

**Oregon State Bar**  
**Meeting of the Board of Governors**  
February 12, 2016  
**Open Session Minutes**

President Ray Heysell called the meeting to order at 9:00 a.m. on February 12, 2016. The meeting adjourned at 1:30 p.m. Members present from the Board of Governors were John Bachofner, Jim Chaney, Chris Costantino, Rob Gratchner, Guy Greco, Michael Levelle, John Mansfield, Vanessa Nordyke, Ramón A. Pagán, Per Ramfjord, Kathleen Rastetter, Julia Rice, Josh Ross, Kerry Sharp, Rich Spier, Kate von Ter Stegge, Charles Wilhoite, Tim Williams and Elisabeth Zinser. Staff present were Helen Hirschbiel, Amber Hollister, Dawn Evans, Susan Grabe, Dani Edwards, Kay Pulju, Kateri Walsh, Judith Baker, and Camille Greene. Also present were Carol Bernick, PLF CEO, Teresa Statler, PLF Board of Directors Vice-Chair, Colin Andries, ONLD Chair, Jovita Wang ABA HOD YLD Delegate, Marilyn Harbur, ABA HOD Delegate, Nadia Dahab, Oregon Federal Bar Association, and Lisa Ludwig, Chair of the Bar Press Broadcasters Council.

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

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

**2. BOG Committees, Special Committees, Task Forces and Study Groups**

**A. Board Development Committee**

Ms. Nordyke presented the committee's motion to make the appointments to various OSB committees and affiliated boards. **[Exhibit A]**

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

Ms. Nordyke presented the committee's motion for recommendations for co-graders on the Board of Bar Examiners. **[Exhibit B]**

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

**B. Budget and Finance Committee**

Mr. Mansfield gave a general financial update. Final revisions to bylaws regarding the investment committee will be presented to the board in April for consideration. The committee will be looking at the admissions process and the cost of grading the bar exam. They will also be looking at the general reserves and holdings.

**C. Policy and Governance Committee**

Ms. Hirschbiel presented the committee motion for proposed changes to the retired status rules and asked for flexibility on the timing of implementation of these rules due to the role out of the new AMS database. **[Exhibit C]**

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

Mr. Levelle presented the committee motion for board approval of the proposed strategic functions and goals. The committee proposes a reduction in the number of functions by consolidation. Mr. Ramfjord said the committee is looking for approval to proceed with these changes in concept and suggested that the wording is a work in process. Ms. Hirschbiel

suggested the board consider one of each of the four concepts at subsequent board meetings. Mr. Levelle proposed function #3 stand alone or be incorporated into another function.

**[Exhibit D]**

**Motion:** The board unanimously approved the committee motion to move forward with development of the concepts of the strategic plan.

Mr. Ramfjord presented the committee motion for proposed changes to the current sponsorship bylaw and to develop a sponsorship policy for the budgeted funds. **[Exhibit E]**

**Motion:** The board approved the committee motion 11-3-1. The motion to approve the bylaw will be on the April consent agenda. (Yes: C. Costantino, K. von Ter Stegge, P. Ramfjord, J. Chaney, V. Nordyke, R. Pagan, M. Levelle, T. Williams, G. Greco, K. Sharp, R. Gratchner. No: J. Rice, J. Bachofner, K. Rastetter. Abstain: J. Mansfield)

**D. Public Affairs Committee**

Mr. Ross and Ms. Grabe updated the board on the latest legislative activity.

Mr. Ross presented the committee motion to adopt the 2016 Legislative Priorities. **[Exhibit F]**

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

**E. Discipline System Review Committee Report**

Mr. Heysell presented members' emails containing feedback on the DSRC report. Member comments will be accepted through March 2. All comments will be sent to board members in writing, including comments from members during the regional conference calls. The DSRC report will be reviewed by the board at a special open session in March before forwarding the DSRC recommendations to the Supreme Court.

At 1:00pm, the meeting was open for public comment on the DSRC report. Ms. Ludwig presented a memo from Mr. Pat Ehlers requesting continued transparency regarding OSB complaints. **[Exhibit G]**

**3. Professional Liability Fund**

Ms. Bernick introduced the new BOD Chair-elect, Teresa Statler, and reported on the 2015 claims attorney and defense counsel evaluations. She stated that the OAAP is reaching out to law school students informing them of their services. Ms. Bernick provided a general update on the PLF's December 2015 financial statements and reported that the PLF had a \$1.1 million deficit due to investment losses and an increase in claim dollar amounts. Claims are going down but severity is rising.

Ms. Bernick presented the PLF request to approve excess cyber extortion coverage. **[Exhibit H]**

**Motion:** Mr. Greco moved, Mr. Wilhoite seconded, and the board voted to approve the PLF request. Mr. Bachofner abstained.

**4. Board of Bar Examiners**

Ms. Hirschbiel presented the BBX comments on the International Trade Task Force recommendations.

**5. OSB Committees, Sections, Councils and Divisions**

**A. Oregon New Lawyers Division Report**

In addition to the written report, Mr. Andries introduced himself and updated the board on the function of the ONLD. He reported on the ONLD's subcommittee activities and new lawyer mental health and alcohol issues.

**B.** MCLE Committee

Ms. Hirschbiel presented the proposed amendments to various MCLE rules and regulations..  
**[Exhibit I]**

**Motion:** Mr. Greco moved, Mr. Bachofner seconded, and the board voted to approve the amendments. Mr. Bachofner was opposed.

**C.** Client Security Fund Committee

Claim 2015-02 BERTONI(Miranda)

Ms. Hirschbiel asked the board to consider the request of the Claimant that the BOG reverse the CSF Committee's denial of the claim, as presented in her memo. **[Exhibit J]**

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

Claim 2015-12 CAROLAN(Avery)

Ms. Hirschbiel asked the board to consider the request of the Claimant that the BOG reverse the CSF Committee's denial of the claim, as presented in her memo. **[Exhibit K]**

**Motion:** Mr. Ramfjord moved, Ms. Rastetter seconded, and the board voted to uphold the committee's denial of the claim. Mr. Levelle voted no. Mr. Williams abstained.

Claim 2015-37 CHIPMAN(Noel)

Ms. Hirschbiel asked the board to consider the request of the Claimant that the BOG reverse the CSF Committee's denial of the claim, as presented in her memo. **[Exhibit L]**

**Motion:** Mr. Ross moved, Ms. von Ter Stegge seconded, and the board voted unanimously to uphold the committee's denial of the claim.

Claim 2015-18 GERBER(Chappue)

Ms. Hirschbiel asked the board to consider the request of the Claimant that the BOG reverse the CSF Committee's denial of the claim, as presented in her memo. **[Exhibit M]**

**Motion:** Mr. Greco moved, Mr. Ramfjord seconded, and the board voted unanimously to uphold the committee's denial of the claim. Ms. von Ter Stegge and Ms. Nordyke abstained.

Claim 2015-34 GRECO(Patillo)

Ms. Hirschbiel asked the board to consider the request of the Claimant that the BOG reverse the CSF Committee's denial of the claim, as presented in her memo. Mr. Greco removed himself from the room for the discussion and vote. **[Exhibit N]**

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

Claim 2015-22 JORDAN(Hernandez)

Ms. Hirschbiel asked the board to consider the request of the Claimant that the BOG reverse the CSF Committee's denial of the claim, as presented in her memo. **[Exhibit O]**

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

Claim 2015-32 LANDERS(Koepke)

This request was removed from the agenda.

Claim 2015-17 GERBER(Graue)

Ms. Hirschbiel asked the board to review the CSF Committee's recommendation to award \$12,500 to Mr. Graue, as explained in her memo. **[Exhibit P]**

**Motion:** Mr. Bachofner moved, Mr. Greco seconded, and the board voted to award the client \$12,500. Ms. Nordyke and Ms. von Ter Stegge abstained.

**D.** Legal Services Committee

Ms. Baker presented the committee recommendation for General Fund Disbursement, based on poverty population, for the board's approval. **[Exhibit Q]**

**Motion:** Mr. Greco moved, Mr. Ross seconded, and the board unanimously approved the committee recommendation.

**E.** Legal Ethics Committee

Ms. Hirschbiel presented the committee's request for board approval of proposed amendments to formal ethics opinions. **[Exhibit R]**

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

## **6. Other Action Items**

Mr. Williams outlined the barriers to accessing the new bar email. Mr. Chaney agreed and admitted that it is difficult to keep bar emails separate from business emails. Mr. Bachofner suggested creating a rule to forward BOG emails to work email. Ms. Nordyke does not have a problem with the email system but supports a system that works for all BOG members. Ms. Hollister shared potential implications of not using a separate email address, as laid out in her memo. **[Exhibit S]**

**Motion:** Mr. Ross moved, Mr. Levelle seconded, and the board voted to remove the email requirement. Yes: Mr. Levelle, Ms. Zinser, Mr. Ross, Mr. Ramfjord, Mr. Chaney, Ms. Nordyke, Mr. Williams, Mr. Greco, Mr. Wilhoite. No: Ms. Costantino, Ms. von Ter Stegge, Ms. Rice, Mr. Bachofner, Mr. Mansfield, Mr. Sharp, Ms. Rastetter.) Those board members who would like to continue to use the bar email should notify Camille Greene.

Ms. Dahab asked to board to help the Federal Bar Association fund an exhibit entitled "A Class Action: A Grassroots Struggle for School Desegregation in California" with a donation of \$2,000. **[Exhibit T]**

**Motion:** Mr. Ross moved and Mr. Levelle seconded to approve the donation. Ms. Zinser moved to amend the motion with a donation of \$1000 instead of \$2000, Mr. Greco seconded.

Mr. Ross commented we keep the donation at \$2000, Mr. Wilhoite, Mr. Levelle and Mr. Williams agreed. Mr. Heysell asked the board to support this rare opportunity with a donation of \$2000. Mr. Bachofner agreed. Mr. Greco reminded the board that it is in their best interest to be consistent with donation amounts. Mr. Wilhoite suggested we model our donation

amount after the amount the FBA donates. Mr. Mansfield pointed out that the board is now taking a fundamentally different position than it took when considering past FBA donation requests. Mr. Heysell clarified that the current bylaw states the board does not make such donations. Ms. Rastetter said this inconsistency in policy needs to be addressed in future sponsorship bylaw changes. Mr. Ramfjord said the current policy stating the bar should not spend member money making donations is a correct policy.

The motion to amend failed. (Yes: Mr. Ramfjord, Mr. Sharp, Mr. Greco, Ms. Zinser. No: Mr. Levelle, Ms. Costantino, Ms. von Ter Stegge, Ms. Rice, Mr. Ross, Mr. Chaney, Ms. Nordyke, Mr. Pagan, Mr. Bachofner, Mr. Wilhoite and Mr. Williams. Abstain: Mr. Mansfield.)

The original motion passed. (Yes: Mr. Levelle, Ms. Zinser, Ms. Costantino, Ms. von Ter Stegge, Ms. Rice, Mr. Ross, Mr. Chaney, Ms. Nordyke, Mr. Pagan, Mr. Bachofner, Mr. Wilhoite, Mr. Williams, Mr. Greco and Ms. Rastetter. No: Mr. Sharp, Mr. Ramfjord. Abstain: Mr. Mansfield)

## **7. Consent Agenda**

### **A. Report of Officers & Executive Staff**

#### Report of the President

In addition to his written report, Mr. Heysell reported on the ABA Mid-year meeting theme of the changing law profession.

#### Report of the President-elect

Mr. Levelle reported he is working on a project to connect with local bar associations around the state.

#### Report of the Executive Director

Ms. Hirschbiel presented the department program evaluations.

#### Director of Regulatory Services

In her written report, Ms. Evans brought to the board's attention the table of New Matters. Her staff is working on disposing of the oldest cases as reflected in the reduced case count.

#### Director of Diversity & Inclusion

No report.

#### MBA Liaison Reports

No report.

#### ABA HOD Delegate Report on ABA HOD Mid-year Meeting

Ms. Wang reported on the resolutions at the meeting and encouraged board members to contact her with any questions. Ms. Harbur reported on various items that were approved by the house, noting in particular the debate around Resolution 107, which urges states to include a diversity component in the MCLE requirements, and Resolution 105, which proposes adoption of regulatory objectives that states should apply when developing regulations for non-

traditional legal services providers. An amendment was added to reinforce the idea that the ABA does not promote non-lawyer legal services providers but rather recommends regulation of their activities in order to protect the public.

**B.** 2015 ULTA Annual Report

As written.

**Motion:** Mr. Chaney moved, Mr. Ramfjord 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

**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 12, 2016  
Executive Session Minutes**

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

A. Unlawful Practice of Law

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

B. Pending or Threatened Non-Disciplinary Litigation

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

C. Other

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

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** February 12, 2016  
**Memo Date:** February 11, 2016  
**From:** Vanessa Nordyke, Board Development Committee Chair  
**Re:** Appointments to various OSB Committees and affiliated boards

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### Action Recommended

Approve the Board Development Committee recommendations for appointments to various OSB standing committees and the Oregon Law Commission. All recommendations were approved unanimously by the committee.

### Background

#### Legal Heritage Interest Group

The Legal Heritage Interest Group is tasked with preserving and communicating the history of the OSB to interested groups. Two member appointments are recommended due to current and expected vacancies.

**Mark Douglas Monson** (110133) and **Spencer Q. Parsons** (034205) are recommended as new members with terms expiring December 31, 2018. Both indicated the LHIG as their first choice of committee service when applying for volunteer service with the OSB.

#### Public Service Advisory Committee

The Public Service Advisory Committee is responsible for advising the BOG and OSB staff on public service priorities and issues to assist in achieving the Bar's public outreach and education goals. One new member appointment is necessary to fill a vacant seat.

**Bonnie Marie Palka** (024147) is recommended as a new member with at term expiring December 31, 2018. Ms. Palka offers the perspective of having practiced in other states (California and Massachusetts) and knows four languages to varying degrees.

#### Quality of Life Committee

The Quality of Life Committee encourages and supports a culture within the legal community that recognizes, accepts, and promotes quality of life objectives as important to personal and professional development. Two new member appointments are necessary as well as the appointment of a new secretary from the existing committee membership.

**Nadia Dahab** (125630) and **Mark Baskerville** (142006) are recommended as new members with terms expiring December 31, 2017. Ms. Dahab offers the perspective of a newly admitted member and has experience as a judicial clerk which is not currently represented on the committee. Mr. Baskerville is a physician at OHSU and is actively involved with physician wellness; his perspective offers insight into how quality of life is addressed in other professions.

**Michael Turner** (095300) is recommended for the secretary position through December 31, 2016. Mr. Turner is an estate planning attorney and has served on the QOL Committee since 2015.



**Unlawful Practice of Law Committee**

The Unlawful Practice of Law Committee investigates complaints of unlawful practice and recommends prosecution where appropriate. The committee has one vacant member seat for appointment through December 31, 2017.

**Wendy L. Hain** (923236) is employed by the Port of Portland which is helpful to the committee since a majority of the UPL complaints stem from the metro area. OSB Bylaws limit the number of private practitioners on this committee to no more than ¼ of the membership; Ms. Hain's eligibility meets with this requirement.

**Oregon Law Commission**

The OSB Board of Governors is responsible for the appointment of three commissioners to the Oregon Law Commission. One new appointment is necessary to fill a vacant seat with a term expiring June 30, 2018.

**Keith Dubanevich** (975200) is a litigator from the Stoll Berne firm in Portland. He has practiced since 1997 and offers a balanced perspective based on the plaintiff and defense-oriented positions he has held over the years in both the private and public sectors. He expressed an interest in serving as a commissioner on his volunteer application with the OSB.

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# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** February 12, 2016  
**Memo Date:** February 11, 2016  
**From:** Vanessa Nordyke, Board Development Committee Chair  
**Re:** Board of Bar Examiner co-grader recommendations

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### Action Recommended

Recommend the following candidates to the Board of Bar Examiners (BBX) for co-grader appointment consideration.

### Background

As provided in OSB bylaw 28.2, the Board of Governors has an opportunity to provide input to the BBX as they select candidates to serve as board members and co-graders. The BOG's first opportunity to provide comment on the BBX appointments came last September. During this time the BOG encouraged the BBX to take steps to increase the diversity of the pool of co-graders. Specifically the BOG suggested considering more lawyers from private practice, from medium or large firms, and from locations outside the Portland and Salem metropolitan areas. The BOG also highlighted the importance of considering candidates with diversity of practice experience and demographic backgrounds.

The Board Development Committee considered each of these factors when reviewing the list of 134 volunteers interested in serving as a Board of Bar Examiner co-grader. Below is a list of the members the committee recommends the BOG submit to the Board of Bar Examiners for consideration.

Daniel Simcoe, 810243

Ernest (Ernie) Warren, 891384

Hon Frank R Alley, 770110

John R HuttI, 953086

Josh Simko, 034508

Karen A Moore, 040922

Kate Wilkinson, 001705

Kendra Matthews, 965672

Kenneth L Brinich, 824845

Lissa Kaufman, 970728

Mandi Philpott, 023692

Marisha Childs, 125994

Patrick M Gregg, 093698

Rosa Chavez, 032855

Todd E Bofferding, 883720

# OREGON STATE BAR

## Governance & Strategic Planning Committee Agenda

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**Meeting Date:** January 9, 2016  
**From:** Helen Hirschbiel, Executive Director  
**Re:** Retired Status Amendments

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### Action Recommended

Approve the proposed language for a new bylaw establishing Retired membership status and for several statutory and other bylaw amendments necessitated by the creation of the new Retired status.

### Discussion

At its meeting on November 20, 2015, after considerable discussion, the committee voted unanimously to create a new membership status for retired members. Set out below is the proposed bylaw amendment to create the new membership status, followed by suggested statutory and other bylaw and rule changes that should be made to incorporate the new status:

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#### **Article 6 Membership Classification and Fees** **Section 6.1 Classification of Members** **Subsection 6.100 General**

Members of the Bar are classified as follows:

(a) Active member - Any member of the Bar admitted to practice law in the State of Oregon who is not an inactive, [retired](#), or suspended member. Active members include Active Pro Bono members.

(b) Inactive member - A member of the Bar who does not practice law may be enrolled as an inactive member. The "practice of law" for purposes of this subsection consists of providing legal services to public, corporate or individual clients or the performing of the duties of a position that federal, state, county or municipal law requires to be occupied by a person admitted to the practice of law in Oregon.

[\(c\) Retired member – A member of the Bar who is at least 65 years old and who is retired from the practice of law \(as defined in paragraph \(b\)\) may be enrolled as a retired member.](#)

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## ORS Chapter 9—The Bar Act

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

**9.180 Classes of membership.** All persons admitted to practice law in this state thereby shall become active members of the bar. Every member shall be an active member unless, at the member's request, or for reasons prescribed by statute, the rules of the Supreme Court, or the rules of procedure, the member is enrolled as an inactive or retired member. An inactive or retired member may, on compliance with the rules of the Supreme Court and the rules of procedure and payment of all required fees, again become an active member. Inactive and retired members shall not hold office or vote, but they shall have such other privileges as the board may provide.

**9.210 Board of bar examiners; fees of applicants for admission to bar.** The Supreme Court shall appoint 12 members of the Oregon State Bar to a board of bar examiners. The Supreme Court shall also appoint two public members to the board who are not active, ~~or~~ inactive or retired members of the Oregon State Bar. The board shall examine applicants and recommend to the Supreme Court for admission to practice law those who fulfill the requirements prescribed by law and the rules of the Supreme Court. With the approval of the Supreme Court, the board may fix and collect fees to be paid by applicants for admission, which fees shall be paid into the treasury of the bar.

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## **OSB Bylaws**

### **Article 3 House of Delegates**

#### **Section 3.4 Meeting Agenda**

After receiving all resolutions, the Board must prepare an agenda for the House. The Board may exclude resolutions from the agenda that are inconsistent with the Oregon or United States constitutions, are outside the scope of the Bar's statutory mission or are determined by the Board to be outside the scope of a mandatory bar's activity under the U.S. Supreme Court decision in Keller v. the State Bar of California. The House agenda, including any resolutions that the Board has excluded, must be published by the Board, with notice thereof, to all ~~active and inactive~~ bar members, at least 20 days in advance of the House meeting.

### **Article 4 Awards**

#### **Section 4.8 President's Public Leadership Award**

The criteria for the President's Public Leadership Award are as follows: The nominee must not be an active, ~~or~~ inactive or retired member of the Oregon State Bar and the nominee must have made significant contributions in any of the areas described in the President's Awards (Section 4.2-4.4 above).

#### **Section 4.9 President's Sustainability Award**

The criteria for the President's Sustainability Award are as follows: The nominee must be an active, ~~or~~ inactive or retired member of the bar or be an Oregon law firm; the nominee must have made a significant contribution to the goal of sustainability in the legal profession in Oregon through education, advocacy, leadership in adopting sustainable business practices or other significant efforts.

### **Article 6 Membership Classification and Fees**

#### ***Subsection 6.101 Active Pro Bono Status***

##### **(a) Purpose**

The purposes of the Active Pro Bono category of active membership in the Bar is to facilitate and encourage the provision of pro bono legal services to low-income Oregonians and volunteer service to the Bar by lawyers who otherwise may choose inactive or retired status or even resign from membership in the Bar, and by lawyers who move to Oregon.

#### ***Subsection 6.102 Transfer of Classification of Membership***

An inactive or retired member may be enrolled as an active member only by complying with the Bar Act, the Rules of the Supreme Court, the Rules of Procedure of the Bar and paying required fees. An active member may voluntarily transfer to inactive or retired status on certification by the member that the criteria of that classification are met and on payment of required fees.

### **Section 6.3 Rights of Members**

Subject to the other provisions of these policies, all active members have equal rights and privileges including the right to hold an office of the Bar, the right to vote, and the right to serve on bar committees. Inactive [and retired](#) members may be members, but not officers, of sections. Suspended members may remain members of or join sections during the term of their suspensions, but may not hold an office of the Bar, vote or serve on the Board of Governors, in the House of Delegates or on any bar committee or section executive committee.

### **Section 6.4 Annual Membership Fees and Assessments**

The payment date for annual membership fees and assessments is set by the Board. If the payment date falls on a Saturday, a legal holiday or a day that the bar office is closed for any reason, including inclement weather or natural disaster, the due date of such fees and assessments is the next day that the bar office is open for business. As used in this section, "legal holiday" means legal holiday as defined in ORS 26 187.010 and 187.020, which includes Sunday as a legal holiday. The Board may establish a uniform procedure for proration of membership fees based on admission to practice during the course of the year. No part of the membership fees will be rebated, refunded or forgiven by reason of death, resignation, suspension, disbarment or change from active to inactive [or retired status membership](#) after January 31. However, a bar member who, by January 31, expresses a clear intent to the Bar to transfer to inactive [or retired](#) status and pays the [inactive required](#) membership assessment by that date, but does not timely submit a ~~signed R~~request for [Enrollment enrollment](#) as an ~~inactive~~ [or retired Membermember](#), may be allowed to complete the [inactive](#) transfer without payment of the active membership assessment, if extenuating circumstances exist. The Executive Director's decision regarding the existence of sufficient extenuating circumstances is final.

### **Section 6.5 Hardship Exemptions**

In case of proven extreme hardship, which must entail both physical or mental disability and extreme financial hardship, the Executive Director may exempt or waive payment of annual membership fees and assessments of an active, ~~or~~ inactive [or retired](#) member. Hardship exemptions are for a one-year period only, and requests must be resubmitted annually on or before January 31 of the year for which the exemption is requested. "Extreme financial hardship" means that the member is unemployed and has no source of income other than governmental or private disability payments. Requests for exemption under this bylaw must be accompanied by a physician's statement or other evidence of disability and documentation regarding income.

**Article 16 Continuing Legal Education**

**Section 16.3 OSB Legal Publications Program**

***Subsection 16.300 Benefit of Membership***

The BarBooks™ online library comprises all Legal Publications products as well as other materials as the Bar deems appropriate to include from time to time. BarBooks™ is a benefit of active membership in the Oregon State Bar and is available for purchase by inactive [or retired](#) members, non-members, and libraries.

**OSB Bylaw 17 Member Services<sup>1</sup>**

**~~Section 17.2 Insurance~~**

~~Providers of Bar-sponsored insurance may use the Bar's logo in their advertising and promotional material with the prior approval of the Executive Director. They may also indicate approval or endorsement by the Board in such material if the Board has approved or endorsed the insurance. Inactive membership status does not affect the eligibility of a member for bar-sponsored insurance.~~

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**Bar Rules of Procedure**

**Title 1 – General Provisions**

**Rule 1.11 Designation of Contact Information.**

(a) All attorneys must designate, on a form approved by the Oregon State Bar, a current business address and telephone number, or in the absence thereof, a current residence address and telephone number. A post office address designation must be accompanied by a street address.

(b) All attorneys must also designate an e-mail address for receipt of bar notices and correspondence except (i) attorneys whose ~~se status is~~ [are over the age of 65 and fully](#) retired ~~from the practice of law~~ and (ii) attorneys for whom reasonable accommodation is required by applicable law. ~~For purposes of this rule an attorney is “fully retired from the practice of law” if the attorney does not engage at any time in any activity that constitutes the practice of law including, without limitation, activities described in OSB bylaws 6.100 and 20.2.~~

(c) An attorney seeking an exemption from the e-mail address requirement ~~for the reasons stated in~~ paragraph (b)(ii) must submit a written request to the Executive Director, whose decision on the request will be final.

(d) It is the duty of all attorneys promptly to notify the Oregon State Bar in writing of any change in his or her contact information. A new designation shall not become effective until actually received by the Oregon State Bar.

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<sup>1</sup> This bylaw is an overlooked vestige of time when we had a bar-sponsored insurance program in which members could participate, and should have been deleted long ago.

**Title 8 – Reinstatement**

**Rule 8.1 Reinstatement — Formal Application Required.**

- (a) Applicants. Any person who has been a member of the Bar, but who has
- (i) resigned under Form A of these rules more than five years prior to the date of application for reinstatement and who has not been a member of the Bar during such period; or
  - (ii) resigned under Form B of these rules prior to January 1, 1996; or
  - (iii) been disbarred as a result of a disciplinary proceeding commenced by formal complaint before January 1, 1996; or
  - (iv) been suspended for misconduct for a period of more than six months; or
  - (v) been suspended for misconduct for a period of six months or less but has remained in a suspended status for a period of more than six months prior to the date of application for reinstatement; or
  - (vi) been enrolled voluntarily as an inactive [or retired](#) member for more than five years; or
  - (vii) been involuntarily enrolled as an inactive member; or
  - (viii) been suspended for any reason and has remained in that status more than five years,

and who desires to be reinstated as an active member or to resume the practice of law in this state shall be reinstated as an active member of the Bar only upon formal application and compliance with the Rules of Procedure in effect at the time of such application. Applicants for reinstatement under this rule must file a completed application with the Bar on a form prepared by the Bar for such purpose. The applicant shall attest that the applicant did not engage in the practice of law except where authorized to do so during the period of the applicant's inactive [or retired](#) status, suspension, disbarment or resignation. A reinstatement to inactive status shall not be allowed under this rule. The application for reinstatement of a person who has been suspended for a period exceeding six months shall not be made earlier than three months before the earliest possible expiration of the period specified in the court's opinion or order of suspension.

\* \* \*

(c) Learning and Ability. In addition to the showing required in BR 8.1(b), each applicant under this rule who has remained in a suspended or resigned status for more than three years or has been enrolled voluntarily or involuntarily as an inactive [or retired](#) member for more than five years must show that the applicant has the requisite learning and ability to practice law in this state. The Bar may recommend and the Supreme Court may require as a condition precedent to reinstatement that the applicant take and pass the bar examination administered by the Board of Bar Examiners, or successfully complete a prescribed course of continuing legal education. Factors to be considered in determining an applicant's learning and ability include, but are not limited to: the length of time since the applicant was an active member of the Bar; whether and when the applicant has practiced law in Oregon; whether the applicant practiced law in any jurisdiction during the period of the



applicant's suspension, resignation or inactive [or retired](#) status in this state; and whether the applicant has participated in continuing legal education activities during the period of suspension or inactive [or retired](#) status in this state.

\* \* \*

**Rule 8.2 Reinstatement — Informal Application Required.**

(a) Applicants. Any person who has been a member of the Bar, but who has

(i) resigned under Form A of these rules for five years or less prior to the date of application for reinstatement, and who has not been a member of the Bar during such period; or

(ii) been enrolled voluntarily as an inactive [or retired](#) member for five years or less prior to the date of application for reinstatement; or

\* \* \*

may be reinstated by the Executive Director by filing an informal application for reinstatement with the Bar and compliance with the Rules of Procedure in effect at the time of such application. The informal application for reinstatement shall be on a form prepared by the Bar for such purpose. The applicant shall attest that the applicant did not engage in the practice of law except where authorized to do so during the period of the applicant's inactive [or retired](#) status, suspension or resignation. Reinstatements to inactive [or retired](#) status shall not be allowed under this rule except for those applicants who were inactive [or retired](#) and are seeking reinstatement to inactive [or retired](#) status after a financial suspension. No applicant shall resume the practice of law in this state or active, ~~or~~ inactive [or retired](#) membership status unless all the requirements of this rule are met.

