

Oregon State Bar
Meeting of the Board of Governors
June 27, 2014
Open Session Minutes

The meeting was called to order by President Tom Kranovich at 2:18 p.m. on June 27, 2014. The meeting adjourned at 5:40 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 and Elisabeth Zinser. Not present were Charles Wilhoite and Timothy L. Williams. Staff present were Sylvia Stevens, Helen Hirschbiel, Rod Wegener, Susan Grabe, Kay Pulju, Mariann Hyland, Dawn Evans, Kateri Walsh, Dani Edwards and Camille Greene. Also present was Ben Eder, ONLD Chair; Ira Zarov, PLF CEO, and Tim Martinez, PLF Board of Directors; and Mark A. Ronning, Chair of Military and Veterans Law Section. Also present were members Daniel Crow and Bonnie Richardson, RPC 8.4 Drafting committee member.

1. Call to Order/Adoption of the Agenda

Motion: Ms. Mitchel-Markley moved, Mr. Prestwich seconded, and the board voted unanimously to accept the agenda as presented.

2. Report of Officers & Executive Staff

A. Report of the President

Mr. Kranovich reported on several activities not included on his written report, including his meeting with the ABA Disciplinary System Review Team and the revelation that they perform an average of six reviews per year so our request for a review was not unique. At the recent OCLEAB meeting, representatives of the Oregon law schools discussed the possibility of restructuring the third year so graduates would be members of the bar and ready to begin the practice of law. Sylvia and Tom just completed a 2-1/2 day tour of central and eastern Oregon local bar associations. Members in attendance expressed appreciation for the visits and for the many services the bar provides.

B. Report of the President-elect

In addition to his written report, Mr. Spier mentioned that he too experienced gratitude from members for the services of the bar. Mr. Spier invited comments on his suggestions for the retreat.

C. Report of the Executive Director

Ms. Stevens reported that Kateri Walsh, Director of Media Relations, will be on sabbatical and her responsibilities will be covered by other employees. The process of selecting a software vendor continues, with a recent on-site visit from the consultant. Ms. Stevens provided clarification on who was included in the interviews with the ABA Consultation team Mr. Mansfield asked how the bar could provide guidance to practitioners regarding marijuana laws. Ms. Hirschbiel reported that the Legal Ethics Committee had been looking into the issues and

will likely ask DCO and the SPRB to consider a policy against prosecution if a lawyer assists a client with conduct that is legal in Oregon but not under federal law.

Motion: Mr. Mansfield moved, Mr. Ehlers seconded, and the board unanimously agreed to ask the Legal Ethics Committee issue an ethics opinion or a rule regarding marijuana laws.

D. Director of Regulatory Services

Ms. Evans reported that the July SPRB meeting will include a retreat to discuss ways to streamline the disciplinary process, such as allowing the DCO staff to have more autonomy in determining what charges to pursue. Ms. Evans has been working on completing investigations that have been in the office for too long.

E. Director of Diversity & Inclusion

Ms. Hyland reported that OLIO planning is well under-way and encouraged BOG members to attend at least part of the event. She presented a short video of a law student explaining the value of OLIO that will be used to recruit first-year law students. The Diversity Story Wall will be revealed on November 7 after the House of Delegates meeting.

F. MBA Liaison Reports

Mr. Ehlers attended the May 7, 2014 MBA board meeting and reported that the MBA is updating its mission statement regarding access to courts. He convinced the board to include persons who lack legal status in their list of groups facing barriers.

G. Oregon New Lawyers Division Report

As written. Mr. Eder presented the Oregon New Lawyers Division request for approval to submit a letter of support to the Legal Services Corporation for the Legal Aid Services of Oregon (LASO) grant application). **[Exhibit A]**

Motion: Mr. Kehoe moved, Mr. Ehlers seconded, and the board voted unanimously to authorize the ONLD to send the letter.

3. Professional Liability Fund [Mr. Zarov]

Mr. Zarov submitted a general update on the PLF's positive financial status **[Exhibit B]**, and reported on three new hires, including an additional law practice management attorney. There is a higher demand for the expertise of their law practice management lawyers. Alan Beck, claims attorney, is retiring after 23 years, during which he processed \$38 million in claims. The PLF will not be seeking an increase in the assessment for next year.

Mr. Martinez reported on the status of the CEO hiring process. A committee of six PLF board members narrowed the pool of twenty-two applicants and granted interviews to eleven. Four applicants were given second interviews which narrowed the pool to two. The committee will meet to review the two remaining candidates. Tentatively there will be a special PLF board meeting next week to announce the new CEO.

4. OSB Committees, Sections and Councils

A. Public Service Advisory Committee

Ms. Pulju presented the committee's recommendation for the board to approve a new "Disability Benefits and injured Workers" panel for the Modest Means Program (MMP). She explained that PSAC considered a variety of approaches and the recommendation is a compromised worked out by a focus group.

Ms. Pulju also asked the board to consider the recommendation of the committee to approve related and housekeeping revisions to the Modest Means Program Policies and Procedures. **[Exhibit C]**

Motion: Mr. Kehoe moved, Ms. Mitchel-Markley seconded, and the board voted unanimously to approve the committee's recommendation to create these Modest Means panels for a pilot period of one year and to approve the revisions as recommended by the committee.

B. Military and Veterans Law Section

Mr. Spier presented the section's request to authorize President Kranovich to sign a letter to the Department of Defense with recommendations for the pending review of the Uniform Code of Military Justice substantially in the form drafted by the Military Law & Veterans Section. **[Exhibit D]**

Motion: Mr. Spier moved, Ms. Mitchel-Markley seconded, and the board voted to approve the section's request have Mr. Kranovich send the letter.

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

A. Board Development Committee

Ms. Mitchel-Markley updated the board on the committee's actions and asked for approval of the Local Professional Responsibility Committees appointments. **[Exhibit E]**

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

Ms. Mitchel-Markley asked for approval of the House of Delegates appointments. **[Exhibit E]**

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

Ms. Mitchel-Markley asked for approval of the Oregon Law Commission appointment. **[Exhibit E]**

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

B. Budget and Finance Committee

Mr. Emerick informed the board on bar-related financial matters and asked the board to accept the audit report of the OSB financial statements for the two-year period ending December 31, 2013. **[Exhibit F]**

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

C. Public Affairs Committee

Mr. Prestwich asked the board to adopt proposed changes to the following practice standards: Specific Standards for Representation in Adult Criminal and Juvenile Delinquency Cases; and Specific Standards of Representation in Juvenile Dependency Cases. **[Exhibit G]**

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

Mr. Prestwich asked the board to accept the task force reports requested by the Senate Judiciary Committee in 2013(SB 798 – Alternate Jurors in Criminal Cases, SB 799 – Motions for Change of Attorney, and SB 812 – Motions for Change of Judge), and submit them to the Committee during fall Legislative Days. **[Exhibit H]**

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

Mr. Prestwich asked the board to approve the following OSB legislative priorities for 2015: adequate funding for court services, technology, and facilities; increased funding, including the use of the cy pres doctrine, for low income civil legal services; increased funding, for public defense services; and support for the Oregon State Bar’s 2015 Law Improvement Package of legislation. **[Exhibit I]**

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

Mr. Prestwich asked the board to continue the current practice regarding political activities to maintain a presence in Salem.

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

D. RPC 8.4 Drafting Committee

Ms. Richardson informed the board of the drafting process that led to a consensus. Mr. Kranovich asked the board to decide whether to forward the proposed Oregon RPC 8.4 amendment to the House of Delegates with a recommendation to adopt the amendment. **[Exhibit J]**

Motion: Ms. Zinser moved, Ms. Matsumonji seconded, and the board voted unanimously to forward the proposed amendment to the HOD with a recommendation to adopt.

E. Executive Director Evaluation Special Committee

Mr. Kehoe asked the board to give direction regarding the desired process for selecting a new Executive Director. After discussion, the Committee was asked to develop a process for the BOG’s consideration that would include timelines, standards and recommendations for the recruitment strategy.

F. Governance and Strategic Planning Committee

Mr. Spier asked the board to approve the proposed amendment to ORS 9.210. **[Exhibit K]**

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

6. Other Action Items

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

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

Mr. Kranovich withdrew from the agenda a proposal for acknowledging the Lincoln High School for winning the 2014 National We the People Competition, after being reminded by Ms. Pulju that he had already done so on his Facebook page.

Ms. Stevens reminded the BOG that the Chief Justice had asked for BOG input on a possible change to RFA 13.20(1)(b) which requires a law student to complete at least four semesters of full-time law study or the equivalent to become a certified law student. Some BOG members had responded to the initial inquiry, indicating support for a more relaxed requirement that would allow students to be certified sooner. The BOG was generally supportive of the idea that eligibility should be based on courses taken rather than credit hours. Ms. Stevens will relay the BOG's views to the Chief Justice.

Ms. Stevens presented the request of Andrew Schpak for the board to be a sponsor of the ABA YLD 2014 Fall Conference that will be held in Portland in October. **[Exhibit M]**

Motion: Mr. Ehlers moved, Mr. Chaney seconded, and the board voted unanimously to be a Silver sponsor and donate \$5,000.

7. Consent Agenda

Motion: Mr. Spier moved, Mr. Kehoe seconded, and the board voted unanimously to approve the consent agenda of past meeting minutes, bylaw amendments **[Exhibit N]** and revised formal ethics opinions **[Exhibit O]**.

8. Closed Sessions – see CLOSED Minutes

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

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

None.

**Oregon State Bar
Board of Governors Meeting
June 27, 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. Pending or Threatened Non-Disciplinary Litigation

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

B. Other Matters

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

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: June 27, 2014
Memo Date: June 26, 2014
From: Ben Eder, Oregon New Lawyers Division Chair
Re: Letter of support for LASO grant application

Issue

The Oregon New Lawyers Division requests approval from the BOG to submit a letter of support for the Legal Aid Services of Oregon (LASO) grant application.

Discussion

LASO receives financial support from the Legal Services Corporation (LSC), a federal agency tasked with funding and regulating legal services programs nationwide. This past spring, Congress appropriated an additional \$2 million dollars to LSC to help fund "Innovative Pro Bono Initiatives." LSC has created a nationwide competitive grant process for LSC programs to apply for a piece of this funding. Not all programs that apply will receive funds.

LASO is in the process of applying for funding through the LSC grant with the goal of creating a new statewide pro bono program manager position in Oregon. Currently, the Portland Office of LASO is the only office with dedicated pro bono staff. A Statewide Pro Bono Manager would be able to work with non-Metro legal aid offices to leverage services to low-income clients by creating and maintaining pro bono opportunities. This Statewide Pro Bono Manager would work with legal aid offices to recruit local private attorneys to do pro bono work, as well as work with Portland metro attorneys, to connect them to rural clients. The Statewide Pro Bono Manager would export best practices being used in the Portland Regional Office as well as create new and innovative opportunities for both urban and rural attorneys to serve clients statewide.

The ONLD voted unanimously to request BOG approval to support LASO with their grant application. The enclosed letter is offered for your review and consideration.



Oregon
New Lawyers
Division

June 26, 2014

Officers

Ben Eder
Chairperson

Karen E. Clevering
Chair-Elect

David N. Eder
Past Chair

Kaori Tanabe
Secretary

Colin G. Andries
Treasurer

Legal Services Corporation
3333 K Street, NW, 3rd Floor
Washington, DC 20007-3522

RE: Letter in support of Legal Aid Services of Oregon

Members

Krista N. Evans
Jason E. Hirshon
Cassie K. Jones
Anthony D. Kuchulis
Collin C. McKean
Jennifer Nicholls

To Whom it May Concern:

The mission of the Oregon New Lawyers Division (ONLD) is to assist new lawyers with the transition to practicing law in Oregon, either from law school or from a practice in another jurisdiction; conduct programs of value to new lawyers and law students; promote public awareness and access to justice; and promote professionalism among new lawyers. The ONLD is the only bar division representing over 4,000 lawyers, approximately 35% of the Bar. The ONLD was created in recognition of the special interests of new lawyers that are often different from those of more experienced attorneys. New lawyers are more likely to be concerned with issues of professional advancement, balancing family and career and substantive legal education.

Subcommittees

Continuing Legal Education
Andrew T. Gust, *Co-Chair*
Joel D. Sturm, *Co-Chair*

Law Related Education
Melissa Healy, *Chair*

Law School Outreach
Chelsea Glynn, *Co-Chair*
Joe Kraus, *Co-Chair*

Member Services & Satisfaction
Ryan M. Vanden Brink, *Chair*

Practical Skills
Andrew T. Weiner, *Chair*

Pro Bono
Colin J. Lebens, *Co-Chair*
Raife R. Neuman, *Co-Chair*

Liaisons

Richard G. Spier
Board of Governors

Danielle Edwards
OSB Staff

Michelle Lane
OSB Staff

The ONLD's commitment to access to justice and promoting professionalism includes a dedication to encouraging our members to engage in pro bono activities. The ONLD has a Pro Bono Committee that works on initiatives that enhance the culture of pro bono in our state. For example, we help coordinate a large Pro Bono Fair each year as part of National Celebrate Pro Bono Week. The ONLD also coordinates a very successful program called the Practical Skills through Public Service Program, that connects unemployed new lawyers with nonprofit and government agencies for short term full time pro bono placements. The ONLD recognizes that pro bono service helps fill the gap in legal services for the poor, while at the same time providing an opportunity for new lawyers to gain valuable legal experience.

The ONLD is very interested in expanding opportunities for new lawyers to get involved in pro bono services. To that end, we enthusiastically support

Legal Aid Services of Oregon in their application to the LSC Pro Bono Innovations Fund. The majority of pro bono opportunities in Oregon are located in the Portland metro area. While many ONLD members practice there, we are invested in creating opportunities for lawyers in all parts of the state. Creating a Statewide Pro Bono Coordinator position would be a vital step toward making this happen.

The ONLD has connections with attorneys statewide and is in a unique position to help LASO with pro bono attorney recruitment (particularly within the new attorney demographic). Recruitment efforts only make sense if there are opportunities to feed new volunteers into. The Statewide Pro Bono Coordinator would be in the position of placing new pro bono recruits in meaningful pro bono activities statewide. By engaging attorneys early in their career the ONLD and LASO can build pro bono advocates and supporters for life. The ONLD looks forward to the opportunity to support LASO in this endeavor, and we unreservedly back LASO in their proposal for LSC Pro Bono Innovations Funding.

Sincerely,



Ben Eder, Chairperson
Oregon New Lawyers Division

**Oregon State Bar
Professional Liability Fund
Financial Statements
4/30/2014**

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**Oregon State Bar
Professional Liability Fund
Combined Primary and Excess Programs
Statement of Net Position
4/30/2014**

<u>ASSETS</u>	<u>THIS YEAR</u>	<u>LAST YEAR</u>
Cash	\$2,060,405.41	\$1,324,493.54
Investments at Fair Value	52,210,174.85	49,291,732.52
Assessment Installment Receivable	6,058,529.08	6,105,044.88
Due from Reinsurers	51,421.37	66,973.96
Other Current Assets	78,279.11	76,607.82
Net Fixed Assets	861,880.81	931,770.53
Claim Receivables	35,426.75	58,890.72
Other Long Term Assets	<u>9,825.00</u>	<u>9,825.00</u>
TOTAL ASSETS	<u>\$61,365,942.38</u>	<u>\$57,865,338.97</u>
 <u>LIABILITIES AND FUND POSITION</u>		
Liabilities:	<u>THIS YEAR</u>	<u>LAST YEAR</u>
Accounts Payable and Other Current Liabilities	\$150,991.40	\$89,996.85
Due to Reinsurers	\$966,220.95	\$941,779.88
Liability for Compensated Absences	370,817.99	445,620.51
Liability for Indemnity	11,341,313.23	13,693,964.59
Liability for Claim Expense	14,720,589.62	13,196,655.36
Liability for Future ERC Claims	2,400,000.00	2,700,000.00
Liability for Suspense Files	1,500,000.00	1,400,000.00
Liability for Future Claims Administration (AOE)	2,300,000.00	2,400,000.00
Excess Ceding Commission Allocated for Rest of Year	538,236.90	493,269.71
Assessment and Installment Service Charge Allocated for Rest of Year	<u>16,517,621.78</u>	<u>16,788,036.67</u>
Total Liabilities	<u>\$50,805,791.87</u>	<u>\$52,149,323.57</u>
Change in Net Position:		
Retained Earnings (Deficit) Beginning of the Year	\$9,270,287.61	\$4,047,255.11
Year to Date Net Income (Loss)	<u>1,289,862.90</u>	<u>1,668,760.29</u>
Net Position	<u>\$10,560,150.51</u>	<u>\$5,716,015.40</u>
TOTAL LIABILITIES AND FUND POSITION	<u>\$61,365,942.38</u>	<u>\$57,865,338.97</u>

**Oregon State Bar
Professional Liability Fund
Primary Program
Statement of Revenues, Expenses, and Changes in Net Position
4 Months Ended 4/30/2014**

