

**Oregon State Bar
Meeting of the Board of Governors
June 24, 2011
Oregon State Bar Center
Open Session Agenda**

The Open Session Meeting of the Oregon State Bar Board of Governors will begin at 11:00 a.m. on June 24, 2011.

Friday, June 24, 2011, 11:00 a.m.

- 1. Call to Order/Finalization of the Agenda**
- 2. Department Presentation**
 - A. Public Affairs [Ms. Grabe]
- 3. Report of Officers**
 - A. Report of the President [Mr. Piucci] Written Exhibit (6/22)
 - B. Report of the President-elect [Ms. Naucler] Written
 - C. Report of the Executive Director [Ms. Stevens] Inform Exhibit
 1. Introduction of Mariann Hyland
 - D. MBA Liaison Report [Mr. Kent] Inform
- 4. Professional Liability Fund [Mr. Zarov]**
 - A. General Update Inform
 1. Defense Panel Training, Case Count, and Staffing
 - B. Financial Report Inform Exhibit
 - C. Time-line for Determining 2012 Assessment Inform
- 5. Special Appearances**
 - A. Update on Convocation on Equality [Mr. Gaydos] Inform
 1. Diversity Section’s Resolution in Support of The 2011 Convocation on Equality Action Exhibit
 - B. ABA Delegate Christine Meadows
 1. Issues for ABA Annual Meeting Inform

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|--|--|--------|----------------|
| C. | Member Request to Support Lawyers in China | Action | Exhibit |
| 6. Rules and Ethics Opinions | | | |
| A. Legal Ethics Committee | | | |
| 1. | Revised Formal Ethics Opinion No. 2005-151 | Action | Exhibit |
| 7. OSB Committees, Sections, Councils and Divisions | | | |
| A. Oregon New Lawyers Division Report [Ms. Kessler] | | | |
| 1. | Approval to Solicit Outside Funding for Federal Training Program | Action | Exhibit (6/23) |
| 8. BOG Committees, Special Committees, Task Forces and Study Groups | | | |
| A. Access to Justice Committee [Mr. Mitchell-Phillips] | | | |
| 1. | Public Service Advisory Committee Recommendation re: RIS Funding Model [Ms. Johnnie] | Action | Exhibit |
| B. Appellate Screening Committee [Mr. Larson] | | | |
| 1. | Accept Recommendations for Appellate Court Vacancy | Action | |
| C. Budget and Finance Committee [Mr. Kent] | | | |
| 1. | Report from the Committee Chair | Inform | |
| 2. | Proposals for Tenant and Capital Improvements at the Bar Center | Action | Exhibit |
| D. Member Services Committee [Ms. Johnnie] | | | |
| 1. | Sunset of the Law Practice Management Section | Action | Exhibit |
| 2. | Timeline for Annual OSB Awards | Inform | |
| 3. | Membership Directory | Inform | Exhibit |
| E. Policy and Governance Committee [Ms. Naucler] | | | |
| F. Public Affairs Committee [Mr. Johnson] | | | |
| 1. | Legislative Update | Inform | |
| 2. | Professionalism Commission Nominations | Action | Exhibit |
| 9. Consent Agenda | | | |

- | | | | |
|-----------|--|------------|---------|
| A. | Approve Minutes of Prior BOG Meetings | | |
| | 1. Open Session – April 22, 2011 | Action | Exhibit |
| | 2. Judicial Proceedings – April 22, 2011 | Action | Exhibit |
| | 3. Executive Session – April 22, 2011 | Action | Exhibit |
| | 4. Special Meeting – May 20, 2011 | Action | Exhibit |
| | 5. Executive Session - May 20, 2011 | Action | Exhibit |
| B. | Appointments Committee | | |
| | 1. Appointments to Various Bar Committees, Boards and Councils | Action | Handout |
| C. | Client Security Fund Claims Recommended for Payment | Action | Exhibit |
| | 1. CSF Claim No. 2011-09 DICKERSON (Morsman) | \$5,000.00 | |
| | 2. CSF Claim No. 2011-12 CARDWELL (Vreeland) | \$500.00 | |
| D. | Executive Director Contract Revision – Revocation | Action | Exhibit |

10. Default Agenda

- | | | | |
|-----------|--|--|---------|
| A. | Minutes of Interim Committee Meetings | | |
| | 1. Access to Justice Committee | | |
| | a. May 20, 2011 | | Exhibit |
| | 2. Appellate Screening Special Committee | | |
| | a. April 22, 2011 | | Exhibit |
| | 3. Budget and Finance Committee | | |
| | a. April 22, 2011 | | Exhibit |
| | b. May 20, 2011 | | Exhibit |
| | 4. Member Services Committee | | |
| | a. April 22, 2011 | | Exhibit |
| | b. May 20, 2011 | | Exhibit |
| | 5. Policy and Governance Committee | | |
| | a. April 22, 2011 | | Exhibit |
| | 6. Public Affairs Committee | | |
| | a. April 22, 2011 | | Exhibit |
| | b. May 20, 2011 | | Exhibit |
| | 7. Public Member Selection Special Committee | | |
| | a. April 22, 2011 | | Exhibit |

- B. CSF Claims Financial Report Exhibit
- C. Chris Kent Affidavits for PLF Covered Claim Exhibit
- 11. **Closed Sessions ([Click here to access the Closed Session Agenda](#))**
 - A. Judicial Session (pursuant to ORS 192.690(1) – Reinstatements click here
 - B. Executive Session (pursuant to ORS 192.660(1)(f) and (h) General Counsel/UPL Report click here
- 12. **Good of the Order (Non-action comments, information and notice of need for possible future board action)**
 - A. Bus to Pendleton in August
 - B. Classroom Law Project Thank You Exhibit
 - C. Sussman CLE Comment Exhibit
 - D. At Well-Paying Firms – Article Exhibit

Oregon State Bar President's Report - June 24, 2011 Board of Governors Meeting

May 2-3	Northwest States Bar Meeting	Salt Lake City, Utah
May 31	Meeting with Chief Justice De Muniz	Salem
June 8	Local Bar tour - Coos County Bar Association	Coos Bay
June 9	Local Bar tour- Curry County Bar Association Jackson County Bar Association	Brookings Medford
June 10	PLF Board meeting	Ashland
June 21	Meeting with Sylvia, Kay and Steve Lawrence regarding Veteran's issue and potential future bar program(s)	Portland
June 22	Oregon Area Jewish Committee 2011 Judge Learned Hand Luncheon	Portland
Other	Numerous meetings with new and ONLD lawyers	

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: June 24, 2010
 From: Sylvia E. Stevens, Executive Director
 Re: Operations and Activities Report

OSB Programs and Operations

Department	Developments
Accounting & Finance/Facilities (Rod Wegener)	<ul style="list-style-type: none"> • Recruitment for a new Business Systems Analyst and Project Manager position will begin soon. As the title suggests, this person will work with all departments to analyze the business and operational processes of the department and determine if technology or any change in procedures will create greater efficiency for the department or the bar. • The staff Sustainability Team meets about quarterly to discuss and evaluate sustainability issues at the bar center. The latest topic is commuting and exploring other alternatives for the daily commutes to the bar center. The CFO is writing an article for the Sustainable Future Section's newsletter and in the course of researching the article found that the bar's use of copiers declined 40% from 2008 to 2010. • Evaluation of what is the best use of the vacant and unfinished space at the bar center continues and a number of recommendations will be before the Budget & Finance Committee.
Admissions (Jon Benson)	<ul style="list-style-type: none"> • Exam Accommodations – We have a record number of special accommodation applicants for the July 2011 exam, which increases the need for proctors and facilities/space for each accommodated applicant. • New exam site – The main testing site for the July exam will now be the Red Lion Jantzen Beach Hotel. We had outgrown the prior facility (July 2011 applicants exceed July 2010 numbers). • Uniform Bar Exam – The Board continues to explore adoption of the Uniform Bar Exam (UBE). Washington and Idaho recently announced their adoption of this exam and it is under consideration in Montana. At the June 3 OCLEAB meeting representatives from the law schools and the Supreme Court indicated tentative support . • On-line bar applications – Work continues on phase 2 of the process, which will "write" data fields filled in online directly to the database. This has the potential to save substantial time currently spend on data entry, will enable more advanced reports, and will facilitate online communication with applicants. • Reciprocity – We continue to see strong numbers for Reciprocity applications. Will closely monitor this trend. • Character & Fitness The Board continues to see a marked increase in the number and severity of applicants with character and fitness issues, resulting in more conditional admissions. Prominent issues include: drug/alcohol abuse,

Department	Developments
	<p>criminal arrests and convictions, student discipline, domestic violence and stalking, and financial difficulties.</p> <ul style="list-style-type: none"> • Jon Benson’s article on the development of online applications was published in the National Conference of Bar Examiners newsletter.
Affirmative Action (Mariann Hyland)	<ul style="list-style-type: none"> • Mariann Hyland started as the Director of Diversity and Inclusion on June 13. • Planning is under way for OLIO 2011, to be held August 4-6 in Hood River. Contributions are at approximately \$25,000, about ½ of what is needed. • AAP staff is assisting with planning for the COE.
Communications (Kay Pulju)	<ul style="list-style-type: none"> • Member communications have focused on new e-mail requirements, online directory listing policies and elimination of the traditional print membership directory. • The bar’s contracted advertising group is soliciting sponsorships for BarBooks. • Staff are proceeding with plans to move production of the Legal Links community access series in house.
CLE Seminars (Karen Lee)	<ul style="list-style-type: none"> • CLE Seminars had record attendance at the 24th Annual NW Bankruptcy Institute in Portland. The program was well-received, even with the threatened government shutdown that would have affected a presentation by a panel of U.S. Trustees. Fortunately, the shutdown was averted and two out of the three trustees were able to give the presentation. • In June, CLE Seminars began offering seminar course materials in both print and electronic formats. All registrants were emailed a link to a PDF of the brochure at least 48 hours prior to the seminar. A few registrants either printed the PDF and brought it with them while others download the PDF to their laptops. The Seminars Department provided power strips at the seminar for laptops. Initial reaction from three seminars ranged from positive (“I liked seeing the materials in advance”) to confused (“Yes, my office ordered the electronic version but I want a book”). CLE Seminars will continue to educate the membership about this green initiative through seminar announcements and its website.
General Counsel (including CAO) (Helen Hirschbiel)	<ul style="list-style-type: none"> • GC, AGC and the CAO Manager attended the ABA Center for Professional Responsibility Annual Conference. • We have been implementing the Fee Arbitration Task Force recommendations, which were approved by the Board in April. • The UPL Task Force will be meeting on June 21 to discuss their revised and possibly final report and recommendations for the Board. • CAO is taking steps to make its intake process paperless. • CAO continues to receive and process about 180 complaints each month.
Human Resources (Christine Kennedy)	<ul style="list-style-type: none"> • Seven people were hired for 2.1 FTE Referral and Information Services (RIS) Assistant positions. Three of them have English/Spanish skills, 5 are current students, 2 recently graduated and are considering law school, 4 were hired from our newly-formed relationship with Lewis & Clark. • Three positions were filled through internal promotions. The Member Services Assistant was promoted to Member Services Specialist, an RIS Assistant was promoted to Member and Public Services Administrative

Department	Developments
	<p>Assistant, and a part-time Admissions Assistant – Limited Duration was promoted to a regular, full-time Admissions Assistant.</p> <ul style="list-style-type: none"> • Janet Sams was hired as the new Receptionist. • The Employment Practices Liability/Directors and Officers insurance policy was renewed with a 14.67% premium reduction.
<p>Information & Design Technology (Anna Zanolli)</p>	<ul style="list-style-type: none"> • IDT developed a matching program for the New Lawyer Mentoring Program and is formulating an IDT strategy that will support the bar’s technology efforts in the years to come. IDT continues to work with Member and Public Services to gather email addresses and online directory listing preferences for members who previously had chosen to not display any contact information. As of June 13, the number of active members without an email in their record has been reduced to 635 (4 % of total active) and 393 active members have now opted to display either a phone number, email address or both (861 members still need to make a display choice).
<p>Legal Publications (Linda Kruschke)</p>	<ul style="list-style-type: none"> • Legal Publications won an ACLEA’s Best Award of Outstanding Achievement for our 2010 release <i>Rights of Foreign Nationals</i>. The award will be presented at the ACLEA Annual Meeting in Boston in July. • Two free BarBooks™ webinars have been held with a total of 76 participants. Two more webinars are scheduled for June 24 and July 12. • The Comment feature of BarBooks™ has been added to the Chapter Outline view in the hopes of getting more comments. • Final editing of <i>Labor and Employment: Private Sector</i> is complete; tables and index are in the works. Four chapters have been posted to BarBooks™ with more to come soon. The first email notices for pre-orders of the print book was sent June 14 with a deadline of Aug. 15. • <i>Construction Law</i> has been edited and we are awaiting final author approvals on about 1/3 of the chapters. Ten chapters have been posted to BarBooks™. We will send email notices for pre-orders after we get final author approvals. • Two PLF books have been posted to BarBooks™. We are waiting on feedback from PLF to finish the other two. The ones that are posted are: <ul style="list-style-type: none"> ○ <i>A Guide to Setting Up and Using Your Lawyer Trust Account</i> ○ <i>Planning Ahead – A Guide to Protecting Your Clients’ Interest in the Event of Your Disability or Death</i> • Four new chapters and forms for <i>Fee Agreement Compendium</i> have been posted to BarBooks™. There are no plans to reprint the book. • A new publication titled <i>Oregon Constitutional Law</i> is in the planning stages and was started by the Constitutional Law Section Executive Committee. It will be a great addition to the BarBooks™ online library in 2012.
<p>Legal Services/OLF (Judith Baker)</p>	<ul style="list-style-type: none"> • The BOG’s newly-created Unclaimed Funds Committee met in May and approved one refund for \$305; two more claims are pending for June in the amount of \$1222. • Judith Baker continues to work with Susan Grabe and legal aid staff on the

Department	Developments
	<p>court filing fee bill as it relates to funds allocated to legal services.</p> <ul style="list-style-type: none"> • Staff is working on the accountability report mandated by the LSP Standards and Guidelines. The accountability report required by the LSP Standards and Guidelines was presented to the LSP Committee on June 9; there are some follow up questions to be referred back to the programs before the report is presented to the BOG later this year. • There were 24 applicants for the Loan Repayment Assistance Program. The committee met on May 14th and made 8 new loans totaling \$32,500. Recipients will receive the loans for the next three years as long as they stay eligible for the program. • Planning has started for the Pro Bono Fair that is scheduled for October 25th at the World Trade Center. There will 3 free CLE's – Consumer Law, Representing Children, and Small Business/Non Profit 101. • Staff continues to work with the PLF on a potential expansion of the certified pro bono program and have drafted a joint Certified Program/PLF Application.
<p>Member Services (Dani Edwards)</p>	<ul style="list-style-type: none"> • Board of Governors election candidate deadlines passed for regions 2, 5 and 6. The number of candidates from region 5 is higher than its been in the last decade. This is the first year candidates were not required to submit a nominating petition which could be a reason for the increase. Region 2 initially had two candidates, but one withdrew. David Wade of Eugene will replace Derek Johnson effective July 1. • Amy Meyri, an internal candidate, was hired for the part-time Member and Public Services Administrative Assistant position. • Published the 2010 Committee and Section Annual Reports on the bar's website. • Beginning the process of member and non-member volunteer recruitment to serve on various OSB boards, committees, and councils.
<p>Minimum Continuing Legal Education (Denise Cline)</p>	<ul style="list-style-type: none"> • The MCLE Committee met Friday, June 10, at noon. • Thirteen OSB members were suspended effective June 2 for failure to comply with the MCLE Rules. • Processed 3,318 program accreditation applications and 551 applications for other types of CLE credit (teaching, legal research, etc.) since the first of the year.
<p>New Lawyer Mentoring (Kateri Walsh)</p>	<ul style="list-style-type: none"> • The matching process has begun for new members admitted following the February bar exam. The matching database is complete and new member applications have been arriving steadily. • Expanded recruitment and outreach for the larger class of new members admitted following the August exam is now underway.
<p>Public Affairs (Susan Grabe)</p>	<ul style="list-style-type: none"> • The Public Affairs Department hosted Day at the Capitol on May 12th and bar members met with every member of the Joint Ways and Means Committee to discuss the bar's priorities of funding for the court system, legal aid, and indigent defense. • The 2011 Legislative Session is winding down and Public Affairs is now

Department	Developments
	<p>focused primarily on ensuring passage of the court budget and fee bills. Of the 18 bar-sponsored bills, 13 have passed through both chambers. SB 381 re: LPRC restructuring, and HB 2684 re: Special Needs Trusts, are dead; the demise of the SB 381 indicates the difficulty of amending the bar act and educating our own members about the discipline system. SB 382 re: Construction law, and SB 384 re: Oregon Private Prompt Payment Act, are working their way through the second chamber. The bar has also added one bill not originally sponsored, HB 2667A re: amending the Lawyer Referral Service contract information onto the summons form, which has also passed.</p> <ul style="list-style-type: none"> • HB 2710 and 2712, the filing fee bills, continue to work their way through the system. These two bills are wrapped up in the public safety budget and court funding issues, which will be decided at the very end of session
Referral & Information Services (George Wolff)	<ul style="list-style-type: none"> • RIS has filled its remaining vacancies for bilingual RIS Assistants. • The annual Lawyer Referral Service registration renewal period is underway. Electronic invoices were sent out May 31 for the 2011-12 Program Year.
Regulatory Services (Jeff Sapiro)	<ul style="list-style-type: none"> • The SPRB continues to meet monthly to review the results of disciplinary investigations and make probable cause decisions in those matters. The board now is at full strength with the recent appointment of Judy Clarke to fill a vacant public member position. • Disciplinary Counsel's Office has been following two bills this legislative session. One, to make the non-filing of an IOLTA compliance report an administrative matter rather than a disciplinary offense, looks like it will become law. The other, to eliminate the requirement that volunteer investigators be grouped into committees, met resistance in the House and is dead. • DCO and CAO staff continue to develop the curriculum for Ethics School, the first session of which will occur later this year. • The Regulatory Services staff continue to process a steady volume of membership status changes, <i>pro hac vice</i> applications and public records requests.

Executive Director's Activities April 22 to June 23, 2011

Date	Event
April 22	BOG & Committee meetings
April 27	CEJ Board Meeting
April 29	Lunch with Disciplinary Board Public Members
May 1-2	Northwest Bars Conference in Salt Lake City
May 4	Legislative Testimony on Bar Bills
May 6	Lunch with Supreme Court; Swearing-In
May 12	OSB Lobby Day in Salem
May 14	Legal Ethics Committee
May 17	MBA Annual Dinner
May 21	Client Security Fund Meeting

May 31	Meet with Chief Justice
June 1-4	ABA Professional Responsibility Conf. & Forum on Client Protection in Memphis
June 8-9	Southern Oregon Local Bar Visits (Coos, Curry and Jackson County Bars)
June 10	PLF Board Meeting in Ashland
June 22	Oregon Area Jewish Committee Learned Hand Award Luncheon

Professional Liability Fund

Ira R. Zarov
Chief Executive Officer

Board of Directors
and Officers

Frederick C. Ruby
Salem
Chairperson

William G. Carter
Medford
Vice Chairperson

Tim Martinez
Salem
Public Member
Secretary-Treas.

Lisa Almasy Miller
Clackamas

Laura E. Rackner
Portland

Valerie D. Fisher
Portland

Guy B. Greco
Newport

John A. Berge
Bend

Valerie D. Saiki
Salem
Public Member

June 14, 2011

To: Oregon State Bar Board of Governors
From: Ira R. Zarov, Chief Executive Officer
R. Thomas Cave, Chief Financial Officer
Re: April 30, 2011 Financial Statements



I have enclosed April 30, 2011 Financial Statements.

These statements show a Primary Program net income of about \$1.8 million for the first four months of 2011. There were excellent investment results that contributed significantly to the income figure. Unfortunately, there were investment declines during May and there continue to be concerns about the economic recovery.

Claim expense as of April 30, 2011 was about \$280,000 under budget. Claim frequency continues to be high. We await the actuary report to see what developments occurred for pending claims.

Attachment

**Oregon State Bar
Professional Liability Fund
Financial Statements
4/30/2011**

TABLE OF CONTENTS

<u>Page</u>	<u>Description</u>
2	Combined Balance Sheet
3	Primary Program Income Statement
4	Primary Program Operating Expenses
5	Excess Program Income Statement
6	Excess Program Operating Expenses
7	Combined Investment Schedule

**Oregon State Bar
Professional Liability Fund
Combined Primary and Excess Programs
Balance Sheet
4/30/2011**

ASSETS

	<u>THIS YEAR</u>	<u>LAST YEAR</u>
Cash	\$1,390,662.49	\$1,308,128.37
Investments at Fair Value	45,857,977.98	40,436,640.79
Assessment Installment Receivable	6,016,015.91	5,488,717.34
Due from Reinsurers	161,795.45	74,491.18
Other Current Assets	78,511.28	75,977.06
Net Fixed Assets	1,075,683.14	1,252,811.96
Claim Receivables	79,307.88	51,910.83
Other Long Term Assets	<u>10,000.00</u>	<u>10,780.00</u>
TOTAL ASSETS	<u>\$54,669,954.13</u>	<u>\$48,699,457.53</u>

LIABILITIES AND FUND EQUITY

	<u>THIS YEAR</u>	<u>LAST YEAR</u>
Liabilities:		
Accounts Payable and Other Current Liabilities	\$71,493.45	\$69,554.57
Due to Reinsurers	\$806,148.58	\$895,551.05
Liability for Compensated Absences	368,657.76	349,618.37
Liability for Indemnity	14,090,660.28	12,860,744.03
Liability for Claim Expense	12,198,685.03	10,573,036.21
Liability for Future ERC Claims	2,400,000.00	2,400,000.00
Liability for Suspense Files	1,400,000.00	1,300,000.00
Liability for Future Claims Administration (AOE)	2,300,000.00	2,200,000.00
Excess Ceding Commission Allocated for Rest of Year	477,210.28	500,742.67
Assessment and Installment Service Charge Allocated for Rest of Year	<u>16,421,444.67</u>	<u>14,946,290.66</u>
Total Liabilities	<u>\$50,534,300.05</u>	<u>\$46,095,537.56</u>
Fund Equity:		
Retained Earnings (Deficit) Beginning of the Year	\$2,349,430.48	\$1,720,386.49
Year to Date Net Income (Loss)	<u>1,786,223.60</u>	<u>883,533.48</u>
Total Fund Equity	<u>\$4,135,654.08</u>	<u>\$2,603,919.97</u>
TOTAL LIABILITIES AND FUND EQUITY	<u>\$54,669,954.13</u>	<u>\$48,699,457.53</u>

**Oregon State Bar
Professional Liability Fund
Primary Program
Income Statement
4 Months Ended 4/30/2011**

	YEAR TO DATE <u>ACTUAL</u>	YEAR TO DATE <u>BUDGET</u>	<u>VARIANCE</u>	YEAR TO DATE <u>LAST YEAR</u>	<u>ANNUAL BUDGET</u>
<u>REVENUE</u>					
Assessments	\$8,082,683.33	\$8,235,333.32	\$152,649.99	\$7,356,895.67	\$24,706,000.00
Installment Service Charge	128,039.00	118,333.32	(9,705.68)	116,249.67	355,000.00
Other Income	23,148.00	0.00	(23,148.00)	25,814.76	0.00
Investment Return	<u>1,889,931.03</u>	<u>737,284.68</u>	<u>(1,152,646.35)</u>	<u>1,168,238.52</u>	<u>2,211,854.00</u>
TOTAL REVENUE	<u>\$10,123,801.36</u>	<u>\$9,090,951.32</u>	<u>(\$1,032,850.04)</u>	<u>\$8,667,198.62</u>	<u>\$27,272,854.00</u>
<u>EXPENSE</u>					
Provision For Claims:					
New Claims at Average Cost	\$6,552,000.00			\$6,023,000.00	
General Expense	35,981.41			18,099.75	
Less Recoveries & Contributions	(30,077.45)			(2,634.10)	
Budget for Claims Expense		<u>\$6,842,526.68</u>			<u>\$20,527,580.00</u>
Total Provision For Claims	<u>\$6,557,903.96</u>	<u>\$6,842,526.68</u>	<u>\$284,622.72</u>	<u>\$6,038,465.65</u>	<u>\$20,527,580.00</u>
Expense from Operations:					
Administrative Department	\$736,431.75	\$778,330.28	\$41,898.53	\$664,652.19	\$2,334,991.00
Accounting Department	202,991.37	221,048.64	18,057.27	189,539.72	663,146.00
Loss Prevention Department	540,787.04	594,079.48	53,292.44	522,489.61	1,782,238.00
Claims Department	726,309.62	796,399.32	70,089.70	731,874.81	2,389,198.00
Allocated to Excess Program	<u>(450,034.60)</u>	<u>(450,034.60)</u>	<u>0.00</u>	<u>(407,146.96)</u>	<u>(1,350,104.00)</u>
Total Expense from Operations	<u>\$1,756,485.18</u>	<u>\$1,939,823.12</u>	<u>\$183,337.94</u>	<u>\$1,701,409.37</u>	<u>\$5,819,469.00</u>
Contingency (2% of Operating Exp)	\$0.00	\$47,797.00	\$47,797.00	\$7,553.36	\$143,391.00
Depreciation and Amortization	\$73,010.21	\$77,000.00	\$3,989.79	\$70,417.24	\$231,000.00
Allocated Depreciation	<u>(14,545.32)</u>	<u>(14,545.32)</u>	<u>0.00</u>	<u>(11,880.32)</u>	<u>(43,636.00)</u>
TOTAL EXPENSE	<u>\$8,372,854.03</u>	<u>\$8,892,601.48</u>	<u>\$519,747.45</u>	<u>\$7,805,965.30</u>	<u>\$26,677,804.00</u>
NET INCOME (LOSS)	<u>\$1,750,947.33</u>	<u>\$198,349.84</u>	<u>(\$1,552,597.49)</u>	<u>\$861,233.32</u>	<u>\$595,050.00</u>

**Oregon State Bar
Professional Liability Fund
Primary Program
Statement of Operating Expense
4 Months Ended 4/30/2011**

<u>EXPENSE:</u>	<u>CURRENT</u> <u>MONTH</u>	<u>YEAR</u> <u>TO DATE</u> <u>ACTUAL</u>	<u>YEAR</u> <u>TO DATE</u> <u>BUDGET</u>	<u>VARIANCE</u>	<u>YEAR</u> <u>TO DATE</u> <u>LAST YEAR</u>	<u>ANNUAL</u> <u>BUDGET</u>
Salaries	\$323,074.48	\$1,270,799.50	\$1,293,410.32	\$22,610.82	\$1,261,675.45	\$3,880,231.00
Benefits and Payroll Taxes	92,384.17	352,410.26	410,126.72	57,716.46	325,607.38	1,230,380.00
Investment Services	0.00	6,513.75	9,000.00	2,486.25	6,529.50	27,000.00
Legal Services	12,256.55	21,511.98	6,666.68	(14,845.30)	577.00	20,000.00
Financial Audit Services	15,000.00	15,000.00	8,333.32	(6,666.68)	22,000.00	25,000.00
Actuarial Services	0.00	6,457.50	6,333.32	(124.18)	7,091.20	19,000.00
Claims Audit Services	0.00	0.00	5,000.00	5,000.00	0.00	15,000.00
Claims MMSEA Services	850.00	4,050.00	4,000.00	(50.00)	4,000.00	12,000.00
Information Services	9,755.70	32,227.29	31,599.96	(627.33)	47,953.31	94,800.00
Document Scanning Services	2,943.54	4,105.34	33,333.32	29,227.98	43,955.95	100,000.00
Other Professional Services	4,698.00	27,782.73	15,750.00	(12,032.73)	12,720.00	47,250.00
Staff Travel	208.39	1,007.71	4,250.00	3,242.29	855.43	12,750.00
Board Travel	887.75	4,334.47	13,000.00	8,665.53	3,034.59	39,000.00
NABRICO	0.00	0.00	4,333.32	4,333.32	0.00	13,000.00
Training	28.00	685.30	4,333.32	3,648.02	2,082.02	13,000.00
Rent	40,908.58	162,727.45	163,634.32	906.87	160,407.59	490,903.00
Printing and Supplies	6,629.65	23,273.75	30,666.64	7,392.89	30,483.05	92,000.00
Postage and Delivery	2,285.22	11,372.67	12,433.32	1,060.65	12,415.28	37,300.00
Equipment Rent & Maintenance	1,834.29	9,724.27	14,333.36	4,609.09	12,263.51	43,000.00
Telephone	3,058.03	11,544.41	11,333.32	(211.09)	10,819.26	34,000.00
L P Programs (less Salary & Benefits)	25,468.71	107,329.32	161,066.80	53,737.48	106,266.43	483,200.00
Defense Panel Training	32.40	56.70	6,900.00	6,843.30	3,615.67	20,700.00
Bar Books Grant	25,000.00	100,000.00	100,000.00	0.00	0.00	300,000.00
Insurance	0.00	9,049.00	20,686.32	11,637.32	8,619.00	62,059.00
Library	2,107.47	6,555.69	8,666.68	2,110.99	7,517.28	26,000.00
Subscriptions, Memberships & Other	1,764.53	18,000.69	10,666.68	(7,334.01)	18,067.43	32,000.00
Allocated to Excess Program	<u>(112,508.65)</u>	<u>(450,034.60)</u>	<u>(450,034.60)</u>	<u>0.00</u>	<u>(407,146.96)</u>	<u>(1,350,104.00)</u>
TOTAL EXPENSE	<u>\$458,666.81</u>	<u>\$1,756,485.18</u>	<u>\$1,939,823.12</u>	<u>\$183,337.94</u>	<u>\$1,701,409.37</u>	<u>\$5,819,469.00</u>

**Oregon State Bar
Professional Liability Fund
Excess Program
Income Statement
4 Months Ended 4/30/2011**

	<u>YEAR TO DATE ACTUAL</u>	<u>YEAR TO DATE BUDGET</u>	<u>VARIANCE</u>	<u>YEAR TO DATE LAST YEAR</u>	<u>ANNUAL BUDGET</u>
<u>REVENUE</u>					
Ceding Commission	\$238,605.14	\$253,333.32	\$14,728.18	\$250,371.33	\$760,000.00
Prior Year Adj. (Net of Reins.)	1,041.01	0.00	(1,041.01)	1,270.95	0.00
Installment Service Charge	37,242.00	14,000.00	(23,242.00)	41,655.00	42,000.00
Investment Return	<u>253,412.26</u>	<u>81,920.32</u>	<u>(171,491.94)</u>	<u>181,432.10</u>	<u>245,761.00</u>
TOTAL REVENUE	<u>\$530,300.41</u>	<u>\$349,253.64</u>	<u>(\$181,046.77)</u>	<u>\$474,729.38</u>	<u>\$1,047,761.00</u>
<u>EXPENSE</u>					
Operating Expenses (See Page 6)	\$480,478.82	\$487,201.32	\$6,722.50	\$440,548.90	\$1,461,604.00
Allocated Depreciation	<u>\$14,545.32</u>	<u>\$14,545.32</u>	<u>\$0.00</u>	<u>\$11,880.32</u>	<u>\$43,636.00</u>
NET INCOME (LOSS)	<u>\$35,276.27</u>	<u>(\$152,493.00)</u>	<u>(\$187,769.27)</u>	<u>\$22,300.16</u>	<u>(\$457,479.00)</u>

**Oregon State Bar
Professional Liability Fund
Excess Program
Statement of Operating Expense
4 Months Ended 4/30/2011**

	<u>CURRENT</u> <u>MONTH</u>	YEAR <u>TO DATE</u> <u>ACTUAL</u>	YEAR <u>TO DATE</u> <u>BUDGET</u>	<u>VARIANCE</u>	YEAR <u>TO DATE</u> <u>LAST YEAR</u>	<u>ANNUAL</u> <u>BUDGET</u>
<u>EXPENSE:</u>						
Salaries	\$66,489.74	\$266,539.61	\$266,252.00	(\$287.61)	\$257,793.32	\$798,756.00
Benefits and Payroll Taxes	20,077.42	80,354.65	83,136.64	2,781.99	71,893.90	249,410.00
Investment Services	0.00	986.25	1,166.68	180.43	970.50	3,500.00
Office Expense	0.00	0.00	0.00	0.00	0.00	0.00
Allocation of Primary Overhead	32,411.49	129,645.96	129,646.00	0.04	105,992.00	388,938.00
Reinsurance Placement & Travel	522.10	1,806.69	4,000.00	2,193.31	2,626.68	12,000.00
Training	0.00	0.00	333.32	333.32	0.00	1,000.00
Printing and Mailing	0.00	1,145.66	1,666.68	521.02	772.50	5,000.00
Program Promotion	0.00	0.00	166.68	166.68	500.00	500.00
Other Professional Services	0.00	0.00	833.32	833.32	0.00	2,500.00
Software Development	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>
TOTAL EXPENSE	<u>\$119,500.75</u>	<u>\$480,478.82</u>	<u>\$487,201.32</u>	<u>\$6,722.50</u>	<u>\$440,548.90</u>	<u>\$1,461,604.00</u>