\* \* \*

(d) Exceptions. Any applicant otherwise qualified to file for reinstatement under this rule but who

(i) during the period of the member's resignation, has been convicted in any jurisdiction of an offense which is a misdemeanor involving moral turpitude or a felony under the laws of this state, or is punishable by death or imprisonment under the laws of the United States; or

(ii) during the period of the member's suspension, resignation or inactive [or retired](#) status, has been suspended for professional misconduct for more than six months or has been disbarred by any court other than the Supreme Court; or

\* \* \*

(g) Suspension of Application. If the Executive Director or the Board, as the case may be, determines that additional information is required from an applicant regarding conduct during the period of suspension, resignation, ~~or~~ inactive [or retired](#) status, the Executive Director or the Board, as the case may be, may direct Disciplinary Counsel to secure additional information concerning the applicant's conduct and defer consideration of the application for reinstatement.

**Rule 8.6 Other Obligations Upon Application.**

(a) Financial Obligations. Each applicant under BR 8.1 through 8.5 shall pay to the Bar, at the time the application for reinstatement is filed, all past due assessments, fees and penalties owed to the Bar for prior years, and the membership fee and Client Security Fund assessment for the year in which the application for reinstatement is filed, less any active, ~~or~~ inactive, or retired membership fees or Client Security Fund assessment paid by the applicant previously for the year of application. Each applicant shall also pay, upon reinstatement, any applicable assessment to the Professional Liability Fund.

**Rule 8.8 Petition To Review Adverse Recommendation.**

Not later than 28 days after the Bar files an adverse recommendation regarding the applicant with the court, an applicant who desires to contest the Bar's recommendation shall file with Disciplinary Counsel and the State Court Administrator a petition stating in substance that the applicant desires to have the case reviewed by the court. If the court considers it appropriate, it may refer the petition to the Disciplinary Board to inquire into the applicant's moral character and general fitness to practice law. Written notice shall be given by the State Court Administrator to the Disciplinary Board Clerk, Disciplinary Counsel and the applicant of such referral. The applicant's resignation, disbarment, suspension or inactive or retired membership status shall remain in effect until final disposition of the petition by the court.

**Rule 8.14 Reinstatement and Transfer--Active Pro Bono.**

(a) Reinstatement from Inactive or Retired Status. An applicant who has been enrolled voluntarily as an inactive or retired member and who has not engaged in any of the conduct described in BR 8.2(d) may be reinstated by the Executive Director to Active Pro Bono status. The Executive Director may deny the application for reinstatement for the reasons set forth in BR 8.2(d), in which event the applicant may be reinstated only upon successful compliance with all of the provisions of BR 8.2. The application for reinstatement to Active Pro Bono status shall be on a form prepared by the Bar for such purpose. No fee is required.

**Title 12 -- Forms**

**Rule 12.9 Compliance Affidavit.**

A compliance affidavit filed under BR 8.3 shall be in substantially the following form:

**COMPLIANCE AFFIDAVIT**

In re: Application of

\_\_\_\_\_  
(Name of attorney) (Bar number)

For reinstatement as an active/inactive/retired (circle one) member of the OSB.

1. Full name \_\_\_\_\_ Date of Birth \_\_\_\_\_

\* \* \*

**Rule 12.10 Compliance Affidavit.**

A compliance affidavit filed under BR 7.1(g) shall be in substantially the following form:

**COMPLIANCE AFFIDAVIT**

In re: Reinstatement of

\_\_\_\_\_  
(Name of attorney) (Bar number)

For reinstatement as an active/inactive/retired (circle one) member of the OSB.

1. Full name \_\_\_\_\_ Date of Birth \_\_\_\_\_

\* \* \*

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**Minimum Continuing Legal Education  
Rules and Regulations**

**Rule One  
Terms and Definitions**

**1.1 Active Member:** An active member of the Oregon State Bar, as defined in Article 6 of the Bylaws of the Oregon State Bar.

\* \* \*

~~**1.12 Retired Member:** An active member who is over 65 years old and is fully retired from the practice of law.~~

\* \* \*

**Regulations to MCLE Rule 1  
Terms and Definitions**

**1.100 Inactive or Retired Member.** An inactive or Retired member of the Oregon State Bar, as defined in Article 3 of the Bylaws.

**Rule Three  
Minimum Continuing Legal Education Requirement**

**3.7 Reporting Period.**

- (a) In General. All active members shall have three-year reporting periods, except as provided in paragraphs (b), (c) and (d).
- (b) New Admittees. The first reporting period for a new admittee shall start on the date of admission as an active member and shall end on December 31 of the next calendar year. All subsequent reporting periods shall be three years.
- (c) Reinstatements.
  - (1) A member who transfers to inactive, retired or Active Pro Bono status, is suspended, or has resigned and who is reinstated before the end of the reporting period in effect at

the time of the status change shall retain the member's original reporting period and these Rules shall be applied as though the transfer, suspension, or resignation had not occurred.

(2) Except as provided in Rule 3.7(c)(1), the first reporting period for a member who is reinstated as an active member following a transfer to inactive, retired or Active Pro Bono status or a suspension, disbarment or resignation shall start on the date of reinstatement and shall end on December 31 of the next calendar year. All subsequent reporting periods shall be three years.

(3) Notwithstanding Rules 3.7(c)(1) and (2), reinstated members who did not submit a completed compliance report for the reporting period immediately prior to their transfer to inactive, retired or Active Pro Bono status, suspension or resignation will be assigned a new reporting period upon reinstatement. This reporting period shall begin on the date of reinstatement and shall end on December 31 of the next calendar year. All subsequent reporting periods shall be three years.

~~(d) Retired Members.~~

~~(1) A retired member who resumes the practice of law before the end of the reporting period in effect at the time of the member's retirement shall retain the member's original reporting period and these Rules shall be applied as though the retirement had not occurred.~~

~~(2) Except as provided in Rule 3.7(d)(1), the first reporting period for a retired member who resumes the practice of law shall start on the date the member resumes the practice of law and shall end on December 31 of the next calendar year. All subsequent reporting periods shall be three years.~~

~~(3) Notwithstanding Rules 3.7(d)(1) and (2), members resuming the practice of law after retirement who did not submit a completed compliance report for the reporting period immediately prior to retirement will be assigned a new reporting period upon the resumption of the practice of law. This reporting period shall begin on the date of the resumption of the practice of law and shall end on December 31 of the next calendar year. All subsequent reporting periods shall be three years.~~

**Regulations to MCLE Rule 3  
Minimum Continuing Legal Education Requirement**

**3.500 Reporting Period Upon Reinstatement.** A member who returns to active membership status as contemplated under MCLE Rule 3.7(c)(2) shall not be required to fulfill the requirement of compliance during the member's inactive or retired status, suspension, disbarment or resignation, but no credits obtained during the member's inactive or retired status, suspension, disbarment or resignation shall be carried over into the next reporting period.

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# OREGON STATE BAR

## Board of Governors Agenda

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From: Policy and Governance Committee  
Meeting Date: February 12, 2016  
Re: Oregon State Bar Strategic Functions and Goals

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### Action Recommended

Consider whether to approve the proposed strategic functions and goals.

### Options

1. Approve the proposed strategic functions.
2. Revise the proposed strategic functions.
3. Leave the current strategic functions as currently configured.

### Background and Discussion

At its November 20, 2015 retreat, the Board of Governors reviewed its 2014 Action Plan (attached) and expressed interest in beginning work in 2016 to develop a new strategic plan for 2017. The retreat facilitator, Mark Engle, recommended that the planning process start with a review of the six core functions and a discussion about whether they can (or should) be pared down to three or four strategic domains. The Policy and Governance Committee agreed with this approach and took up the task of consolidating the core functions. It offers the following for the Board's consideration.

- |             |   |
|-------------|---|
| Function 1: | REGULATORY BODY PROVIDING PROTECTION TO THE PUBLIC  |
| Goal:       | Protect the public by promoting the quality and integrity of lawyers.                         |
| Function 2: | PARTNER WITH JUDICIAL SYSTEM  |
| Goal:       | Promote and protect the quality of the judicial system.                                       |
| Function 3: | CHAMPION OF ACCESS TO JUSTICE   |
| Goal:       | Promote public understanding of the legal system and access to legal services to all persons. |
| Function 4: | ADVOCATE FOR EQUITY   |
| Goal:       | Promote equity and diversity in the legal community and in the provision of legal services.   |

# OREGON STATE BAR

## Governance and Strategic Planning Committee Agenda

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From: Amber Hollister, General Counsel  
Meeting Date: February 12, 2016  
Re: Guidelines for Sponsorships/Contributions

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### Action Recommended

Consider the adoption of formal policy and an annual budget for sponsorships and contributions.

### Options

3. Amend existing Bylaw 5.5 regarding Grants to require that the Board set an annual budget for sponsorships and contributions. Continue to permit section donations.
4. Adopt a formal policy against purely financial sponsorships or contributions, but provide Bar support through the purchase of tickets to events. Continue to permit Bar contributions for access to justice and section donations.
5. Adopt a policy allowing for a fixed dollar amount of financial sponsorships or contributions annually, limited to programs or events that are germane to the bar's mission. Create an application process to consider requests. Continue to permit section donations.

### Background and Discussion

At its October 9, 2015 meeting, the Board asked staff to draft language for a bylaw governing sponsorships and contributions.

At its January 2016 meeting, this Committee considered two proposals outlined in Sylvia E. Stevens' memo, dated November 20, 2015 (see attached). The proposals were based on policies adopted by bars in Arizona and Michigan. The first proposal (Option 1), modeled after Michigan, was to adopt a formal policy of only sponsoring various organizations through the purchase of event tickets, except in limited circumstances. The second proposal (Option 2), modeled after Arizona, was to adopt a budget for sponsorships and contributions and allow organizations to apply for allocated funds in a formal application process.

This Committee considered the proposals presented, and assigned a subcommittee to further consider the issue. After hearing comments from OLF Executive Director Judith Baker, the Committee generally agreed that it was not the intent of the new policy to diminish the long-standing relationship between the Bar and the Campaign for Equal Justice and Oregon Law Foundation. The subcommittee was tasked, in part, with considering how the proposals would

be read together with existing OSB Bylaws (in particular, Subsection 7.203 Grants and Subsection 15.401 Donations).

The subcommittee met and discussed the purpose of the sponsorship and contribution policy. The subcommittee noted the different types of financial provided by the bar to legal and community organizations (organizational and staff support; attendance at events; sponsorships of specific events; and outright financial contributions).

The subcommittee also discussed the Board's discretion to determine its level of involvement in making contributions. For instance, the Board may elect to delegate authority to the Executive Director to make contribution decisions based on general criteria, or may choose to be more involved in the decision making process. The subcommittee also considered the possibility of developing donation criteria for use by the Board in making sponsorship and contribution decisions in addition to any bylaw amendments (e.g., the Bar will not contribute over \$1,000, except in extraordinary circumstances).

## Proposals

Three additional options are presented below.

Option 3 would amend existing Subsection 7.203 Grants, but would make no other changes.

Options 4 and 5 are based on the previously presented Options 1 and 2, but incorporate additional changes to preserve the bar's historic funding of access to justice programs and to ensure internal consistency in the bylaws. Option 4 would amend existing Subsection 7.203 Grants; Option 5 would delete Subsection 7.203 as unnecessary.

All of the proposals assume that Subsection 15.401 Donations, regarding section donations, would remain unchanged.

### **Option 3**

#### **Subsection 7.203 Grants & Contributions**

The bar does not **generally** accept proposals for grants or other contributions to non-profit or charitable organizations, including law-related organizations. The bar may provide financial support to the Classroom Law Project (CLP) and the Campaign for Equal Justice (CEJ) or any other organization that [*in the sole discretion of the Board of Governors, furthers the mission of the bar*] **is germane to the Bar's purposes as set forth in Section 12.1 of these Bylaws**. The **bar's annual budget shall include** an amount **dedicated to providing such financial support, although that amount** [*allocated to any such organization is determined in the consideration and adoption of the bar's annual budget and*] may change from year to year based upon the overall financial needs of the bar. **This budgeted amount shall be in addition to any amounts**

**budgeted to allow bar leadership and staff attendance at local bar and community dinners and similar events.**

**Option 4**

**Section 7.7 Sponsorships**

It is the policy of the bar to support events of Oregon’s local and specialty bars and of other legal and community organizations that are germane to the bar’s mission through the purchase of event tickets and attendance of bar leadership and staff. The board will identify the events for which tickets will be purchased and will include an allocation in the annual budget for that purpose. **Except as provided in Subsections 7.203 and 15.401**, no other support, financial or in-kind, will be provided to such groups except in extraordinary and limited circumstances with the prior approval of the board and a showing that the contribution is germane to the bar’s purpose and mission **as set forth in Section 12.1**.

**Subsection 7.203 Access to Justice Grants**

The bar does not accept proposals for grants or other contributions to non-profit or charitable organizations, including law-related organizations. The bar may provide financial support to the [Classroom Law Project] **Oregon Law Foundation** and Campaign for Equal Justice (CEJ) or any other organization that, in the sole discretion of the Board of Governors, **increases access to justice**. The amount allocated to any such organization is determined in the consideration and adoption of the bar’s annual budget and may change from year to year based upon the overall financial needs of the bar.

**Option 5**

**Section 7.7 Sponsorship and Contribution Requests**

**Subsection 7.7.1 General**

The board may establish an annual budget for sponsorships and contributions for the purpose of supporting legal and community organizations. This budget shall be in addition to the budget established for bar leadership and staff attendance at local bar and community dinners and similar events **and any donations made by sections under Subsection 15.401**.

**Subsection 7.7.2 Qualification**

The program or event for which the contribution is requested must be germane to the bar’s mission to serve justice by promoting respect for the rule of law, by improving the quality of legal services and by increasing access to justice.

The program or event must be germane to the bar’s functions as a professional organization, as a provider of assistance to the public, as a partner with the judicial system, as a regulatory agency, as leaders serving a diverse community, and as advocates for access to justice **as set forth in Section 12.1**.

The program or event must be non-partisan and non-political, and must comply with the bar’s non-discrimination policy **as set forth in Article 10**.



**Subsection 7.7.3 Application and Use of Funds**

The Bar will establish a due date for applications in the last quarter of the year prior to the event for which funds are requested. Applications will be reviewed by the Budget & Finance Committee and submitted with a recommendation to the Board of Governors at its last meeting of the year. Successful applicants will be notified after the board has made its decision, and funds will be distributed in January unless a later distribution date is requested by the recipient. Late applications will be considered if there are budgeted funds remaining after the distribution date.

Funds awarded may be used only for the program or event designated in the application unless the applicant obtains approval from the bar for an alternative use. Funds awarded may not be used for alcohol, religious activities, lobbying or fundraising.

Recipients must include recognition of the bar's sponsorship in brochures, programs or other event materials.

*[Subsection 7.203 Grants*

*The bar does not accept proposals for grants or other contributions to non-profit or charitable organizations, including law-related organizations. The bar may provide financial support to the Classroom Law Project (CLP) and the Campaign for Equal Justice (CEJ) or any other organization that, in the sole discretion of the Board of Governors, furthers the mission of the bar. The amount allocated to any such organization is determined in the consideration and adoption of the bar's annual budget and may change from year to year based upon the overall financial needs of the bar.]*

## OSB Board of Governors

### Action Plan 2014

#### INTRODUCTION

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

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

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

#### FUNCTIONS , GOALS AND STRATEGIES

##### FUNCTION #1 – REGULATORY AGENCY PROVIDING PROTECTION TO THE PUBLIC

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

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

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

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

**FUNCTION #2 – PARTNER WITH THE JUDICIAL SYSTEM**

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

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

**FUNCTION #3 – PROFESSIONAL ORGANIZATION**

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

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

**FUNCTION #4 – ASSISTANCE TO THE PUBLIC**

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

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

**FUNCTION #5 – SERVING A DIVERSE COMMUNITY**

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

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

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

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

**MEMORANDUM**

**TO: Oregon State Bar Board of Governors**  
**FROM: Lisa Ludwig, Chair, Bar Press Broadcasters Council**  
**RE: Request for Continued Transparency Regarding OSB Complaints**  
**DATE: February 12, 2016**

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On Saturday, February 6, 2016, during a regular meeting of the Council, the members considered, and discussed at length, the Discipline System Review Committee's recommendation that:

[C]omplaints of misconduct and all information and documents pertaining to them are confidential and not subject to public disclosure until either (a) the SPRB has authorized the filing of a formal complaint, or (b) the complaint has been finally resolved without SPRB authorization to file a formal complaint.

After thorough consideration, the Council members present voted unanimously, with one abstention, to urge the Oregon State Bar Board of Governors to:

**Maintain the status quo with respect to public records status of Oregon State Bar complaints.**

The Oregon State Bar has had a more than forty year history of a disciplinary system fully open to public disclosure. Such transparency stands as a national example among state bar disciplinary systems of an unwavering commitment to integrity and public protection.

Diminishing transparency, by making the complaint process confidential at any point in the proceedings, will result in a number of consequences that run contrary to the OSB's dedication to an open system designed to serve the citizens' of Oregon by:

- Providing protection from lawyers whose conduct is unprofessional, immoral, or offensive when such conduct does not result in bar discipline
- Preventing erosion of public trust
- Eliminating Sixth Amendment claims of ineffective assistance of counsel during post-conviction proceedings
- Maintaining the reputation of the OSB as a national leader in transparency and fairness

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** February 11-12, 2016

**Memo Date:** January 27, 2016

**From:** Carol J. Bernick, PLF CEO

**Re:** Cyber Extortion Coverage Added to 2016 Breach Response  
Endorsement

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### Action Recommended

Please approve the recommended changes to the PLF Excess Plan. These changes will be presented to our board at its February 5, 2016 meeting. I will present the actual vote at the BOG meeting.

### Background

In late December 2015, the PLF was contacted by our reinsurance brokers at AON with information about an optional enhancement to our current Cyber Liability and Breach Response Endorsement provided by the Beazley Group. Beazley offered, at no additional cost to the PLF or to our covered firms, to add language to our current Cyber Liability Endorsement that would include claims arising from cyber extortion events (the claims were previously excluded under the Endorsement).

Cyber extortion occurs when a business's computer system is attacked and data stored on the computers and/or networks is held under lock and key by extortionists and only released after a payment demand is met. Another term for this type of virus or attack is ransom ware. The PLF is aware of at least one cyber extortion attack made against a Covered Party in 2015. That claim was not covered under the 2015 Excess Breach Response Endorsement.

Beazley recognized that cyber extortion claims were an area of concern for many insurers (including the PLF), and decided to offer coverage for those claims as part of the existing Endorsement. The sublimit available to cover cyber extortion claims under the Endorsement would be \$10,000 with a \$2,000 deductible. Though cyber extortion demands are often quite small (many would not exceed the deductible), Beazley thinks it would be valuable to have these claims submitted and monitored under the Endorsement. This would be particularly valuable if additional claims resulted from the cyber extortion event that would be covered under the Endorsement.

Proposed language for this change to the current Endorsement is included on the following pages. Since this would constitute a change to the 2016 Claims Made Excess Plan, we are submitting it for BOG review and approval.

## CYBER LIABILITY AND BREACH RESPONSE ENDORSEMENT

### NOTICE

COVERAGE AGREEMENTS I.A., I.C. AND I.D. OF THIS ENDORSEMENT PROVIDE COVERAGE ON A CLAIMS MADE AND REPORTED BASIS AND APPLY ONLY TO CLAIMS FIRST MADE AGAINST A COVERED PARTY DURING THE COVERAGE PERIOD OR THE OPTIONAL EXTENSION PERIOD (IF APPLICABLE) AND REPORTED TO THE PLF DURING THE COVERAGE PERIOD OR AS OTHERWISE PROVIDED IN CLAUSE IX. OF THIS ENDORSEMENT. AMOUNTS INCURRED AS CLAIMS EXPENSES UNDER THIS ENDORSEMENT SHALL REDUCE AND MAY EXHAUST THE LIMIT OF LIABILITY.

COVERAGE AGREEMENT I.B. OF THIS ENDORSEMENT PROVIDES FIRST PARTY COVERAGE ON AN INCIDENT DISCOVERED AND REPORTED BASIS AND APPLIES ONLY TO INCIDENTS FIRST DISCOVERED BY A COVERED PARTY AND REPORTED TO THE PLF DURING THE COVERAGE PERIOD.

THIS ENDORSEMENT IS INTENDED TO COVER CERTAIN CLAIMS EXCLUDED UNDER THE PLF CLAIMS MADE PLAN AND PLF CLAIMS MADE EXCESS PLAN. HOWEVER, THE COVERAGE TERMS OF THIS ENDORSEMENT ARE DIFFERENT FROM THE PLF PLANS AND SHOULD BE REVIEWED CAREFULLY. THIS ENDORSEMENT DOES NOT MODIFY IN ANY RESPECT THE TERMS OF THE PLF CLAIMS MADE PLAN OR CLAIMS MADE EXCESS PLAN.

THIS IS A CLAIMS MADE AND REPORTED ENDORSEMENT.

### SCHEDULE

Item 1. **The Firm and Covered Parties** qualifying as such under Section II - WHO IS A COVERED PARTY of the applicable PLF Claims Made Excess Plan and Declarations Sheet to which this endorsement is attached.

Item 2. **Coverage Period:** see Section 3 of the Declarations to which this endorsement is attached.

Item 3. **Limits of Liability:**

**Endorsement Aggregate Limit of Liability** for Coverage Agreements I.A. (Information Security & Privacy Liability), I.B. (Privacy Breach Response Services), I.C. (Regulatory Defense & Penalties), I.D. (Website and Media Content Liability), ~~and~~ I.E. (Crisis Management & Public Relations), and I.F. (Cyber Extortion Loss):

**1-10 attorneys** USD 100,000

**11+ attorneys:** USD 250,000

But sublimited to:

A. Aggregate sublimit of liability applicable to Coverage Agreement I.B. (Privacy Breach Response Services) USD 100,000

B. Aggregate sublimit of liability applicable to Coverage USD 50,000

Agreement I.B.1 (legal and forensic)

C. Aggregate sublimit of liability applicable to Coverage Agreement I.C. (Regulatory Defense & Penalties): USD 50,000

D. Aggregate sublimit applicable to Coverage Agreement I.E. (Crisis Management & Public Relations): USD 10,000

E. Aggregate sublimit of liability for all **Cyber Extortion Loss** under Coverage Agreement I.F.: USD 10,000

~~D.~~ The above sublimit of liability is part of, and not in addition to, the overall **Endorsement Aggregate Limit of Liability** set forth therein.

Item 4. **Retentions:**

A. Coverage Agreements I.A. (Information Security & Privacy Liability), I.C. (Regulatory Defense & Penalties), I.D. (Website and Media Content Liability) and I.E. (Crisis Management & Public Relations): USD 0

B. Coverage Agreement I.B. (Privacy Breach Response Services):

Each Incident, event or related incidents or events giving rise to an obligation to provide **Privacy Breach Response Services:**

1. Costs for services provided under Coverage Agreements I.B.1. (legal and forensic services) and I.B.2. (notification costs) combined: USD 0

2. Services provided under I.B.3. (Call Center Services) and I.B.4. (Credit Monitoring Program): Breaches involving an obligation notify fewer than 100 individuals

C. Coverage Agreement I.F. (Cyber Extortion Loss):  
Each **Extortion Threat** Retention: USD 2,000

Item 5. **Endorsement Retroactive Date:** see Section 7 of the Declarations to which this endorsement is attached.

In consideration for the premium charged for the **PLF Claims Made Excess Plan**, the following additional coverages are added to the **FIRM's PLF Claims Made Excess Plan**. The following provisions in the **PLF Claims Made Excess Plan** shall also apply to this Endorsement: SECTION II – WHO IS A COVERED PARTY, SECTION VIII – COVERAGE DETERMINATIONS, SECTION IX – ASSISTANCE, COOPERATION, AND DUTIES OF COVERED PARTY, paragraphs 1. to 3. of the PLF Claims Made Plan only, SECTION X – ACTIONS BETWEEN THE PLF AND COVERED PARTIES, SECTION XII – RELATIONOF THE PLF COVERAGE TO INSURANCE COVERAGE OR OTHER COVERAGE, SECTION XIII – WAIVER AND ESTOPPEL and SECTION XV – ASSIGNMENT. Except as otherwise specifically set forth herein, no other provisions in the **PLF Claims Made Excess Plan** shall apply to this Endorsement.



## I. COVERAGE AGREEMENTS

### A. **Information Security & Privacy Liability**

To pay on behalf of a **Covered Party**:

**Damages and Claims Expenses**, in excess of the **Retention**, which a **Covered Party** shall become legally obligated to pay because of any **Claim**, including a **Claim** for violation of a **Privacy Law**, first made against any **Covered Party** during the **Coverage Period** or **Optional Extension Period** (if applicable) and reported in writing to the PLF during the **Coverage Period** or as otherwise provided in Clause IX. of this Endorsement for:

1. (a) theft, loss, or **Unauthorized Disclosure of Personally Identifiable Non-Public Information**; or  
(b) theft or loss of **Third Party Corporate Information**;  
that is in the care, custody or control of **The Firm**, or a third party for whose theft, loss or **Unauthorized Disclosure of Personally Identifiable Non-Public Information** or **Third Party Corporate Information** **The Firm** is legally liable (a third party shall include a Business Associate as defined by the Health Insurance Portability and Accountability Act (“HIPAA”)), provided such theft, loss or **Unauthorized Disclosure** first takes place on or after the **Retroactive Date** and before the end of the **Coverage Period**;
2. one or more of the following acts or incidents that directly result from a failure of **Computer Security** to prevent a **Security Breach**, provided that such act or incident first takes place on or after the **Retroactive Date** and before the end of the **Coverage Period**;
  - (a) the alteration, corruption, destruction, deletion, or damage to a **Data Asset** stored on **Computer Systems**;
  - (b) the failure to prevent transmission of **Malicious Code** from **Computer Systems** to **Third Party Computer Systems**; or
  - (c) the participation by **The Firm’s Computer System** in a **Denial of Service Attack** directed against a **Third Party Computer System**;
3. **The Firm's** failure to timely disclose an incident described in Coverage Agreement I.A.1. or I.A.2. in violation of any **Breach Notice Law**; provided such incident giving rise to **The Firm's** obligation under a **Breach Notice Law** must first take place on or after the **Retroactive Date** and before the end of the **Coverage Period**;
4. failure by a **Covered Party** to comply with that part of a **Privacy Policy** that specifically:
  - (a) prohibits or restricts **The Firm’s** disclosure, sharing or selling of a person’s **Personally Identifiable Non-Public Information**;
  - (b) requires **The Firm** to provide access to **Personally Identifiable Non-Public Information** or to correct incomplete or inaccurate **Personally Identifiable Non-Public Information** after a request is made by a person; or
  - (c) mandates procedures and requirements to prevent the loss of **Personally Identifiable Non-Public Information**;

provided the acts, errors or omissions that constitute such failure to comply with a **Privacy Policy** must first take place on or after the **Retroactive Date** and before the end of the **Coverage Period**, and a **Covered Party** must, at the time of such acts, errors or omissions have in force a **Privacy Policy** that addresses those subsections above that are relevant to such **Claim**; or

**B. Privacy Breach Response Services**

To provide **Privacy Breach Response Services** to a **Covered Party** in excess of the **Retention** because of an incident (or reasonably suspected incident) described in Coverage Agreement I.A.1. or I.A.2. that first takes place on or after the **Retroactive Date** and before the end of the **Coverage Period** and is discovered by a **Covered Party** and is reported to the PLF during the **Coverage Period**.

**Privacy Breach Response Services** means the following:

1. Costs incurred:
  - (a) for a computer security expert to determine the existence and cause of any electronic data breach resulting in an actual or reasonably suspected theft, loss or **Unauthorized Disclosure of Personally Identifiable Non-Public Information** which may require a **Covered Party** to comply with a **Breach Notice Law** and to determine the extent to which such information was accessed by an unauthorized person or persons; and
  - (b) for fees charged by an attorney to determine the applicability of and actions necessary by a **Covered Party** to comply with **Breach Notice Law** due to an actual or reasonably suspected theft, loss or **Unauthorized Disclosure of Personally Identifiable Non-Public Information**;

provided amounts covered by (a) and (b) in this paragraph combined shall not exceed the amount set forth in Item 3.B. of the Schedule in the aggregate for the **Coverage Period**.

2. Costs incurred to provide notification to:
  - (a) individuals who are required to be notified by a **Covered Party** under the applicable **Breach Notice Law**; and
  - (b) in the PLF's discretion, to individuals affected by an incident in which their **Personally Identifiable Non-Public Information** has been subject to theft, loss, or **Unauthorized Disclosure** in a manner which compromises the security or privacy of such individual by posing a significant risk of financial, reputational or other harm to the individual.
3. The offering of **Call Center Services** to **Notified Individuals**.
4. The offering of the **Credit Monitoring Product** to **Notified Individuals** residing in the United States whose **Personally Identifiable Non-Public Information** was compromised or reasonably believed to be compromised as a result of theft, loss or **Unauthorized Disclosure**. Such offer will be provided in the notification communication provided pursuant to paragraph I.B.2. above.
5. **The Firm** will be provided with access to educational and loss control information provided by or on behalf of the PLF at no charge.

**Privacy Breach Response Services** and the conditions applicable thereto are set forth more fully in Clause XIII. of this Endorsement, Conditions Applicable to Privacy Breach Response Services.

**Privacy Breach Response Services** shall not include any internal salary or overhead expenses of a **Covered Party**.

C. **Regulatory Defense and Penalties**

To pay on behalf of a **Covered Party**:

**Claims Expenses** and **Penalties** in excess of the **Retention**, which a **Covered Party** shall become legally obligated to pay because of any **Claim** in the form of a **Regulatory Proceeding**, first made against any **Covered Party** during the **Coverage Period** or **Optional Extension Period** (if applicable) and reported in writing to the PLF during the **Coverage Period** or as otherwise provided in Clause IX. of this Endorsement, resulting from a violation of a **Privacy Law** and caused by an incident described in Coverage Agreement I.A.1., I.A.2. or I.A.3. that first takes place on or after the **Retroactive Date** and before the end of the **Coverage Period**.

