

Oregon State Bar
Meeting of the Board of Governors
September 27, 2013
Open Session Minutes

The meeting was called to order by President Michael Haglund at 1:39 p.m. on September 27, 2013. The meeting adjourned at 4:33 p.m. Members present from the Board of Governors were Jenifer Billman, Patrick Ehlers, Hunter Emerick, R. Ray Heysell, Theresa Kohlhoff, Tom Kranovich, Audrey Matsumonji, Caitlin Mitchell-Markley, Maureen O'Connor, Travis Prestwich, Joshua Ross, and Timothy L. Williams. Staff present were Helen Hirschbiel, Rod Wegener, John Gleason, Kay Pulju, Susan Grabe, Kateri Walsh, Dani Edwards, George Wolff, Judith Baker and Camille Greene. Also present were Ira Zarov, PLF CEO, Guy Greco, Vice-Chair PLF Board of Directors, Tom Cave, PLF CFO, Valerie Saiki and John Berge, PLF Public Members, Andrew Gust, ONLD CLE Co-Chair, Cheryl Coon, Disability Law Section, Rob Guarrasi, Workers Compensation Section, Mark Holady, Military and Veterans Law Section, William Jones, Public Service Advisory Committee Chair, Sandra Hansberger, CEJ Executive Director, Holly Puckett, CEJ Assistant Director, and active members Gerry Gaydos, Ed Harnden, David Thornton and Mark Wada.

1. Report of Officers & Executive Staff

A. Report of the President

As written. Mr. Haglund announced the 2014 President-elect nominee will be Mr. Richard Spier. Mr. Spier's nomination will be confirmed at the November board meeting. Mr. Haglund revealed the names of his selections for the President's Special Award of Appreciation: Attorney General Ellen Rosenblum and former OSB President Gerry Gaydos.

Motion: Mr. Kranovich moved and Mr. Ehlers seconded, and the board voted to approve Mr. Haglund's selections for the President's Special Award of Appreciation.

B. Report of the President-elect

Mr. Kranovich reported that he met with the November retreat facilitator and attended various sponsorship events during the past month.

C. Report of the Executive Director

Operations Report as written.

D. Director of Regulatory Services

Mr. Gleason summarized his written report, noting in particular that the uniform bar exam (UBE) is supported by the deans from all three Oregon law schools. The Board of Bar Examiners (BBX) is considering the UBE for Oregon. The board expressed interest in supporting adoption of the UBE as well. Mr. Gleason will prepare for the November board meeting a resolution for the board regarding the UBE and a position paper regarding the Presiding Disciplinary Judge position for discipline cases at the bar.

E. Director of Diversity & Inclusion

As written.

F. MBA Liaison Reports

Mr. Ehlers attended the September 4 MBA meeting. No report was given.

2. Professional Liability Fund [Mr. Zarov]

Mr. Zarov provided a general update and financial report. The PLF is searching for a new CFO as Mr. Cave retires at the end of this year. Mr. Cave presented the PLF's 2014 Budget to the board for approval. The assessment will not increase but the excess rates will.

Motion: Ms. Billman moved, Ms. Mitchel-Markley seconded, and the board voted to approve the 2014 PLF budget which includes a 2% salary pool, a \$200,000 contribution to the OSB for BarBooks®, a new IT position, and an additional Oregon Attorney Assistance Program attorney-counselor position. **[Exhibit A]**

3. OSB Committees, Sections, Councils and Divisions

A. Oregon New Lawyers Division

In Mr. Eder's absence, Mr. Gust reported on a variety of ONLD projects and events described in the written report including their CLE programming geared to help new lawyers become practice-ready. They are pleased with Mr. Spier as their BOG liaison and would like to extend his position to next year.

B. Client Security Fund

Mr. Emerick presented the CSF Workgroup Report & Committee Response. The workgroup made the following recommendations:

1. Increase the CSF reserve to \$1 million, even though achieving that goal will mean retaining the \$45 assessment for more years than originally anticipated.
2. CSF Committee and BOG will continue to review and approve claims throughout the year and the first \$5,000 of approved awards will be paid on approval.
3. The remaining balance of approved award in excess of \$5,000 will be held and paid at the end of the year.¹
4. The Fund reserve balance will never be less than \$500,000 and the year-end awards will be pro-rated as necessary.
5. Any approved award that is not fully paid at the end of the year will be eligible for additional payment over the following two years if the fund balance is sufficient.
6. Revise CSF Rule 6.2 as follows:
No ~~reimbursement from the Fund on any one claim shall exceed~~ claimant shall be entitled to an award in excess of \$50,000 for any claim or claims arising out of claimant's representation by a lawyer or law firm, regardless of the number of matters handled or the length of the representation.
7. Request Legal Ethics Committee to consider the implications of eliminating the permission for "earned on receipt" fees.

Motion: Mr. Ehlers moved, Mr. Prestwich seconded, and the board voted unanimously to approve the workgroup recommendations with the exception of the changes made to CSF Rule 6.2.

¹ This may require a special BOG meeting in December.

Ms. Hirschbiel presented the committee request that the Marion County DA be informed of Jason McBride's activities. There was discussion about whether there was a precedence set or if this recommendation was consistent with the action the board took in the Gruetter case.

Motion: Mr. Kranovich moved, Mr. Ehlers seconded, and the board voted to inform the Marion County District Attorney of Jason McBride's activities. Ms. Kohlhoff and Mr. Prestwich were opposed.

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

Motion: Mr. Emerick moved, Ms. Mitchel-Markley seconded, and the board voted unanimously to approve payments totaling \$112,929.69.

C. Sections Presentation on LRS Policy

Ms. Pulju introduced Cheryl Coon, Disability Law Section, Rob Guarrasi, Workers Compensation Section, and Mark Holady, Military and Veterans Law Section, each of whom presented requests that the areas to be exempted from the LRS referral fee policy due to the financial hardship it creates for the attorneys in their practice area and their clients. Mr. Holady also addressed the issue of military veterans who are underserved. For information only; related action items will appear on the November board agenda.

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

A. Board Development Committee

The update on committee actions was deferred until the next board meeting. Mr. Kranovich presented the committee's appointment recommendation for the Board of Governors 2014 public member.

Motion: The board voted unanimously to approve the appointment of Elizabeth Zinser to the Board of Governors as Public Member in 2014.

B. Budget and Finance Committee

In Mr. Knight's absence, Mr. Haglund presented the committee's request for the board to establish the Active Membership Fee for 2014. **[Exhibit C]**

Motion: The board voted unanimously to approve the committee recommendation to not raise the Active Membership Fee for 2014.

C. Governance and Strategic Planning Committee

Ms. Hirschbiel presented the committee's proposed amendments to the Standard Section Bylaws, which prohibit reimbursement of section executive committee's guest expenses. The proposed amendments will be circulated to section leadership and board members may receive feedback from members. This issue will be on November 2013 BOG Agenda for action. **[Exhibit D]**

Ms. Hirschbiel presented the committee recommendations for section contributions. Ms. Hansberger addressed this committee motion and the importance of sections supporting the

Campaign for Equal Justice because of its link with the bar to support increased equal access to justice around Oregon.

[Exhibit E]

Motion: The board voted unanimously to approve the GSP Committee's recommendations for encouraging section contributions to the Campaign for Equal Justice, based on the HOD resolution requiring the OSB to assist in achieving a 75% contribution rate among sections.

Mr. Ehlers presented the committee's recommendation to submit a marriage equality resolution to the HOD in November. This is an equal rights issue in the legal profession and was not meant to offend any religious views. **[Exhibit F]**

Motion: The board voted to approve the GSP Committee's recommendation that the BOG submit the proposed HOD resolution supporting marriage equality to the HOD in November 2013 and support its passage. Mr. Emerick and Mr. Prestwich were opposed. Ms. Matsumonji abstained.

D. Public Affairs Committee

Mr. Emerick reported on the interim legislative committee meetings. No handout was submitted. The Indian Law Section requested an exemption to UTCR 3.170 for their out-of-state lawyers representing tribes in Oregon courts for ICWA cases. The committee recommended the board decline the section's proposal. The committee motion passed. Mr. Williams was opposed.

E. Special Projects Committee

Mr. Prestwich reported on the progress of current board projects for 2013 and the series of CLEs they will present on the subject of buy/selling practices. Another tree planting will take place November 2, 2013.

F. International Trade & Legal Services Task Force

Report deferred until November board meeting.

5. Other Action Items

A. Ms. Edwards presented the recommendations for various interim committee appointments. **[Exhibit G]**

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

B. Mr. Gaydos explained the relationship between the Campaign for Equal Justice, the Oregon Law Foundation and the Oregon State Bar. He stressed the importance of the leadership banks where bar members hold their trust accounts and how that affects IOLTA. He encouraged all board members to support the Campaign for Equal Justice and the HOD resolution to support Legal Services. Mr. Wada talked about the legal aid fund drive and how it unites lawyers around the state. Mr. Harnden addressed the need for attorneys to network around the state and how this networking helps encourage Oregon's congressmen to support Access to Justice.

- C. Mr. Haglund asked the board to determine whether it wished to remove any of the proposed resolutions from the agenda and whether it wished to take a position on the various delegate resolutions on the 2013 draft HOD agenda.

HOD Agenda Item #9:

Motion: Ms. Billman moved, Mr. Ehlers seconded, and the board voted unanimously to support HOD agenda item #9 re: Diversity & Inclusion Assessment Increase.

HOD Agenda Item #10:

Motion: Ms. Billman moved, Mr. Ehlers seconded, and the board voted to support HOD agenda item #10 re: Amendment of Oregon Rule of Professional Conduct 8.4. Ms. Mitchel-Markley was opposed.

HOD Agenda Item #11:

Ms. Hirschbiel shared comments that members submitted in response to the proposed advertising rule amendments. **[Exhibit H]**

Motion: Ms. Billman moved, Mr. Emerick seconded, and the board voted unanimously to support HOD agenda item #11 re: Amendment of Oregon Rules of Professional Conduct 7.1-7.5.

HOD Agenda Item #12:

Motion: Ms. Billman moved, Mr. Ehlers seconded, and the board voted unanimously to support HOD agenda item #12 re: Amendment of Oregon Rules of Professional Conduct.

HOD Agenda Item #13:

Motion: Ms. Billman moved, Mr. Ehlers seconded, and the board voted unanimously to support HOD agenda item #13 re: Veterans Day Remembrance.

HOD Agenda Item #14:

Motion: Mr. Prestwich moved, Mr. Ehlers seconded, and the board voted unanimously to support HOD agenda item #14 re: Member Support of Judicial Branch.

HOD Agenda Item #15:

Motion: Mr. Heysell moved, Mr. Ross seconded, and the board voted to oppose HOD agenda item #15 re: Online Directory Section Listings based on financial issues. Mr. Prestwich abstained.

HOD Agenda Item #16:

Motion: The board voted unanimously to support HOD agenda item #16 re: Support for Adequate Funding for Legal Services to Low-Income Oregonians.

HOD Agenda Item #17:

Motion: Ms. Mitchel-Markley moved, Mr. Ehlers seconded, and the board voted unanimously to exclude HOD agenda item #17 re: Enhance Public Safety on Oregon Public Waterways pursuant to OSB Bylaw 3.4 and HOD Rule 5.5.

HOD Agenda Item #18:

Motion: Mr. Kranovich moved, Ms. Mitchel-Markley seconded, and the board voted unanimously to oppose HOD agenda item #18 re: Scope of House of Delegates Authority as this issue was already addressed with a poll this summer.

HOD Agenda Item #19:

Motion: The board voted to support HOD agenda item #19 re: Marriage Equality. Mr. Prestwich and Mr. Emerick were opposed.

HOD Agenda Item #20:

Motion: Ms. Kohlhoff moved, Ms. O'Connor seconded, and the board voted unanimously to oppose HOD agenda item #20 re: Admission to Bar after Two Years of Law School as this is a decision for the Supreme Court, not the bar.

HOD Agenda Item #21:

Motion: Mr. Kranovich moved, Ms. Mitchel-Markley seconded, and the board voted to oppose HOD agenda item #21 re: Centralized Legal Notice System because the task force assigned to investigate this issue has yet to release its final report and recommendation to the board. Mr. Ehlers abstained. Ms. Kohlhoff and Ms. O'Connor were opposed.

HOD Agenda Item #22:

Motion: Mr. Heysell moved, Ms. Mitchel-Markley seconded, and the board voted unanimously to oppose HOD agenda item #22 re: Admission Rule for Military Spouse Attorneys.

D. Ms. Hirschbiel presented the draft 2013 HOD Agenda for approval.

Motion: Ms. Mitchel-Markley moved, Mr. Emerick seconded, and the board voted unanimously to approve the 2013 HOD Preliminary Agenda, with the exception of Item #17, which was removed from the agenda.

6. Consent Agenda

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

7. 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

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

None.

**Oregon State Bar
Board of Governors Meeting
September 27, 2013
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. Phillip R. Bennett – 841687

Mr. Gleason presented information concerning the BR 8.1 reinstatement application of Mr. Bennett. Disciplinary Counsel's office recommends the Board of Governors approve Mr. Bennett's reinstatement and recommend such to the Oregon Supreme Court subject to the ten conditions set forth in **[Exhibit I]**.

Motion: Ms. Billman moved, and Mr. Ehlers seconded, to recommend to the Supreme Court that Mr. Bennett's reinstatement application be approved, subject to conditions. The motion passed unanimously.

B. Disciplinary Counsel's Report

As written.

**Oregon State Bar
Board of Governors Meeting
September 27, 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

Tricia Allen dba Affordable Legal Services
(UPL Case No. 2013-27)

The UPL Committee recommends the Board approve the cease and desist agreement negotiated with Tricia Allen, who is an independent paralegal operating Affordable Legal Services out of Talent, Oregon. **[Exhibit J]**

Motion: Ms. Mitchel-Markley moved and Ms. O'Connor seconded to approve the agreement as presented. The motion passed unanimously.

B. Pending or Threatened Non-Disciplinary Litigation

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

C. Other Matters

Washington State Taxes

Ms. Hirschbiel asked the board to determine how to proceed with the counteroffer presented by the Washington Department of Revenue. **[Exhibit K]**

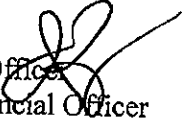
Motion: Mr. Ehlers moved, and Ms. Mitchel-Markley seconded, to decline the offer from the Washington Department of Revenue. The motion passed unanimously.

Professional Liability Fund

Ira R. Zarov
Chief Executive Officer

September 3, 2013

To: PLF Finance Committee (Tim Martinez, Chair; Teresa Statler, and John Berge) and
PLF Board of Directors

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

Re: 2014 PLF Budget and 2014 PLF Primary Assessment

I. Recommended Action

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

1. Approve the 2014 PLF budget as attached. This budget uses a 2014 salary pool recommendation of 2.0 percent. This recommendation has been made after consultation with Sylvia Stevens.
2. Make a recommendation to the Board of Governors concerning the appropriate 2014 PLF Primary Program assessment. We recommend that the 2014 assessment be \$3,500, which is the same amount as the past three years.

II. Executive Summary

1. Besides the two percent salary pool, this budget includes increased costs for PERS and medical insurance. It includes a \$200,000 PLF contribution for the OSB Bar Books. This budget includes two new staff positions; a computer systems analyst / programmer and an additional OAAP attorney position.
2. The actuarial rate study estimates a cost of \$2,730 per lawyer for new 2014 claims. This budget also includes a margin of \$150 per lawyer for adverse development of pending claims.

III. 2014 PLF Budget

Number of Covered Attorneys

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

For the Primary Program, new attorneys paying reduced primary assessments and lawyers covered for portions of the year have been combined into "full pay" units. We currently project 7,107 full-pay attorneys for 2013. For the past five years, the average annual growth of full-pay attorneys has been 1.3 percent. We have chosen to conservatively assume only 1 percent growth for the 2014 budget which translates to 7,178 full-pay attorneys.

Although the Excess Program covers firms, the budget lists the total number of attorneys covered by the Excess Program. Participation in the Excess Program has declined since 2011 because of competition from commercial insurance companies. After holding steady for one year, participation declined again in 2013. We do not expect further declines in 2014.

