

Oregon State Bar
Meeting of the Board of Governors
February 23, 2018
Open Session Minutes

In the absence of President Vanessa Nordyke, President-elect Chris Costantino called the meeting to order at 9:02 a.m. on February 23, 2018. Ms. Nordyke conducted the remainder of the meeting. The meeting adjourned at 11:45 a.m. Members present from the Board of Governors were Colin Andries, John Bachofner, Eric Foster, John Grant, Rob Gratchner, Guy Greco, Tom Peachey, Per Ramfjord, Kathleen Rastetter, Liani Reeves, Julia Rice, Michael Rondeau, Traci Rossi, Kerry Sharp, and David Wade. Not present were Whitney Boise, Michael Levelle, and Eddie Medina. Staff present were Helen Hirschbiel, Amber Hollister, Dawn Evans, Susan Grabe, Dani Edwards, Jonathan Puente, Judith Baker, Troy Wood, Catherine Petrecca, and Camille Greene. Also present was Jennifer Nicholls, ONLD Chair, and Stephanie Tuttle, Board of Bar Examiners.

1. Call to Order/Finalization of Agenda

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

2. 2018 Strategic Areas of Focus

- A.** Ms. Costantino presented the Policy & Governance Committee's recommended BOG Areas of Focus for 2018. **[Exhibit A]**.

Motion: Mr. Bachofner moved, Mr. Greco seconded, and the board voted unanimously in favor of adopting the 2018 BOG Areas of Focus. The motion passed.

- B.** New Lawyer Program Review

New Lawyer Mentoring Changes

Ms. Costantino asked the board to consider changes to the New Lawyer Mentoring Program (NLMP) based on results from ongoing participant surveys, responses from the 2017 new lawyer survey, and the experience of the NLMP staff. The changes include integrating the program with the MCLE program, streamline the reporting requirements, and exempt certain attorneys from paying the fee based on annual salary less than \$65,000 or if their employer pays the fee. This third change was amended by the committee before presenting to the board. **[Exhibit B]**

Motion: The board voted unanimously to accept the changes as presented and amended by the committee. The Policy & Governance committee motion passed.

Oregon New Lawyer Division Update

Ms. Nicholls updated the board on current ONLD activities. At its retreat in January, the ONLD began its review of existing structure and programming. Over the course of the next several months, they will be looking at: governance structure; creating an *ex-officio* position on bar sections and committees; travel expenses; incorporating the Diversity Action Plan strategies into the ONLD; other programming changes.

C. Futures Task Force Progress Report.

Ms. Hierschbiel presented the Futures Task Force progress report, as written, highlighting the following: progress of the Self-Navigator’s WorkGroup; the PLF response to enhancing practice management resources; completion of the OSB economic survey; progress on the legal needs survey; hiring of a new I.T. Director, Gonzalo Gonzalez; AMS launch of phase two; the OSC Civil Justice Initiative Task Force. **[Exhibit C]**

Ms. Costantino asked the board to adopt the Policy & Governance Committee recommendation to amend OSB Bylaw 4.10 to create an Innovations Award. **[Exhibit D]**

Motion: The board voted unanimously to approve the Policy & Governance Committee motion to amend the bylaw to add an award for Technology & Innovation.

Ms. Costantino asked the board to approve the Policy & Governance recommendation to create a Fee Sharing Special Committee. **[Handout E]**

Motion: The board voted unanimously to create the Fee Sharing Special Committee as recommended. The Policy & Governance Committee motion passed.

D. Diversity Action Plan Update

Mr. Puente updated the board on the final version of the Diversity Action Plan and their target measures for 2018. Ms. Hierschbiel encouraged the board to look at the plan in detail as there are action items that related specifically to the board members. Mr. Puente reported that Ms. Pulju is working on a climate survey that will result in hardline data for the board to consider. Ms. Nordyke reminded the board that they are responsible for considering diversity in the appointment process. She is meeting with specialty bar leaders, one on one, and recommended board members reach out to diverse members in their regions.

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

A. Policy and Governance Committee

Ms. Costantino presented the committee motion to amend OSB Bylaw 1.2 to reflect changes to the bar’s strategic functions and goals adopted by the Board of Governors in February 2017. **[Exhibit F]**

Motion: The board voted unanimously in favor of accepting the Policy & Governance Committee’s recommended bylaw amendments. The motion passed.

Ms. Costantino presented the committee motion to form an “Alternative Pathways to Becoming a Lawyer” committee. There was consensus that law school representatives should be invited to participate. **[Exhibit G]**

Motion: The board voted unanimously in favor of the committee motion to form the new committee. The motion passed.

B. Public Affairs Committee

Ms. Rastetter presented the OJD/OSB eCourt Implementation TF Final Report & Survey for the board’s approval and adoption. **[Exhibit H]**

The bar's legislative packages are moving along. The proposal to do away with non-unanimous juries is supported by an ABA Resolution that is on the ABA agenda for their annual meeting in August.

Motion: The board voted unanimously in favor of the Public Affairs Committee motion to accept the report and survey. The motion passed.

C. Budget & Finance Committee

Mr. Wade presented the 2017 Financial Report. The past two years resulted in nearly the same net revenue, which is not projected for the future due to declining membership and the increase in PERS costs. The Investment Committee met with the two portfolio/investment managers: Becker Capital and Washington Trust Bank. In an effort to increase revenue for the operating budget, Mr. Wade proposed that the Investment Committee recommend: a change in strategy to tap excess reserves and pay out 2-3% of reserves into operating fund over the next few years; and a legislative change to charge a fee to 50-year OSB members. Ms. Rastetter said the Public Affairs Committee is discussing how to frame this legislative change to give the bar the discretion to charge a certain categories of fees to 50-year members in the future. In order to keep options open, the Board must approve including a proposal as part of its legislative package now; it can withdraw the proposal later if it decides not to pursue it.

Motion: The board voted to approve the Budget & Finance Committee motion to allow the Public Affairs Committee to draft a legislative proposal for the full board's consideration. Mr. Greco abstained, Mr. Bachofner was opposed. The motion passed.

Mr. Wade reported that the committee is considering changes to the fees charged to section members and the ONLD. The Budget & Finance Committee will determine the cost of the ONLD while the Policy & Governance Committee will determine the benefits of the ONLD.

D. Board Development Committee

Mr. Greco presented the appointments to various bar groups. **[Exhibit I]**

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

Mr. Greco presented the Board of Bar Examiners co-grader recommendations. **[Exhibit J]**

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

Mr. Greco presented the Board of Bar Examiners appointment of Ernest Warren, Jr. to replace Stephanie Eames who resigned from the BBX. **[Exhibit K]**

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

Mr. Greco discussed the BOG and HOD election outreach before the filing deadlines. There are several open positions in the HOD regions.

4. Professional Liability Fund

In Ms. Bernick's absence, a report was presented in writing. No action was required.

5. Board of Bar Examiners

Ms. Tuttle thanked the board for approving their new appointment and their list of co-graders. She asked the board to consider a \$125 application fee increase. The last increase was in 2009 in the amount of \$100. Their expenses have increased due to the UBE exam fee, and their revenues have decreased due to fewer applicants. Mr. Wood added that the cost of exam sites and other exam expenses have increased. **[Exhibit L]**

Motion: Mr. Greco moved, Mr. Bachofner seconded, and the board voted unanimously to approve the BBX's request to send the fee increase to the Oregon Supreme Court for approval.

6. OSB Committees, Sections, Councils and Divisions

A. Legal Ethics Committee

Ms. Hirschbiel asked the board to decide whether to adopt or reject the attached Proposed OSB Formal Op No 2018-XX Representing Husband and Wife in Preparation of Estate Plan Involving Waiver of Elective Share. Mr. Greco proposed to amend Question 4: "After spouse A and spouse B have ~~agreed~~ **executed an agreement** to waive the elected share" **[Exhibit M]**

Motion: Mr. Foster moved, Mr. Greco seconded, and the board voted unanimously to adopt the opinion as amended.

Ms. Hirschbiel asked the board to decide whether to adopt or reject the attached Proposed OSB Formal Op No 2018-XX Disqualification of Judges.

Motion: Mr. Bachofner moved, Mr. Peachey seconded, and the board voted unanimously to adopt the opinion.

B. MCLE Committee

Ms. Hollister presented the MCLE committee request for the board to:

1. Approve the proposed amendment to MCLE Regulation 5.200(g) to clarify that members may claim CLE credit for writing or grading a local component bar exam question.
2. Approve several rule and regulation amendments to reflect recent legislative amendments.
3. Seek limited housekeeping amendment authority from Supreme Court to correct rule numbering when needed. **[Exhibit N]**

Motion: Mr. Greco moved, Mr. Bachofner seconded, and the board voted unanimously to approve the three amendments.

C. Legal Services Program

Ms. Baker asked the board to approve the Legal Services Committee's revisions to Standards and Guidelines to align them more closely to the authority of the statute. **[Exhibit O]**

Motion: Mr. Greco moved, Mr. Ramfjord seconded, and the board voted unanimously to approve the revisions.

7. ABA HOD Delegates

Ms. Meadows updated the board on the ABA Midyear HOD meeting.

8. Consent Agenda

Ms. Nordyke asked if any board members would like to remove any items from the consent agenda for discussion and a separate vote. No one asked to do so.

Report of Officers & Executive Staff

Report of the President
As written.

Report of the Executive Director
As written.

Director of Diversity & Inclusion
As written.

Motion: Mr. Greco moved, Ms. Rice seconded, and the board voted unanimously to approve the consent agenda and past meeting minutes.

9. Closed Sessions – see CLOSED Minutes

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

The board went into closed session.

The board reconvened in open session to vote on the action item on the closed agenda.

Motion: Mr. Greco moved, Mr. Bachofner seconded, to approve the motion. The motion passed unanimously.

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

**Oregon State Bar
Board of Governors Meeting
February 23, 2018
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 Litigation

Ms. Hollister presented the UPL committee's recommendation for the board to approve the initiation of a lawsuit seeking to enjoin persons from the unlawful practice of law under ORS 9.166.

B. Pending Non-Disciplinary Litigation

Ms. Hollister informed the board of non-action items.

OSB Board of Governors

STATUTORY CHARGE

The OSB Board of Governors (BOG) is charged by the legislature (ORS 9.080) to “at all times direct its power to the advancement of the science of jurisprudence and the improvement of the administration of justice.”¹ The Oregon State Bar (OSB) is also responsible, as an instrumentality of the Judicial Department of the State of Oregon, for the regulation of the practice of law.² As a unified bar, the OSB may use mandatory member fees only for activities that are germane to the purposes for which the bar was established.³

MISSION

The mission of the OSB is to serve justice by promoting respect for the rule of law, by improving the quality of legal services, and by increasing access to justice.

STRATEGIC FUNCTIONS

The BOG has translated the statutory charge and mission into five core functions that provide overall direction for OSB programs and activities:

FUNCTION #1 – REGULATORY BODY

GOAL: Protect the public by ensuring the competence and integrity of lawyers.

FUNCTION #2 – PARTNER WITH THE JUDICIAL SYSTEM

GOAL: Support and protect the quality and integrity of the judicial system.

FUNCTION #3 – PROFESSIONAL ORGANIZATION

GOAL: Promote professional excellence of bar members.

FUNCTION #4 – ADVOCATES FOR DIVERSITY, EQUITY AND INCLUSION

GOAL: Advance diversity, equity and inclusion within the legal community and the provision of legal services

FUNCTION #5 – CHAMPIONS FOR ACCESS TO JUSTICE

GOAL: Foster public understanding of and access to legal information, legal services, and the justice system.

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

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

³ In *Keller v. State Bar of California*, 499 US 1,111 SCt 2228 (1990), the US Supreme Court held that an integrated 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 "necessarily or reasonably incurred" for the purpose of regulating the legal profession or improving the quality of legal services.

FIDUCIARY ROLE

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

AREAS OF FOCUS FOR 2018

1. Follow-up on Futures Task Force items
 - a. Develop charge and plan for RPC 5.4 Committee. Consider recommendations.
 - b. Consider recommendations of Paraprofessionals Implementation Committee
 - c. Receive reports on progress of other items and identify action items as appropriate.
 - d. Develop charge and plan for Committee on Alternative Pathways to Becoming a Lawyer. Consider recommendations.
2. Continue review of new lawyer programs for adherence to mission, value to members and adopt changes as appropriate.
 - a. Consider recommendations for changes to the New Lawyer Mentoring Program.
 - b. Seek feedback from ONLD regarding survey results and alternative governance models.
 - c. Consider adding ex-officio member to section executive committees.
3. Continue review of sections and make policy decisions about how to proceed on the following issues:
 - a. Number of sections
 - b. Section fund balances
4. Evaluate potential forms of revenue and cost-savings for 2019 budget and beyond.
5. Implement Diversity Action Plan items identified for 2018.

OREGON STATE BAR

Policy and Governance Committee Agenda

Meeting Date: February 22, 2018
From: Catherine Petrecca, New Lawyer Programs Coordinator
Danielle Edwards, Director of Member Services
Re: Proposed Changes to the New Lawyer Mentoring Program

Action Recommended

Consider changes to the New Lawyer Mentoring Program (NLMP) based on results from ongoing participant surveys, responses from the 2017 new lawyer survey, and the experience of the NLMP staff.

Background

The NLMP launched in 2011, under Supreme Court Rule, to assure that every new lawyer in Oregon would have the benefit of a more senior bar member to welcome them into the profession and serve as a resource during their transition from student to practitioner. At the time of its creation, the NLMP was the third mandatory mentoring program in the country. Two more states have since created mandatory mentoring programs.

The NLMP requires each new lawyer to complete up to four activities in five separate areas, and then suggests another six activities in each of those areas. It also requires the new lawyer to complete ten practice area activities. (See attached Mentoring Plan Checklist.) Each new lawyer is required to turn in the Mentoring Plan, complete with the dates each practice area activity was completed.

Currently, all new lawyers pay a \$100 fee upon completion of the program. Participants may apply for a waiver, but very few do so – an average of three participants per year have requested waivers so far.

See the attached New Lawyer Mentoring Program Review from May 2017 for further details on the program.

Items for Discussion

1. Integrate the NLMP and MCLE Rules

The NLMP is a regulatory program designed to educate new lawyers on Oregon's high standards of integrity, professional conduct, professional competence and service to the public. After completing the program new lawyers receive six MCLE credits applied to their first full MCLE reporting cycle. Currently the NLMP rules are free-standing. Both the NLMP and the MCLE rules are promulgated and amended by the Supreme Court, following recommendations from the BOG.

Staff recommends that NLMP rules be integrated into the MCLE rules. This will help new lawyers understand the focus of the program, set their expectations for other bar regulatory compliance processes, and make internal administration of the program more efficient. This would require revisions of the MCLE rules to include an amended version of the NLMP rules. If the BOG supports this change, staff will work with the MCLE Committee on the proposed changes and bring those amendments to the BOG for consideration before review by the Supreme Court.

Options:

1. Integrate the NLMP Rules into the MCLE Rules.
2. Make no changes.

2. Streamline the NLMP requirements

The results of the new lawyer survey support this idea: respondents were almost-evenly split when asked if *all* curriculum activities should be optional, but only 1/3 of respondents said they think the program should exempt new lawyers who don't think they would benefit from participation. New lawyers and mentors are, however, supportive of reducing the number of requirements, with the writing requirement receiving the most criticism. (Currently, all participants are required to select and complete at least ten practice area activities in a substantive law area, with at least one writing project reviewed by their mentor.) Making the writing requirement optional would not likely have a negative impact on participants who opted out, but would still provide support for those who wanted the chance to have a mentor critique their writing.

It is important to note that staff are currently working on re-formatting the program resource materials to more clearly indicate which activities are optional and which are required.

Options:

1. Change the writing requirement to make it optional.
2. Make no changes.

3. Streamline the Reporting Requirement

In order to streamline the reporting process, staff recommends that new lawyers only be required to turn in the Certificate of Compliance (without the accompanying mentoring plan) and that the Certificate of Compliance be replaced with an MCLE accreditation form submitted upon completion of the program. Seventy-six percent of survey respondents agreed that "the only reporting requirement should be filing a

certificate of completion.” In addition, staff time would be reduced if staff does not need to review the mentoring plan for each participant.

We also recommend that participants be obligated to maintain their mentoring plan for the duration of their current MCLE reporting period, in case an audit needs to be done for MCLE purposes. These changes would need to be incorporated into any new MCLE rules created by the integration of the NLMP Rules into the MCLE Rules.

Streamlining the NLMP certification process and integrating it into the MCLE reporting framework will allow the bar to utilize components of the bar’s new association management software when it comes online.

Options:

1. Eliminate the requirement to file the Mentoring Plan.
2. Change the reporting requirement to an MCLE form.
3. Make no changes

4. Changes to the Program Fee

The NLMP participation fee brings in \$25,000 to \$30,000 in revenue per year. Both the staff program review and the new lawyer survey identified the fee as an area ripe for change, with over 80% of new lawyers agreeing that the fee should be adjusted based on income. In addition, both the survey and statistics from the ABA show that law school debt continues to rise.

For some new lawyers, however, the payment is not a burden. Over half of the fees for the program are paid by employers. Also, upon receipt of the completion fee, each new lawyer receives six MCLE credits. Staff recommends that the reporting form allow new lawyers to self-report their qualification for a fee waiver if their income is below \$60,000¹¹, or if payment of the fee would be an undue burden. Staff can include guidelines for the definition of an undue burden in the program materials.

Options:

1. Eliminate the \$100 program fee.
2. Exempt certain attorneys from paying the fee.
3. Make no changes.

¹¹ The \$60,000 waiver amount is recommended as it is just below the median income reported in the 2017 Economic Survey for lawyers with 0 to 3 years practice.

**February 2018
Progress Report for
OSB Futures Task Force
Recommendations**
(Highlighted items are updates.)

I. Changes to Rules of Professional Conduct				
Task Force Recommendation	Rec. No. and Full Report Reference	Current Status	Next Steps	Timeline
A. Adopt Recommendation to Amend Oregon RPC 7.3, which has already been adopted by the Board in substance, with (very slightly) modified wording.	2.1 Pages 36-38	Adopted by Court.	LEC to draft Formal Ethics Opinion	
B. Adopt Recommendation to Amend Oregon RPC 7.2 and 5.4 to permit fee-sharing with lawyer referral services, with adequate disclosure to consumers.	2.2 Pages 38-40	Committee and charge being developed.	Bring to BOG for discussion and approval. Appointment and welcome memo from President.	
C. Direct the Legal Ethics Committee to consider whether to amend Oregon RPCs to allow fee-sharing or law firm partnership with paraprofessionals and other professionals.	2.3 Pages 40-43	Waiting for implementation of paraprofessional program.		

II. Regulation/Development of Alternative Legal Service Delivery Models

Task Force Recommendation	Rec. No. and Full Report Reference	Current Status	Next Steps	Timeline
A. Convene a paraprofessional licensing implementation committee to prepare a detailed proposal for Board and Supreme Court.	1.1 to 1.11 Pages 3-26	Committee and charge being developed.	Appointment and welcome memo from President.	
B. Direct Public Affairs Committee to craft legislative approach related to online document review and consumer protections generally consistent with the approach outlined by Report.	2.4 Pages 43-45	<p>PAC Report</p> <ul style="list-style-type: none"> HB 4095 Expanding Evidentiary Privilege for Lawyer Referral Services (Passed) 		
C. Direct Public Affairs Committee to craft legislative approach related to Self-Help Centers and Court facilitation that is generally consistent with the approach outlined by Report.	3.2 Pages 48-51	<p>PAC Report</p> <ul style="list-style-type: none"> HB 4097 Legal Resource Centers 		

III. Support Court and Legal Aid Efforts to Increase Access and Explore Innovation

Task Force Recommendation	Rec. No. and Full Report Reference	Current Status	Next Steps	Timeline
A. Establish Ad Hoc committee of stakeholder representatives from OJD/LASO/OSB tasked with streamlining self-navigation resources	3.1 Pages 47-48	<p>BOG sent to CEO.</p> <p>Committee created and meetings being held. See minutes for full report.</p>	<p>Continue meetings.</p> <p>Coordinate with OSCIIF and OSC CJl re topic areas</p>	

<p>B. Direct Staff to Explore Ways to Support Stakeholder Efforts to Improve Family Law and Small Claims Court Processes</p>	<p>3.3-3.4 Pages 51-54</p>	<p>BOG sent to CEO. CEO attending OSC Civil Justice Initiative Task Force meetings. See NCSC Report.</p>	<p>Continue to attend OSC CJI meetings and report to BOG</p>	
<p>C. Promote use of technology and other means to increase A2J in Lower Income & Rural Communities</p>	<p>7.2—7.3 Pages 70-71</p>	<p>BOG sent to CEO. CEO attending Civil Justice Initiative Task Force meetings</p> <p>Participating in Global Legal Hackathon 2/23—2/25: https://globallegalhackathon.com/</p> <p>Consideration of new OSB Technology & Innovation Award.</p> <p>LSP including technology and rural service in accountability review process.</p> <p>Rural Opportunity Fellowship reviewed by D&I Director.</p> <p>Series in OSB Bulletin on rural law practice opportunities. Four published so far: 10/15; 12/15; 7/16; 8/17. Next scheduled for spring 2018.</p> <p>ONLD to hold Rural Summit to explore A2J issues on September 21, 2018.</p> <p>Pro Bono Committee review Texas Rural Justice Project</p>	<p>Continue to attend OSC CJI meetings and report to BOG.</p> <p>On February BOG agenda</p> <p>Conduct accountability review process.</p> <p>Complete review. Make changes as appropriate.</p> <p>Draft and publish 5th article.</p> <p>Hold Summit.</p>	

IV. Enhancement of Existing Bar Programs and Resources

Task Force Recommendation	Rec. No. and Full Report Reference	Current Status	Next Steps	Timeline
A. Ask PSAC to explore ways to increase availability unbundled services offered through LRS	3.5 Pages 54-55	PSAC/LRS exploring.		
B. Continue to Improve & Enhance Resources for Self-Navigators	3.6 Pages 56-57	BOG sent to CEO. Participating in SFLAC pro se assistance subcommittee. Ms. Nordyke testified in favor of HB 4097 Legal Resource Centers.	Continue SFLAC participation. Continue support for self-navigator resources.	
C. Work to improve the public perception of lawyers	7.4 Page 72	BOG sent to CEO. Media relations manager working with media.	Continue work with media.	
D. Expand the Lawyer Referral Service and Modest Means Program	5.1 Page 64	BOG sent to CEO. On 2018 Work Plan for B&F and P&G Committees		
E. Enhance Practice Management Resources				
1. Develop Comprehensive Training Curriculum re Modern Law-Practice Management Methods	6.1 Page 65-68	See Report from PLF CEO		
2. Promote unbundled legal services	7.1 Page 69	See Report from PLF CEO. Fee Agreement Compendium update to include broader sampling of alternative fee agreements. GCO column in 1/18 Bulletin on ethics of unbundling. http://www.osbar.org/bulletin/issues/2018/2018January/html5/index.html?page=9 .		

V. BOG Policy Development

Task Force Recommendation	Rec. No. and Full Report Reference	Current Status	Next Steps	Timeline
A. Embrace Data-Driven Decision-Making through adoption of policies and KPIs.	4 Page 61-63	On P&G 2018 Work Plan		2018
1. Dedicate OSB Resources to Data collection, design and dissemination	4.4 Page 63	<p>BOG sent to CEO.</p> <p>New Association Management Software (AMS) implementation in process. Update.</p> <p>Legal Needs Study in process. Update.</p> <p>Data collection for OSB Economic Survey complete. https://www.osbar.org/_docs/resources/Econsurveys/17EconomicSurvey.pdf</p> <p>Survey of lawyers from non-dominant cultures in development.</p> <p>IT Director hired.</p>	<p>Continue AMS implementation.</p> <p>Finish Study.</p> <p>Complete and conduct survey.</p>	2018

VI. Development of New Bar Programs

Task Force Recommendation	Rec. No. and Full Report Reference	Current Status	Next Steps	Timeline
A. Create Incubator/Accelerator Program	8 Page 86-93	<p>New lawyer survey results received and discussed by BOG.</p> <p>Given to ONLD for consideration.</p>		

OREGON STATE BAR

Board of Governors Agenda

From: Policy & Governance Committee
Meeting Date: February 23, 2018
Re: Proposed Amendments to Bylaw 4.10

Action Recommended

Approve the proposed amendment to OSB Bylaws Article 4 to add an award for Technology & Innovation.

Options

1. Approve the amendment.
2. Send back to the Policy & Governance Committee for further work.
3. Do nothing.

Background and Discussion

A prevailing theme in the Futures Task Force Report was to encourage the use of technology and innovation to increase access to justice—particularly in lower income and rural communities in Oregon. In fact, recommendations 7.2 and 7.3 in the task force report specifically call out the need for the bar to promote the use of technology and innovation as a means to support both the court and legal aid efforts to improve access to justice. The challenge, as always, is how to effectively accomplish that goal in a cost-effective manner.

With that goal in mind, the Policy & Governance Committee began to discuss in 2017 the possibility of creating an OSB Technology and Innovation Award in order to highlight and give recognition to those who use technology and innovation in ways that advance the bar's mission. The award would be yet another tool to provide appreciation for and awareness of such work, with the ultimate goal of stimulating further innovation that serves the bar's mission. At its January 2018 meeting, the Policy & Governance Committee settled on the criteria for such an award, which is set forth below:

Section 4.10 President's Technology & Innovation Award

The criteria for the President's Technology & Innovation Award are as follows: The nominee may be an individual or entity; the nominee must have made a significant contribution in Oregon toward promoting respect for the rule of law, improving the quality of legal services or increasing access to justice through new technology or other innovations.

The Policy & Governance Committee now recommends that the Board of Governors adopt the proposed changes to Article 4 of the OSB Bylaws in order to establish the Technology & Innovation Award.

OREGON STATE BAR

Policy and Governance Committee Agenda

Meeting Date: February 22, 2018
From: Helen M. Hirschbiel, CEO
Re: Proposed Referral Fees/Fee Sharing Committee

Action Recommended

Recommend the Board of Governors approve creation of a committee to study the rules of professional conduct related to lawyers' payment for referrals and sharing of legal fees. Decide on a charge for the committee. Provide feedback regarding makeup of the committee.

Background

At the November 4, 2017 House of Delegates meeting, the HOD voted to refer back to the Board for further study BOG Resolution #3, which resolved that amendments to Oregon Rules of Professional Conduct 5.4(a)(5) and 7.2(b) be submitted to the Oregon Supreme Court for adoption. The proposed amendments to RPC 5.4(a)(5) and 7.2(b) arose out of the Futures Task Force Regulatory Committee. The Futures Task Force charge was to:

Examine how the Oregon State Bar can best protect the public and support lawyers' professional development in the face of the rapid evolution of the manner in which legal services are obtained and delivered. Such changes have been spurred by the blurring of traditional jurisdictional borders, the introduction of new models for regulating legal services and educating legal professionals, dynamic public expectations about how to seek and obtain affordable legal services, and technological innovations that expand the ability to offer legal services in dramatically different and financially viable ways.

The Regulatory Committee was charged to:

Examine new models for the delivery of legal services (e.g., online delivery of legal services, online referral sources, paraprofessionals, and alternative business structures) and make recommendations to the BOG regarding the role the OSB should play, if any, in regulating such delivery models.

The discussion at the HOD meeting revealed that members of the HOD were unified in their commitment to improve access to justice. Further, members expressed an interest in exploring ways to ensure that lawyers have the ability to utilize modern tools to connect with clients, but wanted to avoid making changes to the rules that could erode consumer protection.

