

	2.	Proposed Amendment to Oregon RPC 5.4 e	Inform	Exhibit
B.		Public Affairs Committee [Mr. Larson]		
	1.	Legislative Update	Inform	
7.		Other Action / Discussion Items		
A.		Illinois State Bar Association Resolution/Report re: ABA Policy	Action	Exhibit
B.		Centralized Legal Notice System [OLF]	Inform	Exhibit & Handout
C.		CLE Seminars Business Plan [Ms. Lee]	Inform	Exhibit
D.		Legal Publications Author / Editor Survey Summary	Inform	Exhibit
E.		LRS Policy & Procedure Amendments	Action	Exhibit
F.		OGALLA Request to Support ABA Resolution	Action	Exhibit
G.		Client Security Fund Claims Recommended for Payment	Action	Exhibit
H.		Proposed Legal Job Opportunities Work Group	Action	Exhibit
I.		MCLE Request for Review	Action	Exhibit
J.		OSB Diversity Branding [Mr. Kranovich & Ms. Hyland]		
	1.	Diversity Definition, Tag Line, Business Case Statement	Action	Handout
8.		Closed Sessions – CLOSED Agenda (click here)		
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		
9.		Consent Agenda		
A.		Approve Minutes of Prior BOG Meetings		
	1.	Regular Session – April 27 , 2012	Action	Exhibit
	2.	Special Open Session – May 24, 2012	Action	Exhibit
B.		Appointments Committee		
	1.	Appointments to Various Bar Committees, Boards and Councils	Action	Handout

10. Default Agenda

A. Minutes of Interim Committee Meetings

- 1. Access to Justice Committee**
 - a. May 24, 2012 Exhibit

- 2. Budget and Finance Committee**
 - a. April 27, 2012 Exhibit
 - b. May 24, 2012 Exhibit

- 3. Member Services Committee**
 - a. April 27, 2012 Exhibit
 - b. May 24, 2012 Exhibit

- 4. Policy and Governance Committee**
 - a. April 27, 2012 Exhibit
 - b. May 24, 2012 Exhibit

- 5. Public Affairs Committee**
 - a. May 24, 2012 Exhibit

- 6. Unclaimed Lawyer Trust Accounts**
 - a. April 27, 2012 Exhibit

- 7. Public Member Selection**
 - a. April 27, 2012 Exhibit

B. CSF Financial Report Exhibit

C. Audit Report of 2010 & 2011 OSB Financial Statements Exhibit

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

A. Correspondence

B. Articles of Interest

Report of the President
April 28, 2012—June 13, 2012

5/1-2/12	NW Bar meeting	Tigard
5/10/12	Meet with Chief Justice; lunch with Court; swearing-in of new admittees	Salem
5/11/12	Past presidents' lunch	Tigard
5/17-20/12	ABA State Access to Justice Conf.	Jacksonville, FL
5/24/12	BOG Committee Meeting; BOG alumni dinner	Tigard
6/8/12	PLF meeting; meet with Deschutes Bar	Bend
6/13/12	AJC Award lunch	Portland

Report of President-Elect Mike Haglund

BOG-related activities, May 1-June 15, 2012

- | | |
|----------|--|
| May 1-2 | Western States bar leaders meeting, OSB Center |
| May 9 | Meeting with staffer in charge of Washington State Bar Association Modest Means Program, Seattle |
| May 10 | Meeting with Chief Justice, Salem
Swearing in for new admittees, Willamette University |
| May 21 | MBA annual dinner |
| June 4 | Meeting with representatives of Oregon Association of Counties regarding OLF proposal, OSB Center |
| June 5 | OPB interview regarding judiciary study |
| June 7-8 | PLF Board meeting, Bend |
| June 11 | Oregon Law Commission Judicial Selection Work Group, Salem |
| June 13 | Meeting with representatives of the Oregon Newspaper Publishers Association regarding OCF proposal, OSB Center |

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: June 22, 2012
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"> • Certified 60-day notices were mailed in May to 651 members (3.5% of membership) still owing their 2012 bar membership fees. This is an increase from 2011 when we mailed out 551 or 3.1% of members initially billed. • As of June 11, the survey contractor had received 1,205 responses to the 2012 Economic Survey. This is 30% response rate. The final response rate in 2007 was 66% (2,215 completed surveys). Reminder notices and surveys were sent on June 11. • The contract with Fastcase expires in September 2012. Bar staff are working with Fastcase to determine new features and cost. The original contract was for three years, so no change in providers is expected. • There have been three inquiries about the vacant space in the building in early June including one showing. • The bar expects Integra Telecom to have the bar hooked to a fiber optic line by the end of June creating faster internet access and a marketing feature for potential tenants. • The bar's Project Manager continues to work diligently with LRS staff and Legal Interactive to bring the new lawyer referral software with the new program features to conclusion by July 1.
Admissions (Jon Benson)	<ul style="list-style-type: none"> • The July exam will be held July 24 & 25 at the Red Lion Hotel – Jantzen Beach in Portland. The pool of applicants registered for this exam is below the average for recent July exams by approximately 16%. Adjacent jurisdictions also report similar declines in the number of applicants for this exam. Requests for accommodations on the exam have been on the increase. This includes applicants who will need to use assistive technologies and the hiring of "readers" (for visually-impaired applicants). This increases the costs borne by Admissions and we will continue to track this trend. • The Annual Meeting of the Oregon Council on Legal Education and Admission to the Bar (OCLEAB) will be held on June 22nd. In addition to the BBX, the meeting is attended by the Oregon law school deans and the Chief Justice. One of the main topics on the agenda will be consideration of the Uniform Bar Exam (UBE) which is gaining support nationally. The UBE would allow law licenses to be more "portable" for lawyers seeking work in other jurisdictions. The UBE has been adopted by the adjacent states of Washington & Idaho.

Department	Developments
	<ul style="list-style-type: none"> There is evidence of significant non-compliance with the House Counsel Rule, which requires lawyers working in the state as in-house counsel to be admitted here (unless they fall within the ambit of the “temporary” practice provisions of Oregon RPC 5.5), though they do not need to sit for and pass the Oregon bar examination. Jon Benson has reached out to the Corporate Counsel Section and other groups to encourage compliance. Other enforcement steps are being considered.
Member & Public Services (Kay Pulju)	<p><i>Communications</i></p> <ul style="list-style-type: none"> The Bulletin is on pace to break revenue records, with all revenue items other than classifieds running ahead of projections. The biggest increase (74% over projections) comes from Lawyer Announcements, which could indicate movement in the legal employment market. The Communications team is working on various multimedia projects, including a recruitment video for OLIO. Nomination materials for the 2012 President’s Awards are now available, with promotion efforts underway. A revision of the public-directed handbook Legal Issues for Older Adults has been completed, and will be available online and in print at cost. <p><i>Member & Public Services</i></p> <ul style="list-style-type: none"> The Member Services team continues its ongoing support work for bar sections and committees, including a new review of officer training resources and section CLE services. The Lawyers for Veterans Steering Committee is co-sponsoring a veterans’ benefits program with OSB CLE on June 28, and working with the Public Affairs Department on legislative proposals. <p><i>Referral & Information Services</i></p> <ul style="list-style-type: none"> Registration information and materials were sent to all current panel members in mid-May, with a follow-up notice in mid-June. Staff have been busy responding to questions on the many program changes to take effect on July 2, and also working with General Counsel to address member concerns with the new LRS policies and procedures. Software development has also been a priority, including preparations for webinars to train panelists on the new online interface for tracking referrals. As of June 11 approximately 200 members have registered as panelists for the new program year.
CLE Seminars (Karen Lee)	<ul style="list-style-type: none"> Worked with the Client Assistance Office and Discipline Counsel Office to produce a six-hour ethics seminar on ethics best practices. Seminar satisfied reinstatement requirements for certain OSB members. Strong live and webcast attendance (73 and 26, respectively). Cosponsored a two-day program with the DOJ, FBA, and ONLD on handling a foreclosure case. Great attendance: 108 registered for the live seminar and 221 registered for the webcast. Developed a weekly webcast series on employment law topics that will be broadcast live and replayed during July and August. Worked with CFO, ED, and IDT to develop a new business plan.

Department	Developments
Diversity & Inclusion (Mariann Hyland)	<ul style="list-style-type: none"> • Benjamin James joined the Diversity & Inclusion Department (D&I) as a full-time Diversity & Inclusion Assistant in May. • In May, the Affirmative Action Committee (AAC) voted to recommend a new name for the AAC and an expanded charge. The recommendations are on the BOG’s agenda for June. • We celebrated the completion of the pilot year of the Explore the Law Program (ETL) on May 31 and awarded certificates to 12 Program graduates. • We finalized a draft diversity definition, business case statement and tag line for the BOG’s consideration and approval during its June meeting. • The OSB Diversity Section & Legal Heritage Interest Group are proceeding with planning to create a diversity timeline (“Story Wall”) for the OSB. • OLIO is scheduled for August 9-12 in Hood River. BOG members are invited and encouraged to attend all or part of the program. • Six Public Honors Fellowship students began their placements in May and early June. • Thirteen Clerkship Stipend students began working at their placements. • We awarded six Bar Exam grants for the July bar exam and awarded eight \$2000 law student scholarships for the 2012-2013 academic year.
General Counsel/ CAO (Helen Hirschbiel)	<ul style="list-style-type: none"> • The Fee Mediation Pilot Project is up and running. • We have re-vamped the Fee Arbitration/Mediation and UPL information on the OSB website to make it more accessible to the public. • General Counsel and Deputy General Counsel attended the ABA Nat’l. Professional Responsibility Conference at the end of May. The panels were exceptional this year, and included discussions on ethics in social media, changing law firms, receipt of stolen or inadvertently sent documents, conflicts, electronic banking issues and more. • We continue to handle approximately 20-25 ethics calls each day and 5-10 written and e-mail requests for informal ethics opinions each week. • We continue to work with other bar departments to protect the legal interests of the bar as we implement new and improve existing programs. • Chris Mullmann and Amber Bevacqua-Lynott presented the second Ethics Best Practices class on May 4. By all accounts it was a resounding success. • The Client Assistance Office continues to work on electronic processing and storing of lawyer complaints.
Human Resources (Christine Kennedy)	<ul style="list-style-type: none"> • The Employment Practices Liability and Directors and Officers Liability policy was renewed at an annual premium of \$6,880.00 representing a .69% premium decrease. • Two open positions were filled, one with a new employee and the other an internal candidate. Currently recruiting for two positions including a bilingual RIS assistant. • Staff training was offered to maintain CPR, first aid and other related certificates. Training was also offered that addressed saving for retirement.

<p>Information & Design Technology (Anna Zanolli)</p>	<ul style="list-style-type: none"> • We have acquired and installed a monitor for the lobby to display a continuous-loop slideshow of OSB members and activities, and are exploring including other information such as advertising for local restaurants and OSB room rental information. • The new New Lawyer Mentoring Program application was launched in May. • We are working with the OJD to update exports of bar data to support their systems. The new Odyssey program, now being tested in Yamhill County Circuit Court will let anyone file and find documents for free. Data on bar members is uploaded daily from our site to theirs. [See mention 6/4/12 on OPB: http://news.opb.org/article/yamhill-county-tries-project-open-court-system/]. We are also working with the new vendor who supports OJD’s appellate case management system to develop a secure connection through which we’ll forward updated member data. We are now exporting bar member status and contact information to four organizations on a daily basis, including the PLF. • Staff is on the final development leg of the bar’s new website, set for launch this summer. We received valuable member input on navigation and content from the focus group that was led by Kay Pulju in April.
<p>Legal Publications • (Linda Kruschke)</p>	<ul style="list-style-type: none"> • Monthly BarBooks™ webinars continue, with a break for July and August, resuming again in September. • The following have been posted to BarBooks™ since my last report: <ul style="list-style-type: none"> ✓ Eighteen chapters of <i>Torts</i>, 2012 revision. The print book is scheduled to be released in September, after pre-order sales have been received. ✓ Three chapters of <i>Family Law</i>. These were posted far ahead of schedule so that they could be referenced by speakers for the American Academy of Matrimonial Lawyers’ conference in April. ✓ One chapter of <i>Health Law in Oregon</i>. This book will be posted as chapters are completed throughout 2012, but will not be released as a print book. BarBooks™ users have been notified that the outdated editions of <i>Oregon Health Law Manual</i> will be removed from BarBooks at the end of June. • <i>Labor and Employment Law: Private Sector</i>, 2011 revision, received the ACLEA’s Best Award of Outstanding Achievement, which will be presented at the ACLEA Annual Meeting in Denver this summer. • <i>Oregon Civil Pleading and Practice</i> sold better than expected in our pre-order campaign; actual revenue (\$40,065) has significantly exceeded budget (\$13,500). • In early April all authors and editorial board members from the past five years were surveyed. A memo summarizing the survey results is included in the BOG agenda for the June meeting. • Jenni Abalan, formerly the Program Assistant in MCLE, joined the department as Administrative Assistant in late May. The position was reduced to .875 FTE, which will result in a slight savings in staff costs for the department. • Attorney Editor Cheryl McCord wrote an article on “30 Years of Legal Editing” for the spring edition of ACLEA’s <i>In the Loop</i> newsletter.

<p>Legal Services/OLF (Judith Baker)</p>	<p><i>Legal Services Program:</i></p> <ul style="list-style-type: none"> • Legal services providers are engaging in strategic planning regarding how to provide legal services to low-income Oregonians in the face of declining funding. The bar’s Director of Legal Services Program is involved in the planning process. • The Pro bono Committee is in full swing planning for Pro Bono Week in October. The Pro Bono Committee is also looking at new ways of letting the general public know about lawyers doing pro bono work. In addition the Pro Bono Committee is working to expand the pro bono bulletin board that connects law students and lawyers. • The LRAP Advisory Committee met and selected 10 new grant recipients. The grant amounts rained from \$2,400 to \$5,000. There is currently a total of 21 Oregon lawyers receiving LRAP grants. • Staff is reviewing the available self-help tools for pro se litigants and evaluating what needs to be developed to create a full set of resources for pro se litigants. <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. • The OLF continues to gather information regarding the feasibility of the Centralized Legal Notice Website.
<p>Minimum Continuing Legal Education (Denise Cline)</p>	<ul style="list-style-type: none"> • Seventeen members were suspended on May 24, 2012 for failure to meet their MCLE requirements for the period ending 12/31/2011. • Processed 3,212 program accreditation applications and 609 applications for other types of CLE credit (teaching, legal research, etc.) since the first of the year. • Currently recruiting for a MCLE Program Assistant (.75 FTE) as Jenni Abalan has accepted the Legal Publications Assistant position.
<p>New Lawyer Mentoring (Kateri Walsh)</p>	<ul style="list-style-type: none"> • Mentor recruitment remains a priority, with shortages continuing in some localities and practice areas. • An NLMP subcommittee is working on a better mechanism for approving mentor candidates. • The NLMP is also evaluating its curriculum in response to suggestions that some lawyers choose not to participate as mentors because of the “daunting” responsibility. • The new software application for matching mentors and new lawyers has been implemented and is working well.
<p>Public Affairs (Susan Grabe)</p>	<ul style="list-style-type: none"> • With the 2012 Legislative Session over, the Public Affairs Department is mainly focused on preparing for the 2013 Legislative Session. • On behalf of the OSB Board of Governors, the Public Affairs Committee forwarded its package of 19 Law Improvement proposals to Legislative Counsel’s Office for pre-session filing and drafting for the 2013 Legislative Session. Outreach to both internal and external interest groups will take place over the next few months. • The Public Affairs staff is preparing a 2012 Session edition of the Legislation

	<p>Highlights Notebook summarizing the highlights of short session. Authors and editors have been selected and most chapters have been completed. The publication should be ready for distribution sometime near the end of June.</p> <ul style="list-style-type: none"> • The OSB/OJD Task Force on Oregon eCourt Implementation met in April and June to discuss eFiling, changes to UTCR 21.100 and an update of Yamhill implementation.
Regulatory Services (Jeff Sapiro)	<ul style="list-style-type: none"> • The SPRB continues to meet monthly to review the results of disciplinary investigations and make probable cause decisions in those matters. At its June 15, 2012 meeting, the board considered roughly 20 separate matters. • The second session of Ethics School was held at the Bar Center on May 4, 2012. DCO, CAO and OAAP staff served as presenters. This time, the program had open enrollment; it was not limited only to those who had to attend because of recent disciplinary action. Seventy-two members attended in person and another 26 participated by webcast. • Regulatory Services staff has been busy processing reinstatement applications from many of the 88 lawyers who were suspended administratively for not filing the annual IOLTA certification. • Deschutes County Circuit Court has approved the OSB’s final report and accounting in a law practice custodianship filed in that county, bringing to a close a considerable effort to wind down a very active personal injury practice of a lawyer who has since resigned from the bar. • The Supreme Court recently approved amendments to the rules of procedure recommended by the Board of Governors. The new rules establish a process for those lawyers seeking reinstatement from IOLTA, Ethics School or New Lawyer Mentoring suspensions.

Executive Director’s Activities February 10, 2012 and April 7, 2012

Date	Event
5/1	Northwest Bars Conference welcome dinner
5/2	Northwest Bars Conference @ OSB Center
5/2	CEJ Board Meeting
5/5	CSF Meeting (Keizer)
5/9	Lunch @ Markowitz Herbold
5/10	Meet with Chief Justice and Swearing-In Ceremony
5/11	Past Presidents Luncheon
5/16	Breakfast with local EDs
5/21	MBA Annual Dinner
5/22	SSWC&S Open House
5/24	BOG Committees & BOG Alumni dinner
5/25	Meet with CLP to begin planning ABA/NEH Civility Project program
5/30-6/2	ABA Professional Responsibility Conference and Forum on Client Protection (Boston)
6/8	PLF Board meeting
6/8	Lunch w/Deschutes County Bar
6/13	Oregon Area Jewish Committee Lunch honoring Henry Hewitt

6/16	Legal Ethics Committee meeting (Eugene)
6/20	Lunch with Lane County Bar
6/20	Dinner with Coos & Curry County Bars
6/21	Lunch with Josephine County Bar

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: June 22, 2012
Memo Date: June 8, 2012
From: Jason Hirshon, Oregon New Lawyers Division Chair
Re: ONLD Report

The ONLD Executive Committee met once since the last BOG meeting. In April, the Executive Committee voted to hold a casino night at the OLIO event in Hood River this August. It is a great way for us to meet OLIO members and discuss the benefits of bar involvement.

We are really proud of the foreclosure CLE held on May 17 & 18 that we ran with the help of the OJD, Federal Bar Association, and the OSB Seminars Department. This CLE was a complete success. Over a hundred people attended in person with an additional 200 online. We are excited to see so many people attending and are already brainstorming for the next topic and dates. A social and CLE will be held at the Ram Restaurant on June 7 starting at 5:30pm. We are very pleased Chief Justice Balmer has agreed to present this CLE.

The CLE Subcommittee hosted a CLE program and social in conjunction with the May executive committee meeting held in Bend. The CLE was presented by the current Mayor of the City of Bend. The Member Services Subcommittee has worked diligently to get the July rafting trip organized. The monthly socials in Portland continue to be well attended with the next social on May 30 at the Yolo Lounge.

In national news, the ONLD sent members to the ABA Young Lawyers Division Spring Conference in May and 4 members are set to attend the Annual Meeting in Chicago this August.

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- Adoption 12/2011**
Checklists for Stepparent, Adult, Independent, Agency & Foreign Adoption; Payment re Counseling
- Bankruptcy 11/11**
Bankruptcy Checklist & Resources
- Business 11/11**
Corporate Info Sheet
Disclosure Form ORPC 1: *Business Deals with Client*
Sale of a Small Business Checklist
- Child Abuse Reporting 10/11**
FAQs about Child Abuse Reporting
- Client Communication 10/11**
E-mail, Voicemail, Receipts, Transmittals, Client Status Report
- Client Relations 10/11**
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Client Relations Checklist
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- Closing Your Law Office 11/11**
Checklists and Forms, including Law Ofc List of Contacts (*Fillable*)
Office File Tracking Sheet (*Fillable*)
- Conflicts of Interest 11/11**
Conflict Self Audit (*Fillable*)
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- Docketing & Calendaring 7/11**
Calendaring and File Tickling Systems
Calendaring Note
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Docket Checklist and Sheet (*Fillable*)
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- Domestic Relations 04/12**
A packet of over 20 forms, with checklists, sample letters, and more
- Engagement Letters 10/11**
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- Entity Formation 10/11**
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A packet of over 10 forms, including checklists and sample letters
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Professional Liability Fund

Tuesday, January 31, 2012

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6,764 documents downloaded/viewed in January, 2012

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Professional Liability Fund

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**Oregon State Bar
Professional Liability Fund
Financial Statements
4/30/2012**

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**Oregon State Bar
Professional Liability Fund
Combined Primary and Excess Programs
Balance Sheet
4/30/2012**

<u>ASSETS</u>		
	<u>THIS YEAR</u>	<u>LAST YEAR</u>
Cash	\$1,418,682.62	\$1,390,662.49
Investments at Fair Value	45,740,076.16	45,857,977.98
Assessment Installment Receivable	6,100,499.00	6,016,015.91
Due from Reinsurers	76,206.02	161,795.45
Other Current Assets	80,957.71	78,511.28
Net Fixed Assets	981,780.90	1,075,683.14
Claim Receivables	110,869.99	79,307.88
Other Long Term Assets	<u>9,825.00</u>	<u>10,000.00</u>
TOTAL ASSETS	<u>\$54,518,897.40</u>	<u>\$54,669,954.13</u>
 <u>LIABILITIES AND FUND EQUITY</u>		
	<u>THIS YEAR</u>	<u>LAST YEAR</u>
Liabilities:		
Accounts Payable and Other Current Liabilities	\$157,481.26	\$71,493.45
Due to Reinsurers	\$826,212.71	\$806,148.58
Liability for Compensated Absences	430,305.28	368,657.76
Liability for Indemnity	15,474,189.34	14,090,660.28
Liability for Claim Expense	12,404,808.13	12,198,685.03
Liability for Future ERC Claims	2,700,000.00	2,400,000.00
Liability for Suspense Files	1,400,000.00	1,400,000.00
Liability for Future Claims Administration (AOE)	2,300,000.00	2,300,000.00
Excess Ceding Commission Allocated for Rest of Year	480,926.27	477,210.28
Assessment and Installment Service Charge Allocated for Rest of Year	<u>16,634,022.45</u>	<u>16,421,444.67</u>
Total Liabilities	<u>\$52,807,945.44</u>	<u>\$50,534,300.05</u>
Fund Equity:		
Retained Earnings (Deficit) Beginning of the Year	(\$781,169.42)	\$2,349,430.48
Year to Date Net Income (Loss)	<u>2,492,121.38</u>	<u>1,786,223.60</u>
Total Fund Equity	<u>\$1,710,951.96</u>	<u>\$4,135,654.08</u>
TOTAL LIABILITIES AND FUND EQUITY	<u>\$54,518,897.40</u>	<u>\$54,669,954.13</u>

**Oregon State Bar
Professional Liability Fund
Primary Program
Income Statement
4 Months Ended 4/30/2012**

	YEAR TO DATE <u>ACTUAL</u>	YEAR TO DATE <u>BUDGET</u>	<u>VARIANCE</u>	YEAR TO DATE <u>LAST YEAR</u>	<u>ANNUAL BUDGET</u>
<u>REVENUE</u>					
Assessments	\$8,186,067.22	\$8,302,500.00	\$116,432.78	\$8,082,683.33	\$24,907,500.00
Installment Service Charge	130,944.00	133,666.68	2,722.68	128,039.00	401,000.00
Other Income	34,756.57	0.00	(34,756.57)	23,148.00	0.00
Investment Return	<u>2,461,158.25</u>	<u>876,110.32</u>	<u>(1,585,047.93)</u>	<u>1,889,931.03</u>	<u>2,628,331.00</u>
TOTAL REVENUE	<u>\$10,812,926.04</u>	<u>\$9,312,277.00</u>	<u>(\$1,500,649.04)</u>	<u>\$10,123,801.36</u>	<u>\$27,936,831.00</u>
<u>EXPENSE</u>					
Provision For Claims:					
New Claims at Average Cost	\$6,600,000.00			\$6,552,000.00	
Coverage Opinions	54,923.52			32,374.40	
General Expense	4,322.60			3,607.01	
Less Recoveries & Contributions	(191,483.19)			(30,077.45)	
Budget for Claims Expense		<u>\$7,063,000.00</u>			<u>\$21,189,000.00</u>
Total Provision For Claims	<u>\$6,467,762.93</u>	<u>\$7,063,000.00</u>	<u>\$595,237.07</u>	<u>\$6,557,903.96</u>	<u>\$21,189,000.00</u>
Expense from Operations:					
Administrative Department	\$682,365.69	\$733,924.84	\$51,559.15	\$736,431.75	\$2,201,774.00
Accounting Department	252,372.68	263,319.96	10,947.28	202,991.37	789,960.00
Loss Prevention Department	579,064.78	606,143.56	27,078.78	540,787.04	1,818,430.00
Claims Department	799,039.66	822,290.96	23,251.30	726,309.62	2,466,873.00
Allocated to Excess Program	(366,608.64)	(366,608.64)	0.00	(450,034.60)	(1,099,826.00)
Total Expense from Operations	<u>\$1,946,234.17</u>	<u>\$2,059,070.68</u>	<u>\$112,836.51</u>	<u>\$1,756,485.18</u>	<u>\$6,177,211.00</u>
Contingency (2% of Operating Exp)	\$33,151.06	\$48,513.68	\$15,362.62	\$0.00	\$145,541.00
Depreciation and Amortization	\$58,980.77	\$79,200.00	\$20,219.23	\$73,010.21	\$237,600.00
Allocated Depreciation	(11,998.68)	(11,998.68)	0.00	(14,545.32)	(35,996.00)
TOTAL EXPENSE	<u>\$8,494,130.25</u>	<u>\$9,237,785.68</u>	<u>\$743,655.43</u>	<u>\$8,372,854.03</u>	<u>\$27,713,356.00</u>
NET INCOME (LOSS)	<u>\$2,318,795.79</u>	<u>\$74,491.32</u>	<u>(\$2,244,304.47)</u>	<u>\$1,750,947.33</u>	<u>\$223,475.00</u>

**Oregon State Bar
Professional Liability Fund
Primary Program
Statement of Operating Expense
4 Months Ended 4/30/2012**

<u>EXPENSE:</u>	<u>CURRENT</u> <u>MONTH</u>	<u>YEAR</u> <u>TO DATE</u> <u>ACTUAL</u>	<u>YEAR</u> <u>TO DATE</u> <u>BUDGET</u>	<u>VARIANCE</u>	<u>YEAR</u> <u>TO DATE</u> <u>LAST YEAR</u>	<u>ANNUAL</u> <u>BUDGET</u>
Salaries	\$326,647.64	\$1,319,729.44	\$1,338,808.64	\$19,079.20	\$1,270,799.50	\$4,016,426.00
Benefits and Payroll Taxes	117,644.21	469,419.91	480,414.48	10,994.57	352,410.26	1,441,243.00
Investment Services	0.00	6,686.25	9,000.00	2,313.75	6,513.75	27,000.00
Legal Services	2,320.50	4,683.50	5,000.00	316.50	21,511.98	15,000.00
Financial Audit Services	0.00	14,000.00	8,333.32	(5,666.68)	15,000.00	25,000.00
Actuarial Services	0.00	6,337.50	6,333.32	(4.18)	6,457.50	19,000.00
Claims MMSEA Services	850.00	3,400.00	4,000.00	600.00	4,050.00	12,000.00
Information Services	7,300.10	35,729.62	24,666.64	(11,062.98)	32,227.29	74,000.00
Document Scanning Services	0.00	5,717.66	25,000.00	19,282.34	4,105.34	75,000.00
Other Professional Services	2,956.79	14,684.50	20,666.72	5,982.22	27,782.73	62,000.00
Staff Travel	1,092.13	1,879.58	4,316.68	2,437.10	1,007.71	12,950.00
Board Travel	972.43	3,473.07	13,766.68	10,293.61	4,334.47	41,300.00
NABRICO	0.00	0.00	3,500.00	3,500.00	0.00	10,500.00
Training	926.00	4,106.30	3,999.96	(106.34)	685.30	12,000.00
Rent	41,522.25	165,168.50	166,089.00	920.50	162,727.45	498,267.00
Printing and Supplies	3,502.39	18,025.16	28,333.32	10,308.16	23,273.75	85,000.00
Postage and Delivery	2,410.08	13,895.71	12,583.36	(1,312.35)	11,372.67	37,750.00
Equipment Rent & Maintenance	897.12	5,621.65	18,333.32	12,711.67	9,724.27	55,000.00
Telephone	2,650.25	10,767.13	11,666.68	899.55	11,544.41	35,000.00
L P Programs (less Salary & Benefits)	27,682.82	106,180.36	132,545.52	26,365.16	107,329.32	397,636.00
Defense Panel Training	0.00	0.00	66.64	66.64	56.70	200.00
Bar Books Grant	16,666.67	66,666.68	66,666.68	0.00	100,000.00	200,000.00
Insurance	601.00	8,401.00	20,421.68	12,020.68	9,049.00	61,265.00
Library	3,067.24	7,275.40	10,333.32	3,057.92	6,555.69	31,000.00
Subscriptions, Memberships & Other	1,027.81	20,993.89	10,833.36	(10,160.53)	18,000.69	32,500.00
Allocated to Excess Program	(91,652.16)	(366,608.64)	(366,608.64)	0.00	(450,034.60)	(1,099,826.00)
TOTAL EXPENSE	<u>\$469,085.27</u>	<u>\$1,946,234.17</u>	<u>\$2,059,070.68</u>	<u>\$112,836.51</u>	<u>\$1,756,485.18</u>	<u>\$6,177,211.00</u>

**Oregon State Bar
Professional Liability Fund
Excess Program
Income Statement
4 Months Ended 4/30/2012**

	<u>YEAR TO DATE ACTUAL</u>	<u>YEAR TO DATE BUDGET</u>	<u>VARIANCE</u>	<u>YEAR TO DATE LAST YEAR</u>	<u>ANNUAL BUDGET</u>
<u>REVENUE</u>					
Ceding Commission	\$240,463.14	\$235,200.00	(\$5,263.14)	\$238,605.14	\$705,600.00
Prior Year Adj. (Net of Reins.)	1,369.88	500.00	(869.88)	1,041.01	1,500.00
Installment Service Charge	37,180.00	12,666.68	(24,513.32)	37,242.00	38,000.00
Investment Return	<u>307,197.36</u>	<u>76,183.68</u>	<u>(231,013.68)</u>	<u>253,412.26</u>	<u>228,551.00</u>
TOTAL REVENUE	<u>\$586,210.38</u>	<u>\$324,550.36</u>	<u>(\$261,660.02)</u>	<u>\$530,300.41</u>	<u>\$973,651.00</u>
<u>EXPENSE</u>					
Operating Expenses (See Page 6)	\$400,886.11	\$404,880.60	\$3,994.49	\$480,478.82	\$1,214,642.00
Allocated Depreciation	<u>\$11,998.68</u>	<u>\$11,998.68</u>	<u>\$0.00</u>	<u>\$14,545.32</u>	<u>\$35,996.00</u>
NET INCOME (LOSS)	<u>\$173,325.59</u>	<u>(\$92,328.92)</u>	<u>(\$265,654.51)</u>	<u>\$35,276.27</u>	<u>(\$276,987.00)</u>

**Oregon State Bar
Professional Liability Fund
Excess Program
Statement of Operating Expense
4 Months Ended 4/30/2012**

	<u>CURRENT</u> <u>MONTH</u>	<u>YEAR</u> <u>TO DATE</u> <u>ACTUAL</u>	<u>YEAR</u> <u>TO DATE</u> <u>BUDGET</u>	<u>VARIANCE</u>	<u>YEAR</u> <u>TO DATE</u> <u>LAST YEAR</u>	<u>ANNUAL</u> <u>BUDGET</u>
<u>EXPENSE:</u>						
Salaries	\$56,281.76	\$225,127.04	\$224,911.64	(\$215.40)	\$266,539.61	\$674,735.00
Benefits and Payroll Taxes	19,900.26	79,605.60	79,857.32	251.72	80,354.65	239,572.00
Investment Services	0.00	813.75	1,066.68	252.93	986.25	3,200.00
Office Expense	0.00	0.00	0.00	0.00	0.00	0.00
Allocation of Primary Overhead	22,969.58	91,878.32	91,878.32	0.00	129,645.96	275,635.00
Reinsurance Placement & Travel	0.00	2,316.10	4,000.00	1,683.90	1,806.69	12,000.00
Training	0.00	0.00	333.32	333.32	0.00	1,000.00
Printing and Mailing	0.00	0.00	1,666.68	1,666.68	1,145.66	5,000.00
Program Promotion	500.00	1,000.00	333.32	(666.68)	0.00	1,000.00
Other Professional Services	(2,103.00)	145.30	833.32	688.02	0.00	2,500.00
Software Development	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>
TOTAL EXPENSE	<u>\$97,548.60</u>	<u>\$400,886.11</u>	<u>\$404,880.60</u>	<u>\$3,994.49</u>	<u>\$480,478.82</u>	<u>\$1,214,642.00</u>

**Oregon State Bar
Professional Liability Fund
Combined Investment Schedule
4 Months Ended 4/30/2012**

	CURRENT MONTH <u>THIS YEAR</u>	YEAR TO DATE <u>THIS YEAR</u>	CURRENT MONTH <u>LAST YEAR</u>	YEAR TO DATE <u>LAST YEAR</u>
Dividends and Interest:				
Short Term Bond Fund	\$26,425.86	\$117,342.49	\$21,768.86	\$107,618.85
Intermediate Term Bond Funds	22,205.64	86,144.44	22,326.36	86,003.05
Domestic Common Stock Funds	0.00	7,610.20	0.00	8,333.95
International Equity Fund	0.00	0.00	0.00	0.00
Real Estate	0.00	48,640.69	0.00	53,891.91
Hedge Fund of Funds	0.00	0.00	0.00	0.00
Real Return Strategy	<u>0.00</u>	<u>39,703.93</u>	<u>0.00</u>	<u>45,257.35</u>
Total Dividends and Interest	<u>\$48,631.50</u>	<u>\$299,441.75</u>	<u>\$44,095.22</u>	<u>\$301,105.11</u>
Gain (Loss) in Fair Value:				
Short Term Bond Fund	\$77,269.81	\$217,964.87	\$93,760.15	\$156,298.99
Intermediate Term Bond Funds	90,226.26	241,542.63	107,227.31	128,553.47
Domestic Common Stock Funds	(80,198.44)	885,591.27	191,852.34	563,615.56
International Equity Fund	(88,434.12)	652,503.66	340,801.41	539,454.45
Real Estate	0.00	42,191.11	0.00	47,236.06
Hedge Fund of Funds	(16,830.78)	194,807.67	40,848.41	95,016.43
Real Return Strategy	<u>54,970.37</u>	<u>234,312.65</u>	<u>168,252.90</u>	<u>312,063.22</u>
Total Gain (Loss) in Fair Value	<u>\$37,003.10</u>	<u>\$2,468,913.86</u>	<u>\$942,742.52</u>	<u>\$1,842,238.18</u>
TOTAL RETURN	<u>\$85,634.60</u>	<u>\$2,768,355.61</u>	<u>\$986,837.74</u>	<u>\$2,143,343.29</u>
Portions Allocated to Excess Program:				
Dividends and Interest	\$4,838.83	\$34,929.97	\$4,762.28	\$38,212.59
Gain (Loss) in Fair Value	<u>3,681.81</u>	<u>272,267.39</u>	<u>101,816.19</u>	<u>215,199.67</u>
TOTAL ALLOCATED TO EXCESS PROGRAM	<u>\$8,520.64</u>	<u>\$307,197.36</u>	<u>\$106,578.47</u>	<u>\$253,412.26</u>

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: June 22, 2012
From: Policy and Governance Committee
Re: Proposed Amendments to OSB Bylaw Article 27

Action Recommended

The Policy & Governance Committee recommends that the Board adopt the attached amendments to Article 27 of the Oregon State Bar Bylaws.

Background

In 2010, the Legislature amended Oregon's unclaimed property laws to require that abandoned funds in lawyer trust accounts be delivered to the Oregon State Bar. Pursuant to ORS 98.392(2), the Board adopted rules for the administration of claims to the abandoned funds, which are found in Article 27 of the OSB Bylaws.

The current bylaws place the primary responsibility for adjudicating claims on a special committee that is appointed by the Board, called the Unclaimed Lawyer Trust Account Committee (ULTA Committee). Since implementation of the new process, the ULTA Committee has received and authorized payment of six claims totaling \$2,545.29. Four of the claims were under \$500; two were over \$500 but under \$1500. No claims have been denied.

At its last meeting, the ULTA Committee recommended that the rules be amended to allow bar staff to review and make determinations on smaller claims. The attached proposed amendments would allow the Executive Director or her designee to decide whether to approve or deny claims under \$500. Claims of \$500 or more would still be reviewed and approved or denied by the ULTA Committee.

In an effort to provide additional Board oversight, an amendment has also been included to 27.103(j) which would require the Executive Director to provide an annual report of the claims resolved to the Board.

The claimant whose claim has been denied will retain the opportunity to appeal to the Board. Because the Oregon State Bar is not subject to the Oregon Administrative Procedures Act, claimants for abandoned lawyer trust funds held by the Bar may not file a contested case proceeding as they could for abandoned property held by the Department of State Lands. The appeal to the Board provides an alternative to a contested case hearing.

In addition to some minor housekeeping changes, the attached proposal also includes a 120 day timeline to resolve claims and authority for the Bar to close claims in which the claimant fails to respond to a request for additional information within 90 days. See OSB Bylaw

27.103(a). These timelines are taken from the claim adjudication rules promulgated by the Oregon Department of State Lands which were not specifically incorporated by reference into OSB Bylaw 27.103(b).

Attachments: Article 27 Proposed Amendments

Article 27 Unclaimed Lawyer Trust Account Funds

Section 27.100 Purpose

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

Section 27.101 Administration

(a) All unclaimed lawyer trust account funds appropriated to the Bar shall be received and held in a separate fund in the manner authorized by Section 7.1.

(b) All unclaimed lawyer trust account funds shall be invested in the manner described at Section 7.4. The Legal Services Committee may provide recommendations on the investment of unclaimed lawyer trust account funds to the Investment Committee.

Subsection 27.102 Disbursement

(a) The Executive Director and the Chief Financial Officer are authorized and empowered to make disbursements of unclaimed lawyer trust account funds appropriated to the Bar to:

(1) Claimants for the payment of claims allowed under ORS 98.392(2), pursuant to Subsection 27.103; and

(2) The Bar, for expenses incurred by the Bar in the administration of the Legal Services Program, only if the Executive Director determines such disbursements will not impair the Bar's ability to make payments for claims allowed pursuant to Subsection 27.103 from unclaimed lawyer trust account funds.

(b) The Budget & Finance Committee, after seeking the advice of the Legal Services Committee, may recommend that the Board make disbursements of unclaimed lawyer trust account funds appropriated to the Bar to the Legal Services Program established under ORS 9.572 for the funding of legal services. The Board may authorize ~~is authorized to make such~~ disbursements ~~hereunder~~ only if the Board determines the disbursements will not impair the Bar's ability to make payments for claims allowed pursuant to Subsection 27.103 from unclaimed lawyer trust account funds.

Subsection 27.103 Claim Adjudication

(a) When the Oregon Department of State Lands forwards a claim for unclaimed lawyer trust account funds to the Bar for review, ~~a special committee appointed by the Board~~ the Bar shall ~~review the claim and~~ approve or deny the claim within 120 days after the completed claim form and all necessary information to process the claim is received. If a claimant is requested to provide additional information and fails to do so within 90 days after the request is made, the Bar may close the file without further action. A claim shall be approved if a preponderance of the evidence proves the claimant is legally entitled to the unclaimed lawyer trust account funds. A claim shall be denied if the preponderance of the evidence does not prove the claimant is legally entitled to the property.

(b) The Executive Director or the Executive Director's designee shall decide whether to approve or deny all claims for amounts under \$500. Claims for amounts of \$500 or more must be reviewed and approved or denied by a special committee appointed by the Board.

~~(bc)~~ The Bar shall utilize claim forms published by the Oregon Department of State Lands. To evaluate whether to approve or deny a claim under Subsection 27.103(a), the Bar adopts the claim adjudication rules promulgated by the Oregon Department of State Lands at OAR 141-040-020; and OAR 141-040-0211 through OAR 141-040-0213. Where the rules reference the "Department" they shall be deemed to refer to the Bar.

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

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

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

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

(gh) The Executive Director or designee shall notify the claimant of the Board's decision on appeal. If the Board approves a claim on appeal, the Board shall notify the claimant and the Executive Director.

~~(hi)~~ A holder of property who has delivered unclaimed lawyer trust account funds to the Bar pursuant to ORS 98.386(2) may make payment to or delivery of property to an owner and file a claim with the Bar for reimbursement. The Bar shall reimburse the holder within 60 days of receiving proof that the owner was paid. The Bar may not assess any fee or other service charge to the holder. As a condition of receiving the funds from the Bar, the holder shall agree to assume liability for the claimed asset and hold the Bar harmless from all future claims to the property.

~~(ij)~~ On a monthly basis, the Executive Director or ~~the Executive Director's~~ designee shall provide a listing of the ~~resolution of~~ claims resolved to the Department of State Lands. The Executive Director also shall provide an annual report of the claims resolved to the Board.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: June 22, 2012
From: Sylvia E. Stevens, Executive Director
Re: Proposed Amendment to Oregon RPC 5.4 and RPC 7.1-7.5

Action Recommended

None at this time unless the BOG wishes to proceed without review of this matter by the Policy and Governance Committee.

The amendment to RPC 5.4 was suggested by the LEC in December 2010 (along with an amendment to RPC 7.2) in response to the BOG's request for an opinion on the ethical propriety of the new LRS business model. The amendments to the advertising rules (RPC 7.1-7.5) have been under consideration by the Legal Ethics Committee for more than a year, following a suggestion at the 2010 HOD meeting that the rules be reconciled with Washington's.

Background

The Current Rules

During the run-up to the BOG's decision to adopt a percentage fee model for the Lawyer Referral System, considerable time was spent discussing whether the model would cause the participating lawyers to violate the Rules of Professional Conduct that prohibit a lawyer from sharing fees with a non-lawyer.

RPC 7.2 provides, in pertinent part:

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

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

RPC 5.4 provides:

(a) A lawyer or law firm shall not share legal fees with a nonlawyer, except that:

* * * [exceptions not pertinent to this issue]

(4) a lawyer may share court-awarded legal fees with a nonprofit organization that employed, retained or recommended employment of the lawyer in the matter.

General Counsel and I, as well as others in the bar who have considered the issue, are satisfied that a percentage fee paid to a bar-operated lawyer referral system is not and should not be a violation of the Rules of Professional Conduct. To the extent that the language of Oregon's rules suggests a different result, we believe that a narrow reading of the language should not trump the intent or spirit of the rules.

Unfortunately, the nuances of the rules, both RPC 7.2 and 5.4 are not easy for practitioners to see and the initial reaction of many lawyers to the percentage fee referral model is to question whether their participation will result in a violation of the rules. It goes without saying that the BOG wouldn't have approved the program if it believed that to be the case, but that is small comfort to members who would like a more formal authority for their conduct.

In early 2010, the BOG asked the Legal Ethics Committee if it could draft a formal opinion supporting the conclusion that Oregon's rules were not intended and should not be read to prohibit paying a percentage fee to the bar's LRS. In December 2010, the Committee declined to do so unless the rules were amended (see Burt letter attached). At its meeting on June 16, 2012, the Committee reiterated its support for those amendments, as well as a recommendation that all of Oregon's advertising rules be amended to conform to the ABA Model Rules.

Historical Support for Percentage Fees

The ethical propriety of the percentage fee model was recognized as early as 1956 in ABA Formal Op. No. 291. At the time, both the ABA Canons and the Oregon Rules of Professional Conduct prohibited a lawyer from compensating others for soliciting or obtaining employment for the lawyer, and also prohibited any division of fees with a nonlawyer. The ABA opinion held, however, that the canons were not violated by a bar association's requirement that members help finance the association's lawyer referral service "either by a flat charge or a percentage of fees collected."

Since then, notwithstanding the restriction on splitting fees with nonlawyers, the practice of paying a nonprofit referral service a percentage fee has met with wide approval in ethics opinions and judicial decisions, on the ground that percentage fees are a legitimate method of helping such programs generate income to defray operating costs while making legal services more available to the public.

Although the language of Oregon's relevant rules has varied some over the ensuing years, the meaning of the rules has not. The Oregon Code of Professional Responsibility adopted in 1970 expressly permitted lawyers to participate in and pay "fees incident to" participation in a non-profit referral service operated by a bar association.¹ In 1986, DR 2-

¹ In 1970, DR 2-103 provided, in pertinent part:

"(C) A lawyer shall not request a person or organization to recommend or promote the use of his services or those of his partner or associate, or any other lawyer affiliated with him or his firm, as a private practitioner, except as authorized in DR 2-101, and except that

(1) He may request referrals from a lawyer referral service operated, sponsored, or approved by a bar association and may pay its fees incident thereto.

(D) A lawyer or his partner or associate or any other lawyer affiliated with him or his firm may be recommended, employed or paid by, or may cooperate with, one of the following offices or organizations that promote the use of his services or those of his partner or associate or any other lawyer affiliated with him or his firm if there is no interference with the exercise of independent professional judgment in behalf of his client:

* * *

(3) A lawyer referral service operated, sponsored, or approved by a bar association."

103(C) was amended. The new language allowed lawyers to “cooperate with” any organization providing legal services that were not operated primarily for the financial benefit of a specific lawyer or firm, except that the limitation did not apply to lawyer referral programs operated by bar associations and other not-for-profit entities.² It is not clear why Oregon dropped the “pay fees incident thereto” in favor of “cooperate with,” but nothing in the available records suggests a desire to prohibit percentage fees or otherwise limit the kinds of fees that could be charged.

When Oregon adopted rules based on the ABA Model Rules in 2005, the drafting committee made a conscious choice not to adopt the ABA rules on “Information About Legal Services,” even though ABA Model Rule 7.2 is arguably clearer on the propriety of percentage fees by allowing payment of the “usual charges of a not-for-profit lawyer referral service.” Rather, the language of *former* DR 2-101 through 2-104 was incorporated with only minor changes. The drafting choice was based on the fact that Oregon’s advertising rules had been thoroughly reviewed and modified in 1992 and the drafters chose not to make further changes without a more in-depth study. Moreover, the possibility of a percentage fee model for the OSB lawyer referral service wasn’t on the horizon and there was no felt need to change the language relating to participation in such plans.

