

Oregon State Bar
Meeting of the Board of Governors
February 21, 2014
Open Session Minutes

The meeting was called to order by President Tom Kranovich at 9:00 a.m. on February 21, 2014. The meeting adjourned at 1:40 p.m. Members present from the Board of Governors were Jenifer Billman, James Chaney, Patrick Ehlers, Hunter Emerick, R. Ray Heysell, Matthew Kehoe, Theresa Kohlhoff, John Mansfield, Audrey Matsumonji, Caitlin Mitchel-Markley, Travis Prestwich, Joshua Ross, Richard Spier, Simon Whang, Charles Wilhoite, Timothy L. Williams and Elisabeth Zinser. Staff present were Sylvia Stevens, Helen Hirschbiel, Rod Wegener, Susan Grabe, Mariann Hyland, Judith Baker, John Gleason, Kateri Walsh, Dani Edwards and Camille Greene. Also present was Ben Eder, ONLD Chair, Ira Zarov, PLF CEO, Guy Greco and John A. Berge, PLF Board of Directors, and Steven R. Bennett and Mark Reinecke, Client Security Fund Committee.

1. Report of Officers & Executive Staff

A. Report of the President

Mr. Kranovich reported on the decline of the brick and mortar law practice and the increase of the sole practitioner. Mr. Kranovich acknowledged a request to move the CLNS Task Force discussion to the beginning of the meeting.

Motion: Mr. Mansfield moved, Mr. Whang seconded, and the board voted unanimously to amend the agenda to move item 5G to the top of the agenda.

B. Report of the President-elect

As written.

C. Report of the Executive Director

To be distributed via email. **[Exhibit A]**

D. Director of Regulatory Services

As written.

E. Director of Diversity & Inclusion

Ms. Hyland reported that there is a major change in the criteria for OLIO enrollment. D&I will review interest forms with attention to whether students: Can contribute to the bar's historically or currently underrepresented membership; Have experienced economic, social, or other barriers; Have a demonstrated commitment to increase access to justice; or Have experienced discrimination or oppression. The Employment Retreat in January was a successful event. The Spring Social will be at Willamette University in April.

F. MBA Liaison Reports

Ms. Kohlhoff attended the December 4, 2013 MBA board meeting and Mr. Spier attended the January 8, and February 5, 2014 MBA meetings. Mr. Spier noted the MBA discussed the

possibility of discontinuing the group health program of which OSB is the greatest user. The MBA is concerned it will lose members who join the MBA just for health insurance. Ms. Kohlhoff had no report.

2. Professional Liability Fund [Mr. Zarov]

Mr. Zarov submitted a general update on the PLF's financial status. **[Exhibit B]** 2013 was a very successful year in two ways: positive investment gain and lower claim count. Due to the lower claim count, they will not replace the claims attorney that retired. Mr. Mansfield relayed concerns from the Sole and Small Firm Practitioners Section regarding interest charges on assessments paid in installments. Mr. Zarov responded that the Board of Directors has discussed this concern at some length, but he will remind them about the lingering issue.

3. OSB Committees, Sections, Councils and Divisions

A. Oregon New Lawyers Division Report

Mr. Eder reported on a variety of ONLD projects and events described in his written report. One big project is the new lawyer CLE in Eugene, held February 21, 2014. Future projects include a two-day crash course on family law, and CLEs in Multnomah and outlying counties.

B. CSF Claims

Ms. Stevens presented Mr. Pedro's request for review of the CSF Committee's denial of his claim for reimbursement. Mr. Ehlers questioned the calculation of attorney hours spent on the case. Ms. Stevens stated that the successor attorney on the case estimated the hours. The CSF committee investigator, Mr. Reinecke, said he was concerned that Ms. Ireland was not experienced enough to work on this case, but the successor attorney used Ms. Ireland's pleadings and estimated she had put in about 20 hours of work. The Committee's decision followed Mr. Reinecke's conclusion that this was a fee dispute, not a CSF issue.

Motion: Ms. Billman moved, Mr. Prestwich seconded, and the board voted unanimously to affirm the CSF's denial of Mr. Pedro's claim.

C. CSF Committee Response to BOG Workgroup Recommendations

Ms. Stevens presented an introduction to the Client Security Fund including its purpose and processes, and its history of assessments and awards paid since 1986.

Mr. Bennett asked the board to consider the request of the CSF Committee that changes to CSF policy and procedure adopted in September 2013 not be implemented, except for increasing the reserve to \$1,000,000. Mr. Emerick stated the basis of the workgroup's recommendations was to avoid exhausting CSF reserve in years with unusually high claims and having to dip into general reserves to make the awards. Mr. Greco proposed that the CSF can only use the reserve fund with BOG approval. Ms. Mitchel-Markley questioned why the committee had not provided its input until after the BOG acted on the changes. Ms. Stevens clarified that then-CSF Chair was invited to the September BOG meeting but was unable to attend due to a schedule conflict. Mr. Emerick suggested the board table this action and have the workgroup reconvene and invite the CSF committee to provide input and participate in discussion. Mr. Ross will join the workgroup in place of Mr. Knight who is no longer on the board.

Motion: Mr. Emerick moved, Ms. Mitchel-Markley seconded, and the board voted unanimously to reconvene the workgroup.

D. MCLE Committee

Ms. Hirschbiel presented the committee's proposed amendments to the MCLE rule re: Child and Elder Abuse Reporting requirements. The committee considered combining the two requirements but what constitutes abuse differs greatly for elders and children. **[Exhibit C]**

Motion: Ms. Matsumonji moved, Mr. Whang seconded, and the board voted to approve the MCLE rule changes as requested. Mr. Emerick and Mr. Williams were opposed.

Ms. Hirschbiel presented the committee's proposed amendments to MCLE Rule 3.5(a) and Regulation 3.260. **[Exhibit D]**

Motion: Ms. Zinser moved, Ms. Mitchel-Markley seconded, and the board voted unanimously to approve the MCLE rule and regulation changes as requested.

E. Legal Services Program Committee

Ms. Baker reported on the work of the Task Force on Legal Aid Funding. Currently Oregon has 1 lawyer for every 10,000 low-income clients. In the next 10 years Legal Aid would like to have 2 lawyers for every 10,000 low-income clients. Ms. Baker also mentioned that the OSB had received a check in excess of \$500,000 representing unclaimed client funds in a case handled by former OSB President Rick Yugler. BOG Committees, Special Committees, Task Forces and Study Groups

F. Board Development Committee

Ms. Mitchel-Markley updated the board on the committee's actions and discussed the skills and attributes for BOG and HOD candidates. The committee welcomes additional skill/attribute suggestions from board members.

G. Budget and Finance Committee

Mr. Wegener gave a positive financial update due to increased admissions fees and underestimated lawyer referral revenue. CLE Seminars' revenue was down as was the Client Security Fund reserve.

Mr. Emerick asked the board to approve the committee's recommendation to authorize the OSB Executive Director and CFO to establish a \$500,000 line of credit with a local bank. **[Exhibit E]**

Motion: The board voted unanimously to approve the committee recommendation to establish a line of credit as recommended.

Mr. Emerick gave an update on the database upgrade project and asked the board to approve the committee's recommendation to authorize the bar to expend up to \$20,000 in funds from the Capital Reserve to engage a consultant to assist the bar in the analysis of proposals and selection of a vendor for the new database. **[Exhibit F]**

Motion: The board voted unanimously to approve the committee's recommendation to expend the funds from the Capital Reserve to fund the consultant for the database upgrade project.

H. Governance and Strategic Planning Committee

Mr. Spier presented the committee motion to amend the bar bylaws re: board member officer titles. **[Exhibit G]**

Motion: The board voted unanimously to amend the OSB Bylaws to (1) eliminate the office of vice-president, and (2) clarify the manner of electing officers.

Mr. Spier presented the committee motion to change the name of the President's Affirmative Action Award to the President's Diversity & Inclusion Award.

Motion: The board voted unanimously to approve the committee recommendation.

Mr. Spier presented the committee motion to deny the request of the Animal Law Section to modify its bylaws to eliminate the offices of chair-elect and immediate past chair and extend the term limits for the secretary and member at large positions. **[Exhibit H]**

Motion: The board approved the committee motion on a unanimous vote.

Mr. Spier presented the committee recommendation to amend the Quality of Life Committee charge. **[Exhibit I]**

Motion: The board unanimously approved the proposed amendment to the Quality of Life Committee assignment (also referred to as a committee charge.)

Mr. Spier presented the committee recommendation that the Board of Governors approve a variety of changes to the Loan Repayment Assistance Program Policies and Guidelines, most significantly to increase in the salary cap from \$55,000 to \$60,000 for eligible applicants. **[Exhibit J]**

Motion: The board voted unanimously to approve the committee motion.

Mr. Spier presented the committee's suggestion to invite the deans of Oregon's three law schools to meet with the BOG and to discuss developments in law school curricula that will prepare students for the practice of law.

Motion: The board voted unanimously to approve the committee recommendation.

Mr. Spier presented the committee's amended version of the Action Plan 2014. The board will discuss and take action on the plan in coming months, including a review of OSB programs. No action is required of the board at this meeting. **[Exhibit K]**

Mr. Spier presented the committee decision to develop a policy allowing section guest reimbursement in a particular set of circumstances. No action required by the board. **[Exhibit L]**

I. Public Affairs Committee

Mr. Prestwich gave an update on the legislative session and possible minimum fee changes for Pro Hac Vice cases. The Chief Justice has the authority to make this fee decision but has asked for the BOG's input.

Motion: Mr. Kehoe moved, Mr. Ehlers seconded, and the board voted to recommend to the Chief Justice that he doubles the Pro Hac Vice fee.

J. International Trade and Legal Services Task Force

Ms. Hirschbiel reported on the progress of the task force and the three recommendations from the Task Force that they would like to send out to the membership for comment:

Open up RPC 5.5(c) to foreign lawyers; open up House Counsel Admission to lawyers licensed in foreign jurisdictions; and to issue formal legal ethics opinion interpreting the applicability of RPC 8.5 to foreign lawyers. No action is required from the board at this time.

K. New Lawyer Mentoring Program

No report.

L. Centralized Legal Notice System (CLNS) Task Force

Mr. Ehlers reported on the CLNS Task Force report [**Exhibit M**] and the ONPA Handout in opposition to the report [**Exhibit N**]. There followed a vigorous discussion at which the following points were raised: (1) a centralized online notice system is desirable and will be a reality in the future but newspapers continue to play an important role, particularly outside the Portland metro area and the valley; (2) the OSB would have difficulty getting legislative support in the face of strong opposition from newspapers and their impact on legislative elections; (3) it is not clear that a CLNS would generate as much money as originally thought; (4) there is a risk that funds raised from a CLNS would be directed by the legislature to some other purpose; (5) it wouldn't be wise for the bar to expend the necessary political capital when a successful outcome is unlikely; (6) the OSB is not the proper entity to develop and maintain a CLNS, as it is not germane to the bar's mission; (7) the OSB could use its considerable influence to build a coalition of support for the concept of a CLNS among banks, government agencies, business, etc.

Motion: On motion of Ms. Zinser, seconded by Mr. Ehlers, the BOG adopted the following statement: We reaffirm the value to the public and to institutions in Oregon of a centralized legal notice system that will provide high-quality and affordable notice at the same time that it becomes a sustainable long-term funding source for legal services. The motion included creating a board committee to develop alternative proposals that address that goal Mr. Ehlers and Mr. Prestwich will co-chair the committee; Mr. Kranovich will make additional appointments.

4. Other Action Items

Mr. Kranovich presented the request for the board to consider changing the board meeting days to Fridays with overflow on Saturdays if needed, rather than committees on Thursdays and board meetings on Fridays. After discussion, Mr. Kranovich determined a consensus was reached and no change will be made.

Ms. Edwards asked the board to approve the appointments to various bar committees and boards. **[Exhibit P]**

Motion: Mr. Spier moved, Mr. Mansfield seconded, and the board voted unanimously to approve the various appointments.

5. Consent Agenda

Motion: Mr. Mansfield moved, Mr. Whang seconded, and the board voted unanimously to approve the consent agenda of past meeting minutes.

6. 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

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

None.

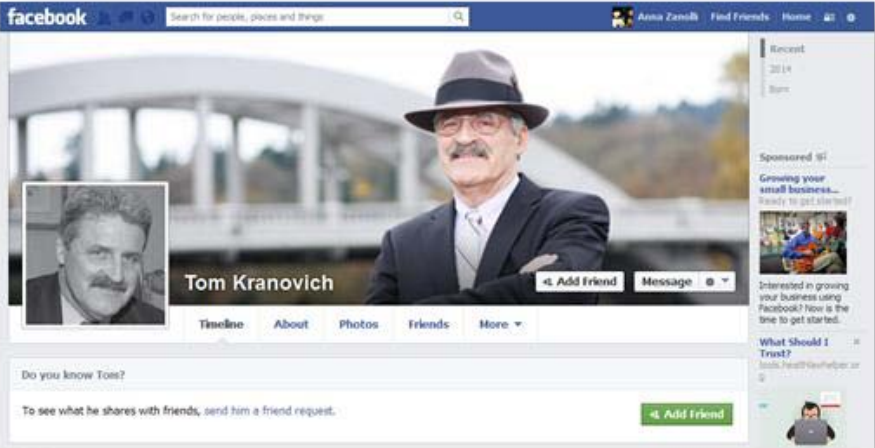
OREGON STATE BAR

Board of Governors Agenda

Meeting Date: February 21, 2014
From: Sylvia E. Stevens, Executive Director
Re: Operations and Activities Report

OSB Programs and Operations

Department	Developments
<ul style="list-style-type: none"> ▪ Accounting & Finance/ Facilities/IT (Rod Wegener) 	<p><i>Accounting:</i></p> <ul style="list-style-type: none"> ▪ Payment of the membership fee by credit card increased again in 2014. By January 31, 2014, 9,733 members paid on line. This is 54% of all payments. The amount paid by credit card was \$4,084,978, or \$521,197 than the year before. On January 31, 731 members paid fees totaling \$299,141 (believed to be a record day high). The latest procrastinator paid at 11:56pm on January 31 (four minutes before the deadline). ▪ The final numbers aren't available yet, but the number of members not paying by the deadline has decreased from prior years. <p><i>Facilities:</i></p> <ul style="list-style-type: none"> ▪ Interested parties continue to explore the vacant space at the bar center. One existing tenant is considering more space and another is considering the space currently leased but not occupied.
<ul style="list-style-type: none"> ▪ Communications & Public Services (includes RIS and Creative Services) (Kay Pulju) 	<p><i>Communications & Public Services:</i></p> <ul style="list-style-type: none"> ▪ Coordinated transition of the CLE Seminars website into the main bar site, along with rebranding of collateral marketing materials; ▪ Coordinated the regulatory notice and reminder system; ▪ Edited a video of a Small Claims public education seminar for presentation on the bar's website – the first in a planned series of productions that will be delivered via web as well as through community access television. ▪ The February/March edition of the Bulletin will be mailed to members in early March. It will feature stories on Oregon's lawyer-legislators and cyber-security for law firms. ▪ The Referral & Information Services team is recruiting a new manager following George Wolff's departure for the New York City Bar Association LRS. Several software modules were completed in December and January, automating processes that used to require either staff or panelist intervention. <p><i>Creative Services:</i></p> <ul style="list-style-type: none"> ▪ Formal transition of the CLE seminar website and registration functions began in January. We spent a good portion of 2013 planning for this transition, collaborating with CLE Seminars and Communications staff as we developed the transition plan. Event registration was consolidated on the InReach vendor site in early January and the new CLE seminar home page was launched last week, with seminar staff armed with the tools and training needed to maintain the site. Coordinated email communications

	<p>will follow this month, with metrics added to measure audience response and refine future messages. The visual integration, streamlined content and search integration with the InReach site provides our online customers with a branded and simplified user experience that should help promote the bar’s seminar registration efforts. To view the new site, go to www.osbar.org/cle</p> <ul style="list-style-type: none"> ▪ We created a new Facebook page for Tom Kranovich’s use as bar president this year. The page was stocked with photos of bridges from all bar regions and we will keep Tom supplied with a monthly list of topics, photos and posting suggestions. We hope he will find the Facebook page a useful tool in his outreach efforts. 
<ul style="list-style-type: none"> ▪ CLE Seminars (Karen Lee) 	<ul style="list-style-type: none"> ▪ Switched to a new online live event registration platform ▪ Worked with Creative Services and Communications staff to revamp CLE website for an early February launch ▪ Was one of the first (if not the first) to cosponsor an ABA program on gender equity in partner compensation ▪ Cosponsored a program with the Diversity & Inclusion Department on the myths and realities of race
<ul style="list-style-type: none"> ▪ Diversity & Inclusion (Mariann Hyland) 	<ul style="list-style-type: none"> ▪ Oral report will be presented at meeting.
<ul style="list-style-type: none"> ▪ General Counsel (includes CAO and MCLE) (Helen Hirschbiel) 	<p><i>General Counsel:</i></p> <ul style="list-style-type: none"> ▪ The Supreme Court adopted all amendments to the RPCs approved by the HOD with the exception of the RPC 8.4 amendment regarding bias and prejudice. ▪ The Legal Ethics Committee has appointed a subcommittee to review and revise formal ethics opinions affected by the new rules. ▪ A task force has been selected to begin working on a revised RPC 8.4 proposal. ▪ In 2013, General Counsel reviewed 206 requests for review of complaints