**Oregon State Bar
Professional Liability Fund
Combined Investment Schedule
4 Months Ended 4/30/2011**

	CURRENT MONTH <u>THIS YEAR</u>	YEAR TO DATE <u>THIS YEAR</u>	CURRENT MONTH <u>LAST YEAR</u>	YEAR TO DATE <u>LAST YEAR</u>
Dividends and Interest:				
Short Term Bond Fund	\$21,768.86	\$107,618.85	\$16,704.91	\$70,809.17
Intermediate Term Bond Funds	22,326.36	86,003.05	18,632.45	71,177.63
Domestic Common Stock Funds	0.00	8,333.95	0.00	8,690.46
International Equity Fund	0.00	0.00	0.00	0.00
Real Estate	0.00	53,891.91	0.00	24,479.80
Hedge Fund of Funds	0.00	0.00	0.00	0.00
Real Return Strategy	<u>0.00</u>	<u>45,257.35</u>	<u>0.00</u>	<u>36,770.49</u>
Total Dividends and Interest	<u>\$44,095.22</u>	<u>\$301,105.11</u>	<u>\$35,337.36</u>	<u>\$211,927.55</u>
Gain (Loss) in Fair Value:				
Short Term Bond Fund	\$93,760.15	\$156,298.99	\$60,452.40	\$204,672.13
Intermediate Term Bond Funds	107,227.31	128,553.47	59,333.61	216,614.49
Domestic Common Stock Funds	191,852.34	563,615.56	83,721.62	377,821.18
International Equity Fund	340,801.41	539,454.45	(89,639.69)	(2,020.03)
Real Estate	0.00	47,236.06	0.00	(3,534.86)
Hedge Fund of Funds	40,848.41	95,016.43	38,732.35	165,164.18
Real Return Strategy	<u>168,252.90</u>	<u>312,063.22</u>	<u>110,632.81</u>	<u>179,025.98</u>
Total Gain (Loss) in Fair Value	<u>\$942,742.52</u>	<u>\$1,842,238.18</u>	<u>\$263,233.10</u>	<u>\$1,137,743.07</u>
TOTAL RETURN	<u>\$986,837.74</u>	<u>\$2,143,343.29</u>	<u>\$298,570.46</u>	<u>\$1,349,670.62</u>
Portions Allocated to Excess Program:				
Dividends and Interest	\$4,762.28	\$38,212.59	\$4,106.20	\$27,634.42
Gain (Loss) in Fair Value	<u>101,816.19</u>	<u>215,199.67</u>	<u>30,587.69</u>	<u>153,797.68</u>
TOTAL ALLOCATED TO EXCESS PROGRAM	<u>\$106,578.47</u>	<u>\$253,412.26</u>	<u>\$34,693.89</u>	<u>\$181,432.10</u>

OREGON STATE BAR BOARD OF GOVERNORS
RESOLUTION IN SUPPORT OF
THE 2011 CONVOCATION ON EQUALITY

WHEREAS diversity within the legal profession, which is reflective of the diversity of cultures, experiences, abilities, race, and sexual orientation of Oregonians, is crucial to pursuing access to justice for all;

WHEREAS the Oregon State Bar is committed to serving and valuing its diverse communities, to advancing equality in the judicial and criminal justice systems, and to removing barriers within those systems;

WHEREAS the Oregon State Bar embraces its diverse constituencies and is committed to the elimination of bias in the Judicial and criminal justice systems;

WHEREAS the Oregon legal community has made much progress but has much more work to do to reach these important goals;

WHEREAS achieving equality in the judicial and criminal justice systems will require ongoing concerted and focused efforts by Oregon attorneys, legal professionals and community leaders;

WHEREAS the 2011 Convocation of Equality seeks to embody and advance these values and efforts, as it celebrates the 10th Anniversary of the first Convocation of Equality in 2001;

WHEREAS the programs, panels and presentations at the 2011 Convocation will advance diversity awareness in a number of communities, including attorneys wishing to increase their cultural competency and understanding of diverse communities; employers seeking to increase diversity in the workplace; diverse attorneys hoping to build leadership skills and to advance their professional and volunteer-service careers; and diversity supporters looking to support diversity efforts;

WHEREAS The 2011 Convocation on Equality is a keystone event that will bring positive attention and focus to the Oregon State Bar's efforts toward inclusion of all;

THEREFORE BE IT RESOLVED THAT:

We support the 2011 Convocation on Equality and encourage bar members and community leaders throughout the state of Oregon to attend and to participate;

We, as the leadership of the Oregon State Bar, agree to review the reports generated at the Convocation and to consider whether to adopt or implement any specific recommendations.

We recognize and support the work of the OSB Diversity Section and other organizations and agencies to implement the Convocation's objectives and goals, consistent with the Bar's commitment to advancing diversity in the Oregon legal community and access to justice for all Oregonians.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: June 24, 2011
From: Sylvia E. Stevens, Executive Director
Re: Support for Lawyers in China

Action Recommended

Consider a member's request that the OSB support lawyers in China.

Background

An OSB member¹ has asked the OSB to express its solidarity with lawyers in China in response to recent arrests and detention of Chinese rights lawyers. In support of the request, the member has submitted the following statement from the Committee To Support Chinese Lawyers:

Lawyers Urge Solidarity With Chinese Colleagues

"I'll bet that there will be others in the future who, like me, will become increasingly mute...

Maybe everyone should learn from me and be a tortoise hiding its head, for it's because I've done this

that not a single hair on my body has been harmed. Of course, perhaps there's been a huge earthquake inside my heart."

—lawyer Li Tiantian's blog entry, posted after her return home after two months of secret detention

On the 22nd anniversary of the violent crackdown on protesters in Tiananmen Square, Chinese authorities are engaged in the most severe crackdown on lawyers and human rights defenders since 1989. Just as the protestors who gathered in Tiananmen Square in 1989 called for democratic reform, today, many of China's human rights lawyers have developed a deep-rooted conviction that the rule of law is not merely a superficial gloss—that it in fact represents a framework for justice that applies equally to all, and with the power to hold even the State that created it accountable.

China has repeatedly avowed its commitment to the rule of law but in recent months has taken violent steps to silence its human rights lawyers. Lawyers are essential to the establishment and maintenance of the rule of law; they play an integral part in the mechanisms that lead to the even-handed and predictable

¹ The member has asked that her name not appear in materials connected with this discussion "since my family continues to do work in China and does not wish to place any Chinese colleagues and contacts at risk."

enforcement of laws. As United Nations General Assembly has unanimously recognized, there is nothing disloyal or subversive about a lawyer defending alleged criminals, unpopular clients, or whistleblowers working to bring official corruption to light.

Li Tiantian is among the wave of lawyers, human rights defenders, and activists who have been arbitrarily detained by the government since February, in apparent response to fears of a Chinese “Jasmine” revolution. Lawyers who have been disappeared, detained, tortured and beaten, include:

Tang Jitian, disappeared in February; after three weeks he was released to house arrest

Teng Biao, disappeared in February for 70 days

Jiang Tianyong, disappeared in February for two months

Liu Shihui, missing since February

Tang Jingling, charged with “inciting subversion of state power” in March

Li Fangping, disappeared for five days in April

Ni Yulan, criminally detained since April and held on unspecified charges

Jin Guanghong, disappeared tortured for ten days in April

Li Xiongbing, disappeared for three days in May

As fellow lawyers, we repudiate these attacks on our Chinese counterparts. At this time, when so many of our Chinese colleagues are being silenced, it is imperative that we speak out on their behalf in order to ensure that this disturbing abuse does not successfully quash their efforts to establish the rule of law in China.

The Committee to Support Chinese Lawyers (<http://www.csclawyers.org>) is a group of independent lawyers from outside China whose goal is to support lawyers in China in their quest to strengthen the rule of law there. The Committee, which is housed at the Leitner Center for International Law and Justice at Fordham Law School in New York City, seeks to strengthen the role of lawyers and to promote their independence.

Encourage your local Bar Association to support Chinese lawyers.

For more information and address information for open letters, please send a request to jchia@law.fordham.edu.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: June 24, 2011
From: Sylvia E. Stevens, Executive Director
Re: Revised Formal Ethics Opinion No. 2005-151

Action Recommended

Consider the recommendation of the Legal Ethics Committee to issue a revised Formal Opinion No. 2005-151 to conform it to recent changes in the Rules of Professional Conduct.

Background

Formal Ethics Opinion No. 2005-151 deals with "fixed fees," including those collected in advance and frequently referred to as "earned on receipt." The opinion was based on RPC 1.5 and 1.15-1 as they existed in January 2005 as well as existing case law governing "earned on receipt" fees.

In December 2010, the Supreme Court adopted an amendment to RPC 1.5 to clarify the circumstances under which a lawyer may charge an "earned on receipt" fee, essentially incorporating its prior case law into the rule. The LEC has modified Opinion 2005-151 to reflect the new requirements imposed by RPC 1.5. The revisions are minor and do not change the substance of the opinion; rather they make it consistent with the new version of the applicable rule, which codifies the case law cited in the opinion.

Exhibit: OSB Formal Ethics Op No 225-151 (redline)

FORMAL OPINION NO. 2005-151

[REVISED 2011]

Fee Agreements:

Fixed Fees

Facts:

Lawyer wishes to use fixed fee agreements for certain types of services that Lawyer will perform for clients. Lawyer intends to obtain most or all of the fixed fee in advance of performing any services for the client.

Questions:

1. May Lawyer enter into fixed fee agreements with clients?
2. May Lawyer deposit prepaid fixed fees in Lawyer's general account?
3. May Lawyer keep all of the prepaid fixed fee even if the representation ends before all of the work is performed by Lawyer?
4. May Lawyer charge more than the fee fixed by the agreement when the matter unexpectedly involves more work than usual for the particular matter?

Conclusions:

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

Discussion:

For purposes of this opinion, the term *fixed fee agreement* includes any fee agreement in which the lawyer's charge for specified services is a fixed dollar amount, regardless of when the lawyer is paid or how much work the lawyer must do and regardless of the name applied by the lawyer to the agreement—e.g., "flat fee," "nonrefundable retainer," "prepaid legal fee," etc.

1. *Propriety of Fixed Fee Agreements.*

Oregon RPC 1.5(a) and (b) provide:

(a) A lawyer shall not enter into an agreement for, charge or collect an illegal or clearly excessive fee or a clearly excessive amount for expenses.

(b) A fee is clearly excessive when, after a review of the facts, a lawyer of ordinary prudence would be left with a definite and firm conviction that the fee is in excess of a reasonable fee. Factors to be considered as guides in determining the reasonableness of a fee include the following:

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

(3) the fee customarily charged in the locality for similar legal services;

(4) the amount involved and the results obtained;

(5) the time limitations imposed by the client or by the circumstances;

(6) the nature and length of the professional relationship with the client;

(7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and

(8) whether the fee is fixed or contingent.

The Oregon RPCs do not prohibit fixed fee agreements. In addition, case law establishes that fixed fee agreements are permitted as long as they are not excessive or unreasonable. *In re Hedges*, 313 Or 618, 623–624, 836 P2d 119 (1992) (“[W]here a [nonrefundable fixed fee] arrangement is used ‘the designation of the fee as nonrefundable must be made by a clear and specific written agreement between client and lawyer.’”); *In re Biggs*, 318 Or 281, 293, 864 P2d 1310 (1994). The mere fact that a fixed fee may result in a fee in excess of a reasonable hourly rate does not in itself make the fee unethical. *In re Gastineau*, 317 Or 545, 552, 857 P2d 136 (1993). On the other hand, “The disjunctive use of the word ‘collect’ means that the excessiveness of the fee may be determined after the services have been rendered, as well as at the time

the employment began.” *In re Gastineau, supra*, 317 Or at 550–551; OSB Formal Ethics Op Nos 2005-15, 2005-69, 2005-97; *In re Sassor*, 299 Or 720, 705 P2d 736 (1985).

2. *May Prepaid Fixed Fees Be Deposited into the Lawyer’s General Account?*

Oregon RPC 1.5(c) provides, in part:

A lawyer shall not enter into an arrangement for, charge or collect:

(3) a fee denominated as “earned on receipt,” “non-refundable” or in similar terms unless it is pursuant to a written agreement signed by the client which explains that:

(i) the funds will not be deposited into the lawyer trust account, and

(ii) the client may discharge the lawyer at any time and in that event may be entitled to a refund of all or part of the fee if the services for which the fee was paid are not completed.

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Oregon RPC 1.15-1(a) provides, in pertinent part:

(a) A lawyer shall hold property of clients or third persons that is in a lawyer’s possession separate from the lawyer’s own property. Funds, including advances for costs and expenses and escrow and other funds held for another, shall be kept in a separate “Lawyer Trust Account” maintained in the state where the lawyer’s office is situated, or elsewhere with the consent of the client or third person. Each lawyer trust account shall be an interest bearing account in a financial institution selected by the lawyer or law firm in the exercise of reasonable care. . . .

Oregon RPC 1.15-1(c) provides:

A lawyer shall deposit into a lawyer trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred.

Ordinarily, fees are earned as work is performed. See OSB Formal Ethics Op No 2005-149. Without a clear written agreement between a lawyer and a client that fees paid in advance are earned on receipt, such funds must be considered client property and are, therefore, afforded the protections imposed by Oregon RPC 1.15-1. *In re Biggs, supra* (discussing former DR 9-101). If there is a written agreement with the client that complies with the requirements of Oregon RPC 1.5(c)(3), the fixed fee is earned on receipt, the funds belong to the lawyer and may not be put in the lawyer’s client trust account. If no such agreement exists, the funds must be placed into the trust

account and can only be withdrawn as earned. See, e.g., *In re Hedges, supra*; OSB Formal Ethics Op No 2005-149.

3. *Early Termination by Client and the "Nonrefundable Fee."*

A lawyer who does not complete all contemplated work will generally be unable to retain the full fixed fee. This is consistent with *In re Thomas*, 294 Or 505, 526, 659 P2d 960 (1983), in which the court stated: "It would appear that any fee that is collected for services that is not earned is clearly excessive regardless of the amount." [Moreover, Oregon RPC 1.5 \(c\)\(3\)\(ii\) requires the lawyer to inform the client in the written fee agreement that the client may be entitled to a refund of all or part of the fee if the services for which the fee was paid are not completed.](#)

Accordingly, even a fee designated as "nonrefundable" is subject to refund if the specified services are not performed. Thus, designation of a prepaid fixed fee as "nonrefundable" may be misleading, if not false, in violation of Oregon RPC 8.4(a)(3) (prohibiting conduct involving "dishonesty, fraud, deceit or misrepresentation that reflects adversely on the lawyer's fitness to practice law"). Whether, or to what extent, a bad-faith termination by a client near the end of a matter requires a refund of fees paid in advance is a question beyond the scope of this opinion.

4. *Charges in Excess of Fixed Fee Agreement.*

A lawyer may not charge more than the agreed-on fee, and any fee charged in excess of the agreed-on fee is excessive as a matter of law. It follows that unless either (a) the fee agreement itself allow for changes over time¹ or (b) the fee agreement is permissibly modified pursuant to OSB Formal Ethics Op No 2005-97, the agreed-on fixed amount is all that the lawyer may collect.

Approved by Board of Governors, ~~August 2005~~ **June 2011**.

¹ For example, a fixed fee agreement might provide a fixed fee for each stage of a project rather than a fixed fee for the whole. Similarly, agreements that allow periodic adjustments to hourly fees or costs are also permissible unless illegal or otherwise unreasonable.

COMMENT: For additional information on this general topic and other related subjects, see THE ETHICAL OREGON LAWYER §§3.2, 3.14, 3.19 (Oregon CLE 2003); [FEE AGREEMENT COMPENDIUM CH. 11 \(UPDATED 4/2011\)](#); RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS §§34, 38 (2003); and ABA Model Rule 1.5.

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OREGON STATE BAR

Board of Governors Agenda

Meeting Date: June 24, 2011
Memo Date: June 10, 2011
From: Tamara Kessler, Oregon New Lawyers Division Chair
Re: ONLD Report

The ONLD Executive Committee met three times since the last BOG meeting. In April, the Executive Committee approved the ONLD's revised mission statement and goals, discussed participation in the Daily Journal of Commerce newsletter, and considered ways to assist Chief Justice DeMuniz in promoting the iCivics website to Oregon schools.

The May Executive Committee meeting included a presentation from the ABA Young Lawyers Section secretary/treasurer candidates and a discussion on the two new practical skills programs. In May the ONLD's High School Essay contest concluded and winners were selected. This year the ONLD was excited to receive 20% more participants than last year.

After-work social events held on April 21 in Salem and Bend were well attended and positively received. The Portland socials are a continual hit month after month with more than 100 members attending the April and May events. The after-work socials provide an opportunity for ONLD Executive Committee members to promote its activities and encourage ONLD member in that region to volunteer in subcommittees. In addition, the social events provide an opportunity for new lawyers in that region to network and socialized in a manner that may not otherwise be available.

The CLE Subcommittee hosted CLE programs in conjunction with the April and May executive committee meetings held in Eugene and Bend. The Eugene program, focusing on DUII prosecution and defense, saw more than 20 attendees. The program in Bend, focusing on ethics, included roughly 25 bar members.

The ONLD's special project task force has made significant strides in their pursuit to secure various volunteer opportunities for new lawyers to contribute. Since the last BOG meeting the program application was finalized and new lawyer members were given a quick deadline to express interest. The task force is currently working to finalize matches between the new lawyer and the placement agency. 38 new lawyers applied for the first round of this new program and the ONLD anticipates the ability to place all of these candidates in a volunteer position. Training CLE programs are set to begin on June 25.

The Executive Committee sponsored a refreshment table at the MBA's Law Student golf event on May 23 and co-sponsored a social for minority bar associations on June 2. Both events provided an opportunity for outreach to segments of the division's membership that participate in ONLD events less frequently.

2011 ONLD Master Calendar

Last updated June 6, 2011

Date	Time	Event	Location
June 16	Noon	Ethics CLE	Multnomah Co. Courthouse
June 16	Noon	Solo practice CLE	CCC, Oregon City
June 16	2:00 p.m.	Estate Planning CLE	Kells Irish Pub, Portland
June 24-25	9:00 a.m.	BOG Board Meeting	OSB, Tigard
June 25	10:15 a.m.	St. Andrews Legal Clinic Run for Justice	The Madeleine Parish, Portland
June 29	5:00 p.m.	After-work social	TBD, Portland
July 21	Noon	Jury selection CLE	Multnomah Co. Courthouse
July 26-27	All Day	Bar Exam	Portland
July 27	5:00 p.m.	After-work social	TBD, Portland
July 29	9:00 a.m.	BOG Committee Meeting	OSB, Tigard
August 4-6	All Day	ABA Annual Meeting	Toronto, Canada
August 5-7	All Day	OLIO Orientation	Hood River Inn, Hood River
August 5	7:00 p.m.	ONLD Social Event at OLIO	Hood River Inn, Hood River
August 6	9:00 a.m.	Executive Committee Meeting	Hood River Inn, Hood River
August 17-21	All Day	Lane County Fair	Lane County Fairgrounds
August 18	Noon	IP CLE	Multnomah Co. Courthouse
August 26-27	9:00 a.m.	BOG Board Meeting	Red Lion, Pendleton
August 31	5:00 p.m.	After-work social	TBD, Portland
September 15	Noon	IP law CLE	Multnomah Co. Courthouse
September 16	5:30 p.m.	CLE Program & Social	TBD, Medford
September 17	9:00 a.m.	Executive Committee Meeting	Rogue Regency, Medford
September 23	9:00 a.m.	BOG Board & Committee Meetings	OSB, Tigard
September 28	5:00 p.m.	After-work social	TBD, Portland
October 6	1:30 p.m.	Swearing In Ceremony & Reception	Willamette University, Salem

October 13-15	All Day	ABA Fall Conference	Seattle, WA
October 20	Noon	Family law CLE	Multnomah Co. Courthouse
October 22	9:00 a.m.	Executive Committee Meeting	OSB, Tigard
October 22	6:00 p.m.	BOWLIO	Pro 300 Lanes, SE Portland
October 25	2:00 p.m.	Pro Bono Fair	World Trade Center, Portland
October 26	5:00 p.m.	After-work social	TBD, Portland
October 28	TBD	HOD Annual Meeting	OSB, Tigard
October 29	All Day	Super Saturday	OSB, Tigard
November 4	5:30 p.m.	Annual Meeting	Hotel Monaco, Portland
November 17	Noon	Products liability CLE	Multnomah Co. Courthouse
November 17-19	All Day	BOG Retreat	The Allison, Newberg
December 15	Noon	Professionalism	Multnomah Co. Courthouse

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: June 24, 2011
Memo Date: June 10, 2011
From: Tamara Gledhill-Kessler, Oregon New Lawyers Division Chair
Re: Request for Federal Funding

Action Recommended

Consider the Oregon New Lawyers Division request to seek federal funding for the Law College Program.

Background

During the ONLD's work to create the Practical Skills through Public Service program it became evident that an extensive training program was needed to meet an increased demand on our legal community for lawyers who are able to practice in Federal Court. Chief Judge Ann Aiken encouraged the ONLD to develop such a training program and encouraged the division to seek funding from the U.S. District Court Attorney Admission Fund.

The following pages include the ONLD and Federal Bar Association Young Lawyers Division proposal and the first workshop outline.

New Opportunities – Practice Area Workshops for Attorneys

Program Proposal jointly submitted by the ONLD & the FBA Young Lawyers Division

I. Purpose of Program

This program will provide training and practical experience for underemployed or unemployed new attorneys in specific practice areas so that they may gain experience while serving legal needs of Oregonians.

II. Why the Program is Necessary

This program can serve two unmet needs in our legal community: lawyers who need work and Oregonians who need lawyers. To help new lawyers better serve their clients, the program will train these attorneys in specific areas of the law.

A. New lawyers are not receiving training

As a result of the lack of employment opportunities, newer attorneys are not receiving the training and mentoring that comes with their first employment. The program will serve to bridge the gap between the academic, theoretical education of law school and the practical experience that comes with employment.

B. There are a large number of Oregonians who need legal representation

There is also a need to provide quality legal representation for underserved Oregonians. Legal Aid and other services are overwhelmed by requests, and this program could train additional lawyers to help meet the needs of Oregonians.

III. Areas of the Law

This program will create training programs in the following areas of the law: (1) social security benefits; (2) residential mortgage lending and foreclosure; (3) personal bankruptcy; and (4) basic estate planning.

IV. Program Details Overview

The training programs will take place at the Mark O. Hatfield United States Courthouse, Portland, Oregon, and be taught by legal professionals and leaders in the community. The goal is to have participants become competent in the specific area so they can handle cases without assistance. The programs will be offered free of charge or for a nominal fee to interested attorneys.

A. Curriculum

The curriculum will include basic skills such as filing deadlines and requirements, local rules instruction, guidance on common issues/problems, and tips for organization, as well as more complex issues such as analysis from the court, review of actual cases, assessment of outcomes from actual cases and a mock case that will be litigated by the participant from start to finish. Each program will be taught over a period of two to three days and will be eligible for CLE credit for attorneys and possibly mentorship hours through the OSB's Mandatory Mentorship Program.

1. Areas of Law

The first program will be Social Security Law. This is an area that is very accessible for new attorneys because of its non-adversarial nature, its discrete issues, and the ability to work in different stages, such as representation at the administrative hearing. Many attorneys in this practice area have commented that it is a collegial bar and not contentious.

Attached as Exhibit A is the proposed curriculum for the Social Security Law program.

Subsequent programs on foreclosure, bankruptcy, and trusts and estates will follow.

2. Instructors

The instructors will design the curriculum, homework assignments and review the material submitted by the participants. Participants will submit a work product for review by the instructors.

3. Pro Bono Requirement

Each participant is also required to complete 10 pro bono hours in the subject area. The pro bono hours should be completed through the Oregon New Lawyers Division Pro Bono project or Federal Bar Association tailored to that practice area.

B. Funding

This committee requests up to \$4,000 per law college from the U. S. District Court Attorney Admissions. Funds are necessary to provide materials to students, promotion of the program, and thank-you luncheon for instructors.

1. Costs of students to attend/payment to instructors

The program will be provided at a nominal cost or free to qualified applicants. The time instructors will spend teaching each program is not insignificant; instructors will prepare program materials and provide feedback on homework assignments. Hopefully, however, most of the instructors will volunteer their time and count the hours dedicated to teaching the program as pro bono hours or mentoring hours.

2. Fee waiver to Federal Bar

In addition, the proposal requests a fee waiver for lawyers seeking admission to the federal bar in exchange for the student/lawyer taking a pro bono federal case.

EXHIBIT A

Social Security Disability Law Workshop

Proposed Instructors:

1. Plaintiff's Attorneys:

- a. Kathryn Tassinari, Brent Wells
- b. Additional Recommendations to be confirmed: Jeff Mates (Columbia County), Sharon Maynard (Portland), Sara Robinson-Glasser (Southern OR), and George Wall (Portland); Brent Walls (Eugene); Drew Johnson (Eugene)

2. Social Security Administration: (awaiting approval from administration to participate)

- a. Administrative Law Judge
- b. Office of General Counsel
 - i. OGC attorneys are willing to participate with the caveat that their involvement will be limited given that the training is essentially for opposing counsel.

3. Judicial Staff:

- a. Law clerks as available
- b. Court Room Deputy for Local Rules Training
- c. Nicole Munoz for CM/ECF training

Length of program: Two to three eight hour days, with a sample record and case studies for homework and assessment. Dates may include 3 successive Friday or Thursday, Friday, and Monday. (maybe have the program run Thursday-Monday so Instructors have weekend to grade homework).

Due to the complexity of complaints to federal court, the program will focus significantly on representing clients at the administrative hearing level. Representation at this stage allows attorneys to gain experience before a judge, working with clients, and developing the record.

Potential Resources: SSA Hornbook, Federal Court SSA handbook, Kate McKeon's SSA materials; *Social Security Disability Law and Procedure in Federal Court* (2010); Panels and topics from the Bar/Bench Conference

Proposed Curriculum:

I. Day 1: Overview

1. SSA Disability Process Overview – Kate McKeon, other federal clerks, ALJ, OGC panel from
 - a. Filing a claim
 - b. Hearing
 - c. Decision
 - d. Appeal
 - e. Federal Court Complaint
 - i. 4 year time lapse between initial application and district court review
2. Eligibility for SSA Disability -- Kate McKeon, other federal clerks, ALJ
 - a. Regulations
 - i. DIS and SSI

- b. Sequential Evaluation (The Five Steps 20 C.F.R. §§ 404.1520 & 416.920)
 - i. Is the claimant working?
 - ii. Does the claimant have a “severe” impairment?
 - iii. Does the claimant have a “listed” impairment?
 - iv. Can the claimant perform her “past relevant work”?
 - v. Can the claimant perform “other work in the national economy?”
 - vi. Each step potentially dispositive.
- c. Various standards

II. Day 2 – Case Selection & Administrative Work

1. Case Selection – Kathryn Tassinari, Brent Wells, other plaintiffs’ attorneys.
 - a. Selecting cases
 - b. How do you get paid?
 - i. Administrative Level
 - ii. Appellate Level (EAJA)
2. Integrating SSA into your law practice - Kathryn Tassinari and other plaintiffs’ attorneys
 - a. Advertising for clients
 - b. Getting paid
3. Developing the Record
 - a. Contents of Record
 - i. Application materials
 - ii. Medical records
 - iii. Arranged by provider in reverse chronology
 - iv. Claimant Questionnaires
 - v. 3rd party Questionnaires
4. The Hearing - ALJ and plaintiffs’ attorneys
 - a. Purpose of hearing
 - b. How to represent your client
 - c. Preparing you client
5. The Appeal Process
 - a. Client’s perspective
 - b. Attorney’s role

III. Day 3 – Appellate Work

1. Filing a Complaint in Federal Court
 - a. CM/ECF
 - b. US District Court, District of Oregon Local rules – Court Room Deputy
2. Complaint in Federal Court
3. Common Issues – federal clerks, plaintiffs’ attorneys
 - a. Rejection of treating doctors and witnesses

- b. Explaining and applying the RFC
 - c. Hypothetical/VE testimony
 - d. Dictionary of Occupational Titles
- 4. Brief Writing – law clerks, plaintiffs’ attorneys
 - a. Elements of the brief
 - b. Writing style, etc.
 - c. Research tools (Westlaw, Lexis, Law librarians?)

IV. Practical Experience

- 1. Federal Clerks: Judges and clerks will select a few qualified applicants for a short term externship to draft an Opinion or Findings and Recommendation on a live case
- 2. Mentoring Opportunities: Observing ALJ hearings

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: June 24, 2011
Memo Date: June 10, 2011
From: Public Service Advisory Committee
Re: Lawyer Referral Service -- Percentage Fee Funding

Action Recommended

Approve development of a percentage-fee funding model for the OSB Lawyer Referral Service (LRS) with the goal of raising program revenue sufficient to cover Referral & Information Services (RIS) program expenses. Direct bar staff, with assistance of the Public Service Advisory (PSA) Committee, to draft new policies and procedures for LRS that address operational and administrative issues identified by the BOG and PSA Committee. Direct the Executive Director and, as needed, the Policy & Governance Committee to proceed with any necessary changes to OSB bylaws, bar policies and the Oregon Rules of Professional Conduct.

Background

The OSB created the LRS in 1971 to match people seeking legal help with appropriate lawyers based on areas of practice, location and special services provided. Approximately 1,300 bar members currently participate as LRS panel attorneys. The basic LRS operating system supports other specialized referral panels within RIS: the Modest Means Program, Military Assistance Panel, Problem Solvers and Lawyer to Lawyer services.¹

RIS is supported through a combination of LRS panel registration fees and general bar funds. Over the past 20+ years different committees and boards have reviewed the LRS/RIS funding model, generally with the stated goal of making the program and/or department financially self-supporting. In 2009 the BOG asked the PSA Committee and bar staff to develop a new funding model for LRS, and assigned a monitoring role to the BOG's Access to Justice Committee. Since that time PSA Committee members and staff have reviewed various funding options, making regular reports to the BOG Access to Justice Committee. Other BOG committees and the full board have also discussed the topic. The PSA Committee has concluded that a percentage fee system is in the best

¹ With the exception of the Modest Means Program, these are all "pro bono" services in which lawyers provide services at no cost to the client. Lawyers participating in the Modest Means Program agree to charge a reduced fee; eligible clients earn no more than 225% of the Legal Aid/Federal Poverty Guideline income limits.

interests of the LRS and the bar, and recommends that the BOG move forward with implementation for the 2012 program year.

A percentage fee system offers the potential to make LRS self-supporting while also funding needed program improvements. It is our understanding that the vast majority of state and local bars have adopted a percentage fee model and that none have reverted back to a registration fee-only model. The other possible option is to increase panel registration fees, but the PSA Committee does not recommend this option as it is unlikely to raise substantial revenue and is instead likely to result in decreased revenue from reduced participation. In addition, a percentage-fee system is the most equitable option in that only those who *choose* to participate in LRS and *financially benefit* as a result will pay anything beyond the basic registration fees.

Implementation will be a complex process involving extensive member communications and regular reports to the BOG through its Policy & Governance Committee. Specific issues to address include:

- Determining the appropriate percentage amount(s) and whether to include thresholds and/or caps;
- Minimizing administrative burdens on panelists;
- Consideration of education/experience requirements for certain panels;
- Timeline for implementation;
- Compiling and consolidating percentage fee model best practices from around the country and drafting new policies, procedures, and rules to effectuate all of the foregoing.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: June 24, 2011
Memo Date: June 14, 2011
From: Chris Kent, Chair, Budget & Finance Committee
Re: Proposals for Tenant and Capital Improvements at the Bar Center

Action Recommended

1. Action on the tenant improvements for the vacant space on the first and third floor and other capital improvements at the bar center.
2. Authorize the bar's CFO to continue exploring a loan for funding the tenant and other capital improvements.
3. Engage Macadam Forbes as brokers for leasing the vacant space at the bar center.

