

Oregon State Bar
Meeting of the Board of Governors
May 3, 2013
Open Session Minutes

The meeting was called to order by President Michael Haglund at 12:35 p.m. on May 3, 2013. The meeting adjourned at 4:45 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, Audrey Matsumonji, Caitlin Mitchel-Markley, Maureen O'Connor, Travis Prestwich, Joshua Ross, Richard Spier, David Wade and Timothy L. Williams. Staff present were Sylvia Stevens, Helen Hirschbiel, Rod Wegener, John Gleason, Kay Pulju, Susan Grabe, Mariann Hyland, Kateri Walsh, Dani Edwards, Judith Baker, George Wolff, and Camille Greene. PLF Board of Directors present were Laura Rackner, Guy Greco, John Berge, Valerie Saiki, Bob Newell, Julia Manela, Teresa Statler. PLF staff present were Ira Zarov, CEO, Bruce Schafer, Barbara Fishleder, Tom Cave, Steve Carpenter, Jeff Crawford, Emilee Preble, Madeleine Campbell, Dee Crocker, and Cindy Hill. Also present was David Eder, ONLD Chair.

1. Introduction of John Gleason

Mr. Gleason, Disciplinary Counsel and Director of Regulatory Services, introduced himself to the board and thanked them for their volunteerism. He described his experience regulating lawyers for the Supreme Court in Colorado where he handled or oversaw 50,000 complaints during his tenure. He emphasized that integrity in the discipline system is critical in maintaining self-regulation. His goals are: strive to know the lawyers he is regulating; meet with relevant citizen organizations to educate them about the system; speed up the current system of regulation in Oregon; and propose rule changes to address the lawyers who ignore the discipline system. He encouraged board members to invite him to events in their respective regions to meet their members.

2. Report of Officers & Executive Staff

A. Report of the President

Mr. Haglund reported on a successful May 1, 2013 Day at the Capitol and meeting with the Citizens Coalition for Court Funding.

Mr. Haglund proposed a task force on licensing legal technicians as a proactive approach in which the developments throughout the country will be studied, recommendations made to the Oregon Supreme Court, and an OSB legislative package developed if that is the consensus view of the proposed task force and meets with BOG approval. Mr. Greco reminded the board that a similar task force, twenty years ago, declined to pursue this matter due to insurance complications. Discussions ensued regarding market pricing, degrees of limited licenses, and regulation of these technicians.

Motion: Mr. Kranovich moved, Ms. Billman seconded, and the board voted unanimously to approve the formation of a Task Force to explore this issue.

Mr. Haglund also proposed a task force on foreign lawyer practice to address challenges of globalization and international legal practice. He stressed the economic advantages to being proactive in welcoming foreign lawyers.

Motion: Mr. Wade moved, Mr. Kehoe seconded, and the board voted unanimously to approve the formation of a Task Force to explore the direction Oregon should take.

B. Report of the President-elect

Mr. Kranovich reported on his activities, including attending the ABA BLI conference in Chicago and the Western States Bar Conference in Hawaii. Locally he has attended several diversity and legislative events.

C. Report of the Executive Director

ED Operations Report as written. Ms. Stevens reported that section administrative fees will increase from \$5.00 to \$8.00 January 1, 2014. She explained how the amount is calculated and what it covers so that BOG members can respond helpfully if their constituents inquire about the change.

D. Director of Diversity & Inclusion

Ms. Hyland reported on the inaugural issue of the Diversity & Inclusion Newsletter, which included profiles of two lawyers who previously served in the military. The Diversity Storywall will be finished within the next year and about half of the necessary funds have been raised. The OLIO orientation program will take place in Hood River in August. BOG members are encouraged to attend as much of the event as possible. Ms. Hyland thanked the PLF's excess program for supporting OLIO.

E. MBA Liaison Reports

Mr. Spier reported on the March 2013 MBA meeting; he described the group as welcoming and involved in interesting projects.

3. Professional Liability Fund [Mr. Zarov]

Mr. Zarov provided a general update and Mr. Cave gave a financial report. The increased frequency of claims is a concern and an increase in assessments may be warranted. Mr. Cave is retiring in November. He will begin training replacement(s) in June. Questions have been raised about installment payments by the Sole & Small Firm Section. Mr. Wade commended the PLF for the successful management of their budget.

4. PLF / BOG Issues of Common Interest

A. Prohibition Against BOG Members Prosecuting or Defending PLF Claims

Mr. Wade, Chair of the Governance and Strategic Planning Committee, raised the issue for consideration and suggested that BOG members play such a limited role in PLF affairs that concerns about influence or the appearance of it can be easily addressed by requiring recusal from any BOG decision involving the PLF while the matter is pending. Mr. Zarov said the issue will be discussed at the next PLF board meeting and report back to the BOG.

B. Special Underwriting Assessments

Mr. Zarov presented the PLF Board's request that the BOG approve the discontinuation of PLF Policy 3.500 which provides for the Special Underwriting Assessment (SUA). There are three accepted principles or goals for SUA: create an incentive for lawyers to practice more carefully; require attorneys who are a higher risk to pay more; and create a perception that there is a moral hazard for lawyers who fall below the accepted standard of care. However, the PLF experience is that the SUA doesn't accomplish those goals and can't be administered fairly. For those reasons, the PLF Board concluded the SUA should be eliminated. **[Exhibit A]**

Motion: Ms. Billman moved, Mr. Prestwich seconded, and the board voted unanimously to approve the PLF Board's request to discontinue the Special Underwriting Assessment.

C. Mr. Haglund presented the bar's request for BarBooks funding from the PLF.

Motion: Ms. Mitchel-Markley moved, Mr. Knight seconded, and the board voted unanimously to request \$200,000 from the PLF to fund BarBooks in 2014.

Mr. Zarov will take this request to the PLF board and report back to the BOG.

D. Ms. Fishleder presented an overview of the Oregon Attorney Assistance Program and its commitment to confidentiality.

5. ABA House of Delegates

The ABA Annual Meeting agenda was previewed as an information item.

6. OSB Committees, Sections, Councils and Divisions

A. Oregon New Lawyers Division

Mr. Eder reported on a variety of ONLD projects and events described in his written report including the lack of practice-ready lawyers coming out of law school. The ONLD will provide more CLEs at the law schools to help remedy this issue. They hosted a successful discussion over dinner with new Sole & Small Firm attorneys.

Mr. Eder asked the board to consider the Oregon New Lawyers Division request for an exemption from the CLE Seminars Department event registration services fee for its Brown Bag CLE series and for any CLE held outside of the Portland area in conjunction with ONLD meetings.

Motion: Mr. Ehlers moved, Mr. Wade seconded, and the board voted in favor of waiving the CLE Seminar's registration fee as requested. Mr. Kranovich was opposed.

Motion: Mr. Ehlers moved, Mr. Spier seconded, and the board voted unanimously to make the approved ONLD fee exemption retroactive to January 1, 2013.

B. CSF Claims

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

Motion: Mr. Kehoe moved, Ms. Mitchel-Markley seconded, and the board voted unanimously to approve payments totaling \$194,424.

Ms. Stevens presented the claimants request for review of the CSF Committee's denial of the HORTON (Calton) claim for reimbursement.

Motion: Mr. Wade moved, Mr. Kranovich seconded, and the board voted unanimously to send the case back to the CSF Committee for a full investigation of Mr. Calton's claim.

Ms. Stevens presented the claimant's request for review of the CSF Committee's denial of the CONNALL (Raske) claim for reimbursement. The issue was whether more than *de minimis* services had been provided by the Connalls.

Motion: Mr. Knight moved, Mr. Kehoe seconded, and the board voted to affirm the CSF's denial of Ms. Raske's claim. Mr. Wade and Mr. Ross were opposed. Mr. Emerick and Mr. Spier recused themselves.

Ms. Stevens presented the CSF Committee recommendation amending the CSF rules to clearly cap claims at \$50,000 *per claimant* but not changing anything else about the Fund's operating policies and discretionary authority. The Committee believes that the program is better served by retaining as much flexibility as possible rather than binding the Committee and BOG to any particular limitations.

Motion: Mr. Haglund recommended the formation of a board subcommittee, consisting of Mr. Emerick, Mr. Kehoe, Mr. Knight and Ms. Mitchel-Markley, to further consider amending the CSF rules to limit the Fund's exposure to significant claims..

C. Legal Services Program Committee

Ms. Baker presented the committee's recommendation that the board approve disbursing \$137,000 from the unclaimed client fund to the legal aid programs for 2013. **[Exhibit C]**

Motion: Mr. Wade moved, Mr. Kehoe seconded, and the board voted unanimously to approve the disbursement of funds.

D. Unlawful Practice of Law

Ms. Hirschbiel presented two UPL advisory opinions:

Advisory Opinion No. 1 – Notarios and Immigration Consultants **[Exhibit D]**, and
Advisory Opinion No. 2 – Entity Representation **[Exhibit E]**.

Motion: Mr. Prestwich moved, Mr. Wade seconded, and the board voted unanimously to approve the two UPL advisory opinions.

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

A. Board Development Committee

Mr. Kranovich reported on the committee's progress on identifying candidates for various appointment positions and also on recruiting candidates for the BOG and HOD.

B. Budget and Finance Committee

Mr. Knight gave a 2014 budget update and deferred to Mr. Wade to present the investment policy revision recommendations to the board. **[Exhibit F]**

Motion: Mr. Knight moved, Mr. Wade seconded, and the board voted unanimously to waive the one-meeting notice to amend the investment policy bylaw.

Motion: The board voted unanimously to approve the committee recommendation to accept the investment policy revision recommendations as presented by Mr. Wade.

Mr. Knight reported on the committee's discussion about section fund balances and its decision to post them in the *Bulletin* annually. Mr. Knight also reported that the committee will begin discussing the 2014 budget and whether a fee increase will be needed at the July board meeting.

C. Governance and Strategic Planning Committee

Motion: The board voted unanimously to approve the committee recommendation to revise the bar's statements of mission, functions and values to make them "linguistically more elegant," in the words of Mr. Wade. **[Exhibit G]**

Motion: The board voted unanimously to approve the committee recommendation to send a HOD survey to all 2011-2013 HOD members to assist the BOG in deciding whether to pursue a comprehensive study of the OSB governance structure. **[Exhibit H]**

Motion: The board voted unanimously to approve the proposed new language for Bylaw 16.200 to clarify what is included in complimentary CLE Seminars registration for certain members. **[Exhibit I]**

Motion: The board voted unanimously to approve the committee recommendation for the revision of OSB Bylaw 6.103 regarding notice to the membership of reinstatement applications. **[Exhibit J]**

Motion: The board voted unanimously to approve the committee recommendation that the CLE Seminars department present a program on gender equality (using the ABA Toolkit).

D. Public Affairs Committee

Mr. Kehoe deferred to Ms. Grabe who gave an update on the legislative session and court funding. Three OSB bills have passed.

E. Special Projects Committee

Mr. Prestwich reported on the progress of current board projects for 2013. The tree planting project was a success. There is a committee proposal to study the SOLACE network where lawyers help other lawyers when natural disasters or other tragedies strike. The process of pairing retiring lawyers with new lawyers with the intention to pass on the practice is under discussion with no current proposals.

F. Appellate Screening Committee

Ms. Billman reported that the Governor has extended the date for submitting applications. The committee will receive the applications in early July and the governor wants the board's

recommendations by the end of the month. The Committee will have to conduct interviews either July 18-21 or 25-28. She asked that more board members help with the committee's screening efforts. Ms. Billman will prepare a message for board members to receive via email.

G. Centralized Legal Notice System Task Force

Mr. Ehlers updated the board on the task force's efforts to find a way to run a centralized notice system. A presentation at the last meeting demonstrated that the technology exists and a self-funded model may be possible. At its next meeting, the task force will look at what is financially at stake for the newspapers and attempt to find common ground.

H. Knowledge Base Task Force

Ms. Stevens reminded the board that the task force was created by a HOD resolution to find an enhanced way members can access information the bar produces. The project is in progress.

8. Other Action Items

- A.** Ms. Edwards presented the recommendations for committee appointments. **[Exhibits K & L]**

Motion: Mr. Prestwich moved, Mr. Ross seconded, and the board unanimously approved the appointments as presented.

- B.** Mr. Wolff presented the Lawyer Referral Service recommended revisions to LRS Policies and Operating Procedures and an update on the Modest Means Program. Mr. Haglund emphasized the need to implement the Legal Jobs Opportunities task force recommendation to expand the Modest Mean Program to include clients with higher incomes as soon as possible.

- C.** Ms. Hirschbiel recommended the board adopt the proposed amendments to the Lawyer Referral Service Policies and Procedures. **[Exhibit M]**

Motion: Mr. Kehoe moved, Mr. Heysell seconded, and the board unanimously approved the amendments as presented.

- D.** Ms. Stevens presented a LawPay proposal, which she, General Counsel and Disciplinary Counsel agree will facilitate members' acceptance of credit card payments consistent with the Rules of Professional Conduct. Participation will be open to any OSB member; the bar would receive sponsorship dollars for certain events, but the bar's revenue share would be appropriated to the MBA. **[Exhibit N]**

Motion: Mr. Emerick moved, Mr. Kranovich seconded, and the board unanimously approved the proposal as presented.

9. Consent Agenda

Motion: Mr. Spier moved, Ms. Mitchel-Markley seconded, and the board voted unanimously to approve the consent agenda of past meeting minutes.

10. 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

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

None.

3.500 PLAN FOR SPECIAL UNDERWRITING ASSESSMENT

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

(B) Special Underwriting Assessment:

(1) The surcharge assessed on January 1 of each year will be based upon the total of all payments for indemnity and expense (including Claims Expense Allowance) paid on a claim or group of related claims in excess of an aggregate amount of \$75,000 per claim. If a claim is part of a group of related claims for which responsibility is allocated pursuant to 3.500(D), the SUA will be based on the amount in excess of \$75,000 of the indemnity and expense allocated to each Covered Party (the "Base Amount"). SUA will be assessed for all claims which are settled or closed by the PLF by September 30 of the prior year. The surcharge for each claim will be equal to 1% of the Base Amount so calculated and will be charged for each of the next five years.

(BOD 10/5/12; BOG 11/10/12)

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

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

(C) (1) Reductions to Indemnity and Expense: For the purposes of SUA, the value of outstanding amounts owed by another but not yet collected will be determined by the PLF staff at the time the SUA is allocated. The PLF will set the value of such potential sources of reimbursement for claims expenses based on the likelihood of collection. The PLF may discount the value of the source of offset, allow full value of the source of offset, or decline to provide any

discount. The amount of the credit determined by the PLF will be treated as reductions to the indemnity and expense paid by the PLF on behalf of a Covered Party and will be deducted in determining the Base Amount. Reinsurance payments will not be treated as reductions to indemnity.

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

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

(D) Allocation and Vicarious Liability:

(1) The Covered Party causing or responsible for the claim or group of related claims will be assessed. When more than one PLF-covered attorney is involved, SUA will be allocated in proportion to each PLF-covered attorney's degree of responsibility or fault. The SUA allocation will be based on any indemnity payments made and defense costs expended, except that a PLF-covered attorney assigned his or her own defense attorney will be deemed responsible for those expenses. SUA may be allocated to a Covered Party even though no claim was made against the Covered Party if it appears that a claim would or could have been made but for the final disposition of the claim giving rise to the SUA under consideration. However, the SUA allocated to such Covered Party will be waived if the Covered Party was not informed by the PLF prior to the final disposition:

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

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

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

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

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

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

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

(3) SUA will not be assessed against a Covered Party if the Covered Party's liability was purely vicarious. However, notwithstanding that the basis of the Covered Party's liability is purely vicarious, a PLF-covered attorney assigned his or her own defense attorney will be deemed responsible for those expenses unless the assignment of a separate defense counsel is legally required (e.g. conflict of interest). For this purpose, pure vicarious liability means liability imposed solely by law, (e.g., partnership liability) on a claim in which the Covered Party had no involvement whatsoever. SUA relief for pure vicarious liability will not be allowed when the Covered Party had some involvement in the legal matter, even if other attorneys in the Covered Party's firm (partners, associates, or employees) or outside the firm were also involved and committed greater potential error. Likewise, SUA relief for pure vicarious liability will not be granted when the alleged error was made by a secretary, paralegal, or other attorney working under the Covered Party's direction or control or who provided research, documents, or other materials to the Covered Party in connection with the claim.

