

Oregon State Bar
Meeting of the Board of Governors
November 19, 2011
The Allison Inn, 2525 Allison Lane, Newberg, OR 97132
Open Session Agenda

The Open Session Meeting of the Oregon State Bar Board of Governors will begin at 9:30 a.m. on November 19, 2011.

Saturday, November 19, 2011, 9:30 a.m.

- 1. Call to Order/Finalization of the Agenda**
- 2. Department Presentation**
 - A. OLF / Legal Services [Ms. Baker]
 - B. CLE Seminars [Ms. Lee] Exhibit
- 3. BOG Officer Elections [Mr. Piucci]**
 - A. President
 - B. President-elect
- 4. Report of Officers & Executive Staff**
 - A. Report of the President [Mr. Piucci] Written Exhibit
 - B. Report of the President-elect [Ms. Naucner] Written
 - C. Report of the Executive Director [Ms. Stevens] Inform Exhibit
 1. Donation of "Dream Court" Sculpture Exhibit
 2. BOG Calendar Exhibit
 - D. Director of Diversity & Inclusion [Ms. Hyland] Inform
 - E. MBA Liaison Reports [Mr. Knight & Mr. Kent] Inform
- 5. Professional Liability Fund [Mr. Zarov]**
 - A. General Update Inform
 - B. Financial Report Inform
 - C. Coverage Plan Changes
 1. Section IV.1.b(2) Action Exhibit

	2.	New Exclusion for Loss of Electronic Data	Action	Exhibit
	3.	Section III.3 Exclusion for Losses Due to "Scams"	Action	Exhibit
D.		Approval of PLF Budget & Assessment	Action	Exhibit
E.		Appointment of New PLF Board Members	Action	Exhibit
6.		Rules and Ethics Opinions		
A.		Legal Ethics Committee		
	1.	Proposed Formal EOP: Duties Regarding Misappropriated Documents	Action	Exhibit
	2.	Proposed Formal EOP: Confidentiality – Cloud Computing	Action	Exhibit
	3.	Proposed Formal EOP: Disclosure of Metadata	Action	Exhibit
7.		OSB Committees, Sections, Councils and Divisions		
A.		Oregon New Lawyers Division Report	Written	Exhibit
B.		SSFP Request to Reconsider LRS Business Model Change [Mr. Kranovich]	Action	Exhibit
8.		BOG Committees, Special Committees, Task Forces and Study Groups		
A.		Budget and Finance Committee [Mr. Kent]		
	1.	Financial Report – October 2011	Action	Exhibit
	2.	2012 OSB Budget Approval	Action	Exhibit
B.		Member Services Committee [Ms. Johnnie]		
	1.	Approve Proposed Election Dates	Action	Exhibit
	2.	Program Review Update	Inform	
C.		Policy and Governance Committee [Ms. Naucler]		
	1.	Amendments to OSB Bylaws Article 20	Action	Exhibit
	2.	Mandatory Malpractice Coverage	Action	Exhibit
	3.	Bylaw 2.102 BOG Committee Assignments	Action	Exhibit
D.		Public Affairs Committee [Mr. Emerick]		
	1.	Resolution to Support Stable Funding for the Courts	Action	Exhibit
E.		New Lawyer Mentoring Program		

	1.	Review and Approve List of Potential Mentors	Action	Exhibit
9.		Other		
	A.	Oregon State Bar Delegation to Cuba 2012	Action	Exhibit
	B.	Request to Consider Co-Sponsorship of ABA Resolution	Action	Exhibit
	C.	Request to Approve Co-Sponsorship of "A Call to Action"	Action	Exhibit
10.		Consent Agenda		
	A.	Approve Minutes of Prior BOG Meetings		
	1.	Open Session – August 26, 2011	Action	Exhibit
	2.	Closed Session – August 26, 2011	Action	Exhibit
	3.	Special Session – September 23, 2011	Action	Exhibit
	4.	Special Session – October 13, 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
11.		Default Agenda		
	A.	Minutes of Interim Committee Meetings		
	1.	Access to Justice Committee		
	a.	September 23, 2011		Exhibit
	2.	Budget and Finance Committee		
	a.	August 26, 2011		Exhibit
	b.	September 23, 2011		Exhibit
	3.	Member Services Committee		
	a.	August 26, 2011		Exhibit
	b.	September 23, 2011		Exhibit
	4.	Policy and Governance Committee		
	a.	August 26, 2011		Exhibit
	b.	September 23, 2011		Exhibit
	5.	Public Affairs Committee		
	a.	September 23, 2011		Exhibit

- 6. Unclaimed Lawyer Trust Account Special Committee
 - a. August 26, 2011 Exhibit
 - B. CSF Claims Financial Report Exhibit
 - C. 2011 House of Delegates Summary of Actions Exhibit
 - D. 2011 ABA Annual Meeting House of Delegates Report Exhibit
12. [Closed Sessions](#)
- A. Judicial Session (pursuant to ORS 192.690(1) – Reinstatements
 - B. Executive Session (pursuant to ORS 192.660(1)(f) and (h)
General Counsel/UPL Report
13. **Good of the Order (Non-action comments, information and notice of need for possible future board action)**
- A. Law schools pressed to tell the truth – *USA Today* 10/31/2011 Exhibit
 - B. OSB Sustainable Future Section- Rio 20 Compilation Document Exhibit
 - C. Bar Exam Compliment Exhibit
 - D. RAZ Apology and Offer Exhibit
 - E. Court Funding Crisis – ABAjournal.com 10/01/2011 Exhibit
 - F. Veterans Courts – ABAjournal.com 11/01/2011 Exhibit
 - G. Convocation on Equality/Video – Letter from David F. Bartz, Jr. Exhibit
 - H. Convocation on Equality – Thank you from Diane Schwartz-Sykes Exhibit

OSB CLE Seminars Department 2012 – 2014 Business Strategies

Today's CLE seminars environment is a complex and highly competitive arena, with burgeoning numbers of providers jockeying for limited consumer dollars. Since 2001 OSB MCLE has identified an increase of almost 310 seminars per year, and pricing by online CLE providers is cutthroat—as low as \$3.31 per Oregon-approved credit.

The communications toolbox that previously relied primarily on print venues to inform attorneys about CLE choices now includes an ever expanding array of technological ways to reach them—from websites to smartphones and social media platforms. Likewise, delivery of CLE content has expanded, branching out from attendance at live seminars to such products as on-demand CLE and live webcasts. The audience for CLE is no less complex. Distinct lawyer-consumer groups, characterized by the Great Generation, Baby Boomers, Gen X and Gen Y, have preferred methods of receiving information about CLE choices, ranging from brochures to tweets. Likewise, each group has different learning styles ranging from live, traditional classroom seminars to MP3 downloads and middle-of-the-night online CLE.

To succeed in this dynamic arena requires careful strategy, resilience, and a willingness to always meet the distinctive needs of diverse groups. The following outlines how OSB CLE Seminars can fulfill its mandate to provide high-quality seminars and seminar products that are cost-effective, relevant, and widely accessible to the membership while successfully competing in a challenging marketplace.

2012

- Increase the price of CLE courses for reciprocal admission applicants; increase promotion of online courses, which were introduced in fall 2011
- Invite exhibitor and sponsor participation at one-day OSB CLE seminars
- Review use of event mobile apps as an opportunity to increase sponsor and exhibitor revenue at multi-day institutes
- Increase online revenue with more active participation in revenue sharing opportunities available through the InReach national network of state and local bar associations
- Schedule two to four online replays of OSB CLE seminars per month
- Develop practice-specific online CLE bundles and offer special pricing
- Expand use of QR (quick response) codes so members can directly access registration and CLE product information from smartphones
- Eliminate video replay sites that have had zero to minimal registration during the past two years
- Continue to reduce printing and postage costs by increasing electronic communication to members regarding upcoming seminars and CLE events
- Continue to reduce printing costs by using electronic formats for course materials
- Reduce printing and postage costs by using electronic formats for select speaker and planner correspondence
- Select more cost-effective speaker and planner tokens of appreciation and streamline the presentation process

- Review Season Ticket pricing structure and research other pricing models

2013

- Review video replay attendance for any additional site reductions
- Increase the number of exhibitors and sponsors for OSB CLE seminars and events by 10% compared to 2012
- Promote OSB CLE webcast seminars directly to other members of the national InReach network of state and local bar associations
- Promote OSB CLE seminars, events, and news through Facebook postings
- Produce 60 to 90 minute CLE products (MP3 downloads, videos, and webcasts) to meet the growing demand for shorter CLE classes
- Schedule at least five to seven online replays of OSB CLE seminars per month
- Research use of Twitter and YouTube to promote OSB CLE seminars, events, and news
- Solicit RFP for CLE app so members can watch accredited CLE presentations via smartphones
- Decide whether to revise Season Ticket pricing structure or create a new product

2014

- Review video replay attendance for any additional site reductions
- Select vendor for CLE app
- Produce YouTube videos promoting OSB CLE
- Implement revised Season Ticket or debut new product
- Review exhibitor and sponsor revenue to determine potential future revenue
- Schedule at least one OSB CLE Seminars event (live seminar, online replay, teleseminar, webcast, etc.) every day the bar center is open

CLE Seminars 2012 Projected Savings and Revenue

2012 Action	Member Impact	Revenue Outcome
Increase the price of CLE courses used by reciprocal admission candidates to fulfill admission requirements.	None. Price increase affects non-members.	Increased revenue: \$5,000 to \$6,500
Increase the number of sponsors and exhibitors at OSB CLE seminars.	Minimal. Some members find sponsors and exhibitors intrusive but careful screening and explicit guidelines about contact with members during the seminar should minimize distractions.	Potential revenue: \$2,500 to \$4,000
Use mobile event apps at institutes to increase sponsor and/or exhibitor revenue.	Minimal. Only members who download the app will see the sponsor and/or exhibitor information.	Potential revenue: \$1,000 - \$1,500
Opt in to CLE programming offered by other bar associations that are part of the InReach national online education network.	Moderate. Provides more CLE topics and programs to OSB members.	Potential revenue: \$2,500
Market OSB seminars to other bar associations that are part of the InReach national online education network.	Moderate. Generates revenue from non-OSB members.	Potential revenue: \$5,000
Add two to four online replays monthly to seminar schedule.	Moderate. Adds another CLE format to existing options.	Potential revenue: \$1,000
Develop three practice-specific online CLE bundles and offer special pricing.	Moderate. Provides a convenience for members	Potential revenue: \$3,000 - \$5,000
Do not fill production assistant (.5 FTE) and program assistant (.5 FTE) positions; use existing CLE	None. Internal reallocation of staff resources.	Estimated salary, taxes, and benefits savings for 1 FTE: \$50,000

CLE Seminars 2012 Projected Savings and Revenue

Seminars staff to complete tasks and responsibilities. Evaluate staffing levels at the end of 2012.		
Reduce special projects budget for two CLE speaker training workshops for specialty bars (OMLA, OWLS, HBA, OAPABA, etc.)	None. Cosponsor with Diversity and Inclusion Department, which has agreed to pay the speaker fees.	\$4,000
Reduce training and education budget for one additional employee to attend an ACLEA (Association for Continuing Education) conference.	None. Will review 2013 budget to see if possible to send an additional employee.	\$1,300
Present seminar materials in an electronic format as part of registration; print materials upon request for a charge of \$25 per copy.	Moderate. CLE Seminars began its "Going Green" campaign in June, 2011. Acceptance of electronic course materials continues to be slow with the membership. A number of members prefer paper. Providing electronic materials puts the burden of a print copy on the registrant.	Printing savings: on average \$15 to \$17 per book. In 2010, books were provided to approximately 4,800 registrants, which was a decrease from 5,500 registrants in 2009 and 6,500 registrants in 2008. Members who participate in seminars via live webcast receive materials electronically.
Continue to reduce the number of print announcements for seminars.	Minimal. Most of the CLE Seminars' announcements are sent entirely electronically or in combination with a print announcement.	Postage and printing savings: \$6,000 to \$8,000
Reduce video replay sites from 16 to six. In the past two years, ten video replay sites hosted five or fewer replays annually.	Minimal; the sites either did not host a replay or only hosted one or two times. For 2010, the targeted sites hosted replays for 27 members. In 2009, the targeted sites hosted replays for 58 members. In lieu of a	\$0. De minimus savings in direct expenses. However, the staff time spent cancelling sites due to lack of registration (including sending DVD rentals to members who registered at a site that was later cancelled)

CLE Seminars 2012 Projected Savings and Revenue

	physical replay site members can either: (1) register for the live seminar webcast and receive access to an archived video of the seminar from their computer for up to two months; or (2) register for the online replay of the seminar, which typically is scheduled several weeks to a month following the live seminar.	is significant, about three hours per cancelled site. In 2010, 246 replays were cancelled at the ten targeted sites. In 2009, 352 replays were cancelled at the same sites.
Eliminate hard copy thank you and evaluation letters to speakers and planners; all correspondence will be sent electronically unless an email address is not available.	None. Internal reallocation of staff resources.	Savings of \$900 in direct expenses for stationary, copying, printing, and postage. Most of the savings will be realized in staff time spent preparing the hard copy letters, which averages one to two hours per program. Eliminating hard copy thank you letters also complements the department's "Going Green" campaign by reducing the use of stationery and envelopes.
Acknowledge speakers and planners with a \$15 gift card presented at the seminar instead of ordering and mailing a wooden plaque and metal tab after the seminar.	None. Internal reallocation of staff resources.	Most of the savings will be realized in the staff time needed to order, proof, collate, and mail plaques and tabs. Direct expense reductions include postage costs for mailing the plaque from the bar center.

**OSB CLE Seminars Department
2008- 2010
*Who We Serve***

	2008	2009	2010	Total
# of live seminars	47	56	46	149
# of attendees (including video replays)	7,109	6,014	5,276	18,399
# online CLE purchases (OSB members)	2,814	2,699	3,687	9,200
Revenue (OSB members)	\$140,788.14	\$140,795.85	\$172,693.85	\$454,277.84
# online CLE purchases (non-OSB members)	54	144	122	320
Revenue (non-OSB members)	\$1,681.50	\$4,167.88	\$5,363.27	\$11,212.65
#Sections (registration and event services)	12	15	18	45
# of attendees	1,779	1,986	2,084	5,849
Revenue	\$12,218.00	\$15,866.50	\$16,677.50	\$44,762.00
50-year members	132	108	81	321
Revenue	\$0.00	\$0.00	\$0.00	\$0.00
Expense (materials, food, registration)	\$8,130.00	\$7,050.00	\$5,250.00	\$20,430.00
Judges and staff	128	160	108	396
Revenue	\$0.00	\$0.00	\$0.00	\$0.00
Expense (materials, food, registration)	\$8,500.00	\$9,965.00	\$7,170.00	\$25,635.00

Pricing Comparison by Sponsor

Sponsor Name	# of Credits	Early Registration	Regular Registration	\$/credit/hour
OSB CLE Seminars— <i>Standard</i> ¹	6.50	\$175	\$195	\$30/hr
OSB CLE Seminars— <i>Contract Speaker</i> ²	6.75	\$200	\$220	\$32.60/hr
OLI— <i>Standard</i> ³	6.00	\$179	\$195	\$32.50/hr
OLI— <i>Contract Speaker</i> ⁴	6.75	\$195	\$215	\$31.85/hr
Law Seminars International ⁵	7.50	N/A	\$695	\$93/hr
The Seminar Group ⁶	6.50	N/A	\$495	\$76/hr
Lewis & Clark Law School ⁷	5.50	N/A	\$175	\$32/hr
PESI ⁸	7.00	N/A	\$279	\$39.86/hr

¹ *Elder Law Roundup* (10/1/10)

² *Speaking to Win* (12/28/10)

³ *Deposition Techniques* (12/10/10)

⁴ *Great Adverse Depositions* (2/11/11)

⁵ *Real Estate Joint Ventures* (11/3/10)

⁶ *Biomass as a Renewable Energy Source* (11/3/10)

⁷ *Taxation and the Environment* (10/8/10)

⁸ *Income Tax Workshop* (6/10/10)

President Report September 2011 - November 2011

Date	Event	Location
September 8-9	North Coast Bar Association visits	Lincoln, Tillamook and Clatsop Counties
September 16-17	Represented BOG at Pendleton Roundup	Pendleton, Oregon
September 23	BOG Committee Meetings	OSB
September 27	HOD out of state regional meeting	Portland, OR
September 28	Lunch with Steve Larson re: Bar screening committees for judicial appointments	Portland, OR
September 29	OSB Mentoring Program/CLE	OSB
October 6	Admissions Ceremony Willamette Law School	Salem, OR
October 13	Special BOG meeting re: PLF budget	Portland, OR
October 13	Meeting with the Chief Justice	Salem, OR
October 13	Lane Co. Bar Association lunch with Kateri on Mentoring	Salem, OR
October 18	Harney County Association dinner with Sylvia Stevens	Ontario, OR
October 19	MBA photos with Steve Blackhurst re: CEJ fundraising awards	Portland, OR
October 25	Pro Bono Awards Celebration	Portland, OR
October 28	HOD meeting	OSB
November 1	Caught a 25 lb Chinook on Tillamook Bay	Tillamook Bay
November 4	Convocation of Equality	Portland, OR
November 8	Meeting with Ethan Knight, Phil Bentley and Curtis Robinhold regarding Judicial Appointments, Legal Aid and OJD funding	Portland, OR
November 10	Meeting with Ross Day on OJD funding issues	Portland, OR
November 10	OSB Awards Luncheon	Portland, OR

November 15	Chief Justice / eCourt Meeting	Salem, OR
November 15	Chief Justice / OSB Meeting	Portland, OR

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: November 19, 2011
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"> • Refined and updated 2012 budget using newest financial figures. • Working with IDT to coordinate and consolidate notices coming from various OSB regulatory departments (i.e., IOLTA, MCLE , Member Fees). • Testing, documenting and training in new “E-fees Notices” application; we are encouraging firms to pay online for all of their attorneys. • Continued extensive cross-training for all accounting staff so any of us can do the others jobs.
Admissions (Jon Benson)	<ul style="list-style-type: none"> • The BBX welcomes two new members: (1) Caroline Wong is a Multnomah County DDA; she has served as a “co-grader” for three prior summer exams. (2) Dr. Shane Haydon is a new public member; he is a licensed psychologist with many years of experience including serving as Director of the Hazelden addiction treatment center and has been a public member of the OSB’s State Lawyers’ Assistance Committee (SLAC). • The BBX and staff continue to follow recent litigation (In the 9th Circuit and other Circuits) involving bar exam accommodations. Oregon has recently adopted some new forms for applicants requesting accommodations which have been vetted to comply with the latest US DOJ regulations. • Staff is compiling demographic data on the reciprocity applicants who have been admitted in the two years since the Oregon Supreme Court liberalized the reciprocity rule to allow “admission on motion” with lawyers from 37 other states. • Jon Benson was selected to participate on one of the ABA’s “site teams” that conduct accreditation evaluations. Jon attended training in Chicago 10/21 & 10/22 (on the ABA nickel) and the site team will be spending the better part of a week at its assigned school – The William Mitchell College of Law in Minneapolis/St. Paul, MN.
Communications (Kay Pulju)	<ul style="list-style-type: none"> • Staff is working with section leaders and other volunteers on the biennial revision and updating of all of the bar’s public education materials. Revisions to “Legal Issues for Older Adults” are near completion, and plans are developing to publish a handbook on small claims court. • The November issue of the Bulletin is out, with a cover story on post-law school employment figures nationally and within Oregon. Final edits are underway for December’s annual “access to justice” edition. • Department staff assisted with planning and logistics for the Convocation on Equality, the annual OSB Awards event and a Veterans Day CLE aimed at

Department	Developments
	<p>recruiting lawyers to undertake VA benefit claims work. Staff also assisted with a recent program, “OSB for Legal Assistants” as a first step in better communication concerning OSB deadlines and regulatory requirements.</p> <ul style="list-style-type: none"> • The Customer Service team is recruiting for a new receptionist to replace LaVerne Stroud, who retired on the last day of September.
<p>CLE Seminars (Karen Lee)</p>	<ul style="list-style-type: none"> • In September, a complimentary seminar for mentors in the New Lawyer Mentoring Program was well received. • Two technology-related seminars were held in September and October: “The Cybersleuth’s Guide to the Internet,” focusing on Internet research, and “The Best Technology to Get the Most out of Your Practice,” showing how to navigate the maze of equipment and software and make the best technology choices for specific needs. • The 13th annual two-day mock trial seminar was held at the end of October at the federal courthouse in Portland. A record number of women judges volunteered to critique the sessions. The program received unanimously “excellent” ratings. • The Department is continuing to “Going Green” with seminar course materials throughout the fall and has informed members that effective January 1, 2012, course materials will be delivery electronically to registrants with print copies available only on request and at an extra cost.
<p>Diversity & Inclusion (Mariann Hyland)</p>	<ul style="list-style-type: none"> • Mariann presented data at the Nov 4 Convocation on Equality addressing the OSB’s race, gender and ethnicity demographic data. OSB stakeholders are working with D&I to enhance the accuracy of this data. • Toni Kelich, J.D., hired as Diversity & Inclusion Coordinator, and Vanessa Lumpkin hired as part-time Administrative Assistant, October 2011. • The 9th annual BOWLIO fundraiser occurred on October 22. Approximately 63 students, judges and lawyers participated, raising over \$2,000 for OLIO after event expenses paid. • We launched “Explore the Law” in October, a new diversity pipeline program the OSB developed in collaboration with PSU and the Multnomah County Bar Association’s Equality Committee. 18 PSU undergraduate students are enrolled in this new certificate program. Over 22 judges and 22 lawyers have volunteered to offer participants informational interviews and job shadowing opportunities. Also, the program offers workshops and activities to help students prepare for applying to law school. • Mariann developed curriculum and delivered training addressing working with diverse new lawyers and clients during the New Mentoring Program training held at the OSB on September 29. • Mariann joined Hunter Emerick, Sylvia Stevens and Susan Grabe in developing and presenting testimony to the Joint House and Senate Judiciary Committee concerning the OSB’s progress in addressing recommendations of the 1994 Oregon Supreme Court Task Force on Racial and Ethnic Issues in the Judicial System. • Mariann continues to meet with members of the legal community to explore ideas and thoughts regarding the OSB’s diversity and inclusion initiatives. In October 2011, Steve Piucci appointed the following BOG

Department	Developments
	<p>members to work with Mariann and various stakeholders to develop an OSB diversity definition and business case statement for diversity: Audrey Matsumonji, Steve Larson, Tom Kranovich and Ken Mitchell-Phillips.</p>
<p>General Counsel (including CAO) (Helen Hierschbiel)</p>	<ul style="list-style-type: none"> • We are planning to launch the Attorney Fee Mediation Pilot Program on January 1, 2012. • We have been implementing the UPL Task Force recommendations. • Attorneys from CAO and GCO have been presenting ethics CLES for various bar groups located throughout the state, including Benton, Clackamas, Douglas, Lane, Marion, Multnomah and Washington County Bar Associations. • The first Ethics School, a collaboration of CAO and DCO, will be held on November 18, 2011 at the OSB Center.
<p>Human Resources (Christine Kennedy)</p>	<ul style="list-style-type: none"> • New hires: Diversity & Inclusion Coordinator, Diversity & Inclusion Assistant, RIS Assistant, and Discipline Legal Secretary. • Open positions: Bilingual RIS Assistant and assistant receptionist. • We are in the process of surveying staff for feedback about their supervisors. • Seven personnel policies were revised to make them compliant or provide clearer language.
<p>Information & Design Technology (Anna Zanolli)</p>	<ul style="list-style-type: none"> • A new “member dashboard” has been launched on the website which draws data real-time from the membership database to display a member’s current status on a number of regulatory items (fee payment, MCLE compliance, IOLTA certification). The dashboard also shows a 5-year history of the members’ section and committee participation, fee payments, and OSB CLE seminar attendance. An events calendar shows upcoming OSB seminars and other bar events with links to online registration. • New InCopy software allows <i>Bulletin</i> staff to edit directly into the production document, a more efficient process that will save time in both the design and editing departments and reduce potential for errors. Our first tests on limited sections over the summer proved successful and the full November issue was produced with the new application. • IDT support for the Convocation on Equality included a website for the event, a slide show of the COE champions, certificates, program and other peripheral materials, and a special logo for visual branding of the event. • Department staff are working closely with Carolyn McRory, the bar’s new business analyst and project manager, to identify all current, planned and proposed projects and set the stage for a more formalized management system that will support our ongoing technology efforts.
<p>Legal Publications (Linda Kruschke)</p>	<ul style="list-style-type: none"> • Linda Kruschke is doing monthly BarBooks™ webinars. The Oct. 25th webinar had 100 participants, the maximum that can be accommodated. The other 45 or so who wanted to participate have been slotted into upcoming dates. • Linda presented a live BarBooks™ demonstration CLE for the Lincoln County Bar Association in Newport on Nov. 4 in response to a request made during President Piucci’s visit.

Department	Developments
	<ul style="list-style-type: none"> • The following have been posted to BarBooks™ since August: <ul style="list-style-type: none"> ✓ The complete revision of <i>Labor & Employment: Private Sector</i>, including PDF. ✓ Six new and one revised Uniform Criminal Jury Instructions. ✓ Three new and one revised Uniform Civil Jury Instructions. ✓ The complete revision of <i>Construction Law</i>, with PDF to be posted as soon as the index and tables are finalized within the next week. ✓ The new edition of <i>Insurance Law: The Basics</i>, with PDF to be posted in several weeks when the index is received. • We are currently offering <i>Construction Law</i> for sale via pre-order. Current sales are \$10,404 versus budgeted revenue of \$3,720. • We have just begun to offer <i>Insurance Law: The Basics</i> for sale via pre-order. The book is smaller than anticipated, so the actual revenue is likely to be closer to \$10,000 than the projected \$17,000. • Kay Pulju conducted a focus group of BarBooks™ users. The full report is available if you are interested. Two major themes emerged: <ul style="list-style-type: none"> ✓ BarBooks™ is a popular starting point for legal research. ✓ BarBooks™ is easy to use.
<p>Legal Services/OLF (Judith Baker)</p>	<p><i>Legal Services Program:</i></p> <ul style="list-style-type: none"> • The LSP has approximately \$210,000 in unclaimed client funds including claims made to date in the amount of \$2,500. The LSP Committee will forward a recommendation for fund disbursement to the legal service programs by the BOG’s April 2012 meeting. • Staff is working on the analysis report for the accountability piece of the LSP Standards and Guidelines. • The Pro Bono Fair was a huge success; there was record attendance of 200, including three justices of the Oregon Supreme Court. • The LRAP Committee meets the beginning of December to review and make policy changes to the LRAP program for 2012. <p><i>Oregon Law Foundation</i></p> <ul style="list-style-type: none"> • The OLF continues to work with banks to maintain the highest possible interest rates on IOLTA accounts and educate lawyers to understand the importance of keeping IOLTA accounts at Leadership Banks.
<p>Member Services (Dani Edwards)</p>	<ul style="list-style-type: none"> • More than 250 new bar members were welcomed in an ONLD-sponsored reception following the October 6 Swearing-in Ceremony at Willamette University. • October 17 concluded this year’s BOG election, the first bar election in which electronic ballots were used almost exclusively. The 15% vote return seen in this election is normal when compared to previous BOG elections. • The Section annual meeting season is coming to an end with only 10 meetings remaining from November 1-15. • The Pro Bono Fair and Awards Ceremony was October 25 at the World

Department	Developments
	<p>Trade Center. The event featured three CLE programs, an awards ceremony honoring law students, lawyers, and firms that provided numerous hours of pro bono service in 2010, and a pro bono service provider “vendor fair”.</p> <ul style="list-style-type: none"> • After several years of declining attendance and mixed reviews from attendees, the department has decided not to hold a 2012 Conference of Bar Leaders but rather to provide a more comprehensive leadership handbook for committees, sections, and local bar presidents.
<p>Minimum Continuing Legal Education (Denise Cline)</p>	<ul style="list-style-type: none"> • The MCLE Committee met on Friday, October 14, and discussed a request from the Uniform Criminal Jury Instructions Committee members for CLE credit for their work on the committee. The MCLE Committee will review additional information and continue the discussion at its December 2011 meeting. • Compliance reports for members with a reporting period ending 12/31/2011 were sent on October 13, 2011. 170 were sent via regular mail (no valid e-mail address on file) and 4,827 were sent via email. As of 10/31/2011, 329 reports have been received and processed. • Jenni Abalan, MCLE Program Assistant, began her full-time schedule on October 1. This schedule will remain in effect through March 31, 2012, when her hours will be reduced to 20 hours per week. • Processed 6,062 program accreditation applications and 918 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"> • <i>Enrollment.</i> We’re focused on getting the October admittees informed about program details, enrolled and then matched. As of 11/8 we have approximately 350 new lawyers either enrolled or due to enroll in the next two weeks. • <i>Matching.</i> We are trying to match mentors and new lawyers as quickly as possible upon enrollment. We currently have approximately 110 matched and completing the program. We are making several dozen matches/day on most days. We are also spending time personally recruiting mentors for new lawyers where our current database doesn’t indicate a natural match. Additionally, we have had a few mentor switches, which we are accommodating quickly whenever possible. • <i>Communications.</i> Quite a bit of time is being spent fielding questions from New Lawyers and Mentors, largely via telephone and email. That is not unexpected with a new program of this type. Kateri is also attending as many committee and other meetings as possible to continue to educate about the program. • <i>Mentor Recruitment.</i> Working on several strategies to continue recruitment efforts, primarily through event or meeting attendance, and a series of targeted emails. • <i>Technology.</i> Troubleshooting in a few categories. Most notably working on refining the database to rectify some glitches and maximize its efficiency.
<p>Public Affairs (Susan Grabe)</p>	<ul style="list-style-type: none"> • Public Affairs hosted the 2011 Oregon Legislation Highlights CLE on Thursday, October 27th, 2011. In-person turnout was lower than expected,

Department	Developments
	<p>but the number of attendees via webinar was greater and we understand there is interest in video replays of the CLE.</p> <ul style="list-style-type: none"> • Public Affairs also put together the 2011 Legislation Highlights publication, which highlights several hundred measures passed affecting numerous practice areas. We coordinated with the PLF to ensure legal malpractice issues were highlighted for practitioners. • On November 2, we hosted the Capitol Club training on the new Oregon Government Ethics Commission statutes and rule changes. • We are developing a strategy and a coalition for speaking out in support of stable funding for the court system. • Department staff participated in November 3 legislative hearing days and is gearing up for the upcoming February Session. • Staff is getting the word out to sections and other bar groups that April 2, 2012 is the deadline for legislative proposals for the 2013 legislative session.
<p>Referral & Information Services (George Wolff)</p>	<ul style="list-style-type: none"> • Two recent vacancies have been filled, each with part-time employees who will each work 20 hours per week. One new staff member is potentially a future bar member, currently attending Lewis & Clark’s Northwestern School of Law. We are in the process of filling a remaining bilingual RIS Assistant vacancy. In the past year, RIS has lost several talented personnel to internal promotion to other bar departments. • RIS is meeting monthly with the Public Service Advisory Committee to assist with the committee’s development of an LRS fee-sharing model, as directed by the BOG in June.
<p>Regulatory Services (Jeff Sapiro)</p>	<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 next meets on November 19, 2011. • With the fall and end-of-year CLE season upon us, several staff are participating on CLE ethics panels this month and next. • The first session of Ethics School will be held at the Bar Center on November 18, 2011. DCO and CAO staff have worked hard to develop the curriculum and program materials. They, along with some PLF staff, will be the instructors at this first session. • DCO welcomes a new staff member, Christopher Ouellette, who fills a legal secretary vacancy in the department. Christopher has worked for civil and criminal law practitioners, and for a corporate legal department. • DCO is nearing completion of the long-term project of converting all past disciplinary complaints and records from paper to electronic format. Staff has scanned roughly two million pages of documents during this project. • 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 June 24 through August 24, 2011

Date	Event
9/8-9	North Coast Visit (Lincoln, Tillamook & Clatsop County Bars)
9/12	Law Firm Lunch--Kell Alterman Runstein
9/14	Lunch meeting with Chief Justice, Steve Piucci & Mitzi Naucler
9/14	“Lawyers for Soldiers” Brainstorming Session
9/16	OLF Meeting-Presentation on Fund-Raising Proposal
9/21	Law Firm Lunch--Schwabe Williamson
9/22	Testify before Joint Senate/House Judiciary Committees
9/22	CEJ Party Under the Stars
9/23	BOG Committee Meetings and MBA/BOG Social
9/26-10/14	Vacation
10/18	Malheur County Bar Visit
10/25	Pro Bono Fair
10/26	Law Firm Lunch--Davis Wright Tremaine
10/27	MBA Absolutely Social Social
10/28	HOD Meeting (a.m.) and CEJ Laff-Off (p.m.)
11/1	Davis Wright Women’s Networking Event
11/2	Law Firm Lunch--Kolisch Hartwell
11/8	Law Firm Lunch--Dunn Carney
11/9	OSB Awards Luncheon
11/11	Lawyers for Soldiers Kick-Off and CLE
11/12	CSF Committee Meeting
11/15	Meeting with Chief Justice
11/16	Law Firm Lunch—Smith Freed
11/16	Dunn Carney Open House Honoring Tom Tongue

September 23, 2011

Sylvia E. Stevens, Executive Director
Oregon State Bar
16037 SW Upper Boones Ferry Road
P.O. Box 231935
Tigard, OR 97281-1935

Re: Possible donation of “Dream Court Sculpture”

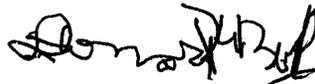
Dear Sylvia:

It was good talking with you earlier this week. As I indicated in that conversation, I own a sculpture entitled “The Dream Court,” which is a depiction of the nine best justices in the history of the United States Supreme Court, as selected by lawyers, judges, and national scholars. It also depicts my late sister arguing in front of that court. The piece was conceptualized by me and executed by the artist Lorenzo Ghiglieri. My brother and I have arranged for one piece in this edition to be donated to our alma mater, The Brooklyn Law School, and I am considering donating my piece to the Oregon State Bar. I feel that the Bar Office would be the appropriate forum for a work of this caliber.

Please let me know whether the Bar is interested in the piece and, if so, whether the Bar would be willing to procure a table to display the work, as well as a plaque identifying the donation as having been made by me and my wife Mary Ann in memory of my late sister Candice DuBoff-Jones, who, as you know, was shot to death in the Multnomah County Courthouse in the late 70’s. If the piece is to be displayed on the main floor of the Bar office, then it would also be good to have a plexi-glass case made to protect it. If it is to be displayed on the upper floor by the reception desk, then that precaution would not be necessary.

I do look forward to hearing from you regarding this matter. If there is anything I can do to assist the Board of Bar Governors in making the determination, please let me know. I am enclosing a photo of the piece for your convenience.

Sincerely,



Leonard DuBoff

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BOG Calendar of Events

SUBJECT TO CHANGE

2011

November 1	Multnomah Bar Association Board	MBA Office
November 4	OSB Convocation on Equality*	TBD
November 9	OSB Annual Awards Luncheon	Governor Hotel, Portland
November 17	Urban League EOD Dinner**	Oregon Convention Center
November 17	Orientation & Local Bar Social	The Allison - Newberg
November 18	Board Retreat/Comm. Mtgs. & Farewell Dinner	The Allison
November 19	BOG Meeting and Dinner	The Allison & Nick's in McMinnville
November 19	State Professional Responsibility Board	OSB Center
December 6	Multnomah Bar Association Board	MBA Office
December 7	CEJ Jackson County Luncheon	County Courthouse Jury Room, Medford
December 9	Professional Liability Fund Board	Tigard
December 16	State Professional Responsibility Board	Conference Call

2012

January 6	BOG Comm. Mtgs. / Staff Appreciation Lunch	OSB Center
Mid-January	Multnomah County Bar Association Dinner	TBD
February 1-7	NABE/NCBP/NCBF - Midyear Meeting	New Orleans, LA
February 3	PLF Board of Directors	Tigard
February 8	CEJ 21 st Annual Awards Luncheon**	Governor Hotel, Portland
February 9	Lunch with Supreme Court	Illaha Country Club
February 9	Local Bar and Legislative Reception	Salem Conf. Ctr. / Grand Hotel
February 10	Board and Committee Meetings	Salem
Mid-February	Oregon Hispanic Bar Association Dinner**	TBD
March 9	Oregon Women Lawyers Dinner/Auction**	The Nines Ballroom, Portland
March 15-16	ABA Bar Leader Institute	Chicago, IL
March 21-24	Western States Bar Conference	Las Vegas, NV
March 30	BOG Committee Meetings	OSB Center
March 30	50-Year Luncheon	TBD
March 30	BOG / ONLD Dinner	TBD
April 17-19	ABA Day in Washington	Washington, DC
April 24	CLP Legal Citizen of Year Award Dinner**	TBD
April 26	OSB/PLF Joint Dinner	TBD
April 27	Board and Committee Meetings + PLF	OSB Center
April 27	PLF Board of Directors	Tigard
April/May	Northwest States Bar Meeting	TBD
May 1	Hispanic Metro Chamber Lunch **	Oregon Convention Center
Early May	New Admittees Swearing In Ceremony**	Smith Auditorium – Willamette University
May 8	BOG Candidate Statements Due	For October Election
Mid-May	Multnomah Bar Assoc. Annual Meeting & Dinner**	TBD
May 25	BOG Committee Meetings	OSB Center
May 25	BOG Alumni Dinner	TBD
May 30 – June 4	National Conf. on Prof. Responsibility	Boston, MA
June 8	PLF Board of Directors	Bend
June 21-23	Board and Committee Meetings	Ashland

July 10-12	HOD Regional Meetings	Per Region
Late July	Oregon Minority Lawyers Assoc. Social/Auction**	TBD
July 27	BOG Committee Meetings	OSB Center
July 31 - August 4	NABE/NCBP/ABA - Annual Meeting	Chicago, IL
August 10	PLF Board of Directors	TBD
Mid-August	Bridging Rivers of Change**	TBD
August 24	Board and Committee Meetings	OSB Center
September 18	HOD Resolution Deadline	Received by OSB
Mid-September	Hispanic Heritage Month Breakfast**	TBD
Late September	CEJ Party Under the Stars	TBD
September 28	BOG Special Meeting	Conference Call
October 1	BOG Election Ballots sent	Online voting only
October 1	HOD Agenda Published	Distributed by OSB
October 5	PLF Board of Directors	TBD
Early October	New Admittees Swearing In Ceremony*	Smith Auditorium – Willamette University
Early October	Oregon Native American Chamber Gathering**	TBD
October 9-11	HOD Regional Meetings	Per Region
October 12	BOG Committee Meetings	OSB Center
October 12	BOG / MBA Social	TBD
Mid-October	OWLS Workplace Leader Awards	TBD
October 15	BOG Ballots due to OSB by 5pm	Online voting only
Late October	OGALLA Dinner & Silent Auction**	TBD
Late October	CEJ Laf-Off	TBD
November 2	House of Delegates Meeting	OSB Center
November 8-10	Board Planning Retreat	Cannon Beach
Early November	OSB Annual Awards Luncheon	TBD
Mid- November	Urban League EOD Dinner**	TBD
December 7	PLF Board of Directors / Annual Dinner	Tigard

2013

January	BOG Comm. Mtgs. / Staff Appreciation Lunch	OSB Center
February 6-12	ABA Mid-Year Meeting	Dallas, TX
March 14-15	ABA Bar Leader Institute	TBD
August 8-13	ABA Annual Meeting	San Francisco, CA

BOG Meetings and Committee Meetings are in BOLD type.

Other events announced, as information is available. Events added since last BOG meeting are highlighted in yellow.

* indicates OSB events which OSB Board members are encouraged to attend.

*** indicates **sponsored** events which OSB Board members are encouraged to attend.

For more ABA events: http://www.abanet.org/abanet/oc/abatoday/?gnav=global_calendar_lead

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: November 17-19, 2011
Memo Date: November 3, 2011
From: Ira Zarov – CEO Professional Liability Fund
Re: Coverage Plan Changes -- **Section IV.1.b(2)**

Action Recommended

The PLF Board of Directors requests approval of the following changes to Section IV.1.b.2 of the PLF Coverage Plan.

Recommendation: Change Section IV.1.b(2) as follows:

Two or more CLAIMS that are SAME OR RELATED CLAIMS, whenever made, will all be deemed to have been first made at the time the earliest such CLAIM was first made. ~~However, this provision will not apply to YOU if YOU have no other coverage from any source applicable to the CLAIM (or that would have been applicable but for exhaustion of limits under that coverage.~~ *This provision will apply to YOU only if YOU have coverage from any source applicable to the earliest such SAME OR RELATED CLAIM (whether or not the available limits of liability of such prior policy or plan are sufficient to pay any liability or CLAIM).*

Background

Issue: There has been some concern over the clarity of the Plan language in Section IV.1.b.(2) and a re-wording of the Subsection has been proposed.

Discussion: The Plan term was meant to protect an attorney who had a claim filed against him or her in a matter that related back to a date prior to the covered party's retroactive date. Without the Plan exception in that case the covered party would have no PLF coverage. The intent of the provision is to allow coverage for that claim if there was no other coverage available, but not to create an additional limit. As the comment notes, however, an additional limit is not created.

In the previous version the second sentence was difficult to understand. The comment, however, provides appropriate clarification. In relevant part, the comment reads:

There is an exception to the special rules in Subsection 1.b.(2) for COVERED PARTIES who had no coverage (with the PLF or otherwise) at the time the initial CLAIM was made, but this exception does not create any additional Limits of Coverage. Pursuant to Subsection VI.2, only one Limit of Coverage would be available.

The proposed change removes the double negative and replaces it with an affirmative statement, better aligning the PLF's intent with the Plan language and comment.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: November 17-19, 2011
Memo Date: November 3, 2011
From: Ira Zarov – CEO Professional Liability Fund
Re: Coverage Plan Changes - New Exclusion

Action Recommended

Approve the addition of a new Exclusion to the PLF Coverage Plan. The new Exclusion states:

[CONFIDENTIAL OR PRIVATE DATA EXCLUSION]

22. This Plan does not apply to any CLAIM arising out of or related to the loss, compromise or breach of or access to confidential or private information or data. If the PLF agrees to defend a SUIT that includes a CLAIM that falls within this exclusion, the PLF will not pay any CLAIMS EXPENSE relating to such CLAIM.

COMMENTS

There is a growing body of law directed at protecting confidential or private information from disclosure. The protected information or data may involve personal information such as credit card information, social security numbers, drivers licenses, or financial or medical information. They may also involve business-related information such as trade secrets or intellectual property. Examples of loss, compromise, breach or access include but are not limited to electronically stored information or data being inadvertently disclosed or released by a Covered Party; being compromised by the theft, loss or misplacement of a computer containing the data; being stolen or intentionally damaged; or being improperly accessed by a Covered Party or someone acting on his or her behalf. However, such information or data need not be in electronic format, and a data breach caused through, for example, the improper safeguarding or disposal of paper records would also fall within this exclusion.

There may be many different costs incurred to respond to a data breach, including but not limited to notification costs, credit monitoring costs, forensic investigations, computer reprogramming, call center support and/or public relations. The PLF will not pay for any such costs, even if the PLF is otherwise providing a defense.

Background

Issue: The PLF wants to address its position on the loss, compromise, or breach of confidential or private information held by a covered party. Much of this data is now held in electronic form. This issue is not limited to the PLF and liability carriers all over the country are attempting to develop responsive products.

The PLF Exclusion is consistent with other malpractice insurance, but there are now a number of stand-alone policies available from insurers. The PLF is in discussions with reinsurers to see if it is feasible to offer such coverage as part of the Excess Program or to provide it in another manner.

Discussion: Working with coverage counsel, the Coverage Committee decided that the best approach would be to craft a new exclusion specifically addressing the issues.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: November 17-19, 2011
Memo Date: November 3, 2011
From: Ira Zarov – CEO Professional Liability Fund
Re: Coverage Plan Changes - **Section III.3 Comments & Language in Exclusion 16.**

Action Recommended

Approve the recommended changes to Section III.3. and Exclusion 16 of the PLF Coverage Plan in the following ways.

Recommendation 1: Expanding the Comment to Section III.3 to include the following language:

***Professional Services.** To qualify for coverage under Section III.1 and III.2b, the act, error or omission causing YOUR liability must be committed “in rendering professional services in YOUR capacity as an attorney, or in failing to render professional services that should have been rendered in YOUR capacity as an attorney.” This language limits coverage to those activities commonly regarded as the rendering of professional services as a lawyer. This language, in addition to limiting coverage to YOUR conduct as a lawyer, is expressly intended to limit the definition of COVERED ACTIVITY so that it does not include YOUR conduct in carrying out the commercial or administrative aspects of law practice. **Examples of commercial or administrative activities could include:** ~~such as~~ collecting fees or costs; guaranteeing that the client will pay third parties (e.g., court reporters, experts or other vendors) for services provided; ~~or~~ depositing, endorsing or otherwise transferring negotiable instruments; **depositing or withdrawing monies or instruments into or from trust accounts; or activities as a trustee that require no specialized legal skill or training, such as paying bills on time or not incurring unnecessary expenses.** The foregoing list of commercial or administrative activities is not exclusive, but rather is illustrative of the kinds of activities that are regarded as part of the commercial aspect of law (not covered), as opposed to the rendering of professional services (covered).*

***Example.** A client purports to hire the Covered Party and provides the Covered Party with a cashier’s check, which the Covered Party deposits into her firm’s client trust account. The Covered Party, on the client’s instructions, wire-transfers some of the proceeds of the cashier’s check to a third party. The cashier’s check later turns out to be forged and the funds transferred out of the trust account belonged to other clients. The Covered Party is later sued by a third party such*

as a bank or other client arising out of the improper transfer of funds. The Covered Party's conduct is not covered under her PLF Plan. Placing, holding or disbursing funds in lawyer trust accounts are not considered professional services for purposes of the PLF Plan.

Recommendation 2: Adopt new language to Exclusion 16.

[GENERAL TORTIOUS CONDUCT EXCLUSIONS]

16. This Plan does not apply to any CLAIM against any COVERED PARTY for:

- a. Bodily injury, sickness, disease, or death of any person;
- b. Injury to, loss of, **loss of use of**, or destruction of any real, personal, or intangible property ~~or loss of use thereof~~; or
- c. Mental anguish or emotional distress in connection with any CLAIM described under Subsections a or b.

This exclusion does not apply to any CLAIM made under ORS 419B.010 if the CLAIM arose from an otherwise COVERED ACTIVITY.

Proposed updated language for Comments.

*Subsection b of this exclusion is intended to encompass a broad definition of property. For these purposes, property includes real, personal and intangible property (e.g. electronic data, financial instruments, **money** etc.) held by an attorney. However, Subsection b is not intended to apply to the extent the loss or damage of property materially and adversely affects an attorney's performance of professional services, in which event the consequential damages resulting from the loss or damage to property would be covered. For the purposes of this Comment, "consequential damages" means the extent to which the attorney's professional services are adversely affected by the property damage or loss.*

Background

Issue: The PLF has had claims involving the administrative aspects of running a law firm. How we define "professional services," "covered activity," and "damages" needs clarification.

Discussion: These claims raise a number of potential issues, including the definitions of "Covered Activity" and "Damages" and what the appropriate insurance coverage, if any, for these types of claims. The first revision is aimed specifically at the "scams" that are commonly used to attempt to defraud covered parties. The second is aimed at instances where the member of a covered party's staff embezzles or otherwise use monies from the trust account of the covered party.

The changes are designed to make clear that such losses are not covered by the PLF Coverage Plan.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: November 17-19, 2011
Memo Date: November 3, 2011
From: Ira Zarov – CEO PLF
Re: Assessment and Budget

Action Recommended

Approve the 2012 Budget and Assessment.

Background

On an annual basis the BOG approves the PLF budget and the assessment for the coming year. The assessment has been previously approved. The attached materials contain the proposed budget and recommendations concerning the assessment.

The highlights of the budget include the addition of a claims attorney position beginning mid-2012, a 2% salary pool, a \$200,000 contribution to the OSB for BarBooks, and added expense for the PLF PERS obligations. In addition, a part-time IT position is also being added.

The budget materials are attached.