There are a number of factors to consider in deciding what charge to give a committee appointed to continue study of these rules and the makeup of such a committee. First, in light of the conversation at the HOD meeting, and because the HOD resolution that proposed

amendments to RPC 5.4(a)(5) and 7.2(b) arose out of the Futures Task Force, the P&G Committee should consider whether the Futures Task Force and Regulatory Committee charges and findings should serve as a backdrop for continued study of these rules.

Second, the P&G Committee should consider whether to expand the scope of study to include alternative business structures. An alternative business structure (ABS) is an entity that provides legal services but is not exclusively owned by lawyers. In essence, it allows non-lawyers to own or invest in law firms. Alternative business structures are likely the wave of the future and, like referral fees, also implicate RPC 5.4. The issues at play for ABS are somewhat different than those for referral fees, however. In addition, a study of ABS would likely necessitate an exploration of entity regulation, which would promise to be a major undertaking. Thus, the Policy & Governance Committee may want to recommend that the BOG limit the scope of study to whether lawyers should be allowed to pay for-profit entities for referrals and, if so, by what model.

If the P&G Committee were to keep the scope of study narrow, but retain the Futures Task Force work as a backdrop, the charge for the special committee might be to:

Study the rules that govern the circumstances under which a lawyer may pay a for-profit company for directing clients to that lawyer (esp. 5.4(a)(5) and 7.2(b)), in light of changing models for obtaining and delivering legal services. Consider how such rules should be amended in order to account for these changes, while still protecting the public and allowing for greater access to legal services.

If the P&G Committee wants to cast a broader net for issues to tackle, the charge for such a committee might be to:

Study RPC 7.2 and 5.4 in light of the findings of the Futures Task Force and consider whether such rules should be amended to allow for payment of referrals and alternative business structures. If so, make recommendations for how such rules should be amended in order to better address the needs of legal consumers while still providing protection to the public.

Whatever the scope of study for this special committee, any renewed effort to consider amendments to Oregon RPC 5.4 and 7.2 should include a broad range of stakeholders from a variety of practice areas, as well as persons well-versed in the needs of legal consumers and modern methods of meeting those needs.

Options

1. **Adopt special committee charge with narrow focus.** This approach would enable a more limited, structured conversation about ethics issues related to payment of referral and advertising fees, as outlined above.
2. **Adopt special committee charge with a broader focus.** This approach would allow the Committee to study a broad range of ethics issues related to collaboration with nonlawyers, including referral fees and alternative business structures.

OREGON STATE BAR

Board of Governors Agenda

From: Policy & Governance Committee
Meeting Date: February 23, 2018
Re: Proposed Amendments to Bylaw 1.2

Action Recommended

Approve the proposed amendments to OSB Bylaw 1.2 to reflect changes to the bar's strategic functions and goals adopted by the Board of Governors in February 2017.

Options

1. Approve the amendments.
2. Send back to the Policy & Governance Committee for further work.
3. Do nothing.

Background and Discussion

At its retreat in November 2015, the Board of Governors expressed an interest in undertaking a review of its functions in order to ensure that they are still aligned with the mission and accurately reflect the work of the Oregon State Bar. During the course of 2016, the Policy & Governance Committee reviewed and discussed the functions and goals and ultimately submitted the attached for the Board of Governors' approval at its meeting in February 2017. The BOG approved the committee's recommendation.

The bylaws now require amendment, so that they reflect the functions and goals adopted by the BOG. The proposed bylaw amendments are set forth below.

Proposed Amendments

Section 1.2 Purposes

The mission of the Oregon State Bar is to serve justice by promoting respect for the rule of law, by improving the quality of legal services and by increasing access to justice.

The Bar fulfills that mission through the following functions:

~~(A) We are a professional organization, promoting high standards of honor, integrity, professional conduct, professional competence, learning and public service among the members of the legal profession.~~

~~(B) We are a provider of assistance to the public seeking to ensure the fair administration of justice for all and the advancement of the science of jurisprudence, and promoting respect for the law among the general public.~~

~~(C) We are a partner with the judicial system, seeking to ensure a spirit of cooperation between the bench and the Bar.~~

~~(D) We are a regulatory agency providing protection to the public, promoting the competence and enforcing the ethical standards of lawyers.~~

~~(E) We are leaders helping lawyers serve a diverse community.~~

~~(F) We are advocates for access to justice.~~

(A) We are a regulatory body, protecting the public by ensuring the competence and integrity of lawyers.

(B) We are a partner with the judicial system, supporting and protecting the quality and integrity of the judicial system.

(C) We are a professional organization, promoting the professional excellence of bar members.

(D) We are advocates for diversity, equity and inclusion within the legal community and the provision of legal services.

(E) We are champions for access to justice, fostering the public's understanding of and access to legal information, legal services, and the justice system.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: February 23, 2018
From: Policy & Governance committee
Re: Proposed Alternative Pathways to Becoming a Lawyer Committee

Action Recommended

Approve creation of a committee to study alternative pathways to becoming a lawyer.

Background

At the November 2016 House of Delegates meeting, the HOD approved a resolution directing the Board of Governors to

appoint a Volunteer Committee to study the advantages of implementing a 'Writing for the Bar Mentorship Program,' by which a Diversity of well-qualified persons would have the opportunity to take the Bar Exam and become valued Member of the Oregon State Bar.

Because staff resources were consumed by the Futures Task Force during 2017, this initiative was stalled until now. We have, however, several eager volunteers who have been waiting patiently in the wings to begin work on this topic.

In addition to being a directive from the HOD, this initiative is aligned with the BOG's strategic focus over the last couple of years. The Board of Governors has repeatedly expressed concern about mounting law school debt and the pressure such debt places on new lawyers who often have struggled to find law-related jobs and make ends meet. Citing findings from the ABA Commission on the Future of Legal Services, the OSB Futures Task Force noted that new lawyers remain un- and underemployed, notwithstanding the persistent access to justice gap:

Total student debt burdens now average in excess of \$140,000—challenging new lawyers' ability to sustain traditional law practices that might address some of the unmet legal need—while legal education remains essentially unchanged.¹

If the law school debt burden could be reduced—or even eliminated—then lawyers may be in a better position to charge less money and thereby help to meet some of the unmet legal need. The BOG has little, if any, influence on the cost of a legal education or on the economy surrounding legal services. Further, it does not set the admissions requirements; the Supreme Court makes those decisions upon the recommendation of the Board of Bar Examiners. That

¹ OSB Futures Task Force Executive Summary, page 4.

said, the BOG can make recommendations to the BBX for changes in the admission requirements that may help ease the cost of a legal education.

“Writing for the Bar” is a concept that would allow a person to sit for the Oregon Bar Exam and become licensed as a lawyer without attending law school. It would require a change to the admissions rules and provide one option to reduce law school debt. Another option would be to change the admissions rules to require only two years of law school in order to become a lawyer in Oregon, rather than the current requirement of three years.

Policy & Governance Committee recommends that a committee be appointed to study these two options and report back to the Board of Governors with a recommendation about whether to pursue implementation of either or both. If the recommendation is to pursue a program, the report should provide details of the essential elements of the program, the anticipated cost of implementation and operation, and how success will be measured.

A list of potential committee members will be provided at the meeting.

Final Report of the OSB / OJD Task Force on Oregon eCourt Implementation

February 23, 2018

The Oregon State Bar/Oregon Judicial Department (OSB/OJD) eCourt Implementation Task Force convened for the first time in May 2008. The original membership consisted of a mixture of lawyers, judges, and OSB and OJD staff who came together to strategize on ways to ensure that Oregon eCourt was successfully implemented. Over time, the membership expanded to include other court stakeholders, such as representatives from companies doing business with OJD and the courts.

The Task Force's original charge was:

To work cooperatively with the Oregon Judicial Department to assist in the implementation of the Oregon eCourt initiative over the next five years; provide input and feedback from bar members on the implementation of Oregon eCourt; develop a strategy to communicate with and educate bar members about Oregon eCourt programs; and provide periodic updates to the Board of Governors.

Over the next eight years, the group served as a conduit between practicing attorneys, OSB, the Professional Liability Fund (PLF), other stakeholders, and OJD, helping to ensure that the manner in which the Oregon eCourt system was implemented took into account the needs of the public and of attorneys working with the courts every day. With Oregon eCourt's final implementation in mid-2016, the Task Force transitioned to less frequent meetings but continued to monitor the system's usage and provided feedback to the OJD regarding questions or concerns raised by OSB members.

The Task Force was chaired by former OSB Board of Governors member Mark Comstock. Over the eight years between its creation and OJD's final Oregon eCourt implementation, dozens of OSB members as well as numerous OJD staff members regularly participated in meetings, which were generally held either in the OSB offices in Tigard or at the chair's office in Salem. Meetings were open to the public, and meeting notices were distributed via an email list that grew to include nearly 200 recipients.

Pre-Implementation

In the early years, the Task Force coordinated with OJD extensively on changes that needed to be made to the Uniform Trial Court Rules, to provide a framework for the statewide transition to an electronic court environment. That work involved outreach to bar members, especially through bar sections and committees, as well as the PLF, to gather feedback on proposed rules, and resulted in many changes to alleviate practicing lawyers concerns.

One of the major areas in which the Task Force sought early feedback regarded the scope and manner of providing online document access. As reported in the Task Force's First Interim Report:

All members of the Task Force and court staff acknowledge that a tension exists between two important policy goals: the need to provide as much information to the public through eCourt as possible about cases within the court system, and the responsibility maintain reasonable data security to safeguard sensitive information provided to the courts.

The Task Force sent draft proposals to the chairs of the Business Law, Business Litigation, Computer and Internet Law, Juvenile Law, Family Law, Estate Planning and Administration, and Criminal Law Sections as well as other interested groups to solicit feedback. Many of those groups provided extensive feedback either in writing or in person at future Task Force meetings, and many of those groups' concerns were accommodated in OJD's ongoing efforts to plan a structure for providing online document access with an accompanying new Draft UTCR Chapter 22. OJD has followed the initial structure of the draft rule to date in opening up statewide remote online access to certain users, which - since early 2014 -- includes all active OSB members.

The Task Force also worked to communicate proposed UTCR changes – both regarding document access and otherwise – to the general OSB membership through numerous media, including the Bar Bulletin, Capitol Insider, Bar News email alerts, and on the OSB's website.

Early on, the Task Force – as well as OJD workgroups tasked with creating the draft UTCRs – struggled with a large number of very specific and often very technical questions. For example, it was initially unclear what kinds of personally identifying information would be available through remote electronic document access. Intuitively, many lawyers imagined a state system working similarly to the federal PACER system in which almost all information contained in filings is made public. However, the difference in variety of cases and filings in state court – each with their own unique complications and problems – in conjunction with the high number of self-represented litigants in state court - made that approach unfeasible. Those concerns led to months, and in some cases years, of discussions about the appropriate manner in which to make court information available to the public.

The Task Force also provided input on a package of Supplementary Local Rules that OJD adopted to apply to each Oregon eCourt that went live, once implementation began.

Pilot Courts and Early Implementation

Oregon eCourt implementation initially began in 2009-10, with several pilot courts around the state, but including only electronic content management in small claims and landlord-tenant cases, in four pilot courts. In early 2011, OJD transitioned to Tyler Technology's Odyssey single-solution system -- an integrated system that includes case management, document management, eFiling, financial, and other components. OJD planned a new staged, five-year rollout, where the Odyssey case management, document management, and financial system went live in all case types in a court at once. OJD began implementation with a pilot court (Yamhill County) in mid-2012, followed by three early adopter courts (Crook-Jefferson, Linn, Jackson) over the next nine months. Beginning in mid-2013, it then followed a rolling schedule where groups of courts around the state went online every several months through mid-2016, with the largest courts going live as stand-alone events (Multnomah, Clackamas, Washington-Oregon Tax Court). OJD has configured and added other integrated components to the Oregon eCourt system over time, including eFiling (see next section), interactive forms, and jury management.

The Task Force's major role during these early stages transitioned to reviewing the efficacy of implementation at each stage of the rollout and discussing problems encountered by local bar members, as well as issues surrounding statewide consistency. The OSB, in its role in facilitating the Task Force's work, solicited feedback from local bar associations and practicing attorneys in local counties as to the successes and failures encountered during implementation. The goal in all cases was to advise the OJD – through the Task Force – of any issues that would compromise access to justice or otherwise cause problems for local attorneys and look for solutions before moving on the next group of counties.

In most cases, local implementation went smoothly. In general, implementation in earlier counties progressed more slowly and was more likely to run into unexpected problems, but OJD learned from each rollout, and later counties tended to progress more and more smoothly and experience fewer issues as part of implementation.

Examples of issues that the Task Force addressed in the early rollouts were (1) necessary shut-downs of the Oregon Judicial Information Network (OJIN) during go-live -- including access issues for lawyers and other stakeholders, such as title companies -- and how to most effectively communicate that information to OSB members and minimize disruption; (2) how to provide critical judgment-entry information to title companies, OSB members, and others; and (3) generally, many issues relating to the transition from paper-based to electronic-based courthouses.

During this time, the Task Force decided to encourage attorneys to contact OSB directly with questions or concerns about Oregon eCourt, which OSB would then pass along to the Task Force as necessary. To that end, OJD added significant information to its website informing attorneys about resources available if they have questions, including contact information for staff who would be able to direct them to the appropriate person to address their concerns. Also, OJD, OSB, and PLF staff developed effective working relationships and consistent channels of communication that facilitated problem-solving in this time period.

eFiling Implementation

OJD began rolling out the eFiling and eService component of the Oregon eCourt system, File & Serve, in 2013, about a year after the initial pilot court implementation. OJD followed the same court implementation schedule for File & Serve, first implementing in the courts that already had gone live and then making File & Serve part of a staged implementation for those that remained -- installing File & Serve in the remaining courts about six weeks after each court's initial system implementation. In December 2014, OJD implemented mandatory eFiling for OSB members, for all courts who then were using File & Serve; in the remaining courts, mandatory eFiling rules were triggered about six weeks after File & Serve implementation. OJD added mandatory eFiling for the appellate courts in 2015.

Throughout the planning and rollout of File & Serve, the Task Force addressed many issues relating to eFiling and eService -- including input on multiple updates to UCR Chapter 21 (Filing and Service by Electronic Means; Electronic Files of the Court), practical, mechanical, and transactional cost concerns, and statewide consistency issues. OJD also worked with OSB and PLF staff to facilitate eFiling trainings around the state, as well as providing notifications to OSB members about eFiling implementations, mandatory transitions, and system down-times.

Late and Post-Implementation

As the statewide rollout progressed, the Task Force continued to address issues that arose over time, for example: (1) vetting and facilitating OSB section and member comment on proposed amendments to Oregon eCourt-related UTCRs, such as UTRC 5.100 (proposed orders and judgments), UTRC 21.120 (retention of documents by eFilers), and many other rules (eFiling/eService and otherwise); (2) raising and addressing lawyer needs in the system, such as automatic email notification of entry of orders and judgments, and consistency improvements in accepting eFilings; and (3) discussing updated subscription plans for case and document access. The Task Force also provided a forum for discussing legislative proposals regarding Oregon eCourt funding – including funding derived from fees paid by the civil bar – that ultimately informed decisions later made by the Oregon Legislature. And, the Task Force discussed additional ongoing system updates, such as OJD's 2015 implementation of interactive online forms, with new form packets being added each year to assist self-represented litigants and the courts alike.

As implementation moved into the later stages, some of the Task Force's focus shifted to issues related to maintaining and improving upon the existing system. With the new focus came a new charge for the Task Force during its final year:

To work cooperatively with the Oregon Judicial Department and OSB members to monitor the ongoing operation 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; to maintain communication with OJD and continue to educate bar members about Oregon eCourt programs; and to provide periodic updates to the Board of Governors.

Ongoing Task Force discussions included both technical issues related to the capabilities of the system itself and policy issues regarding how the system will be managed and funded in the future. Many of those discussions are likely to continue, as access to Oregon eCourt becomes more and more synonymous with access to the court system itself.

Two User Satisfaction Surveys

The final group of counties to go live with Oregon eCourt did so at the end of June 2016, with eFiling for those counties added in August. During the spring leading up to the end of formal implementation, the OSB – at the request of OJD's independent quality assurance consultant – conducted a survey of OSB members and their staff regarding their overall satisfaction with Oregon eCourt. While the survey was not conducted by the Task Force itself, the responses are instructive as to the success of the statewide implementation.

The OSB received 850 survey responses, and the demographic information suggests that a broad cross-section of Oregon attorneys and their staff responded. Overall, the survey results showed a large degree of satisfaction with Oregon eCourt. Significant majorities of respondents indicated separately that eFiling had expanded access to the courts, increased productivity, and lowered costs for their practice. Likewise with the new subscription-based service that provides OSB members with case information and

remote document access (the Oregon Judicial Case Information Network (OJCIN)), the vast majority of respondents indicated both that they were able to successfully use the system to find the information they were looking for and that the system was more efficient than their previous experiences with the old case management system and the courts.

Survey respondents also provided extensive feedback regarding difficulties they have had and suggested improvements to the Oregon eCourt system, which are worth discussing in their own right. Overall, however, the survey responses were quite positive.

A follow-up survey was conducted in conjunction with creating this report in December of 2017. The second survey asked some questions, which were similar to the original survey, to assess any significant changes in responses, as well as addressing some new areas that had been topics of discussion within the task force. Some of the new issues addressed in the second survey included compliance with UTCR 21.100 and the observed time for entry of documents into OECL.

The second survey largely received similar results to the first, with more than 70% of respondents indicating that eFiling had expanded their ability to file pleadings and approximately the same number indicating that it had improved the productivity of their office. A plurality of respondents indicated that it also reduced operating expenses and client costs.

Conclusion

The OSB/OJD Oregon eCourt Task Force has proved to be a successful partnership for OSB and OJD that has provided great benefit to Oregon's lawyers and to the courts as a whole. Through the Task Force, the OSB has had an ongoing opportunity to advance the interest of its members relating to their work in the courts, provide practical input to the OJD, and obtain information about the development, implementation, and maintenance of Oregon eCourt. In turn, OJD has been able to learn -- from the perspective of lawyers, staff, and others who interact with the courts on a daily basis -- how it can develop and use Oregon eCourt to most effectively serve the citizens of Oregon, who rely on the courts to enforce laws, resolve disputes in a fair and timely manner, and ensure access to justice.

2017 eCourt User Survey Results

Executive Summary

In December of 2017 the OSB Public Affairs Department, on behalf of the OSB/OJD eCourt Implementation Task Force, released a survey for OSB members soliciting feedback on Oregon eCourt. This new survey followed up on a survey in May of 2016 that accompanied the formal end of eCourt implementation. The intention of this new survey was to inform the creation of the final task force report that accompanies the formal end of the Implementation Task Force.

Many questions were repeated for the purpose of comparing the answers between the two surveys and seeing if there were any major shifts in opinion. Some additional questions were also included in the new survey for the purpose of looking at specific issues that had more recently been raised by the task force.

Overall Favorability

Most responses were generally favorable, with over 71% of respondents indicating that electronic filing had expanded their ability to file pleadings (Q3) and approximately 70% indicating that it had increased the productivity of their office (Q4). In both of these cases favorable responses were about 5% higher than in the previous survey.

A plurality of respondents – just over 43% - indicated that it had reduced expenses, while only 17% indicated it had increased expenses (Q5). These results are almost identical to the results in the 2016 survey.

Both surveys asked essentially the same question regarding the user's overall experience with OJD File and Serve, in which they were asked to rate their level of satisfaction on a scale of 0-10. Users showed a notably higher level of overall satisfaction in the 2017 survey.

2016 – 21.2% responded 0-4; 30.3% responded 5-6; 39.7% responded 7-8; 8.8% responded 9-10.

2017 – 12.71% responded 0-4; 25% responded 5-6; 44.25% responded 7-8; 18% responded 9-10.

Questions Regarding eService

One complaint that had been made by respondents in the 2016 survey is that some attorneys do not add their service contact information to each case when they use the eFiling system, despite being required to do so by UTCR 21.100. A question was added to the 2017 survey to address this specific issue.

The reality of this problem was borne out by the survey results, with only 58% of respondents indicating they always comply with the rule, and further 12% indicating they comply "most of the time". About 12% of respondents answered that they comply "never", "almost never", or "sometimes"; while 17% of

respondents indicated they were unaware of the rule. (Q6) A large number of respondents specifically commented on this issue, and suggested some version of not allowing attorneys to file at all without first including service information. (Q8) Practitioners who self-identified as practicing in Family Law, Criminal Law, and Litigation/Dispute Resolution appear to have reported somewhat higher levels of familiarity and compliance with the rule, although the sample sizes are relatively small.

A related question asked about what methods of service users are choosing to employ. Only 41% of respondents indicated they primarily serve documents through OJD File and Serve. (Q7) Most respondents indicated they still choose to use a different method of service. While many respondents commented that they employ multiple methods of service, some indicated a lack of trust in File and Serve's eService system. Practitioners who self-identified as practicing in Criminal Law and Juvenile Law appear to most frequently use electronic services through OJD File and Serve.

Delay in documents appearing in the register

Two new questions were also added addressing what is sometimes called "latency" – in this case referring to the amount of time between the submission of a document for filing and notification that the document has been entered in the register. While these questions don't address the technical functioning of the system, they do address the attorney's experience in filing documents.

In the case of documents other than unsigned orders, 77% of respondents indicated that on average a document posted to the register within 3 days, while less than 5% indicated it took 10 days or longer. (Q10)

However, in the case of orders submitted for judicial signature, only 26% indicated the document had generally been processed within 3 days. 34% indicated it averaged 10 days or longer, and 10% indicated that it generally took 21 days or longer. (Q11)

Conclusions

Overall the survey provided similar results to the 2016 survey, but displayed a modest increase in satisfaction with the system that we might expect to see 18 months after final implementation.

Comments provided by respondents provide a wealth of information regarding specific concerns and experiences and are worth reading. While the comments point to a number of areas where it would be nice to ultimately see improvement, many complaints reflect more on policy decisions that have been made regarding the nature of changing services than point to any failure in the system itself.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: February 22, 2018
From: Guy Greco, Board Development Committee Chair
Re: Appointments to various bar groups

Action Recommended

Approve the Board Development Committee's recommendations for member and non-member appointments to the following groups.

Background

Legal Services Program Committee

The Legal Services Program Committee oversees the OSB Legal Services Program and the funds appropriated to the bar by the Oregon Legislature. The committee is in need of one new member and **Laurie Craghead** (922663) is recommended based on her demonstrated commitment to access to justice and the geographic balance she brings to the committee. If appointed, Ms. Craghead's term would expire on December 31, 2020.

Loan Repayment Assistance Program Committee

The Loan Repayment Assistance Program Committee selects program recipients and sets program policy guidelines. One new member is needed to fill the seat designated for a practitioner from civil area of public service law. **Meghan Collins** (101834), a Legal Aid Services of Oregon lawyer, is recommended for the position. If appointed her term would expire December 31, 2020.

Minimum Continuing Legal Education Committee

The MCLE Committee provides input, analysis and evaluation of the program that accredits education programs for Oregon attorneys. One new public member is needed through December 31, 2020. **Oksana Davletshina** is recommended based on her experience as a lawyer from Russia.

State Lawyers Assistance Committee

The State Lawyers Assistance Committee investigates and resolves complaints about lawyers whose conduct impairs their ability to practice law. The committee is in need of one new member and **Chris Shaffner** (021662) is recommended to help balance the gender and geographic balance. Ms. Shaffner's term would expire December 31, 2021.

Uniform Criminal Jury Instructions Committee

The Uniform Criminal Jury Instructions Committee develops uniform jury instructions for use in criminal trials. One new member is needed and **Courtney Quale-Conrad** (085811) is recommended based on her geographic area and the perspective she offers from her employment experience on both sides of criminal cases. Ms. Quale-Conrad's term would expire December 31, 2019.

Oregon Law Commission

The Oregon Law Commission was created by the legislature to conduct law reform and propose new substantive and procedural provisions to improve Oregon law. One new member is needed and **Christa Obold Eshleman** (043801) is recommended based on her experience in juvenile dependency issues and the Commission's ongoing need for a practitioner with this perspective.

The Supreme Court makes appointments to the following bar groups based on recommendations from the Board of Governors. The Board Development Committee identified the following new member appointment recommendations for the BOG and Supreme Court's consideration.

Disciplinary Board

The Disciplinary Board is a component of the disciplinary process where board members act as judges in possible ethics violation cases. Panels consist of an adjudicator, a lawyer, and a public member. They determine if the accused lawyer has violated the Rules of Professional Conduct and, if so, the appropriate sanctions to be imposed. New members are needed to fill vacant seats in region 3 and region 5.

Kelly L. Andersen (791464) is an experienced litigator offering a history of service as bar counsel for disciplinary cases. His appointment would aid in the gender balance of region 3 board members. If appointed his term would end on December 31, 2019.

Rebecca Cambreleng (133209) has a well-rounded legal career and experience as a lawyer from another state. If approved for appointment Ms. Cambreleng would bring better gender balance to region 5 and would serve through December 31, 2020.

Unlawful Practice of Law Committee

The Unlawful Practice of Law Committee investigates complaints of unlawful practice and recommends prosecution where appropriate. As required by OSB bylaw 20.2, only $\frac{1}{4}$ of the committee's membership can be in private practice. Two new members are needed and **Halal A. Ilias** (143449) and **Vanessa L. Crakes** (032436) are recommended for terms through December 31, 2020.

Oregon Board of Bar Examiners

To: Board of Governors Development Committee
Memo Date: January 26, 2018
Meeting Dates: February 22 – 23, 2018
From: Troy Wood, Admissions Manager
Re: Proposed Co-Graders for the July 2018 Bar Exam

The Board of Bar Examiners (BBX) wishes to consider the following candidates to possibly serve as co-graders for the August 2018 grading session. Pursuant to Section 28.2 of the Oregon State Bar Bylaws, the BBX hereby solicits the input of the Oregon State Bar's Board of Governors regarding these candidates. In making these selections, the BBX considered the lawyer's career experience, their area legal expertise, their demographic and geographic diversity and their experience grading or assisting the BBX in other matters.