Full-time Employee Statistics (Staff Positions)

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

	<u>2013 Projections</u>	<u>2014 Budget</u>
Administration	8.20 FTE	10.00 FTE
Claims	19.75 FTE	20.00 FTE
Loss Prevention (includes OAAP)	12.75 FTE	13.58 FTE
Accounting	7.04 FTE	5.95 FTE
Excess	<u>1.00 FTE</u>	<u>1.00 FTE</u>
Total	48.74 FTE	50.53 FTE

We continue to have some permanent positions staffed at less than full-time levels for both 2013 and 2014. Some staff members work from 30 to 36 hours per week. These part-time arrangements fit the needs of both the employee and the PLF. Part-time and staff changes are the reason for the fractional FTE's.

An existing systems administrator position has been moved from the accounting department to the administration department starting with the 2014 budget.

During the first half 2013, a claims attorney and claims secretary retired and new employees were hired for both positions. The 2013 budget included an additional new claims attorney position which was filled in July. The 2013 budget also included a paralegal position in the claims department. The position was filled at 75 percent of full-time. However, the staff member has done more work in the loss prevention department related to closing law offices. As a result, this position has been moved to the loss prevention department.

There are two new positions proposed to be filled in late 2013. Because of potential retirements and the long learning curve, an additional OAAP attorney position has been added to the budget starting in November, 2013. In addition, the chief financial officer is scheduled to retire November 30, 2013 and some of his duties were in the data processing department. A computer systems analysis / programmer position has been added to the administration department starting in October, 2013. Some of the costs of this new position will be offset by reduced expenses with outside contractors. The replacement Chief Financial Officer is expected start in November. The 2013 budget anticipated some of these "succession planning" expenses and had an increased contingency amount. The additional 2013 expenses have been charged to salary and benefits rather than contingency because it allows for better period to period comparisons.

While no definite plans have been made, we continue to expect that some claims attorneys and other members of the PLF management team to retire in the next few years. The 2014 budget continues to have an increased amount allocated to contingency to cover succession planning and possible expenses relating to replacing these positions.

Allocation of Costs between the Excess and Primary Programs

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

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

Besides specific individual allocations, fourteen percent of the costs of the claims attorneys and ten percent of the costs of all loss prevention personnel are allocated to the Excess Program. The total 2014 allocation of salary, benefits and overhead is about 14.35 percent of total administrative operating expense. This is slightly lower than the percentage used in the 2013 budget (14.45 percent).

Primary Program Revenue

Projected assessment revenue for 2013 is based upon the \$3,500 basic assessment paid by an estimated 7,107 attorneys. The budget for assessment revenue for 2014 is based upon a \$3,500 assessment and 7,178 full-pay attorneys. Primary Program revenue for 2013 also includes our forecast for SUA collections of \$215,532. Because of changes in Board of Director policy, there will be no SUA program or collections for 2014.

Investment returns were better than expected for the first seven months of 2013. In doing the 2013 full year projections and 2014 budget, we used the rates of return for the different asset categories recently recommended by R. V. Kuhns & Associates, Inc. These rates are reduced from 2013 levels for several categories (mostly fixed income). While the percentages chosen are significantly lower than historical rates of return, they reflect the current reduced expectations of our investment consultants. Our calculation of investment return projections for the remainder of 2013 and for 2014 began with the July 31, 2013 market value of all current investments. Investment revenue was calculated from July forward using 2.25 percent for the short-term cash flow bond fund, 3.5 percent for intermediate bonds, 7.9 percent for domestic equities, 8.65 percent for foreign equities, 6.75 percent for hedge fund of funds or the GATT funds that are likely to replace the hedge fund of funds, 7 percent for real estate, and 6.75 percent for absolute return. The overall combined expected rate of return for 2014 is about 6.21 percent. (The overall rate combined rate of return used in prepared the 2013 budget was 6.61 percent.)

Primary Program Claims Expense

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

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

During the second half of 2012, 141 claims were made against a single attorney. There have been 15 additional claims made against the same attorney during 2013. All of these claims from 2012 and 2013 are subject to the same coverage limit of \$350,000. When the actuaries reviewed the estimates for claim liabilities in December 31, 2012 and June 30, 2013, they made an adjustment to

their methodology and removed these claims from their normal analysis. It is also appropriate to adjust claim frequency calculations. After this adjustment, the frequency of new claims dropped for the second half of 2012 and this drop in frequency continued for the first half of 2013. Our 2013 projections of claim costs assume 935 claims made during 2013 at \$21,000 per claim. The \$21,000 cost per claim is higher than our current average claim cost (\$20,500) because early analysis suggests that 2013 claim severity may be a bit higher than expected.

The 2013 budget included \$1,065,600 (approximately \$150 per covered party) for adverse development or actuarial increases to estimates in liabilities for claims pending at the start of the year. The June 30, 2013 actuarial review of claim liabilities recommended an increase of about \$665,000 as a result of adverse development of pending claims. In the past, actuarial adjustments have been both up and down and undoubtedly the December 31, 2013 adjustment will differ from the June adjustment. However, in order to project the 2013 cost of pending claims, we have doubled the amount from June (\$1.33 million).

Primary Program new claims expense for 2014 was calculated using figures from the actuarial rate study. The study assumed a frequency rate of 13 percent, 7,178 covered attorneys and an average claim cost of \$21,000. Multiplying these three numbers together gets a 2014 budget for claims expense of \$19.6 million. This would also translate to about 933 claims at \$21,000 for 2014.

We have added a margin of \$150 per covered lawyer to cover adverse development of claims pending at the start of 2014. If pending claims do not develop adversely, this margin could offset higher 2014 claims frequency, cover other negative economic events, or help the PLF reach the retained earnings goal. The pending claims budget for adverse development is equal to \$1,076,700 (\$150 times the estimated 7,178 covered attorneys). The concept of using a margin will be discussed again in the staff recommendation section regarding the 2014 assessment.

Salary Pool for 2014

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

After consultation with Sylvia Stevens, a two percent salary pool increase is recommended for 2014. The salary pool is used to adjust salaries for inflation, to allow normal changes in classifications, and when appropriate to provide a management tool to reward exceptional work. As a point of reference, one percent in the salary pool represents \$40,689 in PLF salary expense and \$14,504 in PLF benefit costs. The total cost of the two percent salary pool is less than one half of one percent of total expenses (0.4 percent). The projected increase in the CPI index for 2014 is between 2 and 3 percent with the average prediction being 2.1 or 2.2 percent.

Because all salary reclassifications cannot be accomplished within the two percent salary pool allocation, we are also requesting \$30,000 for potential salary reclassification. Salary reclassifications generally occur in two circumstances, when a person hired at a lower salary classification achieves the higher competency required for the new classification, or when there is a necessity to change job requirements. The bulk of the salary reclassification amount reflects either the reclassification of relatively recently hired exempt employees or addresses an historical lack of parity between the salaries of employees in positions with equivalent responsibilities. (Exempt positions are generally professional positions and are not subject to wage and hour requirements.) Salaries for entry level hires of exempt positions are significantly lower than experienced staff. As new staff members become proficient, they are reclassified and their salaries are adjusted appropriately. As the board is aware, several new claims attorneys have been hired in recent years. (The major reclassification usually occurs after approximately three years, although the process of salary adjustment often occurs over a longer time period.)

Benefit Expense

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

The employer contribution rates for PERS were expected to increase significantly as of July 1, 2013. Because of legislative changes, the new rates were lower than expected. This is the reason that 2013 projections for benefits and payroll taxes are much lower than the 2013 budget figures.

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

The PLF covers the cost of medical and dental insurance for PLF employees. PLF employees pay about fifty percent of the additional cost of providing medical and dental insurance to dependents. Although the rate of increases in medical insurance is slowing somewhat, the cost of medical insurance continues to rise faster than salary levels. We have included about a 5 percent increase for the cost of medical and dental insurance.

Capital Budget Items

The OAAP telephone system was replaced during 2013. There also will be some minor remodeling (leasehold improvements) for new IT personnel during the last quarter of 2013.

There have been ongoing maintenance problems with the PLF boardroom audiovisual equipment. We have included funds in the capital budget to potentially replace the equipment in 2014.

Other Primary Operating Expenses

Insurance expense in the 2013 budget was higher because of a large increase in the cost of 2012 E&O insurance. The cost of this coverage increased because of a significant claim made against the PLF. The proposed cost of the renewal E&O policy was again increased in 2013. Because of significant increase in cost, a decision was made not to purchase this coverage. The 2013 projections and 2014 budget for insurance were reduced accordingly.

The information services account covers the cost of website development. The PLF finished developing a new website for the PLF defense panel during 2013. The PLF also developed a website for the distribution of material for BOD and BOD committee meetings during 2013. In addition, the main PLF website will be revised and rewritten during 2013 and early 2014.

The PLF has traditionally had defense panel meetings every other year. The 2013 budget included estimates of costs for the scheduled 2013 meeting. Defense panel members pay for their own lodging and meal expenses and some facility and supply costs. The PLF pays for the cost of staff and Board of Director lodging and meals and a portion of supplies and speakers. There is a small 2014 budget amount for a potential small program for newer panel members.

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

The 2014 budget includes a \$200,000 contribution to the OSB Bar Books. The PLF Board of Directors believes there is substantial loss prevention value in free access to Bar Books via the internet which had the potential to reduce future claims.

For many years, the PLF Primary Program has included a contingency budget item. The contingency amount has usually been set between two and four percentage of operating costs. In the past, the contingency items was been used for items such as CEO recruitment expense, the costs of a focus group on SUA, and the Medicare reporting litigation expense. In 2013, the contingency budget was raised to 4 percent of operating costs to cover potential succession costs. The 2014 contingency budget also uses 4 percent of operating expenses (\$314,701).

Total Operating Expenses and the Assessment Contribution to Operating Expenses

Page one of the budget shows projected 2013 Primary Program operating costs to be about 3.2 percent lower than the budget amount.

The 2014 Primary Program operating budget is 2.8 percent higher than the 2013 budget and 6.3 percent greater than the 2013 projections. The main reasons for the increases are the new IT and OAAP positions, the 2 percent salary increase, and related higher benefit costs.

Excess Program Budget

The major focus of this process is on the Primary Program and the effects of the budget on the 2014 Primary Program assessment. We do include a budget for the Excess Program (page 8). Participation in the Excess Program has declined since 2011 because of competition from commercial insurance companies. After holding steady for one year, participation declined again in 2013. We do not expect further declines in 2014 because of reported increases in premium costs from competing insurers.

The major revenue item for the Excess Program is ceding commissions. These commissions represent the portion of the excess assessment that the PLF gets to keep and are based upon a percentage of the assessment (premium) charged. Most of the excess assessment is turned over to reinsurers who cover the costs of resolving excess claims. We currently project ceding commission of \$745,000 for 2013. The 2014 budget estimates ceding commissions to increase slightly because of changes in the excess agreement relating to data loss coverage.

After three or four years from the start of a given plan year, the two reinsurance treaties covering the first \$5 million provide for profit commissions if excess claim payments are low. If there are subsequent adverse developments, prior profit commissions are returned to the reinsurance companies. In recent years, excess claims have increased and it is quite difficult to predict profit commissions in advance. Actual profit commissions have proven to be rather small. As a result, no profit commissions have been included in the 2013 projections or 2014 budget.

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

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

IV. Actuarial Rate Study for 2014

The actuaries review claims liabilities twice a year, at the end of June and December. They also prepare an annual rate study to assist the Board of Directors in setting the assessment. The attached rate study focuses on the estimate of the cost of 2014 claims. It relies heavily on the analysis contained in the actuaries' claim liability study as of June 30, 2013. The methodology used in that study is discussed by separate memorandum. The rate study only calculates the cost of new 2014 claims. It does not consider adjustments to pending claims, investment results, or administrative operating costs.

The actuaries estimate the 2014 claim cost per attorney using two different methods. The first method (shown on Exhibit 1) uses regression analysis to determine the trends in the cost of claims. Regression analysis is a statistical technique used to fit a straight line to number of points on a graph. It is very difficult to choose an appropriate trend. Because of the small amount and volatility of data, different ranges of PLF claim years produce very different trend numbers. The selection of

the starting and ending points is very significant. For the PLF, including a low starting point such as 1987 or a very high point such as 2000 skews the straight line significantly up or down. Because of these problems, the actuaries do not favor using this technique to predict future claim costs.

The second method (Exhibit 2) involves selection of expected claim frequency and claim severity (average cost). Claims frequency is defined as the number of claims divided by the number of covered attorneys. For the indicated amount, the actuaries have used a 2014 claims frequency rate of 13 percent and \$21,000 as the average cost per claim (severity). The average cost figure has increase by \$500 from last years' study. We feel the \$21,000 severity factor is appropriate given the increases in claim expense severity since 2008. The actuaries' chosen frequency rate is a half of one percent lower from last years' figure of 13.5 percent. We feel that this rate is appropriate given the reduction in claim frequency over the past twelve months. The actuaries prefer the result found with this second method. Their indicated average claim cost is \$2,730 per attorney. This amount would only cover the estimated funds needed for 2014 new claims.

It is necessary to calculate a provision for operating expenses not covered by non-assessment revenue. As can be seen in the budget, the estimate of non-assessment revenue does not cover the budget for operating expenses. The 2014 shortfall is about \$575 per lawyer assuming 7,178 full-pay lawyers.

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

V. Staff Recommendations

If you add the operating expense portion of \$575 per lawyer to the actuaries' indicated claim cost of \$2,730, you would have an assessment of \$3,305. We feel that it is appropriate to include a margin of \$150 per attorney for adverse development of pending claims. This allows for a budget of about \$1.1 million for adverse development of pending claims. An assessment of \$3,500 would allow a projected budget profit of about \$326,000.

Because of good financial results for 2012 and the first six months of 2013, the PLF currently has positive combined Primary and Excess retained earnings of about \$4.3 million. The Board of Directors has a long-term goal of \$12 million positive retained earnings. A 2014 assessment with some margin makes it more likely that some small progress will be made toward that retained earnings goal.

Given the factors discussed above, the PLF staff feels that the current Primary Program assessment should be maintained for 2014. Accordingly, we recommend setting the 2014 Primary Program assessment at \$3,500.

The Finance Committee will discuss the actuarial report during its telephone conference meeting at 3:00 p.m. on September 10, 2013 and prepare recommendations for the Board of Directors. The full Board of Directors will then act upon the committee's recommendations at their board meeting on September 13, 2013.