	<p>dismissed by CAO.</p> <ul style="list-style-type: none"> ▪ GCO continues to respond to an average of 10-15 ethics inquiries every day. <p><i>Client Assistance Office:</i></p> <ul style="list-style-type: none"> ▪ Interviewing for 3rd lawyer position; in the home stretch. ▪ Held department planning session to map out strategies for handling complaints electronically. ▪ Program Manager Scott Morrill co-presented at a CLE for the OPDS lawyers. <p><i>Minimum Continuing Legal Education:</i></p> <ul style="list-style-type: none"> ▪ The MCLE Committee met on December 13 and recommended several rule changes regarding (1) the new elder abuse reporting credit requirement and (2) out-of-state members who are also members in a state with which Oregon has MCLE reciprocity. These recommendations will be reviewed by the BOG at its February 21 meeting. ▪ In 2013, the MCLE Department processed 8,607 accreditation applications, including 1,170 applications for other types of CLE activities (teaching, legal research, etc.). So far in 2014, we have processed 850 accreditation applications, including 209 requests for other types of CLE activities. ▪ Compliance reports were sent to 4,950 members on October 15. As of February 5, we still have 188 members who have not submitted a report. Notices of Noncompliance will be sent March 3 (30 days after the filing deadline).
<ul style="list-style-type: none"> ▪ Human Resources (Christine Kennedy) 	<ul style="list-style-type: none"> ▪ Recruiting replacements for the following positions: Disciplinary Counsel and Director of Regulatory Services, Assistant General Counsel and Client Assistance Office Attorney, Referral & Information Services Manager, Discipline Paralegal/Trial Assistant; ▪ Hired two part-time replacements for Referral & Information Services Assistants; ▪ Surveyed employees about their supervisors and compiled the results; ▪ Started the annual performance evaluation process.
<ul style="list-style-type: none"> ▪ Legal Publications (Linda Kruschke) 	<ul style="list-style-type: none"> ▪ The following have been posted to BarBooks™ since my last report: <ul style="list-style-type: none"> ✓ Six <i>Uniform Criminal Jury Instructions</i>. ✓ Sixteen <i>Uniform Civil Jury Instructions</i>. ✓ <i>2013 Oregon Legislation Highlights</i>. ✓ Fourteen additional chapters of <i>Criminal Law</i>, 2013 revision, and the final PDF. ▪ <i>Criminal Law</i> 2013 revision went to the printer February 11. <ul style="list-style-type: none"> ✓ 2013 Budget = \$37,500; 2014 Budget = \$7,000; Sales to date = \$39,051 ▪ <i>Uniform Civil Jury Instructions</i> 2013 supplement is scheduled to go to the printer this week. <ul style="list-style-type: none"> ✓ 2014 Budget = \$25,500; Pre-orders to date = \$24,057 plus Bloomberg fee of \$3,250 to be billed later in the year. ▪ <i>Uniform Criminal Jury Instructions</i> 2013 supplement is scheduled to go to the printer this week. <ul style="list-style-type: none"> ✓ 2014 Budget = 21,700; Pre-orders to date = \$14,491 plus Bloomberg fee of \$3,250 to be billed later in the year.

	<ul style="list-style-type: none"> ▪ In-house editing of the PLF publication <i>Oregon Statutory Time Limitations</i> has begun with two attorney editors working on it. ▪ Our new Attorney Editor is working out great. ▪ We launched our new blog at http://legalpubs.osbar.org and are working on a plan to promote it.
<ul style="list-style-type: none"> ▪ Legal Services Program (Judith Baker) 	<ul style="list-style-type: none"> ▪ The LSP received \$518,000 in unclaimed client funds from a class action handled by Landye Bennett Blumstein LLP. The LSP Committee will meet in March to structure a recommendation regarding how to distribute the funds. ▪ Staff is working with the Public Affairs Dept. and legal aid on HB 4053 to increase the statutory allocation to legal aid that goes to the LSP. ▪ Staff is the liaison to the Task Force on Legal Aid Funding the purpose of which is to set goals to achieve minimally adequate funding for legal aid. ▪ The LRAP Advisory Committee is forwarding policy revisions to the BOG for approval in February. ▪ Staff continue to work with the American Bar Association to coordinate the Equal Justice Conference which takes place in Portland the beginning of May. ▪ The OLF continues to work with banks to try to achieve the maximum return on IOLTA accounts as possible.
<ul style="list-style-type: none"> ▪ Media Relations (Kateri Walsh) 	<ul style="list-style-type: none"> ▪ Report will be posted later.
<ul style="list-style-type: none"> ▪ Member Services (Dani Edwards) 	<ul style="list-style-type: none"> ▪ Recruiting for the OSB and ABA House of Delegates election has begun, the deadline for candidates to file is March 21. More than 40 seats are open for election this year with vacancies in each bar region. Candidate forms and more information is available at https://www.osbar.org/leadership/hod. ▪ On January 1 nearly 400 members began a new term volunteering on one of the bar’s 19 committees or 42 section executive committees. ▪ The department has held two webinar sessions providing training to new section treasurers. Future webinars are being considered to cover topics such as ▪ CLE seminar planning, providing services to the section membership, increasing membership, and executive committee member recruitment and elections.
<ul style="list-style-type: none"> ▪ New Lawyer Mentoring (Kateri Walsh) 	<ul style="list-style-type: none"> ▪ Report will be posted later.
<ul style="list-style-type: none"> ▪ Public Affairs (Susan Grabe) 	<ul style="list-style-type: none"> ▪ <i>Summary.</i> The February 2014 Session began with a flurry of activity during organizational days in January. Public Affairs has focused on the bar’s legislative priorities adopted in January as well as affirmative legislation on Chief Justice Authority to set fees for eCourt and an increase in the statutory allocation for legal aid. ▪ <i>OSB Legislative Reception.</i> Public Affairs Department has worked closely with Executive Services to assist with planning the legislative reception in Salem to be held in conjunction with the February board meeting. ▪ <i>2014 Session.</i> The Public Affairs staff is continually monitoring all bills

	<p>introduced during the legislative session, and referring to sections any bills of interest. Sections are encouraged to work with the Public Affairs staff to monitor and respond to ongoing legislation, and to become involved in the legislative process when appropriate. Bar groups are more engaged in the February session than originally anticipated actively opposing or supporting legislation.</p> <ul style="list-style-type: none"> ▪ <i>2014 Legislative Task Forces.</i> Public Affairs is staffing a number of work groups requested by the legislature. These workgroups will address the policy issues related to use of alternate jurors in criminal cases, withdrawal of attorneys, motions to disqualify a judge in rural counties and eCourt filing fees. Other ongoing task forces include the juvenile dependency and delinquency workgroup on best practices. The recommendations from these taskforces will likely take the form of legislative proposals for 2015. ▪ <i>2015 Law Improvement Package.</i> The Public Affairs staff is meeting with different bar groups to educate them about the bar’s process for proposing legislation for the 2015 legislative session. 2015 Legislative Proposals are due to the Public Affairs Committee on April 4, 2014. A Legislative forum will be held on April 17, 2014 from 1 – 4 pm to discuss the 2015 Legislative proposals. ▪ <i>Liaison activities.</i> The PAD continues to monitor and liaison with external stakeholder groups such as the Council on Court Procedures, the various Oregon Law Commission workgroups including judicial selection and Probate Modernization, as well as the OSB/OJD eCourt Task Force.
<ul style="list-style-type: none"> ▪ Regulatory Services (John Gleason) 	<ul style="list-style-type: none"> ▪ Oral report will be presented at BOG meeting.

Executive Director’s Activities November 25, 2013 – February 21, 2014

Date	Event
12/3/13	Supreme Court Public Meeting on RPC 8.4 amendments
12/5/13	OSB Awards Luncheon
12/6/13	PLF Board Meeting & Dinner
12/10-13/13	Vacation !!!
12/17/13	Campaign for Equal Justice Reception
12/18/13	ED’s Breakfast Group
12/19/13	Innovation Work Group Meeting
12/31/13	Race, Myths & Reality CLE
1/10/14	BOG Committees and Special Meeting
1/10/14	BOG/MBA Leadership Reception
1/11/14	Client Security Fund Meeting
1/15/14	ED’s Breakfast Group
1/17/14	Meeting with Chief Justice re: Regulatory Counsel departure
1/18/14	BOG Strategic Planning Session
1/19/14	Skanner Foundation MLK Breakfast
1/20/14	CEJ Board Meeting
1/23/14	OMLA Recognition Reception

1/24/14	Legal Technicians Task Force Meeting
1/28/14	Meeting with Disciplinary Board Chair-Elect
1/29/14	Law Firm Lunch@Stoll Berne
1/29/14	Oregon Paralegal Association Forum on Licensing Legal Technicians
1/30/14	Markewitz Herbold Open House
2/3/14	Law Firm Lunch@Kell Alterman
2/4-8/14	Nat’l. Assoc. of Bar Executives & Nat’l. Conference of Bar Presidents Meetings
2/11/14	Law Firm Lunch@Perkins Coie
2/12/14	Partners in Diversity “Say Hey” Reception
2/13/14	OWLs Networking Event
2/14/14	Meeting with the Chief Justice & Supreme Court 100 th Anniversary Event
2/19/14	CEJ Awards Luncheon
2/20-21/14	Lunch w/Courts, BOG Committees, Local Bar Reception, BOG Meeting
2/21/14	Oregon Hispanic Bar Association Awards Dinner

II. PRIMARY PROGRAM CLAIMS HANDLING OVERVIEW

(through November 2013)

	2010	2011	2012	2013
INDEMNITY PAID	\$ 8,806,003	\$ 8,021,342	\$ 9,270,238	\$ 8,660,620
Fees other than Repair	\$ 7,018,698	\$ 8,179,751	\$ 8,011,699	\$ 7,227,991
Repair Fees	\$ 883,270	\$ 1,000,757	\$ 967,121	\$ 711,905
Other Expenses	\$ 1,043,529	\$ 1,375,756	\$ 1,075,715	\$ 1,017,013
TOTAL EXPENSE	\$ 8,945,497	\$ 10,556,264	\$ 10,054,535	\$ 8,956,909
TOTAL INDEMNITY & EXP	\$ 17,751,500	\$ 18,577,605	\$ 19,324,773	\$ 17,617,529

NOTE: This report does not reflect contributions or recoveries from other parties.

CLAIMS HANDLING BY YEAR

	2005	2006	2007	2008	2009	2010	2011	2012
Beginning	836	773	741	729	866	923	867	819
Opened	846	783	778	904	976	938	916	1032
Reopened	54	56	40	48	61	58	69	50
Closed	963	871	830	815	980	1052	1033	935
Pending	773	741	729	866	923	867	819	966

CLAIMS IN CURRENT YEAR

	JAN	FEB	MAR	APR	MAY	JUNE
Beginning	966	951	997	977	978	993
Opened	70	94	92	78	82	58
Reopened	13	4	6	7	6	1
Closed	98	52	118	84	73	163
Pending	951	997	977	978	993	889

	JULY	AUG	SEPT	OCT	NOV	DEC
Beginning	889	901	932	927	944	
Opened	80	71	71	84	73	
Reopened	6	7	8	10	4	
Closed	74	75	84	77	117	
Pending	901	904	927	944	904	0

CLAIMS REPORTED EACH YEAR

YEAR	CLAIMS
2000	798
2001	775
2002	816
2003	815
2004	923
2005	842
2006	780
2007	781
2008	901
2009	973

YEAR	CLAIMS
2010	938
2011	916
2012	1032
2013	853

ANNUALIZED	
2013	931

**Oregon State Bar
Professional Liability Fund
Financial Statements
11/30/2013**

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**Oregon State Bar
Professional Liability Fund
Combined Primary and Excess Programs
Balance Sheet
11/30/2013**

<u>ASSETS</u>		
	<u>THIS YEAR</u>	<u>LAST YEAR</u>
Cash	\$729,891.95	\$433,847.26
Investments at Fair Value	41,828,998.80	38,216,788.57
Assessment Installment Receivable	(1.00)	0.00
Due from Reinsurers	474,190.24	40,749.68
Other Current Assets	117,950.87	128,081.13
Net Fixed Assets	869,807.47	961,960.56
Claim Receivables	36,464.00	61,097.60
Other Long Term Assets	<u>10,142.22</u>	<u>9,825.00</u>
TOTAL ASSETS	<u>\$44,067,444.55</u>	<u>\$39,852,349.80</u>
 <u>LIABILITIES AND FUND EQUITY</u>		
	<u>THIS YEAR</u>	<u>LAST YEAR</u>
Liabilities:		
Accounts Payable and Other Current Liabilities	\$138,100.60	\$86,996.03
Due to Reinsurers	\$10,706.07	\$8,279.04
Deposits - Assessments	648,719.00	541,346.00
Liability for Compensated Absences	445,620.51	430,305.28
Liability for Indemnity	13,268,984.18	13,735,605.65
Liability for Claim Expense	13,727,984.22	13,999,009.19
Liability for Future ERC Claims	2,700,000.00	2,700,000.00
Liability for Suspense Files	1,400,000.00	1,400,000.00
Liability for Future Claims Administration (AOE)	2,400,000.00	2,300,000.00
Excess Ceding Commission Allocated for Rest of Year	62,056.86	60,863.71
Assessment and Installment Service Charge Allocated for Rest of Year	<u>2,117,836.65</u>	<u>2,098,356.81</u>
Total Liabilities	<u>\$36,920,008.09</u>	<u>\$37,360,761.71</u>
Fund Equity:		
Retained Earnings (Deficit) Beginning of the Year	\$4,047,255.11	(\$781,169.42)
Year to Date Net Income (Loss)	<u>3,100,181.35</u>	<u>3,272,757.51</u>
Total Fund Equity	<u>\$7,147,436.46</u>	<u>\$2,491,588.09</u>
TOTAL LIABILITIES AND FUND EQUITY	<u>\$44,067,444.55</u>	<u>\$39,852,349.80</u>

**Oregon State Bar
Professional Liability Fund
Primary Program
Income Statement
11 Months Ended 11/30/2013**

	YEAR TO DATE <u>ACTUAL</u>	YEAR TO DATE <u>BUDGET</u>	<u>VARIANCE</u>	YEAR TO DATE <u>LAST YEAR</u>	<u>ANNUAL BUDGET</u>
<u>REVENUE</u>					
Assessments	\$22,938,027.52	\$22,961,583.37	\$23,555.85	\$22,720,179.78	\$25,049,000.00
Installment Service Charge	358,505.58	357,500.00	(1,005.58)	361,745.08	390,000.00
Other Income	47,448.28	0.00	(47,448.28)	59,968.17	0.00
Investment Return	<u>3,889,667.79</u>	<u>2,257,587.75</u>	<u>(1,632,080.04)</u>	<u>3,728,848.53</u>	<u>2,462,823.00</u>
TOTAL REVENUE	<u>\$27,233,649.17</u>	<u>\$25,576,671.12</u>	<u>(\$1,656,978.05)</u>	<u>\$26,870,741.56</u>	<u>\$27,901,823.00</u>
<u>EXPENSE</u>					
Provision For Claims:					
New Claims at Average Cost	\$17,249,500.00			\$19,140,000.00	
Actuarial Adjustment to Reserves	664,997.05			(1,288,663.47)	
Coverage Opinions	131,159.21			122,522.26	
General Expense	81,692.09			40,493.51	
Less Recoveries & Contributions	16,962.32			(153,924.50)	
Budget for Claims Expense		<u>\$18,998,760.00</u>			<u>\$20,725,920.00</u>
Total Provision For Claims	<u>\$18,144,310.67</u>	<u>\$18,998,760.00</u>	<u>\$854,449.33</u>	<u>\$17,860,427.80</u>	<u>\$20,725,920.00</u>
Expense from Operations:					
Administrative Department	\$2,038,718.62	\$2,092,934.25	\$54,215.63	\$2,011,715.71	\$2,283,201.00
Accounting Department	745,623.36	720,704.49	(24,918.87)	682,239.18	786,223.00
Loss Prevention Department	1,664,918.38	1,744,388.47	79,470.09	1,651,597.76	1,902,969.00
Claims Department	2,329,166.95	2,458,421.24	129,254.29	2,185,315.07	2,681,914.00
Allocated to Excess Program	<u>(1,013,012.00)</u>	<u>(1,013,012.00)</u>	<u>0.00</u>	<u>(1,008,173.76)</u>	<u>(1,105,104.00)</u>
Total Expense from Operations	<u>\$5,765,415.31</u>	<u>\$6,003,436.45</u>	<u>\$238,021.14</u>	<u>\$5,522,693.96</u>	<u>\$6,549,203.00</u>
Contingency (4% of Operating Exp)	\$0.00	\$280,657.63	\$280,657.63	\$48,693.21	\$306,172.00
Depreciation and Amortization	\$152,808.94	\$190,666.63	\$37,857.69	\$160,527.31	\$208,000.00
Allocated Depreciation	<u>(27,551.37)</u>	<u>(27,551.37)</u>	<u>0.00</u>	<u>(32,996.37)</u>	<u>(30,056.00)</u>
TOTAL EXPENSE	<u>\$24,034,983.55</u>	<u>\$25,445,969.34</u>	<u>\$1,410,985.79</u>	<u>\$23,559,345.91</u>	<u>\$27,759,239.00</u>
NET INCOME (LOSS)	<u>\$3,198,665.62</u>	<u>\$130,701.78</u>	<u>(\$3,067,963.84)</u>	<u>\$3,311,395.65</u>	<u>\$142,584.00</u>

