

Oregon State Bar
Meeting of the Board of Governors
August 26, 2011
Open Session Minutes

The meeting was called to order by President Stephen Piucci at 12:30 p.m. on August 26, 2011, and adjourned at 3:00 p.m. Members present from the Board of Governors were Jenifer Billman, Hunter Emerick, Ann Fisher, Michelle Garcia, Michael Haglund, Gina Johnnie, David Wade, Matt Kehoe, Christopher Kent, Ethan Knight, Tom Kranovich, Steve Larson, Audrey Matsumonji, Kenneth Mitchell-Phillips, Mitzi Naucler, and Maureen O'Connor. Staff present were Sylvia Stevens, Helen Hirschbiel, Rod Wegener, Susan Grabe, Kay Pulju, Mariann Hyland, and Camille Greene. Also present were: PLF liaison, Tim Martinez and PLF CEO, Ira Zarov.

Friday, August 26, 2011, 1:00 p.m.

1. Department Presentation

- A. Ms. Hirschbiel presented an overview of General Counsel's Office functions and staff. The department's primary goal is to protect the legal and policy interests of the bar by providing legal advice to the BOG, Executive Director, HR Manager and other managers on personnel and other issues. GCO represents the bar's interests in non-disciplinary litigation and negotiates, drafts and reviews all OSB contracts. Other functions include providing ethics assistance to bar members, overseeing operation of the Client Assistance Office and Minimum Continuing Legal Education Department, administering the Client Security Fund and Fee Arbitration Program, supporting the Disciplinary Board and serving as the DB Clerk's office, and supporting the Unlawful Practice of Law and State Lawyers Assistance Committees.
- B. Mr. Wegener presented an overview of Facilities and Operations Division and staff. The division's functions include Accounting, Technology, Design, Facilities and Distribution Services (IKON.)

2. Report of Officers

- A. Report of the President
As written.
- B. Report of the President-elect
As written. Ms. Naucler noted that she is working on the content of the November board retreat and will be asking board members to bring ideas for 2012 to the November retreat.
- C. Report of the Executive Director

As written. Ms. Stevens drew the BOG's attention to the Legal Publications Department's ACLEA award and to the fact that over a two-month period, BarBooks was accessed 3300 times by users who looked at 310,000 pages. She also noted that Judith Baker successfully lobbied US Bank to maintain interest on IOLTA accounts at .7% instead of dropping it to nearly zero as had been planned.

Finally, Ms. Stevens sought the BOG's approval to send a letter to the Hilton Hotel expressing disappointment over the unfortunate treatment of an OLIO participant on August 4, 2011.

Motion: Mr. Haglund moved, Mr. Kranovich seconded, and the board voted unanimously to submit the letter to the Hilton Hotel and copy the entire board, among others.

D. Director of Diversity & Inclusion

Ms. Hyland reported on the Diversity and Inclusion's Department's successful OLIO event. The 14th iteration of the event was well-attended by students, lawyers and judges, and the evaluations were uniformly positive. It also came in under budget. Ms. Hyland explained that the new name of the department reflects a broader focus on inclusion in all aspects of the profession.

E. Report of the BOG Liaison to MBA

Mr. Knight reported on the August 3 meeting of the MBA where he presented the changes in the Lawyer Referral plan. The MBA Board had no issues for the bar.

3. Professional Liability Fund

A. General Update

Mr. Martinez reported that the PLF board is considering whether to eliminate the Special Underwriting Assessment. Any recommendation to do so will be presented to the BOG. The PLF will begin accepting credit card payments for PLF premiums and has found a way to do so that doesn't result in passing on the bank fees to other members

Mr. Martinez also discussed how the recent decline in the stock market effected PLF investments.

. Mr. Zarov gave a brief update on the PLF budget and coverage plan changes. Mr. Zarov also reported that last month's claims audit report indicated that the PLF staff was doing an excellent job with claims handling. Mr. Zarov noted that the PLF will lose over 100 years of experience with the retirements of senior employees over the next two years. He also noted that the PLF Board will have two lawyer vacancies for BOG appointment; nominees will be presented by the end of October.

4. Professionalism Commission Request

A. Proposed Amendment to Statement of Professionalism

The Commission proposes amending the Statement of Professionalism to include support for a diverse bench and bar and asks the board to consider the request of the Oregon Bench/Bar Commission on Professionalism that the proposed amendment to the Statement of Professionalism be submitted to the House of Delegates for approval at the October 2011 meeting. **[Exhibit A]**

Motion: Mr. Wade moved, Mr. Mitchell-Phillips seconded, and the board voted unanimously to submit the amendment to the House of Delegates for approval at the October 2011 meeting.

5. Rules and Ethics Opinions

A. Legal Ethics Committee

Ms. Stevens presented the Legal Ethics Committee's recommendation to issue a proposed formal opinion addressing a lawyer's duties on receipt of documents containing metadata. **[Exhibit B]**. The proposed opinion holds that a lawyer's duty of competence requires familiarity with the concept of metadata and the exercise of reasonable care to protect the inadvertent disclosure of sensitive client information contained in metadata. Mr. Emerick suggested, and Mr. Wade agreed, that the committee's initial premise is wrong and that there should be no presumption that metadata is not inadvertently sent merely arising from a lawyer's duty of care in sending electronic documents.

The consensus of the board was that the Legal Ethics Committee reconsider its analysis of the issues.

Ms. Stevens presented the Legal Ethics Committee's recommendation to issue relating proposed formal opinion discussing addressing the limitations on the disclosure of confidential information by a lawyer seeking to withdraw from a matter in litigation because of difficulties with the client. **[Exhibit C]**

Motion: Mr. Haglund moved, Mr. Knight seconded and the board voted unanimously to issue the proposed formal opinion.

6. OSB Committees, Sections, Councils and Divisions

A. Oregon New Lawyers Division Report

As written.

B. UPL Task Force Report and Recommendations

On behalf of task force chair, Terry Wright, Ms. Hirschbiel presented the UPL Task Force Report, which includes the following recommendations for adoption and implementation by the Board of Governors:

1. Allow the Unlawful Practice of Law Committee ("UPL Committee") to issue advisory opinions in order to provide guidance about what constitutes the unlawful practice of law;
2. Establish a rule that prohibits inactive or retired lawyers from identifying themselves as "lawyers" or "attorneys" unless they also state that they are inactive or retired;
3. Eliminate the admonition letter and replace it with a warning letter;
4. Seek an amendment to the Unlawful Trade Practices Act ("UTPA"), ORS 646.608 et seq. to add that a violation of ORS 9.160 constitutes a violation of the UTPA;
5. Explore, in conjunction with the Court, possible rule changes that would allow the OSB to pursue contempt against disbarred lawyers who continue to practice law directly in the Oregon Supreme Court;
6. Expand the Oregon State Bar website information relating to the unlawful practice of law, and;
7. Expand public outreach and education.

Motion: Mr. Kent moved, Ms. Naucner seconded and the board voted to adopt and implement the UPL Task Force recommendations. Ms. Fisher was opposed.

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

A. Budget and Finance Committee

Mr. Kent reported on the committee's recommendation regarding the following issues highlighted in the Executive Summary Budget Report [**Exhibit D**]:

1. Maintain the current membership fees and assessments for 2012.
2. Continue 2011 funding into 2012 of the program and policy considerations in Section 4.
3. Prepare the 2012 budget to include a transfer of \$400,000 from reserves (planned in 2011 but not needed) and a tentative 2% salary pool.
4. Staff should strive for a balanced budget in 2012.

Motion: The board voted unanimously to approve the committee's recommendations.

Mr. Kent presented the committee's recommendation to select Moss Adams rather than send a RFP soliciting other auditors and bids for the 2010-2011 financial statements.

Motion: The board voted unanimously to approve the Budget & Finance Committee's recommendation to select Moss Adams to perform the audit of the bar's financial statements for fiscal years 2010 and 2011.

B. Member Services Committee

Ms. Johnnie presented the Member Services Committee's recommendations for the 2011 OSB President's Awards and Award of Merit.

Motion: The board voted unanimously to approve the committee's recommendations for the slate of awards recipients. **[Exhibit E]**

Ms. Johnnie presented the Member Services Committee's recommendation that sections not be assessed a per-member administrative fee for law-students who are offered free membership in the section.