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

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

(F) Petition for Review:

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

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

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

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

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

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

(2) The basis for review will be set forth in the petition, and the PLF-covered attorney, or attorneys if more than one, to whom the Covered Party seeks to reassign responsibility for the claim will be requested to participate and submit a response. A SUA appeal must be filed in the first year during which the SUA is assessed and paid. Other details of the review process will be provided to attorneys at the time of SUA assessment. The Board of Directors or its representative will review each petition and

response and make such adjustment, if any, as is warranted by the facts. An adjustment may include reallocation of responsibility for a claim to another attorney (whether or not the attorney responds to the request to participate in the SUA review process), that could result in assessment of a SUA against the attorney. In the event a refund is made, it will include statutory interest. A pending Petition for Review will not relieve the Covered Party from compliance with the assessment notice.

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

3.550 PROCEDURE FOR REVIEW OF SPECIAL UNDERWRITING ASSESSMENT

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

(B) Basis for Appeal:

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

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

(2) A Petition for Review of a SUA must be delivered to the office of the PLF, postmarked no later than January 10 of the year in which the SUA was first imposed. Failure to file a petition by this date means no SUA relief will be granted.

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

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

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

(D) Form of SUA Petition:

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

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

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

(F) Response of Other Attorneys:

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

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

(G) Reply: The PLF will forward a copy of the Response of the Responding Attorney to each of the other PLF-covered attorneys involved in the appeal, and each attorney may submit a written Reply to the PLF within 14 days. The Reply may address only issues raised in the Responding Attorney's Response, and may not raise new issues or arguments. The form of the Reply and

number of copies to be provided will be the same as stated above for the original SUA petition and the Responding Attorney's Response.

(H) Review of Records:

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

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

(I) Decision of SUA Appeals by PLF:

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

any factual determinations, conclusions, and reasons for the conclusions will be forwarded to the attorneys involved in the appeal.

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

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

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

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

(J) BOG Change In SUA Allocation

(1) Any attorney involved in a SUA appeal who after properly and timely filing a petition or other response, is dissatisfied by the decision of the Board of Directors will have a right to request the Board of Governors to review the action of the Board of Directors. In order to be entitled to such review, a written request for such review must be physically received by the Executive Director of the Oregon State Bar within 30 days after the date of the written decision from the PLF to such attorney. Review by the

Board of Governors upon a timely filed request will be a de novo review on the record. In making the determination whether or not the action of the Board of Directors should be affirmed, only the grounds asserted in the petition or other response and written materials which were available to the Board of Directors will be reviewed, unless the Board of Governors, upon its own motion, will request additional materials from the attorney and from the PLF.

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

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

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

(5) If the review of the Board of Governors decreases or eliminates the Covered

Party's SUA, appropriate refund will be made by the PLF together with statutory interest thereon.

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

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

(BOD 8/23/91, 10/2/91, BOG 12/13/91; BOD 12/6/91, BOG 3/13/92; BOD 7/16/93, BOG 8/13/93; BOD 8/9/96; BOG 9/25/96; BOD 10/5/12; BOG 11/10/12)

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: May 3, 2013
From: Sylvia E. Stevens, Executive Director
Re: CSF Awards Recommended for BOG Approval

Action Recommended

Consider the recommendation of the Client Security Fund for awards in the following cases:

CONNALL (Risch)	\$50,000.00
GRUETTER (Bothwell).....	\$44,690.70
GRUETTER (Boyer)	\$10,747.46
GRUETTER (Richmond).....	\$13,485.84
HANDY (Bartow).....	\$45,500.00
BERTONI (Ramirez).....	\$15,000.00
BERTONI (Vargas Torres)	\$15,000.00
TOTAL	\$194,424.00

Discussion

CONNALL (Risch) - \$50,000

Stephen Risch hired Des and Shannon Connall to represent him in March 2008, to defend him against multiple sex offense charges. The Connalls charged a flat fee of \$50,000 for their services through trial. Risch was convicted on all counts after a six-day trial in September 2009.

After the trial, the Connalls and Risch agreed on two new flat fee agreements for the Connall's continued representation in a request for a new trial and, if necessary, for appeals through the Supreme Court. The fee for the second trial was \$40,000 and the fee for the appeal was \$25,000.

In late September 2009, Risch delivered to the Connall firm \$24,000 in cash and ten gold coins (worth approximately \$10,000). Risch also asked the firm to receive and hold in trust his paychecks, and between September 2009 and March 2010 the firm received pay checks totaling \$8,739.60. In December 2009, Risch gave Shannon Connall his power of attorney for banking purposes and authorized the Bank of Astoria to release all of his funds to her for application to his fees. Pursuant to that authority, in January 2010, another \$23,000 of Risch's funds were transferred to the Connall firm.

In late October 2009, the court granted Risch's motion for new trial and the second trial was set for April 2010.

Despite his having handing over money and property worth more than \$65,000, Risch found that his relationship with the Connalls deteriorated soon after the first trial. Shannon Connall was Risch's primary contact and communication between them was sporadic. Among other things, he asserts that most of Shannon's appointments with him were for her to secure additional funds. Additionally, Risch was not notified until late March that the new trial had been postponed to November 2010. On April 4, 2010, Risch hired new counsel and wrote to the Connalls terminating the representation and demanding a refund of all unearned fees. The gold coins were transferred to Risch's new counsel, but no refund or accounting of the funds delivered to the Connalls was every provided.

In response to Disciplinary Counsel's investigation, Des Connall claims that all fees were "well deserved" and reasonably earned. He also disputes the amounts Risch claims to have paid. Connall says Risch gave the firm only \$9500 in cash, but the firm's accounting ledger shows a cash payment of \$24,000.

Connall has not offered any explanation as to why a refund is not due for the work yet to be done under the flat fee agreements. Additionally, other than the motion for new trial, there is no evidence of any work done on Risch's behalf after the motion was granted. DCO has conducted an exhaustive review of this matter and agrees with the CSF Committee's conclusion.

The Committee recommends an award to Risch of \$50,000 (against a loss in excess of \$65,000) and waiver of the requirement that he get a judgment against the Connalls. The Committee does not believe it is fair to require Risch to litigate (to the extent he can do so from prison) with Des Connall over the value of services that may or may not have been provided; additionally, all evidence suggests that the Connalls are judgment-proof.

GRUETTER (Bothwell) - \$44,690.70

Chris Bothwell was struck by a car while crossing E. Burnside street and sustained multiple severe injuries including brain trauma that required the appointment of a conservator for a period of time. He hired Gruetter in September 2007 to pursue claims against the driver's insurer and entered into a standard 1/3 contingency fee agreement.

A \$300,000 settlement was received by Gruetter in April 2008. He deducted his \$100,000 fee and delivered more than \$140,000 to the conservator, retaining the balance to satisfy medial liens and bills. Over the next year or so, Gruetter's office (with some prodding from the client) paid some of the medical providers. He also disbursed small amounts (totaling \$7000) to Bothwell.

A reconstructed accounting based on Gruetter's bank and other records indicates there should have been \$44,690.70 in Gruetter's trust account when the OSB took over as custodian of his practice. There was, however, only slightly more than \$2000 in the account.

The CSF Committee recommends an award of \$44,690.70 to Bothwell, along with a waiver of the requirement that he obtain a civil judgment against Gruetter. Our information is that Gruetter is negotiating a plea with federal prosecutors that will involve jail time and significant restitution. We also believe him to be judgment-proof.

GRUETTER (Boyer) - \$10,747.46

Robbyn Boyer retained Gruetter's firm in July 2009 on a 40% contingent fee agreement. Her case settled for \$57,500; she received a preliminary distribution of nearly \$13,000 after deduction of attorney fees and costs. Gruetter's records reflect that he paid some, but not all of Boyer's outstanding medical bills, and retained \$10,747.46 that was intended for that purpose. Boyer learned of this when she started receiving calls from the medical providers.

The Committee recommends an award of \$10,747.46 and waiver of the requirement for a civil judgment for the reasons stated above.

GRUETTER (Richmond) - \$13,485.84

Doug Richmond hired Gruetter in December 2008 to pursue a personal injury claim on a standard 1/3 contingency fee basis. After settling the claim for \$100,000 in February 2009, , Gruetter paid himself his fees and costs and held \$13,425.84 to pay two outstanding medical bills. When Richmond began to receive demands from the creditors, he was assured as late as November 2011, that Gruetter was continuing to negotiate reductions and paying the bills. When Gruetter's office closed in January 2012, the bills remained unpaid and there was no money in Gruetter's trust account.

The Committee recommends an award of \$13,485.84 and waiver of the requirement for a civil judgment for the reasons stated above.

Handy (Bartow) - \$45,500.00

Bend attorney Paul Handy represented Sam Bartow in various matters over some period of time. In 2007, Bartow deposited \$50,000 into Handy's trust account to be held until Bartow needed the funds. In the meantime, Bartow authorized Handy to use the \$50,000 as collateral for loans to finance an unrelated case for an unrelated client. In exchange, Handy agreed not to charge Bartow for any legal services performed during the time he was using Bartow's funds as collateral.

Bartow died in 2008. Elizabeth Campen was appointed personal representative of Bartow's estate. Upon appointment, Campen demanded return of the \$50,000 from Handy, but Handy said he could not release the funds until the other client's civil matter was resolved.

Campen allowed Handy to retain the funds until July 2012, when she requested proof that the funds remained in Handy's trust account. Handy provided what he represented was a copy of his trust account statement reflecting that the funds were on deposit.

In October 2012, Handy admitted that the funds were gone. He said that over some unstated period of time his assistant had inadvertently applied the funds to work Handy performed on behalf of Bartow. The following month, Handy confessed judgment in favor of the estate for \$50,000 but with no specific admission of guilt.

Handy is currently being prosecuted in Deschutes County on forgery charges. Disciplinary Counsel's Office is investigating two complaints against Handy, one relating to a claim of forgery and the other relating to his handling of Bartow's funds.

The CSF investigator found evidence that Handy had performed approximately 15 hours of work on six relatively minor matters of Bartow's after the \$50,000 was deposited. Notwithstanding Handy's agreement not to charge Bartow for those legal services, the CSF Committee concluded that Bartow or his estate benefited from the work and that the eligible loss to be reimbursed by the fund is \$45,500 (deducting \$4,500 for 15 hours of work at \$300/hour).

With that reduction, the Committee recommends an award of \$45,500 in exchange for an assignment of the Estate's judgment against Handy.

Bertoni (Ramirez) - \$15,000.00

In January 2012, Portland attorney Gary Bertoni stipulated to a 150-day disciplinary suspension from the practice of law based on charges that he had commingled funds and improperly handled his trust account. Bertoni arranged with attorney Kliewer to take possession of his files and be the contact for clients needing their files during his suspension. On March 26, 2012, Kliewer was substituted as attorney of record in an number of Bertoni's pending cases.

Ramirez hired Bertoni in April 2012 to appeal Ramirez' criminal conviction and deposited a retainer of \$15,000. When Ramirez subsequently learned that Bertoni was suspended and could not begin working on the appeal right away, he fired Bertoni and demanded a refund of the retainer.

Bertoni claims he intended to perform all necessary services in a timely fashion notwithstanding his suspension. He says he filed motions to extend the briefing schedule and expected to begin working on the brief in a law clerk capacity, then complete the matter after his reinstatement to active practice. Bertoni also claims to have entered into an agreement to repay Ramirez' deposit, but no payments have been made.

Bertoni was reinstated in August 2012 but is currently being investigated by Disciplinary Counsel's Office on multiple charges including failure to pay withholding taxes for employees,

failing to communicate with clients, charging excessive fees, entering into an improper fixed fee agreement, failing to account, and others.

The Committee recommends and award to the client of the entire \$15,000 retainer with no offset for any work purportedly performed by Bertoni while he was suspended. The committee also recommends waiving the requirement for a civil judgment as claimant is incarcerated out of state and Bertoni is believed to have no assets available to satisfy a judgment.

Bertoni (Vargas-Torres) - \$15,000.00

Client hired Bertoni on January 27, 2012 to handle criminal cases pending in Oregon and Idaho. That was one week after Bertoni signed a stipulation for disciplinary suspension to begin on March 27, 2012.

Bertoni asserts that the client appeared in court in early March and agreed to the substitution of Ronnee Kliewer as his counsel. Kliewer says Bertoni assured her she wouldn't have to do anything on the cases during his suspension, even though they were set for trial in September.

Bertoni claims to have performed substantial services on the client's matters prior to his suspension and to have taken steps to protect the client's interests until he could be reinstated. Bertoni has refused to refund any portion of the \$15,000 paid by the client, claiming it was a flat fee earned on receipt.

It is not clear whether Kliewer resigned or was fired by the client, but he eventually hired new counsel to represent him. The new lawyer found no evidence that Bertoni performed any material services on the cases. She also says that Bertoni's inaction caused the client to lose his opportunity to negotiate a favorable plea deal, as a result of which he will likely face a more severe sentence than his co-defendants.

The Committee concluded that any services performed by Bertoni were *de minimis* within the meaning of the CSF rules and that the client should be awarded the entire \$15,000 paid to Bertoni. The Committee also recommends waiving the requirement for a civil judgment as the client is incarcerated and Bertoni is believed to have no assets available to satisfy a judgment.

OREGON STATE BAR Board Of Governors

Meeting Date: May 3, 2013
Memo Date: April 18, 2013
From: Legal Services Program Committee
Re: Abandoned or Unclaimed Client Funds Appropriated to the OSB Legal Services Program

Action Recommended

The Legal Services Program (LSP) Committee is recommending that the BOG approve disbursing \$137,000 from the unclaimed client fund to the legal aid programs for 2013.

Background

Abandoned or unclaimed client money held in a lawyers' trust account is sent to the Oregon State Bar (OSB), pursuant to ORS 98.386. Revenue received by OSB may be used for the funding of legal services provided through the Legal Services Program, the payment of claims and the payment of expenses incurred by the OSB in the administration of the Legal Services Program.

Disbursement Method Approved in 2012

Last year the BOG approved a method for disbursing unclaimed client funds. The method approved was that the LSP hold \$100,000 in reserve to cover potential claims for the return of unclaimed property and distribute the revenue that arrives each year above this amount. The OSB also entered into an agreement with the legal aid providers in which the legal aid providers agreed to reimburse the OSB if the allotted reserve gets diminished or depleted. The amount of the disbursement changes from year to year depending on the unclaimed funds received each year. \$125,000 was disbursed in 2012.

2013 Disbursement Recommendation

There is currently about \$237,000 unclaimed client funds being held by the LSP. The LSP Committee recommends that the BOG approve allocating \$137,000 to the legal aid providers holding \$100,000 in reserve pursuant to the disbursement method approved in 2012.

For purposes of discussion two documents are attached. One is the Summary of Unclaimed Client Funds which gives the total funds that have been received minus the following:

- claims made by the owners of the funds,
- property forwarded to other jurisdictions
- allocations to the providers

The other is called Claim Detail Summary which outlines details on the claims received.

2013 Legal Aid Allocations

The \$137,000 will be disbursed by using the percent of poverty population with 11% to Lane County Legal Aid and Advocacy Center, 6% to the Center for Nonprofit Legal Services, 1% to Columbia County Legal Aid and 82% to Legal Aid Services of Oregon and Oregon Law Center which cover the rest of the state. The percentage to be disbursed between LASO and OLC will be determined at a later date. The Director of Legal Services Program will disburse funds pursuant to the recommendation forwarded by the LASO and OLC boards.

