

Oregon State Bar
Meeting of the Board of Governors
April 22, 2016
Open Session Minutes

President Ray Heysell called the meeting to order at 12:20 p.m. on April 22, 2016. The meeting adjourned at 3:20 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, Julia Rice, Josh Ross, Rich Spier, Kate von Ter Stegge, Tim Williams, and Elisabeth Zinser. Not present were Kathleen Rastetter, Kerry Sharp, and Charles Wilhoite. Staff present were Helen Hirschbiel, Amber Hollister, Rod Wegener, Susan Grabe, Dani Edwards, Judith Baker, Charles Schulz, David Johnson, and Camille Greene. Present from the PLF were Bob Newell, Teresa Statler, Rob Raschio, Molly Jo Mullen, Carol Bernick, Betty Lou Morrow and John Berge. Also present was Colin Andries, ONLD Chair, and Jay Hull, Davis Wright Tremaine.

1. Call to Order/Finalization of Agenda

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

2. Joint Meeting with Professional Liability Fund Board of Directors

A. Western States Bar Conference Highlights

Ms. Bernick reported on her trip to the Western States Bar Conference. Ms. Hirschbiel presented findings from the 2015 Altman Weil Flash Survey on Law Firms in Transition. .

B. Innovations in Law Practice Models

Ms. Bernick introduced Jay Hull, Chief Innovation Partner at Davis Wright Tremaine. Mr. Hull presented the work DWT has been doing in response to economic pressures to provide more value to clients. They use design thinking concepts to evaluate client needs and to identify the people, processes and technology that will best serve those needs. For example, they are working with Microsoft in-house counsel to determine the most cost-effective way to handle their volumes of procurement contracts. In the future, DWT will provide each client with a secure dashboard to access their fees, case status, calendars, etc.

Mr. Hull stressed that market forces will continue to make inroads on the legal profession, and lawyers need to be prepared to respond. For example, other legal services that are continuing to evolve are IBM's Watson, Legal Zoom, Legal Design Lab, Ross, medium BIG DATA, the Big Four accounting firms have their own lawyers in house, and Amazon Echo.

C. PLF Financial Statements

Ms. Bernick introduced the PLF's CFO, Betty Lou Morrow, who updated the board on the current financial status and presented a brief review of the investment portfolio comparing Q1 2016 with Q4 2015.

D. Future of the Legal Profession Task Force

Mr. Heysell recommended the board appoint a Futures Task Force as described in his memo to the board.

Motion: Ms. Zinser moved the board approve Mr. Heysell's recommendation to appoint a Futures Task Force. Mr. Ross seconded. Several governors recommended that the task force include non-members, as well as individuals with expertise in technology. Mr. Heysell welcomed nominations from BOG members. The board voted unanimously in favor of the motion. The motion passed.

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

A. Public Affairs Committee

Mr. Ross asked the board to accept the committee's Legislative Package Recommendations for the 2017 Session, as outlined in the exhibit. **[Exhibit A]**

Motion: The board unanimously approved the committee motion.

B. Policy and Governance Committee

Mr. Levelle presented the committee's memo regarding proposed revisions to the bar's strategic functions and goals for the purposes of continued strategic planning around those goals.

Motion: The board voted unanimously in favor of the committee motion to approve the five strategic functions. The motion passed.

Ms. Hirschbiel outlined the planning process suggested by Mark Engle. The next step is for the Board to identify a function or functions that the Board would like to have more in-depth discussions around. Such discussion would include review and evaluation of the current strategies and programs that support the function.

Motion: Mr. Levelle moved the board to direct the P&G committee to focus first on Function 5, which is, the bar's role as an advocate for diversity, equity and inclusion. Ms. Nordyke seconded. The board voted unanimously in favor of the motion. The motion passed.

C. Board Development Committee

Ms. Nordyke encouraged the board to submit names of non-members to consider for the BOG's public member position in 2017.

Ms. Nordyke presented the Board Development Committee's recommendation to appoint Sarah Dandurand to the Pro Bono Committee, and Barry Goehler to the Disciplinary Board.

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

Ms. Nordyke presented the Board Development Committee's recommendation to appoint three new members to the OSB Judicial Administration Committee: Patty Rissberger, Nathan Orf, and James Miner.

Motion: Mr. Greco moved to table the committee motion to approve the appointments to the Judicial Administration Committee (JAC). Mr. Mansfield seconded. The P&G Committee will be reviewing the JAC charge and survey request at its next meeting, and may be recommending changes to the JAC structure or charge. Mr. Greco noted that it may be better to wait until after any changes are made

before appointing new members. The board voted unanimously in favor of tabling the committee motion. The committee motion was tabled.

D. Budget and Finance Committee

Mr. Mansfield presented a general financial update. The committee will present amendments to the bylaws at the June 24, 2016 BOG meeting. The review of the reserve and contingency funds revealed that uses of the funds are appropriate and prudent. Mr. Levelle suggested the committee develop standards for the use of these funds.

E. Oregon eCourt Implementation Task Force

Ms. Grabe asked the board to approve the eCourt task force charge. **[Exhibit B]**

Motion: Mr. Williams moved, Mr. Greco seconded, and the board voted unanimously in favor the motion to accept the changes to the task force charge. The motion passed.

Ms. Grabe asked the board to take action on the eCourt survey. **[No Exhibit]**

Motion: Mr. Ross moved, Mr. Bachofner seconded, and the board voted unanimously in favor to accept the motion for the bar to work with the court to develop the eCourt survey. The motion passed.

F. Awards Special Committee

Ms. Hirschbiel presented the nomination form for the 2016 Oregon State Bar Awards. She encouraged board members to submit nominations to Ms. Pulju by the June 30 deadline. At the June 24 board meeting the board will form an awards committee including the president and interested board members. This committee will meet on July 22 to prepare recommendations for the board to select at its September 9 board meeting. **[Exhibit C]**

4. OSB Committees, Sections, Councils and Divisions

A. Oregon New Lawyers Division Report

In addition to the written report, Mr. Andries highlighted the October CLE on documentation and immigration issues for undocumented alien juveniles to educate new lawyers how to obtain the necessary court orders. The ONLD is working on a summit with the WA NLD re: recruitment, retaining, and retirement of attorneys in remote areas.

B. Legal Services Program Committee

Ms. Baker presented the proposed recommendations for disbursing unclaimed client funds from the Legal Services Program:

1. Disburse \$117,500 from the annual unclaimed client funds for 2016 and hold the remainder in reserve.

Motion: Mr. Greco moved, Mr. Bachofner seconded, and the board voted unanimously in favor to accept the proposed recommendation to disburse the funds. The motion passed.

2. Do not disburse any of the unclaimed client funds from the Strawn v Farmers class action and hold the remainder of such funds in reserve.

Motion: Mr. Bachofner moved, Mr. Greco seconded, and the board voted unanimously in favor to accept the recommendation to not disburse the funds. The motion passed.

Ms. Baker asked the board to accept the 2014 Legal Services Program Accountability Report.
[Exhibit D]

Motion: Ms. Zinser moved, Mr. Bachofner seconded, and the board voted unanimously in favor to accept the report. The motion passed.

C. Board of Bar Examiners

Mr. Schulz asked the board to approve the proposed changes to RFA 16.05 re: Limited Admission of House Counsel.

Motion: Mr. Bachofner moved, Mr. Mansfield seconded, and the board voted unanimously in favor to accept the changes. The motion passed.

D. Client Security Fund Committee

Claim 2015-38 CAIN (Mitchell)

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 E]**

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

Claim 2016-08 ALLEN (Reitz)

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 F]**

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

Claim 2015-32 LANDERS (Koepke)

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 G]**

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

Ms. Hirschbiel presented the committee's financials for information purposes.

E. Legal Ethics Committee

Ms. Hirschbiel presented the committee's request for board approval of proposed updates to formal ethics opinions 2005-106 and 2005-169. **[Exhibit H]**

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

5. Consent Agenda

A. Report of Officers & Executive Staff

Report of the President

As written.

Report of the President-elect

Mr. Levelle reported on the County Bar Presidents' conference call on April 7, 2016 and the effort to keep the momentum going in the effort to engage county bars.

Report of the Executive Director

Ms. Hirschbiel reported on the status of the new AMS system. On June 8, 2016 there will be a Section Summit to present the new section CLE procedures. Mr. Spier will facilitate. The new MCLE rules will take effect on September 1, 2016. On April 12, 2016 the changes to the disciplinary rules, approved by the BOG at its March 11, 2016 meeting, were presented to the Supreme Court. Discussion regarding the funding of the court's adjudicator position was discussed.