	YEAR TO DATE <u>ACTUAL</u>	YEAR TO DATE <u>BUDGET</u>	<u>VARIANCE</u>	YEAR TO DATE <u>LAST YEAR</u>	ANNUAL <u>BUDGET</u>
<u>REVENUE</u>					
Assessments	\$8,148,014.56	\$8,374,333.32	\$226,318.76	\$8,264,342.33	\$25,123,000.00
Installment Service Charge	110,796.33	130,000.00	19,203.67	129,676.00	390,000.00
Other Income	30,100.00	0.00	(30,100.00)	20,801.00	0.00
Investment Return	<u>1,058,838.40</u>	<u>897,421.32</u>	<u>(161,417.08)</u>	<u>2,036,445.05</u>	<u>2,692,264.00</u>
TOTAL REVENUE	<u>\$9,347,749.29</u>	<u>\$9,401,754.64</u>	<u>\$54,005.35</u>	<u>\$10,451,264.38</u>	<u>\$28,205,264.00</u>
<u>EXPENSE</u>					
Provision For Claims:					
New Claims at Average Cost	\$5,964,000.00			\$6,680,000.00	
Coverage Opinions	25,767.21			51,063.24	
General Expense	7,922.08			73,477.33	
Less Recoveries & Contributions	(68.71)			(2,951.28)	
Budget for Claims Expense		<u>\$6,890,880.00</u>			<u>\$20,672,640.00</u>
Total Provision For Claims	<u>\$5,997,620.58</u>	<u>\$6,890,880.00</u>	<u>\$893,259.42</u>	<u>\$6,801,589.29</u>	<u>\$20,672,640.00</u>
Expense from Operations:					
Administrative Department	\$776,008.46	\$827,457.40	\$51,448.94	\$695,744.96	\$2,482,372.00
Accounting Department	207,872.66	212,553.96	4,681.30	261,578.68	637,662.00
Loss Prevention Department	569,620.18	693,674.68	124,054.50	592,701.81	2,081,023.00
Claims Department	860,264.82	888,155.88	27,891.06	841,634.34	2,664,467.00
Allocated to Excess Program	<u>(373,596.32)</u>	<u>(373,596.32)</u>	<u>0.00</u>	<u>(368,368.00)</u>	<u>(1,120,789.00)</u>
Total Expense from Operations	<u>\$2,040,169.80</u>	<u>\$2,248,245.60</u>	<u>\$208,075.80</u>	<u>\$2,023,291.79</u>	<u>\$6,744,735.00</u>
Contingency (4% of Operating Exp)	\$0.00	\$104,900.32	\$104,900.32	\$0.00	\$314,701.00
Depreciation and Amortization	\$54,238.08	\$56,600.00	\$2,361.92	\$56,763.80	\$169,800.00
Allocated Depreciation	<u>(8,122.00)</u>	<u>(8,122.00)</u>	<u>0.00</u>	<u>(10,018.68)</u>	<u>(24,366.00)</u>
TOTAL EXPENSE	<u>\$8,083,906.46</u>	<u>\$9,292,503.92</u>	<u>\$1,208,597.46</u>	<u>\$8,871,626.20</u>	<u>\$27,877,510.00</u>
NET POSITION - INCOME (LOSS)	<u>\$1,263,842.83</u>	<u>\$108,584.04</u>	<u>(\$1,155,258.79)</u>	<u>\$1,579,638.18</u>	<u>\$325,754.00</u>

**Oregon State Bar
Professional Liability Fund
Primary Program
Statement of Operating Expense
4 Months Ended 4/30/2014**

<u>EXPENSE:</u>	<u>CURRENT MONTH</u>	<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>
Salaries	\$339,099.89	\$1,368,044.42	\$1,444,463.32	\$76,418.90	\$1,378,683.88	\$4,333,390.00
Benefits and Payroll Taxes	131,150.61	505,001.95	537,842.08	32,840.13	482,039.02	1,613,526.00
Investment Services	0.00	6,753.75	9,333.32	2,579.57	6,876.75	28,000.00
Legal Services	0.00	0.00	4,333.32	4,333.32	2,589.50	13,000.00
Financial Audit Services	13,000.00	13,000.00	7,933.32	(5,066.68)	15,000.00	23,800.00
Actuarial Services	0.00	11,340.00	7,333.32	(4,006.68)	6,448.75	22,000.00
Information Services	2,221.00	11,656.67	32,533.36	20,876.69	32,197.66	97,600.00
Document Scanning Services	0.00	0.00	21,666.68	21,666.68	1,229.61	65,000.00
Other Professional Services	12,572.57	31,884.62	23,410.00	(8,474.62)	18,105.20	70,230.00
Staff Travel	223.29	3,093.93	5,016.68	1,922.75	1,306.52	15,050.00
Board Travel	2,119.59	4,370.38	12,999.96	8,629.58	2,060.17	39,000.00
NABRICO	0.00	0.00	3,533.32	3,533.32	100.00	10,600.00
Training	3,029.50	9,927.36	7,333.32	(2,594.04)	10,495.04	22,000.00
Rent	42,777.25	170,160.74	176,959.68	6,798.94	167,646.08	530,879.00
Printing and Supplies	10,607.63	27,820.86	20,333.36	(7,487.50)	15,849.65	61,000.00
Postage and Delivery	1,894.00	8,029.14	11,583.36	3,554.22	13,485.11	34,750.00
Equipment Rent & Maintenance	736.86	14,666.38	13,500.00	(1,166.38)	16,618.41	40,500.00
Telephone	3,917.32	14,863.35	19,320.00	4,456.65	15,829.40	57,960.00
L P Programs (less Salary & Benefits)	31,492.73	101,583.12	148,265.00	46,681.88	99,412.07	444,794.00
Defense Panel Training	0.00	0.00	500.04	500.04	49.90	1,500.00
Bar Books Grant	16,666.67	66,666.68	66,666.68	0.00	66,666.68	200,000.00
Insurance	0.00	8,221.00	13,048.32	4,827.32	8,432.00	39,145.00
Library	2,948.55	7,834.52	11,000.00	3,165.48	10,107.18	33,000.00
Subscriptions, Memberships & Other Allocated to Excess Program	1,350.10	20,437.56	14,933.32	(5,504.24)	20,431.21	44,800.00
	<u>(93,399.08)</u>	<u>(373,596.32)</u>	<u>(373,596.32)</u>	<u>0.00</u>	<u>(368,368.00)</u>	<u>(1,120,789.00)</u>
TOTAL EXPENSE	<u>\$522,408.48</u>	<u>\$2,031,760.11</u>	<u>\$2,240,245.44</u>	<u>\$208,485.33</u>	<u>\$2,023,291.79</u>	<u>\$6,720,735.00</u>

**Oregon State Bar
Professional Liability Fund
Excess Program
Statement of Revenue, Expenses, and Changes in Net Position
4 Months Ended 4/30/2014**

	<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	\$269,118.45	\$253,333.32	(\$15,785.13)	\$246,634.86	\$760,000.00
Prior Year Adj. (Net of Reins.)	3,446.70	500.00	(2,946.70)	3,371.55	1,500.00
Installment Service Charge	39,808.00	14,000.00	(25,808.00)	41,433.00	42,000.00
Investment Return	<u>135,357.42</u>	<u>67,547.68</u>	<u>(67,809.74)</u>	<u>209,282.61</u>	<u>202,643.00</u>
TOTAL REVENUE	<u>\$447,730.57</u>	<u>\$335,381.00</u>	<u>(\$112,349.57)</u>	<u>\$500,722.02</u>	<u>\$1,006,143.00</u>
<u>EXPENSE</u>					
Operating Expenses (See Page 6)	\$413,588.50	\$416,233.68	\$2,645.18	\$401,581.23	\$1,248,701.00
Allocated Depreciation	<u>\$8,122.00</u>	<u>\$8,122.00</u>	<u>\$0.00</u>	<u>\$10,018.68</u>	<u>\$24,366.00</u>
NET POSITION - INCOME (LOSS)	<u>\$26,020.07</u>	<u>(\$88,974.68)</u>	<u>(\$114,994.75)</u>	<u>\$89,122.11</u>	<u>(\$266,924.00)</u>

**Oregon State Bar
Professional Liability Fund
Excess Program
Statement of Operating Expense
4 Months Ended 4/30/2014**

	<u>CURRENT MONTH</u>	<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>EXPENSE:</u>						
Salaries	\$58,191.10	\$232,764.40	\$232,764.32	(\$0.08)	\$223,217.92	\$698,293.00
Benefits and Payroll Taxes	21,551.82	86,209.56	85,667.36	(542.20)	83,589.68	257,002.00
Investment Services	0.00	746.25	833.32	87.07	623.25	2,500.00
Office Expense	0.00	0.00	0.00	0.00	0.00	0.00
Allocation of Primary Overhead	22,533.84	90,135.36	90,135.32	(0.04)	92,958.00	270,406.00
Reinsurance Placement & Travel	919.93	1,432.93	1,666.68	233.75	0.00	5,000.00
Training	0.00	0.00	166.68	166.68	0.00	500.00
Printing and Mailing	0.00	0.00	1,833.32	1,833.32	92.38	5,500.00
Program Promotion	500.00	2,300.00	2,500.00	200.00	1,100.00	7,500.00
Other Professional Services	0.00	0.00	666.68	666.68	0.00	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>\$103,696.69</u>	<u>\$413,588.50</u>	<u>\$416,233.68</u>	<u>\$2,645.18</u>	<u>\$401,581.23</u>	<u>\$1,248,701.00</u>

**Oregon State Bar
Professional Liability Fund
Combined Investment Schedule
4 Months Ended 4/30/2014**

	<u>CURRENT MONTH THIS YEAR</u>	<u>YEAR TO DATE THIS YEAR</u>	<u>CURRENT MONTH LAST YEAR</u>	<u>YEAR TO DATE LAST YEAR</u>
Dividends and Interest:				
Short Term Bond Fund	\$13,367.38	\$50,551.95	\$25,820.80	\$90,622.76
Intermediate Term Bond Funds	8,204.44	75,279.68	23,781.28	73,383.74
Domestic Common Stock Funds	4,226.00	118,321.97	0.00	38,480.25
International Equity Fund	0.00	0.00	0.00	0.00
Real Estate	0.00	38,384.18	0.00	9,468.82
Hedge Fund of Funds	0.00	0.00	0.00	0.00
Real Return Strategy	<u>0.00</u>	<u>97,934.18</u>	<u>0.00</u>	<u>38,894.23</u>
Total Dividends and Interest	<u>\$25,797.82</u>	<u>\$380,471.96</u>	<u>\$49,602.08</u>	<u>\$250,849.80</u>
Gain (Loss) in Fair Value:				
Short Term Bond Fund	\$19,262.41	\$44,056.43	\$33,985.92	\$23,727.79
Intermediate Term Bond Funds	41,930.03	154,584.37	73,840.27	73,916.27
Domestic Common Stock Funds	(18,893.99)	62,407.50	115,066.02	899,057.03
International Equity Fund	45,358.03	198,008.05	404,472.85	654,780.05
Real Estate	0.00	58,342.79	0.00	64,304.55
Hedge Fund of Funds	0.00	0.00	35,781.33	226,364.91
Real Return Strategy	<u>89,324.01</u>	<u>296,324.72</u>	<u>69,498.16</u>	<u>52,727.26</u>
Total Gain (Loss) in Fair Value	<u>\$176,980.49</u>	<u>\$813,723.86</u>	<u>\$732,644.55</u>	<u>\$1,994,877.86</u>
TOTAL RETURN	<u>\$202,778.31</u>	<u>\$1,194,195.82</u>	<u>\$782,246.63</u>	<u>\$2,245,727.66</u>
Portions Allocated to Excess Program:				
Dividends and Interest	\$1,929.68	\$37,523.84	\$4,518.75	\$25,872.67
Gain (Loss) in Fair Value	<u>13,238.14</u>	<u>97,833.58</u>	<u>66,743.92</u>	<u>183,409.94</u>
TOTAL ALLOCATED TO EXCESS PROGRAM	<u>\$15,167.82</u>	<u>\$135,357.42</u>	<u>\$71,262.67</u>	<u>\$209,282.61</u>

**Oregon State Bar
Professional Liability Fund
Excess Program
Balance Sheet
4/30/2014**

ASSETS

	<u>THIS YEAR</u>	<u>LAST YEAR</u>
Cash	\$1,125,134.34	\$521,287.63
Assessment Installment Receivable	631,391.20	570,653.50
Due from Reinsurers	51,421.37	66,973.96
Investments at Fair Value	<u>2,451,732.64</u>	<u>3,150,558.97</u>
TOTAL ASSETS	<u>\$4,259,679.55</u>	<u>\$4,309,474.06</u>

LIABILITIES AND FUND EQUITY

	<u>THIS YEAR</u>	<u>LAST YEAR</u>
Liabilities:		
Accounts Payable & Refunds Payable	\$40.60	\$89.04
Due to Primary Fund	\$20,589.56	(\$6,265.38)
Due to Reinsurers	966,220.95	941,779.88
Ceding Commission Allocated for Remainder of Year	<u>538,236.90</u>	<u>493,269.71</u>
Total Liabilities	<u>\$1,525,088.01</u>	<u>\$1,428,873.25</u>
Fund Equity:		
Retained Earnings (Deficit) Beginning of Year	\$2,708,571.47	\$2,791,478.70
Year to Date Net Income (Loss)	<u>26,020.07</u>	<u>89,122.11</u>
Total Fund Equity	<u>\$2,734,591.54</u>	<u>\$2,880,600.81</u>
TOTAL LIABILITIES AND FUND EQUITY	<u>\$4,259,679.55</u>	<u>\$4,309,474.06</u>

**Oregon State Bar
Professional Liability Fund
Primary Program
Balance Sheet
4/30/2014**

<u>ASSETS</u>		
	<u>THIS YEAR</u>	<u>LAST YEAR</u>
Cash	\$935,271.07	\$803,205.91
Investments at Fair Value	49,758,442.21	46,141,173.55
Assessment Installment Receivable	5,427,137.88	5,534,391.38
Due From Excess Fund	20,589.56	(6,265.38)
Other Current Assets	57,689.55	82,873.20
Net Fixed Assets	861,880.81	931,770.53
Claim Receivables	35,426.75	58,890.72
Other Long Term Assets	<u>9,825.00</u>	<u>9,825.00</u>
TOTAL ASSETS	<u>\$57,106,262.83</u>	<u>\$53,555,864.91</u>
<u>LIABILITIES AND FUND EQUITY</u>		
	<u>THIS YEAR</u>	<u>LAST YEAR</u>
Liabilities:		
Accounts Payable and Other Current Liabilities	\$130,361.24	\$96,173.19
Liability for Compensated Absences	370,817.99	445,620.51
Liability for Indemnity	11,341,313.23	13,693,964.59
Liability for Claim Expense	14,720,589.62	13,196,655.36
Liability for Future ERC Claims	2,400,000.00	2,700,000.00
Liability for Suspense Files	1,500,000.00	1,400,000.00
Liability for Future Claims Administration (ULAE)	2,300,000.00	2,400,000.00
Assessment and Installment Service Charge Allocated for Remainder of Year	<u>16,517,621.78</u>	<u>16,788,036.67</u>
Total Liabilities	<u>\$49,280,703.86</u>	<u>\$50,720,450.32</u>
Fund Equity:		
Retained Earnings (Deficit) Beginning of the Year	\$6,561,716.14	\$1,255,776.41
Year to Date Net Income (Loss)	<u>1,263,842.83</u>	<u>1,579,638.18</u>
Total Fund Equity	<u>\$7,825,558.97</u>	<u>\$2,835,414.59</u>
TOTAL LIABILITIES AND FUND EQUITY	<u>\$57,106,262.83</u>	<u>\$53,555,864.91</u>

I. Program

A. Overview

The Modest Means Program (MMP) is designed to make legal services available to lower income people who are unable to afford regular attorney fees.

B. Operation

The Referral & Information Services (RIS) ~~Administrator~~ Manager shall develop and revise referral procedures and shall be responsible for the operation of the program. Procedures and rules shall be consistent with the program goals and the following guidelines:

1. RIS Staff ("Staff") may not comment on the qualifications of a participating MMP Panelist Attorney ("Panelist") and may not guarantee the quality or value of legal services.
2. Staff shall not make referrals on the basis of race, sex, age, religion, sexual orientation, or national origin.
3. No more than three referrals may be made to an applicant for the same legal problem.
4. Staff may provide legal information and referrals to social service agencies for callers for whom a legal referral would not be appropriate, and may develop agency resource lists.
5. Callers complaining about possible ethical violations by Panelists shall be referred to the Oregon State Bar Client Assistance Office.

C. Client Eligibility and Attorney Fees

1. To be eligible, applicant income must be less than or equal to at least one current eligibility tier of the MMP ("Tier"). Tiers are based upon set percentages of the current Federal Poverty Guidelines, with allowable adjustments based on guidelines of the Legal Services Corporation.
2. Attorneys' fee levels ("Levels") shall be set to correspond with the Tiers, after giving due consideration to the most recent edition of the Oregon State Bar Economic Survey and common billing practices for each area of law addressed by the MMP. In consultation with the Public Service Advisory Committee, Staff shall periodically adjust the Tiers and Levels. Tier and Level adjustments may be reviewed by the Board of Governors, who shall determine whether the adjustments were reasonable. The client fee for an initial consultation shall not exceed \$35. MMP attorneys are entitled to request a reduced initial retainer deposit ("Reduced Retainer"). "Reduced Retainer" shall mean an amount that is less than the amount of an initial retainer deposit requested for non-MMP cases of similar complexity and duration.
3. [Panels with separate eligibility and attorney fee guidelines may be adopted periodically on a trial basis. Please contact RIS staff for more information.](#)

II. Panelists

A. Eligibility

Attorneys satisfying the following requirements shall be eligible for participation in the program:
The attorney must:

1. be in private practice; and
2. be an active member of the Oregon State Bar who is in good standing; and
3. maintain malpractice coverage with the Professional Liability Fund; and
4. have no Disciplinary Proceedings pending.

“Disciplinary Proceedings” shall include those authorized to be filed pursuant to Rule 2.6 of the Rules of Procedure.