D. **Website Media Content Liability**

To pay on behalf of a **Covered Party**:

**Damages** and **Claims Expenses**, in excess of the **Retention**, which a **Covered Party** shall become legally obligated to pay resulting from any **Claim** first made against any **Covered Party** during the **Coverage Period** or **Optional Extension Period** (if applicable) and reported in writing to the PLF during the **Coverage Period** or as otherwise provided in Clause IX. of this Endorsement for one or more of the following acts first committed on or after the **Retroactive Date** and before the end of the **Coverage Period** in the course of **Covered Media Activities**:

1. defamation, libel, slander, trade libel, infliction of emotional distress, outrage, outrageous conduct, or other tort related to disparagement or harm to the reputation or character of any person or organization;
2. a violation of the rights of privacy of an individual, including false light and public disclosure of private facts;
3. invasion or interference with an individual's right of publicity, including commercial appropriation of name, persona, voice or likeness;
4. plagiarism, piracy, misappropriation of ideas under implied contract;
5. infringement of copyright;
6. infringement of domain name, trademark, trade name, trade dress, logo, title, metatag, or slogan, service mark, or service name; or
7. improper deep-linking or framing within electronic content.

E. **Crisis Management and Public Relations**

To pay **Public Relations and Crisis Management Expenses** incurred by **The Firm** resulting from a **Public Relations Event**. **Public Relations Event** means:

1. the publication or imminent publication in a newspaper (or other general circulation print publication) or on radio or television of a covered **Claim** under this Endorsement; or

2. an incident described in Coverage Agreement I.A.1. or I.A.2. which results in the provision of **Privacy Breach Response Services**, or which reasonably may result in a covered **Claim** under this Endorsement and which **The Firm** has notified the PLF as a circumstance under Clause IX.C. of this Endorsement.

**Public Relations and Crisis Management Expenses** shall mean the following costs, if agreed in advance by the PLF in its reasonable discretion, which are directly related to mitigating harm to **The Firm's** reputation or potential **Loss** covered by this Endorsement resulting from a covered **Claim** or incident:

1. costs incurred by a public relations or crisis management consultant;
2. costs for media purchasing or for printing or mailing materials intended to inform the general public about the event;
3. costs to provide notifications to clients where such notifications are not required by law ("voluntary notifications"), including notices to non-affected clients of **The Firm**;
4. costs to provide government mandated public notices related to breach events (including such notifications required under HIPAA/Health Information Technology for Economic and Clinical Health Act ("HITECH"));
5. costs to provide services to restore healthcare records of **Notified Individuals** residing in the United States whose **Personally Identifiable Non-Public Information** was compromised as a result of theft, loss or **Unauthorized Disclosure**; and
6. other costs approved in advance by the PLF.

**Public Relations and Crisis Management Expenses** must be incurred no later than twelve (12) months following the reporting of such **Claim** or breach event to the PLF and, with respect to clauses 1. and 2., within ninety (90) days following the first publication of such **Claim** or breach event.

## **F. Cyber Extortion**

**To indemnify the Covered Party for:**

**Cyber Extortion Loss, in excess of the Retention, incurred by The Firm as a direct result of an Extortion Threat first made against The Firm during the Coverage Period by a person, other than the FIRM's employees, directors, officers, principals, members, law partners, contractors, or any person in collusion with any of the foregoing. Coverage under this Coverage Agreement is subject to the applicable conditions and reporting requirements, including those set forth in Clause XIII, Obligations in The Event of an Extortion Threat.**

## **II. DEFENSE AND SETTLEMENT OF CLAIMS**

- A. The PLF shall have the right and duty to defend, subject to all the provisions, terms and conditions of this Endorsement:
  1. any **Claim** against a **Covered Party** seeking **Damages** which are payable under the terms of this Endorsement, even if any of the allegations of the **Claim** are groundless, false or fraudulent; or
  2. under Coverage Agreement I.C., any **Claim** in the form of a **Regulatory Proceeding**.

- B. With respect to any **Claim** against a **Covered Party** seeking **Damages** or **Penalties** which are payable under the terms of this Endorsement, the PLF will pay **Claims Expenses** incurred with its prior written consent. The Limit of Liability available to pay **Damages** and **Penalties** shall be reduced and may be completely exhausted by payment of **Claims Expenses**.
- C. If a **Covered Party** shall refuse to consent to any settlement or compromise recommended by the PLF and acceptable to the claimant under this Endorsement and elects to contest the **Claim**, the PLF's liability for all **Damages, Penalties** and **Claims Expenses** shall not exceed:
1. the amount for which the **Claim** could have been settled, less the remaining **Retention**, plus the **Claims Expenses** incurred up to the time of such refusal; plus
  2. fifty percent (50%) of any **Claims Expenses** incurred after the date such settlement or compromise was recommended to a **Covered Party** plus fifty percent (50%) of any **Damages** above the amount for which the **Claim** could have been settled. The remaining fifty percent (50%) of such **Claims Expenses** and **Damages** must be borne by **The Firm** at its own risk and would not be covered;

or the applicable Limit of Liability, whichever is less, and the PLF shall have the right to withdraw from the further defense thereof by tendering control of said defense to a **Covered Party**. The portion of any proposed settlement or compromise that requires a **Covered Party** to cease, limit or refrain from actual or alleged infringing or otherwise injurious activity or is attributable to future royalties or other amounts that are not **Damages** (or **Penalties** for **Claims** covered under Coverage Agreement I.C.) shall not be considered in determining the amount for which a **Claim** could have been settled.

### III. TERRITORY

This Coverage applies only to **Claims** brought in the United States, its territories or possessions, Canada, or the jurisdiction of any Indian Tribe in the United States. This Coverage does not apply to **Claims** brought in any other jurisdiction, or to **Claims** brought to enforce a judgment rendered in any jurisdiction other than the United States, its territories or possessions, Canada, or the jurisdiction of any Indian Tribe in the United States.

### IV. EXCLUSIONS

The coverage under this Coverage does not apply to any **Claim** or **Loss**;

- A. For, arising out of or resulting from **Bodily Injury** or **Property Damage**;
- B. For, arising out of or resulting from any employer-employee relations, policies, practices, acts or omissions, or any actual or alleged refusal to employ any person, or misconduct with respect to employees, whether such **Claim** is brought by an employee, former employee, applicant for employment, or relative or domestic partner of such person; provided, however, that this exclusion shall not apply to an otherwise covered **Claim** under the Coverage Agreement I.A.1., I.A.2., or I.A.3. by a current or former employee of **The Firm**; or to the providing of **Privacy Breach Response Services** involving current or former employees of **The Firm**;
- C. For, arising out of or resulting from any actual or alleged act, error or omission or breach of duty by any director or officer in the discharge of their duty if the **Claim** is brought by the **Firm**, a subsidiary, or any principals, directors, officers, members or employees of the **Firm**.

- D. For, arising out of or resulting from any contractual liability or obligation, or arising out of or resulting from breach of contract or agreement either oral or written, provided, however, that this exclusion will not apply:
1. only with respect to the coverage provided by Coverage Agreement I.A.1., to any obligation of **The Firm** to maintain the confidentiality or security of **Personally Identifiable Non-Public Information** or of **Third Party Corporate Information**;
  2. only with respect to Coverage Agreement I.D.4., for misappropriation of ideas under implied contract; or
  3. to the extent a **Covered Party** would have been liable in the absence of such contract or agreement;
- E. For, arising out of or resulting from any liability or obligation under a **Merchant Services Agreement**;
- F. For, arising out of or resulting from any actual or alleged antitrust violation, restraint of trade, unfair competition, or false or deceptive or misleading advertising or violation of the Sherman Antitrust Act, the Clayton Act, or the Robinson-Patman Act, as amended;
- G. For, arising out of or resulting from any actual or alleged false, deceptive or unfair trade practices; however this exclusion does not apply to:
1. any **Claim** covered under Coverage Agreements I.A.1., I.A.2., I.A.3. or I.C.; or
  2. the providing of **Privacy Breach Response Services** covered under Coverage Agreement I.B.,

that results from a theft, loss or **Unauthorized Disclosure** of **Personally Identifiable Non-Public Information** provided that no **Covered Party** participated or is alleged to have participated or colluded in such theft, loss or **Unauthorized Disclosure**;

- H. For, arising out of or resulting from:
1. the actual or alleged unlawful collection, acquisition or retention of **Personally Identifiable Non-Public Information** or other personal information by, on behalf of, or with the consent or cooperation of **The Firm**; or the failure to comply with a legal requirement to provide individuals with the ability to assent to or withhold assent (e.g. opt-in or opt-out) from the collection, disclosure or use of **Personally Identifiable Non-Public Information**; provided, that this exclusion shall not apply to the actual or alleged unlawful collection, acquisition or retention of **Personally Identifiable Non-Public Information** by a third party committed without the knowledge of a **Covered Party**; or
  2. the distribution of unsolicited email, direct mail, or facsimiles, wire tapping, audio or video recording, or telemarketing, if such distribution, wire tapping or recording is done by or on behalf of a **Covered Party**;
- I. ~~For, arising out of or resulting from any act, error, omission, incident, failure of Computer Security, or Security Breach committed or occurring prior to the Endorsement Retroactive Date~~ Arising out of or resulting from any act, error, omission, incident failure of Computer Security, Extortion Threat, Security Breach or event committed or occurring prior to the Coverage Period start date listed in Section 3 of the Declarations:

1. ~~if any **Covered Party** on or before the **Endorsement Retroactive Date** knew or could have reasonably foreseen that such act, error or omission, incident, failure of **Computer Security**, or **Security Breach** might be expected to be the basis of a **Claim** or **Loss** any member of **The Firm** on or before the **Endorsement Retroactive Date** knew or could have reasonably foreseen that such act, error or omission, failure of **Computer Security**, **Extortion Threat**, or **Security Breach** might be expected to be the basis of a **Claim** or **loss**; or~~
  2. in respect of which any **Covered Party** has given notice of a circumstance, which might lead to a **Claim**, ~~or **Loss**~~, or an **Extortion Threat**, to the insurer PLF or Beazley Group of any other coverage in force prior to the **Endorsement Retroactive Date** inception date of this Coverage;
- J. For, arising out of or resulting from any related or continuing acts, errors, omissions, incidents or events, where the first such act, error, omission, incident or event was committed or occurred prior to the **Endorsement Retroactive Date**;
- K. For, arising out of resulting from any of the following:
1. any actual or alleged violation of the Organized Crime Control Act of 1970 (commonly known as Racketeer Influenced and Corrupt Organizations Act or RICO), as amended, or any regulation promulgated thereunder or any similar federal law or legislation, or law or legislation of any state, province or other jurisdiction similar to the foregoing, whether such law is statutory, regulatory or common law;
  2. any actual or alleged violation of any securities law, regulation or legislation, including but not limited to the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Act of 1940, any state or provincial blue sky or securities law, any other federal securities law or legislation, or any other similar law or legislation of any state, province or other jurisdiction, or any amendment to the above laws, or any violation of any order, ruling or regulation issued pursuant to the above laws;
  3. any actual or alleged violation of the Fair Labor Standards Act of 1938, the National Labor Relations Act, the Worker Adjustment and Retraining Act of 1988, the Certified Omnibus Budget Reconciliation Act of 1985, the Occupational Safety and Health Act of 1970, any similar law or legislation of any state, province or other jurisdiction, or any amendment to the above law or legislation, or any violation of any order, ruling or regulation issued pursuant to the above laws or legislation; or
  4. any actual or alleged discrimination of any kind including but not limited to age, color, race, sex, creed, national origin, marital status, sexual preference, disability or pregnancy;
- however this exclusion does not apply to any otherwise covered **Claim** under Coverage Agreement I.A.1., I.A.2., or I.A.3., or to providing **Privacy Breach Response Services** covered under Coverage Agreement I.B., that results from a theft, loss or **Unauthorized Disclosure of Personally Identifiable Non-Public Information**, provided that no **Covered Party** participated, or is alleged to have participated or colluded, in such theft, loss or **Unauthorized Disclosure**;
- L. For, arising out of or resulting from any actual or alleged acts, errors, or omissions related to any of **The Firm's** pension, healthcare, welfare, profit sharing, mutual or investment plans, funds or trusts, including any violation of any provision of the Employee Retirement Income Security Act of 1974 (ERISA) or any similar federal law or



legislation, or similar law or legislation of any state, province or other jurisdiction, or any amendment to ERISA or any violation of any regulation, ruling or order issued pursuant to ERISA or such similar laws or legislation; however this exclusion does not apply to any otherwise covered **Claim** under Coverage Agreement I.A.1., I.A.2., or I.A.3., or to the providing of **Privacy Breach Response Services** under Coverage Agreement I.B., that results from a theft, loss or **Unauthorized Disclosure of Personally Identifiable Non-Public Information**, provided that no **Covered Party** participated, or is alleged to have participated or colluded, in such theft, loss or **Unauthorized Disclosure**;

- M. Arising out of or resulting from any criminal, dishonest, fraudulent, or malicious act, error or omission, any intentional **Security Breach**, intentional violation of a **Privacy Policy**, or intentional or knowing violation of the law, if committed by a **Covered Party**, or by others if the **Covered Party** colluded or participated in any such conduct or activity; provided this Endorsement shall apply to **Claims Expenses** incurred in defending any such **Claim** alleging the foregoing until such time as there is a final adjudication, judgment, binding arbitration decision or conviction against the **Covered Party**, or written admission by the **Covered Party**, establishing such conduct, or a plea of *nolo contendere* or no contest regarding such conduct, at which time **The Firm** shall reimburse the PLF for all **Claims Expenses** incurred defending the **Claim** and the PLF shall have no further liability for **Claims Expenses**;

provided further, that whenever coverage under this Endorsement would be excluded, suspended or lost because of this exclusion relating to acts or violations by a **Covered Party**, and with respect to which any other **Covered Party** did not personally commit or personally participate in committing or personally acquiesce in or remain passive after having personal knowledge thereof, then the PLF agrees that such Coverage as would otherwise be afforded under this Endorsement shall cover and be paid with respect to those **Covered Parties** who did not personally commit or personally participate in committing or personally acquiesce in or remain passive after having personal knowledge of one or more of the acts, errors or omissions described in above.

- N. For, arising out of or resulting from any actual or alleged:
1. infringement of patent or patent rights or misuse or abuse of patent;
  2. infringement of copyright arising from or related to software code or software products other than infringement resulting from a theft or **Unauthorized Access or Use** of software code by a person who is not a **Covered Party** or employee of **The Firm**;
  3. use or misappropriation of any ideas, trade secrets or **Third Party Corporate Information** (i) by, or on behalf of, **The Firm**, or (ii) by any other person or entity if such use or misappropriation is done with the knowledge, consent or acquiescence of a **Covered Party**;
  4. disclosure, misuse or misappropriation of any ideas, trade secrets or confidential information that came into the possession of any person or entity prior to the date the person or entity became an employee, officer, director, **member**, principal, partner or subsidiary of **The Firm**; or
  5. under Coverage Agreement I.A.2., theft of or **Unauthorized Disclosure** of a **Data Asset**;
- O. For, in connection with or resulting from a **Claim** brought by or on behalf of the Federal Trade Commission, the Federal Communications Commission, or any other state, federal, local or foreign governmental entity, in such entity's regulatory or official



capacity; provided, this exclusion shall not apply to an otherwise covered **Claim** under Coverage Agreement I.C. or to the providing of **Privacy Breach Response Services** under Coverage Agreement I.B. to the extent such services are legally required to comply with a **Breach Notice Law**;

P. ~~Reserved.~~ With respect to Coverage Agreement I.F., for, arising out of or resulting from any criminal, dishonest, fraudulent, or malicious act, error or omission, any **Security Breach, Extortion Threat, or intentional or knowing violation of the law, if committed by any of The Firm's directors, officers, principals, members, law partners, or any person in participation or collusion with any of The Firm's directors, officers, principals, members, or law partners;**

Q. For, arising out of or resulting from:

1. any **Claim** made by any business enterprise in which any **Covered Party** has greater than a fifteen percent (15%) ownership interest or made by **The Firm**; or
2. a **Covered Party's** activities as a trustee, partner, member, manager, officer, director or employee of any employee trust, charitable organization, corporation, company or business other than that of **The Firm**;

R. For, arising out of or resulting from any of the following: (1) trading losses, trading liabilities or change in value of accounts; any loss, transfer or theft of monies, securities or tangible property of others in the care, custody or control of **The Firm**; (2) the monetary value of any transactions or electronic fund transfers by or on behalf of a **Covered Party** which is lost, diminished, or damaged during transfer from, into or between accounts; or (3) the value of coupons, price discounts, prizes, awards, or any other valuable consideration given in excess of the total contracted or expected amount;

S. With respect to Coverage Agreements I.A., I.B. and I.C., any **Claim** or **Loss** for, arising out of or resulting from the distribution, exhibition, performance, publication, display or broadcasting of content or material in:

1. broadcasts, by or on behalf of, or with the permission or direction of any **Covered Party**, including but not limited to, television, motion picture, cable, satellite television and radio broadcasts;
2. publications, by or on behalf of, or with the permission or direction of any **Covered Party**, including, but not limited to, newspaper, newsletter, magazine, book and other literary form, monograph, brochure, directory, screen play, film script, playwright and video publications, and including content displayed on an Internet site; or
3. advertising by or on behalf of any **Covered Party**;

provided however this exclusion does not apply to the publication, distribution or display of **The Firm's Privacy Policy**;

T. With respect to Coverage Agreement I.D., any **Claim** or **Loss**:

1. for, arising out of or resulting from the actual or alleged obligation to make licensing fee or royalty payments, including but limited to the amount or timeliness of such payments;
2. for, arising out of or resulting from any costs or expenses incurred or to be incurred by a **Covered Party** or others for the reprinting, reposting, recall, removal or disposal of any **Media Material** or any other information, content or media, including any media or products containing such **Media Material**, information, content or media;

3. brought by or on behalf of any intellectual property licensing bodies or organizations, including but not limited to, the American Society of Composers, Authors and Publishers, the Society of European Stage Authors and Composers or Broadcast Music, Inc;
  4. for, arising out of or resulting from the actual or alleged inaccurate, inadequate or incomplete description of the price of goods, products or services, cost guarantees, cost representations, or contract price estimates, the authenticity of any goods, products or services, or the failure of any goods or services to conform with any represented quality or performance;
  5. for, arising out of or resulting from any actual or alleged gambling, contest, lottery, promotional game or other game of chance; or
  6. in connection with a **Claim** made by or on behalf of any independent contractor, joint venturer or venture partner arising out of or resulting from disputes over ownership of rights in **Media Material** or services provided by such independent contractor, joint venturer or venture partner;
- U. Arising out of or resulting from, directly or indirectly occasioned by, happening through or in consequence of: war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalization or requisition or destruction of or damage to property by or under the order of any government or public or local authority;
- V. For, arising out of or resulting from a Claim covered by the PLF Claims Made Excess Plan or any other professional liability Coverage available to any **Covered Party**, including any self insured retention or deductible portion thereof;
- W. For, arising out of or resulting from any theft, loss or disclosure of **Third Party Corporate Information** by a **Related Party**;
- X. Either in whole or in part, directly or indirectly arising out of or resulting from or in consequence of, or in any way involving:
1. asbestos, or any materials containing asbestos in whatever form or quantity;
  2. the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of any fungi, molds, spores or mycotoxins of any kind; any action taken by any party in response to the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of fungi, molds, spores or mycotoxins of any kind, such action to include investigating, testing for, detection of, monitoring of, treating, remediating or removing such fungi, molds, spores or mycotoxins; and any governmental or regulatory order, requirement, directive, mandate or decree that any party take action in response to the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of fungi, molds, spores or mycotoxins of any kind, such action to include investigating, testing for, detection of, monitoring of, treating, remediating or removing such fungi, molds, spores or mycotoxins;

the PLF will have no duty or obligation to defend any **Covered Party** with respect to any **Claim** or governmental or regulatory order, requirement, directive, mandate or decree which either in whole or in part, directly or indirectly, arises out of or results from or in consequence of, or in any way involves the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of any fungi, molds, spores or mycotoxins of any kind;

3. the existence, emission or discharge of any electromagnetic field, electromagnetic radiation or electromagnetism that actually or allegedly affects the health, safety or condition of any person or the environment, or that affects the value, marketability, condition or use of any property; or
4. the actual, alleged or threatened discharge, dispersal, release or escape of Pollutants; or any governmental, judicial or regulatory directive or request that a **Covered Party** or anyone acting under the direction or control of a **Covered Party** test for, monitor, clean up, remove, contain, treat, detoxify or neutralize Pollutants. Pollutants means any solid, liquid, gaseous or thermal irritant or contaminant including gas, acids, alkalis, chemicals, heat, smoke, vapor, soot, fumes or waste. Waste includes but is not limited to materials to be recycled, reconditioned or reclaimed.

## V. DEFINITIONS

As used in this Endorsement:

- A. **Bodily Injury** means physical injury, sickness, disease or death of any person, including any mental anguish or emotional distress resulting therefrom.
- B. **Breach Notice Law** means any United States federal, state, or territory statute or regulation that requires notice to persons whose **Personally Identifiable Non-Public Information** was accessed or reasonably may have been accessed by an unauthorized person.

**Breach Notice Law** also means a foreign statute or regulation that requires notice to persons whose **Personally Identifiable Non-Public Information** was accessed or reasonably may have been accessed by an unauthorized person; provided, however, that the **Credit Monitoring Product** provided by Coverage Agreement I.B.4. shall not apply to persons notified pursuant to any such foreign statute or regulation.

- C. **Call Center Services** means the provision of a call center to answer calls during standard business hours for a period of ninety (90) days following notification (or longer if required by applicable law or regulation) of an incident pursuant to Coverage Agreement I.B.2. Such notification shall include a toll free telephone number that connects to the call center during standard business hours. Call center employees will answer questions about the incident from **Notified Individuals** and will provide information required by HITECH media notice or by other applicable law or regulation. **Call Center Services** will only be available for incidents (or reasonably suspected incidents) involving one hundred (100) or more **Notified Individuals**.

- D. **Claim** means:

1. a written demand received by any **Covered Party** for money or services, including the service of a suit or institution of regulatory or arbitration proceedings;
2. with respect to coverage provided under Coverage Agreement I.C. only, institution of a **Regulatory Proceeding** against any **Covered Party**; and
3. a written request or agreement to toll or waive a statute of limitations relating to a potential **Claim** described in paragraph 1. above.

Multiple **Claims** arising from the same or a series of related or repeated acts, errors, or omissions, or from any continuing acts, errors, omissions, or from multiple **Security Breaches** arising from a failure of **Computer Security**, shall be considered a single **Claim** for the purposes of this Endorsement, irrespective of the number of claimants or

**Covered Parties** involved in the **Claim**. All such **Claims** shall be deemed to have been made at the time of the first such **Claim**.

E. **Claims Expenses** means:

1. reasonable and necessary fees charged by an attorney designated pursuant to Clause II., Defense and Settlement of Claims, paragraph A.;
2. all other legal costs and expenses resulting from the investigation, adjustment, defense and appeal of a **Claim**, suit, or proceeding arising in connection therewith, or circumstance which might lead to a **Claim**, if incurred by the PLF, or by a **Covered Party** with the PLF's prior written consent; and
3. the premium cost for appeal bonds for covered judgments or bonds to release property used to secure a legal obligation, if required in any **Claim** against a **Covered Party**; provided the PLF shall have no obligation to appeal or to obtain bonds.

**Claims Expenses** do not include any salary, overhead, or other charges by a **Covered Party** for any time spent in cooperating in the defense and investigation of any **Claim** or circumstance that might lead to a **Claim** notified under this Endorsement, or costs to comply with any regulatory orders, settlements or judgments.

F. **Computer Security** means software, computer or network hardware devices, as well as **The Firm's** written information security policies and procedures, the function or purpose of which is to prevent **Unauthorized Access or Use**, a **Denial of Service Attack** against **Computer Systems**, infection of **Computer Systems** by **Malicious Code** or transmission of **Malicious Code** from **Computer Systems**. **Computer Security** includes anti-virus and intrusion detection software, firewalls and electronic systems that provide access control to **Computer Systems** through the use of passwords, biometric or similar identification of authorized users.

G. **Computer Systems** means computers and associated input and output devices, data storage devices, networking equipment, and back up facilities:

1. operated by and either owned by or leased to **The Firm**; or
2. systems operated by a third party service provider and used for the purpose of providing hosted computer application services to **The Firm** or for processing, maintaining, hosting or storing **The Firm's** electronic data, pursuant to written contract with **The Firm** for such services.

H. **Coverage Period** means the Coverage period as set forth in Item 2. of the Schedule.

I. **Reserved.Cyber Extortion Loss** means:

1. any **Extortion Payment** that has been made under duress by or on behalf of **The Firm** with the PLF or Beazley Group's prior written consent, but solely to prevent or terminate an **Extortion Threat** and in an amount that does not exceed the covered **Damages and Claims Expenses** that would have been incurred had the **Extortion Payment** not been paid;

2. an otherwise covered **Extortion Payment** that is lost in transit by actual destruction, disappearance or wrongful abstraction while being conveyed by any person authorized by or on behalf of **The Firm** to make such conveyance; and

3. fees and expenses paid by or on behalf of **The Firm** for security consultants retained with the PLF or Beazley Group's prior written approval, but solely to prevent or terminate an **Extortion Threat**.

- J. **Covered Media Activities** means the display of **Media Material** on **The Firm's** web site.
- K. **Covered Party** has the same meaning as set forth in Section II – WHO IS A COVERED PARTY in the PLF Claims Made Excess Plan.
- L. **Credit Monitoring Product** means a credit monitoring product that provides daily credit monitoring from the following credit bureaus: Experian, TransUnion and Equifax.

**Notified Individuals** who subscribe to the **Credit Monitoring Product** shall also receive:

1. access to their credit report from one of the three credit bureaus at the time of enrollment;
2. ID theft insurance for certain expenses resulting from identity theft;
3. notification of a critical change to their credit that may indicate fraud (such as an address change, new credit inquiry, new account opening, posting of negative credit information such as late payments, public record posting, as well as other factors); and
4. fraud resolution services if they become victims of identity theft as a result of the incident for which notification is provided pursuant to Coverage Agreement I.B.2.

If the Credit Monitoring Product becomes commercially unavailable, it shall be substituted with a similar commercial product that provides individual credit monitoring for potential identity theft. The **Credit Monitoring Product** will only be available for incidents (or reasonably suspected incidents) involving one hundred (100) or more **Notified Individuals**.

- M. **Data Asset** means any software or electronic data that exists in **Computer Systems** and that is subject to regular back up procedures, including computer programs, applications, account information, customer information, private or personal information, marketing information, financial information and any other information maintained by **The Firm** in its ordinary course of business.

- N. **Damages** means a monetary judgment, award or settlement; provided that the term **Damages** shall not include or mean:

1. future profits, restitution, disgorgement of unjust enrichment or profits by a **Covered Party**, or the costs of complying with orders granting injunctive or equitable relief;
2. return or offset of fees, charges, or commissions charged by or owed to a **Covered Party** for goods or services already provided or contracted to be provided;
3. any damages which are a multiple of compensatory damages, fines, taxes or loss of tax benefits, sanctions or penalties;
4. punitive or exemplary damages;
5. discounts, coupons, prizes, awards or other incentives offered to a **Covered Party's** customers or clients;
6. liquidated damages to the extent that such damages exceed the amount for which a **Covered Party** would have been liable in the absence of such liquidated damages agreement;

7. fines, costs or other amounts a **Covered Party** is responsible to pay under a **Merchant Services Agreement**; or
  8. any amounts for which a **Covered Party** is not liable, or for which there is no legal recourse against a **Covered Party**.
- O. **Denial of Service Attack** means an attack intended by the perpetrator to overwhelm the capacity of a **Computer System** by sending an excessive volume of electronic data to such **Computer System** in order to prevent authorized access to such **Computer System**.
- P. **Endorsement Aggregate Limit of Liability** means the aggregate Limit of Liability set forth in Item 3. of the Schedule.
- Q. **Endorsement Retroactive Date** means the date specified in Section 7 of the Declarations Sheet attached to this Endorsement.
- R. **The Firm** means the entities as defined in Section I – Definitions of the applicable Claims Made Excess Plan and Declarations Sheet to which this Endorsement is attached.
- S. **Loss** means **Damages, Claims Expenses, Penalties, ~~Public Relations and Crisis Management Expenses~~ PCI Fines, Expenses and Costs, Cyber Extortion Loss and Privacy Breach Response Services**.
- T. **Malicious Code** means any virus, Trojan horse, worm or any other similar software program, code or script intentionally designed to insert itself into computer memory or onto a computer disk and spread itself from one computer to another.
- U. **Media Material** means any information in electronic form, including words, sounds, numbers, images, or graphics and shall include advertising, video, streaming content, web-casting, online forum, bulletin board and chat room content, but does not mean computer software or the actual goods, products or services described, illustrated or displayed in such **Media Material**.
- V. **Merchant Services Agreement** means any agreement between a **Covered Party** and a financial institution, credit/debit card company, credit/debit card processor or independent service operator enabling a **Covered Party** to accept credit card, debit card, prepaid card, or other payment cards for payments or donations.
- W. **~~Reserved~~ Extortion Payment** means cash, marketable goods or services demanded to prevent or terminate an Extortion Threat.
- X. **Notified Individual** means an individual person to whom notice is given or attempted to be given under Coverage Agreement I.B.2.; provided any persons notified under a foreign **Breach Notice Law** shall not be considered **Notified Individuals**.
- Y. **Optional Extension Period** means the period of time after the end of the **Coverage Period** for reporting **Claims** as provided in Clause VIII., Optional Extension Period, of this Endorsement.
- Z. **Penalties** means:
1. any civil fine or money penalty payable to a governmental entity that was imposed in a **Regulatory Proceeding** by the Federal Trade Commission, Federal Communications Commission, or any other federal, state, local or foreign governmental entity, in such entity's regulatory or official capacity; and
  2. amounts which a **Covered Party** is legally obligated to deposit in a fund as equitable relief for the payment of consumer claims due to an adverse judgment

or settlement of a **Regulatory Proceeding** (including such amounts required to be paid into a “Consumer Redress Fund”); but and shall not include payments to charitable organizations or disposition of such funds other than for payment of consumer claims for losses caused by an event covered by Coverage Agreements A.1., A.2. or A.3.;

but shall not mean (a) costs to remediate or improve **Computer Systems**, (b) costs to establish, implement, maintain, improve or remediate security or privacy practices, procedures, programs or policies, (c) audit, assessment, compliance or reporting costs, or (d) costs to protect the confidentiality, integrity and/or security of **Personally Identifiable Non-Public Information** from theft, loss or disclosure, even if it is in response to a regulatory proceeding or investigation.