**OREGON STATE BAR
PROFESSIONAL LIABILITY FUND
2014 PRIMARY PROGRAM BUDGET
Presented to PLF Board of Directors on September 13, 2013**

	2011 <u>ACTUAL</u>	2012 <u>ACTUAL</u>	2013 <u>BUDGET</u>	2013 <u>PROJECTIONS</u>	2014 <u>BUDGET</u>
<u>Revenue</u>					
Assessments including SUA	\$24,465,415	\$24,803,326	\$25,049,000	\$25,090,978	\$25,123,000
Installment Service Charge	385,593	394,631	390,000	391,000	390,000
Investments and Other	(544,650)	4,364,988	2,462,823	3,115,627	2,692,264
Total Revenue	<u>\$24,306,358</u>	<u>\$29,562,945</u>	<u>\$27,901,823</u>	<u>\$28,597,605</u>	<u>\$28,205,264</u>
<u>Expenses</u>					
Provision for Claims					
New Claims	\$18,538,608	\$20,908,307	\$19,660,320	\$19,635,000	\$19,595,940
Pending Claims	\$2,398,105	(\$2,435,227)	\$1,065,600	\$1,330,000	\$1,076,700
Total Provision for Claims	<u>\$20,936,713</u>	<u>\$18,473,080</u>	<u>\$20,725,920</u>	<u>\$20,965,000</u>	<u>\$20,672,640</u>
Expense from Operations					
Administration	\$2,234,384	\$2,200,578	\$2,283,201	\$2,260,078	\$2,482,372
Accounting	635,730	748,742	786,223	815,137	637,662
Loss Prevention	1,700,518	1,824,653	1,902,969	1,866,918	2,081,023
Claims	<u>2,305,033</u>	<u>2,398,157</u>	<u>2,681,914</u>	<u>2,462,053</u>	<u>2,666,466</u>
Total Operating Expense	\$6,875,665	\$7,172,130	\$7,654,307	\$7,404,186	\$7,867,523
Contingency	53,523	23,693	306,172	25,000	314,701
Depreciation	209,326	175,500	208,000	168,527	169,800
Allocated to Excess Program	(1,393,740)	(1,135,822)	(1,135,160)	(1,135,160)	(1,145,155)
Total Expenses	<u>\$26,681,487</u>	<u>\$24,708,581</u>	<u>\$27,759,239</u>	<u>\$27,427,553</u>	<u>\$27,879,509</u>
Net Income (Loss)	<u>(\$2,375,129)</u>	<u>\$4,854,364</u>	<u>\$142,584</u>	<u>\$1,170,052</u>	<u>\$325,755</u>
Number of Full Pay Attorneys	6,937	7,030	7,104	7,107	7,178

CHANGE IN OPERATING EXPENSES:

Increase from 2013 Budget	2.79%
Increase from 2013 Projections	6.26%

**OREGON STATE BAR
PROFESSIONAL LIABILITY FUND
2014 PRIMARY PROGRAM BUDGET
CONDENSED STATEMENT OF OPERATING EXPENSE
Presented to PLF Board of Directors on September 13, 2013**

<u>Expenses</u>	<u>2011 ACTUAL</u>	<u>2012 ACTUAL</u>	<u>2013 BUDGET</u>	<u>2013 PROJECTIONS</u>	<u>2014 BUDGET</u>
Salaries	\$3,858,800	\$3,984,100	\$4,148,175	\$4,101,924	\$4,333,390
Benefits and Payroll Taxes	1,194,430	1,395,115	1,576,202	1,473,542	1,613,525
Professional Services	270,489	289,644	314,000	337,261	319,630
Auto, Travel & Training	76,029	95,137	94,450	99,350	122,650
Office Rent	491,884	511,782	520,741	521,137	530,879
Office Expense	153,163	136,526	151,950	134,250	136,250
Telephone (Administration)	34,329	36,564	43,000	49,872	57,960
L P Programs	359,385	389,839	433,560	358,268	444,794
OSB Bar Books	300,000	200,000	200,000	200,000	200,000
Defense Panel Program	20,706	0	23,100	23,100	1,500
Insurance	60,081	70,793	90,129	38,878	39,145
Library	32,928	31,047	33,000	33,000	33,000
Memberships & Subscriptions	18,244	20,512	19,800	21,000	22,200
Interest & Bank Charges	5,197	11,071	6,200	12,604	12,600
Other	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Total Operating Expenses	<u>\$6,875,665</u>	<u>\$7,172,130</u>	<u>\$7,654,307</u>	<u>\$7,404,186</u>	<u>\$7,867,523</u>
Allocated to Excess Program	<u>(\$1,350,104)</u>	<u>(\$1,099,826)</u>	<u>(\$1,105,104)</u>	<u>(\$1,105,104)</u>	<u>(\$1,120,789)</u>
Full Time Employees (See Explanation)	44.56	44.83	47.06	47.74	49.53
Number of Full Pay Attorneys	6,937	7,030	7,104	7,107	7,178
Non-personnel Expenses	\$1,822,435	\$1,792,915	\$1,929,930	\$1,828,720	\$1,920,608
Allocated to Excess Program	(<u>\$388,938</u>)	(<u>\$275,635</u>)	(<u>\$278,874</u>)	(<u>\$278,874</u>)	(<u>\$270,406</u>)
Total Non-personnel Expenses	<u>1,433,497</u>	<u>1,517,280</u>	<u>1,651,056</u>	<u>1,549,846</u>	<u>1,650,202</u>

CHANGE IN OPERATING EXPENSES:

Increase from 2013 Budget	2.79%
Increase from 2013 Projections	6.26%

**OREGON STATE BAR
PROFESSIONAL LIABILITY FUND
2014 PRIMARY PROGRAM BUDGET
ADMINISTRATION**

Presented to PLF Board of Directors on September 13, 2013

	2011 <u>ACTUAL</u>	2012 <u>ACTUAL</u>	2013 <u>BUDGET</u>	2013 <u>PROJECTIONS</u>	2014 <u>BUDGET</u>
<u>Expenses</u>					
Salaries	\$647,912	\$632,504	\$642,627	\$656,351	\$807,152
Benefits and Payroll Taxes	209,493	231,342	242,304	230,476	296,206
Staff Travel	13,759	23,832	17,550	19,250	19,550
Board of Directors Travel	29,994	38,011	39,000	39,000	39,000
Training	843	9,701	8,000	12,000	15,000
Investment Services	27,304	27,719	28,000	28,000	28,000
Legal Services	7,931	13,251	16,000	12,000	13,000
Actuarial Services	18,564	18,900	19,000	19,000	22,000
Information Services	82,863	86,814	96,000	134,705	97,600
Offsite System Backup	1,138	0	0	0	0
Electronic Record Scanning	21,879	52,035	75,000	60,000	65,000
Other Professional Services	73,601	65,375	57,400	60,956	70,230
Pro Services - Medicare Reporting	11,400	3,850	0	0	0
OSB Bar Books	300,000	200,000	200,000	200,000	200,000
Office Rent	491,884	511,782	520,741	521,137	530,879
Equipment Rent & Maint.	42,345	36,000	35,200	39,000	39,000
Dues and Memberships	18,244	20,512	19,800	21,000	22,200
Office Supplies	64,615	51,613	68,000	50,000	52,000
Insurance	60,081	70,793	90,129	38,878	39,145
Telephone	34,329	36,564	43,000	49,872	57,960
Printing	10,966	8,573	11,000	9,000	9,000
Postage & Delivery	34,350	37,715	36,750	34,750	34,750
NABRICO - Assoc. of Bar Co.s	24,805	9,996	10,500	10,600	10,600
Bank Charges & Interest	5,197	11,071	6,200	12,604	12,600
Repairs	887	2,625	1,000	1,500	1,500
Miscellaneous	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Total Operating Expenses	<u>\$2,234,384</u>	<u>\$2,200,578</u>	<u>\$2,283,201</u>	<u>\$2,260,078</u>	<u>\$2,482,372</u>
Allocated to Excess Program	<u>(\$559,903)</u>	<u>(\$430,118)</u>	<u>(\$430,857)</u>	<u>(\$430,857)</u>	<u>(\$461,595)</u>
Administration Full Time Employees	8.75	8.00	8.00	8.20	10.00
CHANGE IN OPERATING EXPENSES:					
Increase from 2013 Budget		8.72%			
Increase from 2013 Projections		9.84%			

OREGON STATE BAR
PROFESSIONAL LIABILITY FUND
2014 PRIMARY PROGRAM BUDGET
ACCOUNTING

Presented to PLF Board of Directors on September 13, 2013

	2011 <u>ACTUAL</u>	2012 <u>ACTUAL</u>	2013 <u>BUDGET</u>	2013 <u>PROJECTIONS</u>	2014 <u>BUDGET</u>
<u>Expenses</u>					
Salaries	\$473,136	\$542,180	\$548,750	\$581,693	\$445,453
Benefits and Payroll Taxes	141,635	183,646	210,973	208,344	162,909
Travel	207	178	400	500	1,500
Financial Audit	20,200	21,700	22,600	22,600	23,800
Training	<u>552</u>	<u>1,038</u>	<u>3,500</u>	<u>2,000</u>	<u>4,000</u>
Total Operating Expenses	<u>\$635,730</u>	<u>\$748,742</u>	<u>\$786,223</u>	<u>\$815,137</u>	<u>\$637,662</u>
Allocated to Excess Program	<u>(\$144,052)</u>	<u>(\$128,721)</u>	<u>(\$111,674)</u>	<u>(\$111,674)</u>	<u>(\$90,264)</u>
Accounting Full Time Employees	6.10	6.90	6.90	7.04	5.95

CHANGE IN OPERATING EXPENSES:

Decrease from 2013 Budget	-18.90%
Decrease from 2013 Projections	-21.77%

**OREGON STATE BAR
PROFESSIONAL LIABILITY FUND
2014 PRIMARY PROGRAM BUDGET
LOSS PREVENTION (Includes OAAP)
Presented to PLF Board of Directors on September 13, 2013**

	<u>2011 ACTUAL</u>	<u>2012 ACTUAL</u>	<u>2013 BUDGET</u>	<u>2013 PROJECTIONS</u>	<u>2014 BUDGET</u>
<u>Expenses</u>					
Salaries	\$1,015,169	\$1,053,974	\$1,059,579	\$1,100,271	\$1,189,806
Benefits and Payroll Taxes	325,964	380,840	409,830	408,379	446,423
In Brief	54,370	44,854	62,000	45,000	62,000
PLF Handbooks	7,320	5,872	6,000	1,000	6,000
Library	102	436	150	500	500
Video and Audio Tapes	42,485	35,454	42,200	35,000	35,000
Mail Distribution of Video and Audiotape	12,871	11,949	12,000	12,000	12,000
Web Distribution of Programs	9,165	24,180	18,000	15,000	18,000
Program Promotion	20,596	28,664	30,000	15,000	20,000
Expense of Closing Offices	4,800	15,861	14,500	4,000	10,500
Facilities	33,591	47,282	45,000	47,000	47,000
Speaker Expense	1,018	(1,311)	5,000	7,000	5,000
Accreditation Fees	1,071	1,632	1,400	1,600	1,600
Beepers & Confidential Phone	3,377	4,107	4,000	5,000	5,000
Expert Assistance	6,414	300	5,000	0	5,000
Bad Debts from Loans	0	0	0	0	0
Memberships & Subscriptions	10,832	11,053	11,000	11,000	12,900
Travel	31,708	36,171	36,950	23,075	36,750
Training	22,883	25,038	40,250	29,325	47,800
Downtown Office	96,782	98,297	100,110	106,768	119,744
Miscellaneous	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Total Operating Expenses	<u>\$1,700,518</u>	<u>\$1,824,653</u>	<u>\$1,902,969</u>	<u>\$1,866,918</u>	<u>\$2,081,023</u>
Allocated to Excess Program	<u>(\$246,921)</u>	<u>(\$202,122)</u>	<u>(\$209,540)</u>	<u>(\$209,540)</u>	<u>(\$225,930)</u>
L P Depart Full Time Employees (Includes OAAP)	11.83	11.83	11.83	12.75	13.58
CHANGE IN OPERATING EXPENSES:					
Increase from 2013 Budget					9.36%
Increase from 2013 Projections					11.47%

OREGON STATE BAR
PROFESSIONAL LIABILITY FUND
2014 PRIMARY PROGRAM BUDGET
CLAIMS DEPARTMENT

Presented to PLF Board of Directors on September 13, 2013

	2011 <u>ACTUAL</u>	2012 <u>ACTUAL</u>	2013 <u>BUDGET</u>	2013 <u>PROJECTIONS</u>	2014 <u>BUDGET</u>
<u>Expenses</u>					
Salaries	\$1,722,583	\$1,755,442	\$1,897,219	\$1,763,609	\$1,890,979
Benefits and Payroll Taxes	517,338	599,287	713,095	626,343	707,987
Claims Audit	5,609	0	0	0	0
Training	4,335	9,758	13,000	12,000	29,000
Travel	1,534	2,623	2,500	4,000	4,000
Library & Information Systems	32,928	31,047	33,000	33,000	33,000
Defense Panel Program	<u>20,706</u>	<u>0</u>	<u>23,100</u>	<u>23,100</u>	<u>1,500</u>
Total Operating Expenses	<u>\$2,305,033</u>	<u>\$2,398,157</u>	<u>\$2,681,914</u>	<u>\$2,462,053</u>	<u>\$2,666,466</u>
Allocated to Excess Program	<u>(\$399,228)</u>	<u>(\$338,865)</u>	<u>(\$353,033)</u>	<u>(\$353,033)</u>	<u>(\$343,000)</u>
Claims Depart Full Time Employees	17.88	18.10	20.33	19.75	20.00
CHANGE IN OPERATING EXPENSES:					
Decrease from 2013 Budget		-0.58%			
Increase from 2013 Projections		8.30%			

OREGON STATE BAR
PROFESSIONAL LIABILITY FUND
2014 PRIMARY PROGRAM BUDGET
CAPITAL BUDGET

Presented to PLF Board of Directors on September 13, 2013

	2011 <u>ACTUAL</u>	2012 <u>ACTUAL</u>	2013 <u>BUDGET</u>	2013 <u>PROJECTIONS</u>	2014 <u>BUDGET</u>
Capital Items					
Furniture and Equipment	\$19,595	\$21,188	\$10,000	\$8,000	\$10,000
Telephone	0	0	1,000	11,500	5,000
Copiers / Scanners	0	71,253	10,000	2,500	8,500
Audiovisual Equipment	0	0	0	0	25,000
Data Processing					
Hardware	22,832	9,434	13,000	12,000	12,000
Software	22,179	5,574	10,000	4,000	6,000
PCs, Ipads and Printers	57,751	27,077	13,500	7,500	7,500
Leasehold Improvements	<u>1,783</u>	<u>1,700</u>	<u>3,000</u>	<u>15,000</u>	<u>5,000</u>
Total Capital Budget	<u>\$124,140</u>	<u>\$136,226</u>	<u>\$60,500</u>	<u>\$60,500</u>	<u>\$79,000</u>

Increase from 2013 Budget 30.58%

Increase from 2013 Projections 30.58%

**OREGON STATE BAR
PROFESSIONAL LIABILITY FUND
2014 EXCESS PROGRAM BUDGET
Presented to PLF Board of Directors on September 13, 2013**

	<u>2011 ACTUAL</u>	<u>2012 ACTUAL</u>	<u>2013 BUDGET</u>	<u>2013 PROJECTIONS</u>	<u>2014 BUDGET</u>
Revenue					
Ceding Commission	720,039	733,700	746,750	745,000	760,000
Profit Commission	21,684	32,599	0	0	0
Installment Service Charge	37,322	37,180	38,000	41,500	42,000
Other	703	1,478	1,500	3,375	1,500
Investment Earnings	<u>22,315</u>	<u>429,191</u>	<u>185,374</u>	<u>292,734</u>	<u>202,643</u>
Total Revenue	<u>\$802,063</u>	<u>\$1,234,148</u>	<u>\$971,624</u>	<u>\$1,082,609</u>	<u>\$1,006,143</u>
Expenses					
Allocated Salaries	\$732,877	\$608,431	\$599,356	\$599,356	\$621,781
Direct Salaries	65,615	66,984	70,298	73,048	76,512
Allocated Benefits	228,289	215,760	226,874	226,874	228,602
Direct Benefits	15,938	23,050	26,657	26,434	28,400
Program Promotion	1,596	6,070	5,000	7,500	7,500
Investment Services	2,696	2,282	3,000	2,500	2,500
Allocation of Primary Overhead	388,938	275,635	278,874	278,874	270,406
Reinsurance Placement Travel	5,733	3,933	5,000	500	5,000
Training	0	0	500	500	500
Printing and Mailing	4,283	5,301	5,000	5,500	5,500
Other Professional Services	6,290	1,345	2,000	2,000	2,000
Software Development	0	0	0	0	0
Total Expense	<u>\$1,452,255</u>	<u>\$1,208,791</u>	<u>\$1,222,559</u>	<u>\$1,223,086</u>	<u>\$1,248,701</u>
Allocated Depreciation	<u>\$43,636</u>	<u>\$35,996</u>	<u>\$30,056</u>	<u>\$30,056</u>	<u>\$24,366</u>
Net Income	<u>(\$693,828)</u>	<u>(\$10,639)</u>	<u>(\$280,991)</u>	<u>(\$170,533)</u>	<u>(\$266,924)</u>
Full Time Employees	1.00	1.00	1.00	1.00	1.00
Number of Covered Attorneys	2,317	2,313	2,395	2,175	2,175
CHANGE IN OPERATING EXPENSES:					
Increase from 2013 Budget		2.14%			
Increase from 2013 Projections		2.09%			

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: September 27, 2013
From: Sylvia E. Stevens, Executive Director
Re: CSF Claims Recommended for Awards

Action Recommended

Consider the recommendation of the CSF Committee that awards be made On the following claims:

No. 2013-33 McBRIDE (J. Garibay).....	\$5,000.00
No. 2012-68 McBRIDE (Romero) & No. 2012-90 McBRIDE (Vega de Garibay).....	\$10,000.00 ¹
No. 2013-38 GRUETTER (Bullwinkel)	\$48,950.15
No. 2013-26 GRUETTER (M. Farrar).....	\$28,984.53
No. 2013-27 GRUETTER (B. Farrar)	\$14,995.01
No. 2013-07 McBRIDE (Olvera).....	\$5,000.00
 TOTAL	 \$112,929.69

Discussion

No. 2013-33 McBRIDE (J. Garibay) \$5,000.00

Jose Garibay came to the US with his family at age four in 1987, entering without permission. In about 2005, Jose was able to acquire a work authorization based on his mother's status as a domestic violence victim. In March 2009, Jose pleaded guilty to two felony charges (including rape in the third degree) and was sentenced to 19 months in prison. In August 2009, the government initiated removal proceedings and in January 2010 Jose was transported to Tacoma to await deportation.