STEFFAN ALEXANDER	Admitted 2013
Portland	Private Practice, Litigation
Black Male	No Experience as Co-Grader
Other BBX Service:	No other service
TODD E. BOFFERDING	Admitted 1988
Hood River	Private Practice, Real Estate/Family
White Male	Has Co-Graded in the Past
Other BBX Service:	No other service
ROSA CHAVEZ	Admitted in 2003
Eugene	University of Oregon
Hispanic Female	Has Co-Graded in the Past
Other BBX Service:	No other service
MARISHA CHILDS	Admitted 2012
Vancouver	Private Practice, Elder Law & Estates
Black Female	Has Co-Graded in the Past
Other BBX Service:	No other service
CHRISTY A. DOORNINK	Admitted 2003
Portland	Private Practice, Workers Comp.
White Female	No Experience as a Co-Grader
Other BBX Service:	No other service

DENISE FJORDBECK Salem White Female Other BBX Service:	Admitted 1982 DOJ, Admin & Environmental Has Co-graded in the Past Prior BBX member
LISSA K. KAUFMAN Portland White Female Other BBX Service:	Admitted 1997 Private Practice, Family & Consumer Has Co-Graded in the Past No other service
RICHARD A. WEILL Troutdale White male Other BBX Service:	Admitted 1982 Private Practice, Family law No Experience as a Co-Grader Served as a C&F Special Investigator
KENDRA MATTHEWS Portland White Female Other BBX Service:	Admitted 1996 Private Practice, Admin & Criminal Has Co-Graded in the Past No other service
SARAH A. PETERS Eugene White Female Other BBX Service:	Admitted 2007 Private Practice, Environmental No Experience as a Co-Grader No other service
MANDI PHILPOTT Gladstone White Female Other BBX Service:	Admitted 2002 Private Practice, Family Law Has Co-Graded in the Past No other service
ANTHONY ROSILEZ Klamath Falls Hispanic Male Other BBX Service:	Admitted 1996 Klamath Community College, Labor & Employment No Experience as a Co-Grader No other service
MICHAEL J. SLAUSON Salem White Male Other BBX Service:	Admitted 2001 DOJ, Criminal & Constitutional Has Co-Graded in the Past No other service

ADRIAN T. SMITH Portland White Lesbian Female Other BBX Service:	Admitted 2012 Juvenile & Criminal Has Co-Graded in the Past No other service
MIRANDA SUMMER Portland Bi-Racial Lesbian Female Other BBX Service:	Admitted 2007 Private Practice, Family Law & Workers Comp No Experience as a Co-Grader No other service
KATHERINE E. WEBER Oregon City White Female Other BBX Service:	Admitted 1994 Circuit Ct Judge No Experience as a Co-Grader No other service
GLEN H. UJIFUSA, JR. Portland Asian Male Other BBX Service:	Admitted 2006 Multnomah County DA's Office No Experience as a Co-Grader No other service
SIMON WHANG Portland Asian Male Other BBX Service:	Admitted 2003 Office of City Attorney Has Co-Graded in the Past No other service
JENNIFER JANE MARTIN Portland White Female Other BBX Service:	Admitted 1984 US Attorney's Office No Experience as a Co-Grader No other service

OREGON STATE BOARD OF BAR EXAMINERS

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(503) 620-0222 or (800) 452-8260 • www.osbar.org

January 29, 2018

Helen M Hierschbiel
Executive Director
Oregon State Bar
PO Box 231935
Tigard, OR 97281

RE: *Board of Governors' Approval of Board of Bar Examiners Actions*

Dear Ms. Hierschbiel:

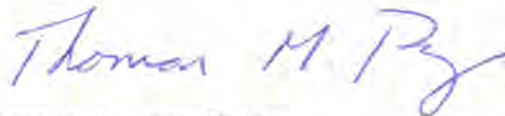
Stephanie Eames resigned from the Oregon State Board of Bar Examiners (BBX) effective December 31, 2017. This necessitates the appointment of a new member to serve out the rest of Ms. Eames' three-year term (ending September 30, 2019). At our January 19, 2018 meeting, the BBX determined that they would recommend Ernest Warren, Jr. to replace Ms. Eames.

Mr. Warren is highly qualified for the BBX. Ernie has been approved by the Board of Governors as an exam co-grader and has regularly co-graded bar exams in the past. He is an efficient and reliable grader.

While our rules do not dictate a process for replacing a board member, in the spirit of OSB and BBX cooperation and OSB Bylaws Section 28.2, the BBX hereby solicits input from the Board of Governors related to Mr. Warren's appointment as a BBX member.

Our goal is to have Mr. Warren's appointment placed on the earliest possible public meeting agenda of the Oregon Supreme Court. Please let me know if you need anything further from the BBX. Thank you in advance for your assistance in this process.

Sincerely,



Thomas M. Ryan, Chair
Oregon State Board of Bar Examiners

cc: Ernest Warren, Jr.

OREGON STATE BOARD OF BAR EXAMINERS

16037 SW Upper Boones Ferry Road, PO Box 231935, Tigard, OR 97281-1935
(503) 620-0222 or (800) 452-8260 • www.osbar.org

February 14, 2018

Helen Hirschbiel
Oregon State Bar
PO BOX 231935
Tigard, Oregon 97281-1935

Re: **Increasing Bar Exam Application Fees.**

Dear Ms. Hirschbiel:

The Oregon Board of Bar Examiners (BBX) is considering raising its application fees. While such an increase requires approval only from the Oregon Supreme Court (ORS 9.210(3)), the BBX recognizes that the Oregon State Bar (OSB) is a stakeholder in the total amount of admission fees recovered and wishes to consult with and receive support from the Board of Governors (BOG) for this fee increase proposal.

The BBX proposes a \$125 increase to the OSB application fee, bringing the total application fee to \$750, with the hope that it could be in place for February 2019 bar exam applicants. The last time the Application Fee was increased was in 2009, when it was raised from \$525 to \$625. *See History of Admission Fees attached.*

This increase is sought to defray increased bar exam administration costs, including those charged by the National Conference of Bar Examiners (NCBE) to Uniform Bar Examination (UBE) jurisdictions. The fee increase also accounts for the fact that the number of bar applicants is likely to diminish in coming years. The data and factors considered by the BBX in making this proposal includes the following:

Bar exam expenses are greater today than they were in 2009.

Bar Exam Expenses in 2009	Exam Expenses in 2017	Difference
\$265.94 per applicant (with 858 applicants)	\$365.57 per applicant (with 667 applicants)	+\$99.63 (-191 applicants)

The two primary factors that impact the costs per applicant are: 1) as a result of becoming a UBE jurisdiction, the NCBE charges the OSB approximately \$50 more per applicant for exam materials; and 2) we have almost 200 fewer bar exam applicants than we had in 2009.

While consistently generating surpluses that have been paid into the Bar's treasury, we have for many years operated on thin margins. The BBX 2018 Budget calls for a surplus of only \$34,023 from projected revenues of \$834,220 (a 4% margin). *See 2018 Budget attached.*

This surplus would be entirely eliminated if we have 54 fewer applicants than we did in 2017. 2017's applicant totals were 41 less than 2016. Already, it appears that this year's February Bar exam will be a handful less than last February's exam totals, which was a near record low for recent February exams. The last time any BBX fee was increased was 2012 when the investigation fee for out-of-state lawyers was increased by \$200.

A \$750 application fee would be in close proximity to the mean of all UBE jurisdictions and below the mean of all Western States.

The mean application fee of all UBE states is approximately \$724. A \$750 Oregon Application Fee would be within 3.6% of the UBE mean. However, Oregon has the 6th most expensive cost of living among all UBE jurisdictions. When each UBE State's application fee is adjusted to Oregon's cost of living, the mean application fee is approximately \$873, far below what we propose.

The mean bar application fee for Western States is approximately \$773. A \$750 Oregon Application Fee would be approximately 3.1% below the Western State mean.

Oregon's Application fee has not kept up with inflation since its last raise in 2009.

According to CPI data provided by the Oregon Department of Administrative Services, Oregon's Application Fee would need to be \$788.75 in order to have the same buying power that the \$625 application fee had in 2009. In other words, inflation has eroded the value of the 2009 application fee by approximately 26%. However, the BBX is only looking to increase its application fee by 20%.

BBX revenues and losses are paid into and from the treasury of the Oregon State Bar.

As previously mentioned, The BBX budget has operated with a razor thin margin the last few years. Some unforeseen expense or circumstance could easily move the BBX's financials into the red, forcing the OSB to cover those losses. That has not happened in recent memory, and we presume the BOG would like to continue to avoid that.

I assure the BOG that the BBX is mindful of its expenses. In the last 5 years, the admissions department has been reduced from 4.5 fte positions to 3.0 fte positions. We

continue to explore ways to reduce expenses, as we are not interested in charging applicants any more than is absolutely necessary.

In the light of the current status of the BBX's finances and the foregoing data, the BBX hopes that this application fee increase proposal will receive support from the Oregon State Bar and the Board of Governors.

The chair of the BBX Finance Committee, Stephanie Tuttle, will present this concern at the next BOG meeting. Please let me know if you require any additional information before that meeting.

Sincerely,

A handwritten signature in black ink, appearing to read "Tom Ryan". The signature is written in a cursive, slightly slanted style.

Thomas M. Ryan, Chair

Enclosures: History of Admission Fees
2018 Budget

CC: Camille Green
Stephanie Tuttle

APPLICATION FEE HISTORY

<u>Year</u>	<u>Amount(s)</u>	<u>Explanation</u>
1861	\$ 5.00	
1913	\$ 10.00	Exam
	\$ 20.00	Attorney Certificates
1936	\$ 20.00	
1945	\$ 35.00	
1949	\$ 35.00	Any applicant for admission upon examination, except as next noted:
	\$ 85.00	By an applicant for admission upon first examination who has been previously admitted to the bar of another state or foreign country; and
	\$ 35.00	For each subsequent examination.
	\$ 125.00	By an applicant for admission on certificate from another state or foreign country
1951	\$ 35.00	Any applicant for admission upon the Student Examination, except as next noted:
	\$ 85.00	By an applicant for admission upon Student Examination who has been previously admitted to the bar of another state, District of Columbia, federal territory, or a foreign country where the common law of England exists as a basis of its jurisprudence, first examination, and
	\$ 35.00	For each subsequent examination.
	\$ 125.00	By an applicant for admission on the Attorney's Examination -- an applicant who has been admitted to the bar of another state, the District of Columbia, federal territory, or foreign country

Application Fee History
Page 2 of 5

		where the common law of England exists as a basis of its jurisprudence, where the requirements for admission are substantially equivalent to those of the state of Oregon, and has been actively, substantially and continuously engaged in the practice of law for at least three of the five years immediately preceding the filing of the application, and
	\$ 75.00	For each subsequent examination.
1956	\$ 50.00	Any applicant for admission upon the Student Examination, except as next noted:
	\$ 100.00	Any applicant for admission upon the first Student Examination who has been previously admitted to the bar of another state, District of Columbia, federal territory, or a foreign country where the common law of England exists as a basis of its jurisprudence, and
	\$ 50.00	For each subsequent examination
	\$ 125.00	By an applicant for the first Attorney Examination -an applicant who has been admitted to the bar of another state, the District of Columbia, federal territory, or foreign country where the common law of England exists as a basis of its jurisprudence, where the requirements for admission are substantially equivalent to those of the state of Oregon, and has been actively, substantially and continuously engaged in the practice of law for at least three of the five years immediately preceding the filing of the application, and
	\$ 75.00	For each subsequent examination.
1961	\$ 50.00	Any applicant for admission upon the Student Examination, except as next noted:
	\$ 125.00	For first Student Examination by an applicant who has been admitted to the bar of another state, the District of Columbia, federal territory, or foreign country where the common law of England exists as a basis of its jurisprudence, and
	\$ 50.00	For each subsequent examination

Application Fee History
Page 3 of 5

\$ 150.00	For first Attorney Examination -- an applicant who has been admitted to the bar of another state, the District of Columbia, federal territory, or foreign country where the common law of England exists as a basis of its jurisprudence, where the requirements for admission are substantially equivalent to those of the state of Oregon, and has been actively, substantially and continuously engaged in the practice of law for at least three of the five years immediately preceding the filing of the application, and
\$ 75.00	For each subsequent examination.

CURRENT FEE STRUCTURE BEGINS

1966	\$ 75.00	Application Fee - Student and Attorney Examination Applicants and, in addition:
	\$ 75.00	Investigation Fee by any applicant who:
		(a) On the date of the first application in Oregon is, or at any time has, engaged in the practice of law; or
		(b) On the date of the second or any subsequent application in Oregon is, or at any time since the last previous application in Oregon has, engaged in the practice of law.
	\$ 25.00	Late Filing Fee
1970	\$ 125.00	Application Fee - Student and Attorney Examination Applicants - increased by \$50.
	\$ 100.00	Investigation Fee by any applicant who: (Please see 1966 for provisions) - increased by \$25.
	\$ 50.00	Late Filing Fee increased by \$25.

Application Fee History
Page 4 of 5

1974	\$ 150.00	Application Fee - Student and Attorney Examination Applicants - increased by \$25.
1979	\$ 200.00	Application Fee - Student and Attorney Examination Applicants (\$10.00 non-refundable portion to obtain application kit) increased by \$50.
July 1985	\$ 250.00	Application Fee - All Applicants - Entire Examination -- NO Attorney Examination -- increased by \$50.
1987	\$ 325.00	Application Fee increased by \$75.
1991	\$ 400.00	Application Fee increased by \$75.
	\$ 150.00	Investigation Fee for applicants who are admitted elsewhere (see July 1985 for provisions) and are applying for the first time. Increased by \$50.
	\$ 100.00	Investigation Fee for applicants who are admitted elsewhere (see July 1985 for provisions) who are reapplying within 12 months of having paid the \$150.00 Investigation Fee. Increased by \$50.
	\$ 100.00	Late Filing Fee increased by \$50.
July, 1999	\$450.00	Application Fee increased by \$50.
	\$200.00	Late Filing Fee increased by \$100.
2000	\$ 525.00	Application Fee increased by \$100.
2002	\$ 225.00	Investigation Fee for applicants who are admitted elsewhere (see July 1985 for provisions) and are applying for the first time.

Application Fee History
Page 5 of 5

	\$ 175.00	Investigation Fee for applicants who are admitted elsewhere (see July 1985 for provisions) who are reapplying within 12 months of having paid the \$225.00 Investigation Fee.
2009	\$625.00	Application Fee increased by \$100.
	\$250.00	Late Filing Fee increased by \$50.
2012	\$425.00	Investigation Fee increased by \$200.
	\$350.00	Late Filing Fee increased by \$100.

Admissions

2018 Budget

<i>Account #</i>	<i>Account Description</i>	<i>Y-T-D</i> <small>As of: 8/30/2017</small>	<i>Current Budget</i>	<i>2018 Budget</i>	<i>Budget Inc (Dec)</i>
<i>Revenues</i>					
101-4070-000	Applications - Bar Exam	442,375	473,750	463,125	-10,625
101-4070-100	Applications - W/O Bar Exam	75,000	120,000	121,250	1,250
101-4180-000	Supreme Court Certificate revenue	3,520	9,000	9,000	0
101-4320-000	Investigation Fees - Bar Exam	62,725	60,625	89,950	29,325
101-4320-100	Investigation Fees - W/O Bar Exam	51,000	81,600	82,450	850
101-4355-000	Late Fees - Bar Exam	32,900	21,000	28,000	7,000
101-4490-000	Photocopies	1,010	5,000	5,000	0
101-4560-000	Registration Packets - Bar Exam	0	0	0	0
101-4560-100	Registration Packets - W/O Bar Exam	0	0	0	0
101-4620-013	Sales - Prior Year Bar Exams	0	0	0	0
101-4670-000	Services to Other Bars	125	250	250	0
101-4750-000	Laptop Fees	10,247	34,650	35,195	545
101-4999-000	Miscellaneous Income	0	0	0	0
Total Revenues		\$678,902	\$805,875	\$834,220	\$28,345
<i>Salaries & Benefits</i>					
101-6100-000	Employee Salaries - Regular	122,930	220,900	245,400	24,500
101-6105-000	Employee Taxes & Benefits - Regular	48,920	87,900	100,400	12,500
101-6150-000	Employee Recognition Bonus	0	0	0	0
101-6200-000	Employee Salaries - Temporary	237	1,800	1,648	-152
101-6205-000	Employee Taxes & Benefits - Temporary	18	180	165	-15
101-6300-000	Long Term Temporary Employee - Agency	0	0	0	0
Total Salaries & Benefits		\$172,105	\$310,780	\$347,613	\$36,833
<i>Direct Program Expenses</i>					
101-7090-000	Bank Fees-Credit card	0	6,500	150	-6,350
101-7100-000	Bar Exam Analysis	0	0	0	0
101-7110-000	Bar Exam Multistate Fees - MBE	13,312	46,400	84,474	38,074
101-7110-100	Bar Exam Multistate Fees - MPT	5,225	20,300	0	-20,300
101-7110-200	Bar Exam Multistate Fees - MEE	5,225	20,300	0	-20,300
101-7130-000	Bar Exam Special Testing Conditions	558	15,600	15,600	0
101-7135-000	Laptop Exp - Special Testing Conditions	0	0	0	0
101-7135-100	Bar Exam Laptop Testing Exp - Electrical	4,490	6,000	5,850	-150
101-7140-000	Bar Exam Specific expenses	4,732	7,000	7,000	0
101-7170-000	Bar Exam Cards and Certificates	0	100	0	-100
101-7175-000	Supreme Court Certificates	1,335	1,500	1,500	0
101-7265-000	Contract Services	0	0	0	0
101-7360-000	Facilities	19,155	28,000	14,790	-13,210
101-7415-000	Hearings	0	500	3,000	2,500
101-7450-000	Investigation - Character/Fitness	1,382	2,500	2,500	0
101-7500-000	Office Equipment- < \$500, tagged	0	100	500	400
101-7570-000	Maintenance - Equipment	0	0	0	0
101-7765-000	Legal Research	0	0	0	0
101-7930-016	Travel & Expense - Board	46,136	124,650	129,013	4,363
101-7940-000	Travel & Expense - Others	0	2,000	2,070	70
Total Direct Program Expenses		\$101,550	\$281,450	\$266,447	(\$15,003)
<i>General & Administrative Expenses</i>					

Admissions

2018 Budget

<i>Account #</i>	<i>Account Description</i>	<i>Y-T-D</i> <small>As of: 8/30/2017</small>	<i>Current Budget</i>	<i>2018 Budget</i>	<i>Budget Inc (Dec)</i>
<i>General & Administrative Expenses</i>					
101-9400-000	Messenger & Delivery Services	0	100	100	0
101-9500-000	Office Supplies	631	2,000	2,000	0
101-9600-000	In House Printing	1,533	3,000	3,000	0
101-9620-000	Postage	1,258	4,500	4,500	0
101-9640-000	Professional Dues	303	200	1,023	823
101-9680-000	Publications & Subscriptions	0	200	200	0
101-9700-000	Small furn & equip < \$500	0	0	0	0
101-9800-000	Telephone	0	0	0	0
101-9830-000	Training & Education	39	1,500	2,178	678
101-9850-000	Travel & Expense - Staff	6,500	19,356	21,022	1,666
101-9999-000	Miscellaneous Expense	0	0	0	0
<i>Total General & Administrative Expenses</i>		\$10,264	\$30,856	\$34,023	\$3,167
<i>Total Expenses</i>		\$283,919	\$623,086	\$648,083	
<i>Net Operating Revenue (Expense)</i>		\$394,983	\$182,789	\$186,137	
101-9000-000	<i>Less: Indirect Cost Allocation</i>	\$81,887	\$140,378	\$144,589	
<i>Net Revenue (Expense)</i>		\$313,096	\$42,411	\$41,548	

FORMAL OPINION 2016:xxxx

Conflicts of Interest, Current Clients: Representing Husband and Wife in Preparation of Estate Plan Involving Waiver of Elective Share

Facts:

Married Couple approaches Lawyer jointly and asks Lawyer to represent both of them in the matters described below.

Married Couple have been married for 15 years and both have children from their previous marriages. They have no children from their current marriage.

Married Couple own their house as tenants by the entirety, but have kept the majority of their assets separate. Spouse A has substantially more assets than Spouse B. They inform Lawyer that it is their individual intent that they would prefer that their estate plans provide that their separate assets be distributed to their children by their previous marriages and their jointly owned assets pass to the surviving spouse by right of survivorship.

Because of the value of Spouse A=s separate property, it is clear to Lawyer that Spouse B would have an elective share claim if Spouse A were to die first. An elective share claim would defeat Married Couple=s current intentions for their estate plan.

Married Couple do not have a prenuptial agreement.

Questions:

1. May Lawyer provide information to Married Couple as to their respective elective share rights under ORS 114.600 to 114.725?
2. May Lawyer advise both Spouse A and Spouse B as to whether they should waive their elective share rights as provided in ORS 114.620(1)?
3. May Lawyer prepare an agreement to mutually waive the elective share rights of Married Couple?
4. After Spouse A and Spouse B have ~~agreed~~executed an agreement to waive the elective share, may Lawyer advise Married Couple concerning their estate plan?

Conclusions:

1. Yes.
2. No, qualified.
3. No, qualified.
4. Yes.

Discussion:

Oregon RPC 1.7 provides:

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

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

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

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

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

(1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;

(2) the representation is not prohibited by law;

(3) the representation does not obligate the lawyer to contend for something on behalf of one client that the lawyer has a duty to oppose on behalf of another client; and

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

1. Lawyer May Provide Information About The Elective Share And Its Potential Waiver To Both Spouses.

Under Oregon's elective share statute, a surviving spouse may elect to receive a percentage share of the decedent's estate according to a formula based on the length of the marriage. ORS 114.605. Absent a waiver of that right, the elective share will override a contrary provision in the decedent's will. *Id.* However, that legal right can be waived. Under ORS 114.620, a spouse may enter into a written agreement, before or after the marriage, to waive his or her elective share. Such agreement to waive the elective share is a type of pre-nuptial or post-nuptial agreement. *In re Estate of Richard B. Wilber*, 75 A3d 1096, 1099 (2013).

Providing general information about the elective share does not create a significant risk that Lawyer's responsibility to one client will be materially impaired by his responsibilities to the other. Each spouse has a fiduciary obligation to the other requiring full disclosure and fairness. *Day v. Vitus*, 102 Or App 97, 792 P2d 1240 (1990); *Matter of Marriage of Eltzroth*, 67 Or App 520, 526, 679 P2d 1369 (1984); *Bauer v. Bauer*, 1 Or App 504, 464 P2d 710 (1970). Providing information about the elective share and its waiver to both spouses is consistently with each spouse's duty to each other. Therefore, it does not create a significant risk of impairing Lawyer's obligation to either spouse for Lawyer to provide such information to both spouses.

2. Advice to Waive Elective Share Presents A Current Client Conflict Of Interest.

Spouses often seek joint representation in estate planning. Typically, the interests of the spouses will be aligned for such purposes. However, there are exceptions in which simultaneous representation would be prohibited. Formal Opinion 2005-86. "For example, spouses with children by prior marriages may have very different opinions concerning how their estates should be divided." *Id.* Thus, an attorney was reprimanded for representing both spouses in revising their estate plans in *In re Plinski*, 16 DB Rptr 114 (2002). In that case, the spouses' interests were adverse because they had children from prior marriages, their respective estates were of different values, they had ongoing financial disagreements, and one spouse was, for reasons of health and disposition, likely susceptible to pressure from the other. *Id.*

An agreement to waive the elective share presents such conflicting interests. As with any pre-nuptial or post-nuptial agreement, it requires one or both spouses to give up potentially valuable legal rights. Such agreement may be particularly fraught with issues that could impair a lawyer's ability to provide competent and diligent representation to both spouses. By definition, it contemplates that the spouses might leave the majority of their estates to others. One or both spouses may wish to provide for children from another marriage. There may be a potential imbalance between the spouses' respective estates, such that the right to an elective share could be more important to one spouse than the other. One spouse may be more sophisticated than the other; one may be in better health and more likely to benefit from the elective share. Waiver elective shares might even require renegotiation of the terms of a prenuptial agreement. Any of those factors creates "a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client." RPC 1.7(a)(2).

Some conflicts may be waivable with informed consent confirmed in writing. RPC 1.7(b)(1) allows such waiver if “the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client.” Comment 15 to the ABA Model Rule 1.7 notes that “[c]onsentability is typically determined by considering whether the interests of the clients will be adequately protected if the clients are permitted to give their informed consent to representation burdened by a conflict of interest.” The *Restatement of Law Governing Lawyers* § 122, comment g.iv, explains:

“The general standard . . . assesses the likelihood that the lawyer will, following consent, be able to provide adequate representation to the clients. The standard includes the requirements both that the consented-to conflict not adversely affect the lawyers relationship with either client and that it not adversely affect the representation of either client. In general, if a reasonable and disinterested lawyer would conclude that one or more of the affected clients could not consent to the conflicted representation because the representation would likely fall short in either respect, the conflict is nonconsentable.”

Were Lawyer to represent both spouses with respect to an agreement to waive the elective share, Lawyer would be literally representing both sides of an agreement likely to benefit one client more than the other. Such conflict may be waivable in limited circumstances, but it is perilous. The Oregon Supreme Court observed, in a case where an attorney drafted an employment contract while representing both the employer and the employee, that “[i]t is never proper for a lawyer to represent clients with conflicting interests no matter how carefully and thoroughly the lawyer discloses the possible effect and obtains consent.” *In re Jans*, 295 Or 289, 295, 666 P2d 830 (1983). It explained:

“It is of the utmost importance that the attorney representing both parties to a transaction reflect upon the rationales behind conflict of interest proscriptions. It is not sufficient that the attorney believes himself able adequately to represent potentially differing interests, or even that all parties have consented. The possibility of subconsciously favoring the interests of either party, the appearance of impropriety that may arise from even the slightest dissatisfaction, the likelihood of receiving confidential information from one party that is damaging or helpful to the other, and the possibility that a court will subsequently disagree with the attorney's decision that he was able adequately to represent both interests—all dictate extreme caution in these situations.

The temptation to represent potentially conflicting interests is particularly difficult to resist in family disputes. Often the attorney is the ‘family lawyer’ and has represented husband, wife, and even the children on previous occasions. . . . If the parties have not clearly understood the lawyer's ethical responsibilities *ab initio*, the ensuing rancor may be directed toward him.”

Id. at 295 n 7 (quoting Aronson, *Conflict of Interest*, 52 Wash L Rev 807, 826–27 (1977)); *see also In re Robertson*, 290 Or 639, 648, 624 P2d 603 (1981) (lawyer is disciplined for representing both buyer and seller of real property).

Comment 30 to ABA Model Rule 1.7 notes that “[a] particularly important factor in determining the appropriateness of common representation is the effect on client-lawyer confidentiality.” Attorney-client privilege is typically waived among clients who are jointly represented. OEC 503(4)(e). Such lack of confidentiality may make it difficult for Lawyer to explore whether one spouse has concerns about waiving the elective share, since that spouse may be reluctant to fully share those concerns with the other spouse. That, in turn, impairs Lawyer’s ability to fully advise each spouse.

In addition to potentially impairing the lawyer’s ability to represent the spouse who might object to waiving the elective share, the conflict also creates risk for the other spouse. A spouse may make certain estate planning decisions based on what he or she believes to be other spouse’s waiver of the elective share. A later finding that the waiver was invalid, due to the attorney’s conflictive representation, would likely frustrate the decedent’s estate plan that counted on that waiver of elective share.

Under the facts as presented here, the conflict is very likely to be nonconsentable. The facts listed are likely to impair Lawyer’s ability to give complete, competent and diligent advice to both spouses as to waiver of the elective share. In particular, the existence of children from previous marriages and the imbalance between the spouses’ separate estates heightens their need for thorough and independent advice. One may reasonably expect Lawyer’s ability to render such advice to be impaired by Lawyer’s duties to the other spouse.

There may be other circumstances in which a lawyer could reasonably believe that he or she could provide competent and diligent representations to both parties to an agreement to waive the elective share. That is more likely if the elective share appears unlikely to substantially affect the estate plan,¹ the spouses do not have children from prior marriages, their separate assets are similar in value, they are both highly sophisticated and unlikely to be susceptible to pressure, and they are similarly positioned with respect to life expectancy. *See In re Plinski*, 16 DB Rptr 114 (2002). Additionally, Formal Opinion No. 2005-86 set forth a list of factors that, in rare circumstances,

¹ It is not always clear, at the time an estate plan is created, whether a devise is likely to be more or less than the elective share. The value of the estate and the devise may be changed by fluctuating values of joint and separate assets, unforeseen expenses, and other inheritances or gifts. Additionally, the statutory percentage of the elective share changes with the length of the marriage.

might allow for joint representation during a divorce. Although that opinion addressed different circumstances, some of the listed factors may be applicable here, including:

- “(3)The marital estate must not contain substantial assets or liabilities;
- (4) The parties must have fully agreed on the disposition of all assets and liabilities [or, here, waiver of the elective share] before consulting the lawyer;
- (5) The lawyer must be in a position to conclude that each party has provided full disclosure of all assets . . .”

To sum up, the more important the elective share appears to be to either spouse, the less likely the conflict is to be waivable, and vice versa.

