

**Oregon State Bar**  
**Meeting of the Board of Governors**  
September 5, 2014  
**Open Session Minutes**

The meeting was called to order by President Tom Kranovich at 1:00 p.m. on September 5, 2014. The meeting adjourned at 5:00 p.m. Members present from the Board of Governors were Jenifer Billman, James Chaney, Hunter Emerick, R. Ray Heysell, Matthew Kehoe, Theresa Kohlhoff, John Mansfield, Audrey Matsumonji, Caitlin Mitchel-Markley, Travis Prestwich, Joshua Ross, Richard Spier, Simon Whang, Timothy Williams and Elisabeth Zinser. Not present were Patrick Ehlers and Charles Wilhoite. Staff present were Sylvia Stevens, Helen Hirschbiel, Rod Wegener, Susan Grabe, Kay Pulju, Dawn Evans, Judith Baker, Dani Edwards and Camille Greene. Also present was Ben Eder, ONLD Chair; and Guy Greco, PLF Board of Directors.

**1. Call to Order/Adoption of the Agenda**

**Motion:** Ms. Mitchel-Markley moved, Mr. Kehoe 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 that he'd had a busy several weeks. He commented specifically on the meetings with the Chief Justice and the Awards Committee. He spoke at OLIO and noted that the criteria for participating in OLIO have expanded. He also gave a speech on professionalism at Willamette Law School's orientation session.

**B. Report of the President-elect**

In writing.

**C. Report of the Executive Director**

In addition to her written report, Ms. Stevens reported on the meeting with attorneys from Ukraine at the Bar Center.

**D. Director of Regulatory Services**

In addition to her written report, Ms. Evans reported that they are making a concerted effort to work on the oldest open cases in her department.

**E. Director of Diversity & Inclusion**

No report.

**F. MBA Liaison Reports**

Mr. Whang reported on the September 3, 2014 MBA board meeting.

## G. Oregon New Lawyers Division Report

Mr. Eder announced the ONLD CLE which will be held in conjunction with the OSB Litigation Section. The ONLD participated in a rafting trip with OLIO. Karen Clevering is the ONLD Chair for 2015.

### 3. Professional Liability Fund [Mr. Zarov]

In Mr. Zarov's absence, Mr. Greco announced that Carol Bernick was hired to replace Mr. Zarov as Chief Executive Officer when he retires at the end of September. Former Board of Directors member John Berge was hired as a claims attorney. Mr. Greco submitted a general update on the PLF's positive financial status and discussed the potential for a pro-rated assessment for part-time lawyers as well as monthly payments.

Mr. Greco asked the board to approve the PLF 2015 budget and assessment. The assessment will remain at \$3500, unchanged from 2014. **[Exhibit A]**

**Motion:** Mr. Kehoe moved, Mr. Prestwich seconded, and the board voted unanimously to approve the PLF 2015 budget and assessment as requested.

**Motion:** Mr. Kehoe amended his motion to include the provision to adjust the PLF budget to reflect the same salary increase in the OSB budget when approved by the BOG at its meeting in November. Mr. Prestwich seconded, and the board voted unanimously to approve the amended motion.

Mr. Greco asked the board to approve the recommended changes to PLF Policy 7.700 which will make excess coverage "continuity credit" discretionary. **[Exhibit B]**

**Motion:** Mr. Mansfield moved, Mr. Spier seconded, and the board voted unanimously to approve the changes to PLF Policy 7.700 as requested.

Mr. Greco asked the board to approve the recommended changes to PLF Policy 3.250 – Step-Rated Assessment. Changes in the step-rated assessment amounts will benefit new attorneys since the economics of law practice have become more problematic. This change will have a cost, but in recent years the PLF balance sheet has been very positive. **[Exhibit C]**

**Motion:** Mr. Emerick moved, Mr. Kehoe seconded, and the board voted unanimously to approve the changes to PLF Policy 3.250 as requested. Mr. Spier abstained.

### 4. OSB Committees, Sections and Councils

#### A. Legal Ethics Committee

Ms. Hirschbiel announced that the committee will have a proposed amendment to RPC 1.2(c) for the board's approval in October. If so, the delegate resolution already submitted asking the BOG to formulate the same amendment will be moot. **[Exhibit D]**

#### B. Legal Services Program Committee

Ms. Baker presented the proposed updates to the Legal Services Program Standards and Guidelines for the board's approval. **[Exhibit E]**

**Motion:** Ms. Zinser moved, Mr. Heysell seconded, and the board voted to approve the committee's requested changes.

**C. Client Security Fund Committee**

Ms. Stevens asked the board to consider the claimant's request for review of the CSF Committee's denial of CSF claim CONNALL(Briggs)2014-11. **[Exhibit F]**

**Motion:** Mr. Williams moved, Mr. Kehoe seconded, and the board voted to uphold the committee's denial of the claim.

Ms. Stevens asked the board to approve the committee's claims recommended for payment. **[Exhibit G]**

**Motion:** Mr. Emerick moved, Mr. Kehoe seconded, and the board voted to approve payment of claim 2013-48 BERTONI (Monroy) in the amount of \$5000.00.

**Motion:** Ms. Matsumonji moved, Mr. Chaney seconded, and the board voted to deny payment of claim 2014-01 McCARTHY (Snellings) in the amount of \$7000.00. Ms. Mitchel-Markley, Mr. Prestwich, Mr. Ross and Ms. Billman voted no. Mr. Emerick, Mr. Kehoe, and Mr. Williams abstained. All others voted in favor of the motion.

**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 2015 BOG Public Member appointment of Kerry L. Sharp. **[Exhibit H]**

**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.

**C. Governance and Strategic Planning Committee**

Mr. Spier asked the board to consider the Committee's recommendation to sunset the OSB Federal Practice and Procedure Committee.

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

Mr. Spier asked the board to pursue legislation that will create an out-of-state region for the Board of Governors, represented on the board by one lawyer-member. **[Exhibit I]**

**Motion:** The board approved the committee motion. Mr. Kehoe, Ms. Kohlhoff and Ms. Zinser were opposed. All others voted in favor of the motion.

**D. Public Affairs Committee**

Mr. Prestwich updated the board on the latest legislative activity, the status of the bar's list of law improvement proposals, and the upcoming election. He updated the board on the request by the Legal Services Corporation (LSC) to support proposed legislation in the U.S. Senate to give the Federal Deposit Insurance Corporation (FDIC) protection to IOLTA accounts held in credit unions.

**E. Executive Director Selection Special Committee**

Mr. Kehoe and Ms. Billman discussed the process for selecting a new executive director and for drafting the job description. Materials will be sent to board members for input.

**F.** International Trade in Legal Services Task Force

Ms. Hirschbiel explained that this is the first piece of the task force's recommendations and is presented now to be in time for the November HOD agenda. She explained the committee's analysis and recommendation to expand RPC 5.5 to allow for temporary practice by lawyers trained outside the US. . **[Exhibit J]**

**Motion:** Mr. Whang moved, Mr. Spier seconded, and the board voted to adopt the task force's recommendation to amend RPC 5.5(c) and to put it on the 2014 HOD agenda. Mr. Kehoe, Mr. Heysell, Ms. Mitchel-Markley and Ms. Kohlhoff were opposed. All others voted in favor of the motion.

**G.** OSB Awards Nominations Committee

Ms. Pulju asked the board to approve the committee's nominations. Mr. Kranovich nominated Judge Alfred Goodwin for a second Wallace P. Carson, Jr. Award. **[Exhibit K]**

**Motion:** The board voted unanimously to accept the committee's nominations with Mr. Kranovich's additional nominee.

**6. Other Action Items**

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

**Motion:** Ms. Matsumonji moved, Mr. Whang seconded, and the board voted unanimously to approve the various appointments.

Mr. Spier informed the board of the status and procedure for ongoing strategic planning by this board and future boards.

Ms. Kohlhoff asked the board to endorse Ballot Measure 89. After discussion, the matter died for lack of a motion.

Ms. Pulju asked the board to approve the four recommendations in the proposed CLE Seminars business model. **[Exhibit M]**

**Motion:** Mr. Spier moved, Mr. Williams seconded, and the board voted to approve and direct staff to carryout recommendation #1 in the proposed business model.

The board agreed to have the OSB Accounting department carryout recommendation #2 in the proposed business model.

**Motion:** Ms. Mitchel-Markley moved, Mr. Prestwich seconded, and the board voted to send recommendations #3 & #4 in the proposed business model to the MCLE committee for further review.

Mr. Spier informed the board that the nominating committee had interviewed the two candidates for 2015 President-elect and would be following up to confer with the remaining

board members. He expects the committee's selection will be announced by the end of September.

**7. Consent Agenda**

**Motion:** Mr. Spier moved, Mr. Chaney seconded, and the board voted unanimously to approve the consent agenda of past meeting minutes and a section's name change request. **[Exhibit N]**

**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)**

Ms. Stevens reported on Lewis & Clark Law School's announcement that it will be closing its low-income legal services clinic in May 2015.

**Oregon State Bar  
Board of Governors Meeting  
September 5, 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 discussed the Executive Director Evaluation. No action taken.

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** September 5, 2014  
**Memo Date:** August 20, 2014  
**From:** Ira Zarov – PLF CEO  
**Re:** 2015 PLF Assessment and Budget

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### **Action Recommended**

Approve the 2015 Budget and Assessment.

### **Background**

On an annual basis, the Board of Governors approves the PLF budget and assessment for the coming year. The Board of Directors proposes that the assessment remain at \$3500 (unchanged from 2014). The attached materials contain the proposed budget and recommendations concerning the assessment.

The highlights of the budget include a 3% salary pool, a \$200,000 contribution to the OSB for BarBooks and a new Practice Management Advisor position. The overall increase to the 2015 budget is 3.31 percent higher than the 2014 budget. The main reasons for the increases are the 3% salary increase and related benefits costs, new loss prevention position, the E&O premium, employee training and travel, scanning of old claims, and the ongoing update of the PLF website.

Attachments

August 12, 2014

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

From: Ira Zarov, Chief Executive Officer  
Betty Lou Morrow, Chief Financial Officer

Re: 2015 PLF Budget and 2015 PLF Primary Assessment

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### **I. Recommended Action**

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

1. Approve the 2015 PLF budget as attached. This budget uses a 2015 salary pool recommendation of **3.0%**. This recommendation has been made after consultation with Sylvia Stevens.
2. Make a recommendation to the Board of Governors concerning the appropriate 2015 PLF Primary Program assessment. We recommend that the 2015 assessment be \$3,500, which is the same amount as the past four years.

### **II. Executive Summary**

1. In addition to the aforementioned 3% salary pool, the medical benefits have increased by 1.09%, as a percentage of total salaries. One (1) FTE claims attorney position was eliminated through attrition. The OAAP PMA staffing was increased by 1 FTE.
2. The actuarial 2015 Assessment study estimates a cost of \$2,731 per lawyer for new 2015 claims. This budget also includes a margin of \$150 per lawyer for adverse development of pending claims.



### **III. 2015 PLF Budget**

#### **Number of Covered Attorneys**

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

For the Primary Program, new attorneys paying reduced primary assessments and lawyers covered for portions of the year have been combined into "full pay" units. We currently project 7,064 full-pay attorneys for 2014. For the past five years, the average annual growth of full-pay attorneys has been .92 percent. We have chosen to use the growth rate of 1% for 2015 which translates to 7135 full-pay attorneys.

Although the Excess Program covers firms, the budget lists the total number of attorneys covered by the Excess Program. Participation in the Excess Program has declined since 2011 because of competition from commercial insurance companies. Covered attorneys dropped 5.2% from 2012 to 2013, and 3.1% year to date 2013 to 2014. For those reasons we have chosen a decline of 3% from 2014 levels to 2015. This will translate to a total of 2110 covered attorneys through our Excess program in 2015.

#### **Full-time Employee Statistics (Staff Positions)**

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

	<b><u>2014 Projections</u></b>	<b><u>2015 Budget</u></b>
Administration	9.00 FTE	9.00 FTE
Claims	19.75 FTE	18.75 FTE
Loss Prevention (includes OAAP)	13.58 FTE	14.58 FTE
Accounting	7.95 FTE	7.95 FTE
<b>Total</b>	<b>50.28 FTE</b>	<b>50.28 FTE</b>

We continue to have some permanent positions staffed at less than full-time levels for both 2014 and 2015. Some staff members work from 30 to 36 hours per week. These part-time arrangements fit the needs of both the employee and the PLF. Part-time and staff changes are the reason for the fractional FTE's.

During the first half 2014, two Claims Attorneys, and a Claims Secretary retired. One of the attorneys and the claims secretary will be replaced. An additional OAAP attorney has been hired and will start in the fall of 2014.

The Accounting Supervisor will retire in August of 2014. Her position will be filled at a full time equivalent but the duties will be reduced and the salary will reduce accordingly.

The two IT staff that had previously been budgeted in Administration are now included in the Accounting budget to follow their line of supervision.

The CEO announced his retirement and will be finished at the PLF in September of 2014. His replacement has been hired and will start in October of 2014.

### **Allocation of Costs between the Excess and Primary Programs**

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

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

Besides specific individual allocations, fourteen percent of the costs of the claims attorneys and ten percent of the costs of all loss prevention personnel are allocated to the Excess Program. The total 2015 allocation of salary, benefits and overhead is about 15.73 percent of total administrative operating expense. This is HIGHER than the percentage used in the 2014 budget (14.35 percent).

### **Primary Program Revenue**

Projected assessment revenue for 2014 is based upon the \$3,500 basic assessment paid by an estimated 7,064 attorneys. The budget for assessment revenue for 2015 is based upon a \$3,500 assessment and 7,135 full-pay attorneys.

Investment returns were better than expected for the first six months of 2014. However, in doing the 2014 full year projections we used the more conservative rolling seven year return at March 31, 2014. That provided an overall rate of 6.11%. Our investment consultants recommended 6% for 2015 so we used the 6.11% for 2015 as well. While the percentage chosen is significantly lower than nearer term results (i.e. a period shorter than seven years) it reflects the ongoing conservative expectations of our investment consultants.

### **Primary Program Claims Expense**

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

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

The 2014 budget included \$1,076,700 (approximately \$150 per covered party) for adverse development or actuarial increases to estimates in liabilities for claims pending at the start of the year. The June 30, 2014 actuarial review of claim liabilities recommended an increase of about \$71,375 as a result of adverse development of pending claims. This amount is so small as to be immaterial so we have let the budgeted number stand as is.

Primary Program new claims expense for 2015 was calculated using figures from the actuarial rate study. The study assumed a frequency rate of 13 percent, 7,135 covered attorneys and an average claim cost of \$21,000. Multiplying these three numbers together gets a 2015 budget for claims expense of \$19.5 million. This would also translate to about 926 claims at \$21,000 for 2015.

We have added a margin of \$150 per covered lawyer to cover adverse development of claims pending at the start of 2015. If pending claims do not develop adversely, this margin could offset

higher 2014 claims frequency, cover other negative economic events, or help the PLF reach the retained earnings goal. The pending claims budget for adverse development is equal to \$1,070,250 (\$150 times the estimated 7,135 covered attorneys). The concept of using a margin will be discussed again in the staff recommendation section regarding the 2015 assessment.

### **Salary Pool for 2014**

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

After consultation with Sylvia Stevens, a three percent salary pool increase is recommended for 2015. The salary pool is used to adjust salaries for inflation, to allow normal changes in classifications, and when appropriate to provide a management tool to reward exceptional work. As a point of reference, one percent in the salary pool represents \$40,908 in PLF salary expense and \$18,887 in PLF benefit costs. The total cost of the three percent salary pool is less than one half of one percent of total expenses (0.3 percent). Comparing the PLF to local employers, Multnomah County has identified 2.7% as the COLA factor they have used in their 2015 budget. They have also identified 1.5% as an additional merit/step increase pool. (<https://multco.us/file/35347/download>)

Because all salary reclassifications cannot be accomplished within the three percent salary pool allocation, we are also requesting \$35,000 for potential salary reclassification. Salary reclassifications generally occur in two circumstances, when a person hired at a lower salary classification achieves the higher competency required for the new classification, or when there is a necessity to change job requirements. The bulk of the salary reclassification amount reflects either the reclassification of relatively recently hired exempt employees or addresses an historical lack of parity between the salaries of employees in positions with equivalent responsibilities. (Exempt positions are generally professional positions and are not subject to wage and hour requirements.) Salaries for entry level hires of exempt positions are significantly lower than experienced staff. As new staff members become proficient, they are reclassified and their salaries are adjusted appropriately. As the board is aware, several new claims attorneys have been hired in recent years. (The major reclassification usually occurs after approximately three years, although the process of salary adjustment often occurs over a longer time period.)