Jose's sister Maria paid \$100 and consulted with McBride in on February 24, 2010 on Jose's behalf. McBride "guaranteed" that Jose would be able to stay in the US and persuaded Maria that he could also help get Jose's conviction overturned. Maria signed a retainer agreement with McBride on Jose's behalf on July 14, 2010; Jose's mother paid a retainer of \$4900. In late July 2010, McBride filed a notice of appearance on Jose's behalf and in late August filed a motion to appear by phone at the removal hearing. At the hearing it was determined that Jose did not qualify for a "reasonable fear" delay in removal, and he was deported on October 2, 2010.

¹ See note 2.

Maria contends that she called McBride two or three times a month to inquire about Jose's case and was always told that he was working on appeals. In March 2011, McBride sent Jose's mother some papers to complete, indicating that he would use her status to seek an adjustment in Jose's status. McBride's file contains no evidence that he filed such application or that he did any work on a criminal or removal appeal. Virtually nothing seems to have been done following Jose's removal.

McBride never told Jose's sister or mother that Jose's felony convictions would permanently bar him from an adjustment of status, or that the chances of a convicted sex offender gaining legal permanent resident status are essentially non-existent.

The CSF Committee recommends an award to Jose (to be paid to his mother) of the entire \$5000 paid to McBride. The Committee concluded that McBride was dishonest in taking a fee from Jose's family and promising an outcome that was legally impossible. McBride had been handling immigration cases for several years and held himself out as an expert, so he had to have known that there was nothing he could do for Jose and should have declined the representation. No judgment is required because the OSB has obtained a judgment against McBride that encompasses all claims.

**No. 2012-68 McBRIDE (Romero) &
No. 2012-90 McBRIDE (Vega de Garibay) \$10,000.00**

Oscar Romero and Maria Vega de Garibay entered the US illegally from Mexico in 1995 and 1997, respectively. They left in 2000 and returned, again illegally, in 2002. They were married in the US in 2006. That same year they filed applications for permanent residency or status adjustment for themselves and their children.

In September 2009, Oscar and Maria's applications were denied due to their multiple illegal entries and ineligibility for an exception. Orders for removal of the family soon followed. Later that month, Oscar and Maria retained McBride to seek cancellation of the removal orders and for work authorizations. McBride assured them that, despite the removal orders and denial or previous applications, he could accomplish their objectives for a fee of \$10,000.² In June 2010, McBride filed a Notice of Appearance with the Immigration Court, two days before a master hearing on Maria's removal hearing. Claimants indicate that McBride attended two removal hearings and was able to have the proceedings continued.

Oscar and Maria also paid \$1155 in fees for filing their applications. McBride asked for the fee (\$385) on three occasions, blamed the immigration authorities. The investigator determined that McBride made at least one erroneous filing that had to be re-done with a new fee. Curiously, however, although he always asked his clients to deliver filing fees in money

² Oscar and Maria each filed CSF Applications for Reimbursement. Oscar sought only the \$5000 attributed to his case, while Maria requested \$10,000 for both of them. It was not clear from either application that they were related and that fact was discovered only through the investigations. The Committee decided to treat their two applications as one.

orders payable to the government, McBride instructed Maria to leave the payee line blank on at least two of the money orders she provided.

Communication with McBride was difficult; when asked about the status he assured the clients that he was looking into things. He never returned their calls and cancelled appointments. At one point he told Maria he was waiting to file their work visa applications until “after the election.” They learned of McBride’s suspension and subsequent resignation when they contacted the OSB for help.

McBride’s files do not contain evidence of any substantive action concerning the clients’ matter. There is a note that the deportation hearings were administratively closed on June 22, 2012 but nothing official that gives a reason. The claimants were unaware of the status of their deportation case until informed by the investigator. There are no copies of completed work applications in McBride’s file. Oscar and Maria have no valid work visas and have not been able to adjust their status.

The CSF Committee concluded that any work done by McBride was *de minimis* and of little value to the claimants. Some members suggested McBride be credited with 2 hours of work at \$200/hour, and refunding \$9600 to the claimants. They also believed that the claimants should recover 2 of the \$385 filing fees, for a total of \$770. Ultimately, the committee voted unanimously to recommend an award of \$10,000.

No. 2013-38 GRUETTER (Bullwinkel) \$48,950.15

David Bullwinkel hired Bryan Gruetter to pursue claims for serious injuries sustained in an automobile accident in 2007. Bullwinkel gave Gruetter \$5000 for expenses, but Gruetter otherwise agreed to handle the case on a *pro bono* basis because of the extensive medical bills and limited insurance available from the driver. Gruetter settled the claim for \$100,00 in July 2008. Gruetter deposited the settlement funds into trust, explaining to Bullwinkel that his strategy was to hold the funds, wait for the medical providers to refer the bills to collections, and then settle cheaply with the collection agencies.

Gruetter paid some of the medical bills in May and June 2010 and distributed \$10,000 to Bullwinkel. He said the balance of \$43,950.15 would be available in November after the statute of limitations passed on the remaining medical claims. Bullwinkel learned of the loss in July 2011 when medical providers began to contact him and he was unable to get an explanation from Gruetter. Gruetter also never accounted for the \$5000 cost advance.

The Committee recommends an award to Bullwinkel of \$48,950.15. His claim is included in the restitution judgment being negotiation by the US Attorney’s Office that will be assigned to the OSB.

No. 2013-26 GRUETTER (B. Farrar) \$14,995.01

No. 2013-27 GRUETTER (M. Farrar) \$28,984.53

Bryan and Maureen Farrar were injured in a car accident and hired Bryan Gruetter to pursue their injury claims. He settled the two claims for \$100,00 each in January 2008. He reported to the clients with a preliminary accounting, indicating that he had successfully negotiated a waiver of the PIP liens and a significant reduction in some of the medical claims, which were paid directly from State Farm.

With his initial accounting Gruetter distributed \$66,572.77 to the claimants and reported that he was withholding \$44,679.23 for outstanding medical bills (\$28,984.53 for Maureen and \$15,694.70 for Bryan). Gruetter promised to continue negotiating with the providers, and assured the clients they would receive a substantial portion of the money he was holding. They heard nothing more from Gruetter and the balance of their medical bills were never paid. Their attorney explains the long delay in presenting a claim to the Farrar's lack of sophistication and trust in Gruetter's continuing assurances that he was taking care of things for them.

The CSF investigation identified an additional \$699.69 in expenses paid on Mr. Farrar's behalf. The CSF Committee recommends unanimously that the Farrars be awarded a total of \$43,979.54.

McBRIDE (Olvera) \$5,000.00

Jose Olvera entered the US illegally in 2002. Shortly thereafter, he was detained and returned to Mexico, but he again entered the US illegally. Jose married a US citizen in 2008 and they have a child who was born in the US.

In February 2011, Olvera hired McBride about getting permanent legal residency. During the interview, Olvera disclosed his two illegal entries into the US. McBride did not inform Olvera that his two illegal entries subjected him to a 10-year bar; rather, he assured Olvera that he could accomplish Olvera's objectives and Olvera paid the quoted fee of \$5,000.

In the summer of 2011, after Olvera had paid 1/2 of the fee, McBride's office filed the petition for permanent residency. The petition disclosed one illegal entry. (McBride apparently typically told clients not to disclose a second illegal entry; he also told clients that the 10-year bar could be waived in certain circumstances.) Olvera continued making payments toward McBride's fee through December 2011. By that time, McBride knew he was being investigated by the Bar on complaints of 10 former clients. In February 2012, the Bar filed a petition seeking immediate suspension, which McBride stipulated to in May 2012. He did not inform clients of his situation and Olvera learned of it only when he unsuccessfully tried to contact McBride's office in the summer of 2012.

The committee concluded that McBride took Olvera's money under false pretenses, since his two illegal entries were a complete bar to Olvera's objective of obtaining permanent legal status, and recommends a refund of the entire \$5000.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: September 27, 2013
Memo Date: September 12, 2013
From: Rod Wegener, CFO
Re: 2014 Active Membership Fee

Action Recommended

Establish the Active Membership Fee for 2014.

Background

The last increase in the Active Membership Fee was in 2006 when the fee was raised from \$397.00 to \$447.00. (This fee does not include the Diversity & Inclusion and Client Security Fund assessments.) The current general active fee for the over-two year member is \$447.00 and \$383.00 for the under-two year member.

The preliminary projections for the 2014 budget indicate the budget can be balanced without a fee increase in the general membership in 2014. Although there have been increases to the other fees and assessments over this nine-year period, the general active member fee for has not changed. (The year of any increase is bolded in red.)

Year	General	D&I	CSF	Total	Inactive
2006	\$447.00	\$30.00	\$ 5.00	\$482.00	\$110.00
2007	\$447.00	\$30.00	\$ 5.00	\$482.00	\$110.00
2008	\$447.00	\$30.00	\$ 5.00	\$482.00	\$110.00
2009	\$447.00	\$30.00	\$ 5.00	\$482.00	\$110.00
2010	\$447.00	\$30.00	\$15.00	\$492.00	\$110.00
2011	\$447.00	\$30.00	\$15.00	\$492.00	\$110.00
2012	\$447.00	\$30.00	\$15.00	\$492.00	\$110.00
2013	\$447.00	\$30.00	\$45.00	\$522.00	\$125.00
2014	\$447.00	\$45.00	\$45.00	\$537.00	\$125.00

At the August 23 meeting, the Budget & Finance Committee recommended to the board that the assessment for the Diversity & Inclusion program be increased from \$30.00 to \$45.00 in 2014. This increase adds approximately \$229,000 to that program's budget for 2014.

The line item budget for 2014 currently is being developed by bar managers and the detail budget will be presented to the Budget & Finance Committee at its October 25 meeting with final approval of the 2014 budget at the November BOG meeting.

Proposed Amended Standard Section Bylaws

Article IX Receipts and Expenditures

Section 1. Membership dues shall be collected by the Oregon State Bar and any other receipts of this Section shall be remitted promptly to the Oregon State Bar.

Section 2. The Oregon State Bar shall regularly assess the Section an amount to cover both direct and indirect costs of the Section's activities performed by the Oregon State Bar staff.

Section 3. Expenditure of the balance of Section funds, after such assessment, shall be as determined by the Executive Committee. Section funds shall be disbursed by the Oregon State Bar as authorized in writing by the Section's Treasurer using forms and following procedures established by the Bar. If the Treasurer is unavailable for authorization, the Section Chair may authorize disbursement of Section funds followed by written notice to the Treasurer of the action taken. Reimbursement of expenses incurred by the Treasurer or by the Treasurer's firm must be authorized in writing by the Section chair. Expenditures of Section funds shall not exceed the available Section fund balance, nor shall expenditures be in violation of laws or policies generally applicable to the Oregon State Bar. **Expenses of spouses or guests will not be reimbursed except as specifically approved by the Board of Governors.**

Section 4. Contracts for Section newsletter editors or other providers of personal services must be reviewed and signed by the Oregon State Bar Executive Director or the Director's designee.

Section 5.

(A) The Section serves as an education, communication and networking forum in the areas of law or other law related activity for which the Board of Governors approved its establishment. If the Section receives support from the Bar on other than a fee for service basis, it shall comply with the expenditure restrictions applicable to the Bar as set forth in *Keller v. State Bar of California*, 496 US 1 (1990) and related board policies.

(B) If the Section wishes to spend Section funds free from the restrictions imposed by *Keller* and related board policies it may do so if it pays the full cost of administration and other support provided by the Bar, so that the Section is entirely self-supported by voluntary dues of its members. The Section must obtain approval of its members to such election by mail or electronic vote or at a regular or special meeting. Upon exercising its right under this policy, the Section shall be provided administrative and other services by the bar on a fee for service basis only. The election shall be effective until rescinded by a vote of the Section membership.

OSB APPROVED RECIPIENTS OF SECTION CHARITABLE CONTRIBUTIONS

The OSB's mission includes promoting the rule of law and the fair administration of justice, and increasing access to justice. OSB Bylaw 1.2. For several years, the OSB House of Delegates has passed resolutions supporting adequate funding for legal services for low-income Oregonians. In furtherance of that goal, the HOD has called for 75% of OSB Sections to contribute to the Campaign for Equal Justice.

The Campaign for Equal Justice is the support arm for Oregon's legal aid programs, which consist of four non-profits: Legal Aid Services of Oregon and the Oregon Law Center (statewide programs); and the Center for Non-Profit Legal Services (Medford) and Lane County Legal Aid and Advocacy. Oregon's legal aid programs also support numerous pro bono programs including the Statewide Low-Income Taxpayer Clinic, the Domestic Violence Project, the Senior Law Project, the Family Law Pro Se Facilitation Clinic, and the Bankruptcy Clinic.

Sections are strongly encouraged to contribute to the Campaign for Equal Justice in furtherance of the Bar's mission to promote the rule of law and the fair administration of justice. Sections may also contribute to any charitable cause that is related to the purposes for which the section exists and that has been approved by the Executive Director. OSB Bylaw 15.401.

The following charities has been approved for section contributions:

- Campaign for Equal Justice¹
- Catholic Charities
- Classroom Law Project
- Chemawa Student Association
- Lewis and Clark Small Business Clinic
- Multnomah County Probate Advisory Committee
- National Bar Association
- National Council on Juvenile and Family Court Judges
- Native American Youth Association
- Oregon Minority Lawyers Association
- Opportunity for Lawyers in Oregon
- Oregon Lawyers Against Hunger
- Oregon Lawyer Assistance Foundation
- Oregon Native American Chapter
- Peacemakers
- Special Advocates for Vulnerable Oregonians, Inc.

Scholarships or Educational Activities:

- Allen Hein Scholarship Fund at NW School of Law of Lewis and Clark College
- Carlton Snow scholarship fund
- Federal Circuit Bar Associations Charitable and Educational Fund
- Harry Chandler scholarship fund
- Juvenile Law Training Academy
- Section scholarships law school students earning the highest grade on the final exam in the section's area of substantive law.

¹ Donations to the individual organizations supported by the CEJ are not allowed, although donors may designate the use of their contributions.

BOG Resolution No. XXX

Whereas, The Oregon Legislative Assembly has directed the BOG to “at all times direct its power to the advancement of the science of jurisprudence and the improvement of the administration of justice,” and

Whereas, The Functions of the Oregon State Bar as stated in OSB Bylaw 1.2 include that “We are leaders helping lawyers serve a diverse community,” and

Whereas, Consistent with and supportive of this Function, one of the Values of the Oregon State Bar is that “The Bar is committed to serving and valuing its diverse community, to advancing equality in the legal system, and to removing barriers to the system,” and

Whereas, the movement for Marriage Equality is the civil rights challenge of this decade, much as the struggle for racial and ethnic equality was an important part of the 1950s and 1960s, which struggle resulted in improved ability of racial minorities to enjoy the same civil rights afforded to others, such as in public accommodations, education, voting rights, -- and marriage (*Loving v. Virginia*, 388 US 1 (1967)), and

Whereas, As the organization of Oregon lawyers who are called upon to “serve a diverse community,” we of the OSB should go on record in support of the civil right to marry a person of either sex and

Whereas, Members of the OSB help Oregonians every day with issues that turn on the status of the marriage relationship, including marriage and dissolution and attendant issues of support, property division, and child custody; adoption; estate planning, estate/gift and income taxation; healthcare and medical insurance; criminal law; education; and the rights and obligations of debtors and creditors, and

Whereas, It is reasonable to support uniformity of application of the law in these areas, as between same-sex and different sex couples who wish to be married, and to contend for the benefits of federal law only recently made available to same-sex couples whose marriages are recognized under state law, and.