A lawyer weighing the totality of these factors might reasonably believe that he or she could competently and diligently represent both spouses with respect to an agreement to waive the elective share. Even in a case where the conflict is waivable, the lawyer would still be required to obtain both clients’ informed consent pursuant to RPC 1.7(b).

3. Preparation of Agreement Waiving Elective Share.

The same analysis applies with respect to preparing the agreement to waive the elective share. Once Lawyer has undertaken to represent both spouses with respect to estate planning, there is a conflict if he represents either spouse with respect to drafting an agreement to waive the elective share. For example, an attorney drafted a property settlement on behalf of divorcing spouses in *Matter of Marriage of Eltzroth*, 67 Or App 520, 679 P2d 1369 (1984). The lawyer “acted only as a scrivener” and “did not provide independent advice to either party.” *Id.*, 67 Or App at 526. Nonetheless, the Court of Appeals noted that it did “not condone the conduct of the attorney in continuing to represent both parties” to the agreement. *Id.* at n 7.

This conflict may be avoided if Lawyer has not yet undertaken representation of one of the spouses with respect to estate planning. As attorney for only one of the spouses, Lawyer may prepare an agreement mutually waiving the elective share on behalf of the spouse that Lawyer represents. It is not mandatory that both parties to a prenuptial or postnuptial agreement be represented by counsel, although that is a factor in determining whether such agreement is enforceable. *Matter of Marriage of Leathers*, 98 Or App 152, 779 P2d 619 (1989).

4. Advice Concerning Estate Plan after Execution of Agreement to Waive Elective Share.

Once the issue of waiver of the elective share has been eliminated by execution of an agreement, Lawyer may represent Spouse A and Spouse B in preparation of their estate planning, absent other circumstances that would create a conflict of interest under RPC 1.7.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: February 23, 2018
Memo Date: February 5, 2018
From: MCLE Committee
Re: Review Regulation Amendment and Housekeeping matters re rule numbering

Action Recommended

1. Approve the proposed amendment to MCLE Regulation 5.200(g) to clarify that members may claim CLE credit for writing or grading a local component bar exam question.
2. Approve several rule and regulation amendments to reflect recent legislative amendments.
3. Seek limited housekeeping amendment authority from Supreme Court to correct rule numbering when needed.

Background – Item #1

Oregon is now a Uniform Bar Exam (UBE) jurisdiction, which means that the BBX no longer writes any bar exam questions. However, the BBX has the option of creating a local component exam and, if the BBX exercises this option, members would be required to draft their own local questions. Presently, we satisfy the local component by requiring UBE applicants to comply with MCLE Rule 3.3(b).

Therefore, the BBX requested that Regulation 5.200(g) be amended as set forth below to reflect the new reality of the UBE. The MCLE Committee approved this regulation amendment at its December 2017 meeting.

MCLE Rule 5.9 Service as a Bar Examiner. Credit may be claimed for service as a bar examiner for Oregon, provided that the service includes personally writing or grading a question for the Oregon bar exam during the reporting period.

Regulation 5.200(g) Service as a Bar Examiner. Three (3) credits may be claimed for writing a bar exam or local component question and three (3) credits may be claimed for grading a bar exam or local component question.

Background – Item #2

During the 2017 Legislative Session, ORS Chapter 9 and the OSB's Rules of Procedure were amended to remove the Local Professional Responsibility Committee from the disciplinary process. Therefore, references to the LPRC must be deleted. Rule 5.10 should be amended as follows:

Rule 5.10 Legal Ethics Service. Credit may be claimed for serving on the Oregon State Bar Legal Ethics Committee, Client Security Fund Committee, Commission on Judicial Fitness & Disability, Oregon Judicial Conference Judicial Conduct Committee, ~~Local Professional Responsibility Committees~~, State Professional Responsibility Board, and Disciplinary Board or serving as volunteer bar counsel or volunteer counsel to an accused in Oregon disciplinary proceedings.

Background – Item #3

Recently, the Oregon Supreme Court indicated it would be open to considering a grant of authority to the bar to correct rule numbering errors on an ongoing basis. This authority would save bar staff and court staff time and reduce member confusion.

For instance, several rule and regulation amendments were approved in 2017 which resulted in new rule numbering. Once the rules were approved, the numbering of remaining rules and regulations were no longer accurate. Further cross-references must be updated.

Specific rule and regulation numbering corrections are set forth below. However, staff proposes that the bar seek broader authority to generally make numbering changes to ensure accuracy and consistency, as needed.

Rule Amendments

Rule 3.2 Active Members.

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

(b) Ethics. At least five of the required hours shall be in subjects relating to ethics in programs accredited pursuant to Rule ~~5.13(a)~~ 5.15(a).¹

¹ The following rule amendments, which were approved by the BOG in November 2017, will be submitted to the Supreme Court for approval:

~~**Rule 5.11 Jury Instructions Committee Service.** Credit may be claimed for serving on the Oregon State Bar Uniform Civil Jury Instructions Committee or Uniform Criminal Jury Instructions Committee.~~ **Credit for Committee and Council Service.** Credit may be claimed for serving on committees that are responsible for drafting court legal rules or jury instructions that are designed to aid the judicial system and improve the judicial process. Examples include service on the Oregon State Bar Uniform Civil Jury Instructions Committee, Uniform Criminal Jury Instructions Committee, Oregon Council on Court Procedures, Uniform Trial Court Rules Committee, and the Federal Bar Association's Local Rules Advisory Committee.

~~**Rule 5.12 Oregon Council on Court Procedures.** Credit may be claimed for service as a member or as staff on the Oregon Council on Court Procedures.~~

If the Supreme Court approves these amendments, this will be Rule 5.14(a).

(c) Abuse Reporting. One hour must be on the subject of a lawyer's statutory duty to report child abuse and elder abuse (see ORS 9.114).²

(d) Access to Justice. In alternate reporting periods, at least three of the required hours must be in programs accredited for access to justice pursuant to Rule ~~5.13(c)~~ 5.15(c).³

Rule 5.6 Other Professionals. Notwithstanding the requirements of Rules ~~5.12~~ 5.14 (a) and (b), participation in an educational activity offered primarily to or by other professions or occupations may be accredited as a CLE activity if the MCLE Program Manager determines that the content of the activity is in compliance with other MCLE accreditation standards. The MCLE Program Manager may accredit the activity for fewer than the actual activity hours if the MCLE Program Manager determines that the subject matter is not sufficient to justify full accreditation.

Rule 5.8 Legal Research and Writing.

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

- (a) It deals primarily with one or more of the types of issues for which group CLE activities can be accredited as described in Rule ~~5.12~~ 5.14(b); and

Rule 5.16 Other Professionals. Notwithstanding the requirements of Rules 5.6 and ~~5.12~~ 5.14(a) and (b), credit may be claimed for teaching an educational activity offered primarily to other professions or occupations if the MCLE Program Manager determines that the content of the activity is in compliance with other MCLE accreditation standards and the applicant establishes to the MCLE Program Manager's satisfaction that the teaching activity contributed to the presenter's professional competence as a lawyer.

Note: If the Supreme Court approves the amendments set forth in Footnote 1, the following rule numbering will change:

Current Rule 5.12 – will be deleted (merged with Rule 5.11)

Current Rule 5.13 – will change to 5.12

Current Rule 5.14 – will change to 5.13

Current Rule 5.15 – will change to 5.14

Current Rule 5.16 – will change to 5.15

² The Supreme Court approved this rule amendment effective January 1, 2018.

³ If the Supreme Court approves the amendments in Footnote 1 above, this will be Rule 5.14(c).

Current Rule 5.17 – will change to 5.16

Regulation Amendments

Regulation 3.600 Introductory Course in Access to Justice. In order to qualify as an introductory course in access to justice required by MCLE Rule 3.3(b), the three-hour program must meet the accreditation standards set forth in MCLE Rule ~~5.13(c)~~ 5.15(c)⁴ and include discussion of at least three of the following areas: race, gender, economic status, creed, color, religion, national origin, disability, age or sexual orientation.

Regulation 5.200(h) Legal Ethics Service. Members may claim two ethics credits for each twelve months of service on committees and boards listed in Rule ~~5.9~~ 5.10.

⁴ If the Supreme Court approves the amendments in Footnote 1, this will be Rule 5.14(c).

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: February 22, 2018
Memo Date: February 9, 2018
From: Judith Baker Legal Services Program Director
Re: Updates to Legal Services Program Standards and Guidelines

Action Recommended

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

Background

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

The LSP Committee is charged with reviewing and making recommendations to the BOG on the Standards and Guidelines and their periodic review. The LSP Committee has reviewed and is recommending approval of the revisions to the Standards and Guidelines (see attached). The revisions fit into three categories:

1. Small style and heading changes distributed throughout the Standards and Guidelines
2. The addition of a reference to ORCP 32 O in the Statutory Authority Section on page 7 and the addition of the text of ORCP 32 O regarding Cy-près awards.
3. Updates to pages 7, 8, and 19 prepared by Bar Counsel to align the standards and guidelines with ORS 9.572 *et seq.*, the statute authorizing the Legal Services Program. The changes clarify the roles of the Legal Services Program Committee and the Director of the Legal Services Program

Oregon State Bar

Legal Services Program

Standards and Guidelines

May 29, 1998

Revised February 22, 2018

Deleted: Revised September 5, 2014

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I. Mission Statement

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

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

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

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

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

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

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

- *Protect the individual rights of low income clients;*
- *Promote the interest of low income individuals and groups in the development and implementation of laws, regulations, policies and practices that directly affect their quality of life;*
- *Employ a broad range of legal advocacy approaches to expand the legal rights of low income individuals and groups where to do so is consistent with considerations of fundamental fairness and dignity; and*

Oregon State Bar Legal Services Program
Standards and Guidelines

Adopted by the Board of Governors May 29, 1998

Amendments adopted by the Board of Governors February 22, 2018 – Page 5

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- Empower low income individuals and groups to understand and effectively assert their legal rights and interests within the civil justice system, with or without the assistance of legal counsel.”

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II. Governing Structure

A. Statutory Authority

On September 24, 1997, the Oregon State Bar Legal Services Program (OSB LSP) was established by the Board of Bar Governors as directed by ORS 9.572 to 9.578 (*Appendix A1*). The OSB LSP is charged with: the administration of funds appropriated to the OSB by ORS 9.577, ORS 98.386 (2), ~~ORS 9.241 (3)~~ and ORCP 32 O (*Appendix A2*) for funding legal services programs; the establishment of standards and guidelines for the funded legal services programs (Providers); and the development of evaluation methods to provide oversight of the Providers.

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B. Governing Committee

1. **Purpose:** The Board of Governors has created the Governing Committee (OSB LSP Committee) pursuant to ORS 9.572(3) to advise the bar in the operation of the Legal Services Program, as outlined in these Standards and Guidelines, ORS 9.572(1). The OSB LSP Committee receives direction from the Board of Governors.

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2. **Relationship to the Legal Services Program Director:** The Legal Services Program Director appointed by the bar, pursuant to ORS 9.572(2), is charged with periodically reviewing legal service providers who receive funding from the Legal Services Program, ORS 9.576(1). The OSB LSP Committee is charged to assist and advise the LSP Director in carrying out the LSP program review among other duties to assist and advise.

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

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

4. Membership

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

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b. Membership: The OSB LSP Committee will consist of 9 members: 7 members, in good standing, of the Oregon State Bar; and 2 public members. The membership should be representative of the statewide aspect of the OSB LSP and should reflect the diversity of the service areas. No more than 3 attorney members should be from the Portland metropolitan area. The following criteria should be considered in selecting members:

- 1) Commitment to the basic principles of access to justice
- 2) Ability to advance the mission of the OSB LSP
- 3) Knowledge and understanding of providing quality legal services to low-income people.
- 4) History of support for legal services providers
- 5) Representation of a geographic area with special attention given to practice area specialties.

5. Term of Appointment: Appointments will be made for 3-year terms with the exception of the initial attorney appointments. To stagger vacancies on the OSB LSP Committee and to provide continuity, the initial appointments will be: 3 attorneys appointed for 3 years; 2 attorneys appointed for 2 years, and 2 attorneys appointed for 1 year.

6. Liaisons to Committee: The Oregon Law Foundation and the Campaign for Equal Justice are invited and encouraged to each have a liaison to the OSB LSP.

7. Meetings: The OSB LSP Committee will meet as needed. The Chair can call Special Meetings as needed. Meeting notices and agendas will be sent out according to public meeting law. Members can participate by telephone.

8. Quorum: Five members constitute a quorum for voting purposes.

9. Subcommittees: The OSB LSP Committee Chair has the authority to appoint additional subcommittees to make recommendations on specific issues as needed.

C. Program Staff

1. Director of Legal Services Program: The OSB Director of Legal Services Program (OSB LSP Director) is hired and supervised by the Executive Director of the Oregon State Bar. The OSB LSP Director staffs the OSB LSP Committee and receives advice and assistance from the OSB LSP Committee when conducting Legal Services Program Review. The OSB LSP Director may also support other work assigned by the Board of Governors to the LSP Committee.

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

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

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

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III. Standards and Guidelines for Providers

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

A. Statement of Goal

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

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B. Provider Structure

1. **Non Profit:** A Provider shall be an Oregon nonprofit corporation, incorporated as a public benefit corporation under ORS Chapter 65, and be recognized as tax exempt under section 501(c)(3) of the Internal Revenue Code.
2. **Board of Directors:** A Provider shall have a Board of Directors which reasonably reflects the interests of the eligible clients in the area served, and which consists of members, each of whom has an interest in, and knowledge of, the delivery of quality legal services to the poor. Appointments to the Board of Directors shall be made so as to ensure that the members reasonably reflect the diversity of the legal community and the population of the areas served by the Provider including race, ethnicity, gender, and similar factors.
 - a. A majority of the directors should be active or active emeritus members of the Oregon State Bar, appointed by the county bar association(s) in the Provider's service area, or by the Oregon State Bar.
 - b. At least one-third of the directors should be persons who are eligible to be clients, but are not current clients, when appointed. The directors who are eligible clients should be appointed by a variety of appropriate groups designated by the program that may include, but are not limited to, client and neighborhood associations and

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community-based organizations which advocate for or deliver services or resources to the client community served by the Provider.

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3. **Staff Attorney Model:** A Provider shall have at least one active member of the Oregon State Bar on staff.
4. **Pro Bono Program:** A Provider shall maintain a Pro Bono Program, certified by the Oregon State Bar pursuant to section 13 of the Oregon State Bar Board Bylaws (Appendix B), as a part of its system of delivery of legal services.
5. **Efficient Use of Resources:** A provider should, to the maximum extent practicable, integrate its operations and staff into existing programs that provide general legal services to low-income Oregonians in the same geographical area and meet the criteria set out in paragraphs B.1 – B.4, rather than maintain organizations that are legally and physically separate. If separate organizations currently exist, the Provider should take whatever actions are required to achieve program integration that will eliminate unnecessary, costly, and inefficient duplication without compromising the Provider's ability to offer the full range of legal services contemplated by these Standards and Guidelines including, but not limited to, challenging federal restrictions that impede such integration.

C. Provider Use of Funds and Eligibility Guidelines

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

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

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

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

- 1. Procedures for Establishing Priorities:** A Provider shall adopt procedures for establishing priorities for the use of all of its resources, including funds from the OSB LSP. The Board of Directors shall adopt a written statement of priorities, pursuant to those procedures, that determines cases and matters which may be undertaken by the Provider. The statement of priorities shall be reviewed annually by the Board.
 - a. The procedures adopted shall include an effective appraisal of the needs of eligible clients in the geographic area served by the recipient, and their relative importance, based on information received from potential or current eligible clients that is solicited in a manner reasonably calculated to obtain the views of all significant segments of the client population. The appraisal shall also include and be based on information from the Provider's employees, Board of Directors, local bar, and other interested persons. The appraisal should address the need for outreach, training of the program's employees, and support services.
 - b. In addition to the appraisal described in paragraph a, of this section, the following factors shall be among those considered by the Provider in establishing priorities.
 - 1) The population of eligible clients in the geographic area served by the Provider, including all segments of that population with special legal problems or special difficulties of access to legal services;
 - 2) The resources of the Provider;
 - 3) The availability of free or low-cost legal assistance in a particular category of cases or matters;
 - 4) The availability of other sources of training, support, and outreach services;
 - 5) The relative importance of particular legal problems to the individual clients of the Provider;
 - 6) The susceptibility of particular problems to solution through legal processes;
 - 7) Whether legal efforts by the Provider will complement other efforts to solve particular problems in the areas served;
 - 8) Whether legal efforts will result in efficient and economic delivery of legal services; and
 - 9) Whether there is a need to establish different priorities in different parts of the Provider's service area.
- 2. Avoidance of Competition with Private Bar:** The Board of Directors of a Provider shall adopt a written policy to avoid using funds received from the OSB LSP to provide

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representation in the types of cases where private attorneys will provide representation to low-income clients without charge in advance as with contingency fee cases. A copy of the policy shall be provided as a part of the application for these funds and shall be consistent with the Provider's mission and written priorities.

E. Provider Grievance Committee and Process

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

F. Additional Standards for Providers

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

- [American Bar Association Standards for the Provision of Civil Legal Aid, August 2006.](#)
- ["Standards for Programs Providing Civil Pro Bono Legal Services to Persons of Limited Means," as adopted by the American Bar Association House of Delegates, August 2013.](#)
- [Legal Services Corporation Performance Criteria, 2007.](#)
- [Oregon Rules of Professional Conduct.](#)

Oregon State Bar Legal Services Program
Standards and Guidelines

Adopted by the Board of Governors May 29, 1998

Amendments adopted by the Board of Governors February 22, 2018 – Page 13

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IV. Cooperative Collaboration by Providers

A. Mechanism for Cooperation:

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

- To facilitate additional communication between organizations;
- To coordinate and integrate key functions across program lines;
- To create a forum for identifying client needs;
- To collaborate and strategize how best to meet the needs of the client community;
- To discuss funding needs and potential funding mechanisms;
- To work with the court system, the legislature, the OSB, local bars, and members of the private bar to create a broad network to develop better access to the justice system.
- To eliminate the legal and physical separation among the programs in order to minimize the duplication of administrative and other costs of delivering legal services to low-income Oregonians.

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V. Oversight by OSB Legal Services Program

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

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A. Funding of Providers

1. Presumptive Funding: To maintain the current statewide level of service the OSB LSP will continue to fund those legal services providers receiving filing fees at the enactment of 1997 Oregon Laws Chapter 801 Section 73 and the 2003 legislative increase in filing fee funds. These providers will receive the funds from the OSB LSP after administrative fees, up to 5.1 million dollars (2003 filing fee level adjusted for inflation increased by the 1.6 million dollar gap to meet the legal needs of the poor assessed in 2003) with an annual cost-of-living increase. The increase in the presumptive funding level meets the 1997 and 2003 legislative intent to provide additional funding for legal services to the poor at the same time continuing the approach adopted by the Interim Civil Legal Services Task Force who developed the Standards and Guidelines in 1998.

a. Initial Funding: Providers will be required to complete the Initial Compliance Determination Application. Providers must complete the application and demonstrate compliance with these Standards and Guidelines within two months after this document becomes effective to qualify for funding under the OSB LSP beginning September 1998.

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Funding will continue under presumptive funding until:

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

b. Distribution of Funds: Presumptive funding will be based on the same distribution formula that was in effect at the enactment of 1997 Oregon Laws Chapter 801 Section 73. The Providers will be encouraged to utilize provisions c. and d. of this Section to modify grants and subcontract to meet unmet needs, to provide services to the under-served populations and to encourage a full range of services throughout Oregon.

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c. Modification of Grants: A Provider receiving presumptive funding may request that the OSB LSP transfer funds allocated to it to another Provider receiving presumptive funding in order to maintain the existing statewide level of service or to improve the statewide availability of services. The OSB LSP will consider the request and submit its recommendation to the BOG.

d. Subcontracting of Funds: Providers may subcontract with others to provide specific services or to enhance services under the following conditions:

- 1) The subcontract is for no more than one year;
- 2) All subcontracts must be approved by the OSB when the aggregate total of the subcontracts for the year or when any one subcontract equals or exceeds \$50,000 or is greater than 25% of the Provider's annualized grant;
- 3) The subcontract is for services within the parameters of these Standards and Guidelines;
- 4) The subcontract includes language insuring compliance with Sections III. C. 1, 3, 4 and III. F. of these Standards and Guidelines if the subcontract is with an organization, other than a current Provider, providing legal services to low- income people, or with a law firm or attorney;
- 5) The Provider must include provisions to obtain the needed information on the services performed by subcontract for inclusion in its annual report; and
- 6) For all subcontracts, the Provider must give the OSB LSP 30 days' notice of intent to subcontract along with a copy of the proposed subcontract.

2. **Additional Funds:** If there are funds over those allocated for presumptive funding, the OSB LSP may award those funds to current Providers or applicants who demonstrate the ability to provide services that address the unmet needs and emerging needs of low-income Oregonians and the needs of the uncounted and under-served, low-income populations. The OSB LSP will determine the process for application for those funds.

B. Performance Evaluation of Providers

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

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

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C. Annual Reporting Requirements

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

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

D. Accountability Process

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

The process has three components:

- a. A periodic self-assessment report submitted by providers, including a narrative portion and a statistical/financial portion;
- b. A periodic accountability report provided by the OSB LSP to the OSB Board of Governors and other stakeholders summarizing the information from the providers' self-assessment reports and other information including ongoing contacts with providers by OSB LSP staff and annual program financial audits; and
- c. 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.

Oregon State Bar Legal Services Program
Standards and Guidelines

Adopted by the Board of Governors May 29, 1998

Amendments adopted by the Board of Governors February 22, 2018 – Page 17

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E. Complaint Procedure

1. Complaints about Legal Services Providers

- a. Each Provider under the OSB LSP is required to have a written internal grievance procedure to address complaints about the manner or quality of legal assistance provided in individual cases or about the denial of legal assistance in individual cases. Any such complaint received by the OSB LSP will be directed to the Providers' internal process except when there appears to be a pattern to the complaints or when the complaint falls into one of the categories listed below. Providers will furnish the OSB LSP with the resolutions to the referred complaints.
- b. Ethics complaints and malpractice claims will be referred to the appropriate department of the Bar.
- c. Complaints that Providers are acting outside the scope of the statute, ORS 9.574, not in compliance with these Standards and Guidelines, or misusing funds will be addressed by the OSB LSP's Committee or Grievance Committee through the Director of the OSB LSP.
- d. Complaints regarding the overall quality of legal assistance or the performance of the Provider will be addressed by the OSB LSP Committee or Grievance Committee through the Director of the OSB LSP.
- e. The OSB LSP Committee, the Executive Director of the Bar, and the General Counsel of the Bar will be notified of the complaints against Providers. A listing of all complaints, which will include synopses and resolutions, will be kept by the OSB LSP Program Director.
- f. Each complaint will be investigated (except ethics and malpractice complaints which will be referred to the appropriate body) and responded to timely. If a Provider is found not to be in compliance with these Standards and Guidelines, the procedure under Non-Compliance by Provider (F of this section) will be implemented.

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

F. Non-Compliance by Provider

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

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

*Oregon State Bar Legal Services Program
Standards and Guidelines*

Adopted by the Board of Governors May 29, 1998

Amendments adopted by the Board of Governors February 22, 2018 – Page 18

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2. **Formal 30 Day Notice:** If the Provider continues to be out of substantial compliance, the Provider and the Provider's Board Chair will be given a formal 30 day written notice that details how it is out of compliance and the steps necessary to achieve compliance. The Director will continue to assist the Provider in resolving the problem.
3. **Mediation:** If after 30 days from the receipt of the formal notice, the Provider still has not demonstrated compliance, the Director will immediately send a second notice to the Provider and the Provider's Board Chair, pursuant to ORS 9.576(2). The second notice will list three names of mediators and give the Provider 15 days from receipt of the second notice to agree to one of the mediators or suggest another mediator. If the Provider and the Director cannot agree on a mediator within the 15 day period, the Director will petition the presiding judge for a judicial district to appoint a mediator.

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

4. **Hearing:** If the mediation fails to produce a resolution in the matter, the Director shall give the Provider and Provider's Board Chair a written notice of hearing pursuant to ORS 9.576(3). The hearing will be held no sooner than 30 days after Provider's receipt of notice of hearing.

The Provider will have the opportunity to present evidence that it has come into compliance or is making satisfactory progress towards compliance. The OSB LSP Committee will make up the hearing panel. Prior to suspension of funding, a written report will be presented to the OSB Board of Governors and OSB Executive Director within 5 days after the hearing is held which outlines the facts and decision. If after the hearing, the OSB LSP Director determines that based upon the written report, the provider is not in compliance with these Standards and Guidelines and that the provider has failed to show satisfactory progress toward achieving compliance, the OSB LSP Director shall suspend further funding of the program until such time that the provider makes a showing of compliance. ORS 9.576(3).

5. **Suspension of Funding:** If the report indicates that the Provider is still not in compliance and is not making satisfactory progress towards compliance based on the decision of the hearing, the Director shall suspend funding until the Provider is able to demonstrate compliance. Notice of suspension shall be served on the Provider in person or by certified mail and will be effective immediately upon service.

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

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

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Appendix A1 – Statutory Authority – Program

Legal Services Program

9.572 Bar to establish Legal Services Program; director; advisory and technical committees.

- (1) The Oregon State Bar shall by rule establish a Legal Services Program. The program shall provide standards and guidelines for legal service providers receiving funding from the program. The rules shall also provide methods for evaluating legal service providers. Funding received under the program may be used only for the provision of legal services to the poor without charge and for expenses incurred by the Oregon State Bar in the administration of the Legal Services Program.
- (2) The Oregon State Bar shall appoint a director of the Legal Services Program established under this section. The bar shall prescribe the duties of the director and fix the salary of the director.
- (3) The Oregon State Bar may establish any advisory or technical committees it deems necessary to advise the bar in establishing and operating the Legal Services Program.

[1997 c.801 §73; 2011 c.595 §99]

9.574 [1997 c.801 §72; 2003 c.737 §98; repealed by 2011 c.595 §97a]

9.576 Review of providers; mediation; hearing; suspension of funding.

- (1) The director of the Legal Services Program appointed under ORS 9.572 shall periodically review legal service providers who receive funding from the program. If the director determines that there are reasonable grounds to believe that a provider is not in substantial compliance with the standards and guidelines adopted under ORS 9.572, the director shall negotiate with the provider in an attempt to bring the program into compliance.
- (2) If the director of the Legal Services Program is unable to negotiate satisfactory compliance with the standards and guidelines of the program established by the Oregon State Bar under ORS 9.572, the director shall give the provider 30 days in which to bring the program into compliance. If the director concludes that the program is not in compliance at the end of the 30-day period, the matter shall be submitted to mediation. The director and the provider shall jointly select a mediator. If the director and provider are unable to select a mediator within 15 days after the expiration of the 30-day period, any presiding judge for a judicial district may appoint a mediator upon the petition of the director.
- (3) If mediation under subsection (2) of this section fails to produce a resolution of the matter, the director shall give the provider notice that a hearing will be held not sooner than 30 days after the date the notice is given. If, after hearing, the director determines that the provider is not in compliance with the standards and guidelines of the program and that the

provider has failed to show satisfactory progress toward achieving compliance, the director shall suspend further funding of the program until such time as the provider makes a showing of compliance.

