

**Oregon State Bar**  
**Meeting of the Board of Governors**  
February 13, 2015  
**Open Session Minutes**

The meeting was called to order by President Rich Spier at 8:58 a.m. on February 13, 2015. The meeting adjourned at 11:30 a.m. Members present from the Board of Governors were James Chaney, Guy Greco, R. Ray Heysell, Theresa Kohlhoff, John Mansfield, Audrey Matsumonji, Vanessa Nordyke, Ramon A. Pagan, Travis Prestwich, Per Ramfjord, Kathleen Rastetter, Joshua Ross, Kerry Sharp, Simon Whang, Timothy Williams and Elisabeth Zinser. Not present was Charles Wilhoite. Staff present were Sylvia Stevens, Helen Hierschbiel, Rod Wegener, Kay Pulju, Susan Grabe, Dawn Evans, Kateri Walsh, Dani Edwards and Camille Greene. Also present was Carol Bernick, PLF CEO, and Tim Martinez, PLF Board of Directors, and Julia Manela, PLF BOG Chair; Karen Clevering, ONLD Chair; and Keith Semple (Chair), Hon. Jenny Ogawa (Secretary) and Kate Caldwell, OSB Workers Compensation Section.

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

The board accepted the agenda, as presented, by consensus.

**2. Report of Officers & Executive Staff**

**A. Report of the President**

Mr. Spier reported that Theresa Wright will be temporarily joining the OSB staff to work on the coordination of existing programs to assist young lawyers in their professional development, with a focus on meeting the needs of the underserved.

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

Mr. Heysell reported that he will be attending the CEJ lunch where Jackson County will be awarded, for the second year, the Justice Cup for the most donations to CEJ.

**C. Report of the Executive Director**

In writing. Ms. Stevens also mentioned that the Discipline System Review Committee has met twice to address the recommendations in the ABA's report on the OSB Disciplinary System. She acknowledged Carol Bernick for the innovations and progress to promote relationships between the PLF staff and the OSB staff.

**D. Director of Regulatory Services**

In writing. Ms. Stevens reported that Ms. Evans received the National Organization of Bar Counsel's 2015 President's Award.

**E. Director of Diversity & Inclusion**

In writing. Ms. Stevens introduced the draft report of 2014 progress on the Diversity Action Plan goals adopted by the BOG in November 2012. The final report is expected in a few weeks.

**F. MBA Liaison Reports**

Mr. Spier reported on the January 7, 2014 meeting and the enthusiasm of the MBA towards the BOG's efforts. Mr. Whang reported on the February 4, 2015 meeting and the increase in diversity on the MBA board.

**G. Oregon New Lawyers Division Report**

In addition to the written report, Ms. Clevering reported on the ONLD's CLEs and their new liaisons from OLIO, ACDI and LRAP. They are in the process of selecting law school liaisons. They are reaching out to local bar members too.

**3. Professional Liability Fund**

Ms. Bernick provided a general update on the PLF's November 2014 financial statements and reported on the 2014 claims attorney and defense counsel evaluations. She introduced the new BOD Chair, Julia Manela. The PLF board will be reevaluating its reserve target, together with the best method for establishing this target, and its effect on the PLF rates.

**4. OSB Committees, Sections and Councils**

**A. Client Security Fund Committee**

Ms. Stevens reported that Mr. Mantell has asked the board to delay the consideration of his claim until he can present more evidence to the CSF committee.

**B. Workers Compensation Section**

Keith Semple, Judge Jenny Ogawa and Kate Caldwell presented the section's concerns with Lawyer Referral Service percentage fee structure, especially considering that the decreasing number of workers compensation attorneys participating in the LRS creates a lack of access to justice for clients. The section is asking for a reduction in record keeping requirements and no fee split on any fees under \$5,000, no fee split on attorney fees earned 2 years after the initial referral, reduction in the fee split for unreimbursed litigation costs incurred by the attorney, and reduction in the LRS portion of the fee split from 12% to 10%. **[Exhibit A]**

**Motion:** Mr. Greco moved, Ms. Kohlhoff seconded, that the board send this to the Public Service Advisory Committee for further study and recommendation to the board. Mr. Ross amended the motion and asked the PSA Committee to look at this as its own standing issue, not a part of the pilot project, and report to the board by its April meeting. Ms. Nordyke seconded the amended motion. Both motions passed unanimously.

**C. Elder Law Section**

Ms. Stevens asked the board for guidance on the section's request for board approval of a donation to the City of Beaverton Dispute Resolution Center to sponsor a Probate Mediation Training. **[Exhibit B]**

The board asked Ms. Stevens to draft amendments to the standard section bylaws regarding section donations for the board to consider at the April board meeting.

**D. Legal Ethics Committee**

Ms. Hirschbiel presented the committee's request for board approval of proposed amendments to formal ethics opinions, with the exception of Formal Opinion No. 2005-49 which has been withdrawn. **[Exhibit C]**

**Motion:** Mr. Heysell moved, Mr. Greco seconded, and the board voted unanimously to approve the amendments as recommended by the committee.

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

### A. Board Development Committee

Mr. Whang presented the committee's motion to reappoint Ms. Judy Snyder to the Commission on Judicial Fitness and Disability.

**Motion:** The board unanimously approved the committee motion.

### B. Budget and Finance Committee

Ms. Kohlhoff gave a general committee update.

### C. Governance and Strategic Planning Committee

Mr. Heysell gave a general committee.

Mr. Heysell presented the committee's proposed amendments to LRAP policies and guidelines **[Exhibit D]**.

**Motion:** The board unanimously approved the committee motion.

Mr. Heysell asked the board to consider the committee's recommended section website policies. **[Exhibit E]**

**Motion:** The board unanimously approved the committee motion.

### D. Public Affairs Committee

Mr. Prestwich updated the board on the latest legislative activity and the status of the bar's law improvement proposals.

### E. Executive Director Selection Special Committee

Mr. Heysell discussed the Executive Director recruitment/selection procedures.

### F. Legal Technicians Task Force

Ms. Stevens presented the task force's report and recommendations. **[Exhibit F]** Mr. Ross pointed out that the task force isn't recommending going forward, but merely asking if this is an idea the board wants to pursue. Mr. Greco stressed that licensing legal technicians is only one aspect of solving the needs of the public and that it is important for the bar to press very hard for funding for family court facilitators.

**Motion:** Mr. Heysell moved, Mr. Greco seconded, and the board voted unanimously to send this report to the Governance & Strategic Planning Committee to study further and make a recommendation to the board for further action.

## 6. Other Action Items

Ms. Edwards presented various appointments to the board for approval with an additional recommendation of appointing Richard Braun to the Client Security Fund to fill a recently-vacated seat. **[Exhibit G]**

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

**7. Consent Agenda**

**Motion:** Mr. Williams moved, Ms. Matsumonji seconded, and the board voted unanimously to approve the consent agenda of past meeting minutes.

**8. Closed Sessions – see CLOSED Minutes**

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

**Motion:** Mr. Williams moved, Ms. Matsumonji seconded, and the board voted unanimously to decline Lauren Paulson's request for mediation regarding his pending class action complaint.

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

None.

**Oregon State Bar  
Board of Governors Meeting  
February 13, 2015  
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.

**Motion:** Mr. Williams moved, Ms. Matsumonji seconded, and the board voted unanimously to decline mediation with Mr. Paulson.

B. Other Matters

None.

# Oregon State Bar Workers' Compensation Section

January 29, 2015

Dear Board of Governors:

The Oregon State Bar Workers' Compensation Section would like to thank you for taking time to consider our ongoing concerns with regard to the fees associated with the lawyer referral service (LRS). Our members include workers' compensation claimant's attorneys, defense attorneys, and administrative law judges. Members from each of these groups have expressed their concerns about the current LRS fee system and their support for this proposal.

As many of you know, when the LRS fee splitting provisions were put into place, the Workers' Compensation and Disability sections raised concerns that the obligation to split fees with LRS in these areas of practice would cause a decrease in the number of attorneys on their respective LRS panels, and thereby limit access to justice for Oregonians in need of an attorney.

Worker's Compensation and Disability practices are similar in that fees are contingent in nature and profits are marginal in many cases. Attorneys taking these cases run a significant risk of barely recouping their time or not getting paid at all. This requires attorneys to handle a greater volume of cases for their business model to be viable. Anecdotally, we know that the LRS is the last call for many folks who have already contacted all the attorneys they could find in the phone book or on the internet. Accordingly, the referrals from LRS tend to be more difficult cases, which are more risky for the attorneys handling them.

According to Kay Pulju, OSB Communications and Public Services Director, 796 LRS referrals went to 90 different Workers' Compensation panelists in 2011. In 2014, 996 referrals went to only 41 panelists. These numbers demonstrate that the WC section's concerns were well founded. The public need for workers' compensation attorneys is increasing significantly, as demonstrated by the increase in calls, while the number of attorneys participating in the LRS has decreased by over 50%.

The BOG took appropriate action to protect the integrity of the LRS system by exempting Social Security and veterans' disability cases from the LRS fee splitting requirements. We continue to believe that a complete exemption would be the BOG's best approach to addressing the attrition on the workers' compensation panel. However, we understand that the BOG remains unwilling to consider giving the workers' compensation panel a complete exemption.

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We understand that workers' compensation panelists have been offered the opportunity to have their referrals apply through the modest means program. However, the requirements of this program create a lot of additional work for attorneys in a low margin/high volume practice. In addition to accounting and recordkeeping requirements, our members are concerned about the fact that workers' compensation claims often involve multiple small fees, on multiple small disputes, over the course of multiple years, and the fact that the attorney is often required to advance costs that cannot be recovered and ultimately come out of the attorney's fee.

To address these concerns, we propose the following revisions to the LRS fee splitting system:

- No fee split on attorney fees under \$5,000
- No fee split on attorney fees earned after 2 years from the date of the initial referral
- Dollar for dollar reduction in the fee split for all unreimbursed litigation costs advanced by the attorney
- Reduction of the LRS portion from 12% to 10%.

We believe that these changes will enable more of our members to serve on the LRS panel and that increasing the pool of panelists will provide greater access to legal services for some of the most vulnerable citizens in our state.

Respectfully,



Keith D. Semple

Chair, OSB Worker's Compensation Section

**SCHMIDT & YEE, PC**

*Attorneys at Law*  
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Aloha, Oregon 97078

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**RECEIVED**

January 19, 2015

**JAN 23 2015**

Oregon State Bar  
Executive Director

Sylvia Stevens  
Executive Director Oregon State Bar  
PO Box 231935  
Tigard, OR 97281-1935

Dear Ms. Stevens:

The Executive Committee of the Elder Law Section has approved a \$100 contribution to the City of Beaverton Dispute Resolution Center in order to sponsor a Probate Mediation Training on May 14 and 15, 2015, subject to Bar approval. We see probate mediation training to be germane to our area of law and increasing the pool of probate mediators to be worthwhile. Attached for further information is the request for The Dispute Resolution Center. Pursuant to OSB Bylaw 15.401, we request your approval for this donation.

Very truly yours,

SCHMIDT & YEE, PC



By  
MICHAEL A. SCHMIDT

MAS:mu

Encl.

cc: Erin Evers



To: Elder Law Section, Oregon State Bar

From: Laura Swartz, City of Beaverton Dispute Resolution Center

Re: Request for Sponsorship for Probate Mediation Training

Date: January 15, 2015

The City of Beaverton Dispute Resolution Center and Clackamas County Resolution Services are planning a Probate Mediation Training for May 14 & 15, 2015 for approximately 80 participants. This will be a tri-county training for participants in Clackamas, Multnomah and Washington Counties. We anticipate offering both general and ethics CLE credits.

We are asking for financial support of \$100 which will help pay the honorarium fee for role play coaches and trainers. Additionally, we would appreciate if you advertise our program to your members. In return, we will list you as a sponsor on the program and training materials.

We have attached a draft agenda of the training. This training will be modelled after the Multnomah County Probate Mediation Trainings in 2009 and 2010. While we have not yet confirmed all of the speakers, Judge Katherine Tennyson, Josh Kadish, Meg Nightingale and Steve Owen, have agreed to participate.

Thank you for your consideration. For more information, please contact Laura Swartz at [lswartz@BeavertonOregon.gov](mailto:lswartz@BeavertonOregon.gov) or 503-526-2244.

*get bar approval*

## DRAFT AGENDA – Tri-County Probate Mediation Training

### DAY 1 – Thursday, May 14, 2015

Time	Topic	Speaker(s)
8:00 – 8:30 a.m.	Registration	
8:45 – 9:15 a.m.	Welcome/ Introduction	
9:15 – 10:15 a.m.	<b>Understanding Diminished Capacity</b>	TBD
10:15 – 10:30 a.m.	Break	
10:30 – 12:00 p.m.	<b>Working with People with Disabilities in Mediation</b>	Meg Nightingale
12:00 – 1:00 p.m.	Lunch	
1:00 – 2:30 p.m.	<b>Family Dynamics</b>	TBD
2:30 – 2:45 p.m.	Break	
2:45 – 4:15 p.m.	<b>Issues in Guardianships/ Conservatorships</b>	Steve Owen

### Day 2 – Friday, May 15, 2015

Time	Topic	Speaker(s)
8:30 – 9:30 a.m.	Ethics Issues	TBD
9:30 – 10:30 a.m.	<b>Panel Perspectives from the Bench</b>	Judges TBD
10:30 – 10:45 a.m.	Break	
10:45 – 12:30 p.m.	<b>Roleplays of Guardianship/ Conservatorship Disputes</b>	Steve Owen
12:30 – 1:30 p.m.	Lunch	
1:30 – 2:30 p.m.	<b>Issues in Probate (Will Contests, Administration Disputes, Trust Disputes, etc.)</b>	Josh Kadish
2:30 – 2:45 p.m.	Break	
2:45 – 4:30 p.m.	<b>Roleplays of Probate Disputes</b>	Josh Kadish and Roleplay Coaches
4:30 – 5:00 p.m.	Debrief; Certificates; Adjourn	

**FORMAL OPINION NO. 2005-102**

**Conflicts of Interest Between Lawyer and Client, Public  
Officials, Conduct Prejudicial to Administration of Justice:  
Lawyer–Municipal Judge Representing  
Clients Before City Council or Court**

**Facts:**

Lawyer, who is engaged in private practice, is also a part-time municipal court judge. Lawyer has been asked to represent Client *A* before the town council in the town in which Lawyer is a part-time municipal court judge.