Motion: The board voted unanimously to approve the committee motion to waive the bar's per-member administrative assessment on sections for law students who are offered complimentary section membership

C. Policy and Governance Committee

Motion: Ms. Naucler presented the committee motion to amend Bylaw 16.200 regarding complimentary CLE seminars registration and discounted CLE seminars products. **[Exhibit F]** The board voted unanimously to approve the committee motion.

Motion: Ms. Naucler presented the committee's motion to amend OSB Bylaws 9.1, 9.2, 9.3, and 9.4 relating to nominating petitions and electronic voting as set forth on **[Exhibit G]** Ms. Naucler also moved that the BOG waive the one meeting notice requirement and enact these changes immediately. Ms. Billman seconded and the board voted unanimously to waive the one meeting notice requirement. The board voted unanimously to approve the committee motion to make the bylaw changes regarding elections.

D. SUA Subcommittee

Motion: Mr. Kent presented the SUA committee (Mr. Kent, Mr. Haglund and Ms. Billman) recommendation for Mr. Thompson. The BOG affirmed the PLF decision in the Thompson case, finding no merit in Thompson's claims of mishandling. Ms. Johnnie abstained

Motion: Mr. Kent presented the SUA committee (Mr. Kent, Mr. Haglund and Ms. Johnnie) recommendation for Mr. Hernandez and Mr. Millard. The BOG affirmed the PLF's decision to allocate the SUA 50/50 between the two lawyers. The parties knew of the proposed allocation and agreed to share it as part of the settlement of the case.

8. Consent Agenda

Motion: Ms. Naucler moved, Ms. Matsumonji seconded, and the board voted unanimously to approve the consent agenda including various appointments **[Exhibit H]**, a new Fee Arbitration Rule establishing an advisory committee **[Exhibit I]** and the Client Security Fund claim recommended for payment **[Exhibit J]**.

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

Nothing submitted.

OREGON STATE BAR
STATEMENT OF PROFESSIONALISM

Approved by the OSB House of Delegates September 16, 2006

Adopted by the Oregon Supreme Court November 16, 2006

As lawyers, we belong to a profession that serves our clients and the public good. As officers of the court, we aspire to a professional standard of conduct that goes beyond merely complying with the ethical rules. Professionalism is the courage to care about and act for the benefit of our clients, our peers, our careers, and the public good. Because we are committed to professionalism, we will conduct ourselves in a way consistent with the following principles in dealing with our clients, opposing parties, opposing counsel, the courts, and the public.

- I will promote the integrity of the profession and the legal system.
- I will work to ensure access to justice for all segments of society.
- I will support a diverse bench and bar.
- I will avoid all forms of unlawful or unethical discrimination.
- I will protect and improve the image of the legal profession in the eyes of the public.
- I will promote respect for the courts.
- I will support the education of the public about the legal system.
- I will work to achieve my client's goals, while at the same time maintain my professional ability to give independent legal advice to my client.
- I will always advise my clients of the costs and potential benefits or risks of any considered legal position or course of action.
- I will communicate fully and openly with my client, and use written fee agreements with my clients.
- I will not employ tactics that are intended to delay, harass, or drain the financial resources of any party.
- I will always be prepared for any proceeding in which I am representing my client.
- I will be courteous and respectful to my clients, to adverse litigants and adverse counsel, and to the court.
- I will only pursue positions and litigation that have merit.
- I will explore all legitimate methods and opportunities to resolve disputes at every stage in my representation of my client.
- I will support pro bono activities.

FORMAL OPINION NO. 2011-XXX**Competency: Disclosure of Metadata****Facts:**

Lawyer A emails to Lawyer B a draft of an Agreement they are negotiating on behalf of their respective clients. Lawyer B is able to use a standard word processing feature to reveal the changes made to an earlier draft (“metadata”). The changes reveal that Lawyer A had initially placed his client’s “bottom line” negotiating points in the draft, and then subsequently deleted them.

Same facts as above except that shortly after opening the document and displaying the changes, Lawyer B receives an urgent request from Lawyer A asking that the document be deleted without reading it because Lawyer A had mistakenly not removed the metadata.

Same facts as the first scenario except that Lawyer B has software designed to thwart the metadata removal tools of common word processing software and wishes to use it to see if there is any helpful metadata in the Agreement.

Questions:

1. Does Lawyer A have a duty to remove or protect metadata when transmitting documents electronically?
2. May Lawyer B use the metadata information that is readily accessible with standard word processing software?
3. Must Lawyer B inform Lawyer A that the document contains readily accessible metadata?
4. Must Lawyer B acquiesce to Lawyer A’s request to delete the document without reading it?
5. May Lawyer A use special software to reveal the metadata in the document?

Conclusions:

1. See discussion.
2. Yes, qualified.
3. No.
4. No, qualified.
5. No.

Discussion:

Metadata generally means “data about data.” As used here, metadata means the embedded data in electronic files that may include information such as who authored a document, when it was created, what software was used, any comments embedded within the content, and even a record of changes made to the document.¹

Lawyer’s Duty in Transmitting Metadata

Oregon RPC 1.1 requires a lawyer to provide competent representation to a client, which includes possessing the “legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.” Oregon RPC 1.6(a) requires a lawyer to “not reveal information relating to the representation of a client” except where the client has expressly or impliedly authorized the disclosure.² Information relating to the representation of a client may include metadata in a document. Taken together, the two rules indicate that a lawyer is responsible for acting competently to safeguard information relating to the representation of a client contained in communications with others. Competency in relation to metadata requires a lawyer utilizing electronic media for communication to maintain at least a basic understanding of the technology and the risks of revealing metadata or to obtain and utilize adequate technology support.³

A lawyers must use reasonable care to avoid the disclosure of confidential client information, particularly where the information could be detrimental to a client.⁴ With respect to metadata in documents, reasonable care includes taking steps to prevent the inadvertent disclosure of metadata, to limit the nature and scope of the metadata revealed, and to control to whom the document is sent.⁵ What constitutes reasonable care will change as technology evolves.

¹ Joshua J. Poje, *Metadata Ethics Opinions Around the U.S.*, AMERICAN BAR ASSOCIATION, May 3, 2010, http://www.americanbar.org/groups/departments_offices/legal_technology_resources/resources/charts-fyis/metadachart.html.

² There are several exceptions to the duty of confidentiality in RPC 1.6, but none are relevant here.

³ The duty of competence with regard to metadata also requires a lawyer to understand the implications of metadata in regard to documentary evidence. A discussion of whether removal of metadata constitutes illegal tampering is beyond the scope of this opinion, but RPC 3.4(a) prohibits a lawyer from assisting a client to “alter, destroy or conceal a document or other material having potential evidentiary value.”

⁴ Jurisdictions that have addressed this issue are unanimous in holding lawyers to a duty of “reasonable care.” See e.g. State Bar of Arizona Ethics Opinion 07-03. By contrast, ABA Formal Opinion 06-442, does not address whether the sending lawyer has any duty, but suggests various methods for eliminating metadata before sending a document. *Id.* But see ABA Model Rule 1.6, comment [17], which provides that “[w]hen transmitting a communication that includes information relating to the representation of a client, the lawyer must take reasonable precautions to prevent the information from coming into the hands of unintended recipients.”⁵ Such steps may include utilizing available methods of transforming the document into a non-malleable form, such as converting it to a PDF or “scrubbing” the metadata from the document prior to electronic transmittal.

⁵ Such steps may include utilizing available methods of transforming the document into a non-malleable form, such as converting it to a PDF or “scrubbing” the metadata from the document prior to electronic transmittal.

The duty to use reasonable care so as not to reveal confidential information through metadata may be best illustrated by way of analogy to paper documents. For instance, a lawyer may send a draft of a document to opposing counsel through regular mail and inadvertently include a sheet of notes torn from a yellow legal pad identifying the revisions to the document. Another lawyer may print out a draft of the document marked up with the same changes as described on the yellow notepad instead of a “clean” copy and mail it to opposing counsel. In both situations, the lawyer has a duty to exercise reasonable care not to include notes about the revisions (the metadata) if it could prejudice the lawyer’s client in the matter.