Director of Regulatory Services

In addition to her written report, Ms. Hirschbiel reported that Ms. Evans is working on drafting proposed rule changes, incorporating the board's approval of 18 out of the 31 DSRC recommendations and some "housekeeping" changes that will be helpful. Ms. Evans anticipates presenting the full set of rule changes to the BOG at its June 24, 2016 board meeting.

Diversity Action Plan

Ms. Hirschbiel presented the 2015 implementation report and encouraged the board to look at both the 2014 and 2015 implementation reports in advance of its June 2016 meeting.

MBA Liaison Report

Mr. Ramfjord reported on the monthly MBA meetings he recently attended and updated the MBA on the DSRC rule changes.

OSB ADA Self-Evaluation 2016

Ms. Hollister presented the evaluation and noted that the report is a requirement of Title 2.

B. Other

Motion: Mr. Greco moved, Ms. Zinser seconded, and the board voted unanimously to approve the consent agenda of past meeting minutes, Fee Arbitration Rule change, and proposed Sponsorship Policy.

6. Closed Sessions – see CLOSED Minutes

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

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

None.

**Oregon State Bar
Board of Governors Meeting
April 22, 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

Meeting Date: April 22, 2016
Memo Date: April 18, 2016
From: Josh Ross, Public Affairs Committee Chair
Re: 2017 OSB Law Improvement Program

Action Recommended

- 1) Accept the Public Affairs Committee (PAC) recommendation to include eight proposals submitted as part of the 2017 Oregon State Bar (OSB) Law Improvement Program package for submission to Legislative Counsel's office for bill drafting.
- 2) Modify the PAC recommendation regarding what is included in the OSB Law Improvement package.
- 3) Decline to submit a package of Law Improvement proposals for 2017.

Background

Every long session, the OSB submits proposed legislation as part of the Law Improvement Program to the Oregon State Legislature for passage. On April 15, 2016, the PAC hosted the OSB Legislative Forum. This year nine OSB sections, workgroups, and committees submitted fifteen proposals for consideration by the Board of Governors (BOG) to be included as part of the 2017 Law Improvement program package.¹

The OSB's Law Improvement package is intended to include proposed legislation from sections, workgroups, and committees that clarify statutory ambiguities, remove unnecessary procedural requirements, modify unforeseen glitches in previous legislation, or otherwise improve the practice of law. Policy changes are also included in the bar package of legislation when deemed appropriate. In order for a legislative concept to be considered at the Legislative Forum, it must be approved by a majority of the section executive committee, and we encourage executive committees to be representative of the diverse views on the section. Bar groups are encouraged to be mindful of differing viewpoints in the practice area.

The proposals were reviewed by the PAC to ensure that they meet the criteria established by both the OSB policies and bylaws, and the U.S. Supreme Court case, *Keller v. State of California*, 499 US 1, 111 S.Ct 2228 (1990).²

¹ In addition, a representative of the Sustainable Futures Section appeared at the Law Improvement Forum to submit a last minute proposal. The concept was an amendment to the Estate Planning and Administration Section's proposal. The amendment would modify the Uniform Prudent Investor Act and allow trustees to consider environmental, social and governance factors when investing and managing trust assets under ORS 130.755(3). This concept was proposed after the deadline.

² For more information on the Oregon State Bar bylaws and the *Keller* case, please visit http://www.osbar.org/leadership/bog/bog_resources.html.

What is the Keller Rule?

In 1990, the United States Supreme Court ruled in *Keller v. State Bar of California*, 499 US 1, 111 SCt 2228 (1990) that an integrated (mandatory) bar's use of compulsory dues to finance political and ideological activities violates the 1st Amendment rights of dissenting members when such expenditures are not germane to the bar's purpose, which the court identified as regulating the legal profession and improving the quality of legal services.

Keller does not prohibit integrated bars from using member dues to advance political or ideological positions that are not germane to the bar's purpose; however, it requires that dissenting members receive a refund of the portion of dues attributable to the non-germane activity.

What are the OSB's Legislative Guidelines?

The OSB's policies and Bylaws limit legislative or policy activities to those reasonably related to any of the following subjects:

1. The regulation and discipline of lawyers;
2. The improvement of the functioning of the courts including issues of judicial independence, fairness, efficacy and efficiency;
3. The availability of legal services to society;
4. The regulation of lawyer trust accounts;
5. The education, ethics, competence, integrity and regulation of the legal profession;
6. The provision of law improvement assistance to elected and appointed government officials;
7. Issues involving the structure and organization of federal, state and local courts in or affecting Oregon;
8. Issues involving the rules of practice, procedure and evidence in federal, state or local courts in or affecting Oregon; and
9. Issues involving the duties and functions of judges and lawyers in federal, state, and local courts in or affecting Oregon.

If the BOG approves a particular proposal for drafting, there are still several opportunities for the board to review the legislative concept before filing. The legislative concepts are not submitted to the legislature until the fall of 2016. Throughout this process, the board will have the ability to ask questions, review the process and proposals, and, if necessary, pull a concept from the package at any point.

Below is the list of legislative proposals from the nine bar groups reviewed by the PAC. Legislative concepts that receive approval for drafting will be submitted to Legislative Counsel's office to be drafted. Those bills that receive final BOG approval will be introduced through the Judiciary Committee, and pre-session filed for the 2017 legislative session.

Direct link to proposals: <http://osbpublicaffairs.homestead.com/2017LIP.html>.

Legislative Proposals

The PAC recommends that the BOG approve eight of the fifteen proposals.

1. The PAC recommends approval for the eight proposals listed below:
 - a. OSB Board of Governors
 - i. Discipline System Review Committee
 - ii. Chapter 9 Administrative Changes
 - b. Business Law Section - Incorporation of Electronic Technology*
 - c. Estate Planning and Administration Section - Amendment to ORS Chapter 130
 - d. Family Law Section
 - i. Spousal Support
 - ii. PERS Survivor Beneficiary Change*
 - e. Nonprofit Organizations Law Section - Update to ORS Chapter 65
 - f. Securities Regulation Section - Eliminating Requirement to Register Employee Equity Plans*

For each of the proposals listed above, the PAC recommends that the section or committee move forward with its proposal(s) with the expectation that each group will implement the suggestions of the PAC and report back on its progress. Those sections with an asterisk after the proposal will be expected to address any concerns raised and report back to the Public Affairs Committee.

2. The PAC has identified the following proposals that need additional work and further vetting, specifically:
 - a. Business Law Section
 - i. Ratification of Defective Corporate Action
 - ii. Holding Companies and Back-End Mergers
 - b. Debtor Creditor Section - Garnishment Statutes
 - c. Family Law Section - Life Insurance
 - d. Real Estate and Land Use - Mortgage Loan Originator

For each of these proposals, the PAC recommends that the Public Affairs Department staff engage with the sponsoring sections in order to manage emerging issues. Sections and committees are expected to continue to work and fine-tune these concepts.

3. The PAC has identified the following proposals as inappropriate for inclusion in the law improvement program at this time, specifically:
 - a. Business Law Section
 - i. Architect Shareholder Liability
 - b. Sustainable Futures Section - Modify Oregon's Uniform Prudent Investor Act
 - c. Workers' Compensation Section - Workers' Compensation Board-Bar Membership

For each of these proposals, the PAC recommends that the proposal not be included in the 2017 Law Improvement Program package nor submitted to Legislative Counsel for drafting.

OSB / OJD Task Force on Oregon eCourt ~~Implementation~~**Charge**

To work cooperatively with the Oregon Judicial Department and OSB members to ~~assist in the implementation~~monitor the ongoing operation of the Oregon eCourt initiative over the next five years; ~~provide input and feedback from bar members on the implementation of Oregon eCourt~~to gather input and feedback from OSB members on how well Oregon eCourt is working for them and their staff; to propose solutions for problems identified by OSB members and court staff, develop a strategy to ~~to maintain communication~~ communicate with OJD and continue to educate bar members about Oregon eCourt programs; and to provide periodic updates to the Board of Governors.

2016 Oregon State Bar Awards

The Oregon State Bar is seeking nominations for its annual awards. The Oregon State Bar presents the Award of Merit, President's Awards, and the Wallace P. Carson, Jr. Award for Judicial Excellence. The Oregon Bench and Bar Commission on Professionalism presents the Edwin J. Peterson Award. Please help us honor our most outstanding lawyers, judges and citizens by nominating your deserving colleagues for these awards.

Award of Merit

The Award of Merit is the highest honor that the bar can bestow. The recipient may be: 1) an Oregon lawyer who has made outstanding contributions to the bench, the bar and the community-at-large, and who exhibits the highest standards of professionalism; or 2) a non-lawyer who has made outstanding contributions to the bar and/or bench, and who exhibits the highest standards of service to the community-at-large. The award does not have to be granted every year, and only one award may be bestowed in any year.