Lawyer is also asked to defend Client *B* in a murder case brought in circuit court. Lawyer anticipates that in defending Client *B*, Lawyer will have to cross-examine police officers who appear before Lawyer as witnesses when Lawyer acts as a municipal court judge.

**Questions:**

1. May Lawyer represent Client *A*?
2. May Lawyer represent Client *B*?

**Conclusions:**

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

**Discussion:**

Oregon RPC 8.4(a)(4) prohibits Lawyer from engaging in “conduct that is prejudicial to the administration of justice.” Oregon RPC 8.4(a)(5) prohibits Lawyer from stating or implying “an ability to influence improperly a government agency or official or to achieve results by means that violate these Rules or other law.” *Cf.* OSB Formal Ethics Op Nos 2005-14, 2005-7. The mere fact that Lawyer would represent these two defendants does not indicate that a violation of any of these rules will occur.<sup>1</sup>

Oregon RPC 1.7 provides:

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

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<sup>1</sup> With respect to these facts, Oregon RPC 1.12(a) does not appear to prohibit these representations. Oregon RPC 1.12(a) provides:

Except as stated in paragraph (d) and Rule 2.4(b), a lawyer shall not represent anyone in connection with a matter in which the lawyer participated personally and substantially as a judge or other adjudicative officer or law clerk to such a person or as an arbitrator, mediator or other third-party neutral, unless all parties to the proceeding give informed consent, confirmed in writing.

- (1) the representation of one client will be directly adverse to another client;
- (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer; or
- (3) the lawyer is related to another lawyer, as parent, child, sibling, spouse or domestic partner, in a matter adverse to a person whom the lawyer knows is represented by the other lawyer in the same matter.

(b) Notwithstanding the existence of a current conflict of interest under paragraph (a), a lawyer may represent a client if:

- (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
- (2) the representation is not prohibited by law;
- (3) the representation does not obligate the lawyer to contend for something on behalf of one client that the lawyer has a duty to oppose on behalf of another client; and
- (4) each affected client gives informed consent, confirmed in writing.

No conflict would exist under Oregon RPC 1.7(a) in Lawyer's representation of Client A and Client B because, in each of these instances, Lawyer would have only one client in a matter. *In re Harrington*, 301 Or 18, 718 P2d 725 (1986).

Under the facts given, there also appears to be no reason to believe that a self-interest conflict would exist under Oregon RPC 1.7(b), which would require the informed consent of Client A or Client B in accordance with Oregon RPC 1.7(b). OSB Formal Ethics Op No 2005-39. There may be circumstances, however, in which there is a significant risk that Lawyer's representation of private clients would be materially limited by Lawyer's personal interests in the role of municipal court judge, in which case Lawyer would need to comply with Oregon RPC 1.7(a)(2) and (b).

Oregon RPC 1.11(d) is also relevant and provides, in pertinent part:

- (d) Except as law may otherwise expressly permit, a lawyer currently serving as a public officer or employee:
  - (1) is subject to Rules 1.7 and 1.9; and
  - (2) shall not:
    - (i) use the lawyer's public position to obtain, or attempt to obtain, special advantage in legislative matters for the lawyer or for a client.
    - (ii) use the lawyer's public position to influence, or attempt to influence, a tribunal to act in favor of the lawyer or of a client.
    - ....
    - (iv) either while in office or after leaving office use information the lawyer knows is confidential government information obtained while a public official to represent a private client.
    - ....

On the present facts, there is no reason to believe that a violation of this rule would occur.

**Approved by Board of Governors, August 2005.**

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COMMENT: For additional information on this general topic and other related subjects, see THE ETHICAL OREGON LAWYER §§7.40, 8.3, 8.14, 10.6, 12.17, 14.30, 14.39, 20.1–20.15 (Oregon CLE 2006); RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS §§113, 122, 125 (2003); and ABA Model Rules 1.0(b), (e), 1.7, 1.11(d), 1.12, 8.4(d).

**FORMAL OPINION NO. 2005-102**

**Conflicts of Interest Between Lawyer and Client, Public  
Officials, Conduct Prejudicial to Administration of Justice:  
Lawyer–Municipal Judge Representing  
Clients Before City Council or Court**

**Facts:**

Lawyer, who is engaged in private practice, is also a part-time municipal court judge. Lawyer has been asked to represent Client *A* before the town council in the town in which Lawyer is a part-time municipal court judge.

Lawyer is also asked to defend Client *B* in a murder case brought in circuit court. Lawyer anticipates that in defending Client *B*, Lawyer will have to cross-examine police officers who appear before Lawyer as witnesses when Lawyer acts as a municipal court judge.

**Questions:**

1. May Lawyer represent Client *A*?
2. May Lawyer represent Client *B*?

**Conclusions:**

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

**Discussion:**

Oregon RPC 8.4(a)(4) prohibits Lawyer from engaging in “conduct that is prejudicial to the administration of justice.” Oregon RPC ~~7.8.41~~(a)(5) prohibits Lawyer from stating or implying “an ability to influence improperly a government agency or official or to achieve results by means that violate these Rules or other law.” *Cf.* OSB Formal Ethics Op Nos 2005-14, 2005-7. The mere fact that Lawyer would represent these two defendants does not indicate that a violation of any of these rules will occur.<sup>1</sup>

Oregon RPC 1.7 provides:

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

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<sup>1</sup> With respect to these facts, Oregon RPC 1.12(a) does not appear to prohibit these representations. Oregon RPC 1.12(a) provides:

Except as stated in ~~Rule 2.4(b) and in~~ paragraph (d) ~~and Rule 2.4(b)~~, a lawyer shall not represent anyone in connection with a matter in which the lawyer participated personally and substantially as a judge or other adjudicative officer or law clerk to such a person or as an arbitrator, mediator or other third-party neutral, unless all parties to the proceeding give informed consent, confirmed in writing.

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

(3) the lawyer is related to another lawyer, as parent, child, sibling, spouse or domestic partner, in a matter adverse to a person whom the lawyer knows is represented by the other lawyer in the same matter.

(b) Notwithstanding the existence of a current conflict of interest under paragraph (a), a lawyer may represent a client if:

(1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;  
(2) the representation is not prohibited by law;  
(3) the representation does not obligate the lawyer to contend for something on behalf of one client that the lawyer has a duty to oppose on behalf of another client;  
and

(4) each affected client gives informed consent, confirmed in writing.

No conflict would exist under Oregon RPC 1.7(a) in Lawyer's representation of Client A and Client B because, in each of these instances, Lawyer would have only one client in a matter. *In re Harrington*, 301 Or 18, 718 P2d 725 (1986).

Under the facts given, there also appears to be no reason to believe that a self-interest conflict would exist under Oregon RPC 1.7(b), which would require the informed consent of Client A or Client B in accordance with Oregon RPC 1.7(b). OSB Formal Ethics Op No 2005-39. There may be circumstances, however, in which there is a significant risk that Lawyer's representation of private clients would be materially limited by Lawyer's personal interests in the role of municipal court judge, in which case Lawyer would need to comply with Oregon RPC 1.7(a)(2) and (b).

Oregon RPC 1.11(d) is also relevant and provides, in pertinent part:

(d) Except as law may otherwise expressly permit, a lawyer currently serving as a public officer or employee:

(1) is subject to Rules 1.7 and 1.9; and

(2) shall not:

(i) use the lawyer's public position to obtain, or attempt to obtain, special advantage in legislative matters for the lawyer or for a client.

(ii) use the lawyer's public position to influence, or attempt to influence, a tribunal to act in favor of the lawyer or of a client.

....

(iv) either while in office or after leaving office use information the lawyer knows is confidential government information obtained while a public official to represent a private client.

....

On the present facts, there is no reason to believe that a violation of this rule would occur.

**Approved by Board of Governors, August 2005.**

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COMMENT: For additional information on this general topic and other related subjects, see THE ETHICAL OREGON LAWYER §§7.40, 8.3, 8.14, 10.6, 12.17, 14.30, 14.39, 20.1–20.15 (Oregon CLE 2003~~6~~); RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS §§113, 122, 125 (2003); and ABA Model Rules 1.0(b), (e), 1.7, 1.11(d), 1.12, 8.4(d).

**FORMAL OPINION NO. 2005-103**  
**Information About Legal Services:**  
**Multistate Law Firm, Advertising Availability**  
**of Out-of-State Lawyer**

**Facts:**

Multistate Firm includes lawyers resident in Oregon who are members of the Oregon State Bar and lawyers resident in other states who are members of their state bars but not of the Oregon State Bar.

**Question:**

May Multistate Firm advertise the availability of non-Oregon State Bar members to their Oregon clients?

**Conclusion:**

Yes, qualified.

**Discussion:**

Multistate law firms are clearly permitted. *See, e.g.,* Oregon RPC 7.5(b).<sup>1</sup> The fact that a particular lawyer at such a firm may not be a member of the Oregon State Bar does not prevent

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<sup>1</sup> Oregon RPC 7.5(b) provides:

A law firm with offices in more than one jurisdiction may use the same name or other professional designation in each jurisdiction, but identification of the lawyers in an office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.

that lawyer from engaging in activities permitted by Oregon RPC 5.5(c) and (d).<sup>2</sup> See ABA Formal Ethics Op No 316 (1967); *Appell v. Reiner*, 43 NJ 313, 204 A2d 146 (1964).

A firm may not state or imply, however, that an out-of-state lawyer is, in fact, a member of the Oregon State Bar unless this is true. Compare Oregon RPC 7.1, which provides, in pertinent part:

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

See also Oregon RPC 5.5(b),<sup>3</sup> 8.4(a)(3) (prohibiting “conduct involving dishonesty, fraud, deceit or misrepresentation that reflects adversely on the lawyer’s fitness to practice law”).

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<sup>2</sup> Oregon RPC 5.5(c) and (d) provide:

(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.

<sup>3</sup> Oregon RPC 5.5(b) provides:

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

**Approved by Board of Governors, August 2005.**

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- (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.

COMMENT: For additional information on this general topic and other related subjects, see THE ETHICAL OREGON LAWYER §§2.5–2.7, 2.21 (Oregon CLE 2003); RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS §3 (2003); and ABA Model Rules 7.1, 7.5(b), 8.4(c).

**FORMAL OPINION NO. 2005-103**  
**Information About Legal Services:**  
**Multistate Law Firm, Advertising Availability**  
**of Out-of-State Lawyer**

**Facts:**

Multistate Firm includes lawyers resident in Oregon who are members of the Oregon State Bar and lawyers resident in other states who are members of their state bars but not of the Oregon State Bar.

**Question:**

May Multistate Firm advertise the availability of non-Oregon State Bar members to their Oregon clients?

**Conclusion:**

Yes, qualified.

**Discussion:**

Multistate law firms are clearly permitted. *See, e.g.*, Oregon RPC 7.5(bf).<sup>1</sup> The fact that a particular lawyer at such a firm may not be a member of the Oregon State Bar does not prevent

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<sup>1</sup> Oregon RPC 7.5(bf) provides:

A law firm with offices in more than one jurisdiction may use the same name or other professional designation in each jurisdiction, but identification of the lawyers in an office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.

~~Subject to the requirements of paragraph (c), a law firm practicing in more than one jurisdiction may use the same name in each jurisdiction, but identification of the firm members in an office of the firm shall indicate the jurisdictional limitations of those not licensed to practice in the jurisdiction where the office is located.~~

that lawyer from engaging in activities permitted by Oregon RPC 5.5(c) and (d).<sup>2</sup> See ABA Formal Ethics Op No 316 (1967); *Appell v. Reiner*, 43 NJ 313, 204 A2d 146 (1964).

A firm may not state or imply, however, that an out-of-state lawyer is, in fact, a member of the Oregon State Bar unless this is true. Compare Oregon RPC 7.1, which provides, in pertinent part:

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

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

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<sup>2</sup> Oregon RPC 5.5(c) and (d) provide:

(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.

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

~~...~~

~~-(11) is false and misleading in any manner not otherwise described above; or~~  
~~-(12) violates any other Rule of Professional Conduct or any statute or regulation applicable to solicitation, publicity or advertising by lawyers.~~

*See also* Oregon RPC 5.5(b),<sup>3</sup> 8.4(a)(3) (prohibiting “conduct involving dishonesty, fraud, deceit or misrepresentation that reflects adversely on the lawyer’s fitness to practice law”).

**Approved by Board of Governors, August 2005.**

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<sup>3</sup> Oregon RPC 5.5(b) provides:

- (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.

COMMENT: For additional information on this general topic and other related subjects, see THE ETHICAL OREGON LAWYER §§2.5–2.7, 2.21 (Oregon CLE 2003); RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS §3 (2003); and ABA Model Rules 7.1, 7.5(b), 8.4(c).

**FORMAL OPINION NO. 2005-12**  
**Firm Names:**  
**Office Sharing with Separate Practices**

**Facts:**

Lawyers A, B, and C share office space. Beyond this, however, A, B, and C all maintain separate practices.

**Question:**

May Lawyers A, B, and C hold themselves out, whether through the use of a common letterhead or otherwise, as “associates,” as “of counsel” with each other, or as lawyers practicing under the name “A, B & C, Lawyers”?

**Conclusion:**

No.

**Discussion:**

Oregon RPC 7.5(a) provides:

A lawyer shall not use a firm name, letterhead or other professional designation that violates Rule 7.1. A trade name may be used by a lawyer in private practice if it does not imply a connection with a government agency or with a public or charitable legal services organization and is not otherwise in violation of Rule 7.1.

