

**Oregon State Bar**  
**Meeting of the Board of Governors**  
April 22, 2011  
**Open Session Minutes**

The meeting was called to order by President Stephen Piucci at 1:10 p.m. on April 22, 2011, and adjourned at 4:27 p.m. Members present from the Board of Governors were Jenifer Billman, Hunter Emerick, Ann Fisher, Michelle Garcia, Michael Haglund, Derek Johnson, Matt Kehoe, Christopher Kent, Ethan Knight, Tom Kranovich, Steve Larson, Audrey Matsumonji, Kenneth Mitchell-Phillips, Mitzi Naucner, and Maureen O'Connor. Staff present were Sylvia Stevens, Helen Hirschbiel, Rod Wegener, Jeff Sapiro, Susan Grabe, George Wolff, Kay Pulju, Karen Lee, Linda Kruschke, Judith Baker, Amber Hollister, Dani Edwards, and Camille Greene. Also present were: ONLD Chair, Tamara Gledhill-Kessler; PLF liaisons William Carter, Valerie Fisher, Tim Martinez, and Fred Ruby; and PLF CFO, Tom Cave and Executive Director, Ira Zarov.

**1. Department Presentations**

- A. Ms. Kruschke presented an overview of the OSB Legal Publications program and staff. The department's mission is to serve the members with useful publications for their practice. The department has many volunteers serving as authors, on their Editorial Review Board, and as members of the UCJI and UCRI committees. BarBooks<sup>TM</sup> has new many new features, publications, forms and instructions available to members at no cost. New PLF publications will be available soon. Revised chapters of books are now available as they are completed, rather than having to wait for the book to be completed. Ms. Kruschke will train interested members on the features of BarBooks<sup>TM</sup>. In the future, BarBooks<sup>TM</sup> will consist of a database of information rather than a collection of books. She has been asked to speak about this program at an ACLEA conference in January 2012.
- B. Ms. Lee presented an overview of OSB CLE Seminars. The department's mission is to improve knowledge and skills of Oregon attorneys. She presented her staff and their responsibilities and current projects. OSB CLE Seminars has 16 video replay sites around Oregon. They host live seminars, webcasts, and teleseminars for members' convenience and work with sections to produce CLE seminars. Ms. Lee reported that the department is looking at the Season Ticket feature to customize it to current needs.

**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

Ms. Stevens presented a report on OSB Programs and Operations developments. She announced that Mariann Hyland has accepted the position of Director of Diversity and Inclusion and will begin June 13, 2011.

**D. Report of the BOG Liaison to MBA**

No report.

**3. Professional Liability Fund**

**A. Financial Report**

Mr. Zarov gave a brief report on the status of the PLF stating it had a record 1011 claims in 2010. The board is looking at the coverage plan and charges to the excess program, because the PLF is losing members to competitive coverage plans.

Tom Cave, PLF CFO, spoke about the audit by Kern & Thompson, LLC. The BOG will receive a copy of the auditor's report.

**B. Liaison Report**

No report.

**4. Special Work Session**

**A. RIS Business Model**

Ms. Pulju presented the background of the OSB Lawyer Referral Service's history, purpose, operations and funding. The three options for OSB Lawyer Referral Service going forward are to maintain the status quo (funded by registration fees); implement percentage fees with goal of departmental self-sufficiency; or implement percentage fees with goal to produce revenue beyond departmental self-sufficiency.

Ms. Stevens encouraged the BOG to focus its discussion on the policy issue of whether to change the funding model rather than on the details that will follow from a decision to change. Mr. Haglund spoke in favor of the second option, to get the system to fund itself before it looks at producing revenue beyond the department. Mr. Kent suggested increasing the registration fees in an effort to increase revenue before considering a percentage fee structure. He felt the other two options would give the bar a poor public perception, possibly exposure to liability, and be costly to track. Ms. Stevens pointed out that Ms. Hollister had researched this and concluded that the risk of liability is very low. Mr. Emerick would prefer we get insurance if we get into percentage fees. Mr. Johnson expressed support for raising the registration fees rather than going to the percentage fee model. Mr. Knight said adjusting the fee schedule could affect access to justice in a positive way that would justify adjusting rules or statutes. Mr. Kranovich did not want to further burden the lawyers who are already participating. Ms. Pulju reported that focus groups had mixed views about a percentage fee structure. Mr. Wolff added that experienced lawyers would support increased registration fees, but newer lawyers would not. Ms. Naucier said this could give new lawyers a chance to build a practice. Mr. Kent