AA. **Personally Identifiable Non-Public Information** means:

1. information concerning the individual that constitutes “nonpublic personal information” as defined in the Gramm-Leach Bliley Act of 1999, as amended, and regulations issued pursuant to the Act;
2. medical or health care information concerning the individual, including “protected health information” as defined in the Health Insurance Portability and Accountability Act of 1996, as amended, and regulations issued pursuant to the Act;
3. information concerning the individual that is defined as private personal information under statutes enacted to protect such information in foreign countries, for **Claims** subject to the law of such jurisdiction;
4. information concerning the individual that is defined as private personal information under a **Breach Notice Law**; or
5. the individual’s drivers license or state identification number; social security number; unpublished telephone number; and credit, debit or other financial account numbers in combination with associated security codes, access codes, passwords or pins;

if such information allows an individual to be uniquely and reliably identified or contacted or allows access to the individual’s financial account or medical record information but does not include publicly available information that is lawfully made available to the general public from government records.

BB. **Reserved-Extortion Threat means a threat to breach Computer Security in order to:**

1. **alter, destroy, damage, delete or corrupt an Data Asset;**
2. **prevent access to Computer Systems or a Data Asset, including a denial of service attack or encrypting a Data Asset and withholding the decryption key for such Data Asset;**
3. **perpetrate a theft or misuse of a Data Asset on Computer Systems through external access;**
4. **introduce malicious code into Computer Systems or to third party computers and systems from Computer Systems; or**
5. **interrupt or suspend Computer Systems;**

**unless an Extortion Payment is received from or on behalf of The Firm.**



Multiple related or continuing **Extortion Threats** shall be considered a single **Extortion Threat** for purposes of this Coverage and shall be deemed to have occurred at the time of the first such **Extortion Threat**.

- CC. **Privacy Law** means a federal, state or foreign statute or regulation requiring **The Firm** to protect the confidentiality and/or security of **Personally Identifiable Non-Public Information**.
- DD. **Privacy Policy** means **The Firm's** public declaration of its policy for collection, use, disclosure, sharing, dissemination and correction or supplementation of, and access to **Personally Identifiable Non-Public Information**.
- EE. **Property Damage** means physical injury to or destruction of any tangible property, including the loss of use thereof.
- FF. **Regulatory Proceeding** means a request for information, civil investigative demand, or civil proceeding commenced by service of a complaint or similar proceeding brought by or on behalf of the Federal Trade Commission, Federal Communications Commission, or any federal, state, local or foreign governmental entity in such entity's regulatory or official capacity in connection with such proceeding.
- GG. Reserved.
- HH. **Retention** means the applicable retention for each Coverage Agreement as specified in Item 4. of the Schedule.
- II. Reserved.
- JJ. **Security Breach** means:
1. **Unauthorized Access or Use of Computer Systems**, including **Unauthorized Access or Use** resulting from the theft of a password from a **Computer System** or from any **Covered Party**;
  2. a **Denial of Service Attack** against **Computer Systems** or **Third Party Computer Systems**; or
  3. infection of **Computer Systems** by **Malicious Code** or transmission of **Malicious Code** from **Computer Systems**,
- whether any of the foregoing is a specifically targeted attack or a generally distributed attack.
- A series of continuing **Security Breaches**, related or repeated **Security Breaches**, or multiple **Security Breaches** resulting from a continuing failure of **Computer Security** shall be considered a single **Security Breach** and be deemed to have occurred at the time of the first such **Security Breach**.
- KK. **Third Party Computer Systems** means any computer systems that: (1) are not owned, operated or controlled by a **Covered Party**; and (2) does not include computer systems of a third party on which a **Covered Party** performs services. Computer systems include associated input and output devices, data storage devices, networking equipment, and back up facilities.
- LL. **Third Party Corporate Information** means any trade secret, data, design, interpretation, forecast, formula, method, practice, credit or debit card magnetic strip information, process, record, report or other item of information of a third party not covered under this Endorsement which is not available to the general public and is provided to a **Covered Party** subject to a mutually executed written confidentiality



agreement or which **The Firm** is legally required to maintain in confidence; however, **Third Party Corporate Information** shall not include **Personally Identifiable Non-Public Information**.

- MM. **Unauthorized Access or Use** means the gaining of access to or use of **Computer Systems** by an unauthorized person or persons or the use of **Computer Systems** in an unauthorized manner.
- NN. **Unauthorized Disclosure** means the disclosure of (including disclosure resulting from phishing) or access to information in a manner that is not authorized by **The Firm** and is without knowledge of, consent, or acquiescence of any **Covered Party**.

## VI. LIMIT OF LIABILITY AND COVERAGE

- A. The **Endorsement Aggregate Limit of Liability** stated in Item 3. of the Schedule is the PLF's combined total limit of liability for all **Damages, Penalties, Privacy Breach Response Services, Public Relations and Crisis Management Expenses and Claims Expenses** payable under this Endorsement. The **Endorsement Aggregate Limit of Liability** is in addition to the Limit of Coverage under the PLF Claims Made Excess Plan.

The sublimit of liability stated in Item 3.A. of the Schedule is the aggregate sublimit of liability payable under Coverage Agreement I.B. Privacy Breach Response Services of this Endorsement and is part of and not in addition to the **Endorsement Aggregate Limit of Liability**.

The sublimit of liability stated in Item 3.B. of the Schedule is the aggregate sublimit of liability payable under Coverage Agreement I.B.(1) of this Endorsement and is part of and not in addition to the **Endorsement Aggregate Limit of Liability**.

The sublimit of liability stated in Item 3.C. of the Schedule is the aggregate sublimit of liability payable under Coverage Agreement I.C. Regulatory Defense and Penalties of this Endorsement and is part of and not in addition to the **Endorsement Aggregate Limit of Liability**.

The sublimit of liability stated in Item 3.D. of the Schedule is the aggregate sublimit of liability payable under Coverage Agreement I.E. Crisis Management and Public Relations of this Endorsement and is part of and not in addition to the **Endorsement Aggregate Limit of Liability**.

The sublimit of liability stated in Item 1.E. of the Schedule is the aggregate limit of liability payable under this Coverage for all **Cyber Extortion Loss** covered under Coverage Agreement I.F. and is part of and not in addition to the **Endorsement Aggregate Limit of Liability**.

Neither the inclusion of more than one **Covered Party** under this Endorsement, nor the making of **Claims** by more than one person or entity shall increase the Limit of Liability.

- B. The Limit of Liability for the **Optional Extension Period** shall be part of and not in addition to the **Endorsement Aggregate Limit of Liability**.
- C. The PLF shall not be obligated to pay any **Damages, Penalties, Privacy Breach Response Services, Public Relations and Crisis Management Expenses or Claims Expenses**, or to undertake or continue defense of any suit or proceeding, after the **Endorsement Aggregate Limit of Liability** has been exhausted by payment of **Damages, Penalties, Public Relations and Crisis Management Expenses or Claims Expenses**, or after deposit of the **Endorsement Aggregate Limit of Liability** in a

court of competent jurisdiction. Upon such payment, the PLF shall have the right to withdraw from the further defense of any **Claim** under this Endorsement by tendering control of said defense to a **Covered Party**.

## VII. RETENTION

- A. The **Retention** amount set forth in Item 4.A. of the Schedule applies separately to each incident, event or related incidents or events, giving rise to a **Claim**. The **Retention** shall be satisfied by monetary payments by **The Firm of Damages, Claims Expenses, Public Relations and Crisis Management Expenses or Penalties**.
- B. The **Retention** amount set forth in Item 4.B. of the Schedule applies separately to each incident, event or related incidents or events, giving rise to an obligation to provide Privacy Breach Response Services. Services under Coverage Agreements I.B.3. and I.B.4. will only be provided for incidents requiring notification to 100 or more individuals..
- C. The **Retention** set forth in Item 4.C. of the Schedule applies separately to each Extortion Threat. The **Retention** shall be satisfied by monetary payments by **The Firm of covered Cyber Extortion Loss**.

## VIII. OPTIONAL EXTENSION PERIOD

- A. In the event **The Firm** purchases Extended Reporting Coverage for its Excess Plan, as provided for in Section XIV of the Excess Plan, **The Firm** will also be provided a corresponding **Optional Extension Period** under this Endorsement. If such **Optional Extension Period** is provided, then the time period for **Claims** to be made and reported to the PLF and Beazley Group will be extended by the same Extended Reporting Coverage Period purchased in the Extended Reporting Coverage; provided that such **Claims** must arise out of acts, errors or omissions committed on or after the **Endorsement Retroactive Date** and before the end of the **Coverage Period**.
- B. The Limit of Liability for the **Optional Extension Period** shall be part of, and not in addition to, the applicable Limit of Liability of the PLF for the **Coverage Period** and the exercise of the **Optional Extension Period** shall not in any way increase the **Endorsement Aggregate Limit of Liability** or any sublimit of liability. The **Optional Extension Period** does not apply to Coverage Agreement I.B.
- C. All notices and premium payments with respect to the **Optional Extension Period** option shall be directed to the PLF and Beazley Group.
- D. At the commencement of the **Optional Extension Period** the entire premium shall be deemed earned, and in the event **The Firm** terminates the **Optional Extension Period** for any reason prior to its natural expiration, the PLF will not be liable to return any premium paid for the **Optional Extension Period**.

## IX. NOTICE OF CLAIM, LOSS OR CIRCUMSTANCE THAT MIGHT LEAD TO A CLAIM

- A. If any **Claim** is made against a **Covered Party**, the **Covered Party** shall forward as soon as practicable to both the PLF and Beazley Group, written notice of such **Claim** in the form of an email or express or certified mail together with every demand, notice, summons or other process received by a **Covered Party** or a **Covered Party's** representative. In no event shall such notice be later than the end of the **Coverage Period** or the end of the **Optional Extension Period**. **Notice to the PLF may be made at [excess@osbplf.org](mailto:excess@osbplf.org) or PLF Excess Program, PO Box 231600, Tigard, OR 97281. Notice to Beazley Group may be made at: [bbr.claims@beazley.com](mailto:bbr.claims@beazley.com) or**

Beazley Group, 1270 Avenue of the Americas, 12<sup>th</sup> Floor, New York, NY 10020 or Tel: 866-567-8570.

- B. With respect to Coverage Agreement I.B., for a legal obligation to comply with a **Breach Notice Law** because of an incident (or reasonably suspected incident) described in Coverage Agreement I.A.1. or I.A.2., such incident or reasonably suspected incident must be reported as soon as practicable to the persons in paragraph A. above during the **Coverage Period** after discovery by a **Covered Party**.
- C. If during the **Coverage Period**, a **Covered Party** first becomes aware of any circumstance that could reasonably be the basis for a **Claim** it may give written notice to both the PLF through and Beazley Group in the form of a telecopy, email or express or certified mail as soon as practicable during the **Coverage Period**. Such a notice must include:
1. the specific details of the act, error, omission, or **Security Breach** that could reasonably be the basis for a **Claim**;
  2. the injury or damage which may result or has resulted from the circumstance; and
  3. the facts by which a **Covered Party** first became aware of the act, error, omission or **Security Breach**.

Any subsequent **Claim** made against a **Covered Party** arising out of such circumstance which is the subject of the written notice will be deemed to have been made at the time written notice complying with the above requirements was first given to the PLF.

An incident or reasonably suspected incident reported to both the PLF and Beazley Group during the **Coverage Period** and in conformance with Clause IX.B shall also constitute notice of a circumstance under this Clause IX.C.

~~D.~~ ~~D.~~ A **Claim** or legal obligation under paragraph A. or B. above shall be considered to be reported to the PLF when written notice is first received by both the PLF or Beazley Group in the form of a telecopy, email or express or certified mail or email through persons named in paragraph A. above of the **Claim** or legal obligation, or of an act, error, or omission, which could reasonably be expected to give rise to a **Claim** if provided in compliance with paragraph C. above.

E. With respect to the Coverage Agreement, in the event of an **Extortion Threat** to which this Coverage applies, the Firm shall notify the PLF or Beazley Group by contacting the persons specified in Item IX.A immediately upon receipt of any **Extortion Threat**, and shall thereafter also provide written notice by telecopy, email or express mail within five (5) days following the **Extortion Threat**.

## X. MERGERS AND ACQUISITIONS

If during the **Coverage Period** The Firm consolidates or merges with or is acquired by another entity, or sells substantially all of its assets to any other entity, then this Endorsement shall remain in full force and effect, but only with respect to a **Security Breach**, or other act or incidents that occur prior to the date of the consolidation, merger or acquisition. There shall be no coverage provided by this Endorsement for any other **Claim** or **Loss**.

## XI. THE FIRM AS AGENT

The Firm shall be considered the agent of all **Covered Parties**, and shall act on behalf of all **Covered Parties** with respect to the giving of or receipt of all notices pertaining to this

Endorsement, the acceptance of any endorsements to this Endorsement, and **The Firm** shall be responsible for the payment of all premiums and **Retentions**.

## **XII. AUTHORIZATION**

By acceptance of this Endorsement, the **Covered Parties** agree that **The Firm** will act on their behalf with respect to the giving and receiving of any notice provided for in this Endorsement, the payment of premiums and the receipt of any return premiums that may become due under this Endorsement, and the agreement to and acceptance of endorsements.

## **XIII. CONDITIONS APPLICABLE TO PRIVACY BREACH RESPONSE SERVICES**

The availability of any coverage under Coverage Agreement I.B. for Privacy Breach Response **Services** (called the “Services” in this Clause) is subject to the following conditions.

In the event of an incident (or reasonably suspected incident) covered by Coverage Agreement I.B of this Endorsement, the PLF (referred to as “we” or “us” in this Clause) will provide **The Firm** (referred to as “you” in this Clause) with assistance with the Services and with the investigation and notification process as soon as you notify us of an incident or reasonably suspected incident (an “Incident”).

- A. The Services provided under the Endorsement have been developed to expedite the investigation and notification process and help ensure that your response to a covered Incident will comply with legal requirements and will be performed economically and efficiently. It is therefore important that in the event of an Incident, you follow the program’s requirements stated below, as well as any further procedures described in the *Information Packet* provided with this Endorsement, and that you communicate with us so that we can assist you with handling the Incident and with the Services. You must also assist us and cooperate with us and any third parties involved in providing the Services. In addition to the requirements stated below, such assistance and cooperation shall include, without limitation, responding to requests and inquiries in a timely manner and entering into third party contracts required for provision of the Services.
- B. If the costs of a computer security expert are covered under Coverage Agreement I.B.1, you must select such expert, in consultation with us, from the program’s list of approved computer security experts included in the *Information Packet* provided with this Endorsement, which list may be updated by us from time to time. The computer security expert will require access to information, files and systems and you must comply with the expert’s requests and cooperate with the expert’s investigation. Reports or findings of the expert will be made available to you, us and any attorney that is retained to provide advice to you with regard to the Incident.
- C. If the costs of an attorney are covered under Coverage Agreement I.B.1., such attorney shall be selected by you from the program’s list of approved legal counsel included in the *Information Packet* provided with this Endorsement, which list may be updated by us from time to time. The attorney will represent you in determining the applicability of, and the actions necessary to comply with, **Breach Notice Laws** in connection with the Incident.
- D. If notification to individuals in connection with an Incident is covered under Coverage Agreement I.B.2., such notice will be accomplished through a mailing, email, or other method if allowed by statute and if it is more economical to do so (though we will not provide notice by publication unless you and we agree or it is specifically required by law), and will be performed by a service provider selected by us from the program’s list of approved breach notification service providers included in the *Information Packet*

provided with this Endorsement, which list may be updated by us from time to time. The selected breach notification service provider will work with you to provide the required notifications.

Our staff will assist you with the notification process, but it is important that you timely respond to requests, approve letter drafts, and provide address lists and other information as required to provide the Services. It will be your responsibility to pay any costs caused by your delay in providing information or approvals necessary to provide the Services, mistakes in information you provide, changes to the letter after approval, or any other failure to follow the notification procedure if it increases the cost of providing the Services in connection with an Incident.

- E. If **Call Center Services** are offered under Coverage Agreement I.B.3., such services shall be performed by a service provider selected by us who will work with you to provide the **Call Center Services** as described in Clause V.C. above.
- F. If a **Credit Monitoring Product** is offered under Coverage Agreement I.B.4, such product shall be provided by a service provider selected by us.

### **XIII. OBLIGATIONS IN THE EVENT OF AN EXTORTION THREAT**

#### **A. Covered Party's Duty of Confidentiality**

The Firm shall use its best efforts at all times to ensure that knowledge regarding the existence of this Coverage for **Cyber Extortion Loss** afforded by this Coverage is kept confidential. The PLF may terminate coverage for **Cyber Extortion Loss** under this Coverage upon ten (10) days written notice to **The Firm** if the existence of Coverage for **Cyber Extortion Loss** provided by this Coverage becomes public knowledge or is revealed to a person making an **Extortion Threat** through no fault of the PLF.

#### **B. The Firm's Obligation to Investigate Extortion Threat and Avoid or Limit Extortion Payment**

Prior to the payment of any **Extortion Payment**, **The Firm** shall make every reasonable effort to determine that the **Extortion Threat** is not a hoax, or otherwise not credible. **The Firm** shall take all steps reasonable and practical to avoid or limit the payment of an **Extortion Threat**.

#### **C. Conditions Precedent**

As conditions precedent to this coverage for **Cyber Extortion Loss** under the terms of this Coverage:

1. **The Firm** must be able to demonstrate that the **Extortion Payment** was surrendered under duress; and
  2. **The Firm** shall allow the PLF, Beazley Group, or their representative to notify the police or other responsible law enforcement authorities or any **Extortion Threat**.
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**Oregon State Bar**  
**Minimum Continuing Legal Education**  
**Rules and Regulations**  
*(As amended effective ??)*  
*Reviewed by MCLE Committee on 12/11/2015*

**Purpose**

It is of primary importance to the members of the bar and to the public that attorneys continue their legal education after admission to the bar. Continuing legal education assists Oregon lawyers in maintaining and improving their competence and skills and in meeting their obligations to the profession. These Rules establish the minimum requirements for continuing legal education for members of the Oregon State Bar.

**Rule One**  
**Terms and Definitions**

**1.1 Active Member:** An active member of the Oregon State Bar, as defined in Article 6 of the Bylaws of the Oregon State Bar.

**1.2 Accreditation:** The formal process of accreditation of activities by the MCLE ~~Administrator~~ Program Manager.

~~1.4~~ **1.3 BOG:** The Board of Governors of the Oregon State Bar.

~~1.5~~ **1.4 Accredited CLE Activity:** An activity that provides legal or professional education to attorneys in accordance with MCLE Rule 5.

~~1.6~~ **1.5 Executive Director:** The executive director of the Oregon State Bar.

~~1.7~~ **1.6 Hour or Credit Hour:** Sixty minutes of accredited group CLE activity or other CLE activity.

~~1.8~~ **1.7 MCLE Committee:** The Minimum Continuing Legal Education Committee appointed by the BOG to assist in the administration of these Rules.

~~1.9~~ **1.8 New Admittee:** A person is a new admittee from the date of initial admission as an active member of the Oregon State Bar through the end of his or her first reporting period.

~~1.10~~ **1.9 Regulations:** Any regulation adopted by the BOG to implement these Rules.

~~1.11~~ **1.10 Reporting Period:** The period during which an active member must satisfy the MCLE requirement.

~~1.12~~ **Retired Member:** An active member who is over 65 years old and is fully retired from the practice of law.

~~1.13~~ **1.11 Sponsor:** An individual or organization providing a CLE activity.

~~1.14~~ **1.12 Supreme Court:** The Supreme Court of the State of Oregon.

## **Regulations to MCLE Rule 1 Terms and Definitions**

**1.100 Inactive or Retired Member.** An inactive or retired member of the Oregon State Bar, as defined in Article 6 of the Bylaws.

**1.101 Suspended Member.** A member who has been suspended from the practice of law by the Supreme Court.

### **1.110 MCLE Filings.**

(a) Anything to be filed under the MCLE Rules shall be delivered to the MCLE ~~Administrator~~ Program Manager, at 16037 SW Upper Boones Ferry Road, PO Box 231935, Tigard, Oregon, 97281-1935.

(b) Filing shall not be timely unless the document is actually received by the MCLE Administrator by the close of business on the day the filing is due.

(c) Timely filing of a completed compliance report as required by Rule 7.1 and 7.4(a)(2) is defined as the actual physical receipt of the signed report at the MCLE office, regardless of the date of posting or postmark, or the date of delivery to a delivery service of any kind. Reports may be delivered by facsimile or electronic transmission. If the due date for anything to be filed under the MCLE Rules is a Saturday or legal holiday, including Sunday, or a day that the Oregon State Bar office is closed, the due date shall be the next regular business day.

### **1.115 Service Method.**

(a) MCLE Compliance Reports shall be sent to the member's email address on file with the bar, except that reports shall be sent by first-class mail (to the last designated business or residence address on file with the Oregon State Bar) to any member who is exempt from having an email address on file with the bar.

(b) Notices of Noncompliance shall be sent via regular mail and email to the member's last designated business or residence address on file with the Oregon State Bar and to the email address on file with the bar on the date of the notice. Email notices will not be sent to any member who is exempt from having an email address on file with the bar.

(c) Service by mail shall be complete on deposit in the mail.

**1.120 Regularly Scheduled Meeting.** A meeting schedule for each calendar year will be established for the BOG and the MCLE Committee, if one is appointed. All meetings identified on the schedule will be considered to be regularly scheduled meetings. Any other meeting will be for a special reason and/or request and will not be considered as a regularly scheduled meeting.

**1.130 Reporting Period.** Reporting periods shall begin on January 1 and end on December 31 of the reporting year.

~~**1.140 Fully Retired.** A member is fully retired from the practice of law if the member is over 65 years of age and does not engage at any time in any activity that constitutes the practice of law including, without limitation, activities described in OSB Bylaws 6.100 and 20.2.~~

## **Rule Two Administration of Minimum Continuing Legal Education**

**2.1 Duties and Responsibilities of the Board of Governors.** The Minimum Continuing Legal Education Rules shall be administered by the BOG. The BOG may modify and amend these Rules and adopt new rules subject to the approval of the Supreme Court. The BOG may adopt, modify and amend regulations to implement these Rules. The BOG may appoint an MCLE Committee to assist in the administration of these rules. There shall be an MCLE ~~Administrator~~ Program Manager who shall be an employee of the Oregon State Bar.

**2.2 Duties of the MCLE Administrator–Program Manager.** The MCLE Administrator Program Manager shall:

- (a) Oversee the day-to-day operation of the program as specified in these Rules.
- (b) Approve applications for accreditation and requests for exemption, and make compliance determinations.
- (c) Develop the preliminary annual budget for MCLE operations.
- (d) Prepare an annual report of MCLE activities.
- (e) Perform other duties identified by the BOG or as required to implement these Rules.

**2.3 Expenses.** The executive director shall allocate and shall pay the expenses of the program including, but not limited to staff salaries, out of the bar’s general fund.

### **Rule Three Minimum Continuing Legal Education Requirement**

**3.1 Effective Date.** These Rules, or any amendments thereto, shall take effect upon their approval by the Supreme Court of the State of Oregon.

#### **3.2 Active Members.**

(a) **Minimum Hours.** Except as provided in Rules 3.3 and 3.4, all active members shall complete a minimum of 45 credit hours of accredited CLE activity every three years as provided in these Rules.

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

(c) Child Abuse or Elder Abuse Reporting. One hour must be on the subject of a lawyer’s statutory duty to report child abuse or one hour on the subject of a lawyer’s statutory duty to report elder abuse (see ORS 9.114). MCLE Regulation 3.300(d) specifies the reporting periods in which the child abuse or elder abuse reporting credit is required.

~~(e)~~ (d) **Access to Justice.** In alternate reporting periods, at least three of the required hours must be in programs accredited for access to justice pursuant to Rule 5.5(b).

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

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

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



~~**3.4 Retired Members.** A retired member shall be exempt from compliance with these Rules, provided the member files a compliance report for any reporting period during which the exemption is claimed certifying that the member was or became retired during the reporting period. A retired member shall not resume the practice of law, either on a full or part-time basis, without prior written notice to the MCLE Administrator.~~

**3.5 3.4 Out-of-State Compliance.**

(a) Reciprocity Jurisdictions. An active member whose principal office for the practice of law is not in the State of Oregon and who is an active member in a jurisdiction with which Oregon has established MCLE reciprocity may comply with these rules by filing a compliance report as required by MCLE Rule 7.1 accompanied by evidence that the member is in compliance with the requirements of the other jurisdiction and has completed the child abuse or elder abuse reporting credit required in ORS 9.114. MCLE Regulation 3.300(d) specifies the reporting periods in which the child abuse or elder abuse reporting credit is required.

(b) Other Jurisdictions. An active member whose principal office for the practice of law is not in the State of Oregon and is not in a jurisdiction with which Oregon has established MCLE reciprocity must file a compliance report as required by MCLE Rule 7.1 showing that the member has completed at least 45 hours of accredited CLE activities as required by Rule 3.2.

~~**3.6 3.5 Retired and Active Pro Bono.** Members who are in Retired or Active Pro Bono status pursuant to OSB Bylaw 6.101 are exempt from compliance with these Rules.~~

**3.7 3.6 Reporting Period.**

(a) In General. All active members shall have three-year reporting periods, except as provided in paragraphs (b), (c) and (d).

(b) New Admittees. The first reporting period for a new admittee shall start on the date of admission as an active member and shall end on December 31 of the next calendar year. All subsequent reporting periods shall be three years.

(c) Reinstatements.

(1) A member who transfers to inactive, retired or Active Pro Bono status, is suspended, or has resigned and who is reinstated before the end of the reporting period in effect at the time of the status change shall retain the member's original reporting period and these Rules shall be applied as though the transfer, suspension, or resignation had not occurred.

(2) Except as provided in Rule 3.7(c)(1), the first reporting period for a member who is reinstated as an active member following a transfer to inactive, retired or Active Pro Bono status or a suspension, disbarment or resignation shall start on the date of reinstatement and shall end on December 31 of the next calendar year. All subsequent reporting periods shall be three years.

(3) Notwithstanding Rules 3.7(c)(1) and (2), reinstated members who did not submit a completed compliance report for the reporting period immediately prior to their transfer to inactive, retired or Active Pro Bono status, suspension or resignation will be assigned a new reporting period upon reinstatement. This reporting period shall begin on the date of reinstatement and shall end on December 31 of the next calendar year. All subsequent reporting periods shall be three years.

~~(d) Retired Members.~~

~~(1) A retired member who resumes the practice of law before the end of the reporting period in effect at the time of the member's retirement shall retain the member's original reporting period and these Rules shall be applied as though the retirement had not occurred.~~

~~(2) Except as provided in Rule 3.7(d)(1), the first reporting period for a retired member who resumes the practice of law shall start on the date the member resumes the practice of law and shall end on December 31 of the next calendar year. All subsequent reporting periods shall be three years.~~

~~(3) Notwithstanding Rules 3.7(d)(1) and (2), members resuming the practice of law after retirement who did not submit a completed compliance report for the reporting period immediately prior to retirement will be assigned a new reporting period upon the resumption of the practice of law. This reporting period shall begin on the date of the resumption of the practice of law and shall end on December 31 of the next calendar year. All subsequent reporting periods shall be three years.~~

### **Regulations to MCLE Rule 3 Minimum Continuing Legal Education Requirement**

~~**3.200 Resumption of Law Practice By a Retired Member.** The resumption of the practice of law by a retired member occurs when the member undertakes to perform any activity that would constitute the practice of law including, without limitation the activities described in OSB Bylaws 6.100 and 20.2.~~

~~**3.250 3.100 Out-of-State Compliance.** An active member seeking credit pursuant to MCLE Rule 3.5(b) shall attach to the member's compliance report filed in Oregon evidence that the member has met the requirements of Rules 3.2(a) and (b) with courses accredited in any jurisdiction. This evidence may include certificates of compliance, certificates of attendance, or other information indicating the identity of the crediting jurisdiction, the number of 60-minute hours of credit granted, and the subject matter of programs attended.~~

~~**3.260 3.200 Reciprocity.** An active member who is also an active member in a jurisdiction with which Oregon has established MCLE reciprocity (currently Idaho, Utah or Washington) may comply with Rule 3.5(a) by attaching to the compliance report required by MCLE Rule 7.1 a copy of the member's certificate of compliance with the MCLE requirements from that jurisdiction, together with evidence that the member has completed the child abuse or elder abuse reporting training required in ORS 9.114. No other information about program attendance is required. MCLE Regulation 3.300(d) specified the reporting periods in which the child abuse or elder abuse reporting credit is required.~~

#### **3.300 Application of Credits.**

(a) Legal ethics and access to justice credits in excess of the minimum required can be applied to the general or practical skills requirement.

