

Oregon State Bar
Meeting of the Board of Governors
April 22, 2011
Oregon State Bar Center
Open Session Agenda

The Open Session Meeting of the Oregon State Bar Board of Governors will begin at 1:00 p.m. on April 22, 2011.

Friday, April 22, 2011, 1:00 p.m.

- 1. Call to Order/Finalization of the Agenda**
- 2. Department Presentation**
 - A. Legal Publications [Ms. Kruschke]
 - B. CLE Seminars [Ms. Lee]
- 3. Report of Officers**
 - A. Report of the President [Mr. Piucci] Written [handout](#)
 - B. Report of the President-elect [Ms. Naucler] Written
 - C. Report of the Executive Director [Ms. Stevens] Inform [5-10 & handout](#)
 - D. MBA Liaison Report
- 4. Professional Liability Fund [Mr. Zarov]**
 - A. Financial Report Inform [handout](#)
 - B. Liaison Report Inform
- 5. Special Work Session**
 - A. RIS Business Model Inform [11-117](#)
- 6. Rules and Ethics Opinions**
 - A. OWLS Request for ORPC on Harassment Inform [118-125](#)
- 7. OSB Committees, Sections, Councils and Divisions**
 - A. Workers' Compensation Section Request for Comment
Re: Attorney Fee Rules Revision
 1. Rules Revision Memo [126](#)

	2.	Workers Compensation Board Rules and Proposals		<u>127-171</u>
	3.	Workers' Compensation Section Comments		<u>172-174</u>
B.		Oregon New Lawyers Division Report [Ms. Kessler]	Inform	<u>175-177</u>
C.		Legal Ethics Committee Response to Request for Opinion	Inform	<u>178-179</u>
D.		Request for BOG Review		
	1.	CSF Claim No. 2011-01 JORDAN (Flores-Salazar)	Action	<u>180-190</u>
8. BOG Committees, Special Committees, Task Forces and Study Groups				
A.		Access to Justice Committee [Mr. Mitchell-Phillips]		
	1.	Accept OJD/OSB Task Force on Family Law Forms and Services' Report, and Approve Recommendations	Action	<u>191-217</u>
B.		Budget and Finance Committee [Mr. Kent]		
	1.	Report from the Committee Chair	Inform	Emailed April 15
C.		Member Services Committee [Ms. Johnnie]		
	1.	Update on OSB Program Review	Inform	
	2.	BOG Candidate Recruitment	Inform	
D.		Policy and Governance Committee [Ms. Naucler]		
	1.	Amend Regulations 1.140 and 3.200 regarding Fully Retired Status	Action	<u>218-219</u>
	2.	Request for Additional MCLE Credit for Lawyer-Legislators	Action	<u>220-221</u>
	3.	Proposed Amendment to OSB bylaws re: Unclaimed Lawyer Trust Accounts	Action	<u>222-225</u>
	4.	Fee Arbitration Task Force Recommendation	Action	<u>226-237</u>
	5.	Judicial Administration Committee Assignment	Action	<u>238-239</u>
	6.	Amendment to OSB Bylaw 2.6 regarding Conflicts of Interest	Action	<u>240-243</u>
E.		Public Affairs Committee [Mr. Johnson]		
	1.	Legislative Update	Inform	

- F. Public Member Selection [Ms. Naucler]
 - 1. Appointment Recommendation Action
- G. Appoint Unclaimed Lawyer Trust Accounts Committee Action

9. Consent Agenda

- A. Approve Minutes of Prior BOG Meetings
 - 1. Open Session – February 18, 2011 Action [244-272](#)
 - 2. Judicial Proceedings – February 18, 2011 Action [273-275](#)
 - 3. Executive Session – February 18, 2011 Action [276](#)
 - 4. Special Meeting – March 18, 2011 Action [277-325](#)
- B. Appointments Committee
 - 1. Appointments to Various Bar Committees, Boards and Councils Action [handout](#)
- C. Budget and Finance
 - 1. Approve Change to OSB Investment Policy in OSB bylaw 7.402 Action [326-327](#)
- D. Policy and Governance
 - 1. Complimentary CLE for Active Pro Bono Members Action [328](#)
 - 2. OSB Bylaw 24.201 Changes re: PLF-PPAM Service to Judges Action [329-330](#)
 - 3. ONLD Bylaw Changes Action [331-343](#)
 - 4. Proposed amendment to MCLE Rules 5.2 and 5.4 Action [344-347](#)
- E. Client Security Fund Claims Recommended for Payment
 - 1. No. 2010-35 TISCORNIA (Carlson) \$17,957.94 Action [348-349](#)
 - 2. No. 2011-03 MORASCH (Memmott) \$ 3,000.00 Action [349](#)
 - 3. No. 2010-09 HAYES (Chrestensen) \$ 3,500.00 Action [350](#)

10. Default Agenda

- A. ABA HOD – Midyear Meeting Inform [351-364](#)
- B. Minutes of Interim Committee Meetings

1.	Access to Justice Committee		
a.	February 17, 2011		<u>365</u>
b.	March 18, 2011		<u>366-367</u>
2.	Appellate Screening Special Committee		
a.	March 18, 2011		<u>368</u>
3.	Budget and Finance Committee		
a.	February 17, 2011		<u>369-370</u>
b.	March 18, 2011		<u>371-372</u>
4.	Member Services Committee		
a.	February 17, 2011		<u>373</u>
b.	March 18, 2011		<u>374</u>
5.	Policy and Governance Committee		
a.	February 17, 2011		<u>375</u>
b.	March 18, 2011		<u>376-377</u>
6.	Public Affairs Committee		
a.	February 17, 2011		<u>378</u>
b.	March 18, 2011		<u>379</u>
7.	Public Member Selection Special Committee		
a.	March 18, 2011		<u>380</u>
C.	CSF Claims Report		<u>381-383</u>
D.	Disciplinary Counsel's 2010 Annual Report	Inform	<u>384-411</u>
11.	Closed Sessions (Click here to access the Closed Session Agenda)		
A.	Judicial Session (pursuant to ORS 192.690(1) – Reinstatements		
B.	Executive Session (pursuant to ORS 192.660(1)(f) and (h) General Counsel/UPL Report		
12.	Good of the Order (Non-action comments, information and notice of need for possible future board action)		
A.	Social Media Revolution (<i>YouTube</i> video)		
B.	Articles of Interest		
1.	Armies of Expensive Lawyers Replaced by Software (<i>New York Times</i> , March 4)		<u>412-414</u>
2.	Is Law School a Losing Game? (<i>New York Times</i> , January 9)		<u>415-420</u>
3.	Law School Bubble is Bursting (<i>Slate</i> , March 18)		<u>421-423</u>
4.	Online Bar Directory Feedback		<u>424-425</u>

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: April 22, 2010
 From: Sylvia E. Stevens, Executive Director
 Re: Operations and Activities Report

OSB Programs and Operations

Department	Developments
Accounting & Finance/Facilities (Rod Wegener)	<ul style="list-style-type: none"> • Bar staff has assumed the “facilities management” duties for the bar center and Fanno Creek Place Buildings B and C. Bar staff already were familiar with most facilities duties with the change, but the accounting required the assumption of new duties. • A survey was sent to sole and small firms in the metro and down the valley area seeking interest in renting short-term office space at the bar center. The results of the survey should be available by the April 22 board meeting. • Designs are being developed for moving Admissions and the Lawyer Referral departments to the third floor vacant space and estimates are being compiled for the approximate cost of the improvements. The project is on hold pending further word from our broker about a potential tenant. • We have closed out the 2010 financial year and issued financial statements for Jan-Mar 2011. • The department is preparing documentation and additional training on the various and complex dues processes and plans to have two staff fully capable of performing all tasks related to the current dues billing processes and system.
Admissions (Jon Benson)	<ul style="list-style-type: none"> • Completed implementation of on-line bar applications, which will save approximately 46,000 sheets of paper annually, plus postage • Completed grading of the February exam, using the “cloud” based grading interface created by IDT. • Experiencing a marked increase in the number of applicants with fairly serious character & fitness issues including: violent crimes (especially against women), drug/alcohol abuse, mental health issues, and patterns of misrepresentations/lying. Implications for the BBX include significantly more complex investigations and more hearings on applications. • Ended FY2010 \$54K in the black, largely due to increase in reciprocity applications and large reduction in paper & postage • Staffing changes: 1 recent resignation, One 0.5 FTE becoming 1.0 FTE, 1 person going on FMLA leave soon (possible temp) • Have outgrown current site and will be holding the July exam at the Jantzen Beach Red Lion. • New federal regulations and more requests from applicants has resulted in an increased number of applicants receiving accommodations on exam, which in turn requires more proctors. • Jon Benson has been named chair of the Technology Committee of the National Conference of Bar Examiners (NCBE) and Charles Schulz will chair the Testing Accommodations Committee.
CLE Seminars	<ul style="list-style-type: none"> • Increasing our webcasting services for OAAP and the PLF; will have webcast five

Department	Developments
(Karen Lee)	<p>seminars between February and June.</p> <ul style="list-style-type: none"> • Revamped the services for sections who do not cosponsor; added more benefits, such as providing MCLE record keeping forms and evaluation forms, and acting as a clearinghouse to coordinate other bar-related services uses for producing CLE events (e.g., Design Center, Facilities, MCLE, etc.). • Developing a time line and action plan for transitioning from print course materials to an electronic format; target date for completion is January 1, 2012, when print copies will only be available upon request and for an additional cost. • Completed delivery of three event mobile apps for the Securities, Litigation, and Bankruptcy institutes; will be analyzing usage and data for future potential use.
General Counsel (including CAO) (Helen Hierschbiel)	<ul style="list-style-type: none"> • GCO continues to respond to a high volume of ethics inquiries and handle a good volume of miscellaneous legal matters. • The Fee Arbitration Task Force has completed its work and is submitting its report and recommendations to the Board at its April 22 meeting. • The UPL Task Force met on April 4 during which it reviewed its draft report and recommendations. They hope to have a final report for the Board in June. • CAO staff is working with IDT and our outside consultant on revising the CAO database and moving to a paperless office. • CAO staff and Helen Hierschbiel will have a half day long range planning retreat in May. • Chris Mullmann and Amber Bevacqua-Lynott are finalizing a first draft of the curriculum for Ethics School recently authorized by the Supreme Court. • The 2010 CAO Annual Report is completed and is being printed by IDT.
Human Resources (Christine Kennedy)	<ul style="list-style-type: none"> • Recruiting for the Director of Diversity and Inclusion position. • Recruiting for 2.1 FTE Referral and Information Services Assistants; hired one student from our relationship with Lewis & Clark with the possibility of one more. • Completed annual performance evaluations for all staff. • Renewed employee benefit contracts. • 40% of the staff participated in the Healthy Heart wellness contest. Teams competed to walk the most steps per week for a month.
Information & Design Technology (Anna Zanolli)	<p>IDT efforts during the first quarter of 2011 were focused on three primary areas:</p> <ul style="list-style-type: none"> • <i>Upgrading the BBX grading interface for the February grading session.</i> Phase 2 of the online interface was introduced at the grading session in Sun River. Improvements gave the graders the ability to review and revise grades throughout the grading process, to see a graph of the grade distribution for themselves and their co-graders, and to navigate more easily through the site. All tech support was handled through phone and email and no IDT staff presence was required at Sun River for the first time. • <i>Developing Mentoring Program.</i> Working with Kateri and her team, Phase I of this new program is underway with data being collected for potential mentors and plans in place to capture same for new lawyers, after which the first round of matching will occur and the mentoring process can commence. With its secure login, the bar's member website will be the clearinghouse for tracking progress through the program. The mentoring system is being designed to fully integrate with the other connected processes, from Admissions to MCLE, fee processing, and communication preferences. • <i>Developing a IDT strategy for the bar.</i> We are working with CogentIT and department management to formulate an IT strategy from which we can clarify staffing needs and project priorities so that we can provide a better infrastructure to support bar programs and plans.
Legal Publications	<ul style="list-style-type: none"> • We have released 4 books since March (<i>Appeal & Review: the Basics; Uniform Civil</i>

Department	Developments
(Linda Kruschke)	<p><i>Jury Instructions (supplement); Oregon Administrative Law; and Uniform Criminal Jury Instructions (supplement)</i>, all offered in print by pre-order and posted to BarBooks™. Print revenue thus far exceeds budget by 2-3 times.</p> <ul style="list-style-type: none"> • Total print book revenue to date for 2011 is \$82,098; other BarBooks™ revenue to date (from law libraries and staff accounts) is \$14,185. • We are in the process of reformatting and adding 4 PLF books to the BarBooks™ online library (<i>A Guide to Setting Up and Running Your Law Office; A Guide to Setting Up and Using Your Lawyer Trust Account; Planning Ahead – A Guide to Protecting Your Clients’ Interest in the Event of Your Disability or Death; and Oregon Statutory Time Limitations Handbook</i>) • Continuing to work with IDT on future plans for BarBooks™.
Legal Services/OLF (Judith Baker)	<ul style="list-style-type: none"> • Bylaws and policies governing the bar’s handling of unclaimed client funds from lawyer trust accounts are on the BOG agenda for approval in April. Approximately \$148,000 has been collected to date. There is one pending request for a return of funds. • Judith Baker is working with Susan Grabe and legal aid staff on legislative issues effecting the filing fee funds administered by the bar and going to legal aid. • Staff is working on the accountability report mandated by the LSP Standards and Guidelines. • LRAP applications are currently available for new applicants. The deadline for submission is April 15. • Planning has started for the Pro Bono Fair that will take place in the fall. • Staff is engaged with the PLF in discussions regarding potential expansion of the certified pro bono program. • The Oregon Law Foundation’s Rules Committee will make a recommendation to the full board about whether to adopt a “comparability” rule based on the results of a feasibility study due on April 8.
Member & Public Services (Kay Pulju)	<p><i>Member Services:</i></p> <ul style="list-style-type: none"> • Distributed information to County Bar Presidents regarding support and materials available through the OSB for Law Day programs and events. • Updated list serves and provided current membership lists to sections after bar dues processing was finalized. Overall 2011 section membership enrolment remained steady compared to last year’s enrolment. • Distributed OSB and ABA House of Delegates election information. The only contested race is for Oregon’s ABA House of Delegates, with three candidates for two seats. While there were no contested HOD elections, only seven vacancies remain after the candidate filing deadline passed. <p><i>Events</i></p> <ul style="list-style-type: none"> • The Convocation on Equality (COE) steering committee and various subcommittees are actively planning and communicating with stakeholders, including surveying various groups to assist in finalizing presentations in three thematic tracks. Steering committee member Gerry Gaydos will update the BOG in June. • Planning is underway for the 2011 Awards Luncheon, which will be Wednesday, November 9th at The Governor Hotel in Portland. The deadline for all nominations is Friday, July 15. • The Bar/Press/Broadcasters Council’s annual “Building a Culture of Dialogue” event takes place May 7. It will bring together media representatives (primary co-planner is the Managing Editor of the Oregonian) with representatives from the courts, Multnomah County DAs office, the defense bar and the Portland police. • All section chairs have received information about the new mp3 library and its role

Department	Developments
	<p>in making short, specialized CLE offerings available statewide; several sections have expressed interest and some have already taken advantage of this new offering.</p> <p><i>Bulletin</i></p> <ul style="list-style-type: none"> • Exceeded \$40,000 in advertising revenue for the February/March 2011 issue (one of only three issues ever to exceed that amount). • Continuing focus on bar priorities through publication of an article on lawyer-legislators (with the assistance of the Public Affairs Department); preparing articles about the mentoring program and early notice of the Convocation on Equality. • Making contacts with a bar sections, bar leaders and other constituencies to “widen the net” on generating article ideas and recruiting authors. <p><i>New Lawyer Mentoring Program</i></p> <ul style="list-style-type: none"> • Enrolling 243 mentors approved by the BOG in March and planning for the broader recruitment effort when the program is opened to all eligible potential mentors. • Ongoing communication efforts include: information for new members who pass the February bar exam; meetings with law school administration and student groups and development of information pieces for law school career services programs; membership communications through the Bulletin and Bar News; and publicity to external audiences. • Working with video producer Melissa Powers on mentor training video with a program overview, and guidance on how to establish and support a successful mentoring relationship. • Developing database programs to manage the matching process and track administrative and regulatory processes. <p><i>RIS</i></p> <ul style="list-style-type: none"> • Filled recent staff vacancies with three part-time employees who will work between 12 and 20 hours per week; currently recruiting for an additional bilingual staff member. • Preparing for the annual Lawyer Referral Service registration cycle, which begins in May. • Since June 30, 2010 (the beginning of the current program year) RIS has received 44,952 calls from the public. Of these, approximately 36,000 resulted in LRS referrals, more than 1,900 received Modest Means Program referrals and 120 were referred through the Military Assistance Panel.
Minimum Continuing Legal Education (Denise Cline)	<ul style="list-style-type: none"> • Mailed 486 Notices of Noncompliance on February 10. The final deadline is April 14. As of April 5, 221 members still need to file their compliance reports for the reporting period ending 12/31/2010. • Processed 2,073 program accreditation applications and 363 applications for other types of CLE credit (teaching, legal research, etc.) in the first three months of 2011. • Jenni Abalan, MCLE Program Assistant, began her part time schedule (20 hours per week) on April 1 and will continue this schedule through September.
Public Affairs (Susan Grabe)	<ul style="list-style-type: none"> • Bar representatives will be attending the ABA Lobby Day in Washington, D.C. April 12-14. The three topics for discussion with our congressional delegation will be funding for Legal Services Corporation, state court funding (federal intercept bill) and judicial vacancies. • The bar is hosting a Day at the Capitol on Thursday May 12th to connect lawyers with their Representatives and Senators to talk about justice system issues of importance to the bar. The goal is to arrange constituent meetings with all legislators, with an emphasis on Ways and Means committee members. • OSB has sponsored 18 bills which are currently making their way through the

Department	Developments
	<p>legislative process. Of the 18 bills, 16 have passed through the first chamber and are waiting for hearing in the second chamber; one is dead and is scheduled for a work session next week.</p> <ul style="list-style-type: none"> • In February, the bar hosted a Legislative Reception in conjunction with the Board meeting. The event was a success and with many legislators and a total of 101 attendees. • In March, the bar hosted a lawyer legislator/appellate court reception which provided those involved the opportunity to share concerns about issues of importance to the bar and the courts. • As always, staff is continually monitoring bills introduced during the legislative session, and referring to sections any bills that may be of interest. Sections are encouraged to work with Public Affairs to monitoring ongoing legislation, and to become involved in the legislative process when appropriate.
Regulatory Services (Jeff Sapiro)	<ul style="list-style-type: none"> • The SPRB continues to meet monthly to review the results of disciplinary investigations and make probable cause decisions in those matters. • Disciplinary Counsel's Office has issued its annual report for 2010 (a copy of which is in the BOG April agenda materials). • IOLTA staff recently turned over to DCO the list of lawyers (approximately 750) who have yet to comply with the 2011 IOLTA filing requirement. • DCO and CAO staff continue to develop the curriculum for Ethics School, the first session of which will occur later this year. • The Regulatory Services staff continue to process a steady volume of membership status changes, <i>pro hac vice</i> applications and public records requests.

Executive Director's Activities February 21 to April 21, 2011

Date	Event
February 22	CEJ Awards Luncheon
February 22	Interviewed for OWLs magazine
February 23	Proctored Bar Exam special applicant
February 28	Mentoring Task Force
March 1	Law Firm Lunch—Jordan Schrader
March 5	LEC Meeting
March 5	MBA Winter Smash
March 8	Queen's Bench Lunch
March 15	Meeting with Chief Justice
March 15	CEJ Board Meeting
March 16	Supreme Court/Lawyer-Legislator Reception
March 17	OWLs Leadership Forum Ethics CLE
March 18	BOG Committees/50-Year Member Lunch/BOG-ONLD Dinner
March 18	CSF Meeting
March 22	Director/Manager Training: Delivering Difficult Messages
March 22	Director of Diversity Interviews (2)
March 23	Director of Diversity Interviews (2)
March 24	Director of Diversity Interviews (2)
March 25	Director of Diversity Interviews (3)
March 30-April 2	<u>Western States Bar Conference</u>
April 5	Director of Diversity Interview (1)
April 8	AAC Meeting/AAP Spring Social

April 12-14	ABA Lobby Day (Washington DC)
April 19-20	Director of Diversity 2 nd Round Interviews
April 20	Classroom Law Project Citizen of the Year Dinner
April 21	Law Firm Lunch—Stoll Berne

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: April 22, 2011

Memo Date: April 11, 2011

Re: BOG Work Session
RIS Business Model

Action Recommended

No action recommended.

Background

I. Background: OSB Lawyer Referral Service

A. History.

The Lawyer Referral Service (LRS) began as a mandatory program in 1971 when restrictions on lawyer advertising made it difficult for potential clients to locate attorneys appropriate to their legal needs and circumstances. From 1971 until 1981 participation in the program was mandatory. In 1981 LRS became a voluntary program supported by registration fees from lawyers electing to participate. The intention was for LRS to become self-sufficient in five years. In 1986 the Board supported a staff recommendation to allow the program to remain subsidized.

B. Purpose.

LRS serves lawyers and the public by referring people who can afford to pay for legal services and need legal assistance to lawyers who have indicated an interest in or willingness to accept such referrals, and by providing ancillary information and alternative referral services. It is the largest and best-known program of the bar's Referral & Information Services (RIS) Department, and the only one that produces revenue. The basic LRS operating systems (e.g., computer hardware and software) support the other department programs. RIS also offers several other programs that help both the people and the lawyers of Oregon.

- **Modest Means** is a reduced-fee program assisting low to moderate-income clients in the areas of family law, landlord-tenant disputes, foreclosures and criminal defense.
- **Problem Solvers** is a pro bono program offering legal advice for youth ages 11-17.
- **Lawyer to Lawyer** connects Oregon lawyers working in unfamiliar practice areas with experienced lawyers willing to offer informal advice at no charge.

- The **Military Assistance Panel** connects military personnel and their families in Oregon with pro bono legal assistance.
- The **FEMA Panel** is a pro bono program activated whenever FEMA declares a disaster area within Oregon.

C. Operations.

RIS annually processes 65,000-80,000 requests for legal assistance and information; of these, more than 50,000 result in referrals to LRS panel attorneys. Requests are submitted primarily by phone but also by mail and increasingly online. In addition to referrals through the various RIS programs many callers are directed to community resources such as legal aid and other programs within the bar such as the Client Assistance Office. For LRS referrals, the most-requested referrals by practice area are: Family Law, General Litigation, Real Property and Criminal Law (see LRS Referrals by Panel).

Approximately 1,300 bar members participate as LRS panelists, which represents 20% of active members in private practice. The profile of an “average” panelist would be a solo or small-firm lawyer in general practice with more than 16 years of practice experience (see LRS Panelist Charts). Policy issues for referral to the BOG are generally first discussed by the OSB Public Service Advisory Committee, which advises on all RIS programs as well as the bar’s public education programming.

The department’s largest expense is staffing, which represents 88% of total expenses (not including ICA). Revenue for 2010 was approximately \$160,000 and net expense (including ICA) was approximately \$275,000. Projections for 2011 are a higher net expense.

D. Funding.

Currently all program revenue derives from panelist registration fees. Basic registration fees, which entitle a panelist to register for up to 4 substantive-law panels, are tiered based on years of bar admission: \$50 (new member), \$75 (admitted 1-3 years) and \$100 (admitted at least 4 years). Additional panels may be added for \$30 each, and additional fees apply for multiple location registrations and the option to receive communications other than via email.

The current fees were set in 2007 following a review of funding options by the PSAC and BOG committees (see LRS Fees Memo). The BOG has revisited LRS funding on several occasions over the past thirty years, first focusing on panel registration fees (see 1987 LRS Program Evaluation) and later on the possibilities of a percentage-fee model. The first BOG exploration of percentages resulted from a recommendation by the ABA’s Program of Assistance and Review in 1992 (see PAR Report 1992). The BOG also conducted a thorough review in 1998 as part of a partnership proposal with the Multnomah Bar Association (see Oregon State and Local Bar LRS proposal). Each time the decision has been made to retain the current funding model with minor, if any, changes to panel registration fees.

II. Basics of LRS Funding Models

A. Panelist Registration Fees.

Almost all LRS's charge some form of annual registration fee based, for example, on the number of panels or subpanels selected by the panelist lawyer. Some programs, like Oregon's, discount these registration fees for those lawyers that are new to the practice of law. Perhaps the greatest advantage of this model is simplicity. Members are comfortable with the concept, all fees are clear in advance of registration and panelists (unless they request changes) are billed only once per year. The disadvantages are that the revenue potential is limited and even small increases tend to result in panelist attrition.

Oregon's LRS registration fees are decidedly on the low end compared to other programs nationally. Feedback from panelists at a focus group session in 2010 was that LRS is a great value and the bar undercharges for its LRS. While some indicated they would happily pay more than double the current rates, other (primarily new) lawyers thought raising registration fees would prevent them from participation.

LRS fees have also been remarkably stable over the years, with few increases. The last increase was made in 2007, and the fees set at that time are still in place. Following that increase LRS saw a first-year decline in participation that only fully rebounded after three years. Previous increases in registration fees, infrequent as they were, had the same effect.

B. Consultation Fees and Forwarding Fees.

This is a commonly used funding mechanism for referral services, although it has lost favor in recent years. In the "consultation fee model" clients must pay the initial consultation fee to the LRS before receiving a referral. Fees are retained by the LRS, which means panelists do not receive any fees for initial client consultations. In the "forwarding fee" model, panelists collect the consultation fee from clients, then forward all or part of the fee to the referral service.

Many programs have abandoned this method because administrative costs substantially offset the revenue it generates. Consultation fees, which require the LRS to process payments, would increase call length considerably and add considerable accounting work; forwarding fees do the same, placing much of the increased administrative burden on panel members. Other concerns are that potential clients may be discouraged by "up front" fees, panelists who are already providing great value for their consulting services should be able to keep the fees, and requiring a consultation fee limits panelists' flexibility in offering free consultations as a client-development tool. In addition, to remain competitive with the legal marketplace, many LRS programs nationally are reducing or eliminating consultation fees altogether. On the plus side, both of these methods do bring in additional revenue, and the consultation fee model in particular has the benefit of effectively screening callers for ability and willingness to pay for legal services.

C. Percentage Fees.

A percentage fee system is one in which a panelist who accepts a fee-generating case returns to the referral service a portion of the fees collected over a threshold amount, if any. Percentage fee systems in effect spread program costs proportionately, with greater contributions from those panelists who most benefit from their participation. A majority of bar-sponsored LRS programs nationwide have adopted percentage fee plans as the most equitable method of funding a referral program.

1) Legal and Ethical Concerns

Much of the discussion and concern over whether to implement percentage fees in Oregon has centered on whether it would require any changes to any statutes or ethics rules. The statutory questions are whether ORS 9.505 and/or 9.515 prohibit a lawyer referral service from requiring that participating lawyers pay a percentage of legal fees earned by the lawyer. The ethics rules that could impact percentage fees are ORPCs 1.5 (fees), 5.4 (professional independence of a lawyer) and 7.2 (advertising). The Public Service Advisory Committee and bar staff provided background on these issues to the BOG's Access to Justice Committee in 2010 (see BOG A2J -- Authority for Percentage Fees).

The bar's Legal Ethics Committee, upon a recent request from the BOG to address the rules issues, declined to draft an opinion that Oregon's rules permit percentage fees in connection with LRS, primarily because of the language of ORPC 7.2 (see Ethics Committee Letter). Previously issued ethics opinions conclude that fee-sharing with a referral service is prohibited by the current rules (see Formal Opinion No. 2005-168 and Formal Opinion No. 2007-180).

The ABA and many states have issued ethics opinions on this topic or specifically noted the ability of public service lawyer referral programs to utilize this mechanism through bar rules. Background materials from the ABA include articles (see Franck article) and summary reports (see Percentage Fee Funding Adopted by State) showing the growth of percentage fees as an LRS funding model.

Should the BOG decide to pursue percentage fee funding, a decision on how to address these issues will need to be made. Very likely, an amendment to ORPC 7.2 would be required so as to expressly permit fee-sharing in lawyer referral cases. That raises another issue: whether the permission should be limited to bar-affiliated programs, to any non-profit service, or to any lawyer referral service. ORS 9.505 is a potential problem, in that it prohibits a "person" from accepting compensation for referring a matter to an attorney. There is some debate and no clear authority on whether the bar is "person" within the meaning of the statute. An obvious solution is to seek an amendment or repeal of the statute in the 2010 legislative session, but it is expected that there would be opposition from the plaintiff's bar. General Counsel is reasonably confident that a legal challenge to the bar's collection of a percentage fee could be defended successfully.

The board would also need to decide how revenue in excess of operational expenses should be spent. Finally, there are several implementation issues to resolve.

2) Implementation Considerations

Determining Percentages and Thresholds: The percentage can be fixed amount for all panels or vary by substantive panel; it can also be graduated levels based upon the total amount collected, e.g., 10% of the first X collected, 15% of any amount collected above X. Most LRS's that have a 15% fee model break even or earn revenue in excess of operational expenses (see Austin CTRLS rules). LRS's that collect 10% sometimes break even but seldom earn revenue beyond expenses (see Maine atty staff manual). Programs that collect 20% or more generally collect revenue in excess of operational expenses (see NV standards and rules).

Member Communications: Programs that have implemented percentage fees report their greatest initial challenge is in communicating the changes to panel members and others. Panel members will need to understand the reasons for the change and, perhaps most importantly, how it may affect them. From preliminary research it appears LRS panelists are most concerned about ease of administration, simplicity of accounting functions and possible implications arising from the bar's regulatory role (i.e., could failure to follow correct LRS procedures have bar disciplinary consequences).

Budgeting: Most LRS's report losing 10-20% of their panelists when percentage fees were first implemented. Panelist attrition, however, is short-lived, with most programs reporting a return to "normal" registration within 2 years. Percentage fee revenue typically takes 3-5 years to reach maturity in revenue terms, and remain highly variable because of the unpredictable nature of fees deriving from personal injury matters.

Infrastructure: The basic database functions required to support a percentage fee system are already in place. Only minor modifications to the current attorney notification and follow-up reporting programs would be required. Additional resources may need to be allocated to handle accounting functions.

III. Other LRS Issues

A. Client Consultation fees. LRS clients pay a maximum of \$35 for an initial consultation with an LRS panelist. There is no set time limit, leaving it up to individuals to control the length and scope of an initial consultation. The PSAC and BOG have periodically considered and rejected changes to the client consultation fees as inconsistent with the program's public service orientation (see P&G re client fees).

B. Subject Matter Panels. These are-of-law panels that require attorneys to meet objectively determinable criteria, e.g., experience or training, as a prerequisite to panel membership. The purpose is to ensure that participating lawyers possess the knowledge and skills necessary to

effectively assist clients in the referred subject matter. Subject Matter Panels are a requirement for certification of an LRS by the ABA (see Model Supreme Court Rules). Sample program guidelines are available from the ABA's website:

<http://apps.americanbar.org/legalservices/lris/clearinghouse/examples.html>. OSB's LRS has adopted subject matter panels for certain complex criminal law, adoption and immigration matters. A subject matter panel for certain employment law matters was added in 2010 on a pilot basis. Current subject matter panel forms are available at the bar's website at <http://www.osbar.org/forms#lrs>

C. Liability for Negligent Referral: Some members may question whether the LRS could face liability for negligent referral under a percentage fee system. The short answer is that an LRS's funding scheme does not appear to effect its potential liability, and to date no LRS has been held liable for negligent referral (see Negligent Referral Liability).

IV. Three Options for OSB LRS

A. Status Quo

LRS remains funded by panel registration fees, although changes in registration fees may be made. Past increases in the registration rate have been small and infrequent, but have still resulted in panelist attrition so that no additional revenue was raised. That said, the fees for Oregon's LRS are very low compared to other programs nationally, and panelists who participated in the 2010 focus groups generally supported raising the registration fees. Focus group members were concerned, however, about the impact of rate increases on new lawyers; PSAC committee members and staff are concerned about attrition in rural areas, where participation is already comparatively low.

Pros:

- Members are accustomed to registration fees so less member/panelist education needed for any change in fee amount.
- Registration fees remain a consistent and predictable source of revenue in the immediate future.
- No changes to Oregon Revised Statutes or Rules of Professional Conduct.

Cons:

- RIS is unlikely to break even and will likely require increased subsidizing from the bar's general fund.
- Loss of opportunity. Private sector internet competition is growing rapidly, and is significantly better funded. The bar's market dominance will decline and be supplanted by private sector competition. Private sector services are able to target potential clients from middle and higher socio-economic strata (internet savvy, middle-class) – a market that the bar is unable to target and is losing right now.

- Costs and expenses will increase over time. Inability to invest in RIS – including increased staffing and technological upgrades – will lead to longer wait-times and an increase in the percentage of abandoned calls.
- Increased registration fees may disadvantage the lawyers least able to afford to participate, and lead to high attrition in rural areas where it is often a challenge to enroll panelists.

B. RIS Implements Percentage Fees with Goal of Departmental Self-Sufficiency.

A percentage fee component would be added to the existing LRS revenue structure with the goal of achieving departmental self-sufficiency. Panelists would remit a percentage of attorneys' fees collected from RIS-referred matters – e.g., X% of all fees collected in excess of \$Y. RIS will track all referrals and issue periodic requests to panelists for open/closed status reports on referred cases. RIS would not collect, nor would panelists remit, any consultation fee charged to potential clients. RIS would thus have two sources of revenue – registration fees and percentage fees.

Pros:

- Maintains low cost, low barrier-to-entry for newer and/or inexperienced panelists.
- Implements an equitable, success-based fee structure. Only those panelists who receive viable cases, on which they are able to collect attorneys' fees, pay anything more than annual registration fee. If no leads are successful; the attorneys' fees earned are not in excess of threshold amounts; and/or the panelist is unable to collect the attorneys' fees billed – the panelist remits no additional fees to RIS.
- RIS should be able to achieve departmental self-sufficiency in 3 to 5 years. Doing so will free up \$330,000 to \$350,000 in general funds currently subsidizing RIS.
- RIS will be able to increase marketing to improve its market position, as lawyers and the public both increasingly utilize internet-based resources to address their needs.
- Aggregated marketing and branding for solo practitioners and small firms. Increasing RIS's marketing ability will provide a valuable member benefit to one of the bar's core constituencies – sole practitioners and small firms. As solo practitioners' and small firms' outsourced marketing firm, RIS will be able to increase and improve marketing on behalf of panelists.
- Greater ability to directly assist in fulfilling the bar's mission "by improving the quality of legal services, and by increasing access to justice." RIS is an integral part of the legal services delivery system. In the business of public service and, at the same time, in the business of providing valuable member benefits, RIS demonstrates to the bar's members, the public, and the judiciary how the bar is fulfilling its access to justice mission: it provides access to justice for low- to moderate-income people in our community.
- Strengthen the bar's brand, improving public perception of the legal profession. RIS is the bar's best-known and most-used service. RIS receives between 65,000

- 80,000 calls per year and accounts for 97% of the email volume in and out of the entire organization.
- Improve the quality of calls/leads for LRS panelists; shore-up erosion of target-market segment. With improved funding, RIS will be able to invest in operations, including marketing and technology, improving client services and, ultimately, panelist satisfaction as the quality of referrals improves.
- Cover increasing departmental costs and expenses. The number of Modest Means Program applications continues to rise and has doubled since 2007. Military Assistance Panel Program referrals have tripled since 2008. Percentage fee revenue will help cover both increasing personnel and direct program costs.

Cons:

- General OSB member and RIS panelist resistance may require a comprehensive educational campaign, potentially including Board of Governors' involvement.
- Possible immediate and significant attrition of panelists, including in rural areas of the state.
- Resentment toward the bar from some panelists required to remit part of their fees to the bar.
- Both registration fees and non-registration revenue will be difficult to predict during the [3- to 5-year] implementation and start-up period.
- While it does not appear that a change to the ORS is necessary, a possible RPC rule change and/or General Counsel Opinion may be prudent.

C. RIS Implements Percentage Fees with Goal to Produce Revenue Beyond Departmental Self-Sufficiency

This is fundamentally the same as Option B except that additional revenue would be produced to improve not only RIS programs but also provide some funding for other public education and access to justice programs. How any additional funds would be spent is a decision for the BOG; members at the LRS focus groups expressed a preference for funding of legal services programs. There are basically two ways to accomplish this goal under a percentage fee model: set the percentage higher or set a very low (or no) threshold on the amount of fees earned that are subject to the percentage fee. Some programs combine both approaches.

Pros:

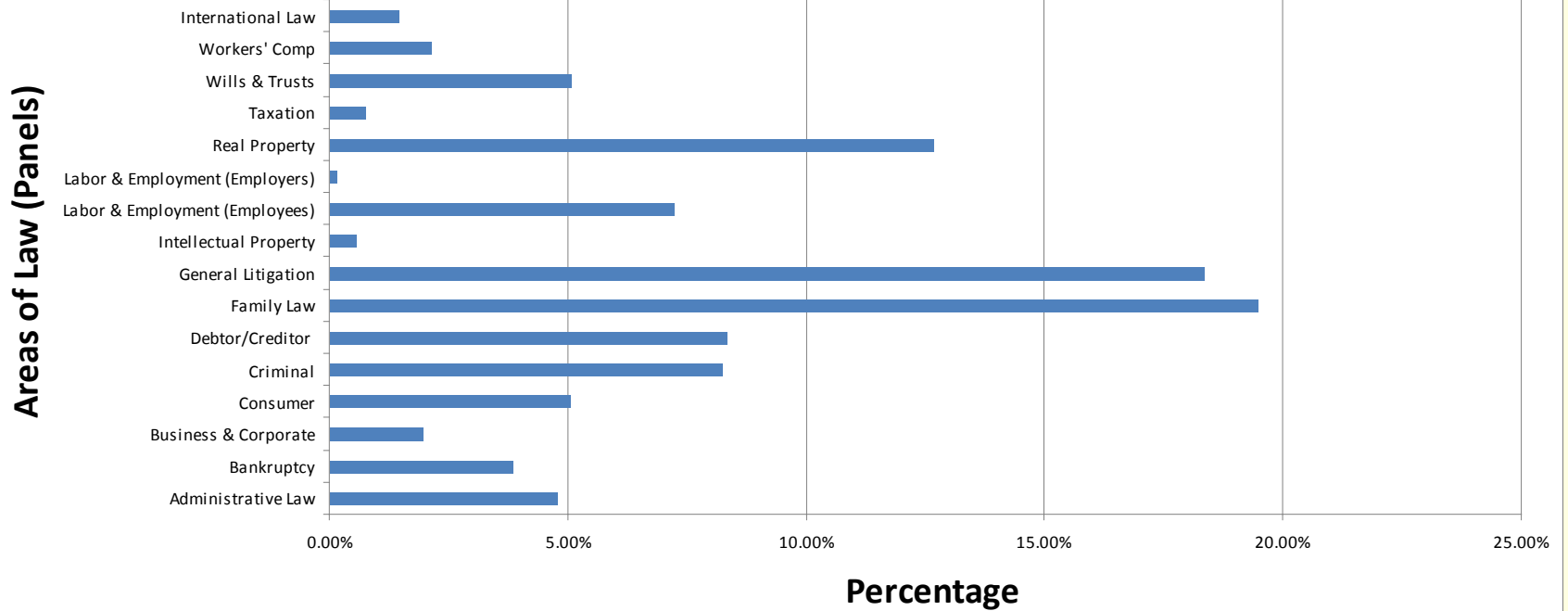
- Everything listed under Option B.
- Additional source of funding for Access to Justice programs, public education efforts, and grants.

Cons:

- Everything listed under Option B.
- RIS panelists may feel it is inequitable to have panelists, and not the entire membership, fund additional Access to Justice programs, public education efforts, and grants.

- RIS panelists may prefer to have a additional funds re-invested in RIS marketing efforts on panelists' behalf.

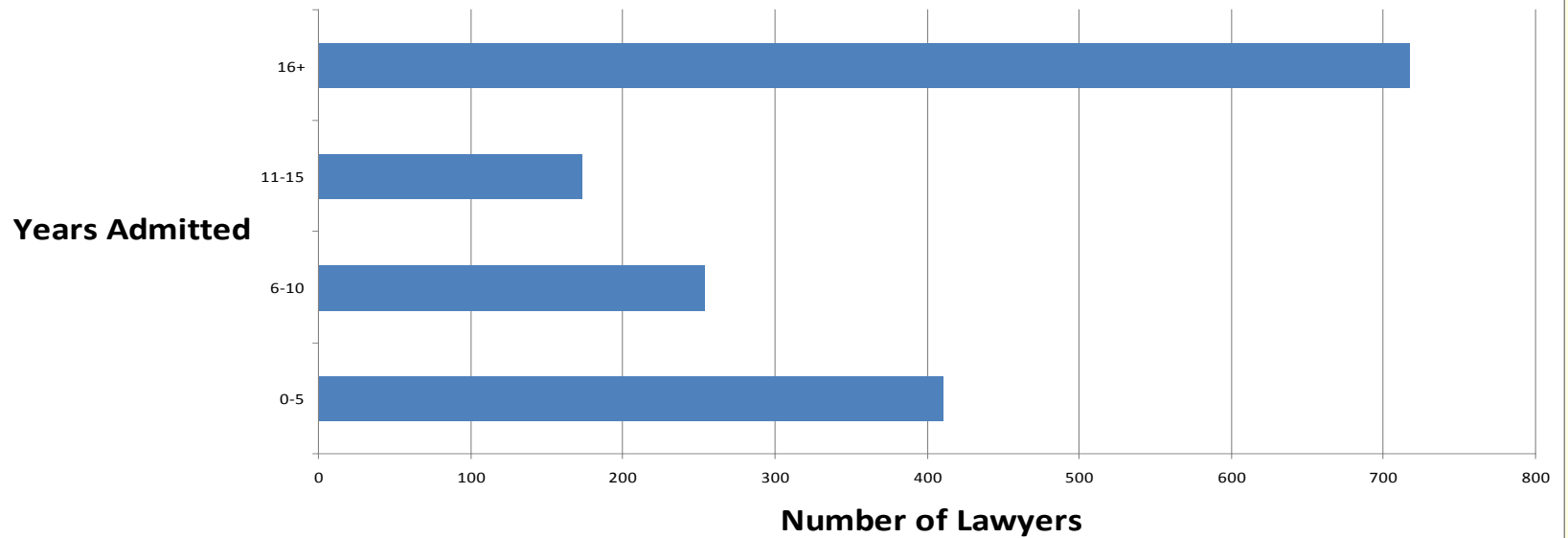
LRS Referrals by Panel



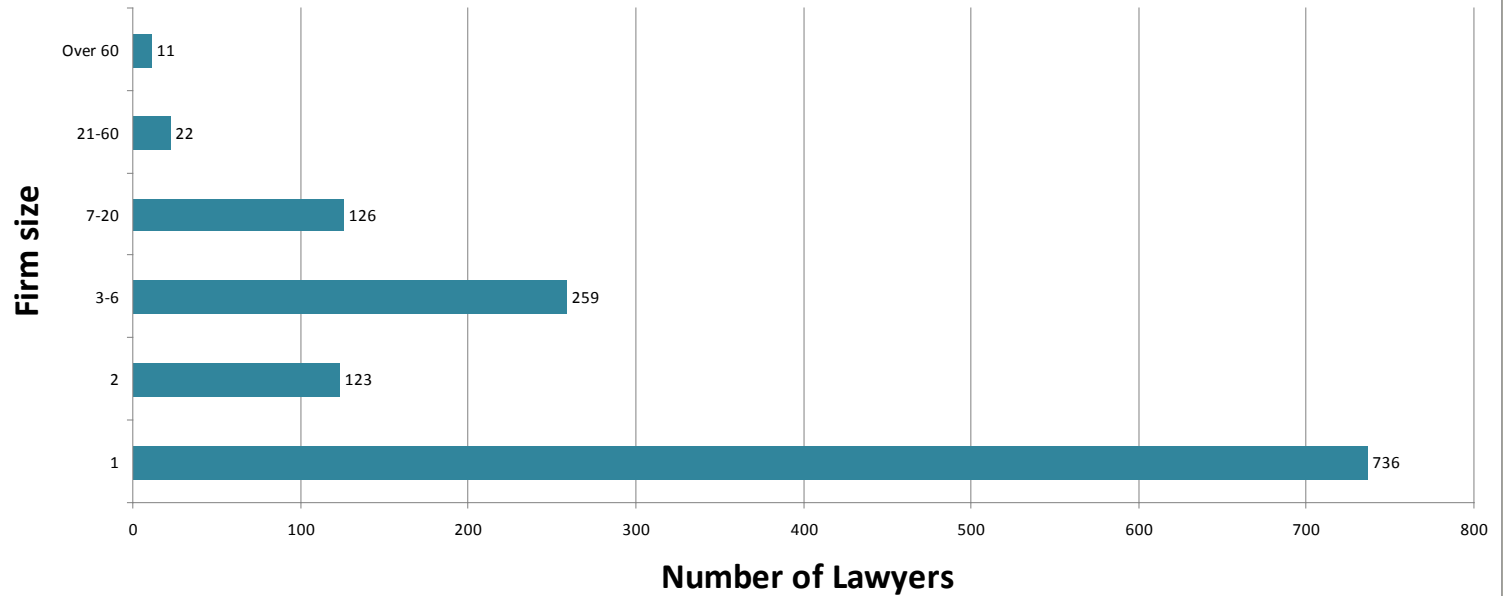
Referrals by type (9.505)

Panel	Percentage of Referrals	No. of Referrals
Administrative Law	4.76%	2137
Bankruptcy	3.84%	1726
Business & Corporate	1.94%	871
Consumer	5.03%	2260
Criminal	8.25%	3703
Debtor/Creditor	8.33%	3740
Family Law	19.47%	8739
9.505 "personal injury or death"	10.32%	4632
Other non-9.505 General Litigation	8.03%	3603
Intellectual Property	0.56%	252
Labor & Employment (Employees)	7.23%	3245
Labor & Employment (Employers)	0.15%	69
Real Property	12.67%	5687
Taxation	0.76%	342
Wills & Trusts	5.08%	2279
Workers' Comp	2.13%	956
International Law	1.45%	653
	100.00%	44894

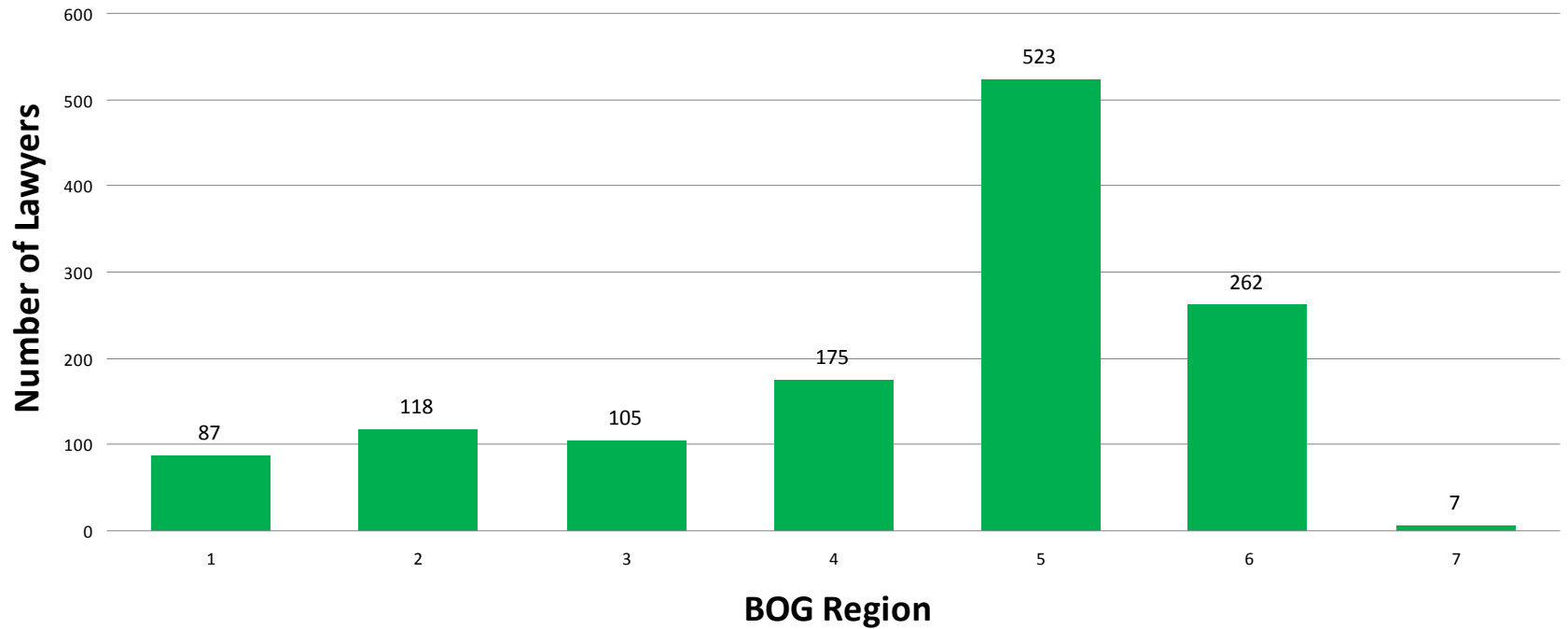
RIS Lawyers by Year Admitted



RIS Lawyers by Firm Size



RIS Lawyers by BOG Region



OREGON STATE BAR

Policy and Governance Committee Agenda

Meeting Date: June 2, 2006
Memo Date: May 17, 2006
From: Public Service Advisory Committee
Staff Liaison Jon Benson, Ext. 419
Re: Proposed LRS fee increase

Action Recommended

The Public Service Advisory (PSA) Committee recommends an increase in the annual fees charged to lawyers participating in the Lawyer Referral Service (LRS), beginning July 1, 2007.

Background

The basic fee for LRS has remained unchanged since 1985. Adjusted for inflation, the \$75 annual registration fee is worth about half of what it was 21 years ago.¹ Additionally, compared to other jurisdictions, the OSB offers significantly lower fees for the LRS program (see attached Exhibit 1 “benchmarking”).

For an annual fee of \$75 (\$55 for “new” lawyers admitted less than 3 years), lawyers can register for up to four (4) panels. Additional panels can be added at a cost of \$25 each. Panels are the general substantive areas of law (i.e., family law, labor & employment law). Within each panel, LRS lawyers may register for as many sub-panels (i.e. child custody, QDRO, discrimination, ADA) as they wish.

Proposed Fee Structure

The PSA Committee recommends the following fee structure:

1. A \$50 annual fee for the first year in which a lawyer is admitted to the OSB. This is a *reduction* from the current lowest rate of \$55 per year. The PSA Committee felt that keeping the initial rate low was an important gesture for new members of the bar.
2. \$75 per year for lawyers admitted three (3) years or less (after the first year \$50 rate).
3. \$100 per year for lawyers admitted more than three (3) years.
4. The price for additional panels (beyond the basic 4) would increase from \$25 to \$30.

The proposed increase in the fee structure would yield \$25,000 to \$30,000 in additional annual revenue, assuming total registration remains at the current level.

¹ According to the U.S. Government’s inflation calculator, \$75 in 1985 had the same purchasing power as \$140.45 in 2006. See <http://data.bls.gov/cgi-bin/cpicalc.pl>

The pros and cons identified with this proposed fee increase are:

Pros:

- Ease of transition with current registration and accounting system
- Easy to justify based on over two decades without increase
- Consistent with current panelist expectations, software, etc.
- Capable of significantly increasing short-term revenue

Cons:

- Lawyer perception of being “nickled and dimed”
- Revenue possibilities more limited than other alternatives

Alternatives to Proposed Fee Structure

In reaching this recommendation, the PSA Committee considered several alternative fee structures. The other fee structures, including relative pros and cons, are:

1) Registration Fees per Panel or Sub-Panel

Charge fees based upon the number of Panels or Sub-Panels for which a lawyer registers. Rather than the current basic structure which allows four (4) Panels and unlimited Sub-Panels, lawyers would be charged for each area of law selected.

The committee rejected this model because it could result in reduced revenue. It is also more likely to diminish coverage in some areas of law and or geographic areas. This model would have also increased costs to sole and small firm practitioners who tend to have a more general practice.

2) Consultation and Forwarding Fees

In one model, the client must pay a fee to the LRS before a referral can be made. The other model requires panelists to collect a consultation fee, the fee is then forwarded to the referral service. Many programs have abandoned this method on finding that the costs of administering forwarding fees substantially offset the new revenue generated.

The committee rejected this model because it would have added administrative and accounting expenses and another layer of bureaucracy. It also would have required lawyers to charge a consultation fee when many currently do not.

3) Percentage Fees

Many other programs around the country utilize a percentage fee structure. Typically, this fee structure involves a modest annual registration fee plus a percentage of the attorney fees charged in the case (see attached Exhibit 1 for some examples). Most

programs that have switched to this structure realize significant increases in revenue within two years.

Currently, a percentage fee model is prohibited by statute (at least as to tort claims). ORS 9.505 & 9.515. It is also prohibited under the Oregon Rules of Professional Conduct. Oregon RPC 5.4(a). Both the statute and the ethics rules would need to be revised to permit this type of fee splitting in Oregon.

The Board of Governors has considered a percentage fee model in the past and declined to implement it.

Conclusion

After weighing the costs and benefits of the various approaches, the PSA committee made the above recommendation. PSA asks the Policy and Governance Committee to review and approve the proposal.

Lawyer Referral Service Program Evaluation

In 1987 as part of the 1988 budget process the Board of Governors requested the Lawyer Referral program to evaluate its current effectiveness and make recommendations regarding the continuation of the program. The Lawyer Referral committee and the OSB staff have examined the issues which affect the program, and tentatively recommend that the program continue in operation, with the following conditions:

1. That the program submit itself to an ABA PAR evaluation on the issues of funding and public service activities.
2. That LRS reinforce its public image by emphasizing a strong marketing/public service campaign, including public service announcements and distribution of posters and business cards throughout the state.
3. That the program be evaluated again in a year to determine if the trend toward program stability is continuing.

BACKGROUND

Introduction to the Program

The Oregon State Bar began operating a Lawyer Referral program in 1971. Participation was mandatory and no membership fee was charged. Then in 1981 the program became voluntary and fee-generating. Attorney pay to participate and the program relies on those fees for most of its operating budget.

Funding

When the program was converted from mandatory to voluntary in 1981, the intention was for LRS to become self-sufficient in five years. However, this was changed in 1986 when the board supported the staff's recommendation that the program would continue to receive a partial subsidy from the general fund. The theory behind the recommendation was the substantial public service functions performed by LRS. In addition to providing referrals to participating attorneys, LRS provides an information and referral service to a variety of callers statewide. Almost half of the calls handled by LRS do not result in referrals.

LRS registration fees have increased as follows since 1981:

1981 - 1982	\$45
1983	55
1984	65
1985 - 1988	75

The revenue from registration fees is approximately equal to the program's expenses except for the overhead/support services charge by the bar. This amount is provided as a partial subsidy. The following is a summary of LRS registration, revenue and expense since 1981. The overhead/indirect cost/support services charge is included as a separate item because it has increased dramatically as OSB accounting procedures have been overhauled. Not included are the carryover and interest income items that were included in previously but are no longer a part of individual program budgets.

<u>Year</u>	<u>Panelists/ Basic Fee</u>	<u>Enrollment Fees</u>	<u>Overhead</u>	<u>Other Expenses</u>	<u>Total Expenses</u>
1981	1660/\$45	\$ 78,135	\$ 2,000	\$ 33,330	\$ 35,330
1982	1740/\$45	81,492	2,500	102,525	105,025
1983	1756/\$55	101,885	2,700	111,605	114,305
1984	1711/\$65	117,045	4,000	114,958	118,958
1985	1450/\$75	115,420	15,000	112,550	127,557
1986	1460/\$75	120,405	19,000	109,490	129,490
1987	1434/\$75	118,080	33,162	109,338	142,500
1988*	1450/\$75	120,000	30,414	126,915	157,329
*Projected					

A significant drop in registration occurred in 1985 when the registration fee was increased to \$75. The change seemed to exceed a psychological amount that attorneys were willing to pay for what many considered a public service obligation. In addition, the idea of attorney advertising was growing, and many attorneys were considering other alternatives to the money spent on LRS. The service in most direct competition at that time was the yellow pages.

Over the past few years LRS has found itself in increasing competition with alternative advertising media, including radio, television, newspapers, yellow pages, and other referral services.

Referral Statistics

The same factors that have created competition for attorney participants have also created competition for referral clients. The following is a summary of LRS statistics for the past five years. The summary includes referrals, other calls, and total calls. (Prior to 1983, the program did not keep statistics on non-referral calls.)

<u>YEAR</u>	<u>REFERRALS</u>	<u>OTHER CALLS</u>	<u>TOTAL</u>
1983 - 84	21000	12115	33115
1984 - 85	15769	13867	29636
%INCR/DECREASE	-25%	+14%	-11%
1985 - 86	18770	13168	31938
%INCR/DECREASE	+19%	-5%	+8%
1986 - 87	15762	14476	30238
%INCR/DECREASE	-16%	+10%	-5%
1987 - 88 *	13570	13250	26820
%INCR/DECREASE	-14%	-8%	-11%

*The figures for 1987 - 88 are projections based on the first ten months of the program year.

The percentage increase/decrease figures were determined based on the totals for the prior year only. They could also be calculated based on the cumulative average or compared each year to the first year in which total call statistics were maintained (1983-84).

CUMULATIVE AVERAGE COMPARISON

YEAR	REFERRALS	OTHERS	TOTAL
1983 - 84	21000	12115	33115
PRIOR AVERAGE	N/A	N/A	N/A
%INCR/DECREASE	N/A	N/A	N/A
1984 - 85	15769	13867	29636
PRIOR AVERAGE	21000	12115	33115
%INCR/DECREASE	-25%	+14%	-11%
1985 - 86	18770	13168	31938
PRIOR AVERAGE	18384	12991	31375
%INCR/DECREASE	+2%	+1%	+2%
1986 - 87	15762	14476	30238
PRIOR AVERAGE	18513	13050	31563
%INCR/DECREASE	-15%	+11%	-4%
1987 - 88	13570	13250	26820
PRIOR AVERAGE	17825	13406	31231
%INCR/DECREASE	-24%	-1%	-14%

1983 - 84 BASE YEAR COMPARISON

YEAR	REFERRALS	OTHERS	TOTAL
1983 - 84	21000	12115	33115
1984 - 85	15769	13867	29626
% CHG FROM BASE	-25%	+14%	-11%
1985 - 86	18770	13168	31938
% CHG FROM BASE	-11%	+9%	-4%
1986 - 87	15762	14476	30238
% CHG FROM BASE	-25%	+19%	-9%
1987 - 88	13570	13250	26820
% CHG FROM BASE	-35%	+9%	-19%

This method of comparison probably creates the most realistic picture of the trend in LRS for the past five years. It shows total calls down approximately 20% from the high point in 1983-84. This decrease was anticipated, and is not as dramatic as might have been anticipated. The level of competition for lawyer referral clients has increased dramatically in the past five years as a result of the following:

- The change in the LRS heading in the yellow pages resulting in the placement of the LRS advertisements at the end, rather than the beginning, of the attorney listings.
- The creation of the subject matter listings for attorneys in the yellow pages.
- An increase, in general, in attorney advertising in all media.
- The introduction of private referral services and legal insurance programs to the marketplace.

All of these factors create competition for LRS. By comparison, in 1983, LRS was competing only with the alphabetical attorney listings for referral clients. Nonetheless, LRS has retained a significant portion of the market and continues to provide a valuable service to over 25,000 members of the public.

LRS Operations

From 1971 until 1985 LRS used a manual referral and record keeping system, first with computer printouts, and then 3X5 cards. In 1985, the program was converted to a computerized referral system. The resulting efficiencies have significantly affected the operation of the referral program. Statistics and attorney/client records are kept by the computer instead of being manually maintained and generated by the staff. The referral/rotation system is much more accurate and clients are served more quickly.

When manual records were used, the staff had to go through the following steps for each referral:

1. Solicit information from caller regarding location and nature of legal problem.
2. Put client on hold.
3. Walk to the central records location, manually sort through index cards for the appropriate location and panel to find an attorney satisfying the client's requirements.
4. Pull the card and return to the desk.
5. Locate the attorney in the Panelist notebook. (In 1984 this step was eliminated when the attorney information was printed on the file card by the OSB computer.)
6. Retrieve the caller from "hold" and give the information on the attorney.
7. Record the referral date on the card.
8. Refile the card in the central file.

This procedure was followed from 70 to 100 times a day. With several people dealing with moveable records, it was extremely difficult to maintain the integrity of the attorney rotation. Cards were misfiled and attorneys were overlooked for long periods of time. In addition, clients were required to remain on hold which can increase frustration with the system. When the system

was computerized, all of the referral functions could be performed from the clerk's desk while talking to the client.

Prior to computerization, the referral lines were operated from 9 to 4, with closures for breaks and lunch. In addition, the lines were closed periodically to catch up on paperwork. After computerization, the referral hours were changed to 9 to 5 and the lunchtime closure was eliminated. The reduction in manual recordkeeping also meant that the number of other closures was substantially reduced. (Of course, computerization has not totally eliminated problems because the program is now dependent on the health of the computer.)

Staffing

In 1981, the LRS program had two referral clerks and a full-time supervisor. Depending on conditions, hours of operation were sometimes abbreviated to four days a week. In 1984, several decisions were made that changed the staffing situation. The clerical staff was increased from two to four, the LRS hours of operation were expanded to five days a week, the public relations/advertising functions were transferred to Public Service & Information, and the full-time supervisor position was replaced by a half-time coordinator position to be filled by an attorney.

Staffing changed again in 1985 when the program was computerized. Hours of operation were expanded again and the part-time clerical staff was reduced from four to three. Staffing has continued at this level, with a half-time administrator, two 60% FTE clerks and one 80% FTE clerk, for a total FTE of 2.5.

In addition to making referrals, the LRS clerks also provide clerical support for the program administrator and the Communications Services Division staff. Applicants are now required to have some word processing experience and it is hoped that this additional training will expand the support services provided by the staff.

LRS SERVICES

In the fall of 1987 LRS paid for a survey of LRS clients. Callers were asked if they would be willing to participate in the survey. Those who agreed were later called by an independent research company. The results of the survey demonstrated that the public is still relying on LRS to introduce them to an attorney, even though a number of alternatives are now available.

Of the group surveyed, approximately half looked to LRS first when they needed to find an attorney. The other callers had tried other sources and had failed to locate an attorney or were not satisfied with the attorney they found.

Clients also indicated a high level of satisfaction with the program. A significant majority of the respondents were either very satisfied (70%) or somewhat satisfied (15%) with the program in general. The LRS staff was also rated highly for being helpful, courteous, and well trained. Although fewer than 50% of the respondents indicated that they used the services of the attorney referred by LRS, more than 80% said that they would recommend LRS to

their best friend.

The survey included demographic information about LRS callers. Approximately one-third of the callers did not work outside the home. (This includes homemakers, retired people, and the unemployed.) Eleven percent of the clients surveyed characterized themselves as professionals. The remainder included a wide variety of occupations.

Approximately one-third of the respondents said they made less than \$15,000 per year, while 44% made between \$20,000 and \$50,000 per year. Sixty-four percent of the respondents were women, and 59% were between the ages of 25 and 45.

The complete survey results and a summary memorandum are available for review in conjunction with this report. In general, the survey supports the conclusion that Lawyer Referral has a positive impact on the public. Clients are satisfied with the service and the the referral attorneys. Clients are also still looking to Lawyer Referral even though other alternatives are available.

The staff plans to redo the survey this fall to determine if there are any changes as a result of LRS marketing efforts or other factors such and increased attorney advertising.

CONCLUSIONS

Internal and external conditions affecting the lawyer referral service have change considerable in the past five years. The program no longer holds a monopoly on the lawyer referral business. In addition to private referral services and legal insurance programs, the program also competes with other methods of advertising. This competition affects the number of attorney participants and the number of referrals. However, the increased competition has not eliminated the need for the bar to operate this program. Other advertising methods and private referral programs do not address the problems of the callers for whom a referral is not appropriate. This constitutes approximately half of the members of the public who call the program.

In addition to satisfying the needs of the non-referral callers, the program provides a significant positive image of the bar and of lawyers, as demonstrated by the level of satisfaction expressed by the callers surveyed. LRS is frequently the first contact people have with the legal system and the staff should continue its efforts to make that first contact a positive experience.

The results of the survey alone do not justify continuing the program, however. The total number of people affected by the program is also significant. In 1986, the LRS staff projected that the total calls would drop to 28,000 in the 1987-88 program year. This projection was off by only 1,200 from the totals now projected through the end of June and listed earlier in this report. The staff has also projected that 1987-88 would represent a stabilization point. The figures should be reviewed again at end of the 1988-89 program year to determine if the projections should be revised. Although the total number of callers has dropped from the high point in 1983-84, the decrease has not been dramatic enough to justify abandoning the program. LRS still reaches more than 25,000 people in a year, not counting those who are

exposed to information about the program through public service announcements and printed information but have not made direct contact. This is the only bar program that involves direct interaction with substantial numbers of non-attorneys.

Because the program is primarily support by membership fees, the bar receives a fairly inexpensive public relations benefit from the program's continued operation.

OTHER RECOMMENDATIONS AND ISSUES

1. Survey of Panelists. This report focuses primarily on the relationship between LRS and the public. It does not address in significant detail the relationship with the participating attorneys. Information from participants could provide assistance in making projections about the continued success of the program. Part of the value of the program is that it does not cause a significant drain on the general fund. If attorney participation decreased dramatically, the effect on the general fund would increase and the program would have to be reevaluated. Therefore, it is recommended that the LRS staff conduct a survey of LRS participants. The funding for such a survey is included in the 1989 LRS budget request.

2. PAR Review. Additional assistance could be received from the ABA LRS review program (PAR). These ABA reviews are conducted by LRS staff people from other states and the program has received positive reports from a number of the programs that have been reviewed. Oregon's referral program is isolated because it is the only one in the state. Information is obtained each year on an informal basis at the ABA LRS conference. However, more substantive assistance and recommendations would result from a formal analysis.

3. Attorney Qualifications. The Board of Governors has raised some concerns about the qualifications of LRS panelists. These issues are being addressed by the LRS committee and are not covered here.

4. 1989 Review. The factors discussed in this report indicate that Lawyer Referral's situation is still volatile and should be monitored to determine if the current projections retain their validity. Therefore, the program should be reviewed again in 1989, preferable at the end of the summer when statistical information will be available, both about total calls and program registration.



AMERICAN BAR ASSOCIATION

Standing Committee on
Lawyer Referral and
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Program of Assistance
and Review

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PAR REPORT

FOR

THE OREGON STATE BAR ASSOCIATION

LAWYER REFERRAL SERVICE

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The scope of the PAR visit was to assist the Oregon State Bar Association (OSBA) in a general evaluation of nearly all aspects of its Lawyer Referral Service (LRS) operations.

Upon arrival at the OSBA, we met with Rebecca Sweetland, Referral & Information Services (RIS) Administrator; Celene Greene, OSBA Executive Director; and Ann Bartch, OSBA Division Director for Member Services. We later met with Carol Page Kamara, LRS Assistant, and Kate Allen and Susan Jackson, LRS Clerks, who have primary responsibility for answering the lawyer referral phones and making referrals. After lunch we met with LRS Committee members Ronald Somers (Chair), Richard Alway, Ronald Dusek, Margy Lampkin, John Mayfield, Melinda White, and Brad Jonasson.

The Service area encompasses the entire state of Oregon and a population of approximately 3 million. There are approximately 10,000 attorneys in the OSBA, 1,040 of which are LRS panel members. Membership in the OSBA is mandatory, as is liability insurance.

The Service's financial support comes from an annual

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LRS registration fee of either \$55 or \$75, depending upon length of time in practice, which allows the attorney to be a member of four (4) subject categories, or panels, out of a total of fifteen (15) categories designated by the LRS. An attorney may join additional panels for a payment of \$10 per panel. Total revenue generated by the LRS in the last full fiscal year was \$120,000, which covered approximately 60% of the LRS' expenses. The balance of the Service's expenses were subsidized by the OSBA.

A flat consultation fee of \$35 is paid by the client to the panel member, who retains that fee. There is no time limit for this initial consultation. Additionally, this consultation fee is waived where it would conflict with a statute or rule regarding attorneys' fees, and in contingent fee matters.

The present staff consists of the RIS administrator, Ms. Sweetland, and part-time staff members Ms. Kamara, Ms. Allen, and Ms. Jackson. Ms. Sweetland has responsibility for various other programs within the OSBA, including overseeing the Pro Bono program. The LRS is open from 9:00 a.m. to 5:00 p.m., Monday through Friday. The Service has five phone lines, two statewide WATS lines and three local lines for the Portland/Lake Oswego area. The LRS maintains office space within the OSBA offices which, while seemingly adequate to meet the current needs of the LRS, provides little or no room for expansion should the need arise.

The LRS received approximately 44,000 calls in the last statistical year, approximately 18,000 of which resulted in referrals to panel members. Statistics indicate a "no-show" rate of approximately 45%. All referrals are made over the phone on a rotational basis. Upon receiving an inquiry and determining that ongoing legal representation is needed, the staff provides a potential client with the name of an attorney who is on the panel for the area of practice of that client's need. Only the attorney receives written notification of the referral. This form is to be returned within two weeks if the client is a "no-show," which seemingly allows attorneys to assume their prior rotational position. In this regard, the consultants suggest that the return time for this "no-show" form be extended to four weeks to provide the client additional time to make the initial contact.

The staff does not provide legal advice. However, callers are referred to other governmental or social service agencies when it is determined that ongoing legal representation is not needed.

The consultants believe the Service has an important role to play in the providing of legal services in the State of Oregon, and that this role can be performed in a professional, potentially self-sustaining fashion. To that end, the consultants have identified several means by which this goal can be realized, including enhanced methods of operation, increased revenue generation, increased awareness and support of the Service among OSBA members, and increased efforts to raise the profile of the Service among the general public. These and other recommendations are discussed more fully below.

PURPOSE OF LAWYER REFERRAL

The PAR consultants indicated that it is the position of the American Bar Association's Lawyer Referral and Information Service (LRIS) Standing Committee that referral service programs are primarily a public service. Lawyer referral services should provide a mechanism for matching clients who are in need of legal services, and who are able to pay at least some attorneys' fees, with lawyers interested in and equipped to handle their legal problems. A lawyer referral service program meeting ABA standards assists members of the public by referring them to one or more lawyers who have been pre-screened by the program and who the program has ascertained (1) are members of the Bar in good standing, (2) carry malpractice insurance in a designated amount, and (3) have the requisite experience to competently handle the particular problem for which a client is referred. A referral program which fully meets the ABA standards for a lawyer referral service also provides a wide variety of information to the public that may address their legal problems without referral to an attorney (e.g., providing information about small claims court procedures, Social Security assistance programs, etc.)

ADMINISTRATION

1. Hours of Operation. The LRS currently operates from 9:00 a.m. to 5:00 p.m., Monday through Friday. The consultants recommend that consideration be given to expanding

these hours to 7:30 a.m. to 6:00 p.m. Services across the country that have expanded their hours to allow the working, middle class consumer to reach them either before or after the normal working day have seen a sharp rise in calls and resulting quality referrals. The consultants would suggest that, given the current fiscal restraints, the LRS initially expand its hours on a staggered basis, e.g. Monday, Wednesday and Friday, 7:30 to 4:00, Tuesday and Thursday, 10:00 to 6:30. Staff hours could be staggered to cover this schedule, assuming security concerns can be adequately satisfied.

Any change in hours should be coordinated with the issuance of a new telephone directory, so that the expanded hours can be accurately reflected in your Yellow Pages ad, the Service's brochures, and on any messages played on a telephone answering device.

2. Staff and Training. A more formalized staff training program for those handling the LRS calls would be useful in ensuring quality referrals to the panel attorneys. Effective training can expand the options open to the caller and reduce the number of misdirected referrals. Because not all calls result in an actual referral, local community agencies from throughout the state should be contacted to assist in advising the staff as to additional resources available to the public. For example, contacts with domestic abuse shelters could provide information on what resources are available to the battered, indigent spouse in various areas of the state. Training is also an excellent form of networking, as those agency directors with whom the LRS shares information are better informed as to the type of service the LRS does, and does not, provide.

A training notebook of suggested scripts, social service agencies, and a brief, basic "checklist" of questions to ask in particular areas of law, should be developed to assist the staff in screening the calls and making more quality referrals. The LRS Committee can be particularly helpful in the staff training process, particularly in instituting a structured, ongoing training program. As a beginning, Committee members could provide a brief overview of each category listed on the LRS application. Committee members and/or panel attorneys could develop the brief, basic "check-list" of questions referenced above to help staff make appropriate referrals.

Although geographic considerations may present some difficulties, Committee and/or panel members could be invited to come to the LRS office to make presentations to the staff on various substantive areas of law. These volunteers should be asked to prepare outlines of the material they intend to cover, with these outlines being incorporated into the proposed training manual. These presentations could be coordinated with LRS Committee meetings, or other OSBA activities which draw panel members to Lake Oswego. If possible, these sessions should be videotaped, in order to be available for future staff training sessions.

Sample training materials are also available from Gwen Austin, PAR Coordinator at the ABA.

3. Screening. Screening is an important function of any lawyer referral service for both the public and the panel attorneys. When calls are effectively screened and appropriately referred, the attorney gets better clients and the callers are happier and better served. When panel attorneys are satisfied about the quality of the referrals they receive, they help the LRS market itself to other potential panel members.

Although the PAR Consultants did not have the opportunity to carefully observe all of the staff's screening techniques, we suggest that the OSBA LRS review its procedures to be sure that adequate information is being obtained from callers regarding the nature of their legal problem(s). Such screening is a benefit to the public, in that callers not in need of legal services can often be referred to a more appropriate resource. While the lawyer referral service is not in a position to give legal advice, it can and should point out alternatives such as small claims court, the attorney general's office, and other governmental and social services agencies which exist to help with a variety of problems. In many instances, it is wise to suggest that the caller try to exhaust other options before contacting an attorney, while leaving the door open for the client to return to the Service for a referral to an attorney should the agency not be able to assist. The United Way or similar charitable organizations, or local county or city offices, may well publish annual guides identifying the numerous agencies which exist within their area, the services they provide, and a contact person within each agency.

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As a reminder, the consultants would highlight the following six important points to remember when speaking to clients:

(a) Courtesy is a must. Remember you represent the OSBA and the legal profession when you answer the telephone. Be professional.

(b) Listen carefully to the caller. What specifically is the problem; are there other aspects of this case that would make a referral in another area of law appropriate? Don't let the caller question your competence. Take control by asking positive questions in a polite and assertive manner.

(c) Try not to talk too long. Remember that most everyone who calls the LRS has a problem of some type and should be dealt with to the best of your ability. However, if you talk too long to one client and lose two others who are on hold, you are only doing one third of your job. Although you should not rush through calls and risk misunderstanding the callers needs, you should always be conscious of calls on hold. Help people effectively but don't overkill. Remember the limitations of the LRS, and if necessary inform the caller of these limitations. You are a referral service, not a legal aid or crisis hotline. On a busy day, more than five minutes on a call is usually too much time.

(d) Do not give personal recommendations. Only make referrals through the LRS computer rotation process. Do not overlook the obvious (e.g. have you gone to the police, do you already have an attorney). If you have a question that you can't answer, ask one of the more experienced staff persons for their opinion. If unable to assist the client, bring the matter up with the Administrator and see if it warrants additional research. Look for ways to improve your ability to assist the public.

(e) Don't play lawyer. Knowing which questions you should try to answer requires good judgement. If you have any questions as to whether or not you are giving the proper information, don't hesitate to put the caller on hold and ask other staff members or consult with the Administrator. You should remember that there is a great danger of seriously

misleading someone with incomplete or partially inaccurate information, particularly when you don't know all the facts surrounding the caller's situation. Ask concrete questions and get hard information. If the facts clearly do not present a legal problem, tell the client why, and if they insist, let them know where they may find a lawyer in the Yellow Pages.

(f) Know which calls are too difficult for you. Callers in physical harm due to abuse, suicidal callers, or otherwise mentally ill callers are difficult to handle. Immediately notify the Administrator or the Executive Director if you believe there is an imminent danger of harm. Mentally ill callers are often manipulative and angry. If you cannot handle the caller, ask a more senior staff member or the Administrator to handle the call. If the caller is abusive to you or uses inappropriate language, you may terminate the call. However, inform them of your intentions to terminate the call before hanging up.

4. Referral Procedure. The LRS currently has a relatively high "no-show" rate of 45 percent. If this is of serious concern to the LRS Committee, the consultants suggest that consideration be given to modifying the LRS' current procedure of simply providing callers with the name and phone number of an attorney, leaving the responsibility of contacting the attorney with the potential client. Experience has shown that a significant "no-show" rate can be reduced by either (1) immediately transferring the potential client's call to the panel member's office, or (2) making the appointment for the caller with the panel member. While the latter procedure obviously requires significant additional time and effort on the part of LRS staff, callers are more likely to follow-up and keep an appointment that has been scheduled for them, rather than simply being left to their own devices. It should be pointed out that if the Service were to adopt this latter suggestion, it is imperative that the callers be recontacted with an appointment within a relatively brief period of time, e.g. two hours.

5. ABA LRS Workshop. As another suggestion for staff development, we recommend that the OSBA continue to send a representative, ideally the person primarily involved with LRS day-to-day operations, to the ABA LRIS Workshop, held annually in various locations across the country. This year the Workshop

will be held in Washington, D.C., from October 14 to 16. The Workshop provides excellent insurance against staff "burnout" by rekindling excitement for lawyer referral. Additionally, it provides information on current developments, what other services are doing and how they do it, and a forum for developing a network of contacts with other lawyer referral service personnel to whom one can turn in the future for guidance.

BUDGETING AND INCOME GENERATION

While it is the view of the ABA's LRIS Standing Committee that lawyer referral is primarily a public service, the consultants nevertheless strongly encourage the OSBA to view itself as being in the "business of public service." Specifically, experience has shown that a well run lawyer referral service which (1) utilizes an effective publicity campaign targeting the middle income legal consumer, and (2) screens calls to determine that panel member attorneys receive clients with viable legal claims, can be a significant benefit to panel members as well as to the public. To that end, the consultants make the following recommendations.

1. Percentage/Forwarding Fees. The consultants recommend that the LRS Committee consider implementing a percentage fee program. The consultants believe such a program is essential if the LRS is to be self supporting. Such a program would bring a percentage of all fees earned by LRS panel members on referred cases back to the LRS. Lawyer referral programs across the country which have implemented such percentage fee systems have found that they can generate substantial revenue for a service.

The LRS Committee should be aware that any percentage fee arrangement will require significant start-up time. Services which have implemented such programs have generally seen an initial loss of panel members and a time lag of between 18 months and 2 years before any significant revenue comes to the Service. These drawbacks tend to be temporary, however, and 2-3 years after implementing such a percentage fee system, most services find that they are in much better financial shape than they were previously.

Similar systems are in use in nearly half the bar-

sponsored lawyer referral services in the country. The ABA has generated an ethics ruling which defines such a system as proper, as have most state ethics boards who have reviewed the issue. Alternative types of programs include a flat percentage fee approach (e.g. charging attorneys 10% of 15% of all fees received), or a sliding scale (e.g. charging 5% of the first \$1,000 received, and 10% of all fees thereafter).

Of course, implementation of such a program must be preceded by significant advance notice to panel members. The PAR consultants recommend that as part of the notification process, the LRS undertake an educational program that stresses the fact that the new fee structure will allow for improvements in the service which the LRS provides to participating attorneys. For example, the increased fees could be used, in part, for expanded public relations activities and to increase the size and coverage of the LRS's Yellow Pages advertisements. The periodically published Referral Newsletter provides a perfect vehicle by which this information could be transmitted to panel members.

While some attorneys will undoubtedly leave the Service when a percentage fee system is adopted, an association-wide publicity campaign advising attorneys of the revamped, expanded LRS should bring in new panel members to offset these losses. The Service may also directly target attorneys with expertise in certain areas of law which are underfilled, or in disparate geographic areas, to help maintain a sufficient number and diversity of attorneys to meet client demand.

Obviously, there are drawbacks to implementing a percentage fee system. First, it does require additional staff time to administer and undertake the necessary follow-up. A good follow-up system is critical to a successful percentage fee system. Attorneys must be billed periodically (usually quarterly), and asked to remit fees received to date. (Sample billing forms can be obtained through the ABA).

An additional method of follow-up which has proven effective is to develop a "case status report" for each attorney, listing all ongoing cases. (Samples are available from the ABA.) As referral report forms are returned by panel members, those cases which have been accepted are listed on the report. The PAR consultants recommend that these status reports be sent to the

panel member periodically, rather than asking the attorney to report his or her fees only at the conclusion of the matter. The LRS Committee will need to anticipate problems and develop procedures to respond to them in advance of the implementation of the proposed fee system. Among the issues the Committee may wish to consider are how to address the failure to return the case status report, disputes with panel attorneys about the fee due, and inaccurate reporting by the attorney regarding the status of a referral.

In order to ensure that the Service receives all fees due from panel members, the consultants would suggest that the LRS utilize client follow-up questionnaires which solicit information directly from the client about (1) client satisfaction with the Service and the panel attorney, (2) payment of the initial consultation fee, and (3) ongoing retention of the panel attorney by the client. Such questionnaires provide valuable information which can be utilized to enhance the operation of the Service. Panel members should be informed of the use of such questionnaires, and that information is gathered regarding the fees which have been paid to the attorney. Any questionnaires which report that an attorney has consulted on (or is handling) a case should be closely monitored. If the attorney fails to report that a case has been opened, or a consultation completed, action on this inconsistency should be taken. For example, a standard letter could be sent asking the panel member to assist in accounting for the discrepancy.

In addition to providing a useful check on the accuracy of the attorney's reports and fees generated, client questionnaires often include glowing praise for the services of the attorney. The Association may want to consider sending copies of such questionnaires to the attorney as a means of acknowledging the valuable services which they have provided.

2. Retention of the Consultation Fee by the LRS.
Many services receive a major portion of their funding by requiring that the initial consultation fee be returned to the service to help defray expenses. This remittance is in addition to the panel registration fee, and may supplement a percentage fee system. Even assuming a significant "no-show" rate, return of this fee to the LRS would clearly result in a marked increase in income over that which the Service currently earns.

The consultants make this recommendation in recognition of the OSBA's fiscal realities. As is the case with most Bar Associations across the country, the OSBA is being asked to do more with less. Naturally, any change in procedure or increase in fees is bound to cause some members to express dissatisfaction. However, if the Service is to become self-supporting, such methods must be examined. Again, it is essential that time be spent educating the members so that the imposition of such a new income generating method is not a surprise to them.

Again, adequate follow-up is essential if collection of the consultation fee is to be a success. Inasmuch as the collection of a high percentage of these fees can have a significant impact on the LRS' revenue, administrative procedures should be in place to allow for suspension or removal of a panel member after 30 to 60 days if the fee is not returned.

The same client questionnaire referred to above with regard to collection of the percentage fee should be utilized to track these consultation fees.

ENHANCEMENT OF IMAGE AND SUPPORT AMONG OSBA MEMBERS

1. LRS Committee. An effective method of strengthening any lawyer referral service is to elicit the general support of members of the sponsoring Bar Association. Support of the Bar's members must begin with the validation of the goals and objectives of the lawyer referral service to better serve (1) the public (prospective and actual clients), (2) the Bar Association (through good public relations with the general public and the media), and (3) individual members of the Bar Association (as attorney panel members receiving fee-generating referrals).

With an eye toward addressing each of the above points, the consultants recommend the following. First, while acknowledging the obvious commitment and concern of present Committee members, the consultants recommend that the OSBA immediately undertake a campaign to further enhance the active involvement of Committee members in the operation of the Service. No better way exists to begin to establish a broad base of

support for the LRS than to create a Committee from the OSBA that is enthusiastic and willing to assist in promoting the goals of the LRS. The president-elect of the OSBA should serve concurrently as a member of the LRS Committee and as the liaison to the Board of Directors, which should promote a clearer understanding of the LRS at the governing board level.

In addition to being the Service's most vocal supporters, Committee members can serve several other functions. They should be available as a resource for the LRS staff when questions of legal concern arise, and should be willing to donate their time to instruct staff in various areas of the law in order to enhance both the speed and quality of referrals. Additionally, the Committee should play an active role in the review and discipline of panel members. It may be a good idea to appoint a subcommittee of four members, called the "Qualifications Subcommittee," to review applications for panel membership and do the necessary investigative work. This is an important quality control measure and should not be neglected.

Committee members can also be helpful in recruiting panel participants. While mail solicitation from the Bar Association is a viable recruiting method, personal contact from a member of the LRS Committee will be more effective than simply another piece of unsolicited mail. Finally, the Committee should have the responsibility of reviewing the rules of operation for the Service from time to time to determine whether they need to be revised to reflect new program goals.

The consultants note that the Committee has set itself an aggressive set of goals for the 1992-93 fiscal year, as set out in the Spring Referral Newsletter. These include integrating pro bono referrals into the LRS, using the LRS as a referral point for ADR section referrals, attempting to gain approval to add the LRS telephone number to all civil summonses, and increasing public awareness of the LRS. With regard to the latter point, the consultants would strongly encourage the Committee to actively pursue the goal of having the LRS number added to civil summonses. This has been done in other jurisdictions, e.g. Camden County, New Jersey, with remarkable results.

The consultants have one other comment with regard to

integrating pro bono referrals into the LRS. While laudable, the consultants would caution the Committee to remain cognizant of the fact that the primary "market" for a lawyer referral service is the middle income legal consumer. Marketing the LRS to these individuals requires a different approach than that required for reaching individuals who require representation on a pro bono basis. Similarly, in order to attract and maintain panels of sufficient size and diversity, it is essential that the LRS be marketed to OSBA members as a source of quality referrals. This message can become diluted if there is confusion created as to the nature of the pro bono component of the Service. While the consultants would strongly support the establishment of a separate and distinct pro bono panel within the LRS, we simply wish to point out the necessity of creating a discrete structure which provides the maximum benefit to fee paying clients, pro bono clients, and OSBA panel members.

2. Recruiting Panel Attorneys. While current attorney participation in the LRS is a reasonably respectable 10 percent, the consultants nevertheless recommend that the LRS's regular recruiting methods be expanded. In order to be successful, any recruiting campaign must promote the image of the LRS as a source of quality referrals, rather than simply an obligation. The LRS should be marketed as a membership benefit, as it can provide attorneys with fee-generating cases. This should occur as the profile of the Service is raised within the Bar Association. It is also anticipated that this effort to increase panel participation would go hand in hand with efforts to further "market" the Service to the general public, as is more fully discussed below.

Some suggestions for recruiting panelists include (1) a direct mailing once a year to all attorneys in the OSBA, inviting their participation and extolling the rewards of LRS membership; (2) solicitation of new admittees at a reception held in their honor, with printed information regarding the Service and applications for membership readily available, followed up with a mailing to all new admittees; and (3) publishing testimonials from current panel members regarding profitable referrals received from the Service. Example of such articles from other Bar Association referral services are available from the ABA.

The OSBA membership publication, For The Record, is an

excellent vehicle for recruiting panelists and for printing articles of special interest regarding LRS participation. One idea that some bar associations use is to reproduce their lawyer referral service application in their newsletter at least once a year. For The Record can also be used to inform your membership of the changes made in the LRS and other income-generating methods under consideration. Examples of such articles are also available from the ABA.

The Service should consider doing a direct, targeted recruitment campaign for new panel members practicing in those areas of the state (e.g. southeast and southern coast) where panel membership is low or non-existent. Such a campaign could involve a direct mailing or a telephone call to attorneys who practice in these areas. The suggested mailing should come from the President, and the calls from OSBA officers or LRS Committee members, as a personal request to join the Service. Additionally, the LRS Committee members may be utilized in a local bar "visitation" program. Each Committee member can target those counties nearest his or her office. A speakers' kit, including information about the LRS, a supply of LRS applications, and a presentation script can be prepared by the LRS staff to assist the Committee member in this outreach. Personal contact is always more effective than a letter.

Incentives are sometimes helpful in attracting new panelists. For example, any incentive which the Service could give present panel members who recruit new panelists might spur their efforts. Fees could also be waived for participants who are newly admitted to the bar. Enclosed with this report is an exemplar of a marketing piece entitled, "Need Some Clients? Let us Help!" which is used by the Wisconsin State Bar Association to attract new attorneys. It should always be kept in mind, however, that the quality of your panel, and whether or not it meets your clients' demands and needs, is more important than the sheer number of participants.

3. Experience Panels. While applicants currently may self-select as many panels as they deem "reasonably within [their] competence," as long as they are willing to pay for them, the PAR consultants strongly recommend that serious consideration be given to establishing experience panels. The benefits of such panels are numerous. First, the LRS can match a client with a

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lawyer who is objectively qualified to handle cases in a particular field of law. This type of matching will enhance the image of the Service within the state. Secondly, the establishment of experience panels will require enhanced screening of clients to determine the nature and difficulty of their legal problems, which will result in panel members receiving more accurate, quality referrals. Finally, the LRS can advertise itself as something more than simply a Yellow Pages listing of lawyers, and thereby more effectively compete for more, and better, referrals with lawyers and firms with larger Yellow Pages ads.

To determine which areas would be appropriate for experience panels, the LRS Committee should review the frequency of requests for referrals in particular areas of practice. In some states, such analysis has helped develop guidelines for experience panels in the areas of family law, criminal law and personal injury litigation. The LRS may wish to review the Experience Panel Manual drafted by the California State Bar's Standing Committee on Lawyer Referral Service, a copy of which may be obtained from the ABA, which explains how a service may implement experience standards for any of its subject matter panels.

While some panel members may initially balk at continued participation in the Service because of their opposition to the Service evaluating their ability to practice law, this problem can be effectively handled if the members of the LRS Committee (1) actively educate members within the legal community, and (2) promote the benefits of the system to both lawyers and the public. There is also the possibility of objections being raised that experience panels will exclude young attorneys who are most in need of referrals to help build their practice. In response to this concern, the Committee may wish to designate certain panels as "open" panels, on which young lawyers can gain experience while providing much needed public service. This should be done in conjunction with an "attorney-to-attorney," or "mentor," referral procedure, whereby a less experienced attorney may be assigned a fee generating case, provided he or she agrees to consult with a more experienced attorney as the case requires. The OSBA's "Lawyer-to-Lawyer" program would be particularly useful in this regard.

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At a minimum, the consultants recommend that attorneys be limited to a maximum number of panels, e.g., four, in recognition of the fact that no one is competent to handle cases in every area of the law.