**Oregon State Bar
Professional Liability Fund
Primary Program
Statement of Operating Expense
11 Months Ended 11/30/2013**

<u>EXPENSE:</u>	<u>CURRENT</u>	<u>YEAR</u>	<u>YEAR</u>	<u>VARIANCE</u>	<u>YEAR</u>	<u>ANNUAL</u>
	<u>MONTH</u>	<u>TO DATE</u>	<u>TO DATE</u>		<u>TO DATE</u>	<u>BUDGET</u>
		<u>ACTUAL</u>	<u>BUDGET</u>		<u>LAST YEAR</u>	<u>BUDGET</u>
Salaries	\$408,675.72	\$3,809,328.24	\$3,802,493.75	(\$6,834.49)	\$3,634,804.37	\$4,148,175.00
Benefits and Payroll Taxes	129,615.78	1,344,144.57	1,444,852.09	100,707.52	1,284,992.92	1,576,202.00
Investment Services	0.00	20,898.75	25,666.63	4,767.88	20,682.00	28,000.00
Legal Services	5,542.50	11,434.00	14,666.63	3,232.63	10,684.50	16,000.00
Financial Audit Services	0.00	22,600.00	20,716.63	(1,883.37)	21,700.00	22,600.00
Actuarial Services	0.00	19,731.25	17,416.63	(2,314.62)	18,900.00	19,000.00
Claims MMSEA Services	0.00	0.00	0.00	0.00	3,850.00	0.00
Information Services	7,723.25	133,848.79	88,000.00	(45,848.79)	78,138.04	96,000.00
Document Scanning Services	13,662.18	43,880.68	68,750.00	24,869.32	50,429.16	75,000.00
Other Professional Services	4,154.68	52,294.11	52,616.74	322.63	45,299.52	57,400.00
Staff Travel	1,609.10	15,429.06	11,412.50	(4,016.56)	15,074.74	12,450.00
Board Travel	1,993.03	25,316.61	35,749.89	10,433.28	28,386.45	39,000.00
NABRICO	0.00	10,958.51	9,625.00	(1,333.51)	9,790.28	10,500.00
Training	807.46	18,603.80	22,458.37	3,854.57	18,595.27	24,500.00
Rent	42,145.08	478,992.43	477,345.88	(1,646.55)	470,260.04	520,741.00
Printing and Supplies	8,909.11	51,511.30	72,416.74	20,905.44	54,170.23	79,000.00
Postage and Delivery	3,475.00	26,757.90	33,687.50	6,929.60	31,065.42	36,750.00
Equipment Rent & Maintenance	2,389.28	39,433.32	33,183.26	(6,250.06)	34,530.71	36,200.00
Telephone	4,547.86	43,794.68	39,416.63	(4,378.05)	32,707.31	43,000.00
L P Programs (less Salary & Benefits)	65,558.14	317,528.46	397,430.22	79,901.76	337,117.48	433,560.00
Defense Panel Training	501.27	9,969.91	21,175.11	11,205.20	0.00	23,100.00
Bar Books Grant	16,666.67	183,333.37	183,333.37	0.00	183,333.37	200,000.00
Insurance	0.00	38,878.00	82,618.25	43,740.25	89,642.00	90,129.00
Library	2,285.42	27,210.49	30,250.00	3,039.51	26,158.27	33,000.00
Subscriptions, Memberships & Other	2,243.98	32,549.08	31,166.63	(1,382.45)	30,555.64	34,000.00
Allocated to Excess Program	<u>(92,092.00)</u>	<u>(1,013,012.00)</u>	<u>(1,013,012.00)</u>	<u>0.00</u>	<u>(1,008,173.76)</u>	<u>(1,105,104.00)</u>
TOTAL EXPENSE	<u>\$630,413.51</u>	<u>\$5,765,415.31</u>	<u>\$6,003,436.45</u>	<u>\$238,021.14</u>	<u>\$5,522,693.96</u>	<u>\$6,549,203.00</u>

**Oregon State Bar
Professional Liability Fund
Excess Program
Income Statement
11 Months Ended 11/30/2013**

	<u>YEAR TO DATE ACTUAL</u>	<u>YEAR TO DATE BUDGET</u>	<u>VARIANCE</u>	<u>YEAR TO DATE LAST YEAR</u>	<u>ANNUAL BUDGET</u>
<u>REVENUE</u>					
Ceding Commission	\$682,625.51	\$684,520.87	\$1,895.36	\$669,500.87	\$746,750.00
Prior Year Adj. (Net of Reins.)	3,371.55	1,375.00	(1,996.55)	1,369.88	1,500.00
Installment Service Charge	41,433.00	34,833.37	(6,599.63)	37,180.00	38,000.00
Investment Return	<u>313,501.31</u>	<u>169,926.13</u>	<u>(143,575.18)</u>	<u>391,245.64</u>	<u>185,374.00</u>
TOTAL REVENUE	<u>\$1,040,931.37</u>	<u>\$890,655.37</u>	<u>(\$150,276.00)</u>	<u>\$1,099,296.39</u>	<u>\$971,624.00</u>
<u>EXPENSE</u>					
Operating Expenses (See Page 6)	\$1,111,864.27	\$1,120,679.34	\$8,815.07	\$1,104,938.16	\$1,222,559.00
Allocated Depreciation	<u>\$27,551.37</u>	<u>\$27,551.37</u>	<u>\$0.00</u>	<u>\$32,996.37</u>	<u>\$30,056.00</u>
NET INCOME (LOSS)	<u>(\$98,484.27)</u>	<u>(\$257,575.34)</u>	<u>(\$159,091.07)</u>	<u>(\$38,638.14)</u>	<u>(\$280,991.00)</u>

**Oregon State Bar
Professional Liability Fund
Excess Program
Statement of Operating Expense
11 Months Ended 11/30/2013**

	<u>CURRENT</u> <u>MONTH</u>	<u>YEAR</u> <u>TO DATE</u> <u>ACTUAL</u>	<u>YEAR</u> <u>TO DATE</u> <u>BUDGET</u>	<u>VARIANCE</u>	<u>YEAR</u> <u>TO DATE</u> <u>LAST YEAR</u>	<u>ANNUAL</u> <u>BUDGET</u>
<u>EXPENSE:</u>						
Salaries	\$56,227.34	\$616,236.44	\$613,849.50	(\$2,386.94)	\$619,133.32	\$669,654.00
Benefits and Payroll Taxes	20,931.31	230,064.99	232,403.49	2,338.50	218,910.02	253,531.00
Investment Services	0.00	1,601.25	2,750.00	1,148.75	1,818.00	3,000.00
Office Expense	0.00	0.00	0.00	0.00	0.00	0.00
Allocation of Primary Overhead	23,239.50	255,634.50	255,634.50	0.00	252,665.38	278,874.00
Reinsurance Placement & Travel	0.00	369.49	4,583.37	4,213.88	3,933.47	5,000.00
Training	0.00	0.00	458.37	458.37	0.00	500.00
Printing and Mailing	3,943.08	4,035.46	4,583.37	547.91	1,568.26	5,000.00
Program Promotion	0.00	3,922.14	4,583.37	661.23	5,564.71	5,000.00
Other Professional Services	0.00	0.00	1,833.37	1,833.37	1,345.00	2,000.00
Software Development	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>
TOTAL EXPENSE	<u>\$104,341.23</u>	<u>\$1,111,864.27</u>	<u>\$1,120,679.34</u>	<u>\$8,815.07</u>	<u>\$1,104,938.16</u>	<u>\$1,222,559.00</u>

**Oregon State Bar
Professional Liability Fund
Combined Investment Schedule
11 Months Ended 11/30/2013**

	CURRENT MONTH <u>THIS YEAR</u>	YEAR TO DATE <u>THIS YEAR</u>	CURRENT MONTH <u>LAST YEAR</u>	YEAR TO DATE <u>LAST YEAR</u>
Dividends and Interest:				
Short Term Bond Fund	\$492.22	\$130,649.59	\$2,563.14	\$184,235.72
Intermediate Term Bond Funds	8,100.72	179,479.03	19,074.36	228,290.22
Domestic Common Stock Funds	0.00	240,474.52	0.00	27,094.64
International Equity Fund	0.00	0.00	0.00	0.00
Real Estate	0.00	137,305.09	0.00	137,625.61
Hedge Fund of Funds	0.00	0.00	0.00	0.00
Real Return Strategy	<u>0.00</u>	<u>113,683.36</u>	<u>0.00</u>	<u>101,407.99</u>
Total Dividends and Interest	<u>\$8,592.94</u>	<u>\$801,591.59</u>	<u>\$21,637.50</u>	<u>\$678,654.18</u>
Gain (Loss) in Fair Value:				
Short Term Bond Fund	\$1,961.12	(\$130,976.54)	\$994.72	\$299,137.54
Intermediate Term Bond Funds	(24,263.09)	(263,347.75)	19,172.41	519,845.35
Domestic Common Stock Funds	228,335.16	1,936,050.76	54,364.27	780,781.04
International Equity Fund	148,135.03	1,570,853.09	163,638.57	1,015,274.96
Real Estate	0.00	266,869.89	0.00	124,187.08
Hedge Fund of Funds	0.00	296,132.24	47,762.04	241,319.13
Real Return Strategy	<u>(58,576.20)</u>	<u>(274,004.18)</u>	<u>41,913.55</u>	<u>460,894.89</u>
Total Gain (Loss) in Fair Value	<u>\$295,592.02</u>	<u>\$3,401,577.51</u>	<u>\$327,845.56</u>	<u>\$3,441,439.99</u>
TOTAL RETURN	<u>\$304,184.96</u>	<u>\$4,203,169.10</u>	<u>\$349,483.06</u>	<u>\$4,120,094.17</u>
Portions Allocated to Excess Program:				
Dividends and Interest	\$446.83	\$60,825.13	\$1,386.96	\$59,874.39
Gain (Loss) in Fair Value	<u>15,370.79</u>	<u>252,676.18</u>	<u>21,014.90</u>	<u>331,371.25</u>
TOTAL ALLOCATED TO EXCESS PROGRAM	<u>\$15,817.62</u>	<u>\$313,501.31</u>	<u>\$22,401.86</u>	<u>\$391,245.64</u>

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: February 21, 2014
From: MCLE Committee
Re: Proposed amendments to various MCLE Rules and Regulations

Issue

House Bill 2205 was passed during the 2013 Legislative Session. Among other changes, Section 5 of HB 2205 amends ORS 124.050 to add lawyers to the list of mandatory reports for elder abuse, and Section 7 amends the mandatory child abuse reporting training requirement set forth in ORS 9.114. Specifically, Section 7 removes the details of the training requirement from the statute but requires the Oregon State Bar to "...adopt rules to establish minimum training requirements for all active members of the bar relating to the duties of attorneys under ORS 124.060 and 419B.010."

The amendments become operative on January 1, 2015.

Options

At its meetings on September 13 and December 13, 2013, the MCLE Committee reviewed and discussed various options for amendments to the MCLE rules and regulations relating to the duties of attorneys to report child abuse and elder abuse, including:

- 1) How long should the training be – 30 minutes; 60 minutes; other?
- 2) How often should lawyers be required to attend the training -- one hour per reporting period; one-half hour per reporting period; one hour in alternate reporting periods; only once?
- 3) Should the training combine the child and elder abuse reporting requirements or deal with them separately?
- 4) Requirements for new admittees

Discussion

The purpose of the statutory amendment was to return to the Supreme Court the authority to set minimum training requirements for attorneys. Therefore, during its discussions about possible amendments to the MCLE rules and regulations relating to the duties of attorneys to report child abuse and elder abuse, the MCLE Committee was aware that it had considerable room for discretion in crafting a new rule. At the same time the Committee was mindful of the importance of lawyers understanding their mandatory reporting requirements and the possible consequences of gutting the training requirement entirely.

The Committee had a lengthy discussion about how much training is “enough”. Some OSB members opined that one training should be enough. The Committee considered this option, but ultimately rejected it for several reasons. First, there was concern that the Supreme Court might not approve a rule amendment that so drastically reduced the training requirement. Second, the MCLE Committee was concerned that such a significant change may give the appearance that lawyers don’t care about child and elder abuse, which may result in potential backlash from the legislature and/or members of the public. Third, members of the MCLE Committee firmly believe that regular training better serves the purpose of the child and elder abuse reporting laws by ensuring that members are reminded of and understand the contours of their mandatory reporting requirements.

Committee members discussed combining the elder abuse and child abuse reporting requirements into one one-hour program, which would be required in the same three-year reporting periods in which access to justice credits are required. The concern with this approach was that, although the reporting obligations and exceptions to reporting are the same for both, what constitutes abuse is different. Child abuse and elder abuse present differently and elder abuse can be more difficult to identify. The Committee considered bar members’ concerns about having to complete two separate requirements and the confusion over which credit would be due in what reporting period, and ultimately determined that it is more important to keep the two requirements separate. The Committee also considered reducing the amount of time for the training, but determined that the topic could not be covered adequately in any time less than an hour.

The Committee also discussed whether the two separate credits should be required in each reporting period. This would further dilute the ethics credit requirement, which has already been diluted by including the child abuse reporting credit as one of the six ethics credits. The Committee was also concerned about requiring lawyers to complete two hours of **mandatory** credit requirements in each reporting period. Therefore, the Committee decided to alternate the two reporting requirements every other reporting cycle.

Finally, the Committee considered whether new admittees should be required to complete the child abuse reporting and elder abuse reporting credits in the first reporting period. This could mean that new admittees would have no ethics credit requirement in the first reporting period. After discussion, it was decided that the new admittees should have a requirement of two ethics credits and no initial child or elder abuse reporting requirement. The proposed amendments would require new admittees to complete child abuse reporting and elder abuse reporting credits in the applicable three year reporting periods set forth in Regulation 3.300(d).

Because new admittees will not have a child abuse or elder abuse reporting requirement in the first reporting period after admission, the Committee agreed that information about these reporting requirements should be included in the new admittee packet and be part of the New Lawyer Mentoring Program curriculum.

Ultimately, the Committee unanimously recommended amending the MCLE Rules and Regulations as follows:

Proposed Rule Amendments Recommended by the MCLE Committee

Rule 3.2 (b) Ethics. At least six of the required hours shall be in subjects relating to ethics in programs accredited pursuant to Rule 5.5(a), including one hour on the subject of a lawyer's statutory duty to report child abuse ~~(see ORS 9.114)~~ or one hour on the subject of a lawyer's statutory duty to report elder abuse (see ORS 9.114). MCLE Regulation 3.300(d) specifies the reporting periods in which the child abuse or elder abuse reporting credit is required.

Rule 3.2(c) Access to Justice. In alternate reporting periods, at least three of the required hours must be in programs accredited for access to justice pursuant to Rule 5.5(b). ~~For purposes of this rule, the first reporting period that may be skipped will be the one ending on December 31, 2009.~~¹

3.3 Reinstatements, Resumption of Practice After Retirement and New Admittees.

(a) An active member whose reporting period is established in Rule 3.7(c)(2) or (d)(2) shall complete 15 credit hours of accredited CLE activity in the first reporting period after reinstatement or resumption of the practice of law in accordance with Rule 3.4. Two of the 15 credit hours shall be devoted to ethics ~~(including one in child abuse reporting).~~

(b) New admittees shall complete 15 credit hours of accredited CLE activity in the first reporting period after admission as an active member, including two credit hours in ethics ~~(including one in child abuse reporting),~~ and ten credit hours in practical skills. ~~New admittees admitted prior to December 31, 2008 must also complete one access to justice credit in their first reporting period.~~ New admittees admitted on or after January 1, 2009² must also complete a three credit hour OSB-approved introductory course in access to justice. The MCLE Administrator may waive the practical skills requirement for a new admittee who has practiced law in another jurisdiction for three consecutive years immediately prior to the member's admission in Oregon, in which event the new admittee must complete ten hours in other areas. After a new admittee's first reporting period, the requirements in Rule 3.2(a) shall apply.

3.5 Out-of-State Compliance.

(a) Reciprocity Jurisdictions. An active member whose principal office for the practice of law is not in the State of Oregon but is in a jurisdiction with which Oregon has established MCLE reciprocity may comply with these rules by filing a

¹ Reference to past date is being deleted for housekeeping purposes.

² References to past dates are being deleted for housekeeping purposes.

compliance report as required by MCLE Rule 7.1 accompanied by evidence that the member is in compliance with the requirements of the other jurisdiction and has completed the child abuse or elder abuse reporting credit required in ORS 9.114.). MCLE Regulation 3.300(d) specifies the reporting periods in which the child abuse or elder abuse reporting credit is required.

5.5 Ethics and Access to Justice.

(a) In order to be accredited as an activity in legal ethics under Rule 3.2(b), an activity shall be devoted to the study of judicial or legal ethics or professionalism, and shall include discussion of applicable judicial conduct codes, disciplinary rules, or statements of professionalism. Of the six hours of ethics credit required by Rule 3.2(b), one hour must be on the subject of a lawyer's statutory duty to report child abuse or elder abuse (see ORS 9.114). The child abuse reporting training requirement can be completed only by one hour of training by participation in or screening of an accredited program. MCLE Regulation 3.300(d) specifies the reporting periods in which the child abuse or elder abuse reporting credit is required.