(b) Practical skills credits can be applied to the general requirement.

(c) For members in a three-year reporting period, one child abuse or elder abuse reporting credit earned in a non-required reporting period may be applied to the ethics credit requirement. Additional child-abuse and elder abuse reporting credits will be applied to the general or practical skills requirement. For members in a shorter reporting period, child abuse and elder abuse reporting credits will be applied as general or practical skills credit. Access to Justice credits earned in a non-required reporting period will be credited as general credits.

(d) Members in a three-year reporting period are required to have 3.0 access to justice credits and 1.0 child abuse reporting credit in reporting periods ending 12/31/2012 through 12/31/2014, 12/31/2018 through 12/31/2020 and in alternate three-year periods thereafter. Members in a three-year reporting period ending 12/31/2015 through 12/31/2017, 12/31/2021 through 12/31/2023 and in alternate three-year periods thereafter are required to have 1.0 elder abuse reporting credit.

### **3.400 Practical Skills Requirement.**

(a) A practical skills program is one which includes courses designed primarily to instruct new admittees in the methods and means of the practice of law. This includes those courses which involve instruction in the practice of law generally, instruction in the management of a legal practice, and instruction in particular substantive law areas designed for new practitioners. A practical skills program may include but shall not be limited to instruction in: client contact and relations; court proceedings; negotiation and settlement; alternative dispute resolution; malpractice avoidance; personal management assistance; the negative aspects of substance abuse to a law practice; and practice management assistance topics such as tickler and docket control systems, conflict systems, billing, trust and general accounting, file management, and computer systems.

(b) A CLE course on any subject matter can contain as part of the curriculum a portion devoted to practical skills. The sponsor shall designate those portions of any program which it claims is eligible for practical skills credit.

(c) A credit hour cannot be applied to both the practical skills requirement and the ethics requirement.

(d) A new admittee applying for an exemption from the practical skills requirement, pursuant to Rule 3.3(b), shall submit in writing to the MCLE Administrator a request for exemption describing the nature and extent of the admittee's prior practice of law sufficient for the Administrator to determine whether the admittee has current skills equivalent to the practical skills requirements set forth in this regulation.

**3.500 Reporting Period Upon Reinstatement.** A member who returns to active membership status as contemplated under MCLE Rule 3.7(c)(2) shall not be required to fulfill the requirement of compliance during the member's inactive or retired status, suspension, disbarment or resignation, but no credits obtained during the member's inactive or retired status, suspension, disbarment or resignation shall be carried over into the next reporting period.

**3.600 Introductory Course in Access to Justice.** In order to qualify as an introductory course in access to justice required by MCLE Rule 3.3(b), the three-hour program must meet the accreditation standards set forth in MCLE Rule 5.5(b) and include discussion of at least three of the following areas: race, gender, economic status, creed, color, religion, national origin, disability, age or sexual orientation.

## **Rule Four Accreditation Procedure**

### **4.1 In General.**

(a) In order to qualify as an accredited CLE activity, the activity must be given activity accreditation by the MCLE ~~Administrator~~ Program Manager.

(b) The MCLE ~~Administrator~~ Program Manager shall electronically publish a list of accredited programs.

(c) All sponsors shall permit the MCLE ~~Administrator~~ Program Manager or a member of the MCLE Committee to audit the sponsors' CLE activities without charge for purposes of monitoring compliance with MCLE requirements. Monitoring may include attending CLE activities, conducting surveys of participants and verifying attendance of registrants.

### **4.2 Group Activity Accreditation.**

(a) CLE activities will be considered for accreditation on a case-by-case basis and must satisfy the accreditation standards listed in these Rules for the particular type of activity for which accreditation is being requested.

(b) A sponsor or individual active member may apply for accreditation of a group CLE activity by filing a written application for accreditation with the MCLE ~~Administrator~~ Program Manager. The application

shall be made on the form required by the MCLE ~~Administrator~~ Program Manager for the particular type of CLE activity for which accreditation is being requested and shall demonstrate compliance with the accreditation standards contained in these Rules.

(c) A written application for accreditation of a group CLE activity submitted by or on behalf of the sponsor of the CLE activity shall be accompanied by the program sponsor fee required by MCLE Regulation 4.300. An additional program sponsor fee is required for a repeat live presentation of a group CLE activity.

(d) A written application for accreditation of a group CLE activity must be filed either before or no later than 30 days after the completion of the activity. An application received more than 30 days after the completion of the activity is subject to a late processing fee as provided in Regulation 4.300.

(e) The MCLE ~~Administrator~~ Program Manager may revoke the accreditation of an activity at any time if it determines that the accreditation standards were not met for the activity. Notice of revocation shall be sent to the sponsor of the activity.

(f) Accreditation of a group CLE activity obtained by a sponsor or an active member shall apply for all active members participating in the activity.

**4.4 Credit Hours.** Credit hours shall be assigned in multiples of one-quarter of an hour. The BOG shall adopt regulations to assist sponsors in determining the appropriate number of credit hours to be assigned.

#### **4.5 Sponsor Advertising.**

(a) Only sponsors of accredited group CLE activities may include in their advertising the accredited status of the activity and the credit hours assigned.

(b) Specific language and other advertising requirements may be established in regulations adopted by the BOG.

### **Regulations to MCLE Rule 4 Accreditation Procedure**

#### **~~4.300~~ 4.200 Group Activity Accreditation.**

(a) Review procedures shall be pursuant to MCLE Rule 8.1 and Regulation 8.100.

(b) The number of credit hours assigned to the activity shall be determined based upon the information provided by the applicant. The applicant shall be notified via email or regular mail of the number of credit hours assigned or if more information is needed in order to process the application.

#### **~~4.350~~ 4.300 Sponsor Fees.**

(a) A sponsor of a group CLE activity that is accredited for 4 or fewer credit hours shall pay a program sponsor fee of \$40.00. An additional program sponsor fee is required for every repeat live presentation of an accredited activity, but no additional fee is required for a video or audio replay of an accredited activity.

(b) A sponsor of a group CLE activity that is accredited for more than 4 credit hours shall pay a program sponsor fee of \$75. An additional program sponsor fee is required for every repeat live presentation of an accredited activity, but no additional fee is required for a video or audio replay of an accredited activity.

(c) Sponsors presenting a CLE activity as a series of presentations may pay one program fee of \$40.00 for all presentations offered within three consecutive calendar months, provided:

- (i) The presentations do not exceed a total of three credit hours for the approved series; and
- (ii) Any one presentation does not exceed one credit hour.

(d) A late processing fee of \$40 is due for accreditation applications that are received more than 30 days after the program date. This fee is in addition to the program sponsor fee and accreditation shall not be granted until the fee is received.

~~(e) All local bar associations in Oregon are exempt from payment of the MCLE program sponsor fees. However, if accreditation applications are received more than 30 days after the program date, the late processing fee set forth in MCLE Regulation 4.350(d) will apply.~~

#### **4.400 Credit Hours.**

(a) Credit hours shall be assigned to CLE activities in multiples of one-quarter of an hour or .25 credits and are rounded to the nearest one-quarter credit.

(b) Credit Exclusions. Only CLE activities that meet the accreditation standards stated in MCLE Rule 5 shall be included in computing total CLE credits. Credit exclusions include the following:

- (1) Registration
- (2) Non-substantive introductory remarks
- (3) Breaks ~~exceeding 15 minutes per three hours of instruction~~
- (4) Business meetings
- (5) Programs of less than 30 minutes in length

#### **4.500 Sponsor Advertising.**

(a) Advertisements by sponsors of accredited CLE activities shall not contain any false or misleading information.

(b) Information is false or misleading if it:

- (i) Contains a material misrepresentation of fact or law or omits a fact necessary to make the statement considered as a whole not materially misleading;
- (ii) Is intended or is reasonably likely to create an unjustified expectation as to the results to be achieved from participation in the CLE activity;
- (iii) Is intended or is reasonably likely to convey the impression that the sponsor or the CLE activity is endorsed by, or affiliated with, any court or other public body or office or organization when such is not the case.

(c) Advertisements may list the number of approved credit hours. If approval of accreditation is pending, the advertisement shall so state and may list the number of CLE credit hours for which application has been made.

(d) If a sponsor includes in its advertisement the number of credit hours that a member will receive for attending the program, the sponsor must have previously applied for and received MCLE accreditation for the number of hours being advertised.

### **Rule Five** **Accreditation Standards for Category I Activities**

**5.1 Group CLE Activities.** Group CLE activities shall satisfy the following:

~~(a) The activity must have significant intellectual or practical content with the primary objective of increasing the participant's professional competence as a lawyer; and~~

~~(b) The activity must deal primarily with substantive legal issues, legal skills, practice issues, or legal ethics and professionalism, or access to justice; and~~

~~(c) (a) The activity must be offered by a sponsor having substantial, recent experience in offering continuing legal education or by a sponsor that can demonstrate ability to organize and effectively present continuing legal education. Demonstrated ability arises partly from the extent to which individuals with legal training or educational experience are involved in the planning, instruction, and supervision of the activity; and~~

~~(d) (b) The activity must be primarily intended for presentation to multiple participants, including but not limited to live programs, video and audio presentations (including original programming and replays of accredited programs), satellite broadcasts and on-line programs; and~~

~~(e) (c) The activity must include the use of thorough, high-quality written materials, unless the MCLE Administrator determines that the activity has substantial educational value without written materials.~~

~~(f) (d) The activity must have no attendance restrictions based on race, color, gender, sexual orientation, religion, geographic location, age, handicap or disability, marital, parental or military status or other classification protected by law, except as may be permitted upon application from a provider or member, where attendance is restricted due to applicable state or federal law.~~

#### **5.4 5.2 Attending Classes.**

(a) Attending a class at an ABA or AALS accredited law school may be accredited as a CLE activity.

(b) Attending other classes may also be accredited as a CLE activity, provided the activity satisfies the following criteria:

(1) The MCLE Administrator determines that the content of the activity is in compliance with other MCLE accreditation standards; and

(2) The class is a graduate-level course offered by a university; and

(3) The university is accredited by an accrediting body recognized by the U.S. Department of Education for the accreditation of institutions of postsecondary education.

(e) 5.3 Legislative Service. General credit hours may be earned for service as a member of the Oregon Legislative Assembly while it is in session.

#### (f) 5.4 New Lawyer Mentoring Program (NLMP)

(1) Mentors may earn CLE credit for serving as a mentor in the Oregon State Bar's New Lawyer Mentoring Program.

(2) New lawyers who have completed the NLMP may be awarded CLE credits to be used in their first three-year reporting period.

**5.3 5.5 Other Professionals.** Notwithstanding the requirements of Rules 5.12(a) and (b), 5.1(b) and (c) and 5.2, participation in or teaching an educational activity offered primarily to or by other professions or occupations may be accredited as a CLE activity if the MCLE Administrator determines that the content of the activity is in compliance with other MCLE accreditation standards. The MCLE Administrator Program Manager may accredit the activity for fewer than the actual activity hours if the MCLE Administrator determines that the subject matter is not sufficient to justify full accreditation.

## Accreditation Standards for Category II Activities

### ~~5.2 Other CLE Activities.~~

#### ~~(a) 5.6 Teaching Activities.~~

~~(1) Teaching activities may be accredited at a ratio of two credit hours for each sixty minutes of actual instruction.~~

~~(2) (a) Teaching credit is allowed may be claimed for teaching for accredited continuing legal education activities or for courses in ABA or AALS accredited law schools.~~

~~(3) (b) Credit may be claimed for teaching Teaching other courses may also be accredited as a CLE activity, provided the activity satisfies the following criteria:~~

~~(i) (1) The MCLE Program Manager Administrator determines that the content of the activity is in compliance with other MCLE accreditation content standards; and~~

~~(ii) (2) The course is a graduate-level course offered by a university; and~~

~~(iii) (3) The university is accredited by an accrediting body recognized by the U.S. Department of Education for the accreditation of institutions of postsecondary education.~~

~~(4) (c) Credit shall may not be claimed by given to an active member whose primary employment is as a full-time or part-time law teacher, but may be claimed by given to an active member who teaches on a part-time basis in addition to the member's primary employment.~~

~~(5) Teaching credit is not allowed for programs and activities for which the primary audience is nonlawyers unless the applicant establishes to the MCLE Administrator's satisfaction that the teaching activity contributed to the professional education of the presenter.~~

~~(6) (d) No credit may be claimed is allowed for repeat presentations of previously accredited courses unless the presentation involves a substantial update of previously presented material, as determined by the MCLE Program Manager Administrator.~~

#### ~~5.7 (e) Legal Research and Writing.~~

~~(1) Credit for legal Legal research and writing activities, including the preparation of written materials for use in a teaching activity may be claimed accredited provided the activity satisfies the following criteria:~~

~~(i) (a) It deals primarily with one or more of the types of issues for which group CLE activities can be accredited as described in Rule 5.1(b); and~~

~~(ii) (b) It has been published in the form of articles, CLE course materials, chapters, or books, or issued as a final product of the Legal Ethics Committee or a final instruction of the Uniform Civil Jury Instructions Committee or the Uniform Criminal Jury Instructions Committee, personally authored or edited in whole or in substantial part, by the applicant; and~~

~~(iii) (c) It contributes substantially to the legal education of the applicant and other attorneys; and~~

~~(iv) (d) It is not done in the regular course of the active member's primary employment.~~

~~(2) The number of credit hours shall be determined by the MCLE Program Manager Administrator, based on the contribution of the written materials to the professional competency of the applicant and other attorneys. One hour of credit will be granted for each sixty minutes of~~

~~research and writing, but no credit shall be granted for time spent on stylistic editing.~~

~~(b) 5.8 Service as a Bar Examiner. Credit may be claimed for service as a bar examiner for Oregon may be accredited, provided that the service includes personally writing or grading a question for the Oregon bar exam during the reporting period. Up to six (6) credit hours may be earned for writing and grading a question, and up to three (3) credit hours may be earned for grading a question.~~

~~(d) 5.9 Legal Ethics Service. Credit may be claimed for A member serving on the Oregon State Bar Legal Ethics Committee, Client Security Fund Committee, Commission on Judicial Fitness & Disability, Oregon Judicial Conference Judicial Conduct Committee, Local Professional Responsibility Committees, State Professional Responsibility Board, and Disciplinary Board or serving as volunteer bar counsel or volunteer counsel to an accused in Oregon disciplinary proceedings may earn two ethics credits for each twelve months of service.~~

~~(e) Legislative Service. General credit hours may be earned for service as a member of the Oregon Legislative Assembly while it is in session.~~

~~(f) New Lawyer Mentoring Program (NLMP)~~

~~—— (1) Mentors may earn CLE credit for serving as a mentor in the Oregon State Bar's New Lawyer Mentoring Program.~~

~~—— (2) New lawyers who have completed the NLMP may be awarded CLE credits to be used in their first three year reporting period.~~

~~(g) 5.10 Jury instructions Committee Service. Credit may be claimed for A member serving on the Oregon State Bar Uniform Civil Jury Instructions Committee or Uniform Criminal Jury Instructions Committee may earn two general credits for each 12 months of service.~~

~~(h) A member seeking credit for any of the activities described in Rule 5.2 must submit a written application on the form designated by the MCLE Administrator for Other CLE Activities.~~

~~**5.3 Other Professionals.** Notwithstanding the requirements of Rules 5.1(b) and (c) and 5.2, participation in or teaching an educational activity offered primarily to or by other professions or occupations may be accredited as a CLE activity if the MCLE Administrator determines that the content of the activity is in compliance with other MCLE accreditation standards. The MCLE Administrator may accredit the activity for fewer than the actual activity hours if the MCLE Administrator determines that the subject matter is not sufficient to justify full accreditation.~~

~~**5.4 Attending Classes.**~~

~~(a) Attending a class at an ABA or AALS accredited law school may be accredited as a CLE activity.~~

~~(b) Attending other classes may also be accredited as a CLE activity, provided the activity satisfies the following criteria:~~

~~(1) — The MCLE Administrator determines that the content of the activity is in compliance with other MCLE accreditation standards; and~~

~~(2) — The class is a graduate level course offered by a university; and~~

~~(3) — The university is accredited by an accrediting body recognized by the U.S. Department of Education for the accreditation of institutions of postsecondary education.~~



## Accreditation Standards for Category III Activities

### **5.6 5.11 Credit for Other Activities**

**(a) Personal Management Assistance.** Credit may be claimed for activities that deal with personal self-improvement may be accredited, provided the MCLE Program Manager Administrator determines the self-improvement relates to professional competence as a lawyer.

**(b) Other Volunteer Activities.** Credit for volunteer activities for which accreditation is not available pursuant to MCLE Rules 5.3, 5.4, 5.6, 5.7, 5.8, 5.9 or 5.10 may be claimed provided the MCLE Program Manager determines the primary purpose of such activities is the provision of legal services or legal expertise.

**~~5.400~~ (c) Business Development and Marketing Courses.** Credit may be claimed for Activities courses devoted to business development and marketing that are specifically tailored to the delivery or marketing of legal services and focus on use of the discussed techniques and strategies in law practices. enhancing profits or generating revenue through advertising and solicitation of legal business, whether denominated business development, client development, practice development, or otherwise, shall not be accredited. Activities dealing with ethical issues relating to advertising and solicitation under applicable disciplinary rules may be accredited if it appears to the Administrator that the emphasis is on legal ethics rather than on business development or marketing.

## Activity Content Standards

### **(a) 5.12 Group and Teaching CLE Activities**

(a) The activity must have significant intellectual or practical content with the primary objective of increasing the participant's professional competence as a lawyer; and

(b) The activity must deal primarily with substantive legal issues, legal skills, practice issues, or legal ethics and professionalism, or access to justice. ; and

### **5.5 5.13 Ethics and Access to Justice.**

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

(b) Child abuse or elder abuse reporting programs must be devoted to the lawyer's statutory duty to report child abuse or elder abuse (see ORS 9.114). MCLE Regulation 3.300(d) specifies the reporting periods in which the child abuse or elder abuse reporting credit is required.

~~(b)~~ (c) In order to be accredited as an activity pertaining to access to justice for purposes of Rule 3.2(e), (d) an activity shall be directly related to the practice of law and designed to educate attorneys to identify and eliminate from the legal profession and from the practice of law barriers to access to justice arising from biases against persons because of race, gender, economic status, creed, color, religion, national origin, disability, age or sexual orientation.

~~(c)~~ (d) Portions of activities may be accredited for purposes of satisfying the ethics and access to justice requirements of Rule 3.2, if the applicable content of the activity is clearly defined.

~~**5.6 Personal Management Assistance.** Activities that deal with personal self-improvement may be accredited, provided the MCLE Administrator determines the self-improvement relates to professional competence as a lawyer.~~

### Teaching Activity Content Standards

~~**5.3 5.14 Other Professionals.** Notwithstanding the requirements of Rules 5.6 and 5.12(a) and (b) 5.1(b) and (c) and 5.2, participation in or credit may be claimed for teaching an educational activity offered primarily to or by other professions or occupations may be accredited as a CLE activity if the MCLE Administrator Program Manager determines that the content of the activity is in compliance with other MCLE accreditation standards and the applicant establishes to the MCLE Program Manager's satisfaction that the teaching activity contributed to the presenter's professional competence as a lawyer. The MCLE Administrator may accredit the activity for fewer than the actual activity hours if the MCLE Administrator determines that the subject matter is not sufficient to justify full accreditation.~~

### Unaccredited Activities

~~**5.7 5.15 Unaccredited Activities.** The following activities shall not be accredited:~~

- (a) Activities that would be characterized as dealing primarily with personal self-improvement unrelated to professional competence as a lawyer; and
- (b) Activities designed primarily to sell services or equipment; and
- (c) Video or audio presentations of a CLE activity originally conducted more than three years prior to the date viewed or heard by the member seeking credit, unless it can be shown by the member that the activity has current educational value.
- (d) Repeat live, video or audio presentations of a CLE activity for which the active member has already obtained MCLE credit.

### **Regulations to MCLE Rule 5 Accreditation Standards**

#### **5.050 Written Materials.**

- (a) For the purposes of accreditation as a group CLE activity under MCLE Rule 5.1(e), written material may be provided in an electronic or computer-based format, provided the material is available for the member to retain for future reference.
- (b) Factors to be considered by the MCLE Administrator Program Manager in determining whether a group CLE activity has substantial educational value without written materials include, but are not limited to: the qualifications and experience of the program sponsor; the credentials of the program faculty; information concerning program content provided by program attendees or monitors; whether the subject matter of the program is such that comprehension and retention by members is likely without written materials; and whether accreditation previously was given for the same or substantially similar program.

### **5.100 Category I Activities**

~~(b)~~ (a) Credit for legislative service may be earned at a rate of 1.0 general credit for each week or part thereof while the legislature is in session.

~~(c)~~ (b) Members who serve as mentors in the Oregon State Bar's New Lawyer Mentoring Program (NLMP) may earn eight credits, including two ethics credits, upon completion of the plan year. If another lawyer assists with the mentoring, the credits must be apportioned between them.

~~(d)~~ (c) Upon successful completion of the NLMP, new lawyers may earn six general/practical skills credits to be used in their first three-year reporting period.

~~5.100 Other CLE~~ **5.200 Category II Activities.** The application procedure for accreditation of Other CLE Activities shall be in accordance with MCLE Rule 5.2 and Regulation 4.300.

~~(a)~~ (a) Teaching credit may be claimed at a ratio of two one credit hour for each sixty minutes of actual instruction.

~~(a)~~ (b) With the exception of panel presentations, when calculating credit for teaching activities pursuant to MCLE Rule 5.2, for presentations where there are multiple presenters for one session, the number of minutes of actual instruction will be divided by the number of presenters unless notified otherwise by the presenter. Members who participate in panel presentations may receive credit for the total number of minutes of actual instruction. Attendance credit may be claimed for any portion of an attended session not receiving teaching credit.

~~(b)~~ Credit for legislative service may be earned at a rate of 1.0 general credit for each week or part thereof while the legislature is in session.

~~(c)~~ Members who serve as mentors in the Oregon State Bar's New Lawyer Mentoring Program (NLMP) may earn eight credits, including two ethics credits, upon completion of the plan year. If another lawyer assists with the mentoring, the credits must be apportioned between them.

~~(d)~~ Upon successful completion of the NLMP, new lawyers may earn six general/practical skills credits to be used in their first three-year reporting period.

### **5.200 Legal Research and Writing Activities.**

~~(a)~~ (c) For the purposes of accreditation of Legal Research and Writing, all credit hours shall be deemed earned on the date of publication or issuance of the written work.

~~(d)~~ One hour of credit may be claimed for each sixty minutes of research and writing, but no credit may be claimed for time spent on stylistic editing.

~~(b)~~ (e) Credit may be claimed for Legal Research and Writing that supplements an existing CLE publication may be accredited if the applicant provides a statement from the publisher confirming that research on the existing publication revealed no need for supplementing the publication's content.

**5.250 (f) Jury Instructions Committee Service.** Members may claim two general credits for each 12 months of service. To be eligible for credit under MCLE Rule ~~5.10~~ 5.2(g), a member of a jury instructions committee must attend at least six hours of committee meetings during the relevant 12-month period.

**(g) Service as a Bar Examiner.** Three (3) credit hours may be claimed for writing a question and three (3) credit hours may be claimed for grading a question.

**(h) Legal Ethics Service.** Members may claim two ethics credits for each twelve months of service on committees and boards listed in Rule 5.9.

### **5.300 Category III Activities.**

(a) Personal Management Assistance. Credit may be claimed for programs that provide ~~A program may be accredited as a personal management assistance program if it provides assistance with issues that could impair a lawyer's professional competence (examples include but are not limited to programs addressing alcoholism, drug addiction, burnout, procrastination, depression, anxiety, gambling or other addictions or compulsive behaviors, and other health and mental health related issues).~~ Credit may also be claimed for programs ~~A program may also be accredited as a personal management assistance program if it is designed to improve or enhance a lawyer's professional effectiveness and competence (examples include but are not limited to programs addressing time and stress management, career satisfaction and transition, and interpersonal/relationship skill-building).~~

(b) Other Volunteer Activities. Volunteer activities for which accreditation is not available pursuant to Rules 5.3, 5.4, 5.6, 5.7, 5.8, 5.9 or 5.10 may be claimed at a ratio of one credit hour for each two hours of uncompensated volunteer activities provided that the MCLE Program Manager determines the primary purpose of such activity is the provision of legal services or legal expertise. Such activities include but are not limited to:

(i) Providing direct pro bono representation to low-income clients referred by certified pro bono programs;

(ii) Serving as a judge, evaluator, mentor or coach in any type of mock trial, moot court, congressional hearing or client legal-counseling competition, law-related class or law-related program at the high school level and above; and

(iii) Teaching a legal education activity offered primarily to nonlawyers high school age and older.

~~5.400~~ (c) Business Development and Marketing Courses. Credit may be claimed for Activities courses devoted to business development and marketing that are specifically tailored to the delivery or marketing of legal services and focus on use of the discussed techniques and strategies in law practices. enhancing profits or generating revenue ~~Examples include but are not limited to courses focusing on business development approaches, strategies and techniques available to attorneys, marketing to clients seeking legal services, and website development to promote one's practice. through advertising and solicitation of legal business, whether denominated business development, client development, practice development, or otherwise, shall not be accredited. Activities dealing with ethical issues relating to advertising and solicitation under applicable disciplinary rules may be accredited if it appears to the Administrator that the emphasis is on legal ethics rather than on business development or marketing.~~

**5.500 5.400 Access to Justice.** A program shall not be ineligible for accreditation as an access to justice activity solely because it is limited to a discussion of substantive law, provided the substantive law relates to access to justice issues involving race, gender, economic status, creed, color, religion, national origin, disability, age, or sexual orientation.

~~5.600~~ **5.500 Independent Study.** Members may earn credit through independent screening or viewing of audio-or video-tapes of programs originally presented to live group audiences, or through online programs designed for presentation to a wide audience. A lawyer who is licensed in a jurisdiction that allows credit for reading and successfully completing an examination about specific material may use such credits to meet the Oregon requirement. No credit will be allowed for independent reading of material selected by a member except as part of an organized and accredited group program.

~~5.700~~ **5.600 Child and Elder Abuse Reporting.** In order to be accredited as a child abuse reporting or elder abuse reporting activity, the one-hour session must include discussion of an Oregon attorney's

requirements to report child abuse or elder abuse and the exceptions to those requirements.

## **Rule Six Credit Limitations**

### **6.1 In General.**

(a) Category I Activities. Credits in this category are unlimited. Credit shall be allowed only for CLE activities that are accredited as provided in these Rules, and substantial participation by the active member is required. The MCLE Administrator Program Manager may allow partial credit for completion of designated portions of a CLE activity.

(b) Category II Activities. Credits in this category are limited to 20 in a three-year reporting period and 10 in a shorter reporting period. No accreditation application is required.

(c) Category III Activities. Credits in this category are limited to 6 in a three-year reporting period and 3 in a shorter reporting period. No accreditation application is required.

~~(b) Except as provided in Rule 6.1(c), credit for a particular reporting period shall be allowed only for activities participated in during that reporting period.~~

~~(c) (d) An active member may carry forward 15 or fewer unused credit hours from the reporting period during which the credit hours were earned to the next reporting period.~~

~~(b) (e) Except as provided in Rule 6.1(c)(d), credit for a particular reporting period shall be allowed only for activities participated in during that reporting period.~~

~~**6.2 Teaching and Legal Research and Writing Limitation.** No more than 15 credit hours shall be allowed for each legal research activity for which credit is sought under MCLE Rule 5.2(c) and no more than 20 hours of combined teaching and legal research and writing credit may be claimed in one three year reporting period. Not more than 10 hours may be claimed in any shorter reporting period.~~

~~**6.3 Personal Management Assistance Limitation.** No more than 6 credit hours may be claimed in one three year reporting period and not more than 3 hours may be claimed in a shorter reporting period for personal management assistance activities.~~

## **Regulations to MCLE Rule 6 Credit Limitations**

**6.100 Carry Over Credit.** No more than six ethics credits can be carried over for application to the subsequent reporting period requirement. Ethics credits in excess of the carry over limit may be carried over as general credits. Child abuse and elder abuse education credits earned in excess of the reporting period requirement may be carried over as general credits, but a new child abuse or elder abuse reporting education credit must be earned in each reporting period in which the credit is required. Access to justice credits may be carried over as general credits, but new credits must be earned in the reporting period in which they are required. Carry over credits from a reporting period in which the credits were completed by the member may not be carried forward more than one reporting period.

**6.200 Credits Earned in Excess of Credit Limitations.** Any credits earned in excess of the credit limitations set forth in MCLE Rule Six ~~6.2 and 6.3~~ may not be claimed in the reporting period in which they are completed or as carry over credits in the next reporting period.

## **Rule Seven Compliance**

**7.1 Reports.** Every active member shall file a completed compliance report certifying completion of the member's MCLE requirement, on a form provided by the MCLE ~~Administrator~~ Program Manager, on or before 5:00 p.m. on January 31 of the year immediately following the active member's reporting period.

### **7.2 Recordkeeping.**

(a) Every active member shall maintain records of participation in CLE activities for use in completing a compliance report and shall retain these records for a period of twelve months after the end of the member's reporting period.