### **Benefit Expense**

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

The employer contribution rates for PERS are stable in the current biennium which ends July 2015. We are budgeting the rates for the entirety of 2015 however as we will do an adjustment in July

2015 to the projected budget when we know what the change, if any, will be. Best research on the topic currently is revealing nothing around any potential changes. It should be noted however that in 2015 many of the new staff hired in 2014 are now PERS eligible, so that increases the cost of PERS, even in the absence of an overall increase.

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

The PLF covers the cost of medical and dental insurance for PLF employees. PLF employees pay about fifty percent of the additional cost of providing medical and dental insurance to dependents. We have included about a 2 percent increase for the cost of medical and dental insurance.

### **Capital Budget Items**

The two major capital purchases in 2015 will be new servers for our IT infrastructure and new AV equipment for the Boardroom.

There is a three year plan laid out to expand the existing infrastructure creating efficiencies in our data processing and also creating heightened security and crash resistance. The first of the three years is 2014 and we have already purchased servers in this fiscal year. The second and third year in the plan is 2015 and 2016.

There have been ongoing maintenance problems with the PLF boardroom audiovisual equipment. We have included funds in the capital budget to potentially replace the equipment in 2015. Historically this equipment has been budgeted at \$25,000 so we have left it at that. However, we will be carefully researching best possible technologies matching our needs without under or over buying.

### **Other Primary Operating Expenses**

**Professional Services** have increased over projected 2014 by about 32%. The majority of this increase is to cover the cost of scanning 2013 claims files, the cost of continuing with the creation of the new PLF website, and a sizeable increase to investment consultant fees (from \$27,000 to \$40,000). The updates to the website in 2015 will include online renewal applications for the Excess program and the development of templates for Universe web interface.

**Auto, Travel, and Training** has increased substantially from 2014 projected due to the addition of new staff in Loss Prevention and the anticipation that new staff members across the organization will require training and offsite travel to bring them up to speed in their positions. Additionally, monies have been allocated for a consultant to provide training to the Claims Attorneys on the Universe database software.

**Defense Panel Program** has increased over 2014 as the bi-annual Defense Panel Conference will be held in 2015. An increase of 10% over 2013 conference costs has been allowed. Defense panel members pay for their own lodging and meal expenses and some facility and supply costs. The PLF pays for the cost of staff and Board of Director lodging and meals and a portion of supplies and speakers.

**Insurance** expense in the 2015 budget is higher than 2014 as we are actively seeking out E&O coverage for the claims attorneys. This coverage was removed in 2013 as the premiums were deemed to high subsequent to the effect of significant payout on a claim made against the PLF. We are working to find a carrier that will provide adequate coverage at a reasonable premium and deductible. We have budgeted \$55,000 premium for that coverage. We expect to hear back from the broker by the end of August 2014. Note that we do have D&O coverage still in place.

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

Contingency for 2015 has been set at 3%. For many years, the PLF Primary Program has included a contingency budget item. The contingency amount has usually been set between two and four percentage of operating costs. In 2014, the contingency budget was raised to 4% of operating costs to cover potential succession costs.

### **Total Operating Expenses and the Assessment Contribution to Operating Expenses**

Page one of the budget shows projected 2014 Primary Program operating costs to be about 5% lower than the budget amount.

The 2015 Primary Program operating budget is 3.31% percent higher than the 2014 budget. The main reasons for the increases are the 3% salary increase and related benefits costs, new LP position, the E&O premium, employee training and travel, scanning of old claims, and the ongoing

update of the PLF website.

### **Excess Program Budget**

The major focus of this process is on the Primary Program and the effects of the budget on the 2015 Primary Program assessment. We do include a budget for the Excess Program (page 8). Participation in the Excess Program has declined since 2011 because of competition from commercial insurance companies. Staff is actively working with AON and the reinsurers to create a more competitive premium structure as well as providing additional claims information at both the primary and excess levels.

The major revenue item for the Excess Program is ceding commissions. These commissions represent the portion of the excess assessment that the PLF gets to keep and are based upon a percentage of the assessment (premium) charged. Most of the excess assessment is turned over to reinsurers who cover the costs of resolving excess claims. We currently project ceding commission of \$760,000 for 2015. This represents an expectation of the commission remaining flat from expected 2014 levels.

After three or four years from the start of a given plan year, the two reinsurance treaties covering the first \$5 million provide for profit commissions if excess claim payments are low. If there are subsequent adverse developments, prior profit commissions are returned to the reinsurance companies. In recent years, excess claims have increased and it is quite difficult to predict profit commissions in advance. Actual profit commissions have proven to be rather small. As a result, no profit commissions have been included in the 2014 projections or 2015 budget.

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

The major expenses for the Excess Program are salary, benefits, and allocations from the Primary Program that were discussed in an earlier section. For the 2015 budget year we have removed all directly charged Excess staff salaries and benefits. We are now allocating all staff positions related to Excess as no staff person spends 100% of their time involved in Excess related work.

### **IV. Actuarial Assessment Study for 2015**

The actuaries review claims liabilities twice a year, at the end of June and December. They also prepare an annual rate study to assist the Board of Directors in setting the assessment. The attached rate study focuses on the estimate of the cost of 2015 claims. It relies heavily on the analysis contained in the actuaries' claim liability study as of June 30, 2014. The methodology used in that study is discussed by separate memorandum. The rate study only calculates the cost of new 2015 claims. It does not consider adjustments to pending claims, investment results, or administrative operating costs.

The actuaries estimate the 2015 claim cost per attorney using two different methods. The first

method (shown on Exhibit 1) uses regression analysis to determine the trends in the cost of claims. Regression analysis is a statistical technique used to fit a straight line to number of points on a graph. It is very difficult to choose an appropriate trend. Because of the small amount and volatility of data, different ranges of PLF claim years produce very different trend numbers. The selection of the starting and ending points is very significant. For the PLF, including a low starting point such as 1987 or a very high point such as 2000 skews the straight line significantly up or down. Because of these problems, the actuaries do not favor using this technique to predict future claim costs.

The second method (Exhibit 2) involves selection of expected claim frequency and claim severity (average cost). Claims frequency is defined as the number of claims divided by the number of covered attorneys. For the indicated amount, the actuaries have used a 2015 claims frequency rate of 13 percent and \$21,000 as the average cost per claim (severity). We feel the \$21,000 severity factor is appropriate given the increases in claim expense severity since 2008. The actuaries' chosen frequency rate is 13%, the same rate as used in 2014. The actuaries prefer the result found with this second method. Their indicated average claim cost is \$2,731 per attorney, which is \$1 more than 2014. This amount would only cover the estimated funds needed for 2015 new claims.

It is necessary to calculate a provision for operating expenses not covered by assessment revenue. As can be seen in the budget, the estimate of assessment revenue does not cover the budget for operating expenses. The 2015 shortfall is about \$586 per lawyer assuming 7,135 full-pay lawyers. This is an increase of \$11 or 2% from 2014.

In their Year 2015 Assessment report, the actuaries discuss the theoretical and practical considerations of having a margin (additional amount) in the calculated assessment to cover operational shortfalls and adverse claims development. On pages 8 and 9 of their report, the actuaries list pros and cons for having a margin in the assessment.

#### **V. Staff Recommendations**

If you add the operating shortfall expense portion of \$586 per lawyer to the actuaries' indicated claim cost of \$2,731, you would have an assessment of \$3,316. We feel that it is appropriate to include a margin of \$150 per attorney for in year adverse development of pending claims. This allows for a budget of about \$1.3 million for adverse development of pending claims. Over the past six years the in year adverse claims development margin has been as low as \$100 (2009) and as high as \$300 (2012).

An assessment of \$3,500 would allow a projected budget profit of about \$245,472.

Because of good financial results for 2013 and the first six months of 2014, the PLF currently has positive combined Primary and Excess retained earnings of about \$11.8 million. The Board of Directors has a long-term goal of \$12 million positive retained earnings. A 2015 assessment with some margin makes it more likely continued progress will be made toward that retained earnings



goal.

Given the factors discussed above, the PLF staff feels that the current Primary Program assessment should be maintained for 2015. Accordingly, we recommend setting the 2015 Primary Program assessment at \$3,500.

The Finance Committee will discuss the actuarial report during its telephone conference meeting at 9:30 a.m. on August 12, 2014 and prepare recommendations for the Board of Directors. The full Board of Directors will then act upon the committee's recommendations at their board meeting on August 14, 2014.

**OREGON STATE BAR  
PROFESSIONAL LIABILITY FUND  
2015 PRIMARY PROGRAM BUDGET  
Presented to PLF Board of Directors on August 14, 2014**

	<u>2012 ACTUAL</u>	<u>2013 ACTUAL</u>	<u>2014 BUDGET</u>	<u>2014 PROJECTIONS</u>	<u>2015 BUDGET</u>
<b><u>Revenue</u></b>					
Assessments	\$24,803,326	\$25,042,533	\$25,123,000	\$24,722,389	\$24,972,500
Installment Service Charge	394,631	391,097	390,000	391,000	335,000
Investments and Other	<u>4,364,988</u>	<u>4,364,988</u>	<u>2,692,264</u>	<u>4,254,239</u>	<u>2,702,765</u>
Total Revenue	<u>\$29,562,945</u>	<u>\$29,798,618</u>	<u>\$28,205,264</u>	<u>\$29,367,628</u>	<u>\$28,010,265</u>
<b><u>Expenses</u></b>					
Provision for Claims					
New Claims	\$20,908,307	\$18,225,493	\$19,595,940	\$19,278,000	\$19,478,550
Pending Claims	<u>(\$2,435,227)</u>	<u>(\$133,446)</u>	<u>\$1,076,700</u>	<u>\$1,076,700</u>	<u>\$1,070,250</u>
Total Provision for Claims	<u>\$18,473,080</u>	<u>\$18,092,047</u>	<u>\$20,672,640</u>	<u>\$20,354,700</u>	<u>\$20,548,800</u>
Expense from Operations					
Administration	\$2,200,578	\$2,482,372	\$2,482,372	\$2,389,557	\$2,552,652
Accounting	748,742	637,662	637,662	785,895	827,287
Loss Prevention	1,824,653	2,070,773	2,070,773	1,911,333	2,139,706
Claims	<u>2,398,157</u>	<u>2,640,466</u>	<u>2,640,466</u>	<u>2,395,228</u>	<u>2,570,768</u>
Total Operating Expense	\$7,172,130	\$7,831,273	\$7,831,273	\$7,482,013	\$8,090,412
Contingency	23,693	0	314,701	0	242,712
Depreciation	175,500	166,575	169,800	168,527	174,800
Allocated to Excess Program	<u>(1,135,822)</u>	<u>(1,135,160)</u>	<u>(1,145,155)</u>	<u>(1,121,002)</u>	<u>(1,291,933)</u>
Total Expenses	<u>\$24,708,581</u>	<u>\$24,954,735</u>	<u>\$27,843,259</u>	<u>\$26,884,238</u>	<u>\$27,764,791</u>
Net Income (Loss)	<u>\$4,854,364</u>	<u>\$4,843,883</u>	<u>\$362,005</u>	<u>\$2,483,390</u>	<u>\$245,474</u>
Number of Full Pay Attorneys	7,030	7,093	7,104	7,064	7,135

**CHANGE IN OPERATING EXPENSES:**

Increase from 2014 Budget	3.31%
Increase from 2014 Projections	8.13%

**OREGON STATE BAR  
PROFESSIONAL LIABILITY FUND  
2015 PRIMARY PROGRAM BUDGET  
CONDENSED STATEMENT OF OPERATING EXPENSE  
Presented to PLF Board of Directors on August 14, 2014**

	<u>2012 ACTUAL</u>	<u>2013 ACTUAL</u>	<u>2014 BUDGET</u>	<u>2014 PROJECTIONS</u>	<u>2015 BUDGET</u>
<b><u>Expenses</u></b>					
Salaries	\$3,984,100	\$4,145,086	\$4,333,390	\$4,137,733	\$4,279,989
Benefits and Payroll Taxes	1,395,115	1,457,187	1,613,525	1,469,131	1,630,430
Professional Services	289,644	331,128	319,630	337,261	410,092
Auto, Travel & Training	95,137	92,557	96,650	99,350	178,225
Office Rent	511,782	521,138	530,879	512,379	520,065
Office Expense	136,526	133,569	136,250	143,250	146,250
Telephone (Administration)	36,564	48,675	57,960	47,000	49,560
L P Programs	389,839	373,908	434,544	417,719	485,394
OSB Bar Books	200,000	200,000	200,000	200,000	200,000
Defense Panel Program	0	9,970	1,500	2,000	11,979
Insurance	70,793	71,471	39,145	36,340	94,928
Library	31,047	32,659	33,000	39,000	39,000
Memberships & Subscriptions	20,512	21,458	22,200	35,000	35,000
Interest & Bank Charges	11,071	5,213	12,600	9,500	9,500
Total Operating Expenses	<u>\$7,172,130</u>	<u>\$7,444,018</u>	<u>\$7,831,273</u>	<u>\$7,485,663</u>	<u>\$8,090,412</u>
Allocated to Excess Program	<u>(\$1,099,826)</u>	<u>(\$1,105,104)</u>	<u>(\$1,120,789)</u>	<u>(\$1,096,636)</u>	<u>(\$1,264,472)</u>
Full Time Employees (See Explanation)	44.56	43.88	45.88	50.86	51.28
Number of Full Pay Attorneys	7,030	7,093	7,104	7,064	7,135
Non-personnel Expenses	\$1,792,915	\$1,841,746	\$1,884,358	\$1,878,799	\$2,179,993
Allocated to Excess Program	<u>(\$275,635)</u>	<u>(\$278,874)</u>	<u>(\$270,406)</u>	<u>(\$270,406)</u>	<u>(\$338,705)</u>
Total Non-personnel Expenses	<u>1,517,280</u>	<u>1,562,872</u>	<u>1,613,952</u>	<u>1,608,393</u>	<u>1,841,288</u>

**CHANGE IN OPERATING EXPENSES:**

Increase from 2014 Budget	3.31%
Increase from 2014 Projections	8.08%

**OREGON STATE BAR  
PROFESSIONAL LIABILITY FUND  
2015 PRIMARY PROGRAM BUDGET  
ADMINISTRATION**

**Presented to PLF Board of Directors on August 14, 2014**

<u>Expenses</u>	<u>2012 ACTUAL</u>	<u>2013 ACTUAL</u>	<u>2014 BUDGET</u>	<u>2014 PROJECTIONS</u>	<u>2015 BUDGET</u>
Salaries	\$632,504	\$641,274	\$807,152	\$755,854	\$733,389
Benefits and Payroll Taxes	231,342	238,566	296,206	254,723	269,643
Staff Travel	23,832	21,363	19,550	19,250	23,050
Board of Directors Travel	38,011	35,514	39,000	39,000	40,000
Training	9,701	8,947	15,000	12,000	20,000
Investment Services	27,719	28,018	28,000	28,000	40,000
Legal Services	13,251	13,738	13,000	12,000	3,500
Actuarial Services	18,900	19,731	22,000	19,000	25,000
Information Services	86,814	136,221	97,600	134,705	111,000
Offsite System Backup	0	0	0	0	0
Electronic Record Scanning	52,035	47,086	65,000	60,000	65,000
Other Professional Services	65,375	63,734	70,230	60,956	139,592
Pro Services - Medicare Reporting	3,850	0	0	0	0
OSB Bar Books	200,000	200,000	200,000	200,000	200,000
Office Rent	511,782	521,138	530,879	512,379	520,065
Equipment Rent & Maint.	36,000	38,672	39,000	44,000	44,000
Dues and Memberships	20,512	21,458	22,200	35,000	35,000
Office Supplies	51,613	51,661	52,000	69,000	70,000
Insurance	70,793	71,471	39,145	36,340	94,928
Telephone	36,564	48,675	57,960	47,000	49,560
Printing	8,573	7,629	9,000	3,000	5,000
Postage & Delivery	37,715	33,400	34,750	25,750	25,750
NABRICO - Assoc. of Bar Co.s	9,996	10,959	10,600	10,600	27,175
Bank Charges & Interest	11,071	5,213	12,600	9,500	9,500
Repairs	2,625	2,207	1,500	1,500	1,500
Miscellaneous	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
<b>Total Operating Expenses</b>	<b><u>\$2,200,578</u></b>	<b><u>\$2,266,674</u></b>	<b><u>\$2,482,372</u></b>	<b><u>\$2,389,557</u></b>	<b><u>\$2,552,652</u></b>
 Allocated to Excess Program	 <b><u>(\$430,118)</u></b>	 <b><u>(\$430,857)</u></b>	 <b><u>(\$461,595)</u></b>	 <b><u>(\$426,696)</u></b>	 <b><u>(\$563,239)</u></b>
 <b>Administration Full Time Employees</b>	 8.75	 8.00	 10.00	 9.00	 9.00
 <b>CHANGE IN OPERATING EXPENSES:</b>					
Increase from 2014 Budget			2.83%		
Increase from 2014 Projections			6.83%		