felt the increased fees would be passed onto the clients and create a barrier to access to justice for some. Ms. Matsumonji weighed in as a public member who supports making money. Other questions raised were: Is this an access to justice issue, a public service, and would percentage fees make money or cause attorneys to leave the program?

Mr. Piucci reminded the BOG that Lish Whitson, former chair of the ABA Standing Committee on Lawyer Referral Services will meet with the BOG on May 20 to answer questions; he expects the BOG to be ready to vote on the question at the June meeting.

## **5. Rules and Ethics Opinions**

### **A. OWLS Request for ORPC on Harassment**

Oregon Women Lawyers has asked the Board of Governors to direct the Legal Ethics Committee to evaluate whether discrimination, intimidation and harassment are adequately addressed in the Oregon RPCs and other policies and procedures relating to lawyer conduct and to report its findings prior to the Convocation on Equality in November 2011. **[Exhibit A]** Multnomah Bar Association submitted a letter of support. Ms. Stevens suggested that the Legal Ethics committee assign this to a special subcommittee that can include representatives from OWLs and other stakeholders. Mr. Piucci agreed and directed that the LEC take up the issues raised in the OWLs letter.

## **6. OSB Committees, Sections, Councils and Divisions**

### **A. Workers' Compensation Section Request for Comment Re: Attorney Fee Rules Revision**

Mr. Piucci presented the options for the BOG to 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 without comment ; 3) direct the Section to conduct further review and provide additional comment; 4) submit comments of its own to the WCB.

**Motion:** Mr. Haglund moved, Ms. Fisher seconded, and the board voted unanimously to adopt the Workers' Compensation Section's comments and forward them to the Workers' Compensation Board.

### **B. Oregon New Lawyers Division Report**

Ms. Kessler reported on a variety of ONLD projects and events described in her written report and presented the 2011 ONLD calendar of events. At their March meeting, ONLD appointed two new Executive Committee members: Mario Conte of Eugene and Ryan Hilts of Lake Oswego. A task force was formed to look at the ONLD programs and ensure they are in line with the memberships' current needs. Ms. Kessler reported their law school presentations went well. Social events in Salem and Bend went well and fulfilled their goal to reach outside the immediate area. The CLE subcommittee held four CLEs in the Portland area and have three more scheduled outside this region. The Oregon New Lawyers Division Practical Skills Project targets underemployed/unemployed lawyers to do pro bono work. Judge Aiken is

working with ONLD on a new project designed to teach new lawyers how to be lawyers in specific areas and has funding for this project.

**C. Legal Ethics Committee Response to Request for Opinion**

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. The BOG accepted the LEC's conclusions and took no further action.

**D. Request for BOG Review**

**1. CSF Claim No. 2011-01 JORDAN (Flores-Salazar)**

I-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. 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." The BOG agreed with the CSF Committee that the lawyer's services were more than minimal or insignificant and also that Mr. Flores-Salazar had received the remaining services at no additional cost to him and that no extraordinary circumstances justified deviating from the rules.

**Motion:** Mr. Kent moved, Mr. Kranovich seconded, and the board voted unanimously to affirm the CSF Claim.

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

**A. Access to Justice Committee**

Mr. Mitchell-Phillips presented the OJD/OSB Task Force on Family Law Forms and Services' Report with its recommendations to the board for approval. **[Exhibit B]** Ms. Naucler commented that she would not favor adopting the recommendations of the report, particularly that if the OJD does not provide forms to the public in divorce cases, OSB should do so. Ms. Pulju said the report could be accepted without comment and referred to the Family Law Section. Ms. Grabe noted the task force did reach out to the Family Law section, and the section agreed to look at the issue whether or not the BOG accepts the report.