Proposed Regulation Amendments

3.260 Reciprocity. An active member whose principal office for the practice of law is in Idaho, Utah or Washington may comply with Rule 3.5(a) by attaching to the compliance report required by MCLE Rule 7.1 a copy of the member's certificate of compliance with the MCLE requirements of the state in which the member's principal office is located, together with evidence that the member has completed the child abuse or elder abuse reporting training required in ORS 9.114. No other information about program attendance is required. MCLE Regulation 3.300(d) specifies the reporting periods in which the child abuse or elder abuse reporting credit is required.

3.300(d) Members in a three-year reporting period are required to have 3.0 access to justice credits and 1.0 child abuse reporting credit in reporting periods ending 12/31/2012 through 12/31/2014, 12/31/2018 through 12/31/2020 and in alternate three-year periods thereafter. ~~Access to Justice credits earned in a non-required reporting period will be credited as general credits.~~ Members in a three-year reporting period ending 12/31/2015 through 12/31/2017, 12/31/2021 through 12/31/2023 and in alternate three-year periods thereafter are required to have 1.0 elder abuse reporting credit. Access to Justice, child abuse reporting and elder abuse reporting credits earned in a non-required reporting period will be credited as general credits.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: February 21, 2014
From: MCLE Committee
Re: Proposed amendments to MCLE Rule 3.5(a) and Regulation 3.260.

Issue

An Oregon State Bar member whose principal office for the practice of law is in Washington, Idaho or Utah, may satisfy the Oregon MCLE requirements by completing the child abuse reporting credit and providing a Comity Certificate of MCLE Compliance from the Washington, Idaho or Utah State Bar. (MCLE Rule 3.5(a) and Regulation 3.260).

MCLE Rule 3.5 Out-of-State Compliance.

(a) Reciprocity Jurisdictions. An active member whose principal office for the practice of law is not in the State of Oregon but is in a jurisdiction with which Oregon has established MCLE reciprocity may comply with these rules by filing a compliance report as required by MCLE Rule 7.1 accompanied by evidence that the member is in compliance with the requirements of the other jurisdiction and has completed the child abuse reporting credit required in ORS 9.114.

MCLE Regulation 3.260 Reciprocity. An active member whose principal office for the practice of law is in Idaho, Utah or Washington may comply with Rule 3.5(a) by attaching to the compliance report required by MCLE Rule 7.1 a copy of the member's certificate of compliance with the MCLE requirements of the state in which the member's principal office is located, together with evidence that the member has completed the child abuse reporting training required in ORS 9.114. No other information about program attendance is required.

The MCLE Committee recently reviewed a request from an Oregon lawyer who is also licensed in Washington and Montana, and whose principal office for the practice of law is in Montana. The lawyer complied with Washington's MCLE requirements. Because his principal office for the practice of law is in Montana rather than Washington, however, he was not permitted to satisfy Oregon's MCLE requirements with a Comity Certificate of Compliance from Washington pursuant to MCLE Rule 3.5. Instead, the rules required him to file a compliance report showing that he completed Oregon's minimum CLE credit requirements for the current reporting period. As a result, the member asked the Committee to consider amending MCLE Rule 3.5 and the accompanying regulations.

Options

At its meeting on December 13, 2013, the Committee discussed three options pursuant to the member's request:

- 1) Make no change to the current rules and regulations.
- 2) Amend the rules and regulations as specifically requested by the member (i.e., delete the reference to principal office location for OSB members who are also members in Washington, Idaho or Utah).

- 3) Expand MCLE reciprocity to cover all out-of-state members of the Oregon State Bar who are also active members in any of the qualifying jurisdictions in RFA 15.05(2), not just those who are active members in Washington, Idaho or Utah.

Discussion

Option 2 slightly expands the current Comity Agreement the Oregon State Bar has with the Washington, Idaho and Utah state bars, which was approved in 1996 after several months of study. The Comity Agreement states that the MCLE rules and regulations of the four northwest states – Oregon, Washington, Idaho and Utah – would be recognized as essentially equivalent to those of each of the other states. This option would allow OSB members to satisfy their Oregon MCLE requirements with a Certificate of MCLE Compliance from Washington, Idaho or Utah regardless of where their principal office is located. Provided the CLE requirements of Washington, Idaho or Utah have been met, the OSB member may submit a Certificate of Compliance from one of these three states (and show completion of the child abuse reporting credit) in lieu of providing a compliance report listing all credits completed during the reporting period.

Option 3 allows any OSB member who is also an active member of any of the qualifying jurisdictions set forth in Rules for Admission 15.05(2)¹ to comply with Oregon’s requirements by providing a Certificate of MCLE Compliance from the qualify jurisdiction and completing the child abuse reporting credit. No other information about credits completed would be required.

Before making a recommendation, MCLE Committee members requested information about the MCLE requirements in the 38 qualifying jurisdictions referenced in RFA 15.05(2). (Note that Montana is not listed as one of the 38 qualifying jurisdictions.) After reviewing the MCLE requirements in the other jurisdictions, members decided not to recommend such broad MCLE reciprocity because many jurisdictions, including Kansas, Indiana, and Louisiana, require only 12 credits per year, which is substantially less than Oregon’s average of 15 credits per year. Also, Oregon does not have the same close relationship with the other states as it does with the four northwest states. The MCLE Administrators in the four northwest states work closely together to maintain the integrity of the agreement.

The Committee did feel a change was warranted because deleting the principal office requirement makes the compliance process less burdensome for members admitted to more than one northwest state. This change mirrors the Washington State Bar procedure, which does

¹ 15.05 *Admission of Attorneys Licensed to Practice Law in other Jurisdictions*

- (1) Attorneys who have taken and passed the bar examination in another qualifying jurisdiction, who are active members of the bar in that qualifying jurisdiction, and who have lawfully engaged in the active, substantial and continuous practice of law for no less than five of the seven years immediately preceding their application for admission under this rule may be admitted to the practice of law in Oregon without having to take and pass the Oregon bar examination, subject to the requirements of this rule.
- (2) For purposes of this rule, a “qualifying jurisdiction” means any other United States jurisdiction which allows attorneys licensed in Oregon to become regular members of the bar in that jurisdiction without passage of that jurisdiction’s bar examination.

The qualifying jurisdictions are: Alabama, Alaska, Arizona, Arkansas, Colorado, Connecticut, District of Columbia, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin and Wyoming

not require that a member have a principal office in Oregon, Idaho or Utah in order to comply with Washington's MCLE requirements with a Comity Certificate from one of those states. Therefore, the Committee recommends Option 2 -- amending Rule 3.50 and Regulation 3.260 as set forth below. These amendments will allow members to comply with Oregon's MCLE requirements by completing the child abuse reporting credit and providing a Comity Certificate of Compliance from Washington, Idaho or Utah, even though their principal office is not in one of those states.

MCLE Rule 3.5 Out-of-State Compliance.

(a) Reciprocity Jurisdictions. An active member whose principal office for the practice of law is not in the State of Oregon ~~but~~ and who is an active member in a jurisdiction with which Oregon has established MCLE reciprocity may comply with these rules by filing a compliance report as required by MCLE Rule 7.1 accompanied by evidence that the member is in compliance with the requirements of the other jurisdiction and has completed the child abuse reporting credit required in ORS 9.114.

MCLE Regulation 3.260 Reciprocity. An active member who is also an active member ~~whose principal office for the practice of law is in a jurisdiction with which Oregon has established MCLE reciprocity~~ (currently Idaho, Utah and Washington) ~~Idaho, Utah or Washington~~ may comply with Rule 3.5(a) by attaching to the compliance report required by MCLE Rule 7.1 a copy of the member's certificate of compliance with the MCLE requirements from that jurisdiction ~~of the state in which the member's principal office is located~~, together with evidence that the member has completed the child abuse reporting training required in ORS 9.114. No other information about program attendance is required.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: February 21, 2014
Memo Date: February 12, 2014
From: Rod Wegener, CFO
Re: Authorization to Open a Line of Credit

Action Recommended

Authorize the OSB Executive Director and CFO to establish a \$500,000 line of credit with a local bank.

Background

At the end of 2012 and 2013, the bar's CFO borrowed funds from the bar's reserves invested with Becker Capital and Washington Trust Bank to cover bar expenses in November and December. The low amount of cash available was due primarily to the excessive amount of Client Security Fund claims paid from July 2012 through the end of 2013. The funds eventually were returned to the reserve portfolios and the total of \$430,000 withdrawn on two occasions in 2013 was returned before December 31.

Although the cash flow issue may not surface again, it was determined that if it did a bank line of credit is a better solution. The matter was presented to the Budget & Finance Committee at its January 10 meeting and the Committee authorized the CFO to research the line with local banks. The Committee suggested banks paying the highest IOLTA rates be contacted.

The CFO contacted four banks – two with which the bar already has a banking relationship and two paying the highest IOLTA rates. The CFO asked each bank for terms on base borrowing rate, add-on rates, set-up and annual fees, length of term, repayment terms, and any other bank requirements.

If temporary funds are needed again, they are not needed until late in the year before member fee payments are made. The matter is before the Budget & Finance Committee now as the issue is recent and to resolve the matter if temporary funds are needed again.

The CFO will share the findings on the research with the four banks with the Budget & Finance Committee which will make a recommendation to the Board of Governors.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: February 21, 2014
Memo Date: February 12, 2014
From: Rod Wegener, CFO
Re: Update on Database Upgrade Project

Action Recommended

Authorize the bar to expend funds from the Capital Reserve to fund the contract of a consultant to aid the bar in the development of the RFP and the analysis and selection of a vendor for the new database.

Background

At the January 10 Budget & Finance Committee meeting, the agenda included the latest information on bar staff ongoing plan for the upgrade of the bar's database. The agenda stated:

At the February meeting, a proposal may be presented to the Committee to provide certain funding for a piece of the project. As indicated in previous reports, the bar's Capital Reserve, which has been \$500,000 and untapped for several years, is the expected source for funding of the project.

In late January, the bar sent a Request for Proposal to three database consulting firms requesting services to review the bar's analysis of its requirements, priorities, and goals; coordinate vendor demonstrations; aid in the development of a RFP to vendors; provide counsel on the demonstrations and vendors; and aid the bar in selection of a vendor. The responses are due February 28.

All three consultants are located in the Washington DC area and have provided such counsel to numerous associations. The bar will perform its due diligence on the three vendors and plan to select the consultant by March 28.

Bylaw 7.302 (b) indicates the purpose of the Capital Reserve:

Capital Reserve Fund: established by policy decisions based on predetermined activities to replace, replenish or preserve capital assets or capital improvements that are purchased or made infrequently, to meet current regulatory requirements or provide enhanced services to the membership. Capital reserve items are capital assets that cost more than \$5,000 or items whose implementation or purchase extend into more than one fiscal year or whose purchase is planned for a future year.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: February 21, 2014
From: Richard Spier, Chair, Governance & Strategic Planning Committee
Re: Composition and Election of BOG Officers

Recommendation

Consider the recommendation of the Committee to amend the OSB Bylaws to (1) eliminate the office of vice-president, and (2) clarify the manner of electing officers.

Discussion

1. Office of Vice-President

Bylaw 2.201 (a) calls for the annual election of the president, the president-elect and two vice-presidents. Originally, board officers were the president, the president-designate (chosen in May to take office in September), a secretary and a treasurer.¹ In mid-1998, the office of president-elect was established and the offices of secretary and treasurer were eliminated as unnecessary in view of the professional staff's handling of those responsibilities. Instead, the lawyer members of the third year class not selected as president-elect automatically became vice-presidents.²

When the change was made in 1998, there were only 16 members of the BOG (12 lawyers and four public members). In each class, then, there were two lawyer members to serve as vice-presidents. With the addition of two lawyer members of the BOG in 2008, the BOG classes now have 3 or 4 lawyer members in alternating years, two or three of whom are eligible to be vice-president.

The GSP Committee recommends eliminating the office of vice-president. Pursuant to OSB Bylaw 2.2, the vice-presidents "perform duties as the Board directs." As a practical matter, the board has never directed the vice-presidents to perform any duties. While it is not stated in the bylaws, the president-elect generally acts in the stead of the president as needed, and the office of vice-president is a title without purpose.

Should the BOG decide to retain the office of vice-president, then the bylaw needs to be revised to accommodate a varying number of vice-presidents.

¹ The treasurer's duties were to "assist the board and its appropriate committees in the preparation of the annual budget..." and "perform such other duties as may be directed by the board." The secretary's duties were "to perform those duties as may be directed by the board." The treasurer was often the chair of the Budget & Finance Committee.

² Bylaw 2.301 prohibits public members from serving as officers.

2. Election of Officers

The language of the bylaw governing election of BOG officers is confusing. One section states that they are “elected each year at the last regularly scheduled board meeting of the calendar year,” while another section provides for unchallenged candidates to be “deemed elected without balloting.”

Since the adoption of the nominating committee for selecting the candidate for President-elect, there has not been a contested election for that office. Because the President-elect is the sole candidate for president, there has not been a contested election for that office as well. Moreover, there is nearly annual confusion about the need to formally “elect” the President-elect or the President.

The committee recommends eliminating the need for a formal election, and recognizing that the president and president-elect are deemed elected.

Proposed Bylaw Amendments

Based on the foregoing, the GSP Committee recommends the following amendments to Bylaws 2.200 and 2.201:

Section 2.2 Officers

Subsection 2.200 Duties

(a) President

The President presides at all meetings of the Board and has the authority to exercise the Board's power between board meetings and to take appropriate action whenever the President finds that a board meeting is not necessary or cannot reasonably be convened. However, the President's action must be consistent with any actions taken or policies previously adopted by the Board or by the membership. The President must report any such action at the next board meeting. The President performs such other duties as the Board directs.

(b) President-Elect

The President-elect performs the duties of the President in the absence, inability or refusal of the President to perform those duties. The President-elect performs other duties as the Board directs.

~~(c) Vice Presidents~~

~~The Vice Presidents perform duties as the Board directs.~~

Subsection 2.201 Election

(a) ~~President and Vice Presidents~~ Time of Election

The President, and President-elect ~~and two Vice Presidents~~ are elected ~~each year~~ at the last regularly scheduled board meeting of the calendar year. The only candidate for President is the President-elect. ~~The other two lawyer members of the third year class are the only candidates for Vice President.~~

(b) President-Elect

Any lawyer member of the second-year class may be a candidate for the office of President-elect by notifying the Executive Director by September 1. Each candidate must submit with said notice a statement outlining the candidate's qualifications, reasons for seeking the position, and vision for the bar. A Nominating Committee, consisting of the fourth-year class and the current President-elect, will interview each candidate and will meet with the remaining board members to discuss their view about each candidate's respective qualifications. The Nominating Committee will announce its candidate for President-elect at least 30 days prior to the last regularly scheduled board meeting of the calendar year. The Nominating Committee's selection will be the sole candidate for President-elect unless at least six members nominate another candidate by written petition delivered to the Executive Director not less than 15 days prior to the last regularly scheduled board meeting of the calendar year.

(c) Voting

~~Election requires voting in person. Voting by proxy is not allowed. If there is only one candidate for an office, the candidate is deemed elected without a formal vote. If there is only one nominee for an office or in the case of the Vice Presidents only two nominees for two positions, the nominee or nominees are deemed elected without balloting. When there is more than one are two nominees for an office, balloting for election will be as follows: Each member present is given a ballot printed with the names of the nominees for the office. If additional nominations have been made that are not on the printed ballot, those names must be written on the ballot. Each member must vote for his/her first choice only. President-elect, the candidate receiving the most votes will be elected. If there are three nominees for President-elect and after the first ballot no candidate one person receives more than 50 percent of the votes on the first vote, the last candidate receiving the fewest votes is eliminated and another ballot is cast vote will be taken. Only board members present at the meeting may vote.~~

Proposed Animal Law Section Bylaw Revisions

~~Standard Animal Law~~ Section Bylaws

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Proposed Animal Law Section Bylaw Revisions

Article I Definition and Purpose

Section 1. Sections provide Bar members who share interests in particular substantive areas of law an opportunity to develop and improve skills and provide a forum for communication and action in matters of common interest.

Section 2. Sections may adopt a statement of purpose.

Section 3. The Section shall not participate in or take a position with respect to the election or appointment of a candidate for any public office.

Article II Membership

Section 1. Any active or inactive member of the Oregon State Bar may be a regular member upon payment of the membership dues. Any active member of another state bar may be an out-of-state member. Sections are encouraged to offer complimentary membership to 50-year members and to judges and their lawyer staff. Nonlawyers may be associate members as provided in Section 2 of this Article. Only regular members may vote and hold office except as otherwise specifically approved by the Section membership and the Board of Governors.

Section 2.

(A) Associate membership shall be available to: (1) employees of an Oregon lawyer or employees of the legal department of a corporation or government entity who are supervised by an Oregon lawyer, (2) law students, and (3) members of related professions.

(B) Out-of-state members as defined in Section 1 and associate members as defined in Section 2(A) are automatically entitled to membership upon payment of section dues unless the Section votes at its annual meeting to “opt out” and not include either out-of-state members or associate members.

(C) Out-of-state members and associate members shall certify their qualifying status upon initial application for membership and annually upon renewing their membership.

(D) Out-of-state or associate membership shall terminate immediately upon the termination of the member’s qualifying status. There shall be no refund of dues in that event.