**OREGON STATE BAR
PROFESSIONAL LIABILITY FUND
2012 PRIMARY PROGRAM BUDGET
Presented to PLF Board of Directors on September 26, 2011**

	<u>2009 ACTUAL</u>	<u>2010 ACTUAL</u>	<u>2011 BUDGET</u>	<u>2011 PROJECTIONS</u>	<u>2012 BUDGET</u>
<u>Revenue</u>					
Assessments including SUA	\$21,913,959	\$22,244,406	\$24,906,000	\$24,563,839	\$24,907,500
Installment Service Charge	333,900	350,469	355,000	386,000	401,000
Investments and Other	<u>4,805,068</u>	<u>3,530,073</u>	<u>2,211,854</u>	<u>2,356,365</u>	<u>2,628,331</u>
Total Revenue	<u>\$27,052,927</u>	<u>\$26,124,948</u>	<u>\$27,472,854</u>	<u>\$27,306,204</u>	<u>\$27,936,831</u>
<u>Expenses</u>					
Provision for Claims					
New Claims	\$18,648,114	\$18,461,583	\$19,281,990	\$18,700,000	\$19,070,100
Pending Claims	<u>\$91,673</u>	<u>\$1,481,000</u>	<u>\$1,412,600</u>	<u>\$3,000,000</u>	<u>\$2,118,900</u>
Total Provision for Claims	<u>\$18,739,787</u>	<u>\$19,942,583</u>	<u>\$20,694,590</u>	<u>\$21,700,000</u>	<u>\$21,189,000</u>
Expense from Operations					
Administration	\$1,977,797	\$2,014,918	\$2,334,991	\$2,314,375	\$2,201,774
Accounting	525,401	530,396	663,146	644,570	789,960
Loss Prevention	1,679,807	1,682,064	1,782,238	1,729,499	1,818,430
Claims	<u>2,163,248</u>	<u>2,219,444</u>	<u>2,389,198</u>	<u>2,334,246</u>	<u>2,466,873</u>
Total Operating Expense	\$6,346,253	\$6,446,822	\$7,169,573	\$7,022,690	\$7,277,036
Contingency	28,028	22,660	143,391	59,874	145,541
Depreciation	193,239	214,377	231,000	220,000	237,600
Allocated to Excess Program	<u>(1,235,837)</u>	<u>(1,257,082)</u>	<u>(1,393,740)</u>	<u>(1,393,740)</u>	<u>(1,135,822)</u>
Total Expenses	<u>\$24,071,470</u>	<u>\$25,369,360</u>	<u>\$26,844,814</u>	<u>\$27,608,824</u>	<u>\$27,713,355</u>
Net Income (Loss)	<u>\$2,981,457</u>	<u>\$755,588</u>	<u>\$628,040</u>	<u>(\$302,620)</u>	<u>\$223,476</u>
Number of Full Pay Attorneys	6,797	6,894	7,006	6,965	7,063

CHANGE IN OPERATING EXPENSES:

Increase from 2011 Budget **1.50%**

Increase from 2011 Projections **3.62%**

**OREGON STATE BAR
PROFESSIONAL LIABILITY FUND
2012 PRIMARY PROGRAM BUDGET
CONDENSED STATEMENT OF OPERATING EXPENSE
Presented to PLF Board of Directors on September 26, 2011**

	<u>2009</u> <u>ACTUAL</u>	<u>2010</u> <u>ACTUAL</u>	<u>2011</u> <u>BUDGET</u>	<u>2011</u> <u>PROJECTIONS</u>	<u>2012</u> <u>BUDGET</u>
<u>Expenses</u>					
Salaries	\$3,640,425	\$3,748,818	\$3,880,231	\$3,858,559	\$4,016,426
Benefits and Payroll Taxes	1,037,568	1,019,242	1,230,380	1,217,160	1,441,242
Professional Services	365,413	379,245	360,050	326,261	309,000
Auto, Travel & Training	78,177	83,908	84,750	87,150	84,250
Office Rent	475,857	482,840	490,903	494,800	498,267
Office Expense	159,840	181,393	172,300	176,200	177,750
Telephone (Administration)	26,247	32,126	34,000	35,000	35,000
L P Programs	426,127	409,406	483,200	390,576	397,636
OSB Bar Books	0	0	300,000	300,000	200,000
Defense Panel Program	19,230	89	20,700	20,320	200
Insurance	60,520	60,806	62,059	60,664	61,265
Library	31,341	26,465	26,000	31,000	31,000
Memberships & Subscriptions	18,605	18,465	20,000	20,000	20,000
Interest & Bank Charges	6,903	4,019	5,000	5,000	5,000
Other	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
 Total Operating Expenses	 <u>\$6,346,253</u>	 <u>\$6,446,822</u>	 <u>\$7,169,573</u>	 <u>\$7,022,690</u>	 <u>\$7,277,036</u>
 Allocated to Excess Program	 <u>(\$1,202,476)</u>	 <u>(\$1,221,441)</u>	 <u>(\$1,350,104)</u>	 <u>(\$1,350,104)</u>	 <u>(\$1,099,826)</u>
 Full Time Employees (See Explanation)	 44.31	 44.33	 44.63	 44.08	 45.73
 Number of Full Pay Attorneys	 6,797	 6,894	 7,006	 6,965	 7,063
 Non-personnel Expenses	 \$1,668,260	 \$1,678,762	 \$2,058,962	 \$1,946,971	 \$1,819,368
Allocated to Excess Program	(<u>\$307,307</u>)	(<u>\$317,976</u>)	(<u>\$388,938</u>)	(<u>\$388,938</u>)	(<u>\$275,635</u>)
Total Non-personnel Expenses	<u>1,360,953</u>	<u>1,360,786</u>	<u>1,670,024</u>	<u>1,558,033</u>	<u>1,543,733</u>

CHANGE IN OPERATING EXPENSES:

Increase from 2011 Budget **1.50%**

Increase from 2011 Projections **3.62%**

**OREGON STATE BAR
PROFESSIONAL LIABILITY FUND
2012 PRIMARY PROGRAM BUDGET
ADMINISTRATION**

Presented to PLF Board of Directors on September 26, 2011

	<u>2009</u> <u>ACTUAL</u>	<u>2010</u> <u>ACTUAL</u>	<u>2011</u> <u>BUDGET</u>	<u>2011</u> <u>PROJECTIONS</u>	<u>2012</u> <u>BUDGET</u>
<u>Expenses</u>					
Salaries	\$618,342	\$632,499	\$652,737	\$647,367	\$624,175
Benefits and Payroll Taxes	198,641	173,709	204,092	200,533	222,967
Staff Travel	17,871	16,344	16,850	15,800	17,550
Board of Directors Travel	40,968	41,374	39,000	39,000	41,300
Training	2,359	6,167	5,000	4,000	4,000
Investment Services	26,692	26,966	27,000	27,000	27,000
Legal Services	13,972	23,963	20,000	10,000	15,000
Actuarial Services	18,390	18,904	19,000	19,000	19,000
Information Services	102,041	116,560	84,000	97,361	74,000
Offsite System Backup	28,841	23,203	10,800	2,000	0
Electronic Record Scanning	108,690	72,391	100,000	65,000	75,000
Other Professional Services	41,537	62,258	47,250	64,200	62,000
Pro Services - Medicare Reporting	2,550	11,200	12,000	11,500	12,000
OSB Bar Books	0	0	300,000	300,000	200,000
Office Rent	475,857	482,840	490,903	494,800	498,267
Equipment Rent & Maint.	37,630	52,910	41,000	51,000	54,000
Dues and Memberships	18,605	18,465	20,000	20,000	20,000
Office Supplies	72,154	80,975	80,000	77,000	75,000
Insurance	60,520	60,806	62,059	60,664	61,265
Telephone	26,247	32,126	34,000	35,000	35,000
Printing	10,953	9,643	12,000	10,000	10,000
Postage & Delivery	35,360	36,992	37,300	37,200	37,750
NABRICO - Assoc. of Bar Co.s	8,931	9,731	13,000	19,950	10,500
Bank Charges & Interest	6,903	4,019	5,000	5,000	5,000
Repairs	3,743	873	2,000	1,000	1,000
Miscellaneous	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Total Operating Expenses	<u>\$1,977,797</u>	<u>\$2,014,918</u>	<u>\$2,334,991</u>	<u>\$2,314,375</u>	<u>\$2,201,774</u>
Allocated to Excess Program	<u>(\$450,185)</u>	<u>(\$472,598)</u>	<u>(\$559,903)</u>	<u>(\$559,903)</u>	<u>(\$430,118)</u>
Administration Full Time Employees	8.88	9.10	8.90	8.75	8.00
CHANGE IN OPERATING EXPENSES:					
Decrease from 2011 Budget		-5.71%			
Decrease from 2011 Projections		-4.87%			

**OREGON STATE BAR
PROFESSIONAL LIABILITY FUND
2012 PRIMARY PROGRAM BUDGET
LOSS PREVENTION (Includes OAAP)
Presented to PLF Board of Directors on September 26, 2011**

	<u>2009</u> <u>ACTUAL</u>	<u>2010</u> <u>ACTUAL</u>	<u>2011</u> <u>BUDGET</u>	<u>2011</u> <u>PROJECTIONS</u>	<u>2012</u> <u>BUDGET</u>
<u>Expenses</u>					
Salaries	\$968,696	\$991,252	\$982,632	\$1,015,166	\$1,039,587
Benefits and Payroll Taxes	284,984	281,406	316,406	323,757	381,207
In Brief	64,818	45,575	62,000	62,000	62,000
PLF Handbooks	6,433	48,835	10,000	3,000	5,000
Library	325	248	300	100	200
Videotape	7,982	13,470	11,500	18,000	20,000
Audiotapes	20,175	19,883	18,000	18,000	20,000
Mail Distribution of Video and Audiotape:	8,907	9,391	8,300	9,300	9,500
Web Distribution of Programs	12,255	13,710	13,000	14,000	14,000
Program Promotion	41,878	17,263	45,000	30,000	35,000
Expense of Closing Offices	11,891	7,707	14,000	7,000	14,000
Facilities	32,566	47,487	60,000	50,000	5,500
Speaker Expense	9,025	(144)	10,000	5,000	10,000
Accreditation Fees	787	1,307	1,200	1,300	1,400
Beepers & Confidential Phone	4,811	4,019	4,500	3,500	4,000
Expert Assistance	18,458	1,500	15,000	0	5,000
Bad Debts from Loans	500	0	0	0	0
Memberships & Subscriptions	10,653	9,773	12,050	10,000	10,250
Travel	31,743	34,266	39,050	28,355	36,300
Training	27,864	23,972	41,700	25,100	40,150
Downtown Office	115,056	111,144	117,600	105,921	105,336
Miscellaneous	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
 Total Operating Expenses	 <u>\$1,679,807</u>	 <u>\$1,682,064</u>	 <u>\$1,782,238</u>	 <u>\$1,729,499</u>	 <u>\$1,818,430</u>
 Allocated to Excess Program	 <u>(\$252,606)</u>	 <u>(\$248,096)</u>	 <u>(\$246,921)</u>	 <u>(\$246,921)</u>	 <u>(\$202,122)</u>
 L P Depart Full Time Employees (Includes OAAP)	 12.28	 11.83	 11.83	 11.83	 11.83
 CHANGE IN OPERATING EXPENSES:					
Increase from 2011 Budget		2.03%			
Increase from 2011 Projections		5.14%			

**OREGON STATE BAR
PROFESSIONAL LIABILITY FUND
2012 PRIMARY PROGRAM BUDGET
CLAIMS DEPARTMENT
Presented to PLF Board of Directors on September 26, 2011**

	<u>2009 ACTUAL</u>	<u>2010 ACTUAL</u>	<u>2011 BUDGET</u>	<u>2011 PROJECTIONS</u>	<u>2012 BUDGET</u>
<u>Expenses</u>					
Salaries	\$1,653,972	\$1,725,001	\$1,758,442	\$1,721,144	\$1,790,752
Benefits and Payroll Taxes	450,678	458,284	559,556	544,782	635,421
Claims Audit	0	0	15,000	10,000	0
Training	6,615	7,061	7,000	5,000	7,000
Travel	1,412	2,544	2,500	2,000	2,500
Library & Information Systems	31,341	26,465	26,000	31,000	31,000
Defense Panel Program	<u>19,230</u>	<u>89</u>	<u>20,700</u>	<u>20,320</u>	<u>200</u>
Total Operating Expenses	<u>\$2,163,248</u>	<u>\$2,219,444</u>	<u>\$2,389,198</u>	<u>\$2,334,246</u>	<u>\$2,466,873</u>
Allocated to Excess Program	<u>(\$378,076)</u>	<u>(\$380,581)</u>	<u>(\$399,228)</u>	<u>(\$399,228)</u>	<u>(\$338,865)</u>
Claims Depart Full Time Employees	18.25	18.50	18.00	17.60	18.75
CHANGE IN OPERATING EXPENSES:					
Decrease from 2011 Budget		3.25%			
Increase from 2011 Projections		5.68%			

**OREGON STATE BAR
PROFESSIONAL LIABILITY FUND
2012 PRIMARY PROGRAM BUDGET
CAPITAL BUDGET**

Presented to PLF Board of Directors on September 26, 2011

	2009	2010	2011	2011	2012
	<u>ACTUAL</u>	<u>ACTUAL</u>	<u>BUDGET</u>	<u>PROJECTIONS</u>	<u>BUDGET</u>
<u>Capital Items</u>					
Furniture and Equipment	\$13,075	\$3,158	\$15,000	\$9,000	\$10,000
Telephone	0	0	2,000	0	2,000
Copiers / Scanners	42,733	0	20,000	5,000	5,000
Document Management & Scanning	10,410	0	15,000	2,000	2,000
Data Processing					
Hardware	3,052	29,995	30,000	28,000	25,000
Software	0	1,234	15,000	10,760	10,000
Personal Computers and Printers	29,933	13,928	23,000	43,178	10,000
Leasehold Improvements	<u>15,800</u>	<u>2,993</u>	<u>8,000</u>	<u>7,000</u>	<u>2,000</u>
Total Capital Budget	<u>\$115,003</u>	<u>\$51,308</u>	<u>\$128,000</u>	<u>\$104,938</u>	<u>\$66,000</u>

Increase from 2011 Budget -48.44%
Decrease from 2011 Projections -37.11%

**OREGON STATE BAR
PROFESSIONAL LIABILITY FUND
2012 EXCESS PROGRAM BUDGET
Presented to PLF Board of Directors on September 26, 2011**

	<u>2009 ACTUAL</u>	<u>2010 ACTUAL</u>	<u>2011 BUDGET</u>	<u>2011 PROJECTIONS</u>	<u>2012 BUDGET</u>
<u>Revenue</u>					
Ceding Commission	796,092	755,096	760,000	720,000	705,600
Profit Commission	11,298	13,508	0	0	0
Installment Service Charge	39,773	41,655	42,000	37,400	38,000
Other	4,739	424	1,500	1,500	1,500
Investment Earnings	<u>534,515</u>	<u>427,932</u>	<u>245,761</u>	<u>293,644</u>	<u>228,551</u>
Total Revenue	<u>\$1,386,417</u>	<u>\$1,238,615</u>	<u>\$1,049,261</u>	<u>\$1,052,544</u>	<u>\$973,651</u>
<u>Expenses</u>					
Allocated Salaries	\$681,121	\$707,500	\$732,877	\$732,877	\$608,431
Direct Salaries	63,995	57,918	65,879	65,582	66,304
Allocated Benefits	214,048	195,965	228,289	228,289	215,760
Direct Benefits	19,615	17,224	21,121	18,328	23,812
Program Promotion	500	500	500	1,000	1,000
Investment Services	3,308	3,034	3,500	3,200	3,200
Allocation of Primary Overhead	307,307	317,976	388,938	388,938	275,635
Reinsurance Placement Travel	2,618	5,498	12,000	6,000	12,000
Training	0	0	1,000	0	1,000
Printing and Mailing	4,169	4,872	5,000	5,000	5,000
Other Professional Services	17,043	0	2,500	500	2,500
Software Development	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Total Expense	<u>\$1,313,724</u>	<u>\$1,310,487</u>	<u>\$1,461,604</u>	<u>\$1,449,714</u>	<u>\$1,214,642</u>
Allocated Depreciation	<u>\$33,361</u>	<u>\$35,641</u>	<u>\$43,636</u>	<u>\$43,636</u>	<u>\$35,996</u>
Net Income	<u>\$39,332</u>	<u>(\$107,513)</u>	<u>(\$455,979)</u>	<u>(\$440,806)</u>	<u>(\$276,987)</u>
Full Time Employees	1.00	1.00	1.00	1.00	1.00
Number of Covered Attorneys	2,589	2,642	2,400	2,325	2,279

CHANGE IN OPERATING EXPENSES:

Decrease from 2011 Budget **-16.90%**

Increase from 2011 Projections **-16.22%**

September 13, 2011

To: PLF Finance Committee (Bill Carter, Chair; Tim Martinez and Fred Ruby) and
PLF Board of Directors

From: Ira Zarov, Chief Executive Officer
R. Thomas Cave, Chief Financial Officer

Re: 2012 PLF Budget and 2012 PLF Primary Assessment

I. Recommended Action

We recommend that the Finance Committee make the following recommendations to the PLF Board of Directors:

1. Approve the 2012 PLF budget as attached. This budget uses a 2012 salary pool recommendation of 2.0 percent. This recommendation has been made after consultation with Sylvia Stevens and the Board of Governors.
2. Make a recommendation to the Board of Governors concerning the appropriate 2012 PLF Primary Program assessment. We recommend that the 2012 assessment be \$3,500, which is unchanged from the 2011 assessment.

II. Executive Summary

1. Besides the two percent salary pool, this budget includes increased costs for PERS and medical insurance. It includes a \$200,000 PLF contribution for the OSB Bar Books. The budget anticipates replacing two staff members who will retire in the fourth quarter of 2011. It includes an additional claims attorney position starting in April, 2012 in anticipation of additional retirements. The budget also includes a new IT position that will be shared with the Bar.
2. The PLF has experienced increased claim frequency and severity in recent years. The actuarial rate study estimates a cost of \$2,700 per lawyer for new 2012 claims. This budget also includes a margin of \$300 per lawyer for adverse development of pending claims.

III. 2012 PLF Budget

Number of Covered Attorneys

We have provided the number of covered attorneys by period for both the Primary and Excess Programs. (The figures are found on pages 1 and 8 of the budget document.) These statistics illustrate the growth in the number of lawyers covered by each program and facilitate period-to-period comparisons.

For the Primary Program, new attorneys paying reduced primary assessments and lawyers covered for portions of the year have been combined into "full pay" units. We currently project 6,965 full-pay attorneys for 2011. Since 2007, the average annual growth of full-pay lawyers is 1.44 percent. Our estimate for 2012 assumes growth of 1.4 percent from our 2011 projection which translates to 7,063 full-pay attorneys.

Although the Excess Program covers firms, the budget lists the total number of attorneys covered by the Excess Program. Participation in the Excess Program has declined since 2010 because of competition from commercial insurance companies. We currently project 2011 excess program participation at 2,325 lawyers which is about 75 fewer than was expected. We project 2012 participation to decline 2 percent from 2011 levels. If you include the other providers of excess insurance, more than 50% of the practicing lawyers in Oregon have excess insurance.

Full-time Employee Statistics (Staff Positions)

We have included "full-time equivalent" or FTE statistics to show PLF staffing levels from year to year. FTE statistics are given for each department on their operating expense schedule. The following table shows positions by department:

	<u>2011 Projections</u>	<u>2012 Budget</u>
Administration	8.75 FTE	8.00 FTE
Claims	17.60 FTE	18.75 FTE
Loss Prevention (includes OAAP)	11.83 FTE	11.83 FTE
Accounting	5.90 FTE	7.15 FTE
Excess	<u>1.00 FTE</u>	<u>1.00 FTE</u>
Total	45.08 FTE	46.73 FTE

We continue to have some permanent positions staffed at less than full-time levels for both 2011 and 2012. Some staff members work from 33 to 36 hours per week. These part-time arrangements fit the needs of both the employee and the PLF. Part-time and staff changes are the reason for the fractional FTE's.

The PLF will have two long-term employees retire in the fourth quarter of 2011. One position in the administration department has a number of tasks in HR, benefits, and processing Excess Program

applications. There will be some changes in responsibilities and this position will be shifted to the Accounting Department. Filling this position should help in succession planning for some of our accounting staff who are nearing retirement age. The other retiring employee is a long-time claims attorney who will leave near the end of 2011. We plan on hiring a successor claims attorney in January of 2012. Both of the retiring employees have worked for the PLF more than twenty years and both replacements will be hired at lower salary levels.

The 2012 budget also includes a new claims attorney position with a hire date of April, 2012. We expect that other claims attorneys will retire in the next few years. In addition, the amount spent with outside defense counsel exceeded \$9 million in 2010 and continues to increase. We hope that additions to the claims department will reduce the funds spent on outside counsel.

There is an additional ¼ data procession position in the accounting department. The PLF hopes to share an employee with the Bar and reduce its dependence on outside contract programmers. The addition of this position is part of the PLF's successor planning. The PLF added a full-time information technology position in March of 2011. The addition of this position has significantly reduced the amount spent on outside IT contractors and improved user training and support.

Allocation of Costs between the Excess and Primary Programs

In 1991, the PLF established an optional underwritten plan to provide excess coverage above the existing mandatory plan. There is separate accounting for Excess Program assets, liabilities, revenues and expenses. The Excess Program reimburses the Primary Program for services so that the Primary Program does not subsidize the cost of the Excess Program. A portion of Primary Program salary, benefits, and other operating costs are allocated to the Excess Program. These allocations are reviewed and adjusted each year. The Excess Program also pays for some direct costs, including printing and reinsurance travel.

Salary and benefit allocations are based on an annual review of the time PLF staff spends on Excess Program activities. The current allocation includes percentages of salaries and benefits for individuals specifically working on the Excess Program.

Besides specific individual allocations, fourteen percent of the costs of claims attorneys and ten percent of all loss prevention personnel are allocated to the Excess Program. The total 2012 allocation of salary, benefits and overhead is about 15.15 percent of total administrative operating expense.

The 2011 Excess Program allocation was 18.66 percent. The 2012 allocation was reduced after careful review of each staff member's work with the Excess Program. In addition, the goal of the Excess Program is to financially break-even. In recent years, the Excess Program's revenues have dropped because of competition from commercial carrier. The lower allocation of expenses should reduce Excess Program losses. We will review and modify the allocation again for 2013 if necessary.

Primary Program Revenue

Projected assessment revenue for 2011 is based upon the \$3,500 basic assessment paid by an estimated 6,965 attorneys. The budget for assessment revenue for 2012 is based upon a \$3,500 assessment and 7,063 full-pay attorneys. Primary Program revenue also includes our forecast for SUA collections of \$185,000 for 2011 and \$187,000 for 2011. This forecast assumes that there is no change in the current SUA policies.

The investment environment has been very volatile recently. There were strong investment gains for the first six months followed by declines during July and August. Our investment return projections for the remainder of 2011 and for 2012 began with the July 31, 2011 market value of all current investments. Investment revenue was calculated from July forward using the rates of return for the different asset categories recommended by R. V. Kuhns & Associates, Inc. (3% for the short-term cash flow bond fund, 5% for intermediate bonds, 8.15% for domestic equities, 8.60% for foreign equities, 7.75% for hedge fund of funds, 7% for real estate, and 6.75% for absolute return). These rates of return are lower than historical figures but reflect the current reduced expectations of our investment consultants. The overall combined expected rate of return for 2012 is about 7.21 percent.

Primary Program Claims Expense

For any given year, claim expense includes two factors – (1) the cost of new claims and (2) any additional upward (or downward) adjustments to the estimate of costs for claims pending at the beginning of the year. Factor 1 (new claims) is much larger and much more important than factor 2. However, problems would develop if the effects of factor 2 were never considered, particularly if there were consistent patterns of adjustments. The “indicated average claim cost” in the actuarial report calculates an amount for factor 1. The report also discusses the possibility of adding a margin to the indicated costs. Adding a margin could cover additional claims costs from adverse development of pending claims (factor 2) or other possible negative economic events such as poor investment returns. We have included margins in the past several years to good effect.

The PLF experienced a significant increase in the frequency of new claims during 2008 and 2009. The frequency level continued to be high during 2010 (13.6%) but declined from 2009 levels. The first four months of 2011 had a high frequency of new claims; however, the frequency rate has dropped significantly since the start of May. The current rate of new claims is close to 13 percent. We currently conservatively project 935 new claims (13.4%) for 2011 at a cost of \$20,000 per claim.

The 2011 budget included \$1,412,600 (approximately \$200 per covered party) for adverse development or actuarial increases to estimates in liabilities for claims pending at the start of the year. The adjustment recommended in the June 30, 2011 actuarial review of claim liabilities was greater than this budget amount (\$2.4 million). Most of the adjustment came from adverse development of claims from recent claim years; in particular, the 2009 claim year. In their review, the actuaries recommended increasing the average cost figure for expense from \$9,500 to

\$10,000. (Claims expense is defined as payments made to individuals other than the claimant; e.g., defense costs.) The total average cost is now \$20,000 per claim which is an increase of \$1,000 during the past 18 months. We do not know if pending claims will continue to develop adversely. It is very possible that the December 31, 2011 actuarial adjustment will be positive rather than negative. However, we continue to have concerns about the effects of the ongoing poor economy on claims and we feel it is prudent to project an additional adverse adjustment of \$600,000 for the second half of 2011.

Primary Program new claims expense for 2012 was calculated using figures from the actuarial rate study. The study assumed a frequency rate of 13.5 percent, 7,063 covered attorneys and an average claim cost of \$20,000. Multiplying these three numbers together gets a 2012 budget for claims expense of \$18.7 million. This would also translate to about 953 claims at \$20,000 for 2012.

We have added a margin of \$300 per covered lawyer to cover adverse development of claims pending at the start of 2012. If pending claims do not develop adversely, this margin could offset even greater 2012 claims frequency, cover other negative economic events, or help the PLF reach the retained earnings goal. The pending claims budget for adverse development is equal to \$2,118,900 (\$300 times the estimated 7,063 covered attorneys). The concept of using a margin will be discussed again in the staff recommendation section regarding the 2012 assessment.

Salary Pool for 2012

The total dollar amount that is available for staff salary increases in a given year is calculated by multiplying the salary pool percentage increase by the current employee salary levels. The salary pool is the only source available for cost of living *and* merit increases. Although there is no policy requiring them, the PLF and OSB historically provide increases to staff that are generally consistent with cost-of-living adjustments.

After consultation with Sylvia Stevens and the Board of Governors, a two percent salary pool increase is recommended for 2012. The salary pool is used to adjust salaries for inflation, to allow normal changes in classifications, and when appropriate to provide a management tool to reward exceptional work. As a point of reference, one percent in the salary pool represents \$36,978 in PLF salary expense and \$12,441 in PLF benefit costs.

Because all salary reclassifications cannot be accomplished within the three percent salary pool allocation, we are also requesting \$15,761, for potential salary reclassification. Salary reclassifications generally occur in two circumstances, when a person hired at a lower salary classification achieves the higher competency required for the new classification, or when there is a necessity to change job requirements. The bulk of the salary reclassification amount reflects either the reclassification of relatively recently hired exempt employees or addresses an historical lack of parity between the salaries of employees in positions with equivalent responsibilities. (Exempt positions are generally professional positions and are not subject to wage and hour requirements.) Salaries for entry level hires for exempt positions are significantly lower than experienced staff. As new staff members become proficient, they are reclassified and

their salaries are adjusted appropriately. As the board is aware, several new claims attorneys and an OAAP professional have been hired in recent years. (The major reclassification usually occurs after approximately three years, although the process of salary adjustment often occurs over a longer time period.) The 2011 budget did not include any additional funds for reclassification. All 2011 salary adjustments were done within the 2011 three percent salary pool.

Benefit Expense

The employer cost of PERS and Medical / Dental insurance are the two largest benefit costs for the PLF.

The specific employer contribution rate for PERS varies depending upon how long an employee has participated in PERS. The rates are changed periodically based upon actuarial studies of the PERS pension liability. Prior to July 1, 2009, the PLF paid between 12.49 percent and 13.98 percent of employee salary to PERS. As of July 1, 2009, the rates changed to 8.01 percent and 8.79 percent which was a drop of nearly 5 percent of salary. As we anticipated in the 2011 budget, the PERS rates increased substantially as of July 1, 2011 to between 14 percent and 15.5 percent. The 2011 projections and 2012 budget use these new rates.

Unlike many state employers, the PLF does not “pick up” the employee contribution to PERS. PLF employees have their six percent employee contribution to PERS deducted from their salaries.

PLF employees pay for a portion of the cost of providing medical and dental insurance to dependents. The cost of medical insurance continues to rise faster than salary levels. Although medical insurance rates are difficult to predict, we have included about a 10 percent increase for the cost of medical and dental insurance.

Capital Budget Items

The PLF added a full-time IT support position in 2011. Because of this new staff position, we have been able to replace several aging servers and upgrade our backup and disaster contingency plans. Recently, we have purchased 45 personal computer units costing about \$36,000. As the current old machines are replaced, overdue upgrades to Windows 7, and upgrades to Microsoft Office will be implemented. These changes should ease ongoing support problems. We hope not to need to make significant changes to personal computer hardware or software for the next three years.

Other Primary Operating Expenses

The PLF has traditionally had defense panel meetings every other year. The 2011 budget included the costs of the defense panel meeting in Salishan. Defense panel members paid for their own lodging and meal expenses and some additional costs. The PLF did pay the cost of staff lodging and

meals and a portion of supplies and speakers.

In addition to the major defense panel meeting, the claims department has also had some programs specifically geared to defense panel members with limited trial experience. These half-day programs are generally held at the Oregon State Bar Center with minor costs.

The 2011 budget included an outside claims department audit. PLF Policies require an outside claims department audit at least every five years. We anticipate that the cost of the 2011 audit will be less than the budget amount. We do not expect to have another claims audit for several years.

The 2011 budget included a \$300,000 contribution to the OSB Bar Books. This contribution was made pursuant to a vote by the PLF Board of Directors at the request of the Oregon State Bar Board of Governors. The BOD believed there was substantial loss prevention value in free access to Bar Books via the internet which had the potential to reduce future claims. The \$300,000 contribution was part of an agreement which provided the PLF contribute an additional \$200,000 in 2012 and another \$100,000 in 2013. The 2012 PLF budget includes the \$200,000 contribution.

For many years, the PLF Primary Program has included a contingency budget item. For 2011, we included a contingency budget of equal to 2 percent of operating costs (\$143,391). The costs of the SUA focus group (\$11,608) and the anticipated costs of the Medicare reporting litigation (\$48,266) have been charged against contingency in the 2011 projections.

The 2012 contingency budget again is 2 percent of operating costs (\$145,541). While we are unaware of any item that might be charged to contingency for 2012, such a budget has proved to be prudent in the past.

Total Operating Expenses and the Assessment Contribution to Operating Expenses

Page one of the budget shows projected 2011 Primary Program operating costs to be slightly lower than the budget amount.

The 2012 Primary Program operating budget is 1.5% higher than the 2011 budget and 3.6% greater than the 2011 projections. The main reasons for the increase from projections are the 2 percent salary increase, the higher costs of PERS and the higher cost of medical insurance.

Excess Program Budget

The major focus of this process is on the Primary Program and the effects of the budget on the 2012 Primary Program assessment. We do include a budget for the Excess Program (page 8). Several firms switched from the PLF Excess Program to commercial competition for 2010 and 2011 coverage. As a result, the number of attorneys covered by PLF Excess for both years was less than anticipated. We expect competition to continue and we anticipate a further decline of 2 percent in participation for 2012.

The major revenue item for the Excess Program is ceding commissions. These commissions represent the portion of the excess assessment that the PLF gets to keep and are based upon a percentage of the assessment (premium) charged. Most of the excess assessment is turned over to reinsurers who cover the costs of resolving excess claims. We currently project ceding commission of \$720,000 for 2011. The decline in ceding commission is greater than the decline in excess participation because many of the firms leaving the PLF purchased high levels of coverage and paid greater than average excess assessments. The 2012 budget estimates ceding commissions to decline 2 percent from the 2011 projections.

After three or four years from the start of a given plan year, the two reinsurance treaties covering the first \$5 million provide for profit commissions if excess claim payments are low. If there are subsequent adverse developments, prior profit commissions are returned to the reinsurance companies. In recent years, excess claims have increased and it is quite difficult to predict profit commissions in advance. Actual profit commissions have proven to be rather small. As a result, no profit commissions have been included in the 2011 projections or 2012 budget.

Excess investment earnings were calculated using the same method described in the Primary Program revenue section.

The major expenses for the Excess Program are salary, benefits, and allocations from the Primary Program that were discussed in an earlier section. As was mentioned earlier, the allocation of Primary Program costs was reduced for the 2012 budget. These allocations will again be reviewed in future budgets in hopes that the Excess Program budget can approach break-even status.

IV. Actuarial Rate Study for 2012

This is the fourteenth time we have received a rate study from our actuaries to assist us in establishing the annual assessment. The attached rate study focuses on the estimate of the cost of 2012 claims. It relies heavily on the analysis contained in the actuaries' claim liability study as of June 30, 2011. The methodology used in that study is discussed by separate memorandum. The rate study only calculates the cost of new 2012 claims. It does not consider adjustments to pending claims, investment results, or administrative operating costs.

The actuaries estimate the 2012 claim cost per attorney using two different methods. The first method (shown on Exhibit 1) uses regression analysis to determine the trends in the cost of claims. Regression analysis is a statistical technique used to fit a straight line to number of points on a graph. It is very difficult to choose an appropriate trend. Because of the small amount and volatility of data, different ranges of PLF claim years produce very different trend numbers. The selection of the starting and ending points is very significant. For the PLF, including a low starting point such as 1987 or a very high ending point such as 2000 skews the straight line upward. Because of these problems, the actuaries do not favor using this technique to predict future claim costs.

The second method (Exhibit 2) involves selection of expected claim frequency and claim severity (average cost). Claims frequency is defined as the number of claims divided by the number of covered attorneys. For the indicated amount, the actuaries have used a 2012 claims frequency rate of 13.5 percent and \$20,000 as the average cost per claim (severity). The average cost figure has increase by \$500 from last years' study. We feel the \$20,000 severity factor is appropriate given the increases in claim severity since 2008. The actuaries frequency rate was reduced from last years' figure of 14 percent. The change was made because the frequency of new claims dropped during the second half of 2010 and continues to drop during 2011. Although the current frequency rate is close to 13 percent, we feel that selection of a higher frequency rate is appropriate given the volatile claims experience of recent years. The actuaries prefer the result found with this second method. Their indicated average claim cost is \$2,700 per attorney. This amount would only cover the estimated funds needed for 2012 new claims.

It is necessary to calculate a provision for operating expenses not covered by non-assessment revenue. As can be seen in the budget, the estimate of non-assessment revenue does not cover the budget for operating expenses. The 2012 shortfall is about \$468 per lawyer assuming 7,063 full-pay lawyers.

The actuaries discuss the possibility of having a margin (additional amount) in the calculated assessment. On pages 8 and 9 of their report, the actuaries list pros and cons for having a margin in the assessment.

V. Staff Recommendations

If you add the operating expense portion of \$468 per lawyer to the actuaries' indicated claim cost of \$2,700, you would have an assessment of \$3,168. We feel that it is appropriate to include a margin of \$300 per attorney for adverse development of pending claims. This allows for a budget of about \$2.1 million for adverse development of pending claims. While this amount sounds high, it is less than our current 2011 projection for adverse development (\$3 million). An assessment of \$3,500 would allow a projected budget profit of about \$223,000.

We have some concerns with trends found in the latest actuarial review of claims. There are indications of increases in claims severity, particularly with the expense portion. This report indicates adverse development of pending claims and recommends an increase in claims expense of over \$2.5 million for the first six months of 2011. Fortunately, claim frequency has dropped particularly in recent months. In addition, there are some indications that changes in the claims department may have lead to sooner recognition of severity for recent claim years. It is very possible that future actuarial adjustments could be positive instead of negative. However, given recent trends, it seems prudent to provide for negative development in 2011 and 2012.

The PLF currently has positive combined retained earnings of about \$1.3 million. The Board of Directors has a long-term goal of \$12 million positive retained earnings. A 2012 assessment with

some margin makes it more likely that some small progress will be made toward that retained earnings goal.

Given the factors discussed above, the PLF staff feels that the current Primary Program assessment should be maintained for 2012. Accordingly, we recommend setting the 2012 Primary Program assessment at \$3,500.

The Finance Committee will discuss these matters during its telephone conference call at 9:00 a.m. on September 20, 2011 and prepare recommendations for the Board of Directors. The full Board of Directors will then discuss the committee's recommendations via a telephone conference call at 9:30 a.m. on September 26, 2011. The Board of Directors will recommend a 2012 assessment figure to the Board of Governors, who will set the final 2012 assessment at its next meeting.



Professional Liability Fund

Ira R. Zarov
Chief Executive Officer

October 24, 2011

Board of Directors
and Officers

To: Oregon State Bar BOG Appointments Committee

Frederick C. Ruby
Salem
Chairperson

From: Ira R. Zarov, Chief Executive Officer 

William G. Carter
Medford
Vice Chairperson

Re: 2012 PLF Board Appointments

Tim Martinez
Salem
Public Member
Secretary-Treas.

The PLF Board of Directors on the recommendations of the BOD selection committee (the BOD Chair and Vice Chair) voted to submit three applicants for the two Board of Directors positions that become vacant at the close of 2011. The new directors will fill the 2012-2016 terms.

Lisa Almasy Miller
Clackamas

The BOD is required to send nominees equal to or greater than the number of available positions. In past years, the BOG has expressed a desire to have more nominees presented than the number of available positions and the PLF BOD has done so. PLF Bylaws, Article 3.4 provides that:

Laura E. Rackner
Portland

By October 31 of each year the Board of Directors will forward to the Board of Governors a list of recommended Director nominees equal to or greater than the number of available positions on the Board in the coming year. The Board will seek nominees according to qualifications determined by the PLF Board. **These may include, but are not limited to, consideration of gender, minority status, ability, experience, type of law practice, and region.**

Valerie D. Fisher
Portland

In the past, the PLF board recommendations have focused on attorneys with at least five years of experience in private practice. Knowledge of the Oregon private law practice milieu has proven valuable to the Board.

Guy B. Greco
Newport

This year, we will be replacing Fred Ruby, Salem, and Lisa Miller, Portland. Their departures will leave the Board with one member from Southern Oregon, one from the Oregon Coast, two members from Salem, two directors from Portland, and one from Central Oregon. In terms of firm size, the board (minus the departing directors) has one member from a mid/large sized firm, two solo practitioners, and two members from small/medium sized firms.

John A. Berge
Bend

Valerie D. Saiki
Salem
Public Member

The substantive expertise includes criminal law, real estate and real estate financing, litigation, family law, and general practice. We are losing expertise in bankruptcy and collection issues and domestic relations, personal injury, and employment law.

Each of the candidates stated that they hoped to contribute to the OSB as volunteers and supported the mission of the PLF. It was their first preference for OSB service.

The Board recommends the following applicants (see resumes attached). The first choice is Robert Newell. The Board did not rank the next two choices in order. Board members are confident both will do an excellent job and would bring valuable qualities to the Board.

Bob Newell

Portland (OSB 790917). Bob is a senior litigator at Davis Wright and has considerable stature in the Portland legal community. He would provide a big firm presence; somewhat that is not currently represented on the Board. Historically, the PLF has had difficulty securing directors from large firms because of the prohibition on the Board member's firm suing Oregon attorneys. Davis Wright's is also a regional firm which has interests similar to Stoel Rives, Schwabe Williamson, and other regional firms. The Board saw this as a considerable plus.

As a litigator, Mr. Newell has tried a number of trademark and software infringement cases, an area of expertise of increasing importance. His overall litigation experience includes tax cases, contracts, and a host of other complex matters.

In addition, Mr. Newell's close connection to Mercy Corp gives him community-wide credibility and, more importantly, his experience has made him knowledgeable about non-profit finances and investment strategies. This is another area where previous expertise is valuable to the PLF Board. In addition, his Mercy Corp experience would be valuable when addressing succession issues.

The Board was aware of Mr. Newell's past disciplinary reprimand. In response, the Board Chair had a discussion with Mr. Newell about the matter and was satisfied that Mr. Newell accepted the disciplinary ruling and understood the reasons for the reprimand. The Board also discussed Mr. Newell with references who spoke highly of his attributes. After reviewing Mr. Newell's application, the Board concluded that Mr. Newell would be an excellent Board member.

Mr. Newell is a past-President of the MBA, served on the OSB Pleading and Practice Committee, and was the recipient of Mercy Corp's Humanitarian Hero Award.

Oscar Garcia

Washington County (OSB 952794). Oscar's practice is criminal defense in both state and federal court and recently has expanded to include domestic relations as well as some general business practice. He had been on the staff of Multnomah Public Defenders as well. Oscar is fluent in Spanish.

Mr. Garcia comes highly recommended by a former Board member and a past-President of the OCDL. This is his third application to serve on the Board. He is a graduate of the OSB Bar Leadership College, and has served on the Unlawful Practice of Law Committee. (He is the Chair Elect, but states he would elect to serve on the PLF Board if there is a conflict.)

The Board considered Mr. Garcia's military experience and the additional diversity he would bring to the Board as pluses. Also, when considering Board applicants, the Board of Directors noted that generational diversity was an important consideration. Mr. Garcia would fill that role as well. Finally, Mr. Garcia's practice is located in Washington County, which in recent years has seen the largest increase in the number of practicing attorneys.

Wendie Kellington

Clackamas County (OSB 83258). Wendie is a solo practitioner. Her areas of expertise are energy siting, land use, municipal law, business, and administrative law. She originally is from the Medford area and is a third generation Oregon lawyer. From 1984 to 1989 she was Assistant General Counsel for Jackson County, and from 1989 to 1995 was a referee for the Oregon Land use Board of Appeals. Subsequent to LUBA and prior to beginning her solo practice, Ms. Kellington worked at Schwabe Perkins and Garvey Shubert.

Ms. Kellington's substantive expertise would be valuable to the PLF. Her tenure at LUBA has made her knowledgeable about the workings of organizations and the role of the board in making policies. She has excellent interpersonal skills and the Board would find her a constructive member. Her judgment would also bring value to the Board.

Attachments

Current Board Members

Term Expires 2011

FREDERICK C. RUBY
DOJ Civil Enf Civil Recovery
1162 Court St., N.E.
Salem, Oregon 97301

LISA ALMASY MILLER
13111 SE 139th Avenue
Happy Valley, Oregon 97086

Term Expires 2012

WILLIAM G. CARTER
PO Box 70
Medford, Oregon 97501

TIM MARTINEZ
Martinez & Sons
4927 Centurian Ct., S.
Salem, Oregon 97302

Term Expires 2013

LAURA E. RACKNER
Gearing Rackner & Engel, LLP
121 SW Morrison St., Suite 750
Portland, Oregon 97204-3117

Term Expires 2014

VALERIE D. FISHER
Ater Wynne LLP
1331 NW Lovejoy Street, Suite 900
Portland, Oregon 97209-3280

GUY B. GRECO
P.O. Box 1070
111 SE Douglas St., Suite C
Newport, Oregon 97365-0081

Term Expires 2015

JOHN A. BERGE
Bryant Lovlien & Jarvis PC
591 SW Mill View Way
PO Box 880
Bend, Oregon 97709

VALERIE D. SAIKI
2560 Skopil Ave., S.
Salem, Oregon 97302



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Robert D. Newell

Partner

bobnewell@dwt.com
Download VCard

Portland
503.778.5234 direct
503.778.5299 fax

Bio News/Publications

Bob Newell does complex commercial litigation. His litigation experience includes securities, trade secrets, non-compete and unfair competition, Uniform Commercial Code, health care and software disputes in state and federal courts. Bob has extensive trial experience and knowledge in Oregon and federal procedure, and speaks and writes on a variety of litigation topics before lawyers and industry groups.

Selected Experience

Too Marker v. Shinhan USA
Shinhan USA

Represented defendant on a claim of infringement of a registered trade dress involving a functionality defense.

Root v. Root
Root, Aleta W.

Represented plaintiff in a breach of trust and breach of fiduciary duty against a trustee.

Viacom v. Hollywood Entertainment
Viacom, Inc.

Represented plaintiff in a multimillion-dollar misappropriation of trade secrets and unfair competition case.

Kaiser Foundation Health Plan v. Alta Bates Hospital
Kaiser Foundation Health Plan

Represented plaintiff against hospital in a claim for breach of contract involving a complicated service provision contract.

Anesthesiologists Associated Inc. v. ProDX
Anesthesiologists Associated, Inc.

Represented plaintiff medical billing company against software developer for breach of contract and negligence. Jury verdict for plaintiff.

Black v. Arizala
Arizala

Represented issuer in securities fraud claim arising out of FCC auction of licenses to mobile telephone company in Puerto Rico. Resulted in judgment for our client.

FTC v. Whole Foods
Whole Foods

Represented third party competitor against disclosure of trade secrets.

Oregon Health & Science University v. Vertex Pharmaceuticals
Oregon Health & Science University

Represented plaintiff in a lawsuit against a drug manufacturer in a claim of breach of contract and various patent related issues.

Professional and Community Activities

- Vice Chair of the Board, Mercy Corps
- American Board of Trial Advocates
- Editorial Board, Oregon State Bar Litigation Journal
- Former President, Multnomah Bar Association
- Former Secretary and Chair, Pleading and Practice Committee; Former Member, Board of Governors, Oregon State Bar

Professional Recognition

Related Practices

Complex Commercial
Litigation

Trade Secrets (Employment)

Securities Litigation

Health Care Litigation &
Dispute Resolution

Software & Technology

Related Industries

Financial Services

Health Care

Software & Technology

Admitted to Practice

Oregon, 1979

- Recipient, Mercy Corps 2009 Humanitarian Hero Award
- Named as one of "America's Leading Lawyers for Business" in Litigation: General Commercial (Oregon) by Chambers USA, 2003-2011
- Named as one of the "Best Lawyers in America" in Business Litigation by Woodward/White, 2003-2007; named in Commercial Litigation, 2008-present
- Recipient, Oregon State Bar Pro Bono Challenge Award for the most individual hours of pro bono legal services, 2004-2006
- Named as one of "Portland's Best Lawyers" in Commercial Litigation by Portland Monthly, 2006-present
- Selected to "Oregon Super Lawyers," Law & Politics, 2006-2011

Education

J.D., University of Oregon School of Law, 1976
A.B., Harvard College, 1969, with honors

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OSCAR GARCIA

Attorney at Law
230 NE Second Avenue, Suite D
Hillsboro, Oregon 97124

Tel. (503) 693-1095 Fax (503) 640-8450
E-mail: oscargar@msn.com

Work Experience: **Attorney at Law, Private Practice, Hillsboro, Oregon, 1998 - present.**

- Criminal Law: State and Federal criminal defense.
- Family Law: domestic relations restraining orders, stalking orders and child support matters.
- Business Law: contracts and small business advising.

Staff Attorney, Metropolitan Public Defenders, Hillsboro, Oregon, 1996 -1998.

- Criminal Defense of individuals charged with misdemeanor and felony allegations.
- Caseload consisting of Spanish speaking individuals.

Languages: **Spanish.**

- Can read, write and speak fluently.

Memberships: **Oregon Criminal Defense Lawyers Association.**

National Association of Criminal Defense Lawyers.

Member of Washington County Bar Association.

- Board Member, 2007.

Affiliations: **Editor and production coordinator of the Spanish Language Legal Network Directory, 2002-Present.**

- Non-profit legal directory listing Spanish- speaking attorneys throughout Oregon which is distributed to non-profit organizations.

Adjunct Visiting Instructor, University of Oregon, School of Law, Eugene, Oregon, January Term, 2011.

- Prepared and designed a 15-hour course titled "Spanish and The Law."
- Instructed bilingual law students on representing and working with Spanish-speaking individuals.

Advisory Attorney, Criminal Law matters, Consulate of Mexico, Portland, Oregon, 2010-Present.

- Assist the Consulate of Mexico with Oregon criminal law matters.

Unlawful Practice of Law Committee, Oregon State Bar, 2008-Present.

- Committee Secretary, 2010 and Chairman Elect, 2011.
- Investigate allegations of unlawful practice of law for the Oregon State Bar.

Oregon State Bar Leadership College graduate.

- 2007 – Completed one year leadership development program.

Oregon State Bar Mentor Program, Years.

- Serving as attorney mentor for new lawyers.

Participant of the Hillsboro Chambers of Commerce Job Shadow Program.

- Assist local high school students with questions regarding a possible career in the legal field, including a two hour job shadow.

Court Admissions: State of Oregon, 1995.

United States District Court, 1999.

United States Court of Appeals, Ninth Circuit, 1999.

United States Supreme Court, 2009.

Education: University of Oregon School of Law, Eugene, Oregon.
▪ J.D. Law, 1995.

University of Notre Dame, Notre Dame, Indiana.
▪ B.B.A. - Management of Information Systems, 1991.

Military Service: 1st LT, U.S. Army Individual Ready Reserve Force.
▪ Summer 1998 to Summer 2000.

1st LT, Oregon National Guard, Field Artillery Unit, Portland Oregon.

- Firing Artillery Battery Executive Officer.
- Fall 1995 to Summer 1998.

1st LT, Oregon National Guard, Infantry Unit, Eugene, Oregon.

- Mortar Platoon Leader.
- August 1993 to Summer 1995.

**2nd LT, U.S. Army Reserve, Training Battalion, Eugene
Oregon.**

- Company Training Officer.
- August 1992 to August 1993.

**U.S. Army Officer Basic Course, Field Artillery School, Fort
Sill, Oklahoma.**

- 1991 to 1992.

U.S. Army Airborne School, Fort Benning, Georgia.

- Summer of 1990.

Army R.O.T.C. Program, University of Notre Dame.

- 1987 to 1991.

Resume

Wendie L. Kellington
Attorney at Law
PO Box 1930
Lake Oswego Or. 97035
Telephone: (503) 636-0069
Facsimile (503) 636-0102
wk@wkellington.com
www.wkellington.com

Education

University of Puget Sound School of Law/Seattle University – 1983 Juris Doctorate
(*Cum Laude*); 1982 American Jurisprudence Award Administrative Law

Southern Oregon State College -- B.S. Political Science (*Cum Laude*)

Employment

Wendie L. Kellington, Attorney at Law P.C.

April 2001 to Present – Practice focuses on energy, business, land use and municipal law

2005-present Bonneville Power Administration on call hearings officer

December 2007 to September 2009 – (Part time) General Counsel REpower USA Corp
(USA subsidiary of German wind turbine manufacturing and O&M company)

Private Practice (Law Firms)

April 1996 to May 2001 – Practice focused on administrative, land use, and municipal law

Oregon Land Use Board of Appeals – Referee and Chief Referee April 1989 to April 1995 - Conducted hearings and wrote hundreds of options and orders on cases appealed to Board

Assistant County Counsel, Jackson County 1984-1989 – Advised Board of Commissioners and county departments on general government, regulatory, contractual and administrative matters; handled court matters and appeals

Professional Activities

Member American Wind Energy Association (2008 to present)

American Bar Association/American Law Institute Annual Land Use Law and Litigation Faculty Member (since 1998) – topics have included materials and presentations on renewable energy, managing development teams, siting energy facilities, administrative and environmental issues

Wendie L. Kellington
Resume
Page 2 of 2

Member Oregon State Bar Energy, Telecom and Utility, Real Estate and Land Use and Government Law Sections

Member Oregon City Attorneys Association (2005-2010 and present)

Member International Municipal Lawyers Assoc. (2005 to 2009)

Board of Visitors, Lewis and Clark Law School (2003-2006)

State of Oregon Building Structures Board (1999 – 2003)

Frequent Speaker various legal topics including for American Law Institute-American Bar Assoc., Oregon State Bar Assoc., Oregon Law Institute, Law Seminars International, Albany New York Law School (2008 Religious Land Uses Symposium), Defense Research and Trial Lawyers Assoc. (DRI)

Admitted to practice in the Oregon State Courts (since 1983), United States Federal District Court (since 1984) and Ninth Circuit Court of Appeals (since 1986)

Sample of Publications

OSB Land Use Desk Book “Annexations” (Pub. 2010); Energy Case Update (ALI ABA 2010); Renewable Energy Siting (ALI ABA 2009 and 2010); OSB Land Use Law Desk Book “Unconstitutional Takings” (1994 and 2000 Supplements); “Handling the Land Use Case” (Multivolume Treatise) “Handling the RLUIPA Case” Chapter (Pub. 2008); APA/ABA Textbook “RLUIPA”, “Federal Perspective” Chapter (Pub. Exp 2008); Zoning and Planning Law Report: “Sustainability: Yeah the Plant’s Checkbook is Overdrawn; But Honey I Still Have Checks”; APA Planning and Environmental Law “Teamwork: The Key to Effective Development Proposals”; Federal Land Use Law Textbook “Religious Land Uses” Chapter 9A; “Land Use Law” Textbook Fifth Ed. Supplement Part D; “Environmental Issues and Partial Takings” Chapters “Nichols on Eminent Domain”

Interests

Triathlon, running, bicycle touring, hiking, canoeing

References available upon request

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: November 19, 2011
From: Sylvia E. Stevens, Executive Director
Re: Proposed Formal Ethics Opinions: Misappropriated Documents
and Cloud Computing

Action Recommended

Consider the recommendation of the Legal Ethics Committee that the two attached opinions be issued as Formal Ethics Opinions. The LEC believes that both of these opinions, while short, provide helpful and needed guidance to lawyers on matters that are not clear from the text of the Rules of Professional Conduct.

Background

Receipt of Documents Sent without Authority

This opinion addresses the obligations of a lawyer who receives documents sent without authority. A very common example is where a divorce client intercepts or otherwise accesses the other spouse's e-mail or regular mail and brings it to the lawyer expecting to use it to advance the client's position. Another common example is in employment litigation where a former colleague of a terminated employee accesses company documents that will be helpful in the terminated employee's wrongful termination case.

Under RCP 4.4(b) a lawyer who receives documents that the lawyer knows or should reasonably know were sent inadvertently is required to promptly notify the sender. The rule was designed to address the situation where an e-mail or fax is mis-sent, or where a confidential document is mistakenly included in a discovery response.

When a lawyer receives documents that are sent without the owner's authority, RPC 4.4(b) offers no guidance. At first blush it might seem that the lawyer should notify the owner of the documents (or his or her counsel). However, other rules may be implicated, limiting the receiving lawyer's options. If the lawyer's own client is the source of the documents, disclosing the client's unauthorized access would violate the lawyer's duty of confidentiality. Even if the client isn't the source of the documents, disclosing the receipt of the documents could well result in harm to the client.

The opinion points out that the receiving lawyer also has a duty not to engage in criminal conduct or conduct prejudicial to the administration of justice. The appropriate method for resolving those issues is beyond the scope of the opinion, which is intended only to clarify that the obligation in RPC 4.4(b) does not apply to documents sent without authority.

Electronic Storage of Client Documents

This opinion deals with electronic storage of documents and data in a remote online server, commonly referred to as “cloud computing.” As happened with the introduction of fax machines, e-mail and cell phones, lawyers have expressed concern about risk to client confidentiality if the information is stored outside of the lawyer’s office and in electronic form.

The opinion begins with an explanation of a lawyer’s duty of confidentiality and the obligation to ensure that the conduct of nonlawyers under the lawyer’s direction and control “is compatible with” the obligations of the lawyer. In the context of storing client materials on a remote third-party server, the lawyer must use reasonable efforts to ensure that the third party vendor will keep the client information secure and confidential.

The opinion concludes with a reminder that evolving technology require that the lawyer stay abreast of changes in the industry and periodically reevaluate the third party vendor’s protective measures.

PROPOSED
FORMAL OPINION 2011-XXX

(Receipt of Documents Sent Without Authority)

Facts:

Lawyer in an adversary proceeding receives documents from a third party that may have been stolen or otherwise taken without authorization from opposing party.¹

Questions:

1. Must Lawyer notify the opposing party of the receipt of the documents?
2. Must Lawyer return the documents to the opposing party?

Conclusions:

1. No, qualified.
2. No, qualified.

Discussion:

RPC 4.4(b) provides that “A lawyer who receives a document relating to the representation of the lawyer’s client and knows or reasonably should know that the document was inadvertently sent shall promptly notify the sender.”²

By its express terms then, Oregon RPC 4.4(b) does not require Lawyer to take or refrain from taking any particular actions with respect to documents that were sent purposely, albeit without authority.³ However, other rules may limit Lawyer’s options or direct Lawyer’s actions.

First, the circumstances in which the documents were obtained by the sender may involve criminal conduct. If so, RPC 1.6⁴ prohibits Lawyer from disclosing the receipt of the documents, as explained in OSB Formal Op. No. 2005-105:

A lawyer who comes into possession of information linking a client to a crime ordinarily is barred by the lawyer’s duty of confidentiality from voluntarily disclosing that information to others. See, e.g., ORS 9.460(3) and Oregon RPC 1.6, discussed in OSB Formal Ethics Op No 2005-34.

This is true even if the documents came from a source other than Lawyer’s own client, as the disclosure could nevertheless work to the detriment of the client in the matter.

¹ For purposes of this opinion, it is assumed that Lawyer did not advise Client to, or otherwise participate in obtaining the documents. See RPC 1.2(c) (a lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is illegal or fraudulent...) and RPC 8.4(2)(4) (a lawyer shall not engage in conduct that is prejudicial to the administration of justice).

² For purposes of the rule, “document” includes e-mail or other electronic communications subject to being read or put into readable form.” ABA Model Rule 4.4(b), Comment [2]

³ Following the promulgation of ABA Model Rule 4.4(b), the ABA withdrew its Formal Opinion 94-382 which suggested that documents sent by anyone without authorization were, from the opposing party’s perspective, an “inadvertent disclosure.” ABA Formal Op. No. 06-440 disavows the prior opinion and expressly holds that where the delivery of the materials is not the result of the sender’s inadvertence, Rule 4.4(b) does not apply.

⁴ RPC 1.6(a): A lawyer shall not reveal information relating

OSB Formal Op. No. 2005-105 also warns that RPC 8.4(a)(4), prohibiting conduct prejudicial to the administration of justice, prevents a lawyer from accepting “evidence of a crime” unless the lawyer makes the evidence available to the prosecution. Further, to the extent that receiving stolen documents constitutes tampering with evidence, the lawyer may also be exposed to criminal liability.

Second, the documents may be entitled to protection under substantive law of privilege or otherwise . *See Burt Hill, Inc.*, 2010 U.S. Dist. Lexis 7492 at 2-4, n.6. The scope and application of those substantive law protections are not questions of professional responsibility. However, a lawyer who reviews, retains or attempts to use privileged documents may be subject to disqualification or other sanctions under applicable court rules or substantive law.⁵

⁵ *Richards v. Jain*, 168 F Supp2d 1195 (WD Wa 2001) (disqualifying counsel for retaining and using privileged materials);” *In re Shell Oil Refinery*, 143 F.R.D. 105 (E.D. La.) (lawyer may not use confidential documents supplied to him by opponent’s employee) *amended and reconsidered on other grounds*, 144 F.R.D. 73 (E.D. La. 1992); *Maldonado v. New Jersey*, 225 F.R.D. 120 (D.N.J. 2004) (plaintiff s counsel who reviewed privileged letter, received from unknown source, and without permission incorporated it by reference in amendment to complaint disqualified); Smallman, *The Purloined Communications Exception to Inadvertent Waiver; Publication and Preservation of Lawyer-Client Privilege*, 32 Tort & Ins. L.J. 715. See also OSB Formal Op.No. 2005-150.

FORMAL OPINION NO. 2011 – XXX

Information Relating to the Representation of a Client: Third Party Electronic Storage of Client Materials

Facts:

Law Firm contracts with third party vendor to store client files and documents online on remote server so that Lawyer and/or Client could access the documents over the internet from any remote location.

Question:

May Lawyer do so?

Conclusion:

Yes, qualified.

Discussion:

With certain limited exceptions, the Oregon Rules of Professional Responsibility require a lawyer to keep client information confidential. See Oregon RPC 1.6¹ In addition, Oregon RPC 5.3 provides:

With respect to a nonlawyer employed or retained, supervised or directed by a lawyer:

(a) a lawyer having direct supervisor authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and

¹ Oregon RPC 1.6 provides:

- (a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).
- (b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:
 - (1) to disclose the intention of the lawyer's client to commit a crime and the information necessary to prevent the crime;
 - (2) to prevent reasonably certain death or substantial bodily harm;
 - (3) to secure legal advice about the lawyer's compliance with these Rules;
 - (4) to establish a claim or defense on behalf of the lawyer in controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client;
 - (5) to comply with other law, court order, or as permitted by these Rules; or
 - (6) to provide the following information in discussions preliminary to the sale of a law practice under Rule 1.17 with respect to each client potentially subject to the transfer: the client's identity; the identities of any adverse parties the nature and extent of the legal services involved; and fee and payment information. A potential purchasing lawyer shall have the same responsibilities as the lawyer to preserve confidences and secrets of such clients whether or not the sale of the practice closes or the client ultimately consents to representation by the purchasing lawyer.

(b) except as provided by Rule 8.4(b), a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by the nonlawyer if:

(1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner or has comparable managerial authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Lawyer may store client materials on a third-party server so long as Lawyer complies with the duties of competence and confidentiality to reasonably keep the client's information secure within a given situation.² To do so, the lawyer must take reasonable steps to ensure that the storage company will reliably secure client data and keep information confidential. Under certain circumstances, this may be satisfied through a third-party vendor's compliance with industry standards relating to confidentiality and security, provided that those industry standards meet the minimum requirements imposed on the Lawyer by the RPC. This may include, among other things, ensuring the service agreement requires the vendor to preserve the confidentiality and security of the materials. It may also require that vendor notify Lawyer of any non-authorized third party access to the materials. Lawyer should also investigate how the vendor backs up and stores its data and metadata to ensure compliance with the Lawyer's duties.³

Although the third party vendor may have reasonable protective measures in place to safeguard the client materials, the reasonableness of the steps taken will be measured against the technology "available at the time to secure data against unintentional disclosure."⁴ As technology advances, the third party vendor's protective measures may become less secure or obsolete over time.⁵ Accordingly, Lawyer may be required to reevaluate the protective measures used by the third party vendor to safeguard the client materials.⁶

² Some call the factual scenario presented above "cloud computing." See Richard Acello, *Get Your Head in the Cloud*, ABA Journal, April 2010, at 28-29 (providing that "cloud computing" is a "sophisticated form of remote electronic data storage on the internet" and "[u]nlike traditional methods that maintain data on a computer or server at a law office or other place of business, data stored 'in the cloud' is kept on large servers located elsewhere and maintained by a vendor").

³ See OSB Legal Ethics Op No 2005-141, which provides: "As long as Law Firm makes reasonable efforts to ensure that recycling company's conduct is compatible with Law Firm's obligation to protect client information, the proposed conduct is permissible. Reasonable efforts include, at least, instructing the recycling company about Law Firm's duties pursuant to Oregon RPC 1.6 and obtaining its agreement to treat all materials appropriately." See also OSB Legal Ethics Op Nos 2005-129, 2005-44.

⁴ See N.J. Ethics Op. 701 (discussing electronic storage and access to files).

⁵ See Arizona Ethics Op. 09-04 (discussing confidentiality, maintaining client files, electronic storage, and the internet).

⁶ A lawyer's obligation in the event of a breach of security of confidential materials is outside the scope of this opinion.

FORMAL OPINION NO. 2011-XXX

Competency: Disclosure of Metadata

Facts:

Lawyer A emails to Lawyer B a draft of an Agreement they are negotiating on behalf of their respective clients. Lawyer B is able to use a standard word processing feature to reveal the changes made to an earlier draft (“metadata”). The changes reveal that Lawyer A had initially placed his client’s “bottom line” negotiating points in the draft, and then subsequently deleted them.

Same facts as above except that shortly after opening the document and displaying the changes, Lawyer B receives an urgent request from Lawyer A asking that the document be deleted without reading it because Lawyer A had mistakenly not removed the metadata.

Same facts as the first scenario except that Lawyer B has software designed to thwart the metadata removal tools of common word processing software and wishes to use it to see if there is any helpful metadata in the Agreement.

Questions:

1. Does Lawyer A have a duty to remove or protect metadata when transmitting documents electronically?
2. May Lawyer B use the metadata information that is readily accessible with standard word processing software?
3. Must Lawyer B inform Lawyer A that the document contains readily accessible metadata?
4. Must Lawyer B acquiesce to Lawyer A’s request to delete the document without reading it?
5. May Lawyer A use special software to reveal the metadata in the document?