**Motion:** Ms. Fisher moved and Mr. Kehoe seconded to refer the report to the Family Law Section. Ms. Naucler was opposed. Motion passed.

**B. Budget and Finance Committee**

Mr. Kent reported on the committee's discussions regarding the changes to the bar's investment policy, changes to office space in the bar center, the March 31, 2011 financial report, updates on tenants and leases at the bar center, the results of a survey sent to sole practitioners for interest in renting office space at the bar center, the implications of changing the OSB Referral and Information Services funding model, and the Budget and Finance Committee's involvement in the bylaw change regarding unclaimed assets.[Exhibit C]

**Motion:** The board voted unanimously to approve the committee motion to waive the one-meeting notice.

Mr. Kent also presented the committee's motion to make an additional change in Bylaw 7.402 (investment policy) to accompany the changes discussed by the BOG on February 18, 2011.

**Motion:** The board voted unanimously to approve the committee motion to amend the bylaw 7.402 with the addition of subparagraphs (j) and (k).

The change to subparagraph (g) of bylaw 7.402 was not previously considered by the board and therefore requires waiver of the one meeting notice requirement in order to make the recommended change.

**Motion:** The board voted unanimously to approve the committee motion to amend bylaw 7.402 subparagraph (g).

**C.** Member Services Committee

In Ms. Johnnie's absence, Ms. O'Connor presented an update on OSB Program Review and BOG Candidate Recruitment.

**D.** Policy and Governance Committee

**1.** Amend Regulations 1.140 and 3.200 regarding Fully Retired Status

Ms. Naucier presented the proposed amendments to MCLE Regulations 1.140 and 3.200 to reference OSB Bylaw 6.100, not 6.101. This is a housekeeping change.

**Motion:** The board voted unanimously to approve the committee motion to amend MCLE Regulations 1.140 and 3.200 to refer to OSB Bylaw 6.100, not 6.101.

**2.** Request for Additional MCLE Credit for Lawyer-Legislators

Rep. Dennis Richardson requested that lawyer-legislators earn more than the currently .5 credit per week allowed MCLE credits for their legislative service during session.

**Motion:** The board voted unanimously to approve the committee motion to amend MCLE Regulations 5.1(e) and 5.100(b) to allow legislators to earn one credit per week during the legislative session.

**3.** Proposed Amendment to OSB bylaws re: Unclaimed Lawyer Trust Accounts

The committee recommended adoption of new provisions in the OSB Bylaws to establish rules on the administration of unclaimed lawyer trust account funds, including procedures for a claim adjudication process. [Exhibit D] Staff also recommends waiving the one-meeting notice required by Bylaw Article 27, as there is already a claim pending.

**Motion:** The board voted unanimously to approve the committee motion to waive the one-meeting notice requirement under OSB Bylaw Article 27.

**Motion:** The board voted unanimously to approve the committee motion to amend the OSB Bylaws to include new provision on the administration of unclaimed lawyer trust account funds, including procedures for a claim adjudication process.

**4. Fee Arbitration Task Force Recommendation**

- a. The committee supports the Task Force recommendations for a number of changes to the current fee arbitration rules, which are reflected in the attached redline version of the OSB Fee Arbitration Rules. [Exhibit E]

**Motion:** The board voted unanimously to approve the committee motion to accept the changes to the current fee arbitration rules.

- b. The committee also recommends adopting the Task Force recommendation the Board do the following to support and expand the OSB Fee Arbitration Program: institute a mediation pilot project; develop and provide arbitration training for volunteer arbitrators at no cost to the volunteers, and; appoint a Fee Arbitration Advisory Committee to act as a continuing resource for training and recruitment of OSB Fee Arbitrators.

**Motion:** The board voted unanimously to approve the committee motion to support and expand the OSB Fee Arbitration Program as recommended by the Fee Arbitration Task Force.

**5. Judicial Administration Committee Assignment**

The Judicial Administration Committee would like to expand its assignment (charge) to allow for support of access to justice, the monitoring of court facilities, public safety issues, and remove their assignment to participate in judicial appointments and new judgeships. [Exhibit F]

**Motion:** The board voted unanimously to approve the committee motion to approve the changes to the Judicial Administration Committee's assignment (charge.)