INCREASED AWARENESS WITH THE GENERAL PUBLIC

The LRS currently utilizes a number of marketing techniques which have been historically successful across the country. Placards which read "WE ARE NOT PERMITTED BY LAW TO GIVE LEGAL ADVICE", then provide the name and phone number of the OSBA's LRS, are already posted in courthouses and, seemingly, other public offices. These placards not only advertise the Service, but save the public employees working in the offices where they are posted time and aggravation, thus making them more sympathetic to the LRS. The LRS also utilizes a well-thought out, high quality brochure to describe the LRS to members of the public. This brochure is apparently distributed primarily at the courts buildings, and other governmental facilities throughout the state.

While lawyer referral service brochures are frequently distributed in the courthouse and community agencies, a large percentage of calls referred from such locations are from people who basically do not have money for legal services and are trying to find low cost or free services to assist them. A better use of the brochures may be to distribute them to employee assistance program (EAP) personnel at large statewide employers, who in turn can give the brochures to their employees who are in need of legal services. Generally, a favorable response is received. The largest Portland/Lake Oswego area employers should be contacted first. Bar Association personnel or Committee members should make appointments to meet face-to-face with EAP directors of these large companies to discuss the benefits of sending employees to the OSBA LRS. Your panel members can also participate in a program to provide speakers at employee lunches and meetings to discuss specific legal topics.

While the OSBA is to be applauded for the content and quality of its current marketing tools, the consultants would recommend that a formalized method be established to ensure that the brochures are adequately stocked at their distribution points. This could take the form of a group of volunteer

attorneys who regularly check the distribution points on a weekly or bi-weekly basis. Alternatively, the LRS could provide personnel who work at the various distribution points with postage-paid return postcards that they could simply drop in the mail when their supply of brochures is exhausted. Once a mechanism for regularly restocking these distribution points is established, the consultants recommend expanding the locations at which the brochures are available to include real estate agency offices, credit unions, military legal offices, senior citizens agencies, etc. The end result of careful distribution will not just be more calls, but more callers who are better informed about the Service and, hopefully, higher quality referrals.

1. Yellow Pages. All studies of LRS advertising effectiveness indicate that Yellow Pages advertising is by far the most effective mechanism for increasing client inquiries. A Yellow Pages ad is the single most important tool for informing the public of the service provided. As lawyer referral services enjoy the benefit of a separate category in the Yellow Pages directory, callers often turn from the complicated maze of numerous attorney offerings to the comfort of a service which offers to help the caller make a choice.

We would suggest a few ways to enhance the current LRS Yellow Pages display ad with a minimum of expense. A bolder outline will attract the attention of those seeking legal assistance. As the LRS is a public service, the ad should always so state. [Note: The same is true of the brochure, which should indicate on its face that the LRS is a public service of the OSBA.] Another proven eye-catcher is the use of quotation marks somewhere in the ad.

The LRS might also want to advertise in its ad "Free Initial Consultations On Personal Injury Cases." With the implementation of a percentage fee program, attracting quality personal injury cases will become extremely important. Advertising free consultations in this limited area would also make the Service more competitive with individual lawyers and firms who similarly advertise. [Note: Again, the brochure should also make reference to the free consultation policy.]

An ad that is easier to spot is bound to generate more calls and therefore more referrals to panel members. These

changes can be made without detracting from the dignity of the advertising, and can be helpful in getting your ad to stand out a little more among the numerous attorney advertisers present in every Yellow Pages directory today. Sample Yellow Pages ads can be obtained from the ABA.

It is also possible to improve Yellow Pages ads with changes that cost money, such as increasing the size and adding color to make the ad more visible. The OSBA may wish to consider these options as resources became available.

2. Press Releases. A good way to get free publicity is through the use of press releases. Any new aspect of the Service, a change in operation, an old aspect not widely known, or statistics, can be released to the newspaper and will hopefully get free attention. Articles on legal issues submitted by the Bar for publication should include a statement at the end telling the reader that the Bar Association has a referral service which can suggest an attorney for further information. Press releases should be short and to the point to induce their publication. This is an area where the OSBA's public relations staff obviously can be particularly helpful.

4. Public Service Announcements. The LRS has used PSAs in the past, and is apparently open to their continued use if the time is available. This should definitely be followed up on.

NOTE: Cable television should not be overlooked in this process, as they are often more willing than other television stations to air public service announcements.

5. Law Day. This day, set aside for the celebration of the legal profession and our system of justice, provides a unique opportunity to both increase public awareness of lawyer referral as a public service and enhance the image of the Bar in general. As part of the OSBA's regular Law Day activities, the LRS should consider offering free consultations, as do many lawyer referral services across the country. This special observance is commonly known as "No Bills" Day. Some services make appointments in advance; some have booths staffed by panel attorneys at public locations; others simply provide every Law Day caller with an appointment for a free consultation, having

checked panel members' availability and willingness to volunteer in advance. Whatever type of arrangement you choose, it is important to send a press release to radio, television and newspapers in advance. The giving of free legal advice always gets media attention.

6. "Ask a Lawyer." Another idea is to have panel attorneys volunteer their time on a regular basis, e.g. once a month, to give free general legal information by telephone from the Bar Association offices. The program can be limited to one particular topic of popular interest, e.g. matrimonial law or landlord/tenant. A press release would be in order publicizing the time, date and hours of the "Ask a Lawyer" program. A similar service, called "Legal Hotline," is offered by the State Bar of Wisconsin, and information on this program is attached. This includes a brief summary of the program, an example of the form used, and suggested areas of law the lawyers will, and will not, discuss. In addition to this program, the State Bar of Wisconsin will soon begin a criminal law hotline. Public defenders, as well as private criminal defense attorneys, will provide simple legal information to pre-screened clients concerning juvenile law, traffic citations, drunk driving, etc. The OSBA LRS may want to consider a similar program.

There are many ways to induce panel participation in the above programs, from certificates of appreciation, discounts on a year's OSBA membership or LRS panel fees, or free tickets to a CLE program or dinner. The positive publicity generated makes such projects worth the effort, while at the same time being a positive experience for panel members as well.

CONCLUSION

The PAR consultants were impressed with the enthusiasm and dedication of the OSBA staff and Committee volunteers. The OSBA's LRS is an efficient, professional operation of which both staff and volunteers may be justifiably proud. The recommendations made in this report are intended to "fine tune" a well operated service and, hopefully, allow the Service to become self-supporting.

The PAR consultants are available anytime by telephone should further questions arise, or if there is a need to clarify

PAR Report For The
Oregon State Bar Association
Lawyer Referral Service
July 22, 1992
Page 20

any part of this report. We thank the OSBA staff and LRS
Committee for the hospitality extended to us during our stay in
beautiful Oregon.

NEED SOME CLIENTS? LET US HELP!

Your office is ready: desk, chairs, plants and filing cabinets are all in place, you have an impressive display of books--but how can you get clients to start knocking at your door? We can help!

This year, the State Bar of Wisconsin is offering new members a free year-long membership to its Lawyer Referral and Information Service (LRIS) program.

The Wisconsin Bar's LRIS program is known nationwide for its quality and services. People throughout Wisconsin call the LRIS hotline to receive information about where they can go to find legal help.

The LRIS staff consists of trained legal counselors who listen to callers' problems and questions. If the callers turn out to be potential clients, they are screened for the area of law that they need, the geographic area of Wisconsin the attorney should come from, and the client's ability to pay an attorney. Then they are referred to an attorney who can handle their case.

You could be that attorney. Whether you are on your own or joining a law firm, you'll want to have your own clients. And the LRIS service is a member benefit--your bar member dues help to pay for the service so it can help you find clients.

So try us out for a year--free! Just return your application stating that you are a new Bar member, fill in the areas of law that you practice, and LRIS will process it immediately. We'll start sending you clients! And remember, after your first year of referrals, you'll still be able to take advantage of LRIS's reduced "new lawyer" annual membership fee of \$35 for another two years.

Think of it. Your own office: desk, chair, plants, filing cabinet, books--and clients. Using LRIS is like having your name listed in every Yellow Pages in Wisconsin. We help you find clients.

Isn't that why you went to law school in the first place?

LAWYER HOTLINE PROGRAM

The Lawyer Hotline Program is a service provided by the Lawyer Referral and Information Service. In its 10 years of service, the Lawyer Hotline has provided a valuable service to the public. The volunteers who contribute to the program answer simple legal questions and help people determine if they should hire a lawyer.

Wisconsin lawyers are asked to volunteer approximately two hours of their time 2 to 3 times per year. Lawyer Referral screens questions called in from members of the public who have a legal concern or problem. Questions are given careful consideration by LRIS so as not to be too complicated, time consuming or questions that could not be found in the Wisconsin Statutes or the reference material which we provide. Attorney volunteers then call the referral clients back at a scheduled time providing them with a few minutes of legal information. Volunteers do not give out their names and they read a disclaimer to each caller before legal advice is given. We have never had a malpractice claim, however we ask that each lawyer who participates have malpractice insurance.

For individual volunteers, Lawyer Hotline is held at the State Bar Center weekly during business hours and Wednesday evenings. However, we encourage small communities and law firms to volunteer for a social and educational evening (or day) with Lawyer Hotline. We will assist you in coordinating the Hotline as well as pay for food and drinks. Only two to four volunteers are needed for this. However, as many as are willing are welcome. Lawyer Hotline gives attorneys a break from their law practice, gives them experience in other areas of law and provides a valuable public service with very little effort. In addition, lawyer hotline contributes to the 25 hour pro bono requirement needed by all Wisconsin lawyers.

HOTLINE RULES

Hotline lawyers do not answer questions involving documents which they cannot see.

No hotline question may involve less than \$20. nor more than \$1000. (small claims limit).

Hotline lawyers do not answer questions involving procedures for courts other than small claims court.
LRIS only discusses matters involving Wisconsin law, not that of other states.

Hotline attorneys give general information to a question that can be answered in 2-3 minutes informally over the phone.

Hotline attorneys answer only questions for which the answers may be looked up easily in the Wisconsin Statutes; they have no access to municipal ordinances, to Federal law, nor to Wisconsin Administrative Code (department regulations).

LRIS staff and Hotline lawyers only discuss a legal matter with the person directly involved in the legal situation.

HOTLINE SUBJECTS

WE DO TAKE:

BANKRUPTCY

- Chapter 7 - liquidation
- Chapter 13 - personal debt reorganization
- Collection (if under \$1000.-small claims amount)
- Replevin (if simple and small claims amount)
- Small Claims Procedures
- Collection of Judgment

CONSUMER - if not referred to Consumer Protection

TRAFFIC (only rarely; e.g., "Can they mail me a ticket?
or, "Is my ticket invalid since it has the wrong
date?")

FAMILY LAW

- Adoption
- Divorce
- Domestic Abuse Restraining Orders (if they won't see
atty.)
- Name Change
- Power of Attorney (sometimes)

WILLS AND PROBATE

- Simple, informal, probate
- Witnessing signature of will

LANDLORD/TENANT - if not referred to ATCP
(if simple and if there is no lease)

TORT

- Simple, small claims property damage
- Harassment restraining order (if they won't see atty.)

NOT HOTLINE

WE DO NOT TAKE:

ALTERNATE SOURCE

ADMINISTRATIVE AGENCIES

Department of Natural Resources
Department of Transportation
Divestment - Title 19
Military/Veterans
Social Security
Social Security Disability
Unemployment Compensation
Workers Compensation

Public Intervenor

Benefit Specialist
Cnty Social Services
Benefit Specialist
LSC for overpayment
LSC, sometimes
Workers Comp Office
Ag, Trade, Consumer Ptcn
Justice
Board of Responsibility

AGRICULTURAL LAW

ANTITRUST

ATTORNEY ETHICS OR CONDUCT

BANKRUPTCY ETC.

Chapter 11
Foreclosure

BUSINESS AND CORPORATIONS

Corporations, Partnerships
Securities

Small Business Develop-
ment Centers
Commnr of Securities or
Securities & Exchange Cnn

COMMERCIAL/CONSUMER

Bank, Credit Union, S & L
Collectn of spouses debt
Contracts
Construction Contracts
FmHA/FHA
Student Loans

Commissioners of These
Justice

LSC, sometimes

CONSTITUTIONAL

Civil Rights
Discrimination

Civil Liberties Union
Equal Rights Div, EEOC,
Local offices, Various
U.S. offices

Mental Commitment

CRIMES AND FORFEITURES

ENVIRONMENTAL LAW

Public Defender
Public Intervenor, DNR

Legal Assistant

HOTLINE ATTORNEY DATA FORM

Special Time

Name _____

Telephone _____

City/County _____

Date/Time _____

Call back time: Day & Date _____ Time _____

Nature of Question: _____

ACTION TAKEN BY ATTORNEY

Returned call:

Date _____

Time _____

☐ Disclaimer given

☐ Not at home

☐ Advised as to law.

☐ Referred to agency. Name of agency _____

☐ Referred back to own attorney.

☐ Referred to Lawyer Referral Service. (800-362-9082 or 608-257-4666)

Comments: _____

Signature of Hotline Attorney _____

Oregon State and Local Bar Lawyer Referral Service

Summary

The Oregon State Bar and Multnomah Bar Association propose to convert the OSB Lawyer Referral Service (LRS) into a fee-generating program jointly sponsored by the OSB and Oregon's local bar associations. The new Oregon Lawyer Referral & Information Service (OLRIS) will be administered as a statewide program by the OSB, with all program staff and phone lines housed at the OSB center. Local bars will have responsibility for local support such as member recruitment, marketing to the public, and review of panelist qualifications. The OSB and local bars will share any increased revenues generated by the conversion to a fee-generating referral program, with the OSB's share dedicated to program improvements, and the local bar shares dedicated to public service projects designed to increase access to the justice system.

The primary program enhancements envisioned for the OLRIS are:

- OLRIS will collect a percentage of attorney fees collected by panelists from OLRIS-referred clients, allowing program improvements with no added cost to clients.
- Percentage fee revenue will be apportioned among the state and local bars to support referral service programming and local access to justice projects.
- All panelists will agree to adhere to specific customer service standards, subject to review and possible panel disqualification by the OLRIS Committee.
- Subject matter panels will be created for referral of complex legal matters, with minimum standards for participation by attorney panelists. Qualifications for participation on subject matter panels will be developed by the OLRIS Committee in cooperation with OSB sections and local bars.

The adoption of the proposed cooperative OLRIS program will require amendments of [DR 2-103\(A\) and DR 3-102\(A\)](#) to permit participating lawyers to pay government, bar association or not-for-profit lawyer referral services a portion of any hourly or contingent fees earned on referred cases. It will also require legislation to amend [ORS 9.515](#) to allow the payment of such fees between government, bar association and not-for-profit lawyer referral services and lawyers, consistent with the Code of Professional Responsibility.

Background

The Oregon State Bar has operated an LRS since 1971. The purpose of the LRS is to match people in need of legal services or legal advice with lawyers or agencies that can help them. The OSB LRS is funded primarily through panelist registration fees, but is also substantially subsidized through the Bar's general fund. Although the Bar's Board of Governors supports the current level of general fund subsidies, the total LRS budget includes only limited funds for program improvements and expansion to meet changing client needs. Of particular concern is the current lack of funds to support and market the Modest Means Program for clients in the lower-middle income bracket.

The OSB Lawyer Referral Committee and staff have addressed these issues by proposing conversion of the LRS to a fee-generating program through establishment of a percentage fee funding. The MBA has also proposed starting a tri-county LRS that would collect percentage fees, and that would include minimum experience requirements for panelists. Board members and staff of the OSB and MBA have met several times to discuss how we can best work together to serve client and member needs. Both organizations have agreed that a cooperative venture will best serve the legal needs of the public. Consultants provided by the ABA Program of Assistance and Review have met with representatives from the OSB and MBA to review our initial plans and help resolve policy issues.

Benefits of Cooperative Program

A cooperatively sponsored referral program will best serve the interests of Bar members and people seeking legal help. For members, the program offers greater participation in program standards, ensures a local client focus, and reduces or eliminates the need for general fund subsidies. Members concerned with public protection and how the public perceives the profession will also benefit from OLRIS's emphasis on consumer needs. For the OSB, a cooperative program allows improved relationships with local bars and an opportunity to increase public service programming without administrative costs. For local bars, the program offers funding for local service programs without the expense of establishing a competing referral program.

More importantly, OLRIS will dramatically improve service to the public in need of legal help. OLRIS will continue the customer service benefit of a "one-stop" information source, rather than the possible confusion and call re-routing that would result from competing referral services. The involvement of local bars will strengthen the program's ties to community resources statewide, resulting in better alternative (social service and government program) referrals. Numerous other improvements discussed below will be possible without any added cost to OLRIS clients or the general public.

OLRIS Funding

A majority of bar-sponsored LRS programs nationwide have adopted percentage fee plans as the most equitable method of funding a referral program. A percentage fee system is one in which a panelist who accepts a fee-generating case returns to the referral service a portion of the fees collected over a threshold amount. Percentage fee systems in effect spread program costs proportionately, with greater contributions from those panelists who most benefit from their participation.

OLRIS policies will provide that panelists may not consider potential referral fees in determining client billing, guaranteeing no added cost to the client for obtaining legal help through OLRIS. Setting a threshold under which referral fees are not incurred will ensure that low and no-fee legal services are not penalized.

The switch to a percentage fee system will likely cause some current panelists to leave the service. While this will lead to more referrals for those panelists who remain, it will also reduce program revenue in the short term. Since implementation will bring increased

costs (for new software, client tracking, enhanced marketing, and possible staffing increases), the OLRIS will not be able to sustain a revenue decline. To prevent such a loss, the basic panel registration fees for OLRIS will need to increase over those charged by LRS.

After reviewing reports of successful percentage fee programs and consultation with the ABA, we recommend the following fee structure for the new program:

Annual panel registration fee:	\$50 for the first panel \$25 for each additional panel
OLRIS percentage fee:	10% of non-contingent fees over \$500 15% of contingent fees over \$750
Consultation fee:	\$35 (payable to referral panelist)

Use of Percentage Fee Revenue

The OLRIS fee-sharing system will provide funds for better phone equipment, staff training, and other improvements that will make the program easier to access and more helpful to clients. Improved marketing for both the OLRIS and Modest Means Program will help reduce confusion over how to get legal help. The costs associated with converting to the new program will be covered by the OSB, offset by increased revenue from basic registration fees. It will take two to three years for the percentage fee system to realize significant revenue.

Percentage fee revenue will be shared by the OSB and local bars based on the level of local bar involvement in OLRIS. Local bar participation in panelist recruitment, panelist qualification review, and community resource tracking will entitle the local bar to 5% of referral fees collected in the bar's membership region. If percentage fees are received from a region without a participating bar, 2% of those fees will be placed into an OSB general account earmarked for access to justice projects sponsored by local and specialty bars.

The OSB will use percentage fee revenue to maintain the OLRIS infrastructure and support legal access programs for lower-income Oregonians. Local bar revenue must be dedicated toward local access to justice projects. Examples of public service projects funded by other bar-sponsored referral programs include:

- Weekly hotlines where lawyers answer simple legal questions over the phone
- Phone advice programs for pro se litigants
- People's Law School presentations
- Sponsorship of CASA volunteer training programs
- Donations to domestic violence and legal services programs

General Panelist Requirements

LRS policies now require only that panelists be active OSB members in good standing who: 1) are not the subject of a formal disciplinary prosecution, 2) carry malpractice coverage through the Professional Liability Fund, and 3) agree only to undertake representation reasonably within the panelist's competence. The new OLRIS will retain these requirements for all panelists. In addition, panelists will agree to 1) adhere to new customer service standards adapted from the Professionalism Commission's Client Bill of Rights, and 2) comply with all OLRIS policies and procedures, subject to review and possible removal by the OLRIS committee.

The Client Bill of Rights addresses the most common complaints clients make about lawyers, stressing general rules of professional conduct already agreed upon by national, state, and local bar associations. Among the commitments stated in the Bill of Rights are:

- 1) To advise of the availability of alternative dispute resolution
- 2) To advise clients against pursuing cases without merit
- 3) To demonstrate that lawyers work to solve problems
- 4) To discuss fee arrangements thoroughly at the beginning of representation
- 5) To support activities that educate the public about the legal process and legal system

These and other customer service standards will be incorporated into the panelist agreement for registration with all OLRIS panels. Specific provisions may include requirements to return staff and client phone calls within a reasonable time period, and to include an explanation of services in all client billings.

The new program will also include formal removal procedures for panelists who fail to comply with program policy. The OLRIS Committee will have authority to suspend, remove, or require specific remedial action from, panelists who fail to comply with OLRIS policies. The program director will be able to temporarily suspend non-compliant panelists, subject to review by the OLRIS Committee. The ability to enforce panelist standards will enhance the program's credibility, ensuring that the occasional panelist who fails to provide good customer service does not damage the reputation of OLRIS and the profession at large.

Subject Matter Panels

The OSB LRS does not rate or recommend attorneys, and offers no endorsement of any particular panelist's abilities or experience. This policy is based on member preferences and a strong historical distrust of any Bar policy that appear to endorse practice specialties. The public, however, likely expects that any referral made by the state bar carries some implied recommendation. Given that the primary purpose of the Bar is to serve the public, and that the MBA strongly supports minimum standards for panelists, the OLRIS contemplates creation of "subject matter" panels for limited practice areas.

Based on the experience of LRS, as well as other programs outlined for us by the ABA, we recommend instituting subject matter panels for the following areas of law:

Criminal Defense – Felony and Capital charges

Family Law – contested custody/real property/family business

General Litigation - Legal Malpractice, Medical Malpractice, Wrongful Death

Wills & Trusts - Estates over \$???

The OLRIS Committee will work with the appropriate OSB Sections to develop panelist standards and related client screening procedures. Panelist standards will include both experience and education standards, with an option for any panelist to petition the Committee to establish eligibility through any equivalent combination of knowledge and experience.

Applicants for subject matter panels will submit a written application to the OLRIS director. OLRIS staff will review panelist applications for prima facie compliance with all general eligibility rules and qualifications for the requested subject matter panels, and will approve applications that clearly meet the standards set for each panel. All applications that raise questions as to a panelists qualifications will be referred to the OLRIS Committee. A panelist qualification subcommittee of the OLRIS Committee, in cooperation with local bars, will review all questioned applications to make a final determination of the applicant's eligibility. The OLRIS Committee will also review any applicant challenges to the program director's qualification decisions.

VI. Timeline for Program Conversion

Final proposal from OSB LRIS Committee and MBA Board	10-31-98
Review by other local bar presidents	11-06-98
Submission to OSB Board of Governors	11-14-98
Referral database conversion	03-01-99
HOD Resolution to amend DR 3-102	07-01-99

OREGON STATE BAR

Access to Justice Committee Agenda

Meeting Date: February 18, 2010
Memo Date: February 11, 2010
From: Kay Pulju, Ext. 402
Re: Authority for percentage fees

Action Recommended

Request that General Counsel prepare a recommendation to the Policy & Governance Committee on amendments to the Oregon Rules of Professional Conduct to explicitly allow fee-sharing between the OSB Lawyer Referral Service and its panelists.

Background

The OSB has considered the option of percentage fee funding for its Lawyer Referral Service (LRS) several times over the past 20 years. The basic concept calls for attorneys who receive fees over a certain threshold amount from LRS clients to remit a percentage of those fees to the LRS. This commonly used method of LRS funding allows many bar-sponsored LRS programs nationwide to be self-supporting and, in many cases, generate revenue for access to justice projects. Earlier explorations of this model for Oregon have stalled over concerns that such a model would require a statutory change to explicitly allow payment of such fees.

Members of the OSB Public Service Advisory Committee and bar staff met on January 29, 2010, to discuss percentage fee funding for the OSB's LRS. Lish Whitson, former chair of the ABA's Standing Committee on Lawyer Referral & Information Services, attended the meeting as a special guest to facilitate the discussion. The group focused on what, if any, statutory or ethical rules might need to be addressed before implementation of any percentage fee proposal in Oregon. The committee reviewed in advance a July 13, 1998, BOG Agenda Memo (attached) drafted by former OSB General Counsel George Riemer. In that memo Riemer advised amending one statutory provision and two disciplinary rules.

The committee first discussed whether ORS 9.505ⁱ and/or 9.515ⁱⁱ prohibit a lawyer referral service from requiring that participating lawyers pay a percentage of legal fees earned by the lawyer. The consensus was that neither provision on its face prohibits LRS percentage fees because, among other reasons, LRS is not a "person" for purposes of ORS 9.505, and not an "attorney" for purposes of ORS 9.515. The committee next turned to the Oregon Rules of Professional Conduct (ORCPs) for further instruction.

The committee reviewed various provisions of the ORPCs, including Rules 1.5 (fees)ⁱⁱⁱ, 5.4 (professional independence of a lawyer)^{iv} and 7.2 (advertising)^v. Each of these rules could be amended to explicitly allow percentage fees, and different states have taken different approaches to address the issue. For example, Washington allows percentage fees through rule 1.5^{vi} while Hawaii, the most recent state to adopt percentage fees, amended 7.2^{vii}. Although the committee has no preference as to which rule should be changed, it is worth noting that Oregon's current rule 7.2 already contains language about sharing fees with lawyer referral services and other organizations. Moreover, a recent ethics opinion^{viii} cites to federal code provisions that specifically carve-out fee-sharing with public service referral programs – as opposed to private third parties -- as a legitimate exception to general prohibitions against fee-sharing.

The committee concluded that this funding proposal appears to be a viable option and that future action should be pursued. Although it is not entirely free from doubt, the committee agreed that the proposal does not appear to conflict with the Oregon Revised Statutes. Rather, the committee, staff and ABA advisor recommend pursuing a rule change to the Oregon Rules of Professional Conduct to specifically allow percentage fee funding for the OSB's LRS and, if desired, other non-profit referral services.

ⁱ **9.505 Payment for referring claims resulting from personal injury or death.** No person shall offer or promise payment of money or other consideration, or accept any offer or promise of payment of money or other consideration, nor shall any person pay or accept money or other consideration, for referring to an attorney any claim for damage resulting from personal injury or death. [1961 c.561 §1].

ⁱⁱ **9.515 Referral of claims, suits or actions between attorneys; division of fees.** (1) Nothing contained in ORS 9.505 shall prevent referral of claims, suits or actions between attorneys.

(2) The provisions of ORS 9.505 shall not prohibit the referral of claims, suits or actions between attorneys or the dividing of fees for legal services with another lawyer consistent with the rules of professional conduct adopted pursuant to ORS 9.490. [1961 c.561 §§2,3; 1989 c.1052 §10].

ⁱⁱⁱ **RULE 1.5 FEES**

(a) A lawyer shall not enter into an agreement for, charge or collect an illegal or clearly excessive fee or a clearly excessive amount for expenses.

(b) A fee is clearly excessive when, after a review of the facts, a lawyer of ordinary prudence would be left with a definite and firm conviction that the fee is in excess of a reasonable fee. Factors to be considered as guides in determining the reasonableness of a fee include the following:

- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
- (3) the fee customarily charged in the locality for similar legal services;
- (4) the amount involved and the results obtained;
- (5) the time limitations imposed by the client or by the circumstances;
- (6) the nature and length of the professional relationship with the client;
- (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
- (8) whether the fee is fixed or contingent.

(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; or
 - (2) a contingent fee for representing a defendant in a criminal case.
 - (d) A division of a fee between lawyers who are not in the same firm may be made only if:
 - (1) the client gives informed consent to the fact that there will be a division of fees, and
 - (2) the total fee of the lawyers for all legal services they rendered the client is not clearly excessive.
 - (e) Paragraph (d) does not prohibit payments to a former firm member pursuant to a separation or retirement agreement, or payments to a selling lawyer for the sale of a law practice pursuant to Rule 1.17.
- Adopted 01/01/05.

^{iv} RULE 5.4 PROFESSIONAL INDEPENDENCE OF A LAWYER

- (a) A lawyer or law firm shall not share legal fees with a nonlawyer, except that:
 - (1) an agreement by a lawyer with the lawyer's firm or firm members may provide for the payment of money, over a reasonable period of time after the lawyer's death, to the lawyer's estate or to one or more specified persons.
 - (2) a lawyer who purchases the practice of a deceased, disabled, or disappeared lawyer may, pursuant to the provisions of Rule 1.17, pay to the estate or other representative of that lawyer the agreed-upon purchase price.
 - (3) a lawyer or law firm may include nonlawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement.
 - (4) a lawyer may share court-awarded legal fees with a nonprofit organization that employed, retained or recommended employment of the lawyer in the matter.
 - (b) A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law.
 - (c) A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.
 - (d) A lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for a profit, if:
 - (1) a nonlawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration;
 - (2) a nonlawyer is a corporate director or officer thereof or occupies the position of similar responsibility in any form of association other than a corporation, except as authorized by law; or
 - (3) a nonlawyer has the right to direct or control the professional judgment of a lawyer.
 - (e) A lawyer shall not refer a client to a nonlawyer with the understanding that the lawyer will receive a fee, commission or anything of value in exchange for the referral, but a lawyer may accept gifts in the ordinary course of social or business hospitality.
- Adopted 01/01/05.

^v RULE 7.2 ADVERTISING

- (a) A lawyer may pay the cost of advertisements permitted by these rules and may hire employees or independent contractors to assist as consultants or advisors in marketing a lawyer's or law firm's services. A lawyer shall not otherwise compensate or give anything of value to a person or organization to promote, recommend or secure employment by a client, or as a reward for having made a recommendation resulting in employment by a client, except as permitted by paragraph (c) or Rule 1.17.
- (b) A lawyer shall not request or knowingly permit a person or organization to promote, recommend or secure employment by a client through any means that involves false or misleading communications about the lawyer or the lawyer's firm. If a lawyer learns that employment by a client has resulted from false or misleading communications about the lawyer or the lawyer's firm, the lawyer shall so inform the client.
- (c) A lawyer or law firm may be recommended, employed or paid by, or cooperate with, a prepaid legal services plan, lawyer referral service, legal service organization or other similar plan, service or organization so long as:

-
- (1) the operation of such plan, service or organization does not result in the lawyer or the lawyer's firm violating Rule 5.4, Rule 5.5, ORS 9.160, or ORS 9.500 through 9.520;
 - (2) the recipient of legal services, and not the plan, service or organization, is recognized as the client;
 - (3) no condition or restriction on the exercise of any participating lawyer's professional judgment on behalf of a client is imposed by the plan, service or organization; and
 - (4) such plan, service or organization does not make communications that would violate Rule 7.3 if engaged in by the lawyer.

Adopted 01/01/05.

^{vi} Washington -- RPC Rule 1.5 Fees

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(e) A division of a fee between lawyers who are not in the same firm may be made only if:

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- 2) the division is between the lawyer and a duly authorized lawyer referral service of either the Washington State Bar Association or of one of the county bar associations of this state.

^{vii} Hawaii -- Rule 7.2 Advertising.

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(c) A lawyer shall not give anything of value to a person for recommending the lawyer's services except that a lawyer may:

- (1) pay the reasonable costs of advertisements or communications permitted by this rule;
- (2) pay the usual charges of a not-for-profit lawyer referral service or qualified legal assistance organization, which charges, in addition to any referral fee, may include a fee calculated as a percentage of legal fees earned by the lawyer to whom the service or organization has referred a matter, provided that any such percentage fee shall be used only to pay the reasonable operating expenses of the service or organization and to fund public service activities of the service or organization, including the delivery of pro bono legal services; and
- (3) pay for a law practice in accordance with Rule 1.17.

^{viii} See Formal Opinion No. 2007-180, p. 524 and fn. 5.

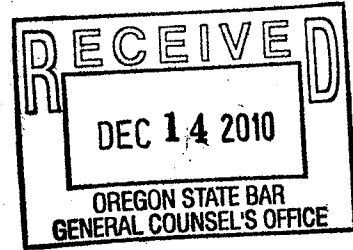
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Holli K. Houston
hhouston@kilmerlaw.com
Admitted in Oregon



December 13, 2010

Kathleen A. Evans
President
OREGON STATE BAR
P.O. Box 231935
Tigard, Oregon 97281-1935

Re: OSB Lawyer Referral Services Percentage Fee Sharing

Dear Ms. Evans:

This is in response to a request by the OSB Board of Governors ("BOG") that the OSB Ethics Committee ("LEC") review a proposal that the OSB Lawyer Referral Service ("LRS") require percentage fee sharing from participating lawyers and, if appropriate, that the Committee issue a Formal Ethics Opinion that such percentage fee splitting does not violate Oregon Law or the Oregon Rules of Professional Conduct ("RPCs"). For the reasons discussed below, the LEC cannot issue such an opinion.

Percentage fee sharing by the LRS has been considered several times. A July 13, 1998, BOG Agenda Memo by former OSB General Counsel George Riemer ("Riemer Memo") (Exhibit A) responded to requests from the OSB Lawyer Referral & Modest Means Committee and the Multnomah County Bar Association for changes to the *former* Oregon Code of Professional Responsibility ("the Code") to permit the OSB and other not-for-profit lawyer referral services to share in a portion of fees received on successful referrals. The Riemer Memo advised the BOG that: (i) amendments needed to be made to the Code (specifically DR 2-103(A) and DR 3-102(A)) to permit participating lawyers to pay governments, bar associations, and not-for-profit lawyer referral services a portion of hourly or contingent fees earned in referral cases; and (ii) an amendment needed to be made to ORS 9.515 to allow payment of such fees. Neither course of action was taken.

More recently, a February 18, 2010, Memo from the OSB Access to Justice Committee ("ATJC Memo") (Exhibit B) requested that the OSB General Counsel prepare a recommendation to amend the RPCs to explicitly allow percentage fee sharing between the LRS and its participating attorneys. The ATJC Memo concluded: (i) that percentage fee sharing does not conflict with Oregon Revised Statutes (conflicting with the Riemer Memo's conclusion that ORS 9.515 must be amended to permit percentage fee sharing between attorneys and governments, bar associations or not-for-profit lawyer referral services);

KILMER, VOORHEES & LAURICK, P.C.

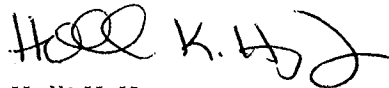
Kathleen A. Evans
December 13, 2010
Page 2

and (ii) that RPC 1.5 (Fees), RPC 5.4 (Professional Independence of a Lawyer), and/or RPC 7.2 (Advertising) should be amended to explicitly allow percentage fee sharing for the LRS and, if desired, other non-profit referral services. It was subsequently suggested that a Formal Ethics Opinion from the LEC might eliminate the need for RPC changes if the LEC concluded that the language of the existing rules was broad enough to allow for percentage fee referral payments.

{ After a nine-month review, the LEC has concluded that existing rules do not allow it to write an opinion authorizing lawyers to participate in a percentage fee referral model.

If the LEC may be of any further assistance, please do not hesitate to contact us again.

Sincerely,



Holli K. Houston
OSB Legal Ethics Committee, Chair

HKH:tjs

Enclosures

cc: Helen Hierschbiel, OSB General Counsel (via US Mail)
Sylvia Stevens, OSB Executive Director (via electronic mail)
OSB Legal Ethics Committee (via electronic mail)

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FORMAL OPINION NO. 2005-168
Lawyer-Owned Lawyer Referral Service

Facts:

Lawyer wishes to open a for-profit lawyer referral service available to the public. The service will be called “XYZ Lawyer Referral Service.” Lawyer will be the sole owner of XYZ, which Lawyer plans to incorporate as an independent entity. Lawyer plans to advertise the service in the local media.

Lawyer intends to operate XYZ Lawyer Referral Service out of Lawyer’s own law office. Lawyer and Lawyer’s legal secretary will screen incoming calls to determine the issues raised by the callers. Lawyer has established several “panels” by substantive area to handle the matters referred. On occasion, however, Lawyer may provide legal advice directly to callers as well as through XYZ Lawyer Referral Service. Lawyers to whom work is referred are expected to remit 15% of the fees generated on referred work to XYZ Lawyer Referral Service, up to a maximum of \$5,000 per referral.

Questions:

1. May Lawyer have an ownership interest in a for-profit lawyer referral service?
2. May Lawyer participate in the management of a for-profit lawyer referral service?
3. May a lawyer referral service provide legal advice to callers in the course of “screening” their inquiries?
4. May a lawyer referral service split fees with the lawyers to whom it refers work?

Conclusions:

1. Yes, qualified.
2. Yes, qualified.
3. No.
4. No.

Discussion:

1. *Lawyer Ownership of For-Profit Lawyer Referral Service.*

Oregon permits for-profit lawyer referral services. Oregon RPC 7.2(c) provides:

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

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

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

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

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

Nevertheless, the referral service must not practice law and must not otherwise assist the lawyer-owner in violations of the Oregon RPCs. *See, e.g.,* OSB Formal Ethics Op Nos 2005-10 (lawyer permitted to operate real estate firm and title insurance company), 2005-101 (lawyer and psychologist could form domestic relations mediation service), 2005-107 (lawyer may join nonlawyer in preparing and marketing audiotapes and videotapes on law-related subjects), 2005-137 (lawyer could participate in joint venture with nonlawyer to offer interactive, online legal information service). *But see* OSB Formal Ethics Op Nos 2005-10, 2005-106, 2005-108 (lawyer cannot use other businesses for improper in-person solicitation of legal work or misrepresent nature of services provided).

2. *Lawyer Management of For-Profit Lawyer Referral Service.*

A lawyer-owner may provide general management and administration of a referral service. *See* OSB Formal Ethics Op No 2005-138 (legal aid service could provide general administration over associated referral service). This would include, for example, hiring and supervising operations management for the referral service. Similarly, the lawyer-owner may operate the referral service at the same physical premises as the lawyer's law practice. *See* OSB Formal Ethics Op No 2005-2 (lawyer may share office space with other businesses).

Even in these circumstances, however, a lawyer-owner should take precautions to avoid participating in the actual “screening” of incoming inquiries in light of the risk that a caller (1) might impart confidential information to the lawyer and thereby create potential conflicts with the lawyer’s other clients or (2) would form the reasonable belief that the lawyer had become the caller’s lawyer. *See* OEC 503(1)(a) (*client* means a person “who consults a lawyer with a view to obtaining professional legal services from the lawyer” for purposes of the lawyer-client privilege); OSB Formal Ethics Op Nos 2005-100 (preliminary discussions with an eye toward potential employment of a lawyer are protected by the lawyer-client privilege), 2005-138; *In re Weidner*, 310 Or 757, 770–771, 801 P2d 828 (1990) (outlining “reasonable expectations of the client” test for determining whether lawyer-client relationship has been formed).

At the other end of the spectrum is *In re Fellows*, 9 DB Rptr 197, 199–200 (1995). The disciplined lawyer in *Fellows* operated a referral service called “Case Evaluation & Referral Service” that was not an independent business but was merely an assumed business name for the lawyer. Such conduct violates both Oregon RPC 7.1 and Oregon RPC 8.4(a)(3). In addition, the operation of a lawyer-owned referral service in this manner would constitute doing business with a client within the meaning of Oregon RPC 1.8(a).

3. *Legal Advice by the Referral Service to Callers.*

Because a referral service itself is not licensed to practice law, it may not provide legal advice to the public. ORS 9.160 (only those licensed to practice law may provide legal advice to third parties). Similarly, a lawyer may not assist a nonlawyer in the unlawful practice of law. Oregon RPC 5.5(a). Consequently, a lawyer may not assist a referral service in its delivering legal advice to the public either. OSB Formal Ethics Op No 2005-87.

4. *Fee-Splitting Between the Referral Service and Participating Lawyers.*

Oregon RPC 5.4(a) prohibits lawyers from sharing fees with nonlawyers outside very narrowly defined exceptions not relevant to the question presented here. Because a referral service itself is not licensed to practice law, lawyers participating in such a service may not split their fees with the service.

Oregon RPC 7.2(a) provides:

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

Lawyers may therefore pay the marketing charges associated with participating in lawyer referral services. *See also* OSB Formal Ethics Op No 2005-73 (acceptance of referrals). Payments made to a lawyer referral service, therefore, must be limited to marketing charges only and must not include a fee-split.

Approved by Board of Governors, August 2005.

COMMENT: For additional information on this general topic and other related subjects, see THE ETHICAL OREGON LAWYER §§2.13, 2.28 (Oregon CLE 2003); RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS §§3, 10 (2003); and ABA Model Rule 7.3(d).

FORMAL OPINION NO. 2007-180

Internet Advertising: Payment of Referral Fees

Facts:

Lawyer wants to participate in a nationwide Internet-based lawyer referral service and has received solicitations from companies offering this service. Customers who use the referral service are not charged. Some providers will charge Lawyer through various mechanisms.

The referral service will not be involved in the lawyer-client relationship. A referred consumer is under no obligation to work with a lawyer to whom the consumer is referred. The referral service will inform consumers that participating lawyers are active members in good standing with the Oregon State Bar who carry malpractice insurance. Consumers may also be informed that participating lawyers may have paid a fee to be listed in the directory. Furthermore, consumers will be informed that lawyers have written their own directory information and that a consumer should question, investigate, and evaluate the lawyer's qualifications before he or she hires a lawyer.

Questions:

1. May Lawyer participate in an Internet-based referral service?
2. May Lawyer ethically pay a fee to be listed in a directory of lawyers?
3. May Lawyer ethically pay a fee based on lawyer's being retained by a referred client?

Conclusions:

1. Yes, qualified.
2. Yes, qualified.
3. No.

Discussion:

Internet-based advertising is governed by the same rules as other advertising. The questions presented here raise issues relating to both advertising and recommending a lawyer's services. Advertising and recommendation are distinguished as follows: "When services are

advertised, the nonlawyer does not physically assist in linking up lawyer and client once the advertising material has been disseminated. When a lawyer's services are recommended, the nonlawyer intermediary is relied upon to forge the actual attorney and client link." *Former OSB Formal Ethics Op No 1991-112* (discussing *former* DR 2-101 and *former* DR 2-103).¹

Lawyers are permitted to communicate information about their services as long as the communication does not misrepresent a material fact and is not otherwise misleading. Oregon RPC 7.1(a)(1)–(2). Internet-based communication is available to consumers outside the states where Lawyer is licensed. Therefore, Lawyer must ensure that nothing in the advertisement implies that Lawyer may represent consumers beyond the scope of Lawyer's licenses. A lawyer who allows his or her name to be included in a directory must ensure that the organizers of the directory do not promote the lawyer by any means that involve false or misleading communications about the lawyer or his or her firm. RPC 7.2(b). For instance, if the directory lists only one type of practitioner, it may not include any statement that the lawyer is a specialist or limits his or her practice to that area unless that is in fact the case. RPC 7.1(a)(4). If the advertising creates an impression that Lawyer is the only practitioner in a specific geographic area who offers services for a particular practice area, when that is not the case, that representation would be misleading and therefore prohibited. Lawyer is responsible for content that Lawyer did not create to the extent that Lawyer knows about that content. Lawyer therefore cannot participate in advertising, including the home page of the advertising site and pages that are directly linked or closely related to the home page and that are created by the advertising company, if the content on those pages violates the Oregon RPCs. Lawyer is not responsible for the content of other lawyers' pages.

¹ See also *Bates v. State Bar of Arizona*, 433 US 350, 97 S Ct 2691, 53 L Ed2d 810 (1977) (upholding a state's right to prohibit false and misleading advertising); *Ohralik v. Ohio State Bar Asso.*, 436 US 447, 98 S Ct 1912, 56 L Ed2d 444 (1978) (upholding a state's right to discipline lawyer personally soliciting a client under circumstances creating undue pressure on prospective client).

Oregon RPC 7.1(d) permits a lawyer to pay others to disseminate information about the lawyer's services, subject to the limitations of RPC 7.2. That latter rule, in turn, allows a lawyer to pay the cost of advertisements and to hire others to assist with or advise about marketing the lawyer's services. RPC 7.2(a). RPC 7.2(a) provides:

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

At the same time, Oregon RPC 5.4(a) prohibits a lawyer from sharing legal fees with a nonlawyer (except in limited circumstances that are not relevant to the questions presented here). RPC 5.4(a) provides:

A lawyer or law firm shall not share legal fees with a nonlawyer, except that:

(1) an agreement by a lawyer with the lawyer's firm or firm members may provide for the payment of money, over a reasonable period of time after the lawyer's death, to the lawyer's estate or to one or more specified persons.

(2) a lawyer who purchases the practice of a deceased, disabled, or disappeared lawyer may, pursuant to the provisions of Rule 1.17, pay to the estate or other representative of that lawyer the agreed-upon purchase price.

(3) a lawyer or law firm may include nonlawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement.

(4) a lawyer may share court-awarded legal fees with a nonprofit organization that employed, retained or recommended employment of the lawyer in the matter.

This rule "prohibits a lawyer from giving a non-lawyer a share of a legal fee in exchange for services related to the obtaining or performance of legal work." *In re Griffith*, 304 Or 575, 611, 748 P2d 86 (1987) (interpreting former DR 3-102, which is now RPC 5.4(a)). In the context of advertising, Oregon RPC 5.4 thus precludes a lawyer from paying someone, or a related third party, who advertises or otherwise disseminates information about the lawyer's services based on the number of referrals, retained clients, or revenue generated from the advertisements. By contrast, paying a fixed annual or other set periodic fee not related to any particular work derived from a directory listing

violates neither RPC 5.4(a) nor RPC 7.2(a). A charge to Lawyer based on the number of hits or clicks on Lawyer's advertising, and that is not based on actual referrals or retained clients, would also be permissible.

Oregon RPC 7.2(c) permits a lawyer or law firm to be recommended by a referral service or other similar plan, service, or organization as long as (1) the operation of the plan does not result in the lawyer or the lawyer's firm violating the rules relating to professional independence² or unauthorized practice of law;³ (2) the client is the recipient of the legal services; (3) the plan does not impose any restriction on the lawyer's exercise of professional judgment; and (4) the plan does not engage in direct contact with prospective clients that would be improper if done by the lawyer.⁴ If a third-party provider were to collect specific information from a consumer, analyze that information to determine what type of lawyer or which specific lawyer is needed, and refer the consumer based on that analysis, it would constitute the unauthorized practice of law and is prohibited. OSB Formal Ethics Op No 2005-168.

A lawyer cannot control where people choose to access the Internet, just as a lawyer does not know where a client will use a traditional telephone directory. Solicitation of clients and payment for referrals in personal injury or wrongful death cases is prohibited by ORS 9.500 and 9.505. Lawyers are also prohibited from soliciting "business at factories, mills, hospitals or other places . . . for the purpose of obtaining business on account of personal injuries to any person or for the purpose of bringing damage suits on account of personal injuries." ORS 9.510. This statute must be read in conjunction with constitutional limitations on the restriction of free speech and does not bar all Internet-based advertising on these issues. OSB Formal Ethics Op No 2005-127.

² Oregon RPC 5.4.

³ Oregon RPC 5.5, ORS 9.160, and ORS 9.500–9.520.

⁴ Oregon RPC 7.3.

Substantive law may also limit Lawyer's ability to pay a referral fee.⁵ Here, the referral fee would be paid to a private third party rather than a "public service referral program," and it thus appears that the U.S. Bankruptcy Code's general prohibition against fee-sharing applies.

Approved by Board of Governors, November 2007.

⁵ See, e.g., 11 USC §503(b)(4), which governs the allowance of attorney fees in bankruptcy cases; §504(a) and (b), which prohibit a lawyer from agreeing to the sharing of compensation or reimbursement with another person; and §504(c), which creates an exception to the §504(a) and (b) restrictions for fee-sharing "with a bona fide public service attorney referral program that operates in accordance with non-Federal law regulating attorney referral services and with rules of professional responsibility applicable to attorney acceptance of referrals."

Percentage Fees: Available *and* Ethical

by Michael Franck

Lawyer referral and information services are not immune from economic reality. They too must cope with the twin pressures of less generous sources of income and escalating expenses. The traditional funding sources of sponsor subsidy plus client and panelist fees are increasingly inadequate. Additional income must be generated if referral and information service components are to maintain the quality standards essential to properly serving the public.

The most equitable source of additional funding for the service is obviously the lawyer who benefits financially from its operation. Why shouldn't that lawyer's contribution be directly proportionate to the monies earned as the result of a referral? Many services have forgone this potential source of funding because they regard it as fee-splitting, which is prohibited by the ethical standards of the profession. Careful analysis of that concern suggests that it is misplaced.

The long-standing prohibition against fee-splitting reflects the concern that a third party sharing in a legal fee would interfere in the lawyer-client relationship, by seeking to influence the lawyer to conduct the representation with an eye toward maximizing the fee to be earned, rather than to benefit the client. This concern first manifested itself in prohibitions against nonlawyer solicitation of claims in exchange for a percentage of the lawyer's fee (see *Mequire v. Corwine*, 101 U.S. 108 (1879)) and in prohibitions against the practice of law by corporations (see *In re Cooperative Co.*, 198 N.Y. 479 (1910)).

The prohibition against lawyers paying laypersons for soliciting cases was incorporated in the original Canons of Professional Ethics adopted by the American Bar Association in 1908. Other forms of fee-sharing with nonlawyers were originally prohibited only by statutes and case law. In 1928, the American Bar Association adopted Canon 34 of the Canons of Judicial Ethics which prohibited the sharing of legal fees

entirely, except with another lawyer based upon a division of service or responsibility. But, as Gilbert and Sullivan's *Little Buttercup* remind us in *H.M.S. Pinafore*, things are seldom what they seem.

In 1956, the ABA Committee on Professional Ethics issued an opinion as to whether a referral service sponsored by a local bar association could require those lawyers utilizing the service to assist in its financing, either by a flat fee or sliding-scale charge based on the fees derived by the lawyers from the cases referred to them. The Committee opined that registrants could be required to contribute to the expense of operation the referral service by a reasonable registration charge or by a reasonable percentage of fees they collected. The latter appeared to clearly be a division of legal fees with a nonlawyer. Nevertheless, the Committee concluded the arrangement would not constitute a violation of Canon 34.

The Ethics Committee gave absolutely no reason for its conclusion that the proposed percentage fee conformed to the existing Canon provision. We can only speculate that the Committee was determined not to impede the then-recent development of the lawyer referral service by the application of an ethical standard which had not anticipated that means of providing legal services to the public.

In 1969, the ABA Canons of Ethics were replaced by the ABA Model Code of Professional Responsibility. The Code retained the prohibition against a lawyer or law firm sharing legal fees with a nonlawyer, with exceptions only for death benefits payable to the estate of a deceased lawyer, compensation for services rendered prior to death payable to the estate of a lawyer, and the inclusion of nonlawyer employees in a firm retirement plan, even though the plan may be based on a profit-sharing arrangement (DR 3-102(A)). However, the Code also incorporated the lawyer referral service exception first sanctioned in Opinion 291. DR –103(B) prohibited the giving of compensation by a lawyer to a person or organization for having recommended or secured the lawyer's employment, or as a reward for having made a recommendation resulting in the lawyer's employment by a client, except that the lawyer was permitted to pay the usual and reasonable fees or dues charged by any of the organizations listed in DR 2-103(D). That subsection permitted the lawyer to

be recommended by, among others, a lawyer referral service operated, sponsored, or approved by a bar association. The percentage fee now had formal Code sanction.

In 1970, a law firm unsuccessfully sought a declaratory judgment that its agreement to pay one-third of an attorney fee of almost \$48,000 in a medical malpractice case referred by the lawyer referral service of a local bar association violated public policy against fee-splitting and was unenforceable. In *Emmons, Williams, Mires & Leech v. State Bar of California*, 6 Cal. App. 3d 565 (1970), the California Court of Appeals, citing criteria for the operation of a lawyer referral service adopted by the State Bar of California which had been premised on standards promulgated by the American Bar Association, as well as the Opinion 291 of the ABA Committee on Professional Ethics, held that the percentage fee did not violate the public policy underlying the prohibitions against fee-splitting and was, therefore, enforceable.

The court summarized the dangers to be avoided by the fee-splitting prohibition as competitive solicitation, potential control by the layperson interested in personal profit rather than the client's fate, and the lay intermediary's tendency to select the most generous, not the most competent, attorney. The court concluded that none of these dangers or disadvantages characterizes a local bar association's referral service. "The bar association seeks not individual profit but the fulfillment of public and professional objectives. It has a legitimate, nonprofit interest in making legal services more readily available to the public. When conducted within the framework conceived for such facilities, its reference service presents no risk of collision with the objectives of the Canons of fee-splitting and lay interposition." The lower court decision requiring the law firm to pay the referral service a percentage of the fee it had earned as the result of the referral was upheld.

Although the *Emmons* decision was not predicated upon the specific provisions of the Code of Professional Responsibility but upon similar regulations adopted by the State Bar of California, it is fully consistent with the philosophy underlying the parallel Code provisions.

The Code was replaced in 1982 by the ABA Model Rules of Professional Conduct. Model Rule 5.4(a), which prohibits a lawyer or law firm from sharing legal fees with a nonlawyer, is identical to DR 3-102(A) of the Model Code. Model Rule 7.2(c) generally prohibits a lawyer from giving anything of value to a person for recommending the lawyer's services. One express exception is that the lawyer may pay the usual charges of a not-for-profit lawyer referral service or legal service organization. The term "usual charges" incorporated the various methods for compensation lawyer referral services then in existence and included flat enrollment charges as well as percentage fees. The Model Code requirement that the referral service be sponsored by a bar association was dropped from the Model Rules. That change reflected significant doubt as to the constitutionality of lawyer ethical standards which advantaged referral service mechanisms sponsored by bar associations over similar services established by not-for-profit organizations to further ideological goals arguably protected by the First Amendment against discriminatory limitations applicable to them and not to others. Even the Model Rule exception, limited to not-for-profit organizations, may be subject to constitutional challenge.

The percentage fee is now a well-established method of funding lawyer referral services (see generally the ethics opinion set forth in the *ABA/BNA Lawyers' Manual on Professional Conduct* 41:804. The files of the ABA Standing Committee on Lawyer Referral and Information Service indicate that more than forty percent of the referral services in existence are so funded in whole or in part.

The size of the percentage fees charged varies greatly. They range up to one-third, the percentage fee at issue and enforced in the *Emmons* case, *supra*.

Although no specific limitation on the size of the referral fee charged by a referral service has been expressly formulated, it seems obvious that some standard of reasonableness must apply. The outside limits of that standard may be defined as the point at which a further deduction from the fee left to the lawyer handling

the matter may well affect the quality of the representation by adversely affecting the enthusiasm the lawyer brings to the matter and the ultimate result the lawyer seeks to achieve.

The purpose for which the proceeds of the referral fee charged by the service are used also raises ethical concerns. The lawyer referral concept was developed to further the profession's obligation to make legal services widely available. Consequently, it would not be appropriate to use the income generated to subsidize the normal operating expenses of the bar association or other sponsor of the referral service. Those proceeds should be devoted to funding the reasonable operating expenses of the service. Any balance remaining should fund public service activities of the service or its sponsoring organization, including the delivery of pro bono legal services.

	<u>State Bar LRIS Collects Percentage Fee?</u>			<u>Percentage Fees Model Used Within State (local or state bar)</u>	
Alabama	Yes			Yes	
Alaska		No			No
Arizona			No State Bar LRIS	Yes	
Arkansas	Yes			Yes	
California			No State Bar LRIS	Yes	
Colorado			No State Bar LRIS	Yes	
Connecticut			No State Bar LRIS	Yes	
Delaware		No			
Florida	Yes			Yes	
Georgia		No		Yes	No
Hawaii	Yes			Yes	
Idaho		No			No
Illinois	Yes			Yes	
Indiana			No State Bar LRIS	Yes	
Iowa	Yes			Yes	
Kansas	Yes			Yes	
Kentucky			No State Bar LRIS	Yes	
Louisiana	Yes			Yes	
Maine	Yes			Yes	
Maryland			No State Bar LRIS	Yes	
Massachusetts	Yes			Yes	
Michigan	Yes			Yes	
Minnesota		No		Yes	No
Mississippi			No State Bar LRIS		
Missouri	Yes			Yes	
Montana	Yes			Yes	
Nebraska		No			No
Nevada	Yes			Yes	
New Hampshire	Yes			Yes	
New Jersey			No State Bar LRIS		
New Mexico	Yes			Yes	
New York	Yes			Yes	
North Carolina		No		Yes	No
North Dakota		No			No
Ohio			No State Bar LRIS	Yes	
Oklahoma			No State Bar LRIS	Yes	
Oregon		No			No
Pennsylvania		No		Yes	No
Rhode Island	Yes			Yes	
South Carolina	Yes			Yes	
South Dakota			?		
Tennessee			No State Bar LRIS	Yes	
Texas	Yes			Yes	
Utah		No			No
Vermont	Yes			Yes	
Virginia			No State Bar LRIS	Yes	
Washington			No State Bar LRIS	Yes	
West Virginia		No			No
Wisconsin	Yes			Yes	
Wyoming		No			No
District of Columbia	Yes			Yes	
TOTAL	23	13	15	39	12
PERCENTAGE	45%	25%	29%	76%	24%
Total		51			51



DESCRIPTION AND RULES OF OPERATION

1. History and Purpose

The Lawyer Referral Service of Central Texas (LRS) is organized and operates to provide a public service by which any person may readily obtain legal services at an affordable fee, or referral information for appropriate legal service, or both.

LRS is a non-profit organization created by the Austin Bar Association (formerly Travis County Bar Association) in 1966 to assist individuals who do not have counsel and who are seeking help with a legal problem. Persons contacting contact LRS are either referred to a lawyer who has indicated that he or she is qualified to handle the legal problem presented or referred to community service organization. It is the responsibility of the Bar, and the professional responsibility of every lawyer, to make legal services available to all persons. In many ways, LRS serves as a clearinghouse for the entire legal community in the greater Austin area. Further objectives of LRS are:

- To acquaint people in need of legal services with the value of consultation with an attorney;
- To aid in the selection of a lawyer by providing information about lawyers and the availability of legal services;
- To provide general legal information needed by the public; and
- To encourage lawyers to recognize their obligation to provide affordable legal services to persons in need of such services.

2. How Does It Work?

One of the hallmarks of the referral service is screening. Referrals are made from information gathered during the screening process based on legal need, geographic area, and language spoken. The attorney next on the rotating list will receive the referral. The attorney's record will then be rotated to the bottom of the referral list of that particular area of the law. If a panel member is not available for calls or consultations (vacations, seminars, etc.) please contact the LRS office to be placed on temporary hold.

The client is given the name and telephone number of one panel member and is then transferred directly to the lawyer's office to arrange an appointment (unless the caller requests otherwise). Generally, the caller will receive one referral per phone call. The exception, when the caller will receive two referrals, is when they are calling from out of town or if they request two names. If two referrals are given, no call transfer is made.

The client is also advised:

- to inform the panel member's office that this is a Lawyer Referral Service referral;
- that they are entitled to a half-hour consultation with the panel member for no more than \$20;
- that fees involved in representation should be discussed with the attorney.

Following the referral, a referral confirmation notice will be sent to the panel member and a comprehensive status report will be sent monthly. The Lawyer Referral Service will also send a survey to clients to follow-up on the service provided to the client by the LRS and the panel member.

3. How to Join

Complete an application including the Member Information Sheet, Subject Matter Applications, pay member dues, and provide a copy of the declaration page of the professional liability insurance policy. **Contact Jeannie Rollo at 472-1311 to schedule an appointment.**

LRS MEMBERSHIP RULES

I. Membership Criteria

Membership is extended to all Travis, Hays, Bastrop and Williamson County attorneys licensed to practice law and members in good standing with the State of Texas, who are engaged in the full-time, private practice of law.

Members must maintain an office in the county(ies) that LRS serves. The office is one in which the attorney maintains a full time practice of law. The Director, with the advice and consent of the LRS Board of Trustees, will have discretion to evaluate the type of practice and how that affects the attorney's ability to serve the geographical area. The LRS Board has final discretion in allowing exceptions. Office space must be completely separate from living space with a separate entrance. For home offices that do not have a separate entrance and meeting space, all attorney/client meetings must take place in a courthouse, law library, law office conference room, or other similar setting to insure safety, privacy, and professionalism.

Panel members must carry profession liability insurance with limits not less than \$100,000 per claim and \$300,000 aggregate. Panel members must attach a copy of the declaration page of the policy to the application for membership. LRS will notify the panel member when the policy has expired and LRS will place the attorney on inactive status until current insurance information has been received. Panel members have the affirmative duty to notify LRS of renewal, cancellation, or other changes to the insurance policy, and should authorize the insurance carrier to supply LRS with any information concerning the policy.

Panel members must possess legal ability and competency to handle legal issues in the categories they have designated for referrals. Panel members must demonstrate personal reliability and integrity and comply with all rules of the Lawyer Referral Service of Central Texas.

II. Membership Dues (non refundable/non prorated)

Annual membership fees are: (membership year is July 1 through June 30 effective of 2/2/09/new dues structure will be put in place July 1, 2010.)

- a. \$200.00 if licensed more than 3 years.
- b. \$175.00 if licensed 1 to 3 years.
- c. \$150.00 if licensed less than 1 year.

To encourage participating in a local bar association, new LRS panel members, joining for the first time, will receive a \$50 discount on LRS dues when they also join the bar association (effective 3/3/2009).

III. Consultation Fees

Referral clients will be informed about the initial consultation fee and that further services and fees will be decided upon privately. Please refer the referral client back to the referral service if representation is denied. If a panel member plans to exceed thirty minutes and charge for the time that exceeds thirty minutes, make certain the referred client understands all fees prior to the start of the consultation. Panel members must have in place written fee agreements.

Panel members must collect a \$20.00 consultation fee from the client at the first appointment. The charge is for consultation only. Please use discretion in giving advice over the phone. Please collect the initial consultation fee immediately before meeting with the client. Checks should be made payable to the Lawyer Referral Service. Please do not forward cash to LRS.

For personal injury (including workers comp), bankruptcy, mediation, and social security disability cases, the attorney must remit the \$20.00 referral fee to LRS on all cases if the panel member has been retained and receives a fee. Please do not charge this fee to the client. This fee applies regardless of whether the case generates more than \$400.00. The status reports will reflect "retained, no consult fee" until the consult fee has been paid.

IV. Fee Agreements

Compensation for additional time or services beyond the initial one-half hour consultation must be agreed to between the panel member and the client before the client is charged any fee beyond the \$20.00. Please be sure the client understands that additional fees may apply upon the expiration of the initial thirty-minute consultation. All participating panel members *must* have written fee agreements with clients who retain them through the LRS referral. Please contact the LRS office for sample fee agreements.

V. Percentage Fees

The combined fees and expenses charged a referred client should not exceed the total charges that the client would have incurred had no referral service been involved.

Panel members are required to pay the Lawyer Referral Service a 15% referral fee on each LRS case that generates a fee of \$400.00 or more. This formula is based on all fees received. For example: On a \$1,000.00 legal fee, the referral fee would be \$90.00, i.e., 15% of \$600.00.

If the referred lawyer and the client enter into an agreement whereby the referred lawyer will provide legal services to the client for which the client will pay a fee, then percentage fees will be due the LRS upon payment of the fees by the client. No percentage fee is due on the first \$400 in fees paid by the client, in other words, there is a \$400 deductible. For all fees earned thereafter, fifteen percent (15%) is due the LRS. After collection of the first \$400 in fees, the referred lawyer shall remit 15% of all fees paid to the lawyer (whether the client has paid in response to a bill or whether the attorney has billed against funds held in trust) to the LRS on the next status report cycle, even if the attorney anticipates that additional fees will be paid in the future by the client.

If the referred lawyer fails to remit the appropriate percentage fee to the LRS within the next status report cycle, the Director shall notify the lawyer requesting immediate remittance of the appropriate percentage fee to the LRS. At the same time, the Director shall remove the lawyer's name from the referral panels until the percentage fees are paid. A \$25 reinstatement fee may apply if the panel member has failed to update status reports beyond the second reporting cycle and has been suspended.

When fees are returned with a status report, please indicate whether the amount is a percentage fee or consultation fee and for which client the monies will be applied.

The following must occur for LRS to close and process a final status on a referred case:

- Please indicate on the status report all fees received, the date fees were paid, and **submit the final client billing or settlement statement with the status report.**
- LRS must receive all fees within 30 days from the receipt of fees.
- If the referred lawyer fails to remit the appropriate percentage fee to the LRS within 30 days of closure of a referred matter, the Director shall contact the panel member, requesting immediate payment of the appropriate percentage fee to the LRS.
- If the member is delinquent, the Director shall remove the lawyer's name from the referral panels until the percentage fee is paid. If the lawyer fails to respond within 15 days of the receipt of the notification sent by the Director, the Director will present the matter to the Collections Committee for submission to collection, pursuant to LRS Section VII of the LRS Membership Rules. At the discretion of the Director and/or Committee, the Board of Trustees of the Lawyer Referral Service of Central Texas may be notified when a panel member has failed to remit the appropriate forms and/or funds to LRS. The Board of Trustees of the LRS of Central Texas may also take whatever action is deemed appropriate, including initiating collection actions and imposing a collection penalty in addition to fees due LRS.
- After the third suspension for failure to pay fees due LRS the panel member is subject to removal from LRS.

If LRS refers a caller who puts other people in touch with LRS attorney for the *same case*, LRS is entitled to 15% of fees from all related cases. However, if the LRS referred case closes and some time later the client re-contacts the attorney on another matter, LRS will not require the 15% fee on the matter unrelated to the LRS referral.

If a LRS panel member cannot handle an LRS referral, the client must be referred back to the LRS for another referral. **Under no circumstance should panel member refer an LRS caller to a non-LRS attorney or broker a referral.** Please contact the LRS with any questions. There is an ongoing obligation to remit percentage fees to LRS. If LRS member decides to share the LRS referral with another attorney, LRS must still receive 15% of *all* fees generated (including those paid to attorney brought in on case). There shall be no brokering of clients or cases referred by LRS.

LRS is entitled to (a) know the outcome of any legal representation, (b) the fees received, and (c) to audit the file to determine if it has received the appropriate amounts. Upon the settlement of any such action, the attorney shall be obligated to include LRS with those who have a right to know about a settlement, to the extent necessary to allow LRS to have knowledge of the terms of the settlement, including all fees paid in the case, whether paid directly by another party, or by settlement proceeds, so that LRS may determine the portion of the fees to which it is entitled.

VI. Subject Matter Panel Application

Members must submit Subject Matter Applications to participate in the many panels. Some applications require proof of experience in particular practice areas. All membership information may be found at www.AustinLRS.org.

VII. Fee Disputes/Audits

Fee disputes arising between LRS and member attorneys that cannot be resolved through intervention by the Executive Director, the Collection Committee, or the Board of Trustees, are subject to collection procedures by LRS.

In an effort to facilitate collection efforts, LRS may require the panel member allow LRS or its agent to examine and audit members' financial or accounting records and the legal files with regard to referred clients. The audit may include, but is not limited to, chart of accounts, general account records, court filing records, calendars, appointment records, time sheets, docket sheets, engagement letters, fee agreements, and contracts with LRS clients.

VIII. Referral Forms

Daily referral confirmation reports will be emailed to the attorney's office when a referral is made. Please retain the forms or return them with payment to LRS.

Comprehensive status reports will be faxed (soon to be posted on the LRS website [www.AustinLRS.org]) once a month listing all pending or open cases. Failure to return the forms within thirty days will be grounds for suspension from the rotation. A \$25 reinstatement fee may apply to suspended panel members whose reports are over 60 days late. Reports will be considered delinquent until completed and fees paid. When fees are paid, please indicate whether the amounts are percentage fees or consultation fees. Please indicate on the status report all attorneys' fees received.

IX. Follow-up

LRS sends follow-up surveys asking if clients consulted with the panel member, amounts of fees paid, and if they were satisfied with how their matter was handled. Any pertinent information will be forwarded to panel members, and, if deemed necessary by the Director of the LRS, to the Board of Trustees. LRS routinely monitors referrals by checking court dockets, legal notices, etc.

MATCH PROGRAM PANEL

The Match Program is a reduced fee program through which LRS matches low to modest income clients with attorneys willing to handle their case at the reduced rate of \$75.00 per hour (maximum). The Match Program is currently available for family law matters, guardianship cases, and drafting of simple wills. Your decision to join the Match Program will help meet the profession's responsibility of providing legal services to all low income Central Texans who qualify. Ask the LRS office for more information. To encourage involvement in this program, LRS provides professional liability insurance coverage for participating Match attorneys who take only Match referrals. The insurance covers Match cases only. If you participate in the Match Program ONLY, your membership dues will be waived the first year. If you join both LRS and Match, you must pay full LRS membership dues and carry malpractice insurance.

LAWYER OF THE DAY

As part of a "24 hour service," criminal law panel members can participate after 5pm and holidays as "on call" attorneys to receive emergency and jail calls. You are permitted to handle all cases in which you are qualified under LRS guidelines. You are entitled to fees for any service performed and obligated by the terms of your agreement with LRS to contribute the first \$20.00 consultation fee to LRS. If you are interested, please call 472-1311 for further information.

MENTOR PROGRAM

The Lawyer Referral Service offers a mentoring program, particularly for attorneys participating in the family law matters through the Match Program. If you agree to mentor, your name will be given to your protégé needing a consultation on a legal matter. Mentors will not be of record, nor be required to hold lengthy meetings with protégé. Mentors should be willing to accept occasional phone calls and offer information or support on difficult cases.

LAWFON

LawFON (Lawyer Friends of Non-profits) is a program where legal work is provided to qualifying non-profits at a reduced rate \$70.00 per hour. The non-profit will also receive a one-hour consultation for \$20, payable to LRS. If you are interested in providing this service, please contact LRS for more information.

LEGALLINE

On the first Tuesday of each month, attorney volunteers take calls from the public to give brief legal advice and assistance. All calls remain anonymous. If more in-depth legal advice is needed, the attorney volunteers refer callers to other agencies or to LRS for a referral. Please volunteer for this worthwhile service.

DISCIPLINARY PROCEDURES
SUSPENSION AND TERMINATION OF MEMBERSHIP

- I. Membership in the Lawyer Referral Service of Central Texas, Inc. is a privilege extended to those attorneys who meet the stated qualifications and agree to comply with LRS regulations. Those qualifications include the requirements that you:
- a. Be a member in good standing of the State Bar of Texas;
 - b. Engage in the full-time, private practice of law;
 - c. Maintain suitable office for receiving clients. Office space must be completely separate from living space with separate entrance and in a commercially zoned area;
 - d. Possess legal ability and competency to handle legal issues in the categories designated for referrals; and
 - e. Demonstrate personal reliability and integrity.
- II. The attorney has an affirmative duty to inform LRS within five (5) days if he/she receives a public or private reprimand, is placed on probation, suspended, or disbarred by the State Bar of Texas, is charged by information or complaint with a misdemeanor offense that constitutes a crime of moral turpitude, or is indicted on felony charges. The LRS conducts a check of disciplinary records of all panel members on a weekly basis.
- III. The Director is empowered to suspend any attorney member indefinitely for one or more of the following violations:
- a. Failure to return referral slips and/or fees with thirty (30) days of the date of the referral;
 - b. Failure to update LRS membership materials;
 - c. Failure to provide proof that professional liability insurance is in force and effect;
 - d. Failure to remit fees owed LRS;
 - e. Failure to respond to LRS inquiries regarding delinquent fees or client complaints, or
 - f. Failure to notify LRS of any public or private reprimand as outlined in section II above.

The Director will send written notice, via postal or electronic mail, of the suspension to the attorney at his/her last known address on or before the date the suspension commences. The attorney's status shall not be jeopardized by such action except that the referrals will not be made during this suspension. If the attorney has not cured the violation within sixty-two (62) days to the satisfaction of the Director, he/she will be subject to termination from the panel. If an attorney is terminated for refusal to pay fees due to LRS, his/her firm will be considered liable to LRS for the fees.

Any member whose membership is suspended or terminated under Section I, II, or III of the Disciplinary Procedures will not be allowed to renew his/her membership until the violation causing the suspension or termination has been cured. Any member who has been terminated will have to present his/her application to the Board of Trustees for readmittance to the panel.

- IV. The Director is empowered to suspend any attorney for a period not to exceed sixty-two (62) days for any good cause including but not limited to the following violations:
- a. Any public or private reprimand, probation, suspension or disbarment from the State Bar of Texas;
 - b. Any indictment for any felony or charged by information or complaint with a misdemeanor offense that constitutes a crime of moral turpitude;
 - c. Filing of formal criminal charges involving moral turpitude;
 - d. Litigation relating to suspension or disbarment from the State Bar of Texas;
 - e. Failure to meet or maintain the qualifications for membership in LRS established by the Board of Trustees;
 - f. Engaging in conduct harmful or injurious to the goals, reputation, or interest of LRS, including:
 - g. Giving the client the impression that persons referred by LRS are entitled to less consideration than other clients;
 - i. Consistent unavailability to referred clients;
 - ii. Consistent refusal to make or keep appointments with referred clients;

- iii. Rudeness to clients;
- iv. Repeated fee disputes with clients; or
- v. Consistent or excessive complaints from referred clients.

The Director will send written notice, via postal or electronic mail, of the suspension to the attorney at his/her last known address on or before the date the suspension commences. The letter will include specific reference to the nature of the violation, the date of the suspension, and notice that failure to cure the violation to the satisfaction of the Director within the time period stated will result in termination of the attorney's membership in LRS. The attorney's status shall not be jeopardized by such action except that referrals will not be made during the suspension.

If, within sixty-two (62) days of the date the suspension commences, the attorney does not cure the violation to the satisfaction of the Director, the Director will terminate the attorney's membership. The Director will send written notice of this action restating the nature of the violation.

- V. Administrative termination may be appealed by written request to the Director. The Director will designate the date of the next Board of Trustees' meeting as the hearing date and will notify the attorney and all members of the Board of Trustees of the date and nature of the hearing. At the meeting, the attorney may be present with or without counsel. It shall be the burden of the attorney to prove by a preponderance of the evidence that he/she is not guilty of the violation stated in the termination notice. The attorney will be expected to respond to questions by the Board of Trustees; the failure to cooperate may be a factor in the Board's decision. A simple majority vote by Board members (assuming a quorum is present) shall determine whether the attorney will be reinstated. This decision shall be final without a right of appeal.

Revised: June 5, 2009



Lawyer Referral & Information Service

Use of the ABA Lawyer Referral and Information Service logo indicates that this lawyer referral program has been reviewed by the ABA and meets the specific public service standards established by the ABA. ABA approved lawyer referral programs:

- *Agree to establish and maintain objective experience criteria for their panel attorneys,*
- *Provide a mechanism for client feedback and resolving client complaints*
- *Do not limit the number of attorneys who may join the Lawyer Referral and Information Service, provided that they meet the objective requirements for panel membership,*
- *Require and verify that all panel attorneys carry legal malpractice insurance.*

*Use of the logo indicates that this program meets ABA standards for lawyer referral services. **The ABA does not review the qualifications of the individual lawyers who participate in the service. For more details on the ABA standards, visit www.abanet.org/legalservices/lrrules.html.***

LRIS Referrals, Reports, and Agreements *A Member Support Staff Handbook*

2009-2010

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Report Schedule

Application & Agreement and Panel Change Form	once a year	anniversary month
Proof of Insurance	once a year	policy anniversary
Attorney Confirmation	at referral	30 days from date
Record Updates	roughly every 2 months, with due date established with reference to holiday calendar, etc, noted on forms, always 30 days or slightly longer	
Quarterly Rpt. & Remittal	four times per year, roughly every 3 months, with an attempt to stagger with holidays and Update due dates, noted on forms	

The Purpose of the Service

The Lawyer Referral & Information Service is a special program offered by the Maine State Bar Association to:

- ✓ serve the public with information and access to legal services;
- ✓ provide member attorneys with opportunities for clients and good PR;
- ✓ promote a positive image of the legal profession; and
- ✓ express the Association’s commitment to professional excellence.

LRIS is not intended to offer lawyer services to people who can’t afford them; on the other hand, it is not just a way to capture paying clients. More callers are assisted by the service with information or direction to more appropriate resources than are actually referred to an attorney. With dues and remittals, your attorney is helping to support this aspect of the public service provided by LRIS staff, as well as our capacity to make referrals. And when we make those referrals we want them to be helpful to the clients and worthwhile for our members, and to reflect well on the Bar Association in every way. To make it all work, we have Standards & Rules.

Our rules deal with how to handle referrals, make reports, and remit fees. Your attorney has signed an agreement to meet our standards and follow our rules, and will need your alert assistance to keep that agreement.

This handbook is intended to help you help your attorney gain the most from membership in the Lawyer Referral & Information Service.

What Else?

Stay in touch!

Call us when you have questions...and we'll do the same.

➡ Let Us Know About Absences, Illnesses, and Full Schedules

Sick? Vacation? In court for the next 3 weeks? It's ok — just tell us! If your attorney is not going to be available for more than a couple of days, please let us know. Remember, your attorney has an agreement to call each LRIS referral back within 3 days of his/her first call to your office. Not receiving a timely call back could damage their legal position, and it is bad public relations for your firm and our service. Call us ahead of time: we will put your attorney out of rotation for as long as you request. That way our service will meet customer expectations, you won't have to deal with an upset caller, and your attorney will remain in compliance and in rotation.

➡ Changes in Contact Information

We have found through experience that communications via e-mail can fail utterly if you or the staff who handles your paperwork have changed your e-mail addresses without telling us. Please let us know of ALL contact information changes as soon as possible – e-mail, telephone, fax, address, firm changes, etc. It will save us all time, confusion, and frustration.

To contact LRIS:

Director
Penny Hilton 622-7523, ext. 223 philton@mainebar.org

Administrative Assistant
Rachel MacArthur 622-7523, ext. 222 rmacarthur@mainebar.org

LRIS FAX 623-0083

Mailing Address Lawyer Referral & Information Service
P O Box 788
Augusta ME 04332-0788

Client Feedback

We solicit client feedback in the form of a Client Survey when a referred case is reported closed by your office, as a means of verifying status reports, and as a way to measure client satisfaction with our service. We enter the results from every returned survey into the computer records pertaining to the attorney, put a paper copy into the attorney's file, and mail a copy to the attorney. We may follow up with a phone call if we feel the respondent's remarks warrant more attention. Only written complaints are considered. If we receive three or more complaints about an attorney within a year, we notify the attorney that the complaints will be considered by the LRIS oversight committee at its next meeting. Similarly, if within two years we receive three or more complaints noting the same *kind* of issue – failure to return calls, for example, or rudeness, or apparent incompetence – we will notify the attorney and bring the complaints to the committee's attention. The committee may ask for an explanation, or may choose to suspend or expel the attorney. The LRIS **Standards and Rules** document describes the process for appealing such a decision.

Complaints regarding alleged malpractice or disputes regarding fees are directed to the Maine Board of Overseers of the Bar. While we do not arbitrate in these matters, repeated complaints will be reported to the committee.

LRIS Sanctions

Temporary Placement Out of Rotation

Delinquent/incomplete report returns
Expired Proof of Insurance
Unpaid Annual Dues

LRIS Committee Consideration for Suspension

3 or more complaints in a year
3 or more complaints about the same issue in 2 years
Referral out of service
Withholding of percentage fees
Consistent failure to comply with LRIS rules

Expulsion

Maine Board of Bar Overseers sanction
Failure to maintain required liability insurance
Unresolved issues related to suspension

Final Sanctions are imposed by the MSBA Board of Governors - see Standards & Rules document.

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We get many calls from attorneys, many from out of state, who need direction to attorneys who can help them with legal matters in Maine. Sometimes they are calling on behalf of themselves, sometimes on behalf of their clients. Sometimes they will call your office personally, and sometimes their clients will be the ones who call. As a professional courtesy, we do not charge these attorneys the regular Client Referral Fee. However, we will only make one referral at a time, as we found we were not getting accurate reports back from attorneys when multiple referrals were made.

THESE ARE STILL LRIS REFERRALS.

We fax you the regular Attorney Confirmation Form, with the same contact information, panel indications, and brief description of the issue. If the attorney is calling on behalf of a client, please note that the client's name will be included in the description.

And

LRIS REPORTING and REMITTAL AGREEMENTS APPLY

Whatever the fee-splitting or payment arrangement your attorney makes with the LRIS-referred attorney, 10% of the fees collected by your attorney for that case in excess of \$200 must be remitted to our service.

The Lawyer Referral & Information Service is in a unique position to connect your attorney with attorneys not already connected to a Maine network, networking that can directly and indirectly bring paying cases to your office for years to come. And it works both ways: your attorney can also get free referrals to other LRIS attorneys.

The percentage remittal to our service is a small and fair fee to pay to keep this service running for the benefit of all.

Please report and remit accurately.

➡ **Quarterly Report and Remittal**

This report is for LRIS referrals your office previously reported as Retained or Retained on Contingency. It is our reminder to you to send in the percentage remittals as you receive client payments, and to let us know when cases are closed. It is very important that these reports be accurate, and that you return them on time, even when there is no payment to make or no status change to report. *Even if the status is unchanged, you must enter a status code for each case listed.* As with the Record Update, we enter your responses into our data base, and if no status is entered for even one of the referrals listed, your attorney will appear on the list of delinquent reports when the 30-day return report is run, which will put your attorney out of rotation.

➡ **Calculating Percentage Fees**

LRIS collects percentage fees of 10% calculated on collected fees for service your attorney receives from each referred client above a specific threshold, excluding court costs and expenses. For referrals made before October 1, 2005, the threshold is \$150. For referrals made after October 1, 2005, the threshold is \$200. Examples:

Referral #2004122500001 (made December 25, 2004) brings in \$2,115 of which \$75 are court fees.

\$2,115	
- 150	
- 75	
\$1,890	10 % to LRIS = \$189

The same financial outcome of Referral #200512250001 (made December 25, 2005) results in a smaller fee to LRIS.

\$2,115	
- 200	
- 75	
\$1,840	10 % to LRIS = \$184

The \$150 or \$200 deduction is made only once with each client account. Referral fees for several cases may be paid together in one check. **Please make sure to indicate on the form, however, how much should be associated with each referral number, and check your addition.**

Referral Reporting

All of the forms below are due within 30 days of their date.

➡ Attorney Confirmation Form

This is the form we fax or mail to you soon after we make a referral to your attorney, usually within 24 hours. It is intended to alert you to the call, to inform you of the basics of the issue, and to show the panels we used that pulled your attorney's name up in our referral search. It is the first report you need to return to us for each referral, and should be returned within 30 days, by fax or mail. Please be as accurate as you can in selecting the report responses, and include additional notes whenever necessary.

➡ Record Updates

The Quarterly R&R's (p.11) include only those referrals for which you have actually been retained or taken on a contingency bases. If you have sent back a report that states conclusively that contact with a referral was minimal - Telephone Conference Only, Services Under Threshold, Referred Back, etc - that referral will not show up on future reports.

The remaining referrals we track by means of reports we call "Updates." These are the referrals that show in our data as "reportless" - where we have heard nothing from you since sending the referral out; "Possible Services" - where you have reported that you may possibly take a case, depending upon (though you don't have to specify) receiving a retainer, or doing more research, or waiting to see how something related develops.; and "CNC - No Contact."

Your office, quite reasonably, may assume someone who hasn't called within several weeks, won't, and will return the report to us saying so. But we have learned that while most callers will call the attorneys we refer them to within minutes of speaking with us, others, for one reason or another, will wait weeks and even months. For this reason, we follow up on each of these referrals for two - three months after our original referral before dropping them off our report. We understand that it can be annoying to have to report "No Contact" more than once - but delayed or deferred follow-through comes with the territory, and we hope you will accommodate our needs with good humor.

When Our Caller Calls Your Office

➡ Note the LRIS caller's Confirmation Number.

While we have used confirmation or "call" numbers on paperwork to identify our referrals to member attorneys since our service began, it is only in the last year that we began instructing callers to give their confirmation number to you the first time they call. We made this change because so many callers were forgetting to identify themselves as LRIS referrals. This number is your cue that our rules with regard to call-back time, personal attention, attorney feedback regarding inappropriate referrals, timely reporting, and percentage fees will all apply.

➡ Direct LRIS callers **ONLY** to the attorney to whom they have been referred.

Your attorney has certified with us that the panels indicated on this year's application are areas in which s/he has experience and will accept referrals. S/he has also specifically agreed to conduct the first consultation *personally* with every LRIS caller we send.

This means that even if you usually refer people with one kind of legal need to one person in the office, and people with another kind of legal need to someone else, LRIS callers **MUST** be directed *only* to the attorney to whom we have referred them. Our selection process uses a database that includes all of the areas of law for which your attorney has told us s/he would like to receive referrals. We use our best judgment in selecting the panels we use for our referral search, based on the information the caller gives us. If your attorney shows up in a search, it means that s/he told us to put her/him on those specific panels. Attorneys may drop or add panels to their LRIS registry at any time. Please notify us so we can make our data reflect her/his current choices, and avoid making inappropriate referrals.

➡ Make sure your attorney calls back within 3 business days.

Our guarantee to all LRIS callers is a return call from the referred attorney within 3 business days. Your attorney is aware of this guarantee, and has agreed to comply.

8 ➡ Do not charge an LRIS referral for the first half-hour of consultation with your attorney.

We know that some of our members routinely provide a first consultation at no charge, while others charge immediately. LRIS clients pay our service a \$25 administrative fee for providing an appropriate referral, and additional referrals, if needed. Your office does not collect this fee. We guarantee that this payment to us covers the first half-hour of their consultation with your attorney, and that your office will not charge for that time. You should know that we do not refer to it as a “free” half-hour, and that we advise them to discuss fees at that time. In our intake, on our website, and in the paperwork they receive from us, we emphasize that they should not expect to “solve their legal problems” in a half-hour, and that attorneys are ethically bound to know the facts and give them due consideration before offering advice. We emphasize that they should be prepared to pay for any service or consultation that extends past a half-hour. Please note that with the exception of that first half-hour, our callers should not be treated differently than those who access you through other means. If your attorney routinely consults for *more* than a half-hour without charge, this same practice should extend to LRIS referrals.

➡ If your attorney cannot assist, s/he **MUST** refer LRIS referrals back to our office for referral to another LRIS attorney.

We understand that it is common practice within the profession to give people the names of other attorneys to consult when, for whatever reason, your attorney can't assist them. **With LRIS referrals, however, your attorney has agreed to depart from this standard practice and refer LRIS callers back to the LRIS office instead.** This is essential to the success of our service in terms of both financial viability and professional credibility. And remember, if we made an inappropriate referral, we want to know. We tell callers that if your attorney cannot assist, they should call us back for another referral. Callers do let us know when attorneys have directed them elsewhere, and it is grounds for suspending your attorney from the service.

Please note that we are committed to providing ethical, professional service to every caller. We will never refer a caller inappropriately for the sake of keeping them in the service. If your attorney has some specific advice about how to redirect the referral, or feels strongly that the caller has needs that only a specific attorney or firm can meet, s/he must discuss this with the LRIS Director. The Director has the authority to permit out-of-service referrals on a case-by-case basis.

➡ After the initial consultation, your attorney **MAY** refer an LRIS client to another non-LRIS member attorney *in your firm*.

Let us know. However, the original LRIS member attorney to whom we referred the caller will still be considered responsible for the case, and all the reporting and service obligations that pertain. All LRIS correspondence will continue to be with the original attorney.

➡ Open LRIS Cases **MUST** be identified within your casefile with the LRIS *Letter of Obligation*.

If your attorney is retained by an LRIS client, you must immediately include some version of the Letter of Obligation in the file you open for that client. This is so the case will always be clearly identified as coming from LRIS. This became particularly important in recent years when there was an up-tick in attorneys travelling to other firms or leaving the practice of law. Once an LRIS case, always an LRIS case, with the attendant obligations.

LRIS Paperwork

➡ Application and Proof of Insurance

If you are reading this, your attorney has already accomplished the major step of applying and being accepted to our service. There are a couple of follow-up steps that you will want to anticipate:

Anniversary Update of Proof of Insurance – The ABA has advised us to pull member attorneys out of rotation immediately on the end date of the proof of insurance we have on file. There is now no grace period for getting proof of renewal to us. As soon as you receive the new policy for the year, send POI (the page noting amount, date, and who is covered) to us, so we can reinstate your attorney.

Experience Panel Applications – Attorneys now have to meet additional requirements to participate in certain LRIS panel areas. If your attorney is interested in participating an experience panel - currently Family Law, Employment Law, Medical Malpractice, Civil Rights, Social Security Law, or Alternative Dispute Resolution - panels, please note that they can join at any time during the year as soon as they can present documentation of meeting the criteria. There is no extra cost to participate in Experience Panels.

STATEMENT OF STANDARDS AND RULES

LAWYER REFERRAL & INFORMATION SERVICE (LRIS)



A PUBLIC SERVICE OF THE
STATE BAR OF NEVADA
www.nvbar.org

Frequently Asked Questions

I. Who can become a member of LRIS?

Any attorney licensed in Nevada who is and remains in good standing with the Nevada State Bar and has proof of Errors & Omissions Insurance.

II. What are the costs to me?

You pay a \$50 annual fee and 20% of net fees collected from your client. You keep the initial consultation fee of \$45.

III. When do I pay?

You remit fees to LRIS as payments are received.

IV. How are clients/attorneys selected?

The staff selects attorneys on a rotational basis, based upon the area of law needed, geographical location and foreign language requirements.

V. How am I advised of potential clients?

LRIS will send you confirmation letters for each client referred to you daily, which you will return to LRIS indicating the status of each referral. Additionally, you may receive weekly, monthly and quarterly reports to ensure that all cases have the appropriate disposition.

VI. What are the benefits of the service?

LRIS advertises statewide in the Yellow Pages, and through other means. Brochures are available to the public at statewide locations. In addition, you receive \$45 for the initial consultation fee (*except for in contingency cases*) and LRIS builds your client base.

VII. What if I decide not to represent the client?

Simply refer the client back to LRIS. Clients may not be transferred to other attorneys without prior approval from the Service.

ARTICLE ONE

Purpose

The purpose of the Lawyer Referral & Information Service (LRIS) is to assist members of the general public in need of legal assistance by providing information and referrals to attorney members in good standing with the State Bar of Nevada.

ARTICLE TWO

Organization

Section 1. Rules of Operation

These Rules shall be called the Rules of Operation of the Lawyer Referral & Information Service, sponsored by the State Bar of Nevada.

Section 2. Terms

As used herein the term “Committee” means the State Bar of Nevada Lawyer Referral & Information Service Committee; the term “Panel members” means attorneys participating in the Lawyer Referral & Information Service; the term “Client” means clients requesting legal referrals from the Lawyer Referral & Information Service; the term “Service” or “LRIS” means the State Bar of Nevada Lawyer Referral & Information Service; the term “Executive Director” means the Executive Director of the State Bar of Nevada.

Section 3. Administration

The Service shall be operated in accordance with these Rules and any amendments thereto as may be adopted in the future by the Board of Governors of the State Bar of Nevada. The Service shall be administered by the Board of Governors of the State Bar of Nevada.

Section 4. Management

The Service will be managed by the Executive Director who, together with other designated personnel selected and supervised by the Executive Director, shall be subject to the approval and continuing jurisdiction of the Board of Governors. The Executive Director or designee shall make periodic reports to the Committee as requested by the Chair of the Committee. The Executive Director or designee shall keep such records as are required by the Committee or the Board of Governors.