B. Registration

1. Qualifying attorneys shall be accepted as Panelists upon submission of the signed registration form which includes an agreement to abide by MMP Policies and Procedures.
2. Applications for special subject matter panels shall be reviewed by Staff in accordance with eligibility guidelines set by the Board of Governors. Challenges to a Staff decision on eligibility shall be reviewed by the Public Service Advisory Committee [\(PSAC\)](#), whose decision is final.

C. Enforcement

1. Panelists against whom Disciplinary Proceedings have been approved for filing shall be immediately removed from MMP until those charges have been resolved. A disciplinary matter shall not be considered resolved until all matters relating to the Disciplinary Proceedings, including appeals, have been concluded and the matter is no longer pending in any form.
2. [A Panelist whose status changes from “active member of the Oregon State Bar who is in good standing” shall be automatically removed from the MMP. A Panelist may be removed from the program or any MMP panel if the Panelist fails to continue to maintain eligibility or otherwise violates the Rules for Panelists. Upon written request, the PSAC will review a decision to remove a panelist at its next regularly scheduled meeting. Such written request must be submitted to the PSAC within 30 calendar days of the date notice of the decision is given to the removed panelist. The PSAC’s decision regarding removal is final.](#)

D. Rules For Panelists

1. [Each panelist shall continuously](#) be an active member of the Oregon State Bar who is in good standing with malpractice coverage from the Professional Liability Fund and have no pending Disciplinary Proceedings;
2. [Panelists agree to charge potential clients who live in Oregon and are referred by the MMP no more than \\$35 for an initial 30-minute consultation, except that no consultation fee may be charged where: \(a\) such charge would conflict with a statute or rule regarding attorneys’ fees in a particular type of case \(e.g., workers’ compensation cases\), or \(b\) the panelist customarily offers or advertises a free consultation to the public for a particular type of case;](#)
3. [If the potential client and panelist agree to continue consulting beyond the first 30 minutes, the panelist must make clear what additional fees will apply;](#)
4. [Panelists will participate only on those panels and subpanels within the panelist’s competence and where the LRS has approved the panelist to participate on one or more special subject matter panels, as applicable;](#)
5. [Panelists will use a written fee agreement for any services provided beyond the initial consultation;](#)
6. [Panelists will communicate regularly with MMP staff, including updating online profiles and providing notice if a panelist is unable to accept referrals for a period of time due to vacation, leave of absence, heavy caseload or any other reason;](#)

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

8. Panelists agree to ~~submit~~ submit any fee disputes with clients referred by MMP to the Oregon State Bar Fee Arbitration Program.

DRAFT

Military Justice Review Group
Office of the General Counsel
Room 3B747
1600 Defense Pentagon
Washington, DC 20301-1600

June 30, 2014

Dear Chief Judge Efron:

As the Military Justice Review Group (MJRG) conducts its "Comprehensive Review of the Uniform Code of Military Justice," per Secretary Hagel's 18 October 2013 direction, Deputy General Counsel Koffsky has requested the input of the Oregon State Bar (OSB) concerning the administration of military justice.

The mission of the OSB is to serve justice by promoting respect for the rule of law, by improving the quality of legal services, and by increasing access to justice. The OSB was established in 1935 by the Oregon Legislative Assembly to license and discipline lawyers, regulate the practice of law and provide a variety of services to bar members and the public. The bar is a public corporation and an instrumentality of the Oregon Judicial Department.

In furtherance of our mission, we are pleased to address two concerns that we believe should be considered in any comprehensive report on the administration of Military Justice in the U.S. Military.

1. Post-service consequences of military justice and other disciplinary actions.
2. Inherent conflicts of interest in criminal defense representation in courts-martial.

Post-service consequences of military disciplinary actions

We believe that statutory language should be considered to require military decision makers to consider post-service consequences of military disciplinary actions.

Oregon is proud to contribute citizens of our state to facilitate the important federal Constitutional requirement to provide for the common defense. It is essentially important to all Oregonians that our citizens are provided adequate due process in any military disciplinary proceeding and that adequate resources are provided to care for veterans for as long as they and their loved ones experience the consequences of their service.

But due process only addresses the proceeding itself, and post-service care address problems which have already occurred. We have been unable to locate anything in the Uniform Code of Military Justice, other statutes, Rules for Court-Martial, or in any Service Regulations which directs military authorities to ensure that post-service consequences of military disciplinary decisions are considered.

At court-martial, for example, the sum total of the guidance that military panel members receive about post-service consequences of punitive discharges is this:

The stigma of a punitive discharge is commonly recognized by our society. A punitive discharge will place limitations on employment opportunities and will deny the accused other advantages which are enjoyed by one whose discharge characterization indicates that (he) (she) has served honorably. A punitive discharge will affect an accused's future with regard to (his) (her) legal rights, economic opportunities, and social acceptability... This court may adjudge either a dishonorable discharge or a bad-conduct discharge. Such a discharge deprives one of substantially all benefits administered by the Department of Veterans Affairs and the Army establishment. Department of the Army Pamphlet 27-9, para 2-5-22.

Nothing is provided to military panel members which orients them to the consequences of their decisions to larger society as well as to the individual Accused. The interests of the several States, which are left completely responsible for veterans who receive punitive discharges, are not addressed at all.

Similarly, we are unable to locate any guidance concerning Administrative Separations which would assist military decision makers in understanding and incorporating into their decision process the profound post-service consequences of negative characterizations of service.

The applicable Department of Defense Instruction, DODI 1332.14, Enclosure 4, paragraph 1.b., merely directs military decision makers as follows:

- (4) The following factors may be considered on the issue of retention or separation, depending on the circumstances of the case:
 - (a) The seriousness of the circumstances forming the basis for initiation of separation proceedings, and the effect of the Service member's continued retention on military discipline, good order, and morale.
 - (b) The likelihood of continuation or recurrence of the circumstances forming the basis for initiation of separation proceedings.
 - (c) The likelihood that the Service member will be a disruptive or undesirable influence in present or future duty assignments.
 - (d) The ability of the Service member to perform duties effectively in the present and in the future, including potential for advancement or leadership.
 - (e) The Service member's rehabilitative potential.
 - (f) The Service member's entire military record.

With respect to characterization of service, the DODI merely states, at Enclosure 4, para 3.b(1)

(a) Characterization at separation shall be based upon the quality of the Service member's service, including the reason for separation ... and the time-honored customs and traditions of military service.

(b) ...[C]onduct that is of a nature to bring discredit on the Military Services or is prejudicial to good order and discipline [and] conduct in the civilian community.

(c) The reasons for separation...

(d) [T]he Service member's age, length of service, grade, aptitude, physical and mental condition, and the standards of acceptable conduct and performance of duty.

Guidance on characterization appears to completely disregard the balance of the young Service Members' lives, years when the military has no further use for these former Service Members.

It is our contention that even badly-behaving former Service Members may mature to be productive and law-abiding citizens of the several States; and it is our further contention that the Services should be directed to consider the larger and long-term good of society alongside short-term military efficacy. Because the Services must always maintain an overwhelming focus on fighting and winning our Nation's wars, we believe this issue merits evaluation for statutory repair.

Inherent conflicts of interest in criminal defense representation in courts-martial

The Oregon State Bar, under the ultimate authority of the Oregon Supreme Court, regulates the practice of law in Oregon for the protection of the public. In its regulatory role, the OSB is responsible for the admission, discipline and reinstatement of lawyers who practice in Oregon, and has tremendous knowledge and experience with attorneys' professional responsibilities, including compliance with their ethical obligations.

Instead of creating and administering a military bar association to license and regulate the practice of law in the military, the DoD has chosen to require military lawyers to have current membership in the bar of one of the several States or the District of Columbia. In other words, the DoD asks the Oregon State Bar to give its *imprimatur* to lawyers practicing in military service but licensed in Oregon, especially as there is no further licensing requirement for military service.

As such, the OSB has an interest in ensuring that Oregon-licensed lawyers are practicing in a manner that does not place them at risk of inadvertently violating our rules of practice. Specifically, Oregon RPC 1.8(k) provides that "[w]hile lawyers are associated in a firm, a prohibition in the foregoing paragraphs (a) through (i) that applies to any one of them shall apply to all of them." What constitutes a "firm" is open to some interpretation, especially in the context of military practice; however, at no time in Oregon have counsel working for the same supervisor been allowed to represent adverse litigants.

As for the applicability of our rules, RPC 8.5(a) provides,

A lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction, regardless of where the lawyer's conduct occurs. A lawyer not admitted in this jurisdiction is also subject to the disciplinary authority of this jurisdiction if the lawyer provides or offers to provide any legal services in this jurisdiction. A lawyer may be subject to the disciplinary authority of both this jurisdiction and another jurisdiction for the same conduct.

The Oregon Rules of Professional Conduct require that attorneys must avoid conflicts of interest in the representation of their clients. We are concerned that it appears to be an actual conflict of interest for attorneys in the same legal organization, whether public or private, to simultaneously represent parties with adverse interests. We understand that the military services have criminal defense organizations within their Judge Advocate General's Corps. The judge, the prosecution, and the defense in courts-martial all report to the same ultimate supervisor, the Judge Advocate General of that service.

In formulating our recommendations for the MJRG, we have considered the Group's ability to propose incremental or evolutionary reforms to Secretary Hagel. Our review of the provision of criminal defense services over the history of our Nation shows a steady progression of increasing independence in the provision of criminal defense representation to Service Members. The creation of the Army's Trial Defense Service in the 1980s was a watershed moment in the evolution of due process in military jurisprudence. However, the Services do not appear to have seen any need for further evolution of the defense function in the intervening 34 years. We would like to propose to the MJRG that it consider the obvious conflict of interest the current system embodies.

While we acknowledge that it is better for an Accused Service Member to have an ostensibly independent TDS attorney than a Prosecutor also serving the Defense Counsel function, we are hard-pressed to see what military exigencies compel the DoD to retain the respective Service Trial Defense organizations solely in Service Channels. Instead, we have considered the current arrangements as step on the way to a fully independent Joint Criminal Defense Organization, either within the DoD (if military exigencies demand that compromise) or independent of the entire military chain of command (if possible). The OSB is certainly in no position to presume expertise over those military exigencies, but we are pleased to raise the issue for the MJRG's consideration.

Very truly yours,



Tom Kranovich, President

June 25, 2014

Dear Members of the Board of Governors:

I am writing to you on behalf of the Executive Committee of the Workers' Compensation Section of the Oregon State Bar. We have reviewed your proposal for a compromise of the 12% referral fee imposed by the Lawyer Referral Service, and wish to express our disappointment that the BOG has declined to exempt the Workers' Compensation Section from this requirement. For the following reasons, we respectfully request that you reconsider.

For a variety of reasons, including the downturn of the economy and changes to the legal framework and burden of proof, workers' compensation has seen a serious decrease in the number of attorneys willing to represent injured workers. Workers' compensation law is a very technical and specialized area of practice, with significant fee limitations. Cases often remain in litigation for many years before reaching a resolution. As I am sure you are aware, out-of-compensation attorney fees in a workers' compensation settlement are limited by statute to 25% of the first \$17,500, and 10% of any additional amount thereafter. Six-figure settlements are rare, but assuming a settlement in the amount of \$100,000, the total attorney fee would be \$12,625. If that attorney is required to pay a 12% referral fee to the OSB, the total attorney fee would be \$11,110. Thus, the attorney would earn an 11.11% fee on a \$100,000 settlement. Please compare this amount to that earned by attorneys who litigate in other practice areas. Please also consider that there are many issues litigated in a workers' compensation case, such as rate and entitlement to temporary disability and extent of permanent disability, that yield important benefits for injured workers, and small attorney fees. For example, in a case involving owed temporary disability benefits at the hearing level, an attorney's fee is limited to 25% of the amounts owed up to a maximum fee of \$1,500. If the Lawyer Referral Service enforces the referral fee requirement, there is even less incentive for an attorney to represent an injured worker on these kinds of issues.

The section has grave concerns that the referral fee will result in an increased reduction in the number of attorneys willing to participate in the program, which will in turn cause an even greater decrease in the number of available attorneys, especially in the more rural areas of Oregon where there are already very few attorneys available. Our section has been working for some time to increase interest in the practice of workers' compensation law, with special focus on representation for injured workers, as the reduction in access to justice remains a serious concern. Enforcing a referral fee will certainly stall our efforts.

Board of Governors

June 25, 2014

Page 2 of 2

We urge you to reconsider your proposal, and ask that the Workers' Compensation Section be treated the same as other disability law practices. Please be aware that this proposal is made not only with the support of those attorneys who currently represent injured workers, but also those who represent employers and insurers, as well as many Administrative Law Judges. The need for attorneys willing to represent injured workers is high, and the consequences of the referral fee will no doubt interfere with the ability of injured workers to obtain legal representation in Oregon.

Thank you for your consideration.

Sincerely,

Signed Electronically

Jacqueline M. Jacobson
Administrative Law Judge
Chair of the Executive Committee of the
Workers' Compensation Section of the Oregon State Bar

Members of the Workers' Compensation Section Executive Committee:

Ronald L. Bohy	ALJ Jenny Ogawa
Katherine M. Caldwell	M. Kathryn Olney
Bin Chen	John M. Oswald
Norman D. Cole	Carol A. Parks
James L. Edmunson	Steven M. Schoenfeld
Christine Coffelt Frost	Keith Semple
Tom Harrell	Dennis R. VavRosky
Allison B. Lesh	ALJ Geoffrey G. Wren

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: June 26, 2014
Memo Date: June 26, 2014
From: Caitlin Mitchel-Markley, Board Development Committee Chair
Re: Appointments to the HOD, LPRC, and Oregon Law Commission

Action Recommended

Approve the Board Development Committee recommendations for appointments to the House of Delegates, Local Professional Responsibility Committees, and the Oregon Law Commission. All recommendations were approved unanimously by the committee unless otherwise noted.

House of Delegates

Region 1 Recommendation: Courtney Quale, term expires 4/17/2017

Region 2 Recommendation: Brandon Braun, term expires 4/20/2015

Region 2 Recommendation: Erin Zemper, term expires 4/20/2015

Region 3 Recommendation: Steve Roe, public member, term expires 4/17/2017

Region 4 Recommendation: Eddie D. Medina, term expires 4/19/2016

Region 4 Recommendation: Chelsea Glynn, term expires 4/17/2017

Region 4 Recommendation: J. Russell Rain, term expires 4/17/2017

Region 4 Recommendation: James Underwood, term expires 4/17/2017

Region 5 Recommendation: Brian T. Sniffen, term expires 4/19/2016

Region 5 Recommendation: Gary U. Scharff expires 4/19/2016

Region 5 Recommendation: Mai T. Nako, term expires 4/17/2017

Region 6 Recommendation: David Phelps, public member, term expires 4/17/2017

Out of State Region Recommendation: Britannia Hobbs, term expires 4/17/2017

Out of State Region Recommendation: Manvir Sekhon, term expires 4/19/2016

Local Professional Responsibility Committees

All member and chair terms expire December 31, 2014.

Hunter Emerick abstained from the vote on member appointments.

Region 1

Lonn T.W. Johnston

Douglas R. Olsen (Chair)

Mark G Reinecke

Paige L. Sully

Bradley V. Timmons

Peter A. Werner

Region 2

Martin M. Fisher
Vaden B. Francisco Jr (Chair)
Robert Kaiser
Danielle J. O'Brien

Region 3

Joel C. Benton
Bruce R. Coalwell (Chair)
Susan Bradley Krant
Tara Kaylene Millan

Region 4

Steven C. Burke
Jessica L. Cousineau
James F. Marron
Cynthia L. Phillips (Chair)
Diane C. Rivera
Walter Weiss Jr

Region 5

Richard S. Bailey
Heather Bowman (Chair)
Mary Ellen Page Farr
Jerilyn Ann Krier
Philip A. Lewis
Morgan W. Long
Eva M. Marcotrigiano
Marisa Moneyhun
Jessica A. Morgan
Kimberlee C. Morrow
Channa C. Newell
Andrew Schlesinger
Brenda Terreault

Region 6

David J. Amesbury
David L. Carlson (Chair)
Deanna P. Laidler
Charles D. Lucas
Franklin Jason Seibert

Region 7

Karen J. Park (Chair)

Oregon Law Commission

Scott Shorr, term expires June 30, 2018

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: June 27, 2014
Memo Date: June 18, 2014
From: Rod Wegener, CFO
Re: Audit Report of the OSB Financial Statements for the two-year period ending December 31, 2013

Action Recommended

Acknowledge receipt of the audit report of the bar's combined 2012 and 2013 financial statements from Moss Adams LLP.

Background

The audit report and a 5-page document entitled "Communication with Those Charged with Governance and Internal Control Related Matters" (with bar staff's one-page response) will be distributed to the board under separate cover prior to the board meeting. The report will include an unqualified opinion for the bar and report no "deficiencies in internal control that we (the auditors) consider to be material weaknesses."

The report is the combination and summary of all bar-related financial operations – results of operational departments, the building fund (Fanno Creek Place), Client Security Fund, Diversity & Inclusion, Legal Services, sections, and the investment portfolio activity. Since the report is a summary of two years and includes all financial activity, the outcome is revenue of almost \$40 million and a "Change in Net Position," i.e. a net expense (loss) of \$802,571.

The net expense is a startling amount, but the "Management's Discussion and Analysis" (MD&A) on page 4-5 explains the reason.

First, due to the large volume and amount of Client Security Fund claims, the CSF program operated at a combined net expense of \$556,332 in 2012 and 2013 (the MD&A refers to only assessments collected and claims paid). This is 69% of the net expense total.

