

**Oregon State Bar**  
**Meeting of the Board of Governors**  
November 10, 2012  
**Open Session Minutes**

The meeting was called to order by President Mitzi Naucler at 12:32 p.m. on November 10, 2012. The meeting adjourned at 3:50 p.m. Members present from the Board of Governors were Jenifer Billman, Barbara Dilaconi, Ann Fisher, Michael Haglund, Matthew Kehoe, Ethan Knight, Theresa Kohlhoff, Tom Kranovich, Steve Larson, Audrey Matsumonji, Pat Ehlers, Maureen O'Connor, Travis Prestwich, Richard Spier and David Wade. Newly-elected board members present were Timothy Williams and Caitlin Mitchel-Markley. Staff present were Sylvia Stevens, Rod Wegener, Helen Hirschbiel, Kay Pulju, Susan Grabe, Mariann Hyland, Judith Baker and Camille Greene. Others present were Mark Johnson Roberts, Tom Cave, PLF CFO, Ira Zarov, PLF COO, David Eder, ONLD Chair-elect, and Jason Hirshon, ONLD Chair.

**1. Call to Order/Finalization of the Agenda**

**2. BOG Officer Elections**

**A. President and President-elect**

**Motion:** Mr. Knight moved, and the board, by acclamation, elected Tom Kranovich as President-elect and Mike Haglund as President for 2013. Mr. Wade and Mr. Knight will be vice-presidents in 2013.

**3. Reports**

**A. Report of the President**

As written.

**B. Report of the President-elect**

**Motion:** Mr. Haglund proposed the board pursue the following in 2013: Court funding, implementation of Legal Job Opportunities task force proposals, Legal Aid funding for general fund, legislative approval of a tax credit for donations to CEJ as well as obtaining interest from title escrow accounts, and the development of a SOLACE program. The motion passed unanimously.

Mr. Haglund reminded the BOG of the quarterly goals approved at the planning session: tree planting (winter), a May Day event (spring), a fun run (summer), and the launch of SOLACE emergency network (fall).

**C. Report of the Executive Director**

ED Operations Report as written. Ms. Stevens announced departmental organization changes that will be effective January 2013.

**D. Board Members' Reports**

None.

**E.** Director of Diversity & Inclusion

Ms. Hyland and Mr. Kranovich reported on the success of BOWLIO and the high participation rate. Ms. Hyland met with the Confederated Tribes who invited the board to visit again. She reported on the progress of the Diversity Timeline wall in the bar center and on their website.

**F.** MBA Liaison Reports

Ms. Kohlhoff reported on the October 3, 2012 MBA meeting. Mr. Spier reported on the November 7, 2012 MBA meeting.

**G.** Oregon New Lawyers Division Report

Mr. Hirshon reported on a variety of ONLD projects and events described in his written report. The ONLD is nationally recognized as an exemplary young lawyer division. They met in Lincoln City in September to paint a non-profit theater and launched the practice tips thumb drive project at the Pro Bono Fair. The latest project is to place new lawyers with non-profits and a focus on leadership positions for ONLD members.

**4. Professional Liability Fund**

Mr. Zarov gave a general update, announced open positions in the office, explained changes to the PLF website, and revisions to the excess program including protection for cyber loss. Beginning this year, the PLF assessment can be paid with credit cards. Mr. Cave reported on the budget, pending claims and the cost of defending claims.

Mr. Zarov asked the board to approve the 2013 Assessment of \$3500 per covered party and approve the PLF 2013 Budget as written.

**Motion:** Mr. Wade moved, Mr. Haglund seconded, and the board voted unanimously to approve the assessment and budget as presented. **[Exhibit A]**

Mr. Zarov asked the board to approve the PLF Claims Made Plan, specifically the sections regarding definitions, exclusions from coverage, and notice of claims as written.

**Motion:** Mr. Wade moved, Mr. Kehoe seconded, and the board voted unanimously to approve the PLF Claims Made Plan as presented. **[Exhibit B]**

Mr. Zarov asked the board to approve changes to PLF policies 3.500 and 3.550 as written.

**Motion:** Mr. Wade moved, Mr. Kehoe seconded, and the board voted unanimously to approve the policy changes as presented. **[Exhibit C]**

Mr. Zarov asked the board to approve changes to various PLF policies as written.

**Motion:** Mr. Wade moved, Mr. Kehoe seconded, and the board voted to approve the remaining policy changes as presented. Mr. Spier was opposed to changes in policy 3.200. **[Exhibit D]**

## 5. Emerging Issues

As BOG liaison to the Labor & Employment Law section, Mr. Larson informed the board of the concerns surrounding decline in section membership and proposed an event to get section leadership together. Mr. Hirshon reported that many young lawyers do not see value in joining a section. The Member Services committee will further study this issue.

Ms. Naucner announced her plan to appoint a task force to study the Centralized Legal Notice System possibilities. Mr. Ehlers and Mr. Prestwich will co-chair. Ms. Kohlhoff and Mr. Kranovich will be on the task force along with 8-10 additional members from various areas of practice.

Ms. Fisher asked the board to look at the economic survey and determine if the bar's programs are meeting the needs of its members in areas such as diversity, reciprocity and foreign lawyers practicing in Oregon.

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

### A. New Lawyer Mentoring Program

The board reviewed the list of mentor candidates submitted by the NLMP Committee.

**Motion:** Mr. Kranovich moved, Mr. Ehlers seconded, and the board voted unanimously to approve the committee motion to recommend the list of candidates to the Oregon Supreme Court.

Ms. Pulju asked the board to approve the revisions to three elements in the mentoring program's rules.

**Motion:** Mr. Wade moved to approve the changes recommended by the NLMP Committee and also to amend Rule 4 so that new mentors will be appointed by the Supreme Court based on recommendations from the Committee and not the BOG. Ms. Dilaconi seconded the motion and the amendment, and the board voted unanimously to approve the revisions and amendment as presented. **[Exhibit E]**

### B. Affirmative Action Committee Name Change Recommendation

Ms. Hyland presented the recommendation of the Diversity & Inclusion Department and the Affirmative Action Committee that the Board change the name of the Affirmative Action Committee to the "Advisory Committee on Diversity & Inclusion."

**Motion:** Mr. Wade moved, Mr. Spier seconded, and the board voted unanimously to approve the committee motion regarding the name change.

### C. Budget and Finance Committee

Mr. Haglund presented the 2013 budget for approval.

**Motion:** The board voted unanimously to approve the 2013 budget as recommended in the committee motion. **[Exhibit F]**

**D.** Member Services Committee

Mr. Kehoe presented the committee's recommended election dates.

**Motion:** The board voted unanimously to approve the election dates as recommended by the Member Services Committee motion. **[Exhibit G]**

**E.** Policy and Governance Committee

Ms. Fisher presented four committee recommendations:

1. Amend the OSB Bylaws to reflect the BOG's decision to return to the pre-2005 practice of ranking its recommendations to the Governor for appellate court appointments.

**Motion:** Mr. Wade moved to waive the one-meeting rule. Ms. Dilaconi seconded. The board voted unanimously to approve the motion to waive the one-meeting rule.

**Motion:** Mr. Kranovich moved to amend the motion to include cultural competency in the selection criteria. Mr. Ehlers seconded. The board unanimously approved the amendment.

**Motion:** The board voted to approve the committee motion, as amended, to amend the bylaws as recommended regarding the appellate screening process. Ms. Naucler and Mr. Larson were opposed. **[Exhibit H];**

2. Amend the Client Security Fund Rules.

**Motion:** The board voted unanimously to accept the rule changes as recommended. **[Exhibit I];**

3. Waive the one-meeting notice requirement in Article 28 and change By-law 6.101(c) to no longer require Active Pro Bono Members of the Oregon State Bar to pay into the Client Security Fund, effective immediately.

**Motion:** The board voted unanimously to waive the one-meeting notice and approve the bylaw change as recommended in the committee motion. **[Exhibit J];**

4. Approve formation of a Military and Veterans Law Section with membership dues set at \$20.00 as recommended by the committee.

**Motion:** The board voted unanimously to create the section as recommended.

**F.** Public Affairs Committee

Mr. Larson presented two handouts with the 2012 election results. Mr. Larson presented the committee motion that the BOG adopt a resolution in support of stable funding for the court system.

**Motion:** The board voted unanimously to approve the court funding resolution. **[Exhibit K]**

## 7. Other Action Items

### A. Client Security Fund

Ms. Stevens presented the claims recommended for payment by the CSF. **[Exhibit L]**

**Motion:** Mr. Wade moved, Ms. Matsumonji seconded, and the board voted unanimously to approve payments totaling \$262,141.19 as recommended by the Client Security Fund.

**Motion:** Mr. Wade moved, Mr. Ehlers seconded, that CSF claims under \$5000, or \$25,000 in total claims for one attorney, do not need board approval. Motion was withdrawn.

Ms. Stevens presented the Client Security Fund Committee's recommendation that the DICKERSON (Morningstar) claim, deferred in August, be paid in the amount of \$50,000.

**Motion:** Mr. Wade moved, Ms. Matsumonji seconded, and the board voted unanimously to approve the payment of \$50,000 as recommended by the Client Security Fund.

Ms. Stevens presented the claimant's request for BOG review on the NICHOLS (Krueger) claim.

**Motion:** Mr. Haglund moved, Mr. Ehlers seconded, and the board voted unanimously to approve the CSF Committee's denial of the claim.

### B. Legal Ethics Committee recommendation not to amend RPC 4.4(b).

**Motion:** Mr. Wade expressed his disagreement with the LEC's recommendation that the rule not be changed. He moved, Ms. Dilaconi seconded, and the board voted to amend RPC 4.4(b) to add at the end "and follow the sender's instructions." Mr. Larson and Mr. Spiers opposed.

## 8. Consent Agenda

**Motion:** Mr. Haglund moved, Mr. Kehoe seconded, and the board voted unanimously to approve the consent agenda including various appointments. **[Exhibit M]**

## 9. Closed Sessions – see CLOSED Minutes

A. Judicial Session (pursuant to ORS 192.690(1)) – Reinstatements

B. Executive Session (pursuant to ORS 192.660(1)(f) and (h)) - General Counsel/UPL Report

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

None.

# Professional Liability Fund

Ira R. Zarov  
Chief Executive Officer

October 6, 2012

To: Professional Liability Fund Board of Directors

From: Ira Zarov, Chief Executive Officer  
R. Thomas Cave, Chief Financial Officer

Re: 2013 PLF Budget and 2013 PLF Primary Assessment

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## **I. Recommended Action**

We recommend that the Finance Committee make the following recommendations to the PLF Board of Directors:

1. Approve the 2013 PLF budget as attached. This budget uses a 2013 salary pool recommendation of 2.0 percent. This recommendation has been made after consultation with Sylvia Stevens.
2. Make a recommendation to the Board of Governors concerning the appropriate 2013 PLF Primary Program assessment. We recommend that the 2013 assessment be \$3,500, which is unchanged from the 2012 and 2011 assessments.

## **II. Executive Summary**

1. Besides the two percent salary pool, this budget includes increased costs for PERS and medical insurance. It includes a \$200,000 PLF contribution for the OSB Bar Books. Because of rising costs of defending claims, this budget includes three additions to the claims department. One position (claims attorney) was previously included in the 2012 budget but was not filled. The budget for contingency has been increased to cover succession planning and possible retirements of senior staff.
2. The PLF has experienced increased claim frequency and severity in recent years. The actuarial rate study estimates a cost of \$2,768 per lawyer for new 2013 claims. This budget also includes a margin of \$150 per lawyer for adverse development of pending claims.

### **III. 2012 PLF Budget**

#### **Number of Covered Attorneys**

We have provided the number of covered attorneys by period for both the Primary and Excess Programs. (The figures are found on pages 1 and 8 of the budget document.) These statistics illustrate the growth in the number of lawyers covered by each program and facilitate period-to-period comparisons.

For the Primary Program, new attorneys paying reduced primary assessments and lawyers covered for portions of the year have been combined into "full pay" units. We currently project 7,034 full-pay attorneys for 2012. For most of the past ten years, there has been annual growth of 1.5 percent or higher. However, there has been slower growth during 2011 and 2012 to date. Accordingly, we have assumed growth of 1 percent for the 2013 budget which translates to 7,104 full-pay attorneys.

Although the Excess Program covers firms, the budget lists the total number of attorneys covered by the Excess Program. Participation in the 2011 Excess Program declined because of competition from commercial insurance companies. We anticipated an additional decline of 2 percent for the 2012 budget. Contrary to those expectations, we now expect the number of 2012 participants to be slightly higher than 2011. The PLF has plans for education programs later this year to promote the need for excess insurance. Our current budget expectations are for 2013 participation to increase by 3 percent. If you include the other providers of excess insurance, more than 50% of the practicing lawyers in Oregon have excess insurance.

#### **Full-time Employee Statistics (Staff Positions)**

We have included "full-time equivalent" or FTE statistics to show PLF staffing levels from year to year. FTE statistics are given for each department on their operating expense schedule. The following table shows positions by department:

	<b><u>2012 Projections</u></b>	<b><u>2013 Budget</u></b>
Administration	8.00 FTE	8.00 FTE
Claims	18.00 FTE	20.33 FTE
Loss Prevention (includes OAAP)	11.83 FTE	11.83 FTE
Accounting	6.90 FTE	6.90 FTE
Excess	<u>1.00 FTE</u>	<u>1.00 FTE</u>
<b>Total</b>	<b>45.73 FTE</b>	<b>48.06 FTE</b>

We continue to have some permanent positions staffed at less than full-time levels for both 2012 and 2013. Some staff members work from 33 to 36 hours per week. These part-time arrangements fit the needs of both the employee and the PLF. Part-time and staff changes are the reason for the fractional FTE's.

The amount of money spent on outside counsel per claim has grown significantly in recent years. At this point, the PLF spends more on claims expense than it does on indemnity payments. Because of the increases in outside expense, we feel that it is appropriate to continue to expand the claims department. The 2012 budget included a new claims attorney position with anticipated hire date of April, 2012. For a variety of reasons, we did not fill that position. The reasons included the supervisory workload connected to the replacement of retiring claims attorneys, the need to consider whether changes in the supervisory and the support staff structure should be made with the addition of a new claims attorney, and finally, the demands of directing the ongoing project of moving the claims department to a paperless environment. We have added the new claims attorney position back to the 2013 budget with an expected hire date of April 1, 2013. We have included an additional claims secretary position with a similar expected hire date. Finally, the budget also has a new paralegal position which would start on March 1, 2013.

While no definite plans have been made, several members of the PLF management team and some claims attorneys are expected to retire in the next few years. We have increased the budget for contingency to cover succession planning and possible expenses relating to replacing these positions.

#### **Allocation of Costs between the Excess and Primary Programs**

In 1991, the PLF established an optional underwritten plan to provide excess coverage above the existing mandatory plan. There is separate accounting for Excess Program assets, liabilities, revenues and expenses. The Excess Program reimburses the Primary Program for services so that the Primary Program does not subsidize the cost of the Excess Program. A portion of Primary Program salary, benefits, and other operating costs are allocated to the Excess Program. These allocations are reviewed and adjusted each year. The Excess Program also pays for some direct costs, including printing and reinsurance travel.

Salary and benefit allocations are based on an annual review of the time PLF staff spends on Excess Program activities. The current allocation includes percentages of salaries and benefits for individuals specifically working on the Excess Program.

Besides specific individual allocations, fourteen percent of the costs of the claims attorneys and ten percent of the costs of all loss prevention personnel are allocated to the Excess Program. The total 2013 allocation of salary, benefits and overhead is about 14.45 percent of total administrative operating expense.

The 2012 Excess Program allocation was 15.15 percent. The 2013 allocation was reduced after careful review of each staff member's work with the Excess Program.

#### **Primary Program Revenue**

Projected assessment revenue for 2012 is based upon the \$3,500 basic assessment paid by an estimated 7,034 attorneys. The budget for assessment revenue for 2013 is based upon a \$3,500



assessment and 7,104 full-pay attorneys. Primary Program revenue also includes our forecast for SUA collections of \$185,000 for 2013 and \$196,000 for 2012. The 2013 budget assumes that there is no major change in the current SUA policies.

Investment returns were better than expected for the first six months of 2012. In doing the 2012 projections and 2013 budget, we used the rates of return for the different asset categories recently recommended by R. V. Kuhns & Associates, Inc. These rates are lower than those used during the 2012 budget preparations. While the percentages chosen are significantly lower than historical rates of return achieved over long periods, they reflect the current reduced expectations of our investment consultants. Our calculation of investment return projections for the remainder of 2012 and for 2013 began with the June 30, 2012 market value of all current investments. Investment revenue was calculated from July forward using 2.5 percent for the short-term cash flow bond fund, 4.25 percent for intermediate bonds, 7.9 percent for domestic equities, 8.65 percent for foreign equities, 7.00 percent for hedge fund of funds, 7 percent for real estate, and 6.75 percent for absolute return. The overall combined expected rate of return for 2013 is about 6.61 percent. (The overall rate combined rate of return used in prepared the 2012 budget was 7.21 percent.)

### **Primary Program Claims Expense**

By far, the largest cost category for the PLF is claim costs for indemnity or defense. Since claims often don't resolve quickly, these costs are paid over several years after the claim is first made. The calculation of claim costs is the largest factor in determining Primary Program profit or loss.

For any given year, claim expense includes two factors – (1) the cost of new claims and (2) any additional upward (or downward) adjustments to the estimate of costs for claims pending at the beginning of the year. Factor 1 (new claims) is much larger and much more important than factor 2. However, problems would develop if the effects of factor 2 were never considered, particularly if there were consistent patterns of adjustments. The “indicated average claim cost” in the actuarial report calculates an amount for factor 1. The report also discusses the possibility of adding a margin to the indicated costs. Adding a margin could cover additional claims costs from adverse development of pending claims (factor 2) or other possible negative economic events such as poor investment returns. We have included margins in the past several years to good effect.

The PLF experienced a significant increase in the frequency of new claims during 2008 and 2009. The frequency level declined during 2010 (13.6 percent) and 2011 (13.2 percent). Claims frequency for the first six months of 2012 was 13.6 percent, which is close to budget expectations. Claim frequency for the second half of 2012 will be distorted by a very large number of claims made against one lawyer. To date, 99 claims have been made against a single lawyer. The most these claims will cost of is one coverage limit. Accordingly, it is appropriate to make an adjustment to the projected claim frequency. If the 99 claims were considered to be 15 (about one coverage limit), the current projected claim count would be 935 which is less than 13.5 percent frequency. We feel that the actuaries will agree with the need for an adjustment and will modify their calculation of the December 31, 2012 in a similar manner. The 2012 projections of claim costs assume 935 claims at \$20,000 per claim.

The 2012 budget included \$2,118,900 (approximately \$300 per covered party) for adverse development or actuarial increases to estimates in liabilities for claims pending at the start of the year. At the time the 2012 budget was prepared, there had been four straight actuarial reports that recommended substantial increases in claim liabilities. The adjustment recommended in the June 30, 2011 actuarial review of claim liabilities alone was greater than this budget amount (\$2.4 million). Most of the adverse development came from claims involving activity just prior or during the economic downturn. The last two actuarial reports have brought much better news. There was a slight decrease in the liability estimate in December 31, 2011 followed by a decrease of nearly \$1.3 million in the June 30, 2012 report. This actuarial report did find that defense (expense) costs continued to rise but decreases in indemnity estimates more than offset the increases in expense costs.

Primary Program new claims expense for 2013 was calculated using figures from the actuarial rate study. The study assumed a frequency rate of 13.5 percent, 7,104 covered attorneys and an average claim cost of \$20,500. Multiplying these three numbers together gets a 2013 budget for claims expense of \$19.7 million. This would also translate to about 959 claims at \$20,500 for 2013.

We have added a margin of \$150 per covered lawyer to cover adverse development of claims pending at the start of 2013. If pending claims do not develop adversely, this margin could offset higher 2013 claims frequency, cover other negative economic events, or help the PLF reach the retained earnings goal. The pending claims budget for adverse development is equal to \$1,065,600 (\$150 times the estimated 7,104 covered attorneys). The concept of using a margin will be discussed again in the staff recommendation section regarding the 2013 assessment.