While the meaning of RPC 7.2 is open to debate, the prohibition against fee-sharing in RPC 5.4(a) is nearly absolute. As indicated by its title “Professional Independence of a Lawyer,” the rule is aimed at protecting the lawyer’s exercise of independent professional judgment without interference or influence by a nonlawyer who has an interest in the fee. As noted by the court in *In re Griffith*, 304 Or 575, 610 (1987) (interpreting *former* DR 3-102(a), the predecessor to RPC 5.4(a)), the rule has its roots in Canon 3, which exhorted lawyers to “assist in preventing the unauthorized practice of law.” Ethical Consideration 3-8 was also relevant to determining the intent of the rule: “Since a lawyer should not aid or encourage a layman to practice law, he should not practice in association with a laymen or otherwise share legal fees with a layman.***”

Although good arguments can be made that a lawyer referral service is not a “nonlawyer,” and even if “nonlawyer” can be read to include an organization, the rule was clearly never designed to prevent participation in a percentage fee lawyer referral program. In fact, the recent addition of the fourth exception is recognition of the widely-held view that lawyers handling pro bono cases for non-profits should be able to recover and dispense a portion of court-awarded fees to the referring organization. Even some states that have not

² In 1986, DR 2-103(C) provided:

“A lawyer may be recommended, employed or paid by, or cooperate with, any organization through which legal services are provided or recommended so long as:

(1) Such organization is not operated primarily for the procuring legal work or financial benefit for any specific lawyer or law firm. This subsection does not apply to lawyer referral, legal aid or public defender programs operated by bar associations, law schools, nonprofit community organizations or governmental agencies:...

adopted Rule 5.4(d) have held that the rule should not be invoked against pro bono groups because the policy reasons against sharing fees with nonlawyers are not implicated.³

Proposed Amendments

The OSB Legal Ethics Committee's proposed amendments are shown on the attached exhibit in "red-line" and "clean" versions. The Committee believes its suggested changes will not only alleviate concerns about the ethical propriety of the new LRS model, but will also be helpful to practitioners by conforming our advertising rules to those used in the majority of states including our neighboring jurisdictions.

In developing the amendments to RPC 7.1-7.5, the LEC reviewed the findings and recommendations of the 2009 Advertising Task Force, which was established at the suggestion of the Supreme Court. During the adoption of the Oregon RPCs in 2005, the Court had indicated its concern that the advertising rules (carried over from the *former* DRs as discussed above) would not survive scrutiny under the Oregon Constitution. The Task Force was particularly concerned about the prohibitions on in-person and real-time electronic solicitation; it also had concerns about the list of prohibited activities in RPC 7.1(a), many of which were seen as either overbroad (prohibiting speech that did not have any of the proscribed effects) or ambiguous.

The LEC recommendation is considerably less sweeping than the Task Force approach because, while it eliminates the troublesome list of prohibitions from Rule 7.1, it retains the existing prohibitions on in-person and real-time electronic solicitation. The LEC recognizes that the Supreme Court may be unwilling to retain these provisions, but also believes that incremental change will be easier for the membership to accept, while also meeting the goal of conformity to the majority national standard.

The LEC's recommendation to add new language to RPC 5.4 is unique. However, since we have no official comment to our rules, the Committee believes it is best to state plainly the permission to share fees (all fees, not only those awarded by the court) with a non-profit referral program.

Because the new LRS model is being implemented July 1, these changes should be put before the HOD at the next opportunity.

³ See, e.g., ABA Formal Ethics Op. 93-374 (1993), Alabama Ethics Op. RO-95-08 (1995), Arkansas Ethics Op. 95-01 (1995), Ohio Supreme Court Ethics Op. 92-1 (1992), Pennsylvania Ethics Op. 93-162 (1993) and Virginia Ethics Op. 1751 (2001).

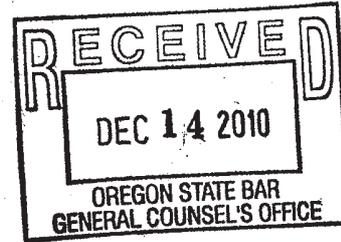
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Holli K. Houston
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Admitted in Oregon



December 13, 2010

Kathleen A. Evans
President
OREGON STATE BAR
P.O. Box 231935
Tigard, Oregon 97281-1935

Re: OSB Lawyer Referral Services Percentage Fee Sharing

Dear Ms. Evans:

This is in response to a request by the OSB Board of Governors ("BOG") that the OSB Ethics Committee ("LEC") review a proposal that the OSB Lawyer Referral Service ("LRS") require percentage fee sharing from participating lawyers and, if appropriate, that the Committee issue a Formal Ethics Opinion that such percentage fee splitting does not violate Oregon Law or the Oregon Rules of Professional Conduct ("RPCs"). For the reasons discussed below, the LEC cannot issue such an opinion.

Percentage fee sharing by the LRS has been considered several times. A July 13, 1998, BOG Agenda Memo by former OSB General Counsel George Riemer ("Riemer Memo") (Exhibit A) responded to requests from the OSB Lawyer Referral & Modest Means Committee and the Multnomah County Bar Association for changes to the *former* Oregon Code of Professional Responsibility ("the Code") to permit the OSB and other not-for-profit lawyer referral services to share in a portion of fees received on successful referrals. The Riemer Memo advised the BOG that: (i) amendments needed to be made to the Code (specifically DR 2-103(A) and DR 3-102(A)) to permit participating lawyers to pay governments, bar associations, and not-for-profit lawyer referral services a portion of hourly or contingent fees earned in referral cases; and (ii) an amendment needed to be made to ORS 9.515 to allow payment of such fees. Neither course of action was taken.

More recently, a February 18, 2010, Memo from the OSB Access to Justice Committee ("ATJC Memo") (Exhibit B) requested that the OSB General Counsel prepare a recommendation to amend the RPCs to explicitly allow percentage fee sharing between the LRS and its participating attorneys. The ATJC Memo concluded: (i) that percentage fee sharing does not conflict with Oregon Revised Statutes (conflicting with the Riemer Memo's conclusion that ORS 9.515 must be amended to permit percentage fee sharing between attorneys and governments, bar associations or not-for-profit lawyer referral services);

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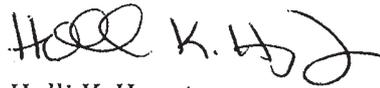
Kathleen A. Evans
December 13, 2010
Page 2

and (ii) that RPC 1.5 (Fees), RPC 5.4 (Professional Independence of a Lawyer), and/or RPC 7.2 (Advertising) should be amended to explicitly allow percentage fee sharing for the LRS and, if desired, other non-profit referral services. It was subsequently suggested that a Formal Ethics Opinion from the LEC might eliminate the need for RPC changes if the LEC concluded that the language of the existing rules was broad enough to allow for percentage fee referral payments.

After a nine-month review, the LEC has concluded that existing rules do not allow it to write an opinion authorizing lawyers to participate in a percentage fee referral model.

If the LEC may be of any further assistance, please do not hesitate to contact us again.

Sincerely,



Holli K. Houston
OSB Legal Ethics Committee, Chair

HKH:tjs

Enclosures

cc: Helen Hierschbiel, OSB General Counsel (via US Mail)
Sylvia Stevens, OSB Executive Director (via electronic mail)
OSB Legal Ethics Committee (via electronic mail)

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Proposed Amendments to Oregon RPCs

Law Firms and Associations

RPC 5.4 Professional Independence of a Lawyer

(a) A lawyer or law firm shall not share legal fees with a nonlawyer, except that:

(1) an agreement by a lawyer with the lawyer's firm or firm members may provide for the payment of money, over a reasonable period of time after the lawyer's death, to the lawyer's estate or to one or more specified persons.

(2) a lawyer who purchases the practice of a deceased, disabled, or disappeared lawyer may, pursuant to the provisions of Rule 1.17, pay to the estate or other representative of that lawyer the agreed-upon purchase price.

(3) a lawyer or law firm may include nonlawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement.

(4) a lawyer may share court-awarded legal fees with a nonprofit organization that employed, retained or recommended employment of the lawyer in the matter.

(5) a lawyer may pay the usual charges of a bar-sponsored or operated not-for-profit lawyer referral service, including fees calculated as a percentage of legal fees received by the lawyer from a referral.

Information About Legal Services

Rule 7.1 Communication Concerning a Lawyer's Services

~~(a) A lawyer shall not make or cause to be made any a false or misleading communication about the lawyer or the lawyer's firmservices, whether in person, in writing, electronically, by telephone or otherwise, if the communication: A communication is false or misleading if it~~

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

~~(2) is intended or is reasonably likely to create a false or misleading expectation~~

~~about results the lawyer or the lawyer's firm can achieve;~~

~~(3) except upon request of a client or potential client, compares the quality of the lawyer's or the lawyer's firm's services with the quality of the services of other lawyers or law firms;~~

~~(4) states or implies that the lawyer or the lawyer's firm specializes in, concentrates a practice in, limits a practice to, is experienced in, is presently handling or is qualified to handle matters or areas of law if the statement or implication is false or misleading;~~

~~(5) states or implies that the lawyer or the lawyer's firm is in a position to improperly~~

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influence any court or other public body or office;

(6) contains any endorsement or testimonial, unless the communication clearly and conspicuously states that any

result that the endorsed lawyer or law firm may achieve on behalf of one client in one matter does not necessarily indicate that similar results can be obtained for other clients;

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

(8) states or implies that one or more persons depicted in the communication are current clients or former clients of the lawyer or the lawyer's firm if they are not, unless the communication clearly and conspicuously discloses that the persons are actors or actresses;

(9) states or implies that one or more current or former clients of the lawyer or the lawyer's firm have made statements about the lawyer or the lawyer's firm, unless the making of such statements can be factually substantiated;

(10) contains any dramatization or recreation of events, such as an automobile accident, a courtroom speech or a negotiation session, unless the communication clearly and conspicuously discloses that a dramatization or recreation is being presented;

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

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

(b) An unsolicited communication about a lawyer or the lawyer's firm in which services are being offered must be clearly and conspicuously identified as an advertisement unless it is apparent from the context that it is an advertisement.

(c) An unsolicited communication about a lawyer or the lawyer's firm in which services are being offered must clearly identify the name and post office box or street address of the office of the lawyer or law firm whose services are being offered.

(d) A lawyer may pay others for disseminating or assisting in the dissemination of communications about the lawyer or the lawyer's firm only to the extent permitted by Rule 7.2.

(e) A lawyer may not engage in joint or group advertising involving more than one lawyer or law firm unless the advertising complies with Rules 7.1, 7.2, and 7.3 as to all involved lawyers or law firms.

Notwithstanding this rule, a bona fide lawyer referral service need not identify the names and addresses of participating lawyers.

Rule 7.2 Advertising

(a) Subject to the requirements of Rules 7.1 and 7.3, A lawyer may advertise services through written, recorded or electronic communication, including public media pay the cost of advertisements permitted by these rules and may hire employees or independent contractors to assist as consultants or advisors in marketing a lawyer's or law firm's services.

(b) A lawyer shall not otherwise compensate or give anything of value to a person or organization to promote, recommend or secure employment by a client, or as a reward for having made a

~~recommendation resulting in employment by a client, except as permitted by paragraph (c) or Rule 1.17 for recommending the lawyer's services, except that a lawyer may:~~

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

~~____ (1) pay the reasonable cost of advertisements or communications permitted by this Rule;~~

~~(c) A lawyer or law firm may be recommended, employed or paid by, or cooperate with, a prepaid~~

~~____ (2) pay the usual charges of a legal services plan, or a not-for-profit lawyer referral service, legal service organization or other similar plan, service or organization so long as:~~

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

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

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

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

~~____ (3) pay for a law practice in accordance with Rule 1.17; and~~

~~____ (4) refer clients to another lawyer pursuant to an agreement not otherwise prohibited under these Rules that provides for the other person to refer clients or customers to the lawyer, if:~~

~~____ (i) the reciprocal referral agreement is not exclusive, and~~

~~____ (ii) the client is informed of the existence and nature of the agreement.~~

~~(c) Any communication made pursuant to this Rule shall include the name and office address of at least one lawyer or law firm responsible for its content.~~

Rule 7.3 Direct Contact with Prospective Clients

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

____ (1) is a lawyer; or

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

____ (3) has consented to the contact by requesting a referral from a not-for-profit lawyer referral service.

(b) A lawyer shall not solicit professional employment from a prospective client by written, recorded or electronic communication or by in-person, telephone or real-time electronic contact even when

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not otherwise prohibited by paragraph (a),
if:

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

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

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

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

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

Rule 7.4 [Reserved]

Rule 7.5 Firm Names and Letterheads

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

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

~~(c) A lawyer in private practice:~~

~~(1) shall not practice under a name that is misleading as to the identity of the lawyer or lawyers practicing under such name or under a name that contains names other than those of lawyers in the firm use a firm name, letterhead or other professional designation that violates Rule 7.1;~~

~~(2) may use a trade name may be used by a lawyer in private practice if the name it does not state or imply a connection with a governmental agency or with a public or charitable legal services organization and is not otherwise in violation of Rule 7.1; and~~

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

~~predecessor firms in a continuing line of succession and may designate the firm or a lawyer practicing in the firm as a professional corporation.~~

~~(b) A law firm with offices in more than one jurisdiction may use the same name or other professional designation in each jurisdiction, but identification of the lawyers in an office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.~~

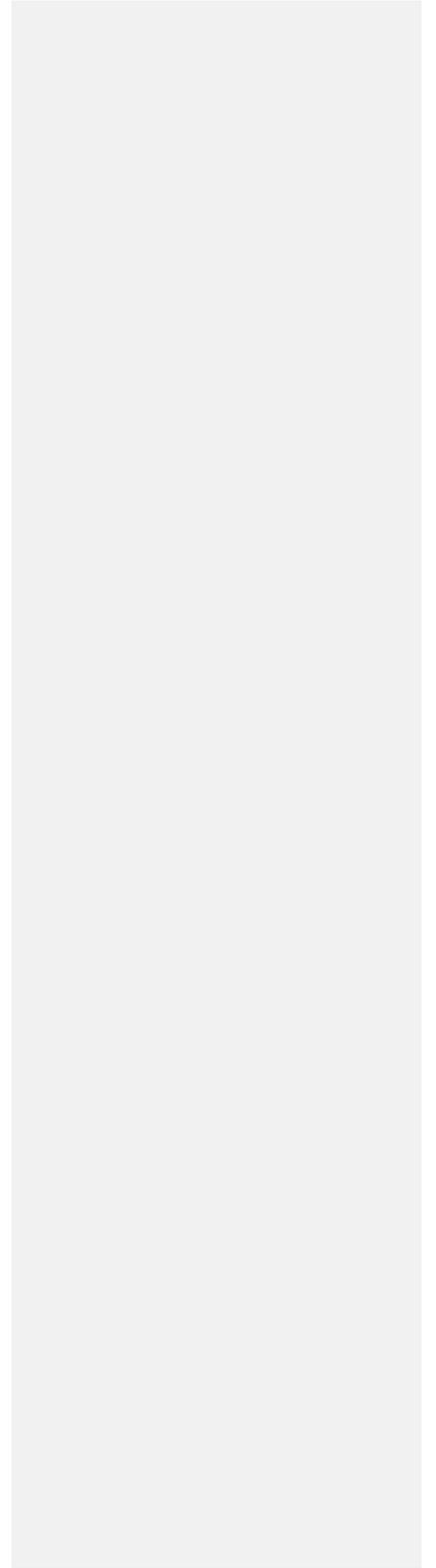
~~(c) Except as permitted by paragraph (c), a lawyer shall not permit his or her name to remain The name of a lawyer holding a public office shall not be used in the name of a law firm, or in communications on its behalf, or to be used by the firm during the time any substantial period in which the lawyer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

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

~~(f) Subject to the requirements of paragraph (c), a law firm practicing in more than one jurisdiction may use the same name in each jurisdiction, but identification of the firm members in an office of the firm shall indicate the jurisdictional limitations of those not licensed to practice in the jurisdiction where the office is located.~~

(d) Lawyers may state or imply that they practice in a partnership or other organization only when that is the fact.

Rule 7.6 [Reserved]



Proposed Amendments to Oregon RPCs

Law Firms and Associations

Rule 5.4 Professional Independence of a Lawyer

(a) A lawyer or law firm shall not share legal fees with a nonlawyer, except that:

(1) an agreement by a lawyer with the lawyer's firm or firm members may provide for the payment of money, over a reasonable period of time after the lawyer's death, to the lawyer's estate or to one or more specified persons.

(2) a lawyer who purchases the practice of a deceased, disabled, or disappeared lawyer may, pursuant to the provisions of Rule 1.17, pay to the estate or other representative of that lawyer the agreed-upon purchase price.

(3) a lawyer or law firm may include nonlawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement.

(4) a lawyer may share court-awarded legal fees with a nonprofit organization that employed, retained or recommended employment of the lawyer in the matter.

(5) a lawyer may pay the usual charges of a bar-sponsored or operated not-for-profit lawyer referral service, including fees calculated as a percentage of legal fees received by the lawyer from a referral.

Information About Legal Services

Rule 7.1 Communication Concerning a Lawyer's Services

A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a statement of fact or law necessary to make the communication considered as a whole not materially misleading.

Rule 7.2 Advertising

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

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

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

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

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

(4) refer clients to another lawyer pursuant to an agreement not otherwise prohibited under these Rules that provides for the other person to refer clients or customers to the lawyer, if:

(i) the reciprocal referral agreement is not exclusive, and

(ii) the client is informed of the existence and nature of the agreement.

(c) Any communication made pursuant to this Rule shall include the name and office address of at least one lawyer or law firm responsible for its content.

Rule 7.3 Direct Contact with Prospective Clients

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

(1) is a lawyer; or

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

(3) has consented to the contact by requesting a referral from a not-for-profit lawyer referral service.

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

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

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

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

Rule 7.4 [Reserved]

Rule 7.5 Firm Names and Letterheads

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

(b) A law firm with offices in more than one jurisdiction may use the same name or other professional designation in each jurisdiction, but identification of the lawyers in an office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.

(c) The name of a lawyer holding a public office shall not be used in the name of a law firm, or in communications on its behalf, during any substantial period in which the lawyer is not actively and regularly practicing law with the firm.

(d) Lawyers may state or imply that they practice in a partnership or other organization only when that is the fact.

Rule 7.6 [Reserved]

**COMPARISON OF ADVERTISING RULES
Oregon & Washington**

Oregon Rules of Professional Conduct	Washington Rules of Professional Conduct	ABA Model Rules of Professional Conduct
INFORMATION ABOUT LEGAL SERVICES		
Rule 7.1 Communication Concerning a Lawyer's Services	Rule 7.1 Communications Concerning a Lawyer's Service	Rule 7.1 Communications Concerning a Lawyer's Services
(a) A lawyer shall not make or cause to be made any communication about the lawyer or the lawyer's firm, whether in person, in writing, electronically, by telephone or otherwise, if the communication:	A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.	A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.
(1) contains a material misrepresentation of fact or law, or omits a statement of fact or law necessary to make the communication considered as a whole not materially misleading;	<i>No Equivalent</i>	<i>No Equivalent</i>
(2) is intended or is reasonably likely to create a false or misleading expectation about results the lawyer or the lawyer's firm can achieve;	<i>No Equivalent</i>	<i>No Equivalent</i>
(3) except upon request of a client or potential client, compares the quality of the lawyer's or the lawyer's firm's services with the quality of the services of other lawyers or law firms;	<i>No Equivalent</i>	<i>No Equivalent</i>
(4) states or implies that the lawyer or the lawyer's firm specializes in, concentrates a practice in, limits a practice to, is experienced in, is presently handling or is qualified to handle matters or areas of law if the statement or implication is false or misleading;	<i>See WRPC 7.4</i>	<i>See MRPC 7.4</i>
(5) states or implies an ability to influence improperly a government agency or official or to achieve results by means that violate these Rules or other law;	<i>No Equivalent</i>	<i>No Equivalent</i>
(6) contains any endorsement or testimonial, unless the communication clearly and conspicuously states that any result that the endorsed lawyer or law firm may achieve on behalf of one client in one matter does not necessarily indicate that similar results can be obtained for other clients;	<i>No Equivalent</i>	<i>No Equivalent</i>

Oregon Rules of Professional Conduct	Washington Rules of Professional Conduct	ABA Model Rules of Professional Conduct
(7) states or implies that one or more persons depicted in the communication are lawyers who practice with the lawyer or the lawyer's firm if they are not;	<i>No Equivalent</i>	<i>No Equivalent</i>
(8) states or implies that one or more persons depicted in the communication are current clients or former clients of the lawyer or the lawyer's firm if they are not, unless the communication clearly and conspicuously discloses that the persons are actors or actresses;	<i>No Equivalent</i>	<i>No Equivalent</i>
(9) states or implies that one or more current or former clients of the lawyer or the lawyer's firm have made statements about the lawyer or the lawyer's firm, unless the making of such statements can be factually substantiated;	<i>No Equivalent</i>	<i>No Equivalent</i>
(10) contains any dramatization or recreation of events, such as an automobile accident, a courtroom speech or a negotiation session, unless the communication clearly and conspicuously discloses that a dramatization or recreation is being presented;	<i>No Equivalent</i>	<i>No Equivalent</i>
(11) is false or misleading in any manner not otherwise described above; or	<i>No Equivalent</i>	<i>No Equivalent</i>
(12) violates any other Rule of Professional Conduct or any statute or regulation applicable to solicitation, publicity or advertising by lawyers.	<i>No Equivalent</i>	<i>No Equivalent</i>
(b) An unsolicited communication about a lawyer or the lawyer's firm in which services are being offered must be clearly and conspicuously identified as an advertisement unless it is apparent from the context that it is an advertisement.	<i>No Equivalent</i>	<i>No Equivalent</i>
(c) An unsolicited communication about a lawyer or the lawyer's firm in which services are being offered must clearly identify the name and post office box or street address of the office of the lawyer or law firm whose services are being offered.	<i>No Equivalent</i>	<i>No Equivalent</i>
(d) A lawyer may pay others for disseminating or assisting in the dissemination of communications about the lawyer or the lawyer's firm only to the extent permitted by Rule 7.2.	<i>See WRPC 7.2(a)</i>	<i>See MRPC 7.2(a)</i>

Oregon Rules of Professional Conduct	Washington Rules of Professional Conduct	ABA Model Rules of Professional Conduct
(e) A lawyer may not engage in joint or group advertising involving more than one lawyer or law firm unless the advertising complies with Rules 7.1, 7.2, and 7.3 as to all involved lawyers or law firms. Notwithstanding this rule, a bona fide lawyer referral service need not identify the names and addresses of participating lawyers.	<i>No Equivalent</i>	
Rule 7.2 Advertising	RULE 7.2 Advertising	Rule 7.2 Advertising
<i>See ORPC 7.1(d)</i>	(a) Subject to the requirements of Rules 7.1 and 7.3, a lawyer may advertise services through written, recorded or electronic communication, including public media.	(a) Subject to the requirements of Rules 7.1 and 7.3, a lawyer may advertise services through written, recorded or electronic communication, including public media.
(a) A lawyer may pay the cost of advertisements permitted by these rules and may hire employees or independent contractors to assist as consultants or advisors in marketing a lawyer's or law firm's services. A lawyer shall not otherwise compensate or give anything of value to a person or organization to promote, recommend or secure employment by a client, or as a reward for having made a recommendation resulting in employment by a client, except as permitted by paragraph (c) or Rule 1.17.	(b) A lawyer shall not give anything of value to a person for recommending the lawyer's services, except that a lawyer may (1) pay the reasonable cost of advertisements or communications permitted by this Rule; (2) pay the usual charges of a legal service plan or a not-for-profit lawyer referral service; (3) pay for a law practice in accordance with Rule 1.17; and (4) refer clients to another lawyer pursuant to an agreement not otherwise prohibited under these Rules that provides for the other person to refer clients or customers to the lawyer, if (i) the reciprocal referral agreement is not exclusive, and (ii) the client is informed of the existence and nature of the agreement.	(b) A lawyer shall not give anything of value to a person for recommending the lawyer's services except that a lawyer may (1) pay the reasonable costs of advertisements or communications permitted by this Rule; (2) pay the usual charges of a legal service plan or a not-for-profit or qualified lawyer referral service. A qualified lawyer referral service is a lawyer referral service that has been approved by an appropriate regulatory authority; (3) pay for a law practice in accordance with Rule 1.17; and (4) refer clients to another lawyer or a nonlawyer professional pursuant to an agreement not otherwise prohibited under these Rules that provides for the other person to refer clients or customers to the lawyer, if (i) the reciprocal referral agreement is not exclusive, and (ii) the client is informed of the existence and nature of the agreement.
<i>No Equivalent</i>	(c) Any communication made pursuant to this rule shall include the name and office address of at least one lawyer responsible for its content.	(c) Any communication made pursuant to this rule shall include the name and office address of at least one lawyer or law firm responsible for its content.
(b) A lawyer shall not request or knowingly permit a person or organization to promote, recommend or secure employment by a client through any means that involves false or misleading communications about the lawyer or the lawyer's firm. If a lawyer learns that employment by a client has resulted from false or misleading communications about the lawyer or the lawyer's firm, the lawyer shall so inform the client.	<i>No Equivalent</i>	<i>No Equivalent</i>
(c) A lawyer or law firm may be recommended, employed or paid by, or cooperate with, a prepaid legal services plan, lawyer referral service, legal service organization or other similar plan, service or organization so long as:	<i>See 7.2 (c)(2) above</i>	<i>See 7.2(a)(2) above</i>

Oregon Rules of Professional Conduct	Washington Rules of Professional Conduct	ABA Model Rules of Professional Conduct
(1) the operation of such plan, service or organization does not result in the lawyer or the lawyer's firm violating Rule 5.4, Rule 5.5, ORS 9.160, or ORS 9.500 through 9.520;	<i>No Equivalent</i>	<i>No Equivalent</i>
(2) the recipient of legal services, and not the plan, service or organization, is recognized as the client;	<i>No Equivalent</i>	<i>No Equivalent</i>
(3) no condition or restriction on the exercise of any participating lawyer's professional judgment on behalf of a client is imposed by the plan, service or organization; and	<i>No Equivalent</i>	<i>No Equivalent</i>
(4) such plan, service or organization does not make communications that would violate Rule 7.3 if engaged in by the lawyer.	<i>No Equivalent</i>	<i>No Equivalent</i>
Rule 7.3 Direct Contact with Prospective Clients	RULE 7.3 Direct Contact with Prospective Clients	Rule 7.3 Direct Contact with Prospective Clients
(a) A lawyer shall not by in-person, live telephone or real-time electronic contact solicit professional employment from a prospective client when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain, unless the person contacted:	(a) A lawyer shall not directly or through a third person, by in person, live telephone or real-time electronic contact solicit professional employment from a prospective client when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain, unless the person contacted:	(a) A lawyer shall not by in-person, live telephone or real-time electronic contact solicit professional employment from a prospective client when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain, unless the person contacted:
(1) is a lawyer; or	(1) is a lawyer; or	(1) is a lawyer; or
(2) has a family, close personal, or prior professional relationship with the lawyer.	(2) has a family, close personal, or prior professional relationship with the lawyer; or	(2) has a family, close personal, or prior professional relationship with the lawyer.
<i>No Equivalent</i>	(3) has consented to contact by requesting a referral from a not-for-profit lawyer referral service	<i>No Equivalent</i>
(b) A lawyer shall not solicit professional employment from a prospective client by written, recorded or electronic communication or by in-person, telephone or real-time electronic contact even when not otherwise prohibited by paragraph (a), if:	(b) A lawyer shall not solicit professional employment from a prospective client by written, recorded or electronic communication or by in-person, telephone or real-time electronic contact even when not otherwise prohibited by paragraph (a), if:	(b) A lawyer shall not solicit professional employment from a prospective client by written, recorded or electronic communication or by in-person, telephone or real-time electronic contact even when not otherwise prohibited by paragraph (a), if:
(1) the lawyer knows or reasonably should know that the physical, emotional or mental state of the prospective client is such that the person could not exercise reasonable judgment in employing a lawyer;	<i>No Equivalent</i>	<i>No Equivalent</i>
(2) the prospective client has made known to the lawyer a desire not to be solicited by the lawyer; or	(1) the prospective client has made known to the lawyer a desire not to be solicited by the lawyer; or	(1) the prospective client has made known to the lawyer a desire not to be solicited by the lawyer; or

Oregon Rules of Professional Conduct	Washington Rules of Professional Conduct	ABA Model Rules of Professional Conduct
(3) the solicitation involves coercion, duress or harassment.	(2) the solicitation involves coercion, duress or harassment.	(2) the solicitation involves coercion, duress or harassment.
(c) Every written, recorded or electronic communication from a lawyer soliciting professional employment from a prospective client known to be in need of legal services in a particular matter shall include the words "Advertisement" in noticeable and clearly readable fashion on the outside envelope, if any, and at the beginning and ending of any recorded or electronic communication, unless the recipient of the communication is a person specified in paragraph (a).	<i>No Equivalent</i>	(c) Every written, recorded or electronic communication from a lawyer soliciting professional employment from a prospective client known to be in need of legal services in a particular matter shall include the words "Advertising Material" on the outside envelope, if any, and at the beginning and ending of any recorded or electronic communication, unless the recipient of the communication is a person specified in paragraphs (a)(1) or (a)(2).
(d) Notwithstanding the prohibitions in paragraph (a), a lawyer may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer that uses in-person or telephone contact to solicit memberships or subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan.	(d) Notwithstanding the prohibitions in paragraph (a), a lawyer may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer that uses in-person or telephone contact to solicit memberships or subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan.	(d) Notwithstanding the prohibitions in paragraph (a), a lawyer may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer that uses in-person or telephone contact to solicit memberships or subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan.
Rule 7.4 Reserved- No Equivalent	Rule 7.4 Communication of Fields of Practice	Rule 7.4 Communication of Fields of Practice
See ORPC 7.1(a)(4)	(a) A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law.	(a) A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law.
<i>No Equivalent</i>	(b) A lawyer admitted to engage in patent practice before the United States Patent and Trademark Office may use the designation "patent attorney" or a substantially similar designation.	(b) A lawyer admitted to engage in patent practice before the United States Patent and Trademark Office may use the designation "Patent Attorney" or a substantially similar designation.
<i>No Equivalent</i>	(c) A lawyer engaged in Admiralty practice may use the designation "Admiralty," "Proctor in Admiralty" or substantially similar designation.	(c) A lawyer engaged in Admiralty practice may use the designation "Admiralty," "Proctor in Admiralty" or a substantially similar designation.

Oregon Rules of Professional Conduct	Washington Rules of Professional Conduct	ABA Model Rules of Professional Conduct
See <i>ORPC 7.1(a)(4)</i>	<p>(d) A lawyer shall not state or imply that a lawyer is a specialist in a particular field of law, except upon issuance of an identifying certificate, award, or recognition by a group, organization, or association, a lawyer may use the terms "certified", "specialist", "expert", or any other similar term to describe his or her qualifications as a lawyer or his or her qualifications in any subspecialty of the law.</p> <p>If the terms are used to identify any certificate, award, or recognition by any group, organization, or association, the reference must: (1) be truthful and verifiable and otherwise comply with Rule 7.1: (2) identify the certifying group, organization, or association; and (3) state that the Supreme Court of Washington does not recognize certification of specialties in the practice of law and that the certificate, award, or recognition is not a requirement to practice law in the state of Washington.</p>	<p>(d) A lawyer shall not state or imply that a lawyer is certified as a specialist in a particular field of law, unless:</p> <p>(1) the lawyer has been certified as a specialist by an organization that has been approved by an appropriate state authority or that has been accredited by the American Bar Association; and</p> <p>(2) the name of the certifying organization is clearly identified in the communication.</p>
Rule 7.5 Firm Name and Letterheads	Rule 7.5 Firm Name and Designations	Rule 7.5 Firm Name and Designations
(a) A lawyer may use professional announcement cards, office signs, letterheads, telephone and electronic directory listings, legal directory listings or other professional notices so long as the information contained therein complies with Rule 7.1 and other applicable Rules.	(a) A lawyer shall not use a firm name, letterhead or other professional designation that violates Rule 7.1. A trade name may be used by a lawyer in private practice if it does not imply a connection with a government agency or charitable legal services organization and is not otherwise in violation of Rule 7.1.	(a) A lawyer shall not use a firm name, letterhead or other professional designation that violates Rule 7.1. A trade name may be used by a lawyer in private practice if it does not imply a connection with a government agency or with a public or charitable legal services organization and is not otherwise in violation of Rule 7.1.
(b) A lawyer may be designated "Of Counsel" on a letterhead if the lawyer has a continuing professional relationship with a lawyer or law firm, other than as a partner or associate. A lawyer may be designated as "General Counsel" or by a similar professional reference on stationery of a client if the lawyer or the lawyer's firm devotes a substantial amount of professional time in the representation of the client.	<i>No Equivalent</i>	<i>No Equivalent</i>

Oregon Rules of Professional Conduct	Washington Rules of Professional Conduct	ABA Model Rules of Professional Conduct
<p>(c) A lawyer in private practice: (1) shall not practice under a name that is misleading as to the identity of the lawyer or lawyers practicing under such name or under a name that contains names other than those of lawyers in the firm; (2) may use a trade name in private practice if the name does not state or imply a connection with a governmental agency or with a public or charitable legal services organization and is not otherwise in violation of Rule 7.1; and (3) may use in a firm name the name or names of one or more of the retiring, deceased or retired members of the firm or a predecessor law firm in a continuing line of succession. The letterhead of a lawyer or law firm may give the names and dates of predecessor firms in a continuing line of succession and may designate the firm or a lawyer practicing in the firm as a professional corporation.</p>	<p>(d) Lawyers may state or imply that they practice in a partnership or other organization only when that is a fact.</p>	<p>(d) Lawyers may state or imply that they practice in a partnership or other organization only when that is a fact.</p>
<p>(d) Except as permitted by paragraph (c), a lawyer shall not permit his or her name to remain in the name of a law firm or to be used by the firm during the time the lawyer is not actively and regularly practicing law as a member of the firm. During such time, other members of the firm shall not use the name of the lawyer in the firm name or in professional notices of the firm. This rule does not apply to periods of one year or less during which the lawyer is not actively and regularly practicing law as a member of the firm if it was contemplated that the lawyer would return to active and regular practice with the firm within one year.</p>	<p>(c) The name of a lawyer holding a public office shall not be used in the name of a law firm, or in communications on its behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm.</p>	<p>(c) The name of a lawyer holding a public office shall not be used in the name of a law firm, or in communications on its behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm.</p>
<p>(e) Lawyers shall not hold themselves out as practicing in a law firm unless the lawyers are actually members of the firm.</p>	<p><i>See 7.5(d) above</i></p>	<p><i>See 7.5(d) above</i></p>
<p>(f) Subject to the requirements of paragraph (c), a law firm practicing in more than one jurisdiction may use the same name in each jurisdiction, but identification of the firm members in an office of the firm shall indicate the jurisdictional limitations of those not licensed to practice in the jurisdiction where the office is located.</p>	<p>(b) A law firm with offices in more than one jurisdiction may use the same name or other professional designation in each jurisdiction, but identification of the lawyers in an office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.</p>	<p>(b) A law firm with offices in more than one jurisdiction may use the same name or other professional designation in each jurisdiction, but identification of the lawyers in an office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.</p>



ILLINOIS STATE
BAR ASSOCIATION

John G. Locallo • *President*
jgl@amari-locallo.com

May 14, 2012

RECEIVED

MAY 17 2012

Oregon State Bar
Executive Director

Ms. Sylvia Stevens
Executive Director, Oregon State Bar Association
16037 SW Upper Boones
Ferry Road
Tigard, OR 97224

Re: ISBA Resolution with Report Concerning Affirmation and Re-adoption
of Existing ABA Policy

Dear Ms. Stevens:

The Illinois State Bar Association is offering a resolution for action by the House of Delegates at the ABA Annual Meeting in August 2012 in Chicago, Illinois. This resolution would affirm and readopt the existing ABA policy adopted in July 2000 that:

The sharing of legal fees with non-lawyers and the ownership or control of the practice of law by non-lawyers are inconsistent with the core values of the legal profession. The law governing lawyers that prohibits lawyers from sharing legal fees with non-lawyers and from directly or indirectly transferring to non-lawyers ownership or control over entities practicing law should not be revised.

Copies of the ISBA's Resolution, Report, Executive Summary and General Information as filed with the American Bar Association Division of Policy Administration on May 4, 2012, are attached.

The Illinois State Bar Association urges and welcomes your association's support and co-sponsorship of this very important resolution.

Amendments to Model Rules 1.5 and 5.4 have been recommended by the Commission on Ethics 20/20 which contravene the existing policy of the American Bar Association. The Commission has indicated that it is considering whether to propose such amendments to the House in February 2013 and it should be made clear prior to those deliberations that the existing policy of the ABA continues and is readopted. The proposals that have been offered for consideration have been given great public distribution, possibly resulting in the public perception that the profession is interested in allowing non-lawyers to invest in and own law firms. This perception will be negated by the adoption of the resolution proposed. It would be helpful to the further consideration of these matters by the Commission that the House make it clear that its current policy is affirmed and readopted.

If you would like to discuss this matter further, do not hesitate to contact us at:

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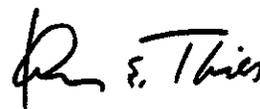
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We look forward to working with you on this important issue.

Very truly yours,



John G. Locallo
President



John E. Thies
President-elect

Enclosures

AMERICAN BAR ASSOCIATION
ILLINOIS STATE BAR ASSOCIATION
REPORT TO THE HOUSE OF DELEGATES

RESOLUTION

1 RESOLVED, that the policy adopted by the American Bar Association in
2 July, 2000, to wit:

3
4 The sharing of legal fees with non-lawyers and the ownership or
5 control of the practice of law by non-lawyers are inconsistent with the
6 core values of the legal profession. The law governing lawyers that
7 prohibits lawyers from sharing legal fees with non-lawyers and from
8 directly or indirectly transferring to non-lawyers ownership or control
9 over entities practicing law should not be revised.

10
11 is hereby affirmed and re-adopted as the policy of this Association.

REPORT

The proposed resolution would affirm and re-adopt certain core principles and values of the legal profession identified in a 2000 ABA House of Delegates adopted Resolution (the "2000 HOD Resolution"). The 2000 HOD Resolution reads in part:

The sharing of legal fees with nonlawyers and the ownership or control of the practice of law by nonlawyers are inconsistent with the core values of the legal profession. The law governing lawyers that prohibits lawyers from sharing legal fees with nonlawyers and from directly or indirectly transferring to nonlawyers ownership or control over entities practicing law should not be revised.

Affirmation and re-adoption of these core principles and values is important now, particularly at a time when technological advances and globalization are pressuring the profession to lessen its commitment to the public and to professional independence.

I. The 2000 House of Delegates Resolution

The 2000 HOD Resolution urged jurisdictions to implement and preserve certain core principles and values of the legal profession. Those principles and values included: (1) a number of specifically identified practice values such as undivided loyalty to a client, competence, and confidentiality; (2) lawyers are a single profession subject to individual jurisdictions' law governing lawyers; (3) preservation of the legal professions' core principles and values is essential to the proper functioning of the American justice system; (4) disciplinary agencies should reaffirm their commitment to vigorously enforcing their jurisdictions' law governing lawyers; (5) each jurisdiction should reevaluate and refine, if necessary, the definition of the "practice of law"; (6) each jurisdiction should retain and enforce those laws prohibiting the practice of law by entities other than law firms; (7) sharing legal fees with, and the ownership and control of the practice of law by, nonlawyers is inconsistent with the core values of the legal profession; and (8) sharing legal fees with nonlawyers and directly or indirectly transferring ownership and control of entities practicing law is prohibited and should not be revised.

The 2000 HOD Resolution was a response to certain proposals made by the ABA's Multi-Disciplinary Practice Commission to facilitate the provision of nonlegal services by law firms (and conversely, the provision of legal services by nonlegal providers). The 2000 HOD Resolution was an important

statement of professional independence, and a clear recognition of the preeminence of the public interest in the practice of law. It remains sound today.

II. The 2012 Proposed Resolution

The proposed resolution provides that the ABA is affirming and re-adopting portions of the 2000 HOD Resolution, namely, the following principles and values: (1) sharing legal fees with nonlawyers and the ownership and control of the practice of law by nonlawyers are inconsistent with the core values of the legal profession; and (2) prohibitions against lawyers sharing legal fees with nonlawyers and from directly or indirectly transferring to nonlawyers ownership or control over entities practicing law should not be revised.

Highlighting these two principles is not intended to minimize the other identified principles and values. As explained below, referencing these two specific principles and values is important as a means to provide continued guidance to the ABA when considering revisions to existing Model Rules of Professional Conduct or other positions of the Association.

III. The Need for Policy Affirmation and Re-Adoption

A. Commission on Ethics 20/20

In 2009, the ABA established its "Commission on Ethics 20/20" (the "Commission") to consider the impact of technology and globalization on the legal profession and determine whether or not such influences warrant changes to the ABA's Model Rules of Professional Conduct ("Model Rules"). Since 2009, the Commission has circulated numerous materials for consideration within the legal community on these subjects, including both: (1) recommendations for changes to the Model Rules; and (2) "working drafts" of proposals for changes to the Model Rules.

On December 2, 2011, the Commission issued two letters. One was titled "For Comment: Discussion Paper on Alternative Law Practice Structures" which suggested the District of Columbia approach to permitting lawyer-nonlawyer partnerships with a cap, however, on nonlawyer ownership. The second letter titled "For Comment: Initial Draft Proposals on Choice of Law Issues Relating to Nonlawyer Ownership Interests in Law Firms" called for changes to Model Rules 1.5(e) and 5.4(a) to permit fee sharing by a lawyer with another firm that has nonlawyer partners and owners when one of the firms (or lawyers) is in a jurisdiction that allows nonlawyer ownership. A letter dated December 28, 2011 titled "Summary of

Actions by the ABA Commission on Ethics 20/20" recommended adoption of the above reference changes to Model Rules 1.5 and 5.4, and also recommended the preparation of a White Paper "regarding forms of alternative law practice structures not recommended by the Commission for adoption in the U.S. at this time, but noting that new developments may prompt reconsideration of this issue in the future, especially in light of changes in client needs and experiences with such practices elsewhere."

On April 16, 2012, the Commission publically announced its intention not to pursue any changes regarding nonlawyer ownership of law firms stating that "there does not appear to be sufficient basis for recommending a change to ABA policy on nonlawyer ownership of firms." However, at the same time, the Commission stated that it would "continue to consider how to provide practical guidance about choice of law problems" referencing the District of Columbia and some foreign jurisdictions which "permit nonlawyer ownership of law firms." Moreover, in this announcement, the Commission did not withdraw its call for a White Paper regarding certain alternative law practice structures.

Substantial media attention has been placed on the Commission's activities. Among other things, this attention may have created the perception that the ABA is going to change its Model Rules to permit fee splitting and non-lawyer ownership of law firms.

B. Choice of Law

As described in the December 28, 2011 "Summary of Actions by the ABA Commission on Ethics 20/20," the proposed amendments to Model Rule 1.5 would unambiguously allow a lawyer in a jurisdiction that prohibits nonlawyer law firm ownership to divide a fee with a lawyer in a firm that has permissible nonlawyer ownership. Similar to the proposed change to Model Rule 1.5, the proposed amendment to Model Rule 5.4(a) would establish the propriety of *intra*-firm fee sharing where a firm has offices in multiple jurisdictions, and where some of those jurisdictions allow nonlawyer ownership but others do not. Each of these amendments violate the current ABA policy. If adopted by the House, this would amount to an approval of nonlawyer fee splitting and ownership.

C. Importance of Policy Affirmation and Re-Adoption

Given the Commission's ongoing consideration of these matters, it is important that the House of Delegates provide its unambiguous direction. By affirming and re-adopting the portions of the ABA's 2000 policy discussed above, the Commission will have clear guidance on how, if at all, to proceed

with its evaluation of the issues. Such guidance would ensure that any proposal in this area reflects and is consistent with established ABA policy.

At the time this report is being written, at least two bar entities support the affirmation and re-adoption of the referenced portions of the 2000 policy: (1) the Illinois State Bar Association; and (2) the Senior Lawyers Division of the ABA. Other bar entities continue to review this issue.

IV. Conclusion

The Illinois State Bar Association respectfully urges the House of Delegates to affirm and re-adopt the referenced portions of its 2000 policy on the core principles and values of the legal profession.

Respectfully submitted,

John G. Locallo
President, Illinois State Bar Association
August, 2012

GENERAL INFORMATION FORM

To Be Appended to Resolutions with Reports

(Please refer to *Instructions for Filing Resolutions with Reports* for completing this form.)

Submitting Entity: Illinois State Bar Association

Submitted By: John G. Locallo, President

1. Summary of Resolution(s).

The Resolution urges the American Bar Association House of Delegates to affirm and re-adopt portions of existing ABA policy adopted in July, 2000 (Report No. 10F) that urged jurisdictions to implement and preserve certain core values of the profession developed to protect the public interest. Specifically, that policy recognized that: (1) sharing legal fees with nonlawyers and the ownership and control of the practice of law by nonlawyers are inconsistent with the core values of the legal profession; and (2) prohibitions against lawyers sharing legal fees with nonlawyers and from directly or indirectly transferring to nonlawyers ownership or control over entities practicing law should not be revised.

2. Approval by Submitting Entity.

The Resolution was approved by the Illinois State Bar Association ("ISBA") Board of Governors at its March 9, 2012 meeting and is an affirmation of the ISBA policy adopted by its Assembly in June, 2000.

3. Has this or a similar resolution been submitted to the House or Board previously?

No. The ABA policy which this resolution seeks to affirm and re-adopt was approved by the House in July, 2000 (Report 10F). Since original passage, no resolution to affirm and re-adopt that policy has been submitted.

4. What existing Association policies are relevant to this Resolution and how would they be affected by its adoption?

The relevant Association policy is that policy which was adopted by the House of Delegates in July, 2000 and which is sought to be affirmed and re-adopted by this resolution. The policy would be affirmed and re-adopted.

5. What urgency exists which requires action at this meeting of the House?

The Commission on Ethics 20/20 has circulated various drafts of proposed changes to Model Rules 1.5 and 5.4, including as concerns (1) choice of law issues relating to nonlawyer ownership interests in law firms (including fee sharing); and (2) alternative law practice structures. The referenced draft changes – which, if adopted, would be in contravention of ABA policy -- have been widely circulated to the public and the profession through the media. Among other things, this circulation may have created the perception that the ABA is going to change its Model Rules to permit non-lawyers to invest in and own law firms.

On April 16, 2012, the Commission publically stated that it intended not to pursue any changes regarding nonlawyer ownership of law firms. However, at the same time, the Commission stated that it is continuing to study “choice of law” issues in advance of possible action at the February, 2013 House of Delegates meeting. Moreover, the Commission is apparently continuing to recommend the preparation of a White Paper “regarding forms of alternative law practice structures not recommended by the Commission for adoption in the U.S. at this time,” noting that “new developments may prompt reconsideration of this issue in the future, especially in light of changes in client needs and experiences with such practices elsewhere.”

Given the ongoing review by the Commission of these matters, and the attention paid to this review by the profession and public, it would be helpful for the House to make clear that its current policy is affirmed and readopted.