**6. Amendment to OSB Bylaw 2.6 regarding Conflicts of Interest**

The committee recommended amending OSB Bylaw 2.6 "Conflicts of Interest" as proposed by General Counsel's Office so as to be consistent with applicable state ethics laws. Ms. Naucler recommended waiving the one-meeting notice change required by

Article 27. Mr. Kent asked for and received clarification on the limitations on receipt of gifts.

**Motion:** Ms. Naucler moved, Ms. Fisher seconded, and the board voted unanimously to waive the one meeting notice.

**Motion:** The board voted unanimously to approve the committee motion to approve the changes to OSB Bylaw 2.6.

**E. Public Affairs Committee**

Mr. Johnson presented a legislative update to the board, including the status of the bar's bills: 17 of the 18 have passed out of their first chamber and are heading for their second chamber; one bill has died. Ms. Grabe commented that the filing fee bill's proponents wanted a workgroup and the Public Affairs committee declined.

**F. Public Member Selection**

Ms. Naucler presented the committee's recommendation to re-appoint Audrey Matsumonji to the Board of Governors Public Member position expiring in 2015 and not conduct a search for a new public member.

**Motion:** The board voted unanimously to approve the committee motion to approve the re-appointment of Ms. Matsumonji.

**G. Appoint Unclaimed Lawyer Trust Accounts Committee**

Consistent with the bylaw adopted earlier in the meeting, Mr. Piucci appointed Mr. Haglund, Mr. Knight and Ms. Billman to the Unclaimed Lawyer Trust Accounts (ULTA) Special Committee to evaluate claims made against unclaimed lawyer trust account funds.

**8. Consent Agenda**

**Motion:** Mr. Larson moved, Mr. Kehoe seconded, and the board voted unanimously to approve the consent agenda including changes to OSB Bylaw 16.200 regarding Complimentary CLE Pro Bono **[Exhibit G]**, amendments to OSB Bylaw 24.201 regarding PLF-PPMAC **[Exhibit H]**, revisions to ONLD Bylaws **[Exhibit I]**, and amendments to MCLE Rules 5.2 and 5.4 **[Exhibit J]**.

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

Nothing submitted.



**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.

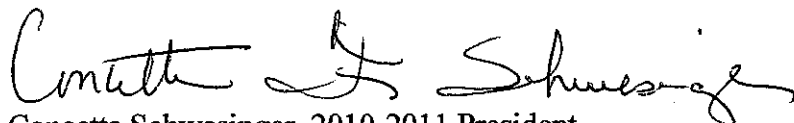
*Resolved Further* that the LEC and/or any task force established for this purpose be directed to report on its conclusions and recommendations by the Board of Governors meeting which immediately precedes the Convocation on Equality scheduled for November 4, 2011.

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

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

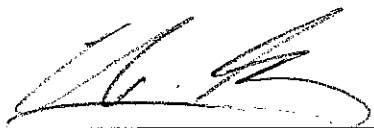
Very truly yours,



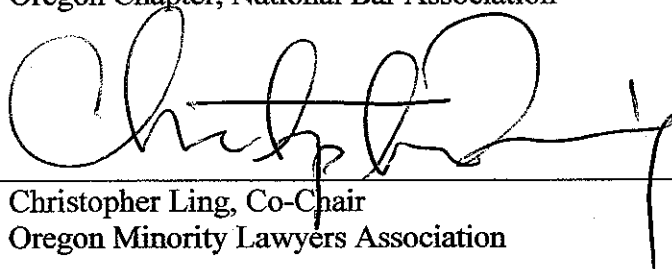
Concetta Schwesinger, 2010-2011 President  
Oregon Women Lawyers

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

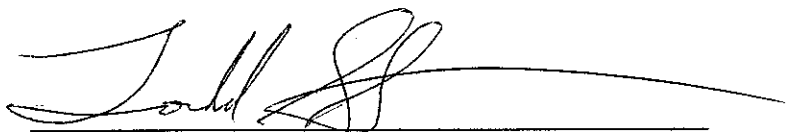
**We Support and Concur with the Foregoing Letter:**



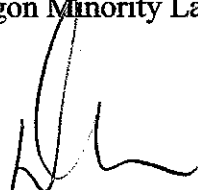
Ali D. Seals, President  
Oregon Chapter, National Bar Association



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.