Conclusions:

1. See discussion.
2. Yes, qualified.
3. No.
4. No, qualified.
5. No.

Discussion:

Metadata generally means “data about data.” As used here, metadata means the embedded data in electronic files that may include information such as who authored a document, when it was created, what software was used, any comments embedded within the content, and even a record of changes made to the document.¹

Lawyer’s Duty in Transmitting Metadata

Oregon RPC 1.1 requires a lawyer to provide competent representation to a client, which includes possessing the “legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.” Oregon RPC 1.6(a) requires a lawyer to “not reveal information relating to the representation of a client” except where the client has expressly or impliedly authorized the disclosure.² Information relating to the representation of a client may include metadata in a document. Taken together, the two rules indicate that a lawyer is responsible for acting competently to safeguard information relating to the representation of a client contained in communications with others. Competency in relation to metadata requires a lawyer utilizing electronic media for communication to maintain at least a basic understanding of the technology and the risks of revealing metadata or to obtain and utilize adequate technology support.³

A lawyers must use reasonable care to avoid the disclosure of confidential client information, particularly where the information could be detrimental to a client.⁴ With respect to metadata in documents, reasonable care includes taking steps to prevent the inadvertent disclosure of metadata, to limit the nature and scope of the metadata revealed, and to control to whom the document is sent.⁵ What constitutes reasonable care will change as technology evolves.

¹ Joshua J. Poje, *Metadata Ethics Opinions Around the U.S.*, AMERICAN BAR ASSOCIATION, May 3, 2010, http://www.americanbar.org/groups/departments_offices/legal_technology_resources/resources/charts-fyis/metadatchart.html.

² There are several exceptions to the duty of confidentiality in RPC 1.6, but none are relevant here.

³ The duty of competence with regard to metadata also requires a lawyer to understand the implications of metadata in regard to documentary evidence. A discussion of whether removal of metadata constitutes illegal tampering is beyond the scope of this opinion, but RPC 3.4(a) prohibits a lawyer from assisting a client to “alter, destroy or conceal a document or other material having potential evidentiary value.”

⁴ Jurisdictions that have addressed this issue are unanimous in holding lawyers to a duty of “reasonable care.” See e.g. State Bar of Arizona Ethics Opinion 07-03. By contrast, ABA Formal Opinion 06-442, does not address whether the sending lawyer has any duty, but suggests various methods for eliminating metadata before sending a document. *Id.* But see ABA Model Rule 1.6, comment [17], which provides that “[w]hen transmitting a communication that includes information relating to the representation of a client, the lawyer must take reasonable precautions to prevent the information from coming into the hands of unintended recipients.”⁵ Such steps may include utilizing available methods of transforming the document into a non-malleable form, such as converting it to a PDF or “scrubbing” the metadata from the document prior to electronic transmittal.

⁵ Such steps may include utilizing available methods of transforming the document into a non-malleable form, such as converting it to a PDF or “scrubbing” the metadata from the document prior to electronic transmittal.

The duty to use reasonable care so as not to reveal confidential information through metadata may be best illustrated by way of analogy to paper documents. For instance, a lawyer may send a draft of a document to opposing counsel through regular mail and inadvertently include a sheet of notes torn from a yellow legal pad identifying the revisions to the document. Another lawyer may print out a draft of the document marked up with the same changes as described on the yellow notepad instead of a “clean” copy and mail it to opposing counsel. In both situations, the lawyer has a duty to exercise reasonable care not to include notes about the revisions (the metadata) if it could prejudice the lawyer’s client in the matter.

Lawyer’s Use of Received Metadata

If a lawyer who receives a document knows or should have known it was inadvertently sent, the lawyer must notify the sender promptly. Oregon RPC 4.4(b). Using the examples above, in the first instance the receiving lawyer may reasonably conclude that the yellow pad notes were inadvertently sent, as it is not common practice to include such notes with document drafts. In the second instance, however, it is not so clear that the “redline” draft was inadvertently sent, as it is not uncommon for lawyers to share marked-up drafts. Given the sending lawyer’s duty to exercise reasonable care in regards to metadata, the receiving lawyer could reasonably conclude that the metadata was intentionally left in.⁶ In that situation, there is no duty under RPC 4.4(b) to notify the sender of the presence of metadata.

If, however, the receiving lawyer knows or reasonably should know that metadata was inadvertently included in the document, RPC 4.4(b) requires only notice to the sender; it does not require the receiving lawyer to return the document unread or to comply with a request by the sender to return the document.⁷ OSB Formal Op. No. 2005-150. Comment [3] to ABA Model Rule 4.4(b) notes that a lawyer may voluntarily choose to return a document unread and that such a decision is a matter of professional judgment reserved to the lawyer. At the same time, the Comment directs the lawyer to Model Rules 1.2 and 1.4. Model Rule 1.2(a) is identical to Oregon RPC 1.2(a) and requires the lawyer to “abide by a client’s decisions concerning the objectives of the representation” and to “consult with the client as to the means by which the objectives are pursued.”⁸ Oregon RPC 1.4(a)(2), like its counterpart Model Rule, requires a lawyer to “reasonably consult about the means by which the client’s objectives are to be accomplished.” Thus, before deciding what to do with an inadvertently sent document, the receiving lawyer should consult with the client about the risks of returning the document versus the risks of retaining and reading the document and its metadata.

⁶ See *Goldsborough v. Eagle Crest Partners*, 314 Or 336 (1992) (In the absence of evidence to the contrary, an inference may be drawn that a lawyer who voluntarily turns over privileged material during discovery acts within the scope of the lawyer’s authority from the client and with the client’s consent.).

⁷ Comment [2] to ABA Model Rule 4.4(b) explains that the rule “requires the lawyer to promptly notify the sender in order to permit that person to take protective measures.” It further notes that “[w]hether the lawyer is required to take additional steps, such as returning the original document, is a matter of law beyond the scope of these Rules, as is the question of whether the privileged status of a document has been waived.”

⁸ Although not required by the Oregon RPCs, parties could agree, at the beginning of a transaction, not to review metadata as a condition of conducting negotiations.

Regardless of the reasonable efforts undertaken by the sending lawyer to remove or screen metadata from the receiving lawyer, it may be possible for the receiving lawyer to thwart the sender's efforts through software designed for that purpose. It is not clear whether uncovering metadata in that manner would trigger an obligation under Oregon RPC 4.4(b) to notify the sender that metadata had been inadvertently sent. Searching for metadata using special software when it is apparent that the sender has made reasonable efforts to remove the metadata may be analogous to surreptitiously entering the other lawyer's office to obtain client information and may constitute "conduct involving dishonesty, fraud, deceit or misrepresentation" in violation of RPC 8.4(a)(3).

Approved by Board of Governors, August 2011.

PROPOSED FOR BOG REVIEW

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: November 19, 2011
Memo Date: November 3, 2011
From: Jason Hirshon, Oregon New Lawyers Division Chair- Elect
Re: ONLD Report

As usual, September, October, and November have been busy months for the ONLD. Since the last BOG report the Executive Committee and Subcommittees have provided their members and the public with the following services:

- Organized 43 middle school classroom presentations focusing on the U.S. Constitution. Several schools outside the metro area participated in the event including schools in Bend, Corvallis, and Salem. Chief Justice Paul DeMuniz also requested to participate in the event by giving a presentation to a at-risk school in Salem.
- In conjunction with the September meeting in Medford the ONLD Executive Committee took part in the Maslow Project Open House and Fundraiser. The Maslow Project is a goal-oriented resource center serving homeless and at-risk for homeless youth, school-aged through 21. The organization focusing on helping youth establish educational, employment, and personal development goals while providing wrap-around case-management services to assist youth in attaining those goals.
- Hosted a presentation at each of the law schools focusing on employment searches after passing the bar exam.
- Sponsored the Affirmative Action Program's fundraiser event- BOWLIO.
- Sponsored a table at the Convocation on Equality.
- Executed the Pro Bono Fair, Awards Ceremony, and three free CLE programs. This year's event resulted in more than 15 provider "fair booth" tables and more than 125 event attendees.
- Held a wills and advanced directives CLE program and clinic for low-income elders during the ABA's Celebrate Pro Bono Week.
- Held three brown bag lunch CLE programs in Portland in addition to SuperSaturday, a full-day CLE program with 15 sessions.
- Welcomed new bar members during a reception following the swearing in ceremony.
- Sponsored monthly after-work socials in Portland as well as Professionalism CLE programs and socials in Eugene, Medford, and Salem.
- The ONLD sent five members to Seattle to participate in the ABA Young Lawyers Division fall meeting and program showcase event.
- On November 11 the ONLD is collaborating with the OSB and Chief Justice DeMuniz to offer under and unemployed attorneys a free CLE on VA Disability Law. The ONLD is enthusiastic about working with the BOG over the next year on future veterans issues.

Sylvia Stevens

From: (e) Tom Kranovich
Sent: Monday, November 07, 2011 7:31 PM
To: 'David Madden'; 'SSFP SectionExec Committee'
Cc: (e) Stephen Piucci; (e) Mitzi Naucler; Sylvia Stevens
Subject: RE: [ssfp-ex] Annual Meeting Motions

Follow Up Flag: Follow up
Flag Status: Flagged

David and Executive Committee members:

Thanks for sending this along. I apologize for not making the annual meeting. I had a prior commitment as a speaker at the Convocation on Equality.

Rod is bar staff. He may even be bar staff liaison. I am the section's contact person with the BOG so you, David, were correct in getting me in the loop.

I am forwarding this to this year's president, Steve Piucci; next year's president, Mitzi Naucler; and to our Executive Director, Sylvia Stevens.

I am not sure what the next steps are in the process of examining possible changes to the LRS. I am confident that if the BOG agrees to any changes it will do so with the goal of developing a program that benefits participating attorneys beyond what they have now while, at the same time, making the program more fiscally self sufficient.

I am pleased that at least one motion was for BOG consideration of alternatives and not for an absolute ban on anything other than the current model. I take this to mean that a response against change still leaves open the possibility of exploring the options with an open mind.

I would like to know if there is a consensus (as opposed to a vocal minority), among section members, as to what the primary purpose of the LRS is. I am not sure there is agreement in the membership over why we even have an LRS program.

Over the years I've talked to some who view LRS as a social service, a portal for access to justice. Some of these folks do not care if the program pays for itself or not. Neither do they care if it makes money their own practices. For them it is a pro bono facilitative and experience gaining service. Conversely, I've talked to some who view LRS as an important revenue source, not their sole revenue source but an important one nonetheless. I've talked to lawyers who depended upon the program to get their fledgling practices off the ground. To some the program is any or all of these things.

Because of what I have just stated, what I think would be most helpful to me, in my role as your BOG contact person, would be to have a concise summary (a brief synopsis and it need not be capable of scientific validation) regarding three things:

- 1) What do section members perceive it is that the BOG is trying to do;
- 2) What is it that section members are most concerned about - what

is their biggest fear; and

3) What is there, about the current model, that section members are most reluctant to give up?

As a bonus question I would ask: What, if anything, has been proposed, suggested or discussed by the section membership to make LRS better. In other words, what should the BOG do as opposed to what should the BOG not do?

Personally, at this point, I'm not wed to either the current program or any other particular model. I am not inclined to change the model unless it results in a benefit the bar membership, the LRS participants and the public. I do believe that there are two issues that are ripe for discussion: 1) what is the need that LRS is supposed to fill and 2) if we can define that need then how do we best meet it? I am not sure the current model is effective at driving good, revenue generating, business into our members hands. I am not sure the current model is the best means of promoting access to justice either. But, I am willing to take a close look at it.

I also believe that if it is possible to implement a program that better serve the bar, the LRS participants and the public then as a governing body the BOG has a social responsibility to make those changes. If the BOG can make better and more efficient use of the bar membership's resources then it has a fiscal duty to do so. However, the best way to do so is to keep people in an informed loop. To that end, I am inclined to propose that someone from the section's executive board (or a board nominee) be appointed to what ever committee it is that will take the next step (what ever that step may be). Do you have anyone in mind?

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

From: David Madden [mailto:dhm@mersenne.com]
Sent: Saturday, November 05, 2011 1:34 PM
To: SSFP SectionExec Committee
Subject: [ssfp-ex] Annual Meeting Motions

Hi all (particularly Josh).

At the annual meeting Friday, there were a couple of motions passed during New Business. I volunteered to write them up, so here they are:

1. The section should encourage the bar not to implement fee sharing in its changes to LRS.
2. If the bar is going to change LRS, it should explore other options besides fee sharing.

Rod mentioned that the BOG was meeting to discuss LRS soon, so perhaps we can rely on our liaison (Tom? Rod? I'm not sure which is the official liaison) to raise these concerns.

For avoidance of doubt, my impression is that SSFP section members are disinclined to support LRS changes that include fee-sharing, and would be disappointed to learn that the BOG failed to even consider alternatives, regardless of whether they ultimately decide to act against the wishes of the affected members.

Regards,

--

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You are currently subscribed to ssfp-ex as: tom@tkatlaw.com.

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or send a blank email to

leave-2413006-1357855.bae8f41bf6ed79f7115be35ebfdd15c8@lists.osbar.org

Sylvia Stevens

From: KDoyleAtty@aol.com
Sent: Thursday, November 10, 2011 12:42 PM
To: (e) Tom Kranovich; ssfp-ex@lists.osbar.org
Cc: (e) Stephen Piucci; (e) Mitzi Naucler; Sylvia Stevens
Subject: Annual Meeting Motions - Answers/Responses to Tom Kranovich by KMD

In a message dated 11/7/2011 7:18:19 P.M. Pacific Standard Time, Tom@TKAtLaw.com writes:

David and Executive Committee members: **Tom and Executive Committee members:**

Thanks for sending this along. I apologize for not making the annual meeting. I had a prior commitment as a speaker at the Convocation on Equality. **We had a good attendance even though there were two programs going on at the same time and two of our board members were very involved in the Convocation.**

Rod is bar staff. He may even be bar staff liaison. I am the section's contact person with the BOG so you, David, were correct in getting me in the loop.

I am forwarding this to this year's president, Steve Piucci; next year's president, Mitzi Naucler; and to our Executive Director, Sylvia Stevens.

I am not sure what the next steps are in the process of examining possible changes to the LRS. I am confident that if the BOG agrees to any changes it will do so with the goal of developing a program that benefits participating attorneys beyond what they have now while, at the same time, making the program more fiscally self sufficient.

I am pleased that at least one motion was for BOG consideration of alternatives and not for an absolute ban on anything other than the current model. I take this to mean that a response against change still leaves open the possibility of exploring the options with an open mind. **The motion (which was made by me) was not a blanket opposition to change. It was more of an expression that the percentage fee model was not appropriate.**

I would like to know if there is a consensus (as opposed to a vocal minority), among section members, as to what the primary purpose of the LRS is. I am not sure there is agreement in the membership over why we even have an LRS program. **Yes, there seems to be a consensus that the LRS is both a Referral service for business development and a reach out by the bar to low income clients.**

Over the years I've talked to some who view LRS as a social service, a portal for access to justice. Some of these folks do not care if the program pays for itself or not. Neither do they care if it makes money their own practices. For them it is a pro bono facilitative and experience gaining service. Conversely, I've talked to some who view LRS as an important revenue source, not their sole revenue source but an important one nonetheless. I've talked to lawyers who depended upon the program to get their fledgling practices off the ground. To some the program is any or all of these things. **Or both of those things. Balancing the practice development with the social service is the huge issue.**

Because of what I have just stated, what I think would be most helpful to me, in my role as your BOG contact person, would be to have a concise summary (a brief synopsis and it need not be capable of scientific validation) regarding three things:

- 1) What do section members perceive it is that the BOG is trying to do; **Make LRS pay for itself.**
- 2) What is it that section members are most concerned about - what is their biggest fear; **That the Governor's changes will take the profit out of the few profitable cases and place an undue burden on those who avail themselves of the LRS by increasing fees and accounting burden.**and
- 3) What is there, about the current model, that section members are most reluctant to give up? **Cost of participation should remain stable with a minimum amount of bookkeeping.**

As a bonus question I would ask: What, if anything, has been proposed, suggested or discussed by the section membership to make LRS better. In other words, what should the BOG do as opposed to what should the BOG not do? **Reduce staff and use more automation in the office. There is a strong sentiment that the current screening process could be streamlined to deal with the volume of calls. Many attorneys have not participated in this program due to the referrals that have been generated in the past. If the referrals improve through better advertising and streamlined call screening then more attorneys will join and bring in more revenue.**

Personally, at this point, I'm not wed to either the current program or any other particular model. I am not inclined to change the model unless it results in a benefit the bar membership, the LRS participants and the public. I do believe that there are two issues that are ripe for discussion: 1) what is the need that LRS is supposed to fill and 2) if we can define that need then how do we best meet it? I am not sure the current model is effective at driving good, revenue generating, business into our members hands. I am not sure the current model is the best means of promoting access to justice either. But, I am willing to take a close look at it.

I also believe that if it is possible to implement a program that better serve the bar, the LRS participants and the public then as a governing body the BOG has a social responsibility to make those changes. If the BOG can make better and more efficient use of the bar membership's resources then it has a fiscal duty to do so. However, the best way to do so is to keep people in an informed loop. To that end, I am inclined to propose that someone from the section's executive board (or a board nominee) be appointed to what ever committee it is that will take the next step (what ever that step may be). Do you have anyone in mind? **That would be a great topic for our December executive board meeting. Would that be soon enough?**

Kelly M. Doyle, Attorney, DOYLE LAW PC
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FINANCIAL STATEMENTS SUMMARY

October 31, 2011

Narrative Summary

A year ago the bar experienced one of its highest ten-month net operating revenues (“NOR”) at \$708,900. In the second half of the year the bar’s net revenue usually declines sharply, but so far this year it has declined only \$207,000 to a net operating revenue of \$804,352. The NOR rose \$38,730 in October. Granted, included in the ten-month NOR is the PLF grant and the reserve allocation totaling \$583,000, but that amount is about as much as would have been garnered from Legal Publication print sales.

Executive Summary

Revenue	Actual 10/31/2011	Seasonal Budget 10/31/2011	Budget Variance	% of Budget	Actual 10/31/2010
Member Fees	\$ 5,711,807	\$5,661,687	\$50,120	0.9%	\$ 5,562,863
Program Fees	2,764,451	2,856,428	(91,977)	-3.2%	3,489,162
Other Income	668,112	583,448	84,664	14.5%	92,949
Total Revenue	9,144,370	9,101,564	42,806	0.5%	9,144,974
Expenses					
Salaries & Benefits	5,999,390	6,192,559	(193,169)	-3.1%	5,820,047
Direct Program, G & A	2,340,628	2,640,639	(300,011)	-11.4%	2,616,027
Contingency	0	20,833	(20,833)	-100.0%	0
Total Expense	8,340,018	8,854,032	(514,014)	-5.8%	8,436,074
Net Operating Rev (Exp)	804,352	\$ 247,532	556,820		708,900
Fanno Creek Place	(447,507)	(637,117)			(613,264)
Net Rev Bef Mkt Adj	356,845	(389,585)			95,635
Unrealized Investment Gains /(Losses)	(62,385)				93,275
Realized Investment Gains/(Losses)	69,935				(16,743)
Publ Inventory Increase/Decrease (COGS)	(245,591)				(91,915)
Reserve Reallocation	(333,330)	(299,997)			0
Net Revenue	\$ (214,526)	\$ (689,582)			\$ 80,252

Positive Budget Variance

Bulletin

Here is a report from Paul Nickell, the Bulletin editor about the Bulletin's financial statements:

It looks like the Bulletin will end up with a substantially higher net revenue in 2011, if present trends hold. We are budgeted to have net revenue of \$18.701. Barring the unforeseen, it should be closer to \$50,000-55,000, maybe slightly more.

This would be the result of a continuation of three trends: same amount of advertising (same size Bulletin, same printing bill), but increase revenues because of the increasing use of color in display ads (and the surcharge that results); the freeze in postage rates carried over from 2010; and the continued reduced pricing in paper and printing carried over from late 2010.

I don't foresee any of those trends going much farther into the future, but it's nice to know that the Bulletin was able to capitalize on it when it could. Kudos to LLM for the sales, and to Bulletin staff helping me to "hold the line."

Lawyer Referral

Lawyer Referral revenue has reached \$158,012. Total revenue in 2010 was \$159,005, which was an all-time high. So the program will break that record again this year. The net expense is \$220,147 after ten months and will end the year at a net expense about \$275,000 – what the average has been for the past few years.

Other Departments

Two other activities with strong revenue and a net revenue are Admissions and MCLE. Both should end 2011 with healthy net revenues as they did in 2011.

Directory Advertising

Gathering advertisers for the 2012 Resource Directory has begun and the success of the move to a directory without the white pages will be better determined with the advertising dollars generated for the 2012 directory.

The results were very good in 2011. For 2010, the last year of the traditional Membership Directory, advertising revenue was \$112,209. For 2011, the first year of the smaller Resource Directory, advertising revenue is \$114,286.

Year End Prognosticating

A year ago Charts A and B gave good insight into where the bar would end the year financially. After 10 months a year ago, the trend for much lower spending for non-personnel costs became obvious leading to a much better than budgeted net operating revenue. The chart a year ago projected a net revenue of \$460,000 and the bar ended at \$620,830.

This year Chart A projects a net revenue of \$588,000. Excluding the reserve allocations, this would leave a net revenue of \$188,000 – well beyond expectations when the 2011 budget was developed.

The dotted red line is the average net expense difference (\$218,000) between October and December. Applying that average for the past five years projects the net revenue for 2011 to be \$588,000.

Chart A

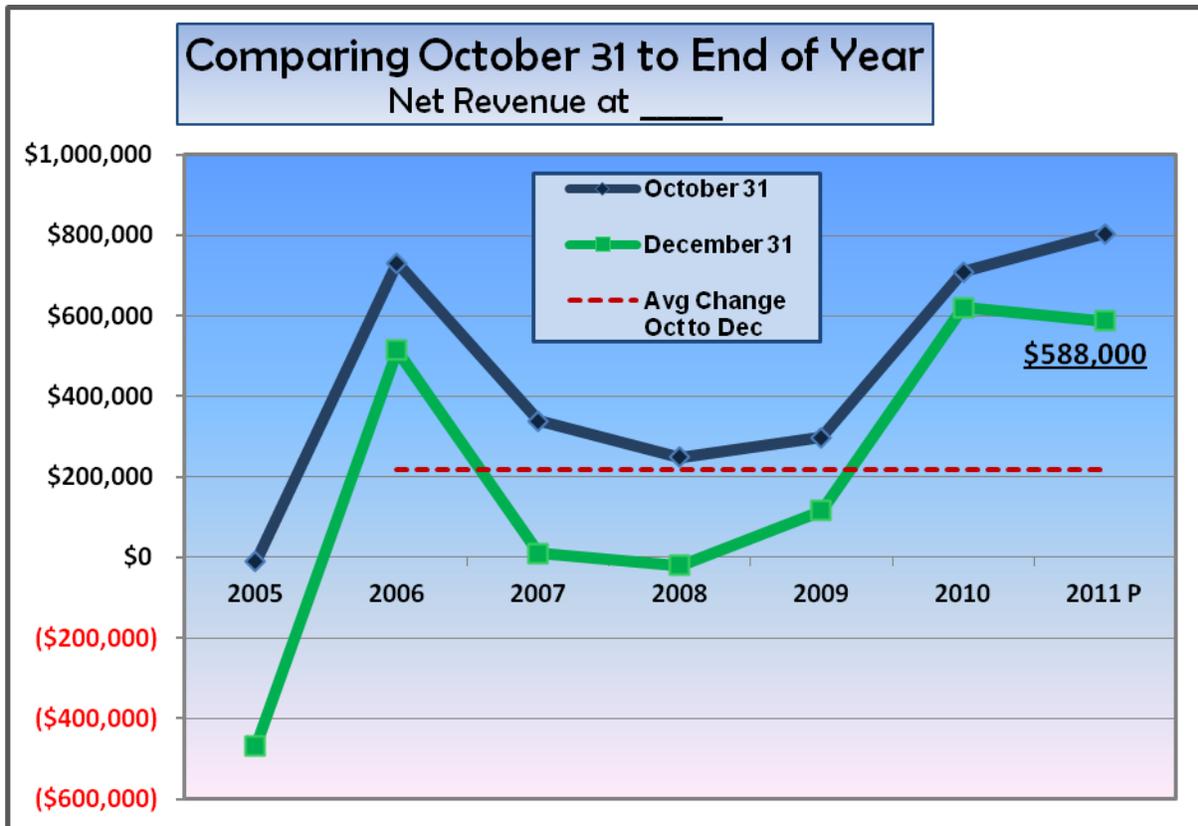
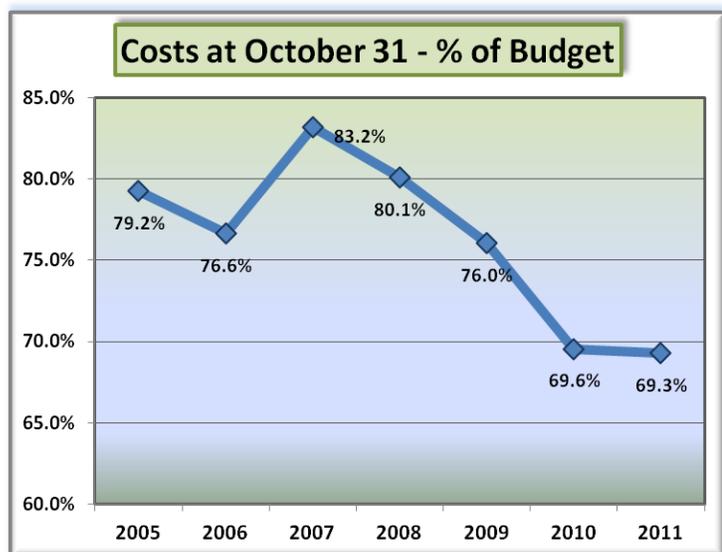


Chart B suggests why a higher net revenue was possible for 2010 and one likely for 2011.

This chart compares the percent of all non-personnel expenses at October 31 of the seven years to the budgeted non-personnel costs.

Although the percent variance has plateaued for 2011, the dollar amount after ten months in 2011 is less than any of the previous six years.



PURPOSE OF THIS REPORT

This is the report for the 2012 Oregon State Bar budget subject to one more review by the Budget & Finance Committee and final action by the Board of Governors.

The Budget & Finance Committee reviewed the previous report of the budget at its September 23 meeting. Since then all bar program and department managers were asked to review their respective budgets if more current data was available, and there were substantive changes made which are incorporated into this report.

The budget is developed from the line item budgets prepared by the bar program and department managers and is a summarized version of each department and program. Those detail budgets are not included with this report, but are available by request and will be available at the meetings.

C **ONTENTS**

1. Overview of the 2012 Budget
 2. Summary of Revenue and Expense Categories
 3. Program, Policy, and Operational Considerations for 2012
 4. Fanno Creek Place
 5. Five-Year Forecast
 6. Reserves, Fund Balances, and Other Contingency Funds
 7. Financial Issues to Face in 2013 and Beyond
 8. Action Items for the 2012 OSB Budget
- Exhibit A – 2012 Budget Summary by Program
Exhibit B – 2011 Budget Summary by Program
Exhibit C - Five-Year Forecast

1 OVERVIEW OF THE 2012 BUDGET

This version of the 2012 budget projects a Net Operating Revenue of \$199,521 (page 1, line 44, column D. See Note on next page). Here are the key factors that lead to this version of the 2012 budget:

- ◆ The \$400,000 from three reserves included in the 2011 budget is transferred to the 2012 budget.
- ◆ There is no change in the active membership fee.
- ◆ The salary pool for personnel is 2%.
- ◆ The program activity is essentially the same as 2011 and the only significant new expense in the 2012 budget is funding for the economic survey.
- ◆ Non-personnel expenses are lower than the 2011 budget.
- ◆ Fanno Creek Place has a lower net expense even though rental revenue will be less than 2011.
- ◆ All reserves, contingencies and fund balances will remain fully funded in 2012.



Summary Comparison of 2011 and 2012 Budgets

Comparison - 2011 and 2012 Budgets				
Category	2011	2012	\$ Change	% Change
Member Fees	\$6,778,300	\$6,959,700	\$181,400	2.7%
Program Fees	3,434,197	3,392,967	(41,230)	-1.2%
PLF Grant	300,000	200,000	(100,000)	-33.3%
Reserve Allocation	400,000	400,000	0	0.0%
Other Income	128,700	143,800	15,100	11.7%
Total Revenue	11,041,197	11,096,467	\$55,270	0.5%
Salaries, Taxes, Benefits	7,318,480	7,585,266	266,786	3.6%
Direct Program, G&A	3,359,733	3,286,680	(73,053)	-2.2%
Contingency	25,000	25,000	0	0.0%
Total Expenditures	10,703,213	10,896,946	193,733	1.8%
Net Revenue/(Expense)	\$337,984	\$199,521	(\$138,463)	

Changes Since the Last Report

The net operating revenue in the report reviewed by the Budget & Finance Committee in September was \$49,983. Most all changes leading to this report were in expenditures and almost all in personnel costs. The changes are:

1. A position in CLE Seminars is filled by an internal transfer and sharing of duties with the resignation of a full-time employee.
2. The charge for benefits is lowered as more data on 2011 costs became available and the base for 2012 was adjusted downward.
3. CLE Seminars decreased some program operating costs.
4. Some minor adjustments were made in administrative costs in a number of departments.
5. Membership Fee revenue was increased by \$16,000 as the analysis of number of new admittees with more recent data projected additional revenue.

Exhibit A is a one-page summary of all 2012 budgets presented by department. For comparison, **Exhibit B** is that same summary for 2011.

NOTE: Any references to a line or page hereafter are from Exhibit C.

2 SUMMARY OF REVENUE AND EXPENSE CATEGORIES

The 2012 budget and the forecasts for bar operations are prepared with these projections:

■ Member Fee Revenue

With no active member fee increase in 2012, it will be the 7th consecutive year with no change in the fee.

This has happened only twice in the bar's history – from 1943 to 1949 and 1963 to 1969.

Revenue from Membership Fees increases 2.7%. This is greater than the last four years year-over-year increase of 2.06% to 2.53%.

This higher increase is due to:

- ... more new members entering the bar than usual, and
- ... additional fees for those members who pay after the January 31 deadline increasing from \$60,000 to \$80,000.

■ Program Fee Revenue

Revenue from the following are expected to be lower in 2012:

- *CLE Seminars* revenue has trended down for the past several years, and 2012 is expected to be no exception.
- With *BarBooks* available online to all members, print book sales have, and as expected, declined. Fewer sales are projected for 2012 again.
- With the elimination of the white pages of names and addresses in the Membership Directory and the conversion to a Resource Directory, *sales of the Directory and the online sales* of the names and addresses are expected to decline in 2012.
- With the new funding model expected by mid-year in 2012, *Lawyer Referral* expects fewer participants in the program. Revenue from any percentage fees are not projected for 2012.

**All Program Fee revenue
is 1.2% less than the
2011 budget**

Other Revenue Matters ---

- ▶ A new source of revenue is \$50,000 which is the \$100.00 fee from 500 members who have completed the *New Lawyers Mentoring Training program*.
- ▶ The *grant from the PLF* for BarBooks declines from \$300,000 to \$200,000.
- ▶ To balance the 2012 budget requires *transferring the \$400,000 in reserves* that was included in the 2011 budget to revenue in the 2012 budget. Those reserves funds will not be needed in 2011 with an improved bottom line for 2011.

The reserves being reduced are the Capital Reserve (\$150,000), Contract legal fees (\$150,000), and the Landlord Contingency (\$100,000).

■ Investment Income

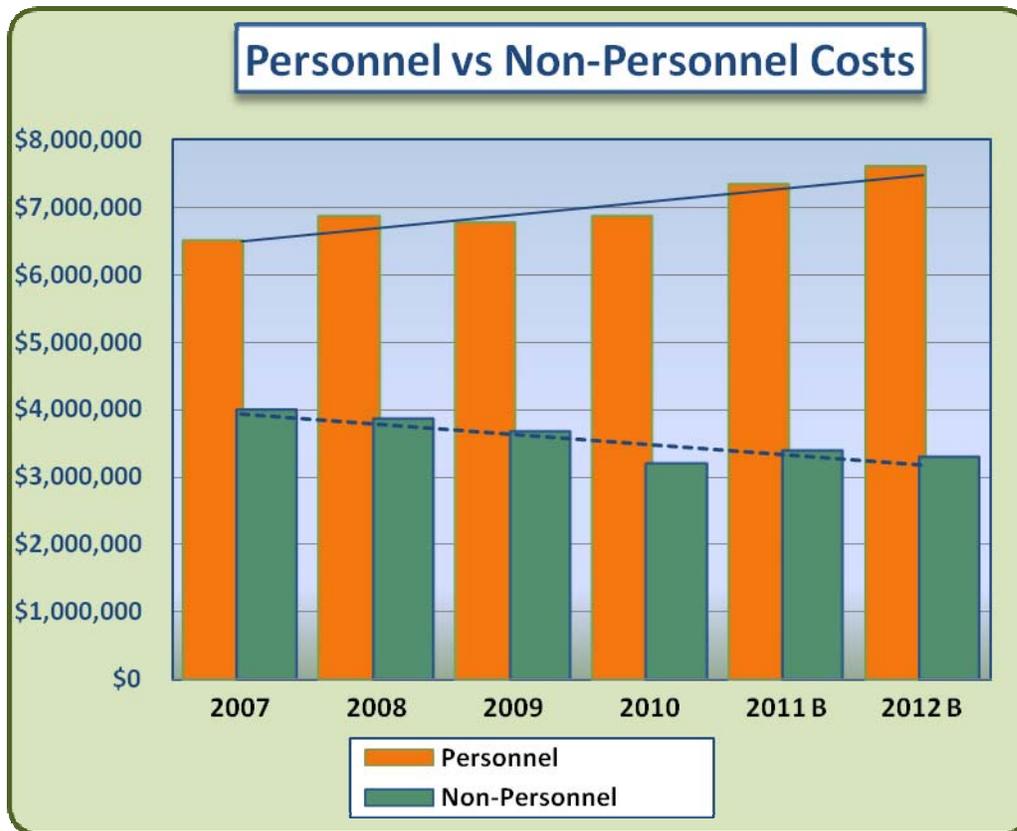
Investment and interest income is derived from the short-term investments (less than 12 month CDs, money market, and the LGIP) and the interest and dividends on the reserve funds managed by Becker Capital and Washington Trust Bank. With interest rates projected to remain low through mid 2013, the budget for these funds is \$107,700, which is similar to the 2011 budget. This amount is about a third to a half of this source of revenue just a few years ago.

■ Salaries, Taxes & Benefits

The salary pool in the 2012 budget is 2% as recommended by the Budget & Finance Committee at the August 26 meeting.

The overall increase in salaries, taxes, and benefits over the 2011 budget is 3.6%. The majority of this increase is driven by the higher PERS rates, but the overall Taxes & Benefit rate declines to 37.3% (from 39% in the Executive Summary budget). If there was no increase in the salary pool in 2012, personnel costs would decline \$185,000.

The chart below shows the trending changes in the cost of operations in the bar's budget. Not surprising, personnel costs have consistently risen (an average of 3.3% over the five years, but non-personnel costs have consistently declined.



■ Direct Program and General & Administrative Expenses

These non-personnel costs drop \$73,053 from the 2011 budget. The chart above compares the budgets for 2011 and 2012, so the real change is not known yet.

The reasons for the decline in these costs have been stated in previous financial reports. The primary reason also fits the bar's sustainability objectives by printing far less and the increasing use of electronic transmission of information. Hand in hand with that is the substantive decline in postage and the related costs.

... The only new added cost is \$18,000 for funding the next economic survey.

Indirect Costs (ICA, aka overhead) increased from 20% to 22% of the budget in 2012. That increase is almost entirely due to personnel cost increases that are a part of the ICA.

3

PROGRAM, POLICY, AND OPERATIONAL CONSIDERATIONS FOR 2012

The following is a list of continuation of funding from 2011 or changes to the 2011 budget. These are the same items and amounts included in the Executive Summary budgets.

◆ Carryover Activities from Prior Budgets

These items have been in the budget in recent years, some for several years.

1. *Grant to Campaign for Equal Justice - \$45,000*

The first commitment of \$50,000 was made in 2001. For 2007 through 2011 the grant was \$45,000.

2. *Grant to Classroom Law Project - \$20,000*

The first commitment of \$20,000 was made in 1999, and has been that amount every year except 2006 when the grant was reduced to \$10,000.

ACTION ITEM:

With the further review of the budget, it was discovered that in addition to the \$20,000 granted to the Classroom Law Project, the bar historically has been asked to help with administrative costs of various CLP events, and the bar's budget has included those costs. In this draft of the 2012 budget, \$3,250 is included for printing and refreshments for mock trial events. Additionally, \$1,000 to \$1,500 is included for the cost of sponsoring a table at the CLP Legal Citizen of the Year Awards Dinner.

Should these additional costs continue to be included in the bar's budget?

3. *Council on Court Procedures - \$4,000*

The bar has committed \$4,000 per year since 1994.

4. *Online Legal Research Library - \$110,970*

The bar's three-year contract with Fastcase ends in September 2012. The contract can renew on an annual basis unless it is renegotiated. An amount is included in the 2012 budget for a research library for members, but this inclusion makes no decision on which library is offered by the bar.

5. *Senior Lawyer Task Force – Placeholder amount of \$10,000*

The 2011 budget includes funding for this task force with a placeholder amount of \$10,000. To date, no funds have been expended.

6. Remote Communications Task Force – Placeholder amount of \$10,000

The 2011 budget includes funding for this task force with a placeholder amount of \$10,000. To date, no funds have been expended.

◆ New Programs/ Activities

There is only one significant new item in the 2012 budget.

ACTION ITEM:

7. Economic Survey - \$18,000

An economic survey has been completed every four or five years since 1989. Following the same format as the last four surveys, a one-page questionnaire would be sent to one-third of all active members after April 15, 2012. For the sake of cost and ease of compilation it is expected the survey will be sent via email.

4 FANNO CREEK PLACE

The 2011 budget for Fanno Creek Place (*page 2*) and the Funds Available forecast (*page 3*) have been amended from its original budget to incorporate the changes in the leases and operation costs of the bar center in the first half of 2011.



- The bar receives a full year's rent from the PLF, Joffe Medi-Center, and Zip Realty.
- Of the currently vacant 4,000 s.f. on the first floor, the budget includes new tenants paying rent by July 1. This is three months later than the previous budget projection, but there is no empirical data that tenants will be found by that date; rather is a reasonable forecast when tenants will be available with the build-out of the vacant space.

The expected 6-month revenue for this space is \$44,895.

- All costs are expected to be approximately \$111,000 less than 2011. The primary reasons are: no management fee to an outside party; no overage of the operating costs at the former PLF space; lower interest expense; and slightly lower building operating costs.
- After interest expense, the largest expense, depreciation, is a non-cash expense of \$505,800 (*line 71*).
- The net expense is \$715,664 (*line 79*) and the cash flow is a negative \$410,987 (*line 92*), both of which are in line with the forecasts leading to the development of the building and slightly less than the forecasts made with the 2011 budget.

5 FIVE-YEAR FORECAST

This version of the 2012 budget and assumptions and trends for the next five years lead to the following:



- Including the bar's Net Operating Revenue and the FCP Net Expense, the total net expense in 2012 is \$516,143 on the accrual basis (*line 136*).
- Converting to the cash basis, there is a positive cash flow of \$253,234 (*line 117*) and the funds available exceed the amount required in the bar's reserves. The positive cash flow is caused in part by removing the large non-cash expense of depreciation and fewer capital purchases in 2012, and assuming no dramatic declines in the investment portfolio.
- If an active member fee increase of \$50.00 is included in 2013 (as indicated on the forecast), \$720,000 in additional fee revenue is added to the budget.
 - ... a fee increase of \$60.00 raises an additional \$864,000;
 - ... if there is no fee increase in 2013, the operating deficit could be as high as \$446,000.
- There is no change in programs or activities from the existing in the forecasts.
- There is little change in revenue from Lawyer Referral in the first years of the new funding model. If the percentage fee program is implemented in mid 2012, the forecast is for this new source of revenue to show results beginning in 2013 and the program to break-even by 2016. Those forecasts are based on expectations from data from other bar associations.
- With this 2012 budget and five-year forecast, the bar could experience a net operating revenue through the next five years and remain above the level of the operating and capital reserve requirements.
- PLF management does not expect an increase in the PLF assessment in 2012, but probably an increase in 2013.
- The forecast includes three or six month vacancies in Fanno Creek Place within the five-year period.

6 RESERVES, FUND BALANCES, AND OTHER CONTINGENCY FUNDS

The two reserves connected to the operating budget are the Operating Reserve and the Capital Reserve. Based on this version of the 2012 budget, the bar will have funds in excess of those reserve requirements (both are \$500,000).

All other reserves, fund balances, and contingencies are not factored into this budget summary and forecasts. They are:

Restricted Fund Balances

- Affirmative Action Program (AAP)
- Client Security Fund (CSF)

BOG Controlled Fund Balances:

- Legal Services
- LRAP
- Sections

Contingencies Established by the BOG:

- Contract legal fees
- Landlord
- PERS

As long as the investment portfolio continues near its current value, these reserves, funds, and contingencies will be fully funded.

Both the Affirmative Action Program and the Client Security Fund project a deficit budget in 2012. The AAP has a high fund balance beginning in 2011 (\$120,293) and intends to use some of the funds in the next two years. The fund balance of the CSF depends on the amount of claims paid. So far in 2011 the claims are well below the \$225,000 budget, but that could change with existing claims under consideration.

7 FINANCIAL ISSUES TO FACE IN 2013 AND BEYOND

A net operating revenue of \$199,521 in 2012 is encouraging, and allows reconsideration of the need for all \$400,000 of reserves transferred to operating revenue. It makes the 2012 budget very manageable – but what about 2013 and beyond?

Below are a number of issues for the Committee and board to consider - some the bar can control with specific actions or plans, and some depend on factors not controllable by the bar.

1. Should there be an **active member fee** increase in 2013? If so, how much? \$50.00? \$60.00?
2. Does the board risk **using more reserves** to balance future budgets? This could be an option if the investment portfolio increases beyond current expectations.
3. Can the new **Lawyer Referral funding model** generate a growing sum of revenue and create enough revenue that it breaks even by 2016?
4. Should the **inactive member fee** be increased in 2013 or a future year? The last inactive fee increase was from \$80.00 to \$110.00 in 2002.
5. Should the **Affirmative Action Program assessment be increased** in 2014 or a future year, or should the program be incorporated into the bar's general fund?
6. Should the **Client Security Fund assessment be increased** in a future year? This change is always dictated by the amount of claims paid.
7. Will the **investment portfolio** continue to show steady growth in income and market value? The forecast includes a modest 3.5% average annual market value increase.

8. Will the current and the newly developed **space for leases** attain the occupancy and revenue levels in the forecasts? Lengthy vacancies only will drain the landlord contingency quickly.
9. Should access to **BarBooks** be available only to those members willing to pay an annual subscription? This would convert BarBooks from a free all-member benefit to a pay for service.
10. Can **CLE Seminars** revenue increase – or at least not decline as it has the past few years?
11. With declining non-dues revenue, how can **future new programs** be funded?
12. What other sources for **non-dues revenue** should be identified?
13. What should be the **salary pool** be in 2013?
14. Should **costs (personnel, program, and/or administrative)** be reduced by a certain percent, or specific activities or costs identified for reduction or elimination?

8

ACTION ITEMS FOR THE 2012 BUDGET

ACTION to be taken on the 2012 budget. The specific points listed are notable changes from the 2011 budget, or are new matters from the previous report.

- a. Should the 2012 Budget include \$18,000 for an economic survey of the membership?
- b. Should the bar continue to pay the additional costs related to Classroom Law Project events in addition to the usual grant?
- c. With the higher net operating revenue, should the amount transferred from the reserves be lowered from the budgeted \$400,000?
- d. Other action items?
- e. Action on the 2012 budget as presented in this report.

OREGON STATE BAR

2012 Budget Summary by Program

<i>Department / Program</i>	<i>Revenues</i>	<i>Sal & Benefits</i>	<i>Direct Program</i>	<i>Gen & Admin</i>	<i>Total Expense</i>	<i>Indirect Costs</i>	<i>Net Revenue</i>
Admissions	\$817,013	\$329,572	\$288,370	\$22,725	\$640,667	\$144,560	\$31,785
Bulletin	\$572,314	\$184,300	\$303,715	\$6,089	\$494,104	\$91,927	(\$13,717)
CLE Seminars	\$1,367,840	\$476,200	\$539,155	\$25,099	\$1,040,454	\$374,743	(\$47,357)
Client Assistance Office	\$0	\$511,700	\$500	\$19,656	\$531,856	\$140,437	(\$672,293)
Communications	\$13,100	\$374,600	\$36,100	\$6,399	\$417,099	\$96,050	(\$500,049)
Disciplinary Counsel	\$69,500	\$1,588,491	\$110,550	\$72,926	\$1,771,966	\$435,622	(\$2,138,088)
General Counsel	\$2,500	\$358,700	\$67,000	\$17,040	\$442,740	\$84,165	(\$524,405)
Governance (BOG)	\$0	\$338,200	\$160,650	\$29,774	\$528,624	\$71,067	(\$599,691)
Legal Publications	\$722,700	\$635,000	\$53,165	\$23,715	\$711,880	\$274,083	(\$263,263)
Loan Repayment Assistance Pro	\$74,500	\$0	\$95,000	\$0	\$95,000	\$0	(\$20,500)
MCLE	\$305,200	\$155,643	\$1,200	\$14,889	\$171,732	\$71,310	\$62,159
Member Services	\$0	\$192,924	\$23,375	\$20,198	\$236,497	\$98,233	(\$334,730)
New Lawyer Mentoring Program	\$50,000	\$128,900	\$4,150	\$400	\$133,450	\$41,719	(\$125,169)
New Lawyers Division	\$4,000	\$58,568	\$78,300	\$10,280	\$147,148	\$39,778	(\$182,926)
Production Services	\$132,200	\$74,600	\$71,950	\$1,775	\$148,325	\$66,216	(\$82,341)
Public Affairs	\$0	\$434,900	\$26,200	\$32,192	\$493,292	\$103,569	(\$596,861)
Referral & Information Services	\$124,200	\$322,969	\$33,500	\$12,562	\$369,031	\$150,382	(\$395,213)
Special Projects	\$0	\$8,700	\$205,170	\$350	\$214,220	\$0	(\$214,220)
TOTAL PROGRAM	\$4,255,067	\$6,173,966	\$2,098,050	\$316,069	\$8,588,085	\$2,283,861	(\$6,616,879)
ALLOCATIONS:							
Finance & Operations	\$6,841,400	\$1,411,300	\$1,027,905	\$82,067	\$2,521,272	(\$2,227,522)	\$6,547,650
Less: Dept Charges/Offsets			(\$293,750)		(\$293,750)		\$293,750
Oregon State Bar Center	\$0	\$0	\$32,560	\$4,970	\$37,530	(\$37,530)	\$0
Contingency			\$25,000		\$25,000		(\$25,000)
TOTAL OPERATIONS	\$11,096,467	\$7,585,266	\$2,889,765	\$403,106	\$10,878,137	\$18,809	\$199,521
Fanno Creek Place	\$775,181	\$115,500	\$1,512,944	\$22,860	\$1,651,304	(\$160,459)	(\$715,664)
TOTAL GENERAL FUND	\$11,871,648	\$7,700,766	\$4,402,709	\$425,966	\$12,529,441	(\$141,650)	(\$516,144)
DESIGNATED FUNDS:							
Affirmative Action Program	\$480,300	\$268,500	\$176,350	\$21,429	\$466,279	\$75,676	(\$61,655)
Client Security Fund	\$235,600	\$38,000	\$203,800	\$3,766	\$245,566	\$13,340	(\$23,306)
Legal Services	\$6,055,000	\$84,500	\$5,937,000	\$7,642	\$6,029,142	\$52,634	(\$26,776)
TOTAL ALL FUNDS	\$18,642,548	\$8,091,766	\$10,719,859	\$458,803	\$19,270,428	\$0	(\$627,881)

Exhibit A

OREGON STATE BAR

Budget Summary by Program

2011

<i>Department / Program</i>	<i>Revenues</i>	<i>Sal & Benefits</i>	<i>Direct Program</i>	<i>Gen & Admin</i>	<i>Total Expense</i>	<i>Indirect Costs</i>	<i>Net Revenue</i>
Admissions	\$818,050	\$330,100	\$274,900	\$39,980	\$644,980	\$157,092	\$15,978
Bulletin	\$555,280	\$177,400	\$308,108	\$4,292	\$489,800	\$46,779	\$18,701
CLE Seminars	\$1,394,080	\$490,347	\$582,630	\$31,251	\$1,104,228	\$396,457	(\$106,605)
Client Assistance Office	\$0	\$493,600	\$1,000	\$18,690	\$513,290	\$116,152	(\$629,442)
Communications	\$16,450	\$477,000	\$46,000	\$5,798	\$528,798	\$117,155	(\$629,503)
Disciplinary Counsel	\$80,000	\$1,569,186	\$113,100	\$77,823	\$1,760,108	\$385,083	(\$2,065,191)
General Counsel	\$2,750	\$323,500	\$65,975	\$16,367	\$405,842	\$58,893	(\$461,985)
Governance (BOG)	\$0	\$357,200	\$165,700	\$29,066	\$551,966	\$79,483	(\$631,449)
Legal Publications	\$873,137	\$618,200	\$55,216	\$24,094	\$697,510	\$328,565	(\$152,938)
Loan Repayment Assistance Pro	\$72,600	\$0	\$90,000	\$0	\$90,000	\$0	(\$17,400)
MCLE	\$292,000	\$148,430	\$1,100	\$14,236	\$163,766	\$54,928	\$73,306
Member Services	\$0	\$202,795	\$22,000	\$26,410	\$251,205	\$115,412	(\$366,617)
New Lawyers Division	\$4,000	\$68,400	\$77,800	\$10,780	\$156,980	\$26,211	(\$179,191)
Production Services	\$143,650	\$71,700	\$78,360	\$200	\$150,260	\$33,946	(\$40,556)
Public Affairs	\$0	\$420,100	\$30,500	\$33,453	\$484,053	\$68,720	(\$552,773)
Referral & Information Services	\$138,000	\$330,090	\$36,000	\$12,505	\$378,595	\$95,323	(\$335,918)
Special Projects	\$0	\$8,400	\$217,883	\$350	\$226,633	\$0	(\$226,633)
TOTAL PROGRAM	\$4,389,997	\$6,086,448	\$2,166,272	\$345,295	\$8,598,014	\$2,080,199	(\$6,288,216)
ALLOCATIONS:							
Finance & Operations	\$6,651,200	\$1,232,033	\$1,135,730	\$86,269	\$2,454,032	(\$1,980,382)	\$6,177,550
Less: Dept Charges/Offsets			(\$473,650)		(\$473,650)		\$473,650
Oregon State Bar Center	\$0	\$0	\$36,060	\$3,940	\$40,000	(\$40,000)	\$0
Contingency			\$25,000		\$25,000		(\$25,000)
TOTAL OPERATIONS	\$11,041,197	\$7,318,480	\$2,889,412	\$435,504	\$10,643,395	\$59,817	\$337,984
Fanno Creek Place	\$837,281	\$106,100	\$1,651,350	\$20,800	\$1,778,250	(\$158,429)	(\$782,540)
TOTAL GENERAL FUND	\$11,878,478	\$7,424,580	\$4,540,762	\$456,304	\$12,421,645	(\$98,612)	(\$444,556)
DESIGNATED FUNDS:							
Affirmative Action Program	\$496,211	\$240,300	\$195,040	\$19,069	\$454,409	\$60,527	(\$18,725)
Client Security Fund	\$228,600	\$32,200	\$226,900	\$1,572	\$260,672	\$12,942	(\$45,014)
Legal Services	\$6,032,500	\$81,300	\$5,944,500	\$5,483	\$6,031,283	\$25,143	(\$23,926)
TOTAL ALL FUNDS	\$18,635,789	\$7,778,380	\$10,907,202	\$482,428	\$19,168,009	\$0	(\$532,221)

Exhibit B

	A	B	C	D	E	F	G	H	I	J	
1	2012 Budget		Oregon State Bar					Five-Year Forecast			
2	Operations										
3	November-11										
4	Proposed Fee increase for Year →		\$0	\$50	\$0	\$0	\$0	\$0	\$0	\$0	
5	Operations		BUDGET	BUDGET	F O R E C A S T						
6			2011	2012	2013	2014	2015	2016	2017		
7	REVENUE										
8	MEMBER FEES										
9	General Fund	\$6,778,300	\$6,959,700	\$7,116,000	\$8,032,000	\$8,213,000	\$8,418,000	\$8,607,000			
10	Active (\$50); Inactive (\$0) Increase			720,000							
11	% of Total Revenue		63.7%	62.7%	68.0%	68.2%	67.9%	67.1%	67.3%		
12	PROGRAM FEES:										
13	CLE Seminars	1,394,080	1,367,840	1,367,840	1,381,518	1,395,334	1,409,287	1,430,426			
14	Legal Publications	167,137	122,700	50,000	20,000	20,000	20,000	20,000			
15	Reallocation of Reserves	0	400,000	0	0	0	0	0			
16	PLF Contribution	300,000	200,000	100,000	0	0	0	0			
17	All Other Programs	1,866,480	1,902,427	1,940,500	1,979,300	2,018,900	2,059,300	2,084,000			
18	New RIS Model				55,000	125,000	170,000	330,000	330,000		
19	Total Program Fees	3,727,697	3,992,967	3,513,340	3,505,818	3,604,234	3,818,587	3,864,426			
20											
21	OTHER INCOME										
22	Investment Income	113,300	107,700	157,200	216,500	263,400	282,100	301,600			
23	Other	15,900	36,100	17,100	17,800	18,500	19,200	20,000			
24	TOTAL REVENUE	10,635,197	11,096,467	11,523,640	11,772,118	12,099,134	12,537,887	12,793,026			
25											
26	EXPENDITURES										
27	SALARIES & BENEFITS										
28	Salaries - Regular (2% Pool)	5,365,541	5,497,400	5,654,100	5,815,300	5,981,100	6,151,500	6,326,700			
29	Benefits - Regular	1,866,300	2,051,700	2,180,500	2,329,900	2,426,200	2,556,900	2,693,000			
30	Salaries - Temp	78,763	33,424	40,000	50,000	40,000	50,000	40,000			
31	Taxes - Temp	7,876	2,742	3,600	4,500	3,600	4,500	3,600			
32	Total Salaries & Benefits	7,318,480	7,585,266	7,878,200	8,199,700	8,450,900	8,762,900	9,063,300			
33	% of Total Revenue		68.8%	68.4%	68.4%	69.7%	69.8%	69.9%	70.8%		
34	DIRECT PROGRAM:										
35	CLE Seminars	582,630	539,155	544,547	549,992	558,242	563,824	572,282			
36	Legal Publications	55,216	53,165	37,000	39,000	40,000	41,000	42,000			
37	All Other Programs	2,220,566	2,272,445	2,329,256	2,375,841	2,435,237	2,508,294	2,583,543			
38	Total Direct Program	2,858,412	2,864,765	2,910,803	2,964,833	3,033,479	3,113,119	3,197,825			
39											
40	GENERAL & ADMIN	495,321	421,915	432,463	443,274	456,573	470,270	484,378			
41											
42	CONTINGENCY	25,000	25,000	25,000	25,000	25,000	25,000	25,000			
43	TOTAL EXPENSES	10,697,213	10,896,946	11,246,466	11,632,808	11,965,952	12,371,289	12,770,503			
44	NET REVENUE/(EXPENSE) - OPERATIONS	(\$62,016)	\$199,521	\$277,174	\$139,311	\$133,182	\$166,598	\$22,523			
45											

	A	B	C	D	E	F	G	H	I	J
46	2012 Budget								Five-Year Forecast	
47	Fanno Creek Place									
48										
49	Fanno Creek Place		BUDGET	BUDGET	F O R E C A S T					
50			2011	2012	2013	2014	2015	2016	2017	
51	REVENUE									
52	RENTAL INCOME (2011 revised)									
53	PLF	\$490,903	\$497,346	\$504,807	\$512,379	\$520,065	\$527,865	\$535,783		
54	Opus Master Lease (Termination Fee)	140,645								
55	20/20 Institute (incl Termination Fee)	245,736								
56	First Floor Tenant - Zip Realty	49,165	50,640	52,160	28,460	48,200	49,200	50,200		
57	First Floor Tenant - Joffe	31,579	126,789	128,683	130,599	132,580	138,144	140,900		
58	New Tenants (three)		44,895	91,800	93,200	69,300	94,600	96,000		
59	OLF	26,904	27,711	28,500	29,400	30,300	31,200	32,100		
60	Meeting Rooms	21,000	25,000	21,000	21,000	24,000	24,000	24,000		
61	Operating Expense Pass-through	0	0	3,000	3,100	3,200	3,300	3,400		
62	INTEREST	3,100	2,800	3,000	4,000	5,000	3,000	4,000		
63										
64	TOTAL REVENUE	1,009,032	775,181	832,950	822,138	832,645	871,309	886,383		
65										
66	EXPENDITURES									
67	OPERATING EXPENSE									
68	Salaries & Benefits	106,200	115,500	119,000	122,600	126,300	130,100	134,000		
69	Opus Management Fee	4,085								
70	Operations	323,993	293,819	302,600	311,700	321,100	330,700	340,600		
71	Depreciation	520,600	505,800	510,800	510,800	510,800	520,800	520,800		
72	Other	30,200	3,000	1,000	1,000	5,000	1,000	1,000		
73	DEBT SERVICE									
74	Interest	744,850	733,185	720,901	707,655	693,699	678,884	663,158		
75	ICA to Operations	(158,429)	(160,459)	(160,459)	(164,500)	(164,500)	(164,500)	(164,500)		
76										
77	TOTAL EXPENSES	1,571,499	1,490,845	1,493,842	1,489,255	1,492,399	1,496,984	1,495,058		
78										
79	NET REVENUE/(EXPENSE) - FC Place	(\$562,467)	(\$715,664)	(\$660,892)	(\$667,117)	(\$659,754)	(\$625,675)	(\$608,675)		
80										
81	ACCRUAL TO CASH ADJUSTMENT									
82	SOURCES OF FUNDS									
83	Depreciation Expense	520,600	505,800	510,800	510,800	510,800	520,800	520,800		
84	TI Allowance from Opus	34,155								
85	Landlord Contingency Fund	230,000					200,000			
86	Loan Proceeds									
87	USES OF FUNDS									
88	Assign PLF Subtenants' Leases (Net)	(85,463)								
89	TI's - First and Third Floors	(230,000)								
90	Principal Pmts - Mortgage	(189,458)	(201,123)	(213,507)	(226,653)	(240,609)	(255,424)	(271,150)		
91										
92	NET CASH FLOW - FC Place	(\$282,633)	(\$410,987)	(\$363,599)	(\$382,970)	(\$389,563)	(\$160,299)	(\$359,025)		
93										

	A	B	C	D	E	F	G	H	I	J	
94	2012 Budget						Five-Year Forecast				
95	Funds Available/Reserve Requirement										
96											
97			BUDGET	BUDGET	F O R E C A S T						
98			2011	2012	2013	2014	2015	2016	2017		
99	FUNDS AVAILABLE										
100	Funds Available - Beginning of Year		\$ 1,376,000	\$1,468,351	\$1,721,585	\$1,990,849	\$1,983,389	\$1,868,108	\$1,872,507		
101	SOURCES OF FUNDS										
102	Net Revenue/(Expense) from operations		(62,016)	199,521	277,174	139,311	133,182	166,598	22,523		
103	Depreciation Expense		271,300	283,700	289,400	295,200	301,100	304,100	307,100		
104	Provision for Bad Debts		25,000	25,000	25,000	25,000	25,000	25,000	25,000		
105	Increase in Investment Portfolio MV		145,000	71,000	77,000	90,000	0	117,000	140,000		
106	Allocation of PERS Reserve		111,000	222,000	112,288						
107	Projected HIGHER Net Operating Revenue		131,000								
108	USES OF FUNDS										
109	Capital Expenditures		(111,400)	(62,700)	(70,000)	(80,000)	(80,000)	(120,000)	(80,000)		
110	Capital Reserve Expenditures		(17,800)	(21,500)	(25,000)	(40,000)	(50,000)	(75,000)	(50,000)		
111	Capital Expenditures - New Building		(18,000)	(50,000)	(50,000)	(50,000)	(50,000)	(50,000)	(50,000)		
112	Capital Reserve Expenditures - New Building							(200,000)			
113	Landlord Contingency Interest		(3,100)	(2,800)	(3,000)	(4,000)	(5,000)	(3,000)	(4,000)		
114	Net Cash Flow - Fanno Creek Place		(282,633)	(410,987)	(363,599)	(382,970)	(389,563)	(160,299)	(359,025)		
115	Addition to PERS Reserve		(96,000)								
116	Projected LOWER Net Operating Revenue		0								
117	CHANGE IN FUNDS AVAILABLE		92,351	253,234	269,263	(7,459)	(115,281)	4,399	(48,402)		
118											
119	Funds Available - End of Year		\$1,468,351	\$1,721,585	\$1,990,849	\$1,983,389	\$1,868,108	\$1,872,507	\$1,824,106		
120											
121	RESERVE REQUIREMENT										
122	Operating Reserve		500,000	500,000	500,000	500,000	500,000	500,000	500,000		
123	Capital Reserve		500,000	500,000	500,000	525,000	550,000	575,000	600,000		
124											
125	Total - Reserve Requirement		\$1,000,000	\$1,000,000	\$1,000,000	\$1,025,000	\$1,050,000	\$1,075,000	\$1,100,000		
126											
127	RESERVE VARIANCE										
128	Over/(Under) Reserve Requirement		\$468,351	\$721,585	\$990,849	\$958,389	\$818,108	\$797,507	\$724,106		
129											
130											
131	Reconciliation		BUDGET	BUDGET	F O R E C A S T						
132	Cash to Accrual		2011	2012	2013	2014	2015	2016	2017		
133	NET REVENUE/(EXPENSE) - Operations		(62,016)	199,521	277,174	139,311	133,182	166,598	22,523		
134	NET REVENUE/(EXPENSE) - FC Place		(562,467)	(715,664)	(660,892)	(667,117)	(659,754)	(625,675)	(608,675)		
135											
136	NET REVENUE/(EXPENSE) - OSB		(\$624,483)	(\$516,143)	(\$383,718)	(\$527,806)	(\$526,572)	(\$459,077)	(\$586,152)		
137											

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: November 19, 2011
Memo Date: October 24, 2011
From: Gina Johnnie, Member Services Committee Chair
Re: 2012 BOG and HOD Election Dates

Action Recommended

Approve the following proposed election dates as required by ORS 9.040 and 9.152 and approved by the Member Services Committee.