[1997 c.801 §74; 2011 c.595 §100]

9.577 Legal Aid Account.

- (1) The Legal Aid Account is established in the General Fund of the State Treasury. All moneys in the account are continuously appropriated to the State Court Administrator for the purpose of the distributions required by this section. Interest earned by the account shall be credited to the General Fund.
- (2) Each month, the State Court Administrator shall transfer to the Legal Aid Account, from amounts collected by the State Court Administrator as fees and charges in the circuit courts, the amounts necessary to make the distributions required by subsection (3) of this section.
- (3) Each biennium, the State Court Administrator shall distribute to the Oregon State Bar \$11.9 million from the Legal Aid Account. Distributions under this section shall be made by the State Court Administrator in eight quarterly installments of equal amounts, with the first distribution to be made as soon as possible after July 1, 2011. Amounts distributed to the Oregon State Bar under this subsection may be used only for the funding of the Legal Services Program established under ORS 9.572.

[2011 c.595 §3a]

Note: 9.577 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 9 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

9.578 Other funding sources.

The Oregon State Bar may apply for, accept and expend moneys from any public or private source, including the federal government, made available for the purpose of establishing or funding legal service programs in Oregon.

[1997 c.801 §75]

Appendix A2 – Statutory Authority – Funding

Statutory Allocation

9.577 Legal Aid Account.

- (1) The Legal Aid Account is established in the General Fund of the State Treasury. All moneys in the account are continuously appropriated to the State Court Administrator for the purpose of the distributions required by this section. Interest earned by the account shall be credited to the General Fund.
- (2) Each month, the State Court Administrator shall transfer to the Legal Aid Account, from amounts collected by the State Court Administrator as fees and charges in the circuit courts, the amounts necessary to make the distributions required by subsection (3) of this section.
- (3) Each biennium, the State Court Administrator shall distribute to the Oregon State Bar \$11.9 million from the Legal Aid Account. Distributions under this section shall be made by the State Court Administrator in eight quarterly installments of equal amounts, with the first distribution to be made as soon as possible after July 1, 2011. Amounts distributed to the Oregon State Bar under this subsection may be used only for the funding of the Legal Services Program established under ORS 9.572.

[2011 c.595 §3a]

Note: 9.577 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 9 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

Unclaimed Lawyer Trust Account Funds

98.386 Deposit of funds.

- (1) Except as provided in subsection (2) of this section, all funds received under ORS 98.302 to 98.436 and 98.992, including the proceeds from the sale of unclaimed property under ORS 98.382, shall be deposited by the Department of State Lands in the Common School Fund Account with the State Treasurer. Before making the deposit the department shall record the name and last-known address of each person appearing from the holders' reports to be entitled to the unclaimed property and the name and last-known address of each insured person or annuitant, and with respect to each policy or contract listed in the report of a life insurance corporation, its number, the name of the corporation, and the amount due.
- (2) Any amounts identified as lawyer trust account funds in the report required by ORS 98.352 shall be paid or delivered by the person holding the amounts to the Oregon State Bar along with a copy of the report. All amounts paid or delivered to the Oregon State Bar under this section are continuously appropriated to the Oregon State Bar, and may be used only for

the funding of legal services provided through the Legal Services Program established under ORS 9.572, the payment of claims allowed under ORS 98.392 (2) and the payment of expenses incurred by the Oregon State Bar in the administration of the Legal Services Program.

- (3) Before making a deposit to the credit of the Common School Fund Account, the department may deduct:
- (a) Any costs in connection with sale of unclaimed property;
 - (b) Any costs of mailing and publication in connection with efforts to locate owners of unclaimed property as prescribed by rule; and
 - (c) Reasonable service charges.

[1957 c.670 §20; 1983 c.716 §16; 1989 c.183 §2; 1993 c.694 §15; 2009 c.462 §2]

Pro Hac Vice Fees

9.241 Practice of law by attorneys licensed in other jurisdictions; rules; fee.

- (1) Notwithstanding ORS 9.160, the Supreme Court may adopt rules to govern the appearance in judicial and administrative proceedings by attorneys who have not been admitted to practice law in this state. Subject to those rules, an attorney who has not been admitted to practice law in this state may appear as counsel for a party in an action or proceeding before a court, or may appear as counsel for a party in an administrative proceeding, if the attorney is associated with an active member of the Oregon State Bar.
- (2) Notwithstanding ORS 9.160, the Supreme Court may adopt rules pursuant to the procedures established by ORS 9.490 that allow attorneys who have not been admitted to practice law in this state to practice law in Oregon on a temporary basis, including performing transactional or prelitigation work.
- (3) The Supreme Court may by rule require the payment of a fee by an attorney appearing as counsel for a party in an action or proceeding before a court under the provisions of subsection (1) of this section. All amounts collected from any fee imposed by the Supreme Court under the provisions of this subsection shall be deposited with the Oregon State Bar and are continuously appropriated to the Oregon State Bar. Amounts appropriated to the Oregon State Bar under this subsection may be used only for the funding of legal services provided through the Legal Services Program established under ORS 9.572 and for expenses incurred by the Oregon State Bar in the administration of the Legal Services Program and in collecting fees imposed under this subsection.

[1993 c.213 §1; 2001 c.223 §1; 2003 c.260 §5]

Cy-près Awards

ORCP 32 O – Payment of damages.

As part of the settlement or judgment in a class action, the court may approve a process for the payment of damages. The process may include the use of claim forms. If any amount awarded as damages is not claimed within the time specified by the court, or if the court finds that payment of all or part of the damages to class members is not practicable, the court shall order that:

- (1) At least 50 percent of the amount not paid to class members be paid or delivered to the Oregon State Bar for the funding of legal services provided through the Legal Services Program established under ORS 9.572; and
- (2) The remainder of the amount not paid to class members be paid to any entity for purposes that the court determines are directly related to the class action or directly beneficial to the interests of class members.

[\$O added by 2015 c.2 §3]

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Appendix B – Oregon State Bar Bylaws, Article 13 – Pro Bono

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Section 13.1 Aspirational Standard

Pro bono publico or pro bono service includes all uncompensated services performed by lawyers for the public good. Such service includes civic, charitable and public service activities; as well as activities that improve the law, the legal system, and the legal profession. The direct provision of legal services to the poor, without an expectation of compensation, is one type of pro bono service. Each lawyer in Oregon should endeavor annually to perform 80 hours of pro bono services. Of this total, the lawyer should endeavor to devote 20 to 40 hours or to handle two cases involving the direct provision of legal services to the poor, without an expectation of compensation. If a lawyer is unable to provide direct legal services to the poor, the lawyer should endeavor to make a comparable financial contribution to an organization that provides or coordinates the provision of direct legal services to the poor.

Section 13.2 Program Certification

Subsection 13.200 Procedure

In order for a pro bono program to obtain bar certification, the program must submit an application and meet the applicable criteria set forth below. The Bar's Executive Director determines whether a program is eligible for certification and this determination is final.

Subsection 13.201 Criteria

- (a) Purpose: The pro bono program must be sponsored by a national, state or local bar association, a court with jurisdiction in Oregon or an incorporated, non-profit or governmental organization, and must provide legal services without fee, or expectation of fee, or for a substantially reduced fee to one or more of the following:
 - (1) Persons of limited means.
 - (2) Underserved populations with special legal needs.
 - (3) Charitable, religious, civic, community, governmental and educational organizations in matters which are designed primarily to address the needs of persons of limited means or underserved populations with special legal needs.
- (b) Compensation: The pro bono program must not provide any compensation to the participating lawyers, except to cover filing fees or other out-of-pocket expenses or to provide professional liability insurance for the pro bono activity.
- (c) Fees: The pro bono program must deliver legal services to clients at no fee or for a substantially reduced fee. Nominal administrative fees are allowed. Donations from clients, whether encouraged or not, are not considered fees. The pro bono program should prohibit

or limit the handling of cases that are clearly fee-generating, and provide for the referral of such cases.

- (d) Quality Control: The program must demonstrate that it has the necessary expertise and quality control to administer a program involving volunteer lawyers. This should include appropriate matching of pro bono lawyers to cases, an effective grievance procedure and adequate tracking and record keeping systems regarding pro bono involvement.
- (e) Diversity: The program must comply with Article 10 of the Bar's Bylaws (Diversity), both in regard to participating lawyers and clients.
- (f) Professional Liability Coverage: The program will provide professional liability coverage for otherwise uncovered attorney volunteers when those attorneys provide legal services to pro bono clients.

Subsection 13.202 Volunteer Recognition

Recognition under this paragraph is intended to provide encouragement, in tangible form, to those Oregon Pro Bono programs and their volunteer lawyers, who help meet the need for legal services by providing direct representation to low-income individuals. As part of its annual planning process, the Board will consider the ways in which the Bar can acknowledge the volunteer efforts of Oregon lawyers, particularly those lawyers who provided at least 40 hours of pro bono services through programs certified under this policy. In so doing, the Board will seek input from bar staff and appropriate bar committees.

Appendix C – OSB Civil Legal Services Task Force May, 1996

**OSB CIVIL LEGAL SERVICES TASK FORCE
FINAL REPORT**

May, 1996



**This Appendix Contains the Key Findings and Recommendations from the
Report. For a Full Copy of the Report
Please call the OSB at 620 0222 - Ext. 323**

**OSB CIVIL LEGAL SERVICES TASK FORCE
FINAL REPORT**

May, 1996

Chair: Stephen S. Walters, Portland
Members: Hon. David V. Brewer, Eugene
Hon. Neil R. Bryant, Bend
Edward L. Clark, Jr., Salem
Michael E. Haglund, Portland
Hon. Jack L. Landau, Salem
James T. Massey, Sisters
Katherine A. McDowell, Portland
Katherine H. O'Neil, Portland
Lawrence B. Rew, Pendleton
Martha L. Walters, Eugene

BOG Liaison: Barrie Herbold
Legal Services Program Liaison: Ira Zarov
OSB Staff Liaison/Reporter: Ann Bartsch

OSB CIVIL LEGAL SERVICES TASK FORCE FINAL REPORT

Stephen S. Walters, Chair
May 24, 1996

Introduction; Task Force Charge

In the summer of 1995 Oregon, like every state in the United States, faced a crisis in its delivery of civil legal services to low-income residents. The new Congress was considering legislation which would ultimately eliminate the Legal Services Corporation, the federal entity which provides funding to local legal services programs (including four programs in Oregon). At the very least, it appeared inevitable that 1996 federal funding for legal services would be reduced by as much as 35% from 1995 levels. Congress was also prepared to impose severe restrictions on the activities of all programs receiving LSC funding, which would have a serious impact upon the ability of LSC program attorneys to provide a full range of high quality legal services to their clients.

In response to this crisis, OSB President Judy Henry, in consultation with Chief Justice Wallace P. Carson, appointed the OSB Civil Legal Services Task Force. Stating that "the organized bar has an important role to play in assisting our programs in planning for the future and in assuring the continuing availability of legal assistance to all of the people of our state," the OSB gave the Task Force the general charge to "develop a plan for civil legal services in Oregon for 1996 and future years, which will, when implemented, effectively provide a full range of legal services to low income Oregonians with all available resources." Steve Walters of Portland was appointed Chair of the Task Force; its members were Judge David Brewer, Neil Bryant, Ned Clark, Mike Haglund, Judge Jack Landau, Jim Massey, Katherine McDowell, Katherine O'Neil, Larry Rew, and Martha Walters. Barrie Herbold served as liaison to the BOG. Ann Bartsch was the OSB staff liaison and reporter. Ira Zarov of Oregon Legal Services served as the liaison to the legal services programs.

Following its initial meeting in September, the Task Force organized itself into four subcommittees, each with a separate charge. Each subcommittee was asked to invite participation and otherwise to secure information from other interested persons, including program board and staff, representatives of the Multnomah Bar Association, and the OSB Low Income Legal Services Committee. (A complete list of all participants is attached to this report as Appendix 5.) The full Task Force met periodically to review the recommendations as they were developed by the subcommittees.

Task Force participants contributed hundreds of volunteer hours to the consideration and final drafting of the reports and recommendations which follow. Complete reports from all of the Task Force subcommittees are included as appendices to this report. The following is a digested description of each subcommittee's activities, along with a listing of its key findings

and recommendations.

Subcommittee 1: Client Need/Priorities; Delivery System

This subcommittee was chaired by Judge David Brewer of Eugene. The subcommittee was asked to gather information on Oregon's existing civil legal services delivery system, for use by the other subcommittees, addressing the following questions:

What legal needs of client community are programs currently addressing? Are there any areas of need which are not being addressed, and which should be incorporated into Oregon's legal services delivery system?

What delivery systems are in place in Oregon to meet these needs? What systems could be developed or expanded?

The subcommittee was also asked to develop an overall mission statement for Oregon's civil legal services delivery system, for adoption by the full Task Force and ultimately by the Board of Governors, as well as by other entities concerned with civil legal services (e.g. the Oregon Law Foundation).

The subcommittee's initial report and Mission Statement were presented to the full Task Force in December and to the Board of Governors in January, 1996. That document is attached as Appendix 1 to this report. The Mission Statement was also adopted by the Board of Directors of the Oregon Law Foundation in February.

Key Findings:

1. Not more than one third of the legal needs of Oregon's low income population were being addressed by legal services programs before the funding cuts.
2. However, as of December, 1995, Oregon did have in place a legal services delivery system capable of providing a full range of civil legal services to low income Oregonians. Key components of that system were federally funded LSC programs and a network of locally based volunteer attorney programs providing supplemental services to the staffed offices. That system will be undercut by the adoption of pending federal legislation providing for severe funding cuts to LSC programs, and for severe restrictions on the activities of those programs which were inconsistent with the Task Force's mission statement for civil legal services.

Subcommittee 2: Structure and Organization

This subcommittee was chaired by Jim Massey of Sisters. It was asked to address the following questions:

Will existing legal entities and organizations be able to perform or facilitate the performance of the work identified by the previous working group? Are there opportunities for resource savings through reconfiguration of existing programs? If the existing structure will not be able to perform the work, what other entities can be developed to perform it?

This subcommittee met five times in the fall and winter of 1995-96. It invited board and staff representatives of Oregon's existing, and developing, legal aid and volunteer attorney programs to meet with the full Task Force to share their plans for necessary restructuring in light of the anticipated LSC funding cuts and restrictions on program activities. The subcommittee made no recommendations on questions it considered to be internal to the programs and their boards of directors, e.g. whether particular programs should or should not merge. However, subcommittee members did participate in ongoing discussions which were taking place among the programs, and the subcommittee's meetings provided an opportunity for strategizing and planning among the programs, bringing in the expertise of the broader legal community.

The subcommittee's full report is attached as Appendix 2. Its key findings and recommendations are as follows.

Key Findings:

1. In late April, 1996, Congress enacted HR 3019, the fiscal year 1996 appropriations bill which includes funds for the Legal Services Corporation. The legislation incorporated a long-anticipated series of restrictions on activities of LSC funded programs, including prohibition of most legislative and administrative advocacy, participation in class actions or welfare reform litigation, and representation of undocumented aliens (including undocumented migrant workers). The legislation further provides that LSC recipient programs may not use non-LSC funds, including state generated funds, to undertake any of these activities.

The 1996 restrictions on LSC funding and substantive work threaten the historic commitment to key Oregon legal services delivery system values.

2. Oregon's four LSC funded programs (Oregon Legal Services, Multnomah County Legal Aid Service, Marion-Polk Legal Aid, and Lane County Legal Aid) will continue to receive LSC funding, and will comply with the new restrictions in conducting their work on behalf of low-income Oregonians.

Consistent with the Task Force's mission statement for Oregon's civil legal services delivery system, Oregon's legal community must take responsibility for developing and nurturing other non-LSC entities capable of providing services which fill in the gaps

which the new Congressional restrictions will otherwise impose.

3. As of the date of this report, the following structural changes have been made (or are in the process of being made) in Oregon's civil legal services delivery system.

Organization of Full Service Law Centers In response to the imposition of restrictions on programs which receive Legal Services Corporation funding, new entities have been and are being organized to provide critically important services to clients, which LSC recipients will no longer be able to provide. Oregon Law Center has been incorporated in Portland and will receive funding from OLF and other sources. The Lane County Law and Advocacy Center has been established in Eugene. A similar "Full Service Law Center" may be established to serve Marion and Polk counties.

MCLAS/OLS Reconfiguration Effective May 13, 1996, Oregon Legal Services' Central Support Office and Multnomah County Legal Aid Service are sharing office space (at the former MCLAS office), resulting in an estimated savings of about \$100,000 per year. The two programs are discussing possible merger later this year. **Marion-Polk** There have been no structural changes so far at Marion-Polk Legal Aid, although the question of merger with other entities is on the table. One attorney position has been lost because of resource limitations.

Jackson County There have been no structural changes so far in Jackson County (Center for Non-Profit Legal Services). A ballot measure which would have provided county funding for the Center and other social service agencies, was defeated by the voters on May 21. It appears that it will be necessary for the program to continue to receive LSC funding as a subgrantee of Oregon Legal Services for its private attorney involvement program.

Campaign for Equal Justice The Campaign for Equal Justice is now separately incorporated, free-standing 501(c)(3) corporation.

Volunteer Lawyers Project The Volunteer Lawyers Project in Multnomah County considered a merger with Multnomah County Legal Aid, but declined to do so in light of the restrictions which would be placed on its activities. It now appears that parts of VLP's program will be taken up by MCLAS (along with financial support from the Multnomah Bar Association), and others will pass to the newly organized Oregon Law Center.

Staffing losses Programs report various levels of staff attrition in the wake of the Congressional action. So far, one local office -- Oregon Legal Services' branch office in Klamath Falls -- has been closed. Most full-time staff at Multnomah County Legal Aid Service have been reduced to 80% time.

Key Recommendations:

1. Three fundamental premises should drive organizational and structural issues:

A. Quality and Independence

Legal services delivery in Oregon should not be driven by or be dependent on LSC funding or mandates. Legal services programs will continue to be an important and vital resource – of many – for providing access to the justice system for low income Oregonians.

B. Preservation of Funding Allocation

Funding levels for service to low-income client groups no longer eligible for LSC funded services, and for all other restricted forms of legal services representation, including welfare reform, class litigation, legislative and administrative advocacy, group representation and client education and training, must be maintained at levels sufficient to provide adequate representation to low-income clients.

C. Independence and Access

Planning and selection of substantive work, and prioritization of delivery to particular client groups or populations, should be based upon sound commitment to principles of equal access to justice consistent with DR 7-101 and EC 2-26, 27 and 28 of the Code of Professional Responsibility, and without regard to the disfavored social, political or economic status of any eligible client.

2. Consortium for Delivery of Services

There should be an ongoing independent consortium of Oregon legal aid providers. Membership would be open to any organization providing legal services to low income Oregonians, as well as any organization which sponsors the delivery of such services (e.g. the MBA). The consortium would provide a forum for ongoing identification of unmet client needs to which resources should be targeted, while avoiding duplication of efforts by member programs. The consortium would allow for coordination and integration of key functions across program lines, and facilitate communication among program funding sources.

The consortium should include:

Current LSC recipient programs
Non-profit legal centers
Public Interest Law Firms
Law school clinics
Campaign for Equal Justice
Bars, particularly OSB and MBA

3. Reorganization/Restructuring for Efficiency of Delivery

The existing legal services programs should continue the ongoing process of internal evaluation to identify means of streamlining, reducing costs and gaining new efficiencies. The programs should continue to evaluate, within the consortium context, whether program mergers, consolidation or sharing of particular functions or services or development of new means or methods of access and delivery are appropriate. Areas of continued discussion and evaluation should be:

- Merger;
- Consolidation of programs/services/shared systems; and
- Appropriate use of technology.
- Intake and referral improvements;
- Coordination among programs with the Bar;
- Coordination with ADR programs.

The various programs should continue to inform and advise one another as this process continues.

4. Development of Non-Restricted Entities

In response to the imposition of restrictions (on and after April 26, 1996) on programs which receive Legal Services corporation funding, new entities have been and are being organized to provide critically important services to clients, which LSC recipients will no longer be able to provide. Oregon Law Center has been incorporated and will receive funding from OLF and other sources; the Lane County Law and Advocacy Center has been established in Eugene. The Task Force makes the following recommendations regarding these "Full Service Law Centers:"

Should be an entity or entities capable of performing legislative and

administrative advocacy.

Should be an entity or entities capable of providing representation to underserved populations with cultural barriers, language barriers, or local access programs, e.g. migrant workers. Should be capable of providing services all over the state.

Should develop pro bono capacities of the bar statewide -- not just as supplement (to take individual cases overflowing from legal services programs), but in such areas as class actions, legislative advocacy, policy development, low income housing development, etc.

Should include all LSC restricted work, particularly class actions on issues affecting low income populations, such as welfare reform and administration of public benefit programs.

As indicated above, the question whether there should ultimately be one such program, with branch offices in key locations (e.g. Salem) was left for study by the OSB legal aid oversight group.

5. Development/Expansion of New Resources

The Subcommittee recommends development and expansion of new and non-legal services resources to complement consortium activities:

There are currently some regional hotlines operated by all legal services programs. Development of additional hotlines could be beneficial; a prime topic would be a (statewide) Child Support hotline.

Local and statewide bar groups should expand their pro bono efforts, working in cooperation with offices statewide. As a corollary, all programs should consider using emeritus attorneys in their area, on the model of the "ELVIS" program in Marion-Polk Legal Aid Service.

There should be strategic, thoughtful reassignment of OLF funding, filing fee surcharge resources, and other available funds to provider programs.

Courts, Bar and OLF should continue to support efforts to increase ADR resources (e.g. farmworker mediation program) and self help mechanisms (Oregon Family Law Task Force is investigating the Maricopa County model).

The OSB should expand its existing Tel-Law program to cover new topics.

The OSB Order Desk/Pamphlet distribution efforts could include legal aid brochures, which are already available from the programs.

OSB should expand its Modest Means program as far as possible.

6. OSB Oversight and Support

The Oregon State Bar should take on an expanded role in oversight and provision of technical assistance to legal aid programs. This oversight/technical assistance role should be assigned to a small group (not more than five persons) who would be directly accountable to the Board of Governors. Members of the group should be OSB members who are knowledgeable in the areas of law office management and legal services/pro bono delivery, and who are independent of the programs. The group should develop defined standards for ongoing assessment of the programs' operations based on existing national standards (e.g. ABA's SCLAID standards, LSC Performance Criteria, Code of Professional Responsibility). Their assessments should concentrate on outcomes, with the emphasis on achieving quality results for clients.

If the Oregon legislature is willing to delegate allocation of filing fee surcharge revenues to the Oregon State Bar Board of Governors, this group would be an appropriate entity to take on this task, or at least, to evaluate and make recommendations to the BOG. (A significant minority of Task Force members believe that, while it is critically important that the OSB assume an oversight/technical assistance role with respect to civil legal services programs, this role should be separated from that of allocation of actual amounts of filing fee surcharge funding.)

Subcommittee 3: Funding

This subcommittee was chaired by Katherine O'Neil of Portland. The subcommittee was asked to address the following questions:

What current funding sources are in place to support legal services delivery in Oregon?
How can they be expanded to meet future needs? What new financial resources can be developed to support a reconfigured delivery system?

The subcommittee gathered information from each of the programs on their present financial base -- components and amounts, short term and long term financial prospects. The subcommittee gathered similar information from the major non-LSC funding sources for legal services and volunteer attorney programs in Oregon, specifically the Campaign for Equal Justice, the Oregon Law Foundation, the Multnomah Bar Association, and the legislature (the source of the filing fee surcharge legislation). Members of the group also researched funding mechanisms which have had success in other states, using information supplied by the American Bar Association's PERLS (Project to Expand Resources for Legal Services) Project. The goal was to develop insights for the BOG on how the organized bar could best step in and help alleviate the anticipated shortfalls.

The subcommittee's full report is attached as Appendix 3. Its key findings and recommendations are as follows.

Key Findings:

1. In FY 1996, funding to the Legal Services Corporation (the federal agency which funds local legal services programs across the country, was cut by approximately 30 percent, to a total of \$278 million. This translates into a loss of approximately \$1 million (of total 1995 funding of approximately \$6 million from all sources) for Oregon's civil legal services programs. There are proposals in the current Congress to reduce LSC funding to \$141 million in FY 1997 (\$1.5 million shortfall for Oregon) and to eliminate it entirely by FY '98. If these proposals are successful, states like Oregon will be charged with all responsibility for providing civil legal services for their low income residents.

2. Oregon programs report the following projected shortfalls in their geographic service areas for 1996:

Jackson County (Center for Nonprofit Legal Services): \$70,000

Lane County (Lane County Legal Aid Service, Lane County Law and Advocacy Center): \$125,000

Marion and Polk Counties (Marion-Polk Legal Aid): \$125,000

Multnomah County (Multnomah County Legal Aid Service): \$440,000

Remaining Oregon counties (Oregon Legal Services): \$210,000

3. Oregon is relatively fortunate in having developed significant sources of non-federal funding for civil legal services at the state and local level. Non-federal funding constituted approximately 51% of the resources available to the legal aid/volunteer attorney programs in 1995. The most significant sources of in-state funding are:

Campaign for Equal Justice Now incorporated as an independent 501(c)(3) entity, the Campaign solicits contributions from Oregon attorneys and law firms, and solicits grants and other assistance from a wide variety of private sector sources, on behalf of legal services programs. In 1995, a total of \$322,000 was raised.

Filing Fee Surcharge Pursuant to ORS 21.480-.490 (appendix 3A to this report), circuit and district courts collect a surcharge on filing fees paid by moving parties in civil suits, which is paid to the legal aid program in that county by the State Court Administrator. This mechanism produces approximately \$1.5 million annually.

Oregon Law Foundation/IOLTA Programs providing civil legal services to low

income Oregonians have been (and should continue to be) the major recipients of funding from OLF's IOLTA (Interest on Lawyers Trust Accounts) program. In 1996, OLF will make a total of \$599,000 in grants, with approximately \$496,000 going to programs in the legal services category.

Without assistance from the Oregon State Bar, the courts, and the legal community generally, these funding sources will not be able to make up the shortfall in federal funding in the foreseeable future.

Key Recommendations:

1. **Filing Fees surcharge** Oregon's circuit and district courts will be consolidated effective January 15, 1998. Currently, legal services programs receive a surcharge on each filing fee paid into circuit court in the amount of \$22.00. In cases currently being filed in district court, the surcharge is \$8.50.

The BOG should urge Chief Justice Carson to exercise his discretion to maintain the \$22 filing fee for all courts after merger of Circuit and District courts in January, 1998.

Alternately, the BOG should make its #1 Legislative agenda for the '97 Legislature a revision in the laws related to filing fees with the fees going to the OSB for distribution.

2. **OSB dues assessment** The FY '96 shortfall could be met by a \$100 per attorney contribution made with the annual OSB dues. Subsequent Congressional cuts would require a greater per attorney contribution.

The BOG should exercise its leadership and chose a method of per capita contribution among the following:

- a. Voluntary contribution collected with OSB dues: "\$100 or other."
- b. Voluntary first year or so and then make it compulsory: "\$100".
- c. Compulsory contribution collected with OSB dues: "\$100" FY '97, "\$250" in subsequent years to make up for continued cuts in Congressional funding. With an option to do 40 hours (or another figure) of pro bono work in an OSB certified pro bono program.

Any compulsory contribution should first be approved by the new OSB House of Delegates with a referral to the general membership following the meeting at which it is approved.

3. **Greater OSB/local bar support for Campaign for Equal Justice** The CEJ would greatly benefit from open, public, frequent support for CEJ from the BOG and other bar leaders. The BOG members can mention the campaign in stump speeches, write about it in all publications. Make CEJ the "lawyers' charity," a part of the legal culture. If BOG members and the county bar presidents did an hour of intake at a legal aid office, they would gain a perspective that would fire their support of the CEJ.
4. **Increase income to OLF/IOLTA** The Oregon Law Foundation should be asked to pursue various mechanisms, for which national models exist, to increase IOLTA income. These include "sweep" accounts for IOLTA funds (cash management or sweep account which sweeps all or part of the IOLTA balance that is over a specified threshold amount from low-yield checking accounts into an investment in Treasury backed securities on a daily basis, producing higher yields for the IOLTA account); ongoing negotiations with banks for higher interest rates, and lower service charges, paid on IOLTA accounts.