6. Status of Legislation. (If applicable)

Not applicable.

7. Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates.

The policy is self-implementing on the adoption of the resolution as it would affirm and readopt the existing policy.

8. Cost to the Association. (Both direct and indirect costs)

Not applicable.

9. Disclosure of Interest. (If applicable)

Not applicable.

10. Referrals.

The Report with Resolution will be circulated to state bar association delegations and elsewhere within the ABA as appropriate.

11. Contact Name and Address Information. (Prior to the meeting. Please include name, address, telephone number and e-mail address)

John E. Thies, President-elect
Illinois State Bar Association
424 S. Second Street
Springfield, Il. 62702
PH: 217-525-1760
ithies@webberthies.com (email)

Robert E. Craghead
Executive Director, Illinois State Bar Association
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rcraghead@isba.org

12. Contact Name and Address Information. (Who will present the report to the House? Please include name, address, telephone number, cell phone number and e-mail address.)

John E. Thies, President-elect
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EXECUTIVE SUMMARY

A. Summary of Recommendation.

The recommendation urges the American Bar Association ("ABA") to affirm and re-adopt existing ABA policy adopted in July, 2000 (Report No. 10F) that urged jurisdictions to implement and preserve certain core values of the profession developed to protect the public interest, including that: (1) sharing legal fees with nonlawyers and the ownership and control of the practice of law by nonlawyers are inconsistent with the core values of the legal profession; and (2) prohibitions against lawyers sharing legal fees with nonlawyers and from directly or indirectly transferring to nonlawyers ownership or control over entities practicing law should not be revised.

B. Issue Recommendation Addresses.

Should the ABA affirm and re-adopt its policy adopted in 2000 that the sharing of legal fees with non-lawyers and ownership or control of the practice of law by non-lawyers are inconsistent with the core values of the legal profession.

C. How Proposed Policy Will Address the Issue.

The recommendation will address the issue by affirming and re-adopting existing ABA policy providing that sharing legal fees with nonlawyers and/or allowing nonlawyer ownership and control of law firms is inconsistent with core principles of the legal profession.

D. Minority Views or Opposition.

The Commission on Ethics 20/20 has recommended or may recommend proposals which are a violation and in contravention of current ABA policy. No specific opposition to the proposed resolution is known at this time.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: June 22, 2012
From: Oregon Law Foundation
Re: Evaluation of OLF Legal Notices Proposal

Publication of Legal Notices – Purposes and Problems

Summary of Major Points

Costs – An estimated \$30 million or more is spent every year in Oregon on publication of notices in physical newspapers. At least 20% of this cost is borne by Oregon taxpayers. Publication on the Internet could be accomplished for a fraction of current costs. The OLF’s proposed budget for such a project anticipates charging those posting notice less than a quarter of what newspapers charge currently, and would charge the public nothing to use the system.

Internet Only publication does not currently meet statutory requirements – The Oregon Newspaper Publishers Association reposts notices from its newspapers online; however ORS Chapter 193 currently does not permit publication on the Internet alone. This means that Oregonians must pay for physical newspaper publication, even if Internet notification would have provided adequate notice.

The current system does not provide notice broadly to the public – While most Oregonians do read newspapers, far fewer see the notices posted within. While most Oregonians may have seen a public notice in a newspaper at some time, there is no evidence that any significant number of Oregonians encounter notices that are directly relevant to them while casually perusing newspapers. There is likewise little evidence that service by newspaper publication results in actual notification of interested parties with any regularity.

The current system encourages the use of papers with limited readership – A significant percentage of notices are published in small papers with limited circulation as a means to save money. Only readers who are specifically looking for notices are likely to find them in these publications. For those Oregonians, searching online is equally if not more convenient. For Oregonians who did not know to seek out the notice or know where to look, published notice in publications such as the Daily Journal of Commerce or the Jefferson Review is unlikely to result in actual notice – despite these being the first and third most used publications for the posting of legal notices in Oregon.

Detailed Discussion

What is the purpose of requiring publication of legal notices?

Historically, legal notices have been published in newspapers as a way of informing members of the public of some action that might impact their rights. These may be cases where the general public has an interest, such as with many government actions. Alternatively, they might be cases in which there are potentially a small number of unknown individuals who theoretically might wish to assert a right in a proceeding – such as unknown heirs who wish to involve themselves in probate. In some cases parties are “served” via newspaper when the location of a named individual is unknown. The hope in such cases is that by publishing notice in the paper, interested parties will become aware of the action.

There are two fundamental problems with this current system of mandating publication of notice in physical newspapers. The first is that the current system is expensive, and the second is that it does not frequently result in actual notice of interested parties.

1 - The current system is expensive

OLF’s analysis of publicly available information indicates that approximately \$30 to \$35 million is spent every year in Oregon on the publication of statutorily required legal notices. Because state and local governments are required to post a great many notices, Oregon taxpayers pay over 20% of this cost. Much of the remaining cost is borne by businesses or by Oregonians who are involved in some legal proceeding, and that cost is ultimately passed on to clients or customers. For example, if a probate lawyer has to spend \$1000 on publishing notices in newspapers, then that is \$1000 less than will ultimately go to a decedent’s heirs.

While costs vary considerably from county to county, OSB members have consistently reported that newspaper publication costs have gone up significantly in recent years. Much of this cost is simply a function of the unavoidable expense of putting the notices into a physical medium, and distributing them throughout the publication area.

Today Internet publication can be accomplished for a fraction of the cost of newspaper publication. At the same time, it is likely that Internet publication will reach a larger audience than is actually reached by newspaper publication. While newspaper publication may sometimes result in notice to some individuals who might have otherwise missed it, the random possibility of an individual encountering a relevant notice must be balanced against the very real costs imposed on businesses and taxpayers.

2 - Few interested individuals receive actual notice under the current system

The theory behind notifying the public by printed newspaper publication rests in part on the idea that a person who reads a newspaper on going to be aware of all of its contents. There is little evidence that this assumption is true. Most people read those parts of the newspaper that they are interested in, and ignore the rest. It is safe to assume that few Oregonians read newspapers for the purpose of finding public notices published within.

While there are certainly some Oregonians who randomly encounter notices relevant to them in printed newspapers, it is doubtful that this happens often. Although most Oregonians do read printed newspapers at least weekly, few of those will read the paper thoroughly enough to make sure they catch anything relevant to them. Many notices are not required to be published every day, and may only be required to be run for a short period of time. Even an individual who regularly reads the specific paper in which the notice is published stands a high likelihood of missing the notice.

Notification in small newspapers

Many public notices are published in newspapers which are not widely read by the most persons in the relevant geographic area. This can add to the existing problem that many interested parties are not effectively notified by newspaper publication. Some examples are illustrative. In Marion County, during a 3 month period surveyed, the Statesman Journal ran a grand total of 136 public notices. During the same period of time, the Jefferson Review – which has a much smaller circulation and readership – ran a total of 1291 public notices¹. During the period surveyed the Jefferson Review ranked third among all newspapers in Oregon in the number of public notices published. While some of these notices may have related to the unique readership of the Jefferson Review, the most likely reason for this discrepancy appears to be that the Jefferson Review charges less than 10% the rate of the Statesman Journal to print the notices. Despite the fact that ORS 193.020 requires publication in the newspaper “best suited to give actual notice,” standard practice throughout the state has long been to use small less expensive newspapers when possible.

It is common practice in Oregon to publish notices in the cheapest available paper. Oregon State Bar members have reported :

*“It is our clients’ interests that we have to keep in mind. As [other attorneys] point out, some lawyers and non-lawyers read the legal notices in their local newspaper every day, and for them, those legal notices are both informative and a source of cultural context. But most people do not read legal notices. When a practitioner in Marion County can permissibly choose to publish notice in the Jefferson Review rather than pay extortionate rates to a Salem daily, that practitioner must do so, in the interests of the people who will ultimately bear those costs. But **the chances of that notice being read, which started low, become lower**” [emphasis added]*

Likewise, another Oregon attorney commented:

“Just as important, notices posted on a single website will provide better access for those who need to see the notices - creditors, heirs, and others. As it stands now, publication typically occurs in the least expensive (smallest perhaps) newspaper in the jurisdiction. It has always seemed odd to me that this type of notice actually serves to notify anyone. I suppose that big creditors keep staff who review the published notices in multiple newspapers, but again that task would be more efficiently done if notices were published in one place.”

¹ Based on total public notices published during October 2011 and March and April of 2012.

In the Portland area, the Portland Oregonian² has a subscriber base over **100 times larger** than the Daily Journal of Commerce³, and assuredly has significantly higher readership among non subscribers as well. Despite that fact, the Journal ran 3509 public notices during the period surveyed, while the Oregonian ran only 1934. In fact, the Daily Journal of Commerce runs more notices than any other two papers combined. Again, while there are some cases where the Daily Journal of Commerce might be the paper best suited to provide actual notice to likely interested parties, there is virtually no possibility of a random Oregonian encountering a notice there because the readership is relatively small and self-selected.

If the theory upon which we require newspaper publication is that random Oregonians will encounter relevant notices while reading the publication, then the current system fails because a large percentage of the notices published are not being placed in the publications that public is actually reading.

The purpose of requiring public notices be published is to ensure that the public is aware of actions that may affect them. Online publication is a more effective method of achieving that objective.

Internet availability in Oregon and the advantages of online publication

A November 2011 report⁴ indicated that 86.18% of Oregonians have ready access to the Internet either in their home or in another location (such as at work). This ranks Oregon as the 6th highest state in the nation in terms of Internet access. This is a larger number of Oregonians than the number that subscribe to a newspaper, and whereas newspaper readership and subscriptions rates have generally fallen nationwide in recent years, Internet access and Internet usage are continually increasing.

There are a number of advantages to online publication beyond issues of cost. In the future, the number of Oregonians who have easy access to information on the Internet will continue to increase. This means that the system's reach will increase over time, whereas the reach of printed publications is likely to continue to decline.

Online notices can be run for much longer periods of time, since a database is not constrained by the physical size of the page. Likewise, online notices can provide vastly more information, since there is no need to charge by the word or inch. Online notices can provide pictures or graphics, and can directly links to other relevant information. All of the reasons that traditional newspaper advertising has shifted to the Internet equally apply to public notices.

Regardless of the method of notice publication, some Oregonians will not receive actual notice when their rights are impacted. This is the case now, and is unlikely to change no matter what notice system is put in place. The choice of the notification method involves a cost-benefit analysis.

² BurrellesLuce 2007 – Top 100 US Daily Newspapers ranks the Oregonian as having 319,625 daily and 375,913 Sunday subscribers.

³ SEC Filings in March 2007 report 2,333 paid subscribers of the Daily Journal of Commerce.

⁴ "Exploring the Digital Nation: Computer and internet Use at Home", United State Department of Commerce 2011.

Policy choices

Deciding what system to use for disseminating public notices is a balance between the actual effectiveness of the various options and the costs imposed on the system users and on the public.

It has never been public policy in Oregon to require either the state or private actors to do everything humanly possible to provide public notice. When multiple papers are available, the statute requires that parties pick one, not publish in all of them. When a lawyer involved in settling an estate is required to seek out potential heirs, that lawyer is required to take whatever steps are reasonable under the circumstances to find interested parties. When a District Attorney charges a person with a crime, it is considered acceptable for them to mail that person a letter ordering them to court, despite the fact that sending the sheriff would undoubtedly result in actual notice a higher percentage of the time.

In all of these cases public policy requires a rational choice to be made that balances the time and expense of the form of notice on the one hand, versus the incremental improvements in the likelihood of actual notice on the other hand.

As stated above, the current system is premised on the idea that most people read a physical newspaper and are thus aware of everything printed within. But in the vast majority of cases, publishing a notice in a newspaper fails to provide actual notice to any specific interested party. Instead, the current system provides the opportunity for notice: if a person is aware of a possibility that such a notice might be published, the person will know where to look for it.

An online notification system can accomplish the same goal, but at a fraction of the cost.



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June 14, 2012

Board of Governors
Oregon State Bar
16037 SW Upper Boones Ferry Rd, Tigard, OR 97281

Reference: Opposition to the Oregon Law Foundation proposal of a centralized legal system on the Oregon State Bar website.

Belatedly, Oregon Newspaper Publishers Association has become aware that the Oregon State Bar is considering a wide-ranging plan to change Oregon law on publication of legal notices. The proposal, we understand, is for the OSB to operate a centralized legal notices website to replace current print/digital publication services, for the purpose of creating a new revenue stream to fund indigent legal services.

The ONPA and its members will oppose this proposal at every level, beginning with this testimony urging the OSB to reject the proposal outright. Our opposition would extend to OSB members, leaders of Oregon municipalities, the public marketplace of ideas and, if necessary, the Legislature.

The responsibility of handling ORS-mandated public notices is an enormous undertaking by staffs at 87 ONPA member newspapers. Formatting (not print but digitally as well), billing, affidavits, specific requirements, fielding calls from attorneys and municipalities, just to mention a few, is so laborious that it would be naive of the OSB to think it would be as easy as throwing up a website and having a small staff of people support it.

The current foreclosure bubble is not a good indicator of what this business has been historically or will be in the not too distant future. As a matter of fact, it is very likely that in the amount of time it would take the OSB to get the proposed plan made into law, researched and up and running, the revenue numbers will no longer be in the range that would be enticing or supportive to the OLF's plan. Without the expenditures from foreclosure it is doubtful the OSB would be interested in maintaining the public notice responsibility long term.

A stand-alone OSB website cannot come near the current mass distribution of legal notices through our member print products, local newspaper websites and ONPA searchable statewide aggregated public notice site combined. (<http://www.publicnoticeads.com/OR/>) The ability to use all of our platforms enables us to reach a much larger audience than one platform alone. By accepting this proposal, the OSB would effectively hide legal notices from the general public and it is questionable if due process would be met in that situation. Further, the OLF proposal is based on inaccurate analysis and ignores

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News-Register, McMinnville

Martha Wells

Albany Democrat-Herald/Corvallis Gazette-Times

EXECUTIVE DIRECTOR

Laurie Hieb

documented citizen preferences.

If the OSB moves forward on this idea after its June 22 Board of Governors meeting, it will signal organizational interest in a path that ultimately would eliminate adequate public notice to a great portion of the public. It would create a situation in which special interest groups, not the general public, would be most likely to view and capitalize on public notices.

ONPA Board of Directors / Government Affairs Committee

ONPA Public Notice Summit - group leaders

Tom Lanctot & Vance Tong –Eagle Newspapers

Canby Herald, Central Oregonian, The Dalles Chronicle, Hood River News, The Madras Pioneer, Molalla Pioneer, The Newberg Graphic, Polk county Itemizer-Observer, Wilsonville Spokesman, Woodburn Independent.

John Perry – East Oregonian Publishing Co.

Blue Mountain Eagle, The Daily Astorian, East Oregonian, The Hermiston Herald, Wallowa County Chieftain

Gordon Black – Western Communications

Baker City Herald, The Bend Bulletin, Curry Coastal Pilot, The Observer, The Redmond Spokesman

Mark Garber & Brian Monihan – Pamplin Media Group

Beaverton Valley Times, Estacada News, Lake Oswego Review, News-Times Forest Grove, The Outlook, The Sandy Post, The South County Spotlight, The Tigard Times, West Linn Tidings

Chris Anderson – Advance Publications

Hillsboro Argus, The Oregonian

Grady Singletary – Dow Jones Local Media Group

Medford Mail Tribune, Ashland Daily Tidings

Mike McInally – Lee Enterprises

Albany Democrat-Herald, Bandon Western World, Corvallis Gazette Times, Lebanon Express, The Umpqua Post, The World, Coos Bay.

Dave Baker - David Pero – The Baker Family

The Eugene Register Guard

Jeb Bladine – The Bladine Family

News Register, McMinnville

Rynni Henderson – The Dolan Company

Daily Journal of Commerce, Portland

June 15, 2012

Board of Governors
Oregon State Bar
16037 SW Upper Boones Ferry Rd
Tigard, OR 97281

Re: Proposal before the Oregon State Bar to Eliminate Public Notices from Oregon
Newspapers

Dear Board of Governors:

I write on behalf of my client, Western Communications, Inc., to briefly supplement comments provided by the Oregon Newspaper Publishers Association. Western Communications, Inc. (“WesCom”) publishes five Oregon community newspapers: the *Baker City Herald*, *The Bulletin* (Bend), the *Curry Coastal Pilot* (Brookings), *The Observer* (La Grande), and *The Redmond Spokesman*. These newspapers strenuously oppose the proposal (“Proposal”) now before the Oregon State Bar, which seeks to have the Bar introduce legislation that would remove all public notices from Oregon newspapers. This “elimination” Proposal has no precedent in any state in the United States. Moreover, it proceeds from multiple incorrect factual and legal premises. Careful investigation demonstrates that the Bar should not move forward with the proposed legislation.

WesCom’s response to the Proposal could easily run to 50 pages or more. There is an extraordinary wealth of information, statewide and nationwide, about the issues raised by the Proposal. The Proposal itself, while only 8 pages as shared with WesCom, makes an exceptional number of mistakes that might be responded to. For present purposes, WesCom will quickly outline a few of the larger issues the Proposal evokes. We would be happy to provide further background, including citation and direction to resources, if the Board has further questions.

- The Proposal fails to tell the Board that the “online centralized system” described in the Proposal *already exists*. The statewide Oregon Newspaper Publisher Association (“ONPA”) website, at <http://www.publicnoticeads.com/OR/>, already possesses all of the functions and characteristics described in the Proposal. It carries “all legal notices required under state law” and published in the 87 ONPA newspapers in every corner of the State, and “makes them available free of charge

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and in a searchable format to the public.” The Proposal before the Board describes no functionality of any kind that does not already exist. For example, the Proposal describes an “alert me” service the Bar’s putative website would offer for “a fee covering a limited period of time.” The Proposal tells this Board that “such a service is not currently offered by Oregon newspapers.” That is not true. The ONPA website offers that precise service. Moreover, unlike the Proposal, Oregon newspapers *do not* charge *any fee* for such service. The Proposal’s offer to create a system that will finally “make it easier for individuals to find or be made aware of notices that affect or interest them” proceeds from the false premise that no such system exists.

- The Proposal to eliminate public notices in newspapers is actually a significant step backwards in terms of providing notice to the public. The business model for the “new,” if duplicative, centralized online system expressly depends upon the *elimination* of all existing public notices published in Oregon’s community newspapers. The Proposal’s claim is that online notice *alone* is so superior to newspaper publication that it should, indeed must, *supplant* all newspaper publication. This premise is simply wrong. The information on this subject is voluminous. In its November 2011 Report entitled “Exploring the Digital Nation: Computer and Internet Use at Home,” the United States Department of Commerce concludes that 25% of Oregon’s population does not have broadband access to the Internet. Moreover, that percentage grows significantly when issues of age, non-majority race, lower income, and non-urban setting, among other demographic characteristics, are considered. Fully one-third of all Oregonians living in non-urban locations are without Internet access, according to the federal government. Again, the addition of age, race, or income drives those non-urban non-access numbers even higher. The United States Census Bureau tells us that more than 62% of United States seniors have no Internet access, and fully a third of the distinct minority who do are limited to dialup, in any event. Again, there is an overwhelming volume of information on this subject, but as a simple starting point for these illustrative purposes, independent research has established that 80% of all Oregon adults read a newspaper at least once during an average week, and 54% read public notices printed there. The case for the unquestioned superiority of Internet notice, or the adequacy of Internet notice alone, does not exist. (Again, the Proposal forgets that Internet notice, exactly as the Proposal would design it, already exists.)
- The Proposal’s business requirement that all publication of public notices in Oregon’s community newspapers be fully eliminated is, in actuality, a huge step

backwards in the effective delivery of public notice to the public. As above, the Proposal *adds nothing* to the *existing* online system, but it *subtracts* from the reach of notice in a significant way, unacceptable in our democracy. While the Internet, as in ONPA's existing website, can *extend* the reach of public notice in some respects, Internet notice *alone*, which is the essential requirement of this Proposal, would result in a significant diminution in the reach of public notice, in an undemocratic fashion, to the general detriment of the public and a heightened detriment to important subgroups in our democracy.

- There is another sense in which the Proposal is radically retrograde. An analogy may illustrate the point. When eager readers visit a bookstore, they invariably see books they had not previously been aware of but which they might well be interested in. When people buy books online, however, for the most part they must *already know* what books they are interested in. This divide is a much more serious matter when it comes to providing the public with information about its governments. The Proposal, which calls for the elimination of all newspaper publication of public notices, would have the unintended net result of hiding information about government from citizens. With an online website only, one largely has to know *in advance* where, when and how to look for that information and what to look for. It is not that it can't be done, but rather that it doesn't fit how vast numbers of us get our information.
- Newspapers have developed readerships through tremendous marketing expenditures. In addition, the attractive information that community newspapers offer, including sports, local news, weather, government information, political trends, and even the crossword, *draws in* the public. Public notice placement next to these "draws" results in people finding those notices. An online system alone starts with no such draw.
- Research demonstrates that newspaper customers are more civically engaged than consumers of any other medium. A not insignificant number of us are accustomed to being exposed to government notices in the public notices section of our newspapers. Newspapers expose significantly more people to information about their government than a system that demands of citizens that they constantly remember to search for information. In this regard, the Proposal (which downplays the costs of a new online system entirely, apparently imagining some sort of Craigslist without any accounting for the precision, verifiability, and anti-hacking that must be required for *official* public notice, let alone the manpower involved), makes *no* mention of the costs of effectively reminding

citizens that they must constantly go to this new site to find out *if* there is any news from their governments. The Proposal makes no mention of the marketing costs involved, over at least a decade if not more, to even begin to make the public look, in advance and without any prior knowledge, to see if there is any new government information available. Without extraordinary marketing, the Proposal is actually hollow with regards to its claim to *provide* notice.

- The Proposal is erroneously sanguine about due process issues. Public notice includes, for example, the service of summons by publication in a newspaper. The claim that online notice can constitutionally supplant newspaper notice, and allow its elimination, strains credulity. One would have to search his or her name constantly to determine whether he or she had been sued. There is a 21st century term for such a person, who is pejoratively known as an “egosurfer.” Service of summons by publication in a newspaper occurs after all other methods have been exhausted but it is well grounded in hundreds of appellate decisions. Eliminating newspaper notice, as proposed, and providing notice online only, depends on a premise of egosurfing and wrongly turns a blind eye to the problems with online access among significant segments of the public. Eliminating newspaper notice, as the Proposal requires, will create unconstitutionality under *Mullane v. Central Hanover Bank & Trust Co.*, 339 US 306 (1950), and its many progeny. The Proposal *subtracts* from existing notice.
- In order to create a straw man, the Proposal gives the Board numerous false statements about how newspaper notice works. Among the more egregious is the statement that newspaper notice “is costly because, in many towns and cities where there is only one newspaper, that newspaper is able to charge above-market advertising rates for individuals, business, or local governments that must publish legal notices.” That statement is patently false and shows absolutely no understanding of ORS 193.090. Similarly, the Proposal’s claim that legal notices are placed in “newspapers with small circulations,” ignores the existing “best suited to give actual notice” requirement of ORS 193.020(2); notices wrongly placed by those seeking to provide notice violate existing Oregon law.
- The Proposal acknowledges that its implementation will “imperil” community newspapers and then blithely tells the Board “that is undoubtedly true.” That is not much of a public policy discussion about the importance of community newspapers in Oregon or their place in Oregon’s democracy.

- One can understand the ends this Proposal seeks, but because the Proposal involves so many other moving parts about the way in which the public would continue to get knowledge about its governments, among other issues, it must be asked whether there are any *Keller* issues involved in introducing this Proposal as legislation.

Conclusion

WesCom's interest in these issues cannot be reduced merely to the financial. Myriad decisions in Oregon's courts recognize the role Oregon's press has in communicating to the public, including information government itself must and should share so that the public may know what government is doing. The Proposal to eliminate public notice from Oregon's community newspapers is unprecedented. That is because it is bad public policy.

Thank you for your consideration of this information.

Very truly yours,

Davis Wright Tremaine LLP

A handwritten signature in black ink, appearing to read 'DAB' with a stylized flourish extending to the right.

Duane A. Bosworth

DAB:cp

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June 19, 2012

Board of Bar Governors
Oregon State Bar
c/o Camille Green, Exec. Ass't
cgreene@osbar.org

Re: Centralized Legal Notice proposal (OLF)

Dear Board Members:

I understand the above proposal is on this weekend's agenda as an information item. I have reviewed the proposal and the several letters the Bar has received in opposition from the ONPA and Western Communications. This proposal was brought to my attention during a phone call that I received from Mark Garber, President of Community Newspapers¹ (Portland Tribune, Gresham Outlook, etc.). As a lawyer who has placed many legal notices in 30 years for probate and foreclosure sales, I do have knowledge of the laws and policies surrounding legal notices in general. The "*why's, why nots, where, if's and but's*" (and financial costs) of legal/public notices is not the focus of my comments to you.

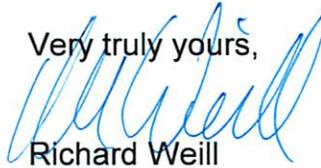
I urge you to very quickly end discussion of this proposal this weekend. The OSB has no business being involved in a profit making scheme that I don't need a newspaper owner to tell me will decimate many community based papers in this state. The OLF memo to you that I reviewed makes a rather glib comment about the fiscal effect of transferring millions of dollars of revenue from the public sector newspaper business to the charitable arm of the OSB. I would be embarrassed as a member of this organization when it is credited with causing people to lose their jobs and newspapers to close because the lawyers in this state got in the "business" of publishing legal/public notices. I don't think I need to waste any words regarding the value of fact based newspaper reporting in our communities and the jobs associated with newspaper organizations.

Years ago statutes and ethics rules were enacted and changed to allow for IOLTA. That was a wonderful idea. Low interest rates have consequences for many sectors of society including the beneficiaries of IOLTA funds. There are many unmet

¹I do not represent Mr. Garber or his company as a client.

needs in our society. As a group the OSB has done what it can and I am sure we will continue to do more. In the meantime we need to continue to make our collective living and we do so under the aegis and imprimatur of the Bar. This proposal will not advance our reputation and standing in the communities that we serve. I am sure the affected parties will not only howl in the legislature; they will howl in their publications. Please do not proceed any further with this proposal.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'Richard Weill', is written over the typed name. The signature is fluid and cursive, with a prominent initial 'R'.

Richard Weill

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: June 22, 2012
Memo Date: June 13, 2012
From: Karen Lee, Ext. 382
Re: OSB CLE 2.0 Report

Action Recommended

Information only.

Background

After the last Board of Governors meeting, the President queried what a CLE department would look like if one were newly created. This report is a look at where CLE will be in the future, the environment a new CLE department would face, and how the current CLE Seminars Department will adapt to that future.

OSB CLE Seminars 2.0

June 22, 2012

Oregon
State
Bar

CLE
Seminars

*Powering Your
Professional
Development*

OSB CLE 2.0

OVERVIEW

Technology will be the driving force in the OSB CLE of the future. From delivering streaming media to live transmissions to downloadable videos, the Internet will be a vital tool for consumers. As the number of mobile devices increases, mobile capability for everything from seminar registration to e-commerce will become the norm.

Attendance at OSB CLE live seminars will continue to contract while distance learning options, both in formats and topics, will expand due to new delivery platforms, affiliations with other CLE sponsors, and using technology to share programming. (EXHIBIT A)

OSB CLE meets a broad range of CLE needs, with its main focus on intermediate to advanced topics. A limited number of basic or fundamentals topics will be offered to assist the growing number of new attorneys who are setting up practice immediately upon passing the bar, as well as attorneys who are switching practice areas. (EXHIBIT B)

With the exception of highly advanced, multi-day events that incorporate networking, half-day seminars and unit seminars (a presentation on a single topic) will become the standard, as the time to devote to CLE becomes more fractured. The attraction of on-demand seminars will continue to grow as attorneys seek to avoid using billable hours for CLE.

Revenue from OSB sections will grow, as section CLE organizers see the value of contracting with OSB CLE for fee-based CLE services. (EXHIBIT C)

OSB members are extremely price conscious and historically have had access to free or very low-cost CLE seminars. The efficient use of staff resources and technology should help OSB CLE maintain or reduce current costs while a robust marketing strategy highlighting CLE technology will increase webcast attendance at seminars and sales of on-demand CLE products.

WHAT YOU'LL SEE IN OSB CLE 2.0

- High quality CLE programming and customer service (EXHIBIT D)
- CLE programming every business day of the year using a wider variety of delivery options (EXHIBIT E)

- Increased topic coverage (general and specialized) through partnering with other CLE sponsors, primarily other state and local bar associations. (EXHIBIT F)
- Mobile-enabled, one-stop e-commerce for everything from live seminar registrations to purchasing seminars on MP3 and MP4 files
- An increase in non-OSB consumers (secondary markets and attorneys from other states) (EXHIBIT G)
- Development of a membership plan (aka the Season Ticket) that fits the flexibility, range of learning styles, and value expectations of consumers
- An increase in the amount of a la carte, fee-based CLE services (registration services, event planning services, and webcasting) requested by OSB sections
- Using social media to announce OSB CLE seminars and products

HOW OSB CLE WILL GET TO 2.0

- Opting in to webcast seminars sponsored by affiliates of OSB CLE's online CLE vendor, InReach, with the first seminar scheduled for June 14, 2012.
- "Single-serve CLE" via webcast (no live audience). A series of six presentations on employment law topics is scheduled for July and August, 2012.
- A new membership plan with a rolling 365-day term (compared to the current fixed term) that focuses on use of online and on-demand delivery.
- Direct communication to sections regarding the range of services available through OSB CLE to bring value to the section's CLE efforts and the section membership.
- CLE Seminars Facebook page and Twitter feed to launch in fall 2012 or winter 2013.

EXHIBIT A
Live CLE vs. Online CLE

	Live Seminars <i>(Seminar registrations)</i>	Live Online Seminars and Online On-demand Seminars <i>(Seminar registrations and purchases)</i>	Total
2007	7,330	1,902	9,323
2008	7,109	2,906	10,015
2009	6,014	3,113	9,127
2010	5,276	4,114	9,390
2011	4,430	5,645	10,075

EXHIBIT B
OSB CLE Fundamental or Basic Courses

	No. of OSB CLE Seminars	No. of Seminars with Fundamental/ Basic Curriculum	% of Total Seminars	No. of CLE Seminars with Practical Skills Credit*	% of Total Seminars
2007	48	3	6%	7	15%
2008	47	1	2%	4	9%
2009	56	2	4%	8	14%
2010	46	3	7%	7	15%
2011	47	3	6%	10	21%

*As approved by MCLE. Practical Skills credit is not directly associated with curriculum that is only basic or fundamental in nature. OSB CLE seminars approved for Practical Skills credits included: Advanced Transactional Drafting, Advanced Legal Editing, Selecting and Influencing Your Jury, Motion Practice, The Cybersleuth's Guide to the Internet, Negotiation Practices in a Tough Economy and certain Access to Justice courses.

EXHIBIT C
Growth in Section CLE Services Revenue

Revenue generated by providing event registration and coordination and webcasting services on a fee basis.

2007 – \$14,100

2008 – \$12,142

2009 – \$16,056

2010 – \$16,622

2011 – \$21,906

EXHIBIT D
CLE Seminars & Staff Evaluations

Seminar and customer service ratings for OSB CLE seminars and staff (compiled from seminar evaluations and Member Services section evaluations)

	Overall seminar quality <i>(Combined average ratings of "excellent" and "very good")</i>	CLE staff	OSB Member Services Section Survey <i>(Based upon an average of a five point scale)</i>
2007	84%	91%	4.6
2008	88%	92%	4.5
2009	86%	92%	4.8
2010	85%	92%	4.6
2011	85%	92%	4.9

EXHIBIT E
Current vs. Future CLE Seminars Delivery Options

CURRENT DELIVERY (2012)	FUTURE DELIVERY (Two to four years)
Live seminars with audience (includes video replays)	Live seminars with audience (no video replays)
Live webcasts with audience (broadcast from live seminar; includes webcast replays)	Live webcasts with and without an audience (includes webcast replays)
Live audio seminars via phone (includes audio replays)	Live audio seminars via phone and computer (includes audio replays)
Live webinars (PowerPoint slides and audio via computer)	Live webinars
MP3 files (downloadable audio files)	MP3 files
Video streaming (not downloadable)	MP4 files (downloadable video files)
Audio streaming (not downloadable; will be replaced by MP3 files by end of 2014)	
CDs (sales) and DVDs (sales and rentals)	

EXHIBIT F
Revenue Generated by Educational Partners

In 2008 OSB CLE began offering members content provided by for-profit CLE sponsors to broaden the bar's coverage of CLE topics. The content provider is responsible for handling registration, delivery of content and course materials, and troubleshooting any technical assistance calls while OSB CLE applies for Oregon-approved MCLE accreditation and markets for seminars to members. In return, OSB CLE receives a share of revenue for each OSB registrant.

2008 – \$ 2,235

2009 – \$ 7,976

2010 – \$ 8,556

2011 – \$11,551

TOTAL \$30,318.00

In its continued efforts to increase the range of continuing education available for OSB members, in late June OSB CLE will begin offering online CLE seminars sponsored by state and local bar associations who utilize the same online CLE platform and registration system as OSB CLE. Like the for-profit educational partners, OSB CLE will market the seminars to the OSB membership and receive a share of revenue from any OSB members who register for the other bar associations' seminars.

EXHIBIT G

Revenue Generated by Members of Other State and Local Bar associations

Through its shared online CLE platform with other state and local bar associations, OSB CLE is able to reach a nationwide audience. All OSB CLE webcasts and on-demand products are available for inclusion in the catalogs of these affiliates. If members of the affiliated bar associations purchase live online seminars or on-demand seminars through their associations, OSB CLE receives a share of that revenue. Over the past five years, inclusion of OSB CLE seminars in the affiliates' catalogs has grown and revenue has increased by 2,203%.

2007 – \$ 244

2008 – \$ 1,254

2009 – \$ 4,168

2010 – \$ 5,363

2011 – \$ 5,620

TOTAL \$16,649

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: June 22–23, 2012

Memo Date: June 8, 2012

From: Linda Kruschke, ext. 415

Re: Legal Publications author and editor survey

Action Recommended

Information only.

Background

In April and May of this year, the OSB Legal Publications Department conducted a survey of authors and editors. We sent the survey to 661 authors and editors who contributed to books published in the last five years. We received 247 responses. Just over 75% of the respondents had volunteered as an author or editor more than once, and almost 15% had volunteered six or more times. This memo is a summary of the survey responses.

Survey Summary

The first two questions that we asked were designed to determine why bar members volunteered as authors or editors of Legal Publications Department books and what benefit they derived from this volunteer activity. The top two reasons given for volunteering in this capacity were:

- I enjoy giving back to the legal community in Oregon—47.7% of respondents
- It gives me prestige and respect within the legal community in Oregon—19.4%

Secondary reasons for volunteering selected by at least 20% of the respondents included:

- It provides a means of marketing my practice
- I love to write about the law
- It is a good way to get MCLE credits

Next we asked whether the respondents would recommend being a volunteer author or editor to one of their colleagues. The results were:

- Yes—86.6%
- No—1.6% (only 4 respondents)
- Maybe—11.8%

There were 137 responses to the follow-up question “Why or why not?” Those who responded “Yes” cited as reasons such things as needing to think critically about the topic and the networking opportunities. Representative responses include:

- “It's a good learning experience. Also, I met some really nice people during the process.”
- “It is a rewarding activity and is an important contribution to keeping other members of the OSB informed and up to date.”
- “It is rewarding in that you focus on an area of law that allows you learn new things, hone your writing skills, work with someone as a co-author that you haven't worked with before . . . etc.”
- “Telling other lawyers in writing what they need to know to practice the law you practice regularly forces you to think clearly about why you do what you do. The editing provided by other lawyers improves your writing.”
- “Good way to get immersed in a subject. Enjoy working with co-authors.”
- “Professionally very satisfying, and a great way to improve your skill set in the area you're writing about.”
- “It is a good opportunity to contribute and enhance one's own knowledge.”
- “It is a good exercise to improve your own understanding of a subject and an opportunity to expand your reputation in the legal community.”
- “You meet other lawyers you would not necessarily meet in your practice. You gain perspectives on the law that make you a better lawyer.”

Of the people who responded “Maybe,” the primary factor determining whether they would recommend this volunteer activity was the considerable time commitment.

Respondents thought volunteers needed to be sure they had the time to do it right.

Other comments included:

- “People should agree to author a chapter for the right reasons, i.e., to educate their colleagues, not to add a notch to their belt or to advance an agenda. My recommendations would depend on those factors.”
- “The section should be in one's practice area. I would not recommend writing just for the sake of writing.”
- “Depends on the friend and the topic. Overall, it was a good experience for me and a good opportunity, for those of my friends who enjoy writing, I would definitely recommend it.”
- “Depends on who the editors are. Editors can own publications and use authority over publications to punish lawyers; they can be protective of their firm, their ideology and turf making the experience unpleasant and counter-productive.”

The next question we asked was “What could the OSB Legal Publications Department do to improve future experiences as a volunteer author or editorial board member?” We received 136 comments to this question, which fell into one of the following five categories:

Type of Comment	Count	Percent of Total
MCLE related	11	8%
Negative	18	13%
Neutral (“no suggestion”)	15	11%
Positive (“great experience”)	48	35%
Suggestions	44	32%

The MCLE-related comments tended to be suggestions that more MCLE credit be given for writing or editing a chapter. These comments will be shared with the MCLE Administrator and MCLE Committee.

The negative comments tended to relate to two issues: (1) delays in publishing books after the author had submitted his or her chapter, and (2) edits made to chapters either by the volunteer editorial review board or the in-house editor, or the controlling nature of the editorial review board. Significant changes have already been made in the Legal Publications Department to address the first issue, including a regular e-mail reminder system and staggering due dates on multivolume books. The latter issue will need to be addressed on a book-by-book basis.

The positive comments tended to be generic, but will be beneficial in helping to recruit new authors and editorial review boards for future projects.

A further benefit of the survey feedback was the number of helpful suggestions received. Several that we have either already implemented (after the book the author had worked on) or will be considering how to best implement are:

- “Have a short CLE or reception on being an author, speaker or Board member.”
- “Assign more persons to each task or subject. The appearance may be a factual recitation of the law, but, in reality, the various opinions on the law create a much more diverse perspective on the topic.”
- “A primer on common editorial issues perhaps?”
- “Just remind volunteer authors of deadlines frequently.”
- “A little more direction about how to go about the task of authoring the publication.”
- “Provide clear and detailed information on what is expected.”
- “Increase the number of communications and reminders and when possible increase the preparation time.”
- “A little more coordination up front about process and expectations.”
- “Diversify the authors' backgrounds to ensure that varying points of view inform the finished product. This also makes the process stimulating and enjoyable.”
- “How about an informal reception or social event every year for volunteer authors and editorial board members of the publications that came out that year?”
- “Perhaps some volunteer meetings would help organize, energize and get folks on board, but it could also detract those who hate extra meetings.”
- “Have previous authors mentor new authors who are in the same field.”

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: June 22, 2012
Memo Date: June 12, 2012
From: Helen M. Hirschbiel, General Counsel
Re: Amendment of LRS Policies and Procedures

Action Recommended

Adopt the attached recommended changes to the LRS Policies and Procedures.

Background

The LRS Policies and Procedures were developed by the Public Service Advisory Committee and staff over the course of three meetings in January 2012. They were submitted to the Board of Governor's Policy and Governance Committee and Budget and Finance Committee for consideration at its February 9 meetings. The Policies and Procedures were adopted by the Board on February 10, 2012.

Registration packets with the new Policies and Procedures were mailed to current LRS participants in mid-May, generating many calls and emails to LRS as well as discussion on some OSB section list serves, most notably the Solo and Small Firm Practitioners section list serve. In particular, some lawyers expressed concerns about language in the new procedures that speaks to sharing client information with the LRS. While these provisions were not intended to require or induce lawyers to violate their professional responsibilities, some lawyers interpreted the language to require them to breach their obligation to maintain client confidentiality.

In order to alleviate these concerns, staff assured panelists that their key ethical concerns would be reviewed by General Counsel and that the Board of Governors would be asked to consider any necessary changes at its June meeting.

The proposed amendments have not been submitted to the P&G Committee because they are not meeting this month. However, adoption of the revisions is urgent because the effective date of the new policies and procedures is July 1, 2012.

Summary of Proposed Amendments

The LRS Policies and Procedures with the proposed amendments are attached. The changes fall into two categories and are summarized as follows:

A. Ethics Concerns

1. Policy V.A.3. The extent to which a panelist must share settlement terms has been limited.
2. Policy V.B.2 This section was added to cover the situation in which a lawyer is paid a flat fee, earned upon receipt, and fails to complete the legal services such that the client may be entitled to a refund under RPC 1.5(c)(3) and associated case law.
3. Procedure 8(d)(ii) has been removed to limit the amount of information that panelists must share in their monthly reports.
4. Procedure 11 has been removed.
5. Procedure 13 has been amended to limit the amount of information that panelists must share when verifying that correct remittances have been paid.

B. Housekeeping Changes

1. Procedure 8(d)(i) has been amended to clarify the reporting requirement.
2. Procedure 8(d)(iii) has been amended to make this section consistent with the bar's collection procedure in OSB Bylaw 7.104 and to give the bar more flexibility to address inadvertent errors.
3. Procedure 8(d)(iv) has been amended to make it consistent with the other changes to 8(d).

Conclusion

Staff proposes the Board adopt the attached amendments to the LRS Policies and Procedures.

Attachment: LRS Policies and Procedures

Policies

I. Goal: The goal of the Lawyer Referral Service (LRS) is to serve lawyers and the public by referring people who seek and can afford to pay for legal assistance (potential clients) to lawyers who are willing to accept such referrals, and also to provide information and other resources as appropriate. All lawyers participating in the LRS (panelists) agree to abide by these Lawyer Referral Service Policies (Policies) and Lawyer Referral Service Operating Procedures (Procedures).

II. Eligibility: Lawyers satisfying the following requirements shall be eligible to apply for participation in the LRS. The lawyer must:

- A. Maintain a private practice;
- B. Be an active member of the Oregon State Bar in good standing;
- C. Maintain malpractice coverage with the Professional Liability Fund (PLF); and
- D. Have no formal disciplinary, protective or custodianship proceedings pending.

Additional standards apply for special subject matter panels; the special subject matter panels and qualifications are stated in the Procedures.

III. Complaints:

A. Ethics Complaints: Complaints about possible ethical violations by panelists shall be referred to the Oregon State Bar Client Assistance Office.

B. Customer Service Complaints: LRS staff monitor complaints concerning the level of customer service provided by panelists. The character, number, and/or frequency of such complaints may result in removal from the LRS, with or without prior notice.

IV. Removal:

A. Panelists against whom disciplinary, protective or custodianship proceedings have been approved for filing shall be automatically removed from the LRS until those charges have been resolved. A matter shall not be deemed to be resolved until all matters relating to the disciplinary proceedings, including appeals, have been concluded and the matter is no longer pending in any form.

B. A panelist whose status changes from "active member of the Oregon State Bar who is in good standing" shall be automatically removed from the LRS.

C. A panelist who leaves private practice, fails to maintain coverage with the PLF, or files an exemption with the PLF shall be automatically removed from the LRS.

D. A panelist may be removed from the LRS or any LRS panel if the panelist violates these Policies and/or the Procedures.

E. In all instances in which the panelist is removed, automatically or otherwise, prior notice need not be given to the panelist.

V. Funding & Refunds:

A. Funding: All panelists shall pay the annual LRS registration fees and percentage remittances on all attorneys' fees earned and collected from each potential client referred by the LRS and accepted as a client.

1. Registration Fees: The Board of Governors (BOG) shall set the registration fees. All panelists shall pay registration fees annually for each program year and, except as provided in Paragraph (B) "Refunds" (below), registration fees are nonrefundable and will not be prorated.

2. Remittances: As provided below and explained further in the Procedures, if a panelist and client enter into an agreement whereby the panelist will provide legal services to the client for which the client will pay a fee, then remittances will be due the LRS upon payment of the fees by the client. The combined fees and expenses charged a client may not exceed the total charges that the client would have incurred had no referral service been involved. The BOG sets the percentage rate(s) to be applied to all panelists' attorneys' fees earned and collected from clients in excess of any applicable threshold. Remittances owed to the LRS are calculated by multiplying the percentage rate(s) by the earned and collected attorney fees. If a panelist fails to pay the appropriate remittance(s) to the LRS in accordance with these Policies and the Procedures, the panelist will be ineligible for referrals until all remittance(s) have been paid in full. A panelist's obligation to pay remittances owed to the LRS continue regardless of whether the panelist is in breach of this agreement, fails to comply with these Policies or the Procedures, is removed from the LRS, is no longer eligible to participate in the LRS, or leaves the LRS.

3. Communications Regarding Remittances: Upon settlement of a matter, the panelist shall be obligated to include the LRS with those who have a right to know about the terms of a settlement to the extent necessary to allow the LRS to ~~have knowledge of the terms of the settlement (including all fees paid in the case, whether paid directly by another party, or by settlement proceeds) so that the LRS may~~ determine the portion of the fees to which it is entitled.

B. Refunds:

1. Upon written request, a panelist who has been automatically removed from the LRS shall be entitled to a prorated refund of registration fees. The amount of the refund shall be based on the number of full months remaining in the program year for which the fees were paid, as measured from the date the written request is received. An automatically removed panelist who again meets all of the eligibility and registration requirements prior to the expiration of the program year during which the automatic removal occurred may reapply and be reactivated for the remainder of that program year upon written request and payment of any amount refunded.

2. Upon written request, a panelist who is required to refund to a client a portion of a flat fee that was earned upon receipt shall be entitled to a refund of the same portion paid to LRS.

VI. Review and Governance:

A. Public Service Advisory Committee (PSAC):

1. The PSAC advises the Board of Governors on the operation of the LRS. The PSAC works with LRS staff in the development and revision of these Policies and the Procedures. Amendments to these Policies must be approved by the BOG. Amendments to the Procedures may be approved by a simple majority of the PSAC, with the exception that proposed revisions to the amount of the registration fees and the percentage rate(s) and threshold used to calculate remittances shall be submitted to the BOG for approval.

2. Upon written request, the PSAC shall review an LRS staff decision to remove a panelist at its next regularly scheduled meeting. Such written request shall be submitted to the PSAC within 30 calendar days of the date notice of the LRS staff decision is given to the removed panelist.

3. Upon written request, the PSAC may review an LRS staff decision regarding a panelist's registration, renewal, and/or special subject matter panel registration (collectively, registration issues). Such written request shall be submitted to the PSAC within 30 calendar days of the date notice of the LRS staff decision is given to the lawyer. The PSAC's review and decision regarding registration issues shall be final.

