

Oregon State Bar
Meeting of the Board of Governors
February 22, 2013
Open Session Minutes

The meeting was called to order by President Michael Haglund at 9:30 a.m. on February 22, 2013. The meeting adjourned at 1:50 p.m. Members present from the Board of Governors were Jenifer Billman, Patrick Ehlers, Hunter Emerick, R. Ray Heysell, Matthew Kehoe, Ethan Knight, Theresa Kohlhoff, Tom Kranovich, Caitlin Mitchel-Markley, Maureen O'Connor, Joshua Ross, Richard Spier, David Wade, Charles Wilhoite and Timothy L. Williams. Staff present were Sylvia Stevens, Helen Hierschbiel, Kay Pulju, Susan Grabe, Mariann Hyland, Catherine Petrecca, Dani Edwards and Camille Greene. Also present was David Eder, ONLD Chair, and Mark Comstock, Oregon eCourt Task Force member.

1. Report of Officers & Executive Staff

A. Report of the President

Mr. Haglund reported that changes to the Modest Means Program recommended by the Job Opportunities Task Force will be ready for BOG consideration in May. Members of the Legal Job Opportunities Task Force will meet with law schools in March.

The Citizen's Coalition for Court Funding will send a letter to legislators in the next week and is working with the Public Affairs Committee to take action in Salem during the legislative session.

Mr. Haglund also reported that he has been attending lunches with Portland's largest law firm as well as some local bar meetings. He believes these are effective outreach to help members understand the Bar and encourage them to participate in Bar governance.

B. Report of the President-elect

Mr. Kranovich reported that he met with the Clackamas County Bar Association to encourage its grassroots efforts to lobby for court funding.

C. Report of the Executive Director

ED Operations Report as written. Ms. Stevens announced that new Disciplinary Counsel, John Gleason, will take his position at the bar in early March. The November 1 BOG meeting has been moved to October 25. Ms. Stevens also reported on her attendance at the ABA Mid-year meeting in Dallas, TX, where there was much talk about the challenges facing state bars and the movement to "de-unify" the Washington State Bar Association. There is also growing recognition that state bars need to be proactive in regulating the increasing number of law service providers who are not lawyers. Mr. Haglund will work with the board to look at the prospect of creating a task force to look at this issue.

D. Director of Diversity & Inclusion

Ms. Hyland reported on the Diversity Advisory Council's background, charge, membership and responsibilities. The OSB Diversity Action Plan is a work in progress that will be presented to the

board for approval this year. The bar's relationship with the diverse community is important and board members are encouraged to attend the diverse events offered to them. The annual Diversity Section / Diversity & Inclusion Advisory Committee retreat was successful in focusing on the different responsibilities of the two groups. Ms. Hyland also reported that the expense budget for the OLIO Orientation has been reduced by thirty percent, consistent with the BOG's direction to limit the use of mandatory fees for the event.

E. MBA Liaison Reports

Ms. Kohlhoff and Mr. Knight reported on the January 2, and February 6, 2013 MBA meetings, respectively. Mr. Knight noted an increased concern regarding court funding in Multnomah County. Ms. Kohlhoff reminded the board that Ms. Hirschbiel is on the MBA board and is an excellent resource.

2. Professional Liability Fund [Mr. Zarov]

Mr. Zarov submitted a general update, financial report and goals for 2013. **[Exhibit A]**

3. Rules and Ethics Opinions

A. Proposed Formal EOP: Social Media

Ms. Stevens presented the proposed formal opinion addressing social media. The opinion makes three points: passively viewing publicly available information is not communication within the meaning of the rule; requesting access to non-public information does not imply "disinterest"; and a lawyer may not make a request for information using an alias. **[Exhibit B]**

Motion: Mr. Knight moved, Mr. Kehoe seconded, and the board voted to approve the LEC's opinion. Mr. Emerick was opposed.

B. Proposal to Amend RPC 1.10

Ms. Stevens presented the LEC's recommendation that the BOG submit an amendment of ORPC 1.10(b) to the HOD in November 2013 to correct a deficiency in the current rule. **[Exhibit C]**

Motion: Mr. Wade moved, Mr. Ross seconded, and the board voted unanimously to submit the amendment to the HOD in November 2013.

C. Proposed Amendments to Advertising Rules

Ms. Stevens presented the LEC's recommendation that the BOG submit amendments to Oregon's advertising rules to the HOD in November 2013. **[Exhibit D]**

Motion: Mr. Spier moved, Mr. Heysell seconded, and the board voted unanimously to submit the advertising rule amendments to the HOD in November 2013 and to publish them in the *Bulletin* sufficiently in advance of the meeting to allow for comments from members.

4. OSB Committees, Sections, Councils and Divisions

A. Oregon New Lawyers Division Report

Mr. Eder reported on a variety of ONLD projects and events described in his written report. The Practical Skills and Public Services program will change to an open enrollment from an application process to provide agencies more time to train members on a staggered basis. The ONLD is working with the law schools to focus on practical skills training through complimentary CLEs provided by the ONLD utilizing the “Law Firm on a Flashdrive” it has created.

B. MCLE Committee

Ms. Hirschbiel presented the committee’s request for the board to review and approve the proposed amendments to Rules 5.2(c)(1)(ii) and (g) and Regulation 5.250. **[Exhibit E]**

Motion: Mr. Williams moved, Mr. Ross seconded, and the board voted unanimously to approve the MCLE rule changes as requested.

C. Loan Repayment Advisory Committee

The Loan Repayment Advisory Committee recommended the Board of Governors approve a decrease in the maximum allowed debt from \$50,000 to \$35,000 for public service lawyers applying for the Oregon State Bar Loan Repayment Assistance Program and that the LRAP Policies and Guidelines be changed to reflect that the Advisory Committee will consider applicants who previously have received a loan from the Program. **[Exhibit F]**

Motion: Mr. Kehoe moved, Mr. Wade seconded, and the board voted unanimously to approve the decrease in debt requirement and change the LRAP policies and guidelines as requested

D. CSF Claims

Ms. Stevens presented the CSF claims recommended for payment other than the McBride claims. She explained that some of the McBride claimants are being assisted by the PLF and until that process is completed, the CSF cannot make recommendations. **[Exhibit G]**

Motion: Mr. Wade moved, Mr. Kranovich seconded, and the board voted unanimously to approve payments totaling \$120,700.80, plus an additional \$550 for the Roccasalva claim due to miscalculation. Mr. Williams abstained.

Ms. Stevens presented Mr. Flanakin’s request for review of the CSF Committee’s denial of his claim for reimbursement.

Motion: Mr. Wade moved, Mr. Emerick seconded, and the board voted unanimously to affirm the CSF’s denial of Mr. Flanakin’s claim.

Ms. Stevens presented Mr. Flores-Salazar’s request for review of the CSF Committee’s denial of his claim for reimbursement.

Motion: Mr. Wade moved, Mr. Ehlers seconded, and the board voted unanimously to affirm the CSF’s denial of Mr. Flores-Salazar’s claim.

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

A. Board Development Committee

Mr. Kranovich reviewed the OSB House of Delegates vacancies and asked the board to identify and recruit possible candidates to run in the election.

B. Budget and Finance Committee

Mr. Knight gave a financial update and informed the board that action will be taken at the next board meeting to approve the bar's financial advisors.

C. Governance and Strategic Planning Committee

Motion: The board voted unanimously to approve the committee recommendation to resume conducting preference polls for circuit court appointments.

Motion: The board voted unanimously to approve the committee recommendation that the Client Security Fund be authorized to give final approval to awards of less than \$5,000. **[Exhibit H]**

Motion: The board voted unanimously to approve the committee recommendation to the Supreme Court that the Executive Director have authority to review formal reinstatement applications in certain cases and to publish applicant names on the OSB web site at least 30 days prior to reinstatement. **[Exhibit I]**

Motion: The board voted unanimously to approve the committee recommendation that Section 8 of the Fee Arbitration Rules be amended as discussed. **[Exhibit J]**

D. Public Affairs Committee

Mr. Kehoe gave an update on the legislative session and court funding. He also informed the board of the UPL Task Force's memo re: HB 2573 (Unauthorized practice violates Unlawful Trade Practice Act.) Ms. Grabe reported 15 of 17 OSB bills have had hearings and moved out of first house.

E. Special Projects Committee

Ms. O'Connor reported on the progress of current board projects for 2013, including the tree planning project scheduled for March 2. Mr. Haglund encouraged BOG members to participate if they are able.

F. Centralized Legal Notice System Task Force

Mr. Ehlers informed the board the task force is looking at Utah's notice system which uses a website instead of newspapers for legal notices. He reported on his recent testimony before the legislature on a pending bill that, if successful, could derail the CLNS project and encouraged the BOG to take a position in opposition if necessary.

G. Knowledge Base Task Force

Ms. Stevens informed the board that the task force is studying the feasibility of providing some method for members to access information the bar produces. The current scope of the project is broad and still in progress.

H. Oregon eCourt

Mr. Comstock informed the board on the progress of the Oregon eCourt Implementation Task Force and the status of the Oregon eCourt system. It will be rolled out in Multnomah County in the spring of 2014. By the end of 2015 the \$100 million e-filing system should be statewide and is scheduled to be mandatory for lawyers six months later. Active members will have heightened access to documents. Transaction fees will be \$5 per packet of documents.

6. Other Action Items

Ms. Stevens presented the request for the board to approve the proposed revision of the Model Explanation of Contingent Fee Agreement to conform to the recent amendment of Oregon RPC 1.8(e). **[Exhibit K]**

Motion: Mr. Spier moved, Mr. Kehoe seconded, and the board voted unanimously to approve the revisions to the agreement as presented.

Ms. Stevens presented Mr. Charles Isaak's request to receive free printed CLE materials and asked the board to confirm her understanding of OSB Bylaw 16.200.

Motion: The board unanimously confirmed the intent of the BOG policy as interpreted by Ms. Stevens, but approved revising the language of the bylaw to be more clear.

7. Consent Agenda

Motion: Mr. Kehoe moved, Mr. Spier seconded, and the board voted unanimously to approve the consent agenda of past meeting minutes and various appointments **[Exhibit L]**.

8. 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

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

None.

Ira R. Zarov
Chief Executive Officer

February 12, 2013

To: Professional Liability Fund Board of Directors
From: R. Thomas Cave, Chief Financial Officer
Re: Draft December 31, 2012 Financial Statements

NTC

I have enclosed draft December 31, 2012 Financial Statements. These statements assume that the Board of Directors will adopt the estimated liabilities for claims that staff and the actuaries have recommended. There are a few additional adjustments that will be made to these figures; however, the additional adjustments are not expected to significantly change the financial results.

These statements show 2012 Primary Program net income of over \$4.8 million. This is a welcome change from the nearly \$2.5 million loss in 2011.

Investment results were excellent and returns were nearly \$1.7 million higher than budget. However, the major reason for the 2012 income was good claim results. Claim costs and liabilities will be discussed in detail during the Finance Committee portion of the board meeting. If you view the two actuarial reports together, the development on claims pending at the start of 2012 was positive (less than the December 31, 2011 estimates) and the budget anticipated negative development (actual results to be slightly higher than December 31, 2011 estimates).

In addition, a single attorney was responsible for 141 claims made during 2012. This situation distorted both the financial results relating to claim results and claim frequency during much of the second half of 2012. It is probably best to remove these single attorney claims when evaluating 2012 claim results both financially and otherwise. These 141 claims are subject to a single \$350,000 limit and the actuaries made a large adjustment for this situation. Also, if these claims are not included, claim frequency dropped significantly during the second half of 2012.

If you have any questions, please contact me.