Wallace P. Carson, Jr. Award for Judicial Excellence

The Wallace P. Carson, Jr. Award for Judicial Excellence honors a member of the state's judiciary. The criteria for the award are as follows: 1) a current or retired state court judge or federal judge; 2) who has made significant contributions to the judicial system; and 3) who is a model of professionalism, integrity and judicial independence.

President's Awards

President's Awards are presented in five categories: Diversity & Inclusion Membership Service, Public Service, Public Leadership and Sustainability. The Board of Governors wants to honor innovative, hard-working individuals who stand out because of their special contributions to the legal profession.

Diversity & Inclusion Award Criteria: The nominee must be an active or emeritus member of the Oregon State Bar, or an Oregon law firm; the nominee must have made recent significant contributions to the goal of increasing minority representation in the legal profession in Oregon through creative employment efforts, innovative recruitment and retention programs, advocacy or other significant efforts.

Membership Service Award Criteria: The nominee must have volunteered for the activity involved; must be an active or emeritus member of the Oregon State Bar; and must have made significant contributions to other lawyers through recent efforts in one or more of the following areas: OSB CLE programs or publications; OSB committees, sections, task forces, boards and other bar groups; the OSB legislative/public affairs process; or similar activities through local bar associations or other law-related groups.

Public Service Award Criteria: The nominee must have volunteered for the activity involved; must be an active or emeritus member of the Oregon State Bar; and must have made significant contributions to the public through recent efforts in one or more of the following areas: pro bono legal service to individuals or groups, law-related public education, coordination of public service law-related events (such as those associated with Law Day), service with community boards or organizations, or similar activities which benefit the public.

Public Leadership Award Criteria: The President's Public Leadership Award is given to someone who is not a member of the Oregon State Bar. The nominee must have made significant contributions in any of the areas covered by the president's awards to bar members.

Sustainability Award Criteria: The nominee must be an active or inactive 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.

Nomination Guidelines

To ensure full consideration of the nominee's contributions, your nomination packet should include:

1. Award Nomination Form: Fill in all requested information and specify the desired award category. A letter can be substituted if it includes the same information.
2. Supporting Detail: The thoroughness of this information can make the difference in the selection process. Supporting detail may include resume information, narratives describing significant contributions and special qualifications, a list of references with phone numbers, letters of recommendation, articles, etc.
3. Submitting Nominations: Nominations must be received by Thursday, June 30, 2016. Electronic submissions are preferred and should be sent to kpulju@osbar.org. Printed nominations should be mailed to: Oregon State Bar, Attn: Awards, P.O. Box 231935, Tigard, OR 97281-1935. For further assistance contact Kay via email or at (503) 431-6402 or 800-452-8260, ext. 402.

Selection Process

Nominations for the OSB awards will be reviewed by the Board of Governors Member Services Committee. The committee will recommend recipients to the Board of Governors. The Oregon Bench and Bar Commission on Professionalism will select the Edwin J. Peterson Award recipient.

Annual Awards Event

Award recipients will be honored at a luncheon on December 8, 2016 at The Sentinel Hotel (formerly The Governor Hotel) in Portland.



2016 Oregon State Bar Awards

Nominee Information Sheet

Nominee Name _____ Bar No. _____

Office Address _____

Office Telephone _____ E-mail Address _____

Award Category: Please indicate the award category for which this nomination is submitted (*select one*)

- Award of Merit
- Diversity & Inclusion Award
- Public Leadership Award
- Carson Award
- Membership Service Award
- Sustainability Award
- Public Service Award

Based on the criteria for the award indicated above, explain why you believe the nominee is deserving of this honor. You are encouraged to attach additional information as outlined in the nomination guidelines to completely describe the nominee's unique qualifications for this award.

Nominating Group/Person _____

Contact Person _____

Office Telephone _____ E-mail Address _____

Please return this form by 5 p.m., Thursday, June 30, 2016 .

Electronic submission (preferred): kpulju@osbar.org or mail to:
Oregon State Bar, Attn: Awards, P.O. Box 231935, Tigard, OR 97281-1935

**OREGON STATE BAR
Board of Governors**

Meeting Date: April 22, 2016
Memo Date: April 8, 2016
From: Legal Services Program Committee
Re: 2014 Legal Services Program Accountability Report

Action Recommended

The Legal Services Program Committee is recommending that the BOG accept the 2014 Legal Services Program Accountability Report.

Background

The OSB Legal Services Program (LSP) began in 1998, following the Oregon Legislature's appropriation of a portion of court filing fees to support civil legal aid services to the poor. Pursuant to ORS 9.572 the OSB is required to manage the funds, develop Standards and Guidelines for providers, appoint a Director of the LSP and create a LSP Committee to provide ongoing oversight, evaluation and support to legal aid providers, to ensure compliance with the Standards and Guidelines, and to further the program's goals.

As part of the oversight and evaluation functions, the Director of the LSP conducts an accountability process that focuses on the effectiveness of the providers in meeting the needs of the individual clients and the larger client community, and the development and use of resources. The LSP Committee is the governing body responsible for making recommendations to the BOG on the assessment of provider programs. The LSP Committee has reviewed the 2014 Legal Services Program Accountability Report and is forwarding to the BOG.

**Oregon State Bar
Legal Services Program
Accountability Analysis**

Overview

The accountability process is designed to provide the OSB LSP with information about the work of legal services providers. With this information the OSB LSP can carry out its duties to the OSB Board of Governors as outlined in the *Oregon Legal Services Program Standards and Guidelines*.

The process focuses on the effectiveness of the providers in meeting the needs of individual clients and the larger client community, and in developing and using resources. The goals of the review are to ensure compliance with OSB LSP *Standards and Guidelines*; to ensure accountability to clients, the public and funders; and to assist with each provider's self-assessment and improvement.

The process has four components:

1. **An annual Self Assessment Report (SAR)** submitted by providers, including a narrative portion and a statistical/financial portion;
2. **Ongoing Evaluation Activities by the OSB LSP**, including peer reviews, desk reviews, ongoing contacts and other evaluation activities consistent with the OSB LSP *Standards and Guidelines*;
3. **A periodic Peer Survey** conducted of attorney partners, clients, judges, opposing counsel and community partners, all of whom are identified by the providers; and
4. **A periodic Accountability Report** to the OSB Board of Governors and other stakeholders, summarizing the information from the providers' Self Assessment Reports and other information, including ongoing contacts with providers by OSB LSP staff, annual program financial audits and the Annual Peer Survey.

The accountability review is an analysis of the information supplied by the programs in the Self Assessment Report covering the 12 month period ending December 31, 2014.

The Providers

There are four providers that receive funding from the OSB LSP:

Legal Aid Services of Oregon (LASO) – statewide provider with regional offices and the only entity that receives federal funds;

Oregon Law Center (OLC) – statewide provider with regional offices;

Lane County Legal Aid and Advocacy Center (LCLAC) – provides service in Lane County; and

Center for Nonprofit Legal Services (CNPLS) – provides service in Jackson County

The Performance Areas

This accountability analysis is divided into "Performance Areas" that track the broad themes expressed in the mission statement and statement of goal in the OSB Legal Services Program Standards and Guidelines. Each section outlines and discusses the level of alignment found and makes recommendations. The performance areas are as follows:

- *“An integrated, statewide system of legal services... [that eliminates] barriers...caused by maintaining legal and physical separation between providers...”*
- *“Centered on the needs of the client community.”*
- *“Efficient and effective...by deploying limited resources in a manner that maximizes the system’s ability to provide representation*
- *Full spectrum of legal services... The broadest range of legal services required to serve the needs of clients.”*
- *“High quality legal services.”*

1) Performance Area One: Achieving an Integrated Statewide System of Legal Aid Services

It is the goal of the OSB LSP that all providers are part of an integrated statewide delivery system designed to provide relatively equal levels of high quality client representation throughout the state of Oregon. This means that the providers need to work together strategically to target limited resources to ensure equality of access statewide. It also means that the providers need to minimize geographic and institutional parochialism. They should also be integrated in the Campaign for Equal Justice’s statewide efforts to increase resources for legal aid.

a) Strategic Planning

One of the structures that the four legal aid providers use to cooperate and provide relatively equal access for clients statewide is the strategic planning process. The last strategic planning process was in 2012/13 in response to the falling revenues for statewide legal aid funding in general and LASO in particular because of federal funding cuts including federal sequestration. The final result was the closing of the Lane County LASO Office with LCLAC remaining as the sole legal services provider in Lane County while keeping the statewide service delivery system stable. The strategic planning committee also created a long term strategic plan for providing efficient and effective service in future years without necessarily increasing revenue. The final report was December, 2013. Because the recommendations from the December, 2013 strategic planning report have been implemented, the providers are engaged in another strategic planning process which started in September, 2015.