B. Board of Governors (BOG):

1. Upon written request by any PSAC member or LRS staff, PSAC decisions regarding proposed revisions to the Procedures may be reviewed by the BOG. Upon

written request of a panelist, a decision of the PSAC regarding panelist eligibility or removal may be reviewed by the BOG, which shall determine whether the PSAC's decision was reasonable. The written request shall be submitted to the BOG within 30 calendar days of the date notice of the PSAC decision is given to the affected panelist.

2. The BOG shall set the amount of the registration fees and the percentage rate(s) and threshold used to calculate remittances.

3. These Policies may be amended, in whole or in part, by the BOG.

Operating Procedures

1) How It Works:

a) Screening: Lawyer Referral Service (LRS) staff process referrals using information gathered from the potential client during the screening process — legal need, geographic area, language spoken, and other requested services (credit cards accepted, evening appointments, etc.) – to find a lawyer participating in the LRS (a panelist) who is the best match for each potential client.

b) Rotation: Referrals are made in rotation to ensure an equitable distribution of referrals among similarly situated panelists.

c) Processing: Generally, potential clients receive one referral at a time and will not be provided more than three referrals within a 12-month period for the same legal issue. Under certain circumstances, LRS staff may provide more than three referrals and may also provide several referrals at the same time. Such circumstances may include but are not limited to emergency hearings, referral requests from those who live out of state, lawyers interviewing panelists to represent their clients in other matters, etc. Potential clients are told by LRS:

i) To tell the panelist that they have been referred by the Oregon State Bar's Lawyer Referral Service;

ii) That they are entitled to an initial consultation of up to 30 minutes for \$35;

iii) That the panelist's regular hourly rate will apply after the first 30 minutes; and,

iv) That all fees beyond the initial consultation will be as agreed between the client and the panelist.

d) Follow-up: After processing a referral, LRS staff email a referral confirmation to the panelist and, if possible, to the potential client as well. A comprehensive status report is sent to panelists on a monthly basis. LRS staff will also send follow-up surveys to potential clients and clients referred by the LRS.

e) Initial Consultations:

i) Amount: Panelists agree to charge potential clients who live in Oregon and are referred by the LRS no more than \$35 for an initial consultation; except that no consultation fee shall be charged where:

(1) Such charge would conflict with a statute or rule regarding attorneys' fees in a particular type of case (e.g., workers' compensation cases), or

(2) The panelist customarily offers or advertises a free consultation to the public for a particular type of case.

ii) Duration: Potential clients are entitled to 30 minutes for a maximum of \$35. If the potential client and panelist agree to continue consulting beyond the first 30 minutes, the panelist must make clear what additional fees will apply.

iii) Telephone, Computer and/or Video Consultations: It is up to the panelist whether the panelist will provide initial consultations by any communication method other than a face-to-face meeting with the potential client. Panelists may indicate their preferences on their LRS applications.

iv) Location of Face-to-Face Consultations: All lawyer-client meetings must take place in an office, conference room, courthouse, law library, or other mutually agreeable location that will ensure safety, privacy, and professionalism.

2) Customer Service: Panelists agree to participate only on those panels and subpanels reasonably within the panelist's competence and where the LRS has qualified the panelist to participate on one or more special subject matter panels, as applicable. In addition, panelists must demonstrate professional reliability and integrity by complying with all LRS Policies and Procedures, including the following customer service standards:

a) Panelists will refrain from charging or billing for any fee beyond the initial consultation fee unless and until the panelist and potential client have agreed to the attorney's fees and costs for additional time or services beyond the initial 30-minute consultation;

b) Panelists will use written fee agreements for any services performed on behalf of clients that are not completed at the initial consultation;

c) Panelists will communicate regularly with LRS staff, including updating online profiles and providing notice if a panelist is unable to accept referrals for a period of time due to vacation, leave of absence, heavy caseload or any other reason;

d) Panelists will keep clients reasonably informed about the status of the clients' legal matters and respond promptly to reasonable requests for information. Panelists will return calls and emails promptly and will provide clients with copies of important papers and letters. Panelists will refer back to the LRS any potential client with whom the panelist is not able to conduct an initial consultation in the timeframe requested by the potential client or for any other reason; however, in order to provide a high level of customer service, the panelist may offer the potential client a referral to another lawyer, provided:

i) The subsequent lawyer is a panelist;

ii) The potential client is informed of the potential client's option to call the LRS back for another referral rather than accepting the offered substitution;

iii) The potential client agrees to the substitution; and

iv) Both the referring panelist and subsequent lawyer keep the LRS apprised of the arrangement and disposition of all referrals, and ensure that all reports to the LRS clarify and document all resulting lawyer-client agreements and relationships, if any.

e) Panelists will submit any fee disputes with LRS-referred clients to the Oregon State Bar Fee Arbitration Program, regardless of who submits the petition for arbitration and regardless of when the dispute arises.

3) How To Join the LRS:

a) Before submitting your application and payment, please read through the Lawyer Referral Service Policies (Policies) and these Procedures completely and contact LRS staff with any questions you may have;

b) Complete and submit the LRS Application Form; log in at www.osbar.org and click on the link for the application;

c) Complete and submit the Subject Matter Qualification forms for certain designated panels (if required);

d) Ensure that your Professional Liability Fund (PLF) coverage is current and that all outstanding PLF invoices are paid; and,

e) Pay all registration fees.

4) Program Year: The LRS operates on a 12-month program year. The program year begins July 1 and ends June 30. Although the LRS will accept applications at any time, registration fees are not prorated for late registrants. Payment of the registration fee shall entitle the panelist to participation only for the remainder of the applicable program year. The LRS may refund registration fees only if requested prior to the beginning of the applicable program year.

5) Territories: LRS registration uses geographic territories based upon population density, counties, court locations and potential client and panelist convenience. A chart of the territories and the counties in each territory may be found on the application. Payment of the base registration fee (see below) includes registration for one territory, which shall be the territory in which a panelist's office is located, known as the panelist's home territory. For an additional fee, panelists may elect to register for additional territories outside of his or her home territory for some or all of the general areas of law panels selected.

6) Subject Matter Panel Qualifications: Registration for special subject matter panels requires a separate form and affirmation showing that the panelist meets basic competency standards. The subject matter panels currently include: felony defense; interstate/independent adoption; deportation; and Department of Labor-referred FMLA/FLSA matters. Additional information and forms are available on the bar's website at www.osbar.org.

7) Registration Fees (effective 07/01/12):

a) Basic Registration Fee (including home territory and up to four areas of law):

i) \$50 for those admitted in Oregon for less than 3 years.

ii) \$100 for those admitted in Oregon for 3 years or more.

b) Enhanced Services Fees:

i) Additional Territories: \$50 for each additional geographic territory

ii) Statewide Listing: \$300

iii) Additional Panels: \$30 for each additional area of law beyond the four included in a basic registration)

8) Remittances:

a) Percentage Rate: 12%

b) Threshold: \$0

c) The Math: Panelists will pay the LRS a remittance on each and every LRS-referred matter in which the earned and collected attorneys' fees meet or exceed the threshold or "deductible." The remittance is a percentage only of the panelist's professional fees and does not apply to any costs advanced and recovered, or the \$35 initial consultation fee.

d) Remittance Payments to the LRS:

i) Panelists will report and ~~pay submit~~ remittances to the LRS no later than the last day of the month following the month in which the attorney fees were paid. in the next status report period after the fees have been paid (either in response to a bill or if the panelist has billed against funds held in trust). If a panelist fails to report or pay the appropriate remittances to the LRS as required, within the next reporting period, LRS staff shall notify the panelist requesting immediate payment of the appropriate remittances to the LRS. LRS staff may remove the panelist from rotation and cease referrals to the panelist until all remittances are paid in full.

~~ii) Final Case Status Reports and Payment: Panelists must submit a final report at the conclusion of the matter reflecting the dates and amounts of all fees paid by or on behalf of the client, accompanied by a copy of the final client billing or settlement statement. The final payment of all remittances due on the matter must be received by the LRS within 30 days of the panelist's receipt of the client's final payment.~~

~~ii) iii) If the panelist fails to pay the appropriate remittance to the LRS within 30-90 days from the date of payment of attorney fees to the panelist, the bar may take any reasonable and financially prudent methods to collect on amounts owed to LRS. LRS staff shall remove the panelist from all referral panels and cease all referrals to the panelist until all remittances owed are paid. If the panelist fails to respond within 10 business days of a delinquency notice sent by LRS staff, the matter will be presented to the Public Service Advisory Committee (PSAC). The PSAC may authorize LRS staff to undertake collection efforts or may refer the matter to OSB general counsel's office.~~

~~iii) iv) A panelist who has been delinquent more than 30 days past due in payment three times is subject to permanent expulsion from the LRS. The PSAC's decision on the expulsion is final.~~

e) Special Circumstances:

i) If an LRS-referred client puts other potential clients in touch with the panelist for the same matter (a multiple-victim auto accident or multiple wage claims against the same employer, for instance), the remittance due to the LRS applies to all fees earned on the matter.

ii) If an LRS-referred matter closes and some time later the client contacts the panelist on an unrelated matter, no remittance is due to the LRS on the new, unrelated matter.

iii) If a panelist elects to share or co-counsel a client matter with another lawyer for any reason, the panelist is solely responsible to the LRS for remittances on all fees generated during the course of representation of the client in that matter (including any fees paid to the other lawyer brought in on the matter).

9) Renewals: To remain an active panelist in the LRS and continue to receive referrals, panelists must:

a) Be current with all remittances owed to the LRS and pay all registration fees owed for the upcoming program year by the deadline stated in the renewal notice; and

b) Continue to be eligible to participate in the LRS and otherwise be in compliance with the Policies and these Procedures.

10) Reporting: LRS will provide panelists a monthly report listing all the panelist's pending or open referral matters. Panelists will complete the report indicating the status of each matter; failure to complete all such reports within 30 days will be grounds for removal from rotation. Reports are considered delinquent until completed and all remittances are paid.

~~11) If, in its sole discretion, the LRS deems it necessary, the LRS may audit the client file and the panelist's records to determine if the correct remittances have been paid.~~

~~11~~2) Follow-up: LRS sends follow-up surveys to clients and potential clients asking if they consulted with the panelist, amounts of fees paid, and if they were satisfied with the LRS process. Any pertinent information will be forwarded to panelists, and, if deemed necessary by LRS staff, to the PSAC. The LRS also routinely monitors referrals by checking court dockets, legal notices, etc.

~~12~~3) Remittance Disputes/Audits: LRS may request panelists to verify that correct remittances have been paid. Upon request, panelists will provide verification to LRS to the extent reasonably necessary to resolve the remittance dispute and to the extent the rules of professional conduct allow. Remittance disputes between the LRS and panelists

~~that cannot be resolved are subject to collection action. Remittance disputes between the LRS and panelists that cannot be resolved through intervention by the Executive Director or the PSAC are subject to collection actions. Participation in the LRS constitutes the panelist's and the client's authorization for the LRS staff or a duly authorized agent to examine and audit the panelist's financial records and the legal files with regard to clients. The audit may include but is not limited to charts of accounts, general account records, court filing records, calendars, appointment records, time sheets, docket sheets, engagement letters, fee agreements and contracts with clients — in any and all forms and formats, media, files, devices, computers and accounts, whether electronic or otherwise.~~

134) Participation in other Referral & Information Services Programs: In addition to administering the LRS, the OSB Referral & Information Services Department also administers the following other programs that provide referrals in the same or similar areas of law: Military Assistance Panel, Problem Solvers Program and Modest Means Program. More information can be found at www.osbar.org/forms.



June 11, 2012

Via U.S. Mail

American Bar Association
House of Delegates
740 15th Street, N.W.
Washington, DC 20005

Re: House of Delegates Resolution 108

Honorable Delegates,

The undersigned organizations write regarding House of Delegates Resolution 108. While we support the American Bar Association in urging state and territorial bar associations to accommodate military *spouse* attorneys, we are concerned about the resolution's failure to address military *domestic partner* attorneys.

The House's failure to explicitly include military domestic partner attorneys is important and has real consequences. As we read the ABA resolution, "spouse" is not defined in any particular way. As such, when state and territorial bars adopt Resolution 108, those bars would likely be incorporating state definitions of "spouse," unless they adopt a rule that explicitly includes same-sex partners within its accommodations. Under most state laws, the term "spouse" does not include same-sex partners.

This failure to address the needs of domestic partners of military personnel is all the more frustrating in that the House of Delegates passed Resolution 108 in the same year in which Don't Ask, Don't Tell was finally eliminated, thereby allowing LGBT military personnel to serve openly, including to acknowledge publicly their partners. Domestic partner attorneys of military personnel are as deserving of the accommodations of Resolution 108 as are spouse attorneys.

We ask the House of Delegates to revisit and revise Resolution 108 to extend its protections to military domestic partner attorneys. Because state bar associations are adopting Resolution 108



already, this matter is urgent. As such, we ask the House of Delegates to take this matter up under emergency procedures and measures.

Respectfully,

Kevin Clonts
Chair,
OGALLA: The LGBT Bar Ass'n of Oregon

cc: Office of the First Lady Michelle Obama

Mark Johnson Roberts, Oregon ABA Delegate

Mitzi M. Naucler, Oregon State Bar President

Oregonian Editorial Staff

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: June 22, 2012
From: Sylvia E. Stevens, Executive Director
Re: Client Security Fund Claims Recommended for Payment

Action Recommended

Consider the May 5, 2012 recommendation of the CSF Committee that the following claims be paid:

No. 2010-16 FIELDS (Bazurto)	\$17,517.00
No. 2010-25 GINSLER (Kiker)	2,434.03
No. 2011-23 MORASCH (Baker)	3,900.00
No. 2012-30 HAMMOND (Elliott)	650.00
No. 2012-06 GRUETTER (Gravance)	50,000.00
No. 2012-11 GRUETTER (Hines)	50,000.00
No. 2012-12 GRUETTER (Vice)	50,000.00
No. 2012-13 GRUETTER (Standley)	13,855.63
No. 2012-16 GRUETTER (Ihrig)	500.00
No. 2012-21 GRUETTER (Meekins)	6,636.59
No. 2012-32 GRUETTER (Lowery)	2,823.17

TOTAL **\$198,316.42**

The committee has given considerable thought to how to pay the outstanding claims, given that the total of pending claims exceeds the Fund balance. At present there are 51 claims pending (including those in this report). If paid at the maximum allowed, the total of the outstanding claims is \$1,031,743. The Fund balance as of April 31, 2012 was \$805,000, leaving a shortfall of \$208,743. (Note: the cost of operating the fund is also charged against the fund balance, so the shortfall will actually be greater.¹) Claims from clients of Bryan Gruetter make up more than \$750,000 of the total outstanding.²

The committee identified three possible options for dealing with the fund shortfall: (1) hold all approved claims until the November meeting and pro rate payments from available funds, with the balance to be paid in 2013 after the next assessment is collected;³ (2) pay all

¹ For 2012, the budgeted expenses other than payment of claims but including the ICA is \$58,800. Most of that is salaries that are ½ paid by the middle of the year; assuming about \$30,000 remaining expense, the year-end shortfall will be approximately \$238,743.

² In its 45 year history, the largest CSF payout on claims against a single lawyer was \$179,000 on account of Fred Young in 1989-1990. Six other lawyers have been responsible for claims in excess of \$100,000: Roger Anunsen, \$137,000; Merlin Estep, \$108,000; William Judy, \$176,000; Lewis King, \$101,000; Carl Loennig, \$151,000; and Gary Rae, \$131,000.

³ The Committee will have a formal recommendation for the BOG in August, but will likely ask that the annual CSF assessment (\$15) be at least doubled.

claims as they are completed until the available fund balance is depleted, deferring payment of the others until early 2013 after the next assessment is collected; (3) pay all claims as they are completed with a “loan” from OSB general reserves, to be repaid as CSF funds are available in 2013.

By a unanimous vote, the committee recommends the third option as best exhibiting the OSB’s commitment to assisting the claimants, particularly the victims of Bryan Gruetter. The committee urges the BOG to authorize a “loan” from general reserves if needed to pay claims as they are presented between now and November. Any such amounts will be reimbursed to the general reserves from the 2013 assessment.

Background

No. 2010-16 FIELDS (Bazurto) - \$17,517

This claim is a comedy/tragedy of errors and miscommunications. Cecilia Bazurto suffered serious permanent injuries from an auto accident in December 2003. She was treated at OHSU, which thereafter duly perfected a hospital lien for approximately \$18,600. Bazurto retained Salem attorney Stanley Fields to pursue a personal injury claim on her behalf. (Note: Bazurto does not speak or read English and relies on others to communicate and translate for her.)

In April 2004, Bazurto’s injury claim was settled for policy limits of \$25,000. After paying himself his 1/3 fee, Fields retained the balance of the settlement funds, explaining to Bazurto that he would try to negotiate a compromise of the OHSU lien so she would receive some of the settlement funds. (After deduction of Fields’ fee, the balance of funds was insufficient to satisfy OHSU’s lien.) Thereafter, Bazurto heard nothing from Fields and he made no offer to OHSU.

In June 2005, Fields submitted a Form B resignation arising out of his mishandling of several client’s trust funds, failure to file tax returns, and failure to respond to the bar’s inquiries. His representation of Bazurto was not part of the disciplinary matter. Bazurto claims she was never informed that Fields could no longer practice law and never received any information about how to contact him or get her money.

In October 2005, Bazurto filed claims with the CSF and the PLF. Both the CSF and the PLF investigated the matter and determined that the funds remained in Fields’ trust account. In September 2006, the CSF denied Bazurto’s claim, finding no evidence of dishonesty. The PLF also denied her claim, finding no negligence on Fields’ part. The PLF referred Bazurto to a Salem attorney who was willing to help her resolve the OHSU lien and she was advised by the CSF to follow up with that attorney because the funds in Fields’ trust account could be released only upon resolution of the OHSU lien.

Bazurto did nothing more (in retrospect it is apparent she didn’t know what to do) until February 2007, when she again contact the PLF. The PLF contacted Fields and arranged for him to issue a check payable jointly to Bazurto and OHSU. In June 2007 Bazurto received the check, in the amount of \$17,517, but again seemed not to know how to proceed and took no action

for several months. OHSU also appears to have done nothing. In the summer of 2008 Bazaruto sent the check to OHSU, which was unable to negotiate the check because of its age. OHSU tried unsuccessfully to contact Fields for a replacement check. Bazaruto again contacted the PLF. In November 2009, Fields responded that he had withdrawn Bazaruto's funds from trust and could not replace them. The PLF passed that information on to Bazaruto.

In June 2010, Bazaruto filed another claim with the CSF (the spelling of her name differed from the original claim, so the CSF didn't realize for some time that it was the same matter). The CSF Committee member originally assigned to investigate did nothing for nearly 18 months. (She was eventually removed from the Committee for failure to attend meetings.) The claim was reassigned in December 2011.

The CSF subpoenaed Fields' trust account records from his bank and confirmed that between March and August 2009, Fields withdrew all but \$24 from his trust account. The investigator also confirmed that OHSU's lien has expired and that OHSU has for several years considered Bazaruto's account uncollectible.

Bazaruto has new counsel (John Zbinden) who says OHSU is now willing to accept \$10,000 to settle Bazaruto's account. Zbinden questions the viability of OHSU claim, given its age.

The CSF recommends that Bazaruto be awarded \$17,517 based on the amount Fields tried to refund in June 2007.⁴ (Note, however, that Fields' trust records showed a balance in June 2007 of \$17,584.75; the discrepancy has not been explained.) The committee also recommended that the requirement for a judgment be waived on the grounds that Fields' whereabouts are unknown, his ability to satisfy a judgment is doubtful, and it would be a substantial hardship for Bazaruto to pursue a judgment.

NOTE: Subsequent to the Committee's decision on this claim, a newly-appointed Committee member informed the Fund Administrator that Fields was employed by the Workers' Compensation Division. The Administrator spoke to Fields, informing him of the likelihood that the CSF will reimburse Bazaruto and that the Bar will seek to recover that payment from him. Fields was cooperative, acknowledging his obligation and apparently willing to work out some kind of payment plan. We will negotiate the details of a repayment plan with him once the claim is paid; any payment plan will be conditioned upon Fields stipulating to a judgment in favor of the Bar.

⁴ Although this claim is old, it falls within the applicable limitations period. CSF Rule 2.8 requires that claims be presented within 2 years of the lawyer's resignation or the date the claimant should have known of the loss, but in no event more than 6 years from the date of the loss. Bazaruto's first claim was filed in 2005, while Fields still had her funds. Her second claim was filed in 2010, approximately 6 months after she learned that Fields has misappropriated her funds.

No. 2010-25 GINSLER (Kiker) – \$2,434.03

Jeffrey Kiker hired William Ginsler to secure the discharge of a particular debt in bankruptcy. Ginsler filed a Chapter 13 and handled the case for a couple of years, although he missed hearings and showed up for others unprepared. Early in the representation, Ginsler recovered \$2434.03 that had been wrongfully garnished by one of Kiker's creditors.

In April 2010, Ginsler obtained permission to withdraw as Kiker's attorney in the Chapter 13, citing "health reasons." At the time he was in the midst of a disciplinary case involving more than 11 client matters; he resigned Form B in October 2010.

At some point, Kiker learned that the Chapter 13 would not discharge the debt he was concerned about. Kiker went to the PLF, which arranged for new counsel to take over the bankruptcy and convert it to a Chapter 7. The bankruptcy was ultimately concluded successfully without further cost to Kiker.

In his application for reimbursement, Kiker sought more than \$8800, comprised of \$2800 in fees paid to Ginsler, \$3600 paid to the Chapter 13 trustee and the \$2434.03 garnishment recovery that Ginsler had never delivered to him. The bankruptcy court records show that all Chapter 13 payments were accounted for and were used to pay creditors and administrative expenses, including Ginsler's fees.

The committee recommends an award to Kiker of \$2434.03 representing the recovered garnishment proceeds that Ginsler apparently misappropriated. (The committee concluded that Kiker suffered no loss in regard to the Ginsler's fees or the Chapter 13 payments.)The committee also recommends waiving the requirement for a civil judgment; Ginsler's Form B was for very similar conduct in numerous cases. Moreover, Ginsler's whereabouts are unknown and it would be difficult for Kiker to obtain a judgment.

No. 2011-23 MORASCH (Baker) - \$3900

Lori Baker hired Marsha Morasch in October 2009 to represent her in a marital dissolution involving custody and parenting time issues. She deposited a \$5000 retainer against Morasch's \$250/hour fees. Morasch filed a petition and a temporary custody hearing was set for January 18, 2010. On the day of the hearing, Morasch's assistant informed Baker and opposing counsel that Morasch would not appear because she had broken both of her feet. The matter was reset to March 2, 2010. Baker had a meeting scheduled with Morasch on February 18 to prepare for the hearing, but Morasch cancelled without explanation.

On the morning of March 2, 2010, opposing counsel emailed a proposed stipulated order on temporary custody to Morasch. Baker told Morasch she couldn't agree to the terms of the proposed order and that she wanted to go ahead with the hearing. An hour before the hearing Morasch's assistant called Baker to say he couldn't locate Morasch and that Baker would need to go to the hearing by herself. Baker did so and, feeling that she had no option, signed the proposed order prepared by opposing counsel. The next day Baker fired Morasch,

and requested that Morasch deliver her file and the unused portion of the retainer to Baker's new counsel. The file was delivered after several more requests, but Baker never received any portion of the retainer or an accounting from Morasch.

Morasch stipulated to a six-month suspension beginning February 2011 during the pendency of formal proceedings involving seven client matters, including Baker's. She has not sought reinstatement. (The CSF has made awards totaling \$11,600 to three of Morasch's other clients.)

CSF Rule 2.2 allows for a refund of fees only if the lawyer's services are of no or only *de minimis* value to the client. The committee found that to be essentially the case here, since Baker's new attorney had to renew discovery requests and re-negotiate the temporary custody order. Baker did get value from the petition Morasch filed, however. Accordingly, the committee recommends payment of \$3900, giving credit for the filing fee and about 3 hours of work by Morasch. No judgment is required because Morasch's disciplinary stipulation arose in part from her representation of Baker.

2012-30 HAMMOND (Elliott) - \$650

Mark Elliott hired Paula Hammond in December 2011 to prepare a QDRO to effectuate the division of his former wife's pension, as directed in their divorce judgment. He paid Hammond \$650, which he understood would cover the work unless an unanticipated complication arose.

In mid-January 2012, Hammond informed Elliott that she was closing her practice, citing health reasons. She did not mention that she had signed a Form B resignation on December 29, 2011 that would be effective February 16, 2012.

Hammond had arranged for Ann Mercer to complete the QDRO, which she did, charging Elliott the same fee that Hammond had quoted. Mercer said Hammond's file showed little or no work on Elliott's matter.

Elliott had several e-mail exchanges with Hammond inquiring about a refund of his unearned fees; in her last e-mail (dated February 7, 2012) she promised "I'll be sending it to you shortly, Mark. I haven't forgotten you."

Hammond's resignation was in connection with four client complaints as well as additional charges identified by the bar while investigating the client complaints. Three of the matters involved allegations of excessive fees or failure to account for and refund unearned fees. In response to the Assistant Disciplinary Counsel's inquiry whether Hammond would be returning any of the client's funds in conjunction with her resignation, Hammond's attorney responded, "I think it makes sense to refer these folks to the Client Security Fund."

The committee recommends an award to Elliott for the entire \$650 and a waiver of the requirement for a judgment. Hammond's resignation was for virtually identical conduct with

other clients; she is also without assets to satisfy a judgment and the amount in question doesn't justify the cost of even a small claims action.

Bryan Gruetter Claims *Common Facts*

Bryan Gruetter had a successful plaintiff's personal injury practice in Bend for more than 8 years. Prior to opening his own office, he worked at the Dunn Carney and Hurley Re firms. He was well known and widely respected in the Bend legal community. Gruetter was Treasurer of the ONLD in 1994 and served on the OSB Legal Ethics Committee (he was chair in 1995). For several years he presented annual ethics CLEs in Bend with Deschutes County Judges.

In 2010 and 2011 Gruetter had two young lawyers working with him as independent contractors, Joe Walsh (Bend office) and Troy Woods (Portland office). He also had several support staff. Gruetter's wife, Michelle, handled the business affairs of the practice including all disbursements from the trust account.

Gruetter had an unblemished disciplinary history until he was admonished in August 2011 for failing to promptly disburse payment to a third party lienholder. He excused his delay as the result of failing to enter the payment date in his "tickle system," being caught up in a complex trial, and health issues that took him away from the office. He assured DCO that he was hiring a new assistant to help bring order to his practice.

Unbeknownst to Disciplinary Counsel's Office, colleagues in Bend had noticed for several months that Gruetter was behaving strangely. He was often seen playing video poker in bars, he missed appointments and increasingly failed to show for court hearings or sought last-minute continuances alleging on health problems or calendar conflicts.

In late November 2011, a complaint was filed alleging that Gruetter had failed over the course of a year to pay a client's hospital lien. The hospital had recently obtained a judgment and was garnishing the client's wages. The bar also heard from a local attorney (and former employee of Gruetter) that Gruetter had been absent from his office for weeks on end, and that he was not responding to client inquiries and that the complainant was only one of many clients who had similar issue with Gruetter.

Within a few days, additional complaints began to come in, all alleging inability to communicate with Gruetter or to receive payments from his office. By January 20, 2012, the bar had received 16 complaints. On January 24, 2012, on the Bar's petition, the Deschutes County Court entered a temporary protective order making OSB the custodian of Gruetter's practice. On February 3, 2012, a stipulated order appointing OSB as custodian was entered. On February 10, 2012, the Bar filed a petition for an order suspending Gruetter from practice during the pendency of formal disciplinary proceedings. Within a few weeks, Gruetter submitted a Form B resignation (citing 25 pending matters) which was accepted by the Supreme Court and became effective April 19, 2012.

Within days of the first disciplinary complaint, Gruetter's clients began to present applications for reimbursement from the Client Security Fund. As of June 12, 2012, there were 31 claims pending with the Fund alleging losses ranging from \$500 to \$142,000. The Gruetter claims constitute more than \$750,000 of the potential Fund payments discussed in the "Action Recommended" section above. Through the custodianship we were able to get copies of the client files for most of the claimants. We also subpoenaed Gruetter's Lawyer Trust Account records from January 2010 through January 2012.

The custodianship is closed; pursuant to the court's final order the custodian has delivered the \$2500 in Gruetter's trust account to the CSF. We understand the US Attorney will be prosecuting Gruetter for wire fraud and we have been cooperating with the USAO in exchanging documents (including Gruetter's client files which were seized by Bend police in March 2012 and eventually released to the USAO when it took over the prosecution).

Based on its review of the first six Gruetter claims, the CSF Committee recommends that the requirement for judgments be waived in all cases. In some of the smaller cases that were part of his Form B resignation, no judgment is required in any event. For the others, the committee believes that pursuing a judgment against Gruetter is pointless. He has no assets of which anyone is aware, and he is likely to be convicted and imprisoned before too long. Additionally, it would be an undue burden on his clients to have incur the additional expense of legal proceedings.

No. 2012-06 GRUETTER (Gravance) - \$50,000

David Gravance hired Gruetter in January 2011 to pursue a medical malpractice case. He agreed to a 40% contingent fee and to pay all litigation costs. Client deposited \$300 with Gruetter toward those costs.

The case settled in mediation for \$85,000 in December 2011. The full settlement amount was deposited into Gruetter's trust account. After deduction of Gruetter's fee (\$34,000) and unreimbursed costs (\$470), Gravance's share was \$50,530. Although Gruetter's file suggests a health insurer lien and unpaid medical expenses in excess of \$33,000, there is no record of any payments. The investigator determined that Gravance is contractually obligated to BlueCross/BlueShield for approximately \$27,000. Client will be denied future benefits unless the outstanding amount is paid.

The committee recommends that Gravance be awarded \$50,000, the maximum allowable from the Fund.

No. 2012-11 GRUETTER (Hines) - \$50,000

In 2008 Gruetter represented a minor child in a case against the State of Oregon for injuries suffered in foster care. The settled in June 2010 for \$100,000. After deduction of Gruetter's fee of \$33,333 and costs of \$1,533, the minor child's share was \$65,134.

According to the court order approving the settlement, the minor's share was to be placed in a conservatorship account. Gruetter deposited the settlement proceeds into his trust account on June 30, 2010. Eight months later, in February 2011, Gruetter secured the appointment of Donna Hines as conservator. When Hines didn't receive the child's share immediately, she hired Jim Peterson to help her. Peterson made demand on Gruetter in March, August and December 2011, to no avail. In January 2012, Hines filed suit against Gruetter in Deschutes County seeking damages of \$195,000 for breach of contract, breach of fiduciary duty, conversion, negligence, and financial abuse of a vulnerable person. The case is still pending, with Gruetter represented by the PLF. No quick resolution is expected.

Both Hines and the child's parents have made claims to the Fund. The committee recommends an award of \$50,000 to Donna Hines as conservator for the minor child. The fee agreement was signed by the child's parents and by the guardian ad litem (a local attorney). Hines was appointed conservator after the case was resolved and the GAL was relieved of responsibility. CSF Rule 2.1 requires that a loss of money is eligible for reimbursement if the claim "is made by the injured client or the client's conservator, personal representative, guardian ad litem, trustee, or attorney in fact."

No. 2013-12 GRUETTER (Vice) - \$50,000

In October 2008 Joe Vice retained Gruetter's firm to probate the estate of and pursue a wrongful death claim concerning his mother, Bertha Vice. Joe was appointed personal representative of Bertha's estate and the wrongful death claim was filed. The claim was settled for \$215,000. After deducting attorney's fees, medical expenses, burial expenses, and DHS and Medicare liens, Gruetter's firm calculated \$130,173.79 to be distributed among Bertha's heirs.

In November 2011, the heirs/beneficiaries agreed to the following apportionment of the net settlement proceeds of \$130,173.79, which was confirmed in an order in the probate:

Son and PR, Joe Vice	\$71,595.57
Daughter, Betty Neimester	26,034.76
Son, Jay Vice	26,034.76
Granddaughter, Vanessa Grome	3,254.34
Granddaughter, Tammy Kearns	3,254.34
Granddaughter, Melody Howell	2,169.57
Grandson, Richard Vice	2,169.57
Great-granddaughter, Mary Vice	2,169.57

Over the next few months, Gruetter's office paid all of the expenses with the exception of the \$644.46 DHS lien, but never distributed any funds to Joe or the other beneficiaries. As a result, the loss attributable to Gruetter is increased to \$130,818.25.

Joe Vice submitted the CSF application for reimbursement for himself and "for listed family members" (and attached a copy of the apportionment agreement of the above-named

family members. On May 4, 2012, the CSF received a “revised application” for reimbursement from attorney Brooks Cooper on behalf of Joe, Betty, Jay and Tammy asking that *each* of them (but not the other beneficiaries) be reimbursed in the amounts shown above (with Joe’s reimbursement limited to the \$50,000 CSF maximum award).⁵

The CSF Committee discussed at some length whether to consider this as one claim or eight claims (the committee had not seen the “revised” claim of May 4, but raised the issue on its own based on the apportionment agreement). In that discussion, the committee took note of the following:

- CSF Rule 2.1 provides that a loss is eligible for reimbursement if the claim is made by “the injured client or the client’s conservator, personal representative, guardian ad litem, trustee, or attorney in fact.”
- Pursuant to Rule 1.4: “‘Client’ means the individual, partnership, corporation, or other entity who, at the time of the act or acts complained of, had an established attorney-client relationship with the lawyer.”
- CSF Rule 2.5 requires that: “ The loss arose from, and was because of:
 - (1) 2.5.1 an established lawyer-client relationship; or
 - (2) 2.5.2 the failure to account for money or property entrusted to the lawyer in connection with the lawyer’s practice of law or while acting as a fiduciary in a matter related to the lawyer’s practice of law.

Several committee members argued that Rule 2.5.2 is inconsistent with 2.1 and 2.5.1 because it appears to allow reimbursement to non-clients whose money or property was entrusted to the lawyer acting as a fiduciary. They suggested that Gruetter was holding funds of Bertha’s estate for the benefit of the beneficiaries and should thus be eligible for reimbursement under 2.5.2.

However, a majority of the committee disagreed, concluding that only clients are eligible for reimbursement from the CSF. Here, Joe Vice was Gruetter’s client and as such he is the only claimant to the fund. Whether Joe is required to share the award according to the apportionment agreement is an issue for Joe and his lawyer to determine. Accordingly, the committee recommends an award of \$50,000 payable to Joe Vice as personal representative of the estate of Bertha Vice.

⁵ The four persons named in the “revised” application are apparently the statutory beneficiaries of the wrongful death claim. Mr. Vice is now claiming that Gruetter committed malpractice in allowing him to agree to share the wrongful death proceeds with non-statutory beneficiaries.

No. 2012-13 GRUETTER (Standley) - \$13,855.63

Gina Standley retained Gruetter in November 2010 for representation in a personal injury case; he assigned it to Troy Wood. The case was settled a year later for \$20,960 and a check in that amount was deposited into Gruetter's trust account on November 18, 2011.

On December 6, 2011, Wood sent Standley a final accounting letter showing a net recovery to her of \$13,885.63 after deduction of attorney fees of \$6,986.66 and costs of \$117.71. On December 19, 2011, Standley sent a letter demanding release of her share of the settlement. Wood was unable to assist because he had no access to funds in trust; all distributions had to go through Michelle or Bryan Gruetter. Neither Gruetter responded to Standley's letter or phone messages.

The committee recommends an award to Standley in the amount of \$13,885.63.

No. 2012-16 GRUETTER (Ihrig) - \$500

Sandra Ihrig engaged Gruetter in August 2011 in connection with a potential medical malpractice claim. Gruetter's office asked her to sign medical releases, send names of her medical providers, and pay \$500 for a "medical review" or evaluation of her claim. Ihrig did as instructed.

Ihrig communicated with Gruetter's office over the next couple of months, principally to provide them with some of her recent medical records as well as other information she had researched about the doctor who treated her and the drugs she was given. In November 2011, Gruetter's office sent Ihrig copies of records it had obtained, but she heard no more from them.

The file does not reflect that Gruetter ever reviewed Ihrig's records or any other aspect of her case. The committee concluded that Ihrig was entitled to an award of the entire \$500 she paid to Gruetter because the services she received were *de minimis* at best.

No. 2012-21 GREUTTER (Meekins) - \$6,636.59

Constance Meekins retained Gruetter in October 2009 to pursue a claim for injuries sustained in a fall. Gruetter assigned the matter to Joe Walsh. Suit was filed and her claim was settled in October 2011 for \$12,000. The funds were deposited into Gruetter's trust account on November 28, 2011.

On December 22, Walsh prepared a final accounting for Meekins. After deducting Gruetter's 1/3 fee and expenses of \$1363.41, there remained \$6,636.59 for distribution to Meekins. Despite several requests from Walsh, no funds were paid to Meekins.

The committee recommends an award to Meekins of \$6,636.59.

No. 1012-32 GRUETTER (Lowery) - \$2823.17

Kathleen Lowery hired Gruetter in August 2009 to pursue a claim for injuries resulting from laser skin treatments. The claim was submitted to arbitration before Mike McClinton; Lowery signed an arbitration agreement providing that she was responsible for ½ of the costs of mediation.

Through mediation, Lowery's claim was settled for \$50,000; the proceeds were received by Gruetter and deposited into his trust account. On August 23, 2011, Gruetter send Lowery a check for \$28,894.66 along with a "1st preliminary Accounting" showing that he was holding back \$1,323.17 for a medical lien and \$1,500 for "final costs." He promised a final accounting in October after all outstanding obligations had been resolved.

In late July, Gruetter's office had contacted the medical provider's claims administrator to ascertain if it would reduce the amount of its lien. In response, the administrator advised it no longer represented the provider and referred Gruetter's office to the new administrator. There is nothing in Gruetter's file to indicate that his staff made any effort to resolve the medical lien. (Lowery has tried to do so on her own, but apparently gets no response from the administrator or the provider.) Gruetter also never paid the arbitrator's fee of \$490 or any other "final costs."

The committee concluded that Lowery has suffered a loss of the \$2,823.17 withheld by Gruetter. They considered at some length whether the CSF should reduce Lowery's award by \$490 and pay the arbitrator directly to ensure he was compensated. However, after a thorough discussion including whether it was appropriate for the CSF to assume responsibility for payments to third parties, the committee recommended an award to Lowery of the entire sum, leaving the resolution of her obligation to Mr. McClintock to the two of them.

MEMORANDUM

TO: Board of Governors, Oregon State Bar
FROM: Mike Haglund, Ethan Knight
RE: Proposed Legal Job Opportunities Work Group
DATE: June 18, 2012

One of the major challenges facing our profession is the lack of job opportunities for recent law school graduates during the last three years of the Great Recession. This memorandum summarizes the reasons that we jointly recommend the formation of a fast track BOG Task Force, tentatively named the Legal Job Opportunities Work Group.

During the last three years, approximately two-thirds of the graduates of U.S. law schools have been unable to find full time work in the profession. Law firms have dramatically reduced or completely eliminated their hiring in response to a significant reduction in the demand for legal work. Many firms have actually cut both lawyers and staff positions. As a result, the historic engine driving much of legal employment – law firms of various sizes – has been sputtering and many new admittees who are strongly committed to pursuing the profession have resorted to hanging out their own shingles as solo practitioners. These developments have significant consequences for the Oregon State Bar: greater needs for mentoring, CLE and professionalism opportunities; potential long-term loss of a significant share of those lawyers who passed the bar in 2009-12 to ongoing membership in the OSB; and the potential for a long-term negative view of the OSB by new admittees who see the organized bar as doing very little to address their significant needs.

Memo to Board of Governors,
Oregon State Bar
June 18, 2012
Page 2

Mitzi, Ethan and I had a brainstorming session on this topic last month. The basic idea is to organize a stakeholder summit involving bar leaders, law students, law school deans and recent admittees and public or private sector individuals with relevant economics experience to examine what steps the organized bar could take to address the existing lack of legal jobs for recent law school graduates.

Washington has a new program that involves a partnership with that state's three schools doing the intake for a state-wide modest means program designed to match underserved client groups with lawyers willing to charge discounted rates, many of them recent grads. The Washington State Bar is funding three half-time positions at the law schools at an annual cost of slightly more than \$100,000. Whether the OSB wants to go that route when we already have skilled intake personnel working for our Lawyer Referral Service is an open question. However, to do something similar, we would need to expand out modest means program and provide training and support for those serving on the modest means panels.

Another idea involves approaching the law schools about establishing an evening class for all comers (students and new practitioners), staffed by a rotating corps of three to five experienced lawyers at each law school. The class could cover designated practice management topics each semester in the first 90 minutes and then open things up for a wide-ranging Q&A for the next 90 minutes. This would add a substantial ongoing resource for new lawyers that supplements the mandatory mentoring program.

Anecdotally, we know that there are legal job opportunities in smaller communities throughout Oregon. There may be a way to develop a system for matching those opportunities with interested new lawyers which serves both new and soon-to-retire practitioners.

This Task Force could also provide an entree for opening a dialog with the deans of the Oregon law schools regarding class size and the unique needs of a growing percentage of their student bodies entering solo or small firm practice after graduation.

We propose the establishment of a BOG task force that would recruit members over the next 60 days, hold a summit in the fall and then generate a report to the BOG with specific action item proposals for decision in late 2012 and implementation in 2013. The Task Force would include key leaders from the ONLD and MBA YLS, who view the legal job opportunity issue as one of bar's the top priorities.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: June 22, 2012
Memo Date: June 18, 2012
From: Denise Cline, MCLE Program Manager
Re: Member Request for Review

Action Recommended

Decide whether to overturn or uphold the MCLE Committee's decision to deny Kevin Lucey's request for a waiver of the \$200 MCLE late fee.

Background

On March 15, 2012, the MCLE Program Manager denied Mr. Lucey's request for a waiver of the \$200 MCLE late fee. At its meeting on June 8, the MCLE Committee unanimously upheld the MCLE Program Manager's decision. Mr. Lucey is requesting Board of Governors review of that decision.

Attached are the materials reviewed by the MCLE Committee on June 8.

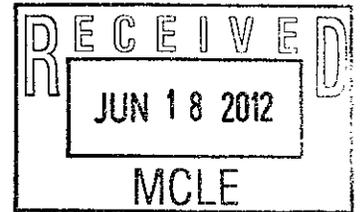
FAX
503/ 273-8842

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1412 AMERICAN BANK BUILDING
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PORTLAND, OREGON 97205
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TELEPHONE
503/ 222-7178

June 15, 2012

Oregon State Bar
P.O. Box 231935
Tigard, OR 97281-1935
Attn: Denise Cline, MCLE Administrator



pd. \$200
ck# 6339

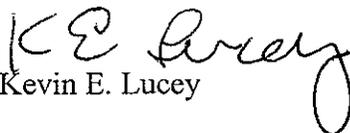
Dear Ms. Cline:

I wish the committee's decision to be reviewed by the Board of Governors pursuant to MCLE Rule 8.1(b). Please submit to the Board my previous correspondence.

I am enclosing a check to the OSB for \$200, with the understanding that this money will be returned to me should the Board grant my waiver request.

Thank you.

Sincerely,


Kevin E. Lucey

June 8, 2012

Kevin E Lucey
621 SW Morrison St #1412
Portland, OR 97205

Re: Request for review

Dear Mr. Lucey:

At its meeting today, the MCLE Committee reviewed your request for a waiver of the \$200 MCLE late fee.

The Committee voted unanimously to uphold my decision to deny your request for a waiver. Pursuant to my March 20 letter, the \$200 late fee is due in our office no later than 5:00 p.m. on Friday, June 22.

Decisions of the MCLE Committee may be reviewed by the Board of Governors pursuant to MCLE Rule 8.1(b).

Thank you.

Sincerely,

Denise Cline
MCLE Program Manager
Ext. 315, Fax: (503) 684-1366
Email: dcline@osbar.org

OREGON STATE BAR

MCLE Committee Agenda

Meeting Date: June 8, 2012
Memo Date: March 22, 2012
From: Denise Cline, MCLE Program Manager
Re: Member Request for Review

Action Recommended

Review member Kevin Lucey's request for review of my decision to deny his request for a waiver of the \$200 MCLE late fee.

Background

Mr. Lucey's letter of March 13 requesting a waiver of the \$200 MCLE late fee, my March 15 letter denying his request and his March 19 letter requesting Board of Governors review of my decision are attached. Although Mr. Lucey addresses his letter to the Board of Governors, his request is to be reviewed by the MCLE Committee pursuant to MCLE Rule 8.1(a).

Mr. Lucey completed his child abuse reporting credit for the 2006-2008 reporting period in January 2009. In February 2009, he paid a \$200 late fee for failure to complete his MCLE requirement before the end of the 2008 reporting period. When he filed his compliance report for the 2009-2011 reporting period, he listed the same child abuse reporting program that he used to complete his 2008 requirement. He cannot claim credit for an activity for which he has already obtained MCLE credit. (MCLE Rule 5.7(d)) He completed another child abuse reporting credit in March 2012 to complete his requirement for the 2009-2011 reporting period and requested a waiver of the \$200 late fee.

Mr. Lucey's failure to complete his MCLE requirement by the end of the 2011 reporting period is due to poor recordkeeping. Therefore, I denied his request for a waiver of the \$200 late fee.

Attachments:

- Kevin Lucey's 3/13/2012 letter
- My 3/15/2012 response
- Kevin Lucey's 3/19/2012 request for review

March 20, 2012

Kevin E Lucey
621 SW Morrison St #1412
Portland, OR 97205

Re: Request for Review

Dear Mr. Lucey:

We received your March 19 letter requesting Board of Governors review of my decision to deny your request for a waiver of the \$200 late fee.

Pursuant to MCLE Rule 8.1(a), this matter will be reviewed by the MCLE Committee at its next regular meeting, which is scheduled for Friday, June 8, at noon. The meeting will be held here at the Oregon State Bar Center or, if you prefer, you may participate via teleconference. Please let me know if you will be attending or participating in the meeting.

The Notice of Noncompliance sets forth an April 13, 2012 deadline to pay the \$200 late fee. Because the next MCLE Committee meeting is scheduled for June 8, I will grant you an extension until June 22 to cure your noncompliance. If the Committee determines that you do not owe a late fee, no action is needed on your part. If the Committee determines that you owe a late fee, you will have until 5:00 p.m. on Friday, June 22, to pay the fee.

Please let me know if you have any questions.

Thank you.

Sincerely,

Denise Cline
MCLE Program Manager
Ext. 315, Fax: (503) 684-1366
Email: dcline@osbar.org

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March 19, 2012

RECEIVED

MAR 20 2012

Oregon State Bar
Executive Director

Oregon State Bar
P.O. Box 231935
Tigard, OR 97281-1935
Attn: Board of Governors

Dear Board of Governors:

Pursuant to OSB MCLE Rule 8.1(a), I am requesting review of an MCLE administrator's decision. On March 13, 2012, I mailed the following letter to Denise Cline, MCLE Program Manager:

"I just finished my reporting period and submitted my documentation in a timely manner. However, due to inadvertence on my part, I did not properly complete my child abuse reporting requirement.