Background

ORS 9.040, 9.042 and 9.152 as well as OSB Bylaw 9.1 and 5.1 outline the following dates for bar elections.

OSB and ABA HOD Election

Candidate statements due	Friday, March 16, 2012
Ballots sent	Thursday, March 29, 2012
Election (ballots due)	Monday, April 16, 2012 (3 rd Monday in April)
Delegates assume office	Tuesday, April 17, 2012

BOG Election

Candidate statements due	Tuesday, May 8, 2012 <i>(160 days before election)</i>
Challenges due	Thursday, June 7, 2012 <i>(30 days from 5/8)</i>
BOG decision on challenges	Thursday, June 21, 2012 <i>(14 days from 6/7)</i>
Petition for SC review	Friday, July 6, 2012 <i>(15 days from 6/21)</i>
Final SC decision	Friday, September 21, 2012 <i>(10 days before ballots are sent)</i>
Ballots sent	October 1, 2012 <i>(1st Monday in October)</i>
Election	October 15, 2012 <i>(3rd Monday in October)</i>
Board Members Assume Office	January 1, 2013

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: November 19, 2011
From: Mitzi Naucler, Chair, Policy & Governance Committee
Re: Amendments to OSB Bylaws Article 20

Action Recommended

The Policy & Governance Committee recommends that the Board adopt the changes to Article 20 of the OSB Bylaws suggested by the UPL Task Force. The Committee also recommends that the BOG waive the one meeting notice requirement for amending the bylaws and adopt the changes immediately.

Background

At its August 26, 2011 meeting, the Board of Governors accepted the UPL Task Force Report and adopted its seven recommendations. Four of the Task Force's recommendations require amendments to the OSB Bylaws:

- #1. Allow the Unlawful Practice of Law Committee to issue advisory opinions in order to provide guidance about what constitutes the unlawful practice of law;
- #3. Eliminate the admonition letter and replace it with a warning letter;
- #6. Expand the Oregon State Bar website information relating to the unlawful practice of law, and;
- #7. Expand public outreach and education.

The Policy and Governance Committee has reviewed the proposed amendments to OSB Bylaw 20 and believes they will work to implement the Task Force recommendations.

Subsection 20.700 Investigation

On receiving a complaint of unlawful practice of law meeting the requirements of Section 20.2 of the Bar's Bylaws, the committee chairperson will assign the complaint a case number and assign it to a committee member for investigation. The committee member will review the documentation accompanying the complaint and will contact the complainant, affected parties and witnesses. The committee member may not employ any methods in his or her investigation that do not comply with the Rules of Professional Conduct. Within 60 days after receiving a complaint of unlawful practice of law, the investigator will submit a written report to the Committee with an analysis of the relevant facts and law and a recommendation for disposition findings-in-writing. The chairperson of the Committee may grant extensions of time to submit a report of investigation as the chairperson deems reasonable. ~~The investigator's final report must contain proposed findings and a recommended disposition.~~

~~Subsection 20.701 Findings~~

~~The accused did not commit the unlawful practice of law, the accused committed the unlawful practice or the Committee was unable to obtain sufficient information to make an informed recommendation without further assistance from a person who is not a member of the Committee or from an agency other than the Bar.~~

Subsection ~~20.702~~ 20.701 Dispositions

Actions to be taken at the discretion of the committee:

(a) Dismissal without prejudice.

This disposition is appropriate when the accused ~~is found~~ did not ~~to have~~ committed the unlawful practice of law.

~~Actions to be taken at the discretion of the committee:~~

(b) Notice Letter.

This disposition is appropriate when insufficient facts exist to establish that the accused has committed the unlawful practice of law, but the accused's activities are such that the Committee believes it appropriate to notify the accused of the provisions of ORS 9.160

(c) ~~Admonition letter~~ Cautionary Letter.

~~This disposition is appropriate when the accused is found to have committed the unlawful practice of law, but the practice is neither ongoing nor likely to recur.~~

This disposition is appropriate when the Committee asserts that the accused is engaged in activities involving the unlawful practice of law, but either 1) the practice is neither ongoing nor likely to recur, or 2) the Committee determines that the matter is inappropriate for prosecution.

(d) Resolution by agreement.

This disposition is appropriate when the Committee asserts that the accused ~~is found to have~~ committed the unlawful practice of law, but is willing to enter into an agreement to discontinue the unlawful practice of law. The agreement is subject to and does not become effective until approved by the Board of Governors.

(e) Referral to Board of Governors for prosecution under ORS 9.166.

This disposition is appropriate when the Committee asserts that the accused ~~is found to have~~ committed the unlawful practice of law, the practice is ongoing or likely to recur and the accused is unwilling to enter an agreement to discontinue the unlawful practice of law; or, for any other reason, the Committee concludes that prosecution under ORS 9.166 is warranted.

(f) Appointment of Outside Investigator or Referral to Other Agency.

This disposition is appropriate when the Committee is unable to obtain sufficient information to make an informed recommendation ~~and or when the Committee otherwise~~ elects to ~~continue with the investigation, refer the matter to another investigator or agency.~~

(g) Referral to Bar Counsel

When a complaint of unlawful practice of law involves an accused against whom the Board has already authorized prosecution, the Committee may refer the matter directly to bar counsel without obtaining prior authorization from the Board. Bar counsel may ask the Committee to conduct an investigation into the new complaint and has discretion to determine whether to include the facts alleged in the new complaint in the prosecution against the accused.

Subsection ~~20.703~~ 20.702 Actions of Unlawful Practice of Law Committee

The Committee will consider reports of investigations at its first meeting after submission of a report. On a vote of a majority of members, a quorum being present, the Committee must: Adopt the report as written or modify the

report or continue the matter for further investigation and revisions to the report. The committee chairperson must document in writing the Committee's final findings and disposition of each complaint. The chairperson or his or her delegate, must, in writing, inform the complainant and the accused of dismissals without prejudice. ~~An admonition~~ **A cautionary** letter authorized by the Committee gives notice to the accused that the Committee ~~found has~~ evidence ~~of a violation of ORS 9.160 that the accused is engaged in activities that the Committee maintains involve the unlawful practice of law. The cautionary letter may provide information on the limits of the law and may demand that the accused cease activities that the Committee asserts constitute the unlawful practice of law. The letter further advises an accused that the accused may, in writing, refuse to accept the admonition or request the Committee to reconsider its conclusion that ORS 9.160 was violated. If an accused rejects an admonition or requests reconsideration, the Committee may dismiss the complaint without prejudice, issue a notice letter, issue a revised admonition letter acceptable to the accused or refer the complaint to the Board for prosecution under ORS 9.166.~~ On a vote of a majority of members of the Committee, a quorum being present, a complaint of unlawful practice of law must be referred to the Board for authorization to file an action under ORS 9.166.

Subsection ~~20.704~~ 20.703 Board of Governors

On authorization by the Board to pursue an action under ORS 9.166, the Bar may obtain counsel to prosecute the action and will report periodically to the Committee and Board on the status of the litigation. Counsel for the Bar may settle unlawful practice litigation before or after the filing of a circuit court complaint by way of agreement with the accused to discontinue the unlawful practice of law. The agreement is subject to and does not become effective until approved by the Board. To the extent necessary, the Committee will assist counsel with preparing and continuing investigation of matters approved for action under ORS 9.166.

Subsection ~~20.705~~ 20.704 Prevention and Education

The unlawful practice of law statutes cannot be adequately enforced by investigation and prosecution alone. Prevention of unlawful practice of law is also a focus of committee activity. Thus, in addition to the disposition options outlined above, the Committee may engage in public outreach and education to prevent and educate the public about the unlawful practice of law. Also, when the Committee becomes aware of a person or entity engaged in activities likely to involve the unlawful practice of law based on the Committee's experience, the Committee may send a ~~cautionary~~ letter to the person or entity regarding the limits of the law on the provision of legal services.

The committee may also, in its discretion, write informal advisory opinions on questions relating to what activities may constitute the practice of law. Such opinions are not binding, but are intended only to provide general guidance to lawyers and members of the public about activities that may be of concern to or investigated by the committee. All such opinions must be approved by a majority vote and submitted to the Board of Governors for final approval prior to publication.

Subsection ~~20.706~~ 20.705 Records

When the investigation of a complaint is concluded, the investigator must deliver all records and documents created or obtained in the investigation to the Bar.

Subsection ~~20.707~~ 20.706 Other Agencies

The Committee may refer to, cooperate with or consult other agencies whether federal, state or local having an interest in the subject matter of any complaint before the Committee or having information or resources that would benefit the Committee's investigation. Referral to, joint prosecution with or requests for information or investigation are appropriate under circumstances that include, but are not limited to the following:

(a) When the allegations concerning a claim of unlawful practice of law would also support or form a part of an activity prohibited by law, ordinance or statute; whether civil or criminal and recognized as a responsibility of the applicable federal, state or local agency.

(b) When the person accused of the unlawful practice of law or a person acting with the accused, is or has been the subject of an investigation, action, injunction or other similar review by a federal, state or local agency and the matter complained of relates directly or indirectly to the matter, person or activity reviewed or investigated.

(c) Whenever an agency, on review of the allegations before the Committee as to an accused, indicates a desire to pursue further investigation alone or in combination with the Bar.

(d) Whenever the agency has or is likely to have, information regarding the complaint, the accused or parties acting with the accused.

OREGON STATE BAR

Policy and Governance Committee Agenda

Meeting Date: August 26, 2011
From: Sylvia E. Stevens, Executive Director
Re: Mandatory Malpractice Coverage for All OSB Members

Action Recommended

Consider whether to recommend statutory or other change to require that all OSB members have malpractice coverage, regardless of the location of their principal office.

Background

Oregon is widely known as the only US jurisdiction that requires its members to carry professional liability (legal malpractice) insurance.¹ In fact, however, not all OSB members are subject to that requirement.

ORS 9.080 provides, in pertinent part:

9.080 Duties of board of governors; professional liability fund; quorum; status of employees of bar.

* * *

(2)(a) The board shall have the authority to require *all active members of the state bar engaged in the private practice of law whose principal offices are in Oregon* to carry professional liability insurance and shall be empowered, either by itself or in conjunction with other bar organizations, to do whatever is necessary and convenient to implement this provision, including the authority to own, organize and sponsor any insurance organization authorized under the laws of the State of Oregon and to establish a lawyer's professional liability fund. This fund shall pay, on behalf of active members of the state bar engaged in the private practice of law *whose principal offices are in Oregon*, all sums as may be provided under such plan which any such member shall become legally obligated to pay as money damages because of any claim made against such member as a result of any act or omission of such member in rendering or failing to render professional services for others in the member's capacity as an attorney or caused by any other person for whose acts or omissions the member is legally responsible.

* * *

(c) For the purposes of paragraph (a) of this subsection, *the principal office of an attorney is considered to be the location where the attorney engages in the private practice of law more than 50 percent of the time engaged in that practice*. In the case of an attorney in a branch office outside Oregon and the main office to which the branch office is connected is in Oregon, the principal office of the attorney is not considered to be in Oregon unless the attorney engages in the private practice of law in Oregon more than 50 percent of the time engaged in the private practice of law.

¹ The trend among jurisdictions that have rejected the mandatory malpractice model is to require lawyers to inform new clients whether they have professional liability coverage. Approximately 23 jurisdictions have adopted some kind of malpractice disclosure requirement.

The Bar's statutory authority to require professional liability insurance dates to 1973, but it wasn't until 1977 that the PLF was established.² While it is not clear from the historical record why the BOG chose to limit PLF coverage to OSB members who practiced principally in Oregon, there are several factors that likely played into that decision. In 1977 when the PLF was created, the vast majority of OSB members practiced in Oregon. Multi-state practice was rare and the barriers to holding multiple licenses were high. Moreover, the PLF was established as a pooled-risk program and the inclusion of OSB members who practiced principally outside of Oregon would have required increased premiums of all members.

There is also nothing in the records relating to the creation of the PLF to suggest that the BOG ever considered requiring OSB members whose principal offices were out of state to maintain some other kind of professional liability coverage. However, in 2002, Oregon adopted a rule permitting reciprocal admission between Oregon, Idaho, Utah and Washington. The rule required that all persons admitted under the rule had to maintain malpractice coverage through the PLF or through a "substantially equivalent" plan:

15.05 Admission of Attorneys Licensed to Practice Law in other Jurisdictions

* * *

(6) All applicants admitted to practice law pursuant to this rule shall obtain and maintain malpractice coverage from the Oregon State Bar Professional Liability Fund (PLF) as required by the rules and regulations of the fund. If an applicant is not required to maintain malpractice coverage through the PLF, the applicant shall obtain and maintain other malpractice coverage covering the applicant's law practice in Oregon which coverage shall be substantially equivalent to the Oregon State Bar Professional Liability Fund coverage plan.

The obligation was continued in the rule when expanded reciprocity went into effect in 2010.

In addition to ORS 9.080's mandate that in-state members have malpractice coverage, some non-members have the same requirement. Non-members who wish to appear *pro hac vice*³ in Oregon courts and administrative proceedings must show the existence of malpractice coverage substantially equivalent to the PLF plan:

3.170 ASSOCIATION OF OUT-OF-STATE COUNSEL (*PRO HAC VICE*)

* * *

(e) If the attorney will engage in the private practice of law in this state, provides a certificate of insurance covering the attorney's activities in this state and providing professional liability insurance substantially equivalent to the Oregon State Bar Professional Liability Fund plan.

² The transcript of the 1976 Annual Meeting contains a discussion of the malpractice "crisis" caused by increasing premiums, underwriters withdrawing from the Oregon market. As a result, a large proportion of Oregon lawyers had no professional liability insurance at the same time that societal recognition that professionals could be held responsible for their errors was on the rise. Several alternatives had been studied, including joining with other northwest bars to create a larger pool of insureds and creating a private self-insurance company based in Bermuda. Following that discussion, the membership authorized the BOG to proceed with creation of its own "retention fund" program that became the PLF.

³ A special admission "for this occasion only."

Local Rule 83-3 of the District Court for the District of Oregon imposes a similar requirement:

(a) Application for Special Admission Pro Hac Vice

Any attorney who is an active member in good standing of the bar of any United States court, or the highest court of any state, territory, or insular possession of the United States, may apply to be specially admitted pro hac vice in a particular case, provided he or she:

* * *

(3) Certifies professional liability insurance, or an equivalent financial responsibility, will apply and remain in force for the duration of the case, including any appeal proceedings.

On the agenda for the HOD's consideration in October is a resolution to amend RPC 5.5 to require out-of-state lawyers who provide legal services in connection with a proposed or pending arbitration in Oregon to register with the bar and certify that they either have malpractice coverage substantially equivalent to the PLF plan or that they have informed the client that they have no such coverage. Notwithstanding a task force's recommendation against imposing such a requirement, the BOG's support for the change was motivated largely by a desire to ensure that clients had the same protection they would enjoy with an Oregon lawyer.

If the proposed amendment to RPC 5.5 passes the HOD and is adopted by the Supreme Court, the only "gap" in the mandatory malpractice scheme will be out-of-state OSB members who were admitted by examination and non-members who provide legal services in Oregon on a temporary basis not connected with a court, administrative or arbitration proceeding. While the latter group might merit some examination in the future, the current interest is in expanding mandatory malpractice coverage to all OSB members.

There are currently 3,966 OSB members whose primary address is outside Oregon and who were admitted by examination.⁴ Bringing the active members in that group under the mandatory malpractice coverage umbrella would require amending ORS 9.080, which currently imposes the requirement only on those members whose principal offices are in Oregon. ORS 9.080 is not a particularly easy statute to navigate, so a fairly comprehensive amendment would be required. In so doing it will be important to limit the PLF coverage to the in-state members so as to avoid increasing the risk pool and the premiums necessary to cover that increased risk.

An amendment of ORS 9.080 could look like this:

9.080 Duties of board of governors; ~~professional liability fund; quorum; status of employees of bar.~~ (1) The state bar shall be governed by the board of governors, except as provided in ORS 9.136 to 9.155. The board is charged with the executive functions of the state bar and shall at all times direct its power to the advancement of the science of jurisprudence and the improvement of the administration of justice. It shall have the authority to adopt, alter, amend and repeal bylaws and to adopt new bylaws containing provisions for the regulation and management of the affairs of the state bar not

⁴ This figure includes active, inactive and pro bono members.

inconsistent with law. ~~It shall promote and encourage voluntary county or other local bar associations.~~

~~(2)(a) The board shall have the authority to require all active members of the state bar engaged in the private practice of law whose principal offices are in Oregon to carry professional liability insurance and shall be empowered, either by itself or in conjunction with other bar organizations, to do whatever is necessary and convenient to implement this provision, including the authority to own, organize and sponsor any insurance organization authorized under the laws of the State of Oregon and to establish a lawyer's professional liability fund. This fund shall pay, on behalf of active members of the state bar engaged in the private practice of law whose principal offices are in Oregon, all sums as may be provided under such plan which any such member shall become legally obligated to pay as money damages because of any claim made against such member as a result of any act or omission of such member in rendering or failing to render professional services for others in the member's capacity as an attorney or caused by any other person for whose acts or omissions the member is legally responsible. The board shall have the authority to assess each active member of the state bar engaged in the private practice of law whose principal office is in Oregon for contributions to such fund, to establish definitions of coverage to be provided by such fund and to retain or employ legal counsel to represent such fund and defend and control the defense against any covered claim made against such member. The board shall have the further authority to offer optional professional liability coverage on an underwritten basis above the minimum required coverage limits provided under such fund, either through such fund, through a separate fund or through any insurance organization authorized under the laws of the State of Oregon, and may do whatever is necessary and convenient to implement this provision. Any fund so established shall not be subject to the Insurance Code of the State of Oregon. Records of a claim against the fund are exempt from disclosure under ORS 192.410 to 192.505.~~

~~— (b) For purposes of paragraph (a) of this subsection, an attorney is not engaged in the private practice of law if the attorney is a full time employee of a corporation other than a corporation incorporated under ORS chapter 58, the state, an agency or department thereof, a county, city, special district or any other public or municipal corporation or any instrumentality thereof. However, an attorney who practices law outside of the attorney's full time employment is engaged in the private practice of law.~~

~~— (c) For the purposes of paragraph (a) of this subsection, the principal office of an attorney is considered to be the location where the attorney engages in the private practice of law more than 50 percent of the time engaged in that practice. In the case of an attorney in a branch office outside Oregon and the main office to which the branch office is connected is in Oregon, the principal office of the attorney is not considered to be in Oregon unless the attorney engages in the private practice of law in Oregon more than 50 percent of the time engaged in the private practice of law.~~

~~(3) The board may appoint such committees, officers and employees as it deems necessary or proper and fix and pay their compensation and necessary expenses. At any meeting of the board, two thirds of the total number of members then in office shall constitute a quorum. It shall promote and encourage voluntary county or other local bar associations.~~

(3) At any meeting of the board, two-thirds of the total number of members then in office shall constitute a quorum.

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(4) Except as provided in this subsection, an employee of the state bar shall not be considered an "employee" as the term is defined in the public employees' retirement laws. However, an employee of the state bar may, at the option of the employee, for the purpose of becoming a member of the Public Employees Retirement System, be considered an "employee" as the term is defined in the public employees' retirement laws. The option, once exercised by written notification directed to the Public Employees Retirement Board, may not be revoked subsequently, except as may otherwise be provided by law. Upon receipt of such notification by the Public Employees Retirement Board, an employee of the state bar who would otherwise, but for the exemption provided in this subsection, be considered an "employee," as the term is defined in the public employees' retirement laws, shall be so considered. The state bar and its employees shall be exempt from the provisions of the State Personnel Relations Law. No member of the state bar shall be considered an "employee" as the term is defined in the public employees' retirement laws, the unemployment compensation laws and the State Personnel Relations Law solely by reason of membership in the state bar.

9.081 (1) The board shall have the authority to require all active members of the state bar engaged in the private practice of law to carry professional liability insurance. The board may establish, own, organize and sponsor a lawyer's professional liability fund for active members of the state bar engaged in the private practice of law whose principal offices are in Oregon. The board may require that active members in the private practice of law whose principal offices are outside Oregon to obtain and maintain professional liability insurance substantially equivalent to the bar's professional liability fund.

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(2) The fund shall pay all sums as may be provided under such plan which any such member shall become legally obligated to pay as money damages because of any claim made against such member as a result of any act or omission of such member in rendering or failing to render professional services for others in the member's capacity as an attorney or caused by any other person for whose acts or omissions the member is legally responsible. The board shall have the authority to assess each active member of the state bar engaged in the private practice of law whose principal office is in Oregon for contributions to such fund, to establish definitions of coverage to be provided by such fund and to retain or employ legal counsel to represent such fund and defend and control the defense against any covered claim made against such member. The board shall have the further authority to offer optional professional liability coverage on an underwritten basis above the minimum required coverage limits provided under such fund, either through such fund, through a separate fund or through any insurance organization authorized under the laws of the State of Oregon, and may do whatever is necessary and convenient to implement this provision. Any fund so established shall not be subject to the Insurance Code of the State of Oregon. Records of a claim against the fund are exempt from disclosure under ORS 192.410 to 192.505.

(3) For purposes of paragraph (1) of this section, an attorney is not engaged in the private practice of law if the attorney is a full-time employee of a corporation other than a corporation incorporated under ORS chapter 58, the state, an agency or department thereof, a county, city, special district or any other public or municipal corporation or

any instrumentality thereof. However, an attorney who practices law outside of the attorney's full-time employment is engaged in the private practice of law.

(4) For the purposes of paragraph (1) of this section, the principal office of an attorney is considered to be the location where the attorney engages in the private practice of law more than 50 percent of the time engaged in that practice. In the case of an attorney in a branch office outside Oregon and the main office to which the branch office is connected is in Oregon, the principal office of the attorney is not considered to be in Oregon unless the attorney engages in the private practice of law in Oregon more than 50 percent of the time engaged in the private practice of law.

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OREGON STATE BAR

Policy and Governance Committee Agenda

Meeting Date: November 19, 2011
From: Sylvia E. Stevens, Executive Director
Re: Amendment to Bylaw 2.102 re: BOG Committee Assignments

Action Recommended

Consider whether to amend OSB Bylaw 2.102 regarding BOG Committee Assignments to conform to actual practice.

Background

OSB Bylaw 2.102 provides:

Subsection 2.102 Board Committee and Other Assignments

Immediately after the election of the new lawyer members of the Board, the senior class will meet, either collectively or individually, with each new member of the Board to conduct an informal orientation regarding board service opportunities and to discuss with each new member that person's experience and service interests on the Board. After the orientation sessions, the senior class will meet to discuss and determine appointments to board committees and task forces, service as to standing committees, sections and any other necessary appointments. The senior class prepares a slate of appointments. Each member of the senior class may chair one board committee of that member's choosing. Conflicts among senior class members will be resolved by that class. Service preferences of each member of the new Board will be honored in developing the slate to the extent possible and appropriate. The proposed slate will then be circulated to the Board and board members may raise any appointment for discussion and appropriate adjustment. Thereafter, the adjusted slate is circulated to the Board and any member of the new board may ask the Board to accept the slate or reject it and refer the rejected slate back to the senior class for further consideration and recommendation to the Board.

This process was developed by the BOG in November 1996; it was added to the BOG Policies and then incorporated into the Bylaws in 2003 (when the policies were repealed). The new process was developed in response to the concerns of some BOG members about their lack of input into the assignments. Attached is a copy of a BOG memo from November 1996 explaining the situation and an excerpt from the minutes of the November 17, 1996 meeting.

It is not at all clear whether the new process was ever implemented as written. The circulation of a preference form for BOG members to indicate their assignment choices was formalized, but there is no record that the development of a slate of assignments was prepared by the senior class.

In recent years, the process has been as follows: preference sheets are distributed to the BOG at or immediately following the retreat. Once they have all been returned, the president-elect and executive director meet to make tentative assignments based on the

preferences. BOG committees are the most difficult assignments, but most of the time senior class members get to chair the committee(s) of their choosing. Other committee assignments consider preferences, but consideration is also given to balancing the committees across the classes and by gender. The tentative slate of assignments is then shared with the entire BOG, with members invited to request changes. In my (admittedly limited) experience, there are few requests for changes and those that have been made have been honored.

The other part of the process that has not been implemented is the meeting of senior class and new BOG members to help the new members make their choices. That appears to happen rather informally at the retreat and I am not aware of any new members who felt additional help in this area was needed.

In the interest of conforming bylaws to practice, I offer the following amendment to Bylaw 2.102:

Subsection 2.102 Board Committee and Other Assignments

~~Immediately after the election of the new lawyer members of the Board, the senior class will meet, either collectively or individually, with each new member of the Board to conduct an informal orientation regarding board service opportunities and to discuss with each new member that person's experience and service interests on the Board. After the orientation sessions, the senior class will meet to discuss and determine appointments to board committees and task forces, service as to standing committees, sections and any other necessary appointments. The senior class prepares a slate of appointments. At or shortly after the annual orientation and retreat, board members will be invited to indicate their preferences for board committee and other assignments. Each member of the senior class will be invited to identify one or more board committees they would like to chair may chair one board committee of that member's choosing. Conflicts among senior class members will be resolved by that class. The executive director and president-elect develop a slate of assignments based on the preferences. Senior class members shall have priority in the choice of assignments, but the Service preferences of each all members of the new Board will be honored in developing the slate to the extent possible and appropriate. The proposed slate will then be circulated to the Board and board members may raise any appointment for discussion and appropriate adjustment. Thereafter, the adjusted slate is circulated to the Board and any member of the new board may ask the Board to accept the slate or reject it and refer the rejected slate back to the senior class for further consideration and recommendation to the Board and any board member may request a change of assignments. The president-elect will make reasonable effort to accommodate any change requests, but the president-elect's decision will be final.~~



5200 S.W. Meadows Road, P.O. Box 1689, Lake Oswego, Oregon 97035-0889
(503) 620-0222 or WATS 1-800-452-8260, FAX: (503) 684-1366

TO: Board of Governors
FROM: Karen Garst *KG*
DATE: November 4, 1996
RE: BOG Committee Appointments

Action Recommended

At its September meeting, the board requested that this item be placed on the agenda in order to decide whether to keep the current process of appointing members to BOG committees or modify that process.

Background

The practice of the Board of Governors to date has been as follows: board members formally or informally informed the president of their preferences and the president has made appointments of members and chairs to BOG committees effective at the end of the annual meeting. There is a reference to this process in the BOG Handbook. The BOG Handbook states under Appointments: The OSB President appoints members of BOG committees, BOG special committees and task forces, BOG liaisons, certain statutory bodies, OSB task forces and special groups, the officers of the Access to Justice Executive Committee, and other groups as directed by the BOG. In researching this item, reference to the role of the president and other board members was found in the August 13-14, 1993 minutes of the Board of Governors. At the October 8, 1993 BOG meeting, the board adopted job descriptions for the executive director, the president, and the other officers of the BOG. Excerpts from these minutes and the job descriptions are attached to this memo.

In 1996, board members were asked on to fill out a special form indicating their committee preferences. The memo with this form was mailed on June 10. Jeff Carter made the selections and notified BOG members on August 20. Both memoranda are attached.

Page Two
BOG Committee Appointments
November 4, 1996

The issue before the board is whether to change this practice for the future and/or the current year. Staff recommends that whatever the decision of the BOG that the policy be codified in the bar's bylaws.

- Enclosures:
1. *Excerpts from August 13-14, 1993 BOG Minutes*
 2. *Excerpts from October 9, 1993 BOG Minutes and job descriptions*
 3. *Jeff Carter's letter dated June 10, 1996*
 4. *Jeff Carter's memo and summary of appointments dated August 20, 1996*

karen/bog/agenda/nov/comapt.memo

Plans were discussed regarding a BOG table at the Campaign for Equal Justice luncheon on December 19 with featured speaker Roberta Cooper Remo. Ms. Garst indicated staff will coordinate reservations for interested board members.

Ms. Garst explained that board and officer job descriptions are in the *1996 BOG Handbook* and have been included in their present form in the handbook since 1994. The job descriptions were developed by committee and approved by the BOG in 1993.

2. APPEARANCES/SPECIAL ISSUES

A. Memorandum on various conflict issues raised at the September BOG meeting

Mr. Carter reviewed the policies discussed in the board's planning session regarding the limitations on various bar officials participating in varying capacities in bar or other proceedings. At the planning session, a decision was made to prohibit a board member from being a character witness for an accused in a bar disciplinary proceeding. Mr. Riemer will draft a formal policy to address this issue. Other issues, analysis and recommendations were presented in agenda exhibit pages 3-20. The board decided to refer other policies in the attachment to the Long Range Planning Committee. Mr. Phillips requested to expand the LRPC to include David Orf and Kevin Lafky as members during the policy review.

B. BOG committee appointments and process

Mr. Carter reviewed the following changes in BOG committees: (1) Public Affairs - Ms. Herbold will become chair, Mr. Lafky remains as a member; (2) Appointments - Mr. Galton will become chair and Ms. Herbold resigns as a member. Mr. Phillips praised Mr. Lafky for stepping aside as chair of the Public Affairs Committee at this time and felt it was important that he be assigned important work and be assigned to chair other BOG groups during the year as opportunities become available.

Ms. Herbold distributed the attached exhibit outlining the Board of Governors' internal appointment process recommended by the ad hoc committee appointed in the planning session. The BOG senior class will meet annually to coordinate with the new board regarding committee service preferences and to appoint committee members and chairs. The board discussed the following: (a) Will this timing set back the ability of the new chairs to get started prior to October? (b) Appointments will be completed by the September meeting. The important issue is to assure that preferences of all new and current BOG members be known prior to making appointment decisions. (c) The most significant change is that the senior class has priority to choose committee chair positions. This will probably resolve 90% of the decision problems and leadership choices. (d) Concern was expressed about first year members not getting what they are interested in and factionalism between classes with the senior class getting "first pick." (e) The

process needs to be tested. (f) The senior class should work as a nominating committee and could include the second year members if decision making becomes problematic. (g) These things ebb and flow - the board may return to the old system in a short while.

Action: Ms. Herbold moved, Mr. Galton seconded, to approve the attached Board of Governors' internal appointment process guidelines. The motion was approved by the board (15-0-1; absent Dixon).

EXHIBIT, p. 1

C. Other policy related issues discussed in the BOG Planning Session

Mr. Carter reviewed the board's consensus from the planning session for the LRPC to review other designated policy issues for recommendation (see related items on agenda exhibit pages 40-48).

D. Election and selections of BOG officers

Mr. Carter indicated this matter was discussed at the board's planning session and would also be referred to the LRPC for its review and recommendation.

E. Workers' Compensation Board schedule of attorney fees

Mr. Carter presented the request for input from the Workers' Compensation Board regarding proposed amendments to its administrative rules governing attorney fee awards. The board discussed the proposed amendments and the recommendations made by the Workers' Compensation Section.

Action: Ms. Cohen moved, Mr. Strever seconded, to recommend that the Workers' Compensation Board (WCB) substitute the Workers' Compensation Section proposal on the schedule of attorneys fees for its own and that a letter be sent to the WCB in this regard. The motion was approved by the board (14-0-1-1; absent Dixon; abstaining Galton).

F. BOG oversight of PLF matter arising from Judge Haas and attorney Michael A. Greene's letters regarding the PLF's handling of the defense in *Pearce/Woodfield v. Baker, Vidas and Dunn Carney et al*

Mr. Graff reviewed the background of the PLF matter described above. He indicated that former PLF board members Stuart Foster (chair) and David Jensen agreed to conduct an investigation of how the PLF had handled the matter. Mr. Graff discussed his disappointment that individual BOG members had been in contact with the PLF Board about the situation before the BOG had agreed on a course of action. It was clarified that the people who made this contact are no longer on the board. Mr. Lafky explained that as liaison to the PLF Board he felt

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: November 19, 2011
From: Hunter Emerick, Public Affairs Committee Chair
Re: Stable Court Funding Resolution

Action Recommended

Consider BOG resolution in support of stable funding for the court system.

Background

As Oregon's economy tries to climb out of this recession, state services have been reduced to address the budget deficit, and the legislature has implemented cuts to virtually all government sectors.

At some point, however, further cuts threaten the viability of essential government services. Oregon is approaching that point with the judicial branch.

- Since the close of the 2007-09 biennium, the trial court budget has been reduced by nearly a quarter, from \$243 million to \$183 million in 2011-13. Trial court full time equivalent staff positions have been reduced by 21 percent, from 1594 to 1258.
- The judicial branch maintained open courts five days a week, eight hours a day in the 2009-2011 biennium. This biennium, however, courts will implement nine furlough days on which courts will be closed.
- Oregon's judges are among the worst paid in the nation, and the legislature has authorized no salary increases since 2007.
- If the state's economy continues to stagnate, the judicial branch may face cuts – as much as a 10.5 percent to an already inadequate budget.

Oregon's judicial branch provides a uniquely important government service mandated by Oregon's Constitution.

- As Chief Justice De Muniz pointed out in his State of the Courts Address in January, Oregon courts stand at the intersection of every important social, political and legal issue in the state.
- Courts decide big questions, such as the validity of the land use system, and small cases that are crucial to those directly involved, like child custody determinations.
- Courts promote public safety and protect vulnerable citizens.
- Viable courts are crucial to the state's business climate: businesses need to know that the courts are available to resolve disputes between businesses, and between businesses and customers.

These are just a few of the reasons why the Oregon Constitution provides that justice is to be administered completely and without delay. (Art. I, Sec. 10)

Given the crucial role of our courts and this constitutional requirement, further decimation of this independent branch of government will lower the quality of life in Oregon for businesses and citizens alike. Further cuts will require courts to rank cases in order of importance. Constitutionally mandated criminal cases will take precedence. The civil docket, including small claims and probate, will have to take a back seat to cases involving public and individual safety.

A majority of the judicial branch budget is spent on staffing for daily court operations. Cuts in the judicial branch budget directly affect the volume of cases that the courts can handle.

In determining how the state will use its resources, the legislature must recognize that the courts *are* a special case.

Oregon State Bar Support for Court Funding

Whereas, the State of Oregon continues to experience severe revenue shortfalls;

Whereas, courts play an essential constitutional role in society preserving the rule of law, ensuring that government acts within the law, and resolving disputes affecting families in crisis, public safety, and business transactions that support Oregon's economy;

Whereas, Oregonians have a constitutional right to justice administered in state courts "completely and without delay;"

Whereas, in response to revenue shortfalls, the legislature has dramatically reduced the Judicial Department budget, resulting in statewide and local court closures due to staff reductions and mandatory furloughs, delays in case processing and severely reduced public services and access to justice in Oregon;

Whereas, further reductions to the Judicial Department budget may end full service courts in some areas of the state;

Whereas, courts are a core function of government, providing services that are not available otherwise through the private sector or non-governmental organizations;

Whereas, legislators rely on the views of their constituents and public input in setting priorities;

Whereas, effective public input depends upon public awareness of the need for priority funding of the Judicial Department to maintain court operations;

Therefore, be it resolved that the Board of Governors

1. Strongly advocate for adequate funding of the Judicial Department;
2. Actively oppose any additional reductions to the Judicial Department budget;
3. Urge members of the bar to contact their legislators in support of adequate funding for the Judicial Department and in opposition to further cuts to the department's budget; and,
4. Urge members of the bar to educate their clients and the public on the critical need to support adequate funding for state courts to ensure that Oregonians have adequate access to timely justice.

OREGON STATE BAR

Board of Governors Memo

Meeting Date: November 17-19, 2011
Memo Date: November 2, 2011
From: Kateri Walsh
Re: New Lawyer Mentor Program: Mentor Nominees

Action Recommended

Review the attached list of volunteer mentors for the New Lawyer Mentoring Program, and approve appointment recommendations for submission to the Oregon Supreme Court.

Background

All mentors participating in the New Lawyer Mentoring Program require recommendation by the Board of Governors and appointment by the Oregon Supreme Court. The criteria include:

- Seven years of experience as a practicing attorney.
- No pending disciplinary prosecutions.
- A reputation for competence, ethics and professionalism.

Please review and approve all appropriate volunteers. Contact Kateri Walsh directly with any questions or concerns about the process, or about any volunteer mentors.

MENTORS FOR BOG APPROVAL NOV. 2011 --- New Lawyer Mentoring Program

BAR#	SALUT	FNI2	MNI2	L.NAME	M.CSZ	REGION
880184	Hon.	John	V.	Acosta	Portland, OR 97204	5
920253	Ms.	Lisa	A.	Amato	Portland, OR 97205	5
820247	Mr.	Mark	Alexander	Anderson	Portland, OR 97207	5
042430	Ms.	Patricia	Asrani	Arjun	Portland, OR 97205	5
771009	Mr.	Lee		Aronson	Portland, OR	5
060407	Ms.	Amy	Rae	Atwood	Portland, OR 97211	5
912011	Ms.	Jean	Ohman	Back	Portland, OR	5
811590	Mr.	John	L.	Barlow	Corvallis, OR 97339	6
994800	Ms.	Heidi	TD	Bauer	Madras, OR 97741	1
045380	Mr.	Kelley	Andrew	Blaine	Portland, OR 97205	5
740435	Mr.	William	W.	Bromley	Eugene, OR 97401	2
032751	Ms.	Jennifer	G.	Brown	Oregon City, OR 97045	7
801779	Mr.	Thomas	W.	Brown	Portland, OR 97205	5
012217	Mr.	Brian	R.	Cable	Portland, OR 97204	5
973360	Ms.	Dayna		Christian	Portland, OR 97204	5
950698	Mr.	Dominic	G.	Colletta	Portland, OR 97204	5
761083	Mr.	Charles	E.	Corrigan	Portland, OR 97205	5
912488	Mr.	William	J.	Critchlow	Eugene, OR 97440	2
851032	Mr.	Randall	L.	Duncan	Portland, OR 97204	5
962643	Hon.	Rebecca	A.	Duncan	Salem, OR 97301	6
740861	Mr.	Dennis	H.	Elliott	Portland, OR 97239	5
892351	Ms.	Lauretta	Lee	Ferguson	Medford, OR 97501	3
940710	Mr.	Joseph	A.	Field	Portland, OR 97205	5
640340	Mr.	Richard	E.	Forcum	Bend, OR 97701	1
872236	Mr.	Kelly	E.	Ford	Beaverton, OR 97005	4
911843	Mr.	Peter	MK	Frost	Eugene, OR 97401	2
990528	Ms.	Kristie		Gibson	Eugene, OR 97440	2
780390	Mr.	Richard	M.	Ginsburg	Hillsboro, OR 97123	4
012668	Mr.	Shanon		Gray	Lake Oswego, OR 97034	7
980588	Mr.	Brian		Haggerty	Newport, OR 97365	4
822743	Mr.	Michael		Halligan	Portland, OR 97205	5
012826	Ms.	Samantha	J.	Hazel	Lake Oswego, OR 97035	7
743400	Ms.	M.	Christie	Helmer	Portland, OR 97204	5
050808	Ms.	Erika		Hente	Eugene, OR 97401	2
721215	Mr.	Davie	A.	Hilgemann	Salem, OR 97301	6
812653	Mr.	Jeffrey	V.	Hill	Portland, OR 97205	5
751746	Mr.	Ronald		Hoebet	Portland, OR 97205	5
012937	Mr.	Clark		Horner	Portland, OR 97205	5
882286	Ms.	Susan	G.	Howe	Salem, OR 97301	6
812692	Mr.	David	J.	Jack	Cannon Beach, OR 97110	4
950326	Mr	Joseph		Jakubek	Portland, OR 97204	5
931682	Mr.	Stephen		Kanaga	Eugene, OR 97401	2
840591	Ms.	Leslie		Kay	Portland, OR 97205	5
984047	Mr.	James	M.	Kearney	Portland, OR 97204	5
880080	Ms.	Wendy		Kent	Portland, OR 97204	5
941820	Mr.	Neil	D.	Kimmelfield	Portland, OR 97204	5
043303	Mr.	Bryan	D.	Kirkpatrick	Portland, OR 97205	5

BAR#	SALUT	FNI2	MNI2	L.NAME	M.CSZ	REGION
710971	Ms.	Emily	Lynn	Knupp	Hillsboro, OR 97123	4
940931	Ms.	Susan	Hohbach	Lain	Lake Oswego, OR 97035	7
941052	Ms.	Kristin		LaMont	Salem, OR 97301	6
913493	Ms.	Melissa	P.	Lande	Bend, OR 97702	1
812875	Mr.	James	D.	Lang	Portland, OR 97205	5
086502	Mr.	Stephen	R.	Ledoux	Portland, OR 979201	5
980746	Mr.	Alan	J.	Leiman	Eugene, OR 97440	2
823269	Mr.	Wayne		Mackeson	Portland, OR 97204	5
953441	Mr.	Francis	J.	Maloney III	Portland, OR 97204	5
913690	Ms.	Jacilyn	R.	Margeson	Portland, OR 97208	5
034276	Ms.	Shannon	Raye	Martinez	Salem, OR 97308	6
772688	Mr.	Michael	J.	Martinis	Salem, OR 97302	6
742472	Ms.	Barbara		McFarland	Portland, OR 97225	4
961945	Mr.	Dan	G.	McKinney	Roseburg, OR 97470	3
971282	Mr.	Thomas		Melville	Gresham, OR 97030	5
890909	Ms.	Margaret	K.	Melvin	Coos Bay, OR 97420	3
823434	Mr.	Christopher	D.	Moore	Eugene, OR 97401	2
780676	Mr.	Mark		Morrell	Portland, OR 97205	5
971322	Mr.	James	P.	O'Connor	Portland, OR 97212	5
031326	Mr.	Frederick		Okamura	Lake Oswego, OR 97035	7
943992	Mr.	James	E.	Oliver, Jr.	Portland, OR 97223	4
881359	Ms.	Margaret	S.	Olney	Portland, OR 97204	5
025977	Ms.	Cathy		Ouellette	Eugene, OR 97401	2
993350	Mr.	Erich	M.	Paetsch	Salem, OR 97308	6
001633	Mr.	Joel		Parker	Portland, OR 97204	5
963936	Mr.	Murray		Petitt	Springfield, OR 97477	2
003552	Mr.	Jason		Pistacchio	Portland, OR 97205	5
891083	Mr.	Arnold	W.	Poole	Albany, OR 97321	6
953878	Ms.	Kimberly	A.	Quach	Portland, OR 97258	5
893447	Mr.	Charles	C.	Reynolds	Portland, OR 97239	5
035616	Mr.	John	A.	Riherd	Portland, OR 97204	5
763185	Mr.	Bruce		Rubin	Portland, OR 97204	5
883031	Mr.	Gary	Underwood	Scharff	Portland, OR 97205	5
910970	Mr.	Steven	Mark	Schoenfeld	Portland, OR 97214	5
862794	Mr.	Larry	D.	Schucht	Salem, OR 97312	6
763311	Hon.	Timothy		Sercombe	Salem, OR 97301	6
903816	Mr.	William		Sherlock	Eugene, OR 97440	2
931138	Ms.	Ellen		Singer	Eugene, OR 97404	2
041351	Ms.	Alyssa	D.	Slater	Enterprise, OR 97828	1
732762	Mr.	Craig	A.	Smith	Eugene, OR 97440	2
732859	Mr.	Gregory	B.	Soriano	Beaverton, OR 97006	4
950451	Mr.	John	D.	Sorlie	Bend, OR 97702	1
873529	Ms.	Karen	A.	Steele	Salem, OR 97302	6
974075	Mr.	Joshua		Stump	Portland, OR 97204	5
780913	Mr.	Paul	F.	Sumner	Madras, OR 97741	1
620920	Mr.	Walter	H.	Sweek	Portland, OR 97205	5
971655	Mr.	Daniel		Thenell	Portland, OR 97204	5
821318	Mr.	Bruce	G.	Thompson	Portland, OR 97225	4

BAR#	SALUT	FNI2	MNI2	L.NAME	M.CSZ	REGION
034918	Ms.	Monica	Ann	Wells	Portland, OR 97208	5
974828	Ms	Mindy		Wittkop	Eugene, OR 97402	2
044628	Ms.	Erin	Janine	Zemper	Eugene, OR 97401	2

Camille Greene

From: Dawn Davis [DDavis@academic-travel.com]
Sent: Thursday, September 22, 2011 11:16 AM
To: Sylvia Stevens
Subject: RE: Oregon State Bar delegation to Cuba 2012

Follow Up Flag: Follow up
Flag Status: Flagged

Sylvia, I am please you will be discussing in Mid-November, is there a time we can speak to discuss this program.

Discussion topics:

1. Program cost for delegation members—estimated at \$3900, all inclusive from Miami, Fl.
2. ATA will cover the cost of the delegation leader
3. Timing

Dawn

Dawn M. Davis
Director, Professionals Abroad
Academic Travel Abroad, Inc.
1920 N Street, N.W., Suite 200, Washington, D.C. 20036
Phone: 202.349.7334 or 800.556.7896, ext. 7334
Fax: 202.342.0317
E-mail: ddavis@academic-travel.com Web: <http://www.professionalsabroad.com>

From: Sylvia Stevens [<mailto:sstevens@osbar.org>]
Sent: Friday, September 16, 2011 4:23 PM
To: Dawn Davis
Subject: RE: Oregon State Bar delegation to Cuba 2012

Dawn, thanks for the invitation. I am not sure my board will be interested, but can you give me some idea of the cost? I can raise the issue with them at their next meeting in mid-November.

From: Dawn Davis [<mailto:DDavis@academic-travel.com>]
Sent: Monday, September 12, 2011 7:54 AM
To: Sylvia Stevens
Subject: Oregon State Bar delegation to Cuba 2012

Dear Ms. Stevens

Last spring I wrote to you regarding the development of a delegation representing your State Bar to travel to Cuba at the invitation of the Union of Cuban Jurists. As your Bar was unable to accept this invitation at that time, I wanted to provide you with a sample of the program which has been developed for other state delegations by the Union of Cuban Jurists and to assess your interest in a delegation for Spring 2012.

The first states participating this fall include, Minnesota, New Mexico, Montana, Washington and Illinois. Each state will have their own program, travel separate from each other and are led by their current president. The final schedule of meetings for each delegation has been developed based on the specific interests of the participating delegates.

I would like to further discuss this invitation with you should you have time this week.

Kindest regards

Dawn Davis

Dawn M. Davis

Director, Professionals Abroad

Academic Travel Abroad, Inc.

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ATA WASHINGTON STATE LAWYERS RESEARCH PROGRAM: THE CUBAN LEGAL SYSTEM
ATA / WSBA / MARAZUL / UNJC / AMISTUR / ICAP
OCTOBER 16-21, 2011
Extension Program October 21-24, 2011

Hotel: Meliá Cohiba

Guide/Interpreter: Rita Pereira

Tour Leader: Stephen R. Crossland, President Washington State Bar Association

Sunday, October 16

- 5:30 am Flight check in at Miami International Airport Concourse G, 2nd floor
Sky King / Marazul counter, for flight 5K 5901 departing Miami 8:30 am
- 9:30 am Arrival, Jose Marti International Airport, Havana
Transfer in, Welcome and hotel check-in (early check-in requested)
- 2:30 pm Program Briefing / Information Meeting (at the hotel)**
Cultural Options (on your own / facilitated by the guide)
- 7:30 pm Welcome Dinner: "El Patio" Restaurant in Old Havana's Cathedral Square**

Monday, October 17

Breakfast at the hotel

- 8:30 am *Leave from hotel lobby*
- 9-10:00 am Meeting with a representative of the North America Division of the Cuban Institute for Friendship with the People (ICAP)**
- 10:30 am Opening Session at the Union of Cuban Jurists' headquarters, followed by a**
Presentation on the current economic situation in Cuba
- 1:00 pm Lunch at "Casa de la Amistad"**
- 3:00 pm Meeting with members of the board of directors of the Cuban Society of Mercantile and Commercial Law.** Topics: Commercial Law in Cuba; analysis of Foreign Investment law; Procedure in cases of 'Litis' and other related topics, – presentation and discussion with Specialists in the field
- 8:00 pm Dinner at "El Templete" Restaurant**
Cultural Options (on your own)

Tuesday, October 18

Breakfast at the hotel

9:00 am *Leave from hotel lobby*

9:30 am **Meeting with members of the board of directors of the Cuban Society of Economic and Financial Law.** Topics: Economic and Financial Law in Cuba. The role of the lawyer in Cuba within the context of the new reforms, laws and guidelines.

12:30 pm **Lunch at “El Aljibe” Restaurant**

3:00 pm **City tour by bus of different places of social and cultural interest in Havana and/or “walking tour” of Old Havana**

Evening: Dinner on your own

Night: Cultural Options.

Wednesday, October 19

Breakfast at the hotel

9:00 am *Leave from hotel lobby*

9:30 am **Meeting/ Session with members of the board of directors of the Cuban Society of Constitutional Law.** Topics: The Cuban Legal System and the Cuban Constitution

1:00 pm **Lunch at the “1830” Restaurant**

[afternoon professional activity TBD, in accordance with individual research interests]

6:00 pm **Cocktail with Cuban specialists on commercial, economic, and financial law**

8:00 pm **Dinner at the Hotel**

Night: Concert and/or Show at a Night Club or other venue

Thursday, October 20

Breakfast at the hotel

9:30 am **Visit to a Legal Services Bureau (“Bufete de Servicios Especializados”)**

Topics: Advocacy, practice and delivery of criminal and civil law services in Cuba; structure and function of community-based legal services; the role of the lawyer in Cuba

12:30 pm **Lunch at “La Torre” Restaurant**

Final Activity at the UNJC

8:00 pm **Farewell Dinner: “El Café del Oriente” Restaurant (with Cuban guests)**

Night: Cultural Options

Friday, October 21

Breakfast at the hotel

AM *Morning free for individual research pursuits*

12:00 n *Hotel check-out / Leave for Matanzas (if staying on “ATA/WSBA Extension Program Option”)*

2:00 pm *Leave from hotel lobby to Airport for 2:45 pm check-in and return flight to the US (5:45 – 6:45 pm Havana-Miami flight on Sky King #5K-5902)*

4:00 pm *Arrival in Matanzas*

Check-in at the Melia Varadero Hotel

8:00 pm **Dinner at the hotel**

Cultural Options

Saturday, October 22

Breakfast at the hotel

9:00 am *leave from hotel lobby*

9:30 am **Visit to the town of Cardenas and the Elian Gonzalez Museum, accompanied by Lawyers to discuss the history of the legal aspects of the case and the impact in Elian's home town as well as the rest of Cuba**

1:00 pm ***Lunch at the hotel***

3:00 pm **Visit to the San Severino Castle's Museum of the Route of the Slave – a core component of the UNESCO "Route of the Slave" Project and site of particular interest this year, 2011, declared by the UN as "International Year for Peoples of African Descent"**

And/or time for individual research pursuits

Evening: Dinner at the hotel

Night *Cultural Options*

Sunday, October 23

Breakfast at the hotel

AM *Time for individual research pursuits*

Noon Hotel check out

Lunch

Return to Havana

5:00 pm Hotel check in, Melia Cohiba

Evening Dinner on your own

Night *Cultural Options*

Monday, October 24

Breakfast at the hotel

Noon Hotel check-out

Leave from hotel lobby to Airport for 1:00 pm check-in and return flight to the US (4:00 – 5:00 pm Havana-Miami flight on Sky King #5K-5902)

From: Katherine O'Neil
Sent: Thursday, November 03, 2011 11:44 AM
To: (e) Stephen Piucci; Sylvia Stevens
Cc: Adrienne Nelson; William Phelan
Subject: BOG Nov. agenda/request to consider cosponsorship of ABA Resolution

Dear Steve and Sylvia -

I am chair of the ABA's Commission on Disability Rights. I am proud to say that Judge Adrienne Nelson is a Commission member. As you know, Judge Nelson is also one of the OSB's delegates in the ABA House of Delegates.