Background

Here is a summary of various capital improvement matters at the bar center, primarily addressing the undeveloped space which would be developed for third-party tenants.

Tenant Improvements on the First and Third Floor

First Floor – The undeveloped space on the first floor is 2,058 r.s.f. The initial idea the Budget & Finance Committee considered for this space was to create 5 to 6 single room offices which would be rented to individual members or other professionals. Upon discussion by the Committee at its last meeting, this was considered not the best use of the space. The results of a survey to members about office space and the subsequent conversation with about ten attorneys who provided interest and contact information in the survey confirmed that this form of "executive office" would not be the best use of the space for the bar.

The best use of the space is a tenant with a 2 plus-year lease. However, per the bar's real estate contact, there are numerous office spaces of approximately 2,000 s.f. available in the metropolitan area. The bar's space is undeveloped making it harder for prospects to envision the space, and if a prospect were interested, being undeveloped would delay the prospect's occupancy. The recommendation is to partially improve the space by installing the walls, flooring, ceilings, some electrical and plumbing, and create one office in the most practical space. A simple design has been created and shared with a contractor to provide an cost estimate for those improvements. The bar eventually will be responsible for all costs of the improvements to this space; but the initial plan is to improve some of the space to make it more marketable.

Third Floor – The undeveloped space on the third floor is 2,496 r.s.f. As has been reported previously, because of its location on the third floor and the shape, this space is more difficult to lease, so the recommended plan is to move the Admissions and Lawyer Referral Departments to the undeveloped third floor space. Currently those two offices occupy

approximately 2,100 r.s.f. on the first floor. The two first floor offices then would be marketed for lease to third parties. Based on early estimates, the cost to improve the third floor space is \$120,000. Adding to the cost is the intent to make the space occupied by the Lawyer Referral Assistants more conducive to a call center by adding better acoustical surroundings and to add the office occupied by a Legal Publications employee to the Admissions Department space.

Other Capital Improvements at the Bar Center

Exterior Signage - Due to the lack of name identity on the building, the bar has explored adding "Oregon State Bar" on the exterior of the third floor to the right as one faces the main entrance. (A drawing of the proposed sign is available at the meeting.) This would make the bar's name more easily identified from Carmen Drive and other streets for infrequent visitors to the bar center. Proposals have been submitted to four vendors and preliminary information indicates an installed back-lit sign will cost approximately \$10,000.

Replace the wood floor - An ongoing flaw in the construction of the bar center is the consistently expanding planks in the wood floor in the receptionist area and hallways of the second floor. Over the three years since installation several planks have continued to shrink and expand creating noticeable gaps in the floor when the planks shrink. Over the years the bar has had numerous meetings with Opus NW, the manufacturer, the installer, the architect and third-party consultants. The cause of the shrinkage appears to be the irregular humidity in the air in the summer and winter months. A plan devised before Opus terminated its lease was to have Opus and the architect share in the cost remaining after the bar absorbed a depreciated value of the floor. The last cost estimate to remove the wood floor and replace it with carpet was approximately \$11,000. With Opus no longer absorbing a share of the cost, the bar could expend \$7,000 to \$8,000 to replace the wood floor.

Summary of Cost of Capital Improvements

The schedule below is only a "best guess" estimate of the costs to fully complete each improvement. Contractors have submitted estimates for the improvements on the third floor and the exterior signage. Only the sign is a formal proposal. The other estimates are based on information from the same contractors. In each case, the estimate should be the high end of the contractor's estimates.

Capital Improvement	Estimated Cost
Vacant Space First Floor - Tenant Improvements <i>(completely improve the space, not just the initial work for marketing purposes.)</i>	\$ 72,000
Vacant Space Third Floor - Improvements for Bar Departments	120,000
Tenant Improvements of Space vacated by Admissions and Lawyer Referral Departments	30,000
Exterior Signage	10,000

Replace the wood floor	8,000
Total	\$ 240,000

Funding for the Tenant and Capital Improvements

The bar has the resources to fund the tenant improvements in the Landlord Contingency Fund – a fund designated for funding shortfalls in long-term rental income or paying for tenant improvements. The balance in the fund is \$557,557. (This is the balance before the \$100,000 reallocated to the 2011 operation budget.)

Since the Budget & Finance Committee has discussed the possibility of deferring a member fee increase for another year, one manner would be to borrow the funds for the tenant improvements and reallocate another portion of the Landlord Contingency to the operations budget, as was approved for the 2011 budget with the reallocation of funds from the Capital Reserve, the legal fees contingency and the landlord contingency. If \$240,000 is reallocated to the operations budget, this is approximately 34% of the revenue generated from a \$50,000 member fee increase. There still would need to be other sources of revenue identified or cost savings to offset the remaining 66%.

The decision to borrow does not need to be made now and can be made during the normal development of the 2012 budget.

To determine the viability of a loan, the bar’s CFO met with representatives of West Coast Bank (the bank with which the bar has its checking account). That discussion indicated a reasonable approach is for the bar to borrow the amount of the actual tenant and capital improvements and amortize that loan over three years. At current conditions, the loan interest rate would be 4.75% to 5% with a ½ of 1% fee (\$1,200 if \$240,000 borrowed). The collateral for the loan probably would be a similar amount of the bar’s investments held by West Coast Trust managed by Becker Capital. The bar would fund the construction costs and be reimbursed with the term loan. If the bar moves ahead with the improvements, the decision to borrow would not have to be made until the improvements are complete, which probably would not be until the latter months of 2011.

The bar and the bank also discussed a line of credit for the construction loan or the term loan, but this is not practical if the intent is to help defer the member fee increase.

Broker Listing Agreement

The bar has worked with Kevin VandenBrink of Macadam Forbes for the past five years for its real estate brokerage needs. Macadam Forbes found the buyer of the former bar building and brought Opus NW and the bar together to develop the building that is the current bar center. Mr. VandenBrink continues to offer real estate advice and information to the bar and referred the most frequent renter of the meeting rooms to the bar.

A brokerage agreement to lease the vacant office space will be available for action at the meeting.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: June 24, 2011
Memo Date: June 9, 2011
From: BOG Member Services Committee
Re: Executive Committee Recommendation to Sunset the Law Practice Management Section

Action Recommended

Sunset the Law Practice Management (LPM) Section as requested, transferring its assets (list serve and fund balance) to the PLF's practice management program.

Background

At its final meeting of 2010, the LPM Executive Committee discussed whether the section has accomplished its purpose and should consider winding down in 2011. The committee focused on several factors, including the section's past history and considerable success in influencing both the OSB and Professional Liability Fund (PLF) to fully embrace the law practice management cause.

When the LPM Section was at its zenith, there were no Practice Management Advisors, and other law practice management organizations (e.g., for professional administrators) either did not exist or were just starting out. The LPM Section was the forum for discussing all law practice management issues, and produced all of the law practice management-related continuing legal education programs. The LPM Section even predates the existence of the OSB's CLE Seminars Department.

The OSB and PLF have since created departments to fulfill functions for which the LPM Section was the original and sole provider many years ago. There is now an entire department of the PLF devoted to law practice management, three full-time Practice Management Advisors, and many professional trade groups for administrators to join. The Practice Management Advisors provide free and confidential assistance with office systems for a wide range of needs including: Setting Up a Law Practice, Financial Management, Office Systems, Client Relations, Technology, Closing a Law Practice and Office Management Resources. Moreover, both the PLF and OSB now produce law practice management CLE's.

The LPM Section successfully shone a spotlight on the importance of law practice management-related issues to the extent that both organizations' cultures shifted to put considerable resources behind law practice management as an education and loss prevention priority. Accordingly, the Law Practice Management Executive Committee recommends that the Board of Governors sunset the section and further recommends the following with respect to disposition of its remaining assets:

- Donate its website and list serve content to the PLF's Practice Management Advisors.
- Donate its fund balance to the PLF's practice management programs to be used for the purpose hiring nationally-recognized Law Practice Management experts as CLE seminar presenters.

BOWERMAN & DAVID, PC

ATTORNEYS AT LAW

Attorneys

DONALD B. BOWERMAN
KRISTEN S. DAVID

1001 Molalla Avenue, Suite 208
Mailing Address: P.O. Box 100
Oregon City, Oregon 97045
(503) 650-0700
Fax: (503) 650-0053

Legal Assistants

COURTNEY M. DEKREY
KATHY DOWNEY
TRISH L. KUNTZ

June 1, 2011

Kay Pulju
Oregon State Bar
Communications Manager
PO Box 231935
Tigard, OR 97281

Re: Membership Directory

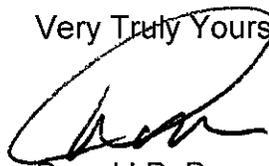
Dear Ms. Pulju:

I am writing to you on behalf of the Executive Committee of the Aviation Section of the Oregon State Bar to protest the decision by the Bar to terminate the printing and distribution of the Membership Directory in its previous format.

We understand that the decision to eliminate the Directory (as we knew it) was in part a "cost saving measure". (Now it can be ordered for about \$20.) It was one of the services that was universally used and valued by the membership.

We are confident that better "cost saving measures" could have been found by at least one of the 90-plus employees of the Bar.

Very Truly Yours,



Donald B. Bowerman

DBB/cmd

cc: Stephen V. Piucci, President OSB
Michelle Garcia, BOG
Tom Kranovich, BOG
Sue McKeon, Chair, Aviation Section
Sarah Hackbart, OSB



**Kranovich
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Phone: (971) 204-0260 | Fax: (971) 204-0261

June 14, 2011

RECEIVED

JUN 16 2011

**Oregon State Bar
Executive Director**

Donald B. Bowerman
Bowerman & David, PC
PO Box 100
Oregon City, OR 97045

RE: Membership Directory

Dear Don:

Thank you for copying me with your letter of June 1, 2011 to Kay Pulju at the Oregon State Bar. I apologize for not responding sooner but this is the first chance I have had to write.

I was not a board member at the time that it was decided to discontinue the printed directory and go to an online directory. Since joining the BOG I have heard some discussion regarding how the change came about and from what I have heard I conclude that the decision to move to an online directory was thoroughly discussed and not lightly made.

I understand that the decision was based upon many factors, including but not limited to: 1) financial considerations, 2) accuracy/currency concerns 3) current business and court/bar trends, and 4) sustainability, and 5) membership impact.

The financial considerations are somewhat obvious. There is significant cost in printing and distributing the printed directory. While I fully appreciate your feeling that better cost saving measures can be found I can assure you that, at least since my tenure, the BOG is constantly looking at revenue saving measures. However, any step taken by the BOG to control costs inevitably results in some segment of the membership taking exception to the decision.

Accuracy and currency are also somewhat obvious. The bar is in a constant state of flux and the directory is out of date on the day that it is sent to the printer. Unfortunately, this is especially so in the current economic environment where there is less stability in the legal field and more movement from firm to firm.

My use of the term "business and court/bar trends", above, is inaccurate. In the business filed, the use of online services has moved from a trend to a current business model. In the courts, the same is true of the Federal Court System which handles all documents and written communication via electronic media. In the state court it is still a trend but even the State Court is moving as quickly as it can toward the business model. We are already required to have email capability and to list our email addresses on our pleadings. In almost every county notices are being sent via email.

Donald B. Bowerman

June 14, 2011

Page 2.

The Chief Justice's E-court efforts may have been side tracked for financial reasons but the transition of the courts to an electronic filing and communication model is inevitable. The efficiencies and the cost savings are too compelling. For some clients a firm's access to electronic research and its ability to communicate electronically is a prerequisite to getting and/or keeping their business. Lawyers who are not computer literate and facile in word processing, electronic research and capable of putting together a power point presentation are becoming unemployable.

As to sustainability, this goes beyond saving a few trees. While some of our membership celebrates the "tree hugger" approach, to me the advent of curbside paper recycling weakens that argument. To me sustainability has to do more with the business model, addressed above. A large and ever growing number of our members cannot see any reason to print information that can be readily obtained online. To them the practice of relying on print is not sustainable for any reason, environmental, economic or otherwise. To them we are wasting the bar's resources by continuing to print and mail bar materials.

It was through the process of balancing the member's needs, their customs and habits, with the considerations addressed, above, that the decision was made. It is not a surprise that there has not been universal acceptance but we are doing what we can to address the needs and concerns of all the membership. At the same time, we realize that we cannot make everyone happy.

While I have known for some time that it was (and is) inevitable, I cannot truthfully say that I am entirely comfortable with the demise of paper. I like being able to reach to that familiar spot on my desk and picking up my well worn directory with commonly called numbers highlighted (and maybe even tabbed). It took a while for me to break that habit and learn to click on the icon that takes me directly to the online membership directory. I still sometimes miss the paper but less and less all the time.

Please know that there is an ongoing effort to make the online directory more "user friendly"; more intuitive. For example, if someone mistakenly looks for me by spelling my last name as "Kranovitch" it will result in "no match" found. Keying only "krano" takes you right to me. The current system is pretty good at finding partial spellings but bad at sorting out misspellings. You will not be found under "Bowermun" but your name pops up by entering "Bower". This problem and others are being worked on but only the user can break the habit of reaching for the familiar paper directory.

Don, I do appreciate your letter and I do share some of the membership's frustration with the changing way with which we obtain information and the way we are forced to practice law. I find it absolutely appalling that jurors are coming to expect a power point presentation on opening statement and on closing argument. I find it annoying that judges are beginning to set their own picky rules, above and beyond the UTCR's and the Local Supplemental Rules, simply because of their perceived ease in our accommodating them due to the availability of electronic dissemination of information. It frustrates me that jurors have the attention span of a cat and seem to want to be entertained as much as informed. But, it is the world in which I live and practice.

Donald B. Bowerman
June 14, 2011
Page 3.

I understand that Michelle Garcia, public BOG member and long time personal friend of yours, will be hand delivering you a courtesy copy of the print directory. I would have just sent you a copy but she wanted to personally present it to you. She is a great lady and, like all of us, thinks and speaks very highly of you.

Sincerely yours,

Tom Kranovich

CC: Michelle Garcia
Stephen Pucci
Kay Pulju
Sylvia Stevens ✓



Lane County Bar Association
PO Box 40313
Eugene, OR 97404

(541) 729-3622
www.lanecountybar.org

June 5, 2011

RECEIVED
JUN 08 2011
Oregon State Bar
Executive Director

Sylvia Stevens
Office of the Executive Director
Oregon State Bar
PO Box 231935
Tigard, OR 97281

Dear Ms. Stevens:

The Lane County Bar Association, through its Board of Directors, respectfully requests that the Oregon State Bar resume publication of its traditional printed Membership Directory, starting in 2012.

The OSB directory has been one of the most-used benefits of bar membership. It has served as both a tangible reminder of our shared involvement in the bar, and as a convenient reference manual. For some attorneys, the OSB Membership Directory has been the one service of the state bar organization that they actually used and appreciated on a day-to-day basis.

We recognize that we are living in an increasingly electronic world, and that many attorneys may now use the OSB's website to find other attorneys. However, just as the telephone company's printed Yellow Pages still provide an important service to the public, a printed OSB Membership Directory would still provide an important service to attorneys. Many older attorneys are more comfortable with a printed format. The nature of a printed page allows certain search strategies that are not easily done electronically.

One must wonder if the new system actually is more efficient or not. Without a printed Membership Directory, one must go to the OSB website, go to the membership directory, and type in up to four lines of data. The search may or may not be successful, and so there may be multiple searches before finding the correct information.

The fact that the Oregon State Bar continues to publish a printed "Resource Directory" undercuts the argument that attorneys should be getting their information electronically. Some of our members report that they have never used the new (2011) Resource Directory, because it does not have membership information in it. The simple listing of attorney names in the new

Resource Directory is of limited value at best. One must wonder, if advertisers sense that attorneys are not using the new Resource Directory as they did the traditional Membership Directory, will advertisers continue to pay for listings and display ads that fewer attorneys see?

We recognize that an attorney may download a pdf format listing of attorney names and contact information, or pay for what appears to be a photocopied version of that list. However, that is a poor substitute for the full traditional Membership Directory, which in one volume included both the information now found in the printed Resource Directory and all of the information provided on the OSB website concerning member contact information.

Thank you for your consideration of this request. We hope that all Oregon attorneys can look forward to a full, printed Membership Directory in 2012.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kristie L. Gibson', with a stylized flourish at the end.

Kristie L. Gibson
President

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: June 24, 2011
From: Derek Johnson, Public Affairs Committee Chair
Re: Professionalism Commission Nomination

Action Recommended

Consider the recommendation of the Public Affairs Committee to nominate Dave Barrows for the Edwin J. Peterson Professionalism Award.

Background

This outlines why the Public Affairs Committee recommends David S. Barrows as the recipient of the 2011 Edwin J. Peterson Professionalism Award. He was an active member of the Oregon State Bar from 1961 until 1995, when he changed his status to inactive.

Although this award is usually made to an active member of the bar, Mr. Barrows' career justifies an exception. This award is appropriate for members of the profession who have practiced in a non-traditional ways, and many lawyers are involved in the legislative process. Dave Barrows is what a professional lawyer lobbyist looks like. He has provided an example for all Oregon lobbyists to emulate – lawyers and non-lawyers alike. Mr. Barrows would have broad support to receive this award from the lawyers in the Oregon lobby.

Mr. Barrows received his bachelor's degree from Willamette University in 1957, and his law degree from Willamette in 1961. Dave Barrows has been an active lobbyist since 1959, and as such is among the longest serving lobbyists in state history. His wealth of experience, integrity, respect for the institution of the legislature and for those involved in it have rightly earned him the sobriquet "The Dean of the Lobby". Mr. Barrows has worked with the bar to shape its biennial Legislative Tips Workshop and Handbook through 2011.

He has represented a wide variety of clients, including the Oregon League of Financial Institutions, Burlington Northern Santa Fe, Chemical Waste management of the Northwest and OMSI. He represented the savings and loan industry in Oregon from 1966 to 1999. He has participated in many civic and not for profit activities, including the following: chair of the Freedom of Expression Foundation; chair of the Budget Committee of the Beaverton School District; member of the Governor's Commission on Women; chair of the Oregon Recreational Trails Advisory Council; chair of the Parents Committee on Sex Education, Oregon Board of Education; member of the Portland Repertory Theater Board; board member of American Red Cross Pacific Northwest Regional Blood Services; and member of the Public Commission on the Oregon Legislature.

While legislative advocacy is not lawyering in the narrow sense, lobbying is a use of legal expertise and advocacy. As a lawyer lobbyist, Dave Barrows has exhibited throughout his

career a commitment to fair dealing and practice in the spirit of the OSB Statement of Professionalism.

Almost all active lobbyists have learned something about professionalism from Dave Barrows. He literally wrote the booklet, provided to all members of the Capitol Club (the lobbyists' professional association), setting forth effective and professional guidelines for legislative advocacy. The chapter headings from this pamphlet are instructive: Honesty; Respect; Be Prepared; Demeanor; Staff and the Golden Rule; Follow Through is Critical; Chaos is Natural; Sexual Attitudes and Conduct. The booklet is a statement of professionalism for lobbyists. Among the tips contained in the booklet:

Do not exaggerate the merits or problems with a bill. Fully disclose weak points so you can frame them in their proper context.

Admit a mistake. You will heighten your credibility with legislators if you are willing to admit an honest mistake.

You will not succeed in the legislative process unless you show sincere respect for legislators, colleagues, and the legislative process.

Do your homework. Know the answers to questions you may be asked. Don't guess. Don't inadvertently lie when you don't know the answer. Find out and get back to them ASAP.

Do not get emotional. This is particularly difficult when you're staring at defeat. Stay professional and keep under control.

"Do unto others..." applies directly to how you deal with the committee and personal staff of the legislature.

(Regarding sexual attitudes and conduct) Don't be a jerk. Don't be a boor. Don't touch. Don't break the law.

Beyond the booklet and the lobby workshops, Mr. Barrows has provided informal mentoring to less experienced colleagues, in much the same way as a senior partner at a law firm might provide professional mentoring to a new associate. His motivation for such activities is a respect for the process and for his fellow lobbyists. His conduct in the Capitol sets a standard for the behavior of all.

Mr. Barrows has had an outstanding career that the bar should recognize with one of its highest honors. While he may be eligible for other bar awards, the professionalism award is the one that fits best: by word and deed he has elevated the practice of everyone in the Capitol.

Oregon State Bar
Meeting of the Board of Governors
April 22, 2011
Open Session Minutes

The meeting was called to order by President Stephen Piucci at 1:10 p.m. on April 22, 2011, and adjourned at 4:27 p.m. Members present from the Board of Governors were Jenifer Billman, Hunter Emerick, Ann Fisher, Michelle Garcia, Michael Haglund, Derek Johnson, Matt Kehoe, Christopher Kent, Ethan Knight, Tom Kranovich, Steve Larson, Audrey Matsumonji, Kenneth Mitchell-Phillips, Mitzi Naucler, and Maureen O'Connor. Staff present were Sylvia Stevens, Helen Hirschbiel, Rod Wegener, Jeff Sapiro, Susan Grabe, George Wolff, Kay Pulju, Karen Lee, Linda Kruschke, Judith Baker, Amber Hollister, Dani Edwards, and Camille Greene. Also present were: ONLD Chair, Tamara Gledhill-Kessler; PLF liaisons William Carter, Valerie Fisher, Tim Martinez, and Fred Ruby; and PLF CFO, Tom Cave and Executive Director, Ira Zarov.

1. Department Presentations

- A. Ms. Kruschke presented an overview of the OSB Legal Publications program and staff. The department's mission is to serve the members with useful publications for their practice. The department has many volunteers serving as authors, on their Editorial Review Board, and as members of the UCJI and UCrJI committees. BarBooks™ has new many new features, publications, forms and instructions available to members at no cost. New PLF publications will be available soon. Revised chapters of books are now available as they are completed, rather than having to wait for the book to be completed. Ms. Kruschke will train interested members on the features of BarBooks™. In the future, BarBooks™ will consist of a database of information rather than a collection of books. She has been asked to speak about this program at an ACLEA conference in January 2012.
- B. Ms. Lee presented an overview of OSB CLE Seminars. The department's mission is to improve knowledge and skills of Oregon attorneys. She presented her staff and their responsibilities and current projects. OSB CLE Seminars has 16 video replay sites around Oregon. They host live seminars, webcasts, and teleseminars for members' convenience and work with sections to produce CLE seminars. Ms. Lee reported that the department is looking at the Season Ticket feature to customize it to current needs.

2. Report of Officers

- A. Report of the President
As written.
- B. Report of the President-elect
As written.
- C. Report of the Executive Director

Ms. Stevens presented a report on OSB Programs and Operations developments. She announced that Mariann Hyland has accepted the position of Director of Diversity and Inclusion and will begin June 13, 2011.

D. Report of the BOG Liaison to MBA

No report.

3. Professional Liability Fund

A. Financial Report

Mr. Zarov gave a brief report on the status of the PLF stating it had a record 1011 claims in 2010. The board is looking at the coverage plan and charges to the excess program, because the PLF is losing members to competitive coverage plans.

Tom Cave, PLF CFO, spoke about the audit by Kern & Thompson, LLC. The BOG will receive a copy of the auditor's report.

B. Liaison Report

No report.

4. Special Work Session

A. RIS Business Model

Ms. Pulju presented the background of the OSB Lawyer Referral Service's history, purpose, operations and funding. The three options for OSB Lawyer Referral Service going forward are to maintain the status quo (funded by registration fees); implement percentage fees with goal of departmental self-sufficiency; or implement percentage fees with goal to produce revenue beyond departmental self-sufficiency.

Ms. Stevens encouraged the BOG to focus its discussion on the policy issue of whether to change the funding model rather than on the details that will follow from a decision to change. Mr. Haglund spoke in favor of the second option, to get the system to fund itself before it looks at producing revenue beyond the department. Mr. Kent suggested increasing the registration fees in an effort to increase revenue before considering a percentage fee structure. He felt the other two options would give the bar a poor public perception, possibly exposure to liability, and be costly to track. Ms. Stevens pointed out that Ms. Hollister had researched this and concluded that the risk of liability is very low. Mr. Emerick would prefer we get insurance if we get into percentage fees. Mr. Johnson expressed support for raising the registration fees rather than going to the percentage fee model. Mr. Knight said adjusting the fee schedule could affect access to justice in a positive way that would justify adjusting rules or statutes. Mr. Kranovich did not want to further burden the lawyers who are already participating. Ms. Pulju reported that focus groups had mixed views about a percentage fee structure. Mr. Wolff added that experienced lawyers would support increased registration fees, but newer lawyers would not. Ms. Naucler said this could give new lawyers a chance to build a practice. Mr. Kent

felt the increased fees would be passed onto the clients and create a barrier to access to justice for some. Ms. Matsumonji weighed in as a public member who supports making money. Other questions raised were: Is this an access to justice issue, a public service, and would percentage fees make money or cause attorneys to leave the program?

Mr. Piucci reminded the BOG that Lish Whitson, former chair of the ABA Standing Committee on Lawyer Referral Services will meet with the BOG on May 20 to answer questions; he expects the BOG to be ready to vote on the question at the June meeting.

5. Rules and Ethics Opinions

A. OWLS Request for ORPC on Harassment

Oregon Women Lawyers has asked the Board of Governors to direct the Legal Ethics Committee to evaluate whether discrimination, intimidation and harassment are adequately addressed in the Oregon RPCs and other policies and procedures relating to lawyer conduct and to report its findings prior to the Convocation on Equality in November 2011. **[Exhibit A]** Multnomah Bar Association submitted a letter of support. Ms. Stevens suggested that the Legal Ethics committee assign this to a special subcommittee that can include representatives from OWLs and other stakeholders. Mr. Piucci agreed and directed that the LEC take up the issues raised in the OWLs letter.

6. OSB Committees, Sections, Councils and Divisions

A. Workers' Compensation Section Request for Comment Re: Attorney Fee Rules Revision

Mr. Piucci presented the options for the BOG to decide whether to: 1) adopt the section comments and forward them to the WCB as comments from the BOG; 2) forward the OSB Worker's Compensation Section comments to the WCB without comment ; 3) direct the Section to conduct further review and provide additional comment; 4) submit comments of its own to the WCB.

Motion: Mr. Haglund moved, Ms. Fisher seconded, and the board voted unanimously to adopt the Workers' Compensation Section's comments and forward them to the Workers' Compensation Board.

B. Oregon New Lawyers Division Report

Ms. Kessler reported on a variety of ONLD projects and events described in her written report and presented the 2011 ONLD calendar of events. At their March meeting, ONLD appointed two new Executive Committee members: Mario Conte of Eugene and Ryan Hilts of Lake Oswego. A task force was formed to look at the ONLD programs and ensure they are in line with the memberships' current needs. Ms. Kessler reported their law school presentations went well. Social events in Salem and Bend went well and fulfilled their goal to reach outside the immediate area. The CLE subcommittee held four CLEs in the Portland area and have three more scheduled outside this region. The Oregon New Lawyers Division Practical Skills Project targets underemployed/unemployed lawyers to do pro bono work. Judge Aiken is

working with ONLD on a new project designed to teach new lawyers how to be lawyers in specific areas and has funding for this project.

C. Legal Ethics Committee Response to Request for Opinion

After a lengthy discussion, the LEC concluded that it could not write an opinion suggesting that RPC 1.2 was broad enough to prohibit counseling a client against violating a court order. It was less concerned about interpreting the phrase "rules of a tribunal" in RPC 3.4 to include "rulings of a tribunal," but questioned the need in view of existing authority interpreting ABA Model Rule 3.4 and identical rules in other jurisdictions. The BOG accepted the LEC's conclusions and took no further action.

D. Request for BOG Review

1. CSF Claim No. 2011-01 JORDAN (Flores-Salazar)

I-In his request for review, Mr. Flores-Salazar reiterates Jordan's failure to finish the job he was hired to do. He also points out that the bar is investigating Jordan and alleges that "there has been plenty of dishonesty" to justify an award from the Fund. There is no doubt that some portion of the \$15,000 fixed fee was not earned. There is, however, no independent evaluation of the amount of refund owed to Mr. Flores-Salazar. Moreover, under the CSF rules, reimbursement is not available if the claimant received the legal services without additional cost except in "extraordinary circumstances." The BOG agreed with the CSF Committee that the lawyer's services were more than minimal or insignificant and also that Mr. Flores-Salazar had received the remaining services at no additional cost to him and that no extraordinary circumstances justified deviating from the rules.

Motion: Mr. Kent moved, Mr. Kranovich seconded, and the board voted unanimously to affirm the CSF Claim.

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

A. Access to Justice Committee

Mr. Mitchell-Phillips presented the OJD/OSB Task Force on Family Law Forms and Services' Report with its recommendations to the board for approval. **[Exhibit B]** Ms. Naucler commented that she would not favor adopting the recommendations of the report, particularly that if the OJD does not provide forms to the public in divorce cases, OSB should do so. Ms. Pulju said the report could be accepted without comment and referred to the Family Law Section. Ms. Grabe noted the task force did reach out to the Family Law section, and the section agreed to look at the issue whether or not the BOG accepts the report.

Motion: Ms. Fisher moved and Mr. Kehoe seconded to refer the report to the Family Law Section. Ms. Naucler was opposed. Motion passed.

B. Budget and Finance Committee

Mr. Kent reported on the committee's discussions regarding the changes to the bar's investment policy, changes to office space in the bar center, the March 31, 2011 financial report, updates on tenants and leases at the bar center, the results of a survey sent to sole practitioners for interest in renting office space at the bar center, the implications of changing the OSB Referral and Information Services funding model, and the Budget and Finance Committee's involvement in the bylaw change regarding unclaimed assets. **[Exhibit C]**

Motion: The board voted unanimously to approve the committee motion to waive the one-meeting notice.

Mr. Kent also presented the committee's motion to make an additional change in Bylaw 7.402 (investment policy) to accompany the changes discussed by the BOG on February 18, 2011.

Motion: The board voted unanimously to approve the committee motion to amend the bylaw 7.402 with the addition of subparagraphs (j) and (k).

The change to subparagraph (g) of bylaw 7.402 was not previously considered by the board and therefore requires waiver of the one meeting notice requirement in order to make the recommended change.

Motion: The board voted unanimously to approve the committee motion to amend bylaw 7.402 subparagraph (g).

C. Member Services Committee

In Ms. Johnnie's absence, Ms. O'Connor presented an update on OSB Program Review and BOG Candidate Recruitment.

D. Policy and Governance Committee

1. Amend Regulations 1.140 and 3.200 regarding Fully Retired Status

Ms. Naucner presented the proposed amendments to MCLE Regulations 1.140 and 3.200 to reference OSB Bylaw 6.100, not 6.101. This is a housekeeping change.

Motion: The board voted unanimously to approve the committee motion to amend MCLE Regulations 1.140 and 3.200 to refer to OSB Bylaw 6.100, not 6.101.

2. Request for Additional MCLE Credit for Lawyer-Legislators

Rep. Dennis Richardson requested that lawyer-legislators earn more than the currently .5 credit per week allowed MCLE credits for their legislative service during session.

Motion: The board voted unanimously to approve the committee motion to amend MCLE Regulations 5.1(e) and 5.100(b) to allow legislators to earn one credit per week during the legislative session.

3. Proposed Amendment to OSB bylaws re: Unclaimed Lawyer Trust Accounts

The committee recommended adoption of new provisions in the OSB Bylaws to establish rules on the administration of unclaimed lawyer trust account funds, including procedures for a claim adjudication process. [Exhibit D] Staff also recommends waiving the one-meeting notice required by Bylaw Article 27, as there is already a claim pending.

Motion: The board voted unanimously to approve the committee motion to waive the one-meeting notice requirement under OSB Bylaw Article 27.

Motion: The board voted unanimously to approve the committee motion to amend the OSB Bylaws to include new provision on the administration of unclaimed lawyer trust account funds, including procedures for a claim adjudication process.

4. Fee Arbitration Task Force Recommendation

- a. The committee supports the Task Force recommendations for a number of changes to the current fee arbitration rules, which are reflected in the attached redline version of the OSB Fee Arbitration Rules. [Exhibit E]

Motion: The board voted unanimously to approve the committee motion to accept the changes to the current fee arbitration rules.

- b. The committee also recommends adopting the Task Force recommendation the Board do the following to support and expand the OSB Fee Arbitration Program: institute a mediation pilot project; develop and provide arbitration training for volunteer arbitrators at no cost to the volunteers, and; appoint a Fee Arbitration Advisory Committee to act as a continuing resource for training and recruitment of OSB Fee Arbitrators.