ARTICLE THREE

Administration

Section 1. Attorney Eligibility

Any attorney member with the State Bar of Nevada in good standing as defined in these Rules and engaged in the active practice of law in the state of Nevada may apply for registration with the Service by submitting a completed application, resume, proof of errors and omissions insurance with minimum coverage of \$250,000 per claim, with \$500,000 aggregate limits, and by paying the non-refundable, annual registration fee of \$50.00. Additionally, prospective attorneys agree to pay any fees due, render any reports upon request and otherwise abide by the rules of the Service.

Section 2. Fiscal Year

The fiscal year for the Service shall run from April 1 through March 31 of each calendar year. Failure of panel members to renew their membership on or before March 31 of each year shall result in an automatic suspension as set forth in Article 3, Section 5. After suspension, re-registration of these panel members shall occur pursuant to Article 3, Section 1, of these rules.

Section 3. Panel Areas

The Committee shall establish subject matter panels in the areas of law it deems appropriate. Referrals generally shall be made in rotation subject to such exceptions warranted by the special geographical, linguistic or other considerations of the client.

Section 4. Disclaimers

The Service will send a confirmation/disclaimer letter to each client referred at the address given. The disclaimer will state "A referral to an attorney, who has indicated a willingness to accept referrals in a particular area of law, does not mean that the State Bar of Nevada Lawyer Referral & Information Service or any other agency or board has certified such lawyer as a specialist or expert. This does not mean that such attorney is more qualified than any other."

Section 5. Suspension or Removal of Panel Members; Appeal process

Panel members may be suspended or removed upon failure of a member to do any of the following:

- [a] pay the annual registration fee,
- [b] maintain the required errors and omissions insurance,
- [c] maintain good standing as defined in Article Three, Section 6 of these rules,

- [d] forward all referral fees when due,
- [e] submit all required reports, or for
- [f] falsifying any material statement made in application to the Service or in any required report, or for
- [g] good cause, including but not limited to violations of Supreme Court Rules or any provision of these Rules, or in the sole discretion of the Committee.

The Committee may suspend or remove a member for any action or inaction which, in the reasonable discretion of the Committee, warrants suspension or removal. If a panel member attorney feels as though they have been unjustly removed, the member may appeal in writing to the Nevada Lawyer Referral and Information Service within 30 days of the suspension or removal. All suspensions, removals or disciplinary matters shall be forwarded to and handled by the appropriate State Bar of Nevada department. For example, a suspension from the service because of a violation of the Nevada Supreme Court Rules shall be referred to the State Bar of Nevada Lawyer Discipline department.

Section 6. Good Standing Defined

An attorney who has been admitted to practice law in the State of Nevada by the Nevada Supreme Court shall be considered in good standing unless one or more of the following events shall occur:

- [a] Suspension – pursuant to Nevada Supreme Court Rule 98,
- [b] Disbarment, Suspension, or Temporary Restraining Order imposed by the Nevada Supreme Court Rule 102,
- [c] A recommendation of disbarment or suspension pursuant to Nevada Supreme Court Rule 105 (2)(D),
- [d] Suspension pursuant to Nevada Supreme Court Rule 111(1), or
- [e] Suspension pursuant to Nevada Supreme Court Rule 117.

Section 7. Withdrawal from Service

Any panel member may withdraw from the Service at any time, although said panel member shall remain liable for all fees generated from any and all LRIS referrals, and, additionally, shall remain responsible for completing and submitting all reports on LRIS referrals as requested.

Section 8. Fee Structure

All panel members must render professional services to clients referred by the Service within the following fee structure:

- [a] Initial consultation – the maximum initial consultation fee is \$45, except that the initial consultation fee is waived for contingency fee cases (Worker’s Comp, Negligence, Social Security matters and some Insurance law matters);
- [b] The fee schedule is subject to the following qualifications:

1. Consultation fees specified in [a] above do not include preparation of any legal documents (consultation fees are retained by the attorney);

2. All compensation for further services will be subject to agreement between attorney and client;
3. Disputes as to fees, at the request of client, shall be submitted to the Fee Dispute Committee of the State Bar of Nevada.

Section 9. Refer Back Procedures

Clients referred by the Service to panel members are to receive their initial consultation by the panel member referred only. If in the opinion of the panel member, the client needs further legal services which the panel member is unable to provide, the panel member shall do one of the following: (1) refer the client back to the Service, or (2) notify the Service that the client is being referred to any other attorney who is a panel member of the Service. Panel members may not refer any case received from the Service to any other attorney or firm without first notifying the Service. Panel members who refer a referred client to, or associate with, new counsel must do so with the Lawyer Referral Service's written consent. In all cases, the initial panel member shall remain liable to the LRIS for 20% of all fees collected (see section 13, *infra*) in the matter until written consent from the LRIS is sent to both attorneys involved and consent is then received from the transferee attorney at the LRIS offices.

Section 10. Panel Member's Record Keeping Obligations

Each panel member shall keep a record of the name of each client referred through the Service, the date of the referral, the general nature of the matter referred, and the total fee received. Upon receipt of a fee or portion thereof or upon disposition of the matter, the attorney shall report to the Service on the matter. Said report shall include pro rata payment of any fees collected. Panel members shall execute a Disbursement Agreement (to be provided by the Service) with the referred client at the conclusion of each full contingency fee case that fully explains the allocation of the case's fees and costs. A copy of this agreement may be requested by the Service at any time. In addition, the Committee also reserves the right to demand an accounting of any case referred as well as a complete audit of that matter. Further, the Committee may request information from clients relating to referrals to panel members. It is the responsibility of panel members to notify the Lawyer Referral Service if there is a period of time of one week or more in which the attorney will be unavailable for referrals because of vacations, caseload or any other reasons.

Section 11. Ethical Considerations

Each panel member shall be guided, governed and bound by the Nevada Supreme Court Rules, the Rules of Professional Conduct governing attorney conduct, and by these Rules of Operation. Any discovered ethical violations, including failure to abide by these Rules of Operation, will be promptly reported by the Committee to the Discipline Department of the State Bar of Nevada, and may further result in suspension of the attorney/panel member by the LRIS. **In all cases, panel member attorneys shall not contact 'prospective LRIS referred clients' before said client shall have first made contact with or have attempted to make first contact with the panel member attorney (see Nevada Supreme Court Rule 197).**

Section 12. Membership in the State Bar of Nevada LRS

No lawyer shall be registered in the Service unless the lawyer (a) is a member in good standing of the State Bar of Nevada, as defined in these Rules, engaged in the active practice of the law in the State of Nevada; (b) has not at any time during the preceding five (5) years prior to application either been under suspension from practice or disbarment by the State Bar of Nevada or any other bar, or serving a sentence or been on probation for a crime involving moral turpitude; (c) maintains errors and omission insurance, in the minimum of \$250,000 per claim, with \$500,000 aggregate limits, (d) waives liability and agrees to indemnify and hold harmless the State Bar of Nevada and its members (and the Committee and its agents) from any claims, demands, actions, liability or loss which may arise from, or be incurred as a result of, the operation of the Service or referrals, of clients to him or her through the Service, or the use of information contained in the registration form. Furthermore, the attorney must read the Rules of Operation and must agree to follow them as a condition precedent to participation in the service.

Section 13. Percentage Fee Basis

Each panel member agrees to pay to the Service twenty percent (20%) of all net fees received by the panel member from any referral made by the Service, **except that the panel member shall keep the initial consultation charge.** Net fees are defined as the total fees remaining after deduction of out-of-pocket costs. Subsequent to accepting a referral, regardless of panel description and so long as it arose out of the same transaction or occurrence, the panel member and the law firm of the panel member shall remain responsible for all percentage fees due the Service. Any dispute regarding percentage fees owed to the Service will be resolved by binding arbitration.

ARTICLE FOUR

Amendments

Section 1. Amendment Procedures.

These Rules may be amended or repealed by a majority vote of the Committee subject to final approval by the Board of Governors of the State Bar of Nevada.

I _____, do hereby declare:

I am an attorney in good standing with the State Bar of Nevada and will abide by the Rules of the Supreme Court of Nevada, the Rules of Professional Conduct governing attorney conduct, and the Rules of Operations of Lawyer Referral & Information Service (LRIS).

I hereby indemnify and hold harmless the State Bar of Nevada and its members (and the Committee and its agents), from any and all claims, demands, actions, liability or loss which may arise from or be incurred as a result of the operation of the Service or referrals of clients to me through the Service, or the use of information contained in the registration form; and agree that the information contained in the registration form may be furnished to referred clients.

I have and shall maintain in force a Lawyer's Professional Liability Insurance policy with a minimum coverage of \$250,000 per claim with \$500,000 aggregate limits.

I warrant that I have not at any time during the preceding five (5) years prior to application either been under suspension from practice, other than for non-payment of State Bar dues from a state other than Nevada, or disbarment by the State Bar of Nevada or any other state bar, or serving a sentence or been on probation for a crime involving moral turpitude.

Attorney Signature

Date

Your signature indicates that you have read the Statement of Standards and Rules in its entirety, and that you agree to all of the terms and conditions contained therein.

Also please make a copy to keep for your records and future reference.

It is the responsibility of the attorney to notify the Lawyer Referral & Information Service of any of the following:

- Address changes
- Association with any attorney outside of the service
 - Departure from your current firm or office
 - Panel selection changes
- Any disciplinary actions pending with the State Bar
- If you will not be accepting referrals for any specific length of time beyond one week

Please make a copy to keep for your records and future reference.

Thank you for your participation in the Lawyer Referral & Information Service.

OREGON STATE BAR

BOG Policy & Governance Committee

Meeting Date: January 6, 2001
Memo Date: January 5, 2001
From: Kay Pulju, Communications, Ext. 402
Re: Percentage fee funding for the Lawyer Referral Service

Action Recommended

Reconsider pursuing the DR and statutory amendments necessary to allow the OSB Lawyer Referral Service (LRS) to implement a percentage fee system.

Background

In October of 1998 the BOG considered a proposal from the LRS Committee and the Multnomah Bar Association that contemplated numerous changes to LRS operations. A key recommendation from that proposal was to make LRS self-supporting (and potentially profitable) through implementation of a percentage fee system. In percentage fee systems, panelists agree to return to the referral service a small percentage of attorney fees collected from LRS clients over a threshold amount.

In declining to pursue the percentage fee proposal, the BOG cited three concerns: 1) the need to amend two disciplinary rules, 2) the apparent necessity for legislative action in the tort claims area, and 3) possible negative reactions from bar members who participate in LRS. While these issues remain, the BOG may wish to reconsider whether the potential benefits now outweigh the difficulties and risks of implementing a percentage fee program.

The materials previously considered by the BOG are attached. The main benefits of pursuing a percentage fee system are summarized below.

1. Equitable new source of revenue. A majority of bar-sponsored LRS programs nationwide use percentage fee systems, having determined that they are the most equitable means of funding their programs. Unlike any other bar revenue source, percentage fees are paid only by those members who use the LRS program, and are paid in direct proportion to the financial benefit each member receives from the program. No member would pay a significant sum unless that member received significant fees from an LRS-referred client.
2. Additional funds for public service programs. Most LRS programs that charge percentage fees bring significant revenue to their sponsoring bar associations. The revenue is generally used in two ways: to support and enhance LRS and Modest Means programming, and to support other access to justice and public service programming.

Based on the experiences of programs similar to the OSB's, \$350,000 is a fair estimate of the annual income percentage fees would bring within three years of implementation. This amount could finance significant customer service improvements in LRS, which is the OSB program most valued by the public. Program enhancements are needed, but not affordable through the bar's general fund. In time LRS revenue could support other access programs of the state and local bars.

3. Support for the bar's legislative initiatives. This year the bar's legislative priority is to gain funds for access to justice. The legislative amendment needed to allow percentage fee funding for the LRS complements the work of the "Lindauer Group" by demonstrating how Oregon lawyers expect to contribute additional funds to access programs.

Attachments:

- BOG agenda memo, 11-2-98
- Percentage Fees: Available and Ethical, ABA Lawyer Referral Network (1993)
- Some Habits of Highly Effective Lawyer Referral Programs, ABA Dialogue (2000)
- Agreement for Lawyer Referral Service Membership, Columbus Bar Association
- Profile 2000: Characteristics of Lawyer Referral & Information Services, ABA (1999)

Model Supreme Court Rules Governing Lawyer Referral & Information Service

Introduction

Lawyer referral services have been in operation in this country for more than 50 years, and were first established in response to requests by middle income persons for assistance in obtaining appropriate legal counsel. Lawyer Referral and Information Services are designed to assist persons who are able to pay normal attorney fees but whose ability to locate appropriate legal representation is frustrated by a lack of experience with the legal system, a lack of information about the type of service needed, or a fear of the potential costs of seeing a lawyer. Lawyer referral programs offer two important services to the public. First, they help the client determine if the problem is truly of a legal nature by screening inquiries and referring the client to other service agencies when appropriate. The second, and perhaps more important, function of a lawyer referral service is to provide the client with an unbiased referral to an attorney who has experience in the area of law appropriate to the client's needs. The public has come to equate the function of lawyer referral programs with consumer-oriented assistance, and expects that the loyalty of the program will lie with the consumer, and only secondarily with the participating attorney.

In 1989, following a long review process by state and local bar association and lawyer referral experts from both the public and private sector, the American Bar Association adopted Model Rules for the operation of public service lawyer referral programs. The overriding concern of the Model Rules is consumer protection.

The aspirational standards used previously at the state and local level were simply not sufficient to ensure the public service orientation of some private, for-profit services; strong and enforceable regulations were needed to achieve minimal standards for all lawyer referral services. However, while the Rules must be strong to be effective, we have been mindful of the need to allow legitimate public service-oriented attorneys and providers to operate without undue interference. In drafting the Model Rules, we have done our best to balance these considerations. These Rules are designed to provide a level playing field for all programs, whether private or bar-sponsored. Each state is urged to examine its rules, decisions and opinions in order to utilize the Model Rules in a manner consistent with its own law.

These Model Rules have also been drafted in legislative form, for states where lawyers are regulated by the Legislature.

SUMMARY OF REQUIREMENTS FOR LAWYER REFERRAL SERVICES BASED UPON "MODEL SUPREME COURT RULES

GOVERNING LAWYER REFERRAL SERVICES"

ADOPTED BY ABA HOUSE OF DELEGATES 8/93

1. A qualified service shall be operated in the public interest and shall provide information regarding government and consumer agencies which may assist the client, as well as provide referrals to lawyers, pro bono programs and other legal service providers. The service may be privately owned so long as the primary purpose is public service.
2. Membership in the service should be open to all licensed attorneys in the geographical area served who meet the requirements of the service outline below. Charges for membership in the service must be reasonable. Membership may not be restricted by the particular geographical areas or subject areas.
3. The service must require its members to maintain malpractice insurance or to provide proof of financial responsibility.
4. The combined fees and expenses charged to a client by a service and the lawyer to whom the client is referred shall not exceed the combined fees and expenses the client would have incurred if no referral service were employed.
5. No fee generating referral may be made to any lawyer who has an ownership in, who operates, or who is employed by the service, or to their law firm. Referrals may be made to lawyers who are members of the board or governing committee of the service so long as they do not receive any preferential treatment.
6. The service must periodically survey client satisfaction with its operations and shall investigate and take appropriate action regarding any complaints against panelists, the service or its employees. The survey may be by mail or by phone and need not involve every client.
7. The service must establish procedures for the admission, suspension or removal of a lawyer from any panel. The procedures must be clearly articulated in the service's materials. The procedure may include peer review, but other procedures are permissible. The procedure must include an appeal process.
8. Subject to the rules of the service's jurisdiction, the service may, in addition to a referral fee, receive a percentage of the fee earned by the lawyer to whom a referral is made. Any such fees received may be used only for the reasonable operating expenses of the service or the fund public service activities of the service or its sponsoring organization.
9. The service must establish subject matter panels and establish minimum requirements for eligibility. The number of subject panels necessary will vary from service to service depending upon the needs of the community served. Requirements for eligibility should include sufficient experience to ensure that the lawyer is qualified in the field of practice. The service should require proof of compliance with the requirements so established, which may include certification in affidavit or affirmation form.

[excerpt: Model Rule X]

A qualified service shall establish specific subject matter panels, and may establish moderate and no fee panels, foreign language panels, alternative dispute resolution panels and other special panels which respond to the referral needs of the consumer public, eligibility for which shall be determined on the basis of experience and other substantial objectively determinable criteria.

Commentary

This requirement is similar to one contained in the ABA's Minimum Quality Standards.

The California legislation required the establishment of specific panels "representing different areas of law and limited to attorneys who meet reasonable participation requirements ..." (see Minimum Standards for a Lawyer Referral Service in California, Rule 7.2). The New York State Bar Association's Proposed Minimum Standards are similar to the California legislation. (See Proposed Minimum Standards, Section 6.2, contained in "Report of the Special Committee on Lawyer Referral Services Regulations," New York State Bar Association, June 1990.)

The importance of establishing meaningful experience requirements cannot be underestimated. It is inappropriate for a service to simply refer a caller to the next lawyer on the list without determining that the lawyer is qualified in the field of practice in which legal services are needed. Since the public relies on services to provide qualified legal representation which improves on what the consumer can obtain by lot, it is incumbent upon these services to ensure that their attorneys have substantially more qualifications than mere bar membership.

"Experience" is not intended to mean "expertise" or "specialization," nor should it be defined merely by length of time in practice. See ABA Statement of Standards section 5.2, Comment. Rather, the goal is to ensure, in the words of this Comment, that both the subject matter panels and the qualification standards shall "meet the needs and reasonable expectations of the community served." In meeting these needs, "consideration should also be given to the panel member's experience with particular kinds of cases," and to "requiring a certain amount of recent actual experience."

DIALOGUE

Summer 1998 - Volume 2, Number 3

Is our LRIS liable?

by Sheree Swetin

Are lawyer referral programs liable for the referrals they make? Can a referral client successfully sue an LRIS for negligent referral? Legal malpractice? What is the bar's liability to the client if the attorney's insurance is canceled? Lawyer referral programs must consider several types of professional liability that could result from their daily activities.

negligent Referrals

Many professional groups refer clients to their members. Negligent referral liability can arise when the lawyer referral service promises or implies that certain standards or criteria exist when in fact, they do not. A lawyer referral program also can be negligent by inaccurately communicating panel attorney qualifications, or by not verifying that attorneys meet the criteria promised to the client. Liability also can exist when the LRIS indicates to the public that the program offers a higher standard of referral, when it in fact does little or nothing to ensure quality referrals.

Legal Malpractice

On rare occasions, lawyer referral programs have been sued for legal malpractice. In such instances, the client often names the LRIS, with the panel member, as an additional defendant, especially if the plaintiff needs a deep pocket because the panel member has insufficient insurance limits.

This is a difficult claim to pursue, because most lawyer referral programs do not establish a lawyer/client relationship or provide legal advice, which are elements of a legal malpractice claim. If your program provides legal advice through lawyer-interviewers or through call-in hotlines, you should look into adding, to your bar's errors and omissions policy, legal malpractice protection for volunteers.

Vicarious liability

Finally, the lawyer referral program can be found to be vicariously liable for legal malpractice claims if its panel members fail to keep their insurance policies in force. Most lawyer referral programs promote the fact that all of their panel members carry legal malpractice insurance.

Is the lawyer referral service liable for malpractice damages if the panel member cancels his or her insurance or fails to make premium payments? At least one program in California has paid money to settle such a claim. Even if the program is not liable for legal malpractice damages, do we have an obligation to notify clients if the panel member drops insurance coverage? Unfortunately, the law is not clear on the answer to this question.

Claims Against LRIS Programs

Only four claims against lawyer referral programs have been reported to the ABA in the past fifteen years. All were dismissed prior to trial. In the complaint filed against the Chicago Bar Association, the plaintiff alleged that the bar was negligent and breached its duty of reasonable care because the referred lawyer was not an expert in the specific area of law and did not have adequate malpractice insurance. The plaintiff argued:

- the LRIS was liable for negligent representation under the "voluntary undertaking" doctrine
- the LRIS was liable as a referring lawyer under the rules of professional conduct.

The court, however, granted the Chicago Bar Association's motion to dismiss. It ruled that the lawyer referral service could not be held liable for the legal malpractice that the referral attorney committed. In addition, the court held that the lawyer referral service is not a "lawyer" and was not subject to the rules of professional conduct that govern the division of fees and professional responsibilities between lawyers. According to the court, "the mere taking of a referral fee as a referring agency

rather than as a referring lawyer will not suffice to make [the referral service] an insurer or otherwise vicariously accountable for the actions of the attorney to whom the matter is referred."

While this decision does not govern courts in other jurisdictions, it may well prove persuasive and may well indicate what another court would decide if faced with a similar case.

Precautions

Lawyer referral programs can take simple precautions to reduce their chances of being successfully sued for negligent referral or malpractice. First, consumers expect more from a bar-sponsored lawyer referral service than they do when looking for an attorney in the yellow pages. Indeed, LRISs pride themselves on providing a public service, and as a result, they must establish some sort of panel qualifications to meet the public's expectations.

Second, a program should not imply panel member standards or criteria that it does not verify. If you say "experienced," then verify experience. If you say "has malpractice insurance," then verify coverage.

Third, consider adding a statement to your attorney referral form that states *"All lawyer referral members must have in force a malpractice insurance policy with minimum limits of \$_____ to accept referrals. You must notify us immediately upon receipt of this referral if your malpractice insurance has lapsed so that we may refer the client to another LRS member."*

Finally, establish rules for reviewing client complaints and removing panel members who do not meet the service's standards. Do not allow today's client complaints to turn into tomorrow's liability claims. Liability claims against lawyer referral programs are always a threat, even though they are, thankfully, few and far between. Lawyer referral directors should be aware of the potential for liability, and they must clearly and honestly communicate to clients the services that the LRIS and its panel members provide. Ultimately, these common-sense precautions will protect the LRIS, the sponsoring bar, and most importantly, the client.

Sheree Swetin is the Staff Director of the ABA Standing Committee on Lawyers' Professional Liability and the Standing Committee on Lawyer Referral and Information Service. If you would like a copy of the Chicago Bar Association decision reported in this article, contact Sheree Swetin at 312/988-5755, or by e-mail at sswetin@staff.abanet.org



RECEIVED

MAR 24 2011

Oregon State Bar
Executive Director

March 18, 2011

Board of Governors
Oregon State Bar
16037 SW Upper Boones Ferry Rd
Tigard, Oregon 97224

**** OPEN LETTER ****

**Re: Oregon Rules of Professional Conduct
Issue to be Referred to Legal Ethics Committee**

Dear Board of Governors,

In response to a recent ethics complaint by a Portland attorney against another attorney for sexual harassment related to pending litigation involving both attorneys, Oregon Women Lawyers (OWLS) formed a committee to consider whether the existing Oregon Rules of Professional Conduct (RPCs) adequately address the issue of harassment in legal proceedings.

Regardless of the outcome of the pending complaint, OWLS believes there is significant gap in the RPCs because they do not directly address discrimination, intimidation and/or harassment. Specifically, OWLS strongly believes discrimination, intimidation and/or harassment by a licensed attorney against any other person involved in a legal proceeding or legal matter in which the attorney is involved should be ethically prohibited by the RPCs. Further, any new or amended rule regarding discrimination, intimidation and/or harassment should prohibit such conduct not only on the basis of gender, but also on the basis of race, ethnicity, sexual orientation, and disability.

OWLS' research indicates that many other jurisdictions have a rule or combination of rules in effect that address intimidation and harassment. As a courtesy, the text of some of these rules is attached. We believe that the Florida, New Jersey and New Mexico rules are good models to consider.

In light of the Convocation on Equality scheduled for November of 2011, OWLS and the undersigned persons and associations ask the Board of Governors to adopt the following resolution:

Whereas, Bar Rules of Procedure 2.5 and 2.6 govern the intake of a professionalism complaint by the Client Assistance Office and any investigation by the Disciplinary Counsel's Office but leave many details to the Bar's discretion; and

Whereas, under the Rules and internal Oregon State Bar practices as currently implemented, sexual and other forms of harassment are not considered violations of either the Rules of Professional Conduct or ORS 9.527 without at least an accompanying criminal conviction; and

Whereas, it is in the interests of the Oregon State Bar and its members to maintain both the actual integrity of the profession and the public perception of the integrity of the profession; and

Whereas, the Oregon State Bar does not at present have a stated policy against harassment in the profession akin to those in place with the Oregon Department of Justice and leading area law firms; and

Whereas, harassment, discrimination and/or intimidation by an attorney towards others involved in the legal process, whether on the basis of gender, race, disability, sexual orientation or other protected class, is unprofessional and reflects poorly on the legal profession as a whole; and

Whereas, the Oregon State Bar has not kept pace with other state bars in addressing harassment, discrimination and/or intimidation as a professionalism issue; and

Whereas, adoption of a clear policy against harassment, discrimination and/or intimidation would contribute to legal professionalism by providing clear guidance for what behaviors do or do not reflect adversely on a lawyer's fitness as a lawyer, regardless of criminal conviction; and

Whereas, adoption of a new or revised Rule of Professional Conduct would support professionalism within the Oregon State Bar; therefore be it

Resolved, that Board of Governors direct the above to the Legal Ethics Committee to (LEC) to evaluate what, if anything, can be done to strengthen and/or clarify the Rules of Professional Conduct or other policies or rules for investigating complaints regarding harassment, discrimination and/or intimidation, whether regarding sex, race, ethnicity, disability, sexual orientation or other protected class.

Resolved Further, that the LEC and/or any task force established for this purpose include a representation of various stakeholders on this issue.

Resolved Further that the LEC and/or any task force established for this purpose be directed to report on its conclusions and recommendations by the Board of Governors meeting which immediately precedes the Convocation on Equality scheduled for November 4, 2011.

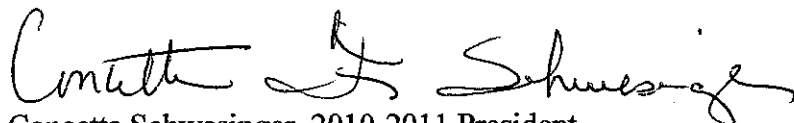
In the event that the LEC elects to establish a task force to evaluate and draft possible wording for a new or revised Rule or Policy, OWLS respectfully requests that Bonnie Cafferky Carter, the OWLS board member who chairs our ad-hoc committee on this issue, represent OWLS and be included on the task force.

On behalf of the entire Oregon Women Lawyers board of directors and the other undersigned persons and associations, I thank you for your attention to this matter. If we can

Oregon Women Lawyers
Letter to the OSB Regarding Resolution Request
March 18, 2011
Page 3 of 3

assist further by providing additional research or answering any questions you or the LEC may have, please don't hesitate to contact us.

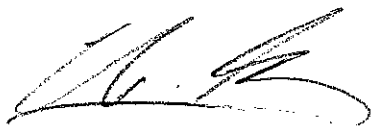
Very truly yours,



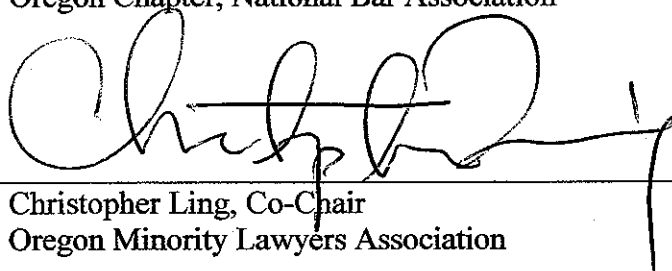
Concetta Schwesinger, 2010-2011 President
Oregon Women Lawyers

cc: Mike Haglund, Attorney, Legal Ethics Committee BOG Contact
Holli Houston, Attorney, Legal Ethics Committee Chairperson
Sylvia Stevens, Executive Director

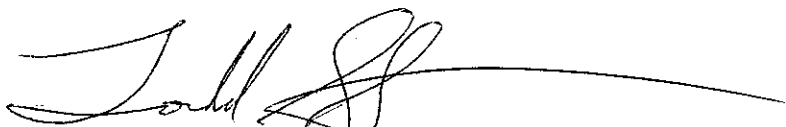
We Support and Concur with the Foregoing Letter:



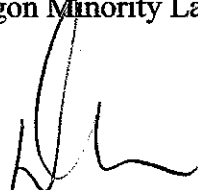
Ali D. Seals, President
Oregon Chapter, National Bar Association



Christopher Ling, Co-Chair
Oregon Minority Lawyers Association



Todd Struble, Co-Chair
Oregon Minority Lawyers Association



David Wang, President
Oregon Asian Pacific American Bar Association

EXAMPLES OF RULES OF PROFESSIONAL CONDUCT

Florida - Rule 4-8.4 Misconduct

A lawyer shall not:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects;

(c) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation, except that it shall not be professional misconduct for a lawyer for a criminal law enforcement agency or regulatory agency to advise others about or to supervise another in an undercover investigation, unless prohibited by law or rule, and it shall not be professional misconduct for a lawyer employed in a capacity other than as a lawyer by a criminal law enforcement agency or regulatory agency to participate in an undercover investigation, unless prohibited by law or rule;

(d) engage in conduct in connection with the practice of law that is prejudicial to the administration of justice, including to knowingly, or through callous indifference, disparage, humiliate, or discriminate against litigants, jurors, witnesses, court personnel, or other lawyers on any basis, including, but not limited to, on account of race, ethnicity, gender, religion, national origin, disability, marital status, sexual orientation, age, socioeconomic status, employment, or physical characteristic;

New Jersey - Rule 8.4(g) Misconduct

It is professional misconduct for a lawyer to: ...

(g) engage, in a professional capacity, in conduct involving discrimination (except employment discrimination unless resulting in a final agency or judicial determination) because of race, color, religion, age, sex, sexual orientation, national origin, language, marital status, socioeconomic status, or handicap where the conduct is intended or likely to cause harm.

New Mexico - Rule 16-300 Prohibition Against Invidious Discrimination

In the course of any judicial or quasi-judicial proceeding before a tribunal, a lawyer shall refrain from intentionally manifesting, by words or conduct, bias or prejudice based on race, gender, religion, national origin, disability, age, or sexual orientation against the judge, court personnel, parties, witnesses, counsel or others. This rule does not preclude legitimate advocacy when race, gender, religion, national origin, disability, age or sexual orientation is material to the issues in the proceeding.

Michigan - Rule 6.5 Professional Conduct.

(a) A lawyer shall treat with courtesy and respect all persons involved in the legal process. A lawyer shall take particular care to avoid treating such a person discourteously or disrespectfully because of the person's race, gender, or other protected personal characteristic. To the extent possible, a lawyer shall require subordinate lawyers and nonlawyer assistants to provide such courteous and respectful treatment.

(b) A lawyer serving as an adjudicative officer shall, without regard to a person's race, gender, or other protected personal characteristic, treat every person fairly, with courtesy and respect. To the extent possible, the lawyer shall require staff and others who are subject to the adjudicative officer's direction and control to provide such fair, courteous, and respectful treatment to persons who have contact with the adjudicative tribunal

[NOTE: This rule is in current litigation regarding a constitutional challenge to the rule. The Respondent claims that the language of the rule is constitutionally vague and overbroad. Similar challenges have been advanced and defeated in the Michigan Supreme Court and in federal court. The previous Respondent who challenged the rule on these grounds appealed to the U.S. Supreme Court, but cert was denied. Additional commentary can be found at <http://www.michbar.org/generalinfo/pdfs/mrpc.pdf>]

Rhode Island - Rule 8.4(d) Misconduct

It is misconduct for a lawyer to: ...

(d) engage in conduct that is prejudicial to the administration of justice, including but not limited to, harmful or discriminatory treatment of litigants, jurors, witnesses, lawyers, and others based on race, national origin, gender, religion, disability, age, sexual orientation or socioeconomic status.

Indiana - Rule 8.4 includes the following definition of "misconduct"

It is professional misconduct for a lawyer to: ...

(g) engage in conduct, in a professional capacity, manifesting , by words or conduct, bias or prejudice based upon race, gender, religion, national origin, disability, sexual orientation, age, socioeconomic status, or similar factors. Legitimate advocacy respecting the foregoing factors does not violate this subsection....

Washington - Rule 8.4(h) Misconduct

It is professional misconduct for a lawyer to: ...

(h) in representing a client, engage in conduct that is prejudicial to the administration of justice toward judges, other parties and/or their counsel, witnesses and/or their counsel, jurors, or court personnel or officers, that a reasonable person would interpret as manifesting prejudice or bias on the basis of sex, race, age, creed, religion, color, national origin, disability, sexual orientation, or marital status. This Rule does not restrict a lawyer from representing a client by advancing material factual or legal issues or arguments.

[Comment: [3] [Washington revision] Legitimate advocacy respecting the factors set forth in paragraph (h) does not violate paragraphs (d) or (h). A trial judge's finding that peremptory challenges were exercised on a discriminatory basis does not alone establish a violation of this Rule.]

Missouri - Rule 4-8.4(g) Misconduct

It is professional misconduct for a lawyer to: ...

(g) manifest by words or conduct, in representing a client, bias or prejudice based upon race, sex, religion, national origin, disability, age, or sexual orientation. This Rule 4-8.4(g) does not preclude legitimate advocacy when race, sex, religion, national origin, disability, age, sexual orientation, or other similar factors, are issues.

[Comment (3) Rule 4-8.4(g) identifies the special importance of a lawyer's words or conduct, in representing a client, that manifest bias or prejudice against others based upon race, sex, religion, national origin, disability, age, or sexual orientation. Rule 4-8.4(g) excludes those instances in which a lawyer engages in legitimate advocacy with respect to these factors. A lawyer acts as an officer of the court and is licensed to practice by the state. The manifestation of bias or prejudice by a lawyer, in representing a client, fosters discrimination in the provision of services in the state judicial system, creates a substantial likelihood of material prejudice by impairing the integrity and fairness of the judicial system, and undermines public confidence in the fair and impartial administration of justice.

Whether a lawyer's conduct constitutes professional misconduct in violation of Rule 4-8.4(g) can be determined only by a review of all of the circumstances; e.g., the gravity of the acts and whether the acts are part of a pattern of prohibited conduct. For the purpose of Rule 4-8.4(g), "manifest ... bias or prejudice" is defined as words or conduct that the lawyer knew or should have known discriminate against, threaten, harass, intimidate, or denigrate any individual or group. Prohibited conduct includes, but is not limited to, unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

- (a) submission to that conduct is made, either explicitly or implicitly, a term or condition of an individual's employment;
- (b) submission to or rejection of such conduct by an individual is used as a factor in decisions affecting such individual; or

(c) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or of creating an intimidating, hostile or offensive environment.]

Ontario, Canada - Rule 5.04 Special Responsibility

(1) A lawyer has a special responsibility to respect the requirements of human rights laws in force in Ontario and, specifically, to honour the obligation not to discriminate on the grounds of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, record of offences (as defined in the Ontario Human Rights Code), marital status, family status, or disability with respect to professional employment of other lawyers, articulated students, or any other person or in professional dealings with other members of the profession or any other person.

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APR 08 2011

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Professionalism,
Education and
Leadership for our
members and our
community.

April 7, 2011

Board of Governors
Oregon State Bar
16037 SW Upper Boones Ferry Road
Tigard, OR 97224

Oregon State Bar
Executive Director

**RE: The Multnomah Bar Association's Support to Refer the Questions
Regarding Harassment to the Legal Ethics Committee**

Dear Members of the Board of Governors:

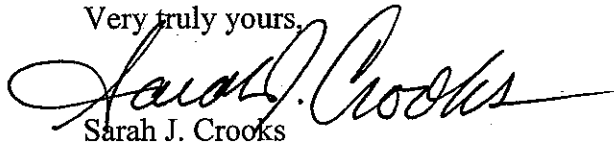
I am writing on behalf of the Board of the Multnomah Bar Association.

We understand that Oregon Women Lawyers ("OWLS") and other bar associations have recently requested that the Board of Governors adopt a proposed resolution that refers to the Oregon State Bar Legal Ethics Committee questions regarding whether the current Oregon Rules of Professional Conduct adequately address a situation involving non-criminal conduct by a lawyer against another individual involved in the legal system that may constitute a form of harassment under civil law, including, but not limited to, harassment based on gender, race, disability, sexual orientation, or other protected class.

The MBA, as lawyers associated for justice, service, professionalism, education and leadership for our members and our community, supports OWLS's request and urges the Board of Governors to direct the Legal Ethics Committee to analyze and evaluate the issues raised by OWLS's request.

Thank you for your attention to these important issues.

Very truly yours,



Sarah J. Crooks

cc: Concetta Schwesinger, OWLS President
David J. Elkanich, Legal Ethics Committee Chair
Steve D. Larson, Legal Ethics Committee, Board of Governors liaison
Sylvia E. Stevens, Oregon State Bar Executive Director

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: April 22, 2011
From: Helen M. Hirschbiel, General Counsel
Re: Workers Compensation Rules Review

Action Recommended

Review the Oregon Administrative Rules relating to attorney fees, costs and expenses, and attorney fee liens in workers compensation cases, and decide what comments to submit to the Worker's Compensation Board, if any.

Background

The Workers' Compensation Board is conducting a review of its administrative rules involving attorney fees, costs and expenses, and attorney fee liens in workers' compensation cases. ORS 656.388(4) requires the WCB to consult with the OSB Board of Governors prior to establishing a schedule of fees for attorneys representing parties in worker's compensation cases. BOG *approval* is not required, only consultation and an opportunity to comment.

The WCB has already received comments and proposals from its Board staff and SAIF. Those comments and proposals are attached. The WCB chair is particularly interested in receiving comments from the BOG on items 1, 2 and 16, but welcomes comments on any of the rules or proposals currently under consideration by the WCB.

In deciding what comments to submit, the BOG should be mindful of its public policy guidelines set forth in OSB Bylaw 12.1. Comments should relate to improving the fairness, efficacy and efficiency of the administrative process for deciding attorney fee issues in worker's compensation cases, and how the proposals might impact the availability of legal services for claimants in worker's compensation cases.

The proposals and comments were submitted to the chair of the OSB Worker's Compensation Section for consideration. The Section comments are attached.

The WCB expects to review all comments in June 2011.

Conclusion

The BOG should decide whether to: 1) adopt the section comments and forward them to the WCB as comments from the BOG; 2) forward the OSB Worker's Compensation Section comments to the WCB; 3) direct the Section to conduct further review and provide additional comment; 4) submit comments of its own to the WCB.

Attachments: Workers' Compensation Board Rule Review and Attorney Fee related comments
OSB Workers' Compensation Section Comments



Oregon

John A. Kitzhaber, MD, Governor

Workers' Compensation Board

2601 25th St SE Ste 150

Salem, OR 97302-1280

(503) 378-3308

1-877-311-8061

www.wcb.oregon.gov

March 11, 2011

Sylvia Stevens, Executive Director
OSB Board of Governors
PO Box 231935
Tigard OR 97281

Dear Ms. Stevens:

Presently, the Workers' Compensation Board is reviewing its rules of practice and procedure found in Chapter 438 of the Oregon Administrative Rules. This plenary review includes Division 015 pertaining to attorney fees, costs and expenses, and attorney fee liens. Several proposed rules are under consideration. (See enclosed).

Pursuant to ORS 656.388(4) the Board shall, after consultation with the Board of Governors of the Oregon State Bar, establish a schedule of fees for attorneys representing a worker and representing an insurer or self-insured employer, under Chapter 656 of the Oregon Revised Statutes.

In accordance with the statute, we are seeking your input concerning these proposals. In this regard, you will note that a general comment has been submitted by the Executive Committee of the Workers' Compensation Section for the Oregon State Bar. Considering the importance of this issue to the Executive Committee, you may wish to also solicit their observations regarding these proposals, as well as the Board's attorney fee rules in general. Your contributions expressly discussing the pros and cons of these proposals, as well as those from the Executive Committee, will greatly assist the Board Members in their critical deliberations.

Please feel free to call me at (503)934-0127 should you have any questions.

Sincerely,

Abigail L. Herman, Chair
Workers' Compensation Board

AH:kb

[execasst/cor/ext/OSB Bd of Govs.docx](#)

Enclosure.

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MAR 14 2011

Oregon State Bar
Executive Director

cc: Board Members

ALJ Charles Mundorff, Chair, Workers' Compensation Section, OSB

Derek C. Johnson, Workers' Compensation Section Board Contact, OSB





MEMORANDUM

March 10, 2011

To: WCB Members

From: Roger C. Pearson/Debra L. Young

Subject: Rule Review/"Attorney Fee-related" Comments
(OAR 438 Division 015)

In accordance with your instructions, set forth below are summaries of "Attorney Fee-related" comments received in response to your "rule review" announcement. The comments are organized by means of the particular rule in question, which has been recited in the summary.

1. Definitions

OAR 438-015-0005(7)

(7) "Denied claim" means a claim for compensation which an insurer or self-insured employer refuses to pay on the express ground that the injury or condition for which compensation is claimed is not compensable or otherwise does not give rise to an entitlement to any compensation.

Comment: Board staff proposes amending OAR 438-015-0005(7) as follows to include the definitions of "denied claims" under ORS 656.386(1)(b)(B), (C), and (D):

(7) "Denied claim" means a claim for compensation which an insurer or self-insured employer refuses to pay on the express ground that the injury or condition for which compensation is claimed is not compensable or otherwise does not give rise to an entitlement to any compensation **or a claim under ORS 656.386(1)(b)(B), (C), and/or (D) to which the insurer or self-insured employer does not timely respond.**

(8) “Expenses and costs” reimbursable under ORS 656.386(2) mean reasonable expenses and costs incurred by the claimant for things and services reasonably necessary to pursue a matter, but do not include attorney fees. Examples of expenses and costs referred to include, but are not limited to, costs of records, expert witness opinions, witness fees and mileage paid to execute a subpoena and costs associated with travel.

Comment: (Submitted by SAIF.) Asserting that the definition of “expenses and costs” expands on the items that are expressly mentioned in ORS 656.386(2), the comment reasons that the statutory definition is not a delegative term and does not require further elaboration. Consequently, the comment suggests that the rule either be amended to restate the statute or repealed.

Response. In adopting the current rule, the Board supplemented its then-existing rule (which referred to “mileage paid to execute a subpoena and costs associated with travel”), with a reference to “expenses and costs” reimbursable under ORS 656.386(2). The Board is authorized to amend its rules whenever it considers such an action to be appropriate. Alternatively, because the validity and meaning of its rule can also be resolved through the litigation process (if and when such a dispute arises), the Members may wish to await such an appeal.

2. General Principles - OAR 438-015-0010

Comment: Member Langer proposes the following amendments to OAR 438-0015-0010:

[General Principles] Attorney Fee Procedures

(1) **(a)** Attorney fees for an attorney representing a claimant before the Board or its Hearings Division shall be authorized only if an executed attorney retainer agreement has been filed with the Administrative Law Judge or Board **and the party seeking attorney fees alleges the substantive right to recover such fees.**

(b) The ALJ or the Board shall not authorize assessed attorney fees for an attorney representing a claimant before the Board or its Hearings Division unless a petition for attorney fees in accordance with section (4) of this rule has been filed with the Administrative Law Judge or Board.

- (2) Attorney fees for an attorney representing a claimant shall be paid out of the claimant's compensation award except as provided by ORS 656.307, 656.382 and 656.386.
- (3) An approved fee awarded or allowed to an attorney representing a claimant shall be a lien upon the claimant's compensation.
- (4) **(a) An attorney who is representing a claimant and seeking assessed attorney fees, shall serve and file a petition for attorney fees no later than:**
- (A) Seven days after the closure of the hearing record; or**
- (B) Seven days after the date of the filing of the last appellate brief on Board review.**
- (b) A signed petition shall state the total amount of attorney fees claimed and the authority relied on for claiming the fees. The petition shall be supported by a statement of facts showing the total amount of attorney time involved, the amount of time devoted to each task, the reasonableness of the amount of time claimed, the hourly rate at which time is claimed, and the reasonableness of the hourly rate.**
- (c) A petition shall address the factors identified in section (7) of this rule.**
- (5) (a) Objections to a petition shall be served and filed within seven days after the date the petition is filed. A reply, if any, shall be served and filed within seven days after the date of service of the objections.**
- (b) Objections shall be specific and may be founded in law or fact.**
- (c) In the absence of timely filed objections to a petition under this rule, the ALJ or the Board will allow attorney fees in the amount sought in the petition, except in cases in which:**
- (A) The entity from whom fees are sought was not a party to the proceeding; or**
- (B) The ALJ or the Board is without authority to award fees.**
- (6) Notwithstanding subsections (1)(b) and (5)(c), if the ALJ's or the Board's order has not been appealed, relief from failure to file a petition for attorney fees or objections to a petition in accordance with these rules may be granted if good cause for failing to comply with these rules is established.**
- (7) In any case where an Administrative Law Judge or the Board is required to determine a reasonable attorney fee, the following factors shall be considered:**

- (a) The time devoted to the case;
 - (b) The complexity of the issue(s) involved;
 - (c) The value of the interest involved;
 - (d) The skill of the attorneys;
 - (e) The nature of the proceedings;
 - (f) The benefit secured for the represented party;
 - (g) The risk in a particular case that an attorney's efforts may go uncompensated; and
 - (h) The assertion of frivolous issues or defenses.
- (8) Percentage limitations on fees established by these rules apply to the amount of compensation paid the claimant exclusive of medical, hospital or other expenses of treatment.

3. **Charge for Legal Services Must Be Authorized**

OAR 438-015-0015

No charge for legal services for representation of claimants in connection with any matter concerning a claim before the Board or its Hearings Division under ORS Chapter 656 is valid unless the charge has been authorized in accordance with ORS 656.307, 656.382 to 656.390 or 656.593 or these rules.

Comment: Attorney fees are also authorized under ORS 656.262(11)(a) (penalty-related attorney fee) and ORS 656.308(2)(d) (attorney fee for prevailing over responsibility denial). Therefore, a comment suggests including a reference to these statutes be added to the list in OAR 438-015-0015. (Submitted by Board staff.)

4. **Cost Bill Procedures**

OAR 438-015-0019

- (1) If a claimant finally prevails against a denial under ORS 656.386(1), the Administrative Law Judge or the Board may order payment of the claimant's reasonable expenses and costs for records, expert opinions, and witness fees incurred in the litigation of the denied claim(s).
- (2) In ordering payment under section (1), an Administrative Law Judge or the Board may award reasonable expenses and costs that the claimant incurred as a result of the litigation of the denied claim(s) under ORS 656.386(1). If the parties stipulate to the specific amount of the reasonable expenses and costs, the Administrative Law Judge's or the Board's award of expenses and costs shall be included in the order finding that the claimant finally prevails against a denied

claim(s) under 656.386(1). In the absence of the parties' stipulation, the Administrative Law Judge or the Board may award reasonable expenses and costs as described in section (1), which the claimant may claim by submitting a cost bill under section (3) to the insurer or the self-insured employer, not to exceed \$1,500, unless the claimant demonstrates extraordinary circumstances justifying payment of a greater amount.

(3) If an order under section (2) does not specify the amount of a reasonable award for expenses and costs, the claimant shall submit, within 30 days after the order under section (2) becomes final, a cost bill to the insurer or self-insured employer. The cost bill, which may be submitted on a form prescribed by the Board, shall contain, but is not limited to, the following information:

(a) An itemization of the incurred expenses and costs for records, expert opinions, and witness fees that are due to the denied claim(s); and

(b) The claimant's signature confirming that the claimed expenses and costs were incurred in the litigation of the denied claim(s).

(4) If the parties disagree whether a claimed fee, expense, or cost is reasonable, a party may request a hearing seeking resolution of that dispute. The resolution of disputes under this section shall be made by a final, appealable order.

(5) Payments for witness fees, expenses, and costs shall be made by the insurer or self-insured employer within 30 days of its receipt of the cost bill submitted in accordance with section (3) and are in addition to compensation payable to the claimant and in addition to attorney fees.

Comment: (Submitted by staff.) Section (4) provides that a party may request a hearing seeking resolution of a dispute regarding the reasonableness of a claimed fee, expense, or cost. However, section (5) requires payment of such fees, expenses, or costs within 30 days of receipt of the cost bill. It would appear that there should be some "tolling" of the payment required in section (5) during the review process under section (4). To address this ambiguity, the following change to section (5) is suggested:

(5) **Unless a dispute arises under section (4), p[P]**ayments for witness fees, expenses, and costs shall be made by the insurer or self-insured employer within 30 days of its receipt of the cost bill submitted in accordance with section (3) and are in addition to compensation payable to the claimant and in addition to attorney fees.

5. Attorney Fee Lien Procedures

OAR 438-015-022

(1) If a former attorney of a claimant alleges that the former attorney has been instrumental in obtaining additional compensation or in settling a claim, the former attorney may provide a notice of potential attorney fee lien to the insurer or the self-insured employer. Copies of such a notice shall also be simultaneously provided to the claimant and to the appropriate litigation forum, if there is a pending case before the Hearings Division or the Board.

(2) The notice of potential attorney fee lien shall include, but is not limited to, the following information:

- (a) A description of the former attorney's services that support the allegation that the attorney was instrumental in obtaining additional compensation or in settling the claimant's claim;
- (b) The amount of the potential claim;
- (c) The amount of the potential attorney fee lien; and
- (d) A copy of an executed retainer agreement between the claimant and the former attorney.

(3) If the insurer or self-insured employer has received a notice of a potential attorney fee lien, any proposed disputed claim settlement, settlement stipulation, or claim disposition agreement shall include a provision resolving the potential attorney fee lien. Any approval of a settlement agreement that does not comply with this provision shall be void.

(4) If the notice of potential attorney fee lien is disputed, the former attorney, the claimant, the insurer, or the self-insured employer may file a petition for resolution of the lien dispute with the forum where litigation involving the claim is pending or, if there is no pending litigation, with the Hearings Division. The petition shall include copies of the notice of potential attorney fee lien and the accompanying materials that were submitted to the claimant and the insurer or the self-insured employer, as well as any other relevant documents.

(5) If a petition for resolution of a potential attorney fee lien dispute is filed, the respondent(s) shall be provided not less than seven days to respond to the petition. The former attorney shall also be provided not less than seven days to reply to the responses.

(6) The resolution of a potential attorney fee lien dispute shall be made by a final, appealable order.

Comment: A comment suggests replacing “The amount of the potential claim” in section (2)(b) with “The value of the potential benefit from the litigation.” (Submitted by SAIF.)

Response: The current rule’s reference to “amount” suggests a more precise term than the proposed word “value.” Likewise, the use of the term “amount” in (2)(b) is consistent with the term “amount” in (2)(c), which refers to the amount of the potential attorney fee lien. Nonetheless, the additional compensation or proceeds obtained through the former attorney’s efforts may be difficult to quantify. Thus, the proposal’s suggestion to replace “amount” with “value” seems reasonable. Replacing “claim” with “benefit from the litigation” does expand the subject matter encompassed within the rule. On the other hand, in some cases, there may have been no “litigation.” In light of such circumstances, a more encompassing term might be: “The value of the additional benefits or disputed claim.”

6. **Maximum Attorney Fees Out of Compensation**

OAR 438-015-0025

Except in situations where a claimant’s attorney fee is an assessed fee, in settlement of disputed claims or claim disposition agreements and in cases under the third-party law, unless there is a finding in a particular case by an Administrative Law Judge or the Board that extraordinary circumstances justify a higher fee, the established fees for attorneys representing claimants are as set forth in OAR 438-015-0040, 438-015-0045, 438-015-0055(1) and 438-015-0080.

Comment: (Submitted by Board staff.) In providing the maximum “out-of-compensation” fees, OAR 438-015-0025 purportedly lists all rules that concern such fees. However, it only lists section (1) of OAR 438-015-0055, whereas sections (1) through (3) of that rule concern “out-of-compensation” fees. Therefore, Board staff suggests amending OAR 438-015-0025 as follows:

Except in situations where a claimant’s attorney fee is an assessed fee, in settlement of disputed claims or claim disposition agreements and in cases under the third-party law, unless there is a finding in a particular case by an Administrative Law Judge or the Board that extraordinary circumstances justify a higher fee, the established fees for attorneys representing claimants are as set forth in OAR 438-015-0040, 438-015-0045, 438-015-0055(1), (2), (3), and 438-015-0080.

7. **Request at Board Review Level for Assessed Fees**

OAR 438-015-0029

(1) On Board review of an Administrative Law Judge's order, to assist the Board in determining the amount of a reasonable assessed fee for services at the hearing level and/or for services on Board review, a claimant's attorney may file a request for a specific fee, which the attorney believes to be reasonable.

(2) The request shall be considered by the Board if:

(a) The request is filed within 14 days from the date of filing of the last appellate brief under OAR 438-011-0020;

(b) The request describes in detail the manner in which the factors set forth in OAR 438-015-0010(4) specifically apply to the case, as well as any other information deemed relevant; and

(c) A copy of the request is simultaneously served upon the other parties and their attorneys who appeared at hearing and on Board review in the manner provided in OAR 438-005-0046(2)(a) and proof of such service is provided in accordance with 438-005-0046(2)(b).

(3) A written response raising objection to the request shall be considered by the Board if:

(a) The response is filed within 14 days from the date of filing of claimant's attorney's request for a specific fee under subsection (2)(a) of this rule; and

(b) A copy of the request is simultaneously served upon the other parties and their attorneys who appeared at hearing and on Board review in the manner provided in OAR 438-005-0046(2)(a) and proof of such service is provided in accordance with 438-005-0046(2)(b).

(4) A request or response that does not comply with this rule shall not be considered by the Board in determining the amount of a reasonable assessed fee.

Comment: A suggestion recommends changing "within" in subsection (2)(a) to "no later than." (Submitted by SAIF.) The suggestion reasons that this change will "reflect actual practice, in which fees are usually requested in a reply brief."

Response: OAR 438-011-0020 provides the time lines for appellate briefs. The suggested change to subsection (2)(a) (from "within" to "no later than") does not appear to make any substantive change. Consequently, the proposed change seems to be unnecessary.

Comment: Subsection (2)(c) provides for service of a claimant's attorney's request for a specific attorney fee amount on the other parties *and* their attorneys. However, OAR 438-005-0046(2)(a) (the "service" rule referenced in subsection (2)(c)) provides for service to "each party or to their attorneys." (Emphasis added). For consistency purposes, it is suggested that "and" be replaced with "or." (Submitted by Board staff.)

Response: Suggestion seems reasonable.

Comment: Two concerns have been raised regarding subsection (3)(b). The subsection refers to the carrier's "request" to a claimant's attorney's request for a specific fee; whereas the appropriate word would seem to be "response." (Submitted by both SAIF and Board staff.) Secondly, subsection also contains the "and / or" conflict referred to in subsection (2)(b). (Submitted by Board staff.) For consistency purposes, it is suggested that the reference to "and" be replaced with "or."

Response: Suggestion seems reasonable.

Comment: Member Weddell has proposed amending section (4) of the rule as follows:

(4) A request or response that does not comply with this rule [shall] **may** not be considered by the Board in determining the amount of a reasonable assessed fee.

Comment: Based on her recommended changes to OAR 438-015-0010, Member Langer proposes repeal of OAR 438-015-0029.

8. **Attorney Fee When There is No Hearing**

OAR 438-015-0030

If an attorney is instrumental in obtaining compensation for a claimant without a hearing before an Administrative Law Judge, a reasonable attorney fee may be approved or assessed. The amount of the fee shall be determined by an Administrative Law Judge or by agreement of the parties.

Comment: A comment suggests replacing “without a hearing” with “prior to a hearing,” as well as adding the phrase “where authorized by statute.” (Submitted by SAIF.)

Response: ORS 656.386(1)(a) (which refers to a carrier-paid attorney fee award for denied claims) uses the phrase “prior to” when allowing for such an award when an attorney is instrumental in obtaining a rescission of a denial prior to an ALJ’s decision. Nevertheless, the rule is apparently not intended to only address such a situation, because it refers to both assessed (carrier-paid”) fees and approved (“out-of-compensation”) fees. Furthermore, there is no indication that the rule has been misconstrued or has resulted in litigation. Under such circumstances, it does not appear that amendment of the rule is necessary.

Turning to the phrase “where authorized by statute,” such language is legally correct. Nonetheless, the phrase is also redundant because the rule is premised on the principle that supporting statutory authority exists for such an award. Therefore, the proposed amendment seems unnecessary.

9. Attorney Fees When a Claimant Requests a Hearing on a Denied Claim

OAR 438-015-0035

If the Administrative Law Judge orders the acceptance of a previously denied claim, the Administrative Law Judge shall award a reasonable assessed fee. This rule applies to denials of original claims for accidental injury and occupational disease, denials of aggravation and partial denials.

Comment: (Submitted by Board staff.) The second sentence of the rule presents an incomplete list of potential denials that, if set aside, would qualify for assessed attorney fees; *e.g.*, new/omitted medical condition claims are not included. Consistent with the suggested amendment to OAR 438-015-0005(7) (the “denial” definition rule regarding attorney fees) to include denials under ORS 656.386(1)(b)(B), (C), and (D), the following amendment is recommended:

“This rule applies to denials under OAR 438-015-0005(7).”

If this change to OAR 438-015-0005(7) is made, the reference to the “denial” definition rule would cover all eligible denials. In addition, if there are statutory changes to the definition of “denial” in the future, only OAR 438-015-0005(7) would require amendment.

10. Attorney Fees When a Claimant Requests a Hearing on a Responsibility Denial

OAR 438-015-0038

If the claimant's attorney appears in any proceeding regarding a responsibility denial issued under ORS 656.308(2), and actively and meaningfully participates, and finally prevails against that responsibility denial, the Administrative Law Judge shall award a reasonable assessed fee to be paid by the insurer or self-insured employer who issued the responsibility denial. Absent a showing of extraordinary circumstances, the assessed attorney fee shall not exceed \$2,500. The maximum attorney fee awarded under this rule is subject to an annual adjustment on July 1 as calculated by the Workers' Compensation Division (on behalf of the Director) by the same percentage increase as made to the average weekly wage defined in ORS 656.211, if any.

Comment: (Submitted by Board staff.) A suggestion recommends adding the following language to the end of this rule:

Before July 1 of each year the Board, by bulletin, will publish the maximum fee, after adjusting the fee by the same percentage increase, if any, to the average weekly wage. Dollar amounts will be rounded to the nearest whole dollar.

To the extent possible, this language tracks OAR 436-001-0410(1)(c), which also ties the maximum fee to the average weekly wage as defined in ORS 656.211 and provides that dollar amounts are rounded to the nearest dollar).

Comment: (Submitted by SAIF.) A suggestion recommends amending the rule to state that a carrier is liable for a carrier-paid attorney fee if a claimant finally prevails over the carrier's responsibility denial and the carrier "is found responsible for the claim that was the subject of its responsibility denial." The comment reasons that such language provides further clarification to the rule.

Response: The rule's language mirrors ORS 656.308(2)(d), which provides for a carrier-paid attorney fee for "the attorney's appearance and active and meaningful participation in finally prevailing against a responsibility denial." Moreover, if a claimant finally prevails against a responsibility denial, it would seem to follow that the carrier will be "found responsible for the claim that was the subject of its responsibility denial." Thus, the proposed additional language seems superfluous. As such, no amendment is recommended.

11. **Attorney Fees When a Claimant Requests a Hearing on Extent of Permanent Disability**

OAR 438-015-0040

(1) If the Administrative Law Judge awards additional compensation for permanent partial disability, the Administrative Law Judge shall approve a fee of 25 percent of the increased compensation, but not more than \$4,600, to be paid out of the increased compensation.

(2) If the Administrative Law Judge awards compensation for permanent total disability, the Administrative Law Judge shall approve a fee of 25 percent of the increased compensation, but not more than \$12,500, to be paid out of the award for permanent total disability.

Comment: Subsection (1) refers to “permanent partial disability.” That phrase describes benefits potentially available for injuries occurring before January 1, 2005. However, for injuries occurring on or after January 1, 2005, the corresponding benefits available are: “permanent disability (whole person impairment and work disability).” In light of these circumstances, a comment suggests that the reference to “permanent partial disability” be replaced with “permanent disability.” (Submitted by Board staff.) In this way, the generic term “permanent disability” will encompass awards for both “pre” and “post” January 1, 2005 injuries.

(1) If the Administrative Law Judge awards additional compensation for permanent [*partial*] disability, the Administrative Law Judge shall approve a fee of 25 percent of the increased compensation, but not more than \$4,600, to be paid out of the increased compensation.

12. **Attorney Fees in Connection With Disputed Claim Settlements**

OAR 438-015-0050

“When a denied and disputed claim is settled under the Administrative Law Judge provisions of ORS 656.289(4) and OAR 438-009-0010, an attorney fee may be approved by the Administrative Law Judge or the Board in an amount up to 25 percent of the first \$17,500 of the settlement proceeds plus ten percent of any amount of the settlement proceeds in excess of \$17,500. Under extraordinary circumstances, a fee may be authorized in excess of this calculation.” (Emphasis added).

Comment: The first use of the phrase “Administrative Law Judge” (highlighted above) is apparently a typographical error because ORS 656.289(4) does not have “ALJ provisions.” Instead, ORS 656.289(4)(a) provides, in relevant part, that the parties may “with the approval of an [ALJ], the board or the court, by agreement make such disposition of the claim as is considered reasonable.” Therefore, it is suggested that the first use of the phrase “Administrative Law Judge” be deleted from OAR 438-015-0050(1). (Submitted by Board staff.)

13. Attorney Fees When a Claimant Requests Review by the Board

OAR 438-015-0055

(1) If a claimant requests review of an Administrative Law Judge’s order on the issue of compensation for temporary disability and the Board awards additional compensation, the Board shall approve a fee of 25 percent of the increased compensation, provided that the total of fees approved by the Administrative Law Judge and the Board shall not exceed \$5,000.

(2) If a claimant requests review of an Administrative Law Judge’s order on the issue of compensation for permanent disability and the Board awards additional compensation, the

Board shall approve a fee of 25 percent of the increased compensation, provided that the total

of fees approved by the Administrative Law Judge and the Board shall not exceed \$6,000.

(3) If a claimant requests review of an Administrative Law Judge’s order on the issue of compensation for permanent total disability and the Board awards additional compensation,

the Board shall approve a fee of 25 percent of the increased compensation, provided that the total of fees approved by the Administrative Law Judge and the Board shall not exceed \$16,300.

(4) If a claimant requests review of an Administrative Law Judge’s order that upheld a denial of compensability for a claim and the Board orders the claim accepted, the Board shall assess a reasonable attorney fee to be paid by the insurer or self-insured employer to the claimant’s attorney.

(5) If a claimant requests review of an Administrative Law Judge’s order that upheld a responsibility denial issued under ORS 656.308 and the claimant’s attorney actively and meaningfully participates in finally prevailing against the responsibility denial, the Board shall award a reasonable assessed fee to be paid by the insurer or self-insured employer who issued the responsibility denial. Absent a showing of extraordinary circumstances, the assessed attorney fee for prevailing over the

responsibility denial shall not exceed \$2,500. The maximum attorney fee awarded under this section is subject to an annual adjustment on July 1 as calculated by the Workers' Compensation Division (on behalf of the Director) by the same percentage increase as made to the average weekly wage defined in ORS 656.211, if any.

Comment: (Submitted by Board staff.) Subsection (5) provides for assessed attorney fees for finally prevailing against a responsibility denial at the Board review level. OAR 438-015-0038, which provides for such assessed fees at the hearing level, refers to ORS 656.308(2), whereas subsection (5) of OAR 438-015-0055 refers just to "ORS 656.308." For consistency purposes it is suggested that subsection be amended to refer to "ORS 656.308(2)." In addition, consistent with the reasoning expressed regarding a suggested amendment to OAR 438-015-0038, it is recommended that the following language be added to the end of this rule:

Before July 1 of each year the Board, by bulletin, will publish the maximum fee, after adjusting the fee by the same percentage increase, if any, to the average weekly wage. Dollar amounts will be rounded to the nearest whole dollar.

14. Attorney Fees in Third-Party Cases

OAR 438-015-0095

Unless otherwise ordered by the Board after a finding of extraordinary circumstances, an attorney fee not to exceed 33-1/3 percent of the gross recovery obtained by the plaintiff in an action maintained under the provisions of ORS 656.576 - 656.595 is authorized.

Comment: (Submitted by Board staff.) This rule identifies the statutory range of "third party law" as: "ORS 656.576 – 656.595," but "third party law" extends to ORS 656.596. To bring the rule into consistency with the statutes, it is suggested that the rule's language be changed to "ORS 656.576 **through** 656.596".

15. Attorney Fees in Cases Involving ORS 656.262(11)(a)

OAR 438-015-0110

If the Director, an Administrative Law Judge, the Board, or the Court find that the insurer or self-insured employer unreasonably delayed or unreasonably refused to pay compensation, or unreasonably delayed acceptance or denial of a claim, an assessed attorney fee shall be awarded in a reasonable amount that:

- (1) Is proportionate to the benefit to the claimant;
- (2) Takes into consideration the factors set forth in OAR 438-015-0010(4), giving primary consideration to the results achieved and to the time devoted to the case; and
- (3) Does not exceed \$3,000, absent a showing of extraordinary circumstances. The maximum attorney fee awarded under this section is subject to an annual adjustment on July 1 as calculated by the Workers' Compensation Division (on behalf of the Director) by the same percentage increase as made to the average weekly wage defined in ORS 656.211, if any.

Comment: (Submitted by Board staff.) Consistent with the suggested changes to OAR 438-015-0038 and OAR 438-015-0055(5), it is recommended that the following language be added to the end of subsection (3).

Before July 1 of each year the Board, by bulletin, will publish the maximum fee, after adjusting the fee by the same percentage increase, if any, to the average weekly wage. Dollar amounts will be rounded to the nearest whole dollar.

16. **General Principles**

Comment: (Submitted by SAIF.) A comment proposes the implementation of a "Statement of Service" requirement for all cases, which would require a claimant's attorney to set forth the total amount of the claimed fee, the statutory basis for such a fee, and the total amount of time, as well as the time devoted to each task.

Response: The Board's rules have previously included such a requirement. For a variety of reasons (substantive and procedural), such a requirement was removed. Currently, the Board has a rule that allows a claimant's attorney to submit a request for an assessed fee on review and the opposing party an opportunity to respond. (OAR 438-015-0029). As a general practice, some claimant's counsels will include a request for an attorney fee award in their final appellate brief (sometimes with supporting information) and the carrier's counsel will include a response/objection in a subsequent brief/letter. Likewise, similar informal procedures are followed at the Hearings Division, either at the hearing or during written closing argument. Considering the implications the adoption of such an amendment would have on all participants in the dispute resolution system, it is suggested that the Members seek further input from all facets of this system (parties, practitioners, and ALJs) before further proceeding with this matter.



Oregon

John A. Kitzhaber, MD, Governor

Workers' Compensation Board

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March 14, 2011

Sylvia Stevens, Executive Director
OSB Board of Governors
PO Box 231935
Tigard OR 97281

Dear Ms. Stevens:

Presently, the Workers' Compensation Board is reviewing its rules of practice and procedure found in Chapter 438 of the Oregon Administrative rules. This plenary review includes Division 015 pertaining to attorney fees, costs and expenses, and attorney fee liens. Several proposed rules are under consideration.

Pursuant to ORS 656.388(4), the Board shall, after consultation with the Board of Governors of the Oregon State Bar, establish a schedule of fees for attorneys representing a worker and representing an insurer or self-insured employer under Chapter 656 of the Oregon Revised Statutes.

Previously, by letter dated March 11, 2011, the Workers' Compensation Board specifically requested the Board of Governors review and comment on the Division 15 proposed rules. Inadvertently, our prior submission lacked all necessary attachments. To correct this oversight, we are forwarding on the missing attachment (a January 31, 2011 memo from Member Langer providing reasoning for the proposed changes to OAR 438-015-0050). Please include with our original letter and attachment.

Should you have further questions, feel free to call me at (503)934-0127.

Sincerely,

Abigail L. Herman, Chair
Workers' Compensation Board

AH:kb

excassst/cor/ext/OSB Bd of Gavs2.docx

Enclosure

cc: Board Members

ALJ Charles Mundorff, Chair, Workers' Compensation Section, OSB

Derek C. Johnson, Workers' Compensation Section Board Contact, OSB

RECEIVED

MAR 15 2011

Oregon State Bar
Executive Director





MEMORANDUM

January 31, 2011

To: The Workers' Compensation Board

From: Vera Langer

Subject: Attorney Fee Rules

It has been suggested that, as part of our administrative rule review, we address the attorney fee rules in Division 015 in OAR Chapter 438. The current relevant attorney fee provisions provide:

OAR 438-015-0005 provides, in part:

Definitions

In addition to the definitions set forth in OAR 438-005-0040:

- (1) "Approved fee" means an attorney fee paid out of a claimant's compensation.
- (2) "Assessed fee" means an attorney fee paid to a claimant's attorney by an insurer or self-insured employer in addition to compensation paid to a claimant.
- (3) "Attorney" means a member of the Oregon State Bar.
- (4) "Attorney fee" means payment for legal services performed by an attorney on behalf and at the request of a claimant under ORS Chapter 656.

OAR 438-015-0010 provides:

General Principles

- (1) Attorney fees for an attorney representing a claimant before the Board or its Hearings Division shall be authorized only if an executed attorney retainer agreement has been filed with the Administrative Law Judge or Board.
- (2) Attorney fees for an attorney representing a claimant shall be paid out of the claimant's compensation award except as provided by ORS 656.307, 656.382 and 656.386.
- (3) An approved fee awarded or allowed to an attorney representing a claimant shall be a lien upon the claimant's compensation.
- (4) In any case where an Administrative Law Judge or the Board is required to determine a reasonable attorney fee, the following factors shall be considered:
 - (a) The time devoted to the case;
 - (b) The complexity of the issue(s) involved;
 - (c) The value of the interest involved;
 - (d) The skill of the attorneys;
 - (e) The nature of the proceedings;
 - (f) The benefit secured for the represented party;
 - (g) The risk in a particular case that an attorney's efforts may go uncompensated; and
 - (h) The assertion of frivolous issues or defenses.
- (5) Percentage limitations on fees established by these rules apply to the amount of compensation paid the claimant exclusive of medical, hospital or other expenses of treatment.

OAR 438-015-0015 provides:

Charge for Legal Services Must Be Authorized

No charge for legal services for representation of claimants in connection with any matter concerning a claim before the Board or its Hearings Division under ORS Chapter 656 is valid unless the charge has been authorized in accordance with ORS 656.307, 656.382 to 656.390 or 656.593 or these rules.

OAR 438-015-0029 provides:

Request at Board Review Level for Assessed Fees

(1) On Board review of an Administrative Law Judge's order, to assist the Board in determining the amount of a reasonable assessed fee for services at the hearing level and/or for services on Board review, a claimant's attorney may file a request for a specific fee, which the attorney believes to be reasonable.

(2) The request shall be considered by the Board if:

(a) The request is filed within 14 days from the date of filing of the last appellate brief under OAR 438-011-0020;

(b) The request describes in detail the manner in which the factors set forth in OAR 438-015-0010(4) specifically apply to the case, as well as any other information deemed relevant; and

(c) A copy of the request is simultaneously served upon the other parties and their attorneys who appeared at hearing and on Board review in the manner provided in OAR 438-005-0046(2)(a) and proof of such service is provided in accordance with 438-005-0046(2)(b).

(3) A written response raising objection to the request shall be considered by the Board if:

(a) The response is filed within 14 days from the date of filing of claimant's attorney's request for a specific fee under subsection (2) (a) of this rule; and

(b) A copy of the request is simultaneously served upon the other parties and their attorneys who appeared at hearing and on Board

review in the manner provided in OAR 438-005-0046(2)(a) and proof of such service is provided in accordance with 438-005-0046(2)(b).

(4) A request or response that does not comply with this rule shall not be considered by the Board in determining the amount of a reasonable assessed fee.

Reasons for Amendments

As I discussed in my dissent in *Stephanie Thomas*, 62 Van Natta 2825, 2838-46 (2010), the procedures for obtaining and granting attorney fee awards in this forum are unprecedented. Unlike state and federal trial courts, appellate courts, and administrative agencies, we require no petition for attorney fees, statement of services or the opposing party's objection to a specific attorney fee request. Compare ORCP 68; UTCR Form 5.080; ORAP 13.10; OAR 115-035-0055; OAR 661-010-0075(1)(e)(A). Nor do we require represented claimants to raise specifically an entitlement to attorney fees, *Frank P. Heaton*, 44 Van Natta 2104, 2106 (1992), or identify a statute authorizing attorney fees. *Ricardo C. Cortes*, 62 Van Natta 2330 (2010).

ORS Chapter 656 contains several attorney fee provisions. Because of the increasing procedural complexity of the workers' compensation cases, determining an entitlement to attorney fees has become a legally complicated task. In addition, because represented claimants are not required to request attorney fees and, if they file a specific request, are not required to provide any supporting documentation, we must search the, often voluminous, contested case records to find what services attorneys provided to the claimants on issues on which they are entitled to assessed attorney fees. We must then determine how these services should be valued under the factors of OAR 438-015-0010(4). As a result, we expend considerable skills and resources in determining the entitlement to, as well as the amount of, attorney fees.

I submit, however, that raising, preserving, and contesting attorney fee issues ought to rest with the parties. Logically, the party seeking an attorney fee award carries the burden to prove the entitlement to and reasonableness of a fee. The opposing party then has the burden to provide specific objections.

Under the long-established judicial and administrative procedures, no award is made unless the prevailing party files an adequate petition for attorney fees and supporting documentation. Consistent with that practice and procedure, I propose that our rules be amended to require, as a prerequisite of an assessed attorney fee award, that the claimant's attorney adequately raise an entitlement to an attorney fee, including identifying a statute authorizing a fee and supporting case law, specify the amount sought and file a signed and detailed statement of services in support of the attorney fee request. *See* ORAP 13.10(5); *but see McCarthy v. Oregon Freeze Dry, Inc.*, 327 Or 84, 90-91, *adhered to on recon*, 327 Or 185 (1998) (the requirement in ORAP 13.10(5) of a statement of the "authority relied on" is not a jurisdictional prerequisite, but is a direction to the parties to assist the appellate court in determining whether the court has authority to award attorney fees on appeal). Furthermore, I propose that the opposing objecting party be required to file timely specific objections. *See* ORCP 68C(4)(b) (objections shall be specific and may be founded in law or in fact); *Kahn v. Canfield*, 330 Or 10, 13014 (2000) (where a party files a petition that comports with ORAP 13.10(5), the court's inquiry generally will be limited to the objections to the petition); *Depoe Bay Fish Co. v. Coon*, 113 Or App 249 (1992) (in reliance on ORAP 13.10(6), absent a timely filed objection, the court granted the attorney fee award in the amount requested). In addition, I suggest that we consider, at our discretion, the most current Oregon State Bar Economic Survey as a starting point in determining the reasonableness of an attorney's hourly rate.¹

Consistent with this model, if the claimant's attorney prevails but fails to request properly an attorney fee, we would not reach any attorney fee issues and the

¹ Many state and all federal jurisdictions, employ a mathematical lodestar method in calculating reasonable attorney fees. The lodestar method multiplies the reasonable number of hours by the attorney's reasonable hourly rate as a starting point in determining a reasonable attorney fee. Depending on the circumstances of each case, the lodestar amount may be adjusted upwards or downwards. *See, e.g., Ferland v. Conrad Credit Corp.*, 244 F.3d 1145, 1149 n. 4 (9th Cir. 2001). *See also Randall Paul Sutton: The Lodestar Method; An Objective Solution to the Unreasonable Way in which Reasonable Fees Are Calculated in Oregon*, 29 Willamette L. Rev. 801 (1993) (criticizing the "factor method" as arbitrary and advocating the use of the objective lodestar method). Recently, Oregon courts have approved a similar method in statutory-fee determinations. *Strawn v. Farmers Ins. Co. of Oregon*, 233 Or App 401 (2010) (in determining a "reasonable amount" of attorney fees authorized by ORS 742.061(1) and applying the factors set forth in ORS 20.075(1), the court considered reasonableness of total hours spent and standard billing rates, and approved a multiplier to enhance the lodestar amounts); *Dockins v. State Farm Ins. Co.*, 330 Or 1, 7 (2000).

attorney would go uncompensated. If there are no timely objections to a valid petition for attorney fees, we would allow attorney fees in the amount sought, except in cases where the fee is sought from an entity that is not a party to the proceeding or we have no authority to award a fee. *See* ORAP 13.10; *cf.* ORCP 68(C)(4)(d) (if no timely objections are filed, the court may award attorney fees). Failure to comply with the rules may be excused only for good cause.²

The changes I propose resemble the appellate courts' practice in determining statutory attorney fees. In workers' compensation appeals, the Oregon courts apply the same statutes that authorize attorney fees in our proceedings, namely ORS 656.382(2) and 656.386(1). Workers' compensation law practitioners routinely appeal contested case orders to the appellate courts and are familiar with the courts' rules and procedures for seeking and objecting to attorney fee awards. Likewise, many workers' compensation law practitioners represent claimants before the Social Security Administration, where the procedures for obtaining a fee award are based on similar requirements. *See e.g.*, 20 CFR 404.1725. Those who practice personal injury laws also are familiar with similar attorney fee provisions applicable in civil proceedings. ORCP 68.

With the proposed amendments, OAR 438-015-0010 would state:

[General Principles] **Attorney Fee Procedures**

(1) (a) Attorney fees for an attorney representing a claimant before the Board or its Hearings Division shall be authorized only if an executed attorney retainer agreement has been filed with the Administrative Law Judge or Board **and the party seeking attorney fees alleges the substantive right to recover such fees.**

(b) **The ALJ or the Board shall not authorize assessed attorney fees for an attorney representing a claimant before the Board or its Hearings Division unless a petition for attorney fees in accordance with section (4) of this rule has been filed with the Administrative Law Judge or Board.**

² My review of the history of our attorney fee rules reveal that similar procedures existed in the past. WCB Admin. Order 2-1989 (eff. April 1, 1989); WCB Admin. Order 5-1987 (eff. January 1, 1988).

(2) Attorney fees for an attorney representing a claimant shall be paid out of the claimant's compensation award except as provided by ORS 656.307, 656.382 and 656.386.

(3) An approved fee awarded or allowed to an attorney representing a claimant shall be a lien upon the claimant's compensation.

(4) (a) An attorney who is representing a claimant and seeking assessed attorney fees, shall serve and file a petition for attorney fees no later than:

- (A) Seven days after the closure of the hearing record; or**
- (B) Seven days after the date of the filing of the last appellate brief on Board review.**

(b) A signed petition shall state the total amount of attorney fees claimed and the authority relied on for claiming the fees. The petition shall be supported by a statement of facts showing the total amount of attorney time involved, the amount of time devoted to each task, the reasonableness of the amount of time claimed, the hourly rate at which time is claimed, and the reasonableness of the hourly rate.

(c) A petition shall address the factors identified in section (7) of this rule.

(5) (a) Objections to a petition shall be served and filed within seven days after the date the petition is filed. A reply, if any, shall be served and filed within seven days after the date of service of the objections.

(b) Objections shall be specific and may be founded in law or fact.

(c) In the absence of timely filed objections to a petition under this rule, the ALJ or the Board will allow attorney fees in the amount sought in the petition, except in cases in which:

(A) The entity from whom fees are sought was not a party to the proceeding; or

(B) The ALJ or the Board is without authority to award fees.

(6) Notwithstanding subsections (1)(b) and (5)(c), if the ALJ's or the Board's order has not been appealed, relief from failure to file a petition for attorney fees or objections to a petition in accordance with these rules may be granted if good cause for failing to comply with these rules is established.

(7) In any case where an Administrative Law Judge or the Board is required to determine a reasonable attorney fee, the following factors shall be considered:

- (a) The time devoted to the case;
 - (b) The complexity of the issue(s) involved;
 - (c) The value of the interest involved;
 - (d) The skill of the attorneys;
 - (e) The nature of the proceedings;
 - (f) The benefit secured for the represented party;
 - (g) The risk in a particular case that an attorney's efforts may go uncompensated; and
 - (h) The assertion of frivolous issues or defenses.
- (8) Percentage limitations on fees established by these rules apply to the amount of compensation paid the claimant exclusive of medical, hospital or other expenses of treatment.**

OAR 438-015-0029 would be deleted.

The proposed changes are largely based upon ORAP 13.10, with some provisions drawn from ORCP 68 and the 1987 and 1989 versions of Division 15 rules.³

While some may argue that increased litigation will result from these proposed changes, any increase most likely would be temporary, until practitioners get accustomed to the new rules. Attorney fee awards in workers' compensation proceedings have increased considerably. Because large amounts are at stake, I submit that it is necessary to revise the attorney fee rules and practices to reflect

³ The relevant parts of these rules are attached for your convenience. Please note that bracketed provisions were deleted and underlined provisions were added in the 1989 version of the rule.

the new reality, assist us in discharging our statutory duties, and promote substantial justice. *See* OAR 438-005-0035 (the overriding principle in adjudication of controversies in this forum is substantial justice).

I look forward to discussing the proposed changes.

West's Oregon Revised Statutes Annotated

Oregon Rules of Appellate Procedure

13. Costs and Disbursements, Attorney Fees, and Damages

OR Rules App. Proc., ORAP 13.10

RULE 13.10 Petition for attorney fees ¹

Currentness

(1) This rule governs the procedure for petitioning for attorney fees in all cases except the recovery of compensation and expenses of court-appointed counsel payable from the Public Defense Services Account.

(2) A petition for attorney fees shall be served and filed within 21 days after the date of decision. The filing of a petition for review or a petition for reconsideration does not suspend the time for filing the petition for attorney fees.

(3) When a party prevails on appeal or on review and the case is remanded for further proceedings in which the party who ultimately will prevail remains to be determined, the prevailing party on appeal or review may petition the appellate court for attorney fees within the time and in the manner provided in this rule. ² If the appellate court determines an amount of attorney fees under this subsection, it may condition the actual award of attorney fees on the ultimate outcome of the case. In that circumstance, an award of attorney fees shall not be included in the appellate judgment, but shall be awarded by the court or tribunal on remand in favor of the prevailing party on appeal or review, if that party also prevails on remand, and shall be awarded against the party designated on appeal or review as the party liable for attorney fees.

(4) When the Supreme Court denies a petition for review, a petition for attorney fees for preparing the petition for review or a response to the petition for review shall be filed in the Supreme Court.

(5)(a) A petition shall state the total amount of attorney fees claimed and the authority relied on for claiming the fees. The petition shall be supported by a statement of facts showing the total amount of attorney time involved, the amount of time devoted to each task, the reasonableness of the amount of time claimed, the hourly rate at which time is claimed, and the reasonableness of the hourly rate.

(b) If a petition requests attorney fees pursuant to a statute, the petition shall address any factors, including, as relevant, those factors identified in ORS 20.075(1) and (2) or ORS 20.105(1), that the court may consider in determining whether and to what extent to award attorney fees. ³

(6) Objections to a petition shall be served and filed within 14 days after the date the petition is filed. A reply, if any, shall be served and filed within 14 days after the date of service of the objections.

(7) A party to a proceeding under this rule may request findings regarding the facts and legal criteria that relate to any claim or objection concerning attorney fees. A party requesting findings must state in the caption of the petition, objection, or reply that the party is requesting findings pursuant to this rule. ⁴ A party's failure to request findings in a petition, objection, or reply in the form specified in this rule constitutes a waiver of any objection to the absence of findings to support the court's decision.

(8) The original of any petition, objections, or reply shall be filed with the Administrator, accompanied by five copies if filed in the Court of Appeals and eight copies if filed in the Supreme Court, together with proof of service on all other parties to the appeal, judicial review, or proceeding.

(9) In the absence of timely filed objections to a petition under this rule, the Supreme Court and the Court of Appeals, respectively, will allow attorney fees in the amount sought in the petition, except in cases in which:

- (a) The entity from whom fees are sought was not a party to the proceeding; or
- (b) The Supreme Court or the Court of Appeals is without authority to award fees.

1 See Appendix 13.10.

2 This subsection does not create a substantive right to attorney fees, but merely prescribes the procedure for claiming and determining attorney fees under the circumstances described in this subsection.

3 See, e.g., *Tyler v. Hartford Insurance Group*, 307 Or 603, 771 P2d 274 (1989), and *Matizza v. Foster*, 311 Or 1,803 P2d 723 (1990), with respect to ORS 20.105(1), and *McCarthy v. Oregon Freeze Dry, Inc.*, 327 Or 84, 957 P2d 1200 (1998), *adh'd to on recons*, 327 Or 185, 957 P2d 1200 (1998), with respect to ORS 20.075.

4 For example: "Appellant's Petition for Attorney Fees and Request for Findings Under ORAP 13.10(7)" or "Respondent's Objection to Petition for Attorney Fees and Request for Findings Under ORAP 13.10(7)."

Credits

[Adopted effective January 1, 1990; amended effective January 1, 1996; January 1, 1999. Temporarily amended July 30, 2001; amended effective January 1, 2003; January 1, 2005.]

Current with amendments received through 10/1/2010

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West's Oregon Revised Statutes Annotated

Oregon Rules of Appellate Procedure

Appendices (Refs & Annos)

OR Rules App. Proc., App. 13.10

APPENDIX 13.10. Illustration for ORAP 13.10

Currentness

IN THE SUPREME COURT (COURT OF APPEALS) OF THE STATE OF OREGON

.....)
Plaintiff-Appellant,)
(or Plaintiff-Respondent)) _____ County Circuit
v.) Court No. _____
.....)
Defendant-Respondent.)
(or Defendant-Appellant)) (SC or CA) _____

PETITION FOR ATTORNEY FEES

Appellant (Respondent) moves this court for an order allowing appellant (respondent) a reasonable sum as attorney fees in the amount of \$ ____.

This petition is based on [cite authority] and on the following facts.

[Set out facts showing the attorney time involved, the time devoted to each task, the reasonableness of the amount of time claimed, the hourly rate at which time is claimed, and the reasonableness of the hourly rate.]

[If the petition is based on a contractual provision, that provision should be set out verbatim in the petition.]

.....
Attorney for Petitioner
[Sign and print/type name,
bar number, address, and
telephone number]

Credits

[Adopted effective January 1, 1990.]

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West's Oregon Revised Statutes Annotated

Title 1. Courts of Record; Court Officers; Juries

Oregon Rules of Civil Procedure

OR Rules Civ. Proc., ORCP 68

ORCP 68. Allowance and taxation of attorney fees and costs and disbursements

Currentness

A Definitions. As used in this rule:

A(1) Attorney fees. "Attorney fees" are the reasonable value of legal services related to the prosecution or defense of an action.

A(2) Costs and disbursements. "Costs and disbursements" are reasonable and necessary expenses incurred in the prosecution or defense of an action other than for legal services, and include the fees of officers and witnesses; the expense of publication of summonses or notices, and the postage where the same are served by mail; any fee charged by the Department of Transportation for providing address information concerning a party served with summons pursuant to subparagraph D(4)(a)(i) of Rule 7; the compensation of referees; the expense of copying of any public record, book, or document admitted into evidence at trial; recordation of any document where recordation is required to give notice of the creation, modification or termination of an interest in real property; a reasonable sum paid a person for executing any bond, recognizance, undertaking, stipulation, or other obligation therein; and any other expense specifically allowed by agreement, by these rules, or by other rule or statute. The court, acting in its sole discretion, may allow as costs reasonable expenses incurred by a party for interpreter services. The expense of taking depositions shall not be allowed, even though the depositions are used at trial, except as otherwise provided by rule or statute.

B Allowance of costs and disbursements. In any action, costs and disbursements shall be allowed to the prevailing party, unless these rules or other rule or statute direct that in the particular case costs and disbursements shall not be allowed to the prevailing party or shall be allowed to some other party, or unless the court otherwise directs. If, under a special provision of these rules or any other rule or statute, a party has a right to recover costs, such party shall also have a right to recover disbursements.

C Award of and entry of judgment for attorney fees and costs and disbursements.

C(1) Application of this section to award of attorney fees. Notwithstanding Rule 1 A and the procedure provided in any rule or statute permitting recovery of attorney fees in a particular case, this section governs the pleading, proof and award of attorney fees in all cases, regardless of the source of the right to recovery of such fees, except when:

C(1)(a) Such items are claimed as damages arising prior to the action; or

C(1)(b) Such items are granted by order, rather than entered as part of a judgment.

C(2)(a) Alleging right to attorney fees. A party seeking attorney fees shall allege the facts, statute or rule that provides a basis for the award of such fees in a pleading filed by that party. Attorney fees may be sought before the substantive right to recover such fees accrues. No attorney fees shall be awarded unless a right to recover such fee is alleged as provided in this subsection.

C(2)(b) If a party does not file a pleading and seeks judgment or dismissal by motion, a right to attorney fees shall be alleged in such motion, in similar form to the allegations required in a pleading.

C(2)(c) A party shall not be required to allege a right to a specific amount of attorney fees. An allegation that a party is entitled to "reasonable attorney fees" is sufficient.

C(2)(d) Any allegation of a right to attorney fees in a pleading or motion shall be deemed denied and no responsive pleading shall be necessary. The opposing party may make a motion to strike the allegation or to make the allegation more definite and certain. Any objections to the form or specificity of allegation of the facts, statute or rule that provides a basis for the award of fees shall be waived if not alleged prior to trial or hearing.

C(3) **Proof.** The items of attorney fees and costs and disbursements shall be submitted in the manner provided by subsection (4) of this section, without proof being offered during the trial.

C(4) **Procedure for seeking attorney fees or costs and disbursements.** The procedure for seeking attorney fees or costs and disbursements shall be as follows:

C(4)(a) **Filing and serving statement of attorney fees and costs and disbursements.** A party seeking attorney fees or costs and disbursements shall, not later than 14 days after entry of judgment pursuant to Rule 67:

C(4)(a)(i) File with the court a signed and detailed statement of the amount of attorney fees or costs and disbursements, together with proof of service, if any, in accordance with Rule 9 C; and

C(4)(a)(ii) Serve, in accordance with Rule 9 B, a copy of the statement on all parties who are not in default for failure to appear.

C(4)(b) **Objections.** A party may object to a statement seeking attorney fees or costs and disbursements or any part thereof by written objections to the statement. The objections shall be served within 14 days after service on the objecting party of a copy of the statement. The objections shall be specific and may be founded in law or in fact and shall be deemed controverted without further pleading. Statements and objections may be amended in accordance with Rule 23.

C(4)(c) **Hearing on objections.**

C(4)(c)(i) If objections are filed in accordance with paragraph C(4)(b) of this rule, the court, without a jury, shall hear and determine all issues of law and fact raised by the statement of attorney fees or costs and disbursements and by the objections. The parties shall be given a reasonable opportunity to present affidavits, declarations and other evidence relevant to any factual issue, including any factors that ORS 20.075 or any other statute or rule requires or permits the court to consider in awarding or denying attorney fees or costs and disbursements.

C(4)(c)(ii) The court shall deny or award in whole or in part the amounts sought as attorney fees or costs and disbursements.

C(4)(d) **No timely objections.** If objections are not timely filed the court may award attorney fees or costs and disbursements sought in the statement.