Summary of Unclaimed Client Funds

\$389,350.54	Submitted Abandoned Property
\$2,685.88	Claimed Property
\$17,305.91	Property Forward to Other Jurisdictions
\$125,000.00	Distributions to Programs
\$244,358.75	Total in GL acct 122-2320-000
(\$6,858.36)	Less Property Pending to be forwarded
\$237,500.39	Funds Available

Claim Detail Summary

Row Labels	Values	
	Total Amount for the Year	Number of Properties
1985	\$130.00	2
1986	\$4.48	1
1988	\$7.40	2
1989	\$115.75	2
1990	\$333.95	2
1992	\$124.80	3
1993	\$1,596.38	2
1994	\$71.68	3
1995	\$2.20	2
1996	\$1,042.41	7
1997	\$820.39	7
1998	\$1,282.57	7
1999	\$5,138.43	15
2000	\$14,591.06	44
2001	\$6,640.86	32
2002	\$7,524.55	25
2003	\$9,427.67	34
2004	\$15,579.62	79
2005	\$46,088.80	57
2006	\$31,380.47	61
2007	\$57,491.18	102
2008	\$104,268.26	122
2009	\$37,253.21	66
2010	\$20,185.89	96
2011	\$1,375.86	4
Grand Total	\$362,477.87	777

Row Labels	Values	
	Number of Claims	Sum
(blank)		
0.01-5000.01	758	\$134,371.43
5000.01-10000.01	12	\$78,111.43
10000.01-15000.01	3	\$30,814.72
15000.01-20000.01	1	\$16,591.75
25000.01-30000.01	1	\$26,259.07
30000.01-35000.01	1	\$30,070.42
45000.01-50000.01	1	\$46,259.05
Grand Total	777	\$362,477.87

Largest Claims and Dates Abandoned

\$ 46,259.05	5/2/2008
\$ 30,070.42	5/27/2005
\$ 26,259.07	6/27/2008
\$ 16,591.75	2/14/2007
\$ 10,528.11	12/31/2006
\$ 10,218.41	12/4/2009
\$ 10,068.20	10/9/2009

UPL Advisory Opinion No. 1

Immigration Practice: Notarios, Translators, and Accredited Representatives

Facts:

A, who is a non-lawyer, studies materials online and at the library and feels confident he can help people who have immigration concerns. He sets up a business called Immigration Forms Oregon, which gives people immigration advice for a modest fee. Immigration Forms Oregon advises its customers about what immigration benefits are available, how to obtain those benefits, what forms to use, and how to deal with immigration proceedings.

B, who is a non-lawyer, agrees to help a friend translate an immigration form into her native language for free. B does not select the form, does not give her friend advice on how to fill out the form, and does not otherwise give her friend any legal advice.

C is an “accredited representative” who provides immigration advice at a nonprofit organization approved by the Board of Immigration Appeals.

Questions:

1. Is A or his business, Immigration Forms Oregon, engaged in the unlawful practice of law?
2. Is B engaged in the unlawful practice of law?
3. Is C engaged in the unlawful practice of law?

Conclusion:

1. Yes. A and his business, Immigration Forms Oregon, are engaged in the unlawful practice of law in violation of ORS 9.160. A and Immigration Forms Online are also in violation of ORS 9.280 because they are acting as immigration consultants.

2. No, qualified. As long as B only translates the forms, but does not select forms, provide advice on how to fill out forms, or otherwise provide her friend with legal advice, she is not engaged in the unlawful practice of law.
3. No, qualified. Assuming C is accredited by the Board of Immigration Appeals to serve as an accredited representative, she is not engaged in the unlawful practice of law.

Discussion:

I. *Question No. 1 (Notario)*

In Question 1, A is engaged in the unlawful practice of law because he is not a lawyer licensed to practice law and he is not otherwise authorized by federal law to provide immigration advice. ORS 9.160; ORS 9.280. A may not (1) give immigration advice to others; (2) select immigration forms for others; or (3) fill in immigration forms for others for compensation.

Generally, non-lawyers are prohibited from providing legal advice on immigration matters to others. ORS 9.160.¹ Immigration matters are complicated. In order to determine whether an individual is entitled to apply for status or other relief, it is necessary to have a thorough understanding of the law. A non-lawyer who selects forms or advises clients in an immigration case would be engaged in the unlawful practice of law, because “no immigration case is routine and immigration law is complex and constantly changing.” *Oregon State Bar v. Ortiz*, 77 Or App 532, 713 P2d 1068 (1986).

A is also engaged in the unlawful practice of law because he is improperly acting as an immigration consultant. Under Oregon law, non-lawyers are generally

¹ This prohibition does not apply to any person or qualified designated entity authorized by federal law to represent persons before the United States Department of Homeland Security or the United States Department of Justice. ORS 9.280(3); see Question 3.

prohibited from acting as immigration consultants. ORS 9.280(1).² A person acts as an immigration consultant when he or she accepts a fee in return for giving “advice on an immigration matter, including but not limited to drafting an application, brief, document, petition or other paper or completing a form provided by a federal or state agency in an immigration matter.” ORS 9.280(2)(a).

II. *Question No. 2 (Translator of Immigration Forms)*

In Question 2, B is not likely to be engaged in the unlawful practice of law. The translation of an immigration form for another, without more, does not constitute the unlawful practice of law. *See Oregon State Bar v. Fowler*, 278 Or 169, 563 P2d 674 (1977).

B is not acting as an immigration consultant because she is not charging a fee to help her friend. ORS 9.280(2)(a).

Even so, B is prohibited from selecting the appropriate immigration forms for her friend to use, giving advice on how to fill out the form, and giving legal advice on the friend’s immigration matter. *See Ortiz*, 77 Or App at 536.

III. *Question No. 3 (Accredited Representatives)*

In Question 3, C is not engaged in the unlawful practice of law provided that she is an accredited representative of an organization approved by the Board of Immigration Appeals ("BIA"), and she charges only a nominal fee for her immigration services.

Federal regulations allow a person who works for a qualified nonprofit organization and who has been accredited by the BIA to represent another person in immigration matters. 8 CFR 292.1(a)(4). Qualified nonprofit organizations include nonprofit religious, charitable, social service, or similar organizations established in the United States and recognized as such by the BIA. 8 CFR 292.2(a). Qualified nonprofit organizations may apply for accreditation for persons of “good moral character” to serve as their representatives. 8 CFR

² *See supra*, footnote 1.

292.2(d). Accreditation is valid for only three years, but may be renewed. *Id.* Accreditation terminates when the BIA's recognition of the accredited organization ceases or when the accredited representative's employment with such organization is terminated. *Id.* The BIA maintains a list of all accredited organizations and representatives.

UPL Advisory Opinion No. 2

Non-Lawyer Representation of Corporations, Unincorporated Associations, Nonprofit Corporations, Trusts, and Partnerships

Facts:

Majority owner, who is a non-lawyer, is the majority owner of a closely held corporation.

President, who is a non-lawyer, is the president of an unincorporated association.

Chairman, who is a non-lawyer, is the chairman of the board of a nonprofit corporation.

Trustee, who is a non-lawyer, is the sole trustee of a trust.

Partner, who is a non-lawyer, is the major partner of a business partnership.

Each of the above non-lawyers is interested in representing his or her respective entity in court.

Questions:

1. May majority owner of corporation, president of association, chairman of nonprofit, trustee of trust, or partner in a partnership, represent his or her respective entity in state or federal court?
2. May majority owner of corporation, president of association, chairman of nonprofit, trustee of trust, or partner in a partnership, represent his or her respective entity in small claims court?

Conclusion:

1. No.
2. Yes.

Discussion:

- I. *Question No. 1 (Entity Representation in State and Federal Court)*

A majority owner of corporation, president of association, chairman of nonprofit, trustee of trust, or partner in a partnership, who attempts to represent his or her respective entity in state or federal court would likely be engaging in the unlawful practice of law. ORS 9.160; *see Oregon State Bar v. Wright*, 280 Or 693, 573 P2d 283 (1977).

As a general rule, although non-lawyers may represent themselves *pro se*, they may not represent entities in state or federal court. ORS 9.320¹; 28 U.S.C. §1654.² This prohibition against non-lawyers representing entities includes, but is not limited to, the representation of for-profit and nonprofit corporations³, unincorporated associations⁴, partnerships⁵, and trusts⁶.

¹ ORS 9.320(1) provides, “Any action, suit, or proceeding may be prosecuted or defended by a party in person, or by attorney, except that the state or a corporation appears by attorney in all cases, unless otherwise specifically provided by law.” *See Oregon Peaceworks Green, PAC v. Secretary of State*, 311 Or 267, 810 P2d 836 (1991) (holding that the combined effect of ORS 9.160 and ORS 9.320 is to provide that persons may appear *pro se*, but entities must be represented by an lawyer); *but see State ex rel. Juvenile Dept. of Lane County v. Shuey*, 119 Or App 185, 850 P2d 378 (1993) (holding that under the Indian Child Welfare Act an Indian tribe need not have a lawyer to intervene in child custody proceeding).

² 28 USC §1654 provides, “In all courts of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein.” Federal courts interpret Section 1654 to prohibit non-lawyer representation of entities. *See Rowland v. California Men's Colony, Unit II Men's Advisory Council*, 506 US 194, 202, 113 S Ct 716, 721 (1993) (“As the courts have recognized, the rationale for that rule applies equally to all artificial entities. Thus, save in a few aberrant cases, the lower courts have uniformly held that 28 U.S.C. § 1654, providing that ‘parties may plead and conduct their own cases personally or by counsel,’ does not allow corporations, partnerships, or associations to appear in federal court otherwise than through a licensed attorney.”) (footnote omitted).

³ ORS 9.320(1).

⁴ *See Oregon Peaceworks Green, PAC*, 311 Or at 271-72 (treasurer of an unincorporated political action committee, a non-lawyer, was not empowered to

II. *Question No. 2 (Small Claims Court Exception)*

A majority owner of corporation, president of association, chairman of nonprofit, trustee of trust, or partner in a partnership, would likely be permitted to represent his or her respective entity as its legal representative in small claims court. Non-lawyers may represent entities of which they are the legal representative in the small claims department of an Oregon circuit or justice court. See ORS 46.415(5); ORS 55.090(2).

represent political action committee in state court); *Church of the New Testament v. United States*, 783 F.2d 771, 773 (9th Cir 1986) (“unincorporated associations, like corporations, must appear through an lawyer”).

⁵ See e.g., *Rowland*, 506 US at 202; and *First Amendment Found. v. Vill. of Brookfield*, 575 F Supp 1207, 1207 (ND Ill 1983) (holding corporations, partnerships, and unincorporated associations may not appear through an officer or other non-lawyer representative), cited with approval in *Oregon Peaceworks Green, PAC*, 311 Or. at 272.

⁶ See *Marguerite E. Wright Trust v. Dep’t. of Revenue*, 297 Or 533, 536 (1984) (non-lawyer trustee of the plaintiff trust may not represent a business trust); *Hansen v. Bennett*, 162 Or App 380, 383 n 4, 986 P2d 633, 635 n 4 (1999) (noting that court dismissed an appeal filed on behalf of a corporation and a trust on the ground that an lawyer had not filed the notice of appeal for those entities); *C.E. Pope Equity Trust v. United States*, 818 F.2d 696 (9th Cir 1987) (holding non-lawyer trustee of organization which was alleged to be trustee of trust bringing complaints was two steps removed from the real party in interest and could not appear *pro se* to prosecute suit).

Section 7.4 Investment Policy

Subsection 7.400 Purpose

This investment policy is established to provide direction and limits for the Bar's investment manager in investing all cash assets held by the Bar. The funds are to be invested in a manner that ensures the protection of the Bar's cash assets and provides a dependable source of operating revenue. The investment objectives are in order of importance: to ensure the safety of the assets, to ensure sufficient liquidity and to obtain the highest possible rate of return. The policy consists of objectives for the Bar's short-term and long-term investments.

The objective of the **Short-term Investment** policy is to provide for short-term investment of cash to be used within the Bar's current fiscal year, generally one year or less. The objective shall be to minimize or eliminate risk while achieving a reasonable yield within the range of short-term expectations.

The objective of the **Long-term Investment** policy is to provide for long-term growth and stability of all reserves, designated, and contingency funds. The funds are invested to maximize the return on the investment, consistent with an appropriate level of risk and subject to the generation of adequate current income. This investment fund shall be diversified to provide reasonable assurance that investment in a single security, a class of securities, or industry will not have an excessive impact on the Bar. Long-term investment strategy should achieve reasonable yields while minimizing exposure to risk.

Subsection 7.401 Investment Management

The Executive Director or the Chief Financial Officer is authorized and directed to deposit, sell, convert or withdraw cash on deposit in excess of that required for current operations and to invest those funds in accordance with the Bar's investment policy using expert advice and assistance as he or she may require. The Bar will maintain a list of all authorized institutions that are approved for investment purposes.

Management and Monitoring of Performance

Investment Committee. An "Investment Committee" consisting of members of the Budget & Finance Committee and the Bar's Chief Financial Officer shall monitor the investment policy and portfolio.

Investment(s). The Committee may engage one or more fee-for-service investment managers with varying styles and expertise and delegate individual investment decisions to such investment managers within the guidelines of this policy and the specific direction of the Committee. The investment managers may contact the designated liaison of the Committee, who shall be the Bar's Chief Financial Officer between meetings of the Committee to implement or suggest changes in investments or strategy. If necessary, the Committee may meet by telephone to consider changes in investments or strategies. The selection and allocation of funds to individual statement managers will be made by the Committee.

Committee Meetings. The investment manager(s) shall prepare quarterly reports of the portfolio's performance. The Committee will meet at least quarterly to monitor the performance of the assets.

Performance Standards. The investment committee will evaluate investment managers using a number of factors including performance relative to the most applicable benchmarks, quality of communications with the investment committee, and adherence to the Bar's investment policy.

Annual Review. This investment guidelines and policies shall be reviewed at least annually by the Budget & Finance Committee.

Subsection 7.402 Approved Investments

Investments will be limited to the following obligations and subject to the portfolio limitations as to issuer:

- (a) The State of Oregon Local Government Investment Pool (LGIP) no percentage limit for this issuer.
- (b) U.S. Treasury obligations - no percentage limitation for this issuer.
- (c) Federal Agency Obligations - each issuer is limited to \$250,000, but not to exceed 25 percent of total invested assets.
- (d) U.S. Corporate Bond or Note - each issuer limited to \$100,000.
- (e) Commercial Paper - each issuer limited to \$100,000.
- (f) Mutual funds that commingle one or more of the approved types of investments, or securities meeting the minimum credit quality standards of this policy.
- (g) Mutual funds of U.S. and foreign equities.
- ~~(h) Mutual funds in these asset classes: high-yield bonds, emerging market bonds, international small capitalization equities, and diversified commodities.~~
- ~~(h) Federal deposit insurance corporation insured accounts.~~
- ~~(i) Individual public-traded stocks, excluding margin transactions and, short sales, and derivatives.~~
- ~~(j) Mutual funds investing in infrastructure, in commodities, and in instruments such as high yield bonds, adjustable rate bonds, derivatives, futures, currencies, and ETFs, but not swaps or speculative instruments or mortgage backed securities, and only for the purpose of both managing risk and diversifying the portfolio and not at all for purposes of leveraging, with all such investments in total not to exceed 10% of the total invested assets."~~

Security	Minimum credit quality
Interest bearing deposits of banks, savings and loans and credit unions	The issuing financial institution must be rated "well capitalized" as defined by the financial institution's regulator. Those that are not "well capitalized" will be limited by the level of their deposit insurance.
Obligations issued or guaranteed by U.S., local, city and state governments and agencies	A-/A3 as defined by Standard & Poor's and Moody's
Money Market Funds	The issuing financial institution must be rated "well capitalized" as defined by the financial institution's regulator. Those that are not "well capitalized" will be limited by the level of their deposit insurance.
Money Market Mutual Funds	The issuing financial institution must be rated "well capitalized" as defined by the financial institution's regulator. Those that are not "well capitalized" will be limited by the level of their deposit insurance.
Obligations issued or guaranteed by the U.S. Federal government	Not applicable
Obligations issued or guaranteed by U.S. Federal agencies	AAA/AAA as defined by Standard & Poor's and Moody's
Obligations issued or guaranteed by U.S. government-sponsored enterprises	AAA/AAA as defined by Standard & Poor's and Moody's
Obligations issued or guaranteed by local, city and state governments and agencies.	A-/A3 as defined by Standard & Poor's and Moody's
Obligations of U.S. corporations	A-/A3 as defined by Standard & Poor's and Moody's

Subsection 7.403 Limitations

At the discretion of the Budget & Finance Committee, the entire investment portfolio may be invested in any combination of the Local Government Investment Pool, U.S. Treasury obligations or federal agency obligations. The maturities of the investment obligations will be the investment manager's estimate of the Bar's cash needs, subject to the specific fund liquidity requirements. No maturity period will exceed 84 months.