Motion: The board voted unanimously to approve the committee motion to support and expand the OSB Fee Arbitration Program as recommended by the Fee Arbitration Task Force.

5. Judicial Administration Committee Assignment

The Judicial Administration Committee would like to expand its assignment (charge) to allow for support of access to justice, the monitoring of court facilities, public safety issues, and remove their assignment to participate in judicial appointments and new judgeships. [Exhibit F]

Motion: The board voted unanimously to approve the committee motion to approve the changes to the Judicial Administration Committee's assignment (charge.)

6. Amendment to OSB Bylaw 2.6 regarding Conflicts of Interest

The committee recommended amending OSB Bylaw 2.6 "Conflicts of Interest" as proposed by General Counsel's Office so as to be consistent with applicable state ethics laws. Ms. Naucler recommended waiving the one-meeting notice change required by

Article 27. Mr. Kent asked for and received clarification on the limitations on receipt of gifts.

Motion: Ms. Naucler moved, Ms. Fisher seconded, and the board voted unanimously to waive the one meeting notice.

Motion: The board voted unanimously to approve the committee motion to approve the changes to OSB Bylaw 2.6.

E. Public Affairs Committee

Mr. Johnson presented a legislative update to the board, including the status of the bar's bills: 17 of the 18 have passed out of their first chamber and are heading for their second chamber; one bill has died. Ms. Grabe commented that the filing fee bill's proponents wanted a workgroup and the Public Affairs committee declined.

F. Public Member Selection

Ms. Naucler presented the committee's recommendation to re-appoint Audrey Matsumonji to the Board of Governors Public Member position expiring in 2015 and not conduct a search for a new public member.

Motion: The board voted unanimously to approve the committee motion to approve the re-appointment of Ms. Matsumonji.

G. Appoint Unclaimed Lawyer Trust Accounts Committee

Consistent with the bylaw adopted earlier in the meeting, Mr. Piucci appointed Mr. Haglund, Mr. Knight and Ms. Billman to the Unclaimed Lawyer Trust Accounts (ULTA) Special Committee to evaluate claims made against unclaimed lawyer trust account funds.

8. Consent Agenda

Motion: Mr. Larson moved, Mr. Kehoe seconded, and the board voted unanimously to approve the consent agenda including changes to OSB Bylaw 16.200 regarding Complimentary CLE Pro Bono **[Exhibit G]**, amendments to OSB Bylaw 24.201 regarding PLF-PPMAC **[Exhibit H]**, revisions to ONLD Bylaws **[Exhibit I]**, and amendments to MCLE Rules 5.2 and 5.4 **[Exhibit J]**.

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

Nothing submitted.



RECEIVED

MAR 24 2011

Oregon State Bar
Executive Director

March 18, 2011

Board of Governors
Oregon State Bar
16037 SW Upper Boones Ferry Rd
Tigard, Oregon 97224

**** OPEN LETTER ****

**Re: Oregon Rules of Professional Conduct
Issue to be Referred to Legal Ethics Committee**

Dear Board of Governors,

In response to a recent ethics complaint by a Portland attorney against another attorney for sexual harassment related to pending litigation involving both attorneys, Oregon Women Lawyers (OWLS) formed a committee to consider whether the existing Oregon Rules of Professional Conduct (RPCs) adequately address the issue of harassment in legal proceedings.

Regardless of the outcome of the pending complaint, OWLS believes there is significant gap in the RPCs because they do not directly address discrimination, intimidation and/or harassment. Specifically, OWLS strongly believes discrimination, intimidation and/or harassment by a licensed attorney against any other person involved in a legal proceeding or legal matter in which the attorney is involved should be ethically prohibited by the RPCs. Further, any new or amended rule regarding discrimination, intimidation and/or harassment should prohibit such conduct not only on the basis of gender, but also on the basis of race, ethnicity, sexual orientation, and disability.

OWLS' research indicates that many other jurisdictions have a rule or combination of rules in effect that address intimidation and harassment. As a courtesy, the text of some of these rules is attached. We believe that the Florida, New Jersey and New Mexico rules are good models to consider.

In light of the Convocation on Equality scheduled for November of 2011, OWLS and the undersigned persons and associations ask the Board of Governors to adopt the following resolution:

Whereas, Bar Rules of Procedure 2.5 and 2.6 govern the intake of a professionalism complaint by the Client Assistance Office and any investigation by the Disciplinary Counsel's Office but leave many details to the Bar's discretion; and

Whereas, under the Rules and internal Oregon State Bar practices as currently implemented, sexual and other forms of harassment are not considered violations of either the Rules of Professional Conduct or ORS 9.527 without at least an accompanying criminal conviction; and

Whereas, it is in the interests of the Oregon State Bar and its members to maintain both the actual integrity of the profession and the public perception of the integrity of the profession; and

Whereas, the Oregon State Bar does not at present have a stated policy against harassment in the profession akin to those in place with the Oregon Department of Justice and leading area law firms; and

Whereas, harassment, discrimination and/or intimidation by an attorney towards others involved in the legal process, whether on the basis of gender, race, disability, sexual orientation or other protected class, is unprofessional and reflects poorly on the legal profession as a whole; and

Whereas, the Oregon State Bar has not kept pace with other state bars in addressing harassment, discrimination and/or intimidation as a professionalism issue; and

Whereas, adoption of a clear policy against harassment, discrimination and/or intimidation would contribute to legal professionalism by providing clear guidance for what behaviors do or do not reflect adversely on a lawyer's fitness as a lawyer, regardless of criminal conviction; and

Whereas, adoption of a new or revised Rule of Professional Conduct would support professionalism within the Oregon State Bar; therefore be it

Resolved, that Board of Governors direct the above to the Legal Ethics Committee to (LEC) to evaluate what, if anything, can be done to strengthen and/or clarify the Rules of Professional Conduct or other policies or rules for investigating complaints regarding harassment, discrimination and/or intimidation, whether regarding sex, race, ethnicity, disability, sexual orientation or other protected class.

Resolved Further, that the LEC and/or any task force established for this purpose include a representation of various stakeholders on this issue.

Resolved Further that the LEC and/or any task force established for this purpose be directed to report on its conclusions and recommendations by the Board of Governors meeting which immediately precedes the Convocation on Equality scheduled for November 4, 2011.

In the event that the LEC elects to establish a task force to evaluate and draft possible wording for a new or revised Rule or Policy, OWLS respectfully requests that Bonnie Cafferky Carter, the OWLS board member who chairs our ad-hoc committee on this issue, represent OWLS and be included on the task force.

On behalf of the entire Oregon Women Lawyers board of directors and the other undersigned persons and associations, I thank you for your attention to this matter. If we can

Oregon Women Lawyers
Letter to the OSB Regarding Resolution Request
March 18, 2011
Page 3 of 3

assist further by providing additional research or answering any questions you or the LEC may have, please don't hesitate to contact us.

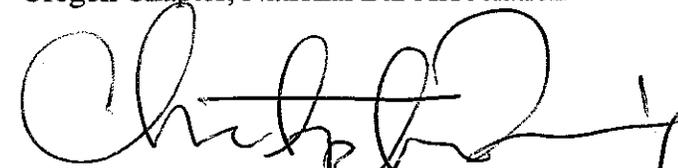
Very truly yours,


Concetta Schwesinger, 2010-2011 President
Oregon Women Lawyers

cc: Mike Haglund, Attorney, Legal Ethics Committee BOG Contact
Holli Houston, Attorney, Legal Ethics Committee Chairperson
Sylvia Stevens, Executive Director

We Support and Concur with the Foregoing Letter:


Ali D. Seals, President
Oregon Chapter, National Bar Association


Christopher Ling, Co-Chair
Oregon Minority Lawyers Association


Todd Struble, Co-Chair
Oregon Minority Lawyers Association


David Wang, President
Oregon Asian Pacific American Bar Association

EXAMPLES OF RULES OF PROFESSIONAL CONDUCT

Florida - Rule 4-8.4 Misconduct

A lawyer shall not:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects;

(c) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation, except that it shall not be professional misconduct for a lawyer for a criminal law enforcement agency or regulatory agency to advise others about or to supervise another in an undercover investigation, unless prohibited by law or rule, and it shall not be professional misconduct for a lawyer employed in a capacity other than as a lawyer by a criminal law enforcement agency or regulatory agency to participate in an undercover investigation, unless prohibited by law or rule;

(d) engage in conduct in connection with the practice of law that is prejudicial to the administration of justice, including to knowingly, or through callous indifference, disparage, humiliate, or discriminate against litigants, jurors, witnesses, court personnel, or other lawyers on any basis, including, but not limited to, on account of race, ethnicity, gender, religion, national origin, disability, marital status, sexual orientation, age, socioeconomic status, employment, or physical characteristic;

New Jersey - Rule 8.4(g) Misconduct

It is professional misconduct for a lawyer to: ...

(g) engage, in a professional capacity, in conduct involving discrimination (except employment discrimination unless resulting in a final agency or judicial determination) because of race, color, religion, age, sex, sexual orientation, national origin, language, marital status, socioeconomic status, or handicap where the conduct is intended or likely to cause harm.

New Mexico - Rule 16-300 Prohibition Against Invidious Discrimination

In the course of any judicial or quasi-judicial proceeding before a tribunal, a lawyer shall refrain from intentionally manifesting, by words or conduct, bias or prejudice based on race, gender, religion, national origin, disability, age, or sexual orientation against the judge, court personnel, parties, witnesses, counsel or others. This rule does not preclude legitimate advocacy when race, gender, religion, national origin, disability, age or sexual orientation is material to the issues in the proceeding.

Michigan - Rule 6.5 Professional Conduct.

(a) A lawyer shall treat with courtesy and respect all persons involved in the legal process. A lawyer shall take particular care to avoid treating such a person discourteously or disrespectfully because of the person's race, gender, or other protected personal characteristic. To the extent possible, a lawyer shall require subordinate lawyers and nonlawyer assistants to provide such courteous and respectful treatment.

(b) A lawyer serving as an adjudicative officer shall, without regard to a person's race, gender, or other protected personal characteristic, treat every person fairly, with courtesy and respect. To the extent possible, the lawyer shall require staff and others who are subject to the adjudicative officer's direction and control to provide such fair, courteous, and respectful treatment to persons who have contact with the adjudicative tribunal

[NOTE: This rule is in current litigation regarding a constitutional challenge to the rule. The Respondent claims that the language of the rule is constitutionally vague and overbroad. Similar challenges have been advanced and defeated in the Michigan Supreme Court and in federal court. The previous Respondent who challenged the rule on these grounds appealed to the U.S. Supreme Court, but cert was denied. Additional commentary can be found at <http://www.michbar.org/generalinfo/pdfs/mrpc.pdf>]

Rhode Island - Rule 8.4(d) Misconduct

It is misconduct for a lawyer to: ...

(d) engage in conduct that is prejudicial to the administration of justice, including but not limited to, harmful or discriminatory treatment of litigants, jurors, witnesses, lawyers, and others based on race, national origin, gender, religion, disability, age, sexual orientation or socioeconomic status.

Indiana - Rule 8.4 includes the following definition of "misconduct"

It is professional misconduct for a lawyer to: ...

(g) engage in conduct, in a professional capacity, manifesting , by words or conduct, bias or prejudice based upon race, gender, religion, national origin, disability, sexual orientation, age, socioeconomic status, or similar factors. Legitimate advocacy respecting the foregoing factors does not violate this subsection....

Washington - Rule 8.4(h) Misconduct

It is professional misconduct for a lawyer to: ...

(h) in representing a client, engage in conduct that is prejudicial to the administration of justice toward judges, other parties and/or their counsel, witnesses and/or their counsel, jurors, or court personnel or officers, that a reasonable person would interpret as manifesting prejudice or bias on the basis of sex, race, age, creed, religion, color, national origin, disability, sexual orientation, or marital status. This Rule does not restrict a lawyer from representing a client by advancing material factual or legal issues or arguments.

[Comment: [3] [Washington revision] Legitimate advocacy respecting the factors set forth in paragraph (h) does not violate paragraphs (d) or (h). A trial judge's finding that peremptory challenges were exercised on a discriminatory basis does not alone establish a violation of this Rule.]

Missouri - Rule 4-8.4(g) Misconduct

It is professional misconduct for a lawyer to: ...

(g) manifest by words or conduct, in representing a client, bias or prejudice based upon race, sex, religion, national origin, disability, age, or sexual orientation. This Rule 4-8.4(g) does not preclude legitimate advocacy when race, sex, religion, national origin, disability, age, sexual orientation, or other similar factors, are issues.

[Comment (3) Rule 4-8.4(g) identifies the special importance of a lawyer's words or conduct, in representing a client, that manifest bias or prejudice against others based upon race, sex, religion, national origin, disability, age, or sexual orientation. Rule 4-8.4(g) excludes those instances in which a lawyer engages in legitimate advocacy with respect to these factors. A lawyer acts as an officer of the court and is licensed to practice by the state. The manifestation of bias or prejudice by a lawyer, in representing a client, fosters discrimination in the provision of services in the state judicial system, creates a substantial likelihood of material prejudice by impairing the integrity and fairness of the judicial system, and undermines public confidence in the fair and impartial administration of justice.

Whether a lawyer's conduct constitutes professional misconduct in violation of Rule 4-8.4(g) can be determined only by a review of all of the circumstances; e.g., the gravity of the acts and whether the acts are part of a pattern of prohibited conduct. For the purpose of Rule 4-8.4(g), "manifest ... bias or prejudice" is defined as words or conduct that the lawyer knew or should have known discriminate against, threaten, harass, intimidate, or denigrate any individual or group. Prohibited conduct includes, but is not limited to, unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

- (a) submission to that conduct is made, either explicitly or implicitly, a term or condition of an individual's employment;
- (b) submission to or rejection of such conduct by an individual is used as a factor in decisions affecting such individual; or

(c) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or of creating an intimidating, hostile or offensive environment.]

Ontario, Canada - Rule 5.04 Special Responsibility

(1) A lawyer has a special responsibility to respect the requirements of human rights laws in force in Ontario and, specifically, to honour the obligation not to discriminate on the grounds of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, record of offences (as defined in the Ontario Human Rights Code), marital status, family status, or disability with respect to professional employment of other lawyers, articulated students, or any other person or in professional dealings with other members of the profession or any other person.

REPORT from the
OJD/OSB TASK FORCE on
FAMILY LAW FORMS and SERVICES



Oregon State Bar

February 2011

OJD/OSB Task Force on Family Law Forms and Services

HON. MAUREEN MCKNIGHT, Multnomah County Circuit Court, and
MICHAEL FEARL, Attorney at Law, OSB Family Law Section
Co-Chairs

Nancy Cozine
*Deputy Trial Court Administrator
Multnomah County Circuit Court
Portland*

Mitzi Naucler
*President-Elect, OSB Board of Governors
Member, Access to Justice Committee
Albany*

Jean Fogarty
*Director
Oregon Child Support Program
Oregon Dept. of Justice
Salem*

Martha Renick
*Law Librarian
Marion County Law Library
Salem*

Sue Gerhardt
*Family Court Coordinator
Washington County Circuit Court
Hillsboro*

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*Facilitator
Clackamas County Circuit Court
Oregon City*

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*Trial Court Administrator
Lincoln County Circuit Court
Newport*

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Invited Participants

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Rebecca Orf and David Factor, *State Court Administrator's Office*
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EXECUTIVE SUMMARY

Oregonians now represent themselves in Family Court in 67%-86% of the cases filed. Given the huge demand for legal help in family law matters that nonprofit law firms and the private bar cannot meet, access to justice efforts the last 10 years have concentrated on the statewide availability of model family law forms and procedural assistance from courthouse facilitators. Now, budget cutbacks have led to reductions in existing court services and stalled planning efforts focused on self-representation. The next critical step is nevertheless clear: a transition from hard-copy, fill-in the-blank forms to a user-friendly, online document assembly service that guides litigants through branching questions to produce forms that can be printed out or filed electronically (a la TurboTax®). Redirecting litigants who can easily access, navigate, and file family law court forms online should produce operational savings and preserve diminishing court and community resources for the most needy family law litigants. The only question for justice planners is whether the Courts or Bar, each substantially invested in access to justice, will take the lead on this initiative.

A Task Force appointed jointly by the Oregon Supreme Court Chief Justice Paul DeMuniz and Oregon State Bar President Kathleen Evans recommends that the Oregon Judicial Department (OJD) take the lead. However, if OJD's eCourt sponsors cannot commit to beginning development of the forms by the end of 2011, the Oregon State Bar (OSB) should instead promptly assume the leadership role but collaborate with OJD on technology and practice requirements. Determining whether and what to charge litigants for use of the electronic interactive format is a key question and involves careful consideration of both what constitutes a sustainable business model with staff support and the situation of low-income litigants qualifying for court fee waivers and deferrals. Prefatory work can and should begin immediately on prioritizing which family forms should be available in the interactive format. The State Court Administrator's Family Law Advisory Committee should undertake this effort with the OSB Family Law Section and jointly work other stakeholders to produce recommendations regarding courthouse facilitation delivery models that maximize both court efficiencies and family law access. Expanding the delivery of *pro bono* and unbundled legal services is a component of this access effort and the area of child support calculation assistance may merit particular focus. Finally, the OSB Family Law Section should convene an OSB/OJD workgroup to examine statutes, rules, and forms that unduly complicate legal matters for self-represented family law litigants.

OJD/OSB TASK FORCE ON FAMILY LAW FORMS AND SERVICES

RECOMMENDATIONS

February 2011

1. OJD should take the lead in developing and maintaining model family law forms for use in Oregon trial courts. If funding or other issues prevent OJD from committing to this role by August 2011 and commencing action on the development of interactive electronic formats by January 2012, OSB should promptly assume the leadership role but collaborate with OJD on technology and practice requirements.

2. OJD should ensure by rule or other administrative action that the model family law forms are accepted in all Oregon trial courts.

3. OJD (or OSB if it assumes the lead role), should provide adequate legal staffing and clerical support for coordinating the development, maintenance, and revision of the model forms.

4. Model family law forms should be provided in an interactive electronic format that integrates with the developing eCourt platform. Forms determined not suitable for interactive formats should be offered in fillable Portable Document Format (PDF). Forms and supportive material should follow standard plain language principles and achieve as closely as possible an eighth grade readability level.

5. Due to access-to-justice implications, the determination of whether to charge the public for use of the electronic interactive format, separate from filing fees, should involve careful consideration of the situation of low-income litigants. If OJD develops the forms and determines that nominal fees are necessary to develop and maintain the on-line document assembly service, consideration should include a tiered model that accommodates individuals with fee waivers and deferrals. Fees for these individuals should be based only on a cost-recovery goal for the forms and document assembly services provided by OJD and its vendor.

6. The Statewide Family Law Advisory Committee (SFLAC) should recommend prioritization of forms for development on interactive formatting, considering case volume, litigant needs, and other relevant criteria. The SFLAC should involve the private bar, eCourt and other OJD staff, and other stakeholders such as non-profit legal services providers and public and law librarians in the process.

7. The following issues should be considered in development of interactive forms:

- integration with e-filing functionality
- Interface using a standard web browser
- ability to extract data for vital records and other statistical needs
- adaptability to both self-represented users and attorneys
- inclusion of a preliminary or internal diagnostic to determine appropriateness of particular form for the individual user
- automatic data validation
- support for electronic prompts for instructions
- ability of users to save work for later completion
- clarity for users regarding data security and data retention
- maximized capacity of local administrator (OJD or OSB) to make minor revisions
- capacity to provide interactive service in languages other than English

8. The website hosting the interactive forms should

- use a secure portal
- state clearly what entity is providing and hosting the service
- provide access to explanatory material and instructions throughout the interactive interview process and specific to particular points therein
- include links to other resources for legal information and assistance

9. OJD should make every effort to maintain court facilitation programs at the maximum level of service possible, recognizing that facilitator roles are likely to change after implementation of interactive forms. OJD should evaluate imposition of a user-fee for facilitation appointments only if necessary and effective to support continuation of the programs and their training needs. The SFLAC should make recommendations to the State Court Administrator regarding facilitation delivery models maximizing both court efficiencies and family law access for courts facing additional cutbacks in this access.

10. OSB, non-profit legal services providers, and the Division of Child Support of the Oregon Dept. of Justice should continue efforts to expand information about, and delivery of, unbundled legal services and *pro bono* assistance. Child support calculation assistance is one area of potential focus.

11. The Family Law Section of the OSB should convene an OSB/OJD workgroup to identify and make recommendations eliminating or revising statutory and regulatory forms and procedures that unduly complicate legal matters for self-represented family law litigants.

I. Origin and Charge of the Task Force

During the decade between 1997 and 2007, Oregon courts developed a two-fold approach in response to the high number of family law cases involving litigants without lawyers.¹ Facilitation programs providing procedural assistance were implemented at courthouses and many model family law forms were prepared for public use, available both at the courthouses and on-line. In 2007, the State Family Law Advisory Committee completed a report suggesting specific areas for additional planning.² Seven proposals were made with the dual goals of improving both access to justice for self-represented parties and effective court management of cases involving self-representation. Central among the SFLAC recommendations was the development of user-friendly, electronically-interactive forms. Planning for Oregon eCourt was proceeding at the State Court Administrator's Office on a track parallel to the SFLAC's self-representation planning and also envisioned the eventual development of interactive forms in several areas of the law.

Since 2007, however, significant budget reductions precipitated by the poor economy have stalled energy and funding for both interactive forms and broader self-representation planning. Moreover, some local courts have eliminated or reduced their facilitation programs to preserve resources. Simultaneously, the court's partners in the access to justice community have continued to struggle with the high unmet demand for family law legal services. The poor economy has placed additional stress on this challenge. In addition, given the enormous public need for family law help, concern has arisen that market-minded entrepreneurs may soon preempt access-oriented,

¹ Although data collected from the Oregon Judicial Information Network (OJIN) both under-reports and over-reports the rate of self-representation due to a variety of reasons, the most recent information available indicates that at least 67% and as high as 86% of family law matters involve at least one self-represented party. Oregon data indicates that both sides are self-represented in approximately 49% of family law filings. *Analysis of Domestic Relations Cases Having At Least One Pro Se Party*, Office of the State Court Administrator, Analysts Giordano and Yetter (February 1, 2005); Update by Analyst Giordano in January 2008. Task Force members found that surrounding states report similar rates of self-representation.

² "Self-Representation in Oregon's Family Law Cases: Next Steps," September 2007, available at <http://courts.oregon.gov/OJD/docs/OSCA/cpsd/courtimprovement/familylaw/FINALReportonSelfRepresentation9-6-07.pdf>. The SFLAC is a statutorily created entity appointed by the Chief Justice of the Oregon Supreme Court and advises the State Court Administrator. ORS 3.436.

quality-focused legal planners by selling web-based interactive Oregon family law court forms for profit.

It was against this backdrop that the Self-Representation Subcommittee of the SFLAC recommended a joint Bench-Bar collaboration. In December 2009, Chief Justice Paul DeMuniz of the Oregon Supreme Court and Oregon State Bar President Kathleen A. Evans each appointed six persons to a Task Force on Family Law Forms and Services. The charge of the Task Force was to:

- Review recommendations from the 1999 report of the Oregon Family Law Legal Services Commission³
- Assess the status of current Oregon initiatives regarding family law court forms and services for self-represented litigants
- Examine evolving technology and analyze potential resources and collaborations and
- Develop recommendations for the Oregon Judicial Department and the Oregon State Bar, identifying priorities and strategies for maintaining and improving forms and services.

II. The Task Force's Composition and Work

Appointments were made to the Task Force in March 2010 from the various constituencies most commonly encountering self-represented family law litigants. In addition to judges, attorneys, courthouse facilitators, and court administrators, representatives were identified from law libraries, access to justice groups, and the Oregon Child Support Program (CSP). The CSP provides support enforcement services to over 250,000 mostly low- and middle-income Oregon families on its paternity and child support caseload. Chief Justice DeMuniz appointed:

- Nancy Cozine, Deputy Trial Court Administrator in Multnomah County;
- Sue Gerhardt, Family Court Coordinator in the Washington County Circuit Court;
- Nancy Lamvik, Trial Court Administrator in Newport County;

³ This group was created by the 1997 Oregon Legislature to evaluate and report on how courthouse facilitation and unbundled legal services might enhance the delivery of family law legal services to low- and middle-income Oregonians.

- Elizabeth Vaughn, Family Court Facilitator in the Clackamas County Circuit Court; and
- Hon. Charles Zennaché, Circuit Court Judge in Lane County.

OSB Bar President Kathleen Evans appointed:

- Jean Fogarty, Director, Oregon Child Support Program, Oregon Department of Justice;
- Karen Lord, member of the OSB Board of Governors Access to Justice Committee;
- Mitzi Naucler, President-Elect, OSB President; Member, Access to Justice Committee;
- Martha Renick, Marion County Law Librarian; and
- Anthony Wilson, Portland attorney and OSB Family Law Executive Board representative.

The Honorable Maureen McKnight, Multnomah County Circuit Court Judge and Chair of the SFLAC Subcommittee on Self-Representation, and Michael Fearl, a Portland attorney who is a member of that subcommittee, were named as Co-Chairs. Kay Pulju, Communications Director for the Oregon State Bar, provided staffing. The OSB also provided meeting facilities at its Tigard office.

The chairs also invited other interested persons to participate in discussions: representatives of Legal Aid (Pro Bono Coordinator Maya Crawford), the Oregon Law Center (State Support Unit Attorney Robin Selig), and the Gateway Center for Domestic Violence Services (Martha Strawn Morris, who is administering a federal grant to develop interactive forms for Family Abuse Prevention Act cases). Rebecca Orf and David Factor from the State Court Administrator's Office also participated regularly in the Task Force's work. Additional interested persons from the courts, bar groups, and legal service providers received copies of the minutes and an opportunity to comment on this report.

The Task Force met monthly in half-day sessions from April 2010 through November 2010. The group began by reviewing both the 1999 report of the Family Law Legal Services Commission and the 2007 SFLAC report. The group then discussed the status of current initiatives focused on self-representation: the OSB's Modest Means, Pro Se Coaching, and Pro Bono Programs; Legal Aid's and the Oregon Law Center's *pro bono* projects and web-based materials; and the on-line interactive child support calculator introduced by the Child Support Program in January 2010.

Several meetings then focused exclusively on the issue of interactive forms. Two providers (TurboCourt and A2J) were invited to a meeting to demonstrate product capabilities and respond to questions from Task Force members. Members then compared and prioritized the features viewed in light of the perceived needs of Oregon litigants and identified the preparation work needed for interactive forms. Attention then turned to the court's facilitation programs and other responses from the legal community to the unmet family law need.

III. Underlying Themes

Underlying the recommendations in this report are three themes that have also informed the SFLAC's work on self-representation:

- While the ultimate goal in access to justice efforts is representation by attorneys, self-representation is a permanent aspect of the family court. As such, the legal system's response to litigants without lawyers must be **actively planned**.
- The most effective approaches to self-representation will be **developed and tested in collaborations** between the courts, the bar, and other community partners. This second point has assumed even more significance given the current budget realities of the Oregon courts.
- The access goals of the justice system merge with efficiency goals when user-friendly products and interfaces are provided for those who can navigate them. By re-directing the thousands of individuals who can easily access, navigate, and even file on-line products such as interactive forms, **diminishing court time and services and other limited legal resources can be preserved for the most needy legal consumers** who require in-person, staff-intensive assistance.

IV. Recommendations and Commentary

RECOMMENDATION No. 1

OJD should take the lead in developing and maintaining model family law forms for use in Oregon trial courts. If funding or other issues prevent OJD from committing to this role by August 2011 and commencing action on the development of interactive electronic formats by January 2012, OSB should promptly assume the leadership role but collaborate with OJD on technology and practice requirements.

COMMENTARY

The courts are the natural first choice to provide model family law forms and lead the transition to electronic formats. Given the significant numbers of Oregonians who represent themselves in family law matters,⁴ the court's interest in the content and use of model forms is unmatched. The forms create the framework for court involvement and response, court staff daily deal with litigants about document errors or missing forms, and the forms serve as the template for most court rulings involving self-represented family law parties. Also, consistency in statewide acceptance of the forms would also be maximized with OJD development.⁵ OJD has a well-established history of convening multi-perspective statewide advisory groups on family law forms and, if staffing were available, can readily collaborate with OSB and other legal services providers on the initiative. In addition, both the *Oregon Judicial Department Strategic Plan 2009-2013* and the vision for Oregon eCourt anticipate exactly this user-friendly, web-based access to a virtual courthouse interactive model forms offer, with or without electronic filing. Knowledge of OJD's technological requirements is critical to implement this vision and regular contact with OJD's Enterprise Technical Services Division (ETSD) staff would be optimized with OJD as the forms developer. Finally, implementation of interactive family law forms is precisely the type of

⁴ See footnote 1.

⁵ See Recommendation No. 2.

government milestone that produces the press reports and public acclaim that can leverage additional public and legislative support for eCourt. Like on-line payment of traffic tickets, interactive family law forms combine a very broadly-used customer service with obvious efficiency. Task Force members are aware of no jurisdiction in which an entity *other* than the courts has taken the lead on form development.

On the other hand, provision of the forms is not a statutorily required court function but a responsibility the courts appropriately assumed to respond effectively to the surge of litigants without lawyers.⁶ Budget cuts have now drastically affected all court staffing, including centralized support at the State Court Administrator's office for maintenance and updates to the model forms. OJD's sponsorship of the transition to electronic formats is destined for the same unsustainable status⁷ unless adequate funding is dedicated to maintenance, revision, and training as well as to initial development of the forms. OSB shares the access-to-justice focus that model interactive forms represent and in a climate of diminishing public funds, OSB is well-suited to leverage that fairness incentive with a business-based model that would fund the initiative on user fees rather than vulnerable public funds. OSB is also experienced in convening multi-perspective collaborative groups and can establish a close working relationship with OJD's ETSD and eCourt staff. If the OSB Board of Governors is able to continue its long-standing support of access efforts against competing priorities, maintaining the forms and spearheading the transition to interactive formatting could be effectively hosted by OSB. Based on the widespread support of legal practitioners for court facilitation programs, Task Force members believe that family law lawyers will view this project similarly as supplementary to and not competitive with their own services.

Moving forward quickly on this project is important for several reasons: (1) the longer the delay, the more likely it becomes that private entrepreneurs focused on profit rather than access,

⁶ OJD implemented Recommendation No. 3 of the 1999 Oregon Family Law Legal Services Commission report that "OJD coordinate the development, updating, and dissemination of sample family law forms for pro se parties."

⁷ See commentary to Recommendation No. 3.

efficiency, and legal correctness⁸ will develop a product and establish a market share against which OJD or OSB would need to compete; (2) Oregon's model family law forms will very soon be out-of-date again. In addition to the routine changes stemming from the upcoming legislative session, substantial changes to family law are anticipated from the quadrennial review of child support calculation rules in 2011. No plan currently exists to update and revise the existing forms and revival of discussion about removing this resource from the court's website is likely. Task Force members believe that given OJD's recent selection of a single-source provider for eCourt and its recalibration timeframe, a six month period ending in August 2011 should be adequate for assessing whether and how quickly interactive family law forms fit in the short-term vision of eCourt planning. If OJD cannot commit to this step and take initial action within the 6-12 month deadline suggested by Task Force members, OSB should act promptly to spearhead the effort, in collaboration with OJD and other legal service providers.

RECOMMENDATION No. 2

OJD should ensure by rule or other administrative action that the model family law forms are accepted in all Oregon trial courts.

COMMENTARY

Some Oregon trial courts still require use of a locally produced form in particular situations, tweaked from the applicable model family law form posted on the OJD website. Self-represented litigants who download and complete forms from the OJD website sometimes find those model forms rejected by individual courts insisting on use of the local form. This circumstance also complicates the delivery of legal help by practitioners in one county of the state to litigants with

⁸ Commercial preparers of family law forms remain in business despite the court's current provision of printable, fill-in-the-blanks versions. Some of these businesses use the court-provided forms and charge litigants for assistance in filling them out. At least one firm uses its own forms, some of which are inadequate from a legal standpoint and result in the litigant having to re-file with court-provided forms, both steps necessitating extra work for the court.

matters sited in another county. The lack of mandatory acceptance – particularly given the loss of the Family Counsel position at the State Court Administrator’s Office -- also means that local court staff are revising form content piecemeal, sometimes without legally-trained oversight or coordination except through sharing on the OSCA Family Law Facilitator email listserv (for which legally-trained staff support is not consistently available). Policy decisions from eCourt governance understandably preserve the ability of practitioners to use their individual family law pleading templates and the Task Force is not recommending that Oregon convert to a “mandatory” family law form approach such as California and Washington use. And local courts should continue to have the discretion to develop forms for procedures unique to their county or district. Members believe, however, that *requiring* local courts to accept centrally developed and vetted model forms is an important part of ensuring statewide access to justice. The Chief Justice can ensure this acceptance by Uniform Trial Court Rule or other administrative action he selects. Institutionalizing the opportunity for the family law bar, court staff, and judges to review and comment on forms prior to publication is a critical component for favorable reception of the “universal acceptance” mandate.