C(4)(e) **Findings and conclusions.** On the request of a party, the court shall make special findings of fact and state its conclusions of law on the record regarding the issues material to the award or denial of attorney fees. A party shall make a request pursuant to this paragraph by including a request for findings and conclusions in the title of the statement of attorney fees or costs and disbursements or objections filed pursuant to paragraph (a) or (b) of this subsection. In the absence of a request under this paragraph, the court may make either general or special findings of fact and may state its conclusions of law regarding attorney fees.

C(5) **Judgment concerning attorney fees or costs and disbursements.**

C(5)(a) **As part of judgment.** If all issues regarding attorney fees or costs and disbursements are decided before entry of a judgment pursuant to Rule 67, the court shall include any award or denial of attorney fees or costs and disbursements in that judgment.

C(5)(b) **By supplemental judgment; notice.** If any issue regarding attorney fees or costs and disbursements is not decided before entry of a general judgment, any award or denial of attorney fees or costs and disbursements shall be made by supplemental judgment.

C(6) **Avoidance of multiple collection of attorney fees and costs and disbursements.**

C(6)(a) **Separate judgments for separate claims.** If more than one judgment is entered in an action, the court shall take such steps as necessary to avoid the multiple taxation of the same attorney fees and costs and disbursements in those judgments.

C(6)(b) **Separate judgments for the same claim.** If more than one judgment is entered for the same claim (when separate actions are brought for the same claim against several parties who might have been joined as parties in the same action, or when pursuant to Rule 67 B separate limited judgments are entered against several parties for the same claim), attorney fees and costs and disbursements may be entered in each judgment as provided in this rule, but satisfaction of one judgment bars recovery of attorney fees or costs and disbursements included in all other judgments.

Credits

CCP Dec. 13, 1980; amended by Laws 1981, c. 898, § 7; § C amended by Laws 1983, c. 728, § 6; § A(2) amended by CCP Dec. 8, 1984; § A amended by Laws 1987, c. 586, § 43; § C(2) amended by CCP Dec. 10, 1988 and Jan. 6, 1989; § C amended by CCP Dec. 15, 1990; § A amended by CCP Dec. 12, 1992; § C amended by Laws 1993, c. 18, § 4; § A amended by CCP Dec. 14, 1996; § A amended by Laws 1997, c. 872, § 17; § C amended by CCP Dec. 12, 1998; § C amended by Laws 2003, c. 194, § 13; § C amended by Laws 2003, c. 576, § 262; § C(4)(c)(i) amended by CCP Jan. 1, 2004; Laws 2005, c. 22, § 4; Laws 2005, c. 568, § 31a.

Notes of Decisions (843)

Current through 2010 Special Session Laws. Revisions to Acts made by the Oregon Reviser were unavailable at the time of publication.

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West's Oregon Revised Statutes Annotated

Uniform Trial Court Rules

Chapter 5. Proceedings in Civil Cases (Refs & Annos)

Uniform Trial Court Rules, UTCR 5.080

UTCR 5.080 Statement for attorney fees, costs, and disbursements

Currentness

In civil cases, the statement for attorney fees, costs, and disbursements must be filed in substantially the form set forth in Form 5.080 in the UTCR Appendix of Forms.

Credits

[Amended effective August 1, 2008.]

Current with amendments received through 10/1/2010

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

_____)	
_____)	
Plaintiff,)	CIVIL CASE NO. _____
)	
v.)	STATEMENT FOR ATTORNEY
)	FEEs, COSTS, AND DISBURSEMENTS
_____)	FOR (PLAINTIFF/DEFENDANT)
_____)	
Defendant.)	

The undersigned attorney offers the following facts in support of an award of reasonable and necessary attorney fees, costs, and disbursements:

1. Plaintiff/Defendant is entitled to recover attorney fees, costs, and disbursements pursuant to the following facts, statute or rule:

2. Legal Fees including the number of hours and services provided in this matter by each attorney, clerk, and legal assistant and the hourly rates for each are set forth in detail in Exhibit 1. The total sum of these fees is \$ _____. Exhibit 1 is summarized as follows:

<u>Name</u>	<u>Position</u>	<u>Hourly Rate</u>	<u>Number of Hours</u>	<u>Fees</u>
-------------	-----------------	--------------------	----------------------------	-------------

3. The specific factors supporting an award and the amount of legal fees pursuant to ORS 20.075 or other statute or rule are set forth in Exhibit 2.

4. Litigation expenses billable directly to the client that are not overhead expenses already reflected in the hourly rate for legal services are set forth in detail in Exhibit 3. The total sum of these costs and disbursements is \$_____.

5. Costs and disbursements supported by ORCP 68 A(2) or other statute or rule, including the prevailing party fee, are set forth in detail in Exhibit 4. The total sum of these costs and disbursements is \$_____.

6. In anticipation of efforts that will be spent in postjudgment proceedings, plaintiff/defendant seeks the additional sum of \$_____ as explained more fully in Exhibit 5.

7. In summary, plaintiff/defendant is entitled to an award of reasonable and necessary attorney fees in the sum of \$_____, litigation expenses in the sum of \$_____, costs and disbursements in the sum of \$_____, and postjudgment work in the sum of \$_____.

I hereby declare that the above statement, including the information contained in the exhibits to this statement, is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury.

Date _____

Signature _____

OSB# (if applicable) _____

Type or print name _____

(5) "Client paid fee" means an attorney fee paid by an insurer or self-insured employer to its attorney.

(6) "Compensation" means all benefits, including medical services, provided for a compensable injury to a subject worker or the beneficiaries of a subject worker pursuant to ORS Chapter 656.

(7) "Costs" means money expended by an attorney for things and services reasonably necessary to pursue a matter on behalf of a party, but do not include fees paid to any attorney. Examples of costs referred to include, but are not limited to, costs of independent medical examinations, depositions, expert witness opinions, witness fees and mileage paid to execute a subpoena and costs associated with travel.

(8) "Court" means the Court of Appeals or Supreme Court of the State of Oregon.

438-15-010 GENERAL PRINCIPLES. (1987)

(1) Attorney fees for an attorney representing a claimant, insurer or self-insured employer shall be authorized only if an executed attorney retainer agreement has been filed with the referee, Board or court.

(2) Attorney fees for an attorney representing a claimant shall be paid out of the claimant's compensation award except as provided by ORS 656.307, 656.382 and 656.386.

(3) An approved fee awarded or allowed to an attorney representing a claimant shall be a lien upon the claimant's compensation.

(4) Payment of attorney fees for attorneys representing insurers and self-insured employers are the responsibility of the insurer or self-insured employer. Collection of any such fee shall be the responsibility of the attorney.

(5) Except as otherwise provided in these rules, an assessed fee or client paid fee shall not be authorized by a referee, the Board or a court unless the attorney requesting authorization for payment of the fee files a statement of services on a form prescribed by the Board, or complies with the rules of the court for matters involving authorization of attorney fees.

(6) In any case where a referee, the Board or a court is required to determine a reasonable attorney fee, the following factors shall be considered:

- (a) The time devoted to the case;
- (b) The complexity of the issue(s) involved;
- (c) The value of the interest involved;
- (d) The skill and standing of the attorneys;
- (e) The nature of the proceedings;
- (f) The result secured for the represented party;
- (g) The risk in a particular case that an attorney's efforts may go uncompensated; and
- (h) The assertion of frivolous issues or defenses.

(7) Percentage limitations on fees established by these rules apply to the amount of compensation paid the claimant exclusive of medical, hospital or other expenses of treatment.

438-15-015 CHARGE FOR LEGAL SERVICES MUST BE AUTHORIZED.

No charge for legal services for representation of claimants, insurers or self-insured employers in connection with any claim under ORS Chapter 656 is valid unless the charge has been authorized in accordance with ORS 656.307, 656.382 to 656.390 or 656.593 or these rules.

438-15-020 ATTORNEY FEES FOR ATTORNEYS REPRESENTING INSURERS AND SELF-INSURED EMPLOYERS.

(1) Attorneys representing insurers and self-insured employers are authorized to submit statements for legal services performed in connection with a claim under ORS Chapter 656 directly to the client without further authorization from a referee or the Board if no request for hearing has been filed and the total charges for legal services do not exceed \$500, exclusive of costs.

(2) In all other cases the referee, Board or court shall authorize a client-paid fee that is reasonable, considering the factors set forth in 438-15-010(6). The fee authorized shall not exceed that agreed to in the retainer agreement.

438-15-025 MAXIMUM ATTORNEY FEES OUT OF COMPENSATION.

Except in situations where a claimant's attorney fee is an assessed fee, in settlement of disputed claims and in cases under the third-party law, unless there is a finding in a particular case by a referee, the Board or a court that

performed by an attorney on behalf and at the request of a claimant, insurer or self-insured employer under ORS Chapter 656.

(5) "Client paid fee" means an attorney fee paid by an insurer or self-insured employer to its attorney.

(6) "Compensation" means all benefits, including medical services, provided for a compensable injury to a subject worker or the beneficiaries of a subject worker pursuant to ORS Chapter 656.

(7) "Costs" means money expended by an attorney for things and services reasonably necessary to pursue a matter on behalf of a party, but do not include fees paid to any attorney. Examples of costs referred to include, but are not limited to, costs of independent medical examinations, depositions, expert witness opinions, witness fees and mileage paid to execute a subpoena and costs associated with travel.

[(8) "Court" means the Court of Appeals or Supreme Court of the State of Oregon.]

438-15-010 GENERAL PRINCIPLES. (1989)

(1) Attorney fees for an attorney representing a claimant, insurer or self-insured employer shall be authorized only if an executed attorney retainer agreement has been filed with the referee [,] or Board [or court].

(2) Attorney fees for an attorney representing a claimant shall be paid out of the claimant's compensation award

except as provided by ORS 656.307, 656.382 and 656.386.

(3) An approved fee awarded or allowed to an attorney representing a claimant shall be a lien upon the claimant's compensation.

(4) Payment of attorney fees for attorneys representing insurers and self-insured employers are the responsibility of the insurer or self-insured employer. Collection of any such fee shall be the responsibility of the attorney.

(5) Except as otherwise provided in these rules, an assessed fee or client paid fee shall not be authorized by a referee [,] or the Board [or a court] unless the attorney requesting authorization for payment of the fee files a statement of services on a form prescribed by the Board [, or complies with the rules of the court for matters involving authorization of attorney fees].

(6) In any case where a referee [,] or the Board [or a court] is required to determine a reasonable attorney fee, the following factors shall be considered:

- (a) The time devoted to the case;
- (b) The complexity of the issue(s) involved;
- (c) The value of the interest involved;
- (d) The skill [and standing] of the attorneys;
- (e) The nature of the proceedings;
- (f) The [result] benefit secured for the

represented party;

- (g) The risk in a particular case that an attorney's efforts may go uncompensated; and
- (h) The assertion of frivolous issues or defenses.

(7) Percentage limitations on fees established by these rules apply to the amount of compensation paid the claimant exclusive of medical, hospital or other expenses of treatment.

438-15-015 CHARGE FOR LEGAL SERVICES MUST BE AUTHORIZED.

(1) No charge for legal services for representation of claimants, insurers or self-insured employers in connection with any claim under ORS Chapter 656 is valid unless the charge has been authorized in accordance with ORS 656.307, 656.382 to 656.390 or 656.593 or these rules.

(2) Attorneys representing insurers and self-insured employers are authorized to issue billings to clients on an interim basis consistent with the attorneys' usual billing practices whether or not there has been a conclusion of the proceeding(s) in which legal services have been provided. Attorneys who issue such billings shall make an accounting to the client(s) upon authorization of a client paid fee under 438-15-020 and shall make such monetary adjustments required to account for the difference, if any, between fees charged and fees authorized, except that fees authorized shall not exceed fees agreed to in the

retainer agreement.

438-15-020 ATTORNEY FEES FOR ATTORNEYS REPRESENTING
INSURERS AND SELF-INSURED EMPLOYERS.

(1) Attorneys representing insurers and self-insured employers are authorized to submit statements for legal services performed in connection with a claim under ORS Chapter 656 directly to the client without further authorization from a referee or the Board if no request for hearing has been filed or if the request for hearing has been dismissed and the total charges for legal services do not exceed \$500, exclusive of costs.

(2) In all other cases the referee[,] or Board [or court] shall authorize a client-paid fee that is reasonable, considering the factors set forth in section (6) of OAR 438-15-010[(6)]. [The fee authorized shall not exceed that agreed to in the retainer agreement.]

438-15-025 MAXIMUM ATTORNEY FEES OUT OF COMPENSATION.

Except in situations where a claimant's attorney fee is an assessed fee, in settlement of disputed claims and in cases under the third-party law, unless there is a finding in a particular case by a referee[,] or the Board [or a court] that extraordinary circumstances justify a higher fee, the established fees for attorneys representing claimants are as set forth in 438-15-040, 438-15-045, 438-15-055(1) [, 438-15-060(1)] and 438-15-080.

[438-15-027 TIME FOR FILING STATEMENT OF SERVICES.]

[(1) The following subsections apply only to assessed fees, client paid fees and extraordinary approved fees for services before the referee or the Board:]

[(a) A statement of services for a proceeding before a referee shall be filed within 15 days of the conclusion of the proceeding.]

[(b) A request for authorization of an attorney fee under 438-15-030 shall be filed within 30 days after the legal services are concluded.]

[(c) A statement of services for proceedings before the Board in own motion matters shall be filed within 30 days after mailing of the own motion order.]

[(d) A statement of services for proceedings on Board review of a referee's order shall be filed within 15 days after the filing of the last brief to the Board.]

[(2) A statement of services for proceedings before a court shall be filed in accordance with the rules of the court.]

438-15-028 TIME FOR REQUESTING FEE AUTHORIZATION OR

AWARD.

(1) Requests for approval or award of assessed and client paid fees shall be submitted to the referee or Board as follows:

(a) A statement of services for a hearing or

other proceeding on the record before a referee shall be filed within 15 days of the closing of the evidentiary record;

(b) A statement of services for a fee in connection with a settled case shall be submitted with the fully executed settlement documents;

(c) A statement of services for Board review of a referee's order shall be submitted to the Board within 15 days of the filing, or expiration of the time for filing, of the last brief;

(d) A statement of services for fees in connection with a Board's own motion matter shall be submitted within 30 days of the mailing date of the Board's order; and

(e) A request for authorization of an attorney fee under OAR 438-15-030 shall be submitted within 30 days after legal services are concluded.

(2) Statements of services not submitted within the times provided in the preceding section shall not be considered for approval unless:

(a) The referee or the Board retain jurisdiction to authorize an attorney fee, and

(b) The statement of services is accompanied by a written explanation setting forth good cause for failure to comply with the preceding section together with an original and six copies of a proposed order authorizing the attorney fee

requested.

(3) Calculation of the time for issuance of orders of referees pursuant to ORS 656.289(1) and orders of the Board pursuant to ORS 656.295(6) shall not be tolled or extended by application of this rule.

438-15-030 ATTORNEY FEES WHEN THERE IS NO HEARING.

(1) If an attorney is instrumental in obtaining compensation for a claimant without a hearing before a referee, a reasonable attorney fee may be approved or assessed. The amount of the fee shall be determined [in a summary proceeding] by a referee or by agreement of the parties.

(2) A referee may approve a reasonable attorney fee for a claimant's attorney when a claim is submitted to Evaluation for redetermination of disability by agreement of the parties. Unless the parties agree otherwise, the fee shall be paid out of any increased compensation awarded to the claimant by Evaluation.

(3) If a client paid fee is not authorized under 438-15-020(1), the referee may authorize a client paid fee in accordance with 438-15-010(5) and (6).

438-15-035 ATTORNEY FEES WHEN A CLAIMANT REQUESTS A HEARING ON A DENIED CLAIM.

If [, after a hearing requested by the claimant,] the referee orders the acceptance of a previously denied claim, the referee shall award a reasonable assessed fee. This rule applies

April 13, 2011

Helen M Hirschbiel
Oregon State Bar
16037 SW Upper Boones Ferry Rd
PO Box 231935
Tigard OR 97281

Re: OAR 438-015 proposed Rule changes

Dear Ms. Hirschbiel:

In response to your request for input from the Workers' Compensation Section Executive Committee (EC) regarding the proposed rule changes in OAR 438-015 the committee convened a special meeting and make the following recommendations.

These recommendations are numerated to coincide with the changes identified in the March 10, 2011 Memorandum authored by Roger Pearson and Debra Young attached.

1. The EC thought the proposed amendment offered by Board staff is unnecessary. The definition of denied claim "as claim for compensation on which an insurer or self-insured employer refuses to pay on the express ground that the injury or conditions for which compensation is claimed is not compensable or otherwise does not give rise to an entitlement to any compensation" is substantively correct and consistent with current practice.

Regarding the definition of expenses and costs, a majority of the EC felt no new rule was needed. The statute can be clarified, if necessary, through Board decisions and appeals.

2.
2 & 16 General Principles; Attorney Fee Procedures

These are discussed together as they both concern the same rule provision regarding fee petitions.

No EC member advocated in favor of either proposal. The current system allows, but does not require, attorneys to submit fee petitions. EC members who represent injured workers thought this system worked reasonably well. EC members were concerned a rule requiring submission of fee petitions in every claim would require all parties –attorneys representing workers, defense attorneys, and administrative law judges – to devote a significant amount of time to litigation regarding fees. And were concerned that the time spent in pursuing a

claim would become the dominant consideration in the assessment of fee when time is only one factor that should be considered when determining a reasonable fee. Administrative Law Judges have a significant work load now, and requiring them to consider merits of individual fee petitions in every claim would increase their work load and increase the time required to complete a decision.

Additionally, attorneys representing workers might be unwilling to accept clients who live far away from their office because of a risk their travel time would not be compensated. This could have implications with respect to access to justice.

As well, defense counsel noted that a response to a fee petition would increase costs to their clients and increase litigation. The EC recommended no change in the current rules.

3. EC recommended adoption of the proposed changes as provided in the March 10, 2011 Memorandum.
4. EC recommended adoption of the proposed changes as provided in the March 10, 2011 Memorandum.
5. EC recommended adoption of the proposed changes as provided in the March 10, 2011 Memorandum.
6. EC recommended adoption of the proposed changes as written provided in the March 10, 2011 Memorandum.
7. EC recommended that all requests for fees should be served on attorneys, rather than on parties. (If a worker is not represented by an attorney, there will not be a fee.)

Time of service (Section 2(c)) should incorporate “no later than 14 days” rather than “within 14 days.”

EC did not recommend the proposal to substitute “may” for “shall” regarding consideration of fee petitions and thereby allow the Board to consider requests or responses that do not comply with the rule. Rather, EC recommends the following language:

“(4) A request or response that does not comply with this rule shall not be considered by the Board in determining the amount of a reasonable assessed fee absent extraordinary circumstances.”

8. EC concurs with Board Staff that this amendment is unnecessary.
9. EC recommended adoption of the proposed changes as provided in the March 10, 2011 Memorandum.

10. EC recommended adoption of the proposed changes as provided in the March 10, 2011 Memorandum.
11. EC recommended no change to the existing rule noting the statute uses the term “permanent partial disability,” which includes impairment and disability awards.
12. EC recommended adoption of the proposed changes as provided in the March 10, 2011 Memorandum.
13. EC recommended adoption of the proposed changes as provided in the March 10, 2011 Memorandum.
14. EC recommended adoption of the proposed changes as provided in the March 10, 2011 Memorandum.
15. EC recommended adoption of the proposed changes as provided in the March 10, 2011 Memorandum.

I hope this information is helpful in the Board of Governor’s consideration of the proposed rule changes. If you have any questions or concerns please do not hesitate to contact me.

Very truly yours,

Charles R. Mundorff
2011 Chair
Oregon State Bar
Workers’ Compensation Section

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: April 22, 2011
Memo Date: April 7, 2011
From: Tamara Kessler, Oregon New Lawyers Division Chair
Re: ONLD Report

The ONLD Executive Committee met twice since the last BOG meeting. In February the Executive Committee voted to participate in the MBA's golf event for law students scheduled for May 23. This event provides the ONLD an additional opportunity to work with law students while continuing to build its relationship with the MBA. While on the topic of law students, the Law School Outreach subcommittee held their first set of law school events at each of the law schools. Overall roughly 125 students participated in the panel presentation and networking events.

During the March meeting two new members were appointed to the Executive Committee, Mario Conte of Eugene and Ryan Hilts of Lake Oswego. The Executive Committee also approved the co-sponsorship of a social for minority bar associations scheduled for June 2.

After-work social events have been expanded this year with scheduled events on April 21 in Salem and Bend. The Portland socials have continued to be well attended with more than 100 members attending the February and March events. The after-work socials provide an opportunity for ONLD Executive Committee members to promote its activities and encourage ONLD member in that region to volunteer in subcommittees. In addition, the social events provide an opportunity for new lawyers in that region to network and socialized in a manner that may not otherwise be available.

The CLE Subcommittee has been busy this year having already held four CLE programs resulting in more than 100 attendees. Upcoming CLE programs in Clackamas, Deschutes, Jackson, and Lane Counties join the monthly lunchtime programs held at the Multnomah County Courthouse. Topics for these programs not only meet the mandatory reporting requirements for New Lawyer Ethics and Child Abuse Reporting, the ONLD will also highlight tips for new lawyers on starting their own practice and representation of domestic violence survivors.

The ONLD's special project task force has made significant strides in their pursuit to secure various volunteer opportunities for new lawyers to contribute. The special project is called the ONLD's Practical Skills Through Public Service Program. The list of organizations now includes Legal Aid Services of Oregon, Juvenile Rights Project, City Attorney's Office of Beaverton, Metropolitan Public Defender, Multnomah Defense Inc., and St. Andrews Legal Clinic. An application for new lawyer volunteers is in development and should be distributed by mid April.

The Executive Committee would like to thank the Member Services Committee for encouraging us to review the division's purpose and goals. A task force was created in February to evaluate the ONLD's programs and ensure they are in line with the memberships current needs. The Executive Committee will consider the task force's recommendations in April and I will report back to the Member Services Committee during the April 22 meeting.

2011 ONLD Master Calendar

Last updated March 28, 2011

Date	Time	Event	Location
April 21	Noon	Creating Your Brand	Multnomah Co. Courthouse
April 21	5:00 p.m.	After-work social	900 Wall, Bend
April 21	5:00 p.m.	After-work social	Ram Restaurant, Salem
April 22-23	9:00 a.m.	BOG Board Meeting	OSB, Tigard
May 6	1:30 p.m.	Swearing In Ceremony & Reception	Willamette University, Salem
May 12-14	All Day	ABA Spring Conference	Las Vegas, NV
May 14	TBD	Essay Contest Judging	OSB, Tigard
May 19	Noon	Child Abuse Reporting	Multnomah Co. Courthouse
May 19	11:00 a.m.	Domestic Violence CLE	Rosie Bareis Campus, Bend
May 20	9:00 a.m.	BOG Committee Meeting	OSB, Tigard
May 20	5:30 p.m.	CLE Program & Social	Greg's Grill, Bend
May 21	6:30 a.m.	Pole, Pedal, Paddle	Mt. Bachelor Monument, Bend
May 22	9:00 a.m.	Executive Committee Meeting	Sunriver
May 23	1:00 p.m.	MBA Golf Event (ONLD table)	Langdon Farms, Aurora
May 25	5:00 p.m.	After-work social	TBD, Portland
June 2	4:30 p.m.	MBA Joint Social	Ater Wynne LLP
June 11	9:00 a.m.	Executive Committee Meeting	OSB, Tigard
June 16	Noon	Ethics CLE	Multnomah Co. Courthouse
June 16	Noon	Solo practice CLE	CCC, Oregon City
June 24-25	9:00 a.m.	BOG Board Meeting	OSB, Tigard
June 29	5:00 p.m.	After-work social	TBD, Portland
July 21	Noon	Jury selection CLE	Multnomah Co. Courthouse
July 26-27	All Day	Bar Exam	Portland
July 27	5:00 p.m.	After-work social	TBD, Portland

Bold indicates an update since the last version

July 29	9:00 a.m.	BOG Committee Meeting	OSB, Tigard
August 4-6	All Day	ABA Annual Meeting	Toronto, Canada
August 5-7	All Day	OLIO Orientation	Hood River Inn, Hood River
August 5	7:00 p.m.	ONLD Social Event at OLIO	Hood River Inn, Hood River
August 6	9:00 a.m.	Executive Committee Meeting	Hood River Inn, Hood River
August 17-21	All Day	Lane County Fair	Lane County Fairgrounds
August 18	Noon	IP CLE	Multnomah Co. Courthouse
August 26-27	9:00 a.m.	BOG Board Meeting	Red Lion, Pendleton
August 31	5:00 p.m.	After-work social	TBD, Portland
September 15	Noon	IP law CLE	Multnomah Co. Courthouse
September 16	5:30 p.m.	CLE Program & Social	TBD, Medford
September 17	9:00 a.m.	Executive Committee Meeting	Rogue Regency, Medford
September 23	9:00 a.m.	BOG Board & Committee Meetings	OSB, Tigard
September 28	5:00 p.m.	After-work social	TBD, Portland
October 6	1:30 p.m.	Swearing In Ceremony & Reception	Willamette University, Salem
October 13-15	All Day	ABA Fall Conference	Seattle, WA
October 20	Noon	Family law CLE	Multnomah Co. Courthouse
October 22	9:00 a.m.	Executive Committee Meeting	OSB, Tigard
October 22	6:00 p.m.	BOWLIO	Pro 300 Lanes, SE Portland
October 25	2:00 p.m.	Pro Bono Fair	World Trade Center, Portland
October 26	5:00 p.m.	After-work social	TBD, Portland
October 28	TBD	HOD Annual Meeting	OSB, Tigard
October 29	All Day	Super Saturday	OSB, Tigard
November 4	5:30 p.m.	Annual Meeting	Hotel Monaco, Portland
November 17	Noon	Products liability CLE	Multnomah Co. Courthouse
November 17-19	All Day	BOG Retreat	The Allison, Newberg
December 15	Noon	Professionalism	Multnomah Co. Courthouse

Bold indicates an update since the last version

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: April 22, 2011
From: Sylvia E. Stevens, General Counsel
Re: Legal Ethics Committee Response to BOG Request for Ethics Opinion

Action Recommended

None, unless desired.

Background

At the February 2011 meeting, the BOG asked the Legal Ethics Committee to draft an opinion clarifying RPCs 1.2(c) and 3.4(c). After considering the BOG's request, the Committee declined to write an opinion, concluding that the desired result was not supported by the plain language of the rules.

The BOG's request followed the HOD's rejection of proposed amendments to those RPCs (albeit apparently for reasons unrelated to the rationale for the proposed changes).

RPC 1.2(c) provides that

"A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is illegal, or fraudulent, 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."

RPC 3.4(c) provides that a lawyer shall not:

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

OSB staff proposed an amendment to these rules based on concerns raised by Disciplinary Counsel's Office during prosecution of a lawyer accused of counseling his client to ignore a custody order. DCO also questioned whether a lawyer who ignores a court ruling is subject to discipline under the RPCs.

Former DR 7-106 prohibited a lawyer from advising a client to "disregard a standing rule of a tribunal or a ruling of a tribunal," but permitted a lawyer to make a good faith effort to test the validity of a rule or ruling. RPC 3.4 refers only to "rules" of a tribunal and prohibits only the lawyer's own disobedience, not advising a client to do so. RPC 1.2 prohibits counseling a client to engage in conducting known by the lawyer to be "illegal."

Several jurisdictions have held that "rules" of a tribunal encompasses "rulings" of a tribunal within the meaning of Rule 3.4, but we have no such authority in Oregon. The prohibition in Rule 1.2 against counseling a client in illegal conduct is unambiguous, but it is not clear that "illegal" encompasses a ruling of a court. The Oregon Supreme Court ruled in *In re Hockett*, 303 Or 150 (1987) that "illegal" (for purposes of *former* DR 7-102(A)(7)) was not limited

to criminal conduct, but included any violation of statute. No Oregon case law has been found that suggests the term “illegal” should apply to violations of court rulings.

After a lengthy discussion, the LEC concluded that it could not write an opinion suggesting that RPC 1.2 was broad enough to prohibit counseling a client against violating a court order. It was less concerned about interpreting the phrase “rules of a tribunal” in RPC 3.4 to include “rulings of a tribunal,” but questioned the need in view of existing authority interpreting ABA Model Rule 3.4 and identical rules in other jurisdictions.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: April 22, 2011
From: Sylvia E. Stevens, Executive Director
Re: CSF Claim No. 2011-01 JORDAN (Flores-Salazar) Request for Review

Action Recommended

Consider claimant Armando Flores-Salazar's request for BOG review of the Clients Security Fund Committee's denial of his claim for reimbursement.

Background

Committee Investigation, Review and Decision

At its meeting on March 19, 2011, the CSF Committee considered Mr. Flores-Salazar's claim for reimbursement from the Fund and ultimately voted to deny the claim. Mr. Flores-Salazar has made a timely request for BOG review of the Committee's decision.

Armando Flores-Salazar was convicted in Clackamas County in November 2006 on multiple felonies and was sentenced to 75 months in prison; he is currently serving his sentence. Shortly after the conviction, he retained Keith Jordan to handle the restitution hearing and an appeal of the conviction.

The written fee agreement recites a "base retainer fee" of \$15,000 that is characterized as a "non-refundable retainer" and a "fixed fee." The agreement explains that the "fee is not charged on an hourly basis and client will not be billed on the basis of hours spent...no matter how many or how few hours are spent." On the issue of refund, the agreement says that "no portion of [the fee] will be refunded...unless a reasonable dispute arises concerning money earned." In a paragraph headed "Discharge and Withdrawal," the agreement states that "[i]f Attorney withdraws without cause without completing Attorney's duties under this Contract, then, and only then may Client be entitled to a refund of some or all of the retainer, depending on the facts and circumstances." "Cause" is defined in that same paragraph to include "any fact or circumstance that would render Attorney's continuing representation unlawful or unethical."

After being hired, Jordan filed a timely notice of appeal in December 2006. In January 2007, he also a motion for release pending appeal and a motion regarding restitution in the Circuit Court. At a hearing in February 2007, the release motion was denied and the restitution motion was deemed moot because the Circuit Court no longer had jurisdiction. Filing of the trial transcript was delayed until May 2007 while Mr. Flores-Salazar's family put together \$2400 to pay the transcriptionist. Once the transcript was filed, the time for filing the appellant's opening brief began to run. Jordan obtained several extensions, but ultimately filed the opening brief on October 25, 2007. The brief ran some 50 pages and included six assignments of error and was, in the CSF investigator's view, thoroughly researched and competently prepared.

Jordan was suspended in Oregon effective January 2008 and did no further work on the matter. On Mr. Flores-Salazar's *pro se* motion, a public defender was appointed to complete the

appeal. The new lawyer obtained permission to file a supplemental brief addressing one of the six assignments error. The conviction was affirmed without opinion. Mr. Flores-Salazar made demand on Jordan for a refund of \$10,000 of the \$15,000 fee, but received no response.¹

In cases of this type, the CSF Rules provide:

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.

The CSF Committee found that 2.2.1 didn't apply. The Committee also found that the services provided to Mr. Flores-Salazar were more than "minimal or insignificant" within the meaning of Rule 2.2.3. There has also been no independent determination of the amount of the advance fee that should be refunded to Mr. Flores-Salazar. Finally, the Committee found that the case was concluded without additional cost to the client and that Mr. Flores-Salazar suffered no loss.

Request for BOG Review

In his request for review, Mr. Flores-Salazar reiterates Jordan's failure to finish the job he was hired to do. He also points out that the bar is investigating Jordan and alleges that "there has been plenty of dishonesty" to justify an award from the Fund.

Additional Information

The following additional information was gleaned from Disciplinary Counsel's investigation of Mr. Flores-Salazar's complaint about Jordan's conduct.

¹ Jordan wrote to Mr. Flores-Salazar in June 2008 informing Mr. Flores-Salazar that Jordan's license to practice in Oregon had been temporarily suspended for 270 days (the letter is dated June 2007, which appears to be a typo since it was clearly written after the opening brief had been filed). Jordan offered to complete the appeal after his license was reinstated. He also asked for an additional fee of \$15,000 because the case was significantly more complex than he had initially believed. No additional monies were paid by Mr. Flores-Salazar; Jordan's letter is apparently what precipitated Mr. Flores-Salazar asking the court to appoint counsel to complete the appeal.

Jordan is a member of both the Oregon and California bars. In December 2006, Jordan signed a stipulation with the California bar for a 2-year suspension, all but 9 months stayed, for misconduct in eight immigration matters. The stipulation was subject to the California Supreme Court's approval and did not become effective until June 28, 2007. The OSB was aware of the California proceedings. In October 2006 the OSB had asked Jordan for a status report on the California discipline and on June 21, 2007 informed Jordan that his ability to represent clients in Oregon would likely soon be compromised.

On July 17, 2007, DCO notified the Oregon Supreme Court about Jordan's suspension in California and conveyed the SPRB's recommendation that Jordan be suspended from practice in Oregon for 2 years. Jordan filed a memo in opposition, arguing that the Oregon suspension should be only for the 9-months that he was actually suspended from practice in California. On November 1, 2007, the Oregon Supreme Court issued an order immediately suspending Jordan for 9 months. Jordan asked for reconsideration, indicating that he needed time to wrap up client matters. With no opposition from the OSB, the court deferred Jordan's suspension for two months, making it effective January 1, 2008.²

Conclusion

An argument can be made that Jordan knew when he accepted Mr. Flores-Salazar's case in late 2006 that he would be unable to complete it before being subject to a reciprocal suspension of some kind in Oregon. Taking the case may thus be an act of dishonesty.

Jordan certainly knew it by mid-2007 that he would not be able to finish the representation. He filed Mr. Flores-Salazar's opening brief only a few days before the Oregon Supreme Court issued its order suspending him immediately. Despite having two months to wrap up his practice, Jordan did not notify Mr. Flores-Salazar of the situation or move to withdraw from the case.

There is no doubt that some portion of the \$15,000 fixed fee was not earned. There is, however, no independent evaluation of the amount of refund owed to Mr. Flores-Salazar. Moreover, under the CSF rules, reimbursement is not available if the claimant received the legal services without additional cost except in "extraordinary circumstances." If the BOG believes this case constitutes such circumstances, it can determine the amount of an award to the claimant or refer the matter back to the CSF Committee to do so.

Attachments: Flores-Salazar Request for Review
CSF Investigator's Report

² Jordan has never sought reinstatement in Oregon although he was reinstated in California in May 2008. In September 2009 Jordan signed a second stipulation for discipline in California, this time for a 3-year suspension with 1 year stayed. The OSB again notified the Oregon Supreme Court, which in October 2010 entered a reciprocal discipline order suspending Jordan for 2 years.

RECEIVED

Oregon State Bar
Sylvia Stevens, Executive Director
P.O. Box 231935
Tigard, OR 97281

APR 11 2011

4/6/11

RE: Request for review on claim No. 2011-01

Oregon State Bar
Executive Director

Dear Sirs,

Please be advised that by this letter I am requesting review of the denial of my claim. I believe the decision of the Client Security Fund is in error. As the file should clearly indicate, there has been plenty of dishonesty, and the Bar currently has an investigation pending. Most notably, he requested more money to finish a job that he was not even licensed to do, namely he did not have a Oregon Bar number at the time. As the file should also make clear, I am not asking that the entire retainer be refunded, I paid Mr. Jordan \$15,000 to file an appeal, including argument, and appeal the Oregon Supreme Court, I don't think there was any dispute about the scope of the work to be performed, the dispute was that he became disbarred, could not finish the work, and then asked for more money. How the Committee concluded that Mr. Jordan argued my case in front of the Oregon Court of Appeals, and then filed a petition for review to the Oregon Supreme Court, I do not know. Thank You for your courtesies in this matter.



Armando Flores-Salazar
Sid# 16425955
TRCI
82911 Beach Access Rd
Umatilla, OR 97882

**CLIENT SECURITY FUND
INVESTIGATION REPORT
(REVISED)**

From: Chris Eggert
Date: March 8, 2011
Re: Client Security Fund Claim No. 2011-01
Claimant: Armando Flores-Salazar
Attorney: Keith Jordan

Investigator's Recommendation

I recommend that the Committee deny in full the \$10,000 claim.

Statement of the Claim

Armando Flores-Salazar submitted a claim on December 29, 2010, for reimbursement in the amount of \$10,000. Mr. Flores-Salazar claims he paid \$15,000 to Mr. Jordan and asserts the work performed has no value beyond \$5,000.

Mr. Flores-Salazar was convicted following a four-day jury trial in Clackamas County Circuit Court on November 17, 2006, of multiple felonies, for which he was sentenced to a Measure 11 sentence of 75 months in prison. He is currently incarcerated and continues to serve his sentence.

Shortly after Mr. Flores-Salazar was convicted, attorney Keith Jordan was hired to represent him on appeal. Alicia Ramos, not the Claimant, signed a fee agreement for payment of a \$15,000 flat fee for Mr. Jordan to prepare the appeal and handle a restitution hearing. The fee agreement provided that the fee was earned in full and non-refundable, except if a fee dispute arose. Mr. Flores-Salazar reportedly paid the fee by withdrawing his 401(k) balance.

Mr. Jordan filed an appearance in Clackamas County Circuit Court, and filed a timely Notice of Appeal in December 2006. In January 2007, Mr. Jordan filed in the Circuit Court a motion for release pending appeal. A hearing was held on this motion on February 6, 2007; the motion was denied. OJIN records that a restitution hearing was not held because the Court of Appeals had jurisdiction over the case while the appeal was pending.

The transcript was not prepared until May 2007. The delay was due in part to the transcriptionist's fee of \$2,400, which was required by the transcriptionist to be paid in advance. Mr. Flores-Salazar's family paid the transcriptionist in Spring 2007, and the transcript was prepared and filed.

In a letter dated June 24, 2007, Mr. Jordan wrote to Mr. Flores-Salazar that he had been suspended from the practice of law for 270 days. He further informed Mr. Flores-Salazar that he could continue to work on the appeal after reinstatement, that the matter was considerably more complicated than had been anticipated at the time he was hired for the appeal, and that

an additional fee of \$15,000 would need to be paid for his work to continue. Mr. Jordan was not in fact suspended at this time, the additional \$15,000 was never paid, and Mr. Jordan went on to file a brief before the end of 2007.

Mr. Jordan prepared and filed an Appellant's Opening Brief. The brief was timely filed in late 2007 after several extensions of time were granted by the Court of Appeals. Mr. Jordan requested and received multiple extensions of time due to the lengthy preparation of the trial transcript and to his own lengthy brief preparation period. The brief Mr. Jordan filed ran some 50 pages and included six assignments of error. It is of some interest that the Department of Justice in its pleadings noted the brief rightfully should have been even longer, as Mr. Jordan used a 12-point typeface instead of the required 13-point typeface. The investigator reviewed the Appellant's Opening Brief in the Court of Appeals file. The brief appears to have been thoroughly researched and competently prepared.

Mr. Jordan was suspended in Oregon on January 1, 2008. He has not to this day been reinstated. Mr. Jordan does not appear to have performed any work on Mr. Flores-Salazar's behalf after the date of his suspension.

Mr. Flores-Salazar obtained the assistance of a publicly-appointed attorney from the Public Defense Services Commission's Appellate Division. The PDSC court-appointed attorney requested and received permission to file a supplemental brief. The Supplemental Brief contained additional briefing materials on only one of the six assignments of error. The original brief was not amended, withdrawn or disavowed in any way by the court-appointed appellate attorney.

The conviction was ultimately affirmed without opinion.

Mr. Flores-Salazar has not filed a civil complaint in any court against Mr. Jordan, and no judgment is forthcoming. There has been no criminal prosecution of Mr. Jordan in connection with this matter.

A PLF claim is pending against Mr. Jordan in connection with this matter.

Mr. Jordan's file and time records, if any exist, are not available for review.

Investigator's Actions

The investigator contacted Mr. Linn Davis in the Oregon State Bar Disciplinary Counsel's Office for information about Mr. Jordan and this claim. Mr. Davis advised the investigator that there were no time records available, Mr. Jordan's file would not likely be available, and that Mr. Jordan would likely not be available for interview. Mr. Davis sent the investigator a timeline of Mr. Jordan's various suspensions.

The investigator obtained an OJIN print of the Clackamas County Circuit Court case in which Mr. Flores-Salazar was convicted, which was the subject of the appeal Mr. Jordan was hired to handle.

The investigator conducted a telephone interview with Mr. Flores-Salazar, who is incarcerated.

The investigator reviewed the appellate file at the Oregon Court of Appeals.

Following the initial write-up of this report, Mr. Flores-Salazar provided the investigator with a copy of the fee agreement, and a letter from Mr. Jordan dated June 24, 2007.

Findings and Conclusions

The claimant had an attorney-client relationship with Mr. Jordan. Mr. Jordan was an active member of the bar at the time of the representation, and was working in Oregon. Mr. Jordan ceased providing services after one year to the claimant, when he started a suspension on January 1, 2008.

There was a contract for Mr. Jordan for legal services, but it is not clear that the claimant was a contracting party or, aside from his verbal statement to the investigator, the paying party. The contract was for representation on appeal of Mr. Flores-Salazar's criminal conviction and related actions in Circuit Court. The fee for Mr. Jordan's services was \$15,000, which appears to have been paid in full. The fee agreement provided for the fee to have been "earned upon receipt", no portion of it was likely ever deposited to a lawyer trust account, and while termed "nonrefundable" the fee agreement provided for the possibility of a refund or partial refund in the event of a fee dispute.

It cannot be said that a loss was suffered by the claimant, or that any loss was the result of the lawyer's dishonest conduct. Mr. Jordan appears to have performed substantial services for Mr. Flores-Salazar, in both of the courts he was hired to appear in connection with this matter. While a subsequent attorney was granted the opportunity to supplement a portion of Mr. Jordan's work, there was no amendment, withdrawal or abandonment of Mr. Jordan's work. The value of Mr. Jordan's work cannot be accurately determined without time records, but it certainly was of more than minimal value.

There was no criminal prosecution of Mr. Jordan, there is no civil judgment against Mr. Jordan in connection with this claim, and Mr. Jordan's suspension was not related to this matter. A disciplinary complaint against Mr. Jordan in connection with this claim is pending. The claim is for more than \$5,000.

There is no evidence of a bond, surety or insurance.

Claimant sent Mr. Jordan a demand letter, and no reply was received.

The claim was filed more than two years after discovery of the claimed loss.



Jordan Law Firm

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ATTORNEY-CLIENT CONTRACT Fixed Fee Felony-Criminal-State Superior/Municipal Court

This ATTORNEY-CLIENT FEE CONTRACT ("Contract") is entered into by and between "Client" identified below and the JORDAN LAW FIRM ("Attorney"). If this agreement is signed by someone other than the client, the signer represents that client has given authority to sign this agreement on the client's behalf. Client will be represented by Attorney in the matter of People v.

ARMANDO FERRAS SALAZAR; Docket Number(s):
CR06-00856 Appeal & Reconstitution Hearing

1. **CONDITIONS.** This contract will not take effect, and Attorney will have no obligation to provide legal services, until Client returns a signed copy of this Contract and pays the fixed fee called for in this agreement.
2. **SCOPE AND DUTIES.** Client hires Attorney to provide legal services reasonably required to represent Client for all matters in the State Superior and Municipal Court including investigation, research, pre-trial hearings and pre-trial motions. Should the matter be dismissed or concluded in the State Court without a trial there will be no additional Attorney fees. However, if the matter is not concluded before trial, Client will pay to Attorney, well before the start of a misdemeanor trial, or immediately after a preliminary hearing on a felony, a fee of \$ 114 per day in trial. Representation of Client at trial will not occur until payment of the above trial fee. Further, it is understood that our fees in the State Court **do not include** re-hearings or representation on matters dismissed, writs or appeals except on the payment of additional Attorney fees which will be negotiated at that time. Client hires Attorney to handle this matter, and not any specific individual within Attorney. Attorney shall take all reasonable steps to keep Client informed of progress and to respond to Client's inquiries. Client agrees to appear in court at all times requested by the Court or Attorney. Client shall be truthful with Attorney, cooperate with Attorney, keep Attorney informed of developments, abide by this Contract, pay Attorney's bills on time and keep Attorney advised of Client's address, home/work telephone number, pager number and whereabouts.
3. **BASE RETAINER FEE.** Client agrees to pay a non-refundable retainer of \$ 15,000 for Attorney's services under this Contract. The retainer is due upon signing this agreement and Attorney will not make any appearance for Client in Court until the retainer is paid in full. Attorney shall have no obligation whatsoever to provide services to Client until the fixed fee is paid in full. Except as provided elsewhere in this agreement, the retainer will be earned in full and **no portion of it will be refunded** once any professional services have been performed, unless a reasonable dispute arises concerning money earned. Client agrees to resolve any fee dispute through binding arbitration with either the local Bar Association in the County where this case was filed, or the State Bar of California Mandatory Fee Arbitration Program.

Our retainer fee is not charged on an hourly basis and client will not be billed on the basis of hours spent on the case no matter how many or how few hours are spent. Client is paying a retainer for professional services rendered in accordance with the terms of this retainer agreement.

Z

4. **COSTS AND EXPENSES.** In addition to the fee for professional services, Client will pay for all costs and expenses incurred by Attorney, including:

1. **Miscellaneous Expenses** - Fees fixed by law, assessed by public agencies, or regularly established by Attorney, including, but not limited to, long distance telephone calls, Fax costs, computer research costs, messenger and other delivery fees, postage, in-office photocopying, other reproduction costs, travel costs, parking, mileage, clerical staff overtime, word processing charges, charges for computer time and other similar items investigation expenses, consultants' fees and other similar items.
2. **Out of Town Travel** - Client agree to pay attorney's transportation, meals, lodging and all other costs of any necessary out-of-town travel.
3. **Consultants and Investigators** - To aid in the preparation or presentation of client's case, it may become necessary to hire consultants or investigators. Attorney will not hire such persons unless client pays the fees and charges in advance. Attorney will select any consultants or investigators to be hired.

5. **DEPOSIT.** In addition to the retainer, Client shall deposit \$ 2 upon signing this retainer agreement. The sum shall be deposited in a trust account, to be used to pay for the costs and expenses. Client hereby authorizes Attorney to withdraw sums from the trust account to pay the costs Client incurs. Any unused deposit at the conclusion of Attorney's services will be refunded to the extent not applied to unpaid costs, expenses.

6. **INSURANCE.** Attorney maintains errors and omissions insurance coverage applicable to the services to be rendered.

7. **DISCHARGE AND WITHDRAWAL.** Client may discharge Attorney at any time. Attorney may withdraw upon Client's breach of this Contract. Cause includes client's refusal to cooperate with Attorney or to follow Attorney's advice on a material matter or any other fact or circumstance that would render Attorney's continuing representation unlawful or unethical. If Attorney withdraws without cause before completing Attorney's duties under this Contract, then, and only then may Client be entitled to a refund of some or all of the retainer, depending on the facts and circumstances. Further it is agreed that, should payments not be made upon billing or when agreed upon, Attorney reserves the right to withdraw from the case as the attorney of record without refunding any earned fees previously paid. Those paid fees will be payment for services already rendered, and Client will consent to such withdrawal at Attorney's request

8. **CONCLUSION OF SERVICES.** Notwithstanding any other provision in this agreement, when Attorney's services conclude, all unpaid monies shall immediately become due and payable. After Attorney's services conclude, Attorney will, upon Client's request, deliver Client's file to Client, along with any client funds or property in Attorney's possession.

Client hereby authorizes Attorney to destroy client's file not sooner than two (2) years from the date of conclusion of services. Attorney may destroy all material contained in file Attorney's file including but not limited to original documents, tape recordings, photographs, investigative reports, correspondence, computer data and/or compilations whether purchased by Attorney, provided by Client or generated by Attorney. **Client hereby relieves Attorney of any liability arising from the destruction of client's file.**

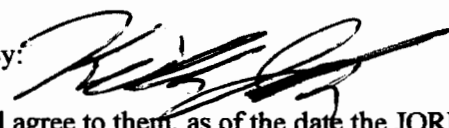
9. **DISCLAIMER OF GUARANTEE.** Nothing in this Contract and nothing in Attorney's statements to Client will be construed as a promise or guarantee about the outcome of Client's matter. **Attorney makes no such promises or guarantees. Attorney's comments about the outcome of Client's matter are**

expressions of opinion only.

10. **EFFECTIVE DATE.** This contract will take effect when Client has performed the conditions stated in paragraph 1, but its effective date will be retroactive to the date Attorney first provided service. Even if this Contract does not take effect, Client will be obligated to pay Attorney the reasonable value of any services Attorney may have performed for Client.

Date: 12/3/06

"Attorney"
JORDAN LAW FIRM

By: 

I have read and understood the foregoing terms and agree to them, as of the date the JORDAN LAW FIRM first provided legal services.

Date:

(Client's name - printed)

Address:

Telephone: _____

(Signature of client)

If this agreement is not being signed by the client, please complete the following:

Date: X 12-3-06

(Name of person signing for client - printed)

Address:

Telephone: _____

X Alicia Ramos C.
(Signature of person signing for client)

.....

Credit Card: _____

Name on card: _____

Expiration Date: _____

Amount Authorized: _____

Cardholder's Signature: _____

Date: _____



• Jordan Law Firm

Morgan Building
720 SW Washington
Suite 750
Portland, OR 97205
Tel: 503 279 2600
Fax: 503 279 2601

June 24, 2007

Armando Flores Salazar
16425955
TRCI
82911 Beach Access Road
Umatilla, OR 97882

Dear Armando:

I am writing to you to confirm the following outstanding issues we have. As you are already aware, **my license** to practice law in Oregon is **temporarily suspended**. It was suspended for 270 days.

As I have said many times over the phone, I promise that as soon as my privilege to practice law is reinstated, I will finish your case by going to the oral argument. I have always wanted to finish what I started and I will finish your case once I have my license back.

We have also discussed the fact that you don't have to wait for me. You can find another lawyer if you like. You can hire anyone; however, I understand that you would like me to be your lawyer and you want to wait for me. I appreciate your trust in me, and I am excited at the chance to finish your case and fight to win it.

Regarding your outstanding bill, when we first met I was lead to believe that your case was straight forward and simple. I was told that the issue concerned a Miranda violation. Once I had the 811 page transcript in hand, I advised you that this was going to be a difficult and complex appeal which meant that the original \$15,000 flat fee was insufficient.

In order to complete this Measure 11 direct appeal, and additional \$15,000 was and is due. The great majority of this outstanding fee is for work already completed in writing a 50-page brief. It would be best if you and/or your family could make a payment against the outstanding balance you owe me for services previously rendered.

I look forward to speaking with you soon. Stay safe, and don't give up the faith that you can win your appeal.

Sincerely,

Keith Jordan
Not an attorney

www.jordanlawfirm.net
keith.jordan@jordanlawfirm.net

REPORT from the

**OJD/OSB TASK FORCE on
FAMILY LAW FORMS and SERVICES**



Oregon  State Bar

February 2011

OJD/OSB Task Force on Family Law Forms and Services

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Rebecca Orf and David Factor, *State Court Administrator's Office*
Martha Strawn Morris, *Gateway Center for Domestic Violence Services*

EXECUTIVE SUMMARY

Oregonians now represent themselves in Family Court in 67%-86% of the cases filed. Given the huge demand for legal help in family law matters that nonprofit law firms and the private bar cannot meet, access to justice efforts the last 10 years have concentrated on the statewide availability of model family law forms and procedural assistance from courthouse facilitators. Now, budget cutbacks have led to reductions in existing court services and stalled planning efforts focused on self-representation. The next critical step is nevertheless clear: a transition from hard-copy, fill-in the-blank forms to a user-friendly, online document assembly service that guides litigants through branching questions to produce forms that can be printed out or filed electronically (a la TurboTax®). Redirecting litigants who can easily access, navigate, and file family law court forms online should produce operational savings and preserve diminishing court and community resources for the most needy family law litigants. The only question for justice planners is whether the Courts or Bar, each substantially invested in access to justice, will take the lead on this initiative.

A Task Force appointed jointly by the Oregon Supreme Court Chief Justice Paul DeMuniz and Oregon State Bar President Kathleen Evans recommends that the Oregon Judicial Department (OJD) take the lead. However, if OJD's eCourt sponsors cannot commit to beginning development of the forms by the end of 2011, the Oregon State Bar (OSB) should instead promptly assume the leadership role but collaborate with OJD on technology and practice requirements. Determining whether and what to charge litigants for use of the electronic interactive format is a key question and involves careful consideration of both what constitutes a sustainable business model with staff support and the situation of low-income litigants qualifying for court fee waivers and deferrals. Prefatory work can and should begin immediately on prioritizing which family forms should be available in the interactive format. The State Court Administrator's Family Law Advisory Committee should undertake this effort with the OSB Family Law Section and jointly work other stakeholders to produce recommendations regarding courthouse facilitation delivery models that maximize both court efficiencies and family law access. Expanding the delivery of *pro bono* and unbundled legal services is a component of this access effort and the area of child support calculation assistance may merit particular focus. Finally, the OSB Family Law Section should convene an OSB/OJD workgroup to examine statutes, rules, and forms that unduly complicate legal matters for self-represented family law litigants.

OJD/OSB TASK FORCE ON FAMILY LAW FORMS AND SERVICES

RECOMMENDATIONS

February 2011

1. OJD should take the lead in developing and maintaining model family law forms for use in Oregon trial courts. If funding or other issues prevent OJD from committing to this role by August 2011 and commencing action on the development of interactive electronic formats by January 2012, OSB should promptly assume the leadership role but collaborate with OJD on technology and practice requirements.

2. OJD should ensure by rule or other administrative action that the model family law forms are accepted in all Oregon trial courts.

3. OJD (or OSB if it assumes the lead role), should provide adequate legal staffing and clerical support for coordinating the development, maintenance, and revision of the model forms.

4. Model family law forms should be provided in an interactive electronic format that integrates with the developing eCourt platform. Forms determined not suitable for interactive formats should be offered in fillable Portable Document Format (PDF). Forms and supportive material should follow standard plain language principles and achieve as closely as possible an eighth grade readability level.

5. Due to access-to-justice implications, the determination of whether to charge the public for use of the electronic interactive format, separate from filing fees, should involve careful consideration of the situation of low-income litigants. If OJD develops the forms and determines that nominal fees are necessary to develop and maintain the on-line document assembly service, consideration should include a tiered model that accommodates individuals with fee waivers and deferrals. Fees for these individuals should be based only on a cost-recovery goal for the forms and document assembly services provided by OJD and its vendor.

6. The Statewide Family Law Advisory Committee (SFLAC) should recommend prioritization of forms for development on interactive formatting, considering case volume, litigant needs, and other relevant criteria. The SFLAC should involve the private bar, eCourt and other OJD staff, and other stakeholders such as non-profit legal services providers and public and law librarians in the process.

7. The following issues should be considered in development of interactive forms:

- integration with e-filing functionality
- Interface using a standard web browser
- ability to extract data for vital records and other statistical needs
- adaptability to both self-represented users and attorneys
- inclusion of a preliminary or internal diagnostic to determine appropriateness of particular form for the individual user
- automatic data validation
- support for electronic prompts for instructions
- ability of users to save work for later completion
- clarity for users regarding data security and data retention
- maximized capacity of local administrator (OJD or OSB) to make minor revisions
- capacity to provide interactive service in languages other than English

8. The website hosting the interactive forms should
- use a secure portal
 - state clearly what entity is providing and hosting the service
 - provide access to explanatory material and instructions throughout the interactive interview process and specific to particular points therein
 - include links to other resources for legal information and assistance

9. OJD should make every effort to maintain court facilitation programs at the maximum level of service possible, recognizing that facilitator roles are likely to change after implementation of interactive forms. OJD should evaluate imposition of a user-fee for facilitation appointments only if necessary and effective to support continuation of the programs and their training needs. The SFLAC should make recommendations to the State Court Administrator regarding facilitation delivery models maximizing both court efficiencies and family law access for courts facing additional cutbacks in this access.

10. OSB, non-profit legal services providers, and the Division of Child Support of the Oregon Dept. of Justice should continue efforts to expand information about, and delivery of, unbundled legal services and *pro bono* assistance. Child support calculation assistance is one area of potential focus.

11. The Family Law Section of the OSB should convene an OSB/OJD workgroup to identify and make recommendations eliminating or revising statutory and regulatory forms and procedures that unduly complicate legal matters for self-represented family law litigants.

I. Origin and Charge of the Task Force

During the decade between 1997 and 2007, Oregon courts developed a two-fold approach in response to the high number of family law cases involving litigants without lawyers.¹ Facilitation programs providing procedural assistance were implemented at courthouses and many model family law forms were prepared for public use, available both at the courthouses and on-line. In 2007, the State Family Law Advisory Committee completed a report suggesting specific areas for additional planning.² Seven proposals were made with the dual goals of improving both access to justice for self-represented parties and effective court management of cases involving self-representation. Central among the SFLAC recommendations was the development of user-friendly, electronically-interactive forms. Planning for Oregon eCourt was proceeding at the State Court Administrator's Office on a track parallel to the SFLAC's self-representation planning and also envisioned the eventual development of interactive forms in several areas of the law.

Since 2007, however, significant budget reductions precipitated by the poor economy have stalled energy and funding for both interactive forms and broader self-representation planning. Moreover, some local courts have eliminated or reduced their facilitation programs to preserve resources. Simultaneously, the court's partners in the access to justice community have continued to struggle with the high unmet demand for family law legal services. The poor economy has placed additional stress on this challenge. In addition, given the enormous public need for family law help, concern has arisen that market-minded entrepreneurs may soon preempt access-oriented,

¹ Although data collected from the Oregon Judicial Information Network (OJIN) both under-reports and over-reports the rate of self-representation due to a variety of reasons, the most recent information available indicates that at least 67% and as high as 86% of family law matters involve at least one self-represented party. Oregon data indicates that both sides are self-represented in approximately 49% of family law filings. *Analysis of Domestic Relations Cases Having At Least One Pro Se Party*, Office of the State Court Administrator, Analysts Giordano and Yetter (February 1, 2005); Update by Analyst Giordano in January 2008. Task Force members found that surrounding states report similar rates of self-representation.

² "Self-Representation in Oregon's Family Law Cases: Next Steps," September 2007, available at <http://courts.oregon.gov/OJD/docs/OSCA/cpsd/courtimprovement/familylaw/FINALReportonSelfRepresentation9-6-07.pdf>. The SFLAC is a statutorily created entity appointed by the Chief Justice of the Oregon Supreme Court and advises the State Court Administrator. ORS 3.436.

quality-focused legal planners by selling web-based interactive Oregon family law court forms for profit.

It was against this backdrop that the Self-Representation Subcommittee of the SFLAC recommended a joint Bench-Bar collaboration. In December 2009, Chief Justice Paul DeMuniz of the Oregon Supreme Court and Oregon State Bar President Kathleen A. Evans each appointed six persons to a Task Force on Family Law Forms and Services. The charge of the Task Force was to:

- Review recommendations from the 1999 report of the Oregon Family Law Legal Services Commission³
- Assess the status of current Oregon initiatives regarding family law court forms and services for self-represented litigants
- Examine evolving technology and analyze potential resources and collaborations and
- Develop recommendations for the Oregon Judicial Department and the Oregon State Bar, identifying priorities and strategies for maintaining and improving forms and services.

II. The Task Force's Composition and Work

Appointments were made to the Task Force in March 2010 from the various constituencies most commonly encountering self-represented family law litigants. In addition to judges, attorneys, courthouse facilitators, and court administrators, representatives were identified from law libraries, access to justice groups, and the Oregon Child Support Program (CSP). The CSP provides support enforcement services to over 250,000 mostly low- and middle-income Oregon families on its paternity and child support caseload. Chief Justice DeMuniz appointed:

- Nancy Cozine, Deputy Trial Court Administrator in Multnomah County;
- Sue Gerhardt, Family Court Coordinator in the Washington County Circuit Court;
- Nancy Lamvik, Trial Court Administrator in Newport County;

³ This group was created by the 1997 Oregon Legislature to evaluate and report on how courthouse facilitation and unbundled legal services might enhance the delivery of family law legal services to low- and middle-income Oregonians.

- Elizabeth Vaughn, Family Court Facilitator in the Clackamas County Circuit Court; and
- Hon. Charles Zennaché, Circuit Court Judge in Lane County.

OSB Bar President Kathleen Evans appointed:

- Jean Fogarty, Director, Oregon Child Support Program, Oregon Department of Justice;
- Karen Lord, member of the OSB Board of Governors Access to Justice Committee;
- Mitzi Naucler, President-Elect, OSB President; Member, Access to Justice Committee;
- Martha Renick, Marion County Law Librarian; and
- Anthony Wilson, Portland attorney and OSB Family Law Executive Board representative.

The Honorable Maureen McKnight, Multnomah County Circuit Court Judge and Chair of the SFLAC Subcommittee on Self-Representation, and Michael Fearl, a Portland attorney who is a member of that subcommittee, were named as Co-Chairs. Kay Pulju, Communications Director for the Oregon State Bar, provided staffing. The OSB also provided meeting facilities at its Tigard office.

The chairs also invited other interested persons to participate in discussions: representatives of Legal Aid (Pro Bono Coordinator Maya Crawford), the Oregon Law Center (State Support Unit Attorney Robin Selig), and the Gateway Center for Domestic Violence Services (Martha Strawn Morris, who is administering a federal grant to develop interactive forms for Family Abuse Prevention Act cases). Rebecca Orf and David Factor from the State Court Administrator's Office also participated regularly in the Task Force's work. Additional interested persons from the courts, bar groups, and legal service providers received copies of the minutes and an opportunity to comment on this report.

The Task Force met monthly in half-day sessions from April 2010 through November 2010. The group began by reviewing both the 1999 report of the Family Law Legal Services Commission and the 2007 SFLAC report. The group then discussed the status of current initiatives focused on self-representation: the OSB's Modest Means, Pro Se Coaching, and Pro Bono Programs; Legal Aid's and the Oregon Law Center's *pro bono* projects and web-based materials; and the on-line interactive child support calculator introduced by the Child Support Program in January 2010.

Several meetings then focused exclusively on the issue of interactive forms. Two providers (TurboCourt and A2J) were invited to a meeting to demonstrate product capabilities and respond to questions from Task Force members. Members then compared and prioritized the features viewed in light of the perceived needs of Oregon litigants and identified the preparation work needed for interactive forms. Attention then turned to the court's facilitation programs and other responses from the legal community to the unmet family law need.

III. Underlying Themes

Underlying the recommendations in this report are three themes that have also informed the SFLAC's work on self-representation:

- While the ultimate goal in access to justice efforts is representation by attorneys, self-representation is a permanent aspect of the family court. As such, the legal system's response to litigants without lawyers must be **actively planned**.
- The most effective approaches to self-representation will be **developed and tested in collaborations** between the courts, the bar, and other community partners. This second point has assumed even more significance given the current budget realities of the Oregon courts.
- The access goals of the justice system merge with efficiency goals when user-friendly products and interfaces are provided for those who can navigate them. By re-directing the thousands of individuals who can easily access, navigate, and even file on-line products such as interactive forms, **diminishing court time and services and other limited legal resources can be preserved for the most needy legal consumers** who require in-person, staff-intensive assistance.

IV. Recommendations and Commentary

RECOMMENDATION No. 1

OJD should take the lead in developing and maintaining model family law forms for use in Oregon trial courts. If funding or other issues prevent OJD from committing to this role by August 2011 and commencing action on the development of interactive electronic formats by January 2012, OSB should promptly assume the leadership role but collaborate with OJD on technology and practice requirements.

COMMENTARY

The courts are the natural first choice to provide model family law forms and lead the transition to electronic formats. Given the significant numbers of Oregonians who represent themselves in family law matters,⁴ the court's interest in the content and use of model forms is unmatched. The forms create the framework for court involvement and response, court staff daily deal with litigants about document errors or missing forms, and the forms serve as the template for most court rulings involving self-represented family law parties. Also, consistency in statewide acceptance of the forms would also be maximized with OJD development.⁵ OJD has a well-established history of convening multi-perspective statewide advisory groups on family law forms and, if staffing were available, can readily collaborate with OSB and other legal services providers on the initiative. In addition, both the *Oregon Judicial Department Strategic Plan 2009-2013* and the vision for Oregon eCourt anticipate exactly this user-friendly, web-based access to a virtual courthouse interactive model forms offer, with or without electronic filing. Knowledge of OJD's technological requirements is critical to implement this vision and regular contact with OJD's Enterprise Technical Services Division (ETSD) staff would be optimized with OJD as the forms developer. Finally, implementation of interactive family law forms is precisely the type of

⁴ See footnote 1.

⁵ See Recommendation No. 2.

government milestone that produces the press reports and public acclaim that can leverage additional public and legislative support for eCourt. Like on-line payment of traffic tickets, interactive family law forms combine a very broadly-used customer service with obvious efficiency. Task Force members are aware of no jurisdiction in which an entity *other* than the courts has taken the lead on form development.

On the other hand, provision of the forms is not a statutorily required court function but a responsibility the courts appropriately assumed to respond effectively to the surge of litigants without lawyers.⁶ Budget cuts have now drastically affected all court staffing, including centralized support at the State Court Administrator's office for maintenance and updates to the model forms. OJD's sponsorship of the transition to electronic formats is destined for the same unsustainable status⁷ unless adequate funding is dedicated to maintenance, revision, and training as well as to initial development of the forms. OSB shares the access-to-justice focus that model interactive forms represent and in a climate of diminishing public funds, OSB is well-suited to leverage that fairness incentive with a business-based model that would fund the initiative on user fees rather than vulnerable public funds. OSB is also experienced in convening multi-perspective collaborative groups and can establish a close working relationship with OJD's ETSD and eCourt staff. If the OSB Board of Governors is able to continue its long-standing support of access efforts against competing priorities, maintaining the forms and spearheading the transition to interactive formatting could be effectively hosted by OSB. Based on the widespread support of legal practitioners for court facilitation programs, Task Force members believe that family law lawyers will view this project similarly as supplementary to and not competitive with their own services.

Moving forward quickly on this project is important for several reasons: (1) the longer the delay, the more likely it becomes that private entrepreneurs focused on profit rather than access,

⁶ OJD implemented Recommendation No. 3 of the 1999 Oregon Family Law Legal Services Commission report that "OJD coordinate the development, updating, and dissemination of sample family law forms for pro se parties."

⁷ See commentary to Recommendation No. 3.

efficiency, and legal correctness⁸ will develop a product and establish a market share against which OJD or OSB would need to compete; (2) Oregon's model family law forms will very soon be out-of-date again. In addition to the routine changes stemming from the upcoming legislative session, substantial changes to family law are anticipated from the quadrennial review of child support calculation rules in 2011. No plan currently exists to update and revise the existing forms and revival of discussion about removing this resource from the court's website is likely. Task Force members believe that given OJD's recent selection of a single-source provider for eCourt and its recalibration timeframe, a six month period ending in August 2011 should be adequate for assessing whether and how quickly interactive family law forms fit in the short-term vision of eCourt planning. If OJD cannot commit to this step and take initial action within the 6-12 month deadline suggested by Task Force members, OSB should act promptly to spearhead the effort, in collaboration with OJD and other legal service providers.

RECOMMENDATION No. 2

OJD should ensure by rule or other administrative action that the model family law forms are accepted in all Oregon trial courts.

COMMENTARY

Some Oregon trial courts still require use of a locally produced form in particular situations, tweaked from the applicable model family law form posted on the OJD website. Self-represented litigants who download and complete forms from the OJD website sometimes find those model forms rejected by individual courts insisting on use of the local form. This circumstance also complicates the delivery of legal help by practitioners in one county of the state to litigants with

⁸ Commercial preparers of family law forms remain in business despite the court's current provision of printable, fill-in-the-blanks versions. Some of these businesses use the court-provided forms and charge litigants for assistance in filling them out. At least one firm uses its own forms, some of which are inadequate from a legal standpoint and result in the litigant having to re-file with court-provided forms, both steps necessitating extra work for the court.

matters sited in another county. The lack of mandatory acceptance – particularly given the loss of the Family Counsel position at the State Court Administrator’s Office -- also means that local court staff are revising form content piecemeal, sometimes without legally-trained oversight or coordination except through sharing on the OSCA Family Law Facilitator email listserv (for which legally-trained staff support is not consistently available). Policy decisions from eCourt governance understandably preserve the ability of practitioners to use their individual family law pleading templates and the Task Force is not recommending that Oregon convert to a “mandatory” family law form approach such as California and Washington use. And local courts should continue to have the discretion to develop forms for procedures unique to their county or district. Members believe, however, that *requiring* local courts to accept centrally developed and vetted model forms is an important part of ensuring statewide access to justice. The Chief Justice can ensure this acceptance by Uniform Trial Court Rule or other administrative action he selects. Institutionalizing the opportunity for the family law bar, court staff, and judges to review and comment on forms prior to publication is a critical component for favorable reception of the “universal acceptance” mandate.

RECOMMENDATION No. 3

OJD (or OSB if it assumes the lead role) should provide adequate legal staffing and clerical support for coordinating the development, maintenance, and revision of the model forms.

COMMENTARY

Ensuring adequate staff to maintain and revise the forms and as well as to train staff on their content is critical to OJD sponsorship of model forms and the transition to interactive formatting. No centralized support currently exists at OSCA for work on the existing “hard copy” model family law forms. Except for one small contract, volunteers are attempting to address improvements piecemeal, and local courts are re-inventing the wheel with individually developed (and sometimes

legally improper) updates. The members of the SFLAC have attempted to help but as an unstaffed body, SFLAC assistance is both limited in scope and dependent on member availability. Nor is there current OJD staffing to coordinate a multi-perspective group of bar and court representatives for forms review, as has been the practice in the past. Moreover, substantive changes in family law occur not just biennially with Oregon legislative action or annually with the publication of the Uniform Trial Court Rules but unpredictably due to issuance of federal regulations affecting both administrative and judicial actions regarding child support. An on-going dedicated position (or portion thereof) filled by an attorney with family law expertise is needed at OSCA to coordinate this work:

- to convene an advisory body,
- to draft and user-test revisions to the forms,
- to publish proposed forms for comment
- to serve as a clearinghouse for comments and needed updates,
- to liaise with the court vendor on development issues, and
- to train court facilitators and other court staff dealing with the public regarding the forms.

It is unclear whether and how eCourt planning envisions the on-going support needed for this staffing component. Should OSB assume primary leadership on the interactive family law forms effort, the model will be to impose electronically-paid user fees (separate from court filing fees) that underwrite the cost of this on-going work. Under this approach, the court training and coordination components would need to be a planned collaboration.

RECOMMENDATION No. 4

Model family law forms should be provided in an interactive electronic format that integrates with the developing eCourt platform. Forms determined not suitable for interactive formats should be offered in fillable Portable Document Format (PDF). Forms and supportive material should follow standard plain language principles and achieve as closely as possible an eighth grade readability level.

COMMENTARY

This proposal is the crux of the Task Force's recommendations. Whether it is OJD or OSB who assumes the prime sponsorship role, Oregon needs to transition from hard-copy, fill-in-the-blanks versions available on the web and at courthouses to a more user-friendly format that is also capable of electronic filing. Broad consensus exists nationwide that after standardization, user-friendly document-assembly software is the next critical step in forms delivery.

The core concept of document assembly is the idea of software that walks users through branching questions to complete forms which are then printed out or filed electronically. Among the advantages are the ability to provide support as people complete the forms, that users need enter repetitive information only once, and that the focus can be on the information needed to complete the form. The process of filling out the forms also educates the litigant on what is relevant to their claim. *"Best Practices in Court-Based Self-Help Programs for the Self-Represented: Concepts, Attributes, and Issues for Exploration,"* National Center for State Courts (2006), pp. 15-18. Available online at http://www.nscsonline.org/WC/Publications/KIS_ProSe_Best_Practices_SRLN.pdf.

Not all Oregon model family law forms can or should be available in an interactive format. Some are short enough that the development time and expense outweigh the benefit. The opportunities for interactive forms are numerous, however, and already recognized as a key component of Oregon eCourt planning. At this report's writing, OJD has selected its single-source provider (Tyler Technologies) during which process Tyler's subcontractor, TurboCourt/Intersys, demonstrated its capacity for interactive document assembly programs. With the identity of OJD's vendor and the capacity of its product now known, the only questions are how soon the fiscal environment at OJD will allow it to implement this component in the overall eCourt plan and whether significant delay prompts the OSB to take the lead.

Currently twenty-two (22) packets with a total of approximately 235 forms are available for downloading from the OJD website in PDF (Portable Document Format) for statewide use. Many of these forms are 1 or 2 pages long and not particularly complex. They do not require the development of branching logic to assist the filer in filling them out, but could benefit from auto-population of the caption and other fields from related forms prepared electronically. Forms determined not to be suitable for the interactive dialogue due to brevity or simplicity should be provided in a fillable PDF format. This will allow users to fill out forms electronically by completing form fields *or* to print the form and fill it in manually.

Other forms are longer and cover multiple issues. The petition for dissolution of marriage with children, for example, is 10 pages long and the judgment for this action is 14 pages. The entire packet of forms for this case-type consists of 16 different forms, each of which requires identical captions and address information. Determining which packets, and which forms in particular packets, are appropriate for the interactive format and which are better suited for a fillable PDF format (not currently offered on-line) is a task that can be undertaken now. This review could also highlight major readability concerns.

The final theme presented in this recommendation involves the readability of Oregon's family law forms. Using standard readability algorithms, the current model forms test at grade 16 (college level), but the guidelines for court documents based on national and state standards call for levels of 5th to 8th grade, depending on public use.⁹ It is widely acknowledged that legal documents and forms cannot always meet this threshold but concerted efforts are needed to address plain language principles in both the interactive queries and printed versions of the forms.

⁹ See *"Clear Writing Guidelines for Correspondence, Memoranda, Policies, Reports, and Public Documents,"* Office of the State Court Administrator, Oregon Judicial Department, (February 20, 2008).

RECOMMENDATION No. 5

Due to access-to-justice implications, the determination of whether to charge the public for use of the electronic interactive format, separate from filing fees, should involve careful consideration of the situation of low-income litigants. If OJD develops the forms and determines that nominal fees are necessary to develop and maintain an on-line document assembly service, consideration should include a tiered model that accommodates individuals with fee waivers and deferrals. Fees for these individuals should be based only on a cost-recovery goal for the forms and document assembly services provided by OJD and its vendor.

COMMENTARY

This issue was a difficult one for Task Force members. Many felt strongly that no user fee should be charged for use of interactive technology, especially if OJD is the developer. These members argued that filing fees – whether for manual filing or electronic filing – should be determined by separate court schedule but no additional cost should be imposed for use of the interactive document assembly process. Requiring litigants to pay for a technology-based approach the court wants to *encourage* (if not actually mandate for the self-represented) is both counter-intuitive and counter-productive under this view. Like other entities changing their business operations, OJD should create inducements rather than disincentives for use. Administrative savings from reduced staff/facilitation time in assisting litigants with hard copy forms are likely very substantial. Even though some of those recouped staff resources could concentrate on the more intensive one-on-one, personal assistance needed by those lacking computer literacy or having language issues that complicate access, the savings and efficiencies gained from interactive forms appear reasonably likely to be significant enough to help defray the upfront development and maintenance costs.

Conversely, several themes underscore the need to consider charging fees for use of interactive forms, an approach other Task Force members favor. Foremost is the statewide budget crisis and the cuts OJD will almost certainly be making in operations. User fees may be the only viable way for the courts to launch this initiative, particularly when the uncertainty about eCourt

funding as a whole is weighed against the urgency of proceeding with the interactive forms component now rather than later. If the only way to begin OJD deployment of the document assembly program in 2011 is to charge user fees, such fees may be appropriate but consideration of the needs of low-income litigants¹⁰ is needed in this analysis. Task Force members discussed two approaches:

- A three-tier option -- no fee would be charged individuals with waivers, a modest fee charged those with deferrals, and a standard fee for those who qualify for neither.
- A two-tier approach: a nominal fee for low-income individuals with waivers or deferrals and a higher, standard fee for those without those orders.

The latter approach has the advantage of simplicity of administration although it ignores a differentiation in incomes the fee waiver rules establishes. The bottom line is that if user fees are necessary for OJD to move forward, it is clear that to preserve public access to the virtual courthouse, the choice of fee model needs to be informed by the expected rates of deferrals and waivers of family law litigants, as well as by costs to develop and maintain the forms. In addition, the sequencing procedure developed for e-filing would need to include the step of administrative decision or judicial approval of the waiver/deferral request.

The second, and related, point is that even if funding exists for initial development of interactive forms, associated maintenance, revision, and staffing costs require on-going funding whose stability at OJD is unclear. A modest user fee designed to fund a part-time position and revision costs (if not separately negotiated with the vendor) may be necessary. Staffing for the forms developer position could be maintained from the savings produced from reduced staff facilitation time or revenue realized from appropriate document assembly fees.

¹⁰ The best deferral/waiver data to which the Task Force had access was reported by the SFLAC in June 2009. Available OJIN data indicated a waiver/deferral/neither split of 30%/10%/60% for general family law filings but facilitators reported anecdotally a 45%/30%/25% for their clientele. Not surprisingly, facilitation customers overall are lower-income than family law litigants in general.

The third and final theme is that OSB as alternative developer would almost certainly pursue a user-fee model. At minimum, the OSB model would produce revenue sufficient to sustain the forms project, including any necessary technical maintenance and staff support. Unlike OJD, OSB does not stand to gain any efficiencies or cost-savings that would offset the cost of form development. The bar would certainly consider accommodations for low-income clients, but does not have ready access to fee waiver and deferral information so a different standard or adjustment would need to be developed.

If OJD takes the lead role, significant sentiment existed that any user fee charged low-income litigants, if imposed, be focused only on a break-even basis and not be premised on a revenue-generating model. However, Task Force members recognized that cost estimates need to include the maintenance, revision, training, and staffing functions as well as reasonably expected business increases. The forms will have only short-lived utility if an infrastructure is not built to maintain it.

RECOMMENDATION No. 6

The Statewide Family Law Advisory Committee (SFLAC) should recommend prioritization of forms for development on interactive formatting, considering case volume, litigant needs, and other relevant criteria. The SFLAC should involve the private bar, eCourt and other OJD staff, and other stakeholders such as non-profit legal services providers and public and law librarians in the process.

COMMENTARY

The most commonly used family law form packets in Oregon are well-known (dissolution, unmarried parents, modification of custody/support, fee waiver/deferral, for example). Prioritization of which forms should be prepared for interactive formatting, and in what order, is a preparatory step OJD and OSB should and can take even while the single source provider contracts are prepared. The SFLAC should assume that responsibility after the work of the Task Force is completed.

Intensive staffing of the effort is not needed but coordination with the newly hired OJD Forms Developer and other eCourt workgroups will be critical. The prioritization recommendations should be a collaborative effort involving that Forms Developer, court facilitators, other court staff, the Family Law Section of OSB, and other non-profit legal services providers such as Legal Aid and public and law librarians.

RECOMMENDATION No. 7

The following issues should be considered in development of forms produced with virtual interview technology:

- integration with e-filing functionality
- interface using a standard web browser
- adaptability to both self-represented users and attorneys
- inclusion of a preliminary or internal diagnostic to determine appropriateness of particular form for the individual user
- automatic data validation
- support from electronic prompts for instructions
- ability of user to save work for later completion
- clarity for users regarding data security and data retention
- ability to extract data for vital records and other statistical needs
- maximized capacity of local administrator (OJD / OSB) to make minor revisions
- capacity to provide service in languages other than English (print form in English but dialogue in other language)

COMMENTARY

A user-friendly document assembly program should be the new gateway between self-represented litigants and the court. It is the vehicle by which these individuals will provide more complete and focused information to decision-makers, produce legally sufficient pleadings, and also improve their understanding of the issues in the case and the court process. The software for the document production should operate independently of any e-filing program, so that parties can print out their forms and file them manually (when no e-filing option exists or for other reasons), but must also be fully compatible with the e-filing functionality developed by OJD. Interface with a standard

web browser is critical, as is a preliminary or internal diagnostic to ensure that the interactive “path” chosen is the one appropriate for the user. Automatic internal data validation is also needed to highlight and prevent clerical or other mistakes in names, dates, addresses, and computations. The software must provide prompts which the user can access to obtain explanations about particular terms or points implicated by the presenting questions. Clear explanations regarding the process to save entered answers and subsequently return to document assembly (without repeating the query process) are also a necessity. Given privacy and safety concerns, prominently posted information regarding the retention and security of data is imperative. Task Force members anticipate the benefit of data extraction for producing the trends and statistics for policy planning that family courts in Oregon have long lacked. The ability to export court documents for delivery to outside partners (Child Support Program, Vital Statistics, Sheriff offices for service) would likely be a function of the case management system rather than document assembly, but the logic for a party’s service options should be planned as part of some forms’ production. A significant component of maintaining the interactive forms is the ability of the developing entity (OJD or OSB) to make minor revisions required by law or rule changes. The capacity *by the developer* (OJD or OSB) to revise instructional prompts (the least complex revision) as well as the form (mid-level complexity) and the logic tree itself (greatest complexity) should be thoughtfully negotiated with an eye toward the unpredictable frequency with which family law procedures can change due to the timing of legislative action and state and federal regulation. Finally, the capacity to produce forms in English based on interactive dialogues in other languages, even if not implemented immediately, should be a priority requirement.

RECOMMENDATION No. 8

The website hosting the interactive forms should:

- use a secure portal
- state clearly what entity is providing and hosting the service
- provide access to explanatory material and instructions throughout the interactive interview process and specific to particular points on the screen

COMMENTARY

Whichever entity develops the forms will need to determine how to refer users to the host site without appearing to impair neutrality (for OJD) or to endorse a particular product (for both OJD and OSB). Some courts “umbrella” the forms production site by using a name reflecting the sponsoring court (for example, “California Superior Court EZ Legal File”). Others contain the court name on the page but also provide disclaimers that indicate that the interactive form process is available *through* the court but is not a component of it: See, for example, Minnesota’s approach:

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The bottom line is that users are entitled to know the relationship of the developer to the forms producer to make an informed choice about proceeding.

As previously mentioned, the virtual technology program must include prompts that the user can access to obtain explanations about particular terms or points implicated by the presenting questions. Links to external resources should be provided as well, where appropriate. This is an arena in which collaboration with other Oregon legal services providers would be most beneficial. OJD, OSB, Legal Aid Services of Oregon (LASO), and the Oregon Law Center are the primary developers of public legal education material in this state. The Child Support Program serves as a well-traveled path for many parents and is their first encounter with the family law justice system. Appropriate links to and from the CSP website are also a priority. Planning about the resource material that can be linked to the interactive forms would optimize the access efforts of each. Dedicated funding may be available for such a collaboration.¹¹

¹¹ The national Legal Services Corporation provides Technology Initiative Grants (TIG) to Legal Services grantees in a number of specific technology-related areas focused on increased client access. At least one of the streams under this grant program prioritizes statewide collaborations with partners that substantially improve the legal services provided to the low-income community. LSC notes that according to a September 2009 survey by the Pew Internet & American Life Project, individuals in 62% of households with incomes of less than \$30,000 have access to and use the Internet, at least occasionally, either from home or from public access points.

RECOMMENDATION No. 9

OJD should make every effort to maintain court facilitation programs at the maximum level of service possible, recognizing that facilitator roles are likely to change after implementation of interactive forms. OJD should evaluate imposition of a user-fee for facilitation appointments only if necessary and effective to support continuation of the programs and their training needs. The SFLAC should make recommendations to the State Court Administrator regarding facilitation delivery models maximizing both court efficiencies and family law access for courts facing additional cutbacks in this access.

COMMENTARY

For the last decade, family law facilitation programs – along with model forms -- have been the backbone of OJD’s commitment to provide “fair, accessible, and timely justice” for family law litigants. Court staff providing procedural assistance and forms review have assisted thousands of Oregonians, many referred by lawyers, law enforcement, and social service agencies. Most of those assisted cannot afford to hire attorneys¹², are unemployed or underemployed, have limited income from social security or disability payments, or are receiving some form of state assistance. In addition, those seeking facilitation assistance are sometimes at imminent risk of losing their children to state care without the intervention of protective family law orders. Facilitation customers come from every socio-economic class because facilitation – like all services of the judicial branch – is available to all Oregonians regardless of income. In recognition that a minority of facilitation clients could afford some fee for facilitation and against a backdrop of funding cutbacks that have seen some courts already end or substantially reduce their facilitation programs, the SFLAC reluctantly recommended in 2009 that OJD consider imposing a user-fee for facilitation appointments. Task Force members endorse that suggestion only if such fees directly support the continuation of the programs and their training needs, meaningfully accommodate low-income litigants with fee deferrals and waivers, and are insulated from legislative re-allocation. Those conditions appear unlikely in the aggregate.

¹²

See footnote 10.

Left then with high demand and reduced resources, re-organization and even prioritization of facilitation services may be necessary. The SFLAC, in consultation with local trial court administration staff (including facilitators) and the family law bar, should develop recommendations for the State Court Administrator to offer local courts regarding facilitation delivery models maximizing both court efficiencies and family law access. Maximizing public access to computers and printers will probably be a critical component in this discussion. The recommendations will need to encompass the changing roles of facilitators likely after implementation of interactive forms. Requests for facilitation help may decrease in number due to user-friendly, web-based materials but increase in complexity as those without computer access or with literacy or other barriers remain ill-served by electronic forms.

RECOMMENDATION No. 10

OSB, non-profit legal services providers, and the Division of Child Support of the Oregon Department of Justice should continue efforts to expand information about, and delivery of, unbundled legal services and *pro bono* assistance. Child support calculation assistance is one area of potential focus.

COMMENTARY

The OSB, Legal Aid Services of Oregon (LASO), Oregon Law Center (OLC), and government agencies offer a range of programs to assist self-represented litigants in family law matters. The OSB, LASO, and OLC focus their efforts on attorney involvement. In addition to education efforts, the OSB offers a Modest Means Program that matches lower-income Oregonians with private attorneys willing to charge reduced fees.¹³ The OSB's Lawyer Referral Service, which

¹³ The Modest Means Program was started in 1994 with the goal of matching lower-income Oregonians with attorneys willing to work for reduced fees. By 1995, the Modest Means Program had added two Family Law pro se subpanels – Pro Se Coaching and Document Review. It now includes the following pro se subpanels:

provides any potential client an attorney consultation for no more than \$35, offers referral categories for Document Review and Pro Se Coaching within its family law panel. The OSB's programs have grown rapidly in recent years: in the 2005-06 program year, 88 clients were referred under the pro se panels; for the 2009-10 program year the number of clients rose to 408, a 364% increase in that four year span. Attorney panelist registration has also steadily increased, with 250 attorneys registered for the 2010-11 program year.

LASO and other legal aid programs offer *pro se* assistance in family law matters through group classes and clinic models. Some clinics are run in partnership with courthouse facilitation programs, including a Multnomah County program that offers low-income clients appointments with attorney volunteers on Tuesday and Thursday afternoons. These *pro bono* attorneys provide legal advice and help people fill out family law court forms.

The DOJ's Oregon Child Support Program provides an array of services related to paternity and the establishment and enforcement of child support orders. DOJ offers general information about child support-related matters on its website and provides a guided-interview for support calculation assistance that produces child support worksheets required as petition and judgment exhibits. This interactive calculator is available to all users, regardless of income. Individuals without computer access or who have literacy, language, or educational barriers often require assistance in understanding and performing the calculation process. Unbundled and *pro bono* assistance could be particularly suited to this arena, given the statewide uniformity of the calculation rules and the possibility of telephonic or emailed communication rather than in-person consultation. The Child Support Program also makes numerous referrals to unbundled and pro bono service providers to address parenting time issues and custody matters that impact child support orders but cannot be addressed by Program personnel.

In addition to continuing their current programs and services, these organizations should increase efforts to educate and assist self-represented litigants. The OSB and non-profit legal

services providers should actively encourage lawyers to provide *pro bono* and low-fee legal services, including unbundled legal services. While the OSB and Professional Liability Fund (PLF) have both published articles and produced CLE programs supportive of unbundling, the topic has received little attention the past few years. The OSB and PLF should renew education and recruitment efforts, encouraging members to provide services to self-represented litigants through existing LASO, OLC, and OSB programs.

In support of private attorney involvement, OJD should encourage Oregon judges to support *pro bono* programs as appropriate under the judicial canons. Finalization of proposed amendments to the Oregon Code of Judicial Conduct could greatly enhance this effort if proposed commentary is adopted supporting judicial recruitment, recognition, and other support to *pro bono* programs.

RECOMMENDATION No. 11

The Family Law Section of the OSB should convene an OSB/OJD workgroup to identify and make recommendations eliminating or revising statutory and regulatory forms and procedures that unduly complicate legal matters for self-represented family law litigants.

COMMENTARY

Negotiating the complex rules and procedures that govern any litigation is daunting for self-represented litigants in family law cases. Most are unfamiliar with the legal system. For many, their divorce or custody case is the only direct contact they will have with the courts. These parties face a vast array of forms and procedures that must be correctly navigated before their case can be completed. Some of these forms or procedures may be outdated, overly complicated, or unnecessary. By eliminating unnecessary forms and procedures, and simplifying those that are overly complicated, facilitation programs and other access to justice resources would be able to increase their effectiveness by reducing the sheer volume of information litigants must

accommodate in order to see their case through to completion. In addition, with fewer forms or procedures to process, courthouse staff time would be freed up for other tasks. Task Force members identified several areas for possible study, including whether the statutory 90-day waiting period required in dissolution cases should be modified or eliminated,¹⁴ and whether the procedure for submitting a dissolution judgment on a prima facie affidavit could be streamlined. Altering either of these procedures would legislative, rule, and/or or practice changes. The Family Law Section of the OSB should convene a work group drawn from the Bar, OJD, and nonprofit legal service providers to identify law improvements that can be achieved by eliminating unnecessary forms and procedures and streamlining others where possible, and to recommend changes to both rules and statutes in order to facilitate the improvements.

¹⁴ Proposed legislation is expected in the 2011 session on one approach to changing the waiting period.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: April 22, 2011
From: P&G Committee
Re: Amend Regulations 1.140 and 3.200 regarding Fully Retired Status

Action Recommended

Review and approve the proposed amendments to MCLE Regulations 1.140 and 3.200 to reference OSB Bylaw 6.100, not 6.101. This is basically a housekeeping change.

Background

It was recently brought to the attention of the MCLE Program Manager that MCLE Regulations 1.140 and 3.200 refer to an incorrect OSB Bylaw. The regulations currently read:

1.140 Fully Retired. A member is fully retired from the practice of law if the member is over 65 years of age and does not engage at any time in any activity that constitutes the practice of law including, without limitation, activities described in OSB Bylaws 6.101 and 20.2.

3.200 Resumption of Law Practice By a Retired Member. The resumption of the practice of law by a retired member occurs when the member undertakes to perform any activity that would constitute the practice of law including, without limitation the activities described in OSB Bylaws 6.101 and 20.2.

Both regulations should be amended to refer to OSB Bylaw 6.100, not 6.101.

Here is the text of OSB Bylaws 6.100 and 6.101:

Article 6 Membership Classification and Fees

Section 6.1 Classification of Members

Subsection 6.100 General

Members of the Bar are classified as follows:

(a) Active member - Any member of the Bar admitted to practice law in the State of Oregon who is not an inactive or suspended member. Active members include Active Pro Bono members.