Subsection 7.404 Prudent Person Standard

The standard of prudence to be used by the investment manager in managing the overall portfolio will be the prudent investor rule, which states: "Investments shall be made with judgment and care, under circumstances then prevailing, which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not for speculation, but for investment, considering the probable safety of their capital as well as the probable income to be derived."

Mission

The mission of the Oregon State Bar is to serve justice by promoting respect for the rule of law, by improving the quality of legal services and by increasing access to justice.

Functions of the Oregon State Bar¹

We are a regulatory agency providing protection to the public.

We are a partner with the judicial system.

We are a professional organization.

We are leaders helping lawyers serve a diverse community.

We are advocates for access to justice.

~~And the bar does this as a “public” corporation—as an instrumentality of the Oregon Supreme Court.~~

Values of the Oregon State Bar

Integrity

Integrity is the measure of the bar’s values through its actions. ~~The bar’s activities will be, in all cases, consistent with its values.~~ The bar strives to adhere to the highest ethical and professional standards in all of its dealings.

Fairness

The bar ~~embraces its diverse constituency and is committed to~~ works to the elimination of bias in the justice system and to ensure access to justice for all citizens.

Leadership

The bar ~~will~~ actively pursues its vision mission and promotes and encourages leadership among its members both to the legal profession and the community. ~~This requires the bar and all individual members to exert leadership to advance their goals.~~

Diversity

The bar is committed to serving and valuing its diverse community, to advancing equality in the justice system, and to removing barriers to that system.

~~Promote the Rule of the Law~~ Justice

¹ These are the same as the Purposes set forth in OSB Bylaw 1.2, except they are in different order and the bylaw doesn’t include the final statement about the bar’s status. Also, the bylaw includes the following purpose: “We are a provider of assistance to the public seeking to ensure the fair administration of justice for all and the advancement of the science of jurisprudence, and promoting respect for the law among the general public.”

~~The rule of law is the premise of the democratic form of government. The bar promotes the rule of law as the best means to resolve conflict and achieve equality in a democratic society. The rule of law underpins all of the programs and services the bar provides.~~

Accountability

The bar is ~~committed to~~ accountability for its decisions and actions and will be transparent and open in communication with ~~will provide regular means of communicating its achievements to~~ its various constituencies.

Excellence

Excellence is a fundamental goal in the delivery of bar programs and services ~~by the bar~~. Since excellence has no boundary, the bar strives for continuous improvement. ~~The bar will benchmark its activities to organizations who exhibit “best practices” in order to assure high quality and high performance in its programs and services.~~

The BOG is interested in hearing your viewpoints about the continuing viability of the HOD as a governance structure. Following the 2011 HOD meeting, a member suggested that issues should be submitted to the entire membership for electronic vote rather than delegated to the relatively small number of HOD members. Other concerns raised in recent years are that the HOD doesn't fairly reflect the views of out-of-valley members, and that too much time is spent on member resolutions that don't involve bar governance. There is also concern that in the face of the increasing complexity of bar operations and practice issues the HOD may not be the best way to decide important issues such as membership fee increases or disciplinary rule changes. Please help guide the BOG's discussion by completing this short survey, which is open to all current and past HOD members. The results will be shared with the current HOD when the survey is complete, and will be included in a future BOG meeting agenda. You are of course also welcome to share any comments, concerns or suggestions with bar staff or any member of the board.

1. Overall, do you believe the HOD serves a meaningful role in OSB governance?

- Yes
- No
- Not sure

2. Do you think the following changes would have a positive, negative, or no impact on the HOD's effectiveness?

- Eliminate Section chairs as delegates
- Increase the number of elected delegates
- Have more HOD meetings, or more regional HOD gatherings
- Create an executive committee of the HOD
- Hold HOD meetings outside of the Portland metro area
- Limit the number of resolutions any one member can bring
- Limit the number of resolutions the BOG can bring to the HOD
- Limit or eliminate resolutions that do not relate to bar governance (e.g., general statements of support for court funding, legal services, etc.)

3. What do you think is the most challenging aspect of service on the HOD?

- Lack of information on bar programs, policies and budget
- Lack of information on preferences of constituents
- Lack of communication among HOD members
- Meeting location/date is inconvenient
- Other

4. Who do you think is best suited to represent the membership in deciding membership fees?

- The HOD
- The BOG
- The general membership, through a "town hall" format
- The general membership, through electronic vote

5. Who do you think is best suited to represent the membership in making changes to the rules of professional conduct for referral to the Oregon Supreme Court?

House of Delegates

Board of Governors

OSB Legal Ethics Committee

Either the HOD or BOG, but the membership should be consulted/surveyed in advance

General membership, through a "town hall" format

General membership, through electronic vote

6. To what degree do you share the following concerns about replacing the HOD with electronic voting by the membership?

Not enough members would vote

Some members will not understand the issues they're asked to decide

Loss of the discussion and debate that informs and improves decision-making at HOD meetings

Too easy for 'special interest' groups to influence voting

Other

7. Please share your comments and suggestions, if any:

Subsection 16.200 Reduced and Complimentary Registrations; Product Discounts

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

(b) Complimentary registration does not include the cost of lunch, materials in hard copy for which a fee is charged, or other any fee-based activities held in conjunction with a CLE seminar, or any other item not included in the registration fee.

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

(d) For purposes this policy, “judges” means full or part-time paid judges and referees of the Circuit Courts, the Court of Appeals, the Tax Court, the Supreme Court, and of tribal and federal courts within Oregon. Complimentary registration at any event for judicial clerks will be limited to one clerk for each trial court judge and two clerks for each appellate court judge.

(e) Complimentary registration for Active Pro Bono members is limited to eight (8) hours of programming in any one calendar year, which may be used in increments.

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

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

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

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: May 3, 2013
From: Sylvia E. Stevens, Executive Director
Re: Amendment of OSB Bylaw 6.301 (Relating to Reinstatement Applications)

Action Recommended

Approve the revision of OSB Bylaw 6.301 for the reasons set forth below.

Background

At its February 21, 2013 meeting, the BOG approved revisions to the Bar Rules of Procedure that delegated to the Executive Director the authority to review (and forward to the Supreme Court) formal reinstatement applications. The Supreme Court adopted the changes on April 5, 2013, effective on the date of the order.

Bylaw 6.301 currently requires a one-meeting notice before the BOG takes a final vote on formal reinstatement applications. The apparent reason for this was to allow time for a thorough investigation and notice of the reinstatement application to be published in the *Bulletin* to elicit comment from members about the applicant. Since the BOG will not be reviewing the majority of reinstatement applications, the one-meeting notice is no longer necessary. However, staff plans to continue publishing notice to the membership, as that has been a long-standing aspect of the internal process and occasionally produces helpful information about an applicant. The Bar Rules do not have a requirement to publish notice (and we did not include it in the amendments recently approved by the court). Instead, we suggest putting in the bylaws. If the BOG agrees with this approach, Bylaw 6.103 will read as follows:

Subsection 6.103 Reinstatement

~~Upon receipt of A final vote by the Board on an application for reinstatement submitted under BR 8.1 of the Rules of Procedure, the bar shall publish notice of and a request for comment on the bar's web site for a period of 30 days. requires notice at a prior board meeting unless two thirds of the entire Board waives such requirement. If the Board, in its review and investigation, determines that an applicant for reinstatement as an active member of the Bar has not been an active member continuously for a period of more than five years, the Board may recommend to the Supreme Court of the State of Oregon that, as one of the conditions precedent to reinstatement, if it is otherwise recommended, the applicant (1) be required to establish his or her competency and learning in the law by receiving a passing grade on the Oregon Bar Examination as defined under the Rules of the Supreme Court for Admission of Attorneys next following the date of filing of such application for reinstatement or (2) be required to complete a specified number of credit hours of accredited Continuing Legal Education activity before or within a specified time after the applicant's reinstatement.¹~~

¹ This is a duplication of the authorization in the Bar Rules of Procedure to recommend retaking the bar exam or completing a course of continuing education as a condition of reinstatement as is not necessary in the bylaws.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: May 3, 2013
Memo Date: April 19, 2013
From: Danielle Edwards, Director of Member Services
Re: Volunteer Appointments

Action Recommended

Approve the following recommendations for committee appointments.

Background

Federal Practice and Procedure Committee

Due to a resignation, the committee needs one member appointed. The committee chair requests the appointment of **Judge Anna J. Brown** (801730). As a US District Court Judge, Anna Brown is located in Portland and has agreed to serve as a committee member.

Recommendation: Judge Anna Brown, member, term expires 12/31/2014

Judicial Administration Committee

Due to a resignation, the committee needs one member appointed. The committee officers and liaison request the appointment of **Terry L. Wright** (814289). Ms. Wright has held numerous volunteer positions with the bar including service on the BOG. She currently holds a region 5 HOD delegate seat and has agreed to serve on the committee if appointed.

Recommendation: Terry L. Wright, member, term expires 12/31/2014

Loan Repayment Assistance Program Committee

The LRAP Committee guidelines require member participation from attorneys practicing specific areas of law. The district attorney seat is vacant and Tim Colohan, President of the Oregon District Attorneys Association, recommends the appointment of **Richard L. Wesenberg** (921553). Mr. Wesenberg currently serves as the Douglas County DA and offers geographic diversity to the committee. The staff liaison supports his appointment.

Recommendation: Richard L. Wesenberg, member, term expires 12/31/2015

Quality of Life Committee

The QOL Committee needs one member and one advisory member appointed. The committee chair recommends **AnneMarie Sgarlata** (065061) for the member seat. Ms. Sgarlata is with the US Attorney's Office in Portland and selected the QOL Committee as her first choice volunteer preference. **Adina Flynn** (962858) is recommended for the advisory member position. Ms. Flynn is an inactive bar member currently working as a financial advisor. The committee plans to utilize her experience on its transitions subcommittee.

Recommendation: AnneMarie Sgarlata, member, term expires 12/31/2015

Recommendation: Adina Flynn, advisory member, term expires 12/31/2015

Uniform Civil Jury Instructions Committee

One committee member position is vacant on the UCJI Committee, as such staff and the committee recommend the appointment of **Tom Powers** (983933). Mr. Powers is a partner at a small Beaverton firm and indicated the UCJI Committee as his first choice preference when volunteering.

Recommendation: Tom Powers, member, term expires 12/31/2015

Unlawful Practice of Law Committee

Due to the resignation of Bronson James, staff and the UPL Committee officers recommend the appointment of **Joel Benton** (110727). Mr. Benton is County Counsel for Jackson County and indicated the UPL Committee as his second choice appointment when he volunteered.

Recommendation: Joel Benton, member, term expires 12/31/2015

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: May 3, 2013
Memo Date: May 2, 2013
From: Danielle Edwards, Director of Member Services
Re: Additional Volunteer Appointments

Action Recommended

Approve the following recommendations for committee appointments.

Background

Client Security Fund Committee

Due to the removal of a non-participating committee member, one appointment is necessary. The committee staff liaison requests the appointment of **Bradley V. Timmons** (903941). Mr. Timmons practices in The Dalles and would bring geographic diversity to the committee's membership.

Recommendation: Bradley V. Timmons, member, term expires 12/31/2014

Public Service Advisory Committee

Due to the resignation of one committee member the staff liaison recommends the appointment of **Bruce B. Harrell** (921886). Mr. Harrell recently served a shortened term on the committee and offers geographic diversity to its membership. Recently a significant amount of the committee's work has focused on the Referral and Information Services percentage fee model transition, Mr. Harrell has experience in this area based on his Lawyer Referral Service and Modest Means Program participation.

Recommendation: Bruce B. Harrell, member, term expires 12/31/2014

Uniform Civil Jury Instructions Committee

Due to a resignation, one additional member appointment needs to be made. The committee officers and staff liaison recommend **Timothy J. Heinson** (872480). Mr. Heinson is a partner at a small Portland firm and primarily handles personal injury cases. Mr. Heinson has been contacted in is willing to serve.

Recommendation: Timothy J. Heinson, member, term expires 12/31/2015

Lawyer Referral Service Policies

I. Goals: The goals of the Lawyer Referral Service (LRS) ~~is~~are to serve lawyers and the public by referring people who seek and can afford to pay for legal assistance (potential clients) to lawyers who are willing to accept such referrals, and ~~also~~ to provide information and other resources as appropriate. All lawyers participating in the LRS (panelists) agree to abide by these Lawyer Referral Service Policies (Policies) and Lawyer Referral Service Operating Procedures (Procedures).

II. Eligibility: Lawyers ~~satisfying who satisfy~~ the following requirements ~~shall bear~~e eligible to apply for participation in the LRS. The lawyer must:

- A. ~~Maintain a~~Be in private practice;
 - B. Be an active member of the Oregon State Bar in good standing;
 - C. ~~Maintain~~Have malpractice coverage with the Professional Liability Fund (PLF);
- and
- D. Have no formal disciplinary, protective, or custodianship proceedings pending.

Additional ~~standards apply~~requirements for participation on special subject matter panels; ~~the special subject matter panels and qualifications~~ are stated in the Procedures.

III. Complaints about Panelists:

A. Ethics Complaints: Complaints about possible ethical violations by panelists ~~shall~~will be referred to the Oregon State Bar Client Assistance Office.

B. Fee Complaints: Complaints about panelists' fees will be referred to the Oregon State Bar Fee Arbitration Program.

~~BC.~~ Customer Service Complaints: LRS staff monitor complaints concerning the level of customer service provided by panelists. The character, number, and/or frequency of such complaints may result in removal from the LRS, ~~with or~~ without prior notice.

IV. Removal: Panelists may be removed from the LRS or any LRS panel without prior notice if they no longer meet the eligibility requirements, if they violate any of the LRS Policies or Procedures, or as otherwise provided in these Policies and Procedures.

~~A.~~ Panelists against whom disciplinary, protective, or custodianship proceedings have been approved for filing ~~shall~~will be ~~automatically~~ removed from the LRS until those ~~charges~~matters have been resolved. A matter ~~shall~~will not be deemed ~~to be~~ resolved

until all ~~matters relating to the disciplinary~~ such proceedings, including appeals, have been concluded and the matter is no longer pending in any form.

~~B. A panelist whose status changes from “active member of the Oregon State Bar who is in good standing” shall be automatically removed from the LRS.~~

~~C. A panelist who leaves private practice, fails to maintain coverage with the PLF, or files an exemption with the PLF shall be automatically removed from the LRS.~~

~~D. A panelist may be removed from the LRS or any LRS panel if the panelist violates these Policies and/or the Procedures.~~

~~E. In all instances in which the panelist is removed, automatically or otherwise, prior notice need not be given to the panelist.~~

V. Feesunding & Refunds:

A. Feesunding: All panelists ~~shall~~ must pay the ~~annual~~ LRS registration fees and percentage remittances set by the Board of Governors (BOG) and provided below. ~~on all attorneys’ fees earned and collected from each potential client referred by the LRS and accepted as a client.~~

1. Registration Fees: ~~The Board of Governors (BOG) shall set the registration fees.~~ All panelists ~~shall~~ must pay registration fees annually for each program year and, except as provided in Paragraph ~~(V.B.)~~ “Refunds” (below), registration fees are nonrefundable and will not be prorated. The registration fees are:

a) Basic Registration Fee (including home territory and up to four panels):

i) \$50 for those admitted in Oregon for less than 3 years

ii) \$100 for those admitted in Oregon for 3 years or more

b) Enhanced Services Fees:

i) Additional Territories: \$50 for each additional geographic territory

ii) Statewide Listing: \$300

iii) Additional Panels: \$30 for each additional panel beyond the four included in a basic registration

2. Remittances: ~~As provided below and explained further in the Procedures, if a panelist and client enter into an agreement whereby the panelist will provide legal services to the client for which the client will pay a fee, then remittances will be due the LRS upon payment of the fees by the client. The combined fees and expenses charged a client may not exceed the total charges that the client would have incurred had no referral service been involved. Panelists owe the LRS a remittance when: 1) the panelist has earned and collected attorney fees on an LRS-referred matter; and, 2) the amount earned and collected meets or exceeds the threshold set by the BOG. The remittance owed is a percentage of the attorney fees earned and collected by the panelist on the LRS-referred matter. The BOG sets the percentage rate and threshold used to calculate the remittances owed are:~~

a) Percentage Rate: 12%

b) Threshold: \$0

~~(s) to be applied to all panelists' attorneys' fees earned and collected from clients in excess of any applicable threshold. Remittances owed to the LRS are calculated by multiplying the percentage rate(s) by the earned and collected attorney fees. If a panelist fails to pay the appropriate remittance(s) to the LRS in accordance with these Policies and the Procedures, the panelist will be ineligible for referrals until all remittance(s) have been paid in full. A panelist's obligation to pay remittances owed to the LRS continue regardless of whether the panelist is in breach of this agreement, fails to comply with these Policies or the Procedures, is removed from the LRS, is no longer eligible to participate in the LRS, or leaves the LRS.~~

3. Communications Regarding Remittances: Upon settlement of a matter, the panelist ~~shall be obligated to~~ must include the LRS with those who have a right to know about the terms of a settlement to the extent necessary to allow the LRS to determine the portion of the fees to which it is entitled.