Lawyer’s Use of Received Metadata

If a lawyer who receives a document knows or should have known it was inadvertently sent, the lawyer must notify the sender promptly. Oregon RPC 4.4(b). Using the examples above, in the first instance the receiving lawyer may reasonably conclude that the yellow pad notes were inadvertently sent, as it is not common practice to include such notes with document drafts. In the second instance, however, it is not so clear that the “redline” draft was inadvertently sent, as it is not uncommon for lawyers to share marked-up drafts. Given the sending lawyer’s duty to exercise reasonable care in regards to metadata, the receiving lawyer could reasonably conclude that the metadata was intentionally left in.⁶ In that situation, there is no duty under RPC 4.4(b) to notify the sender of the presence of metadata.

If, however, the receiving lawyer knows or reasonably should know that metadata was inadvertently included in the document, RPC 4.4(b) requires only notice to the sender; it does not require the receiving lawyer to return the document unread or to comply with a request by the sender to return the document.⁷ OSB Formal Op. No. 2005-150. Comment [3] to ABA Model Rule 4.4(b) notes that a lawyer may voluntarily choose to return a document unread and that such a decision is a matter of professional judgment reserved to the lawyer. At the same time, the Comment directs the lawyer to Model Rules 1.2 and 1.4. Model Rule 1.2(a) is identical to Oregon RPC 1.2(a) and requires the lawyer to “abide by a client’s decisions concerning the objectives of the representation” and to “consult with the client as to the means by which the objectives are pursued.”⁸ Oregon RPC 1.4(a)(2), like its counterpart Model Rule, requires a lawyer to “reasonably consult about the means by which the client’s objectives are to be accomplished.” Thus, before deciding what to do with an inadvertently sent document, the receiving lawyer should consult with the client about the risks of returning the document versus the risks of retaining and reading the document and its metadata.

⁶ See *Goldsborough v. Eagle Crest Partners*, 314 Or 336 (1992) (In the absence of evidence to the contrary, an inference may be drawn that a lawyer who voluntarily turns over privileged material during discovery acts within the scope of the lawyer’s authority from the client and with the client’s consent.).

⁷ Comment [2] to ABA Model Rule 4.4(b) explains that the rule “requires the lawyer to promptly notify the sender in order to permit that person to take protective measures.” It further notes that “[w]hether the lawyer is required to take additional steps, such as returning the original document, is a matter of law beyond the scope of these Rules, as is the question of whether the privileged status of a document has been waived.”

⁸ Although not required by the Oregon RPCs, parties could agree, at the beginning of a transaction, not to review metadata as a condition of conducting negotiations.

Regardless of the reasonable efforts undertaken by the sending lawyer to remove or screen metadata from the receiving lawyer, it may be possible for the receiving lawyer to thwart the sender's efforts through software designed for that purpose. It is not clear whether uncovering metadata in that manner would trigger an obligation under Oregon RPC 4.4(b) to notify the sender that metadata had been inadvertently sent. Searching for metadata using special software when it is apparent that the sender has made reasonable efforts to remove the metadata may be analogous to surreptitiously entering the other lawyer's office to obtain client information and may constitute "conduct involving dishonesty, fraud, deceit or misrepresentation" in violation of RPC 8.4(a)(3).

Approved by Board of Governors, August 2011.

PROPOSED FOR BOG REVIEW

FORMAL OPINION NO. 2011-XXX

**Withdrawal from Litigation:
Client Confidences**

Facts:

During litigation, Lawyer and Client have a dispute concerning the representation. Lawyer and Client cannot resolve the dispute and Lawyer files a motion to withdraw in which Lawyer wishes to state one of the following:

- My client won't listen to my advice;
- My client won't cooperate with me;
- My client hasn't paid my bills in a timely fashion; or
- My client has been untimely and uncooperative in making discovery responses during the course of this matter.

Question:

May Lawyer chose unilaterally to provide the court any of the client information noted above in the motion to withdraw?

Conclusion:

No, qualified.

Discussion:

Oregon RPC 1.0(f) provides:

Information relating to the representation of a client denotes both information protected by the attorney-client privilege under applicable law, and other information gained in a current or former professional relationship that the client has requested be held inviolate or the disclosure of which would be embarrassing or would be likely to be detrimental to the client.

Oregon RPC 1.6(a) provides:

A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is

impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).

Oregon RPC 1.6(b) provides, in part:

A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:

* * *

(4) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client;

(5) to comply with other law, court order, or as permitted by these Rules;

* * *

Lawyer's obligation not to reveal information relating to the representation of a client continues even when moving to withdraw from representing Client. *See* Oregon RPC 1.6(a). To the extent the withdrawal is based on "information relating to the representation of a client," then Lawyer may not reveal the basis for the withdrawal to the court unless disclosure is permitted by one of the narrow exceptions in RPC 1.6(b).¹

Depending upon the specific factual circumstances involved, the four statements noted above seem likely to constitute information relating to the representation of a client because if the information "would be embarrassing or would be likely to be detrimental to the client." *See also* THE ETHICAL OREGON LAWYER § 4.3 (OSB CLE 2006) (providing that an event "such as the nonpayment of fees, may have confidential aspects to it, and therefore may constitute information protected by Oregon RPC 1.6").²

For example, a client's inability and/or refusal to pay may prejudice the client's ability to resolve the dispute with an opposing party; likewise, a party's unwillingness to cooperate with discovery may lead the plaintiff to file additional pleadings or seek sanctions. Consequently,

¹ This opinion does not address the situation that would occur where a client terminates a lawyer's services. Pursuant to Oregon RPC 1.16(a)(3), a lawyer is required to withdraw from the representation of a client if "the lawyer is discharged." Under those circumstances, it would be appropriate to inform the court that the lawyer's motion is being brought pursuant to Oregon RPC 1.16(a)(3).

² This opinion assumes that the dispute between Lawyer and Client does not concern whether Lawyer should take action in violation of the RPCs. For an analysis of such a situation, see OSB Formal Ethics Opinion 2005-34, which notes that if a client will not rectify perjury, "the lawyer's only option is to withdraw, or seek leave to withdraw, from the matter without disclosing the client's wrongdoing." *See also In re A.*, 276 Or 225, 554 P2d 479 (1976).

Lawyer cannot unilaterally and voluntarily decide to make this information public unless an exception to Oregon RPC 1.6 can be found.

Neither a disagreement between Lawyer and Client about how the client's matter should be handled nor the client's failure to pay fees when due constitute a "controversy between the lawyer and the client" within the meaning of RPC 1.6(b)(4). While there may be others, the two most obvious examples of such a controversy are fee disputes and legal malpractice claims. A client's dissatisfaction with the lawyer's performance may ultimately ripen into a controversy, but at the point of withdrawal, such a controversy is inchoate at best. In a fee dispute or malpractice claim fairness dictates that the lawyer be on equal footing with the client regarding the facts. Such is not the case under the facts presented here.

Suppose, however, that the court inquires regarding the basis for the withdrawal or orders disclosure of such information.³ Comment [3] to ABA Model Rule 1.16 offers guidance and provides, in part:

The court may request an explanation for the withdrawal, while the lawyer may be bound to keep confidential the facts that would constitute such an explanation. The lawyer's statement that professional considerations require termination of the representation ordinarily should be accepted as sufficient.⁴

If the court orders disclosure, Lawyer may reveal information relating to the representation of Client under Oregon RPC 1.6(b)(5) but may only do so to the extent "reasonably necessary" to comply with the court order. Lawyer should therefore take steps to limit unnecessary disclosure of confidential information by, for example, offering to submit such information under seal (or outside the presence of the opposing party) so as to avoid prejudice or injury to the client.⁵

Approved by Board of Governors, August 2011

³ See, e.g., Oregon RPC 1.16(c), which provides that a lawyer wishing to withdraw must "comply with applicable law requiring notice to or permission of a tribunal when terminating a representation." See also Uniform Trial Court Rule 3.140 (discussing resignation of attorneys); USDC LR 83-11 (discussing withdrawal from a case).

⁴ Similarly, the OREGON ETHICAL LAWYER provides that "[i]n most instances, it should be sufficient to state on the record or in public pleadings that the situation is one in which withdrawal is appropriate and to offer to submit additional information under seal if the court so desires." THE OREGON ETHICAL LAWYER § 4.3 (OSB CLE 2006).

2012 EXECUTIVE SUMMARY BUDGET

*Report to the Board of Governors
August 26, 2011*

PURPOSE OF THIS REPORT

The purpose of the Executive Summary budget is a “first look” at the 2012 budget and identify and evaluate the fiscal implications in developing next year’s budget and subsequent years’ forecasts and to consider:

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

This 2012 budget summary and forecasts are developed on anticipated trends, percentage increases, and various assumptions with the 2011 budget as the base, and no amount is interpreted to be a final amount for 2012.