The Oregon State Bar should assist OLF in investigating mechanisms for increasing income to the Foundation through legislation providing for, among other possibilities: direction of interest on funds in the hands of title insurance companies to OLF; direction of a portion of state abandoned property funds to OLF; direction of unclaimed client trust funds to OLF.
5. **Potential funding sources for consideration by legal services programs** include implementation of sliding scale fees for service to clients in the moderate income range (125% - 200% of poverty guidelines); local and county bond issue funding (Jackson County example); retainer contracts with Indian tribes and social service agencies; and gaming revenues.

Subcommittee 4: Ethical Responsibility/Quality Assurance/Transition

This subcommittee was chaired by Judge Jack Landau of the Court of Appeals. It was asked to consider how the bar could best assist the LSC programs' attorneys in meeting their ethical responsibilities to clients in light of the restrictions imposed by Congress.

The subcommittee also reviewed a memorandum from James N. Gardner of Portland, outlining a potential 10th Amendment challenge to the conditions and restrictions imposed on the Legal Services Corporation and its grantees by Congress.

The subcommittee's full report is attached as Appendix 4. Its key findings and recommendations are as follows.

Key Findings:

1. **ABA Formal Opinion 96-399** In February, 1996, the American Bar Association Standing Committee on Ethics and Professional Responsibility released Formal Opinion 96-399, "Ethical Obligations of Lawyers Whose Employers Receive Funds for the Legal Services Corporation to their Existing and Future Clients When such Funding Is Reduced and When Remaining Funding Is Subject to Restrictive Conditions." At approximately the same time, Oregon Legal Services prepared its own proposed response to the anticipated funding and practice restrictions. Rather than duplicate the foregoing efforts, the subcommittee focused on a review of the analysis and recommendations of the ABA Standing Committee and OLS.

In general, the OLS policy appears to follow from, and is entirely consistent with, the formal opinion of the ABA Standing Committee.

Copies of ABA Formal Opinion 96-399, and of OLS' internal memorandum "Implementing New Restrictions," are attached to the full subcommittee report at Appendices 4A and 4B.

Key Recommendations

1. The ABA Standing Committee's formal opinion is, of necessity, based on the Model Rules and not on the rules of professional responsibility governing any particular jurisdiction. So far as the Task Force is aware, however, the Oregon Code of Professional Responsibility is consistent with the Model Rules in all respects material to the questions before the ABA Standing Committee. The Task Force has little reason to believe that the ethical obligations of Oregon legal services lawyers will be substantially different under the Oregon Code and, therefore, regards the ABA Standing Committee's formal opinion as a useful source of advice to legal services lawyers in this state. Nevertheless, the Task Force believes that it may be of value to Oregon lawyers to have the Oregon State Bar Legal Ethics Committee review the ABA Standing Committee's formal opinion in the light of the particular requirements of the Oregon Code, to determine the extent to which the obligations of Oregon legal services attorneys are anticipated to be different than those of lawyers generally in the context of the Model Rules. Accordingly, the Task Force has prepared an opinion request to that effect.
2. The Task Force has considered, at least preliminarily, the possibility of other responses to the anticipated funding and practice restrictions than accommodation through modification of legal services policies and practices. Of particular note is the suggestion that the constitutionality of the restrictions be challenged in federal court. Although the Task Force expresses no opinion on the likelihood of success of such a challenge, it does recommend that the option be explored by the appropriate authorities.

In essence, the theory of the proposed lawsuit is that the imposition of federal restrictions on the provision of legal services violates the Tenth Amendment to the federal Constitution. The major premise of the argument is that the operation of state /court systems is at the core of powers reserved to the states by the Tenth Amendment and that the operation of state court systems includes the promulgation and enforcement of rules of professional responsibility. The minor premise of the argument is that the anticipated restrictions on legal services practice will necessitate a modification of such rules of professional responsibility. The key, of course, is the minor premise, namely, whether the expected practice restrictions actually require a modification of state professional responsibility rules or other matters properly regarded as core areas of state sovereignty.

Assuming the potential viability of a Tenth Amendment claim, the question arises: Who would be the proper plaintiff(s)? In all likelihood, the proper party plaintiff would be the State of Oregon, or the Chief Justice, or both; in all events, the matter would be subject to the advice and representation of the Attorney General. The Task Force recommends that the Attorney General be requested to evaluate the possibility of initiating a lawsuit to challenge the constitutionality of the anticipated funding and practice restrictions.

Conclusion

Hundreds of hours of volunteer effort, energy, and emotion have gone into the creation of this final report. The issues with which the Task Force has wrestled with are critically important to the future of access to justice for low-income Oregonians, both in the short and the long term. The Task Force members urge the Board of Governors to put these issues at the head of the bar's agenda for this year and the years to come. As the BOG's original charge to the Task Force stated, the organized bar has a critically important role to play in assuring the continuing availability of legal assistance to all of the people of our state. We urge the Board to take up this work.

Appendix D – Declaration of Angel Lopez and Charles Williamson

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF NEW YORK

CARMEN VELAZQUEZ, <i>et al.</i> , Plaintiffs, v. LEGAL SERVICES CORPORATION, <i>et al.</i> , Defendants.	97 Civ. 00182 (FB)
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DAVID F. DOBBINS, <i>et al.</i> , Plaintiffs, v. LEGAL SERVICES CORPORATION, Defendant.	01 Civ. 8371 (FB)
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DECLARATION OF ANGEL LOPEZ AND CHARLES WILLIAMSON

Angel Lopez and Charles Williamson, declare as follows:

1. I, Angel Lopez, am the President of the Oregon State Bar ("OSB").

2. I, Charles Williamson, am the President Elect of the Oregon State Bar, and will serve as President in 2003. I am currently a member of the Board of Governors of the OSB and am the Chair the OSB Access to Justice Committee.

3. We make this declaration on behalf of the Oregon State Bar in support of the plaintiffs' request for a preliminary injunction enjoining the enforcement of restrictions imposed by the Legal Services Corporation ("LSC") on the professional activities of lawyers employed by non-profit corporations receiving funding from LSC, especially when those activities are funded entirely from non-LSC private and governmental sources, because the Bar believes that the restrictions interfere significantly with OSB's effort to use state funding to provide comprehensive legal services. More specifically, we make this declaration to demonstrate that LSC's program integrity regulation requirement of physical separation between LSC-funded and non-LSC-funded activities imposes an undue burden on First Amendment activities of legal services providers. Because the separation requirement inevitably imposes significant costs, the plaintiffs should be permitted to challenge LSC's claimed justification for those costs, and should not be required to exhaust administrative remedies prior to testing the legality of the requirement. Finally, we make this declaration to describe particular ways in which certain other legal services restrictions infringe on plaintiffs' First Amendment rights.

4. The Oregon Legislature directed the Oregon State Bar to by rule establish a Legal Services Program to provide legal services to the poor without charge (ORS 9.572 to 9.578). The legislature funded this program through state filing fees. In 1998, OSB adopted the mission of the state legal services program as follows:

To use the filing fee revenue to fund a coordinated, statewide system of legal services centered on the needs of the client community as identified

in the Mission Statement of the *OSB Civil Legal Services Task Force Final Report*, May 1996, and

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

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

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

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

5. The mission of the OSB Legal Services Program, as set out above, was written by the OSB Civil Legal Services Task Force. In the summer of 1995, Judy Henry, the President of the Oregon State Bar, in consultation with Oregon Supreme Court Chief Justice Wallace P.

Carson, Jr., appointed ten distinguished Oregonians to serve on the OSB Civil Legal Services Task Force and gave the Task Force the general charge to “develop a plan for civil legal services in Oregon for 1996 and future years, which will, when implemented, effectively provide a full range of legal services to low income Oregonians with all available resources.” The Task Force included several prominent private attorneys from some of the most respected firms in Oregon, a trial judge who was later appointed to the Court of Appeals, a judge from the Court of Appeals, a State Senator who was Chair of the Joint Judiciary Committee and two representatives from the OSB. The Task Force appointed subcommittees bringing in a much larger number of participants with extensive knowledge and expertise. Task Force participants contributed hundreds of volunteer hours in the consideration and final drafting of the reports and recommendations.

6. The Oregon Legislature directed OSB to provide standards and guidelines for legal service providers (ORS 9.572). The OSB guidelines require using the filing fee revenue to fund a coordinated, statewide system of legal services centered on the needs of the client community as identified in the mission statement set out above in paragraph 4. In addition, OSB adopted the “Standards for Providers of Civil Legal Services to the Poor,” as approved by the American Bar Association House of Delegates, August 1986, “Standards for Programs Providing Civil Pro Bono Legal Services to Persons of Limited Means,” as adopted by the American Bar Association House of Delegates, February, 1996, “The Legal Services Corporation Performance Criteria,” 1996 and the Oregon Code of Professional Responsibility.

7. The LSC restrictions – including restrictions on class actions, attorney fees, lobbying, and representing certain categories of clients – make it significantly more difficult for the Oregon State Bar to implement the mission, standards and goals of the state Legal Services

Program. These restrictions effectively prevent many legal services offices in Oregon from meeting key needs of their clients, both by directly restricting advocacy financed by LSC funds and by restricting advocacy financed by non-LSC funds in programs that also receive some LSC funds. The federal restrictions on the use of state money increase costs of providing state funded services to low income Oregonians, increase the administrative expense and reduce the quality of service for the reasons explained below.

8. The OSB Legal Services Program distributed approximately \$ 2,793,000 to service providers in 2001. These funds went to twenty offices serving low income clients in all 36 counties in Oregon. Fourteen of these offices also accepted federal funding from LSC and therefore provided a limited range of legal services in compliance with the LSC restrictions. Six legal services offices in Oregon receive no federal LSC money and therefore provide a full range of legal services low income clients without the LSC federal restrictions.

9. There is inadequate funding for civil legal services in Oregon. The Oregon State Bar, Oregon Judicial Department and Office of Governor John Kitzhaber, M.D. sponsored an assessment of legal needs in Oregon that was published March 31, 2000. The needs survey established that fewer than two in ten low-income people with a need for civil legal services get legal services in Oregon (including services provided by non-profits, pro bono and private practitioners working for a fee). This determination was based on surveys of judges, lawyers, social service providers, legal service providers and low income people.

Quantity of Services

10. Based on the Oregon experience, the cost of creating and sustaining separate non-profit corporations and separate offices, as required by the LSC "program integrity" regulation, reduces the quantity of services that can be provided by the OSB Legal Services Program

because it requires increasing operating expenses necessary to rent additional space, pay for separate executive directors, pay for separate accounting departments, operate separate computer networks, and operate separate telephone systems.

11. For example, the Oregon Law Center (“OLC”), which receives funding from OSB, the Oregon Law Foundation (OLF), Campaign for Equal Justice (CEJ) and from other foundations, was established to provide unrestricted services through offices located in Portland, Ontario, Coos Bay and Grants Pass. Legal Aid Services of Oregon (“LASO”) provides LSC restricted services through offices located in Portland, Bend, Pendleton, Roseburg, McMinnville, Hillsboro, Woodburn, Newport, Oregon City, and Albany. The same individuals serve on the board at LASO and the board at OLC. The two corporations maintain separate offices and do not share employees. Both non-profit corporations deliver services to low-income clients living in thirty-three of Oregon’s thirty-six counties. Rural offices are paired by region so that, for example, one LSC funded office in Northeastern Oregon can refer restricted cases or clients to a state funded office located in another town within the same region. Both programs maintain separate offices located in Portland. There are administrative costs inherent in coordinating a system with two separate corporations serving a geographical area that would be better served by one. The additional administrative costs necessary to maintain the separate entities could be better used to open another rural office or to hire more staff attorneys to provide additional service to clients if LSC permitted the OSB Legal Services Program to pay for one staff attorney assigned to do class actions, seek attorney fees, work on legislative and administrative lobbying, and represent immigrants, who was permitted to work in the same office and program as a staff attorney paid for by LSC to represent individual clients.

12. In addition, there is a financial cost imposed by the LSC restriction that prohibits seeking attorney fees. Because current funding is only adequate to serve two in ten people with a civil legal problem, the OSB Legal Services Program seeks to increase the number of clients served with the state filing fee money by directing non-profit service providers to recover statutory attorney fees when available. The money earned through attorney fees is then used to increase the quantity of civil legal services available for low income clients. Attorneys funded by state filing fee money who are working for a non-profit service providers who also accept federal LSC funding cannot seek or retain attorneys fees. Money that should be available to provide more services is lost. For example, attorney fees that could be earned under statutes like the federal Equal Access to Justice Act are never collected.

Quality of Service

13. The harms caused by the legal services restrictions are compounded by Oregon's large geographical area, widely distributed clients and limited funding. This task of providing high quality legal services throughout the state is made far more difficult or even impossible when the federal restrictions prohibit using state money to pay for restricted work that is done within an office that also receives any federal money from LSC. The federal requirement of "program integrity" requires maintaining a separate non-LSC-funded office to provide the full range of high quality legal services. It is not possible to have two legal services offices in a small rural county, and certainly not in each of the thirty-six counties in Oregon, with current funding.

14. The OSB recognizes that technological advances can help address some of the problems posed by underfunded, understaffed and restricted offices serving a large client base over vast distances. Video telephones, hotlines, pro se forms and classes, courthouse facilitators,

web sites and booklets are used legal services providers in Oregon. However, none of the technological advances are a real substitute for having a legal services office representing clients in a community. It remains crucial to have a presence in communities across Oregon. Legal services attorneys working in rural offices become an important part of the community. By their mere presence there is less likely to be major problems for low income people. Legal services attorneys living in rural communities understand local client needs, the local economy, social structure, politics and judges. They are respected by the clients, judges, office holders, social service providers, the private bar and opposing parties.

15. High quality civil legal services for the poor cannot be provided across long distances. The "separate entity" restriction has forced legal services providers in Oregon to support an OLC office in Ontario (no federal money) and an LASO office in Pendleton (some LSC federal money). For example, in theory, a person lacking eligible alien status, needing representation in a class action, requiring administrative or legislative advocacy, or bringing a case where attorneys fees are available could go to OLC in Ontario to seek legal services. There are two staff attorneys in Ontario and four staff attorneys in Pendleton. However, it is 167 miles from Pendleton to Ontario. In addition, many of the low income people in the region served by each office live even farther away. The Blue Mountains are located between the two offices with two treacherous sections of the highway often closed in winter. Low income families usually lack the reliable transportation, money for gas and time off from low wage jobs necessary to make such a trip. Lawyers have to take time to travel to court hearings that are far away; they handle fewer cases and provide lower quality legal representation because they work as outsiders in the distant community. Some routine legal services cases like domestic violence and evictions require going to court quickly on little notice. A lobbyist from another town is less

effective at city hall or with the county commissioners. Clients would receive far better service if OSB Legal Services Program money were used to finance one attorney in Ontario and one attorney in Pendleton to do the work that needs to be done to provide equal access to justice, while LSC funded three attorneys in Pendleton and one in Ontario to do the work currently permitted by LSC. Having the "program integrity" requirement precludes this approach. The same problem is repeated in Bend (241 miles to the paired OLC office in Grants Pass), Roseburg (85 miles to the paired office in Coos Bay), Newport (98 miles to the paired office in Coos Bay), Albany (69 miles to Portland), Woodburn (30 miles to Portland), and McMinnville (38 miles to Portland).

16. The LSC restriction prohibiting attorneys from seeking attorneys fee award also reduces the quality of services that can be provided to clients through Oregon's coordinated delivery system. Oregon has many fee shifting statutes that are designed to encourage settlement and to discourage the litigation of uncertain claims. The prevailing party is entitled to attorney fees. Clients represented by an attorney who is free to seek attorney fees are better served because the parties are more likely to reach a reasonable settlement quickly. Indeed, it is sometimes essential for lawyers to move for contempt but even in those circumstances, which often are not predictable at the outset, the attorneys in LSC-funded programs are prohibited from seeking fees. Although the Oregon planning process has attempted to provide individuals with access to attorneys who can do unrestricted work, it is inevitable and unavoidable that LASO will take some cases where the client would be entitled to seek fees but for the barrier presented by the federal LSC restrictions.

17. The LSC restrictions prohibiting attorneys from working on class actions also reduces the quality of services. One of the Key Recommendations in the *OSB Civil Legal*

Services Final Report was to support “Full Service Law Centers” that provide all LSC restricted work, “particularly class actions on issues affecting low income populations, such as welfare reform and administration of public benefit programs.” The following example is illustrative of the problem: The plaintiff alleged that a welfare office in one county had a pattern and practice of improperly processing applications for general assistance. General assistance is made available to very low income people who are extremely vulnerable, often people who have a mental disability and are not receiving any other benefits. State law required that the office adequately develop an evidentiary record when processing applications. The local welfare office was not following this requirement and was routinely denying benefits to a large number of qualified applicants.

18. Because of inadequate resources, OLC could not take the case and LASO filed a lawsuit in state court seeking an order directing the state agency to change its policy in order to follow the law. The court denied the order on grounds that the plaintiff could have corrected the harm done to plaintiff as an individual by asking for an administrative hearing where the hearings officer would have followed the state law, developed the record and granted benefits to plaintiff. The judge told the LASO attorney from the bench that she would have to file a class action in order to change the local welfare office’s pattern and practice. When she told the judge that federal LSC regulations prohibited her from filing a class action, he expressed concern.

19. The LASO office does not have the staff necessary to accept every case on behalf of general assistance applicants, ask for a hearing and make certain that the individual client gets benefits. It is a much more efficient and effective use of an attorney’s time in this type of case to file a class action forcing the local welfare office to follow the law and grant benefits in response to the first application. Even if there were adequate staff to accept each individual case, many

desperate low income clients, especially those with a mental disability, would be unlikely to understand their legal rights and get the help they need to enforce their legal rights. Oregon courts do not recognize standing based on capable of repetition yet evading review.

20. The “program integrity” restriction effectively precludes the OSB Legal Services Program from funding one attorney to do this work in each legal services office while permitting an LSC funded attorney to do different work in the same office. Instead, the OSB is unable to do more than to fund attorneys who are located at a great distance in many cases. The result is that, as a consequence of the program integrity restriction, important work simply cannot be done.

21. We were authorized to sign a declaration on behalf of the Oregon State Bar by a resolution of the Board of Governors adopted on the 25th day of January 2002.

We declare under penalty of perjury that the foregoing is true and correct.

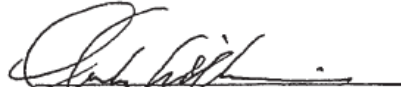
Executed on June 12, 2002

Portland, Oregon

OREGON STATE BAR



Angel López
President



Charles Williamson
President Elect

Oregon State Bar

*Legal Services
Program*

Standards and Guidelines

May 29, 1998

Revised February 22, 2018

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I. Mission Statement

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

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

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

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

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

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

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

- *Protect the individual rights of low income clients;*
- *Promote the interest of low income individuals and groups in the development and implementation of laws, regulations, policies and practices that directly affect their quality of life;*
- *Employ a broad range of legal advocacy approaches to expand the legal rights of low income individuals and groups where to do so is consistent with considerations of fundamental fairness and dignity; and*

- *Empower low income individuals and groups to understand and effectively assert their legal rights and interests within the civil justice system, with or without the assistance of legal counsel.”*

II. Governing Structure

A. Statutory Authority

On September 24, 1997, the Oregon State Bar Legal Services Program (OSB LSP) was established by the Board of Bar Governors as directed by ORS 9.572 to 9.578 (*Appendix A1*). The OSB LSP is charged with: the administration of funds appropriated to the OSB by ORS 9.577, ORS 98.386 (2), ORS 9.241 (3) and ORCP 32 O (*Appendix A2*) for funding legal services programs; the establishment of standards and guidelines for the funded legal services programs (Providers); and the development of evaluation methods to provide oversight of the Providers.

B. Governing Committee

1. **Purpose:** The Board of Governors has created the Governing Committee (OSB LSP Committee) pursuant to ORS 9.572(3) to advise the bar in the operation of the Legal Services Program, as outlined in these Standards and Guidelines, ORS 9.572(1). The OSB LSP Committee receives direction from the Board of Governors.
2. **Relationship to the Legal Services Program Director:** The Legal Services Program Director appointed by the bar, pursuant to ORS 9.572(2), is charged with periodically reviewing legal service providers who receive funding from the Legal Services Program, ORS 9.576(1). The OSB LSP Committee is charged to assist and advise the LSP Director in carrying out the LSP program review among other duties to assist and advise.
3. **Duties to the OSB Board of Governors:** The OSB LSP Committee will be responsible for reviewing and reporting to or making recommendations to the OSB Board of Governors on the following:
 - The Standards and Guidelines for the OSB LSP and their periodic review
 - Applications for funding to the OSB LSP
 - Disbursement of funds and annual OSB LSP budget
 - Assessment of Provider Programs
 - Annual reporting by the Providers
 - Legislative issues involving the legal aid filing fee funds
 - Complaints and grievances about Providers
 - Additional work of the OSB LSP
4. **Membership**
 - a. **Appointment:** Appointment of members to the OSB LSP Committee shall be made by the Oregon State Bar Board of Governors.

b. Membership: The OSB LSP Committee will consist of 9 members: 7 members, in good standing, of the Oregon State Bar; and 2 public members. The membership should be representative of the statewide aspect of the OSB LSP and should reflect the diversity of the service areas. No more than 3 attorney members should be from the Portland metropolitan area. The following criteria should be considered in selecting members:

- 1) Commitment to the basic principles of access to justice
 - 2) Ability to advance the mission of the OSB LSP
 - 3) Knowledge and understanding of providing quality legal services to low-income people.
 - 4) History of support for legal services providers
 - 5) Representation of a geographic area with special attention given to practice area specialties.
5. **Term of Appointment:** Appointments will be made for 3-year terms with the exception of the initial attorney appointments. To stagger vacancies on the OSB LSP Committee and to provide continuity, the initial appointments will be: 3 attorneys appointed for 3 years; 2 attorneys appointed for 2 years, and 2 attorneys appointed for 1 year.
6. **Liaisons to Committee:** The Oregon Law Foundation and the Campaign for Equal Justice are invited and encouraged to each have a liaison to the OSB LSP.
7. **Meetings:** The OSB LSP Committee will meet as needed. The Chair can call Special Meetings as needed. Meeting notices and agendas will be sent out according to public meeting law. Members can participate by telephone.
8. **Quorum:** Five members constitute a quorum for voting purposes.
9. **Subcommittees:** The OSB LSP Committee Chair has the authority to appoint additional subcommittees to make recommendations on specific issues as needed.

C. Program Staff

1. **Director of Legal Services Program:** The OSB Director of Legal Services Program (OSB LSP Director) is hired and supervised by the Executive Director of the Oregon State Bar. The OSB LSP Director staffs the OSB LSP Committee and receives advice and assistance from the OSB LSP Committee when conducting Legal Services Program Review. The OSB LSP Director may also support other work assigned by the Board of Governors to the LSP Committee.
 - a. The LSP Director will be responsible for monitoring, reviewing, reporting and making recommendations to the OSB LSP Committee on the following:

- These Standards and Guidelines and their periodic review
 - Applications for funding
 - Disbursement of funds and Annual OSB LSP budget
 - Assessment of Provider Programs
 - Annual Reporting by the Providers
 - Legislative Issues regarding the filing fee funds
 - Complaints and grievances about Providers
 - Additional work of the OSB LSP
- b.** The LSP Director will be responsible for providing technical assistance to Providers to ensure compliance with these Standards and Guidelines.

III. Standards and Guidelines for Providers

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

A. Statement of Goal

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

B. Provider Structure

1. **Non Profit:** A Provider shall be an Oregon nonprofit corporation, incorporated as a public benefit corporation under ORS Chapter 65, and be recognized as tax exempt under section 501(c)(3) of the Internal Revenue Code.
2. **Board of Directors:** A Provider shall have a Board of Directors which reasonably reflects the interests of the eligible clients in the area served, and which consists of members, each of whom has an interest in, and knowledge of, the delivery of quality legal services to the poor. Appointments to the Board of Directors shall be made so as to ensure that the members reasonably reflect the diversity of the legal community and the population of the areas served by the Provider including race, ethnicity, gender, and similar factors.
 - a. A majority of the directors should be active or active emeritus members of the Oregon State Bar, appointed by the county bar association(s) in the Provider's service area, or by the Oregon State Bar.
 - b. At least one-third of the directors should be persons who are eligible to be clients, but are not current clients, when appointed. The directors who are eligible clients should be appointed by a variety of appropriate groups designated by the program that may include, but are not limited to, client and neighborhood associations and

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community-based organizations which advocate for or deliver services or resources to the client community served by the Provider.

3. **Staff Attorney Model:** A Provider shall have at least one active member of the Oregon State Bar on staff.
4. **Pro Bono Program:** A Provider shall maintain a Pro Bono Program, certified by the Oregon State Bar pursuant to section 13 of the Oregon State Bar Board Bylaws (Appendix B), as a part of its system of delivery of legal services.
5. **Efficient Use of Resources:** A provider should, to the maximum extent practicable, integrate its operations and staff into existing programs that provide general legal services to low-income Oregonians in the same geographical area and meet the criteria set out in paragraphs B.1 – B.4, rather than maintain organizations that are legally and physically separate. If separate organizations currently exist, the Provider should take whatever actions are required to achieve program integration that will eliminate unnecessary, costly, and inefficient duplication without compromising the Provider’s ability to offer the full range of legal services contemplated by these Standards and Guidelines including, but not limited to, challenging federal restrictions that impede such integration.

C. Provider Use of Funds and Eligibility Guidelines

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

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

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

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

- 1. Procedures for Establishing Priorities:** A Provider shall adopt procedures for establishing priorities for the use of all of its resources, including funds from the OSB LSP. The Board of Directors shall adopt a written statement of priorities, pursuant to those procedures, that determines cases and matters which may be undertaken by the Provider. The statement of priorities shall be reviewed annually by the Board.
 - a.** The procedures adopted shall include an effective appraisal of the needs of eligible clients in the geographic area served by the recipient, and their relative importance, based on information received from potential or current eligible clients that is solicited in a manner reasonably calculated to obtain the views of all significant segments of the client population. The appraisal shall also include and be based on information from the Provider's employees, Board of Directors, local bar, and other interested persons. The appraisal should address the need for outreach, training of the program's employees, and support services.
 - b.** In addition to the appraisal described in paragraph a, of this section, the following factors shall be among those considered by the Provider in establishing priorities.
 - 1)** The population of eligible clients in the geographic area served by the Provider, including all segments of that population with special legal problems or special difficulties of access to legal services;
 - 2)** The resources of the Provider;
 - 3)** The availability of free or low-cost legal assistance in a particular category of cases or matters;
 - 4)** The availability of other sources of training, support, and outreach services;
 - 5)** The relative importance of particular legal problems to the individual clients of the Provider;
 - 6)** The susceptibility of particular problems to solution through legal processes;
 - 7)** Whether legal efforts by the Provider will complement other efforts to solve particular problems in the areas served;
 - 8)** Whether legal efforts will result in efficient and economic delivery of legal services; and
 - 9)** Whether there is a need to establish different priorities in different parts of the Provider's service area.
- 2. Avoidance of Competition with Private Bar:** The Board of Directors of a Provider shall adopt a written policy to avoid using funds received from the OSB LSP to provide

representation in the types of cases where private attorneys will provide representation to low-income clients without charge in advance as with contingency fee cases. A copy of the policy shall be provided as a part of the application for these funds and shall be consistent with the Provider's mission and written priorities.