**OREGON STATE BAR  
PROFESSIONAL LIABILITY FUND  
2015 PRIMARY PROGRAM BUDGET  
LOSS PREVENTION (Includes OAAP)  
Presented to PLF Board of Directors on August 14, 2014**

	<u>2012</u> <u>ACTUAL</u>	<u>2013</u> <u>ACTUAL</u>	<u>2014</u> <u>BUDGET</u>	<u>2014</u> <u>PROJECTIONS</u>	<u>2015</u> <u>BUDGET</u>
<b><u>Expenses</u></b>					
Salaries	\$1,053,974	\$1,065,411	\$1,189,806	\$1,094,563	\$1,194,861
Benefits and Payroll Taxes	380,840	390,424	446,423	402,701	459,451
In Brief	44,854	46,731	62,000	71,782	70,000
PLF Handbooks	5,872	4,949	6,000	6,000	6,000
Library	436	389	500	400	5,000
Video and Audio Tapes	35,454	44,382	35,000	30,000	32,000
Mail Distribution of Video and Audiotape	11,949	14,607	12,000	14,000	14,000
Web Distribution of Programs	24,180	25,215	18,000	25,000	20,000
Program Promotion	28,664	16,863	20,000	18,000	22,000
Expense of Closing Offices	15,861	3,691	10,500	4,000	10,500
Facilities	47,282	42,828	47,000	45,000	47,000
Speaker Expense	(1,311)	4,466	5,000	2,500	5,000
Accreditation Fees	1,632	1,205	1,600	1,000	1,600
Beeepers & Confidential Phone	4,107	5,110	5,000	5,210	5,300
Expert Assistance	300	0	5,000	2,000	5,000
Bad Debts from Loans	0	0	0	0	0
Memberships & Subscriptions	11,053	10,517	11,400	10,623	14,150
Travel	36,171	26,541	34,500	23,860	43,600
Training	25,038	25,420	41,300	24,250	42,500
Downtown Office	98,297	100,992	119,744	130,444	141,744
Miscellaneous	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
 Total Operating Expenses	 <u>\$1,824,653</u>	 <u>\$1,829,743</u>	 <u>\$2,070,773</u>	 <u>\$1,911,333</u>	 <u>\$2,139,706</u>
 Allocated to Excess Program	 <u>(\$202,122)</u>	 <u>(\$209,540)</u>	 <u>(\$225,930)</u>	 <u>(\$209,248)</u>	 <u>(\$241,636)</u>
  L P Depart Full Time Employees (Includes OAAP)	  11.83	  11.83	  13.58	  14.58	  14.58

**CHANGE IN OPERATING EXPENSES:**

Increase from 2014 Budget	3.33%
Increase from 2014 Projections	11.95%

**OREGON STATE BAR  
PROFESSIONAL LIABILITY FUND  
2015 PRIMARY PROGRAM BUDGET  
CLAIMS DEPARTMENT**

**Presented to PLF Board of Directors on August 14, 2014**

	2012	2013	2014	2014	2015
	<u>ACTUAL</u>	<u>ACTUAL</u>	<u>BUDGET</u>	<u>PROJECTIONS</u>	<u>BUDGET</u>
<b><u>Expenses</u></b>					
Salaries	\$1,755,442	\$1,853,764	\$1,890,979	\$1,732,548	\$1,784,958
Benefits and Payroll Taxes	599,287	628,388	707,987	605,680	679,331
Claims Audit	0	0	0	0	0
Training	9,758	8,577	3,000	12,000	49,000
Travel	2,623	4,966	4,000	4,000	6,500
Library & Information Systems	31,047	32,659	33,000	39,000	39,000
Defense Panel Program	<u>0</u>	<u>9,970</u>	<u>1,500</u>	<u>2,000</u>	<u>11,979</u>
Total Operating Expenses	<u>\$2,398,157</u>	<u>\$2,538,325</u>	<u>\$2,640,466</u>	<u>\$2,395,228</u>	<u>\$2,570,768</u>
Allocated to Excess Program	<u>(\$338,865)</u>	<u>(\$353,033)</u>	<u>(\$343,000)</u>	<u>(\$348,642)</u>	<u>(\$340,540)</u>
Claims Depart Full Time Employees	17.88	18.10	20.33	19.75	18.75
<b>CHANGE IN OPERATING EXPENSES:</b>					
Decrease from 2014 Budget			-2.64%		
Increase from 2014 Projections			7.33%		





**OREGON STATE BAR  
PROFESSIONAL LIABILITY FUND  
2015 EXCESS PROGRAM BUDGET  
Presented to PLF Board of Directors on August 14, 2014**

	<u>2012 ACTUAL</u>	<u>2013 ACTUAL</u>	<u>2014 BUDGET</u>	<u>2014 PROJECTIONS</u>	<u>2015 BUDGET</u>
<b><u>Revenue</u></b>					
Ceding Commission	733,700	747,993	760,000	675,000	760,000
Profit Commission	32,599	32,069	0	0	0
Installment Service Charge	37,180	41,433	42,000	41,500	42,000
Other	1,478	7,913	1,500	6,900	69,001
Investment Earnings	<u>429,191</u>	<u>330,352</u>	<u>202,643</u>	<u>355,101</u>	<u>203,434</u>
Total Revenue	<u>\$1,234,148</u>	<u>\$1,159,760</u>	<u>\$1,006,143</u>	<u>\$1,078,501</u>	<u>\$1,074,435</u>
<b><u>Expenses</u></b>					
Allocated Salaries	\$608,431	\$599,356	\$621,781	\$621,781	\$672,520
Direct Salaries	66,984	73,078	76,512	0	0
Allocated Benefits	215,760	226,874	228,602	228,602	253,247
Direct Benefits	23,050	24,120	28,400	27,684	0
Program Promotion	6,070	3,922	7,500	7,500	7,500
Investment Services	2,282	1,982	2,500	2,500	2,500
Allocation of Primary Overhead	275,635	278,874	270,406	278,874	338,705
Reinsurance Placement Travel	3,933	369	5,000	500	5,000
Training	0	0	500	500	500
Printing and Mailing	5,301	4,035	5,500	5,500	5,500
Other Professional Services	1,345	0	2,000	2,000	2,000
Software Development	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Total Expense	<u>\$1,208,791</u>	<u>\$1,212,611</u>	<u>\$1,248,701</u>	<u>\$1,175,441</u>	<u>\$1,287,472</u>
Allocated Depreciation	<u>\$35,996</u>	<u>\$30,056</u>	<u>\$24,366</u>	<u>\$30,056</u>	<u>\$27,461</u>
Net Income	<u>(\$10,639)</u>	<u>(\$82,907)</u>	<u>(\$266,924)</u>	<u>(\$126,996)</u>	<u>(\$240,498)</u>
Full Time Employees	1.00	1.00	1.00	0.00	0.00
Number of Covered Attorneys	2,313	2,193	2,395	2,175	2,140

**CHANGE IN OPERATING EXPENSES:**

Increase from 2014 Budget	3.10%
Increase from 2014 Projections	9.53%

# Rudd and Wisdom, Inc.

## CONSULTING ACTUARIES

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Philip J. Ellis, A.S.A.  
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August 6, 2014

Mr. Ira Zarov  
Ms. Betty Lou Morrow  
Oregon State Bar Professional  
Liability Fund  
Post Office Box 1600  
Lake Oswego, Oregon 97035-0889

Re: Year 2015 Assessment

Dear Ira and Betty Lou:

At your request, we have analyzed the PLF Primary Fund's historical claims data available through June 30, 2014. Based on this analysis, we have projected the expected claim cost for the Primary Fund for the Calendar Year 2015 (CY 2015) and developed recommendations concerning the CY 2015 assessment for the Primary Fund.

Our assignment for this study was to focus on a projection of the Primary Fund's projected claim cost for CY 2015. We have not attempted to address the impact of investment income, installment surcharges, underwriting expenses or unallocated loss adjustment expenses. Based on our analysis we estimate that the PLF Primary Fund's CY 2015 average claim cost per attorney will lie in a range of \$2,100 to \$3,190 (see table on page 7 of this report) with an indicated average claim cost of \$2,730 per attorney.

At June 30, 2014, the PLF Primary Fund has retained earnings (the equivalent of surplus for an insurance company) of approximately \$11.8 million. The Primary Program had net income of approximately \$2.5 million for the first six months of 2014. At June 30, 2000, the PLF Primary Fund had retained earnings in excess of \$7 million. Shortly after that, a combination of claims experience and investment results eliminated the Primary Fund's surplus. With a recent history of negative retained earnings, it is important that the PLF Primary Fund charge an adequate rate and add a

margin to regenerate surplus. Net investment income and installment surcharges offset part of the PLF's operating expenses. A supplement to provide for operating expenses is also appropriate. As stated above, a pure premium in the neighborhood of \$2,730 per attorney for the 2015 claim year is reasonably likely to cover the Primary Fund's claim costs. If the Primary Fund covers approximately 7,100 full pay attorneys in CY 2015, then the Primary Fund should expect to increase its surplus by approximately \$710,000 for each \$100 that the assessment rate exceeds the Fund's claim and administrative costs on a per-attorney basis.

In our claim reserve report dated August 5, 2014 we recommended that the Primary Fund keep at least \$5 million of surplus to be able to absorb adverse claim or investment experience which may occur in the future. We also described an approach for quantifying desired surplus levels using statistical confidence levels. In prior studies, we have noted the need for caution in establishing assessment rates for the PLF Primary Fund. This has not changed, and there are several reasons for the Board to exercise caution in setting the rate at this time.

1. The Fund's frequency has been volatile varying from a low rate of 11.4% in 1990 to a high rate of 14.7% in 2004. It has also varied significantly from year to year. This volatility makes it difficult to predict the Fund's frequency for a given year.
2. The Fund's claim costs have had a moderately positive trend since 1993, indicating that claim costs are increasing. Since 1999, the average claim cost per attorney has hovered in a range of \$2,300 to \$3,000 after being in the \$1,800 to \$2,000 range for most of the 1990's. The 2000 and 2001 claim years are the exceptions, as the average claim cost in 2000 spiked to \$3,214 and the claim cost in 2001 dropped to \$1,958.
3. The market value of the Fund's assets has been volatile, producing large gains in some years and losses in others during the past 20 years.
4. The Fund currently has a surplus position of approximately \$8.5 million. This is a good position for the Fund. It must be noted, however, that the Primary Fund had accumulated a \$10 million surplus at the end of 1999 that evaporated rather quickly due to bad investment and claim experience. Volatile asset values tend to exacerbate a low or negative surplus position. Surplus enables an insurance company or fund to withstand adverse experience (whether it is due to claims or asset values) without having to take drastic measures.

## **Data and Methodology**

The analysis utilizes case incurred amounts for indemnity and expense as of June 30, 2014, provided by the PLF staff. The term "case incurred" is used herein to describe the estimated value placed on a claim by the PLF staff. The value includes both the paid and unpaid portions of the claim. The indemnity and expense components of incurred claims for each semiannual reporting period are reviewed separately. These amounts have been developed based on actuarial development factors, which are used to estimate the amount by which ultimate losses can be expected to differ from the case incurred amounts established by the PLF. We make this determination by analyzing the actual periodic changes (measured at semiannual intervals) in case incurred amounts. The purpose of this approach is to adjust for any pattern of over or under-reserving by the PLF staff that may have appeared in the experience data.

The methodology and judgment utilized in selecting the actuarial development factors for this review are consistent with that utilized in our determination of reserves for unpaid losses as of June 30, 2014. While the development factors used in this analysis represent our best judgment concerning future development patterns, it should be noted that attorneys professional liability insurance is a volatile line of business that is affected by legislation, judicial interpretation and the economy. This may cause future development patterns to differ from those exhibited in the claim data at June 30, 2014.

The PLF has provided information concerning the historical and estimated future number of full pay equivalent attorneys. This has provided the basis for the exposure data used in our analysis. The number of full pay attorneys is determined as the total assessment for a given year divided by the assessment rate for the year. Effective with the 2006 plan year, the PLF reduced the discounts given to attorneys with limited prior PLF coverage ("step rating"). This distorts the calculation of the number of full pay attorneys as the same number and distribution of attorneys will now generate more assessment dollars. Based on data from 2001 through 2005, this change generates approximately 2% more assessment dollars and therefore 2% more full pay equivalent attorneys. Seven years ago, we adjusted the number of full pay attorneys for 2006 and 2007 to get the exposure data on a basis consistent with prior years. For this analysis the change in the number of full pay equivalent attorneys does not appear to have a material impact on the results. For that reason we have used the unadjusted number of full pay equivalent attorneys as provided.

In this analysis, we have concentrated only on the claim costs. We have made no calculations of 2015 investment income or operating expenses. It is our understanding that the PLF staff will include a discussion of those factors in their recommendations regarding the 2015 assessment.

### **Provision for Claims**

The foundation for the determination of a provision for claims is the expected claim cost for the assessment period. This analysis anticipates a calendar year 2015 assessment period with the bulk of the policies written January 1, 2015. To determine the expected claim cost for this period, we used the following approach:

1. Claims experience was analyzed for calendar years 1983 through 2013. The ultimate incurred claims used in this analysis are the same as those determined in connection with our estimate of PLF Primary Fund reserves as of June 30, 2014. We have described the methodology used in that determination in separate correspondence.

Exhibit 1 presents a summary of this analysis, including ultimate incurred claims, number of claims, frequency, severity, and claim cost for calendar years 1983 through 2013. The average claim cost per attorney for calendar years 1983 through 2013 is displayed in the column captioned "Untrended Claim Cost." The untrended claim cost is determined by dividing (a) the ultimate incurred claim amounts reported during each calendar year by (b) the attorney exposure for that year. Therefore, the claim cost represents the average incurred claims for an average attorney insured for the full calendar year. The values described above are also displayed for the first six months of 2014.

There is a special claim situation for this study. In 2012 and 2013, 160 claims were reported from a single attorney. The aggregate limit for these claims is \$350,000. We have valued those claims at \$220,000 for indemnity and \$130,000 for expense. For claim count and frequency purposes, these claims were treated as a single claim. To do otherwise would distort our results.

2. The current coverage limits (\$300,000 per claim) have been in place since 1987. We have focused our analysis on the experience period, which includes calendar years 2004 through 2013. We note that a \$25,000 claim expense allowance was implemented in 1995 and an additional \$25,000 claim expense allowance (for a total of \$50,000) was added in 2005. The experience for periods since 1995

reflects the first allowance. Only the 2005 through 2013 experience reflects the second expense allowance. We do not believe that the impact of the second allowance on claims expense is significant enough to invalidate the use of data from previous periods in our analysis. We have omitted the 2014 claims from the experience period because these claims are new, and there is only six months of data. Each calendar year claim cost is trended to the middle of CY 2015, the approximate midpoint of the exposure to be incurred during the assessment period. The purpose of trending is to recognize the tendency of claim costs to increase over time.