**Oregon State Bar
Professional Liability Fund
Financial Statements
12/31/2012**

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7	Combined Investment Schedule

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**Oregon State Bar
Professional Liability Fund
Combined Primary and Excess Programs
Balance Sheet
12/31/2012**

ASSETS

	<u>THIS YEAR</u>	<u>LAST YEAR</u>
Cash	\$2,931,542.67	\$2,318,022.25
Investments at Fair Value	42,396,004.86	40,146,720.55
Due from Reinsurers	1,346,014.01	92,717.95
Other Current Assets	265,996.39	77,736.69
Net Fixed Assets	980,612.12	1,029,923.75
Claim Receivables	66,271.00	69,888.65
Other Long Term Assets	<u>13,919.48</u>	<u>13,939.81</u>
TOTAL ASSETS	<u>\$48,000,360.53</u>	<u>\$43,748,949.65</u>

LIABILITIES AND FUND EQUITY

	<u>THIS YEAR</u>	<u>LAST YEAR</u>
Liabilities:		
Accounts Payable and Other Current Liabilities	\$194,072.75	\$249,226.80
Due to Reinsurers	\$18,916.32	\$3,068.00
Deposits - Assessments	10,128,861.50	9,747,483.99
Liability for Compensated Absences	445,620.51	430,305.28
Liability for Indemnity	14,200,000.00	15,000,000.00
Liability for Claim Expense	12,500,000.00	12,700,000.00
Liability for Future ERC Claims	2,700,000.00	2,700,000.00
Liability for Suspense Files	1,400,000.00	1,400,000.00
Liability for Future Claims Administration (AOE)	<u>2,400,000.00</u>	<u>2,300,000.00</u>
Total Liabilities	<u>\$43,987,471.08</u>	<u>\$44,530,084.07</u>
Fund Equity:		
Retained Earnings (Deficit) Beginning of the Year	(\$781,169.42)	\$2,349,430.48
Year to Date Net Income (Loss)	<u>4,794,058.87</u>	<u>(3,130,599.90)</u>
Total Fund Equity	<u>\$4,012,889.45</u>	<u>(\$781,169.42)</u>
TOTAL LIABILITIES AND FUND EQUITY	<u>\$48,000,360.53</u>	<u>\$43,748,914.65</u>

**Oregon State Bar
Professional Liability Fund
Primary Program
Income Statement
12 Months Ended 12/31/2012**

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	YEAR TO DATE <u>ACTUAL</u>	YEAR TO DATE <u>BUDGET</u>	<u>VARIANCE</u>	YEAR TO DATE <u>LAST YEAR</u>	<u>ANNUAL BUDGET</u>
<u>REVENUE</u>					
Assessments	\$24,803,325.67	\$24,907,500.00	\$104,174.33	\$24,465,414.66	\$24,907,500.00
Installment Service Charge	394,631.00	401,000.00	6,369.00	385,593.00	401,000.00
Other Income	69,868.17	0.00	(69,868.17)	45,578.66	0.00
Investment Return	4,295,120.03	2,628,331.00	(1,666,789.03)	(590,228.90)	2,628,331.00
TOTAL REVENUE	<u>\$29,562,944.87</u>	<u>\$27,936,831.00</u>	<u>(\$1,626,113.87)</u>	<u>\$24,306,357.42</u>	<u>\$27,936,831.00</u>
<u>EXPENSE</u>					
Provision For Claims:					
New Claims at Average Cost	\$20,760,000.00			\$18,079,500.00	
Actuarial Adjustment to Reserves	(2,435,227.40)			2,398,104.72	
Net Changes in AOE Liability	100,000.00			0.00	
Net Changes in ERC Liability	0.00			300,000.00	
Coverage Opinions	141,424.92			184,656.43	
General Expense	68,234.72			15,986.23	
Less Recoveries & Contributions	(161,352.20)			(41,534.61)	
Budget for Claims Expense		<u>\$21,189,000.00</u>			<u>\$21,189,000.00</u>
Total Provision For Claims	<u>\$18,473,080.04</u>	<u>\$21,189,000.00</u>	<u>\$2,715,919.96</u>	<u>\$20,936,712.77</u>	<u>\$21,189,000.00</u>
Expense from Operations:					
Administrative Department	\$2,222,235.63	\$2,201,774.00	(\$20,461.63)	\$2,296,029.63	\$2,201,774.00
Accounting Department	742,389.46	789,960.00	47,570.54	635,728.92	789,960.00
Loss Prevention Department	1,824,647.59	1,867,930.00	43,282.41	1,700,516.45	1,867,930.00
Claims Department	2,398,388.09	2,466,873.00	68,484.91	2,305,032.97	2,466,873.00
Allocated to Excess Program	(1,099,825.92)	(1,099,826.00)	(0.08)	(1,350,103.80)	(1,099,826.00)
Total Expense from Operations	<u>\$6,087,834.85</u>	<u>\$6,226,711.00</u>	<u>\$138,876.15</u>	<u>\$5,587,204.17</u>	<u>\$6,226,711.00</u>
Contingency (2% of Operating Exp)	\$23,693.21	\$145,541.00	\$121,847.79	\$53,522.64	\$145,541.00
Depreciation and Amortization	\$175,500.35	\$237,600.00	\$62,099.65	\$209,326.30	\$237,600.00
Allocated Depreciation	(35,996.04)	(35,996.00)	0.04	(43,635.96)	(35,996.00)
TOTAL EXPENSE	<u>\$24,724,112.41</u>	<u>\$27,762,856.00</u>	<u>\$3,038,743.59</u>	<u>\$26,743,129.92</u>	<u>\$27,762,856.00</u>
NET INCOME (LOSS)	<u>\$4,838,832.46</u>	<u>\$173,975.00</u>	<u>(\$4,664,857.46)</u>	<u>(\$2,436,772.50)</u>	<u>\$173,975.00</u>

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**Oregon State Bar
Professional Liability Fund
Primary Program
Statement of Operating Expense
12 Months Ended 12/31/2012**

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	<u>CURRENT</u> <u>MONTH</u>	<u>YEAR</u> <u>TO DATE</u> <u>ACTUAL</u>	<u>YEAR</u> <u>TO DATE</u> <u>BUDGET</u>	<u>VARIANCE</u>	<u>YEAR</u> <u>TO DATE</u> <u>LAST YEAR</u>	<u>ANNUAL</u> <u>BUDGET</u>
<u>EXPENSE:</u>						
Salaries	\$349,295.22	\$3,984,099.59	\$4,016,426.00	\$32,326.41	\$3,858,799.80	\$4,016,426.00
Benefits and Payroll Taxes	125,668.69	1,410,661.61	1,441,243.00	30,581.39	1,256,075.74	1,441,243.00
Investment Services	7,036.50	27,718.50	27,000.00	(718.50)	27,303.75	27,000.00
Legal Services	2,556.00	13,240.50	15,000.00	1,759.50	7,930.85	15,000.00
Financial Audit Services	0.00	21,700.00	25,000.00	3,300.00	20,200.00	25,000.00
Actuarial Services	0.00	18,900.00	19,000.00	100.00	18,563.75	19,000.00
Claims Audit Services	0.00	0.00	0.00	0.00	5,609.47	0.00
Claims MMSEA Services	0.00	3,850.00	12,000.00	8,150.00	11,400.00	12,000.00
Information Services	8,676.13	86,814.17	74,000.00	(12,814.17)	84,000.57	74,000.00
Document Scanning Services	1,605.63	52,034.79	75,000.00	22,965.21	21,879.03	75,000.00
Other Professional Services	20,075.52	65,375.04	62,000.00	(3,375.04)	73,599.75	62,000.00
Staff Travel	1,084.81	16,159.55	12,950.00	(3,209.55)	8,048.77	12,950.00
Board Travel	9,624.70	38,011.15	41,300.00	3,288.85	29,994.17	41,300.00
NABRICO	205.85	9,996.13	10,500.00	503.87	24,805.25	10,500.00
Training	1,901.67	20,496.94	12,000.00	(8,496.94)	5,729.42	12,000.00
Rent	41,522.25	511,782.29	498,267.00	(13,515.29)	491,884.09	498,267.00
Printing and Supplies	6,017.01	60,187.24	85,000.00	24,812.76	75,579.87	85,000.00
Postage and Delivery	6,649.83	37,715.25	37,750.00	34.75	34,350.20	37,750.00
Equipment Rent & Maintenance	4,093.80	38,624.51	55,000.00	16,375.49	43,232.15	55,000.00
Telephone	3,856.33	36,563.64	35,000.00	(1,563.64)	34,328.63	35,000.00
L P Programs (less Salary & Benefits)	52,716.21	389,833.69	447,136.00	57,302.31	359,384.18	447,136.00
Defense Panel Training	0.00	0.00	200.00	200.00	20,705.79	200.00
Bar Books Grant	16,666.63	200,000.00	200,000.00	0.00	300,000.00	200,000.00
Insurance	(18,849.07)	70,792.93	61,265.00	(9,527.93)	60,080.89	61,265.00
Library	4,888.79	31,047.06	31,000.00	(47.06)	32,927.77	31,000.00
Subscriptions, Memberships & Other	11,500.55	42,056.19	32,500.00	(9,556.19)	30,894.08	32,500.00
Allocated to Excess Program	(91,652.16)	(1,099,825.92)	(1,099,826.00)	(0.08)	(1,350,103.80)	(1,099,826.00)
TOTAL EXPENSE	\$565,140.89	\$6,087,834.85	\$6,226,711.00	\$138,876.15	\$5,587,204.17	\$6,226,711.00

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**Oregon State Bar
Professional Liability Fund
Excess Program
Income Statement
12 Months Ended 12/31/2012**

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	<u>YEAR TO DATE ACTUAL</u>	<u>YEAR TO DATE BUDGET</u>	<u>VARIANCE</u>	<u>YEAR TO DATE LAST YEAR</u>	<u>ANNUAL BUDGET</u>
<u>REVENUE</u>					
Ceding Commission	\$732,247.30	\$705,600.00	(\$26,647.30)	\$720,039.00	\$705,600.00
Prior Year Adj. (Net of Reins.)	1,395.58	1,500.00	104.42	703.08	1,500.00
Profit Commission	0.00	0.00	0.00	21,683.65	0.00
Installment Service Charge	37,180.00	38,000.00	820.00	37,322.00	38,000.00
Investment Return	<u>429,190.43</u>	<u>228,551.00</u>	<u>(200,639.43)</u>	<u>22,315.28</u>	<u>228,551.00</u>
TOTAL REVENUE	<u>\$1,200,013.31</u>	<u>\$973,651.00</u>	<u>(\$226,362.31)</u>	<u>\$802,063.01</u>	<u>\$973,651.00</u>
<u>EXPENSE</u>					
Operating Expenses (See Page 6)	\$1,208,790.86	\$1,214,642.00	\$5,851.14	\$1,452,254.45	\$1,214,642.00
Allocated Depreciation	<u>\$35,996.04</u>	<u>\$35,996.00</u>	<u>(\$0.04)</u>	<u>\$43,635.96</u>	<u>\$35,996.00</u>
NET INCOME (LOSS)	<u>(\$44,773.59)</u>	<u>(\$276,987.00)</u>	<u>(\$232,213.41)</u>	<u>(\$693,827.40)</u>	<u>(\$276,987.00)</u>

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**Oregon State Bar
Professional Liability Fund
Excess Program
Statement of Operating Expense
12 Months Ended 12/31/2012**

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	<u>CURRENT</u> <u>MONTH</u>	<u>YEAR</u> <u>TO DATE</u> <u>ACTUAL</u>	<u>YEAR</u> <u>TO DATE</u> <u>BUDGET</u>	<u>VARIANCE</u>	<u>YEAR</u> <u>TO DATE</u> <u>LAST YEAR</u>	<u>ANNUAL</u> <u>BUDGET</u>
<u>EXPENSE:</u>						
Salaries	\$56,281.76	\$675,415.08	\$674,735.00	(\$680.08)	\$798,491.49	\$674,735.00
Benefits and Payroll Taxes	19,900.26	238,810.28	239,572.00	761.72	244,226.61	239,572.00
Investment Services	463.50	2,281.50	3,200.00	918.50	2,696.25	3,200.00
Office Expense	0.00	0.00	0.00	0.00	0.00	0.00
Allocation of Primary Overhead	22,969.58	275,634.96	275,635.00	0.04	388,937.88	275,635.00
Reinsurance Placement & Travel	0.00	3,933.47	12,000.00	8,066.53	5,733.38	12,000.00
Training	0.00	0.00	1,000.00	1,000.00	0.00	1,000.00
Printing and Mailing	3,732.60	5,300.86	5,000.00	(300.86)	4,283.30	5,000.00
Program Promotion	505.00	6,069.71	1,000.00	(5,069.71)	1,595.54	1,000.00
Other Professional Services	0.00	1,345.00	2,500.00	1,155.00	6,290.00	2,500.00
Software Development	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>
 TOTAL EXPENSE	 <u>\$103,852.70</u>	 <u>\$1,208,790.86</u>	 <u>\$1,214,642.00</u>	 <u>\$5,851.14</u>	 <u>\$1,452,254.45</u>	 <u>\$1,214,642.00</u>

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**Oregon State Bar
Professional Liability Fund
Combined Investment Schedule
12 Months Ended 12/31/2012**

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	CURRENT MONTH <u>THIS YEAR</u>	YEAR TO DATE <u>THIS YEAR</u>	CURRENT MONTH <u>LAST YEAR</u>	YEAR TO DATE <u>LAST YEAR</u>
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Dividends and Interest:

Short Term Bond Fund	\$18,087.07	\$202,322.79	\$31,771.39	\$195,362.54
Intermediate Term Bond Funds	291,236.92	519,527.14	68,647.26	303,125.23
Domestic Common Stock Funds	83,747.53	110,842.17	58,028.69	88,794.83
International Equity Fund	78,977.54	78,977.54	141,088.25	141,088.25
Real Estate	36,396.98	142,758.88	102,575.76	235,703.88
Hedge Fund of Funds	0.00	0.00	0.00	0.00
Real Return Strategy	<u>169,213.58</u>	<u>270,621.57</u>	<u>247,563.88</u>	<u>475,267.39</u>
Total Dividends and Interest	<u>\$677,659.62</u>	<u>\$1,325,050.09</u>	<u>\$649,675.23</u>	<u>\$1,439,342.12</u>

Gain (Loss) in Fair Value:

Short Term Bond Fund	(\$14,502.23)	\$284,635.31	(\$12,585.89)	\$61,308.85
Intermediate Term Bond Funds	(271,144.05)	248,701.30	62,932.10	14,598.16
Domestic Common Stock Funds	17,556.80	798,337.84	24,084.67	(420,781.83)
International Equity Fund	228,078.87	1,243,353.83	(143,572.87)	(1,198,859.08)
Real Estate	37,689.98	109,446.00	(26,595.92)	112,928.24
Hedge Fund of Funds	45,268.48	286,587.61	(18,441.87)	(294,549.77)
Real Return Strategy	<u>(134,459.99)</u>	<u>326,434.90</u>	<u>(246,839.83)</u>	<u>(281,900.31)</u>
Total Gain (Loss) in Fair Value	<u>(\$91,512.14)</u>	<u>\$3,297,496.79</u>	<u>(\$361,019.61)</u>	<u>(\$2,007,255.74)</u>

TOTAL RETURN

	<u>\$586,147.48</u>	<u>\$4,622,546.88</u>	<u>\$288,655.62</u>	<u>(\$567,913.62)</u>
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Portions Allocated to Excess Program:

DRAFT

Dividends and Interest	\$43,121.37	\$102,995.76	\$52,753.63	\$128,837.47
Gain (Loss) in Fair Value	<u>(5,176.58)</u>	<u>326,194.67</u>	<u>(29,314.79)</u>	<u>(106,522.19)</u>
TOTAL ALLOCATED TO EXCESS PROGRAM	<u>\$37,944.79</u>	<u>\$429,190.43</u>	<u>\$23,438.84</u>	<u>\$22,315.28</u>

PROPOSED-FORMAL OPINION 2013-XXXX

Accessing Information about Third Parties
Through a Social Networking Website

Facts:

Lawyer wishes to investigate an opposing party, a witness, or a juror by accessing the person's social media website. While viewing the publicly available information on the website, Lawyer learns that there is additional information that the person has kept from public view through privacy settings and that is available by submitting a request through the person's website.

Questions:

1. May Lawyer review a person's publicly available information on the internet?
2. May Lawyer, or an agent on behalf of Lawyer, request access to a person's non-public information?
3. May Lawyer or an agent on behalf of Lawyer use a computer username or other alias that does not identify Lawyer when requesting permission from the account holder to view non-public information?

Conclusions:

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

Discussion:

1. **Lawyer may access publicly available information on a social networking website.¹**

Oregon RPC 4.2 provides:

In representing a client or the lawyer's own interests, a lawyer shall not communicate or cause another to communicate on the subject

¹ Although Facebook, MySpace and Twitter are current popular social media sites, this opinion is meant to apply to any similar social networking websites.

of the representation with a person the lawyer knows to be represented by a lawyer on that subject unless:

- (a) the lawyer has the prior consent of a lawyer representing such other person;
- (b) the lawyer is authorized by law or by court order to do so; or
- (c) a written agreement requires a written notice or demand to be sent to such other person, in which case a copy of such notice or demand shall also be sent to such other person's lawyer.

Accessing the publicly available information on a person's social media website is not a "communication" prohibited by RPC 4.2. OSB Ethics Op No 2005-164 discusses the propriety of a lawyer accessing the public portions of an adversary's website and concludes that doing so is not "communicating" with the site owner within the meaning of RPC 4.2. The Opinion compared accessing a website to reading a magazine article or purchasing a book written by an adversary. The same analysis applies to publicly available information on a person's social media web pages.²

2. Lawyer may request access to non-public information if the person is not represented by counsel in that matter and no actual representation of disinterest is made by Lawyer.

To access non-public information on a social media website, a lawyer may need to make a specific request to the holder of the account.³ Typically that is done by clicking a box on the public portion of a person's social media site, which triggers an automated notification to the holder of the account asking whether he or she would like to accept the request. Absent actual knowledge that the person is represented by counsel, a

This analysis is not limited to adversaries in litigation or transactional matters; it applies to a lawyer who is accessing the publicly available information of any person. However, caution must be exercised with regard to jurors. Although a lawyer may review a juror's publicly available information on social networking websites, communication with jurors before, during and after a proceeding is generally prohibited. Accordingly, a lawyer may not send a request to a juror to access non-public personal information on a social networking website, nor may a lawyer ask an agent to do so. See RPC 3.5(b) (prohibiting ex parte communications with a juror during the proceeding unless authorized to do so by law or court order); RPC 3.5(c) (prohibiting communication with a juror after discharge if (1) the communication is prohibited by law or court order; (2) the juror has made known to the lawyer a desire not to communicate; or (3) the communication involves misrepresentation, coercion, duress or harassment); RPC 8.4(a)(4) (prohibiting conduct prejudicial to the administration of justice). See, generally, §61:808, ABA/BNA Lawyers' Manual on Professional Conduct and cases cited therein.

³ This is sometimes called "friending", although it may go by different names on different services, including "following" and "subscribing."

direct request for access to the person's non-public personal information is permissible. OSB Formal Ethics Op No 2005-164.⁴

In doing so, however, Lawyer must be mindful of Oregon RPC 4.3, which regulates communications with unrepresented persons. RPC 4.3 prohibits a lawyer from stating or implying that the lawyer is disinterested in the matter; moreover, if the lawyer "knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter" the lawyer is required to make an effort to correct the misunderstanding.⁵ A simple request to access non-public information does not imply that Lawyer is "disinterested" in the pending legal matter. On the contrary, it suggests some that Lawyer is interested in the person's social media information, although for an unidentified purpose.

Similarly, Lawyer's request for access to non-public information does not in and of itself make a representation about a lawyer's role. In the context of social media websites, the holder of the account has full control over who views the information available on his pages. The holder of the account may allow access to his social network to the general public or may decide to place some, or all, of that information behind "privacy settings," which restrict who has access to that information. The account holder can accept or reject requests for access. Accordingly, the holder's failure to inquire further about the identity or purpose of unknown access requestors is not the equivalent of misunderstanding the lawyer's role in the matter.⁶ By contrast, if

⁴ See, e.g., New York City Bar Formal Opinion 2010-2, which concludes that a lawyer "can – and should – seek information maintained on social networking sites, such as Facebook, by availing themselves of informal discovery, such as the truthful 'friending' of unrepresented parties * * *."

⁵ Oregon RPC 4.3 provides, in pertinent part:

In dealing on behalf of a client or the lawyer's own interests with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding.

The purpose of the rule is to avoid the possibility that a nonlawyer will believe lawyers "carry special authority" and that a non-lawyer will be "inappropriately deferential" to someone else's attorney. See also ABA Model Rule 4.3, Cmt. [1] ("An unrepresented person, particularly one not experienced in dealing with legal matters, might assume that a lawyer is disinterested in loyalties or is a disinterested authority on the law even when the lawyer represents a client."). The rule is designed to correct for the possibility that a nonlawyer will believe that lawyers have special authority and will be inappropriately deferential to another person's lawyer. As such, it applies only when a lawyer is known to the person to be acting in the capacity of a lawyer. *Apple Corps Ltd. V. Int'l. Collectors Society*, 15 F.Supp2d 456 (D.N.J. 1998) (rejecting application of 4.3 to lawyers and lawyers' investigators posing as customers to monitor compliance with a consent order).

⁶ Cf. *Murphy v. Perger* [2007] O.J. No. 5511, (S.C.J.) (Ontario, Canada) (requiring personal injury plaintiff to produce contents of Facebook pages, noting that "[t]he plaintiff could not have a serious expectation of privacy given that 366 people have been granted access to the private site.")

the holder of the account asks for additional information to identify Lawyer, or if Lawyer has some other reason to believe that the person misunderstands her role, Lawyer must provide the additional information or withdraw the request.

If Lawyer has actual knowledge that the holder of the account is represented by counsel on the subject of the matter, RPC 4.2 prohibits Lawyer from making the request except through the person's counsel or with the counsel's prior consent.⁷ See OSB Formal Ethics Op No. 2005-80 (discussing the extent to which certain employees of organizations are deemed represented for purposes of RPC 4.2).

3. Lawyer may not advise or supervise the use of deception in obtaining access to non-public information unless ORCP 8.4(b) applies.

Oregon RPC 8.4(a)(3) prohibits a lawyer from engaging in "conduct involving dishonesty, fraud, deceit or misrepresentation that reflects adversely on the lawyer's fitness to practice law."⁸ See also RPC 4.1(a) (prohibiting a lawyer from knowingly making a false statement of material fact to a third person in the course of representing a client). Accordingly, Lawyer may not engage in subterfuge designed to shield Lawyer's identity from the person when making the request.⁹

As an exception to RPC 8.4(a)(3), RPC 8.4(b) allows a lawyer to advise clients and others about or supervise, "lawful covert activity in the investigation of violations of civil or criminal law or constitutional rights, provided the lawyer's conduct is otherwise in compliance with these Rules of Professional Conduct." For purposes of the rule "covert activity" means:

[A]n effort to obtain information on unlawful activity through the use of misrepresentations or other subterfuge. 'Covert activity' may be commenced by a lawyer or involve a lawyer as an advisor or supervisor only when the lawyer in good faith believes there is a reasonable possibility that unlawful activity has taken place, is taking place or will take place in the foreseeable future.

In the limited instances allowed by the RPC 8.4(b) (more fully explicated in OSB Formal Ethics Op No 2005-173), Lawyer may advise or supervise another's deception to access a person's non-public information on a social media website.

⁷ *In re Newell*, 348, Or. 396, 413, 234 P.3d 967 (2010), (reprimanding lawyer who communicated on "subject" of the representation).

⁸ See *In re Carpenter*, 337 Or. 226, 95 P3d 203 (2004) (lawyer received public reprimand after assuming false identity on social media website).

⁹ See Oregon RPC 8.4(a) which prohibits a lawyer from violating the RPCs, from assisting or inducing another to do so, or from violating the RPCs "through the acts of another").

request of the former client, such affidavit shall be updated periodically to show actual compliance with the screening procedures. The law firm, the personally disqualified lawyer, or the former client may seek judicial review in a court of general jurisdiction of the screening mechanism used, or may seek court supervision to ensure that implementation of the screening procedures has occurred and that effective actual compliance has been achieved.”

According to the Comment to Washington’s rule, these requirements were added in 2011 in an effort to align Washington’s long-standing screening rule with the ABA Model Rule. The Comment also cautions that, “prior to undertaking the representation, non-disqualified firm members must evaluate the firm’s ability to provide competent representation even if the disqualified member can be screened in accordance with this Rule.”

Options for Amending Oregon’s Rule

The Legal Ethics Committee recognized the problem with Oregon’s rule, with its focus on notice to the disqualified lawyer’s former law firm and the underlying assumption that the firm continues to represent the client.

The simplest change that would eliminate the problem would be to amend subparagraphs (1) and (2) to substitute “former client” for “former law firm:”

(1) the personally disqualified lawyer shall serve on the lawyer’s former [*law firm*] **client** an affidavit attesting that during the period of the lawyer’s disqualification the personally disqualified lawyer will not participate in any manner in the matter or the representation and will not discuss the matter or the representation with any other firm member; and the personally disqualified lawyer shall serve, if requested by the former [*law firm*] **client**, a further affidavit describing the lawyer’s actual compliance with these undertakings promptly upon final disposition of the matter or representation;

(2) at least one firm member shall serve on the former [*law firm*] **client** an affidavit attesting that all firm members are aware of the requirement that the personally disqualified lawyer be screened from participating in or discussing the matter or the representation and describing the procedures being followed to screen the personally disqualified lawyer; and at least one firm member shall serve, if requested by the former [*law firm*] **client**, a further affidavit describing the actual compliance by the firm members with the procedures for screening the personally disqualified lawyer promptly upon final disposition of the matter or representation; and

On the other hand, the LEC believes this may be an opportunity to simplify Oregon’s rule and require only that the personally disqualified lawyer be screened and that any affected client is given prompt notice, leaving the mechanics of the screening to the lawyer and the new firm:

When a lawyer becomes associated with a firm, no lawyer associated in the firm shall knowingly represent a person in a matter in which that lawyer is disqualified under Rule

1.9, unless the personally disqualified lawyer is **promptly** screened from any form of participation or representation in the matter **and written notice of the screening procedures employed is promptly given to any affected former client.**

Under this formulation, practitioners would not be required to follow any particular procedure, but would need to ensure that the procedures employed are sufficient to meet the standard in the definition of “screened.” (That is the situation currently with regard to RPC 1.18, which allows a lawyer who consulted with a prospective client to be screened to avoid disqualification of the firm from representing an adverse party.)