Recommendation: Oregon’s strategic planning efforts have been recognized as a national best practice. That said those efforts need to be more integrated to meet this performance area. The last strategic planning report dated December 7, 2013 made recommendations on how OLC and LASO can enhance efficient and effective legal services to clients statewide. Although CNPLS and LCLAC information was included when looking at revenue, staffing and poverty population statistics, those organizations were not included in the main part of the plan that spoke to implementing recommendations on how to be effective and efficient. These are the recommendations having to do with advocacy, coordination, service delivery models, staffing patterns and technology.

LASO and OLC are the two statewide organizations with regional offices. They share a responsibility to provide services statewide while focusing on the needs of the local community. They work closely together to provide a full range of legal services to low-income clients. They maintain separate organizations only because of the restrictions on the federal funds and strive to integrate services as much as possible. They accomplish this by

sharing a board; they both use Legal Server as their case management system; they use the same policies for intake, priority setting, regional office management and regional manager evaluation. They also have joint quarterly managers meetings. Jackson and Lane County programs focus on providing services to clients in their community, except for the LCLAC lawyers who are experts in and focus on state policy. Because the county programs are stand alone nonprofits with different boards and different administrative and service delivery systems it makes it difficult for CNPLS and LCLAC to integrate with LASO and OLC in a way that promotes the efficiencies and effectiveness contemplated by this performance standard. The providers need to strive in this strategic planning process to look at ways to include all the providers in the recommendations that flow from the final strategic planning report.

b) Increasing Resources for Legal Aid

The Campaign for Equal Justice is legal aid's primary resource development arm. CEJ coordinates the annual fund drive, educates lawyers and the community about the importance of access to justice, works to increase state and federal funding for legal aid and builds an endowment. CEJ reports that the providers are integrated from a resource development and fund raising perspective. The providers engage in numerous activities to support CEJ's annual campaign and work closely with CEJ and the OSB to protect and expand funding for legal aid.

c) Integrated Training and Legislative Advocacy Network

Training: It is important that providers encourage lawyers to stay abreast of changes among the issues that affect low income clients in Oregon by participating in various forums in which such issues and strategies are discussed.

OLC houses the State Support Unit (SSU). The goal of the SSU is to provide support to all Oregon's legal aid lawyers. They do this by sponsoring trainings designed to provide professional development for legal aid lawyers statewide. These trainings include areas such as new lawyer training, motion practice training, discovery training, complex litigation training and trial advocacy training. The SSU also maintains listservs to keep all staff up to date on changes in legislative, administrative and case law. In addition, the SSU attorneys sponsor quarterly task force meetings organized by family, employment, housing and administrative law to keep staff up to date on substantive law developments and provide opportunities to network, discuss cases and understand statewide developments. It is important that legal aid attorneys participate in various forums in which areas of law and strategies are discussed. This allows attorneys to stay aware of changes among the issues that affect the low-income communities it serves.

The SSU reports that all provider attorneys are members of most of the statewide task force listservs. LCLAC attorneys routinely attend most state task force meetings but CNPLS only occasionally attends and has been absent from the family law task force. LCLAC and CNPLS are both absent from the employment law listserv and task force. LCLAC and CNPLS case closing statistics show that attorneys from those offices do not focus on employment law cases.

Recommendation: All provider practitioners should strive as much as practical to participate in the trainings and task force meetings facilitated by the SSU. Attorneys can currently attend task force by phone and providers should work on ways to allow lawyers located outside of Portland to attend trainings and task force meetings remotely to defray the cost of traveling to Portland. This may allow Medford attorneys to attend task force meetings more frequently although they should make it a priority to be more connected to the other lawyers who practice poverty law in Oregon.

Legislative Advocacy: LCLAC and CNPLS work closely with OLC in legislative advocacy in a variety of areas of law and the providers report that it is very effective.

2). Performance Area Two: Centered on the Needs of the Client Community

Performance Area Two gauges the success of providers at targeting their services on the most compelling needs of the client community and the ability to implement response to the changing circumstances. They do this by understanding their community through participation on boards and advisory committees as well as working with social service agencies and community based organizations that serve low income persons. In other words providers need to be integrated into the community to be able to understand current need and see emerging trends. Ongoing assessment should be coupled with periodically conducting a more formal needs assessments and setting program priorities to address the needs identified. To fully understand the needs of a community, providers should strive to reach those populations that have not traditionally sought the services of the legal aid office.

- a) **OLC and LASO:** OLC and LASO have both incorporated best practices for reviewing client need that determine the program's priorities. LASO and OLC report that the priority setting process happens approximately every two years at a regional office level and includes a periodic regional needs assessment to seek input from a wide variety of stakeholders including people who are income-eligible to be clients, former and current clients; local attorneys and county bar associations; government and non-profit partner agencies serving people who are income-eligible to be clients; local judges; and other community partners. The primary mechanism for input is a survey questionnaire distributed by a variety of methods, including on-line, mail and email, telephone calls, on-site availability of surveys for current clients and interviews and focus groups with clients. After survey information is collected and analyzed, each office conducts priority setting meetings involving office staff and others. The established priorities guide the work plans for each office, guide outreach/intake and become an integral part of each office's case acceptance decisions. LASO and OLC's priorities are adopted by the LASO and OLC Boards on an annual basis. Board policy is that LASO and OLC should implement the statewide program priorities through local office priority setting that contain more specific goals tailored to local considerations.

OLC and LASO report that local offices change priorities in response to changing client needs. Examples are the Bend office added housing cases for disabled clients to its list of priorities and the Pendleton office added three case priorities: guardianships; homeless rights issues; and pro se and pro bono assistance for expungement cases.

- b) **LCLAC:** LCLAC reports that the primary method of assessing client community needs is through “Case Priority Planning Sessions” which is an analysis of statistics at intake, surveys, and staff observations and communications with other agency representatives and potential clients. In 2014, the process involved analysis of statistics and staff discussion. The last thorough assessment of Lane County clients and their legal service needs was conducted in 2011 by the LASO Regional Lane County Legal Aid office. After gathering the information, LASO coordinated their priority setting process with LCLAC to avoid duplication of services. The LASO Lane County Regional office closed in 2012.

Recommendation: In order to meet the OSB LSP Standards and Guidelines it is recommended that LCLAC develop tools, methods and policies to establish a more formal and periodic Client Needs Assessment. The Assessment periodically appraises the needs of the eligible clients in the Lane County area. The appraisal should seek to include information from income-eligible to be clients, former and current clients, employees, social service agencies, the private bar and other interested persons. The appraisal should include surveying those populations that are eligible for services but have not traditionally sought LCLAC services.

- c) **CNPLS:** CNPLS reports that they conduct a legal needs assessment for Jackson County at least once every two years using assessment questionnaires to seek input from former and current clients, judges, local attorneys, government and non-profit agencies and other community stakeholders. They also pay particular attention to community needs assessments conducted by ACCESS, local Community Action Agency and United way. CNPLS conducts priority setting meetings with staff and the board of directors. Once established, the priorities guide employee work plans and become a part of the case acceptance decisions.

Recommendation: Although CNPLS has recently conducted a client assessment and set priorities, it is recommended that CNPLS seek to understand the legal needs of those populations that are eligible for services but have not traditionally sought CNPLS services. It is also recommended that CNPLS be prepared to change priorities and implement a response to changing client need.

Both LCLAC and CNPLS have service delivery models whereby staff attorneys are very specialized in the area of law they practice. This may inhibit a response to a new area of law that emerges and calls for substantive knowledge and strategic approaches that are unfamiliar to a specialized attorney. As indicated in the recommendations above CNPLS and LCLAC need to be prepared to change priorities and implement a response to emerging client need even if outside their specialization.

All providers should strive to incorporate best practices in how they assess community need, set priorities and incorporate service changes for changing client need for all communities. Consistency statewide is important to achieve an understanding of the most pressing client need and understand how resources should be spent.

3). Performance Area Three: Achieving Efficient and Effective Delivery of Services

Performance Area Three speaks to how effectively legal aid represents its clients and that it achieves the results with minimum waste of resources and effort. “Efficient and effective” is a phrase used throughout the ABA Standards. This includes those standards that address joint planning by providers around access and service delivery models; the importance of statewide training opportunities; and choosing advocacy methods that both accomplish a meaningful result and are a cost effective use of resources. Joint planning and statewide training opportunities were discussed under Performance Area One. This section will focus on advocacy methods that both accomplish a meaningful result and are a cost effective use of resources. The following are examples from the providers that highlight effective and efficient advocacy methods.