The Budget & Finance Committee reviewed the Executive Summary Budget at its July 29 meeting and its recommendations are incorporated into this version of the report.

C ONTENTS

1. Budget Development Calendar
2. Summary of 2010 and 2011 Budgets
3. Assumptions in Developing 2012 Budget
4. Program, Policy, and Operational Considerations for 2012
5. Fanno Creek Place
6. Summary of the 2012 Budget Projection
7. Issues to Address in the 2012 Budget Summary and Five-year Forecast
8. Reserves and Other Contingency Funds
9. Recommendations of the Budget & Finance Committee to the Board of Governors
Exhibit A – 2012 Budget and Five-Year Forecast
Exhibit B – 2012 Salaries, Taxes & Benefits at Various Salary Pool Options

1 BUDGET DEVELOPMENT CALENDAR

Date	Process
July 29	Budget & Finance Committee reviewed the 2012 Executive Summary Budget
August 25-26	The Board of Governors reviews the Budget & Finance Committee's report of the 2012 Executive Summary Budget
Mid August to mid September	Bar staff prepare 2012 line by line program/department budgets
September 23	Budget & Finance Committee reviews the 2012 Budget Report. Decision on Member Fee increase.
Mid September to late October	Bar staff refine 2012 budget
October 28	House of Delegates meeting. Action on Fee resolution (if increase approved by the BOG).
November 17	Budget & Finance Committee review revised 2012 Budget Report
November 17-18	Board of Governors reviews and approves 2012 Budget

2 SUMMARY OF 2010 AND 2011 BUDGETS

Before we look at 2012, here is a summary of the last two budget years and any significant additions, deletions, or changes from the previous year.

2010 Financial Report
<ul style="list-style-type: none"> ▶ Net Operating Revenue was \$620,830 – almost 4-1/2 times higher than the budget with the biggest variance in non-personnel costs being 15% under budget. ▶ The Fanno Creek Place Net Expense was \$687,386 - about \$13,000 under budget. ▶ The bar's investment portfolio for its reserves was transferred to two investment management firms and at year end were \$3.950 million.
Additions, Deletions, Changes
<ol style="list-style-type: none"> 1. <i>The bar exam application fee was increased by \$100.</i> 2. <i>The service fee to sections was increased by \$1.25 to \$6.50 (the first increase in three years).</i> 3. <i>The ethics school was added - \$27,000</i> 4. <i>The number of participants in the Leadership College was reduced; thus decreasing this program budget.</i> 5. <i>The PERS Contingency was increased by \$192,000.</i>

2011 Budget

- ▶ The operation budget is a \$337,984 net revenue.
- ▶ Non-personnel costs decrease 1% partly due to the lack of printing of Legal Publications and general continued movement to electronic distribution of information.
- ▶ The Fanno Creek Place net expense is \$764,540.

Additions, Deletions, Changes

1. *Revenue included a \$600,000 grant from the PLF to be received over three years with \$300,000 forthcoming in 2011.*
2. *Reserves totaling \$400,000 are allocated to revenue to offset the loss of revenue from BarBooks available to all members online at no cost beginning January 1, 2011.*
3. *The Leadership College is eliminated*
4. *Funding of \$18,000 approved for the Mandatory Mentoring (now New Lawyer Mentoring Training) program.*
5. *The white pages are not included in the traditional Membership Directory which is replaced by a Resource Directory.*
6. *The membership fee statement is to be distributed by email (first such method of distribution was November 2010).*
7. *Funding approved for Senior Lawyers and Remote Communications Task Forces.*
8. *The costs of the Ethics School were incorporated into the Disciplinary Council budget.*

3 ASSUMPTIONS IN DEVELOPING THE 2012 BUDGET

The 2012 budget and the forecasts for bar operations are prepared with these assumptions:

■ Member Fee Revenue

There is no increase in the active member fee in the 2012 budget.

A 2.5% increase in Membership Fee revenue is projected due to the increase the number of members. This is the same projected growth as last year and adds \$170,000 in revenue.

The forecast assumes a \$50.00 active member fee increase in 2013.

■ Program Fee Revenue

There are a number of likely changes to the 2012 Program Fee revenue. These are included in this draft of the 2012 budget.

- ... The 2012 budget anticipates a swap of years in the allocation of \$400,000 from three reserves. The mid-year projection for 2011 suggests net revenue will be large enough so the reserve dollars are not needed in 2011.

- The \$400,000 then is allocated to the 2012 revenue budget.
- ... The grant from the PLF for BarBooks declines by \$100,000.
 - ... Sales of print legal publications are less than 2011 sales, but the number is an unsubstantiated amount for 2012 and is expected to continue to decline over time.
 - ... CLE Seminars revenue is dropped by 5% from the 2011 budget as that revenue has been falling below budget the past few years.
 - ... There is a 10% reduction in Lawyer Referral revenue caused by some participants not renewing due to the new funding plan.
 - ... The other program fee activities increase 2% a year as programs like Admissions and MCLE consistently have generated higher revenue.
 - ... A new source of revenue included is \$60,000 which is the \$100.00 fee from 600 members who have completed the New Lawyers Mentoring Training program.

■ Investment Income

Investment income is projected to be about the same as 2011 based on the Federal Reserve’s statement in early August that rates will remain at the current levels through mid 2013. The returns (interest and dividends) on the funds managed by the investment managers also are projected to be similar to 2011.

■ Salaries, Taxes & Benefits

The salary pool in this version of the 2012 budget is 3%. This pool is the recommendation of the bar Executive Director and the PLF CEO.

- The salary pool has been: 2011 – 3%; 2010 – 3%; 2009 - 3% (although a smaller rate for exempt and higher rate for non-exempt employees); 2008 - 4%; 2007 - 5%.

At its July 25 meeting, the Budget & Finance Committee instructed the bar’s CFO to prepare a schedule of salaries, taxes & benefits with pool rates at 3%, 2%, 1%, and no increase. See Exhibit B for the detailed schedule.

- A 1% change in the pool equals \$75,000 in salaries, taxes, and benefits.
- No increase in the salary pool in 2012 indicates a cost reduction in this budget summary by almost \$225,000.

The biggest cost impact on the 2012 budget is the increased rate in the employer’s share of PERS. In the last four cycles, the employer rate has jumped back and forth considerably – see the chart below.

Beginning			64% of OSB salaries are at the Tier 1&2 rate. That % declines consistently with a change in personnel
July 1 /Rate	Tier 1&2	OPSRP	
2005	12.30%	8.04%	
2007	4.33%	5.82%	
2009	2.06%	2.84%	
2011	9.55%	8.05%	

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

For the sake of this summary budget, these costs vary between no change to a 1-1/2% increase. These costs have declined the past two years, but whether that continues into 2012 will not be known until the line item budgets are prepared.

... The only new added cost is \$18,000 for funding the next economic survey.

4 **PROGRAM, POLICY, AND OPERATIONAL CONSIDERATIONS FOR 2012**

The items in this section are a continuation of funding from 2011, or changes to the 2011 budget.

The BOG should provide direction to staff whether all items should transfer to the 2012 budget.

◆ **Carryover Activities from Prior Budgets**

These items have been in the budget in recent years, some for several years.

1. *Grant to Campaign for Equal Justice - \$45,000*

The first commitment of \$50,000 was made in 2001. For 2007 through 2011 the grant was \$45,000.

2. *Grant to Classroom Law Project - \$20,000*

The first commitment of \$20,000 was made in 1999, and has been that amount every year except 2006 when the grant was reduced to \$10,000.

3. *Council on Court Procedures - \$4,000*

The bar has committed \$4,000 per year since 1994.

4. *Fastcase Online Legal Research Library - \$99,000*

The bar's three-year contract with Fastcase ends in September 2012. The contract can renew on an annual basis unless it is renegotiated. An amount is included in the 2012 budget for a research library for members, but this inclusion makes no decision on which library is offered by the bar.

5. *Senior Lawyer Task Force – Placeholder amount of \$10,000*

The 2011 budget includes funding for this task force with a placeholder amount of \$10,000. To date, no funds have been expended.

6. *Remote Communications Task Force – Placeholder amount of \$10,000*

The 2011 budget includes funding for this task force with a placeholder amount of \$10,000. To date, no funds have been expended.