The LEC recommends the second, simpler approach. The BOG may wish to consider sending the proposal out to the membership for a comment period and an opportunity for final review before it goes on the 2013 HOD agenda.

PROPOSED OREGON RPCs 7.1 THROUGH 7.5

(as recommended by the Legal Ethics Committee February 2013)

Current ORPC	Proposed ORPC	Explanation
<i>INFORMATION ABOUT LEGAL SERVICES</i>		
Rule 7.1 Communications Concerning a Lawyer's Services		
<p>(a) A lawyer shall not make or cause to be made any communication about the lawyer or the lawyer's firm, whether in person, in writing, electronically, by telephone or otherwise, if the communication:</p> <p>(1) contains a material misrepresentation of fact or law, or omits a statement of fact or law necessary to make the communication considered as a whole not materially misleading;</p> <p>(2) is intended or is reasonably likely to create a false or misleading expectation about results the lawyer or the lawyer's firm can achieve;</p> <p>(3) except upon request of a client or potential client, compares the quality of the lawyer's or the lawyer's firm's services with the quality of the services of other lawyers or law firms;</p> <p>(4) states or implies that the lawyer or the lawyer's firm specializes in, concentrates a practice in, limits a practice to, is experienced in, is presently handling or is qualified to handle matters or</p>	<p>A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.</p>	<p><i>The proposed new rule combines (a) and (a)(1) of the current rule and states the overarching prohibition against communications that are false or misleading either by misrepresentation or omission.</i></p> <p><i>The remaining specific prohibitions are eliminated, with the exception of (a)(4), which is now found in Rule 7.4.</i></p> <p><i>Eliminating a list of specific prohibitions will require lawyers to evaluate proposed communications on a case-by-case basis, but also focuses the analysis on the harm to be prevented, namely that communications not be false or misleading.</i></p> <p><i>The 2009 Advertising Task Force also recommended eliminating the enumerated list on the grounds that it was overbroad and underinclusive since it didn't include every prohibited type of communications while including some things that weren't necessarily either false or misleading.</i></p>

PROPOSED OREGON RPCs 7.1 THROUGH 7.5

(as recommended by the Legal Ethics Committee February 2013)

Current ORPC	Proposed ORPC	Explanation
<p>lawyer's firm have made statements about the lawyer or the lawyer's firm, unless the making of such statements can be factually substantiated;</p> <p>(10) contains any dramatization or recreation of events, such as an automobile accident, a courtroom speech or a negotiation session, unless the communication clearly and conspicuously discloses that a dramatization or recreation is being presented;</p> <p>(11) is false or misleading in any manner not otherwise described above; or</p> <p>(12) violates any other Rule of Professional Conduct or any statute or regulation applicable to solicitation, publicity or advertising by lawyers.</p>		
<p>(b) An unsolicited communication about a lawyer or the lawyer's firm in which services are being offered must be clearly and conspicuously identified as an advertisement unless it is apparent from the context that it is an advertisement.</p>		<p><i>This prohibition is duplicative and unnecessary since a communication whose nature isn't clear from the context is very likely misleading if not false, which is covered above.</i></p>
<p>(c) An unsolicited communication about a lawyer or the lawyer's firm in which services are being</p>		<p><i>This prohibition is now found in Rule 7.2(c).</i></p>

PROPOSED OREGON RPCs 7.1 THROUGH 7.5

(as recommended by the Legal Ethics Committee February 2013)

Current ORPC	Proposed ORPC	Explanation
offered must clearly identify the name and post office box or street address of the office of the lawyer or law firm whose services are being offered.		
(d) A lawyer may pay others for disseminating or assisting in the dissemination of communications about the lawyer or the lawyer's firm only to the extent permitted by Rule 7.2.		<i>This provision adds nothing and is duplicative of Rule 7.2, where to and is addressed more particularly.</i>
(e) A lawyer may not engage in joint or group advertising involving more than one lawyer or law firm unless the advertising complies with Rules 7.1, 7.2, and 7.3 as to all involved lawyers or law firms. Notwithstanding this rule, a bona fide lawyer referral service need not identify the names and addresses of participating lawyers.		<i>This is nothing more than another statement that communications are not permitted if they violate the "false or misleading" standard. It is an unnecessary duplication, particularly with reference to the provisions of Rules 7.2 and 7.3.</i>
Rule 7.2 Advertising		
(a) A lawyer may pay the cost of advertisements permitted by these rules and may hire employees or independent contractors to assist as consultants or advisors in marketing a lawyer's or law firm's services. A lawyer shall not otherwise compensate or give anything of value to a person or organization to promote, recommend or	(a) Subject to the requirements of Rules 7.1 and 7.3, a lawyer may advertise services through written, recorded or electronic communication, including public media.	<p><i>The new rule is a general permission for advertising in various media, provided the communications are not false or misleading and do not involve improper in-person contact.</i></p> <p><i>The current prohibition against paying someone else to recommend or secure employment is found in (b).</i></p>

PROPOSED OREGON RPCs 7.1 THROUGH 7.5

(as recommended by the Legal Ethics Committee February 2013)

Current ORPC	Proposed ORPC	Explanation
<p>secure employment by a client, or as a reward for having made a recommendation resulting in employment by a client, except as permitted by paragraph (c) or Rule 1.17.</p>		
<p>(b) A lawyer shall not request or knowingly permit a person or organization to promote, recommend or secure employment by a client through any means that involves false or misleading communications about the lawyer or the lawyer's firm. If a lawyer learns that employment by a client has resulted from false or misleading communications about the lawyer or the lawyer's firm, the lawyer shall so inform the client.</p>	<p>(b) A lawyer shall not give anything of value to a person for recommending the lawyer's services except that a lawyer may</p> <p>(1) pay the reasonable costs of advertisements or communications permitted by this Rule;</p> <p>(2) pay the usual charges of a legal service plan or a not-for-profit lawyer referral service; and</p> <p>(3) pay for a law practice in accordance with Rule 1.17.</p>	<p><i>The current rule's prohibition on allowing another to promote a lawyer through means involving false or misleading communications is eliminated as unnecessary in light of the overarching prohibition against false and misleading communications in Rule 7.1 and RPC 8.4, which makes it misconduct for a lawyer to violate the rules through the acts of another.</i></p> <p><i>New paragraph (b) continues the prohibition against paying another for recommending or securing employment subject to specific exceptions. New (b)(1) is virtually identical to current (a). New (b)(2) is currently found in ORPC 7.2(c).</i></p> <p><i>New (b)(3) reiterates language in current ORPC 1.5(e).</i></p> <p><i>The committee believes that the structure of the new rule is clearer.</i></p> <p><i>[Note: the proposal differs from ABA MR 7.2(b) in two significant respects. MR</i></p>

PROPOSED OREGON RPCs 7.1 THROUGH 7.5

(as recommended by the Legal Ethics Committee February 2013)

Current ORPC	Proposed ORPC	Explanation
		<p><i>7.2(b)(2) allows payment to a “qualified” lawyer referral service, which is defined as one approved an “an appropriate regulatory authority.” MR 7.2(b)(4) allows reciprocal referral agreements between lawyers or between lawyers and nonlawyer professionals, which is directly contradictory to Oregon RPC 5.4(e).]</i></p>
<p>(c) A lawyer or law firm may be recommended, employed or paid by, or cooperate with, a prepaid legal services plan, lawyer referral service, legal service organization or other similar plan, service or organization so long as:</p> <p>(1) the operation of such plan, service or organization does not result in the lawyer or the lawyer's firm violating Rule 5.4, Rule 5.5, ORS 9.160, or ORS 9.500 through 9.520;</p> <p>(2) the recipient of legal services, and not the plan, service or organization, is recognized as the client;</p> <p>(3) no condition or restriction on the exercise of any participating lawyer's professional judgment on behalf of a client is imposed by the plan, service or organization; and</p> <p>(4) such plan, service or</p>		<p><i>The permission to participate in legal service plans and referral services is in new Rule 7.2(b). The remainder of the current rule is unnecessary since all of the prohibited conduct is covered in other rules, including Oregon RPC 5.4, which prohibits lawyer from allowing their judgment to be influenced by others.</i></p>

PROPOSED OREGON RPCs 7.1 THROUGH 7.5

(as recommended by the Legal Ethics Committee February 2013)

Current ORPC	Proposed ORPC	Explanation
organization does not make communications that would violate Rule 7.3 if engaged in by the lawyer.		
	(c) Any communication made pursuant to this rule shall include the name and office address of at least one lawyer or law firm responsible for its content.	<i>This paragraph retains what is currently Oregon RPC 7.1(c).</i>
Rule 7.3 [Direct Contact with Prospective] Solicitation of Clients		
(a) A lawyer shall not by in-person, live telephone or real-time electronic contact solicit professional employment from a prospective client when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain, unless the person contacted: (1) is a lawyer; or (2) has a family, close personal, or prior professional relationship with the lawyer.	(a) A lawyer shall not by in-person, live telephone or real-time electronic contact solicit professional employment when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain, unless the person contacted: (1) is a lawyer; or (2) has a family, close personal, or prior professional relationship with the lawyer.	<i>The proposed new rule is identical to current Oregon RPC 7.3(a), but incorporates the recommendations of the ABA Ethics 20/20 Commission to change the title and deletes the phrase "from a prospective client." The reason for that change is to avoid confusion with the use of the phrase in Rule 1.18, where a prospective client is someone who has actually shared information with a lawyer.</i>
(b) A lawyer shall not solicit professional employment from a prospective client by written, recorded or electronic communication or by in-person, telephone or real-time electronic contact even when not otherwise prohibited by paragraph (a), if: (1) the lawyer knows or reasonably should know that	(b) A lawyer shall not solicit professional employment by written, recorded or electronic communication or by in-person, telephone or real-time electronic contact even when not otherwise prohibited by paragraph (a), if: (1) the lawyer knows or reasonably should know that the physical, emotional or	<i>Following the recommendation of the ABA Ethics 20/20 Commission, the proposed amended rule substitutes "target of the solicitation" for "prospective client" in subparagraphs (1) and (2). The proposed rule also retains Oregon's (b)(1), which was eliminated from the Model</i>

PROPOSED OREGON RPCs 7.1 THROUGH 7.5

(as recommended by the Legal Ethics Committee February 2013)

Current ORPC	Proposed ORPC	Explanation
<p>the physical, emotional or mental state of the prospective client is such that the person could not exercise reasonable judgment in employing a lawyer;</p> <p>(2) the prospective client has made known to the lawyer a desire not to be solicited by the lawyer; or</p> <p>(3) the solicitation involves coercion, duress or harassment.</p>	<p>mental state of the target of the solicitation is such that the person could not exercise reasonable judgment in employing a lawyer;</p> <p>(2) the target of the solicitation has made known to the lawyer a desire not to be solicited by the lawyer; or</p> <p>(3) the solicitation involves coercion, duress or harassment.</p>	<p><i>Rule several years ago for reasons that are not entirely clear.</i></p>
<p>(c) Every written, recorded or electronic communication from a lawyer soliciting professional employment from a prospective client known to be in need of legal services in a particular matter shall include the words "Advertisement" in noticeable and clearly readable fashion on the outside envelope, if any, and at the beginning and ending of any recorded or electronic communication, unless the recipient of the communication is a person specified in paragraph (a).</p>	<p>(c) Every written, recorded or electronic communication from a lawyer soliciting professional employment from anyone known to be in need of legal services in a particular matter shall include the words "Advertising Material" on the outside envelope, if any, and at the beginning and ending of any recorded or electronic communication, unless the recipient of the communication is a person specified in paragraphs (a)(1) or (a)(2).</p>	<p><i>The new rule is virtually identical to the current rule, except that the new rule substitutes "anyone" for prospective client" and requires the words "Advertising Material" instead of "Advertisement." It also eliminates the requirement that the words be "in noticeable and clearly readable fashion," on the ground that the phrase is open to varying interpretation and because if the notification of "Advertising Material" isn't sufficiently readable it constitutes no notice and would be a violation of the rule.</i></p>
<p>(d) Notwithstanding the prohibitions in paragraph (a), a lawyer may participate with a prepaid or group legal service plan operated by an</p>	<p>(d) Notwithstanding the prohibitions in paragraph (a), a lawyer may participate with a prepaid or group legal service plan operated by an</p>	<p><i>The new rule is identical to the current rule.</i></p>

PROPOSED OREGON RPCs 7.1 THROUGH 7.5

(as recommended by the Legal Ethics Committee February 2013)