### **Salary Pool for 2013**

The total dollar amount that is available for staff salary increases in a given year is calculated by multiplying the salary pool percentage increase by the current employee salary levels. The salary pool is the only source available for cost of living *and* merit increases. Although there is no policy requiring them, the PLF and OSB historically provide increases to staff that are generally consistent with cost-of-living adjustments.

After consultation with Sylvia Stevens, a two percent salary pool increase is recommended for 2013. The salary pool is used to adjust salaries for inflation, to allow normal changes in classifications, and when appropriate to provide a management tool to reward exceptional work. As a point of reference, one percent in the salary pool represents \$39,318 in PLF salary expense and \$14,113 in PLF benefit costs. The total cost of the two percent salary pool is less than one half of one percent of total expenses (0.39 percent).

Because all salary reclassifications cannot be accomplished within the two percent salary pool allocation, we are also requesting \$13,283 for potential salary reclassification. Salary reclassifications generally occur in two circumstances, when a person hired at a lower salary classification achieves the higher competency required for the new classification, or when there is a necessity to change job requirements. The bulk of the salary reclassification amount reflects

either the reclassification of relatively recently hired exempt employees or addresses an historical lack of parity between the salaries of employees in positions with equivalent responsibilities. (Exempt positions are generally professional positions and are not subject to wage and hour requirements.) Salaries for entry level hires for exempt positions are significantly lower than experienced staff. As new staff members become proficient, they are reclassified and their salaries are adjusted appropriately. As the board is aware, several new claims attorneys have been hired in recent years. (The major reclassification usually occurs after approximately three years, although the process of salary adjustment often occurs over a longer time period.)

### **Benefit Expense**

The employer cost of PERS and Medical / Dental insurance are the two major benefit costs for the PLF.

The specific employer contribution rate for PERS varies depending upon how long an employee has participated in PERS. The rates are changed periodically based upon actuarial studies of the PERS pension liability. Prior to July 1, 2009, the PLF paid between 12.49 percent and 13.98 percent of employee salary to PERS. As of July 1, 2009, the rates changed to 8.01 percent and 8.79 percent which was a drop of nearly 5 percent of salary. The PERS rates increased substantially as of July 1, 2011 to between 14 percent and 15.9 percent. The 2012 budget calculations were made using those rates. The employer contribution rates for PERS are expected to increase again as of July 1, 2013. The rates will not be announced until next year and are somewhat dependent upon investment performance for the remainder of 2012. However, some preliminary estimates from PERS indicate that the increase may be slightly more than 3 percent. Since the possible increase will come half way through 2013, the rate of the employer contribution for PERS was increased by slightly more than 1 and one half percent for the 2013 budget.

Unlike many state employers, the PLF does not "pick up" the employee contribution to PERS. PLF employees have their six percent employee contribution to PERS deducted from their salaries.

PLF employees pay for a portion of the cost of providing medical and dental insurance to dependents. Although the rate of increases in medical insurance is slowing somewhat, the cost of medical insurance continues to rise faster than salary levels. Although medical insurance rates are difficult to predict, we have included about a 7 percent increase for the cost of medical and dental insurance.

### **Capital Budget Items**

The OAAP has been in the same location for more than eleven years. A second ten-year lease was negotiated late in 2011. As part of the lease renewal, a tenant improvement allowance was received from the landlord. This allowance was used to remodel and update the space this year. We are near the completion of the remodel and anticipate replacing some furniture. Most of the 2012 projected furniture purchases will be made for the OAAP.

The PLF copiers / scanners were recently replaced. There should not be additional purchases for several years.

The PLF replaced all personal computer units and upgraded software in the fall of 2011. We do not expect to replace these units until 2014. Several servers were replaced during 2011 and 2012. We only expect one significant server upgrade during 2013. The capital budget also includes some funds for the purchase of tablet computers to be used to electronically distribute Board of Director materials.

### **Other Primary Operating Expenses**

Because of successful litigation, the budget no longer includes the external costs related to Medicare reporting. The judicial decision to exempt the PLF from reporting also significantly simplifies claim handling.

Insurance expense in the 2012 projections and the 2013 budget was increased because of a large increase in the cost of E&O insurance. The E&O insurers increased the cost of renewing the policy because they are currently covering a significant claim made against the PLF.

The Information Services 2012 projection was over budget because the costs of developing a new website for the PLF defense panel. The 2013 budget for this item was increased because of anticipated major changes to the current PLF website.

The PLF has traditionally had defense panel meetings every other year. The 2013 budget includes estimates of costs for the scheduled 2013 meeting. Defense panel members pay for their own lodging and meal expenses and some facility and supply costs. The PLF pays for the cost of staff and Board of Director lodging and meals and a portion of supplies and speakers.

PLF Policies require an outside claims department audit at least every five years. (The PLF has a financial audit every year.) A claims audit was performed in 2011 and we do not expect to have another claims audit for several years.

The 2012 budget included a \$200,000 contribution to the OSB Bar Books. This contribution was made pursuant to a vote by the PLF Board of Directors at the request of the Oregon State Bar Board of Governors. The BOD believed there was substantial loss prevention value in free access to Bar Books via the internet which had the potential to reduce future claims. The \$200,000 contribution was part of an agreement that provided the PLF contribute \$300,000 for 2011, \$200,000 in 2012 and another \$100,000 in 2013. The 2013 PLF budget includes the \$100,000 contribution.

For many years, the PLF Primary Program has included a contingency budget item. In the past, the contingency items was been used for items such as CEO recruitment expense, the costs of a focus group on SUA, and the Medicare reporting litigation expense. For 2012, we included a contingency budget of equal to 2 percent of operating costs (\$145,541). The costs of the Medicare reporting

litigation (\$41,000) have been charged against contingency in the 2012 projections.

As discussed earlier, we have raised the 2013 contingency budget to 4 percent of operating costs (\$302,172).

### **Total Operating Expenses and the Assessment Contribution to Operating Expenses**

Page one of the budget shows projected 2012 Primary Program operating costs to be about 1.9 percent lower than the budget amount.

The 2012 Primary Program operating budget is 4.5% higher than the 2012 budget and 6.5% greater than the 2012 projections. The main reasons for the increase from projections are the new positions in the claims department, the 2 percent salary increase, and the higher costs of PERS and medical insurance.

### **Excess Program Budget**

The major focus of this process is on the Primary Program and the effects of the budget on the 2013 Primary Program assessment. We do include a budget for the Excess Program (page 8). After a couple of years of small declines in participation in the Excess Program, we expected further declines for 2012. However, we now project a small increase in Excess participant for 2012. We are increasing promotional efforts and will have some educational programs regarding the need for excess insurance. We have budgeted for an increase of 3 percent in Excess Program participation for 2013.

The major revenue item for the Excess Program is ceding commissions. These commissions represent the portion of the excess assessment that the PLF gets to keep and are based upon a percentage of the assessment (premium) charged. Most of the excess assessment is turned over to reinsurers who cover the costs of resolving excess claims. We currently project ceding commission of \$725,000 for 2012. The 2013 budget estimates ceding commissions to increase 3 percent from the 2012 projections.

After three or four years from the start of a given plan year, the two reinsurance treaties covering the first \$5 million provide for profit commissions if excess claim payments are low. If there are subsequent adverse developments, prior profit commissions are returned to the reinsurance companies. In recent years, excess claims have increased and it is quite difficult to predict profit commissions in advance. Actual profit commissions have proven to be rather small. As a result, no profit commissions have been included in the 2012 projections or 2013 budget.

Excess investment earnings were calculated using the same method described in the Primary Program revenue section.

The major expenses for the Excess Program are salary, benefits, and allocations from the Primary Program that were discussed in an earlier section. As was mentioned earlier, the allocation of

Primary Program costs was reduced for the 2013 budget. These allocations will again be reviewed in future budgets.

#### **IV. Actuarial Rate Study for 2013**

The actuaries review claims liabilities twice a year, at the end of June and December. They also prepare an annual rate study to assist the Board of Directors in setting the assessment. The attached rate study focuses on the estimate of the cost of 2013 claims. It relies heavily on the analysis contained in the actuaries' claim liability study as of June 30, 2012. The methodology used in that study is discussed by separate memorandum. The rate study only calculates the cost of new 2013 claims. It does not consider adjustments to pending claims, investment results, or administrative operating costs.

The actuaries estimate the 2013 claim cost per attorney using two different methods. The first method (shown on Exhibit 1) uses regression analysis to determine the trends in the cost of claims. Regression analysis is a statistical technique used to fit a straight line to number of points on a graph. It is very difficult to choose an appropriate trend. Because of the small amount and volatility of data, different ranges of PLF claim years produce very different trend numbers. The selection of the starting and ending points is very significant. For the PLF, including a low starting point such as 1987 or a very high point such as 2000 skews the straight line significantly up or down. Because of these problems, the actuaries do not favor using this technique to predict future claim costs.

The second method (Exhibit 2) involves selection of expected claim frequency and claim severity (average cost). Claims frequency is defined as the number of claims divided by the number of covered attorneys. For the indicated amount, the actuaries have used a 2013 claims frequency rate of 13.5 percent and \$20,500 as the average cost per claim (severity). The average cost figure has increase by \$500 from last years' study. We feel the \$20,500 severity factor is appropriate given the increases in claim expense severity since 2008. The actuaries' chosen frequency rate is unchanged from last years' figure of 13.5 percent. We feel that this rate is appropriate given experience in recent years. The actuaries prefer the result found with this second method. Their indicated average claim cost is \$2,768 per attorney. This amount would only cover the estimated funds needed for 2013 new claims.

It is necessary to calculate a provision for operating expenses not covered by non-assessment revenue. As can be seen in the budget, the estimate of non-assessment revenue does not cover the budget for operating expenses. The 2013 shortfall is about \$562 per lawyer assuming 7,104 full-pay lawyers.

The actuaries discuss the possibility of having a margin (additional amount) in the calculated assessment. On pages 8 and 9 of their report, the actuaries list pros and cons for having a margin in the assessment.

### **V. Staff Recommendations**

If you add the operating expense portion of \$562 per lawyer to the actuaries' indicated claim cost of \$2,768, you would have an assessment of \$3,330. We feel that it is appropriate to include a margin of \$150 per attorney for adverse development of pending claims. This allows for a budget of about \$1 million for adverse development of pending claims. An assessment of \$3,500 would allow a projected budget profit of about \$132,000.

We were happy to have a favorable adjustment in the latest actuarial review of claim liabilities. We hope that most of the claims coming out of the economic downturn have been made at this point. We are concerned about the rising costs to defend claims. We feel that it is prudent to continue to provide for negative development in 2012 and 2013. However, because of the favorable current liability review, we have reduced the margin for adverse development from \$300 to \$150 per lawyer.

Because of good financial results for the first six months of 2012, the PLF currently has positive combined retained earnings of about \$2.3 million. The Board of Directors has a long-term goal of \$12 million positive retained earnings. A 2013 assessment with some margin makes it more likely that some small progress will be made toward that retained earnings goal.

Given the factors discussed above, the PLF staff feels that the current Primary Program assessment should be maintained for 2012. Accordingly, we recommend setting the 2012 Primary Program assessment at \$3,500.

**OREGON STATE BAR  
PROFESSIONAL LIABILITY FUND  
2013 PRIMARY PROGRAM BUDGET  
Modified by PLF Board of Directors on October 6, 2012**

	<u>2010 ACTUAL</u>	<u>2011 ACTUAL</u>	<u>2012 BUDGET</u>	<u>2012 PROJECTIONS</u>	<u>2013 BUDGET</u>
<b>Revenue</b>					
Assessments including SUA	\$22,244,406	\$24,465,415	\$24,907,500	\$24,815,676	\$25,049,000
Installment Service Charge	350,469	385,593	401,000	394,571	390,000
Investments and Other	3,530,073	(544,650)	2,628,331	2,917,524	2,462,823
Total Revenue	<u>\$26,124,948</u>	<u>\$24,306,358</u>	<u>\$27,936,831</u>	<u>\$28,127,771</u>	<u>\$27,901,823</u>
<b>Expenses</b>					
Provision for Claims					
New Claims	\$18,461,583	\$18,538,608	\$19,070,100	\$18,700,000	\$19,660,320
Pending Claims	<u>\$1,481,000</u>	<u>\$2,398,105</u>	<u>\$2,118,900</u>	<u>\$200,000</u>	<u>\$1,065,600</u>
Total Provision for Claims	<u>\$19,942,583</u>	<u>\$20,936,713</u>	<u>\$21,189,000</u>	<u>\$18,900,000</u>	<u>\$20,725,920</u>
Expense from Operations					
Administration	\$2,014,918	\$2,234,384	\$2,201,774	\$2,220,757	\$2,283,201
Accounting	530,396	635,730	789,960	760,565	786,223
Loss Prevention	1,682,064	1,700,518	1,867,930	1,804,736	1,902,969
Claims	<u>2,219,444</u>	<u>2,305,033</u>	<u>2,466,873</u>	<u>2,404,686</u>	<u>2,681,914</u>
Total Operating Expense	\$6,446,822	\$6,875,665	\$7,326,537	\$7,190,745	\$7,654,307
Contingency	22,660	53,523	145,541	41,000	306,172
Depreciation	214,377	209,326	237,600	187,000	208,000
Allocated to Excess Program	<u>(1,257,082)</u>	<u>(1,393,740)</u>	<u>(1,135,822)</u>	<u>(1,135,822)</u>	<u>(1,135,160)</u>
Total Expenses	<u>\$25,369,360</u>	<u>\$26,681,487</u>	<u>\$27,762,856</u>	<u>\$25,182,923</u>	<u>\$27,759,239</u>
Net Income (Loss)	<u>\$755,588</u>	<u>(\$2,375,129)</u>	<u>\$173,975</u>	<u>\$2,944,848</u>	<u>\$142,584</u>
Number of Full Pay Attorneys	6,894	6,937	7,063	7,034	7,104

**CHANGE IN OPERATING EXPENSES:**

Increase from 2012 Budget           4.47%

Increase from 2012 Projections       6.45%



**OREGON STATE BAR  
PROFESSIONAL LIABILITY FUND  
2013 PRIMARY PROGRAM BUDGET  
CONDENSED STATEMENT OF OPERATING EXPENSE  
Modified by PLF Board of Directors on October 6, 2012**

	<u>2010 ACTUAL</u>	<u>2011 ACTUAL</u>	<u>2012 BUDGET</u>	<u>2012 PROJECTIONS</u>	<u>2013 BUDGET</u>
<b>Expenses</b>					
Salaries	\$3,748,818	\$3,858,800	\$4,016,426	\$3,961,785	\$4,148,175
Benefits and Payroll Taxes	1,019,242	1,194,430	1,441,243	1,412,924	1,576,202
Professional Services	379,245	270,489	309,000	301,390	314,000
Auto, Travel & Training	83,908	76,029	84,250	80,850	94,450
Office Rent	482,840	491,884	498,267	511,782	520,741
Office Expense	181,393	153,163	177,750	152,750	151,950
Telephone (Administration)	32,126	34,329	35,000	38,000	43,000
L P Programs	409,406	359,385	447,136	385,202	433,560
OSB Bar Books	0	300,000	200,000	200,000	200,000
Defense Panel Program	89	20,706	200	200	23,100
Insurance	60,806	60,081	61,265	88,362	90,129
Library	26,465	32,928	31,000	32,000	33,000
Memberships & Subscriptions	18,465	18,244	20,000	19,800	19,800
Interest & Bank Charges	4,019	5,197	5,000	5,700	6,200
Other	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
<b>Total Operating Expenses</b>	<b><u>\$6,446,822</u></b>	<b><u>\$6,875,665</u></b>	<b><u>\$7,326,537</u></b>	<b><u>\$7,190,745</u></b>	<b><u>\$7,654,307</u></b>
<b>Allocated to Excess Program</b>	<b><u>(\$1,221,441)</u></b>	<b><u>(\$1,350,104)</u></b>	<b><u>(\$1,099,826)</u></b>	<b><u>(\$1,099,826)</u></b>	<b><u>(\$1,105,104)</u></b>
<b>Full Time Employees (See Explanation)</b>	<b>44.33</b>	<b>44.56</b>	<b>45.73</b>	<b>44.73</b>	<b>47.06</b>
<b>Number of Full Pay Attorneys</b>	<b>6,894</b>	<b>6,937</b>	<b>7,063</b>	<b>7,034</b>	<b>7,104</b>
<b>Non-personnel Expenses</b>	<b>\$1,678,762</b>	<b>\$1,822,435</b>	<b>\$1,868,868</b>	<b>\$1,816,036</b>	<b>\$1,929,930</b>
Allocated to Excess Program	<u>(\$317,976)</u>	<u>(\$388,938)</u>	<u>(\$275,635)</u>	<u>(\$275,635)</u>	<u>(\$278,874)</u>
<b>Total Non-personnel Expenses</b>	<b><u>1,360,786</u></b>	<b><u>1,433,497</u></b>	<b><u>1,593,233</u></b>	<b><u>1,540,401</u></b>	<b><u>1,651,056</u></b>

**CHANGE IN OPERATING EXPENSES:**

Increase from 2012 Budget           **4.47%**

Increase from 2012 Projections       **6.45%**

**OREGON STATE BAR  
PROFESSIONAL LIABILITY FUND  
2013 PRIMARY PROGRAM BUDGET  
ADMINISTRATION**

Modified by PLF Board of Directors on October 6, 2012

	<u>2010 ACTUAL</u>	<u>2011 ACTUAL</u>	<u>2012 BUDGET</u>	<u>2012 PROJECTIONS</u>	<u>2013 BUDGET</u>
<b><u>Expenses</u></b>					
Salaries	\$632,499	\$647,912	\$624,175	\$632,345	\$642,627
Benefits and Payroll Taxes	173,709	209,493	222,967	222,928	242,304
Staff Travel	16,344	13,759	17,550	17,100	17,550
Board of Directors Travel	41,374	29,994	41,300	36,800	39,000
Training	6,167	843	4,000	5,000	8,000
Investment Services	26,966	27,304	27,000	27,500	28,000
Legal Services	23,963	7,931	15,000	16,000	16,000
Actuarial Services	18,904	18,564	19,000	19,000	19,000
Information Services	116,560	82,863	74,000	87,000	96,000
Offsite System Backup	23,203	1,138	0	0	0
Electronic Record Scanning	72,391	21,879	75,000	75,000	75,000
Other Professional Services	62,258	73,601	62,000	51,340	57,400
Pro Services - Medicare Reporting	11,200	11,400	12,000	3,850	0
OSB Bar Books	0	300,000	200,000	200,000	200,000
Office Rent	482,840	491,884	498,267	511,782	520,741
Equipment Rent & Maint.	52,910	42,345	54,000	37,000	35,200
Dues and Memberships	18,465	18,244	20,000	19,800	19,800
Office Supplies	80,975	64,615	75,000	67,000	68,000
Insurance	60,806	60,081	61,265	88,362	90,129
Telephone	32,126	34,329	35,000	38,000	43,000
Printing	9,643	10,966	10,000	11,000	11,000
Postage & Delivery	36,992	34,350	37,750	36,750	36,750
NABRICO - Assoc. of Bar Co.s	9,731	24,805	10,500	10,500	10,500
Bank Charges & Interest	4,019	5,197	5,000	5,700	6,200
Repairs	873	887	1,000	1,000	1,000
Miscellaneous	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Total Operating Expenses	<u>\$2,014,918</u>	<u>\$2,234,384</u>	<u>\$2,201,774</u>	<u>\$2,220,757</u>	<u>\$2,283,201</u>
 Allocated to Excess Program	 <u>(\$472,598)</u>	 <u>(\$559,903)</u>	 <u>(\$430,118)</u>	 <u>(\$430,118)</u>	 <u>(\$430,857)</u>
 Administration Full Time Employees	 9.10	 8.75	 8.00	 8.00	 8.00
 <b>CHANGE IN OPERATING EXPENSES:</b>					
Decrease from 2012 Budget		3.70%			
Decrease from 2012 Projections		2.81%			