We respectfully request that at the BOG's Nov. 17-19 meeting in Newberg, the BOG consider and then cosponsor the Commission's resolution related to discrimination against persons with disabilities who take the LSAT. I attach a copy of the resolution with its explanatory report.

We have found that the Law School Admissions Council is often out of compliance with the Americans with Disabilities Act and denies appropriate accommodations to applicants with disabilities. Most perniciously - and also we believe in violation of the ADA - the LSAC "flags" the scores of persons who receive accommodations as "non standard" with an inference that the score lacks validity. This kink at the entrance to the pipeline to the practice of law is one of the reasons that there are so few lawyers with disabilities practicing in Oregon -- and elsewhere.

Cosponsorship by the OSB would be important to the passage of this resolution. OSB cosponsorship would demonstrate that representatives of practicing lawyers in Oregon take disability diversity seriously, welcome persons with disabilities into the profession and expect administrators of the LSAT to do so also.

The resolution will be presented at the mid year meeting of the ABA House of Delegates in New Orleans on February 6, 2011. We would be grateful for the BOG's support and especially grateful for an early vote of support. If the BOG would find it helpful, I will travel to Newberg to present the resolution. We appreciate your consideration!

This is our list of cosponsors as of today: The Bar Association of the City of Baltimore, the Utah state bar, the National Association of Law Students with Disabilities, the National Native American Bar Association, the ABA General Practice, Solo and Small Firm Division, the ABA Standing Committee on the Delivery of Legal Services and the ABA Commission on Sexual Orientation and Gender Identity. Other ABA entities will consider cosponsoring the resolution at their November meetings.

The final, negotiated form of this resolution was not achieved until ten days ago. Thus, my late request to the BOG.

Among the OSB delegates to the ABA HOD, only Judge Nelson is fully informed. I'll bring Christine Meadows and Marilyn Harbur into the loop today.

And, Steve: it's been a great year for you. I noted that you included disability diversity in your remarks in the Bulletin as you began your year. Cosponsorship of this resolution by the BOG would be an appropriate capstone as you come into the last months of your service as OSB president.

Very best wishes -

KO'N

KATHERINE H. O'NEIL, J.D.
ARBITRATION & MEDIATION

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AMERICAN BAR ASSOCIATION
COMMISSION ON MENTAL AND PHYSICAL DISABILITY LAW
REPORT TO HOUSE OF DELEGATES

RESOLUTION

1 RESOLVED, That the American Bar Association urges all entities that administer a law school
2 admission test to provide appropriate accommodations for a test taker with a disability to best
3 ensure that the exam results reflect what the exam is designed to measure, and not the test taker's
4 disability. These accommodations should include, but not be limited to, the following:

- 5
6 1. Removal of architectural and communication barriers;
7 2. Modification of rules, practices and procedures; and
8 3. Provision of auxiliary aids and services

9
10 FURTHER RESOLVED, That the American Bar Association urges all entities that administer,
11 score, or report the results of a law school admission test to establish procedures to ensure that
12 the application process, the scoring of the test, and the reporting of test scores is consistent for all
13 applicants and does not differentiate on the basis that an applicant received an accommodation
14 for a disability.

15
16 FURTHER RESOLVED, That the American Bar Association urges all entities that administer a
17 law school admission test to:

- 18
19 1. Make readily accessible to applicants the policies, guidelines, and administrative
20 procedures used for granting accommodations requested by those with disabilities;
21 2. Give notice to applicants, within a reasonable period of time, whether or not requested
22 accommodations have been granted; and
23 3. Provide a fair process for timely reconsideration of the denial of requested
24 accommodations.

REPORT

Introduction

The ABA's Goal III calls on the legal profession to eliminate bias and to enhance diversity, including for persons with disabilities. In spite of these assurances, the testing process for law school admission remains an obstacle to the full and equal participation of individuals with disabilities in the legal profession. Students with disabilities are substantially underrepresented in law schools across the country.¹ In part, this is due to the fact that the testing process relied upon by most law schools in the United States does not afford the same benefits to applicants with disabilities that it affords to other applicants.

The proposed resolution urges any entity that administers a law school admission test to ensure that law school applicants with disabilities are given no less than the accommodations that federal law requires, including, where appropriate, removal of architectural and communication barriers, modification of rules, practices and procedures, and provision of auxiliary aids and services.

The Americans with Disabilities Act (ADA), enacted in 1990, introduced a new way of looking at what it means to discriminate. For people with disabilities, affording identical treatment to all does not confer equal access to proceedings, programs, and activities. The person with deafness, the person with blindness, the person who uses a wheelchair, or the person with dyslexia might be excluded unless accommodations are made for his or her unique needs.

The proposed resolution also urges any entity that administers, scores, or reports a law school admission test to take steps to ensure that the application process, the scoring of the test, and the reporting of test scores do not discriminate based on disability, in particular that scores not be differentiated on the basis of whether an individual received any type of accommodation for a disability. It further urges any entity that administers a law school admission test to make public the policies, guidelines, and administrative procedures used for granting accommodations requested by those with disabilities; to give notice to applicants within a reasonable period of time whether requested accommodations have been granted; and to provide a fair process for timely reconsideration of the denial of requested accommodations.

For many years, the ABA has been committed to going beyond what the law requires in providing accommodations to lawyers, judges and law students with disabilities. In 1989, the ABA adopted policy supporting in principle proposed legislation that became the ADA. In 1997, the ABA approved a policy calling upon all courts to provide qualified language interpreters, including sign language interpreters, for persons who are deaf or hard of hearing. Policy adopted in 1998 urges that any nominating or evaluating entity, when making character and fitness determinations of state judicial candidates, narrowly tailor its questions concerning

¹ While persons with disabilities represent nearly 20% of the population, a much smaller percentage are found in our law schools. While there is no accurate count, because tracking based on disability lags well behind such statistics for race, ethnicity and gender, we do know that only 3.4% of law students requested accommodations for the 2009-2010 school year. E-mail from Kenneth R. Williams, Data Specialist, ABA Section of Legal Education and Admissions to the Bar (Jan. 18, 2011, 17:29 EST) (on file with author).

physical and mental disabilities or physical and mental health treatment in order to focus its inquiries on information relevant to a candidate's current fitness to serve as a judge, with such reasonable modifications as might be required. In 2002, the ABA adopted policy urging all federal, state and municipal courts to make courthouses and court proceedings accessible to individuals with disabilities, including lawyers, judges, jurors, litigants, witnesses, and observers, in order to ensure equal access to justice and compliance with the ADA. The policy also recommended that each courthouse appoint a disability accommodations coordinator to develop procedures for receiving requests for accommodations from individuals with disabilities and for responding creatively with reasonable accommodations that meet the needs of the individual, including removal of architectural barriers, modification of rules and practices, and provision of auxiliary aids and services.

The proposed resolution builds upon these existing policies by urging entities that administer law school admission tests to take specific steps to ensure that applicants with disabilities have equal access to legal education. The resolution is necessary because existing resolutions are incomplete in their application to the law school admission process and because developments in the 20 years since passage of the ADA have resulted in a wealth of experience that entities can draw upon to implement more effective programs.

Background

An individual who wishes to attend an ABA-accredited law school must take an admission test before entry. In order for a law school to become one of the over 195 ABA-approved law schools, an academic institution must adhere to standards promulgated by the Council of the ABA's Section of Legal Education & Admissions to the Bar (Council). The Council is identified by the U.S. Department of Education as the national accrediting agency for professional law schools. Although there is a process for consultation with the ABA House of Delegates on accreditation matters, decisions of the Council are final.² According to the Council's ABA Standards and Rules of Procedure for Approval of Law Schools (Standards), a law school must have an admission test which is "a valid and reliable admission test to assist the school and the applicant in assessing the applicant's capability of satisfactorily completing the school's educational program."³

Standard 503 of the Standards requires that, "In making admission decisions, a law school shall use the test results in a manner that is consistent with the current guidelines regarding proper use of the test results provided by the agency that developed the test."⁴

Presently, the only nationally-administered test available for such a purpose is the Law School Admission Test (LSAT). In its current state, the LSAT is a timed test with four scored and one unscored multiple choice sections. Each section is thirty-five minutes long. There is one reading comprehension section, one analytical reasoning section, and two logical reasoning/games sections. The LSAT is administered by the Law School Admissions Council (LSAC), a non-profit organization. Although the Section Council does not endorse a particular admission test

² 2007-2008 ABA Standards for Approval of Law Schools, Preface, at vi-vii.

³ 2007-2008 ABA Standards for Approval of Law Schools, Standard 503.

⁴ *Id.*

nor does it have official ties with the LSAC, it does acknowledge the LSAT in the Standard's Interpretation 503-1 which states:

A law school that uses an admission test other than the Law School Admission Test sponsored by the Law School Admission Council shall establish that such other test is a valid and reliable test to assist the school in assessing an applicant's capability to satisfactorily complete the school's educational program.

The proposed resolution is not intended to apply only to the LSAC, but is meant to cover any and all entities that administer a law school admission test.

Flagging

The Standards append the guidelines developed by the LSAC regarding proper use of the test results as "Appendix 2: LSAC Cautionary Policies Concerning LSAT Scores." The cautionary policies single out LSAT scores earned under accommodated or nonstandard conditions. The policy states:

Carefully evaluate LSAT scores earned under accommodated or nonstandard conditions.

LSAC has no data to demonstrate that scores earned under accommodated conditions have the same meaning as scores earned under standard conditions. Because the LSAT has not been validated in its various accommodated forms, accommodated tests are identified as nonstandard and an individual's scores from accommodated tests are not averaged with scores from tests taken under standard conditions.

According to the LSAC's website, an applicant registered to take the LSAT must complete a packet. The packet contains forms to be filled out by the applicant and an evaluator describing and documenting the applicant's disability as well as the accommodation(s) requested by the applicant.⁵ The LSAC has reported that, on average, 1,960 applicants requested an accommodation per testing year between 2002 and 2007.⁶ Furthermore, during that timeframe, the majority of accommodations given, 67%, were for extra testing time, extra rest time, or a separate testing room.⁷ An applicant who is granted extra time as an accommodation typically received up to time-and-a-half for the test.⁸ When extra time is given as an accommodation, the score is reported individually and the person does not receive a percentile rating. The LSAC sends a letter to the law school notifying the institution of this practice and that the score attained with the extra time is "nonstandard." This procedure is commonly called "flagging" a score.

A consensus within the testing and academic communities recognizes that extra time for those with learning disabilities and some other disabilities is an acceptable accommodation for an entrance examination, although there continues to be disagreement about the amount of extra

⁵ See LSAC – The LSAT - Accommodated Testing, <http://lsac.org/JD/LSAT/accommodated-testing.asp>.

⁶ Thornton, Andrea, Marcus, Laura & Reese, Lynda, *LSAC Report Research Series: Accommodated Test-Taker Trends and Performance for the June 2002 through February 2007 LSAT Administrations* (2008), at 4, available at: <http://lsac.org/LsacResources/Research/TR/TR-08-02.pdf>.

⁷ *Id.* at 6.

⁸ *Id.* at 7.

time that should be granted. For example, the LSAC typically grants at most time-and-a-half, while the College Board (which administers the SAT, PSAT, and Advanced Placement tests) gives up to double the amount of time. Yet when an accommodated score is labeled as “nonstandard” or when a testing agency tells the academic program that the score does not conform to the scores of students who were not given accommodations, the student with the accommodated score is placed at a serious disadvantage. There are serious policy, ethical, and social problems involved with flagged scores, including disregard for an applicant’s desire not to have his or her disability revealed and the potential attachment of a stigma during the admission process. If scores are to be flagged, it should be done with the consent of the applicant.

Pursuant to a federal court case dealing with flagged SAT scores,⁹ a Blue Ribbon Panel of experts was convened to study whether flagged/accommodated SAT scores were comparable, and as valid as, non-accommodated SAT scores. The Panel’s majority concluded that the SAT scores of accommodated tests had results equivalent to tests with no accommodations.¹⁰ Educational Testing Service (ETS), the entity which oversees administration of the SAT, has found there is a positive correlation between tests with extra time given and achievement in college; in other words, SAT scores of those with extra time as an accommodation “were fairly accurate predictors of [first year grade point averages] for students with learning disabilities.”¹¹ Therefore, in 2003, the College Board abandoned the flagging of test scores that had extra time as an accommodation. Following the College Board’s lead, American College Testing, Inc., halted flagging of the ACT test shortly thereafter.

There is a growing body of case law dealing with the granting of accommodations for and the flagging of law school admission tests. Additionally, there are numerous lawsuits involving the LSAC and other graduate school-related testing agencies that have been settled out of court. Most agreements are with individual plaintiffs and involve making accommodations for one applicant which expire after the applicant takes the test. In recent years, two larger settlement agreements were reached between the LSAC and both the U.S. Department of Justice (DOJ) and the National Federation of the Blind (NFB). The agreement with DOJ dealt primarily with the review process of accommodation requests. The agreement with the NFB is tailored towards accommodations for those with visual impairments.

Accommodations

Judge David S. Tatel, who is blind, described how accommodations made it possible for him to serve as Judge on the U. S. Court of Appeals for the D.C. Circuit in an address to the National Conference on the Employment of Lawyers with Disabilities, co-sponsored by the ABA Commission on Mental & Physical Disability Law, the ABA Office of the President and the U.S. Equal Employment Opportunity Commission in 2006. Judge Tatel described how the use of a

⁹ *Breimhorst v. ETS*, 2000 WL 34510621 (N.D. Cal, Mar. 27 2000).

¹⁰ NOEL GREGG, ET AL., THE FLAGGING TEST SCORES OF INDIVIDUALS WITH DISABILITIES WHO ARE GRANTED THE ACCOMMODATION OF EXTRA TIME: A REPORT OF THE MAJORITY OPINION ON THE BLUE RIBBON PANEL ON FLAGGING (2002).

¹¹ THE COLLEGE BOARD, PREDICTIVE VALIDITY OF SAT I: REASONING TEST FOR TEST-TAKERS WITH LEARNING DISABILITIES AND EXTENDED TIME ACCOMMODATIONS, RESEARCH REPORT NO. 2002-5, at 9 (2002).

reader, Braille Speak for note-taking, and other accommodations eliminated the impact of his disability on his work. He added:

One of the most interesting things I noticed in my law firm, and I now notice on my court, is the extent to which the institution subconsciously accommodates to the needs of people with disabilities. When I first started people had never worked with a blind lawyer, and there were awkward moments. There were periods of time I would go to a meeting and people were talking about a document that I might not have seen ahead of time. People would be silently reading it, and I would clear my throat until finally one person would get the point and start reading aloud. Well, after a couple of years, people began to read things out loud just on their own. It became second nature. The same thing happened on the D.C. Circuit.¹²

In the landmark case of *Tennessee v. Lane*, the Supreme Court highlighted the importance of providing accommodations so as to prevent exclusion:

The unequal treatment of disabled persons in the administration of judicial services has a long history, and has persisted despite several legislative efforts to remedy the problem of disability discrimination. Faced with considerable evidence of the shortcomings of previous legislative responses, Congress was justified in concluding that this “difficult and intractable proble[m]” warranted “added prophylactic measures in response.” . . . Recognizing that failure to accommodate persons with disabilities will often have the same practical effect as outright exclusion, Congress required the States to take reasonable measures to remove architectural and other barriers to accessibility.

Accommodations, when needed, are essential to prevent discrimination against individuals with disabilities. Congress recognized this in the context of high stakes testing when it enacted the ADA. Title III of the ADA codifies the concept that it is discriminatory not to “offer such examinations or courses in a place and manner accessible to persons with disabilities or offer alternative accessible arrangements for such individuals.”¹³ Moreover, DOJ regulations implementing ADA Title III state that a test-administering entity shall make sure that:

[t]he examination is selected and administered so as to best ensure that, when the examination is administered to an individual with a disability that impairs sensory, manual, or speaking skills, the examination results accurately reflect the individual’s aptitude or achievement level or whatever other factor the examination purports to measure, rather than reflecting the individual’s [disability.]¹⁴

Furthermore, private entities that offer admission testing are required to:

¹² THE NATIONAL CONFERENCE ON THE EMPLOYMENT OF LAWYERS WITH DISABILITIES: A REPORT FROM THE AMERICAN BAR ASSOCIATION FOR THE LEGAL PROFESSION, at 30-31 (2006)

¹³ See 42 USC §12189.

¹⁴ 28 C.F.R. § 36.309(b)(1)(1).

provide appropriate auxiliary aids for persons with impaired sensory, manual, or speaking skills, unless that entity can demonstrate that offering a particular auxiliary aid would fundamentally alter the measurement of the skills or knowledge the examination is intended to test or would result in an undue burden.¹⁵

Because ending discrimination requires accommodation of individual needs, determining what accommodations "best ensure" equality in a given instance requires a fact-specific, individualized analysis of the test taker's circumstances.¹⁶ Regulations regarding testing and accommodations under the ADA, recently released by the DOJ, underscore the importance of this process and stress the importance of having the testing agency: request documentation of an impairment in a reasonable manner; give considerable weight to documentation of previously used accommodations; and work with the applicant in a timely manner.¹⁷

Law school entrance examinations are high stakes tests. The Attorney General, in issuing the regulations on testing accommodations, recognized this fact noting "the importance of ensuring that the key gateways to education and employment are open to individuals with disabilities."¹⁸ An "accessible" exam must provide a qualified individual with a disability an opportunity to demonstrate his or her knowledge and ability equal to that which it extends to other test takers.¹⁹

Moreover, law school entrance examinations will continue to be relied on by most law schools even if the ABA decides no longer to make them a mandatory requirement in order to receive ABA-accreditation. They not only help to determine whether an applicant is admitted to law school, but whether an applicant will receive financial support and has access to the nation's leading law schools. Admission to a prestigious law school is more than an economic benefit for a student. Attending a prestigious law school opens up opportunities in government and public life, prestigious private law firms, judicial clerkships in higher courts, and access to judicial appointments at the highest levels later in life. The U.S. Supreme Court recognized the significance of gaining admission to the leading law schools in *Grutter v. Bollinger*:

Individuals with law degrees occupy roughly half the state governorships, more than half the seats in the United States Senate, and more than a third of the seats in the United States House of Representatives. The pattern is even more striking when it comes to highly selective law schools. A handful of these schools accounts for 25 of the 100 United States Senators, 74 United States Courts of Appeals judges, and nearly 200 of the more than 600 United States District Court judges.

In order to cultivate a set of leaders with legitimacy in the eyes of the citizenry, it is necessary that the path to leadership be visibly open to talented and qualified individuals of every race and ethnicity. All members of our heterogeneous society must have

¹⁵ 28 C.F.R. § 36.309(b)(3).

¹⁶ See 28 C.F.R. app. §35.160; 28 C.F.R. §35.160(b)(2); See also *Enyart v. NCBE*, 630 F.3d 1153, 1164-65 (9th Cir. 2011), cert. denied, 80 U.S.L.W. 3191 (U.S. Oct. 3, 2011); *Wong v. Regents of Univ. of Cal.*, 192 F.3d 807, 818 (9th Cir. 1999); *D'Amico v. N.Y.S. Bd. of Law Examiners*, 813 F. Supp. 217, 221 (W.D.N.Y. 1993).

¹⁷ See 75 Fed. Reg. 56,236 (Sept. 15, 2010) (codified at 28 C.F.R. §36.309(b)(iv-vi))

¹⁸ 56 Fed. Reg. 35,544, 35,572 (July 26, 1991).

¹⁹ *Id.*

confidence in the openness and integrity of the educational institutions that provide this training. As we have recognized, law schools “cannot be effective in isolation from the individuals and institutions with which the law interacts.” Access to legal education (and thus the legal profession) must be inclusive of talented and qualified individuals of every race and ethnicity, so that all members of our heterogeneous society may participate in the educational institutions that provide the training and education necessary to succeed in America.²⁰

Although the *Grutter* case concerned a program to promote diversity by race and ethnicity at the University of Michigan Law School, the Court’s observation that all members of our heterogeneous society should have an equal opportunity to participate in the educational institutions that train our leaders also applies to individuals with disabilities.

Conclusion

Making law schools accessible to individuals with disabilities can help ensure that the legal profession is more open to persons with disabilities than it is now. The Association should encourage entities that administer law school admission testing and the law schools that rely on such testing to implement the ADA and to look for creative ways to make legal education and the legal profession more accessible to students with disabilities.

Respectfully submitted,
Katherine H. O’Neil, Chair
Commission on Mental and Physical Disability Law
February 2012

²⁰ *Grutter v. Bollinger*, 539 U.S. 306, 332-33 (2003) (citations omitted).

As Oregonians continue to face daunting challenges from the economic crisis, legal aid programs that provide low-income Oregonians with civil law matters such as safety from domestic violence, and issues relating to unemployment benefits, housing and foreclosure matters have had cut 16% of their staff. Now more than ever it is important to join the **Campaign for Equal Justice, Oregon State Bar and Oregon Law Foundation** in supporting legal aid programs in your community.

A Call to Action

What You Can Do to Help Legal Aid in Your Community

- Understand how funding for legal aid works and **support increased funding on both the state and federal level**. Supporting access to justice is a bi-partisan cause.
- **Give generously to the Campaign for Equal Justice**. The best way to increase access is to create more legal aid staff attorney positions. Go to www.cej-oregon.org to make a donation.
- **Where you Bank Matters!** Put your lawyer trust account funds with a “Leadership Bank.” These banks are committed to maximizing the rate of return on IOLTA accounts. The interest from these accounts is distributed by the Oregon Law Foundation. Go to www.oregonlawfoundation.org to locate the Leadership Banks in your community.
- **Do pro bono work through your local legal aid office**. Administrative resources are often limited, so please be patient. Sign up for the Pro Bono Oregon listserv - join the support website www.oregonadvocates.org and from there join the ProBonoOregon listserv under the listservs tab. When you join the listserv you will receive a weekly email with available pro bono cases.
- Frequently **review your IOLTA account for abandoned client funds**. These funds are now paid to the Oregon State Bar for appropriation to legal aid through the Oregon State Bar’s Legal Services Program.
- **Include the Endowment Fund in your estate plan**. Gifts and bequests to the Endowment Fund will grow to be a source of perpetual, stable support for Oregon’s legal programs and a lasting legacy for donors. For more information go to www.cej-oregon.org and click on the Endowment link.
- **Understand how legal services are delivered in your community** so that you can make appropriate referrals for low-income clients.
- **Become involved in your local legal aid offices’ priority setting**. Periodically, your local office seeks input on the legal needs of the low-income client community and the priority of these legal needs.

Oregon State Bar
Meeting of the Board of Governors
August 26, 2011
Open Session Minutes

The meeting was called to order by President Stephen Piucci at 12:30 p.m. on August 26, 2011, and adjourned at 3:00 p.m. Members present from the Board of Governors were Jenifer Billman, Hunter Emerick, Ann Fisher, Michelle Garcia, Michael Haglund, Gina Johnnie, David Wade, 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, Susan Grabe, Kay Pulju, Mariann Hyland, and Camille Greene. Also present were: PLF liaison, Tim Martinez and PLF CEO, Ira Zarov.

Friday, August 26, 2011, 1:00 p.m.

1. Department Presentation

- A. Ms. Hirschbiel presented an overview of General Counsel's Office functions and staff. The department's primary goal is to protect the legal and policy interests of the bar by providing legal advice to the BOG, Executive Director, HR Manager and other managers on personnel and other issues. GCO represents the bar's interests in non-disciplinary litigation and negotiates, drafts and reviews all OSB contracts. Other functions include providing ethics assistance to bar members, overseeing operation of the Client Assistance Office and Minimum Continuing Legal Education Department, administering the Client Security Fund and Fee Arbitration Program, supporting the Disciplinary Board and serving as the DB Clerk's office, and supporting the Unlawful Practice of Law and State Lawyers Assistance Committees.
- B. Mr. Wegener presented an overview of Facilities and Operations Division and staff. The division's functions include Accounting, Technology, Design, Facilities and Distribution Services (IKON.)

2. Report of Officers

- A. Report of the President
As written.
- B. Report of the President-elect
As written. Ms. Naucler noted that she is working on the content of the November board retreat and will be asking board members to bring ideas for 2012 to the November retreat.
- C. Report of the Executive Director

As written. Ms. Stevens drew the BOG's attention to the Legal Publications Department's ACLEA award and to the fact that over a two-month period, BarBooks was accessed 3300 times by users who looked at 310,000 pages. She also noted that Judith Baker successfully lobbied US Bank to maintain interest on IOLTA accounts at .7% instead of dropping it to nearly zero as had been planned.

Finally, Ms. Stevens sought the BOG's approval to send a letter to the Hilton Hotel expressing disappointment over the unfortunate treatment of an OLIO participant on August 4, 2011.

Motion: Mr. Haglund moved, Mr. Kranovich seconded, and the board voted unanimously to submit the letter to the Hilton Hotel and copy the entire board, among others.

D. Director of Diversity & Inclusion

Ms. Hyland reported on the Diversity and Inclusion's Department's successful OLIO event. The 14th iteration of the event was well-attended by students, lawyers and judges, and the evaluations were uniformly positive. It also came in under budget. Ms. Hyland explained that the new name of the department reflects a broader focus on inclusion in all aspects of the profession.

E. Report of the BOG Liaison to MBA

Mr. Knight reported on the August 3 meeting of the MBA where he presented the changes in the Lawyer Referral plan. The MBA Board had no issues for the bar.

3. Professional Liability Fund

A. General Update

Mr. Martinez reported that the PLF board is considering whether to eliminate the Special Underwriting Assessment. Any recommendation to do so will be presented to the BOG. The PLF will begin accepting credit card payments for PLF premiums and has found a way to do so that doesn't result in passing on the bank fees to other members

Mr. Martinez also discussed how the recent decline in the stock market effected PLF investments.

. Mr. Zarov gave a brief update on the PLF budget and coverage plan changes. Mr. Zarov also reported that last month's claims audit report indicated that the PLF staff was doing an excellent job with claims handling. Mr. Zarov noted that the PLF will lose over 100 years of experience with the retirements of senior employees over the next two years. He also noted that the PLF Board will have two lawyer vacancies for BOG appointment; nominees will be presented by the end of October.

4. Professionalism Commission Request

A. Proposed Amendment to Statement of Professionalism

The Commission proposes amending the Statement of Professionalism to include support for a diverse bench and bar and asks the board to consider the request of the Oregon Bench/Bar Commission on Professionalism that the proposed amendment to the Statement of Professionalism be submitted to the House of Delegates for approval at the October 2011 meeting. **[Exhibit A]**

Motion: Mr. Wade moved, Mr. Mitchell-Phillips seconded, and the board voted unanimously to submit the amendment to the House of Delegates for approval at the October 2011 meeting.

5. Rules and Ethics Opinions

A. Legal Ethics Committee

Ms. Stevens presented the Legal Ethics Committee's recommendation to issue a proposed formal opinion addressing a lawyer's duties on receipt of documents containing metadata. **[Exhibit B]**. The proposed opinion holds that a lawyer's duty of competence requires familiarity with the concept of metadata and the exercise of reasonable care to protect the inadvertent disclosure of sensitive client information contained in metadata. Mr. Emerick suggested, and Mr. Wade agreed, that the committee's initial premise is wrong and that there should be no presumption that metadata is not inadvertently sent merely arising from a lawyer's duty of care in sending electronic documents.

The consensus of the board was that the Legal Ethics Committee reconsider its analysis of the issues.

Ms. Stevens presented the Legal Ethics Committee's recommendation to issue relating proposed formal opinion discussing addressing the limitations on the disclosure of confidential information by a lawyer seeking to withdraw from a matter in litigation because of difficulties with the client. **[Exhibit C]**

Motion: Mr. Haglund moved, Mr. Knight seconded and the board voted unanimously to issue the proposed formal opinion.

6. OSB Committees, Sections, Councils and Divisions

A. Oregon New Lawyers Division Report

As written.

B. UPL Task Force Report and Recommendations

On behalf of task force chair, Terry Wright, Ms. Hirschbiel presented the UPL Task Force Report, which includes the following recommendations for adoption and implementation by the Board of Governors:

1. Allow the Unlawful Practice of Law Committee ("UPL Committee") to issue advisory opinions in order to provide guidance about what constitutes the unlawful practice of law;
2. Establish a rule that prohibits inactive or retired lawyers from identifying themselves as "lawyers" or "attorneys" unless they also state that they are inactive or retired;
3. Eliminate the admonition letter and replace it with a warning letter;
4. Seek an amendment to the Unlawful Trade Practices Act ("UTPA"), ORS 646.608 et seq. to add that a violation of ORS 9.160 constitutes a violation of the UTPA;
5. Explore, in conjunction with the Court, possible rule changes that would allow the OSB to pursue contempt against disbarred lawyers who continue to practice law directly in the Oregon Supreme Court;
6. Expand the Oregon State Bar website information relating to the unlawful practice of law, and;
7. Expand public outreach and education.

Motion: Mr. Kent moved, Ms. Naucner seconded and the board voted to adopt and implement the UPL Task Force recommendations. Ms. Fisher was opposed.

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

A. Budget and Finance Committee

Mr. Kent reported on the committee's recommendation regarding the following issues highlighted in the Executive Summary Budget Report [**Exhibit D**]:

1. Maintain the current membership fees and assessments for 2012.
2. Continue 2011 funding into 2012 of the program and policy considerations in Section 4.
3. Prepare the 2012 budget to include a transfer of \$400,000 from reserves (planned in 2011 but not needed) and a tentative 2% salary pool.
4. Staff should strive for a balanced budget in 2012.

Motion: The board voted unanimously to approve the committee's recommendations.

Mr. Kent presented the committee's recommendation to select Moss Adams rather than send a RFP soliciting other auditors and bids for the 2010-2011 financial statements.

Motion: The board voted unanimously to approve the Budget & Finance Committee's recommendation to select Moss Adams to perform the audit of the bar's financial statements for fiscal years 2010 and 2011.

B. Member Services Committee

Ms. Johnnie presented the Member Services Committee's recommendations for the 2011 OSB President's Awards and Award of Merit.

Motion: The board voted unanimously to approve the committee's recommendations for the slate of awards recipients. **[Exhibit E]**

Ms. Johnnie presented the Member Services Committee's recommendation that sections not be assessed a per-member administrative fee for law-students who are offered free membership in the section.

Motion: The board voted unanimously to approve the committee motion to waive the bar's per-member administrative assessment on sections for law students who are offered complimentary section membership

C. Policy and Governance Committee

Motion: Ms. Naucler presented the committee motion to amend Bylaw 16.200 regarding complimentary CLE seminars registration and discounted CLE seminars products. **[Exhibit F]** The board voted unanimously to approve the committee motion.

Motion: Ms. Naucler presented the committee's motion to amend OSB Bylaws 9.1, 9.2, 9.3, and 9.4 relating to nominating petitions and electronic voting as set forth on **[Exhibit G]** Ms. Naucler also moved that the BOG waive the one meeting notice requirement and enact these changes immediately. Ms. Billman seconded and the board voted unanimously to waive the one meeting notice requirement. The board voted unanimously to approve the committee motion to make the bylaw changes regarding elections.

D. SUA Subcommittee

Motion: Mr. Kent presented the SUA committee (Mr. Kent, Mr. Haglund and Ms. Billman) recommendation for Mr. Thompson. The BOG affirmed the PLF decision in the Thompson case, finding no merit in Thompson's claims of mishandling. Ms. Johnnie abstained

Motion: Mr. Kent presented the SUA committee (Mr. Kent, Mr. Haglund and Ms. Johnnie) recommendation for Mr. Hernandez and Mr. Millard. The BOG affirmed the PLF's decision to allocate the SUA 50/50 between the two lawyers. The parties knew of the proposed allocation and agreed to share it as part of the settlement of the case.

8. Consent Agenda

Motion: Ms. Naucler moved, Ms. Matsumonji seconded, and the board voted unanimously to approve the consent agenda including various appointments **[Exhibit H]**, a new Fee Arbitration Rule establishing an advisory committee **[Exhibit I]** and the Client Security Fund claim recommended for payment **[Exhibit J]**.

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

Nothing submitted.

OREGON STATE BAR
STATEMENT OF PROFESSIONALISM

Approved by the OSB House of Delegates September 16, 2006

Adopted by the Oregon Supreme Court November 16, 2006

As lawyers, we belong to a profession that serves our clients and the public good. As officers of the court, we aspire to a professional standard of conduct that goes beyond merely complying with the ethical rules. Professionalism is the courage to care about and act for the benefit of our clients, our peers, our careers, and the public good. Because we are committed to professionalism, we will conduct ourselves in a way consistent with the following principles in dealing with our clients, opposing parties, opposing counsel, the courts, and the public.

- I will promote the integrity of the profession and the legal system.
- I will work to ensure access to justice for all segments of society.
- I will support a diverse bench and bar.
- I will avoid all forms of unlawful or unethical discrimination.
- I will protect and improve the image of the legal profession in the eyes of the public.
- I will promote respect for the courts.
- I will support the education of the public about the legal system.
- I will work to achieve my client's goals, while at the same time maintain my professional ability to give independent legal advice to my client.
- I will always advise my clients of the costs and potential benefits or risks of any considered legal position or course of action.
- I will communicate fully and openly with my client, and use written fee agreements with my clients.
- I will not employ tactics that are intended to delay, harass, or drain the financial resources of any party.
- I will always be prepared for any proceeding in which I am representing my client.
- I will be courteous and respectful to my clients, to adverse litigants and adverse counsel, and to the court.
- I will only pursue positions and litigation that have merit.
- I will explore all legitimate methods and opportunities to resolve disputes at every stage in my representation of my client.
- I will support pro bono activities.

FORMAL OPINION NO. 2011-XXX**Competency: Disclosure of Metadata****Facts:**

Lawyer A emails to Lawyer B a draft of an Agreement they are negotiating on behalf of their respective clients. Lawyer B is able to use a standard word processing feature to reveal the changes made to an earlier draft (“metadata”). The changes reveal that Lawyer A had initially placed his client’s “bottom line” negotiating points in the draft, and then subsequently deleted them.

Same facts as above except that shortly after opening the document and displaying the changes, Lawyer B receives an urgent request from Lawyer A asking that the document be deleted without reading it because Lawyer A had mistakenly not removed the metadata.

Same facts as the first scenario except that Lawyer B has software designed to thwart the metadata removal tools of common word processing software and wishes to use it to see if there is any helpful metadata in the Agreement.

Questions:

1. Does Lawyer A have a duty to remove or protect metadata when transmitting documents electronically?
2. May Lawyer B use the metadata information that is readily accessible with standard word processing software?
3. Must Lawyer B inform Lawyer A that the document contains readily accessible metadata?
4. Must Lawyer B acquiesce to Lawyer A’s request to delete the document without reading it?
5. May Lawyer A use special software to reveal the metadata in the document?

Conclusions:

1. See discussion.
2. Yes, qualified.
3. No.
4. No, qualified.
5. No.

Discussion:

Metadata generally means “data about data.” As used here, metadata means the embedded data in electronic files that may include information such as who authored a document, when it was created, what software was used, any comments embedded within the content, and even a record of changes made to the document.¹

Lawyer’s Duty in Transmitting Metadata

Oregon RPC 1.1 requires a lawyer to provide competent representation to a client, which includes possessing the “legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.” Oregon RPC 1.6(a) requires a lawyer to “not reveal information relating to the representation of a client” except where the client has expressly or impliedly authorized the disclosure.² Information relating to the representation of a client may include metadata in a document. Taken together, the two rules indicate that a lawyer is responsible for acting competently to safeguard information relating to the representation of a client contained in communications with others. Competency in relation to metadata requires a lawyer utilizing electronic media for communication to maintain at least a basic understanding of the technology and the risks of revealing metadata or to obtain and utilize adequate technology support.³

A lawyers must use reasonable care to avoid the disclosure of confidential client information, particularly where the information could be detrimental to a client.⁴ With respect to metadata in documents, reasonable care includes taking steps to prevent the inadvertent disclosure of metadata, to limit the nature and scope of the metadata revealed, and to control to whom the document is sent.⁵ What constitutes reasonable care will change as technology evolves.

¹ Joshua J. Poje, *Metadata Ethics Opinions Around the U.S.*, AMERICAN BAR ASSOCIATION, May 3, 2010, http://www.americanbar.org/groups/departments_offices/legal_technology_resources/resources/charts-fyis/metadatchart.html.

² There are several exceptions to the duty of confidentiality in RPC 1.6, but none are relevant here.

³ The duty of competence with regard to metadata also requires a lawyer to understand the implications of metadata in regard to documentary evidence. A discussion of whether removal of metadata constitutes illegal tampering is beyond the scope of this opinion, but RPC 3.4(a) prohibits a lawyer from assisting a client to “alter, destroy or conceal a document or other material having potential evidentiary value.”

⁴ Jurisdictions that have addressed this issue are unanimous in holding lawyers to a duty of “reasonable care.” See e.g. State Bar of Arizona Ethics Opinion 07-03. By contrast, ABA Formal Opinion 06-442, does not address whether the sending lawyer has any duty, but suggests various methods for eliminating metadata before sending a document. *Id.* But see ABA Model Rule 1.6, comment [17], which provides that “[w]hen transmitting a communication that includes information relating to the representation of a client, the lawyer must take reasonable precautions to prevent the information from coming into the hands of unintended recipients.”⁵ Such steps may include utilizing available methods of transforming the document into a non-malleable form, such as converting it to a PDF or “scrubbing” the metadata from the document prior to electronic transmittal.

⁵ Such steps may include utilizing available methods of transforming the document into a non-malleable form, such as converting it to a PDF or “scrubbing” the metadata from the document prior to electronic transmittal.

The duty to use reasonable care so as not to reveal confidential information through metadata may be best illustrated by way of analogy to paper documents. For instance, a lawyer may send a draft of a document to opposing counsel through regular mail and inadvertently include a sheet of notes torn from a yellow legal pad identifying the revisions to the document. Another lawyer may print out a draft of the document marked up with the same changes as described on the yellow notepad instead of a “clean” copy and mail it to opposing counsel. In both situations, the lawyer has a duty to exercise reasonable care not to include notes about the revisions (the metadata) if it could prejudice the lawyer’s client in the matter.

Lawyer’s Use of Received Metadata

If a lawyer who receives a document knows or should have known it was inadvertently sent, the lawyer must notify the sender promptly. Oregon RPC 4.4(b). Using the examples above, in the first instance the receiving lawyer may reasonably conclude that the yellow pad notes were inadvertently sent, as it is not common practice to include such notes with document drafts. In the second instance, however, it is not so clear that the “redline” draft was inadvertently sent, as it is not uncommon for lawyers to share marked-up drafts. Given the sending lawyer’s duty to exercise reasonable care in regards to metadata, the receiving lawyer could reasonably conclude that the metadata was intentionally left in.⁶ In that situation, there is no duty under RPC 4.4(b) to notify the sender of the presence of metadata.

If, however, the receiving lawyer knows or reasonably should know that metadata was inadvertently included in the document, RPC 4.4(b) requires only notice to the sender; it does not require the receiving lawyer to return the document unread or to comply with a request by the sender to return the document.⁷ OSB Formal Op. No. 2005-150. Comment [3] to ABA Model Rule 4.4(b) notes that a lawyer may voluntarily choose to return a document unread and that such a decision is a matter of professional judgment reserved to the lawyer. At the same time, the Comment directs the lawyer to Model Rules 1.2 and 1.4. Model Rule 1.2(a) is identical to Oregon RPC 1.2(a) and requires the lawyer to “abide by a client’s decisions concerning the objectives of the representation” and to “consult with the client as to the means by which the objectives are pursued.”⁸ Oregon RPC 1.4(a)(2), like its counterpart Model Rule, requires a lawyer to “reasonably consult about the means by which the client’s objectives are to be accomplished.” Thus, before deciding what to do with an inadvertently sent document, the receiving lawyer should consult with the client about the risks of returning the document versus the risks of retaining and reading the document and its metadata.

⁶ See *Goldsborough v. Eagle Crest Partners*, 314 Or 336 (1992) (In the absence of evidence to the contrary, an inference may be drawn that a lawyer who voluntarily turns over privileged material during discovery acts within the scope of the lawyer’s authority from the client and with the client’s consent.).

⁷ Comment [2] to ABA Model Rule 4.4(b) explains that the rule “requires the lawyer to promptly notify the sender in order to permit that person to take protective measures.” It further notes that “[w]hether the lawyer is required to take additional steps, such as returning the original document, is a matter of law beyond the scope of these Rules, as is the question of whether the privileged status of a document has been waived.”

⁸ Although not required by the Oregon RPCs, parties could agree, at the beginning of a transaction, not to review metadata as a condition of conducting negotiations.

Regardless of the reasonable efforts undertaken by the sending lawyer to remove or screen metadata from the receiving lawyer, it may be possible for the receiving lawyer to thwart the sender's efforts through software designed for that purpose. It is not clear whether uncovering metadata in that manner would trigger an obligation under Oregon RPC 4.4(b) to notify the sender that metadata had been inadvertently sent. Searching for metadata using special software when it is apparent that the sender has made reasonable efforts to remove the metadata may be analogous to surreptitiously entering the other lawyer's office to obtain client information and may constitute "conduct involving dishonesty, fraud, deceit or misrepresentation" in violation of RPC 8.4(a)(3).

Approved by Board of Governors, August 2011.

PROPOSED FOR BOG REVIEW

FORMAL OPINION NO. 2011-XXX

**Withdrawal from Litigation:
Client Confidences**

Facts:

During litigation, Lawyer and Client have a dispute concerning the representation. Lawyer and Client cannot resolve the dispute and Lawyer files a motion to withdraw in which Lawyer wishes to state one of the following:

- My client won't listen to my advice;
- My client won't cooperate with me;
- My client hasn't paid my bills in a timely fashion; or
- My client has been untimely and uncooperative in making discovery responses during the course of this matter.

Question:

May Lawyer chose unilaterally to provide the court any of the client information noted above in the motion to withdraw?

Conclusion:

No, qualified.

Discussion:

Oregon RPC 1.0(f) provides:

Information relating to the representation of a client denotes both information protected by the attorney-client privilege under applicable law, and other information gained in a current or former professional relationship that the client has requested be held inviolate or the disclosure of which would be embarrassing or would be likely to be detrimental to the client.

Oregon RPC 1.6(a) provides:

A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is

impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).

Oregon RPC 1.6(b) provides, in part:

A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:

* * *

(4) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client;

(5) to comply with other law, court order, or as permitted by these Rules;

* * *

Lawyer's obligation not to reveal information relating to the representation of a client continues even when moving to withdraw from representing Client. *See* Oregon RPC 1.6(a). To the extent the withdrawal is based on "information relating to the representation of a client," then Lawyer may not reveal the basis for the withdrawal to the court unless disclosure is permitted by one of the narrow exceptions in RPC 1.6(b).¹

Depending upon the specific factual circumstances involved, the four statements noted above seem likely to constitute information relating to the representation of a client because if the information "would be embarrassing or would be likely to be detrimental to the client." *See also* THE ETHICAL OREGON LAWYER § 4.3 (OSB CLE 2006) (providing that an event "such as the nonpayment of fees, may have confidential aspects to it, and therefore may constitute information protected by Oregon RPC 1.6").²

For example, a client's inability and/or refusal to pay may prejudice the client's ability to resolve the dispute with an opposing party; likewise, a party's unwillingness to cooperate with discovery may lead the plaintiff to file additional pleadings or seek sanctions. Consequently,

¹ This opinion does not address the situation that would occur where a client terminates a lawyer's services. Pursuant to Oregon RPC 1.16(a)(3), a lawyer is required to withdraw from the representation of a client if "the lawyer is discharged." Under those circumstances, it would be appropriate to inform the court that the lawyer's motion is being brought pursuant to Oregon RPC 1.16(a)(3).

² This opinion assumes that the dispute between Lawyer and Client does not concern whether Lawyer should take action in violation of the RPCs. For an analysis of such a situation, see OSB Formal Ethics Opinion 2005-34, which notes that if a client will not rectify perjury, "the lawyer's only option is to withdraw, or seek leave to withdraw, from the matter without disclosing the client's wrongdoing." *See also In re A.*, 276 Or 225, 554 P2d 479 (1976).

Lawyer cannot unilaterally and voluntarily decide to make this information public unless an exception to Oregon RPC 1.6 can be found.

Neither a disagreement between Lawyer and Client about how the client's matter should be handled nor the client's failure to pay fees when due constitute a "controversy between the lawyer and the client" within the meaning of RPC 1.6(b)(4). While there may be others, the two most obvious examples of such a controversy are fee disputes and legal malpractice claims. A client's dissatisfaction with the lawyer's performance may ultimately ripen into a controversy, but at the point of withdrawal, such a controversy is inchoate at best. In a fee dispute or malpractice claim fairness dictates that the lawyer be on equal footing with the client regarding the facts. Such is not the case under the facts presented here.

Suppose, however, that the court inquires regarding the basis for the withdrawal or orders disclosure of such information.³ Comment [3] to ABA Model Rule 1.16 offers guidance and provides, in part:

The court may request an explanation for the withdrawal, while the lawyer may be bound to keep confidential the facts that would constitute such an explanation. The lawyer's statement that professional considerations require termination of the representation ordinarily should be accepted as sufficient.⁴

If the court orders disclosure, Lawyer may reveal information relating to the representation of Client under Oregon RPC 1.6(b)(5) but may only do so to the extent "reasonably necessary" to comply with the court order. Lawyer should therefore take steps to limit unnecessary disclosure of confidential information by, for example, offering to submit such information under seal (or outside the presence of the opposing party) so as to avoid prejudice or injury to the client.⁵

Approved by Board of Governors, August 2011

³ See, e.g., Oregon RPC 1.16(c), which provides that a lawyer wishing to withdraw must "comply with applicable law requiring notice to or permission of a tribunal when terminating a representation." See also Uniform Trial Court Rule 3.140 (discussing resignation of attorneys); USDC LR 83-11 (discussing withdrawal from a case).

⁴ Similarly, the OREGON ETHICAL LAWYER provides that "[i]n most instances, it should be sufficient to state on the record or in public pleadings that the situation is one in which withdrawal is appropriate and to offer to submit additional information under seal if the court so desires." THE OREGON ETHICAL LAWYER § 4.3 (OSB CLE 2006).

2012 EXECUTIVE SUMMARY BUDGET

*Report to the Board of Governors
August 26, 2011*

PURPOSE OF THIS REPORT

The purpose of the Executive Summary budget is a “first look” at the 2012 budget and identify and evaluate the fiscal implications in developing next year’s budget and subsequent years’ forecasts and to consider:

- new or revised policy approved by the board;
- planning or recommendations of the various board committees;
- new programs or modifications to current programming;
- the projected year and amount of the next member fee increase;
- the impact of financial decisions today on future budgets.

This 2012 budget summary and forecasts are developed on anticipated trends, percentage increases, and various assumptions with the 2011 budget as the base, and no amount is interpreted to be a final amount for 2012.

The Budget & Finance Committee reviewed the Executive Summary Budget at its July 29 meeting and its recommendations are incorporated into this version of the report.

C ONTENTS

1. Budget Development Calendar
2. Summary of 2010 and 2011 Budgets
3. Assumptions in Developing 2012 Budget
4. Program, Policy, and Operational Considerations for 2012
5. Fanno Creek Place
6. Summary of the 2012 Budget Projection
7. Issues to Address in the 2012 Budget Summary and Five-year Forecast
8. Reserves and Other Contingency Funds
9. Recommendations of the Budget & Finance Committee to the Board of Governors
Exhibit A – 2012 Budget and Five-Year Forecast
Exhibit B – 2012 Salaries, Taxes & Benefits at Various Salary Pool Options

1 BUDGET DEVELOPMENT CALENDAR

Date	Process
July 29	Budget & Finance Committee reviewed the 2012 Executive Summary Budget
August 25-26	The Board of Governors reviews the Budget & Finance Committee's report of the 2012 Executive Summary Budget
Mid August to mid September	Bar staff prepare 2012 line by line program/department budgets
September 23	Budget & Finance Committee reviews the 2012 Budget Report. Decision on Member Fee increase.
Mid September to late October	Bar staff refine 2012 budget
October 28	House of Delegates meeting. Action on Fee resolution (if increase approved by the BOG).
November 17	Budget & Finance Committee review revised 2012 Budget Report
November 17-18	Board of Governors reviews and approves 2012 Budget

2 SUMMARY OF 2010 AND 2011 BUDGETS

Before we look at 2012, here is a summary of the last two budget years and any significant additions, deletions, or changes from the previous year.

2010 Financial Report
<ul style="list-style-type: none"> ▶ Net Operating Revenue was \$620,830 – almost 4-1/2 times higher than the budget with the biggest variance in non-personnel costs being 15% under budget. ▶ The Fanno Creek Place Net Expense was \$687,386 - about \$13,000 under budget. ▶ The bar's investment portfolio for its reserves was transferred to two investment management firms and at year end were \$3.950 million.
Additions, Deletions, Changes
<ol style="list-style-type: none"> 1. <i>The bar exam application fee was increased by \$100.</i> 2. <i>The service fee to sections was increased by \$1.25 to \$6.50 (the first increase in three years).</i> 3. <i>The ethics school was added - \$27,000</i> 4. <i>The number of participants in the Leadership College was reduced; thus decreasing this program budget.</i> 5. <i>The PERS Contingency was increased by \$192,000.</i>

2011 Budget

- ▶ The operation budget is a \$337,984 net revenue.
- ▶ Non-personnel costs decrease 1% partly due to the lack of printing of Legal Publications and general continued movement to electronic distribution of information.
- ▶ The Fanno Creek Place net expense is \$764,540.

Additions, Deletions, Changes

1. *Revenue included a \$600,000 grant from the PLF to be received over three years with \$300,000 forthcoming in 2011.*
2. *Reserves totaling \$400,000 are allocated to revenue to offset the loss of revenue from BarBooks available to all members online at no cost beginning January 1, 2011.*
3. *The Leadership College is eliminated*
4. *Funding of \$18,000 approved for the Mandatory Mentoring (now New Lawyer Mentoring Training) program.*
5. *The white pages are not included in the traditional Membership Directory which is replaced by a Resource Directory.*
6. *The membership fee statement is to be distributed by email (first such method of distribution was November 2010).*
7. *Funding approved for Senior Lawyers and Remote Communications Task Forces.*
8. *The costs of the Ethics School were incorporated into the Disciplinary Council budget.*

3 ASSUMPTIONS IN DEVELOPING THE 2012 BUDGET

The 2012 budget and the forecasts for bar operations are prepared with these assumptions:

■ Member Fee Revenue

There is no increase in the active member fee in the 2012 budget.

A 2.5% increase in Membership Fee revenue is projected due to the increase the number of members. This is the same projected growth as last year and adds \$170,000 in revenue.

The forecast assumes a \$50.00 active member fee increase in 2013.

■ Program Fee Revenue

There are a number of likely changes to the 2012 Program Fee revenue. These are included in this draft of the 2012 budget.

- ... The 2012 budget anticipates a swap of years in the allocation of \$400,000 from three reserves. The mid-year projection for 2011 suggests net revenue will be large enough so the reserve dollars are not needed in 2011.

- The \$400,000 then is allocated to the 2012 revenue budget.
- ... The grant from the PLF for BarBooks declines by \$100,000.
 - ... Sales of print legal publications are less than 2011 sales, but the number is an unsubstantiated amount for 2012 and is expected to continue to decline over time.
 - ... CLE Seminars revenue is dropped by 5% from the 2011 budget as that revenue has been falling below budget the past few years.
 - ... There is a 10% reduction in Lawyer Referral revenue caused by some participants not renewing due to the new funding plan.
 - ... The other program fee activities increase 2% a year as programs like Admissions and MCLE consistently have generated higher revenue.
 - ... A new source of revenue included is \$60,000 which is the \$100.00 fee from 600 members who have completed the New Lawyers Mentoring Training program.

■ Investment Income

Investment income is projected to be about the same as 2011 based on the Federal Reserve's statement in early August that rates will remain at the current levels through mid 2013. The returns (interest and dividends) on the funds managed by the investment managers also are projected to be similar to 2011.

■ Salaries, Taxes & Benefits

The salary pool in this version of the 2012 budget is 3%. This pool is the recommendation of the bar Executive Director and the PLF CEO.

- The salary pool has been: 2011 – 3%; 2010 – 3%; 2009 - 3% (although a smaller rate for exempt and higher rate for non-exempt employees); 2008 - 4%; 2007 - 5%.

At its July 25 meeting, the Budget & Finance Committee instructed the bar's CFO to prepare a schedule of salaries, taxes & benefits with pool rates at 3%, 2%, 1%, and no increase. See Exhibit B for the detailed schedule.

- A 1% change in the pool equals \$75,000 in salaries, taxes, and benefits.
- No increase in the salary pool in 2012 indicates a cost reduction in this budget summary by almost \$225,000.

The biggest cost impact on the 2012 budget is the increased rate in the employer's share of PERS. In the last four cycles, the employer rate has jumped back and forth considerably – see the chart below.

Beginning			64% of OSB salaries are at the Tier 1&2 rate. That % declines consistently with a change in personnel
July 1 /Rate	Tier 1&2	OPSRP	
2005	12.30%	8.04%	
2007	4.33%	5.82%	
2009	2.06%	2.84%	
2011	9.55%	8.05%	

■ **Direct Program and General & Administrative Expenses**

For the sake of this summary budget, these costs vary between no change to a 1-1/2% increase. These costs have declined the past two years, but whether that continues into 2012 will not be known until the line item budgets are prepared.

... The only new added cost is \$18,000 for funding the next economic survey.

4 **PROGRAM, POLICY, AND OPERATIONAL CONSIDERATIONS FOR 2012**

The items in this section are a continuation of funding from 2011, or changes to the 2011 budget.

The BOG should provide direction to staff whether all items should transfer to the 2012 budget.

◆ **Carryover Activities from Prior Budgets**

These items have been in the budget in recent years, some for several years.

1. *Grant to Campaign for Equal Justice - \$45,000*

The first commitment of \$50,000 was made in 2001. For 2007 through 2011 the grant was \$45,000.

2. *Grant to Classroom Law Project - \$20,000*

The first commitment of \$20,000 was made in 1999, and has been that amount every year except 2006 when the grant was reduced to \$10,000.

3. *Council on Court Procedures - \$4,000*

The bar has committed \$4,000 per year since 1994.

4. *Fastcase Online Legal Research Library - \$99,000*

The bar's three-year contract with Fastcase ends in September 2012. The contract can renew on an annual basis unless it is renegotiated. An amount is included in the 2012 budget for a research library for members, but this inclusion makes no decision on which library is offered by the bar.

5. *Senior Lawyer Task Force – Placeholder amount of \$10,000*

The 2011 budget includes funding for this task force with a placeholder amount of \$10,000. To date, no funds have been expended.

6. *Remote Communications Task Force – Placeholder amount of \$10,000*

The 2011 budget includes funding for this task force with a placeholder amount of \$10,000. To date, no funds have been expended.

◆ **New Programs/Activities**

There is the only new item in the first draft of the 2012 budget.

7. *Economic Survey - \$18,000*

An economic survey has been completed every four or five years

since 1989. Following the same format as the last four surveys, a one-page questionnaire would be sent to one-third of all active members after April 15, 2012. For the sake of cost and ease of compilation it is expected the survey will be sent via email.