Current ORPC	Proposed ORPC	Explanation
organization not owned or directed by the lawyer that uses in-person or telephone contact to solicit memberships or subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan.	organization not owned or directed by the lawyer that uses in-person or telephone contact to solicit memberships or subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan.	
Rule 7.4 (Reserved)		
		<p><i>ABA MR 7.4 provides:</i></p> <p><i>Rule 7.4 Communication of Fields of Practice and Specialization</i></p> <p><i>(a) A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law.</i></p> <p><i>(b) A lawyer admitted to engage in patent practice before the United States Patent and Trademark Office may use the designation "Patent Attorney" or a substantially similar designation.</i></p> <p><i>(c) A lawyer engaged in Admiralty practice may use the designation "Admiralty," "Proctor in Admiralty" or a substantially similar designation.</i></p> <p><i>(d) A lawyer shall not state or imply that a lawyer is certified as a specialist in a particular field of law, unless:</i></p> <p><i>(1) the lawyer has been certified as a specialist by an organization that has been approved by an appropriate state authority or that has been accredited by the American Bar Association; and</i></p> <p><i>(2) the name of the certifying organization is clearly identified in the communication.</i></p>

PROPOSED OREGON RPCs 7.1 THROUGH 7.5

(as recommended by the Legal Ethics Committee February 2013)

Current ORPC	Proposed ORPC	Explanation
		<i>The committee recommends not adopting any of the provisions on the ground that they are unnecessarily duplicative of the overarching prohibition against false or misleading communications.</i>
Rule 7.5 Firm Names and Letterheads		
(a) A lawyer may use professional announcement cards, office signs, letterheads, telephone and electronic directory listings, legal directory listings or other professional notices so long as the information contained therein complies with Rule 7.1 and other applicable Rules.	(a) A lawyer shall not use a firm name, letterhead or other professional designation that violates Rule 7.1. A trade name may be used by a lawyer in private practice if it does not imply a connection with a government agency or with a public or charitable legal services organization and is not otherwise in violation of Rule 7.1.	<i>This new rule is similar current Oregon RPC 7.5(a), but includes the permission to use a trade name that is currently in Oregon RPC 7.5(c)(2). The phrase "professional designation" is broad enough to capture the listings enumerated in the current rule as well as other, more modern, uses of firm names. It also includes the prohibition against falsely implying a connection with government or charitable organization that is currently in Oregon RPC 7.1(a)(5) and 7.5(c)(2).</i>
(b) A lawyer may be designated "Of Counsel" on a letterhead if the lawyer has a continuing professional relationship with a lawyer or law firm, other than as a partner or associate. A lawyer may be designated as "General Counsel" or by a similar professional reference on stationery of a client if the lawyer or the lawyer's firm	(b) A law firm with offices in more than one jurisdiction may use the same name or other professional designation in each jurisdiction, but identification of the lawyers in an office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.	<i>The LEC recommends deleting current(b) as being an unnecessary focus on the business relationships between lawyers. The definition of "firm" continues to include Of Counsel, which the committee believes is sufficient to capture the conflict aspect of "of counsel" relationships.</i> <i>The new rule retains the</i>

PROPOSED OREGON RPCs 7.1 THROUGH 7.5

(as recommended by the Legal Ethics Committee February 2013)

Current ORPC	Proposed ORPC	Explanation
devotes a substantial amount of professional time in the representation of the client.		<i>requirement of current Oregon RPC 7.5(f).</i>
<p>(c) A lawyer in private practice:</p> <p>(1) shall not practice under a name that is misleading as to the identity of the lawyer or lawyers practicing under such name or under a name that contains names other than those of lawyers in the firm;</p> <p>(2) may use a trade name in private practice if the name does not state or imply a connection with a governmental agency or with a public or charitable legal services organization and is not otherwise in violation of Rule 7.1; and</p> <p>(3) may use in a firm name the name or names of one or more of the retiring, deceased or retired members of the firm or a predecessor law firm in a continuing line of succession. The letterhead of a lawyer or law firm may give the names and dates of predecessor firms in a continuing line of succession and may designate the firm or a lawyer practicing in the firm as a professional corporation.</p>	<p>(c) The name of a lawyer holding a public office shall not be used in the name of a law firm, or in communications on its behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm.</p>	<p><i>The new rule is similar to the prohibition in current RPC 7.5(d), except that it applies only to lawyer holding public office.</i></p> <p><i>Current (c)(1) is essentially the same as new 7.5(d).</i></p> <p><i>Current (c)(2) is covered in new 7.5(a).</i></p> <p><i>Current (c)(3) is a relic of a prior era and is unnecessary in view of the accepted use of "legacy" law firm names or names that don't name any of the lawyers.</i></p>
(d) Except as permitted by paragraph (c), a lawyer shall not permit his or her name to	(d) Lawyers may state or imply that they practice in a partnership or other	<i>The new rule is a succinct but broad statement that covers much of what is currently in</i>

PROPOSED OREGON RPCs 7.1 THROUGH 7.5

(as recommended by the Legal Ethics Committee February 2013)

Current ORPC	Proposed ORPC	Explanation
<p>remain in the name of a law firm or to be used by the firm during the time the lawyer is not actively and regularly practicing law as a member of the firm. During such time, other members of the firm shall not use the name of the lawyer in the firm name or in professional notices of the firm. This rule does not apply to periods of one year or less during which the lawyer is not actively and regularly practicing law as a member of the firm if it was contemplated that the lawyer would return to active and regular practice with the firm within one year.</p>	<p>organization only when that is a fact.</p>	<p><i>7.5(c),(d) and (e).</i></p>
<p>(e) Lawyers shall not hold themselves out as practicing in a law firm unless the lawyers are actually members of the firm.</p>		
<p>(f) Subject to the requirements of paragraph (c), a law firm practicing in more than one jurisdiction may use the same name in each jurisdiction, but identification of the firm members in an office of the firm shall indicate the jurisdictional limitations of those not licensed to practice in the jurisdiction where the office is located.</p>		<p><i>See proposed new 7.5(b) above.</i></p>

Meeting Date: February 22, 2013

From: MCLE Committee

Re: Proposed amendments to Rules 5.2(c) (1)(ii) and (g) and Regulation 5.250

...

5.2 Other CLE Activities.

...

(c) Legal Research and Writing.

(1) Legal research and writing activities, including the preparation of written materials for use in a teaching activity may be accredited provided the activity satisfies the following criteria:

- (i) It deals primarily with one or more of the types of issues for which group CLE activities can be accredited as described in Rule 5.1(b); and
- (ii) It has been published in the form of articles, CLE course materials, chapters, or books, or issued as a final product of the Legal Ethics Committee or a final instruction of the Uniform Civil Jury Instructions Committee or the Uniform Criminal Jury Instructions Committee, personally authored or edited in whole or in substantial part, by the applicant; and
- (iii) It contributes substantially to the legal education of the applicant and other attorneys; and
- (iv) It is not done in the regular course of the active member's primary employment.

(2) The number of credit hours shall be determined by the MCLE Administrator, based on the contribution of the written materials to the professional competency of the applicant and other attorneys. One hour of credit will be granted for each sixty minutes of research and writing, but no credit shall be granted for time spent on stylistic editing.

(d) Legal Ethics Service. A member serving on the Oregon State Bar Legal Ethics Committee, Client Security Fund Committee, Commission on Judicial Fitness & Disability, Local Professional Responsibility Committees, State Professional Responsibility Board, and Disciplinary Board or serving as volunteer bar counsel or volunteer counsel to an accused in Oregon disciplinary proceedings may earn two ethics credits for each twelve months of service.

(e) Legislative Service. General credit hours may be earned for service as a member of the Oregon Legislative Assembly while it is in session.

(f) New Lawyer Mentoring Program (NLMP)

(1) Mentors may earn CLE credit for serving as a mentor in the Oregon State Bar's New Lawyer Mentoring Program.

(2) New lawyers who have completed the NLMP may be awarded CLE credits to be used in their first three-year reporting period.

(g) Jury Instructions Committee Service. A member serving on the Oregon State Bar Uniform Civil Jury Instructions Committee or Uniform Criminal Jury Instructions Committee may earn two general credits for each 12 months of service.

(h) A member seeking credit for any of the activities described in Rule 5.2 must submit a written application on the form designated by the MCLE Administrator for Other CLE Activities.

...

Regulations to MCLE Rule 5 Accreditation Standards

5.100 Other CLE Activities. The application procedure for accreditation of Other CLE Activities shall be in accordance with MCLE Rule 5.2 and Regulation 4.300.

(a) With the exception of panel presentations, when calculating credit for teaching activities pursuant to MCLE Rule 5.2, for presentations where there are multiple presenters for one session, the number of minutes of actual instruction will be divided by the number of presenters unless notified otherwise by the presenter. Members who participate in panel presentations may receive credit for the total number of minutes of actual instruction. Attendance credit may be claimed for any portion of an attended session not receiving teaching credit.

(b) Credit for legislative service may be earned at a rate of 1.0 general credit for each week or part thereof while the legislature is in session.

(c) Members who serve as mentors in the Oregon State Bar's New Lawyer Mentoring Program (NLMP) may earn eight credits, including two ethics credits, upon completion of the plan year. If another lawyer assists with the mentoring, the credits must be apportioned between them.

(d) Upon successful completion of the NLMP, new lawyers may earn six general/practical skills credits to be used in their first three-year reporting period.

5.200 Legal Research and Writing Activities.

(a) For the purposes of accreditation of Legal Research and Writing, all credit hours shall be deemed earned on the date of publication or issuance of the written work.

(b) Legal Research and Writing that supplements an existing CLE publication may be accredited if the applicant provides a statement from the publisher confirming that research on the existing publication revealed no need for supplementing the publication's content.

5.250 Jury Instructions Committee Service. To be eligible for credit under MCLE Rule 5.2(h), a member of a jury instructions committee must attend at least six hours of committee meetings during the relevant 12-month period.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: February 22, 2013
From: Sylvia E. Stevens, Executive Director
Re: CSF Claims Recommended for Payment

Action Recommended

Consider the CSF Committee's recommendation that awards be made in the following matters:¹

No. 2012-24 HOWLETT (Steinbeck)	\$750.00
No. 2012-80 KAUFMAN (Lite)	\$1,207.24
No. 2012-15 GRUETTER (Gordon)	\$50,000.00
No. 2012-31 GRUETTER (Roccasalva)	\$61,682.33 (2 claims)
No. 2012-35 GRUETTER (Martinez)	\$7,061.23
No. 2012-61 McBRIDE (Carosella)	\$3,350.00
No. 2012-63 McBRIDE (Lua)	\$2,500.00
No. 2012-76 McBRIDE (Hernandez Rodriguez)	\$4,100.00
No. 2012-78 McBRIDE (Cortez Hernandez)	\$3,300.00
No. 2012-McBRIDE (Valdivia)	\$3,000.00
No. 2012-88 McBRIDE (Palacios Rodriguez)	\$1,500.00
No. 2012-91 McBRIDE (Garibay, Rudolfo)	\$1,500.00
No. 2012-92 McBRIDE (Lucas-Lepe)	\$4,900.00
No. 2012-93 McBRIDE (Ramirez, A.)	\$5,000.00
No. 2012-94 McBRIDE (Keiper)	\$4,000.00
No. 2012-96 McBRIDE (Maldonado, Jose E.)	\$3,100.00
No. 2012-110 McBRIDE (Melchor)	\$4,500.00
TOTAL	\$161,450.80

¹ The CSF Committee recommends waiver of the requirement for a judgment in all of these cases. With McBride and Gruetter, the conduct giving rise to the claims was either part of or very similar to the conduct that resulted in their Form B resignations. In the other cases, the circumstances are such that it would be futile or a hardship for the claimants to pursue civil judgments. Moreover, Howlett is deceased, Kaufman's whereabouts are unknown, McBride has filed bankruptcy and Gruetter is likely to be in prison soon.

*Loan Repayment
Assistance Program*

Policies and Guidelines

**Adopted by the Board of Governors
November 18, 2006**

Revised January 1, 2012[23](#)

The mission of the Oregon State Bar’s Loan Repayment Assistance Program is to attract and retain public service lawyers by helping them pay their educational debt.

Statement of Purpose

The Oregon State Bar recognizes that substantial educational debt can create a financial barrier which prevents lawyers from pursuing or continuing careers in public service law. The Oregon State Bar’s program of loan repayment assistance is intended to reduce that barrier for these economically-disadvantaged lawyers, thereby making public service employment more feasible.