RECOMMENDATION No. 3

OJD (or OSB if it assumes the lead role) should provide adequate legal staffing and clerical support for coordinating the development, maintenance, and revision of the model forms.

COMMENTARY

Ensuring adequate staff to maintain and revise the forms and as well as to train staff on their content is critical to OJD sponsorship of model forms and the transition to interactive formatting. No centralized support currently exists at OSCA for work on the existing “hard copy” model family law forms. Except for one small contract, volunteers are attempting to address improvements piecemeal, and local courts are re-inventing the wheel with individually developed (and sometimes

legally improper) updates. The members of the SFLAC have attempted to help but as an unstaffed body, SFLAC assistance is both limited in scope and dependent on member availability. Nor is there current OJD staffing to coordinate a multi-perspective group of bar and court representatives for forms review, as has been the practice in the past. Moreover, substantive changes in family law occur not just biennially with Oregon legislative action or annually with the publication of the Uniform Trial Court Rules but unpredictably due to issuance of federal regulations affecting both administrative and judicial actions regarding child support. An on-going dedicated position (or portion thereof) filled by an attorney with family law expertise is needed at OSCA to coordinate this work:

- to convene an advisory body,
- to draft and user-test revisions to the forms,
- to publish proposed forms for comment
- to serve as a clearinghouse for comments and needed updates,
- to liaise with the court vendor on development issues, and
- to train court facilitators and other court staff dealing with the public regarding the forms.

It is unclear whether and how eCourt planning envisions the on-going support needed for this staffing component. Should OSB assume primary leadership on the interactive family law forms effort, the model will be to impose electronically-paid user fees (separate from court filing fees) that underwrite the cost of this on-going work. Under this approach, the court training and coordination components would need to be a planned collaboration.

RECOMMENDATION No. 4

Model family law forms should be provided in an interactive electronic format that integrates with the developing eCourt platform. Forms determined not suitable for interactive formats should be offered in fillable Portable Document Format (PDF). Forms and supportive material should follow standard plain language principles and achieve as closely as possible an eighth grade readability level.

COMMENTARY

This proposal is the crux of the Task Force's recommendations. Whether it is OJD or OSB who assumes the prime sponsorship role, Oregon needs to transition from hard-copy, fill-in-the-blanks versions available on the web and at courthouses to a more user-friendly format that is also capable of electronic filing. Broad consensus exists nationwide that after standardization, user-friendly document-assembly software is the next critical step in forms delivery.

The core concept of document assembly is the idea of software that walks users through branching questions to complete forms which are then printed out or filed electronically. Among the advantages are the ability to provide support as people complete the forms, that users need enter repetitive information only once, and that the focus can be on the information needed to complete the form. The process of filling out the forms also educates the litigant on what is relevant to their claim. *"Best Practices in Court-Based Self-Help Programs for the Self-Represented: Concepts, Attributes, and Issues for Exploration,"* National Center for State Courts (2006), pp. 15-18. Available online at http://www.nscsonline.org/WC/Publications/KIS_ProSe_Best_Practices_SRLN.pdf.

Not all Oregon model family law forms can or should be available in an interactive format. Some are short enough that the development time and expense outweigh the benefit. The opportunities for interactive forms are numerous, however, and already recognized as a key component of Oregon eCourt planning. At this report's writing, OJD has selected its single-source provider (Tyler Technologies) during which process Tyler's subcontractor, TurboCourt/Intersys, demonstrated its capacity for interactive document assembly programs. With the identity of OJD's vendor and the capacity of its product now known, the only questions are how soon the fiscal environment at OJD will allow it to implement this component in the overall eCourt plan and whether significant delay prompts the OSB to take the lead.

Currently twenty-two (22) packets with a total of approximately 235 forms are available for downloading from the OJD website in PDF (Portable Document Format) for statewide use. Many of these forms are 1 or 2 pages long and not particularly complex. They do not require the development of branching logic to assist the filer in filling them out, but could benefit from auto-population of the caption and other fields from related forms prepared electronically. Forms determined not to be suitable for the interactive dialogue due to brevity or simplicity should be provided in a fillable PDF format. This will allow users to fill out forms electronically by completing form fields *or* to print the form and fill it in manually.

Other forms are longer and cover multiple issues. The petition for dissolution of marriage with children, for example, is 10 pages long and the judgment for this action is 14 pages. The entire packet of forms for this case-type consists of 16 different forms, each of which requires identical captions and address information. Determining which packets, and which forms in particular packets, are appropriate for the interactive format and which are better suited for a fillable PDF format (not currently offered on-line) is a task that can be undertaken now. This review could also highlight major readability concerns.

The final theme presented in this recommendation involves the readability of Oregon's family law forms. Using standard readability algorithms, the current model forms test at grade 16 (college level), but the guidelines for court documents based on national and state standards call for levels of 5th to 8th grade, depending on public use.⁹ It is widely acknowledged that legal documents and forms cannot always meet this threshold but concerted efforts are needed to address plain language principles in both the interactive queries and printed versions of the forms.

⁹ See *"Clear Writing Guidelines for Correspondence, Memoranda, Policies, Reports, and Public Documents,"* Office of the State Court Administrator, Oregon Judicial Department, (February 20, 2008).

RECOMMENDATION No. 5

Due to access-to-justice implications, the determination of whether to charge the public for use of the electronic interactive format, separate from filing fees, should involve careful consideration of the situation of low-income litigants. If OJD develops the forms and determines that nominal fees are necessary to develop and maintain an on-line document assembly service, consideration should include a tiered model that accommodates individuals with fee waivers and deferrals. Fees for these individuals should be based only on a cost-recovery goal for the forms and document assembly services provided by OJD and its vendor.

COMMENTARY

This issue was a difficult one for Task Force members. Many felt strongly that no user fee should be charged for use of interactive technology, especially if OJD is the developer. These members argued that filing fees – whether for manual filing or electronic filing – should be determined by separate court schedule but no additional cost should be imposed for use of the interactive document assembly process. Requiring litigants to pay for a technology-based approach the court wants to *encourage* (if not actually mandate for the self-represented) is both counter-intuitive and counter-productive under this view. Like other entities changing their business operations, OJD should create inducements rather than disincentives for use. Administrative savings from reduced staff/facilitation time in assisting litigants with hard copy forms are likely very substantial. Even though some of those recouped staff resources could concentrate on the more intensive one-on-one, personal assistance needed by those lacking computer literacy or having language issues that complicate access, the savings and efficiencies gained from interactive forms appear reasonably likely to be significant enough to help defray the upfront development and maintenance costs.

Conversely, several themes underscore the need to consider charging fees for use of interactive forms, an approach other Task Force members favor. Foremost is the statewide budget crisis and the cuts OJD will almost certainly be making in operations. User fees may be the only viable way for the courts to launch this initiative, particularly when the uncertainty about eCourt

funding as a whole is weighed against the urgency of proceeding with the interactive forms component now rather than later. If the only way to begin OJD deployment of the document assembly program in 2011 is to charge user fees, such fees may be appropriate but consideration of the needs of low-income litigants¹⁰ is needed in this analysis. Task Force members discussed two approaches:

- A three-tier option -- no fee would be charged individuals with waivers, a modest fee charged those with deferrals, and a standard fee for those who qualify for neither.
- A two-tier approach: a nominal fee for low-income individuals with waivers or deferrals and a higher, standard fee for those without those orders.

The latter approach has the advantage of simplicity of administration although it ignores a differentiation in incomes the fee waiver rules establishes. The bottom line is that if user fees are necessary for OJD to move forward, it is clear that to preserve public access to the virtual courthouse, the choice of fee model needs to be informed by the expected rates of deferrals and waivers of family law litigants, as well as by costs to develop and maintain the forms. In addition, the sequencing procedure developed for e-filing would need to include the step of administrative decision or judicial approval of the waiver/deferral request.

The second, and related, point is that even if funding exists for initial development of interactive forms, associated maintenance, revision, and staffing costs require on-going funding whose stability at OJD is unclear. A modest user fee designed to fund a part-time position and revision costs (if not separately negotiated with the vendor) may be necessary. Staffing for the forms developer position could be maintained from the savings produced from reduced staff facilitation time or revenue realized from appropriate document assembly fees.

¹⁰ The best deferral/waiver data to which the Task Force had access was reported by the SFLAC in June 2009. Available OJIN data indicated a waiver/deferral/neither split of 30%/10%/60% for general family law filings but facilitators reported anecdotally a 45%/30%/25% for their clientele. Not surprisingly, facilitation customers overall are lower-income than family law litigants in general.

The third and final theme is that OSB as alternative developer would almost certainly pursue a user-fee model. At minimum, the OSB model would produce revenue sufficient to sustain the forms project, including any necessary technical maintenance and staff support. Unlike OJD, OSB does not stand to gain any efficiencies or cost-savings that would offset the cost of form development. The bar would certainly consider accommodations for low-income clients, but does not have ready access to fee waiver and deferral information so a different standard or adjustment would need to be developed.

If OJD takes the lead role, significant sentiment existed that any user fee charged low-income litigants, if imposed, be focused only on a break-even basis and not be premised on a revenue-generating model. However, Task Force members recognized that cost estimates need to include the maintenance, revision, training, and staffing functions as well as reasonably expected business increases. The forms will have only short-lived utility if an infrastructure is not built to maintain it.

RECOMMENDATION No. 6

The Statewide Family Law Advisory Committee (SFLAC) should recommend prioritization of forms for development on interactive formatting, considering case volume, litigant needs, and other relevant criteria. The SFLAC should involve the private bar, eCourt and other OJD staff, and other stakeholders such as non-profit legal services providers and public and law librarians in the process.

COMMENTARY

The most commonly used family law form packets in Oregon are well-known (dissolution, unmarried parents, modification of custody/support, fee waiver/deferral, for example). Prioritization of which forms should be prepared for interactive formatting, and in what order, is a preparatory step OJD and OSB should and can take even while the single source provider contracts are prepared. The SFLAC should assume that responsibility after the work of the Task Force is completed.

Intensive staffing of the effort is not needed but coordination with the newly hired OJD Forms Developer and other eCourt workgroups will be critical. The prioritization recommendations should be a collaborative effort involving that Forms Developer, court facilitators, other court staff, the Family Law Section of OSB, and other non-profit legal services providers such as Legal Aid and public and law librarians.

RECOMMENDATION No. 7

The following issues should be considered in development of forms produced with virtual interview technology:

- integration with e-filing functionality
- interface using a standard web browser
- adaptability to both self-represented users and attorneys
- inclusion of a preliminary or internal diagnostic to determine appropriateness of particular form for the individual user
- automatic data validation
- support from electronic prompts for instructions
- ability of user to save work for later completion
- clarity for users regarding data security and data retention
- ability to extract data for vital records and other statistical needs
- maximized capacity of local administrator (OJD / OSB) to make minor revisions
- capacity to provide service in languages other than English (print form in English but dialogue in other language)

COMMENTARY

A user-friendly document assembly program should be the new gateway between self-represented litigants and the court. It is the vehicle by which these individuals will provide more complete and focused information to decision-makers, produce legally sufficient pleadings, and also improve their understanding of the issues in the case and the court process. The software for the document production should operate independently of any e-filing program, so that parties can print out their forms and file them manually (when no e-filing option exists or for other reasons), but must also be fully compatible with the e-filing functionality developed by OJD. Interface with a standard

web browser is critical, as is a preliminary or internal diagnostic to ensure that the interactive “path” chosen is the one appropriate for the user. Automatic internal data validation is also needed to highlight and prevent clerical or other mistakes in names, dates, addresses, and computations. The software must provide prompts which the user can access to obtain explanations about particular terms or points implicated by the presenting questions. Clear explanations regarding the process to save entered answers and subsequently return to document assembly (without repeating the query process) are also a necessity. Given privacy and safety concerns, prominently posted information regarding the retention and security of data is imperative. Task Force members anticipate the benefit of data extraction for producing the trends and statistics for policy planning that family courts in Oregon have long lacked. The ability to export court documents for delivery to outside partners (Child Support Program, Vital Statistics, Sheriff offices for service) would likely be a function of the case management system rather than document assembly, but the logic for a party’s service options should be planned as part of some forms’ production. A significant component of maintaining the interactive forms is the ability of the developing entity (OJD or OSB) to make minor revisions required by law or rule changes. The capacity *by the developer* (OJD or OSB) to revise instructional prompts (the least complex revision) as well as the form (mid-level complexity) and the logic tree itself (greatest complexity) should be thoughtfully negotiated with an eye toward the unpredictable frequency with which family law procedures can change due to the timing of legislative action and state and federal regulation. Finally, the capacity to produce forms in English based on interactive dialogues in other languages, even if not implemented immediately, should be a priority requirement.

RECOMMENDATION No. 8

The website hosting the interactive forms should:

- use a secure portal
- state clearly what entity is providing and hosting the service
- provide access to explanatory material and instructions throughout the interactive interview process and specific to particular points on the screen

COMMENTARY

Whichever entity develops the forms will need to determine how to refer users to the host site without appearing to impair neutrality (for OJD) or to endorse a particular product (for both OJD and OSB). Some courts “umbrella” the forms production site by using a name reflecting the sponsoring court (for example, “California Superior Court EZ Legal File”). Others contain the court name on the page but also provide disclaimers that indicate that the interactive form process is available *through* the court but is not a component of it: See, for example, Minnesota’s approach:

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The bottom line is that users are entitled to know the relationship of the developer to the forms producer to make an informed choice about proceeding.

As previously mentioned, the virtual technology program must include prompts that the user can access to obtain explanations about particular terms or points implicated by the presenting questions. Links to external resources should be provided as well, where appropriate. This is an arena in which collaboration with other Oregon legal services providers would be most beneficial. OJD, OSB, Legal Aid Services of Oregon (LASO), and the Oregon Law Center are the primary developers of public legal education material in this state. The Child Support Program serves as a well-traveled path for many parents and is their first encounter with the family law justice system. Appropriate links to and from the CSP website are also a priority. Planning about the resource material that can be linked to the interactive forms would optimize the access efforts of each. Dedicated funding may be available for such a collaboration.¹¹

¹¹ The national Legal Services Corporation provides Technology Initiative Grants (TIG) to Legal Services grantees in a number of specific technology-related areas focused on increased client access. At least one of the streams under this grant program prioritizes statewide collaborations with partners that substantially improve the legal services provided to the low-income community. LSC notes that according to a September 2009 survey by the Pew Internet & American Life Project, individuals in 62% of households with incomes of less than \$30,000 have access to and use the Internet, at least occasionally, either from home or from public access points.

RECOMMENDATION No. 9

OJD should make every effort to maintain court facilitation programs at the maximum level of service possible, recognizing that facilitator roles are likely to change after implementation of interactive forms. OJD should evaluate imposition of a user-fee for facilitation appointments only if necessary and effective to support continuation of the programs and their training needs. The SFLAC should make recommendations to the State Court Administrator regarding facilitation delivery models maximizing both court efficiencies and family law access for courts facing additional cutbacks in this access.

COMMENTARY

For the last decade, family law facilitation programs – along with model forms -- have been the backbone of OJD’s commitment to provide “fair, accessible, and timely justice” for family law litigants. Court staff providing procedural assistance and forms review have assisted thousands of Oregonians, many referred by lawyers, law enforcement, and social service agencies. Most of those assisted cannot afford to hire attorneys¹², are unemployed or underemployed, have limited income from social security or disability payments, or are receiving some form of state assistance. In addition, those seeking facilitation assistance are sometimes at imminent risk of losing their children to state care without the intervention of protective family law orders. Facilitation customers come from every socio-economic class because facilitation – like all services of the judicial branch – is available to all Oregonians regardless of income. In recognition that a minority of facilitation clients could afford some fee for facilitation and against a backdrop of funding cutbacks that have seen some courts already end or substantially reduce their facilitation programs, the SFLAC reluctantly recommended in 2009 that OJD consider imposing a user-fee for facilitation appointments. Task Force members endorse that suggestion only if such fees directly support the continuation of the programs and their training needs, meaningfully accommodate low-income litigants with fee deferrals and waivers, and are insulated from legislative re-allocation. Those conditions appear unlikely in the aggregate.

¹² See footnote 10.

Left then with high demand and reduced resources, re-organization and even prioritization of facilitation services may be necessary. The SFLAC, in consultation with local trial court administration staff (including facilitators) and the family law bar, should develop recommendations for the State Court Administrator to offer local courts regarding facilitation delivery models maximizing both court efficiencies and family law access. Maximizing public access to computers and printers will probably be a critical component in this discussion. The recommendations will need to encompass the changing roles of facilitators likely after implementation of interactive forms. Requests for facilitation help may decrease in number due to user-friendly, web-based materials but increase in complexity as those without computer access or with literacy or other barriers remain ill-served by electronic forms.

RECOMMENDATION No. 10

OSB, non-profit legal services providers, and the Division of Child Support of the Oregon Department of Justice should continue efforts to expand information about, and delivery of, unbundled legal services and *pro bono* assistance. Child support calculation assistance is one area of potential focus.

COMMENTARY

The OSB, Legal Aid Services of Oregon (LASO), Oregon Law Center (OLC), and government agencies offer a range of programs to assist self-represented litigants in family law matters. The OSB, LASO, and OLC focus their efforts on attorney involvement. In addition to education efforts, the OSB offers a Modest Means Program that matches lower-income Oregonians with private attorneys willing to charge reduced fees.¹³ The OSB's Lawyer Referral Service, which

¹³ The Modest Means Program was started in 1994 with the goal of matching lower-income Oregonians with attorneys willing to work for reduced fees. By 1995, the Modest Means Program had added two Family Law pro se subpanels – Pro Se Coaching and Document Review. It now includes the following pro se subpanels:

provides any potential client an attorney consultation for no more than \$35, offers referral categories for Document Review and Pro Se Coaching within its family law panel. The OSB's programs have grown rapidly in recent years: in the 2005-06 program year, 88 clients were referred under the pro se panels; for the 2009-10 program year the number of clients rose to 408, a 364% increase in that four year span. Attorney panelist registration has also steadily increased, with 250 attorneys registered for the 2010-11 program year.

LASO and other legal aid programs offer *pro se* assistance in family law matters through group classes and clinic models. Some clinics are run in partnership with courthouse facilitation programs, including a Multnomah County program that offers low-income clients appointments with attorney volunteers on Tuesday and Thursday afternoons. These *pro bono* attorneys provide legal advice and help people fill out family law court forms.

The DOJ's Oregon Child Support Program provides an array of services related to paternity and the establishment and enforcement of child support orders. DOJ offers general information about child support-related matters on its website and provides a guided-interview for support calculation assistance that produces child support worksheets required as petition and judgment exhibits. This interactive calculator is available to all users, regardless of income. Individuals without computer access or who have literacy, language, or educational barriers often require assistance in understanding and performing the calculation process. Unbundled and *pro bono* assistance could be particularly suited to this arena, given the statewide uniformity of the calculation rules and the possibility of telephonic or emailed communication rather than in-person consultation. The Child Support Program also makes numerous referrals to unbundled and pro bono service providers to address parenting time issues and custody matters that impact child support orders but cannot be addressed by Program personnel.

In addition to continuing their current programs and services, these organizations should increase efforts to educate and assist self-represented litigants. The OSB and non-profit legal

Pro Se Coaching, Document Review, Process Questions, Domestic Violence, Grandparent Issues, Spousal Support, Child Support Rebuttal and Contested Custody.

services providers should actively encourage lawyers to provide *pro bono* and low-fee legal services, including unbundled legal services. While the OSB and Professional Liability Fund (PLF) have both published articles and produced CLE programs supportive of unbundling, the topic has received little attention the past few years. The OSB and PLF should renew education and recruitment efforts, encouraging members to provide services to self-represented litigants through existing LASO, OLC, and OSB programs.

In support of private attorney involvement, OJD should encourage Oregon judges to support *pro bono* programs as appropriate under the judicial canons. Finalization of proposed amendments to the Oregon Code of Judicial Conduct could greatly enhance this effort if proposed commentary is adopted supporting judicial recruitment, recognition, and other support to *pro bono* programs.

RECOMMENDATION No. 11

The Family Law Section of the OSB should convene an OSB/OJD workgroup to identify and make recommendations eliminating or revising statutory and regulatory forms and procedures that unduly complicate legal matters for self-represented family law litigants.

COMMENTARY

Negotiating the complex rules and procedures that govern any litigation is daunting for self-represented litigants in family law cases. Most are unfamiliar with the legal system. For many, their divorce or custody case is the only direct contact they will have with the courts. These parties face a vast array of forms and procedures that must be correctly navigated before their case can be completed. Some of these forms or procedures may be outdated, overly complicated, or unnecessary. By eliminating unnecessary forms and procedures, and simplifying those that are overly complicated, facilitation programs and other access to justice resources would be able to increase their effectiveness by reducing the sheer volume of information litigants must

accommodate in order to see their case through to completion. In addition, with fewer forms or procedures to process, courthouse staff time would be freed up for other tasks. Task Force members identified several areas for possible study, including whether the statutory 90-day waiting period required in dissolution cases should be modified or eliminated,¹⁴ and whether the procedure for submitting a dissolution judgment on a prima facie affidavit could be streamlined. Altering either of these procedures would legislative, rule, and/or or practice changes. The Family Law Section of the OSB should convene a work group drawn from the Bar, OJD, and nonprofit legal service providers to identify law improvements that can be achieved by eliminating unnecessary forms and procedures and streamlining others where possible, and to recommend changes to both rules and statutes in order to facilitate the improvements.

¹⁴ Proposed legislation is expected in the 2011 session on one approach to changing the waiting period.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: April 22, 2011
Memo Date: April 8, 2011
From: Chris Kent, Chair, Budget & Finance Committee
Re: Change in OSB Investment Policy

Action Recommended

Approve the changes of the OSB bylaw 7.402 to include the amendments approved by the Budget & Finance Committee. Waive the one meeting notice requirement for the change to subparagraph (g) of bylaw 7.402.

Background

The addition of subparagraphs (j) and (k) to bylaw 7.402 was first on the February 18 board agenda and since this is a bylaw change, it is before the board for final approval.

The change to subparagraph (g) of bylaw 7.402 was not previously considered by the board and therefore requires waiver of the one meeting notice requirement in order to make the recommended change.

The addition of subparagraphs (j) and (k) is the outcome of the Budget & Finance Committee's meeting with representatives of Washington Trust Bank on January 7. At that meeting, the Committee approved the change to bylaw 7.402 *Approved Investments* to add Small Capitalization International Equities and the Emerging Markets Fixed Income as investment classes in the bar's investment policy.

The deletion of the second clause in subparagraph (g) is essentially a housekeeping change to make bylaw 7.402 internally consistent. Currently, the prohibition of individual stock ownership in bylaw 7.402(g) conflicts with 7.402(i), which allows for investment in individual publicly-traded stock. The Committee believes this was an oversight.

Bylaw subsection 7.402 with the recommended changes (underlined or stricken and in red) follow this memo.

Subsection 7.402 Approved Investments

Investments will be limited to the following obligations and subject to the portfolio limitations as to issuer:

- (a) The State of Oregon Local Government Investment Pool (LGIP) no percentage limit for this issuer.
- (b) U.S. Treasury obligations - no percentage limitation for this issuer.
- (c) Federal Agency Obligations - each issuer is limited to \$250,000, but not to exceed 25 percent of total invested assets.
- (d) U.S. Corporate Bond or Note - each issuer limited to \$100,000.
- (e) Commercial Paper - each issuer limited to \$100,000.
- (f) Mutual funds that commingle one or more of the approved types of investments.
- (g) Mutual funds of U.S. and foreign equities ~~and not including individual stock ownership.~~
- (h) Federal deposit insurance corporation insured accounts.
- (i) Individual publicly-traded stocks excluding margin transactions, short sales, and derivatives.
- (j) Small capitalization international equities.
- (k) Emerging markets fixed income.

Security	Minimum credit quality
Interest bearing deposits of banks, savings and loans and credit unions	The issuing financial institution must be rated "well capitalized" as defined by the financial institution's regulator. Those that are not "well capitalized" will be limited by the level of their deposit insurance.
Obligations issued or guaranteed by U.S., local, city and state governments and agencies	A-/A3 as defined by Standard & Poor's and Moody's
Money Market Funds	The issuing financial institution must be rated "well capitalized" as defined by the financial institution's regulator. Those that are not "well capitalized" will be limited by the level of their deposit insurance.
Money Market Mutual Funds	The issuing financial institution must be rated "well capitalized" as defined by the financial institution's regulator. Those that are not "well capitalized" will be limited by the level of their deposit insurance.
Obligations issued or guaranteed by the U.S. Federal government	Not applicable
Obligations issued or guaranteed by U.S. Federal agencies	AAA/AAA as defined by Standard & Poor's and Moody's
Obligations issued or guaranteed by U.S. government-sponsored enterprises	AAA/AAA as defined by Standard & Poor's and Moody's
Obligations issued or guaranteed by local, city and state governments and agencies.	A-/A3 as defined by Standard & Poor's and Moody's
Obligations of U.S. corporations	A-/A3 as defined by Standard & Poor's and Moody's

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: April 22, 2011
Memo Date: April 7, 2011
From: Mitzi Naucler, Policy & Governance Chair
Re: Amendments to OSB Bylaws
Unclaimed Lawyer Trust Accounts

Action Recommended

In 2010, the Legislature amended Oregon's unclaimed property laws to require that funds in abandoned lawyer trust accounts be delivered to the Oregon State Bar. Bar staff recommends amending the OSB Bylaws to provide rules on the administration of unclaimed lawyer trust account funds, and rules on the claim adjudication process.

Bar staff recommends that the Board waive the one-meeting notice requirement under OSB Bylaw Article 27 (which requires a vote of two-thirds of the Board).

Bar staff recommends that the Board appoint a special committee to evaluate claims made against unclaimed lawyer trust account funds, pursuant to the new bylaws.

Background

Recently, ORS 98.386 was amended to provide that unclaimed funds in lawyer trust accounts shall be delivered to the Oregon State Bar. The Bar has entered into an Interagency Agreement with the Department of State Lands, Unclaimed Property Section, to receive and share information about claims. However, the Bar is also required by ORS 98.392(2) to "adopt rules for the administration of claims" that are received for unclaimed lawyer trust account funds.

The proposed bylaws (attached) are divided into three sections: administration, disbursement, and claims adjudications. The first subsection, X.101, provides that unclaimed lawyer trust account funds are to be held in a separate account and administered and invested according with existing bar bylaws.

The second subsection, X.102, outlines the disbursement policy for the funds. The subsection provides that the Executive Director and CFO may make payments from the funds for approved claims and administrative expenses. It also provides that the Board, upon the recommendation of the Budget & Finance Committee, may authorize disbursements of unclaimed lawyer trust account funds to Legal Services if the Board determines the disbursements will not impair the Bar's ability to make payments for claims for the funds.

The third subsection, X. 103, addresses claim adjudication. The proposed bylaws place the primary responsibility for adjudicating claims on a special committee that is appointed by

the Board. The proposed bylaws adopt procedures to use for the adjudication of claims that are consistent with Department of State Lands procedures. Claimants whose claims are denied are provided the opportunity to appeal the denial to the Board. Because the Oregon State Bar is not subject to the Oregon Administrative Procedures Act, claimants would not have an opportunity to file a contested case, in the same manner they would for unclaimed property held by the Department of State Lands. The appeal to the Board provides an alternative to a contested case hearing.

Section X.X Unclaimed Lawyer Trust Account Funds

Subsection X.100 Purpose

This policy is established to provide direction and limits for the administration, disbursement, and claims adjudication of unclaimed lawyer trust account funds appropriated to the Bar. For the purposes of this section, “unclaimed lawyer trust account funds” are defined to mean all funds allocated to the bar pursuant to ORS 98.386(2).

Subsection X.101 Administration

- (a) All unclaimed lawyer trust account funds appropriated to the Bar shall be received and held in a separate fund in the manner authorized by Section 7.1.
- (b) All unclaimed lawyer trust account funds shall be invested in the manner described at Section 7.4. The Legal Services Committee may provide recommendations on the investment of unclaimed lawyer trust account funds to the Investment Committee.

Subsection X.102 Disbursement

- (a) The Executive Director and the Chief Financial Officer are authorized and empowered to make disbursements of unclaimed lawyer trust account funds appropriated to the Bar to:
 - (1) Claimants for the payment of claims allowed under ORS 98.392(2), pursuant to Subsection X.103; and
 - (2) The Bar, for expenses incurred by the Bar in the administration of the Legal Services Program, only if the Executive Director determines such disbursements will not impair the Bar’s ability to make payments for claims allowed pursuant to Subsection X.103 from unclaimed lawyer trust account funds.
- (b) The Budget & Finance Committee, after seeking the advice of the Legal Services Committee, may recommend that the Board make disbursements of unclaimed lawyer trust account funds appropriated to the Bar to:
 - (1) The Legal Services Program established under ORS 9.572 for the funding of legal services.

The Board is authorized to make disbursements hereunder only if the Board determines the disbursements will not impair the Bar's ability to make payments for claims allowed pursuant to Subsection X.103 from unclaimed lawyer trust account funds.

Subsection X.103 Claim Adjudication

(a) When the Oregon Department of State Lands forwards a claim for unclaimed lawyer trust account funds to the Bar for review, a special committee appointed by the Board shall review the claim and approve or deny the claim. A claim shall be approved if a preponderance of the evidence proves the claimant is legally entitled to the unclaimed lawyer trust account funds. A claim shall be denied if the preponderance of the evidence does not prove the claimant is legally entitled to the property.

(b) The Bar shall utilize claim forms published by the Oregon Department of State Lands. To evaluate whether to approve or deny a claim under Subsection X.103(a), the Bar adopts the claim adjudication rules promulgated by the Oregon Department of State Lands at OAR 141-040-020; and OAR 141-040-0211 through OAR 141-040-0213. Where the rules reference the "Department" they shall be deemed to refer to the Bar.

(c) If a claim is approved pursuant to this Subsection, the special committee shall notify the claimant and the Executive Director.

(d) If a claim is denied, the special committee shall notify the claimant and the Executive Director. The notice of denial shall include the specific reason for denial and shall include a notice of an opportunity to appeal the denial to the Board.

(e) A claimant may appeal the denial of a claim by making a request in writing addressed to the Executive Director of the Bar, within 60 days after the date of written notice of denial of the claim. A request for appeal shall be in writing and shall identify issues of law or fact raised by the denial and include a summary of the evidence of ownership on which the claim was originally submitted. The Board will review each request for appeal at its next scheduled board meeting following receipt of the request and respond through the Executive Director in writing. The Board's response will include an explanation of the Board's reasoning.

(f) Additional evidence shall not be admissible on appeal to the Board, except by mutual consent of the Board, the claimant, and any other parties to the proceeding. If such additional evidence is not admitted, the Board shall allow the claimant to resubmit the claim to the special committee with the new evidence.

(g) If the Board approves a claim on appeal, the Board shall notify the claimant and the Executive Director.

(h) A holder of property who has delivered unclaimed lawyer trust account funds to the Bar pursuant to ORS 98.386(2) may make payment to or delivery of property to an owner and file a claim with the Bar for reimbursement. The Bar shall reimburse the holder within 60 days of receiving proof that the owner was paid. The Bar may not assess any fee or other service charge to the holder. As a condition of

receiving the funds from the Bar, the holder shall agree to assume liability for the claimed asset and hold the Bar harmless from all future claims to the property.

(i) On a monthly basis, the Executive Director or the Executive Director's designee shall provide a listing of the resolution of claims to the Department of State Lands.

Fee Arbitration Rules

Rules of the Oregon State Bar on Arbitration of Fee Disputes

Effective ~~August 14, 2004~~ April 22, 2011

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Section 1. Purpose

1.~~10~~ The purpose of these Rules is to provide for the arbitration of fee disputes between active members of the Oregon State Bar maintaining offices in Oregon and their clients; ~~and between those members and other active members of the Oregon State Bar; and; between active members of a state bar other than Oregon and their clients who either are residents of the state of Oregon or have their principal place of business in Oregon.~~ Parties who agree to participate in this program expressly waive the requirements of ORS 36.600 to 36.740 to the extent permitted by ORS 36.610 except as specifically provided herein.