B. Refunds:

1. Upon written request, a panelist who has been ~~automatically~~ removed from the LRS ~~shall be~~ is entitled to a prorated refund of registration fees provided that the panelist has no unpaid balances for LRS registration fees or remittances. The amount of the refund ~~shall will~~ be based on the number of full months remaining in the program year for which the fees were paid, as measured from the date the written request is received. ~~An automatically~~ removed panelist who again meets all of the eligibility ~~and registration~~ requirements prior to the expiration of the program year during which the ~~automatic~~ removal occurred

may reapply and be reactivated for the remainder of that program year upon written request and payment of any amount refunded.

2. Upon written request, a panelist who is required to refund to a client a portion of a flat fee that was earned upon receipt will be refunded the percentage paid to LRS of the portion refunded to the client. ~~shall be entitled to a refund of the same portion paid to LRS.~~

VI. Review and Governance:

A. Public Service Advisory Committee (PSAC):

1. The PSAC advises the ~~Board of Governors~~BOG on the operation of the LRS. The PSAC works with LRS staff in the development and revision of these Policies and the Procedures. Amendments to these Policies must be approved by the BOG. Amendments to the Procedures may be approved by ~~a simple majority of the PSAC,~~ with the exception that proposed revisions to the amount of the registration fees and the percentage rate(s) and threshold used to calculate remittances shall be submitted to the BOG for approval. The BOG may amend these Policies and Procedures at any time. The RIS Manager may waive or suspend Procedures for good cause.

2. Upon written request, the PSAC ~~shall~~will review ~~an LRS staff~~a decision to remove a panelist at its next regularly scheduled meeting. Such written request shall be submitted to the PSAC within 30 calendar days of the date notice of the ~~LRS staff~~ decision is given to the removed panelist. The PSAC's decision regarding removal is final.

3. Upon written request, the PSAC ~~may~~will review ~~an LRS staff~~a decision regarding a panelist's registration, renewal, and/or special subject matter panel registration (collectively, registration issues). Such written request ~~shall~~must be submitted to the PSAC within 30 calendar days of the date notice of the ~~LRS staff~~ decision is given to the lawyer. The PSAC's ~~review and~~ decision regarding registration issues ~~shall be~~is final.

~~B. Board of Governors (BOG):~~

~~1. Upon written request by any PSAC member or LRS staff, PSAC decisions regarding proposed revisions to the Procedures may be reviewed by the BOG. Upon written request of a panelist, a decision of the PSAC regarding panelist eligibility or removal may be reviewed by the BOG, which shall determine whether the PSAC's decision was reasonable. The written request shall be submitted to the BOG within 30 calendar days of the date notice of the PSAC decision is given to the affected panelist.~~

~~2. The BOG shall set the amount of the registration fees and the percentage rate(s) and threshold used to calculate remittances.~~

~~3. These Policies may be amended, in whole or in part, by the BOG.~~

Lawyer Referral Service Operating Procedures

1) ~~How It Works~~What LRS Will Do:

a) ~~Screening Referrals: Lawyer Referral Service (LRS) staff will refer potential clients to panelists based on process referrals using information gathered from the potential client during the screening process—~~legal need, geographic area, language spoken, and other requested services (credit cards accepted, evening appointments, etc.).~~—to find a lawyer participating in the LRS (a panelist) who is the best match for each potential client.~~

b) Rotation: Referrals are made in rotation to ensure an equitable distribution of referrals among similarly situated panelists.

c) Processing: Generally, potential clients receive one referral at a time and will not be provided more than three referrals within a 12-month period for the same legal issue. Under certain circumstances, LRS ~~staff~~ may provide more than three referrals and may also provide several referrals at the same time. Such circumstances may include, but are not limited to, emergency hearings, referral requests from those who live out of state, and lawyers interviewing panelists to represent their clients in other matters, ~~etc.~~ LRS tells P potential clients ~~are told by LRS:~~

i) To tell the panelist that they have been referred by the LRS-Oregon State Bar's Lawyer Referral Service;

ii) ~~That t~~I they are entitled to an initial consultation of up to 30 minutes for \$35;

iii) ~~That t~~I the panelist's regular hourly rate will apply after the first 30 minutes; and,

iv) ~~That a~~All fees beyond the initial consultation will be as agreed between the potential client and the panelist.

d) Follow-up: After processing a referral, ~~LRS staff email a referral confirmation is emailed~~ to the panelist. ~~and, if possible, to the potential client as well. A comprehensive status report is sent to panelists on a monthly basis.~~ LRS ~~staff will~~ may also send referral confirmations and follow-up surveys to potential clients ~~and clients~~ referred by the LRS. Any pertinent information from surveys will be forwarded to panelists, and, if deemed

necessary by LRS staff, to the PSAC. The LRS also routinely monitors referrals by checking court dockets, legal notices, etc.

2) What Panelists Will Do:

ea) Initial Consultations:

i) Amount: Panelists agree to charge potential clients who live in Oregon and are referred by the LRS no more than \$35 for an initial consultation, ~~;~~ except that no consultation fee ~~shall~~ may be charged where:

(1) Such charge would conflict with a statute or rule regarding attorneys' fees in a particular type of case (e.g., workers' compensation cases), or

(2) The panelist customarily offers or advertises a free consultation to the public for a particular type of case.

ii) Duration: Potential clients are entitled to an initial consultation of up to 30 minutes for a maximum fee of \$35. If the potential client and panelist agree to continue consulting beyond the first 30 minutes, the panelist must make clear what additional fees will apply.

iii) ~~Telephone, Computer and/or Video Consultations~~ Communication Method: It is up to the panelist ~~Each panelist may decide~~ whether the panelist will to provide initial consultations in person, by telephone, by video conference, or by some other method of real-time communication. ~~by any communication method other than a face-to-face meeting with the potential client.~~ Panelists may indicate their preferences on their LRS applications.

iv) Location of ~~Face-to-Face~~ In-Person Consultations: ~~All lawyer-client meetings~~ In-person consultations between potential clients and panelists must take place in an office, conference room, courthouse, law library, or other mutually agreeable location that will ensure safety, privacy, and professionalism.

~~z~~ b) Fees: Panelists agree not to charge more fees and expenses to an LRS-referred client than they would to a client who is not referred by LRS.

c) Customer Service:

i) Panelists ~~agree to will~~ participate only on those panels and subpanels ~~reasonably~~ within the panelist's competence and where the LRS has ~~qualified~~ approved the panelist to participate on one or more special subject matter panels, as applicable. ~~;~~

~~In addition, panelists must demonstrate professional reliability and integrity by complying with all LRS Policies and Procedures, including the following customer service standards:~~

~~aii) Panelists will refrain from not charging or billing for any fee beyond the initial consultation fee unless and until the panelist and potential client have agreed to the attorney's fees and costs for additional time or services beyond the initial 30-minute consultation;~~

~~biii) Panelists will use a written fee agreements for any services performed on behalf of clients that are not completed at provided beyond the initial consultation;~~

~~eiv) Panelists will communicate regularly with LRS staff, including updating online profiles and providing notice if a panelist is unable to accept referrals for a period of time due to vacation, leave of absence, heavy caseload or any other reason; and,~~

~~ev) Panelists will keep clients reasonably informed about the status of their clients' legal matters and respond promptly to reasonable requests for information. Panelists will return calls and emails promptly and will provide clients with copies of important papers and letters.~~

~~d) Except as provided below, Ppanelists will refer back to the LRS any potential client with whom the panelist is not ableunable to conduct an initial consultation in the timeframe requested by the potential client or for any other reason.~~

~~i) Panelist Substitution: TheA panelist may offer the potential client a referral to another-a substitute lawyer, provided:~~

- ~~(1) The subsequentsubstitute lawyer is a panelist;~~
- ~~(2) The potential client is informed of the potential client's option to call the LRS back for another referral rather than accepting the offered substitution;~~
- ~~(3) The potential client agrees to the substitution; and~~
- ~~(4) Both the referring panelists and subsequent lawyer keep the notify LRS apprised of the substitution. arrangement and disposition of all referrals, and ensure that all reports to the LRS clarify and document all resulting lawyer client agreements and relationships, if any.~~

~~ii) Non-Panelist Referral: A panelist may request LRS to waive this requirement when adherence to this requirement is contrary to the panelist's independent professional judgment.~~

e) Panelists ~~will submit any fee disputes with LRS-referred clients to~~ will use the Oregon State Bar Fee Arbitration Program for any fee disputes with LRS-referred clients, ~~regardless of who submits the petition for arbitration and regardless of when the dispute arises.~~

f) Panelists must have access to a computer with one of the following internet browsers installed and running the most recent version: Internet Explorer, Chrome, Firefox, or Safari.

3) How To Join the LRS:

a) ~~Before submitting your application and payment, please read through the Lawyer Referral Service Policies (Policies) and these Procedures completely and contact LRS staff with any questions you may have;~~

b) ~~Complete and submit the LRS Application Form; log in at www.osbar.org and click on the link for the application;~~

c) ~~Complete and submit the Subject Matter Qualification forms for certain designated panels (if required);~~

d) ~~Ensure that your Professional Liability Fund (PLF) coverage is current and that all outstanding PLF invoices are paid; and,~~

e) ~~Pay all registration fees~~

43) Program Year: The LRS operates on a 12-month program year. The program year begins July September 1 and ends ~~June 30~~ August 31. Although the LRS will accept applications at any time, registration fees are not prorated for late registrants. Payment of the registration fee ~~shall~~ entitles the panelist to participation only for the remainder of the applicable program year. The LRS may refund registration fees in full only if requested prior to the beginning of the applicable program year.

54) Territories: LRS registration uses geographic territories based upon population density, counties, court locations and potential client and panelist convenience. A chart of the territories and the counties in each territory may be found on the application. Payment of the basic registration fee ~~(see below)~~ includes registration for ~~one territory, which shall be~~ the territory in which a panelist's office is located, known as the panelist's home territory. For an additional fee, panelists may elect to register for additional territories outside of his or her home territory for some or all of the ~~general areas of law~~ panels selected.

~~65) Special Subject Matter Panel Qualifications: Registration for special subject matter panels requires a separate form and affirmation showing that the panelist meets basic competency standards. The special subject matter panels currently include: felony defense; interstate/independent adoption; deportation; and Department of Labor-referred FMLA/FLSA matters. Additional information and forms are available on the bar's website at www.osbar.org~~

~~7) Registration Fees (effective 07/01/12):~~

~~a) Basic Registration Fee (including home territory and up to four panels or areas of law):~~

~~i) \$50 for those admitted in Oregon for less than 3 years.~~

~~ii) \$100 for those admitted in Oregon for 3 years or more.~~

~~b) Enhanced Services Fees:~~

~~i) Additional Territories: \$50 for each additional geographic territory~~

~~ii) Statewide Listing: \$300~~

~~iii) Additional Panels: \$30 for each additional panel or area of law beyond the four included in a basic registration)~~

~~86) Reporting and Remittance Requirements:~~

~~a) Percentage Rate: 12%~~

~~b) Threshold: \$0~~

~~c) The Math: Panelists will pay the LRS a remittance on each and every LRS-referred matter in which the earned and collected attorneys' fees meet or exceed the threshold or "deductible." The remittance is a percentage only of the panelist's professional fees and does not apply to any costs advanced and recovered, or the \$35 initial consultation fee.~~

~~da) Remittance Payments to the LRS Reporting: With limited exception, panelists must regularly report on all LRS-referred matters. Panelists who have not reported on any given LRS-referred matter for more than 60 days are considered past due in their reporting requirements. Panelists whose reporting is past due may be removed from LRS without notice until all reporting is brought up to date.~~

b) Reporting Payments: Panelists must report payments they receive on LRS-referred matters within 30 days of receipt.

c) Remittance Payments: Panelists must pay remittances when due and owing. Remittances are calculated in accordance with the Policies. The remittance is a percentage only of the panelist's attorney fees and does not apply to any costs advanced and recovered or to the \$35 initial consultation fee.

i) Remittances are due to LRS within 30 days of reporting payments received or within 60 days of receiving payment, whichever is sooner.

ii) A panelist who fails to pay remittances when due may be removed from LRS without notice until all remittances are paid in full.

iii) If a panelist fails to pay remittances within 90 days of when they are due, the bar may take any reasonable and financially prudent methods to collect amounts owed to LRS.

iv) A panelist who has been more than 30 days past due in payment three times is subject to permanent removal from the LRS. The PSAC's decision on the removal is final.

v) A panelist's obligation to pay remittances owed to the LRS continues regardless of whether the panelist is in breach of this agreement, fails to comply with these Policies or the Procedures, is removed from the LRS, is no longer eligible to participate in the LRS, or leaves the LRS.

~~i) Panelists will report and pay remittances to the LRS no later than the last day of the month following the month in which the attorney fees were paid. If a panelist fails to report or pay the appropriate remittances to the LRS as required, LRS staff may remove the panelist from rotation and cease referrals to the panelist until all remittances are paid in full.~~

~~ii) If the panelist fails to pay the appropriate remittance to the LRS within 90 days from the date of payment of attorney fees to the panelist, the bar may take any reasonable and financially prudent methods to collect on amounts owed to LRS.~~

~~iii) A panelist who has been more than 30 days past due in payment three times is subject to permanent expulsion from the LRS. The PSAC's decision on the expulsion is final.~~

ed) Special Circumstances:

i) If an LRS-referred client puts one or more other potential clients in touch with the panelist for the same matter (e.g., a multiple-victim auto accident or multiple wage claims against the same employer, for instance), the remittance due to the LRS applies to will be based on a percentage of all fees earned and collected on the new clients' matter in addition to the LRS-referred matter.

ii) If an LRS-referred matter closes and some time later the client contacts the panelist on an unrelated matter, no remittance is due to the LRS on the new, unrelated matter.

iii) If a panelist elects to share or co-counsel an LRS-referred client matter with another lawyer for any reason, the panelist is solely responsible to the LRS for remittances on all fees generated-earned and collected during the course of representation of the client in that matter (including any fees paid to the other lawyer brought in on the matter).

e) Remittance Disputes: LRS may request panelists to verify that correct remittances have been paid. Upon request, panelists must provide verification to LRS to the extent reasonably necessary to resolve the remittance dispute and to the extent the rules of professional conduct allow.

~~9) Renewals: To remain an active panelist in the LRS and continue to receive referrals, panelists must:~~

~~a) Be current with all remittances owed to the LRS and pay all registration fees owed for the upcoming program year by the deadline stated in the renewal notice; and~~

~~b) Continue to be eligible to participate in the LRS and otherwise be in compliance with the Policies and these Procedures.~~

~~10) Reporting: LRS will provide panelists a monthly report listing all the panelist's pending or open referral matters. Panelists will complete the report indicating the status of each matter; failure to complete all such reports within 30 days will be grounds for removal from rotation. Reports are considered delinquent until completed and all remittances are paid.~~

~~11) Follow-up: LRS sends follow-up surveys to clients and potential clients asking if they consulted with the panelist, amounts of fees paid, and if they were satisfied with the LRS process. Any pertinent information will be forwarded to panelists, and, if deemed~~

necessary by LRS staff, to the PSAC. The LRS also routinely monitors referrals by checking court dockets, legal notices, etc.