Section 1 – Administrative Partners

(A) *Advisory Committee*

(i) Membership

An Advisory Committee will be appointed by the Oregon State Bar (OSB) Board of Governors, and will be comprised of nine members who meet the following criteria:

- OSB President, or member of the Board of Governors designated by the President
- Chair of the OSB New Lawyers Division, or designee
- Representative from an Oregon law school, preferably with financial aid expertise
- Representative from the indigent criminal defense area of public service law
- Representative from a county district attorney’s office
- Representative from the civil area of public service law
- Three at-large members who are OSB members, represent geographical diversity, and have shown a commitment to public service law

(ii) Appointment and Administration

- OSB President and Chair of the OSB New Lawyers Division, or designees, will serve for a term of one year.
- Other Advisory Committee members will serve for a term of three years and may be reappointed for one additional term.
- Advisory Committee members will elect a Chair and such other officers as they determine are necessary from among Advisory Committee members. Officers shall serve a one-year term, subject to renewal.
- One-third of the initial appointments will be for one year, one-third for two years, and one-third for three years. The OSB Board of Governors will determine which of the initial positions is for which length.
- The OSB will designate a staff person to support the Advisory Committee’s work.
- Current applicants for or recipients of LRAP loans may not serve on the Advisory Committee.

(iii) Advisory Committee Duties

- Select participants for the loan repayment assistance program (LRAP or the Program), and report the selections to the OSB.

- Report annually to the OSB Access to Justice Committee on the Program's status.
- Amend and set policy guidelines as needed for the Program.
- Raise funds to achieve programmatic objectives.
- Adopt procedures to avoid conflicts of interest.
- Make clear program rules to avoid grievances.

(B) *Oregon State Bar*

- Support the Advisory Committee's work through provision of a part-time staff person
- Receive and invest member dues designated for LRAP
- Administer other funds raised by the Advisory Committee
- Receive and review LRAP applications for completeness and eligibility, and forward completed applications from eligible applicants to the Advisory Committee
- Disburse LRAP money to participants selected by the Advisory Committee.
- Receive and review annual certifications of continuing LRAP eligibility.
- Provide marketing and advertising services for the Program, including an LRAP website which includes frequently asked questions with responses.
- Coordinate response to grievances submitted by Program participants.
- Handle inquiries about LRAP through the staff person or, if necessary, forward such inquiries to the Advisory Committee.

Section 2 – Requirements for Program Participation

(A) *Application and Other Program Procedures*

- [Applicants must fully complete the Program application, submit annual certifications and follow other Program procedures.](#)
- [Previous recipients may apply.](#)

(B) *Qualifying Employment*

- Employment must be within the State of Oregon.
- Qualifying employment includes employment as a practicing attorney with civil legal aid organizations, other private non-profit organizations providing direct legal representation of low-income individuals, as public defenders or as deputy district attorneys.
- Judicial clerks and attorneys appointed on a case-by-case basis are not eligible.
- Thirty-five hours or more per week will be considered full-time employment.
- Part-time employees are eligible to apply for the Program, but participation may be prorated at the discretion of the Advisory Committee.

(C) *Graduation/License/Residency Requirements*

- Program applicants must be licensed to practice in Oregon.
- Program participation is not limited to graduates of Oregon law schools. Graduates of any law school may apply.
- Program participation is not limited to recent law school graduates. Any person meeting Program requirements, as outlined herein, may apply.

- Program participation is not limited to Oregon residents, provided the applicant works in Oregon and meets other Program requirements.

(D) *Salary Cap for Initial Applicants*

Applicants with full time salaries greater than \$55,000 at the time of initial application will be ineligible for Program participation.

- The Advisory Committee may annually adjust the maximum eligible salary.
- As more fully described in Section 3(B)(ii), Program participants may retain eligibility despite an increase in salary above the cap set for initial participation.

(E) *Eligible Loans*

All graduate and undergraduate educational debt in the applicant's name will be eligible for repayment assistance.

- Applicants with eligible debt at the time of initial application less than ~~\$50,000~~ 35.000 will be ineligible for Program participation.
- If debt in the applicant's name and in others' names is consolidated, the applicant must provide evidence as to amount in the applicant's name prior to consolidation.
- Loan consolidation or extension of repayment period is not required.
- Program participants who are in default on their student loans will be ineligible to continue participating in the Program (see 4(C)(v) below for more details).

Section 3 – Description of Benefit to Program Participants

(A) *Nature of Benefit*

The Program will make a forgivable loan (LRAP loan) to Program participants.

(i) Amount and Length of Benefit

- LRAP loans will not exceed \$5,000 per year per Program participant for a maximum of three consecutive years. LRAP loans cannot exceed the annual student loan minimum payments of the participant.
- .
- The Advisory Committee reserves discretion to adjust the amount of the LRAP loan and/or length of participation based on changes in the availability of program funding.
- LRAP loans will be disbursed in two equal payments per year. .

(ii) Interest on LRAP Loans

Interest will accrue from the date the LRAP loan is disbursed, at the rate per annum of Prime, as published by the Wall Street Journal as of April 15 of the year in which the loan is awarded, not to exceed nine percent.

(iii) Federal Income Tax Liability

Each Program participant is responsible for any tax liability the Program participant may incur, and neither the Advisory Committee nor the OSB can give any Program participant legal advice as to whether a forgiven LRAP loan must be treated as taxable income.

Program participants are advised to consult a tax advisor about the potential income tax implications of LRAP loans. However, the intent of the Program is for LRAP loans which are forgiven to be exempt from income tax liability.

(B) *Forgiveness and Repayment of LRAP Loans*

The Program annually will forgive one year of loans as of April 15 every year if the Participant has been in qualifying employment the prior year and has paid at least the amount of his/her LRAP loan on his/her student loans. Only a complete year (12 months from April 15, the due date of application) of qualifying employment counts toward LRAP loan forgiveness.

(i) Loss of Eligibility Where Repayment Is Required

Program participants who become ineligible for Program participation because they leave qualifying employment must repay LRAP loans, including interest, for any amounts not previously forgiven.

- The repayment period will be equal to the number of months during which the Program participant participated in the Program (including up to three months of approved leave).
- The collection method for LRAP loans not repaid on schedule will be left to the discretion of the Oregon State Bar.
- Participants shall notify the Program within 30 days of leaving qualifying employment.

(ii) Loss of Eligibility Where Repayment Is Not Required

Program participants who become ineligible for continued Program participation due to an increase in income from other than qualifying employment (see Section 4(C)(iv)) or because their student loans are in default (see Section 4(C)(v)) will not receive any additional LRAP loans. Such Program participants will remain eligible to receive forgiveness of LRAP loans already disbursed so long as the Program participant remains in qualifying employment and submits an employer certification pursuant to Section 4(C)(iii).

(iii) Exception to Repayment Requirement

A Program participant may apply to the Advisory Committee for a waiver of the repayment requirement if (s)he has accepted public interest employment in another state, or for other exceptional circumstances. Such Program participants will not receive any additional LRAP loans.

(C) *Leaves of Absence*

Each Program participant will be eligible to continue to receive benefits during any period of leave approved by the Program participant's employer. If any such approved leave period extends for more than three months, the amount of time the Program participant must remain in qualifying employment before an LRAP Loan is forgiven is extended by the length of the leave in excess of three months. This extra time is added to the end of the year in which the leave is taken and thereafter, the starting date of the new

year is reset based upon the new ending date of the year in which the extended leave is taken.

Section 4 – Program Procedures

(A) *Application and Disbursement Procedure*

- Applications submitted to the Advisory Committee must be postmarked or delivered to the Oregon State Bar office by April 15 of each year.
 - Applicants must be members of the OSB already engaged in qualifying employment by the application deadline.
 - Applicants may not commence the application process prior to receiving bar exam results.
 - Unsuccessful applicants will get a standard letter drafted by the Advisory Committee and may reapply in future years as long as they meet the qualifications.
- Applicants will be notified by June 1 of each year as to whether or not they have been selected for Program participation in accordance with the selection criteria set forth in Section 4(B).
- Those applicants selected as Program participants will receive a promissory note for the first year of LRAP loans along with their notification of selection. The executed promissory note will be due to the Advisory Committee by June 15.
- Initial disbursement of LRAP loans will be made by July 1 provided the executed promissory note has been returned.
- In conjunction with the annual certification procedure set forth in Section 4(C), persons who remain eligible Program participants will be sent a new promissory note, covering the LRAP loan in the upcoming year by June 1, which must be executed and returned by June 15.
- Ongoing disbursement of loans to persons who remain Program participants will be made on or about July 1 of each year.

(B) *Program Participant Selection*

(i) *Factors to be Considered*

- Meeting the salary, debt and employment eligibility for the Program does not automatically entitle an applicant to receive a LRAP loan. If the Advisory Committee needs to select among applicants meeting the salary, debt and employment eligibility criteria, it may take into account the following factors:
 - Demonstrated commitment to public service;
 - Financial need;
 - Educational debt, monthly payment to income ratio, and/or forgivability of debt;
 - Extraordinary personal expenses;
 - Type and location of work;
 - Assistance from other loan repayment assistance programs;
- The Advisory Committee reserves the right to accord each factor a different weight, and to make a selection among otherwise equally qualified applicants.
- If there are more eligible applicants than potential Program participants for a given year, the Advisory Committee will keep the materials submitted by other applicants

for a period of six months in the event a selected individual does not participate in the Program.

(ii) Other Factors to be Considered Related to Applicant's Income

The following factors, in addition to the applicant's salary from qualifying employment, may be considered in determining applicant's income:

- Earnings and other income as shown on applicant's most recent tax return
- Income-producing assets;
- Medical expenses;
- Child care expenses;
- Child support; and
- Other appropriate financial information.

(C) Annual Certification of Program Participant's Eligibility

(i) Annual Certifications Required

Program participants and their employers will be required to provide annual certifications to the OSB by April 15 that the participant remains qualified for continued Program participation. Annual certifications forms will be provided by the Program. The OSB will verify that the Program participants remain eligible to receive LRAP loans and will obtain new executed promissory notes by June 15 prior to disbursing funds each July 1.

(ii) Program Participant Annual Certifications - Contents

The annual certifications submitted by Program participants will include:

- Evidence that payments have been made on student's loans in at least the amount of the LRAP loan for the prior year and evidence that student loan is not in default.
- Completed renewal application demonstrating continued program eligibility

(iii) Employer Certification - Contents

The annual certifications submitted by employers will include:

- Evidence that the Program participant remains in qualifying employment; and
- Evidence of the Program participant's current salary and, if available, salary for the upcoming year.

(iv) Effect of Increase in Salary and Income and Changes in Circumstances

Program participants remain eligible for the Program for three years despite increases in salary provided that they remain in qualifying employment with the same employer and are not in default on their student loans. If a Program participant's financial condition changes for other reasons, the Advisory Committee may make a case-by-case determination whether the Program participant may receive any further LRAP loans. Even if no further LRAP loans are received, this increase in income will not affect the LRAP loan forgiveness schedule so long as the Program participant remains in qualifying employment and submits an employer certification pursuant to Section 4(C)(iii).

(v) Effect of Default on Student Loans

Program participants who are in default on their student loans will be ineligible to receive further LRAP Loans, but may seek to have LRAP loans forgiven in accordance with the loan forgiveness schedule if they remain in qualifying employment and submit an employer certification pursuant to Section 4(C)(iii).

(vi) Voluntary Withdrawal from Program

A Program participant may voluntarily forgo future LRAP loans despite retaining eligibility (e.g., the Program participant remains in qualifying employment and receives a substantial increase in salary). In such a case, LRAP loans already received will be forgiven in accordance with the loan forgiveness schedule so long as the Program participant remains in qualifying employment and submits an employer certification as otherwise required under Section 4(C)(iii).

(D) *Dispute/Grievance Resolution*

- Grievance procedure applies only to Program participants, not applicants.
- Program participants have 30 days to contest a determination in writing.
- The Advisory Committee has 60 days to respond.
- The Advisory Committee's decision is final, subject to BOG review.

Meeting Date: February 22, 2013
From: David Wade, Chair, Governance and Strategic Planning Committee
Re: CSF Authority to Resolve Small Awards

To effect the proposed change, the GSP Committee recommends that the CSF Rule 4.11¹ be amended as follows:

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 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.

4.11. Claims for which the award is less than \$5,000 may be finally approved by the Committee. All other [C]claims approved by the Committee shall be reviewed by the Board of Governors prior to final action being taken thereon. The Committee shall provide reports to the Board of Governors reflecting all awards finally approved by the Committee since the last Board meeting.

4.12 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.

¹ The text of preceding and following rules are included for context.

Amendments to Reinstatement Rules of Procedure -
To Allow Executive Director to Review and Act on Most BR 8.1 Applications

Title 8 — Reinstatement

Rule 8.1 Reinstatement — Formal Application Required.