Whereas, the United States Supreme Court recently held the federal Defense of Marriage Act unconstitutional as respects its prohibition of the federal government’s recognition of same sex marriages that are valid under state law(*United States v. Windsor*, 570 US ____ (2013)), and
Whereas, in holding that the central government cannot discriminate against same-sex spouses whose marriages are valid under applicable state law, the Court stated:

. . . The differentiation [between different-sex and same-sex marriage] demeans the couple, whose moral and sexual choices the Constitution protects, see *Lawrence [v. Texas]*, 539 U. S. 558 [2003], and whose relationship the State has sought to

dignify. And it humiliates tens of thousands of children now being raised by same-sex couples. The law in question makes it even more difficult for the children to understand the integrity and closeness of their own family and its concord with other families in their community and in their daily lives, and

Whereas, We must be respectful of Bar members and members of the public whose personal religious or moral beliefs may be strongly opposed to same-sex marriage, but as an organization charged with protecting equality in the legal profession, and “advancing the science of jurisprudence and the improvement of the administration of justice,” , the OSB should publicly support a legal environment in Oregon in which the relationship between same-sex couples who wish to marry is deemed “dignified,” in which the moral and sexual choices of same sex couples are not “demeaned,” and in which their children are not “humiliated,” Now therefore,

BE IT RESOLVED, that the Oregon State Bar supports the right of every Oregonian to marry a person of any sex, subject to applicable law regarding age, residence, and other prevailing statutory requirements.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: September 27, 2013
Memo Date: September 11, 2013
From: Danielle Edwards, Director of Member Services
Re: Volunteer Appointments

Action Recommended

Review and approve the following appointment recommendations.

Background

State Lawyers Assistance Committee

Due to a resignation and the chair moving out of state, the committee requires the appointment of a chair and one member. Staff and the committee officers recommend the appointment of **Robert "Kim" Lusk** (782911) as chair. Mr. Lusk has been a member of the committee since 2005 and is currently serving in the secretary position. Staff also recommends the appointment of **Michael W. Seidel** (871466). In addition to his experience with SLAC business from his previous service, he also provides geographic diversity as a practicing attorney from central Oregon.

Recommendation: Robert "Kim" Lusk, chair, term expires 12/31/2014

Recommendation: Michael W. Seidel, member, term expires 12/31/2014

House of Delegates

HOD Regions 1 and 2 have public member vacancies. Staff recommends the appointment of **James B. Horan** of Baker City for the region 1 position. Mr. Horan is the government affairs and communications manager at Oregon Trail Electric Consumer's Cooperative and currently serves on the Public Service Advisory Committee. **Nathaline Frener**, recommended by staff for the region 2 position, is the program supervisor for the Lane County Family Mediation Program.

Region 1: James B. Horan, term expires 4/19/2016

Region 2: Nathaline Frener, term expires 4/19/2016

CASA Workgroup

During the 2013 legislative cycle, HB 3363 called for creation of a workgroup to study and make recommendations to remove obstacles in the juvenile court dependency system. The BOG was asked to appoint two members to the workgroup with expertise representing parents and children in juvenile court dependency proceedings. On September 9 Mike Haglund appointed **Angela Sherbo** (824472), who worked closely with CASA and the Judicial Department to reach a compromise on HB3363 to create this workgroup, and **Nancy Cozine** (972432), Executive Director of the Office of Public Defense Services.

Oregon Elder Abuse Workgroup

During the 2013 legislative cycle, HB 2205 created the Oregon Elder Abuse Workgroup, consisting of 22 members. The group is to study and make recommendations on defining "abuse of vulnerable persons". The definition will be relevant to lawyers, who will become mandatory elder abuse reporters effective January 1, 2015. The workgroup is to recommend legislation to the 2014 legislature. The Board of Governors has two appointments to the workgroup: a lawyer whose practice is concentrated on elder law and a criminal defense lawyer. In July the BOG appointed **Lara C Johnson** (933230) to the workgroup. **John Lamborn** (951389) was appointed to the remaining OSB seat by Mike Haglund on September 9.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: September 27, 2013
From: Helen M. Hirschbiel, General Counsel
Re: Advertising Rules Commentary

Action Recommended

Review member comments to determine whether any changes should be made to the proposed advertising rules prior to submission to the House of Delegates.

Background

At its meeting on February 22, 2013, the Board approved for HOD consideration, changes to the current advertising rules. The proposed changes are on the draft HOD agenda.

The Board also directed staff to solicit comments to the proposed advertising rules from the membership. To that end, staff published an article in the OSB Bulletin summarizing the proposed changes and providing a link to the full text of the proposed rules on the bar website. The comments received are attached to this memo.

Three people raised concerns about proposed RPC 7.2(b), which continues the prohibition against paying another for recommending or securing employment that exists in current RPC 7.2(a). Neither the current rule nor the proposed rule applies to referral fees between lawyers, which is governed by RPC 1.5(d). A few who commented expressed concern that proposed RPC 7.2(b) would prohibit lawyers from sending a token of appreciation for an unsolicited referral, such as a gift basket or a bottle of wine. These types of *de minimus* thank you gifts have never been interpreted as violating RPC 7.2(a), either in Oregon or in other states with the identical rule.¹ In fact, the Legal Ethics Committee plans to write an opinion on this topic once the advertising rules are settled in order to resolve any confusion.

One person raised a concern about the continued requirement that the phrase "Advertising Material" be included on the outside of the envelope, saying that no other states include such a requirement. In fact, the vast majority of states maintain this requirement, the purpose of which is to ensure that the communication is not misleading. Even so, I did find eleven jurisdictions (including Washington) that have omitted this requirement from their rules.

One person, Scott Wolfe, contends that the rules as currently crafted sweep too broadly in their application to electronic communications and therefore are likely unconstitutional. In 2008, Mr. Wolfe sued the Louisiana Attorney Disciplinary Board in federal court, challenging the Louisiana equivalent of proposed Oregon RPC 7.2(c), which provided:

¹ Of the 41 jurisdictions I was able to review, 39 include language substantially similar to the proposed Oregon rule. A few specifically refer to RPC 1.5 as the rule applicable to lawyer referral fees, and one specifically provides that *de minimus* gifts are an exception to the general prohibition on giving things of value in exchange for a referral.

Rule 7.2 Communications Concerning a Lawyer's Services

The following shall apply to any communication conveying information about a lawyer, a lawyer's services or a law firm's services:

(a) Required information:

(1) Name of Lawyer. All advertisements and written communications pursuant to these Rules shall include the name of at least one lawyer responsible for their content.

(2) Location of Practice. All advertisements and written communications provided for under these Rules shall disclose, by city or town, one or more bona fide office location(s) of the lawyer or lawyers who will actually perform the services advertised.

In Louisiana, these requirements expressly applied to all electronic and internet-based communications. Mr. Wolfe noted that pop-up advertisements, text advertisements and other advertisements geared toward smaller mobile devices are typically limited in the number of characters. He maintained that by requiring lawyers to include the name and address of the lawyer in all communications, the Louisiana rules effectively barred lawyers from using these types of electronic advertising. The US District Court for the Eastern District of Louisiana agreed, and found the Louisiana rule an unconstitutional limitation on free speech.

Relevant portions of the proposed Oregon RPC 7.2 provide:

(a) Subject to the requirements of Rules 7.1 and 7.3, a lawyer may advertise services through written, recorded or electronic communication, including public media.

.....

(c) Any communication made pursuant to this rule shall include the name and office address of at least one lawyer or law firm responsible for its content.

Mr. Wolfe is not the first to express concerns about the constitutionality of the Oregon advertising rules for lawyers. In August 2009, a BOG-appointed Advertising Task Force made recommendations for much more sweeping changes to the advertising rules than the current proposal, based in part on its understanding of the limits that can be placed on commercial speech under the Oregon Constitution. For one, the Task Force proposed that the prohibition on in-person solicitation be eliminated entirely. The Task Force did not, however, recommend elimination of the requirement that an unsolicited communication be identified as an advertisement and identify the name of the lawyer and the city and state in which the lawyer's office is located, suggesting that it had no concerns about the constitutionality of these provisions. On the other hand, it is unclear whether the Task Force considered these provisions in the context of web-based and other electronic communications.

The Legal Ethics Committee reviewed the comments at its meeting on August 17, 2013 and decided not to make any changes to the proposed rules that were originally submitted and approved by the Board.

From: Russ.Abrams@Daimler.com
To: [Helen Hierschbiel](#)
Subject: Proposed Modifications to Advertising Rules
Date: Monday, July 08, 2013 10:59:06 AM

Dear Ms. Hierschbiel,

I have a brief comment relating to the proposed modifications to the RPCs as they relate to advertising. I understand the Bar Association's position is that personal opinions on etiquette or tasteful conduct are not necessarily grounds for maintaining or modifying the rules on this topic. Nevertheless, separation of the rules from things like courtesy and etiquette are part of the reason lawyers are generally and appropriately condemned as aggressive, rude, bellicose and vulture-like. Until we demand more from ourselves in our written mandatory standards, our profession will continue its decline in the eyes of our fellow citizens. Thank you.

Russell S. Abrams
Business Development Manager
Daimler Trucks NA
2477 Deerfield Dr.
Fort Mill, SC 29715
russ.abrams@daimler.com
(803) 578-3647

If you are not the addressee, please inform us immediately that you have received this e-mail by mistake, and delete it. We thank you for your support.

From: [Timothy Farrell](#)
To: [Helen Hierschbiel](#)
Subject: RPC 7.3
Date: Wednesday, July 10, 2013 2:22:05 PM

Dear Ms. Hierschbiel:

I was shocked to see that the proposed new rule still requires the word "advertisement" to be displayed on the envelop of solicitation letters. During the foreclosure crisis I sent dozens of letters to local homeowners who were facing foreclosure. I did not receive a single response, much less retain a client during this difficult time when the banks were unlawfully taking families' homes from them. It is my belief that these letters were immediately disposed of in the recycling bin. As a member of 6 bar associations, I can tell you that no other state has such a rule interfering with an attorney's ability to attract and retain clients. I would respectfully suggest that the envelope provision be deleted and limited to the body of the solicitation to give Oregon attorneys a fighting chance to develop their practice.

Sincerely,
Timothy MB Farrell

--

CONFIDENTIALITY NOTICE: The materials in this electronic mail transmission (including all attachments) are private and confidential and are the property of the sender. The information contained in the material is privileged and is intended only for the use of the named addressee(s). If you are not the intended addressee, be advised that any unauthorized disclosure, copying, distribution or the taking of any action in reliance on the contents of this material is strictly prohibited. If you have received this electronic mail transmission in error, please immediately notify the sender by telephone at (541)490-4525 or send an electronic message to timothymbfarrell@yahoo.com, and thereafter destroy it immediately.

From: [Dean Heiling](#)
To: [Helen Hirschbiel](#)
Cc: [Jim Dwyer](#); [Roy Fernandes](#); [Sylvia Albright](#)
Subject: PROPOSED RCP 7.2
Date: Wednesday, July 17, 2013 9:58:05 AM

Ms. Hirschbiel:

Proposed rule 7.2(b) prohibits lawyers from giving “anything of value” to a person who refers someone to the lawyer. Over the last couple decades my office has made it a practice of sending “thank you” notes and a nominal gift (such as chocolate or a \$10 gift card to a popular establishment) to people who refer clients to us. To me, it’s like taking a loaf of homemade bread to a new neighbor; it’s not compensation for anything, it’s just a nice thing to do. I propose a modification of the rule to allow modest gifts of appreciation.

Thank you.

Dean Heiling
HEILING DWYER
ATTORNEYS AT LAW
1220 SW Morrison, Suite 820
Portland OR 97205

phone: 503-274-0404
fax: 503-274-0004

From: [Daniel Re](#)
To: [Helen Hierschbiel](#)
Subject: Comment Regarding Proposed Oregon RPC 7.1
Date: Tuesday, July 23, 2013 2:00:56 PM

Dear Ms. Hierschbiel,

I have the following comments regarding proposed Oregon RCP 7.1.

The existing RPC 7.1(a) applies to communications made by a lawyer and to communications caused to be made by a lawyer about the lawyer the lawyer or the lawyer's firm that fall under one or more of the twelve types of conduct specified in that rule.

The proposed RPC 7.1 apply only to false or misleading communications made by a lawyer about the lawyer or the lawyer's services. The proposed Rule 7.1 appears to substantively change the existing Rule by eliminating its applicability to:

- (1) Statements caused to be made by the lawyer; and,
- (2) Statements about the lawyer's firm.

If my understanding of the consequences of the changes made by the proposed Rule 7.1 are accurate, they would create opportunities for attorneys to have false and misleading statements made about their firms or made by others about themselves without violating the RCPs. In my view, this would not protect the public and would be contrary to the purpose of the RPCs.

Please let me know if these issues were specifically considered by the Board of Governors in February, 2013 and, if they were, why the BOG felt these changes were appropriate. Any other information you have regarding these changes would be appropriate.

Thank you.

Daniel C. Re

From: [Sylvia Stevens](#)
To: "[David Bean](#)"
Subject: RE: Comment, per your request
Date: Wednesday, July 24, 2013 2:51:00 PM

David, the proposed amendments do not change the existing prohibition against compensating or "giving anything of value" in exchange for a referral. That is the rule nearly everywhere and has never been interpreted to prohibit ordinary professional thank-you's such as a bottle of wine or a fruit basket. What is not permitted is cash payments or a new car or anything else that is likely to motivate a referral to get the swag rather than to benefit the client.

Sylvia Stevens
Executive Director
503-431-6359
sstevens@osbar.org

Oregon State Bar • 16037 SW Upper Boones Ferry Road • PO Box 231935 • Tigard, OR 97281-1935 •
www.osbar.org

-----Original Message-----

From: David Bean [<mailto:dib@wysekadish.com>]
Sent: Wednesday, July 24, 2013 1:16 PM
To: Sylvia Stevens
Subject: Comment, per your request

Hi Sylvia,

Hope you are well.

I might be mistaken, and I hope I am, but I don't think the proposed rule changes effect 7.2(a). In my view, the rule should be changed to allow lawyers to be courteous with thank you gifts of reasonable value. For example, if someone refers me a case, I should be able to send them a book or bottle of wine.

I'm told no one has gotten in trouble for violating this rule and that the Bar would likely not enforce it. If it's true that it's nothing the Bar would enforce, then the rule might have well be scrapped. Either it's a good rule and should be enforced, or it should be changed.

What do you think?

Thank you,

David

From: [Jim Yocom](#)
To: [Helen Hierschbiel](#)
Subject: Comments on Revisions Oregon RPC 7.1-7.5
Date: Thursday, July 25, 2013 11:56:07 AM

Dear Helen,

I am writing to express a couple of concerns about the proposed revisions to RPC 7.5. Please pass these on to the Legal Ethics Committee. Thank you so much!

7.5(a). I have concerns about the revisions to 7.5(a). Lawyers practice as sole practitioners, LLCs, nonprofits, and professional corporations. Any of these may register a trade name with the Oregon Secretary of State. These are all firms (1.0d), so any can technically register a trade name. What does it mean for a "lawyer in private practice" to use a trade name? Suppose A, B, and C form a charitable nonprofit, ABC Charities of Oregon. A is hired as a staff attorney by ABC. Under 7.5(a), is A in private practice? May ABC register a trade name (ABC) "use" that name?