Oregon RPC 7.5(d) provides, “[l]awyers may state or imply that they practice in a partnership or other organization only when that is a fact.” Similarly, Oregon RPC 7.1(a) provides, in pertinent part:

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

Use of the term *associates* or *of counsel* by lawyers who are not truly associated or of counsel with each other in private practice, but who merely share office space and other services, is misleading within the meaning of these rules because it “impl[ies] that they practice in a partnership or other organization” when in fact they do not. Oregon RPC 7.5(d); *Cf. In re Sussman and Tanner*, 241 Or 246, 405 P2d 355 (1965). Similarly, use of the name “A, B & C, Lawyers” is misleading if no law firm exists in which all three lawyers are a part because that is what the name suggests. *Cf. In re Bach*, 273 Or 24, 539 P2d 1075 (1975).

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COMMENT: For additional information on this general topic and other related subjects, see THE ETHICAL OREGON LAWYER §§2.19, 12.19 (Oregon CLE 2003); and OSB Formal Ethics [Op Nos 2005-50](#) (when lawyers who share office space may represent adverse parties), [2005-65](#) (permits listing nonlawyer employees on lawyer's letterhead, with designation of positions held, as long as practice is neither false nor misleading), [2005-109](#) (associated firms may identify themselves as "Associated Offices" when their relationship is ongoing). *See also* Barbara Fishleder, *Office Sharing: Can You Comply with the Code of Professional Responsibility and Still Get Sued for Legal Malpractice*, 52 OSB BULLETIN 23 (June 1992).

**FORMAL OPINION NO. 2005-12**  
**Firm Names:**  
**Office Sharing with Separate Practices**

**Facts:**

Lawyers A, B, and C share office space. Beyond this, however, A, B, and C all maintain separate practices.

**Question:**

May Lawyers A, B, and C hold themselves out, whether through the use of a common letterhead or otherwise, as “associates,” as “of counsel” with each other, or as lawyers practicing under the name “A, B & C, Lawyers”?

**Conclusion:**

No.

**Discussion:**

Oregon RPC 7.5(a) provides:

A lawyer shall not use a firm name, letterhead or other professional designation that violates Rule 7.1. A trade name may be used by a lawyer in private practice if it does not imply a connection with a government agency or with a public or charitable legal services organization and is not otherwise in violation of Rule 7.1.

~~A lawyer may use professional announcement cards, office signs, letterheads, telephone and electronic directory listings, legal directory listings or other professional notices so long as the information contained therein complies with Rule 7.1 and other applicable disciplinary rules.~~

Oregon RPC 7.5(d)(1) provides, “[l]awyers may state or imply that they practice in a partnership or other organization only when that is a fact.”

~~in pertinent part, that a lawyer in private practice~~

~~shall not practice under a name that is misleading as to the identity of the lawyer or lawyers practicing under such name or under a name that contains names other than those of lawyers in the firm.~~

Similarly, Oregon RPC 7.1(a) provides, in pertinent part:

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

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

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

Use of the term *associates* or *of counsel* by lawyers who are not truly associated or of counsel with each other in private practice, but who merely share office space and other services, is misleading within the meaning of these rules because it “impl[ies] that they practice in a partnership or other organization” when in fact they do not. Oregon RPC 7.5(d); Cf. *In re Sussman and Tanner*, 241 Or 246, 405 P2d 355 (1965). Similarly, use of the name “A, B & C, Lawyers” is misleading if no law firm exists in which all three lawyers are a part because that is what the name suggests. Cf. *In re Bach*, 273 Or 24, 539 P2d 1075 (1975).

**~~Approved by Board of Governors, August 2005.~~**

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COMMENT: For additional information on this general topic and other related subjects, see THE ETHICAL OREGON LAWYER §§2.19, 12.19 (Oregon CLE 2003); and OSB Formal Ethics [Op Nos 2005-50](#) (when lawyers who share office space may represent adverse parties), [2005-65](#) (permits listing nonlawyer employees on lawyer’s letterhead, with designation of positions held, as long as practice is neither false nor misleading), [2005-109](#) (associated firms may identify themselves as “Associated Offices” when their relationship is ongoing). *See also* Barbara

Fishleder, *Office Sharing: Can You Comply with the Code of Professional Responsibility and Still Get Sued for Legal Malpractice*, 52 OSB BULLETIN 23 (June 1992).

**FORMAL OPINION NO. 2005-127**

**Information About Legal Services:  
Writing to Accident Victims**

**Facts:**

Law Firm, which restricts its practice to personal injury and product liability cases, proposes to prepare a letter or pamphlet that would invite the reader to call and schedule a consultation to discuss possible claims relating to recent personal injuries. The letter or pamphlet would be mailed to the home address of persons injured in accidents reported in local newspapers.

**Question:**

Is it permissible for Law Firm to prepare and distribute a letter or pamphlet in the manner described above?

**Conclusion:**

Yes, qualified.

**Discussion:**

Oregon RPC 7.3 provides:

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

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

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

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

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

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

ORS 9.510 provides:

No attorney shall solicit business at factories, mills, hospitals or other places, or retain members of a firm or runners or solicitors for the purpose of obtaining business on account of personal injuries to any person, or for the purpose of bringing damage suits on account of personal injuries.

Oregon RPC 7.3(a) does not prohibit the proposed mailing because the rule does not apply to written letters or pamphlets. In most instances, the mere fact that someone has been in an accident would not cause the law firm to run afoul of Oregon RPC 7.3(b). The law firm should, however, carefully review the available information about a proposed recipient in order to assess the potential applicability of Oregon RPC 7.3(b) before sending the letter or pamphlet. *Cf.* Oregon RPC 1.0(h); *In re Johnson*, 300 Or 52, 707 P2d 573 (1985) (for conflict-of-interest purposes, lawyers are deemed to know what reasonable inquiry under circumstances would disclose). As is clear from the language of Oregon RPC 7.3(c), the “Advertising Material” requirement applies when a letter or pamphlet is sent to potential clients known to need legal services in a particular matter. Thus, the “Advertising Material” requirement applies in this case. By contrast, it does not apply when sending newsletters and other general information pieces, even though sent to targeted recipients.

If ORS 9.510 were deemed to include written as well as in-person contacts, the statute would be unconstitutional. Targeted mailings that are truthful and not misleading constitute commercial speech that is protected by the First Amendment to the United States Constitution. *Shapiro v. Kentucky Bar Ass’n*, 486 US 466, 108 S Ct 1916, 100 L Ed2d 475 (1988). The application of ORS 9.510 must therefore be limited by excluding written communications therefrom. *Cf. City of Portland v. Welch*, 229 Or 308, 316, 364 P2d 1009, 367 P2d 403 (1961).

All communications about Law Firm's services are subject to Oregon RPC 7.1:

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

*See also* Oregon RPC 8.4(a)(3) (prohibiting "conduct involving dishonesty, fraud, deceit or misrepresentation"). If the letters with pamphlets comply with limitations in these sections, they are permissible.

**Approved by Board of Governors, August 2005.**

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COMMENT: For additional information on this general topic and other related subjects, see THE ETHICAL OREGON LAWYER §§2.6–2.15 (Oregon CLE 2006); and ABA Model Rules 7.1–7.3.

**FORMAL OPINION NO. 2005-127**

**Information About Legal Services:  
Writing to Accident Victims**

**Facts:**

Law Firm, which restricts its practice to personal injury and product liability cases, proposes to prepare a letter or pamphlet that would invite the reader to call and schedule a consultation to discuss possible claims relating to recent personal injuries. The letter or pamphlet would be mailed to the home address of persons injured in accidents reported in local newspapers.

**Question:**

Is it permissible for Law Firm to prepare and distribute a letter or pamphlet in the manner described above?

**Conclusion:**

Yes, qualified.

**Discussion:**

Oregon RPC 7.3 provides:

- (a) A lawyer shall not by in-person, live telephone or real-time electronic contact solicit professional employment ~~from a prospective client~~ when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain, unless the person contacted:
- (1) is a lawyer; or
  - (2) has a family, close personal, or prior professional relationship with the lawyer.
- (b) A lawyer shall not solicit professional employment ~~from a prospective client~~ by written, recorded or electronic communication or by in-person, telephone or real-time electronic contact even when not otherwise prohibited by paragraph (a), if:
- (1) the lawyer knows or reasonably should know that the physical, emotional or mental state of the ~~prospective client~~ target of the solicitation is such that the person could not exercise reasonable judgment in employing a lawyer;
  - (2) the ~~prospective client~~ target of the solicitation has made known to the lawyer a desire not to be solicited by the lawyer; or
  - (3) the solicitation involves coercion, duress or harassment.

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

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

ORS 9.510 provides:

No attorney shall solicit business at factories, mills, hospitals or other places, or retain members of a firm or runners or solicitors for the purpose of obtaining business on account of personal injuries to any person, or for the purpose of bringing damage suits on account of personal injuries.

Oregon RPC 7.3(a) does not prohibit the proposed mailing because the rule does not apply to written ~~communications~~ letters or pamphlets. In most instances, the mere fact that someone has been in an accident would not cause the law firm to run afoul of Oregon RPC 7.3(b). The law firm should, however, carefully review the available information about a proposed recipient in order to assess the potential applicability of Oregon RPC 7.3(b) before sending the letter or pamphlet. *Cf.* Oregon RPC 1.0(h); *In re Johnson*, 300 Or 52, 707 P2d 573 (1985) (for conflict-of-interest purposes, lawyers are deemed to know what reasonable inquiry under circumstances would disclose). As is clear from the language of Oregon RPC 7.3(c), the “Advertising Materialement” requirement applies when a letter or pamphlet is sent to potential clients known to need legal services in a particular matter. Thus, the “Advertising Materialement” requirement applies in this case. By contrast, it does not apply when sending newsletters and other general information pieces, even though sent to targeted recipients.

If ORS 9.510 were deemed to include written as well as in-person contacts, the statute would be unconstitutional. Targeted mailings that are truthful and not misleading constitute commercial speech that is protected by the First Amendment to the United States Constitution. *Shapiro v. Kentucky Bar Ass’n*, 486 US 466, 108 S Ct 1916, 100 L Ed2d 475 (1988). The application of ORS 9.510 must therefore be limited by excluding written communications therefrom. *Cf. City of Portland v. Welch*, 229 Or 308, 316, 364 P2d 1009, 367 P2d 403 (1961).

**All communications about Law Firm's services are subject to Oregon RPC 7.1:**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

*See also Oregon RPC 8.4(ae)(3)* (prohibiting “conduct involving dishonesty, fraud, deceit or misrepresentation”). If the letters with pamphlets comply with limitations in these sections, they are permissible.

**Approved by Board of Governors, August 2005.**

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COMMENT: For additional information on this general topic and other related subjects, see THE ETHICAL OREGON LAWYER §§2.6–2.15 (Oregon CLE 2003~~6~~); and ABA Model Rules 7.1–7.3.

## FORMAL OPINION NO. 2005-35

### Information About Legal Services: Greeting Cards and Open House

#### Facts:

Lawyer *A* would like to send greeting cards or letters to Lawyer *A*'s current and former clients, thanking them for employing Lawyer *A*.

Lawyer *B* would like to send greeting cards or letters to people who have referred clients to Lawyer *B*, in which Lawyer *B* would thank them for doing so.

Lawyer *C* would like to hold an open house, and invite both current and former clients and nonclients.

#### Questions:

1. Is the proposed conduct of Lawyer *A* ethical?
2. Is the proposed conduct of Lawyer *B* ethical?
3. Is the proposed conduct of Lawyer *C* ethical?

#### Conclusions:

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

#### Discussion:

The proposed conduct of Lawyer *A* and Lawyer *B* is constitutionally protected. *See, e.g., Shapero v. Kentucky Bar Ass'n*, 486 US 466, 108 S Ct 1916, 100 L Ed 2d 475 (1988). Thus, no rule of professional conduct could prohibit this conduct unless the conduct was ancillary to some independent act of wrongdoing, such as improper in-person solicitation or making misrepresentations about a lawyer's services. *Cf. OSB Formal Ethics Op Nos 2005-3, 2005-2.* Given the nature of the proposed communications, we also do not believe that Lawyer *A* or Lawyer *B* must take any special steps to identify the thank-you notes as advertisements or to treat the notes as unsolicited communications about the lawyers' services within the meaning of Oregon RPC 7.2(a), (c) or 7.3(c).<sup>1</sup>

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<sup>1</sup> Oregon RPC 7.2(a) and (c) provide:

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

The question relating to Lawyer C is arguably somewhat more difficult because the open house could give rise to situations involving improper in-person solicitation within the meaning of Oregon RPC 7.3(a).<sup>2</sup> The fact that improper in-person solicitation could theoretically occur is not sufficient by itself, however, to prohibit Lawyer C from sending the invitations or holding the party. *Cf. In re Blaylock*, 328 Or 409, 978 P2d 381 (1999) (lawyer must act intentionally to violate former DR 2-104(a)).

**Approved by Board of Governors, August 2005.**

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

Oregon RPC 7.3(c) provides:

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

<sup>2</sup> Oregon RPC 7.3(a) provides:

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

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

COMMENT: For additional information on this general topic and related subjects, see THE ETHICAL OREGON LAWYER §§2.14, 2.23–2.29 (Oregon CLE 2006); and ABA Model Rule 7.1–7.3. *See also* OSB Formal Ethics Op Nos 2005-70, 2005-79, 2005-100, 2005-106, 2005-127.

## FORMAL OPINION NO. 2005-35

### Information About Legal Services: Greeting Cards and Open House

#### Facts:

Lawyer *A* would like to send greeting cards or letters to Lawyer *A*'s current and former clients, thanking them for employing Lawyer *A*.

Lawyer *B* would like to send greeting cards or letters to people who have referred clients to Lawyer *B*, in which Lawyer *B* would thank them for doing so.

Lawyer *C* would like to hold an open house, and invite both current and former clients and nonclients.

#### Questions:

1. Is the proposed conduct of Lawyer *A* ethical?
2. Is the proposed conduct of Lawyer *B* ethical?
3. Is the proposed conduct of Lawyer *C* ethical?