OREGON STATE BAR  
PROFESSIONAL LIABILITY FUND  
2013 PRIMARY PROGRAM BUDGET  
ACCOUNTING

Modified by PLF Board of Directors on October 6, 2012

	2010 <u>ACTUAL</u>	2011 <u>ACTUAL</u>	2012 <u>BUDGET</u>	2012 <u>PROJECTIONS</u>	2013 <u>BUDGET</u>
<b><u>Expenses</u></b>					
Salaries	\$400,066	\$473,136	\$561,912	\$543,517	\$548,750
Benefits and Payroll Taxes	105,843	141,635	201,648	193,898	210,973
Travel	127	207	400	250	400
Financial Audit	23,800	20,200	25,000	21,700	22,600
Training	<u>560</u>	<u>552</u>	<u>1,000</u>	<u>1,200</u>	<u>3,500</u>
Total Operating Expenses	<u>\$530,396</u>	<u>\$635,730</u>	<u>\$789,960</u>	<u>\$760,565</u>	<u>\$786,223</u>
Allocated to Excess Program	<u>(\$120,166)</u>	<u>(\$144,052)</u>	<u>(\$128,721)</u>	<u>(\$128,721)</u>	<u>(\$111,674)</u>
Accounting Full Time Employees	4.90	6.10	7.15	6.90	6.90

CHANGE IN OPERATING EXPENSES:

Decrease from 2012 Budget	-0.47%
Increase from 2012 Projections	3.37%

**OREGON STATE BAR  
PROFESSIONAL LIABILITY FUND  
2013 PRIMARY PROGRAM BUDGET  
LOSS PREVENTION (Includes OAAP)  
Modified by PLF Board of Directors on October 6, 2012**

	<u>2010 ACTUAL</u>	<u>2011 ACTUAL</u>	<u>2012 BUDGET</u>	<u>2012 PROJECTIONS</u>	<u>2013 BUDGET</u>
<b><u>Expenses</u></b>					
Salaries	\$991,252	\$1,015,169	\$1,039,587	\$1,041,004	\$1,059,579
Benefits and Payroll Taxes	281,406	325,964	381,207	378,530	409,830
In Brief	45,575	54,370	62,000	45,000	62,000
PLF Handbooks	48,835	7,320	5,000	6,000	6,000
Library	248	102	200	200	150
Videotape	13,470	22,487	20,000	20,000	22,000
Audiotapes	19,883	19,998	20,000	20,000	20,200
Mail Distribution of Video and Audiotape	9,391	12,871	9,500	11,000	12,000
Web Distribution of Programs	13,710	9,165	14,000	18,000	18,000
Program Promotion	17,263	20,596	35,000	25,000	30,000
Expense of Closing Offices	7,707	4,800	14,000	14,000	14,500
Facilities	47,487	33,591	55,000	40,000	45,000
Speaker Expense	(144)	1,018	10,000	500	5,000
Accreditation Fees	1,307	1,071	1,400	1,400	1,400
Beepers & Confidential Phone	4,019	3,377	4,000	4,000	4,000
Expert Assistance	1,500	6,414	5,000	2,000	5,000
Bad Debts from Loans	0	0	0	0	0
Memberships & Subscriptions	9,773	10,832	10,250	11,000	11,000
Travel	34,266	31,708	36,300	33,850	36,950
Training	23,972	22,883	40,150	34,100	40,250
Downtown Office	111,144	96,782	105,336	99,152	100,110
Miscellaneous	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
 Total Operating Expenses	 <u>\$1,682,064</u>	 <u>\$1,700,518</u>	 <u>\$1,867,930</u>	 <u>\$1,804,736</u>	 <u>\$1,902,969</u>
 Allocated to Excess Program	 <u>(\$248,096)</u>	 <u>(\$246,921)</u>	 <u>(\$202,122)</u>	 <u>(\$202,122)</u>	 <u>(\$209,540)</u>
 <b>L P Depart Full Time Employees (Includes OAAP)</b>	 11.83	 11.83	 11.83	 11.83	 11.83

**CHANGE IN OPERATING EXPENSES:**

Increase from 2012 Budget            1.88%

Increase from 2012 Projections        5.44%

**OREGON STATE BAR  
PROFESSIONAL LIABILITY FUND  
2013 PRIMARY PROGRAM BUDGET  
CLAIMS DEPARTMENT**

**Modified by PLF Board of Directors on October 6, 2012**

	<u>2010 ACTUAL</u>	<u>2011 ACTUAL</u>	<u>2012 BUDGET</u>	<u>2012 PROJECTIONS</u>	<u>2013 BUDGET</u>
<b><u>Expenses</u></b>					
Salaries	\$1,725,001	\$1,722,583	\$1,790,752	\$1,744,919	\$1,897,219
Benefits and Payroll Taxes	458,284	517,338	635,421	617,567	713,095
Claims Audit	0	5,609	0	0	0
Training	7,061	4,335	7,000	7,500	13,000
Travel	2,544	1,534	2,500	2,500	2,500
Library & Information Systems	26,465	32,928	31,000	32,000	33,000
Defense Panel Program	<u>89</u>	<u>20,706</u>	<u>200</u>	<u>200</u>	<u>23,100</u>
Total Operating Expenses	<u>\$2,219,444</u>	<u>\$2,305,033</u>	<u>\$2,466,873</u>	<u>\$2,404,686</u>	<u>\$2,681,914</u>
Allocated to Excess Program	<u>(\$380,581)</u>	<u>(\$399,228)</u>	<u>(\$338,865)</u>	<u>(\$338,865)</u>	<u>(\$353,033)</u>
Claims Depart Full Time Employees	18.50	17.88	18.75	18.00	20.33
<b>CHANGE IN OPERATING EXPENSES:</b>					
Increase from 2012 Budget		8.72%			
Increase from 2012 Projections		11.53%			

**OREGON STATE BAR  
PROFESSIONAL LIABILITY FUND  
2013 PRIMARY PROGRAM BUDGET  
CAPITAL BUDGET**

**Modified by PLF Board of Directors on October 6, 2012**

	<u>2010 ACTUAL</u>	<u>2011 ACTUAL</u>	<u>2012 BUDGET</u>	<u>2012 PROJECTIONS</u>	<u>2013 BUDGET</u>
<b><u>Capital Items</u></b>					
Furniture and Equipment	\$3,158	\$19,595	\$10,000	\$21,000	\$10,000
Telephone	0	0	2,000	1,000	1,000
Copiers / Scanners	0	0	5,000	66,000	5,000
Document Management & Scanning	0	0	2,000	5,253	5,000
Data Processing					
Hardware	29,995	22,832	25,000	15,367	13,000
Software	1,234	22,179	10,000	1,200	10,000
Personal Computers and Printers	13,928	57,751	10,000	3,500	13,500
Leasehold Improvements	<u>2,993</u>	<u>1,783</u>	<u>2,000</u>	<u>3,000</u>	<u>3,000</u>
 Total Capital Budget	 <u>\$51,308</u>	 <u>\$124,140</u>	 <u>\$66,000</u>	 <u>\$116,320</u>	 <u>\$60,500</u>

**Decrease from 2012 Budget           -8.33%**

**Decrease from 2012 Projections       -47.99%**

**OREGON STATE BAR  
PROFESSIONAL LIABILITY FUND  
2012 EXCESS PROGRAM BUDGET  
Modified by PLF Board of Directors on October 6, 2012**

	<u>2010 ACTUAL</u>	<u>2011 ACTUAL</u>	<u>2012 BUDGET</u>	<u>2012 PROJECTIONS</u>	<u>2013 BUDGET</u>
<b><u>Revenue</u></b>					
Ceding Commission	755,096	720,039	705,600	725,000	746,750
Profit Commission	13,508	21,684	0	0	0
Installment Service Charge	41,655	37,322	38,000	37,200	38,000
Other	424	703	1,500	1,400	1,500
Investment Earnings	<u>427,932</u>	<u>22,315</u>	<u>228,551</u>	<u>341,093</u>	<u>185,374</u>
Total Revenue	<u>\$1,238,615</u>	<u>\$802,063</u>	<u>\$973,651</u>	<u>\$1,104,693</u>	<u>\$971,624</u>
<b><u>Expenses</u></b>					
Allocated Salaries	\$707,500	\$732,877	\$608,431	\$608,431	\$599,356
Direct Salaries	57,918	65,615	66,304	66,950	70,298
Allocated Benefits	195,965	228,289	215,760	215,760	226,874
Direct Benefits	17,224	15,938	23,812	23,942	26,657
Program Promotion	500	1,596	1,000	4,000	5,000
Investment Services	3,034	2,696	3,200	3,000	3,000
Allocation of Primary Overhead	317,976	388,938	275,635	275,635	278,874
Reinsurance Placement Travel	5,498	5,733	12,000	5,000	5,000
Training	0	0	1,000	500	500
Printing and Mailing	4,872	4,283	5,000	5,000	5,000
Other Professional Services	0	6,290	2,500	2,000	2,000
Software Development	0	0	0	0	0
Total Expense	<u>\$1,310,487</u>	<u>\$1,452,255</u>	<u>\$1,214,642</u>	<u>\$1,210,218</u>	<u>\$1,222,559</u>
<b>Allocated Depreciation</b>	<u>\$35,641</u>	<u>\$43,636</u>	<u>\$35,996</u>	<u>\$35,996</u>	<u>\$30,056</u>
<b>Net Income</b>	<u>(\$107,513)</u>	<u>(\$693,828)</u>	<u>(\$276,987)</u>	<u>(\$141,521)</u>	<u>(\$280,991)</u>
<b>Full Time Employees</b>	1.00	1.00	1.00	1.00	1.00
<b>Number of Covered Attorneys</b>	2,642	2,317	2,279	2,325	2,395
<b>CHANGE IN OPERATING EXPENSES:</b>					
Decrease from 2012 Budget		0.65%			
Decrease from 2012 Projections		1.02%			

Action Memo To: OSB Board of Governors  
 October 30, 2012  
 Page 2

11. "LAW ENTITY" refers to a professional corporation, partnership, limited liability partnership, limited liability company, or sole proprietorship engaged in the private practice of law *in Oregon*.

## 2. Section V(4)(b) – EXCLUSIONS FROM COVERAGE

Exclusion 4 addresses coverage for punitive damages and sanctions. Subsection (b) bars coverage for sanctions and penalties levied against covered attorneys and "others." The intent of the use of "others" is to bar coverage for clients and parties who might seek indemnity from the lawyer for sanctions or penalties imposed on them for their own conduct. The use of the term "others" in this way is not entirely self-evident and could give rise to confusion about who and what is excluded from coverage under Exclusion 4. We propose that the phrase be removed from Subsection (b) as follows:

\*\*\*\*\*

4. This Plan does not apply to:
- a. The part of any CLAIM seeking punitive, exemplary or statutorily enhanced damages; or
  - b. Any CLAIM for or arising out of the imposition of attorney fees, costs, fines, penalties, or other sanctions ~~on the COVERED PARTY or others~~ imposed under any federal or state statute, administrative rule, court rule, or case law intended to penalize bad faith conduct and/or the assertion of frivolous or bad faith claims or defenses. The PLF will defend the COVERED PATY against such a CLAIM, but any liability for indemnity arising from such CLAIM will be excluded.

## 3. Section VII – Notice of Claims

The PLF Claims Made Plan addresses the issue of when and how a claim is made and coverage triggered in two separate places: SECTION VII-NOTICE OF CLAIMS and SECTION IV-GRANT OF COVERAGE.

After discussing possible inconsistencies between the two sections with coverage counsel and PLF claims staff, we proposed changing Section VII to reconcile the two sections. Note that Section IV.1.b has been included for reference only, no changes are proposed. The inconsistency was between Section IV (1) (c) which stated the date of a claim was when "the PLF first became aware of facts...." and the requirement in Section VII that the PLF have written notice of the claim from the Covered Party before the PLF sets a date for the claim. The new Section VII cures the inconsistency.



The date a claim is made is important because it determines the claim year expenditures on behalf of a Covered Party for a Claim are charged against.

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#### SECTION IV — GRANT OF COVERAGE

##### 1. Indemnity.

a. The PLF will pay those sums that a COVERED PARTY becomes legally obligated to pay as DAMAGES because of CLAIMS arising out of a COVERED ACTIVITY to which this Plan applies. No other obligation or liability to pay sums or perform acts or services is covered unless specifically provided for under Subsection 2 - Defense.

b. This Plan applies only to CLAIMS first made against a COVERED PARTY during the COVERAGE PERIOD.

(1) The applicable COVERAGE PERIOD for a CLAIM will be the earliest of:

(a) When a lawsuit is filed or an arbitration or ADR proceeding is formally initiated; or

(b) When notice of a CLAIM is received by any COVERED PARTY or by the PLF; or

(c) When the PLF first becomes aware of facts or circumstances that reasonably could be expected to be the basis of a CLAIM; or

(d) When a claimant intends to make a CLAIM but defers assertion of the CLAIM for the purpose of obtaining coverage under a later COVERAGE PERIOD and the COVERED PARTY knows or should know that the COVERED ACTIVITY that is the basis of the CLAIM could result in a CLAIM.

(2) Two or more CLAIMS that are SAME OR RELATED CLAIMS, whenever made, will all be deemed to have been first made at the time the earliest such CLAIM was first made. This provision will apply to YOU only if YOU have coverage from any source applicable to the earliest such SAME OR RELATED CLAIM (whether or not the available limits of liability of such prior policy or plan are sufficient to pay any

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#### SECTION VII — NOTICE OF CLAIMS

1. The COVERED PARTY must, as a condition precedent to the right of protection afforded by this coverage, give the PLF, at the address shown in the Declarations, as soon as practicable, written notice of any CLAIM made against the COVERED PARTY. In the event a SUIT is brought against the COVERED PARTY, the COVERED PARTY must immediately notify and deliver to the PLF, at the address shown in

the Declarations, every demand, notice, summons, or other process received by the COVERED PARTY or the COVERED PARTY'S representatives.

2. If the COVERED PARTY becomes aware of a ~~specific act, error, or omission~~ **facts or circumstances that reasonably could be expected to be the basis of a CLAIM** for which coverage is **may be** provided under this Plan ~~during the COVERAGE PERIOD~~, the COVERED PARTY must give written notice to the PLF as soon as practicable during the COVERAGE PERIOD of:

- a. The specific act, error, or omission;
- b. DAMAGES and any other injury that has resulted or may result; and
- c. The circumstances by which the COVERED PARTY first became aware of such act, error, or omission.

~~then any CLAIM that is subsequently made against the COVERED PARTY based on or arising out of such act, error, or omission will be deemed to have been made during the COVERAGE PERIOD.~~

~~3. If, during the COVERAGE PERIOD, a potential claimant requests that the PLF agree to toll or suspend the running of a time limitation applicable to a potential CLAIM against a COVERED PARTY based on a specific act, error, or omission for which coverage is provided under this Plan, and if the PLF agrees in writing to do so with the consent of the COVERED PARTY, then any CLAIM that is subsequently made against the COVERED PARTY based on or arising out of such act, error, or omission will be deemed to have been made during the COVERAGE PERIOD.~~

3. **If the PLF opens a suspense or claim file involving a CLAIM or potential CLAIM which otherwise would require notice from the COVERED PARTY under subsection 1. or 2. above, the COVERED PARTY'S obligations under those subsections will be considered satisfied for that CLAIM or potential CLAIM.**

#### COMMENTS

**This is a Claims Made Plan. Section IV.1.b. determines when a CLAIM is first made for the purpose of triggering coverage under this Plan. Section VII states the COVERED PARTY's obligation to provide the PLF with prompt notice of CLAIMS, SUITS, and potential CLAIMS.**

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### 3.500 PLAN FOR SPECIAL UNDERWRITING ASSESSMENT

(A) Plan for Special Underwriting Assessment: Lawyers will be subject to a Special Underwriting Assessment (SUA) to be assessed under the following terms and conditions. This Plan for Special Underwriting Assessment may be changed or amended in the future.

(B) Special Underwriting Assessment:



(1) The surcharge assessed on January 1 of each year will be based upon the total of all payments for indemnity and expense (including Claims Expense Allowance) paid on a claim or group of related claims in excess of an aggregate amount of \$75,000 per claim. If a claim is part of a group of related claims for which responsibility is allocated pursuant to 3.500(D), the SUA will be based on the amount in excess of \$75,000 of the indemnity and expense allocated to each Covered Party or group of related claims (the "Base Amount"). SUA will be assessed for all claims which are settled or closed by the PLF during the five-year period ending by September 30 of the prior year. The surcharge for each claim or group of related claims will be equal to 1% of the Base Amount so calculated and will be charged for each of the next five years. When a claim or group of related claims is made against more than one Covered Party, the SUA will first be calculated for the claim or group of related claims as a whole and then be allocated among the Covered Parties; no more than \$75,000 aggregate defense and indemnity costs (including Claims Expense Allowance) will be excluded from the SUA calculation regardless of the number of Covered Parties or related claims involved.

(2) All present and former Covered Parties will be assessed according to these provisions, but a Covered Party will be required to pay the SUA only if the Covered Party maintains current coverage with the PLF at the time of the SUA assessment.

{BOD 6/20/03; BOG 9/18/03}

(C) (1) Reductions to Indemnity and Expense:

For the purposes of SUA, the value of outstanding amounts owed by another but not yet collected will be determined by the PLF staff at the time the SUA is allocated. The PLF will set the value of such potential sources of reimbursement for claims expenses based on the likelihood of collection. The PLF may discount the value of the source of offset, allow full value of the source of offset, or decline to provide any discount. The amount of the credit determined by the PLF will be treated as reductions to the indemnity and expense paid by the PLF on behalf of a Covered Party and will be deducted in determining the Base Amount. Reinsurance payments will not be treated as reductions to indemnity.

(2) Covered parties will be notified of the PLF's decision as to the amount allowed for any third party source of repayment and can appeal that decision by letter submitted to the PLF CEO within 14 days of receiving notification of the PLF action. The PLF CEO will notify the covered party of a final decision prior to the final computation of any SUA assessment.

(BOD 08/06/09; BOG 08/28/09)

(D) Allocation and Vicarious Liability:

(1) The Covered Party causing or responsible for the claim or group of related claims will be assessed. When more than one PLF-covered attorney is involved, SUA will be allocated in proportion to each PLF-covered attorney's degree of responsibility or fault. The SUA allocation will be based on any indemnity payments made and defense costs expended, except that a PLF-covered attorney assigned his or her own defense attorney will be deemed responsible for those expenses. SUA may be allocated to a Covered Party even though no claim was made against the Covered Party if it appears that a claim would or could have been made but for the final disposition of the claim giving rise to the SUA under consideration.

However, the SUA allocated to such Covered Party will be waived if the Covered Party was not informed by the PLF prior to the final disposition of the claim:

(a) of the claim giving rise to the SUA,

(b) of the possibility of a claim from the claimant or another party or of a cross-claim from another Covered Party, and

(c) of the potential of a SUA allocation from the claim.

In such cases, a separate PLF file will be opened in the name of each Covered Party facing a potential SUA allocation.

(BOD 6/20/03; BOG 9/18/03)

(2) Initial Allocation of Responsibility: The ~~Chief Executive Officer~~ CEO of the PLF will make an initial allocation of responsibility among the PLF-covered attorneys involved upon settlement or closing of the claim or group of related claims. Where responsibility is equal or no reasonable basis is available to determine the appropriate percentage of responsibility, responsibility will be allocated equally among the PLF-covered attorneys.



(BOD 6/20/03; BOG 9/18/03)

(3) SUA will not be assessed against a Covered Party if the Covered Party's liability was purely vicarious. However, notwithstanding that the basis of the Covered Party's liability is purely vicarious, a PLF-covered attorney assigned his or her own defense attorney will be deemed responsible for those expenses unless the assignment of a separate defense counsel is legally required (e.g. conflict of interest). For this purpose, pure vicarious liability means liability imposed solely by law, (e.g., partnership liability) on a claim in which the Covered Party had no involvement whatsoever. SUA relief for pure vicarious liability will not be allowed when the

Covered Party had some involvement in the legal matter, even if other attorneys in the Covered Party's firm (partners, associates, or employees) or outside the firm were also involved and committed greater potential error. Likewise, SUA relief for pure vicarious liability will not be granted when the alleged error was made by a secretary, paralegal, or other attorney working under the Covered Party's direction or control or who provided research, documents, or other materials to the Covered Party in connection with the claim.

(BOD 10/21/05; BOG 11/19/05)

(E) Billing: The ~~special underwriting assessment~~ SUA will be added to the regular billing for the basic assessment.