Section 2. Arbitration Panels

2.~~10~~ General Counsel shall appoint members to an arbitration panel in each ~~judicial district board of governors region~~, from which hearing panels will be selected. The normal term of appointment shall be three years, and a panel member may be reappointed to a further term. All attorney panel members shall be active or active pro bono members in good standing of the Oregon State Bar. Public members will be selected from individuals who reside or maintain a principal business office in the ~~judicial district board of governors region~~ of appointment and who are neither active nor inactive members of any bar.

Section 3. Initiation of Proceedings

3.1 An arbitration proceeding shall be initiated by the filing of a written petition and an arbitration agreement. The petition must be signed by one of the parties to the dispute and filed with General Counsel's Office within 6 years of the completion of the legal services involved in the dispute.

3.2 Upon receipt of the petition and arbitration agreement signed by the petitioning party, General Counsel's Office shall forward a copy of the petition and the original arbitration agreement to the respondent named in the petition by ~~certified regular first-class mail; e-mail or facsimile or by such other method as may reasonably provide the respondent with actual notice of the initiation of proceedings. return receipt requested.~~ Any supporting documents submitted with the petition shall also be provided to the respondent. If the respondent desires to submit the dispute to arbitration, the respondent shall sign the original arbitration agreement and return it to General Counsel's Office within twenty (2~~10~~) days after receipt. A twenty (2~~10~~) day extension of time to sign and return the petition may be granted by General Counsel. Failure to sign and return the arbitration agreement within the specified time shall be deemed a rejection of arbitration. A lawyer who is retained by a client who was referred by the OSB Modest Means Program or OSB Lawyer Referral Program may not decline to arbitrate if such client files a petition for fee arbitration.

3.3 If the respondent agrees to arbitrate, General Counsel's Office shall notify the petitioner who shall, within twenty (2~~10~~) days of the mailing of the notice, pay a filing fee of \$50 for claims of less than ~~\$5000~~ \$7500 and \$75 for claims of ~~\$ 5000~~ \$7500 or more. The filing fee may be waived at the discretion of General Counsel based on the submission of a statement of the petitioner's assets and liabilities reflecting inability to pay. The filing fee shall not be refunded if the dispute is settled prior to the issuance of an award or if the parties agree to withdrawal of the petition, except on a showing satisfactory to General Counsel's Office of extraordinary circumstances or hardship.

3.4 If arbitration is rejected, General Counsel's Office shall notify the petitioner of the rejection and of any stated reasons for the rejection.

3.5 The petition, arbitration agreement and statement of assets and liabilities shall be in the form prescribed by General Counsel, provided however, that the agreement may be modified with the consent of both parties and the approval of General Counsel's Office.

3.6 After the parties have signed the agreement to arbitrate, if one party requests that the proceeding not continue, General Counsel's Office shall dismiss the proceeding. A dismissed proceeding will be reopened only upon agreement of the parties or receipt of a copy of an order compelling arbitration pursuant to ORS 36.625.

Section 4. Amounts in Dispute

4.1 Any amount of fees or costs in controversy may be arbitrated. The arbitrator(s) may award interest on the amount awarded as provided in a written agreement between the parties or as provided by law, but shall not award attorney fees or costs incurred in the arbitration proceeding. General Counsel's Office may decline to arbitrate cases in which the amount in dispute is less than \$250.00.

~~4.2 Arbitrators may not award affirmative relief in the form of damages or reduce a fee to compensate for losses incurred by a client for alleged malpractice or otherwise. However, evidence shall be allowed regarding allegations of the attorney's mishandling of a case to determine whether the fees charged for the services were reasonable. The sole issue to be determined in all arbitration proceedings under these rules shall be whether the fees or costs charged for the services rendered were reasonable in light of the factors set forth in RPC 1.5. Arbitrators may receive any evidence relevant to a determination under this Rule, including evidence of the value of the lawyer's services rendered to the client. An attorney shall not be awarded more than the amount for services billed but unpaid. A client shall not be awarded more than the amount already paid, and may also be relieved from payment of services billed and remaining unpaid.~~

Section 5. Selection of Arbitrators

5.1 Each party to the dispute shall receive with the petition and arbitration agreement a list of the members of the arbitration panel having jurisdiction over the dispute. The arbitration panel having jurisdiction over a dispute shall be that of the ~~judicial district~~board of governors region in which the ~~attorney~~lawyer to the dispute maintains his or her law office, unless the parties agree that the matter should be referred to the panel of another ~~judicial district~~board of governors region.

5.2 Each party may challenge without cause, and thereby disqualify as arbitrators, not more than two members of the panel. Each party may also challenge any member of the panel for cause. Any challenge must be made by written notice to General Counsel, shall include an explanation of why the party believes the party cannot have a fair and impartial hearing before the member, and shall be submitted along with the Petition and Agreement. Challenges for cause shall be determined by General Counsel, based on the reasons offered by the challenging party.

5.3 Upon receipt of the arbitration agreement signed by both parties, General Counsel shall select the appropriate number of arbitrators from the list of unchallenged members of the panel to hear a particular dispute. Disputed amounts of less than ~~\$5,000~~ \$7,500 shall be arbitrated by one panel member. Disputed amounts of ~~\$5,000~~ \$7,500 or more shall be arbitrated by three panel members (subject to Rule 5.4). If three (3) arbitrators are appointed, General Counsel shall appoint one ~~attorney~~lawyer member to serve as chairperson. Notice of appointment shall be given by the General Counsel to the parties. Regardless of the amount in controversy, the parties may agree that one arbitrator hear and decide the dispute.

5.4 If three arbitrators cannot be appointed in a particular case from the arbitration panel of the ~~judicial district board of governors region~~ in which a dispute involving ~~\$5,000~~\$7,500 or more is pending, the dispute shall be arbitrated by a single arbitrator. If, however, any party files a written objection with General Counsel within 10 days after notice that a single arbitrator will be appointed under this ~~Rule~~subsection, two additional arbitrators shall be appointed, under the procedures set out in subsection 5.5.

5.5 Any change or addition in appointment of arbitrators shall be made by General Counsel. When appropriate, arbitrators can be appointed by the General Counsel from the arbitration panel of a different ~~judicial district board of governors region~~. When necessary, General Counsel may also select other arbitrators, provided that the attorney~~lawyer~~ members are active members in good standing of the Oregon State Bar.

5.6 Before accepting appointment, an arbitrator shall disclose to the parties and, if applicable, to the other arbitrators any known facts that a reasonable person would consider likely to affect the impartiality of the arbitrator in the proceeding. Arbitrators have a continuing duty to disclose any such facts learned after appointment. After disclosure of facts required by this rule, the arbitrator may be appointed or continue to serve only if all parties to the proceeding consent; in the absence of consent by all parties, General Counsel's Office will appoint a replacement arbitrator and, if appropriate, extend the time for the hearing.

Section 6. Arbitration Hearing

6.1 The arbitrator(s) appointed shall determine a convenient time and place for the arbitration hearing to be held. The chairperson or single arbitrator shall provide written notice of the hearing date, time and place to the parties and to General Counsel's Office not less than 1~~40~~ days before the hearing. Notice may be provided by regular first class mail, e-mail, or facsimile or by such other method as may reasonably provide the parties with actual notice of the hearing. Appearance at the hearing waives the right to notice.

6.2 The arbitration hearing shall be held within ~~sixty (60)~~ ninety (90) days after appointment of the arbitrator(s) by General Counsel, subject to the authority granted in subsection 6.3.

6.3 The arbitrator or chairperson may adjourn the hearing ~~from time to time~~ as necessary. Upon request of a party to the arbitration for good cause, or upon his or her own determination, the arbitrator or chairperson may postpone the hearing from time to time.

6.4 Arbitrators shall have those powers conferred on them by ORS 36.675. The chairperson or the sole arbitrator shall preside at the hearing. He or she shall be the judge of the relevance and materiality of the evidence offered and shall rule on questions of procedure. He or she shall exercise all powers relating to the conduct of the hearing, and conformity to legal rules of evidence shall not be necessary. Arbitrators shall resolve all disputes using their professional judgment concerning the reasonableness of the charges made by the lawyer involved.

6.5 The parties to the arbitration are entitled to be heard, to present evidence and to cross-examine witnesses appearing at the hearing. Any party to an arbitration may be represented at his or her own expense by ~~an~~ attorney~~lawyer~~ at the hearing or at any stage of the arbitration.

6.6 On request of any party to the arbitration or any arbitrator, the testimony of witnesses shall be given under oath. When so requested, the chairperson or sole arbitrator may administer oaths to witnesses testifying at the hearing.

6.7 Upon request of one party, and with consent of both parties, the ~~chairperson-panel~~ or sole arbitrator may decide the dispute upon written statements of position and supporting documents submitted by each party, without personal attendance at the arbitration hearing. The chairperson or sole arbitrator may also allow a party to appear by telephone if, in the sole discretion of the chairperson or sole arbitrator, such appearance will not impair the ability of the arbitrator(s) to determine the matter. The party desiring to appear by telephone shall bear the expense thereof.

6.8 If any party to an arbitration who has been notified of the date, time and place of the hearing but fails to appear, the chairperson or sole arbitrator may either postpone the hearing or proceed with the hearing and determine the controversy upon the evidence produced, notwithstanding such failure to appear.

6.9 Any party may have the hearing reported at his or her own expense. In such event, any other party to the arbitration shall be entitled to a copy of the reporter's transcript of the testimony, at his or her own expense, and by arrangements made directly with the reporter. As used in this subsection, "reporter" may include an electronic reporting mechanism.

6.10 If during the pendency of an arbitration hearing or decision the client files a malpractice suit against the lawyer, the arbitration proceedings shall be either stayed or dismissed, at the agreement of the parties. Unless both parties agree to stay the proceedings within 14 days of the arbitrator's receipt of a notice of the malpractice suit, the arbitration shall be dismissed.

Section 7. Arbitration Award

7.1 An arbitration award shall be rendered within thirty (30) days after the close of the hearing unless General Counsel, for good cause shown, grants an extension of time.

7.2 The arbitration award shall be made by a majority where heard by three members, or by the sole arbitrator. The award shall be in writing and signed by the members concurring therein or by the sole arbitrator. The award shall state the basis for the panel's jurisdiction, the nature of the dispute, the amount of the award, if any, the terms of payment, if applicable, and an opinion regarding the reasons for the award. Awards shall be

substantially in the form shown in Appendix A. An award that requires the payment of money shall be accompanied by a separate statement that contains the information required by ORS 18.042 for judgments that include money awards.

7.3 The original award shall be forwarded to General Counsel, who shall mail certified copies of the ~~agreement and~~ award to each party to the arbitration. General Counsel shall retain the original ~~award,~~ award, together with the original agreement to arbitrate. Additional certified copies of the agreement and award will be provided on request. The OSB file will be retained for six years after the award is rendered; thereafter it may be destroyed without notice to the parties.

7.4 If a majority of the arbitrators cannot agree on an award, they shall so advise General Counsel within 30 days after the hearing. General Counsel shall resubmit the matter, de novo, to a new panel within thirty days.

7.5 The arbitration award shall be binding on both parties, subject to the remedies provided for by ORS 36.615, 36.705 and 36.710. The award may be confirmed and a judgment entered thereon as provided in ORS 36.615, 36.700 and ORS 36.715.

7.6 Upon request of a party and with the approval of General Counsel for good cause, or on General Counsel's own determination, the arbitrator(s) may be directed to modify or correct the award for any of the following reasons:

- a. there is an evident mathematical miscalculation or error in the description of persons, things or property in the award;
- b. the award is in improper form not affecting the merits of the decision
- c. the panel or sole arbitrator has not made a final and definite award upon a matter submitted; or
- d. to clarify the award.

Section 8. Public Records and Meetings

8.1 The arbitration of a fee dispute through General Counsel's Office is a private, contract dispute resolution mechanism, and not the transaction of public business.

8.2 Except as provided in paragraph 8.4 below, or unless all parties to an arbitration agree otherwise, all records, documents, papers, correspondence and other materials submitted by the parties to the General Counsel, or to the arbitrator(s), and any award rendered by the arbitrator(s), shall not be subject to public disclosure.

8.3 Arbitration hearings are closed to the public, unless all parties agree otherwise. Witnesses who will offer testimony on behalf of a party may attend the hearing, subject to the chairperson's or sole arbitrator's discretion, for good cause shown, to exclude witnesses.

8.4 Notwithstanding paragraphs 8.1, 8.2, and 8.3, lawyer arbitrators shall ~~disclose inform to~~ the Client Assistance Office when they know, based on information any knowledge obtained during the course of an arbitration proceeding, that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, of an apparent ethical violation committed by the attorney; and a All records, documents, papers, correspondence and other materials submitted to General Counsel or to the arbitrator(s) during the course of the proceeding, and any award rendered by the arbitrator(s), shall be made available to the Client Assistance Office for the purpose of reviewing the alleged ethical violations in accordance with BR 2.5.

8.5 Notwithstanding paragraphs 8.1, 8.2, and 8.3, General Counsel may disclose to the Client Assistance Office or to Disciplinary Counsel, upon the Client Assistance Office's or Disciplinary Counsel's request, whether a fee arbitration proceeding involving a particular ~~attorney~~ lawyer is pending, the current status of the proceeding, and, at the conclusion of the proceeding, in whose favor the award was rendered.

8.6 Notwithstanding paragraphs 8.1, 8.2 and 8.3, if any lawyer whose employment was secured through the Oregon State Bar Modest Means Program or Lawyer Referral Program refuses to participate in fee arbitration, General Counsel shall notify the administrator of such program(s).

Section 9. Arbitrator Immunity and Competency to Testify

9.1 Pursuant to ORS 36.660, arbitrators shall be immune from civil liability to the same extent as a judge of a court of this state acting in a judicial capacity. All other provisions of ORS 36.660 shall apply to arbitrators participating in the Oregon State Bar fee arbitration program.

Appendix A

**Oregon State Bar
Fee Arbitration**

) Case No.

Petitioner

)

v.

) Arbitration Award

)

Respondent

)

Jurisdiction

Nature of Dispute

Amount of Award

Opinion

Award Summary

The arbitrator(s) find that the total amount of fees and costs that should have been charged in this matter ~~are~~is:

\$

Of which the Client is found to have paid:

\$

For a net amount due of:

\$

Accordingly, the following award is made:

\$

Client shall pay Attorney the sum of:

\$

(or)

Attorney shall refund to Client the sum of:

\$

(or)

Nothing further shall be paid by either attorney or client.

/Signature(s) of Arbitrator(s)

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: April 22, 2011
Memo Date: April 5, 2011
From: Mitzi Naucler, Policy and Governance Committee Chair
Re: Judicial Administration Committee Assignment Revisions

Action Recommended

Approve revisions to the Judicial Administration Committee assignment (also referred to as a committee charge).

Background

The Judicial Administration Committee would like to expand its assignment to allow for the support of access to justice and the monitoring of court facilities and public safety issues. The committee also requests that the assignment include the ability to track relevant work on and support of various alternative courts. The attached assignment outlines the specific wording of these changes.

Additionally, the committee is asking that their assignment to participate in judicial appointments and new judgeships be removed since the committee has not been involved in the judicial selection process for several years.

Note, additions and deletions to the original assignment are indicated by underlining (new) or strikethrough (deleted).

JUDICIAL ADMINISTRATION COMMITTEE CHARGE

General:

Study and make recommendations to the Board on matters concerning state judicial administration and the judiciary. Monitor and recommend improvements in technology, operation, discipline and funding within the judicial system.

Specific:

1. Review relevant past and future legislation affecting the justice system ~~and its funding~~, and coordinate with Public Affairs Committee of BOG.
2. Monitor and provide recommendations to BOG regarding ballot measures and issues of special interest affecting judicial administration and Oregon Judicial Department funding.
3. Monitor the implementation of the Chief Justice's Oregon eCourt Program and related implementation rules, policies, and laws, provide recommendations to the BOG on issues affecting judicial administration in the eCourt Program.
4. Work with the Legislature, the Judicial Department, and local counties on court facilities issues and monitor the work of the Interim Committee on Court Facilities established in section 18, chapter 860, Oregon Laws 2007, and report to the BOG on legislative measures addressing court facilities issues.
5. Monitor and support Public Defense Services public safety issues, access to justice, and related funding issues.
6. Track relevant work on and support alternative courts (water court, veteran's courts, expedited civil jury trials), Treatment Courts and Problem Solving Courts, including Drug Courts, Family Courts, DUII Courts, and Mental Health Courts.
- ~~7. Continue involvement in judicial appointments and new judgeships.~~
7. Support public awareness including community outreach by judges.
8. Continue to study and consider judicial selection and judicial campaign proposals.
9. Relate the above activities to ~~court accessibility~~ access to courts and keeping courts open.
10. Solicit nominations for the OSB Award of Merit, the President's Public Service Award, Membership Service Award, Affirmative Action Awards, the Joint Bench Bar Professionalism Award and any other state, local and national awards for lawyers who contribute to serving the legal needs of Oregonians.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: April 22, 2011
From: Mitzi Naucler, Chair, Policy and Governance Committee
Re: Complimentary CLE for Active Pro Bono Members

Action Recommended

Approved amendments to OSB Bylaw 16.200 to allow Active Pro Bono members to attend up to 8 hours of OSB CLE annually without charge. This amendment was presented to and discussed by the BOG at its February 2011 meeting, which satisfies the one-meeting notice requirement of OSB Bylaw 27.

Background

After considering the request of an Active Pro Bono member, the Policy and Governance Committee recommended to the BOG that such members be entitled to complimentary attendance at OSB CLE seminars, limited to one program of one day or less. After discussion, the BOG voted to allow up to eight (8) hours annually, regardless of the number of days or programs.

To implement the new policy, Bylaw 16.200 should be amended as follows:

Subsection 16.200 Reduced and Complimentary Registrations

(a) Complimentary admission to CLE seminars is available to the following OSB lawyer members: Active Pro Bono members, lawyer-legislators, 50-year members, judges, and judicial clerks.

(b) Complimentary admission does not include the cost of lunch or other fee-based activities held in conjunction with a CLE seminar.

(c) For purposes this policy, "judges" means full or part-time paid judges and referees of the Circuit Courts, the Court of Appeals, the Tax Court, the Supreme Court, and of tribal and federal courts within Oregon. Complimentary registration at any event for judicial clerks will be limited to one clerk for each trial court judge and two clerks for each appellate court judge.

(d) Complimentary admission for Active Pro Bono members is limited to eight (8) hours of programming in any one calendar year, which may be used in increments.

(e) Reduced registration fee, tuition assistance and complimentary copies of programs may be available to certain other attendees, in the sole discretion of the CLE Seminars Director.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: April 22, 2011
From: Mitzi Naucler, Chair, Policy and Governance Committee
Re: Amendments to OSB Bylaw 24.201

Action Recommended

Approve amendments to OSB Bylaw 24.201 to specifically include “judges” in addition to lawyers as eligible recipients of services provided by the PLF Personal and Practice Management Assistance Committee (PLF-PPMAC). This item was presented to and discussed by the BOG at its February 2011 meeting, which satisfies the one-meeting notice requirement of OSB Bylaw 27.

Background

The PLF-PPMAC programs are the Oregon Attorney Assistance Program (OAAP) and the Practice Management Assistance Program (PMA). The PLF-PPMAC was created pursuant to ORS 9.568(2), which provides:

...the board may create personal and practice management assistance committees to provide assistance to lawyers who are suffering from impairment or other circumstances that may adversely affect professional competence or conduct. Personal and practice management assistance committees may also provide advice and training to lawyers in practice management.

Pursuant to OSB Bylaw 24.201, the PLF-PPMAC

has the authority to provide assistance to lawyers who are suffering from impairment or other circumstances that may adversely affect professional competence or conduct and may also provide advice and training to lawyers in practice management. The PLF-PPMAC may provide this assistance through the PLF’s Oregon Attorney Assistance Program and the Practice Management Advisor Program and by the use of the PLF staff and volunteers.

The bylaw currently mirrors the language of the statute, which doesn’t say anything about judges. That said, most judges are lawyers, and so might reasonably be considered a subset of the more general term “lawyers.” Consequently, it is staff’s opinion that the statute and bylaw currently allow the PLF-PPMAC to provide services to judges. In fact, the PLF-PPMAC programs have historically been open to judges.

While an amendment to the bylaw may be technically unnecessary, there is no harm in making the proposed change. Further, the PLF provides good reason for the proposed change. The OAAP has been working with a committee of judges to improve judicial access to the OAAP. The committee has encouraged the OAAP to make its services more visibly directed toward judges in particular as well as lawyers in general. Amending the bylaw to specifically add “judges” as eligible recipients of the PLF-PPMAC services is part of that effort.

Similarly, deleting “to lawyers” broadens the reach of the PLF-PPMAC. In order to ensure services continue to focus on law practice rather any type of practice, the generic term “practice management” should be modified to say “law practice management.”

Accordingly, the Policy and Governance Committee supports the PLF’s request that OSB Bylaw 24.201 be amended to read:

[The PLF-PPMAC] has the authority to provide assistance to lawyers and judges who are suffering from impairment or other circumstances that may adversely affect professional competence or conduct and may also provide advice and training ~~to lawyers~~ in law practice management. The PLF-PPMAC may provide this assistance through the PLF’s Oregon Attorney Assistance Program and the Practice Management Advisor Program and by the use of the PLF staff and volunteers.

New Lawyers Division Bylaws

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Article 1.
Name, Purpose and Fiscal Year

1.1 Name.

The name of this organization shall be the Oregon New Lawyers Division (“Division”) of the Oregon State Bar (“hBar”).

1.2 Purposes.

The purposes of the Division shall be to encourage new lawyers to participate in the activities of the bar, to conduct programs of value to new lawyers and law students, to promote public awareness of and access to the legal system, and to promote professionalism among new lawyers in Oregon.

1.3 Public Office.

The Division shall not participate in or intervene in (including the publishing or distribution of statements) any political campaign on behalf of any candidate for public office.

1.4 Fiscal Year.

The fiscal year of the Division shall coincide with the fiscal year of the hBar.

1.5 Bar Policies.

The Division shall comply with the policies of the Board of Governors of the hBar that apply to sections, except as otherwise provided in these bylaws.

Article 2.
Membership and Dues

2.1 Members.

Each member of the hBar shall be eligible to be a member of the Division until the last day of the Division’s fiscal year in which such member attains the age of thirty-six (36) years or until the last day of the sixth full fiscal year in which any such member has been admitted to practice in this state, whichever is later. All eligible members of the hBar shall automatically be members of the Division unless and until membership dues are assessed under this Article, in which case all eligible members of the hBar who pay the Division membership dues shall be members of the Division.

2.2 Associate Members.

Any law student presently attending an ABA accredited law school in Oregon shall automatically be considered an associate member of the Division without payment of dues. Individual students at other ABA accredited schools shall be associate members upon written request.

2.3 Dues.

Membership dues may be set by the membership of the Division at the annual meeting of the Division, subject to subsequent approval of the Board of Governors. Membership dues shall not be prorated for any portion of a year. The Division Executive Committee may establish free or discounted membership rates for new admittees or for attorneys with incomes below a specified level. If assessed, membership dues shall be collected annually by the hBar with hBar membership fees.

2.4 Associate Member Participation in Division Business.

Associate members may not serve as voting members of the Executive Committee and may not vote at Division meetings. However, they may serve on any Division Standing Committee or Special Committee.

Article 3.
Division Executive Committee

3.1 Composition.

The Executive Committee shall be composed of eleven Division members. There shall be one Executive Committee position for each of the following ~~six~~ seven (7) regions.

Region 1:

Baker, Crook, Deschutes, Gilliam, Grant, Harney, Hood River, Jefferson, ~~Klamath~~, Lake, Malheur, Morrow, Sherman, Umatilla, Union, Wallowa, Wasco and Wheeler Counties.

Region 2:

Lane County.

Region 3:

Coos, Curry, Douglas, Jackson, ~~Benton, Klamath Lincoln, Linn~~ and Josephine Counties.

Region 4:

Clatsop, Columbia, Lincoln, Tillamook, Washington, and Yamhill Counties.

Region 5:

Multnomah County.

Region 6:

~~Clackamas~~, Benton, Linn, Marion, and Polk ~~Yamhill~~ Counties.

Region 7:

Clackamas County.

The remaining ~~five~~ four Executive Committee members shall be elected at-large by the Division membership. In addition, the past Chairperson shall serve as a non voting member of the Executive Committee, whether or not he or she falls within the membership criteria of Article 2.

3.2 Duties.

The Executive Committee shall supervise and control the affairs of the Division subject to these bylaws and the bylaws and policies of the Board of Governors of the ~~b~~Bar.

3.3 Majority Vote, Quorum.

~~Action of the Executive Committee shall be by majority vote.~~ A quorum consisting of a majority of the Executive Committee, not including the past chairperson, shall be required to conduct its business. Action of the Executive Committee shall be by majority vote.

3.4 Meetings.

The Chairperson may, and upon the request of three members of the Executive Committee shall, call meetings of the Executive Committee.

3.5 Action Between Meetings.

Between meetings of the Division, the Executive Committee shall have full power to do and perform all acts and functions that the Division itself might perform. The Executive Committee shall provide a summary of such actions at the next meeting of the Division membership.

3.6 Membership Votes.

The Executive Committee may direct that a matter be submitted to the members of the Division for a vote by mail, electronic vote or for a vote at any Division meeting.

3.7 Compensation.

No salary or compensation for services shall be paid to any member of the Executive Committee or member of any other committee with the exception of the Editor and other staff of a Division newsletter (if applicable). Reimbursement may be allowed for travel and other out-of-pocket expenses for members of the Executive Committee and members of all Division standing and special committees.

3.8 Removal.

Executive Committee members missing two consecutive Executive Committee meetings or three of eight consecutive Executive Committee meetings may be removed from office by majority vote of the Executive Committee members. Executive Committee members who are suspended from membership in the Oregon State Bar may be removed at any time during the period of suspension by a two-thirds majority of the Executive Committee members or by a two-thirds majority of members voting at the Division's annual business meeting.

3.9 Rescission.

The membership of the Division shall have the right to rescind or modify any action or decision by the Executive Committee, except for filling a vacancy in the position of Officer or Executive Committee member, and also may instruct the Executive Committee as to future action. The Executive Committee shall be bound by any such action of the membership. The right of the membership to direct, modify, or rescind an act of the Executive Committee shall not include power to invalidate contracts or payments previously made under direction of the Executive Committee. Any vote to direct, modify, or rescind an action of the Executive Committee must be taken at a meeting at which two-thirds of members present vote in favor of the ~~M~~motion.

Article 4. Officers

4.1 Composition.

The officers of the Division shall be a Chairperson, a Chairperson-Elect, a Secretary, a Treasurer and such other officers as may be determined to be necessary by the membership. The officers shall be elected from among the Executive Committee members.

4.2 Chairperson.

The Chairperson, or the Chairperson-Elect in the absence of the Chairperson, shall preside at all meetings of the Division and of the Executive Committee. The Chairperson shall appoint the ~~officers~~ chairperson and members of all committees of the Division pursuant to Article 7; plan and monitor the programs of the Division; keep the Executive Committee duly informed and carry out its decisions; and perform such other duties as may be designated by the Executive Committee. The Chair shall serve as an ex-officio delegate to the Oregon State Bar House of Delegates.

4.3 Chairperson-Elect.

The Chairperson-Elect shall aid the Chairperson in the performance of his or her responsibilities, and shall perform such further duties as may be designated by the Executive Committee. In the event of the death, disability, or resignation of the Chairperson, the Chairperson-Elect shall perform the duties of the Chairperson for the remainder of the Chairperson's term or disability. The Chairperson-Elect shall automatically become the Chairperson immediately following the annual election of officers.

4.4 Secretary.

The Secretary shall maintain all books, papers, documents and other property pertaining to the work of the Division, and shall keep a true record of proceedings of all meetings of the Division and of the Executive

Committee. Typed minutes of all meetings of the Division and of the Executive Committee shall be distributed to all members of the Executive Committee as soon as possible but no later than fourteen (14) days (excluding weekends and holidays) after the meeting and shall be subject to amendment and approval at the next Executive Committee Meeting. In addition, the Chairperson or Secretary shall, whenever possible, distribute notice of scheduled Executive Committee meetings to all Executive Committee members at least ten (10) days (excluding weekends and holidays) prior to such meeting. The Secretary shall perform other such duties as designated by the Executive Committee. Minutes and agendas distributed to Executive Committee Members shall be contemporaneously provided to the ~~h~~Bar.

4.5 Treasurer.

The Treasurer, shall keep an accurate record of all receipts and expenditures approved by the Division; report on the Division's present and projected financial condition at each meeting of the Division Executive Committee; prepare, in conjunction with the ~~h~~Bar staff administrator, an annual projected budget for approval by the Executive Committee; and submit a report of the Division's financial affairs and financial condition to the members at the Division annual business meeting. The budget shall then be submitted to the Board of Governors for its approval no later than ~~November 15~~ September 1. The treasurer shall submit any requests for general Bar funding to the Board of Governors no later than September 30-1 of the year prior to the fiscal year for which such funds are requested..

Article 5. Meetings

5.1 Open Meetings.

The Division (including meetings of the Executive Committee) is subject to the Public Meetings Law. Therefore, the bar shall be notified twenty (20) days in advance (excluding weekends and holidays) of Division meetings. If 20 days' notice is not practical, notice shall be given as soon as possible. Reasonable notice shall be given to Division members of all Division meetings.

5.2 Meeting.

Each year there shall be at least one membership meeting for the purpose of conducting Division business, which meeting shall be known as the Division annual business meeting. The Division annual business meeting may be held in conjunction with the annual meeting of the ~~h~~Bar at a time and place to be coordinated with the ~~h~~Bar's Executive Director, or on any other date no later than November 15.

5.3 Special Meetings.

Special meetings of the Division may be scheduled from time to time by the Executive Committee.

5.4 Action.

Action at a meeting of the Division membership shall be by a majority of those members present and voting. At least six members who maintain offices in at least three different regions must be present to establish a quorum at a meeting of the Division membership.

5.5 Floor vote.

During the meetings described in the preceding two paragraphs, the Division membership at large may call any matter to the floor upon the vote of the majority of the members who are present.

5.6 Rules.

Except as otherwise provided herein, all meetings of the Division shall be conducted in accordance with the then current version of Roberts Rules of Order.

Article 6.
Terms In Office And Elections

6.1 Limitation on Executive Committee Membership.

No member may be elected or appointed to serve on the Executive Committee for more than six years, except that a member who first serves an unexpired term of one year or less shall be eligible for election or appointment to two full three year terms.

6.2 Term.

Each term of office ~~shall begin immediately following election to the Executive Committee~~ shall begin January 1. Members of the Executive Committee shall serve three-year terms. The terms of office shall be staggered so that approximately one-third of the positions are up for election each year, as outlined below:

Positions 1 and 2 (Region 1 and 2)

Terms expire: ~~2006, 2009~~, 2012, 2015, 2018, 2021

Positions 3 and 4 (Region 3 and 4)

Terms expire: ~~2008~~, 2011, 2014, 2017, 2020

Positions 5 and 6 (Region 5 and 6)

Terms expire: ~~2007, 2010~~, 2013, 2016, 2019, 2022

Positions 7 (Region 7)

Terms expire: 2008, 2011, 2014, 2017, 2020

~~and~~ Position 8 (At Large)

Terms expire: ~~2008~~, 2011, 2014, 2017, 2020

Positions 9 and 10 (At Large)

Terms expire: ~~2006, 2009~~, 2012, 2015, 2018, 2021

Position 11 (At Large)

Term expires: ~~2007, 2010~~, 2013, 2016, 2019, 2022

6.3 Vacancies.

Except as provided by Article 4.3, the Executive Committee shall fill by appointment any officer or Executive Committee position that becomes vacant. However, if said vacancy exists at the time of the annual meeting, it shall be filled by election.

6.4 Unexpired Term.

Any officer or Executive Committee member appointed to fill an unexpired term shall serve the unexpired period.

6.5 Eligibility for Executive Committee Membership.

No person shall be eligible for election or appointment to the Executive Committee unless that person is a member of the Division at the time of the election or appointment.

6.5.1 Effect of Article 2.1.

The fact that a person will not be eligible under Article 2.1 to remain a Division member for the entire term of office does not preclude that person from being appointed or elected to the Executive Committee. However, that person's term will automatically be deemed vacant at the annual meeting which immediately precedes the end of that member's eligibility for Division membership.