5 FANNO CREEK PLACE

NOTE: Any references to a line or page hereafter are from Exhibit A.

The 2011 budget for Fanno Creek Place (*page 2*) and the Funds Available forecast (*page 3*) have been amended to incorporate the changes in the leases and operation costs of the bar center in the first half of 2011.

The 2012 budget for Fanno Creek Place is prepared with these assumptions:

- The bar receives a full year's rent from the PLF, Joffe Medi-Center, and Zip Realty. Of the currently vacant 4,000 s.f. on the first floor, the forecast includes two of the three spaces leased for the full year.
- With the termination of the 20/20 Institute and Opus NW in early 2011, the projected 2012 rental income is \$37,000 less than what 2011 would have been if those leases remained.
- The forecast includes three or six month vacancies within the five-year period.
- Operating costs increase minimally although the facilities agreement cost of approximately \$54,000 was eliminated January 31, 2011.
- The annual debt service (principal and interest) for the fifth year of the

30-year mortgage is \$891,535 (\$733,185 interest and \$201,123 principal) (*page 2, column D, lines 75 and 92*). Depreciation is a non-cash expense of \$520,600 (*line 85*).

- The net expense is \$728,670 (*line 81*) and the cash flow is a negative \$409,000 (*line 94*), both of which are in line with the forecasts leading to the development of the building and slightly less than the forecasts made with the 2011 budget. The 2011 budget net expense and negative cash flow were \$764,540 and \$422,191 respectively.

6 SUMMARY OF THE 2012 BUDGET PROJECTION

The result of this draft of the 2012 budget with the assumptions and trends listed in this report lead to a **Net Operating Expense of \$87,830** for 2012. (*page 1, line 45, column D*)

- Including the bar's Net Operating Expense and the FCP Net Expense, the total net expense in 2012 is \$816,500 (accrual basis, *line 138*). Converting to the cash basis, the net negative cash flow is \$80,823 (*line 119*), but the funds available exceed the amount required in the bar's reserves.
- With this budget and five-year forecast, the bar could experience small net operating expenses off and on through the next five years and even fall below the level of the operating fund reserves.
- In the development of the 2011 budget, an active member fee

increase of \$50.00 was projected for 2012. No increase is included in this report. If an active member fee increase of \$50.00 were included, \$705,000 in additional fee revenue is added to the budget; thereby eliminating the net expense in 2012.

If there is no active member fee increase in 2012, it would be the seventh consecutive year with no change in the fee.

That has happened only twice in the bar's history – from 1943 to 1949 and 1963 to 1969.

However, when those seven year cycles ended, the total bar membership was 2,132 and 3,364 (it's 18,475 at June 30, 2011) and the active member fee was \$6.00 and \$50.00 respectively.

- There is little change in revenue from Lawyer Referral in the first years of the new funding model. If the percentage fee program is implemented in mid 2012, the forecast is for this new source of revenue to show results beginning in 2013 and the program to break-even by 2016. Those forecasts are based on expectations from data from other bar associations.
- PLF management does not believe there will be an increase in the PLF assessment in 2012, but probably an increase in 2013.

7 ISSUES TO ADDRESS IN THE 2012 2012 BUDGET SUMMARY AND FIVE- AND FIVE-YEAR FORECAST

A net operating expense of \$87,830 is tolerable in 2012 if the \$400,000 in reserves is transferred from 2011 to 2012. Doing so assumes 2011 will meet or exceed its budgeted bottom line.

The Committee and board have numerous options and flexibility in achieving a strong fiscal position in 2012 and the near future. Below are a number of issues for the Committee and board to consider - some the bar can control with specific actions or plans, and some depend on factors not controllable by the bar.

1. Should the **active member fee** increase be made in 2012? Doing so creates a net revenue in 2012 and means many of the following issues need not be addressed this year.
2. If a fee increase is approved for 2012, the **\$400,000 reserves** can remain in the investment portfolio and be allocated to revenue in a future year. Otherwise those reserves are needed in 2012 to create a balanced budget.
3. Should the bar **borrow \$200,000+** in 2011 for the tenant improvements and use the Landlord Contingency dollars allocated for these improvements in 2012 instead of in 2011? This action would reduce the negative cash flow projected for 2012.
4. Can the new **Lawyer Referral** funding model generate a growing sum of revenue and create enough revenue that it breaks even by 2016?

5. Should the **inactive member fee** be increased in 2012 or a future year? The last inactive fee increase was from \$80.00 to \$110.00 in 2002.
6. Will the **investment portfolio** continue to show steady growth in income and market value? The forecast includes a modest 3.5% average annual market value increase.
7. Will the current and the newly developed **space for leases** attain the occupancy and revenue levels in the forecasts? Three or six month vacancies are included three times in the forecast.
8. Should access to **BarBooks** be available only to those members willing to pay an annual subscription? This would convert BarBooks from a free all-member benefit to a pay for service.
9. Can **CLE Seminars** revenue increase – or at least not decline as it has the past few years?
10. What should the **salary pool** be in 2012?
11. Should **costs (personnel, program, and/or administrative)** be reduced by a certain percent, or specific activities or costs identified for reduction or elimination?

8 RESERVES AND OTHER CONTINGENCY FUNDS

The two reserves connected to the operating budget are the Operating Reserve and the Capital Reserve.

The *Operating Reserve* policy is fixed at \$500,000 since the approval of the Executive Summary Budget in 1999. The *Capital Reserve* is \$500,000 (reduced by \$100,000 for 2011) and is based on the expected equipment and capital improvement needs of the bar in the future.

All other reserves, fund balances, and contingencies – *fund balances for Affirmative Action, CSF, Legal Services, LRAP, and sections* and the *contingencies for legal fees, landlord, and PERS* - are not factored into this budget summary and forecasts since they are either restricted or reserved by board action.

The accumulated total at January 1, 2011 of the reserves and contingencies which are controlled by board action are:

Fund, Reserve or Contingency	Balance January 1, 2011
LRAP	\$ 64,614
Contract Legal Fees (<i>net of \$150,000</i>)	66,079
Landlord Contingency (<i>net of \$100,000</i>)	447,557
PERS Contingency	349,288
Operating Reserve	500,000
Capital Reserve (<i>net of \$150,000</i>)	500,000
Total	\$ 1,927,538

Additionally, the Board of Governors has some control over section fund balances which were \$674,763 at January 1, 2011.

9 RECOMMENDATIONS OF THE BUDGET & FINANCE COMMITTEE TO THE BOARD OF GOVERNORS

Action or direction on the following highlighted in the summary budget:

1. Decision on the current fees and assessments: general membership fee (\$447.00), the Affirmative Action Program assessment (\$30.00), and the Client Security Fund assessment (\$15.00), for a total fee of \$492.00 (all fees are 2011 fees for the two-year and over members).
2. Action on program or policy considerations for 2012 in Section 4.
3. Action on any issues in Section 7.
4. Response to assumptions in this report.
5. Guidance to bar staff budget preparers for the 2012 budget.

	A	B	C	D	E	F	G	H	I	J	
1	2012 Budget		Oregon State Bar					Five-Year Forecast			
2	Operations										
3	August-11										
4	Proposed Fee increase for Year →		\$0	\$50	\$0	\$0	\$0	\$0	\$0	\$0	
5	Operations		BUDGET	BUDGET	F O R E C A S T						
6			2011	2012	2013	2014	2015	2016	2017		
7	REVENUE										
8	MEMBER FEES										
9	General Fund	\$6,778,300	\$6,948,000	\$7,104,000	\$8,020,000	\$8,200,000	\$8,405,000	\$8,594,000			
10	Active (\$50); Inactive (\$0) Increase			720,000							
11	% of Total Revenue	63.7%	62.9%	67.9%	68.1%	67.7%	66.9%	67.1%			
12	PROGRAM FEES:										
13	CLE Seminars	1,394,080	1,324,000	1,337,240	1,350,612	1,370,872	1,391,435	1,412,306			
14	Legal Publications										
15	Print Book Sales	167,137	100,000	50,000	20,000	20,000	20,000	20,000			
16	Reallocation of Reserves	0	400,000	0	0	0	0	0			
17	PLF Contribution	300,000	200,000	100,000	0	0	0	0			
18	All Other Programs	1,866,480	1,949,000	1,988,000	2,027,800	2,068,400	2,109,800	2,135,100			
19	New RIS Model			55,000	125,000	170,000	330,000	330,000			
20	Total Program Fees	3,727,697	3,973,000	3,530,240	3,523,412	3,629,272	3,851,235	3,897,406			
21											
22	OTHER INCOME										
23	Investment Income	113,300	115,700	157,100	216,400	263,200	281,900	301,400			
24	Other	15,900	15,900	17,100	17,800	18,500	19,200	20,000			
25	TOTAL REVENUE	10,635,197	11,052,600	11,528,440	11,777,612	12,110,972	12,557,335	12,812,806			
26											
27	EXPENDITURES										
28	SALARIES & BENEFITS										
29	Salaries - Regular (Pool at 3% in 2012)	5,365,541	5,497,900	5,654,600	5,815,800	5,981,600	6,152,000	6,327,300			
30	Benefits - Regular	1,866,300	2,149,700	2,272,300	2,412,700	2,472,500	2,542,900	2,615,400			
31	Salaries - Temp	78,763	50,000	40,000	50,000	40,000	50,000	40,000			
32	Taxes - Temp	7,876	5,000	3,600	4,500	3,600	4,500	3,600			
33	Total Salaries & Benefits	7,318,480	7,702,600	7,970,500	8,283,000	8,497,700	8,749,400	8,986,300			
34	% of Total Revenue	68.8%	69.7%	69.1%	70.3%	70.2%	69.7%	70.1%			
35	DIRECT PROGRAM:										
36	CLE Seminars	582,630	582,630	594,283	606,168	618,292	630,657	643,271			
37	Legal Publications	55,216	55,200	37,000	39,000	40,000	41,000	42,000			
38	All Other Programs	2,220,566	2,272,000	2,328,800	2,375,376	2,434,760	2,507,803	2,583,037			
39	Total Direct Program	2,858,412	2,909,830	2,960,083	3,020,544	3,093,052	3,179,461	3,268,308			
40											
41	GENERAL & ADMIN	495,321	503,000	515,575	528,464	544,318	560,648	577,467			
42											
43	CONTINGENCY	25,000	25,000	25,000	25,000	25,000	25,000	25,000			
44	TOTAL EXPENSES	10,697,213	11,140,430	11,471,158	11,857,009	12,160,070	12,514,509	12,857,075			
45	NET REVENUE/(EXPENSE) - OPERATIONS	(\$62,016)	(\$87,830)	\$57,282	(\$79,396)	(\$49,099)	\$42,826	(\$44,269)			
46											

	A	B	C	D	E	F	G	H	I	J
47	2012 Budget								Five-Year Forecast	
48	Fanno Creek Place									
49										
50	Fanno Creek Place		BUDGET	BUDGET	F O R E C A S T					
51			2011	2012	2013	2014	2015	2016	2017	
52	REVENUE									
53	RENTAL INCOME <i>(2011 revised)</i>									
54	PLF	\$490,903	\$497,346	\$504,807	\$512,379	\$520,065	\$527,865	\$535,783		
55	Opus Master Lease <i>(Termination Fee)</i>	140,645								
56	20/20 Institute <i>(incl Termination Fee)</i>	245,736								
57	First Floor Tenant - Zip Realty	49,165	50,640	52,160	28,460	48,200	49,200	50,200		
58	First Floor Tenant - Joffe	31,579	126,789	128,683	130,599	132,580	138,144	140,900		
59	New Tenants <i>(three)</i>		86,600	91,800	93,200	69,300	94,600	96,000		
60	OLF	26,904	27,711	28,500	29,400	30,300	31,200	32,100		
61	Meeting Rooms	21,000	18,000	18,000	21,000	24,000	24,000	24,000		
62	Operating Expense Pass-through	0	0	3,000	3,100	3,200	3,300	3,400		
63	INTEREST	3,100	3,100	4,000	5,000	6,000	3,000	4,000		
64										
65	TOTAL REVENUE	1,009,032	810,186	830,950	823,138	833,645	871,309	886,383		
66										
67	EXPENDITURES									
68	OPERATING EXPENSE									
69	Salaries & Benefits	106,200	110,400	113,700	117,100	120,600	124,200	127,900		
70	Opus Management Fee	4,085								
71	Operations	323,993	332,100	342,100	352,400	363,000	373,900	385,100		
72	Depreciation	520,600	520,600	520,600	520,600	520,600	530,600	530,600		
73	Other	30,200	1,000	1,000	1,000	5,000	1,000	1,000		
74	DEBT SERVICE									
75	Interest	744,850	733,185	720,901	707,655	693,699	678,884	663,158		
76	Principal	0	0	0	0	0	0	0		
77	ICA to Operations	(158,429)	(158,429)	(158,429)	(162,400)	(162,400)	(162,400)	(162,400)		
78										
79	TOTAL EXPENSES	1,571,499	1,538,856	1,539,872	1,536,355	1,540,499	1,546,184	1,545,358		
80										
81	NET REVENUE/(EXPENSE) - FC Place	(\$562,467)	(\$728,670)	(\$708,922)	(\$713,217)	(\$706,854)	(\$674,875)	(\$658,975)		
82										
83	ACCRUAL TO CASH ADJUSTMENT									
84	SOURCES OF FUNDS									
85	Depreciation Expense	520,600	520,600	520,600	520,600	520,600	530,600	530,600		
86	TI Allowance from Opus	34,155								
87	Landlord Contingency Fund	230,000					200,000			
88	Loan Proceeds									
89	USES OF FUNDS									
90	Assign PLF Subtenants' Leases (Net)	(85,463)								
91	TI's - First and Third Floors	(230,000)								
92	Principal Pmts - Mortgage	(189,458)	(201,123)	(213,507)	(226,653)	(240,609)	(255,424)	(271,150)		
93										
94	NET CASH FLOW - FC Place	(\$282,633)	(\$409,193)	(\$401,829)	(\$419,270)	(\$426,863)	(\$199,699)	(\$399,525)		
95										

	A	B	C	D	E	F	G	H	I	J	
96	2012 Budget							Five-Year Forecast			
97	Funds Available/Reserve Requirement										
98											
99			BUDGET	BUDGET	F O R E C A S T						
100			2011	2012	2013	2014	2015	2016	2017		
101	FUNDS AVAILABLE										
102			\$ 1,376,000	\$1,468,351	\$1,387,528	\$1,374,970	\$1,068,503	\$719,342	\$547,169		
103	SOURCES OF FUNDS										
104			(62,016)	(87,830)	57,282	(79,396)	(49,099)	42,826	(44,269)		
105			271,300	271,300	276,700	282,200	287,800	290,700	293,600		
106			25,000	25,000	25,000	25,000	25,000	25,000	25,000		
107			145,000	71,000	77,000	90,000	0	117,000	140,000		
108			111,000	222,000	112,288						
109			131,000								
110	USES OF FUNDS										
111			(111,400)	(100,000)	(80,000)	(100,000)	(80,000)	(120,000)	(80,000)		
112			(17,800)	(20,000)	(25,000)	(50,000)	(50,000)	(75,000)	(50,000)		
113			(18,000)	(50,000)	(50,000)	(50,000)	(50,000)	(50,000)	(50,000)		
114								(200,000)			
115			(3,100)	(3,100)	(4,000)	(5,000)	(6,000)	(3,000)	(4,000)		
116			(282,633)	(409,193)	(401,829)	(419,270)	(426,863)	(199,699)	(399,525)		
117			(96,000)								
118			0								
119			92,351	(80,823)	(12,559)	(306,466)	(349,162)	(172,173)	(169,194)		
120											
121			\$1,468,351	\$1,387,528	\$1,374,970	\$1,068,503	\$719,342	\$547,169	\$377,975		
122											
123	RESERVE REQUIREMENT										
124			500,000	500,000	500,000	500,000	500,000	500,000	500,000		
125			500,000	500,000	500,000	525,000	550,000	575,000	600,000		
126											
127			\$1,000,000	\$1,000,000	\$1,000,000	\$1,025,000	\$1,050,000	\$1,075,000	\$1,100,000		
128											
129	RESERVE VARIANCE										
130			\$468,351	\$387,528	\$374,970	\$43,503	(\$330,658)	(\$527,831)	(\$722,025)		
131											
132											
133	Reconciliation										
134	Cash to Accrual										
135			(62,016)	(87,830)	57,282	(79,396)	(49,099)	42,826	(44,269)		
136			(562,467)	(728,670)	(708,922)	(713,217)	(706,854)	(674,875)	(658,975)		
137											
138			(\$624,483)	(\$816,500)	(\$651,640)	(\$792,613)	(\$755,953)	(\$632,049)	(\$703,244)		
139											

2012 Salaries, Taxes & Benefits at Various Salary Pool Options

Pool Increase		2011 Budget			\$ Incr fr 2011 Budget	\$ Svgs If __ % Pool	Projected 2012 Net Revenue
		Salaries	Tax/Bene	Total			
		\$5,365,541	\$1,868,300	\$7,233,841			
2	3.0%	\$5,497,900	\$2,149,700	\$7,647,600	\$413,759		\$ (87,830)
0	2.0%	\$5,444,300	\$2,128,700	\$7,573,000	\$339,159	(\$74,600)	\$ (13,230)
1	1.0%	\$5,390,600	\$2,107,700	\$7,498,300	\$264,459	(\$149,300)	\$ 61,470
2	0.0%	\$5,337,000	\$2,086,800	\$7,423,800	\$189,959	(\$223,800)	\$ 135,970

8/11/2011

Exhibit B

1. The Member Services Committee moves the following slate for the 2011 OSB Awards:

Public Leadership: Jud Randall

Sustainability: Jim Kennedy

Member Service: Jack Lundeen and the Hon. Jill Tanner

Public Service: Carl Neil and Brent Renison

Affirmative Action: Hon. Thomas Rastetter

Wallace P. Carson, Jr., Award for Judicial Excellence: Hon. Janice Wilson

Award of Merit: Ted Kulongoski

2. The Member Services Committee moves that the bar waive its per-member assessment for complimentary law-student membership in bar sections.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: August 26, 2011
From: Mitzi Naucler, Chair, Policy & Governance Committee
Re: Proposed Changes to Bylaw 16.200

Action Recommended

Consider the Policy & Governance Committee's motion to amend Bylaw 16.200 regarding complimentary CLE seminars registration and discounted CLE seminars products.

Background

Over the years, advances in technology have led to the development of a wide variety of our CLE seminars delivery formats. There has also been growth in the number of sources of CLE content. In recent years, the BOG has elected to offer reduced or complimentary seminar registration to several categories of members.

When Bylaw 16.200 was first drafted, live seminars were the primary source of CLE for members. Today, the CLE Seminars Department offers no less than seven formats for delivering CLE. While all the content is approved for Oregon credit, not all the content is developed and provided by the CLE Seminars Department. Providing complimentary copies and registration is not always possible due to pricing restrictions and the cost of non-CLE Seminars Department content. The proposed bylaw changes are designed to identify and clarify the available complimentary registration and pricing discounts to seminars and seminar products made available to members by the CLE Seminars Department.

Summary of Changes:

- Title – Adds “CLE Discounts” to the bylaw.
- (a) Clarifies the type of CLE program eligible for complimentary registration and who provides the program's content.
- (b) Clarified for text consistency.
- (c) NEW – provides reduced registration for seminar webcasts when the CLE Seminars provides the seminar content.
- (d) Renumbered and sentence structure corrected.
- (e) Renumbered and clarified for text consistency.
- (f) Renumbered and clarified for text consistency; moves “complimentary copies” to new 16.200 (g).
- (g) NEW – provides discounts and complimentary copies of any archived CLE product where the CLE Seminars Department is the content provider.

- (h) NEW – provides that discounts, complimentary copies, and complimentary registration for seminars and seminar products are not available when the CLE Seminars Department is not the content provider except at the discretion of the CLE Seminars Director.

Proposed new language:

Subsection 16.200 Reduced and Complimentary Registrations; Product Discounts

(a) Complimentary ~~admission to~~registration for live CLE seminars and scheduled video replays where the CLE Seminars Department is the content provider is available to the following OSB lawyer members: Active Pro Bono members, lawyer-legislators, 50-year members, judges, and judicial clerks.

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

(c) Reduced registration for webcasts where the CLE Seminars Department is the content provider is available the following lawyer members: Active Pro Bono members, lawyer-legislators, 50-year members, judges, and judicial clerks.

(e-d) 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.

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

(g) Discounts for and complimentary copies of archived CLE Seminars products in any format where the CLE Seminars Department is the content provider may be available at the sole discretion of the CLE Seminars Director.

(h) Seminars and seminar products in any format where the CLE Seminars Department is not the content provider are not subject to any discounts, complimentary registration or complimentary copies except at the sole discretion of the CLE Seminars Director.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: August 26, 2011
From: Mitzi Naucler, Policy and Governance Committee Chair
Re: Amendments to OSB Elections Bylaws

Action Recommended

Consider the Policy & Government Committee's motion to amend OSB Bylaws 9.1, 9.2, 9.3, and 9.4 as set forth herein. The Committee also recommends that the BOG waive the one meeting notice requirement and enact these changes immediately.

Background

In 2010, the BOG and HOD voted to eliminate the requirement for members to submit a nominating petition when filing as a candidate. The Bar Act was amended by the 2011 Legislature to reflect those decisions. The proposed amendments to Bylaws 9.1 and 9.2 will conform the bylaws to the new procedure and also eliminate the nominating petition requirement for ABA House of Delegates candidates.

Further amendments to 9.2 and to 9.4 allow the bar to continue online voting for elections and polls and make it clear that online voting is the default process.¹ Bylaw 9.3 is eliminated because online voting does away with the problem of providing new ballots to members who change their address between the opening and closing of the voting. Going to nearly-universal online voting will save the bar approximately \$7000 in printing and mailing costs annually and promotes the goal of sustainability.

Section 9.1 Date of Elections

The election for members of the Board of Governors will be held annually on the third Monday in October. Bar members who wish to appear on the ballot must present a ~~nominating petition signed by at least 10 members entitled to vote for the nominee~~ candidate statement to the executive director of the Bar at least 160 days before the election.

In the case of an uncontested election for the Board of Governors, a candidate will be declared elected thirty-one days after the final day on which nominating petitions for the Board are required to be filed, provided that a challenge has not been filed pursuant to ORS 9.042. If a challenge has been filed, the candidate will be declared elected at the end of that process unless the challenge is successful.

¹ The few members who are exempt from the requirement to provide an e-mail address will continue to receive paper ballots. For the present, staff plans send a postcard notice that voting is open to those (approximately 400) members who are not exempt but who have nevertheless declined to provide an e-mail address.

The election for members of the OSB House of Delegates will be held annually on the third Monday in April. Bar members who wish to appear on the ballot must present a ~~nominating petition signed by at least 10 members entitled to vote for the nominee candidate statement~~ to the executive director of the Bar at least 30 days before the election. ~~The nominating petition for a delegate from the region composed of all areas not located in this state need only be signed by the candidate for the position~~

The election for representatives to the ABA House of Delegates will be held annually on the third Monday in April in conjunction with the election to the OSB House of Delegates. Bar members who wish to appear on the ballot must present a ~~nominating petition signed by at least 10 members entitled to vote for the nominee candidate statement~~ to the executive director of the Bar at least 30 days before the election.

Section 9.2 Ballots

The Executive Director will prepare ballots whenever a contest exists and the ballots will be accompanied by ~~a the one page candidate~~ statement that includes the candidate's name, law firm, principal office address, current full-face photograph, law school from which graduated, date of admission in Oregon, state and local bar activities, offices and other pertinent information. The statements must be ~~provided submitted~~ on a ~~uniform~~ form prepared by the Bar, which will also indicate that the information supplied by the candidate has not been edited or verified by the Bar. A request for a ~~nominating petition and candidate's~~ statement or the submission thereof will be considered public information. When a member entitled to vote has not received a ballot or when the ballot has been lost or destroyed, the Executive Director will supply another ballot on receipt of satisfactory proof of non-receipt, loss or destruction of the original ballot. Ballots will be electronic.

Section 9.3 Change in Region

~~If a member changes his or her principal office address to another region between the time the ballot is sent and the date of the election, prior to the distribution of ballots and the member supplies the Executive Director with satisfactory notice and proof of the change, within 15 days before the date of the election, the member will be entitled to vote from the region of his or her new principal office address. The member will surrender the written ballot, if any, that was previously mailed to the member. The Executive Director will, on request and receipt of the notice and proof of change of address, supply the member with a proper written ballot or access to the bar's electronic voting process for the member's new region.~~

Section 9.4.3 Voting

~~Paper ballots must be deposited with the Executive Director in an envelope marked "ballot", but which bears no other distinguishing marks. The envelope must be sealed and enclosed in an envelope addressed to the Executive Director on which there will be blanks for the member's name, principal office address and signature. The Executive Director will have the custody of the ballots after they are submitted. Any member of the Bar will be permitted to be present while the ballots are canvassed. The Executive Director will announce the results of the balloting and will notify each candidate of the results of the election. Electronic ballots will be available to members. Members eligible to vote will be provided by using a secure link to the candidates statements and an online ballot. The candidate statements and photos will be electronically distributed. Ballots will be tabulated electronically using a secure voting system to assure no duplicate entries. Any member of the Bar will be permitted to be present while the~~

ballots are canvassed. The Executive Director will announce the results of the balloting and will notify each candidate of the results of the election.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: August 26, 2011
Memo Date: August 26, 2011
From: Ethan Knight, Appointments Committee Vice-Chair
Re: Volunteer Appointments to Various Boards, Committees, and Councils

Action Recommended

Approve the following Appointments Committee recommendations.

Legal Ethics Committee

Recommendation: Lori Hellis, term expires 12/31/2013

New Lawyer Mentoring Committee

Recommendation: Christopher Lombard, term expires 12/31/2012

Recommendation: Ali Seals, term expires 12/31/2013

House of Delegates

Region 2 Recommendation: Daniel Webb Howard, term expires 4/15/2013

Region 2 Recommendation: Roger F. Smith, public member, term expires 4/15/2013

Region 3 Recommendation: Philip Paquin, public member, term expires 4/15/2013

Region 5 Recommendation: Melvin Oden-Orr, term expires 4/15/2013

Region 6 Recommendation: David Phelps, public member, term expires 4/21/2014

Out of State Region Recommendation: Lish Whitson, term expires 4/15/2013

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: August 26, 2011
From: Mitzi Naucler, Chair, Policy & Governance Committee
Re: Fee Arbitration Rules Amendment

Action Recommended

Consider the Policy & Governance Committee motion to amend the Fee Arbitration Rules to create an Advisory Committee.

Background

At its April 22, 2011 meeting, the Board of Governors accepted the Fee Arbitration Task Force Report and adopted its recommendations. One of the recommendations was to create a Fee Arbitration Advisory Committee to act as a continuing resource for training and recruitment of arbitrators. In order to implement this recommendation, the Policy and Governance Committee recommends amending the Fee Arbitration Rules as follows:

Section 2. Arbitration Panels and Advisory Committee

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2.1 General Counsel shall appoint members to an arbitration panel in each 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 board of governors region of appointment and who are neither active nor inactive members of any bar.

2.2 General Counsel shall also appoint an advisory committee consisting of at least one attorney panel member from each of the board of governors regions. The advisory committee shall assist General Counsel with training and recruitment of arbitration panel members, provide guidance as needed in the interpretation and implementation of the fee arbitration rules, and make recommendations to the board of governors for changes in the rules or program.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: August 26, 2011
From: Sylvia E. Stevens, Executive Director
Re: CSF Claim Recommended for Payment

Action Recommended

The CSF Committee, at its meeting on July 23, 2011, voted to recommend the following claim for payment:

No. 2010-38 HAYES (Guerrero)	\$2,000.00
------------------------------	------------

Background

No. 2010-38 HAYES (Guerrero)

Claimant engaged Keith Hayes in November 2008 to assist in resolving two competing child support orders in Oregon and Arizona. He deposited a \$2000 retainer against Hayes' fees. Shortly thereafter, Guerrero received copies of letters Hayes sent to the appropriate state agencies. Guerrero called Hayes' office several times and was told by the secretary that Hayes was working on Guerrero's matter, but he never again heard from Hayes. So far as Guerrero could tell, nothing more was done on his behalf and he never received either an accounting or a refund from Hayes. Guerrero is trying to resolve the matter himself now, as he cannot afford to hire another attorney.

Hayes' primary practice was bankruptcy. In March 2009 he was suspended from practice before the Bankruptcy Court and ordered to disgorge fees in several cases. An interim disciplinary suspension order was entered against Hayes in January 2010 and he was disbarred by a trial panel in July 2010. Hayes' current whereabouts are unknown.

The CSF Committee concluded that Guerrero is entitled to a refund of the unearned fees paid to Hayes in advance, that Hayes' work for Guerrero was minimal or insignificant within the meaning of CSF Rule 2.2.2, and that Guerrero should be reimbursed the full amount of \$2000. The committee also recommends waiving the requirement for a civil judgment against Hayes as Guerrero is not in a financial position to pursue such an action and Hayes is likely judgment-proof in any event.

**Oregon State Bar
Board of Governors Meeting
August 26, 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. Alexander Gordon – 822671

Motion: Mr. Mitchell-Phillips presented information concerning the BR 8.1 & 8.7 reinstatement application of Mr. Gordon. Mr. Mitchell-Phillips moved, and Ms. Naucier seconded, to temporarily reinstate Mr. Gordon pursuant to BR 8.7, and to consider his unconditional reinstatement at the November board meeting. The motion passed unanimously.

2. Amy P. Grant – 992716

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

3. Niamh M. Lewis – 003172

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

4. Amy L. Muenchrath - 973463

Motion: Ms. Johnnie presented information concerning the BR 8.1 reinstatement application of Ms. Muenchrath. Ms. Johnnie moved, and Mr. Wade seconded, to recommend to the Supreme Court that Ms. Muenchrath's reinstatement application be approved, to be effective upon her completion of 45 CLE hours. The motion passed unanimously.

5. John W. Walker - 733145

Motion: Ms. Naucler presented information concerning the BR 8.1 reinstatement application of Mr. Walker. Ms. Naucler moved, and Ms. Matsumonji seconded, to recommend to the Supreme Court that Mr. Walker's reinstatement application be approved. The motion passed unanimously.

6. Jo Ellen Zucker – 883371

Motion: Mr. Emerick presented information concerning the BR 8.1 & 8.7 reinstatement application of Ms. Zucker. Mr. Emerick moved, and Mr. Wade seconded, to temporarily reinstate Ms. Zucker pursuant to BR 8.7, and to consider her unconditional reinstatement in November. The motion passed unanimously.

B. Disciplinary Counsel's Report

As written.

**Oregon State Bar
Board of Governors Meeting
August 26, 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. Pending UPL Litigation
 - 1. The BOG received status reports on the non-action items.

- B. Pending or Threatened Non-Disciplinary Litigation
 - 1. The BOG received status reports on the non-action items.

- C. Other Matters
 - 1. The BOG received status reports on the non-action items.

**Oregon State Bar
Special Meeting of the Board of Governors
September 23, 2011
Minutes**

The meeting was called to order by President Steve Piucci at 10:00 a.m. on September 23, 2011, and adjourned at 11:10 a.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, Ethan Knight, Tom Kranovich, Steve Larson, Audrey Matsumonji, Kenneth Mitchell-Phillips, Mitzi Naucler, Maureen O'Connor and David Wade. Staff present were Sylvia Stevens, Helen Hirschbiel, Rod Wegener, Kay Pulju, Judith Baker, Susan Grabe, Mariann Hyland and Camille Greene. Also present was Robert G. Burt, representing the Legal Ethics Committee.

1. Approval of 2011 House of Delegates Agenda

Mr. Piucci presented the draft 2011 HOD Agenda.

Motion: Ms. Fisher moved, Mr. Haglund seconded, and the board voted unanimously to approve the 2011 HOD Preliminary Agenda.

Mr. Piucci then asked the board to determine whether it wishes to take a position on the various delegate resolutions.

HOD Agenda Item #12:

Motion: Ms. Naucler moved, Ms. Fisher seconded, and the board voted unanimously to not take a position on HOD agenda item #12 re: Support for Judicial Department Budget Funding.

HOD Agenda Item #13:

Motion: Mr. Haglund moved, Mr. Wade seconded, and the board voted unanimously to support HOD agenda item #13 re: Support of Adequate Funding for Legal Services to Low-Income Oregonians. Ms. Naucler abstained.

HOD Agenda Item #15:

Motion: Mr. Kranovich moved, Mr. Mitchell-Phillips seconded, and the board voted unanimously to not take a position on HOD agenda item #15 re: Amendment to Oregon Rule of Civil Procedure 42.

HOD Agenda Item #16:

Motion: Mr. Wade moved, Mr. Kehoe seconded, and the board voted unanimously to oppose HOD agenda item #16 re: Increasing LRS Initial Consultation Fee. Ms. Fisher abstained.

2. Task Force On Discipline For Discrimination, Intimidation & Harassment

Mr. Burt presented the task force report and recommendation that the BOG adopt a resolution for an amendment to RPC 8.4. Mr. Burt also pointed out that the Legal Ethics Committee has not had time for a thorough review of the task force's proposed rule and was, on a preliminary vote, evenly divided about the need for a rule and the language any amendment should take. Ms. Stevens reminded the BOG that OWLs would like Mr. Piucci to announce the board's action at the COE. Note: the minutes' exhibit is an updated version of Mr. Burt's letter. **[Exhibit A]**

Motion: Mr. Wade moved, Mr. Kranovich seconded, and the board voted unanimously to accept the task force conclusion that the rules should prohibit discrimination, intimidation and harassment in the practice of law and to send the matter back to the Legal Ethics Committee to study whether the best approach is a rule change or a formal opinion to clarify that such conduct is prohibited.

3. Formation of Non-Profit Law Section

Ms. Naucler presented the proposal to form a Nonprofit Organizations Law Section.

Motion: The board voted unanimously to approve the P&G committee's motion to create a Nonprofit Organizations Law Section.

4. CEJ Request for Co-Sponsorship

Ms. Stevens presented the CEJ request for the OSB to co-sponsor a trophy awarded annually to the region of the state that has the largest percentage increase in the number of CEJ donors.

Motion: Ms. O'Connor moved, Mr. Knight seconded, and the board voted unanimously to approve OSB co-sponsorship of the CEJ annual award.

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

None.

ROBERT G. BURT, P.C.

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IN REPLY PLEASE REFER
TO FILE NO: 1000-LEC

September 21, 2011

Stephen V. Piucci
President
OREGON STATE BAR
Oregon State Bar Center
P.O. Box 231935
Tigard, Oregon 97281-1935

Re: OSB Legal Ethics Committee Task Force Review of Oregon Rules of Professional Conduct to Address the Issue of Discrimination, Intimidation, and/or Harassment In Legal Proceedings

Dear Mr. Piucci:

This is in response to a request by the OSB Board of Governors ("BOG") that the OSB Legal Ethics Committee ("LEC") review a March 18, 2011, letter from Oregon Women Lawyers ("OWLS") concerning the amendment of existing Oregon Rules of Professional Conduct ("RPCs") to "adequately address the issue of harassment in legal proceedings." The letter included endorsements by the Oregon Chapter of the National Bar Association, the Oregon Minority Lawyers Association, and the Oregon Asia Pacific American Bar Association.

In response to the BOG's request, the LEC formed a Task Force ("TF") to evaluate the OWLS' request. This letter is the TF's evaluation of the issues raised by OWLS' letter.

I. BACKGROUND

OWLS' letter was prompted by an ethics complaint filed by a Portland lawyer against another Portland attorney for discrimination, intimidation, and/or harassment ("Levy Matter"). The complaint arose from a March 4, 2010, incident at a downtown Portland law firm party. The female victim complained about being groped and subjected to sexually-charged statements by Jack Levy. In the victim's complaint, she stated that she believed Levy's conduct was a "strategic maneuver" to unsettle her on the night before she and Levy would be meeting at her client's property on a pending construction defect case (the victim represented the property owner, and Levy represented the property developer). The victim subsequently filed a complaint against Levy with the Portland Police Department. On July 2, 2010, Levy pleaded guilty in Multnomah County Circuit Court to a violation of ORS 166.065(1)(a)(A) (a class A misdemeanor for intentionally harassing or annoying another by subjecting that person to offensive physical contact that consists of touching the sexual or other intimate parts on the person). Levy was sentenced to two

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President
OREGON STATE BAR
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years probation, and was ordered to: write a letter of apology to the victim; stay away from the victim; and attend a class on gender issues and professionalism. On February 24, 2011,

the Oregon Supreme Court's Disciplinary Board approved a stipulation for Levy's discipline, whereby he was publicly reprimanded for violating ORS 9.527(2)(for conviction of a misdemeanor involving moral turpitude)(see, attached copy of ORS 9.527).

While the Levy Matter was pending, OWLS formed a committee to consider whether the existing RPCs adequately address the issue of discrimination, intimidation, and/or harassment by a lawyer in legal proceedings. OWLS' March 18, 2011, letter to the BOG stated (page 1):

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.

II. ADEQUACY OF EXISTING RPCs

OWLS' letter concluded that "there is a significant gap in the RPCs because they do not directly address discrimination, intimidation and/or harassment." That "significant gap," from OWLS' perspective, results in:

(a) The OSB Client Assistance Office and the OSB Disciplinary Counsel's Office not considering sexual and other forms of harassment as constituting violations of the RPCs or ORS 9.527 without an accompanying criminal conviction; and

(b) The OSB not keeping pace with other state bars (or with the Oregon Department of Justice or leading Oregon law firms) in advancing a stated policy against discrimination, intimidation, and/or harassment by an attorney towards others involved in the legal process.

OWLS incorrectly states the position of both the OSB Client Assistance Office and the OSB Disciplinary Counsel's Office – a criminal conviction of harassment is not treated by either as a prerequisite for either initiating an investigation or proceeding with a disciplinary action. With the possible exception of the Levy Matter, OWLS' letter does not

ROBERT G. BURT, P.C.

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identify specific instances in which the OSB Client Assistance Office or the OSB Disciplinary Counsel's Office required a criminal conviction of sexual and other form of harassment as a prerequisite to pursuing a violation of the RPCs or ORS 9.527 on those grounds (see, subparagraph (a), above). The OSB Client Assistance Office's initial processing of the victim's telephone call in the Levy Matter may have left the victim with a misinterpretation of the OSB Client Assistance Office's intake policy on complaints. The

occurrence appears to have been an isolated incident, and did not ultimately result in a failure to investigate to Levy's conduct -- or in a failure to sanction Levy. The TF's inquiry has not produced another specific occurrence like the victim's experience with the OSB Client Assistance Office. Levy's conduct was unquestionably unprofessional, boorish, and rude -- and was ultimately determined to have been both criminal and a violation of ORS 9.527; however, such conduct might have been found (even in the absence of the victim filing a police report, and Levy pleading guilty to a class A misdemeanor) to have violated the following existing RPCs and Oregon statute:

RULE 4.4 RESPECT FOR THE RIGHTS OF THIRD PERSONS; INADVERTENTLY SENT DOCUMENTS

(a) In representing a client or the lawyer's own interests, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, harass or burden a third person, or knowingly use methods of obtaining evidence that violate the legal rights of such a person.

RULE 8.4 MISCONDUCT

(a) It is professional misconduct for a lawyer to:

* * *

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

* * *

(4) engage in conduct that is prejudicial to the administration of justice;

* * *

9.527 Grounds for disbarment, suspension or reprimand. The Supreme Court may disbar, suspend or reprimand a member of the bar whenever, upon proper proceedings for that purpose, it appears to the court that:

(1) The member has committed an act or carried on a course of conduct of such nature that, if the member were applying for admission to the bar, the application should be denied:

ROBERT G. BURT, P.C.

ATTORNEYS

Stephen V. Piucci
President
OREGON STATE BAR
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* * * * *

(4) The member is guilty of willful deceit or misconduct in the legal profession:

With the exception of ensuring that the OSB Client Assistance Office is appropriately sensitive to inquiries concerning harassment, the TF believes that the circumstances surrounding the victim's contact with the OSB Client Assistance Office is a case of "no harm, no foul." After a rough start, the process ultimately worked as it should have. The existing RPCs and ORS 9.527 provide bases upon which to address lawyer

conduct involving discrimination, intimidation, and/or harassment in a legal proceeding. In the absence of other considerations (see, Part II, below), the TF believes that there may not be a need to amend the existing RPCs.

III. AMENDMENT OF EXISTING RPCs

OWLS' letter observes "that many jurisdictions have a rule or combination of rules in effect that address intimidation and harassment" (see, subparagraph (b), above). OWLS' observation is correct. Many other state bars (as well as the American Bar Association) address the issue of discrimination, intimidation, and/or harassment in their functional equivalents of RPC 4.4 and/or RPC 8.4. The TF's review indicates that, with varying degrees of specificity, 29 other state bars have a rule that proscribe discrimination, intimidation, and/or harassment – in fact, 6 of those other state bar's rules specifically proscribe sexual harassment itself.^{1/}

IV. CONCLUSION

Although RPC 4.4(a), RPC 8.4(a)(2) or (4), and ORS 9.527 provide potential bases to address discrimination, intimidation, and/or harassment by lawyers in legal proceedings, the TF agrees with OWLS -- that it is in the interests of the OSB and its members to now amend RPC 8.4 to advance, in a specific manner, a policy against lawyers knowingly manifesting, by words or conduct, in the course of representing a client or the lawyer's own interests, bias or prejudice based upon race, religion, age, gender, sexual orientation, national origin, marital status, or disability. Toward that end, the TF has prepared, and by this letter recommends that the Board of Governors adopt a resolution for, an amended RPC 8.4 to implement such a specific policy by the OSB and its members. I have attached the TF's recommended amended RPC 8.4.^{2/}

^{1/} They include the state bars for: Iowa (Rule 32:8.4); Maryland (Rule 8.4); Minnesota (Rule 8.4); Missouri (Rule 4-8.4); New Jersey (RPC 8.4); and Wisconsin (SRC 20:8.4)

^{2/} On October 14, 2011, OWLS is sponsoring a conference in Portland – "Diverse Perspectives Bringing the Legal Profession into the 21st Century." The conference's keynote speaker will be Professor Anita Hill. Although an amendment of RPC 8.4 cannot be accomplished by the conference's date, it would be a fine gesture from the OSB and its members if Professor Hill could, in her presentation at the conference, announce that she has learned that the OSB has joined six other state bars in adopting an RPC that states a policy against discrimination, intimidation, and/or harassment (including a specific policy against sexual harassment)

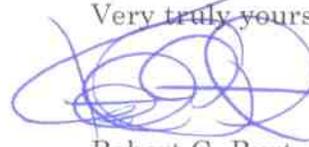
ROBERT G. BURT, P.C.

ATTORNEYS

Stephen V. Piucci
President
OREGON STATE BAR
September 21, 2011
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If you have any questions concerning the above, please do not hesitate to contact me.

Very truly yours,



Robert G. Burt
Task Force Chair

RGB/mgp
Enclosures: as

OREGON REVISED STATUTES

9.527 Grounds for disbarment, suspension or reprimand. The Supreme Court may disbar, suspend or reprimand a member of the bar whenever, upon proper proceedings for that purpose, it appears to the court that:

- (1) The member has committed an act or carried on a course of conduct of such nature that, if the member were applying for admission to the bar, the application should be denied;
- (2) The member has been convicted in any jurisdiction of an offense which is a misdemeanor involving moral turpitude or a felony under the laws of this state, or is punishable by death or imprisonment under the laws of the United States, in any of which cases the record of the conviction shall be conclusive evidence;
- (3) The member has willfully disobeyed an order of a court requiring the member to do or forbear an act connected with the legal profession;
- (4) The member is guilty of willful deceit or misconduct in the legal profession;
- (5) The member is guilty of willful violation of any of the provisions of ORS 9.460 or 9.510;
- (6) The member is guilty of gross or repeated negligence or incompetence in the practice of law; or
- (7) The member has violated any of the provisions of the rules of professional conduct adopted pursuant to ORS 9.490. [Formerly 9.480; 1989 c.1052 §11]

OREGON RULES OF PROFESSIONAL CONDUCT

RULE 8.4 MISCONDUCT

(a) It is professional misconduct for a lawyer to:

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

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

(3) engage in conduct involving dishonesty, fraud, deceit or misrepresentation that reflects adversely on the lawyer's fitness to practice law;

(4) engage in conduct that is prejudicial to the administration of justice;

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

(6) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law; or

(7) knowingly manifest by words or conduct, in the course of representing a client or the lawyer's own interests, bias or prejudice based upon race, religion, age, gender, sexual orientation, national origin, marital status, or disability.

(b) Notwithstanding paragraphs (a)(1), (3) and (4) and Rule 3.3(a)(1), it shall not be professional misconduct for a lawyer to advise clients or others about or to supervise lawful covert activity in the investigation of violations of civil or criminal law or constitutional rights, provided the lawyer's conduct is otherwise in compliance with these Rules of Professional Conduct. "Covert activity," as used in this rule, means an effort to obtain information on unlawful activity through the use of misrepresentations or other subterfuge. "Covert activity" may be commenced by a lawyer or involve a lawyer as an advisor or supervisor only when the lawyer in good faith believes there is a reasonable possibility that unlawful activity has taken place, is taking place or will take place in the foreseeable future.

(c) Notwithstanding paragraph (a)(7), a lawyer shall not be prohibited from declining, accepting, or withdrawing from representation of a client in accordance with Rule 1.16, or from engaging in legitimate advocacy with respect to the bases set forth therein.

**Oregon State Bar
Special Meeting of the Board of Governors
October 13, 2011
Minutes**

The meeting was called to order by President Steve Piucci at 8:01 a.m. on October 13, 2011, and adjourned at 8:25 a.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, Audrey Matsumonji, Kenneth Mitchell-Phillips, Mitzi Naucner, Maureen O'Connor and David Wade. Staff present were Helen Hirschbiel and Camille Greene. Also present were Ira Zarov and Tom Cave from the Professional Liability Fund.

1. PLF Primary Assessment and Excess Rates

A. Approve the 2012 Excess Rates

Tom Cave explained the method to determine these rates. Each year the BOG approves the PLF excess rates. This year the rates for excess coverage have increased in the following amounts:

\$700,000 Class I coverage has increased from \$882 to \$961.

\$700,000 Class II coverage has increased from \$1,589 to \$1,732.

\$1,700,000 Class I coverage has increased from \$1,644 to \$1,792.

\$1,700,000 Class II coverage has increased from \$2,827 to \$3,081.

B. Approve the 2012 Assessment

The PLF Board of Directors approved the proposed assessment and budget at its September 26, 2011 meeting. Pursuant to PLF and OSB policies, the BOG also must approve the budget and assessment for the coming year. This year, the recommendation is to maintain the assessment at the 2011 amount of \$3,500.

Motion: Ms. Fisher moved, Ms. Dilaconi seconded, and the board voted unanimously to approve the 2012 excess rates and assessment as proposed.

2. Bar Preference Poll

Mr. Larson informed the board about the 7th judicial district opening. The presiding judge has pressed the treasurer of the Mid-Columbia Bar Association to ask for a preference poll from the board. Mr. Larson requested a decision from the board. The board decided by consensus to not conduct the poll. Mr. Larson will inform the presiding judge of the board's decision.

3. Good of the Order (Non-action comments, information and notice of need for possible future board action) None.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: November 19, 2011
From: Sylvia E. Stevens, Executive Director
Re: CSF Claims Recommended for Payment

Action Recommended

Approve the following claims recommended for payment by the Client Security Fund:

No. 2011-20	ETTINGER (Milich)	\$ 500.00
NO. 2009-38	DALRYMPLE (Johnson)	852.00
No. 2011-25	PRIES (Dahl)	800.00
No. 2011-24	HAYES (Mohs)	1,500.00
No. 2011-26	HAYES (Tabib)	2,500.00
No. 2011-19	HAYES (Pantalone)	3,250.00
No. 2010-36	GINSLER (Kitchens)	1,363.00
No. 2011-22	SCHANNAUER (Olive)	800.00
No. 2011-15	HARRISON (Bischel)	395.00
No. 2010-32	S. CONNALL (Ryan)	13,500.00
	TOTAL	\$25,460.00

Background

No. 2011-20 ETTINGER (Milich) \$500

Milich hired Bend attorney Mariel Ettinger in February 2010 to represent him in a DUII and related charges and deposited a \$3000 retainer for fees. While the DUII was pending, Milich was charged with menacing and harassment and agreed that Ettinger would apply any bail refund to fees in the second matter.

In May 2010, Ettinger's motion to release the bail was granted, and she received \$850 from the court (\$150 of the \$1000 bail was retained by the court as a security release fee). In August, Ettinger appeared for Milich and entered a not guilty plea.

Following the August hearing, Ettinger did no further work for Milich and did not account for or refund any unearned fees. Beginning in September 2010, Ettinger's personal problems interfered with her ability to practice and the PLF appointed counsel to marshal her practice and ensure that pending matters were assigned to new counsel. In October 2010 attorney Victoria Moffet (from whom Ettinger had rented office space) substituted in as

Milich's counsel. She completed the DUII case in December 2010. Milich later hired attorney Bob Moon to handle the menacing case and paid him \$1000 for his services.

Moffett received no payment for her representation of Milich, claiming to have completed the case "as a good deed" when it was apparent that Ettinger wasn't attending to his matters. Milich claims Ettinger didn't earn the \$3000 he paid for the DUII case, and Moffett concurs that the file doesn't reflect significant work. Nevertheless, Milich suffered no loss on the DUII matter because the work was completed at Moffett at no additional cost to him.

Milich also claims that Ettinger didn't earn the \$850 received from his bail refund. However, the CSF Committee concluded that she had done some work on the case and recommends an award of \$500. The Committee also recommends that the requirement for a judgment be waived because the small amount involved doesn't merit legal action against Ettinger who is likely judgment-proof at this time in any event.

2009-38 DALRYMPLE (Johnson) \$852

Johnson hired Klamath Falls attorney Richard Dalrymple in June 2008 for representation in a DUII matter and deposited a \$1500 retainer. Dalrymple performed some work, including a court appearance in September. By the end of October 2008, Dalrymple had applied \$648 of the retained to his fees and in November 2008 tendered a statement showing a trust balance of \$852. Johnson says no further work was performed and when he asked for a refund of his retainer, Dalrymple said he liked to retain such balances for a year in case new charges were filed.

Dalrymple took his own life on February 2, 2009. Attorney Gary Hedlund was hired to administer the estate, but quickly determined that there were no assets. He notified clients and assisted with the return of files, but told the clients they should contact Mrs. Dalrymple about refunds of trust deposits. Johnson picked up his file, but acknowledges that he didn't make any effort to contact Dalrymple's widow.

Dalrymple's widow has not been very cooperative with the CSF investigation (including ignoring a subpoena). Nevertheless, she reports that there was some money in Dalrymple's trust account at the time of his death and that the records showed money owed to Johnson. She also says she distributed the available trust account funds to clients who asked until the funds were gone. Dalrymple had no personal assets and Mrs. Dalrymple has had to sell her house and file bankruptcy to satisfy personal debts.

The CSF Committee was troubled by Johnson's failure to take any action in early 2009, when he could likely have recovered the unearned portion of his retainer. Of course, had that happened, the CSF would likely have received a claim from another client who came up short.

The CSF Committee ultimately concluded there was sufficient evidence of dishonesty (failure to keep the retainer in trust; apparent lie about needing to keep money in case additional charges were filed) to make Johnson's claim eligible for reimbursement from the CSF.

The Committee also recommends waiving the requirement for a judgment as Dalrymple's estate is insolvent.

No 2011-25 PRIES (Dahl) \$800

Ms. Dahl hired Eugene attorney John Pries in July 2009 to file a bankruptcy to stop the foreclosure of her home. She met with Pries once and deposited \$300 for the filing fee and \$500 toward a \$1500 retainer or fixed fee for the matter. There was no written agreement that the fees were earned on receipt.

Dahl heard nothing more from Pries but was unconcerned because he had told her that "these things take time." On December 29, 2009, the sheriff came to her door to evict her. She lived in her car for several days and had to put her dogs to sleep. Although she tried to contact Pries during this time, she couldn't reach him. Unbeknownst to Dahl, Pries had been arrested on November 28, 2009 and was jailed for several months. He was out by April 2010, but never contacted Dahl. The bankruptcy court has no record that he filed anything on behalf of Dahl. Pries died from liver failure on January 23, 2011.¹

The CSF Committee recommends that Dahl be awarded the entire \$800 she paid to Pries and that the requirement for a judgment be waived.

No. 2011-24 HAYES (Mohs) \$1,500

Nicolasa and Kurt Mohs hired Salem attorney Keith Hayes in 2006 to file a Chapter 13 bankruptcy. He charged them \$4000, but after he filed the petition and attended their meeting with the trustee, he did little or no work on the case. The Mohs' tried unsuccessfully to contact Hayes over the next several years because of problems with their case. Most of their concerns have to do with the quality of Hayes' advice.

In March 2009 Hayes was suspended from practice before the Bankruptcy Court and ordered to disgorge fees in several cases. An interim disciplinary suspension order was entered against Hayes in January 2010 and he was disbarred by a trial panel in July 2010. Hayes' current whereabouts are unknown. In July 2011, after considering the Mohs' application, the US Bankruptcy Court entered an order disallowing \$1500 of the fees paid by the Mohses and issuing a judgment in their favor.

The CSF Committee recommends reimbursing the Mohs \$1500 in exchange for an assignment of their judgment against Hayes. All information suggests that Hayes is judgment-proof if he could be found and it would be an unreasonable burden to require the Mohs' to attempt to collect their judgment from Hayes.

¹ The CSF received one other claim from a former client of Pries, but he resolved it voluntarily in December 2010 and the file was closed.

No. 2011-26 HAYES (Tabib) \$2,500

Tabib hired Keith Hayes in June 2008 for representation in a criminal matter. His wife and mother paid the \$2500 retainer. Hayes visited Tabib once in jail, but did not appear at any court hearings and ceased contact with the client. Despite repeated requests, Hayes has failed to provide an accounting for the funds received on Tabib's behalf.

Tabib engaged Lynne Morgan as substitute counsel. She reports that any work Hayes might have done on the case was of no value and she had to start at the beginning and provide all necessary services.

The Committee recommends reimbursing the entire retainer of \$2,500 on the ground that any work performed by Hayes was de minimis at best. The Committee also recommends that the requirement for a judgment be waived, for the reasons stated above. If an award is made, Tabib has requested that it be paid \$2000 to his wife and \$500 to his mother, as those are the amounts they each contributed for his fees.

No. 2011-19 HAYES (Pantalone) \$3,250

John and Linda Pantalone retained Hayes in 2006 to file a Chapter 13 bankruptcy. The prepared drafts of the paperwork, which Hayes reviewed and filed. After than Hayes was unavailable, which required the Pantalones to deal with the trustee and negotiate directly with their creditors. Eventually, in 2011, the Pantalones finished their plan with all creditors being paid.

The Pantalones had legal insurance through Arag, through which Hayes received \$750. He also received \$3,250 through the Pantalone's Chapter 13 plan, even though Arag confirmed that the \$750 payment should have been Hayes' full fee.

The CSF concluded that Hayes was dishonest in failing to inform the Pantalones or the court that the Arag payment was intended to be his full fee, and in accepting \$3,250 from the Pantalone's Chapter 13 plan payments. The CSF recommends reimbursing the \$3,250 and waiving the requirement for a judgment, as Hayes' whereabouts are unknown and he is likely judgment-proof.

No. 2010-36 GINSLER (Kitchens) \$1,363

This is the third claim the CSF has received from former clients of Portland attorney William Ginsler. Kitchens hired Ginsler in June 2008 to handle a Chapter 13 bankruptcy.

Ginsler instructed Kitchens to turn over his tax refund check of \$1,363 to the trustee, but Kitchens mistakenly cashed it. Kitchens withdrew the appropriate amount from his credit union account and gave it to Ginsler in a cashiers' check. Ginsler said he would remit the funds to the Chapter 13 trustee. The trustee has no record of receiving the money.

As the bankruptcy case neared a close in early 2010, Ginsler petitioned the court for additional attorney fees. Kitchens objected to any additional fees for Ginsler, and pointed out the missing \$1,363 to the court. The bankruptcy judge ordered Ginsler to appear and account for the missing funds. (Ginsler withdrew from representing Kitchens, who retained substitute counsel to conclude the Chapter 13.) Ginsler also hired counsel. At the hearing, Ginsler's counsel reported that Ginsler would not appear, citing health reasons, but acknowledged that Ginsler had received the \$1,363 and hadn't remitted it to the trustee. The bankruptcy judge denied Ginsler's request for additional fees and filed a complaint with the bar.