(F) Petition for Review:

(1) The Covered Party may petition the Board of Directors in writing for review of the ~~special underwriting assessment~~ SUA only upon the basis that:

(a) The allocation made under 3.500(D)(1), (2), or (3) was incorrect  
or

(b) The claim was handled by the PLF or its employees and agents (including assigned defense counsel) in a negligent or improper manner which resulted in an increased ~~special underwriting assessment~~ SUA to the Covered Party  
or

(c) The assignment of separate counsel pursuant to 3.500(D)(3) was necessary.

(BOD 6/20/03; BOG 9/18/03; BOD 10/21/05; BOG 11/19/05)

A SUA arising from a claim will not be reassigned to the attorney for the claimant who brought the claim if the reason given for the reassignment by the appealing attorney is that the claimant's attorney should not have asserted the claim, should have asserted the claim in a more economical fashion, should have asserted the claim against someone else, or other similar reason.

(2) The basis for review will be set forth in the petition, and the PLF-covered attorney, or attorneys if more than one, to whom the Covered Party seeks to reassign responsibility for the claim will be requested to participate and submit a response. A SUA appeal must be filed in the first year during which the SUA is assessed and paid. Other details of the review process will be provided to attorneys at the time of SUA assessment. The Board of Directors or its representative will review each petition and response and make such adjustment, if any, as is warranted by the facts. An adjustment may include reallocation of responsibility for a claim to another attorney (whether or not the attorney responds to the request to participate in the SUA review process), that could result in assessment of a SUA against the attorney. In the event a refund is made, it will include statutory interest. A pending Petition for Review will not relieve the Covered Party from compliance with the assessment notice.

(BOD 12/6/91, BOG 3/13/92; BOD 7/16/93, BOG 8/13/93; BOD 8/9/96; BOG 9/25/96; BOD 8/14/98; BOG 9/25/98; BOD 6/20/03; BOG 9/18/03; BOD 10/5/12; BOG ???)

### 3.550 PROCEDURE FOR REVIEW OF SPECIAL UNDERWRITING ASSESSMENT

(A) Procedure for SUA Appeal: The following procedures will apply to the appeal of any Special Underwriting Assessment assessed against a covered party under PLF Policy 3.500.

(B) Basis for Appeal:

(1) The Covered Party may petition the Board of Directors in writing for review of the Special Underwriting Assessment only upon the bases stated at PLF Policy 3.500(F)(1).

(BOD 6/20/03; BOG 9/18/03)

(2) A Petition for Review of a SUA must be delivered to the office of the Professional Liability Fund (PLF), postmarked no later than January 10 of the year in which the

SUA was first imposed. Failure to file a petition by this date means no SUA relief will be granted.

(C) General Schedule for Appeals: The schedule for SUA appeals will be as follows:

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<u>Activity</u>	<u>Time Allowed</u>
Submission of SUA Petition by Covered Party.....	January 10
Development of claim summary by PLF staff (optional).....	30 days
Covered Party's reply to PLF claim analysis (optional).....	7 days
Submission of Response by Responding Attorney.....	30 days
Submission of Reply.....	14 days
Decision by PLF Board of Directors.....	30-60 days
Further appeal to Board of Governors from decision of PLF Board of Directors .....	30 days
Decision of Board of Governors.....	30-60 days

Deadlines may be extended, modified, or supplemented by the PLF or the Board of Governors as appropriate.

(D) Form of SUA Petition:

(1) A Covered Party who seeks to reassign responsibility for a claim will set forth in detail the reasons why responsibility should be reassigned, the other PLF-covered attorney or attorneys who should be held responsible, and the percentage of responsibility for the claim (totaling 100 percent) which the Covered Party and each other PLF-covered attorney so named should bear. A Covered Party who seeks a reduction or waiver of the SUA due to mishandling of the claim by the PLF or its employees or agents will set forth in detail the reasons why the SUA should be reduced or waived, and what amount of SUA (if any) the Covered Party should be assessed.

(2) The petition for relief from SUA submitted by the Covered Party may be in any form the Covered Party chooses. The Covered Party is responsible for attaching to the SUA petition or submitting therewith all correspondence, documents, and other written materials from the PLF claim file or other sources which the Covered Party wishes the Board of Directors or Board of Governors to consider. The Covered Party is required to provide 10 copies of the SUA petition and all supporting documents for an appeal to the ~~Professional Liability Fund~~ Board of Directors, and is required to provide 16 copies of the SUA petition and all supporting documents for an appeal to the Board of Governors. In addition, the Covered Party will provide an additional copy of the SUA petition and all supporting documents for each other PLF-covered attorney to whom the Covered Party seeks to reassign responsibility for a claim in whole or in part.

(E) Claim Summary: The PLF may prepare a staff summary of the claims relating to the SUA appeal at its option. The claim summary will be presented to the SUA committee and the PLF Board of Directors, and to the Board of Governors upon further appeal. If a claim summary is prepared, a copy will be provided to the Covered

Party, and the Covered Party may submit a reply if desired within seven days.

(F) Response of Other Attorneys:

(1) The PLF will forward a copy of (a) the Covered Party's SUA petition and all supporting documents; (b) any staff summary prepared by the PLF; and (c) any reply of the Covered Party to any PLF staff summary to the other PLF-covered attorney named in the petition (the "Responding Attorney").

(2) The Responding Attorney may submit a written Response to the petition in any form the Responding Attorney chooses and may file a cross-appeal as to any SUA which has been allocated to the Responding Attorney. The cross-appeal may seek to reallocate SUA to the original appealing attorney or to another PLF-covered attorney, or may seek review of the SUA due to negligent or improper handling of the claim by the PLF or its employees and agents, in the same manner as an original SUA appeal may be filed under these policies. The Responding Attorney is responsible for attaching to the Response or submitting therewith all correspondence, documents, and other written materials from the PLF claim file or other sources which the Responding Attorney wishes the Board of Directors or Board of Governors to consider. The Responding Attorney is required to provide 10 copies of the Response and all supporting documents for an appeal to the ~~Professional Liability Fund~~ PLF Board of Directors, and is required to provide 16 copies of the Response and all supporting documents for an appeal to the Board of Governors. In addition, the Responding Attorney will provide an additional copy of the Response and all supporting documents for each other PLF-covered attorney involved in the SUA appeal.

(G) Reply: The PLF will forward a copy of the Response of the Responding Attorney to each of the other PLF-covered attorneys involved in the appeal, and each attorney may submit a written Reply to the PLF within 14 days. The Reply may

address only issues raised in the Responding Attorney's Response, and may not raise new issues or arguments. The form of the Reply and number of copies to be provided will be the same as stated above for the original SUA petition and the Responding Attorney's Response.

(H) Review of Records:

(1) Each attorney involved in the SUA appeal may review his or her entire PLF file relating to the claim in question. Coverage opinions and other documents relating to coverage questions, reservations of rights, and other matters confidential to the PLF are not available for examination. File documents which are protected by attorney-client or other privilege are not available for inspection unless the attorney holding the privilege consents to inspection. However, review of claims files by the Board of Directors or the Board of Governors will not be deemed a waiver of attorney-client or other privilege.

(2) Records may be examined at the offices of the ~~Professional Liability Fund~~ PLF through prior arrangement. The PLF will provide up to 100 pages of photocopies from the relevant case file at no charge. Additional copies requested by the Covered Party will be provided at \$.15 per page.

(I) Decision of SUA Appeals by PLF:

(1) SUA appeals to the PLF Board of Directors will initially be reviewed by the SUA Committee. The committee will consider all materials provided by the attorneys involved in the appeal, the claim summary prepared by the PLF staff (if any), and such additional portions of the relevant claim files as the committee chooses. The committee may seek additional information from the attorneys involved in the appeal and from other persons which will be disclosed to the parties to the appeal. The SUA Committee will present a recommendation to the PLF Board of Directors. The Board of Directors will consider the same written materials

considered by the SUA Committee, and will make a final decision concerning the SUA appeal. A full written explanation of the determination of the SUA appeal, including findings of fact, if there are any factual determinations, conclusions, and reasons for the conclusions will be forwarded to the attorneys involved in the appeal.

(2) Decision of a SUA appeal will result in such adjustment, if any, as is warranted by the facts. An adjustment may include reallocation of responsibility for a claim to another PLF-covered attorney (whether or not the attorney responds to the request to participate in the SUA review process), which could result in assessment of a SUA against the attorney.

(3) If the decision of the Board of Directors decreases or eliminates the Covered Party's ~~special underwriting assessment~~ SUA, an appropriate refund will be made by the ~~Professional Liability Fund~~ PLF together with statutory interest thereon.

(4) If the decision of the Board of Directors serves to impose all or part of the subject ~~special underwriting assessment~~ SUA on another PLF-covered attorney, the SUA reallocated to the attorney is due and payable 30 days after written notice to the attorney. Any SUA not paid when due will accrue interest at the legal rate until paid, and will be included as part of the attorney's PLF assessment in the following year.

(5) Any decision as to responsibility will be binding on the parties in future years according to the terms of any applicable future SUA plans.

(J) BOG Change In SUA Allocation

(1) Any attorney involved in a SUA appeal who after properly and timely filing a petition or other response, is dissatisfied by the decision of the Board of Directors will have a right to request the Board of Governors to review the



action of the Board of Directors. In order to be entitled to such review, a written request for such review must be physically received by the Executive Director of the Oregon State Bar within 30 days after the date of the written decision from the PLF to such attorney. Review by the Board of Governors upon a timely filed request will be a de novo review on the record. In making the determination whether or not the action of the Board of Directors should be affirmed, only the grounds asserted in the petition or other response and written materials which were available to the Board of Directors will be reviewed, unless the Board of Governors, upon its own motion, will request additional materials from the attorney and from the PLF.

(2) The President of the Oregon State Bar will appoint a committee of not less than three of the members of the Board of Governors which will meet and conduct a review of the appropriate materials and which will make a recommendation to the Board of Governors as to whether or not the action of the PLF Board of Directors should be affirmed. The Board of Governors will make a determination and will notify the attorney in writing of its decision, including any adjustment to the assessment, and the decision of the Board of Governors will be final.

(3) A request for Board of Governors review will constitute and evidence the consent of the Covered Party for the Board of Governors and others designated by them to review all pertinent files of the PLF relating to the Covered Party. In relation to such review, the members of the Board of Governors are subject to compliance with Rule 8.3 of the Oregon Rules of Professional Conduct (ORPC).

(4) Review of a SUA appeal by the Board of Governors will result in such adjustment, if any, as is warranted by the facts. An adjustment may include reallocation of responsibility for a claim to another attorney (whether or not the attorney responds to the request to participate in the SUA review process),

which could result in assessment of a SUA against the attorney.

(5) If the review of the Board of Governors decreases or eliminates the Covered Party's ~~special underwriting assessment~~ SUA, appropriate refund will be made by the ~~Professional Liability Fund~~ PLF together with statutory interest thereon.

(6) If the review of the Board of Governors serves to impose all or part of the subject ~~special underwriting assessment~~ SUA on another PLF-covered attorney, the SUA reallocated to the attorney is due and payable 30 days after written notice to the attorney. Any SUA not paid when due will accrue interest at the legal rate until paid, and will be included as part of the attorney's PLF assessment in the following year.

(K) Questions Regarding Appeal Procedure: Any questions regarding SUA appeal procedures should be forwarded in writing to the Chief Executive Officer/CEO of the ~~Professional Liability Fund~~ PLF or the Executive Director of the Oregon State Bar, as appropriate. The PLF Board of Directors and the Board of Governors reserve the right to amend these rules at a future date.

(BOD 8/23/91, 10/2/91, BOG 12/13/91; BOD 12/6/91, BOG 3/13/92; BOD 7/16/93, BOG 8/13/93; BOD 8/9/96; BOG 9/25/96; BOD 10/5/12; BOG ???)

**3.620 EXTENDED REPORTING COVERAGE  
(1996 AND LATER YEARS)**

**PLAN FOR EXTENDED REPORTING COVERAGE  
FOR PLAN YEAR 1996 AND LATER YEARS  
(For Attorneys Leaving Private Practice in 1995  
and Later Years)**

The Board of Directors of the Professional Liability Fund adopts the following Plan for Extended Reporting Coverage for Claims Made Plan Year 1996 and subsequent years. This Plan for Extended Reporting Coverage is subject to amendment or termination by the Board of Directors at any time. No rights are vested as to



(C) The results of the evaluation will be provided to the members of the BOD and to the BOG liaisons to the PLF. A confidential written summary of the results will be placed in the CEO's personnel file.

(BOD 2/7/03; BOG N/A)

**2.200 REPORTING TO BOARD OF GOVERNORS AND MEMBERSHIP**

(A) The Professional Liability Fund will report on its financial position at least quarterly to the Board of Governors. Such financial reporting will include budget reports, balance sheets, and statements of operations. Where applicable, such financial reports will include comparative statements for the corresponding previous period of time.

(B) The Professional Liability Fund will furnish to the Board of Governors all audited or unaudited statements as may be prepared by its auditors and any comments furnished to the Professional Liability Fund by its auditors.

(C) Investment reports will be submitted to such members of the Board of Governors as are designated by the Board of Governors immediately after submission to the Board of Directors.

(D) Status reports of activities of the Fund will be made to the Board of Governors by the Chairperson or Chief Executive Officer upon request.

**2.250 TRAVEL, EXPENSE, AND REIMBURSEMENT POLICY**

(A) Board members and the Chief Executive Officer are encouraged to promote the aims of the Professional Liability Fund, whether by meeting with interested individuals (whether or not they are members of the Oregon State Bar) or by attending national meetings on the subject

of professional errors and omissions coverage so long as attendance at the meetings does not involve undue time or expense or hinder the Chief Executive Officer's ability to manage the Fund. If Board members or the Chief Executive Officer attend a meeting at the request of another bar association or other group, reimbursement from the meeting sponsor should be obtained if possible.

(B) Board members (as designated by the Chairperson of the Board of the Professional Liability Fund) may attend meetings of the National Association of Bar Related Insurance Companies (NABRICO) or relevant American Bar Association committees on legal malpractice. Generally, Board members attend the NABRICO meeting in the second and fourth years of their terms.

(C) Board and committee members (as designated by the Chairperson) may be requested to accompany the Chief Executive Officer to meet with representatives of the national insurance market to arrange excess coverage in following form to Oregon's plan or to assist in negotiations with any reinsurance carrier for the Professional Liability Fund.

(D) Board members are required to attend Board meetings in various locations throughout the state of Oregon and to attend Oregon State Bar Board of Governors meetings when acting as liaisons between the two Boards (see PLF Bylaws 6.3). The Chief Executive Officer will attend all such meetings.

(E) Current policies provide for reimbursement for travel, meals, lodging, and business connected miscellaneous expenses when they are on approved travel or business. Spousal/Domestic Partner expenses are included for Board members. Reimbursement for the spouse/domestic partner of the Chief Executive Officer is not included. Supporting documentation is required for air, bus, train and rental car transportation, lodging, and certain miscellaneous expenditures. Personal expense



**CHAPTER 3 – PRIMARY PLAN COVERAGE AND ASSESSMENT**

**3.100 CLAIMS MADE PLAN AND RETROACTIVE DATE**

(A) Primary coverage will be provided to active members of the Oregon State Bar engaged in the private practice of law whose principal offices are in Oregon in accordance with the applicable Claims Made Plan adopted by the Board of Directors in each year.

(B) Attorneys who have maintained continuous PLF coverage since July 1, 1978 will have no retroactive Date for their current primary coverage. Attorneys who have maintained continuous PLF primary coverage since a date after July 1, 1978 will have a Retroactive Date which is the date on which the attorney's PLF primary coverage first commenced.

(C) If an attorney terminates his or her PLF primary coverage, the attorney will receive a new Retroactive Date upon returning to PLF primary coverage which is the date on which the attorney's new period of PLF primary coverage commenced.

(BOD 10/9/09; BOG 10/30/09)

(D) Any attorney formerly exempt from PLF participation under Policy 3.150(C) who applies for PLF primary coverage during 2003 or 2004 will receive a Retroactive Date which will be the date on which the attorney's PLF primary coverage first commenced; or, upon provision of satisfactory information to the PLF, the attorney will receive an earlier Retroactive Date which will be the date beginning the continuous period in which the attorney met the primary coverage criteria under PLF Policy 3.100 prior to applying for PLF primary coverage. Any attorney to whom this subsection applies will be assessed under PLF Policies 3.200 and 3.250 as if that attorney had had PLF primary coverage continuously from the date of the attorney's Retroactive Date.

(BOD 8/11/95; BOG 11/12/95; BOD 2/7/03; BOG 2/27/03)

PLF Policy Manual  
January 2012

**3.130 SPECIAL COVERAGE SITUATIONS**

(A) Assistance for Impaired or Disabled Attorneys: An attorney who provides assistance to impaired or disabled attorneys at the request of the PLF or according to procedures recommended by the PLF will not be considered to be functioning as a "BUSINESS TRUSTEE" under Section III.3 of the PLF Claims Made Plan.

(BOD 4/10/98; BOG 5/30/98)

**3.150 EXEMPTIONS FROM PLF PARTICIPATION**

(A) (1) Active members of the Oregon State Bar whose principal office is not in Oregon are not eligible to obtain primary coverage from the Professional Liability Fund, and are required to sign a request for exemption from PLF participation at least annually. Attorneys in this category will be required to inform the PLF whether or not they engage in the private practice of law in Oregon, and if so, will be required to provide the following additional information to the PLF at least annually upon request: whether or not they maintain professional liability insurance which covers them for their private practice of law in Oregon, the name and address of the insurance carrier, the name of the insured, the coverage limits and deductible, the retroactive date of the insurance policy, the policy period, a copy of the declarations sheet, and a copy of the policy and any endorsements. Attorneys are required to respond to information requests within 30 days.

(2) As used in subsection (1) of this section, an active member of the Oregon State Bar whose principal office is not in Oregon and is not otherwise exempt from the PLF primary coverage requirement is deemed to be engaging in the private practice of law in Oregon if the attorney meets any of the following criteria:

(a) The attorney appears as an attorney for a party in a proceeding before any court or administrative agency in the state of Oregon, or

★ See pg. 16

(b) The attorney meets with current or prospective clients in Oregon, or

(c) The attorney maintains an office in Oregon. The term "office" is defined at PLF Policy 3.180(B).

(B) Attorneys not in private practice in the state of Oregon, either on a full-time or part-time basis with or without remuneration, are not subject to the annual assessment and may file a request for exemption based upon one of the following categories:

(1) employed exclusively as a government attorney or judge;

(2) employed exclusively by a corporation or business entity (including non-profit organizations but not including law entities);

(3) an employee or independent contractor with a legal aid or public defender office which provides professional liability coverage for the attorney through an Acceptable Alternative Insurer as defined at Subsection (D);

(4) employed in a non-law related field;

(5) retired;

(6) law clerk/supervised attorney not engaged in the private practice of law;

(7) unemployed;

(8) any other category which does not constitute the private practice of law in Oregon, or any activity which would be excluded or otherwise not covered by the PLF Claims Made Plan.

(C) [Reserved for future use]

[BOD 7/31/03; BOG 9/18/03]

(D) (1) An "Acceptable Alternative Insurer" is defined as an insurer which meets both of the following qualifications:

(a) The insurer is (1) an admitted insurer in Oregon, (2) a surplus lines insurer which has complied with all applicable Oregon statutes and regulations of the Insurance Division of the State of Oregon, or (3) a risk retention group or purchasing group formed under federal statute and registered with the Insurance Division of the State of Oregon.

(b) The insurer provides claims made professional malpractice insurance covering the activities of the exempt attorney with coverage limits of at least \$250,000 per claim/\$250,000 aggregate, regardless of the amount of any applicable deductible.

(2) Attorneys claiming exemption under any exemption category which requires the attorney to maintain professional liability coverage for the attorney through an Acceptable Alternative Insurer must maintain the coverage at all times during the year while the exemption is in effect, and may be required to provide proof of such coverage upon request. Any attorney who fails to maintain such coverage will be referred to the Oregon State Bar for disciplinary action.

(E) Requests for exemption will be handled in accordance with procedures adopted by the Chief Executive Officer. Attorneys requesting exemption will be required to sign the following statement:

I hereby certify that I am exempt from the [year] assessment to the Professional Liability Fund for the following reason:

[List exemption categories]

I agree to notify the Professional Liability Fund immediately if I cease to be exempt at any time during [year].

(F) Exemptions from assessment must be applied for on an annual basis or when the attorney's status changes from private practice in accordance with the administrative procedures of the PLF. It remains the obligation of an exempt attorney to notify the PLF of any change in status to private practice status and to pay the prorated assessment due at that time.