#### Conclusions:

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

#### Discussion:

The proposed conduct of Lawyer *A* and Lawyer *B* is constitutionally protected. *See, e.g., Shapero v. Kentucky Bar Ass'n*, 486 US 466, 108 S Ct 1916, 100 L Ed 2d 475 (1988). Thus, no rule of professional conduct could prohibit this conduct unless the conduct was ancillary to some independent act of wrongdoing, such as improper in-person solicitation or making misrepresentations about a lawyer's services. *Cf. OSB Formal Ethics Op Nos 2005-3, 2005-2.* Given the nature of the proposed communications, we also do not believe that Lawyer *A* or Lawyer *B* must take any special steps to identify the thank-you notes as advertisements or to treat

the notes as unsolicited communications about the lawyers' services within the meaning of Oregon RPC 7.21(ba)-(c) or 7.3(c).<sup>1</sup>

The question relating to Lawyer C is arguably somewhat more difficult because the open house could give rise to situations involving improper in-person solicitation within the meaning of Oregon RPC 7.3(a).<sup>2</sup> The fact that improper in-person solicitation could theoretically occur is not sufficient by itself, however, to prohibit Lawyer C from sending the invitations or holding the party. *Cf. In re Blaylock*, 328 Or 409, 978 P2d 381 (1999) (lawyer must act intentionally to violate former DR 2-104(a)).

### Approved by Board of Governors, August 2005.

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<sup>1</sup> Oregon RPC 7.22(ba) and (c) provide:

~~\_\_\_\_ (ba) Subject to the requirements of Rules 7.1 and 7.3, a lawyer may advertise services through written, recorded or electronic communication, including public media. An unsolicited communication about a lawyer or the lawyer's firm in which services are being offered must be clearly and conspicuously identified as an advertisement unless it is apparent from the context that it is an advertisement.~~

~~\_\_\_\_ (c) Any communication made pursuant to this rule shall include the name and office address of at least one lawyer or law firm responsible for its content. An unsolicited communication about a lawyer or the lawyer's firm in which services are being offered must clearly identify the name and post office box or street address of the office of the lawyer or law firm whose services are being offered.~~

Oregon RPC 7.3(c) provides:

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

<sup>2</sup> Oregon RPC 7.3(a) provides:

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

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

COMMENT: For additional information on this general topic and related subjects, see THE ETHICAL OREGON LAWYER §§2.14, 2.23–2.29 (Oregon CLE 20036); and ABA Model Rule 7.1–7.3. *See also* OSB Formal Ethics Op Nos 2005-70, 2005-79, 2005-100, 2005-106, 2005-127.

**FORMAL OPINION NO. 2005-65**  
**Listing of Nonlawyer Personnel on Firm Letterhead**

**Facts:**

Lawyer proposes to list nonlawyer personnel, together with the positions that those people hold, on Lawyer's letterhead (e.g., June Doe, Office Manager; John Doe, Legal Assistant).

**Question:**

May Lawyer do so?

**Conclusion:**

Yes, qualified.

**Discussion:**

Oregon RPC 7.5(a) provides:

A lawyer shall not use a firm name, letterhead or other professional designation that violates Rule 7.1. A trade name may be used by a lawyer in private practice if it does not imply a connection with a government agency or with a public or charitable legal services organization and is not otherwise in violation of Rule 7.1.

Oregon RPC 7.1(a) provides:

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

As long as the proposed listings do not involve false or misleading communications, they are permissible.

**Approved by Board of Governors, August 2005.**

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COMMENT: For additional information on this general topic and related subjects, see THE ETHICAL OREGON LAWYER §§2.19–2.20 (Oregon CLE 2003); ABA/BNA LAWYERS' MANUAL ON PROFESSIONAL CONDUCT 81:3001–81:3014 (2002); and ABA Model Rules 7.1, 7.5(a).

**FORMAL OPINION NO. 2005-65**

**Listing of Nonlawyer Personnel on Firm Letterhead**

**Facts:**

Lawyer proposes to list nonlawyer personnel, together with the positions that those people hold, on Lawyer's letterhead (e.g., June Doe, Office Manager; John Doe, Legal Assistant).

**Question:**

May Lawyer do so?

**Conclusion:**

Yes, qualified.

**Discussion:**

Oregon RPC 7.5(a) provides:

~~A lawyer shall not use a firm name, letterhead or other professional designation that violates Rule 7.1. A trade name may be used by a lawyer in private practice if it does not imply a connection with a government agency or with a public or charitable legal services organization and is not otherwise in violation of Rule 7.1. A lawyer may use professional announcement cards, office signs, letterheads, telephone and electronic directory listings, legal directory listings or other professional notices so long as the information contained therein complies with Rule 7.1 and other applicable Rules.~~

Oregon RPC 7.1(a) provides:

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

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

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

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

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

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

~~See also Oregon RPC 8.4(a)(3), which prohibits “conduct involving dishonesty, fraud, deceit or misrepresentation that reflects adversely on the lawyer’s fitness to practice law.”~~ As long as the proposed listings do not involve false or misleading communications, they are permissible.

**Approved by Board of Governors, August 2005.**

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COMMENT: For additional information on this general topic and related subjects, see THE ETHICAL OREGON LAWYER §§2.19–2.20 (Oregon CLE 2003); ABA/BNA LAWYERS’ MANUAL ON PROFESSIONAL CONDUCT 81:3001–81:3014 (2002); and ABA Model Rules 7.1, 7.5(a).

*Loan Repayment  
Assistance Program*

**Policies and Guidelines**

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

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*Revised ~~January 11, 201~~October 20, 2014*

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

### **Statement of Purpose**

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

### **Oregon Public Records Act Notice**

The Oregon State Bar is subject to the Oregon Public Records Act, ORS Chapter 192. The bar has an obligation to disclose its records when requested, unless an exemption applies. The bar agrees the personal financial information you provide in response to the LRAP Application is submitted in confidence and will only be disclosed under the Act if required by law.

## **Section 1 – Administrative Partners**

### **(A) *Advisory Committee***

#### **(i) Membership**

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

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

#### **(ii) Appointment and Administration**

- OSB President and Chair of the OSB New Lawyers Division, or designees, will serve for a term of one year.
- Other Advisory Committee members will serve for a term of three years and may be reappointed for one additional term.
- Advisory Committee members will elect a Chair and such other officers as they determine are necessary from among Advisory Committee members. Officers shall serve a one-year term, subject to renewal.

- One-third of the initial appointments will be for one year, one-third for two years, and one-third for three years. The OSB Board of Governors will determine which of the initial positions is for which length.
- The OSB will designate a staff person to support the Advisory Committee's work.
- Current applicants for or recipients of LRAP loans may not serve on the Advisory Committee.

**(iii) Advisory Committee Duties**

- Select participants for the loan repayment assistance program (LRAP or the Program), and report the selections to the OSB.
- Report annually to the OSB -Governance and Strategic Planning Committee on the Program's status.
- Amend and set policy guidelines as needed for the Program.
- Raise funds to achieve programmatic objectives.
- Adopt procedures to avoid conflicts of interest.
- Make clear program rules to avoid grievances.

**(B) Oregon State Bar**

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

## **Section 2 – Requirements for Program Participation**

**(A) Application and Other Program Procedures**

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

**(B) Qualifying Employment**

- Employment must be within the State of Oregon.
- Qualifying employment includes employment as a practicing attorney with civil legal aid organizations, other private non-profit organizations providing direct legal representation of low-income individuals, as public defenders or as deputy district attorneys.

- Judicial clerks and attorneys appointed on a case-by-case basis are not eligible.
- Thirty-five hours or more per week will be considered full-time employment; hours worked per week less than 35 will be considered part-time.
- Part-time employees are eligible to apply for the Program;- however **participation repayment assistance** may be prorated at the discretion of the Advisory Committee, based on FTE.

**(C) Graduation/License/Residency Requirements**

- Program applicants must be licensed to practice in Oregon.
- Program participation is not limited to graduates of Oregon law schools. Graduates of any law school may apply.
- Program participation is not limited to recent law school graduates. Any person meeting Program requirements, as outlined herein, may apply.
- Program participation is not limited to Oregon residents, provided the applicant works in Oregon and meets other Program requirements.

**(D) Salary Cap for Initial Applicants**

Applicants with salaries greater than \$~~60,000~~ 65,000 at the time of ~~initial~~ application will be ineligible for Program participation.

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

**(E) Eligible Loans**

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

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

### **Section 3 – Description of Benefit to Program Participants**

**(A) Nature of Benefit**

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

**(i) Amount and Length of Benefit**

- LRAP loans will not exceed \$~~5,000~~ 7,500 per year per Program participant for a maximum of three consecutive years. LRAP loans cannot exceed the annual student loan -payments of the participant.

- The Advisory Committee reserves discretion to adjust the amount of the LRAP loan and/or length of participation based on changes in the availability of program funding.
- LRAP loans will be disbursed in two equal payments per year. .

**(ii) Interest on LRAP Loans**

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

**(iii) Federal Income Tax Liability**

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

**(B) *Forgiveness and Repayment of LRAP Loans***

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

**(i) Loss of Eligibility Where Repayment Is Required**

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

- The repayment period will be equal to the number of months during which the Program participant participated in the Program (including up to three months of approved leave), or 12 months, whichever is longer.
- The collection method for LRAP loans not repaid on schedule will be left to the discretion of the Oregon State Bar.
- Participants shall notify the Program within 30 days of leaving qualifying employment.

**(ii) Loss of Eligibility Where Repayment Is Not Required**

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

**(iii) Exception to Repayment Requirement**

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

**(C) *Leaves of Absence***

Each Program participant will be eligible to continue to receive benefits during any period of leave approved by the Program participant's employer. If any such approved leave period extends for more than three months, the amount of time the Program participant must remain in qualifying employment before an LRAP Loan is forgiven is extended by the length of the leave in excess of three months. ~~This extra time~~The leave time exceeding three months is added to the end of the year in which the leave is taken and thereafter, the starting date of the new year is reset based upon the new ending date of the year in which the extended leave is taken until the three year LRAP Loan period concludes.

**Section 4 – Program Procedures**

**(A) *Application and Disbursement Procedure***

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

**(B) *Program Participant Selection***

**(i) Factors ~~to be~~ Considered**

- Meeting the salary, debt and employment eligibility for the Program does not automatically entitle an applicant to receive a LRAP loan. If the Advisory Committee needs to select among applicants meeting the salary, debt and employment eligibility criteria, it may take into account the following factors:
  - Demonstrated commitment to public service;
  - Financial need;
  - Educational debt, monthly payment to income ratio, and/or forgiveness of debt;
  - Extraordinary personal expenses;
  - Type and location of work;
  - Assistance from other loan repayment assistance programs;
- The Advisory Committee reserves the right to accord each factor a different weight, and to make a selection among otherwise equally qualified applicants.
- If there are more eligible applicants than potential Program participants for a given year, the Advisory Committee will keep the materials submitted by other applicants for a period of six months in the event and may automatically reconsider the applicant pool if an individual selected to receive an LRAP loan ~~selected individual~~ does not participate in the Program.

**(ii) Other Factors ~~to be~~ Considered Related to Applicant's Income**

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

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

**(C) *Annual Certification of Program Participant's Eligibility***

**(i) Annual Certifications Required**

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

**(ii) Program Participant Annual Certifications - Contents**

The annual certifications submitted by Program participants will include:

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

**(iii) Employer Certification - Contents**

The annual certifications submitted by employers will include:

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

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

Program participants remain eligible for the Program for three years despite increases in salary provided that they remain in qualifying employment with the same employer and are not in default on their student loans. If a Program participant's financial condition changes for other reasons, the Advisory Committee may make a case-by-case determination whether the Program participant may receive any further LRAP loans. Even if no further LRAP loans are received, this increase in income will not affect the LRAP loan forgiveness schedule so long as the Program participant remains in qualifying employment and submits an employer certification pursuant to Section 4(C)(iii).

**(v) Effect of Default on Student Loans**

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

**(vi) Voluntary Withdrawal from Program**

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

**(D) *Dispute/Grievance Resolution***

- Grievance procedure applies only to Program participants, not applicants.
- Program participants have 30 days to contest a determination in writing.
- The Advisory Committee has 60 days to ~~respond~~issue a decision.
- ~~The Advisory Committee's decision is final. A Program participant may appeal the Advisory Committee's decision by making a request in writing to Board of Governors within 30 days of the Advisory Committee's decision. The decision of the Board is final. subject to BOG review.~~

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** February 13, 2015  
**From:** Ray Heysell, Chair, Governance & Strategic Planning Committee  
**Re:** Section Web Policies

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### Issue

Consider the recommendations of the Governance & Strategic Planning Committee regarding changes to section web site and financial policies.

### Discussion

At its meeting in November, the GSP Committee considered several issues relating to section websites and fund balances. The committee voted unanimously to recommend the following new policies regarding section web sites:

1. All section web sites shall be hosted by the OSB on our site by July 2016 unless staff determines that a later date is desirable.

Currently, nearly half of the bar's 37 sections with web sites have their sites hosted independently of the bar. Section web site design does not follow a standard template, and the section's identity as part of the OSB is not always clear. Under this recommendation, independent section sites would be hosted by the OSB and all sections would use a common template developed by the bar to conform to and emphasize OSB branding.

2. Section membership directories shall be available only to section members and will be linked to the OSB database.

With the implementation of new management software, we plan to provide sections with searchable membership directories. Some sections (most notably the Sole & Small Firm and Workers' Compensation sections) have expressed interest having their membership directories available to the public as [a](#) means of matching potential clients with lawyers. Keeping section directories for the use of section members only will avoid internal competition with the Lawyer Referral Service, not only to avoid negatively impacting LRS revenue, but also to assure the quality control, screening and resource help for potential clients that LRS provides.

3. BOG liaisons will work with sections that have overly large fund balances, encouraging them to find ways to use the dues that their members are paying rather than accumulating them for unspecified purposes.