6.5.2 Regional Requirements.

At the time of election or appointment to a Regional position, the member's principal office must be in that region, but subsequent moves during that term of office shall not result in disqualification.

6.6 Eligibility for Officers.

When elected, all officers must be Executive Committee Members who are eligible for Division membership through the entire term of office. In the case of the Chairperson elect, the person selected must be eligible to remain a member of the Division through the Chairperson-elect's term of office, and through his or her term as chairperson. However, a person may be selected for the Chair-elect position even though his or her term as an Executive Committee member will expire before the end of the term as Chairperson. He or she shall automatically be deemed to have been re-elected to the Executive Committee until the term as Chairperson ends, at which time the unexpired portion of the three-year Executive Committee term will be filled in accordance with Article 6.3.

6.7 Terms for Officers.

The term for each officer position shall be one year. The Chairperson-Elect shall automatically succeed to the office of Chairperson. No officer shall serve two successive terms in the same office, except the Treasurer, who may serve no more than two successive terms in office. Partial terms of office shall not be taken into account for purposes of the preceding sentence. No person shall simultaneously hold two offices for a period exceeding four months.

6.8 Nominating Committee.

At least ninety (90) days prior to the Division's annual business meeting, the Executive Committee shall appoint a nominating committee of not less than three ~~h~~Bar members. The Chairperson and at least one other Executive Committee member shall serve on the nominating committee, with preference given to those Executive Committee members who have served the longest on the Executive Committee. Those persons who accept a position on the nominating committee are ineligible for nomination to a new term or position for the upcoming year. The nominating committee shall make and report to the Executive Committee ~~at least forty-five (45) days~~ thirty (30) days or within a reasonable time prior to the Division's annual business meeting one nomination for each Division position to be filled by election. The nominating committee's proposed slate of candidates for Executive Committee positions shall be submitted to the membership unless rejected by a majority of the Executive Committee. If the slate or a portion of it is rejected, the Executive Committee shall, at least 30 days prior to the election date, formulate the slate with the assistance of the nominating committee. The nominating committee's proposed slate of officers shall automatically be submitted to the newly elected Executive Committee for its approval or rejection.

6.9 Diversity.

The nominating committee shall use reasonable efforts to nominate members who reflect a reasonable cross section of the Division's membership taking into account all relevant factors including, without limitation, the practice area, geographic, age, gender and ethnic make-up of the Division membership. To the extent possible, no more than one person from the same law firm, company or public agency in the same department may serve on the Executive Committee at the same time.

6.10 Notice.

The report of the nominating committee shall be communicated by mail or electronically to the Division membership along with the notice of the time and place of the election at least fourteen (14) days (excluding holidays and weekends) in advance of such election. The notice may be consolidated with other communications of the ~~h~~Bar or its sections so long as the notice is reasonably calculated to reach all Division members prior to the election.

6.11 Election of Executive Committee Members.

Elections shall be conducted at the Division's annual meeting, by mail, or electronically.

6.12 Election of Executive Committee Members at Annual Meeting.

If elections are conducted at the Division's annual meeting, additional nominations may be made for any position from the floor. Elections for contested positions may be by written ballot or voice vote. Each contested position shall be set forth and voted upon separately. Elections shall be by plurality. All Division members may vote for all "at large" positions. For any given regional vacancy, only those Division members who maintain their principal office in that region may vote, with any ties to be broken by a plurality vote of the entire Division membership.

6.13 Election of Executive Committee Members by Mail or Electronically.

Upon approval of the Executive Committee, elections of Executive Committee members may be by written or electronic ballot sent to the Division membership provided the process allows: (1) for write-in votes, (2) that ballots are returned to an appropriate Division officer for tabulation and (3) that the results are certified to the Bar Center no later than November 15. candidacy for each regional representative to the Executive Committee shall be limited to those members who maintain their principal office in that region.

6.14 Election of Officers.

Officers shall be elected by a majority vote of the Executive Committee immediately prior to the annual election of Executive Committee Members and ratified at the Division Annual Meeting.

Article 7. Committees

7.1 Standing Committees.

The Executive Committee may establish as many standing committees as it deems necessary and may set the names, functions, and length of service of those committees. The Chairperson of the Executive Committee, with the approval of the Executive Committee, shall appoint the Chairperson and members of the standing committees.

7.2 Other Committees.

In addition to the standing committees as provided above, the Executive Committee may appoint as many special committees for particular purposes as the Division Executive Committee deems necessary and may set the name, function, and length of service of those committees. The Chairperson, with the approval of the Executive Committee, shall appoint the chairperson and members of all special committees.

Article 8. Representation Of The Oregon State Bar's Position

8.1 Approval Required.

Except as provided below, the Division shall not present to the legislature, or any committee or agency thereof, a position or proposal on any bill or express any position of the Division without the majority approval of the Executive Committee and the approval of the Board of Governors. If the Division's Legislative Committee requests the Executive Committee to take a position on a bill, and if it is reasonably necessary to act prior to the next regularly scheduled Executive Committee meeting, the officers of the Executive Committee may act upon the request. At least three officers shall be required to establish a quorum to take such action. Any one officer shall have the power to reject a proposed position and refer the matter instead to the Executive Committee.

8.2 Bar Approval Process.

During regular legislative sessions the Executive Committee may, by majority vote, tentatively approve a position on a bill if that position is consistent with the purposes of the Division. Rather than initiating legislation, the Division will have the ability with this process to object or defend bills already introduced or surfacing to the attention of the Division with minimal notice.

The proposed position shall be submitted to the hBar's Public Affairs Director or the Chairperson of the Board of Governors' Public Affairs Committee. After receipt of the proposal, the person to whom notice was given shall have up to 72 hours to notify the Division either (a) that the position is approved or (b) that the position is being submitted to the Public Affairs Committee for approval. If such notice is not given within 72 hours, or if the position is approved, it then becomes an official position of the Division and representatives of the Division may testify or make other appropriate statements. The hBar's Public Affairs Director shall be kept informed about the status of such positions and related activities.

If the proposal is referred to the Public Affairs Committee, it shall determine, on behalf of the Board of Governors, whether or not it is in the best interests of the entire hBar (1) for the hBar to take an official position or (2) to allow the Division to take a position as requested.

Article 9. Receipts And Expenditures

9.1 Dues.

Membership dues shall be collected by the hBar and any other receipts of the Division shall be remitted promptly to the hBar and placed in an account designated for use by the Division.

9.2 Assessments.

The hBar may regularly assess the Division an amount of money to cover both direct and indirect costs of Division activities performed by hBar staff.

9.3 Expenditures.

Expenditure of the balance of Division funds after such assessment shall be as determined by the Executive Committee, to be disbursed by the hBar's Executive Director, or the Director's designee, solely as authorized in writing by the Division's Treasurer using forms and following procedures established by the Executive Director. If the Treasurer is unavailable for authorization, the Division Chairperson may authorize disbursement of Division funds followed by written notice of the action taken. Any reimbursement of expenses incurred by the Treasurer or by the Treasurer's firm must be authorized in writing by the Division's Chairperson. Expenditure of Division funds shall not be in excess of the available Division fund balance, nor shall expenditures be in violation of laws or policies generally applicable to the hBar.

9.4 Retention of Funds.

Division annual reserves, if any, shall be set and maintained as provided for in the Division's annual budget as approved by the Board of Governors.

Article 10. Minutes And Reports

10.1 Minutes.

Minutes shall be kept of all meetings of the Executive Committee and of the Division and a copy of the minutes of each such meeting shall be promptly delivered to the hBar's Executive Director or ONLD staff administrator and to each member of the Executive Committee within fourteen (14) days (excluding weekends and holidays) of the meeting so recorded.

10.2 Request for BOG Action.

Whenever the Division desires to request action by the Board of Governors, the requested action shall be reflected in the minutes and shall in addition be set forth in a letter accompanying the minutes and delivered to the Board of Governors in care of the Executive Director. If the vote on the requested action is not unanimous, the votes for and against shall be set forth in the minutes and the dissenting members shall be afforded the opportunity to explain their positions.

10.3 Report.

Not later than December 1, the Chairperson shall file with the Bar's Executive Director a concise report summarizing the activities of the current year and anticipated activities for the ensuing year, together with the full text of any proposed legislation. The report shall contain a description of the budget and expenditures for that year as well as the proposed budget for the next year. This information will be summarized by the Bar staff and included with the Bar Annual Reports distributed to all active members each year.

10.4 Budget.

A proposed annual budget and proposed annual dues shall be provided to the Executive Director for approval by the Board of Governors no later than September 30th of the preceding year if it contains a proposal for charging membership dues. For any year in which funds are requested from the Bar's general funds, a proposed annual budget shall be submitted to the Board of Governors no later than September 30th of the preceding year.

10.5 In Person Report.

The Chair or Chair-elect, in so much as possible, will attend Board of Governor meetings to make a report on Division activities and programs.

Article 11. Amendments To Bylaws

11.1 Amendments by BOG.

These bylaws may be amended by the Board of Governors. Notice of intent to so promulgate and pass bylaw amendments shall be given to the Executive Committee in sufficient time to allow review and comment. Bylaw amendments so passed by the Board of Governors become effective upon passage.

11.2 Amendments by Division.

These bylaws may be amended by the Division by majority vote by ballot, or at any membership meeting of the Division by majority vote of the members present and voting, to become effective upon subsequent approval of the Board of Governors. Notice of intent to amend bylaws shall be publicized in a manner which is calculated to provide Division members with reasonable notice and opportunity to comment before the Division acts. Determination as to what notice is reasonable under any provision of these bylaws may take the cost of notification into account.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: April 22, 2011
Memo Date: March 30, 2011
From: P&G Committee
Re: Proposed amendment to MCLE Rules 5.2 and 5.4

Action Recommended

Review the proposed amendments to MCLE Rules 5.2 and 5.4 regarding CLE credit for attending or teaching classes other than law school classes.

Background

In April 2010, the P&G Committee reviewed the following proposal from the MCLE Committee to amend MCLE Rule 5.4 to allow CLE credit for attending classes other than law school classes.

5.4 Attending Law School Classes. Attending a class at an ABA or AALS accredited law school may be accredited as a CLE activity. Attending other classes may also be accredited as a CLE activity to the extent that the activity deals with one or more of the types of issues for which group CLE activities can be accredited.

At that time, the P&G Committee declined to approve the recommendation because members felt the amendment was too broad. (See attached minutes from April 29, 2010 P&G Committee.) The P&G Committee sent the proposal back to the MCLE Committee for further development. The P&G Committee also asked that the MCLE Committee include a proposal to broaden Rule 5.2 regarding teaching credit for classes other than law school classes.

After much discussion and review, the MCLE Committee recommended amendments to MCLE Rules 5.2 and 5.4 as listed below. These amendments were reviewed and approved by the P&G Committee on March 18.

5.2 Other CLE Activities.

(a) Teaching Activities.

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

(2) Teaching credit is allowed ~~only~~ for accredited continuing legal education activities or for courses in ABA or AALS accredited law schools.

(3) Teaching other courses may also be accredited as a CLE activity, provided the activity satisfies the following criteria:

- (i) The MCLE Administrator determines that the content of the activity is in compliance with other MCLE accreditation standards; and
- (ii) The course is a graduate-level course offered by a university; and
- (iii) The university is accredited by an accrediting body recognized by the U.S. Department of Education for the accreditation of institutions of postsecondary education.

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

~~(3)~~ ~~(5)~~ Teaching credit is not allowed for programs and activities for which the primary audience is nonlawyers unless the applicant establishes to the MCLE Administrator's satisfaction that the teaching activity contributed to the professional education of the presenter.

~~(4)~~ ~~(6)~~ No credit is allowed for repeat presentations of previously accredited courses unless the presentation involves a substantial update of previously presented material, as determined by the MCLE Administrator.

5.4 Attending Law School Classes.

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

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

- (1) The MCLE Administrator determines that the content of the activity is in compliance with other MCLE accreditation standards; and
- (2) The class is a graduate-level course offered by a university; and
- (3) The university is accredited by an accrediting body recognized by the U.S. Department of Education for the accreditation of institutions of postsecondary education.

Attachment

**Oregon State Bar
Board of Governors Meeting
April 22, 2011
Judicial Proceedings Minutes**

Reinstatements and disciplinary proceedings are judicial proceedings and are not public meetings (ORS 192.690). This portion of the BOG meeting is open only to board members, staff, and any other person the board may wish to include. This portion is closed to the media. The report of the final actions taken in judicial proceedings is a public record.

A. Reinstatements

1. Mark J. Dobson – 842084

Motion: Mr. Johnson presented information concerning the BR 8.1 reinstatement application of Mr. Dobson. Mr. Piucci moved, and Mr. Johnson seconded, to recommend Mr. Dobson’s reinstatement to the Supreme Court. The motion passed unanimously.

2. Maureen Flanagan – 990488

Mr. Knight presented information concerning the BR 8.1 reinstatement application of Ms. Flanagan to satisfy the one meeting notice requirement of Bylaw 6.103. The application will come before the board at a later meeting.

3. Fred M. Granum – 832145

Motion: Mr. Kranovich presented information concerning the BR 8.1 reinstatement application of Mr. Granum to satisfy the one meeting notice requirement of Bylaw 6.103, and the applicant’s request pursuant to BR 8.7 for temporary reinstatement. Mr. Kranovich moved, and Mr. Kent seconded, to approve Mr. Granum’s temporary reinstatement. The motion passed unanimously

4. J. Pat Horton - 670523

Motion: In Ms. Johnnie’s absence, Mr. Sapiro presented information concerning the BR 8.1 reinstatement application of Mr. Horton. Ms. Fisher moved, and Ms. Matsumonji seconded, to recommend Mr. Horton’s reinstatement to the Supreme Court. The motion passed unanimously.

5. Heath E. Kula – 023567

Motion: Mr. Haglund presented information concerning the BR 8.1 reinstatement application of Mr. Kula. Mr Haglund moved, Mr. Kehoe seconded and the board passed the motion to recommend Mr. Kula’s reinstatement to the Supreme Court. The motion passed unanimously.

6. William Nootenboom – 961952

Motion: Mr. Emerick presented information concerning the BR 8.1 reinstatement application of Mr. Nootenboom. Mr. Emerick moved, Mr. Piucci seconded and the board passed the motion to recommend Mr. Kula’s reinstatement to the Supreme Court. The motion passed unanimously.

7. Michael J. Uda - 814525

Motion: Ms. Matsumonji presented information concerning the BR 8.1 reinstatement application of Mr. Uda. Ms. Matsumonji moved, Mr. Piucci seconded, and the board passed the motion to recommend Mr. Uda’s reinstatement to the Supreme Court. The motion passed unanimously.

B. Disciplinary Counsel’s Report

As written.

**Oregon State Bar
Board of Governors Meeting
April 22, 2011
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

- a. The UPL Committee recommended the Board seek injunctive relief against Ms. Hayes to prevent her continued unlawful practice of law.

Motion: Mr. Knight moved and Ms. O'Connor seconded to reject the recommendation that the Board seek injunctive relief against Ms. Hayes. The board unanimously approved the motion.

B. General Counsel's Report

- a. The BOG received status reports on the non-action items
- b. The BOG was asked to decide whether to submit an amicus brief in Mr. Corrinet's appeal of the order revoking his membership to the Federal Bar for the District of Oregon.

Motion: Mr. Haglund moved and Mr. Knight seconded the BOG not submit an amicus brief in Mr. Corrinet's appeal. The board unanimously approved the motion.

**Oregon State Bar
Special Meeting of the Board of Governors
May 20, 2011
Minutes**

The meeting was called to order by President Steve Piucci at 11:05 a.m. on May 20, 2011, and adjourned at 12:39 p.m. Members present from the Board of Governors were Jenifer Billman, Barbara Dilaconi, Hunter Emerick, Ann Fisher, Michelle Garcia, Michael Haglund, Gina Johnnie, Matthew Kehoe, Christopher Kent, Tom Kranovich, Steve Larson, and Maureen O'Connor. Staff present were Rod Wegener, Helen Hierschbiel, Kay Pulju, Amber Hollister, George Wolff and Camille Greene. Also present were Lish Whitson, former chair of the ABA's Standing Committee on Lawyer Referral & Information Services and an out-of-state member of the bar's House of Delegates, and three members of the OSB Public Service Advisory Committee: Doug Tookey, Chair, Will Jones, Member, and Dan Griffith, Public Member.

1. Call to Order

2. Lawyer Referral Service Funding (Johnnie)

A. Guest Speaker, Lish Whitson

Ms. Johnnie gave the background of the LRS funding issue and the need for additional funding now that Bar Books is a free service to members. The board will vote on this issue in June. If new funding is approved, it could bring LRS out of the red, helping the OSB's overall budget situation. OSB currently has approximately 1300 LRS panel members and receives up to 80,000 calls per year, with 55,000 of those referred to the panelists.

Mr. Whitson reported, based on past experience, that a percentage-fee funding model would bring steady revenue income to the bar while providing access to justice to the public. It is important to distinguish between Pro bono, Modest Means, and LRIS when branding each program. The OSB can avoid negligent referral liability (not an issue elsewhere) with proper terms of agreement for and vetting of panelists.

Mr. Whitson's answers to LRS Questions [**Exhibit A**] and others raised by **BOG members**:

- King County's panel has 300 attorneys and raises \$250,000-\$260,000 per year.
- Registration fees would need to increase to unsupportable amounts to equal the revenue from percentage-fee funding.
- OSB's panels are very large, perhaps the largest in the country. LRS should strive for quality panels, rather than quantity. Attrition at the outset of percentage fees is therefore a benefit, and experience shows that most who

leave will want to come back when they see how good the program has become.

- States that implement a percentage-fee model do not return to their previous funding model. Without percentage fees, pro bono and modest means panels may become unsustainable, and the quality of LRS referrals continues to degrade over time.
- When calls are properly referred to Pro bono, Modest Means, or LRIS, the program benefits everyone and access to justice is served.
- Ms. Hirschbiel clarified that it would require a change to Oregon's RPCs.
- Give your panelists a heads up on the new terms: under oath, hold harmless, and percentage fees and hope that some will opt out resulting in a quality panel. Our current number of 1300 panelists is too many to service efficiently. Send out a questionnaire at the end of the first year. It is good publicity and a public service.

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

None.

1. What is the revenue potential with percentage fees?
2. Wouldn't it be easier and just as effective to raise the panel registration fees?
3. What happens if so many lawyers dislike the new model that they quit the program?
4. How many other statewide and/or mandatory bar LRS's use a percentage fee model? What have some of their experiences been?
5. What if Oregon is just different from other jurisdictions?
6. What's to lose by keeping the status quo?
7. Some Oregon lawyers say they never get fee-generating cases from our LRS. What if that's the case and switching to percentage fees fails to bring in new revenue?
8. Isn't it particularly unfair to "tax" LRS lawyers since they only get low fee generating cases and the program benefits everyone?
9. Won't the ethics rules require clarification?
10. Wouldn't percentage fees greatly increase the amount of administrative work each lawyer has to do?
11. How are confidential settlement amounts handled?
12. What's to stop a lawyer from increasing his/her hourly rate to compensate for the "new" amount owed under a percentage fees revenue model?
13. Won't the public disapprove of the LRS receiving part of the funds collected from the client? Won't percentage fees make the bar look bad?
14. Is there an increased likelihood the bar could face a negligent referral claim?
15. Why shouldn't the OSB just outsource the program or use an online-only software product?

**Oregon State Bar
Board of Governors Meeting
May 20, 2011
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. Tax Matters

- a. Decide whether to pursue an administrative appeal of the Washington Department of Revenue decision regarding the Oregon State Bar's tax obligations.

OSB received notice from Washington State that we are liable for B&O tax on OSB CLEs held in Washington State in the past. We responded, as a governmental entity, we should be exempt. Washington disagreed. We can proceed to move forward with voluntary disclosure agreement, to limit liability to the past four tax years, or proceed with the administrative appeal. Ms. Hirschbiel recommends we proceed with the administrative appeal, based on precedence set by Washington State Bar. It is hard to distinguish us from the Washington State Bar, who won their administrative appeal. OSB may look for alternative counsel, rather than Stoel Rives, who represented us as a state agency in the past. They recommend we sit down with Washington state to discuss. We have until June 13 to appeal. We have operated in good faith, exempt from Federal and other taxes, and thought we were exempt from Washington state tax, too. If we proceed with this appeal, will it have a ripple effect with our other tax exemptions? Washington State Bar may want to file an *amicus brief* so they are not affected if we have to pay taxes which are estimated at \$3000-\$4000 per year.

Motion: Mr. Haglund moved and Ms. Fisher seconded to accept the recommendation to pursue an administrative appeal of the Washington Department of revenue decision regarding the Oregon State Bar's tax obligations. The board unanimously approved the motion.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: June 24, 2011
From: Sylvia E. Stevens, Executive Director
Re: CSF Claims Recommended for Payment

Action Recommended

Consider the following claims that the Client Security Fund Committee recommends for reimbursement:

No. 2011-09 DICKERSON (Morsman)	\$5,000.00
No. 2011-12 CARDWELL (Vreeland)	\$500.00
TOTAL	\$5,500.00

Background

No. 2011-09 DICKERSON (Morsman) \$5,000.00

Morsman hired Dickerson in late February 2007 in connection with a child custody matter. Morsman deposited \$5,000 against Dickerson's hourly fees. Morsman contacted Dickerson regularly to check on the status of his legal matter, but after a while Dickerson stopped responding. In May 2007, Morsman fired Dickerson and demanded an accounting and a refund of the unearned funds, which he never got. Morsman hired another attorney to pursue the custody matter.

In response to Disciplinary Counsel's inquiries, Dickerson claimed to have researched the law on parental neglect, collected medical records and other documents from Morsman, and began drafting a petition for change of custody. He was never able to produce any documents that showed his efforts and Morsman's new attorney found nothing in the file of any consequence.

The DCO investigation also showed that Dickerson didn't put the Morsman's fee deposit in his trust account; rather he deposited the funds into his personal account, which was almost immediately overdrawn. At his disciplinary trial, which involved other client matters, the panel made a specific finding that Dickerson was not a credible witness. Dickerson was disbarred effective August 7, 2010.

The CSF Committee concluded that the claim was eligible for reimbursement and should be reimbursed in the full amount on the ground that Dickerson's services were "minimal or insignificant" within the meaning of CSF Rule 2.2.3. No civil judgment is required because the claim is for no more than \$5,000 and Dickerson was disciplined in connection with it.

No. 2011-12 CARDWELL (Vreeland) \$500.00

Vreeland hired Cardwell in September 2010 for a Chapter 7 bankruptcy. He paid \$500 at the first meeting and filled out some initial questionnaires. Cardwell promised to schedule a subsequent meeting to collect the additional information needed for the bankruptcy filing, but he didn't. Vreeland didn't make any effort to follow up with Cardwell due to losing his job and home.

When Vreeland attempted to contact Cardwell in March 2011, he was informed that Cardwell had committed suicide in February 2011, leaving Vreeland's and several other cases uncompleted. The PLF assisted Cardwell's mother in the closing of Cardwell's office. Both the PLF and Cardwell's mother reported that Cardwell did not have an active trust account at the time of his death and his business account held less than \$100. That money has been used to pay other obligations of the estate. There is no evidence that Cardwell did any work on Vreeland's matter.

The small estate affidavit filed by Cardwell's mother shows that the only assets are two older vehicles worth approximately \$9,000; debts exceed \$180,000, of which \$120,000 is student loans.

The CSF Committee concluded that the claim is eligible for payment; the Committee also recommends waiving the requirement for a judgment.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: June 24, 2011
From: Sylvia E. Stevens, Executive Director
Re: Executive Director Contract Revision

Action Recommended

Revoke the decision at the February 17, 2011 Board meeting revising the ED contract to include an extra PERS contribution.

Background

Earlier this year, at my request, the BOG approved a revision to my contract that would have designated a small percentage of my salary as an employer contribution to my PERS Individual Account. PERS has informed me that it does not believe I qualify under the statutory provision that allows these employer contributions for "groups" of employees. I am not interested in pursuing an appeal of PERS' decision and request that the BOG revoke its prior action so that my contract remains in its original August 2010 form.

MINUTES

BOG Access to Justice Committee

Meeting Date: May 20, 2011
Location: Oregon State Bar Center, Tigard
Chair: Kenneth Mitchell-Phillips
Vice-Chair: Gina Johnnie
Members Present: Jennifer Billman, Hunter Emerick, Gina Johnnie (acting Chair), Tom Kranovich, Maureen O'Connor
Members Absent: Derek Johnson, Kenneth Mitchell-Phillips
Staff Members: Kay Pulju

ACTION ITEMS

1. **Topic:** Minutes of the March 18, 2011, meeting were approved.

INFORMATION ITEMS

2. **Topic:** Loan Repayment Assistance Program report. The LRAP Committee selected eight new grant recipients this year. Each will receive a forgivable loan for three years provided they stay in eligible employment all three years. Loan amounts ranged from \$1,000-\$5,000, based on each recipient's annual debt obligation. Recipients are employed in public service capacities across the state, including legal aid programs, district attorney offices and public defender programs.
3. **Topic:** Oregon Law Foundation report. The OLF has reviewed results of the study it commissioned on whether to seek a "comparability" rule in Oregon. Comparability rules require lawyers to keep their IOLTA accounts in banks that offer rates comparable to those paid on similar non-IOLTA accounts. The OLF's conclusion is that a rule change is not warranted. Instead, OLF will continue to work with the Oregon Bankers Association to celebrate and support the Leadership Bank program, a voluntary approach that has served Oregon well.
4. **Topic:** Pro Bono Committee projects. Along with ongoing subcommittee work, the Pro Bono Committee is preparing for the annual "Celebrate Pro Bono" week in October. The CLE subcommittee is working with the bar's MCLE committee on possible recommendations to allow MCLE credit for pro bono work.

MINUTES

BOG Appellate Screening Special Committee

Meeting Date: April 22, 2011
Location: Oregon State Bar Center
Chair: Steve Larson
Vice-Chair:
Members Present: Audrey Matsumonji, Hunter Emerick, Steve Larson, Jenifer Billman
Members Absent: Derek Johnson, Gina Johnnie
Guests:
Staff Members: Susan Grabe

ACTION ITEMS

1. **Appellate Court Vacancy.** The Judicial Vacancy Committee discussed dates to meet to conduct interviews of candidates for the Court of Appeals position soon to be vacant due to the retirement of Judge Rosenblum. The committee determined that in light of the governor's timelines that the best dates would be May 25 and 26.
-

Minutes **Budget & Finance Committee**

April 22, 2011
Oregon State Bar Center
Tigard, Oregon

Present - Committee Members: Chris Kent, chair; Steve Larson; Hunter Emerick; Michelle Garcia; Mike Haglund; Derek Johnson; Mitzi Naucler. **Other BOG:** Tom Kranovich. **Staff:** Sylvia Stevens; Helen Hirschbiel; Rod Wegener.

1. Minutes – March 18, 2011 Committee Meeting

The minutes of the March 18, 2011 meeting were approved.

2. Changes to the Bar's Investment Policy

The Committee recommended that the phrase "and not including individual stock ownership" be deleted from section (g) of bylaw 7.402 *Approved Investments* as it is inconsistent with a similar phrase in section (i) and probably inadvertently not removed with the changes the Committee approved in 2009. The entire section 7.402 with the changes previously approved by the Committee is on the board agenda for final approval of the policy and bylaw change.

3. Changes to Office Space at the Bar Center

Mr. Wegener reported the projected budget for the tenant improvements of the third floor space to move the Admissions and Lawyer Referral Departments is not complete. He estimated the cost to exceed \$100,000 based on preliminary information received from vendors. The following week a second survey seeking more detailed interest will be sent to members who have expressed interest in discussing the possibility of leasing office space at the bar center. Mr. Wegener indicated he should have more data at the next Committee meeting and possibly a budget to perform the tenant improvements at both locations.

In respect to other building lease and facilities matters, Mr. Wegener reported that the bar will seek to evict RMT International from the space formerly occupied by the PLF. RMT did not pay the bar the approximately \$34,000 in rent from January to April 2011 after the bar granted RMT opportunities to do so.

Mr. Wegener reported the bar received \$184,050.00 from 20/20 Institute on April 21 as the termination fee for the early termination of its lease with the bar. On April 19, the bar also executed a five-year lease with Joffe CVG property, LLC to occupy the 20/20 premises beginning May 1, 2011. The beginning base rent is \$21.00 per s.f. and the bar is not responsible for any tenant improvements.

4. Financial Report – March 31, 2011

The March 31, 2011 report had been distributed to the board a few days prior to the meeting. The discussion at the meeting involved the amount of the bar's reserves and the amount held as investments exceeding the dollar amount of the aggregate of the bar's reserves, fund

balances, and contingencies. Mr. Wegener indicated the excess probably has not been this high since prior to the construction of the bar center.

5. Updates on Tenant and Leases at the Bar Center

The discussion on this topic was integrated into the discussion of agenda item 3.

6. Lawyer Referral Program

No discussion. The topic is on the Board of Governors meeting agenda for discussion by the full board.

7. Unclaimed Assets

No discussion. The topic is on the Board of Governors meeting agenda for approval of the new bylaw.

8. Next Committee meeting

The next meeting is scheduled for May 20, 2011 at the bar center in Tigard.

Minutes
Budget & Finance Committee
May 20, 2011
Oregon State Bar Center
Tigard, Oregon

Present - Committee Members: Chris Kent, chair; Hunter Emerick; Mike Haglund. **Other BOG Members:** Steve Piucci **Staff:** Helen Hierschbiel; Rod Wegener.

1. Minutes – April 22, 2011 Committee Meeting

There was no quorum present, so no action taken on the minutes.

2. Financial Report – April 30, 2011

The April 30, 2011 report had been distributed to the board a few days prior to the meeting. Mr. Wegener highlighted the unusual net revenue of Fanno Creek Place and the Lawyer Referral financial information which might be relevant for the discussion with the entire board following the committee meeting.

3. Updates on Vacant Space at the Bar Center

Mr. Wegener directed the Committee to the design for five single offices for lease on the bar center's vacant first floor. The plan was presented in conjunction with the move of the Admissions and Lawyer Referral Departments to the third floor and performing all tenant improvements under the same contract. Mr. Wegener reported he has contacted about four attorneys who have expressed an interest in renting a single office at the bar center. The Committee questioned if renting single offices without a receptionist will be a successful venture for the bar. The Committee agreed a more viable plan is to lease the first floor space under a longer term lease. If there are no immediate plans to develop the first floor space, there is no urgency in moving the Admissions and Lawyer Referral Departments until tenants are identified.

The Committee was receptive to place a sign "Oregon State Bar" on the front exterior of the building and favored the location on the right side of the building facing the building.

Mr. Wegener shared that a representative of the Sustainability Future Section has encouraged the bar to pursue solar panels on the building and had provided recent information about incentive plans. The Committee expressed no commitments to the idea, but informed Mr. Wegener to ask the section to work with the bar to develop a proposal of the benefit, cost, and payback for the Committee's review.

4. Lawyer Referral Program

The discussion about the Lawyer Referral program was integrated with the development of the bar's 2012 budget. For its next meeting the Committee asked Mr. Wegener to develop projections for revenue if the registration fee were increased by certain amounts, the expected attrition, and the impact on the overall program budget.

5. PLF Audit Report

No discussion.

6. Preparing for the 2012 Budget

In addition to the discussion about the impact of the Lawyer Referral program on the overall bar budget, the Committee discussed what options the Committee has to develop a budget in 2012 without a member fee increase. The Committee wants the 2012 Executive Summary Budget to include options for the salary pool for 2012.

7. Next Committee meeting

The next meeting is scheduled for June 24, 2011 at the bar center in Tigard.

MINUTES

BOG Member Services Committee

Meeting Date: April 22, 2011
Location: Oregon State Bar Center, Tigard
Chair: Gina Johnnie
Vice-Chair: Maureen O'Connor
Members Present: Maureen O'Connor (Acting Chair), Ann Fisher, Matt Kehoe, Audrey Matsumonji, Ken Mitchell-Phillips
Members Absent: Gina Johnnie, Ethan Knight
Guests: Jennifer Billman, Tamara Kessler (ONLD), Steve Pucci
Staff Members: Danielle Edwards, Karen Lee, Kay Pulju, George Wolff

ACTION ITEMS

1. **Topic:** Approved minutes of the March 18, 2011, committee meeting.
2. **Topic:** Law Practice Management Section. George Wolff outlined the recommendation of the section's executive committee to sunset the section and transfer its assets (list serve and fund balance) to the PLF's practice management program. The section would like its transferred funds dedicated to securing expert speakers for CLE programs on law practice management topics. The Committee approved the section's request and will present its recommendation to the full BOG.