(G) Special policy consideration has been given by the PLF Board of Directors to exempt attorneys in the following situations:

(1) Non-Active and Out-of-State Attorneys: The Plan covers only those active members of the Oregon State Bar whose principal office is in the state of Oregon. Attorneys who are not active members of the Oregon State Bar or whose principal office is not in Oregon are not entitled to participate in the PLF even if they serve Oregon clients.

(2) [Reserved.]

(3) Amicus Curiae: An attorney who has claimed exemption from the PLF may appear and file an amicus curiae brief on behalf of another without remuneration.

(4) Pro Bono Service: Attorneys who represent or perform services for clients on a pro bono basis are required to obtain PLF coverage. However, exempt attorneys may provide pro bono services through OSB-certified or other volunteer lawyer programs that provide professional liability coverage for the attorney through an acceptable Alternative Insurer or the PLF's pro bono coverage program as defined at Subsection (D).

(5) Family Practice: An exempt attorney may represent his or her spouse, parent, step-parent, child, step-child, sibling, or any member of the attorney's household. An exempt attorney also may represent a business entity owned or controlled by one or more of these listed family members if the representation is

excluded under the terms of the PLF Claims Made Plan.

(6) Student Legal Advisers and Attorneys With Law School Legal Clinics: Attorneys who serve as student legal advisers at any college or graduate school, and attorneys who supervise law students serving clients through any law school legal clinic, are permitted and required to claim exemption from PLF participation under Subsection (B)(1) or (B)(2) on account of such activities so long as (a) they are employees of the college, graduate school, law school, or legal clinic, and (b) the services they provide to students or clients are within the scope of their employment.

(7) Law Clerks/Supervised Attorneys (Including Retired and "Of Counsel" Attorneys): An attorney may perform legal research and writing without obtaining PLF coverage provided:

(a) the attorney's work is reviewed and supervised by an attorney with PLF coverage (or an attorney who is permitted to engage in private practice while claiming exemption from the PLF);

(b) the attorney makes no strategy or case decisions;

(c) the attorney does not hold himself or herself out to any client as an attorney or represent any party;

(d) the attorney signs no pleadings or briefs;

(e) the attorney attends no depositions as the attorney of record;

(f) the attorney makes no court appearances as the attorney of record;

(g) the attorney does not use the title "attorney," "attorney at law," or "lawyer" on any correspondence or documents; and

(h) the attorney is not listed in the firm name or on the firm letterhead as an attorney or firm members (unless specified as retired). If the attorney is retired, the attorney's name may be listed on the firm letterhead as "retired" or "of counsel (retired)," whichever applies.

Attorneys may request exemption from participation in the PLF if they are retired or are "of counsel" to a law firm and will be acting in the same capacity as a law clerk so long as the limitations stated in this subsection are observed. Part-time or "of counsel" attorneys who do not follow these limitations must obtain current PLF coverage.

(8) Arbitration and Mediation: An attorney may serve as an arbitrator without obtaining PLF coverage provided that the attorney's services are limited to serving as an arbitrator and do not include representing any of the parties in the arbitration. This exemption is available only if the attorney's practice is limited to serving as an arbitrator (or other exempt activity). An attorney claiming exemption under this provision may not use the title "attorney," "attorney at law," "attorney/arbitrator," "lawyer," "legal services," or similar phrase on any stationary, cards, billing forms, or professional listings unless the title is followed by an asterisk or other mark and the phrase "\*\*Not engaged in the private practice of law" appears on the same page. However, attorneys claiming exemption under this category may use the title "J.D." after their name.

An attorney may perform mediation services without obtaining PLF coverage providing that the attorney's practice is exclusively limited to mediation (or other exempt activity) and the attorney complies with Rule 2.4 relating to mediation. An attorney claiming exemption under this provision may not use the title "attorney," "attorney at law," "attorney/mediator," "lawyer," "legal services," or similar phrase on any stationary, cards, billing

forms, or professional listings unless the title is followed by an asterisk or other mark and the phrase "\*\*Not engaged in the private practice of law" appears on the same page. However, attorneys claiming exemption under this category may use the title "J.D." after their name.

(9) Non-Covered Activities: An attorney who is otherwise exempt from participation in the PLF may engage in law-related activities and represent a client without obtaining PLF coverage if all of the attorney's activities would be excluded or otherwise not covered by the PLF Claims Made Plan.

(10) Volunteer Activity for Government Entity: An attorney who is otherwise exempt from participation in the PLF may provide unpaid volunteer legal services to a government entity without obtaining PLF coverage. The attorney is required to notify the government entity in writing that the attorney does not maintain PLF coverage, act on behalf of a government entity as a public official, employee or in any other capacity that comes within the defense and indemnity requirements of ORS 30.285 and 30.287, or similar state or federal statute rules or case law.

~~Government Entity~~ ~~Government Activity~~  
Exemption: An attorney who is otherwise exempt from participation in the PLF may provide unpaid volunteer legal services to a government entity without obtaining PLF coverage. The attorney is required to notify the government entity in writing that the attorney does not maintain PLF coverage, act on behalf of a government entity as a public official, employee or in any other capacity that comes within the defense and indemnity requirements of ORS 30.285 and 30.287, or similar state or federal statute rules or case law.

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(11) Active Emeritus and Active Retired Membership Status: Attorneys who maintain Active Emeritus or Active Retired membership status with the Oregon State Bar are limited by the OSB as to their permitted activities. Attorneys in these membership statuses are exempt from PLF participation by definition and will not receive an annual billing statement and request for exemption form.

(12) Employed Attorneys: Employed attorneys claiming exemption under subsections (B)(1) through (3) above may represent a third party in an attorney-client relationship so long as such representation is within the attorney's scope of employment. Examples include

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** November 9, 2012  
**Memo Date:** October 29, 2012  
**From:** Ira Zarov – CEO PLF  
**Re:** PLF Policy 3.200 Regular Assessment

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### **Action Recommended**

Approve changes to PLF Policy 3.200 relating to payment of the assessment.

### **Background**

Currently, PLF policies state that the PLF will not accept an assessment payment made by a check drawn on a lawyer trust account. Because there are many instances in which checks drawn on trust accounts are legitimate expenditures, the suggested policy change removes the prohibition.

ATTACHMENT

change during the year and Attorney F is neither required nor permitted to obtain PLF coverage; however, the following January 1 his principal office for the coming year will be determined to be in Oregon.

Example: Attorney G maintains three offices, one in Portland, Oregon, one in Salem, Oregon, and one in Vancouver, Washington. On January 1, he determines that he spent 25 percent of his time at his Portland office, 15 percent of his time at his Salem office, and 60 percent of his time at his Vancouver office during the prior 12 months. Because the Oregon office time (40 percent) is less than the non-Oregon office time (60 percent), Attorney F's principal office is not in Oregon.

Example: Attorney H maintains three offices, one in Medford, Oregon, one in Yreka, California, and one in Denio, Nevada. On January 1, she determines that she spent 45 percent of her time at her Medford office, 20 percent of her time at her Yreka office, and 35 percent of her time at her Denio office during the prior 12 months. Because the Oregon office time (45 percent) is less than the non-Oregon office time (55 percent), Attorney H's principal office is not in Oregon. On July 12, Attorney H closes her Denio, Nevada office. Because she still maintains an office outside of Oregon, the location of Attorney F's principal office for the year does not change even though she spends more time at her Medford office than at her Yreka office during the rest of the year. However, the following January 1 her principal office for the coming year may be in Oregon if her total Oregon office time the previous year exceeded the total non-Oregon office time.

Example: Attorney I is a member of both the Oregon and California State Bars, but maintains only an office in Los Angeles. On September 1, he opens an office in Portland, but he keeps his Los Angeles office as well. During the balance of the year, Attorney I is physically present 80 percent of the time in his Portland office and 20 percent in his Los Angeles office. Attorney I is neither required nor permitted to maintain PLF coverage for the period September 1 through December 31, but he is required and permitted to obtain PLF coverage for the following year as of January 1.

{BOD 7/16/93; BOG 8/13/93; BOD 2/18/94; BOG 3/12/94; BOD 12/1/95; BOG 1/20/96; BOD 8/14/98; BOG 9/25/98}

### 3.200 REGULAR ASSESSMENT



(A) Assessments of the Professional Liability Fund will be established on the basis of the PLF's experience, operating needs, and projections of future claim development. The projected assessment for the following Plan Period will be submitted to the Board of Governors for their approval no later than November 1 of each year.

(B) Payment of the basic assessment is due on or before January 1. Attorneys entering private practice in Oregon after January 1 of any Plan Period will pay a proportionate assessment on the basis of one-twelfth of the total for each full or partial month that the lawyer will be in practice during the year, including the month entering private practice. The default date for all assessments will be 10 days after the due date, or on the first regular business day thereafter.

~~(C) The Professional Liability Fund will not accept any assessment payment made by check drawn on a lawyer trust account.~~

BOD 08/10/12; BOG ???

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~~(D)~~ If the lawyer is not eligible for exemption as described in section 3.150, the staff of the Professional Liability Fund is not authorized to waive or reduce the assessment amount without





prior approval of the Board of Directors. The assessment amount includes the basic assessment, the Special Underwriting Assessment and any appropriate late payment charge.

{BOD 7/16/93, BOG 8/13/93; BOD 8/9/96; BOG 9/25/96, BOD 10/25/02; BOG 11/16/02, BOD 08/10/12, BOG ???}

**3.250 STEP-RATED ASSESSMENT**

(A) Attorneys will receive a discount on the cost of their PLF coverage during their first periods of coverage as provided in this policy. The annual assessment rate for an attorney’s PLF coverage will be determined as of January 1 of each year, and the rate will apply to all periods of coverage obtained by the attorney during the year. The PLF will calculate the total number of full or partial months of PLF coverage which the attorney has maintained in all prior years as of January 1 of the current year (the “Prior Coverage Period Total”). Each partial month of coverage will be counted as a full month. The attorney will then be entitled to a Step Rating Credit in calculation of the attorney’s annual assessment rate as stated in the following table:

<u>Prior Coverage Period Total</u>	<u>Step Rating Credit</u>
0 months to 12 months	40 percent
Over 12 months to 24 months	20 percent
Over 24 months	0 percent

The Step Rating Credit will be applied as a reduction only to the regular assessment established for the year by the Board of Governors.

(B) The Step Rating Credit will not apply to any Special Underwriting Assessment, installment service charge, late payment charge, or any other charge.

{BOD 9/25/96; BOG 11/17/96; BOD 9/14/05; BOG 9/30/05}

**3.300 INSTALLMENT PRIVILEGES**

(A) Installment payment of the annual assessment shall be allowed as follows: An attorney may elect to pay the annual assessment (including any Special Underwriting Assessment) in four quarterly installments. The default date for the first installment is January 10 together with full payment of an installment service charge, and the default dates for the remaining installments are April 10, July 10, and October 10 or the first regular business day thereafter. The installment service charge shall be calculated as an administrative charge of \$25 plus a finance charge of 7% on the total assessment due (including any Special Underwriting Assessment). The service charge may be rounded up or down to the nearest whole dollar. Attorneys who fail to pay the first installment and full service charge together with any applicable late payment charges, reinstatement charges, and other amounts due to the Bar or the PLF within two weeks after the applicable default date may not thereafter elect to pay on the installment payment plan for the balance of the year.

(B) If the assessment default date is after January 10, the number of installments available will be fewer than four and will be equal to the number of full quarters left in the year after the default date. No installment payment plan is available if the default date is after June 30.

(C) Attorneys who elect to pay the annual assessment in installments but who fail to make any payment by the applicable installment default date shall be required to pay the entire remaining assessment balance (including any Special Underwriting Assessment) immediately and shall not be entitled to a partial or full refund of any installment service charge previously paid. The attorney shall be charged a late payment charge of \$100 per month for each partial or full calendar month the attorney is in default. The PLF will also begin the notice requirements pursuant to statute.

(D) Attorneys who elect to pay the annual assessment in installments and who subsequently choose to pay some or all of the remaining

(E) If an attorney is paying his or her assessment on an installment basis and will be leaving the private practice of law in Oregon prior to the last calendar month of the next installment period, the attorney may simultaneously (1) file an Application for Proration and Request for Exemption indicating the anticipated date of leaving the private practice of law in Oregon, and (2) pay a reduced installment payment as calculated by the PLF based on the anticipated date of leaving the private practice of law in Oregon. The attorney will be responsible for notifying the PLF immediately if the attorney's actual last day of private practice in Oregon is different than the date previously indicated to the PLF, and will be required to pay immediately any additional assessment amounts which may be due based upon the correct date.

(BOD 9/26/94; BOG 11/12/94; BOD 8/11/95; BOG 11/12/95; BOD 8/9/96; BOG 9/25/96)

### 3.450 PAYMENTS MADE IN ERROR

In the discretion of the Chief Executive Officer, assessments which were inadvertently or erroneously paid to the Professional Liability Fund when an attorney was eligible or required to claim an exemption from participation in the PLF may be refunded upon request. ~~However, no such refunds will be made more than 24 months after the date of payment to the PLF. Refunds are limited to the current plan year and the prior plan year assessments paid in error and will not include service charges or late fees. No more than two plan years shall be included in the refund calculation.~~ As payments are accepted on an individual attorney basis, and not on a firm or partnership basis, the staff of the PLF will inquire as to the party who made the assessment payment, and if payment was made by the attorney's former firm on his or her behalf, the refund check will be made payable to both the individual attorney and to the firm.

(BOD 9/26/94; BOG 11/12/94; BOD 8/9/96; BOG 9/25/96; BOD 08/10/12; BOG ???)

### 3.500 PLAN FOR SPECIAL UNDERWRITING ASSESSMENT

(A) Plan for Special Underwriting Assessment: Lawyers will be subject to a Special Underwriting Assessment (SUA) to be assessed under the following terms and conditions. This Plan for Special Underwriting Assessment may be changed or amended in the future.

(B) Special Underwriting Assessment:

(1) The surcharge assessed on January 1 of each year will be based upon the total of all payments for indemnity and expense (including Claims Expense Allowance) paid on a claim or group of related claims in excess of an aggregate amount of \$75,000 per claim. If a claim is part of a group of related claims for which responsibility is allocated pursuant to 3.500(D), the SUA will be based on the amount in excess of \$75,000 of the indemnity and expense allocated to each Covered Party or group of related claims (the "Base Amount"). SUA will be assessed for all claims which are settled or closed by the PLF during the five-year period ending by September 30 of the prior year. The surcharge for each claim or group of related claims will be equal to 1% of the Base Amount so calculated and will be charged for each of the next five years. When a claim or group of related claims is made against more than one Covered Party, the SUA will first be calculated for the claim or group of related claims as a whole and then be allocated among the Covered Parties; no more than \$75,000 aggregate defense and indemnity costs (including Claims Expense Allowance) will be excluded from the SUA calculation regardless of the number of Covered Parties or related claims involved.

(2) All present and former Covered Parties will be assessed according to these provisions, but a Covered Party will be required to pay the SUA only if the Covered Party maintains current coverage with the PLF at the time of the SUA assessment.

(BOD 6/20/03; BOG 5/18/03)

confidentiality of program participants will be maintained consistent with the provisions of ORS 9.568 and applicable Bar and PLF policies.

(BOD 6/20/03; BOG 9/18/03)

(C) The Committee will meet with the Board of Governors and provide periodic written reports of its activities at least annually. The reports will contain program statistics, a description of program changes and developments, a narrative summary of results, suggestions to applicable bylaws and policies, and such other general information as the Board of Governors may request. However, the identity of any person who has received assistance from the OAAP or the PMAP will not be requested or required to be disclosed, the periodic reports will not disclose the identity of any person who has received assistance from the OAAP or the PMAP, and in all cases the confidentiality of program participants will be maintained consistent with the provisions of ORS 9.568 and applicable Bar and PLF policies.

(D) For the purposes of ORS 9.568, all PLF employees as well as all other persons providing help through, at the request of, or with the approval of the OAAP and PMAP, will be deemed to be agents of the PLF-PPMAC (in addition to all others who fall within the definition of ORS 9.568(8)).

(BOD 6/18/99; BOD 8/6/99; BOG 9/16/99; BOD 11/19/99; BOG 1/28/00)

**6.200 OREGON ATTORNEY ASSISTANCE PROGRAM (OAAP)**

The Professional Liability Fund has established an assistance program called the Oregon Attorney Assistance Program (OAAP). The purpose of the OAAP is to provide personal assistance to ~~attorneys~~ lawyers and judges pursuant to ORS 9.568.

(A) The purpose of the OAAP is:

(1) To provide assistance to Oregon lawyers and judges who experience ~~alcoholism, drug addiction, problem alcohol, drug, and/or other substance use,~~ burnout, career transition, depression, anxiety, compulsive disorders (including gambling addiction), time management issues, relationship issues, stress, or other distress that impairs a lawyer's or judge's ability to function:

(2) To aid in the curtailment of malpractice claims and disciplinary complaints;

(3) To educate the legal community about sources of distress and/or impairment, such as the diseases of alcoholism, chemical dependency, depression, and other distress that impacts a lawyer's or judge's ability to function effectively ~~problem substance use, anxiety, depression, relationship issues, compulsive disorders, chronic illness, and career transition;~~ and

(4) To educate the legal community and families of Oregon lawyers and judges about the scope of services offered by the OAAP and resources that are available for assistance.

(BOD 8/27/04; BOG 10/13/04; BOD 04/27/12; BOG ???)

(B) The OAAP will be based on the concept of lawyers helping lawyers.

(C) In order to assist Oregon lawyers and judges, the OAAP will be available to all Oregon lawyers and judges. In addition, to the extent permitted by available resources, the OAAP will also be available to law office staff, court staff, families of lawyers and judges, and law students in Oregon law schools.

(D) The OAAP will be conducted in the strictest basis of confidentiality. The OAAP program will use federal and state regulations on confidentiality of alcohol and chemical dependency programs as a basis for all OAAP guidelines and procedures. The confidentiality and privilege provided under ORS 9.080(2), ORS



## MENTORING PLAN

*(to be filed with the Oregon State Bar upon completion)*

Please note: this section is in continuing development. Please feel free to contact the NLMP with recommendations for further activity content.

Set forth in the Mentoring Plan below are the required and elected activities of the NLMP. Please note that while all six of the core curriculum areas are required to be addressed, many of the actual activities for addressing each area are suggestions. Mentors and new lawyers are encouraged to be broad, expansive and creative in how they address each of the six components.

Further, it is not the expectation that the mentor directly lead each and every experience outlined. The mentor assumes the role of “primary care practitioner” in assuring that the new lawyer gains access to the people and professionals that will support the new lawyer’s career goals, and reinforce development of a professional, ethical and competent law practice. Quite frequently, new lawyers may get more value out of exploring key concepts with someone more directly involved or knowledgeable about that area. For example, in a large firm, understanding of billing practices or trust account management may be handled by the accounting department, with the mentor simply confirming that the curriculum element was addressed.

Finally, as this new program continues to develop, we hope that participants will add their own ideas for how they addressed each area. This will help add to the suggestions included in the manual for future participants.