3. Selecting an appropriate trend rate is an important step in applying the methodology described above. The 1996 - 2013 experience period indicates a trend of approximately 2.0%. Between 1992 and 1998, claim costs were flat (i.e., no measurable trend) with values in a range of \$1,800 to \$2,000 per attorney. The 1999 and later claim years give the trend line an upward slope because average claim cost increased by approximately \$560 per attorney in 1999 and the average cost has been in the mid to high \$2,000 range since that time. The net effect of this experience is that it is difficult to select a specific trend. However, we note that the Primary Fund's claim cost trend has generally been in the 1% to 3% range.
4. Having established a framework for reviewing the claims experience, we must develop a method for determining the expected cost of claims to be reported in CY 2015. For this purpose, we have employed two different approaches:
  - a. Based on the analysis described in (1) through (3) above we have selected a range of claim cost trends that we believe to be appropriate. These trends are applied to each calendar year's untrended claim cost to produce for each calendar year a range of claim costs trended to July 1, 2015. The averages of these trended claim costs provide a range of expected claim costs for claims to be reported in 2015. These calculations are displayed in Exhibit 1.
  - b. As an alternative to the approach described above we have used the claims data and professional judgment to select a range of claim frequencies and a range of average claim severities. Multiplying the claim frequencies by the average severities also produces a range of expected claim costs. This approach is displayed in Exhibit 2.

5. For each of the methods described above parameters representing expected future claim experience must be selected. The following paragraphs describe our rationale for the parameters we have selected.
  - a. As stated above, the first method requires the selection of appropriate trend rates for annual claim costs. In Exhibit 1, we have selected 1.00%, 2.00%, and 3.00% trends for our range of values. As we noted in the reserve report, the selection of beginning and ending points can have a significant impact on the conclusions about average trend rates. Depending on the period selected, the PLF Primary Fund has had claim cost trends in the 1% to 3% range.
  - b. To implement the second method, selection of appropriate claim frequency and claim severity parameters is required. At the low end, we have selected a 12% frequency and a \$17,500 average severity. Since 1995, there have been only five years with claim frequencies less than 13%. It should be noted that the frequency since 2012 (including the first six months of 2014) has been less than 13%. The average claim size has been at or below \$17,500 in four of the past 13 years. Even so, these parameters would be characterized as optimistic.

The indicated estimate is based on 13.00% frequency and \$21,000 severity. These are the same parameters we employed in the assessment study we performed last year. The PLF Primary Fund's average frequency since 2003 is 13.1% if we ignore the 160 claims generated by the one attorney in 2012 and 2013. The average frequency since 2003 is 13.3% if we include those claims. The claim frequency for 2012 and 2013 is less than 13% without the 160 claims. The Primary Fund experienced claim frequency of 13% or higher every year between 1997 and 2005. The frequency for 2008 through the 2011 averaged 13.60% after two years at 11.90%. We believe that we should pick parameters that give the program a good chance to be adequate.

The Primary Fund's average claim size (i.e., severity) is a more difficult selection. Between 1993 and 1998, the average severity never exceeded \$14,500, falling in a range of \$12,600 to \$14,500. In 1999, severity jumped to \$16,530 and spiked to \$23,593 in 2000. The average claim severity for the last 10 years is \$19,411 without the 160 claims and \$19,066 with those claims. Over the past five years it has been \$20,077 without the 160 claims and \$19,403 with those claims. Based on recent experience, we believe that \$21,000 will prove to be an adequate severity estimate for 2015 claims.

With a surplus of approximately \$11.8 million, we believe that the Board should set the assessment rate for 2014 to cover the claim cost and operating expenses. At the current surplus level, the need to increase the Primary Fund's retained earnings is not as important as it has been in prior years.

At the upper end of the range, we have selected a 14.5% frequency and a \$22,000 average severity. The PLF Primary Fund has experienced frequency in excess of 14% in 1995, 1999, 2004, and 2009. Two of the ten full years since 2004 have produced an average severity at or above \$21,000. The first half of 2014 is also above \$21,000. The average severity for claim year 2000 (\$23,593) is the largest in the Fund's history.

- c. We have noted in the past that attorneys professional liability insurance is a volatile line of business. It is reasonable to expect that there will be years in the future that will have significantly higher than expected claim costs. Years with lower than expected claim costs are also to be expected. This uncertainty with regard to future experience suggests the need for caution in rating.

6. The table below summarizes our estimates of the CY 2015 expected claim cost.

<i>Estimate</i>	<i>Method 1 Average Trended Claim Cost</i>	<i>Method 2 Frequency x Severity</i>
Low	\$ 2,719	\$ 2,100
Indicated	2,899	2,730
High	3,093	3,190

These results are not significantly different from the analysis we did last year. The results from Method 1 are slightly lower in this year's analysis than the corresponding values from last year's study. The results from Method 2 are identical to the results from last year because we used the same parameters. As a check on the reasonableness of the results from Method 2, we have determined the trend rates applied to the average trended claim costs over the 2004 – 2013 period, which produce expected claim costs approximately the same as the three estimates. A negative 2.20% trend reproduces the low estimate, while a 0.90% trend produces the indicated estimate and a 2.75% trend is needed for the high estimate. These determinations were made to provide additional perspective to the analysis. The Method 1 calculations are presented in Exhibit 1. The Method 2 calculations are presented in Exhibit 2.



### **Rating Margin: Theoretical Considerations**

Generally, it is appropriate to include in an insurance rate a provision for adverse deviation from expected experience. The purpose of this rating margin is to increase the insurance organization's chances for rating adequacy by making a reasonable provision for adverse fluctuation in claims experience.

Because this methodology utilizes the average trended claim cost from the experience period, statistically, there is a 50% probability that actual results will be better than expected and a 50% probability that actual results will be worse than expected, assuming the trend factor provides an appropriate basis for projection. The typical insurance organization considers it prudent to increase its probability of success substantially above the 50/50 position. This is accomplished by establishing a rating margin either statistically, based on the observed fluctuations in the experience data, or subjectively, based on actuarial and management judgment.

It is sometimes appealing to establish the margin based on a mathematical measure of the statistical fluctuation observed in the experience data, e.g., the standard deviation. Frequently, however, the data is not sufficiently credible for such a purpose and, in any event, the approach may be too esoteric. As a result, it is often convenient and equally effective to establish the margin based on a subjectively chosen percentage of the expected claim cost. The selection of the percentage margin requires management to exercise judgment based on the organization's willingness to accept risk, its ability to withstand adverse experience, its position in the competitive market, etc.

The ability of the typical insurance organization to withstand adverse experience depends in part on the adequacy of its surplus (the equivalent of the PLF Primary Fund's retained earnings). A strong surplus position permits a lower rating margin, while a weaker surplus position would require a larger margin. Likewise, an organization's surplus relative to its surplus goal might also influence management's judgment regarding the margin to be included in its rates.

The PLF's unique circumstances allow it to be significantly less conservative than a commercial insurer in establishing its rates. The mandatory participation requirement and PLF's ability to establish future assessments to fund prior deficits provide at least as much protection against adverse experience as a strong surplus position provides to the typical commercial insurer. As a result, a rating margin is not nearly as important to the PLF Primary Fund as it is to the typical insurer and management has more

discretion in the judgment it exercises in this regard. While there is certainly an argument to be made that under normal circumstances the PLF Primary Fund should incorporate no margin in its rating, some consideration may be in order concerning minimizing the frequency of rate adjustments, retained earnings position and goals, etc.

### **Rating Margin: Practical Considerations**

The PLF's unique circumstances allow it to be significantly less conservative than a commercial insurer in establishing rates. Nevertheless, there are several considerations, which indicate that under certain conditions some additional margin in the rate may be appropriate:

1. The Primary Fund presently has a reasonable amount of positive retained earnings. A margin in the assessment rate would enable the Primary Fund to increase its retained earnings and provide a better cushion to absorb adverse claim experience, such as a higher than expected number of reported claims or adverse development on existing and future claims. This point is not as important as it has been in past years. However, the Primary Fund's current surplus should not be considered excessive.
2. The Primary Fund's assets are reported at market value, and investment results vary from year to year. The PLF uses asset allocation to limit volatility but investment income can not be predicted precisely for rating purposes. Thus, investment risk, as well as claim risk, becomes an important consideration in the rating process.

In spite of the considerations listed above, there are also factors, which indicate that an additional margin in the rate may not be needed at this time:

1. Attorneys are required to participate in the PLF's Primary Fund, and the PLF has the ability to set future rates at whatever level it deems necessary to maintain the financial soundness of the Fund.
2. The PLF also operates an Excess Fund to provide attorneys with coverage in excess of \$300,000. The Excess Fund currently (through May 31, 2014) has retained earnings of approximately \$2.7 million. While the accounting on the two Funds is separate and it is not the goal of the PLF staff for the Excess Fund to subsidize the Primary Fund, the assets of the two Funds are commingled, and nothing prevents the two Funds from supporting each other financially.

3. Unlike other members of NABRICO, the PLF’s Primary Fund is not constrained by competition. Since the coverage is mandatory, the PLF has the ability to assess policyholders to meet the Primary Fund’s financial needs without fear of losing market share. The staff and Board of Directors of the PLF believe that they have an obligation to the attorneys of the state of Oregon not to abuse this privilege. Thus, they are reluctant to overreact to adverse experience. They will implement rate increases when experience clearly dictates that increases are required.

For your consideration, we have developed expected CY 2015 claim costs without a margin and with 10% and 15% margins. A 10% margin is subjective and is a commonly used level in much of our rate work with other insurance entities. For the values displayed in Exhibit 1, one standard deviation is approximately 15% of the expected claim cost. The table below summarizes our estimates of the CY 2015 claim costs:

<i>Claim Cost Estimates</i>	<i>Expected CY 2015 Average Claim Cost</i>					
	<i>Average Trended Claim Cost Method</i>			<i>Frequency x Severity Method</i>		
	<i>No Margin</i>	<i>10% Margin</i>	<i>15% Margin</i>	<i>No Margin</i>	<i>10% Margin</i>	<i>15% Margin</i>
Low	\$2,719	\$2,991	\$3,127	\$2,100	\$2,310	\$2,415
Indicated	2,899	3,189	3,334	2,730	3,003	3,140
High	3,093	3,402	3,557	3,190	3,509	3,669

Prior to 1999, we had recommended rates that proved (with the benefit of hindsight) to be too high. The rates proposed for the 2000 through 2004 rate studies have proven to be inadequate. For the 2000 through 2014 policy years, we have projected pure premiums (i.e., claim costs) between \$1,958 and \$2,768. At this point, we believe that the actual claim costs for those years will be between \$1,843 and \$3,214. The table below summarizes these results:

<i>Policy Year</i>	<i>Expected Claim Cost at Time of Study</i>	<i>Estimated Claim Cost at 6/30/2014</i>
2000	\$ 1,958	\$ 3,214
2001	1,980	1,958

<i>Policy Year</i>	<i>Expected Claim Cost at Time of Study</i>	<i>Estimated Claim Cost at 6/30/2014</i>
2002	2,160	2,338
2003	2,236	2,623
2004	2,228	2,542
2005	2,520	2,556
2006	2,538	2,204
2007	2,544	1,869
2008	2,470	3,015
2009	2,527	3,067
2010	2,633	2,538
2011	2,730	2,574
2012	2,700	2,571
2013	2,768	2,558
2014	2,730	2,569

We believe that \$2,730 per attorney is reasonably likely to cover the cost of 2015 claims. This is identical to the claim cost we proposed in the analysis we performed last year. This value reflects the same frequency (13.00%) and claim severity (\$21,000) that we used last year. Please note that this rate is based on professional judgment and a focus on recent claim experience.

### **Important Considerations**

#### ***Credibility***

Attorneys professional liability insurance is a low frequency, high severity exposure. Accordingly, a block of attorneys professional liability insurance policies generates lower credibility than a similar-sized block of a high frequency, low severity exposure like automobile insurance. Due to its size and nature, the PLF Primary Fund's block of business does not possess as much credibility as an actuary would prefer in developing rates. While one would prefer to enhance the predictability of

experience by relying upon an outside source of data to compliment PLF Primary Fund's actual experience, we do not believe that any reasonably comparable body of data exists. This is the result of the lack of industry loss data for this line of coverage and the tremendous variations in risk among jurisdictions. We believe that the economic and judicial climate that exists in Oregon is substantially different from that of other jurisdictions. In addition, due to its mandatory nature, the PLF Primary Fund claim experience can be expected to be substantially different from that of other jurisdictions. This difference renders loss data developed in other jurisdictions inapplicable for the purpose of establishing rates for Oregon attorneys. Accordingly, despite expected weaknesses in the credibility of the historical data, we believe it is the best basis for establishing PLF Primary Fund rates.

### ***Retained Earnings***

We understand that the PLF Primary Fund has a goal of maintaining a level of retained earnings (surplus) sufficient to stabilize assessments. The question of how much surplus the PLF Primary Fund should maintain has been considered. In our reserve report dated August 5, 2014, we have discussed an approach that may help the PLF Primary Fund quantify its desired surplus level. It is clear to us that it is beneficial for the Primary Fund to have some surplus. It is also clear that the PLF was not established for the purpose of making a profit. The mandatory nature of the PLF Primary Fund and its ability to assess covered attorneys suggests a significantly smaller amount of surplus than would be appropriate for a commercial insurer or for one of the PLF's sister organizations in other states.

### ***Miscellaneous Issues***

Attorneys professional liability insurance has been a volatile line of coverage subject to sudden adverse change. To the extent that unexpected adverse occurrences influence the PLF Primary Fund's experience, projections of expected claim cost and the assessment based on these conclusions could prove inadequate. Significant upward trends in the claim cost of attorneys professional liability insurance have occurred in some jurisdictions. The potential for change makes periodic rate analyses necessary. We suggest that these analyses continue to be performed on an annual basis.

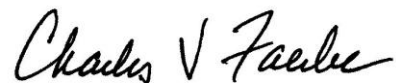
While the PLF must cope with the uncertainty and volatility associated with the attorneys professional liability line of coverage, it has significant advantages over other organizations. These advantages enhance the PLF's chances for appropriately establishing the assessment. The mandatory nature of the program avoids the

Mr. Ira Zarov  
Ms. Betty Lou Morrow  
Page 13  
August 6, 2014

disruption that occurs in a commercial company's block of business that results from consumer response to the competitive market. The PLF is not required to make assumptions regarding its exposure base for the period for which the assessment is to be established. Also, writing one policy form with uniform coverage features and limits and a common renewal date greatly strengthens the rating process. Because of these attributes, the PLF does not have to "aim at a moving target," as do its sister organizations in other states. While periodic analyses are important to the PLF's success, the resulting revisions are more likely to be refinements than sudden large increases.

As in the past, we have enjoyed the opportunity to work with you and we look forward to discussing the results of this analysis. If you have any questions, or if there are other issues that should be addressed, please let us know.

Sincerely,



Charles V. Faerber, F.S.A., A.C.A.S

CVF: ms  
Enclosure

cc: Mr. Philip S. Dial

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# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** September 5, 2014  
**Memo Date:** July 30, 2014  
**From:** Ira Zarov, PLF CEO  
**Re:** PLF Policy 3.250 – Step-Rated Assessment

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### Action Recommended

Please approve the recommended changes to PLF Policy 3.250. These revisions were approved by the PLF Board of Directors at its August 14, 2014 board meeting.

### Background

Prior to 2005, the Step-Rated Assessment policy was more generous than the current policy. The former policy provided a 50% credit in the first year, 30% in year two, and 15% in year three. The change was made for purely economic reasons as the PLF's fiscal experience had recently been negative. The relevant Board minutes stated:

The step-rated discounts cost about \$1.1 million with the current assessment. The staff and Finance Committee recommend reducing the discount by modifying the existing policy. This change would increase revenue approximately \$349,000. Staff hopes that this change would increase the chances that the Primary Program assessment would remain at \$3,000 for 2007.

Circumstances have changed in several ways. First, in recent years the PLF balance sheet has been very positive. Second, the economics of law practice have become more problematic, especially for new attorneys (the group who benefit most from the step-rated credits).

The suggested change (see PLF Policy 3.250 attached) has a cost. The cost, however, is estimated to be at the high end, \$350,000 per year and at the lower end, \$210,000. This range is a reflection of how many individuals would make use of the credit.