Section 3. Membership dues shall be set by the membership of the Section at the annual meeting of the Section or by mail or electronic ballot, subject to subsequent approval of the Board of Governors. Membership dues shall not be prorated for any portion of a year. Dues may be waived for new admittees, law students or any other category designated by the Section. Membership dues for members of the Oregon State Bar shall be collected annually by the Bar with Bar membership fees.

Proposed Animal Law Section Bylaw Revisions

Article III Meetings of Section

Section 1. Meetings of the Section (including meetings of the Executive Committee and its committees) are subject to the Public Meetings Law (ORS 192.610 et seq. and 192.630(4)). ORS 192.630(4) requires that meetings of a public body be held within the geographic boundaries of the state. The Section shall notify the Bar at least twenty (20) days in advance of any meeting, or in the case of special meetings as soon as possible.

Section 2. The Section shall hold at least one membership meeting annually for the purpose of conducting Section business, which meeting shall be known as the Section Annual Business Meeting. The Section Annual Business Meeting may be held electronically. Sections shall elect officers and executive committee members by November 15.

Section 3. Special meetings of the Section may be scheduled from time to time by the Section Executive Committee.

Section 4. A quorum is required to conduct Section Business at all meetings of the Section. At Section meetings other than Section Executive Committee meetings, those members voting shall constitute a quorum and action shall be by majority of those voting.

Section 5. A report to the Section membership shall be presented at the meeting and shall include information about the Section's activities and use of dues for the previous calendar year, the activities and use of dues contemplated for the next year, the status of the Section's finances, its budget, long range plan and fiscal reserve policy.

Section 6. The Section shall sponsor or co-sponsor not fewer than one continuing legal education program every two years. The CLE program may, but need not, be held in conjunction with the Section's Annual Business Meeting. Sections are encouraged to offer complimentary CLE admission to 50-year members and to judges and their lawyer staff.

Article IV Officers

Section 1. The officers of the Section shall be the Chair, ~~Chair-Elect, Immediate Past Chair,~~ Secretary, Treasurer and such other officers as may be determined to be necessary by the membership. Officers of the Section shall be active members of the Oregon State Bar. Sections may establish eligibility requirements or other procedures to ensure rotation of the Chair among specific groups or specialty areas of the membership, such as plaintiff or defense counsel.

Section 2. The Chair, or the ~~Chair-Elect~~Secretary in the absence of the Chair, shall preside at all meetings of the Section and of the Section Executive Committee. The Chair shall appoint the officers and members of all committees of the Section pursuant to Article VII; plan and monitor the programs of the Section; keep the Section Executive Committee informed and carry out its decisions; and perform such other duties as may be designated by the Section Executive Committee.

~~**Section 3.** The Chair-Elect will become the Chair on January 1 regardless of the date of the Section Annual Business Meeting or the date of the mailed or electronic ballot election. The Chair-Elect shall aid the Chair in the performance of the Chair's responsibilities, and shall perform such other duties as may be designated by the Section Executive Committee. In the event of the death, disability, or~~

Proposed Animal Law Section Bylaw Revisions

~~resignation of the Chair, the Chair-Elect shall perform the duties of the Chair for the remainder of the Chair's term or disability.~~

Section 43. The Secretary shall retain and maintain all books, papers, documents and other property pertaining to the work of the Section, and shall keep a true record of proceedings of all meetings and votes of the Section and of the Section Executive Committee. The Secretary shall aid the Chair in the performance of the Chair's responsibilities, and shall perform such other duties as may be designated by the Section Executive Committee. In the event of the death or resignation of the Chair, the Secretary shall convene a meeting of the Executive Committee to vote on a new Chair to complete the unexpired term. ~~The Secretary shall perform other duties as assigned by the Section Executive Committee.~~

Section 54. The Treasurer shall keep an accurate record of all receipts and expenditures by the Section as hereinafter provided; report on the Section's present and projected financial condition at each meeting of the Section Executive Committee; prepare an annual projected budget for approval by the Section Executive Committee; and submit a report of the Section's financial affairs and financial condition to the members at the Section Annual Business Meeting.

Section 65. Section Chairs shall serve as ex officio voting members of the Oregon State Bar House of Delegates. In the event the section chair holds another position that also serves as an ex officio member of the House of Delegates, the section chair shall designate an alternate to serve in the chair's stead at any House of Delegates meeting. In all other situations, the section chair may designate an alternate delegate to serve in the chair's stead at any House of Delegates meeting. An alternate delegate must be a person duly authorized in the section's bylaws or otherwise to act in the section chair's stead.

Article V

Section Executive Committee

Section 1. The Section Executive Committee shall be composed of the Chair, ~~the Chair-Elect, the Immediate Past Chair,~~ the Secretary, the Treasurer, and not fewer than two (2) nor more than twelve (12) Members-at-Large. The terms of the Members-at-Large shall be staggered as evenly as possible. Suspended members may not serve on the Section Executive Committee.

Section 2. The Section Executive Committee shall supervise and control the affairs of the Section subject to these Bylaws and the Bar's bylaws.

Section 3. A quorum is required to conduct Executive Committee business. A quorum shall consist of a majority of the Executive Committee. Action of the Section Executive Committee shall be by majority vote of those voting.

Section 4. The Chair may, and upon the request of three members of the Executive Committee shall, call meetings of the Executive Committee.

Section 5. Between meetings of the Section, the Section Executive Committee shall have full power to do and perform all acts and functions that the Section itself may perform. Voting on matters of Section business may be done electronically and results of an electronic vote must be recorded in the official minutes of the Section.

Proposed Animal Law Section Bylaw Revisions

Section 6. The Section Executive Committee may direct that a matter be submitted to the members of the Section by a mail or electronic vote or by a vote at the Section Annual Business Meeting; in any such event, binding action of the Section shall be by majority of those voting.

Section 7. No salary or compensation for services shall be paid to any member of the Section Executive Committee or member of any committee with the exception of the Editor and other staff of the Section newsletter (if applicable). Reimbursement may be allowed for travel and other out-of-pocket expenses for members of the Section Executive Committee and members of all Section standing and special committees.

Section 8. The membership of the Section shall have the right to rescind or modify any action or decision by the Section Executive Committee, except for filling a vacancy in the position of Officer or Executive Committee member, and also may instruct the Section Executive Committee as to future action. The Executive Committee shall be bound by any such action of the membership. The right of the membership to direct, modify, or rescind an act of the Section Executive Committee shall not include the power to invalidate contracts or payments previously made under direction of the Executive Committee. Any vote to direct, modify, or rescind an action of the Section Executive Committee must be taken at a meeting at which two-thirds of members voting approve the Motion.

Article VI

Terms of Office and Elections

Section 1. No member may serve on the Section Executive Committee for more than nine consecutive years.

Section 2. Each term of office shall begin on January 1 regardless of whether the election is held at the Section Annual Business Meeting or a mailed or electronic ballot election.

Section 3. A position on the executive committee, including an officer position, may be, at the option of the Executive Committee, deemed vacant if that member:

- A. Fails to attend two consecutive meetings, in the absence of an excuse approved by the chair prior to the meeting; or
- B. Fails to attend four consecutive meetings, even if excused.

Section 4. ~~Except as provided by Article IV, Section 3, and except for the office of Chair-Elect, the~~ Section Executive Committee shall fill by appointment until January 1 of the next year any position that becomes vacant.

Section 5. Any officer or Member-at-Large appointed to fill an unexpired term shall serve the unexpired period. Such members shall then be eligible at the next Section Annual Business Meeting or mail or electronic ballot election for election for a first full term, unless the member's election to the new term will result in a violation of Section 1 of this article.

Section 6. At the Section Annual Business Meeting or a mail or electronic ballot election, the Section membership shall elect:

- A. A Chair-~~Elect~~, Secretary and Treasurer, each to serve a term of one year; and
- B. Members-at-Large to serve terms of two years or less on the Section Executive Committee.

Proposed Animal Law Section Bylaw Revisions

Section 7. ~~The Chair Elect will succeed to the office of Chair on January 1 and serve a term of one year. If the office of Chair Elect is vacant at the Section Annual Business Meeting or a mail or electronic ballot election, then a Chair shall be elected by the members. No member shall serve in the office of Chair for more than two consecutive years. Except as provided by Section 1 of this article, No officer-member shall have a limit to the number of successive terms in the position of Secretary or serve two successive terms in the same office, except the~~ Treasurer. A Member-at-Large may serve no more than ~~four-six~~ consecutive years as a Member-at-Large.

Section 8. At least sixty (60) days prior to the Section Annual Business Meeting or a mail or electronic ballot election, the Section Executive Committee shall appoint a nominating committee of not less than three members of the Section, no more than two-thirds of whom may be on the Executive Committee. The nominating committee shall make and report to the Chair at least thirty (30) days prior to the Section Annual Business Meeting or the date of a mail or electronic ballot election one nomination for each position to be filled by election. The nominating committee shall use reasonable efforts to ensure that the members nominated reflect the diversity of the Section membership, the Oregon State Bar and community at large, taking into account all relevant factors including without limitation practice area, office location, age, gender, race, ethnicity, disability and sexual orientation.

Section 9. To the extent possible, no more than one person from the same law firm, company or department of a public agency may serve on the Executive Committee at the same time.

Section 10. If elections are held at the Section Annual Business Meeting, the report of the nominating committee shall be distributed to the Section membership along with the notice of the time and place of the Section Annual Business Meeting at least fourteen (14) business days in advance of the meeting. Additional nominations for any position may be made from the floor at the Section Annual Business Meeting. Elections for contested positions may be by written ballot. Each contested position shall be set forth and voted upon separately. In a contested election, the candidate receiving the highest number of votes shall be elected.

Section 11. Upon approval of the Section Executive Committee, elections may be by mail or electronic ballot of the Section membership provided that: (1) write-in votes are allowed, (2) ballots are returned to an appropriate Section officer for tabulation, and (3) the results are certified to the Bar Center no later than November 15.

Article VII Committees

Section 1. The Section Executive Committee may establish as many standing committees as deemed necessary and may set the names, functions, and duration of such committees. The Chair, with the approval of the Section Executive Committee, shall appoint the Chair and members of all standing committees.

Section 2. In addition to the standing committees provided above, the Executive Committee may appoint as many special committees for particular purposes as deemed appropriate and may set the names, functions, and duration of such committees. The Chair, with the approval of the Section Executive Committee, shall appoint the Chair and members of all special committees.

Proposed Animal Law Section Bylaw Revisions

Article VIII Legislative Activities

Section 1. Legislative activity of the Section, whether initiating legislation or taking positions in support or opposition of pending legislation shall be in compliance with Article 12 of the OSB Bylaws and these bylaws. The Section shall not represent to the legislature or any committee thereof a position or proposal or any bill or act as the position of the Section without the majority approval of the Section Executive Committee and the approval of the Board of Governors, except as provided otherwise below.

Section 2. The Section shall submit proposals for new legislation, together with the full text of the proposals to the Public Affairs Director by April 1, or such date as the Public Affairs Director shall designate. The proposal shall indicate whether the Section requests that it be presented to the legislature under the sponsorship of the Oregon State Bar or of the Section. The Board of Governors will inform the Section whether the legislation should go forward under the sponsorship of the Section or under the sponsorship of the Bar, and whether it will be presented to the House of Delegates or the membership for approval. If the Board of Governors declines to submit the Section's proposal for Bar-sponsored legislation to the House of Delegates or the membership, any member of the Section may submit the matter to the House of Delegates or the membership in accordance with ORS 9.148(3) and (4) and Article 3 of the OSB Bylaws.

Section 3. During regular legislative sessions the Section Executive Committee may, by majority vote, tentatively approve a position in favor of or in opposition to any pending bill within its general subject area. The proposal shall be submitted to the Bar's Public Affairs Director or the Chair of the Board of Governors Public Affairs Committee. After receipt of the proposal, the chair of the committee shall have 72 hours to approve the position or to refer it to the entire Public Affairs Committee. If the chair or committee approves the proposal, the action then becomes an official position of the Section and representatives of the Section may testify or make other appropriate statements.

Section 4. When special need is demonstrated, the Public Affairs Committee may expedite the introduction of new Section bills or amendments. The Public Affairs Director shall be kept informed about the status of Section legislative activity.

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

Proposed Animal Law Section Bylaw Revisions

fund balance, nor shall expenditures be in violation of laws or policies generally applicable to the Oregon State Bar.

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.

Article X

Notice of Meetings, Minutes and Reports

Section 1. The Chair or Secretary shall distribute notice of scheduled Section Executive Committee meetings together with an agenda and minutes of the previous meeting to all Section Executive Committee members and to the Bar at least ten (10) business days prior to such meetings, or if ten days' notice is not practicable, then such lesser notice as is practicable. Minutes of all meetings of the Section and of the Section Executive Committee shall be distributed to all members of the Section Executive Committee and to the Bar no later than thirty (30) days after the meeting and are subject to amendment and approval at the next meeting of the Section or the Section Executive Meeting.

Section 2. Whenever the Section desires to request action by the Board of Governors, the requested action shall be reflected in the minutes and shall in addition be set forth in a letter accompanying the minutes and delivered to the Board of Governors in care of the Executive Director. If the vote on the requested action is not unanimous, the votes for and against shall be set forth in the minutes and the dissenting members shall be afforded the opportunity to explain their positions.

Section 3. Not later than December 1, the Chair shall file with the Executive Director of the Oregon State Bar a concise report summarizing the activities of the current year and anticipated activities for the ensuing year.

Section 4. A proposed annual budget and proposed annual dues for approval by the Board of Governors shall be provided to the Executive Director no later than October 15 of each year if it contains a proposal for a change in membership dues, or no later than December 1 of each year if no change in membership dues is proposed. Alternatively, this budget information may be included with the Section's annual report submitted December 1, pursuant to Section 3 of this Article.

Proposed Animal Law Section Bylaw Revisions

Section 5. The proposed budget shall have attached to it a short description of the Section's long range plans for programs and activities which require accumulation of funds and the Executive Committee's reserve plan, including the target reserve calculated to protect the Section from foreseeable financial loss.

Section 6. At the request of the Board of Governors, the Section Chair shall present a report in person to the Board of Governors concerning the activities of the Section for the current and succeeding years.

Article XI Amendments to Bylaws

Section 1. These Bylaws may be amended by the Board of Governors. Notice of intent to promulgate and pass Bylaw Amendments shall be given to the Section Executive Committee Chair in sufficient time to allow for review and comment. Bylaw amendments passed by the Board of Governors become effective upon passage.

Section 2. These Bylaws may be amended by the Section by a majority of those voting in a mail or electronic ballot or at any membership meeting of the Section to become effective upon subsequent approval of the Board of Governors. Notice of intent to amend bylaws and the text of proposed amendments shall be distributed to all Section members at least fourteen (14) business days prior to the meeting or mail or electronic balloting.

Article XII Sunsetting the Section

Section 1. A Section Executive Committee may recommend that the Board of Governors sunset the section if it has accomplished its goals or is otherwise deemed no longer necessary. A sunset recommendation submitted to the Board of Governors must include a proposal for distribution of any section assets.

Section 2. The Section has a duty to its members, and at a minimum each year, must:

- A. Hold regular Executive Committee meetings.
- B. Appoint a Nominating Committee.
- C. Hold a Section Annual Business Meeting.
- D. Elect officers and executive committee members at large by November 15 of each year.
- E. Submit an annual budget.
- F. File an annual report.

If the Section fails to meet the above minimum requirements, it is subject to restructuring or sunsetting by the Board of Governors.

Article XIII Rules of Order

Section 1. Except as otherwise provided herein, meetings of this Section shall be conducted in accordance with the most recent edition of Robert's Rules of Order.

Proposed Animal Law Section Bylaw Revisions

Section 2. All references in these Bylaws to “mail” or “mailing” or “mail ballot” shall also include electronic email to a member or addressee who has an email address on file with the Oregon State Bar.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: February 21, 2014
Memo Date: January 27, 2014
From: Rich Spier, Governance & Strategic Planning Committee Chair
Re: Quality of Life Committee Assignment Revisions

Action Recommended

Consider the GSP Committee's request to amend the Quality of Life Committee assignment (also referred to as a committee charge).

Background

Over the last year the Quality of Life Committee periodically discussed their committee assignment. In December of 2013 the committee approved the below revisions with the intent of making the committee's assignment more holistic and integrated with the OSB's goals.

Additions and deletions to the original assignment are indicated by underlining (new) or strikethrough (deleted).

QUALITY OF LIFE COMMITTEE CHARGE

General:

~~Educate and motivate lawyers to make professional choices that will enhance their quality of life and advance the legal profession.~~

Encourage and support a culture within the legal community that recognizes, accepts, and promotes quality of life objectives as important to personal and professional development.

Specific:

1. Encourage awareness ~~and discussion of the diverse standards by which lawyers evaluate their lives of~~ and foster openness to the personal and professional choices that lawyers make to improve quality of life for themselves and others.
2. Educate lawyers and ~~law firms~~ legal employers about the benefits of reducing tension between personal and professional life, and methods for doing so.
3. Identify obstacles and problems that tend to limit the range of quality of life options available to the legal community and develop solutions to overcome those obstacles.
- ~~2-4.~~ Educate lawyers about methods for improving quality of life, including pursuing physical and mental wellness, managing stress, volunteering, and improving personal financial skills and stability.
- ~~3-5.~~ Provide information and support relating to quality of life to ~~for~~ lawyers who choose non-traditional career paths.
- ~~4-6.~~ Continued publication of ~~Solicit and draft~~ articles ~~on enhancing the~~ related to quality of life issues for publication on the Committee's website, in the *Bulletin*, and other OSB-legal publications.