◆ **New Programs/Activities**

There is the only new item in the first draft of the 2012 budget.

7. *Economic Survey - \$18,000*

An economic survey has been completed every four or five years

since 1989. Following the same format as the last four surveys, a one-page questionnaire would be sent to one-third of all active members after April 15, 2012. For the sake of cost and ease of compilation it is expected the survey will be sent via email.

5 FANNO CREEK PLACE

NOTE: Any references to a line or page hereafter are from Exhibit A.

The 2011 budget for Fanno Creek Place (*page 2*) and the Funds Available forecast (*page 3*) have been amended to incorporate the changes in the leases and operation costs of the bar center in the first half of 2011.

The 2012 budget for Fanno Creek Place is prepared with these assumptions:

- The bar receives a full year's rent from the PLF, Joffe Medi-Center, and Zip Realty. Of the currently vacant 4,000 s.f. on the first floor, the forecast includes two of the three spaces leased for the full year.
- With the termination of the 20/20 Institute and Opus NW in early 2011, the projected 2012 rental income is \$37,000 less than what 2011 would have been if those leases remained.
- The forecast includes three or six month vacancies within the five-year period.
- Operating costs increase minimally although the facilities agreement cost of approximately \$54,000 was eliminated January 31, 2011.
- The annual debt service (principal and interest) for the fifth year of the

30-year mortgage is \$891,535 (\$733,185 interest and \$201,123 principal) (*page 2, column D, lines 75 and 92*). Depreciation is a non-cash expense of \$520,600 (*line 85*).

- The net expense is \$728,670 (*line 81*) and the cash flow is a negative \$409,000 (*line 94*), both of which are in line with the forecasts leading to the development of the building and slightly less than the forecasts made with the 2011 budget. The 2011 budget net expense and negative cash flow were \$764,540 and \$422,191 respectively.

6 SUMMARY OF THE 2012 BUDGET PROJECTION

The result of this draft of the 2012 budget with the assumptions and trends listed in this report lead to a **Net Operating Expense of \$87,830** for 2012. (*page 1, line 45, column D*)

- Including the bar's Net Operating Expense and the FCP Net Expense, the total net expense in 2012 is \$816,500 (accrual basis, *line 138*). Converting to the cash basis, the net negative cash flow is \$80,823 (*line 119*), but the funds available exceed the amount required in the bar's reserves.
- With this budget and five-year forecast, the bar could experience small net operating expenses off and on through the next five years and even fall below the level of the operating fund reserves.
- In the development of the 2011 budget, an active member fee

increase of \$50.00 was projected for 2012. No increase is included in this report. If an active member fee increase of \$50.00 were included, \$705,000 in additional fee revenue is added to the budget; thereby eliminating the net expense in 2012.

If there is no active member fee increase in 2012, it would be the seventh consecutive year with no change in the fee.

That has happened only twice in the bar's history – from 1943 to 1949 and 1963 to 1969.

However, when those seven year cycles ended, the total bar membership was 2,132 and 3,364 (it's 18,475 at June 30, 2011) and the active member fee was \$6.00 and \$50.00 respectively.

- There is little change in revenue from Lawyer Referral in the first years of the new funding model. If the percentage fee program is implemented in mid 2012, the forecast is for this new source of revenue to show results beginning in 2013 and the program to break-even by 2016. Those forecasts are based on expectations from data from other bar associations.
- PLF management does not believe there will be an increase in the PLF assessment in 2012, but probably an increase in 2013.

7 ISSUES TO ADDRESS IN THE 2012 2012 BUDGET SUMMARY AND FIVE- AND FIVE-YEAR FORECAST

A net operating expense of \$87,830 is tolerable in 2012 if the \$400,000 in reserves is transferred from 2011 to 2012. Doing so assumes 2011 will meet or exceed its budgeted bottom line.

The Committee and board have numerous options and flexibility in achieving a strong fiscal position in 2012 and the near future. Below are a number of issues for the Committee and board to consider - some the bar can control with specific actions or plans, and some depend on factors not controllable by the bar.

1. Should the **active member fee** increase be made in 2012? Doing so creates a net revenue in 2012 and means many of the following issues need not be addressed this year.
2. If a fee increase is approved for 2012, the **\$400,000 reserves** can remain in the investment portfolio and be allocated to revenue in a future year. Otherwise those reserves are needed in 2012 to create a balanced budget.
3. Should the bar **borrow \$200,000+** in 2011 for the tenant improvements and use the Landlord Contingency dollars allocated for these improvements in 2012 instead of in 2011? This action would reduce the negative cash flow projected for 2012.
4. Can the new **Lawyer Referral** funding model generate a growing sum of revenue and create enough revenue that it breaks even by 2016?

5. Should the **inactive member fee** be increased in 2012 or a future year? The last inactive fee increase was from \$80.00 to \$110.00 in 2002.
6. Will the **investment portfolio** continue to show steady growth in income and market value? The forecast includes a modest 3.5% average annual market value increase.
7. Will the current and the newly developed **space for leases** attain the occupancy and revenue levels in the forecasts? Three or six month vacancies are included three times in the forecast.
8. Should access to **BarBooks** be available only to those members willing to pay an annual subscription? This would convert BarBooks from a free all-member benefit to a pay for service.
9. Can **CLE Seminars** revenue increase – or at least not decline as it has the past few years?
10. What should the **salary pool** be in 2012?
11. Should **costs (personnel, program, and/or administrative)** be reduced by a certain percent, or specific activities or costs identified for reduction or elimination?

8 RESERVES AND OTHER CONTINGENCY FUNDS

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

The *Operating Reserve* policy is fixed at \$500,000 since the approval of the Executive Summary Budget in 1999. The *Capital Reserve* is \$500,000 (reduced by \$100,000 for 2011) and is based on the expected equipment and capital improvement needs of the bar in the future.

All other reserves, fund balances, and contingencies – *fund balances for Affirmative Action, CSF, Legal Services, LRAP, and sections* and the *contingencies for legal fees, landlord, and PERS* - are not factored into this budget summary and forecasts since they are either restricted or reserved by board action.

The accumulated total at January 1, 2011 of the reserves and contingencies which are controlled by board action are:

Fund, Reserve or Contingency	Balance January 1, 2011
LRAP	\$ 64,614
Contract Legal Fees (<i>net of \$150,000</i>)	66,079
Landlord Contingency (<i>net of \$100,000</i>)	447,557
PERS Contingency	349,288
Operating Reserve	500,000
Capital Reserve (<i>net of \$150,000</i>)	500,000
Total	\$ 1,927,538

Additionally, the Board of Governors has some control over section fund balances which were \$674,763 at January 1, 2011.

9 RECOMMENDATIONS OF THE BUDGET & FINANCE COMMITTEE TO THE BOARD OF GOVERNORS

Action or direction on the following highlighted in the summary budget:

1. Decision on the current fees and assessments: general membership fee (\$447.00), the Affirmative Action Program assessment (\$30.00), and the Client Security Fund assessment (\$15.00), for a total fee of \$492.00 (all fees are 2011 fees for the two-year and over members).
2. Action on program or policy considerations for 2012 in Section 4.
3. Action on any issues in Section 7.
4. Response to assumptions in this report.
5. Guidance to bar staff budget preparers for the 2012 budget.