Second, the largest expense of bar operations after personnel is depreciation. Depreciation is a non-cash expense and totaled \$1,470,360 (\$1,011,003 is applicable to the building) for the two years. This expense will continue to remain large and likely will lead to the bar's audit report reflecting a negative "Change in Net Position" for the next few years.

Nancy Young, the lead auditor for Moss Adams, will be present by phone at the Budget & Finance Committee meeting. Her presence intends to satisfy Statement on Auditing Standards (SAS) 114 which requires the auditor to meet with "those charged with governance" and report any significant findings from the audit. Also, SAS 115 requires the auditor to report any internal control matters if any are identified in the audit.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: June 27, 2014
From: Travis Prestwich, Public Affairs Committee Chair
Re: Best Practices for Indigent Defense and Juvenile Dependency Providers

Issue

Whether to adopt proposed changes to the following standards to provide guidance to criminal and juvenile practitioners:

- 1) Specific Standards for Representation in Adult Criminal and Juvenile Delinquency Cases, and
- 2) Specific Standards of Representation in Juvenile Dependency Cases.

Options

Adopt proposed changes to the Specific Standards for Representation in Adult Criminal and Juvenile Delinquency Cases and the Specific Standards of Representation in Juvenile Dependency Cases and update the current foreword: a statement of intent that these guidelines are not intended to establish a legal standard of care.

Adopt proposed changes to the Specific Standards for Representation in Adult Criminal and Juvenile Delinquency Cases and the Specific Standards of Representation in Juvenile Dependency Cases to provide guidance to practitioner.

Decline to adopt proposed changes to the Specific Standards for Representation in Adult Criminal and Juvenile Delinquency Cases and the Specific Standards of Representation in Juvenile Dependency Cases.

Discussion

The Oregon State Bar has a history of concern for the quality of representation provided to persons in criminal, delinquency, dependency, civil commitment, and post-conviction proceeding. There have been at least four OSB task forces devoted to this subject.

In 1996, the Oregon State Bar Board of Governors first approved the Principles and Standards for Counsel in Criminal, Delinquency, Dependency and Civil Commitment Cases. Adoption of the performance standards by the Bar was a key recommendation of the first task force.

These standards include a forward and five sections:

- 1) General Standards,
- 2) Specific Standards for Representation in Criminal and Juvenile Delinquency Cases,
- 3) Specific Standards for Representation in Juvenile Dependency Cases,
- 4) Specific Standards for Representation in Civil Commitment Proceedings, and

5) Maximum Caseload Standards for Defense Counsel.

In 2006, the Board revised the 1996 standards. In 2012, two separate task forces were created to revise sections 2 and 3. The first task force addressed criminal and delinquency cases and the second addressed juvenile dependency cases. The remaining standards were not addressed as they have been updated since 2006.

The standards have become a critical component of training and education efforts for lawyers practicing in these areas. Keeping them updated and relevant is important.

Nonetheless, concerns have been raised that the standards might create a standard of care and create a malpractice trap for practitioners. At the request of the Public Affairs Committee a forward has been included with the standards similar to what is contained in the 2006 version and quoted below:

"These guidelines are not rules of practice and are not intended to establish a legal standard of care. Some of the guidelines incorporate existing standards, such as the Oregon Rules of Professional Conduct, however, which are mandatory."

Identical language was included as well in the foreword to the standards for post-conviction relief practitioners, which the BOG adopted in 2009.

Proposed Revised Standards

Attached are the new standards produced by the criminal workgroup which replace what is published on the OSB website as "Specific Standards for Representation in Criminal and Juvenile Delinquency Cases." In addition, the juvenile workgroup has updated the "Specific Standards for Representation in Juvenile and Dependency Cases." These changes to sections 2 and 3 will make the "general standards" in Section 1 unnecessary.

Specific Standards for Representation in Criminal and Juvenile Delinquency Cases

The criminal and juvenile delinquency cases task force included academia, the bench, private practice, and public defender offices. Task force members were Margie Paris, Professor of Law, University of Oregon; Shaun McCrea, in private practice in Eugene; the Honorable Lisa Grief, Jackson County Circuit Court; Lane Borg, Executive Director, Metropolitan Public Defender; Julie McFarlane, Supervising Attorney, Youth, Rights & Justice; Shawn Wiley, Chief Deputy Defender, Appellate Division, Office of Public Defense Services. Paul Levy, General Counsel, Office of Public Defense Services, served as chair of the task force.

The task force examined existing standards and reviewed other state and national standards. The task force found that although Oregon's standards are grounded in the standards promulgated by the National Legal Aid and Defender Association (NLADA) in 1994, Oregon's standards differed. In addition, the task force also benefited from National Juvenile Defense Standards (2012), which present a systematic approach to defense practice in juvenile court. (The NJDC standards are available at <http://www.njdc.info/publications.php>.) While the revision recognizes this work as establishing a national norm for representation in delinquency cases, it melds parts of this work into Oregon standards.

The task force maintained a format of a short statement of a standard, followed by more detailed implementation language. New for this revision, and in keeping with the NLADA and many other state standards, is commentary following many of the standards, which provides additional background and guidance regarding a particular aspect of criminal or delinquency defense.

Specific Standards of Representation in Juvenile Dependency Cases

The task force created to address Juvenile Dependency standards included members from academia as well as from both private practice and public defender offices. Task force members were Julie McFarlane, Supervising Attorney, Youth, Rights & Justice; Shannon Storey, Office of Public Defense Services; Joseph Hagedorn, Metro Public Defender; Leslie Harris, University of Oregon Law School; Tahra Sinks, private practice in Salem; LeAnn Easton, Dorsay & Easton LLP; and Joanne Southey, Department of Justice Civil Enforcement Division.

It became very clear to members of the task force throughout this process that customs and practices in juvenile dependency cases vary widely from county to county in Oregon. While some of these differences may be more stylistic than substantive, some may have a significant impact on the rights of children and parents. One of the goals in writing the action and commentary sections of the standards was identify for attorneys best practices that may differ from the custom in their jurisdiction.

The goal of this task force was to create a revised set of standards that was both easy for the practitioner to read and understand and also provide relevant detail and explanations as necessary. As with the criminal standards, this task force sought to include, in addition to the rules and implementation sections, commentary to both explain the rationale behind the individual standards and to provide relevant real world examples when possible.

These revisions, if approved by the BOG, will serve as useful tools for both the new and experienced lawyer as a guide on the best practices for diligent and high quality representation. The revision may also serve as a helpful guide for courts, clients, the media and who wish to understand the expectations for defense lawyers in criminal and delinquency cases and juvenile dependency lawyers representing both juveniles and parents.

In conclusion, the revised standards may serve to increase Oregon Lawyers' expertise while not increasing exposure to malpractice claims.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: June 27, 2014
From: Travis Prestwich, Public Affairs Committee Chair
Re: Judiciary Committee Task Force Reports (SB 798, SB 799, and SB 812)

Issue

Consider whether to adopt the task force reports requested by the Senate Judiciary Committee Task Forces in 2013,

- SB 798 – Alternate Jurors in Criminal Cases,
- SB 799 – Motions for Change of Attorney, and
- SB 812 – Motions for Change of Judge,

and submit them to the Committee during fall Legislative Days.

Options

Adopt the reports for SB 798 (Alternate Jurors in Criminal Cases), SB 799 (Motions for Change of Attorney), and SB 812 (Motions for Change of Judge) and submit them to the Senate Judiciary Committee.

Adopt the reports for SB 798 (Alternate Jurors in Criminal Cases), SB 799 (Motions for Change of Attorney), and SB 812 (Motions for Change of Judge) with changes and submit them to the Senate Judiciary Committee.

Decline to accept the reports for SB 798 (Alternate Jurors in Criminal Cases), SB 799 (Motions for Change of Attorney), and SB 812 (Motions for Change of Judge).

Discussion

At the end of the 2013 Legislative Session, Senator Floyd Prozanski requested that the Oregon State Bar create task forces to address three legislative concepts. All three bills, SB 798 (Alternate Jurors in Criminal Cases), SB 799 (Motions for Change of Attorney), and SB 812 (Motions for Change of Judge), received hearings during the session, however none of them received sufficient support to pass both chambers.

In response, the bar created and staffed three task forces, bringing together bill sponsors and interested stakeholders to review the proposed concepts, work towards developing compromise language, and provide a report and recommendations to the Senate Judiciary Committee for the Fall Legislative Days.

SB 798 - Alternate Jurors in Criminal Cases

During the 2013 legislative session, the legislature considered SB 798. The bill would have modified ORS Chapter 136 to expand the permissible use of alternate jurors in criminal cases. The task force included judges, representatives for both prosecutors and criminal defense attorneys, and representatives of the Oregon State Bar.

Under current law, the court is generally required to dismiss all alternate jurors when the case is submitted to the jury, meaning that if a juror becomes incapacitated during deliberations, there will no longer be an alternate available. In such a situation, the court will generally be forced to declare a mistrial and the case will have to be retried.

After discussion, the task force agreed that allowing alternate jurors to be used after deliberations have begun is a positive change. The proposal has the potential to make the courts more efficient by eliminating the need for some cases to be retried and with the concession that parties must agree to the alternates.

This proposed change was in part modeled after recent changes to the Oregon Rules of Civil Procedure. Those changes went into effect on January 1, 2014 and allow the use of alternate jurors after deliberations begin in civil cases. Because the ORCP does not apply to criminal cases, separate legislation is required in order to make analogous changes.

SB 799 – Motions for Change of Attorney

During the 2013 legislative session, the legislature considered SB 799. The bill would have modified ORS 9.380, which addresses changes in representation during judicial proceedings. The task force included judges, both criminal and civil litigators, family law practitioners, and representatives of the Oregon Judicial Department, the Professional Liability Fund, and the Oregon State Bar.

ORS 9.380(1) allows for two different procedures for attorney withdrawal and substitution in an action or proceeding. An attorney may withdraw or the attorney-client relationship terminated if the attorney consents prior to a judgment or final determination or at any time by order of court for good and sufficient cause. For the second option, either the client or the attorney must make a request to the court.

The task force recommends two parallel processes to address the concerns raised by SB 799. It should be noted that the task force would like to work with legislative counsel to determine whether the statutory language should be removed completely or whether the language should direct the reader to the Uniform Trial Court Rules (UTCRC).

First, draft legislation should be submitted to either repeal ORS 9.380 and 9.390 in their entirety or to replace them with a very brief statute that simply refers the reader to the UTCR.

Secondly, the bar would be willing to work with the UTCR Committee to draft new language to be added to the Uniform Trial Court Rules.

SB 812 – Motions for Change of Judge

During the 2013 legislative session, the legislature considered SB 812. The bill would have modified the process to disqualify a judge due to a party's belief that they cannot have a fair or impartial trial or hearing before the judge in question (ORS 14.260). Currently, parties are permitted to make two motions supported by affidavit to disqualify a judge. The proposed language in SB 812 would limit a party to only making one motion to disqualify if the case was in a judicial district with three or fewer circuit court judges.

The task force included judges, both criminal and civil litigators, family law practitioners, and representatives of the Oregon Judicial Department, the Professional Liability Fund, and the Oregon State Bar.

The original bill was introduced to address concerns of judges in rural counties and applied only to smaller judicial districts. There appeared to be concern that in some districts the ability to make to motions was being used aggressively and was not only driving up costs to bring in judges from other counties but also allowed "judge shopping."

Three concerns were raised by the task force members:

- After a review of neighboring states, it appears that Oregon is the only state that allows two affidavits.
- Several members of the task force voiced concerns that having different laws apply to different districts based on the size of the district does not meet fairness and equity standards and that any solution should be statewide and not apply only to rural judicial districts.
- Many members of the task force thought that the current system worked well and that the problem appeared to be localized rather than a statewide problem.

The task force members did appear to have some interest in Arizona's rule addressing "Notice of Change in Judge," however the task force was ultimately unable to develop any final recommendations regarding whether a bill should be drafted for the 2015 session, and if so, what the content of that bill would be.

Proposed Oregon State Bar Legislative Priorities for 2015

1. **Support Court Funding.** Support for adequate funding for Oregon's court.

- **Citizens Campaign for Court Funding.** Continue with efforts to institutionalize the coalition of citizens and business groups that was formed in 2012 to support court funding.
- **eCourt Implementation.** Support the Oregon Judicial Department's effort to fully implement eCourt.
- **Court Facilities.** Continue to work with the legislature and the courts to make critical improvements to Oregon's courthouses.

2. **Support legal services for low income Oregonians.**

- **Civil Legal Services.**
 - Our highest priority is to increase the current level of funding for low income legal services.
- **Indigent Defense.**
 - **Public Defense Services.** Constitutionally and statutorily required representation of financial qualified individuals in Oregon's criminal and juvenile justice systems:
 - Ensure funding sufficient to maintain the current service level.
 - Support fair compensation for publicly funded attorneys in the criminal and juvenile justice systems.
 - Support reduced caseloads for attorneys representing parents and children.

3. **Support OSB 2015 Law Improvement Package.**

- The bar's 2015 package of law improvement proposals has 22 proposals from 17 bar groups.

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Oregon Criminal Defense Lawyers Association

Strength in numbers. Fairness in justice.

June 25, 2014

Tom Kranovich
President
Oregon State Bar
PO Box 231935
Tigard, OR 97281-1935

Dear Mr. Kranovich:

I am writing on behalf of the Oregon Criminal Defense Lawyers Association Board of Directors and our 1,300 members, to request the support of the Oregon State Bar in the ongoing endeavor to secure adequate public defense funding from the legislature. As you have done in the past, we are asking that you make funding for attorneys, investigators and support staff who provide services to adult and juvenile indigent clients, one of the Bar's top three lobbying priorities in 2015.

Defense providers have long suffered pay disparity with their prosecution counterparts. Notwithstanding efforts by the 2013 Legislative Assembly, the disparity continues to grow. It is not surprising that there is a growing unwillingness by providers to continue subsidizing the public defense system. Public defense is a draw for many, but the basic needs of life, family and school debt are draining the ranks of defense providers. The current situation seriously threatens the state's constitutional mandate to provide an effective and efficient public defense system. We are asking that you again make a serious commitment of support in helping us convince the legislature that they must place a higher economic value on the service of the defense community.

If you have questions, please feel free to call me or our Executive Director, John Potter, 541-686-8716.

Thank you for your time and attention to this matter.

Sincerely,

Eve Oldenkamp
OCDLA President
office: 541-882-1426, cell: 541-331-3851

RECEIVED

JUN 30 2014

Oregon State Bar
Executive Director



OREGON STATE BAR

Board of Governors Agenda

Meeting Date: June 27, 2014
From: Helen M. Hirschbiel, General Counsel
Re: RPC 8.4 Drafting Committee Report

Issue

The Board of Governors must decide whether to forward the proposed Oregon RPC 8.4 amendment to the House of Delegates with a recommendation to adopt the amendment.

Options

1. Accept the proposed rule and forward to the HOD with a recommendation to pass.
2. Accept the proposed rule and forward to the HOD with a recommendation not to pass.
3. Accept the proposed rule and forward to the HOD with no recommendation.
4. Circulate the proposal for member comment.

Background

In November 2013, the OSB House of Delegates approved an amendment to Oregon RPC 8.4 that would have prohibited a lawyer, in the course of representing a client, from knowingly manifesting bias or prejudice on a variety of bases. The HOD amendment was presented to the Supreme Court in accordance with ORS 9.490, but the Court deferred action on the proposal and asked the bar to consider changes that would address the Court's concerns that the RPC 8.4 amendment as drafted may impermissibly restrict the speech of OSB members.

Because of the strong HOD support for an anti-bias rule, the OSB Board of Governors decided to convene a special committee (the RPC 8.4 Drafting Committee) to develop a revised proposal that would satisfy the Court's concerns.

The attached report and proposed rule are the results of the Committee's efforts.

Attachments: June 2014 Report of the RPC 8.4 Drafting Committee

Oregon State Bar

**Report of the
Oregon State Bar Board of Governors
RPC 8.4 Drafting Committee
June 2014**

In November 2013, the OSB House of Delegates approved an amendment to Oregon RPC 8.4 that would have prohibited a lawyer, in the course of representing a client, from knowingly manifesting bias or prejudice on a variety of bases. The HOD proposal reads as follows:

(a) It is professional misconduct for a lawyer to:

(7) in the course of representing a client, engage in conduct that knowingly manifests bias or prejudice based upon race, color, national origin, religion, age, sex, gender identity, gender expression, sexual orientation, marital status, disability or socioeconomic status.

(b) Notwithstanding paragraph (a)(7), a lawyer shall not be prohibited from engaging in legitimate advocacy with respect to the bases set forth therein, or from declining, accepting, or withdrawing from representation of a client in accordance with Rule 1.16.

The HOD proposal was presented to the Supreme Court in accordance with ORS 9.490, but the Court deferred action on the proposal and asked the bar to consider changes that would address the Court's concerns.

Based on comments from members of the Court at the December 3, 2013 public meeting, as well as a letter from the Court's staff attorney, it was clear that the Court believed the RPC 8.4 amendment as drafted would impermissibly restrict the speech of OSB members. Specifically, the Court was concerned that the rule is violated by any manifestation of bias, even the mere expression of opinion, without a requirement that there be an adverse impact therefrom.

Because of the strong HOD support for an anti-bias rule, the OSB Board of Governors decided to convene a special committee (the RPC 8.4 Drafting Committee) to develop a revised proposal that would satisfy the Court's concerns.

The RPC Drafting Committee was comprised of nine individuals: two who had personally appeared and presented written objections to the HOD proposal at the Supreme Court public meeting in December 2013; three representatives of the Legal Ethics Committee who had participated in the development of the HOD proposal; two representatives of specialty bars who had also been involved in the development of the HOD proposal, and; two recommendations from the Court as having some expertise in Oregon free speech jurisprudence. In addition, Theresa Kohlhoff and Caitlin Mitchel-Markley were appointed as non-voting representatives for the Board.