- a). **OLC:** Safe, decent and affordable housing is important for low-income Oregonians. Housing is typically the first or second highest priority in the community based on client needs assessments. OLC reported that they and the housing law task force strategically targeted limited resources to better protect and improve affordable housing for low income Oregonians by using a broad range of advocacy tools to improve the applicable statutes, case law and practice at the local and statewide lever. They did this by working with landlords and housing authorities to implement new housing law; litigating to protect government subsidized housing units from loss; working with partners to improve policies and practices to comply with state and federal foreclosure protection for tenants; setting legal precedent at the Oregon Supreme Court to Protect Tenants from Retaliation and participating in legislative advocacy to support housing.
- b). **LASO:** LASO’s Portland Regional Office worked with community partners in Clackamas County for several years to establish a new family justice center where survivors of domestic abuse, sexual assault, and vulnerable adults can access many of their services under one roof. The family justice center opened in December 2013. Throughout 2014 LASO attorneys and intake workers met with survivors at the justice center. The one-stop model is an efficient and effective model that benefits clients by providing comprehensive, holistic services.
- c). **LCLAC:** The Survivor’s Justice Center continues to work closely with the University of Oregon School of Law Domestic Violence Clinic to facilitate a coordinated approach and to avoid duplication of services. This division of cases promotes efficiency both for the University and for Lane County Legal Aid & Advocacy Center. The Survivor’s Justice Center is the hub for legal services for survivors in Lane County. They triage all cases once a week and determine which are appropriate for full or limited representation from their attorneys and which should be referred to the University’s program.
- d). **CNPLS:** CNPLS’s housing attorney has been working with the statewide Legal Aid Foreclosure Help Project since its inception in 2013 and has been collaborating with four attorneys from OLC and LASO and with the local and regional agencies and the private bar. She also has a good working relationship with ACCESS housing counselors in Jackson County. She has attended the most number of resolution conferences of the 5 project attorneys and has developed an expertise for holding the creditors accountable and negotiating favorable outcomes. She attended the May Project training session in Eugene where she was the trainer on resolution

conferences. She has also developed an expertise in seeking LRAPP. Due to her skill and knowledge, clients have received loan modifications. Cases without fee waivers are electronically filed in other Oregon counties.

Outcome Measures

The providers were also asked to report on outcome measures for cases closed in 2014 that involved litigation or settlement to show how effective the legal service was. The measure and results are as follows (includes outcomes from LASO, OLC and LCLAC) and reflect the excellent work that legal aid does for their clients:

LASO

- Client achieved a positive result - 93%
- As a result of our representation and as relevant to the client's individual situation, in the attorney's reasonable assessment:
 1. The client is physically safer – 82%
 2. The client is better able to keep children safe - 94%
 3. The client has obtained or maintained housing - 73%
 4. The client has improved housing conditions - 67%
 5. The client is more economically secure - 87%
 6. The case benefitted the client's family or household members - 94%
 7. The case will benefit other low-income clients - 18%
 8. Where a positive result was not achieved, cases filed for strategic reason - 13%

OLC

- Client achieved a positive result - 93%
- As a result of our representation and as relevant to the client's individual situation, in the attorney's reasonable assessment:
 1. The client is physically safer – 77%
 2. The client is better able to keep children safe - 68%
 3. The client has obtained or maintained housing - 71%
 4. The client has improved housing conditions - 63%
 5. The client is more economically secure - 71%
 6. The case benefitted the client's family or household members - 77%
 7. The case will benefit other low-income clients - 53%
 8. Where a positive result was not achieved, cases filed for strategic reason – 12.5%

LCLAC

- Client achieved a positive result - 92%
- As a result of our representation and as relevant to the client's individual situation, in the attorney's reasonable assessment:
 1. The client is physically safer – 90%

2. The client is better able to keep children safe - 100%
3. The client has obtained or maintained housing - 98%
4. The client has improved housing conditions - 75%
5. The client is more economically secure - 65%
6. The case benefitted the client's family or household members - 87%
7. The case will benefit other low-income clients - 90%
8. Where a positive result was not achieved, cases filed for strategic reason - 50%

4) Performance Area Four: Achieving a Full Spectrum of Legal Services

Performance area four reflects the principle expressed in the OSB LSP Standards and Guidelines that providing a wide range of legal services for the poor promotes fairness as well as efficiency and effectiveness. Enforcing broader rights of low-income communities is a function of legal services advocates, as well as providing individuals with representation in day-to-day matters. Providing community legal education and helping people represent themselves are also important functions.

All the programs provide a full range of legal services which include phone/walk-in intake and advice, direct legal representation for individuals by staff and pro bono lawyers, complex litigation, community legal education, assistance to self-represented litigants and legislative or administrative advocacy. Also the providers make extensive use of other resources in the service area including community-based organizations that serve the same population.

In 2014 the providers closed a total of 13,626 cases which includes staff and pro bono cases. 35% were family law cases, 28% were housing cases and 9% were consumer/finance cases. Approximately 83% were closed as advice and/or brief service.

The providers outlined cases that reflect the full spectrum of legal services given. Examples of typical cases are as follows:

Self-Represented Litigants: LCLAC reports a married couple with irregular income received advice and counsel from staff attorney. They appeared in court pro se and were successful in receiving a trial period plan (TPP), made all the payments, and then received a permanent modification of their loan. The wife later started work as a housing counselor.

Community Legal Education: CNPLS reports that their immigration attorney teaches citizenship classes to clients and community members at the First Presbyterian Church every Monday. Ten to twelve students attend these classes and 100% are deemed to be ready to pass the naturalization test to become citizens.

Direct Representation: LCLAC reports they represented a widow, age 75, with significant hearing problems, was listed on the deed with her deceased husband but was not on the home loan note. After significant negotiations, including citing applicable law and a resolution conference, the lender agreed to allow client to assume the loan and to modify its terms, making it more affordable.

LASO reports they represented Ruth who was recovering from surgery in a wheelchair when her husband of several decades grabbed her and yelled at her in a public place. She felt deeply humiliated, and the reaction from those around her was a life-changing moment. "Unless we have someone to enlighten us about abused women, we have no idea what to do, or that you can walk

out the door,” says Ruth. She contacted LASO to help her get protection from his abuse for herself and her teenage son, who is autistic. Ruth and her son have been thriving apart from the abuser. Ruth says, “I have a right to enjoy my life and our son has a right to explore every avenue out there and not be held back.” She wants everyone to know legal aid may have saved her life.

Major Cases and Projects That Have Systemic Impact: LASO, Oregon Law Center and the National Housing Law Project filed suit in federal court in an effort to preserve the only affordable housing complex in Merrill, Oregon. The complex is operated under the U.S. Department of Agriculture's Rural Development housing subsidy program. The plaintiffs filed a complaint and preliminary injunction motion to enjoin USDA from accepting the final payment on the property's mortgage in advance of the date the mortgage was originally supposed to mature. Accelerated payment of the mortgage would prematurely remove the complex from the affordable housing program. USDA responded to the motion by conceding that the agency would not accept a premature final payment on the mortgage. This decision by USDA has already helped stop the premature final payment on another 42 unit affordable housing complex in Oregon and may help to stop the premature mortgage maturity of at least 70 other properties across the country. Other issues in the case remain to be litigated.

Legislative Efforts That Have Systemic Impact: LCLAC attorney John VanLandingham leads two coalitions of landlord and tenant advocates that have negotiated, drafted and gotten adopted into state law, consensus bills amending landlord/tenant law in every legislative session but one since 1983. John is the chief tenant advocate, chief drafter, electronic secretary and lead advocate within the Legislature for both coalitions. Oregon is the only state in the nation which amends its landlord/tenant laws through a coalition process; as a result, issues which require litigation in other states are usually addressed by state statute in Oregon.

Integrating the Resources of the Legal Profession: The legal profession is a valuable resource in addressing the needs of the low-income community and should be integrated to the greatest extent possible into a provider's efforts to provide a full spectrum of legal services that respond to its clients' needs. Oregon legal aid providers all report that pro bono attorney involvement is an integrated part of the structure used to deliver high quality legal services. The following are examples of how volunteer lawyers are used:

- The Volunteer Lawyer Project of the Portland Regional Office of LASO has existed for over 30 years. The bankruptcy clinic of the VLP serves clients in Multnomah, Washington, Clackamas, Yamhill, Columbia, Wasco and Hood River counties.
- The LASO Pendleton office uses pro bono attorneys for intake at several locations throughout its geographically wide service area.
- LCLAC uses both non-lawyers and lawyers for intake, to provide staffing in both the main office and Florence office.