"This problem started during my previous reporting period, 2006-2008. Somehow I failed to complete my child abuse reporting requirement during that period. I do not now remember the reason. In January 2009 I completed the training, submitted the paperwork and paid the \$200 penalty.

"When recording my hours following my 2009-2011 reporting period, I saw that I had completed child abuse reporting training during that period and recorded it as training for that period. This was unintentional, as I had forgotten that the child abuse MCLE I reviewed in January 2009 was to complete my MCLE requirements for 2006-2008. I did not believe that I was entitled credit for two periods based on a single MCLE viewing; I had simply forgotten the reason for the January 2009 viewing. I had not filed the contemporaneous screening log with my 2006-2008 documents as I should have, so when I saw the screening log and its 2009 date I simply assumed it was for the 2009-2011 period and included the MCLE with my compliance report for that period.

"You pointed out my error in a Notice of Noncompliance dated February 10, 2012. I have since completed the child abuse reporting training and I am enclosing the documentation along with my compliance report with an addendum recording the training.

"Pursuant to OSB MCLE Rule 9, I am asking the Bar to waive the \$200 penalty. I feel that this is essentially the same problem as last time repeating itself. To keep this from occurring again I am filing this 2012 training with my 2009-2011 documents and putting a note on it as a reminder that it should not be counted for my 2012-2014 reporting period.

"Thank you for your consideration of this waiver request."

On March 16, 2012, I received a letter from Ms. Cline dated March 15, 2012, denying my request for a waiver and explaining that my mistake does not constitute a hardship.

Oregon State Bar MCLE Rule 9 is the applicable rule governing my waiver request and reads as follows:

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

Broadly, there are three possible bases for which to have granted my waiver request: (1) that a hardship made compliance impossible or inordinately difficult; or (2) that special circumstances made compliance impossible or inordinately difficult; or (3) that the waiver is not inconsistent with the purpose of the MCLE rules. I believe that Ms. Cline’s ruling only considered the first of these three bases and did not consider the other two.

I was not outside the country on military duty, nor did I suffer from a grave illness, nor did I have any other reason for not completing this training that would easily be recognized as a hardship. My reason was that I thought that I had completed the required Child Abuse Reporting (“CAR”) Training within my reporting period and therefore did not make an attempt to obtain a second hour of training within the reporting period. And in fact I was correct: I had obtained the one hour CAR training within the reporting period. But I had forgotten the circumstances of that training – that I obtained it for the previous reporting period because I had inadvertently neglected to obtain it then.

This created a special circumstance – the attainment of training in January 2009 that the Rules nevertheless did not allow me to apply to my 2009-2011 period – that, coupled with my forgetting in December of 2011 the circumstances of that January 2009 training, made it inordinately difficult for me to obtain another hour of CAR training during that period.

When I obtain MCLE training such as the CAR training, with respect to those who require such training and provide it, I have no desire to obtain anything more than the minimum. Therefore, it would have been inordinately difficult to have the incentive to arrange a second hour of training when I believed that I had already completed my CAR training for my reporting period.

Finally, Rule 9 provides that a waiver can be granted if it is “not inconsistent with these Rules.” The purpose of the Rules is stated at their very beginning:

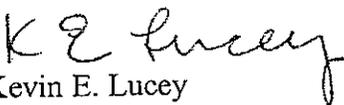
“It is of primary importance to the members of the bar and to the public that attorneys continue their legal education after admission to the bar. Continuing legal education assists Oregon lawyers in maintaining and improving their competence and skills and in meeting their obligations to the profession.”

CAR training deals with the last purpose – meeting an attorney’s obligation to the profession (or perhaps more accurately, to society). I obtained my hour of training to meet this requirement about one week ago. I had otherwise completed 58.5 hours of MCLE training in a timely manner.

Since my error was an honest mistake and not a shirking of my duties, I do not see how waiving the payment of a \$200 penalty would be inconsistent with the Rules. I certainly knew of this penalty, having paid it three years ago in somewhat similar circumstances, and yet knowledge of the penalty did not deter me from making this mistake. It could not have deterred me, because my mistake was inadvertent.

Thank you very much for your consideration of this request.

Sincerely,


Kevin E. Lucey

March 15, 2012

Kevin E Lucey
621 SW Morrison St #1412
Portland, OR 97205

Re: Request for waiver

Dear Mr. Lucey:

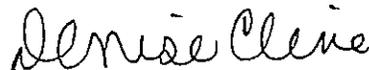
I received your request for a waiver of the \$200 MCLE late fee for not completing your minimum credit requirement by the December 31, 2011 deadline.

Your request for a waiver of the late fee is denied because there is no finding of hardship or other circumstance that makes compliance impossible or inordinately difficult. You have explained that you had forgotten that the child abuse reporting credit you completed in January 2009 was for your 2006-2008 reporting period and so you claimed credit for it again in the 2009-2011 reporting period. This is unfortunate but not considered a hardship.

Please see MCLE Rule 8.1(a) regarding review of my decision.

Thank you.

Sincerely,



Denise Cline
MCLE Program Manager
Ext. 315, Fax: (503) 684-1366
Email: dcline@osbar.org

KEVIN E. LUCEY

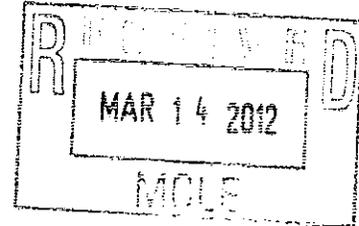
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March 13, 2012

Oregon State Bar
P.O. Box 231935
Tigard, OR 97281-1935
Attn: Denise Cline, MCLE Administrator



Dear Ms. Cline:

I just finished my reporting period and submitted my documentation in a timely manner. However, due to inadvertence on my part, I did not properly complete my child abuse reporting requirement.

This problem started during my previous reporting period, 2006-2008. Somehow I failed to complete my child abuse reporting requirement during that period. I do not now remember the reason. In January 2009 I completed the training, submitted the paperwork and paid the \$200 penalty.

When recording my hours following my 2009-2011 reporting period, I saw that I had completed child abuse reporting training during that period and recorded it as training for that period. This was unintentional, as I had forgotten that the child abuse MCLE I reviewed in January 2009 was to complete my MCLE requirements for 2006-2008. I did not believe that I was entitled credit for two periods based on a single MCLE viewing; I had simply forgotten the reason for the January 2009 viewing. I had not filed the contemporaneous screening log with my 2006-2008 documents as I should have, so when I saw the screening log and its 2009 date I simply assumed it was for the 2009-2011 period and included the MCLE with my compliance report for that period.

You pointed out my error in a Notice of Noncompliance dated February 10, 2012. I have since completed the child abuse reporting training and I am enclosing the documentation along with my compliance report with an addendum recording the training.

Pursuant to OSB MCLE Rule 9, I am asking the Bar to waive the \$200 penalty. I feel that this is essentially the same problem as last time repeating itself. To keep this from occurring again I am filing this 2012 training with my 2009-2011 documents and putting a note on it as a reminder that it should not be counted for my 2012-2014 reporting period.

Thank you for your consideration of this waiver request.

Sincerely,

Kevin E. Lucey

Oregon State Bar
Meeting of the Board of Governors

April 27, 2012

Open Session Minutes

The meeting was called to order by President Mitzi Naucler at 1:05 p.m. on April 27, 2012. The meeting adjourned at 5:02 p.m. Members present from the Board of Governors were Jenifer Billman, Pat Ehlers, Hunter Emerick, Ann Fisher, Michelle Garcia, Mike Haglund, Matthew Kehoe, Theresa Kohlhoff, Tom Kranovich, Steve Larson, Audrey Matsumonji, Maureen O'Connor, Travis Prestwich, Richard Spier and David Wade. Staff present were Sylvia Stevens, Rod Wegener, Helen Hierschbiel, Jeff Sapiro, Kay Pulju, Susan Grabe, Mariann Hyland, Judith Baker, Christine Kennedy, Maggie Wagner, Toni Kelich, Anna Zanolli, Kateri Walsh, and Camille Greene. Others present were Tom Cave, PLF CFO, Bill Carter, PLF Board Member, Valerie Saiki, PLF Board, Norm Williams, OLF President, Jason Hirshon, ONLD Chair and Lauren Paulson.

1. Call to Order/Finalization of the Agenda

2. Department Presentations

- A. Mr. Wegener presented an overview of Facilities and Operations and the indirect cost allocations which include: accounting services, facilities, tenant services, mailing and distribution, Information Design & Technology, and Human Resources.
- B. Ms. Kennedy presented an overview of the Human Resources department. She explained HR's contribution to controlling indirect costs through management of workers' compensation, employment practices, and liability insurance claims. HR is also committed to increasing the diversity of bar staff, which is especially challenging given the bar's low employee turnover rate.

3. Reports

A. Report of the President

As written.

B. Report of the President-elect

As written.

C. Report of the Executive Director

ED Operations Report as written. Ms. Stevens informed the BOG that she has engaged Jason Furlong to speak on trends in the profession immediately prior to the 2012 HOD Meeting. She also mentioned that staff is working on an update on the OSB Website Redesign. Ms. Stevens inquired if the BOG was interested in an email distribution list or whether they are satisfied with sending regular e-mails for their intra-board communication.

D. Board Members' Reports

Board member Maureen O'Connor will be a speaker at the ABA LRIS Leadership Forum in Chicago in June. Hunter Emerick attended the OLIO Spring Social. He also reported that the Judicial Administration Committee is supporting the judicial department's efforts to increase court funding. Ms. Garcia announced that the Affirmative Action Committee would like reports from the BOG at their meetings.

E. Director of Diversity & Inclusion

Ms. Hyland reported on the recent projects and programs of the Diversity & Inclusion Department, including diversity branding and logo creation, collaboration with US Department of Agriculture to settle discrimination claims, the launch of their fundraising campaign, development a participant database, and the launch of a facebook® site and a twitter® account.

F. MBA Liaison Reports

Mr. Larson reported on the April 4, 2012 MBA meeting and dinner. He noted the MBA is active and interested in staying involved in the coalition to help court funding. Ms. Kohlhoff reported on the May 2, 2012 MBA meeting, their member insurance costs and interest in the OSB LRS changes.

G. Oregon New Lawyers Division Report

Mr. Hirshon reported on a variety of ONLD projects and events described in his written report. ONLD will participate in the MBA's May golf event for law students and has formed a group to expand the ONLD's social networking and provide technology guidance. ONLD is looking for a non-law public service project in Lincoln City. They are setting up a young lawyer mentoring listserve and a "thumbdrive" effort to bridge the gap between lawyers who need work and people who need their services. Mr. Hirshon was elected to represent Oregon and Washington as the ABA Young Lawyers District representative.

4. Professional Liability Fund

Mr. Carter gave a general update and presented the 2011 PLF Annual Report. The claims department surveyed lawyers who have had claims and the results were favorable to the PLF. Mr. Cave presented the financial report. Investment returns have been good, but defense costs are increasing. The PLF will be meeting with actuaries to assess the value of their current claims relative to their budget.

5. Emerging Issues Discussion

Ms. Naucler updated the board on the WSBA Fee Referendum which will roll back license fees from \$450 to \$325. The reduction was approved by 52% of the members voting (43%). The proponents argued, in part, that the WSBA should focus on its mandatory functions. Mr. Wegener presented a brief summary of how the OSBs membership fee is spent.

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

A. Access to Justice Committee

Ms. Baker presented the Legal Aid Accountability Report which summarizes the review of the legal service programs that receive funding from the OSB Legal Services Program and the areas that require follow-up. Legal services programs are going through a planning process to ensure continuity of services after the funding cuts.

B. Member Services Committee

Mr. Kehoe gave an update on the Credit Card Affinity Program and product discounts for members, and solicited ideas for a proposed member satisfaction survey/poll. Regions 1, 3, 4 and 5 have board openings and need candidates for the October election. The committee is discussing whether to change the Standard Section Bylaws regarding executive committee term limits and will submit a recommendation to the board at the June meeting.

C. Budget and Finance Committee

Mr. Haglund presented the March 31, 2012 Financial Report. Mr. Emerick reported that the 2012 Economic Survey will be presented to the board at the June meeting.

D. Policy and Governance Committee

Ms. Fisher presented six committee recommendations:

1. An initial charge for the New Lawyer Mentoring Program and a revision to the Unlawful Practice of Law committee charge **[Exhibit A]**;
2. An amendment to MCLE Rule 3.7(c) to clarify that Active Pro Bono members reinstating to regular active status will have the same reporting periods as members reinstating from inactive status **[Exhibit B]**;
3. Adoption and submission to the Supreme Court of amendments to the Bar Rules of Procedure establishing reinstatement requirements for members suspended for failure to file IOLTA compliance reports, complete the New Lawyer Mentoring Program requirements, or complete ethics school **[Exhibit C]**;
4. A revision to OSB Bylaw 15.401 expanding the permissible recipients of section charitable donations **[Exhibit D]**; and
5. Several housekeeping amendments to the OSB Bylaws **[Exhibit E]**.

Motion: The board voted unanimously to approve the recommendations of the Policy and Governance Committee.

Ms. Fisher reported that the P&G Committee recommends pursuing legislation to establish a bar-operated centralized legal notice system. Mr. Larson reported that the Public Affairs Committee agrees that the concept should be presented to Legislative Counsel's office to hold the prospective bill's "place" in the 2013 session. Mr. Emerick expressed the need for a business plan to insure the board is aware of the costs of developing and maintaining the online system and that there is adequate funding for this model, and of the potential political challenges that we will face. Mr. Williams stated that the Oregon Law Foundation has

researched this model for over a year and concluded that an understanding of the scope of these legislative changes is needed before you can develop a website for this purpose.

Motion: Mr. Haglund moved, Mr. Kranovich seconded, and the board voted unanimously to include the central legal notice system proposal with the rest of the bar's legislative package, with the understanding that additional information will be developed about the structure of the system. Ms. Naucner abstained. **[Exhibit F]**

E. Public Affairs Committee

Mr. Larson presented a legislative update. In May the legislature will conduct hearings on filing fee changes. The Chief Justice is going to the Emergency Board to seek funding for the courts.

Motion: Mr. Larson moved, Mr. Kehoe seconded, and the board voted unanimously to accept Mr. Larson's amended committee motion to submit the 2013 OSB law improvement package with the understanding that after drafting by Legislative Counsel's Office, the bills will be reviewed again by the Public Affairs Committee and the board. **[Exhibit G]**

F. New Lawyer Mentoring Program

Ms. Walsh informed the board of the NLMP mentor selection process and the screening of mentors. The NLMP subcommittee recommends, if a mentor candidate is questioned by the board, a board member from the candidate's region will contact members in that region for feedback on the candidate and report back to the board. After discussion, it was agreed not to seek a change in the NLMP Rules at this time, but to discuss the issue with the Chief Justice.

The board reviewed the list of mentor candidates submitted by the NLMP Committee.

Motion: Mr. Kranovich moved, Mr. Wade seconded, and the board voted unanimously to recommend them to the Oregon Supreme Court. **[Exhibit H]**

7. Other Action Items

A. Courthouse Passes for OSB Members

Mr. Spier reported that one of his constituents had inquired about the possibility of a "bar card" or other mechanism for OSB members to bypass courthouse security. After reviewing the history of this issue, the board agreed this is not an issue it wishes to undertake at this time.

B. CSF Claim No. 2012-01 HOWLETT (Uriarte) Appeal

Motion: Mr. Larson moved, Mr. Emerick seconded, and the board voted unanimously to affirm the CSF's denial of the claim.

8. Consent Agenda

Motion: Mr. Haglund moved, Mr. Wade seconded, and the board voted unanimously to approve the consent agenda including various appointments **[Exhibit I]** and the Client Security Fund Claims for repayment **[Exhibit J]**.

9. Closed Sessions – see CLOSED Minutes

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

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

None.

OREGON STATE BAR

Policy and Governance Committee Agenda

Meeting Date: March 30, 2012
Memo Date: March 15, 2012
From: Danielle Edwards, Ext. 426
Re: NLMP and UPL Committee Assignments

Action Recommended

The Policy and Governance Committee should recommend to the Board that it approve the proposed New Lawyer Mentoring Committee assignment and changes to the Unlawful Practice of Law Committee assignment.

Background

The New Lawyer Mentoring Committee was created by the Board of Governors during their March 18, 2011 meeting with the purpose of reviewing mentor candidates and overseeing implementation of the curriculum and program. Since a committee assignment was not originally created, the language on the following page is offered to serve as their formal committee assignment.

In November 2011 the Board of Governors approved changes to OSB Bylaw Article 20 based on a recommendation from the Policy and Governance Committee and the Unlawful Practice of Law Task Force. The following proposed changes to the UPL Committee assignment reflect the bylaw changes adopted by the BOG last November and relate to the committee's role in drafting informal advisory opinions.

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

NEW LAWYER MENTORING COMMITTEE CHARGE

General:

The New Lawyer Mentoring Committee works with Oregon State Bar Staff to develop, implement, oversee and refine the New Lawyer Mentoring Program. The Committee and its members shall:

Specific:

1. Act as ambassadors for the Program to the legal community and public, including acting as a resource for speaking engagements and CLE programs related to the Program;
2. Assist with the recruitment and retention of mentors;
3. Develop Program policy and oversee the regulatory components of the program, including enforcement of Program requirements and approval of new mentors;
4. Solicit feedback from Program participants and strategies for evaluating the performance of the Program;
5. Review and revise Program curriculum and structure as needed; and
6. Solicit nominations for the OSB Award of Merit, the President's Public Service Award, Membership Service Award, Affirmative Action Awards, the Joint Bench Bar Professionalism Award, and any other state, local, and national awards for lawyers who make a contribution to serving the legal needs of Oregonians.

UNLAWFUL PRACTICE OF LAW COMMITTEE CHARGE

General:

1. Provide input, analysis and evaluation of the program to the program manager and/or BOG.
2. Make recommendations to the program manager regarding how the program can be improved.
3. Serve as volunteers for program elements.
4. Understand that when changes are made in program outcomes, input will be considered from the committee, as well as from other groups or means such as surveys, focus groups, ideas from other bars, etc.
5. Recognize that the program committee is not a governing body for the program and that the committee does not direct the activities of the program manager.

Specific Program Outcomes:

1. Conduct thorough investigations of UPL complaints and present comprehensive investigative reports for full committee consideration within 60 days of an assignment, or within an extended period as provided by committee rule.
2. Assist in drafting informal advisory opinions on what constitutes the unlawful practice of law.
3. Continue to recommend to the BOG that injunctive suits be initiated or that cease and desist agreements be entered into when the facts of a particular investigation support such action.
4. Issue letters of notice or admonition to the subjects of committee investigations, as warranted by the facts and committee rules.
5. Maintain policies and procedures to ensure compliance with statutory requirements, to meet standards of due process and fairness, and to ensure an appropriate measure of public protection from unlicensed practitioners.
6. Solicit nominations for the OSB Award of Merit, the President's Public Service Award, Membership Service Award, Affirmative Action Awards, the Joint Bench Bar Professionalism Award and any other local and national awards for lawyers who make a contribution to serving the legal needs of Oregonians.

OREGON STATE BAR

Policy and Governance Committee Agenda

Meeting Date: March 30, 2012
Memo Date: March 6, 2012
From: MCLE Committee
Re: Proposed Amendment to MCLE Rule 3.7(c)

Action Recommended

Review and approve the proposed amendment to MCLE Rule 3.7(c) to clarify reporting periods for Active Pro Bono members who are reinstated as active members.

Background

Please see MCLE Rule 3.6 regarding Active Pro Bono members.

3.6 Active Pro Bono. Members who are in Active Pro Bono status pursuant to OSB Bylaw 6.101 are exempt from compliance with these Rules.

In order to clarify whether an Active Pro Bono member who becomes reinstated as an active member will be assigned a new reporting period or retain a current reporting period, I propose amending Rule 3.7(c) as follows:

3.7 Reporting Period.

(c) Reinstatements.

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

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

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

OREGON STATE BAR

BOG Policy and Governance Committee Agenda

Meeting Date: March 30, 2012
Memo Date: March 8, 2012
From: Jeffrey D. Sapiro, Disciplinary Counsel, Ext. 319
Re: Proposed Amendments to Reinstatement Rules

Action Recommended

Review amendments to Title 8 of the Bar Rules of Procedure (“BRs”) and, if acceptable, submit them to the Board of Governors for adoption and subsequent filing with the Oregon Supreme Court. The amendments would establish a reinstatement procedure for lawyers who have been suspended for not filing the annual IOLTA certificate, for failing to complete Ethics School and for failing to comply with the New Lawyer Mentoring Program.

Background

Title 8 of the BRs contains the rules of procedure that govern reinstatements. Presently, the rules recognize that lawyers may be applying for reinstatement for the following reasons: they are on inactive status, or previously resigned, or have been suspended for disciplinary reasons, or were suspended for nonpayment of bar dues or the PLF assessment.

Recent developments have created a need to amend the reinstatement rules to recognize other situations in which lawyers may be suspended and subsequently seek reinstatement:

1. NLMP. The New Lawyer Mentoring Program (“NLMP”) Rule, adopted by the Oregon Supreme Court in December 2010, provides that a lawyer who fails to complete the program may be suspended by the court.
2. IOLTA Certificate. At the bar’s request, ORS 9.675 was passed in 2011. That statute requires active members to file an annual IOLTA certificate with the bar, disclosing the location and account number of lawyer trust accounts. A failure to do so results in an administrative suspension, much like a failure to pay bar dues or the PLF assessment.
3. Ethics School. In 2011, BR 6.4 became effective. That rule requires disciplined lawyers to attend a one-day ethics program presented by the bar. A failure to do so may result in suspension.

Discussion

Attached, in a red-line format, are proposed amendments to the reinstatement rules. They incorporate into the existing rule structure of Title 8 the new types of suspension

mentioned above and establish the procedure for those suspended lawyers to seek reinstatement.

The amendments recognize that, like MCLE suspensions, NLMP and Ethics School suspensions are imposed by the Supreme Court and, therefore, it is the court that must make the ultimate decision to reinstate.¹ However, suspensions for failing to file an annual IOLTA certificate occur by operation of a statutory procedure like bar dues and PLF suspensions. Therefore, these three types of reinstatements (IOLTA, bar dues and PLF assessment) are dealt with similarly.

ORS 9.542 provides that the Board of Governors may adopt rules of procedure, subject to the approval of the Supreme Court. Staff is recommending that the Policy & Governance Committee submit the attached amendments to the Board of Governors for adoption and subsequent filing with the Supreme Court.

JDS

¹ Note that the NLMP rule adopted by the Supreme Court in December 2010, already has a reinstatement provision in it and, therefore, the inclusion of an NLMP provision in Title 8 of the rules of procedure is a bit redundant. However, lawyers who are interested in reinstatement for any reason are likely to look to Title 8 for guidance and staff sees no harm in having an NLMP provision there, as well. The two provisions are consistent with one another.

Title 8 — Reinstatement

Rule 8.1 Reinstatement — Formal Application Required.

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

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

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

(b) Required Showing. Each applicant under this rule must show that the applicant has good moral character and general fitness to practice law and that the resumption of the practice of law in this state by the applicant will not be detrimental to the administration of justice or the public interest. No applicant shall resume the practice of law in this state or active membership status unless all the requirements of this rule are met.

(c) Learning and Ability. In addition to the showing required in BR 8.1(b), each applicant under this rule who has remained in a suspended or resigned status for more than three years or has been enrolled voluntarily or involuntarily as an inactive member for more than five years must show that the applicant has the requisite learning and ability to practice law in this state. The Board may recommend and the Supreme Court may require as a condition precedent to

reinstatement that the applicant take and pass the bar examination administered by the Board of Bar Examiners, or successfully complete a prescribed course of continuing legal education. Factors to be considered in determining an applicant's learning and ability include, but are not limited to: the length of time since the applicant was an active member of the Bar; whether and when the applicant has practiced law in Oregon; whether the applicant practiced law in any jurisdiction during the period of the applicant's suspension, resignation or inactive status in this state; and whether the applicant has participated in continuing legal education activities during the period of suspension or inactive status in this state.

(d) Fees. In addition to the payments required in BR 8.6, an applicant under this rule shall pay at the time the application for reinstatement is filed, an application fee of \$500.

Rule 8.2 Reinstatement — Informal Application Required.

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

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

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

(iii) been suspended for failure to pay the Professional Liability Fund assessment, Client Security Fund assessment, or membership fees or penalties and has remained in that status more than six months but not in excess of five years prior to the date of application for reinstatement,

(iv) been suspended for failure to file with the Bar a certificate disclosing lawyer trust accounts and has remained in that status more than six months but not in excess of five years prior to the date of application for reinstatement,

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

(b) Required Showing. Each applicant under this rule must show that the applicant has good moral character and general fitness to practice law and that the resumption of the practice of law in this state by the applicant will not be detrimental to the administration of justice or the public interest. No applicant shall resume the practice of law in this state or active membership status unless all the requirements of this rule are met.

(c) Fees. In addition to the payments required in BR 8.6, an applicant under this rule shall pay at the time the application for reinstatement is filed, an application fee of \$250.

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

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

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

(iii) has engaged in conduct which raises issues of possible violation of the Bar Act, Code of Professional Responsibility or Rules of Professional Conduct;

shall be required to seek reinstatement under BR 8.1. Any applicant required to apply for reinstatement under BR 8.1 because of this rule shall pay all fees, assessments and penalties due and delinquent at the time of the applicant's resignation, suspension or transfer to inactive status, and an application fee of \$500 to the Bar at the time the application for reinstatement is filed, together with any payments due under BR 8.6.

(e) Referral of Application to Board. If the Executive Director is unable to determine from a review of an informal application and any information gathered in the investigation of the application that the applicant for reinstatement has made the showing required by BR 8.2(b), the Executive Director shall refer the application to the Board for consideration, with notice to the applicant.

(f) Board Consideration of Application. If, after a referral from the Executive Director, the Board determines from its review of the informal application and any information gathered in the investigation of the application that the applicant for reinstatement has made the showing required by BR 8.2(b), the Board shall reinstate the applicant. If the Board determines that the applicant has not made the showing required by BR 8.2(b), the Board shall deny the application for reinstatement. The Board also may determine that an application filed under BR 8.2 be granted conditionally. The Board shall file an adverse recommendation or a recommendation of conditional reinstatement with the Supreme Court under BR 8.7.

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

Rule 8.3 Reinstatement — Compliance Affidavit.

(a) Applicants. Subject to the provisions of BR 8.1(a)(v), any person who has been a member of the Bar but who has been suspended for misconduct for a period of six months or less shall be reinstated upon the filing of a Compliance Affidavit with Disciplinary Counsel as set forth in BR 12.9, unless the court or Disciplinary Board in any suspension order or decision shall have directed otherwise.

(b) Fees. In addition to the payments required in BR 8.6, an applicant under this rule shall pay an application fee of \$250.

Rule 8.4 Reinstatement — Financial or Trust Account Certification Matters.

(a) Applicants. Any person who has been a member of the Bar but suspended solely for failure to pay the Professional Liability Fund assessment, Client Security Fund assessment or annual membership fees or penalties, or suspended solely for failure to file a certificate disclosing lawyer trust accounts, may be reinstated by the Executive Director to the membership status from which the person was suspended within six months from the date of the applicant's suspension, upon ~~payment of the following sums to the Bar~~:

(i) payment to the Bar of all applicable assessments, fees and penalties owed by the member to the Bar, and

(ii) in the case of a suspension for failure to pay membership fees or penalties or the Client Security Fund assessment, payment of a reinstatement fee of \$100; or

(iii) in the case of a suspension for failure to pay the Professional Liability Fund assessment, payment of a reinstatement fee of \$100; or

(iv) in the case of suspensions for failure to pay both membership fees or penalties or the Client Security Fund assessment, and the Professional Liability Fund assessment, payment of a reinstatement fee of \$200; or

(v) in the case of suspension for failure to file a lawyer trust account certificate, filing such a certificate with the Bar and payment of a reinstatement fee of \$100.

An applicant under this rule must, in conjunction with the payment of all required sums, submit a written statement to the Executive Director indicating compliance with this rule before reinstatement is authorized. The written statement shall be on a form prepared by the Bar for such purpose. The applicant shall attest that the applicant did not engage in the practice of law except where authorized to do so during the period of the applicant's suspension.

(b) Exceptions. Any applicant otherwise qualified to file for reinstatement under this rule but who, during the period of the member's suspension, has been suspended for misconduct for more than six months or been disbarred by any court other than the Supreme Court, shall be required to seek reinstatement under BR 8.1. Any applicant required to apply for reinstatement under BR 8.1 because of BR 8.4(b) shall pay all fees, assessments and penalties due and delinquent at the time of the applicant's suspension and an application fee of \$500 to the Bar at the time the application for reinstatement is filed, together with any payments due under BR 8.6.

Rule 8.5 Reinstatement — Noncompliance With Minimum Continuing Legal Education, New Lawyer Mentoring Program or Ethics School Requirements.

(a) Applicants. Subject to the provisions of BR 8.1(a)(viii), any person who has been a member of the Bar but suspended solely for failure to comply with the requirements of the Minimum Continuing Legal Education Rules, the New Lawyer Mentoring Program or the Ethics School established by BR 6.4 may seek reinstatement at any time subsequent to the date of the applicant's suspension by meeting the following conditions:

(i) Completing the requirements that led to the suspension;

(ii) Filing a written statement with the Executive Director, on a form prepared by the Bar for that purpose, which indicates compliance with this rule and the applicable MCLE, -NLMP or Ethics School Rule 8-2. The applicant shall attest that the applicant did not engage in the practice of law except where authorized to do so during the period of the applicant's suspension; and

(iii) Submitting in conjunction with the required written statement, a reinstatement fee of \$100.

(b) Referral to Supreme Court. Upon compliance with the requirements of this rule, the Executive Director shall submit a recommendation to the Supreme Court with a copy to the applicant. No reinstatement is effective until approved by the Court.

(c) Exception. Reinstatement under this rule shall have no effect upon any member's status under any other proceeding under these Rules of Procedure.

Rule 8.6 Other Obligations Upon Application.

(a) Financial Obligations. Each applicant under BR 8.1 through 8.5 shall pay to the Bar, at the time the application for reinstatement is filed, all past due assessments, fees and penalties owed to the Bar for prior years, and the membership fee and Client Security Fund assessment for the year in which the application for reinstatement is filed, less any active or inactive membership fees or Client Security Fund assessment paid by the applicant previously for the year of application. Each applicant under BR 8.1(a)(i), BR 8.1(a)(viii), BR 8.2(a)(i), ~~or~~ BR 8.2(a)(iii) or BR 8.2(a)(iv) shall also pay to the Bar, at the time of application, an amount equal to the inactive membership fee for each year the applicant remained suspended or resigned and for which no membership fee has been paid. Each applicant shall also pay, upon reinstatement, any applicable assessment to the Professional Liability Fund.

(b) Judgment for Costs; Client Security Fund Claim. Each applicant shall also pay to the Bar, at the time of application:

(i) any unpaid judgment for costs and disbursements assessed in a disciplinary or contested reinstatement proceeding; and

(ii) an amount equal to any claim paid by the Client Security Fund due to the applicant's conduct, plus accrued interest thereon.

(c) Refunds. In the event an application for reinstatement is denied, the Bar shall refund to the applicant the membership fees and assessments paid for the year the application was filed, less the membership fees and assessments that applied during any temporary reinstatement under BR 8.7.

(d) Adjustments. In the event an application for reinstatement is filed in one year and not acted upon until the following year, the applicant shall pay to the Bar, prior to reinstatement, any increase in membership fees or assessments since the date of application. If a decrease in membership fees and assessments has occurred, the Bar shall refund the decrease to the applicant.

Rule 8.7 Board Investigation And Recommendation.

(a) Investigation and Recommendation. On the filing of an application for reinstatement under BR 8.1 and BR 8.2, Disciplinary Counsel shall make such investigation as it deems proper and report to the Executive Director or the Board, as the case may be. For applications filed under BR 8.1, the Board shall recommend to the court that the application be granted, conditionally or unconditionally, or denied, and shall mail a copy of its recommendation to the applicant. For applications denied by the Board or recommended for conditional reinstatement under BR 8.2(f), the Board shall file its recommendation with the court and mail a copy of the recommendation to the applicant.

(b) Temporary Reinstatements. Except as provided herein, the Board may temporarily reinstate an applicant pending receipt of all investigatory materials if a determination is made that the applicant is of good moral character and generally fit to practice law. A temporary reinstatement shall not exceed a period of four months unless authorized by the court. In no event shall the Board temporarily reinstate an applicant who seeks reinstatement following a suspension or disbarment for professional misconduct, or an involuntary transfer to inactive status.

Rule 8.8 Petition To Review Adverse Recommendation.

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

Rule 8.9 Procedure On Referral By Court.

On receipt of notice of a referral to the Disciplinary Board under BR 8.8, Disciplinary Counsel may appoint Bar Counsel to represent the Bar. Disciplinary Counsel or Bar Counsel shall prepare and file with the Disciplinary Board Clerk, with proof of service on the applicant, a statement of objections. The statement of objections shall be substantially in the form set forth in BR 12.5.

Rule 8.10 Answer To Statement Of Objections.

The applicant shall answer the statement of objections within 14 days after service of the statement and notice to answer upon the applicant. The answer shall be responsive to the objections filed. General denials are not allowed. The answer shall be substantially in the form set forth in BR 12.3. The original shall be filed with the Disciplinary Board Clerk with proof of service on Disciplinary Counsel and Bar Counsel. After the answer is filed or upon the expiration of the time allowed in the event the applicant fails to answer, the matter shall proceed to hearing.

Rule 8.11 Hearing Procedure.

Titles 4, 5 and 10 shall apply as far as practicable to reinstatement proceedings referred by the court to the Disciplinary Board for hearing.

Rule 8.12 Burden Of Proof.

An applicant for reinstatement to the practice of law in Oregon shall have the burden of establishing by clear and convincing evidence that the applicant has the requisite good moral character and general fitness to practice law and that the applicant's resumption of the practice of law in this state will not be detrimental to the administration of justice or the public interest.

Rule 8.13 Burden Of Producing Evidence.

While an applicant for reinstatement has the ultimate burden of proof to establish good moral character and general fitness to practice law, the Bar shall initially have the burden of producing evidence in support of its position that the applicant should not be readmitted to the practice of law.

Rule 8.14 Reinstatement and Transfer--Active Pro Bono.

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

(b) Transfer to Regular Active Status. An applicant who has been on Active Pro Bono status for a period of five years or less and who desires to be eligible to practice law without restriction may be transferred to regular active status by the Executive Director in the manner provided in and subject to the requirements of BR 8.2. An applicant who has been on Active Pro Bono status for a period of more than five years may be transferred to regular active status only upon formal application pursuant to BR 8.1.

OREGON STATE BAR

Policy and Governance Committee Agenda

Meeting Date: April 27, 2012
From: Sylvia E. Stevens, Executive Director
Re: Section Charitable Donations

Action Recommended

Consider revising the OSB Bylaw 15.401 as it relates to charitable donations by sections.

Background

OSB Sections are authorized to make charitable donations only with the prior approval of the Executive Director. The ED, in turn, may approve donations only where the contribution “is related to the purposes for which the section exists.”¹ Pursuant to OSB Bylaw 15.1, “Sections are intended to provide bar members who share particular interests an opportunity to develop and improve skills and to provide a forum for communication and action in matters of common interest.”

For sections that are not entirely self-supporting, charitable donations must also be to organizations or causes where the donee can show that the donation is consistent with the “limitations” in Bylaw 12.1,² the “guidelines” for the bar’s legislative and policy activities. The guidelines are an expression of permitted uses for mandatory license fees under the doctrine of *Keller v. State Bar of California*, 499 US 1,111 SCt 2228 (1990), which requires that the fees only be used for activities that are germane to the purposes for which the bar exists. According to ORS 9.080, those purposes are “advancing the science of jurisprudence” and “improving the administration of justice.”

¹ OSB Bylaws Subsection 15.401 Donations:

Sections may make donations to charitable causes only with prior approval of the Executive Director. The Executive Director will allow such donations only on a showing by the prospective donee that the donation of section funds to the charitable entity is related to the purposes for which the section exists. For sections that are not entirely self-supporting, as described in Article IX, Section 5(B) of the Standard Section Bylaws, the prospective donee must also show that the donation fits within the limitations set forth in Section 12.1 of the Bar’s Bylaws.

² OSB Bylaws Section 12.1:

Bar legislative or policy activities must be reasonably related to any of the following subjects: Regulating and disciplining lawyers; improving the functioning of the courts including issues of judicial independence, fairness, efficacy and efficiency; making legal services available to society; regulating lawyer trust accounts; the education, ethics, competence, integrity and regulation of the legal profession; providing law improvement assistance to elected and appointed government officials; issues involving the structure and organization of federal, state and local courts in or affecting Oregon; issues involving the rules of practice, procedure and evidence in federal, state or local courts in or affecting Oregon; or issues involving the duties and functions of judges and lawyers in federal, state and local courts in or affecting Oregon.

Section donations to the Campaign for Equal Justice and the Classroom Law Project have long been permitted (and, in fact, encouraged). Other approved recipients have been added to the list (see attached) as requests were made by sections. While most of the recipients have some connection to the science of law and the administration of justice, it is difficult to always see a connection to the purposes for which a section exists. The lack of clear standards on that last point suggest (and recent practice bears this out) that nearly every section request is granted without much analysis. The process would have more integrity if the bylaw relating to section donations offered better guidance.

No section is entirely self-supporting, so all are required to abide by the *Keller*-based limitations in Bylaw 12.1. Further limiting donations to those that are connected to the section's mission may not be necessary. A look at the list of approved recipients suggests that the requirement has been interpreted loosely over the years. Assuming, for instance, that the donation to the Lewis & Clark Small Business Clinic came from the Business Law Section, it is not clear how that donation advances the section's purpose of "improving skills" or "action in matters of common interest" to section members. On the other hand, the donation provides greater avenues to legal services for small business owners, which serves a bar-wide commitment to access to justice. It is more properly the province of a section to decide what causes to support, so long as they don't violate Bylaw 12.1.

I suggest amending Bylaw 15.4011 as follows:

Sections may make donations to charitable causes or organizations only with prior approval of the Executive Director. The Executive Director will allow such donations ~~only~~ on a showing by the section prospective donee ~~that the donation of section funds to the charitable entity is related to the purposes for which the section exists. For sections that are not entirely self-supporting, as described in Article IX, Section 5(B) of the Standard Section Bylaws, the prospective donee must also show~~ that the donation ~~fits within the limitations~~ is germane to the Bar's purposes as set forth in Section 12.1 of the se Bar's Bylaws. The Executive Director will maintain a list of approved recipients.

List of Approved
Charitable Contributions

Any section making a donation to a charitable group can only do so with the approval of the Executive Director. The Director will only allow donations on the showing by the prospective donee that the donation of section funds to the charitable entity is related to the purpose for which the section exists. The following groups have been approved:

Allen Hein Scholarship Fund at NW School of Law of Lewis & Clark College

Campaign for Equal Justice

Carlton Snow scholarship fund

Chemawa Student Association

Classroom Law Project

Federal Circuit Bar Associations Charitable and Educational Fund - FCBA

Harry Chandler scholarship fund

Legal Aid Services of Oregon

Lewis & Clark Small Business Clinic

Multnomah County Probate Advisory Committee

National Bar Assoc. – Oregon Chapter

National Council on Juvenile and Family Court Judges

NAYA – Native American Youth Association

OMLA (Oregon Minority Lawyers Association)

OLIO (Opportunity for Lawyers in Oregon)

Oregon Lawyer Assistance Foundation (OLAF)

Oregon Lawyers Against Hunger

Peacemakers

St. Andrews Legal Clinic

Section scholarships to 3 law school for students earning the highest grade on the final exam i.e., Securities Section award to securities students.

Updated 3/12

Article 2 Board of Governors

Section 2.1 Duties and Responsibilities

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Subsection 2.101 Election

(a) The election of lawyer-members of the Board will be conducted according to Article 9 of the Bar's Bylaws.

(b) ~~Nominations-Candidate statements~~ for the office of Governor from a region must be in writing. The Executive Director will prepare the forms for ~~these nominations~~the candidate statements and supply the forms to the applicants. Applicants must complete and file the form with the Executive Director by the date set by the Board. The Executive Director must conduct elections in accordance with the Bar Bylaws and the Bar Act.

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Section 2.3 Public Members

In addition to the ~~12~~ resident active members of the Bar required by ORS 9.025, four public positions exist on the Board of the Bar.

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Article 5 Oregon State Bar Delegates to the American Bar Association House of Delegates

Section 5.1 Selection

~~Nominations-Candidate statements~~ for the House of Delegates of the American Bar Association ("ABA") must be in writing. The Executive Director will prepare forms for ~~these nominations~~the candidate statements and supply the forms to applicants. The applicants must file the forms with the Executive Director not more than 90 nor less than 30 days before the election held in conjunction with the Oregon State Bar House of Delegates election. Election of ABA delegates must be conducted according to Article 9 of the Bar's Bylaws. The ABA delegates will be elected from the state at large and the term of office is two years. ABA delegates must be in-state active members of the Bar. The Board must fill a vacancy in the office of ABA delegate due to a delegate's resignation, death or any other reason in the same manner as provided in ORS 9.040(2) for board members.

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Article 9 Election Procedures

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 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~~candidate statements 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.

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 candidate statement to the executive director of the Bar at least 30 days before the election.

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 candidate statement to the executive director of the Bar at least 30 days before the election.

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Article 18 Discipline

Section 18.1 State Professional Responsibility Board

Subsection 18.100 Duties

The State Professional Responsibility Board ("SPRB") is authorized to exercise its powers and authority pursuant to statute, the rules of procedure and the Bar's bylaws. The SPRB will meet regularly pursuant to the call of the chairperson to consider complaints and other matters within its jurisdiction. The SPRB will receive the counsel and advice of the Office of Disciplinary Counsel of the Bar. Disciplinary Counsel will regularly report to the Board of Governors regarding actions taken by the SPRB. The SPRB may proceed with business if a quorum of ~~five-six~~ members is present at any meeting and act by a vote of a majority of those present.

Subsection 18.101 Composition

The SPRB will consist of ~~seven-eight~~ resident active members of the Bar and two at large public members appointed by the Board of Governors. The Board of Governors annually will appoint one member of the SPRB to act as its chairperson. All lawyer members of the SPRB are appointed for terms of not more than four years from the following regions: two members from region five and one member from each of the other Board of Governors regions. The two public members are appointed for terms of not more than four years. No member may serve more than four years. The Board of Governors may replace members of the SPRB as the need arises.

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Article 24 Attorney Assistance

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Section 24.4 State Lawyers Assistance Committee Review and Intake

Subsection 24.400 Complaints and Referrals

(a) Any person may submit directly to SLAC, either orally or in writing, the name of any lawyer whose performance or conduct appears to be impairing the lawyer's professional competence or ability to practice law. A referral of a lawyer to SLAC should include a description of the circumstances and copies of any relevant documents. SLAC members who are contacted regarding a complaint or referral will obtain preliminary information and refer the matter to the chairperson. The chairperson will confirm receipt of a referral in a letter to the person making the referral. The letter must contain a disclosure substantially as follows:

"We appreciate your interest in bringing this matter to our attention. Our Committee will respond by contacting the lawyer to discuss the problem. It is important for you to understand, however, that the purpose of this Committee is to provide confidential assistance to lawyers who are impaired in the practice of law for reasons such as drug or alcohol problems, emotional problems or lack of competence. For that reason, we focus our work on determining the specific assistance that the lawyer needs and making sure that the lawyer follows a treatment or assistance program. This Committee does not deal with lawyer discipline issues. All information we receive from you will be kept confidential and will not be reported to the bar disciplinary authorities. If you believe that this lawyer has acted improperly and you wish to make a complaint to the bar, you should write to Client Assistance Office, Oregon State Bar, P.O. Box 231935, Tigard, OR 97281."

(b) If a referral is received from a member of the Bar, the letter required in paragraph (A) must also contain the following statement:

"If you are a member of the Bar, please review Oregon RPC ~~8-1(e)~~8.3(a) to determine whether you may have an independent obligation to contact the Bar."

.....

Article 25 Law Student Associates

Any student currently enrolled in an Oregon law school may become a Law Student Associate of the Bar. Law Student Associates are not members of the Bar and, except as provided in this article, do not have any of the rights and responsibilities of members. Law Student Associates must pay an annual fee established by the Executive Director in an amount sufficient to cover the cost of providing information and services to Law Student Associates. ~~Law Student Associates will receive a subscription to the Bulletin, will be informed of the Bar sections that permit Law Student Associates and will be informed of CLE seminars that the CLE Seminars Manager determines are relevant to law students. Other s~~Services and information ~~may be~~ provided ~~to Law Student Associates will be~~ determined by the Executive Director.

OREGON STATE BAR
Policy and Governance Committee

Meeting Date: March 19, 2012
Memo Date: March 30, 2012
From: Oregon Law Foundation Board
Re: Centralized Legal Notice System

Action Recommended

This memo is informational only.

Background

OBJECTIVE: Create a website owned by the Oregon State Bar, at which all legal notices required under state law would be made available free of charge and in a searchable format to the public, the net revenue of which website would be allocated to the Oregon Law Foundation (OLF) for distribution according to its charitable formulae.

WHY MOVE TO A SYSTEM OF ONLINE LEGAL NOTICES: The current system in which legal notices are published in newspapers is both costly and ineffective. Persons and businesses who must publish legal notices in newspapers incur significant costs, often running into the thousands of dollars for each individual legal notice. Some local governments, which must publish a variety of legal notices regarding governmental meetings and actions (see, e.g., ORS § 305.583(9)), spend considerable sums publishing these required legal notices. In the case of legal notices published by private businesses, such as banks or construction firms, the costs of publishing these notices are passed along to customers; in the case of legal notices published by county and local governments, those costs are passed on to taxpayers in the form of higher taxes.

Equally disturbing, legal notices published in newspapers are often never viewed by the persons who might be interested or affected by the actions that are the subject of the notices. Indeed, many of these legal notices are published in newspapers with small circulations in which it is highly unlikely that interested parties will ever see or learn of the notice.

Moreover, the Legislature did not create the newspapers' monopoly because it wished to subsidize the newspaper industry but because, for most of Oregon's history, newspapers were the best way to alert the public of important issues and developments.

That assumption, which is the entire rationale for requiring publication of legal notices in newspapers – no longer holds true in the 21st Century. More and more individuals seek information through online sources. Correspondingly, newspaper circulation has dwindled substantially in the past decade. As a result of these two, mutually reinforcing phenomena, newspaper publication is increasingly unlikely to alert members of the public of the activities or developments that are the subject matter of the required legal notices. In short, relying on newspapers to provide a forum for the dissemination of important legal notices no longer makes sense.

By centralizing legal notices on a single, online website, costs to advertisers would be reduced (saving affected businesses and taxpayers millions of dollars per year in advertising costs). In addition, a centralized online system would make it easier for individuals and businesses to find or be made aware of notices that affect or interest them. In short, an online notice system would be both more efficient and more effective.