(b) The MCLE ~~Administrator~~ Program Manager may maintain records of active members' participation in CLE activities as necessary to verify compliance with the MCLE requirement.

### **7.3 Audits.**

(a) The MCLE ~~Administrator~~ Program Manager may audit compliance reports selected because of facial defects or by random selection or other appropriate method.

(b) For the purpose of conducting audits, the MCLE ~~Administrator~~ Program Manager may request and review records of participation in CLE activities reported by active members.

(c) Failure to substantiate participation in CLE activities in accordance with applicable rules and regulations after request by the MCLE ~~Administrator~~ Program Manager shall result in disallowance of credits for the reported activity, and in certain situations, assessment of the late filing fee specified in 7.5(f).

(d) The MCLE ~~Administrator~~ Program Manager shall refer active members to the Oregon State Bar Disciplinary Counsel for further action where questions of dishonesty in reporting occur.

### **7.4 Noncompliance.**

(a) Grounds. The following are considered grounds for a finding of non-compliance with these Rules:

(1) Failure to complete the MCLE requirement for the applicable reporting period.

(2) Failure to file a completed compliance report on time.

(3) Failure to provide sufficient records of participation in CLE activities to substantiate credits reported, after request by the MCLE ~~Administrator~~ Program Manager.

(b) Notice. In the event of a finding of noncompliance, the MCLE ~~Administrator~~ Program Manager shall send a written notice of noncompliance to the affected active member. The notice shall be sent via regular mail and email 30 days after the filing deadline and shall state the nature of the noncompliance and shall summarize the applicable rules regarding noncompliance and its consequences.

### **7.5 Cure.**

(a) Noncompliance for failure to file a completed compliance report by the due date can be cured by filing the completed report demonstrating completion of the MCLE requirement during the applicable reporting period, together with the late fee specified MCLE Regulation 7.200, no more than 60 days after the notice of noncompliance was sent.

(b) Noncompliance for failure to complete the MCLE requirement during the applicable reporting period can be cured by doing the following no more than 60 days after the notice of noncompliance was sent:

(1) Completing the credit hours necessary to satisfy the MCLE requirement for the applicable

reporting period;

(2) Filing the completed compliance report; and

(3) Paying the late filing fee specified in MCLE Regulation 7.200.

(c) Noncompliance for failure to provide the MCLE ~~Administrator~~ Program Manager with sufficient records of participation in CLE activities to substantiate credits reported can be cured by providing the MCLE ~~Administrator~~ Program Manager with sufficient records, together with the late fee specified in MCLE Regulation 7.200, no more than 60 days after the notice of noncompliance was sent.

(d) Credit hours applied to a previous reporting period for the purpose of curing noncompliance as provided in Rule 7.5(b) may only be used for that purpose and may not be used to satisfy the MCLE requirement for any other reporting period.

(e) When it is determined that the noncompliance has been cured, the MCLE ~~Administrator~~ Program Manager shall notify the affected active member that he or she has complied with the MCLE requirement for the applicable reporting period. Curing noncompliance does not prevent subsequent audit and action specified in Rule 7.3.

**7.6 Suspension.** If the noncompliance is not cured within the deadline specified in Rule 7.5, the MCLE ~~Administrator~~ Program Manager shall recommend to the Supreme Court that the affected active member be suspended from membership in the bar.

### **Regulations to MCLE Rule 7 Compliance**

#### **7.100. Member Records of Participation.**

(a) In furtherance of its audit responsibilities, the MCLE ~~Administrator~~ Program Manager may review an active member's records of participation in Category I CLE activities. Records which may satisfy such a request include, but are not limited to, certificates of attendance or transcripts issued by sponsors, MCLE recordkeeping forms, canceled checks or other proof of payment for registration fees or audio or video tapes, course materials, notes or annotations to course materials, or daily calendars for the dates of CLE activities. For individually screened presentations, contemporaneous records of screening dates and times shall be required.

(b) Members claiming credit for Category II activities should keep course descriptions, course schedules or other documentation verifying the number of minutes of actual instruction, along with a sample of the written materials prepared, if applicable. Members claiming Legal Research and Writing credit should keep a log sheet indicating the dates and number of hours engaged in legal research and writing in addition to a copy of the written product.

(c) Members claiming credit for Category III activities should keep log sheets indicating the dates and number of hours engaged in pro-bono representation and other volunteer activities, along with course descriptions and course schedules, if applicable. Members claiming credit for direct pro-bono representation to low-income clients should also keep documentation establishing the referral by a certified pro bono provider.

**7.150 Sponsor Records of Participation.** Within 30 days after completion of an accredited CLE activity, the sponsor shall submit an attendance record reflecting the name and Oregon bar number of each Oregon bar member attendee. The record shall be in a compatible electronic format or as otherwise directed by the MCLE ~~Administrator~~ Program Manager.

**7.200 Late Fees.** Members who complete any portion of the minimum credit requirement after the end of the reporting period or who fail to file a completed compliance report by the filing deadline set forth in Rule 7.1 must pay a \$200 late fee.

~~(a) The late fee for curing a failure to timely file a completed compliance report is \$50 if the report is filed and the late fee is paid after the filing deadline and no more than 30 days after the mailing of the notice of noncompliance and \$100 if the report is filed and the late fee is paid more than 30 days after the mailing of the notice of noncompliance but within the 60 day cure period; if additional time for filing is granted by the MCLE Administrator, the fee shall increase by \$50 for every additional 30 days or part thereof.~~

~~(b) The late fee for not completing the MCLE requirement during the applicable reporting period is \$200 if the requirement is completed after the end of the reporting period but before the end of the 60 day cure period; if additional time for meeting the requirement is granted by the MCLE Administrator, the fee shall increase by \$50 for every additional 30 days or part thereof.~~

## **Rule Eight Review and Enforcement**

### **8.1 Review.**

(a) Decisions of the MCLE ~~Administrator~~ Program Manager. A decision, other than a suspension recommended pursuant to Rule 7.6, affecting any active member or sponsor is final unless a request for review is filed with the MCLE ~~Administrator~~ Program Manager within 21 days after notice of the decision is mailed. The request for review may be by letter and requires no special form, but it shall state the decision to be reviewed and give the reasons for review. The matter shall be reviewed by the BOG or, if one has been appointed, the MCLE Committee, at its next regular meeting. An active member or sponsor shall have the right, upon request, to be heard, and any such hearing request shall be made in the initial letter. The hearing shall be informal. On review, the BOG or the MCLE Committee shall have authority to take whatever action consistent with these rules is deemed proper. The MCLE ~~Administrator~~ Program Manager shall notify the member or sponsor in writing of the decision on review and the reasons therefor.

(b) Decisions of the MCLE Committee. If a decision of the MCLE ~~Administrator~~ Program Manager is initially reviewed by the MCLE Committee, the decision of the MCLE Committee may be reviewed by the BOG on written request of the affected active member or sponsor made within 21 days of the issuance of the MCLE Committee's decision. The decision of the BOG shall be final.

(c) Suspension Recommendation of the MCLE ~~Administrator~~ Program Manager. A recommendation for suspension pursuant to Rule 7.6 shall be subject to the following procedures:

(1) A copy of the MCLE ~~Administrator's~~ Program Manager's recommendation to the Supreme Court that a member be suspended from membership in the bar shall be sent by regular mail and email to the member.

(2) If the recommendation of the MCLE ~~Administrator~~ Program Manager is approved, the court shall enter its order and an effective date for the member's suspension shall be stated therein.

**8.2 Reinstatement.** An active member suspended for noncompliance with the MCLE requirement shall be reinstated only upon completion of the MCLE requirement, submission of a completed compliance report to the bar, payment of the late filing and reinstatement fees, and compliance with the applicable provisions of the Rules of Procedure.



**Regulations to MCLE Rule 8  
Review and Enforcement**

**8.100 Review Procedure.**

(a) The MCLE ~~Administrator~~ Program Manager shall notify the active member or sponsor of the date, time and place of the BOG or MCLE Committee meeting at which the request for review will be considered. Such notice must be sent no later than 14 days prior to such meeting. If the request for review is received less than 14 days before the next regularly scheduled meeting, the request will be considered at the following regularly scheduled meeting of the BOG or MCLE Committee, unless the member or sponsor waives the 14 day notice.

(b) A hearing before the MCLE Committee may be recorded at the request of the active member or sponsor or the MCLE Committee. In such event, the party requesting that the matter be recorded shall bear the expense of such recording. The other party shall be entitled to a copy of the record of the proceedings at their own expense.

(c) The MCLE ~~Administrator~~ Program Manager shall notify the active member or sponsor of the decision and the reasons therefor within 28 days of the date of the review. A decision of the MCLE Committee shall be subject to BOG review as provided in Rule 8.1.

**Rule Nine  
Waivers and Exemptions**

Upon written request of a member or sponsor, the MCLE ~~Administrator~~ Program Manager may waive in full or part, grant exemption from or permit substitute compliance with any requirement of these Rules upon a finding that hardship or other special circumstances makes compliance impossible or inordinately difficult, or upon a finding that the requested waiver, exemption or substitute compliance is not inconsistent with the purposes of these Rules. The request shall state the reason for the waiver or exemption and shall describe a continuing legal education plan tailored to the particular circumstances of the requestor.

**Regulations to MCLE Rule 9  
Waivers and Exemptions**

**9.100 Waivers and Exemptions .** The MCLE ~~Administrator~~ Program Manager will consider requests for waivers and exemptions from the MCLE Rules and Regulations on a case by case basis.

**Rule Ten  
Amendment**

These Rules may be amended by the BOG subject to approval by the Supreme Court. Amendments may be proposed by the MCLE Committee, the executive director, or an active member. Proposed amendments shall be submitted and considered in compliance with any regulations adopted by the BOG

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# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** February 12, 2016  
**From:** Helen Hierschbiel, Executive Director  
**Re:** CSF Claim 2015-02 BERTONI (Miranda-Lopez) Request for BOG Review

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### Action Requested

Consider the claimant's request for BOG review of the CSF Committee's denial of his claim for reimbursement.

### Discussion

Claimant seeks reimbursement of unearned fees paid to Gary Bertoni for post-conviction relief, alleging that Bertoni did not to earn the fee and neglected to recognize that the statute of limitations for seeking PCR had already run.

Claimant was convicted in Washington County in 2004. He was represented by a public defender who Claimant believed did little or no investigation of the case. After his release, Claimant began looking for an attorney to challenge the conviction and have it expunged, but was unable to afford the retainer deposit required by the attorneys he contacted.

In late January 2014, Claimant eventually hired Bertoni to pursue post-conviction relief, and deposited a \$1,500 retainer towards Bertoni's fees. Claimant says Bertoni expressed optimism about the case and they communicated regularly for a few months. Claimant says he then learned from others that there was a two-year statute of limitations on post-conviction relief, so he decided to fire Bertoni. On May 30, 2014, Claimant met with Bertoni, who gave Claimant a check for \$125 while also offering to continue working on the case. Claimant took the refund check, but agreed to Bertoni continuing to work on his case. In mid-June, Claimant again sent a termination letter to Bertoni and refused Bertoni's subsequent request to continue the representation.

In response to the investigator's inquiry, Bertoni claimed to have fully earned the fees he received. Bertoni says he informed Claimant at the outset that the two-year statute of limitations made it extremely unlikely that anything could be done; thereafter, at Claimant's insistence, Bertoni reviewed the court files and transcripts, performed some legal research, spoke to the DA, and discussed the matter with Claimant.

While the Committee questioned the quality and value of Bertoni's services, it found no basis to conclude that Bertoni was dishonest or that he didn't provide some of the services he claimed.

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** February 12, 2016  
**From:** Helen Hierschbiel, Executive Director  
**Re:** CSF Claim No. 2015-12 CAROLAN (Avery) Request for BOG Review

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### Action Requested

Consider claimant's request for BOG review of the CSF Committee's denial of his claim for reimbursement.

### Discussion

In March 2009, James Avery pleaded guilty in Maryland to misdemeanor assault of a now-adult step-daughter who alleged that James had sexually abused her when she was a child. The plea was on the advice of James's Maryland defense counsel, who believed the plea would insulate James from being charge in Oregon (where he and the victim had previously resided). Maryland sentenced Avery to 10 years (14 months to be actually served) and required him to register as a sex offender.

In August 2010, James was indicted in Josephine County on felony sex abuse charges involving the same victim. His public defender in Oregon advised James to plead guilty to the Oregon charges because his prior guilty plea in Maryland could be used against him. James took his lawyer's advice and was sentenced to 144 months.

While in prison in Oregon, James reconnected with his former wife, Catherine.<sup>1</sup> In October 2011, Catherine arranged for attorney Kevin Carolan to evaluate whether James had a basis for post-conviction relief, as Catherine and James were concerned that neither of his criminal defense attorneys had given him good advice . According to Catherine, she had an oral agreement with Carolan about the services to be provided for James, and she paid an initial retainer of \$2,000 against what she understood to be an hourly rate of \$165.

James subsequently signed a written agreement on November 11, 2011, which acknowledged receipt of the initial retainer and provided that he would be billed for Carolan's time at the rate of \$200/hour, and for his assistant's time at \$70/hour. The agreement also contained the following: "I understand Mr. Carolan may assign work on my case to an associate within or outside of his firm."

Almost immediately after being retained, Carolan engaged a contract lawyer to research some issues relating to James' convictions; Carolan agreed to pay the contract lawyer \$50/hour. He did not tell James or Catherine that he was using a contract lawyer. His billing statement did

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<sup>1</sup> Catherine is not the mother of Avery's step-daughter victim. She and James had apparently been estranged for several years prior to the incidents at issue here.

not indicate a contract lawyer had been hired; rather, the contracted work was billed as Carolan's own and at his hourly rate. Upon receiving the first bill, Catherine contacted Carolan to clarify the billing rate. Carolan agreed to the lower rate of \$165 and adjusted the bill. By December 2011, the initial retainer had been exhausted and he requested another \$2000, which Catherine paid in several installments.

In September 2012, again without informing the client, Carolan replaced the first contract lawyer with a second one, who he paid \$75-100/hour. Again, Carolan's billing statement did not indicate that a contract lawyer did the work shown, which was billed at Carolan's hourly rate.

In early October 2012, James terminated Carolan's representation after a telephone conversation with the new contract lawyer led James to believe that Carolan had been pursuing a flawed strategy. Upon the termination, Carolan refunded an unearned balance of \$614 and delivered a research memo to Catherine. When asked about the records from the underlying cases, Carolan said he had never obtained them.<sup>2</sup>

James and Catherine complained to the bar, alleging that Carolan had been dishonest and charged an excessive fee. They claimed he never met with either of them and had only a couple of phone calls with James. After a year of "investigating," Carolan lacked a clear understanding of the facts. Carolan responded that he likely mis-remembering a conversation with James, but that it was irrelevant to the issue of whether James received an adequate defense in either state; he also described in some detail his varying theories of what relief might be available to James. In the spring of 2014, the SPRB authorized formal prosecution of Carolan for lack of competence and improper division of a fee between lawyers not in the same firm, in connection with his representation of James.

James requested an award of \$3,386 from the Client Security Fund (representing the \$4,000 paid to Carolan, less the \$614 refund). The committee investigator recommended an award of \$1,438 based on her calculation of the work done by the contract lawyers at their respective rates. After discussion, the CSF Committee rejected that recommendation. Essentially, the denial was based on the Committee's conclusion that it is not dishonest for a lawyer to use contract lawyers to perform services, particularly where it is expressly contemplated in the fee agreement. As for charging his own rates for the contract lawyers' time, the Committee members believed that "upcharging" for a contract lawyer is common practice, as it captures the lawyer's time in assigning and reviewing the work and recognizes that the lawyer is ultimately responsible. The Committee also analogized the practice to the way that firms bill for the services of associate attorneys. The Committee acknowledges that Carolan's services may have been of poor quality, but found no basis to conclude he had been dishonest or had failed to provide services in exchange for the fees he received.

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<sup>2</sup> The CSF Application indicates that the parties participated in fee mediation, during which Carolan offered another \$200 refund that the client rejected.

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** February 12, 2016  
**From:** Helen Hirschbiel, Executive Director  
**Re:** CSF Claim No. 2015-37 CHIPMAN (Noel) Request for BOG Review

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### Action Requested

Consider the claimant's request for BOG review of the CSF's denial of his claim for reimbursement.

### Discussion

Claimant Sainfort Noel seeks reimbursement of \$385 (an initial consultation fee of \$35 plus a flat fee of \$250) paid to Kerry Chipman, claiming that Chipman didn't do what he was asked or agreed to do and that his services were therefore of no value.

According to his application for reimbursement, Noel hired Chipman on March 26, 2015 "to get a deny [sic] letter from [employment] administration [sic] judge and account showing a 0 balance." Noel alleges that after two weeks with no word, he called Chipman who said he wasn't interested in the case and wouldn't pursue it further.

To get a fuller understanding of the facts, the CSF Committee investigator reviewed Noel's CAO complaint, which included documents from his participation in fee arbitration over the same issue. Based on those documents, the following facts were developed.

Noel hired Chipman to obtain documents from the Oregon Employment Department that he believed were being wrongfully withheld. In November 2014, Noel's application for unemployment benefits had been allowed, but he received no money. He had received an overpayment on a prior claim, but had repaid it. Based on his review of the documents and Noel's explanations, Chipman suspected that Noel may have been wrong, that his new claim had been denied rather than approved, and that he should have received an administrative denial.

Chipman agreed to correspond with the employment department to clarify the situation and obtain copies of what he expected would be a denial letter and an accounting of Noel's reimbursement of the earlier overpayment. Chipman called Heinechen, the employment department person in charge of Noel's case, that very day (March 26), but he was out until March 30. Chipman immediately informed Noel that he wouldn't have any information for him for a few days.

On March 30, Chipman spoke to Heinechen, who confirmed that Noel's fall 2014 application for benefits had been approved (not denied as Chipman expected). However, Heinechen also explained that in Noel's previous claim he had been assessed three penalty weeks in addition to having to reimburse an overpayment of \$464. Those decisions were the result of the department's conclusion that Noel had made misrepresentations in his earlier claim for benefits. Noel had made two payments of \$50 each, reducing the overpayment obligation to \$364.

When he received the hearings decisions and accounting from Heinechen, Chipman explained to Noel that, although his claim had been approved, no benefits were paid during the three penalty weeks. For the following two weeks, the department applied the benefits to the unpaid balance of the overpayment (the entire \$314 benefit one week and \$50 the second).

Noel refused to accept Chipman's explanation of the situation. He complained to CAO and also requested fee arbitration. When the fee arbitrator found for Chipman, Noel also complained to CAO about the arbitrator.

The CSF Committee found no dishonesty here, merely a misunderstanding. Noel has focused on Chipman's initial suspicion that the fall 2014 claim for benefit had been denied and that it is illegal for the department to withhold benefits absent a denial letter. Noel refuses to accept that Chipman provided reasonable services, albeit somewhat different than they both anticipated. As Chipman noted in his response to CAO:

"If [Noel] had told me at the initial LRS consultation that he'd been penalized for misrepresentation; had been assessed an overpayment at the same time; and repaid very little of that overpayment voluntarily, I could have saved him his \$250. That is not what he told me. Rather he accused Mr. Heinechen of personally stealing his money. That does not appear to have been the case."

Despite the fact that Chipman was able to clarify Noel's benefit situation for him, Noel argues that he is entitled to a full refund because Chipman didn't do what he agreed to do, i.e., obtain a copy of a denial letter and an accounting showing that Noel's overpayment obligation had been satisfied. However, there was no denial letter, so Chipman could never have obtained one. Chipman's agreement to do so was based on his initial misunderstanding of Noel's situation and his preliminary conclusion (based on what Noel told him), that benefits had been denied without the proper notice.

Accompanying documents: Noel Application for Reimbursement  
Investigator's Report  
Chipman Response to CAO Inquiry  
Noel Request for Review

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** February 12, 2016  
**From:** Helen Hierschbiel, Executive Director  
**Re:** CSF Claim No. 2015-08 GERBER (Chappue) Request for BOG Review

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### Action Requested

Consider the claimant's request for BOG review of the CSF Committee's denial of his claim for reimbursement.

### Discussion

Joseph Chappue's conviction on several criminal charges was final in April 2013. He hired Susan Gerber in October 2013 to pursue post-conviction relief. Over time, Chappue's fiancée paid Gerber a total of \$12,800 on his behalf.

Susan Gerber's practice was almost entirely post-conviction relief and criminal appeals. She practiced in Ontario, Oregon, first with the Rader Stoddard Perez firm beginning in 2010, then in early 2014 in a partnership with Vicki Vernon. That arrangement lasted only a few months, and by March 2014, Gerber was on her own.<sup>1</sup>

In the spring and summer of 2014, the bar received several complaints from Gerber's clients and a Malheur County judge alleging that Gerber was missing court dates and not attending to her clients' matters. In response to the bar's investigation, Gerber explained that she had become overwhelmed by her workload starting in December 2013. She also attributed her conduct to her addiction to prescription pain medication following knee surgery. In October 2014, Gerber stipulated to an involuntary transfer to inactive status on the ground that her addiction disabled her from "assisting and cooperating with her attorney and from participating in her defense" of disciplinary matters.

In anticipation of her change of status, Gerber entered into an agreement with Vicki Vernon pursuant to which Vernon would take over 12 of Gerber's pending matters in exchange for \$5,000. (Three of the clients subsequently chose not to be represented by Vernon.) The agreement contemplated that Gerber would be reinstated to active practice in 30 days and in the interim would assist Vernon with the transferred cases as a legal assistant or law clerk. If Gerber was not reinstated in 30 days, the agreement provided for an additional \$10,000 payment to be deposited in Vernon's trust account and from which she could withdraw funds at the rate of \$150 per hour for her services to the clients whose matters were transferred.

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<sup>1</sup> Prior to moving to Ontario, Gerber worked for several years for the Department of Justice handling similar types of cases. She had the reputation of being very good at her work.

Gerber was not reinstated in 30 days and remains on disability inactive status. She never paid Vernon the promised \$10,000, but Vernon received that amount from the PLF.

Court records and documents obtained from Ms. Vernon show that Gerber performed significant services on Chappue's behalf. Gerber's records show that she spent nearly 50 hours on the case. In November 2013, she filed a notice of representation and a motion to allow the filing of a formal petition; thereafter she met with claimant, spoke numerous times with his fiancée, and gathered and reviewed trial transcripts. In July 2014, she drafted and filed a petition for post-conviction relief, an exhibit list and a motion for Chappue to proceed *in forma pauperis*. She also prepared and filed a response to the state's motion to dismiss. Chappue recalls a hearing at which the judge commented that the petition filed by Gerber was "poorly done" and "needed changes."

In October 2014, Gerber informed Chappue that she was going to transfer to involuntary inactive status for an undetermined period, but indicated she could assist Vernon with Chappue's case. In November 2014 Chappue spoke to Gerber and demanded a refund of his fees. He says she admitted having failed in her duties, but that she had done a significant amount of work on the case. Vernon represented Chappue at his post-conviction hearing in October 2015, at which his petition was denied.

The CSF Committee denied this claim on the ground that it does not meet the requirements for a claim for unearned fees.<sup>2</sup> There was no evidence that Gerber didn't intend to perform the services for which she was hired, and that she performed more than de minimis services. Moreover, CSF Rule 2.2.4 provides that a fee is eligible for reimbursement if the client receives equivalent legal services from another lawyer without cost to the client:

2.2.4 In the event that a client is provided equivalent legal services by another lawyer without cost to the client, the legal fee paid to the predecessor lawyer will not be eligible for reimbursement, except in extraordinary circumstances.

As indicated above, Chappue's post-conviction case was completed by Vernon at no additional cost to him. While the Committee acknowledged that Chappue may have legitimate concerns about the quality and value of Gerber's services, the claim is not eligible for reimbursement from the CSF.

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<sup>2</sup> CSF Rule 2.2 provides: 2.2.1 In a loss resulting from a lawyer's refusal or failure to refund an unearned legal fee, "dishonest conduct" shall include (i) a lawyer's misrepresentation or false promise to provide legal services to a client in exchange for the advance payment of a legal fee or (ii) a lawyer's wrongful failure to maintain the advance payment in a lawyer trust account until earned.

2.2.2 A lawyer's failure to perform or complete a legal engagement shall not constitute, in itself, evidence of misrepresentation, false promise or dishonest conduct.

2.2.3 Reimbursement of a legal fee will be allowed only if (i) the lawyer provided no legal services to the client in the engagement; or (ii) the legal services that the lawyer actually provided were, in the Committee's judgment, minimal or insignificant; or (iii) the claim is supported by a determination of a court, a fee arbitration panel, or an accounting acceptable to the Committee that establishes that the client is owed a refund of a legal fee. No award reimbursing a legal fee shall exceed the actual fee that the client paid the attorney.



# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** February 12, 2016  
**From:** Helen Hirschbiel, Executive Director  
**Re:** CSF Claim No. 2015-34 GRECO (Patillo) Request for BOG Review

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### Action Requested

Consider the claimant's request for review of the CSF Committee's denial of his claim for reimbursement.

### Discussion

Claimant Daniel Patillo hired attorney Guy Greco in late July 2011 for defense against criminal charges and deposited a \$5,000 retainer. On October 19, Greco contacted Patillo about the status of his case and reminded him that an additional \$10,000 retainer would be required for Greco to handle the trial. Patillo declined to pay the additional retainer and Greco obtained court approval to withdraw from the case on November 15, 2011. Shortly thereafter, Greco returned \$1,794.55 to Patillo as the unused portion of the retainer.

Patillo's claim is rambling and nearly incomprehensible, but it appears he believes that Greco received (and misappropriated) an additional \$5,000 of his money. In support of this, Claimant has provided a *Statement of Lawyers Trust Account for Daniel Patillo* from a Michigan attorney who represented Patillo in a workplace injury claim. The statement shows the following debit:

"11-25-11 Overnight retainer Attorney Guy Greco (cashier's check).....\$5,000"

The Michigan attorney has no personal recollection of the transaction, but stands by his accounting that he overnighted a \$5,000 check to Greco at Patillo's request. Greco denies ever having received the check, and says he would have returned it he had, as it would have been received after he withdrew from Patillo's criminal case. Because it was a cashier's check, it is difficult to trace. Greco provided copies of his bank statements from November and December 2011, neither of which reflect a \$5,000 deposit.

Patillo filed a small claims action against Greco in Lincoln County in August 2015 seeking return of the \$5,000 "unearned retainer;" Greco demanded a jury trial and the case has been transferred to circuit court but there has been no activity since the transfer. Patillo has also sued his Michigan attorney in Lincoln County, alleging he did not authorize the distribution to Greco.

Patillo suffers from significant cognitive and emotional difficulties as a result of his 1988 workplace injury and the Committee was unsure of his credibility. The Committee also found it unlikely that Patillo would have authorized a \$5,000 transfer when the additional retainer

requested by Greco was \$10,000; additionally, the supposed transfer came after Greco had withdrawn from the case, so Patillo had no reason to be sending him additional funds. Ultimately the Committee concluded there was insufficient evidence of dishonesty by Greco to support the claim.

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** February 12, 2016  
**From:** Helen Hierschbiel, Executive Director  
**Re:** CSF Claim No. 2015-22 JORDAN (Hernandez) Request for BOG Review

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### Action Requested

Consider the claimant's request for BOG review of the CSF Committee's denial of her claim for reimbursement.

### Discussion

Hernandez retained Keith Jordan in March 2007 to represent her in an immigration removal proceeding arising out of criminal convictions for which she was incarcerated. Through her friend and employer (Kundelius), Hernandez paid \$2,000 towards the \$12,000 fixed fee requested by Jordan. Jordan did not tell Hernandez that in December 2006 he had entered into a stipulation with the California State Bar for a two-year disciplinary suspension that was awaiting approval from the California Supreme Court.<sup>1</sup>

On April 12, Jordan filed a motion to allow him to appear by telephone at a hearing set for April 16; the motion also sought termination of the removal proceeding, and asked that Hernandez be released on bond. Jordan did not appear on April 16 and the hearing was reset to April 23. Jordan again failed to appear and the hearing was reset to April 26. Jordan appeared and the court denied his motions to terminate the proceeding and release Hernandez.

On May 9, Jordan missed another hearing that was reset to August 13. On May 15, Kundelius deposited another \$5,000 toward Jordan's fee. On May 29, the California Supreme Court ordered Jordan's suspension, effective June 28, 2007.<sup>2</sup> The Executive Office for Immigration Review (EOIR) and the US Department of Homeland Security initiated disciplinary sanction against Jordan, but Jordan did not convey that information to Hernandez.

On July 17, Kundelius paid Jordan another \$500. On July 20, EOIR suspended Jordan from practicing in immigration matters. On August 10, Jordan told Hernandez about his suspension and did nothing more on her case. Hernandez appeared by herself at the August 13 removal hearing and prevailed.

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<sup>1</sup> In subsequent disciplinary proceedings in Oregon, Jordan claimed he didn't realize that a suspension of his California license would affect his ability represent clients in immigration matter because he expected to remain an active member of the Oregon State Bar.

<sup>2</sup> The California suspension was for two years, with all but nine months stayed, and a three-year probation. That resulted in Jordan's reciprocal nine-month suspension in Oregon, beginning January 1, 2008.

In September 2009 (two years after the completion of her immigration case), Hernandez filed a complaint about Jordan with the OSB. In July 2012, Jordan stipulated to an 18-month suspension arising in part from his representation of Hernandez, acknowledging that he had charged her an excessive fee.