It is unclear why trade names are singled out here. Presumably the name **itself** as formally registered would not be OK if it implied a connection with a public or charitable organization, even if the Secretary of State let you register it.

I acknowledge that the model rule is confusing on these points. The existing rule uses the language.

Wouldn't it be clearer--and avoid all of this mess--for 7.5(a) to read: "A firm [the latter of which the ORPCs define to include single-person operations (1.0d)] shall not use a name, trade name, letterhead or other professional designation that violates 7.1 or implies an untrue or misleading connection with a government agency or public or charitable legal services organization." (something along these lines). In conjunction with 7.5(d), doesn't this do the trick?

7.5(d). I have concerns about the exact wording of the revised 7.5(d). It is unclear to me what it means for lawyers to "imply that they practice in a partnership or other organization." This can be read to prohibit practicing in a **specific** partnership or organization or in a partnership or organization **in general**. This is not a crazy reading of the rule. For example, sole practitioners and single-member professional corporations and LLCs frequently refer to themselves as "we" in their advertising materials, and refer to their operations as "firms." It is entirely common in the business world for solo operations to use a royal "we," perhaps because they mean to include themselves and any contract attorneys they hire. The proposed rule can be read to prohibit this kind of representation.

In contrast, the existing rule seems targeted to a different kind of misrepresentation--namely holding out that you are affiliated with XYZ, when you are in fact not affiliated with XYZ. The words ("a" and "the") in current 7.1(e) seem to make that clear.

Thanks to the committee for all of their hard work. In general, the proposed

changes look terrific & I am very pleased!

Jim Yocom
OSB# 111504

From: ["Richard M. Fernández esq."](#)
To: [Helen Hirschbiel](#)
Subject: Comment on Proposed ORPC 7.2(b)
Date: Monday, July 29, 2013 2:18:18 PM

(Dear Helen, thank you in advance for passing this on to the BOG for me.)

Dear BOG:

I would like to weigh in on the proposed change to the above-referenced draft rule and state that I believe it is time to lift this prohibition on providing referral fees. It is standard practice in many professions to provide such a courtesy to others who make referrals. In the context of the legal profession, any concern that somehow lawyers might misuse this should be covered by existing duties of honesty and avoiding false and misleading statements. A blanket prohibition on professional referral fees strikes me as over broad and unnecessary and could be permitted subject to appropriate cautions. I think it would also comport better with the spirit of the proposed changes to the advertising rules, which seems to express less of a paternalistic view towards both lawyers and the public.

Respectfully,
Rick Fernández
Bowles Fernández Law LLC
5200 SW Meadows Rd Ste 150
Lake Oswego, OR 97035-0066
p 503.726.5930
f 503.406.2428
rick@bowlesfernandez.com

From: [Scott Wolfe](#)
To: [Helen Hirschbiel](#)
Subject: Fwd: Comment on Rules of Professional Conduct Change
Date: Thursday, August 08, 2013 4:47:37 AM

My comment was sent last week, but keeps being returned to me. See below.

----- Forwarded message -----

From: **Scott Wolfe** <scott@wolfelaw.com>
Date: Sun, Aug 4, 2013 at 2:24 PM
Subject: Comment on Rules of Professional Conduct Change
To: hhirschbiel@osbar.com
Cc: Sean Sullivan <sean@wolfelaw.com>, Seth Smiley <ssmiley@wolfelaw.com>

Hi Ms. Hirschbiel:

This email is sent in response to your office's request for comments within the Oregon State Bar Bulletin (July 2013). I am a licensed attorney in Oregon, as well as a few other states, including Louisiana.

In 2008 / 2009, Louisiana amended their RPCs to more strictly regulate advertisements. I particular took issue with the requirements as they restricted freedom of speech through electronic communications (websites, blogs, twitter feeds, etc.). Therefore, I filed a federal lawsuit against the bar association: [Scott G Wolfe Jr, et al v. Louisiana Attorney Disciplinary Board, et al](#), United States Eastern District Court, No. 08-4994.

After a Motion for Summary Judgment, the court ruled in our favor and declared the Louisiana rules unconstitutional as they related to electronic communications. See: [Order and Reasons](#).

Today, in response to the Oregon Request for Comments, I write with most concern for Rule 7.2(c), which provides that "Any communication made pursuant to this rule shall include the name and office address of at least one lawyer or law firm responsible for its content."

Since "communication" is previously defined as "written, recorded or electronic," this provision is eerily similar to the provision that caused concern in Louisiana and ultimately led to its unconstitutionality.

In promulgating these rules, the Oregon Board of Governors must consider the character and nature of the communications it seeks to regulate. With specific regard to electronic communications, it appears that Oregon would be making the same mistake as Louisiana, for at least the following two reasons:

(1) I suspect that Oregon, like Louisiana, will not be able to show any harm caused to any consumers as a result of any electronic communications by attorneys; and

(2) Oregon will not be able to justify the requirements of Rule 7.2(c) in electronic communications, which, unlike print and traditional advertisements, oftentimes have character limitations.

The same problems arise with respect to proposed RPC 7.3(c).

I'm happy to discuss these issues with any contacts at Oregon further.

Best,

Scott Wolfe Jr. (092642)

--

Scott G. Wolfe, Jr.

Wolfe Law Group, L.L.C.

<http://www.wolfelaw.com>

e: scott@wolfelaw.com

--

Scott G. Wolfe, Jr.

Wolfe Law Group, L.L.C.

<http://www.wolfelaw.com>

e: scott@wolfelaw.com

From: [Scott Wolfe](#)
To: [Helen Hirschbiel](#)
Subject: Re: Comment on Rules of Professional Conduct Change
Date: Thursday, August 15, 2013 7:23:35 AM

Hi Helen -

One additional thing that I overlooked in my original comment. The original comment focused on two specific provisions, but a broader problem with the regulation was only mentioned in passing: that the law does not contemplate the nature of the 'communication' being regulated.

When regulating 'commercial speech' there is a lot of discussing in the jurisprudence about what constitutes commercial speech. Is it that the speaker had a financial motivation? It is a traditional advertisement? Etc.

The problem with regulating electronic communications as the OSBA now proposes is that the nature of this speech is not always commercial, or even close to commercial. In fact, because I personally (and many attorneys) frequently blog about pending legislation and court decisions, there is an excellent argument that this is 'political speech,' the most difficult to regulate.

This was argued successfully in my Louisiana case. I caution the OSBA against passing a regulation so broadly regulating 'electronic communication' without clearly distinguishing between true advertisements and other educational or political communications by attorneys.

Scott

Sent from my iPhone

On Aug 12, 2013, at 12:27 PM, Helen Hirschbiel <HHirschbiel@osbar.org> wrote:

Scott,

Thank you for taking the time to comment. I plan to share all comments with the Legal Ethics Committee and Board of Governors.

<!--[if !vml]--><!--[endif]-->Helen Hirschbiel
General Counsel
503-431-6361
HHirschbiel@osbar.org

Oregon State Bar • 16037 SW Upper Boones Ferry Road • PO Box 231935 • Tigard, OR 97281-1935 •
www.osbar.org

From: Scott Wolfe [<mailto:scott@wolfelaw.com>]
Sent: Thursday, August 08, 2013 4:47 AM
To: Helen Hirschbiel
Subject: Fwd: Comment on Rules of Professional Conduct Change

My comment was sent last week, but keeps being returned to me. See below.

----- Forwarded message -----

From: **Scott Wolfe** <scott@wolfelaw.com>
Date: Sun, Aug 4, 2013 at 2:24 PM
Subject: Comment on Rules of Professional Conduct Change
To: hhirschbiel@osbar.com
Cc: Sean Sullivan <sean@wolfelaw.com>, Seth Smiley <ssmiley@wolfelaw.com>

Hi Ms. Hirschbiel:

This email is sent in response to your office's request for comments within the Oregon State Bar Bulletin (July 2013). I am a licensed attorney in Oregon, as well as a few other states, including Louisiana.

In 2008 / 2009, Louisiana amended their RPCs to more strictly regulate advertisements. I particular took issue with the requirements as they restricted freedom of speech through electronic communications (websites, blogs, twitter feeds, etc.). Therefore, I filed a federal lawsuit against the bar association: [Scott G Wolfe Jr, et al v. Louisiana Attorney Disciplinary Board, et al](#), United States Eastern District Court, No. 08-4994.

After a Motion for Summary Judgment, the court ruled in our favor and declared the Louisiana rules unconstitutional as they related to electronic communications. See: [Order and Reasons](#).

Today, in response to the Oregon Request for Comments, I write with most concern for Rule 7.2(c), which provides that "Any communication made pursuant to this rule shall include the name and office address of at least one lawyer or law firm responsible for its content."

Since "communication" is previously defined as "written, recorded or electronic," this provision is eerily similar to the provision that caused concern in Louisiana and ultimately led to its unconstitutionality.

In promulgating these rules, the Oregon Board of Governors must consider the character and nature of the communications it seeks to regulate. With specific regard to electronic communications, it appears that Oregon would be making the same mistake as Louisiana, for at least the following two reasons:

(1) I suspect that Oregon, like Louisiana, will not be able to show any harm caused to any consumers as a result of any electronic communications by attorneys; and

(2) Oregon will not be able to justify the requirements of Rule 7.2(c) in electronic communications, which, unlike print and traditional advertisements, oftentimes have character limitations.

The same problems arise with respect to proposed RPC 7.3(c).

I'm happy to discuss these issues with any contacts at Oregon further.

Best,

Scott Wolfe Jr. (092642)

--

Scott G. Wolfe, Jr.

Wolfe Law Group, L.L.C.

<http://www.wolfelaw.com>

e: scott@wolfelaw.com

--

Scott G. Wolfe, Jr.

Wolfe Law Group, L.L.C.

<http://www.wolfelaw.com>

e: scott@wolfelaw.com

witness in this proceeding. The evidence is substantial that Bennett has been clean and sober since February, 2012 (a period of 18 months and his longest period of sobriety since 2003).

If the support of others in recovery is essential to sobriety, and experts say it is, then Bennett is likely to succeed. He is supported in every aspect of his life by individuals committed to his sobriety. Of equal significance is his commitment to his daughter.

If Bennett's reinstatement is approved by the board and the court, it should be subject to the conditions set forth below. The conditions will provide the bar and the public with additional safeguards should Bennett relapse.

Conclusion

I recommend the Board of Governors approve Bennett's reinstatement and recommend such to the Oregon Supreme Court subject to the conditions set forth below.

Conditions of Reinstatement

1. Bennett's conditional reinstatement will commence when approved by the Oregon Supreme Court and shall continue for 24 months thereafter. During this period Bennett will comply with all terms and conditions of his reinstatement.
2. Bennett will comply with all provisions of the Oregon Rules of Professional Conduct. A finding of probable cause by the State Professional Responsibility Board in a complaint filed against Bennett may be a violation of the conditions of reinstatement.
3. Bennett will abstain from alcohol or any other mind altering substance unless prescribed by a physician for the duration of this conditional reinstatement.
4. Within 15 days of his conditional reinstatement Bennett will consult with the State Lawyers Assistance Committee (SLAC) for implementation of the monitoring required herein. Bennett acknowledges and agrees that SLAC must provide the Disciplinary Counsel's Diversion and Probation Coordinator all reports required by his conditional admission.
5. Bennett shall provide releases to treating counselors, therapists, health care providers, and/or AA or other recovery or peer support program, or sponsors, to allow them to freely communicate with Disciplinary Counsel's Diversion and Probation Coordinator regarding the nature of the treatment provided to Bennett, and whether Bennett is complying with the recommended treatment. Any medical records or documents produced in connection with this Agreement shall remain confidential except for the purposes of this particular proceeding.
6. Bennett shall attend an AA, or other equivalent recovery program, meeting on at least a twice weekly basis for the duration of this agreement. If any mental health professional or evaluator requires that Bennett attend such a recovery program more frequently,

Bennett shall comply with that recommendation. Bennett shall provide written confirmation of compliance with these terms and conditions on a monthly basis to Disciplinary Counsel's Diversion and Probation Coordinator. The above-mentioned reports are due the first of every month for the duration of the conditional admission.

7. Bennett will submit to full-screen, random urinalysis testing at least once every 14 days for the duration of this conditional admission unless the Disciplinary Counsel determines that more frequent urinalysis testing is appropriate. For urinalysis testing, Bennett shall provide a sufficient urine sample. A copy of the laboratory results of each urinalysis shall be provided to Disciplinary Counsel's Diversion and Probation Coordinator by the laboratory or testing facility. Bennett shall execute all necessary releases so that the laboratory or agency administering the urinalysis can send copies of the results to Disciplinary Counsel's Diversion and Probation Coordinator at the same time it sends the results to Bennett or his representative or treatment provider. A positive test for use of alcohol or mood-altering substances shall be deemed a violation of the terms and conditions of this conditional reinstatement. An abnormally low creatinine level, below 20mg/dL, which may be indicative of an attempt to "flush" your system to reduce or eliminate the level of any prohibited substance or substances, may also be deemed a violation of the terms and conditions of this agreement.
8. As suggested by Bennett's treating physician, Bennett shall undergo a 5-panel hair follicle random screening once every 3 months for the duration of his conditional reinstatement. The 5-panel screening must test for the following substances: Amphetamines including Methamphetamines and Ecstasy, Cocaine, Opiates, and Phencyclidine. A copy of the laboratory report shall be provided to Disciplinary Counsel's Diversion and Probation Coordinator by the testing facility at the same time the report is provided to Bennett. A positive test for the use of any of the named substances or other mind altering substance may be considered a breach of Bennett's Conditional Reinstatement.
9. Bennett shall complete the Oregon State Bar Ethics School within one year and comply with all MCLE requirements associated with his active status.
10. Bennett shall pay all costs associated with compliance with the terms and conditions of his reinstatement.

JSG

Attachments: Reinstatement data sheet
Stipulation for discipline

CEASE AND DESIST AGREEMENT

THIS AGREEMENT is entered into by and between the Oregon State Bar (hereafter "Bar") and Tricia Allen doing business as Affordable Legal Services (hereafter "Allen").

RECITALS

The Oregon State Bar was created and exists by virtue of the laws of the State of Oregon and is authorized to enforce the provisions of ORS Chapter 9 relating to the practice of law by persons not active members of the Bar.

At all relevant times Allen was doing business as a paralegal with a principal place of business in Jackson County, Oregon.

Allen was not and is not an active member of the Oregon State Bar.

Before the date of this agreement, Allen engaged in one or more of the following activities which the Bar contends violates ORS 9.160, *et seq.*:

- A. Drafting a demand letter on behalf of another person in a child custody modification matter;
- B. Providing legal advice to another person in a child custody modification matter; and
- C. Seeking to represent another person in a child custody modification matter.

NOW, THEREFORE, in consideration of the mutual promises set forth herein, which are contractual and not mere recitals, the Bar and Allen hereby agree as follows:

1. Allen agrees to refrain from engaging in the following practices:
 - a. Representing to the public in any manner that she is authorized to practice law.
 - b. Drafting or selecting documents for another when informed or trained discretion must be exercised in the selection or drafting of a document to meet the needs of another;
 - c. Providing legal advice by making any exercise of an intelligent choice or informed discretion in advising another of his or her legal rights or duties;
 - d. Using print or electronic materials, advertisements or other solicitations describing services which can reasonably be construed as legal services; and
 - e. Taking any other action for another which requires legal skill or judgment.
2. Allen will not engage in the same or any similar activity as described in paragraph

1, in any manner whatsoever, whether as an individual, corporation, association, partnership or as a partner, investor, shareholder, director, officer, employee, consultant, independent contractor, or otherwise. This prohibition extends throughout the State of Oregon. Nor will Allen accomplish the same through an affiliate or affiliation, including but not limited to Affordable Legal Services. The term "affiliate" means any legal entity or person that directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control by Allen

3. So long as Allen refrains from engaging in the practices described in Paragraph 1 herein, complies with the terms of this agreement, and does not engage in the unlawful practice of law or violate ORS 9.160, *et seq.*, the Bar agrees to refrain from seeking to enjoin Allen.