(a) Applicants. Any person who has been a member of the Bar, but who has

- (i) resigned under Form A of these rules more than five years prior to the date of application for reinstatement and who has not been a member of the Bar during such period; or
- (ii) resigned under Form B of these rules prior to January 1, 1996; or
- (iii) been disbarred as a result of a disciplinary proceeding commenced by formal complaint before January 1, 1996; or
- (iv) been suspended for misconduct for a period of more than six months; or
- (v) been suspended for misconduct for a period of six months or less but has remained in a suspended status for a period of more than six months prior to the date of application for reinstatement; or
- (vi) been enrolled voluntarily as an inactive member for more than five years; or
- (vii) been involuntarily enrolled as an inactive member; or
- (viii) been suspended for any reason and has remained in that status more than five years,

and who desires to be reinstated as an active member or to resume the practice of law in this state shall be reinstated as an active member of the Bar only upon formal application and compliance with the Rules of Procedure in effect at the time of such application. Applicants for reinstatement under this rule must file a completed application with the Bar on a form prepared by the Bar for such purpose. The applicant shall attest that the applicant did not engage in the practice of law except where authorized to do so during the period of the applicant's inactive status, suspension, disbarment or resignation. A reinstatement to inactive status shall not be allowed under this rule. The application for reinstatement of a person who has been suspended for a period exceeding six months shall not be made earlier than three months before the earliest possible expiration of the period specified in the court's opinion or order of suspension.

(b) Required Showing. Each applicant under this rule must show that the applicant has good moral character and general fitness to practice law and that the resumption of the practice of law in this state by the applicant will not be detrimental to the administration of justice or the public interest. No applicant shall resume the practice of law in this state or active membership status unless all the requirements of this rule are met.

(c) Learning and Ability. In addition to the showing required in BR 8.1(b), each applicant under this rule who has remained in a suspended or resigned status for more than three years or has been enrolled voluntarily or involuntarily as an inactive member for more than five years must show that the applicant has the requisite learning and ability to practice law in this state. The ~~Board-Bar~~ may recommend and the Supreme Court may require as a condition precedent to reinstatement that the applicant take and pass the bar examination administered by the Board of Bar Examiners, or successfully complete a prescribed course of continuing legal education. Factors to be considered in determining an applicant's learning and ability include, but are not limited to: the length of time since the applicant was an active member of the Bar; whether and when the applicant has practiced law in Oregon; whether the applicant practiced law in any jurisdiction during the period of the applicant's suspension, resignation or inactive status in this state; and whether the applicant has participated in continuing legal education activities during the period of suspension or inactive status in this state.

(d) Fees. In addition to the payments required in BR 8.6, an applicant under this rule shall pay at the time the application for reinstatement is filed, an application fee of \$500.

(e) Review by Executive Director; Referral of Application to Board. If, after review of an application filed under BR 8.1 and any information gathered in the investigation of the application, the Executive Director determines that the applicant has made the showing required by BR 8.1(b), the Executive Director shall recommend to the Supreme Court, as provided in BR 8.7, that the application be granted, conditionally or unconditionally. If the Executive Director is unable to determine from a review of an application and any information gathered in the investigation of the application that the applicant has made the showing required by BR 8.1(b), the Executive Director shall refer the application to the Board for consideration, with notice to the applicant.

(f) Board Consideration of Application. If, after a referral from the Executive Director, the Board determines from its review of the application and any information gathered in the investigation of the application that the applicant has made the showing required by BR 8.1(b), the Board shall recommend to the Supreme Court, as provided in BR 8.7, that the application be granted, conditionally or unconditionally. If the Board determines that the applicant has not made the showing required by BR 8.1(b), the Board shall recommend to the Supreme Court that the application be denied.

Rule 8.2 Reinstatement — Informal Application Required.

(a) Applicants. Any person who has been a member of the Bar, but who has

(i) resigned under Form A of these rules for five years or less prior to the date of application for reinstatement, and who has not been a member of the Bar during such period; or

(ii) been enrolled voluntarily as an inactive member for five years or less prior to the date of application for reinstatement; or

(iii) been suspended for failure to pay the Professional Liability Fund assessment, Client Security Fund assessment, or membership fees or penalties and has remained in that status more than six months but not in excess of five years prior to the date of application for reinstatement,

(iv) been suspended for failure to file with the Bar a certificate disclosing lawyer trust accounts and has remained in that status more than six months but not in excess of five years prior to the date of application for reinstatement,

may be reinstated by the Executive Director by filing an informal application for reinstatement with the Bar and compliance with the Rules of Procedure in effect at the time of such application. The informal application for reinstatement shall be on a form prepared by the Bar for such purpose. The applicant shall attest that the applicant did not engage in the practice of law except where authorized to do so during the period of the applicant's inactive status, suspension or resignation. Reinstatements to inactive status shall not be allowed under this rule except for those applicants who were inactive and are seeking reinstatement to inactive status after a financial suspension. No applicant shall resume the practice of law in this state or active or inactive membership status unless all the requirements of this rule are met.

(b) Required Showing. Each applicant under this rule must show that the applicant has good moral character and general fitness to practice law and that the resumption of the practice of law in this state by the applicant will not be detrimental to the administration of justice or the public interest. No applicant shall resume the practice of law in this state or active membership status unless all the requirements of this rule are met.

(c) Fees. In addition to the payments required in BR 8.6, an applicant under this rule shall pay at the time the application for reinstatement is filed, an application fee of \$250.

(d) Exceptions. Any applicant otherwise qualified to file for reinstatement under this rule but who

(i) during the period of the member's resignation, has been convicted in any jurisdiction of an offense which is a misdemeanor involving moral turpitude or a felony under the laws of this state, or is punishable by death or imprisonment under the laws of the United States; or

(ii) during the period of the member's suspension, resignation or inactive status, has been suspended for professional misconduct for more than six months or has been disbarred by any court other than the Supreme Court; or

(iii) has engaged in conduct which raises issues of possible violation of the Bar Act, Code of Professional Responsibility or Rules of Professional Conduct;

shall be required to seek reinstatement under BR 8.1. Any applicant required to apply for reinstatement under BR 8.1 because of this rule shall pay all fees, assessments and penalties due and delinquent at the time of the applicant's resignation, suspension or transfer to inactive status, and an application fee of \$500 to the Bar at the time the application for reinstatement is filed, together with any payments due under BR 8.6.

(e) Referral of Application to Board. If the Executive Director is unable to determine from a review of an informal application and any information gathered in the investigation of the application that the applicant for reinstatement has made the showing required by BR 8.2(b), the Executive Director shall refer the application to the Board for consideration, with notice to the applicant.

(f) Board Consideration of Application. If, after a referral from the Executive Director, the Board determines from its review of the informal application and any information gathered in the investigation of the application that the applicant for reinstatement has made the showing required by BR 8.2(b), the Board shall reinstate the applicant. If the Board determines that the applicant has not made the showing required by BR 8.2(b), the Board shall deny the application for reinstatement. The Board also may determine that an application filed under BR 8.2 be granted conditionally. The Board shall file an adverse recommendation or a recommendation of conditional reinstatement with the Supreme Court under BR 8.7.

(g) Suspension of Application. If the Executive Director or the Board, as the case may be, determines that additional information is required from an applicant regarding conduct during the period of suspension, resignation or inactive status, the Executive Director or the Board, as the case may be, may direct Disciplinary Counsel to secure additional information concerning the applicant's conduct and defer consideration of the application for reinstatement.

Rule 8.3 Reinstatement — Compliance Affidavit.

(a) Applicants. Subject to the provisions of BR 8.1(a)(v), any person who has been a member of the Bar but who has been suspended for misconduct for a period of six months or less shall be reinstated upon the filing of a Compliance Affidavit with Disciplinary Counsel as set forth in BR 12.9, unless the court or Disciplinary Board in any suspension order or decision shall have directed otherwise.

(b) Fees. In addition to the payments required in BR 8.6, an applicant under this rule shall pay an application fee of \$250.

Rule 8.4 Reinstatement — Financial or Trust Account Certification Matters.

(a) Applicants. Any person who has been a member of the Bar but suspended solely for failure to pay the Professional Liability Fund assessment, Client Security Fund assessment or annual membership fees or penalties, or suspended solely for failure to file a certificate disclosing lawyer trust accounts, may be reinstated by the Executive Director to the membership status from which the person was suspended within six months from the date of the applicant's suspension, upon:

(i) payment to the Bar of all applicable assessments, fees and penalties owed by the member to the Bar, and

(ii) in the case of a suspension for failure to pay membership fees or penalties or the Client Security Fund assessment, payment of a reinstatement fee of \$100; or

(iii) in the case of a suspension for failure to pay the Professional Liability Fund assessment, payment of a reinstatement fee of \$100; or

(iv) in the case of suspensions for failure to pay both membership fees or penalties or the Client Security Fund assessment, and the Professional Liability Fund assessment, payment of a reinstatement fee of \$200; or

(v) in the case of suspension for failure to file a lawyer trust account certificate, filing such a certificate with the Bar and payment of a reinstatement fee of \$100.

An applicant under this rule must, in conjunction with the payment of all required sums, submit a written statement to the Executive Director indicating compliance with this rule before reinstatement is authorized. The written statement shall be on a form prepared by the Bar for such purpose. The applicant shall attest that the applicant did not engage in the practice of law except where authorized to do so during the period of the applicant's suspension.

(b) Exceptions. Any applicant otherwise qualified to file for reinstatement under this rule but who, during the period of the member's suspension, has been suspended for misconduct for more than six months or been disbarred by any court other than the Supreme Court, shall be required to seek reinstatement under BR 8.1. Any applicant required to apply for reinstatement under BR 8.1 because of BR 8.4(b) shall pay all fees, assessments and penalties due and delinquent at the time of the applicant's suspension and an application fee of \$500 to the Bar at the time the application for reinstatement is filed, together with any payments due under BR 8.6.

Rule 8.5 Reinstatement — Noncompliance With Minimum Continuing Legal Education, New Lawyer Mentoring Program or Ethics School Requirements.

(a) Applicants. Subject to the provisions of BR 8.1(a)(viii), any person who has been a member of the Bar but suspended solely for failure to comply with the requirements of the Minimum Continuing Legal Education Rules, the New Lawyer Mentoring Program or the Ethics School established by BR 6.4 may seek reinstatement at any time subsequent to the date of the applicant's suspension by meeting the following conditions:

(i) Completing the requirements that led to the suspension;

(ii) Filing a written statement with the Executive Director, on a form prepared by the Bar for that purpose, which indicates compliance with this rule and the applicable MCLE, NLMP or Ethics School Rule. The applicant shall attest that the applicant did not engage in the practice of law except where authorized to do so during the period of the applicant's suspension; and

(iii) Submitting in conjunction with the required written statement, a reinstatement fee of \$100.

(b) Referral to Supreme Court. Upon compliance with the requirements of this rule, the Executive Director shall submit a recommendation to the Supreme Court with a copy to the applicant. No reinstatement is effective until approved by the Court.

(c) Exception. Reinstatement under this rule shall have no effect upon any member's status under any other proceeding under these Rules of Procedure.

Rule 8.6 Other Obligations Upon Application.

(a) Financial Obligations. Each applicant under BR 8.1 through 8.5 shall pay to the Bar, at the time the application for reinstatement is filed, all past due assessments, fees and penalties owed to the Bar for prior years, and the membership fee and Client Security Fund assessment for the year in which the application for reinstatement is filed, less any active or inactive membership fees or Client Security Fund assessment paid by the applicant previously for the year of application. Each applicant under BR 8.1(a)(i), BR 8.1(a)(viii), BR 8.2(a)(i), BR 8.2(a)(iii) or BR 8.2(a)(iv) shall also pay to the Bar, at the time of application, an amount equal to the inactive membership fee for each year the applicant remained suspended or resigned and for which no membership fee has been paid. Each applicant shall also pay, upon reinstatement, any applicable assessment to the Professional Liability Fund.

(b) Judgment for Costs; Client Security Fund Claim. Each applicant shall also pay to the Bar, at the time of application:

(i) any unpaid judgment for costs and disbursements assessed in a disciplinary or contested reinstatement proceeding; and

(ii) an amount equal to any claim paid by the Client Security Fund due to the applicant's conduct, plus accrued interest thereon.

(c) Refunds. In the event an application for reinstatement is denied, the Bar shall refund to the applicant the membership fees and assessments paid for the year the application was filed, less the membership fees and assessments that applied during any temporary reinstatement under BR 8.7.

(d) Adjustments. In the event an application for reinstatement is filed in one year and not acted upon until the following year, the applicant shall pay to the Bar, prior to reinstatement, any increase in membership fees or assessments since the date of application. If a decrease in membership fees and assessments has occurred, the Bar shall refund the decrease to the applicant.

Rule 8.7 Board Investigation And Recommendation.