Attachment:  
PLF Policy 3.250 – tracked.

**3.250 STEP-RATED ASSESSMENT**

(A) Attorneys will receive a discount on the cost of their PLF coverage during their first periods of coverage as provided in this policy. The annual assessment rate for an attorney's PLF coverage will be determined as of January 1 of each year, and the rate will apply to all periods of coverage obtained by the attorney during the year. The PLF will calculate the total number of full or partial months of PLF coverage which the attorney has maintained in all prior years as of January 1 of the current year (the "Prior Coverage Period Total"). Each partial month of coverage will be counted as a full month. The attorney will then be entitled to a Step Rating Credit in calculation of the attorney's annual assessment rate as stated in the following table:

<u>Prior Coverage Period Total</u>	<u>Step Rating Credit</u>
0 months to 12 months	40 percent
Over 12 months to 24 months	20 percent
Over 24 months <u>to 36 months</u>	<u>20</u> percent
<u>Over 36 months</u>	<u>0 percent</u>

The Step Rating Credit will be applied as a reduction only to the regular assessment established for the year by the Board of Governors.

(B) The Step Rating Credit will not apply to any ~~Special Underwriting Assessment~~, installment service charge, late payment charge, or any other charge.

(BOD 9/25/96; BOG 11/17/96; BOD 9/14/05; BOG 9/30/05)

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# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** September 5, 2014  
**Memo Date:** August 22, 2014  
**From:** Ira Zarov, PLF CEO  
**Re:** Recommended Changes to PLF Policies Section 7

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### Action Recommended

Approve recommended changes to PLF Policy 7.700. These changes were approved by the PLF Board of Directors at its August 14, 2014 board meeting.

### Background

PLF Bylaws and Policies Section 7 sets forth how the PLF Excess Coverage Program is both underwritten and operated. Section 7.200(L)(1) provides for a continuity credit that benefits law firms who maintain continuous excess coverage with the PLF. This continuity credit begins at 2% for the first year of coverage, and builds each year by 2% to provide a maximum credit of 20% after ten years. As Section 7 is currently written, awarding this continuity credit to covered law firms is not optional for the underwriter. This one-size-fits-all approach has the effect of providing a financial benefit to firms with a negative claims history or different level of excess risk. This policy is not consistent with best underwriting practices. Elimination of the “one-size-fits-all,” automatic nature of the continuity credit would allow the underwriters increased flexibility to provide this credit to firms that do not pose increased risk.

The changes to PLF Policy 7.700(N) are necessary to make that policy consistent with PLF Policy 7.700(L).

### PLF Policy 7.700(L)(1)

This Policy currently reads:

Continuity Credit: Firms which are offered excess coverage will receive the following continuity credits for the following periods of continuous PLF excess coverage:

Full Years of Continuous PLF Coverage	Continuity Credit (As Percentage of Applicable Firm Assessment)
10 or more	20%
9	18%
8	16%
7	14%
6	12%
5	10%

Full Years of Continuous PLF Coverage	Continuity Credit (As Percentage of Applicable Firm Assessment)
4	8%
3	6%
2	4%
1	2%

The PLF Board of Directors proposes changing PLF Policy 7.700(L)(1) to the following:

Discretionary Continuity Credit: Firms that are offered excess coverage may receive a continuity credit for each year of continuous PLF Excess Coverage (2% for one year, up to a maximum credit of 20% for ten years) at the underwriters discretion if the firm has no negative claims experience, does not practice in a Higher Risk Practice Area, and meets acceptable practice management criteria. See PLF Policy 7.300(A)&(C). A renewing firm currently receiving a continuity credit may see a reduction in that credit if, at the time of renewal, the firm had a negative claims experience, is practicing in a Higher Risk Practice Area, or fails to meet acceptable practice management criteria.

**PLF Policy 7.700(N)**

The last sentence in PLF Policy 7.700(N) reads:

Renewing firms will qualify for continuity credits pursuant to subsection (L) so long as the firm renews its coverage no later than January 31.

If the changes are made to PLF Policy 7.700(L)(1) as proposed above, the PLF Board recommends the following corresponding change to PLF Policy 7.700(N):

Renewing firms may qualify for the discretionary continuity credit pursuant to subsection (L) so long as the firm renews its coverage no later than January 31. Renewal after January 31 will result in the automatic loss of any accumulated discretionary continuity credit.

**RESOLUTION – AMENDMENT TO ORPC 1.2**

Whereas Oregon attorneys wish clarify the ethical duties of Oregon attorneys complying with current Oregon law now therefore be it,

**RESOLVED, THAT** the Board of Governors formulate an amendment and/or subsection to ORCP 1.2(c), for approval by the House of Delegates and adoption by the Supreme Court, that clarifies ORCP 1.2(c) to allow a lawyer to assist a client in conduct that the lawyer reasonably believes is permitted by the Oregon Medical Marijuana Program, the Medical Marijuana Dispensary Program and any other Oregon law (including the 2014 Initiative Measure 91 – The Control, Regulation, and Taxation of Marijuana and Industrial Hemp if it passes) related to the use and regulation of marijuana and/or hemp including regulations, orders, and other state or local provisions implementing those laws. The clarification should also include a provision requiring the lawyer to advise the client regarding conflicting federal law and policy.

Submitted by Delegate: Eddie D. Medina  
OSB Number: 054345

Background Statement: Currently, ORPC 1.2(c) states that “[a] lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is illegal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.”

ORPC 1.2(c) is vague regarding the scope of counsel and assistance an Oregon attorney may give to clients wishing to conduct business under Oregon’s Medical Marijuana Program, the Medical Marijuana Dispensary Program and the imminent legalization of recreational marijuana and hemp. This amendment would merely clarify that an attorney is not in violation of the ORPC’s by working with businesses complying with Oregon law.

Clarification of ORCP 1.2 is necessary because the Colorado Bar Assoc. Ethics Committee recently interpreted a nearly identical rule (Colo. RPC 1.2(d)) to prohibit lawyers from (1) drafting or negotiating contracts to facilitate the purchase and sale of marijuana between businesses and/or (2) drafting or negotiating leases for properties or facilities, or contracts for resources or supplies, that clients intended to use to cultivate, manufacture, distribute, or sell marijuana. In addition, the Committee interpreted the rule to prohibit a lawyer from representing the lessor or supplier in such a transaction if the lawyer knew the client’s intended uses of the property, facilities or supplies was related to marijuana. The Committee found that violation of the ethics rule occurred even though those transactions complied with Colorado law. Colo. Bar Assoc., *Formal Opinion 125 – The Extent to Which Lawyers May Represent Clients Regarding Marijuana-Related Activities*, 42 The Colo. Lawyer 19 (2013), [http://www.cobar.org/tcl/tcl\\_articles.cfm?articleid=8370](http://www.cobar.org/tcl/tcl_articles.cfm?articleid=8370).

In direct response to the Committee’s findings, the Colorado Supreme Court clarified Colo. RPC 1.2(d) and stated that it was not a violation of the Colo. RPC’s for a lawyer to

“counsel a client regarding the validity, scope, and meaning of Colorado constitution article XVIII, secs. 14 & 16, **and [a lawyer] may assist a client in conduct that the lawyer reasonably believes is permitted by these constitutional provisions and the statutes, regulations, orders, and other state or local provisions implementing them.** In these circumstances, the lawyer shall also advise the client regarding related federal law and policy.” Colo. Rules of Prof.’l Conduct, Rule. 1.2[14].

In conclusion, without additional clarification of ORPC 1.2(c), Oregon attorneys run the risk of a violating the ORPC’s by merely drafting or negotiating a contract on behalf of a business participating in Oregon’s legal marijuana/hemp marketplace. The fact that no disciplinary action has been taken to date against any Oregon lawyer regarding this specific ethical issue does not provide sufficient guidance or assurances to Oregon lawyers that wish to provide valuable and needed legal services to clients in this highly regulated industry.

Financial Impact: None.

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** September 5, 2014  
**Memo Date:** August 25, 2014  
**From:** Judith Baker Legal Services Program Committee  
**Re:** Updates to Legal Services Program Standards and Guidelines

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### **Action Recommended**

The Legal Services Program (LSP) Committee is recommending that the BOG approve the revisions to the LSP Standards and Guidelines.

### **Background**

The Legal Services Program Standards and Guidelines (Standards and Guidelines) were developed in 1998 and apply to all programs providing civil legal aid services in Oregon who receive funding from the OSB Legal Services Program (LSP). The Standards and Guidelines outline the OSB's governing structure and oversight authority as well as provider structure and use of fund requirements.

The LSP Committee is charged with reviewing and making recommendations to the BOG on the Standards and Guidelines and their periodic review. The LSP Committee has reviewed and is recommending approval of the revisions to the Standards and Guidelines (see attached). The revisions are mostly updates to the following: statutory authority; provider structure; additional standards.

Oregon State Bar Legal Services Program  
Standards & Guidelines

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Appendices

- A. Statutory Authority
  - A1 ORS 9.572 et seq.
  - A2 Ors 21.480
- B. Oregon State Bar Board of Governor’s Policies Section 15.300 et seq.
- C. “Standards for Providers of Civil Legal Services to the Poor,” as approved by the ABA House of Delegates, August, 1996
- D. “Standards for Programs Providing Civil Pro Bono Legal Services to Persons of Limited Means,” adopted by the American Bar Association House of Delegates, February 1996.
- E. OSB Civil Legal Services Task Force Final Report, May, 1996
- F. Selected Legal Services Corporation Performance Criteria, 1996
- G. Declaration of Angel Lopez and Charles Williamson



## I. Mission Statement

It is the mission of the Oregon State Bar Legal Services Program:

To use the filing fee revenue to fund an integrated, statewide system of legal services centered on the needs of the client community as identified in the Mission Statement of the OSB Civil Legal Services Task Force Final Report, May 1996; and

To use its oversight authority to work with Providers to insure that the delivery of services is efficient and effective in providing a full spectrum of high quality legal services to low-income Oregonians.

To work to eliminate barriers to the efficient and effective delivery of legal services caused by maintaining legal and physical separation between providers of general legal services to low-income Oregonians in the same geographical area, while maintaining Providers' ability to offer the broadest range of legal services required to serve the needs of clients.

*OSB Civil Legal Services Task Force Final Report, May 1996  
Appendix I, Page 1 & 2*

*“Legal services programs exist to ensure that institutions and organizations created to serve public interests and needs, particularly governmental and civic institutions, treat individuals equally no matter what their economic situation. This is not a radical notion; it is the cornerstone of American concepts of justice and fair play.*

*The mission of Oregon’s statewide legal services delivery system should continue to be centered on the needs of its client community. It should be expansive, recognizing that equal justice contemplates more than simply providing a lawyer in every family law or unlawful detainer case (though it certainly includes this goal as well). This mission must contemplate lawyering in its broadest sense, acknowledging that the interests of low income clients can only be served if the delivery system is dedicated to providing full and complete access to the civil justice system in a way that empowers this segment of the population to define, promote, and protect its legitimate interests. As such, the mission must be to:*

- \* *Protect the individual rights of low income clients;*
- \* *Promote the interest of low income individuals and groups in the development and implementation of laws, regulations, policies and practices that directly affect their quality of life;*
- \* *Employ a broad range of legal advocacy approaches to expand the legal rights of low income individuals and groups where to do so is consistent with considerations of fundamental fairness and dignity; and*
- \* *Empower low income individuals and groups to understand and effectively assert their legal rights and interests within the civil justice system, with or without the assistance of legal counsel.”*

## II. Governing Structure

### A. Statutory Authority

On September 24, 1997, the Oregon State Bar Legal Services Program (OSB LSP) was established by the Board of Bar Governors as directed by ORS 9.572 to 9.578 (Appendix A1). The OSB LSP is charged with: the administration of ~~filing fee~~ funds appropriated to the OSB by ORS ~~21.480-9.577 (Appendix A2)~~ ORS 98.386 (2) and ORS 9.241 (3) for funding legal services programs; the establishment of standards and guidelines for the funded legal services programs (Providers); and the development of evaluation methods to provide oversight of the Providers.

### B. Governing Committee

1. **Purpose:** The Governing Committee (OSB LSP Committee) is charged with oversight of the OSB LSP and the funds appropriated to the Bar by the Oregon Legislature under ORS 9.572. The OSB LSP Committee will receive direction from the Board of Governors.

2. **Duties to the OSB Board of Governors:** The OSB LSP Committee will be responsible for reviewing and reporting to or making recommendations to the OSB Board of Governors on the following:

The Standards and Guidelines for the OSB LSP and their periodic review  
Applications for funding to the OSB LSP  
Disbursement of funds and annual OSB LSP budget  
Assessment of Provider Programs  
Annual reporting by the Providers  
Legislative issues involving the legal aid filing fee funds  
Complaints and grievances about Providers  
Additional work of the OSB LSP

#### 3. Membership

a. **Appointment:** Appointment of members to the OSB LSP Committee shall be made by the Oregon State Bar Board of Governors.

- b. Membership:** The OSB LSP Committee will consist of 9 members: 7 members, in good standing, of the Oregon State Bar; and 2 public members. The membership should be representative of the statewide aspect of the OSB LSP and should reflect the diversity of the service areas. No more than 3 attorney members should be from the Portland metropolitan area. The following criteria should be considered in selecting members:
- (1) Commitment to the basic principles of access to justice
  - (2) Ability to advance the mission of the OSB LSP
  - (3) Knowledge and understanding of providing quality legal services to low-income people.
  - (4) History of support for legal services providers
  - (5) Representation of a geographic area with special attention given to practice area specialties.
4. **Term of Appointment:** Appointments will be made for 3 year terms with the exception of the initial attorney appointments. To stagger vacancies on the OSB LSP Committee and to provide continuity, the initial appointments will be: 3 attorneys appointed for 3 years; 2 attorneys appointed for 2 years, and 2 attorneys appointed for 1 year.
5. **Liaisons to Committee:** The Oregon Law Foundation and the Campaign for Equal Justice are invited and encouraged to each have a liaison to the OSB LSP.
6. **Meetings:** The OSB LSP Committee will meet quarterly. The Chair can call Special Meetings as needed. Meeting notices and agendas will be sent out according to public meeting law. Members can participate by telephone.
7. **Quorum:** Five members constitute a quorum for voting purposes.
8. **Subcommittees:** The OSB LSP Committee Chair has the authority to appoint additional subcommittees to make recommendations on specific issues as needed.

**C. Program Staff**

**1. Director of Legal Services Program:** The OSB will hire a Director of Legal Services Program (OSB LSP Director) who will be supervised by the Executive Director of the Oregon State Bar. The OSB LSP Director will staff the OSB LSP Committee and be responsible for supporting its work and for the effective administration of all aspects of the LSP.

**a.** The LSP Director will be responsible for monitoring, reviewing, reporting and making recommendations to the OSB LSP Committee on the following:

These Standards and Guidelines and their periodic review  
Applications for funding  
Disbursement of funds and Annual OSB LSP budget  
Assessment of Provider Programs  
Annual Reporting by the Providers  
Legislative Issues regarding the filing fee funds  
Complaints and grievances about Providers  
Additional work of the OSB LSP

**b.** The LSP Director will be responsible for providing technical assistance to Providers to ensure compliance with these Standards and Guidelines.

### III. Standards and Guidelines for Providers

The following standards and guidelines shall apply to all programs providing civil legal services in Oregon who receive, or who may apply to receive, funding from the Oregon State Bar Legal Services Program (OSB LSP) pursuant to ORS 9.572 *et seq.* These Standards and Guidelines apply only to services funded by filing fees received from the OSB LSP.

#### A. Statement of Goal

It is the goal of the OSB LSP that all Providers shall be an integral part of an integrated delivery system for civil legal services which incorporates the Mission, Values and Core Capacities set forth in the OSB Civil Legal Services Task Force Final Report, May 1996, (Appendix E). The filing fee money should be used to fund providers in an integrated system designed to provide relatively equal levels of high quality client representation throughout the state of Oregon and designed to address the core capacities identified in the OSB Legal Services Task Force Report. The integrated delivery system should be structured to eliminate the legal and physical separation of offices serving the same geographical area, avoid duplication of administrative functions and costs, reduce the burdens on staff and clients, and minimize other barriers to the efficient delivery of legal services described in the Declaration of Angel Lopez and Charles Williamson authorized by the Board of Bar Governors in January 2002 (Appendix G), while maintaining the Provider's ability to offer a broad array of high quality legal services consistent with the Mission Statement.