In its appointment letter, the Committee was asked to leave to the BOG and HOD the policy question of whether the bar should have any rule on the issue, and to only recommend language that will not impermissibly restrict lawyer speech, while at the same time establishing a standard for appropriate professional conduct.

The Committee met four times during the spring of 2014. The agendas, minutes, and materials considered during the meetings, were all posted on the OSB website. As instructed, the Committee focused its efforts on developing a rule that would both address conduct the HOD proposal was trying to reach and pass constitutional muster by focusing on harmful effects, rather than expression. During the first two meetings, the Committee struggled with articulating harmful effects within the construct of the HOD proposal. Unable to make any headway using this approach, the Committee abandoned the prohibition against “manifesting bias or prejudice” and instead returned to the original purpose behind the development of the rule, which was to prohibit harassment, intimidation and discrimination.

Thereafter, the Committee considered what class or classes of individuals to protect. The Committee discussed at length whether to keep the original list contained in the HOD proposal, whether to limit the list to immutable characteristics, or whether to omit select classes of individuals. In particular, the question of whether to include socio-economic status, gender identity and gender expression generated considerable controversy. The list included in the HOD proposal had derived from a suggestion made to the Legal Ethics Committee in April 2013 that the list mirror those classes of individuals that are protected under Oregon law. With this in mind the Committee decided to omit socio-economic status and retain the remaining classes listed in the HOD proposal.

The Committee also discussed whether to apply the rule only to the lawyer “in the course of representing a client” or whether to expand its application to a lawyer representing himself or herself. In deference to the HOD rule, the Committee decided that the proposed rule should apply only to a lawyer acting “in the course of representing a client.”

Finally, the Committee discussed whether to retain the exception for legitimate advocacy, contained in the HOD-approved Rule 8.4(c). While some members of the Committee doubted the need for it, everyone agreed that there was no harm in retaining the exception for legitimate advocacy. On the other hand, the Committee also unanimously agreed that the second clause of the paragraph in HOD rule 8.4(c) should be omitted. It provides that a lawyer shall not be prohibited from “declining, accepting, or withdrawing from representation of a client in accordance with Rule 1.16.” Three reasons came out. First, there is already a rule governing withdrawal, which would apply regardless of the inclusion of RPC 8.4(c). Second, the second clause makes little sense in light of the changes to the substance of Rule 8.4(a)(7). Third, the clause may conflict with lawyers’ obligations under the public accommodation laws.

The Committee unanimously recommended that the attached proposal be presented to the Board of Governors for its consideration.

Submitted by: David Elkanich, chair, Kristin Asai, Thomas Christ, Kelly Ford, Keith Garza, Michael Levelle, Kathleen Rastetter, Bonnie Richardson, and the Honorable David Schumann.

RULE 8.4 MISCONDUCT

(a) It is professional misconduct for a lawyer to --

* * * * *

(7) in the course of representing a client, knowingly intimidate or harass a person because of that person's race, color, national origin, religion, age, sex, gender identity, gender expression, sexual orientation, marital status, or disability.

(c) Notwithstanding paragraph (a)(7), a lawyer shall not be prohibited from engaging in legitimate advocacy with respect to the bases set forth therein.

PROPOSED Amendment to ORS 9.210

9.210 Board of bar examiners; rules for admission; fees of applicants; confidentiality and nature of proceedings. (1) The board of governors shall nominate for appointment by the Supreme Court a board of bar examiners to examine applicants, investigate their character and fitness and other qualifications, and certify to the Supreme Court for admission those applicants who fulfill the requirements prescribed by law and the rules of the Supreme Court. The composition of the board of bar examiners shall be as provided in the rules described in subsection (2) of this section.

(2) The board of governors shall formulate rules for carrying out the functions of the board of bar examiners and governing the qualifications, requirements and procedures for admission to the bar by examination and otherwise, and when such rules are adopted by the Supreme Court, shall have the power to enforce them. The board of governors may adopt regulations to implement the rules.

(3) With the approval of the Supreme Court, the board of governors shall fix and collect fees to be paid by applicants for admission.

(4) Applications for admission and any other materials pertaining to individual applicants are confidential and may be disclosed only as provided in the rules described in Subsection (2) of this section. The bar's consideration of individual applicants' qualifications are judicial proceedings for purposes of the Public Meetings Law.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: June 26, 2014
Memo Date: June 16, 2014
From: Danielle Edwards, Director of Member Services
Re: Committee Appointments

Action Recommended

Consider an appointment to the Legal Ethics Committee as requested by the committee officers and staff liaison.

Background

Legal Ethics Committee

Due to the resignation of one committee member the officers and staff liaison recommend the appointment of **Laurie Hager** (012715). She has practiced as Sussman Shank for more than a decade and handles a variety of business litigation matters. She indicated LEC was his first choice preference for appointment on the volunteer survey.

Recommendation: Laurie Hager, member, term expires 12/31/2016

Sponsorship and Exhibitor Opportunities

Sponsorship Descriptions	Gold- Premier \$20,000	Gold \$10,000	Silver \$5,000	Bronze \$2,500	Supporter \$1,000	Exhibitor \$2,500
Fall Conference, October 9-11, 2014—Portland, OR (Special pricing if sponsor agrees to 2+ conferences.)						
Name recognition in printed promotional pieces if confirmed by June 1, 2013	X	X				
A company brochure and/or promotional item included in registration packets	X	X	X			
Name Recognition and hyperlink to organization placed on the conference website	X	X	X	X		
Name recognition and hyperlink to organization placed on promotional and registrant emails	X	X	X	X		
Complimentary conference registrations	4	4	2	1		
Complimentary tickets to the Thursday Council Dinner	4	4				
Complimentary tickets to the Friday Night Gala	4	4				
Event Sponsorship	Council Dinner and Gala	Council Dinner and Gala	Welcome Reception	Choice of one on-site meeting event (luncheon, breakfast)		
Name recognition in onsite guide and event signage in Registration Area	X	X	X	X	X	
Table display for company brochure and other promotional items in Registration Area	X	X	X			X
Ribbon identifying Gold Sponsors	X	X				
Spring Conference, May 12-14, 2015—Tampa Bay, Florida (Special pricing if sponsor agrees to 2+ conferences.)						
Name recognition in printed promotional pieces if confirmed by June 1, 2013	X	X				
A company brochure and/or promotional item included in registration packets	X	X	X			
Name Recognition and hyperlink to organization placed on the conference website	X	X	X	X		
Name recognition and hyperlink to organization placed on promotional and registrant emails	X	X	X	X		
Complimentary conference registrations	4	4	2	1		
Complimentary tickets to the Thursday Council Dinner	4	4				
Complimentary tickets to the Friday Night Gala	4	4				
Event Sponsorship	Council Dinner and Gala	Council Dinner and Gala	Welcome Reception	Choice of one on-site meeting event (luncheon, breakfast)		
Name recognition in onsite guide and event signage in Registration Area	X	X	X	X	X	
Table display for company brochure and other promotional items in Registration Area	X	X	X			X
Ribbon identifying Gold Sponsors	X	X				

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: June 26, 2014
From: Amber Hollister, Deputy General Counsel
Re: Amend Bylaw Section 24.6 on SLAC Records Retention

Issue

The current bylaws require that the bar maintain closed State Lawyers Assistance Committee (SLAC) files permanently. OSB Bylaw Section 24.6. I recommend that we amend the bylaws to provide that closed files will be maintained for a ten year period.

Options

1. Amend OSB Bylaw Section 24.6 to provide that closed SLAC files will be maintained for ten years.
2. Take no action.

Discussion

Currently, OSB Bylaws provide that SLAC records must be “maintained permanently in locked storage at the Bar’s offices. After discussing this matter with bar staff and SLAC Chair Kim Lusk, I recommend that we amend the bylaw to provide that closed files will be maintained for ten years:

Section 24.6 State Lawyers Assistance Committee Records

The chairperson will maintain an intake log as a permanent record of SLAC. In it will be noted each referral to SLAC, the date of the referral, the name of the person making the referral, the name of the referred lawyer, action taken on the referral and the ultimate disposition of the referral. Written materials regarding a referral which does not result in a case being opened, will be kept with the intake log. The designee to whom a case is assigned will create a file and will maintain all reports, correspondence, records and other documents pertaining to the case. The designee is responsible for maintaining the confidentiality of the file and the information it contains while the file is in the designee’s possession. The file on a case will be closed when the referral is dismissed, on notice to Disciplinary Counsel of non-cooperation or as provided in Subsection 24.503(H) of the Bar’s Bylaws. Closed files will be maintained for ten years permanently in locked storage at the Bar’s offices. SLAC will notify the referring person of the general disposition of the referral, but not of its detailed findings or the remedial measures taken.

This proposed amendment balances the burden of maintaining highly confidential case materials (*i.e.* medical records, substance abuse evaluations, mental health records), with the need to have background information available to SLAC designees if a referred lawyer whose case is closed is re-referred to SLAC. From a practical perspective, if a lawyer is outside of SLAC's jurisdiction for a period of ten years, it is unlikely that the old file materials will be particularly useful to SLAC. Any medical records related to a case that was closed more than ten years prior would need to be updated. SLAC's authority is limited to monitoring a lawyer for a current impairment.

Further, it is highly unlikely that SLAC records would ever be discoverable by a third party. SLAC records are confidential and are not discoverable in any civil or disciplinary proceeding without the written consent of the referred lawyer, and are exempt from disclosure under the public records law. ORS 9.568.

Amending the SLAC records retention schedule for closed files to ten years would be consistent with the schedule for disciplinary complaints that are referred to Disciplinary Counsel by the Client Assistance Office but are dismissed before formal charges are filed.¹

¹SLAC may disclose records relating to a lawyer's noncooperation with SLAC or information obtained by the bar from any other source. ORS 9.568(4). If SLAC refers a lawyer to Disciplinary Counsel for noncooperation, any records forwarded to Disciplinary Counsel related to the noncooperation would be kept in accordance with discipline's retention schedule. If a lawyer is ultimately disciplined for noncooperation with SLAC, the current retention schedule provides the disciplinary file is permanently maintained.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: June 26, 2014
From: Amber Hollister, Deputy General Counsel
Re: Amend Bylaw Section 8.101(b) on Public Records Fee Schedule

Issue

The current bylaws require that the Board adopt the Bar's public records request fee schedule. OSB Bylaw Section 8.101(b). I recommend that we amend the bylaws to provide that the executive director may establish a fee schedule consistent with the bylaws.

Options

1. Amend OSB Bylaw Section 8.101(b) to provide that the executive director will establish a fee schedule for public records requests.
2. Take no action.

Discussion

OSB Bylaw Subsection 8.101 provides that the Board must approve the Bar's public records fee schedule. The costs associated with responding to public records requests frequently change. Because there is sufficient guidance provided by OSB Bylaw Section 8.1 regarding setting the fee schedule, the Board should delegate its authority to set the fee schedule to the executive director, as follows:

Subsection 8.101 Public Record Requests and Bar Fees for Public Records Searches and Copies

- (a) The executive director will assign appropriate staff to respond to requests for public records. The executive director will advise the board of any public records disputes that are taken by the requestor to the attorney general for further consideration.
- (b) The executive director will establish ~~propose and the board will adopt~~ a fee schedule for public records requests. The fee schedule will include a per-page charge for paper records and a schedule of charges for staff time in locating records; reviewing records to delete exempt material; supervising the review of original records; summarizing, compiling, and tailoring records to the request; and any related activity necessary to respond to requests for public records.
- (c) The fee schedule shall be reasonably calculated to reimburse the bar for the actual cost of making the records available. The charges for staff time shall be computed on the basis of the actual salary of the employee or employees engaged in responding to a particular public records request.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: June 27, 2014
From: Legal Ethics Committee
Re: Updating OSB Formal Ethics Opinions 2005-02, 2005-03, 2005-07, 2005-51, 2005-58, 2005-79, 2005-100, 2005-112, 2005-115

Issue

The Board of Governors must decide whether to adopt the proposed amendments to the formal ethics opinions.

Options

1. Adopt the proposed amendments to the formal ethics opinions.
2. Decline to adopt the proposed amendments to the formal ethics opinions.

Discussion

The Oregon Supreme Court has adopted numerous amendments to the Oregon Rules of Professional Conduct over the last couple of years. The Legal Ethics Committee is in the process of reviewing all of the formal ethics opinions to determine whether and how the opinions need to be amended to bring them into conformance with the new rules. The attached is the second batch of opinions that require amendments.

This second batch of amended opinions consists of purely housekeeping amendments. The amendments include swapping out the relevant prior rule with the amended rule and providing additional explanation of the new rule to the extent necessary. The committee also made some changes to the organization of the opinions for clarity. The committee made no changes to the original substantive positions taken in any of the attached opinions.

Staff recommends adopting the proposed amended opinions.

Attachments: OSB Formal Ethics Op Nos: 2005-02, 2005-03, 2005-07, 2005-51, 2005-58, 2005-79, 2005-100, 2005-112, 2005-115

FORMAL OPINION NO. 2005-100
Information About Legal Services:
Initiating Contact with Lawyer Referral Service Clients

Facts:

Lawyer *A* receives the name and address of Client *A* from the Oregon State Bar Lawyer Referral Service. Client *A* fails to contact Lawyer *A* and Lawyer *A* would like to initiate contact with Client *A*.

Lawyer *B* is initially consulted by Client *B*. When Client *B* fails to contact Lawyer *B* again after the initial consultation, Lawyer *B* would like to contact Client *B*.

Questions:

1. May Lawyer *A* initiate contact with Client *A*?
2. May Lawyer *B* initiate contact with Client *B*?

Conclusions:

1. Yes, qualified.
2. Yes, qualified.

Discussion:

Oregon RPC 7.1 provides:

A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.

Oregon RPC 7.3 provides, in pertinent part:

(a) A lawyer shall not by in-person, live telephone or real-time electronic contact solicit professional employment when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain, unless the person contacted:

- (1) is a lawyer; or
- (2) has a family, close personal, or prior professional relationship with the lawyer.

(b) A lawyer shall not solicit professional employment by written, recorded or electronic communication or by in-person, telephone or real-time electronic contact even when not otherwise prohibited by paragraph (a), if:

- (1) the lawyer knows or reasonably should know that the physical, emotional or mental state of the target of the solicitation is such that the person could not exercise reasonable judgment in employing a lawyer;
- (2) the target of the solicitation has made known to the lawyer a desire not to be solicited by the lawyer; or

(3) the solicitation involves coercion, duress or harassment.

(c) Every written, recorded or electronic communication from a lawyer soliciting professional employment from anyone known to be in need of legal services in a particular matter shall include the words “Advertising Material” on the outside envelope, if any, and at the beginning and ending of any recorded or electronic communication, unless the recipient of the communication is a person specified in paragraph (a).

Because Lawyer A has no family, close personal, or prior professional relationship with Client A, Oregon RPC 7.3(a) prohibits Lawyer A from initiating personal or telephone contact with potential Client A. Lawyer A may, however, communicate with Client A in writing. As long as the requirements of Oregon RPC 7.1 and 7.3 are complied with, including the requirement that written communications be labeled “Advertising Material” pursuant to Oregon RPC 7.3(c), Lawyer A’s contact would be ethical.

The difference between Lawyer A’s situation and Lawyer B’s situation is that Client B has met with Lawyer B. This constitutes a *prior professional relationship* within the meaning of Oregon RPC 7.3(a)(2). In-person or telephone contact, as well as written contact, is permissible under Oregon RPC 7.3(a) unless one of the exceptions set forth in Oregon RPC 7.3(b) applies.

Approved by Board of Governors, August 2005.

COMMENT: For additional information on this general topic and other related sources, see THE ETHICAL OREGON LAWYER §§2.5–2.14, 2.23–2.26, 2.28, 2.31 (Oregon CLE 2006); and ABA Model Rules 7.1–7.3.

FORMAL OPINION NO. 2005-100
Information About Legal Services:
Initiating Contact with Lawyer Referral Service Clients

Facts:

Lawyer *A* receives the name and address of Client *A* from the Oregon State Bar Lawyer Referral Service. Client *A* fails to contact Lawyer *A* and Lawyer *A* would like to initiate contact with Client *A*.

Lawyer *B* is initially consulted by Client *B*. When Client *B* fails to contact Lawyer *B* again after the initial consultation, Lawyer *B* would like to contact Client *B*.

Questions:

1. May Lawyer *A* initiate contact with Client *A*?
2. May Lawyer *B* initiate contact with Client *B*?

Conclusions:

1. Yes, qualified.
2. Yes, qualified.

Discussion:

Oregon RPC 7.1 provides, in pertinent part:

A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.(b) ~~An unsolicited communication about a lawyer or the lawyer's firm in which services are being offered must be clearly and conspicuously identified as an advertisement unless it is apparent from the context that it is an advertisement.~~

~~(c) An unsolicited communication about a lawyer or the lawyer's firm in which services are being offered must clearly identify the name and post office box or street address of the office of the lawyer or law firm whose services are being offered.~~

Oregon RPC 7.3 provides, in pertinent part:

(a) A lawyer shall not by in-person, live telephone or real-time electronic contact solicit professional employment ~~from a prospective client~~ when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain, unless the person contacted:

- _____ (1) is a lawyer; or
- (2) has a family, close personal, or prior professional relationship with the lawyer.