(b) Inactive member - A member of the Bar who does not practice law may be enrolled as an inactive member. The "practice of law" for purposes of this subsection consists of providing legal services to public, corporate or individual clients or the performing of the duties of a position that federal, state, county or municipal law requires to be occupied by a person admitted to the practice of law in Oregon.

Subsection 6.101 Active Pro Bono Status

(a) Purpose

The purposes of the Active Pro Bono category of active membership in the Bar is to facilitate and encourage the provision of pro bono legal services to low-income Oregonians and volunteer service to the Bar by lawyers who otherwise may choose inactive status or even resign from membership in the Bar, and by lawyers who move to Oregon.

(b) Eligibility for Active Pro Bono Status

The Active Pro Bono category of active membership is available to lawyers in good standing: Who agree to provide pro bono legal services to indigent clients referred by pro bono programs certified under Section 13.2 of the Bar's Bylaws; who do not engage in the practice of law except for providing pro bono services specified above or in volunteer service on the State Professional Responsibility Board, a Local Professional Responsibility Committee, the Disciplinary Board or as bar counsel; who agree to report annually to the Oregon State Bar the number of hours of pro bono service they provide; and who obtain professional liability coverage through the Professional Liability Fund or the program referring the pro bono cases.

(c) Membership Fees

Active Pro Bono members are assessed a fee that is equivalent to the inactive membership fee plus the Client Security Fund assessment.

(d) Procedure

The Bar will notify potentially eligible lawyers of the availability of the Active Pro Bono category of membership and provide interested members with an application form. The Executive Director or designee is authorized to determine members' eligibility for Active Pro Bono status and this determination is final.

(e) Reporting Requirement for Active Pro Bono Status

Bar Certified pro bono programs will report to the Bar no later than January 31 of each year the total hours of pro bono services that Active Pro Bono lawyers provided in the preceding calendar year. Active Pro Bono lawyer must ensure that the certified program reports their hours or must individually report their hours no later than February 15 of each year.

(f) Transfer from Active Pro Bono Status

Active Pro Bono members may continue in that status from year-to-year on certification that they remain eligible for such status and payment of the appropriate membership fees and assessments. Active Pro Bono members wishing to resume regular active membership status must comply with BR 8.14. Active Pro Bono members admitted through Admissions Rule 17.05 are not eligible to transfer their status to any other status.

OREGON STATE BAR

Policy and Governance Committee Agenda

Meeting Date: April 22, 2011
From: Sylvia E. Stevens, Executive Director
Re: Request for Additional MCLE Credit for Lawyer-Legislators

Action Recommended

Consider the request from Rep. Dennis Richardson that lawyer-legislators earn more than the currently allowed MCLE credits for their legislative service.

Background

MCLE Rule 5.1(e) provides:

Legislative Service. General credit hours may be earned for service as a member of the Oregon Legislative Assembly while it is in session.

MCLE Regulation 5.100(b) provides:

Credit for legislative service may be earned at a rate of .5 general credit for each week or part thereof while the legislature is in session.

Prior to 2010, Regulation 5.100(b) limited credits to 2 for each month of service during a session; the rule was changed to allow lawyer-legislators to earn credits by the week to account for sessions that began or ended in mid-month.

Rep. Richardson suggests that the current credit limit does not adequately reflect the amount of time lawyer-legislators spend learning about and working with the law. Under the current regulation, a lawyer-legislator could earn approximately 12 credits during a 6-month session. Rep. Richardson suggests doubling that to allow one credit for each week the legislature is in session.

From: Susan Grabe
Sent: Friday, March 18, 2011 9:42 AM
To: Sylvia Stevens; (e) Mitzi Naucler
Cc: (e) Stephen Pucci
Subject: FW: To OSB re MCLE credits for legislators

FYI, here is the letter Representative Richardson has sent for P&G to consider increasing the number of MCLE credits for legislators.

Susan

From: Rep Richardson [<mailto:richardson.rep@state.or.us>]
Sent: Friday, March 18, 2011 8:01 AM
To: Susan Grabe
Subject: To OSB re MCLE credits for legislators



State Rep. Dennis Richardson

State Capitol Office: 503-986-1404
rep.dennisrichardson@state.or.us
 District Office: 55 South 5th Street
 Central Point, Oregon 97502
 541-601-0083



Mitzi Naucler, Chair
 Policy and Governance Committee
 Oregon State Bar, Board of Governors

Dear Ms. Naucler,

I am writing to encourage the Policy and Governance Committee to consider increasing the number of MCLE credits available to legislators for their service in the Oregon State Legislature.

Under the current Regulations to MCLE Rule 5, legislators may earn a maximum of one half credit for each week that the legislature is in session. This low rate of credit accrual is not commensurate with the considerable amount of time that legislators spend learning about the law in Oregon. In a typical week, most legislators will spend between 10 and 20 hours in committee hearings, where changes to substantive law are discussed. Additionally, legislators often spend additional time researching the law outside of committee hearings.

The amount of information imparted during even one legislative hearing, is often far more than is imparted during a traditional CLE seminar, and it is often equally relevant to a lawyer-legislator's law practice. It seems that some consideration of whether the current rate of credit accrual for legislative service is adequate may be appropriate.

In addition, as Legislators we are statutory reporters of child abuse and regularly involved in matters relating to ethics and moral consequences in the law. Due consideration of this when considering additional ethics CLE credit would also be appreciated.

I believe it would be appropriate to allow at least one general Credit of CLE for every week the Legislature is in session that would also qualify for ethics requirements. Hopefully, any such change would apply immediately for any such service in the Legislature that occurred during the current and future reporting periods.

Thank you in advance for taking the time to consider this issue, and I look forward to discussing it with your further.

Sincerely,

Dennis Richardson

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: April 22, 2011
Memo Date: April 7, 2011
From: Mitzi Naucler, Policy & Governance Chair
Re: Amendments to OSB Bylaws
Unclaimed Lawyer Trust Accounts

Action Recommended

In 2010, the Legislature amended Oregon's unclaimed property laws to require that funds in abandoned lawyer trust accounts be delivered to the Oregon State Bar. Bar staff recommends amending the OSB Bylaws to provide rules on the administration of unclaimed lawyer trust account funds, and rules on the claim adjudication process.

Bar staff recommends that the Board waive the one-meeting notice requirement under OSB Bylaw Article 27 (which requires a vote of two-thirds of the Board).

Bar staff recommends that the Board appoint a special committee to evaluate claims made against unclaimed lawyer trust account funds, pursuant to the new bylaws.

Background

Recently, ORS 98.386 was amended to provide that unclaimed funds in lawyer trust accounts shall be delivered to the Oregon State Bar. The Bar has entered into an Interagency Agreement with the Department of State Lands, Unclaimed Property Section, to receive and share information about claims. However, the Bar is also required by ORS 98.392(2) to "adopt rules for the administration of claims" that are received for unclaimed lawyer trust account funds.

The proposed bylaws (attached) are divided into three sections: administration, disbursement, and claims adjudications. The first subsection, X.101, provides that unclaimed lawyer trust account funds are to be held in a separate account and administered and invested according with existing bar bylaws.

The second subsection, X.102, outlines the disbursement policy for the funds. The subsection provides that the Executive Director and CFO may make payments from the funds for approved claims and administrative expenses. It also provides that the Board, upon the recommendation of the Budget & Finance Committee, may authorize disbursements of unclaimed lawyer trust account funds to Legal Services if the Board determines the disbursements will not impair the Bar's ability to make payments for claims for the funds.

The third subsection, X. 103, addresses claim adjudication. The proposed bylaws place the primary responsibility for adjudicating claims on a special committee that is appointed by

the Board. The proposed bylaws adopt procedures to use for the adjudication of claims that are consistent with Department of State Lands procedures. Claimants whose claims are denied are provided the opportunity to appeal the denial to the Board. Because the Oregon State Bar is not subject to the Oregon Administrative Procedures Act, claimants would not have an opportunity to file a contested case, in the same manner they would for unclaimed property held by the Department of State Lands. The appeal to the Board provides an alternative to a contested case hearing.

Section X.X Unclaimed Lawyer Trust Account Funds

Subsection X.100 Purpose

This policy is established to provide direction and limits for the administration, disbursement, and claims adjudication of unclaimed lawyer trust account funds appropriated to the Bar. For the purposes of this section, “unclaimed lawyer trust account funds” are defined to mean all funds allocated to the bar pursuant to ORS 98.386(2).

Subsection X.101 Administration

- (a) All unclaimed lawyer trust account funds appropriated to the Bar shall be received and held in a separate fund in the manner authorized by Section 7.1.
- (b) All unclaimed lawyer trust account funds shall be invested in the manner described at Section 7.4. The Legal Services Committee may provide recommendations on the investment of unclaimed lawyer trust account funds to the Investment Committee.

Subsection X.102 Disbursement

- (a) The Executive Director and the Chief Financial Officer are authorized and empowered to make disbursements of unclaimed lawyer trust account funds appropriated to the Bar to:
 - (1) Claimants for the payment of claims allowed under ORS 98.392(2), pursuant to Subsection X.103; and
 - (2) The Bar, for expenses incurred by the Bar in the administration of the Legal Services Program, only if the Executive Director determines such disbursements will not impair the Bar’s ability to make payments for claims allowed pursuant to Subsection X.103 from unclaimed lawyer trust account funds.
- (b) The Budget & Finance Committee, after seeking the advice of the Legal Services Committee, may recommend that the Board make disbursements of unclaimed lawyer trust account funds appropriated to the Bar to:
 - (1) The Legal Services Program established under ORS 9.572 for the funding of legal services.

The Board is authorized to make disbursements hereunder only if the Board determines the disbursements will not impair the Bar's ability to make payments for claims allowed pursuant to Subsection X.103 from unclaimed lawyer trust account funds.

Subsection X.103 Claim Adjudication

(a) When the Oregon Department of State Lands forwards a claim for unclaimed lawyer trust account funds to the Bar for review, a special committee appointed by the Board shall review the claim and approve or deny the claim. A claim shall be approved if a preponderance of the evidence proves the claimant is legally entitled to the unclaimed lawyer trust account funds. A claim shall be denied if the preponderance of the evidence does not prove the claimant is legally entitled to the property.

(b) The Bar shall utilize claim forms published by the Oregon Department of State Lands. To evaluate whether to approve or deny a claim under Subsection X.103(a), the Bar adopts the claim adjudication rules promulgated by the Oregon Department of State Lands at OAR 141-040-020; and OAR 141-040-0211 through OAR 141-040-0213. Where the rules reference the "Department" they shall be deemed to refer to the Bar.

(c) If a claim is approved pursuant to this Subsection, the special committee shall notify the claimant and the Executive Director.

(d) If a claim is denied, the special committee shall notify the claimant and the Executive Director. The notice of denial shall include the specific reason for denial and shall include a notice of an opportunity to appeal the denial to the Board.

(e) A claimant may appeal the denial of a claim by making a request in writing addressed to the Executive Director of the Bar, within 60 days after the date of written notice of denial of the claim. A request for appeal shall be in writing and shall identify issues of law or fact raised by the denial and include a summary of the evidence of ownership on which the claim was originally submitted. The Board will review each request for appeal at its next scheduled board meeting following receipt of the request and respond through the Executive Director in writing. The Board's response will include an explanation of the Board's reasoning.

(f) Additional evidence shall not be admissible on appeal to the Board, except by mutual consent of the Board, the claimant, and any other parties to the proceeding. If such additional evidence is not admitted, the Board shall allow the claimant to resubmit the claim to the special committee with the new evidence.

(g) If the Board approves a claim on appeal, the Board shall notify the claimant and the Executive Director.

(h) A holder of property who has delivered unclaimed lawyer trust account funds to the Bar pursuant to ORS 98.386(2) may make payment to or delivery of property to an owner and file a claim with the Bar for reimbursement. The Bar shall reimburse the holder within 60 days of receiving proof that the owner was paid. The Bar may not assess any fee or other service charge to the holder. As a condition of

receiving the funds from the Bar, the holder shall agree to assume liability for the claimed asset and hold the Bar harmless from all future claims to the property.

(i) On a monthly basis, the Executive Director or the Executive Director's designee shall provide a listing of the resolution of claims to the Department of State Lands.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: April 22, 2011
From: Mitzi Naucner, Policy & Governance Committee Chair
Re: Fee Arbitration Task Force Report

Action Recommended

Accept the Fee Arbitration Task Force Report and recommend that the Board adopt its recommendations.

Summary of Report Recommendations

In 2010, the Board of Governors appointed a Fee Arbitration Task Force to evaluate the current fee arbitration rules and make proposals for changes where appropriate, to determine whether and how to increase participation in the program, and to develop recommendations for training and/or recruitment of arbitrators in order to improve the quality and consistency of fee arbitration awards.

In its report, the Task Force recommends making a number of changes to the current fee arbitration rules, which are reflected in the attached redline version of the OSB Fee Arbitration Rules. The Policy & Governance Committee reviewed and approved the proposed changes to the rules, and recommends that the Board adopt the proposed changes.

In addition to the proposed rule changes, the Task Force recommends the Board do the following to support and expand the OSB Fee Arbitration Program:

1. Institute a mediation pilot project
2. Develop and provide an arbitration training for volunteer arbitrators at no cost to the volunteers, and;
3. Appoint a Fee Arbitration Advisory Committee to act as a continuing resource for training and recruitment of OSB Fee Arbitrators.

The Policy & Governance Committee has reviewed the Fee Arbitration Task Force Report and recommends that the Board accept the report and adopt its recommendations.

Attachments: Fee Arbitration Task Force Report

Fee Arbitration Rules with proposed revisions

FEE ARBITRATION TASK FORCE
REPORT
April 22, 2011

Summary & Introduction

In 2009, the Board of Governors approved the creation of a Fee Arbitration Task Force to evaluate the current fee arbitration rules and make proposals for changes where appropriate, to determine whether and how to increase participation in the program, and to develop recommendations for training and/or recruitment of arbitrators in order to improve the quality and consistency of fee arbitration awards.

The following Task Force members were appointed in early 2010: the Honorable Kristena LaMar, Nena Cook, Lori DeDobbelaire, Scott T. Downing, Cynthia M Fraser, Nancy E Hochman, Dan MW Johnson, Jonathan Levine, Donald W McCann, Melvin Oden-Orr, David W Owens, Ronald L Roome, John L Svoboda and Suzanne Townsend. Task Force members were from throughout the state of Oregon who had vast experience either in arbitration in general, or with the Oregon State Bar Fee Arbitration Program in particular. Two public members from the Fee Arbitration Panel participated in the Task Force, as well as a couple of lawyers who specialize in mediation. The Honorable Kristena LaMar served as the Task Force chair.

The Task Force met five times during 2010 and early 2011, spending the bulk of its time reviewing the current rules and discussing potential changes to those rules. In conducting its review, the Task Force considered comments submitted by participants in the program as well as fee arbitration rules adopted by the ABA and other jurisdictions.

Proposed Rule Changes

The attached redline version of the OSB Fee Arbitration Rules shows the changes proposed by the Task Force.

Many of the changes are simply housekeeping and meant to make the program easier to administer. For example, the Task Force saw no need to send the initial petition and arbitration agreement by certified mail. Instead, it changed the notice provisions under both 3.2 and 6.1 to allow notice by mail, e-mail or any method reasonably calculated to provide actual notice to the parties. In addition, instead of organizing and choosing panel members by judicial district, the proposed rules organize panel members by board region. Categorizing the fee arbitration volunteers in a manner that is consistent with other bar volunteers makes for easier administration and a broader pool of available arbitrators in the more remote regions of the state.

A few of the changes are more substantive and warrant some explanation.

Rule 1.1. The Task Force is recommending that the fee arbitration program be made available to resolve disputes between lawyers from out of state and their Oregon clients. This change is in response to the concern that some Oregon citizens are being left without a simple and efficient way to resolve fee disputes with their out-of-state lawyers. While it will undoubtedly mean some additional administrative costs for the program, there is no way to determine how many people will take advantage of this change.

Rule 4.2. This section presented the most difficulty for the Task Force. Nena Cook, who regularly defends legal malpractice cases, was perhaps the most vocal and articulate in expressing concerns about the rule as written. While arbitrators may not award damages for alleged malpractice, the rule specifically allows for consideration of allegations of the attorney's mishandling of a case. Many arbitrators struggle with this apparent contradiction in the rule. In addition, the ambiguity of the rule may allow for the argument that a fee arbitration award precludes subsequent litigation of a malpractice issue. The changes to this rule are meant to address those issues.

Rule 6.10. This section provides for either the stay or dismissal of a fee arbitration proceeding if the client files a malpractice suit against the lawyer during the pendency of the proceeding. It is meant to mitigate the confusion that often arises when a malpractice suit is brought while a fee arbitration proceeding is pending. Typically as a practical matter, the fee dispute is resolved by the malpractice suit.

Rule 8.4. The Task Force proposes changing Section 8.4 to mirror the language of RPC 8.3(a), as the current language has proved to be confusing to implement. While this is a relatively simple and minor change, the Task Force wants the Board to know that it had a lengthy and healthy discussion about whether the proceedings should be not just exempt from the public records laws, but confidential. The argument in favor of requiring the parties to keep the proceedings confidential was that it would allow the parties to maintain the privilege of any attorney-client communications that are disclosed during the course of the fee arbitration. The argument against confidentiality was that it may keep the arbitrator and client from disclosing ethical misconduct that either occurred during the proceeding or that occurred during the underlying representation and became apparent during the arbitration. In the end, a majority of the Task Force members felt strongly that the proceedings should not be confidential, and the lawyer arbitrators' duty to report ethical misconduct should be clarified.

Rule 9.1. This section provides that arbitrators are immune from civil liability and may not be compelled to testify regarding the arbitration proceedings over which they preside. This proposal is in response to concerns that several arbitrators have expressed regarding disgruntled participants threatening to sue them.

Training & Recruitment of Arbitrators

Staff reported receiving regular comments from the panel arbitrators requesting training on the OSB fee arbitration program and how to conduct fee arbitrations. In addition some task force members expressed concern that some arbitrators may not have or display appropriate listening skills and/or temperament during the arbitrations.

The Task Force discussed whether arbitrators should have either minimum qualifications or some level of training before being allowed to act as an arbitrator in the OSB Fee Arbitration Program. ORS 36.415 requires arbitrators to be a member of the bar for 5 years. Multnomah County Circuit Court requires arbitrators who want to be on the list to handle court-annexed arbitration to complete a two hour training

course. For its part, the OSB supplies a small handbook for arbitrators that covers the Fee Arbitration Rules and provides general guidelines on how to conduct arbitrations.

The OSB Fee Arbitration Program includes non-lawyers on the three-member panels and while it requires lawyers to be active members of the bar, it does not require a certain number of years of experience. The Task Force believes that continued inclusion of public members is important, although included a change in its rules to allow participants to opt out of the 3-panel requirement.

The Task Force was reluctant to impose a training requirement, as it did not want to impose additional barriers to recruiting and retaining volunteers and did not want to exclude public members from participation in panels. Instead, the Task Force recommends that the bar develop a webinar on the basics of the OSB Fee Arbitration Program and how to conduct an arbitration, and that the bar make that webinar available at no cost to volunteer panel members.

In addition, the Task Force recommends that the Board appoint an advisory committee, made up of at least one lawyer-arbitrator from each Board region to act as a resource for training and recruitment. Other jurisdictions with robust fee arbitration programs have such advisory committees and rely heavily on their support.

Increasing Participation in the Program

The Task Force discussed several ways of increasing participation in the Fee Arbitration Program. First, the Task Force discussed the possibility of making the arbitration of fee disputes mandatory in Oregon. The Task Force spent a long time discussing this option, and reviewed both the ABA Model Rules and rules from other states which provide for mandatory fee arbitration. The primary concern of the Task Force was that, were participation mandatory, any amounts in excess of the Small Claims Court's jurisdiction (\$7500) could not be made binding since the Oregon Constitution guarantees the right of jury trial for those larger sums. Therefore, the process would not provide a final resolution to the parties, and would offer little beyond what is available in the circuit court. In the end, the Task Force consensus was to keep the process as it is (absent an alternate agreement by the parties): not mandatory, but binding.

Second, the Task Force discussed including mediation as an option both to encourage greater participation in the program and to allow for an alternate means of resolving fee disputes. The Task Force recommends that the Board approve the implementation of a three year pilot project, incorporating mediation into the current fee arbitration program as an alternative dispute resolution option. At the conclusion of the pilot project term, the Board should evaluate the success of the project and determine whether mediation should continue to be made available as an alternative fee dispute resolution option.

Respectfully submitted,

Hon. Kristena LaMar, chair, Fee Arbitration Task Force

Fee Arbitration Rules

Rules of the Oregon State Bar on Arbitration of Fee Disputes

Effective ~~August 14, 2004~~ April 22, 2011

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Section 1. Purpose

1.~~10~~ The purpose of these Rules is to provide for the arbitration of fee disputes between active members of the Oregon State Bar maintaining offices in Oregon and their clients; ~~and between those members and other active members of the Oregon State Bar; and; between active members of a state bar other than Oregon and their clients who either are residents of the state of Oregon or have their principal place of business in Oregon.~~ Parties who agree to participate in this program expressly waive the requirements of ORS 36.600 to 36.740 to the extent permitted by ORS 36.610 except as specifically provided herein.

Section 2. Arbitration Panels

2.~~10~~ General Counsel shall appoint members to an arbitration panel in each ~~judicial district board of governors region~~, from which hearing panels will be selected. The normal term of appointment shall be three years, and a panel member may be reappointed to a further term. All attorney panel members shall be active or active pro bono members in good standing of the Oregon State Bar. Public members will be selected from individuals who reside or maintain a principal business office in the ~~judicial district board of governors region~~ of appointment and who are neither active nor inactive members of any bar.

Section 3. Initiation of Proceedings

3.1 An arbitration proceeding shall be initiated by the filing of a written petition and an arbitration agreement. The petition must be signed by one of the parties to the dispute and filed with General Counsel's Office within 6 years of the completion of the legal services involved in the dispute.

3.2 Upon receipt of the petition and arbitration agreement signed by the petitioning party, General Counsel's Office shall forward a copy of the petition and the original arbitration agreement to the respondent named in the petition by ~~certified regular first-class mail; e-mail or facsimile or by such other method as may reasonably provide the respondent with actual notice of the initiation of proceedings. return receipt requested.~~ Any supporting documents submitted with the petition shall also be provided to the respondent. If the respondent desires to submit the dispute to arbitration, the respondent shall sign the original arbitration agreement and return it to General Counsel's Office within twenty (2~~10~~) days after receipt. A twenty (2~~10~~) day extension of time to sign and return the petition may be granted by General Counsel. Failure to sign and return the arbitration agreement within the specified time shall be deemed a rejection of arbitration. A lawyer who is retained by a client who was referred by the OSB Modest Means Program or OSB Lawyer Referral Program may not decline to arbitrate if such client files a petition for fee arbitration.

3.3 If the respondent agrees to arbitrate, General Counsel's Office shall notify the petitioner who shall, within twenty (2~~10~~) days of the mailing of the notice, pay a filing fee of \$50 for claims of less than ~~\$5000~~ \$7500 and \$75 for claims of ~~\$ 5000~~ \$7500 or more. The filing fee may be waived at the discretion of General Counsel based on the submission of a statement of the petitioner's assets and liabilities reflecting inability to pay. The filing fee shall not be refunded if the dispute is settled prior to the issuance of an award or if the parties agree to withdrawal of the petition, except on a showing satisfactory to General Counsel's Office of extraordinary circumstances or hardship.

3.4 If arbitration is rejected, General Counsel's Office shall notify the petitioner of the rejection and of any stated reasons for the rejection.

3.5 The petition, arbitration agreement and statement of assets and liabilities shall be in the form prescribed by General Counsel, provided however, that the agreement may be modified with the consent of both parties and the approval of General Counsel's Office.

3.6 After the parties have signed the agreement to arbitrate, if one party requests that the proceeding not continue, General Counsel's Office shall dismiss the proceeding. A dismissed proceeding will be reopened only upon agreement of the parties or receipt of a copy of an order compelling arbitration pursuant to ORS 36.625.

Section 4. Amounts in Dispute

4.1 Any amount of fees or costs in controversy may be arbitrated. The arbitrator(s) may award interest on the amount awarded as provided in a written agreement between the parties or as provided by law, but shall not award attorney fees or costs incurred in the arbitration proceeding. General Counsel's Office may decline to arbitrate cases in which the amount in dispute is less than \$250.00.

~~4.2 Arbitrators may not award affirmative relief in the form of damages or reduce a fee to compensate for losses incurred by a client for alleged malpractice or otherwise. However, evidence shall be allowed regarding allegations of the attorney's mishandling of a case to determine whether the fees charged for the services were reasonable. The sole issue to be determined in all arbitration proceedings under these rules shall be whether the fees or costs charged for the services rendered were reasonable in light of the factors set forth in RPC 1.5. Arbitrators may receive any evidence relevant to a determination under this Rule, including evidence of the value of the lawyer's services rendered to the client. An attorney shall not be awarded more than the amount for services billed but unpaid. A client shall not be awarded more than the amount already paid, and may also be relieved from payment of services billed and remaining unpaid.~~

Section 5. Selection of Arbitrators

5.1 Each party to the dispute shall receive with the petition and arbitration agreement a list of the members of the arbitration panel having jurisdiction over the dispute. The arbitration panel having jurisdiction over a dispute shall be that of the ~~judicial district~~board of governors region in which the ~~attorney~~lawyer to the dispute maintains his or her law office, unless the parties agree that the matter should be referred to the panel of another ~~judicial district~~board of governors region.

5.2 Each party may challenge without cause, and thereby disqualify as arbitrators, not more than two members of the panel. Each party may also challenge any member of the panel for cause. Any challenge must be made by written notice to General Counsel, shall include an explanation of why the party believes the party cannot have a fair and impartial hearing before the member, and shall be submitted along with the Petition and Agreement. Challenges for cause shall be determined by General Counsel, based on the reasons offered by the challenging party.

5.3 Upon receipt of the arbitration agreement signed by both parties, General Counsel shall select the appropriate number of arbitrators from the list of unchallenged members of the panel to hear a particular dispute. Disputed amounts of less than ~~\$5,000~~ \$7,500 shall be arbitrated by one panel member. Disputed amounts of ~~\$5,000~~ \$7,500 or more shall be arbitrated by three panel members (subject to Rule 5.4). If three (3) arbitrators are appointed, General Counsel shall appoint one ~~attorney~~lawyer member to serve as chairperson. Notice of appointment shall be given by the General Counsel to the parties. Regardless of the amount in controversy, the parties may agree that one arbitrator hear and decide the dispute.

5.4 If three arbitrators cannot be appointed in a particular case from the arbitration panel of the ~~judicial district~~ board of governors region in which a dispute involving ~~\$5,000~~ \$7,500 or more is pending, the dispute shall be arbitrated by a single arbitrator. If, however, any party files a written objection with General Counsel within 10 days after notice that a single arbitrator will be appointed under this ~~Rulesubsection~~, two additional arbitrators shall be appointed, under the procedures set out in subsection 5.5.

5.5 Any change or addition in appointment of arbitrators shall be made by General Counsel. When appropriate, arbitrators can be appointed by the General Counsel from the arbitration panel of a different ~~judicial district~~ board of governors region. When necessary, General Counsel may also select other arbitrators, provided that the ~~attorney~~lawyer members are active members in good standing of the Oregon State Bar.

5.6 Before accepting appointment, an arbitrator shall disclose to the parties and, if applicable, to the other arbitrators any known facts that a reasonable person would consider likely to affect the impartiality of the arbitrator in the proceeding. Arbitrators have a continuing duty to disclose any such facts learned after appointment. After disclosure of facts required by this rule, the arbitrator may be appointed or continue to serve only if all parties to the proceeding consent; in the absence of consent by all parties, General Counsel's Office will appoint a replacement arbitrator and, if appropriate, extend the time for the hearing.

Section 6. Arbitration Hearing

6.1 The arbitrator(s) appointed shall determine a convenient time and place for the arbitration hearing to be held. The chairperson or single arbitrator shall provide written notice of the hearing date, time and place to the parties and to General Counsel's Office not less than 140 days before the hearing. Notice may be provided by regular first class mail, e-mail, or facsimile or by such other method as may reasonably provide the parties with actual notice of the hearing. Appearance at the hearing waives the right to notice.

6.2 The arbitration hearing shall be held within ~~sixty (60)~~ ninety (90) days after appointment of the arbitrator(s) by General Counsel, subject to the authority granted in subsection 6.3.

6.3 The arbitrator or chairperson may adjourn the hearing ~~from time to time~~ as necessary. Upon request of a party to the arbitration for good cause, or upon his or her own determination, the arbitrator or chairperson may postpone the hearing from time to time.

6.4 Arbitrators shall have those powers conferred on them by ORS 36.675. The chairperson or the sole arbitrator shall preside at the hearing. He or she shall be the judge of the relevance and materiality of the evidence offered and shall rule on questions of procedure. He or she shall exercise all powers relating to the conduct of the hearing, and conformity to legal rules of evidence shall not be necessary. Arbitrators shall resolve all disputes using their professional judgment concerning the reasonableness of the charges made by the lawyer involved.

6.5 The parties to the arbitration are entitled to be heard, to present evidence and to cross-examine witnesses appearing at the hearing. Any party to an arbitration may be represented at his or her own expense by ~~an attorney~~ lawyer at the hearing or at any stage of the arbitration.

6.6 On request of any party to the arbitration or any arbitrator, the testimony of witnesses shall be given under oath. When so requested, the chairperson or sole arbitrator may administer oaths to witnesses testifying at the hearing.

6.7 Upon request of one party, and with consent of both parties, the ~~chairperson-panel~~ or sole arbitrator may decide the dispute upon written statements of position and supporting documents submitted by each party, without personal attendance at the arbitration hearing. The chairperson or sole arbitrator may also allow a party to appear by telephone if, in the sole discretion of the chairperson or sole arbitrator, such appearance will not impair the ability of the arbitrator(s) to determine the matter. The party desiring to appear by telephone shall bear the expense thereof.

6.8 If any party to an arbitration who has been notified of the date, time and place of the hearing but fails to appear, the chairperson or sole arbitrator may either postpone the hearing or proceed with the hearing and determine the controversy upon the evidence produced, notwithstanding such failure to appear.

6.9 Any party may have the hearing reported at his or her own expense. In such event, any other party to the arbitration shall be entitled to a copy of the reporter's transcript of the testimony, at his or her own expense, and by arrangements made directly with the reporter. As used in this subsection, "reporter" may include an electronic reporting mechanism.

6.10 If during the pendency of an arbitration hearing or decision the client files a malpractice suit against the lawyer, the arbitration proceedings shall be either stayed or dismissed, at the agreement of the parties. Unless both parties agree to stay the proceedings within 14 days of the arbitrator's receipt of a notice of the malpractice suit, the arbitration shall be dismissed.

Section 7. Arbitration Award

7.1 An arbitration award shall be rendered within thirty (30) days after the close of the hearing unless General Counsel, for good cause shown, grants an extension of time.

7.2 The arbitration award shall be made by a majority where heard by three members, or by the sole arbitrator. The award shall be in writing and signed by the members concurring therein or by the sole arbitrator. The award shall state the basis for the panel's jurisdiction, the nature of the dispute, the amount of the award, if any, the terms of payment, if applicable, and an opinion regarding the reasons for the award. Awards shall be

substantially in the form shown in Appendix A. An award that requires the payment of money shall be accompanied by a separate statement that contains the information required by ORS 18.042 for judgments that include money awards.

7.3 The original award shall be forwarded to General Counsel, who shall mail certified copies of the ~~agreement and~~ award to each party to the arbitration. General Counsel shall retain the original ~~award, award,~~ together with the original agreement to arbitrate. Additional certified copies of the agreement and award will be provided on request. The OSB file will be retained for six years after the award is rendered; thereafter it may be destroyed without notice to the parties.

7.4 If a majority of the arbitrators cannot agree on an award, they shall so advise General Counsel within 30 days after the hearing. General Counsel shall resubmit the matter, de novo, to a new panel within thirty days.

7.5 The arbitration award shall be binding on both parties, subject to the remedies provided for by ORS 36.615, 36.705 and 36.710. The award may be confirmed and a judgment entered thereon as provided in ORS 36.615, 36.700 and ORS 36.715.

7.6 Upon request of a party and with the approval of General Counsel for good cause, or on General Counsel's own determination, the arbitrator(s) may be directed to modify or correct the award for any of the following reasons:

- a. there is an evident mathematical miscalculation or error in the description of persons, things or property in the award;
- b. the award is in improper form not affecting the merits of the decision
- c. the panel or sole arbitrator has not made a final and definite award upon a matter submitted; or
- d. to clarify the award.

Section 8. Public Records and Meetings

8.1 The arbitration of a fee dispute through General Counsel's Office is a private, contract dispute resolution mechanism, and not the transaction of public business.

8.2 Except as provided in paragraph 8.4 below, or unless all parties to an arbitration agree otherwise, all records, documents, papers, correspondence and other materials submitted by the parties to the General Counsel, or to the arbitrator(s), and any award rendered by the arbitrator(s), shall not be subject to public disclosure.

8.3 Arbitration hearings are closed to the public, unless all parties agree otherwise. Witnesses who will offer testimony on behalf of a party may attend the hearing, subject to the chairperson's or sole arbitrator's discretion, for good cause shown, to exclude witnesses.

8.4 Notwithstanding paragraphs 8.1, 8.2, and 8.3, lawyer arbitrators shall ~~disclose inform to~~ the Client Assistance Office when they know, based on information any knowledge obtained during the course of an arbitration proceeding, that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects. ~~of an apparent ethical violation committed by the attorney; and a~~ All records, documents, papers, correspondence and other materials submitted to General Counsel or to the arbitrator(s) during the course of the proceeding, and any award rendered by the arbitrator(s), shall be made available to the Client Assistance Office for the purpose of reviewing the alleged ethical violations in accordance with BR 2.5.

8.5 Notwithstanding paragraphs 8.1, 8.2, and 8.3, General Counsel may disclose to the Client Assistance Office or to Disciplinary Counsel, upon the Client Assistance Office's or Disciplinary Counsel's request, whether a fee arbitration proceeding involving a particular ~~attorney~~ lawyer is pending, the current status of the proceeding, and, at the conclusion of the proceeding, in whose favor the award was rendered.

8.6 Notwithstanding paragraphs 8.1, 8.2 and 8.3, if any lawyer whose employment was secured through the Oregon State Bar Modest Means Program or Lawyer Referral Program refuses to participate in fee arbitration, General Counsel shall notify the administrator of such program(s).

Section 9. Arbitrator Immunity and Competency to Testify

9.1 Pursuant to ORS 36.660, arbitrators shall be immune from civil liability to the same extent as a judge of a court of this state acting in a judicial capacity. All other provisions of ORS 36.660 shall apply to arbitrators participating in the Oregon State Bar fee arbitration program.

Appendix A

**Oregon State Bar
Fee Arbitration**

) Case No.

Petitioner

)

v.

) Arbitration Award

)

Respondent

)

Jurisdiction**Nature of Dispute****Amount of Award****Opinion****Award Summary**

The arbitrator(s) find that the total amount
of fees and costs that should have been charged
in this matter ~~are~~ is:

\$

Of which the Client is found to have paid:

\$

For a net amount due of:

\$

Accordingly, the following award is made:

\$

Client shall pay Attorney the sum of:

\$

(or)

Attorney shall refund to Client the sum of:

\$

(or)

Nothing further shall be paid by either attorney or client.

/Signature(s) of Arbitrator(s)

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: April 22, 2011
Memo Date: April 5, 2011
From: Mitzi Naucler, Policy and Governance Committee Chair
Re: Judicial Administration Committee Assignment Revisions

Action Recommended

Approve revisions to the Judicial Administration Committee assignment (also referred to as a committee charge).

Background

The Judicial Administration Committee would like to expand its assignment to allow for the support of access to justice and the monitoring of court facilities and public safety issues. The committee also requests that the assignment include the ability to track relevant work on and support of various alternative courts. The attached assignment outlines the specific wording of these changes.

Additionally, the committee is asking that their assignment to participate in judicial appointments and new judgeships be removed since the committee has not been involved in the judicial selection process for several years.

Note, additions and deletions to the original assignment are indicated by underlining (new) or strikethrough (deleted).

JUDICIAL ADMINISTRATION COMMITTEE CHARGE

General:

Study and make recommendations to the Board on matters concerning state judicial administration and the judiciary. Monitor and recommend improvements in technology, operation, discipline and funding within the judicial system.

Specific:

1. Review relevant past and future legislation affecting the justice system ~~and its funding,~~ and coordinate with Public Affairs Committee of BOG.
2. Monitor and provide recommendations to BOG regarding ballot measures and issues of special interest affecting judicial administration and Oregon Judicial Department funding.
3. Monitor the implementation of the Chief Justice's Oregon eCourt Program and related implementation rules, policies, and laws, provide recommendations to the BOG on issues affecting judicial administration in the eCourt Program.
4. Work with the Legislature, the Judicial Department, and local counties on court facilities issues and monitor the work of the Interim Committee on Court Facilities established in section 18, chapter 860, Oregon Laws 2007, and report to the BOG on legislative measures addressing court facilities issues.
5. Monitor and support Public Defense Services public safety issues, access to justice, and related funding issues.
6. Track relevant work on and support alternative courts (water court, veteran's courts, expedited civil jury trials), Treatment Courts and Problem Solving Courts, including Drug Courts, Family Courts, DUII Courts, and Mental Health Courts.
- ~~7. Continue involvement in judicial appointments and new judgeships.~~
7. Support public awareness including community outreach by judges.
8. Continue to study and consider judicial selection and judicial campaign proposals.
9. Relate the above activities to ~~court accessibility~~ access to courts and keeping courts open.
10. Solicit nominations for the OSB Award of Merit, the President's Public Service Award, Membership Service Award, Affirmative Action Awards, the Joint Bench Bar Professionalism Award and any other state, local and national awards for lawyers who contribute to serving the legal needs of Oregonians.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: April 22, 2011
Memo Date: April 7, 2011
From: Mitzi Naucler, Policy & Governance Chair
Re: Amendments to OSB Bylaw 2.6

Action Recommended

Over the past few years, the Legislature has amended ORS Chapter 244 relating to government ethics. Bar staff recommends amending OSB Bylaw 2.6 "Conflicts of Interest" to be consistent with state ethics laws.

Bar staff also recommends that the Board waive the one-meeting notice requirement under OSB Bylaw Article 27 (which requires a vote of two-thirds of the Board).

Background

Under ORS 9.010(3)(h), the Oregon State Bar is subject to ORS 244.010 to 244.040, pertaining to government ethics. OSB Bylaw 2.6 seeks to incorporate the standards of ORS Chapter 244 and put bar officials on notice that they are subject to government ethics laws.

Recent legislative amendments have changed key provisions of ORS Chapter 244 including, but not limited to:

- decreasing the value of gifts public officials may receive in a calendar year from any one source from \$100 to \$50;
- amending the definition of who has a "legislative or administrative interest" in public officials;
- amending the definition of what is a gift and what is not a gift; and
- amending the definition of what is a business with which an official is associated.

The attached proposed amendment to OSB Bylaw 2.6 amends the Bylaws to reflect current state ethics law. The proposed amendment also adds the term "Oregon Registered Domestic Partner" to the definition of "relative" in the context of government ethics as is required by HB 2007 (2007). The proposed amendment also clarifies that should ORS Chapter 244 be amended in a manner that makes the law inconsistent with the Bylaws, the new law will govern bar officials' conduct.

Section 2.6 Conflicts of Interest

Bar officials are subject to the provisions of ORS Chapter 244, the Government Standards and Practices Act. Nothing in this section is intended to enlarge or contradict the statutory provisions as they may apply to bar officials. To the extent anything in this section contradicts the provisions of ORS Chapter 244, bar officials shall be bound by the statutory provisions.

Subsection 2.600 Definitions

As used in Section 2:

(a) "Actual conflict of interest" means that the person, a relative of the person or a business with which the person or a relative of the person is associated will derive a private pecuniary benefit or detriment as a result of an action, decision or recommendation of the person in the course of bar-related activities.

(b) "Bar official" means members of the Board of Governors; appointees of the Board of Governors, including members of standing committees, Local Professional Responsibility Committees, bar counsel panels, and the State Professional Responsibility Board; section officers and executive committee members; and bar staff.

(c) "Business" means any corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, self-employed person and any other legal entity operated for economic gain, but excluding any income-producing not-for-profit corporation that is tax exempt under IRC §501(c) with which a bar official is associated only as a member or board director in or in a non-remunerative capacity.

(d) "Business with which the person is associated" means:

(1) any private business or closely held corporation of which the person-bar official or the person's-bar official's relative is a director, officer, owner, employee or agent or any business or closely held corporation in which the person-bar official or the person's-bar official's relative owns or has owned stock worth \$1,000 or more at any point in the preceding year;

(2)- Any publicly held corporation in which the bar official or the bar official's relative owns or has owned \$100,000 or more in stock or another form of equity interest, stock options or debt instruments at any point in the preceding calendar year; and

(3) Any publicly held corporation of which the bar official or the bar official's relative is a director or officer.

(e) Except as excluded by ORS 244.020(6), "Gift" means something of economic value given to or solicited by a bar official, or a relative or member of the household of the bar official:

(1) Without valuable consideration of equivalent value, including the full or partial forgiveness of indebtedness, which is not extended to others who are not bar officials or the relatives or members of the household of bar officials on the same terms and conditions; or

(2) For valuable consideration less than that required from others who are not bar officials.

(f) "Potential conflict of interest" means that the ~~person~~bar official, a relative of the ~~person~~bar official or a business with which the ~~person~~bar official or a relative of the ~~person~~bar official is associated, could derive a private pecuniary benefit or detriment as a result of an action, decision or recommendation of the person in the course of bar-related activities, unless the pecuniary benefit or detriment arises out of the following:

(1) An interest or membership in a particular business, industry, occupation or other class required by law as a prerequisite to the holding by the bar official of the office or position.

(2) Any action in the bar official's official capacity which would affect to the same degree a class consisting of all inhabitants of the state, or a smaller class consisting of an industry, occupation or other group including one of which or in which the bar official, or the bar official's relative or business with which the person or the bar official's relative is associated, is a member or is engaged.

(3) Membership in or membership on the board of directors of a nonprofit corporation that is tax-exempt under section 501(c) of the Internal Revenue Code.-

(g) "Member of the household" means any person who resides with the bar official.

(h) "Relative" means the bar official's spouse, the bar official's Oregon Registered Domestic Partner, any children of the bar official or the bar official's spouse or Oregon Registered Domestic Partner, and siblings and parents of the bar official or the bar official's spouse or Oregon Registered Domestic Partner. Relative also means any individual for whom the bar official provides benefits arising from the bar official's public employment or from whom the bar official receives benefits arising from that individual's employment.

Subsection 2.601 Prohibited Actions

Regardless of whether an actual or potential conflict is disclosed:

(a) No bar official may use or attempt to use the person's official position to obtain any financial gain or the avoidance of any financial detriment that would not otherwise be available to the person, but for the bar official's holding of the official position, except official salary, reimbursement of expenses for official activities or unsolicited awards for professional achievement for the bar official, ~~or~~ a relative of the bar official, a member of the household of the bar official, or for any business with which the bar official or the bar official's relative is associated.

(b) No bar official may attempt to further the personal gain of the bar official through the use of confidential information gained by reason of an official activity or position.

(c) No bar official or relative or member of the household of a bar official may solicit or receive, during any calendar year, any gift or gifts with an aggregate value of more than \$~~5100~~ from any single source that could reasonably be known to have ~~an economic~~ interest, distinct from that of the general public, in any matter ~~concerning which the official has any authority or responsibility~~ subject to the decision or vote of the bar official acting in the bar official's official capacity. This provision does not apply to bar officials who are subject to the Oregon Code of Judicial Conduct.

(d) No bar official may solicit or receive a promise of future employment based on an understanding that any official action will be influenced by the promise.

Oregon State Bar
Meeting of the Board of Governors
February 18, 2011
Open Session Minutes

The meeting was called to order by President Stephen Piucci at 9:09 a.m. on February 18, 2011, and adjourned at 12:33 p.m. Members present from the Board of Governors were Jenifer Billman, Michelle Garcia, Hunter Emerick, Ann Fisher, Michael Haglund, Derek Johnson, Matt Kehoe, Christopher Kent, Ethan Knight, Tom Kranovich, Steve Larson, Audrey Matsumonji, Kenneth Mitchell-Phillips, and Mitzi Naucler. Staff present were Sylvia Stevens, Helen Hierschbiel, Rod Wegener, Jeff Sapiro, Susan Grabe, Kay Pulju, and Camille Greene. Also present was ONLD Chair, Teresa Gledhill-Kessler.

1. Department Presentation

Ms. Pulju presented an overview of OSB Member and Public Services. She described the department's organizational chart and relationships between her departments - Bulletin, Marketing, Media and Communications, Member Services, Customer Service/Reception, and Referral and Information Services and their projects - Special Events, Event calendar, Pubic Education, MP3 downloads, and Legal Links among others.

2. Report of Officers

A. Report of the President

As written.

B. Report of the President-elect

As written.

C. Report of the Executive Director

ED Operations Report and Sustainability Report as written. Ms. Stevens explained the process used to recruit a new Director of Diversity and Inclusion. She presented a slide show from the ABA titled "The Future of the Legal Profession" Which predicts significant changes resulting from globalization, technology and demographics . She suggested the BOG might want to consider the creation of a "futures committee" to monitor trends and develop strategies.

D. Oregon New Lawyers Division

Ms. Kessler reported on a variety of ONLD projects and events described in her written report. She also presented the 2011 ONLD calendar of events. ONLD is working on a special project aimed at recruiting new lawyers who are unemployed or under-employed to get experience as volunteers for pro bono organizations.

E. Report of the BOG Liaison to MBA

Mr. Haglund reported on the January 4 and February 1 MBA meetings. The MBA's financial situation is solid and they will make grants to the CEJ and Volunteer Lawyer's

Project. Multnomah Bar Foundation's civic education in Junior High and High School is their primary mission.

3. Professional Liability Fund [Mr. Zarov]

A. Financial Report

Ms. Stevens gave a brief report from Mr. Zarov. The PLF ended 2010 with modest net revenue, primarily because of good investment returns in December 2010. The PLF is \$2 million toward its goal of having \$12 million in reserves. New claims attorney Pam Stendahl begins work on February 22 and a new IT person will start on March 1.

4. Rules and Ethics Opinions

A. Proposed Formal Opinion on Limited Scope Representation

Ms. Stevens presented Proposed Formal Opinion No. 2010-183 regarding Scope of Representation and Limiting the Scope and unbundled legal services. Mr. Larson, the Ethics Committee contact, suggested that the committee had not concluded in their discussions and was not ready for our vote on this proposal. Ms. Fisher and Ethan Knight disagreed, based on their personal experience with the LEC and were confident that the proposed opinion had been discussed at length and is ready for a vote. [Exhibit A]

Motion: Mr. Haglund moved, Mr. Knight seconded, and the board voted unanimously to adopt Proposed Formal Opinion No. 2010-183.

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

A. Client Security Fund

1. Mr. Haglund presented Mr. Johansen's request for review of the CSF Committee's denial of his Claim No. 2010-39. The committee was concerned that Mr. Johansen had not been entirely candid about the amount of his loss; moreover, the committee concluded that the loss resulted from loans made as a personal favor to Oh, and were not the result of the lawyer-client relationship.

Motion: Mr. Kent moved, Ms. Matsumonji seconded, and the board voted unanimously to uphold the CSF Committee's denial of Mr. Johansen's application for reimbursement.

B. Mentoring Task Force

Mr. Piucci reported on the status of the task force's work to date. He is working with Kateri Walsh on an introductory video about the mentoring program for the OSB website, mentor training and interviews. More than 200 lawyers have volunteered to be mentors thus far. Based on results from Utah's mentoring program, this synergistic project may help launch a senior law program.

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

A. Appellate Screening Committee

Mr. Larson reported that he and Mr. Piucci are going to meet with the governor's new general counsel, Liani Reeves, to talk about the appellate selection process under the new governor.

B. Budget and Finance Committee [Mr. Kent]

1. Changes to the OSB Investment Policy

Mr Kent reported on the proposed change of the OSB by law 7.402 to include strategies that the committee believes are compliant with the bar's policy and add more diversity to the portfolio. In accordance with Bylaw 27, this constitutes notice and the motion will be before the BOG for a vote in April. [Exhibit B]

2. Update on Tenants and Leases at the Bar Center

Mr. Kent reported on three recommended BOG actions: ratify the execution of the Lease Termination Agreement with OPUS; engage Macadam Forbes as brokers for leasing the vacant space at the bar center; and make recommendations for development of the vacant space at the bar center.

Motion: The board unanimously approved the Budget and Finance Committee motion.

3. Oral Report of Committee Chair

Mr. Kent reported on the options considered and their outcome on the budget's bottom line. Mr. Wegener reported on details of the OPUS lease default and monies involved.

C. Executive Director Evaluation Committee

1. Amendment of ED Contract

Ms. Garcia reported on the changes requested by Ms. Stevens' request for amendments to her contract, giving Ms. Stevens discretion to contribute a larger portion of her salary to her PERS Individual Account.

Motion: The board voted unanimously to approve the committee's motion..

D. Member Services Committee

1. Update on OSB Program Review

Ms. Matsumonji updated the board on the committee's review of the current OSB programs. The mission of the ONLD program is changing and needs review.

2. Recruitment for 2011 HOD elections

Ms. Matsumonji reported that recruitment for HOD elections is in progress. The deadline is Friday, March 18 and 64 candidates are needed.

E. Policy and Governance Committee [Ms. Naucler]

1. Complimentary CLE for Active Pro Bono Members.

Ms. Naucler explained the committee's motion that the OSB allow Active Pro Bono members to attend one complimentary CLE each year, limited to one full day. She added that there are plenty of no-cost CLE programs for Active Pro Bono Members to give them an opportunity to earn required MCLE credits. There followed some discussion about the appropriate limit on complimentary CLE attendance.

Motion: Mr. Emerick moved and Mr. Kehoe seconded that Pro Bono members be entitled to up to 8 hours of complimentary OSB CLE. The motion passed unanimously.

2. ONLD Bylaw Changes

Ms. Naucler presented the committee motion to approve the revisions to the Oregon New Lawyers Division bylaws to incorporate reference to new Region 7, ensure uniformity of terms and make modifications to various dates. In accordance with Bylaw 27, this constitutes notice and the motion will be before the BOG for a vote in April. [Exhibit C]

3. MCLE Rule and Regulation on Mentoring

Ms. Naucler presented the committee's motion to recommend that the Supreme Court adopt new MCLE Rule 5.2(f) allowing new lawyers and mentors to earn MCLE credit for participating in the New Lawyer Mentoring Program. The committee also recommends adoption of new Regulation 5.100(c) and (d) specifying the amount of credits that can be earned. [Exhibit D]

Motion: The board voted unanimously to approved the committee's motion.

4. Standing Committee on Urban/Rural Issues

Ms. Naucler reported that the committee is not recommending the creation of a standing committee to address the issues raised in the Task Force report. Rather, it has asked staff to prepare a summary of what the bar is doing in those areas. The report will be presented and open for discussion at the 2011 HOD meeting.

Motion: The board voted unanimously to accept the Urban/Rural Task Force report and to proceed as recommended by the committee.

5. Renewing Resolution to Amend ORPCs 1.2 and 3.4.

Ms. Naucler reported that, after discussion, the committee did not believe the proposed amendments should be presented again to the HOD. Rather, the

committee suggests that the issue be presented to the LEC for development of a formal opinion.

Motion: The board voted unanimously to adopt the committee's suggestion.

6. Advertising Rule Conformity

Ms. Naucier reminded the BOG that the issue of conformity among northwest states was raised at the 2010 HOD meeting. The committee recommends asking the Legal Ethics Committee to study the issue and make recommendations to the BOG regarding any changes that should be made.

Motion: The board unanimously approved the committee's recommendation.

7. Amendment to Bylaw 24.201

Motion: Ms. Naucier reported on the PLF's request that Bylaw 24.201 be amended to specifically include "judges" in addition to lawyers as eligible recipients of services provided by the PLF Personal and Practice Management Assistance Committee. In accordance with Bylaw 27, this constitutes first notice and the matter will be before the BOG for a vote in April.

F. Public Affairs Committee

Mr. Johnson updated the board on the 2011 Legislative session. The Chief Justice is interested in developing a relationship with lawyer-legislators and has requested that the Bar host a reception in March for him to network with them. The bar's law improvement package is moving along well this session. The court fees bills, civil and criminal, have had one hearing.

Motion: Mr. Larson moved, Mr. Kent seconded, a resolution that the board continue to support funding civil legal services and public defense services integral to court functions. The board voted unanimously in favor of the resolution, with Ms. Naucier abstaining.

G. Public Member Selection

No report.

7. Consent Agenda

Motion: Mr. Kehoe moved, Mr. Knight seconded, and the board voted unanimously to approve the consent agenda, including additional appointment recommendations [Exhibit E] and contact assignments [Exhibit F].

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

PROPOSED

FORMAL OPINION NO. 2010-183

Scope of Representation; Limiting the Scope

Facts:

Lawyer A is asked by Client X for assistance in preparing certain pleadings to be filed in court. Client X does not otherwise want Lawyer A's assistance in the matter, plans to appear *pro se*, and does not plan to inform anyone of Lawyer A's assistance.

Lawyer B has been asked to represent Client Y on a unique issue that has arisen in connection with complex litigation in which Client Y is represented by another law firm.

Lawyer C has consulted with Client Z about an environmental issue that is complicating Z's sale of real property. Client Z asks for Lawyer C's help with the language of the contract, but intends to conduct all of the negotiations with the other party and the other party's counsel by herself.

Question:

1 May Lawyers A, B and C limit the scope of their representations as requested by the respective clients?

Conclusion:

1. Yes, qualified.

Discussion:

In each example, the prospective client seeks to have the lawyer handle only a specific aspect of the client's legal matter. Such limited scope representation¹ is expressly allowed by Oregon RPC 1.2(b):

A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

As the examples herein reflect, a lawyer may limit the scope of his or her representation to taking only certain actions in a matter (e.g., Lawyer A's drafting 'or reviewing pleadings), or to only certain aspects of, or issues in, a matter (e.g., Lawyer B's representation on a unique issue in litigation, or Lawyer C's advising in a single issue in a transactional matter). In order to

¹ This is sometimes described as the "unbundling" of legal services, or as "discrete task representation."

limit the scope of the representation, RPC 1.2 requires that (1) the limitation must be reasonable under the circumstances, and (2) the client must give informed consent.²

With respect to the requirement that the limitations of the representation be reasonable, comment [7] to ABA Model Rule 1.2 offers the following guidance:

If, for example, a client's objective is limited to securing general information about the law the client needs in order to handle a common and typically uncomplicated legal problem, the lawyer and client may agree that the lawyer's services will be limited to a brief telephone consultation. Such a limitation, however, would not be reasonable if the time allotted was not sufficient to yield advice upon which the client could rely. Although an agreement for a limited representation does not exempt a lawyer from the duty to provide competent representation, the limitation is a factor to be considered when determining the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

The second requirement of RPC 1.2 is the client's informed consent to the limited scope representation. RPC 1.0(g) defines informed consent as:

[T]he agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct. * * *

Obtaining the client's informed consent requires the lawyer to explain the risks of a limited scope representation. Depending on the circumstances, those risks may include that the matter is complex and that the client may have difficulty identifying, appreciating, or addressing critical issues when proceeding without legal counsel.³ One "reasonably available alternative," is to have a lawyer involved in each material aspect of the legal matter. The

² A lawyer providing a limited scope of services must be aware of and comply with any applicable law or procedural requirements. For example, if Lawyer A drafts pleadings for Client X, the pleadings would need to comply with Uniform Trial Court Rule ("UTC") 2.010(7), which requires a Certificate of Document Preparation by which a pro se litigant indicates whether he or she had paid assistance in selecting and completing the pleading.

³ A limited scope representation does not absolve the lawyer from any of the duties imposed by the RPCs as to the services undertaken. For example, the lawyer must provide competent representation in the limited area, may not neglect the work undertaken, and must communicate adequately with the client about the work. See, e.g., Oregon RPC 1.1, 1.3, 1.4. Likewise, a lawyer providing limited assistance to a client must take steps to assure there are no conflicts of interest created by the representation. See, e.g., Oregon RPC 1.7, 1.9.

explanation should also state as fully as reasonably possible what the lawyer will not do, so as to prevent the lawyer and client from developing different expectations regarding the nature and extent of the limited scope representation.

By way of example, Oregon RPC 4.2 generally prohibits a lawyer from communicating with a person if the lawyer has actual knowledge the person is represented by a lawyer on the subject of the communication.⁴ Mere knowledge of the limited scope representation may not be sufficient to invoke an obligation under Oregon RPC 4.2.⁵ Accordingly, the lawyer providing the limited scope representation should communicate the limits of Oregon RPC 4.2 with the client. If the client wants the protection of communication only through the lawyer on some or all issues, then the lawyer should be sure to communicate clearly to opposing counsel the scope of the limited representation and the extent to which communications are to be directed through the lawyer.⁶

⁴ Oregon RPC 4.2 provides that, “[i]n representing a client or the lawyer’s own interests, a lawyer shall not communicate or cause another to communicate on the subject of the representation with a person the lawyer knows to be represented by a lawyer on that subject unless:

- (a) the lawyer has the prior consent of a lawyer representing such other person;
- (b) the lawyer is authorized by law or by court order to do so; or
- (c) a written agreement requires a written notice or demand to be sent to such other person, in which case a copy of such notice or demand shall also be sent to such other person’s lawyer.”

See, e.g., OSB Legal Ethics Op Nos. 2005-6 (discussing communicating with a represented party in general) and 2005-80; *In re Newell*, 348 Or 396, 234 P3d 967 (2010) (reprimanding lawyer for communicating in a civil case with a person known to be represented by a criminal defense lawyer on the same subject). *See also* Oregon RPC 1.0(h), which provides: “‘Knowingly,’ ‘known,’ or ‘knows’ denotes actual knowledge of the fact in question * * *.”

⁵ *See, e.g.*, Colorado RPC 4.2 cmt [9A] (“[a] pro se party to whom limited representation has been provided * * * is considered to be unrepresented for purposes of this Rule unless the lawyer has knowledge to the contrary”); Los Angeles County Bar Association Prof’l. Responsibility and Ethics Committee, Formal Op. No. 502 (1999) (“[s]ince Attorney is not counsel of record for Client in the litigation * * * the opposing attorney is entitled to address Client directly concerning all matters relating to the litigation, including settlement of the matter”); Missouri Supreme Court Rule 4-1.2(e) (“[a]n otherwise unrepresented party to whom limited representation is being provided or has been provided is considered to be unrepresented for purposes of communication under Rule 4-4.2 and Rule 4-4.3 except to the extent the lawyer acting within the scope of limited representation provides other counsel with a written notice of a time period within which other counsel shall communicate only with the lawyer of the party who is otherwise self-represented”); Washington D.C. Bar Op. 330 (2005) (“[e]ven if the lawyer has reason to know that the *pro se* litigant is receiving some behind-the-scenes legal help, it would be unduly onerous to place the burden on that lawyer to ascertain the scope and nature of that involvement. In such a situation, opposing counsel acts reasonably in proceeding as if the opposing party is not represented, at least until informed otherwise”).

⁶ While not required, it may be advisable to clarify the scope of the limited scope representation in writing to opposing counsel. *Cf.* Washington RPC 4.2 cmt. [11] (providing “[a]n otherwise unrepresented person to whom limited representation is being provided or has been provided in accordance with Rule 1.2(c) is considered to be unrepresented for purposes of this Rule unless the opposing lawyer knows of, or has been provided with, a written notice of appearance under which, or a written notice of time period during which, he or she is to communicate

In the case of Lawyer A, even if the lawyer's participation was announced in compliance with court rules (such as by compliance with UTCR 2.010(7)), Oregon RPC 4.2 would not be implicated because Lawyer A is not counsel of record and the limited assistance in preparing pleadings is not evidence that Lawyer A represents Client X in the matter.⁷ In the case of Lawyer C, the lawyer should make clear to Client Z that the limited scope representation does not include communication with the opposing counsel.

Finally, while the client's informed consent to the limited scope representation is not generally required to be in writing,⁸ an effective written engagement letter minimizes any such risks if it "specifically describe[s] the scope of representation, how the fee is to be computed, how the tasks are to be limited, and what the client is to do."⁹ THE ETHICAL OREGON LAWYER §15.16 (Oregon CLE 2006).

only with the limited representation lawyer as to the subject matter within the limited scope of the representation").

⁷ See, e.g., Kansas Bar Association Legal Ethics Op. No. 09-01 (2009): "Attorneys who provided limited representation must include on any pleadings a legend stating 'Prepared with Assistance of Counsel.' But "[a]n attorney who receives pleadings or documents marked with the legend 'Prepared with Assistance of Counsel' has no duty to refrain from communicating directly with the *pro se* party, unless and until the attorney has reasonable notice that the *pro se* party is actually represented by another lawyer in the matter beyond the limited scope of the preparation of pleadings or documents, or the opposing counsel actually enters an appearance in the matter."

See also State Bar of Nevada Standing Committee on Ethics and Prof'l. Responsibility, Formal Op. No. 34 (2009) (an ostensibly *pro se* litigant assisted by a 'ghost-lawyer' is to consider the *pro se* litigant 'unrepresented' for purposes of the RPCs, which means that the communicating attorney must comply with Rule 4.3 governing communications with unrepresented persons).

⁸ Since RPC 1.2 does not require a writing, RPC 1.0 does not require a recommendation to consult independent counsel. It is worth noting, however, that if the lawyer is providing a limited scope representation with respect to a contingency matter, such an arrangement would need to be in writing. See ORS 20.340. See also FEE AGREEMENT COMPENDIUM ch. 8 (OSB CLE 2007).

⁹ In addition, "when a lawyer associates counsel to handle certain aspects of the client's representation, the division of responsibility between the lawyers should also be documented in a written agreement." See FEE AGREEMENT COMPENDIUM ch. 9 (OSB CLE 2007). See also Oregon RPC 1.5(d) (discussing when fees may be split between lawyers who are not in the same firm).

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: February 18, 2011
Memo Date: February 7, 2011
From: Chris Kent, Chair, Budget & Finance Committee
Re: Change in OSB Investment Policy

Action Recommended

Approve the change of the OSB bylaw 7.402 to include the amendments approved by the Budget & Finance Committee.

Background

At its January 7, 2011 meeting, the Budget & Finance Committee met with representatives of Washington Trust Bank who had recommended changes to the bar's investment policy to include strategies that it believed were compliant with the bar's policy and added more diversity to the portfolio. The bank representatives explained the rationale for the market neutral strategy and stated it already uses specific mutual funds for other clients for the small cap international equities and the emerging market fixed income classes proposed by the bank. In each case, the investment would not exceed 2-1/2% to 3% of the total portfolio.

The Committee resolved to approve the Small Capitalization International Equities and the Emerging Markets Fixed Income as investment classes in the bar's investment policy. The Committee did not approve other recommendations of the bank including the use of the Goldman Sachs Hi-Yield Fund as an investment option and that the bar's policy add "Investment in Securities with a rating of A- or lower shall be limited to 10% of the account's value."

Bylaw subsection 7.402 with the recommended changes (underlined and in red) follow this memo.

Subsection 7.402 Approved Investments

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

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

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

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: February 18, 2011
From: Mitzi Naucler, Policy & Governance Committee Chair
Re: ONLD Bylaw Changes

Action Recommended

Approve revisions to the Oregon New Lawyers Division bylaws to incorporate changes made to the bar regions, ensure uniformity of terms and make modifications to various dates.

Background

The ONLD bylaws were last updated in November 2005, since that time the bar has made changes to its bylaws and region configuration. In addition to better aligning the ONLD bylaws with OSB practices, the proposed bylaw changes also clarify terms used throughout the document.

In accordance with ONLD bylaw 11.2, Division members approved the proposed bylaw amendments during the Division's annual meeting on November 12, 2010. The Policy & Governance Committee considered the changes on January 7, 2011 and urges their adoption.

Attachment: ONLD Bylaws with Proposed Changes

New Lawyers Division Bylaws

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Article 1.
Name, Purpose and Fiscal Year

1.1 Name.

The name of this organization shall be the Oregon New Lawyers Division (“Division”) of the Oregon State Bar (“~~h~~Bar”).

1.2 Purposes.

The purposes of the Division shall be to encourage new lawyers to participate in the activities of the bar, to conduct programs of value to new lawyers and law students, to promote public awareness of and access to the legal system, and to promote professionalism among new lawyers in Oregon.

1.3 Public Office.

The Division shall not participate in or intervene in (including the publishing or distribution of statements) any political campaign on behalf of any candidate for public office.

1.4 Fiscal Year.

The fiscal year of the Division shall coincide with the fiscal year of the ~~h~~Bar.

1.5 Bar Policies.

The Division shall comply with the policies of the Board of Governors of the ~~h~~Bar that apply to sections, except as otherwise provided in these bylaws.

Article 2.
Membership and Dues

2.1 Members.

Each member of the ~~h~~Bar shall be eligible to be a member of the Division until the last day of the Division’s fiscal year in which such member attains the age of thirty-six (36) years or until the last day of the sixth full fiscal year in which any such member has been admitted to practice in this state, whichever is later. All eligible members of the ~~h~~Bar shall automatically be members of the Division unless and until membership dues are assessed under this Article, in which case all eligible members of the ~~h~~Bar who pay the Division membership dues shall be members of the Division.

2.2 Associate Members.

Any law student presently attending an ABA accredited law school in Oregon shall automatically be considered an associate member of the Division without payment of dues. Individual students at other ABA accredited schools shall be associate members upon written request.

2.3 Dues.

Membership dues may be set by the membership of the Division at the annual meeting of the Division, subject to subsequent approval of the Board of Governors. Membership dues shall not be prorated for any portion of a year. The ~~Division~~ Executive Committee may establish free or discounted membership rates for new admittees or for attorneys with incomes below a specified level. If assessed, membership dues shall be collected annually by the ~~h~~Bar with ~~h~~Bar membership fees.

2.4 Associate Member Participation in Division Business.

Associate members may not serve as voting members of the Executive Committee and may not vote at Division meetings. However, they may serve on any Division Standing Committee or Special Committee.

Article 3.
Division Executive Committee

3.1 Composition.

The Executive Committee shall be composed of eleven Division members. There shall be one Executive Committee position for each of the following ~~six~~ seven (7) regions.

Region 1:

Baker, Crook, Deschutes, Gilliam, Grant, Harney, Hood River, Jefferson, ~~Klamath~~, Lake, Malheur, Morrow, Sherman, Umatilla, Union, Wallowa, Wasco and Wheeler Counties.

Region 2:

Lane County.

Region 3:

Coos, Curry, Douglas, Jackson, ~~Benton, Klamath Lincoln, Linn~~ and Josephine Counties.

Region 4:

Clatsop, Columbia, Lincoln, Tillamook, Washington, and Yamhill Counties.

Region 5:

Multnomah County.

Region 6:

~~Clackamas~~, Benton, Linn, Marion, and Polk ~~Yamhill~~ Counties.

Region 7:

Clackamas County.

The remaining ~~five~~ four Executive Committee members shall be elected at-large by the Division membership. In addition, the past Chairperson shall serve as a non voting member of the Executive Committee, whether or not he or she falls within the membership criteria of Article 2.

3.2 Duties.

The Executive Committee shall supervise and control the affairs of the Division subject to these bylaws and the bylaws and policies of the Board of Governors of the ~~b~~Bar.

3.3 Majority Vote, Quorum.

~~Action of the Executive Committee shall be by majority vote.~~ A quorum consisting of a majority of the Executive Committee, not including the past chairperson, shall be required to conduct its business. Action of the Executive Committee shall be by majority vote.

3.4 Meetings.

The Chairperson may, and upon the request of three members of the Executive Committee shall, call meetings of the Executive Committee.

3.5 Action Between Meetings.

Between meetings of the Division, the Executive Committee shall have full power to do and perform all acts and functions that the Division itself might perform. The Executive Committee shall provide a summary of such actions at the next meeting of the Division membership.

3.6 Membership Votes.

The Executive Committee may direct that a matter be submitted to the members of the Division for a vote by mail, electronic vote or for a vote at any Division meeting.

3.7 Compensation.

No salary or compensation for services shall be paid to any member of the Executive Committee or member of any other committee with the exception of the Editor and other staff of a Division newsletter (if applicable). Reimbursement may be allowed for travel and other out-of-pocket expenses for members of the Executive Committee and members of all Division standing and special committees.

3.8 Removal.

Executive Committee members missing two consecutive Executive Committee meetings or three of eight consecutive Executive Committee meetings may be removed from office by majority vote of the Executive Committee members. Executive Committee members who are suspended from membership in the Oregon State Bar may be removed at any time during the period of suspension by a two-thirds majority of the Executive Committee members or by a two-thirds majority of members voting at the Division's annual business meeting.

3.9 Rescission.

The membership of the Division shall have the right to rescind or modify any action or decision by the Executive Committee, except for filling a vacancy in the position of Officer or Executive Committee member, and also may instruct the Executive Committee as to future action. The Executive Committee shall be bound by any such action of the membership. The right of the membership to direct, modify, or rescind an act of the Executive Committee shall not include power to invalidate contracts or payments previously made under direction of the Executive Committee. Any vote to direct, modify, or rescind an action of the Executive Committee must be taken at a meeting at which two-thirds of members present vote in favor of the ~~M~~motion.

Article 4. Officers

4.1 Composition.

The officers of the Division shall be a Chairperson, a Chairperson-Elect, a Secretary, a Treasurer and such other officers as may be determined to be necessary by the membership. The officers shall be elected from among the Executive Committee members.

4.2 Chairperson.

The Chairperson, or the Chairperson-Elect in the absence of the Chairperson, shall preside at all meetings of the Division and of the Executive Committee. The Chairperson shall appoint the ~~officers~~ chairperson and members of all committees of the Division pursuant to Article 7; plan and monitor the programs of the Division; keep the Executive Committee duly informed and carry out its decisions; and perform such other duties as may be designated by the Executive Committee. The Chair shall serve as an ex-officio delegate to the Oregon State Bar House of Delegates.

4.3 Chairperson-Elect.

The Chairperson-Elect shall aid the Chairperson in the performance of his or her responsibilities, and shall perform such further duties as may be designated by the Executive Committee. In the event of the death, disability, or resignation of the Chairperson, the Chairperson-Elect shall perform the duties of the Chairperson for the remainder of the Chairperson's term or disability. The Chairperson-Elect shall automatically become the Chairperson immediately following the annual election of officers.

4.4 Secretary.

The Secretary shall maintain all books, papers, documents and other property pertaining to the work of the Division, and shall keep a true record of proceedings of all meetings of the Division and of the Executive

Committee. Typed minutes of all meetings of the Division and of the Executive Committee shall be distributed to all members of the Executive Committee as soon as possible but no later than fourteen (14) days (excluding weekends and holidays) after the meeting and shall be subject to amendment and approval at the next Executive Committee Meeting. In addition, the Chairperson or Secretary shall, whenever possible, distribute notice of scheduled Executive Committee meetings to all Executive Committee members at least ten (10) days (excluding weekends and holidays) prior to such meeting. The Secretary shall perform other such duties as designated by the Executive Committee. Minutes and agendas distributed to Executive Committee Members shall be contemporaneously provided to the ~~h~~Bar.

4.5 Treasurer.

The Treasurer, shall keep an accurate record of all receipts and expenditures approved by the Division; report on the Division's present and projected financial condition at each meeting of the Division Executive Committee; prepare, in conjunction with the ~~h~~Bar staff administrator, an annual projected budget for approval by the Executive Committee; and submit a report of the Division's financial affairs and financial condition to the members at the Division annual business meeting. The budget shall then be submitted to the Board of Governors for its approval no later than ~~November 15~~ September 1. The treasurer shall submit any requests for general Bar funding to the Board of Governors no later than September 30-1 of the year prior to the fiscal year for which such funds are requested..

Article 5. Meetings

5.1 Open Meetings.

The Division (including meetings of the Executive Committee) is subject to the Public Meetings Law. Therefore, the bar shall be notified twenty (20) days in advance (excluding weekends and holidays) of Division meetings. If 20 days' notice is not practical, notice shall be given as soon as possible. Reasonable notice shall be given to Division members of all Division meetings.

5.2 Meeting.

Each year there shall be at least one membership meeting for the purpose of conducting Division business, which meeting shall be known as the Division annual business meeting. The Division annual business meeting may be held in conjunction with the annual meeting of the ~~h~~Bar at a time and place to be coordinated with the ~~h~~Bar's Executive Director, or on any other date no later than November 15.

5.3 Special Meetings.

Special meetings of the Division may be scheduled from time to time by the Executive Committee.

5.4 Action.

Action at a meeting of the Division membership shall be by a majority of those members present and voting. At least six members who maintain offices in at least three different regions must be present to establish a quorum at a meeting of the Division membership.

5.5 Floor vote.

During the meetings described in the preceding two paragraphs, the Division membership at large may call any matter to the floor upon the vote of the majority of the members who are present.

5.6 Rules.

Except as otherwise provided herein, all meetings of the Division shall be conducted in accordance with the then current version of Roberts Rules of Order.

Article 6.
Terms In Office And Elections

6.1 Limitation on Executive Committee Membership.

No member may be elected or appointed to serve on the Executive Committee for more than six years, except that a member who first serves an unexpired term of one year or less shall be eligible for election or appointment to two full three year terms.

6.2 Term.

Each term of office ~~shall begin immediately following election to the Executive Committee~~ shall begin January 1. Members of the Executive Committee shall serve three-year terms. The terms of office shall be staggered so that approximately one-third of the positions are up for election each year, as outlined below:

Positions 1 and 2 (Region 1 and 2)

Terms expire: ~~2006, 2009~~, 2012, 2015, 2018, 2021

Positions 3 and 4 (Region 3 and 4)

Terms expire: ~~2008~~, 2011, 2014, 2017, 2020

Positions 5 and 6 (Region 5 and 6)

Terms expire: ~~2007, 2010~~, 2013, 2016, 2019, 2022

Positions 7 (Region 7)

Terms expire: ~~2008~~, 2011, 2014, 2017, 2020

~~and~~ Position 8 (At Large)

Terms expire: ~~2008~~, 2011, 2014, 2017, 2020

Positions 9 and 10 (At Large)

Terms expire: ~~2006, 2009~~, 2012, 2015, 2018, 2021

Position 11 (At Large)

Term expires: ~~2007, 2010~~, 2013, 2016, 2019, 2022

6.3 Vacancies.

Except as provided by Article 4.3, the Executive Committee shall fill by appointment any officer or Executive Committee position that becomes vacant. However, if said vacancy exists at the time of the annual meeting, it shall be filled by election.

6.4 Unexpired Term.

Any officer or Executive Committee member appointed to fill an unexpired term shall serve the unexpired period.

6.5 Eligibility for Executive Committee Membership.

No person shall be eligible for election or appointment to the Executive Committee unless that person is a member of the Division at the time of the election or appointment.

6.5.1 Effect of Article 2.1.

The fact that a person will not be eligible under Article 2.1 to remain a Division member for the entire term of office does not preclude that person from being appointed or elected to the Executive Committee. However, that person's term will automatically be deemed vacant at the annual meeting which immediately precedes the end of that member's eligibility for Division membership.

6.5.2 Regional Requirements.

At the time of election or appointment to a Regional position, the member's principal office must be in that region, but subsequent moves during that term of office shall not result in disqualification.

6.6 Eligibility for Officers.

When elected, all officers must be Executive Committee Members who are eligible for Division membership through the entire term of office. In the case of the Chairperson elect, the person selected must be eligible to remain a member of the Division through the Chairperson-elect's term of office, and through his or her term as chairperson. However, a person may be selected for the Chair-elect position even though his or her term as an Executive Committee member will expire before the end of the term as Chairperson. He or she shall automatically be deemed to have been re-elected to the Executive Committee until the term as Chairperson ends, at which time the unexpired portion of the three-year Executive Committee term will be filled in accordance with Article 6.3.

6.7 Terms for Officers.

The term for each officer position shall be one year. The Chairperson-Elect shall automatically succeed to the office of Chairperson. No officer shall serve two successive terms in the same office, except the Treasurer, who may serve no more than two successive terms in office. Partial terms of office shall not be taken into account for purposes of the preceding sentence. No person shall simultaneously hold two offices for a period exceeding four months.

6.8 Nominating Committee.

At least ninety (90) days prior to the Division's annual business meeting, the Executive Committee shall appoint a nominating committee of not less than three ~~h~~Bar members. The Chairperson and at least one other Executive Committee member shall serve on the nominating committee, with preference given to those Executive Committee members who have served the longest on the Executive Committee. Those persons who accept a position on the nominating committee are ineligible for nomination to a new term or position for the upcoming year. The nominating committee shall make and report to the Executive Committee ~~at least forty-five (45) days~~ thirty (30) days or within a reasonable time prior to the Division's annual business meeting one nomination for each Division position to be filled by election. The nominating committee's proposed slate of candidates for Executive Committee positions shall be submitted to the membership unless rejected by a majority of the Executive Committee. If the slate or a portion of it is rejected, the Executive Committee shall, at least 30 days prior to the election date, formulate the slate with the assistance of the nominating committee. The nominating committee's proposed slate of officers shall automatically be submitted to the newly elected Executive Committee for its approval or rejection.

6.9 Diversity.

The nominating committee shall use reasonable efforts to nominate members who reflect a reasonable cross section of the Division's membership taking into account all relevant factors including, without limitation, the practice area, geographic, age, gender and ethnic make-up of the Division membership. To the extent possible, no more than one person from the same law firm, company or public agency in the same department may serve on the Executive Committee at the same time.

6.10 Notice.

The report of the nominating committee shall be communicated by mail or electronically to the Division membership along with the notice of the time and place of the election at least fourteen (14) days (excluding holidays and weekends) in advance of such election. The notice may be consolidated with other communications of the ~~h~~Bar or its sections so long as the notice is reasonably calculated to reach all Division members prior to the election.

6.11 Election of Executive Committee Members.

Elections shall be conducted at the Division's annual meeting, by mail, or electronically.

6.12 Election of Executive Committee Members at Annual Meeting.

If elections are conducted at the Division's annual meeting, additional nominations may be made for any position from the floor. Elections for contested positions may be by written ballot or voice vote. Each contested position shall be set forth and voted upon separately. Elections shall be by plurality. All Division members may vote for all "at large" positions. For any given regional vacancy, only those Division members who maintain their principal office in that region may vote, with any ties to be broken by a plurality vote of the entire Division membership.

6.13 Election of Executive Committee Members by Mail or Electronically.

Upon approval of the Executive Committee, elections of Executive Committee members may be by written or electronic ballot sent to the Division membership provided the process allows: (1) for write-in votes, (2) that ballots are returned to an appropriate Division officer for tabulation and (3) that the results are certified to the Bar Center no later than November 15. candidacy for each regional representative to the Executive Committee shall be limited to those members who maintain their principal office in that region.

6.14 Election of Officers.

Officers shall be elected by a majority vote of the Executive Committee immediately prior to the annual election of Executive Committee Members and ratified at the Division Annual Meeting.

Article 7. Committees

7.1 Standing Committees.

The Executive Committee may establish as many standing committees as it deems necessary and may set the names, functions, and length of service of those committees. The Chairperson of the Executive Committee, with the approval of the Executive Committee, shall appoint the Chairperson and members of the standing committees.

7.2 Other Committees.

In addition to the standing committees as provided above, the Executive Committee may appoint as many special committees for particular purposes as the Division Executive Committee deems necessary and may set the name, function, and length of service of those committees. The Chairperson, with the approval of the Executive Committee, shall appoint the chairperson and members of all special committees.

Article 8. Representation Of The Oregon State Bar's Position

8.1 Approval Required.

Except as provided below, the Division shall not present to the legislature, or any committee or agency thereof, a position or proposal on any bill or express any position of the Division without the majority approval of the Executive Committee and the approval of the Board of Governors. If the Division's Legislative Committee requests the Executive Committee to take a position on a bill, and if it is reasonably necessary to act prior to the next regularly scheduled Executive Committee meeting, the officers of the Executive Committee may act upon the request. At least three officers shall be required to establish a quorum to take such action. Any one officer shall have the power to reject a proposed position and refer the matter instead to the Executive Committee.

8.2 Bar Approval Process.

During regular legislative sessions the Executive Committee may, by majority vote, tentatively approve a position on a bill if that position is consistent with the purposes of the Division. Rather than initiating legislation, the Division will have the ability with this process to object or defend bills already introduced or surfacing to the attention of the Division with minimal notice.

The proposed position shall be submitted to the hBar's Public Affairs Director or the Chairperson of the Board of Governors' Public Affairs Committee. After receipt of the proposal, the person to whom notice was given shall have up to 72 hours to notify the Division either (a) that the position is approved or (b) that the position is being submitted to the Public Affairs Committee for approval. If such notice is not given within 72 hours, or if the position is approved, it then becomes an official position of the Division and representatives of the Division may testify or make other appropriate statements. The hBar's Public Affairs Director shall be kept informed about the status of such positions and related activities.

If the proposal is referred to the Public Affairs Committee, it shall determine, on behalf of the Board of Governors, whether or not it is in the best interests of the entire hBar (1) for the hBar to take an official position or (2) to allow the Division to take a position as requested.

Article 9. Receipts And Expenditures

9.1 Dues.

Membership dues shall be collected by the hBar and any other receipts of the Division shall be remitted promptly to the hBar and placed in an account designated for use by the Division.

9.2 Assessments.

The hBar may regularly assess the Division an amount of money to cover both direct and indirect costs of Division activities performed by hBar staff.

9.3 Expenditures.

Expenditure of the balance of Division funds after such assessment shall be as determined by the Executive Committee, to be disbursed by the hBar's Executive Director, or the Director's designee, solely as authorized in writing by the Division's Treasurer using forms and following procedures established by the Executive Director. If the Treasurer is unavailable for authorization, the Division Chairperson may authorize disbursement of Division funds followed by written notice of the action taken. Any reimbursement of expenses incurred by the Treasurer or by the Treasurer's firm must be authorized in writing by the Division's Chairperson. Expenditure of Division funds shall not be in excess of the available Division fund balance, nor shall expenditures be in violation of laws or policies generally applicable to the hBar.

9.4 Retention of Funds.

Division annual reserves, if any, shall be set and maintained as provided for in the Division's annual budget as approved by the Board of Governors.

Article 10. Minutes And Reports

10.1 Minutes.

Minutes shall be kept of all meetings of the Executive Committee and of the Division and a copy of the minutes of each such meeting shall be promptly delivered to the hBar's Executive Director or ONLD staff administrator and to each member of the Executive Committee within fourteen (14) days (excluding weekends and holidays) of the meeting so recorded.

10.2 Request for BOG Action.

Whenever the Division desires to request action by the Board of Governors, the requested action shall be reflected in the minutes and shall in addition be set forth in a letter accompanying the minutes and delivered to the Board of Governors in care of the Executive Director. If the vote on the requested action is not unanimous, the votes for and against shall be set forth in the minutes and the dissenting members shall be afforded the opportunity to explain their positions.

10.3 Report.

Not later than December 1, the Chairperson shall file with the Bar's Executive Director a concise report summarizing the activities of the current year and anticipated activities for the ensuing year, together with the full text of any proposed legislation. The report shall contain a description of the budget and expenditures for that year as well as the proposed budget for the next year. This information will be summarized by ~~h~~Bar staff and included with the ~~h~~Bar Annual Reports distributed to all active members each year.

10.4 Budget.

A proposed annual budget and proposed annual dues shall be provided to the Executive Director for approval by the Board of Governors no later than September 30th of the preceding year if it contains a proposal for charging membership dues. For any year in which funds are requested from the ~~h~~Bar's general funds, a proposed annual budget shall be submitted to the Board of Governors no later than September 30th of the preceding year.

10.5 In Person Report.

The Chair or Chair-elect, in so much as possible, will attend Board of Governor meetings to make a report on Division activities and programs.

Article 11. Amendments To Bylaws

11.1 Amendments by BOG.

These bylaws may be amended by the Board of Governors. Notice of intent to so promulgate and pass bylaw amendments shall be given to the Executive Committee in sufficient time to allow review and comment. Bylaw amendments so passed by the Board of Governors become effective upon passage.

11.2 Amendments by Division.

These bylaws may be amended by the Division by majority vote by ballot, or at any membership meeting of the Division by majority vote of the members present and voting, to become effective upon subsequent approval of the Board of Governors. Notice of intent to amend bylaws shall be publicized in a manner which is calculated to provide Division members with reasonable notice and opportunity to comment before the Division acts. Determination as to what notice is reasonable under any provision of these bylaws may take the cost of notification into account.

OREGON STATE BAR

Policy & Governance Committee Agenda

Meeting Date: February 17, 2011
Memo Date: February 1, 2011
From: Denise Cline, MCLE Program Manager
Re: Proposal to amend Rule 5.2 and Regulation 5.100

Action Recommended

Review and approve the amendments to MCLE Rule 5.2 and Regulation 5.100.

Background

With the inception of the New Lawyer Mentoring Program (NLMP), the MCLE Rules and Regulations should be amended to allow for credit for this type of activity. The proposed amendments are set forth below:

MCLE Rule 5.2 Other CLE Activities

(f) New Lawyer Mentoring Program (NLMP).

(1) Mentors may earn CLE credit for serving as a mentor in the Oregon State Bar's New Lawyer Mentoring Program.

(2) New lawyers who have completed the NLMP may be awarded CLE credits to be used in their first three-year reporting period.

(f) (g) A member seeking credit for any of the activities described in Rule 5.2 must submit a written application on the form designated by the MCLE Administrator for Other CLE Activities.

MCLE Regulation 5.100 Other CLE Activities

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.

(c) Members who serve as mentors in the Oregon State Bar's New Lawyer Mentoring Program (NLMP) may earn eight credits, including two ethics credits, upon completion of the plan year. If another lawyer assists with the mentoring, the credits must be apportioned between them.

(d) Upon successful completion of the NLMP, new lawyers may earn six general/practical skills credits to be used in their first three-year reporting period.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: February 18, 2011
Memo Date: February 18, 2011
From: Barbara Dilaconi, Chair, Appointments Committee
Re: Volunteer Appointments to Various Boards, Committees, and Councils

Action Recommended

Approve the following Appointments Committee recommendations.

Affirmative Action Committee

Recommendation: Roland Iparraguirre, term expires 12/31/2011

Public Service Advisory Committee

Recommendation: Erin K. Fitzgerald, term expires 12/31/2013

Recommendation: Bruce B. Harrell, term expires 12/31/2012

Recommendation: William M. Jones, term expires 12/31/2013

Unlawful Practice of Law Committee

Recommendation: Karen Oakes, term expires 12/31/2012

Uniform Civil Jury Instructions Committee

Recommendation: Karen R. Thompson, term expires 12/31/2011

Disciplinary Board

Region 1 Recommendation: Max Taggart, term expires 12/31/2013

House of Delegates

Region 3 Recommendation: Nathan Ratliff, term expires 4/16/2012

Region 4 Recommendation: Wesley Gromlich, public member, term expires 4/16/2012

Region 7 Recommendation: Willard H. Chi, term expires 4/16/2012

Region 7 Recommendation: Angela Franco Lucero, term expires 4/16/2013

Region 7 Recommendation: Deanna L. Franco, term expires 4/16/2013

Region 7 Recommendation: Robert LeChevallier, term expires 4/16/2013

Commission on Judicial Fitness and Disability

Recommendation: Judy Snyder, four-year term

BOG Committee and OSB Group Contact Assignments 2011

	2011			2012					2013				2014						Total
	AM	CK	GJ	BD	MN	MG	SL	AF	DJ	MO'C	EK	MH	KM-P	MK	HE	TK	JB		
BOG Standing Committees																		BOG Standing Committees	
Access to Justice			x					x	x	x			x-C				x	Access to Justice	6
Appointments				x-C	x	x	x				x			x		x		Appointments	7
Budget & Finance		x-C			x	x	x		x			x			x			Budget & Finance	7
Member Services	x		x-C	x						x	x		x	x				Member Services	7
Policy & Governance		x		x	x-C	x		x				x				x		Policy & Governance	7
Public Affairs	x								x-C	x	x		x		x			Public Affairs	7
BOG Special Committees																		BOG Special Committees	
Appellate Screening	x		x				x-C		x						x		x	Appellate Screening	6
Executive Dir. Eval.		x				x-C		x				x				x		Executive Dir. Eval.	5
Public Member Select	x-C				x					x				x			x	Public Member Select	5
TOTAL BOG COM	4	3	3	3	4	4	3	3	4	4	3	3	3	3	3	3	3	TOTAL	
Special Assignments																		Special Assignments	
CSF												x						CSF	
Legal Ethics							x											Legal Ethics	
PLF (3)					x					x				x				PLF (3)	
UPL				x														UPL	
TOTAL SA	0	0	0	0	1	0	1	0	0	1	0	1	0	1	0	0	0		
OSB Committees																		OSB Committees	
Access to Justice	This was left out in 2011. Need contact for 2012.													x				Access to Justice	
Affirmative Action	x																	Affirmative Action	
Federal P&P												x						Federal P&P	
Judicial Admin									x									Judicial Admin	
Legal Services																x		Legal Services	
MCLE														x				MCLE	
Pro Bono																	x	Pro Bono	
Procedure & Practice							x											Procedure & Practice	
Public Service Adv.								x										Public Service Adv.	
Quality of Life				x														Quality of Life	
SLAC													x					SLAC	
UJI-Civil															x			UJI-Civil	
UJI-Criminal											x							UJI-Criminal	
TOTAL COM	1	0	0	1	0	0	1	1	1	0	1	1	1	1	1	1	1	TOTAL	

BOG Committee and OSB Group Contact Assignments 2011

	2011			2012					2013				2014						Total
	AM	CK	GJ	BD	MN	MG	SL	AF	DJ	MO'C	EK	MH	KM-P	MK	HE	TK	JB		
OSB Sections																		OSB Sections	
Administrative Law														x				Administrative Law	
Admiralty												x						Admiralty	
ADR																x		ADR	
Agricultural Law													x					Agricultural Law	
Animal Law														x				Animal Law	
Antitrust, Trade Reg											x							Antitrust, Trade Reg	
Appellate Practice															x			Appellate Practice	
Aviation									x									Aviation	
Business Law													x					Business Law	
Business Litigation		x																Business Litigation	
Civil Rights					x													Civil Rights	
Computer & Internet										x								Computer & Internet	
Constitutional Law		x																Constitutional Law	
Construction Law			x															Construction Law	
Consumer Law			x															Consumer Law	
Corporate Counsel				x														Corporate Counsel	
Criminal Law											x							Criminal Law	
Debtor-Creditor			x															Debtor-Creditor	
Disability Law	x																	Disability Law	
Diversity	x																	Diversity	
Elder Law					x													Elder Law	
Energy, Telecom.								x										Energy, Telecom.	
Environmental & NR												x						Environmental & NR	
Estate Planning						x												Estate Planning	
Family Law																x		Family Law	
Government Law																	x	Government Law	
Health Law				x														Health Law	
Indian Law	x																	Indian Law	
Intellectual Property										x								Intellectual Property	
International Law												x						International Law	
Juvenile Law																	x	Juvenile Law	
Labor & Employment															x			Labor & Employment	
Law Practice Mgt								x										Law Practice Mgt	
Litigation							x											Litigation	
Products Liability									x									Products Liability	
Real Est & Land Use													x					Real Est & Land Use	
Securities Reg.							x											Securities Reg.	
Sole & Small Firm																x		Sole & Small Firm	
Taxation															x			Taxation	
Workers Comp									x									Workers Comp	
TOTAL SEC	3	2	3	2	2	1	2	2	3	2	2	3	3	2	3	3	2	TOTAL	

BOG Committee and OSB Group Contact Assignments 2011

	2011			2012					2013				2014						Total
	AM	CK	GJ	BD	MN	MG	SL	AF	DJ	MO'C	EK	MH	KM-P	MK	HE	TK	JB		
Other OSB Groups																		Other OSB Groups	
LRAP										x									
Legal Heritage IG																x		Legal Heritage IG	
New Lawyers Div							x											New Lawyers Div	
OLF					x													OLF	
SPRB				x														SPRB	
TOTAL	0	0	0	1	1	0	1	0	0	1	0	0	0	0	0	1	0	TOTAL	
SEC/COM/GR Total	8	5	6	7	8	5	8	6	8	8	6	8	7	7	7	8	6	GRAND TOTAL	

**Oregon State Bar
Board of Governors Meeting
February 18, 2011
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. Derek Anderson – 961329

Motion: Ms. Fisher presented information concerning the BR 8.1 reinstatement application of Mr. Anderson. Mr. Piucci moved, and _____ seconded, to recommend Mr. Anderson's reinstatement to the Supreme Court. The motion passed unanimously.