	A	B	C	D	E	F	G	H	I	J
1	2012 Budget		Oregon State Bar					Five-Year Forecast		
2	Operations									
3	August-11									
4	Proposed Fee increase for Year →		\$0	\$50	\$0	\$0	\$0	\$0	\$0	\$0
5	Operations		BUDGET	BUDGET	F O R E C A S T					
6			2011	2012	2013	2014	2015	2016	2017	
7	REVENUE									
8	MEMBER FEES									
9	General Fund	\$6,778,300	\$6,948,000	\$7,104,000	\$8,020,000	\$8,200,000	\$8,405,000	\$8,594,000		
10	Active (\$50); Inactive (\$0) Increase			720,000						
11	% of Total Revenue	63.7%	62.9%	67.9%	68.1%	67.7%	66.9%	67.1%		
12	PROGRAM FEES:									
13	CLE Seminars	1,394,080	1,324,000	1,337,240	1,350,612	1,370,872	1,391,435	1,412,306		
14	Legal Publications									
15	Print Book Sales	167,137	100,000	50,000	20,000	20,000	20,000	20,000		
16	Reallocation of Reserves	0	400,000	0	0	0	0	0		
17	PLF Contribution	300,000	200,000	100,000	0	0	0	0		
18	All Other Programs	1,866,480	1,949,000	1,988,000	2,027,800	2,068,400	2,109,800	2,135,100		
19	New RIS Model			55,000	125,000	170,000	330,000	330,000		
20	Total Program Fees	3,727,697	3,973,000	3,530,240	3,523,412	3,629,272	3,851,235	3,897,406		
21										
22	OTHER INCOME									
23	Investment Income	113,300	115,700	157,100	216,400	263,200	281,900	301,400		
24	Other	15,900	15,900	17,100	17,800	18,500	19,200	20,000		
25	TOTAL REVENUE	10,635,197	11,052,600	11,528,440	11,777,612	12,110,972	12,557,335	12,812,806		
26										
27	EXPENDITURES									
28	SALARIES & BENEFITS									
29	Salaries - Regular (Pool at 3% in 2012)	5,365,541	5,497,900	5,654,600	5,815,800	5,981,600	6,152,000	6,327,300		
30	Benefits - Regular	1,866,300	2,149,700	2,272,300	2,412,700	2,472,500	2,542,900	2,615,400		
31	Salaries - Temp	78,763	50,000	40,000	50,000	40,000	50,000	40,000		
32	Taxes - Temp	7,876	5,000	3,600	4,500	3,600	4,500	3,600		
33	Total Salaries & Benefits	7,318,480	7,702,600	7,970,500	8,283,000	8,497,700	8,749,400	8,986,300		
34	% of Total Revenue	68.8%	69.7%	69.1%	70.3%	70.2%	69.7%	70.1%		
35	DIRECT PROGRAM:									
36	CLE Seminars	582,630	582,630	594,283	606,168	618,292	630,657	643,271		
37	Legal Publications	55,216	55,200	37,000	39,000	40,000	41,000	42,000		
38	All Other Programs	2,220,566	2,272,000	2,328,800	2,375,376	2,434,760	2,507,803	2,583,037		
39	Total Direct Program	2,858,412	2,909,830	2,960,083	3,020,544	3,093,052	3,179,461	3,268,308		
40										
41	GENERAL & ADMIN	495,321	503,000	515,575	528,464	544,318	560,648	577,467		
42										
43	CONTINGENCY	25,000	25,000	25,000	25,000	25,000	25,000	25,000		
44	TOTAL EXPENSES	10,697,213	11,140,430	11,471,158	11,857,009	12,160,070	12,514,509	12,857,075		
45	NET REVENUE/(EXPENSE) - OPERATIONS	(\$62,016)	(\$87,830)	\$57,282	(\$79,396)	(\$49,099)	\$42,826	(\$44,269)		
46										

	A	B	C	D	E	F	G	H	I	J
47	2012 Budget								Five-Year Forecast	
48	Fanno Creek Place									
49										
50	Fanno Creek Place		BUDGET	BUDGET	F O R E C A S T					
51			2011	2012	2013	2014	2015	2016	2017	
52	REVENUE									
53	RENTAL INCOME <i>(2011 revised)</i>									
54	PLF	\$490,903	\$497,346	\$504,807	\$512,379	\$520,065	\$527,865	\$535,783		
55	Opus Master Lease <i>(Termination Fee)</i>	140,645								
56	20/20 Institute <i>(incl Termination Fee)</i>	245,736								
57	First Floor Tenant - Zip Realty	49,165	50,640	52,160	28,460	48,200	49,200	50,200		
58	First Floor Tenant - Joffe	31,579	126,789	128,683	130,599	132,580	138,144	140,900		
59	New Tenants <i>(three)</i>		86,600	91,800	93,200	69,300	94,600	96,000		
60	OLF	26,904	27,711	28,500	29,400	30,300	31,200	32,100		
61	Meeting Rooms	21,000	18,000	18,000	21,000	24,000	24,000	24,000		
62	Operating Expense Pass-through	0	0	3,000	3,100	3,200	3,300	3,400		
63	INTEREST	3,100	3,100	4,000	5,000	6,000	3,000	4,000		
64										
65	TOTAL REVENUE	1,009,032	810,186	830,950	823,138	833,645	871,309	886,383		
66										
67	EXPENDITURES									
68	OPERATING EXPENSE									
69	Salaries & Benefits	106,200	110,400	113,700	117,100	120,600	124,200	127,900		
70	Opus Management Fee	4,085								
71	Operations	323,993	332,100	342,100	352,400	363,000	373,900	385,100		
72	Depreciation	520,600	520,600	520,600	520,600	520,600	530,600	530,600		
73	Other	30,200	1,000	1,000	1,000	5,000	1,000	1,000		
74	DEBT SERVICE									
75	Interest	744,850	733,185	720,901	707,655	693,699	678,884	663,158		
76	Principal	0	0	0	0	0	0	0		
77	ICA to Operations	(158,429)	(158,429)	(158,429)	(162,400)	(162,400)	(162,400)	(162,400)		
78										
79	TOTAL EXPENSES	1,571,499	1,538,856	1,539,872	1,536,355	1,540,499	1,546,184	1,545,358		
80										
81	NET REVENUE/(EXPENSE) - FC Place	(\$562,467)	(\$728,670)	(\$708,922)	(\$713,217)	(\$706,854)	(\$674,875)	(\$658,975)		
82										
83	ACCRUAL TO CASH ADJUSTMENT									
84	SOURCES OF FUNDS									
85	Depreciation Expense	520,600	520,600	520,600	520,600	520,600	530,600	530,600		
86	TI Allowance from Opus	34,155								
87	Landlord Contingency Fund	230,000					200,000			
88	Loan Proceeds									
89	USES OF FUNDS									
90	Assign PLF Subtenants' Leases (Net)	(85,463)								
91	TI's - First and Third Floors	(230,000)								
92	Principal Pmts - Mortgage	(189,458)	(201,123)	(213,507)	(226,653)	(240,609)	(255,424)	(271,150)		
93										
94	NET CASH FLOW - FC Place	(\$282,633)	(\$409,193)	(\$401,829)	(\$419,270)	(\$426,863)	(\$199,699)	(\$399,525)		
95										

	A	B	C	D	E	F	G	H	I	J	
96	2012 Budget						Five-Year Forecast				
97	Funds Available/Reserve Requirement										
98											
99			BUDGET	BUDGET	F O R E C A S T						
100			2011	2012	2013	2014	2015	2016	2017		
101	FUNDS AVAILABLE										
102	Funds Available - Beginning of Year		\$ 1,376,000	\$1,468,351	\$1,387,528	\$1,374,970	\$1,068,503	\$719,342	\$547,169		
103	SOURCES OF FUNDS										
104	Net Revenue/(Expense) from operations		(62,016)	(87,830)	57,282	(79,396)	(49,099)	42,826	(44,269)		
105	Depreciation Expense		271,300	271,300	276,700	282,200	287,800	290,700	293,600		
106	Provision for Bad Debts		25,000	25,000	25,000	25,000	25,000	25,000	25,000		
107	Increase in Investment Portfolio MV		145,000	71,000	77,000	90,000	0	117,000	140,000		
108	Allocation of PERS Reserve		111,000	222,000	112,288						
109	Projected HIGHER Net Operating Revenue		131,000								
110	USES OF FUNDS										
111	Capital Expenditures		(111,400)	(100,000)	(80,000)	(100,000)	(80,000)	(120,000)	(80,000)		
112	Capital Reserve Expenditures		(17,800)	(20,000)	(25,000)	(50,000)	(50,000)	(75,000)	(50,000)		
113	Capital Expenditures - New Building		(18,000)	(50,000)	(50,000)	(50,000)	(50,000)	(50,000)	(50,000)		
114	Capital Reserve Expenditures - New Building							(200,000)			
115	Landlord Contingency Interest		(3,100)	(3,100)	(4,000)	(5,000)	(6,000)	(3,000)	(4,000)		
116	Net Cash Flow - Fanno Creek Place		(282,633)	(409,193)	(401,829)	(419,270)	(426,863)	(199,699)	(399,525)		
117	Addition to PERS Reserve		(96,000)								
118	Projected LOWER Net Operating Revenue		0								
119	CHANGE IN FUNDS AVAILABLE		92,351	(80,823)	(12,559)	(306,466)	(349,162)	(172,173)	(169,194)		
120											
121	Funds Available - End of Year		\$1,468,351	\$1,387,528	\$1,374,970	\$1,068,503	\$719,342	\$547,169	\$377,975		
122											
123	RESERVE REQUIREMENT										
124	Operating Reserve		500,000	500,000	500,000	500,000	500,000	500,000	500,000		
125	Capital Reserve		500,000	500,000	500,000	525,000	550,000	575,000	600,000		
126											
127	Total - Reserve Requirement		\$1,000,000	\$1,000,000	\$1,000,000	\$1,025,000	\$1,050,000	\$1,075,000	\$1,100,000		
128											
129	RESERVE VARIANCE										
130	Over/(Under) Reserve Requirement		\$468,351	\$387,528	\$374,970	\$43,503	(\$330,658)	(\$527,831)	(\$722,025)		
131											
132											
133	Reconciliation		BUDGET	BUDGET	F O R E C A S T						
134	Cash to Accrual		2011	2012	2013	2014	2015	2016	2017		
135	NET REVENUE/(EXPENSE) - Operations		(62,016)	(87,830)	57,282	(79,396)	(49,099)	42,826	(44,269)		
136	NET REVENUE/(EXPENSE) - FC Place		(562,467)	(728,670)	(708,922)	(713,217)	(706,854)	(674,875)	(658,975)		
137											
138	NET REVENUE/(EXPENSE) - OSB		(\$624,483)	(\$816,500)	(\$651,640)	(\$792,613)	(\$755,953)	(\$632,049)	(\$703,244)		
139											