(b) A lawyer shall not solicit professional employment ~~from a prospective client~~ by written, recorded or electronic communication or by in-person, telephone or real-time electronic contact even when not otherwise prohibited by paragraph (a), if:

——(1) the lawyer knows or reasonably should know that the physical, emotional or mental state of the ~~prospective client~~target of the solicitation is such that the person could not exercise reasonable judgment in employing a lawyer;

——(2) the ~~prospective client~~target of the solicitation has made known to the lawyer a desire not to be solicited by the lawyer; or

——(3) the solicitation involves coercion, duress or harassment.

(c) Every written, recorded or electronic communication from a lawyer soliciting professional employment from a ~~prospective client~~anyone known to be in need of legal services in a particular matter shall include the words “~~Advertisement~~Advertising Material” ~~in noticeable and clearly readable fashion~~ on the outside envelope, if any, and at the beginning and ending of any recorded or electronic communication, unless the recipient of the communication is a person specified in paragraph (a).

Because Lawyer A has no family, close personal, or prior professional relationship with Client A, Oregon RPC 7.3(a) prohibits Lawyer A from initiating personal or telephone contact with potential Client A. Lawyer A may, however, communicate with Client A in writing. ~~On the facts as presented, any communication by Lawyer A to potential Client A would not constitute an unsolicited communication, so would not trigger the requirements of Oregon RPC 7.1(b) Cf. OSB Formal Ethics Op No 2005-127.~~ As long as the other requirements of Oregon RPC 7.1⁺ and

⁺~~Oregon RPC 7.1 provides, in pertinent part:~~

~~——(a) A lawyer shall not make or cause to be made any communication about the lawyer or the lawyer’s firm, whether in person, in writing, electronically, by telephone or otherwise, if the communication:~~

~~——(1) contains a material misrepresentation of fact or law, or omits a statement of fact or law necessary to make the communication considered as a whole not materially misleading;~~

~~——(2) is intended or is reasonably likely to create a false or misleading expectation about results the lawyer or the lawyer’s firm can achieve;~~

~~——(3) except upon request of a client or potential client, compares the quality of the lawyer’s or the lawyer’s firm’s services with the quality of the services of other lawyers or law firms;~~

~~——(4) states or implies that the lawyer or the lawyer’s firm specializes in, concentrates a practice in, limits a practice to, is experienced in, is presently handling or is qualified to handle matters or areas of law if the statement or implication is false or misleading;~~

~~——(5) states or implies an ability to influence improperly a government agency or official or to achieve results by means that violate these Rules or other law;~~

7.3 are complied with, including the requirement that written communications be labeled “~~Advertisement~~Advertising Material” pursuant to Oregon RPC 7.3(c), Lawyer A’s contact would be ethical.

~~— (6) — contains any endorsement or testimonial, unless the communication clearly and conspicuously states that any result that the endorsed lawyer or law firm may achieve on behalf of one client in one matter does not necessarily indicate that similar results can be obtained for other clients;~~

~~— (7) — states or implies that one or more persons depicted in the communication are lawyers who practice with the lawyer or the lawyer’s firm if they are not;~~

~~— (8) — states or implies that one or more persons depicted in the communication are current clients or former clients of the lawyer or the lawyer’s firm if they are not, unless the communication clearly and conspicuously discloses that the persons are actors or actresses;~~

~~— (9) — states or implies that one or more current or former clients of the lawyer or the lawyer’s firm have made statements about the lawyer or the lawyer’s firm, unless the making of such statements can be factually substantiated;~~

~~— (10) — contains any dramatization or recreation of events, such as an automobile accident, a courtroom speech or a negotiation session, unless the communication clearly and conspicuously discloses that a dramatization or recreation is being presented;~~

~~— (11) — is false or misleading in any manner not otherwise described above; or~~

~~— (12) — violates any other Rule of Professional Conduct or any statute or regulation applicable to solicitation, publicity or advertising by lawyers.~~

~~.....~~

~~— (d) — A lawyer may pay others for disseminating or assisting in the dissemination of communications about the lawyer or the lawyer’s firm only to the extent permitted by Rule 7.2.~~

~~— (e) — A lawyer may not engage in joint or group advertising involving more than one lawyer or law firm unless the advertising complies with Rules 7.1, 7.2, and 7.3 as to all involved lawyers or law firms. Notwithstanding this rule, a bona fide lawyer referral service need not identify the names and addresses of participating lawyers. A lawyer shall not make a false or misleading communication about the lawyer or the lawyer’s services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.~~

The difference between Lawyer A's situation and Lawyer B's situation is that Client B has met with Lawyer B. This constitutes a *prior professional relationship* within the meaning of Oregon RPC 7.3(a)(2). In-person or telephone contact, as well as written contact, is permissible under Oregon RPC 7.3(a) unless one of the exceptions set forth in Oregon RPC 7.3(b) applies.

Approved by Board of Governors, August 2005.

COMMENT: For additional information on this general topic and other related sources, see THE ETHICAL OREGON LAWYER §§2.5–2.14, 2.23–2.26, 2.28, 2.31 (Oregon CLE 200~~63~~); and ABA Model Rules 7.1–7.3.

FORMAL OPINION NO. 2005-112

Information About Legal Services: Distribution of Brochure by Welcoming Program and Participation in Health Club Services Program

Facts:

Law Firm is marketing its services in part through distribution of its brochure by a welcoming program and in part through participation in a health club services program.

The welcoming program distributes materials from businesses to executives and professionals who are new to the community. The materials distributed include information about the community, a business card folder containing cards of sponsors, and a bound book containing profiles and illustrations of civic, professional, and business leaders in the community. Although Law Firm would be designated as a sponsor of the welcoming program, Law Firm would not have its business card included in the business card folder for distribution with those of other sponsors. Instead, Law Firm's participation would be limited to a one-page profile in the bound book, which includes profiles of health care professionals, banks, real estate companies, restaurants, hotels, and the like. Law Firm would be the only lawyer-participant in the program and would pay a fee to participate. The welcoming program is not operated primarily for the purpose of procuring legal work or other financial benefits for Law Firm.

As part of its membership services, a health club provides its members certain benefits from lawyers such as free initial consultations, free consultations regarding wills, and discounted fees on certain types of legal work. The health club views these services not only as beneficial to its existing members but also as an inducement to secure future members. Law Firm's participation in the health club's services program would be through being included on a list of merchants and professionals providing similar introductory discounts or through the use of a coupon entitling the recipient to one of the above-mentioned services at no cost. The health club would receive no financial reward for providing Law Firm's name to its members.

Question:

1. May Law Firm participate in the welcoming program?
2. May Law Firm participate as a member of the health club services program through which legal services are advertised?

Conclusion:

1. Yes.
2. Yes, qualified

Discussion:

1. Welcoming Program

Oregon RPC 7.2(a) provides that “[s]ubject to the requirements of Rules 7.1 and 7.3, a lawyer may advertise services through written, recorded or electronic communication, including public media.” Here, the materials provided under the welcoming program are printed, and therefore allowed under Oregon RPC 7.2(a).

Oregon RPC 7.1 provides:

A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.

So long as the Law Firm profile included in the welcoming program is truthful and not misleading, Law Firm’s participation in the welcoming program would not violate RPC 7.1.

Oregon RPC 7.3 applies where the lawyer seeks to solicit professional employment. Here, as the welcoming program is not operated for the purposes of procuring legal work or other financial benefits, the requirements of RPC 7.3 are not applicable.

Assuming that the welcoming program’s role is merely publicizing the availability of the legal services, as opposed to recommending the Law Firm, Oregon RPC 7.2(b) would also permit such activity.

2. Health Club Services

The Health Club Services actively recommends Law Firm for its services. Oregon RPC 7.2 governs lawyer recommendations, and provides, in pertinent part:

(b) A lawyer shall not give anything of value to a person for recommending the lawyer's services except that a lawyer may

- (1) pay the reasonable costs of advertisements or communications permitted by this rule;
- (2) pay the usual charges of a legal service plan or a not-for-profit lawyer referral service; and
- (3) pay for a law practice in accordance with Rule 1.17.

Under the health club services program, there is no fee or other compensation paid by Law Firm to the club for the advertising service. However, by the use of Law Firm’s name, by the existence of Law Firm’s prestige and goodwill in the community, by the fact of Law Firm’s

participation in the plan, and by Law Firm's offer of discounted legal services to club members, Law Firm is effectively providing the health club with a potentially valuable endorsement and with an exclusive benefit that the club may pass on to its members. The health club is placed in the position of being a third-party beneficiary when new members are persuaded to join due to the benefits offered by the availability of promotional discounts. A quantification of the value of the benefit to the club and a comparison of advertising costs to that benefit as measured against a standard of reasonableness should be analyzed. The value bestowed on the club by Law Firm must not exceed the reasonable cost of the advertising. If the value does not exceed the reasonable cost of the advertising, Oregon RPC 7.2 is not violated.

Approved by Board of Governors, August 2005.

COMMENT: For additional information on this general topic and other related subjects, see THE ETHICAL OREGON LAWYER §§2.5–2.8, 2.11, 2.13, 2.15–2.17, 2.27–2.28 (Oregon CLE 2003); and ABA Model Rules 7.1–7.2, 8.4(c). *See also* Washington Formal Ethics Op 141.

FORMAL OPINION NO. 2005-115

**Unauthorized Practice of Law:
Third-Party Influence**

Facts:

Corporation, which is not authorized to practice law in Oregon, markets estate planning services in Oregon through sales representatives. When a customer purchases Corporation's services, Corporation agrees to evaluate the estate planning needs of the customer, select appropriate planning methods, draft the documents, and forward them to the customer's sales representative.

In the sales documents, customers authorize Corporation to obtain local counsel for the express and limited purposes of reviewing the documents to determine whether they comply with Oregon law and to assist in executing the documents. Corporation pays the lawyer for this work.

Question:

May an Oregon lawyer accept representation of Corporation's customers in these circumstances?

Conclusion:

No.

Discussion:

Oregon RPC 5.5(a) provides:

(a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

See also Oregon RPC 8.4(a)(1), which makes it professional misconduct for a lawyer to violate the Rules of Professional Conduct "through the acts of another."

When Corporation not only provides forms but also personally consults with Customers, explains the documents, makes recommendations, and renders advice, the services performed by Corporation constitute the unauthorized practice of law. *Oregon State Bar v. Miller & Co.*, 235 Or 341, 343–344, 385 P2d 181 (1963). See also *Oregon State Bar v. Gilchrist*, 272 Or 552, 563–564, 538 P2d 913 (1975); *Oregon State Bar v. Taub*, 190 Or App 280, 78 P3d 114 (2003); *State Bar v. Security Escrows, Inc.*, 233 Or 80, 89, 377 P2d 334 (1962).

Lawyer may not represent Corporation's customers because to do so would be aiding a nonlawyer in the unauthorized practice of law in violation of Oregon RPC 5.5(a). Such conduct is not cured by a disclaimer and suggestion to seek separate counsel. *In re Phillips*, 338 Or 125, 107 P3d 615 (2005); *Oregon State Bar v. Miller*, *supra*, 235 Or at 344. See also OSB Formal Ethics [Op Nos 2005-101](#), [2005-87](#), [2005-20](#).¹

The proposed arrangement also violates ~~Oregon RPC 7.2(e)(3),² [AHD1] which prohibits a lawyer from accepting referrals from an organization that places any "condition or restriction on the~~

¹ A lawyer who purports to advise the customer about the documents will have at least a waivable conflict under Oregon RPC 1.7(a)(2) and possibly a nonwaivable conflict under Oregon RPC 1.7(b)(3).

² ~~Oregon RPC 7.2(e) provides:~~

~~—(e)— A lawyer or a law firm may be recommended, employed or paid by, or cooperate with, a prepaid legal services plan, lawyer referral service, legal service organization or other similar plan, service or organization so long as:~~

~~—(1)— the operation of such plan, service or organization does not result in the lawyer or the lawyer's firm violating Rule 5.4, Rule 5.5, ORS 9.160, or ORS 9.500 through 9.520;~~

~~—(2)— the recipient of legal services, and not the plan, service or organization, is recognized as the client;~~

~~—(3)— no condition or restriction on the exercise of any participating lawyer's professional judgment on behalf of a client is imposed by the plan, service or organization;~~

~~—(4)— such plan, service or organization does not make communications that would violate Rule 7.3 if engaged in by the lawyer.~~

~~exercise of any participating lawyer's professional judgment on behalf of a client." Similarly, Oregon RPC 5.4(c) as Corporation expressly limits Lawyer's professional judgment in representing customers to whether documents comply with Oregon law.³ ~~would also be violated.~~~~

Approved by Board of Governors, August 2005.

³ Oregon RPC 5.4(c) provides:

(c) A lawyer shall not permit a person who recommends, employs or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.

COMMENT: For additional information on this general topic and other related subjects, see THE ETHICAL OREGON LAWYER §§2.27–2.28, 12.11 (Oregon CLE 2003); RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS §4 (2003); and ABA Model Rules 5.4(c), 5.5(a), 7.3, 8.4(a). *See also* Washington Formal Ethics Op Nos 18, 80, 84; Washington Informal Ethics Op Nos 899, 1471, 1505, 1568, 1747, 1879 (unpublished).

FORMAL OPINION NO. 2005-2
Information About Legal Services:
Cross-Referrals, Office Sharing with Nonlawyer

Facts:

Lawyer *A* proposes to enter into an agreement with Trust Company pursuant to which Lawyer *A* will endeavor to send Lawyer *A*'s clients to Trust Company when they need services of the type provided by Trust Company, in exchange for an agreement by Trust Company to recommend the use of Lawyer *A*'s services to its customers and to employ Lawyer *A* whenever practicable.

Lawyer *B* proposes to share office space with a CPA, but they propose no sharing or cross-referrals of clients, and they propose to keep their practices separate and independent.

Questions:

1. Is Lawyer *A*'s arrangement ethical?
2. Is Lawyer *B*'s arrangement ethical?

Conclusions:

1. No.
2. Yes.

Discussion:

Oregon RPC 7.2 provides in part:

- (b) A lawyer shall not give anything of value to a person for recommending the lawyer's services except that a lawyer may
 - (1) pay the reasonable costs of advertisements or communications permitted by this Rule;
 - (2) pay the usual charges of a legal service plan or a not-for-profit lawyer referral service; and
 - (3) pay for a law practice in accordance with Rule 1.17.

Oregon RPC 5.4(e) provides:

A lawyer shall not refer a client to a nonlawyer with the understanding that the lawyer will receive a fee, commission or anything of value in exchange for the referral, but a lawyer may accept gifts in the ordinary course of social or business hospitality.

Several other sections are also potentially applicable. Oregon RPC 8.4(a)(1) makes it professional misconduct for a lawyer to "violate the Rules of Professional Conduct, knowingly

assist or induce another to do so, or do so through the acts of another.” In other words, a lawyer cannot do indirectly what the lawyer cannot do directly.

That rule must be read in concert with Oregon RPC 7.3:

(a) A lawyer shall not by in-person, live telephone or real-time electronic contact solicit professional employment when a significant motive for the lawyer’s doing so is the lawyer’s pecuniary gain, unless the person contacted:

- (1) is a lawyer; or
- (2) has a family, close personal, or prior professional relationship with the lawyer.

(b) A lawyer shall not solicit professional employment by written, recorded or electronic communication or by in-person, telephone or real-time electronic contact even when not otherwise prohibited by paragraph (a), if:

- (1) the lawyer knows or reasonably should know that the physical, emotional or mental state of the target of the solicitation is such that the person could not exercise reasonable judgment in employing a lawyer;
- (2) the target of the solicitation has made known to the lawyer a desire not to be solicited by the lawyer; or
- (3) the solicitation involves coercion, duress or harassment.

....

(d) Notwithstanding the prohibitions in paragraph (a), a lawyer may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer that uses in-person or telephone contact to solicit memberships or subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan.

The quid pro quo nature of Lawyer A’s above-described arrangement would clearly violate these provisions. On the other hand, a mere office-sharing arrangement as proposed by Lawyer B would not.

Approved by Board of Governors, August 2005.

COMMENT: For additional information on this general topic and other related subjects, see THE ETHICAL OREGON LAWYER §§2.15, 2.27–2.28 (Oregon CLE 2006); RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS §10 (2003); and ABA Model Rule 5.4.

FORMAL OPINION NO. 2005-2
Information About Legal Services:
Cross-Referrals, Office Sharing with Nonlawyer

Facts:

Lawyer *A* proposes to enter into an agreement with Trust Company pursuant to which Lawyer *A* will endeavor to send Lawyer *A*'s clients to Trust Company when they need services of the type provided by Trust Company, in exchange for an agreement by Trust Company to recommend the use of Lawyer *A*'s services to its customers and to employ Lawyer *A* whenever practicable.

Lawyer *B* proposes to share office space with a CPA, but they propose no sharing or cross-referrals of clients, and they propose to keep their practices separate and independent.

Questions:

1. Is Lawyer *A*'s arrangement ethical?
2. Is Lawyer *B*'s arrangement ethical?

Conclusions:

1. No.
2. Yes.

Discussion:

Oregon RPC 7.2 provides in part:

~~(a) — . . . A lawyer shall not otherwise compensate or give anything of value to a person or organization to promote, recommend or secure employment by a client, or as a reward for having made a recommendation resulting in employment by a client, except as permitted by paragraph (c) or Rule 1.17.~~

~~—(b) A lawyer shall not give anything of value to a person for recommending the lawyer's services except that a lawyer may request or knowingly permit a person or organization to promote, recommend or secure employment by a client through any means that involves false or misleading communications about the lawyer or the lawyer's firm. If a lawyer learns that employment by a client has resulted from false or misleading communications about the lawyer or the lawyer's firm, the lawyer shall so inform the client.~~

(1) pay the reasonable costs of advertisements or communications permitted by this Rule;

(2) pay the usual charges of a legal service plan or a not-for-profit lawyer referral service; and

(3) pay for a law practice in accordance with Rule 1.17.