E. Provider Grievance Committee and Process

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

F. Additional Standards for Providers

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

- [American Bar Association Standards for the Provision of Civil Legal Aid, August 2006.](#)
- ["Standards for Programs Providing Civil Pro Bono Legal Services to Persons of Limited Means," as adopted by the American Bar Association House of Delegates, August 2013.](#)
- [Legal Services Corporation Performance Criteria, 2007.](#)
- [Oregon Rules of Professional Conduct.](#)

IV. Cooperative Collaboration by Providers

A. Mechanism for Cooperation:

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

- To facilitate additional communication between organizations;
- To coordinate and integrate key functions across program lines;
- To create a forum for identifying client needs;
- To collaborate and strategize how best to meet the needs of the client community;
- To discuss funding needs and potential funding mechanisms;
- To work with the court system, the legislature, the OSB, local bars, and members of the private bar to create a broad network to develop better access to the justice system.
- To eliminate the legal and physical separation among the programs in order to minimize the duplication of administrative and other costs of delivering legal services to low-income Oregonians.

V. Oversight by OSB Legal Services Program

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

A. Funding of Providers

1. Presumptive Funding: To maintain the current statewide level of service the OSB LSP will continue to fund those legal services providers receiving filing fees at the enactment of 1997 Oregon Laws Chapter 801 Section 73 and the 2003 legislative increase in filing fee funds. These providers will receive the funds from the OSB LSP after administrative fees, up to 5.1 million dollars (2003 filing fee level adjusted for inflation increased by the 1.6 million dollar gap to meet the legal needs of the poor assessed in 2003) with an annual cost-of-living increase. The increase in the presumptive funding level meets the 1997 and 2003 legislative intent to provide additional funding for legal services to the poor at the same time continuing the approach adopted by the Interim Civil Legal Services Task Force who developed the Standards and Guidelines in 1998.

a. Initial Funding: Providers will be required to complete the Initial Compliance Determination Application. Providers must complete the application and demonstrate compliance with these Standards and Guidelines within two months after this document becomes effective to qualify for funding under the OSB LSP beginning September 1998.

Funding will continue under presumptive funding until:

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

b. Distribution of Funds: Presumptive funding will be based on the same distribution formula that was in effect at the enactment of 1997 Oregon Laws Chapter 801 Section 73. The Providers will be encouraged to utilize provisions c. and d. of this Section to modify grants and subcontract to meet unmet needs, to provide services to the under-served populations and to encourage a full range of services throughout Oregon.

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

B. Performance Evaluation of Providers

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

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

C. Annual Reporting Requirements

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

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

D. Accountability Process

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

The process has three components:

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

E. Complaint Procedure

1. Complaints about Legal Services Providers

- a. Each Provider under the OSB LSP is required to have a written internal grievance procedure to address complaints about the manner or quality of legal assistance provided in individual cases or about the denial of legal assistance in individual cases. Any such complaint received by the OSB LSP will be directed to the Providers' internal process except when there appears to be a pattern to the complaints or when the complaint falls into one of the categories listed below. Providers will furnish the OSB LSP with the resolutions to the referred complaints.
- b. Ethics complaints and malpractice claims will be referred to the appropriate department of the Bar.
- c. Complaints that Providers are acting outside the scope of the statute, ORS 9.574, not in compliance with these Standards and Guidelines, or misusing funds will be addressed by the OSB LSP's Committee or Grievance Committee through the Director of the OSB LSP.
- d. Complaints regarding the overall quality of legal assistance or the performance of the Provider will be addressed by the OSB LSP Committee or Grievance Committee through the Director of the OSB LSP.
- e. The OSB LSP Committee, the Executive Director of the Bar, and the General Counsel of the Bar will be notified of the complaints against Providers. A listing of all complaints, which will include synopses and resolutions, will be kept by the OSB LSP Program Director.
- f. Each complaint will be investigated (except ethics and malpractice complaints which will be referred to the appropriate body) and responded to timely. If a Provider is found not to be in compliance with these Standards and Guidelines, the procedure under Non-Compliance by Provider (F of this section) will be implemented.

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

F. Non-Compliance by Provider

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

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

- 2. Formal 30 Day Notice:** If the Provider continues to be out of substantial compliance, the Provider and the Provider's Board Chair will be given a formal 30 day written notice that details how it is out of compliance and the steps necessary to achieve compliance. The Director will continue to assist the Provider in resolving the problem.
- 3. Mediation:** If after 30 days from the receipt of the formal notice, the Provider still has not demonstrated compliance, the Director will immediately send a second notice to the Provider and the Provider's Board Chair, pursuant to ORS 9.576(2). The second notice will list three names of mediators and give the Provider 15 days from receipt of the second notice to agree to one of the mediators or suggest another mediator. If the Provider and the Director cannot agree on a mediator within the 15 day period, the Director will petition the presiding judge for a judicial district to appoint a mediator.

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

- 4. Hearing:** If the mediation fails to produce a resolution in the matter, the Director shall give the Provider and Provider's Board Chair a written notice of hearing pursuant to ORS 9.576(3). The hearing will be held no sooner than 30 days after Provider's receipt of notice of hearing.

The Provider will have the opportunity to present evidence that it has come into compliance or is making satisfactory progress towards compliance. The OSB LSP Committee will make up the hearing panel. Prior to suspension of funding, a written report will be presented to the OSB Board of Governors and OSB Executive Director within 5 days after the hearing is held which outlines the facts and decision. If after the hearing, the OSB LSP Director determines that based upon the written report, the provider is not in compliance with these Standards and Guidelines and that the provider has failed to show satisfactory progress toward achieving compliance, the OSB LSP Director shall suspend further funding of the program until such time that the provider makes a showing of compliance. ORS 9.576(3).

- 5. Suspension of Funding:** If the report indicates that the Provider is still not in compliance and is not making satisfactory progress towards compliance based on the decision of the hearing, the Director shall suspend funding until the Provider is able to demonstrate compliance. Notice of suspension shall be served on the Provider in person or by certified mail and will be effective immediately upon service.

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

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

Appendix A1 – Statutory Authority – Program

Legal Services Program

9.572 Bar to establish Legal Services Program; director; advisory and technical committees.

- (1) The Oregon State Bar shall by rule establish a Legal Services Program. The program shall provide standards and guidelines for legal service providers receiving funding from the program. The rules shall also provide methods for evaluating legal service providers. Funding received under the program may be used only for the provision of legal services to the poor without charge and for expenses incurred by the Oregon State Bar in the administration of the Legal Services Program.
- (2) The Oregon State Bar shall appoint a director of the Legal Services Program established under this section. The bar shall prescribe the duties of the director and fix the salary of the director.
- (3) The Oregon State Bar may establish any advisory or technical committees it deems necessary to advise the bar in establishing and operating the Legal Services Program.

[1997 c.801 §73; 2011 c.595 §99]

9.574 [1997 c.801 §72; 2003 c.737 §98; repealed by 2011 c.595 §97a]

9.576 Review of providers; mediation; hearing; suspension of funding.

- (1) The director of the Legal Services Program appointed under ORS 9.572 shall periodically review legal service providers who receive funding from the program. If the director determines that there are reasonable grounds to believe that a provider is not in substantial compliance with the standards and guidelines adopted under ORS 9.572, the director shall negotiate with the provider in an attempt to bring the program into compliance.
- (2) If the director of the Legal Services Program is unable to negotiate satisfactory compliance with the standards and guidelines of the program established by the Oregon State Bar under ORS 9.572, the director shall give the provider 30 days in which to bring the program into compliance. If the director concludes that the program is not in compliance at the end of the 30-day period, the matter shall be submitted to mediation. The director and the provider shall jointly select a mediator. If the director and provider are unable to select a mediator within 15 days after the expiration of the 30-day period, any presiding judge for a judicial district may appoint a mediator upon the petition of the director.
- (3) If mediation under subsection (2) of this section fails to produce a resolution of the matter, the director shall give the provider notice that a hearing will be held not sooner than 30 days after the date the notice is given. If, after hearing, the director determines that the provider is not in compliance with the standards and guidelines of the program and that the

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provider has failed to show satisfactory progress toward achieving compliance, the director shall suspend further funding of the program until such time as the provider makes a showing of compliance.

[1997 c.801 §74; 2011 c.595 §100]

9.577 Legal Aid Account.

- (1) The Legal Aid Account is established in the General Fund of the State Treasury. All moneys in the account are continuously appropriated to the State Court Administrator for the purpose of the distributions required by this section. Interest earned by the account shall be credited to the General Fund.
- (2) Each month, the State Court Administrator shall transfer to the Legal Aid Account, from amounts collected by the State Court Administrator as fees and charges in the circuit courts, the amounts necessary to make the distributions required by subsection (3) of this section.
- (3) Each biennium, the State Court Administrator shall distribute to the Oregon State Bar \$11.9 million from the Legal Aid Account. Distributions under this section shall be made by the State Court Administrator in eight quarterly installments of equal amounts, with the first distribution to be made as soon as possible after July 1, 2011. Amounts distributed to the Oregon State Bar under this subsection may be used only for the funding of the Legal Services Program established under ORS 9.572.

[2011 c.595 §3a]

Note: 9.577 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 9 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

9.578 Other funding sources.

The Oregon State Bar may apply for, accept and expend moneys from any public or private source, including the federal government, made available for the purpose of establishing or funding legal service programs in Oregon.

[1997 c.801 §75]

Appendix A2 – Statutory Authority – Funding

Statutory Allocation

9.577 Legal Aid Account.

- (1) The Legal Aid Account is established in the General Fund of the State Treasury. All moneys in the account are continuously appropriated to the State Court Administrator for the purpose of the distributions required by this section. Interest earned by the account shall be credited to the General Fund.
- (2) Each month, the State Court Administrator shall transfer to the Legal Aid Account, from amounts collected by the State Court Administrator as fees and charges in the circuit courts, the amounts necessary to make the distributions required by subsection (3) of this section.
- (3) Each biennium, the State Court Administrator shall distribute to the Oregon State Bar \$11.9 million from the Legal Aid Account. Distributions under this section shall be made by the State Court Administrator in eight quarterly installments of equal amounts, with the first distribution to be made as soon as possible after July 1, 2011. Amounts distributed to the Oregon State Bar under this subsection may be used only for the funding of the Legal Services Program established under ORS 9.572.

[2011 c.595 §3a]

Note: 9.577 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 9 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

Unclaimed Lawyer Trust Account Funds

98.386 Deposit of funds.

- (1) Except as provided in subsection (2) of this section, all funds received under ORS 98.302 to 98.436 and 98.992, including the proceeds from the sale of unclaimed property under ORS 98.382, shall be deposited by the Department of State Lands in the Common School Fund Account with the State Treasurer. Before making the deposit the department shall record the name and last-known address of each person appearing from the holders' reports to be entitled to the unclaimed property and the name and last-known address of each insured person or annuitant, and with respect to each policy or contract listed in the report of a life insurance corporation, its number, the name of the corporation, and the amount due.
- (2) Any amounts identified as lawyer trust account funds in the report required by ORS 98.352 shall be paid or delivered by the person holding the amounts to the Oregon State Bar along with a copy of the report. All amounts paid or delivered to the Oregon State Bar under this section are continuously appropriated to the Oregon State Bar, and may be used only for

*Oregon State Bar Legal Services Program
Standards and Guidelines – Appendix A2*

Adopted by the Board of Governors May 29, 1998

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the funding of legal services provided through the Legal Services Program established under ORS 9.572, the payment of claims allowed under ORS 98.392 (2) and the payment of expenses incurred by the Oregon State Bar in the administration of the Legal Services Program.

- (3) Before making a deposit to the credit of the Common School Fund Account, the department may deduct:
 - (a) Any costs in connection with sale of unclaimed property;
 - (b) Any costs of mailing and publication in connection with efforts to locate owners of unclaimed property as prescribed by rule; and
 - (c) Reasonable service charges.

[1957 c.670 §20; 1983 c.716 §16; 1989 c.183 §2; 1993 c.694 §15; 2009 c.462 §2]

Pro Hac Vice Fees

9.241 Practice of law by attorneys licensed in other jurisdictions; rules; fee.

- (1) Notwithstanding ORS 9.160, the Supreme Court may adopt rules to govern the appearance in judicial and administrative proceedings by attorneys who have not been admitted to practice law in this state. Subject to those rules, an attorney who has not been admitted to practice law in this state may appear as counsel for a party in an action or proceeding before a court, or may appear as counsel for a party in an administrative proceeding, if the attorney is associated with an active member of the Oregon State Bar.
- (2) Notwithstanding ORS 9.160, the Supreme Court may adopt rules pursuant to the procedures established by ORS 9.490 that allow attorneys who have not been admitted to practice law in this state to practice law in Oregon on a temporary basis, including performing transactional or prelitigation work.
- (3) The Supreme Court may by rule require the payment of a fee by an attorney appearing as counsel for a party in an action or proceeding before a court under the provisions of subsection (1) of this section. All amounts collected from any fee imposed by the Supreme Court under the provisions of this subsection shall be deposited with the Oregon State Bar and are continuously appropriated to the Oregon State Bar. Amounts appropriated to the Oregon State Bar under this subsection may be used only for the funding of legal services provided through the Legal Services Program established under ORS 9.572 and for expenses incurred by the Oregon State Bar in the administration of the Legal Services Program and in collecting fees imposed under this subsection.

[1993 c.213 §1; 2001 c.223 §1; 2003 c.260 §5]

Cy-près Awards

ORCP 32 O – Payment of damages.

As part of the settlement or judgment in a class action, the court may approve a process for the payment of damages. The process may include the use of claim forms. If any amount awarded as damages is not claimed within the time specified by the court, or if the court finds that payment of all or part of the damages to class members is not practicable, the court shall order that:

- (1) At least 50 percent of the amount not paid to class members be paid or delivered to the Oregon State Bar for the funding of legal services provided through the Legal Services Program established under ORS 9.572; and
- (2) The remainder of the amount not paid to class members be paid to any entity for purposes that the court determines are directly related to the class action or directly beneficial to the interests of class members.

[§O added by 2015 c.2 §3]

Appendix B – Oregon State Bar Bylaws, Article 13 – Pro Bono

Section 13.1 Aspirational Standard

Pro bono publico or pro bono service includes all uncompensated services performed by lawyers for the public good. Such service includes civic, charitable and public service activities; as well as activities that improve the law, the legal system, and the legal profession. The direct provision of legal services to the poor, without an expectation of compensation, is one type of pro bono service. Each lawyer in Oregon should endeavor annually to perform 80 hours of pro bono services. Of this total, the lawyer should endeavor to devote 20 to 40 hours or to handle two cases involving the direct provision of legal services to the poor, without an expectation of compensation. If a lawyer is unable to provide direct legal services to the poor, the lawyer should endeavor to make a comparable financial contribution to an organization that provides or coordinates the provision of direct legal services to the poor.

Section 13.2 Program Certification

Subsection 13.200 Procedure

In order for a pro bono program to obtain bar certification, the program must submit an application and meet the applicable criteria set forth below. The Bar's Executive Director determines whether a program is eligible for certification and this determination is final.

Subsection 13.201 Criteria

- (a) Purpose: The pro bono program must be sponsored by a national, state or local bar association, a court with jurisdiction in Oregon or an incorporated, non-profit or governmental organization, and must provide legal services without fee, or expectation of fee, or for a substantially reduced fee to one or more of the following:
 - (1) Persons of limited means.
 - (2) Underserved populations with special legal needs.
 - (3) Charitable, religious, civic, community, governmental and educational organizations in matters which are designed primarily to address the needs of persons of limited means or underserved populations with special legal needs.
- (b) Compensation: The pro bono program must not provide any compensation to the participating lawyers, except to cover filing fees or other out-of-pocket expenses or to provide professional liability insurance for the pro bono activity.
- (c) Fees: The pro bono program must deliver legal services to clients at no fee or for a substantially reduced fee. Nominal administrative fees are allowed. Donations from clients, whether encouraged or not, are not considered fees. The pro bono program should prohibit

or limit the handling of cases that are clearly fee-generating, and provide for the referral of such cases.

- (d) **Quality Control:** The program must demonstrate that it has the necessary expertise and quality control to administer a program involving volunteer lawyers. This should include appropriate matching of pro bono lawyers to cases, an effective grievance procedure and adequate tracking and record keeping systems regarding pro bono involvement.
- (e) **Diversity:** The program must comply with Article 10 of the Bar's Bylaws (Diversity), both in regard to participating lawyers and clients.
- (f) **Professional Liability Coverage:** The program will provide professional liability coverage for otherwise uncovered attorney volunteers when those attorneys provide legal services to pro bono clients.

Subsection 13.202 Volunteer Recognition

Recognition under this paragraph is intended to provide encouragement, in tangible form, to those Oregon Pro Bono programs and their volunteer lawyers, who help meet the need for legal services by providing direct representation to low-income individuals. As part of its annual planning process, the Board will consider the ways in which the Bar can acknowledge the volunteer efforts of Oregon lawyers, particularly those lawyers who provided at least 40 hours of pro bono services through programs certified under this policy. In so doing, the Board will seek input from bar staff and appropriate bar committees.

Appendix C – OSB Civil Legal Services Task Force May, 1996

**OSB CIVIL LEGAL SERVICES TASK FORCE
FINAL REPORT**

May, 1996



**This Appendix Contains the Key Findings and Recommendations from the
Report. For a Full Copy of the Report
Please call the OSB at 620 0222 - Ext. 323**

**OSB CIVIL LEGAL SERVICES TASK FORCE
FINAL REPORT**

May, 1996

Chair: Stephen S. Walters, Portland
Members: Hon. David V. Brewer, Eugene
Hon. Neil R. Bryant, Bend
Edward L. Clark, Jr., Salem
Michael E. Haglund, Portland
Hon. Jack L. Landau, Salem
James T. Massey, Sisters
Katherine A. McDowell, Portland
Katherine H. O'Neil, Portland
Lawrence B. Rew, Pendleton
Martha L. Walters, Eugene

BOG Liaison: Barrie Herbold
Legal Services Program Liaison: Ira Zarov
OSB Staff Liaison/Reporter: Ann Bartsch

OSB CIVIL LEGAL SERVICES TASK FORCE FINAL REPORT

Stephen S. Walters, Chair
May 24, 1996

Introduction; Task Force Charge

In the summer of 1995 Oregon, like every state in the United States, faced a crisis in its delivery of civil legal services to low-income residents. The new Congress was considering legislation which would ultimately eliminate the Legal Services Corporation, the federal entity which provides funding to local legal services programs (including four programs in Oregon). At the very least, it appeared inevitable that 1996 federal funding for legal services would be reduced by as much as 35% from 1995 levels. Congress was also prepared to impose severe restrictions on the activities of all programs receiving LSC funding, which would have a serious impact upon the ability of LSC program attorneys to provide a full range of high quality legal services to their clients.

In response to this crisis, OSB President Judy Henry, in consultation with Chief Justice Wallace P. Carson, appointed the OSB Civil Legal Services Task Force. Stating that "the organized bar has an important role to play in assisting our programs in planning for the future and in assuring the continuing availability of legal assistance to all of the people of our state," the OSB gave the Task Force the general charge to "develop a plan for civil legal services in Oregon for 1996 and future years, which will, when implemented, effectively provide a full range of legal services to low income Oregonians with all available resources." Steve Walters of Portland was appointed Chair of the Task Force; its members were Judge David Brewer, Neil Bryant, Ned Clark, Mike Haglund, Judge Jack Landau, Jim Massey, Katherine McDowell, Katherine O'Neil, Larry Rew, and Martha Walters. Barrie Herbold served as liaison to the BOG. Ann Bartsch was the OSB staff liaison and reporter. Ira Zarov of Oregon Legal Services served as the liaison to the legal services programs.

Following its initial meeting in September, the Task Force organized itself into four subcommittees, each with a separate charge. Each subcommittee was asked to invite participation and otherwise to secure information from other interested persons, including program board and staff, representatives of the Multnomah Bar Association, and the OSB Low Income Legal Services Committee. (A complete list of all participants is attached to this report as Appendix 5.) The full Task Force met periodically to review the recommendations as they were developed by the subcommittees.

Task Force participants contributed hundreds of volunteer hours to the consideration and final drafting of the reports and recommendations which follow. Complete reports from all of the Task Force subcommittees are included as appendices to this report. The following is a digested description of each subcommittee's activities, along with a listing of its key findings

and recommendations.

Subcommittee 1: Client Need/Priorities; Delivery System

This subcommittee was chaired by Judge David Brewer of Eugene. The subcommittee was asked to gather information on Oregon's existing civil legal services delivery system, for use by the other subcommittees, addressing the following questions:

What legal needs of client community are programs currently addressing? Are there any areas of need which are not being addressed, and which should be incorporated into Oregon's legal services delivery system?

What delivery systems are in place in Oregon to meet these needs? What systems could be developed or expanded?

The subcommittee was also asked to develop an overall mission statement for Oregon's civil legal services delivery system, for adoption by the full Task Force and ultimately by the Board of Governors, as well as by other entities concerned with civil legal services (e.g. the Oregon Law Foundation).

The subcommittee's initial report and Mission Statement were presented to the full Task Force in December and to the Board of Governors in January, 1996. That document is attached as Appendix 1 to this report. The Mission Statement was also adopted by the Board of Directors of the Oregon Law Foundation in February.

Key Findings:

1. Not more than one third of the legal needs of Oregon's low income population were being addressed by legal services programs before the funding cuts.
2. However, as of December, 1995, Oregon did have in place a legal services delivery system capable of providing a full range of civil legal services to low income Oregonians. Key components of that system were federally funded LSC programs and a network of locally based volunteer attorney programs providing supplemental services to the staffed offices. That system will be undercut by the adoption of pending federal legislation providing for severe funding cuts to LSC programs, and for severe restrictions on the activities of those programs which were inconsistent with the Task Force's mission statement for civil legal services.

Subcommittee 2: Structure and Organization

This subcommittee was chaired by Jim Massey of Sisters. It was asked to address the following questions:

Will existing legal entities and organizations be able to perform or facilitate the performance of the work identified by the previous working group? Are there opportunities for resource savings through reconfiguration of existing programs? If the existing structure will not be able to perform the work, what other entities can be developed to perform it?

This subcommittee met five times in the fall and winter of 1995-96. It invited board and staff representatives of Oregon's existing, and developing, legal aid and volunteer attorney programs to meet with the full Task Force to share their plans for necessary restructuring in light of the anticipated LSC funding cuts and restrictions on program activities. The subcommittee made no recommendations on questions it considered to be internal to the programs and their boards of directors, e.g. whether particular programs should or should not merge. However, subcommittee members did participate in ongoing discussions which were taking place among the programs, and the subcommittee's meetings provided an opportunity for strategizing and planning among the programs, bringing in the expertise of the broader legal community.

The subcommittee's full report is attached as Appendix 2. Its key findings and recommendations are as follows.

Key Findings:

1. In late April, 1996, Congress enacted HR 3019, the fiscal year 1996 appropriations bill which includes funds for the Legal Services Corporation. The legislation incorporated a long-anticipated series of restrictions on activities of LSC funded programs, including prohibition of most legislative and administrative advocacy, participation in class actions or welfare reform litigation, and representation of undocumented aliens (including undocumented migrant workers). The legislation further provides that LSC recipient programs may not use non-LSC funds, including state generated funds, to undertake any of these activities.

The 1996 restrictions on LSC funding and substantive work threaten the historic commitment to key Oregon legal services delivery system values.

2. Oregon's four LSC funded programs (Oregon Legal Services, Multnomah County Legal Aid Service, Marion-Polk Legal Aid, and Lane County Legal Aid) will continue to receive LSC funding, and will comply with the new restrictions in conducting their work on behalf of low-income Oregonians.

Consistent with the Task Force's mission statement for Oregon's civil legal services delivery system, Oregon's legal community must take responsibility for developing and nurturing other non-LSC entities capable of providing services which fill in the gaps

which the new Congressional restrictions will otherwise impose.

3. As of the date of this report, the following structural changes have been made (or are in the process of being made) in Oregon's civil legal services delivery system.

Organization of Full Service Law Centers In response to the imposition of restrictions on programs which receive Legal Services Corporation funding, new entities have been and are being organized to provide critically important services to clients, which LSC recipients will no longer be able to provide. Oregon Law Center has been incorporated in Portland and will receive funding from OLF and other sources. The Lane County Law and Advocacy Center has been established in Eugene. A similar "Full Service Law Center" may be established to serve Marion and Polk counties.

MCLAS/OLS Reconfiguration Effective May 13, 1996, Oregon Legal Services' Central Support Office and Multnomah County Legal Aid Service are sharing office space (at the former MCLAS office), resulting in an estimated savings of about \$100,000 per year. The two programs are discussing possible merger later this year. **Marion-Polk** There have been no structural changes so far at Marion-Polk Legal Aid, although the question of merger with other entities is on the table. One attorney position has been lost because of resource limitations.

Jackson County There have been no structural changes so far in Jackson County (Center for Non-Profit Legal Services). A ballot measure which would have provided county funding for the Center and other social service agencies, was defeated by the voters on May 21. It appears that it will be necessary for the program to continue to receive LSC funding as a subgrantee of Oregon Legal Services for its private attorney involvement program.

Campaign for Equal Justice The Campaign for Equal Justice is now separately incorporated, free-standing 501(c)(3) corporation.

Volunteer Lawyers Project The Volunteer Lawyers Project in Multnomah County considered a merger with Multnomah County Legal Aid, but declined to do so in light of the restrictions which would be placed on its activities. It now appears that parts of VLP's program will be taken up by MCLAS (along with financial support from the Multnomah Bar Association), and others will pass to the newly organized Oregon Law Center.

Staffing losses Programs report various levels of staff attrition in the wake of the Congressional action. So far, one local office -- Oregon Legal Services' branch office in Klamath Falls -- has been closed. Most full-time staff at Multnomah County Legal Aid Service have been reduced to 80% time.

Key Recommendations:

1. Three fundamental premises should drive organizational and structural issues:

A. Quality and Independence

Legal services delivery in Oregon should not be driven by or be dependent on LSC funding or mandates. Legal services programs will continue to be an important and vital resource – of many – for providing access to the justice system for low income Oregonians.

B. Preservation of Funding Allocation

Funding levels for service to low-income client groups no longer eligible for LSC funded services, and for all other restricted forms of legal services representation, including welfare reform, class litigation, legislative and administrative advocacy, group representation and client education and training, must be maintained at levels sufficient to provide adequate representation to low-income clients.

C. Independence and Access

Planning and selection of substantive work, and prioritization of delivery to particular client groups or populations, should be based upon sound commitment to principles of equal access to justice consistent with DR 7-101 and EC 2-26, 27 and 28 of the Code of Professional Responsibility, and without regard to the disfavored social, political or economic status of any eligible client.

2. Consortium for Delivery of Services

There should be an ongoing independent consortium of Oregon legal aid providers. Membership would be open to any organization providing legal services to low income Oregonians, as well as any organization which sponsors the delivery of such services (e.g. the MBA). The consortium would provide a forum for ongoing identification of unmet client needs to which resources should be targeted, while avoiding duplication of efforts by member programs. The consortium would allow for coordination and integration of key functions across program lines, and facilitate communication among program funding sources.

The consortium should include:

Current LSC recipient programs
Non-profit legal centers
Public Interest Law Firms
Law school clinics
Campaign for Equal Justice
Bars, particularly OSB and MBA

3. **Reorganization/Restructuring for Efficiency of Delivery**

The existing legal services programs should continue the ongoing process of internal evaluation to identify means of streamlining, reducing costs and gaining new efficiencies. The programs should continue to evaluate, within the consortium context, whether program mergers, consolidation or sharing of particular functions or services or development of new means or methods of access and delivery are appropriate. Areas of continued discussion and evaluation should be:

- Merger;
- Consolidation of programs/services/shared systems; and
- Appropriate use of technology.
- Intake and referral improvements;
- Coordination among programs with the Bar;
- Coordination with ADR programs.