A handful of sections maintain significant fund balances, often more than 2 or 3 times their annual expenditures. Yet they continue to collect annual dues from members. Accumulating

large fund balances is not the purpose of sections; rather they are intended to provide networking and educational opportunities for their members. Those sections should be encouraged (perhaps ultimately mandated) to spend down excessively high balances by establishing scholarships, bringing in national speakers, or in other ways that will benefit the section membership. The downside of this effort is that reduction of large section balances will reduce the interest the bar earns on invested reserves, although the impact will be relatively small.

# **LEGAL TECHNICIANS TASK FORCE**

## **FINAL REPORT TO THE BOARD OF GOVERNORS**

February 13, 2015

### *Introduction*

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In mid-2013, the Board of Governors through the Bar's President, Michael Haglund, established this Task Force to consider the possibility of the Bar's promoting the concept of licensing Legal Technicians<sup>1</sup> as one component of the BOG's overall strategy for increasing access to justice. Regardless of its ultimate recommendation, the Task Force was also directed to outline the preliminary considerations and outline an approach for developing such a licensure program.

The Task Force was comprised of eighteen members, drawn from a variety of sources, including representatives from Legal Aid organizations, young lawyers, the judiciary, the Professional Liability Fund, the Board of Bar Examiners, paralegal organizations and paralegal educators, and people with a history of working with and for self-represented litigants. In addition, other interested individuals, representing various constituencies, attended some or all of the Task Force's meetings.

The Task Force was chaired by Theresa Wright. Members of the Task Force were Gerald Brask, Shari Bynum, Hon. Suzanne Bradley Chanti, Michele Grable, Guy B. Greco, Professor Leslie Harris, William J. Howe III, Bradley D. Maier, John J. Marandas, Sean Mazorol, Hon. Maureen H. McKnight, Mitzi M. Naucner, Linda Odermott, and Hon. Jill A. Tanner. Joshua Ross was the BOG liaison; staff support was provided by OSB Executive Director Sylvia Stevens and Executive Assistant Camille Greene.

### *Executive Summary*

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At its December 2014 meeting, the Task Force agreed to submit a proposal to the BOG suggesting that it consider the general concept of a limited license for legal technicians as one component of the BOG's overall strategy for increasing access to justice. A large majority of, but not all Task Force members, concur with this recommendation.

The Task Force recognizes that the licensed legal technician concept is but one potential

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<sup>1</sup> The Task Force found this title to be less cumbersome than WSBA's "Limited License Legal Technician" and would also distinguish the Oregon concept from WSBA's LLLT program.

tool to address the “justice gap” and should not be viewed as the sole solution or in isolation. During its information-gathering meetings the Task Force acknowledged the funding cuts have eliminated much of the courthouse facilitator assistance and that inadequate funding for Legal Aid is a constant limitation on the availability of legal services for low-income Oregonians.

Should the Board decide to proceed with this concept, the Task Force recommends a new Board or Task Force be established to develop the detailed framework of the program. For the reasons set out herein, the BOG should review the recently established Washington State Bar Association LLLT program and consider it as a potential model.

## *Methodology*

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Beginning July 27, 2013, 2013, and through the end of the year, the Task Force met six times, approximately once per month for two to three hours each meeting.

Task Force members reviewed significant written material before the first meeting and additional materials at subsequent meetings. These materials included: Paralegal Regulation by State; *The Last Days of the American Lawyer* by Thomas D. Morgan; numerous articles from the states of California, New York and Washington, and the country of Canada; OSB 1992 Legal Technicians Task Force Report; Washington Supreme Court Rule APR 28 regarding the Limited License Legal Technician Board; Washington State Bar Association *Changing Profession – Challenges and Opportunities*; National Center for State Courts’ *Roadmap for Action – Lessons From the Implementation of Recent Civil Rules Projects*; Oregon State Family Law Advisory Committee’s *Oregon Family Courts – What’s new What’s to Come*; OSB Referral Information Services statistics; a WSBA Webinar that included Regulation of the April 28 LLLT Board, WSBA *Pathway to LLT Admission, and Program and Licensing Process*; *Protecting the Profession or the Public?* by D. Rhode & L. Ricca; and *The Incidental Lawyer* by Jordan Furlong.

The Task Force spent a fair amount of time reviewing and discussing the 1992 Legal Technicians Task Force report and the fact that no action ensued, and how this result could be different given the changes in the legal profession during the interim. Most notably, the Task Force was cognizant of the fact that there are more people unable to afford or unwilling to pay lawyers now than when the last report was issued, and no adequate solution has been found.

In addition, during the first two meetings, members discussed a variety of matters, including pros and cons of moving forward, access to justice, reasons for creating (or not creating) a Limited License, and other related matters. The October meeting was dedicated to a presentation from Paula Littlewood, Executive Director of the Washington Bar Association, about Washington’s efforts to create a Limited License Legal Technicians program. (See Appendix A.) During the final meeting, the Task Force received reports from various subcommittees (see below), and determined the actions to recommend to the Board.

## *The Washington State Bar Association Program*

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The Washington State Bar Association (WSBA) spent approximately two years developing its Licensed Legal Technician program, and it is comprehensive and well thought-out. As noted above, the Task Force believes that, should the Board of Governors choose to proceed with the idea of Licensed Legal Technicians, it should review, consider and learn from Washington's program, including the successes and challenges in its implementation. This includes educational requirements, extensive practical work experience under a licensed lawyer, and a licensure examination. Additionally, the WSBA program has provisions for continuing education, rules of professional conduct, mandatory malpractice insurance, and a disciplinary scheme. Their first WSBA LLLTs will be limited to practicing in the area of family law, and licensing of the first group is imminent.

A more detailed summary is contained in Appendix A.

## *Issues and Considerations Identified*

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The Task Force discussed the positives, negatives, and other factors in considering whether Oregon should implement a Licensed Legal Technician program.

### *Major Factors*

The major factors the Task Force identified were:

- the vast need for legal assistance in the low- to moderate- income populations;
- the concern that the Legislature might proceed with proposed legislation if the Bar does not act itself with a preferred program; and
- the need to balance increased access to justice and protection of the public.

That said, the primary concern of the Task Force was the issue of access to justice. The Task Force also understood that regardless of programs implemented by the Bar or other entities, there will never be 100% of clients who want or need representation.

The Task Force discussed reasons that people do not hire lawyers to represent them in their cases.

- While based primarily on anecdotal information, the consensus was that most people who do not hire lawyers for full representation cannot afford to do so.

This is the client base the Task Force hopes to reach with its proposal.

- There are others who may be adverse to hiring lawyers for a variety of reasons, although they are financially able to do so. These include those mistrustful of lawyers and those who believe they know enough about the court and legal system that they are able to represent themselves adequately.

The Task Force acknowledged that the legal profession and the provision of legal service has been changing and continues to do so:

- Consumers have much more access to legal information and “assistance” over the internet, and from other resources;
- Courts are moving toward having self-help forms available for litigants to complete on their own;<sup>2</sup>
- There have long been unlicensed “paralegals” in various communities providing various quality of assistance, sometimes to the significant detriment of the public;<sup>3</sup> and
- The proliferation of self-help books has also impacted the public’s use of lawyers for what they may view as the simpler legal procedures required by their situation.

The Task Force was also cognizant of the number of new lawyers who are having a difficult time finding employment. Of particular note is that the most recent statistics show:

- Currently, approximately 86% of all family law litigants in Oregon are self-represented<sup>4</sup>. At least in terms of family law cases, the percentage of unrepresented litigants has not decreased over the years, indicating that new lawyers have not found a method to represent this population; and
- In 23% of civil cases (excluding cases such as landlord/tenant in which most tenants represent themselves) in Multnomah County one or both of the parties are self-represented.

The Task next identified the arguments in favor of and against the licensing of legal technicians:

#### *Pros*

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<sup>2</sup> In fact, Restraining Orders through the Family Abuse Prevention Act are available on a state-wide basis for litigants utilizing a “TurboTax” type of system.

<sup>3</sup> This is an unlawful practice of law issue which the Bar has been working to remedy for years.

<sup>4</sup> In 1992, when the prior Legal Technicians Task Force report was issued, the figure was 38%.

- It would be a step forward to providing access to justice for poor to moderate income Oregonians, although there may be less radical alternatives; and
- At least with respect to the family law arena, the risk of “cutting into” the work of unemployed lawyers appears to be negligible given the volume of potential clients in the low- to moderate-income community.

### *Cons*

- Only one state (Washington) has developed and implemented a Licensed Legal Technician program; while others are exploring the idea, if Oregon were to go forward we would be clearly in the forefront;
- The WSBA program was created under a mandate of the Washington Supreme Court and continues to be controversial among the membership of WSBA; the BOG should expect that a similar program would be controversial in Oregon and further study should include input from the OSB membership;
- The licensing of legal technicians might have some impact on new lawyers’ ability to obtain employment or develop solo careers; and
- The imposition of the WSBA-style requirements on Licensed Technicians might not allow them to provide services to the target population at a cost lower than typical lawyer fees.

### *Other Considerations*

The Task Force believes that if a licensing scheme is established, in addition to pre-licensure educational and experiential qualifications, Legal Technicians should have to meet certain post-licensure requirements including having malpractice coverage, complying with a code of ethics, and have continuing legal education.

Discussed but not decided was:

- What entity (the OSB, the Supreme Court or other?) should oversee the program?
- How the program would be implemented initially;
- How the initial implementation would be financed;
- Whether to recommend that Licensed Legal Technicians should have to contribute to some sort of client protection fund;

- Whether Legal Technicians would have to maintain client trust accounts;
- What entity should provide malpractice insurance;
- The actual scope of activities Legal Technicians could perform; for example, should Legal Technicians be allowed to draft or choose forms for clients, and what, if any, role, should Legal Technicians be allowed to have in the courtroom?
- How Legal Technicians with licenses from other states should be treated;
- How Oregon should handle Legal Technicians that have their primary office outside of the state of Oregon; and
- Clarification as to the different responsibilities Legal Technicians would have depending on whether they are under the direction and supervision of an attorney or not, or whether that supervision was relevant at all.

The Task Force also recognizes that in order for the Bar or other entity could proceed with a licensing program, the Bar Act would need to be amended to allow this category of legal practitioner, with possible limitations being statutorily defined. Supreme Court acceptance of the concept would also be critical

### *Subcommittee Recommendations*

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After its general discussion, Task Force members agreed that there were certain areas of law more conducive to non-attorney representation than others, discussed possible legislative amendments needed, and issues such as Continuing Legal Education and malpractice coverage. As a result, the Task Force formed Subcommittees to give close consideration to specific issues presented by the Subcommittee assignments. Each of these Subcommittees presented a written report to the Task Force. These written reports are attached to this report as exhibits, and summarized below.

Three Subcommittees focused on implementation issues and three focused on substantive issues.

#### *Implementing Legislation*

See Appendix B for proposed legislation.

#### *Client Protection/Ethics/Malpractice*

See Appendix C for commentary regarding these matters.

## *Education and Licensing*

See Appendix D for the full Subcommittee report.

The Education and Experience Requirements Subcommittee reviewed assorted resources regarding the WSBA requirements for its LLLTs; a number of documents related to different voluntary and mandatory paralegal regulation plans from states around the country (New York and North Carolina, for example); the education, experience and continuing education requirements from the three main national, paralegal certification programs (NFPA's, NALA's, and NALS); SB 1068 - the 1992 proposed Oregon legislation on this same topic; the 1992 final report from the OSB Task Force on this same issue, the Portland Community College Class Curriculum for the paralegal program, as well as other related documents.

The subcommittee found that although the Washington LLLT Program was well thought out, there were a number of items that needed revision for a Legal Technician plan to work in Oregon. After many discussions about the need for a definition of the education and experience requirements that a paralegal should possess, the group turned to the standards to create a new profession in form of a legal technician, as well as the need for a disciplinary body to oversee both paralegals and legal technicians. The Subcommittee considered the innovative idea of using the drafted education and experience requirements (crafted and edited by the subcommittee for the legal technician) as a jumping off point for a second prong of the proposed legislation – a Voluntary Oregon Registered Paralegal (VORP) program to be overseen by the OSB which would define education and experience requirements for those paralegals wishing to participate. This idea could be presented in concert with the concept of the Legal Technician (as the first prong in a two-prong proposal); or as a separate and independent, voluntary, paralegal-regulation model, which would bring paralegals under the disciplinary purview of the Oregon State Bar. This would assist in addressing the education and experience standards that a potential client contacting a self-identified paralegal possess, give disciplinary discretion to the OSB for ethical misconduct such as UPL performed by a VORP, and assist in public protection by creating a registry of paralegals who possess these minimum standards.

## *Family Law*

See Appendix E for the full Subcommittee report.

The Family Law Subcommittee created a list of probable tasks LLLT's certified in family law could perform, to include:

- providing approved forms (such as those on the OJD web site), assisting the "client" in choosing which forms to utilize, and assisting in completing these forms, in a ministerial capacity and without giving legal advice about the case;

- providing generalized explanations of the law without applying it specifically to the client's case or fact pattern;
- explaining legal options without offering legal opinions;
- reviewing approved documents completed by litigants to determine if they are completely and correctly completed;
- reviewing and interpreting necessary background documents (for example, review discovery and client's materials) and offering limited explanations insofar as necessary to complete approved forms;
- providing or suggesting published information to clients pertaining to legal procedures, client's legal rights and obligations and materials of assistance with children's issues (for example, *Isa Ricci's Mom's House, Dad's House*);
- explaining court procedures without applying it specifically to the client's case or fact pattern (for example, difference between traditional trial and informal domestic relations trial in Deschutes County);
- filing legal documents at the client's request; and

The subcommittee also discussed whether LLLTs should be permitted to work with both parties to divorce, subject to ethics rules applicable to LLLTs.

#### *Landlord/Tenant and Small Claims*

See Appendix F for the full Subcommittee report.

The use of LLLTs is recommended in landlord tenant cases and small claims cases. Both kinds of cases are largely populated by self-represented litigants and there are lots of forms available for litigants.

- There are more than twice as many of these cases than there are family law cases, by 2011 numbers about 48,000 family law cases compared to about 97,000 FED and small claims cases.
- There is demand for affordable help in the fields of landlord-tenant and small claims cases and this would be a good entry point for certified LLLTs.