2012 Salaries, Taxes & Benefits at Various Salary Pool Options

Pool Increase		2011 Budget			\$ Incr fr 2011 Budget	\$ Svgs If __ % Pool	Projected 2012 Net Revenue
		Salaries	Tax/Bene	Total			
		\$5,365,541	\$1,868,300	\$7,233,841			
2	3.0%	\$5,497,900	\$2,149,700	\$7,647,600	\$413,759		\$ (87,830)
0	2.0%	\$5,444,300	\$2,128,700	\$7,573,000	\$339,159	(\$74,600)	\$ (13,230)
1	1.0%	\$5,390,600	\$2,107,700	\$7,498,300	\$264,459	(\$149,300)	\$ 61,470
2	0.0%	\$5,337,000	\$2,086,800	\$7,423,800	\$189,959	(\$223,800)	\$ 135,970

8/11/2011

Exhibit B

1. The Member Services Committee moves the following slate for the 2011 OSB Awards:

Public Leadership: Jud Randall

Sustainability: Jim Kennedy

Member Service: Jack Lundeen and the Hon. Jill Tanner

Public Service: Carl Neil and Brent Renison

Affirmative Action: Hon. Thomas Rastetter

Wallace P. Carson, Jr., Award for Judicial Excellence: Hon. Janice Wilson

Award of Merit: Ted Kulongoski

2. The Member Services Committee moves that the bar waive its per-member assessment for complimentary law-student membership in bar sections.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: August 26, 2011
From: Mitzi Naucler, Chair, Policy & Governance Committee
Re: Proposed Changes to Bylaw 16.200

Action Recommended

Consider the Policy & Governance Committee's motion to amend Bylaw 16.200 regarding complimentary CLE seminars registration and discounted CLE seminars products.

Background

Over the years, advances in technology have led to the development of a wide variety of our CLE seminars delivery formats. There has also been growth in the number of sources of CLE content. In recent years, the BOG has elected to offer reduced or complimentary seminar registration to several categories of members.

When Bylaw 16.200 was first drafted, live seminars were the primary source of CLE for members. Today, the CLE Seminars Department offers no less than seven formats for delivering CLE. While all the content is approved for Oregon credit, not all the content is developed and provided by the CLE Seminars Department. Providing complimentary copies and registration is not always possible due to pricing restrictions and the cost of non-CLE Seminars Department content. The proposed bylaw changes are designed to identify and clarify the available complimentary registration and pricing discounts to seminars and seminar products made available to members by the CLE Seminars Department.

Summary of Changes:

- Title – Adds “CLE Discounts” to the bylaw.
- (a) Clarifies the type of CLE program eligible for complimentary registration and who provides the program's content.
- (b) Clarified for text consistency.
- (c) NEW – provides reduced registration for seminar webcasts when the CLE Seminars provides the seminar content.
- (d) Renumbered and sentence structure corrected.
- (e) Renumbered and clarified for text consistency.
- (f) Renumbered and clarified for text consistency; moves “complimentary copies” to new 16.200 (g).
- (g) NEW – provides discounts and complimentary copies of any archived CLE product where the CLE Seminars Department is the content provider.

- (h) NEW – provides that discounts, complimentary copies, and complimentary registration for seminars and seminar products are not available when the CLE Seminars Department is not the content provider except at the discretion of the CLE Seminars Director.

Proposed new language:

Subsection 16.200 Reduced and Complimentary Registrations; Product Discounts

(a) Complimentary ~~admission to~~registration for live CLE seminars and scheduled video replays where the CLE Seminars Department is the content provider is available to the following OSB lawyer members: Active Pro Bono members, lawyer-legislators, 50-year members, judges, and judicial clerks.

(b) Complimentary ~~admission~~registration does not include the cost of lunch or other fee-based activities held in conjunction with a CLE seminar.

(c) Reduced registration for webcasts where the CLE Seminars Department is the content provider is available the following lawyer members: Active Pro Bono members, lawyer-legislators, 50-year members, judges, and judicial clerks.

(e-d) 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.

(e) Complimentary ~~admission~~registration 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-f) Reduced registration ~~fee,~~and tuition assistance and complimentary copies of programs may be available to certain other attendees, ~~in~~at the sole discretion of the CLE Seminars Director.

(g) Discounts for and complimentary copies of archived CLE Seminars products in any format where the CLE Seminars Department is the content provider may be available at the sole discretion of the CLE Seminars Director.

(h) Seminars and seminar products in any format where the CLE Seminars Department is not the content provider are not subject to any discounts, complimentary registration or complimentary copies except at the sole discretion of the CLE Seminars Director.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: August 26, 2011
From: Mitzi Naucler, Policy and Governance Committee Chair
Re: Amendments to OSB Elections Bylaws

Action Recommended

Consider the Policy & Government Committee's motion to amend OSB Bylaws 9.1, 9.2, 9.3, and 9.4 as set forth herein. The Committee also recommends that the BOG waive the one meeting notice requirement and enact these changes immediately.

Background

In 2010, the BOG and HOD voted to eliminate the requirement for members to submit a nominating petition when filing as a candidate. The Bar Act was amended by the 2011 Legislature to reflect those decisions. The proposed amendments to Bylaws 9.1 and 9.2 will conform the bylaws to the new procedure and also eliminate the nominating petition requirement for ABA House of Delegates candidates.

Further amendments to 9.2 and to 9.4 allow the bar to continue online voting for elections and polls and make it clear that online voting is the default process.¹ Bylaw 9.3 is eliminated because online voting does away with the problem of providing new ballots to members who change their address between the opening and closing of the voting. Going to nearly-universal online voting will save the bar approximately \$7000 in printing and mailing costs annually and promotes the goal of sustainability.

Section 9.1 Date of Elections

The election for members of the Board of Governors will be held annually on the third Monday in October. Bar members who wish to appear on the ballot must present a ~~nominating petition signed by at least 10 members entitled to vote for the nominee~~ candidate statement to the executive director of the Bar at least 160 days before the election.

In the case of an uncontested election for the Board of Governors, a candidate will be declared elected thirty-one days after the final day on which nominating petitions for the Board are required to be filed, provided that a challenge has not been filed pursuant to ORS 9.042. If a challenge has been filed, the candidate will be declared elected at the end of that process unless the challenge is successful.

¹ The few members who are exempt from the requirement to provide an e-mail address will continue to receive paper ballots. For the present, staff plans send a postcard notice that voting is open to those (approximately 400) members who are not exempt but who have nevertheless declined to provide an e-mail address.