- ~~5.7. Form-Maintain relationships with other Bar/OSB sections and committees, Oregon law schools, and other groups to promote discussion of these issues within their constituencies the committee's goals. Enhance involvement with groups outside of the OSB, including OAAP, OWLs and Oregon law schools in promoting the goals of the committee.~~
- ~~6. Continue to maintain web site.~~
- ~~7. Pursue greater speaker outreach to talk to members and law students about balancing home and work life.~~
- ~~8. Solicit nominations for the annual OSB Awards of Merit, the President's Public Service Award, Membership Service Award, Affirmative Action Awards, the Joint Bench~~
- ~~9.8. Bar Professionalism Award and any other state, local and national awards for lawyers who contribute to serving the legal needs of Oregonians. of lawyers who exemplify or demonstrate the benefits of incorporating higher quality of life standards into their lives and law practices.~~

*Loan Repayment
Assistance Program*

Policies and Guidelines

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

Revised January 11, 201~~3~~

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

Statement of Purpose

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

Section 1 – Administrative Partners

(A) *Advisory Committee*

(i) Membership

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

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

(ii) Appointment and Administration

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

(iii) Advisory Committee Duties

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

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

(B) Oregon State Bar

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

Section 2 – Requirements for Program Participation

(A) Application and Other Program Procedures

- Applicants must fully complete the Program application, submit annual certifications and follow other Program procedures.
- Previous recipients ~~may apply~~ are eligible to reapply.

(B) Qualifying Employment

- Employment must be within the State of Oregon.
- Qualifying employment includes employment as a practicing attorney with civil legal aid organizations, other private non-profit organizations providing direct legal representation of low-income individuals, as public defenders or as deputy district attorneys.
- Judicial clerks and attorneys appointed on a case-by-case basis are not eligible.
- Thirty-five hours or more per week will be considered full-time employment; hours worked per week less than 35 will be considered part-time.
- Part-time employees are eligible to apply for the Program; ~~but however~~ participation may be prorated at the discretion of the Advisory Committee, based on FTE.

(C) Graduation/License/Residency Requirements

- Program applicants must be licensed to practice in Oregon.
- Program participation is not limited to graduates of Oregon law schools. Graduates of any law school may apply.

- Program participation is not limited to recent law school graduates. Any person meeting Program requirements, as outlined herein, may apply.
- Program participation is not limited to Oregon residents, provided the applicant works in Oregon and meets other Program requirements.

(D) *Salary Cap for Initial Applicants*

Applicants with ~~full-time~~ salaries greater than ~~\$55,000~~60,000 at the time of initial application will be ineligible for Program participation.

- The Advisory Committee may annually adjust the maximum eligible salary.
- As more fully described in Section 3(B)(ii), Program participants may retain eligibility despite an increase in salary above the cap set for initial participation.
- The above amount may be pro-rated for part-time employees, based on FTE

(E) *Eligible Loans*

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

- Applicants with eligible debt at the time of initial application less than \$ ~~35,000~~ will be ineligible for Program participation.
- If debt in the applicant's name and in others' names is consolidated, the applicant must provide evidence as to amount in the applicant's name prior to consolidation.
- Loan consolidation or extension of repayment period is not required.
- Program participants who are in default on their student loans will be ineligible to continue participating in the Program (see 4(C)(v) below for more details).

Section 3 – Description of Benefit to Program Participants

(A) *Nature of Benefit*

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

(i) Amount and Length of Benefit

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

(ii) Interest on LRAP Loans

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

(iii) Federal Income Tax Liability

Each Program participant is responsible for any tax liability the Program participant may incur, and neither the Advisory Committee nor the OSB can give any Program participant legal advice as to whether a forgiven LRAP loan must be treated as taxable income. Program participants are advised to consult a tax advisor about the potential income tax implications of LRAP loans. However, the intent of the Program is for LRAP loans which are forgiven to be exempt from income tax liability.

(B) *Forgiveness and Repayment of LRAP Loans*

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

(i) Loss of Eligibility Where Repayment Is Required

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

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

(ii) Loss of Eligibility Where Repayment Is Not Required

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

(iii) Exception to Repayment Requirement

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

(C) *Leaves of Absence*

Each Program participant will be eligible to continue to receive benefits during any period of leave approved by the Program participant's employer. If any such approved leave period extends for more than three months, the amount of time the Program

participant must remain in qualifying employment before an LRAP Loan is forgiven is extended by the length of the leave in excess of three months. This extra time is added to the end of the year in which the leave is taken and thereafter, the starting date of the new year is reset based upon the new ending date of the year in which the extended leave is taken.

Section 4 – Program Procedures

(A) *Application and Disbursement Procedure*

- Applications submitted to the Advisory Committee must be postmarked or delivered to the Oregon State Bar office by April 15 of each year.
 - Applicants must be members of the OSB already engaged in qualifying employment by the application deadline.
 - Applicants may not commence the application process prior to receiving bar exam results.
 - Unsuccessful applicants will get a standard letter drafted by the Advisory Committee and may reapply in future years as long as they meet the qualifications described in Section 2.
- Applicants will be notified by June 1 of each year as to whether or not they have been selected for Program participation in accordance with the selection criteria set forth in Section 4(B).
- Those applicants selected as Program participants will receive a promissory note for the first year of LRAP loans along with their notification of selection. The executed promissory note ~~will be due~~ must be returned to the Advisory Committee by June 15.
- Initial disbursement of LRAP loans will be made by July 1 provided the executed promissory note has been returned.
- In conjunction with the annual certification procedure set forth in Section 4(C), persons who remain eligible Program participants will be sent a new promissory note, covering the LRAP loan in the upcoming year by June 1, which must be executed and returned by June 15.
- Ongoing disbursement of loans to persons who remain Program participants will be made on or about July 1 of each year.

(B) *Program Participant Selection*

(i) Factors to be Considered

- Meeting the salary, debt and employment eligibility for the Program does not automatically entitle an applicant to receive a LRAP loan. If the Advisory Committee needs to select among applicants meeting the salary, debt and employment eligibility criteria, it may take into account the following factors:
 - Demonstrated commitment to public service;
 - Financial need;
 - Educational debt, monthly payment to income ratio, and/or forgiveness of debt;
 - Extraordinary personal expenses;
 - Type and location of work;
 - Assistance from other loan repayment assistance programs;

- The Advisory Committee reserves the right to accord each factor a different weight, and to make a selection among otherwise equally qualified applicants.
- If there are more eligible applicants than potential Program participants for a given year, the Advisory Committee will keep the materials submitted by other applicants for a period of six months in the event a selected individual does not participate in the Program.

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

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

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

(C) Annual Certification of Program Participant’s Eligibility

(i) Annual Certifications Required

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

(ii) Program Participant Annual Certifications - Contents

The annual certifications submitted by Program participants will include:

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

(iii) Employer Certification - Contents

The annual certifications submitted by employers will include:

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

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

Program participants remain eligible for the Program for three years despite increases in salary provided that they remain in qualifying employment with the same employer and are not in default on their student loans. If a Program participant’s financial condition changes for other reasons, the Advisory Committee may make a case-by-case determination whether the Program participant may receive any further LRAP loans. Even if no further LRAP loans are received, this increase in income will not affect the

LRAP loan forgiveness schedule so long as the Program participant remains in qualifying employment and submits an employer certification pursuant to Section 4(C)(iii).

(v) Effect of Default on Student Loans

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

(vi) Voluntary Withdrawal from Program

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

(D) *Dispute/Grievance Resolution*

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

OSB Board of Governors

~~Planning Session Outline~~

~~January 18, 2014~~

Action Plan 2014

~~MISSION AND FUNCTIONS OF THE OREGON STATE BAR~~

INTRODUCTION

The OSB Board of Governors (BOG) is charged by the legislature (ORS 9.080) to “at all times direct its power to the advancement of the science of jurisprudence and the improvement of the administration of justice.”¹ The OSB is also responsible, as an instrumentality of the Judicial Department of the State of Oregon, for the regulation of the practice of law.² As a unified bar, the OSB can use mandatory member fees only for activities that are germane to the purposes for which the bar was established. The BOG has translated the statutory mission purposes into six core functions that provide overall direction for OSB programs and activities:

- We are a regulatory agency providing protection to the public.
- We are a partner with the judicial system.
- We are a professional organization.
- We are a provider of assistance to the public.
- We are leaders helping lawyers serve a diverse community.
- We are advocates for access to justice.

~~As a unified bar, the OSB can use mandatory member fees only for activities that are germane to the purposes for which the bar was established.~~

In order to advance the mission and achieve its goals, the BOG must assure that the OSB is effectively governed and managed, and that it has adequate resources to maintain the desired level of programs and activities.

FUNCTIONS , GOALS AND STRATEGIES

FUNCTION #1 – REGULATORY AGENCY PROVIDING PROTECTION TO THE PUBLIC

Goal: Provide meaningful protection of the public while enhancing member and public perception understanding of and respect for the discipline system.

Strategy 1	Conduct a comprehensive review of disciplinary procedures and practices
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¹ Webster's Dictionary defines jurisprudence as the "philosophy of law or the formal science of law." "The "administration of justice" has been defined in case law variously as the "systematic operation of the courts," the "orderly resolution of cases," the existence of a "fair and impartial tribunal," and "the procedural functioning and substantive interest of a party in a proceeding."

² The OSB's responsibilities in this area are clearly laid out in the Bar Act, ORS Chapter 9.

	focusing on fairness and efficiency.
Strategy 2	Improve member <u>and public</u> understanding of the disciplinary process and of their role in client protection.
Strategy 3	Increase the visibility of disciplinary staff attorneys among the membership.
Strategy 4	Provide adequate channels for public information and comment.

FUNCTION #2 – PARTNER WITH THE JUDICIAL SYSTEM

Goal: Promote and protect the integrity of the judicial system.

Strategy 1	Support adequate funding for the Judicial Branch in the legislature.
Strategy 2	Respond appropriately to challenges to the independence of the judiciary.
Strategy 3	<u>Assure-Participate</u> meaningfully <u>ly participation</u> in judicial selection processes.

FUNCTION #3 – PROFESSIONAL ORGANIZATION

Goal: Provide meaningful-relevant and cost-effective services to enhance the competencequality of legal services provided by bar members.

<u>Strategy 1</u>	<u>Ensure adequate resources to maintain desired level of services.</u>
Strategy <u>21</u>	Review OSB programs for adherence to mission, value to members and efficiency.
<u>Strategy 3</u>	<u>Ensure appropriate management of OSB Center to maximize rental income, contain operating costs, and provide space for member activities.</u>
Strategy <u>42</u>	Upgrade organizational software to meet changing member demands for online services.
Strategy <u>53</u>	Develop and enhance programs that support career opportunities and professional development of new lawyers.
Strategy <u>64</u>	Coordinate and collaborate with law schools <u>toward reducing the cost of legal education while</u> <u>to develop effective models for</u> graduating new lawyers with needed skills.

FUNCTION #4 – ASSISTANCE TO THE PUBLIC

Goal: Promote public understanding of and respect for the justice system.

Strategy 1	Support <u>the Classroom Law Project and similar</u> civic education programs <u>and activities that promote understanding of and respect for the rule of law and the legal profession.</u>
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Strategy 2	Enhance the availability of public information about OSB regulatory and client protection programs.
Strategy 3	Promote the Referral & Information Service programs.

FUNCTION #5 – SERVING A DIVERSE COMMUNITY

Goal: Increase the diversity of the Oregon bench and bar; Engage and include increase participation by the OSB’s diverse membership at all levels of the organization and assist bar members in serving a diverse community.

Strategy 1	Implement the OSB Diversity Action Plan. Assist OSB leadership to develop relationships with all facets of the membership.
Strategy 2	Break down the barriers to justice for diverse clients.
Strategy 3	Promote professional development of diverse lawyers.

FUNCTION #6 – ACCESS TO JUSTICE

Goal: Promote access to legal information, legal services, and the legal system for all persons.

Strategy 1	Identify <u>new and additional</u> sources of funding for low-income legal services.
Strategy 2	Explore expansion of who can provide legal services in Oregon.
Strategy 3	Support the leveraging of technology to provide legal information to self-represented persons.
Strategy 4	Support and promote funding for indigent defense services for children and adults.

~~OTHER ISSUES FOR CONSIDERATION~~

- ~~▪ Governance – future of the House of Delegates~~
- ~~▪ Financial Stability and Resources for the Future~~
- ~~▪ OSB Role in Admissions~~

OSB Board of Governors

Action Plan 2014

INTRODUCTION

The OSB Board of Governors (BOG) is charged by the legislature (ORS 9.080) to “at all times direct its power to the advancement of the science of jurisprudence and the improvement of the administration of justice.”¹ The OSB is also responsible, as an instrumentality of the Judicial Department of the State of Oregon, for the regulation of the practice of law.² As a unified bar, the OSB can use mandatory member fees only for activities that are germane to the purposes for which the bar was established. The BOG has translated the statutory purposes into six core functions that provide overall direction for OSB programs and activities:

- We are a regulatory agency providing protection to the public.
- We are a partner with the judicial system.
- We are a professional organization.
- We are a provider of assistance to the public.
- We are leaders helping lawyers serve a diverse community.
- We are advocates for access to justice.

In order to advance the mission and achieve its goals, the BOG must ensure that the OSB is effectively governed and managed, and that it has adequate resources to maintain the desired level of programs and activities.

FUNCTIONS , GOALS AND STRATEGIES

FUNCTION #1 – REGULATORY AGENCY PROVIDING PROTECTION TO THE PUBLIC

Goal: Provide meaningful protection of the public while enhancing member and public understanding of and respect for the discipline system.

Strategy 1	Conduct a comprehensive review of disciplinary procedures and practices focusing on fairness and efficiency.
Strategy 2	Improve member and public understanding of the disciplinary process and of their role in client protection.
Strategy 3	Increase the visibility of disciplinary staff attorneys among the membership.
Strategy 4	Provide adequate channels for public information and comment.

¹ Webster's Dictionary defines jurisprudence as the "philosophy of law or the formal science of law." "The "administration of justice" has been defined in case law variously as the "systematic operation of the courts," the "orderly resolution of cases," the existence of a "fair and impartial tribunal," and "the procedural functioning and substantive interest of a party in a proceeding."

² The OSB's responsibilities in this area are clearly laid out in the Bar Act, ORS Chapter 9.

FUNCTION #2 – PARTNER WITH THE JUDICIAL SYSTEM

Goal: Promote and protect the integrity of the judicial system.

Strategy 1	Support adequate funding for the Judicial Branch in the legislature.
Strategy 2	Respond appropriately to challenges to the independence of the judiciary.
Strategy 3	Participate meaningfully in judicial selection processes.

FUNCTION #3 – PROFESSIONAL ORGANIZATION

Goal: Provide relevant and cost-effective services to enhance the quality of legal services provided by bar members.

Strategy 1	Review OSB programs for adherence to mission, value to members and efficiency.
Strategy 2	Upgrade organizational software to meet changing member demands for online services.
Strategy 3	Develop and enhance programs that support career opportunities and professional development of new lawyers.
Strategy 4	Coordinate and collaborate with law schools to develop effective models for graduating new lawyers with needed skills.

FUNCTION #4 – ASSISTANCE TO THE PUBLIC

Goal: Promote public understanding of and respect for the justice system.

Strategy 1	Support civic education programs and activities that promote understanding of and respect for the rule of law and the legal profession.
Strategy 2	Enhance the availability of public information about OSB regulatory and client protection programs.
Strategy 3	Promote the Referral & Information Service programs.

FUNCTION #5 – SERVING A DIVERSE COMMUNITY

Goal: Increase the diversity of the Oregon bench and bar; increase participation by the OSB's diverse membership at all levels of the organization and assist bar members in serving a diverse community.

Strategy	Implement the OSB Diversity Action Plan.
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FUNCTION #6 – ACCESS TO JUSTICE

Goal: Promote access to legal information, legal services, and the legal system for all persons.

Strategy 1	Identify new and additional sources of funding for low-income legal services.
Strategy 2	Explore expansion of who can provide legal services in Oregon.
Strategy 3	Support the leveraging of technology to provide legal information to self-represented persons.
Strategy 4	Support and promote funding for indigent defense services for children and adults.

OREGON STATE BAR

Governance & Strategic Planning Committee Agenda

Meeting Date: February 21, 2014
From: Danielle Edwards, Director of Member Services
Re: Section Guest Expense Reimbursement Request

Issue

During the November 23, 2013 meeting the BOG voted to amend the standard section bylaws to prohibit executive committee guest reimbursements except as specifically approved by the Board of Governors. After notifying section leadership of the bylaw amendment two sections requested exception to the bylaw and ask the BOG to consider adopting a policy that would allow certain reimbursements.

Options

Adopt a policy allowing section guest reimbursement in a particular set of circumstances.

Deny the request for section guest expense reimbursements.

Discussion

The Executive Committees of the Business Law Section and the Real Estate and Land Use Section submitted the attached letters requesting exemption from OSB Standard Section Bylaw Article IX, Section 3.

When the BOG amended the section bylaws last November three reasons were offered as the basis for the change:

- 1) Bring the section bylaws into alignment with OSB Bylaw 7.500,
- 2) Proactively prevent violations of the Oregon Government Ethics Laws and prevent a perception of unfairness,
- 3) Eliminate the administrative cost associated with tracking guest reimbursement amounts to ensure compliance with tax laws because guest expenses are not a business expense.