#### B. Provider Structure

- 1. Non Profit:** A Provider shall be an Oregon nonprofit corporation, incorporated as a public benefit corporation under ORS Chapter 65, and be recognized as tax exempt under section 501(c)(3) of the Internal Revenue Code.
- 2. Board of Directors:** A Provider shall have a Board of Directors which reasonably reflects the interests of the eligible clients in the area served, and which consists of members, each of whom has an interest in, and knowledge of, the delivery of quality legal services to the poor. Appointments to the Board of Directors shall be made so as to ensure that the members reasonably reflect the diversity of the legal community and the population of

the areas served by the Provider including race, ethnicity, gender and similar factors.

- a. A majority of the directors should be active or active emeritus members of the Oregon State Bar, appointed by the county bar association(s) in the Provider's service area, or by the Oregon State Bar.
  - b. At least one-third of the directors should be persons who are eligible to be clients, but are not current clients, when appointed. The directors who are eligible clients should be appointed by a variety of appropriate groups designated by the program that may include, but are not limited to, client and neighborhood associations and community based organizations which advocate for or deliver services or resources to the client community served by the Provider.
3. **Staff Attorney Model:** A Provider shall have at least one active member of the Oregon State Bar on staff.
4. **Pro Bono Program:** A Provider shall maintain a Pro Bono Program, certified by the Oregon State Bar pursuant to section 15.300 *et seq.* of the Oregon State Bar Board of Governors' Policies (Attachment B), as a part of its system of delivery of legal services.
5. **Efficient Use of Resources:** A provider should, to the maximum extent practicable, integrate its operations and staff into existing programs that provide general legal services to low-income Oregonians in the same geographical area and meet the criteria set out in paragraphs B.1 – B.4, rather than maintain organizations that are legally and physically separate. If separate organizations currently exist, the Provider should take whatever actions are required to achieve program integration that will eliminate unnecessary, costly, and inefficient duplication without compromising the Provider's ability to offer the full range of legal services contemplated by these Standards and Guidelines including, but not limited to, challenging federal restrictions that impede such integration.

### C. **Provider Use of Funds and Eligibility Guidelines**

1. **Use of Funds:** A Provider shall use funds received pursuant to ORS 9.572 *et seq.* only for the provision of civil legal services to the poor.

The use of funds from the OSB LSP or compliance with these Standards and Guidelines is a matter between the Provider and the OSB. Nothing in these rules shall be construed to provide a basis to challenge the representation of a client. The sole remedy for non-compliance with these Standards and Guidelines is found in the procedures under non-compliance in ORS 9.572 and in these rules, Section V.E. & F.

2. **Eligibility Guidelines:** The Board of Directors of a Provider shall adopt income and asset guidelines, indexed to the Federal poverty guidelines, for determining the eligibility of individuals seeking legal assistance from the program. A copy of the income and asset guidelines shall be provided as a part of the application for these funds and shall be consistent with the Provider's mission and written priorities.
3. **Payment of Costs:** Eligible clients shall not be charged fees for legal services provided by a Provider with funds pursuant to ORS 9.572 *et seq.* However, a Provider may require clients to pay court filing fees or similar administrative costs associated with legal representation.
4. **Recovery of Attorney Fees:** A Provider may also recover and retain attorney fees from opposing parties as permitted by law.

**D. Procedures for Priorities and Policy for Avoiding Competition with Private Bar**

1. **Procedures for Establishing Priorities:** A Provider shall adopt procedures for establishing priorities for the use of all of its resources, including funds from the OSB LSP. The Board of Directors shall adopt a written statement of priorities, pursuant to those procedures, that determines cases and matters which may be undertaken by the Provider. The statement of priorities shall be reviewed annually by the Board.
  - a. The procedures adopted shall include an effective appraisal of the needs of eligible clients in the geographic area served by the recipient, and their relative importance, based on information received from potential or current eligible clients that is solicited in a manner reasonably calculated to obtain the views of all significant segments of the client population. The appraisal shall also include and be based on information from the Provider's employees, Board of Directors, local bar, and other interested persons. The appraisal should address the



need for outreach, training of the program's employees, and support services.

b. In addition to the appraisal described in paragraph a, of this section, the following factors shall be among those considered by the Provider in establishing priorities.

- (1) The population of eligible clients in the geographic area served by the Provider, including all segments of that population with special legal problems or special difficulties of access to legal services;
- (2) The resources of the Provider;
- (3) The availability of free or low-cost legal assistance in a particular category of cases or matters;
- (4) The availability of other sources of training, support, and outreach services;
- (5) The relative importance of particular legal problems to the individual clients of the Provider;
- (6) The susceptibility of particular problems to solution through legal processes;
- (7) Whether legal efforts by the Provider will complement other efforts to solve particular problems in the areas served;
- (8) Whether legal efforts will result in efficient and economic delivery of legal services; and
- (9) Whether there is a need to establish different priorities in different parts of the Provider's service area.

2. **Avoidance of Competition with Private Bar:** The Board of Directors of a Provider shall adopt a written policy to avoid using funds received from the OSB LSP to provide representation in the types of cases where private attorneys will provide representation to low-income clients without charge in advance as with contingency fee cases. A copy of the policy shall be provided

as a part of the application for these funds and shall be consistent with the Provider's mission and written priorities.

#### E. **Provider Grievance Committee and Process**

1. **Grievance Committee:** The Board of Directors of a Provider shall establish a grievance committee, composed of lawyer and client members in approximately the same proportion as the makeup of the Board.
2. **Grievance Process:** The Provider shall establish procedures for determining the validity of a complaint about the manner or quality of legal assistance that has been rendered, or about the denial of legal assistance due to a determination that a potential client is financially ineligible.
  - a. The procedures shall minimally provide:
    - (1) Information to a client at the time of the initial visit about how to make a complaint;
    - (2) Prompt consideration of each complaint by the director of the program, or the director's designee; and
    - (3) If the director is unable to resolve the matter, an opportunity for a complainant to submit an oral and written statement to the grievance committee.

#### F. **Additional Standards for Providers**

A Provider shall conduct all of its operations, including provision of legal services, law office management, and operation of the pro bono program in conformity with the following recognized standards, as applicable:

1. ~~“Standards for Providers of Civil Legal Services to the Poor,” as approved by the American Bar Association House of Delegates, August, 1986. (Appendix C)~~
1. American Bar Association Standards for the Provision of Civil Legal Aid, August, 2006 (Appendix C)
2. “Standards for Programs Providing Civil Pro Bono Legal Services to Persons of Limited Means,” as adopted by the American Bar Association House of Delegates, August, 2013 ~~February, 1996~~. (Appendix D)

3. Legal Services Corporation Performance Criteria, ~~1996~~ 2007. (Appendix F)
4. Oregon Rules of Professional Conduct Code of Professional Responsibility.

G. ~~Columbia County Exception~~

~~The Columbia County Legal Aid program is a Pro Bono Program, which currently does not have an attorney on staff as required by B.3. of this section. However, the Columbia County Legal Aid program shall make efforts over the next four (4) years to comply with B.3. of this section. In addition, the Columbia County Legal Aid program shall comply with the ABA Standards for Programs Providing Civil Pro Bono Services to Persons of Limited Means, February 1996, Standard 4.8, (Appendix D) requiring appropriate attorney supervision of its non-attorney staff. Finally, the Columbia County Legal Aid program shall take steps to comply with all other Standards.~~

~~This exception is based on the fact that since the early 1980s the Columbia County Legal Aid program has been a successful Pro Bono program. Over the years the program received filing fees.~~

~~The program does not currently have a staff attorney due to the lack of financial resources. The program has been able to provide pro bono legal services without a staff attorney. Based on this history, the Columbia County Legal Aid program is granted an exception to B.3. of this section for no more than four (4) years.~~

## IV. Cooperative Collaboration by Providers

- A. **Mechanism for Cooperation:** Providers will create a mechanism for cooperation among themselves and other programs providing services to low-income Oregonians:

To facilitate additional communication between organizations;

To coordinate and integrate key functions across program lines;

To create a forum for identifying client needs;

To collaborate and strategize how best to meet the needs of the client community;

To discuss funding needs and potential funding mechanisms;

To work with the court system, the legislature, the OSB, local bars, and members of the private bar to create a broad network to develop better access to the justice system.

To eliminate the legal and physical separation among the programs in order to minimize the duplication of administrative and other costs of delivering legal services to low-income Oregonians.

## V. Oversight by OSB Legal Services Program

The filing fees collected for legal services by the OSB LSP will continue to be used to support programs providing basic civil legal assistance to low-income Oregonians. The increase in court fees was calculated to replace decreased funding by other sources to legal services in Oregon and to enhance the broad based, full range of advocacy approaches and services to clients.

### A. Funding of Providers

1. **Presumptive funding:** To maintain the current statewide level of service the OSB LSP will continue to fund those legal services providers receiving filing fees at the enactment of 1997 Oregon Laws Chapter 801 Section 73 and the 2003 legislative increase in filing fee funds. These providers will receive the funds from the OSB LSP after administrative fees, up to 5.1 million dollars (2003 filing fee level adjusted for inflation increased by the 1.6 million dollar gap to meet the legal needs of the poor assessed in 2003) with an annual cost-of-living increase. The increase in the presumptive funding level meets the 1997 and 2003 legislative intent to provide additional funding for legal services to the poor at the same time continuing the approach adopted by the Interim Civil Legal Services Task Force who developed the Standards and Guidelines in 1998.
  - a. **Initial Funding:** Providers will be required to complete the Initial Compliance Determination Application. Providers must complete the application and demonstrate compliance with these Standards and Guidelines within two months after this document becomes effective to qualify for funding under the OSB LSP beginning September, 1998.

Funding will continue under presumptive funding until:

1. Provider is found not in compliance at which point Section V.F. will be implemented;
2. Provider discontinues provision of services at which point Section V. F. 5. will be implemented;
- or 3. OSB LSP no longer receives funding under ORS 9.572 *et seq.*

- b. **Distribution of Funds:** Presumptive funding will be based on the same distribution formula that was in effect at the enactment of 1997 Oregon Laws Chapter 801 Section 73. The Providers will be encouraged to utilize provisions **c.** and **d.** of this Section to modify

grants and subcontract to meet unmet needs, to provide services to the under-served populations and to encourage a full range of services throughout Oregon.

- c. **Modification of Grants:** A Provider receiving presumptive funding may request that the OSB LSP transfer funds allocated to it to another Provider receiving presumptive funding in order to maintain the existing statewide level of service or to improve the statewide availability of services. The OSB LSP will consider the request and submit its recommendation to the BOG.
  
- d. **Subcontracting of Funds:** Providers may subcontract with others to provide specific services or to enhance services under the following conditions:
  - (1) The subcontract is for no more than one year;
  - (2) All subcontracts must be approved by the OSB when the aggregate total of the subcontracts for the year or when any one subcontract equals or exceeds \$50,000 or is greater than 25% of the Provider's annualized grant;
  - (3) The subcontract is for services within the parameters of these Standards and Guidelines;
  - (4) The subcontract includes language insuring compliance with Sections III. C. 1, 3, 4 and III. F. of these Standards and Guidelines if the subcontract is with an organization, other than a current Provider, providing legal services to low-income people, or with a law firm or attorney;
  - (5) The Provider must include provisions to obtain the needed information on the services performed by subcontract for inclusion in its annual report; and
  - (6) For all subcontracts, the Provider must give the OSB LSP 30 days notice of intent to subcontract along with a copy of the proposed subcontract.

- 2. **Additional Funds:** If there are funds over those allocated for presumptive

funding, the OSB LSP may award those funds to current Providers or applicants who demonstrate the ability to provide services that address the unmet needs and emerging needs of low-income Oregonians and the needs of the uncounted and under-served, low-income populations. The OSB LSP will determine the process for application for those funds.

## **B. Performance Evaluation of Providers**

The OSB LSP has the responsibility to ensure that filing fees funds are effectively being used to provide high quality legal services to low-income Oregonians. The Annual Reporting Requirements and the Accountability Process are designed to provide the OSB LSP with the information necessary for the oversight required by Statute and not to be unduly burdensome on Providers.

All oversight activities shall be conducted in accordance with the American Bar Association's Standards for Monitoring and Oversight of Civil Legal Services Programs.

## **C. Annual Reporting Requirements**

- 1. Annual Audit:** All Providers shall annually undergo a financial audit by an independent auditor, which meets generally acceptable accounting practices. A copy of the final audit report shall be submitted to the OSB LSP.
- 2. Annual Report:** Each Provider shall annually file with the OSB LSP a report detailing its activities in the previous year. The report will be due by the first day of October and needs to contain the following information in the requested format:
  - a.** The numbers and types of cases and matters in which legal services were delivered;
  - b.** A listing of the Provider's staff and Governing Body;
  - c.** A copy of its budget;
  - d.** A narrative description of the Provider's operations, including a description of its needs assessment, priority setting, and grievance

processes, which is sufficient to demonstrate that the Provider is in compliance with these Standards and Guidelines.

A Provider may comply with this requirement by submitting copies of reports or applications to the Legal Services Corporation, the Oregon Law Foundation or other funding agencies that provide the requested information.

#### **D. ACCOUNTABILITY PROCESS**

**1. Process:** The process will focus on the effectiveness of the providers in meeting the needs of individual clients and the larger client community, and in the development and use of resources. The goals of the review are to assure compliance with OSB LSP Standards and Guidelines; assure accountability to clients, the public and funders; and to assist with provider's self-assessment and improvement.

The process has three components:

1. A periodic self assessment report submitted by providers, including a narrative portion and a statistical/financial portion;
2. A periodic accountability report provided by the OSB LSP to the OSB Board of Governors and other stakeholders summarizing the information from the providers' self assessment reports and other information including ongoing contacts with providers by OSB LSP staff and annual program financial audits; and
3. Ongoing evaluation activities by the OSB LSP including peer reviews, desk reviews, ongoing contacts and other evaluation activities consistent with the OSB LSP Standards and Guidelines.

#### **E. Complaint Procedure**

##### **1. Complaints about Legal Services Providers:**

- a. Each Provider under the OSB LSP is required to have a written internal grievance procedure to address complaints about the manner or quality of legal assistance provided in individual cases or about the denial of legal assistance in individual cases. Any such complaint received by the OSB LSP will be directed to the Providers' internal process except when there appears to be a pattern to the complaints or when the complaint falls into one of the categories listed below.



Providers will furnish the OSB LSP with the resolutions to the referred complaints.

- b. Ethics complaints and malpractice claims will be referred to the appropriate department of the Bar.
- c. Complaints that Providers are acting outside the scope of the statute, ORS 9.574, not in compliance with these Standards and Guidelines, or misusing funds will be addressed by the OSB LSP's Committee or Grievance Committee through the Director of the OSB LSP.
- d. Complaints regarding the overall quality of legal assistance or the performance of the Provider will be addressed by the OSB LSP Committee or Grievance Committee through the Director of the OSB LSP.
- e. The OSB LSP Committee, the Executive Director of the Bar, and the General Counsel of the Bar will be notified of the complaints against Providers. A listing of all complaints, which will include synopses and resolutions, will be kept by the OSB LSP Program Director.
- f. Each complaint will be investigated (except ethics and malpractice complaints which will be referred to the appropriate body) and responded to timely. If a Provider is found not to be in compliance with these Standards and Guidelines, the procedure under Non-Compliance by Provider (F of this section) will be implemented.

## 2. **Complaints from Applicants to the OSB LSP**

Applicants who are not granted funds by the OSB LSP may make a written presentation to the Board of Governors during the OSB LSP Committee's funding recommendation.

## F. **Non-Compliance by Provider**

- 1. **Informal Negotiation:** When it is found that a Provider is not in substantial compliance with these Standards and Guidelines, the OSB LSP Director (the Director) will negotiate and work with the Provider to assist it in coming into compliance. This period of negotiation will last no more than 60 days and no less than 15 days.