#### *Estate Planning*

See Appendix G for the full Subcommittee report.

The Estate Planning Subcommittee concluded that estate planning is not a suitable area of practice for LLLTs. The primary arguments against LLLTs being involved in estate planning are:

- There is no shortage of low cost attorneys (including many newer attorneys) in Oregon who handle wills and estate planning matters at very reduced and usually fixed rates;
- There is no evidence that the approximately 40% of Oregonians who die intestate do so because they could not afford a lawyer. People who die intestate or rely on forms they find online would continue to do so. LLLTs add no value in this area; and
- There is no such thing as a “simple will.” Ala carte services and use of online and template forms without analysis and plans already do more harm than good.

### *Conclusion*

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The Task Force recommends that the Board of Governors consider the possibility of the Bar’s creating a Limited License Legal Technician (LLLT) model as one component of the BOG’s overall strategy for increasing access to justice. It further recommends, should the Board decide to proceed with the LLLT concept, that it begin with the suggestions developed by Task Force Subcommittees. The Task Force also suggests that the first area that be licensed be family law, to include guardianships.

It should be noted that this recommendation is not unanimous one the Task Force, and that there are many members of the Task Force not in support of any sort of Licensed Legal Technician program. All were in agreement, however that, at a minimum, the Bar might want to explore creating a voluntary paralegal registry, so that members of the public who wish to can learn more about the qualifications of the paralegal from whom they are seeking legal services.

# LLLT Program

About the Program and the  
Licensing Process

# Impetus Behind the LLLT Rule

## 2003 Civil Legal Needs Study

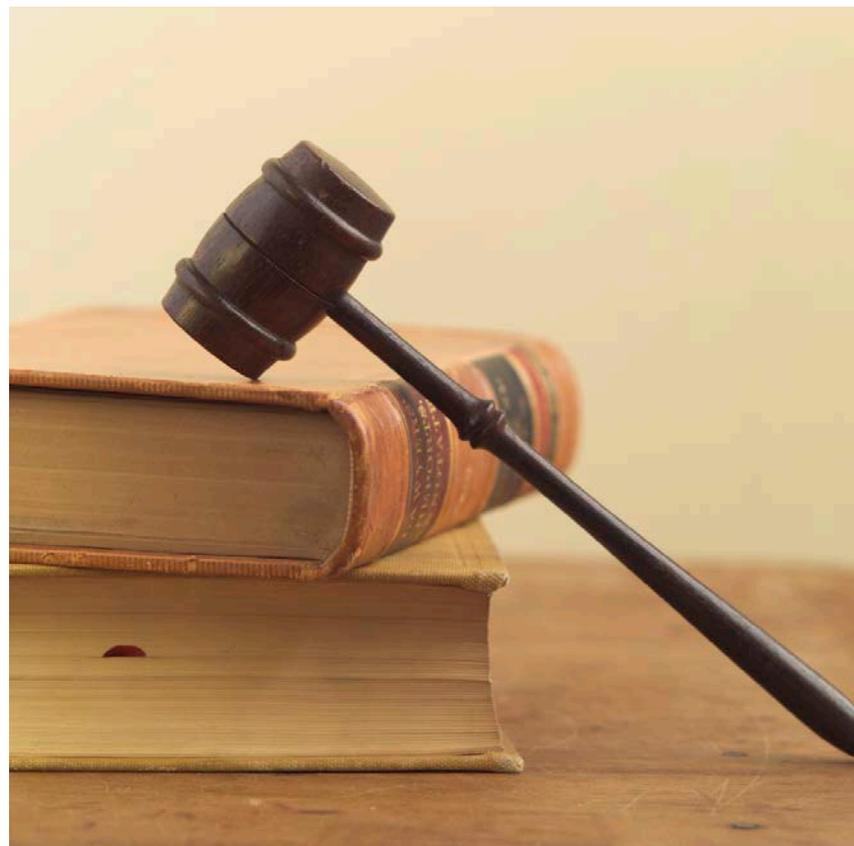
- Revealed glaring unmet need for legal services in WA low-income population (defined as families with incomes below 125% of the Federal Poverty Level)

## GR 25

- Instructed the Practice of Law Board to make recommendations re authorizing non-lawyers to “engage in certain defined activities that would otherwise constitute the practice of law as defined in GR 24.” GR 25(c)(4).

# Supreme Court Order

June 15, 2012: Supreme Court issues order adopting LLLT Rule, stating “[w]e have a duty to ensure the public can access affordable legal and law related services, and that they are not left to fall prey to the perils of the unregulated market place.”  
Order at 5-6.





**Admission  
to Practice  
Rule  
(APR) 28**

**Created LLLT Program &  
LLLT Board**

**Authorizes limited  
practice of law by  
nonlawyers in approved  
practice areas**

**Specifies requirements for  
licensure**

# Legal Technicians may:

Inform clients of procedures and course of legal proceedings

Provide approved and lawyer prepared self-help materials

Review documents and exhibits from opposing party and explain them

Select, complete, file, and serve approved and lawyer prepared forms and advise of their relevance

Advise clients of necessary documents and explain their relevance

Assist client in obtaining necessary documents



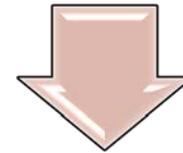
LLTs may not (unless permitted by GR 24):



# Initial Practice Area



Family law  
chosen as first  
practice area



Approved by  
Supreme Court  
in March 2013

# Defining the Family Law Scope of Practice

**Family law shall include (subject to limitations):**

- **Child support modification actions**
- **Dissolution and legal separation actions**
- **Domestic violence actions**
- **Committed intimate relationship actions**
- **Parenting and support actions**
- **Parenting plan modifications**
- **Paternity actions**
- **Relocation actions**

# Legal Technicians shall:

Be at least 18 years of age

Have a minimum associate level degree

Meet education, examination, and  
experience requirements

Show proof of financial responsibility

Show proof of continuing legal  
education courses

Abide by a code of ethical conduct  
(LLLT RPC)

Be subject to discipline

# Pathway to Admission

## STEP 1: COMPLETE EDUCATION

- **Minimum associate level degree**
- **Core Education:** 45 credit hours at an ABA approved program
- **Practice Area Education**

## STEP 2: PASS EXAMINATIONS

- **Core education exam**
- **Practice area exam**
- Exams include multiple choice, essay, and practice exercise sections

## STEP 3: ESTABLISH EXPERIENCE

- **3,000 hours of substantive law-related experience**
- Supervised by a licensed lawyer
- Within 3 years before or after passing examination

# Step 1: Core Education, 45 Credit Hours

Intro to Law and Legal Process, 3 credits

Civil Procedure, 8 credits

Legal Research, Writing, and Analysis, 8 credits

Contracts, 3 credits

Professional Responsibility/Ethics, 3 credits

Law Office Procedures and Technology, 3 credits

Interviewing and Investigation Techniques, 3 credits

**ELECTIVES:** Applicant may take remaining credits as legal studies elective courses



# Limited Time Waiver

The Board will waive the **associate degree** and **core education** requirements, if you have:

1. Passed the Certified Paralegal Exam (NALA) **OR** the Paralegal Advanced Competency Exam (NFPA) **OR** the Professional Paralegal Exam (NALS)

2. Active certification as a NALA Certified Paralegal **OR** NFPA Registered Paralegal **OR** NALS Professional Paralegal

3. 10 years of substantive law-related experience supervised by a licensed lawyer

# Limited Time Waiver Applications

## How to Apply

- Meet all 3 requirements
- Provide original certification documents
- Obtain Declaration(s) of Supervising Lawyer(s)
- Pay \$150 application fee

## Restrictions

- Is *not* a license to practice as an LLLT
- Does *not* waive practice area education
- Must apply for waiver by December 31, 2016
- Apply for licensure by December 31, 2018 or waiver will expire

# Step 1 continued

## Practice Area Education

Must be taken in each practice area

Must be developed by or in conjunction with an ABA approved law school

Should include WA law specific topics



## Family Law Courses

Developed by all 3 WA law schools

Offered by UW in Winter 2014, with all law schools providing instruction

To be offered by live webcast and in person

# Family Law Courses

## Course Description

- 5 credits of basic domestic relations subjects
- 10 credits in advanced and WA specific domestic relations subjects

## Core Prerequisites

- Intro to Law & Legal Process
- Civil Procedure
- Legal Research, Writing, & Analysis
- Professional Responsibility
- Interviewing & Investigation

## How to Enroll for Winter 2014

- Complete prerequisites **OR**
- Have a paralegal degree from an ABA approved program with  $\frac{1}{2}$  of 45 core credits completed, **OR**
- Have an approved waiver
- Submit enrollment form **OR** waiver application by December 16, 2013

# Step 2: Examination

**When can I apply?**

- Early Fall 2014
- After completing the core and practice area education

**Do I have to pass both exams to be licensed?**

- Yes, for initial licensure
- For new practice areas, LLLTs take only the practice area exam

**When is the 1<sup>st</sup> exam?**

- Approx. mid-late Fall 2014

# Step 3: Experience

## “Substantive law-related work”

- Requires knowledge of legal concepts and is customarily but, not necessarily, performed by a lawyer

## “Supervised”

- Lawyer personally directs, approves, and has responsibility for work performed

## 3,000 Hours of Experience

- Approx. 18 months full time
- Within 3 years before or after notification of passing exams

## Declaration(s) of Supervising Lawyer(s)

- Certification of substantive experience and period of supervision by lawyer



# Learn More

Visit our website at  
[www.wsba.org/llt](http://www.wsba.org/llt)

Contact Thea Jennings at (206)  
727-8289 or [theaj@wsba.org](mailto:theaj@wsba.org)

## Draft Bill

### LICENSED LEGAL TECHNICIANS

1. Subject to the approval of the Supreme Court, the board of governors may adopt a plan to license legal technicians to provide a limited scope of legal services to the public independent of supervision by licensed attorneys. The board may create a Legal Technicians Licensing Board (LTLT Board) which, subject to approval of the Supreme Court, shall have authority to:

(a) establish the education, experience and examination requirements for licensure of legal technicians;

(b) define areas of law for licensed legal technician practice and establish the special requirements for certification in each practice area;

(c) establish continuing education requirements;

(d) promulgate and enforce rules of professional conduct and disciplinary procedures for licensed legal technicians;

(e) require licensed legal technicians to contribute to the OSB Client Security Fund;

(f) establishing financial responsibility requirements; and

(g) establish application, annual licensure, special certification, and any other fees necessary to carry out the duties and responsibilities of the LTLT Board.

2. An applicant for licensure must satisfy all of the requirements of ORS 9.220 (1)-(2) and all other requirements that may be established by the LTLT Board.

3. Oregon law of attorney-client privilege and the law of a lawyer's fiduciary responsibility to the client shall apply to the Licensed Legal Technician-client relationship to the same extent as to the attorney-client relationship.

### **Formulation of Rules of Professional Conduct; Formulation of Rules of Procedure.**

(1) The LLLT Board shall formulate rules of professional conduct, and when such rules are adopted by the Supreme Court, they shall be binding upon all LLLTs.

(2) The board, subject to the approval of the Supreme Court, may also adopt rules of procedure relating to the investigation of the conduct of LLLTs and applicants for a LLLT license, the reinstatement of such a license, and relating to the conduct of licensing, reinstatement, and disciplinary proceedings.

#### **Comment:**

Subsection (1) is based on ORS 9.490(1). Subsection (2) is based on ORS 9.542(1). It was part of the proposed limited law advisor statute drafted by the 1992 Task Force.

### **Limited Licensed Legal Technician Client Security Fund.**

(1) As used in this section “client security fund” means a fund created under subsection (2) of this section.

(2) The board may adopt a plan to relieve or mitigate pecuniary losses to the clients of LLLTs caused by dishonest conduct of those LLLTs in their work as LLLTs. The plan may provide for establishing, administering and dissolving a separate fund and for payments from that fund to reimburse losses and costs and expenses of administering the fund. The board may adopt rules of procedure to carry out the plan. The insurance laws of the state shall not apply to the fund.

(3) A client security fund may include:

(a) Transfers by the board from other available funds;

(b) Voluntary contributions and payment by licensees under subsection (4) of this section;

(c) Claims recovered under subsection (7) of this section; and

(d) Income from investments of the fund.

(4) To establish and maintain a client security fund, the board may require an annual payment by each active LLLT. The payment authorized by this section shall be due at the same time, and enforced in the same manner, as payment of the annual license fee.

(5) (a) Upon the filing of a claim, verified under oath, by a client claiming a pecuniary loss under subsection (2) of this section, the board or its designated representatives shall determine if the person named in the

claim as the LLLT whose dishonest conduct caused the loss maintained an office in the State of Oregon at the time of the transaction out of which the claim arose; and

(1) Has been found guilty of a crime arising out of the claimed dishonest conduct which caused the loss;

(2) In the case of a claim of loss of \$5,000 or less, has had his or has resigned his or her license due to circumstances arising out of the claimed dishonest conduct which caused the loss; or

(3) Has been the object of a judgment entered in any proceeding arising out of the claimed dishonest conduct which caused the loss and, if the object of a judgment for money entered in favor of the claimant, has failed to pay the judgment, and execution issued on the judgment has been returned uncollected or that issuance of execution would be a useless act.

(b) After complying with subsection (a) of this section, if the board or its representatives require additional information to determine the claim, the board or its representatives may compel by subpoena the person named in the claim as the LLLT whose dishonest conduct caused the loss, or any other person having knowledge of the matter, to appear for the purpose of giving testimony, and may compel by subpoena the production of records, documents and other things pertinent to the claim. The subpoena shall have the same force and effect as in a civil action in circuit court for the county in which the person was served or in the county in which the principal office of the board is located.

(6) (a) Any person who has made a claim with the Board of LLLTs concerning a loss allegedly caused by the dishonest conduct of the person's LLLT, or who has given information to the board relative to a proposed or pending client security fund claim shall be absolutely immune from civil liability for such acts.