Recommendation: Those attorneys who were pro bono volunteers and answered the survey agreed that they received adequate training and supervision and had positive experiences

volunteering. That said only 50% of those volunteers reported their volunteer hours to the organization. As this is a critical piece of information for the Oregon State Bar, the organizations should ensure that each volunteer reports his/her hours and that those hours are reported to the Oregon State Bar's Pro Bono Coordinator.

5) Achieving High Quality of Legal Services

Delivering high quality legal services is a fundamental requirement of the OSB LSP and the providers meet the requirements set out by the OSB LSP Standards and Guidelines. This area includes approaches for reviewing/supervising legal work, methods for assigning cases to legal staff, supervising support and fiscal staff, technical support, evaluating staff, training staff, recruiting and retaining diverse qualified staff and ensuring zealous advocacy of clients.

- a) **Technology:** Providers should utilize technology to support efficient operations and promote high quality and responsive service. The rapid and ongoing changes brought about by technology have a dramatic impact on how low income persons interact with their environment and with the legal system. Each provider has a responsibility to plan effectively how it will use technology in providing assistance to low income persons in its service area and in supporting its internal operations, including the production and management of legal work and the training and support of its staff. *ABA Standards for the Provision of Civil Legal Aid Standard 2.10 Use of Technology.*

LASO and OLC: LASO and OLC have incorporated the technologies that should be in a modern legal aid office today. They engage in adequate planning around needs and capacities; they have adequate funds budgeted for technology; they both use a robust case management system (CMS) that includes reporting features and access to client and case data and is available in real time in all regional offices. The CMS does document production, timekeeping, calendaring and conflicts checks. The CMS allows staff to generate reports, extract meaningful data for case supervision, plan, and evaluate programs and other purposes. All staff can access the system and database remotely. OLC and LASO work closely in development and innovation relating to the two statewide legal aid community websites OregonLawHelp and Oregon Advocates. OregonLawHelp is a statewide website that contains information for the client community. Oregon Advocates is a website to provide staff and pro bono lawyers with access to sample pleadings, briefs, motions and other documents. OLC and LASO coordinate closely in both planning and purchasing systems which achieves greater efficiencies.

LCLAC: LCLAC reports that its CMS system is old and its replacement is a high priority but additional grant funds must be sought to be able to buy a good CMS in the future. Some funds have also been set aside as a start on this need. LCLAC reports referring clients to Oregon Law Help but does not report using the Oregon Advocates website to access sample pleadings, briefs and other documents to assist practitioners.

Recommendation: It is recommended that LCLAC make it a priority to budget and plan for incorporating those technologies that should be in a legal aid office today. This includes an upgraded CMS and upgrading computer security systems.

CNPLS: CNPLS does not currently have the technologies that should be in a modern legal aid office today. This is due to the lack of resources. CNPLS was recently awarded a Meyer

Memorial Trust Foundation grant for \$85,000 to plan and implement a CMS system together with software and hardware needed to run the system. CNPLS reports referring clients to Oregon Law Help but does not report using the Oregon Advocates website to access sample pleadings, briefs and other documents to assist practitioners.

Recommendation: Use the grant funds to plan for and implement a new CMS system.

b) Management Systems: The providers report that they have systems in place to adequately review/supervise legal work, assign cases to legal staff and procedures for evaluating staff performance. They also report systems for appropriate legal research and investigation, provisions for ensuring client confidentiality and conflicts checks and provisions for zealous advocacy of clients' interests.

OLC and LASO: OLC and LASO specifically report that they have the same policies in place to assure that the regional offices provide quality services. The policies are outlined in two documents called Criteria for Operation of Offices and Criteria for Manager Evaluation. The criteria in both documents are the same because the regional managing attorneys are evaluated against whether the office criteria are met. The criteria covers important areas such as effectiveness of advocacy, setting advocacy goals, intake, management of legal work, community visibility, accessibility, private bar involvement, training and career development, office systems, OSB Standards and Guidelines and financial matters. Staff evaluations take place. LASO and OLC's collective bargaining agreement and the personnel policies for managers provide procedures for staff evaluations with regional managers evaluated every other year.

Every quarter LASO and OLC conduct quarterly managers meetings for all the managing attorneys. The agendas include topics such as "how to conduct a proper needs assessment" and "overcoming barriers to doing more systemic advocacy". The regional manager from Marion/Polk County commented on how helpful he finds the managers meetings both in substance and as a forum to interact with other managing attorneys.

Recommendation: LASO and OLC have incorporated best practices to assure the regional offices provide quality services. It is recommended that all providers adopt a similar set of criteria for operation of an office and for manager evaluation.

CNPLS: CNPLS reported that they have adequate systems in place for reviewing and supervising legal work, assigning cases to legal staff, supervising the work of fiscal and support staff and staff evaluation. It is not clear whether CNPLS has written management policies in place similar to LASO and OLC.

Recommendation: It is recommended that CNPLS adopt a set of criteria similar to that of LASO and OLC for operation of an office, and for manager and staff evaluations.

LCLAC: LCLAC's executive director retired the end of June, 2015. Two long time employees of LCLAC, John VanLandingham and Jean Beachdel, were appointed as co-directors on 10/1/2014. Mr. VanLandingham has taken on the responsibility of supervising the lawyers and Ms. Beachdel the support staff. LCLAC reports that in 2013 they developed a system for conducting staff evaluations for all staff which was replicated in 2014 and was slated again for July, 2015. LCLAC does not have written management policies in place similar to LASO and OLC.

Recommendation: It is recommended that LCLAC adopt a set of criteria similar to that of LASO and OLC for operation of an office, and for manager and staff evaluations.

Subcommittee Review of LCLAC: A LSP subcommittee is conducting a review of the delivery of legal services at LCLAC. The subcommittee will forward a report to the LSP Committee for further discussion.

Peer Survey: A peer survey was conducted of attorney partners, clients, judges, opposing counsel and community partners, all of whom are identified by the providers. A summary of the results are attached. The results are helpful for this review and also provide feedback to the providers from community stakeholders.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: April 22, 2016
From: Helen Hierschbiel, Executive Director
Re: CSF Claim No. 2015-38 CAIN (Mitchell) Request for BOG Review

Action Requested

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

Discussion

In early 2013, James R. Mitchell and his renter had a dispute over the lease with an option to buy agreement between them. Mr. Mitchell filed a claim against the renter in small claims court and obtained a judgment in the amount of \$1,709.

Disappointed in the amount of the judgment, Mr. Mitchell consulted with attorney Jessica Cain to determine the viability of pursuing a motion for reconsideration. Mr. Mitchell gave Ms. Cain \$500 and his file materials and met with Ms. Cain once. He says he never heard from Ms. Cain after that initial meeting.

Ms. Cain reports that she agreed to review Mr. Mitchell's case for a flat fee of \$500. Her case notes from their meeting include a notation of "\$500 ff," but there is no written fee agreement. Ms. Cain says she spent approximately three hours reviewing the file documents and the recording of the hearing. She also maintains that she either left a message for Mr. Mitchell or spoke to him shortly thereafter to convey that she believed a request for reconsideration was not warranted. She says she heard nothing from Mr. Mitchell until a year later, when he left a couple of messages, which she acknowledges she did not return.

The Committee investigator reviewed the file provided by Ms. Cain. It contained approximately 60 pages of documents, photos, and the audio recording from the hearing (which was approximately 1.75 hours long). The file did not contain any notes indicating the date or time that Ms. Cain conveyed her opinion to Mr. Mitchell.

Mr. Mitchell requested an award of \$500 from the Client Security Fund—the full amount of money he paid to Ms. Cain. In order for a loss to be eligible for reimbursement, it must result from a lawyer's dishonest conduct. CSF Rule 2.2.1. Further, reimbursement of a legal fee is only allowed if the lawyer provided no legal services whatsoever or if the legal services were minimal or insignificant. CSF Rule 2.2.3.

The CSF Committee concluded that Ms. Cain did perform legal services for Mr. Mitchell, and that such services were more than de minimus. Moreover, the Committee found no evidence of dishonesty on Ms. Cain's part. Instead, the Committee determined that any claim Mr. Mitchell might have is, at best, a fee dispute.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: April 22, 2016
From: Helen Hierschbiel, Executive Director
Re: CSF Claim No. 2016-08 ALLEN (Reitz) Request for BOG Review

Action Requested

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

Discussion

In April 2012, Gregory A. Reitz engaged Sara Allen to represent him in his divorce. He paid her a \$3,000 retainer and signed a written fee agreement providing for services at the rate of \$225 per hour.