4. The parties agree that should Allen breach this agreement, that breach shall be considered the unlawful practice of law in violation of ORS 9.160, *et seq.*

5. In the event the Bar is required to bring any future action to enjoin the unlawful practice of law by Allen, and it prevails in such action, it shall be entitled to recover from Allen reasonable attorney fees and legal expenses at trial and on appeal, in addition to all other sums provided by law.

6. This agreement is entered into in Oregon and shall be governed by the laws of Oregon. Venue for future actions to enjoin the unlawful practice of law by Allen shall be in the county of the Bar's choosing.

7. If any provision of this agreement is invalid or unenforceable, then, to the extent possible, all the remaining provisions of the agreement shall remain in full force and effect and shall be binding upon both parties.

8. This agreement is subject to and shall not become effective or binding on either party until it is approved by the Board of Governors of the Bar and signed by its authorized representative.

9. This agreement represents the entire agreement between the parties, and no change in this agreement shall be binding against either party unless it is in writing and has been authorized by the Board of Governors of the Bar.

10. The parties have read this agreement and enter into it voluntarily and after having had the opportunity to consult with legal counsel.

//

//

//

THIS IS A LEGALLY BINDING CONTRACT. IF YOU HAVE ANY QUESTIONS YOU SHOULD CONSULT WITH A LAWYER.

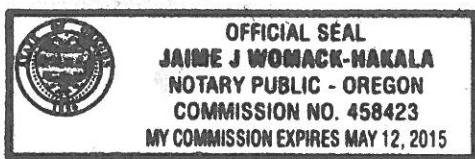
IN WITNESS WHEREOF, the parties have executed this agreement on the day and year first written above.

Tricia M Allen
Tricia Allen

Dated: August 30, 2013

State of Oregon)
County of Jackson) ss.

Personally appeared Tricia Allen, who being first duly sworn, did say that she is an owner of Affordable Legal Services, and acknowledged this instrument to be his voluntary act and deed.



Jaime Hakala
Notary Public for Oregon
My Commission Expires: May 12, 2015

OREGON STATE BAR

By: _____
Amber A. Hollister
Deputy General Counsel

Dated: _____

State of Oregon)
County of Washington) ss.

Personally appeared Amber A. Hollister, who, being first duly sworn, did say that she is Deputy General Counsel for the Oregon State Bar, a public corporation, and that said instrument was approved by the Board of Governors of the Oregon State Bar on the ___ day of _____, 2013, and that this instrument is acknowledged to be the voluntary act and deed of the Oregon State Bar.

Notary Public for Oregon
My Commission Expires: _____

OREGON STATE BAR

Board of Governors Executive Session Agenda

Meeting Date: September 27, 2012
From: Helen M. Hirschbiel, General Counsel
Re: Washington State Tax Liability
Attorney-Client Privileged Communication

Action

Decide whether to accept the Washington Department of Revenue's (DOR) offer of settlement regarding the Oregon State Bar liability for Washington State Business and Occupation Tax (B&O Tax) for gross revenue earned from CLE seminars conducted in Washington and sales/use tax for CLE publications and products sold to Washington state residents.

Background

The OSB CLE Seminars Department has been conducting seminars in the state of Washington for over 20 years. The bar also sells miscellaneous CLE products to Washington residents. In addition, one of the CLE Seminars Department employees has been telecommuting from her home in Washington for the last 15 years.

In 2009, it came to the bar's attention that it may have tax liability for its business activities in Washington. After consultation with several tax attorneys, the OSB Board decided to voluntarily disclose its activities to the Washington DOR in an effort to limit its liability for any alleged tax owed. At the same time, the bar argued that it was not subject to any tax liability. On May 11, 2011, the DOR Audit Division determined that the bar is subject to both B&O and sales tax. The OSB Board decided to appeal the Audit Division's decision to the DOR Appeals Division. A hearing was held and on September 20, 2012, the bar received the ALJ decision that the bar is subject to both B&O tax and retail sales tax for its Washington activities.

Last fall, the OSB Board decided to petition for executive level review of the ALJ decision and attempt to negotiate a settlement with DOR, again to try to limit tax liability exposure. After executive level review was granted, we made an offer to settle the matter: the bar would collect and remit sales tax from January 1, 2013 going forward; in exchange, DOR would waive any past sales tax liability and agree that the bar is not liable for B&O tax.

DOR rejected the offer. A second hearing was held on July 1, 2013, this time with the ALJ's supervisor in tow. The second hearing was even more discouraging than the first. On September 10, 2013, the DOR made a counteroffer of settlement. The letter is attached.

Discussion

Frankly, the offer makes no sense and does not comply with its own regulations. We made an effort to point this out to Judge Margolis in our response letter dated September 16, 2013, which is also attached. Not surprisingly, Judge Margolis does not agree with our reasoning and seems to stand by his original offer. See DOR letter dated September 18, 2013.

We have discussed Judge Margolis' offer with our tax attorney and determined that we have several options at this point.

1. Take the offer, with the hope that we can still convince them to limit the look-back period to four years.
2. Decline the offer, wait for the assessment of our tax liability, and pay it.

Because we made a voluntary disclosure, our liability should be limited to a look-back period of four years and would include interest but no penalties. The four year look-back period is calculated from the date of assessment, so we believe that the assessment should only reach back to 2009. If this calculation is used, according to the numbers provided by Judge Margolis, the amount of the assessment plus interest should be approximately \$32,500.

Things have not gone the way we expected so far, however, and it could be that the assessment will look back the full seven years to 2006 and include penalties as well as interest. In that event, the tax liability would be approximately \$70,000.

Based on Judge Margolis' letter, it is even possible that the DOR would look back seven years from 2009, when the bar first came forward. We have not gathered the amount of income that arguably bore a nexus to Washington for 2002—2004, so I cannot say for certain what that number would be, but adding tax for those years would likely add at least another \$20,000 to the bottom line.

3. Await the assessment of our tax liability and initiate a new administrative appeal.

It is unlikely that we would get a different result a second time around with the DOR Appeals Division. However, we could appeal the administrative decision to the Washington State Board of Tax Appeals. Unfortunately, the bar's counsel has suggested that the State Board tends to rubberstamp the DOR decisions. After appealing to the State Board, we could further appeal to the Thurston County Superior Court. If we were not successful, we could further appeal to the Washington State Court of Appeals or the Washington Supreme Court.

4. Wait for the assessment, pay it, and file a petition for refund in Thurston County Superior Court in Washington.

The superior court reviews these cases de novo, and most are decided on summary judgment. This option would give us the quickest resolution. If we were not successful, we could appeal to the Washington State Court of Appeals.

5. File an action for declaratory and injunctive relief in federal court.

I have little information about this option. The Tax Anti-Injunction Act, 26 USC 7421(a), provides that federal courts do not have jurisdiction to restrain the collection of a tax except in very limited circumstances. Mr. Mastrodonato seems to think that the bar's situation may qualify as one of those limited circumstances, but neither he nor I have spent any time to research this issue yet. In his opinion, however, the federal court would offer the most independent and favorable view of our case. My concern is the added time and cost of arguing the jurisdictional issue.

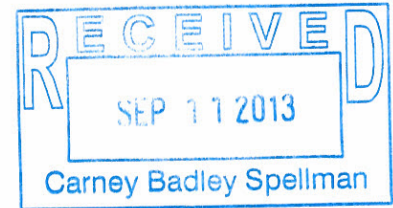
Other Considerations

If the Board decides to pursue some type of appeal, whether administrative, or in state or federal court, there could be substantial additional costs to retain outside counsel. We have paid over \$10,000 in attorney fees so far. An action in state or federal court could easily top \$50,000. We have considered handling this case in house, but would need to associate with local counsel in order to do so. We are also exploring the option of pro bono counsel. The facts and legal arguments have already been developed, so this may be a relatively simple, interesting, and compelling case for an Oregon lawyer who is also licensed in Washington.

Another consideration for the Board is the possibility of losing on appeal and getting a published decision that is available to other taxing entities. Because of the Oregon State Bar's unique status as a public corporation and instrumentality of the judicial department of the state of Oregon, whether the bar should enjoy the same rights and privileges, or bear the same responsibilities, as other state governmental entities is a recurring issue. While the IRS found the bar to be a governmental entity for income tax purposes, that decision was over 50 years ago, and the bar has changed significantly since then.



STATE OF WASHINGTON
DEPARTMENT OF REVENUE



September 10, 2013

SCANNED

George Mastrodonato
Carney Badley Spellman PS
701 5th Ave Ste 3600
Seattle WA 98104-7010

Re: Oregon State Bar
Registration No. 603 122 675
Docket No. 201106-0053
Determination No. 12-0248

Dear George,

It was a pleasure talking with you, and thank you for the additional information regarding your client's position on whether Oregon State Bar (OSB) has substantial nexus for taxes imposed on apportionable activities under RCW 82.04.067(1)(c).

We understand that while OSB disagrees with the Department's holding in Det. No. 12-0248, it would agree to a settlement under which it would collect and remit retail sales tax on Washington sales for 2013 forward. The Department maintains that OSB is liable for Washington taxes, and would require OSB to recognize such liability in any potential closing agreement; we decline to agree that OSB will pay on a purely voluntary basis. Assuming that OSB is willing to make this concession, we are hopeful that OSB and the Department will be able to reach agreement.

We have shared the numbers you provided regarding OSB's activities with the Audit Division (Audit), and based on this information, along with previously provided figures, Audit has estimated OSB's liability for tax and interest (interest computed through September 30, 2013) as follows: \$10,773 for 2005, \$6,164 for 2006, \$7,064 for 2007, \$10,292 for 2008, \$9,076 for 2009, \$10,431 for 2010, \$7,150 for 2011, and \$5,892 for 2012. For 2011 and 2012, the tax estimate is equivalent to retail sales tax only, as retailing B&O tax is offset by small business tax credits and based on the information you supplied, it appears that OSB lacks substantial nexus for service and other activities B&O tax after December 31, 2010.¹ We will make schedules available for your review upon request.

¹ See the Department's Special Notice titled "B&O tax reporting requirement continues after business activity stops," dated September 10, 2010, available at <http://dor.wa.gov>.



George Mastrodonato
September 10, 2013
Page 2

OFFER:

Although OSB has not entered into a voluntary disclosure agreement with the Department, it did come forward seeking to enter into such an agreement initially. We are willing to extend the same relief to your client now through settlement.

For settlement purposes, we are prepared to fully waive penalties in exchange for your client accepting liability for Washington taxes and (1) paying a sum of \$66,842 in satisfaction of its liability through 2012, (2) paying retail sales tax and retailing B&O tax for 2013 forward, and (3) agreeing to report and remit taxes imposed on apportionable activities should OSB's business practices establish nexus for such activities under RCW 82.04.067. We are willing to work with you on establishing a date for the filing of returns for 2013 and remitting amounts due. We will waive interest on the 2013 amounts if received promptly.

Please let us know if your client is interested in these terms by September 23, 2013. If we do not hear from you, we will assume you are not interested and will continue with the decision writing process.

Sincerely,



H. Geoffrey Margolis
Administrative Law Judge
Appeals Division

HGM:nsj
cc: Mary Barrett, Director's Designee

CARNEY
BADLEY
SPELLMAN

George C. Mastrodonato

Law Offices
A Professional Service Corporation

701 Fifth Avenue, Suite 3600
Seattle, Washington 98104-7010
T (206) 622-8020
F (206) 467-8215
Direct Line (206) 607-4110

Email: Mastrodonato@carneylaw.com

September 16, 2013

VIA EMAIL (geoffreym@dor.wa.gov)/
ORIGINAL VIA U.S. MAIL

Geoffrey Margolis
Administrative Law Judge
Department of Revenue - Appeals Division
P.O. Box 47460
Olympia, WA 98504-7460

**Re: Oregon State Bar
Registration No. 603 122 675
Docket No. 201106-0053
Determination No. 12-0248**

Dear Geoff:

This is in response to your letter of September 10, 2013, and to the Department's offer of settlement in the above matter. I have reviewed your letter with Helen Hierschbiel and we have two requests and one point of clarification.

- First, in respect to the calculation of OSB's tax liability (including interest) for the years 2005 to 2012, you offered to make the audit schedules available for our review. We would appreciate a copy of the Audit Division's calculation, so please send that to me.

- Second, you set a September 23, 2013 deadline for OSB to respond to the Department's offer. The OSB Board of Governors' monthly meeting will not take place until after this date and Ms. Hierschbiel would like the opportunity to discuss the Department's offer with the Board before we provide a response to you. So, we would like the deadline extended to Friday, October 4, 2013. Please confirm that this new deadline will be acceptable to the Department.

- Third, your letter states that the Department will extend the benefits of voluntary disclosure to OSB. We appreciate this offer and have two questions regarding it. First, we have never had any reason to believe that the OSB was not still within the Department's voluntary disclosure program and therefore eligible for its benefits. If the Department believes that the OSB is not still within the program, we would like to know the basis for the Department's belief. Second, our understanding of the voluntary disclosure program is that the retroactive liability or "look back" period is limited to four years from the date of the assessment plus the current year, which is consistent with RCW 82.32.050. However, the offer the Department has made requires OSB to pay retroactive taxes (plus interest) going back to 2005 – a period of eight years (plus the current year).

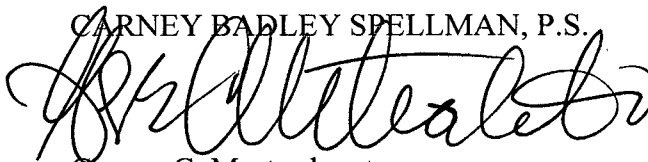
Geoffrey Margolis
September 16, 2013
Page 2

To our knowledge, no assessment has been made to date. On the assumption the Department's assessment will be made before December 31, 2013, an offer consistent with the voluntary disclosure program should only include tax liability incurred on and after January 1, 2009.¹ Indeed, even the Audit Division back on May 4, 2010, wrote that the Department's assessment would not include any taxes prior to January 1, 2007. So, the Department's offer is not only inconsistent with RCW 82.32.050, it is also inconsistent with Audit's prior commitment to assess OSB beginning January 1, 2007. Therefore, if the Department intends to adhere to the voluntary disclosure guidelines as stated in your letter, the "look back" period should begin with the tax year 2009. Please confirm that this is the Department's intent with its offer.

Thank you for your attention to the above items. We would appreciate your prompt attention to all of these items so that the OSB Board can be properly advised of this pending matter.

Sincerely,

CARNEY BADLEY SPELLMAN, P.S.



George C. Mastrodonato

GCM:cu

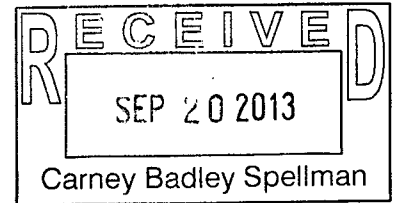
cc: Mary Barrett, Director's Designee (MaryB@dor.wa.gov)
Helen Hirschbiel, Esq.

¹ At the time, Audit asked if OSB intended to appeal Audit's determination to the Appeals Division and OSB indicated that it would. But, at no time did OSB ask Audit to delay the assessment or do anything to otherwise prevent Audit from issuing an assessment for taxes during the "look back" period.



STATE OF WASHINGTON
DEPARTMENT OF REVENUE

September 18, 2013



George Mastrodonato
Carney Badley Spellman PS
701 5th Ave., Suite 3600
Seattle WA 98104-7010

Re: OREGON STATE BAR
Registration No. 603 122 675
Docket No. 201106-0053
Determination No. 12-0248

Dear George,

Thank you for your letter dated September 16, 2013. Below please find a response to your two requests and one point of clarification.

You requested a copy of the draft audit schedules referenced in our letter of September 10, 2013. The schedules are enclosed. Please keep in mind that these schedules are for settlement purposes only. You also asked that we extend the deadline to respond to the Department's offer from September 23, 2013 to October 4, 2013. The deadline is hereby extended to October 4, 2013, per your request.

Finally, with regards to the benefits of the voluntary disclosure program, the parties have not entered into an agreement under which OSB agreed to pay taxes and the Department waived penalties and limited the "look back" period. Under the settlement offer, the Department is extending the benefits of voluntary disclosure to the extent OSB would have enjoyed these benefits had it entered into a voluntary disclosure agreement in 2009, when it approached the Department. Thus, it includes tax liability and interest from 2005 forward.