Ginsler resigned Form B in October 2010 with eleven complaints pending including this one. The CSF Committee recommends that Kitchens be awarded \$1,363 to reimburse him for Ginsler's misappropriation. No judgment is required because the claim is for less than \$5,000 and Ginsler was disciplined in connection with the same conduct.

No. 2011-22 SCHANNAUER (Olive) \$800

Ms. Olive hired Bend attorney Peter Schannauer in October 2009 to pursue Olive's adoption of her domestic partner's eleven-year-old son. He quoted a fee of \$600 plus \$200 for filing fees, which Olive deposited with him a few days later.

Olive heard nothing from Schannauer until March 2010, when she called for a status update. Hearing nothing again, Olive called Schannauer in October 2010 demanding a refund. Schannauer responded by e-mail saying her petition had been denied and that he would call the next day to discuss how she should proceed. That was Olive's last contact with Schannauer.

Olive hired attorney Tim Brewer to complete the adoption. When Brewer called Schannauer to get the file, Schannauer expressed remorse and said he knew he should refund Olive's fees. Schannauer also promised to send copies of what he had filed with the court. Brewer heard nothing more and, on contacting the court, was informed that nothing had ever been filed on Olive's behalf.

The Committee recommends that Olive be reimbursed for the entire \$800 paid to Schannauer and that the requirement for judgment be waived. Olive is of limited means and it would be a hardship to require her to pursue a judgment; the committee prefers to have staff pursue a small claims judgment against Schannauer who, as of this writing, continues to practice.

No. 2011-15 HARRISON (Bischel) \$395

Ruth Bischel seek to recover \$5,624 paid to Eugene attorney Pamela Harrison. Bischel hired Harrison in September 2004 to pursue an employment-related claim against Lane Community College. Bischel claims that Harrison took the case on a contingency fee, but could not provide a fee agreement to that effect.

Harrison disputes Bischel's claim, but says that while the case began on an hourly basis it was converted to a contingency basis in July 2006. Harrison's office sent Bischel a contingency fee agreement to sign at that time, but Bischel never returned it. Harrison's version of the agreement is supported by monthly invoices sent to Bischel between September 2004 and July 2006, which Bischel paid. Thereafter, all statements show "no charge" for professional services.

The CSF's concern is with Bischel's last payment. In early 2009, the bar began investigating two unrelated complaints against Harrison and she ultimately resigned Form B, effective July 29, 2010. On August 6, 2010, Bischel contacted Harrison inquiring about a \$395 invoice she had received. Harrison responded on August 27, 2010:

"Not to worry. Everything is moving along on your case. You need to pay the invoice so we can put "green fees" in the account for court fees, depositions, etc. I will call you if there are any issues. As I explained earlier these things take time. Please be patient."

Bischel paid the invoice the next day, but heard no more from Harrison. Bischel eventually retained another attorney to pursue her claims and filed a malpractice claim against Harrison, which is pending. Harrison denies having communicated with Bischel in August 2010 and having received the \$395 check. She provided an elaborate explanation including that she didn't have e-mail service at the time, and that she didn't bank where the check appears to have been processed.

The CSF Committee was not persuaded by Harrison's denials and concluded she acted dishonestly in accepting payment for future legal services that she would not be able to provide. Because of the small amount in question, the Committee recommends that Bischel be reimbursed \$395 without the need to obtain and pursue collection of a judgment against Harrison.

No. 2010-32 SHANNON CONNALL (Ryan) \$13,500

By way of background, Shannon Connall practiced law with her father Des Connall for many years until she submitted a Form B resignation on November 10, 2010 with this and other complaints pending against her and her father. The complaints against Mr. Connall are pending in DCO.

Lynn Ryan hired Shannon in February 2010, initially in connection with a DHS matter involving Ryan's children. Shannon quoted and Ryan paid a \$5000 fixed fee for that matter. In April 2010, Ryan was charged with DUII and Shannon agreed to handle the second matter for \$2500. Shannon did some work on Ryan's DHS matter, but other than appearing at arraignment, did nothing on the DUII.

Ryan had been referred to Shannon by her estranged husband, Johns, who was being represented by Shannon and Des Connall at the time. In December 2009, Johns' mother had deposited \$11,000 with Shannon to pay Johns' bail, but it was never needed used for bail. In

June 2010, Johns and his mother requested a refund of the bail money, but Shannon informed them she had used it for Ryan's legal fees. Johns' mother was angry because she had not authorized the funds to be used for anything other than her son's bail. She demanded a meeting with Des Connall and in early July, both Shannon and Des met with Johns and Johns' mother to discuss the bail money issue. Ryan also attended the meeting, which was heated and unpleasant. It ended with Shannon telling Ryan that she (Ryan) owed Johns' mother \$11,000 and needed to pay it to Shannon immediately.

Although Ryan believed she had paid two fixed fees for all of Shannon's services and was not particularly pleased with the services she had received, Ryan wanted to avoid problems with Johns' mother, so she paid Shannon \$11,000.

Ryan eventually went to the police and Shannon was charged with theft. She pleaded no contest to Theft in the 1st Degree on May 5, 2011 and was ordered to pay Ryan \$13,835 (apparently for the \$11,000 paid in July 2010 and the \$2,500 paid in April for the DUUI plus miscellaneous costs). Shannon's sentencing has been postponed until May 2016 to allow her an "opportunity to put her house in order" including, presumably, reimbursing Ryan. To date she has paid only a fraction of what she owes.

Shannon's last address is in Fargo, North Dakota and does not, to our knowledge, have any assets. The CSF Committee recommends awarding Ryan \$13,500 in exchange for an assignment of her rights against Shannon (and Des, who may be legally responsible as Shannon's employer).

MINUTES

BOG Access to Justice Committee

Meeting Date: September 23, 2011
Location: Oregon State Bar Center, Tigard
Chair: Kenneth Mitchell-Phillips
Vice-Chair: Gina Johnnie
Members Present: Jennifer Billman, Hunter Emerick, David Wade, Maureen O'Connor
Members Absent: Kenneth Mitchell-Phillips, Maureen O'Connor
Staff Members: Susan Grabe, Judith Baker, Cathy Petrecca

ACTION ITEMS

1. **Topic:** Minutes of the July 29, 2011 were approved contingent upon changing how Maureen O'Connors' name was reflected in the minutes.

INFORMATION ITEMS

2. **Topic: Funding Crisis and Impact on Oregon's Legal Aid Programs**

Judith Baker gave an overview of legal aid's funding decrease and resulting staff layoffs. Oregon has four legal aid programs that provide services statewide. 2011-2013 revenue has decreased by 15% compared to the previous biennium. Predictions for future funding are not optimistic with the likelihood that funding is not likely to improve over the next 2 to 5 years. The result is that legal aid will reduce staff by 16%. The decision was to reduce staff statewide, causing a greater impact on urban offices, rather than closing rural offices and diminishing the statewide system.

3. **Topic: Concept of Earning CLE Credit for Pro Bono Representation**

Cathy Petrecca explained that there is an effort by the Pro Bono Committee to get CLE credit for lawyers representing clients through an OSB Certified Pro Bono Program. The MCLE Committee will make their recommendation at their December, 2011 meeting.

4. **Topic: Pro Bono Fair**

Cathy Petrecca reminded the committee that the Pro Bono Fair is October 25 at the World Trade Center. It consists of free CLEs in the afternoon with a reception and awards ceremony at 5 pm. The Pro Bono Fair also includes legal service organizations having booths with the goal of lawyers signing up for pro bono opportunities.

Minutes **Budget & Finance Committee**

August 26, 2011
Red Lion Hotel
Pendleton, Oregon

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

1. Minutes – July 29, 2011 Committee Meeting

The minutes of the July 29, 2011 meeting were approved.

2. Selection of Auditor for Audit of OSB 2010 and 2011 Financial Statements

The Committee recommended Moss Adams to perform the bar's audit for the 2010 and 2011 financial statements at the July 29 meeting. The matter was on the Board of Governors agenda for action by the board. The board approved the Committee's recommendation.

3. 2012 Executive Summary Budget

Mr. Wegener stated the 2012 Executive Summary Budget on the agenda includes the discussion points from the Committee's July 29 meeting and any new information available since that meeting. A significant change was to transfer the \$400,000 in reserves allocated to revenue in 2011 to revenue for the 2012 budget. Mr. Wegener further stated the next budget for the Committee's review will be the first draft of the staff's line item budgets.

The Committee discussions led to these actions:

- Reaffirmed there will be no active member fee increase for 2012.
- After much discussion, the Committee recommended a 2% salary pool for the next stage of the 2012 budget.
- The Committee agreed to retain the \$10,000 placeholder amounts each for the Senior Lawyer and Remote Communications task forces in the 2011 budget for the 2012 budget.

4. Financial Report – July 31, 2011

Mr. Wegener summarized the July 31 report included on the Committee agenda. There was a net operating revenue in July and raised the year-to-date net revenue to an unusual high of \$1.047 million. Much of the net revenue has been the result of overall under-spending in non-personnel accounts, some of which were included in the report.

He also reported the fund balance of the Client Security Fund could approach \$500,000 at year end if claims continue as they have for the past two years. The \$500,000 balance is the recommended low balance for the fund suggested by the CSF Committee. If the \$500,000 balance is reached, the board will either need to consider an assessment increase from the membership, or reevaluate the \$500,000 recommended balance.

5. Update on Tenant and Capital Improvements at the Bar Center

Nothing to report other than that noted on the agenda.

6. Next Committee meeting

The next meeting is scheduled for September 23, 2011 at the bar center.

Minutes
Budget & Finance Committee
September 23, 2011
Oregon State Bar Center
Tigard, Oregon

Present - Committee Members: Steve Larson, vice-chair; Hunter Emerick; Michelle Garcia; Mike Haglund; Mitzi Naucler; David Wade. **Other BOG Members:** Steve Piucci. **Staff:** Sylvia Stevens; Susan Grabe; Rod Wegener.

1. Minutes – August 26, 2011 Committee Meeting

The minutes of the August 26, 2011 meeting were approved.

2. 2012 OSB Budget

Mr. Wegener summarized the 2012 budget which was the line item budget prepared by the department managers. He stated this budget will be refined and updated with more current data in some cases for the November meeting.

The budget included a \$49,983 net operating revenue. The budget included no increase in the active member fee and transferred to revenue the \$400,000 in reserves that was included in the 2011 budget. There are few changes in the 2012 budget from the 2011 budget, but include the revenue and funding of the New Lawyer Mentoring Program, funding for a economic survey, and a salary pool of 2%. Although personnel costs increased primarily due to the large increase in the employer's rate for PERS, non-personnel costs are lower than the 2011 budget.

The Five-year Forecast indicates the bar will have positive cash flow in 2012 in spite of the low operating revenue and the net expense in Fanno Creek Place, and the reserves will remain fully funded if the equity market remains stable. Finally, even though the 2012 budget shows a small net operating revenue, budgeting for 2013 will be much more challenging with lower revenue expected for 2013.

Even though revenue in 2012 from CLE Seminars is budgeted at less than the 2011 budget, the Committee questioned if the amount was decreased enough. Due to the declining revenue and consistent net expenses, the Committee asked that the department manger meet with the Committee at its November meeting and discuss plans to decrease operating costs and the short-term and long-term plans for the financial and operational activity of seminars.

3. Financial Report – August 31, 2011

The bar's operating statements had a net expense for August 31 and Mr. Wegener stated a net expense likely will occur for each month through the rest of the year. With a net operating revenue of \$956,000 through August 31, the bar should end the year with a small net revenue thereby not needing any funds from the reserves to balance the 2011 budget.

4. Presentation by Investment Managers

The Committee heard presentations from the investment managers of Becker Capital and Washington Trust Bank on the performance of the bar's funds invested with each firm. Reports prepared by the managers had been emailed to the committee members prior to the meeting.

The Committee discussed investing in equities paying higher dividends with Jay Dyer of Becker Capital. Mr. Dyer commented that the firm looks at the long-term and overall performance of the funds as the best value for the bar, but indicated if the bar wished to invest in equities paying higher dividends, the Committee only would need to indicate so.

Washington Trust Bank was represented by Chad LeGate and Rick Cloutier, who reported that the portfolio was well-diversified and the firm was close to approaching the 50/50 target between equities and fixed income. When he stated that attaining that target was held up by the \$200,000 it was expecting the bar to withdraw in the second half of the year. Mr. Wegener stated that was no longer necessary and would inform both managers that the bar would not need those funds in 2011.

5. Update on Tenant and Capital Improvements at the Bar Center

Other than that noted on the agenda, Mr. Wegener reported there have been inquiries and a visit by a prospect for the leased space on the first floor.

6. Next Committee meeting

The next meeting is scheduled for November 19, 2011 at The Allison, Newberg, Oregon.

MINUTES

BOG Member Services Committee

Meeting Date: August 26, 2011
Location: Red Lion Hotel, Pendleton
Chair: Gina Johnnie
Vice-Chair: Maureen O'Connor
Members Present: Gina Johnnie, Ann Fisher, Audrey Matsumonji, Ken Mitchell-Phillips, Maureen O'Connor. By phone: Matt Kehoe, Ethan Knight
Members Absent: None
Guests: Tom Kranovich (BOG)
Staff Members: Mariann Hyland, Kay Pulju

ACTION ITEMS

1. **Topic:** Minutes of the June and July meetings were approved.
2. **Topic:** The Animal Law Section's request to waive the per-member administrative assessment for complimentary law student memberships was approved for submission to the full board.
3. **Topic:** A slate of recommendations for the OSB President's Awards and Award of Merit was approved for submission to the full board.

INFORMATION ITEMS

1. **Topic:** Board travel and event expenses. Members discussed whether to develop formal criteria for board travel and event expenses. A review of the bar's internal sponsorship policy for law-related events will appear on the next committee agenda.

MINUTES

BOG Member Services Committee

Meeting Date: September 23, 2011
Location: Oregon State Bar, Tigard
Chair: Gina Johnnie
Vice-Chair: Maureen O'Connor
Members Present: Gina Johnnie, Maureen O'Connor, Ann Fisher, Matt Kehoe, Ethan Knight, Ken Mitchell-Phillips. By phone: Audrey Matsumonji.
Members Absent: None
Guests: Jenifer Billman (BOG)
Staff Members: Danielle Edwards, Camille Greene, Kay Pulju

ACTION ITEMS

1. **Topic:** Minutes of the August meeting were approved.
2. **Topic:** BOG and HOD election dates for 2012. Proposed election timelines (based on statutory deadlines) were approved.

INFORMATION ITEMS

1. **Topic:** OSB Event Sponsorships. Committee members reviewed the current internal policies on event sponsorship and proposed ideas for improvement:
 - Make official recognition a condition of sponsorship
 - Set a guideline that each board member attend at least two events per year (discuss at upcoming BOG retreat); board members should bring name tags
 - Unfilled seats at sponsored tables should be filled by scholarship, either from the OSB or the host organization.
 - If a table is not warranted, request that board members be placed at different tables to promote networking
2. **Topic:** CLE Seminars. The Budget & Finance Committee is interested in reviewing CLE seminars, which could possibly be done in cooperation with the Member Services Committee. Gina Johnnie will discuss the matter with Steve Larson and also Mitzi Naucler to see how this might work with the November strategic planning session.

MINUTES

BOG Policy & Governance Committee

Meeting Date: August 26, 2011
Location: Red Lion Hotel, Pendleton, Oregon
Chair: Mitzi Naucler
Vice-Chair: Michael Haglund
Members Present: Ann Fisher, Michelle Garcia, Michael Haglund, Chris Kent, Tom Kranovich, Mitzi Naucler
Members Absent: Barbara Dilaconi
Guests: None
Staff Members: Sylvia Stevens, Helen Hierschbiel

ACTION ITEMS

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| <p>1. Topic: Approval of Minutes from July 29, 2011. On motion of Mr. Haglund, seconded by Mr. Kent, the minutes as submitted were approved unanimously.</p> |
| <p>2. Topic: Expanding Mandatory Malpractice. The committee discussed the fact that there is no mechanism in place to assure that reciprocity admittees maintain their malpractice coverage. The committee also discussed how to expand the requirement for malpractice insurance to Oregon lawyers admitted by examination who don't maintain their principal office in Oregon. The bar act could be amended, but there was concern about opening the statute to legislative tinkering. It was suggested that the requirement could be incorporated into the admission rules. Staff will study the issues further and the topic will be on the September meeting agenda.</p> |
| <p>3. Topic: Election Bylaw Changes. The committee reviewed staff's suggested language amending Bylaws 9.1 and 9.2 to conform them to the elimination of the requirement for nominating petitions. Proposed changes to Bylaw 9.1 and 9.2 will make online voting the default process and Bylaw 9.3 would be repealed because it is irrelevant to online voting. On motion of Ms. Garcia, seconded by Mr. Kranovich, the committee voted unanimously to forward these recommendations to the BOG.</p> |
| <p>4. Topic: Request for Non-Profit Law Section. The committee noted that sufficient interest has been shown in a Non-Profit Law Section. It was agreed that if all required elements are presented to the committee in September, it will recommend creation of the Section at the Special BOG meeting on September 23.</p> |

MINUTES

BOG Policy & Governance Committee

Meeting Date: September 23, 2011
Location: OSB Center, Tigard, Oregon
Chair: Mitzi Naucler
Vice-Chair: Michael Haglund
Members Present: Ann Fisher, Michelle Garcia, Michael Haglund, Tom Kranovich, Mitzi Naucler
Members Absent: Barbara Dilaconi
Guests: None
Staff Members: Sylvia Stevens, Helen Hirschbiel, Dani Edwards

ACTION ITEMS

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| <p>1. Topic: Approval of Minutes of August 26, 2011 meeting. On motion of Ms. Fisher, seconded by Mr. Haglund, the minutes as submitted were approved unanimously.</p> |
| <p>2. Topic: UPL Bylaw Changes. Ms. Hirschbiel reviewed the proposed changes to Bylaw 20 to implement recommendations 1, 3, 6 and 7 of the UPL Task Force Report. After a short discussion, on motion of Mr. Haglund, seconded by Ms. Fisher, the committee voted unanimously to forward the bylaw changes to the BOG in November.</p> |
| <p>3. Topic: Request to Create Nonprofit Organizations Law Section. Ms. Edwards reported that Mr. Gear and his colleagues had obtained the requisite number of signatures to create this new section that will serve the citizens of Oregon by helping lawyers better serve the diverse range of non-governmental not-for-profit entities recognized under federal and state law. A slate of officers for the executive committee has been identified and dues are proposed at \$25, beginning in 2012. After a short discussion, on motion of Mr. Haglund, seconded by Mr. Kranovich, the committee voted unanimously to recommend that the BOG create the new section.</p> |
| <p>4. Topic: Expanding Mandatory Malpractice. Ms. Stevens reported that after consideration, staff believes the only effective way to mandate and monitor malpractice coverage for lawyers admitted by examination (and for reciprocity admittees) is by a statutory change. Some concerns were expressed about bringing the issue to the legislature. A question was also raised about what the membership will think of the idea. Ms. Stevens reminded the committee that the HOD action on the proposal to amend RPC 5.5 may provide some insight. After discussion, it was decided to defer further consideration until November.</p> |

MINUTES

BOG Public Affairs Committee

Meeting Date:	September 23, 2011
Location:	Oregon State Bar Center, OR
Chair:	Hunter Emerick
Vice-Chair:	Audrey Matsumonji
Members Present:	Hunter Emerick, Audrey Matsumonji (by phone), Gina Johnnie, Ethan Knight, David Wade
Members Absent:	Kenneth Mitchell-Phillips, Maureen O'Connor
Guests:	Steve Pucci
Staff Members:	Susan Grabe

ACTION ITEMS

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| <ol style="list-style-type: none">1. Minutes: The minutes were approved.2. Federal Judicial Council Recommendations. PAC approved the Federal Practice and Procedure Committee request to support the recommendation of four new 9th circuit federal court judgeships and one temporary position for Oregon. |
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INFORMATION ITEMS

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| <ol style="list-style-type: none">3. OJD Budget. The new filing fee schedule goes into effect on October 1, 2011. There will be a link to the fee schedule as well as the court closure days on the bar's webpage. There was discussion about including information that the statute of limitations would be tolled during court closure days. |
| <ol style="list-style-type: none">4. eCourt. eCourt funds will be meted out according to strict terms with significant legislative oversight. The court has selected a vendor and is now determining what additional modifications the vendor can deliver versus what is not feasible. The bar's task force is soliciting input on the proposed UTCR 22 draft regarding what information is available on the internet, who has access to it and what responsibilities lawyers have to protect certain information that is submitted to the court.5. September interim legislative days. The chair reported on the bar panel that addressed an update of bar responses to the task force on racial and ethnic bias. The bar presented testimony that consisted of an overview of the bar, addressed specific questions related to the bar's discipline system and highlighted the mission and focus of the diversity and inclusion program. Questions from legislators' elicited information about the bar's task force on dependency and delinquency best practice standards as well as draft rule 8.4 that the bar is considering. |
| <p>Future issues. Coalition building to address court funding – stakeholder group. The idea of forming a round table of stakeholders to address the shortfall in judicial department funding should include interests from the business community, landlords, debt collectors, banks, Oregon Business Association and AOI. Such collation should also include representatives from small business and the agricultural community and the geographically diverse.</p> |

Minutes

BOG Unclaimed Lawyer Trust Account Special Committee

Meeting Date: August 26, 2011
Location: OSB Center, Tigard
Members Present: Jenifer Billman and Michael Haglund
Members Absent: Ethan Knight
Guests: None
OSB Liaison: Helen Hierschbiel

ACTION ITEMS

1. Approval of Minutes. The Committee approved the minutes for the June 24, 2011 ULTA Committee meeting.	
2. Travelers Companies Inc. Claim. Michael Haglund moved, and Jenifer Billman seconded, to approve Travelers Companies Inc. request for return of funds delivered to the bar. Approval of the claim was unanimous.	

OREGON STATE BAR
Client Security - 113
For the Nine Months Ending September 30, 2011

Description	September 2011	YTD 2011	Budget 2011	% of Budget	September Prior Year	YTD Prior Year	Change v Pr Yr
REVENUE							
Interest	\$255	\$2,270	\$4,300	52.8%	\$167	\$2,247	1.0%
Judgments	385	7,245	4,000	181.1%	360	6,114	18.5%
Membership Fees	450	215,995	220,300	98.0%	285	211,186	2.3%
TOTAL REVENUE	1,090	225,510	228,600	98.6%	812	219,547	2.7%
EXPENSES							
SALARIES & BENEFITS							
Employee Salaries - Regular	4,126	26,512	23,900	110.9%	3,911	24,204	9.5%
Employee Taxes & Benefits - Reg	926	8,069	8,300	97.2%	723	6,686	20.7%
TOTAL SALARIES & BENEFITS	5,052	34,581	32,200	107.4%	4,634	30,889	11.9%
DIRECT PROGRAM							
Claims	2,000	93,815	225,000	41.7%	3,000	155,694	-39.7%
Collection Fees	446	3,272	500	654.3%	582	3,750	-12.8%
Committees			100				
Travel & Expense			1,300			2,887	-100.0%
TOTAL DIRECT PROGRAM EXPENSE	2,446	97,086	226,900	42.8%	3,582	162,331	-40.2%
GENERAL & ADMINISTRATIVE							
Photocopying			150				
Postage	5	137			10	156	-12.0%
Professional Dues			200				
Telephone	7	34				102	-66.8%
Training & Education		350	450	77.8%			
Staff Travel & Expense		1,284	772	166.3%		768	67.1%
TOTAL G & A	12	1,805	1,572	114.8%	10	1,027	75.8%
TOTAL EXPENSE	7,510	133,472	260,672	51.2%	8,226	194,248	-31.3%
NET REVENUE (EXPENSE)	(6,420)	92,038	(32,072)		(7,414)	25,299	263.8%
Indirect Cost Allocation	1,079	9,711	12,942		1,092	9,828	-1.2%
NET REV (EXP) AFTER ICA	(7,499)	82,327	(45,014)		(8,506)	15,471	432.1%
Fund Balance beginning of year		551,690					
Ending Fund Balance		634,017					
Staff - FTE count		.35	.35			.35	

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
7/5/2011	Kelley, Phil	360.00
8/5/2011	Kelley, Phil	360.00
7/19/2011	Shinn, Michael	25.00
8/17/2011	Shinn, Michael	25.00
9/6/2011	Kelley, Phil	360.00
9/16/2011	Shinn, Michael	25.00
10/3/2011	Kelley, Phil	360.00
10/21/2011	Shinn, Michael	25.00
11/1/2011	Kelley, Phil	360.00

TOTAL

\$4,630.00

Summary of 2011 House of Delegates Actions October 28, 2011

Passed

Amend Oregon Rule of Professional Conduct 1.15-2 to delete subsection (m). (BOG Resolution No. 2). Yes: 137; No: 1; Abstain: 1

Amend Oregon Rule of Professional Conduct 5.5. (BOG Resolution No. 3). Yes: 67; No: 63; Abstain: 4

Veterans Day Remembrance extending gratitude to those serving in the military service and offering condolences to the families of those who have died in service to their country (BOG Resolution No.4). Yes: 133; No: 1; Abstain: 3

Support Adequate Funding for Legal Services to Low-Income Oregonians (HOD Resolution No. 2). Yes: 126; No: 6; Abstain: 5.

Amend Statement of Professionalism (BOG Resolution No. 5). Yes: 114; No: 21; Abstain: 5.

Failed

Amend Oregon Rule of Civil Procedure 42 (HOD Resolution No. 3). Yes: 28; No: 105; Abstain: 5.

Withdrawn

Support for Judicial Department Budget Funding (HOD Resolution No. 1).

Increase LRS Initial Consultation Fee (HOD Resolution No. 4)

MEMORANDUM

TO: Oregon State Bar Board of Governors and Sylvia Stevens, OSB Executive Director

FROM: OSB Delegates Adrienne Nelson, Marilyn Harbur, Christine Meadows and Ben Eder

SUBJECT: 2011 Annual Meeting of the American Bar Association and Meeting of the House of Delegates

DATE: September 2, 2011

REPORT ON THE ABA ANNUAL MEETING

The 133rd Annual Meeting of the American Bar Association (the “ABA”) was held August 4-9, 2011, at the Fairmont Royal York Hotel/Metro Toronto Convention Center in Toronto, Canada. Wide varieties of programs were sponsored by committees, sections, divisions, and affiliated organizations. The House of Delegates met for a one and a half day session.

The Nominating Committee also met and sponsored a “Meet the Candidates” Forum on Sunday, August 7, 2011. The following candidates seeking nomination at the 2012 Midyear Meeting gave speeches to the Nominating Committee and to the members of the Association present: Robert M. Carlson of Montana, candidate for Chair of the House of Delegates; and James R. Silkenat of New York, candidate for President-Elect of the Association.

THE HOUSE OF DELEGATES

The House of Delegates of the American Bar Association (the “House”) met on Monday, August 8, and Tuesday, August 9, 2011. Linda A. Klein of Georgia presided as Chair of the House.

The [invocation](#) for the House was delivered by Timothy B. Walker of Colorado, Section of Family Law Delegate. The United States and Canadian National Anthems were sung by four Canadian “singing lawyers” who are each lead singers in different bands. Their lawyer bands raise money annually for charities, including AIDSbeat, an annual rock n’ roll charity bash organized by Toronto’s legal community.

The Chair of the House Committee on Credentials and Admissions, Laura V. Farber of California, welcomed the new members of the House and moved that the signed roster be approved as the permanent roster for this meeting of the House. The motion was **approved**. Ms. Farber also reported on the Committee’s completion of the 2010 five-year review of membership figures, noting that two state bar associations will gain a delegate,

one state bar association will lose a delegate, seven local bar associations each will lose a delegate, and two local bar associations will lose representation in the House. Ms. Farber reminded members that although the five-year review has resulted in a loss of delegates and representation, additional delegates can be added each year during the Committee's annual review process.

Palmer Gene Vance II of Kentucky, Chair of the Committee on Rules and Calendar, provided a report on the Final Calendar for the House, including recently filed reports. He moved to consider the late-filed reports, adopt the final calendar and approve the list of individuals who sought privileges of the floor. All three motions were **approved**. Mr. Vance noted that the deadline for submission of Resolutions with Reports for the 2012 Midyear Meeting is Wednesday, November 16, 2011, while the deadline for Informational Reports is Friday, December 2, 2011. He also referred to the consent calendar, noting the deadline for removing an item from the consent calendar or from the list of resolutions to be archived.

Later in the day, Mr. Vance moved the items remaining on the consent calendar. The motion was **approved**.

For more details of the House meeting, see the following two-part report of the House session. The first part of the report provides a synopsis of the speeches and reports made to the House. The second part provides a summary of the action on the resolutions presented to the House.

I. SPEECHES AND REPORTS MADE TO THE HOUSE OF DELEGATES

[Welcome by the Supreme Court Justice of Canada](#)

Chair Klein welcomed The Honorable Rosalie Silberman Abella, Supreme Court Justice of Canada. Justice Abella welcomed the delegates to Toronto, Canada. She proclaimed that she was proud to be a member of the legal profession, as lawyers represent the best hope that justice will be pursued and preserved. Justice Abella noted the ABA's role as the key player in protecting the institutions of democracy and justice. In explaining the need for the ABA, she emphasized that if the public cannot see justice being done, they will stop believing it. Justice Abella told delegates about how her father came to be hired by Americans to provide legal services in Germany following World War II, which restored his faith in justice, after having been detained in concentration camps. She explained that she decided to become a lawyer when she was four years old, after her family moved to Canada and her father was told that he could not practice law because he was not Canadian. She encouraged members to keep leading and inspiring, going forward with wisdom and courage.

Statement by the Chair of the House

Linda A. Klein of Georgia, Chair of the House recognized members of the various House committees. She announced that the House webpage can now be accessed directly from the ABA's home page under "Popular Resources" and that the House Technology Committee would be reporting on the proceedings of the House via Twitter @

ABAhod.

She recognized the Committee on Rules and Calendar and reminded members where they could find the House Rules of Procedure. Chair Klein introduced the Tellers Committee and reviewed procedures for speaking.

Chair Klein addressed the importance and need for the work of the Fund for Justice and Education (“FJE”) and urged every House member to support it financially.

She highlighted the work of the Legal Opportunity Scholarship Fund which was started in 1999. It funds scholarships to minority law students and over the last 10 years has provided over \$3 million in 220 minority scholarships. Chair Klein announced that one of the scholarships had been named in honor and memory of Armando Lasas-Ferrer, former member of the ABA Board of Governors and former Secretary of the Association.

Chair Klein discussed the obligations and responsibilities of House members to take legislative priorities to lawmakers in Washington, D.C. She asked each delegate to be part of the Grassroots Action Team and attend ABA Day on April 17-19, 2012 in Washington, D.C. She suggested that members register early, as participation requires advance planning.

Chair Klein encouraged delegates to have their firms become 100% members of the ABA. At the conclusion of the meeting, she remarked about the large agenda that the House had covered, thanked members of the House for their attention and the courtesies they extended to the speakers. She also thanked the members of the House committees, the staff supporting the House committees, and the Committee on Rules and Calendar.

Statement by the Secretary

Hon. Bernice B. Donald of Tennessee, Secretary of the Association, moved approval of the House of Delegates Summary of Action from the 2011 Midyear Meeting, which was **approved** by the House.

On behalf of the Board of Governors, Secretary Donald presented and referred the House to Report Nos. 177 and 177A, which were the Board’s Informational and Transmittal Reports to the House. She moved approval of the continuation of the list of special committees and commissions as contained in Report No. 177A. The motion was **approved**.

Deceased members of the House were named by the Secretary of the Association, Hon. Bernice B. Donald of Tennessee, and were remembered by a moment of silence. Chair Klein also asked for recognition of those who had given their lives in Iraq and Afghanistan.

Chair Klein recognized former ABA President Dennis W. Archer of Michigan, on a point of personal privilege to speak in honor of Armando Lasas-Ferrer of Puerto Rico, former member of the ABA Board of Governors and former secretary of the Association. Michael Byowitz of New York spoke on a point of personal privilege in honor of Norman

Redlich, former Dean of NYU School of Law, former Chair of the Section on Legal Education and Admissions to the Bar, and a longtime member of the House. H. William Allen of Arkansas spoke on a point of personal privilege in honor of John C. Deacon of Arkansas, also a longtime member of the House.

Hon. Bernice B. Donald of Tennessee thanked members for the opportunity to serve as Secretary of the Association for the past three years. She also thanked the ABA for their efforts and support. She introduced her successor, The Honorable Cara Lee T. Neville of Minnesota. Secretary Donald then encouraged members to plant a garden and create fertile ground for seedlings to grow. She said she wanted us to plant five rows of peas – the Ps of professionalism, principle, purpose, preparation, and politeness. She wanted us to plant three rows of squash to squash apathy, indifference, and unjust criticism. She wanted us to include several rows of lettuce – let us treat each other with dignity and respect; let us be unselfish and inclusive; let us promote the goals of the Association and the goals of equal justice of the law; and let us always place principle above power and self opportunity. She concluded by saying that no garden would be complete without turnips. She said that we need to turn up for meetings. We need to turn up on time, with ideas, a plan, energy to execute the plan, and an unalterable determination to make everything count for something good. She encouraged us to work to make today good and successful and to view tomorrow as a gift by which we receive freshness and innocence.

Statement by the ABA President

ABA President Stephen N. Zack of Florida told us of his awe for the majesty of the House and the good work that it does. He thanked everyone for the amazing opportunity to serve as President of an association that has devoted 133 years to defending liberty and pursuing justice. He noted that his service would not have been possible without a loving family, a supportive firm, and dedicated staff.

Noting that membership is the key to all that the ABA does, President Zack reported that we have strengthened our Association in terms of value and visibility. He explained that our key initiatives have been aggressive recruiting, better business operations, and the use of planning and technology to drive membership and revenue growth. Those initiatives have been carried out through a membership telemarketing campaign, a “member gets a member” program, and a new website that is more user-friendly. He reported increases in membership in the judicial division, the solo and small firm division, and the law student division. He also proudly reported that we have stabilized our membership. President Zack expressed his appreciation for the hard work of the membership committee. He told us that “we are on the right path and the future is indeed bright.”

President Zack emphasized the important work that has been done this year, especially with regard to four initiatives. First, he described the crisis facing our courts and lauded the work of the Task Force on the Preservation of the Justice System. He explained that our democracy depends on co-equal judiciary, so we must ensure that our courts are protected. Second, he praised the work of the Commission on Civics Education. The ABA has fought for funding of civics education, has established academies to teach civics, and has provided lesson plans to lawyers to teach a civics class in high schools across the country. Third, he thanked the Commission on Hispanic Legal Rights and

Responsibilities for its work in promoting the largest minority in the United States within our profession. President Zack noted that our country will lose respect for the legal profession and the rule of law if the demographics of the legal profession do not reflect those of the country at large. Lastly, President Zack said we have focused on disaster preparedness by developing a rule that is now being adopted by the supreme courts of many states to allow short-term assistance by lawyers from other jurisdictions in emergencies.

In closing, President Zack urged the ABA to continue the work of defending liberty and pursuing justice, which it has done for 133 years.

ABA Medal Presentation

ABA President Stephen N. Zack of Florida introduced David Boies and Theodore Olson, praising their enthusiastic willingness to chair the Task Force on the Preservation of the Justice System and described them as “our own dream team.” He touted their storied legal careers and called them “a force of nature” together. President Zack noted that this was the first time that the ABA Medal was awarded to two individuals at the same time. He said that both Mr. Boies and Mr. Olson stand for honesty, integrity, and civility. President Zack expressed our gratitude to them and asked them to accept the Association’s highest honor.

Mr. Boies accepted the ABA Medal, stating that there is no greater honor for a lawyer. He praised the law as a wonderful profession but one that faces many challenges. He urged us to reinvigorate the profession and use the opportunity to make our society more just, fair, and democratic. He also praised Mr. Olson, saying that there could not be a better lawyer and friend. Mr. Boies said that although he and Mr. Olson can passionately disagree, as they do on many issues, they can also work together on issues where they have common ground. He reminded us that our society works where we advocate with passion but always recognizes our higher duty to the courts and the justice system.

Mr. Olson thanked President Zack, the Board of Governors, and the ABA members and expressed his gratitude for the honor of receiving the ABA Medal. He acknowledged the importance of the award to both the Association and the profession. He stated that he felt privileged to be part of such a rewarding profession that focuses on service to others and to the rule of law. He noted the practicality of and the need for civility and explained that civility sometimes requires us to say “no” to a client. He also noted the current crisis in the courts, asking delegates to support the resolution sponsored by the Commission on the Preservation of the Justice System and urging us to use our advocacy for necessary change. Mr. Olson praised Mr. Boies and stated that the award represents that people from different views should and must work together.

Presentation by Commission on Ethics 20/20

Chair Klein recognized Michael Traynor of California, co-chair of the Commission on Ethics 20/20, who summarized the Commission’s work and offered a preview of the issues that will be considered by the House of Delegates during its 2012 Annual Meeting. The Commission was created in 2009 to help ensure that lawyer regulation keeps pace with legal needs and practices, especially given increasing multi-jurisdictional practice. Mr.

Taynor explained that the proposals that will come before the House will take three forms: recommendations to amend the Model Rules; recommendations on how the Association can help lawyers practically; and reports on emerging issues. He noted that all of the proposed rule amendments will be published by September 2011, so as to provide sufficient time for review and comment in advance of the 2012 Annual Meeting. The Commission's Reporter, Andrew Pearlman, provided an overview of their seven working groups, which address: technology; outsourcing; lawyer mobility; in-bound foreign lawyers; alternative litigation financing; alternative law practice structures; and law firm rankings. Judith Miller, chair of the Commission's outreach committee, told delegates about the public hearings, appearances at bar meetings, CLEs, podcasts, webinars, and presentations conducted by the Commission. (See [PowerPoint presentation](#).)

Statement by the Treasurer

ABA Treasurer, Alice E. Richmond of Massachusetts, referred members of the House of Delegates to her written report and then summarized the Association's significant progress on financial matters during the past three years. She reported on improvements to the ABA's financial services and reporting activities, including new staff, a new in-house budget system, implementation of an accrual accounting system, selection of new ABA outside auditors, and the creation of a task force to examine how we describe and utilize our reserves. She also reported on changes to the ABA's grant application process and cash management operations. She outlined the ABA's current real estate strategy, including the Chicago headquarters lease renegotiation which resulted in approximately \$12 million in savings. After extended study and approval by the Board of Governors, the ABA's iconic Washington DC building is now on the market and the ABA expects to realize a significant gain from its sale. Treasurer Richmond informed delegates that the ABA had reaffirmed its commitment to the existing defined benefit retirement program and reported that improving economic conditions and better financial management might result in less volatility in the ABA's ongoing pension obligations for all of its employees. . Treasurer Richmond then discussed the year-end projections. She stated that we anticipate ending FY 2011 slightly ahead of budget as to the consolidated revenues, noting that we seem to have stemmed the dues decline and have been increasing non-dues revenue, particularly through the ABA Member Advantage programs. She also stated that we continue to manage the expense side of the budget very well. Lastly, she thanked members for the opportunity to serve as the Association's Treasurer and introduced her successor, Lucian T. Pera of Tennessee.

Presentation by President of the American Bar Endowment

Chair Klein recognized President of the American Bar Endowment, Lee Cooper of Alabama. Mr. Cooper described the American Bar Endowment, its activities and its unique role in the ABA. Mr. Cooper presented a check for more than \$3.3 million from the ABE to William Hubbard, president of the American Bar Foundation. Mr. Cooper also presented a check for more than \$3.3 million to Alan S. Kopit, chair of the Council for the Fund for Justice and Education to support the projects of the FJE.

[Statement by the Executive Director](#)

ABA Executive Director Jack L. Rives of Illinois reported that, at a critical time for the legal profession, it has been a very busy year for the Association. He noted there are some 2200 entities in the ABA, and he emphasized the need to avoid self-limiting boundaries between the entities, to make the Association more effective. Executive Director Rives saluted the work of President Zack and said that it is our responsibility to build upon President Zack's legacy. He explained that the staff is committed to execute the vision of the Board of Governors and the policies of the House, and he noted that staff must do so with a sense of urgency.

Executive Director Rives reported that a key for making progress is to prove value to our members. He stated that while the loss of members continues, the rate of decline has decelerated. He credited the positive trend to the work of the Association's leaders, especially the membership committee. He commented on technology, noting that we are continuing to improve the new website launched mid-year. We are also attacking the problems associated with email spam. He noted that we have increased the number of publications, and he highlighted a partnership with Bloomberg that will allow us to reach new markets.

Executive Director Rives provided an update on the Association's facilities, reporting on the re-negotiation of the lease in Chicago, the anticipated sale of the Washington, D.C. building, and the search for new space in Washington, D.C. He echoed the Treasurer's remarks concerning the progress in financial services, explaining that operational cuts have been made where necessary, so that the Association can operate within its budget. He also applauded improvements to the budget process.

Executive Director Rives conveyed the staff's appreciation for the three percent raise they will receive in Fiscal Year 2012, after having their pay frozen for three years. He reported on five staff task forces -- procurement, staff travel and expense reimbursement, personnel appraisal, meetings and travel, and diversity and inclusion -- the first three of which have already completed their reports. He also reported on the "Why Program," which has produced more than 175 suggestions. He assured delegates that we will continue to be innovative and find ways to make improvements. He spoke about the newly instituted wellness program for staff and the training program that is being implemented for staff.

Finally, Executive Director Rives reported on the continuing progress of the Association's business continuity plan. He noted that the goal is certification, which would be a first for a large association. While difficult to achieve, we are on track to receive the certification.

[Passing of the President's Gavel](#)

ABA President Zack introduced [President-Elect Wm. T. \(Bill\) Robinson III](#) of Kentucky as a long-time friend and colleague, noting that they have walked through the ABA together. President Zack noted that President-Elect Robinson previously served with distinction as our treasurer and is now ready to lead the Association. President Zack then passed the gavel to President-Elect Robinson.

President-Elect Robinson thanked members for the opportunity to serve, remarking that it is such a privilege. He expressed his gratitude to President Zack for all of his work in representing both the Association and the lawyers in America with enthusiasm and honor. President-Elect Robinson recognized his family and his law firm, thanking them for their support. He then emphasized the profound value of the Association's work, giving numerous examples. He cited the work of the Commission on Immigration and the lawyers who represent individuals facing the dire consequences of deportation. He said that we are now able to reassure lawyers that they can practice law without the intrusion of federal agencies, with the defeat of the FTC and Dodd-Frank's regulation efforts. He highlighted the importance of diversity, proudly noting that his stellar appointments committee under the very able leadership of Gene Vance of Kentucky helped assure increased diversity in every category of appointments. President-Elect Robinson stated that even though volunteer service and leadership are part of who we are as lawyers, he will be continuing to encourage lawyers in their volunteer service.

President-Elect Robinson spoke about Association membership. He told delegates that prospective members believe that the Association has ably advanced the rule of law but think the ABA will continue doing so, regardless of whether they actually become members. He emphasized that if we want to increase membership, we need to develop a compelling answer as to why lawyers should join the Association. He quickly pointed out that we already have the answer in our sections, divisions, and forums, which produce and deliver state-of-the-art content. We must support them in continuing that important work.

President-Elect Robinson then spoke about the ABA's over-all role. He said that when we speak out on issues of general interest, our voice is diluted. On the other hand, when we advocate for the rule of law, the ABA becomes the dominant player. He said that is where we need to be. As the most pressing illustration, he pointed to the current crisis in our courts, which threatens the viability of the entire justice system and puts our constitutional democracy at risk. President-Elect Robinson emphatically stated that this underfunding of the state courts presents an issue that gives us an opportunity to demonstrate that the ABA can make a positive difference but that we cannot do it alone. We must reach out and partner with the community at large and work to ensure access to the courts. He urged ABA action on this critical and important issue.

President-Elect Robinson committed to working to cultivate a greater appreciation of the ABA as the bar association that is the voice of the legal profession and emphasized it is a great professional honor to assume leadership of the Association.

Election of Officers of the Association and Members of the Board of Governors

On behalf of the Nominating Committee, Robert T. Gonzales of Maryland, Chair of the Steering Committee of the Nominating Committee, reported on the nominations for officer of the Association and members of the Board of Governors. The House of Delegates elected the following persons for the terms noted:

Officer of the Association

President-Elect for 2011-2012

Laurel G. Bellows of Illinois

Members of the Board of Governors (2011-2014)

District Members

District 1: Joseph J. Roszkowski of Rhode Island

District 2: Josephine A. McNeil of Massachusetts

District 4: Allen C. Goolsby of Virginia

District 6: Robert L. Rothman of Georgia

District 12: Thomas A. Hamill of Kansas

Section Members-at-Large

Section of Business Law

Barbara Mendel Mayden of Tennessee

Senior Lawyers Division

Charles A. Collier, Jr. of California

Minority Member-At-Large

Harold D. Pope III of Michigan

Woman Member-At-Large

Sandra R. McCandless of California

Young Lawyer Member-At-Large

Michael Pellicciotti of Washington

Law Student Member-At-Large (2011-2012)

Brandon Scott Smith of South Carolina

It was noted that the Association's Constitution provides that the President-Elect automatically becomes the President at the conclusion of the Annual Meeting and Wm. T. (Bill) Robinson III of Kentucky will assume that office. In addition, The Honorable Cara Lee T. Neville of Minnesota and Lucian T. Pera of Tennessee will assume the offices of Secretary and Treasurer, respectively, at the conclusion of this meeting.

Remarks by President-Elect Nominee

President-Elect Nominee Laurel G. Bellows of Illinois told us of her profound sense of gratitude as she enthusiastically accepted the responsibilities of serving as our next President-Elect. She encouraged members to approach her with ideas and emphasized that our expertise is needed. President-Elect Nominee Bellows remarked on the power of the House when it adopts policy, noting that it has changed attitudes and lives. She praised the work of President-Elect Robinson and his wife, Joan. In addition, she pledged to follow the distinguished leadership of Past President Carolyn B. Lamm and President Stephen N. Zack and assured a continued seamless transition of message and mission.

President-Elect Nominee Bellows stated the Association is strong, despite the recession. She noted that our current success is due to the leadership of our Executive Director and the dedication of the ABA staff. She stated that there was much to do to respond to the expectations of our members to make each of us a better lawyer for having joined the ABA; and, much to do preserve our system of justice, but that together, through the coalition of staff and volunteers, we would achieve our goals. She thanked her family for their support as she assumes this new and important role.

President-Elect Nominee Bellows said wherever she goes she will carry the message that lawyers matter. She emphasized that lawyers matter because we understand we are a nation of laws, where ends do not justify the means. Lawyers matter because we have chosen to serve others and are compelled to speak out against injustice and unfairness and our skilled advocates sworn to defend our Constitution and the rights with which we are endowed as human beings. She spoke of the delicate balance between liberty and security. She said that we can work to end the trafficking of women and children, improve the quality of legal education, ensure security but protect freedom, protect the right to civil trial by jury, protect the judiciary from political interference, and increase the value of ABA membership by responding to the needs of solo and small firm lawyers, while working to assure justice for the clients we represent beyond our borders.

President-Elect Nominee Bellows praised the on-going national dialogue about diversity reminding us that we must include gender inequality in that dialogue. She stated that the quality of our lives is directly correlated to the quality of our laws, and emphasized that lawyers have the responsibility to improve our laws and institutions of justice. She asked each of us to join her in helping make America a place where the strong are more just and the weak are more secure. She said that's why we became lawyers.

Scope Nominating Committee

Jeffrey J. Snell of Ohio, Chair of the Committee on Scope and Correlation of Work, nominated Richard A. Soden of Massachusetts, to the Committee on Scope for a 5-year term beginning at the conclusion of the 2011 Annual Meeting. The motion was **approved**. Chair Klein later moved the election of Richard A. Soden, who was **elected**.

Delegate-at-Large Election Results

Hon. Bernice B. Donald, Secretary of the Association, announced the election of the following members to three-year terms as Delegates-at-Large: Mark D. Agrast of the District of Columbia; Myles Lynk of Arizona; Andrew Joshua Markus of Florida; Judy Perry Martinez of Louisiana; Pamela J. Roberts of South Carolina; and Robert A. Stein of Minnesota.

II. RESOLUTIONS VOTED ON BY THE HOUSE

A brief summary of the action taken on resolutions brought before the House follows. The resolutions are categorized by topic areas and the number of the resolution is noted in brackets. The [Daily Journal](#) for the 2011 Toronto Annual Meeting, which reports the action taken by the House of Delegates, is available on the ABA's website. To view the

final, adopted language of Resolutions and the full text of the Reports, click on the Report Number.

ADMINISTRATIVE LAW

[104B] On behalf of the Section of Administrative Law and Regulatory Practice, Randolph J. May of Maryland moved Revised Resolution 104B urging Congress to update and strengthen federal lobbying laws by requiring fuller reporting of lobbying activities, forbidding certain conflicts of interest, and providing for more effective enforcement of the Lobbying Disclosure Act of 1995. The resolution was **approved as revised**.

ARCHIVING

[400] The House **approved by consent** Resolution 400 recommending that certain Association policies that pertain to public issues and are 10 years old or older be archived.

ASSOCIATION'S CONSTITUTION, BYLAWS AND HOUSE RULES OF PROCEDURE

[11-1] Edward Haskins Jacobs of the Virgin Islands presented Report 11-1 amending §1.2 of the Constitution to include the following language as one of the purposes of the Association: "to defend the right to life of all innocent human beings, including all those conceived but not yet born." Brian Melendez of Minnesota, Chair of the Standing Committee on Constitution and Bylaws, reported that the standing committee had reviewed Report 11-1 and voted to recommend that the proposal not be approved, finding it was not suitable for adoption in the Constitution. Stephen J. Curley of Connecticut moved to postpone indefinitely. The House approved the motion to **postpone indefinitely**.

[11-2] Joaquin C. Arriola, Jr. of Guam moved Report 11-2 amending §2.2 and §6.2 of the Constitution and various other sections of the Constitution and the House Rules of Procedure, to provide that each territory, as defined, shall have a seat in the House of Delegates. Brian Melendez of Minnesota, Chair of the Standing Committee on Constitution and Bylaws reported that the standing committee had reviewed Report 11-2, and approved the form of the proposal but took no position on the merits of the proposal. Tom Bolt of the Virgin Islands moved an amendment in the nature of a substitute. R. William Ide III of Georgia spoke against the amendment. The motion to amend was defeated. Philip S. Anderson of Arkansas spoke against the proposal. H. Thomas Wells, Jr. of Alabama and Christopher E. Johnson, Jr. of Michigan spoke in favor of the proposal. The proposal was **approved**. (See [video](#) of debate.)

[11-3] Tommy Preston, Jr. of South Carolina moved Report 11-3 amending §7.2 of the Constitution and various other sections of the Bylaws to change the Law Student member-at-large from a non-voting member of the ABA Board of Governors to a voting member. Brian Melendez of Minnesota, Chair of the Standing Committee on Constitution and Bylaws reported that the standing committee had reviewed Report 11-3, and approved the form of the proposal but took no position on the merits of the proposal. The proposal was **approved**.

[11-4] The House **approved by consent** Report 11-4 amending §30.5 of the Bylaws to provide that non-U.S. lawyer associates may serve as officers of the Section of Business Law.

[11-5] The House **approved by consent** Report 11-5 amending §32.1 (d) of the Bylaws to provide that non-U.S. lawyer associates may serve on the Governing Committee of the Forum on Construction Law.

[11-6] Jeffrey J. Snell of Ohio moved Report 11-5 amending §31.7 of the Bylaws to eliminate the Standing Committee on Environmental Law. Stephen J. Humes of Connecticut and Irma S. Russell of Montana spoke about the proposal but did not oppose it. The proposal was **approved**.

BLANKET AUTHORITY POLICY

[306] On behalf of Robert J. Gaudet, Jr., Royce Murray, Heather Hodges, Benjamin G. Davis, Brant McGee and Sharon Payant, Benjamin Davis of Ohio introduced and the Honorable Bernice B. Donald, Secretary of the Association, moved Resolution 306 amending the Blanket Authority policy to prohibit sections, divisions, and other Association entities from submitting statements or comments under Blanket Authority to any foreign governmental entity including the European Commission or any other foreign government. Stephen A. Saltzburg of the District of Columbia spoke against the resolution. Ellen J. Flannery of the District of Columbia moved to postpone indefinitely. Benjamin G. Davis of Ohio and Mark I. Schickman of California spoke against the motion to postpone indefinitely. Barbara Mendel Mayden of Tennessee spoke in favor of the motion to postpone indefinitely. The motion to postpone indefinitely was defeated. The resolution was **not approved**. (See [video](#) of debate.)

CIVIC EDUCATION

[300] On behalf of the Commission on Civic Education in the Nation's Schools, Paulette Brown of New Jersey moved Resolution 300 recommending that state, local, and territorial bar associations urge state and local legislatures, education commissions and school boards to mandate civic education classes/courses in elementary, middle and secondary public schools. The resolution was **approved**.

CIVILITY

[108] The House **approved by consent** Resolution 108 affirming the principle of civility as a foundation for democracy and the rule of law and urging lawyers, ABA member entities and other bar associations to take meaningful steps to enhance the constructive role of lawyers in promoting a more civil and deliberative public discourse.

COURTS/JUDGES

[107] On behalf of the Standing Committee on Judicial Independence, William K. Weisenberg of Ohio moved Resolution 107 urging states to establish clearly articulated procedures for judicial disqualification determinations and prompt review of denials of

requests to disqualify a judge. The resolution was **approved**.

[123] On behalf of the National Conference of State Trial Judges, W. Terry Ruckriegle of Colorado moved Revised Resolution 123 adopting the *Model Time Standards for State Courts*, dated August 2011, and urging state judicial systems to adopt and implement the *Standards*. The resolution was **approved as revised and amended**.

[302] On behalf of the Task Force on Preservation of the Justice System, David Boies of New York moved Resolution 302 urging state, territorial, and local bar associations to document the impact of funding cutbacks to the judicial systems in their jurisdictions, to publicize the effects of those cutbacks to create coalitions to address and respond to the ramifications of funding shortages to their justice systems. The resolution was **approved**.

CRIMINAL LAW

[10A] On behalf of the Bar Association of the District of Columbia, Gregory S. Smith, moved Resolution 10A urging applicable governmental entities to take all appropriate measures to ensure that the National Criminal Instant Background Check System (NICS) is as complete and accurate as possible, so that all persons properly categorized as prohibited persons under 18 U.S.C. § 922(g) are included in the NICS system. Cynthia Orr of Texas spoke against the resolution. Mark I. Schickman of California and Robert L. Weinberg of the District of Columbia spoke in favor of the resolution. The resolution was **approved**. (See [video](#) of debate.)

[105A] On behalf of the Criminal Justice Section, Stephen A. Saltzburg of the District of Columbia moved Revised Resolution 105A urging the U.S. Sentencing Commission to complete a comprehensive assessment of the guidelines for child pornography offenses, taking into account the severity of each offense. Martha W. Barnett of Florida spoke against the resolution, and William N. Shepherd of Florida spoke in favor of the resolution. The resolution was **approved as revised**. (See [video](#) of debate.)

[105B] On behalf of the Criminal Justice Section, Anne J. Swern of New York moved Resolution 105B adopting the *Key Requirements for the Certification of Correctional Accrediting Entities*, dated August 2011, and urging governments to require that public and private facilities in which adults or juveniles are confined for violations or alleged violations of criminal, juvenile, or immigration laws be accredited by one or more federally-certified accrediting entities. Cynthia Orr of Texas spoke in favor of the resolution. The resolution was **approved**.

[105C] The House **approved by consent** Resolution 105C urging the Bureau of Prisons, the U.S. Marshals Service, Immigration and Customs Enforcement, and state, tribal and local correctional authorities to develop and implement gender-responsive needs assessments that account for women's specific needs, including parenting responsibilities, the importance of their relationships, their histories of domestic violence and abuse, and their distinctive patterns and prevalence of mental health issues.

[105D] On behalf of the Criminal Justice Section, William N. Shepherd of Florida moved Resolution 105D urging governments to adopt disclosure rules in courts requiring the prosecution to obtain from its agents and to make timely disclosure to the defense before the commencement of trial or a guilty plea all information known to the prosecution that tends to negate the guilt of the accused, mitigate the offense charged or sentence, or impeach the prosecution's witnesses or evidence, except when relieved of this responsibility by a protective order. The resolution was **approved**.