~~_____ (e) _____ A lawyer or law firm may be recommended, employed or paid by, or cooperate with, a prepaid legal services plan, lawyer referral service, legal service organization or other similar plan, service or organization so long as:~~

~~_____ (1) _____ the operation of such plan, service or organization does not result in the lawyer or the lawyer's firm violating Rule 5.4, Rule 5.5, ORS 9.160, or ORS 9.500 through 9.520; and~~

~~_____ (2) _____ the recipient of legal services, and not the plan, service or organization, is recognized as the client; and~~

~~_____ (3) _____ no condition or restriction on the exercise of any participating lawyer's professional judgment on behalf of a client is imposed by the plan, service or organization; and~~

~~_____ (4) _____ such plan, service or organization does not make communications that would violate Rule 7.3 if engaged in by the lawyer.~~

Oregon RPC 5.4(e) provides:

A lawyer shall not refer a client to a nonlawyer with the understanding that the lawyer will receive a fee, commission or anything of value in exchange for the referral, but a lawyer may accept gifts in the ordinary course of social or business hospitality.

Several other sections are also potentially applicable. Oregon RPC 8.4(a)(1) makes it professional misconduct for a lawyer to “violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another.” In other words, a lawyer cannot do indirectly what the lawyer cannot do directly.

That rule must be read in concert with Oregon RPC 7.3:

(a) A lawyer shall not by in-person, live telephone or real-time electronic contact solicit professional employment ~~from a prospective client~~ when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain, unless the person contacted:

_____ (1) is a lawyer; or

_____ (2) has a family, close personal, or prior professional relationship with the lawyer.

(b) A lawyer shall not solicit professional employment ~~from a prospective client~~ by written, recorded or electronic communication or by in-person, telephone or real-time electronic contact even when not otherwise prohibited by paragraph (a), if:

_____ (1) the lawyer knows or reasonably should know that the physical, emotional or mental state of the ~~prospective client~~target of the solicitation is such that the person could not exercise reasonable judgment in employing a lawyer;

_____ (2) the ~~prospective client~~target of the solicitation has made known to the lawyer a desire not to be solicited by the lawyer; or

_____ (3) the solicitation involves coercion, duress or harassment.

....

(d) Notwithstanding the prohibitions in paragraph (a), a lawyer may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer that uses in-person or telephone contact to solicit memberships or subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan.

~~Accord Oregon RPC 7.1(d) (“A lawyer may pay others for disseminating or assisting in the dissemination of communications about the lawyer or the lawyer’s firm only to the extent permitted by Rule 7.2.”).~~

The quid pro quo nature of Lawyer A’s above-described arrangement would clearly violate these provisions. On the other hand, a mere office-sharing arrangement as proposed by Lawyer B would not.

Approved by Board of Governors, August 2005.

COMMENT: For additional information on this general topic and other related subjects, see THE ETHICAL OREGON LAWYER §§2.15, 2.27–2.28 (Oregon CLE 2003~~6~~); RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS §10 (2003); and ABA Model Rule 5.4. ~~See also Washington Formal Ethics Op No 30 (reaching same conclusion regarding sharing office space with nonlawyer).~~

FORMAL OPINION NO. 2005-3
Information About Legal Services:
Disseminating Information Through the Media
or Through Speeches

Facts:

Lawyer is asked to do the following:

- (1) Write a column on legal matters for a local newspaper;
- (2) Answer legal questions sent in by readers of the newspaper;
- (3) Engage in the same types of conduct in a radio or television format; and
- (4) Speak to community groups, church groups, and the like on legal matters.

Question:

Is the above-described conduct consistent with rules of professional conduct on providing information on legal services?¹

Conclusion:

Yes, qualified.

Discussion:

There is no suggestion in the foregoing facts that Lawyer or others acting on Lawyer's behalf intend to make any false or misleading communications about Lawyer or Lawyer's services within the meaning of Oregon RPC 7.1.² *See also* Oregon RPC 8.4(a)(3) (prohibiting "conduct involving dishonesty, fraud, deceit or misrepresentation").

There also is no suggestion that Lawyer is paying for the privilege of being permitted to engage in the foregoing activities or that Lawyer's legal services are being improperly advertised. *Cf.* Oregon RPC 7.2(b), 7.3(c).³

¹ This opinion assumes that no lawyer-client relationship is created by these activities. *Cf. In re Weidner*, 310 Or 757, 801 P2d 828 (1990).

² Oregon RPC 7.1 provides:

A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.

³ Oregon RPC 7.2(b) provides:

A lawyer shall not give anything of value to a person for recommending the lawyer's services except that a lawyer may

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-
- (1) pay the reasonable costs of advertisements or communications permitted by this Rule;
 - (2) pay the usual charges of a legal service plan or a not-for-profit lawyer referral service; and
 - (3) pay for a law practice in accordance with Rule 1.17.

Oregon RPC 7.3(c) provides, in part:

Every written, recorded or electronic communication from a lawyer soliciting professional employment from anyone known to be in need of legal services in a particular matter shall include the words “Advertising Material” on the outside of the envelope, if any, and at the beginning and ending of any recorded or electronic communication, . . .

COMMENT: For additional information on this general topic and other related subjects, see THE ETHICAL OREGON LAWYER §§2.13–2.15, 2.26 (Oregon CLE 2006); 2 GEOFFREY C. HAZARD, JR. & W. WILLIAM HODES, THE LAW OF LAWYERING §§54–57 (3d ed 2001); and ABA Model Rules 7.1–7.3.

FORMAL OPINION NO. 2005-3
Information About Legal Services:
Disseminating Information Through the Media
or Through Speeches

Facts:

Lawyer is asked to do the following:

- (1) Write a column on legal matters for a local newspaper;
- (2) Answer legal questions sent in by readers of the newspaper;
- (3) Engage in the same types of conduct in a radio or television format; and
- (4) Speak to community groups, church groups, and the like on legal matters.

Question:

Is the above-described conduct consistent with rules of professional conduct on providing information on legal services?¹

Conclusion:

Yes, qualified.

Discussion:

There is no suggestion in the foregoing facts that Lawyer or others acting on Lawyer's behalf intend to make any false or misleading communications about Lawyer or Lawyer's services within the meaning of Oregon RPC 7.1(a)(1).² See also Oregon RPC 8.4(a)(3) (prohibiting "conduct involving dishonesty, fraud, deceit or misrepresentation").

There also is no suggestion that Lawyer is paying for the privilege of being permitted to engage in the foregoing activities or that Lawyer's legal services are being improperly advertised. Cf. Oregon RPC ~~7.1(b)~~, 7.2(ab), 7.3(c).³

¹ This opinion assumes that no lawyer-client relationship is created by these activities. Cf. *In re Weidner*, 310 Or 757, 801 P2d 828 (1990).

² Oregon RPC 7.1(a)(1) provides:

~~(1) A lawyer shall not make or cause to be made any a false or misleading communication about the lawyer or the lawyer's firm, whether in person, in writing, electronically, by telephone or otherwise, if the communication . . . services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a statement of fact or law necessary to make the communication statement considered as a whole not materially misleading.~~

³ Oregon RPC 7.21(b) provides, in part:

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~~An unsolicited communication about a lawyer or the lawyer's firm in which services are being offered must be clearly and conspicuously identified as an advertisement unless it is apparent from the context that it is an advertisement.~~

~~A lawyer shall not give anything of value to a person for recommending the lawyer's services except that a lawyer may~~

- ~~(1) pay the reasonable costs of advertisements or communications permitted by this Rule;~~
- ~~(2) pay the usual charges of a legal service plan or a not-for-profit lawyer referral service; and~~
- ~~(3) pay for a law practice in accordance with Rule 1.17.~~

~~Oregon RPC 7.2(a) provides, in part:~~

~~A lawyer may pay the cost of advertisements permitted by these rules and may hire employees or independent contractors to assist as consultants or advisors in marketing a lawyer's or law firm's services. A lawyer shall not otherwise compensate or give anything of value to a person or organization to promote, recommend or secure employment by a client, or as a reward for having made a recommendation resulting in employment. . . .~~

~~Oregon RPC 7.3(c) provides, in part:~~

~~Every written, recorded or electronic communication from a lawyer soliciting professional employment from anyone a prospective client known to be in need of legal services in a particular matter shall include the words "Advertising Material" in noticeable and clearly readable fashion on the outside of the envelope, if any, and at the beginning and ending of any recorded or electronic communication. . . .~~

COMMENT: For additional information on this general topic and other related subjects, see THE ETHICAL OREGON LAWYER §§2.13–2.15, 2.26 (Oregon CLE 2003~~6~~); 2 GEOFFREY C. HAZARD, JR. & W. WILLIAM HODES, THE LAW OF LAWYERING §§54–57 (3d ed 2001); and ABA Model Rules 7.1–7.3. ~~Cf. Washington Formal Ethics Op No 141 (lawyer's appearance on TV).~~

FORMAL OPINION NO. 2005-51
Conflicts of Interest, Current Clients:
Lawyer Membership in Trade Association
Represented by Lawyer

Facts:

Lawyer represents Trade Association. Trade Association asks Lawyer to become an associate member.

Question:

May Lawyer become an associate member?

Conclusion:

Yes, qualified.

Discussion:

Absent some reason to believe that Lawyer's joining Trade Association would violate any of the following rules, there is no reason why Lawyer may not join.

Lawyer should consider whether Lawyer's representation of Trade Association will be materially limited by his or her personal interest as an associate member. Oregon RPC 1.7(a)(2) provides:

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a current conflict of interest. A current conflict of interest exists if:

...

(2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer. . . .

If Lawyer's personal interest is materially limited, Lawyer may continue to represent Trade Association only with Trade Association's informed consent, confirmed in writing as required by Oregon RPC 1.7(b).

Lawyer should also consider whether joining Trade Association would potentially allow Trade Association to direct or regulate his or professional judgment. Oregon RPC 5.4(c) provides:

A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.

If Lawyer believes that his or her associate membership with Trade Association would direct or regulate his or her professional judgment, he or she should decline the membership.

Lawyer should also consider whether his or her associate membership confers a benefit upon Trade Organization in exchange for recommending Lawyer's services. Oregon RPC 7.2(b) provides

(b) A lawyer shall not give anything of value to a person for recommending the lawyer's services except that a lawyer may

(1) pay the reasonable costs of advertisements or communications permitted by this Rule;

(2) pay the usual charges of a legal service plan or a not-for-profit lawyer referral service; and

(3) pay for a law practice in accordance with Rule 1.17.

If Lawyer's associate membership confers a benefit upon Trade Organization through his or her goodwill in exchange for recommending Lawyer's services, Lawyer would violate Oregon RPC 7.2(b).

Approved by Board of Governors, August 2005.

COMMENT: For more information on this general topic and related subjects, see THE ETHICAL OREGON LAWYER §§5.4–5.5, 5.11, 9.9–9.10 (Oregon CLE 2003); RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS §§14 comment f, 121 comment d, 131, 135 (2003); and ABA Model Rules 5.4(c), 7.2(a).

FORMAL OPINION NO. 2005-51
Conflicts of Interest, Current Clients:
Lawyer Membership in Trade Association
Represented by Lawyer

Facts:

Lawyer represents Trade Association. Trade Association asks Lawyer to become an associate member.

Question:

May Lawyer become an associate member?

Conclusion:

Yes, qualified.

Discussion:

~~Oregon RPC 7.2(a) provides:~~

~~— A lawyer may pay the cost of advertisements permitted by these rules and may hire employees or independent contractors to assist as consultants or advisors in marketing a lawyer's or law firm's services. A lawyer shall not otherwise compensate or give anything of value to a person or organization to promote, recommend or secure employment by a client, or as a reward for having made a recommendation resulting in employment by a client, except as permitted by paragraph (c) or Rule 1.17.~~

~~Oregon RPC 5.4(c) provides:~~

~~— A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.~~

Absent some reason to believe that Lawyer's joining Trade Association would violate any of the following rules, there is no reason why Lawyer may not join.

Lawyer should consider whether Lawyer's representation of Trade Association will be materially limited by his or her personal interest as an associate member. Oregon RPC 1.7(a)(2) is also relevant provides:

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a current conflict of interest. A current conflict of interest exists if:

...

(2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer. . . .

If Lawyer's personal interest is materially limited, Lawyer may continue to represent Trade Association only with Trade Association's informed consent, confirmed in writing as required by Oregon RPC 1.7(b).

~~Once a member of Trade Association, Lawyer must consider whether Lawyer's representation of Trade Association will be materially limited by his or her personal interest as a member. Oregon RPC 1.7(a)(2). If so, Lawyer may continue to represent Trade Association only with Trade Association's informed consent, confirmed in writing as required by Oregon RPC 1.7(b). Absent some reason to believe that Lawyer's joining Trade Association would violate any of the foregoing rules, there is no reason why Lawyer may not join.~~

Lawyer should also consider whether joining Trade Association would potentially allow Trade Association to direct or regulate his or professional judgment. Oregon RPC 5.4(c) provides:

A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.

If Lawyer believes that his or her associate membership with Trade Association would direct or regulate his or her professional judgment, he or she should decline the membership.

Lawyer should also consider whether his or her associate membership confers a benefit upon Trade Organization in exchange for recommending Lawyer's services. Oregon RPC 7.2(b) provides

(b) A lawyer shall not give anything of value to a person for recommending the lawyer's services except that a lawyer may

(1) pay the reasonable costs of advertisements or communications permitted by this Rule;

(2) pay the usual charges of a legal service plan or a not-for-profit lawyer referral service; and

(3) pay for a law practice in accordance with Rule 1.17.

If Lawyer's associate membership confers a benefit upon Trade Organization through his or her goodwill in exchange for recommending Lawyer's services, Lawyer would violate Oregon RPC 7.2(b).

Approved by Board of Governors, August 2005.

COMMENT: For more information on this general topic and related subjects, see THE ETHICAL OREGON LAWYER §§5.4–5.5, 5.11, 9.9–9.10 (Oregon CLE 2003); RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS §§14 comment f, 121 comment d, 131, 135 (2003); and ABA Model Rules 5.4(c), 7.2(a).

FORMAL OPINION NO. 2005-58
Information About Legal Services:
Publicizing Lawyer's Relationship to Independent Business

Facts:

Lawyer is a member of Bank's board of directors. Bank's public relations firm wishes to publicize Bank by including photographs of board members in Bank's newspaper advertisements.

Question:

May Lawyer permit the use of Lawyer's photograph for this purpose?

Conclusion:

Yes.

Discussion:

Absent some reason to believe that the photographs would be used in a misleading or improper manner,¹ there is no reason Lawyer cannot permit his or her photograph to be used in Bank's advertisements. *Cf.* OSB Formal Ethics [Op No 2005-3](#).

Approved by Board of Governors, August 2005.

¹ Oregon RPC 7.1(a) provides:

A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.

COMMENT: For additional information on this general topic and related subjects, see THE ETHICAL OREGON LAWYER §2.15 (Oregon CLE 2003); 2 GEOFFREY C. HAZARD, JR. & W. WILLIAM HODES, THE LAW OF LAWYERING §§54–57 (3d ed 2001); and ABA Model Rules 7.1–7.2.

FORMAL OPINION NO. 2005-58
Information About Legal Services:
Publicizing Lawyer's Relationship to Independent Business

Facts:

Lawyer is a member of Bank's board of directors. Bank's public relations firm wishes to publicize Bank by including photographs of board members in Bank's newspaper advertisements.

Question:

May Lawyer permit the use of Lawyer's photograph for this purpose?

Conclusion:

Yes, ~~qualified~~.

Discussion:

Absent some reason to believe that the photographs would be used in a misleading or improper manner,¹ there is no reason Lawyer cannot permit his or her photograph to be used in Bank's advertisements. Cf. OSB Formal Ethics [Op No 2005-3](#).

¹ Oregon RPC 7.1(a) provides:

~~A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading. — A lawyer shall not make or cause to be made any communication about the lawyer or the lawyer's firm, whether in person, in writing, electronically, by telephone or otherwise, if the communication:~~

~~— (1) — contains a material misrepresentation of fact or law, or omits a statement of fact or law necessary to make the communication considered as a whole not materially misleading;~~

~~— (2) — is intended or is reasonably likely to create a false or misleading expectation about results the lawyer or the lawyer's firm can achieve;~~

~~— (3) — except upon request of a client or potential client, compares the quality of the lawyer's or the lawyer's firm's services with the quality of the services of other lawyers or law firms;~~

~~— (4) — states or implies that the lawyer or the lawyer's firm specializes in, concentrates a practice in, limits a practice to, is experienced in, is~~

Approved by Board of Governors, August 2005.