~~12) Remittance Disputes: LRS may request panelists to verify that correct remittances have been paid. Upon request, panelists will provide verification to LRS to the extent reasonably necessary to resolve the remittance dispute and to the extent the rules of professional conduct allow. Remittance disputes between the LRS and panelists that cannot be resolved are subject to collection action.~~

~~13) Participation in other Referral & Information Services Programs: In addition to administering the LRS, the OSB Referral & Information Services Department also administers the following other programs that provide referrals in the same or similar areas of law: Military Assistance Panel, Problem Solvers Program and Modest Means Program. More information can be found at www.osbar.org/forms.~~

MEMBER BENEFIT PROPOSAL PREPARED FOR THE OREGON STATE BAR

LawPay

Member Benefit Program

AffiniPay

6200 Bridge Point Parkway, Suite 250

Austin, Texas 78730

Direct: 512.366.6970

Amy Porter, CEO



Information contained in this proposal shall not be used or disclosed, except for evaluation purposes to members of the Oregon State Bar staff, membership benefits evaluation committee and/or review board. © 2013 AffiniPay

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Background and Organization

Company History

AffiniPay is a full-service ISO (Independent Sales Organization) registered with Visa and MasterCard to provide merchant account and online payment services. Founded in 2005 by experienced bankcard professionals and a former board member of the Electronic Transactions Association (ETA), AffiniPay has quickly become the leading provider of payment processing for the legal industry.

Unlike traditional ISO groups, AffiniPay is focused on providing custom payment solutions to the legal industry. This narrow focus allows us to provide a deeper level of understanding and expertise to our clients.

LawPay History

The LawPay program, a custom payment solution for attorneys, was developed with the input of bar association partners and their ethics committees. At their request, we examined the requirements for handling client funds and developed a solution to resolve the ethical dilemma attorneys face when processing credit cards. We now offer our LawPay program exclusively through bar and legal associations nationwide. It is the only program currently endorsed and recommended by 34 state and 49 local bar associations.

As the premier provider of electronic payment systems for the legal industry, AffiniPay works with major legal software programs to integrate and adopt our service. We continually monitor and research changes to trust account guidelines and state bar opinions surrounding the issue of credit card acceptance.

As AffiniPay continues to focus on the legal industry, a strategic partnership with Oregon State Bar would enhance our already strong network of attorneys. Attorneys benefit from better pricing, favorable terms, including VIP service and access to enhancements to our systems and reporting.

With over 15,000 attorneys using the LawPay program, we have unmatched experience working with attorneys.

The LawPay program made Jim Calloway's "Best in Law Office Management and Technology" list for 2007.

Ellen Peck, opinion writer for the State Bar of California wrote that the LawPay program, "... solves the ethical problem raised by Formal Opinion 2007-172" in the January 2008 edition of the California Bar Journal.

"It's a pleasure dealing with LawPay! Love your statements, love your customer service and love your techs."

—J. Moore, The Florida Bar

LAWPAY

CREDIT CARD PROCESSING

LawPay Technology

We offer multiple hardware and software options to handle credit and debit card payment processing. Our team works with attorneys to select the option that works best for their business. In addition to traditional credit card terminals, attorneys can take advantage of our proprietary payment technology. This secure, web-based option gives members the ability to accept credit card transactions in the office, over the internet, and on the go through LawPay Mobile.

LawPay Web:



LawPay Mobile – iPhone, iPad, and Android Options:



Key Feature – Secure Client-Payment Page

As part of the LawPay program, attorneys can take advantage of our customized payment solution. This technology allows clients to make secure payments from their attorney’s website.

Even if an attorney does not have a website, they can send an email containing a secure link. The client enters their credit card information and submits payment. The payment is automatically transferred into the attorney’s checking account.



- ✓ Easy –One Click Payments
- ✓ Secure Page reduces PCI requirements
- ✓ Eliminates the need for additional website development
- ✓ Hosted Page can link to website or email

This option is not only convenient, it is secure. Using the secure payment page allows clients to enter their own information, eliminating the need for attorneys to collect or store sensitive card information in their office.

“I will be telling every lawyer I know about the outstanding customer support and service provided by LawPay.”
— L. Piel, State Bar of Nevada

LawPay Commitment

The LawPay commitment to Oregon State Bar consists of several elements: 1) Advertising, 2) Sponsorship, and 3) Non-dues Revenue.

1) Advertising

AffiniPay shall commit to a minimum of \$10,000 in print and/ or electronic advertising per year.

2) Sponsorship

AffiniPay shall commit to a minimum of \$2,500 to sponsor programs relevant to the LawPay program including, but not limited to the Annual Meeting and the Sole & Small Firm Practitioners Section Tech Fair.

3) Non-dues Revenue

In addition to advertising and sponsorship, LawPay offers a non-dues revenue. Oregon State Bar has opted to forward all non-dues revenue from the LawPay program to the Multnomah Bar Association. Multnomah Bar Association will receive 7.5 basis points on every dollar in Visa/MasterCard transactions.

	5 members/mo 8,000 proc vol												
YEAR 1													
month	mo 1	mo 2	mo 3	mo 4	mo 5	mo 6	mo 7	mo 8	mo 9	mo 10	mo 11	mo 12	
new accounts	5	5	5	5	5	5	5	5	5	5	5	5	5
total accounts	5	10	15	20	25	30	35	40	45	50	55	60	
volume	\$ 40,000	\$ 40,000	\$ 40,000	\$ 40,000	\$ 40,000	\$ 40,000	\$ 40,000	\$ 40,000	\$ 40,000	\$ 40,000	\$ 40,000	\$ 40,000	\$ 40,000
total vol	\$ 40,000	\$ 80,000	\$ 120,000	\$ 160,000	\$ 200,000	\$ 240,000	\$ 280,000	\$ 320,000	\$ 360,000	\$ 400,000	\$ 440,000	\$ 480,000	
Commission to Multnomah Bar Association													
	0.000758	\$ 30.32	\$ 60.64	\$ 90.96	\$ 121.28	\$ 151.60	\$ 181.92	\$ 212.24	\$ 242.56	\$ 272.88	\$ 303.20	\$ 333.52	\$ 363.84
												Year 1 Non-Dues Revenue	\$ 2,364.96
YEAR 2													
month	mo 13	mo 14	mo 15	mo 16	mo 17	mo 18	mo 19	mo 20	mo 21	mo 22	mo 23	mo 24	
new accounts	5	5	5	5	5	5	5	5	5	5	5	5	5
total accounts	65	70	75	80	85	90	95	100	105	110	115	120	
volume	\$ 40,000	\$ 40,000	\$ 40,000	\$ 40,000	\$ 40,000	\$ 40,000	\$ 40,000	\$ 40,000	\$ 40,000	\$ 40,000	\$ 40,000	\$ 40,000	\$ 40,000
total vol	\$ 520,000	\$ 560,000	\$ 600,000	\$ 640,000	\$ 680,000	\$ 720,000	\$ 760,000	\$ 800,000	\$ 840,000	\$ 880,000	\$ 920,000	\$ 960,000	
Commission to Multnomah Bar Association													
	0.000758	\$394.16	\$424.48	\$454.80	\$485.12	\$515.44	\$545.76	\$576.08	\$606.40	\$636.72	\$667.04	\$697.36	\$727.68
												Year 2 Non-Dues Revenue	\$ 6,731.04

The revenue projection below is very conservative and is based on our average monthly credit card volume for attorneys. We have found that attorneys process an average of \$8,000 per month.

Non-dues revenue is recurring and paid out on a quarterly basis.

LawPay's Unique Approach

The Industry

The payment processing industry is populated by thousands of companies that sell payment processing services and equipment. Most of these groups operate as sales arms of larger processing companies or banks. They traditionally target any business that accepts credit card payments - casting their nets wide and focusing on acquiring retail and service sector businesses: restaurants, dry cleaners, gas stations, or car washes. These groups generally offer a standard merchant program and often do not have the knowledge of requirements for handling trust account transactions.



The Program

The LawPay program safeguards and separates client funds into trust and operating accounts in compliance with ABA and state guidelines for credit acceptance. It credits retainers to the trust account and credits regular billing and invoice payments to the operating account. While processing fees for both transaction types are deducted at the end of the month from the operating account. This process eliminates any commingling of client funds and simplifies your accounting. Transactions are handled correctly with a LawPay program.

Protection

More importantly, beyond just separating funds, the LawPay program protects the attorney trust account from all 3rd party "invasion." We restrict the ability of all other banking institutions from debiting monies from an attorney trust or IOLTA account which the attorney is not ethically allowed to grant access.

Proven Solution

It is critical for attorneys to handle transactions between their trust and operating accounts correctly. Attorneys can trust their transactions to LawPay and accept credit cards with confidence.

Attorney Education

To additionally enhance the LawPay program, we provide attorney education programs through a series of CLE classes, articles, newsletters, and e-Alerts on subject matters such as PCI Compliance, Chargeback Prevention, and Collection Best Practices for law firms.

PCI Compliance Program

In 2008, the Payment Card Industry created specific security standards mandatory for all businesses accepting credit card transactions.

We have developed a unique PCI Compliance program providing attorneys with a simple solution at no cost to becoming compliant.

Our simplified approach to PCI Compliance bundles everything a law firm needs into one program. Not only are our LawPay systems fully PCI compliant, we offer detailed guidance and support on all aspects of PCI Compliance and card security.

Service Level Guarantee

All account management and client support is in-house, allowing us to provide attorneys the highest level of support and satisfaction. Above and beyond providing merchant accounts we frequently assist firms in streamlining their accounting and collection processes. With over 15,000 attorneys using the LawPay program, our account managers have both unmatched bankcard knowledge and experience working with large and small firms.

With the LawPay program, attorneys are provided with a relevant, valuable benefit serviced by a team of experienced professionals. This program was designed with the input of bar associations to specifically address the needs of client-attorney transactions.

“I would highly recommend the LawPay program to my colleagues and other members of the Oklahoma Bar Association. Every time I call I get someone on the phone who is helpful and pleasant. I don’t have to navigate a complex phone tree to speak to a live human. I appreciate having someone available to answer my questions. I also want to mention that the assistance provided at startup was particularly helpful. My personal account manager walked me through using the credit card machine and then walked my staff through the process. It was easier than I imagined, and the monthly transaction statements are clear and simple to follow.”

— C. Christensen
Board of Governors Member, OBA

LAWPAY

CREDIT CARD PROCESSING

Endorsements

The LawPay program is approved and recommended exclusively by 34 state and 49 local bar associations, including:



Alabama State Bar • Allegheny County Bar Association • Arapahoe County Bar Association • Arkansas Bar Association • Atlanta Bar Association • Austin Bar Association • Bar Association of Erie County • Bar Association of Metropolitan St. Louis • Boulder County Bar Association • Bucks County Bar Association • Chicago Bar Association • Clark County Bar Association • Clearwater Bar Association • Colorado Bar Association • Connecticut Bar Association • Dade County Bar Association • Dallas Bar Association • DeKalb Bar Association • DuPage County Bar Association • El Paso Bar Association • Fairfax Bar Association • Fayette County Bar Association • Florida Association for Women Lawyers • The Florida Bar • Genesee County Bar Association • Hartford County Bar Association • Hidalgo County Bar Association • Hillsborough County Bar Association • Illinois State Bar Association • Indiana State Bar Association • Iowa State Bar Association • Johnson County Bar Association • Kansas City Metropolitan Bar Association • Kentucky Bar Association • Lawyers Club of San Diego • Los Angeles County Bar Association • Louisiana State Bar Association • Macomb County Bar Association • Maine State Bar Association • Maricopa County Bar Association • Maryland State Bar Association • Massachusetts Bar Association • Memphis Bar Association • Minnesota State Bar Association • The Missouri Bar • Montgomery County Bar Association • Multnomah Bar Association • Nebraska State Bar Association • New Hampshire Bar Association • New Haven County Bar Association • New Jersey State Bar Association • New York City Bar Association • North Carolina Advocates for Justice • North Carolina Bar Association • Ohio State Bar Association • Oklahoma Bar Association • Oklahoma County Bar Association • Orange County Bar Association • Palm Beach County Bar Association • Pennsylvania Bar Association • Rhode Island Bar Association • Bar Association of the City of Richmond • Sacramento County Bar Association • San Antonio Bar Association • San Diego County Bar Association • Smith County Bar Association • South Carolina Bar Association • State Bar of Montana • State Bar of New Mexico • State Bar of Nevada • State Bar of Texas • State Bar of Wisconsin • Tarrant County Bar Association • Tennessee Bar Association • Vermont Bar Association • Virginia Bar Association • Washoe County Bar Association • Women Lawyers Association of Michigan • Wyoming State Bar

Addendum:

1. Pricing
2. Marketing Samples

Pricing

Below is a price comparison of a Standard Merchant Account versus the LawPay member benefit program. On average, LawPay reduces overall processing fees by 25%.

	Standard Merchant Account	LawPay Program
Fees		
Application Fee	\$75 - \$195	None
Contract Terms	1 - 3 years	None
Cancellation Fee	\$70 - \$300	None
Set Up Fees	\$100 - \$300	None
Annual Fee	\$50 - \$200	None
Monthly Minimum Fee	\$20+	None
Service		
Processing Rate for Swipe (In Person) Debit	1.69%	1.59%
Processing Rate for Swipe (In Person) Transactions	1.85%	1.79%
Processing Rate Keyed (Internet/Mail/Phone)	2.65%	2.19%
Processing Rate Mid & Non-Qualified (Corp, Biz, Pur. Cards)	1.50%	.86%
Transaction Fee (Includes authorization and settlement)	25 - 35 ¢	20 ¢
Monthly Statement/Service Fee	\$10 - \$15	WAIVED
Monthly Online Secure Gateway (Virtual Terminal)	\$30 - \$50	\$5 - \$30
Features		
QuickBooks Module	No	Yes
Billing Presentment and Electronic Invoices	No	Yes
Online Bill Pay for Clients	No	Yes
PCI Compliance		
PCI Annual Fee	\$79 - \$200	None
Monthly Compliance Fee	\$20 - \$30	None

Based on card type accepted

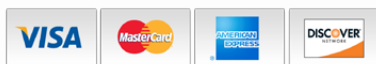


THE CORRECT WAY TO ACCEPT PAYMENTS!

Trust your credit card transactions to the only merchant account provider recommended by 34 state and 49 local bar associations!

- ✓ Separate earned and unearned fees
- ✓ 100% protection of your Trust or IOLTA account
- ✓ Complies with ABA & State Bar guidelines
- ✓ Safe, simple, and secure!

Reduce processing fees and avoid commingling funds through LawPay.



Process all major card brands through LawPay



Secure web payments

Mobile Swiper iPhone, iPad, Android

866.376.0950

LawPay.com/MaineBar

Proud Member
Benefit Provider



Maine State Bar
ASSOCIATION

AVAILABLE EXCLUSIVELY THROUGH
THE MAINE STATE BAR ASSOCIATION

LawPay is a registered trademark of 2025 First Bank, N.A., Chicago, IL


We create custom marketing materials designed to target your membership and increase awareness. Promotional materials are branded with your association's logo. We track responses and continually refine our content and design.

A custom information page for members. The purpose is to generate interest and leads. The form is used to collect member contact information.


Recommended by Over 80 Bar Associations

Reply Reply All Forward Junk Print Delete To Do Categories Projects Links

From: info@lawpay.com
Reply-To: info@lawpay.com
Date: Thursday, February 13, 2013 9:44 AM
To: mlindemann@affinipay.com
Subject: Recommended by Over 80 Bar Associations




LAWPAY
Trust your transactions to LawPay
Recommended by 34 state & 49 local bar associations!




Your Logo
Invoice Information
Amount to Pay:
Invoice #:

APPROVED!
Thank you for your payment



Send

Email a secure link to your clients



Click

Clients pay with the the click of a button



Paid!

Payment deposits directly to your bank account

The Easiest Way to Get Paid

LawPay's Secure Client-Payment Page is a great tool for getting paid! The secure link is created and hosted by LawPay, reducing the need for costly shopping cart systems and development time. The LawPay Secure Client-Payment Page eliminates the need to handle or store sensitive client card information. Simply plug the secure link into your website, invoices, or email, giving clients the ability to enter their own credit card information... anytime!