In May 2012, Kundelius submitted a claim for reimbursement from the CSF for the \$7,500 he had paid to Jordan on Hernandez' behalf. On June 4, Sylvia Stevens notified Kundelius in writing that under CSF rules, only the client is eligible for reimbursement from the CSF, and providing a new application for Hernandez to submit.

Nothing further was heard from Hernandez until August 2015, when she submitted her application for reimbursement. In response to the CSF investigator's inquiry as to why she had waited so long to submit a claim to the CSF, Hernandez said she thought a payment from the CSF would be automatic in light of the "favorable disciplinary proceeding" against Jordan. The CSF Committee didn't disagree that Jordan was dishonest in failing to refund the unearned portion of the fee (which the CSF calculated at \$5,500), but found the claim to be untimely.

CSF Rule 2.8 provides that a claim must be filed:

*"...within two years after the latest of the following: (a) the date of the lawyer's conviction; or (b) in the case of a claim of loss of \$5,000.00 or less, the date of the lawyer's disbarment, suspension, reprimand or resignation from the Bar; or (c) the date a judgment is obtained against the lawyer, or (d) the date the claimant knew or should have known, in the exercise of reasonable diligence, of the loss. In no event shall any claim against the Fund be considered for reimbursement if it is submitted more than six (6) years after the date of the loss.*

Hernandez filed her claim three years after Jordan's suspension and more than 8 years after Jordan's representation of her ended. The Committee believed she should have known of her loss in August 2007 when Jordan refused to refund any of the fees he had been paid. The Committee also noted that Hernandez has made no effort to collect from Jordan, other than one telephone call in which he agreed he owed her the \$500 that was paid three days before his EOIR suspension.

In her request for BOG review, Hernandez argues that her claim should be deemed filed when Kundelius submitted an application in May 2012, because he had her power of attorney.<sup>3</sup> Unfortunately, Kundelius' application doesn't indicate he is acting under a power of attorney, nor did he so indicate in response to Ms. Stevens' letter returning his application. Hernandez offers no explanation for the three year delay between Kundelius' application and hers.

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<sup>3</sup> CSF Rule 2.1: A loss of money or other property of a lawyer's client is eligible for reimbursement if...the claim is made by the injured client or the client's conservator, personal representative, guardian ad litem, trustee, or attorney in fact.

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** February 12, 2016  
**From:** Helen Hirschbiel, Executive Director  
**Re:** CSF Awards Recommended for Payment

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### Action Requested

Consider the following claim for which the Client Security Fund Committee recommends awards:

GERBER (Graue)	\$12,500.00
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### Discussion

#### SUSAN GERBER COMMON FACTS

Beginning sometime in 2010, Susan Gerber practiced in Ontario, Oregon, first with the Rader Stoddard Perez firm, then in a brief partnership with Vicki Vernon, and by 2013 on her own. She represented clients in post-conviction relief cases and criminal appeals.

In the spring and summer of 2014, the bar received several complaints from Gerber's clients and a Malheur County judge alleging that Gerber was missing court dates and not attending to her clients' matters. In response to the bar's investigation, Gerber explained that she had become overwhelmed by her workload starting in December 2013. She also attributed her conduct to her addiction to prescription pain medication following knee surgery. In October 2014, Gerber stipulated to an involuntary transfer to inactive status on the ground that her addiction disabled her from "assisting and cooperating with her attorney and from participating in her defense" of disciplinary matters.

In anticipation of her change of status, Gerber entered into an agreement with Vicki Vernon pursuant to which Vernon would take over 12 of Gerber's pending matters in exchange for \$5,000. The agreement contemplated that Gerber would be reinstated to active practice in 30 days and in the interim would assist Vernon with the transferred cases as a legal assistant or

law clerk. If Gerber was not reinstated in 30 days, the agreement provided for an additional \$10,000 payment to be deposited in Vernon's trust account and from which she could withdraw funds at the rate of \$150 hour for her services to the clients whose matters were transferred.

Gerber was not reinstated in 30 days and remains on disability inactive status. She never paid Vernon the promised \$10,000, but Vernon received that amount from the PLF. Three of Gerber's clients declined to be represented by Vernon, but she continues to represent the remainder.

Susan Gerber's practice was almost entirely post-conviction relief and criminal appeals. She practiced in Ontario, Oregon, first with the Rader Stoddard Perez firm beginning in 2010, then in early 2014 in a partnership with Vicki Vernon. That arrangement lasted only a few months, and by March 2014, Gerber was on her own.<sup>1</sup>

In the spring and summer of 2014, the bar received several complaints from Gerber's clients and a Malheur County judge alleging that Gerber was missing court dates and not attending to her clients' matters. In response to the bar's investigation, Gerber explained that she had become overwhelmed by her workload starting in December 2013. She also attributed her conduct to her addiction to prescription pain medication following knee surgery. In October 2014, Gerber stipulated to an involuntary transfer to inactive status on the ground that her addiction disabled her from "assisting and cooperating with her attorney and from participating in her defense" of disciplinary matters.

In anticipation of her change of status, Gerber entered into an agreement with Vicki Vernon pursuant to which Vernon would take over 12 of Gerber's pending matters in exchange for \$5,000. (Three of the clients subsequently chose not to be represented by Vernon.) The agreement contemplated that Gerber would be reinstated to active practice in 30 days and in the interim would assist Vernon with the transferred cases as a legal assistant or law clerk. If Gerber was not reinstated in 30 days, the agreement provided for an additional \$10,000

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<sup>1</sup> Prior to moving to Ontario, Gerber worked for several years for the Department of Justice handling similar types of cases. She had the reputation of being very good at her work.

payment to be deposited in Vernon's trust account and from which she could withdraw funds at the rate of \$150 hour for her services to the clients whose matters were transferred.

Gerber was not reinstated in 30 days and remains on disability inactive status. She never paid Vernon the promised \$10,000, but Vernon received that amount from the PLF.

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# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** February 12, 2016  
**Memo Date:** January 29, 2016  
**From:** Judith Baker, Director Legal Services Program and LSP Committee  
**Re:** Disbursement of General Fund Revenue to Legal Aid Providers

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### Action Recommended

Approve the following recommendation from the Legal Services Program Committee disbursing the general fund revenue held by the Oregon State Bar to the legal aid providers.

### Background

The four legal aid programs, Legal Aid Services of Oregon (LASO), Oregon Law Center (OLC), Lane County Legal Aid and Advocacy Center (LCLAC) and Center for Nonprofit Legal Services (CNPLS), ask the OSB Legal Services Committee and the Board of Governors to distribute the general fund revenue based on poverty population. The American Community Survey (ACS) data provides the most reliable population estimates. Legal aid uses this demographic data in strategic planning. According to the ACS data, 11.34% of the individuals living in Oregon who are financially eligible for legal aid, because they have incomes below 125% of the national poverty guidelines, live in Lane County. Therefore, 11.34% of the \$600,000 should be sent to LCLAC. Similarly, 5.76% of the \$600,000 should be sent to CNPLS because that is the percentage of people who are eligible for legal aid who live in Jackson County. LASO and OLC serve the remainder of the state and should receive 82.9% of the \$600,000 to serve the low-income people living in the regions where they have primary responsibility. LASO and OLC will divide their share equally. This would breakout as follows:

- LCLAC \$68,040 ( $\$600,000 \times .1134 = \$68,040$ )
- CNPLC \$34,560 ( $\$600,000 \times .0576 = \$34,560$ )
- LASO \$248,700 ( $\$600,000 \times .82.9 = \$497,400/2 = \$248,700$ )
- OLC \$248,700 ( $\$600,000 \times .82.9 = \$497,400/2 = \$248,700$ )

The legal aid programs in Oregon ask that this revenue be distributed by OSB to each legal aid program in two equal payments, with one payment distributed in March 2016 and one payment distributed in January of 2017. To the extent that there are new developments, the programs may ask the OSB Legal Services Committee and the OSB to make adjustments to the payments scheduled for January of 2017. For example, further reductions in the federal appropriation for the Legal Services Corporation for FY2017 could cause the programs to request that a higher percentage be sent to LASO in order to maintain a stable statewide delivery system.



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# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** February 12, 2016  
**From:** Legal Ethics Committee  
**Re:** Updating OSB Formal Ethics Opinions 2005-30, 2005-68, 2005-77, 2005-94, 2005-121, 2005-128, 2005-157 and 2005-166

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### Issue

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

### Options

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

### Discussion

The Oregon Supreme Court adopted numerous amendments to the Oregon Rules of Professional Conduct over the last couple of years. In addition, there have been several court decisions on matters of professional responsibility. The Committee continues its review of the formal ethics opinions to determine whether and how the opinions need to be amended to bring them into conformance with the new rules and case law.

OSB Formal Op No 2005-128 has been amended to reflect the amendment to RPC 1.6(b) that allows for limited disclosure of client confidences in order to detect and resolve conflicts of interest when a lawyer moves firms. The amendments to this opinion include swapping out the relevant prior rule with the amended rule and providing additional explanation to the extent necessary. The committee made no changes to the substantive positions taken in the opinion.

OSB Formal Op No 2005-94 has been amended to bring it in conformance with the Oregon Supreme Court's decision in *In re Spencer*, 355 Or 679 (2014), which clarified that a lawyer who serves as both lawyer and real estate broker for a client does not have a conflict under RPC 1.7(a)(2) solely by virtue of the fact that the lawyer may receive a sales commission.

OSB Formal Op Nos 2005-30, 2005-68, 2005-77, 2005-121, 2005-157, 2005-166 have been amended to include a footnote that clarifies that the tripartite relationship that is generally presumed to exist in the insurance defense context can be overcome by the specific facts and circumstances in a particular matter.

Staff recommends adopting the proposed amended opinions.

Attachments: Redline versions of OSB Formal Ethics Op Nos. 2005-30, 2005-68, 2005-77, 2005-94, 2005-121, 2005-128, 2005-157 and 2005-166.

## **FORMAL OPINION NO. 2005-30**

### **Conflicts of Interest, Current Clients: Simultaneous Representation of Insurer and Insured**

#### **Facts:**

Insured has a property damage insurance policy with Insurer. When Insured's property is damaged by the negligent conduct of a third party, Insurer pays Insured to the extent required by the policy, minus the applicable deductible. The policy provides that, to the extent that Insurer pays Insured, Insurer is subrogated to Insured's claims against third parties.

Insurer now proposes to pay Lawyer to represent both Insurer and Insured in an action against a third party to recover damages not reimbursed by Insurer to Insured as well as the sums that Insurer paid to Insured. At the time that Insurer makes this request, it does not appear that the interests of Insurer and Insured do or may diverge.

#### **Question:**

May Lawyer undertake to represent both Insurer and Insured in an action against the third party?

#### **Conclusion:**

Yes, qualified.

#### **Discussion:**

In undertaking this representation, Lawyer would have both Insurer and Insured as clients, even though the action may be prosecuted solely in Insured's name.<sup>1</sup> *See, e.g.,* ABA Informal Ethics Op No 1476

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<sup>1</sup> [Any assumption that a tripartite relationship exists can be overcome by the specific facts and circumstances in a particular matter. See \*In re Weidner\*, 310 Or 757, 801 P2d 828 \(1990\) \(articulating the test for an attorney-client relationship\); \*Evraz Inc., N.A., v. Continental Ins. Co.\*, Civ. No. 3:08-cv-00447-AC, 2013 WL 6174839 \(D.Or. 2013\) \(finding no tripartite relationship where insurer did not hire lawyer and where lawyer had made it clear to insurer that she only represented insured\).](#)

(1981); ABA Formal Ethics Op No 282 (1950); 1 *Insurance* ch 14 (Oregon CLE 1996 & Supp 2003). Since Insurer would be paying Lawyer's fee, Lawyer must comply with the requirements of Oregon RPC 1.8(f):

A lawyer shall not accept compensation for representing a client from one other than the client unless:

- (1) the client gives informed consent;
- (2) there is not interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and
- (3) information related to the representation of a client is protected as required by Rule 1.6.

Oregon RPC 5.4(c) is also relevant:

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

As long as Lawyer does not permit improper influence within the meaning of Oregon RPC 5.4(c) and obtains informed consent from Insured pursuant to Oregon RPC 1.8(f)(1) and [Oregon RPC 1.0\(g\)](#),<sup>2</sup> the simultaneous representation would not be prohibited. There also is no reason this representation should be prohibited by Oregon RPC 1.7.<sup>3</sup> As

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<sup>2</sup> Oregon RPC 1.0(g) provides:

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

<sup>3</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:

- (1) the representation of one client will be directly adverse to another client;

discussed in OSB Formal Ethics Op No 2005-27, a lawyer may represent multiple clients without special disclosure and consent if it does not reasonably appear that a conflict is present. *Cf. In re Stauffer*, 327 Or 44, 48 n 2, 956 P2d 967 (1998) (citing *In re Samuels & Weiner*, 296 Or 224, 230, 674 P2d 1166 (1983)).

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

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COMMENT: For more information on this general topic and other related subjects, see *The Ethical Oregon Lawyer* §§ 3.36, § 9.17 (Oregon CLE 2003); *Restatement (Third) of the Law Governing Lawyers* § 134 (2003); and ABA Model Rule 1.8(f). See also OSB Formal Ethics Op Nos 2005-166 (insurance defense lawyer may not agree to comply with insurer's billing guidelines if to do so requires lawyer to materially compromise his or her ability to exercise independent judgment on behalf of client in violation of RPCs), [OSB Formal Ethics Op No 2005-115](#) (lawyer may not

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(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.

## **Formal Opinion No 2005-30**

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ethically permit representation of client to be controlled by others), [OSB Formal Ethics Op No 2005-98](#) (lawyer may ethically agree with insurer to handle number of cases for insurer at flat rate per case regardless of amount of work required as long as overall fee is not clearly excessive and as long as lawyer does not permit existence of agreement to limit work that lawyer would otherwise do for particular client).

## FORMAL OPINION NO. 2005-68

### Trust Accounts: Claims of Two or More Persons

#### Facts:

Lawyer represents Insurer and Insured in an action against a third party to recover damages allegedly caused by a third party's negligence. Insurer tells Lawyer that when settlement funds are received, Lawyer must forward all funds to Insurer and that Insurer will be the one to decide how much Insurer keeps by way of subrogation and how much is forwarded to Insured for uninsured losses.

#### Question:

May Lawyer honor Insurer's request?

#### Conclusion:

No.

#### Discussion:

Under these facts, Lawyer has two clients, Insurer and Insured.<sup>1</sup> OSB Formal Ethics Op No 2005-30. Any settlement proceeds would represent funds of both of Lawyer's clients.

Oregon RPC 1.15-1(d) and (e) provide:

(d) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon

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<sup>1</sup> [Any assumption that a tripartite relationship exists can be overcome by the specific facts and circumstances in a particular matter. See In re Weidner, 310 Or 757, 801 P2d 828 \(1990\) \(articulating the test for an attorney-client relationship\); Evraz Inc., N.A., v. Continental Ins. Co., Civ. No. 3:08-cv-00447-AC, 2013 WL 6174839 \(D.Or. 2013\) \(finding no tripartite relationship where insurer did not hire lawyer and where lawyer had made it clear to insurer that she only represented insured\).](#)

## Formal Opinion No 2005-68

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request by the client or third person, shall promptly render a full accounting regarding such property.

(e) When in the course of representation a lawyer is in possession of property in which two or more persons (one of whom may be the lawyer) claim interests, the property shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the property as to which the interests are not in dispute.

On the facts as presented, Insurer is not “entitled to receive” the full amount of settlement funds collected within the meaning of Oregon RPC 1.15-1(d). *Cf. In re Conduct of Howard*, 304 Or 193, 204, 743 P2d 719 (1987); OSB Formal Ethics Op No 2005-52. If Insurer and Insured agree on how to divide the money, Lawyer must make the agreed-on division. If not, Lawyer must either retain any disputed sums pending resolution of the dispute, as provided in Oregon RPC 1.15(e), or interplead the disputed funds. *Cf. OSB Formal Ethics Op No 2005-52.*

**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* §§ 9.17, § 11.3, §§ 11.7–11.8 (Oregon CLE 2003); *Restatement (Third) of the Law Governing Lawyers* §§ 45, § 46 comment d, 134 (2003); and ABA Model Rule 1.15.

**FORMAL OPINION NO. 2005-77**

**Conflicts of Interest, Current Clients:  
Representation of Insured  
After Investigation of Matter for Insurer**

**Facts:**

Lawyer is retained by Insurer to review an insurance policy issued to Insured because of a complaint filed by a third party against Insured. Lawyer advises Insurer that Insurer has a duty to defend Insured but may well not have a duty to pay any ultimate judgment. After that work is completed, Insurer asks Lawyer to represent Insurer and Insured in defense of the underlying litigation subject to a reservation of rights.

**Question:**

May Lawyer represent Insurer and Insured in defense of the underlying litigation?

**Conclusion:**

See discussion.

**Discussion:**

As discussed in OSB Formal Ethics Op No 2005-30, both Insured and Insurer would be Lawyer's clients in the defense of the underlying action.<sup>1</sup> Simultaneous representation in insurance defense cases is generally permissible: a conflict that falls within Oregon RPC 1.7

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<sup>1</sup> [Any assumption that a tripartite relationship exists can be overcome by the specific facts and circumstances in a particular matter. See In re Weidner, 310 Or 757, 801 P2d 828 \(1990\) \(articulating the test for an attorney-client relationship\); Evraz Inc., N.A., v. Continental Ins. Co., Civ. No. 3:08-cv-00447-AC, 2013 WL 6174839 \(D.Or. 2013\) \(finding no tripartite relationship where insurer did not hire lawyer and where lawyer had made it clear to insurer that she only represented insured\).](#)



generally will not exist because the clients have common interest in defeating the claim.<sup>2</sup> *See also* OSB Formal Ethics Op No 2005-121.

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<sup>2</sup> If the representation of one client will be directly adverse to the other client, the proposed representation would be impermissible even if both Insurer and Insured consented. *See In re Holmes*, 290 Or 173, 619 P2d 1284 (1980) (under former DR 5-105, consent would not have cured actual conflict of interest between lawyer's two clients). If there a significant risk that the representation of one client will be materially limited by the lawyer's responsibilities to the other client, the representation would be permissible, but only if Lawyer reasonably believes that he or she is able to competently represent both clients, and Insurer and Insured give informed consent, confirmed in writing. *Cf. In re Conduct of Barber*, 322 Or 194, 904 P2d 620 (1995).

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:

(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.

In this situation, however, the fact of Lawyer’s recently completed work for Insurer on the coverage question must also be considered. Because of that work, if there is a significant risk that Lawyer’s representation of Insured in defense of the underlying claim will be materially limited by Lawyer’s responsibilities to Insurer, a conflict will be present under Oregon RPC 1.7(a). Consequently, Lawyer could not represent both Insurer and Insured in the underlying action without a reasonable belief that Lawyer could competently represent both clients, and only after receiving informed consent, confirmed in writing, from both Insurer and Insured pursuant to Oregon RPC 1.7(b), Oregon RPC 1.0(b), and ~~1.0~~(g). The disclosure to Insured must include a discussion of the fact of the prior representation of Insurer on the coverage question and its potential significance. *Cf. In re Germundson*, 301 Or 656, 661, 724 P2d 793 (1986); *In re Conduct of Montgomery*, 292 Or 796, 802–804, 643 P2d 338 (1982); *In re Benson*, 12 DB Rptr 167 (1998); *In re Rich*, 13 DB Rptr 67 (1999).

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Oregon RPC 1.0(b) and (g) provide:

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

. . . .

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

Oregon RPC 1.8(f) and [Oregon RPC 5.4\(c\)](#) also apply to this situation.<sup>3</sup> On the present facts, however, these rules do not create any additional requirements beyond those created by Oregon RPC 1.7.

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

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<sup>3</sup> Oregon RPC 1.8(f) provides:

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

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

Oregon RPC 5.4(c) provides:

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

COMMENT: For additional information on this general topic and other related subjects, see *The Ethical Oregon Lawyer* §§ 3.36, § 9.2, §§ 9.8–9.11, § 9.13, § 9.17, § 9.20, §§ 20.1–20.15 (Oregon CLE 2003); *Restatement (Third) of the Law Governing Lawyers* §§ 121–122, § 128, § 130, § 134 (2003); and ABA Model Rules 1.0(b) and (e), 1.7, 1.8(f), 5.4(c). See also OSB Formal Ethics Op No 2005-157; Washington Informal Ethics Op No 943 (unpublished).

**FORMAL OPINION NO. 2005-94**  
**Conflicts of Interest:**  
**Lawyer's Spouse as Real Estate Broker**

**Facts:**

Lawyer is married to Real Estate Broker but does no legal work for Real Estate Broker.

**Questions:**

1. May Lawyer represent a seller in drafting a listing agreement with Real Estate Broker?
2. May Lawyer represent the seller or buyer in a transaction from which Real Estate Broker will earn a commission?

**Conclusions:**

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

**Discussion:**

Because Real Estate Broker is ~~by hypothesis~~, not a client of Lawyer, it is unnecessary to consider the potential applicability of Oregon RPC 1.7 as it relates to a current client conflict between two clients.<sup>1</sup> However, Lawyer must consider whether Lawyer's own personal interests, or Lawyer's interests in and responsibilities to Lawyer's spouse, would create a conflict in representing seller under either scenario. Oregon RPC 1.7 is relevant in regard to Lawyer's personal interest in the matter.<sup>2</sup>

Oregon RPC 1.7 provides, in pertinent part:

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

...

(2) there is a significant risk that the representation of one or more clients will be materially limited . . . by a personal interest of the lawyer.

....

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<sup>1</sup> For opinions discussing the point at which a lawyer-client relationship is formed, see, e.g., OSB Formal Ethics Op No 2005-46; *In re Harrington*, 301 Or 18, 718 P2d 725 (1986); and *In re Weidner*, 310 Or 757, 801 P2d 828 (1990).

<sup>2</sup> For opinions discussing the point at which a lawyer-client relationship is formed, see, e.g., OSB Formal Ethics Op No 2005-46; *In re Harrington*, 301 Or 18, 718 P2d 725 (1986); and *In re Weidner*, 310 Or 757, 801 P2d 828 (1990).

(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.

~~Oregon RPC 1.8(a) provides:~~

~~A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:~~

- ~~(1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client;~~
- ~~(2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and~~
- ~~(3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.~~

Oregon RPC 1.0(b) and (g) provide:

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

. . . .

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

Marriage is a civil contract (ORS 106.010) carrying with it a myriad of rights and responsibilities under federal and state law.<sup>3</sup> The degree to which spouses share common rights,

<sup>3</sup> Spouses may file joint tax returns becoming jointly and severally liable for income taxes for relevant years; they may incur joint and several liabilities for acquisition of major assets; they share government regulated benefits, including those regulated by ERISA; if they have lived in a community property state, community property rights may have attached to their assets as they move from state to state; upon filing a petition for dissolution, assets become shared, as a matter of law.

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liabilities and interests may affect how significant the risk that the representation of a client will be materially affected by Lawyer's interests in or responsibility to his or her spouse.<sup>4</sup> See Restatement (Third) of the Law Governing Lawyers §125 (2003).

The Oregon Supreme Court recently discussed a similar situation in which Lawyer served as both lawyer and broker for a client, addressing whether there was a significant risk that representation of the client in a bankruptcy and real estate transaction would be materially limited by the lawyer's personal interest in receiving a sales commission. The Court determined that the prospect of receiving a commission was not enough, standing alone, to create a conflict under RPC 1.7(a)(2). *In re Conduct of Spencer*, 355 Or. 679, 692 (2014). Even so, the Court cautioned:

If, as other jurisdictions have held, additional aspects of a real estate transaction (on which the Bar does not rely here) can result in a current conflict under RPC 1.7(a)(2), careful lawyers who seek to serve as both a client's legal advisor and broker in the same real estate transaction would be advised to satisfy the advice and consent requirements of both RPC 1.8(a) and RPC 1.7(b). See ABA Model Rules, Rule 1.8, comment [3] (recognizing that the same transaction can implicate both rules and require that both consent requirements be satisfied).

Id. at 697.

It seems unlikely that Lawyer can successfully deny that there is a significant risk there is either personal interest or a duty to a third person (a spouse) creating a current conflict of interest. Lawyer should take the steps described in Oregon RPC 1.7(2) to advise client of the current conflict and obtain "informed consent" to representation.

Oregon RPC 1.7(a)(2) would clearly be violated if Lawyer were to represent a buyer or seller in a real property transaction in which Lawyer's spouse stood to earn a commission unless Lawyer's client gives informed consent, confirmed in writing. Cf. *In re Baer*, 298 Or 29, 688 P2d 1324 (1984); *In re Henderson*, 10 DB Rptr 51 (1996). Assuming, without concluding, that representation of a client under these circumstances also constitutes a "business transaction with a client" within the meaning of Oregon RPC 1.8(a), the client's informed consent would also be required to avoid a violation of that rule. Cf. *In re Luebke*, 301 Or 321, 722 P2d 1221 (1986).

Approved by Board of Governors, August 2005.

<sup>4</sup> Oregon courts have long recognized that a husband and wife do not deal at arms' length and have imposed a fiduciary duty of the highest degree in transactions between them. *Matter of Marriage of Eltroth*, 67 Or.App. 520 (1984). Arguably, this duty alone may trigger Lawyer's duties under Oregon RPC 1.7(a)(2).

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COMMENT: For additional information on this general topic and other related subjects, see THE ETHICAL OREGON LAWYER §§8.2–8.5, 8.9–8.12, 8.14, 9.22, 20.1–20.15 (Oregon CLE 2003); RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS §§122, 125–126 (2003); and ABA Model Rules 1.0(b), (e), 1.7–1.8.

**FORMAL OPINION NO. 2005-121**

**Conflicts of Interest, Current Clients:  
Insurance Defense**

**Facts:**

Plaintiff files a complaint against Insured that includes two claims for relief. Insured has an insurance policy pursuant to which Insurer owes a duty to defend against, and a duty to pay damages on, the first claim for relief. Insurer would have no such duties, however, if Plaintiff had sued only on the second claim for relief. The amount of damages sought on the second claim exceeds policy limits.

Insured tenders the defense of the entire action to Insurer. Insurer accepts the tender of defense of both claims subject to a reservation of rights with respect to the second claim. Insurer then hires Lawyer to represent Insured in the case brought by Plaintiff.

After reviewing the pleadings and investigating the facts, Lawyer concludes that the first claim for relief may be subject to a motion to dismiss or a summary judgment motion or that it may be possible, for a sum that Insurer would be willing to pay, to settle the first claim only. The second claim, however, is not potentially subject to such motions and cannot be settled. Lawyer also knows that Insured does not want Lawyer to bring such a motion or effect such a partial settlement because doing so would leave Insured without an Insurer-paid defense on the second claim for relief and would diminish the ability of Insured to get funds from Insurer to help settle the case as a whole.

**Question:**

May Lawyer file a motion against the first claim or settle it?

**Conclusion:**

No.



**Discussion:**

As a general proposition, a lawyer who represents an insured in an insurance defense case has two clients: the insurer and the insured.<sup>1</sup> OSB Formal Ethics Op Nos 2005-77, [OSB Formal Ethics Op No 2005-30](#). Consequently, a lawyer in such a situation must be mindful of the restrictions in Oregon RPC 1.7 on current-client conflicts of interest:

(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:

(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.

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<sup>1</sup> [Any assumption that a tripartite relationship exists can be overcome by the specific facts and circumstances in a particular matter. See \*In re Weidner\*, 310 Or 757, 801 P2d 828 \(1990\) \(articulating the test for an attorney-client relationship\); \*Evraz Inc., N.A., v. Continental Ins. Co.\*, Civ. No. 3:08-cv-00447-AC, 2013 WL 6174839 \(D.Or. 2013\) \(finding no tripartite relationship where insurer did not hire lawyer and where lawyer had made it clear to insurer that she only represented insured\).](#)

For the definitions of *informed consent* and *confirmed in writing*, see Oregon RPC 1.0(b) and (g).<sup>2</sup>

The relationship between Lawyer, Insured, and Insurer is both created and limited by the insurance policy. As the court stated in *Nielsen v. St. Paul Companies*, 283 Or 277, 280, 583 P2d 545 (1978), for example:

When a complaint is filed against the insured which alleges, without amendment, that the insured is liable for conduct covered by the policy, the insurer has the duty to defend the insured, even though other conduct is also alleged which is not within the coverage. . . . The insurer owes a duty to defend if the claimant can recover against the insured under the allegations of the complaint *upon any basis* for which the insurer affords coverage. [Emphasis in original; citations omitted.]

See also ABA Formal Ethics Op No 282 (1950), which notes that simultaneous representation of insurers and insureds in actions brought by third parties generally does not raise conflict problems because of the “community of interest” growing out of the insurance contract.

When an insurer defends an insured without any reservation of rights (by which the insured reserves its right to deny coverage), there is

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<sup>2</sup> Oregon RPC 1.0(b) and (g) provide:

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

. . . .

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

little or no opportunity for a conflict of interest because the community of interest between the insurer and insured should be complete. When an insurer defends subject to a reservation of rights, however, a risk of conflict is present. To minimize this risk and to permit joint representation in such cases, both the ethics rules and insurance law require that a lawyer hired by the insurer to defend an insured must treat the insured as “the primary client” whose protection must be the lawyer’s “dominant” concern. *See, e.g.*, ABA Informal Ethics Op No 1476 (1981); 1 *Insurance* chs 6, 14 (Oregon CLE 1996 & Supp 2003).<sup>3</sup> Consequently, a lawyer who is hired to defend the insured in a situation such as the one described in this opinion cannot file a motion that would adversely affect the insured’s right to a defense or to coverage but must indeed act in a manner that is consistent with the interests of the insured.<sup>4</sup> *See Insurance, supra. See also Barmat v. John and Jane Doe Partners A–D*, [155 Ariz 519](#), 747 P2d 1218, 1219 (~~Ariz~~1987).