Shortly thereafter, Mr. Reitz's wife's lawyer, Mark Cottle, filed a Petition for Dissolution of Marriage. Ms. Allen prepared and filed a response and a motion and order for temporary support. Mr. Reitz contends that Ms. Allen was largely unprepared at the hearing for temporary support. In addition, she failed to file a Uniform Support Declaration, resulting in the Motion being denied. Ms. Allen subsequently filed the Uniform Support Declaration on Mr. Reitz's behalf, but Mr. Reitz was so disappointed in her performance at the hearing, that he fired her shortly after the hearing. Mr. Cottle's recollection of the hearing differed from that of Mr. Reitz. He said that Ms. Allen knew the materials and the case, but that Mr. Reitz was a difficult client.

Ms. Allen has entered a Stipulation for Discipline, stemming from six separate bar complaints, including a complaint by Mr. Reitz. According to the stipulation, Mr. Reitz asked for a refund, but Ms. Allen failed to pay any refund and failed to timely account for his \$3,000 deposit. The stipulation did not include a discussion of the services performed by Ms. Allen.

Mr. Reitz requested an award of \$3,000 from the Client Security Fund—the full amount of money he paid to Ms. Allen. In order for a loss to be eligible for reimbursement, it must result from a lawyer's dishonest conduct. CSF Rule 2.2.1. Further, reimbursement of a legal fee is only allowed if the lawyer provided no legal services whatsoever or if the legal services were minimal or insignificant. CSF Rule 2.2.3.

The CSF Committee denied the claim on several grounds. First, it concluded that Ms. Allen did perform legal services for Mr. Reitz, and that such services were more than de minimus. The Committee also found no evidence of dishonesty on Ms. Allen's part. Instead, the Committee determined that any claim Mr. Reitz might have is, at best, a fee dispute. Finally, Mr. Reitz failed to file the claim within two years of the discovery of Ms. Allen's conduct, as

required by CSF Rule 2.8. Mr. Reitz made no effort to collect from Ms. Allen in the meantime, and provided no good reason for his delay.

In his request for review, Mr. Reitz reiterates much of his original complaints about Ms. Allen. He does, however, provide additional explanation for the delay in submitting his claim for reimbursement from the Client Security Fund. He says that he suffers from PTSD which affects his memory.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: April 22, 2016,
From: Helen Hierschbiel, Executive Director
Re: CSF Claim No. 2015-32 LANDERS (Koepke) Request for BOG Review

Action Requested

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

Discussion

In October 2011, Gregory Koepke hired Mary Landers to represent him in defense of multiple criminal charges in Josephine County Court. Judith Koepke (Mr. Koepke's mother) paid Ms. Landers \$15,075 for the representation, but never received a written fee agreement from her. Mr. Koepke is dissatisfied with the representation and seeks a full refund of the money his mother paid. He says she was sick a lot prior to trial and did not work on his case during that time.

Ms. Landers agrees that she was sick, but maintains that she worked on his case. She says that she and her investigator visited him several times and spoke with him on the phone almost daily. Mr. Koepke admits that she visited him three or four times and that her investigator visited him three times, and that he spoke with Ms. Landers on the phone three times. The court docket shows a release hearing was held on December 8, 2011, and trial was on December 20 and 21, 2011. There is no dispute that Ms. Landers represented Mr. Koepke at the hearing and trial. Mr. Koepke was found guilty on the assault II and menacing charges, and not guilty on the strangulation charge.

In his request for review, Mr. Koepke admits that he did receive a "new client information sheet" which set forth Ms. Lander's hourly rate at \$175 per hour, and her staff rate at \$75 per hour. He expresses particular concern that he never received any bills from Ms. Landers or accounting of her time. He concedes that she is entitled to payment "to some extent," but doesn't believe she is entitled to the full \$15,000 paid.

The CSF Committee investigator acknowledged problems with the representation and expressed understanding of Mr. Koepke's dissatisfaction with Ms. Lander's services. Nonetheless, the investigator found no evidence of dishonesty.

In order for a loss to be eligible for reimbursement, it must result from a lawyer's dishonest conduct. CSF Rule 2.2.1. Further, reimbursement of a legal fee is only allowed if the lawyer provided no legal services whatsoever or if the legal services were minimal or insignificant. CSF Rule 2.2.3.

The CSF Committee denied Mr. Koepke's claim on several grounds. First, it concluded that Ms. Landers did perform legal services for Mr. Koepke, and that such services were more than de minimus. The Committee also found no evidence of dishonesty on Ms. Lander's part. Instead, the Committee determined that any claim Mr. Koepke might have is, at best, a fee dispute. Finally, Mr. Koepke failed to file the claim within two years of the discovery of Ms. Lander's conduct, as required by CSF Rule 2.8. Mr. Koepke identifies his date of loss as January 2012, which is when his sentencing occurred. Mr. Koepke did not submit the claim until September 2015, over three years later. Mr. Koepke made no effort to collect from Ms. Landers in the meantime, and provided no good reason for his delay.

FORMAL OPINION NO. 2005-106

Information ~~About~~about Legal Services:
Purchase of Tax Preparation Business ~~or Private Law Practice~~

Facts:

Lawyer-A represents clients in tax matters. Lawyer-A would like to purchase the tax preparation business of Tax Consultant, a licensed non-lawyer tax consultant. ~~Lawyer A also would like to purchase the private practice of Lawyer B because this practice is similar to Lawyer A's practice.~~

Question:

May Lawyer-A make the purchases?

Conclusion:

~~See discussion~~Yes.

Discussion:

Neither the Oregon RPCs nor ORS chapter 9 prohibits ~~the purchase of businesses by lawyers.~~¹ ~~such purchases. In fact, Oregon RPC 1.17 expressly contemplates the purchase and sale of a law practice.~~

~~However, Lawyer~~Prior to the purchase of the business lawyer cannot ~~may not engage in improper~~ ~~solicitations~~solicitation. ~~-. Cf. Oregon RPC 5.6(a).~~² ~~However, Lawyer A,~~ however, Lawyer cannot use ~~thisese~~ acquisitions ~~directly or indirectly~~ to engage ~~directly or indirectly~~ in improper in-person solicitation of additional clients. ~~See Cf. Oregon RPC 8.4(a)(1) (making it~~

¹ ~~Oregon RPC 1.17 however does specify ethical rules related to the sale or purchase of a law practice.~~

² ~~Oregon RPC 5.6(a) provides that a lawyer shall not participate in offering or making "a partnership, shareholders, operating, employment, or other similar type of agreement that restricts the right of a lawyer to practice after termination of the relationship, except as agreement concerning benefits upon retirement." The present hypothetical involves none of the agreements listed above, nor a partnership.~~

professional misconduct for a lawyer to violate the Oregon RPCs “through the acts of another”); Oregon RPC 7.3 (generally limiting in-person, telephone, or real-time electronic solicitation);³ Oregon RPC 8.4(a)(1) (making it professional misconduct for a lawyer to violate

³ Oregon RPC 7.3 provides:

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

~~— (1) — is a lawyer; or~~

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

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

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

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

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

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

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

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

(1) is a lawyer; or

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

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

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

the Oregon RPCs “through the acts of another”). For example, Lawyer A could not, for example, make it an expressed or implied condition of the acquisition that Tax Consultant or Lawyer B solicit clients for Lawyer A.⁴ Oregon RPC 7.2;⁵ OSB ~~Formal Ethics~~ Formal Ethics Op No

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

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

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

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

⁴ We express no opinion as to whether Tax Consultant is under any obligations of confidentiality that would prevent disclosure to Lawyer A.

⁵ Oregon RPC 7.2 provides:

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

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

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

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

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

(c) Any communication made pursuant to this rule shall include the name and office address of at least one lawyer or law firm responsible for its content. —(a)— A lawyer may pay the cost of advertisements permitted by these rules and may hire employees or independent contractors to assist as consultants or advisors in marketing a lawyer's or law firm's services. A lawyer shall not otherwise compensate or give anything of value to a person or organization to promote, recommend or secure employment by a client, or as a reward for having made a recommendation resulting in employment by a client, except as permitted by paragraph (c) or Rule 1.17.