The Director will notify the OSB LSP Committee and the OSB Executive Director that the Provider is out of compliance prior to formal notice being given.

2. **Formal 30 Day Notice:** If the Provider continues to be out of substantial compliance, the Provider and the Provider's Board Chair will be given a formal 30 day written notice that details how it is out of compliance and the steps necessary to achieve compliance. The Director will continue to assist the Provider in resolving the problem.
3. **Mediation:** If after 30 days from the receipt of the formal notice, the Provider still has not demonstrated compliance, the Director will immediately send a second notice to the Provider and the Provider's Board Chair. The second notice will list three names of mediators and give the Provider 15 days from receipt of the second notice to agree to one of the mediators or suggest another mediator. If the Provider and the Director cannot agree on a mediator within the 15 day period, the Director will petition the presiding judge for a judicial district to appoint a mediator.

In the mediation, the OSB LSP will be represented by the Director or by the Chair of the OSB LSP Committee. The Provider will be represented by its Executive Director or Board Chair. Within one week of the mediation, a written decision will be forwarded to the OSB LSP Committee, the OSB Executive Director, the OSB Board of Governors and the Provider's Board Chair.

4. **Hearing:** If the mediation fails to produce a resolution in the matter, the Director shall give the Provider and Provider's Board Chair a written notice of hearing. The hearing will be held no sooner than 30 days after Provider's receipt of notice of hearing.

The Provider will have the opportunity to present evidence that it has come into compliance or is making satisfactory progress towards compliance. The OSB LSP Committee will make up the hearing panel. Prior to suspension of funding, a written report will be presented to the OSB Board of Governors and OSB Executive Director within 5 days after the hearing is held which outlines the facts and decision.

5. **Suspension of Funding:** If the report indicates that the Provider is still not in compliance and is not making satisfactory progress towards compliance based on the decision of the hearing, the Director shall suspend funding until

the Provider is able to demonstrate compliance. Notice of suspension shall be served on the Provider in person or by certified mail and will be effective immediately upon service.

The OSB LSP Committee, in consultation with the OSB Executive Director and the OSB General Counsel, will determine if during the suspension all or part of the suspended funds should be used to contract with another Provider for legal services. If the Provider continues to provide legal services as defined under the funding agreement during the suspension, any unused funds accrued during the suspension will be paid to the Provider.

6. **Termination of Services:** If the Provider terminates its provision of legal services as defined under these Standards and Guidelines, funding will cease and all unexpended funds shall revert back to the OSB LSP. The OSB LSP Committee will meet to determine the reallocation of those funds to other Providers or to new applicants.



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AFTER SIX YEARS THEY HAVE NOT FIXED ANY TEETH, WHICH WERE KNOCKED OUT AND DAMAGED DUE TO BEING IN PRISON. IN THIS DAY AND AGE, HOW CAN IT BE POSSIBLE, THAT SOMEONE HAS TO ENDURE SUCH INHUMANE TREATMENT, AND YOU HAVE THE AUDACITY TO TELL ME THE CONNALLS DID NO WRONG. THE CONNALLS WERE NOT HELD ACCOUNTABLE FOR THEIR ACTIONS. I THOUGHT THE BAR ASSOCIATION HELD THE ATTORNEYS TO A HIGHER STANDARD AND BEING LICENSED HELD THEM TO CERTAIN STANDARDS OF CONDUCT. I HIRED SHANNON AND I KNOW THE BAR IS AWARE OF HER ADDICTION AND ALSO OF HER ACTIONS, WHICH WERE CRIMINAL, NOT WITHSTANDING HER CONDUCT AS AN ATTORNEY. AS FOR DES CONNALL I DO NOT KNOW WHAT HIS EXCUSE IS OR WAS. OTHER THAN HE THOUGHT HE WAS ABOVE THE LAW, AND EVERYONE WAS SUPPOSE TO WORSHIP HIM AND NOT QUESTION ANY OF HIS ACTIONS. HE WAS A SENILE OLD MAN WHO SHOULD HAVE STOPPED PRACTICING LAW YEARS AGO, NOT TO MENTION HE WAS RUDE AND DID NOT KNOW THE TRUTH OR SEEK TO FIND THE TRUTH. OUR JUSTICE SYSTEM IS IN A SAD STATE, DUE TO PEOPLE LIKE THE CONNALLS, AND THE FACT THAT ATTORNEYS ARE NOT HELD ACCOUNTABLE FOR THEIR ACTIONS. THAT IS THE REASON ALL THE JOKES ABOUT LAWYERS. THE PUBLIC KNOWS THAT THE BAR AND THE CLIENT SECURITY FUND COMMITTEE AND ALL THE ATTORNEYS ARE PROTECTING EACH OTHER SO THAT IF YOU ARE A LAWYER YOU CAN DO AS YOU DAM WELL PLEASE.

OUR JUSTICE SYSTEM IS IN A HORRIBLE STATE AND THERE IS NO JUSTICE, IT IS JUST A MONEY THING, I E PROBATION, FINES, TREATMENT, IMPRISONMENT SO THAT YOU CAN'T EVEN GET A PHONE CALL UNLESS YOU HAVE MONEY, AND A LOT OF IT. JOB SECURITY FOR ATTORNEYS, JUDGES, CORRECTIONAL OFFICERS, PROBATION OFFICERS, TREATMENT PERSONNEL, AND ALL OF THESE PEOPLE JUDGE AND TREAT THE PUBLIC AS GARBAGE BECAUSE THEY DON'T HAVE TO GO BY OUR RULES. THEY ARE ABOVE THE LAW

WHAT HAPPENED TO JUSTICE, WHERE SOMEONE PAID FOR THEIR WRONG DOING AND THEN WERE ABLE TO GET ON WITH THEIR LIFE, NO THEY PAY FOR THE REST OF THEIR LIFE AND THERE IS NOT CHANCE TO START OVER, BECAUSE THE SYSTEM WILL NOT LET THEM.

I DID NOT HIRE DES CONNALL, I HIRED SHANNON CONNALL, I DID NOT KNOW SHANNAN WAS AN ADDICT AND THAT SHE WAS NOT COMPETENT. I WAS TRYING TO TAKE CARE OF A VERY SICK HUSBAND, THAT IS WHY I HIRED SHANNON CONNALL. MY HUSBAND IS A TRANSPLANT PATIENT, HAS A HEART CONDITION (8 HEART ATTACKS) DIABETIC, AND HAS CANCER FROM THE IMMUNE SUPPRESSANT DRUGS. SO HE WAS NOT IN ANY CONDITION TO HELP CLAYTON. I HAD TO PAY THE ATTORNEY FEES WITH A CREDIT CARD, AND HAD TO PAY INTEREST FOR A YEAR BEFORE I COULD PAY IT OFF, BUT I KNOW IT WAS A SMALL AMOUNT TO THE CONNALLS, CLAYTON'S TRIAL WAS FEBRUARY 9, 2010, AND MY MOTHER PASSED AWAY ON FEBRUARY 1<sup>ST</sup> AND MY SISTER ON FEBRUARY 14<sup>TH</sup>. THIS WAS A VERY STRESSFUL TIME FOR ME AND I DEPENDED ON THE CONNALLS TO DO WHAT I HAD RETAINED THEM TO DO.

CLAYTON HAS SERVED SIX YEARS FOR BEING STUPID AND HAS SUFFERED A BROKEN ARM, WHICH WAS NOT EVEN SET FOR THREE MONTHS, AND HAD TO UNDERGO SURGERY TO REPAIR, AND STILL IS NOT RIGHT. A PUNCTURED LUNG,

July 29, 2014

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WHICH THEY MADE HIM RETURN TO HIS CELL AND SUFFER ALL NIGHT TRYING TO BREATHE, AND THEY GAVE HIM A GERD COCKTAIL FOR A PUNCTURED LUNG, IT IS A MIRACLE HE IS ALIVE. .INSECT BITES, LOSS OF HIS TEETH, UNABLE TO EVEN EAT SOLID FOODS. I EVEN FOUND A DENTIST WHO WOULD FIX HIS TEETH, AND THE PRISON IN SALEM AGREED TO TRANSPORT HIM FOR THE DENTAL WORK, BUT HE WAS MOVED FOR NO REASON TO ONTARIO. WHERE I HAVE NOT EVEN BEEN ABLE TO VISIT HIM FOR FOUR YEARS, BECAUSE OF HIS FATHER'S HEALTH. WE HAD DOCTOR'S LETTERS AND THE DA SAID HE COULD BE KEPT IN SALEM, BECAUSE OF HIS FATHERS' HEALTH, BUT SOMEONE CHANGED THAT. NO MATTER WHAT I TRY TO DO TO GET PROPER CARE, A PROPER DEFENSE NOTHING WORKS RIGHT IN THE SYSTEM. I GUESS IT IS ALRIGHT SINCE CLAYTON HAS ADS AND DIDN'T DO WELL IN WELL IN SCHOOL, HE IS NOT SMART ENOUGH TO CARE SO WE CAN JUST LOCK HIM UP AND FORGET HIM.

SO YOU THINK YOUR DECISION IS RIGHT, WELL I DO NOT HAVE TO JUDGE YOU, SHANNON OR DES CONNALL, THEY HAVE TO ANSWER TO A HIGHER POWER. I HOPE HE IS AS UNDERSTANDING AS YOU ARE.

SINCERELY

A handwritten signature in blue ink that reads "Lagale Brigggs". The signature is written in a cursive, flowing style with a large initial 'L'.

LAGALE BRIGGGS

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** September 5, 2014  
**From:** Sylvia E. Stevens, Executive Director  
**Re:** CSF Claims Recommended for Awards

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### Action Recommended

Consider the recommendation of the Client Security Fund Committee to make awards in the following cases:

No. 2013-48 BERTONI (Monroy)	\$5,000.00
No. 2014-01 McCARTHY (Snellings)	\$7,000.00

### Discussion

#### No. 2013-48 BERTONI (Monroy) \$5,000

Anna Monroy consulted with Gary Bertoni in August 2011 regarding representation in a post-conviction proceeding.<sup>1</sup> Monroy claims that Bertoni agreed to take the case for a fixed fee of \$5,000; she acknowledges that the written fee agreement is inconsistent (it provides for a non-refundable fee of \$2,000 to be applied against his fees of \$300/hour), but claims she signed the agreement in September on Bertoni's assurance that he would adhere to the fixed fee. Monroy paid \$2,000 at or near the time of signing the fee agreement; a second payment of \$3,000 was made in February 2012.<sup>2</sup> Bertoni asserts he was handling the case on an hourly basis and earned more than he was paid.

Monroy and Bertoni have very different versions of what occurred after Bertoni was retained. Monroy says he did virtually nothing on her case and didn't tell her that he was going to be suspended for five months beginning on March 26, 2012. When she learned about it, Bertoni assured her that he had arranged for attorney Kliewer to assume his responsibilities in the post-conviction case. Kliewer contends that her role was very limited by Bertoni and that she was instructed not to take some actions that she believed were necessary for Monroy. It was Kliewer who informed Monroy that Bertoni hadn't done anything on her case.

After the initial consultation, Bertoni claims he reviewed the discovery and the transcript from Monroy's criminal trial and participated in a telephone status conference. He also claims that he worked as Kliewer's "legal intern" during his suspension, arranging scheduling, performing legal research, and attempting unsuccessfully to attend a meeting in

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<sup>1</sup> Shortly after retaining Bertoni on the post-conviction matter, Monroy retained him to defend her in civil action arising out of the same conduct as the criminal conviction, for which she paid him \$1,300. She does not seek an award in the civil matter, as Bertoni eventually delivered the funds to another attorney who handled the case.

<sup>2</sup> Monroy was incarcerated during all relevant times and the fees were paid by her sister, Teresa.

Monroy's case as a legal assistant. Bertoni was reinstated in late August, 2012. A few days later, Monroy terminated his services. Bertoni doesn't deny that he hadn't filed Monroy's post-conviction petition by the time she terminated the representation in August 2012.

Monroy says Bertoni visited her in September 2012, trying to convince her to rescind the termination. In the course of that conversation Bertoni apologized for mishandling her case and said he would discuss reimbursement with her "in the future." By contrast (in a letter responding to DCO's inquiries about his representation of Monroy), Bertoni denies Monroy's claims and characterizes himself as diligent, generous, conscientious, sincere, and completely innocent of any wrongdoing.

At a meeting in March 2014, the CSF Committee concluded that Bertoni was dishonest in retaining funds for which no services of any value were received and recommended an award of the full \$5,000 paid for the post-conviction matter. (The committee also believed that Bertoni had failed to retain the funds in trust until earned.) Additionally, the committee recommended waiving the requirement for a civil judgment because there is no reason to believe Bertoni has any assets. Moreover, he is likely to be disciplined in connection with his representation of Monroy, making the need for a judgment moot under the rules.

When Bertoni was informed of the Committee's recommendation, he asked to present additional information in support of his position. The Committee reviewed Bertoni's submission at its meeting on July 12, 2014 and voted unanimously to affirm its earlier recommendations.

*Attachments: Application for Reimbursement  
Committee Investigator's Report  
Bertoni Letter to Investigator*

#### **No. 2014-01 McCARTHY (Snellings) \$7,000**

Claimant seeks an award of his portion of the proceeds of a personal injury claim handled by Steven McCarthy.

Beginning at least in March 2012, Snellings was in a joint venture ("7777 Quarter Horses") with Vicky McCarthy and her son Scott Newman. At the time, Vicky McCarthy was Steven McCarthy's wife. Snellings lived on property owned by Steve and Vicky McCarthy and apparently received room and board in exchange for services he contributed to the venture.

On August 18, 2012, Snellings was involved in a motor vehicle accident and hired McCarthy to pursue a claim for injuries sustained in the accident. The fee agreement provided for a standard 1/3 fee to McCarthy, but according to Snellings, McCarthy subsequently agreed to take a fee of only \$3,000, with the balance going to Snellings.

On October 3, 2012, State Farm issued a check for \$10,000 to Snellings and McCarthy. The check was endorsed "In Trust for Calvin Snellings by Trustee" by Steven McCarthy.



According to Snellings, upon receipt of the settlement check, McCarthy told Snellings he was in temporary financial trouble, needed to borrow Snellings' portion of the settlement, and would repay it as soon as received the proceeds of another case that was close to completion. Snellings claims he was unwilling to make the loan, but felt he couldn't object since McCarthy had possession of the funds. Despite numerous demands, McCarthy has never delivered Snellings' funds.

Although McCarthy did not respond to the investigator's inquiries, he provided the OSB with a copy of a civil complaint he drafted (but apparently never filed) alleging that beginning in early 2012, the joint venturers conspired and acted in concert to deprive him of his property and cause the dissolution of his marriage. He also alleges having been told by Vicky and the others that Snelling had donated his share of the insurance settlement to the venture as working capital. (In response to inquiries from DCO,<sup>3</sup> Vicky denied that Snellings donated his settlement to the joint venture and says she never received any such sum.)

The CSF Committee had a spirited discussion of the claim and was not unanimous in its decision. The majority believed that McCarthy was dishonest in "luring" Snellings into letting McCarthy keep the funds and also believed that McCarthy took advantage of Snellings by essentially "requesting" the loan while he was in possession of Snellings' funds. The majority noted that Snellings has limited education and little knowledge of the legal system and they believed that McCarthy used his influence as a lawyer to discourage Snellings from refusing the loan or making a fuss when McCarthy refused to repay him. The majority was also suspicious about McCarthy's conflicting descriptions of what the funds were ultimately used for.

In contrast, a minority of the committee found no evidence of dishonesty, only a loan gone bad. They also were not persuaded that "but for" the lawyer-client relationship, Snellings would not have made the loan to McCarthy. They also pointed out that Snellings made no apparent effort to collect the loan from McCarthy prior to making a claim with the CSF. (To the best of staff's knowledge, based on information provided by Snellings, McCarthy has relocated to Florida.)

Ultimately, the Committee voted 9-2 to award Snellings \$7,000 (and, implicitly, to waive the requirement that he first obtain a judgment against McCarthy).

*Attachments: Application for Reimbursement  
Committee Investigator's Report*

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<sup>3</sup> DCO recommends that the SPRB authorize formal charges against McCarthy for failing to secure proper consent to a business transaction with his client and for failure to respond to disciplinary inquiries; DCO does not believe there is probable cause to charge McCarthy with dishonesty in connection with the loan.