[105E] On behalf of the Criminal Justice Section, Stephen A. Saltzburg of the District of Columbia moved Resolution 105E urging the President and the United States Department of Defense to assure that there is an opportunity for public notice and comment with respect to the issuance of the rules for the periodic review of continued law of war detention cases required by the President's Executive Order No. 13567, 76 Fed. Reg. 13277 (2011). The resolution was **approved**.

[109] On behalf of the Commission on Domestic Violence, Mark I. Schickman of California moved Revised Resolution 109 urging governments to enact legislation and appropriate funds to protect sexual crime victims' rights by eliminating the substantial backlog of rape kits collected from crime scenes and convicted offenders. The resolution was **approved as revised**.

[115] On behalf of the Standing Committee on Gun Violence, David J. Pasternak of California moved Revised Resolution 115 supporting federal, state, territorial and local laws that give law enforcement authorities broad discretion to determine whether a permit or license to engage in concealed carry should be issued in jurisdictions that allow the carrying of concealed weapons, and opposing laws that limit such discretion by mandating the issuance of a concealed carry permit or license to persons simply because they satisfy minimum prescribed requirements. The resolution was **approved as revised**.

DISASTER RESPONSE AND PREPAREDNESS

[116] On behalf of the Special Committee on Disaster Response and Preparedness, David F. Bienvenu of Louisiana moved Resolution 116 urging all lawyers to regularly assess their practice environment to identify and address risks that arise from any natural or manmade disaster that may compromise their ability to diligently and competently protect their clients' interests and maintain the security of their clients' property. The resolution was **approved**.

[125] On behalf of the Section of Individual Rights and Responsibilities, James R. Silkenat of New York moved Revised Resolution 125 opposing federal, state, territorial and tribal laws that would alter the duty of care owed to victims of a natural or manmade disaster by relief organizations and health care practitioners and supporting programs to educate relief organizations and health care practitioners about their duty of care owed to victims in a natural or manmade disaster. The resolution was **approved as revised**.

ELECTION LAW

[121] On behalf of the Standing Committee on Election Law, Benjamin E. Griffith of Mississippi moved Revised Resolution 121 supporting efforts to improve voter registration practices and urging federal legislation or administrative action creating incentives to encourage election jurisdictions to adopt such improvements. The resolution was **approved as revised**.

EMPLOYMENT DISCRIMINATION

[124] On behalf of the National Conference of the Administrative Law Judiciary, Daniel F. Solomon of the District of Columbia moved Revised Resolution 124 urging the President, Congress, the Chair and Commissioners of the Equal Employment Opportunity Commission (EEOC) to adopt measures to provide that employment discrimination hearings conducted by the EEOC comply with the Administrative Procedure Act. The resolution was **approved as revised**.

ENVIRONMENTAL LAW

[112] On behalf of the Section of Environment, Energy, and Resources, Lee A. Deihns III of Georgia moved Resolution 112 urging the United States Government to ensure that federally-recognized Indian tribes (Tribes) listed pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a, may participate fully in policy discussions on the issue of climate change domestically and in international fora. The resolution was **approved**.

FAMILY LAW/CHILDREN

[101A] On behalf of the Section of Litigation, Joanne A. Epps of Pennsylvania moved Resolution 101A adopting the *Model Act Governing the Representation of Children in Abuse, Neglect, and Dependency Proceedings*, dated August 2011. Robert E. Stein of the District of Columbia and Marshall J. Wolf of Ohio spoke in favor of the resolution. The resolution was **approved**.

HEALTH LAW

[114] On behalf of the Health Law Section, Gregory L. Pemberton of Indiana moved Revised Resolution 114 urging governments to assure that predictive and diagnostic medical genetic testing provided on-line, via the telephone, or by any other direct-to-consumer means complies with certain requirements. The resolution was **approved as revised**.

IMMIGRATION

[103B] On behalf of the Commission on Youth at Risk, Laura V. Farber of California moved

Revised Resolution 103B urging Congress to modify immigration laws to take into account the best interests of minor children who may be affected by a parent, legal guardian, or primary caregiver's immigration detention or removal. The resolution was **approved as revised**.

[103C] On behalf of the Commission on Youth at Risk, Laura V. Farber of California moved Resolution 103C urging the Department of Homeland Security to revise its policies so that detained parents, legal guardians, and primary caregivers of children have meaningful participation with their attorneys at judicial proceedings involving their children; and that those involved in family and juvenile courts be educated regarding the connection between state child welfare laws and immigration laws. The resolution was **approved**.

[103D] On behalf of the Commission on Youth at Risk, Laura V. Farber of California moved Revised Resolution 103D urging that unaccompanied and undocumented immigrant children in the United States, upon their apprehension by immigration authorities, be screened by independent experts to determine if they are eligible for immigration relief. The resolution was **approved as revised**.

[104A] On behalf of the Section of Administrative Law and Regulatory Practice, John M. Vittone of Maryland moved Resolution 104A supporting application of the Immigration and Nationality Act to allow persons outside the United States to pursue motions to reopen or motions to reconsider removal (deportation) proceedings on the same basis and subject to the same restrictions that apply to persons who file such petitions from within the United States. The resolution was **approved**.

[118] The House **approved by consent** Resolution 118 supporting measures to improve access to counsel for individuals in immigration removal proceedings.

[303] On behalf of the Commission on Hispanic Legal Rights and Responsibilities, Cesar L. Alvarez of Florida moved Revised Resolution 303 urging Congress to reject any resolution proposing an amendment to the United States Constitution that would alter, in any way, the granting of United States citizenship under the Fourteenth Amendment to any persons born in the United States (including territories, possessions and commonwealths) based upon the citizenship or immigration status of one or both parents at the time of the person's birth. With privileges of the floor, Thomas A. Saenz of California spoke in favor of the resolution. The resolution was **approved as revised**.

INTELLECTUAL PROPERTY LAW

[117] On behalf of the Section of Intellectual Property Law, Donald R. Dunner moved Revised Resolution 117 supporting the continued application by courts of the legal principles to determine if an issued patent claim meets the definiteness requirement under 35 U.S.C. section 112. The resolution was **approved as revised**.

[304A] On behalf of the Section of Intellectual Property Law, Donald R. Dunner of the District of Columbia moved Resolution 304A adopting policy relating to the right of a patent applicant to obtain judicial relief after being denied a patent by the U.S. Patent and Trademark Office. The resolution was **approved**.

[304B] On behalf of the Section of Intellectual Property Law, Donald R. Dunner of the District of Columbia moved Resolution 304B adopting policy supporting the principle that laws of nature, physical phenomena, and abstract ideas are not eligible for patenting under 35 U.S.C. §101. The resolution was **approved**.

INTERNATIONAL LAW

[101C] On behalf of the Section of Litigation, Joanne A. Epps of Pennsylvania moved Resolution 101C adopting as best practices the *Protocol on Court-to-Court Communications in Canada-U.S. Cross-Border Class Actions* and *Notice Protocol: Coordinating Notice(s) to the Class(es) in Multijurisdictional Class Proceedings*, dated August 2011, and urging courts and counsel in cross-border class action cases involving the United States and Canada to adopt the *Protocols*. With privileges of the floor, Irwin Warren of New York, spoke in favor of the resolution. The resolution was **approved**.

[113A] On behalf of the Section of International Law, Michael Byowitz of New York moved Resolution 113A opposing federal or state laws that impose blanket prohibitions on consideration or use of foreign or international law and opposing federal or state laws that impose blanket prohibitions on consideration or use of the entire body of law or doctrine of a particular religion. The resolution was **approved**.

[113B] On behalf of the Section of International Law, Andrew Joshua Markus of Florida moved Resolution 113B urging Congress to fund U.S. participation in capital increases and replenishments for the World Bank, the Inter-American Development Bank, the African Development Bank, and the European Bank for Reconstruction and Development. The resolution was **approved**.

[301] On behalf of the Section of Business Law, Maury B. Poscover of Missouri moved Resolution 301 supporting development and harmonization of international trade and commerce and the establishment of predictable systems of secured lending through the adoption of secured transactions reform in developing countries and encouraging lawyers to support and participate in efforts to have secured transactions reform adopted in developing countries. The resolution was **approved**.

LAW AND AGING

[106A] On behalf of the Commission on Law and Aging, Jeffrey J. Snell of Ohio moved Resolution 106A urging Congress, and all federal, state and territorial administrative bodies to continue efforts to expand the availability of home and community based services as a viable long term option. The resolution was **approved**.

[106B] On behalf of the Commission on Law and Aging, Jeffrey J. Snell of Ohio **withdrew** Resolution 106B urging the United States Department of Health and Human Services to ensure that all health care providers that participate in Medicare and Medicaid refrain from providing treatment not wanted by patients and seeking reimbursement for such treatment.

[106C] On behalf of the Commission on Law and Aging, Jeffrey J. Snell of Ohio moved Resolution 106C encouraging the United States Department of State and the United Nations and its member states to support the ongoing processes at the United Nations and the Organization of American States to strengthen protection of the rights of older persons,

including the efforts and consultations towards an international and regional human rights instrument on the rights of older persons. The resolution was **approved**.

LEGAL AID AND INDIGENT DEFENDANTS

[122] On behalf of the Standing Committee on Legal Aid and Indigent Defendants, the Honorable Vanessa Ruiz of the District of Columbia introduced and the Honorable Bernice B. Donald, Secretary of the Association, moved Resolution 122 adopting the *ABA Standards for Language Access in Courts*, dated August 2011, and urging courts and other tribunals to give high priority to the prompt implementation of these *Standards*. With privileges to the floor, the Honorable Eric Washington of the District of Columbia spoke about the resolution. The Honorable Fernande R.V. Duffly of Massachusetts moved to postpone the resolution indefinitely. The House approved the motion to **postpone indefinitely**. (See [video](#) of debate.)

LEGAL EDUCATION

[10B] On behalf of the New York State Bar Association, Steven P. Younger of New York moved Resolution 10B recommending that law schools, law firms, CLE providers and others concerned with continued professional development provide the knowledge, skills and values that are required of the successful modern lawyer. Pauline A. Schneider of the District of Columbia spoke regarding the resolution but did not oppose it. Lawrence Fox of Pennsylvania moved an amendment, which was approved. Vincent E. Doyle of New York and Tiffany V. Colbert of Florida spoke in favor of the resolution. The resolution was **approved as amended**. (See [video](#) of debate.)

[100] The House **approved by consent** Resolution 100 granting approval and reapproval to several paralegal education programs, withdrawing the approval of three programs at the requests of the institutions, and extending the term of approval to several paralegal education programs.

[102] On behalf of the National Native American Bar Association, Mary Smith of Illinois moved Resolution 102 urging the Law School Admissions Council and ABA-approved law schools to require additional information, including Tribal citizenship, Tribal affiliation or enrollment number, and/or a “heritage statement”, from individuals who indicate on their applications for testing or admission that they are Native American. The resolution was **approved**.

[111A] On behalf of the Young Lawyers Division, Carrie Ann Baker of Florida, moved Revised Resolution 111A urging Congress to enact legislation that assists individuals who are experiencing financial hardship due to excessive levels of student loan debt but are not covered by the provisions of the student loan overhaul passed into law on March 30, 2010. Alyssa Ehrlich of California spoke in favor of the resolution. The resolution was **approved as revised**.

[111B] On behalf of the Young Lawyers Division, David B. Wolfe of New Jersey moved Revised Resolution 111B urging all ABA-Approved Law Schools to report employment data that identifies whether graduates have obtained full-time or part-time employment within

the legal profession, whether in the private or public sector, or whether in alternative professions and whether such employment is permanent or temporary. The resolution was **approved as revised**.

[119] The House **approved by consent** Resolution 119 concurring in the action of the Council of the Section of Legal Education and Admissions to the Bar in making amendments to Standards 512, 306 and 105, and to Rules 20 and 24 of the ABA *Standards and Rules of Procedure for Approval of Law Schools*, dated August 2011.

LITIGATION

[101B] On behalf of the Section of Litigation, Lawrence J. Fox of Pennsylvania **withdrew** Resolution 101B adopting the *Standards of Conduct For Experts Retained By Lawyers*, dated August 2011, and urging counsel to incorporate the Standards in lawyer engagement agreements with experts.

[305] On behalf of Robert J. Gaudet, Jr., Royce Murray, Heather Hodges, Joseph Federici, Benjamin G. Davis, Brant McGee and Sharon Payant, Benjamin G. Davis of Ohio introduced and the Honorable Bernice B. Donald, Secretary of the Association, moved Resolution 305 encouraging the European Commission to adopt rules allowing for class actions within the 27 Member States. Michael H. Byowitz of New York spoke against the resolution. Joseph G. Krauss of the District of Columbia moved to postpone indefinitely. Benjamin G. Davis of Ohio spoke against the motion to postpone indefinitely. The House approved the motion to **postpone indefinitely**. (See [video](#) of debate.)

MILITARY LAW

[120] The House **approved by consent** Resolution 120 urging Congress to amend the Uniformed Services Employment and Reemployment Rights Act of 1994 (“USERRA” or “the Act”), 38 U.S.C. §§ 4301–4335, by adding provisions to require employers to provide certain reasonable accommodations for returning veterans with combat injuries that may not manifest themselves until after a return to work.

UNIFORM ACTS

[110A] The House **approved by consent** Resolution 110A approving the Revised Uniform Law on Notarial Acts, promulgated by the National Conference of Commissioners on Uniform State Laws in 2010, as appropriate legislation for those states desiring to adopt the specific substantive law suggested therein.

[110B] On behalf of the National Conference of Commissioners on Uniform State Laws, Robert A. Stein of Minnesota moved Resolution 110B approving the Uniform Collaborative Law Rules/Act, promulgated by the National Conference of Commissioners on Uniform State Laws in 2010, as appropriate legislation or rules for those states desiring to adopt the specific substantive law suggested therein. Lawrence J. Fox of Pennsylvania, Carolyn B. Lamm of the District of Columbia, Jonathan W. Wolfe of New Jersey, and Joanne A. Epps of Pennsylvania spoke against the resolution. Marna S. Tucker of the District of Columbia, Michael S. Greco of Massachusetts, and Michael Houghton of Delaware, who had privileges of the floor, spoke in favor of the resolution. Robert A. Weeks of California

moved the previous question and the question was called. The resolution was **defeated** by a vote of 154 to 298. (See *video of debate*: [Part One](#); [Part Two](#); [Part Three](#).)

YOUTH AT RISK

[103A] On behalf of the Commission on Youth at Risk, Laura V. Farber of California moved Revised Resolution 103A urging state legislatures to enact laws that effectively aid minors who are victims of human trafficking. The resolution was **approved as revised**.

Closing Business

At the conclusion of the meeting of the House on Tuesday, August 9, Chair Klein remarked about the large agenda that the House had covered, thanked the delegates for their attention, especially to the late filed reports. She thanked members of the House for their attention and the courtesies they extended to the speakers. She also thanked the members of the House committees, the staff supporting the House committees, and the Committee on Rules and Calendar.

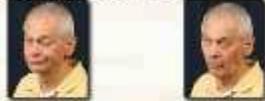
David F. Biennu of Louisiana was recognized to make a presentation to delegates regarding the 2012 New Orleans Midyear Meeting.

Tracy A. Giles of Virginia moved a resolution in appreciation of the Toronto lawyers and judges, for their work in hosting the meeting. The motion was **approved**.

Chair Klein recognized Palmer Gene Vance II of Kentucky who then moved that the House adjourn *sine die*. The motion was **approved**.

PRESIDENT REDUCES AMOUNT HOMEOWNERS OWE

If you owe less than \$625,000 on your mortgage, the President wants you to refinance. Using this one ridiculously easy trick can save you up to \$145,000. If you are a homeowner and you haven't looked into refinancing recently, you may be surprised at how much you can save.



Under 25 **26-45**

BREAKING NEWS:
Dow closes down 275 points

Law schools pressed to tell the truth on job placement, debt

Vid

By Mary Beth Marklein, USA TODAY

Updated 6d 2h ago

204

Recommend 851

154



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The [American Bar Association](#) and 200 law schools it accredits are under growing pressure from Congress to quell complaints that colleges are misleading students about job prospects and saddling graduates with loans they can't afford to repay.

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Last week, Sen. [Barbara Boxer](#), D-Calif., and Sen. [Tom Coburn](#), R-Okla., asked the [Education Department's](#) investigative arm to examine "the confluence of growing enrollments, steadily increasing tuition rates and allegedly sluggish job placement" at American law schools.

Sen. [Chuck Grassley](#), R-Iowa, alarmed by high average borrowing rates, —\$68,827 among students at public schools and \$106,249 at private — is pressing the bar association to factor student-loan default rates into its accreditation decisions.

By Jack Gruber, USA TODAY

Sen. Chuck Grassley, R-Iowa, is pressing the American Bar Association to factor student-loan default rates into its accreditation decisions.

STORY: [Student loans outstanding will exceed \\$1T this year](#)

MORE: [For-profit colleges focus of student loan issue](#)

STORY: [Law aims to give more accurate tally of college costs](#)

Class-action lawsuits against law schools are on the rise, alleging that colleges make factual omissions and bend the truth about how many graduates are working in the field of law.

Ads by Google

Cooley Law School

Ample Aid & Flexible Scheduling
We Make Law School Work For You!

Cooley.edu

\$10,000 - \$125,000 Debt?

Can't Pay Debt, Get Relief. See
If You Qualify, See Savings! Start

DebtReliefCenter.org/See-Savings

Customer Support Reps

Needed For Local Call Center. Full Time Position. Apply Online Now!

www.ACSCallCenters.com/TechJobs

Law school debt

Average amount borrowed per year for law school:

Source: American Bar Association

"A graduate could be working as a barista in Starbucks ... and would be deemed employed," say two lawsuits, filed in August by New York firm Kurzon Strauss. In a motion to dismiss, lawyers representing [New York Law School](#) say the school's data meet ABA requirements.

The issue has been heating up throughout the year. Among the developments:

- A federal panel this summer scolded the bar association for failing to comply with 17 federal regulations related to accreditation, a quality-control measure through which the ABA determines which schools can get federal student aid.

- So far this year, class-action lawsuits alleging fraud and related charges have been filed against three law schools. Two lawsuits, for example, allege that New York Law School and [Thomas M. Cooley Law School](#) post employment data that omit whether jobs were full-or part-time, temporary or permanent or required a law degree.

[Indiana University](#) law professor [William Henderson](#) says the grim job market has exposed tactics long-used by law schools in a competitive bid for high rankings — and tuition revenue, much of which comes from federally backed student loans. "We're at this sad point where legal education does not have a really good face-saving way out of this," he says.

The underlying issue is whether the ABA is adequately policing law schools in its gatekeeper role. In a letter this month to the ABA, Boxer expressed concern that law schools were reporting a rosier job placement rate for their graduates than national studies suggest. The National Association for Law Placement, for example, indicates that since 2001, about two-thirds of graduates from all ABA-approved law schools obtained legal jobs, yet "most law schools report that nearly all of their students have jobs shortly after graduation," she notes.

The [Princeton Review](#)'s just-released "Best 167 Law Schools" lists 111 schools reporting employment rates of 90% or higher after nine months, and an additional 40 report rates from 80% to 89% Yet the non-profit National Association for Law Placement's annual survey of 2010 graduates cited the lowest employment rate since 1996, with just 68% in positions where passing the bar is required, down from 77% in 2007, and 9.4% reporting that they were not working. While ABA-accredited law schools awarded 44,004 degrees that year, a study by the Economic Modeling Specialist estimates that 26,239 jobs were available.

The ABA's section of legal education in August censured Pennsylvania's Villanova University School of Law, which this spring acknowledged doctoring some data, and is reviewing a similar case involving the [University of Illinois College of Law](#). "There is a lot of suspicion and a lot of smoke out there (but) we have received no complaints from other

schools. No evidence has been submitted to us," says Hulett "Bucky" Askew, who heads the ABA's legal education section.

An ABA committee also has recommended a change in reporting requirements, beginning with the class of 2011, designed to finalized changes it said would "offer very helpful information to assist prospective law students and graduates in making very important decisions about law school attendance and careers," say an ABA statement.

But critics say the problem goes deeper than that. "These aren't just angry graduates who are upset they didn't get jobs," says Kyle McEntee, executive director of Law School Transparency, a nonprofit that is seeking broader reforms in the law school industry. "The problem is we have a legal education model that's broken."

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Posted 6d 18h ago | Updated 6d 2h ago



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Life Change: From Tech Wizardry to Stand Up Comedy *Work Goes Strong*

Colleges Look for the Next Higher Education Model *US News University Directory*

National CD rates for Sept. 15, 2011 *Bankrate.com*

[?]

We've updated the Conversation Guidelines. Changes include a brief review of the moderation process and an explanation on how to use the "Report Abuse" button. [Read more](#).

What Do You Think?

To leave a comment, you need to sign up.

[Sign up](#)

[Log in](#)

159 comments

Sort:



truckman

9:50 PM on October 24, 2011

Score: 30

Every school should be required to post their graduation rate.

They should also be required to post their crime statistics. As is rape is never reported on campus along with many other felony crimes. Their internal police do nothing but ignore the truth.

[Report Abuse](#)

4 replies

Wow, you know a system is corrupted when even lawyers are getting screwed over and lied to.....

Report Abuse

The problem with profit based institutions is what people will do to sustain or increase those profits.

1 reply



[misled also](#)

10:33 PM on October 24, 2011

Score: 55

Not only should they look into law schools, they should look into these 2 year colleges and degrees you get over the internet. They promise you the jobs but deliver nothing. All they want is your money!!!!!!! And it leaves you with nothing but debt you can't repay. It happened to me at a so-called "Junior College" in their paralegal program. I got nothing from it but debt and credits that wouldn't transfer to any college. They give you their "Employment Rate" which is a joke because they count any job, in any field, even if you had it when you enrolled. They're CROOKS!!!

Report Abuse

3 replies



[ewd76](#)

10:44 PM on October 24, 2011

Score: 32

Congress is broken, the economic system is broken, the electoral process is broken, legal education is broken...What isn't broken these days??? We need more lawsuits to tell us.

Report Abuse

2 replies



[TexUSAproud](#)

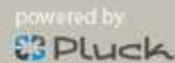
11:06 PM on October 24, 2011

Score: 32

I guess the lack of transparency is taught early :(

Report Abuse

Next



Rio + 20 United Nations Conference on Sustainable Development

October 30, 2011

Ladies and Gentlemen:

Subject: Input for the Rio 20 Compilation Document

As the Executive Committee of the Sustainable Future Section (“the Section”) of the Oregon State Bar¹ in the United States of America, we write to request that the Rio 20 Compilation Document include the reasons and the manner in which the legal profession can join forces with other economic and social actors to promote sustainability. Lawyers can educate clients by including sustainability as an aspect of legal counseling, and lawyers can, and must, change their own practices to make them more sustainable.

Law is an essential element when addressing the two themes of Rio 20: “green economy” and “the institutional framework of sustainable development”. As *Our Common Future* explains,

“Sustainability requires the enforcement of wider responsibilities for the impacts of decisions. This requires changes in the legal and institutional frameworks that will enforce the common interest. Some necessary changes in the legal framework start from the proposition that an environment adequate for health and well-being is essential for all human beings including future generations. Such a view places the right to use public and private resources in its proper social context and provides a goal for more specific measures.” *Our Common Future* Art. 76, available at <http://www.un-documents.net/ocf-02.htm>.

Indeed, Annex 1 of *Our Common Future* is a “Summary of Proposed Legal Principles for Environmental Protection and Sustainable Development Adopted by the WCED Experts Group on Environmental Law”. <http://www.un-documents.net/ocf-a1.htm>. Notwithstanding the key interaction between law and sustainability, lawyers in general have not yet played a significant role in the sustainability movement and its growing impact on social goals and behaviors.

We feel it is essential to examine the important role lawyers can play regarding sustainability in the Rio 20 Compilation Document. Traditionally, law as a profession has been regarded by many as reactive, that is, lawyers follow their clients in the decision-making process. Yet lawyers help clients make fully informed decisions. A lawyer educated about sustainability is able to provide clients with information on the impact of clients’ decisions in terms of advancing or hindering a green economy and operating within an effective institutional framework for sustainable development. The Oregon State Bar provides a model that can be applied to other professional lawyers organizations, and the Sustainable Future Section provides a model to educate lawyers in sustainability and to facilitate integrating sustainability into the practice of law. This paper explains specific actions that were effective in creating the Oregon model so that they can be imitated.

Oregon State Bar Task Force on Sustainability

After years of growing interest among individual Oregon attorneys and attorney groups, in 2008 the Oregon State Bar Board of Governors (“the Board”) commissioned a task force of Oregon lawyers to review and make recommendations to the Board relating to sustainability. The charge required the task force to consider the Bar’s internal operations and carbon footprint, consider how to educate and encourage lawyers and law firms in sustainability, consider how the Bar should integrate sustainability

¹ The Oregon State Bar is the licensing and governing body for lawyers practicing law in Oregon.

into the Bar structure and whether, and how, the Bar should be concerned about the rights and opportunities of future generations, consider the judiciary's and the administration's use of resources, and make recommendations regarding all of the above. The task force fulfilled its charge and submitted a Sustainability Task Force Report in 2009 recommending a framework by which the Bar and individual lawyers could incorporate sustainability into the legal profession and individual law practice. The report recommended that the Bar's governing body adopt a bylaw that would include considerations of sustainability principles, form a "Sustainable Future Section" for lawyers to study and educate lawyers in the application of sustainability to law and law practice, and evaluate the Bar's carbon footprint and determine how to lessen that impact.²

1. Bylaw:

In October 2009, the Board added Article 26 to the Oregon State Bar Bylaws:

"The Bar supports the goal of sustainability, generally defined as meeting present needs without compromising the ability of future generations to meet their own needs. Because Bar operations and the practice of law impact the environment and society generally, the Bar will be cognizant of sustainability in its internal operating practices as well as in its service to members. Internally, the Executive Director will designate a sustainability coordinator for Bar operations, will encourage continuous sustainability improvement in Bar operations, and will report to the Board of Governors at least annually on progress and impediments. In the practice of law, principles of sustainability may be important in addressing competing economic, social and environmental priorities that impact future generations. The Bar will encourage education and dialogue on how law impacts the needs and interests of future generations relative to the advancement of the science of jurisprudence and improvement of the administration of justice."

2. Sustainable Future Section:

With approximately 290 lawyer members, the Section is devoted to the relationship between sustainability and law. The Section supports sustainability by providing institutional expertise to the Oregon State Bar and its members, educating attorneys and other legal professionals on sustainability and its integration into the law and on best office practices, and promoting dialogue on how law interfaces with the needs and interests of future generations. The Section provides opportunities for the judicial branch and Bar to engage in constructive dialogues about creating new legal frameworks around sustainability and in facing the daunting challenges of climate change.

Among the Section's activities, it has begun study groups focusing on topics such as emerging sustainability criteria in requests for proposals involving legal services, and the feasibility and effect of creating a state office of legal guardian to analyze how proposed legislation and administrative rules might impact the environmental interests of future generations. A 2009 report exploring this latter topic in depth is "Recalibrating the Law of Humans with the Laws of Nature: Climate Change, Human Rights, and Intergenerational Justice".³

To educate lawyers, the Section maintains a website (<http://osbsustainablefuture.org/>), produces a quarterly newsletter, and organizes one- to two-hour legal education programs on a variety of topics directly related to sustainability. Examples of topics covered in the newsletter include: "The Law Office

² http://www.osbar.org/_docs/resources/09SustainabilityTaskForceReport.pdf

³ An executive summary of this report is attached to the Sustainability Task Force Report.

Sustainability Policy”, “The Ethical Dimensions of Sustainability”, and “The Precautionary Principle”. Program topics have included “How Sustainability is Transforming the Practice of Law”, “Should the Oregon Constitution be Amended to Protect the Environmental Rights of Future Generations?”, “The Paperless Office”, “Human Right to Water”, and “Ecosystem Services”. Continuing legal education credits are available for most programs sponsored by the Section. In addition, in 2010, the Section created Sustainable Leadership Awards to recognize the exceptional contributions of lawyers and law firms in advancing sustainability. The Section is in the process of creating a Partnership in Sustainability program to recognize law firms implementing and maintaining sustainable office practices that satisfy criteria established by the Section.

3. Carbon footprint:

The Oregon State Bar office operates for 60 hours a week with 135 workers on the main shift and 135 personal computers, serving approximately 17,500 members in Oregon, other states, Washington D.C., U.S. territories, and other countries. The Sustainability Task Force Report and subsequent carbon footprint reports provide the Bar information on the extent to which greenhouse gas emissions result from its operations and key actions the Bar can take to conserve resources and reduce this impact.

Conclusion

Lawyers may assist their clients in two ways to advance the themes of Rio 20 and sustainable development: we can educate clients, and we can reflect sustainability values in our own operations as individual professionals and as a profession as a whole. The example of the Oregon State Bar demonstrates how lawyers can do this. With information and awareness of the relationship between law and sustainability, lawyers can further sustainable development by helping craft legally sound frameworks for the private and public sectors to implement the steps that will undoubtedly be a product of Rio 20.

Thank you for considering this input.

Sincerely,

Oregon State Bar Sustainable Future Section, Executive Committee

Excellent!
Sylvia



Family Owned. Family Values. Since 1956

RECEIVED

August 29, 2011

SEP 01 2011

Sylvia Stevens, Executive Director
Oregon State Bar
P.O. Box 231935
Tigard, OR 97281

Oregon State Bar
Executive Director

Dear Ms. Stevens:

I hope that this letter finds you well.

I served as a bar examination co-grader from 2002-2005 and as a Board member from 2005-2008. I have also co-graded several times since 2008. In that capacity, I have had a great deal of interaction with Jon Benson. I just wanted to let you know what a fabulous job Jon has done. He has streamlined processes for Board members and is very appreciative of the time demands for members. He has also made the exam and admissions process itself more efficient and responsive to applicant's needs. Jon has brought a new level of professionalism to the Board and to his role. He is a tremendous asset to the Bar and a genuine pleasure to work with.

Sincerely,

Kate A. Wilkinson
Corporate Counsel &
Director of Human Resources

KAW/np

RAZ

TRANSPORTATION

August 26, 2011

Oregon State Bar
16037 SW Upper Boones Ferry Rd
Tigard, OR 97224

RECEIVED

SEP 06 2011

Oregon State Bar
Executive Director

Dear Camille,

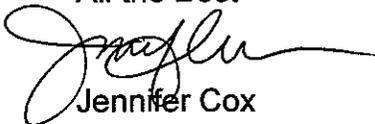
Please accept my apologies for our failure to serve you for your trip to Pendleton on August 25, 2011. I completely understand how inconvenient this was for your group and the day you had planned for the Board of Governors.

In an attempt to put Raz back in your good graces, I would be happy to offer you one (1) complimentary bus charter for your group good until 9/30/12 (based on availability). This can be used for any size vehicle in our fleet- 29, 50, 55 or 56 passenger motorcoach. All of the vehicles have a restroom on board, DVD players with monitors throughout the coach, reclining seats with footrests, and all are powered by Bio-Diesel. I promise the next time, you will have a professionally trained and prepared driver, and you will experience the service for which you contract us.

We strive to maintain high levels of customer service and unfortunately, incidents such as this happen. The up-side is that situations such as this make us strive to be better for our clients.

Again, I apologize for the service (or lack of service) you received on August 25th. Your business is important to us and I appreciate your patience and understanding in this matter.

All the Best~



Jennifer Cox
Sales Director

Jennifer.Cox@coachamerica.com

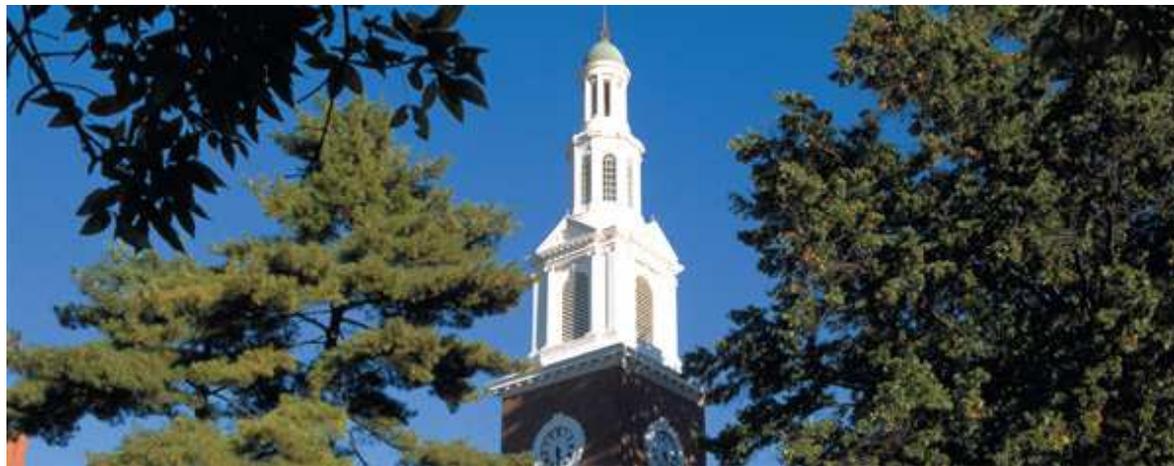
503-684-3322, ext 702

Your ABA

In Defense of the Courts: Symposium Finds No Easy Way to Fund Courts

Posted Nov 1, 2011 12:50 AM CST

By [James Podgers](#)



The University of Kentucky, Robinson's alma mater, hosted the symposium in September. Photo of Memorial Hall courtesy of the university.

Evidence of the growing financial crisis looming over state courts around the country continues to roll in. But attendees at a symposium Sept. 23-24 at the University of Kentucky in Lexington hardly needed to be convinced that budget cutbacks being imposed by legislatures are creating a severe strain on state courts.

Many of them—including judges, court administrators, bar leaders, legal scholars and members of the business community—have been sounding the alarm for several months about how the work of the courts is being undermined by dwindling financial resources.

“This whole meeting is about one word: access,” said immediate-past ABA President Stephen N. Zack of Miami during one of the symposium’s panel discussions. “Without adequate funding, there is no access.”

Zack, the administrative partner at Boies, Schiller & Flexner in Miami, brought the issue to the ABA’s front burner at the start of his term in August 2010 when he appointed the [Task Force on Preservation of the Justice System](#).

The task force has been continued by current ABA President Wm. T. (Bill) Robinson III. The symposium was held, in part, to honor Robinson, a 1971 graduate of the university’s law school.

But as Robinson emphasized in his closing remarks at the symposium, it’s not enough for the legal community alone to recognize the impact that budget cuts are having on the ability of courts to protect rights and provide a forum for individuals and businesses to resolve their disputes.

“We know the stakes, and we are united,” said Robinson, the member in charge of the Florence, Ky., office of Frost Brown Todd. “Now it’s time to go out and mobilize the forces of the public. We have the ability to persuade our neighbors to lend their voices to our cause. Getting the public behind us is essential.”

POLITICS MATTER

The need to build coalitions to advocate for the courts was a key element in a resolution by the justice system task force that was approved in August by the ABA House of Delegates. The policy also calls on courts and bar associations to develop effective strategies for communicating with the public and legislators on the issue, and it urges courts to develop best practices for the efficient use of court resources. In addition, the policy urges legislators to recognize “their constitutional responsibility to fund their justice systems adequately” and bring greater predictability to the budgeting process for courts.

Coalition building could be a daunting task, however, because court funding often gets tangled up with other concerns. Erwin Chemerinsky outlined the complexities in a speech that opened the meeting. The nagging economic slowdown has been bad

enough for the courts, said Chemerinsky, who is dean at the University of California at Irvine School of Law. But in looking at why state legislatures are cutting funding for the courts, “I think it will be a mistake if the discussion stops there,” he said. “Another factor is politics,” said Chemerinsky, “and the judiciary isn’t a particularly powerful advocacy group.”

Since it’s difficult for members of the judiciary to lobby legislators, Chemerinsky said, the organized bar is the natural advocacy group to speak on behalf of the courts. Still, the bar is struggling to convince legislators and the public that court viability is crucial both to individual rights and the interests of the business community.

The task is not getting any easier, he said, as the number of lawyers who serve in state legislatures continues to drop. Moreover, the growing use of private justice—for instance, mediation and arbitration—allows wealthy individuals and corporations to avoid the courts.

But perhaps the most important factor is the apparent “lack of support for the political will to fund what we need in government,” said Chemerinsky. “We have to take on the larger social issue of how we convince people the government isn’t an evil, that the government provides for them.”

Chemerinsky’s speech set the tone for much of the discussion that followed during a series of panels. In one of those panels, for instance, Lisa A. Rickard, president of the Institute for Legal Reform at the U.S. Chamber of Commerce, said the chamber endorses the justice system task force’s recommendations adopted in August.



Photo of Stefan Bing and Wm. T. (Bill) Robinson III courtesy of ABA Media Services



Photo of Lisa Rickard courtesy of ABA Media Services

ATTICUS FINCH, WHERE ARE YOU?

“These cuts could not come at a more inopportune time,” Rickard said, as more people turn to the courts seeking remedies for problems relating to the economy, such as foreclosures, bankruptcy and domestic relations.

But Rickard said the business community also would like to see some of its concerns about the courts addressed, including discovery delays, uncertainty over liability in tort cases and third-party financing of litigation.

Such concerns make it harder to build effective coalitions for the courts, she said, especially when the legal profession hasn’t always been responsive to business community concerns. “So far, we’re still looking at ways to create dialogue on building a broader coalition,” she said.

Other speakers expressed concerns that the court funding crisis hasn’t registered with the public. Individuals and families affected by the economy may be most at risk from cutbacks from justice services.

“The silence is deafening,” said John R. Broderick Jr., who recently retired as chief justice of the New Hampshire Supreme Court to become dean and president of the University of New Hampshire School of Law in Concord. “The problem that brought us here to Lexington is not being talked about around the dinner tables of America.”

One reason for that apparent lack of concern is a general lack of awareness about the role of the courts as a branch of government, said Maureen O’Connor, chief justice of the Ohio Supreme Court. “There are no Atticus Finches in the world of evening television,” she observed.

But Broderick said the courts also may be losing credibility with younger members of the population. “Young people live in a virtual world,” he said. “We exist in a brick-and-mortar and paper world. Transparency, accountability, accessibility. Whatever technology and social media does to advance that, we should embrace it.”

Despite these concerns, the ABA’s Robinson and Margaret H. Marshall, the recently retired chief justice of the Supreme Judicial Court of Massachusetts, both expressed hope in their speeches closing the symposium that efforts to tap into latent public support for the courts will be successful. “I believe Americans do want to wake up in a country that has a functioning court system,” Marshall said, “but they don’t realize what is at risk.”

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Photo of John Broderick courtesy of ABA Media Services

Features

The Battle on the Home Front: Special Courts Turn to Vets to Help Other Vets

Posted Nov 1, 2011 4:10 AM CST

By William H. McMichael



Photo of Judge Robert Russell by Jennifer S. Altman.

When Assistant District Attorney Ray Herman first became involved with Buffalo, N.Y.'s alternative treatment program for military veterans who'd found themselves on the wrong side of the law, he had his doubts.

"The whole program seemed a little—I don't know—touchy-feely," says the no-nonsense Herman.

But slowly, case by case, what Herman saw changed his mind. "I really support this," he says. "There's a very, very high percentage of success with the program, which is an excellent result for everyone because these are people that are no longer going to be in trouble with the law. So the program works."

Veterans treatment courts like Buffalo's are sprouting in courtrooms across the country, with 80 having been established in the past 3½ years. The growth—largely independent of the federal government—has been sparked by the recognition of judges, prosecutors, public defenders and legislators that a significant number of veterans are returning from the wars in Iraq and Afghanistan with mental health issues that can manifest themselves in criminal acts both great and small, and that steering them toward treatment they may have initially rejected will benefit society in the long run.

The problems have myriad sources, many of them rooted in the horrors of war, such as the out-of-nowhere shock of explosions from hidden roadside bombs, an enemy weapon that can damage the psyche as well as the body; the stress of near-continuous combat; the long deployments, which for several years in Iraq were lengthened from a year to 15 months away from home.

For infantrymen like John Clum, the stresses took a toll upon returning home.

Clum served and fought twice in Iraq. His first combat deployment was in 2005 with the 82nd Airborne Division. The duty was rough. The unit sustained near-daily rocket and mortar attacks. His battalion lost 14 members, some of them close friends. "I was pretty tight with those guys," Clum says.

And a second Iraq tour in 2007, after he had spent time back home in Tulsa, Okla., and gotten married, Clum says, "was far more intense than my first one."

Clum, now 37, came home and left the Army; he didn't realize he suffered from post-traumatic stress disorder, depression and mild traumatic brain injury.

He found a job doing construction work at oil refineries. The work took him away from home a lot, and his marriage fell apart.

He had other troubles readjusting to civilian life. He “missed the guys” and, knowing they were deployed to Afghanistan, felt he had let them down by stepping away.

He started hitting the bottle.

“I was drinking every day,” Clum says. “Blackout drinking.”

He was arrested twice for drunk driving. Just before receiving a one-year suspended sentence in March 2010, Clum tried to hang himself in his jail cell.

Then he read a newspaper story about a special court program for veterans. He called his public defender, and soon he was in Judge Sarah Day Smith’s veterans treatment court in Tulsa.

Like similar courts created over the past few years across the nation, Smith’s court specializes in working with troubled veterans to get them counseling, and linking them to government treatment and other benefits they may have not known about or skipped over upon their return home. The program is aimed at helping them regain the sense of discipline and camaraderie they had in uniform, and steering them onto a more positive course in life.

Ten months into the 18-month program, Clum now takes stabilizing medication, undergoes counseling, works with a volunteer veteran mentor, auto-tests for sobriety three times a day and regularly attends Alcoholics Anonymous meetings.

“It’s a very hard program,” Clum says, but he adds that he has progressed to the point where he now plays a positive role in the lives of his son, 13, and daughter, 10. And he has a job that he found himself, installing home generators for a veteran-friendly company.

“Got a future,” he says.

COMMON BONDS

The nation’s first veterans treatment court was established in Buffalo in early 2008. Robert Russell, an associate judge for the Buffalo City Court, noticed more veterans showing up in his drug and mental health treatment courts, which he set up in 1995 and 2002, respectively.

Russell is not a veteran, but he knew that an estimated one in five veterans of the ongoing wars shows signs of mental health issues. He also saw that veterans coming before his other courts had a noticeably positive reaction to two fellow vets who worked for the court, former soldier Jack O’Connor and former Marine Hank Pirowski.

“It was, wait a minute, there’s something to this ... how a veteran responds to another veteran,” Judge Russell says.

A year of planning followed, including meetings with the local Department of Veterans Affairs advisory board, which ended up producing the court’s first veteran mentors and health providers, as well as veteran advocates in the local community.

The court was born and the idea has quickly spread, as the numbers make plain. The Buffalo court is considered a model and is one of four that hosts training sessions for other courts and courts in development.

The concept is rooted in the approach of drug treatment courts such as Russell’s that now dominate the country’s more than 3,000 “problem-solving” or “collaborative” courts.

In drug courts, defendants get a chance to rehabilitate instead of serving jail time. Typically, they submit to weekly blood tests, and the courts receive status reports from teachers or employers for 12-18 months. Most drug courts do not accept violent defendants, although this varies by state.

Most defendants plead guilty to the crime, but the sentence is stayed pending completion of the program, as is the case in Buffalo.

Veterans treatment courts, hybrids of the drug and mental health treatment courts, run much the same way.

If participants stay clean and on track, they “graduate” and have their charges dismissed and records wiped clean. There are



Judge Robert Russell created the nation’s first veterans treatment court in Buffalo, N.Y., in 2008. Photo by Jennifer S. Altman.

exceptions: In California, for example, convictions for crimes of violence and driving while intoxicated remain on the record after graduation.

"It's really up to the person," Buffalo ADA Herman explains. "And if they want to do it, help's available and the judge is willing to work with them. But they are kind of on their own, also. Because it's a choice they have to make. You want to clean yourself up ... you're going to have to show up to the sessions. And if you don't, you could be in jail."

Collaborative courts work, according to Judge Wendy Lindley of California's Orange County Combat Veterans Court. In a 2009 report, Lindley wrote that studies during the past 15 years show they enhance public safety, cut recidivism and are more cost-effective than the typical manner of processing offenders.

The veterans court concept, however, does not attract universal support.

Allen Lichtenstein, general counsel for the Nevada chapter of the American Civil Liberties Union, told Reuters earlier this year that, while his group recognizes that certain veterans have special needs, it opposes the establishment of what it says are, in effect, two separate systems.

"Where does it end?" asks Lichtenstein. "Do we then have courts where police are treated because of a certain status?"

The national organization, however, wholeheartedly backs the concept, says Vanita Gupta, the ACLU's deputy legal director. "We are always on the lookout for making sure that problem-solving courts comply with procedural fairness and actually don't end up being more punitive than the normal criminal justice system."

But veterans treatment courts, Gupta says, "have developed a recognition that our criminal justice system is, frankly, ill-equipped to address the problems of substance abuse, chemical dependency, mental illness that really plague so many in our prisons, including the majority of veterans who are incarcerated."

As with the drug courts, there are no national standards for admission. Generally, however, veterans must have a diagnosis of substance abuse or mental illness, such as post-traumatic stress disorder, to be admitted. Some courts, but not all, limit participation to combat veterans.



CONTROVERSY OVER PLEADING

Most treatment courts require pleas before accepting clients, and some observers take issue with this. Army veteran Guy Gambill of Minneapolis, a longtime advocate for veterans caught in the justice system, believes that some veterans—facing the choice between a long, court-ordered treatment program and a small fine plus six months in jail—will, despite the former's promise of personal betterment, opt for the latter.

Veterans are screened for drug usage.
Photo by Jennifer S. Atzman.

Gambill thinks veterans with mental illness or substance abuse issues would be far better served, as would society, if more courts offered diversion programs—that is, allowed veterans charged with nonviolent crimes to be

placed into treatment without having to enter a plea.

Lindley says she's familiar with the argument for diversion. But going in that direction, she says, takes too much off the veterans' shoulders in the eyes of the law.

"I think that's kind of a tough argument," she says. "It's my understanding that [diversion advocates] feel in cases such as, let's say, driving under the influence, that a veteran should get a walk. And I know that law enforcement and the DA's association feel that would be a miscarriage of justice."

Brian Clubb, a former Marine Corps intelligence officer, attorney and public defender who now serves as the Veterans Treatment Court project director for the National Association of Drug Court Professionals, says pleas often produce better long-term results.

"It's been shown that, actually, individuals who have pled guilty or pled no-contest tend to do better in these courts and graduate more often than individuals who are put into diversionary status," says Clubb, whose Alexandria, Va.-based organization is the unofficial national clearinghouse for veterans treatment courts. "And for that reason, some courts have gone more to that model."

He adds, "It's kind of a stick. You know what's going to happen to you if you don't do well."

Lindley and Clubb acknowledge, however, that in the age of the Internet, court records have taken on a life of their own.

Another difference among the veterans courts—and a further sign that the concept is still evolving—is the disparity of views on admission of those charged with violent crimes. Some courts won't hear such cases; others do, but with significant caveats and checks. The degree of violence, the offender's prior record and the victim's view are all taken into account.

When Russell reviews domestic violence cases, for instance, he says it's a matter "of distinguishing between those with a predisposition for domestic violence, and those whose behavior has changed after their service and related to their service. Because some of the symptoms related to post-traumatic stress disorder, traumatic brain injury, things of that sort, might be indicative of an expression that might result in anger—outbursts and anger ... distinguishable from those who commit domestic violence before they go into the service and return home and still do the same thing."

Lindley also accepts such cases—not, however, crimes such as murder or sexual assault—and says she doesn't understand why all the veterans courts don't do likewise.

"If our goal is to protect our communities and make them a safer place, then why wouldn't we take cases of violence?" she asks.

"These things are so new," says Matt Stiner, a former Marine and Iraq war veteran who helped set up the Tulsa court. A former veteran court mentor, Stiner now works with Clubb as the NADCP's director of development and outreach for Justice for Vets, a division of the association. "Everybody's trying to figure out: How do we treat these charges? They are different. They need to be looked at differently."

COMBAT VETS ONLY?

A difference of philosophy also exists among various states and within the veterans court community over whether combat service should be a criterion for admission. One camp feels that all vets should be accepted, including those who never deployed to a war zone. The other believes the courts should admit only those with combat-related mental health issues.

Lindley's court is limited to offenses committed as a result of substance abuse, PTSD or other problems stemming from combat service; noncombat vets are referred to the county's other collaborative courts. The court has about 50 active participants and has seen 10 veterans graduate.

The "combat vets only" rule is not Lindley's—it's dictated by state law. But she agrees with it.

"What unites combat veterans is their combat," says Lindley, whose court began about two years after Russell's. "That experience ... resonates very deeply with them. I think that if they've been damaged as a result of their service ... in a combat zone, that ethically and morally we need to respond by offering them special services to restore them to who they were."

In contrast, the Buffalo court and many others accept all veterans with a clinical diagnosis of serious and persistent mental health disease, or drug or alcohol addiction. Russell says all vets deserve special consideration simply for their willingness to serve and defend their nation. Russell says his court is not preferential and does not violate the constitutional concept of equal protection under the law.

"It's not discriminatory" based on religion, race or gender, he says. "If you served in the armed forces, you can come into the program."

The best argument for veterans courts, advocates say, is that they seem to work: 70 percent of defendants finish the programs and 75 percent are not rearrested for at least two years after, according to NADCP statistics.

None of Russell's 56 graduates to date has been rearrested, to the court's knowledge. Only 26 of the 202 veterans admitted to his program have dropped out before graduation due to noncompliance. Currently, more than 90 veterans are enrolled at Buffalo.



A veteran completing the program receives applause from mentors, coordinators and court personnel.
Photo by Jennifer S. Altman.

FOOTING THE BILLS

The various courts are funded by way of what Clubb calls a patchwork—some limited federal grants and state grants, but more often a combination of local court system reallocations and court officials willing to work late.

The Justice Department's Bureau of Justice Assistance provides money for five-day team training of court officials at one of four mentor court sites—Buffalo, Tulsa, and Orange and Santa Clara counties in California. The Substance Abuse and Mental Health Service Administration provides funding for the mentor courts' administrative training costs and provides travel stipends for one-day training visits, Clubb says.

For many, however, local funds are nonexistent. Robert Wesley, a public defender in Orange County, Fla., says his district can't afford such a court. Shannon Edmonds of the Texas District & County Attorneys Association told the Texas House Committee on Criminal Jurisprudence last year, "The big issue seems to be funding."

THE COMING WAVE

In a 2007 report, Bureau of Justice researchers concluded that the percentage of veterans in state and federal prisons had steadily declined over the previous three decades. Veterans advocates and officials, however, fear that with a military that has been at war for almost a decade and has seen escalating numbers of veterans seeking VA mental health treatment, that trend could reverse.

A 2008 study by the Rand Corp. found that almost 19 percent of Iraq and Afghanistan vets were reporting symptoms of PTSD or major depression. Of those seeking VA treatment from fiscal years 2002 through 2009, mental disorders were listed as a possible diagnosis for 48 percent, according to the Veterans Affairs Office of Public Health and Environmental Hazards.

VA studies have found PTSD victims typically exhibit more aggression than nonsufferers, and symptoms can lead indirectly to criminal behavior.

"We're seeing war veterans coming into the court in increasing numbers," Clubb says. "If we don't address it at the early stages, then we're going to start seeing those young veterans on the streets, homeless, in jail ... for things that could have been addressed earlier with assistance from the VA, from the services."

Clubb says he doesn't want to see veterans of the Iraq and Afghanistan wars "going down the same decades-long path that the Vietnam vets have."

Many vets refuse to acknowledge they may suffer from war-related mental problems, Clubb says. For some, there's a concern that doing so can mean more questions, treatment protocols and longer delays in getting home—the issue Gambill described. Others simply refuse to admit such problems because they can be perceived as a sign of weakness.

The courts try to cut through this stigma. In Buffalo, that effort involves Russell, court officials, the probation officer, prosecutors, public defenders, VA specialists and veteran mentors.

Senior case managers Mikel Morris and Pam LaMancuso track counseling, treatment and educational efforts so "the judge is fully aware of the participant's progress," LaMancuso says.

If problems arise, the first reaction typically is not punitive, Morris says, but more “What can we do to help you out?”

VA medical centers increasingly engage with these local courts to provide better, more immediate services to troubled vets.

For example, Tamekia Slaughter, a social worker in the Buffalo VA's substance abuse program, works with Morris and LaMancuso to obtain permission for the VA to share information with the court about a veteran's treatment. She also funnels various reports, such as urinalysis results, to Russell.

She has in-court, online access to a veteran's VA medical history and can verify whether a vet has had a specific treatment or procedure. Some, she finds, have never signed up for VA treatment.

THE VETERAN CONNECTION

The real key to Buffalo's success, observers say, lies in its mentor program. The court has a pool of more than 35 veteran mentors—from active-duty service members and younger veterans to older, retired vets—one of whom attends every court session. They give the veteran offenders someone to relate to but also can serve as adviser, facilitator and liaison with the court.

VA police detective Jason Jaskula, who served with the 1st Marine Division in Iraq, says the mentors want to hear defendants say they're willing to work to turn themselves around. “I'll be pretty blunt,” he says. “If you don't want to do this ... I've got 20 other guys that need my help.”

Danielle Maichle, a public defender with the Legal Aid Bureau of Buffalo, says the mentors' approach works toward getting the veterans to tap into the sense of pride they had in the military. “There's something about that pride from the past that they're able to resurrect, and they're able to move forward,” she says. “I've seen it.”

“Structure,” Lindley says. “They respond well to structure.”

A good example is Bryan, a Navy information systems technician from 2000 to 2005 and a defendant in the Orange County court. He asked that his last name not be published.



A mentor hugs a veteran after his court hearing. Photo by Jennifer S. Altman.



Buffalo public defender Danielle Maichle and Erie County Assistant District Attorney Ray Herman attest to the success of the alternative treatment program, which includes veteran mentors. Photo by Jennifer

He left shipboard duty in 2004 for a mobile communications unit serving with a special operations team in Afghanistan for six months, where he saw “a lot of ... ground combat, a lot of caves.”

He got out and went home to San Clemente, Calif. Hanging around hard-charging special warfare types, he says, had rubbed off. He started working out like a fiend, taking steroids and pain pills, and drinking too much alcohol. His marriage began falling apart.

Looking to recapture that military camaraderie, he fell in with four guys who decided to go vigilante on neighborhood drug pushers.

“We were kicking down doors,” Bryan says. “We had weapons.”

Leaving the gym one day, he got pulled over. The police found steroids in his car. Though he wound up in jail, his public defender knew of Lindley's court and got him admitted.

At first, he was resistant. “I didn't believe I had a problem,” he says. But the court—and two stints in rehabilitation programs—got him on track, he says.

Now a new father, working a full-time job and in the final phase of the 18-month program, Bryan gives the mentors in Lindley's court high marks and says he hopes to give something back by joining their ranks after he graduates.

William H. McMichael is the Hampton Roads, Va., bureau chief for Navy Times, a Gannett Co. newspaper. A version of this story first appeared in Military Times.

S. Altman.

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November 8, 2011

VIA E-MAIL

Sylvia E. Stevens
Executive Director
Oregon State Bar
P.O. Box 231935
Tigard, OR 97281-1935

Re: Convocation on Equality/Video

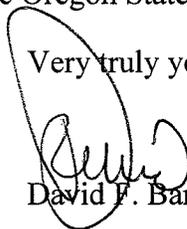
Dear Sylvia:

As a member of the Steering Committee on the Convocation and someone who has worked in this area for sometime, I wanted to pass along my thanks to you for the strong and broad support from the Oregon State Bar for the 2011 Convocation on Equality. Many of your colleagues at the Bar added great value to the successful event. I know that their efforts flowed from the support you provide on this issue.

One person I want to highlight is Kay Pulju. I am also on the Video Subcommittee. Kellie Johnson's leadership and work was the key to our successful video, but Kay's skills, tenacity and efforts help bring the video to a tremendous final product.

Kudos to you for the excellent efforts of the Oregon State Bar team.

Very truly yours,



David F. Bartz, Jr.

DFB:dl

Dear OSB -

Thank you for the innumerable support on the Convocation of Equality. I know that practically each and every one of you ~~was~~ involved in one way or another. With your efforts, this event went off without a hitch.

OSB has consistently supported legal diversity and inclusion efforts.

I look forward to working with you all to implement the recommendations which get us to these goals.

Thanks again.

Steve Schwartz Sykes