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

2005-2. Without endorsement or influence from Lawyer, Tax Consultant, ~~however, and Lawyer B could, however may,~~ inform their clients of their possible need for legal services ~~respective transactions~~ and inform them of Lawyer A's availability to do their work. ~~without endorsement.~~ However, ~~if clients of the Lawyer are clients of the tax preparation business after purchase,~~ ~~Lawyer may solicit them as a prior business relationship exists.~~

If clients of Lawyer are also clients of the tax preparation business of Tax Consultant, Lawyer may be required to determine if Lawyer's business interest in the tax preparation business gives rise to a conflict of interest under RPC 1.7(a)(2).⁶ or RPC 1.8(a).⁷ ~~Lawyer B,~~

~~lawyer learns that employment by a client has resulted from false or misleading communications about the lawyer or the lawyer's firm, the lawyer shall so inform the client.~~

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

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

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

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

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

~~———— We express no opinion as to whether Tax Consultant is under similar obligations of confidentiality that would prevent disclosure to Lawyer A.~~

⁶ Oregon RPC 1.7(a)(2) provides:

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

(1) . . .

(3) 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; . . .

⁷ RPC 1.8(a) provides

(a) 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:

~~however, may be bound to~~ See, e.g., Oregon RPC 1.17(c), which provides:

~~—— The notice may describe the purchasing lawyer or law firm's qualifications, including the selling lawyer's opinion of the purchasing lawyer or law firm's suitability and competence to assume representation of the client, but only if the selling lawyer has made a reasonable effort to arrive at an informed opinion.~~

~~If so, Lawyer may be required to obtain informed consent in writing from the client under RPC 1.7(b)(4) or RPC 1.8(a)(3), or may be required to withdraw from representation if the conflict may not be waived. A more detailed analysis of the ethical concerns and potential conflicts of a lawyer acting in multiple roles may be found in OSB Formal Ethics Op. No. 2006-176.~~

~~—— Note, too, that although Lawyer B is generally prohibited from disclosing information relating to the representation of a client, Oregon RPC 1.6(b)(6)⁸ permits the~~

~~(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.~~

⁸—Oregon RPC 1.6(b)(6) provides:

~~—— (b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary...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~~

~~disclosure to a potential purchaser of Lawyer B's practice by imposing the same duty of confidentiality on Lawyer A.~~

~~For additional information on this general topic and other related subjects, see THE ETHICAL OREGON LAWYER §§2.6, 2.13–2.15, 2.23–2.27, 2.31, 12.9–12.11, 12.35, 12.39 (Oregon CLE 2003); and ABA Model Rules 7.2–7.3, 5.6(a), 8.4(a). See also Washington Formal Ethics Op No 192; Washington Informal Ethics Op. Nos. 927, 1260, 1953 (2001), 1965 (2001), 1998, 2055 (unpublished 2004), 2098 (2005).~~

Approved by Board of Governors, ~~August 2005~~ 2016.

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~~the information shall have the same responsibilities as the disclosing lawyer to preserve the information regardless of the outcome of the contemplated transaction.~~

~~— COMMENT: For additional information on this general topic and other related subjects, see THE ETHICAL OREGON LAWYER §§2.6, 2.13–2.15, 2.23–2.27, 2.31, 12.9–12.11, 12.35, 12.39 (Oregon CLE 2003); and ABA Model Rules 7.2–7.3, 5.6(a), 8.4(a). See also Washington Formal Ethics Op No 192; Washington Informal Ethics Op Nos 927, 1260, 1953, 1965, 1998, 2055 (unpublished).~~

FORMAL OPINION NO. 2005-169
Information About Legal Services:
Firm Names—Retired Partner Mediator

Facts:

Lawyer A is a former partner in the AB&C Law Firm. Lawyer A has retired from the active practice of law but continues to practice as a mediator. Lawyer A also consults with members of the AB&C Law Firm and receives a salary from the firm. Lawyer A's name continues to be used in the firm name and Lawyer A is identified on the firm's letterhead as "available solely as mediator." Lawyer A has ceased to maintain PLF coverage under ORS 9.080(2)(a), which requires coverage for lawyers "engaged in the private practice of law."

Questions:

1. May the AB&C Law Firm continue to use Lawyer A's name in the firm name and list Lawyer A on the firm's letterhead as a mediator?
2. May Lawyer A work as a consultant within the firm if Lawyer A no longer maintains PLF coverage?

Conclusions:

1. Yes.
2. Yes, qualified.

Discussion:

Oregon RPC 7.5 provides:

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

* * *

(e) A lawyer may be designated "Of Counsel" on a letterhead if the lawyer has a continuing professional relationship with a lawyer or law firm, other than as partner or associate. A lawyer may be designated as "General Counsel" or by a similar professional reference on stationery of a client if the lawyer of the lawyer's firm devotes a substantial amount of professional time in the representation of the client.

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

_____ (c) _____ A lawyer in private practice:

_____ (1) _____ shall not practice under a name that is misleading as to the identity of the lawyer or lawyers practicing under such name or under a name that contains names other than those of lawyers in the firm;

~~———— (3) ——— may use in a firm name the name or names of one or more of the retiring, deceased or retired members of the firm or a predecessor law firm in a continuing line of succession. The letterhead of a lawyer or law firm may give the names and dates of predecessor firms in a continuing line of succession and may designate the firm or a lawyer practicing in the firm as a professional corporation.~~

~~———— (d) ——— Except as permitted by paragraph (c), a lawyer shall not permit his or her name to remain in the name of a law firm or to be used by the firm during the time the lawyer is not actively and regularly practicing law as a member of the firm. During such time, other members of the firm shall not use the name of the lawyer in the firm name or in professional notices of the firm. This rule does not apply to periods of one year or less during which the lawyer is not actively and regularly practicing law as a member of the firm if it was contemplated that the lawyer would return to active and regular practice with the firm within one year.~~

~~———— (e) ——— Lawyers shall not hold themselves out as practicing in a law firm unless the lawyers are actually members of the firm.~~

Oregon RPC 7.1 provides, in pertinent part:

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

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

~~———— ...~~

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

~~———— ...~~

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

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

These rules permit the use of Lawyer A’s name in the firm name as long as the use of the name is not false or misleading. Because Lawyer A’s professional activities are limited to mediation, which is not the practice of law, Lawyer A is retired within the meaning of Oregon RPC 7.5(e)(3). Although RPC 7.5 has been amended to more closely resemble the current version of ABA Model Rule 7.5, the ABA comments make it clear that a law firm may still use a retired lawyer’s name in the firm name.¹ Accordingly, the AB&C Law Firm may continue to

¹ See, e.g., RPC 7.5 cmt [1] which provides in part: “it is misleading to use the name of a lawyer not associated with the firm or a predecessor of the firm, or the name of a nonlawyer” (emphasis added). Other jurisdictions are in accord. See, e.g., DC Ethics Opinion 277 (November 1997), which concludes that “[a] law firm may retain in its

use Lawyer A's name in the firm name because Lawyer A is a former partner of the Firm, Lawyer A retired from the active practice of law (e.g. Lawyer A is not practicing at another law firm), and the Firm is clear about the services that Lawyer A may provide.

The firm may hold out Lawyer A as “available [to clients] solely as a mediator” if this representation is true and Lawyer A’s conduct is lawful. Under Oregon law, PLF coverage is required only of lawyers who engage in the private practice of law. ORS 9.080. Because mediation is not the practice of law, a lawyer who limits services to mediation is not required to have PLF coverage. *Cf. In re Kluge*, 332 Or 251, 27 P3d 102 (2001); *Balderree v. Oregon State Bar*, 301 Or 155, 719 P2d 1300 (1986). Moreover, Lawyer A can provide consulting advice to others engaged in the firm’s legal practice without personally practicing law. *See also* OSB Formal Ethics Op No 2005-65 (nonlawyer personnel may be listed as such on letterhead). Affected clients should be informed that Lawyer A’s participation is advisory only, and that Lawyer A does not assume responsibility for the handling of any client’s matter.

COMMENT: For additional information on this general topic and other related subjects, see THE ETHICAL OREGON LAWYER §§ 2.19, 12.16 (Oregon CLE 2003~~6~~); ~~RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS §§ 58, 98 (2003)~~; and ABA Model Rules 7.1, 7.5.

name the name of a former partner, except where the former partner is practicing law elsewhere or where the firm is prohibited by law from retaining the name.” The Opinion explained that “at least as regards retired or deceased partners, ethics law has been clear since at least the time of the predecessor Code of Professional Responsibility that the names of such partners could ethically be included in law firm names.” See also Ethics Comm. of the Mass. Bar Assoc., Op. No. 81-5, (April 14, 1981) (concluding that it would be permissible to include the names of retired partners in firm name); Washington Advisory Opinion 2164 (2007) (providing that “[p]rior opinions of the Committee make clear that a firm may continue to use the name of a former partner where the former partner is deceased, fully retired or inactive, or maintains some ownership stake in the firm”).