The Premier Credit Card Processor for the Legal Industry

Trust Your Transactions to LawPay

It is critical for attorneys to handle transactions between their trust and operating accounts correctly. Attorneys can trust their transactions to LawPay and accept credit cards with confidence.

Unlike typical merchant accounts, LawPay allows you to:

LawPay is Coming to a Show Near You!

Date	Show
Mar 13 - 15	ABA Leaders
Apr 4 - 6	ABA Tech Show
Apr 12	Dallas Minority Attorney Program

A customized email sent to members.

Recommended by Over 80 Bar Associations

Reply Reply All Forward Junk Print Delete To Do Categories Projects Links

From: amber@lawpay.com
Reply-To: amber@lawpay.com
Date: Thursday, March 5, 2013 9:44 AM
To: mlindemann@affinipay.com
Subject: Recommended by Over 80 Bar Associations

FREE
Web-Based
TERMINAL
— PLUS —
PROGRAM FEE
WAIVED
for the **FIRST**
3 MONTHS

DBA Minority Attorney Program Attendees Get Paid with LawPay!

- ✓ Lower fees by up to 25%
- ✓ Reduce collections
- ✓ Increase cash flow
- ✓ Get paid on time

LAWPAY
CREDIT CARD PROCESSING

Member Benefit

Thanks for stopping by our booth at the DBA Minority Attorney Program!

Trust your transactions to the premier payment processor for the legal industry. It is critical for attorneys to handle transactions between their trust and operating accounts correctly. Attorneys can trust their transactions to [LawPay](#) and accept credit cards with confidence.

Unlike typical merchant accounts, [LawPay](#) allows you to:

- Accept Visa, MasterCard, Discover, and Amex
- Save up to 25% off standard fees
- Accept credit cards for retainers
- Avoid commingling client funds

LawPay's unique processing program correctly separates earned and unearned fees in compliance with ABA and State guidelines. That is why LawPay is endorsed and recommended by [34 State and 49 Local Bar Associations](#).

! Special Conference Offer

Today through April 30, 2013, the \$150 web-based terminal start-up fee is waived for all DBA Minority Attorney Program Attendees.

In addition, if you open a LawPay account by April 30, 2013, I will waive your program fee for 3 months!

We Have a Winner!

Congratulations to Phyllis Lister Brown for winning the LawPay iPad giveaway! Thanks to all who participated.



Currently Accepting Credit Cards? Let's Compare!

I would love to compare your current processing rates with our program. On average we have saved attorneys between 20-25%!



A custom tradeshow follow-up email to conference attendees with a special offer to generate interest.

BEST PRACTICES

Boost the Bottom Line

Accepting Credit and Debit Cards Pays Dividends for Law Firms

BY AMY PORTER

LAWPAY ACCOUNT SERVICES ARE AVAILABLE TO NJSBA MEMBERS AT SPECIAL RATES

The ongoing recession has all law firms concerned about their fiscal health – and legal administrators worldwide are looking for ways to boost their firms’ bottom lines. Fortunately, one simple process is guaranteed to make you and your firms more successful by attracting clients, increasing cash flow, and reducing collection efforts. Credit and debit card acceptance is an essential practice management tool that is often overlooked as a means to increase revenue. Today, many clients and prospective clients prefer the convenience of paying with credit or debit cards as opposed to checks. Why turn away a prospective client who wants to use your law firm’s services and has the means to pay promptly?

CASH FLOW 101

Once considered taboo, acceptance of credit cards for payment is allowing a growing number of law firms to benefit from immediate cash flow and to eliminate “the check is in the mail” syndrome. Clients turn to your firm for help with legal matters. However, it’s not your firm’s responsibility to extend credit to clients, and that is exactly what happens every time an invoice goes unpaid. Let MasterCard and Visa manage your clients’ credit lines and worry about collections, while you save your time and energy for operating, managing, and growing the firm’s practice.

PAYMENT PRE-AUTHORIZATIONS

Avoid the hassle of chasing down delinquent payments by providing a credit pre-authorization form with all letters of engagement. Several types of pre-authorization forms exist for accepting clients’ credit or debit card payments. One option is for a payment plan or recurring charge billed to the client’s credit or debit card for a set amount on a weekly or monthly basis. You can also arrange to automatically bill any past due balance over 30, 60, or 90 days to the client’s credit card on file.



Credit card acceptance is an essential law practice management tool.

BEST PRACTICES

Amy Porter, Chief Executive Officer, AffiniPay Credit Card Processing



It's not your firm's responsibility to extend credit to clients, and that is exactly what happens every time an invoice goes unpaid. Let MasterCard and Visa manage your clients' credit lines and worry about collections, while you save your time and energy for operating, managing, and growing the firm's practice.

One California law firm reduced its outstanding collections from 25 percent to less than 5 percent when it began including a pre-authorization form with all new paperwork that went into the client file and a credit authorization form with each invoice giving the firm permission to charge the client's credit card on record. Similar to the pre-authorization form, a credit authorization form gives your law firm permission to charge a client's credit or debit card for a certain amount. Avoid late and no-pay pay clients entirely by including a credit card authorization with all invoices.

Even a small change such as adding the option to enter a credit card number and signature on your current invoices will help to reduce late payments.

PAYMENT INCENTIVES

Many firms offer incentives for timely payments and benefit from substantially reduced collections files. For example, a 15 attorney firm in Austin, Texas, offers 10 percent discounts to clients who pay within 10 days of receiving their invoices. The thought process is simple: The firm would rather have 90 percent of its money in 10 days than 100 percent in 60, 90, or even 120 days. What matters most is that the cash flows into firm in a timely manner so that all of the firm's bills – including staff salaries – are paid on time.

Similarly, a firm in Oklahoma City offers 25 percent discounts when clients pay within 10 days. The law firm adjusted its budgets to accommodate such large discounts and made sure to keep its pricing competitive. The method is clearly a powerful incentive; in fact, many of the firm's clients now insist on paying their bills right away. In both of the aforementioned situations, the ability to accept credit cards creates an efficient way to implement and streamline these programs.

WEB SITES AS PAYMENT CENTERS

Law firms should consider adding payment portals to their Web sites. By simply adding a "Pay Bill" link, your firm can offer clients a convenient and fast way for them to pay you at any time.

One firm in Montana added a "Pay Bill" link to its Web site. In subsequent invoices and letters, the firm communicated to clients that they could go online at any time and simply click a button to pay for their legal services immediately. The firm also includes a link in a monthly e-mail to each client.

The cost of adding a payment center to a Web site is minimal, and compared to the costs incurred to utilize a third-party billing provider or collections agency it is a veritable bargain. (To see an example of a simple yet successful bill payment link, visit www.teaselaw.com.)

PROCEED WITH CAUTION

If your firm is considering or is already taking advantage of credit card payment options, ensure you have the proper procedures in place to handle such transactions. This includes compliance with trust account guidelines, proper documentation for chargeback prevention, and basic security procedures to protect cardholder information.

One of the most common concerns with credit card acceptance is the risk of a chargeback, which occurs when the cardholder files a dispute with his or her credit card issuing bank. To successfully defend an unfounded dispute, your law firm must prove two things: that the work was performed and that the client gave his or her permission to charge the credit card to pay for that work.

Proving that your law firm's services were provided is often the easiest part. Clearly documenting and tracking every minute of work performed is a standard part of performing the business of law.

Surprisingly, where law firms often fall short is in obtaining a client signature for a credit card transaction. One large law firm was recently involved in a \$25,000 chargeback case. The firm's leaders believed the chargeback was initiated simply because the client was unhappy with the outcome of the case. The firm quickly produced documentation that legal services were provided and that the work was performed. However, it lost the chargeback dispute because a signature authorizing the firm to charge the credit card was never obtained.

The engagement letter was agreed to, and the fee arrangement was in place. In fact every important piece of paper was signed except for the credit authorization form that specifically states the firm could charge the client's

credit card. If the firm had been able to show the bank a legitimate authorization, it could have easily won the chargeback case.

CARDHOLDER SECURITY

In addition to documentation, you must have a procedure in place to handle and store client credit card information. All card information should be kept under lock and key, with access provided to authorized staff members only. Card information should never be shared electronically, including via e-mail.

Common sense should dictate when client information may be at risk. You should give credit card data the same level of confidentiality afforded to other sensitive client information. (For more detail on card security, visit the PCI Security Standards Council Web site at www.pcisecuritystandards.org.)

THE BOTTOM LINE

Incorporating credit card acceptance into your law firm's payment process enables clients to pay their bills promptly and frees your firm from much of the responsibility of collections. The beneficial results include increased cash flow and reduced receivables. Let Visa and MasterCard focus on collecting payments, while you and your staff focus on the business of running the firm.

about the author

Amy Porter is the Founder and Chief Executive Officer of AffiniPay, the exclusive provider of LawPay, a professional payment solution for attorneys and their clients. For more information visit www.LawPay.com.

ACCEPT CREDIT CARDS— GET PAID FASTER THAN A SPEEDING BULLET

By Amy Porter

GPSOLO
July/August 2012

Article Placement

Technology and trends are changing faster than most non-superheroes can keep up with, much less an attorney attempting to run both a law practice and a business. How do you defend yourself against the onslaught of new technology with options changing on a weekly basis? Many attorneys are completely overwhelmed, becoming paralyzed with indecision. Others simply choose to ignore technology and change altogether, hoping it will all just go away.

One of the most critical areas of changing technology is payment methods, especially with regard to credit card processing. Historically, many lawyers have not set up the means of accepting credit card payments because they do not see their practices as “traditional businesses”; instead, they see themselves as “professionals.” Although it is true that attorneys have an ethical duty to their clients—even a higher calling to uphold justice—in reality, they have to run a successful business first, which involves getting compensated for their work. If not, their ability to successfully practice law may be in peril.

Money Talks

Cash flow has long been known as the key to running a business effectively. With recent technological advances, attorneys finally have the ability to control cash flow through the use of credit cards and electronic payments. Gain control of your accounts receivables, and you gain control of your overall practice. If your practice currently maintains a significant outstanding amount of receivables, then

Amy Porter is the CEO of AffiniPay, provider of the LawPay program, recommended by more than 80 bar associations as the correct way to handle credit cards in a law firm. She may be reached at 866/376-0950 or info@lawpay.com

Make sure the processing company you choose understands the specific needs of a law firm.

you are effectively extending credit to your clients. In most cases, law firms do not have an “underwriting” process to determine the creditworthiness of their clients and have little insight into their ability to pay fees. Traditionally, law firms do not perform credit checks or report delinquent clients to credit agencies. By allowing your firm to accept credit card payments, you can effectively shift your receivables to the card-issuing banks. Visa- and MasterCard-issuing banks have already established the creditworthiness and financial capability of your clients. They are in the business of issuing credit, collecting debt, and monitoring credit, so you don't have to be. You can stick to the practice of law.

Credit cards and debit cards are becoming the payment of choice among consumers. According to a March 2009 report of the American Bankers Association, credit cards are responsible for more than \$2.5 trillion in transactions a year, accepted at more than 24 million locations, and used in more than 200 countries and territories. Some 10,000 payment card transactions are made every second around the world. Based on these trends, attorneys can no longer ignore the importance of accepting credit cards, nor the risks associated with bad debts.

How Do I Get Started?

If you are considering accepting credit cards in your practice, make sure the credit card processing company you choose understands the specific needs of a law firm. Most attorneys prefer to accept payment in a professional manner. As such, law firms do not have a checkout lane or ATMs stationed in their reception area. There are many custom payment options available to law firms, including credit card terminals and web-based solutions specifically designed for attorneys and their business. The total cost of a credit card transaction typically averages between 2 percent and 3.5 percent of the payment amount.

Separating Earned and Unearned Fees

One key feature to consider when opening your merchant account is the ability to separate earned and unearned fees when accepting credit cards. In order to

stay in compliance with the guidelines of the American Bar Association and most state bars for accepting for credit cards, a merchant account must correctly separate earned and unearned fees into operating and trust accounts to prevent the commingling of funds. In addition, a compliant merchant account should enable an attorney to designate which account should be used for withdrawals of all processing fees.

The Law Firm Merchant

In the world of merchant accounts, law firms are unique business entities. Unlike a restaurant or retail store, law firms have special considerations when dealing with credit cards and client funds. Whether you are considering accepting credit cards or already offer an electronic payment option, using state-of-the-art technology will ensure you are paid quickly and securely. Some other tips to ensure a successful transition to the modern ways of getting paid as a law firm merchant:

- 1. Protect your trust and IOLTA accounts.** Do not allow your merchant provider access to your trust account. Most merchant agreements will require you to give access to this account in the event of a charge back or fraud. There are merchant services specific to law firms that correctly protect and safeguard your trust accounts.
- 2. Avoid storing credit card information.** If you bill clients on a monthly basis, you will potentially need the ability to recharge their credit cards. Accepting credit cards through a secure web-based solution will allow you to avoid keeping sensitive credit card information within the walls of your office. Modern law firms are quickly moving away from the traditional credit card machines, which sometimes require paper storage of client credit card numbers. This also limits the liability and risk to your firm of credit card information falling into the wrong hands.
- 3. Communicate to your clients.** Let clients know what your payment expectations are on the front end by

You don't have to be a computer science engineer to embrace credit card payments.

4. including due dates, late fees, and payment options as part of your fee agreement. It is much easier to establish these guidelines while your client is new and eager to get started. More importantly, continue to communicate to your clients what payment options you provide by including credit card logos or adding "Major Credit Cards Accepted" to your invoices and website. Clients will commonly look for an attorney who provides credit card options. Even popular legal websites such as Martindale-Hubbell have specific search criteria to find attorneys who accept credit cards.

5. **Use the technology you have.** Once you make the decision to accept credit cards, be sure to use the payment option that best suits your needs. Depending on your area of practice—and, more importantly, where you interact with your client—there are different choices to accept payment. For example, there are many options to accept credit cards with smartphones, including iPads and laptops.

6. **Let your clients do the work.** By taking time to establish payment options on your website, clients can run their own credit cards. Not only does this provide a convenience to clients, but it frees up the time you otherwise would spend processing credit card payments. This also allows you to avoid ever seeing credit card numbers, eliminating any responsibility to accept, store, shred, or protect credit card numbers.

7. **PCI compliance.** When you accept credit cards in your office, you also accept the responsibility of protecting cardholder data. Be sure your merchant solution is PCI compliant. PCI-DSS is the payment card industry's security guidelines for merchants. More information can be found on the PCI Security Standards Council website or the websites of other PCI specialists, such as PCICentral.