Additionally the BOG may want to consider the use of membership fees to heavily subsidize sections. In accordance with Bylaw 15.400, the bar provides administrative support to sections including the collection of dues and management of section funds. In exchange for this support, the Bar charges an administrative fee equal to 50% of the actual cost to provide the services. The current administrative charge is \$8.00 per section member. In January 2014 there were 16,208 section memberships making the Bar's cost to support sections this year at nearly \$130,000. Although it would be section funds used to reimburse guest expenses the BOG should consider whether it wants to allow sections to spend member's money on these expenses.

An exception is made to Bylaw 7.500 which allows reimbursement of BOG guests at official dinners. If the BOG wants to allow section guest expense reimbursement it could adopt a policy that would allow reimbursement for only the following:

Expenses: meals (but not including alcohol);

Individuals: spouses or household members of executive committee members;

Events: official executive committee functions which the spouse or household member is expected to attend;

The BOG could further specify that no more than \$600 per individual would be reimbursed in any given year. Additional limitations could be specified such as the number of events and guests for which reimbursement would be provided.

Both section requests cite good reasons for allowing reimbursement of guests. If the BOG denies the request some thought should be given to the reasoning for refusing section reimbursements.

Oregon State Bar

Report of the OSB Centralized Legal Notice Task Force

Nov. 23, 2013

Report of the OSB Centralized Legal Notice Task Force

Nov. 23, 2013

Summary

The Centralized Legal Notice Task Force was established by the Oregon State Bar (OSB) Board of Governors in response to a resolution passed at the 2012 House of Delegates meeting that instructed the Board of Governors to:

reconsider¹ seeking legislative approval for a centralized legal notice system to be operated for the benefit of all Oregonians under the auspices of either the state judicial department or a private nonprofit such as the Oregon Law Foundation.

Having thoroughly discussing the benefits of a centralized legal notice system, evaluating the likelihood of legislative success and determining that it might be possible to create the online system with little or no initial investment by the OSB, the task force believes² that the options available to the OSB Board of Governors are that (1) the bar continue to work with the Oregon Newspaper Publishers Association with the intention of ultimately arriving at a mutually acceptable proposal for a more robust online notice system that would both maintain the newspapers' historic involvement in the public legal notice system while generating revenue to be used for legal services; (2) ascertain whether the desired vendor is available and willing to develop and maintain the online system, being compensated with a portion of the posting fee; and (3) seek legislative approval of a centralized online legal notice system either in concert with the Oregon Newspaper Publishers Association (ONPA) or on its own.

Creation of the Task Force

In the spring of 2012, the Oregon Law Foundation approached the Oregon State Bar with a proposal to fundamentally change the system for the posting of most statutorily required legal

¹ At its meeting on July 27, 2012, the BOG had voted not to pursue the enabling legislation at that time, but to continue discussing the concept of a centralized online legal notice system operated by the Oregon State Bar.

² The task force findings, conclusions and recommendations set forth herein were nearly unanimous, with only one member dissenting. Where there were significant divisions of opinion, the differing views are clarified by "some members" or "most members" or similar language.

notices. Under the proposal, rather than being published in local newspapers, legal notices from around the state would be posted to a centralized web site that would be maintained by the OLF, the Bar,³ or another designated entity.

The OLF believed that this system could be operated and maintained for a cost that was low enough that attorneys and other parties posting notices could actually be charged much lower rates than they currently pay to newspapers. Additionally, the OLF believed that it would be possible to retain some significant part of the revenue received, and use that revenue to fund legal aid services programs in Oregon.

The BOG and OSB staff evaluated the OLF proposal for what came to be referred to as the CLNS. Concerns included whether operation of a CLNS was within the bar's mission, whether the bar had the expertise and capacity to establish and operate such a system, and whether the legislature would be amenable to the proposal. The BOG also conferred with representatives of the Oregon Newspaper Publishers Association and other news entities, all of which expressed strong opposition to the CLNS concept. Their opposition was due in part to the impact an online system would have on their revenues and ability to continue operating, and concern that many citizens do not yet look online for their news, especially local public notices. After vigorous debate, the BOG ultimately concluded that the CLNS proposal was not ready for inclusion in the 2013 Law Improvement Package.

In November 2012 the House of Delegates passed a resolution encouraging the Board of Governors to further investigate this issue and to again consider legislation. As a consequence of that resolution, the BOG formed the Centralized Legal Notice Task Force. The task force met five times beginning in January of 2013 and concluding in September 2013. The Task Force was co-chaired by BOG members Travis Prestwich and Patrick Ehlers. Task Force members were Duane Bosworth, Chad Jacobs, Karen Clevering, Theresa Kohlhoff, Kathleen Evans, Tom Kranovich, S. Ward Greene, and Norman Williams. Staff support was provided by Sylvia Stevens and Matt Shields.

Major Issues of Discussion

The task force identified several issues that merited discussion. These included:

- Is a Centralized Legal Notice System technically feasible?
- Is a Centralized Legal Notice System economically viable?
- Is shifting from newspaper publication to internet publication wise public policy?

³ References herein to "the OSB" or "the Bar" refer to the Oregon State Bar as an organizational entity and not to any individual members.

- Assuming that such a system is advisable, is it appropriate and feasible for the Oregon State Bar to operate and administer the system?
- Does it make sense to operate a centralized system in addition to publication in physical newspapers, or should it operate as a replacement?
- Is there a role for newspapers if notice is only required in an online format?

The task force invited guests to the meetings to discuss similar systems in use in Utah and by the Oregon Sheriffs' Association. The task force examined the ONPA "Public Notice Oregon" web site. The task force also had a presentation from a national vendor, NIC Inc., about the technical aspects and associated costs of developing an online system with the functionality contemplated by the task force.

The task force discussion also highlighted concerns that some lawyers have about the existing legal notice system, including:

- The perception or reality that the cost of publication is too high.
- Concerns regarding the effectiveness of newspaper publication – e.g. are such notices actually being read by the relevant parties?
- The need for improvements to the existing online listing of legal notices that is maintained by the Oregon Newspaper Publishers Association.
- The factors that influence lawyers' selection of a publication in which to run a notice.

While some of those concerns were not directly related to the charge of the task force, to the extent they represent the concerns of bar members regarding the current system, they were deemed appropriate for consideration in evaluating the merits of any major change in Oregon's legal notice requirements.

Current State of the Law

Oregon statutes have long required the publication of legal notices in newspapers. These notices typically include real and personal property foreclosures, sheriff's sales of foreclosed property, probate notices, and notices of state and local government meetings. Depending on the type of notice, the statutes require publication in varying detail and for various lengths of time.

ORS 193.010 and 193.020 generally define what publications are suitable for newspaper publication. ORS 193.010 defines "newspaper" and requires:

- The publication must be in English, and must be for the dissemination of local or legal news.
- The publication must be of a minimum physical size.

- The publication must have been publishing at least once a week for at least 12 months prior to the notice, and
- The publication must have *“bona fide subscribers representing more than half of the total distribution of copies circulated, or distribution verified by an independent circulation auditing firm.”*

The last requirement has never been analyzed at an appellate level, but in 2012 the Deschutes County Circuit Court held that a free weekly did not meet the definition of “newspaper” because it lacked a paid subscriber base.

When newspaper publication is required, the notice must be placed in a newspaper that is published within the county in which the “action, suit or other proceeding” is pending. In the event that there is no newspaper in the county, notice must be placed in the closest newspaper. ORS 193.020(1).

ORS 193.020(2) further provides that if more than one newspaper in the county meets the requirements of ORS 193.020(1), then the notice should be published in the newspaper “which the moving party considers best suited to give actual notice.” The statute does not specify criteria that the moving party would use to make this determination.

In cases where lawyers (and presumably agencies of state and local government) have a choice of where to publish their notices, anecdotal information suggests that they often make the decision based on which newspaper has the lowest rates for publishing notices.

Task Force Findings

Technical Feasibility

After studying and evaluating the online notice systems of the Oregon Newspaper Publishers Association,⁴ the Oregon Sheriff’s Association and the State of Utah, the task force had a presentation from NIC Inc.,⁵ the software developer that has created many of the programs in use by the State of Oregon. The last presentation, in particular, satisfied the task force that building a centralized legal notice system that is capable of handling all public legal notices published in Oregon is technically feasible. In an absolute sense, the volume of information that would need to be stored and presented in a centralized legal notice system, while considerable, is not so great as with other major technology projects the state has undertaken. The greater

⁴ The Oregon Newspaper Publishers Association currently maintains a website that compiles legal notices published in member newspapers. It is not clear whether this website displays all such notices, but it appears to have the nearly all of the ones run in ONPA member newspapers.

⁵ NIC Inc. describes itself as the nation’s leading provider of official government portals, online services and secure payment processing solutions. More information is available at www.egov.com.

challenge will be constructing a database that is robust enough to allow searches based on user-selected criteria. The ONPA and OSA websites currently consist of notices that can be sorted only geographically. Task force members generally felt that the major potential advantage of any online system would be to enable users to search for notices based on other criteria, such as by the subject of the notice or by the names of parties. Ideally the system would also allow users to subscribe to an automatic notice whenever certain type of notice was posted (e.g. all foreclosures in Josephine County).

Economic Feasibility

The economic feasibility of a centralized online notice system is obviously of great importance, as the Bar probably does not currently have the resources or the will to invest in a major software development project. However, NIC Inc. works on a “zero-dollar contracting” self-funding model at no cost to the government agency. It recoups its costs from transaction fees or a portion of the revenues generated by the program⁶ and from ongoing maintenance charges.

As with the existing newspaper publication model, an online central notice system would generate revenue by charging a fee to post a notice. Additional revenue could also be generated from subscriptions or other add-on features that might be available. For example, while individuals who only occasionally use the system likely would prefer to simply browse postings by location or date, or might want to run basic searches; frequent business users might wish to subscribe to a more active form of notification – such as receiving direct emails about postings in a topic area. That kind of active notification could potentially serve as an additional revenue source.

The task force also noted that the economic feasibility of the system will be affected by the amount of personal handling required. Some systems – such as the one run by the Oregon Sheriff’s Association to post notices of Sheriff’s sales – appear to require a large amount of direct staff involvement in each posting. (Nevertheless, the Sheriff’s Association charges much less for its online notices than the cost to post notices in local newspapers.) Similarly, ONPA reports that it provides considerable assistance to posters in formatting and otherwise preparing the published notices, which are then posted unchanged to the website.

By contrast, NIC has developed systems for some State of Oregon agencies that are essentially automated and require very little staff involvement with each customer/client use of the system. The task force contemplates a centralized legal notice system that would operate with minimal staff involvement because notices would be posted as submitted (similar to posting on

⁶ For instance, NIC Inc. developed the State of Oregon’s online tax payment portal and program and receives a few dollars of each tax payment that is made online.

Craigslist). Only technical assistance would be provided, such as explanations of how to post a notice or search posted notices.

Based on these findings, the task force is confident that a system could be created that will allow for much cheaper posting rates (rough estimates are in the \$20-30 range) while generating sufficient net income after payment of operating expenses to contribute meaningfully toward low-income legal services.

Public Policy Considerations

The task force spent considerable time looking at the public policy implications of moving from newspaper publication to a centralized legal notice system, and task force members were by no means unanimous on answers to these questions.

While all members of the task force were very concerned about finding a stable funding stream for legal services, this was not a major driving force for everyone in the group. Many task force members expressed a desire for a legal notice system – whether online or in print – that will be most likely to result in actual notice going to interested parties. Task force members disagreed on the efficacy of the current statutory notice system. However, members did generally agree that there are certain advantages and disadvantages to one system versus another.

The task force members identified advantages a centralized system – whether as a replacement for newspaper publication or in addition to it:

- An online system would likely be significantly cheaper for those posting notice because there is no need to recoup the cost of paper, printing and distribution and once a notice is published it can remain on the site for whatever period is required without additional effort. Moving to posting notices exclusively online could result in substantial savings to government agencies and to the public. That said, the extent of the savings would vary considerably depending on the amount of staff assistance provided to system users, and the amount of revenue legal services.
- An online system would offer much more search capacity. For individuals who are actively looking for notices, searching in an online database is likely preferable to searching through multiple newspapers. Moreover, notices could be “pushed” through a subscription service.
- Some task force members expressed the belief that a primarily or exclusively online system would result in more frequent actual notice to persons who have a direct interest in the issue being noticed. This belief is difficult to quantify, because there is extremely little data available on the frequency with which public notices published in

newspapers result in direct notification of parties who were otherwise unaware of the issue.

The group also acknowledged several arguments in favor of continuing to publish notices in newspapers.

- The members of the public are already used to notices in their local newspapers, and know to look in the paper for such notice, this is the place to look. If notices suddenly stopped being printed in newspapers at all, confusion may result and many members of the public would be at a loss to know where to look for them instead.
- Newspapers are disinterested third parties with regard to the content of the notices. While the newspapers may have a clear financial interest in publishing legal notices, they do not normally have a direct interest in the matter that is the subject of the notice. An instrumentality of government, on the other hand, might be seen as less objective. To the extent that public confidence in the objectivity of the system is an issue, a system run by a third party such as the newspaper industry may be preferable.
- Somewhat related to the first point, newspapers “push” notices out in an active way that even an interactive database does not. The public is already reading newspapers, and may thus see public notices while browsing the newspaper and become aware of events or issues they would not have known to go look for in an online system. By contrast, people will have to actively seek information in a centralized database, and are much less likely to just stumble across the information as they might while browsing their local paper. Only more sophisticated readers, such as those who rely on public notices in their business, are likely to subscribe to a “push” notification system.

This last point is an issue about which many task force members, and likely many members of the public, disagree. While it is clear that a great many people regularly read newspapers, many people (and particularly younger people) are migrating to the internet for their news. This may be more of a problem for large metropolitan newspapers than for small “hyperlocal” publications, but it is a real and growing trend. While it is also clear that most regular readers are aware that public notices are published in newspapers, it does not necessarily follow that the public is generally likely to see notices published in newspapers. There is undoubtedly some number of persons who read the newspaper front to back, or who routinely read the public notices, but it is more likely that most readers simply peruse individual articles and sections of their papers and rarely if ever read the public notices. At the same time, individuals and businesses who regularly and actively search newspapers for notices of interest to them will no doubt continue to actively search the notices regardless of the format in which they are published.

Advisability of OSB Involvement

Another issue addressed by the task force was the extent to which – even if a centralized legal notice system is deemed advisable – the Oregon State Bar should be involved in developing and operating the system.

Although lawyers frequently post statutorily required public notices in newspapers on behalf of their clients, the Oregon State Bar as an institution has not historically been involved with the public legal notice system in Oregon. Designating the Bar as the agency tasked with overseeing a statewide central notice system to some task force members was a major expansion of the Bar's mission. Some task force members expressed reservations regarding expanding so far beyond the bar's historic and statutorily mandated role of regulating attorneys, advancing the science of jurisprudence and improving the administration of justice.

Nevertheless, many members of the task force felt that the Oregon State Bar is a better entity to perform this function than the State of Oregon and this was within the mission of the Bar, i.e. to promote access to justice. The Bar has a clear and historic interest in the integrity of the judicial system, public access to the courts and the proper functioning of government in general. Furthermore, as with newspapers, the Bar is only very rarely an interested party in matters for which statutory notice is required. The State of Oregon, on the other hand, is frequently an interested party. There may be some value in the separation created by the system being supervised by an entity that is not directly part of state government.

To the extent that the system generates enough revenue to help fund legal services, some task force members advocated for maintaining Bar involvement with the system on the ground that the Bar would have more control over the revenue stream, and could help ensure that legal services continued to benefit from the system. Some task force members specifically advocated that the Oregon State Bar should only be involved with the system if it results in revenue for legal services, although this was not a unanimous position.

Another issue of concern to the task force is cost. In principle, once the system is up and running, overseeing a truly self-sufficient centralized legal notice system should not have significant financial consequences to the Bar because the revenue would offset the operating and maintenance costs. What has not yet been confirmed is whether the Bar would have to incur costs to create the system. Additionally, no effort was made to quantify the cost of educating the public about an online legal notice system. Current budget projections do not include an outlay of funds for those purposes.

Possible Collaboration with the Newspaper Industry

Most of the members of the task force agreed that there would be considerable value in attempting to reach a collaborative solution with the newspaper industry. Working with the newspaper industry on the creation of a centralized system rather than advocating for one that would exclude them would make it easier to get legislative approval of the necessary statutory changes. The task force also recognizes the continuing civic purposes that newspapers serve, especially in smaller and rural communities; a complete withdrawal of public notices that will have an adverse affect on the newspapers would not serve the citizens of those communities well.

One possible approach would be to continue requiring newspaper publication of abbreviated public notice, with information directing interested parties to the online system for additional information. Not only would this appease the newspapers, but it would have the additional advantage of gradually introducing the public to the new system.

Task force members (as volunteers but not as arms of the task force) have been meeting with representatives of the (ONPA) regarding such an approach. That work will continue if the Board of Governors agrees.

Conclusions

Based on its careful consideration of the issues, the task force believes the Bar has three basic choices available:

- Proceed on its own to seek legislation that would substitute a centralized legal notice system for the current newspaper publication system.
- Continue to seek a collaborative solution with the Oregon Newspaper Publishers Association, and only propose legislation once that process is complete (whether successfully or unsuccessfully).
- Decline to pursue any changes to the system at this time.