**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

---

HON. MAUREEN MCKNIGHT, Multnomah County Circuit Court, and  
MICHAEL FEARL, Attorney at Law, OSB Family Law Section  
*Co-Chairs*

Nancy Cozine  
*Deputy Trial Court Administrator  
Multnomah County Circuit Court  
Portland*

Mitzi Naucler  
*President-Elect, OSB Board of Governors  
Member, Access to Justice Committee  
Albany*

Jean Fogarty  
*Director  
Oregon Child Support Program  
Oregon Dept. of Justice  
Salem*

Martha Renick  
*Law Librarian  
Marion County Law Library  
Salem*

Sue Gerhardt  
*Family Court Coordinator  
Washington County Circuit Court  
Hillsboro*

Elizabeth Vaughn  
*Facilitator  
Clackamas County Circuit Court  
Oregon City*

Nancy Lamvik  
*Trial Court Administrator  
Lincoln County Circuit Court  
Newport*

Anthony Wilson  
*Attorney at Law  
OSB Family Law Section  
Portland*

Karen Lord  
*OSB Board of Governors  
Access to Justice Committee  
Salem*

Hon. Charles Zennaché  
*Circuit Court Judge  
Lane County Circuit Court  
Eugene*

---

### Staff to the Task Force:

Kay Pulju  
*Communications Director, Oregon State Bar  
Tigard  
kpulju@osbar.org*

### Invited Participants

Robin Selig, *Oregon Law Center*  
Maya Crawford, *Legal Aid Services of Oregon*  
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 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.<sup>1</sup> 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.<sup>2</sup> 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,

---

<sup>1</sup> 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.

<sup>2</sup> "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 Commission<sup>3</sup>
- 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;

---

<sup>3</sup> 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,<sup>4</sup> 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.<sup>5</sup> 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

---

<sup>4</sup> See footnote 1.

<sup>5</sup> 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.<sup>6</sup> 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 status<sup>7</sup> 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,

---

<sup>6</sup> 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."

<sup>7</sup> See commentary to Recommendation No. 3.



efficiency, and legal correctness<sup>8</sup> 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

---

<sup>8</sup> 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](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 5<sup>th</sup> to 8<sup>th</sup> grade, depending on public use.<sup>9</sup> 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.

---

<sup>9</sup> 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 litigants<sup>10</sup> 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.

---

<sup>10</sup> 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:

**NOTICE:** The I-CAN! service and content are provided for convenience and informational purposes only. The service and content are not intended to be legal advice and are not a substitute for a lawyer. By linking to I-CAN!, the MN Judicial Branch does not imply any endorsement of I-CAN! and is not responsible or liable for the content, accuracy or privacy practices of the I-CAN! service. Read [Disclaimer](#).

and Florida’s:



Administrative Office of the Courts  
20th Judicial Circuit of Florida  
[www.ca.cjis20.org](http://www.ca.cjis20.org)

**You are now leaving the 20th Judicial Circuit website.**

Links to **TurboCourt - Florida** and content on that site are provided for your convenience and for informational purposes only. It does not constitute or imply endorsement of this site by the Administrative Office of the Courts and the 20th Judicial Circuit. The Administrative Office of the Courts and the 20th Judicial Circuit are not responsible or liable for the content, accuracy, or privacy practices of linked sites, or for products or services described on these sites.

Click below to continue:

**TurboCourt - Florida**



<http://www.turbocourt.com/go.jsp?act=actShowState&tmstp=1148604266773&id=170>

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.<sup>11</sup>

---

<sup>11</sup> 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 attorneys<sup>12</sup>, 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.

---

<sup>12</sup>

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.<sup>13</sup> The OSB's Lawyer Referral Service, which

---

<sup>13</sup> 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,<sup>14</sup> 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.