2. F. Michael Banks – 932065

Mr. Mitchell-Phillips presented information concerning the BR 8.1 reinstatement application of Mr. Banks to satisfy the one meeting notice requirement of Bylaw 6.103. The application will come before the board at a later meeting.

3. Mark J. Dobson – 842084

Mr. Johnson presented information concerning the BR 8.1 reinstatement application of Mr. Dobson to satisfy the one meeting notice requirement of Bylaw 6.103. The application will come before the board at a later meeting.

4. J. Pat Horton - 670523

Motion: In Ms. Johnnie's absence, Mr. Sapiro presented information concerning the BR 8.1 reinstatement application of Mr. Horton to satisfy the one meeting notice requirement of Bylaw 6.103, and the applicant's request pursuant to BR 8.7 for temporary reinstatement. Mr. Piucci moved, and _____ seconded, to approve Mr. Horton's temporary reinstatement. The motion passed unanimously.

5. Aaron Jacoby – 990653

Motion: Mr. Larson presented information concerning the BR 8.2 reinstatement application of Mr. Jacoby that was approved by the board on November 13, 2011. Mr. Jacoby does not want to be subject to the terms of the conditional reinstatement. Ms. Matsumonji moved, and Mr. Kent seconded, to adhere to the board's November 13 recommendation to the Supreme Court that Mr. Jacoby be conditionally reinstated for a period of two years, during which time Mr. Jacoby is to continue with a treatment program and be monitored by the State Lawyers Assistance Committee. The board passed the motion (yes, 7 [Emerick, Haglund, Johnson, Kehoe, Kent, Matsumonji, Naucler]; no, 6 [Billman, Fisher, Knight, Kranovich, Larson, Mitchell-Phillips]; absent, 3 [DiIaconi, Johnnie, O'Connor]; abstain, 2 [Garcia, Piucci]).

6. Steven B. Johnson – 940995

Motion: Mr. Kehoe presented a request for the board to reconsider its 2008 recommendation for the BR 8.1 reinstatement of Mr. Johnson, based on the outcome of a disciplinary proceeding by the Hawaii State Bar resulting in Mr. Johnson's disbarment in that state. Mr. Kehoe moved, Ms. Matsumonji seconded, and the board voted unanimously to rescind its November 2008 recommendation to reinstate and instead to recommend to the Supreme Court that Mr. Johnson's application be denied.

7. Heath E. Kula - 023567

Mr. Haglund presented information concerning the BR 8.1 reinstatement application of Mr. Kula to satisfy the one meeting notice requirement of Bylaw 6.103. The application will come before the board at a later meeting.

8. William Nootenboom – 961952

Mr. Emerick presented information concerning the BR 8.1 reinstatement application of Mr. Nootenboom to satisfy the one meeting notice requirement of Bylaw 6.103. The application will come before the board at a later meeting.

9. Michael M. Pacheco – 910851

Mr. Kranovich presented information concerning the BR 8.1 reinstatement application of Mr. Pacheco to satisfy the one meeting notice requirement of Bylaw 6.103. The application will come before the board at a later meeting.

10. William J. Schermer – 793795

Motion: Mr. Kent presented information concerning the BR 8.1 reinstatement application of Mr. Schermer. Mr. Kent moved, and Mr. Piucci seconded, to recommend Mr. Schermer's reinstatement to the Supreme Court. The motion passed unanimously. Mr. Piucci abstained.

11. Cheryl K. Smith – 911037

Motion: Mr. Knight presented information concerning the BR 8.1 reinstatement application of Ms. Smith. Mr. Knight moved, and Mr. Piucci seconded, to recommend Ms. Smith's reinstatement to the Supreme Court conditioned upon Ms. Smith completing 25 MCLE credits before her reinstatement is effective. The motion passed unanimously.

12. J. Lee Street – 983965

Motion: Ms. Naucier presented information concerning the BR 8.2 reinstatement application of Mr. Street. Ms. Naucier moved, and Mr. Piucci seconded, to reinstate Mr. Street effective March 10, 2011, subject to the terms of the Stipulation for Discipline approved by the Supreme Court in *In re Street*, Or S Ct So58814 (2010). The motion passed unanimously.

13. Michael J. Uda – 914525

Motion: Ms. Matsumonji presented information concerning the BR 8.1 reinstatement application of Mr. Uda to satisfy the one meeting notice requirement of Bylaw 6.103. The application will come before the board at a later meeting.

B. Disciplinary Counsel's Report

As written.

**Oregon State Bar
Board of Governors Meeting
February 18, 2011
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

- a. The BOG received status reports on the non-action items.

B. General Counsel's Report

- a. The BOG received status reports on the non-action items and was asked to approve the eviction of RMT International, tenants of the PLF office space on Meadows Road, since they have not been paying rent.

Motion: Mr. Johnson moved and Mr. Mitchell-Phillips seconded to approve the eviction lawsuit against RMT International. The board unanimously approved the motion.

Oregon State Bar
Special Meeting of the Board of Governors
March 18, 2011
Minutes

The meeting was called to order by President Steve Piucci at 1:28 p.m. on March 18, 2011, and adjourned at 1:48 p.m. Members present from the Board of Governors were Jenifer Billman, Hunter Emerick, Michael Haglund, Gina Johnnie, Matthew Kehoe, Christopher Kent, Ethan Knight, Steve Larson, Audrey Matsumonji, Kenneth Mitchell-Phillips, Mitzi Naucner and Maureen O'Connor. Staff present were Sylvia Stevens, Rod Wegener, Helen Hirschbiel and Camille Greene.

1. Call to Order

2. New Lawyer Mentoring Program

A. Approve Mentor Candidates

Mr. Piucci presented the slate of mentor candidates recommended by the Mentoring Task Force.

Motion: Mr. Larson moved, Mr. Knight seconded, and the board voted unanimously to approve the slate of candidates. **[Exhibit A]**

B. Approve proposed Formal EOP on Lawyer-to-Lawyer Consulting, creation of the Standing Committee on Mentoring, and the NLMP curriculum as set out in the Manual.

Ms. Stevens presented the proposed formal opinion on lawyer-to-lawyer consulting, confidentiality, and conflict issues. She explained that a standing committee is contemplated in the NLMP rule adopted by the Supreme Court to oversee the program including recruiting and vetting mentor candidates and making changes in the curriculum or other aspects as appropriate. Ms. Stevens also clarified that the standing committee will have fewer members than the task force but will consist initially of several task force members. Mr. Piucci explained that the NLMP curriculum is similar to the Utah program, but modified by the task force after considerable discussion and assessment of what will work best in Oregon.

Motion: Mr. Larson moved, Mr. Emerick seconded, and the board voted unanimously to approve the formal opinion, the creation of the standing committee on mentoring, and the NLMP curriculum as set out in the NLMP Manual. **[Exhibit B]**

3. 9th Circuit Judicial Conference Nominees

Mr. Knight presented the Appointments Committee's background on the nominees for the 9th Circuit Judicial Conference. These names will be sent to Judge Aiken.

Motion: The board voted unanimously to approve the committee's motion to approve the list of nominees. **[Exhibit C]**

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

Aldrich, Dean E. (962080)
Anderly, Andrea J. (901792)
Angeli, Courtney W. (941765)
Arellano, Joseph C. (801518)
Armstrong, Chelsea Dawn (020670)
Ashby, Wells (032601)
Baca, David C. (821848)
Barragar, Anne L. (871591)
Barton, Robert E. (814637)
Basham, Jonathan G. (900381)
Bender, Laurie (881570)
Bennett, J. David (710180)
Berne, Gary M. (774077)
Bernier, Thomas C. (771159)
Bier, Lilian (861541)
Blodgett, Bryan E. (851555)
Bonaparte, Robert E. L. (883411)
Boutin, Roderick A. (821998)
Bowersox, Jeffrey A. (814422)
Breiling, Michael (952180)
Bruington, Mary (984520)
Brydolf, Ingrid (935260)
Burke, Lawrence B. (892082)
Burns, Justin J. (002220)
Calzacorta, Carmen M. (841900)
Capon, Craig (981928)
Carson, Christopher T. (844502)
Cascagnette, Bradley A. (022686)
Cogan, Mark C. (920167)
Connors, John J. (820380)
Corson, Don (851777)
Dahlin, Eric L. (965720)
Davis, Ross G. (670222)
Degner, David C. (771578)
DePaolis, Diane M. (761194)
Dilaconi, Barbara M. (911510)
Duvall, Hubert (882000)
Edelson, Jeffrey M. (880407)
Engle, Douglas M. (822499)
Ferris, John E. (660419)
Fisher, Valerie (740958)
Freed, Dennis N. (741030)
Gaydos, Gerry (764138)
Gedrose, Gareld Joel (802366)
Glick, Richard M. (792384)
Grover, Todd (982443)
Hagan, Julia Maureen (850477)
Hansen, Evan D. (033388)
Hantke, Seth W. (012747)
Alexander, J. Michael (750106)
Anderson, Mary F. (952016)
Annand, Megan B. (925567)
Arms, Adam Scott (010186)
Arneson, James A. (770980)
Aspell, Bradford J. (740159)
Baker, Brian V. (930304)
Barrett, James M. (011991)
Barton, William A. (720209)
Bassos, Alexander C. (981824)
Bendixsen, Kurt C. (881588)
Berge, John A. (871663)
Bernick, Carol J. (894098)
Bertholf, Michael P. (044642)
Blackhurst, Steven K. (730320)
Boehmer, Colette (824924)
Borg, C. Lane (850294)
Bowerman, Donald B. (590110)
Bowman, Timothy M. (771220)
Brown, David G. (025232)
Bryant, Neil R. (730417)
Buchanan, William Fred (932223)
Burke, Stefanie L. (032783)
Butler, Robert D. (670150)
Campbell, Stephen D. (801858)
Carpenter, Sarah E. (002277)
Carter, Jeff J. (822159)
Cauble, Walter L. (670182)
Connors, E. Michael (954956)
Cooke, Jenny (791930)
Crooks, Sarah J. (971512)
Davis, John E (Jack) (750912)
Deatherage, William V. (540254)
DeJong, Timothy (940662)
Diehl, Jonathan (011343)
Duden, Paul R. (660354)
Dwyer, Roy (620263)
Edwards, Craig K. (802137)
Ferris, Arminda J. (791693)
Fisher, L. Kent (912684)
Foster, Eric R. (021164)
Gallaher, David D. (741079)
Gaylord, William A. (731043)
Gerber, Susan R. (992651)
Greene, S. Ward (774131)
Hadlock, Erika L. (912978)
Han, Bik-Na (993399)
Hansen, Kurt F. (842400)
Harris, Stuart C. (920056)

Heatherman, Patricia L. (932990)
Hedlund, Gary L. (731297)
Heth, Jacob A. (970212)
Hillier, Thomas S. (802642)
Hopkins, Robert B. (731430)
Howes, Thomas C. (721286)
Hubel, Dennis J. (761789)
Hull, Jay D. (842511)
Hurley, James V. (610403)
James, Bronson D. (033499)
Johansen, Eric R. (822919)
Jones, Steven P. (782628)
Karnopp, Dennis C. (670610)
Kauffman, Samuel C. (943527)
Koch, Anne E. (013190)
Kono, Kevin H. (023528)
Landis, Erin Keith (023607)
Larson, Steve D. (863540)
Levine, Michael Robert (931421)
Ludwig, Lisa J. (953387)
Ma, Akana K J. (950910)
MacRitchie, Brian John (793115)
Mansfield, William A. (530710)
Mark, Stacey E. (872949)
Marmaduke, Don H. (530727)
Matthews, Kendra M. (965672)
McCormack, Christopher A. (001769)
McGaughey, Robert J. (800787)
McGrory, Jr., John F. (813115)
McNair, Charles (752548)
Mierjeski, Edward (821626)
Mooney, Jenna Leigh (993249)
Morrow, Andrew J. (803190)
Myrick, Lynn M. (752745)
Nelson, Adrienne C. (960985)
Norris, Dan (881341)
Panner, Owen (500876)
Peachey, Thomas C. (783319)
Peters, Daniel B. (903586)
Pirner, Deborah L. (993453)
Querin, Phillip C. (722070)
Rahmsdorff, Terry L. (732422)
Raschio, Robert S. (013864)
Reynolds, Garry (753150)
Richter, Peter C. (711465)
Rocker, David Casby (944218)
Roome, Ronald L. (880976)
Sanchez, Michael G. (951593)
Sawyer, Sandra (831368)

Heckert, Beth (872472)
Hercher, David W. (812639)
Hill, Steven L. (933190)
Hogan, Teresa (854015)
Houze, Stephen A. (721261)
Hubbard, Rose L. (890630)
Huddleston, Mark D. (792700)
Hull, Mary P. (973740)
Jacobson, Jerry A. (761843)
Jensen, Deanna Ballou (013026)
Jones, Robert E. (530569)
Joslin, Ryan S. (972962)
Karpinski, Alan W. (882397)
Ketterling, Keith A. (913368)
Kohlmetz, Andrew M. (955418)
Lagesen, Jason Riley (033664)
Lane, Richard K. (721451)
Laurick, James P. (821530)
Levy, Paul E. (872852)
Lyon, Jesse D. (982862)
MacFarlane, Ingrid (863328)
Maloney, Paul T. (013366)
Mardikes, George M. (890805)
Markowitz, David B. (742046)
Masih, Aruna A. (973241)
McCord, Michael B. (783000)
McDonald, David T. (862430)
McGrath, Michael Thomas (013445)
McIntosh, Dawn M. (923924)
Meltebeke, Brenda L. (923988)
Miller, Jr., William R. (752610)
Morrison, Sheila Fox (032626)
Moscato, Frank A. (721752)
Nash, Karla L. (942037)
Newell, Robert D. (790917)
Nunn, Robert W. (762731)
Parker, Laurance W. (882863)
Perry, Tatiana A. (003480)
Phillips, Michael Connelly (823309)
Powers, Steven R. (013825)
Rackner, Laura (843280)
Ransom, John S. (742655)
Ravassipour, Kelly W. (021322)
Richman, Mark (043990)
Roberts, Beth L. (935213)
Rogers, Keith B. (763153)
Rothauge, Renee E. (903712)
Sawyer, Loren L. (590861)
Saxton, Ronald L. (793763)

Schaleger, Rebecca S. (003774)
Schmor, Douglass H. (763257)
Shadbeh, Nargess (853284)
Shipsey, Krista (943850)
Skerjanec, Carol DeHaven (941758)
Smith, Sharon R. (862920)
Sorensen-Jolink, M. Scott (774188)
Stockton, William H. (743163)
Storey, Shannon (034688)
Strom, Trina J. (870886)
Sussman, Marc (773687)
Tarbox, Bruce (001181)
Thuemmel, Robert G. (773759)
Tintera, Thomas J. (813953)
Tongue, Thomas Michael (993819)
Trubo, Herbert A. (733066)
Tyler, Lee Ogden (843678)
VanLeuven, Joseph M. (824189)
Waggoner, James C. (743307)
Watkins, Ulanda Lynette (964516)
Welborn, Gordon L. (870965)
Whittemore, Richard J. (824512)
Wilner-Nugent, Bear (044549)
Yraguen, Francisco J. (701651)

Schimmelbusch, Erik S. (973908)
Scholl, Greg (954039)
Sherlag, Steven J. (931034)
Simko, Joshua K. (034538)
Smith, Bruce D. (722404)
Sokol, Larry N. (722475)
Stannard, Mindy S. (044223)
Stone, Richard J. (940021)
Strever, Kevin K. (853395)
Studenberg, Philip W. (784468)
Talcott, Anne Marie (965325)
Thomas, Kevin S. (984061)
Thurber, Kent B. (753640)
Tomasi, Valerie Athena (841583)
Trinchero, Mark P. (883221)
Turner, Lisa Marie (014817)
Uerlings, James R. (760307)
Wada, Mark R. (784199)
Wallace, Jeffrey (763730)
Watts, Susan E. (773845)
Whipple, B. Scott (983750)
Wickre, James A. (743418)
Wyers, Teunis J. (763873)

Oregon State Bar

New Lawyer Mentoring Program Manual

Resources for New Lawyers and Mentors

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INTRODUCTION

The first years of a lawyer's practice are a critical time in the development of professional habits, practices and character. To facilitate this transition into the practice of law, the Oregon Supreme Court, in conjunction with the Bar, has created the New Lawyer Mentoring Program. The goal of the NLMP is to introduce new lawyers to the high standards of integrity, professional conduct, professional competence and service to the public that are an Oregon tradition.

Shortly after admission, each new lawyer (unless deferred or exempt), will be paired with an experienced lawyer who has practiced for at least seven years and who has been selected by the Court for his or her commitment to ethics, professionalism and professional skills. Together, the new lawyer and the mentor will develop a curriculum of activities to introduce the new lawyer to the legal community and to the practical application of ethics, civility and professionalism. The new lawyer will also receive practical guidance about client relations and law office management, as well as explore practical skills in a substantive area of the law. The mentor will be a coach and a guide as the new lawyer adjusts to the challenges of law practice. Finally, working with the new lawyer will allow the mentor to see the profession through new, enthusiastic eyes and help the mentor understand generational differences.

The NLMP is premised on one-to-one interaction as a supplement to traditional classroom-style continuing education programs that new lawyers attend. Although it consists of a series of mandatory activities and experiences, the NLMP is flexible enough to complement and coordinate with existing law firm training programs as well as the special training needs of government, corporate, and public interest practices.

The success of the NLMP depends on the commitment of both the mentors and the new lawyers, and the Court and the Bar appreciate the devotion of time, energy and skill that will be required on both sides. We are confident that mentors and new lawyers alike will benefit from the program.

This manual contains information about and forms for enrolling in the NLMP, developing the individual mentoring program, and certifying completion. It also has some tips for successful mentoring relationships, a copy of the Supreme Court's New Lawyer Mentoring Rule, and selected Oregon Rules of Professional Conduct. Questions not addressed in the manual can be directed to the NLMP Administrator, Kateri Walsh at 503-431-6406, or NLMP Coordinator, Karla Houtary at 503-431-6367.

OPERATING PROCEDURES AND POLICIES

1. Enrollment, Exemptions and Deferrals

- a. The New Lawyer Mentoring Program (NLMP) will operate in two sessions each year. The first begins in mid-May (Spring Session) and the second begins in mid-October (Fall Session). New lawyers who take the oath of office at times other than the scheduled swearing-in ceremonies will be assigned to a session by the NLMP administrator.
- b. Within 28 days of admission, new lawyers must either enroll in the NLMP, certify they are exempt, or request a deferment.
- c. New lawyers are exempt from the NLMP if they have engaged in the active, substantial and continuous practice of law in another jurisdiction for two or more years prior to admission in Oregon.
- d. New lawyers who are not practicing law, including judicial clerks, may request to defer participation in the NLMP until they begin practicing, at which time they must enroll in the next available NLMP session.
- e. New lawyers who practice outside the state of Oregon will be deferred from participation in the NLMP if the Bar determines that mentoring cannot be arranged conveniently. If a new lawyer deferred for this reason established a principal office in Oregon within the first two years of admission, the new lawyer must enroll in the next available NLMP session.

2. Mentor Match

- a. The Bar will match new lawyers with mentors based principally on geography and practice area. To the extent possible and practicable, consideration will be given to preferences for gender, age, ethnicity and other factors identified by a new lawyer or a mentor.
- b. New lawyers employed in law firms, government offices, corporate law departments, or other group practices may request either an “inside” or an “outside” mentor. An “inside” mentor is in the same firm or office as the new lawyer. An “outside” mentor is a lawyer not in the same firm or office as the new lawyer. New lawyers may request a specific mentor; if the mentor requested has not been appointed by the Supreme Court, a conditional match will be made pending the mentor’s appointment.
- c. The Bar will match new lawyers and mentors within 14 days of the Bar’s receipt of the new lawyer’s enrollment form in most cases, after which written notice of the match and respective contact information will be provided to the new lawyer and the mentor.
- d. The new lawyers is responsible for arranging the initial meeting with the mentor, and the meeting must take place within 28 days of the announcement of the match.

3. Designing the Mentoring Plan

- a. The Mentoring Plan includes core concepts and experiences that will introduce new lawyers to practical aspects of lawyering with which all lawyers need to be familiar for the successful and professional practice of law. The Mentoring Plan has six component parts:

- Introduction to the Legal Community;
- Rules of Professional Conduct, Professionalism, and Cultural Competence;
- Introduction to Law Office Management;
- Working With Clients;
- Career Development:
 - ✓ Public Service,
 - ✓ Bar Programs,
 - ✓ Work/Life Balance
- Practice Area Basic Skills.

Parts 1-5 are comprised of specific topics that the new lawyer must discuss with the mentor and specific activities that the new lawyer must complete and review with the mentor. In the Practice Area component, the new lawyer selects and completes, then discusses with the mentor, a minimum of 10 basic skill activities in one or more substantive practice areas that best match the new lawyer's interests.

- b. During the initial meeting, the new lawyer and the mentor should review the required elements of the mentoring plan identify the practice areas the new lawyer will focus on during the mentorship.
- c. The mentoring plan may include as many practice area activities as the new lawyer and mentor agree are practical, but must include at least 10 activities from one or more practice areas. The activities listed in the substantive areas are not exclusive; the new lawyer and mentor may supplement the listed activities or substitute others that they identify as basic competency skills. Similarly, if the new lawyer is interested in a substantive area for which no activities are suggested, the new lawyer and the mentor may develop a customized elective plan of activities designed to build basic skills in that area.
- d. If the mentor does not have experience in the practice area or areas the new lawyer wishes to focus on, the mentor should help the new lawyer find another experienced lawyer who practices in the subject area to assist in mentoring the new lawyer. In that situation, the mentors may split the allowed mentoring continuing education credits.
- e. A new lawyer employed by a law firm, corporate legal department, or governmental unit may complete an alternate mentoring plan based on the employer's established training program, provided the program covers the areas required by the NLMP.
- f. A new lawyer who has completed some of the mentoring plan activities as a law clerk or otherwise prior to admission may also develop a customized plan with the mentor that will build on existing skills in the component areas.

4. Completing the Mentoring Plan

- a. The mentoring plan is designed to be completed in approximately one year. It is expected that new lawyers and their mentors will meet at least once each month for twelve months, and that each meeting will last approximately 90 minutes to allow sufficient time to review and discuss the various experiences and activities that make up the mentoring plan and to monitor the new lawyer's progress.
- b. New lawyers who are mentored within their law firm, corporate legal department, or governmental unit may complete some of their required activities in small group settings rather than by individual discussion with their inside mentors.
- c. When all mentoring plan activities have been completed, the new lawyer and the mentor shall sign a Certificate of Completion. The new lawyer is responsible for filing the Certificate with the Bar, accompanied by a fee of \$100. When the Certificate has been filed, the new lawyer will be awarded six (6) hours of Minimum Continuing Legal Education credit that can be applied to the new lawyer's *next* reporting period (not the first reporting period on admission). See MCLE Regulation 6.100.
- d. The Certificate of Completion must be filed with the Bar on or before December 31 of the new lawyer's first full year of admission. (For example, new lawyers admitted in 2011 will have until December 31, 2012 to complete their plans and file the certificate of completion.)
- e. A new lawyer who is unable to complete the plan within the allowed time may be granted additional time for good cause shown. Examples of good cause include health issues, a change in employment, or other circumstances that prevent the new lawyer from working on the mentoring plan. The new lawyer must submit a Request for additional time in writing on or before the completion deadline.

5. Noncompliance, Suspension and Reinstatement.

- a. A new lawyer who fails to complete the mentoring plan on time (and who has not been granted an extension) will be given written notice and shall have 60 days from the date of the notice to cure the noncompliance.
- b. If the noncompliance is not cured (by completing the mentoring plan) within the time allowed, the Executive Director shall recommend to the Supreme Court that the new lawyer be suspended from membership in the Bar.
- c. During a period of suspension, the new lawyer may not engage in the practice of law.
- d. A suspended new lawyer may apply for reinstatement as soon as the mentoring plan is completed. In addition to the reinstatement application, the new lawyer must submit the Certificate of Completion, the NLMP fee of \$100 and a reinstatement fee of \$100.
- e. Upon receipt of a satisfactory application for reinstatement, the Executive Director will forward a recommendation to the Supreme Court that the new lawyer be reinstated to active membership. Reinstatement is effective upon approval by the Supreme Court.

- f. A reinstatement after suspension for not completing the NLMP has no effect upon any other aspect of the new lawyer's status, including any suspension for nonpayment of membership fees, MCLE noncompliance or a disciplinary proceeding.

FREQUENTLY ASKED QUESTIONS

1. Is the NLMP Mandatory?

Yes, all newly admitted members of the Oregon State Bar must participate in the program unless they have already practiced in another jurisdiction for at least two years.

2. What if I am unemployed or otherwise not practicing law after admission?

New lawyers who do not have plans to begin practicing law immediately after admission, including new lawyers who are working as judicial clerks, may request a deferral until such time as they begin practicing law.

3. When do I start the NLMP?

Unless exempt or deferred, new lawyers must enroll in the NLMP by filing the enrollment form with the Bar within 28 days after admission to the bar. New lawyers who are granted a deferral must enroll in the next available NLMP session following their beginning to practice law.

4. Who are the mentors?

Mentors are Oregon bar members in good standing who have at least seven years of experience in the practice of law. They must have a reputation for competence and for conducting themselves ethically and professionally.

5. How are mentors selected?

Initially, bar leaders around the state were asked to nominate qualified lawyers in their communities. The nominees were reviewed by the NMLP Task Force recruitment committee, which recommended suitable candidates to the Board of Governors. The slated of mentors approved by the BOG was then sent to the Supreme Court for appointment. For the second and subsequent sessions, bar members will be invited to nominate themselves. The BOG's standing Committee on the NLMP will review the candidates and make recommendations to the Supreme Court.

6. Do mentors get any special training?

Yes. All appointed mentors are required to screen a training video prepared by the Bar. In addition to familiarizing mentors with the creation and execution of the mentoring plan, the training video includes ideas and tips for establishing successful mentoring relationships.

7. How do I find a mentor?

The Bar will match new lawyers with mentors who have been appointed by the Supreme Court. The principal criteria for the match will be location and practice area interest,

although other factors, such as a preference for gender, ethnicity, or age will be given consideration to the extent possible.

8. *Does my mentor have to be a lawyer in my firm?*

Generally, lawyers employed in law firms, corporate legal departments, and government offices will be matched with a mentor in the same firm or office. However, new lawyers may request and will then be matched with an “outside” mentor.

9. *Can I choose my own mentor?*

A new lawyer’s request for a specific mentor will be taken into consideration, provided the mentor is qualified and appointed by the court.

10. *What is the Mentoring Plan?*

The Mentoring Plan sets out the activities the new lawyer will work on with the mentor during the mentoring year. It is comprised of five areas of required activities and one practice area selected by the new lawyer. The elective activities may be in one or more substantive areas and must include at least 10 basic skills activities. Several practice area activities are contained in this manual. If a new lawyer wishes to focus on a substantive area not covered in the manual, the new lawyer and the mentor may identify basic skill activities related to that substantive area.

11. *Can I get credit for Mentoring Plan activities that I have already completed prior to admission?*

Prior experience as a lawyer clerk or otherwise prior to admission will not exempt a new lawyer from the NLMP. However, the new lawyer and the mentor may design a customized mentoring plan that has the same focus but builds on existing knowledge and skills through more advanced activities.

12. *How much time will the NLMP require?*

The NLMP mentoring plan is designed to be completed in approximately twelve months if the new lawyer and mentor meet regularly. As a guide, the new lawyer and mentor should expect to meet monthly for approximately 90 minutes. Because the Certificate of Completion doesn’t have to be filed until December 31 of the first full year of admission, however, new lawyers will actually have 14 to 17 months to complete their plans.

13. *Do I have to complete the new admittee MCLE requirements in addition to the Mentoring Plan?*

Yes. The NLMP does not replace the Minimum Continuing Legal Education requirements for new admittees. (See MCLE Rule 3.3(b).) However, upon successful completion of the NLMP, new lawyers are awarded six MCLE credits that can be carried forward into their first three-year reporting period.

14. Do new lawyers receive MCLE credit for participating in the NLMP?

Yes, see question #10 above.

15. Do mentors receive MCLE credit?

Yes, the Board of Governors has determined that mentors may claim 8 general MCLE credits for mentoring a new lawyer. If another lawyer assists with the mentoring, the credits may be apportioned between them according to their respective responsibility for the mentoring.

16. What do I do if I have a problem with my mentor?

If a mentor is not making time for regular meetings or is not providing helpful guidance and coaching through the mentoring plan activities, a new mentor can be assigned. New lawyers are encouraged to give the relationship some time to develop and to remember that the NLMP mentor may not be able to satisfy all of the needs for support that the new lawyer may have. There are many voluntary mentoring programs available and new lawyers are encouraged to participate in as many as they feel is helpful or appropriate.

17. What if I can't complete my Mentoring Plan within the time allowed?

If a new lawyer does not believe that December 31 deadline can be met due to health or personal issues, job changes or other circumstances beyond their control, an extension may be granted for good cause shown. A request for an extension must be submitted in writing to the Bar prior to the December 31 deadline. A new lawyer who does not qualify for an extension and who does not complete the plan in time will be given written notice and 60 days to cure the noncompliance (by completing the plan). Failure to complete the plan will result in the Executive Director recommending that the noncomplying new lawyer be suspended from membership in the Bar and, consequently, from the practice of law.

18. How do I establish completion of the Mentoring Plan?

When all of the activities of the Mentoring Plan have been completed, the new lawyer and the mentor sign the Certificate of Completion. The new lawyer is responsible for filing the Certificate and a copy of the completed Mentoring Plan with the Bar and paying the \$100 fee.

19. What if I can't afford the fee?

At the sole discretion of the Executive Director, the NLMP fee may be waived in cases of financial hardship or special circumstances. Requests for a fee waiver must be submitted in writing to the Executive Director and include the reason for the request accompanied by a summary of the applicant's income and expenses.

20. *How do I get reinstated from a suspension?*

A new lawyer suspended for failing to timely complete the mentoring plan can apply to the Executive Director for reinstatement by submitting the appropriate reinstatement form accompanied by the Certificate of Completion, paying the NLMP fee of \$100 and paying the reinstatement fee of \$100. If the submission is satisfactory to the Executive Director, a recommendation for the applicant's reinstatement will be sent to the Supreme Court.

TIPS FOR SUCCESS

If you are a mentor...

- Make the time and take the time to develop a meaningful mentoring relationship and consider it an opportunity for mutual learning.
- Listen to your new lawyer's concerns and, especially in the beginning, draw out those concerns that the new lawyer may be reluctant to raise.
- Create a safe environment for the new lawyer's growth by being accessible and non-judgmental, keeping confidences, and inviting open and frank conversations.
- Acknowledge the issues facing new lawyers who are ethnic minorities, or who may face particular challenges because of their religion, sexual orientation, economic status, national origin or age.
- Remember that the only stupid question is the one that isn't asked. Encourage your new lawyer to ask, ask, ask. Be respectful and responsive with your answers.
- Your responsibility is not to direct or supervise your new lawyer's work, but to be a coach and guide for the development of professional values and skills.
- Share your experience and talent freely. Be the role model you would want.

If you are a new lawyer...

- Be respectful of your mentor's time. Be prompt and give plenty of notice if you need to reschedule a meeting. Make good use of your meeting time; come prepared with a list of things you want to discuss.
- Your mentor's "war stories" can be valuable learning tools, especially if you can relate them to a situation of your own.
- Ask questions! Don't let your ego get in the way of accepting feedback and constructive criticism from your mentor.
- Build multiple mentor relationships; your NLMP mentor will not be able to counsel or advise you in every aspect of your professional or personal life. Develop effective networks with peers, other lawyers in and outside your workplace, judges, family and friends.
- Your reputation in the community will be based on your interactions with your mentor, your work colleagues, opposing counsel, court staff and judges. Nurture it and guard it jealously.

NEW LAWYER MINIMUM CONTINUING LEGAL EDUCATION REQUIREMENTS

In addition to the NLMP, new lawyers must meet the new admittee MCLE requirement of 15 hours of accredited CLE. The 15 hours consist of practical skill courses, ethics (including a child abuse reporting course) and an introductory course in access to justice:

3.3 Reinstatements, Resumption of Practice After Retirement and New Admittees.

* * *

(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 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 requirements in Rule 3.2(a) shall apply.

Unless a new lawyer's participation in the NLMP is deferred, the first MCLE reporting period runs concurrently with the NLMP and ends on December 31 of the first full calendar year of admission:

3.7 Reporting Period.

* * *

(b) New Admittees. The first reporting period for a new admittee shall start on the date of admission as an active member and shall end on December 31 of the next calendar year. All subsequent reporting periods shall be three years.

The practical skills requirement will address many of the topics that the new lawyer will discuss with the mentor and may be completed in one single program (such as the OSB PLF *Learning the Ropes* program) or in several shorter programs:

3.400 Practical Skills Requirement.

(a) A practical skills program is one which includes courses designed primarily to instruct new admittees in the methods and means of the practice of law. This includes those courses which involve instruction in the practice of law generally, instruction in the management of a legal practice, and instruction in particular substantive law areas designed for new practitioners. A practical skills program may include but shall not be limited to instruction in: client contact and relations; court proceedings; negotiation and settlement; alternative dispute resolution; malpractice avoidance; personal management assistance; the negative aspects of substance abuse to a law practice; and practice management assistance topics such as tickler and docket control systems, conflict systems, billing, trust and general accounting, file management, and computer systems.

The introductory Access to Justice course must be one that is specifically approved as such by the MCLE Administrator:

3.600 Introductory Course in Access to Justice. In order to qualify as an introductory course in access to justice required by MCLE Rule 3.3(b), the three-hour program must meet the accreditation standards set forth in MCLE Rule 5.5(b) and include discussion of at least three of the following areas: race, gender, economic status, creed, color, religion, national origin, disability, age or sexual orientation.

Note that not all programs approved for Access to Justice credits meets the requirements for the introductory course.

If you have any questions about your MCLE requirements or whether any particular CLE program will fulfill the new admittee requirements, please call the OSB MCLE Department at (503) 620 0222 ext. 368 or toll free in Oregon 1-800-452-8260, ext. 368, or e-mail your questions to Denise Cline, MCLE Administrator, at dccline@osbar.or or Jenni Abalan at jabalan@osbar.org.

ETHICAL CONSIDERATIONS IN MENTORING

FORMAL ETHICS OPINION NO. 2011-184

Lawyer to Lawyer Consulting: Confidentiality, Conflicts of Interest

Facts:

Lawyer A participates in a mentoring program for new lawyers. Lawyer B is Lawyer A's mentor and is not in Lawyer A's law firm. Lawyer A wishes to discuss a matter concerning one of his clients with Lawyer B.

Lawyer C is a solo practitioner. She is a member of an email listserv maintained by a professional organization that provides members the opportunity to exchange ideas and respond to questions about problems and issues that arise in their practice. Lawyer C encounters an unusual situation in a case she is handling and wishes to receive advice on how to proceed from knowledgeable colleagues who participate in her listserv.

Questions:

1. May Lawyer A disclose information relating to the representation of his client with Lawyer B?
2. May Lawyer B consult regarding Lawyer A's client matter without first checking for conflicts of interest between Lawyer A's client and any client of Lawyer B's firm?
3. May Lawyer C relate the details of the unusual situation she has encountered to other lawyers who participate in her professional organization's listserv?

Conclusions:

1. Yes, qualified.
2. See discussion.
3. Yes, qualified.

Discussion:

Oregon RPC 1.6 provides, in pertinent part:

(1) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).

Oregon RPC 1.7 provides, in pertinent part:

Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a current conflict of interest. A current conflict of interest exists if:

- (1) the representation of one client will be directly adverse to another client;

(2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer; or.....

It is not uncommon for a lawyer working on a client matter to seek the guidance or assistance of a knowledgeable colleague. Except where the client has specifically instructed otherwise, lawyers may consult with colleagues within their own firms or who are formally associated on a client's matter violating the duties to safeguard confidential information and avoid conflicts of interest.

A lawyer may also on occasion seek the advice of colleagues who are not members of the lawyer's firm or associated on a client matter. Whether those discussions arise in the context of a formal mentoring relationship or through informal discussions, such as on a professional listserv or in casual conversation, both the lawyer seeking advice and the lawyer giving the advice must exercise care to avoid violating their duties to their respective clients.

The American Bar Association's Standing Committee on Ethics and Professional Responsibility Formal Opinion 98-411, *"Ethical Issues in Lawyer-to-Lawyer Consultation,"* provides practical guidance on this subject.¹ Even though ABA opinion was adopted before listservs and other electronic discussion tools² were commonly used by lawyers and makes no reference to them or to lawyer mentoring programs, the principles it discusses and the guidance it provides are applicable in these contexts.³

I. Considerations for the Consulting Lawyer

Oregon RPC 1.6 safeguards "all information relating to the representation of a client," and prohibits disclosure of such information without the client's informed consent or as provided in one of the specific exceptions to the rule. There is no exemption for lawyers participating in mentorship programs or for other lawyers seeking assistance on behalf of clients. RPC 1.6(a) permits disclosure of confidential information, without the informed consent of a client, where the disclosure is "impliedly authorized to carry out the representation..." The rule does not suggest what kind of disclosures might be impliedly authorized, the ABA opinion interprets Rule 1.6 "to allow disclosures of client information to lawyers outside the firm when the consulting lawyer reasonably believes the disclosure will further the representation by

¹ Formal Opinion 98-411 (1998), available at: www.abanet.org/media/youraba/200911/98-411.pdf

² For purposes of this opinion, when reference is made to "listservs" the same considerations apply to discussions on blogs, online community "bulletin boards" or similar electronic discussion venues.

³ The ABA opinion purports to apply equally to consultations about the substance or procedure of a client's matter and to consultations about the consulting lawyer's own ethical responsibilities in the matter. However, since the ABA opinion was issued, both the ABA and Oregon have adopted rules that expressly permit disclosure of otherwise confidential information to the extent reasonably necessary "to secure legal advice about the lawyers compliance with these Rules." ABA Model Rule 1.6(b)(4) and Oregon RPC 1.6(b)(3). Comment [9] to the ABA Model Rule suggests that such disclosures may be impliedly authorized for the lawyer to carry out the representation but, even if not, are permitted "because of the importance of a lawyer's compliance with the Rules of Professional Conduct." This opinion is limited to consultations between lawyers unrelated to the lawyer's own professional conduct.

obtaining the consulted lawyer's experience or expertise for the benefit of the consulting lawyer's client."

Consultations that are general in nature and that do not involve disclosure of information relating to the representation of a specific client do not implicate Rule 1.6. For instance, there would be no violation of the rule in a listserv inquiry seeking the name or citation for a recent case on a subject relevant to a client matter or to discussions about an issue of law or procedure that might be present in a client matter. Similarly, inquiries or discussions posed as hypotheticals generally do not implicate RPC 1.6. Accordingly, Lawyer A might safely pose a question to Lawyer B, or Lawyer C might post an inquiry on a listserv, as a hypothetical case.

Framing a question as a hypothetical is not a perfect solution, however. Lawyers faces a significant risk of violating Rule 1.6 when posing hypothetical questions if the facts provided permit persons outside the lawyer's firm to determine the client's identity. Where the facts are so unique or where other circumstances might reveal the identity of the consulting lawyer's client even without the client being named, the lawyer must first obtain the client's informed consent for the disclosures.

To obtain "informed consent," a lawyer must provide a client with "adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct."⁴ As noted in the ABA opinion, that may include an explanation that the disclosure may constitute a waiver of attorney-client privilege or might otherwise prejudice the client's interests.

A lawyer should avoid consulting with another lawyer who is likely to be or to become counsel for an adverse party in the matter. In the absence of an agreement to the contrary, the consulted lawyer does not assume any obligation to the consulting lawyer's client by simply participating in the consultation.⁵ The consulting lawyer thus risks divulging sensitive information to a client's current or future adversary, who is not prohibited from subsequently using the information for the benefit of his or her own client. This should be a particular concern to Lawyer C if she posts her inquiry to a listserv, whose members may represent parties on all sides of legal issues. Moreover, no listserv, regardless the restrictions and limitations upon those who participate in it, can assure that messages will be read only by persons aligned with the interests of the lawyer posting an inquiry. Lawyer C, in seeking to consult about an unusual fact pattern, must be careful about using a listserv to obtain assistance from other attorneys, at least not without the informed consent of her client about the potential risks of the consultation.

⁴ Oregon RPC 1.0(g).

⁵ The ABA opinion suggests that an agreement to maintain confidentiality might be inferred in some situations, such as where the consulting lawyer puts conditions on the consultation or where the information discussed is of a nature that a reasonable lawyer would assume its confidentiality. In the absence of any authority, however, practitioners should not assume a confidentiality agreement will be inferred.

One way for a consulting lawyer to avoid some of the foregoing risks is to obtain an agreement that the consulted lawyer will both maintain the confidentiality of information disclosed and not engage in representation adverse to the consulting lawyer's client.

II. Considerations for the Consulted Lawyer

As discussed above, a consulted lawyer assumes no obligations to the consulting lawyer's client by the mere fact of the consultation. Lawyer B will not have violated any duty to Lawyer A's client under Rule 1.6 if Lawyer B later discloses or uses information received from Lawyer A, including in circumstances where Lawyer B undertakes representation adverse to Lawyer A's client.

Even a consultation premised on hypothetical facts can have practical implications for the consulted lawyer if the guidance provided to the consulting lawyer is used to harm a client of the consulted lawyer. The ABA opinion illustrates this point with the example of a lawyer skilled in real estate matters, like our Lawyer B, who is consulted by a less experienced lawyer, such as our Lawyer A, about how a tenant might void a lease. As a result of Lawyer B's guidance, Lawyer A's client repudiates a lease. Lawyer B subsequently learns that the landlord whose lease was repudiated is a client of Lawyer B's firm.

In that situation, if there was no confidentiality agreement between the lawyers, Lawyer B has a duty to inform the landlord client about the consultation and its possible consequences. While doing so does not breach any duties to Lawyer A's client or to Lawyer B's client, the practical result may be allegations of negligence or ethical misconduct by the landlord client and the destruction of the relationship. Had Lawyers A and B entered a confidentiality agreement regarding the consultation, then Lawyer B and his firm could be disqualified under Rule 1.10. If Lawyer B's obligations under that agreement would materially limit his ability to represent the landlord in the matter.⁶

Lawyer B can avoid the problems posed by the above example by insisting, prior to any consultation with Lawyer A about a client matter, that Lawyer A provide the identity of the client so that Lawyer B can check for possible conflicts with clients of Lawyer B's firm. In addition to checking for possible conflicts, Lawyer B might seek an agreement from Lawyer A, on behalf of Lawyer A's client, that the consultation will not create any obligations by Lawyer B to Lawyer A's client.

Consultations among lawyers, whether during the course of a mentorship program, on listservs and other "social media," during continuing education programs or in more informal settings, are an important part of a lawyer's professional development and a critical component in representing clients. Indeed, such consultations may be one way in which lawyers fulfill their ethical duty, under Oregon RPC 1.1, to provide competent representation. But lawyers who are not members of the same firm or affiliated on a particular case must be mindful of other ethical obligations to clients. For the consulting lawyer, like Lawyers A and C this opinion, care should

⁶ Oregon RPC 1.7(a)(2) prohibits a lawyer from representing a client if there is "a significant risk that the representation...will be materially limited by the lawyer's responsibilities to...a third person..." except where the affected client gives informed consent, confirmed in writing.

be taken not to violate the duty to maintain the confidentiality of information relating to the representation of a client. For the consulted lawyer, like Lawyer B, the duty of loyalty to existing clients must be considered. Even though a consultation will not create an attorney-client relationship between the client of the consulting lawyer and the consulted lawyer, there may be circumstances, as illustrated above, where the consulted lawyer will need to check for possible conflicts of interest, or take other prophylactic measures, to ensure that an obligation to current clients is not impaired.

Approved by Board of Governors, March 2011.

OREGON STATE BAR STATEMENT OF PROFESSIONALISM

(adopted by the Oregon Supreme Court December 1, 2006)

As lawyers, we belong to a profession that serves our clients and the public good. As officers of the court, we aspire to a professional standard of conduct that goes beyond merely complying with the ethical rules. Professionalism is the courage to care about and act for the benefit of our clients, our peers, our careers, and the public good. Because we are committed to professionalism, we will conduct ourselves in a way consistent with the following principles in dealing with our clients, opposing parties, opposing counsel, the courts, and the public.

- I will promote the integrity of the profession and the legal system.
- I will work to ensure access to justice for all segments of society.
- I will avoid all forms of illegal or unethical discrimination.
- I will protect and improve the image of the legal profession in the eyes of the public.
- I will promote respect for the courts.
- I will support the education of the public about the legal system.
- I will work to achieve my client's goals, while at the same time maintain my professional ability to give independent legal advice to my client.
- I will always advise my clients of the costs and potential benefits or risks of any considered legal position or course of action.
- I will communicate fully and openly with my client, and use written fee agreements with my clients.
- I will not employ tactics that are intended to delay, harass, or drain the financial resources of any party.
- I will always be prepared for any proceeding in which I am representing my client.
- I will be courteous and respectful to my clients, to adverse litigants and adverse counsel, and to the court.
- I will only pursue positions and litigation that have merit.
- I will explore all legitimate methods and opportunities to resolve disputes at every stage in my representation of my client.
- I will support pro bono activities.

SELECTED OREGON RULES OF PROFESSIONAL CONDUCT

Rule 1.0 Terminology

(b) "Confirmed in writing," when used in reference to the informed consent of a person, denotes informed consent that is given in writing by the person or a writing that a lawyer promptly transmits to the person confirming an oral informed consent. See paragraph (g) for the definition of "informed consent." If it is not feasible to obtain or transmit the writing at the time the person gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter.

(f) "Information relating to the representation of a client" denotes both information protected by the attorney-client privilege under applicable law, and other information gained in a current or former professional relationship that the client has requested be held inviolate or the disclosure of which would be embarrassing or would be likely to be detrimental to the client.

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

Rule 1.6 Confidentiality of Information

(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the

disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).

(b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:

(1) to disclose the intention of the lawyer's client to commit a crime and the information necessary to prevent the crime;

(2) to prevent reasonably certain death or substantial bodily harm;

(3) to secure legal advice about the lawyer's compliance with these Rules;

(4) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client;

(5) to comply with other law, court order, or as permitted by these Rules; or

(6) to provide the following information in discussions preliminary to the sale of a law practice under Rule 1.17 with respect to each client potentially subject to the transfer: the client's identity; the identities of any adverse parties; the nature and extent of the legal services involved; and fee and payment information. A potential purchasing lawyer shall have the same responsibilities as the selling lawyer to preserve information relating to the representation of such clients whether or not the sale of the practice closes or the client ultimately consents to representation by the purchasing lawyer.

(7) to comply with the terms of a diversion agreement, probation,

conditional reinstatement or conditional admission pursuant to BR 2.10, BR 6.2, BR 8.7 or Rule for Admission Rule 6.15. A lawyer serving as a monitor of another lawyer on diversion, probation, conditional reinstatement or conditional admission shall have the same responsibilities as the monitored lawyer to preserve information relating to the representation of the monitored lawyer's clients, except to the extent reasonably necessary to carry out the monitoring lawyer's responsibilities under the terms of the diversion, probation, conditional reinstatement or conditional admission and in any proceeding relating thereto.

Rule 1.7 Conflict of Interest: Current Clients

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a current conflict of interest. A current conflict of interest exists if:

- (1) the representation of one client will be directly adverse to another client;
- (2) there is a significant risk that the representation of one or more clients will

be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer; or

(3) the lawyer is related to another lawyer, as parent, child, sibling, spouse or domestic partner, in a matter adverse to a person whom the lawyer knows is represented by the other lawyer in the same matter.

(b) Notwithstanding the existence of a current conflict of interest under paragraph (a), a lawyer may represent a client if:

- (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
- (2) the representation is not prohibited by law;
- (3) the representation does not obligate the lawyer to contend for something on behalf of one client that the lawyer has a duty to oppose on behalf of another client; and
- (4) each affected client gives informed consent, confirmed in writing.

NEW LAWYER MENTORING PROGRAM RULE

(adopted by the Oregon Supreme Court December 6, 2010)

- 1. Applicability.** All lawyers admitted to practice in Oregon after January 1, 2011 must complete the requirements of the Oregon State Bar's New Lawyer Mentoring Program (NLMP) except as otherwise provided in this rule.
- 2. Administration of the NLMP; MCLE Credit.**
 - 2.1. The OSB Board of Governors shall develop the NLMP curriculum and requirements in consultation with the Supreme Court and shall be responsible for its administration. The OSB Board of Governors shall appoint a standing committee to advise the BOG regarding the curriculum and administration of the NLMP.
 - 2.2. The OSB Board of Governors may establish a fee to be paid by new lawyers participating in the NLMP.
 - 2.3. The OSB Board of Governors shall establish by regulation the number of Minimum Continuing Legal Education credits that may be earned by new lawyers and mentors for participation in the NLMP.
- 3. New Lawyer's Responsibilities.**
 - 3.1. The NLMP shall be operated in two sessions each year, one beginning on May 15 and the other on October 15. Unless deferred or exempt under this rule, new lawyers must enroll, in the manner prescribed by the OSB, in the first NLMP session after their admission to the bar.
 - 3.2. The new lawyer shall be responsible for ensuring that all requirements of the NLMP are completed within the requisite period including, without limitation, filing a Completion Certificate executed by the assigned mentor attesting to successful completion of the NLMP.
- 4. Appointment of Mentors.** The Supreme Court will appoint mentors recommended by the OSB Board of Governors. To qualify for appointment, the mentor must be a member of the OSB in good standing, with at least seven years of experience in the practice of law, and have a reputation for competence and ethical and professional conduct. All appointed mentors must complete the NLMP mentor training before participating in the program.
- 5. Deferrals.**
 - 5.1. The following new lawyers are eligible for a temporary deferral from the NLMP requirements:
 - 5.1.1. New lawyers on active membership status whose principal office is outside the State of Oregon and for whom the OSB determines that no mentorship can be arranged conveniently; and
 - 5.1.2. New lawyers serving as judicial clerks; and
 - 5.1.3. New lawyers who are not engaged in the practice of law.
 - 5.2. A new lawyer who is granted a deferral under section 5.1.1 of this Rule and who, within two years of beginning to practice law in any jurisdiction, establishes a principal office within the State of Oregon, must enroll in the next NLMP session. A new lawyer whose participation in the NLMP was deferred under sections 5.1.2 or 5.1.3 of this rule must

enroll in the next NLMP session following the conclusion of the judicial clerkship or the lawyer's entering into the practice of law.

- 6. Exemptions.** New lawyers who have practiced law in another jurisdiction for two years or more are exempt from the requirements of the NLMP.
- 7. Certificate of Completion; Noncompliance.**
 - 7.1. Each new lawyer is expected to complete the NLMP within 12 months of the date of enrollment, but in no event later than December 31 of the first full year of admission to the bar. The Certificate of Completion must be filed with the bar on or before that date.
 - 7.2. A new lawyer who fails to file a Certificate of Completion by December 31 of the first full year of admission shall be given written notice of noncompliance and shall have 60 days from the date of the notice to cure the noncompliance. Additional time for completion of the NLMP may be granted for good cause shown. If the noncompliance is not cured within the time granted, the OSB Executive Director shall recommend to the Supreme Court that the affected member be suspended from membership in the bar.
- 8. Reinstatement.** A new lawyer suspended for failing to timely complete the NLMP may seek reinstatement by filing with the OSB Executive Director a Certificate of Completion and a statement attesting that the applicant did not engage in the practice of law during the period of suspension except where authorized to do so, together with the required fee for the NLMP and a reinstatement fee of \$100. Upon receipt of the foregoing, the Executive Director shall recommend to the Supreme Court that the member be reinstated. The reinstatement is effective upon approval by the Court. Reinstatement under this rule shall have no effect upon the member's status under any proceeding under the Bar Rules of Procedure.

NLMP CALENDAR FOR 2011-SPRING SESSION*

May 6, 2011	Swearing-In Ceremony
June 3, 2011	Enrollment Forms Due
June 17, 2011	Mentor matches announced
July 15, 2011	Initial meeting between New Lawyer and Mentor
July 29, 2011	Alternate Plan proposals due
May 6, 2012	One year mentoring term ends, Certificates of Completion may be filed
December 31, 2012	Last day for Certificates of Completion
January 13, 2013	Notices of noncompliance sent
March 13, 2013	Noncompliance "cure" period expires
March 15, 2013	Suspension recommendations sent to Supreme Court

NLMP Calendar for 2011-Fall Session*

October 6, 2011	Swearing-In Ceremony
November 3, 2011	Enrollment Forms Due*
November 17, 2011	Mentor matches announced
December 15, 2011	Initial meeting between New Lawyer and Mentor
December 29, 2011	Alternate Plan proposals due
October 6, 2012	One year mentoring term ends, Certificates of Completion may be filed
December 31, 2012	Last day for Certificates of Completion
January 13, 2013	Notices of noncompliance sent
March 13, 2013	Noncompliance "cure" period expires
March 15, 2013	Suspension recommendations sent to Supreme Court

*New lawyers who are admitted other than at the scheduled swearing-in ceremonies will have adjusted deadlines for filing enrollment forms, mentor match, initial meetings, alternate proposals and end of one-year term, all of which will be based on actual admission date.

INITIAL MEETING GUIDE

What	Mentor	New Lawyer
Come prepared	Learn what you can about your new lawyer prior to the initial meeting.	Learn what you can about your mentor prior to the initial meeting.
Mentor's Career Story	Tell a brief story about your career, including a discussion about your mentors and their lessons. If you had no mentors, discuss how it affected your career.	Listen. Ask questions.
New Lawyer's Goals	Listen. Ask questions. Discuss	Explain your career goals, including practice areas that interest you.
Compliance Deadline	Review the expected time for completion of the NLMP, including extensions if necessary, and the consequences of noncompliance.	Acknowledge your understanding of the deadlines and your responsibility for successful completion.
Prepare the Mentoring Plan ^{††}	Review the plan components. Discuss the new lawyer's practice area interest and any adjustments to meet the new lawyer's individual needs.	Review the plan in advance and be prepared to discuss your practice area choice and any other adjustments for your individual needs.
Establish a regular meeting schedule.	Inform the new lawyer of your time commitments and general schedule; agree on a method and frequency for communication between scheduled meetings.	Commit to organizing your time so as to make efficient use of mentoring meetings. Be considerate of the mentor's schedule.
Agree to be candid about any problems.	Explain that you will inform the new lawyer if a problem arises in the mentoring relationship, or if a desired result is not being achieved.	Explain that you will inform the mentor if a problem arises in the mentoring relationship, or if a desired result is not being achieved.

^{††} If your firm has an established plan, determine if it has been qualified under the NLMP; if not, you can seek approval by submitting a request explaining how the firm's plan is substantially similar to and will provide substantially equivalent experiences to the new lawyer as the standard plan.

APPENDIX OF FORMS

NLMP Enrollment Form (to be used by all new admittees to enroll in the NLMP, to certify their exemption, or request a deferment).

The Mentoring Plan (a worksheet on which the new lawyer and mentor develop the plan and track the completion of activities).

Elective Practice Area Activities (a list of suggest practice area activities from which the new lawyer and mentor select at least ten to be completed during the mentoring year).

Certificate of Completion (to be filed with the NLMP Administrator when all mentoring plan activities have been completed).

NLMP Enrollment Form

Name _____

OSB # _____

Address _____

Phone _____

E-mail _____

☐ I am exempt from the NLMP because I have engaged in the active, substantial and continuous practice of law in _____ (jurisdiction) for two or more years prior to admission in Oregon.

☐ I request a deferral from the NLMP because:

☐ I am a judicial clerk for _____.

☐ I am unemployed or employed in a non-law position.

☐ I will be practicing in another state. (If you check this box, attach a separate sheet explaining your situation and why you believe it will be difficult to participate in the NLMP.)

Mentor Match Information

Employer Name & Address _____

I would prefer an ☐ inside ☐ outside mentor.

Name of proposed mentor, if applicable: _____

Practice Areas of Interest (you may include up to three):

Do you wish to be matched by age, gender or ethnicity? If so, please complete the applicable portion(s) below:

I would like a mentor who is ☐ less than ☐ more than 10 years older than me.

Gender: ☐ Male ☐ Female

Ethnicity: ☐ Caucasian

☐ Asian/Pacific Islander

☐ African-American

☐ Native American

☐ Hispanic/Latino

☐ Other _____

Are there any other factors you would like to have considered in matching you with a mentor? If yes, please describe: _____

Mentoring Plan

(to be filed with the Oregon State Bar upon completion)

New Lawyer _____

Mentor _____

A. Required Activities & Experiences

Activity	Date Completed
1. Introduction to the Legal Community, Public Service and Bar Service	
a. As soon as practicable after receipt of the mentoring match, the new lawyer and mentor meet to get acquainted and design the mentoring plan. The new lawyer is responsible for arranging the initial meeting.	
b. Introduce the new lawyer to other lawyers and staff members at the mentor's office or workplace or ascertain that such introductions have already occurred.	
c. Introduce the new lawyer to other lawyers in the community through attendance at meetings of the local bar association or another law-related group. Discuss opportunities for participating in the work of local, state or national bar organizations and the value of professional networking and relationships gained thereby.	
d. Discuss a lawyer's professional obligations regarding and the personal rewards arising from community and public service, and supporting and providing legal service to low income clients.	
e. Acquaint the new lawyer with Campaign for Equal Justice, the Oregon Law Foundation and other law-related charitable organizations. Acquaint the new lawyer with programs in which lawyers in private practice can provide pro bono legal services. Alternatively, have the new lawyer report on a visit with someone closely connected to these services.	
f. Review and discuss the opportunities for volunteer participation in OSB and local bar programs (including the ONLD and local bar young lawyer groups) and how being involved in such activities promotes professional and personal development.	
g. Escort the new lawyer on a tour of the local courthouse(s) and, to the extent practicable, introduces the new lawyer to members of the judiciary, court personnel, and clerks of court. (Required only for new lawyers whose practices will take them to the courthouse.)	
h. Describe and explain the customs and expectations of etiquette and behavior in the legal community such as cooperating with reasonable requests of opposing counsel that do not prejudice the rights of the lawyer's client, punctuality in fulfilling all professional commitments, avoiding offensive tactics, and treating opposing parties and counsel with courtesy, and discuss the value of adhering to those customs and practices.	

2. Rules of Professional Conduct / Standards of Professionalism

a. Discuss the lawyer's oath and of the practical application of the obligation to protect the laws of the State of Oregon and the United States.	
b. Discuss the core lawyering values of confidentiality and loyalty with reference to the Oregon Rules of Professional Conduct. Review and discuss in depth at least two of the following Rules: <ul style="list-style-type: none">▪ 1.7 thru 1.11 Conflicts of Interest ;▪ 3.3. Candor Toward the Tribunal;▪ 4.2 Communication with Persons Represented by Counsel; or▪ 4.3 Dealing with Unrepresented Persons.	
c. Review and discuss ethical issues that arise with some regularity in the practice setting and best practices for resolving them, with reference to experience as well as the Rules of Professional Conduct. Review and discuss the importance of and methods used to screen for conflicts. Discuss available resources for resolving ethical issues, including consultation with the OSB ethics advice service, private ethics counsel, and in-house ethics counsel or committees.	
d. Discuss how a new lawyer should handle a situation in which it is believed that another lawyer has violated ethical duties, including the duty to report certain kinds of misconduct. Discuss what to do if the new lawyer believes he or she has been instructed to engage in prohibited conduct.	
e. Review and discuss the OSB Statement on Professionalism.	
f. Discuss and explain the Minimum Continuing Legal Educations requirements and ways to fulfill such requirements, including OSB programs.	
g. Discuss the importance of cultural competence to effectively representing diverse clients and working in a diverse legal community.	

3. Introduction to Law Office Management

a. Discuss good time keeping and time management techniques.	
b. If the new lawyer and the mentor are in the same firm, discuss the new lawyer's role in the billing system. If not in the same firm, review and discuss good billing practices.	
c. Review and discuss trust account rules and best practices for handling of client funds, including importance of clearing checks before funds are drawn and authority needed to pay lawyer fees from client funds in trust.	
d. Review and discuss malpractice insurance coverage including disclosure requirements.	
e. Introduce calendar and "tickler" or reminder systems.	
f. Introduce the use of information technology systems in law practice.	
g. Discuss resources (publications, seminars, equipment, etc.) that a new	

lawyer might find particularly helpful in his or her work.	
h. Discuss the roles and responsibilities of paralegals, secretaries, and other office personnel, and how to establish good working relationships with others in the office who are support staff, colleagues, or senior partners.	
i. Review and discuss a lawyer's responsibility as a subordinate under RPC 5.2, and as a supervisor of non-lawyers under RPC 5.3.	
4. Working with Clients	
a. Discuss the importance of knowing who you represent, particularly when representing corporations, government agencies or other organizations.	
b. Discuss client interaction, including tips for gathering information about a legal matter and appraising the credibility and trust of a potential client.	
c. Review how to screen for, recognize, and avoid conflicts of interest.	
d. Discuss issues that arise regarding the scope of representation.	
e. Discuss "DOs and DON'Ts" of maintaining good ongoing client relations, such as returning telephone calls and keeping clients informed about matters.	
f. Participate in or observe at least one client interview or client counseling session.	
g. Discuss how to decide whether to accept a proffered representation.	
h. Discuss how to talk about and set the fee for legal services. Review retainers and fee agreements and discuss the importance of written engagement agreements.	
i. Discuss how to deal with a difficult client and how to decline representation of the unrealistic or "impossible" client.	
j. Discuss terminating the lawyer-client relationship and necessary documentation.	
5. Career Satisfaction and Work/Life Balance	
a. Discuss how to handle challenging relationships in and outside the office, and how to develop a support systems of colleagues and others with whom the new lawyer can discuss problems as they arise.	
b. Discuss the new lawyer's career objectives and how best to achieve them. If applicable, discuss the importance of having a business plan for developing a practice.	
c. Discuss the importance of making time for family, friends, and other personal interests, including how to manage billable hour or other performance requirements to enable an appropriate balance of professional obligations and personal life.	
d. Discuss the warning signs of substance abuse and depression and how to address those problems when they are manifested in the new lawyer or others. Review and discuss the support and counseling available to the new lawyer and the new lawyer's family through the Oregon Attorney's Assistance Program.	

B. Elective Practice Area Activities

Select and complete at least ten (10) Practice Area Activities in one or more substantive law Practice Areas shown on the following pages. At least one of the Activities must be a writing project that the mentor reviews with the new lawyer. If the new lawyer is interested in a practice area not included here, the new lawyer and mentor may identify basic skill activities in that practice area to include in the mentoring plan. The activities and experiences suggested on the following pages may be adjusted to the new lawyer's particular practice setting and individual needs.

<i>Activity</i>	<i>Date Completed</i>
1.	
2.	
3.	
4.	
5.	
6.	
7.	
8.	
9.	
10.	

Elective Practice Area Activities

1. Civil Litigation

a. Rules and Pleadings

- (1) Review and discuss the local rules of the Federal District Court of Oregon or the Oregon Uniform Trial Court Rules, as applicable, focusing on issues that frequently arise.
- (2) Review and discuss the Supplemental Local rules for your county's Circuit Court focusing on issues that frequently arise.
- (3) Review and discuss pleading standards.
- (4) Participate in preparing a complaint.
- (5) Review, discuss and prepare a summons and cause it to be served.
- (6) Participate in preparing an answer to complaint, counterclaim, cross-claim or third-party complaint.
- (7) Discuss and participate in a "conference" before filing a motion (include why is it required, what constitutes conferral, provision of authorities for one's position, necessity for dispositive motions.)
- (8) Discuss the pros and cons of a motion to dismiss in federal court or state court.
- (9) Prepare, file, and argue a motion. Review and discuss.

b. Discovery and Summary Judgment

- (1) Prepare for and observe or participate in a discovery planning conference with opposing counsel in a state or federal court case.
- (2) Participate in or observe a Rule 16 scheduling conference in the Federal District Court of Oregon.
- (3) Participate in or observe a scheduling conference in state court.
- (4) Participate in or observe an interview of a witness. Discuss how to take a proper statement from a witness for use at trial.
- (5) Discuss common issues of professionalism in a litigation practice including scheduling courtesies, who will produce documents or be deposed first, where will depositions occur, personal attacks in briefs or hearings, proper usage of email and fax communications, returning phone calls, appropriate courtroom conduct by counsel and client, preparation of a client for the courtroom, and others.
- (6) Prepare one of the following: a Request for Production of Documents, a Request for Admissions, or, if in Federal Court, a set of Interrogatories.
- (7) Prepare a Response to one of the following: a Request for Production of Documents, a Request for Admissions, or if in Federal Court, a Set of Interrogatories.
- (8) Discuss the proper preparation of a witness for a deposition and the proper conduct of an attorney taking and defending a deposition.
- (9) Participate in the preparation for and the taking of a deposition of a witness or adverse party in a civil.

- (10) Participate in the preparation for and defense of a deposition of a witness for your client or of your client in a civil action.
- (11) Participate in identifying expert witnesses and producing expert witness reports.
- (12) Discuss or participate in preparing motions and memoranda in support of summary judgment in state or federal court.

c. Trial preparation and trial

- (1) Discuss or participate in final trial preparations including preparing pretrial order and making pretrial disclosures of witnesses and exhibits.
- (2) Attend to observe or participate in a final pretrial conference in state or federal court.
- (3) Participate in an evidentiary hearing in a state or federal court.
- (4) Participate in or observe a trial (or significant parts of one) in a civil or criminal case in either a state or federal court.
- (5) Discuss the mechanics of trial, including where to be when questioning a witness or addressing the court, proper attire, when to stand, courtroom decorum, addressing opposing counsel, judge's bench books, etc.

2. Criminal Litigation

- a. Observe or participate in client interview or in a meeting with a key prosecution witness.
- b. Discuss factors considered by prosecutors in making charging decision.
- c. Participate in charge negotiations between defense counsel and the prosecutor's office.
- d. Participate in making a discovery request in a criminal case, including request for exculpatory materials.
- e. Discuss defense discovery obligations in state cases.
- f. Participate in engagement of private investigator for defense to interview witnesses and discuss the ethical issues involved in the use of state or federal investigators.
- g. Review information or indictment for constitutional and/or pleading defects.
- h. Research elements of crime charged or under investigation; discuss.
- i. Review and discuss pretrial diversion options.
- j. Review and discuss plea in abeyance statute in a particular case and study applicable statute.
- k. Discuss alternatives to prosecution in state cases such as specialty courts, diversion, and civil compromise.
- l. Review and discuss criteria in federal cases for a one- or two-level reduction of offense in a particular case and study applicable statute.
- m. Discuss elements of greater and lesser offenses and range of mandatory and discretionary sentences in a state case.
- n. Participate in discussions about and make or oppose a bail or pretrial release request .
- o. Observe and participate in trial.
- p. Observe and participate in entry of plea in state or federal court.
- q. Review and discuss Presentence Report; participate in filing objections.

- r. Research and participate in analysis of federal sentencing guidelines in particular federal case.
- s. Research and participate in analysis of sentencing guidelines in a particular state case.

3. Administrative Law

- a. Review and discuss the Oregon Administrative Procedures Act.
- b. Review and discuss the Attorney General's Model and Uniform Administrative Rules.
- c. Review and discuss the administrative rules promulgated by the Office of Administrative Hearings.
- d. Review and discuss the Oregon Public Records Law and the Oregon Open Meetings Law.
- e. Meet the Chief Administrative Law Judge and available administrative law judges from the Office of Administrative Hearings.
- f. Attend several types of administrative law contested case hearings which are open to the public.
- g. Participate in or observe an administrative law case from intake through hearing and final order.
- h. Review the OSB Oregon Administrative Law Handbook.
- i. Review the Attorney General's Administrative Law Manual and the Attorney General's Public Records and Meetings Manual.
- j. Review and discuss selected Oregon administrative law appellate case law.
- k. Review and discuss the OSB ethics opinions related to administrative law.

4. Alternative Dispute Resolution

- a. Review and discuss Oregon statutes on mediation including requirement to screen for potential conflict of interest of mediator.
- b. Discuss the differences between arbitration and mediation and the considerations for using each method of dispute resolution.
- c. Observe, participate in, or prepare for a mediation.
- d. Observe, participate in, or prepare for an arbitration.
- e. Discuss how to prepare a client for mediation or arbitration.

5. Appellate Practice

- a. Review and discuss the Oregon and Federal Rules of Appellate Procedure, as applicable.
- b. Attend and observe an appellate argument in the Oregon Supreme Court, the Oregon Court of Appeals, or the 9th Circuit Court of Appeals.
- c. Review and discuss ORS Ch. 138 through ORS 138.504 regarding appeals in criminal cases.
- d. Review and discuss ORS 183.400 and ORS 183.480 to 183.497 regarding judicial review of administrative agency actions.
- e. Review and discuss the Appellate Court Settlement Program.
- f. Review and discuss the Oregon Appellate Court Style Manual.
- g. Attend a CLE on a component of appellate practice (e.g., brief writing, oral argument).

- h. Review and discuss the OSB Appeal and Review CLE.
- i. Review discuss ORS ch. 19 Appeals and those portions of ORS ch. 21 Attorney Fees; Costs and Disbursements, ORS ch. 21 Fees Generally and ORS ch. 22 Bonds and Other Security Deposits related to appeals.
- j. Read and discuss an article or book on oral advocacy or brief writing.
- k. Participate in the drafting of a brief.
- l. Review and discuss the Appellate Practice Section Pro Bono .

6. Business Law

- a. Discuss the various forms of business entities (corporations, LLCs, partnerships, LLPs, etc.) and the considerations for choosing each one.
- b. Discuss key considerations in choosing Oregon, Delaware, or other jurisdiction for incorporation or organization of new entities.
- c. Draft or review basic documents involved in the formation of a business entity such as Articles of Incorporation, Articles of Organization, Bylaws, Operating Agreements, Partnership Agreements, corporate minutes and resolutions.
- d. Discuss basic blue sky and other securities issues associated with formation of entities.
- e. Conduct blue sky research for a proposed issuance by a private company.
- f. Draft or review Form D and related blue sky notices.
- g. Discuss or review one or more of the following documents commonly developed in a business practice:
 - (1) shareholders' agreement;
 - (2) buy-sell agreement;
 - (3) stock purchase agreement;
 - (4) asset purchase agreement;
 - (5) noncompetition agreement;
 - (6) security/collateral agreement; or
 - (7) promissory note.
- h. Participate in the due diligence process for mergers and acquisitions.
- i. Prepare UCC filings.

7. Constitutional Law

- a. Review and discuss the most common federal Constitutional claims used by attorneys in Oregon. This could include one or more of the following:
 - (1) Rights of communication and expression.
 - (2) Anti-establishment and religious freedom.
 - (3) Equal protection and due process.
 - (4) Privacy.
 - (5) Search and seizure.
 - (6) Habeas Corpus.
 - (7) Supremacy.
- b. Review and discuss how the Oregon Supreme Court interprets and applies the State Constitution and the claims that are used more frequently by practicing attorneys in Oregon. This could include one or more of the following:

- (1) First-things-first doctrine and primacy of state constitutional issues.
- (2) Independent state constitutional rights.
- (3) Interpreting state constitutional provisions.
- (4) Expanded rights in criminal proceedings.
- (5) Expanded rights of expression.
- (6) Impairment of contract, open court and remedies, privileges and immunities, or the religion clauses.
- c. Review and discuss advantages and disadvantages of raising federal constitutional claims in state or federal court.
- d. Review and discuss some of the common issues that arise in claims filed pursuant to Section 1983 of the Civil Rights Act Review and discuss some of the issues related how and where constitutional claims can be raised and what record will be necessary (challenging referendums or initiatives, administrative actions, state statutes, actions by judge during trial, constitutional claims in administrative proceedings, appeals, removal to federal court, referral from federal court to State Supreme Court).

8. Debtor-Creditor/Consumer Law

- a. Discuss and prepare or review a motion for provisional process.
- b. Discuss and prepare or review documents for the appointment of a receiver or an assignment for the benefit of creditors.
- c. Discuss and review statutory and possessory liens and their enforcement.
- d. Discuss and review how to file and enforce a foreign judgment.
- e. Discuss and prepare appropriate documents for garnishment or execution on a judgment.
- f. Discuss fraudulent conveyances and how to challenge or set aside a transfer.
- g. Discuss and review state and federal consumer protection laws including the UTPA, the Fair Debt Collection Act, the Fair Credit Act, TILA, and vehicle "lemon laws" and the claims and defenses they offer.
- h. Discuss and review a standard retail installment contract.
- i. Discuss and review the family expense doctrine.
- j. Observe or participate in a hearing on a consumer law issue.

9. Environmental Law

- a. Discuss or write a legal memorandum analyzing a significant question under one or more of the following statutory areas: RCRA Hazardous Waste (State and Federal), Solid Waste Management, Storage Tanks, Clean Air Act, Clean Water Act, NEPA/SEPA, Endangered Species Act, Asbestos Management.
- b. Discuss the obligations under applicable Right-to-Know statutes.
- c. Discuss obligations to report the discovery of preexisting contamination.
- d. Discuss or assist in preparing environmental permits needed for a project under both state and federal laws.
- e. Discuss or prepare a checklist for a multimedia compliance audit for an industrial facility.
- f. Discuss or observe a rulemaking process.

- g. Discuss or write a legal memorandum analyzing Superfund liability.
- h. Discuss or participate in preparation for and management of an agency inspection.
- i. Discuss or review agency penalty policy.

10. Estate Planning

- a. Participate in drafting and reviewing basic estate planning documents.
- b. Assist in gathering and organizing client information.
- c. Prepare diagrams of specific estate plans for clients.
- d. Prepare estate planning binders for clients.
- e. Participate in drafting and reviewing probate pleadings.
- f. Prepare notice to creditors and arrange for publication.
- g. Prepare the inventory of an estate.

11. Family Law

- a. Review and discuss the Rules of Civil Procedure, Uniform Trial Court Rules, and applicable Supplemental Local Rules specific to Family Law.
- b. Prepare a petition for dissolution.
- c. Prepare a Statement of Assets and Liabilities
- d. Create a child support worksheet.
- e. Observe or participate in a hearing on motion for temporary orders.
- f. Observe or participate in custody evaluation settlement conference Participate in a collaborative law meeting.
- g. Participate in a mediation.
- h. Observe or participate in a family law trial.
- i. Participate in preparing a premarital agreement or review and discuss statutory requirements, case law, and necessary terms of premarital agreements.

12. Immigration Law and the Representing of Foreign Nationals in Oregon

- a. Review and discuss the substantive law and procedures related to admission and exclusion.
- b. Review and discuss the substantive law and procedures related to removal, including relief from removal (voluntary departure, prosecutorial discretion, regularization of status, extreme hardship).
- c. Review and discuss the availability of judicial review and habeas corpus on matters related to admission, exclusion and removal.
- d. Review and discuss the most common grounds for seeking admission, delaying removal or changing immigration status to avoid removal. (Could include one or more of the following: creating a business, employment, family, victim of domestic violence or human trafficking, refugee, political asylum).
- e. Review and discuss common legal issues related to advising and representing foreign nationals in Oregon. This could include one or more of the following:
 - (1) Future impact of a guilty, no contest plea, or criminal conviction on admissibility and removal under immigration law.

- (2) Effect of immigration status on right to work, buy land, create a business, serve on a board of directors, and similar matters.
- (3) Requirements that employers check immigration status at time of hiring and in response to Social Security mismatch letter, I-9 audit, or other notice to employer from the federal government.
- (4) Effect of immigration status on rights of employees under labor protections statutes.
- (5) Effect of immigration status on eligibility for various government benefits and the potential impact of seeking benefits on immigration status.
- (6) Practical considerations in civil litigation related to discovery or retaliation.
- (7) Getting a drivers license and insurance under the REAL ID act.

13. Intellectual Property and Patent Law

- a. Discuss or participate in patent search/evaluation.
- b. Discuss or participate in drafting and filing a patent application.
- c. Discuss or participate in filing an Information Disclosure Statement (IDS).
- d. Discuss or participate in drafting an Office Action response.
- e. Discuss or participate in a telephone conversation with an Examiner.
- f. Discuss or participate in preparing and drafting an appeal brief.
- g. Discuss and review techniques for successful patent prosecution.
- h. Observe or participate in patent litigation.
- i. Observe or participate in a client interview.
- j. Discuss or participate in trademark search/evaluation.
- k. Discuss or participate in drafting and filing a trademark application.
- l. Discuss or participate in drafting an Office Action response.
- m. Discuss or participate in preparing and drafting an appeal brief.
- n. Discuss and review techniques for successful trademark prosecution.
- o. Discuss or participate in trademark litigation.
- p. Discuss or participate in drafting and filing a copyright application.

14. Juvenile Law

- a. Dependency cases
 - (1) Attend a shelter hearing.
 - (2) Discuss the standards used by DHS for removal in ICWA and non-ICWA cases and reasonable efforts to avoid removal, achieve permanency.
 - (3) Discuss placement options for children including involvement of relatives and visitation arrangements.
 - (4) Discuss the role of the court, DHS, the CASA, and the district attorney or department of justice lawyer (and the tribe in ICWA cases).
 - (5) Attend a jurisdictional hearing and discuss preparation of the parent to testify.
 - (6) Discuss the grounds for initial and continuing juvenile court jurisdiction and the relationship with “reasonable” or “active” efforts by the state to reunite the family.
 - (7) Attend a permanency hearing.
 - (8) Attend a termination of parental rights trial or review a transcript .

- (9) Discuss the role of counsel for a child who is capable of considered judgment; discuss best interests representation of a child not capable of considered judgment.
- (10) Discuss Special Immigrant Juvenile Status for non-citizen child clients.
- b. Delinquency cases
 - (1) Discuss formal and informal treatment of juvenile offenders and scope of court's discretion.
 - (2) Discuss capacity of juveniles to aid and assist and waive constitutional rights.
 - (3) Discuss the role of counsel in delinquency cases and the need to follow client directives as in criminal cases.
 - (4) Discuss pre-petition issues for juveniles, detention, and waiver to criminal court.
 - (5) Discuss direct and collateral consequences of juvenile adjudications.
 - (6) Attend a detention hearing.
 - (7) Attend a jurisdictional hearing.
 - (8) Attend a dispositional hearing.
 - (9) Discuss post-dispositional issues.

15. Labor and Employment

- a. Review and discuss the Oregon Bureau of Labor & Industries/EEOC administrative process. Review or participate in drafting a charge or the response to a charge.
- b. Participate in or observe the BOLI/EEOC administrative process, including a resolutions conference or an appeal to the Labor Commission.
- c. Participate in drafting or review and discuss a separation or settlement agreement.
- d. Participate in or discuss consultation with management on HR issues.
- e. Prepare for and observe or participate in an unemployment benefits appeal hearing.
- f. Review and discuss an employment law issue, such as a claim under Title VII, the Family Medical Leave Act, the Americans with Disabilities Act, or other substantive federal law or its state counterpart.
- g. Discuss or participate in drafting one or more of the following: basic defined contribution plans, including 401(k) plans; basic cafeteria plans; basic umbrella welfare plans; routine amendments to plans; determination letter requests; summary plan descriptions; summary of material modifications and summary annual report; distribution forms.

16. Legislative and Administrative Lobbying

- a. Discuss and review the roles that an attorney could play in advising or advocating in legislative or administrative lobbying for a client.
- b. Discuss the state and federal laws that require lobbyist to register, the definitions of lobbying, the restrictions on making gifts, and the requirements related to reporting time and certain expenditures.
- c. Discuss and review the characteristics of effective legislative lobbying, including how to make connections with legislators and legislative staff, build credibility and trust, testify, participate in work groups, join coalitions and similar matters.
- d. Attend and, if possible, participate in a legislative hearing.

- e. Discuss and review how to build relationships with agency representatives and the formal and informal ways to influence the agency in its decision-making.
- f. Become familiar with the OSB Public Affairs Program.

17. Natural Resources/Land Use

- a. Discuss or research a significant question under one or more of the following statutory areas: National Environmental Policy Act/SEPA/CEQA, Endangered Species Act/Marine Mammal Protection Act/Magnuson Stevens Fishery Conservation and Management Act, Clean Water Act/Rivers and Harbors Act, Coastal Zone Management Act, Federal Insecticide Fungicide, and Rodenticide Act, Federal Land Policy and Management Act/Multiple-Use Sustained-Yield Act/National Forest Management Act, reclamation Laws/Reclamation Reform Act, state and local land use laws, water rights laws, and wetlands laws, substantive mining and oil and gas laws.
- b. Discuss environmental, natural resources, and local land use permits needed for a project under federal, state, and local laws.
- c. Discuss or assist with the preparation of a permit application at the federal, state or local level.
- d. Discuss or review Phase I and Phase II environmental site assessments.
- e. Discuss or participate in due diligence investigations, such as compliance with applicable local land use requirements or existence of water rights.
- f. Discuss or review a property transfer assessment.
- g. Discuss or draft a site access agreement for survey work (legal survey, fish and wildlife survey, wetland delineations, remedial action).

18. Negotiation

- a. Discuss how to prepare for the negotiation of a legal matter (e.g., release of a personal injury claim, lease agreement, etc.).
- b. Discuss when and how negotiation should be initiated.
- c. Discuss when and how to involve the client in negotiation.
- d. Discuss ethical and professional obligations of negotiators.
- e. Discuss skills needed to be an effective negotiator and how to acquire them.
- f. Observe or participate in a negotiation.

19. Real Estate Law

- a. Discuss the steps involved in negotiating and completing a commercial real estate transaction.
- b. Draft or review one or more common real estate documents such as real estate purchase agreements, deeds of trust, mortgages, commercial leases, residential leases, Notice of Default.
- c. Discuss the basic provisions of state and federal law affecting real estate and the enforcement of legal rights associated with real estate.
- d. Discuss the taxation of real estate.

- e. Discuss title concepts and issues including marketability of title, priority of interests, forms of ownership, forms of conveyances, recording requirements, statutory and nonstatutory liens and other similar concepts.
- f. Discuss title insurance policy forms, available endorsements and customary insurance and endorsement practices in different transactions.
- g. Discuss distinctions between real and personal property and the methods of transfers of and creation of liens on different asset types.
- h. Discuss easements, reservations, covenants and the enforcement of such rights, common interest ownership options and the applicability of real estate doctrines such as partition.
- i. Discuss survey concepts and issues including metes and bounds legal descriptions, access and title issues presented by surveys.

20. Tax Law

- a. Discuss the principal tax considerations associated with various forms of entities (corporations, LLCs, partnerships, limited partnerships, etc.).
- b. Discuss the general tax considerations associated with taxable and tax-free acquisitions and divestitures, equity compensation, like-kind exchanges and the procedures associated with federal and state tax controversies.
- c. Assist with the basic tax tasks associated with entity organizations, including federal EINs, S corporation and OSub elections.
- d. Discuss the tax forms and publications applicable to the basic types of entities.
- e. Analyze and discuss one or more complex tax matters.
- f. Prepare and analyze tax calculations.
- g. Participate in preparing IRS tax forms.

New Lawyer Mentoring Program
CERTIFICATE OF COMPLETION

By our signatures affixed below,

[New Lawyer's name, please print] OSB # _____

and

[Mentor's name] OSB # _____

hereby certify that the New Lawyer named above has satisfactorily
completed all the requirements of the New Lawyer Mentoring Program
Mentoring Plan, a copy of which is submitted herewith.

Dated this _____ day of _____, 201__.

[New Lawyer's signature]

[Mentor's signature]

All new lawyers must comply with the requirements of MCLE Rule 3.3(b). This certification relates only to the NLMP.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: March 18, 2011
Memo Date: March 18, 2011
From: Ethan Knight, Vice Chair, Appointments Committee
Re: Recommendations for Ninth Circuit Judicial Conference Lawyer
Representatives

Action Recommended

Approve the following list of members as the bar's recommended candidates for appointment as lawyer representatives to the Ninth Circuit Judicial Conference.

Margie Paris, Eugene, 070608

Yoon Park, Portland, 077095

Susan Pichford, Portland, 980911

Ed Talmadge, Medford, 014967

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: April 22, 2011
Memo Date: April 8, 2011
From: Chris Kent, Chair, Budget & Finance Committee
Re: Change in OSB Investment Policy

Action Recommended

Approve the change of the OSB bylaw 7.402 to include the amendments approved by the Budget & Finance Committee.

Background

This matter first was on the February 18 board agenda and since this is a bylaw change, it is before the board for final approval.

The bylaw change is the outcome of the Budget & Finance Committee's meeting with representatives of Washington Trust Bank on January 7. At that meeting, the Committee approved the change to bylaw 7.402 *Approved Investments* to add Small Capitalization International Equities and the Emerging Markets Fixed Income as investment classes in the bar's investment policy.

Bylaw subsection 7.402 with the recommended changes (underlined and in red) follow this memo.

Subsection 7.402 Approved Investments

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

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

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

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: April 22, 2011
From: Mitzi Naucler, Chair, Policy and Governance Committee
Re: Complimentary CLE for Active Pro Bono Members

Action Recommended

Approved amendments to OSB Bylaw 16.200 to allow Active Pro Bono members to attend up to 8 hours of OSB CLE annually without charge. This amendment was presented to and discussed by the BOG at its February 2011 meeting, which satisfies the one-meeting notice requirement of OSB Bylaw 27.

Background

After considering the request of an Active Pro Bono member, the Policy and Governance Committee recommended to the BOG that such members be entitled to complimentary attendance at OSB CLE seminars, limited to one program of one day or less. After discussion, the BOG voted to allow up to eight (8) hours annually, regardless of the number of days or programs.

To implement the new policy, Bylaw 16.200 should be amended as follows:

Subsection 16.200 Reduced and Complimentary Registrations

(a) Complimentary admission to CLE seminars is available to the following OSB lawyer members: Active Pro Bono members, lawyer-legislators, 50-year members, judges, and judicial clerks.

(b) Complimentary admission does not include the cost of lunch or other fee-based activities held in conjunction with a CLE seminar.

(c) For purposes this policy, "judges" means full or part-time paid judges and referees of the Circuit Courts, the Court of Appeals, the Tax Court, the Supreme Court, and of tribal and federal courts within Oregon. Complimentary registration at any event for judicial clerks will be limited to one clerk for each trial court judge and two clerks for each appellate court judge.

(d) Complimentary admission for Active Pro Bono members is limited to eight (8) hours of programming in any one calendar year, which may be used in increments.

(e) Reduced registration fee, tuition assistance and complimentary copies of programs may be available to certain other attendees, in the sole discretion of the CLE Seminars Director.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: April 22, 2011
From: Mitzi Naucler, Chair, Policy and Governance Committee
Re: Amendments to OSB Bylaw 24.201

Action Recommended

Approve amendments to OSB Bylaw 24.201 to specifically include “judges” in addition to lawyers as eligible recipients of services provided by the PLF Personal and Practice Management Assistance Committee (PLF-PPMAC). This item was presented to and discussed by the BOG at its February 2011 meeting, which satisfies the one-meeting notice requirement of OSB Bylaw 27.

Background

The PLF-PPMAC programs are the Oregon Attorney Assistance Program (OAAP) and the Practice Management Assistance Program (PMA). The PLF-PPMAC was created pursuant to ORS 9.568(2), which provides:

...the board may create personal and practice management assistance committees to provide assistance to lawyers who are suffering from impairment or other circumstances that may adversely affect professional competence or conduct. Personal and practice management assistance committees may also provide advice and training to lawyers in practice management.

Pursuant to OSB Bylaw 24.201, the PLF-PPMAC

has the authority to provide assistance to lawyers who are suffering from impairment or other circumstances that may adversely affect professional competence or conduct and may also provide advice and training to lawyers in practice management. The PLF-PPMAC may provide this assistance through the PLF’s Oregon Attorney Assistance Program and the Practice Management Advisor Program and by the use of the PLF staff and volunteers.

The bylaw currently mirrors the language of the statute, which doesn’t say anything about judges. That said, most judges are lawyers, and so might reasonably be considered a subset of the more general term “lawyers.” Consequently, it is staff’s opinion that the statute and bylaw currently allow the PLF-PPMAC to provide services to judges. In fact, the PLF-PPMAC programs have historically been open to judges.

While an amendment to the bylaw may be technically unnecessary, there is no harm in making the proposed change. Further, the PLF provides good reason for the proposed change. The OAAP has been working with a committee of judges to improve judicial access to the OAAP. The committee has encouraged the OAAP to make its services more visibly directed toward judges in particular as well as lawyers in general. Amending the bylaw to specifically add “judges” as eligible recipients of the PLF-PPMAC services is part of that effort.

Similarly, deleting “to lawyers” broadens the reach of the PLF-PPMAC. In order to ensure services continue to focus on law practice rather any type of practice, the generic term “practice management” should be modified to say “law practice management.”