New Lawyer \_\_\_\_\_ Mentor \_\_\_\_\_

<b>A. REQUIRED AND ELECTIVE ACTIVITIES &amp; EXPERIENCES</b>	
<b>1. Introduction to the Legal Community, Public Service and Bar Service</b>	
<b>REQUIRED ACTIVITIES</b>	<b>DATE COMPLETED</b>
<ul style="list-style-type: none"> <li>▪ As soon as practicable after receipt of the mentoring match, the new lawyer and mentor meet to get acquainted and design the mentoring plan. The new lawyer is responsible for arranging the initial meeting.</li> </ul>	
<ul style="list-style-type: none"> <li>▪ Introduce the new lawyer to other lawyers in the community through attendance at meetings of the local bar association or another law-related group. Discuss opportunities for participating in the work of local, state or national bar organizations and the value of professional networking and relationships gained thereby.</li> </ul>	

<ul style="list-style-type: none"> <li>Describe and explain the customs and expectations of etiquette and behavior in the legal community such as cooperating with reasonable requests of opposing counsel that do not prejudice the rights of the <b>lawyer's client, punctuality in fulfilling all professional commitments</b>, avoiding offensive tactics, treating opposing parties and counsel with courtesy, and discuss the value of adhering to those customs and practices.</li> </ul>	
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**INTRODUCTION TO THE LEGAL COMMUNITY OPTIONAL ACTIVITIES**

*The following are suggestions for other activities to help address this first curriculum area. Mentors and new lawyers are encouraged to add their own ideas and activities to this list as well:*

<ul style="list-style-type: none"> <li>Introduce new lawyer to other lawyers and staff members at the mentors office or workplace, or ascertain that such introductions have already occurred.</li> </ul>	
<ul style="list-style-type: none"> <li><b>Discuss a lawyer's professional obligations regarding and the personal rewards</b> arising from community and public service, and supporting and providing legal service to low income clients. Acquaint the new lawyer with Campaign for Equal Justice, the Oregon Law Foundation and/or other law-related charitable organizations. Acquaint the new lawyer with programs in which lawyers in private practice can provide pro bono legal services. Alternatively, have the new lawyer report on a visit with someone closely connected to these services.</li> </ul>	
<ul style="list-style-type: none"> <li>Review and discuss the opportunities for volunteer participation in OSB and local bar programs (including the ONLD and local bar young lawyer groups) and how being involved in such activities promotes professional and personal development.</li> </ul>	
<ul style="list-style-type: none"> <li>Escort the new lawyer on a tour of the local courthouse(s) and, to the extent practicable, introduce the new lawyer to members of the judiciary, court personnel, and clerks of court. <i>(Encouraged for new lawyers whose practices will take them to the courthouse.)</i></li> </ul>	

**2. Rules of Professional Conduct / Standards of Professionalism**

<b>REQUIRED ACTIVITIES</b>	<b>DATE COMPLETED</b>
<ul style="list-style-type: none"> <li>Review and discuss ethical issues that arise with some regularity in the practice setting and best practices for resolving them, with reference to experience as well as the Rules of Professional Conduct. Review and discuss the importance of and methods used to screen for conflicts. Discuss available resources for resolving ethical issues, including consultation with the OSB ethics advice service, private ethics counsel, and in-house ethics counsel or committees.</li> </ul>	

<ul style="list-style-type: none"> <li>▪ Review and discuss the OSB Statement on Professionalism.</li> </ul>	
<ul style="list-style-type: none"> <li>▪ Discuss the importance of cultural competence to effectively represent diverse clients and work in a diverse legal community.</li> </ul>	

**PROFESSIONALISM OPTIONAL ACTIVITIES**

*The following are suggestions for other activities to help address this second curriculum area. Mentors and new lawyers are encouraged to add their own ideas and activities to this list as well:*

<ul style="list-style-type: none"> <li>▪ Discuss the lawyer's oath and the practical application of the obligation to protect the laws of the State of Oregon and the United States.</li> </ul>	
<ul style="list-style-type: none"> <li>▪ Discuss the core lawyering values of confidentiality and loyalty with reference to the Oregon Rules of Professional Conduct. <b>Some ORPC's that could be emphasized include:</b> <ul style="list-style-type: none"> <li>▪ 1.7 thru 1.11 Conflicts of Interest;</li> <li>▪ 3.3. Candor Toward the Tribunal;</li> <li>▪ 4.2 Communication with Persons Represented by Counsel; or</li> <li>▪ 4.3 Dealing with Unrepresented Persons.</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>▪ Discuss how a new lawyer should handle a situation in which it is believed that another lawyer has violated ethical duties, including the duty to report certain kinds of misconduct. Discuss what to do if the new lawyer believes he or she has been instructed to engage in prohibited conduct.</li> </ul>	
<ul style="list-style-type: none"> <li>▪ Discuss and explain the Minimum Continuing Legal Education requirements and ways to fulfill such requirements, including OSB programs.</li> </ul>	

**3. Introduction to Law Office Management**

<b>REQUIRED ACTIVITIES</b>	<b>DATE COMPLETED</b>
<ul style="list-style-type: none"> <li>▪ Discuss the ethics rule most frequently invoked by the OSB – neglect of a legal matter and failure to communicate with client – and the role of good time keeping, time management and communication techniques. <b>Introduce calendar and “tickler” or reminder systems.</b></li> </ul>	
<ul style="list-style-type: none"> <li>▪ Review and discuss malpractice insurance coverage including disclosure requirements.</li> </ul>	

<b>LAW OFFICE MANAGEMENT OPTIONAL ACTIVITIES</b>	
<i>The following are suggestions for other activities to help address this third curriculum area. Mentors and new lawyers are encouraged to add their own ideas and activities to this list as well:</i>	
<ul style="list-style-type: none"> <li>▪ If the new lawyer and the mentor are in the same firm, discuss the new lawyer's role in the billing system. If not in the same firm, review and discuss good billing practices, or arrange for new lawyer to meet with someone knowledgeable about best practices.</li> </ul>	
<ul style="list-style-type: none"> <li>▪ Review and discuss trust account rules and best practices for handling of client funds, including importance of clearing checks before funds are drawn and authority needed to pay lawyer fees from client funds in trust. Review and discuss OSB and PLF resources.</li> </ul>	
<ul style="list-style-type: none"> <li>▪ Introduce the use of information technology systems in law practice.</li> </ul>	
<ul style="list-style-type: none"> <li>▪ Discuss resources (publications, seminars, research tools, equipment, etc.) that a new lawyer might find particularly helpful in his or her work.</li> </ul>	
<ul style="list-style-type: none"> <li>▪ Discuss the roles and responsibilities of paralegals, secretaries, and other office personnel, and how to honor and establish good working relationships with others in the office who are support staff, colleagues, or senior partners.</li> </ul>	
<ul style="list-style-type: none"> <li>▪ Review and discuss a lawyer's responsibility as a subordinate under RPC 5.2, and as a supervisor of non-lawyers under RPC 5.3.</li> </ul>	

<b>4. Working with Clients</b>	
<b>REQUIRED ACTIVITIES</b>	<b>DATE COMPLETED</b>
<ul style="list-style-type: none"> <li>▪ Review how to screen for, recognize, and avoid conflicts of interest.</li> </ul>	
<ul style="list-style-type: none"> <li>▪ Discuss "DOs and DON'Ts" of maintaining good ongoing client relations, such as returning telephone calls and keeping clients informed about matters.</li> </ul>	

<b>WORKING WITH CLIENTS OPTIONAL ACTIVITIES</b>	
<i>The following are suggestions for other activities to help address this fourth curriculum area. Mentors and new lawyers are encouraged to add their own ideas and activities to this list as well:</i>	
<ul style="list-style-type: none"> <li>▪ Discuss the importance of knowing whom you represent, particularly when representing corporations, government agencies or other organizations.</li> </ul>	

<ul style="list-style-type: none"> <li>▪ Discuss client interaction, including tips for gathering information about a legal matter and appraising the credibility and trust of a potential client.</li> </ul>	
<ul style="list-style-type: none"> <li>▪ Discuss issues that arise regarding the scope of representation.</li> </ul>	
<ul style="list-style-type: none"> <li>▪ Participate in or observe at least one client interview or client counseling session.</li> </ul>	
<ul style="list-style-type: none"> <li>▪ Discuss how to decide whether to accept a proffered representation.</li> </ul>	
<ul style="list-style-type: none"> <li>▪ Discuss how to talk about and set the fee for legal services. Review retainers and fee agreements and discuss the importance of written engagement agreements.</li> </ul>	
<ul style="list-style-type: none"> <li>▪ Discuss how to deal with a difficult client and how to decline representation of the unrealistic or “impossible” client.</li> </ul>	
<ul style="list-style-type: none"> <li>▪ Discuss terminating the lawyer-client relationship and necessary documentation.</li> </ul>	

<b>5. Career Satisfaction and Work/Life Balance</b>	
<b>REQUIRED ACTIVITIES</b>	<b>DATE COMPLETED</b>
<ul style="list-style-type: none"> <li>▪ Discuss how to handle challenging relationships in and outside the office, and how to develop a support system of colleagues and others with whom the new lawyer can discuss problems as they arise.</li> </ul>	
<ul style="list-style-type: none"> <li>▪ Discuss the warning signs of substance abuse and depression and how to address those problems when they are manifested in the new lawyer or others. Review and discuss the support and counseling available to the new lawyer and their family through the Oregon Attorney’s Assistance Program. Review OSB and PLF resources.</li> </ul>	

<b>CAREER SATISFACTION OPTIONAL ACTIVITIES</b>	
<p><i>The following are suggestions for other activities to help address this fifth curriculum area. Mentors and new lawyers are encouraged to add their own ideas and activities to this list as well:</i></p>	
<ul style="list-style-type: none"> <li>▪ Discuss the importance of having a business plan for developing a practice and meeting both short- and long-term career objectives.</li> </ul>	
<ul style="list-style-type: none"> <li>▪ Discuss the importance of making time for family, friends, and other personal interests. Discuss how to manage billable hour or other performance requirements to enable an appropriate balance of professional obligations and personal life.</li> </ul>	



## B. ELECTIVE PRACTICE AREA ACTIVITIES

Select and complete at least ten (10) Practice Area Activities in one or more substantive law Practice Areas shown on the following pages. **At least one** of the Activities must be a writing project that the mentor reviews with the new lawyer.

If the new lawyer is interested in a practice area not included here, the new lawyer and mentor may identify basic skill activities in that practice area to include in the mentoring plan.

The activities and experiences suggested on the following pages may be adjusted to the new lawyer's particular practice setting and individual needs.

<i>ACTIVITY</i>	<i>DATE COMPLETED</i>
1.	
2.	
3.	
4.	
5.	
6.	
7.	
8.	
9.	
10.	

## New Lawyer Mentoring Program Rule

(adopted by the Oregon Supreme Court December 6, 2010)

**1. Applicability.** All lawyers admitted to practice in Oregon after January 1, 2011 must complete the requirements of the Oregon State Bar's New Lawyer Mentoring Program (NLMP) except as otherwise provided in this rule.

**2. Administration of the NLMP; MCLE Credit.**

2.1. The OSB Board of Governors shall develop the NLMP curriculum and requirements in consultation with the Supreme Court and shall be responsible for its administration. The OSB Board of Governors shall appoint a standing committee to advise the BOG regarding the curriculum and administration of the NLMP.

2.2. The OSB Board of Governors may establish a fee to be paid by new lawyers participating in the NLMP.

2.3. The OSB Board of Governors shall establish by regulation the number of Minimum Continuing Legal Education credits that may be earned by new lawyers and mentors for participation in the NLMP.

**3. New Lawyer's Responsibilities.**

~~3.1. The NLMP shall be operated in two sessions each year, one beginning on May 15 and the other on October 15. Unless deferred or exempt under this rule, new lawyers must enroll, in the manner prescribed by the OSB, in the first NLMP session after their admission to the bar.~~

~~3.2-3.1.~~ The new lawyer shall be responsible for ensuring that all requirements of the NLMP are completed within the requisite period including, without limitation, filing a Completion Certificate executed by the assigned mentor attesting to successful completion of the NLMP.

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**4. Appointment of Mentors.** The Supreme Court will appoint mentors recommended by the OSB Board of Governors. To qualify for appointment, the mentor must be a member of the OSB in good standing, with at least ~~seven-five~~ years of experience in the practice of law, and have a reputation for competence and ethical and professional conduct. ~~All appointed mentors must complete the NLMP mentor training before participating in the program.~~

**5. Deferrals.**

5.1. The following new lawyers are eligible for a temporary deferral from the NLMP requirements:

5.1.1. New lawyers on active membership status whose principal office is outside the State of Oregon and for whom the OSB determines that no mentorship can be arranged conveniently; and

5.1.2. New lawyers serving as judicial clerks; and

5.1.3. New lawyers who are not engaged in the practice of law.

5.2. A new lawyer who is granted a deferral under section 5.1.1 of this Rule and who, within two years of beginning to practice law in any jurisdiction, establishes a principal office within the State of Oregon, must enroll in the next NLMP session. A new lawyer whose participation in the NLMP was deferred under sections 5.1.2 or 5.1.3 of this rule must enroll in the ~~next~~-NLMP ~~session~~ following the conclusion of the judicial clerkship or the lawyer's entering into the practice of law.

**6. Exemptions.** New lawyers who have practiced law in another jurisdiction for two years or more are exempt from the requirements of the NLMP.

**7. Certificate of Completion; Noncompliance.**

7.1. Each new lawyer is expected to complete the NLMP within 12 months of the date of enrollment, but in no event later than December 31 of the first full year of admission to the bar, ~~unless the new lawyer has been granted an extension of time by the OSB~~. The Certificate of Completion must be filed with the bar on or before that date.

7.2. A new lawyer who fails to file a Certificate of Completion by December 31 of the first full year of admission shall be given written notice of noncompliance and shall have 60 days from the date of the notice to cure the noncompliance. Additional time for completion of the NLMP may be granted for good cause shown. If ~~the~~ noncompliance is not cured within the time granted, the OSB Executive Director shall recommend to the Supreme Court that the affected member be suspended from membership in the bar.

**8. Reinstatement.** A new lawyer suspended for failing to timely complete the NLMP may seek reinstatement by filing with the OSB Executive Director a Certificate of Completion and a statement attesting that the applicant did not engage in the practice of law during the period of suspension except where authorized to do so, together with the required fee for the NLMP and a reinstatement fee of \$100. Upon receipt of the foregoing, the Executive Director shall recommend to the Supreme Court that the member be reinstated. The reinstatement is effective upon approval by the Court. Reinstatement under this rule shall have no effect upon the member's status under any proceeding under the Bar Rules of Procedure.

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# OREGON STATE BAR

## 2013 Budget Summary by Program

Exhibit F

<i>Department / Program</i>	<i>Revenue</i>	<i>Sal &amp; Benefits</i>	<i>Direct Program</i>	<i>Gen &amp; Admin</i>	<i>Total Expense</i>	<i>Indirect Costs</i>	<i>Net Revenue</i>
Admissions	\$721,998	\$339,032	\$290,850	\$18,201	\$648,083	\$142,518	(\$68,604)
Bulletin	\$656,374	\$191,100	\$346,833	\$2,670	\$540,603	\$90,628	\$25,143
CLE Seminars	\$1,313,455	\$469,900	\$424,025	\$25,390	\$919,315	\$369,448	\$24,692
Client Assistance Office	\$0	\$530,800	\$500	\$20,149	\$551,449	\$138,453	(\$689,902)
Communications	\$14,400	\$391,000	\$21,550	\$8,022	\$420,572	\$94,693	(\$500,865)
Disciplinary Counsel	\$76,250	\$1,685,112	\$112,600	\$69,314	\$1,867,026	\$429,467	(\$2,220,243)
General Counsel	\$2,500	\$363,300	\$53,250	\$15,681	\$432,231	\$82,976	(\$512,707)
Governance (BOG)	\$0	\$310,200	\$146,300	\$26,178	\$482,678	\$70,063	(\$552,741)
Legal Publications	\$246,040	\$575,600	\$100,313	\$21,548	\$697,461	\$270,210	(\$721,631)
Loan Repayment Assistance Prog	\$73,800	\$0	\$84,000	\$0	\$84,000	\$0	(\$10,200)
MCLE	\$304,600	\$158,088	\$1,500	\$13,561	\$173,149	\$70,303	\$61,148
Member Services	\$0	\$198,174	\$21,875	\$13,975	\$234,024	\$96,845	(\$330,869)
New Lawyer Mentoring Program	\$40,000	\$139,500	\$2,150	\$2,448	\$144,098	\$41,129	(\$145,227)
New Lawyers Division	\$4,000	\$59,900	\$70,300	\$7,880	\$138,080	\$39,216	(\$173,296)
Production Services	\$13,500	\$70,000	\$700	\$2,500	\$73,200	\$65,281	(\$124,981)
Public Affairs	\$0	\$454,900	\$30,400	\$32,855	\$518,155	\$102,106	(\$620,261)
Referral & Information Services	\$170,500	\$330,656	\$32,680	\$10,367	\$373,703	\$148,257	(\$351,460)
Special Projects	\$300,000	\$15,900	\$198,800	\$350	\$215,050	\$0	\$84,950
<b>TOTAL PROGRAMS</b>	<b>\$3,937,417</b>	<b>\$6,283,162</b>	<b>\$1,938,626</b>	<b>\$291,089</b>	<b>\$8,512,877</b>	<b>\$2,251,593</b>	<b>(\$6,827,054)</b>
<b>ALLOCATIONS:</b>							
Finance & Operations	\$6,879,312	\$1,474,420	\$925,550	\$70,253	\$2,470,223	(\$2,197,423)	\$6,606,512
Less: Dept Charges/Offsets			(\$272,800)		(\$272,800)		\$272,800
Oregon State Bar Center	\$0	\$0	\$32,510	\$850	\$33,360	(\$33,360)	\$0
Contingency			\$25,000		\$25,000		(\$25,000)
<b>TOTAL OPERATIONS</b>	<b>\$10,816,729</b>	<b>\$7,757,582</b>	<b>\$2,648,886</b>	<b>\$362,192</b>	<b>\$10,768,660</b>	<b>\$20,810</b>	<b>\$27,258</b>
Fanno Creek Place	\$801,871	\$119,800	\$1,528,341	\$16,300	\$1,664,441	(\$160,459)	(\$702,111)
<b>TOTAL GENERAL FUND</b>	<b>\$11,618,600</b>	<b>\$7,877,382</b>	<b>\$4,177,227</b>	<b>\$378,492</b>	<b>\$12,433,101</b>	<b>(\$139,649)</b>	<b>(\$674,853)</b>
<b>DESIGNATED FUNDS:</b>							
Diversity Inclusion	\$478,200	\$302,700	\$175,900	\$18,125	\$496,725	\$74,607	(\$93,132)
Client Security Fund	\$682,100	\$39,400	\$202,800	\$2,674	\$244,874	\$13,152	\$424,074
Legal Services	\$6,055,000	\$95,300	\$5,935,000	\$2,710	\$6,033,010	\$51,890	(\$29,900)
<b>TOTAL ALL FUNDS</b>	<b>\$18,833,900</b>	<b>\$8,314,782</b>	<b>\$10,490,927</b>	<b>\$402,001</b>	<b>\$19,207,710</b>	<b>\$0</b>	<b>(\$373,811)</b>

Exhibit A

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** November 10, 2012  
**Memo Date:** October 18, 2012  
**From:** Matt Kehoe, Member Services Committee Chair  
**Re:** 2013 BOG and HOD Election Dates

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### Action Recommended

Approve the following proposed election dates as required by ORS 9.040 and 9.152 and recommended by the Member Services Committee.

### Background

ORS 9.040, 9.042 and 9.152 as well as OSB Bylaw 9.1 and 5.1 outline the following dates for bar elections.

#### OSB and ABA HOD Election

Candidate statements due	Friday, March 15, 2013
Ballots sent	Thursday, March 28, 2013
Election (ballots due)	Monday, April 15, 2013 (3 <sup>rd</sup> Monday in April)
Delegates assume office	Tuesday, April 16, 2013

#### BOG Election

Candidate statements due	Tuesday, May 14, 2013 <i>(160 days before election)</i>
Challenges due	Thursday, June 13, 2013 <i>(30 days from 5/14)</i>
BOG decision on challenges	Thursday, June 27, 2013 <i>(14 days from 6/13)</i>
Petition for SC review	Friday, July 12, 2013 <i>(15 days from 6/27)</i>
Final SC decision	Friday, September 27, 2013 <i>(10 days before ballots are sent)</i>
Ballots sent	October 7, 2013 <i>(1<sup>st</sup> Monday in October)</i>
Election	October 21, 2013 <i>(3<sup>rd</sup> Monday in October)</i>
Board Members Assume Office	January 1, 2014

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** November 10, 2012  
**From:** Ann Fisher, Chair, Policy & Governance Committee  
**Re:** Amending Appellate Selection Bylaws

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### Action Recommended

Approve the P&G Committee's recommendations for amending the OSB Bylaws to reflect the BOG's decision to return to the pre-2005 practice of ranking its recommendations to the Governor for appellate court appointments.

### Background

At its August 24, 2012 meeting, the BOG approved the Policy and Governance Committee's recommendation to return to the practice of ranking the BOG's recommendations for appellate judicial appointments.

For many years prior to 2005, the BOG identified the candidates it believed were "highly qualified" for the Governor's appellate court appointments.<sup>1</sup> Although the record is scant as to why the process was changed, it appears it was done to be "congruent with the Governor's desires."