---

<sup>14</sup> 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  
**Memo Date:** April 8, 2011  
**From:** Chris Kent, Chair, Budget & Finance Committee  
**Re:** Change in OSB Investment Policy

---

### Action Recommended

Approve the changes of the OSB bylaw 7.402 to include the amendments approved by the Budget & Finance Committee. Waive the one meeting notice requirement for the change to subparagraph (g) of bylaw 7.402.

### Background

The addition of subparagraphs (j) and (k) to bylaw 7.402 was first on the February 18 board agenda and since this is a bylaw change, it is before the board for final approval.

The change to subparagraph (g) of bylaw 7.402 was not previously considered by the board and therefore requires waiver of the one meeting notice requirement in order to make the recommended change.

The addition of subparagraphs (j) and (k) 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.

The deletion of the second clause in subparagraph (g) is essentially a housekeeping change to make bylaw 7.402 internally consistent. Currently, the prohibition of individual stock ownership in bylaw 7.402(g) conflicts with 7.402(i), which allows for investment in individual publicly-traded stock. The Committee believes this was an oversight.

Bylaw subsection 7.402 with the recommended changes (underlined or stricken 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  
**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.

## Fee Arbitration Rules

### Rules of the Oregon State Bar on Arbitration of Fee Disputes

Effective ~~August 14, 2004~~ April 22, 2011

#### TABLE OF CONTENTS

<u><b>Section 1.</b></u> Purpose.....	2
<u><b>Section 2.</b></u> Arbitration Panels.....	2
<u><b>Section 3.</b></u> Initiation of Proceedings.....	2
<u><b>Section 4.</b></u> Amounts in Dispute.....	3
<u><b>Section 5.</b></u> Selection of Arbitrators .....	3
<u><b>Section 6.</b></u> Arbitration Hearing .....	4
<u><b>Section 7.</b></u> Arbitration Award .....	<del>5</del> 4
<u><b>Section 8.</b></u> Public Records and Meetings .....	5
<u><b>Section 9.</b></u> Arbitrator Immunity and Competency to Testify.....	<u>6</u>
<b>Appendix A</b> .....	7



## **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  
**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.

## New Lawyers Division Bylaws

### TABLE OF CONTENTS

<b>Article 1. Name, Purpose and Fiscal Year.....</b>	<b>4</b>
1.1 Name. ....	4
1.2 Purposes.....	4
1.3 Public Office.....	4
1.4 Fiscal Year.....	4
1.5 Bar Policies.....	4
<b>Article 2. Membership and Dues.....</b>	<b>4</b>
2.1 Members.....	4
2.2 Associate Members. ....	4
2.3 Dues. ....	4
2.4 Associate Member Participation in Division Business.....	4
<b>Article 3. Division Executive Committee.....</b>	<b>5</b>
3.1 Composition.....	5
3.2 Duties. ....	5
3.3 Majority Vote, Quorum.....	5
3.4 Meetings.....	5
3.5 Action Between Meetings.....	5
3.6 Membership Votes. ....	6
3.7 Compensation. ....	6
3.8 Removal.....	6
3.9 Rescission.....	6
<b>Article 4. Officers.....</b>	<b>6</b>
4.1 Composition.....	6
4.2 Chairperson.....	6
4.3 Chairperson-Elect.....	6
4.4 Secretary.....	6
4.5 Treasurer.....	7
<b>Article 5. Meetings.....</b>	<b>7</b>
5.1 Open Meetings.....	7
5.2 Meeting.....	7
5.3 Special Meetings.....	7