George Mastrodonato

September 18, 2013

Page 2

The Department is prepared to issue an assessment upon request. We would consider your position that OSB should benefit from the voluntary disclosure program and that the "look back" period should be four years plus the current year, but would also consider provisions regarding the assessment period for unregistered taxpayers.

Sincerely,



H. Geoffrey Margolis

Appeals Division

HGM:ci

cc: Mary Barrett, Director's Designee

Enclosure

603 122 675
Schedule 1

Oregon State Bar
Summary of Tax Adjustments by Classification
Source: Supplemental Schedules 2 through 5

Audit Number: 0210500 - 000
Auditor: 619 - Mark Blunck
Audit Period: 1/1/2009 - 12/31/2012

		2009	2010	2011	2012	TOTALS
<u>SCHEDULE</u>						
<u>REFERENCE:</u>						
	<i><u>Royalties; Child Care; Nonprofit R&D - 080</u></i>					
Schedule 2	Royalties Tax Due on Gross Washington Income from Copyright Licenses	0	0	0	0	0
		<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
	<i><u>Service & Other Activities; Gambling Contests of Chance (less than \$50,000 a year) - 004</u></i>					
Schedule 3	Service & Other Activities Tax Due on Live Seminars at Venues within Washington	2,274	2,284	0	0	4,558
		<u>2,274</u>	<u>2,284</u>	<u>0</u>	<u>0</u>	<u>4,558</u>
	<i><u>Retailing - 002</u></i>					
Schedule 4A	Retailing Tax Due on Sales of CDs, Tapes, DVDs, Books, Digital Automated Services and Tangible Products	289	385	343	288	1,305
		<u>289</u>	<u>385</u>	<u>343</u>	<u>288</u>	<u>1,305</u>
	<i><u>State and Combined Local Sales - 001</u></i>					
Schedule 4B (0003)	Retail Sales Tax Due on Sales of CDs, Tapes, DVDs, Books, Digital Automated Services and Tangible Products	5,745	7,774	6,920	5,815	26,254
		<u>5,745</u>	<u>7,774</u>	<u>6,920</u>	<u>5,815</u>	<u>26,254</u>
	<i><u>Miscellaneous Taxes and Credits</u></i>					
Schedule 5	Annual Small Business B&O Tax Credits Applied in Tax Assessment	0	(625)	(343)	(288)	(1,256)
		<u>0</u>	<u>(625)</u>	<u>(343)</u>	<u>(288)</u>	<u>(1,256)</u>
	Total Tax Adjustment (Excluding Penalties and Interest)	8,308	9,818	6,920	5,815	30,861
	Estimated Interest (Calculated on Total Tax) through 09/30/2013	768	613	230	77	1,688
	<i>Total Tax and Estimated Interest</i>	<u>9,076</u>	<u>10,431</u>	<u>7,150</u>	<u>5,892</u>	<u>32,549</u>

603 122 675
Schedule 2

Oregon State Bar
Royalties Tax Due on Gross Washington Income from Copyright Licenses
Source: Washington Income Figures Provided by George Mastrodonato, Attorney.

	1/1 - 12/31 2009	1/1 - 12/31 2010	1/1 - 12/31 2011	1/1 - 12/31 2012	TOTALS
Tax Rate	.00484	.00484	.00484	.00484	
Line Code 080					

Gross Washington Income from Sales Copyright Licenses Subject to Royalties B&O Tax	40	20	0	0	60
Commercial Domicile is in Oregon, so Copyright License Income is not Taxable for period of 01/01/2009 - 04/30/2010	(40)	(20)	0	0	(60)
Total Taxable Amounts	0	0	0	0	0
X Tax Rate = Royalties B&O Tax Difference to Schedule 1	0	0	0	0	0

NOTE: Differences Due to Rounding May be Present in this Schedule.

FOR INTERNAL USE ONLY

	2009	2010	2011	2012	TOTAL
Royalties B&O	0	0	0	0	0

Math 1	Math 2	Tax Tot	LSU	LSU Code
OK	OK	OK	N/A	N/A

Audit 2000 - Version 9.02
Revised - May, 2013

603 122 675
Schedule 3

Oregon State Bar
Service & Other Activities Tax Due on Live Seminars at Venues within Washington
Source: Washington Income Figures Provided by George Mastrodonato, Attorney.

	1/1 - 12/31 2009	1/1 - 4/30 2010	5/1 - 12/31 2010	1/1 - 12/31 2011	1/1 - 12/31 2012	TOTALS
Tax Rate	.015	.015	.018	.018	.018	
Line Code 004						

Gross Washington Seminar and Advertising Income Subject to Service and Other Activities B&O Tax
Economic Nexus Threshold \$250,000 was not met, so Gross Income is not Taxable
Total Taxable Amounts

	151,569	44,777	89,553	38,604	147,143	471,646
	0	0	0	(38,604)	(147,143)	(185,747)
	151,569	44,777	89,553	0	0	285,899
X Tax Rate = Service & Other Activities B&O Tax Difference to Schedule 1	2,274	672	1,612	0	0	4,558

NOTE: Differences Due to Rounding May be Present in this Schedule.

FOR INTERNAL USE ONLY

	2009	2010	2011	2012	TOTAL
Service & Other Activities B&O	0	2,274	2,284	0	4,558

Math 1	Math 2	Tax Tot	LSU	LSU Code
OK	OK	OK	N/A	N/A

Audit 2000 - Version 9.02
Revised - May, 2013

603 122 675
Schedule 4A

Oregon State Bar
Retailing Tax Due on Sales of CDs, Tapes, DVDs, Books, Digital Automated Services and Tangible Products
Source: Washington Income Figures Provided by George Mastrodonato, Attorney

	1/1 - 12/31 2009	1/1 - 12/31 2010	1/1 - 12/31 2011	1/1 - 12/31 2012	TOTALS
Tax Rate	.00471	.00471	.00471	.00471	
Line Code 002					

Washington Sales of CDs, Tapes, DVDs, Books, Publications, and Tangible Personal Property Subject to Retailing B&O Tax
Total Taxable Amounts

	61,277	81,831	72,846	61,212	277,166
	61,277	81,831	72,846	61,212	277,166

X Tax Rate = Retailing B&O Tax Difference to Schedule 1

	289	- 385	343	288	1,305
--	-----	-------	-----	-----	-------

NOTE: Differences Due to Rounding May be Present in this Schedule.

FOR INTERNAL USE ONLY

	2009	2010	2011	2012	TOTAL
Retailing B&O	0	289	385	343	288
					1,305

Math 1	Math 2	Tax Tot	LSU	LSU Code
OK	OK	OK	N/A	N/A

Audit 2000 - Version 9.02
Revised - May, 2013

603 122 675
 Schedule 4B (0003)

Oregon State Bar
 Retail Sales Tax Due on Sales of CDs, Tapes, DVDs, Books, Digital Automated Services and Tangible Products
 Source: Washington Income Figures Provided by George Mastrodonato, Attorney.

	1/1 - 3/31	4/1 - 12/31	1/1 - 12/31	1/1 - 12/31	1/1 - 12/31	TOTALS
	2009	2009	2010	2011	2012	
Tax Rate	.09	.095	.095	.095	.095	
Line Code 001						

Washington Sales of CDs, Tapes, DVDs, Books, Publications, and Tangible Personal Property Subject to Retail Sales Tax	15,319	45,958	81,831	72,846	61,212	277,166
Total Taxable Amounts	15,319	45,958	81,831	72,846	61,212	277,166
X Tax Rate = Retail Sales Tax Difference to Schedule 1	1,379	4,366	7,774	6,920	5,815	26,254

NOTE: Differences Due to Rounding May be Present in this Schedule.

FOR INTERNAL USE ONLY

	2009	2010	2011	2012	TOTAL
Retail Sales	0	5,745	7,774	6,920	26,254
0003-Pool Fund (Highest Rate)					

Math 1	Math 2	Tax Tot	LSU	LSU Code
OK	OK	OK	OK	0003

Audit 2000 - Version 9.02
 Revised - May, 2013

603 122 675
Schedule 5

Oregon State Bar
Annual Small Business B&O Tax Credits Applied in Tax Assessment
Schedules 2, 3 and 4A.

1/1 - 12/31 1/1 - 12/31 1/1 - 12/31 1/1 - 12/31 TOTALS
2009 2010 2011 2012

Tax Rate
Line Code 000

Allowable Annual Small Business B&O Tax Credits as Calculated within Workpaper A
Total Taxable Amounts

0	625	343	288	1,256
0	625	343	288	1,256

X Tax Rate = Small Business Credit 815 Tax Difference to Schedule 1

0	(625)	(343)	(288)	(1,256)
---	-------	-------	-------	---------

NOTE: Differences Due to Rounding May be Present in this Schedule.

FOR INTERNAL USE ONLY

	2009	2010	2011	2012	TOTAL
Small Business Credit 815	0	(625)	(343)	(288)	(1,256)

Audit 2000 - Version 9.02
Revised - May, 2013

Math 1	Math 2	Tax Tot	LSU	LSU Code
OK	OK	OK	N/A	N/A

603 122 675
Schedule 1

Oregon State Bar
Summary of Tax Adjustments by Classification
Source: Supplemental Schedules 2 through 4

Audit Number: 0210500 - 000
Auditor: 619 - Mark Blunck
Audit Period: 1/1/2005 - 12/31/2008

		2005	2006	2007	2008	TOTALS
SCHEDULE						
REFERENCE:						
	<i>Royalties; Child Care; Nonprofit R&D - 080</i>					
Schedule 2	Royalties Tax Due on Gross Washington Income from Copyright Licenses	0	0	0	0	0
		<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
	<i>Service & Other Activities; Gambling Contests of Chance (less than \$50,000 a year) - 004</i>					
Schedule 3	Service & Other Activities Tax Due on Live Seminars at Venues within Washington	1,723	1,017	678	2,460	5,878
		<u>1,723</u>	<u>1,017</u>	<u>678</u>	<u>2,460</u>	<u>5,878</u>
	<i>Retailing - 002</i>					
Schedule 4A	Retailing Tax Due on Sales of CDs, Tapes, DVDs, Books, and Tangible Products	320	189	257	326	1,092
		<u>320</u>	<u>189</u>	<u>257</u>	<u>326</u>	<u>1,092</u>
	<i>State and Combined Local Sales - 001</i>					
Schedule 4B (0003)	Retail Sales Tax Due on Sales of CDs, Tapes, DVDs, Books, and Tangible Products	6,053	3,613	4,908	6,236	20,810
		<u>6,053</u>	<u>3,613</u>	<u>4,908</u>	<u>6,236</u>	<u>20,810</u>
	Total Tax Adjustment (Excluding Penalties and Interest)	8,096	4,819	5,843	9,022	27,780
	Estimated Interest (Calculated on Total Tax) through 09/30/2013	2,677	1,345	1,221	1,270	6,513
	<i>Total Tax and Estimated Interest</i>	<u>10,773</u>	<u>6,164</u>	<u>7,064</u>	<u>10,292</u>	<u>34,293</u>

603 122 675
Schedule 2

Oregon State Bar
Royalties Tax Due on Gross Washington Income from Copyright Licenses,
Source: Washington Income Figures Provided by George Mastrodonato, Attorney.

	1/1 - 12/31 2005	1/1 - 12/31 2006	1/1 - 12/31 2007	1/1 - 12/31 2008	TOTALS
Tax Rate	.00484	.00484	.00484	.00484	
Line Code 080					

Gross Washington Income from Sales Copyright Licenses Subject to Royalties B&O Tax
Commercial Domicile is in Oregon, so Copyright License Income is not Taxable for period of 01/01/2005 - 12/31/2008
Total Taxable Amounts

	93	55	125	45	318
	(93)	(55)	(125)	(45)	(318)
	0	0	0	0	0
	0	0	0	0	0

X Tax Rate = Royalties B&O Tax Difference to Schedule 1

NOTE: Differences Due to Rounding May be Present in this Schedule.

FOR INTERNAL USE ONLY

	2005	2006	2007	2008	TOTAL
Royalties B&O	0	0	0	0	0

Math 1	Math 2	Tax Tot	LSU	LSU Code
OK	OK	OK	N/A	N/A

Audit 2000 - Version 9.02
Revised - May, 2013

603 122 675	Oregon State Bar	1/1 - 12/31	1/1 - 12/31	1/1 - 12/31	1/1 - 12/31	TOTALS
Schedule 3	Service & Other Activities Tax Due on Live Seminars at Venues within Washington	2005	2006	2007	2008	
	Source: Washington Income Figures Provided by George Mastrodonato, Attorney.	Tax Rate	.015	.015	.015	.015
		Line Code 004				
Gross Washington Seminar, Advertising, and Online Subscription Income Subject to Service and Other Activities B&O Tax		114,892	67,805	45,174	163,996	391,868
Total Taxable Amounts		114,892	67,805	45,174	163,996	391,868
X Tax Rate = Service & Other Activities B&O Tax Difference to Schedule 1		1,723	1,017	678	2,460	5,878

NOTE: Differences Due to Rounding May be Present in this Schedule.

FOR INTERNAL USE ONLY						
	2005	2006	2007	2008	TOTAL	
Service & Other Activities B&O	0	1,723	1,017	678	2,460	5,878
	Math 1	Math 2	Tax Tot	LSU	LSU Code	
	OK	OK	OK	N/A	N/A	

Audit 2000 - Version 9.02
Revised - May, 2013

603 122 675
Schedule 4A

Oregon State Bar
Retailing Tax Due on Sales of CDs, Tapes, DVDs, Books, and Tangible Products
Source: Washington Income Figures Provided by George Mastrodonato, Attorney.

	1/1 - 12/31 2005	1/1 - 12/31 2006	1/1 - 12/31 2007	1/1 - 12/31 2008	TOTALS
Tax Rate	.00471	.00471	.00471	.00471	
Line Code 002					

Washington Sales of CDs, Tapes, DVDs, Books, Publications, and Tangible Personal Property Subject to Retailing B&O Tax
Total Taxable Amounts

68,014	40,140	54,537	69,288	231,979
68,014	40,140	54,537	69,288	231,979

X Tax Rate = Retailing B&O Tax Difference to Schedule 1

320	189	257	326	1,092
-----	-----	-----	-----	-------

NOTE: Differences Due to Rounding May be Present in this Schedule.

FOR INTERNAL USE ONLY

	2005	2006	2007	2008	TOTAL
Retailing B&O	0	320	189	257	1,092

Math 1	Math 2	Tax Tot	LSU	LSU Code
OK	OK	OK	N/A	N/A

Audit 2000 - Version 9.02
Revised - May, 2013

603 122 675
 Schedule 4B (0003)

Oregon State Bar
 Retail Sales Tax Due on Sales of CDs, Tapes, DVDs, Books, and Tangible Products
 Source: Washington Income Figures Provided by George Mastrodonato, Attorney.

	1/1 - 3/31	4/1 - 12/31	1/1 - 12/31	1/1 - 12/31	1/1 - 12/31	TOTALS
	2005	2005	2006	2007	2008	
Tax Rate	.086	.09	.09	.09	.09	
Line Code 001						

Washington Sales of CDs, Tapes, DVDs, Books, Publications, and Tangible Personal Property Subject to Retail Sales Tax	17,004	51,011	40,140	54,537	69,288	231,979
Total Taxable Amounts	17,004	51,011	40,140	54,537	69,288	231,979
X Tax Rate = Retail Sales Tax Difference to Schedule 1	1,462	4,591	3,613	4,908	6,236	20,810

NOTE: Differences Due to Rounding May be Present in this Schedule.

FOR INTERNAL USE ONLY

	2005	2006	2007	2008	TOTAL
Retail Sales	0	6,053	3,613	4,908	20,810
0003-Pool Fund (Highest Rate)					

Math 1	Math 2	Tax Tot	LSU	LSU Code
OK	OK	OK	OK	0003

Audit 2000 - Version 9.02
 Revised - May, 2013