The various programs should continue to inform and advise one another as this process continues.

4. **Development of Non-Restricted Entities**

In response to the imposition of restrictions (on and after April 26, 1996) on programs which receive Legal Services corporation funding, new entities have been and are being organized to provide critically important services to clients, which LSC recipients will no longer be able to provide. Oregon Law Center has been incorporated and will receive funding from OLF and other sources; the Lane County Law and Advocacy Center has been established in Eugene. The Task Force makes the following recommendations regarding these "Full Service Law Centers:"

Should be an entity or entities capable of performing legislative and

administrative advocacy.

Should be an entity or entities capable of providing representation to underserved populations with cultural barriers, language barriers, or local access programs, e.g. migrant workers. Should be capable of providing services all over the state.

Should develop pro bono capacities of the bar statewide -- not just as supplement (to take individual cases overflowing from legal services programs), but in such areas as class actions, legislative advocacy, policy development, low income housing development, etc.

Should include all LSC restricted work, particularly class actions on issues affecting low income populations, such as welfare reform and administration of public benefit programs.

As indicated above, the question whether there should ultimately be one such program, with branch offices in key locations (e.g. Salem) was left for study by the OSB legal aid oversight group.

5. **Development/Expansion of New Resources**

The Subcommittee recommends development and expansion of new and non-legal services resources to complement consortium activities:

There are currently some regional hotlines operated by all legal services programs. Development of additional hotlines could be beneficial; a prime topic would be a (statewide) Child Support hotline.

Local and statewide bar groups should expand their pro bono efforts, working in cooperation with offices statewide. As a corollary, all programs should consider using emeritus attorneys in their area, on the model of the "ELVIS" program in Marion-Polk Legal Aid Service.

There should be strategic, thoughtful reassignment of OLF funding, filing fee surcharge resources, and other available funds to provider programs.

Courts, Bar and OLF should continue to support efforts to increase ADR resources (e.g. farmworker mediation program) and self help mechanisms (Oregon Family Law Task Force is investigating the Maricopa County model).

The OSB should expand its existing Tel-Law program to cover new topics.

The OSB Order Desk/Pamphlet distribution efforts could include legal aid brochures, which are already available from the programs.

OSB should expand its Modest Means program as far as possible.

6. OSB Oversight and Support

The Oregon State Bar should take on an expanded role in oversight and provision of technical assistance to legal aid programs. This oversight/technical assistance role should be assigned to a small group (not more than five persons) who would be directly accountable to the Board of Governors. Members of the group should be OSB members who are knowledgeable in the areas of law office management and legal services/pro bono delivery, and who are independent of the programs. The group should develop defined standards for ongoing assessment of the programs' operations based on existing national standards (e.g. ABA's SCLAID standards, LSC Performance Criteria, Code of Professional Responsibility). Their assessments should concentrate on outcomes, with the emphasis on achieving quality results for clients.

If the Oregon legislature is willing to delegate allocation of filing fee surcharge revenues to the Oregon State Bar Board of Governors, this group would be an appropriate entity to take on this task, or at least, to evaluate and make recommendations to the BOG. (A significant minority of Task Force members believe that, while it is critically important that the OSB assume an oversight/technical assistance role with respect to civil legal services programs, this role should be separated from that of allocation of actual amounts of filing fee surcharge funding.)

Subcommittee 3: Funding

This subcommittee was chaired by Katherine O'Neil of Portland. The subcommittee was asked to address the following questions:

What current funding sources are in place to support legal services delivery in Oregon?
How can they be expanded to meet future needs? What new financial resources can be developed to support a reconfigured delivery system?

The subcommittee gathered information from each of the programs on their present financial base – components and amounts, short term and long term financial prospects. The subcommittee gathered similar information from the major non-LSC funding sources for legal services and volunteer attorney programs in Oregon, specifically the Campaign for Equal Justice, the Oregon Law Foundation, the Multnomah Bar Association, and the legislature (the source of the filing fee surcharge legislation). Members of the group also researched funding mechanisms which have had success in other states, using information supplied by the American Bar Association's PERLS (Project to Expand Resources for Legal Services) Project. The goal was to develop insights for the BOG on how the organized bar could best step in and help alleviate the anticipated shortfalls.

The subcommittee's full report is attached as Appendix 3. Its key findings and recommendations are as follows.

Key Findings:

1. In FY 1996, funding to the Legal Services Corporation (the federal agency which funds local legal services programs across the country, was cut by approximately 30 percent, to a total of \$278 million. This translates into a loss of approximately \$1 million (of total 1995 funding of approximately \$6 million from all sources) for Oregon's civil legal services programs. There are proposals in the current Congress to reduce LSC funding to \$141 million in FY 1997 (\$1.5 million shortfall for Oregon) and to eliminate it entirely by FY '98. If these proposals are successful, states like Oregon will be charged with all responsibility for providing civil legal services for their low income residents.

2. Oregon programs report the following projected shortfalls in their geographic service areas for 1996:

Jackson County (Center for Nonprofit Legal Services): \$70,000

Lane County (Lane County Legal Aid Service, Lane County Law and Advocacy Center): \$125,000

Marion and Polk Counties (Marion-Polk Legal Aid): \$125,000

Multnomah County (Multnomah County Legal Aid Service): \$440,000

Remaining Oregon counties (Oregon Legal Services): \$210,000

3. Oregon is relatively fortunate in having developed significant sources of non-federal funding for civil legal services at the state and local level. Non-federal funding constituted approximately 51% of the resources available to the legal aid/volunteer attorney programs in 1995. The most significant sources of in-state funding are:

Campaign for Equal Justice Now incorporated as an independent 501(c)(3) entity, the Campaign solicits contributions from Oregon attorneys and law firms, and solicits grants and other assistance from a wide variety of private sector sources, on behalf of legal services programs. In 1995, a total of \$322,000 was raised.

Filing Fee Surcharge Pursuant to ORS 21.480-.490 (appendix 3A to this report), circuit and district courts collect a surcharge on filing fees paid by moving parties in civil suits, which is paid to the legal aid program in that county by the State Court Administrator. This mechanism produces approximately \$1.5 million annually.

Oregon Law Foundation/IOLTA Programs providing civil legal services to low

income Oregonians have been (and should continue to be) the major recipients of funding from OLF's IOLTA (Interest on Lawyers Trust Accounts) program. In 1996, OLF will make a total of \$599,000 in grants, with approximately \$496,000 going to programs in the legal services category.

Without assistance from the Oregon State Bar, the courts, and the legal community generally, these funding sources will not be able to make up the shortfall in federal funding in the foreseeable future.

Key Recommendations:

1. **Filing Fees surcharge** Oregon's circuit and district courts will be consolidated effective January 15, 1998. Currently, legal services programs receive a surcharge on each filing fee paid into circuit court in the amount of \$22.00. In cases currently being filed in district court, the surcharge is \$8.50.

The BOG should urge Chief Justice Carson to exercise his discretion to maintain the \$22 filing fee for all courts after merger of Circuit and District courts in January, 1998.

Alternately, the BOG should make its #1 Legislative agenda for the '97 Legislature a revision in the laws related to filing fees with the fees going to the OSB for distribution.

2. **OSB dues assessment** The FY '96 shortfall could be met by a \$100 per attorney contribution made with the annual OSB dues. Subsequent Congressional cuts would require a greater per attorney contribution.

The BOG should exercise its leadership and chose a method of per capita contribution among the following:

- a. Voluntary contribution collected with OSB dues: "\$100 or other."
- b. Voluntary first year or so and then make it compulsory: "\$100".
- c. Compulsory contribution collected with OSB dues: "\$100" FY '97, "\$250" in subsequent years to make up for continued cuts in Congressional funding. With an option to do 40 hours (or another figure) of pro bono work in an OSB certified pro bono program.

Any compulsory contribution should first be approved by the new OSB House of Delegates with a referral to the general membership following the meeting at which it is approved.

3. **Greater OSB/local bar support for Campaign for Equal Justice** The CEJ would greatly benefit from open, public, frequent support for CEJ from the BOG and other bar leaders. The BOG members can mention the campaign in stump speeches, write about it in all publications. Make CEJ the "lawyers' charity," a part of the legal culture. If BOG members and the county bar presidents did an hour of intake at a legal aid office, they would gain a perspective that would fire their support of the CEJ.

4. **Increase income to OLF/IOLTA** The Oregon Law Foundation should be asked to pursue various mechanisms, for which national models exist, to increase IOLTA income. These include "sweep" accounts for IOLTA funds (cash management or sweep account which sweeps all or part of the IOLTA balance that is over a specified threshold amount from low-yield checking accounts into an investment in Treasury backed securities on a daily basis, producing higher yields for the IOLTA account); ongoing negotiations with banks for higher interest rates, and lower service charges, paid on IOLTA accounts.

The Oregon State Bar should assist OLF in investigating mechanisms for increasing income to the Foundation through legislation providing for, among other possibilities: direction of interest on funds in the hands of title insurance companies to OLF; direction of a portion of state abandoned property funds to OLF; direction of unclaimed client trust funds to OLF.

5. **Potential funding sources for consideration by legal services programs** include implementation of sliding scale fees for service to clients in the moderate income range (125% - 200% of poverty guidelines); local and county bond issue funding (Jackson County example); retainer contracts with Indian tribes and social service agencies; and gaming revenues.

Subcommittee 4: Ethical Responsibility/Quality Assurance/Transition

This subcommittee was chaired by Judge Jack Landau of the Court of Appeals. It was asked to consider how the bar could best assist the LSC programs' attorneys in meeting their ethical responsibilities to clients in light of the restrictions imposed by Congress.

The subcommittee also reviewed a memorandum from James N. Gardner of Portland, outlining a potential 10th Amendment challenge to the conditions and restrictions imposed on the Legal Services Corporation and its grantees by Congress.

The subcommittee's full report is attached as Appendix 4. Its key findings and recommendations are as follows.

Key Findings:

1. **ABA Formal Opinion 96-399** In February, 1996, the American Bar Association Standing Committee on Ethics and Professional Responsibility released Formal Opinion 96-399, "Ethical Obligations of Lawyers Whose Employers Receive Funds for the Legal Services Corporation to their Existing and Future Clients When such Funding Is Reduced and When Remaining Funding Is Subject to Restrictive Conditions." At approximately the same time, Oregon Legal Services prepared its own proposed response to the anticipated funding and practice restrictions. Rather than duplicate the foregoing efforts, the subcommittee focused on a review of the analysis and recommendations of the ABA Standing Committee and OLS.

In general, the OLS policy appears to follow from, and is entirely consistent with, the formal opinion of the ABA Standing Committee.

Copies of ABA Formal Opinion 96-399, and of OLS' internal memorandum "Implementing New Restrictions," are attached to the full subcommittee report at Appendices 4A and 4B.

Key Recommendations

1. The ABA Standing Committee's formal opinion is, of necessity, based on the Model Rules and not on the rules of professional responsibility governing any particular jurisdiction. So far as the Task Force is aware, however, the Oregon Code of Professional Responsibility is consistent with the Model Rules in all respects material to the questions before the ABA Standing Committee. The Task Force has little reason to believe that the ethical obligations of Oregon legal services lawyers will be substantially different under the Oregon Code and, therefore, regards the ABA Standing Committee's formal opinion as a useful source of advice to legal services lawyers in this state. Nevertheless, the Task Force believes that it may be of value to Oregon lawyers to have the Oregon State Bar Legal Ethics Committee review the ABA Standing Committee's formal opinion in the light of the particular requirements of the Oregon Code, to determine the extent to which the obligations of Oregon legal services attorneys are anticipated to be different than those of lawyers generally in the context of the Model Rules. Accordingly, the Task Force has prepared an opinion request to that effect.
2. The Task Force has considered, at least preliminarily, the possibility of other responses to the anticipated funding and practice restrictions than accommodation through modification of legal services policies and practices. Of particular note is the suggestion that the constitutionality of the restrictions be challenged in federal court. Although the Task Force expresses no opinion on the likelihood of success of such a challenge, it does recommend that the option be explored by the appropriate authorities.

In essence, the theory of the proposed lawsuit is that the imposition of federal restrictions on the provision of legal services violates the Tenth Amendment to the federal Constitution. The major premise of the argument is that the operation of state /court systems is at the core of powers reserved to the states by the Tenth Amendment and that the operation of state court systems includes the promulgation and enforcement of rules of professional responsibility. The minor premise of the argument is that the anticipated restrictions on legal services practice will necessitate a modification of such rules of professional responsibility. The key, of course, is the minor premise, namely, whether the expected practice restrictions actually require a modification of state professional responsibility rules or other matters properly regarded as core areas of state sovereignty.

Assuming the potential viability of a Tenth Amendment claim, the question arises: Who would be the proper plaintiff(s)? In all likelihood, the proper party plaintiff would be the State of Oregon, or the Chief Justice, or both; in all events, the matter would be subject to the advice and representation of the Attorney General. The Task Force recommends that the Attorney General be requested to evaluate the possibility of initiating a lawsuit to challenge the constitutionality of the anticipated funding and practice restrictions.

Conclusion

Hundreds of hours of volunteer effort, energy, and emotion have gone into the creation of this final report. The issues with which the Task Force has wrestled with are critically important to the future of access to justice for low-income Oregonians, both in the short and the long term. The Task Force members urge the Board of Governors to put these issues at the head of the bar's agenda for this year and the years to come. As the BOG's original charge to the Task Force stated, the organized bar has a critically important role to play in assuring the continuing availability of legal assistance to all of the people of our state. We urge the Board to take up this work.

Appendix D – Declaration of Angel Lopez and Charles Williamson

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF NEW YORK

CARMEN VELAZQUEZ, <i>et al.</i> , Plaintiffs, v. LEGAL SERVICES CORPORATION, <i>et al.</i> , Defendants.	97 Civ. 00182 (FB)
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DAVID F. DOBBINS, <i>et al.</i> , Plaintiffs, v. LEGAL SERVICES CORPORATION, Defendant.	01 Civ. 8371 (FB)
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DECLARATION OF ANGEL LOPEZ AND CHARLES WILLIAMSON

Angel Lopez and Charles Williamson, declare as follows:

1. I, Angel Lopez, am the President of the Oregon State Bar ("OSB").

2. I, Charles Williamson, am the President Elect of the Oregon State Bar, and will serve as President in 2003. I am currently a member of the Board of Governors of the OSB and am the Chair the OSB Access to Justice Committee.

3. We make this declaration on behalf of the Oregon State Bar in support of the plaintiffs' request for a preliminary injunction enjoining the enforcement of restrictions imposed by the Legal Services Corporation ("LSC") on the professional activities of lawyers employed by non-profit corporations receiving funding from LSC, especially when those activities are funded entirely from non-LSC private and governmental sources, because the Bar believes that the restrictions interfere significantly with OSB's effort to use state funding to provide comprehensive legal services. More specifically, we make this declaration to demonstrate that LSC's program integrity regulation requirement of physical separation between LSC-funded and non-LSC-funded activities imposes an undue burden on First Amendment activities of legal services providers. Because the separation requirement inevitably imposes significant costs, the plaintiffs should be permitted to challenge LSC's claimed justification for those costs, and should not be required to exhaust administrative remedies prior to testing the legality of the requirement. Finally, we make this declaration to describe particular ways in which certain other legal services restrictions infringe on plaintiffs' First Amendment rights.

4. The Oregon Legislature directed the Oregon State Bar to by rule establish a Legal Services Program to provide legal services to the poor without charge (ORS 9.572 to 9.578). The legislature funded this program through state filing fees. In 1998, OSB adopted the mission of the state legal services program as follows:

To use the filing fee revenue to fund a coordinated, statewide system of legal services centered on the needs of the client community as identified

in the Mission Statement of the *OSB Civil Legal Services Task Force Final Report*, May 1996, and

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

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

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

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

5. The mission of the OSB Legal Services Program, as set out above, was written by the OSB Civil Legal Services Task Force. In the summer of 1995, Judy Henry, the President of the Oregon State Bar, in consultation with Oregon Supreme Court Chief Justice Wallace P.

Carson, Jr., appointed ten distinguished Oregonians to serve on the OSB Civil Legal Services Task Force and gave the Task Force the general charge to “develop a plan for civil legal services in Oregon for 1996 and future years, which will, when implemented, effectively provide a full range of legal services to low income Oregonians with all available resources.” The Task Force included several prominent private attorneys from some of the most respected firms in Oregon, a trial judge who was later appointed to the Court of Appeals, a judge from the Court of Appeals, a State Senator who was Chair of the Joint Judiciary Committee and two representatives from the OSB. The Task Force appointed subcommittees bringing in a much larger number of participants with extensive knowledge and expertise. Task Force participants contributed hundreds of volunteer hours in the consideration and final drafting of the reports and recommendations.

6. The Oregon Legislature directed OSB to provide standards and guidelines for legal service providers (ORS 9.572). The OSB guidelines require using the filing fee revenue to fund a coordinated, statewide system of legal services centered on the needs of the client community as identified in the mission statement set out above in paragraph 4. In addition, OSB adopted the “Standards for Providers of Civil Legal Services to the Poor,” as approved by the American Bar Association House of Delegates, August 1986, “Standards for Programs Providing Civil Pro Bono Legal Services to Persons of Limited Means,” as adopted by the American Bar Association House of Delegates, February, 1996, “The Legal Services Corporation Performance Criteria,” 1996 and the Oregon Code of Professional Responsibility.

7. The LSC restrictions – including restrictions on class actions, attorney fees, lobbying, and representing certain categories of clients – make it significantly more difficult for the Oregon State Bar to implement the mission, standards and goals of the state Legal Services

Program. These restrictions effectively prevent many legal services offices in Oregon from meeting key needs of their clients, both by directly restricting advocacy financed by LSC funds and by restricting advocacy financed by non-LSC funds in programs that also receive some LSC funds. The federal restrictions on the use of state money increase costs of providing state funded services to low income Oregonians, increase the administrative expense and reduce the quality of service for the reasons explained below.

8. The OSB Legal Services Program distributed approximately \$ 2,793,000 to service providers in 2001. These funds went to twenty offices serving low income clients in all 36 counties in Oregon. Fourteen of these offices also accepted federal funding from LSC and therefore provided a limited range of legal services in compliance with the LSC restrictions. Six legal services offices in Oregon receive no federal LSC money and therefore provide a full range of legal services low income clients without the LSC federal restrictions.

9. There is inadequate funding for civil legal services in Oregon. The Oregon State Bar, Oregon Judicial Department and Office of Governor John Kitzhaber, M.D. sponsored an assessment of legal needs in Oregon that was published March 31, 2000. The needs survey established that fewer than two in ten low-income people with a need for civil legal services get legal services in Oregon (including services provided by non-profits, pro bono and private practitioners working for a fee). This determination was based on surveys of judges, lawyers, social service providers, legal service providers and low income people.

Quantity of Services

10. Based on the Oregon experience, the cost of creating and sustaining separate non-profit corporations and separate offices, as required by the LSC "program integrity" regulation, reduces the quantity of services that can be provided by the OSB Legal Services Program

because it requires increasing operating expenses necessary to rent additional space, pay for separate executive directors, pay for separate accounting departments, operate separate computer networks, and operate separate telephone systems.

11. For example, the Oregon Law Center (“OLC”), which receives funding from OSB, the Oregon Law Foundation (OLF), Campaign for Equal Justice (CEJ) and from other foundations, was established to provide unrestricted services through offices located in Portland, Ontario, Coos Bay and Grants Pass. Legal Aid Services of Oregon (“LASO”) provides LSC restricted services through offices located in Portland, Bend, Pendleton, Roseburg, McMinnville, Hillsboro, Woodburn, Newport, Oregon City, and Albany. The same individuals serve on the board at LASO and the board at OLC. The two corporations maintain separate offices and do not share employees. Both non-profit corporations deliver services to low-income clients living in thirty-three of Oregon’s thirty-six counties. Rural offices are paired by region so that, for example, one LSC funded office in Northeastern Oregon can refer restricted cases or clients to a state funded office located in another town within the same region. Both programs maintain separate offices located in Portland. There are administrative costs inherent in coordinating a system with two separate corporations serving a geographical area that would be better served by one. The additional administrative costs necessary to maintain the separate entities could be better used to open another rural office or to hire more staff attorneys to provide additional service to clients if LSC permitted the OSB Legal Services Program to pay for one staff attorney assigned to do class actions, seek attorney fees, work on legislative and administrative lobbying, and represent immigrants, who was permitted to work in the same office and program as a staff attorney paid for by LSC to represent individual clients.

12. In addition, there is a financial cost imposed by the LSC restriction that prohibits seeking attorney fees. Because current funding is only adequate to serve two in ten people with a civil legal problem, the OSB Legal Services Program seeks to increase the number of clients served with the state filing fee money by directing non-profit service providers to recover statutory attorney fees when available. The money earned through attorney fees is then used to increase the quantity of civil legal services available for low income clients. Attorneys funded by state filing fee money who are working for a non-profit service providers who also accept federal LSC funding cannot seek or retain attorneys fees. Money that should be available to provide more services is lost. For example, attorney fees that could be earned under statutes like the federal Equal Access to Justice Act are never collected.

Quality of Service

13. The harms caused by the legal services restrictions are compounded by Oregon's large geographical area, widely distributed clients and limited funding. This task of providing high quality legal services throughout the state is made far more difficult or even impossible when the federal restrictions prohibit using state money to pay for restricted work that is done within an office that also receives any federal money from LSC. The federal requirement of "program integrity" requires maintaining a separate non-LSC-funded office to provide the full range of high quality legal services. It is not possible to have two legal services offices in a small rural county, and certainly not in each of the thirty-six counties in Oregon, with current funding.

14. The OSB recognizes that technological advances can help address some of the problems posed by underfunded, understaffed and restricted offices serving a large client base over vast distances. Video telephones, hotlines, pro se forms and classes, courthouse facilitators,

web sites and booklets are used legal services providers in Oregon. However, none of the technological advances are a real substitute for having a legal services office representing clients in a community. It remains crucial to have a presence in communities across Oregon. Legal services attorneys working in rural offices become an important part of the community. By their mere presence there is less likely to be major problems for low income people. Legal services attorneys living in rural communities understand local client needs, the local economy, social structure, politics and judges. They are respected by the clients, judges, office holders, social service providers, the private bar and opposing parties.

15. High quality civil legal services for the poor cannot be provided across long distances. The "separate entity" restriction has forced legal services providers in Oregon to support an OLC office in Ontario (no federal money) and an LASO office in Pendleton (some LSC federal money). For example, in theory, a person lacking eligible alien status, needing representation in a class action, requiring administrative or legislative advocacy, or bringing a case where attorneys fees are available could go to OLC in Ontario to seek legal services. There are two staff attorneys in Ontario and four staff attorneys in Pendleton. However, it is 167 miles from Pendleton to Ontario. In addition, many of the low income people in the region served by each office live even farther away. The Blue Mountains are located between the two offices with two treacherous sections of the highway often closed in winter. Low income families usually lack the reliable transportation, money for gas and time off from low wage jobs necessary to make such a trip. Lawyers have to take time to travel to court hearings that are far away; they handle fewer cases and provide lower quality legal representation because they work as outsiders in the distant community. Some routine legal services cases like domestic violence and evictions require going to court quickly on little notice. A lobbyist from another town is less

effective at city hall or with the county commissioners. Clients would receive far better service if OSB Legal Services Program money were used to finance one attorney in Ontario and one attorney in Pendleton to do the work that needs to be done to provide equal access to justice, while LSC funded three attorneys in Pendleton and one in Ontario to do the work currently permitted by LSC. Having the “program integrity” requirement precludes this approach. The same problem is repeated in Bend (241 miles to the paired OLC office in Grants Pass), Roseburg (85 miles to the paired office in Coos Bay), Newport (98 miles to the paired office in Coos Bay), Albany (69 miles to Portland), Woodburn (30 miles to Portland), and McMinnville (38 miles to Portland).

16. The LSC restriction prohibiting attorneys from seeking attorneys fee award also reduces the quality of services that can be provided to clients through Oregon’s coordinated delivery system. Oregon has many fee shifting statutes that are designed to encourage settlement and to discourage the litigation of uncertain claims. The prevailing party is entitled to attorney fees. Clients represented by an attorney who is free to seek attorney fees are better served because the parties are more likely to reach a reasonable settlement quickly. Indeed, it is sometimes essential for lawyers to move for contempt but even in those circumstances, which often are not predictable at the outset, the attorneys in LSC-funded programs are prohibited from seeking fees. Although the Oregon planning process has attempted to provide individuals with access to attorneys who can do unrestricted work, it is inevitable and unavoidable that LASO will take some cases where the client would be entitled to seek fees but for the barrier presented by the federal LSC restrictions.

17. The LSC restrictions prohibiting attorneys from working on class actions also reduces the quality of services. One of the Key Recommendations in the *OSB Civil Legal*

Services Final Report was to support “Full Service Law Centers” that provide all LSC restricted work, “particularly class actions on issues affecting low income populations, such as welfare reform and administration of public benefit programs.” The following example is illustrative of the problem: The plaintiff alleged that a welfare office in one county had a pattern and practice of improperly processing applications for general assistance. General assistance is made available to very low income people who are extremely vulnerable, often people who have a mental disability and are not receiving any other benefits. State law required that the office adequately develop an evidentiary record when processing applications. The local welfare office was not following this requirement and was routinely denying benefits to a large number of qualified applicants.

18. Because of inadequate resources, OLC could not take the case and LASO filed a lawsuit in state court seeking an order directing the state agency to change its policy in order to follow the law. The court denied the order on grounds that the plaintiff could have corrected the harm done to plaintiff as an individual by asking for an administrative hearing where the hearings officer would have followed the state law, developed the record and granted benefits to plaintiff. The judge told the LASO attorney from the bench that she would have to file a class action in order to change the local welfare office’s pattern and practice. When she told the judge that federal LSC regulations prohibited her from filing a class action, he expressed concern.

19. The LASO office does not have the staff necessary to accept every case on behalf of general assistance applicants, ask for a hearing and make certain that the individual client gets benefits. It is a much more efficient and effective use of an attorney’s time in this type of case to file a class action forcing the local welfare office to follow the law and grant benefits in response to the first application. Even if there were adequate staff to accept each individual case, many

desperate low income clients, especially those with a mental disability, would be unlikely to understand their legal rights and get the help they need to enforce their legal rights. Oregon courts do not recognize standing based on capable of repetition yet evading review.

20. The “program integrity” restriction effectively precludes the OSB Legal Services Program from funding one attorney to do this work in each legal services office while permitting an LSC funded attorney to do different work in the same office. Instead, the OSB is unable to do more than to fund attorneys who are located at a great distance in many cases. The result is that, as a consequence of the program integrity restriction, important work simply cannot be done.

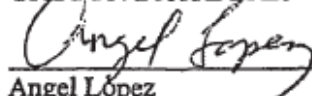
21. We were authorized to sign a declaration on behalf of the Oregon State Bar by a resolution of the Board of Governors adopted on the 25th day of January 2002.

We declare under penalty of perjury that the foregoing is true and correct.

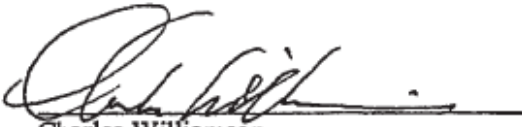
Executed on June 12, 2002

Portland, Oregon

OREGON STATE BAR



Angel López
President



Charles Williamson
President Elect