**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* §9.17 (Oregon CLE 2003); *Restatement (Third) of the Law Governing Lawyers* §134 (2000); and ABA Model Rules 1.0(b), (e), 1.7.

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<sup>3</sup> The law also provides that if there is a potential conflict between the insurer and the insured, the facts found by the court in the action by the third party against the insured will not be given collateral estoppel effect as to either the insurer or the insured in a subsequent coverage dispute. *See, e.g., Ferguson v. Birmingham Fire Ins. Co.*, 254 Or 496, 509–~~5~~11, 460 P2d 342 (1969).

<sup>4</sup> The insurer is free to hire other counsel to litigate the coverage issue.

**FORMAL OPINION NO. 2005-128**

**Conflicts of Interest, Current and Former Clients:  
Lawyer Changing Firms, Imputed Disqualification**

**Facts:**

While Lawyer was at ~~Old~~ Former Firm, Lawyer was the only lawyer who worked on or acquired information relating to the representation of Client. Subsequently, Lawyer left ~~Old~~ Former Firm to start New Firm, and Client directed all pending or further work to New Firm.

**Question:**

May ~~Old~~ Former Firm represent parties adversely to Client without Client's consent?

**Conclusion:**

Yes, qualified.

**Discussion:**

Oregon RPC 1.10(b) provides:

(b) When a lawyer has terminated an association with a firm, the firm is not prohibited from thereafter representing a person with interests materially adverse to those of a client represented by the formerly associated lawyer and not currently represented by the firm, unless:

- (1) the matter is the same or substantially related to that in which the formerly associated lawyer represented the client; and
- (2) any lawyer remaining in the firm has information protected by Rules 1.6 and 1.9(c) that is material to the matter.

Oregon RPC 1.6 provides:

- (a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).
- (b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:

- ~~(1) to disclose the intention of the lawyer's client to commit a crime and the information necessary to prevent the crime;~~
- ~~(2) to prevent reasonably certain death or substantial bodily harm;~~
- ~~(3) to secure legal advice about the lawyer's compliance with these Rules;~~~~(4) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client;~~
- ~~(5) to comply with other law, court order, or as permitted by these Rules; or~~

~~\_\_\_\_\_ (6) \_\_\_\_\_ to provide the following information in discussions preliminary to the sale of a law practice under Rule 1.17 with respect to each client potentially subject to the transfer: the client's identity; the identities of any adverse parties; the nature and extent of the legal services involved; and fee and payment information. A potential purchasing lawyer shall have the same responsibilities as the selling lawyer to preserve confidences and secrets of such clients whether or not the sale of the practice closes or the client ultimately consents to representation by the purchasing lawyer. (6) \_\_\_\_\_ in connection with the sale of a law practice under Rule 1.17 or to detect and resolve conflicts of interest arising from the lawyer's change of employment or from changes in the composition or ownership of a firm. In those circumstances, a lawyer may disclose with respect to each affected client the client's identity, the identities of any adverse parties, the nature and extent of the legal services involved, and fee and payment information, but only if the information revealed would not compromise the attorney-client privilege or otherwise prejudice any of the clients. The lawyer or lawyers receiving the information shall have the same responsibilities as the disclosing lawyer to preserve the information regardless of the outcome of the contemplated transaction.~~

~~\_\_\_\_\_ (7) \_\_\_\_\_ to comply with the terms of a diversion agreement, probation, conditional reinstatement or conditional admission pursuant to BR 2.10, BR 6.2, BR 8.7 or Rule for Admission Rule 6.15. A lawyer serving as a monitor of another lawyer on diversion, probation, conditional reinstatement or conditional admission shall have the same responsibilities as the monitored lawyer to preserve information relating to the representation of the monitored lawyer's clients, except to the extent reasonably necessary to carry out the monitoring lawyer's responsibilities under the terms of the diversion, probation, conditional reinstatement or conditional admission and in any proceeding relating thereto.~~

(c) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.

Oregon RPC 1.9(c) provides:

(c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:

(1) use information relating to the representation to the disadvantage of the former client except as these Rules would permit or require with respect to a client, or when the information has become generally known; or

(2) reveal information relating to the representation except as these Rules would permit or require with respect to a client.

~~Ordinarily, OldFormer~~ Firm's representation in matters adverse to Client ~~might~~ may give rise to former client conflicts that could be waived only with the informed consent of all affected clients, confirmed in writing. See, e.g., Oregon RPC 1.0(b), and 1.0(g) as; cited in OSB Formal Ethics Op Nos 2005-17 and 2005-11.

Because Lawyer has left ~~OldFormer~~ Firm, however, ~~OldFormer~~ Firm will need conflicts waivers to pursue matters involving ~~its former~~ Client only when "the matter is the same or substantially related to that in which Lawyer formerly represented Client while associated with OldFormer Firm, and any lawyer remaining in ~~OldtheFormer F~~ Firm has information protected by Rules 1.6 and 1.9(c) that is material to the matter."<sup>22</sup> Oregon RPC 1.10(b).

As presented in these facts, no lawyer ~~who is~~ still at OldFormer Firm worked on, or actually acquired information relating to the representation of Client while Lawyer was at Old Firm~~protected by these rules~~. Cf. OSB Formal Ethics Op No 2005-120 and sources cited; *Gas-A-Tron v. Union Oil Co.*, 534 F2d 1322 (9th Cir 1976).<sup>1</sup> The sole remaining question, then, is whether it can be said that any lawyer remaining at OldFormer Firm subsequent to Lawyer's departure acquired information or is deemed to "have" "has" information relating to the representation of Client while Lawyer was at OldFormer Firm, and whether if OldFormer Firm has retained files, including electronic documents, of Client that contain information that is material to the matter.

If OldFormer Firm takes sufficient steps to assure that no lawyer at OldFormer Firm has or will actually acquire ~~the~~ information relating to the representation of Client while Lawyer was at OldFormer Firm in the future—by, for example, by segregating, restricting access to, or destroying such materials or returning them to Client without retaining copies—OldFormer Firm has or will have established that no lawyer remaining at OldFormer Firm will have such information, and any obligations under Oregon RPC 1.10(b) will clearly have been met.<sup>2</sup> *See also* OSB Formal Ethics Op No 2005-174.

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

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<sup>1</sup> Cf. Oregon RPC 1.9(b), which prohibits a lawyer from being adverse to a client of the lawyer's former law firm if the lawyer "had acquired information" about the former firm's client that is protected by Oregon RPC 1.6 and 1.9(c) and is material to the matter. ABA Model Rule 1.9 comment [5] explains that Model Rule 1.9(b) operates to disqualify the lawyer who has *actual* knowledge of protected information.

<sup>2</sup> Cf. Oregon RPC 1.18, which permits a firm to undertake a representation adverse to a prospective client who consulted with one member of a firm, provided the consulting member is adequately screened from participating in the matter, and written notice is promptly given to the prospective client. Adequate screening means employing procedures reasonably adequate to protect information that the isolated lawyer is obligated to protect.

COMMENT: For additional information on this general topic, and other related subjects, see THE ETHICAL OREGON LAWYER §§9.3–9.6, 9.25 (Oregon CLE 2006 rev.2003); RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS §§121–124, 132 (2003); and ABA Model Rules 1.6, 1.9–1.10.

## FORMAL OPINION NO 2005-157

[REVISED 2014]

### **Information Relating to the Representation of a Client: Submission of Bills to Insurer's Third-Party Audit Service**

#### **Facts:**

Lawyer represents Client whose insurance carrier is paying the bills. The insurance carrier asks Lawyer to submit Client's detailed bills to a third-party audit service.

#### **Questions:**

1. May Lawyer submit Client's bills to a third-party audit service at the request of Client's insurance carrier?

2. May Lawyer ethically seek Client's consent to submit Client's bills, which contain information relating to the representation of a client, to a third-party audit service?

#### **Conclusions:**

1. No, qualified.
2. Yes, qualified.

#### **Discussion:**

Absent an agreement to the contrary, an Oregon lawyer who represents an insured in an insurance defense case will generally have two clients: the insurer and the insured.<sup>1</sup> OSB Formal Ethics Op Nos 2005-121, [OSB Formal Ethics Op No 2005-77](#), [OSB Formal Ethics Op No 2005-30](#). Both the Oregon RPCs and insurance law as interpreted in Oregon require that a lawyer hired by the insurer to defend an insured

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<sup>1</sup> Any assumption that a tripartite relationship exists can be overcome by the specific facts and circumstances in a particular matter. See In re Weidner, 310 Or 757, 801 P2d 828 (1990) (articulating the test for an attorney-client relationship); Evraz Inc., N.A., v. Continental Ins. Co., Civ. No. 3:08-cv-00447-AC, 2013 WL 6174839 (D.Or. 2013) (finding no tripartite relationship where insurer did not hire lawyer and where lawyer had made it clear to insurer that she only represented insured).

must treat the insured as “the primary client” whose protection must be the lawyer’s “dominant” concern. OSB Formal Ethics Op No 2005-121.

One of a lawyer’s most important duties is the preservation of information relating to the representation of a client. Oregon RPC 1.6 provides:

(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).

(b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:

(1) to disclose the intention of the lawyer’s client to commit a crime and the information necessary to prevent the crime;

(2) to prevent reasonably certain death or substantial bodily harm;

(3) to secure legal advice about the lawyer’s compliance with these Rules;

(4) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer’s representation of the client;

(5) to comply with other law, court order, or as permitted by these Rules; or

(6) in connection with the sale of a law practice under Rule 1.17 or to detect and resolve conflicts of interest arising from the lawyer’s change of employment or from changes in the composition or ownership of a firm. In those circumstances, a lawyer may disclose with respect to each affected client the client’s identity, the identities of any adverse parties, the nature and extent of the legal services involved, and fee and payment information, but only if the information revealed would not compromise the attorney-client privilege or otherwise prejudice any of the clients. The lawyer or lawyers receiving the information shall have the same responsibilities as the disclosing lawyer to preserve the information regardless of the outcome of the contemplated transaction.



(7) to comply with the terms of a diversion agreement, probation, conditional reinstatement or conditional admission pursuant to BR 2.10, BR 6.2, BR 8.7 or Rule for Admission Rule 6.15. A lawyer serving as a monitor of another lawyer on diversion, probation, conditional reinstatement or conditional admission shall have the same responsibilities as the monitored lawyer to preserve information relating to the representation of the monitored lawyer's clients, except to the extent reasonably necessary to carry out the monitoring lawyer's responsibilities under the terms of the diversion, probation, conditional reinstatement or conditional admission and in any proceeding relating thereto.

(c) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.

1. *Submission of Bills to Third Party.*

If the bills contain no information protected by Oregon RPC 1.6, Lawyer may submit the bills to the third-party audit service. On the other hand, if the bills contain such information, Lawyer may not disclose them unless one of the exceptions contained in Oregon RPC 1.6 applies. In effect, this means that absent Client's consent, Lawyer must not reveal the information. Depending on the facts of the matter and the substantive law applicable to such situations, Lawyer may need to discuss with Client the risks, if any, that the submission of the detailed bills to the third-party audit service may entail. This might include, for example, a risk of inappropriate disclosure of protected information, a risk of waiver of the lawyer-client privilege,<sup>2</sup> or a risk of adverse effects on the insurer-insured relationship.

2. *Seeking Consent to Disclose Bills.*

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>2</sup> For a discussion regarding the waiver of lawyer-client privilege on the disclosure of bills to a government auditor, see *United States v. Massachusetts Institute of Technology*, 129 F3d 681, [97-2 US Tax Cas P 50955](#) (1st Cir 1997).

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(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.

Oregon RPC 1.0(b) and (g) provide:

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

....

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

Whether an insurer's demand for Lawyer to provide confidential client information to a third party would give rise to a conflict and, if so, whether the conflict would be waivable or nonwaivable, will depend on the specific facts of the matter. *Cf.* Washington Formal Ethics Op No 195 (1999) ("it is almost inconceivable that it would ever be in the client's best interests to disclose confidences or secrets to a third party"). *See also* New York Formal Ethics Op No 716 (1999); Massachusetts Informal Ethics Op No 1997-T53 (1997) (auditor must take steps to protect confidentiality of disclosed information). Unless a conflict exists that cannot be waived, it is permissible for Lawyer to ask Client for consent.

**Approved by the Board of Governors, April 2014.**

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COMMENT: For additional information on this general topic and other related subjects, see *The Ethical Oregon Lawyer* §§ 6.8, 9.15 (Oregon CLE 2006); *Restatement (Third) of the Law Governing Lawyers* §§ 59–60, 62, 121, 128 (2003); and ABA Model Rules 1.6–1.7.

## FORMAL OPINION ~~NO.~~NO 2005-166

### Competence and Diligence: Compliance with Insurance Defense Guidelines

#### Facts:

Insurer has an ongoing professional relationship with Lawyer to defend claims asserted against its insureds. As a part of that relationship, Insurer requires Lawyer to agree to comply with its Litigation Billing/Management Guidelines (the “Guidelines”).<sup>1</sup> The Guidelines may mandate, among other things, (1) approval by Insurer before Lawyer may schedule and take depositions, conduct legal research, prepare substantive motions, or hire experts, (2) delegation of particular tasks to paralegals, and (3) submission to Insurer of status reports or litigation plans or both.

A cause of action is filed against defendant Insured. Insurer retains Lawyer to provide a defense for Insured. Insurer sends Lawyer a cover letter confirming representation, along with the claim file. The letter contains a reminder to Lawyer to comply with Insurer’s Guidelines. Insurer also requests that Lawyer sign an acknowledgement form that Lawyer has received the claim file and the Guidelines.

#### Question:

May Lawyer agree to comply with the Guidelines without regard to their effect on Lawyer’s clients?

#### Conclusion:

No.

#### Discussion:

Lawyer may sign and return the acknowledgment letter to indicate that Lawyer has accepted the *assignment* of the matter, but must advise

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<sup>1</sup> The Guidelines may also be referred to as “case handling” or “case management” guidelines.

Insurer that he or she cannot agree to comply with Guidelines that might compromise Lawyer's ethical obligations as discussed below.

Lawyer may comply with the Guidelines only if Lawyer has an opportunity to review and evaluate the Guidelines with respect to each case and, based on that review, Lawyer reasonably concludes that compliance with the Guidelines will not materially compromise Lawyer's professional, independent judgment or Lawyer's ability to provide competent representation to Insured. Lawyer cannot agree to comply with the Guidelines before reviewing and analyzing the facts and issues of each case because such an advance agreement would potentially surrender Lawyer's professional judgment. Moreover, throughout the case, Lawyer has an ongoing ethical obligation to reevaluate whether his or her continued compliance with the Guidelines impedes his or her ability to exercise independent judgment.

In Oregon, a lawyer retained by an insurer to represent both the insurer and the insured must treat the insured as the "primary client" whose protection must remain the lawyer's "dominant concern."<sup>2</sup> OSB Formal Ethics Op Nos 2005-121, [OSB Formal Ethics Op No 2005-77](#), [OSB Formal Ethics Op No 2005-30](#).

Oregon RPC 1.8(f) provides:

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

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

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<sup>2</sup> [Any assumption that a tripartite relationship exists can be overcome by the specific facts and circumstances in a particular matter. See In re Weidner, 310 Or 757, 801 P2d 828 \(1990\) \(articulating the test for an attorney-client relationship\); Evraz Inc., N.A., v. Continental Ins. Co., Civ. No. 3:08-cv-00447-AC, 2013 WL 6174839 \(D.Or. 2013\) \(finding no tripartite relationship where insurer did not hire lawyer and where lawyer had made it clear to insurer that she only represented insured\).](#)

Oregon RPC 1.1 requires that Lawyer provide “competent representation” to Insured, which requires the “legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.” Notwithstanding the directives set forth in the Guidelines, Lawyer must not allow his or her professional judgment or the quality of his or her legal services to be compromised materially by Insurer.

Under Oregon RPC 5.5(a), Lawyer also must not assist a nonlawyer in the unauthorized practice of law. Thus, Lawyer may comply with the Guidelines requirements that certain tasks be delegated to a paralegal only if, in Lawyer’s independent professional judgment, the particular task is appropriate for performance by a paralegal in the particular case and the paralegal is appropriately supervised.

Insurer may require Lawyer to inform Insurer about the litigation process through periodic status reports, detailed billing statements, and the submission of other information. Lawyer’s compliance with this aspect of the Guidelines does not necessarily violate Lawyer’s ethical obligations if the disclosure of such information advances the interests of both Insured and Insurer, and does not otherwise compromise Lawyer’s duty to maintain his or her independent judgment. *Cf.* OSB Formal Ethics Op No 2005-157.

In the final analysis, Lawyer must determine on a case-by-case and step-by-step basis whether compliance with the Guidelines will restrict Lawyer’s ability to perform tasks that, in Lawyer’s professional judgment, are necessary to protect Insured’s interests. Lawyer cannot commit in advance to comply with Guidelines that restrict Lawyer’s representation of Insured, possibly to Insured’s detriment. Lawyer also must continue to monitor the effect of the Guidelines during the entire course of representation. If Lawyer cannot ethically comply with any particular aspect of the Guidelines, Lawyer must obtain a modification of the Guidelines from Insurer, or decline or withdraw from the representation.

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

## Formal Opinion No 2005-166

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COMMENT: For additional information on this general topic and other related subjects, see *The Ethical Oregon Lawyer* §§\_3.36, §\_9.17 (Oregon CLE 2003); *Restatement (Third) of the Law Governing Lawyers* §§\_3, §\_16, §\_134 (2003); and ABA Model Rule 1.8.

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** February 12, 2016  
**Memo Date:** February 1, 2016  
**From:** Amber Hollister, General Counsel  
**Re:** Board of Governors' Bar Email Accounts

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### Action Recommended

Consider Board's use of bar email accounts.

### Background

Beginning in 2016, at the Board's request, the Bar established email accounts for each member of the Board. This memorandum addresses how maintaining Board email accounts may impact the bar's ability to respond to public records requests and to implement litigation holds.

#### A. Oregon's Public Records Law

Using bar email accounts may streamline responding to public records requests. The bar is subject to Oregon's Public Records Act. ORS 9.010(3)(e). Accordingly, the bar regularly receives requests for its records which are fielded by the bar's public records custodian.

From time to time, the bar may receive public records requests that include requests for Board member emails. Emails to and from Board members related to bar business are public records that must be produced unless they are subject to an exemption to the public records law.<sup>1</sup>

By maintaining email accounts for members of the Board, the bar may be able to simplify responses to public record requests. In theory, if all emails are contained in osbar.org accounts, bar staff could search for responsive emails and produce them when necessary.

If emails related to bar business are located in other accounts, searching for responsive emails may be more complicated. If emails related to bar business are in an email account with confidential client communications it could be difficult for bar staff to provide assistance locating responsive emails.

#### B. Litigation Holds

Utilizing bar email accounts may also aid the bar in creating effective litigation holds. On occasion, the bar is a party to litigation. The bar has a duty, like any other potential litigant, to preserve evidence when there is a reasonable likelihood of litigation.

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<sup>1</sup> Under the Act, a public record is broadly defined to include "any writing that contains information relating to the conduct of the public's business" that is "prepared, owned, used or retained by a public body." ORS 192.410(4).



In modern day litigation, much of the relevant evidence is in electronic form. Board member email accounts allow the bar to maintain records of potentially relevant electronic discovery throughout the pendency of litigation. If all Board member email related to bar business is contained in the bar's email system, the bar will be able to preserve evidence on behalf of Board members. Bar email could potentially save Board members the time and energy required to segregate and preserve email when the bar implements a litigation hold.

### **Conclusion**

Ultimately, whether to maintain Board member email accounts is the prerogative of the Board. A number of Board members have reported technical difficulties in using the bar's email system, and it is unclear at this point whether those difficulties may be overcome.

The Board has the following options:

1. **Require the Use of Bar Email Accounts.** This option could create efficiencies when responding to public records requests or implementing litigation holds. However, even with bar email accounts in place, Board members may, from time to time, receive emails in their personal email accounts related to bar business. Board members could make a practice of only using bar email accounts to respond to inquiries related to bar business, and of forwarding all email related to bar business received in personal accounts to their bar accounts.
2. **Make Use of Bar Email Accounts Discretionary.** This option would provide Board members with maximum flexibility, but would not ensure the bar maintains a complete record of emails related to bar business. In many ways, this is the least desirable option because the bar would maintain Board email accounts without reaping the efficiencies of a consistent practice. I do not recommend this option.
3. **Discontinue Bar Email Accounts.** This option would require Board members to rely on their existing email accounts for bar related communications. Bar staff would need to work with Board members as necessary to respond to public records requests or implement litigation holds. This option may create additional risks for Board members who wish to protect client confidences. This option may also increase costs to the Bar.

Oregon State Bar Sponsorship Proposal  
District of Oregon Chapter  
“A Class Action: The Grassroots Struggle for School Desegregation”  
Amount of Proposed Sponsorship: \$2000

**Project Description:**

The Oregon Chapter of the Federal Bar Association plans to host “**A Class Action: The Grassroots Struggle for School Desegregation,**” at the Mark O. Hatfield U.S. District Courthouse between April and June 2016. This traveling exhibit, created by the Museum of Teaching and Learning (MOTAL) and the Ninth Judicial Circuit Historical Society, depicts the history of school segregation and desegregation, particularly with respect to Mexican American elementary school students. It focuses on the Ninth Circuit’s landmark decision in Mendez v. Westminster School District, which was, in all respects, the precursor to Brown v. Board of Education. It further tells the story of how community organizing and grassroots activism can produce positive change in schools and communities across the United States.

At present, the Mendez exhibit has been hosted at various courthouses throughout California, including the Ninth Circuit’s James R. Browning Courthouse in San Francisco and the Edward J. Schwartz Courthouse in the Southern District of California (San Diego). It is a traveling exhibit, and MOTAL’s goal is to provide more opportunities throughout the Ninth Circuit for bar and community members to explore the case, learn about its origins, and engage in discussions about how its legacy has inspired change in recent years.

The Oregon Chapter of the Federal Bar Association has chosen to host the Mendez exhibit in Portland to provide the opportunity for our local bar and community members to participate in the important dialogue that the exhibit inspires. We believe that it will serve to educate not only members of our local bar, but also elementary and high school students, parents, and citizens in our community. It will encourage members of the public to visit our courthouse, learn about the justice system, and engage with their local judges, lawyers, and courthouse staff. In light of the exhibit’s theme, we further believe that the exhibit will teach members of our community the value of engaging or continuing to be engaged in issues of local and national importance.

In addition to hosting the traveling exhibit, our chapter will plan and host the following exhibit-related programs, which will be open to members of the bar and the community:

- A welcome reception, featuring Mary H. Murguia, Circuit Judge, U.S. Court of Appeals for the Ninth Circuit;
- A community lecture addressing issues related to the Mendez case;
- A lunch CLE series for members of the bar, which will include 2-3 lunch programs addressing civil rights class action litigation, grassroots organizing, and issues of discrimination in our schools and communities;
- Chapter-member-led tours of the Mendez exhibit at the Hatfield U.S. District Courthouse.

Oregon State Bar Sponsorship Proposal  
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**Objectives:**

The table below summarizes the objectives of the Mendez project.

Target Audience	Objectives	Expected Benefits and Results	Method of Implementation
<b>Local Bar</b>	<ul style="list-style-type: none"> <li>- Promote education and awareness;</li> <li>- Facilitate the science and development of jurisprudence;</li> <li>- Foster engagement with the community and within the bar, for the purposes of furthering our understanding of community legal needs and current concerns.</li> </ul>	<ul style="list-style-type: none"> <li>- Education surrounding current issues of racial discrimination;</li> <li>- Opportunities to engage with community members and colleagues;</li> <li>- Increased understanding of the process of grassroots activism;</li> <li>- Opportunities to engage and develop relationships with students, schools, and civic organizations;</li> <li>- Increased understanding of community needs beyond those addressed with this project.</li> </ul>	<ul style="list-style-type: none"> <li>- CLE lunch/speaker series addressing topics related to the <u>Mendez</u> case;</li> <li>- Bar-member-led tours of the <u>Mendez</u> exhibit;</li> <li>- Community lecture.</li> </ul>
<b>Students</b>	<ul style="list-style-type: none"> <li>- Promote education and awareness through a visual and interactive experience;</li> <li>- Foster engagement with our judicial system;</li> <li>- Inspire grassroots activism.</li> </ul>	<ul style="list-style-type: none"> <li>- Education surrounding current issues of racial discrimination;</li> <li>- Inspired appreciation for and interest in community activism;</li> <li>- Increased understanding of the</li> </ul>	<ul style="list-style-type: none"> <li>- Participation in exhibit tours and community lecture.</li> </ul>

Oregon State Bar Sponsorship Proposal  
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		judicial system’s role in the lives of all citizens, no matter their age, race, sex, or other status.	
<b>Community Members</b>	<ul style="list-style-type: none"> <li>- Promote education and awareness through visual and interactive exhibit experience;</li> <li>- Foster engagement with our judicial system;</li> <li>- Inspire grassroots activism.</li> </ul>	<ul style="list-style-type: none"> <li>- Education surrounding current issues of racial discrimination;</li> <li>- Inspired appreciation for and interest in community activism;</li> <li>- Increased understanding of the judicial system’s role in the lives of all citizens, no matter their age, race, sex, or other status.</li> </ul>	<ul style="list-style-type: none"> <li>- Participation in exhibit tours and community lecture.</li> </ul>
<b>Minority Bar Associations</b>	<ul style="list-style-type: none"> <li>- Promote education and awareness;</li> <li>- Facilitate the science of jurisprudence;</li> <li>- Foster engagement with the community and other bar associations.</li> </ul>	<ul style="list-style-type: none"> <li>- Education surrounding current issues of racial discrimination;</li> <li>- Inspired appreciation for and interest in community activism;</li> <li>- Better understanding of jurisprudence in areas related civil rights and discrimination;</li> <li>- Increased engagement with students, schools, and civic organizations.</li> </ul>	<ul style="list-style-type: none"> <li>- CLE lunch/speaker series addressing topics related to the <u>Mendez</u> case;</li> <li>- Community lecture and welcome reception.</li> </ul>
<b>Law Firms</b>	<ul style="list-style-type: none"> <li>- Promote education and awareness;</li> </ul>	<ul style="list-style-type: none"> <li>- Education surrounding current</li> </ul>	<ul style="list-style-type: none"> <li>- CLE lunch/speaker</li> </ul>

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	<ul style="list-style-type: none"> <li>- Foster engagement with the community and other bar associations;</li> <li>- Facilitate the science of jurisprudence; Foster engagement with the community and other bar associations.</li> </ul>	<ul style="list-style-type: none"> <li>issues of racial discrimination;</li> <li>- Inspired appreciation for and interest in community activism;</li> <li>- Better understanding of jurisprudence in areas related civil rights and discrimination;</li> <li>- Increased engagement with students, schools, and civic organizations;</li> <li>- Understanding of community needs beyond those addressed with this project.</li> </ul>	<ul style="list-style-type: none"> <li>series addressing topics related to the <u>Mendez</u> case;</li> <li>- Community lecture and welcome reception.</li> </ul>
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**Budget:**

The cost to host this exhibit is such that we intend to partner with a number of local bar associations to fund the project. Below is an estimate of the costs associated with travel, community outreach, and programming associated with the exhibit:

Travel:	\$10,800
Community Outreach and Tour Materials:	\$500
Welcome Reception and Community Lecture:	\$3500
 Total:	 \$14,800

Our local chapter plans to contribute \$2500 to the event, and the U.S. District Court for the District of Oregon has agreed to contribute \$1500. We have also applied for a grant from the Federal Bar Association Foundation in the amount of \$5000. **We hope that the Oregon State Bar will be willing to contribute \$2000 to the project.** Other potential funding sources, which we are currently pursuing, include minority bar associations, local bar association foundations, and private law firms.

Community outreach costs include providing curriculum materials to local schools, materials for exhibit tours, and preparation/distribution of education materials addressing civil rights, judicial

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administration, and community activism. Costs associated with the welcome reception and the CLE lunch series will be paid separately by the chapter. We plan to use the Oregon State Bar funding to pay for a portion of the exhibit’s travel cost.

### **Timing**

We will host the exhibit starting in April 2016. The exhibit would be housed at the Hatfield U.S. Courthouse for 10 weeks. When the exhibit arrives in April, we will have a welcome reception featuring Mary H. Murguia, Circuit Judge, U.S. Court of Appeals for the Ninth Circuit. We anticipate hosting 2-3 lunchtime CLEs over the course of the 10-week period, and at least one community lecture during that time. The specific dates of the CLE programs and community lecture are not yet determined.

### **Publicity:**

We plan to conduct local and regional publicity in the following manner:

- **School (4<sup>th</sup> Grade) and Community Outreach:** We are currently working with MOTAL to develop curriculum materials that we can make available to local schools and community organizations. Our membership will be reaching out to all local school districts and certain community organizations to invite groups of students and children to tour the exhibit, attend the welcome reception, and incorporate the curriculum materials into the classroom.
- **FBA Membership Publicity:** We will use our local chapter listserv to publicize events to our membership. Members of our executive board will be tasked with publicity within their respective law firms or offices. Executive board members will also conduct community outreach efforts described above.
- **Cosponsor Publicity:** Should we secure funding from the Oregon State Bar and other bar associations and law firms, we expect that you and others will help us publicize the event through your available channels, including websites, listservs, and newsletters.