(b) The Board of LLLTs, its officers, the members of any client security fund committee, investigators, agents, and employees shall be absolutely immune from civil liability in the performance of their duties relative to proposed or pending client security fund claims.

(7) Reimbursement from the client security fund is discretionary; however, the board shall not authorize payment unless the conditions of subsection (5)(a) of this section have been found to exist. However, the board may, in its sole discretion, waive one or more of the conditions of subsection (5)(a) of this section in cases of extreme hardship or special and unusual circumstances. The LLLT Board is subrogated, in the amount that a client's claim is reimbursed from the client security fund, to all rights and

remedies of that client against the LLLT whose dishonest conduct caused the loss, or against the estate of the LLLT, or against any other person liable for the loss.

**Comment:**

This language is taken verbatim from ORS 9.615 through ORS 9.665 which created the Oregon State Bar Client Security Fund. It was part of the proposed limited law advisor statute drafted by the 1992 Task Force.

Most client security fund claims arise from the misappropriation of lawyer trust account funds. While this writer is not in favor of authorizing trust accounts for LLLTs, misappropriation of funds could still occur when clients prepay for LLLT services which are not rendered by the practitioner. Therefore, a client security fund is still a necessary regulatory component.

**Professional Liability Coverage**

(1) The board shall require LLLTs to carry professional liability coverage or to secure and provide some other proof of financial responsibility, of a type and amount deemed appropriate by the board, prior to practicing LLLT activities. The board shall be empowered, either itself or in conjunction with other organizations, to do whatever is necessary and convenient to implement this provision, including the authority to own, organize and sponsor any insurance organization under the laws of the State of Oregon and to establish a LLLT professional liability fund.

(2) This fund, if established, shall pay, on behalf of LLLTs whose principal offices are in Oregon, all sums as may be provided under such plan which any such LLLT shall become legally obligated to pay as money damages because of any claim made against such LLLT as a result of any act or omission of such LLLT in rendering or failing to render services for others in the person's capacity as a LLLT or caused by any other person for whose acts or omissions the LLLT is legally responsible. The board shall have the authority to assess each LLLT whose principal office is in Oregon for contributions to such fund, to establish definitions of coverage to be provided by such fund and defend and control the defense against any covered claim made against such LLLT. Any fund so established shall not be subject to the Insurance Code of the State of Oregon. Records of a claim against the fund are exempt from disclosure under ORS 192.410 to 192.505.

(3) For the purposes of subsection (2) of this section, the principal office of a LLLT is considered to be the location where the LLLT engages in LLLT activities more than 50 percent of the time. If a LLLT performs LLLT services in a branch office outside Oregon and the main office to which the branch office is connected is in Oregon, the principal office of the LLLT is not considered to be in Oregon unless the LLLT engages in LLLT activities in Oregon more than 50 percent of the time engaged in LLLT activities.

**Comment:**

This language is taken from ORS 9.080(2) authorizing the Board of Governors to create the Professional Liability Fund. It was part of the proposed limited law advisor statute drafted by the 1992 Task Force.

This language authorizes the governing board to determine what type of financial responsibility is most appropriate for LLLTs.

The Subcommittee on Education and Experience Requirements recommends:

**Both a Voluntary Oregon Registered Paralegal program and Limited License Legal Technician program**

Preliminary Statement: The availability of affordable legal services to the public is a goal to which the Oregon State Bar is committed and which is supported by the longstanding commitment of Oregon lawyers and the Code of Professional Responsibility. The employment of Paralegals is a longstanding practice of some law firms, government agencies, and in-house counsel which reduces the cost of legal services to their clients. Utilization of and reliance upon Paralegals by Attorneys in the delivery of legal services is supported and encouraged by the Bar.

Voluntary registration of Paralegals would provide a standard for the utilization of this valuable profession and provide appropriate recognition for the advancements this paraprofession has made in the legal industry. The creation of a separate professional status of Limited License Legal Technicians to serve the public would further enhance the opportunities available to the public for utilization of alternative legal resources at a reduced cost.

For purposes of this Rule, a **Voluntary Oregon Registered Paralegal** is a person who meets the State's requirements for this profession and who is employed or retained by a lawyer, law office, corporation, governmental agency or other entity and who performs specifically delegated substantive legal work for which a lawyer is responsible, such as: apply substantive knowledge of the law and legal procedures in rendering direct assistance to lawyers engaged in legal research, preparing or interpreting legal documents, drafting procedures, meeting clients and witnesses and other aspects of the operation of a law office, government agency, or in-house counsel.

For purposes of this Rule, a **Limited License Legal Technician** will be someone who meets the State's requirements for this profession and who is permitted to provide limited legal assistance to clients without being under the supervision of a lawyer as defined under these Rules.

**Voluntary Oregon Registered Paralegal**

- A Voluntary Oregon Registered Paralegal is defined as a person who:
  1. Is at least 18 years of age; and
  2. Has a minimum Associates level Degree in Paralegal or Legal Studies or related program from an ABA Approved Institution or other college or institution approved by the Oregon State Bar, with:
    - a) 45 quarter credits (or equivalent) in Paralegal Core Curriculum, as part of an AA or BA/BS;
      1. Paralegal Core Curriculum shall be 45 quarter credits (or equivalent) in Paralegal or Legal Studies; as defined in the LLLT Core Education Requirements, including: introductory law, civil procedure, legal research, professional responsibility, law office management, interviewing skills and legal technology; or
    - b) A law school degree from an ABA Approved institution provided; however, that the person:
      - 1) is not licensed as a lawyer; or

- 2) a lawyer who has been disbarred or suspended; and
3. Show proof of continuing learning education courses; and
4. Abides by the Oregon Code of Professional Responsibility; registers and pays required fees; is subject to discipline; and complies with other such regulation as enacted by the Oregon State Bar; and
5. Works under the *supervision and direction* of a licensed lawyer or government agency.

- **Exception to Education Requirements/Grandfather Clause.**

An applicant for Voluntary Oregon Registered Paralegal may request waiver of the Education requirements within 2 years of the effective date of the Voluntary Oregon Registered Paralegal program. The Bar will waive the Education requirement if the applicant has:

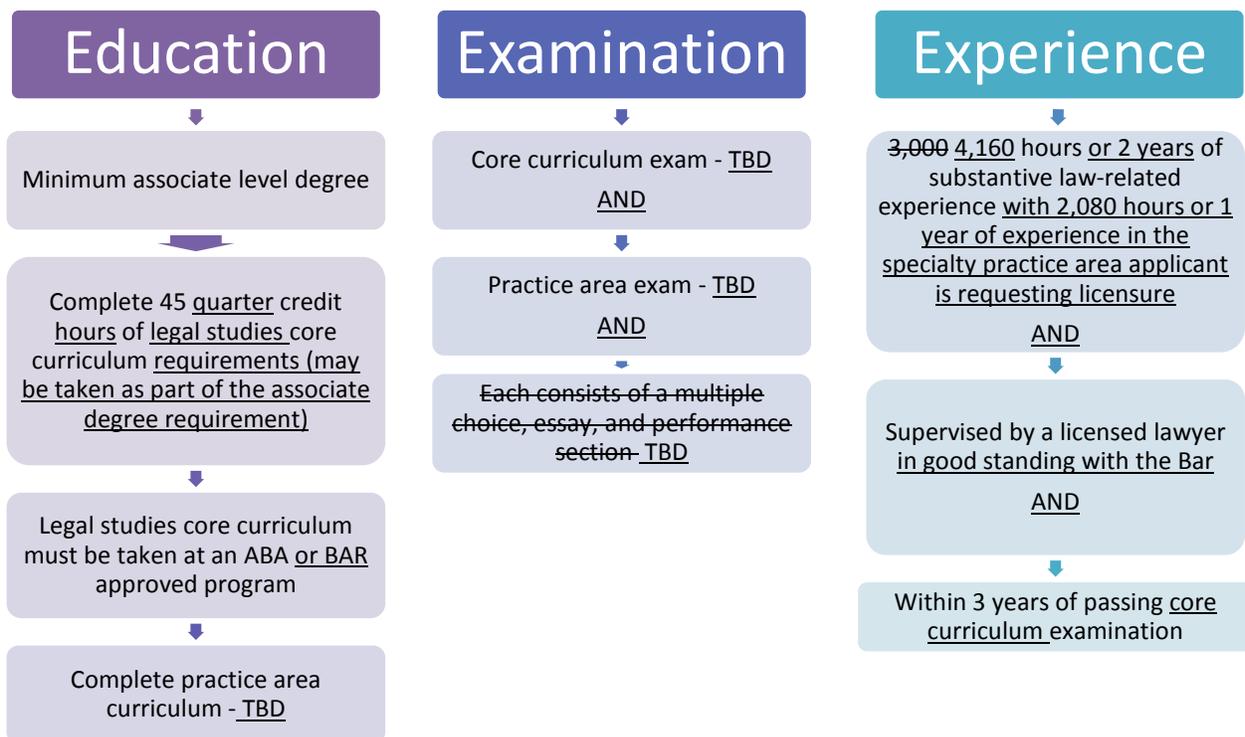
- a) Passed the Certified Paralegal Exam (NALA) **OR** the Paralegal Advanced Competency Exam (NFPA) **OR** the Professional Paralegal Exam (NALS) **OR** the Paralegal CORE Competency Exam (NFPA); and
- b) Active certification as a Certified Paralegal **OR** PACE Registered Paralegal **OR** Professional Paralegal **OR** CORE Registered Paralegal ; or
- c) Has 10 years of substantive law related experience as a paralegal, supervised by a licensed lawyer in good standing with the Bar, as evidenced by a supervising attorney declaration of same.

\*Note: Leslie Harris is abstaining from the Voluntary Oregon Registered Paralegal portion of the subcommittee's recommendations.

## 1. Limited License Legal Technicians shall:

- Be at least 18 years of age;
- Have a minimum associate level degree;
- Meet education, examination, and experience requirements;
- Show proof of financial responsibility;
- Show proof of continuing learning education courses – TBD;
- Abide by a code of ethical conduct – TBD;
- Not be a lawyer who has been disbarred or suspended in any state; and
- Be subject to discipline - TBD.

2. To be eligible for licensure, candidate shall complete the following:



3. Associate Degree and Core Curriculum Requirement Waiver; Grandfather Clause. The applicant may request a waiver of the associate degree and core curriculum requirements within 2 years of the LLLT program effective date (TBD), if:

Until 2 years after the effective date of the program - TBD, the Board will waive the associate degree and *core curriculum requirements*, if the applicant has:

1. Passed the Certified Paralegal Exam (NALA) **OR** the Paralegal Advanced Competency Exam (NFPA) **OR** the Professional Paralegal Exam (NALS)

2. Active certification as a Certified Paralegal **OR** PACE Registered Paralegal **OR** Professional Paralegal

3. 10 years of substantive law-related experience supervised by a licensed lawyer in good standing with the Bar

4. Legal Studies Core Curriculum; the subcommittee recommends 45 Quarter Credits (or equivalent) to include the following topics:

Intro to Law and Legal Process

Ethics and Professional Responsibility

Legal Research and Library Use

Computer Assisted Legal Research

Applied Legal Research and Legal Writing

Interviewing and Investigation Techniques

Law Office Procedures and Technology /Software

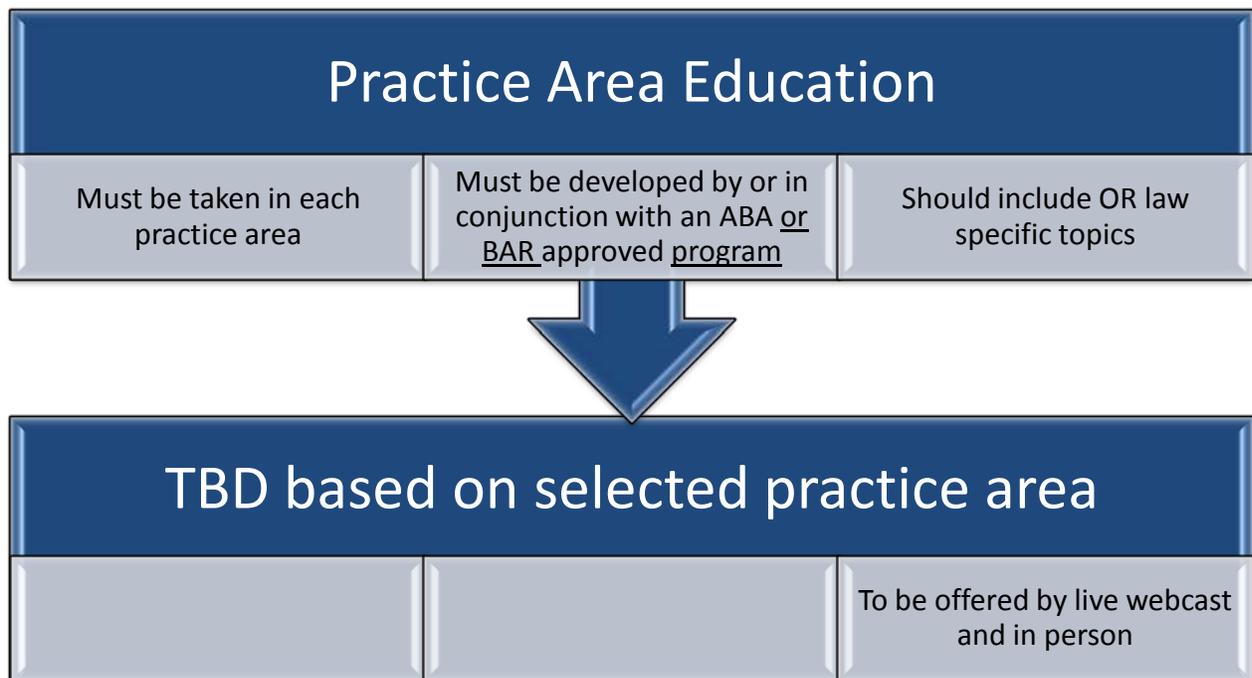
Law Office Management/Administration

Civil Procedure/Litigation

ELECTIVES: Applicant may take remaining credits as paralegal studies or legal elective courses

\*Note: the subcommittee would revisit this section and refine it, should the recommendation be approved.