Under the current procedure, the Bar recommends those candidates it considers "suitable for consideration by the Governor." In practice, this has meant that all candidate names are forwarded to the Governor:

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<sup>1</sup> The pre-2005 version of Bylaw 2.703 provided in pertinent part:

\* \* \*

(b) The Board may make recommendations to the Governor from the pool of candidates who submit information to the Bar for appointment to fill vacant positions on the Court of Appeals, Supreme Court or the Oregon Tax Court. For a vacancy on the Oregon Tax Court, the Board will participate in the process only if requested by the Governor. *The Board will recommend at least three people* for the Supreme Court and Court of Appeals, and not less than five names for the Oregon Tax Court, each of *whom the Board believes to be highly qualified*, based upon the information obtained in the review process and the following criteria: Integrity, legal knowledge and ability, professional experience, judicial temperament, diligence, health, financial responsibility and public service as defined in the ABA Guidelines for Reviewing Qualifications of Candidates. A lawyer who seeks appointment to the same position within two years of first having received a "highly qualified" rating by the Board, may ask the Board to submit his or her name to the Governor with a "highly qualified" rating without the need to submit another application or to be re-interviewed. Candidates in this category must inform the Board of any changes in information previously submitted. The Board reserves the right to request and receive additional information from any candidate prior to deciding whether to resubmit the candidate's name to the Governor as "highly qualified." In addition to submitting its list of "highly qualified" candidates, the Board will respond to any specific request of the Governor whether certain other candidates in the pool meet a "qualified" standard. A "highly qualified" or "qualified" recommendation is intended to be objective. Failure to recommend a candidate in any particular selection process is not a finding that the person is unqualified.

***Subsection 2.703 Statewide Judicial Appointments***

(a) For judicial appointments to a statewide court, no bar poll will be taken, but bar members will be notified of the impending appointment and will be asked to inform the Board of their interest. If an appellate selection process has been concluded within three months preceding the announcement of a new appellate vacancy, the Board has the option of not conducting a separate process, but re-submitting the previous list of highly qualified<sup>2</sup> candidates to the Governor without notification to members.

(b) The Governor's Office will deliver copies of the completed applications to the bar. *The Board will make recommendations to the Governor from the pool of candidates who submit information to the Governor's Office for appointment to fill vacant positions on the Court of Appeals, Supreme Court or the Oregon Tax Court. For a vacancy on the Oregon Tax Court, the Board will participate in the process only if requested by the Governor. Upon completion of the due diligence review, the Board's Committee on the Judiciary will recommend a list of candidates suitable for consideration by the Governor to the Board, based on the statutory requirements of ORS 2.020 for the Supreme Court, ORS 2.540 for the Court of Appeals, and ORS 305.445 for the Oregon Tax Court, as well as information obtained in the review process, and as screened in using, at a minimum, the following criteria: integrity, legal knowledge and ability, professional experience, judicial temperament, diligence, health, financial responsibility and public service. The Board will then determine the final list of candidates to submit to the Governor. A lawyer who seeks appointment to the same position within two years of first having received a "suitable for consideration by the Governor status" will not be required to submit another application or to be re-interviewed. Candidates in this category must inform the Board of any changes in information previously submitted. The Board reserves the right to request and receive additional information from any candidate prior to deciding whether to resubmit the candidate's name to the Governor. The chair of the Board's Committee on the Judiciary (along with members of the committee as determined by the committee) will also provide a written or oral summary of the committee's information about each candidate to the Office of General Counsel for the Governor. The summary will also include comments regarding candidates not submitted for consideration.*

(c) The Board will appoint on a yearly basis, pursuant to Subsection 2.102 of the Bar's Bylaws, a committee to make candidate qualification recommendations to the Board using the criteria set forth in this section. Meetings of the committee, including interviews of candidates, are public meetings, except for portions of meetings during which reference reports are presented and discussed. The term "reference reports," for purposes of this section, means information obtained by committee members and staff from persons listed as references by the candidates and information obtained by committee members and staff from other persons knowledgeable about candidates as part of the candidate background check process. The committee will discuss reference reports in executive session pursuant to ORS 192.660(1)(f). The committee will vote on its recommendations to the Board in a public meeting. The selection process will include, but is not limited to, review of the written applications; interviews of each candidate, unless waived; contacts with judges or hearings officers before whom the candidate has practiced; contacts with opposing counsel in recent cases or other matters; contacts with references; and review of writing samples.

(Emphasis added)

The practice described in the bylaw differs slightly from actual practice. For one thing, the name "Committee on the Judiciary" appears to have been used only briefly (between late

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<sup>2</sup> Given the changes in 2005, deletion or amendment of this phrase was apparently overlooked.



2003 and 2006). By early 2007, all mention in the BOG agendas and minutes refers to the “Appellate Selection Committee.” On a substantive level, the “oral summary” of the committee’s information is generally conveyed at the conclusion of the interviews and candidate review, which the Governor’s counsel attends. In essence, the Governor’s counsel sits through the interviews and listens to the selection committee’s discussion of the relative merits of the candidates. No additional report is provided, either orally or in writing.

To implement the BOG’s decision to return to its prior practice, Bylaw 2.703 could be amended as follows:

**[Proposed]**

***Subsection 2.703 Statewide Judicial Appointments***

(a) For judicial appointments to a statewide court, *[no bar poll will be taken, but]* bar members will be notified of the impending appointment and will be *[asked to inform]* **invited to participate in the Board’s *[of their interest]* appellate recommendation process.**<sup>3</sup> If an appellate *[selection]* **recommendation** process has been concluded within three months preceding the announcement of a new appellate vacancy, the Board has the option of not conducting a separate process, but re-submitting the previous list of highly qualified candidates to the Governor without notification to members.

(b) *[The Governor’s Office will deliver copies of the completed applications to the bar. The Board will make recommendations to the Governor from the pool of candidates who submit information to the Governor’s Office for appointment to fill vacant positions on the Court of Appeals, Supreme Court or the Oregon Tax Court. For a vacancy on the Oregon Tax Court, the Board will participate in the process only if requested by the Governor]* **In addition to submitting its list of "highly qualified" candidates, the Board will respond to any specific request of the Governor whether certain other candidates in the pool meet a "qualified" standard. A "highly qualified" or "qualified" recommendation is intended to be objective. Failure to recommend a candidate in any particular selection process is not a finding that the person is unqualified.**<sup>4</sup>

(c) **The bar’s review process will include, but is not limited to, review of the written applications; interviews of each candidate, unless waived; reports from judges or hearings officers before whom the candidate has appeared; reports from opposing counsel in recent cases or other matters; reports from references supplied by the candidate; and review of writing samples.**

(d) Upon completion of the due diligence review, the Board’s **Appellate Selection Committee *[on the Judiciary]* will recommend to the Board at least three *[a list of]* candidates *[suitable for consideration by the Governor to the Board]* **it believes to be highly qualified,** based on the statutory requirements of *[ORS 2.020 for the Supreme Court, ORS 2.540 for the Court of Appeals, and ORS 305.445 for the Oregon Tax Court]* **the position,** as well as information obtained in the review process, *and as screened in using, at a minimum,* **and** the following criteria: integrity, legal knowledge and ability,**

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<sup>3</sup> It isn’t clear that the Governor’s office will continue to provide applications to us if they are displeased with the change in our process. Prior to August 2005, applicants completed two forms, one for the Bar and one for the Governor. One benefit of the change was to require only one form, which the Governor’s office provided to the Bar.

<sup>4</sup> An alternative would be to rank the candidates as “most highly qualified” and provide additional names that the Board believes are “highly qualified” at the request of the Governor. The remaining candidates are presumptively qualified and the final sentence of this paragraph could be deleted.

professional experience, judicial temperament, diligence, health, financial responsibility and public service. The Board will then determine the final list of candidates to submit to the Governor.

(e) A lawyer who seeks appointment to the same position within two years of first having received a “[suitable for consideration by the Governor status] **highly qualified**” **rating** will not be required to submit another application or to be re-interviewed. [Candidates in this category must inform the Board of any changes in information previously submitted.] The Board [reserves the right to] **will** request [and receive additional] **those candidates to update the previously submitted** information [from any candidate] prior to deciding whether to resubmit the candidate’s name to the Governor. [The chair of the Board’s Committee on the Judiciary (along with members of the committee as determined by the committee) will also provide a written or oral summary of the committee’s information about each candidate to the Office of General Counsel for the Governor. The summary will also include comments regarding candidates not submitted for consideration.]

([c] f) [The Board will appoint on a yearly basis, pursuant to Subsection 2.102 of the Bar’s Bylaws, a committee to make candidate qualification recommendations to the Board using the criteria set forth in this section.] Meetings of the committee, including interviews of candidates, are public meetings, except for portions of meetings during which reference reports are presented and discussed. The term “reference reports,” for purposes of this section, means information obtained by committee members and staff from persons listed as references by the candidates and information obtained by committee members and staff from other persons knowledgeable about candidates as part of the candidate background check process. **Discussion of reference reports by the committee and the Board will be** [The committee will discuss reference reports] in executive session pursuant to ORS 192.660(1)(f). [The committee will vote on its recommendations to the Board in a public meeting. The selection process will include, but is not limited to, review of the written applications; interviews of each candidate, unless waived; contacts with judges or hearings officers before whom the candidate has practiced; contacts with opposing counsel in recent cases or other matters; contacts with references; and review of writing samples.]

Bylaw 2.700 suggests that the Board will participate in judicial selection only upon request:

**Section 2.7 Judicial Selection**

**Subsection 2.700 General**

If requested by the appropriate appointing authority, the Board will participate in a state or federal judicial selection process. Any poll conducted by the Bar will be for informational purposes only and will not constitute the official position of the Bar. Certified election results will be made available as promptly as possible to the press, to the candidates, to the appointing authority and otherwise as the Board may direct.

That language has been in the bar’s regulations for many years. The committee recommends amending it to clarify that the Bar will conduct its own processes regardless of whether the appointing authority wants the Bar’s input. The committee recommends that Bylaw 2.700 be revised as follows:

**The Bar plays an important role in state and federal judicial selection by conducting preference polls for contested elections and for circuit court appointments, and by interviewing and evaluating candidates for appellate court appointments. Any poll conducted by the Bar is for informational purposes only and will not constitute an official position of the Bar. Results of evaluations and polls will be made public as soon as practicable to the press, the candidates and the appointing authority.**

**Client Security Fund Rules**

*(As approved by the Board of Governors through February 19, 2010)*

**TABLE OF CONTENTS**

**Section 1. Definitions. .... 2**

**Section 2. Reimbursable Losses. .... 2**

**Section 3. Statement of Claim for Reimbursement. .... 3**

**Section 4. Processing Statements of Claim. .... 4**

**Section 5. Subrogation for Reimbursements Made. .... 5**

**Section 6. General Provisions. .... 5**

### Section 1. Definitions.

For the purpose of these Rules of Procedure, the following definitions shall apply:

1.1 “Administrator” means the person designated by the OSB Executive Director to oversee the operations of the Client Security Fund.

1.2 “Bar” means the Oregon State Bar.

1.3 “Committee” means the Client Security Fund Committee.

1.4 “Fund” means the Client Security Fund.

1.5 “Lawyer” means one who, at the time of the act or acts complained of, was an active member of the Oregon State Bar and maintained an office for the practice of law in Oregon.

1.6 “Client” means the individual, partnership, corporation, or other entity who, at the time of the act or acts complained of, had an established attorney-client relationship with the lawyer.

1.7 “Claimant” means one who files a claim with the Fund.

1.8 “Dishonest conduct” means a lawyer’s willful act against a client’s interest by defalcation, by embezzlement, or by other wrongful taking.

### Section 2. Reimbursable Losses.

A loss of money or other property of a lawyer’s client is eligible for reimbursement if:

2.1 The claim is made by the injured client or the client’s conservator, personal representative, guardian ad litem, trustee, or attorney in fact.

2.2 The loss was caused by the lawyer’s dishonest conduct.

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

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

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

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

2.3 The loss was not covered by any similar fund in another state or jurisdiction, or by a bond, surety agreement or insurance contract, including losses to which any bonding agent, surety or insurer is subrogated.

2.4 The loss was not to a financial institution covered by a “banker’s blanket bond” or similar insurance or surety contract.

2.5 The loss arose from, and was because of:

2.5.1 an established lawyer-client relationship; or

2.5.2 the failure to account for money or property entrusted to the lawyer in connection with the lawyer's practice of law or while acting as a fiduciary in a matter related to the lawyer's practice of law.

2.6 As a result of the dishonest conduct, either:

2.6.1

The lawyer was found guilty of a crime;

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

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

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

2.8 The claim was filed with the Bar within two years after the latest of the following: (a) the date of the lawyer's conviction; or (b) in the case of a claim of loss of \$5,000.00 or less, the date of the lawyer's disbarment, suspension, reprimand or resignation from the Bar; or (c) the date a judgment is obtained against the lawyer, or (d) the date the claimant knew or should have known, in the exercise of reasonable diligence, of the loss. In no event shall any claim against the Fund be considered for reimbursement if it is submitted more than six (6) years after the date of the loss.

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

2.10 No attorney's fees shall be paid directly from the Fund for services rendered by an attorney in preparing or presenting a claim to the Fund. Members of the Bar are encouraged to assist claimants without charge in preparing and presenting a claim to the Fund. Nevertheless, a member of the Bar may contract with a claimant for a reasonable attorney fee, which contract must be disclosed to the Committee at the time the claim is filed or as soon thereafter as an attorney has been retained. The Committee may disapprove an attorney fee that it finds to be unreasonable. No attorney shall charge a fee in excess of the amount the Committee has determined to be reasonable, and no attorney fee shall be paid in addition to the award. In determining a reasonable fee, the Committee may refer to factors set out in ORS 20.075.

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

### **Section 3. Statement of Claim for Reimbursement.**

3.1 ~~The Committee shall prepare a form of~~All claims for reimbursement must be submitted on the form prepared by the Bar.

3.2 The claim form shall require, as minimum information:

3.2.1 The name and address of the lawyer alleged to have engaged in "dishonest conduct."

3.2.2 The amount of the alleged loss.

3.2.3 The date or period of time during which the alleged loss occurred.

3.2.4 A general statement of facts relative to the claim, including a statement regarding efforts to collect any judgment against the lawyer.

3.2.5 The name and address of the claimant and a verification of the claim by the claimant under oath.

3.2.6 The name of the attorney, if any who is assisting the claimant in presenting the claim to the Client Security Fund Committee.

3.3 The Statement of Claim shall contain substantially the following statement: ALL DECISIONS REGARDING PAYMENTS FROM THE CLIENT SECURITY FUND ARE DISCRETIONARY. Neither the Oregon State Bar nor the Client Security Fund are responsible for the acts of individual lawyers.

#### Section 4. Processing Statements of Claim.

4.1 All statements of claim shall be ~~filed with the office of the General Counsel, submitted to Client Security Fund, Oregon State Bar, 5200 S.W. Meadows Road, 16037 SW Upper Boones Ferry Rd., P. O. Box 1689, Lake Oswego, Tigard, Oregon 97035-0889, 281-1935, and shall be forthwith transmitted by such office to the chairperson of the Committee.~~

4.2 The ~~chairperson of the Committee~~ Administrator shall cause each statement of claim to be sent to a member of the Committee for investigation and report. Such member shall be reimbursed by the State Bar for reasonable out of pocket expenses incurred by said attorney in making such investigation. A copy of the statement of claim shall be sent by regular mail to the lawyer who is the subject of the claim at the lawyer's last known address. Before transmitting a statement of claim for investigation, the ~~chairperson~~ Administrator may request of the claimant further information with respect to the claim.

4.3. A Committee member to whom a statement of claim is referred for investigation shall conduct such investigation as seems necessary and desirable to determine whether the claim is for a "reimbursable loss" and is otherwise in compliance with these rules in order to guide the Committee in determining the extent, if any, to which such claim shall be reimbursed from the Fund.

4.4 Reports with respect to claims shall be submitted by the Committee member to whom the claim is assigned for investigation to the ~~Committee chairperson~~ Administrator within a reasonable time after the referral of the claim to that member, ~~subject to the call of the chairperson of the Committee.~~ Reports submitted shall contain criteria for payment set by these rules and shall include the recommendation of the member for the payment of any amount on such claim from the Fund.

4.5 The Committee shall meet from time to time upon the call of the chairperson. At the request of at least two members of the Committee and with reasonable notice, the chairperson shall promptly call a meeting of the Committee.

4.6 At any meeting of the Committee, claims may be considered for which a report has been completed. In determining each claim, the Committee shall be considered the representative of the Board of Governors and, as such, shall be vested with the authority conferred by ORS 9.655.

4.7 ~~Meetings of the Committee are public meetings within the meaning of the Public Meetings Law. In the discretion of the Chairperson, or as otherwise authorized by the Committee, t~~The claimant, the claimant's attorney, the lawyer or the lawyer's attorney may be allowed to present their respective positions regarding the claim at a meeting called to consider a claim.

4.8 The Committee, in its sole discretion, shall determine the amount of loss, if any, for which any claimant shall be reimbursed from the Fund. The Committee may, in its sole discretion, allow further reimbursement in any year to a claimant who received only a partial payment of a "reimbursable loss" solely because of the balance of the Fund at the time such payment was made.

4.9 No reimbursement shall be made to any claimant if the claim has not been submitted and reviewed pursuant to these rules. No reimbursement shall be made to any claimant unless approved by a majority of a quorum of the Committee. The Committee shall be authorized to accept or reject claims in whole or in part to the extent that funds are available to it, and the Committee shall have the discretion to determine the order and manner of payment of claims.

4.10.1 The denial of a claim by the Committee shall be final unless a claimant's written request for review by the Board of Governors is received by the Executive Director of the Bar within 20 days of the Committee's

decision. The 20 days shall run from the date the Committee's decision is sent to the claimant by mail, exclusive of the date of mailing.

4.10-2 Claims approved by the Committee shall be reviewed by the Board of Governors prior to final action being taken thereon. ~~4.10.3~~ Decisions of the Committee which are reviewed by the Board of Governors shall be considered under the criteria stated in these rules. The Board shall approve or deny each claim presented to it for review, or it may refer a claim to the Committee for further investigation prior to making a decision.

4.11 The Committee, in its sole discretion, may make a finding of "dishonest conduct" for the purpose of adjudicating a claim. Such a determination shall not be construed to be a finding of unprofessional conduct for purposes of discipline.

4.12 The Committee may recommend to the Board of Governors that information obtained by the Committee about a lawyer's conduct be provided to the appropriate District Attorney or to the Oregon Department of Justice when, in the Committee's opinion, a single serious act or a series of acts by the lawyer might constitute a violation of criminal law or of a civil fraud or consumer protection statute.

### **Section 5. Subrogation for Reimbursements Made.**

5.1.1 As a condition of reimbursement, a claimant shall be required to provide the Bar with a pro tanto transfer of the claimant's rights against the lawyer, the lawyer's legal representative, estate or assigns, and of the claimant's rights against the person or entity who may be liable for the claimant's loss.

5.1.2 Upon commencement of an action by the Bar as subrogee or assignee of a claim, it shall advise the claimant, who may then join in such action to recover the claimant's unreimbursed losses.

5.1.3 In the event that the claimant commences an action to recover unreimbursed losses against the lawyer or another person or entity who may be liable for the claimant's loss, the claimant shall be required to notify the Bar of such action.

5.1.4 The claimant shall be required to agree to cooperate in all efforts that the Bar undertakes to achieve restitution for the Fund.

5.2 A claimant shall not release the lawyer from liability or impair the Bar's assignment of judgment or subrogated interest without the prior approval of the Board of Governors.

5.3 The ~~Committee Administrator~~ shall ~~be responsible for collection of Fund receivables and shall have sole discretion to determine when such efforts would be futile.~~ ~~from time to time, recommend to the Board that collection efforts be brought and that various claims be assigned to collection agencies or referred to counsel for collection. The Board may authorize such efforts as it deems proper and, upon the recommendation of the Committee, The Administrator may undertake collection efforts directly or may assign subrogated claims to a collection agency or outside counsel. The Administrator~~ may authorize the expenditure of money from the Client Security Fund for reasonable costs and expenses of collection.

### **Section 6. General Provisions.**

6.1 These Rules may be changed at any time by a majority vote of a quorum of the Committee subject to approval by the Board of Governors of the Oregon State Bar. A quorum is a majority of the entire Committee membership.