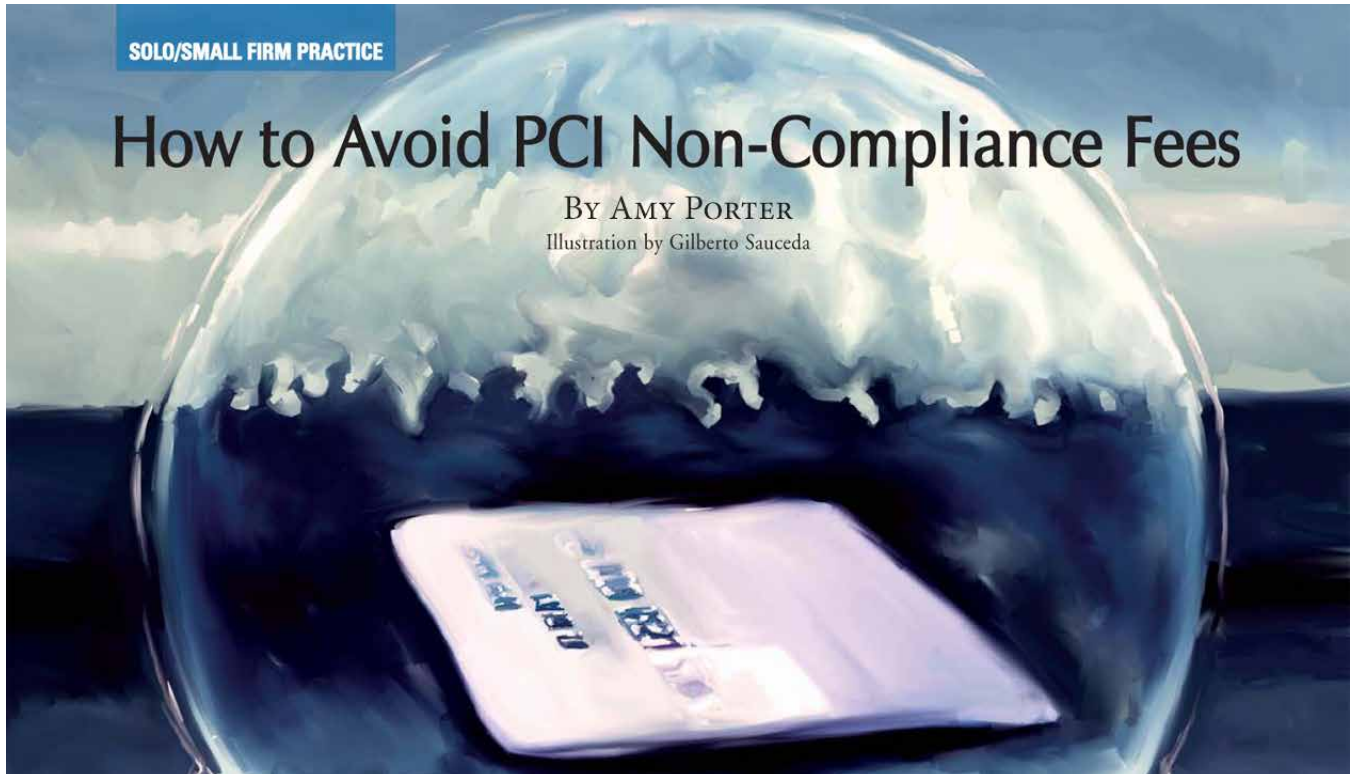
What Checkbook?

If you thought the Internet was a fad or swore you would never carry a cell phone, then you are likely thinking that you will never accept credit card payments from your clients. But, as with those other two "fads," you'd be well advised to reconsider. Credit cards and other forms of electronic payments have become an integral part of our nation's commerce and the way many people prefer to pay. In 2009 credit cards officially surpassed paper check transactions in the United States. Perhaps it is time to rethink the way your firm handles billing and collections.

Hall, Arbery & Gilligan LLP, an Atlanta, Georgia, law firm, recently embraced payment technology and immediately saw a decrease in the number of days their invoices were outstanding. The firm administrator decided to take it one step further and add a payment option to their website. Jeannie Johnston, the firm manager and paralegal at Hall, Arbery & Gilligan, says that by adding a Secure Payment Link to their website, they've seen an increase in payments by individuals who would typically make multiple payments via check. Johnston indicates one of the biggest benefits to using technology to get paid is the convenience and the ability to collect a full balance from clients. When asked if she would recommend using technology as a form of payment, Johnston says, "I would absolutely recommend attorneys using technology to get paid. I believe this is the road attorneys are going down. Firms that haven't previously considered using technology as a payment option should reconsider their decision."

You Don't Have to Be Superman to Be a Super Lawyer

It is not necessary to be a website developer or a computer science engineer to embrace credit card payments, just a smart attorney who knows how to get paid. By using technology as a payment tool, you give clients flexible payment options while allowing yourself to get paid quickly and securely. So, with technology moving at a rate that is "faster than a speeding bullet," throw on your Super Lawyer cape and take back control of your receivables—and, ultimately, your practice.



SOLO/SMALL FIRM PRACTICE

How to Avoid PCI Non-Compliance Fees

BY AMY PORTER
Illustration by Gilberto Saucedo

If your law firm accepts credit card payments, you should have received information from your merchant provider regarding the recent updates to Payment Card Industry Data Security Standard (PCI-DSS) compliance requirements. When you accept credit card payments, you also accept the responsibility of protecting cardholder information. As of July 1, any firm accepting credit cards is required to comply with the PCI security standards. (Check with your merchant bank for deadlines and fees.)

In addition to the new requirements, most major processors have started implementing non-compliance fees. It may be helpful to review a recent merchant statement for those charges, which typically range from \$15 to \$25 per month. To avoid non-compliance fees, you will need to take steps to become PCI compliant. You may have received calls regarding non-compliance fees or

enticements to switch to other processors; however, use caution as these calls may just be ambush marketing techniques. Please check with your acquiring bank for specific deadlines and fees.

What Is PCI?

In 2006, the major credit card brands (Visa, Mastercard, Discover, American Express, and JCB) formed a security council. The council's goal was to ensure the safe handling of cardholder data at all times and to reduce credit card fraud by developing a standardized set of regulations for the entire credit card processing industry. The resulting Payment Card Industry Data Security Standard, Payment Application Data Security Standard, and the PIN Transaction Security Standard work together to achieve that goal.

Payment Card Industry Data Security Standards are focused on protecting credit card information at the merchant level by

implementing basic procedures to protect cardholder data. The new regulations will make protecting sensitive card information a priority, thus reducing identity theft and credit card fraud.

Regardless of how many transactions you accept or process, PCI is an important step in protecting the security of merchant account. To ensure credit card transactions are secure through every step of the payment process, all parties in the payment industry are now required to be PCI compliant.

Doing Your Part

PCI compliance is composed of two areas: How credit cards are processed through our systems and how you handle credit card information within the walls of your office. The security of your office is paramount for compliance. For example, do you store paper copies of credit card data in a secure way? Do you

use a payment gateway or a terminal to process credit cards? These are practical security points addressed by the PCIDSS and apply to any business that processes, stores, or transmits credit card data (www.pcisecuritystandards.org).

Until recently, most of the focus has been on major retailers that process in excess of 6 million Visa transactions per year. All merchants — regardless of credit card processing volume — must now comply with the regulations. Failure to meet requirements can result in security breaches, costly fines, and forensic audits.

Twelve Requirements Of PCI-DSS

Depending on how you process credit cards, some of these requirements may not apply to your business. Most small businesses that use a swipe machine (terminal) or payment gateway focus on Requirements 3, 9, and 12. These requirements will also be the basis for developing strong security policies and procedures for how your business handles credit card data.

Build and Maintain a Secure Network

Requirement 1: Install and maintain a firewall configuration to protect cardholder data.

Requirement 2: Do not use vendor-supplied defaults for system passwords and other security parameters.

Protect Cardholder Data

Requirement 3: Protect stored cardholder data.

Requirement 4: Encrypt transmission of cardholder data across open, public networks.

Maintain a Vulnerability Management Program

Requirement 5: Use and regularly update anti-virus software.

Requirement 6: Develop and maintain secure systems and applications.

Implement Strong Access Control Measures

Requirement 7: Restrict access to cardholder data by business need-to know.

Requirement 8: Assign a unique ID to each person with computer access.

Requirement 9: Restrict physical access to cardholder data.

Regularly Monitor and Test Networks

Requirement 10: Track and monitor all access to network resources and cardholder data.

Requirement 11: Regularly test security systems and processes.

Maintain an Information Security Policy

Requirement 12: Maintain a policy that addresses information security.

Becoming PCI Compliant

There are several steps every merchant must complete to become PCI compliant:

- **Complete a Self-Assessment Questionnaire (SAQ)** — The SAQ is a set of questions you need to answer about how your business processes credit cards;
- **Implement Changes** — Make the necessary changes to your standard operating procedures;
- **Develop Security Policies** — Update or create security policies and procedures for how your office handles credit card data;
- **Conduct Vulnerability Scan (when applicable)** — This step applies to all merchants transmitting credit card data over the Internet; and
- **Get Certified** — Complete “Attestation of Compliance” to confirm your business meets all PCI regulations.

Credit Card Compliance For Attorneys

Even though the PCI-DSS is not a federal law, several states have started mandating compliance to many provisions of the PCI standards. In 2007, Minnesota became one of the first states to adopt a set of enforceable standards that protect credit card data. Since then, Nevada, Washington, and Massachusetts have adopted similar laws.

Implementing small changes can

have a big impact on your security. There are guidelines in the PCI-DSS that address Internet security and payment applications and also guidelines that address how businesses handle credit card data on a physical level. Assessing your vulnerabilities is a great way to fix potential issues and educate your staff. According to some reports, the majority of credit card fraud is caused by simple carelessness and theft (www.datalossdb.org/statistics). Office security policies that define procedures for changing passwords, storing information, and disposing of credit card data can make the difference between compliance and non-compliance.



AMY PORTER Amy

Porter is the Founder and Chief Executive Officer of AffiniPay, the exclusive provider of LawPay, a professional payment solution for attorneys and their clients. For more information visit www.LawPay.com.

SOLO/SMALL FIRM PRACTICE

To address the unique practice issues of solo and small firm lawyers, the *Texas Bar Journal* has developed this special series of articles that will appear regularly in the magazine. If you would like to see a particular topic covered, please send your story ideas to Associate Editor **Patricia L. Garcia** at pgarcia@texasbar.com.

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New IRS Section 6050W

What is it, and How it Affects Attorneys

It is estimated there are over 10,000 credit card transactions made every second around the world. This astonishing number results in over \$7.5 trillion in credit card payments per year (American Bankers Association). If you are one of the lucky businesses processing these transactions, congratulations, you are now subject to the newest IRS requirement – Section 6050W.

What is 6050W?

Section 3091(a) of the Housing Assistance Tax Act of 2008 (the “Act”) added section 6050W to the Code requiring merchant acquiring entities and third party settlement organizations to file an information return for each calendar year reporting all payment card transactions and third party network transactions with participating payees occurring in that calendar year. It was created in an effort to further reduce the estimated \$345 billion tax gap from the business sector by providing additional information to the IRS on aggregate credit card transactions. Effective January 2012, all credit card processors (i.e. LawPay, First Data, TSYS, etc) and 3rd party payment aggregators (PayPal & Square) will be required to report gross card transactions to the IRS. This means the gross dollar amount of all transactions will be reported on a special 1099-K, regardless of returns or any processing fee deductions.

The amount to be reported to the IRS with respect to each lawyer is the total gross amount of all of the transaction made for that lawyer in the calendar year. The preamble to the final regulations under section 6050W makes clear that the amount reported is to be the total gross amount “without regard to any adjustments for credits, cash equivalents, discount amounts, fees, re-funded amounts, or any other amounts.” 75 FR 49821-01, 2010 WL 3207681 (August 16, 2010).

Commentators on the final regulations had suggested “defining ‘gross amount’ as net sales, taking into account credit transactions, chargebacks and other adjustments, on the ground that gross amount is not a true indicator of revenue.” Id. The Treasury rejected these

suggestions because “[t]he information reported on the return required under these regulations is not intended to be an exact match of the net, taxable, or even the gross income of a payee.” Id

What about my IOLTA?

In the case of attorneys, Section 6050W does not make a distinction between credit card transaction deposits made to a trust or IOLTA bank account and an attorney’s operating bank account. This has many attorneys concerned the IRS will view these transactions incorrectly as income. However, there are two important items to note: (1) the new 1099-K is only intended to be “informational”, (2) your processor should include a merchant industry code on your 1099-K identifying you as a law firm or provider or legal services. The reporting requirements under section 6050W require credit card processors to report to the IRS on Form 1099-K the total gross amount of payment card transactions processed for each client over the calendar year, without reduction to account for amounts deposited into IOLTAs. Although there are few instructions from the IRS informing taxpayers on how to account for discrepancies between 1099-Ks issued to them and amounts reported on the taxpayer’s return, it is clear that the IRS does not intend the Form 1099-K to match net, taxable, or even gross income. Thus, the amount shown on the Form 1099-K will not in all instances be required to be reported as income.

Match or Mis-Match?

In addition to the gross volume reporting, Section 6050W also requires processors to verify and match your federal tax ID and legal name to IRS records. 6050W requires an exact match on both items to file your 1099-K correctly. Due to technology limitations with most Visa & MasterCard processors, merchant statements are usually limited to only 25-35 characters. As such, many law firms merchants have either abbreviated their name or used an acronym for their merchant account.

If this is the case, you will need to contact your processor to assure that your legal name on your merchant exactly matches the legal name you use to file your tax returns (at least within the maximum number of characters provided by your merchant processor).

Painful Penalty

First the good news.... Originally set to begin January 2012, the IRS has decided to use the 2011 tax year as a “trial run” for reporting on 1099-Ks. Due to system and reporting limitations with both the IRS and virtually all card processors, the timeline for matching legal names and TINs has been extended until the 2012 tax year. The bad news however, is beginning January 2013, the IRS will impose a 28% withholding penalty on all credit card transactions if the merchant information on file is not an exact match with their records. It is still unclear what steps merchants will need to take to reclaim held funds, even if the legal name and TIN information is corrected.

Due to the steep withholding penalty, it is imperative that you confirm the information on your 1099-K this year. If you have not yet received a 1099-K from your processor, call and request a copy. All 1099-Ks should have been sent out in late January for a “trial run.” You will notice there is nothing further that needs to be done for the current 2011 tax year.

Fees for 6050W?

It seems anytime the IRS changes a policy or tax requirement, a new fee is created by the banking institutions to reclaim their own costs. As a merchant, you will be happy to know Section 6050W specifically states processors may not charge for implementing the 1099-K process. Beware of new 6050W charges disguised as “Government Fees” or “Tin-Matching Fees” that may have been recently added to your merchant account.

No Need for Alarm

The intent of Section 6050W is to assist the IRS in identifying businesses not filing accurate tax returns. In other words, the IRS appears to be targeting businesses most likely to omit or avoid reporting correct tax information. Requiring a taxpayer to account for discrepancies between amounts reported on Form 1099-K and the taxpayer’s return would be consistent with reporting on Form 1099-Misc. In the case of Form 1099-

Misc, a taxpayer reporting business income on Form 1040 reports only amounts that are “properly shown” on the 1099-Misc. In the case of deviations, the taxpayer is instructed to “attach a statement explaining the difference” (See 2010 Instructions for Schedule C: Profit or Loss From Business). Thus, it would be consistent with IRS policy in other areas to similarly require a taxpayer reporting a return amount different from the amount shown on Form 1099-K to attach a statement showing the reason for the difference. In the case of a lawyer depositing amounts into an IOLTA, the statement would show the amount of such deposits over the year which is excludable from gross income.

Fortunately, the IRS has recently provided guidance for the 2011 tax filing year through a notice to Tax Filers dated January 31, 2012 entitled “Clarification to the instructions for Schedule C, E & F on Reporting 1099-K Amounts” (<http://www.irs.gov/formspubs/article/0,,id=253098,00.html>). Not only has the requirement to report the amounts of Gross Credit Card Transactions been deferred for the tax Year 2011, there are other indications that the IRS may NOT require small business tax filers to reconcile the differences between 1099-K amount and income for future tax years.

Lastly, if come January 2013, you have still not matched your legal name and TIN with your processor, my advice is to stop accepting credit cards until you verify your legal name and federal Tax ID names match. There is no reason to risk a 28% withholding penalty when it is so easily avoidable. While LawPay is taking a very proactive approach to these new rules from the IRS by validating all Attorney Merchants, not every processor is following suit. Don’t wait for your credit card processor to contact you! The IRS has assigned the reporting requirements on the credit card processors, but the ultimate liability lies squarely with you and your firm.

For more information on Section 6050W visit www.IRS.gov or consult directly with your tax advisor.

About AffiniPay/ LawPay

The LawPay program is a custom payment solution designed by AffiniPay for attorneys. LawPay complies with ABA and state requirements for managing client funds.

**Oregon State Bar
Board of Governors Meeting
May 3, 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. Mark L. Runnels – 803666

Mr. Wade presented information concerning the BR 8.1 reinstatement application of Mr. Runnels.

Motion: Mr. Wade moved, and Mr. Spier seconded, to recommend to the Supreme Court that Mr. Runnels' reinstatement application be approved. The motion passed. Ms. O'Connor and Mr. Ehlers were opposed.

2. Jonathan P. Sushida – 031469

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

B. Disciplinary Counsel's Report

As written.

**Oregon State Bar
Board of Governors Meeting
May 3, 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 Litigation

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

B. Pending or Threatened Non-Disciplinary Litigation

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

C. Other Matters

The BOG received a status report on this non-action item.