5.4 Action.....	7
5.5 Floor vote. ....	7
5.6 Rules .....	7
<b>Article 6. Terms In Office And Elections .....</b>	<b>8</b>
6.1 Limitation on Executive Committee Membership. ....	8
6.2 Term .....	8
6.3 Vacancies. ....	8
6.4 Unexpired Term.....	8
6.5 Eligibility for Executive Committee Membership. ....	8
6.6 Eligibility for Officers.....	9
6.7 Terms for Officers.....	9
6.8 Nominating Committee. ....	9
6.9 Diversity.....	9
6.10 Notice. ....	9
6.11 Election of Executive Committee Members. ....	9
6.12 Election of Executive Committee Members at Annual Meeting.....	10
6.13 Election of Executive Committee Members by Mail or Electronically.....	10
6.14 Election of Officers.....	10
<b>Article 7. Committees.....</b>	<b>10</b>
7.1 Standing Committees. ....	10
7.2 Other Committees. ....	10
<b>Article 8. Representation Of The Oregon State Bar's Position .....</b>	<b>10</b>
8.1 Approval Required.....	10
8.2 Bar Approval Process.....	10
<b>Article 9. Receipts And Expenditures .....</b>	<b>11</b>
9.1 Dues. ....	11
9.2 Assessments.....	11
9.3 Expenditures.....	11
9.4 Retention of Funds. ....	11
<b>Article 10. Minutes And Reports.....</b>	<b>11</b>
10.1 Minutes.....	11
10.2 Request for BOG Action. ....	11
10.3 Report.....	12
10.4 Budget. ....	12
10.5 In Person Report. ....	12

<b>Article 11. Amendments To Bylaws .....</b>	<b>12</b>
11.1 Amendments by BOG. ....	12
11.2 Amendments by Division. ....	12

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

**Oregon State Bar  
Board of Governors Meeting  
April 22, 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. Mark J. Dobson – 842084

**Motion:** Mr. Johnson presented information concerning the BR 8.1 reinstatement application of Mr. Dobson. Mr. Piucci moved, and Mr. Johnson seconded, to recommend Mr. Dobson's reinstatement to the Supreme Court. The motion passed unanimously.

2. Maureen Flanagan – 990488

Mr. Knight presented information concerning the BR 8.1 reinstatement application of Ms. Flanagan to satisfy the one meeting notice requirement of Bylaw 6.103. The application will come before the board at a later meeting.

3. Fred M. Granum – 832145

**Motion:** Mr. Kranovich presented information concerning the BR 8.1 reinstatement application of Mr. Granum 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. Kranovich moved, and Mr. Kent seconded, to approve Mr. Granum's temporary reinstatement. The motion passed unanimously

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. Ms. Fisher moved, and Ms. Matsumonji seconded, to recommend Mr. Horton's reinstatement to the Supreme Court. The motion passed unanimously.

5. Heath E. Kula – 023567

**Motion:** Mr. Haglund presented information concerning the BR 8.1 reinstatement application of Mr. Kula. Mr Haglund moved, Mr. Kehoe seconded and the board passed the motion to recommend Mr. Kula's reinstatement to the Supreme Court. The motion passed unanimously.

6. William Nootenboom – 961952

**Motion:** Mr. Emerick presented information concerning the BR 8.1 reinstatement application of Mr. Nootenboom. Mr. Emerick moved, Mr. Piucci seconded and the board passed the motion to recommend Mr. Kula's reinstatement to the Supreme Court. The motion passed unanimously.

7. Michael J. Uda - 814525

**Motion:** Ms. Matsumonji presented information concerning the BR 8.1 reinstatement application of Mr. Uda. Ms. Matsumonji moved, Mr. Piucci seconded, and the board passed the motion to recommend Mr. Uda's reinstatement to the Supreme Court. The motion passed unanimously.

B. Disciplinary Counsel's Report

As written.

**Oregon State Bar  
Board of Governors Meeting  
April 22, 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 UPL Committee recommended the Board seek injunctive relief against Ms. Hayes to prevent her continued unlawful practice of law.

**Motion:** Mr. Knight moved and Ms. O'Connor seconded to reject the recommendation that the Board seek injunctive relief against Ms. Hayes. The board unanimously approved the motion.

**B. General Counsel's Report**

- a. The BOG received status reports on the non-action items
- b. The BOG was asked to decide whether to submit an amicus brief in Mr. Corrinet's appeal of the order revoking his membership to the Federal Bar for the District of Oregon.

**Motion:** Mr. Haglund moved and Mr. Knight seconded the BOG not submit an amicus brief in Mr. Corrinet's appeal. The board unanimously approved the motion.