4a. Practice Area Education, recommend requirements:



5. Examination. The subcommittee recommends the use of an existing National Certification Exam to satisfy the legal studies core curriculum requirement of the Examination. Further, we recommend that the practice area portion of the Exam be created based upon the specific practice area selected for licensure.

6. Experience Requirements, recommend to include:

### “Substantive law-related work”

- Requires knowledge of legal concepts and is customarily but, not necessarily, performed by a lawyer

### “Supervised”

- Lawyer in good standing with the Bar personally directs, approves, and has responsibility for work performed

### 4,160 Hours of Experience

- Approx. 2 years full time
- With 2,080 hours or 1 year of experience in the specialty practice area applicant is requesting licensure
- Within 3 years before or after notification of passing core curriculum and practice area exams

### Declaration(s) of Supervising Lawyer(s)

- Certification of substantive experience and period of supervision by lawyer

7. Continuing Education Requirements: Subcommittee recommends a two-prong CLE requirement, similar to the OSB Attorney CLE Requirement. We recommend a 45 CLE hour requirement every 3 years with a 3 year rotating reporting cycle. One prong of the CLE component would cover the core CLEs including: ethics (6 hours), mandatory reporting (3 hours), access to justice (3 hours) and practical skills - legal technology (3 hours), office administration, etc...) and the other prong would be specific to the specialty license - TBD.

\*Note: the subcommittee would revisit this section and refine it, should the recommendation be approved.

**Should the LLLT proposal be approved by the BOG, the Education and Experience Subcommittee members; Shari Bynum, Gerry Brask, Jill Tanner, Leslie Harris, and Linda Odermott, have committed to seeing this project through to final resolution.**

## Outline of Possible Tasks to be Performed by Licensed Legal Technicians in Oregon

Discussion Draft - LLLT Task Force, Family Law Subcommittee, 1/21/14

1. Provide state forms (such as those on the OJD web site), help them choose which ones to use, and assist in completing these forms, in a ministerial capacity and without giving legal advice about the case.
2. Provide generalized explanations of the law without applying it specifically to the client's case or fact pattern. Explain legal options without offering legal opinions. For example:
  - Options for children include joint or separate custody.
  - Define terms such as "joint custody", "sole custody," "separate property," maintenance vs. transitional vs. compensatory spousal support, "custody" vs. "parenting time."
  - What happens to separately acquired property (gifts, premarital and inheritances): Answer, the court can divide it or not. "The rules are complex, you will need a lawyer to advise you on how the rules apply to your case."
3. Review documents completed by litigants to determine if they are completely and correctly completed.
4. Review and interpret necessary background documents (for example, review discovery and client's materials) documents and offer limited explanations.
5. Provide or suggest published information to clients pertaining to legal procedures, client's legal rights and obligations and materials of assistance with children's issues (for example, Isa Ricci's *Mom's House, Dad's House*)
  - Any limits? Materials from Planned Parenthood? Advocacy groups such as DV organizations, dad's rights groups and religious organizations?
6. Explain court procedures without applying it specifically to the client's case or fact pattern (for example, difference between traditional trial and informal domestic relations trial in Deschutes County).
7. Filing and serving legal documents at the client's request.
8. Allow attendance at court proceedings?

### ADDITIONAL QUESTIONS:

- Can the LLLT's work with both parties to the case?
- Any conflict with the PLF if paralegals in firms do this type of work?

## **Use of Limited License Legal Technicians in Landlord / Tenant Law & Small Claims Advising**

Landlord-tenant legal work is likely suitable as an initial area of practice for Limited Legal License Technicians (LLLTs) for several reasons. First, it is a discrete area of the law with discrete tasks. All remedies are statutory and statutes are strictly construed. In an FED, a prevailing landlord is limited to recovery of possession of the property (plus fees and costs). If a tenant prevails her recovery is limited to her fees and costs. There is little overlap with other areas of the law such as business law, torts, family law, bankruptcy, etc.

Generally both parties are self-represented. Parties to these cases are often inexperienced, lack business skills, or are landlords with few units. All parties are potential clients who could benefit by some direction or assistance in navigating the legal process. Simply explaining the process, timeline, potential for technical errors (avoiding them or identifying them), and the likely results at trial would help inform the parties' as to their options, negotiating strategy, and need to emotionally and financially prepare for what will come next.

Few attorneys are interested in these cases because they usually involve a small amount of billable time and there are relatively small dollar amounts at stake.

There are lots of forms and information available from the various circuit courts, and it would be fairly simple to standardize the forms for uniform, state-wide practice. Many of the notices required by statute are also already formalized by legal form publishing companies and could be standardized by updates to statutes or the UTCR.

The complexities in landlord-tenant cases come in collateral issues such as tenant rights when domestic violence is part of the landlord's reason for eviction, personal injury claims arising out of tenancy, Fair Housing Act issues and reasonable accommodation requests, violations of local building codes, and the removal of squatters and non-tenants. Training on identifying and appropriately handling these issues would require a modest amount of time, making it an attractive option for LLLTs.

There are some limitations to the value of LLLT for these cases. Most of an attorney's work in this field often relies on communications with the other party—either settlement negotiations by email, letter, or phone, or by drafting and sending written notice required by the statute. If they are forbidden by ethical rules from this communication, their value to their client may be substantially limited.

Another concern is that eviction cases are designed to progress quickly. If a client needs a letter written, communication to an opposing party, or representation at trial, the time to get a lawyer is very brief. By the time a client has called and set up an appointment with an LLLT, they may not have time to call and set up a separate appointment with an attorney.

A companion set of cases that may be suitable for LLLT work are small claims matters. Many of these cases are a result of landlord-tenant relationships arising as complaints for damages caused by tenant or tenants claiming the return of deposits or the value of personal property. These cases are limited in scope because of the

statutory limit on the amount of damages and the one-year statute of limitations for landlord-tenant claims. Lawyers are generally barred from appearing in small claims matters and because of the small amount at controversy lawyers are usually not hired in these cases. Potential clients often need help with filling out the forms, understanding the substantive rules involved, understanding the presentation of evidence, and preparing their cases for trial or mediation.

The numbers of cases filed show that there is a substantial demand for affordable legal services in these fields of law. In 2011 (the latest numbers available on the OJD website) there were 47,918 family law type cases filed in Oregon Circuit Courts. Of that number about 10,800 were Family Abuse Prevention Restraining Order cases leaving about 37,118 other family law cases. By comparison there were about 23,700 FED cases filed and over 73,600 small claims cases. The FED cases and small claims cases do not include cases that were filed in the various municipal and justice courts across the state. There are more than twice the number of landlord-tenant and small-claims cases filed in Oregon courts than there are family law cases, implying a larger pool of potential clients for LLLTs in this field than in others. However, it should be noted that entity owners and property managers are already allowed to file FEDs without representation and regularly do so. Entities are also permitted to file in small-claims court without an attorney. Because non-attorneys are already sanctioned to “practice law” in these arenas, there may not be much paid demand for advise-only consultations.

On balance, the demand for affordable help in the fields of landlord-tenant law and small-claims cases certainly exists and may well be a good entry point for a limited-license legal technician program to operate.

## LLLT Task Force, Estate Planning Sub-Committee 01/23/2014

For a variety of reasons, estate planning is not a suitable area of practice for Limited Legal License Technicians (“LLLTs”) because there is no demonstrated need for lower cost legal services and no access to justice argument. There is no shortage of low cost attorneys in Oregon willing to handle wills and estate planning matters. Many new and solo attorneys practice in this area in particular and rates already tend to be very low and competitive. There is also no evidence that the approximately 40% of Oregonians who die intestate do so because they could not afford to hire lawyers to prepare will or estate planning documents for them. For estates that end up in probate, most courts compel the heirs to engage legal counsel. The cost of legal fees are controlled and managed by the probate court and the legal fees are paid from the proceeds of the estate. Unlike other areas of the law, consumers do not go without counsel because they can’t afford to pay a lawyer upfront.

Oregon’s intestate succession laws protect the heirs of decedents who die intestate. Simple estate planning template forms are readily available online and from Stevens Ness and many consumers use them. However, people who self-represent tend to cause problems for themselves. Their estates and heirs typically pay out far more in legal fees to resolve disputes caused by poorly drafted wills and related documents than if they had died intestate or paid even a nominal fee to get succession planning advice. The problem with a la carte estate planning documents is that they easily (though usually unintentionally) harm the intended heirs. Will forms are deceptively simple. Common message is that “stakes are high, there is no such thing as a simple will, and the devil is in the details.” Having an LLLT assist with form preparation does not solve this problem. Only sound legal analysis and strategic advice can address and resolve complex issues in the tax and estate planning arena.

Assuming LLLTs become authorized to practice in the estate planning arena, it is unlikely that consumers who die intestate or choose to rely on templates or online forms rather pay even nominal fees for legal services would pay for the advice and assistance of an LLLT. Further, consumers with any wealth at stake, concern about guardianship of their children, or in need of bulletproof advance directives will continue to engage the services of lawyers who specialize in the field. In short, “there is no value added to the consumer by creating a class of non lawyers authorized to prepare estate planning documents.”

Consulted with:

1. Two local practitioners (one small firm, one big firm).
2. Multnomah County Circuit Court Judge who regularly handles probate matters (as well as family law).
3. Chair of OSB Estate Planning Section.
4. Members of Executive Committee of OSB Estate Planning Section.

Concerns:

1. No access to justice argument.
2. People who die intestate or who rely on online forms will do so anyhow (no value added to the consumer).
3. No such thing as a “simple will.”
4. There’s a critical role for paralegals to play in the practice (and they do) but not solo.
5. Lawyers already handle these matters at very low rates.
6. High value clients will pay for lawyers.
7. Concern about whether and how privilege will attach.
8. Who will cover malpractice?
9. How get relevant and necessary experience in drafting without court litigation?
10. Issue of dual representation.
11. Online and template forms without analysis and a plan are useless and do more harm than good.
12. LTTT’s won’t be able to make any money without charging lawyers rates.
13. High risk with too much at stake.
14. Concern about potential for increased elder abuse due to lack of due diligence, legal analysis.
15. Can only work with fiduciary relationship.

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** February 13, 2015  
**Memo Date:** January 28, 2015  
**From:** Danielle Edwards, Director of Member Services  
**Re:** Volunteer Appointments

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### Action Recommended

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

### Background

#### Client Security Fund Committee

Due to the resignation of one committee member the staff liaison recommends the appointment of **David J. Malcolm** (990789). Mr. Malcolm selected CSF as his first preference for committee appointment through the volunteer opportunities survey last year.

**Recommendation:** David J. Malcolm, member, term expires 12/31/2016

#### Legal Heritage Interest Group

An existing member needs to be appointed to serve as secretary for the remainder of the year. **Mary Anne Anderson** (903593) volunteered and the group members support her willingness to serve. Ms. Anderson has served on the LHIG since 2011.

**Recommendations:** Mary Anne Anderson, secretary, term expires 12/31/2015

#### Legal Services Program Committee

Due to a lack of interest from public member candidates at the end of last year, one non-lawyer seat on the LSP Committee went unfilled. Past BOG member, **Jenifer Billman**, has expressed an interest and agreed to serve on the committee if appointed.

**Recommendation:** Jenifer Billman, public member, term expires 12/31/2017

#### Loan Repayment Assistance Program Committee

The policies and guidelines of the loan repayment assistance program outline the committee's composition which includes one representative from the civil area of public service law. **Lori Alton** from the Oregon Law Center is interested in serving since the previous representative is no longer eligible for this position. Ms. Alton is familiar with the OLC and LASO personnel policies, salary scales, and other information relevant to committee business. The executive directors from OLC and LASO support her participation as does the OSB staff liaison.

**Recommendation:** Lori Alton, member, term expires 12/31/2017

#### Minimum Continuing Legal Education Committee

Due to the resignation of one member the committee officers and staff liaison recommend the appointment of **Linda Gouge** (920672). Ms. Gouge offers geographic diversity to the committee and expressed a willingness to serve through the volunteer opportunities survey last year.

**Recommendation:** Linda Gouge, member, term expires 12/31/2016

**Procedure & Practice Committee**

Last November the BOG appointed Neil Jackson to serve as chair of the Procedure & Practice Committee. Mr. Jackson declined the appointment due to a conflict with another volunteer position. **Steven C. Berman** (951769) is recommended by the staff liaison to fill the chair position based on his prior service as secretary of the committee and his willingness to serve if appointed.

**Recommendation:** Steven C. Berman, chair, term expires 12/31/2015

**State Lawyers Assistance Committee**

Due to a resignation the committee needs one new member appointed. The committee recommends **Sharon D. Maynard** (925843) who attended in the January meeting and is willing to serve. Ms. Maynard has experience working with individuals dealing with mental health and cognitive impairment issues.

**Recommendation:** Sharon D. Maynard, member, term expires 12/31/2018

**Disciplinary Board**

One additional member is needed for the region 5 board. Staff recommends the appointment of **Samuel C. Kauffman** (943527). Mr. Kauffman has extensive experience as a criminal defense attorney from a variety of law firm sizes and has agreed to serve if appointed.

**Recommendation:** Samuel C. Kauffman, member, term expires 12/31/2017

**House of Delegates**

Three new members are needed to fill vacant seats on the HOD in regions 5, 6, and Out of State. **Amber L. Labrecque** (094593) is an associate at a small firm in Portland and expressed an interest in the HOD through the volunteer opportunities survey. **Karen E. Clevering** (082885) practices in Salem at the DOJ and is currently serving as chair of the ONLD. **Brandon G. Braun** (133097) was appointed to the HOD last year in region 2 before moving to Spokane, WA which required his removal as a delegate. He is again interested in serving on the HOD as an out of state member.

**Recommendation:** Amber Labrecque, region 5 delegate, term expires 4/17/2017

**Recommendation:** Karen E. Clevering, region 6 delegate, term expires 4/17/2017

**Recommendation:** Brandon G. Braun, out of state region delegate, term expires 4/19/2016