6.2 No reimbursement from the Fund on any one claim shall exceed ~~\$25,000 for claims filed on or before July 1, 1993, and \$50,000 for claims filed after that date.~~

6.3 A member of the Committee who has or has had a lawyer-client relationship or financial relationship with a claimant or lawyer who is the subject of a claim shall not participate in the investigation or review of a claim involving the claimant or lawyer.

6.4 These Rules shall apply to all claims pending at the time of their enactment.



6.5 The ~~Committee Administrator~~ shall ~~prepare an annual report to the membership and may~~ from time to time issue press releases or other public statements about the Fund and claims that have been paid. ~~The annual report and any~~ Press releases and other public statements shall include the name of the lawyer, the amount of reimbursement, the general nature of the claim, the lawyer's status with the bar and whether any criminal action has been instituted against the lawyer for the conduct giving rise to the loss. If the claimant has previously initiated criminal or civil action against the lawyer, the press release or public statement may also include the claimant's name. The ~~annual report,~~ press release or other public statement may also include general information about the Fund, what claims are eligible for reimbursement, how the Fund is financed, and who to contact for information. ~~All press releases or other public statements shall be coordinated with the Communications Manager and conform to BOG Policy 1.600.~~

***Subsection 6.101 Active Pro Bono Status***

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**(a) Purpose**

The purposes of the Active Pro Bono category of active membership in the Bar is to facilitate and encourage the provision of pro bono legal services to low-income Oregonians and volunteer service to the Bar by lawyers who otherwise may choose inactive status or even resign from membership in the Bar, and by lawyers who move to Oregon.

**(b) Eligibility for Active Pro Bono Status**

The Active Pro Bono category of active membership is available to lawyers in good standing: Who agree to provide pro bono legal services to indigent clients referred by pro bono programs certified under Section 13.2 of the Bar's Bylaws; who do not engage in the practice of law except for providing pro bono services specified above or in volunteer service on the State Professional Responsibility Board, a Local Professional Responsibility Committee, the Disciplinary Board or as bar counsel; who agree to report annually to the Oregon State Bar the number of hours of pro bono service they provide; and who obtain professional liability coverage through the Professional Liability Fund or the program referring the pro bono cases.

**(c) Membership Fees**

Active Pro Bono members are assessed a fee that is equivalent to the inactive membership fee, ~~plus the Client Security Fund assessment.~~

**(d) Procedure**

The Bar will notify potentially eligible lawyers of the availability of the Active Pro Bono category of membership and provide interested members with an application form. The Executive Director or designee is authorized to determine members' eligibility for Active Pro Bono status and this determination is final.

**(e) Reporting Requirement for Active Pro Bono Status**

Bar Certified pro bono programs will report to the Bar no later than January 31 of each year the total hours of pro bono services that Active Pro Bono lawyers provided in the preceding calendar year. Active Pro Bono lawyer must ensure that the certified program reports their hours or must individually report their hours no later than February 15 of each year.

**(f) Transfer from Active Pro Bono Status**

Active Pro Bono members may continue in that status from year-to-year on certification that they remain eligible for such status and payment of the appropriate membership fees and assessments. Active Pro Bono members wishing to resume regular active membership status must comply with BR 8.14. Active Pro Bono members admitted through Admissions Rule 17.05 are not eligible to transfer their status to any other status.

## **OSB Board of Governors Resolution in Support of Stable Funding for the Court System**

Whereas, the State of Oregon continues to experience severe revenue shortfalls;

Whereas, courts play an essential constitutional role in society preserving the rule of law, ensuring that government acts within the law, and resolving disputes affecting families in crisis, public safety, and business transactions that support Oregon's economy;

Whereas, Oregonians have a constitutional right to justice administered in state courts "completely and without delay;"

Whereas, in response to revenue shortfalls, the legislature has dramatically reduced the Judicial Department budget, resulting in statewide and local court closures due to staff reductions and mandatory furloughs, delays in case processing and severely reduced public services and access to justice in Oregon;

Whereas, further reductions to the Judicial Department budget may end full service courts in some areas of the state;

Whereas, courts are a core function of government, providing services that are not available otherwise through the private sector or non-governmental organizations;

Whereas, legislators rely on the views of their constituents and public input in setting priorities;

Whereas, effective public input depends upon public awareness of the need for priority funding of the Judicial Department to maintain court operations;

Therefore, be it resolved that the Board of Governors

1. Strongly advocate for adequate funding of the Judicial Department;
2. Actively oppose any additional reductions to the Judicial Department budget;
3. Urge members of the bar to contact their legislators in support of adequate funding for the Judicial Department and in opposition to further cuts to the department's budget; and,
4. Urge members of the bar to educate their clients and the public on the critical need to support adequate funding for state courts to ensure that Oregonians have adequate access to timely justice.

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** November 11, 2012  
**From:** Sylvia E. Stevens, Executive Director  
**Re:** CSF Claims Recommended for Payment

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### Action Recommended

Consider the following claims recommended for payment by the Client Security Fund at their meetings on September 8 and October 27, 2012:

CONNALL (Johns) .....	\$14,300.00
McBRIDE (Ramos Gonzales).....	5,500.00
McBRIDE (Sayago Saucedo) .....	1,800.00
McBRIDE (Benhumea).....	2,500.00
McBRIDE (Romero Rodriguez) .....	4,000.00
McBRIDE (Vina Cruz) .....	4,500.00
McBRIDE (Cisneros Ponce).....	5,000.00
McBRIDE (Lopez) .....	2,500.00
McBRIDE (Bown) .....	2,700.00
McBRIDE (Jung).....	5,200.00
McBRIDE (Pardo).....	3,000.00
McBRIDE (Perez) .....	2,500.00
McBRIDE (Mejia) .....	4,600.00
McBRIDE (Alvarado).....	4,350.00
McBRIDE (Escobar).....	1,650.00
GRUETTER (Riggs).....	50,000.00
GRUETTER (Ray) .....	50,000.00
GRUETTER (Ferguson).....	7,171.67
GRUETTER (Strohm) .....	16,354.22
GRUETTER (Lyons).....	5,620.79
GRUETTER (Laughlin) .....	3,454.12
GRUETTER (Burk) .....	9277.63
GRUETTER (Mills) .....	3,315.54
GRUETTER (Sare).....	19,000.00
GRUETTER (Alire) .....	31,847.22
DALTON (Miller).....	2,000.00
<b>TOTAL</b>	<b>\$262,141.19</b>

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** November 10, 2012  
**Memo Date:** November 7, 2012  
**From:** Barbara Dilaconi, Appointments Committee Chair  
**Re:** Appointments to various bar committees, councils, and boards (1 of 2)

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### Action Recommended

Approve the following recommendations from the Appointments Committee.

#### **Affirmative Action Committee**

Chair: Reeves, Liani  
 Secretary: Haroldson, John M  
 Members with terms expiring 12/31/2013:  
 Meng, Linda  
 Members with terms expiring 12/31/2015:  
 Butler, Deborah  
 Haroldson, John M  
 O'Neil, Yumi  
 Umscheid, Lisa  
 Wu, Michael

#### **Bar Press Broadcasters Council**

Chair: Underhill, Rod  
 Members with terms expiring 12/31/2015:  
 Hermann, Robert  
 Ludwig, Lisa  
 Mackeson, Wayne  
 Meek, Daniel  
 Thompson, Hon. Kristen

#### **Client Security Fund Committee**

Chair: Bennett, Steve  
 Secretary: Brown, Elaine  
 Members with terms expiring 12/31/2015:  
 Miller, Lisa A  
 Reinecke, Mark  
 Statler, Teresa  
 Calderon, Carlos (public member)

#### **Federal Practice and Procedure Committee**

Chair: Haile, Benjamin  
 Secretary: Gartner, Nadine  
 Members with terms expiring 12/31/2013:  
 Haile, Benjamin  
 Members with terms expiring 12/31/2015:  
 Farrell, Timothy  
 Kelly, Adam  
 McConnell, Kevin  
 Meserow, Nancy  
 Scannell, Terry  
 Zusman, Kelly

#### **Judicial Administration Committee**

Co-Chairs: Nordyke, Vanessa  
 Secretary: Boutin, Roderick  
 Members with terms expiring 12/31/2015:  
 Duong, Phil  
 Dielschneider, Janmarie  
 Hunsaker, Danielle  
 Paris, Wendy  
 O'Brien, Danielle

#### **Legal Ethics Committee**

Chair: Hansen, Kurt  
 Secretary: Riordan Armstrong, Shannon  
 Members with terms expiring 12/31/2015:  
 Asai, Kristin  
 Burt, Robert  
 Downey, Sean  
 Gordon, David  
 Hallvik, Taylor  
 Muhlheim, Wilson

#### **Legal Heritage Committee**

Chair: Anderson, Mary Anne  
 Secretary: von Ter Stegge, Katherine  
 Members with terms expiring 12/31/2015:  
 Farr, Mary Ellen  
 Hull, Rachel  
 Quinn, Rebecca  
 Vogt, Randall

#### **MCLE Committee**

Chair: Batlan, Cecelia  
 Secretary: O'Day, Sean  
 Members with terms expiring 12/31/2015:  
 Batlan, Cecelia  
 Banwarth, Allison  
 King, Christy  
 Larkin, Linda

**New Lawyer Mentoring Committee**

Chair: Schpak, Andrew  
Members with terms expiring 12/31/2013:  
Hill, Gary  
Members with terms expiring 12/31/2015:  
DePaolis, Diane  
Freitas, Norma  
Howry, John  
Lam, Vincci  
Schradle, Philip

**Pro Bono Committee**

Chair: Shumaker, Brantley  
Secretary: Sawyer, Justin  
Members with terms expiring 12/31/2014:  
Robbins, Meagan  
Members with terms expiring 12/31/2015:  
Hanks, Virginia  
Richards, Gabrielle  
Sawyer, Justin  
Schmonsees, Brian  
Strauhull, Jonathan

**Procedure and Practice Committee**

Chair: Posner, Jason  
Secretary: Pistacchio, Jason  
Members with terms expiring 12/31/2014:  
Tahir, Melissa L  
Members with terms expiring 12/31/2015:  
Bachofner, John  
Gerber, Susan  
Jackson, Neil  
Kafoury, Jason  
Lewton, Michael

**Public Service & Information Committee**

Chair: Jones, William M.  
Secretary: Fitzgerald, Erin  
Members with terms expiring 12/31/2015:  
Brown, Heidi  
Costa, Jennifer  
Lang, Mark  
Soper, Josh  
Horan, James (public member)

**Quality of Life Committee**

Chair: Milton Decker, Heather  
Secretary: Marcotrigiano, Eva  
Members with terms expiring 12/31/2015:  
Gilbert, Joan  
Vilella, Anne

**State Lawyers Assistance Committee**

Chair: Gumusoglu, Shea  
Secretary: Lusk, Robert “Kim”  
Members with terms expiring 12/31/2014:  
Grover, Diane  
Members with terms expiring 12/31/2016:  
Laidler, Deanna  
Lusk, Robert “Kim”  
Parsons, John  
Versteeg, Ed (public member)  
Harrington, Bernadette (public member)

**Uniform Civil Jury Instructions Committee**

Chair: Houston, Holli  
Secretary: Malmsheimer, Matthew  
Members with terms expiring 12/31/2015:  
Colbach, Michael  
Devlin, John  
Mooney, Josephine H  
Rounds, Christopher  
Young, John

**Uniform Criminal Jury Instructions Committee**

Chair: Davis, Kara  
Secretary: Leggett, Terry  
Members with terms expiring 12/31/2015:  
Contreras, Jamie  
Johnson, Rankin  
Latto, Harrison  
Nelson, Justin  
Price, Steven L

**Unlawful Practice of Law Committee**

Chair: Colton, Britney  
Chair-Elect: Rufolo, Laura  
Secretary: von Ter Stegge, Katharine  
Members with terms expiring 12/31/2015:  
Overgaard, Mary  
Members with terms expiring 12/31/2016:  
Brown, Jermaine  
Hilton, Frank  
Lanker, Alan S

**Bar Counsel Panel**

All terms expire 12/31/2015

**Region 1**

Phil Hung Duong  
Richard E. Forcum  
Susan R. Gerber  
Michael W. Peterkin

**Region 2**

Wendy J. Baker  
Stephen R. Blixseth  
Louis L. Kurtz  
Michael H. Long  
David B. Mills  
Wilson C. Muhlheim  
Liane I. Richardson  
Stephen J. R. Shepard  
Tina Stupasky

**Region 3**

Robert L. Cowling  
Richard A. Cremer  
John C. Howry  
Bernard S. Moore  
Steven L. Wilgers

**Region 4**

James A. Underwood

**Region 5**

John F. Adlard  
Mark P. Bronstein  
Paul R. Duden  
James M. Finn  
Mark Morrell  
Eric J. Neiman  
Jennifer A. Nelson  
Michael P. Opton  
Christopher R. Piekarski  
Bruce R. Rubin  
Steven W. Seymour  
David P. R. Symes  
Steven T. Wax  
Candace H. Weatherby

**Region 6**

Mary Crawford  
Elaine D. Smith-Koop  
Calvin N. Souther, Jr.

**Region 7**

Herbert C. Sundby

**Local Professional Responsibility Committee**

All terms expire 12/31/2013

**Region 1**

Beth M. Bagley (Chair)  
David M. Gordon  
Douglas R. Olsen  
Mark G. Reinecke  
Paige L. Sully  
Bradley Timmons  
Valerie Wright

**Region 2**

Diane DePoalis  
Martin M. Fisher  
Francisco, Vaden B. (Chair)  
Danielle O'Brien

**Region 3**

Bruce R. Coalwell (Chair)  
Joel C. Benton  
Janay Haas

Lore Rutz-Burri

**Region 4**

Cynthia Phillips  
Rebecca A. Quinn  
Barbara Smythe (Chair)  
James A. Underwood  
Elijah Van Camp

**Region 5**

Richard Bailey  
Heather Bowman (Chair)  
Mary Page Farr  
Taylor R. Hallvik  
Jerilyn A. Krier  
Deanna P Laidler  
Morgan W. Long  
Marisa Moneyhun  
Brenda Terreault

Maite Uranga

**Region 6**

David Amesbury  
John H. Beckfield (Chair)  
J. Channing Bennett  
David L. Carlson  
Alan S. Lanker  
Carol A. Parks  
Patti Powell

**Region 7**

Michael J. Buroker (Chair)  
Kara L. Govro  
Gary D. Hill  
Eva M. Marcotrigiano  
Jessica A. Morgan

**State Professional Responsibility Committee**

Chair: Greg Hendrix, term expires 12/31/2013

Region 2: E. Bradley Litchfield, term expires 12/31/2016

Region 4: Blair Henningsgaard, term expires 12/31/2016

Region 5: Danna Fogarty, term expires 12/31/2014



# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** November 10, 2012  
**Memo Date:** November 10, 2012  
**From:** Barbara Dilaconi, Appointments Committee Chair  
**Re:** Appointments to various bar committees, councils, and boards (2 of 2)

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### Action Recommended

Approve the following recommendations from the Appointments Committee.

#### Disciplinary Board

State Chair and Chair-Elect terms expire 12/31/2013.

State Chair: Wood, Mary Kim

State Chair-Elect: Yee, Pam

Unless otherwise noted, regional chair positions have terms expiring 12/31/2013 and members have terms expiring 12/31/2015.

#### **Region 1**

Chair: Hopp, Carl W. Jr.

#### **Region 2**

Chair: Miller, Robert A.

Members:

Harris, Jet

MucCully, George A. (PM)

#### **Region 3**

Chair: Annand, Megan

Members:

Austin, Penny

Paquin, Phil (PM)

#### **Region 4**

Chair: Yee, Pam

Members:

Reel, Allen

Bailey, William D

#### **Region 5**

Chair: Cooper, Nancy

Members:

Butterfield, Lisanne M.

Green, David W.

Hathaway, Charles R.

Watkins, Ulanda

Crispin, Craig

Dippel, Courtney C.

Hercher, David W.

Jackson, JoAnn (PM)

Yosses, Mary Beth (PM)

#### **Region 6**

Chair: Edmonds, James

Members:

Johnson, Philip

Bagg, John T.

#### **Region 7**

Chair: Buccino, Anthony

#### Client Security Fund Committee

William Davis, member, term expires 12/31/2015

#### Legal Ethics Committee

Ankur Doshi, member, term expires 12/31/2015

#### Legal Services Committee

Mike Hallinan, chair, term expires 12/31/2013

Josh Newton, secretary, term expires 12/31/2013

Kristin L. Bremer, member, term expires 12/31/2015

Amy Edwards, member, term expires 12/31/2015

Josh Newton, member, term expires 12/31/2015

#### New Lawyer Mentoring Committee

Sarah Brown, member, term expires 12/31/2015

#### Local Professional Responsibility Committee

Douglas R. Olsen, region 1 alternate chair, term expires 12/31/2013

#### Oregon Law Foundation Board

Katharine West, term expires 12/31/2016

#### Professional Liability Fund Board of Directors

Teresa Statler, term expires 12/31/2017

Tim Martinez, public member, term expires 12/31/2017

**Oregon State Bar  
Board of Governors Meeting  
November 10, 2012  
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. Martha E. Beaves – 980334

**Motion:** Mr. Knight presented information concerning the BR 8.1 reinstatement application of Ms. Beaves and the recommendation to waive the one meeting notice requirement set forth in Bar Bylaw 6.103. Mr. Knight moved, and Mr. Haglund seconded, to waive the one meeting notice and recommend to the Supreme Court that Ms. Beaves's reinstatement application be approved upon completion of 25 CLE credits. The motion passed unanimously.

2. Philip R. Bennett – 841687

**Motion:** Mr. Knight, in Mr. Emerick's absence, presented information concerning the BR 8.1 reinstatement application of Mr. Bennett to satisfy the one meeting notice requirement set forth in Bar Bylaw 6.103. Mr. Bennett's application will be placed on a future agenda for consideration and action.

3. Jennifer M. Gleason – 935198

**Motion:** Ms. Dilaconi presented information concerning the BR 8.1 reinstatement application of Ms. Gleason. Ms. Dilaconi moved, and Ms. Matsumonji seconded, to recommend to the Supreme Court that Ms. Gleason's reinstatement application be approved effective January 1, 2013. The motion passed unanimously.

4. Paul S. Majkut – 872900

**Motion:** Ms. Matsumonji, presented information concerning the BR 8.1 reinstatement application of Mr. Majkut. Ms. Matsumonji moved, and Mr. Prestwich seconded, to recommend to the Supreme Court that Mr. Majkut's reinstatement application be approved effective January 1, 2013. The motion passed unanimously.

5. Kimberly M. Pfefer – 053471

**Motion:** Mr. Kehoe presented information concerning the BR 8.1 reinstatement application. Mr. Kehoe moved, and Ms. Matsumonji seconded, to recommend to the Supreme Court that Ms. Pfefer's reinstatement application be approved upon completion of 45 CLE credits. The motion passed unanimously.

6. Ann E. Setty-Rosevear – 971347

**Motion:** Mr. Kranovich presented information concerning the BR 8.1 reinstatement application of Ms. Setty-Rosevear to satisfy the one meeting notice requirement set forth in Bar Bylaw 6.103. Ms. Setty-Rosevear's application will be placed on a future agenda for consideration and action.

7. Joel D. Shapiro – 003814

**Motion:** Mr. Ehlers presented information concerning the BR 8.1 reinstatement application of Mr. Shapiro. Mr. Ehlers moved, and Ms. Dilaconi seconded, to recommend to the Supreme Court that Mr. Shapiro's reinstatement application be approved effective January 1, 2013. The motion passed unanimously.

8. Emily Rae Swensen – 971759

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

B. Disciplinary Counsel's Report

As written.

**Oregon State Bar  
Board of Governors Meeting  
November 10, 2012  
Executive Session Minutes**

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

A. Unlawful Practice of Law

1. The BOG received status reports on the non-action items.
2. The UPL Committee recommends the Board seek injunctive relief against Mr. Marcus to prevent his continued unlawful practice of law.

**Motion:** Mr. Haglund moved, Mr. Wade seconded, and the board voted unanimously to approve the initiation of a lawsuit seeking to enjoin Philip Marcus from the unlawful practice of law pursuant to ORS 9.166.

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.