# Oregon State Bar Public Member Application

Oregon  
State  
Bar

Name: (First, Middle, Last) <b>Kerry L. Sharp</b>	
Residence Address: (number, street, city, state, zip) <b>3827 Bass Lane Lake Oswego, OR 97034</b> County: USA	Residence Phone:  Office Phone: <b>503.784.9278</b>
Office Address: (number, street, city, state, zip) <b>3827 Bass Lane Lake Oswego, OR 97034</b> County: USA	E-Mail Address: <b>kerrysharp@earthlink.net</b>
Office Mailing Address: (if different)  County:	Occupation: (and job title, if any) <b>Management Consultant</b>

## College and Post-Graduate Education:

School	Location	Dates	Degrees
Michigan State University	East Lansing, MI	1966-1971	BS Civil Engineering
Harvard Business School	Boston, MA	1975-1977	MBA

## Employment: List major paid employment chronologically beginning with most recent experiences.

Dates (from/to)	Employer and Position Held	City/State
2011-present	Niobrara Holding Company - Principal	Lake Oswego, OR
2007-present	Portland State University - Adjunct Instructor	Portland, OR
2007-2011	Point B, Inc - Senior Associate	Portland, OR
2002-2006	Stancorp Financial Group - AVP	Portland, OR
1999-2001	Louisiana-Pacific Corp - Director of Marketing	Portland, OR

## Community/Volunteer Services: List significant volunteer activities chronologically beginning with most recent services.

Dates (from/to)	Organization and Position Held	City/State
2010-2011	Urban League - ProBono Strategy Lead	Portland, OR
1990-1994	Oregon National Guard Assn - Board President	Salem, OR
1989-1990	PACC Health Plans - Board of Trustees Member	Clackamas, OR
1987-1988	Lake Oswego Chamber of Commerce - Leadership LO	Lake Oswego, OR

**Statement:** Describe why you are interested in serving as a public member of the Oregon State Bar. Include information not already mentioned about yourself and your experiences and background that supports your interests.

I know from personal experience that effective legal services can be critical in time of need. I believe service as a public member of the OSB board offers a unique opportunity to help influence and ensure accessibility of essential legal services, and to help promote public trust and credibility. I see this as an opportunity to work closely with fellow board members to help ensure organizational priorities are appropriate, and that key initiatives and programs are well-defined and prioritized. And, just as importantly, to help ensure that actions and messages are appropriately focused, balanced and effectively communicated. I recognize the need to continually ensure that OSB is best serving the needs of its stakeholders - not only members of the bar, but also all Oregonians.

My professional focus is on working closely with leadership teams to help them develop clear strategic priorities, define and prioritize key imperatives, and ensure focus on execution and results. I believe effective boards are those that value questions, challenge assumptions and seek clarity. I feel that my professional experience has helped me develop perspective that will enable me to contribute effectively to the workings of the board.

My background includes leadership roles in corporate, consulting, military, educational and nonprofit organizations. I've worked with senior leadership as well as front-line employees. I have followed the emergence of military and veterans law initiatives and would like to help ensure these get the emphasis and attention they deserve.

On a personal note, I enjoy opportunities to learn new things, particularly learning from and working around people that are making a difference. In this sense, I think service on the OSB board would be a lot of "fun". I'm excited.

**Miscellaneous:**

Have you ever been convicted or have you pleaded guilty to any crime?  Yes  No  
Have you ever been the subject of any professional disciplinary proceeding or had any professional license or permit revoked, suspended or restricted?  Yes  No  
If your answer to either of these questions is "yes," please give full details on a separate sheet of paper.

**Opportunities:** If you have a particular interest in a committee or board, please indicate your preference. A brief description of OSB public member opportunities is included with this application.

Board of Governors  Disciplinary Board  Fee Arbitration and Mediation  House of Delegates  
 Professional Liability Fund  State Professional Responsibility Board

**Committees:**

Advisory Committee on Diversity and Inclusion  Client Security Fund  Judicial Administration  
 Legal Services  Minimum Continuing Legal Education  Professionalism Commission  
 Public Service Advisory  Quality of Life  State Lawyers Assistance  Unlawful Practice of Law

**References:** List names and contact information of three people who may be contacted as references.

Name	Address
Peter Engel	President, Fred Meyer Jewelers
Phone	Email Address
(503) 797-5550	peter.engel@fredmeyer.com
Name	Address
Joanne Warner	Dean, School of Nursing, University of Portland
Phone	Email Address
(503) 943-8045	warner@up.edu
Name	Address
Jim Pittman	President, Insurance Consulting Services, Inc.
Phone	Email Address
(503) 542-4085	jim@icspdx.com
Applicant's Signature	Date



July 29, 2013

Where did you learn about the public member opportunities available at the Oregon State Bar?

Current Board of Governors public member Maureen O'Connor has spoken highly of this opportunity to serve.

Application deadline is August 2, 2013. Return applications to:

• Danielle Edwards, Oregon State Bar, 16037 SW Upper Boones Ferry Rd, PO Box 231935, Tigard, OR 97281-1935 •  
• dedwards@osbar.org • 503-598-6994 (fax) •

**9.025 Board of governors; number; eligibility; term; effect of membership.** (1) The Oregon State Bar shall be governed by a board of governors consisting of ~~18-19~~ members. ~~Fourteen~~ Fifteen of the members shall be active members of the Oregon State Bar, ~~who at the time of appointment, at the time of filing a statement of candidacy, at the time of election, and during the full term for which the member was appointed or elected, maintain the principal office of law practice in the region of this state in which the active members of the Oregon State Bar eligible to vote in the election at which the member was elected maintain their principal offices.~~ Four of the members shall be appointed by the board of governors from among the public. ~~Who~~ They shall at all time throughout their full term be residents of this state and may not be active or inactive members of the Oregon State Bar. A person charged with official duties under the executive and legislative departments of state government, including but not limited to elected officers of state government, may not serve on the board of governors. Any other person in the executive or legislative department of state government who is otherwise qualified may serve on the board of governors.

(2) The board of governors shall divide the State of Oregon into regions for election of fourteen of the board members. ~~the purpose of determining eligibility to be a candidate for the board of governors, eligibility to be elected or appointed to the board of governors, and eligibility to vote in board of governors elections.~~ The regions shall be based on the number of attorneys who have their principal offices in the region. To the extent that it is reasonably possible, the regions shall be configured by the board so that the representation of board members to attorney population in each region is equal to the representation provided in other regions. At least once every 10 years the board shall review the number of attorneys in the regions and shall alter or add regions as the board determines is appropriate in seeking to attain the goal of equal representation. There shall also be an out-of-state region comprised of the active members who maintain their principal office outside of the State of Oregon, and which shall have one representative on the board regardless of the number of members in the region.

(3) Attorney candidates for the board of governors shall at all times during their candidacy and throughout their full term maintain the principal office for the practice of law in the region for which they seek election or appointment. Members of the board of governors may be elected only by the active members of the Oregon State Bar who maintain their principal offices in the regions established by the board. The regular term of a member of the board is four years. The board may establish special terms for positions that are shorter than four years for the purpose of staggering the terms of members of the board. The board must identify a position with a special term before accepting statements of candidacy for the region in which the position is located. The board shall establish rules for determining which of the elected members for a region is assigned to the position with a special term.

\* \* \*

**PROPOSED AMENDMENT TO RPC 5.5(C)**

**RULE 5.5 UNAUTHORIZED PRACTICE OF LAW; MULTIJURISDICTIONAL PRACTICE**

(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.

(b) A lawyer who is not admitted to practice in this jurisdiction shall not:

(1) except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or

(2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.

(c) A lawyer admitted in another ~~United States~~ jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction that:

(1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;

(2) are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized;

(3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternate dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires pro hac vice admission;

(4) are not within paragraphs (c)(2) or (c)(3) and arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice; or

(5) are provided to the lawyer's employer or its organizational affiliates and are not services for which the forum requires pro hac vice admission.

(d) A lawyer admitted in another ~~United States~~ jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services in this jurisdiction that are services that the lawyer is authorized to provide by federal law or other law of this jurisdiction.

(e) A lawyer who provides legal services in connection with a pending or potential arbitration proceeding to be held in his jurisdiction under paragraph (c)(3) of this rule must, upon engagement by the client, certify to the Oregon State Bar that:

- (1) the lawyer is in good standing in every jurisdiction in which the lawyer is admitted to practice; and
- (2) unless the lawyer is in-house counsel or an employee of a government client in the matter, that the lawyer
  - (i) carries professional liability insurance substantially equivalent to that required of Oregon lawyers, or
  - (ii) has notified the lawyer's client in writing that the lawyer does not have such insurance and that Oregon law requires Oregon lawyers to have such insurance.

The certificate must be accompanied by the administrative fee for the appearance established by the Oregon State Bar and proof of service on the arbitrator and other parties to the proceeding.

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# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** September 5, 2014  
**Memo Date:** August 22, 2014  
**From:** Tom Kranovich, OSB President  
**Re:** Award recommendations for 2014

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### Action Recommended

Approve the following slate of nominees for the 2013 President's awards, Wallace P. Carson, Jr., Award for Judicial Excellence and the Award of Merit:

President's Membership Service Award:	Edward J. Harri, Renee E. Rothauge
President's Public Service Award:	Hong Kim Thi Dao, Stephen L. Griffith, Lake James H. Perriguy
President's Diversity & Inclusion Award:	Liani JH Reeves, Kim Sugawa-Fujinaga
President's Sustainability Award:	Steven R. Schell
Wallace P. Carson, Jr., Award:	Hon. Alfred T. Goodwin, Hon. Nan Waller
OSB Award of Merit:	Ira Zarov

### Background

At its July meeting the BOG formed a special committee to review award nominations and submit recommendations to the full board. Committee members Tom Kranovich, Matt Kehoe, Simon Whang, Tim Williams, Caitlin Mitchel-Markley, Rich Spier, Jim Chaney and John Mansfield met by conference call on August 13 to discuss the nominations, resulting in the recommendations listed above.

The awards will be presented at a luncheon on December 4 at the Sentinel Hotel (formerly Governor Hotel) in Portland.

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# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** September 5, 2014  
**Memo Date:** August 21, 2014  
**From:** Danielle Edwards, Director of Member Services  
**Re:** Committee Appointment

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### **Action Recommended**

Consider an appointment to the Uniform Criminal Jury Instructions Committee as requested by the committee officers and staff liaison.

### **Background**

#### **Uniform Criminal Jury Instructions Committee**

Due to the resignation of one committee member the officers and staff liaison recommend the appointment of **Paul L. Smith** (001870). He has practiced at DOJ since 2002 and indicated this committee has his first choice for appointment through the volunteer preference survey.

**Recommendation:** Paul L. Smith, member, term expires 12/31/2016



# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** September 5, 2013  
**Memo Date:** August 25, 2014  
**From:** Kay Pulju  
**Re:** CLE Seminars

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### Action Recommended

Set policy direction for CLE Seminars as detailed below.

### Background

At its July 25 meeting the BOG requested a staff recommendation on policy changes to improve the financial position of the OSB CLE Seminars Department, as well as a list of all CLE-related policy issues previously discussed in the program review process.

### Recommendations

1. Require all bar sections, committees and the ONLD to work with the OSB CLE Seminars Department. For programs that offer fewer than three MCLE credits only registration services would be required, with event services optional; programs that offer three or more MCLE credits would need to be co-sponsored.

The estimated budget impact of this change is \$120,000 annually, a combination of new revenue to the CLE Seminars Department and decreased expenses in other areas of the bar. It would also offer other benefits: coordinated scheduling, increased marketing opportunities, improved customer service for program registrants, consistent MCLE reporting and more effective use of the bar's conference center.

The new requirements would be implemented in stages, with registration services on board in 2016 followed by co-sponsorship requirements in 2017. This will allow time for the board and staff to discuss the policy changes with stakeholders, explaining the financial background, benefits to both the OSB and member groups, and gathering feedback and suggestions on service enhancements and implementation details. A staged implementation also allows time for staff to build capacity to take on additional co-sponsored programs. New software, processes and procedures will be introduced in 2016, which will build the department's capacity to take on new co-sponsored programs in 2017.

Before the communications phase begins, the board should consider whether any other section-related policy matters should be broached at the same time, e.g., independent section websites and development of online directories.

2. Provide a budget offset to CLE Seminars for the cost of complimentary registrations.

Current board policy grants free registration for OSB CLE Seminars programs to judges and their attorney staff, 50-year members, and active pro bono members. The retail value of these

complementary registrations has averaged \$29,000 annually over the last three years. If the board wishes to retain the complimentary registration policy for broader policy reasons, an offset would provide a more accurate reflection of the department's financial performance.

### 3. Reinstate MCLE sponsor accreditation fees for local bar programs.

By board policy, local bar associations are not required to pay an accreditation fee, and at least one specialty bar has requested a future waiver of accreditation fees. In 2013 the value of fee waivers to local bars was approximately \$6,720 (a total of 168 programs at an average cost of \$40 each). Eliminating the waiver would impact the MCLE program budget only, but would put local bars on an equal footing with other providers, including specialty bars, bar sections and committees and OSB CLE Seminars. Staff recommends that the board develop an accreditation fee policy that applies equally to all applicants.

### 4. Monitor MCLE developments.

At least two other states are considering amending their MCLE rules to require some level of participation in a seminar to claim MCLE credit. The OSB should monitor progress in those states before considering any similar changes to Oregon's MCLE rules. Also, the installation of new association management software should give opportunities to streamline the MCLE reporting process, including self-reported credits, providing a better picture of the impact of product-sharing on CLE Seminars revenue.

## **OSB Policies that negatively affect profitability of the OSB CLE Seminars Department**

### MCLE-related:

- Relatively simple and inexpensive accreditation process encourages national providers
- No restrictions on who can claim credit so hard and electronic media products are easily shared and self reported
- Self-reported credits are not tracked
- No requirements for Oregon-specific law (other than child abuse and elder abuse reporting)
- No requirements for interactive/participatory programs (majority of states require)
- Accreditation fees are waived for all local and county bars (not OSB, bar groups or specialty bars)

### Leadership and program support for "free" CLE:

- Free CLE at HOD meeting and other events
- Free CLE to advance priority issues, e.g., Law Practice Transitions
- Free CLE/MCLE credit as volunteer recruitment, e.g. Disciplinary Board conference and NLMP
- Complimentary registration (OSB CLE only) for judges and their attorney staff, 50-year members and Active Pro Bono members.

Internal Competition

- Multiple affiliate groups encouraged to provide CLE, including Sections, ONLD and PLF
- No requirement to cosponsor with CLE Seminars
- No requirement to use registration or event services
- No charge for use of conference facilities, including room sets and a/v support
- No charge for email marketing assistance
- Staff expected to assist groups with “independent” CLEs

## SWIDER | HAVER

ATTORNEYS AT LAW

1420 American Bank Building  
621 S.W. Morrison Street  
Portland, Oregon 97205-3897

Robert A. Swider  
Telephone (503) 226-8122  
Direct Line (503) 241-9577  
robert@swiderhaver.com

July 3, 2014

Oregon State Bar  
Board of Governors  
P.O. Box 231935  
Tigard, OR 97281

Attn: Sylvia Stevens

RECEIVED

JUL 07 2014

Oregon State Bar  
Executive Director**Re: Changing the Name of the Computer and Internet Law Section**

Dear Board of Governors:

I am the chair of the Executive Committee of the Computer and Internet Law Section. I am writing to request your approval to change the name of the section to the Technology Law Section. The Executive Committee discussed this name change during the last several monthly meetings and unanimously approved a motion to change the name at our June 5, 2014 meeting.

The name change request is the result of a realization that computers have become ubiquitous and that many of us are connected to the Internet through our cell phones and other electronic devices most of the time. This prompted us to discuss our mission, the attendant legal issues and how our program offerings have and will continue to expand to encompass broader technology issues in addition to the issues reflected by our present name.

We request your approval of the name change and look forward to the renamed Section being able to better serve the membership of the OSB.

Very truly yours,

Swider Haver



by Robert Swider