~~presently handling or is qualified to handle matters or areas of law if the statement or implication is false or misleading;~~

~~—(5)—states or implies an ability to influence improperly a government agency or official or to achieve results by means that violate these Rules or other law;~~

~~—(6)—contains any endorsement or testimonial, unless the communication clearly and conspicuously states that any result that the endorsed lawyer or law firm may achieve on behalf of one client in one matter does not necessarily indicate that similar results can be obtained for other clients;~~

~~—(7)—states or implies that one or more persons depicted in the communication are lawyers who practice with the lawyer or the lawyer's firm if they are not. . . .~~

~~Oregon RPC 8.4(a)(3) prohibits “conduct involving dishonesty, fraud, deceit or misrepresentation that reflects adversely on the lawyer’s fitness to practice law.” Oregon RPC 8.4(a)(1) makes it professional misconduct for a lawyer to violate the rules “through the acts of another.”~~

~~Oregon RPC 7.2(a) provides:~~

~~A lawyer may pay the cost of advertisements permitted by these rules and may hire employees or independent contractors to assist as consultants or advisors in marketing a lawyer’s or law firm’s services. A lawyer shall not otherwise compensate or give anything of value to a person or organization to promote, recommend or secure employment by a client, or as a reward for having made a recommendation resulting in employment by a client, except as permitted by paragraph (c) or Rule 1.17.~~

COMMENT: For additional information on this general topic and related subjects, see THE ETHICAL OREGON LAWYER §2.15 (Oregon CLE 2003); 2 GEOFFREY C. HAZARD, JR. & W. WILLIAM HODES, THE LAW OF LAWYERING §§54–57 (3d ed 2001); and ABA Model Rules 7.1–7.2.

FORMAL OPINION NO. 2005-7

**Lawyer as State Legislator:
Lobbying on a Client's Behalf**

Facts:

Lawyer, who is also a member of the state legislature, is asked by Client to seek legislation that would benefit Client. Client offers to pay Lawyer a fee for this work.

Question:

May Lawyer ethically perform the work requested for the fee offered?

Conclusion:

No.

Discussion:

The proposed conduct would constitute bribe-giving (ORS 162.015) and bribe-receiving (ORS 162.025), both of which are felonies. Pursuant to Oregon RPC 1.2(c) and 8.4(a)(1)–(2), Lawyer could not knowingly commit or assist in such illegal conduct.¹ *See also* Oregon RPC 8.4(a)(5) (lawyer may not “state or imply an ability to influence improperly a government agency or official . . .”).

¹ Oregon RPC 1.2(c) provides, in pertinent part, that “[a] lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is illegal or fraudulent, . . .”

Oregon RPC 8.4(a) provides, in pertinent part, that it is professional misconduct for a lawyer to:

(1) violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(2) commit a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects;

. . . .

(5) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate these Rules or other law, . . .

In addition, Oregon RPC 1.11(d)(2) provides, in pertinent part:

[A] lawyer currently serving as a public officer or employee . . . shall not:

- (i) use the lawyer's public position to obtain, or attempt to obtain, special advantage in legislative matters for the lawyer or for a client.
- (ii) use the lawyer's public position to influence, or attempt to influence, a tribunal to act in favor of the lawyer or of a client.
- (iii) accept anything of value from any person when the lawyer knows or it is obvious that the offer is for the purpose of influencing the lawyer's action as a public official.
- (iv) either while in office or after leaving office use information the lawyer knows is confidential government information obtained while a public official to represent a private client.

Oregon RPC 1.11(c) provides, in pertinent part:

[T]he term "confidential government information" means information that has been obtained under governmental authority and which, at the time this Rule is applied, the government is prohibited by law from disclosing to the public or has a legal privilege not to disclose and which is not otherwise available to the public.

Although ORS 244.120(1)(b) permits a legislator to disclose certain conflicts of interest and participate in the legislative process notwithstanding the conflict, nothing in ORS chapter 244 or in Oregon RPC 1.11 permits bribe-giving or bribe-taking. *Cf.* ORS 244.040.

Approved by Board of Governors, August 2005.

COMMENT: For additional information on this general topic and related subjects, see *In re McMahon*, 266 Or 376, 513 P2d 796 (1973) (deputy district attorney violated ethics rules by accepting gifts from bail bondsmen when it was obvious that offer was to influence his action as public official); THE ETHICAL OREGON LAWYER §§12.17, 14.4 (Oregon CLE 2006); and RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS §133 (2003).

FORMAL OPINION NO. 2005-7

**Lawyer as State Legislator:
Lobbying on a Client's Behalf**

Facts:

Lawyer, who is also a member of the state legislature, is asked by Client to seek legislation that would benefit Client. Client offers to pay Lawyer a fee for this work.

Question:

May Lawyer ethically perform the work requested for the fee offered?

Conclusion:

No.

Discussion:

The proposed conduct would constitute bribe-giving (ORS 162.015) and bribe-receiving (ORS 162.025), both of which are felonies. Pursuant to Oregon RPC 1.2(c) and 8.4(a)(1)–(2), Lawyer could not knowingly commit or assist in such illegal conduct.¹ *See also* Oregon RPC 7.18.4(a)(5) (lawyer may not “[state] or impl[y] an ability to influence improperly a government agency or official . . .”).

¹ Oregon RPC 1.2(c) provides, in pertinent part, that “[a] lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is illegal or fraudulent. . . .”

Oregon RPC 8.4(a) provides, in pertinent part, that it is professional misconduct for a lawyer to:

- (1) violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- (2) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;

. . . .

(5) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate these Rules or other law, . . .

In addition, Oregon RPC 1.11(d)(2) provides, in pertinent part:

[A] lawyer currently serving as a public officer or employee . . . ~~shall not shall~~
~~not~~:

- (i) use the lawyer's public position to obtain, or attempt to obtain, special advantage in legislative matters for the lawyer or for a client.
- (ii) use the lawyer's public position to influence, or attempt to influence, a tribunal to act in favor of the lawyer or of a client.
- (iii) accept anything of value from any person when the lawyer knows or it is obvious that the offer is for the purpose of influencing the lawyer's action as a public official.
- (iv) either while in office or after leaving office use information the lawyer knows is confidential government information obtained while a public official to represent a private client.

Oregon RPC 1.11(c) provides, in pertinent part:

[T]he term "confidential government information" means information that has been obtained under governmental authority and which, at the time this Rule is applied, the government is prohibited by law from disclosing to the public or has a legal privilege not to disclose and which is not otherwise available to the public.

Although ORS 244.120(1)(b) permits a legislator to disclose certain conflicts of interest and participate in the legislative process notwithstanding the conflict, nothing in ORS chapter 244 or in Oregon RPC 1.11 permits bribe-giving or bribe-taking. *Cf.* ORS 244.040.

Approved by Board of Governors, August 2005.

COMMENT: For additional information on this general topic and related subjects, see *In re McMahon*, 266 Or 376, 513 P2d 796 (1973) (deputy district attorney violated ethics rules by accepting gifts from bail bondsmen when it was obvious that offer was to influence his action as public official); THE ETHICAL OREGON LAWYER §§12.17, 14.4 (Oregon CLE 2003~~6~~); and RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS §133 (2003).

FORMAL OPINION NO. 2005-79
Information About Legal Services:
Providing Legal Services to Church Members
or on Behalf of Church-Related Causes

Facts:

Lawyer is asked to enter into a prepaid legal services plan to be organized by Church, which Church would make available to its members. The plan will be in full compliance with the applicable statutes set forth in ORS 750.505–750.715.

Lawyer is also asked by Church to undertake various representations on behalf of non-Church members in support of issues of interest to Church (e.g., helping to assure that adequate housing and medical services are made available to elderly people). In performing the latter work, Lawyer may be asked to contact potential clients in person or by telephone.

Questions:

1. May Lawyer enter into a prepaid legal services plan paid for and organized by Church, where lawyer would represent members of Church?
2. May lawyer contact non-Church members as potential clients at the request of Church?

Conclusions:

1. Yes, qualified.
2. Yes, qualified.

Discussion:

1. Prepaid Legal Services Plan

Oregon RPC 7.2 provides, in relevant part:

(b) A lawyer shall not give anything of value to a person for recommending the lawyer's services except that a lawyer may

(2) pay the usual charges of a legal service plan * * * *

In addition, Oregon RPC 7.3(d) provides:

(d) Notwithstanding the prohibitions in paragraph (a), a lawyer may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer that uses in-person or telephone contact to solicit memberships or subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan.

Lawyer should be mindful of other potential ethical issues that may arise from representing clients through a prepaid legal services plan. Oregon RPC 1.8(f) provides

- (f) A lawyer shall not accept compensation for representing a client from one other than the client unless:
- (1) the client gives informed consent;
 - (2) there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and
 - (3) information related to the representation of a client is protected as required by Rule 1.6.

Oregon RPC 5.4(c) further notes that Lawyer's professional judgment should not be directed or regulated by Church in his or her representation of clients. It provides

- (c) A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.

As long as the requirements of Oregon RPC 1.8(f) and 5.4(c) are met, Lawyer may be paid by Church for representing clients other than Church.

Lawyer should also be careful not to assist a nonlawyer with the unlawful practice of law. Oregon RPC 5.5(a) provides:

- (a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

ORS 9.160 provides that "a person may not practice law in this state, or represent that the person is qualified to practice law in this state, unless the person is an active member of the Oregon State Bar."

2. Contact of non-members of Church

Under Oregon RPC 7.3(a), in-person or live telephone solicitation of potential clients is generally prohibited. Oregon RPC 7.3(a) states

- (a) A lawyer shall not by in-person, live telephone or real-time electronic contact solicit professional employment when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain, unless the person contacted:

- (1) is a lawyer; or
- (2) has a family, close personal, or prior professional relationship with the lawyer.

However, Oregon RPC 7.3(d) provides an exception to Oregon RPC 7.3(a). Oregon RPC 7.3(d) states

(d) Notwithstanding the prohibitions in paragraph (a), a lawyer may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer that uses in-person or telephone contact to solicit memberships or subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan.

The language of Oregon RPC 7.3(d) generally appears to permit personal contacts in the types of representations at issue. The ability to engage in personal contact is limited, however, by Oregon RPC 7.3(b):

(b) A lawyer shall not solicit professional employment by written, recorded or electronic communication or by in-person, telephone or real-time electronic contact even when not otherwise prohibited by paragraph (a), if:

- (1) the lawyer knows or reasonably should know that the physical, emotional or mental state of the target of the solicitation is such that the person could not exercise reasonable judgment in employing a lawyer;
- (2) the target of the solicitation has made known to the lawyer a desire not to be solicited by the lawyer; or
- (3) the solicitation involves coercion, duress or harassment.

Approved by Board of Governors, August 2005.

COMMENT: For additional information on this general topic and other related subjects, see THE ETHICAL OREGON LAWYER §§2.13, 2.25–2.26, 2.28, 3.36 (Oregon CLE 2003); RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS §134 (2003); and ABA Model Rules 1.8(f), 5.4(c), 7.2, 7.3(b) and (d). *See also* Washington Informal Ethics Op Nos 1447, 1508 (unpublished).

FORMAL OPINION NO. 2005-79
Information About Legal Services:
Providing Legal Services to Church Members
or on Behalf of Church-Related Causes

Facts:

Lawyer is asked to enter into a prepaid legal services plan to be organized by Church, which Church would make available to its members. The plan will be in full compliance with the applicable statutes set forth in ORS 750.505–750.715.

Lawyer is also asked by Church to undertake various representations on behalf of non-Church members in support of issues of interest to Church (e.g., helping to assure that adequate housing and medical services are made available to elderly people). In performing the latter work, Lawyer may be asked to contact potential clients in person or by telephone.

Questions:

1. —May Lawyer ~~proceed as proposed?~~ ~~enter into a prepaid legal services plan paid for and organized by Church, where lawyer would represent members of Church?~~
2. May lawyer contact non-Church members as potential clients at the request of Church?

Conclusions:

1. —Yes, qualified.
2. Yes, qualified.

Discussion:

1. Prepaid Legal Services Plan

Oregon RPC 7.2 provides, in relevant part:

(b) A lawyer shall not give anything of value to a person for recommending the lawyer's services except that a lawyer may

(2) pay the usual charges of a legal service plan * * * *

In addition, ~~Under Oregon RPC 7.3(d),~~ provides: ~~a lawyer may participate in a prepaid legal services plan operated by the Church for the benefit of Church's members.~~

Oregon RPC 7.3(d)2 provides:

(d) Notwithstanding the prohibitions in paragraph (a), a lawyer may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer that uses in-person or telephone contact to solicit memberships or subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan.

~~———— (a) ——— A lawyer may pay the cost of advertisements permitted by these rules and may hire employees or independent contractors to assist as consultants or advisors in marketing a lawyer’s or law firm’s services. A lawyer shall not otherwise compensate or give anything of value to a person or organization to promote, recommend or secure employment by a client, or as a reward for having made a recommendation resulting in employment by a client, except as permitted by paragraph (e) or Rule 1.17.~~

~~———— (b) ——— A lawyer shall not request or knowingly permit a person or organization to promote, recommend or secure employment by a client through any means that involves false or misleading communications about the lawyer or the lawyer’s firm. If a lawyer learns that employment by a client has resulted from false or misleading communications about the lawyer or the lawyer’s firm, the lawyer shall so inform the client.~~

~~———— (c) ——— A lawyer or law firm may be recommended, employed or paid by, or cooperate with, a prepaid legal services plan, lawyer referral service, legal service organization or other similar plan, service or organization so long as:~~

~~———— (1) ——— the operation of such plan, service or organization does not result in the lawyer or the lawyer’s firm violating Rule 5.4, Rule 5.5, ORS 9.160, or ORS 9.500 through 9.520; and~~

~~———— (2) ——— the recipient of legal services, and not the plan, service or organization, is recognized as the client; and~~

~~———— (3) ——— no condition or restriction on the exercise of any participating lawyer’s professional judgment on behalf of a client is imposed by the plan, service or organization; and~~

~~———— (4) ——— such plan, service or organization does not make communications that would violate Rule 7.3 if engaged in by the lawyer.~~

~~———— Absent a violation of this rule, Lawyer may participate in a prepaid legal services plan for the benefit of Church’s members.~~

~~———— ○Lawyer should be mindful of other potential ethical issues that may arise from representing clients through a prepaid legal services plan. Oregon RPC 1.8(f) provides~~

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~~———— (f) A lawyer shall not accept compensation for representing a client from one other than the client unless:~~

- ~~_____~~(1) the client gives informed consent;⁺
- ~~_____~~(2) there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and
- ~~_____~~(3) information related to the representation of a client is protected as required by Rule 1.6.

~~_____~~ Oregon RPC 5.4(c) further notes that Lawyer's professional judgment should not be directed or regulated by Church in his or her representation of clients. It provides

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- ~~_____~~(c) A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.

As long as the requirements of Oregon RPC 1.8(f) and 5.4(c) are met, Lawyer may be paid by Church for representing clients other than Church.

Lawyer should also be careful not to assist a nonlawyer with the unlawful practice of law. Oregon RPC 5.5(a) provides:

- (a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

ORS 9.160 provides that "a person may not practice law in this state, or represent that the person is qualified to practice law in this state, unless the person is an active member of the Oregon State Bar."

2. Contact of non-members of Church

~~_____~~⁺ Oregon RPC 1.0(b) and (g) provide:

~~_____~~(b) "Confirmed in writing," when used in reference to the informed consent of a person, denotes informed consent that is given in writing by the person or a writing that a lawyer promptly transmits to the person confirming an oral informed consent. . . . If it is not feasible to obtain or transmit the writing at the time the person gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter.

~~_____~~

~~_____~~(g) "Informed consent" denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct. When informed consent is required by these Rules to be confirmed in writing or to be given in a writing signed by the client, the lawyer shall give and the writing shall reflect a recommendation that the client seek independent legal advice to determine if consent should be given.

Under Oregon RPC 7.3(a), in-person or live telephone solicitation of potential clients is generally prohibited. Oregon RPC 7.3(a) states

(a) A lawyer shall not by in-person, live telephone or real-time electronic contact solicit professional employment when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain, unless the person contacted:

(1) is a lawyer; or

(2) has a family, close personal, or prior professional relationship with the lawyer.

~~With respect to in-person or telephone solicitation of non-Church members (i.e., persons not within the prepaid legal services plan) However, Oregon RPC 7.3(d) provides an exception to Oregon RPC 7.3(a). Oregon RPC 7.3(d) states, in pertinent part:~~

~~(d) Notwithstanding the prohibitions in paragraph (a), a lawyer may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer that uses in-person or telephone contact to solicit memberships or subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan.~~

~~(d) — [A] lawyer may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer that uses in person or telephone contact to solicit memberships or subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan.~~

The language of Oregon RPC 7.3(d) generally appears to permit personal contacts in the types of representations at issue. The ability to engage in personal contact is limited, however, by Oregon RPC 7.3(b):

(b) A lawyer shall not solicit professional employment by written, recorded or electronic communication or by in-person, telephone or real-time electronic contact even when not otherwise prohibited by paragraph (a), if:

(1) the lawyer knows or reasonably should know that the physical, emotional or mental state of the target of the solicitation is such that the person could not exercise reasonable judgment in employing a lawyer;

(2) the target of the solicitation has made known to the lawyer a desire not to be solicited by the lawyer; or

(3) the solicitation involves coercion, duress or harassment.

~~(b) A lawyer shall not solicit professional employment from a prospective client by written, recorded or electronic communication or by in-person, telephone or real-time electronic contact even when not otherwise prohibited by paragraph (a), if:~~

~~(1) the lawyer knows or reasonably should know that the physical, emotional or mental state of the prospective client is such that the person could not exercise reasonable judgment in employing a lawyer;~~

~~(2) the prospective client has made known to the lawyer a desire not to be solicited by the lawyer; or~~

~~(3) the solicitation involves coercion, duress or harassment.~~

Approved by Board of Governors, August 2005.

~~COMMENT: For additional information on this general topic and other related subjects, see THE ETHICAL OREGON LAWYER §§2.13, 2.25–2.26, 2.28, 3.36 (Oregon CLE 2003); RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS §134 (2003); and ABA Model Rules 1.8(f), 5.4(c), 7.2, 7.3(b) and (d). *See also* Washington Informal Ethics Op Nos 1447, 1508 (unpublished).~~