Accordingly, the Policy and Governance Committee supports the PLF’s request that OSB Bylaw 24.201 be amended to read:

[The PLF-PPMAC] has the authority to provide assistance to lawyers and judges who are suffering from impairment or other circumstances that may adversely affect professional competence or conduct and may also provide advice and training ~~to lawyers~~ in law practice management. The PLF-PPMAC may provide this assistance through the PLF’s Oregon Attorney Assistance Program and the Practice Management Advisor Program and by the use of the PLF staff and volunteers.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: April 22, 2011
From: Mitzi Naucler, Policy & Governance Committee Chair
Re: ONLD Bylaw Changes

Action Recommended

Approve revisions to the Oregon New Lawyers Division bylaws. This item was presented to and discussed by the BOG at its February 2011 meeting, which satisfies the one-meeting notice requirement of OSB Bylaw 27.

Background

The ONLD bylaws were last updated in November 2005, since that time the bar has made changes to its bylaws and region configuration. In addition to better aligning the ONLD bylaws with OSB practices, the proposed bylaw changes also clarify terms used throughout the document.

In accordance with ONLD bylaw 11.2, Division members approved the proposed bylaw amendments during the Division's annual meeting on November 12, 2010. The Policy & Governance Committee considered the changes on January 7, 2011 and urges their adoption.

Attachment: ONLD Bylaws with Proposed Changes

New Lawyers Division Bylaws

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Article 1.
Name, Purpose and Fiscal Year

1.1 Name.

The name of this organization shall be the Oregon New Lawyers Division (“Division”) of the Oregon State Bar (“~~h~~Bar”).

1.2 Purposes.

The purposes of the Division shall be to encourage new lawyers to participate in the activities of the bar, to conduct programs of value to new lawyers and law students, to promote public awareness of and access to the legal system, and to promote professionalism among new lawyers in Oregon.

1.3 Public Office.

The Division shall not participate in or intervene in (including the publishing or distribution of statements) any political campaign on behalf of any candidate for public office.

1.4 Fiscal Year.

The fiscal year of the Division shall coincide with the fiscal year of the ~~h~~Bar.

1.5 Bar Policies.

The Division shall comply with the policies of the Board of Governors of the ~~h~~Bar that apply to sections, except as otherwise provided in these bylaws.

Article 2.
Membership and Dues

2.1 Members.

Each member of the ~~h~~Bar shall be eligible to be a member of the Division until the last day of the Division’s fiscal year in which such member attains the age of thirty-six (36) years or until the last day of the sixth full fiscal year in which any such member has been admitted to practice in this state, whichever is later. All eligible members of the ~~h~~Bar shall automatically be members of the Division unless and until membership dues are assessed under this Article, in which case all eligible members of the ~~h~~Bar who pay the Division membership dues shall be members of the Division.

2.2 Associate Members.

Any law student presently attending an ABA accredited law school in Oregon shall automatically be considered an associate member of the Division without payment of dues. Individual students at other ABA accredited schools shall be associate members upon written request.

2.3 Dues.

Membership dues may be set by the membership of the Division at the annual meeting of the Division, subject to subsequent approval of the Board of Governors. Membership dues shall not be prorated for any portion of a year. The ~~Division~~ Executive Committee may establish free or discounted membership rates for new admittees or for attorneys with incomes below a specified level. If assessed, membership dues shall be collected annually by the ~~h~~Bar with ~~h~~Bar membership fees.

2.4 Associate Member Participation in Division Business.

Associate members may not serve as voting members of the Executive Committee and may not vote at Division meetings. However, they may serve on any Division Standing Committee or Special Committee.

Article 3.
Division Executive Committee

3.1 Composition.

The Executive Committee shall be composed of eleven Division members. There shall be one Executive Committee position for each of the following ~~six~~ seven (7) regions.

Region 1:

Baker, Crook, Deschutes, Gilliam, Grant, Harney, Hood River, Jefferson, ~~Klamath~~, Lake, Malheur, Morrow, Sherman, Umatilla, Union, Wallowa, Wasco and Wheeler Counties.

Region 2:

Lane County.

Region 3:

Coos, Curry, Douglas, Jackson, ~~Benton, Klamath Lincoln, Linn~~ and Josephine Counties.

Region 4:

Clatsop, Columbia, Lincoln, Tillamook, Washington, and Yamhill Counties.

Region 5:

Multnomah County.

Region 6:

~~Clackamas~~, Benton, Linn, Marion, and Polk ~~Yamhill~~ Counties.

Region 7:

Clackamas County.

The remaining ~~five~~ four Executive Committee members shall be elected at-large by the Division membership. In addition, the past Chairperson shall serve as a non voting member of the Executive Committee, whether or not he or she falls within the membership criteria of Article 2.

3.2 Duties.

The Executive Committee shall supervise and control the affairs of the Division subject to these bylaws and the bylaws and policies of the Board of Governors of the ~~b~~Bar.

3.3 Majority Vote, Quorum.

~~Action of the Executive Committee shall be by majority vote.~~ A quorum consisting of a majority of the Executive Committee, not including the past chairperson, shall be required to conduct its business. Action of the Executive Committee shall be by majority vote.

3.4 Meetings.

The Chairperson may, and upon the request of three members of the Executive Committee shall, call meetings of the Executive Committee.

3.5 Action Between Meetings.

Between meetings of the Division, the Executive Committee shall have full power to do and perform all acts and functions that the Division itself might perform. The Executive Committee shall provide a summary of such actions at the next meeting of the Division membership.

3.6 Membership Votes.

The Executive Committee may direct that a matter be submitted to the members of the Division for a vote by mail, electronic vote or for a vote at any Division meeting.

3.7 Compensation.

No salary or compensation for services shall be paid to any member of the Executive Committee or member of any other committee with the exception of the Editor and other staff of a Division newsletter (if applicable). Reimbursement may be allowed for travel and other out-of-pocket expenses for members of the Executive Committee and members of all Division standing and special committees.

3.8 Removal.

Executive Committee members missing two consecutive Executive Committee meetings or three of eight consecutive Executive Committee meetings may be removed from office by majority vote of the Executive Committee members. Executive Committee members who are suspended from membership in the Oregon State Bar may be removed at any time during the period of suspension by a two-thirds majority of the Executive Committee members or by a two-thirds majority of members voting at the Division's annual business meeting.

3.9 Rescission.

The membership of the Division shall have the right to rescind or modify any action or decision by the Executive Committee, except for filling a vacancy in the position of Officer or Executive Committee member, and also may instruct the Executive Committee as to future action. The Executive Committee shall be bound by any such action of the membership. The right of the membership to direct, modify, or rescind an act of the Executive Committee shall not include power to invalidate contracts or payments previously made under direction of the Executive Committee. Any vote to direct, modify, or rescind an action of the Executive Committee must be taken at a meeting at which two-thirds of members present vote in favor of the ~~M~~motion.

Article 4. Officers

4.1 Composition.

The officers of the Division shall be a Chairperson, a Chairperson-Elect, a Secretary, a Treasurer and such other officers as may be determined to be necessary by the membership. The officers shall be elected from among the Executive Committee members.

4.2 Chairperson.

The Chairperson, or the Chairperson-Elect in the absence of the Chairperson, shall preside at all meetings of the Division and of the Executive Committee. The Chairperson shall appoint the ~~officers~~ chairperson and members of all committees of the Division pursuant to Article 7; plan and monitor the programs of the Division; keep the Executive Committee duly informed and carry out its decisions; and perform such other duties as may be designated by the Executive Committee. The Chair shall serve as an ex-officio delegate to the Oregon State Bar House of Delegates.

4.3 Chairperson-Elect.

The Chairperson-Elect shall aid the Chairperson in the performance of his or her responsibilities, and shall perform such further duties as may be designated by the Executive Committee. In the event of the death, disability, or resignation of the Chairperson, the Chairperson-Elect shall perform the duties of the Chairperson for the remainder of the Chairperson's term or disability. The Chairperson-Elect shall automatically become the Chairperson immediately following the annual election of officers.

4.4 Secretary.

The Secretary shall maintain all books, papers, documents and other property pertaining to the work of the Division, and shall keep a true record of proceedings of all meetings of the Division and of the Executive

Committee. Typed minutes of all meetings of the Division and of the Executive Committee shall be distributed to all members of the Executive Committee as soon as possible but no later than fourteen (14) days (excluding weekends and holidays) after the meeting and shall be subject to amendment and approval at the next Executive Committee Meeting. In addition, the Chairperson or Secretary shall, whenever possible, distribute notice of scheduled Executive Committee meetings to all Executive Committee members at least ten (10) days (excluding weekends and holidays) prior to such meeting. The Secretary shall perform other such duties as designated by the Executive Committee. Minutes and agendas distributed to Executive Committee Members shall be contemporaneously provided to the ~~h~~Bar.

4.5 Treasurer.

The Treasurer, shall keep an accurate record of all receipts and expenditures approved by the Division; report on the Division's present and projected financial condition at each meeting of the Division Executive Committee; prepare, in conjunction with the ~~h~~Bar staff administrator, an annual projected budget for approval by the Executive Committee; and submit a report of the Division's financial affairs and financial condition to the members at the Division annual business meeting. The budget shall then be submitted to the Board of Governors for its approval no later than ~~November 15~~ September 1. The treasurer shall submit any requests for general Bar funding to the Board of Governors no later than September 30-1 of the year prior to the fiscal year for which such funds are requested..

Article 5. Meetings

5.1 Open Meetings.

The Division (including meetings of the Executive Committee) is subject to the Public Meetings Law. Therefore, the bar shall be notified twenty (20) days in advance (excluding weekends and holidays) of Division meetings. If 20 days' notice is not practical, notice shall be given as soon as possible. Reasonable notice shall be given to Division members of all Division meetings.

5.2 Meeting.

Each year there shall be at least one membership meeting for the purpose of conducting Division business, which meeting shall be known as the Division annual business meeting. The Division annual business meeting may be held in conjunction with the annual meeting of the ~~h~~Bar at a time and place to be coordinated with the ~~h~~Bar's Executive Director, or on any other date no later than November 15.

5.3 Special Meetings.

Special meetings of the Division may be scheduled from time to time by the Executive Committee.

5.4 Action.

Action at a meeting of the Division membership shall be by a majority of those members present and voting. At least six members who maintain offices in at least three different regions must be present to establish a quorum at a meeting of the Division membership.

5.5 Floor vote.

During the meetings described in the preceding two paragraphs, the Division membership at large may call any matter to the floor upon the vote of the majority of the members who are present.

5.6 Rules.

Except as otherwise provided herein, all meetings of the Division shall be conducted in accordance with the then current version of Roberts Rules of Order.

Article 6.
Terms In Office And Elections

6.1 Limitation on Executive Committee Membership.

No member may be elected or appointed to serve on the Executive Committee for more than six years, except that a member who first serves an unexpired term of one year or less shall be eligible for election or appointment to two full three year terms.

6.2 Term.

Each term of office ~~shall begin immediately following election to the Executive Committee~~ shall begin January 1. Members of the Executive Committee shall serve three-year terms. The terms of office shall be staggered so that approximately one-third of the positions are up for election each year, as outlined below:

Positions 1 and 2 (Region 1 and 2)

Terms expire: ~~2006, 2009~~, 2012, 2015, 2018, 2021

Positions 3 and 4 (Region 3 and 4)

Terms expire: ~~2008~~, 2011, 2014, 2017, 2020

Positions 5 and 6 (Region 5 and 6)

Terms expire: ~~2007, 2010~~, 2013, 2016, 2019, 2022

Positions 7 (Region 7)

Terms expire: ~~2008~~, 2011, 2014, 2017, 2020

~~and~~ Position 8 (At Large)

Terms expire: ~~2008~~, 2011, 2014, 2017, 2020

Positions 9 and 10 (At Large)

Terms expire: ~~2006, 2009~~, 2012, 2015, 2018, 2021

Position 11 (At Large)

Term expires: ~~2007, 2010~~, 2013, 2016, 2019, 2022

6.3 Vacancies.

Except as provided by Article 4.3, the Executive Committee shall fill by appointment any officer or Executive Committee position that becomes vacant. However, if said vacancy exists at the time of the annual meeting, it shall be filled by election.

6.4 Unexpired Term.

Any officer or Executive Committee member appointed to fill an unexpired term shall serve the unexpired period.

6.5 Eligibility for Executive Committee Membership.

No person shall be eligible for election or appointment to the Executive Committee unless that person is a member of the Division at the time of the election or appointment.

6.5.1 Effect of Article 2.1.

The fact that a person will not be eligible under Article 2.1 to remain a Division member for the entire term of office does not preclude that person from being appointed or elected to the Executive Committee. However, that person's term will automatically be deemed vacant at the annual meeting which immediately precedes the end of that member's eligibility for Division membership.

6.5.2 Regional Requirements.

At the time of election or appointment to a Regional position, the member's principal office must be in that region, but subsequent moves during that term of office shall not result in disqualification.

6.6 Eligibility for Officers.

When elected, all officers must be Executive Committee Members who are eligible for Division membership through the entire term of office. In the case of the Chairperson elect, the person selected must be eligible to remain a member of the Division through the Chairperson-elect's term of office, and through his or her term as chairperson. However, a person may be selected for the Chair-elect position even though his or her term as an Executive Committee member will expire before the end of the term as Chairperson. He or she shall automatically be deemed to have been re-elected to the Executive Committee until the term as Chairperson ends, at which time the unexpired portion of the three-year Executive Committee term will be filled in accordance with Article 6.3.

6.7 Terms for Officers.

The term for each officer position shall be one year. The Chairperson-Elect shall automatically succeed to the office of Chairperson. No officer shall serve two successive terms in the same office, except the Treasurer, who may serve no more than two successive terms in office. Partial terms of office shall not be taken into account for purposes of the preceding sentence. No person shall simultaneously hold two offices for a period exceeding four months.

6.8 Nominating Committee.

At least ninety (90) days prior to the Division's annual business meeting, the Executive Committee shall appoint a nominating committee of not less than three ~~h~~Bar members. The Chairperson and at least one other Executive Committee member shall serve on the nominating committee, with preference given to those Executive Committee members who have served the longest on the Executive Committee. Those persons who accept a position on the nominating committee are ineligible for nomination to a new term or position for the upcoming year. The nominating committee shall make and report to the Executive Committee at least ~~forty-five (45) days~~ thirty (30) days or within a reasonable time prior to the Division's annual business meeting one nomination for each Division position to be filled by election. The nominating committee's proposed slate of candidates for Executive Committee positions shall be submitted to the membership unless rejected by a majority of the Executive Committee. If the slate or a portion of it is rejected, the Executive Committee shall, at least 30 days prior to the election date, formulate the slate with the assistance of the nominating committee. The nominating committee's proposed slate of officers shall automatically be submitted to the newly elected Executive Committee for its approval or rejection.

6.9 Diversity.

The nominating committee shall use reasonable efforts to nominate members who reflect a reasonable cross section of the Division's membership taking into account all relevant factors including, without limitation, the practice area, geographic, age, gender and ethnic make-up of the Division membership. To the extent possible, no more than one person from the same law firm, company or public agency in the same department may serve on the Executive Committee at the same time.

6.10 Notice.

The report of the nominating committee shall be communicated by mail or electronically to the Division membership along with the notice of the time and place of the election at least fourteen (14) days (excluding holidays and weekends) in advance of such election. The notice may be consolidated with other communications of the ~~h~~Bar or its sections so long as the notice is reasonably calculated to reach all Division members prior to the election.

6.11 Election of Executive Committee Members.

Elections shall be conducted at the Division's annual meeting, by mail, or electronically.

6.12 Election of Executive Committee Members at Annual Meeting.

If elections are conducted at the Division's annual meeting, additional nominations may be made for any position from the floor. Elections for contested positions may be by written ballot or voice vote. Each contested position shall be set forth and voted upon separately. Elections shall be by plurality. All Division members may vote for all "at large" positions. For any given regional vacancy, only those Division members who maintain their principal office in that region may vote, with any ties to be broken by a plurality vote of the entire Division membership.

6.13 Election of Executive Committee Members by Mail or Electronically.

Upon approval of the Executive Committee, elections of Executive Committee members may be by written or electronic ballot sent to the Division membership provided the process allows: (1) for write-in votes, (2) that ballots are returned to an appropriate Division officer for tabulation and (3) that the results are certified to the Bar Center no later than November 15. candidacy for each regional representative to the Executive Committee shall be limited to those members who maintain their principal office in that region.

6.14 Election of Officers.

Officers shall be elected by a majority vote of the Executive Committee immediately prior to the annual election of Executive Committee Members and ratified at the Division Annual Meeting.

Article 7. Committees

7.1 Standing Committees.

The Executive Committee may establish as many standing committees as it deems necessary and may set the names, functions, and length of service of those committees. The Chairperson of the Executive Committee, with the approval of the Executive Committee, shall appoint the Chairperson and members of the standing committees.

7.2 Other Committees.

In addition to the standing committees as provided above, the Executive Committee may appoint as many special committees for particular purposes as the Division Executive Committee deems necessary and may set the name, function, and length of service of those committees. The Chairperson, with the approval of the Executive Committee, shall appoint the chairperson and members of all special committees.

Article 8. Representation Of The Oregon State Bar's Position

8.1 Approval Required.

Except as provided below, the Division shall not present to the legislature, or any committee or agency thereof, a position or proposal on any bill or express any position of the Division without the majority approval of the Executive Committee and the approval of the Board of Governors. If the Division's Legislative Committee requests the Executive Committee to take a position on a bill, and if it is reasonably necessary to act prior to the next regularly scheduled Executive Committee meeting, the officers of the Executive Committee may act upon the request. At least three officers shall be required to establish a quorum to take such action. Any one officer shall have the power to reject a proposed position and refer the matter instead to the Executive Committee.

8.2 Bar Approval Process.

During regular legislative sessions the Executive Committee may, by majority vote, tentatively approve a position on a bill if that position is consistent with the purposes of the Division. Rather than initiating legislation, the Division will have the ability with this process to object or defend bills already introduced or surfacing to the attention of the Division with minimal notice.

The proposed position shall be submitted to the hBar's Public Affairs Director or the Chairperson of the Board of Governors' Public Affairs Committee. After receipt of the proposal, the person to whom notice was given shall have up to 72 hours to notify the Division either (a) that the position is approved or (b) that the position is being submitted to the Public Affairs Committee for approval. If such notice is not given within 72 hours, or if the position is approved, it then becomes an official position of the Division and representatives of the Division may testify or make other appropriate statements. The hBar's Public Affairs Director shall be kept informed about the status of such positions and related activities.

If the proposal is referred to the Public Affairs Committee, it shall determine, on behalf of the Board of Governors, whether or not it is in the best interests of the entire hBar (1) for the hBar to take an official position or (2) to allow the Division to take a position as requested.

Article 9. Receipts And Expenditures

9.1 Dues.

Membership dues shall be collected by the hBar and any other receipts of the Division shall be remitted promptly to the hBar and placed in an account designated for use by the Division.

9.2 Assessments.

The hBar may regularly assess the Division an amount of money to cover both direct and indirect costs of Division activities performed by hBar staff.

9.3 Expenditures.

Expenditure of the balance of Division funds after such assessment shall be as determined by the Executive Committee, to be disbursed by the hBar's Executive Director, or the Director's designee, solely as authorized in writing by the Division's Treasurer using forms and following procedures established by the Executive Director. If the Treasurer is unavailable for authorization, the Division Chairperson may authorize disbursement of Division funds followed by written notice of the action taken. Any reimbursement of expenses incurred by the Treasurer or by the Treasurer's firm must be authorized in writing by the Division's Chairperson. Expenditure of Division funds shall not be in excess of the available Division fund balance, nor shall expenditures be in violation of laws or policies generally applicable to the hBar.

9.4 Retention of Funds.

Division annual reserves, if any, shall be set and maintained as provided for in the Division's annual budget as approved by the Board of Governors.

Article 10. Minutes And Reports

10.1 Minutes.

Minutes shall be kept of all meetings of the Executive Committee and of the Division and a copy of the minutes of each such meeting shall be promptly delivered to the hBar's Executive Director or ONLD staff administrator and to each member of the Executive Committee within fourteen (14) days (excluding weekends and holidays) of the meeting so recorded.

10.2 Request for BOG Action.

Whenever the Division desires to request action by the Board of Governors, the requested action shall be reflected in the minutes and shall in addition be set forth in a letter accompanying the minutes and delivered to the Board of Governors in care of the Executive Director. If the vote on the requested action is not unanimous, the votes for and against shall be set forth in the minutes and the dissenting members shall be afforded the opportunity to explain their positions.

10.3 Report.

Not later than December 1, the Chairperson shall file with the Bar's Executive Director a concise report summarizing the activities of the current year and anticipated activities for the ensuing year, together with the full text of any proposed legislation. The report shall contain a description of the budget and expenditures for that year as well as the proposed budget for the next year. This information will be summarized by ~~h~~Bar staff and included with the ~~h~~Bar Annual Reports distributed to all active members each year.

10.4 Budget.

A proposed annual budget and proposed annual dues shall be provided to the Executive Director for approval by the Board of Governors no later than September 30th of the preceding year if it contains a proposal for charging membership dues. For any year in which funds are requested from the ~~h~~Bar's general funds, a proposed annual budget shall be submitted to the Board of Governors no later than September 30th of the preceding year.

10.5 In Person Report.

The Chair or Chair-elect, in so much as possible, will attend Board of Governor meetings to make a report on Division activities and programs.

Article 11. Amendments To Bylaws

11.1 Amendments by BOG.

These bylaws may be amended by the Board of Governors. Notice of intent to so promulgate and pass bylaw amendments shall be given to the Executive Committee in sufficient time to allow review and comment. Bylaw amendments so passed by the Board of Governors become effective upon passage.

11.2 Amendments by Division.

These bylaws may be amended by the Division by majority vote by ballot, or at any membership meeting of the Division by majority vote of the members present and voting, to become effective upon subsequent approval of the Board of Governors. Notice of intent to amend bylaws shall be publicized in a manner which is calculated to provide Division members with reasonable notice and opportunity to comment before the Division acts. Determination as to what notice is reasonable under any provision of these bylaws may take the cost of notification into account.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: April 22, 2011
Memo Date: March 30, 2011
From: P&G Committee
Re: Proposed amendment to MCLE Rules 5.2 and 5.4

Action Recommended

Review the proposed amendments to MCLE Rules 5.2 and 5.4 regarding CLE credit for attending or teaching classes other than law school classes.

Background

In April 2010, the P&G Committee reviewed the following proposal from the MCLE Committee to amend MCLE Rule 5.4 to allow CLE credit for attending classes other than law school classes.

5.4 Attending Law-School Classes. Attending a class at an ABA or AALS accredited law school may be accredited as a CLE activity. Attending other classes may also be accredited as a CLE activity to the extent that the activity deals with one or more of the types of issues for which group CLE activities can be accredited.

At that time, the P&G Committee declined to approve the recommendation because members felt the amendment was too broad. (See attached minutes from April 29, 2010 P&G Committee.) The P&G Committee sent the proposal back to the MCLE Committee for further development. The P&G Committee also asked that the MCLE Committee include a proposal to broaden Rule 5.2 regarding teaching credit for classes other than law school classes.

After much discussion and review, the MCLE Committee recommended amendments to MCLE Rules 5.2 and 5.4 as listed below. These amendments were reviewed and approved by the P&G Committee on March 18.

5.2 Other CLE Activities.

(a) Teaching Activities.

(1) Teaching activities may be accredited at a ratio of two credit hours for each sixty minutes of actual instruction.

(2) Teaching credit is allowed ~~only~~ for accredited continuing legal education activities or for courses in ABA or AALS accredited law schools.

(3) Teaching other courses may also be accredited as a CLE activity, provided the activity satisfies the following criteria:

- (i) The MCLE Administrator determines that the content of the activity is in compliance with other MCLE accreditation standards; and
- (ii) The course is a graduate-level course offered by a university; and
- (iii) The university is accredited by an accrediting body recognized by the U.S. Department of Education for the accreditation of institutions of postsecondary education.

(4) 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)~~ (5) 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)~~ (6) 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.

5.4 Attending Law School Classes.

(a) Attending a class at an ABA or AALS accredited law school may be accredited as a CLE activity.

(b) Attending other classes may also be accredited as a CLE activity, provided the activity satisfies the following criteria:

- (1) The MCLE Administrator determines that the content of the activity is in compliance with other MCLE accreditation standards; and
- (2) The class is a graduate-level course offered by a university; and
- (3) The university is accredited by an accrediting body recognized by the U.S. Department of Education for the accreditation of institutions of postsecondary education.

Attachment

Minutes

BOG Policy and Governance Committee

April 29, 2010

OSB Center, 4:00 p.m.

Chair – Mitzi Naucier

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

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

1. **Minutes.** The minutes of the March 19, 2010 meeting were approved as submitted.
2. **MCLE Access to Justice Experiential Learning Proposal.** Mitzi introduced the MCLE Committee's proposal for experiential learning credit. She also reviewed the concerns and objections presented by the Affirmative Action Committee, Diversity Section Executive Committee and Access to Justice CLE Advisory Committees. (Ms. Stevens reported that she had received an e-mail from the Oregon Minority Lawyers Association endorsing the stakeholders' position.) The committee members discussed the proposal and length, emphasizing the following points: (1) If the goal is to give lawyers more insight into problems of clients with access to justice issues, how does limiting the credit to representations outside the lawyer's normal scope serve that purpose? (2) Limiting credit to cases outside one's normal practice area without a mentoring component will result in incompetent service and second-rate lawyering, which is the wrong way to achieve access to justice. (3) Experiential learning might be a possible "extra credit" activity but would be a significant paradigm shift in MCLE philosophy. It was suggested that the stakeholders might be interested in developing an experiential component could be made more acceptable, but after discussion it was agreed that the stakeholders have been clear that classroom learning is the preferred approach. Ms. Evans reminded the group that classroom learning was also a key to the concept that made the compromise work. Mr. Garcia concurred and confirmed that the stakeholders put high value on classroom education. Additionally, they are concerned that this proposal would allow end-runs around classroom learning and a diminution in understanding whether you are learning anything? Mr. Rae stated that the MCLE Committee had no idea that stakeholders would be so committed to classroom learning. Mr. Haglund moved, seconded by Ethan Knight, to reject the proposal but encourage the MCLE Committee to continue working if they are interested in developing something with wider support. The motion passed unanimously.
3. **MCLE Committee Teaching, Writing and AtoJ Proposals.** Ms. Stevens reviewed her memo explaining the various proposals. Regarding the proposal to eliminate the 1:4 multiplier for teaching where written materials are prepared, the committee was persuaded that allowing credit for actual time spent preparing materials is fairer (subject to the 15 hour/project limitation). Mr. Haglund moved, seconded by Ethan Knight, to approve this change. The motion passed on a 5 to 1 vote (Ms. O'Connor voting no.)

The committee then turned to the proposal to allow credit for writing regardless of whether it was published in a traditional sense or whether it contributes to the education of others. After discussion, Ms. Dilaconi moved, seconded by Ethan Knight, to reject the proposal. The motion passed unanimously.

The next issue was credit for attending classes other than at accredited law schools. The committee discussed the proposal at some length and also discussed whether the teaching credit should be expanded to allow credit for more than law school and CLE courses. The difficulty is in setting the proper limits while recognizing the broad range of knowledge required by lawyers in serving diverse clients. Several members felt that the current scope of accredited programs covers nearly every area of learning and that the committee's proposal is too broad. Others felt that further development by the MCLE Committee would be helpful. By consensus, the proposal was returned to the MCLE Committee for further development, including broadening the teaching credit.

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

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

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

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

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: April 22, 2011
From: Sylvia E. Stevens, Executive Director
Re: CSF Claims Recommended for Payment

Action Recommended

Consider the Client Security Fund Committee's recommendation that the following claims be paid:

No. 2010-35 TISCORNIA (Carlson)	\$17,957.94
No. 2011-03 MORASCH (Memmott)	\$3,000.00
No. 2011-04 HAYES (Chrestensen)	\$3,500.00
TOTAL	\$24,457.94

Background

No. 2010-35 TISCORNIA (Carlson) \$17,957.94

Victor Tiscornia was hired by Stephanie Carlson in September 2008 to establish a conservatorship over settlement proceeds from her young daughter's personal injury settlement. Richard Walsh handled the personal injury attorney case and paid Tiscornia \$1000 to set up the conservatorship. Walsh delivered the net settlement proceeds of \$17,957.94 to Tiscornia in March 2009.

Immediately upon receiving the check, Tiscornia had Carlson sign a power of attorney so he could deposit the check into his trust account. Carlson heard nothing more from him, but assumed he was taking care of whatever needed to be done. She was also focused on other matters, including losing her job and having landlord issues as a result.

In May 2010, Carlson was notified by the court that a conservator's report was due. She tried without success to reach Tiscornia. When she arrived at the show cause hearing, Tiscornia appeared with counsel. In response to the judge's grilling, Tiscornia invoked his 5th Amendment right against self-incrimination.

Carlson filed a complaint with the bar. The resulting investigation revealed that Tiscornia transferred the entire \$17,957.94 from trust to his business account the day after he received the funds and that by the end of that month, the balance in his trust account was less than \$300. The bar instituted formal proceedings against Tiscornia arising out of several complaints relating to his handling of client matters, at least two of which involved failure to account for funds. A temporary suspension order was issued in December 2010. A second

proceeding was filed based on two trust account overdrafts in late 2010; Tiscornia has not responded to the first formal complaint and an order of default was entered in January 2011.

The CSF Committee concluded that Carlson's claim is eligible for reimbursement. She was the client for the conservatorship over her daughter's funds and Tiscornia misappropriated funds over which she was a fiduciary. The Committee was concerned, however, that any CSF award is subject to the conservatorship. The PLF is assisting Carlson with the conservatorship matter and will be able to provide adequate instructions regarding how a CSF award should be distributed.

No. 2011-03 MORASCH (Memmott) \$3,000.00

Ms. Memmott retained Portland attorney Marsha Morasch in November 2009 to oppose her former spouse's desire to modify their parenting plan desired by her former spouse. Memmott signed a fee agreement and deposited a retainer of \$3,500 against Morasch's hourly fees of \$250.

In March 2010, Memmott learned that her former spouse's attorney had filed a motion to modify the parenting plan. She contacted Morasch, who confirmed she had received the motion and asked Memmott to e-mail her wishes regarding a parenting plan. Memmott sent her e-mail to Nick Morasch, Morasch's son and office assistant. Several appointments were made, but cancelled by Morasch. After more unsuccessful efforts to communicate with Morasch, Memmott hired another lawyer to represent her. Memmott informed Morasch in writing that the representation was terminated and requested the turn-over of her file and refund of the unused portion of the retainer.

When no money was forthcoming, Memmott filed a disciplinary complaint, which is currently under investigation along with six other matters involving alleged failure to return unearned fees. In July 2010, DCO asked Morasch to account for Memmott's retainer. Her counsel responded, enclosing a letter from Morasch stating that Memmott's unearned fees had been refunded. Memmott continues to dispute Morasch's statements.

In October 2010, DCO again requested an accounting from Morasch of Memmott's and the other six client retainers. There was no response.¹ In lieu of prosecution on another of the matters in DCO, Morasch stipulated to a six month suspension that began in February 2011.

The CSF Committee concluded that this claim is eligible for reimbursement and that no judgment is required because it was part of the basis for Morasch's disciplinary sanction and is for less than \$5000.

¹ The CSF received a request for reimbursement from another of Morasch's former clients. During the course of the investigation, Morasch refunded approximately ½ of the retainer and the claimant withdrew her request for the remainder.

No. 2011-04 HAYES (Chrestensen) \$3,500.00

Claimant engaged Keith Hayes in mid-2008 to put her through a Chapter 13 bankruptcy. She paid \$300 initially and \$3200 through her plan. Plan payments were based on the income of both the claimant and her spouse.

During the pendency of the bankruptcy, claimant and her spouse separated and he lost his job. When claimant tried to contact Hayes in July 2009 for help getting her monthly payments adjusted, she was told repeatedly by his staff that he was in court or otherwise unavailable. Unbeknownst to the claimant, in March 2009, the Bankruptcy Court had suspended Hayes from practice before the court and ordered disgorgement of fees in several cases.

In October 2009, claimant contact the court directly asking for assistance. The result was an order removing Hayes as her counsel and requiring him to refund the entire \$3,500 he had received from the claimant in fees. He failed to do so.

An interim disciplinary suspension order was entered against Hayes in January 2010 and a trial panel disbarred him in July 2010. The CSF Committee recommends that this claim be paid in the amount of \$3,500 and, while claimant's matter was not one of the disciplinary complaints leading to Hayes' disbarment, the conduct is sufficiently similar to justify waiving the requirement that she obtain a civil judgment against him. In addition, claimant is in financial distress and Hayes' whereabouts and ability to respond to a judgment are unknown.

MEMORANDUM

TO:

FROM:

SUBJECT: 2011 Midyear Meeting of the American Bar Association and
Meeting of the House of Delegates

DATE: March 4, 2011

REPORT ON THE ABA MIDYEAR MEETING

The 72nd Midyear Meeting of the American Bar Association (the “ABA”) was held February 14, 2011 at the Marriott Atlanta Marquis Hotel in Atlanta, Georgia. Wide varieties of programs were sponsored by committees, sections, divisions, and affiliated organizations. The House of Delegates met for one day. The Nominating Committee also met.

The Nominating Committee sponsored a “Meet the Candidates” Forum on Sunday, February 13, 2011. The following candidates seeking nomination at the 2012 Midyear Meeting, gave speeches to the Nominating Committee and to the members of the Association present: Robert M. Carlson of Montana, C. Elisia Frazier of Georgia, and Kay H. Hodge of Massachusetts, candidates for Chair of the House of Delegates; and Ellen F. Rosenblum of Oregon, James R. Silkenat of New York, and Howard H. Vogel of Tennessee, candidates for President-Elect.

THE HOUSE OF DELEGATES

The House of Delegates of the American Bar Association (the “House”) met on Monday, February 14, 2011, Linda A. Klein of Georgia, presided as Chair of the House.

The Georgia Tech ROTC presented the colors. The invocation for the House was delivered by Congressman John Lewis of Georgia. The Chair of the House Committee on Credentials and Admissions, Laura V. Farber of California, welcomed the new members of the House and moved that the signed roster be approved as the permanent roster for this meeting of the House. The motion was **approved**.

Deceased members of the House were named by the Secretary of the Association, Hon. Bernice B. Donald of Tennessee, and were remembered by a moment of silence. Chair Klein recognized C. Timothy Hopkins of Idaho on a point of personal privilege regarding the passing of Eugene C. Thomas, former Chair of the House of Delegates and President of the Association. Chair Klein recognized Ronald L. Marmer of Illinois on a

point of personal privilege regarding the passing of Jerold S. Solovy, an ABA member from Illinois.

In addition, Chair Klein recognized Past President Michael S. Greco of Massachusetts on a point of personal privilege regarding the passing of Robert D. Evans, a long-time ABA employee who served as Associate Executive Director of Governmental Affairs and the Washington, D.C. office.

For more details of the House meeting, see the following two-part report of the House session. The first part of the report provides a synopsis of the speeches and reports made to the House. The second part provides a summary of the action on the resolutions presented to the House.

I. SPEECHES AND REPORTS MADE TO THE HOUSE OF DELEGATES

Statement by the Chair of the House

Linda A. Klein of Georgia, Chair of the House welcomed the delegates in the House and recognized members of the various House committees. Chair Klein extended a special welcome to new members of the House, as well as students from Therrell High School, who were attending the House proceedings as part of President Zack's civics education program. She announced that the House Technology Committee would be reporting on the proceedings of the House via Twitter.

Chair Klein recognized the efforts of the members of the Rules and Calendars Committee, the ABA staff, and the Tellers who make the House operations possible and productive. She encouraged all House members to participate in the House proceedings and debates.

Chair Klein reminded House members about the reinvigorated online directory of House members. She informed House members that they would be receiving an email from the Select Committee after the meeting as a further reminder for them to update their directory listing.

Chair Klein emphasized the value of ABA membership and encouraged House members to ask all of the lawyers in their firms to join and participate in the ABA's work.

Chair Klein encouraged members of the House to continue to financially support the program efforts of the Fund for Justice and Education (FJE). She noted that every member of the House has contributed to the FJE in each of the past four years, and she said that we want to ensure that happens again by the time of the Annual Meeting in Toronto. She asked members to consider making a donation to the ABA Legal Opportunity Scholarship Fund, which, as an FJE project, has provided over \$3,000,000.00 to over 200 minority law students.

Chair Klein encouraged members of the House to continue to promote ABA policies passed in the House by becoming active members of the ABA Grassroots Action team and by participating in ABA Day in Washington, scheduled for April 12-14 in Washington, D.C.

Chair Klein announced that at the 2011 Annual Meeting, the House will elect one member to the Committee on Scope and Correlation of Work. The position will be a five-year term. She encouraged those interested in the position to contact members of the Scope Nominating Committee and submit an application by March 15, 2011.

Noting that the appointments process for President-Elect William T. Robinson III of Kentucky is currently underway, Chair Klein encouraged House members to nominate themselves or others. Chair Klein encouraged those interested to list several choices for appointments and reminded them that the deadline to apply online is March 1, 2011.

Finally, Chair Klein recognized and thanked members and chairs of the House committees.

Statement by the Secretary

Hon. Bernice B. Donald of Tennessee, Secretary of the Association, moved approval of the House of Delegates Summary of Action from the 2010 Annual Meeting, which was **approved** by the House. On behalf of the Board of Governors, Secretary Donald presented and referred the House to Report Nos. 177, 177A and 177B, the Board's Informational, Transmittal and Legislative Priorities Reports.

Statement by the ABA President

In his remarks to the House, President Stephen N. Zack of Florida highlighted four words that rest above the pillars of the U.S. Supreme Court – equal justice under law. President Zack told the House that equal justice under law is a promise to all Americans, but it is a promise in jeopardy.

President Zack remarked that equal justice under law cannot be achieved if states do not sufficiently fund the judicial branch. What should be a co-equal, third branch of government is typically receiving less than one percent of a state's budget. As a result, our courts are in danger. Services are being cut and delays are growing because of the judicial system is being starved of funds. President Zack shared additional details from the first hearing of the Task Force on the Preservation of the Justice System, which is examining the state court funding crisis. At that hearing, state Supreme Court justices reported that certain budget-strapped courts will not process cases unless filers bring their own paper. The recently retired chief justice of the New Hampshire Supreme Court reported that he had to suspend all civil jury trials for 12 months because of a lack of money. President Zack noted that the business community has billions of dollars tied up in our courts and is suffering because of this attack on our judicial system.

President Zack also emphasized that equal justice means access, which takes many forms. For example, the Commission on Hispanic Legal Rights and Responsibilities has been studying the key legal issues impacting Latinos throughout the United States and will present resolutions to the House of Delegates later this year. He also noted that equal access would be further hit if the Legal Services Corp.'s budget is cut as proposed. He challenged the Association to fight to protect the Legal Services Corp.

President Zack stated that the current state of the justice system is not an accident, because today the courts are not fully understood or appreciated as a third, co-equal branch of government. In recent years, our country has stopped teaching civics in the nation's schools. Poll results showing that 75% of Americans do not know that the First Amendment protects religious freedom or that two out of three high school graduates identify the three branches of government as Democrat, Republican, and Independent demonstrate the lack of basic civics knowledge. President Zack highlighted the work of the Commission on Civic Education in the Nation's Schools and reported that the first ABA Academies, which feature lawyers going out to teach civics to young people, are getting underway. He reinforced that we need to make sure that all Americans understand the differences between the three branches of government, and that we as ABA members can work in our communities to bring civics back.

President Zack concluded his remarks by discussing the value, vision, and voice of the ABA. He noted the ABA's new website, www.americanbar.org. He championed the success of the ABA's voice through clarification of the FTC's Red Flags Rule, exclusion of federal regulation of lawyers from the Dodd-Frank legislation, and preservation of full federal insurance for IOLTA. He reported that membership is stable, and that the judicial division and the solo division have seen increases in membership. He thanked the ABA staff for their good work and praised the leadership of Executive Director Jack Rives.

Statement by the Treasurer

The Treasurer, Alice E. Richmond of Massachusetts, referred members of the House of Delegates to her written report. Treasurer Richmond reported that the independent audits have been concluded without any negative findings, which also reflects excellent work by the ABA financial services staff. She further reported that after several years of uncertainty and despite continued turbulent economic times, Fiscal Year 2010 met expectations and offered hope for greater stability to come. Fiscal Year 2010 ended with a surplus because of slightly greater revenue and slightly lower expenses than anticipated. However, after highlighting the reserve and investment transfers that occurred in Fiscal Year 2010 which enabled the ABA to show a surplus, she cautioned that we will need to increase our revenue in the future so we do not continue to deplete our reserves. Treasurer Richmond noted that revenue from dues and publications has been declining but that the meetings and gifts and grants categories have shown solid growth. With regard to expenses, Treasurer Richmond reported major savings, due largely to vast improvements in expense management. She spoke briefly about issues related to the pension plan and identified cash flow management and accounts receivable as areas which will be carefully monitored to evaluate the changes which were instituted last fiscal year. Lastly, Treasurer Richmond introduced her successor, Lucian T. Pera from Tennessee.

Statement by the Executive Director

Jack L. Rives of Illinois, Executive Director and Chief Operating Officer of the ABA, referred members of the House of Delegates to his written report and reported on the ABA's progress -- which he credited to people who turn challenges into great opportunities. Executive Director Rives updated members of the House of Delegates on several matters. First, the ABA has revolutionized its website. The staff devoted significant time and effort to revamp and launch the new website. Executive Director Rives noted the feedback form for comments and he highlighted the new URL: AmericanBar.org. Next, concerning facilities, the ABA plans to consolidate its operations in Chicago by giving up one floor, at an annual cost savings of more than \$1,000,000. We're also considering the possibility of selling our building in Washington, D.C. Efforts are being made to increase membership. Executive Director Rives expressed optimism with regard to the Association's membership numbers, and he emphasized the need to show value to members so that we can retain them. With regard to staff, Executive Director Rives has task forces currently looking at the personnel appraisal system, the travel reimbursement system, and the contracting system. Executive Director Rives praised the staff as exceptional. He noted that staff pay has been frozen for the past three years but he will propose a pay increase for Fiscal Year 2012. He noted that the flex dollars previously offered to staff to offset health care costs has been replaced by a wellness program. The wellness program has been well received by staff and should lead to significant cost savings as well as a healthier staff. An effort to improve the Association's use of email is underway. This issue is being studied and any changes will be carefully tested before they are widely implemented. Executive Director Rives reported on the new email addresses for staff: All staff can now be reached at "firstname.lastname@americanbar.org. Finally, under the leadership of our new CFO, we're working on improvements to the budget process. Executive Director Rives encouraged members of the House of Delegates to contact him with comments, questions, and suggestions at any time.

Report of the Nominating Committee

The Nominating Committee met on Sunday, February 13, 2011. On behalf of the committee, Robert T. Gonzales of Maryland, Chair of the Steering Committee of the Nominating Committee, reported on the following nominations for the terms indicated:

MEMBERS OF THE BOARD OF GOVERNORS (2011-2014)

District Members

District 1: Joseph J. Roszkowski of Rhode Island

District 2: Josephine A. McNeil of Massachusetts

District 4: Allen C. Goolsby of Virginia

District 6: Robert L. Rothman of Georgia

District 12: Thomas A. Hamill of Kansas

Section Members-at-Large

Section of Business Law

Barbara Mendel Mayden of Tennessee

Senior Lawyers Division

Charles A. Collier, Jr. of California

Minority Member-At-Large

Harold D. Pope III of Michigan

Woman Member-At-Large

Sandra R. McCandless of California

Young Lawyer Member-At-Large

Michael Pellicciotti of Washington

OFFICER OF THE ASSOCIATION

President-Elect for 2011-2012

Laurel G. Bellows of Illinois

Remarks by President-Elect Nominee

Laurel G. Bellows of Illinois, President-Elect Nominee, addressed the House. In her remarks, Ms. Bellows emphasized that lawyers matter because we are heirs to unfinished work of the Founders and Framers and the means to a just society and the voice of those who otherwise have no voice. She stated that because lawyers matter, the ABA matters and all we do throughout the ABA matters. She emphasized that the ABA is focusing on providing much needed professional services to our members, particularly in light of this recession. Concurrently, she strongly believes that if the best days for our profession are to lie ahead of us, lawyers, and particularly ABA, must be involved in the policy of law and not just in its administration and practice. She trusts lawyers to articulate the pros and cons relating to the important issues that face our country so Americans will understand what is at stake. She proposes that lawyers take the lead in framing the debate on the Great Issues where we as lawyers have special expertise. Such Issues go beyond those that are traditionally dear to us like justice and fairness to issues that define us as Americans, such as our rights and liberties and the sacrifices we are called to make in a complex and changing world. Ms. Bellows concluded by saying, "Lawyers matter. This is our calling. This is the time."

Remarks by Congressman John Lewis

Chair Klein introduced The Honorable John Lewis, Congressman from Georgia. Congressman Lewis thanked the House of Delegates for welcoming him and, in turn, welcomed the House of Delegates to Atlanta. He reminded the House of Delegates that lawyers are at the heart of progress. Speaking of his experiences and the civil rights movement, he emphasized the significance of lawyers and judges in achieving a non-violent revolution under the rule of law. He encouraged us to never give up or given in and to keep the faith. He urged us to keep our eyes on the prize by working for justice to create a just system that respects the dignity and worth of every human being.

Remarks on the “State of the State Courts”

Chair Klein introduced The Honorable Wallace B. Jefferson, President of the Conference of Chief Justices and Chief Justice of the Texas Supreme Court to address the House on the State of the State Courts. Chief Justice Wallace reported that the rule of law is currently in jeopardy. He noted that IOLTA funds have plummeted in recent years and emphasized state funding challenges. He said that New Hampshire had to suspend civil trials and that other states have implemented hiring freezes and periodic court closures. Making reference to the court funding crisis, he explained that the rule of law becomes an empty slogan when it is banished from the halls of justice. He further explained that the fiscal crisis has become a structural crisis, which will change how justice is dispensed. He emphasized the work of access to justice commissions created by the states and the ABA. He praised the ABA for adopting policy that would help state judiciaries recover debts owed to them through court-ordered financial obligations. He pledged that the Conference of Chief Justices will work with the ABA to address this issue, so as to defend our legal system.

II. RESOLUTIONS VOTED ON BY THE HOUSE

A brief summary of the action taken on resolutions brought before the House follows. The resolutions are categorized by topic areas and the number of the resolution is noted in brackets.

ADMINISTRATIVE LAW

[10A] On behalf of the New Jersey State Bar Association, Karol Corbin Walker of New Jersey moved Resolution 10A supporting the ongoing efforts by the Administrative Office of the United States Courts to update and enhance the functionality of the Federal Judiciary’s Case Management/Electronic Case File system, to continue to meet the case filing needs of judges, chambers, clerks’ offices, the bar, debtors, litigants, claimants, trustees, and other users in light of changing technology. The resolution was **approved**.

[112] On behalf of the National Conference of the Administrative Law Judiciary, Daniel F. Solomon of Maryland moved Revised Resolution 112 reaffirming the recommended authority of Central Panel Judges in the Model Act Creating a State Central Hearing Agency, adopted by the House of Delegates in February 1997. Robert A. Stein of Minnesota spoke in favor of the resolution. The resolution was **approved as revised**.

ANIMAL LAW

[108B] On behalf of the Tort Trial and Insurance Practice Section, Hervey Levin of Texas moved Revised Resolution 108B urging federal, state, territorial and local legislative bodies and governmental agencies to enact laws and implement policies to ensure the humane treatment and disposition of seized animals in a timely manner. The resolution was **approved as revised**.

CIVIC EDUCATION

[300] On behalf of the Commission on Civic Education in the Nation's Schools, Paulette Brown of New Jersey moved Resolution 300 urging federal, state, territorial, and local governments to require civic education for elementary, middle, and secondary students in the nation's public schools and to provide competitive grant funding for programs to meet this requirement. Tommy Preston, Jr. of South Carolina spoke in favor of the resolution. The resolution was **approved**.

CRIMINAL JUSTICE

[10D] On behalf of the Bar Association of the District of Columbia, Gregory S. Smith of the District of Columbia **withdrew** Resolution 10D urging governments to take all appropriate measures to ensure that the National Criminal Instant Background Check System (NICS) is as complete and accurate as possible, so that all persons properly categorized as prohibited persons under 18 U.S.C. § 922(g), are included in the NICS system.

[104A] On behalf of the Criminal Justice Section, Stephen A. Saltzburg of the District of Columbia moved Revised Resolution 104A urging federal, state, territorial, tribal and local courts to adopt a procedure whereby a criminal trial court shall disseminate to the prosecution and defense a written checklist delineating in detail the general disclosure obligations of the prosecution under *Brady v. Maryland*, 373 U.S. 83 (1963), its progeny and applicable ethical standards. The resolution was **approved as revised**.

[104B] On behalf of the Criminal Justice Section, William N. Shepherd of Florida moved Resolution 104B urging Congress to amend 28 U.S.C. §§ 2241(d) and 2255(f)(1) to provide equitable tolling of the one-year statute of limitations for filing for post-conviction relief when the prisoner who has an attorney has timely requested post-conviction counsel to file a §2254 petition or a §2255 motion. The resolution was **approved**.

[104C] On behalf of the Criminal Justice Section, Stephen A. Saltzburg of the District of Columbia moved Revised Resolution 104C urging the U.S. Sentencing Commission to assess current federal policy regarding sentences for economic crimes and, based on that assessment, to reconsider its approach to ensure that the guidelines are proportional to offense severity by reducing emphasis on monetary loss and combinations of multiple specific offense characteristics that overstate the seriousness of the offense. The resolution was **approved as revised**.

[104D] On behalf of the Criminal Justice Section, William N. Shepherd of Florida moved Revised Resolution 104D urging federal, state, local and territorial governments to use electronic monitoring and home detention at government expense for juvenile offenders who are legally subject to secure detention but whose risk of flight or further offending does not necessitate secure pre-trial detention or incarceration. Robert Arnold Weeks of California spoke in favor of the resolution. The resolution was **approved as revised**.

EMERGENCY MANAGEMENT

[114] On behalf of the Section of State and Local Government Law, Benjamin E. Griffith of Mississippi moved Resolution 114 endorsing the Resolutions for an Effective National Mitigation Effort, a white paper on national mitigation prepared by the Association of the Directors of Emergency Management of the U.S. states, territories and the District of Columbia. The resolution was **approved**.

ENVIRONMENT

[118] On behalf of the Section of Environment, Energy and Resources, Lee A. Deihns III of Georgia moved Resolution 118 urging Congress to enact legislation to reform the Toxic Substances Control Act. The resolution was **approved**.

INTELLECTUAL PROPERTY

[111] On behalf of the Section of Intellectual Property Law, Donald R. Dunner of the District of Columbia moved Revised Resolution 111 supporting evaluation of inventions relating to DNA technology by the same uniform standards that apply in evaluating patent eligibility of inventions relating to other natural materials or subject matter, and opposing new exclusionary rules for DNA that go beyond the long-standing exceptions to patent eligibility recognized by the U.S. Supreme Court. The resolution was **approved as revised**.

JUDICIAL INDEPENDENCE

[115] On behalf of the Standing Committee on Judicial Independence, William K. Weisenberg of Ohio **withdrew** Resolution 115 urging states to establish clearly articulated procedures for judicial disqualification determinations and review of denials of requests to disqualify judges.

LAW LIBRARY OF CONGRESS

[110] On behalf of the Standing Committee on Law Library of Congress, M. Elizabeth Medaglia of Virginia moved Resolution 110 supporting efforts by the Law Library of Congress and the Library of Congress to create and continue programs that (1) develop, maintain and enhance the Law Library's services, facilities, operations and staff, and the acquisition of materials and their preservation and care, and (2) utilize the best technologies and methods available to make the Law Library's vast and growing collections accessible. The resolution was **approved**.

LEGAL EDUCATION

[100A] On behalf of the Section of Legal Education and Admissions to the Bar, Pauline A. Schneider of the District of Columbia moved Revised Resolution 100A reaffirming support for the ethical independence of law school clinical programs consistent with the ABA Model Rules of Professional Conduct; and opposes improper attempts by persons or institutions outside law schools to interfere in the ongoing activities of law school clinical programs and courses. On behalf of the Criminal Justice Section, Stephen A. Saltzburg of the District of Columbia moved to amend the resolution. The amendment was approved. The resolution was **approved as revised and amended**.

[100B] The House **approved by consent** Resolution 100B as submitted by the Section of Legal Education and Admissions to the Bar, concurring in the action of the Council of the Section of Legal Education and Admissions to the Bar in making amendments to Standard 509 (Basic Consumer Information); Rule 10 (Appeal of an Adverse Decision of the Council); Rule 22 (Teach Out Plan and Agreement and Closure of a Law School); and Rule 24 (Complaints Concerning Law School Non-Compliance with the Standards) of the ABA Standards and Rules of Procedure for Approval of Law Schools, dated February 2011.

[100C] On behalf of the Section of Legal Education and Admissions to the Bar, Ruth V. McGregor of Arizona moved Resolution 100C amending the Model Rule for Admission by Motion, dated February 2011, to eliminate provisions that prohibit in-house counsel and judicial law clerks from qualifying on the basis of practice performed in the jurisdiction where admission on motion is being sought. The resolution was **approved**.

LEGAL SERVICES

[10E] On behalf of the New York State Bar Association, Stephen P. Younger of New York moved Resolution 10E opposing any proposal to cut funding for the Legal Services Corporation for the Fiscal Year 2011, and urging Congress to support increased funding of the Corporation necessary to provide needed services to low income Americans. Robert Arnold Weeks of California and former ABA President Robert J. Grey, Jr. of Virginia spoke in favor of the resolution. The resolution was **approved**.

MEDICAL

[108A] On behalf of the Tort Trial and Insurance Practice Section, Hervey Levin of Texas moved Revised Resolution 108A urging Congress to amend the Medicare Secondary Payer Act to provide clear, predictable, and consistent procedures for the submission, uniform determination and timely approval of third party medical set aside settlement proposals submitted to the Centers for Medicare & Medicaid Services. The resolution was **approved as revised**.

[113] On behalf of the Standing Committee on Medical Professional Liability, Lish Whitson of Washington moved Revised Resolution 113 supporting the development and use of evidence-based, clinical or medical practice guidelines or standards regarding patient care and safety created by independent experts. The resolution was **approved as revised**.

MILITARY LAW

[103] On behalf of the Standing Committee on Armed Forces Law, Herbert B. Dixon, Jr. of the District of Columbia moved Resolution 103 urging states and territories to adopt the Model State Code of Military Justice and the Model Manual for Courts-Martial to provide an updated body of law for military forces not subject to the Uniform Code of Military Justice when military forces are serving under the exclusive jurisdiction of Chapter 47 of Title 10, United States Code. Major General F. Andrew Turley spoke with privileges of the House in favor of the resolution. The resolution was **approved**.

[105] On behalf of the Section of Real Property, Trust and Estate Law, David M. English of Missouri moved Resolution 105 urging Congress to enact legislation amending Title 10, United States Code, to permit the payment of military Survivor Benefit Plan benefits to a special needs trust for the benefit of a disabled beneficiary. The resolution was **approved**.

NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS

[109A] The House **approved by consent** Resolution 109A as submitted by the National Conference of Commissioners on Uniform State Laws, approving the Uniform Partition of Heirs Property Act, promulgated by the National Conference of Commissioners on Uniform State Laws in 2010, as an appropriate Act for those states desiring to adopt the specific substantive law suggested therein.

[109B] The House **approved by consent** Resolution 109B as submitted by the National Conference of Commissioners on Uniform State Laws, approving the Uniform Faithful Presidential Electors Act, promulgated by the National Conference of Commissioners on Uniform State Laws in 2010, as an appropriate Act for those states desiring to adopt the specific substantive law suggested therein.

[109C] The House **approved by consent** Resolution 109C as submitted by the National Conference of Commissioners on Uniform State Laws, approving the Uniform Electronic Recordation of Custodial Interrogations Act, promulgated by the National Conference of Commissioners on Uniform State Laws in 2010, as an appropriate Act for those states desiring to adopt the specific substantive law suggested therein.

[109D] On behalf of the National Conference of Commissioners on Uniform State Laws, Robert A. Stein of Minnesota moved Resolution 109D approving the 2010 Amendments to Article 9 of the Uniform Commercial Code, promulgated by the National Conference of Commissioners on Uniform State Laws in 2010, as appropriate amendments to that Act for those states desiring to adopt the specific substantive law suggested therein. Michael Houghton of Delaware spoke in favor of the resolution. The resolution was **approved**.

[109E] The House **approved by consent** Resolution 109E as submitted by the National Conference of Commissioners on Uniform State Laws, approving the Uniform Military and Overseas Voters Act, promulgated by the National Conference of Commissioners on Uniform State Laws in 2010, as an appropriate Act for those states desiring to adopt the specific substantive law suggested therein.

[109F] On behalf of the National Conference of Commissioners on Uniform State Laws, Robert A. Stein of Minnesota **withdrew** Resolution 109F approving the Uniform Collaborative Law Rules/Act, promulgated by the National Conference of Commissioners on Uniform State Laws in 2010, as an appropriate legislation for those states desiring to adopt the specific substantive law suggested therein.

PARALEGAL

[106] The House **approved by consent** Resolution 106 as submitted by the Standing Committee on Paralegals, granting approval and reapproval to several paralegal education programs, withdrawing the approval of two programs at the requests of the institutions and extending the term of approval to several paralegal education programs.

PUBLIC CONTRACT

[116] On behalf of the Section of Public Contract Law, John S. Pachter of Virginia moved Resolution 116 opposing the adoption of legislation by Congress that would mandate suspension or debarment of a single entity or class from bidding on or receiving federal contracts and grants without regard to the existing regulatory framework which provides for agency discretion in suspension and debarment determinations. The resolution was **approved**.

SECURITIES LAW

[117] On behalf of the Section of Administrative Law and Regulatory Practice, Randolph J. May of Maryland moved Revised Resolution 117 urging Congress to amend subsection 13(p) of the Securities Exchange Act of 1934 (15 U.S.C. § 78m (p)) to define a person subject to the requirements of that subsection as “an issuer with securities registered under section 12 of the Exchange Act”. The resolution was **approved as revised**.

TAXATION

[10B] On behalf of the Ohio State Bar Association, William K. Weisenberg of Ohio moved with an amendment Resolution 10B urging Congress to enact legislation similar to H.R. 1956 and S. 3989 (111th Congress) that would amend the federal tax code to let states recover overdue debts due to them, including court-ordered victims’ restitution, fines, fees and costs, by intercepting federal tax refunds that are due to the debtors who owe the debts to the states. The resolution was **approved as amended**.

[101] On behalf of the Section of Taxation, Richard Lipton of Illinois moved with an amendment Resolution 101 adopting the Model Transactional Tax Overpayment Act, dated February 2011 and recommending its adoption by appropriate legislative bodies. The resolution was **approved as amended**.

SPECIALIZATION

[102] The House **approved by consent** Resolution 102 as submitted by the Standing Committee on Specialization, by granting accreditation of the Pretrial Practice specialty program of the National Board of Legal Specialty Certification of Wrentham, Massachusetts until the adjournment of the House of Delegates meeting in February 2016.

VOTING RIGHTS

[10C] On behalf of the Bar Association of the District of Columbia, Robert L. Weinberg of the District of Columbia moved Resolution 10C urging the United States House of Representatives to restore the right of D.C. citizens to have their elected Congresswoman vote on proposed legislation considered by the House in Committee of the Whole. Former ABA President Robert J. Grey, Jr. of Virginia spoke in favor of the resolution. The resolution was **approved**.

YOUTH JUSTICE

[107A] On behalf of the Commission on Youth at Risk, Laura V. Farber of California moved Revised Resolution 107A urging federal, state, territorial and local officials to prevent and remediate the existence and dangers of bullying, including cyberbullying and youth-to-youth sexual and physical harassment, by developing education programs to assist teachers, parents and children in identifying victims of these acts and enhancing appropriate interventions. Mark I. Schickman of California moved to amend the resolution. The amendment was approved. The resolution was **approved as revised and amended**.

[107B] On behalf of the Commission on Youth at Risk, Laura V. Farber of California moved Resolution 107B urging federal, state, territorial, tribal and local governments to create and provide appropriate support for Youth or Teen Courts that will divert youth from the formal consequences of juvenile court petitions, proceedings, adjudications or juvenile justice sanctions. Stephen P. Younger of New York spoke in favor of the resolution. The resolution was **approved**.

Closing Business

At the conclusion of the meeting of the House on Monday, February 14, after various thank you's and reminders about the 2011 Toronto, Canada Annual Meeting, Chair Linda A. Klein recognized Palmer Gene Vance II of Kentucky who then moved that the House adjourn *sine die*.

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MINUTES

BOG Access to Justice Committee

Meeting Date: February 17, 2011
Location: Salem Convention Center
Chair: Kenneth Mitchell-Phillips
Vice-Chair: Gina Johnnie
Members Present: Kenneth Mitchell-Phillips, Derek Johnson, Hunter Emerick, Tom Kranovich, Jenifer Billman ,
Members Absent: Gina Johnnie
Guests: Ethan Knight Audrey Matsumonji
Staff Members: Judith Baker, Susan Grabe, Kay Pulju

ACTION ITEMS

- | |
|---|
| 1. Topic: Approved minutes of the January 7, 2011 meeting. |
| 2. Topic: Review and discussion of a copy of a letter received from modest means lawyer Mike Seidel who practices in Deschutes County. The letter was addressed to Deschutes County Trial Administrator and was requesting that Deschutes County presiding Judge revise how the fee waiver and deferral is implemented in Deschutes County. Staff reported that the Order Establishing Standards and Practices for Fee Deferrals and Waivers in Civil Actions issued by Chief Justice De Muniz is being followed inconsistently by courts statewide. Some counties follow the order and in other counties the order is completely ignored.

Action: This issue will be forwarded to the Oregon State Bar's Court Fees Taskforce for review and consideration. |

MINUTES

BOG Access to Justice Committee

Meeting Date: March 18, 2011
Location: Oregon State Bar Center
Chair: Kenneth Mitchell-Phillips
Vice-Chair: Gina Johnnie
Members Present: Kenneth Mitchell-Phillips, Tom Kranovich, Jenifer Billman, Gina Johnnie, Michael Haglund
Members Absent: Derek Johnson
Guests: Kalie Moore, LRS Program Administrator, Alameda County Bar Ass. Jeannie Rollo, Executive Director, LRS of Central Texas
Staff Members: Judith Baker, Susan Grabe, Kay Pulju, George Wolff

ACTION ITEMS

1. **Topic:** Approved minutes of the February 18, 2011 meeting.

2. **Topic:** **The Bench/Bar Task Force on Family Law Forms and Services**

The Bench/Bar Task Force on Family Law Forms and Services completed its report, which was presented to the committee for referral to the full BOG in April. The recommendation from the task force was that the OJD should take the lead in developing and maintaining model family law forms for use in Oregon trial courts. If funding or other issues prevent OJD from committing to this role by August 2011 and commencing action on the development of interactive electronic formats by January 2012, OSB should assume the leadership role but collaborate with OJD on technology and practice requirements.

Action: The committee agreed to forward the recommendation from the task force to the full BOG in April.

INFORMATIONAL ITEMS

3. **Topic:** **Unclaimed Client Trust Account Funds Held by the Bar**

The committee was updated on the unclaimed client trust account funds being held by the bar. Staff explained there is approximately \$150,000 in the fund. These funds are subject to claims made by clients seeking their abandoned property indefinitely. Currently five claims make up approximately 58% of the total funds held. The DSL reports that it pays approximately 1/3 of annual receipts in claim payments annually but that they are seeing an increase in the percentages claimed over the last four or five years. The DSL operates out of the interest earnings so the principal that would be due the owners is not impacted. The bar's situation is unique in that the bar is contemplating disbursing principle and there is no history on how the receipts or claim refunds may fluctuate from year to year. This makes it difficult to gauge how

much the bar will get in subsequent years to offset any errors in current projections and how much can safely be allocated to programs in the current year that is unlikely to ever be claimed. The LSP Committee is therefore recommending that the bar hold the funds and focus on investment options that will maximize the return with revenue allocated to the legal service providers. The investment recommendation from the LSP Committee is to place approximately 2/3 or approximately \$100,000 of the funds in a one year CD. The remaining 1/3 will be held in a money market for the payment of claims. This recommendation is subject to reevaluation as a greater understanding of the fund is obtained but no later than January, 2012.

**4. Topic: Abbreviated version of ABA Lawyer Referral and Information Services
Presentation: "Innovations that Build the Perfect System: Money, Member Benefit & Public Service.**

Kalie Moore, LRS Program Administrator from Alameda County Bar Association and Jeannie Rollo, Executive Director, LRS of Central Texas participated by teleconference in the meeting to present an abbreviated version of "Innovations that Build the Perfect System: Money, Member Benefit & Public Service". They are both from percentage fee lawyer referral programs and spoke about the structure of their programs and the benefits to the program, members and the public.

MINUTES

BOG Appellate Screening Special Committee

Meeting Date: March 18, 2011
Location: Oregon State Bar Center
Chair: Steve Larson
Vice-Chair: Gina Johnnie
Members Present: Audrey Matsumonji, Hunter Emerick, Steve Larson, Jenifer Billman, Gina Johnnie
Members Absent: Derek Johnson
Guests: Steve Piucci, Mitzi Nauclear, Matt Kehoe
Staff Members: Susan Grabe

ACTION ITEMS

1. **Review of Judicial application materials.** The Judicial Vacancy Committee reviewed Interest Form for Judicial Appointments and provided comments to the governor's office regarding the form: Perhaps the Litigation Practice Section should have a question about Appellate Experience; Perhaps there should be a question asking why the applicant wants to be a judge; some questions should be removed because they were probably inappropriate to ask an applicant for employment and questioned whether letter writing campaigns should be discouraged. The committee understands that groups do write letters, so perhaps the instruction should say: Applicants are strongly discouraged from advocating letter writing campaigns.

INFORMATION ITEMS

2. **Governor's Judicial Selection Process.** Steve Larson relayed discussions with Governor's Office regarding how the new governor would like to proceed. The Governor is interested in coordinating with the bar on not only appellate court vacancies, but also would like to encourage the regional BOG member to engage in the local bar process when there are trial court vacancies. The committee will continue to refine the process with respect to local bar involvement and arranged for the BOG member from Washington County (Matthew Kehoe) to contact the Washington County Bar Association chair (Sharon Brown) to discuss the judicial vacancy in Washington County.
3. **Appellate Court Vacancy.** There will likely be an appellate court vacancy in the near future which would require this committee to act.

Minutes
Budget & Finance Committee
February 17, 2011
Salem Conference Center
Salem, Oregon

Present - Committee Members: Chris Kent, chair; Steve Larson; Hunter Emerick; Michelle Garcia; Mike Haglund; Derek Johnson; Mitzi Naucler. **Other BOG Members:** Steve Piucci; Jennifer Billman; Ann Fisher; Tom Kranovich. **Staff:** Sylvia Stevens; Helen Hierschbiel; Susan Grabe; Rod Wegener.

1. Minutes – January 7, 2011 Committee Meeting

The minutes of the January 7, 2011 meeting were approved.

2. Changes to the Bar's Investment Policy

A policy change was approved by the Committee at the January meeting and is on the Board of Governors agenda for action.

3. Updates on Tenant and Leases at the Bar Center

The Committee recommended that the Board of Governors ratify the execution of the Lease Termination Agreement with Opus Northwest signed by the OSB President and the PLF CEO.

Mr. Wegener reported that Opus Northwest also has signed the agreement and the funds were wired to the bar's account on February 11.

The Committee recommended to the Board of Governors to engage Macadam Forbes as brokers to lease the vacant space at the bar center. The Committee added that the agreement should be for six months and should exclude any space developed by the bar for short-term office space and leased to its members.

The Committee recommended that the Board of Governors ratify the staff's action to issue an eviction notice to RMT International as it is two months delinquent in its rent payments for the office space at the former PLF offices.

Mr. Wegener reported that the bar has engaged a designer to develop a design for office space to move the Admissions and Lawyer Referral Departments to the vacant space on the third floor at the bar center. Mr. Wegener agreed to send a copy of the design document to the board members.

Mr. Wegener further reported that the bar has received a copy of a proposal from a local not-for-profit company to lease the space that had been occupied by the tenant 20/20. 20/20 continues to make payments to the bar even though it no longer occupies the space.

4. Financial Report – December 31, 2010

Mr. Wegener reported that the final 2010 financial report just out includes a net operating revenue of \$620,830, which is considerably higher than the budgeted net operating revenue of \$140,085. After including Fanno Creek Place, the investment portfolio gains and losses, and the necessary accruals, the bar ends 2010 with a \$93,925 net revenue.

The primary reason for the higher net revenue is the under spending of the non-personnel expense budget by 14.5%. Much of the under spending applied to using technology rather than printing and mailing for communications with members and the public, e.g. organization-wide postage expense was \$96,000 under budget. Personnel costs also were below budget. Additionally, expenses that can fluctuate annually and not related to technology – e.g. court reporters, contract legal fees, BOG expenses – also were under budget.

Admissions and Lawyer Referral revenue were at all-time highs and CLE Seminars and Legal Publications had net expenses of \$32,000 and \$58,000 respectively, lower than 2009. These positive results led to the bar's cash and investments being higher than a year ago when a lower number was expected. The investment portfolio is \$330,000 higher than when the funds were transferred to the contract investment managers.

5. Unfinished Business

The Committee discussed the future of funding the Lawyer Referral program, specifically whether the bar should institute a percentage fee revenue plan. The pros and cons and other revenue options were debated. Ms. Stevens suggested that the Committee and board discuss the topic at the April board meeting and decide what action to take at the June meeting. Mr. Wegener reported that the program has a net expense of about \$250,000 annually (edit. The final 2010 net expense was \$275,000).

Mr. Wegener reported that at a future meeting the Legal Services Committee will present a policy recommendation how to invest the funds the bar has received in unclaimed assets created by a new statute. The bar has received about \$145,000 to date.

6. Next Committee meeting

The next meeting will be March 18, 2011 at the bar center in Tigard.

Minutes
Budget & Finance Committee
March 18, 2011
Oregon State Bar Center
Tigard, Oregon

Present - Committee Members: Chris Kent, chair; Steve Larson; Hunter Emerick; Mike Haglund; Mitzi Naucner. **Staff:** Sylvia Stevens; Helen Hierschbiel; Judith Baker; Rod Wegener.

1. Minutes – February 17, 2011 Committee Meeting

The minutes of the February 17, 2011 meeting were approved.

4. Financial Report – February 28, 2011

The February 28, 2011 report was distributed to the board members a few days prior to the meeting. Mr. Wegener's summary included an explanation of how the reserve allocation is reported as revenue on the financial statements. The February 28 net operating revenue is \$621,543. The Committee discussed the financial condition of CLE Seminars when Mr. Wegener reported the lower revenue in season tickets as an indication of declining revenue. The Committee stated that Seminars financial condition will be a topic of discussion at future meetings. Mr. Wegener's final statement referred the Committee to the summary of the bar's reserve investment portfolio and the similarity of the amount of the portfolio managed by the two investment companies.

3. Updates on Tenant and Leases at the Bar Center

There was no new information about the action against one of the tenants in the former PLF space and the design of the space on the third floor. In Executive Session, the Committee heard the latest information and negotiations on the lease proposals for replacing the 20/20 lease.

4. Lawyer Referral – Percentage Fees – Impact on Five-Year Forecast

Mr. Wegener distributed a one-page summary entitled "New LRS Funding Models – Impact on OSB Budget." The summary was prepared for the Committee to understand the implications on the increase in future membership fees if percentage fee funding was or was not implemented by the bar. The summary reported possible scenarios for the bar's budget in future years if: 1) there were no changes to funding the LRS program; 2) conservative revenue growth as defined a year ago; 3) if LRS earned enough revenue to break-even by the third year of the funding change; and 4) if there were higher revenue growth after the third year (using \$500,000 as an example).

The Committee acknowledged that the discussion on percentage fee funding for the Lawyer Referral program will be on the BOG April 22 meeting agenda with a decision on funding to be decided at the June BOG meeting.

5. Unclaimed Assets

Judith Baker, the bar's Legal Services Director, explained why the bar is the recipient of funds for unclaimed assets distributed by the State's Department of Administrative Services to the bar, and the need for the revised bylaws describing the administration, disbursement, and claim adjudication of those funds. The Budget & Finance Committee's role is described in the Disbursement section. The bylaw changes also were presented to the Policy & Governance Committee. The approval of the bylaws will be on an upcoming BOG agenda

6. Unfinished Business

No discussion.

7. Next Committee meeting

The next meeting is scheduled for April 22, 2011 at the bar center in Tigard.

MINUTES

BOG Member Services Committee

Meeting Date: February 17, 2011
Location: Salem Conference Center
Chair: Audrey Matsumonji (acting for Gina Johnnie)
Vice-Chair: Maureen O'Connor
Members Present: Maureen O'Connor (by phone), Ethan Knight, Matt Kehoe, Audrey Matsumonji, Ken Mitchell-Phillips
Members Absent: Ann Fisher, Gina Johnnie
Guests: Steve Piucci (BOG)
Staff Members: Danielle Edwards, Kay Pulju

ACTION ITEMS

1. **Topic:** Approved minutes of the January 7, 2011, committee meeting.
2. **Topic:** OSB Program Review. Pulju provided an overview of the agenda exhibits on the Oregon New Lawyers Division and proposed Senior Lawyers Division. Before making recommendations on the senior division, committee members agreed to review the new lawyer division since it has been offered as a model for development of the senior division and has also been identified as a priority item by some BOG members. Discussion points included:
 - Potential synergy with the New Lawyer Mentor Program
 - Current ONLD expenses and programs
 - Overlap with other OSB programs and services
 - Mission of the ONLD and how it may have changed over the years

ACTION: Danielle Edwards will ask the current executive committee for their ideas on updating the mission of the ONLD, which will be brought back to this committee for further discussion.

INFORMATION ITEMS

3. **Topic:** Danielle Edwards reported on vacancies for the upcoming OSB House of Delegates elections. There will be more vacancies than usual due to the addition of a new BOG region and an increase in positions for out-of-state delegate positions, which are typically more difficult to fill.
4. **Topic:** Pulju summarized member response to recent changes in bar communications (membership directory, e-mail requirement and electronic fee notices) as detailed in an agenda memo.

MINUTES

BOG Member Services Committee

Meeting Date: March 18, 2011
Location: Oregon State Bar Center, Tigard
Chair: Gina Johnnie
Vice-Chair: Maureen O'Connor
Members Present: Gina Johnnie, Maureen O'Connor, Ethan Knight, Matt Kehoe, Audrey Matsumonji, Ken Mitchell-Phillips
Members Absent: None
Guests: Steve Piucci (BOG)
Staff Members: Danielle Edwards, Kay Pulju, George Wolff

ACTION ITEMS

1. **Topic:** Approved minutes of the February 17, 2011, committee meeting.
2. **Topic:** OSB Program Review. Pulju reviewed the chart of OSB program revenue and expenses provided with the agenda. Discussion points included:
 - Direct program expenses are low in most areas.
 - Areas for further review: Bar exam review course possibilities; use of print/paper for the Bulletin; services currently outsourced by CLE seminars; projected print sales data for Legal Publications. CLE Seminars discussion will be set for the April committee meeting.
 - Committee members requested annual reports for Disciplinary Counsel and the Client Assistance Office.
 - ONLD chair will report on revised mission at the April meeting.

INFORMATION ITEMS

3. **Topic:** Referral & Information Services program review (materials provided) will be part of a larger discussion topic on RIS at the April BOG meeting.
- 4.

MINUTES

BOG Policy and Governance Committee

Meeting Date: February 17, 2011
Location: Salem Convention Center
Chair: Mitzi Naucner
Vice-Chair: Michael Haglund
Members Present: Mitzi Naucner, Michael Haglund, Ann Fisher, Michelle Garcia, Chris Kent, Tom Kranovich
Members Absent: Barbara Dilaconi
Staff Members: Sylvia Stevens, Helen Hierschbiel.

ACTION ITEMS

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|---|
| 1. Topic: Minutes of January 7, 2010. The minutes of the January 7, 2010 meeting were approved unanimously. |
| 2. Topic: MCLE Rule and Regulation on Mentoring Credits. The committee agreed with the concept of awarding MCLE credits for new lawyer and mentors. Mr. Haglund moved, Ms. Fisher seconded, and the committee voted unanimously to recommend that the BOG adopt the proposed MCLE Rule and Regulation as submitted. |
| 3. Topic: Creation of Standing Committee on Urban/Rural Issues. Ms. Fisher identified three options for responding to the task force recommendation for a standing committee to continue working on issues identified by the task force: ignore it, create the task force or come up with a different idea. The committee was clear it had no intention of ignoring the task force's report and concerns. There was some hesitation, however, about creating a standing committee when it isn't clear that it would need to exist indefinitely. During the discussion, a suggestion was made that staff should prepare a report addressing what, if anything, the OSB is currently doing (or planning) that will address task force recommendations, then present the report at the HOD meeting in a forum that will allow for member input. The committee will recommend proceeding in that manner. |
| 4. Topic: Renewing Proposed Amendments to RPC 1.2 and 3.4. The committee discussed staff's suggestion to bring the proposed amendments back to the HOD for further consideration. After discussion, there was a consensus that the concerns about the scope and application of "rule" vs. "ruling" could be addressed by an ethics opinion. The committee asked staff to submit the issue to the LEC for consideration. |
| 5. Topic: Advertising Rules Conformity. After discussion, the committee consensus was that this issue should be referred to the LEC for study and development of recommendations. |
| 6. Topic: Amendments to Bylaw 24.1. After brief discussion Mr. Haglund moved, Ms. Garcia seconded, and the committee voted unanimously to recommending to the BOG that the OSB Bylaws be amended as proposed. |

MINUTES

BOG Policy & Governance Committee

Meeting Date: March 18, 2011
Location: OSB Center, Tigard, Oregon
Chair: Mitzi Naucler
Vice-Chair: Michael Haglund
Members Present: Ann Fisher, Michael Haglund, Chris Kent, Mitzi Naucler
Members Absent: Barbara Dilaconi, Michelle Garcia, Tom Kranovich
Staff Present: Sylvia Stevens, Helen Hierschbiel, Denise Cline

ACTION ITEMS

1. Approval of February 17, 2011 minutes.
2. Amendment to MCLE Rule 5.4. MCLE Program Manager Denise Cline introduced the MCLE Committee's revised proposal for amending MCLE Rules 5.2 and 5.4 relating to credit for teaching. As proposed, Rule 5.2 would allow credit for teaching graduate level nonlaw courses at an accredited university. Rule 5.4 similarly would allow credit for attending graduate level nonlaw courses at an accredited university. Mr. Haglund moved to recommend the proposals to the BOG. The motion was seconded by Ms. Fisher and passed unanimously.
3. Amend MCLE Regulations 1.140 and 3.200. By acclamation without discussion, the committee voted to recommend these amendments correcting a Bylaw reference to the BOG.
4. Amendments to Bylaw 2.6. The committee reviewed the proposed amendments to conform the bylaw to recent changes in the Government Standards & Practices Act. Mr. Kent moved to recommend the bylaw changes to the BOG. The motion was seconded by Mr. Haglund and passed unanimously.
5. New Bylaw on Unclaimed IOLTA Funds. The Committee reviewed the proposed new bylaw establishing procedures for dealing with unclaimed IOLTA funds received by the bar. Mr. Kent moved to recommend the proposal to the BOG, making it a new Bylaw 27 and renumbering existing Bylaw 27. Mr. Haglund seconded the motion and it passed unanimously.
6. Revision of Fee Arbitration Rule 4.2. Ms. Hierschbiel explained the Fee Arbitration Task Force's revised recommendation for amending Fee Arbitration Rule 4.2 regarding attorney fee awards in fee arbitration matters. She also reported that the Task Force declined to recommend a rule limiting the admissibility of arbitration information in subsequent proceedings, concluding the issue was better addressed by the court or by agreement of the parties. Mr. Haglund moved to approve the Task Force's proposed Rule 4.2 and to recommend it with the package of Fee Arbitration Rule changes that will be presented to the BOG in April. Ms. Fisher seconded the motion and it passed unanimously.
7. Suggested HOD Changes. The committee discussed briefly but took no action on several suggestions for improving the HOD experience.

8. Revision to Judicial Administration Committee Assignment. The committee reviewed the JAC's proposal to revise its assignment (charge) to conform it to current practice, including elimination of any role in judicial selection. Mr. Haglund moved to recommend the revised assignment to the BOG. Ms. Fisher seconded the motion and it passed unanimously.

9. Standing Committee on the Future of the Profession. The committee briefly discussed whether the BOG should have a standing committee to monitor and make recommendations about trends in the profession. Ms. Naucler pointed out that change is happening faster, a constant barrage of new issues. The committee agreed with her suggestion that staff bring information to the retreat in November that will enable the BOG to determine whether such a committee will be helpful.

MINUTES

BOG Public Affairs Committee

Meeting Date: February 17, 2011
Location: Salem, OR
Chair: Derek Johnson
Vice-Chair: Audrey Matsumonji
Members Present: Derek Johnson, Audrey Matsumonji, Hunter Emerick, Kenneth Mitchell-Phillips
Members Absent: Gina Johnnie, Steve Larson, Maureen O'Connor
Guests:
Staff Members: Susan Grabe

ACTION ITEMS

- | |
|--|
| 1. Minutes: The minutes were approved by consensus. |
| 2. Court Fees Task Force Update: PAC discussed the position of the bar's court fees task force on HB 2710 re civil filing fees, and HB 2711 re creation of a permanent committee to review filing fees in light of the pending hearing. PAC moved and unanimously approved a motion to reinforce its earlier position in support of the civil filing fee structure to ensure access to the court system and to support a dedicated fee for legal services in Oregon. |
| 3. SB 404 judicial recusal: PAC discussed whether it made sense to amend ORS 14.210, regarding circumstances in which a judge is precluded from acting as a judge due to an actual or potential conflict, or the appearance of such a conflict, with one or more of the parties to a case. The language of the bill would state that a judge is NOT disqualified from participating in a proceeding because of a familial relationship with a partner, associate, or other co-worker of a party appearing before the judge. Instead, SB 404 would limit disqualifying relationships to circumstances where a judge is related to a party, or related to the attorney actually appearing before them. PAC moved and approved opposition to the bill based on feedback from bar groups. |

INFORMATION ITEMS

- | |
|---|
| 4. Positions on legislation: The Committee reviewed the process for approval of bar group requests to take a position or comment on legislation. |
| 5. Legislative session update and bills of interest: The committee discussed the current session dynamic and bills of interest, including SB 28, cultural competency, SB 404 Judicial Recusal and SB 593, legal malpractice pleading requirements. |
| 6. Lawyer legislator caucus meeting: There will be on scheduled in conjunction with the court to address court funding and access to justice issues. |
| 7. Conference Calls: The committee reviewed potential dates for conference calls during session if necessary to consider legislative action. |

MINUTES

BOG Public Affairs Committee

Meeting Date: March 18, 2011
Location: Oregon State Bar Center, OR
Chair: Derek Johnson
Vice-Chair: Audrey Matsumonji
Members Present: Audrey Matsumonji, Hunter Emerick, Steve Larson, Kenneth Mitchell-Phillips, Maureen O'Connor, Gina Johnnie
Members Absent: Derek Johnson
Guests: Steve Pucci
Staff Members: Susan Grabe

ACTION ITEMS

- | |
|---|
| 1. Minutes: The minutes were approved by consensus. |
| 2. Section Position Requests. The committee reviewed the process for section and committee position requests. Many bar groups monitor legislation, some express concerns, others support or oppose legislation. A tracking sheet will be made available to the committee at each meeting for either approval or ratification. |
| 3. PAC positions. Public Affairs discussed a number of litigation reform proposals pending before the legislature which would impact access to justice including HB 3228, HB 3519, SJR 5, SJR 19 and SJR 33. Consistent with previous OSB positions on the detrimental impact on access to justice for Oregonians, the committee voted to oppose the proposals with one "no" vote. |

INFORMATION ITEMS

- | |
|---|
| 4. Lawyer Legislator/Appellate Courts' Reception. The committee debriefed on the value of such an event and concluded that it helps foster better communication between the bench bar and legislature on issues important to the judicial system such as court funding and access to justice. |
| 5. Governor's Judicial Selection Process. The Governor is interested in coordinating with the bar on not only appellate court vacancies, but also would like to encourage the regional BOG member to engage in the local bar process when there are trial court vacancies. |
| 6. Legislative session update and bills of interest: The Oregon Judicial Department budget hearings will begin next week followed by indigent defense, Judicial Fitness Commission and other Public Safety entities. HB 2710 re filing fees is in a House Judiciary workgroup where it will be modified further. Oregon eCourt hearing is scheduled first part of April. All bar sponsored bills are scheduled for a hearing in the first chamber. |

MINUTES

BOG Public Member Selection Committee

Meeting Date: March 18, 2011
Location: Oregon State Bar Center
Chair: Audrey Matsumonji
Vice-Chair: Mitzi Naucler
Members Present: Mitzi Naucler, Maureen O'Connor, Matt Kehoe, and Jenifer Billman
Members Absent: Audrey Matsumonji

ACTION ITEMS

1. **Topic: Audrey Matsumonji's request for a two-year reappointment to the Board of Governors.** The committee considered Audrey's request for a 2-year term and rejected that request by consensus. The committee agreed, again by consensus to offer Audrey a 4-year term if she would accept it. The committee agreed that if Audrey accepted a 4-year term then there would be no general search for a new public member this year. Mitzi will communicate the offer to Audrey with the caveat that she needs to let us know her decision as soon as possible, preferably before the next BOG meeting. The committee adjourned .

[illegible]

	2	11	J	D	M	S	C	C	D
Date	Attorney								Payment Recei ed
1/6/2011	Kelley, Phil								360.00
2/4/2011	Kelley, Phil								360.00
3/16/2011	Correll, Jon								500.00
4/4/2011	Kelley, Phil								360.00

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Description	Fiscal Year 2011	FTE 2011	Budget 2011	% of Budget	Fiscal Year Prior Year	FTE Prior Year	Change v Pr Yr
REVENUE							
Interest	\$316	\$524	\$4,300	12.2%	\$344	\$640	-18.1%
Judgments	360	720	4,000	18.0%	360	720	
Membership Fees	180	211,350	220,300	95.9%	(771)	206,152	2.5%
TOTAL REVENUE	856	212,594	228,600	93.0%	(67)	207,512	2.4%
EXPENSES							
SALARIES & BENEFITS							
Employee Salaries - Regular	2,761	5,523	23,900	23.1%	2,406	4,803	15.0%
Employee Taxes & Benefits - Reg	830	1,606	8,300	19.4%	717	1,469	9.4%
TOTAL SALARIES & BENEFITS	3,591	7,129	32,200	22.1%	3,123	6,272	13.7%
DIRECT PROGRAM							
Claims			225,000		656	656	-100.0%
Collection Fees			500				
Committees			100				
Travel & Expense			1,300		450	450	-100.0%
TOTAL DIRECT PROGRAM EXPENSE			226,900		1,106	1,106	-100.0%
GENERAL & ADMINISTRATIVE							
Photocopying			150				
Postage	17	37			19	25	49.5%
Professional Dues			200				
Telephone						30	-100.0%
Training & Education	200	200	450	44.4%			
Staff Travel & Expense	469	469	772	60.8%			
TOTAL G & A	687	707	1,572	45.0%	19	55	1180.8%
TOTAL EXPENSE	4,278	7,836	260,672	3.0%	4,248	7,433	5.4%
NET REVENUE (EXPENSE)	(3,422)	204,758	(32,072)		(4,316)	200,079	2.3%
Indirect Cost Allocation	1,079	2,158	12,942		1,092	2,184	-1.2%
NET REV (EXP) AFTER ICA	(4,501)	202,600	(45,014)		(5,408)	197,895	2.4%
=====			=====		=====	=====	=====
Fund Balance beginning of year		551,690					
Ending Fund Balance		754,290					
		=====					
Staff - FTE count		.35	.35			.35	

Oregon State Bar

2010 **Disciplinary
Counsel's Office**
Annual Report

March 2011

Jeffrey D. Sapiro
Disciplinary Counsel

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I. INTRODUCTION

This is the Annual Report of the Oregon State Bar Disciplinary Counsel's Office for 2010. The report provides an overview of Oregon's lawyer discipline system, an analysis of the caseload within the system, along with the dispositions in 2010, and a discussion of significant developments over the last year.

II. STATE PROFESSIONAL RESPONSIBILITY BOARD (SPRB)

The principal responsibility of Disciplinary Counsel's Office is to serve as counsel to the State Professional Responsibility Board (SPRB), the body to which the investigative and prosecutorial functions within the discipline system are delegated by statute. The SPRB seeks to enforce the disciplinary rules in the Rules of Professional Conduct (the RPCs), while operating within the procedural framework of the Bar Rules of Procedure (the BRs). The SPRB is a ten-member board of unpaid volunteers, consisting of one lawyer each from Board of Governors (BOG) Regions 1 through 4, 6, and 7, two lawyers from Region 5 and two public members. (The creation of Region 7 effective January 2011, increased the size of the SPRB from nine to ten.)

The SPRB met 11 times in 2010. With regular meetings and conference calls combined, the SPRB considered approximately 240 case-specific agenda items during the year. This does not include the many policy matters also considered by the board.

The Bar was fortunate to have the following individuals on the SPRB in 2010:

David W. Hittle (Salem) – Chairperson

Peter R. Chamberlain (Portland)

Greg Hendrix (Bend)

Jonathan P. Hill (Roseburg) – Public Member

Timothy L. Jackle (Medford)

William B. Kirby (Beaverton)

Jolie Krechman (Portland) – Public Member

Martha J. Rodman (Eugene)

Jana Toran (Portland)

The terms of David Hittle, Jolie Krechman, and Martha Rodman expired at the end of 2010. The new appointments for 2011 include: Chelsea Dawn Armstrong (Salem), Danna C. Fogarty (Eugene), Michael J. Gentry (Lake Oswego), and Dr. S. Michael Sasser (Public Member from Medford). Jana Toran is the SPRB Chairperson for 2011.

III. SYSTEM OVERVIEW

A. Complaints Received

The Bar's Client Assistance Office (CAO) handles the intake of all oral and written inquiries and complaints about lawyer conduct. Only when the CAO finds that there is sufficient evidence to support a reasonable belief that misconduct may have occurred is a matter referred to Disciplinary Counsel's Office for investigation. See BR 2.5.

The table below reflects the number of files opened by Disciplinary Counsel in recent years, including the 428 files opened in 2010.