The consensus of the Centralized Legal Notice System Task Force is that the Board of Governors should seek continued negotiation with the ONPA with the intention that some kind of collaborative system be developed. If this process results in a satisfactory approach, the bar should join with the ONPA to actively pursue legislation. If negotiations with the ONPA are not ultimately successful, then the Board should consider pursuing legislation on its own. In either event, the Bar would also need to determine whether NIC, Inc. or a similar provider would create a system with no upfront cost to the Bar, or identify appropriate funding sources to cover the upfront costs that would be incurred.

Working with the ONPA will necessarily mean that the bar will not be introducing any legislation into the 2014 session on this issue because of the time necessary to explore and craft a solution that is acceptable to all parties. However, given the relatively narrow scope of the 35-day even-year session, pursuing legislation in 2014 is likely not realistic even if the Bar was committed to doing so. Members and committees are permitted to introduce only a handful of bills, and there is a relatively narrow window for public input. Many legislators would likely be uncomfortable with pushing through a significant change in a short session.

Most task force members also believed that a collaborative approach is much more likely to be successful in the legislature than any proposal that the Bar advocated for on its own. The legislature generally favors proposals where all the major parties have already come together and reached a consensus. In the absence of such a consensus, the legislature often defers major decisions by forming legislative task forces to push for such a compromise. Therefore, even if the Bar preferred to advocate for its own solution without working with the newspapers, there is some significant chance the legislature would insist on such collaboration anyway.

Finally many task force members noted that historically the newspaper association has some considerable sway with legislators. Few legislators want to see the newspapers in their districts suffer, and of course the newspapers have considerable ability to advocate for their own interests. There could be adverse effects for a legislator to go against the newspapers. In short, it would be difficult albeit not impossible for the Bar to be able to convince the legislature to completely revamp the legal notice system over the unified objection of the newspaper industry.

The task force was not unanimous on how to proceed in the event that an agreement with the ONPA cannot be reached. However, the majority of members expressed the position that some form of a centralized system was in the best interests of both the bar and the state, and that the bar should continue to push for this change in the event that negotiations with the ONPA are ultimately unsuccessful. In that event, it is the task force's secondary recommendation that the Bar advocate for legislation on its own, even in light of the aforementioned difficulties.

Additionally the task force believes that in any legislative effort, the Bar should consider whether there are other consensus improvements to the public notice system that can be made that would be of benefit to OSB members. This is a secondary goal that should not jeopardize the overall effort, but the task force felt that we should make every effort to improve the law where we can.

February 18, 2014

Board of Governors
Oregon State Bar
16037 SW Upper Boones Ferry Rd
Tigard, OR 97281



Reference: Bar Task Force Report on proposed centralized legal notice site

We appreciate opportunities in recent months for open discussion between ONPA and the Bar concerning Oregon legal notices.

Concerning the Bar Task Force report, we feel it necessary to point out a couple things:

1) The report misrepresents current functionality of the ONPA legal notices website. The website allows users to search by preset category, by newspaper, by county, by city, by date range, by key words, or by any combination of the above. The website also provides users with a "push" function that delivers desired legal notices to users via email notification.

2) The report gives inadequate weight to the expertise and time spent by hundreds of Oregon newspaper staff members in formatting, timely publication and verification of legal notices for many hundreds of local government bodies and special districts.

ONPA's position on Oregon legal notice issues includes the following:

1) Publication of legal notices should remain in newspapers, where they are most accessible to and best-read by Oregonians;

2) ONPA should continue publication of all newspaper legal notices on a free website that best serves the public;

3) ONPA will talk with interested parties about content and pricing of legal notices, and engage OSB interests in discussion of ways to solve deficiencies in the legal aid fund.

4) We appreciate the efforts of attorney and Task Force member, S. Ward Greene, to maintain open communications with ONPA in recent months. We agree with the opinion that concluded his written report to the Bar: "It is still my view that fighting against the newspapers' historic role in providing public notice would be costly, unproductive and harmful to the public and to the Bar."

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February 19, 2014

Board of Governors
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Re: Centralized "Legal Notice" Task Force

Dear Governors:

I write to comment briefly on the Report of the OSB Centralized "Legal Notice" Task Force, which addressed public notices in Oregon. As you may know, I provided Sylvia Stevens with a number of requested corrections to a draft of the Report, in order to correct inaccuracies, only. Many but not all of those corrections were made and I thank Sylvia very much for considering that input. What follows here is an extremely truncated response to the substance of the final Report. I would be happy to answer any questions or provide additional information.

I very respectfully disagree with the Report's conclusions regarding Technical Feasibility, Economic Feasibility, and Public Policy Considerations. I leave to others, especially this Board, the issue of the Advisability of OSB Involvement. Let me explain, briefly.

I. Brief Background regarding the Task Force's work

The Task Force held five meetings: on January 9, February 28, April 11, June 6, and September 11, 2013. The first meeting was preceded by distribution of an agenda calling for a review of the charge to the Task Force and a review of various papers already submitted to this Board. The first meeting resulted in a wide-ranging discussion, as reflected in minutes subsequently distributed. No votes were taken on any matter in that meeting.

At the conclusion of the first meeting, the chair moved that the second meeting focus on "evaluating existing online systems, including especially the existing systems in place in Utah." In the interim between the two meetings, the chair had testified before the Oregon House Committee on Consumer Protection and Government Efficiency that

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we're going to invite to the Task Force representatives from the State of Utah who are involved in a public notification system. In Utah they have, it's my information now, gone to a completely Internet-based public notification system [W]e invited stakeholders in that process to come and speak to the Task Force by conference call and to walk us through their website to show us what they've been able to achieve in that state."

House Committee, February 21, 2013.

The minutes of the second meeting properly indicate that it was devoted to the "Utah system demonstration." What the minutes do not capture, however, despite discussion at that meeting and in two subsequent meetings, is that the Utah system importantly: (1) did *not* move any public notice of any kind from Utah's newspapers of general circulation, despite the repeated contention that all public notices had been moved to the Internet, only; and (2) did not generate any revenue, for Legal Aid or for any purpose. In fact, it was explained that a Utah State Senator initiated legislation that would have accomplished the very kind of Internet-only public notice system being proposed to the Oregon State Bar, but that after thorough investigation, that senator found that an Internet-only system would not provide the *effective* notification required both by due process and by good government. The initially proposed system, which would have been identical to the one proposed to this Bar, was expressly rejected. The actual Utah system continues to depend on newspapers, just as in Oregon (and indeed in all states), coupled with online posting of all notices, just as already exists in Oregon.

An agenda was distributed for the third meeting, April 11, which was devoted very largely to the work that a company called "NIC" is doing for governmental bodies in Oregon and in 28 other states and some 500 cities and counties. These programs are generally known as "eGovernment." They involve transactions with government, including, as the presenter described, buying fishing licenses, paying taxes, renewing business licenses, registering businesses, and paying parking tickets.

In answer to questions, the presenter for NIC stated that in none of their 29 states or other government bodies did they have experience pushing out public *notification* regarding legal matters or information on proposals from government. In his words, they are comfortable with an "if you build it they will come" system of handling transactions with governments, that is, when a citizen knows she needs a business license or needs to pay her taxes, she finds the NIC systems online and engages them to conduct her transaction with government. In the presenter's words, NIC "only supports government transactions." It does not have experience with public notice, nor does it have any experience with trying to bring the public's attention to, or to educate the public about, proposed government actions, reports, or other matters that require public notice.

The fourth meeting of the Task Force was held on June 6. No minutes were provided for the previous, April 11, meeting. Nor was there any agenda distributed for the June 6 meeting. Similarly, there were no minutes subsequently distributed concerning the June 6 meeting. I was out of the state and I do not know what was discussed at that meeting, alone. I am assured that, as with all previous meetings, no votes were taken.

The next meeting of the Task Force was held on September 11, 2013. No agenda was provided for that meeting. Very shortly before the meeting, I was informed that the group had apparently agreed at the June 6 meeting that September 11 would be the last meeting of the Task Force. That was unknown to me and unknown to Ward Greene, also, because there had been no minutes of the June 6 meeting. Although there are no minutes of the September 11 meeting, either, in my presence the Task Force had a very wide-ranging and lengthy discussion of a variety of issues. Both Mr. Greene and I had to separately leave this exceptionally long meeting before it ended. I am informed that a number of votes were taken in the final 30 minutes of the meeting but there are no records of those votes.

II. Technical Feasibility

I respectfully disagree with the Report's conclusion regarding Technical Feasibility. The presentation by NIC *did* demonstrate that NIC could handle the volume of information involved in Oregon's myriad public notices. It did not, however, provide any information regarding the precise issue of public notice, and NIC has no experience in that regard. Moreover, one of the four charges to the Task Force was to "determine what kind of *public outreach* would be required for successful implementation and develop a budget and schedule for the outreach." November 28, 2012 Memorandum from Mitzi Naucler, OSB President, to the new Task Force members (emphasis added). With all due respect, the Task Force did not gather information on this subject and did not address this part of its four-part charge. There is nothing mentioned in the Report about the cost of or effort needed in making the public fully aware of a proposed Internet-only system, as would be required both by due process and by good government. Neither NIC nor any other source provided any information regarding that subject.

In fact, throughout all discussion there was a persistent theme by proponents of a move to an Internet-only system that the Internet would "vastly improve notification," because it would make notice "more *available* to the public," as the chair contended consistently, beginning with his July 24, 2012 memorandum to this Board. That contention confuses "access" and "notice." That confusion was addressed by the House Consumer Protection and Government Efficiency Committee, on February 21, 2013, during the course of the Task Force's work. In that hearing, Representative Smith noted that the purpose of "public notice"

is to inform. It's to educate. It's to notify. And to me, I'm struggling with, who better to do that than newspapers with general

circulation. Their job is to go out and to inform the public of what's going on in their community, in their neighborhood, and to me it seems like one goes with the other. The struggle I'm having with the Internet, the *Internet to me seems like a great place for someone to go to search, but not to be notified.*

In response Mr. Ehlers testified:

If you've ever had an item, any kind of personal property item in the last five years that you've wanted to sell to another person ... [you've] probably placed it, and many of the committee members here would have placed it, on *Craigslist, which is a centralized notification system*

(Testimony February 21, 2013, 1:00 p.m.) (emphases added).

Representative Smith was asking a question the Task Force did not answer. That a citizen *could* find information about government or other public matters, *if* she knew what she was looking for, is access. That is the Craigslist model. Creating a system to alert a citizen to important information which the citizen may have *absolutely no idea exists* or any idea they would be *interested in*, is public notice. Craigslist is *access* for those *seeking* something, but it is *not notice*. I believe that a survey of constitutional law professors and civil procedure professors across the nation would illustrate this important distinction. I believe that same survey would take issue with the chair's testimony before the House Committee that "the market will determine what is the better notification, what is the least costly notification, and what is the most effective notification," which, it was contended, is Internet-only. It is not to be doubted that the market will determine what is the *least costly* "notification," but it is to be gravely doubted that the market alone will determine the *most effective* notification with regard to either due process or good government concerns.

In short, I respectfully disagree with the Report's conclusions regarding Technical Feasibility. It was proposed that the Utah experience demonstrated technical feasibility, but in fact Utah rejected the very idea of Internet-only notice that is being proposed here. (It should be noted that just as in Oregon, Utah newspapers publish searchable public notices online, also, already.) The report from NIC demonstrated that although it could handle the *volume* of information at issue, it does not have experience in public notice. The Report's conclusion regarding Technical Feasibility omits consideration of an essential part of any proposed system of notice, which is to consider notice in terms of both due process and good government requirements.

III. Economic Feasibility

Regarding Economic Feasibility, as stated the Task Force was to “determine what kind of public outreach would be required for successful implementation and develop a budget and schedule for the outreach.” With all due respect, the Task Force did not address this issue and certainly did not determine the millions of dollars in public outreach that would be involved in any such attempt to begin to address concerns of due process and good government. With this in mind, I do not believe there was any demonstration of Economic Feasibility that could satisfy what must be the concerns of the State Bar, of all institutions, regarding the requirements of due process and good government.

IV. Public Policy Considerations

With regard to Public Policy Considerations, I have described the Task Force’s confusion concerning access and public notice. Representative Smith succinctly captured public policy concerns. I believe that the vast majority of legal and other professors across the country could further elaborate on the concerns of going to an Internet-only system of notice at this juncture in the history of technology. As mentioned, the Utah legislature looked at precisely the issue being urged here and rejected it. I respectfully disagree with the Report’s conclusion regarding Public Policy Considerations.

One problem the Task Force had, which relates to its conclusions, concerns compliance with the requirements of Oregon’s Public Meetings laws. The Task Force was advised at its outset of the requirement to follow all Public Meetings law statutes, which it discussed in its first meeting. ORS 192.640 requires an agenda, missing for at least the last two meetings. Much more importantly, ORS 192.650 requires minutes for every public meeting, which shall be available within a reasonable time and which “shall include at least the following information:

- (a) All members of the governing body present;
- (b) All motions, proposals, resolutions, orders, ordinances and measures proposed and their disposition;
- (c) The results of all votes and, ... the vote of each member by name;
- (d) The substance of any discussion on any matter.”

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Unfortunately, there are no minutes for three of five meetings and no records of any motion or of any votes made by this Task Force at any time.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "DAB" followed by a stylized flourish.

Duane A. Bosworth

DAB:cp

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: February 21, 2014
Memo Date: January 31, 2014
From: Danielle Edwards, Director of Member Services
Re: Volunteer Appointments

Action Recommended

The following bar groups have vacant seats. Consider appointments to these groups as requested by the committee officers and staff liaisons.

Background

Advisory Committee on Diversity and Inclusion

Due to the resignation of one committee member the staff liaison recommends the appointment of **Jessica Asai** (073218). As a past OLIO student and active supporter of D&I programs, Ms. Asai offers an insight and familiarity with ACDI programs. Ms. Asai selected ACDI as her first preference for committee appointment through the volunteer opportunities survey last year.

Recommendation: Jessica Asai, member, term expires 12/31/2015

Judicial Administration Committee

Two appointments are needed to fill vacant member seats on the committee. The chair, secretary, and staff liaison recommend **Christopher Ramras** (965056) and **Morgen E. Daniels** (075739). Mr. Ramras is with the Multnomah County DA's Office and Ms. Daniels fills the committee's need for a criminal defense lawyer. Both candidates volunteered through the bar's annual process and selected JAC as their first committee choice for appointment.

Recommendations: Morgen E. Daniels, member, term expires 12/31/2015
Christopher Ramras, member, term expires 12/31/2015

Legal Ethics Committee

Due to the resignation of one committee member the chair and staff liaison recommend the appointment of **Jeremy Markiewicz** (053195). As a prosecutor Mr. Markiewicz offers a perspective the committee has lacked for several years. Mr. Markiewicz is from Medford and selected LEC as his first choice for committee appointment.

Recommendation: Jeremy Markiewicz, member, term expires 12/31/2015

Legal Services Program Committee

One committee member resigned and the staff liaison recommends the appointment of **Andrea H. Thompson** (084923). Ms. Thompson is an associate at Stoel Rives focusing on employment defense litigation.

Recommendation: Andrea H. Thompson, member, term expires 12/31/2015

Pro Bono Committee

The committee needs to have one of its current members appointed as secretary. **Megan Robbins** (121357) agreed to serve.

Recommendation: Megan Robbins, secretary, term expires 12/31/2014

Public Service Advisory Committee

One of this year's new appointees was unable to accept a position on the committee. As such, the chair recommends the appointment of **Debra Cohen Maryanov** (114519). Ms. Cohen Maryanov is from Salem and would likely offer an interesting perspective based on her current position with the Oregon Court of Appeals. PSAC was her first preference for appointment through the volunteer opportunities survey last year.

Recommendation: Debra Cohen Maryanov, member, term expires 12/31/2016

Unlawful Practice of Law Committee

Due to a resignation the committee needs one new member appointed. The committee would benefit from the large-firm perspective **Krista N. Hardwick** (052759) offers. UPL was Ms. Hardwick's first committee preference based upon her volunteer survey.

Recommendation: Krista N. Hardwick, member, term expires 12/31/2014

Disciplinary Board

One member from region 2 resigned from the board. Staff recommends the appointment of **Liane M. Inkster** (953940) to fill the vacant seat. Ms. Inkster is an experienced bar volunteer having served on the LPRC, Affirmative Action Committee, Professional Commission, Uniform Criminal Jury Instructions Committee, and HOD. She also indicated a willingness to serve on the Disciplinary Board through the bar volunteer preferences survey.

Recommendation: Liane M. Inkster, member, term expires 12/31/2016

**Oregon State Bar
Board of Governors Meeting
February 21, 2014
Executive Session Minutes**

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

A. Unlawful Practice of Law

1. The UPL Committee recommends the Board approve the cease and desist agreement negotiated with Mr. Buttermore.

Motion: Mr. Mansfield moved and Ms. Mitchel-Markley seconded to accept the recommendation that the Board approve the cease and desist agreement. The board unanimously approved the motion.

Motion: Mr. Whang moved and Mr. Spier seconded to recommend that the UPL committee send the case to the home jurisdiction of Florida. The board unanimously approved the motion.

B. Pending or Threatened Non-Disciplinary Litigation

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

C. Other Matters

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