WHY DOES THE SYSTEM NEED TO BE CENTRALIZED? In order to ensure that the public would be able to easily find legal notices in which they are interested, all legal notices would have to be published in one, central location. If there were multiple websites (or newspapers as there are now), members of the public would not know which website to access. Indeed, for those notices whose publication is required by due process, the failure to centralize the online publication of such notices would arguably raise concerns under the Due Process Clause of the Fourteenth Amendment.

WHY OSB SHOULD BE THE ENTITY TO SET UP AND RUN AN ONLINE LEGAL NOTICE WEBSITE: For three reasons. First, the bar is the most natural entity to own and operate a centralized legal notices website. Legal notices are, by definition, uniquely associated with the legal profession. They are typically created by lawyers and have critical due process impact on the public. Who better to understand and enforce the public's due process rights than lawyers. Moreover, part of the problem with the current, newspaper-based system is that so many legal notices are never seen or read by the parties to which they are ostensibly addressed. An OSB-owned website would be the most natural place for lawyers both to post and to search legal notices. As such, it would be much more likely that

notices posted on such a website would reach their intended audience, thereby assisting in the administration of justice in Oregon.

Second, as discussed in more detail below, a centralized, online legal notice website would generate a significant amount of net revenue. It is precisely because of the amount of revenue that is at stake that newspapers or other for-profit enterprises have an incentive to maximize profits which come at the cost of tax payers and consumers. Hence, the online legal notices website should be owned by a not for profit entity, such as the bar. Indeed, it is hard to imagine another not for profit entity that would be better suited to own and operate an online, legal notices website other than the bar. In addition an important element of a legal notice system is that notices be published in a forum independent of the government such as a neutral third party to ensure that the notice delivery requirements are followed. The bar is a public corporation funded by membership and program fees. It is not a state agency and does not receive any financial support from the state's general fund. To that end it is an objective third party with no economic stake in the system making it the ideal neutral party.

Third, by operating the legal notices website, the bar would be positioned, via the Oregon Law Foundation, to provide funds for legal services for the benefit of needy Oregonians. Affiliated with the bar, OLF helps fulfill the bar's mission of increasing access to justice in Oregon. As in the 1980s, when the bar realized that the interest on lawyer trust accounts provided a potential revenue source for legal aid programs and assigned the OLF to serve as the organization to collect and distribute IOLTA income, the requirement to publish legal notices likewise creates a large potential source of revenue that could be used to fund legal aid services. Although the state's IOLTA program provides significant assistance to legal aid services in Oregon, the drop in interest rates witnessed in the past four years has forced the Oregon Law Foundation to slash the amount of money that it awards to grantees by over 66% during that time. The income generated from a bar-owned legal notices website would allow OLF both to diversify its income sources (thereby making it less sensitive to interest rate changes) and, more importantly, to increase the amount of money that it is able to distribute each year to eligible programs.

HOW SUCH AN ONLINE SYSTEM WOULD WORK: Persons or entities who are required by law to give the public notice of proposed actions (such as public meetings, foreclosures, probating of wills, etc.) would send the proposed notice to the online website (either electronically or via mail), which would then post the notice on the website in an easily searchable format for the required time period for that type of notice. The website would be free to the public, who could search the posted notices free of charge. The persons or businesses who post the notices, however, would be charged a reasonable fee for publishing the notice, just as newspapers do currently.

Such a centralized online system would likely generate significant income for the bar. An informal study conducted last fall by an Oregon attorney, John Gear, estimated that Oregon newspapers receive approximately \$30 million per year to publish legal notices required under state law. Assuming that the \$30 million figure is in the general ballpark, an online website could easily charge less than the newspaper do now (because, unlike a newspaper, the website would not have to purchase newsprint or hire many employees to operate the endeavor). Preliminary investigations as to what it would cost to create and maintain the website suggest that it would cost approximately \$100,000 to set up the website and perhaps that same amount per year to maintain it. If the website were to charge one-third of what newspapers currently charge, it would stand to generate potentially as much as \$10 million in gross revenue per year, which would produce a net income of approximately \$9.9 million per year.

In addition to this publication revenue, additional revenue could also be generated by setting up the website to allow for individuals who wish to be notified when a notice naming a particular person, property, or business to purchase an “alert me” service. For a fixed fee covering a limited period of time, the website would email the subscriber to alert them whenever a legal notice with a particular person, property, or business is named in the notice. Because such a service is not currently offered by Oregon newspapers, the likely revenue stream from such subscriptions is difficult to estimate.

WHAT NEEDS TO BE DONE:

PHASE ONE (Legislative Changes): Currently, a number of sections in the Oregon Revised Statutes require regulated entities to publish notices in a newspaper of general circulation. As a consequence, newspapers possess a legislatively-conferred monopoly on the publication of these notices. In order to set up a bar-owned and operated online legal notice system, it would be necessary to persuade the Legislature during the 2013 Regular Session to amend these statutory provisions.

Legislation to establish an online legal notices system would need to comprise two elements. First, a new subchapter would need to be added to Chapter 193 of the ORS, which governs publication of legal notices, to expressly provide for online publication through the OSB. This subchapter would authorize OSB to create a centralized, online website for the publication of legal notices, permit OSB to charge persons who submit such notices for publication a reasonable charge for such publication, and outline the basic guidelines for the publication of such notices (how long must OSB keep them online, etc.). In addition, the statute would provide that the net revenue from such website be provided to OLF to, in turn, fund access to justice.

Second, all of the pertinent statutes throughout ORS that require newspaper publication of a legal notice would have to be amended to provide that all such legal notices be “published” in the OSB Legal Notices Website. For example, consider the statutory requirement for banks and other lenders that wish to foreclose on real property to provide notice of the foreclosure sale to the public. As currently written, ORS § 86.750(2)(A) requires trustees under a deed of trust to publish notice of the foreclosure sale: “a copy of the notice of sale must be published in a newspaper of general circulation in each of the counties in which the property is situated once a week for four successive weeks. The last publication must be made more than 20 days prior to the date the trustee conducts the sale.” In recent years, this particular statutorily-conferred monopoly has become especially lucrative for newspapers, so much so that real estate trust companies have recently begun purchasing small-

town newspapers to reduce their publication costs – see the Oregonian article from Jan. 15, 2012

([http://www.oregonlive.com/business/index.ssf/2012/01/northwest trustee squeezes mor.html](http://www.oregonlive.com/business/index.ssf/2012/01/northwest_trustee_squeezes_mor.html)). Under this proposal, ORS § 86.750(2)(A) would be amended to read something like the following: “... a copy of the notice of sale must be transmitted to the Oregon State Bar, which shall include such notice on its legal notice website as provided in ORS § 193.____ for a period of no less than 28 days, the last day of which period must be at least 20 days prior to the date the trustee conducts the sale.”

PHASE TWO (Business Startup): Create the OSB Legal Notices website in time for it to be up and running as of the effective date of the statutory changes.

A. Place an RFP with website developers to create a website that would permit individuals to search all legal notices by name, subject, or location. The website could also sell subscription services to individuals and lawyers, in which, for a fixed fee, the website would automatically alert the individual or lawyer by email if a legal notice were posted that met a specified search parameter.

B. Once the website is up and running, OSB would designate a person to manage the website to ensure its continual operation and to answer questions by outside parties.

C. Advertise the website. It will be important to undertake an advertising campaign to assure that both the entities using the website to place notices and the public searching for notices have knowledge of the website’s existence.

LIKELY OBJECTIONS AND THE RESPONSES THERETO:

(1) This is stealing business from newspapers and will therefore be the end of many newspapers. Newspapers are likely to object to this proposal on the ground that it will eliminate a substantial category of their advertising revenue, thereby imperiling many marginal newspapers. While that is undoubtedly true, it is also beside the point.

Newspapers have been able to generate that income solely by virtue of the legislatively-conferred monopoly that the Oregon Legislature has given them. There is nothing sacrosanct about that monopoly. In fact, newspapers have abused that monopoly by charging high prices for the publication of those notices. Those high costs, in turn, are passed along to consumers and taxpayers, both of whom must ultimately foot the bill for the cost of these notices.

(2) Due process requires that legal notices be published in newspapers. The U.S. Supreme Court has never held that legal notices must be published in newspapers; rather, due process requires only that any notice, other than personal notice, be undertaken in a manner “reasonably calculated” to reach affected persons or entities. True, publication in newspapers has long been held to provide a way of complying with due process when personal notice is impossible or unavailable. At a time when newspapers were the only widely circulated medium of communication, newspapers were perhaps the best mechanism for reaching individuals who could not be identified personally or for giving notice to the public generally. These days, however, with declining newspaper circulation, it is possible that newspaper publication no longer satisfies this due process requirement. More importantly, though, online publication on a centralized website available free of charge to the public would certainly provide a superior means of providing notice both to individuals potentially affected by the action that is the subject matter of the notice and to the public generally. Unlike newspaper publication, the online system would be free to consumers and more readily accessible to the public at large.

Newspapers will argue that a web based legal notice system is not readily accessible to those members of the public not online so the due process requirement is not met. However the same holds true for those members of the public who do not subscribe to a newspaper. Both those without online access and those without a newspaper subscription can go to their local library to gain either online or newspaper access for free.

SUMMARY: The current statutory system provides newspapers with a legislatively-conferred and -created monopoly for the publication of legal notices. This monopoly is both costly and incomplete. It is costly because, in many towns and cities where there is only one

newspaper, that newspaper is able to charge above-market advertising rates for individuals, businesses, or local governments that must publish legal notices. It is incomplete because individuals or businesses that wish to learn of some action that is the subject of the legal notice may not subscribe to the relevant newspaper or read the pertinent section of the newspaper on the day that the legal notice is published.

By moving to a centralized, online system for the publication of legal notices, costs to businesses and taxpayers could be reduced, and due process concerns could be more easily met. Moreover, as the principal, not for profit organization dedicated to serving and bolstering the system of justice in Oregon, OSB is best positioned to assume this role, and the income generated by the website could then be used by OLF to help fund legal services for low-income Oregonians.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: April 27, 2012
From: Steve Larson, Public Affairs Committee Chair
Re: Law Improvement Proposals

Consider Public Affairs Committee request to approve 2013 OSB package of Law Improvement proposals for **approve** submission of the law improvement package to Legislative Counsel (LC) for drafting in accordance with the comments in the attached memo.

Background

Attached is a list of legislative proposals from bar groups reviewed by the Public Affairs Committee to ensure they meet the OSB guidelines with respect to legislation, OSB Bylaw 12. Once approved by the board, these bills, in the normal course of business, would be submitted to Legislative Counsel's office for bill drafting purposes, introduction through Judiciary Committee, and then pre-session filed for the 2013 legislative session. In this instance, Public Affairs will continue to monitor them and address any concerns raised in the comments to the proposals.

Direct link to the proposals: <http://osblip2013.homestead.com/index.html>

By way of background, it might help to have an overview of the process by which bar group legislative proposals are developed and the options the board has with respect to handling them.

To begin, bar sections and committees are encouraged to have a legislative subcommittee that is involved in the legislative process, either monitoring or advocating on issues that affect their area of practice. Public Affairs staff works with bar groups (mainly sections that encompass substantive practice areas) to help them develop legislative proposals for submission to the board, and ultimately, inclusion in the bar's package of Law Improvement Legislation for the 2013 legislative session. Law improvement legislation is legislation that clarifies statutory ambiguities, removes unnecessary procedural requirements, modifies unforeseen glitches in previous legislation, or otherwise improves the practice of law. Policy changes are also included in the bar package of legislation when deemed appropriate.

Most bar groups create legislative subcommittees to solicit issues or concerns, and to develop a set of recommendations for executive committees to consider. Before any proposal is forward to the board of governors for consideration, it must be approved by a majority of the executive committee (we encourage executive committees to be representative of the diverse views on the section). Bar groups are encouraged to be mindful of differing viewpoints in the practice area.

Thirteen bar groups submitted 22 proposals for consideration by the April 2 deadline which were posted on the OSB website.

On April 23, 2012, the Public Affairs Committee held a meeting at which representatives from the various bar groups were invited to present their proposals and comments from the bar at large were solicited. Aside from comments on two bills affecting administrative law, there were no member comments received on the proposals. We will continue to disseminate the concepts and actively solicit feedback.

Public Affairs Committee reviews legislation to ensure that

- it meets the OSB guidelines with respect to legislation, OSB Bylaw 12, (Keller)
- respects divergent opinions of subgroups within the legal profession and
- avoids committing bar resources to issues that are divisive or create factions within the profession

Generally, the PAC has encouraged section and committee participation in the law improvement program by giving deference to the expertise and the work of the groups that have made proposals.

The next step in the process is for the Board of Governors to approve the package for submission to Legislative Counsel for drafting. This step does not mean that any particular bill will be introduced as a bar sponsored bill; it simply allows the proposal to be placed in a form that could be introduced. Proposing groups work with LC to ensure that the bill actually reflects the intent of the drafters.

The PAC and the BOG may decide to move forward or decline to sponsor a proposal at any of these points in the future:

- when the LC draft is received during summer, or
- when the draft is forwarded to the Judiciary Committee for introduction (September), up to the point when the Judiciary Committee actually votes to sponsor bills in December.

Oregon State Bar
2013 Law Improvement Package

Board of Governors:

1. Board of Governors

- Dischargability of OSB Costs – This bill would provide that an award of costs to the Oregon State Bar in a disciplinary proceedings is not dischargeable in a bankruptcy proceeding.
**** NOTE – Confirm Oregon Supreme Court’s position on this issue before proceeding.**
- Custodianship of Law Practice – This bill would permit an individual who is appointed as a custodian of a nonperforming law practice to receive first priority in payment for reasonable compensation and expenses in a case where assets are insufficient to meet all obligations.
- UTPA Amendment – Amends the Unlawful Trade Practices Act to explicitly make the unlawful practice of law an unlawful trade practice. Amends ORS 646.608.

2. Lawyers for Veterans

- Notice of SCRA in Administrative Hearings - Amend ORS 183.413 to require notice of administrative hearings to include a statement that the Servicemembers Civil Relief Act applies to such proceedings and affords active duty servicemembers the right to defer such hearings.
****NOTE – Governor’s office may address this problem administratively, making the introduction of a bill unnecessary.**
- Increase Judicial Discretion in Sentencing Certain Veterans - Allow judges increased discretion to sentence certain veterans to probation and treatment rather than to incarceration. To be eligible for such sentencing, the veteran must suffer from Post Traumatic Stress Disorder or from Traumatic Brain Injury.
****NOTE – Ongoing discussion with District Attorneys and other interested parties is necessary. Final language of proposal may change based on these discussions.**

3. OLF

- Interest from Escrow Accounts – Requires that escrow trust accounts held by title companies be set up according to a system similar to lawyer’s IOLTA accounts, with interest going partially to funding legal services.
**** NOTE – Send back to OLF for further consideration.**

- Centralized Legal Notice System - Requires that the Oregon State Bar create and maintain a centralized online system that lawyers, government entities, and other persons may use to post statutorily required legal notices. Posting to this system eliminate the need for the person to run a notice in the newspaper. Any net revenue from this system would go to fund legal services.
****NOTE – Request BOG set up task force to study issues and develop recommendations for BOG to consider.**

OSB Sections:

4. Administrative Law

- Fastcase Pilot Project - Requires state agencies to maintain final orders (as defined in ORS Chapter 183) in a digital format. This requirement is being proposed in order to facilitate the inclusion of agency final orders in online electronic databases such as Fastcase.
****NOTE – Work with DAS and Governor’s office regarding feasibility.**

5. Animal Law

- Warrantless Entry for Animal Welfare - Amends existing law to clarify that peace officers may enter a premises, search and seize an animal without a warrant if they reasonably believe that it is necessary to prevent serious harm or to render aid to the animal. Peace officers are currently permitted to do this to safeguard “property”, which includes animals. However some jurisdictions are reluctant to exercise this authority without clearer statutory guidance. Amends ORS 133.033.
**** NOTE – Work with section to create training opportunities with law enforcement on this issue.**

6. Business Law

- Remote-Only Shareholder Meetings - Clarify existing law to make clear that it is permissible to hold shareholder meetings over a webcast or other electronic communications medium without the need for the meeting to be based in a physical location. Current law clearly allows shareholders to participate at a meeting via this type of technology, but references in statute to the “place” of the meeting make it unclear if a meeting can be conducted exclusively through such remote communication systems. Amends ORS Chapter 60.
****NOTE – Concerns have been raised regarding shareholders who are unable to participate electronically. Further discussion with section to determine if this concern can be accommodated or whether non-bar affiliated entity should sponsor.**
- Equity Awards to Employees - The bill provides express authority for boards of directors to delegate to corporate officers the authority to grant equity awards to corporate employees. Current law is clear that boards may do this directly, but it is unclear as to whether they may delegate the authority to officers. Amends ORS 60.157.

7. Consumer Law

- Disclosure of Termination Fees – This bill amends the Unlawful Trade Practice Act and would require that at the time a contract is executed the contracting entity must conspicuously disclose the early cancellation fee and the total amount of the payments required to fulfill the entire contract. Amends ORS Chapter 646.
****NOTE – Work with section to determine if there is a non-bar entity better suited to sponsor this proposal.**

8. Debtor-Creditor

- Amended Notices of Sale - This bill would clearly define the duties of a trustee in a trust deed foreclosure when an initial sale has been lawfully stayed and the stay is then lifted. Amends ORS 86.755.
****NOTE – Work with section to determine if there is a non-bar entity better suited to sponsor this proposal.**
- Qualifications to Serve as Trustee - This bill would allow another attorney in the trustee attorney's firm to act on behalf of the trustee when the trustee is unavailable to act as trustee. Under current law, matters that must be undertaken by the trustee must wait until the trustee is again available, or a new trustee is appointed. Amends ORS 86.790.
****NOTE – Work with section to determine if there is a non-bar entity better suited to sponsor this proposal.**

9. Elder Law

- Protective Proceedings - Makes clarifications to the rules regarding attorney's fees and costs in protective proceedings cases. Amends ORS 125.095.

10. Estate Planning and Administration

- Uniform Trust Code Revisions - Makes numerous technical changes to the Oregon Uniform Trust Code. Amends ORS Chapter 130.
- Digital Assets - Establishes definitions and rules for the administration, maintenance and disposition of digital assets upon a decedent's death. Amends ORS Chapters 114, 125 and 130.
****NOTE – Workgroup will continue to work with internet service providers to address concerns.**

11. Family Law

- Housekeeping (ORS Ch 107 and 109) - This bill makes several changes to ORS Chapters 107 and 109 in order to clarify several ambiguities and errors. The issues covered include taxability of spousal support and applicability of statutory restraining orders, the proper location to file filiation proceedings, and the elimination of the term “suit” in certain contexts.

**** NOTE – Some provisions of this bill are more appropriate to be included in Legislative Counsel’s general statutory cleanup bill. This bill should be amended to remove those sections, e.g, the proper location to file filiation proceedings, and the elimination of the term “suit” in certain contexts.**

- Life Insurance - This bill provides for the award of attorneys fees in certain cases involving court ordered life insurance policies.
- Survivor Benefit – This bill provides for protections of survivor benefits for former spouses of members in a public retirement plan in cases where the spouses divorce prior to the death of the insured party.
**** NOTE – Work with section to determine if there is a non-bar entity better suited to sponsor this proposal.**

12. Juvenile Law

- Correction to Erroneous Statutory Reference – ORS 419B.100(1) (Jurisdiction in juvenile dependency proceedings) refers to “subsection 6” in the body of the text. However, this subsection was eliminated by a bill in 2011. In 2011, the legislature removed the former subsection(3), dealing with parental treatment by prayer, leaving only 5 subsections. This bill would correct this erroneous reference.
**** NOTE – This problem can be addressed through inclusion in Legislative Counsel’s general statutory cleanup bill. Introduction of this bill is likely unnecessary.**

OSB Committees:

13. Uniform Criminal Jury Instructions

- Technical Correction to Uniform Criminal Jury Instructions - Corrects a longstanding conflict between the current Uniform Criminal Jury Instructions and the Oregon Supreme Court’s decision in *Ireland v. Mitchell*, 226 Or 286, 290, 359 P2d 894 (1961). The statute requires that a judge inform jurors that they must distrust a witness that is false in one part of their testimony, whereas the court has ruled that jurors may distrust such a witness, but are not obligated to do so. Common practice is to abide by the Supreme Court’s ruling. Amends ORS 10.095.

MENTORS FOR BOG APPROVAL, APRIL 2012 --- New Lawyer Mentoring Program

Bar#	Sal.	F.Name	M.Name	L.Name	City.State.Zip
770998	Mr.	Howard	G.	Arnett	Bend, OR 97701
781270	Mr.	Ronald		Atwood	Portland, OR 97204
974240	Ms.	Kristy	Kay	Barrett	Portland, OR 97213
821973	Mr.	Ronald	L.	Bohy	Beaverton, OR 97008
863439	Mr.	Jon		Correll	Eugene, OR 97401
042762	Ms.	Sarah		Drescher	Portland, OR 97232
710506	Mr.	Charles		Duncan	Eugene, OR 97401
852697	Ms.	Jean		Fischer	Keizer, OR 97303
870450	Mr.	Brad		Garber	Lake Oswego, OR 97035
721040	Mr.	Roger		Gould	Coos Bay, OR 97420
832904	Mr.	James	T.	Guinn	Oregon City, OR 97045
772370	Mr.	Roland	W.	Johnson	Enterprise, OR 97828
963262	Mr.	Joel		Kent	Bend, OR 97701
862264	Mr.	David		Kuhns	Salem, OR 97302
842740	Mr.	David	P.	Levine	Lake Oswego, OR 97035
870625	Mr.	Eric	R.	Miller	Portland, OR 97223
803136	Mr.	Scott		Monfils	Portland, OR 97204
873117	Ms.	Mary	Kathryn	Olney	Salem, OR 97312
935585	Ms.	Jodie		Polich	Milwaukie, OR 97269
823781	Mr.	Robert		Radler	Beaverton, OR 97008
791045	Ms.	Dianne		Sawyer	Portland, OR 97223
944368	Mr.	Matthew		Shirtcliff	Baker City, OR 97814
003996	Ms.	Kristin		Sterling	Portland, OR 97204
921356	Ms.	Deborah		Stoll-Underwood	Eugene, OR 97401
044445	Ms.	Rebecca		Watkins	Portland, OR 97204
833452	Mr.	Brian		Whitehead	Salem, OR 97302
743432	Mr.	Steven		Wilgers	Coos Bay, OR 97420
853926	Mr.	David	O.	Wilson	Eugene, OR 97401
861068	Ms.	Robin		Wright	Portland, OR 97204

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: April 27, 2012
Memo Date: April 27, 2012
From: Barbara Dilaconi, Appointments Committee Chair
Re: Volunteer Appointments to Various Boards, Committees, and Councils

Action Recommended

Approve the following Appointments Committee recommendations.

Affirmative Action Committee

Recommendation: Charles "Chas" Lopez, Public Member, term expires 12/31/2014

Minimum Continuing Legal Education Committee

Recommendation: Cecelia Batlan, Secretary, term expires 12/31/2012

House of Delegates

Region 1 Recommendation: Justin Morton, term expires 4/20/2015

Region 2 Recommendation: Ross M Shepard, term expires 4/20/2015

Region 2 Recommendation: Douglas R Wilkinson, term expires 4/20/2015

Region 3 Recommendation: Peter Joseph Carini, term expires 4/20/2015

Region 3 Recommendation: Josh Soper, term expires 4/20/2015

Region 4 Recommendation: Simeon D (Sim) Rapoport, term expires 4/20/2015

Region 4 Recommendation: Scott Bellows, term expires 4/20/2015

Region 5 Recommendation: Shannon R Armstrong, term expires 4/20/2013

Region 5 Recommendation: Christopher A Larsen, term expires 4/20/2014

Region 5 Recommendation: Lori L Brocker, term expires 4/20/2014

Region 5 Recommendation: Jason E Hirshon, term expires 4/20/2015

Region 5 Recommendation: Justin D Leonard, term expires 4/20/2015

Region 5 Recommendation: Duane K Petrowsky, term expires 4/20/2015

Region 5 Recommendation: Christopher R Piekarski, term expires 4/20/2015

Region 5 Recommendation: Douglas A Schoen, term expires 4/20/2015

Region 5 Recommendation: Christine Meadows, term expires 4/20/2015

Metropolitan Public Defender Services Board of Trustees

Recommendation: Stephen A. Houze, term expires 6/3/2015

Ninth circuit Judicial Conference Lawyer Representatives

Recommendations: Bryan Beel, Craig A. Crispin, Orrin Leigh Grover III, Rachel Marshall, Tonia Moro, Josh Newton, Karen Oakes, Robert Rainwater, Elizabeth A. Semler, and Kim Sugawa-Fujinaga.

Oregon Law Commission

Recommendation: Julie McFarlane, term expires 6/30/2016

Recommendation: Mark Comstock, term expires 6/30/2016

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: April 27, 2012
From: Sylvia E. Stevens, Executive Director
Re: CSF Claims Recommended for Payment

Action Recommended

Consider the CSF Committee's recommendation to make the following award:

CSF Claim No. 2010-19 DICKERSON (Rawson) - \$3100

Background

On February 1, 2008, Claimant entered into an agreement to pay Daniel Dickerson a flat fee of \$5000 to pursue litigation arising from misrepresentation in a real estate matter. The agreement provided that the funds were "deemed to be earned, in full, upon receipt." She paid Dickerson \$600 upon signing the agreement and the balance in three installments.

Claimant says she heard nothing from Dickerson after the initial meeting and she professes no knowledge about what happened in her case. Nevertheless, she paid Dickerson \$1000 on February 11, 2008; \$300 on May 22, 2008; and \$3100 on February 17, 2009.

The court file indicates that Dickerson filed a complaint on Claimant's behalf on February 21, 2008. On May 30, 2008, the court issued a general judgment of dismissal for want of prosecution. Sometime thereafter Dickerson effected service on the defendants, who filed a notice of intent to appear in July 2008. The file contains nothing else. The statute of limitations has run and Claimant's claim cannot be revived.

Dickerson was disbarred in August 2010 for multiple violations of the RPCs, but this representation was not part of his disciplinary case. The matters leading to Dickerson's disbarment were similar, however: Dickerson took on a client's matter, accepted a fee in advance, then did little or no work and stopped communicating with the clients. The trial panel opinion notes that Dickerson's violations occurred during a relatively short period of time (mid-2006 to mid-2008) when he was experiencing personal problems. Nevertheless, the panel was found no excuse for Dickerson's failure to inform his clients that he was unable to perform adequately. In at least one matter, the panel found his failure to refund the unearned portion of a flat fee paid in advance was an intentional misappropriation.

The CSF Committee acknowledged that Dickerson did some work on Claimant's matter (preparation, filing and service of the complaint) for which he was entitled to be compensated. However, the Committee concluded that Dickerson was dishonest in accepting \$3100 more than 9 months after Claimant's matter had been dismissed (a fact which he failed to convey) and long after he essentially abandoned her matter.

**Oregon State Bar
Board of Governors Meeting
April 27, 2012
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. Michael R. Blaskowsky – 841766

Motion: Ms. O'Connor presented information concerning the BR 8.1 reinstatement application of Mr. Blaskowsky to satisfy the one meeting notice requirement set forth in Bar Bylaw 6.103. Mr. Blaskowsky's application will be placed on a future agenda for consideration and action.

2. Susan M. Coby – 901556

Motion: Ms. Kohlhoff presented information concerning the BR 8.1 reinstatement application of Ms. Coby to satisfy the one meeting notice requirement set forth in Bar Bylaw 6.103. Ms. Coby's application will be placed on a future agenda for consideration and action.

3. Ann Highet – 902999

Motion: Mr. Spier presented information concerning the BR 8.1 reinstatement application of Ms. Highet to satisfy the one meeting notice requirement set forth in Bar Bylaw 6.103. Ms. Highet's application will be placed on a future agenda for consideration and action.

4. James M. Pippin – 711354

Motion: Mr. Larson presented information concerning the BR 8.1 reinstatement application of Mr. Pippin. Mr. Larson moved, and Mr. Wade seconded, to recommend to the Supreme Court that Mr. Pippin's reinstatement application be approved. The motion passed. Mr. Emerick abstained.

5. Randall W. Rosa – 825006

Motion: Mr. Ehlers presented information concerning the BR 8.1 reinstatement application of Mr. Rosa to satisfy the one meeting notice requirement set forth in Bar Bylaw 6.103. Mr. Rosa's application will be placed on a future agenda for consideration and action.

6. Lisette M. Spencer – 963398

Motion: Mr. Haglund presented information concerning the BR 8.1 reinstatement application of Ms. Spencer. Mr. Haglund moved, and Mr. Wade seconded, to recommend to the Supreme Court that Ms. Spencer's reinstatement application be approved. The motion passed unanimously.

7. Robert E. Sullivan – 983539

Motion: Ms. Garcia presented information concerning the BR 8.1 reinstatement application of Mr. Sullivan. Mr. Wade moved, and Mr. Emerick seconded, to temporarily reinstate Mr. Sullivan per BR 8.7(b). The motion passed unanimously.

8. Hadley Howell Van Vactor – 060138

Motion: Mr. Emerick presented information concerning the BR 8.1 reinstatement application of Ms. Van Vactor. Mr. Emerick moved, and Mr. Spier seconded, to recommend to the Supreme Court that Ms. Van Vactor's reinstatement application be approved. The motion passed unanimously.

B. Disciplinary Counsel's Report

Mr. Sapiro reported on developments regarding the bar's custodianship over the law practice of Bryan W. Gruetter, who is no longer a member of the Oregon State Bar.

**Oregon State Bar
Board of Governors Meeting
April 27, 2012
Executive Session Minutes**

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

A. Unlawful Practice of Law

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

B. Pending or Threatened Non-Disciplinary Litigation

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

C. Other Matters

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

**Oregon State Bar
Special Open Meeting of the Board of Governors
May 24, 2012
Minutes**

The meeting was called to order by President Mitzi Naucler at 5:00 p.m. on May 24, 2012. The meeting adjourned at 5:30 p.m. Members present from the Board of Governors were Jenifer Billman, Hunter Emerick, Ann Fisher, Michael Haglund, Ethan Knight, Theresa Kohlhoff, Tom Kranovich, Steve Larson, Maureen O'Connor, Travis Prestwich and Richard Spier. Staff present were Sylvia Stevens, Helen Hirschbiel, Rod Wegener, Kay Pulju, Susan Grabe, Judith Baker and Camille Greene. Board members not present: Barbara Dilaconi, Patrick Ehlers, Michelle Garcia, Matthew Kehoe, Audrey Matsumonji and David Wade.

1. Replacement Appointment to the Client Security Fund

In the absence of Appointments Committee Chair, Barbara Dilaconi, Steve Larson presented the committee's recommendation of Ronald Atwood as replacement appointment to the Client Security Fund. Mr. Atwood's term will expire 12/30/2014.

Motion: The board voted unanimously to approve the committee motion for the appointment as recommended. **[Exhibit A]**

2. Centralized Legal Notice System

Ms. Baker provided the board with a draft business plan for the Centralized Legal Notice System. A discussion followed. The board agreed that more information would be needed before the BOG can decide whether to proceed. **[Exhibit B]**

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: May 24, 2012
Memo Date: May 24, 2012
From: Barbara Dilaconi, Appointments Committee Chair
Re: Volunteer Appointments to Various Boards, Committees, and Councils

Action Recommended

Approve the following Appointments Committee recommendations.

Client Security Fund Committee

Recommendation: Ronald Atwood, member, term expires 12/30/2014

Centralized Public Notice System Projected Budget

	Startup 1st year	2nd year	3rd year	4th year	5th year	6th year
Revenue						
40,900 ads @\$80/ad	\$0	\$3,272,000	\$3,272,000	\$3,272,000	\$3,272,000	\$3,272,000
Expenses						
Startup costs (a)						
Internal (b)	97,620					
External/Out of Pocket	91,500					
Marketing	45,000					
Annual Maintenance						
External Support Costs		55,000	57,800	60,700	63,700	66,900
New personnel		90,000	94,500	99,200	104,200	109,400
Existing personnel (management) (c)		27,000	28,400	29,800	31,300	32,900
Administrative Costs		38,700	40,600	42,600	44,700	46,900
Total Expenses	234,120	210,700	221,300	232,300	243,900	256,100
Gross Revenue	(234,120)	3,061,300	3,050,700	3,039,700	3,028,100	3,015,900
Payback OSB Startup Costs		(234,120)				
Legal Aid Funding		(2,800,000)	(3,000,000)	(3,000,000)	(3,000,000)	(3,000,000)
Net Revenue	(\$234,120)	\$27,180	\$50,700	\$39,700	\$28,100	\$15,900
Accumulated Reserve	(\$234,120)	\$27,180	\$77,880	\$117,580	\$145,680	\$161,580

Notes

(a) Startup costs advanced by OSB

(b) Existing OSB IDT staff and contractors; may include using more outside contractors;
full cost allocated as this project delays OSB projects

(c) Existing OSB manager absorbing this role

Oregon Legal Notices - Project Estimate

Project Name: Oregon Legal Notices Website	Submitted for Review:	Date Approved:
Project Manager:	Project Sponsor(s): Judith Baker	Project Stakeholder(s):

Executive Summary

The goal of the Website is to facilitate publishing and access of all statutorily required legal notices, making them readily available and searchable to the public while meeting disclosure requirements, thereby creating a unified state system for all legal notices in Oregon. Revenues from posting and a subscription-based alert feature will ultimately raise funds for the Oregon Law Foundation. This project is contingent on Oregon Legislation changes to legal notice laws, so the earliest we would know if this is approved is June 2013.

Project Description

Development Needs

- Create web components to support the posting, viewing and reporting of legal notices on an online web portal.
- Interface/Functionality to search and display legal notices
- Interface/Functionality to create and post notices with ability to pay online
- Interface/Functionality to subscribe to notices with ability to pay online
- Interface to support OSB administrative functions of the site such as content management and reporting
- Integration with OSB Financial System
- User Account Administration – secure self-service method to create and maintain login credentials to create & subscribe to notices
- Notification functionality for internal and external process workflows such as an affidavit used to prove legal notice.

Additional Features & Functionality

- Digital Signature integration
- Search Engine Optimization

Project Deliverables

Proposal from Legal Interactive



Oregon_State_Bar_
Open_Records_Propo

- Complete public notice management of posting, viewing and reporting
- Powerful Apache Solr that powers many of the largest sites online that includes rich document searches, content recommendations, hit highlighting, database integration and index replication
- Fully integrated, PCI e-commerce system that allows users to pay to post notices
- Membership subscription feature that allows members to subscribe to receive notices for a fee and manage account with login credentials
- Complete Content Management system that permits OSB staff to add, delete, and edit all content
- Complete Integration with the OSB financial system
- Workflow system allows you to tailor permissions and customize workflow to your organizational needs
- Digital signature integration for all requested areas of the site (Rightsignature subscription required)
- System can handle over a million postings per year by thousands of users.
- Accessibility and Section 508 Compliance. Site meets ADA guidelines.
- Upgrades and new features are included with every subscription.
- Government-level security requirements that include Passwords that comply with Level 2 of NIST'S
- Electronic Authentication Guidelines, https is pre-configured, and CAPTCHA comes standard on all forms
- KPI Dashboard reporting system provides real-time metrics for your data.

Example Tasks to Manage Program

Example work required by new program staff may include:

- Ensure program is meeting legal requirements through defined business rules implemented by the Oregon State Bar.
- Enhance the use and adoption of the product through means of communication to the potential audience of the website.

- Act as liaison with external organizations as needed to provide expertise surrounding public notices.
- Define training and education on the processes surrounding the use the tool both internal and external users.
- Assist in customer service related tasks as they arise.
- Create and manage reports as needed for management and finance.
- Troubleshoot website and process issues and bring attention to issues as they arise.
- Manage non notice website content as needed.
- Review notification and confirmation templates as needed to provide corrections, removals and/or additions.
- Potential audit or review of posted legal notices.

Example finance staff work:

- Account Management for institutions who create multiple postings a month, rather than having to provide a credit card for every post.
- Provide assistance with exceptions that result from the large volume of transactions.
- Support the additional eCommerce feature set in Great Plains.
- Support the new OSB staff that will manage the program overall.

Project Timeline - 1 Year

Initiation & Planning stages:

- Define detailed business requirements by translating legislation into understandable business rules for the overall program and software to operate
- Define marketing and communication plan

Execution stages:

- Execution of web development activities
- Execution of marketing and communication activities
- Staff training and procedural implementation activities
- User Acceptance Testing
- Web site implementation activities
- Website and system go-live

Summary Budget

****This estimate does not cover potential Marketing costs****

Project Budget					
Internal Costs		Internal Costs		External Costs	
L1	\$ 24.00	L3	\$ 69.00	WAM	\$ 85.00
L2	\$ 41.00	Mixed	\$ 45.00	WEB	\$ 95.00
Internal Cost					
Resource	Tasks	Hours	Cost		
BSA & Project Manager	Manage Project, Requirements Support	520	\$	21,320.00	
Stake Holder - OSB Management	Provide Guidance and Decision Making	500	\$	34,500.00	
Stake Holder - OSB Finance	Provide Guidance and Decision Making	250	\$	17,250.00	
Project Sponsor - OLF Director	Provide Guidance and Decision Making	130	\$	8,970.00	
Developer	Assist with OSB Application Integration	100	\$	4,100.00	
System/Network Administrator	Support Solution Design	40	\$	1,640.00	
OSB Support Staff (multiple resources)	User Acceptance Testing	80	\$	3,280.00	
OSB Support Staff (multiple resources)	Documentation, Training, Communication	160	\$	6,560.00	
		Total Hours	1780		
		Total Cost	\$	97,620.00	
External Cost					
Resource or Software	Hours	Cost			
Web Site Development Costs		\$	52,000.00		
Great Plains Business Ready Licenses for eCommerce		\$	15,000.00		
Great Plains Consultant	100	\$	20,000.00		
Staff Computer Equipment		\$	4,500.00		
		Total Hours	100		
		Total Cost	\$	91,500.00	
				Total Project Cost	\$ 189,120.00
Post Production Support Costs - YEAR 1					
Description on Cost	Cost				
Enterprise Software & Database Monthly Hosting Fee - \$2700 a month	\$ 32,400.00				
Search Engine Optimization - \$679 a month	\$ 8,148.00				
Maintenance & Support Plan - \$250 a month	\$ 3,000.00				
IBM Twice Daily Web Site Backups	Included				
Hardware (Server/Drives/OS)	Included				
1 Hour Per Month Of Custom Software Programming or Requested System Updates	Included				
Software Support Maintenance - Anticipated Enhancements - a year (50 hours x \$95)	\$ 4,750.00				
Digital Signature - \$199 a month	\$ 2,388.00				
Great Plains Business Ready Licenses Maintenance Cost	\$ 4,350.00				
Total Support Costs				\$	55,036.00
Staff Increase a Year					
Description on Cost	Cost				
FTE 1.0 at grade 10 so \$22.00 x .35 (benefits) = \$29.70 per hour	\$ 61,776.00				
FTE .25 to manage so \$38.00 x .35 (benefits) = \$51.30 per hour	\$ 26,676.00				
FTE .5 to for Finance staff at grade 8 so \$20 x .35 (benefits) = \$27.00	\$ 28,080.00				
Total Staff Costs				\$	116,532.00
				Total Yearly Maintenance Co	\$ 171,568.00

Oregon Law Foundation Public Notice Campaign Estimate

Submitted by WordBridge

Situation |

Oregon's Legal Aid system provides legal services for low-income clients throughout the state. A primary source of funding for the statewide network comes from Interest on Lawyer Trust Accounts (IOLTA). The current climate of low interest rates has decimated this funding source and the Oregon Law Foundation (OLF) is exploring creative ways to recover from this funding loss. They are proposing a web-based system through which public notices are delivered. Currently, public notices are published at a premium advertising rate in local newspapers.

More than just a new web tool, an online delivery system for Public Notices will:

- Ensure due process
- Increase accessibility of public notices
- Save municipalities millions of dollars each year
- Provide a stable funding source for Legal Services
- Demonstrate creative, high-level problem solving by the Oregon law community

A broad awareness campaign is critical to build awareness of the new system among the many stakeholders that utilize public notices. The campaign will showcase the benefits that stakeholders will gain by embracing and actively engaging with an online Public Notice system.

The campaign assures a transparent approach is being used to inform stakeholders and the general public about the new resource prior to its launch. It will proactively answer questions regarding why the change was made, and provides training on the new system.

The OLF anticipates strong opposition from the newspapers and some segments of the general population.

Communication Goals |

- Build **awareness** of new Public Notice website among key stakeholder audiences
- Generate **attendance** to Webinar or other trainings for the new resource
- Increase **traffic** to the online resource
- Increase number of "**transactions**" (as defined by OLF, may include entity registrations)

Target Audiences for Campaign |

- Lawyers
- Municipalities
- Financial Institutions
- School districts
- Media
- Other users of the Public Notice system

Campaign Elements |

Below is a high-level estimate for a state-wide awareness campaign estimated to start in June 2013. The length of the campaign is to be determined but is estimated to conclude in June 2014. The actual campaign cost may change based on additional deliverables agreed to between WordBridge and OLF. This estimate includes strategy development, material production (with designer as needed), account/project management and executive debriefing billed at \$90/hour for a total of \$42,900. It does not include costs for a media buy or design of paid media material.

Phase 1 Develop campaign brand	Cost for Phase 1 = \$ 10,900
Develop work plan, identify ownership of action items, agreement on calendar of deliverables	
Information download from OLF team - features, changes, resources, etc. that will be delivered through new website.	
Develop key messages for campaign by audience. This document will provide a guide for all communications created for this campaign. It's the "source of truth"	
Create initial contact piece (electronic and printed) to announce the upcoming launch of Public Notice online resource.	
Create preview flyer (electronic and printed) featuring the top-level benefits of Public Notice online resource organized by audience	
Develop e-newsletter/e-blast template specific to campaign to send through html email or email management tool (such as MailChimp or Constant Contact). This resource will highlights features of the new website and how it impacts the existing Public Notice delivery network. Answers the questions: "Why the change?" "What's in it for me?" "Why should I care?" "How does it work?" Provides updates on legislative process, implementation, etc.	
Phase 2 Features/benefits preview	Cost for Phase 2 = \$ 26,600
Write press material, deliver and perform media outreach for "preview" phase	
Develop three short (3-5 minute) website tutorials that highlight key access points and features: General overview – public, General overview - entities, Registering for an account – entities. Additional tutorials may be recommended based on TBD website functionality.	
Create and send four campaign e-newsletter/e-blasts	
Write article for OLF/Oregon Bar Association publications about the campaign	
Create project partner marketing toolkit that contains plug-and-play material including newsletter stories, text blurbs of various lengths for website and emails, graphic link-back “bug” with code for copy/paste placement.	
Design call to action to register an account on the public notice resource (for entities that will post)	
Develop presentation and script for webinar that can be delivered live and recorded for on-demand viewing.	

Phase 3 | Launch. Training opportunities and user registrations.

Cost for Phase 3 = \$ 5,400

Write, deliver and perform media outreach for "it's here" press release

Deliver partner toolkit for site promotion. Conduct outreach to partners to place stories and other elements of the "toolkit" in local communication channels.

Deliver Webinar

Work with OLF to deploy tutorials, archived webinar and other wrap-up resources as needed

Deliver templates, graphic files and final versions of all material created for campaign to OLF

MINUTES

BOG Access to Justice Committee

Meeting Date: May 24, 2012
Location: Oregon State Bar Center
Chair: Maureen O'Connor
Vice-Chair: Ann Fisher
Members Present: Maureen O'Connor, Tom Kranovich, Ann Fisher, Jenifer Billman
Members Absent: Audrey Matsumonji
Staff Members: Judith Baker, Cathy Petrecca, Kay Pulju, Susan Grabe
Guests: Judge Maureen McKnight, Judge Nan Waller, Maya Crawford

INFORMATION ITEMS

1. Topic: Presentation from Judge Waller and Judge McKnight

Judge McKnight and Judge Waller attended the meeting to discuss the growing number of pro se litigants that are representing themselves in the court process. They reported that 85% of family law cases have at least one party unrepresented but there is also a growing number of pro se litigants in other areas of law. This is causing a burden on court staff especially at a time when court staff, including court facilitators, have been cut. There is an additional burden on judges who need to instruct pro se litigants on court process and procedure. The judges are looking to provide better access and tools to assist pro se litigants through the court process thereby providing greater access.

The judges discussed the idea of building a self represented resource center using the Multnomah County Law Library space. It would mean a collaborative repurposing of the law library into a resource center for pro se litigants. The resource center would include access to forms, tutorials and websites that provide information concerning basic concepts of court process and procedure. This in turn will allow pro se litigants greater access to the courts. It was also discussed that an important access tool for pro se family law litigants would be statewide uniform family law forms.

Judge McKnight and Judge Waller said that they needed two things from the bar. The first was general support for their vision. The second is having bar staff research the self help tools that currently exist and what needs to be developed to create an effective resource center.

Minutes
Budget & Finance Committee

April 27, 2012
Oregon State Bar Center
Tigard, Oregon

Present - Committee Members: Mike Haglund, chair; Steve Larson, vice-chair; Hunter Emerick; Michelle Garcia; Theresa Kohlhoff; David Wade. **Other BOG Members:** Mitzi Naucler; Patrick Ehlers; Ann Fisher; Tom Kranovich. **Staff:** Sylvia Stevens; Susan Grabe; Mariann Hyland; Rod Wegener. **Visitor(s):** One

1. Minutes – March 30, 2012 Committee Meeting

The minutes of the March 30, 2012 meeting were approved.

2. Investment Policy and Portfolio

Upon review of the responses on the agenda from Washington Trust Bank and Becker Capital, the committee discussed the risk and reward factors of adding the high-yield asset class to the bar's investment policy. To resolve the matter, the committee asked Mr. Wegener to invite the Washington Trust representative to attend the next committee meeting. The committee also directed Mr. Wegener to have Washington Trust include better analysis and comparisons to benchmarks on the quarterly reports.

3. Financial Report – March 31, 2012

Mr. Wegener reported the first quarter of 2012 was in line with the budget and the most positive number was the unrealized gain in the investment portfolio.

Most of the discussion was directed at the report and two charts on MCLE activity. The charts showed the growth in MCLE accredited programs and the change in length of program from the longer, full-day event to the less than 2 hours event. These changes were attributable to more members earning credits through shorter, on-line programs and not live attendance. The committee asked how these trends compare to the bar's CLE Seminars development of programs. Since CLE Seminars will present to the committee at its next meeting, the committee asked that the comparisons be a part of the presentation.

4. BOG Agenda – Emerging Issues Discussion

Since this topic was how the OSB membership fee is spent, the topic was on the committee agenda. The topic and the related charts were discussed at the full board meeting later in the day.

5. Discussion of CLE Seminars

Due to another commitment of the CLE Seminars Manager, the discussion about CLE Seminars' financial plans will be discussed at the May 24 meeting.

6. Next Committee meeting

The next meeting is scheduled for May 24, 2012 at the bar center.