INFORMATION ITEMS

3. **Topic:** ONLD Mission Statement. Tamara Kessler reported that the ONLD Executive Committee has recently revised its mission and reviewed all its activities and reviews its programmatic goals annually. New ONLD programs focus on supporting the goals of the bar's mentoring program.
4. **Topic:** CLE Seminars. Karen Lee reviewed the program's history, purposes and current priorities. The department is increasingly moving toward electronic delivery of programs and course materials. Committee members requested more information on the revenue breakdown for the department. The Committee would also like details on the bar center's conference facilities, including total expense and revenue, percentage of time the facilities are in use and an overview of efforts to rent facilities to outside groups.
5. **Topic:** BOG elections. Danielle Edwards reported that a recommendation to conduct future elections only in electronic format will be considered by the board's Policy & Governance Committee.

MINUTES

BOG Member Services Committee

Meeting Date: May 20, 2011
Location: Oregon State Bar Center, Tigard
Chair: Gina Johnnie
Vice-Chair: Maureen O'Connor
Members Present: Gina Johnnie, Maureen O'Connor, Ann Fisher, Matt Kehoe
Members Absent: Ethan Knight, Audrey Matsumonji, Ken Mitchell-Phillips
Guests: Tom Kranovich (BOG)
Staff Members: Paul Nickell, Kay Pulju

ACTION ITEMS

1. **Topic:** Approved minutes of the April 22, 2011, committee meeting.

INFORMATION ITEMS

2. **Topic:** OSB Program Review. Chair Johnnie reviewed the purposes of the program review and the committee's goal of presenting issues for consideration at the annual BOG retreat.
3. **Topic:** OSB Bulletin. Paul Nickell, Editor, gave an overview of the goals and publication priorities of the bar's membership magazine. It is both a communications vehicle for the organization and a member service on its own, focused on subjects of interest to members. A readership survey conducted in 2010 showed strong support for the Bulletin's content; conversely, respondents had little interest in receiving the Bulletin electronically. Focused efforts to encourage out-of-country members to opt for an electronic version have had little success to date but will continue. Currently advertising revenue for each issue exceeds the fixed costs (primarily paper, printing and postage). Advertising is handled by an outside vendor. Committee members requested a review of options for advertising, including possible other vendors.
4. **Topic:** OSB Awards. The 2011 event will be a luncheon, which should reduce costs for both the bar and members who purchase tickets. The deadline for nominations is Friday, July 15. BOG members are encouraged to submit nominations.
5. **Topic:** Event Sponsorships. Staff will prepare a summary of the bar's event sponsorship guidelines for discussion at the next meeting.

MINUTES

BOG Policy & Governance Committee

Meeting Date: April 22, 2011
Location: OSB Center, Tigard, Oregon
Chair: Mitzi Naucler
Vice-Chair: Michael Haglund
Members Present: Ann Fisher, Michael Haglund, Chris Kent, Tom Kranovich, Mitzi Naucler
Members Absent: Barbara Dilaconi, Michelle Garcia
Staff Present: Sylvia Stevens, Helen Hierschbiel, Denise Cline
Guests: Hon. Kristena LaMar

ACTION ITEMS

<p>1. Approval of March 18, 2011 minutes.</p>
<p>2. Fee Arbitration Task Force Recommendations. Judge LaMar explained the Task Force's recommendations to 1) establish a pilot mediation project; 2) establish a standing advisory committee on Fee Arbitration; and 3) implement regular training for arbitrators. After discussion, Mr. Haglund moved, seconded by Ms. Fisher, to adopt the Task Force recommendations. The motion passed unanimously.</p>
<p>3. MCLE Regulations re: Fully Retired Status. These committee discussed these housekeeping changes at its meeting on March 18 and voted to recommend their adoption to the BOG.</p>
<p>4. MCLE Credit for Legislative Service. Ms. Naucler outlined the proposal to double the MCLE credit available to lawyer-legislators from .5 credit for each week the legislature is in session to 1 credit per week. Some concern was expressed that lawyer-legislators would not have to participate in any traditional CLE activities (other than CAE, ethics and AtoJ), and that the BOG needs to be careful about diluting the reason for MCLE. Other discussion centered on recognizing the complexity of the issues faced by lawyer-legislators and the value of encouraging lawyer service. Mr. Kent moved, seconded by Mr. Kranovich, to recommend the change. The motion passed unanimously.</p>

MINUTES

BOG Public Affairs Committee

Meeting Date: April 22, 2011
Location: Oregon State Bar Center, OR
Chair: Derek Johnson
Vice-Chair: Audrey Matsumonji
Members Present: Audrey Matsumonji, Hunter Emerick, Steve Larson, Kenneth Mitchell-Phillips, Maureen O'Connor, Gina Johnnie
Members Absent: Derek Johnson
Guests:
Staff Members: Susan Grabe

ACTION ITEMS

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| 1. Minutes: The minutes were approved by consensus. |
| 2. Section Position Requests. The committee reviewed the process for section and committee position requests. Many bar groups monitor legislation, some express concerns, others support or oppose legislation. A tracking sheet will be made available to the committee at each meeting for either approval or ratification. |
| 3. PAC positions. The committee reviewed the BOG/PAC list of bills of interest and discussed in greater detail many of the proposals. The committee also discussed whether there was interest in forming an interim workgroup to discuss issues related to judicial recusal. There was no interest expressed. Other bills of interest included HB 2325 re a portion of punitive damages awards going to court facilities and HB 2321 a bill re electronic notice requirements for state agencies. |

INFORMATION ITEMS

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| 4. ABA Day in Washing ton, D.C. The trip to DC was a success with the entire delegation supportive of legal aid funding and general interest in supporting the tax intercept act and expressed concern about the large number of judicial vacancies at the federal level. |
| 5. Governor's Judicial Selection Process. The bar's Appellate Vacancy Committee will be meeting in May to conduct interviews of candidates for Judge Rosenblum's seat on the court. The Governor would like to make appointments by the first part of July. |
| 6. Legislative session update and bills of interest: The Oregon Judicial Department budget hearings will happen before the end of May. There appear to be some complications with the eCourt outside vendor contract deliverables and audit. We will wait to hear more as we get closer to the hearing. |

MINUTES

BOG Public Affairs Committee

Meeting Date: May 20, 2011
Location: Oregon State Bar Center, OR
Chair: Derek Johnson
Vice-Chair: Audrey Matsumonji
Members Present: Audrey Matsumonji, Hunter Emerick, Maureen O'Connor, Gina Johnnie
Members Absent: Derek Johnson, Kenneth Mitchell-Phillips, Ethan Knight
Guests: Steve Pucci
Staff Members: Susan Grabe, David Nebel

ACTION ITEMS

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| 1. Minutes: The minutes were approved by consensus. |
| 2. Elder Law Task Force. The Public Affairs Committee authorized the sections request to recommend that the Governor appoint a member of the Elder Law Section to the Elder Abuse Work Group, created under HB 2325. |

INFORMATION ITEMS

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| 3. Fee Bills. HB 2710 and 2712 have become the subject of a broader interest among legislative leadership. The Co Chairs of Ways and Means have taken the bills under consideration and will revise them. It is unclear what will emerge. |
| 4. eCourt. OJD has hired single source vendor, Tyler Technologies, with a good record in setting up eCourt in other states. However, Chief Justice DeMuniz is at loggerheads with the Legislative Fiscal Office, and a critical audit report has been issued. Public Affairs Committee members have requested a copy of the audit report when it's published. |
| 5. Legislative session update and bills of interest: Report on bar sponsored bills, SB 381 re: LPRC restructuring, and HB 2684 re: Special Needs Trusts, are dead; the demise of SB 381 indicates difficulty of amending the bar act and educating our own members about the discipline system. SB 382 re: Construction law, and SB 384 re: Oregon Private Prompt Payment Act, are working their way through the second chamber. The rest have made it through the process. |

MINUTES

BOG Public Member Selection Committee

Meeting Date: April 22, 2011
Location: Oregon State Bar Center
Chair: Audrey Matsumonji
Vice-Chair: Mitzi Naucler
Members Present: Audrey Matsumonji, Mitzi Naucler, Maureen O'Connor, Matt Kehoe, and Jenifer Billman

ACTION ITEMS

- 1. Topic: Audrey Matsumonji's request for reappointment to the Board of Governors.**
The committee considered Audrey's request for a 4-year term reappointment to the Board of Governors. The committee agreed by consensus to nominate Audrey for reappointment during the April BOG meeting. The committee adjourned.

CLAIM #	NAME	ATTORNEY	CLAIM	PENDING	AMOUNT PAID	DATE PAID	DATE DENIED W/DRAWN	UNPAID BALANCE	ASSIGNED TO
11-18	Miller, Diana Lynn	Hayes, Keith	2,500.00	2,500.00				2,500.00	Barrack
11-17	Schweickart, Joni Rae	Barker, Mitchell	5,000.00	5,000.00				5,000.00	Angus
11-16	Szal, Dennis	Harrison, Pamela	6,822.20	6,822.20				6,822.20	Kekel
11-15	Bichsel, Ruth J	Harrison, Pamela	5,624.00	5,624.00				5,624.00	Kekel
11-14	Weige, Vance Laroy	Brown, L. Ross	41,200.00	41,200.00				41,200.00	McGean
11-13	Suanders, Ima Jean Lousie	Burns, Suan Ford	400.00	400.00				400.00	Calderon
11-12	Vreeland, Lee Whitney	Cardwell, Timothy	500.00	500.00				500.00	Cousineau
11-11	Roberts, Kevin Neal	Cardwell, Timothy	500.00	500.00				500.00	Cousineau
11-09	Morsman, Arthur Michael	Dickerson, Daniel	5,000.00	5,000.00				5,000.00	Howard
11-08	Mason, Ronald C	Cardwell, Timothy	1,300.00	1,300.00				1,300.00	Cousineau
11-07	Stratton, Laurence Eugene	Connall, Shannon and Des	10,000.00	10,000.00				10,000.00	Wright
11-06	Reis, Ryan Walter	Connall, Shannon	5,000.00	5,000.00				5,000.00	Wright
11-05	Raske, Karen	Connall, Shannon	3,250.00	3,250.00				3,250.00	Wright
11-02	Risch, Stephen R	Connall, Des & Shannon	57,000.00	57,000.00				57,000.00	Wright
10-40	Stockberger, Dale D	Dalrymple, Richard	1,945.00	1,945.00				1,945.00	Bennett
10-38	Guerrero, Daniel J	Hayes, Keith	2,000.00	2,000.00				2,000.00	Barrack
10-37	Chang, Gina and Joe & Oh, Mi Soon	Oh, John H	6,000.00	6,000.00				6,000.00	Angus
10-36	Kitchens, Michael M	Ginsler, B. William	16,925.91	16,925.91				16,925.91	Wright
10-32	Ryan, Lynn	Connall, Shannon	18,500.00	18,500.00				18,500.00	Wright
10-31	Johns, Frank and Chongnak	Connall, Des	25,300.00	25,300.00				25,300.00	Wright
10-28	Myers, Teresa	Hayes, Keith	3,020.00	3,020.00				3,020.00	Barrack
10-25	Kiker, Jeffrey Allen	Ginsler, B. William	8,868.03	8,868.03				8,868.03	Howard
10-21	Sisney, Bryan	Harrison, Pamela	8,142.50	8,142.50				8,142.50	Gouge
10-20	Payne Estate (Ken Eiler Esq)	Ginsler, B. William	1,829.00	1,829.00				1,829.00	Wright
10-19	Rawson, Kathryn Eilene	Dickerson, Daniel	5,000.00	5,000.00				5,000.00	Howard
10-16	Bazurto, Cecilia	Fields, Stanley	\$25,000.00	25,000.00				25,000.00	Gouge
09-38	Johnson, Steven R	Dalrymple, Richard	\$852.00	852.00				852.00	Foster
				267,478.64				267,478.64	
						Fund Excess		658,416.00	
	Funds available for claims and indirect costs allocation as of May2011						Total in CSF Account	390,937.36	

2011 JUDGMENTS COLLECTED

Date	Attorney	Payment Received
1/6/2011	Kelley, Phil	360.00
2/4/2011	Kelley, Phil	360.00
3/16/2011	Correll, Jon	500.00
4/4/2011	Kelley, Phil	360.00
4/8/2011	Long, Michael	430.00
6/3/2011	Kelley, Phil	720.00

TOTAL **\$2,730.00**

OREGON STATE BAR
Client Security - 113
For the Five Months Ending May 31, 2011

Description	May 2011	YTD 2011	Budget 2011	% of Budget	May Prior Year	YTD Prior Year	Change v Pr Yr
REVENUE							
Interest	\$250	\$1,304	\$4,300	30.3%	\$224	\$1,446	-9.8%
Judgments		2,370	4,000	59.3%	360	1,800	31.7%
Membership Fees	1,815	213,975	220,300	97.1%	2,560	209,499	2.1%
TOTAL REVENUE	2,065	217,649	228,600	95.2%	3,144	212,745	2.3%
EXPENSES							
SALARIES & BENEFITS							
Employee Salaries - Regular	1,747	14,129	23,900	59.1%	2,377	13,120	7.7%
Employee Taxes & Benefits - Reg	879	4,295	8,300	51.7%	731	3,838	11.9%
TOTAL SALARIES & BENEFITS	2,626	18,424	32,200	57.2%	3,108	16,957	8.7%
DIRECT PROGRAM							
Claims	3,000	86,315	225,000	38.4%	10	131,981	-34.6%
Collection Fees			500		87	319	-100.0%
Committees			100				
Travel & Expense			1,300			450	-100.0%
TOTAL DIRECT PROGRAM EXPENSE	3,000	86,315	226,900	38.0%	97	132,750	-35.0%
GENERAL & ADMINISTRATIVE							
Photocopying			150				
Postage	32	99			23	77	29.3%
Professional Dues			200				
Telephone	7	21				74	-72.3%
Training & Education		200	450	44.4%			
Staff Travel & Expense		469	772	60.8%	10	28	1605.3%
TOTAL G & A	39	789	1,572	50.2%	33	178	342.7%
TOTAL EXPENSE	5,665	105,528	260,672	40.5%	3,237	149,885	-29.6%
NET REVENUE (EXPENSE)	(3,600)	112,121	(32,072)		(93)	62,860	78.4%
Indirect Cost Allocation	1,079	5,395	12,942		1,092	5,460	-1.2%
NET REV (EXP) AFTER ICA	(4,679)	106,726	(45,014)		(1,185)	57,400	85.9%
Fund Balance beginning of year		551,690					
Ending Fund Balance		658,416					
Staff - FTE count		.35	.35			.35	

Kent &
Johnson, LLP
attorneys at law



CHRISTOPHER H. KENT
Licensed in Oregon, Washington,
and the District of Columbia

Email: ckent@kentlaw.com

May 16, 2011

RECEIVED

MAY 17 2011

Oregon State Bar
Executive Director

Sylvia E. Stevens
Oregon State Bar
16037 SW Upper Boones Ferry Rd.
PO Box 231935
Tigard, OR 97281

Re: **Bruce Korum Legal Malpractice Case**
Our File No.: 1774-001

Dear Sylvia:

My partner, Leslie Johnson, has agreed to assume representation on a PLF covered claim for one of her clients. Pursuant to Bylaws 23.503, I am submitting the initial affidavit for myself and one with the firm. I am completely screened off from this matter and have no knowledge of it other than the name of the client. If you need anything else let me know.

Very truly yours,

Christopher H. Kent

Enclosures

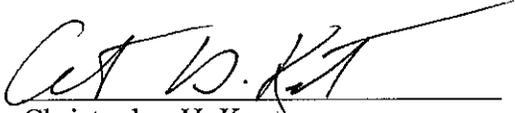
64974

AFFIDAVIT OF CHRISTOPHER H. KENT

STATE OF OREGON)
) ss.
County of Multnomah)

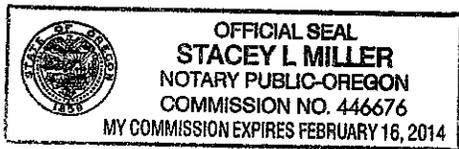
I, Christopher H. Kent, having been duly sworn do hereby depose and say:

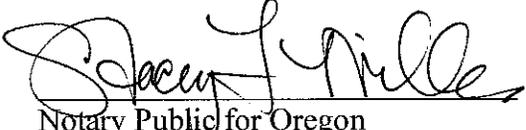
1. I am a partner with the law firm of Kent & Johnson, LLP. My partner, Leslie Johnson, has agreed to represent an individual, Bruce Korum, in a matter involving a Professional Liability Fund covered claim. I will not participate in the matter or the representation and will not discuss the matter or the representation with any other firm member or staff person.



Christopher H. Kent

SUBSCRIBED AND SWORN TO before me on this 16th day of May, 2011.





Notary Public for Oregon
My commission expires: 2/16/2014

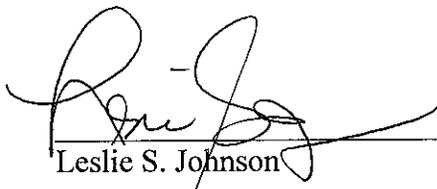
64975

AFFIDAVIT OF LESLIE S. JOHNSON

STATE OF OREGON)
) ss.
County of Multnomah)

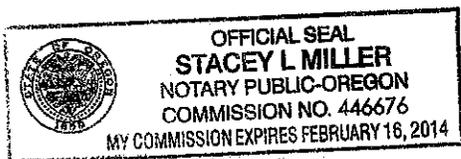
I, Leslie S. Johnson, having been duly sworn do hereby depose and say:

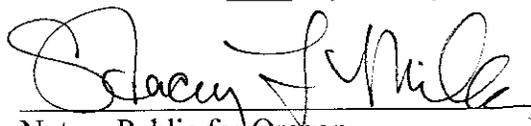
1. I am a partner with the law firm of Kent & Johnson, LLP. My partner, Chris Kent, will not in any way participate in the representation of my client, Bruce Korum, in a matter involving a Professional Liability Fund covered claim. He has not and will not be involved in this matter. There have been no discussions with Chris about this representation, and all staff members have been instructed to not discuss this matter with him.



Leslie S. Johnson

SUBSCRIBED AND SWORN TO before me on this 16th day of May, 2011.





Notary Public for Oregon
My commission expires: 2/16/2014

64976



**CLASSROOM
LAW PROJECT™**

Executive Director
Marilyn R. Cover

Program Director
Barbara Rost

Program Manager
Morgan Bennett

Office Manager
Dana Gantz

Board of Directors
Hon. Thomas Balmer

Jerry Boehm
Thom Brown
Jim Carter
Paul Conable
Marilyn Cover
Kenneth Davis
David Ernst
Richard George
Peter Hamilton
Ron Hitchcock
Jim Huffman
Noah Jarrett
Lynn Johnson
Grant Jones
Margaret Kirkpatrick
Peter Koehler
Shelley Larkins
Daniel Larsen
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Michael Simon
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Karen Stratton
Jaye Taylor
Tim Volpert
Jennifer Williamson

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Lewis & Clark Law School
Oregon State Bar

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Lane Powell PC
Miller Nash LLP
Nike, Inc.
Schwabe Williamson & Wyatt PC
Stoel Rives LLP
Umpqua Bank

Madison Circle
Ater Wynne LLP
NW Natural
Perkins Coie LLP
Portland General Electric
West Coast Bank

620 SW Main St., Suite 102
Portland, OR 97205
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Fax: 503.224.1721

office@classroomlaw.org
www.classroomlaw.org

Sylvia Stevens
Oregon State Bar
16037 SW Upper Boones Ferry Rd.
PO Box 231935
Tigard, OR 97281

Dear Sylvia:

On behalf of the Board of Directors and staff, thank you for your \$20,000 Circle Membership contribution to the Classroom Law Project on April 7, 2011. We are aware that the competition for corporate support continues to increase, and hence the more grateful that you have found value in aiding our mission to build strong communities in Oregon by teaching youth to become active citizens. The generous support of the Oregon State Bar enables Classroom Law Project to continue our efforts in reach of this goal.

As you know, Classroom Law Project has been a non-profit 501(c)(3) organization since 1983. We pride ourselves in being the only civic studies program in Oregon that successfully brings educators and students together with civic leaders and lawyers to provide the best practices in civic education to students. Working with national partners like the American Bar Association, the Center for Civic Education, and Constitutional Rights Foundation, Classroom Law Project has created a wide array of programs, activities, and services.

From mock trials and court tours to new lesson materials and workshops for teachers, Classroom Law Project is working to tailor programs that meet current needs of schools, and provide lifelong skills for students. We continue to provide direct services to over 5,000 students this year. Our in-service training opportunities attracted over 300 teachers; if each of these teachers uses law related education materials with students, we estimate that we will have served an additional 10,000 students this year.

Please retain this document for your records. This is your receipt for tax purposes. The CLP tax identification number is 93-0847940.

Again, thank you for your continued support. You have joined the list of special friends of Classroom Law Project.

Sincerely,

Marilyn R. Cover
Executive Director

April 25, 2011

*Sylvia -
The Bar's support
for our work in
helping students
become informed
and active citizens
is crucial in giving
helping us bring
additional corporate
support to our
program and
individuals.
Thank you,
Marilyn*

RECEIVED

APR 28 2011

Oregon State Bar
Executive Director

Sylvia Stevens

From: Karen Lee
Sent: Tuesday, May 31, 2011 1:00 PM
To: 'Marc Sussman'
Cc: Sylvia Stevens
Subject: RE: OSB CLE - Starting Your Own Practice - June 17 - Early Reg. Ends June 13 - OSB 773687

Follow Up Flag: Follow up
Flag Status: Flagged

Hi Marc,

Thank you for passing along the new attorney's comments regarding our June 17 seminar. I am going to forward them to the bar's Executive Director, Sylvia Stevens. She may have some thoughts about how young lawyers can be helped in the situation described.

I appreciate the time you have taken to interact with the new lawyers and convey the information to me.

Karen

From: Marc Sussman [mailto:sussmarc@qwest.net]
Sent: Friday, May 27, 2011 11:35 AM
To: Karen Lee
Subject: Re: OSB CLE - Starting Your Own Practice - June 17 - Early Reg. Ends June 13 - OSB 773687

Karen,

Thank you for your response to my email to Kateri and Sarah. I'm glad to see that there is a further discount for attorneys in the ONLD and that the OSB is somewhat sensitive to this issue. However, I'm not convinced the needs of this segment of the Bar are sufficiently considered and met in this respect. I'd like to share the comments of a new attorney who I've been informally mentoring and who is in this cohort of attorneys:

My initial reaction is that the cost of CLE is certainly a very real issue for me as a new attorney, and at \$90 I am very selective in terms of attendance. I have seen the advertising for this CLE and I was interested in going, however unless a CLE is \$20 or less, I have to be very certain I will get a lot of good information and materials in order to attend. With respect to this CLE, based on the seminar description, I do not believe I will attend this seminar at this stage at the \$90 price tag.

Another factor to consider is that the "Learning the Ropes" seminar takes care of a new lawyer's first reporting period. Thus, there is no incentive to attend beyond the information presented and cost becomes an even larger factor.

I will say that typically most CLE organizers are sympathetic to our plight, however. Whenever I want to attend a CLE, I always call the organizer and ask if I can volunteer for the registration table or otherwise in order to cut down the cost. That works pretty well, but cost still remains a primary factor in my attendance.

I'm not unmindful of the cost of putting on a CLE (based on my involvement with the Criminal Law Section Executive Committee). But, I think that the fact that the cost of this CLE is discounted 40% from the usual CLE registration fee begs the question (or raises a separate question about whether the cost of CLEs is reasonable in general). I liken it to the cost of a house that used to cost \$500,000 and now costs only \$300,000 after the market collapse. It may appear to be a great deal; but, it is still not affordable to someone whose resources can

only afford a house for \$150,000.

As an old(er) member of the bar, I wouldn't mind subsidizing CLE programs so that the cost to the young attorneys who really need the program is nominal and truly affordable.

Marc

On 5/24/2011 4:12 PM, Karen Lee wrote:

Hi Marc,

Thank you for your email and your comments regarding our upcoming seminar on June 17.

I appreciate your concern that new lawyers may find CLE costs daunting. The CLE Seminars Department recognizes that new lawyers have limited financial resources. For that reason, this seminar has an Oregon New Lawyers Division (ONLD) rate of \$90. All lawyers admitted to the Oregon bar are automatically members of the ONLD until they reach the age of 36 or have been a bar member for more than six years, whichever occurs last. Accordingly, all recently admitted bar members are eligible for the \$90 rate, which includes lunch and a copy of the author's book on starting your own law practice. In the event the \$90 rate is still a hardship, we will explore additional tuition assistance options with the individual.

Regular registration for a full day OSB CLE seminar is \$195 (without lunch), so the \$90 rate is a significant reduction in price. Even the non-ONLD rate of \$120 is a discount of almost 40% off the regular rate. Even though there is a registration fee for attending the seminar, the department will still be underwriting a significant portion of the expenses involved in presenting this valuable information to the new lawyers.

Please do not hesitate to contact me directly with any additional questions or concerns you may have.

Karen

Karen D. Lee

Director, CLE Seminars

Oregon State Bar

<mailto:klee@osbar.org>

(503) 431-6382 (direct)

Toll free (in Oregon): 1-800-452-8260 Ext. 382

Live and online OSB CLE at <http://www.osbarcle.org>

From: Sarah Hackbart

Sent: Tuesday, May 24, 2011 1:59 PM

To: Karen Lee

Cc: 'Marc Sussman'; Kateri Walsh

Subject: RE: OSB CLE - Starting Your Own Practice - June 17 - Early Reg. Ends June 13 - OSB 773687

Hi Marc, I am forwarding your email to Karen Lee, Manager of the CLE Department who can address your concerns.

Sarah Hackbart

Oregon State Bar

Member Services Section Specialist

P.O. Box 231935

Tigard, OR 97281-1935

Direct Phone: 503 431-6385
Fax: 503 598-6988
Email: shackbart@osbar.org

From: Marc Sussman [<mailto:sussmarc@qwest.net>]
Sent: Monday, May 23, 2011 4:49 PM
To: Kateri Walsh; Sarah Hackbart
Subject: Fwd: OSB CLE – Starting Your Own Practice – June 17 – Early Reg. Ends June 13 - OSB 773687

Kateri, Sarah,

I wasn't sure who to address my comments to, so I'm starting with you! On several occasions in the past year or two I've been approached for advice and possible work by new law school grads who had to start their own practices due to the terrible job market. I think this is a great program idea. I also am very troubled -- even a bit outraged -- by the cost. It seems obvious to me that the lawyers who need this program and for whom it is designed are least able to afford \$120 for the program. If the OSB really is trying to serve its membership, I'd think more consideration would be given to the affordability of a CLE like this for the target audience!

Marc

----- Original Message -----

Subject: OSB CLE – Starting Your Own Practice – June 17 – Early Reg. Ends June 13 - OSB 773687
Date: Mon, 23 May 2011 16:20:35 -0700
From: OSB CLE Seminars Department <cle@osbar.org>
Reply-To: cle@osbar.org
To: <sussmarc@qwest.net>



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Oregon State Bar Center, Tigard

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Please join the Oregon New Lawyers Division for an ice cream social immediately following the conclusion of the seminar!

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May 23, 2011

At Well-Paying Law Firms, a Low-Paid Corner

By CATHERINE RAMPELL

WHEELING, W.Va. — The nation's biggest law firms are creating a second tier of workers, stripping pay and prestige from one of the most coveted jobs in the business world.

Make no mistake: These are full-fledged lawyers, not paralegals, and they do the same work traditional legal associates do. But they earn less than half the pay of their counterparts — usually around \$60,000 — and they know from the outset they will never make partner.

Some of the lawyers who have taken these new jobs are putting the best face on their reduced status. "To me there's not much of a difference between what I'm doing now and what I would be doing in a partner-track job," said Mark Thompson, 29, who accepted a non-partner-track post at [Orrick, Herrington & Sutcliffe](#) when he could not find a traditional associate job. "I still feel like I'm doing pretty high-level work — writing briefs, visiting client sites, prepping witnesses for hearings."

Asked whether he hopes someday to switch onto the partner track, given the higher pay for this same work, he is diplomatic. "I'm leaving all my possibilities open," he said.

Lawyers like Mr. Thompson are part of a fundamental shift in the 50-year-old business model for big firms.

Besides making less, these associates work fewer hours and travel less than those on the grueling partner track, making these jobs more family-friendly. And this new system probably prevents jobs from going offshore.

But as has been the case in other industries, a two-tier system threatens to breed resentments among workers in both tiers, given disparities in pay and workload expectations. And as these programs expand to more and more firms, they will eliminate many of the lucrative partner-track positions for which law students suffer so much debt.

Mr. Thompson is one of 37 lawyers in Orrick's new program, which is based in this small Rust Belt city an hour southwest of Pittsburgh. An international firm headquartered in San Francisco, Orrick is one of a handful of law firms, including [WilmerHale](#) and [McDermott Will & Emery](#), experimenting with ways to control escalating billing rates.

"For a long time the wind was at the back of these big law firms," said William D. Henderson, a historian at Indiana University-Bloomington.

"They could grow, expand and raise rates, and clients just went along with absorbing the high overhead and lack of innovation. But eventually clients started to resist, especially when the economy soured."

For decades, firms used essentially the same model: charging increasingly higher rates for relatively routine work done by junior associates, whose entry-level salaries in major markets have now been bid up to \$160,000 (plus bonus, of course), a sum reported by the big law schools. Even under pressure to reduce rates, firms are reluctant to lower starting salaries unilaterally for fear of losing the best talent — and their reputations.

"Everyone acknowledges that \$160,000 is too much, but they don't want to back down because that signals they're just a midmarket firm," said Mr. Henderson. "It's a big game of chicken."

So now firms are copying some manufacturers — which have similarly inflexible pay because of union contracts — by creating a separate class of lower-paid workers.

At law firms, these positions are generally called "career associates" or "permanent associates." They pay about \$50,000 to \$65,000, according to Michael D. Bell, a managing principal at Fronterion, which advises law firms on outsourcing.

These nonglamorous jobs are going to nonglamorous cities.

Orrick moved its back-office operations to a former metal-stamping factory here in 2002, and in late 2009 began hiring career associates. Costs of living are much cheaper in Wheeling than in San Francisco, Tokyo or its 21 other locations, saving \$6 million to \$10 million annually, according to Will A. Turani, Wheeling's director of operations.

"It's our version of outsourcing," said Ralph Baxter, Orrick's chief executive. "Except we're staying within the United States."

Similar centers have cropped up in other economically depressed locations. WilmerHale, a 12-office international firm, has “in-sourced” work to Dayton, Ohio.

“There’s a big, low-cost attorney market there,” said Scott Green, WilmerHale’s executive director. “That means we can offer our services more efficiently, at lower prices.”

What’s good for clients, of course, isn’t quite as good for those low-cost lawyers.

Lower salaries make it even more difficult for newly minted lawyers to pay off their law school debt — like the \$150,000 in loans that David Perry accumulated upon graduation from Northwestern University School of Law in 2009.

Mr. Perry, 37, became a career associate at Orrick after unsuccessfully seeking public service work (which would offer the option of loan forgiveness). But he says he loves his “lifestyle job,” which enables him to work from home and spend time with his infant son while still doing interesting work.

“I didn’t have the strong desire to make loads of cash,” he said.

Other career associates at Orrick said they too were content, even if this track was not their first choice out of law school.

Heather Boylan Clark, 34, was a seventh-year associate at Jones Day before applying for a career associate position after the birth of her second child. She makes 40 percent less than before, but says she still does “challenging work,” and, more important, has greater control of her schedule.

“I’m not killing myself to be hitting specific numbers of billable hours in any given year,” said Ms. Boylan Clark, a graduate of the University of Virginia School of Law. “Now I’m always home for bedtime.”

To some extent, firms have been using lawyers off the partner track for years, known as staff attorneys, although usually on an ad-hoc basis. Executives at Orrick were quick to clarify that the new class of career associates should not be confused with such attorneys, and emphasized efforts to make career associates feel valued.

“There are no second-class citizens at Orrick,” said Mr. Baxter. “This is a career path for people who want it because they prefer the attributes.”

But while Ms. Boylan Clark and others switched from partner tracks at other firms, Orrick has not encouraged associates on its partner track to switch to career associate out of concern that it would seem like a demotion, according to Laura Saklad, Orrick’s chief lawyer development officer.

“That’s just about perception, though,” Ms. Saklad said. “These are not second-class jobs, but the program is so new that they may be perceived that way.”