(a) Investigation and Recommendation. On the filing of an application for reinstatement under BR 8.1 and BR 8.2, Disciplinary Counsel shall make such investigation as it deems proper and report to the Executive Director or the Board, as the case may be. For applications filed under BR 8.1, the Executive Director or the Board, as the case may be, shall recommend to the court that the application be granted, conditionally or unconditionally, or denied, and shall mail a copy of its recommendation to the applicant. For applications denied by the Board or recommended for conditional reinstatement under BR 8.2(f), the Board shall file its recommendation with the court and mail a copy of the recommendation to the applicant.

(b) Temporary Reinstatements. Except as provided herein, the Executive Director or the Board may temporarily reinstate an applicant pending receipt of all investigatory materials if a determination is made that the applicant is of good moral character and generally fit to practice law. A temporary reinstatement shall not exceed a period of four months unless authorized by the court. In no event shall the Executive Director or the Board temporarily reinstate an applicant who seeks reinstatement following a suspension or disbarment for professional misconduct, or an involuntary transfer to inactive status.

Rule 8.8 Petition To Review Adverse Recommendation.

Not later than 28 days after the Bar files an adverse recommendation regarding the applicant with the court, an applicant who desires to contest the Board's Bar's recommendation shall file with Disciplinary Counsel and the State Court Administrator a petition stating in substance that the applicant desires to have the case reviewed by the court. If the court considers it appropriate, it may refer the petition to the Disciplinary Board to inquire into the applicant's moral character and general fitness to practice law. Written notice shall be given by the State Court Administrator to the Disciplinary Board Clerk, Disciplinary Counsel and the applicant of such referral. The applicant's resignation, disbarment, suspension or inactive membership status shall remain in effect until final disposition of the petition by the court.

Rule 8.9 Procedure On Referral By Court.

On receipt of notice of a referral to the Disciplinary Board under BR 8.8, Disciplinary Counsel may appoint Bar Counsel to represent the Bar. Disciplinary Counsel or Bar Counsel shall prepare and file with the Disciplinary Board Clerk, with proof of service on the applicant, a statement of objections. The statement of objections shall be substantially in the form set forth in BR 12.5.

Rule 8.10 Answer To Statement Of Objections.

The applicant shall answer the statement of objections within 14 days after service of the statement and notice to answer upon the applicant. The answer shall be responsive to the objections filed. General denials are not allowed. The answer shall be substantially in the form set forth in BR 12.3. The original shall be filed with the Disciplinary

Board Clerk with proof of service on Disciplinary Counsel and Bar Counsel. After the answer is filed or upon the expiration of the time allowed in the event the applicant fails to answer, the matter shall proceed to hearing.

Rule 8.11 Hearing Procedure.

Titles 4, 5 and 10 shall apply as far as practicable to reinstatement proceedings referred by the court to the Disciplinary Board for hearing.

Rule 8.12 Burden Of Proof.

An applicant for reinstatement to the practice of law in Oregon shall have the burden of establishing by clear and convincing evidence that the applicant has the requisite good moral character and general fitness to practice law and that the applicant's resumption of the practice of law in this state will not be detrimental to the administration of justice or the public interest.

Rule 8.13 Burden Of Producing Evidence.

While an applicant for reinstatement has the ultimate burden of proof to establish good moral character and general fitness to practice law, the Bar shall initially have the burden of producing evidence in support of its position that the applicant should not be readmitted to the practice of law.

Rule 8.14 Reinstatement and Transfer--Active Pro Bono.

(a) Reinstatement from Inactive Status. An applicant who has been enrolled voluntarily as an inactive member and who has not engaged in any of the conduct described in BR 8.2(d) may be reinstated by the Executive Director to Active Pro Bono status. The Executive Director may deny the application for reinstatement for the reasons set forth in BR 8.2(d), in which event the applicant may be reinstated only upon successful compliance with all of the provisions of BR 8.2. The application for reinstatement to Active Pro Bono status shall be on a form prepared by the Bar for such purpose. No fee is required.

(b) Transfer to Regular Active Status. An applicant who has been on Active Pro Bono status for a period of five years or less and who desires to be eligible to practice law without restriction may be transferred to regular active status by the Executive Director in the manner provided in and subject to the requirements of BR 8.2. An applicant who has been on Active Pro Bono status for a period of more than five years may be transferred to regular active status only upon formal application pursuant to BR 8.1.

Meeting Date: February 22, 2013
From: David Wade, Chair, Governance and Strategic Planning Committee
Re: Amendment of Fee Arbitration Rules

OSB Fee Arbitration Rules

Section 8. Public Records and Meetings

8.1 The arbitration of a fee dispute through General Counsel's Office is a private, contract dispute resolution mechanism, and not the transaction of public business.

8.2 Except as provided in paragraph 8.4 below **or as required by law or court order**, [*or unless all parties to an arbitration agree otherwise,*] all **electronic and written** records and other materials submitted by the parties to [*the*] General Counsel's Office, or to the arbitrator(s), and any award rendered by the arbitrator(s), shall not be subject to public disclosure, **unless all parties to an arbitration agree otherwise. General Counsel considers all electronic and written records and other materials submitted by the parties to General Counsel's Office, or to the arbitrator(s), to be submitted on the condition that they be kept confidential.**

8.3 Arbitration hearings are closed to the public, unless all parties agree otherwise. Witnesses who will offer testimony on behalf of a party may attend the hearing, subject to the chairperson's or sole arbitrator's discretion, for good cause shown, to exclude witnesses.

8.4 Notwithstanding paragraphs 8.1, 8.2, and 8.3, lawyer arbitrators shall inform the Client Assistance Office when they know, based on information obtained during the course of an arbitration proceeding, that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects.

8.5 Notwithstanding paragraphs 8.1, 8.2, 8.3 and 8.4, [A]all electronic and written records[, documents papers, correspondence] and other materials submitted to General Counsel or to the arbitrator(s) during the course of the proceeding, and any award rendered by the arbitrator(s), shall be made available to the Client Assistance Office and/or Disciplinary Counsel for the purpose of reviewing any alleged ethical violations in accordance with BR 2.5 and BR 2.6.

8.[5]**6** Notwithstanding paragraphs 8.1, 8.2, [*and*] 8.3 **and 8.4**, General Counsel may disclose to the Client Assistance Office or to Disciplinary Counsel, upon the Client Assistance Office's or Disciplinary Counsel's request, whether a fee arbitration proceeding involving a particular lawyer is pending, the current status of the proceeding, and, at the conclusion of the proceeding, in whose favor the award was rendered.

8.[6]**7** Notwithstanding paragraphs 8.1, 8.2 and 8.3, if any lawyer whose employment was secured through the Oregon State Bar Modest Means Program or Lawyer Referral Program refuses to participate in fee arbitration, General Counsel shall notify the administrator of such program(s).

Oregon State Bar Approved
Explanation of Contingent Fee Agreement

This is an explanation of your Contingent Fee Agreement with us. Please read it and sign it before you sign the Agreement.

The Contingent Fee Agreement says:

1. We agree to handle your case.
2. If we handle your case to completion and do not recover any money for you, you do not have to pay us for our services.
3. If we handle your case to completion and recover some money for you, you must pay us for our services. Our fee will be a percentage of what we recover for you. The percentage is set forth in the Contingent Fee Agreement.
4. If we advance money for filing fees, witness fees, doctors' reports, court reporters' services or other expenses on your behalf:

☐ you must repay us whether the case is won or lost; or
☐ you must repay us only if we recover money for you; or
☐ you do not need to repay us regardless of the outcome of your case.
5. You may cancel the Contingent Fee Agreement by notifying us in writing within 24 hours after you sign it.
6. If you cancel the agreement within the 24-hour period, you will have no obligation to us.

I have read the foregoing explanation before signing a Contingent Fee Agreement with
(Name of Lawyer or Firm)

Date

~~I have read the foregoing explanation before I signed a Contingent Fee Agreement with [Name of Firm].~~

 Client's Signature

Date

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Meeting Date: February 22, 2013
From: Danielle Edwards, Director of Member Services
Re: Volunteer Appointments

Federal Practice and Procedure Committee

Recommendation: Marjorie A. Elken, Secretary, term expires 12/31/2013

Legal Heritage Interest Group

Recommendation: Mary L. Dougherty, Chair, term expires 12/31/2013

Loan Repayment Assistance Program Committee

Recommendation: Russell Barnett, member, term expires 12/31/2015

Recommendation: Suzannah E. Newman, member, term expires 12/31/2015

Minimum Continuing Legal Education Committee

Recommendation: Claudia Pieters, public member, term expires 12/31/2015

Pro Bono Committee

Recommendation: Kristina Faricy, member, term expires 12/31/2013

Recommendation: Joshua R. Orem, member, term expires 12/31/2014

Quality of Life Committee

Recommendation: Cody Elliott, member, term expires 12/31/2015

Disciplinary Board

Nomination: Dr. John H. Kilian, public member, term expires 12/31/2015

Local Professional Responsibility Committee

Recommendation: Cynthia Phillips, Chair, term expires 12/31/2013

**Oregon State Bar
Board of Governors Meeting
February 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. William R. Bloom – 780192

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

2. Adam P. Karp – 011336

In Ms. O'Connor's absence, Ms. Steven's presented information concerning the BR 8.1 reinstatement application of Mr. Karp to satisfy the one meeting notice requirement set forth in Bar Bylaw 6.103. Mr. Karp's application will be placed on a future agenda for consideration and action.

3. Sheryl Manley – 963341

In Mr. Ehlers' absence, Mr. Haglund presented information concerning the BR 8.1 reinstatement application of Ms. Manley to satisfy the one meeting notice requirement set forth in Bar Bylaw 6.103. Ms. Manley's application will be placed on a future agenda for consideration and action.

4. John M. Mann – 933530

In Mr. Kehoe's absence, Ms. Stevens presented information concerning the BR 8.1 reinstatement application of Mr. Mann to satisfy the one meeting notice requirement set forth in Bar Bylaw 6.103. Mr. Mann's application will be placed on a future agenda for consideration and action.

5. Michael J. Moiso– 930802

Mr. Spier presented information concerning the BR 8.1 reinstatement application of Mr. Moiso to satisfy the one meeting notice requirement set forth in Bar Bylaw 6.103. Mr. Moiso's application will be placed on a future agenda for consideration and action.

6. Mark L. Runnels – 803666

Mr. Wade presented information concerning the BR 8.1 reinstatement application of Mr. Runnels to satisfy the one meeting notice requirement set forth in Bar Bylaw 6.103. Mr. Runnels' application will be placed on a future agenda for consideration and action.

7. Ann E. Setty-Rosevear – 971347

Motion: Mr. Kranovich presented information concerning the BR 8.1 reinstatement application of Ms. Setty-Rosevear. Mr. Kranovich moved, and Mr. Emerick seconded, to recommend to the Supreme Court that Ms. Setty-Rosevear's reinstatement application be approved, temporarily effective today. The motion passed unanimously.

8. Su K. Suh – 983521

In Ms. Kohlhoff's absence, Mr. Haglund presented information concerning the BR 8.1 reinstatement application of Ms. Suh to satisfy the one meeting notice requirement set forth in Bar Bylaw 6.103. Ms. Suh's application will be placed on a future agenda for consideration and action.

9. Jenifer M. Willer – 971766

Motion: Mr. Emerick presented information concerning the BR 8.1 reinstatement application of Ms. Willer to satisfy the one meeting notice requirement set forth in Bar Bylaw 6.103. Mr. Emerick moved, and Mr. Wade seconded, to waive the one meeting notice and recommend to the Supreme Court that Ms. Willer's reinstatement application be approved after the completion of 45 MCLE credits. The motion passed unanimously.

B. Disciplinary Counsel's Report

As written.

**Oregon State Bar
Board of Governors Meeting
February 22, 2013
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 UPL Committee recommended the Board seek injunctive relief against Ms. Jan Hope aka Janice Niemann to prevent her continued unlawful practice of law.

Motion: Mr. Heysell moved and Mr. Emerick seconded to accept the recommendation that the Board approve the initiation of the lawsuit. The board unanimously approved the motion.

2. The UPL Committee recommends the Board approve the cease and desist agreement negotiated with Ms. Ernst.

Motion: Mr. Spier moved and Mr. Knight seconded to accept the recommendation that the Board approve the negotiated agreement with Ms. Ernst. The board unanimously approved the motion.

3. The UPL Committee recommends the Board approve the cease and desist agreement negotiated with Ms. Benson.

Motion: Mr. Knight moved and Ms. Mitchel-Markley seconded to accept the recommendation that the Board approve the negotiated agreement with Ms. Benson. The board unanimously approved the motion.

B. Pending or Threatened Non-Disciplinary Litigation

The BOG received status reports on the non-action items.

C. Other Matters

Washington State Taxes

Motion: Mr. Spier moved and Mr. Knight seconded, to give Ms. Hirschbiel discretion pursuing action in this matter.