Minutes
Budget & Finance Committee
May 24, 2012
Oregon State Bar Center
Tigard, Oregon

Present - Committee Members: Mike Haglund, chair; Steve Larson, vice-chair; Michelle Garcia; Theresa Kohlhoff; Ethan Knight. **Other BOG Members:** Jenifer Billman; Mitzi Naucler; Ann Fisher. **Staff:** Sylvia Stevens; Susan Grabe; Helen Hierschbiel; Mariann Hyland; Rod Wegener.

1. Minutes – April 27, 2012 Committee Meeting

The minutes of the April 27, 2012 meeting were approved.

2. Investment Policy and Portfolio

As two committee members were absent for the discussion on the investment policy, the committee agreed to defer the discussion to the next meeting. In response to Mr. Wegener's comment that the audit showed that some of the corporate notes were a grade or two below the bar's policy, the committee stated the credit rating on notes and other fixed income instruments should be reported to the committee annually.

3. Lease Conditions at the Bar Center

The committee agreed that having the vacant space leased on the first floor is more important than the lease rate, so the bar should promote a rate that will rent the space as soon as possible.

4. Financial Report – April 30, 2012

Mr. Wegener had no new information to add to the report distributed previously to the committee. Mr. Wegener did point out the statements about depreciation expense since it will be a key factor in the net expense that will be reported on the audit report when it is delivered to the committee.

The committee indicated it wants to continue to receive the financial report sent via email when it is completed and it also to be included on any upcoming committee agenda.

Executive Director Stevens reported a number of substantial Client Security Fund claims will come to the Board of Governors at its next meetings and the board should be prepared for probable large payments of claims. The committee also should consider how to fund the claims if they exceed the amount of the CSF fund balance.

5. Audit Report of OSB 2010 & 2011 Financial Statements

In an earlier email to the committee, Mr. Wegener reported the audit report is not complete as the auditors and bar staff need to work through clarifications in the notes and comments in the report. The report will reflect an unqualified opinion for the bar's statements. The lead auditor will speak with the committee at its next meeting probably via a conference phone call.

6. CLE Seminars department Business Plan

As the CLE Seminars Manager was not present at the meeting, Mr. Wegener stated he had reviewed the report with Ms. Lee and Ms. Stevens. He then walked the committee through the plan. There was considerable discussion about the report and included comments as:

- There should be more specialized, niche topics and the registration fees on these programs should be higher.
- There were contrasting comments about the quality of the seminars.
- Currently there are too many beginner-level topics.
- The target audience is not the 1 to 5-year member. New attorneys can get low cost CLE's from the NLD. The young lawyers' market is not OSB seminars.
- How does the bar move into new topics, arenas?

The committee will continue to review the financial impact of the consistent net expense of the program, any future direction leading to changes in the program, and efforts to decrease or the willingness to accept the net expense

7. 2012 Economic Survey

Mr. Wegener reported the contractor had received 1,024 surveys as of May 24. This is almost $\frac{1}{4}$ of all distributed survey questionnaires.

8. Next Committee meeting

The next meeting is scheduled for June 22, 2012 prior to the Board of Governors meeting in Ashland.

MINUTES

BOG Member Services Committee

Meeting Date: April 27, 2012
Location: OSB Center, Tigard
Chair: Matt Kehoe
Vice-Chair: Tom Kranovich
Members Present: Matt Kehoe, Ann Fisher, Travis Prestwich, Richard Spier, Audrey Matsumonji (by phone).
Guests: Maureen O'Connor (BOG), Lauren Paulson
Staff Members: Danielle Edwards, Sarah Hackbart, Kay Pulju

ACTION ITEMS

1. **Topic:** Minutes of the march 30, 2012, meeting were approved as offered.
2. **Topic: Affinity Programs.** Committee members discussed the variety of affinity and member benefit programs reviewed in the agenda packet. The consensus was to pursue member benefits focused on practice support (e.g. technology services, credit card processing, facility rentals) and not to pursue affinity relationships. Staff should continue to gather information on possible discount partners and also research member interests.
3. **Topic: Member Poll.** Committee members discussed goals of a potential member-wide electronic poll. In addition to discount providers, the committee would like to know the following: what CLEs members attend, and who provides them; frequency of use and satisfaction with Fastcase and BarBooks; level of past and current involvement with OSB as a volunteer, including service on section executive committees. Demographics questions will be important to show differences among various categories of members. Matt Kehoe will invite the full board to offer topics and questions.
4. **Topic: Section Bylaws.** The committee recommended approval of all proposed changes (see agenda memo) other than the items modifying term limits. The Policy & Governance Committee will discuss this item at its May meeting.

INFORMATION ITEMS

5. BOG elections. All committee and board members were encouraged to continue recruiting candidates up until the May 8 deadline.
6. OSB Program Review. Ann Fisher would like to continue this project.

MINUTES

BOG Member Services Committee

Meeting Date: May 24, 2012
Location: OSB Center, Tigard
Chair: Matt Kehoe
Vice-Chair: Tom Kranovich
Members Present: Matt Kehoe, Tom Kranovich, Travis Prestwich, Richard Spier
Staff Members: Kay Pulju

ACTION ITEMS

1. **Topic:** Minutes of the April meeting were approved as offered.
2. **Topic: Member Survey.** Committee members discussed a draft survey instrument. Suggestions included: adding an “other” option and comment line to the affinity service question; adding a question about service on the House of Delegates and attendance at the former Annual Meeting; specifically mention the Fastcase renewal process; offer incentives to participate while preserving confidentiality.
3. **Topic: OSB Program Review.** Additional copies of the program review notebooks are available for any interested board member.

INFORMATION ITEMS

4. **Topic: Sustainability Awards.** The Sustainable Future Section is interested in proposing changes to the nomination and selection process for this award.

MINUTES

BOG Policy and Governance Committee

Meeting Date: April 27, 2012
Location: OSB Center
Chair: Ann Fisher
Vice-Chair: David Wade
Members Present: Ann Fisher, David Wade, Jenifer Billman, Matt Kehoe, Travis Prestwich, Richard Spier
Guests: Public Affairs Committee (Pat Ehlers, Hunter Emerick, Michael Haglund, Theresa Kohlhoff, Tom Kranovich, Steve Larsen), Norm Williams and Lauren Paulson
Staff Members: Sylvia Stevens, Helen Hirschbiel, Judith Baker, Denise Cline, Danielle Edwards, Susan Grabe, Jeff Sapiro

ACTION ITEMS

- | |
|---|
| <p>1. Approve Minutes of March 30, 2012 meeting. The minutes were approved by acclamation.</p> |
| <p>2. Committee Charges. The committee reviewed a new charge for the New Lawyer Mentoring Committee and a revision to the UPL Committee charge to include its authority to draft advisory opinions. Mr. Wade moved, Mr. Kehoe seconded, and the committee voted unanimously to recommend adoption of the new and revised charges as presented.</p> |
| <p>3. MCLE Rule 3.7(c) Amendment. After discussion, on motion of Mr. Wade, seconded by Mr. Kehoe, the committee voted unanimously to recommend that MCLE Rule 3.7(c) be amended to make it clear that Active Pro Bono members reinstating to regular active status are subject to the same requirements as members reinstating from inactive status.</p> |
| <p>4. Section Charitable Donations. Ms. Stevens explained the confusion and uncertainty among sections about permissible charitable donations and her own difficulty determining whether a section's intended donation is sufficiently related to the section's purpose. After discussion, on motion of Mr. Wade, seconded by Mr. Kehoe, the committee voted unanimously to recommend adoption of the new language in Bylaw 15.401 proposed by staff.</p> |
| <p>5. Refunding Annual Fees on Death. The committee discussed whether to amend Bylaw 6.4 to allow refunds of annual fees on the death of a member, noting that staff has done so in spite of the bylaw for many years, but only in response to a request. Some committee members suggested that the fees should be subject to refund for any reason, while others suggested refunds on death should be automatic and not available only on request. After considerable discussion, on motion of Mr. Prestwich, seconded by Mr. Spier, the committee voted unanimously not to change the bylaw and directed staff to enforce it as written.</p> |
| <p>6. Centralized Public Notice System. Norm Williams, chair of the Oregon Law Foundation, presented the OLF's proposal that the OSB pursue legislation pursuant to which all public notices required under Oregon law would be submitted to a centralized online system</p> |

operated by the OSB. The committee and others present had a vigorous discussion of the pros and cons of the idea including the lack of precision as to what it would cost to develop and operate the website and how much revenue the system could be expected to generate. Questions were also raised about how to handle objections from newspapers whose principal revenue comes from publishing legal notices, whether there was a sufficient nexus to the OSB mission, whether state funding for legal services could be jeopardized by an alternative revenue source, and whether the legislature would be amenable to the idea. On motion of Mr. Wade, seconded by Mr. Kehoe, the committee voted unanimously to recommend that the BOG pursue enabling legislation.

- 7. Other Items.** The remaining agenda items were deferred until the committee's May 24 meeting.

MINUTES

BOG Policy and Governance Committee

Meeting Date: May 24, 2012
Location: OSB Center
Chair: Ann Fisher
Vice-Chair: David Wade
Members Present: Ann Fisher, Jenifer Billman, Matt Kehoe, Travis Prestwich, Richard Spier
Members Absent: Barbara Dilaconi, David Wade
Guests and Staff: Sylvia Stevens, Helen Hierschbiel

ACTION ITEMS

- | |
|--|
| <p>1. Approve Minutes of April 27, 2012 meeting. The minutes were approved by acclamation.</p> |
| <p>2. Section Bylaw Changes. Ms. Fisher explained that the proposed changes were housekeeping in nature with the exception of one that designates chair-elect the HOD delegate if the chair serves in a dual capacity in the HOD. After discussion, the committee directed staff to add another new provision allowing the chair to designate an alternate in the event of the chair's unavailability.</p> |
| <p>3. HOD Review. Ms. Fisher outlined her concerns about the HOD and the importance of not dismissing ideas just because no action has been taken on them in the past. No action was taken; the committee will continue to discuss options for the HOD.</p> |
| <p>4. Judicial Selection and Professionalism. Ms. Fisher explained her concerns about the BOG's support for the judiciary in the face of what some members believe is unprofessional treatment from judges. She would like the committee to explore what can be done to improve judicial professionalism so that members will support the BOG's efforts on behalf of the judiciary.</p> |
| <p>5. Proactive Stance on Socio-Political Issues. Ms. Fisher stated her belief that the BOG has historically interpreted the <i>Keller</i> restrictions too narrowly and has been too timid regarding controversial issues. Ms. Stevens explained that <i>Keller</i> restrictions apply only to the use of mandatory fees in support or opposition of candidates or issues not germane to the bar's purposes. <i>Keller</i> does not prohibit the publication of articles on controversial topics in the <i>Bulletin</i> or elsewhere. Differing views about the wisdom of highlighting divisive issues were discussed briefly.</p> |
| <p>6. LRS Update. Ms. Fisher reported on list serve comments in response to the renewal solicitation for the Lawyer Referral Service which indicate a need for more information about the changes and their implications. She suggested holding an open meeting for panelists, members of the SSFP and other interested sections at which the changes can be explained and questions answered. She also pointed out that many of the comments raise issues that need to be studied going forward. She asked for a report on the renewal rate at the July meeting.</p> |
| <p>7. ULTA Bylaw Changes. Ms. Hierschbiel explained the proposed changes to simplify and streamline the process for dealing with claims for Unclaimed Lawyer Trust Account funds.</p> |

MINUTES

BOG Public Affairs Committee

Meeting Date: May 24, 2012
Location: Oregon State Bar
Chair: Steve Larson
Vice-Chair: Hunter Emerick,
Members Present: Maureen O'Connor, Patrick Ehlers, Tom Kranovich, Mike Haglund, Audrey Matsumonji,
Others present: Mitzi Naucler
Staff Members: Susan Grabe

ACTION ITEMS

Minutes. The minutes for the February 9, April 5 and April 23 meetings were formally approved.

Law Improvement Proposals. PAC approved forwarding the bar's package of legislative concepts to legislative counsel's office for bill drafting purposes. Public Affairs staff will continue to address issues of concern with affected stakeholders.

Court Funding. PAC reviewed a draft of the EcoNW report; some suggestions and comments will be provided to the drafters.

INFORMATION ITEMS

Legislative Hearing Days. Representatives from the Lawyers for Veterans Steering Committee, the OSB Task Force on Filing Fees and the Family Law Section testified in different hearings during the third week of May. In addition, the bar sent a letter in support of the Judicial Department's request to the E Board for additional monies.

ABA DAY Update. The meetings with our congressional delegation went well. There has been continued contact on issues related to the court intercept act, the violence against women act and maneuvers related to funding for legal services.

Minutes

BOG Unclaimed Lawyer Trust Account Special Committee

Meeting Date: April 27, 2012
Location: OSB Center, Tigard
Members Present: Patrick Ehlers, Theresa Kohlhoff
Members Absent: Ethan Knight
Guests: None
OSB Liaison: Helen Hierschbiel

ACTION ITEMS

1. Approval of Minutes. The Committee approved the minutes for the June January 6, 2012 ULTA Committee meeting.	
2. Sanhsith Saypannha. Patrick Ehlers moved and Theresa Kohlhoff seconded, to approve Sanhsith Saypannha's request for return of funds delivered to the bar. Approval of the claim was unanimous.	

MINUTES

BOG Public Member Selection Committee

Meeting Date: April 27, 2012
Location: Oregon State Bar Center
Chair: Barbara Dilaconi
Vice-Chair: Matt Kehoe
Members Present: Jenifer Billman, Maureen O'Connor, and Travis Prestwich
Staff Members: Danielle Edwards and Amy Meyri

INFORMATIONAL ITEMS

1. **Topic: Timeline and Interview Dates**

The committee reviewed the timeline and discussed dates for interviewing BOG public member candidates. The interviews will be held on September 28 at the OSB Center in Tigard Oregon.

2. **Topic: Review of Materials**

The committee reviewed the revised public member application, press release, and reference check questions. No changes were made to these documents.

CLAIM #	NAME	ATTORNEY	CLAIM	PENDING	AMOUNT PAID	DATE PAID	DATE DENIED W/DRAWN	UNPAID BALANCE	ASSIGNED TO
10-16	Bazurto, Cecilia	Fields, Stanley	\$25,000.00	25,000.00		BOG June		25,000.00	Angus
10-25	Kiker, Jeffrey Allen	Ginsler, B. William	8,868.03	8,868.03		BOG June		8,868.03	Cousineau
10-31	Johns, Frank and Chongnak	Connall, Des	25,300.00	25,300.00		BOG June		25,300.00	Wright
11-02	Risch, Stephen R	Connall, Des & Shannon	57,000.00	50,000.00				50,000.00	Wright
11-05	Raske, Karen	Connall, Shannon	3,250.00	3,250.00				3,250.00	Wright
11-07	Stratton, Laurence Eugene	Connall, Shannon and Des	10,000.00	10,000.00				10,000.00	Wright
11-13	Suanders, Ima Jean Lousie	Burns, Suan Ford	400.00	400.00				400.00	Calderon
11-21	Roelle, Brian D	Connall, Des	23,000.00	23,000.00				23,000.00	Wright
11-22	Olive, Wendy	Schannauer, Peter	800.00	800.00				800.00	McGean
11-23	Baker, Lori Marie	Morasch, Marsha	5,000.00	5,000.00		BOG June		5,000.00	Kekel
11-27	Noble, Wendy D	Hayes, Keith	4,000.00	4,000.00				4,000.00	Barrack
11-28	Morning Star Missionary Baptist Church	Dickerson, Daniel	355,000.00	50,000.00				50,000.00	Angus
11-29	Foster, Elisha Leon	Gruetter, Bryan	45,000.00	45,000.00				45,000.00	Welch
12-03	Key, Veryl (aty Jennifer Coughlin)	Gruetter, Bryan	60,000.00	50,000.00				50,000.00	Welch
12-04	Liebzeit, Leann	Gruetter, Bryan	48,400.00	48,400.00				48,400.00	Miller
12-06	Gravance, David	Gruetter, Bryan	51,000.00	50,000.00		BOG June		50,000.00	Miller
12-07	Runkel, Lana	Gruetter, Bryan	142,000.00	50,000.00				50,000.00	Bennett
12-08	Burk, Alice Elizabeth	Gruetter, Bryan	6,940.00	6,940.00				6,940.00	Wright
12-09	Mills, Carolyn Betty	Gruetter, Bryan	3,696.50	3,696.50				3,696.50	Wright
12-10	Schnee, Cynthia	Hammond, Paula	1,500.00	1,500.00				1,500.00	Brown
12-11	Hines, Donna Conservator for TS	Gruetter, Bryan	65,133.67	50,000.00		BOG June		50,000.00	Calderon
12-12	Riggs, Amy Lynn Evadora	Gruetter, Bryan	100,000.00	50,000.00				50,000.00	Cousineau
12-13	Standley, Gina	Gruetter, Bryan	13,855.63	13,855.63		BOG June		13,855.63	Cousineau
12-14	Ferguson, Norma	Gruetter, Bryan	7,171.67	7,171.67				7,171.67	Kekel
12-15	Gordon, Tae Mee	Gruetter, Bryan	66,504.14	50,000.00				50,000.00	Kekel
12-16	Ihrig, Sandra	Gruetter, Bryan	500.00	500.00		BOG June		500.00	Brown
12-17	Thornhill, Cheryl and Laird	Gruetter, Bryan	28,934.83	28,934.83				28,934.83	Brown
12-18	Strohm, Mary Jo	Gruetter, Bryan	16,319.22	16,319.22				16,391.22	Kekel
12-19	Ray, Michael	Gruetter, Bryan	100,000.00	50,000.00				50,000.00	Cousineau
12-20	Vice, Monroe Edward Joe	Gruetter, Bryan	130,173.79	50,000.00		BOG June		50,000.00	Angus
12-21	Meekins, Constance Anna Lorene	Gruetter, Bryan	12,000.00	12,000.00		BOG June		12,000.00	Angus
12-22	Lyons, Angela	Gruetter, Bryan	4,530.99	4,530.99				4,530.99	Eggert
12-23	Leece, Gerald and Kimberly	Hammond, Paula	2,699.00	2,699.00				2,699.00	Brown
12-24	Steinbeck, Theodore C	Howlett, Bruce	950.00	950.00				950.00	Brown
12-25	McClain, Kathryn A	Gruetter, Bryan	23,767.96	23,767.96				23,767.96	Welch
12-26	Shore, Ryan	Gruetter, Bryan	18,390.34	18,390.34				18,390.34	Eggert
12-27	Boyer, Robbyn Lynn	Gruetter, Bryan	20,000.00	20,000.00				20,000.00	Eggert
12-28	Love, Jenny M	Gruetter, Bryan	2,483.82	2,483.82				2,483.82	Franco
12-29	Estate of Melvin Johnson	La Follett, Thomas	37,371.92	37,371.92				37,371.92	Monson
12-30	Elliott, Mark S	Hammond, Paula	650.00	650.00		BOG June		650.00	Stevens
12-31	Roccasalva, Hope	Gruetter, Bryan	96,113.87	50,000.00				96,113.87	Franco
12-32	Lowery, Kathleen P	Gruetter, Bryan	2,823.17	2,823.17		BOG June		2,823.17	Miller

OREGON STATE BAR
Client Security - 113
For the Four Months Ending April 30, 2012

Description	April 2012	YTD 2012	Budget 2012	% of Budget	April Prior Year	YTD Prior Year	Change v Pr Yr
REVENUE							
Interest	\$353	\$1,274	\$3,400	37.5%	\$245	\$1,054	20.9%
Judgments	395	1,155	6,000	19.3%	790	2,370	-51.3%
Membership Fees	375	215,790	226,200	95.4%	600	212,160	1.7%
TOTAL REVENUE	1,123	218,219	235,600	92.6%	1,635	215,584	1.2%
EXPENSES							
SALARIES & BENEFITS							
Employee Salaries - Regular	2,130	9,585	27,700	34.6%	2,738	12,382	-22.6%
Employee Taxes & Benefits - Reg	715	3,027	10,100	30.0%	819	3,416	-11.4%
TOTAL SALARIES & BENEFITS	2,845	12,613	37,800	33.4%	3,557	15,798	-20.2%
DIRECT PROGRAM							
Claims		1,945	200,000	1.0%	3,500	83,315	-97.7%
Collection Fees		46	2,000	2.3%			
Committees			250				
Pamphlet Production		11	150	7.6%			
Travel & Expense			1,400				
TOTAL DIRECT PROGRAM EXPENSE		2,003	203,800	1.0%	3,500	83,315	-97.6%
GENERAL & ADMINISTRATIVE							
Messenger & Delivery Services			100				
Office Supplies			150				
Photocopying			150				
Postage	20	184			12	67	174.3%
Professional Dues	200	200	200	100.0%			
Telephone	9	15	450	3.4%		14	11.8%
Training & Education	425	425	600	70.8%		200	112.5%
Staff Travel & Expense			2,116			469	-100.0%
TOTAL G & A	655	825	3,766	21.9%	12	750	9.9%
TOTAL EXPENSE	3,499	15,440	245,366	6.3%	7,070	99,863	-84.5%
NET REVENUE (EXPENSE)	(2,377)	202,779	(9,766)		(5,434)	115,720	75.2%
Indirect Cost Allocation	1,119	4,476	13,425		1,079	4,316	3.7%
NET REV (EXP) AFTER ICA	(3,496)	198,303	(23,191)		(6,513)	111,404	78.0%
Fund Balance beginning of year		607,132					
Ending Fund Balance		805,436					
Staff - FTE count		.35	.30			.35	

2012 JUDGMENTS COLLECTED

Date	Attorney	Payment Received
1/30/2012	Kelley, Phil	360.00
2/17/2012	Shinn, Michael	25.00
3/7/2012	Kelley, Phil	360.00
3/19/2012	Shinn, Michael	15.00
4/3/2012	Kelley, Phil	360.00
5/7/2012	Kelley, Phil	360.00
5/29/2012	Shinn, Michael	25.00

TOTAL

\$1,505.00

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: June 22, 2012
Memo Date: June 13, 2012
From: Rod Wegener, CFO
Re: Audit Report of OSB 2010 and 2011 Financial Statements

Action Recommended

Acknowledge receipt of the audit report of the bar's 2010 and 2011 financial statements from Moss Adams LLP.

Background

The audit report of the bar's financial statements for fiscal years of 2010 and 2011 as reported by Moss Adams is scheduled to be complete by June 15. The report and a 4-page letter entitled "Communication with Those Charged with Governance and Internal Control Related Matters" will be sent in print to all members of the Board of Governors. The report will include an unqualified opinion for the bar, but is longer than previous reports as there is more content in the Management's Discussion and Analysis and the Notes to the statements.

Nancy Young, the lead auditor for Moss Adams, will be present by phone or in person at the Budget & Finance Committee meeting. Her presence intends to satisfy Statement on Auditing Standards (SAS) 114 which requires the auditor to meet with "those charged with governance" and report any significant findings from the audit. Also, SAS 115 requires the auditor to report any internal control matters if any are identified in the audit.



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RECEIVED

MAY 11 2012

May 10, 2012

Oregon State Bar
Executive Director

Camille Greene
Oregon State Bar
16037 SW Upper Boones Ferry Rd PO BOX 231935
Tigard, OR 97281-1935

Dear Camille:

Have you heard? The Lincoln High School students – you heard them at the Legal Citizen Dinner discuss the tension between state and federal rights – were named **number 1** last week at the *We The People* National competition! Their knowledge of constitutional issues that are as true today as they were for the founders is what great civic education can do. Thank you for supporting education for them and so many others.

Your support enables us to connect amazing teachers like Richard English with great volunteers like Jim Westwood. Your support brings programs to students that helps them think, learn, and become good citizens – students like Bryan Little who do mock trial in high school and are catapulted into public service. Your support makes a difference. We humbly, gratefully thank you.

The Classroom Law Project Board of Directors, staff, and I thank you for sponsoring a table at the dinner on Tuesday, April 24, at The Governor Hotel. As you know, Classroom Law Project has been a non-profit 501(c)(3) organization since 1983 (tax I.D 93-0847940). As the competition for donations increases, support like yours has become even more essential to our program.

Again, thank you for your help. Thank you for supporting Classroom Law Project, civic education, and students and teachers across the state. Please do not hesitate to contact me with any questions, comments or suggestions.

Sincerely,

Marilyn R. Cover
Executive Director

p.s.

Play golf with us at Pumpkin Ridge September 24, 2012
(go to www.classroomlaw.org for more information).

Sylvia Stevens

From: Rob Elders [Robert.Elders@prospectmedical.com]
Sent: Thursday, May 17, 2012 11:16 AM
To: Mitzi Naucler; Barbara M. Dilaconi; Steve Larson; Michael Haglund
Cc: Sylvia Stevens; Jeff Sapiro
Subject: OS Bar IOLTA Problems
Attachments: scan0171.pdf

Board,

In your governance and oversight capacity, I believe that you should know that changes are needed in the disorganized IOLTA Bar program.

Regards,
Rob

From: Rob Elders
Sent: Thursday, May 17, 2012 10:54 AM
To: 'Jeff Sapiro'
Cc: 'mnaucler@osbar.org'; 'bdilaconi@osbar.org'; 'slarson@osbar.org'; 'mhaglund@osbar.org'
Subject: RE: Resending message

Mr. Sapiro,

I appreciate your attempt to be helpful, and I understand that your organization's mistakes were not directly your fault.

Under protest, I will file the reinstatement application and pay the fee. I did already file the IOLTA certification and I am disappointed in your staff's failure. That said, I did discover that I was at fault in one way and, because of that, I will give up my protest. I searched my e-mails and I did find one reminder e-mail that I received on January 12th (buried in a lot of junk e-mail from osbar.org).

I received no other reminder e-mails or phone calls. The only mailing that I received was the one in March that caused me to immediately file the certification. I truly hope that I will never be asked to certify that I have not had any bar membership suspension, because (given the absolute absurdity of this one) it would be EXTREMELY hard for me to say "yes." As I mentioned, I have been a long time member of the New York and California Bars and I have never had ANY problem with them.

I now know that I can file the IOLTA certification online (rather than by mail, as I did in March). Other than that, is there something else that I can do to ensure that I won't have this kind of ridiculous problem again? Given your organization's disorganization and lack of warning/reminder notices, I'm concerned.

Regards,
Rob

Robert J. Elders
Corporate Counsel
Prospect Medical Holdings, Inc.
10780 Santa Monica Blvd., Suite 400
Los Angeles, CA 90025
Tel: 714-788-1249
Fax: 714-560-7641
Email: rob.elders@prospectmedical.com



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From: Jeff Sapiro [mailto:jsapiro@osbar.org]
Sent: Thursday, May 17, 2012 8:49 AM
To: Rob Elders
Subject: Resending message

Mr. Elders: Late yesterday afternoon, I sent you a response e-mail. This morning, I received a "delivery delayed" notification suggesting my message may not have gotten through to you. Below is that message. I hope the second time is the charm.

Mr. Elders: Thank you for your inquiry. Based on what I've been able to determine, rescinding the suspension is not possible. Allow me to explain.

Until 2011, lawyers were at risk of disciplinary suspension if they did not file an IOLTA certification timely. Former RPC 1.15-2(m). The OSB determined in 2010 that the filing requirement should be handled as an administrative, rather than as a disciplinary, matter. Therefore, in 2011, the disciplinary rule was repealed and a statute was passed, ORS 9.675, that provided for the annual IOLTA requirement. If a lawyer does not file the certification by the due date, the bar sends the lawyer a notice by certified mail. If nothing is filed within 60 days of the notice, the lawyer is suspended automatically by operation of law.

For 2012, the bar included information about the IOLTA filing requirement and due date in the membership assessment invoice sent late in 2011. IOLTA staff sent reminders by e-mail in January and February 2012. Pursuant to the statute, the 60-day suspension notices were sent by certified mail on March 15, 2012, to all lawyers we had not yet heard from. We have a postal receipt confirming that the certified letter was delivered to your address on March 16, 2012.

Although you recall sending a certification to us in March, and your copy of the certification is dated March 19, 2012, our IOLTA staff has no record of ever receiving this document from you. Given the significant consequences to our members, IOLTA staff takes great care to ensure all in-coming mail is handled appropriately and entered accurately in our records. They tell me they did not receive your certification. As a result, by operation of ORS 9.675(2), you were suspended effective May 15, 2012.

We take no pleasure in suspending any lawyer. However, we can't rescind a suspension that resulted from the operation of the applicable statute. If you haven't been provided with information about reinstating from the suspension, let me know and I will see that you get it.

Jeffrey D. Sapiro
Disciplinary Counsel
Oregon State Bar
16037 SW Upper Boones Ferry Road
Tigard, Oregon 97281-1935
1-800-452-8260 Ext. 319 or 503-431-6319
Fax: 503-968-4457
jsapiro@osbar.org

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Julie R. Genova
Director
 (312) 988-5518
julie.genova@americanbar.org

Market Research Department
 321 North Clark Street
 Chicago, Illinois 60654
 FAX: (312) 988-5528
www.americanbar.org

MEMORANDUM

DATE: April 11, 2012

TO: Standing Committee on Membership

CC: Jack Rives

FROM: Julie Genova

Re: 2012 National Lawyer Population Survey

I am pleased to share with you the latest results from the ABA National Lawyer Population Survey. Sent to each state bar or licensing agency, the survey requests the number of licensed lawyers, resident and active in the state as of December 31, 2011. The current number of licensed, active attorneys in the country is **1,245,205**, an increase of two percent over the previous year.

The new state-by-state listing of the number of lawyers from the survey is included in this document and can also be found on the ABA web site:

http://www.americanbar.org/resources_for_lawyers/profession_statistics.html/2012_NATL_LAWYER_by_State.pdf

Several other data tables are attached for your information. Page 3 of the memo includes 10-year trend information from 2002 to present. While each year has generally shown a minimal increase over the prior year, those increases add up over time. The total number of lawyers has risen 19% since 2002.

The demographic statistics compiled from the survey are found on pages 4-6 and are largely consistent with previous years. The percentage of women in the profession is 33%. The race/ethnicity data included is based on only 16 states (23% of the overall lawyer population) and must be interpreted with caution. A better resource for race/ethnicity statistics is the 2010 U.S. Census, which reported the following breakdown for lawyers:

White, not Hispanic	88.1%
Black, not Hispanic	4.8%
Asian Pacific American, not Hispanic	3.4%

NOTE: U.S. Census Bureau considers Hispanic an ethnicity, not a race. Persons of Hispanic origin can be of any race.

For easy reference, I've attached a compilation of lawyer demographics at the end of this document. The compilation includes U.S. Census data as well as data from other sources and is available on the ABA web site: http://www.americanbar.org/resources_for_lawyers/profession_statistics.html

Feel free to pass this along to members or others in your department who would find the information useful. Or, if you or someone else in your area needs an electronic version of one of the other data tables, please contact Jeniffer Goral at extension x5589. Thank you.

American Bar Association

National Lawyer Population by State

Compiled by: ABA Market Research Department, 321 N. Clark St., Chicago, IL 60654

STATE		2011 # ATTYS RESIDENT & ACTIVE	2012 # ATTYS RESIDENT & ACTIVE*	INDEX
Alabama	AL	13,876	14,135	102
Alaska	AK	2,451	2,418	99
American Samoa	AS	47	44	94
Arizona	AZ	14,471	14,471	100
Arkansas	AR	5,545	5,928	107
California	CA	157,388	159,824	102
Colorado	CO	20,211	20,768	103
Connecticut	CT	20,585	20,842	101
Delaware	DE	2,820	2,853	101
Dist. of Columbia	DC	50,440	51,271	102
Florida	FL	64,715	66,556	103
Georgia	GA	28,871	28,520	99
Guam	GU	256	256	100
Hawaii	HI	4,054	4,107	101
Idaho	ID	3,553	3,627	102
Illinois	IL	60,069	60,069	100
Indiana	IN	14,016	15,512	111
Iowa	IA	7,200	7,308	102
Kansas	KS	8,129	8,156	100
Kentucky	KY	12,579	12,891	102
Louisiana	LA	17,974	18,327	102
Maine	ME	3,718	3,865	104
Maryland	MD	22,172	22,477	101
Massachusetts	MA	41,920	42,483	101
Michigan	MI	33,370	33,692	101
Minnesota	MN	23,363	23,774	102
Mississippi	MS	6,886	6,955	101
Missouri	MO	23,933	24,276	101
Montana	MT	2,980	3,008	101
Nebraska	NE	5,238	4,983	95
Nevada	NV	6,732	6,850	102
New Hampshire	NH	3,423	3,449	101
New Jersey	NJ	40,754	40,997	101
New Mexico	NM	5,318	5,513	104
New York	NY	161,031	163,798	102
North Carolina	NC	20,706	21,280	103
North Dakota	ND	1,448	1,546	107
North Mariana Islands	MP	130	135	104
Ohio	OH	38,118	37,745	99
Oklahoma	OK	11,704	12,978	111
Oregon	OR	12,065	12,276	102
Pennsylvania	PA	48,492	48,947	101
Puerto Rico	PR	13,282	13,282	100
Rhode Island	RI	4,114	4,060	99
South Carolina	SC	9,384	9,537	102
South Dakota	SD	1,880	1,865	99
Tennessee	TN	16,630	16,947	102
Texas	TX	78,844	80,657	102
Utah	UT	6,552	7,309	112
Vermont	VT	2,263	2,270	100
Virgin Islands	VI	650	650	100
Virginia	VA	23,936	24,091	101
Washington	WA	23,503	23,741	101
West Virginia	WV	4,753	4,854	102
Wisconsin	WI	15,252	15,364	101
Wyoming	WY	1,658	1,668	101
TOTAL		1,225,452	1,245,205	102

*Individual state bar associations or licensing agencies were asked to provide the number of resident, active attorneys as of December 31, 2011.

Note: Arizona, Illinois, Guam, Puerto Rico, and the Virgin Islands did not provide current data for 2012, so stats from previous year were repeated.

American Bar Association

STATE		2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2012/2002	Index
Alabama ¹	AL	11,426	9,697	12,092	12,382	12,625	12,936	13,231	13,443	13,655	13,876	14,135	124	
Alaska	AK	2,255	2,257	2,281	2,309	2,318	2,303	2,385	2,362	2,418	2,451	2,418	107	
American Samoa ⁹	AS						57	58	45	44	47	44	77	
Arizona ¹²	AZ	11,172	11,376	12,006	12,369	12,172	12,501	12,793	13,028	13,384	14,471	14,471	130	
Arkansas	AR	5,100	5,144	5,200	5,280	5,500	5,600	5,700	5,700	5,789	5,545	5,928	116	
California	CA	132,452	134,468	136,571	139,371	141,030	145,355	148,399	149,982	153,155	157,388	159,824	121	
Colorado	CO	20,000	17,038	17,362	17,599	18,449	18,376	18,894	19,340	19,737	20,211	20,768	104	
Connecticut	CT	19,000	17,839	18,066	17,975	18,578	18,823	19,013	19,427	20,309	20,585	20,842	110	
Delaware	DE	2,022	2,118	2,234	2,329	2,391	2,478	2,526	2,592	2,706	2,820	2,853	141	
Dist. of Columbia	DC	39,393	41,055	41,721	42,596	43,445	45,231	46,689	48,456	49,207	50,440	51,271	130	
Florida ³	FL	51,468	52,967	54,643	48,453	46,475	59,912	59,953	61,426	62,875	64,715	66,556	129	
Georgia	GA	23,134	23,698	24,367	24,930	25,632	26,459	27,227	27,457	27,398	28,871	28,520	123	
Guam ^{9, 10, 12}	GU						295	270	243	256	256	256	87	
Hawaii	HI	3,794	3,772	3,886	3,931	4,016	4,138	4,126	4,100	4,077	4,054	4,107	108	
Idaho	ID	2,927	2,934	3,045	3,109	3,166	3,220	3,330	3,221	3,299	3,553	3,627	124	
Illinois ^{4, 10, 12}	IL	68,321	54,155	57,531	63,866	61,130	60,805	61,259	58,457	60,069	60,069	60,069	88	
Indiana ¹¹	IN	12,620	12,581	13,640	13,185	13,069	12,546	13,564	14,379	13,850	14,016	15,512	123	
Iowa	IA	6,574	6,611	6,734	6,820	6,896	6,957	6,959	7,036	7,080	7,200	7,308	111	
Kansas	KS	7,178	7,302	7,383	7,466	7,666	7,777	7,855	7,951	8,009	8,129	8,156	114	
Kentucky	KY	10,549	10,722	10,912	11,084	11,336	11,607	11,876	12,088	12,334	12,579	12,891	122	
Louisiana	LA	16,128	16,357	16,638	16,872	16,955	16,930	16,965	17,279	17,688	17,974	18,327	114	
Maine	ME	3,404	3,249	3,383	3,452	3,512	3,570	3,594	3,647	3,663	3,718	3,865	114	
Maryland	MD	19,870	20,855	20,603	20,177	20,510	20,999	20,996	21,554	22,149	22,172	22,477	113	
Massachusetts	MA	46,608	46,622	48,650	49,824	49,837	39,616	42,501	43,198	44,121	41,920	42,483	91	
Michigan	MI	30,330	30,795	30,734	31,034	31,432	31,918	32,131	32,321	32,731	33,370	33,692	111	
Minnesota ³	MN	19,354	19,850	20,057	21,886	20,177	21,426	21,944	22,448	22,585	23,363	23,774	123	
Mississippi	MS	6,015	6,152	6,361	6,500	6,641	7,312	6,723	6,748	6,786	6,886	6,955	116	
Missouri ⁵	MO	19,764	20,252	20,252	21,680	21,688	22,238	22,602	23,362	23,728	23,933	24,276	123	
Montana	MT	2,671	2,656	2,675	2,746	2,706	2,728	2,844	2,885	2,921	2,980	3,008	113	
Nebraska	NE	4,743	4,828	4,905	4,975	5,037	5,069	5,117	5,215	5,149	5,238	4,983	105	
Nevada	NV	4,640	4,587	5,091	5,517	5,580	5,909	6,105	6,395	6,523	6,732	6,850	148	
New Hampshire	NH	3,061	3,100	3,132	3,186	3,245	3,307	3,309	3,397	3,396	3,423	3,449	113	
New Jersey ⁴	NJ	36,785	36,860	37,172	38,104	38,466	39,019	39,384	40,060	40,286	40,754	40,997	111	
New Mexico	NM	4,748	4,803	4,922	4,960	5,091	5,167	5,267	5,542	5,269	5,318	5,513	116	
New York	NY	122,739	137,108	140,479	142,538	144,599	147,096	150,542	153,552	157,778	161,031	163,798	133	
North Carolina	NC	16,105	16,534	16,912	17,308	17,717	18,339	18,966	19,637	20,226	20,706	21,280	132	
North Dakota	ND	1,294	1,297	1,297	1,302	1,368	1,328	1,345	1,381	1,397	1,448	1,546	119	
North Mariana Islands ⁶	MP					156	128	127	128	129	130	135	87	
Ohio ⁷	OH	33,211	33,974	34,856	36,063	34,421	36,892	36,644	37,467	37,335	38,118	37,745	114	
Oklahoma	OK	11,531	10,633	10,719	11,756	12,002	12,146	12,357	11,511	11,711	11,704	12,978	113	
Oregon	OR	10,048	10,350	10,494	10,698	10,887	11,140	11,344	11,532	11,766	12,065	12,276	122	
Pennsylvania ⁸	PA	40,575	40,562	41,193	38,460	45,415	45,968	46,065	46,276	47,453	48,492	48,947	121	
Puerto Rico ^{10, 12}	PR	10,947	11,209	11,191	11,805	11,767	12,142	12,454	13,071	13,282	13,282	13,282	121	
Rhode Island ³	RI	4,490	5,135	4,764	4,791	3,951	4,351	4,055	4,044	4,098	4,114	4,060	90	
South Carolina	SC	7,615	7,571	7,355	8,360	8,823	8,411	8,961	9,059	9,264	9,384	9,537	125	
South Dakota	SD	1,606	1,605	1,627	1,661	1,715	1,743	1,761	1,794	1,839	1,880	1,865	116	
Tennessee	TN	13,354	13,513	13,724	14,058	14,470	14,867	15,199	15,855	16,365	16,630	16,947	127	
Texas	TX	62,425	64,593	65,983	69,405	69,762	70,842	73,505	75,087	77,049	78,844	80,657	129	
Utah	UT	5,362	5,368	5,919	5,760	6,041	6,984	6,215	6,568	6,778	6,552	7,309	136	
Vermont	VT	2,307	2,223	2,182	2,161	2,229	2,280	2,183	2,185	2,166	2,263	2,270	98	
Virgin Islands ¹²	VI	514	400	450	394	480	600	750	700	700	650	650	126	
Virginia	VA	19,500	19,795	20,129	20,852	21,391	21,722	21,183	21,682	22,472	23,936	24,091	124	
Washington	WA	19,544	20,770	21,300	21,485	22,678	23,151	22,776	22,973	23,204	23,503	23,741	121	
West Virginia	WV	4,072	4,175	4,290	4,426	4,497	4,572	4,618	4,672	4,725	4,753	4,854	119	
Wisconsin	WI	13,639	13,813	14,030	14,123	14,354	14,561	14,448	14,906	15,078	15,252	15,364	113	
Wyoming	WY	1,367	1,334	1,361	1,393	1,473	1,511	1,537	1,522	1,636	1,658	1,668	122	
TOTAL		1,049,751	1,058,662	1,084,504	1,104,766	1,116,967	1,143,358	1,162,124	1,180,386	1,203,097	1,225,452	1,245,205	119	

* Individual state bar associations or licensing agencies are asked each year to provide the number of resident and active attorneys.

¹ In 2003, Alabama was able to provide the total number of resident and active attorneys. In all other years, the number reflects all resident attorneys - regardless of whether they were active or not.

³ In 2006 Rhode Island and Minnesota were able to provide the total number of resident and active attorneys. In earlier years the number reflects all resident attorneys regardless of whether they were active or not, so the 2006 decrease represents greater accuracy in counting. The same is true for Florida prior to 2005.

⁴ For a number of years, Illinois and New Jersey were only able to provide the total number of active lawyers - regardless of whether they were residents of the state or not. In 2003 the number for Illinois is reflective of only residents who are active, so the decrease represents greater accuracy in counting. The same is true for New Jersey starting in 2002.

⁵ Missouri changed database providers in 2001, so the increase is due to greater accuracy in counting. In 2004, Missouri was unable to provide the current number of resident and active attorneys due to system issues. The 2003 figure was used.

⁶ The territory of Northern Mariana Islands is new to the survey in 2006.

⁷ Ohio's numbers from 2005 were reported from data collected in April 2005, when the new bar admittees had been sworn in causing an increase in the numbers. For all other years the numbers reflect December 31st.

⁸ In 2006, the Pennsylvania reporting source shifted from the State Bar to the State Licensing Agency who was able to provide more complete statistics including lawyers with addresses that were unlisted or withheld, so the increase represents greater accuracy in counting.

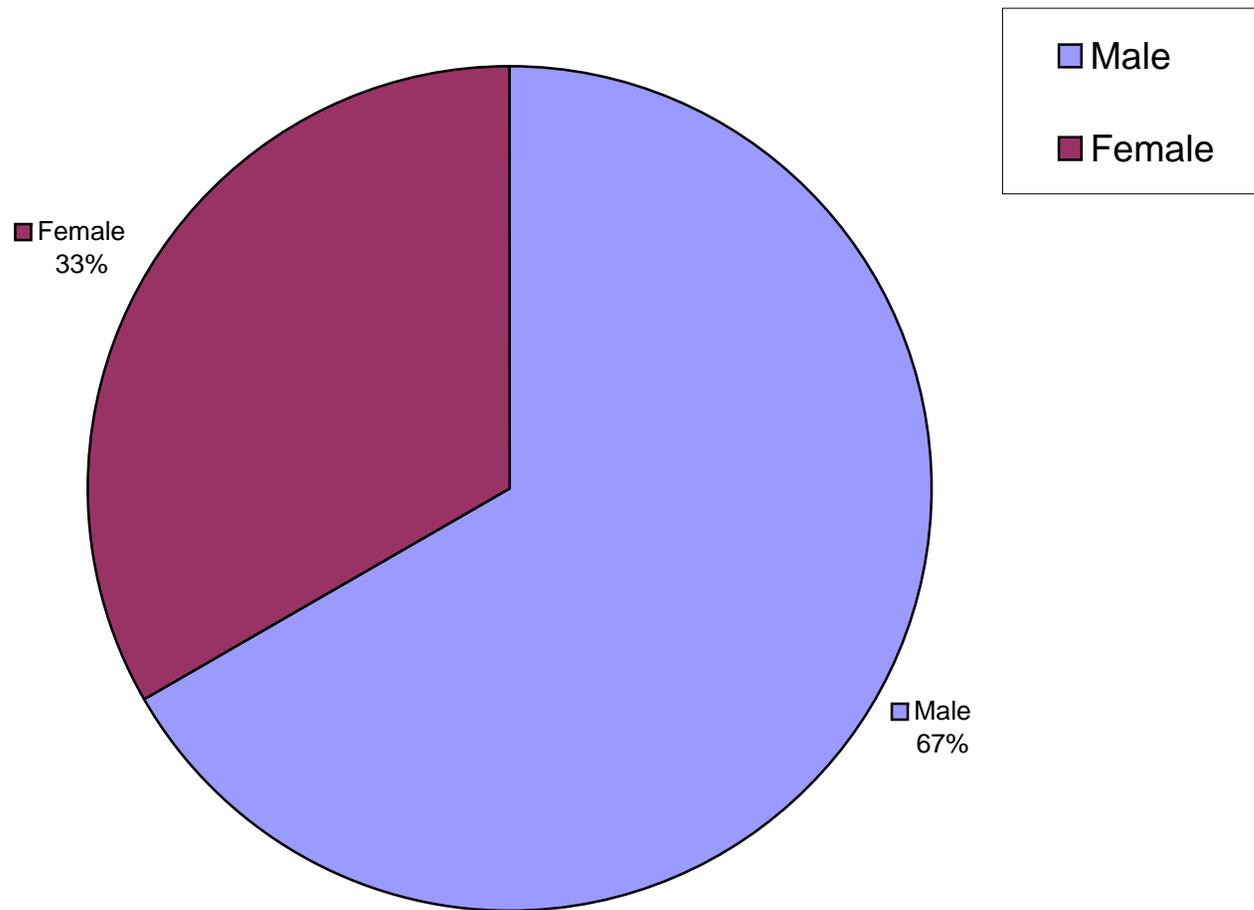
⁹ The territories of American Samoa and Guam were new to the survey in 2007.

¹⁰ Illinois, Guam, and Puerto Rico did not provide current data for 2011 so prior year's stats were used.