Files Opened by Disciplinary Counsel					
Month	2006	2007	2008	2009	2010
January	28	30	30	43	29
February	40	49	39	25	25
March	41	42	36	39	26
April	53	30	26	40	30
May	22	19	35	21	119 [†]
June	23	29	30	142 [*]	26 [‡]
July	29	31	37	16	34
August	36	23	38	35	25
September	21	16	125 [†]	31	36
October	38	38	27	34	33
November	23	46	15	31	21
December	29	23	29	26	24
TOTAL	383	376	467	483	428

[†]98 IOLTA compliance matters

^{*}97 IOLTA compliance matters

[‡]87 IOLTA compliance matters

[§]2 IOLTA compliance matters

The breakdown of the open files for 2010 was: 242 referrals from the Client Assistance Office, 64 trust account overdraft notices from financial institutions that came directly to Disciplinary Counsel's Office, 89 inquiries concerning lawyer compliance with the IOLTA rules, and 33 other matters opened by Disciplinary Counsel on the office's initiative.

For 2010, statistical information regarding complainant type and complaint subject matter is found in Appendix A to this report. Similar information for 2009 is found in Appendix B for comparison purposes.

Every complaint Disciplinary Counsel's Office received in 2010 was acknowledged in writing by staff, analyzed and investigated to varying degrees depending on the nature of the allegations. As warranted, staff corresponded with the complainant and the responding attorney, and

obtained relevant information from other sources, to develop a “record” upon which a decision on merit could be made.

If, after investigation, staff determined that probable cause did not exist to believe that misconduct had occurred, the matter was dismissed by Disciplinary Counsel. BR 2.6(b). Complainants have the right under the rules of procedure to contest or appeal a dismissal by Disciplinary Counsel staff. In that case, the matter is submitted to the SPRB for review. The SPRB reviewed 20 such appeals in 2010, affirming all but one of the dismissals.

When Disciplinary Counsel determined from an investigation that there may have been probable cause of misconduct by a lawyer, the matter was referred to the SPRB for review and action. Each matter was presented to the board by means of a complaint summary (factual review, ethics analysis and recommendation) prepared by staff. Each file also was made available to the SPRB. In 2010, the SPRB reviewed 121 of these probable cause investigations. The following section describes that process of review in more detail.

B. SPRB

The SPRB acts as a grand jury in the disciplinary process, determining in each matter referred to it by Disciplinary Counsel whether probable cause of an ethics violation exists. Options available to the SPRB include dismissal if there is no probable cause of misconduct; referral of a matter back to Disciplinary Counsel or to a local professional responsibility committee (LPRC) for additional investigation; issuing a letter of admonition if a violation has occurred but is not of a serious nature; offering a remedial diversion program to the lawyer; or authorizing a formal disciplinary proceeding in which allegations of professional misconduct are litigated. A lawyer who is offered a letter of admonition may reject the letter, in which case the Rules of Procedure require the matter to proceed to a formal disciplinary proceeding. Rejections are rare.

A lawyer who is notified that a formal disciplinary proceeding will be instituted against him or her may request that the SPRB reconsider that decision. Such a request must be supported by new evidence not previously available that would have clearly affected the board’s decision, or legal authority not previously known to the SPRB which establishes that the decision to prosecute is incorrect.

In 2010, the SPRB made probable cause decisions on 7 reports submitted by investigative committees and 143 matters investigated by Disciplinary Counsel staff. Action taken by the SPRB in recent years and in 2010 is summarized in the following table:

Action Taken by SPRB					
Year	Pros.	Admon. Offered	Admon. Accepted	Dismissed	Diversion
2006	94	33	33	85	4
2007	133	40	40	77	2
2008	123	31	30†	90	2
2009	128	29	28†	59	5
2010	72	34	34	38	5

† One admonition letter offered was later reconsidered by the SPRB and the matter was dismissed.

Note that the figures for prosecutions reflect the number of complaints that were authorized for prosecution, not necessarily the number of lawyers being prosecuted. For example, one lawyer may be the subject of numerous complaints that are consolidated into one disciplinary proceeding.

In addition to the normal complaint review process, the SPRB also is responsible for making recommendations to the Supreme Court on matters of urgency including temporary and immediate suspensions of lawyers who have abandoned their practice, are suffering under some disability, have been convicted of certain crimes, or have been disciplined in another jurisdiction subjecting them to reciprocal discipline here in Oregon. There were nine (9) such matters in 2010.

C. Local Professional Responsibility Committee (LPRCs)

Most complaints are investigated in-house by Disciplinary Counsel staff. However, some matters that require in-depth field investigation are referred by staff or the SPRB to local professional responsibility committees (LPRCs). There are 16 such committees made up of single county or multi-county districts. Total membership for all LPRCs is approximately 65.

Each year LPRC members are provided with a handbook prepared and updated by the Disciplinary Counsel's Office. The handbook describes in detail the responsibilities each LPRC member is asked to undertake. It also provides practical suggestions in conducting an LPRC investigation, contains copies of resource materials including the applicable statutes and procedural rules, and includes examples of final LPRC reports in a standardized format requested by the SPRB.

Under the applicable rules of procedure, Disciplinary Counsel staff arranges for an assignment to be made to an individual committee member, and the committee member is authorized to report back his or her findings without going through the entire committee. A committee member has 90 days to complete an assignment, with one extension of 60 days available. If an investigation is not completed by then, the rules require the matter to be referred back to Disciplinary Counsel for completion. BR 2.3(a)(2)(C). Twenty-four (24) matters were referred to LPRCs in 2010. One of these assignments was referred back to Disciplinary Counsel for

completion and another ten were rendered moot by a lawyer's death or resignation.

D. Formal Proceedings

(1) *Prosecution Function*

After the SPRB authorizes formal proceedings in a given matter, attorneys in Disciplinary Counsel's Office draft a formal complaint and may, but don't always, arrange for volunteer bar counsel to assist in preparation for trial. Bar Counsel are selected from a panel of lawyers appointed by the Board of Governors.

Discovery methods in disciplinary proceedings are similar to those in civil litigation. Requests for admission, requests for production, and depositions are common. Disputes over discovery are resolved by the trial panel chairperson assigned to a particular case.

Pre-hearing conferences to narrow the issues and to explore settlement are available at the request of either party. Such conferences are held before a member of the Disciplinary Board who is not a member of the trial panel in that case.

(2) *Adjudicative Function*

Members of the Disciplinary Board, appointed by the Supreme Court, sit in panels of three (two lawyers, one non-lawyer) and are selected for each disciplinary case by a regional chairperson. The panel chair rules on all pretrial matters and is responsible for bringing each case to hearing within a specific time frame established by the rules.

After hearing, the panel is required to render its decision within 28 days (subject to time extensions), making findings of fact, conclusions of law and a disposition. Panels rely on the ABA *Standards for Imposing Lawyer Sanctions* and Oregon case law in determining appropriate sanctions when misconduct has been found.

Seventeen (17) disciplinary cases were tried in 2010, although some of these matters went by default and did not require full evidentiary hearings.

E. Dispositions Short of Trial

Fortunately, many of the disciplinary proceedings authorized by the SPRB are resolved short of trial with resignations or stipulations. Form B resignation (resignation "under fire") does not require an admission of guilt by an accused lawyer but, because charges are pending, is treated like a disbarment such that the lawyer is not eligible for reinstatement in the future. Seven (7) lawyers submitted Form B resignations in 2010, thereby eliminating the need for further prosecution in those cases. While a resignation ends a formal proceeding, it is often obtained only after a substantial amount of investigation, discovery and trial preparation. For example, one lawyer resigned in 2010, but only after a multi-day trial, the trial panel issued its decision and the lawyer's brief was due in the Supreme Court.

A significant number of cases are resolved by stipulations for discipline in which there is no dispute over material fact and both the Bar and the accused lawyer agree on the violations committed and appropriate sanction. Stipulations must be approved by the SPRB or its chairperson on behalf of the Bar. Once that approval is obtained, judicial approval is required from the state and regional chair of the Disciplinary Board in cases where sanctions do not exceed a 6-month suspension, or from the Supreme Court for cases involving greater sanctions. Judicial approval is not always given, in which case the parties must negotiate further or proceed to trial.

In 2010, 55 formal proceedings were concluded: 15 by decision in a contested case; 29 by stipulation; 7 by Form B resignation; and 4 by diversion. Another four matters resulted in the Supreme Court imposing reciprocal discipline by court order.

F. Appellate Review

The Supreme Court does not automatically review discipline cases in Oregon. Trial panel decisions, even those imposing disbarment, are final unless either the Bar or the accused lawyer seeks Supreme Court review. Appellate review by the court is mandatory if requested by a party.

When there is an appeal, lawyers in Disciplinary Counsel's Office prepare the record for submission to the court, draft and file the Bar's briefs and present oral argument before the court. The SPRB decides for the Bar whether to seek Supreme Court review.

In 2010, the Supreme Court rendered seven (7) discipline opinions in contested cases. The court also approved five (5) stipulations for discipline, imposed reciprocal discipline in four (4) cases, and issued orders in two (2) other cases suspending lawyers on an interim basis while the disciplinary proceedings against them were pending.

Among the noteworthy court decisions were:

In *In re Scott M. Snyder*, 348 Or 307, 232 P3d 952 (2010), the Supreme Court had occasion to interpret for the first time RPC 1.4 (a) and (b), the rules that require a lawyer to maintain a reasonable level of communication with a client. The lawyer represented a client in a personal injury claim and failed to inform the client of developments in the case or respond to status inquiries from the client. The lawyer contended that he was properly tending to the client's claim and that his conduct perhaps was poor "customer relations," but not unethical. The court disagreed, finding that the lawyer did not keep the client reasonably informed about the status of the case when the lawyer failed to apprise the client of communications from the prospective defendant and from the client's insurer, or tell the client that the lawyer intended to delay settlement negotiations with the carrier. The court concluded that this was the type of information that a client needs to know in order to make informed decisions about a case, and that it was required communication under RPC 1.4. The court also found that the lawyer failed to return the client's file materials promptly upon request, in violation of RPC 1.15-1(d). The lawyer was suspended from practice for 30 days.

In *In re Robert D. Newell*, 348 Or 396, 234 P3d 967 (2010), the lawyer was charged with communicating with a represented party in violation of RPC 4.2. The lawyer represented a corporate client in civil litigation and wanted to depose a former corporate employee who was awaiting sentencing on a criminal conviction related to his conduct while employed at the company. Knowing that the former employee was represented by counsel in the criminal case, the lawyer caused a deposition subpoena to be served on the former employee on a Friday evening, requiring appearance for the deposition on Saturday morning. The criminal defense lawyer was not notified of the deposition. The deponent appeared pursuant to the subpoena, advised that he had been unable to reach his defense lawyer and would not be able to answer questions related to the criminal case. The lawyer nevertheless proceeded to depose the former employee, asking questions that related to the criminal case. The lawyer defended the disciplinary charge by asserting that the deposition was taken as part of the civil case and the deponent was not represented by counsel in the civil case; hence, there was no improper communication with a represented party. The Supreme Court held that RPC 4.2 is not so limited. It prohibits communication on the "subject" on which a person is represented, in this case a subject that was common to both the civil and criminal cases. The court also rejected the defense that the communication with the former employee was pursuant to a properly noticed deposition and therefore fit within the "authorized by law" exception to RPC 4.2. The court was not willing to extend the exception that broadly, particularly when the former employee's defense counsel had no notice of the deposition. The lawyer was reprimanded for the violation.

In *In re Smith*, 348 Or 535, 236 P3d 137 (2010), a lawyer was suspended from practice for 90 days after he advised a client to enter a medical marijuana clinic at which the client formerly was employed and take control of the clinic from the clinic operators. The lawyer also accompanied the client to the clinic and made misrepresentations to those present about his client's authority to seize control. The Supreme Court determined that the lawyer had no nonfrivolous basis in law or fact to advise the client to take control of the clinic, or to make misrepresentations, and that he knew it. He therefore violated RPC 3.1 [frivolous action], RPC 4.1(a) [false statements] and RPC 8.4(a)(3) [misrepresentations]. He also was complicit in a criminal trespass of the clinic, thereby violating RPC 8.2(a)(2) [criminal conduct reflecting adversely on fitness].

In *In re Hostetter*, 348 Or 574, 238 P3d 13 (2010), the lawyer was found to have committed a former client conflict of interest (former DR 5-105(C)/RPC 1.9(a)) when he first represented a client in obtaining a series of loans from an individual lender, and later after the client died, represented the lender in seeking to collect the outstanding loans from the first client's estate. For conflict of interest purposes, the former client's interests survived her death and were adverse to the interests of the lender. Accordingly, the lawyer was not permitted to represent the lender in the subsequent collection efforts. In a separate aspect of the case, the lawyer was found to have engaged in misrepresentation when he altered a deed that already had been signed, and then recorded it. The lawyer was suspended from practice for 150 days.

G. Contested Admissions/Contested Reinstatements

Disciplinary Counsel's Office also represents the Board of Bar Examiners (BBX) in briefing and arguing before the Supreme Court those cases in which the BBX has made an adverse admissions recommendation regarding an applicant. The actual investigation and hearing in these cases are handled by the BBX under a procedure different from that applicable to lawyer discipline cases.

For reinstatements, Disciplinary Counsel's Office is responsible for processing and investigating all applications. Recommendations are then made to either the bar's Executive Director or the Board of Governors, depending on the nature of the application. Many reinstatements are approved without any further level of review. For reinstatement applicants who have had significant, prior disciplinary problems or have been away from active membership status for more than five years, the Board of Governors makes a recommendation to the Supreme Court. In cases when the board recommends against reinstatement of an applicant, the Supreme Court may refer the matter to the Disciplinary Board for a hearing before a threemember panel much like lawyer discipline matters, or may direct that a hearing take place before a special master appointed by the court. Disciplinary Counsel's Office has the same responsibilities for prosecuting these contested cases as with disciplinary matters. The office also handles the appeal of these cases, which is automatic, before the Supreme Court. A number of these proceedings were in progress in 2010.

IV. DISPOSITIONS

Attached as Appendix C is a list of disciplinary dispositions from 2010. The following table summarizes dispositions in recent years:

SANCTION TYPE	2006	2007	2008	2009	2010
Disbarment	3	1	5	1	2
Form B Resignation	6	10	18	8	7
Suspension	36	35	22	18	23
Suspension stayed/probation	0	0	2	0	5
Reprimand	14	20	23	12	16
Involuntary inactive Transfer	0	0	1	0	0
TOTAL Lawyer Sanctions	59	66	71	39	53
Dismissals after Adjudication	5	0	2	0	2
Dismissed as moot	0	0	1	1	0
Diversion	4	2	2	5	4
Admonitions	33	42	30	28	34

In conjunction with a stayed suspension or as a condition of admission or reinstatement, it is common for a period of probation to be imposed upon a lawyer. Disciplinary Counsel's Office was monitoring six (6) lawyers on probation at the end of 2010, along with six (6) lawyers in diversion. Most

probations and diversions require some periodic reporting by the lawyer. Some require more active monitoring by a probation supervisor, typically another lawyer in the probationer's community.

The types of conduct for which a disciplinary sanction was imposed in 2010, or a Form B resignation was submitted, varied widely. The following table identifies the misconduct most often implicated in those proceedings that were concluded by decision, stipulation, order, or resignation in 2010:

Type of misconduct	% of cases in which misconduct present
Inadequate client communication	49%
Neglect of legal matter	36%
Dishonesty or misrepresentation	35%
Trust account violation	35%
Excessive or illegal fees	29%
Failure to respond to OSB	25%
Inadequate accounting records	24%
Conduct prejudicial to justice	22%
Failure to return property or funds	16%
Incompetence	16%
Criminal conduct	15%
Improper withdrawal	15%
Unauthorized practice	11%
Multiple client conflicts	7%
Self-interest conflicts	5%
Disregarding a court rule or ruling	5%
Improper communication	5%
Advertising	4%
Other	22%

V. SUMMARY OF CASELOAD

A summary of the pending caseload in Disciplinary Counsel's Office at the end of 2010 follows:

New complaints pending	167
Pending LPRC investigations.....	9
Pending formal proceedings	64*
Probation/diversion matters.....	12
Contested admission/contested reinstatement matters.....	1
TOTAL.....	253

* Reflects no. of lawyers; no. of complaints is greater.

In addition to disciplinary matters, Disciplinary Counsel's Office processed and investigated approximately 164 reinstatement applications in 2010; processed approximately 543 membership status changes (inactive and active pro bono transfers and voluntary resignations); and responded to roughly 2,800 public record requests during the year.

VI. STAFFING/FUNDING

In 2010, Disciplinary Counsel's Office employed fifteen staff members (14 FTE), along with occasional temporary help. In addition to Disciplinary Counsel, there were seven staff lawyer positions. Support staff included one investigator, one office administrator, one regulatory services coordinator, three secretaries, and one public records coordinator. Current staff members include:

Disciplinary Counsel

Jeffrey D. Sapiro

Assistants Disciplinary Counsel

Amber Bevacqua-Lynott
Mary A. Cooper
Susan R. Cournoyer
Linn D. Davis
Stacy J. Hankin
Martha M. Hicks
Kellie F. Johnson

Support Staff

Lynn Bey-Roode
Jennifer Brand
Karen L. Duncan
Anita B. Erickson
Sandy L. Gerbish
Vickie R. Hansen
R. Lynn Haynes

Disciplinary Counsel's Office is funded out of the Bar's general fund. Revenue is limited (roughly \$70,000 for 2010) and comes from cost bill collections, reinstatement fees, a fee for good standing certificates and *pro hac vice* admissions, and photocopying charges for public records.

Expenses for 2010 were \$1,567,000 with an additional \$373,500 assessed as a support services (overhead) charge. Of the actual program expenses, 91% consisted of salaries and benefits. An additional 4.6% of the expense budget went to out-of-pocket expenses for court reporters, witness fees, investigative expenses and related items. Four percent of the expense budget was spent on general and administrative expenses such as copying charges, postage, telephone and staff travel expense.

VII. OTHER DEVELOPMENTS

A. Trust Account Overdraft Notification Program

The Oregon State Bar has a Trust Account Overdraft Notification Program, pursuant to ORS 9.132 and RPC 1.152. Under the program, lawyers are required to maintain their trust accounts in financial institutions that have agreed to notify the Bar of any overdraft on such accounts. Approximately 65 banks have entered into notification agreements with the Bar.

In 2010, the Bar received notice of 64 trust account overdrafts. For each overdraft, a written explanation and supporting documentation was requested of the lawyer, with follow-up inquiries made as necessary.

Many overdrafts were the result of bank or isolated lawyer error and, once confirmed as such, were dismissed by staff. If circumstances causing an overdraft suggested an ethics violation, the matter was referred to the SPRB. A minor violation resulting in an overdraft typically results in a letter of admonition issued to the lawyer. More serious or on-going violations result in formal disciplinary action. A summary of the disposition of trust account overdrafts received in 2010 follows:

2010 Trust Account Overdrafts	
Dismissed by staff	49
Dismissed by SPRB	0
Referred to LPRC for further investigation	0
Closed by admonition letter	4
Closed by diversion	1
Formal charges authorized	3
Closed by Form B resignation	5
Pending (as of 3/2011)	2
Total Received	64

B. IOLTA Compliance

Related to trust accounts is the obligation under RPC1.152(m) for Oregon lawyers to certify annually that they are in compliance with the trust account disciplinary rules, identifying the financial institutions and account numbers in which Interest on Lawyer Trust Account (IOLTA) trust funds are held. The annual certification is distributed to each lawyer with the yearly invoice for membership dues.

By April 2010, approximately 730 lawyers still had not filed their IOLTA certifications, and their names were turned over to Disciplinary Counsel's Office. Further notices from DCO prompted substantial compliance such that only two (2) lawyers ultimately were charged with a violation of RPC 1.15-2(m) from 2010.

C. Public Records

In Oregon, lawyer discipline files are public record with very limited exceptions. Disciplinary Counsel staff responds to an average of 230 public records requests each month. These requests come from members of the public who inquire into a lawyer's background or from other Bar members who have a need to examine these records.

Disciplinary history data is on computer such that many disciplinary record inquiries can be answered without a manual review of a lawyer's file. A significant number of requests, however, require the scheduling of appointments for file review.

During 2010, the Bar followed its established document management and retention policies. Ethics complaints dismissed for lack of probable

cause more than ten (10) years ago were destroyed. Retained records were scanned and maintained in electronic format, thereby reducing the physical file storage needs of the Bar.

D. *Pro Hac Vice* Admission

Uniform Trial Court Rule 3.170 provides that all applications by out-of-state lawyers for admission in a single case in Oregon (*pro hac vice* admission) must first be filed with the Oregon State Bar, along with a fee of \$250. Disciplinary Counsel's Office is responsible for reviewing each application and supporting documents (good standing certificate, evidence of professional liability coverage, etc.) for compliance with the UTCR. The filing fees collected, after a nominal administrative fee is deducted, are used to help fund legal service programs in Oregon.

In 2010, the Bar received and processed 381 *pro hac vice* applications, collecting \$95,250 for legal services.

E. Custodianships

ORS 9.705, *et. seq.*, provides a mechanism by which the Bar may petition the circuit court for the appointment of a custodian to take over the law practice of a lawyer who has abandoned the practice or otherwise is incapable of carrying on. In 2010, the Bar was not required to initiate a custodianship, although two lawyers were suspended by the Supreme Court upon the Bar's petition alleging emergency circumstances.

F. Continuing Legal Education Programs

Throughout 2010, Disciplinary Counsel staff participated in numerous CLE programs dealing with ethics and professional responsibility issues. Staff spoke to law school classes, local bar associations, Oregon State Bar section meetings, specialty bar organizations and general CLE audiences.

VIII. CONCLUSION

In 2010, the Oregon State Bar remained committed to maintaining a system of lawyer regulation that fairly but effectively enforces the disciplinary rules governing Oregon lawyers. Many dedicated individuals, both volunteers and staff, contributed significantly toward that goal throughout the year.

Respectfully submitted,

Jeffrey D. Sapiro

Disciplinary Counsel

APPENDIX A - 2010

COMPLAINANT TYPE	NUMBER	PERCENTAGE
Accused (self-reported)	19	4.4%
Client	121	28.3%
Judge	16	3.7%
Opposing Counsel	37	8.7%
Opposing Party	26	6.1%
Third Party	27	6.3%
Unknown	0	0%
OSB	93	21.7%
OSB (IOLTA Compliance)	89	20.8%
TOTAL	428	100.0%
COMPLAINT SUBJECT MATTER	NUMBER	PERCENTAGE
Adoption	2	.5%
Advertisement	0	0%
Arbitration	2	.5%
Bankruptcy	18	4.2%
Business	10	2.3%
Civil dispute (general)	22	5.1%
Conservatorship	2	.5%
Criminal	57	13.3%
Domestic Relations	40	9.3%
Estate Planning	2	.5%
Guardianship	4	.9%
Immigration	5	1.2%
Juvenile	4	.9%
Labor Law	2	.5%
Litigation (general)	23	5.4%
Land Use	0	0%
Other	30	7.0%
Paternity	0	0%
Personal injury	13	3.0%
Probate	7	1.6%
Real Estate	8	1.9%
Social Security	3	.7%
Tenant/landlord	1	.2%
Tax	0	0%
Trust Account (IOLTA)	89	20.8%
Trust Account Overdraft	77	18.0%
Workers Comp.	5	1.2%
Unknown	2	.5%
TOTAL	428	100.0%

APPENDIX B - 2009

COMPLAINANT TYPE	NUMBER	PERCENTAGE
Accused (self-reported)	22	4.5%
Client	151	31.3%
Judge	8	1.6%
Opposing Counsel	27	5.6%
Opposing Party	28	5.8%
Third Party	52	10.8%
Unknown	0	–
OSB	98	20.3%
OSB (IOLTA Compliance)	97	20.1%
TOTAL	483	100%
COMPLAINT SUBJECT MATTER	NUMBER	PERCENTAGE
Adoption	5	1.0%
Advertisement	0	–
Arbitration	0	–
Bankruptcy	22	4.6%
Business	5	1.0%
Civil dispute (general)	20	4.2%
Conservatorship	2	0.4%
Criminal	60	12.4%
Domestic Relations	44	9.1%
Estate Planning	4	0.8%
Guardianship	1	0.2%
Immigration	8	1.7%
Juvenile	1	0.2%
Labor Law	3	0.6%
Litigation (general)	31	6.4%
Land Use	0	–
Other	26	5.4%
Paternity	0	–
Personal injury	11	2.3%
Probate	8	1.7%
Real Estate	13	2.7%
Social Security	2	0.4%
Tenant/landlord	2	0.4%
Tax	0	–
Trust Account (IOLTA)	97	20.1%
Trust Account Overdraft	102	21.1%
Workers Comp.	12	2.5%
Unknown	4	0.8%
TOTAL	483	100%

OSB Disposition List 2010

Case No.	Case Name/Cite	Disposition	CC/ Stip	S Ct/ DB	Date of Action	Effective Date	DRs ORS	Bulletin Summary
1	O 8 - 163, 164 Catherine Dixon 24 DB Rptr 1	Four year suspension	CC	DB	11/20/09	1/20/10	1.5(a), 1.15-1(d), 1.16(d), 8.1(a)(2) 1.4(a) - NG	April 2010
2	O 9-142 Ann B. Witte 24 DB Rptr 10	Reprimand	Stip	DB	1/11/10	1/11/10	1.3, 1.4(a), 1.16(a), 1.16(d)	April 2010
3	O 8 - 124, 125; O 9- 45, 46 Martin R. Capetz SC S058043	Form B resignation	-	S Ct	1/21/10	1/21/10	1.5(a), 1.15-1(a), 1.15-1(c), 1.16(d), 3.4(a), 5.5(a), 7.1(a)(1), 7.5(c)(1), 8.1(a) (2), 8.4(a)(3), 8.4(a)(4), ORS 9.160(1)	April 2010
4	O 9-95, O 9-96 William E. Carl SC S058149, 24 DB Rptr 17	One year suspension, all but 30 days stayed, 3 year probation	Stip	S Ct	1/21/10	1/28/10	8.4(a)(2), ORS 9.527(2)	April 2010
5	O 9 - 09, 10, 49 to 51, 109 to 111 Keith Hayes SC S058075	BR 3.1 suspension	CC	S Ct	1/28/10	1/28/10	1.3, 1.4(a), 1.5(a), 1.16(d), 3.3(a)(1), 3.4(a), 3.4(c), 8.4(a)(3), 8.4(a)(4)	No
6	O 9-121 Karen Misfeldt 24 DB Rptr 25	Reprimand	Stip	DB	2/3/10	2/3/10	1.1, 1.4(a), 1.4(b), 1.7(a)	April 2010
7	O 9-68 Benjamin M. Karlin 24 DB Rptr 31	60 day suspension	Stip	DB	2/3/10	3/5/10	1.4(a), 1.4(b), 1.15-1(a), 1.15-1(c), 1.15-1(d)	April 2010
8	O 9-41 Christy Dickson	Diversio	-	SPRB	2/15/10	2/15/10	1.16(c), 1.16(d), 8.1(a)(2)	No
9	O 9-106 Sharon C. Stevens 24 DB Rptr 38	60 day suspension	Stip	DB	2/19/10	3/5/10	1.3, 1.4(a)	April 2010
10	O 9-97, O 9-126 Craig P. Colby 24 DB Rptr 47	30 day suspension	Stip	DB	3/3/10	3/3/10	1.3, 1.4(a), 1.4(b)	May 2010
11	O 9-125 Daniel J. Lounsbury 24 DB Rptr 53	Reprimand	Stip	DB	3/22/10	3/22/10	1.5(a), 1.15-1(c), 1.16(d)	May 2010
12	10-01 Theodore A. Mahr SC S058212	BR 3.5 reciprocal discipline - three year suspension	CC	S Ct	3/25/10	3/25/10	Wash RPC 1.2, 1.3, 1.4, 1.5(a), 1.5(b), 1.16(d), 8.4(a), 8.4(c)	May 2010
13	O 9-136 Christian E. Hearn	Diversio	-	SPRB	4/1/10	4/1/10	DR 9-101A2, 9-101D3, RPC 1.15-2(c), 1.15-2(e), 1.15-2(f)	No

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OSB Disposition List 2010

	Case No.	Case Name/Cite	Disposition	CC/ Stip	S Ct/ DB	Date of Action	Effective Date	DRs ORS	Bulletin Summary
14	09-48	Amanda L. Stanley SC S058309	Form B resignation	-	S Ct	4/8/10	4/8/10	1.15-1(c), 1.16(d), 8.4(a)(2), 8.4(a)(3), ORS 9.527(2)	June 2010
15	08-30 to 32, 38; 09-05	Jonathan P. Sushida SC S058382, 24 DB Rptr 58	Three year suspension	Stip	S Ct	4/8/10	4/8/10	1.1, 1.2(a), 1.3, 1.4(a), 1.4(b), 1.15-1(a), 1.15-1(c), 1.15-1(d), 1.16(a)(2), 1.16(d), 8.1(a)(2), 8.4(a)(3),	June 2010
16	08 - 69 , 70, 89, 126, 127	Peter J. Carini 24 DB Rptr 75	30 day suspension stayed/ probation	CC	DB	2/19/10	4/24/10	1.4(a), 3.4(c), 8.4(a)(4)	July 2010
17	09-135	James N. Welty 24 DB Rptr 92	Reprimand	Stip	DB	4/22/10	4/22/10	9-101C3, 9-101C4	June 2010
18	08-106	Paula B. Hammond 24 DB Rptr 97	30 day suspension	Stip	DB	4/29/10	6/1/10	1-102(A)(4), 2-110(B)(2), 6-101(A), 1.1, 1.16(a)(1), 8.4(a)(4)	July 2010
19	08-107 to 08-110	Glenda P. Durham SC S058259	Form B resignation	-	S Ct	4/29/10	4/29/10	1-102(A)(4), 2-110(B)(2) & (3), 5-103(B), 6-101(A), 6-101(B), 1.1, 1.4(a) & (b), 1.8(e), 1.16(a)(1) & (2), 8.1(a)(1) & (2), 8.4(a)(4)	July 2010
20	06-109	Thomas J. Peterson 348 Or 325, 232 P3d 940	60 day suspension	CC	S Ct	5/27/10	7/26/10	1.15-1(a), 1.15-1(c)	Aug/Sept 2010
21	08-19	Scott M. Snyder 348 Or 307, 232 P3d 952	30 day suspension	CC	S Ct	5/27/10	7/26/10	1.4(a), 1.4(b), 1.15-1(d)	Aug/Sept 2010
22	09-87	Donald R. Slayton 24 DB Rptr 106	60 day suspension	Stip	DB	5/27/10	6/15/10	8.4(a)(3), 8.4(a)(4)	Aug/Sept 2010
23	07-142	Robert D. Newell 348 Or 396, 234 P3d 967	Reprimand	CC	S Ct	6/10/10		4.2	Aug/Sept 2010
24	09-24	Rhonda Lee Antell SC S058544, 24 DB Rptr 113	1 year suspension, 10 months stayed, one-year probation	Stip	S Ct	6/11/10	6/14/10	8.4(a)(2), 8.4(a)(3)	Oct 2010

OSB Disposition List 2010

Case No.	Case Name/Cite	Disposition	CC/ Stip	S Ct/ DB	Date of Action	Effective Date	DRs ORS	Bulletin Summary
25	09-34 Charles F. Lee 24 DB Rptr 121	Dismissal	CC	DB	4/14/10	6/19/10	8.4(a)(4)	July 2010
26	09-72 Rankin Johnson 24 DB Rptr 127	Six month suspension	Stip	DB	6/16/10	6/30/10	1.3, 1.4(a), 8.4(a)(3)	Aug/Sept 2010
27	06-9110 R. Kevin Hendrick 24 DB Rptr 138	Two year suspension	CC	DB	4/5/10	6/22/10	1.15-1(a), 1.15-1(c), 1.15-1(d), 7.1(a)(1), 8.1(a)(1), 8.4(a)(2), 8.4(a)(3)	Aug/Sept 2010
28	10-33, 10-34 Deborah L. Abernathy SC S058388	BR 3.5 reciprocal discipline - 10 month suspension	CC	S Ct	6/24/10	6/24/10	Ariz. ER 1.1, 1.3, 1.4, 1.5, 1.15, 1.16, 8.1(b)	Aug/Sept 2010
29	07-175, 10-18 Scott P. Bowman SC S058608, 24 DB Rptr 144	One year suspension, eight months stayed, plus proba- tion	Stip	S Ct	7/8/10	9/6/10	1-102(A)(2), 1.4(a), 1.8(h)(1), 1.8(h)(3), 1.15-1(a), 1.15-1(c), 5.4(a), 5.5(a), 8.1(a)(2), 8.4(a)(2), ORS 9.160(1)	Oct 2010
30	07-94, 95; 08-09; 09-26, 43, 44 Michael R. Shinn SC S058563	Form B resignation	-	S Ct	7/8/10	7/8/10	1.3, 1.4(a), 1.5(a), 1.15-1(a), 1.15-1(d), 3.4(c), 8.1(a)(2), 8.4(a)(3), 8.4(a)(4), ORS 9.527(3)	Aug/Sept 2010
31	10-35 James R. Eckley SC S058376	BR 3.5 reciprocal discipline - reprimand	CC	S Ct	7/8/10	7/8/10	Ariz ER 1.8(a), 5.7; Ariz R S Ct 43, 44(a)	Aug/Sept 2010
32	09-114, 09-115 Edmund J. Spinney	Diversión	-	SPRB	7/15/10	7/15/10	1.15-1(a), 1.15-1(c), 8.1(a)(2)	No
33	07-53 Frederick T. Smith 348 Or 535, 236 P3d 137	90 day suspension	CC	S Ct	7/15/10	9/13/10	3.1, 4.1(a), 8.4(a)(2), 8.4(a)(3)	Oct 2010
34	09 - 09, 10, 49-51, 109-113, 116-120, 144 Keith Hayes 24 DB Rptr 157	Disbarment	CC	DB	5/26/10	7/27/10	1.3, 1.4(a), 1.4(b), 1.5(a), 1.15-1(d), 1.16(d), 3.3(a)(1), 3.3(a)(4), 3.4(c), 8.1(a)(2), 8.4(a)(3), 8.4(a)(4)	Oct 2010
35	07-37, 07-161 D. Rahn Hostetter 348 Or 574, 238 P3d 13	150 day suspension	CC	S Ct	7/29/10	9/27/10	1-102A3, 5-105C, 1.9(a), 8.4(a)(3)	Oct 2010

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OSB Disposition List 2010

	Case No.	Case Name/Cite	Disposition	CC/ Stip	S Ct/ DB	Date of Action	Effective Date	DRs ORS	Bulletin Summary
36	09-75	Pamela A. Harrison SC S058599	Form B resignation	-	S Ct	7/29/10	7/29/10	1.3, 1.4(a), 1.15-1(d)	Oct 2010
37	10-58	Marsha N. Honda SC S058541	BR 3.5 reciprocal matter - no discipline imposed	CC	S Ct	7/29/10	7/29/10	Calif criminal conviction	No
38	08-161	Gary R. Carl 24 DB Rptr 170	Dismissal	CC	DB	6/1/10	8/3/10	NG - 1-102A3, 1-102A4, 7-110B	Oct 2010
39	08 - 9 3 ; 09 - 3 3 , 42, 59, 60, 91	Daniel W. Dickerson 24 DB Rptr 177	Disbarment	CC	DB	6/4/10	8/7/10	1.3, 1.4(a), 1.5(a), 1.15-1(a), 1.15-1(c), 1.15-1(d), 1.16(d), 8.1(a)(2), 8.4(a)(3)	Nov 2010
40	09-03	Robert S. Simon 24 DB Rptr 181	Reprimand	Stip	DB	8/16/10	8/16/10	2-106A, ORS 9.160	Oct 2010
41	09-69	Todd S. Hammond 24 DB Rptr 187	Reprimand	Stip	DB	8/16/10	8/16/10	2-106A, 1.5(a)	Oct 2010
42	10-67	Priscilla Maloney 24 DB Rptr 194	Reprimand	Stip	DB	8/16/10	8/16/10	1.4(a)	Nov 2010
43	10-16, 10-17	Carter A. Daum 24 DB Rptr 199	120 day suspension	Stip	DB	8/18/10	9/17/10	1.1, 1.2(c), 1.3, 1.4(a), 8.4(a)(3), 8.4(a) (4)	Oct 2010
44	09-74, 10-71	Lisette Spencer 24 DB Rptr 209	90 day suspension	Stip	DB	8/18/10	9/1/10	1.2(a), 1.3, 1.4(a), 1.5(a), 8.4(a)(4)	Nov 2010
45	10-19	David G. Brown	Diversion	-	SPRB	9/1/10	9/1/10	1.5(a), 1.15-1(d), 1.15-1(e)	No
46	09-124	Michael R. Jordan 24 DB Rptr 218	60 day suspension	Stip	DB	8/19/10 9/24/10	8/21/10	1.3, 1.4(a), 1.4(b), 8.4(a)(3)	Nov 2010
47	08-42	Sean L. Hartfield 349 Or 108, 239 P3d 992	Reprimand	CC	S Ct	9/23/10	10/14/10	8.4(a)(4)	Dec 2010
48	09-21	James F. O'Rourke 24 DB Rptr 227	Reprimand	Stip	DB	10/6/10	10/6/10	1.1	Dec 2010

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OSB Disposition List 2010

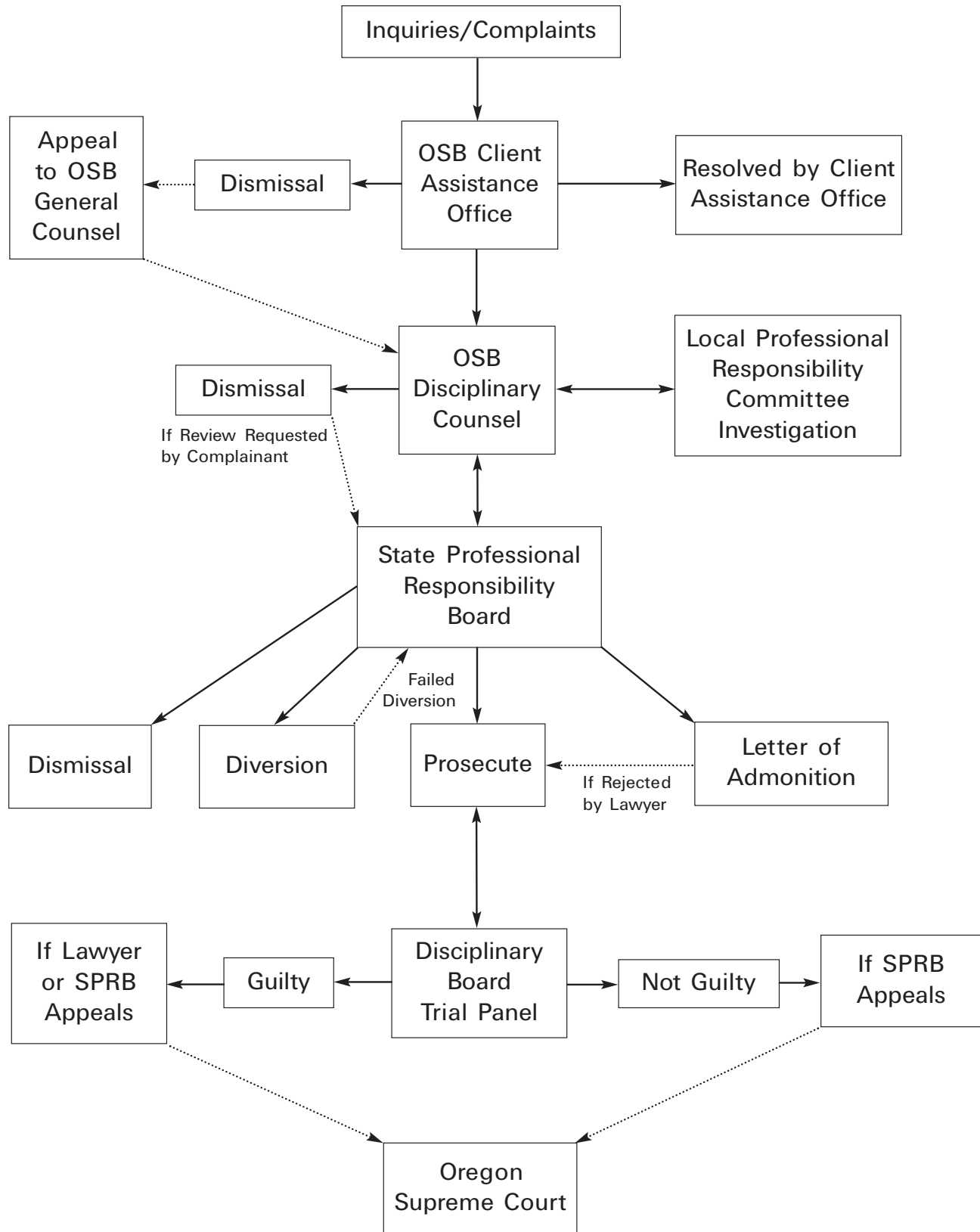
Case No.	Case Name/Cite	Disposition	CC/ Stip	S Ct/ DB	Date of Action	Effective Date	DRs ORS	Bulletin Summary
49	James C. Hilborn 24 DB Rptr 233	30 day suspension	Stip	DB	10/8/10	12/15/10	1.4(a), 1.4(b), 8.4(a)(4)	Dec 2010
50	Ann Mercer 24 DB Rptr 240	Reprimand	Stip	DB	10/8/10	10/8/10	3.5(b), 5.5(a), Wash 5.5(a)	Dec 2010
51	Mitchell R. Barker 24 DB Rptr 246	60 day suspension	Stip	DB	10/20/10	11/3/10	5.5(a), 8.1(a)(1), ORS 9.160	Dec 2010
52	B. William Ginsler SC SO58776	Form B resignation	-	S Ct	10/21/10	10/21/10	1.1, 1.3, 1.4(a), 1.5(a), 1.15-1(a), 1.15-1(c), 1.15-1(d), 1.16(a)(1), 1.16(d), 8.4(a)(3)	January 2011
53	Keith G. Jordan SC SO58744	BR 3.5 reciprocal discipline - two year suspension	CC	S Ct	10/21/10	10/21/10	Cal RPC 3-110(a), 3-700(a)(2), 3-700(d)(1), 3-700(d)(2), B&P §6068(m)	Feb/Mar 2011
54	Scott A. Hodgess 24 DB Rptr 253	Reprimand	Stip	DB	10/29/10	10/29/10	5.5(a), 8.1(a)(2), ORS 9.160	January 2011
55	J. Lee Street SC SO58814, 24 DB Rptr 258	One year suspension, eight months stayed, plus proba- tion	Stip	S Ct	11/10/10	11/10/10	1-102(A)(2), 8.4(a)(2)	January 2011
56	Susan Ford Burns 24 DB Rptr 266	One year suspension	CC	DB	9/30/10	12/7/10	2-106A, 9-101C3, 1.4(a), 1.5(a), 1.7(a), 1.15-1(c), 1.15-1(d), 1.15-1(e), 1.16(d), 8.1(a)(2)	Feb/Mar 2011
57	Theodore C. Coran 24 DB Rptr 269	Reprimand	Stip	DB	12/7/10	12/7/10	1.5(c)(2), 1.15-1(a), 1.15-1(c)	Feb/Mar 2011
58	Lynn M. Murphy 349 Or 366, 245 P3d 100	120 day suspension	CC	S Ct	12/9/10	2/7/11	1.3, 1.4(a), 8.1(a)(2)	Feb/Mar 2011
59	G. Victor Tiscornia, II	BR 3.1 suspension	CC	S Ct	12/13/10	12/13/10	1.3, 1.4(a), 1.4(b), 1.5(a), 3.4(c), 1.15-1(a), 1.15-1(d), 8.1(a)(2), 8.4(a)(2), 8.4(a)(3), 8.4(a)(4)	No

APPENDIX C-5

OSB Disposition List 2010

	Case No.	Case Name/Cite	Disposition	CC/ Stip	S Ct/ DB	Date of Action	Effective Date	DRs ORS	Bulletin Summary
60	10-128	Gino G. Pieretti 24 DB Rptr 277	Reprimand	Stip	DB	12/17/10	12/17/10	1.3, 1.4(a)	Feb/Mar 2011
61	10-37	Shannon K. Connall SC S058951	Form B resignation	-	S Ct	12/23/10	12/23/10	1.1, 1.3, 1.4(a), 1.5(a), 1.7(a), 1.15-1(a), 1.15-1(c), 1.15-1(d), 1.15-1(e), 1.16, 8.1(a)(1), 8.4(a)(3)	Feb/Mar 2011
62	10-137	Jack Levy SC S058948	BR 3.4 criminal conviction - No discipline imposed	-	S Ct	12/23/10	12/23/10	ORS 9.527(2)	No
63	10-104	Dan Van Thiel 24 DB Rptr 282	Reprimand	Stip	DB	12/29/10	12/29/10	2.4(a)(1), 2.4(a)(2), 4.3	x

OREGON STATE BAR DISCIPLINARY PROCESS



APPENDIX D



March 4, 2011

Armies of Expensive Lawyers, Replaced by Cheaper Software

By JOHN MARKOFF

When five television studios became entangled in a Justice Department antitrust lawsuit against CBS, the cost was immense. As part of the obscure task of "discovery" — providing documents relevant to a lawsuit — the studios examined six million documents at a cost of more than \$2.2 million, much of it to pay for a platoon of lawyers and paralegals who worked for months at high hourly rates.

But that was in 1978. Now, thanks to advances in artificial intelligence, "e-discovery" software can analyze documents in a fraction of the time for a fraction of the cost. In January, for example, [Blackstone Discovery](#) of Palo Alto, Calif., helped analyze 1.5 million documents for less than \$100,000.

Some programs go beyond just finding documents with relevant terms at computer speeds. They can extract relevant concepts — like documents relevant to social protest in the Middle East — even in the absence of specific terms, and deduce patterns of behavior that would have eluded lawyers examining millions of documents.

"From a legal staffing viewpoint, it means that a lot of people who used to be allocated to conduct document review are no longer able to be billed out," said Bill Herr, who as a lawyer at a major chemical company used to muster auditoriums of lawyers to read documents for weeks on end. "People get bored, people get headaches. Computers don't."

Computers are getting better at mimicking human reasoning — [as viewers of "Jeopardy!" found out](#) when they saw Watson beat its human opponents — and they are claiming work once done by people in high-paying professions. The number of computer chip designers, for example, has largely stagnated because powerful software programs replace the work once done by legions of logic designers and draftsmen.

Software is also making its way into tasks that were the exclusive province of human decision makers, like loan and mortgage officers and tax accountants.

These new forms of automation have renewed the debate over the economic consequences of technological progress.

David H. Autor, an economics professor at the [Massachusetts Institute of Technology](#), says the United States economy is being "hollowed out." New jobs, he says, are coming at the bottom of the economic pyramid, jobs in the middle are being lost to automation and outsourcing, and now job growth at the top is slowing because of automation.

"There is no reason to think that technology creates unemployment," Professor Autor said. "Over the long run we find things for people to do. The harder question is, does changing technology always lead to better jobs? The answer is no."

Automation of higher-level jobs is accelerating because of progress in computer science and linguistics. Only recently have researchers been able to test and refine algorithms on vast data samples, including a huge trove of e-mail from the [Enron Corporation](#).

"The economic impact will be huge," said Tom Mitchell, chairman of the machine learning department at [Carnegie Mellon University](#) in Pittsburgh. "We're at the beginning of a 10-year period where we're going to transition from computers that can't understand language to a point where computers can understand quite a bit about language."

Nowhere are these advances clearer than in the legal world.

E-discovery technologies generally fall into two broad categories that can be described as "linguistic" and "sociological."

The most basic linguistic approach uses specific search words to find and sort relevant documents. More advanced programs filter documents through a large web of word and phrase definitions. A user who types "dog" will also find documents that mention "man's best friend" and even the notion of a "walk."

The sociological approach adds an inferential layer of analysis, mimicking the deductive powers of a human Sherlock Holmes. Engineers and linguists at [Cataphora](#), an information-sifting company based in Silicon Valley, have their software mine documents for the activities and interactions of people — who did what when, and who talks to whom. The software seeks to visualize chains of events. It identifies discussions that might have taken place across e-mail, instant messages and telephone calls.

Then the computer pounces, so to speak, capturing "digital anomalies" that white-collar criminals often create in trying to hide their activities.

For example, it finds “call me” moments — those incidents when an employee decides to hide a particular action by having a private conversation. This usually involves switching media, perhaps from an e-mail conversation to instant messaging, telephone or even a face-to-face encounter.

“It doesn’t use keywords at all,” said Elizabeth Charnock, Cataphora’s founder. “But it’s a means of showing who leaked information, who’s influential in the organization or when a sensitive document like an S.E.C. filing is being edited an unusual number of times, or an unusual number of ways, by an unusual type or number of people.”

The Cataphora software can also recognize the sentiment in an e-mail message — whether a person is positive or negative, or what the company calls “loud talking” — unusual emphasis that might give hints that a document is about a stressful situation. The software can also detect subtle changes in the style of an e-mail communication.

A shift in an author’s e-mail style, from breezy to unusually formal, can raise a red flag about illegal activity.

“You tend to split a lot fewer infinitives when you think the [F.B.I.](#) might be reading your mail,” said Steve Roberts, Cataphora’s chief technology officer.

Another e-discovery company in Silicon Valley, [Clearwell](#), has developed software that analyzes documents to find concepts rather than specific keywords, shortening the time required to locate relevant material in litigation.

Last year, Clearwell software was used by the law firm DLA Piper to search through a half-million documents under a court-imposed deadline of one week. Clearwell’s software analyzed and sorted 570,000 documents (each document can be many pages) in two days. The law firm used just one more day to identify 3,070 documents that were relevant to the court-ordered discovery motion.

Clearwell’s software uses language analysis and a visual way of representing general concepts found in documents to make it possible for a single lawyer to do work that might have once required hundreds.

“The catch here is information overload,” said Aaref A. Hilaly, Clearwell’s chief executive. “How do you zoom in to just the specific set of documents or facts that are relevant to the specific question? It’s not about search; it’s about sifting, and that’s what e-discovery software enables.”

For Neil Fraser, a lawyer at Milberg, a law firm based in New York, the Cataphora software provides a way to better understand the internal workings of corporations he sues, particularly when the real decision makers may be hidden from view.

He says the software allows him to find the ex-Pfc. Wintergreens in an organization — a reference to a lowly character in the novel “Catch-22” who wielded great power because he distributed mail to generals and was able to withhold it or dispatch it as he saw fit.

Such tools owe a debt to an unlikely, though appropriate, source: the electronic mail database known as the [Enron Corpus](#).

In October 2003, Andrew McCallum, a computer scientist at the [University of Massachusetts](#), Amherst, read that the federal government had a collection of more than five million messages from the prosecution of Enron.

He bought a copy of the database for \$10,000 and made it freely available to academic and corporate researchers. Since then, it has become the foundation of a wealth of new science — and its value has endured, since privacy constraints usually keep large collections of e-mail out of reach. “It’s made a massive difference in the research community,” Dr. McCallum said.

The Enron Corpus has led to a better understanding of how language is used and how social networks function, and it has improved efforts to uncover social groups based on e-mail communication.

Now artificial intelligence software has taken a seat at the negotiating table.

Two months ago, [Autonomy](#), an e-discovery company based in Britain, worked with defense lawyers in a lawsuit brought against a large oil and gas company. The plaintiffs showed up during a pretrial negotiation with a list of words intended to be used to help select documents for use in the lawsuit.

“The plaintiffs asked for 500 keywords to search on,” said Mike Sullivan, chief executive of Autonomy Protect, the company’s e-discovery division.

In response, he said, the defense lawyers used those words to analyze their own documents during the negotiations, and those results helped them bargain more effectively, Mr. Sullivan said.

Some specialists acknowledge that the technology has limits. “The documents that the process kicks out still have to be read by someone,” said Herbert L. Roitblat of OrcaTec, a consulting firm in Atlanta.

Quantifying the employment impact of these new technologies is difficult. Mike Lynch, the founder of Autonomy, is convinced that “legal is a sector that will likely employ fewer, not more, people in the U.S. in the future.” He estimated that the shift from manual document discovery to e-discovery would lead to a manpower reduction in which one lawyer would suffice for work that once required 500 and that the newest generation of software, which can detect duplicates and find clusters of important documents on a particular topic, could cut the head count by another 50 percent.

The computers seem to be good at their new jobs. Mr. Herr, the former chemical company lawyer, used e-discovery software to reanalyze work his company’s lawyers did in the 1980s and ’90s. His human colleagues had been only 60 percent accurate, he found.

“Think about how much money had been spent to be slightly better than a coin toss,” he said.

January 9, 2011

Is Law School a Losing Game?

By DAVID SEGAL

CORRECTION APPENDED

IF there is ever a class in how to remain calm while trapped beneath \$250,000 in loans, Michael Wallerstein ought to teach it.

Here he is, sitting one afternoon at a restaurant on the Upper East Side of Manhattan, a tall, sandy-haired, 27-year-old radiating a kind of surfer-dude serenity. His secret, if that's the right word, is to pretty much ignore all the calls and letters that he receives every day from the dozen or so creditors now hounding him for cash.

"And I don't open the e-mail alerts with my credit score," he adds. "I can't look at my credit score any more."

Mr. Wallerstein, who can't afford to pay down interest and thus watches the outstanding loan balance grow, is in roughly the same financial hell as people who bought more home than they could afford during the real estate boom. But creditors can't foreclose on him because he didn't spend the money on a house.

He spent it on a law degree. And from every angle, this now looks like a catastrophic investment.

Well, every angle except one: the view from law schools. To judge from data that law schools collect, and which is published in the closely parsed U.S. News and World Report annual rankings, the prospects of young doctors of jurisprudence are downright rosy.

In reality, and based on every other source of information, Mr. Wallerstein and a generation of J.D.'s face the grimmest job market in decades. Since 2008, some 15,000 attorney and legal-staff jobs at large firms have vanished, according to a Northwestern Law study. Associates have been laid off, partners nudged out the door and recruitment programs have been scaled back or eliminated.

And with corporations scrutinizing their legal expenses as never before, more entry-level legal work is now outsourced to contract temporary employees, both in the United States and in countries like India. It's common to hear lawyers fret about the sort of tectonic shift that crushed the domestic steel industry decades ago.

But improbably enough, law schools have concluded that life for newly minted grads is getting sweeter, at least by one crucial measure. In 1997, when U.S. News first published a statistic called "graduates known to be employed nine months after graduation," law schools reported an average employment rate of 84 percent. In the most recent U.S. News rankings, 93 percent of grads were working -- nearly a 10-point jump.

In the Wonderland of these statistics, a remarkable number of law school grads are not just busy -- they are raking it in. Many schools, even those that have failed to break into the U.S. News top 40, state that the median starting salary of graduates in the private sector is \$160,000. That seems highly unlikely, given that Harvard and Yale, at the top of the pile, list the exact same figure.

How do law schools depict a feast amid so much famine?

"Enron-type accounting standards have become the norm," says William Henderson of Indiana University, one of many exasperated law professors who are asking the American Bar Association to overhaul the way law schools assess themselves. "Every time I look at this data, I feel dirty."

IT is an open secret, Professor Henderson and others say, that schools finesse survey information in dozens of ways. And the survey's guidelines, which are established not by U.S. News but by the American Bar Association, in conjunction with an organization called the National Association for Law Placement, all but invite trimming.

A law grad, for instance, counts as "employed after nine months" even if he or she has a job that doesn't require a law degree. Waiting tables at Applebee's? You're employed. Stocking aisles at Home Depot? You're working, too.

Number-fudging games are endemic, professors and deans say, because the fortunes of law schools rise and fall on rankings, with reputations and huge sums of money hanging in the balance. You may think of law schools as training grounds for new lawyers, but that is just part of it.

They are also cash cows.

Tuition at even mediocre law schools can cost up to \$43,000 a year. Those huge lecture-hall classes -- remember "The Paper Chase"? -- keep teaching costs down. There are no labs or expensive equipment to maintain. So much money flows into law schools that law professors are among the highest paid in academia, and law schools that are part of universities often subsidize the money-losing fields of higher education.

"If you're a law school and you add 25 kids to your class, that's a million dollars, and you don't even have to hire another teacher," says Allen Tanenbaum, a lawyer in Atlanta who led the American Bar Association's commission on the impact of the economic crisis on the profession and

legal needs. "That additional income goes straight to the bottom line."

There were fewer complaints about fudging and subsidizing when legal jobs were plentiful. But student loans have always been the financial equivalent of chronic illnesses because there is no legal way to shake them. So the glut of diplomas, the dearth of jobs and those candy-coated employment statistics have now yielded a crop of furious young lawyers who say they mortgaged their future under false pretenses. You can sample their rage, and their admonitions, on what are known as law school scam blogs, with names like Shilling Me Softly, Subprime JD and Rose Colored Glasses.

"Avoid this overpriced sewer pit as if your life depended on it," writes the anonymous author of the blog Third Tier Reality -- a reference to the second-to-bottom tier of the U.S. News rankings -- in a typically scatological review. "Unless, of course, you think that you will be better off with \$110k-\$190k in NON-DISCHARGEABLE debt for a degree that qualifies you to wait tables at the Battery Park Bar and Lounge."

But so far, the warnings have been unheeded. Job openings for lawyers have plunged, but law schools are not dialing back enrollment. About 43,000 J.D.'s were handed out in 2009, 11 percent more than a decade earlier, and the number of law schools keeps rising -- nine new ones in the last 10 years, and five more seeking approval to open in the future.

Apparently, there is no shortage of 22-year-olds who think that law school is the perfect place to wait out a lousy economy and the gasoline that fuels this system -- federally backed student loans -- is still widely available. But the legal market has always been obsessed with academic credentials, and today, few students except those with strong grade-point averages at top national and regional schools can expect a come-hither from a deep-pocketed firm. Nearly everyone else is in for a struggle. Which is why many law school professors privately are appalled by what they describe as a huge and continuing transfer of wealth, from students short on cash to richly salaried academics. Or perhaps this is more like a game of three-card monte, with law schools flipping the aces and a long line of eager players, most wagering borrowed cash, in a contest that few of them can win.

And all those losers can remain cash-poor for a long time. "I think the student loans that kids leave law school with are more scandalous than payday loans," says Andrew Morriss, a law professor at the University of Alabama. "And because it's so easy to get a student loan, law school tuition has grossly outpaced the rate of inflation for the last 20 years. It's now astonishingly high."

Like everything else about the law, however, the full picture here is complicated. Independent surveys find that most law students would enroll even if they knew that only a tiny number of them would wind up with six-figure salaries. Nearly all of them, it seems, are convinced that they're going to win the ring toss at this carnival and bring home the stuffed bear.

And many students enroll for reasons other than immediate financial returns. Mr. Wallerstein, for instance, was drawn by the prestige of the degree. He has no regrets, at least for now, even though he seems doomed to a type of indentured servitude at least through his 30s.

"Law school might not be worth it for another 10 or 15 years," he says, "but the riskier approach always has the bigger payoff."

True, say Professor Henderson and his allies. But he contends that law schools -- which, let's not forget, require students to take courses on disclosure and ethics -- have a special moral obligation to tell the truth about themselves. It's an obligation that persists, he says, even if students would sign on the dotted line no matter what.

"You're beginning your legal education at an institution that is engaging in the kind of disreputable practices that we would be incredibly disappointed to discover our graduates engaging in," he says. "What we have here is powder keg, and if law schools don't solve this problem, there will be a day when the Federal Trade Commission, or some plaintiff's lawyer, shows up and says 'This looks like illegal deception.'"

WHEN he started in 2006, Michael Wallerstein knew little about the Thomas Jefferson School of Law, other than that it was in San Diego, which seemed like a fine place to spend three years.

"I looked at schools in Pennsylvania and Long Island," he says, "but I thought, why not go somewhere I'll enjoy?"

Mr. Wallerstein is chatting over lunch one recent afternoon with his fiancée, Karin Michonski. She, too, seems unperturbed by his dizzying collection of i.o.u.'s. Despite those debts, she hopes that he does not wind up in one of those time-gobbling corporate law jobs.

"We like hanging out together," she says with a laugh.

If love paid the bills, these two would be debt-free tomorrow. But it doesn't, and Mr. Wallerstein has no money in the bank, no assets and -- aside from the occasional job as a legal temp -- no wages to garnish. He and Ms. Michonski live rent-free in a nearby brownstone, in return for keeping an eye on the elderly man who owns the place.

"Sometimes the banks will threaten to sue," he says, "but one of the first things you learn in law school, in civil procedure class, is that it doesn't make sense to sue someone who doesn't have anything."

He remembers little about the promotional materials the Thomas Jefferson school sent when he applied in 2006, other than a pamphlet with lots of promising numbers. That was before the economy crumbled, but the school's postgraduate data still looks fabulous, particularly given its spot in the fourth and bottom tier of U.S. News's rankings. The most recent survey says 92 percent of Thomas Jefferson grads were employed nine months after they earned their degrees.

Beth Kransberger, associate dean of student affairs at Thomas Jefferson, stands by that figure, noting that it includes 25 percent of those

graduates who could not be located, as well as anyone who went on to other graduate studies -- all perfectly kosher under the guidelines.

Like lots of administrators, she defends the figures she gathers and laments that so many other schools are manipulating results.

"You need to take the high road," she said. "Schools that are behaving the most ethically want students who come to law school with their eyes open."

Even students with open eyes, though, will have a hard time sleuthing through the U.S. News rankings. They are based entirely on unaudited surveys conducted by each law school, using questions devised by the American Bar Association and the National Association for Law Placement. Given the stakes and given that the figures are not double-checked by an impartial body, each school faces exactly the sort of potential conflict of interest lawyers are trained to howl about.

The surveys themselves have a built-in bias. As many deans acknowledge, the results are skewed because graduates with high-paying jobs are more likely to respond than people earning \$9 an hour at Radio Shack. (Those who don't respond are basically invisible, aside from reducing the overall response rate of the survey.)

Certain definitions in the surveys seem open to abuse. A person is employed after nine months, for instance, if he or she is working on Feb. 15. This is the most competitive category -- it counts for about one-seventh of the U.S. News ranking -- and in the upper echelons, it's not unusual to see claims of 99 percent and, in a handful of cases, 100 percent employment rates at nine months.

A number of law schools hire their own graduates, some in hourly temp jobs that, as it turns out, coincide with the magical date. Last year, for instance, Georgetown Law sent an e-mail to alums who were "still seeking employment." It announced three newly created jobs in admissions, paying \$20 an hour. The jobs just happened to start on Feb. 1 and lasted six weeks.

A spokeswoman for the school said that none of these grads were counted as "employed" as a result of these hourly jobs. In a lengthy exchange of e-mails and calls, several different explanations were offered, the oddest of which came from Gihan Fernando, the assistant dean of career services. He said in an interview that Georgetown Law had "lost track" of two of the three alums, even though they were working at the very institution that was looking for them.

As absurd as the rankings might sound, deans ignore them at their peril, and those who guide their schools higher up the U.S. News chart are rewarded with greater alumni donations, better students and jobs at higher-profile schools.

"When I was a candidate for this job," said Phillip J. Closius, the dean of the University of Baltimore School of Law, "I said 'I can talk for 10 minutes about the fallacies of the U.S. News rankings,' but nobody wants to hear about fallacies. There are millions of dollars riding on students' decisions about where to go to law school, and that creates real institutional pressures."

Mr. Closius came from the University of Toledo College of Law, where he lifted the school to No. 83 from No. 140, he said. Among his strategies: shifting about 40 students with lower LSAT scores into the part-time program. Because part-time students didn't then count in the U.S. News survey -- the rules have since been changed -- Toledo's bar passage rate rose, which helped its ranking.

"You can call it massaging the data if you want, but I never saw it that way," he says. Weaker students wound up with lighter course loads, which meant that fewer of them flunked out. In his estimation, a dean who pays attention to the U.S. News rankings isn't gaming the system; he's making the school better.

Unfortunately, he says, not all schools play fair.

Of course, fair play is hardly encouraged. Any institution with the guts to report, say, a 4 percent drop in postgraduate employment would plunge in the rankings, leaving the dean to explain a lot of convoluted math, and the case for unvarnished truth, to a bunch of angry students and alums.

Critics of the rankings often cast the issue in moral terms, but the problem, as many professors have noted, is structural. A school that does not aggressively manage its ranking will founder, and because there are no cops on this beat, there is no downside to creative accounting. In such circumstances, the numbers are bound to look cheerier, even as the legal market flat-lines.

"We ought to be doing a better job for our students and spend less time worrying about whether another school is five spots ahead," says David N. Yellen, dean of the Loyola University Chicago School of Law. "But in the real world you can't escape from the pressures. We're all sort of trapped. I don't know if anyone is out-and-out lying, but I do know that a lot of schools are hyping a lot of misleading statistics."

WHEN Mr. Wallerstein started at Thomas Jefferson, he was in no mood for austerity. He borrowed so much that before the start of his first semester he nearly put a down payment on a \$350,000 two-bedroom, two-bath condo, figuring that the investment would earn a profit by the time he graduated. He was ready to ink the deal until a rep at the mortgage giant Countrywide asked if his employer at the time -- a trade magazine publisher in New Jersey -- would write a letter falsely stating that he was moving to San Diego for work.

"We were on a three-way call with my real estate agent and I said I didn't feel comfortable with that," he says. "The Countrywide guy chuckled and said, 'Everyone lies on their mortgage application.'"

Instead, Mr. Wallerstein rented a spacious apartment. He also spent a month studying in the South of France and a month in Prague -- all on borrowed money. There were cost-of-living loans, and tuition of about \$33,000 a year. Later came a \$15,000 loan to cover months of studying for

the bar.

Today, his best guess is that he should be sending \$2,000 to \$3,000 a month in total, to lenders that include Wells Fargo, Citibank and Sallie Mae.

"There are a bunch of others," he says. "I'm not really good at keeping records."

Mr. Wallerstein didn't know it at the time, but Thomas Jefferson leads the nation's law schools in at least one category: 95 percent of students graduate with debt, the highest rate in the U.S. News rankings.

The reason, Ms. Kransberger says, is that many Thomas Jefferson students are either immigrants or, like Mr. Wallerstein, the first person in their family to get a law degree; statistically those are both groups with generally little or modest means. When Ms. Kransberger meets applicants engaged in what she calls "magical thinking" about their finances, she advises them to defer for a year or two until they are on stronger footing.

"But I don't think you can act as a moral educator," she says. "Should we really be saying to students who don't have family help, 'No, you shouldn't have access to law school'? That's a tough argument to make."

It's an argument complicated by the reality that a small fraction of graduates are still winning the Big Law sweepstakes. Yes, they tend to hail from the finest law schools, and have the highest G.P.A.'s. But still.

"Who's to say to any particular student, 'You won't be the one to get the \$160,000-a-year job,' " says Steven Greenberger, a dean at the DePaul College of Law. "I think they should have all the info, and the info should be accurate, but saying once they know that they shouldn't be allowed to come, that's predicated on the idea that students are really ignorant and don't know what is best for them."

Based on the seething and regret you hear from some law school grads, more than a few wish that someone had been patronizing enough to say, "Oh no you don't." But it's often hard to convince students about the potential downside of law school, says Kimber A. Russell, a 37-year-old graduate of DePaul, who writes the Shilling Me Softly blog.

"This idea of exceptionalism -- I don't know if it's a thing with millennials, or what," she says, referring to the generation now in its 20s. "Even if you tell them the bottom has fallen out of the legal market, they're all convinced that none of the bad stuff will happen to them. It's a serious, life-altering decision, going to law school, and you're dealing with a lot of naïve students who have never had jobs, never paid real bills."

Graduates who have been far more vigilant about their finances than Mr. Wallerstein are in trouble. Today, countless J.D.'s are paying their bills with jobs that have nothing to do with the law, and they are losing ground on their debt every day. Stories are legion of young lawyers enlisting in the Army or folding pants at Lululemon. Or baby-sitting, like Carly Rosenberg, of the Brooklyn Law School class of 2009.

"I guess I kind of assumed that someone would hook me up with something," she says. She has sent out 15 to 20 résumés a week since March, when she passed the bar. So far, nothing.

Jason Bohn, who received his J.D. from the University of Florida, is earning \$33 an hour as a legal temp while strapped to more than \$200,000 in loans, nearly all of which he accumulated as an undergraduate and while working on a master's degree at Columbia University.

"I grew up a ward of the state of New York, so I don't have any parents to call for help," Mr. Bohn says. "For my sanity, I have to think there is an end in sight."

As a student, Mr. Wallerstein assumed that the very scale of law school -- all the paperwork, all the professors, all the tests -- implied that pots of gold awaited anyone with smarts, charm and a willingness to work hard. He began to doubt that assumption when the firm where he had interned told him that it hadn't been profitable for two years and could not offer him a full-time job.

Mr. Wallerstein and his fiancée moved back East after graduation, and he landed a job at a small firm in Queens. He says he was paid \$10 an hour and worked for a manager who seemed to have walked straight out of a Dickens novel. Over a firm-wide lunch, as Labor Day approached, she asked employees to thank her, one at a time, for giving them the holiday off.

"When it was my turn, I said, 'Labor Day is about celebrating the 40-hour workweek, weekends, that sort of thing,' " Mr. Wallerstein recalls. "She said, 'Well, workers have that now so you don't need a day off to celebrate it.' "

He lasted less than a month.

Since then, he has found jobs at temporary projects reviewing documents. The latest of these gigs is in office space rented on the 11th floor of the Viacom building in Times Square. He sits in a small, windowless room with five other lawyers, all clicking through page after page of documents on computers under fluorescent lights. The walls are bare except for the name of each lawyer, tacked overhead.

"Welcome to the veal pen," said one during a tour two weeks ago.

The job is set up through a company called Peak Discovery, which put an ad on Craigslist, seeking 100 lawyers. "We got about 300 responses overnight," said John Thacher, who is managing the project.

Mr. Thacher has managed about 2,500 people in his six years in the temporary legal business, and maybe five of them have gone on to associate

jobs in law firms, the kind of work that nearly everyone aspires to when entering law school.

"Most of us either went to the wrong law school, which is the bottom two-thirds, or we were too old when we graduated," he said. "I was 32 when I graduated, and at 32 you're washed up in this field, in terms of a shot at the real deal. They perceived me as somebody they can't indoctrinate into slave labor and work to death for seven years and then release if they don't like you."

This gets to what might be the ultimate ugly truth about law school: plenty of those who borrow, study and glad-hand their way into the gated community of Big Law are miserable soon after they move in. The billable-hour business model pins them to their desks and devours their free time.

Hence the cliché: law school is a pie-eating contest where the first prize is more pie.

Law school defenders note that huge swaths of the country lack adequate and affordable access to lawyers, which suggests that the issue here isn't oversupply so much as maldistribution. But when the numbers are crunched, studies find that most law students need to earn around \$65,000 a year to get the upper hand on their debt.

That kind of money is hard to earn hanging a shingle in rural Ohio or in public defenders' offices, the budgets of which are often being cut. As elusive, and inhospitable, as jobs in Big Law may be, they are one of the few ways for new grads to keep out of delinquency.

The mismatch of student expectations and likely postgraduate outcomes is starting to yield some embarrassing headlines. In October, a student at Boston College Law School made news by posting online an open letter to the dean, offering to leave the school if he could get his tuition money back.

"With fatherhood impending," wrote the student, whose name was redacted, "I go to bed every night terrified of the thought of trying to provide for my child AND paying off my J.D., and resentful at the thought that I was convinced to go to law school by empty promises of a fulfilling and remunerative career."

After a few years of warnings by concerned professors, the American Bar Association is now studying whether it should refine the questions in its surveys in order to get more realistic and useful statistics for the U.S. News rankings. In mid-December, the organization held a two-day hearing in Fort Lauderdale, Fla., about the collection of job placement data.

"There is a legitimate question about whether we're asking for detailed-enough info and displaying that info for those who use it," says Bucky Askew of the bar association. "I think it's fair to say we're aware of the criticism and have a committee working to getting to the bottom of this."

And what about U.S. News? The editors could, but won't unilaterally demand better data from law schools. "Do we have the power to do that? Yes, I think we do," said Robert Morse, who oversees the law school rankings. "But we'd have to create a whole new definition of 'employed,' and it would be awkward if U.S. News imposed that definition by itself. It would be preferable if the A.B.A. took a leadership role in this."

Instead of overhauling the rankings, some professors say, the solution may be to get law schools and the bar association out of the stat-collection business. Steven Greenberger of DePaul recommends a mandatory warning -- a bit like the labels on cigarette packs -- that every student taking the LSAT, the prelaw standardized test, must read.

"Something like 'Law school tuition is expensive and here is what the actual cost will be, the job market is uncertain and you should carefully consider whether you want to pursue this degree,' " he says. "And it should be made absolutely clear to students, that if they sign up for X amount of debt, their monthly nut will be X in three years."

Another approach would be to limit class sizes or the number of new law schools. But the bar association, which is granted accrediting authority by the Department of Education, says that it would run afoul of antitrust law if it imposed such limits.

Today, American law schools are like factories that no force has the power to slow down -- not even the timeless dictates of supply and demand.

Solving the J.D. overabundance problem, according to Professor Henderson, will have to involve one very drastic measure: a bunch of lower-tier law schools will need to close. But nobody inside of the legal establishment, he predicts, has the stomach for that. "Ultimately," he says, "some public authority will have to step in because law schools and lawyers are incapable of policing themselves."

MR. WALLERSTEIN, for his part, is not complaining. Once you throw in the intangibles of having a J.D., he says, he is one of law schools' satisfied customers.

"It's a prestige thing," he says. "I'm an attorney. All of my friends see me as a person they look up to. They understand I'm in a lot of debt, but I've done something they feel they could never do and the respect and admiration is important."

Compared with the life he left four years ago, he has lost ground. That research position in Newark, he figures, would pay him \$60,000 a year now, with benefits. Instead, he's vying with a crowd for jobs that pay at rates just a little higher, but that last only a few weeks at a time, with no benefits. And he's a quarter-million dollars in the hole.

Unless, somehow, the debt just goes away. Another of Mr. Wallerstein's techniques for remaining cool in a serious financial pickle: believe that the pickle might somehow disappear.

"Bank bailouts, company bailouts -- I don't know, we're the generation of bailouts," he says in a hallway during a break from his Peak Discovery job. "And like, this debt of mine is just sort of, it's a little illusory. I feel like at some point, I'll negotiate it away, or they won't collect it."

He gives a slight shrug and a smile as he heads back to work. "It could be worse," he says. "It's not like they can put me jail."

PHOTOS: William Henderson of Indiana University says law schools have a moral obligation to tell the truth about themselves. (PHOTOGRAPH BY JIM WILSON/THE NEW YORK TIMES)(BU6); Kimber A. Russell, who has a J.D., writes a blog about the high debts and grim job prospects facing law school graduates. (PHOTOGRAPH BY SALLY RYAN FOR THE NEW YORK TIMES); Michael Wallerstein, who has a law degree, has \$250,000 in loans and only the occasional job as a legal temp. (PHOTOGRAPH BY MICHAEL FALCO FOR THE NEW YORK TIMES) (BU7) DRAWING (DRAWING BY PETER AND MARIA HOEY) (BU1)

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Law of Averages

Why the law-school bubble is bursting.

By Annie Lowrey

Posted Friday, March 18, 2011, at 4:49 PM ET

The law-school bubble may have just burst.

According to data from the Law School Admission Council, first reported by the *Wall Street Journal*, the number of applicants to law school has dropped a whopping 11.5 percent year-to-year—to the lowest level since 2001 at this point in the application cycle. Some schools are still accepting applications, so the numbers will change in the coming weeks, says the council's Wendy Margolis. But about 90 percent of applications are in, and the pattern is clear.

It is a remarkable turnaround. The number of applicants to law school has waxed and waned over the course of the past decade, but the general trend has been up. And applications took a further turn skyward when the recession hit. Between 2007 and 2009, the number of LSAT takers jumped 20 percent, and the number of applicants swelled 6.3 percent. (Between 2001 and 2002, after the dot-com bubble burst, the number of applicants actually jumped more, by nearly 20 percent.)

Over the past decade, the number of law-school students has also steadily increased, as universities have opened or expanded their schools. Law schools tend to be moneymakers: They're cheap to set up, and tuition runs high, even at poorly rated programs. Thus, universities have added them on with relish, and the list of approved law schools has increased 9 percent in the past decade, to 200. That means that the number of new lawyers minted every year has not stopped growing, either: Law schools awarded 44,004 degrees last year, up 13 percent in a decade.

But the prospects for those legions of new lawyers have been grim, a fact hardly unbeknownst to them. As I reported this fall, in the past few years, young lawyers faced a glut of competition from other legal

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professionals; plummeting wages; a reduction in openings in and offers at big law firms; and crippling high student-loan debts. When the recession hit, thousands of young lawyers suddenly found themselves trying to work off six figures of debt in pay-per-hour assistant gigs. Granted, things are looking better. But the National Association of Legal-Career Professionals still cautions that "entry-level recruiting volumes have not returned to anything like the levels measured before the recession."

The tide seems to be turning. Fewer applicants and applications do not translate into fewer lawyers, of course—and falling demand for legal services is the ultimate root of the problem. But the drop in applicants does seem to mean that young folks considering the legal profession are getting savvier.

So what explains the drop in applications? First, the job market is getting better, if slowly. When the economy turns around, in general, people tend to enter the workforce rather than head for graduate school. According to the Bureau of Labor Statistics, in the past year, the unemployment rate has declined from 14.9 percent to 14.6 percent for 20- to 24-year olds, and from 9.9 percent to 9.6 percent for 25- to 34-year-olds. (More than 80 percent of law-

school applicants fall in that age range.) For people with a college degree of all ages, the rate has fallen from 5.0 to 4.4 percent in the past year. The labor market has not gotten remarkably better, but it has improved, translating into fewer graduate-school applications.

But the biggest reason may be cultural, not economic. In the past year or two, scads of bloggers have committed themselves to exposing law school as a "scam," and the *New York Times* and *Wall Street Journal* have devoted thousands of words to telling readers why law school is a bad, bad idea if you do not actually want to be a lawyer. Look to any of a dozen blogs or news sites to explain how wages for legal workers might continue to fall, as automation takes over rote tasks and businesses increasingly refuse to pay obscenely high per-hour fees. Wandering further into the realm of anecdotal, virtually every young lawyer or law

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student I know would *love* to talk my ear off about the worrisome employment prospects for new legal professionals.

Once the conventional wisdom has spotted a bubble—whether in housing or gold or anything else—it tends to burst. That will come as cold comfort to the thousands of young lawyers struggling to pay their debts. But it may be something to consider for anyone willing to pay the law school of her choice six figures to extend her academic career for another three years. Maybe by then the recovery will actually be genuine.

*Annie Lowrey reports on economics and business for **Slate**. Previously, she worked as a staff writer for the and on the editorial staffs of and . Her e-mail is annie.lowrey@slate.com.*

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Sylvia Stevens

From: Ramon Klitzke [ramon.klitzke@klarquist.com]
Sent: Friday, April 15, 2011 10:19 AM
To: Sylvia Stevens
Subject: RE: Membership Directory

Sylvia, hopefully if there is significant blowback from members on this issue, the BOG will recognize that they miscalculated the priorities of the members they serve and at least reconsider the issue (rather than just conclude that "we know better"). Wisconsin has concluded for now that the printed directory (which looks like a small telephone book) is not the place to look for cost savings, but then I believe the Wisconsin State Bar is dealing with serious debate over whether membership should be voluntary or mandatory and may be extra sensitive to the practical needs and priorities of members.

Has BOG considered a policy of printing a directory only for members who so request by a certain date each year? Those members who prefer or can live with an online version would effectively opt out through inaction. This would realize significant cost savings since many members would opt out or neglect to make the request for a printed version (but at least the choice was available). If only a small group of members make the request, then even I would agree the online approach is the better solution from a collective standpoint. However if a substantial number of members request the printed version, the mandate of the members should be relevant.

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From: Sylvia Stevens [mailto:sstevens@osbar.org]
Sent: Friday, April 15, 2011 9:50 AM
To: Ramon Klitzke
Subject: RE: Membership Directory

Ray, the BOG understands that change is difficult and that quite a few members rue the passing of the printed directory. The BOG is continually making challenging choices about how to use resources and the decision to make BarBooks available as a benefit of membership required finding savings elsewhere. After much discussion, the BOG concluded that having current, accurate information online, coupled with the print and paper savings, justified eliminating the printed member listings. Of course, the print directory is available by order, or you can download and print your own. If you wish to order a copy, contact Matt at the OSB Order Desk.

From: Ramon Klitzke [mailto:ramon.klitzke@klarquist.com]
Sent: Wednesday, April 13, 2011 4:59 PM
To: Sylvia Stevens
Subject: Membership Directory

Dear Sylvia,

In the recent OSB Bulletin I read with interest your defense of the OSB's decision to discontinue the printed version of the directory. I echo the sentiments of the three attorneys who questioned the wisdom of the OSB's decision. I hope the OSB will seriously reconsider this decision for next year and beyond. The OSB's service in providing the directory to OSB members is *one of the OSB services I value the most*. I believe many members share my view and miss the printed version.

I regularly use the OSB Membership Directory and pass on the "old" version to my assistant each year, as do other attorneys in our office. My assistant makes regular use of the directory as well. Perhaps I am an old timer who needs to sacrifice in the name of cost savings and the best interests of younger members, but I find the printed version much easier and faster to use (for the record I am fairly computer savvy and use online resources extensively).

If the cost of printing publications is an issue and online versions truly serve as an equal substitute, then why not distribute the monthly OSB Bulletin online to avoid publishing and mailing 12 issues each year to thousands of members.

I note in closing that I am a member of the Wisconsin Bar Association, a larger association than OSB. Even as an inactive member I continue to receive each year the Wisconsin Lawyer Directory which easily is twice as thick as the OSB version.

For next year, I hope the OSB will bring back the printed version and look for cost savings elsewhere. I write this as an individual and not in any representative capacity of our firm. Thank you for considering my concerns.

Sincerely,
Ray Klitzke

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President Report: Late February 2011 - Mid April 2011

Date	Event	Location
February 23, 2011	Meeting with Rynni Henderson, Daily Journal of Commerce re: future legal links newsletter, "Briefly Legal"	Portland, Oregon
March 4, 2011	Meeting with Steve Larson and Gov. Kitzhaber's general and assistant general counsel Liani Reeve and Steve Powers regarding judicial appointments	Portland, Oregon
March 7, 2011	Lunch meeting with member to discuss complaint about OSB disciplinary process	Portland, Oregon
March 8	Lunch with Ben Eder regarding ONLD projects	Portland, Oregon
March 9, 2011	Lunch with Albert Menashe	Portland, Oregon
March 15, 2011	Meeting with Chief Justice DeMuniz	Salem, Oregon
March 16, 2011	OSB reception at Willamette for Lawyer Legislatures	Salem, Oregon
March 17, 2011	Daily Journal of Commerce "Leaders in the Law" event	The Nines, Portland, Oregon
March 18, 2011	Committee Meeting and short BOB meeting	OSB
March 29, 2011	Oregon Legislature: Testimony in support of the OJD Budget	Salem, Oregon
March 30 - April 2, 2011	Western States Bar Conference	Maui, HI
April 12 - 14, 2011	ABA Lobby Days	Washington, DC

Memo

Date: April 19, 2011
From: Sylvia E. Stevens, Executive Director
Re: Western States Bar Conference Report

Following is a brief summary of news and events for the state bars represented¹ at the 2011 Western States Bar Conference:

Arizona

- Implemented a new disciplinary system modeled largely on Colorado; “early intervention” at intake with experienced counsel has increased the use of diversion; trials are heard by a paid judge and two volunteers.
- Law Foundation has negotiated with banks for a better annual rate on IOLTA funds; threatened that lawyers would have to move accounts from non-cooperating banks.
- Realigning Young Lawyers Division structure to mirror BOG and use it as mentoring and leadership training.

California

- Adopted Rules of Professional Conduct based on ABA Model Rules.
- New Executive Director (Joe Dunn) and Disciplinary Counsel (Jim Towery).
- A legislatively-mandated “governance task force” is exploring the structure and selection process for the BOG and is required to make recommendations to the Supreme Court, the governor and the legislature “for enhancing and ensuring that public protection is the highest priority in the licensing, regulation and discipline of attorneys.”

Colorado (voluntary bar with 80% market penetration)

- Working on a merit selection/popular retention system for judges.
- Judiciary is under attack, principally by initiative petitions.
- Developed a “Know Your Judge” program in cooperation with the League of Women Voters.
- “Our Courts” program pairs judges and lawyers to speak to civic groups about the judicial system.
- Possible response to Legal Aid funding cuts include increasing bar registration fees, increasing the Colorado Bar Association membership fee, or a direct assessment of lawyers.

¹ For reasons I cannot explain, I do not have notes from the presentations by New Mexico or Utah.

- Looking at developing a mentoring program; considering sponsoring a symposium of existing programs to see what works best, etc.
- Member survey shows Casemaker (online legal research) and monthly magazine are most popular services.

Idaho

- 2011 saw first fee increase in 12 years; requires approval of members, Supreme Court and legislature.
- Adopted Uniform Bar Exam, retaining authority to grade and set pass score.
- Trying to establish state funding for Legal Aid, hampered by lack of cooperation from Legal Aid.
- Smallest % of women judges nationally (approx. 10%). Judicial recruitment committee is looking at the process, including surveying for information on why women don't apply.
- Starting Leadership College—6 sessions per year.

Montana

- Court eliminated UPL Commission; is defining what it means to be a lawyer rather than what constitute the practice of law.
- New rule on “unbundling” causing *great* concern.
- Considering adoption of Uniform Bar Exam.
- Exploring a web-based mentoring program.
- Surprised to learn that 30-40% of bar members would qualify for modest means program.
- Referendum coming on election of Supreme Court justices by district.
- Entered into memorandum of understanding with law foundation to improve alignment of goals and control issues.

Nevada

- Instituting a “Practice Takeover” program for dead or disabled lawyers.
- Created a “Preferred Bank Program” for IOLTA funds.

North Dakota

- Working on ways to use social media to benefit members
- Looking to improve pro bono services
- 2nd Biennial Leadership Forum—a 2-day program for selected group of lawyers with fewer than five years of practice.

- Recently adopted a Code of Professionalism.

South Dakota

- Still has well-attended annual meeting (note: in-state active membership is 1,865).
- Theme for 2011 is work/life balance; a membership survey (46% response) showed that 10% of members suffer from stress or mental illness and 1/2 don't get any help.
- Battling legislature over court funding; governor has demanded a 10% cut of all state budgets.
- Delivery of legal services in remote rural areas is an increasing challenge.

Texas

- Texas Lawyers for Texas Veterans program in partnership with law school—video has increased lawyer participation and public respect for lawyers.
- Created a Wellness Initiative to address stress, substance abuse and mental health issues that impair lawyers' ability to practice.

Washington

- Re-engineering to narrow program focus from "mile wide and inch deep;" factors include whether the program fits the bar's mission and whether WSBA is the best institution to do it.
- Addresses tension between service to members and service to public with strategic goal of "enhancing the culture of service;" offers a broader menu of opportunities.
- Established a foreclosure assistance program for modest-means clients in conjunction with law school clinics.
- Free or low-cost training for pro bono lawyers, plus telephone and other one-on-one support.
- Free CLE for new admittees.
- Website matching resource for contract attorneys and firms that want to hire them.
- iCivics pilot project starting in Olympia with strong support from government lawyers.
- Developed a seminars center for webcasting CLE programs (used by WSBA and others).
- Has a very action Senior Lawyers Section.
- Considering converting New Lawyers Division to a voluntary section; redeploying resources to train new lawyers in leadership and encourage participation at the local level.
- UBE begins in 2013.



FINANCIAL STATEMENTS SUMMARY

March 31, 2011

Narrative Summary

The Net Operating Revenue after three months is \$520,561. That equates to a \$283,000 positive budget variance. The comparison to 2010 does not appear as rosy, but understandable when considering revenue is less due to fewer sales of Legal Publications material and *Salaries & Benefits*. This large increase from 2010 is because March 2011 included three payroll periods (this happens twice a year with the twice-a-week payroll system), rather than two in 2010.

The large budget variance in *Salaries & Benefits* is due to vacancies in three positions and Benefits (specifically PERS costs) which will be lower the first six months than the last six months of 2011. The lower *Direct Program* expense is attributable to less print and marketing expenses for Legal Publications and overall under-budget spending so far.

Executive Summary

Revenue	Actual 3/31/2011	Seasonal Budget 3/31/2011	Budget Variance	% of Budget	Actual 3/31/2010
Member Fees	\$ 1,730,308	\$1,633,650	\$96,658	5.9%	\$ 1,669,253
Program Fees	1,138,036	1,165,109	(27,073)	-2.3%	1,539,544
Other Income	203,177	176,190	26,987	15.3%	24,240
Total Revenue	3,071,521	2,974,949	96,572	3.2%	3,233,037
Expenses					
Salaries & Benefits	1,852,710	1,970,360	(117,650)	-6.0%	1,583,037
Direct Program, G & A	698,250	761,321	(63,071)	-8.3%	803,910
Contingency	0	6,250	(6,250)	-100.0%	0
Total Expense	2,550,960	2,737,930	(186,970)	-6.8%	2,386,947
Net Operating Rev (Exp)	520,561	\$ 237,019	283,543		846,090
Fanno Creek Place	(196,027)	(191,135)			(179,592)
Net Rev Bef Mkt Adj	324,534	45,884			666,498
Unrealized Investment Gains /(Losses)	99,086				12,367
Realized Investment Gains/(Losses)	31,618				(17,915)
Publ Inventory Increase/Decrease (COGS)	(118,914)				(31,815)
Reserve Reallocation	(99,999)	(99,999)			0
Net Revenue	<u>\$ 236,325</u>	<u>\$ (54,115)</u>			<u>\$ 629,135</u>

Positive Budget Variance

Production Services (Membership & Resource Directory)

After three months of the year, we can see the financial impact of the conversion of the *Membership Directory* to a *Resource Directory*. The changes were not including 300 plus pages addresses and mailing the January *Bulletin*.



Resource Directory. The changes of members' names and Resource Directory with the

The cost savings were substantial, even though sales of the *Resource Directory* and the "white pages" have been minimal compared to 2010. An encouraging number is advertising revenue being slightly above 2010.

	2011	2010	Variance
<u>Revenue</u>			
Advertising	\$114,286	\$112,307	\$ 1,979
Sales	2,727	22,380	(19,653)
<u>Expenses</u>			
Mailing Related	9,864	28,486	(18,622)
Printing	22,118	64,429	(42,311)
Net Overall Savings to the Bar – (less revenue, but far less costs)			\$ 43,259

First Quarter Reserve Requirements vs Funds Available

The bar's funds available for its Reserves are in a financially healthy condition at the end of the first quarter. The funds available managed by the investment managers and specific short-term funds exceed the needed amount in all the reserves by \$566,000.

See the chart on the next page.

The first quarter report often can appear better than later in the year reports since all the Restricted Funds (Sections, Legal Services, Client Security Fund, and Affirmative Action Program) and LRAP all have almost all of its entire year's revenue included in the fund balances. Included in the "Funds Available" column is \$878,000 in short term funds (not held by the investment managers), which are the total of the expected reductions by year end of those funds just noted.

OSB Reserves and Funds Available

March 31, 2011