The election for members of the OSB House of Delegates will be held annually on the third Monday in April. Bar members who wish to appear on the ballot must present a ~~nominating petition signed by at least 10 members entitled to vote for the nominee candidate statement~~ to the executive director of the Bar at least 30 days before the election. ~~The nominating petition for a delegate from the region composed of all areas not located in this state need only be signed by the candidate for the position~~

The election for representatives to the ABA House of Delegates will be held annually on the third Monday in April in conjunction with the election to the OSB House of Delegates. Bar members who wish to appear on the ballot must present a ~~nominating petition signed by at least 10 members entitled to vote for the nominee candidate statement~~ to the executive director of the Bar at least 30 days before the election.

Section 9.2 Ballots

The Executive Director will prepare ballots whenever a contest exists and the ballots will be accompanied by ~~a the one-page candidate~~ statement that includes the candidate's name, law firm, principal office address, current full-face photograph, law school from which graduated, date of admission in Oregon, state and local bar activities, offices and other pertinent information. The statements must be ~~provided submitted~~ on a ~~uniform~~ form prepared by the Bar, which will also indicate that the information supplied by the candidate has not been edited or verified by the Bar. A request for a ~~nominating petition and candidate's~~ statement or the submission thereof will be considered public information. ~~When a member entitled to vote has not received a ballot or when the ballot has been lost or destroyed, the Executive Director will supply another ballot on receipt of satisfactory proof of non receipt, loss or destruction of the original ballot. Ballots may be a paper ballot or will be an electronic ballot.~~

Section 9.3 Change in Region

~~If a member changes his or her principal office address to another region between the time the ballot is sent and the date of the election, prior to the distribution of ballots and the member supplies the Executive Director with satisfactory notice and proof of the change, within 15 days before the date of the election, the member will be entitled to vote from the region of his or her new principal office address. The member will surrender the written ballot, if any, that was previously mailed to the member. The Executive Director will, on request and receipt of the notice and proof of change of address, supply the member with a proper written ballot or access to the bar's electronic voting process for the member's new region.~~

Section 9.4.3 Voting

~~Paper ballots must be deposited with the Executive Director in an envelope marked "ballot", but which bears no other distinguishing marks. The envelope must be sealed and enclosed in an envelope addressed to the Executive Director on which there will be blanks for the member's name, principal office address and signature. The Executive Director will have the custody of the ballots after they are submitted. Any member of the Bar will be permitted to be present while the ballots are canvassed. The Executive Director will announce the results of the balloting and will notify each candidate of the results of the election. Electronic ballots will be available to members. Members eligible to vote will be provided by using a secure link to the candidates statements and an online ballot. The candidate statements and photos will be electronically distributed. Ballots will be tabulated electronically using a secure voting system to assure no duplicate entries. Any member of the Bar will be permitted to be present while the~~

ballots are canvassed. The Executive Director will announce the results of the balloting and will notify each candidate of the results of the election.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: August 26, 2011
Memo Date: August 26, 2011
From: Ethan Knight, Appointments Committee Vice-Chair
Re: Volunteer Appointments to Various Boards, Committees, and Councils

Action Recommended

Approve the following Appointments Committee recommendations.

Legal Ethics Committee

Recommendation: Lori Hellis, term expires 12/31/2013

New Lawyer Mentoring Committee

Recommendation: Christopher Lombard, term expires 12/31/2012

Recommendation: Ali Seals, term expires 12/31/2013

House of Delegates

Region 2 Recommendation: Daniel Webb Howard, term expires 4/15/2013

Region 2 Recommendation: Roger F. Smith, public member, term expires 4/15/2013

Region 3 Recommendation: Philip Paquin, public member, term expires 4/15/2013

Region 5 Recommendation: Melvin Oden-Orr, term expires 4/15/2013

Region 6 Recommendation: David Phelps, public member, term expires 4/21/2014

Out of State Region Recommendation: Lish Whitson, term expires 4/15/2013

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: August 26, 2011
From: Mitzi Naucler, Chair, Policy & Governance Committee
Re: Fee Arbitration Rules Amendment

Action Recommended

Consider the Policy & Governance Committee motion to amend the Fee Arbitration Rules to create an Advisory Committee.

Background

At its April 22, 2011 meeting, the Board of Governors accepted the Fee Arbitration Task Force Report and adopted its recommendations. One of the recommendations was to create a Fee Arbitration Advisory Committee to act as a continuing resource for training and recruitment of arbitrators. In order to implement this recommendation, the Policy and Governance Committee recommends amending the Fee Arbitration Rules as follows:

Section 2. Arbitration Panels and Advisory Committee

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2.1 General Counsel shall appoint members to an arbitration panel in each 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 board of governors region of appointment and who are neither active nor inactive members of any bar.

2.2 General Counsel shall also appoint an advisory committee consisting of at least one attorney panel member from each of the board of governors regions. The advisory committee shall assist General Counsel with training and recruitment of arbitration panel members, provide guidance as needed in the interpretation and implementation of the fee arbitration rules, and make recommendations to the board of governors for changes in the rules or program.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: August 26, 2011
From: Sylvia E. Stevens, Executive Director
Re: CSF Claim Recommended for Payment

Action Recommended

The CSF Committee, at its meeting on July 23, 2011, voted to recommend the following claim for payment:

No. 2010-38 HAYES (Guerrero)	\$2,000.00
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Background

No. 2010-38 HAYES (Guerrero)

Claimant engaged Keith Hayes in November 2008 to assist in resolving two competing child support orders in Oregon and Arizona. He deposited a \$2000 retainer against Hayes' fees. Shortly thereafter, Guerrero received copies of letters Hayes sent to the appropriate state agencies. Guerrero called Hayes' office several times and was told by the secretary that Hayes was working on Guerrero's matter, but he never again heard from Hayes. So far as Guerrero could tell, nothing more was done on his behalf and he never received either an accounting or a refund from Hayes. Guerrero is trying to resolve the matter himself now, as he cannot afford to hire another attorney.

Hayes' primary practice was bankruptcy. In March 2009 he was suspended from practice before the Bankruptcy Court and ordered to disgorge fees in several cases. An interim disciplinary suspension order was entered against Hayes in January 2010 and he was disbarred by a trial panel in July 2010. Hayes' current whereabouts are unknown.

The CSF Committee concluded that Guerrero is entitled to a refund of the unearned fees paid to Hayes in advance, that Hayes' work for Guerrero was minimal or insignificant within the meaning of CSF Rule 2.2.2, and that Guerrero should be reimbursed the full amount of \$2000. The committee also recommends waiving the requirement for a civil judgment against Hayes as Guerrero is not in a financial position to pursue such an action and Hayes is likely judgment-proof in any event.

**Oregon State Bar
Board of Governors Meeting
August 26, 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. Alexander Gordon – 822671

Motion: Mr. Mitchell-Phillips presented information concerning the BR 8.1 & 8.7 reinstatement application of Mr. Gordon. Mr. Mitchell-Phillips moved, and Ms. Naucier seconded, to temporarily reinstate Mr. Gordon pursuant to BR 8.7, and to consider his unconditional reinstatement at the November board meeting. The motion passed unanimously.

2. Amy P. Grant – 992716

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

3. Niamh M. Lewis – 003172

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

4. Amy L. Muenchrath - 973463

Motion: Ms. Johnnie presented information concerning the BR 8.1 reinstatement application of Ms. Muenchrath. Ms. Johnnie moved, and Mr. Wade seconded, to recommend to the Supreme Court that Ms. Muenchrath's reinstatement application be approved, to be effective upon her completion of 45 CLE hours. The motion passed unanimously.

5. John W. Walker - 733145

Motion: Ms. Naucler presented information concerning the BR 8.1 reinstatement application of Mr. Walker. Ms. Naucler moved, and Ms. Matsumonji seconded, to recommend to the Supreme Court that Mr. Walker's reinstatement application be approved. The motion passed unanimously.

6. Jo Ellen Zucker – 883371

Motion: Mr. Emerick presented information concerning the BR 8.1 & 8.7 reinstatement application of Ms. Zucker. Mr. Emerick moved, and Mr. Wade seconded, to temporarily reinstate Ms. Zucker pursuant to BR 8.7, and to consider her unconditional reinstatement in November. The motion passed unanimously.

B. Disciplinary Counsel's Report

As written.

**Oregon State Bar
Board of Governors Meeting
August 26, 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. Pending UPL Litigation
 - 1. The BOG received status reports on the non-action items.

- B. Pending or Threatened Non-Disciplinary Litigation
 - 1. The BOG received status reports on the non-action items.

- C. Other Matters
 - 1. The BOG received status reports on the non-action items.