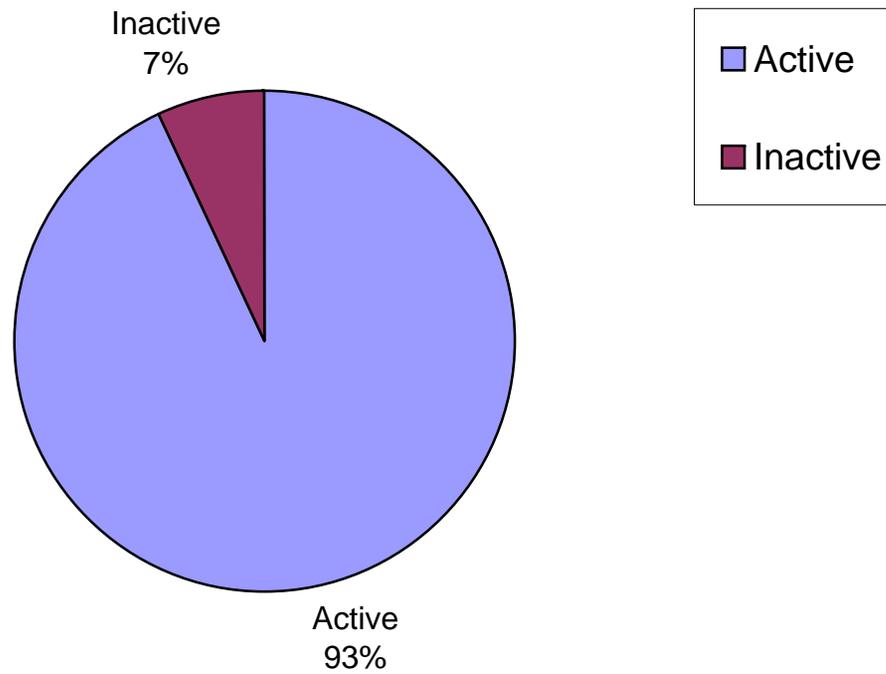
¹¹ In 2011, Indiana began using a new system for attorney registration leading to greater accuracy in reporting.

¹² Arizona, Illinois, Guam, Puerto Rico, and the Virgin Islands did not provide current data for 2012 so prior year's stats were used.

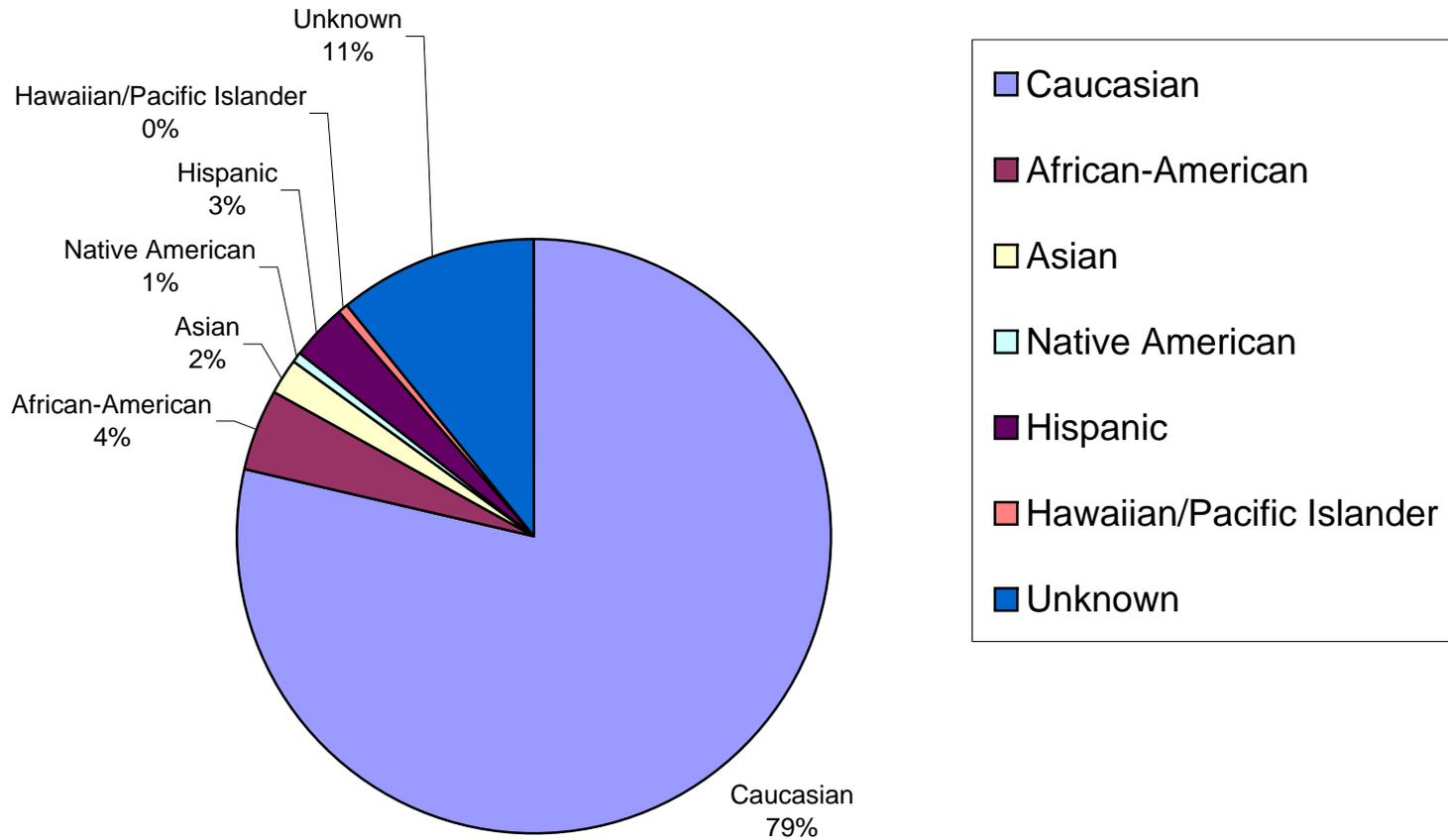
Gender



Lawyer Population Active & Inactive Lawyers



Race/Ethnicity



16 states, representing 23% of the lawyer population, reported statistics for race/ethnicity.



**Defending Liberty
Pursuing Justice**
LAWYER DEMOGRAPHICS

NUMBER OF LICENSED LAWYERS - 2011

1,245,205

Source: ABA Market Research Department, 4/2012

GENDER

	<u>1980</u>	<u>1991</u>	<u>2000</u>
Male	92%	80%	73%
Female	8%	20%	27%

Sources: *The Lawyer Statistical Report*, American Bar Foundation, 1985, 1994, 2004 editions

AGE

	<u>1980</u>	<u>1991</u>	<u>2000</u>
29 yrs. or less	15%	10%	7%
30-34	21%	16%	12%
35-39	15%	18%	14%
40-44	9%	18%	15%
45-54	16%	18%	28%
55-64	12%	10%	13%
65+	13%	10%	12%
Median age	39	41	45

Sources: *The Lawyer Statistical Report*, American Bar Foundation, 1985, 1994, 2004 editions

RACE / ETHNICITY

	<u>2000*</u>	<u>2010*</u>
White, not Hispanic	88.8%	88.1%
Black, not Hispanic	4.2%	4.8%
Hispanic	3.4%	3.7%
Asian Pacific American, not Hispanic	2.2%	3.4%
American Indian, not Hispanic	0.2%	-
Native Hawaiian or Pacific Islander, not Hispanic	.04%	-

*Source: 2000, 2010 U.S. Census, Bureau of the Census

NOTE: U.S. Census considers Hispanic an ethnicity, not a race. Persons of Hispanic origin can be of any race.

LAW STUDENTS

<i>Academic Year</i>	<u>2007-2008</u>	<u>2008-2009</u>	<u>2009-2010</u>
Total JD enrollment	141,719	142,922	145,239
Gender			
Male	53%	53%	53%
Female	47%	47%	47%
Minority enrollment	21.6%	21.9%	22.4%

Source: ABA Section of Legal Education & Admissions to the Bar

http://www.americanbar.org/groups/legal_education/resources/statistics.html

PRACTICE SETTING

<i>% of lawyers in...</i>	<u>1980</u>	<u>1991</u>	<u>2000</u>
Private Practice	68%	73%	74%
Government	9%	8%	8%
Private Industry	10%	9%	8%
Retired/Inactive	5%	5%	5%
Judiciary	4%	3%	3%
Education	1%	1%	1%
Legal Aid/Public Defender	2%	1%	1%
Private Association	1%	1%	1%

Sources: *The Lawyer Statistical Report*, American Bar Foundation, 1985, 1994, 2004 editions

PRIVATE PRACTITIONERS

<i>% of private practitioners...</i>	<u>1980</u>	<u>1991</u>	<u>2000</u>
Solo	49%	45%	48%
2 – 5 lawyers	22%	15%	15%
6 – 10 lawyers	9%	7%	7%
11-20 lawyers	7%	7%	6%
21 – 50 lawyers	6%	8%	6%
51 – 100 lawyers	7%	5%	4%
101 + lawyers	*	13%	14%

Sources: *The Lawyer Statistical Report*, American Bar Foundation, 1985, 1994, 2004 editions

* Largest firm size for 1980 data was 51+ lawyers.

LAW FIRM SIZE

<i>% of law firms with...</i>	<u>1980</u>	<u>1991</u>	<u>2000</u>
2 – 5 lawyers	81%	75%	76%
6 – 10 lawyers	12%	13%	13%
11-20 lawyers	4%	7%	6%
21 – 50 lawyers	2%	3%	3%
51 – 100 lawyers	1%	1%	1%
101 + lawyers	*	1%	1%
Total # firms	38,482	42,513	47,563

Sources: *The Lawyer Statistical Report*, American Bar Foundation, 1985, 1994, 2004 editions

* Largest firm size for 1980 data was 51+ lawyers.

From: OSB Referral & Information Services
Sent: Thursday, June 07, 2012 10:08 AM
To: Sylvia Stevens
Subject: OSB LRS - June 15 Deadline Reminder and Update



Oregon State Bar

Dear Panelist:

First of all, thank you to all who have already registered for the 2012-13 program year. We are excited to see the registration forms coming in and remain ever grateful for your support.

A reminder to those who have not yet registered: We need to receive your registration and payment on or before June 15 to ensure that you will be in active rotation on July 2. If we receive your registration and payment after June 15, we will register you -- we just cannot promise that you will be in active rotation on July 2.

Thanks also to the many of you who have called and emailed with questions on implementation of the new program policies and procedures. Here is an update on our progress:

- **Panelist Interface:** We are putting the finishing touches on the panelist interface for the new database and referral system. We hope to have it as close to perfect as possible by July 2. With that goal in mind, we are seeking a few volunteers to take a look and offer feedback later this month. Please email me (gwolff@osbar.org) if you are interested in volunteering.
- **Login Credentials & Training:** After July 2 we will be emailing each panelist a login name and temporary password. These will be different from the login credentials you use for the main OSB website. Although the software is user friendly, we will be scheduling some webinars in July for those who would like hands-on training. We will announce the dates after the launch of the new program year.
- **Initial Reporting:** At the end of July, you will receive an email reminder to log in and review your referrals for the month of July. You will be able to indicate which referrals became cases and which did not, whether

they are open or closed, contingency or non-contingency, etc. You will have until the end of August -- 30 days from the date of the email -- to review your referral history and submit your first report. You may, of course, report back in advance of receiving the email reminder, and you may review your referral history any time you wish.

- Policy & Operating Procedures Changes: You may have heard that some attorneys are concerned about language in the new procedures that speaks to sharing client information with the LRS. It was certainly not our intent to require or induce lawyers to violate their professional responsibilities. Now that we see how the language is being interpreted, revised language to address concerns about maintaining the confidentiality of client information is being drafted and will be presented to the BOG at its June meeting. We will report on the BOG's action to you directly, though you may well hear of the changes through the BOG Update e-newsletters as well.
- Updated FAQs: We have updated and revised the LRS FAQs on the OSB website at <http://www.osbar.org/ris/rischanges.html> and will continue to do so as the new program rolls out.

Again, I want to thank you – not just those who decide to try out the new LRS, but also those who decide not to. Thank you for taking the time to read through the materials and make an informed decision. We do recognize that this is not a one-size-fits-all program; through the past three years of research, focus groups, surveys, and individual discussions, we have come to realize it actually never was. To participate is a business decision unique and personal to you and your practice, and all of the Referral & Information Services staff very much respect your decision and honor your past support of this program.

Regards,

George D. Wolff
Oregon State Bar
Referral & Information Services Manager
503-431-6418
gwoff@osbar.org

Oregon State Bar | 16037 SW Upper Boones Ferry Road | Tigard, Oregon 97224

If you would like to receive your e-mails at a secondary e-mail address go to www.osbar.org/secured/login.asp and log in using your bar number and password, then click on Communication Preferences and set up a secondary e-mail address.

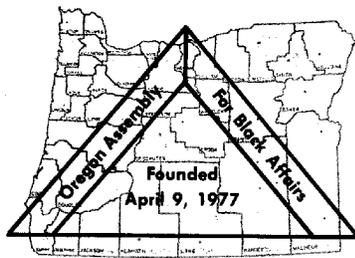
6-14-2012

Dear Sylvia,

On behalf of the Deschutes
County Bar Association, Thank
You for visiting us last week
and updating us as to current
events and upcoming changes
with the Oregon State Bar.

I am proud to be a member of
the OS Bar and believe you do
an excellent job of supporting
practitioners in many ways! It
was a pleasure meeting everyone.

Kind Regards, Pete
Christoff



Oregon Black Political Convention

P. O. Box 12485
Salem, Oregon 97309
<http://www.oaba.us>
oaba@peak.org

2010 OBPC PLATFORM & RESOLUTION

April 13-15, 2012

On April 13-15, 2012, the 2012 Oregon Black Political Convention (OBPC) met at the Crowne Plaza Portland Convention Center, 1441 NE 2nd Avenue, Portland, OR 97232, and the delegates to this Convention adopted the 2012 Oregon Black Political Convention Platform and Resolutions. Below are the planks and resolutions that were adopted:

- I. Political Action
- II. Black Youth
- III. Civil And Human Rights
- IV. Community Development
- V. Law Enforcement Accountability And Reform
- VI. Education
- VII. Access To Justice
- VIII. Economic & Business Development
- IX. Health Care
- X. Black Employment
- XI. Local, State, Federal And World Affairs

I. POLITICAL ACTION

The Oregon Black Political Convention (OBPC) recognizes that all the political parties must work with the President to achieve the collective interests of the United States. OBPC recognizes that Black Oregonians must be prepared to work with all levels of the political spectrum to achieve the collective interests of Black Oregonians. It is the position of the OBPC that all publicly elected and appointed officials represent the interests of Black Oregonians, regardless of the official's race, gender, sexual orientation, religious affiliation, or geographical location. It is the position of OBPC that Black Oregonians must assert how it wants to be represented and whether the quality of this representation is being achieved. **THEREFORE,**

1. The Oregon Black Political Convention (OBPC) urges Black Oregonians to work with the political party of their choice and to hold their political party accountable for addressing the issues and concerns of Black Oregonians.
2. OBPC calls upon Black Oregonians to get involved in political campaigns of their choice in order to understand the workings of the political process.
3. OBPC urges Black Oregonians to consider becoming Precinct Committee persons to assure our voices are heard within the party processes.

2010 OBPC PLATFORM & RESOLUTION

April 13-15, 2012

4. OBPC urges OABA to hold a summit of Black organizations within Oregon to discuss how they want publicly elected and appointed officials to represent the interest of Black Oregonians.
5. OBPC urges voters of Oregon to elect individuals to be U.S. Representatives in Congress who will not sign pledges that will cause them to violate their oaths of office as U.S. Representatives in Congress.
6. OBPC urges Black Americans to demand that elected officials regardless of their political affiliation (Democratic Party, Republican Party or other parties) honor their oaths of office and work to make lives better for all citizens of this Nation.

II. BLACK YOUTH

OBPC acknowledges that the future of the Black Community depends on protecting and preparing our children to actively engage in the Black community and the community-at-large. OBPC recognizes that the strength of the relationship between parent and child is the most vital and basic component for building the social, emotional and behavioral health of Black children and this relationship provides for success in school and beyond. The Black Community must not allow the health and growth of Black youth to be threatened by inadequate systems of education, Black on Black crimes, violence, institutional racism, low expectations, biases within the criminal justice system and lack of access to adequate food, childcare, housing, employment and post secondary opportunities. OBPC believes that Black youth must learn as they pursue their goals in life that, "Politics is everything and everything is politics." **THEREFORE,**

1. The Oregon Black Political Convention (OBPC) urges young Black people to become change agent for the Oregon Black Community.
2. OBPC urges young Black people to learn, know and share the issues of the Oregon Black Community.
3. OBPC urges young Black people to learn and understand the power of citizenship as they prepare for and pursue their goals in life.
4. OBPC calls upon Black youth to register and vote.
5. OBPC calls upon Black youth to assist with voter registration activities and to work to get out the youth vote.
6. OBPC urges Black youth to learn about the political processes in order to represent the concerns of youth before various public bodies
7. OBPC urges young Black people to understand that attending and participating in conventions are parts of the process to be politically involved in defining the needs, goals and aspirations of the Black Community and in communicating the same to individuals who can make the difference.
8. OBPC urges young Black people to learn the names of the elected officials who represent them in places where they live.

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9. OBPC urges young Black people to not be ashamed of their identity and to be willing to share their identity and humanity with each other and other group.
10. OBPC urges young Black people to become members of the NAACP, Urban League, African American Chamber of Commerce (AACS), OABA and other social and political groups in order to develop their political and leadership skills
11. OBPC urges members of the Black Community to provide opportunities to engage the youth from elementary school in their civic responsibility as citizens of Oregon.

III. CIVIL AND HUMAN RIGHTS

The Oregon Black Political Convention (OBPC) recognizes Civil and human rights are the foundation of the freedoms, which all people are entitled to enjoy. OBPC affirms that the Oregon Constitution guarantees fundamental and basic civil rights. The OBPC finds that Black Oregonians' civil and human rights are being abridged and compromised by the efforts of individuals, groups, organizations, and the government bodies whose interest are in direct and indirect conflict with these rights unless one has access to justice including competent, quality, affordable, and unbiased legal representation. THEREFORE,

1. The Oregon Black Political Convention (OBPC) encourages all Black Americans to educate themselves about their rights as citizens, civic affairs, and government duties and responsibilities in the protection of these civil and human rights.
2. OBPC encourages Black Oregonians to empower themselves to hold accountable the legal professions in its responsibility to provide quality, effective, and unbiased legal representation for Black citizens.
3. OBPC calls upon all organizations and government bodies to stand against any efforts to retrench affirmative action, civil and human rights laws. Moreover, OBPC calls upon all organizations and government bodies to further expand the enactment and enforcement of affirmative action, civil and human rights laws.
4. OBPC urges all Black Organizations to hold public entities accountable for affirmative action performance by reviewing required plans, monitoring reports, and program activities designed to meet the purpose and spirit of the regulations.
5. OBPC urges all public entities to hold all contractors and sub-contractors accountable for affirmative action performance.

IV. COMMUNITY DEVELOPMENT

The Oregon Black Political Convention (OBPC) believes that community development is a process that should be used as one of many tools to heal the United States from its history of slavery and racism. OBPC recognizes that USA is not in a "post racial period." OBPC recognizes that there is a greater need for community development to be used by all people in the United States to transform the institutions to serve all people. Oregon and the United States need to be transformed through more community development to remove institutional bias,

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discrimination and disparity. OBPC believes that there are many opportunities for institutional transformations through community development that will uplift the lives of all people in the United States of America. THEREFORE,

1. The Oregon Black Political Convention (OBPC) urges all people to recognize that the United States still suffers from its history of slavery and racism and to understand that we must work to eliminate the impact of slavery and racism on the people of the United States.
2. OBPC calls upon Black Oregonians to work with government bodies and organizations in Oregon and United States to remove bias, disparity and all forms of discrimination.
3. OBPC urges greater accountability from the Oregon Commission on Black Affairs (OCBA). OBPC calls on OCBA to fully fulfill its statutory duties pursuant to ORS 185.430.
4. OBPC calls upon the Portland Development Commission and City of Portland officials to evaluate their community development assistance grants to assure equal opportunity in the allocation process.
5. OBPC calls upon Black Organizations to review banking practices around community development grants performance to assure accountability in grant participation and distribution.

V. LAW ENFORCEMENT ACCOUNTABILITY AND REFORM

The Oregon Black Political Convention (OBPC) recognizes that it is the role of law enforcement officials and institutions to serve and protect all people in Oregon. OBPC recognizes that there must be law enforcement accountability and reform to ensure that law enforcement units throughout Oregon are prepared and capable to serve and protect all people in Oregon. Also, OBPC recognizes that law enforcement institutions and public servants are the instruments of the leaders in our executive branch of government to provide safety and security for all the people of Oregon. OBPC believes that law enforcement officials throughout Oregon, including all elected and appointed government employee who are responsible for the prevention, investigation, apprehension, or detention of individuals suspected or convicted of violating criminal laws, must be held accountable to ensure the elimination of conscious and unconscious biases against Black Oregonians as well as all Oregonians. When carrying out their duties and enforcing the rule of law, law enforcement institutions and public servants must take steps to prevent the use of unnecessary deadly or near deadly force against Black Oregonians and all other Oregonians. The Oregon Black Political Convention believes that in all cases where concerns are raised about the use of unnecessary deadly or near-deadly force, justice cannot be achieved without a thorough and unbiased investigation and prosecution. THEREFORE,

1. The Oregon Black Political Convention (OBPC) urges the Oregon Governor, Oregon Attorney General, Oregon County Commissioners, Oregon Mayors, District Attorneys and County Sheriffs and all elected leaders and public servants in our executive branches of government in Oregon to use law enforcement units to provide safety and security, without bias, for all the people of Oregon.

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2. OBPC urges the Oregon Legislative Assembly to pass legislation that would prevent Oregon having a “stand your ground” law.
3. OBPC urges elected leaders of the executive branches of government to immediately replace law enforcement officials who violate their “oath of office”.
4. OBPC urges the Oregon Legislative Assembly to pass legislation that ensures that all police union contracts are in compliance with federal, state and local laws and do not confer any immunities or privileges in violation of those laws.
5. OBPC urges the 2013 Oregon Legislative Assembly to re-introduce and pass the 2011 Senate Bill 44, which provides more protection to all Oregonians against hate crimes.
6. OBPC calls for the reestablishment of Community Policing and Citizen Advisory Boards to improve relationships and to jointly solve problems.
7. OBPC urges elected officials to hold law enforcers accountable for community relations and performance.
8. OBPC urges the Oregon Legislative Assembly to pass legislation to require investigations of police use of excessive force be performed by a team outside of the jurisdiction of the incident. This could be either a separate prosecutor designated by the State Attorney General or some other entity – Governor, courts, District Attorney Association.

VI. EDUCATION

The Oregon Black Political Convention (OBPC) concludes that education is key to social change. The Black Community must use education for cultural, intellectual and economic development, and growth. The Oregon Black Political Convention supports high quality public education and opposes efforts to deny public education to any child in Oregon or in other states. THEREFORE,

1. The Oregon Black Political Convention (OBPC) strongly recommends that the Black Community focuses attention and energy on events affecting Black students in both public and private schools, and actively assists those students in their preparation to learn and in becoming productive citizens.
2. OBPC urges all educational institutions to recognize methodologies (such as the emerging technologies & historical, formal and informal education) that are fundamental for the development, enhancement, productivity and intellectual survival of Black people.
3. OBPC urges the Oregon Black Community to question the direction of the Oregon Education Investment Board as to its benefit to the education of Black Students in Oregon.
4. OBPC opposes the use of vouchers to support charter or private schools.
5. OBPC urges the Oregon Legislature to provide for every Oregon student to have a full range of core subjects funding services, such as early childhood education, counseling, critical thinking, citizenship, the arts, physical education, vocational and career education, health education, and library services.

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6. OBPC urges Oregon Governor to conduct an investigation as to where PPS Board of Education has violated state laws in the way that it has decided to close Humboldt and Tubman schools.
7. OBPC urges the Governor and the legislative assembly to address and pass legislation to ensure all Oregon public schools are funded equitably.
8. OBPC urges all employees of the education system and daycare providers to report to authorities all crimes committed on school grounds and to provide victim protection to and from class.

VII. ACCESS TO JUSTICE

The Oregon Black Political Convention (OBPC) recognizes that many Black Oregonians experience multiple barriers to accessing justice, and that strategies are necessary to remove these barriers and increase access to justice. Areas of concern include but are not limited to: (1) Accessibility and affordability of legal representation; (2) Conscious and unconscious bias among lawyers, judges, court staff, corrections and probation officers, law enforcement officials, government and private institutions; (3) Civil justice practices and policies that disproportionately and negatively impact Black Oregonians; and (4) Criminal justice practices policies that disproportionately and negatively impact Blacks. The Oregon Black Political Convention believes that addressing these barriers will benefit Blacks Oregonians as well as all Oregonians. **THEREFORE,**

1. The Oregon Black Political Convention (OBPC) urges the Oregon Assembly for Black Affairs (OABA) to work with Oregon State Bar (OSB) to ensure that barriers to accessing justice are removed and that there is increased access to justice.
2. OBPC urges the Oregon State Bar Board of Governors to enact ethical rules of professional conduct that prohibit bias and prejudice against clients based on race and other protected classes.
3. OBPC calls upon all attorneys licensed by the State of Oregon to be change agents to ensure that all people of Oregon have access to justice that is affordable.
4. OBPC encourages the Governor of Oregon to use the appointment process to diversify the Bench as vacancies arise.

VIII. ECONOMIC & BUSINESS DEVELOPMENT

The Oregon Black Political Convention (OBPC) supports the efforts and activities of Black people to increase their participation in economic and business development at the local level, and in the expanding global marketplace. **THEREFORE,**

1. The Oregon Black Political Convention (OBPC) supports and promotes the development of competitive Black businesses.

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2. OBPC calls upon the African American Chamber of Commerce (AACC) to host a conference or seminar on economic and business development at the local level, and in the expanding global marketplace.
3. OBPC urges the Governor and Legislature to provide tools and resources that assist small business with planning, marketing, and financial management.
4. OBPC strongly urges the Governor to make the state agencies accountable for increasing diversity in their contractors.
5. OBPC calls upon all general contractors to evaluate their contracting practices to assure Black Contractors are included in consideration and participation.
6. OBPC calls upon all governmental entities to identify barriers to fair and equitable contracting and to develop strategies for removing those barriers.
7. OBPC calls upon all governmental bodies to annually review economic activities and resource allocation decisions to assure inclusion and fair contracting practices.
8. OBPC calls upon all general contractors to encourage greater opportunities for targeted participation in young adults pre-apprenticeship and apprenticeship training.

IX. HEALTH CARE

The Oregon Black Political Convention (OBPC) recognizes the importance of quality, affordable, appropriate, and accessible healthcare for all people. OBPC has concerns about health care disparities; lack of affordable, accessible and quality health care; and lack of outreach and educational programs directed toward the Black Community. OBPC believes health care is a right, and not a privilege. **THEREFORE,**

1. The Oregon Black Political Convention (OBPC) supports the 2010 Affordable Care Act and urges the U.S. Supreme Court to uphold this law.
2. OBPC supports reproductive rights and preventive health care for women.
3. OBPC calls upon all health entities to implement “equity lens” for the evaluation of their programs and service, requiring program impact statements regarding program policy and services to the Black Community.
4. OBPC calls upon all healthcare providers related health groups and organizations to be **involved** with the Black Community to find ways to reduce health risk and disparities.
5. OBPC urges the legislative assembly to review its mental health laws to empower physicians to make primary treatment decisions for the mentally ill.
6. OBPC supports examination for early detection for preventive health care for women, men and children.

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X. BLACK EMPLOYMENT

The Oregon Black Political Convention (OBPC) recognizes that the unemployment and underemployment rates among Black Oregonians are significantly higher than White Oregonians. OBPC believes that the Oregon Black organizations must encourage the Oregon Governor, legislators, county commissioners, and city mayors and council members to create jobs in the Black Community. **THEREFORE,**

1. The Oregon Black Political Convention (OBPC) urges Black organizations that deal with Black employment, unemployment and underemployment to host a conference on Black employment.
2. OBPC urges the Oregon Legislative Assembly to pass legislation that require enforcement of "Equal Pay for Equal Work" laws and regulations to include all protected classes.
3. OBPC urges the Governor to hold the state agencies accountable fiscally for failure to meet the lowest threshold for increasing Black employees in the state agencies
4. OBPC condemns the high rate of Black unemployment and calls upon all governmental entities to work towards correcting this problem.
5. OBPC calls upon governmental entities to assure that their human resources programs are working to eliminate artificial barriers in their recruitment, testing, and other processes.
6. OBPC supports the President Barack Obama's American Jobs Act of 2011.

XI. LOCAL, STATE, FEDERAL AND WORLD AFFAIRS

The Oregon Black Political Convention finds that the constitutions or charters of government units mandate these units to represent the interests of *all* citizens, including Black Americans. OBPC believes that the public official is obligated by an oath of office to faithfully discharge the duties of the office to which the public official is elected or appointed. The Oregon Black Political Convention acknowledges that public policies affect how the United States, as a nation, involves itself in the global economy and international affairs. The Oregon Black Political Convention urges Black Americans to get involved in local, state, national and world affairs. The Oregon Black Political Convention supports the participation of Black Americans in the establishment, control, monitoring, and implementation of public policies that not only embrace but also promote Black involvement at the local, state, national and world levels.

THEREFORE,

1. The Oregon Black Political Convention (OBPC) urges the citizens of the United States and of Oregon to read and understand the constitutions of these government entities.
2. OBPC calls upon all Black Oregonians to recognize that they are citizens at multiple levels of governments and that they need to be responsible in their engagement at all governmental levels.
3. OBPC opposes efforts to downplay provisions of the U.S Constitution and Oregon Constitution.

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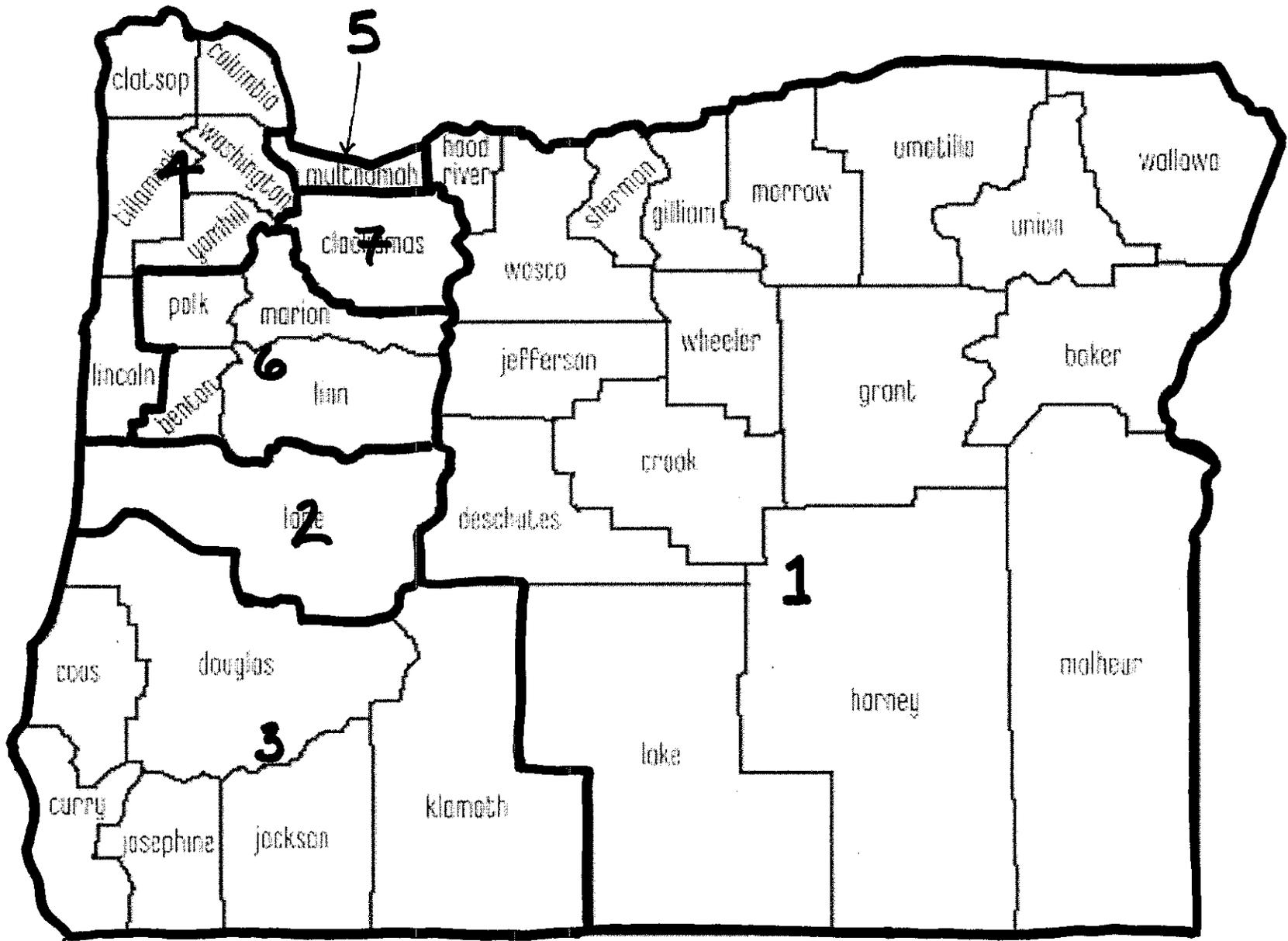
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4. OBPC urges the Oregon Legislative Assembly to pass legislation declaring that it is an oath violation when an elected official knowingly lie to the press and the public about an issue that the elected official is discussing.
5. OBPC calls upon the Oregon World Affairs Council to reach out to extend membership and participation opportunities to the Black Community.
6. OBPC calls upon all public bodies to evaluate their recruitment and appointment processes to public boards and commissions to ensure Black Americans' opportunity to participate in this decision making bodies
7. OBPC calls upon the legislative units at all levels of government to stop privatizing functions of government.

2012 OREGON BLACK POLITICAL CONVENTION (OBPC)

Theme: "2012 Election Politics-OBPC: Citizens Engaged and Making a Difference for All Oregonians!"

2012 OREGON BLACK POLITICAL CONVENTION http://www.oaba.us oaba@peak.org	
2012 OBPC Convention Chair	Glendora Claybrooks
2012 OBPC Platform & Resolutions Moderator	Robert Phillips
2012 OBPC Recorder	Rashad Henry
OABA President	Calvin O. L. Henry



County	Population	Lawyers	Ratio L:P
Baker	16,134	19	1:849
Crook	20,978	24	1:874
Deschutes	157,773	392	1:402
Gilliam	1,871	2	1:935
Grant	7,445	7	1:1060
Harney	7,422	7	1:1060
Hood River	22,346	55	1:406
Jefferson	21,720	17	1:1277
Lake	7,805	10	1:789
Malheur	31,313	46	1:681
Morrow	11,173	3	1:3724
Sherman	1,765	2	1:882
Umatilla	75,889	100	1:759
Union	25,748	33	1:780
Wallowa	7,008	11	1:637
Wasco	25,713	38	1:677
Wheeler	1,441	1	1:1441

Region 1

Region 2

Lane	351,715	930	1:378
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Region 3

Coos	63,043	87	1:725
Curry	22,364	30	1:745
Douglas	107,667	112	1:961
Jackson	203,206	321	1:633
Josephine	82,713	82	1:1009
Klamath	66,380	81	1:820

Region 4

Clatsop	37,039	64	1:579
Columbia	49,351	51	1:968
Lincoln	46,034	101	1:456
Tillamook	25,250	37	1:682
Washington	529,710	1,183	1:447
Yamhill	99,193	138	1:718

Region 5

Multnomah	735,334	5,612	1:131
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Region 6

Benton	85,579	121	1:707
Linn	116,672	101	1:1155
Marion	315,335	1,218	1:259
Polk	75,403	84	1:898

Region 7

Clackamas	375,992	952	1:395
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Totals	3,831,524	12,072	1:317
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Distribution of Oregon's General and Lawyer Populations

(General population figures are from 2010 census; lawyer figures are as of April 2012)

TUESDAY, MAY 15, 2012 6:00 PM UTC

Debt: Not just for undergrads

These days, a law degree comes with \$150,000 of debt -- and no guarantee of a job after graduation

BY PAUL CAMPOS



(Credit: [Vince Clements](#) via [Shutterstock](#))

Last summer a young lawyer wrote to me about her struggles to find employment. Her story was all too familiar: After graduating with honors from a middling law school, she was unable to find a real legal job, and was reduced to taking a series of temporary, low-paying positions that did not allow her to even begin to pay off educational debts that, three years after graduation, had ballooned to nearly a quarter of a million dollars.

Rather than merely lamenting her situation, however, she explained to me she was more fortunate than many of her fellow recent graduates: “I know that I am better off than a lot of these younger lawyers. I get job interviews. I can afford the apartment I share with my

friend. I have a great resume. I am an excellent researcher and writer. I rarely go to bed hungry anymore.”

That last sentence stayed with me. I have been researching what’s been happening to recent law school graduates, and it’s no exaggeration to describe the situation as a growing catastrophe. The statistics are shocking:

Approximately half of the 45,000 people who will graduate this year from ABA-accredited law schools will never find jobs as lawyers. (The Bureau of Labor Statistics estimates that over the next decade 21,000 new jobs for lawyers will become available each year, via growth and outflow from the profession.)

Most of those who do find jobs will be making between \$30,000 and \$60,000 per year.

People currently in law school are going to graduate with an average of \$150,000 of educational debt. This debt will have an average interest rate of 7.5 percent, meaning the typical graduate will be accruing nearly \$1,000 per month in interest upon graduation. Unlike almost every other form of debt, these loans cannot be discharged in bankruptcy.

In short, one out of every two law graduates will not have a legal career, and most of the rest will never make enough money to pay back their educational loans. This means they will either have to rely on other sources of income (spouses, extended family) to service their debts, or they will have to go into the federal government’s new Income-Based Repayment program. This program will keep people in debt servitude for 25 (soon to be reduced to 20) years, during which time the balance on their loans will grow, making it almost impossible for them to qualify for mortgages and many other forms of consumer debt. Finally, the debt – which for many law graduates will have grown to more than \$1 million – will be discharged, meaning, of course, that taxpayers will be left to pick up the tab.

All this adds up to a completely unsustainable system – one in which the cost of acquiring a law degree no longer bears any rational relationship to the benefits the typical graduate can expect to receive from it. In this regard, the economic disaster that legal education has become is merely a particularly stark example of the increasingly absurd financial structure of higher education in America.

How did we get into this mess? The basic problem – one that goes far beyond the growing crisis inside America’s law schools – is a product of two related myths. The first is that educational debt is almost axiomatically “good debt” – that is, the sort of debt that will generate a positive return on investment. The second is that the market for higher education is rational and efficient.

For generations now, Americans have been told that it always makes sense to invest in higher education for themselves and their children. This belief was so strong that it had three unfortunate consequences: It convinced politicians and taxpayers that there was no good reason to subsidize public higher education (if people were going to enjoy such a good return on an investment why should the government subsidize it?). It encouraged colleges and universities to adopt a business mentality, which increasingly led these institutions to make revenue maximization their top goal. And it led the purchasers of higher education not to ask hard questions about whether what they were buying was worth the price they were being asked to pay for it.

It is true it is more realistic to expect prospective law students to try to determine the real net present value of attending law school than to expect high school students to make the same calculation regarding a college degree. Still, in the case of law schools the ceaseless message that more higher education is always worth the cost has combined with the misleading reporting practices regarding employment and salary outcomes to produce a classic case of severe market failure: Most law students now pay far more for their degrees than those degrees are worth.

The result has been several consecutive decades of rising costs in real dollar terms. Law schools provide a particularly stark example of these trends: A generation ago, as measured in 2012 dollars, annual tuition at Harvard Law School was \$12,500 per year. Resident tuition at my alma mater, Michigan Law School, was \$4,400 per year, again in current 2012 dollars. Today the respective figures are \$51,000 and \$48,000.

Despite the rhetoric of self-interested and/or clueless academics, higher education is not “priceless.” At some point, the cost will come to outweigh the benefit. That point has already been reached for countless university graduates in general, and law school graduates in particular. As prospective students and their families become aware of this fact, our debt-fueled higher education bubble, like so many other financial bubbles before it, will pop.

Paul Campos is a professor of law at the University of Colorado at Boulder.

Special BOG Meeting Results in More Transformational Decisions

The Board of Governors met for a special public board meeting on May 22 to continue its work in light of the fact that WSBA faces a 28 percent reduction in license fees starting in 2013.

The Board continues to weigh all decisions it makes against the WSBA's mission and guiding principles, which they recommitted to at the April BOG meeting.

Based on the recent completion of a more comprehensive fiscal analysis, they are mindful of not cutting too deep too fast, and maintaining a more thoughtful and deliberate approach to transforming the organization. Over the next couple of years, this process will involve drawing down reserves, bringing the organization's expenses into alignment with its reduced revenues, as well as finding operational efficiencies, program reductions and implementing strategic restructuring.

The meeting began with the Board first deciding its approach would be to employ a mix of cuts to expenditures and use of unrestricted reserve funds in FY13 to help transition the organization into a new reduced revenue model. This decision is based on a premise that license fees will not increase significantly (or at all) anytime in the near future.

Recommendations carried over from the April meeting voted on at the May 22 meeting:

- **Young Lawyers Division (WYLD)** — WSBA reaffirmed its commitment to engage with and support new lawyers, and will begin transitioning the WYLD leadership structure from a Board of Trustees to a standing committee that is connected more broadly across the organization. This will result in a savings of approximately \$125,000.
- **Casemaker** — WSBA will maintain Casemaker as a free member benefit, and will not institute a charge for use by members.
- **Volunteer Travel Reimbursement** – Recognizing the important role volunteers play and the need to ensure participation statewide, the BOG voted to maintain travel reimbursement for volunteers. It remains open to revising expense policies aimed at being more fiscally prudent.
- **Pro Hac Vice Fees** — WSBA will move to ask the Supreme Court to increase Pro Hac Vice fees.
- **ABA Delegates** — WSBA will continue to fund its ABA delegates at \$800 per year for a total of \$5,600.
- **Other Expenses Eliminated** — \$5,000 for votingforjudges.org, \$500 for accommodation fund.

Budget and Audit Recommendations from the May 16 meeting that were approved at the May 22 meeting:

- **Lawyer Services** — WSBA will maintain existing funding levels in Lawyer Services while it seeks to move toward a more broad-based and outreach model.

- **Practice of Law Board** — WSBA will seek to eliminate funding through license fees for the Practice of Law Board (a board created by the Supreme Court through court rule).
- **Communications** — WSBA will place a high priority on efforts to communicate and engage with members and the public. The BOG asked for recommendations by its July meeting on changes to Bar News, which includes exploring a transition to online, and how it fits within WSBA's overall communications plan.
- **Legislative Program** — WSBA will maintain its current staffing and resource allocations to its Legislative Program.
- **Public Service Programs** — WSBA will continue to deliver public service programs. Specifically, Home Foreclosure will fold into Moderate Means at the end of next year when the funds from the Attorney General's office are expended.
- **Diversity** — WSBA will continue to invest in Diversity and to develop a strategic, robust program for building cultural competence within the organization and the membership.
- **WSBA Leadership Institute** — WSBA will transfer the WSBA Leadership Institute to the University Of Washington School Of Law effective Oct. 1, 2012. The Law School will receive the equivalent of one year's funding from the 2012 budget (\$127,000), to help with this transition.
- **Service Center** — WSBA will keep a priority on high-touch customer service to callers.
- **Access to Justice** — WSBA will continue supporting the current programming for the Access to Justice Board (a board created by the Supreme Court through court order) while the BOG and ATJ Board ask the Supreme Court for funding to help pay for staffing costs.

With the decisions made by the Board of Governors that are outlined above, the staff Executive Management Team is now working to complete staffing models that have been under development. Those will be presented at the June and July BOG meetings. Importantly, the decisions made at this meeting as well as the April meeting, did not close the gap in expense reductions needed as WSBA heads into FY13. The remainder of cuts will be through reductions in direct expenses and staffing. Some positions will be eliminated as a result of Tuesday's decisions and others will be eliminated or reduced as a result of additional operational efficiencies and strategic realignments needed to close this gap.

More updates on WSBA's transformational progress will be provided following the board meeting scheduled for June 8 in Yakima.

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State bar wants to call the tune

California weighs law schools skills mandate.

The State Bar of California is mulling whether to impose a practical skills training requirement on lawyers applying for admission — a move some legal academics say is unnecessary and could stifle innovation.

Karen Sloan
April 30, 2012

Law schools have caught plenty of flak in recent years from critics who charge that they routinely produce graduates who can write a law review article but cannot draft a contract or interview a client. Now the State Bar of California is mulling whether to impose a practical skills training requirement on lawyers applying for admission — a move some legal academics say is unnecessary and could stifle innovation.

"My personal judgment is that we don't need this right now," said Stanford Law School Dean Larry Kramer, noting that many law schools have been moving to add clinics and other skills-based courses. "I think they're being a little too quick without recognizing what's already going on."

A state bar task force will soon begin examining whether new attorneys must attain a certain level of hands-on training before being admitted to practice in California. The discussion is still in the early stages, but ideas being kicked around include requiring an internship or mentorship program; a set number of skills-training hours; or a year-long course for 3Ls that covers real-world lawyering skills.

The Task Force on Admissions Regulation Reform is scheduled to issue its recommendations in December 2013. Whatever it decides, the repercussions could be major. California's bar is the largest in the nation, so the ripple effects would reach law schools and bar associations outside the state.

"This is not a new issue," said State Bar of California Executive Director Joseph Dunn. "The debate about practical skills training has been long-standing within legal academia. But because of their paralysis, in the last few years the debate has started to seep into the regulatory bodies at the state level that govern the admission to the practice of law."

The state bar lacks authority to mandate law school curricula, Dunn noted, but schools in California would have little choice but to adjust should the bar go in that direction. Dunn predicted that law schools will push back, as they have in previous years when bar regulators have taken up the training issue.

"We're probably going to hear the usual opposition that has been in play for decades from legal academia, which is, 'We already offer robust options, clinics, internships, etc. There is no need to convert this into a mandatory requirement that would force us to amend our curriculum, which might impact our ranking on *U.S. News & World Report*,'" Dunn said.

The idea of a bar-mandated practical skills training requirement doesn't sit well with Erwin Chemerinsky, dean of the University of California, Irvine School of Law. He is a vocal proponent of practical skills training — Irvine was founded in 2009 with a focus on real-world training and is the first California law school to require students to complete a clinic in order to graduate — but Chemerinsky is uncomfortable with the bar making rules that would influence law school curriculum.

"I have very mixed feelings," he said. "On the one hand, I stringently support skills training in law school. On the other hand, I don't like the idea of the state bar saying, 'This is what you should be teaching.'...Law schools should decide what they teach. Not the bar."

Dunn argued that ensuring that new lawyers can adequately represent their clients falls squarely within the function of the state bar, which has a responsibility to protect consumers of legal services. California bar president Jon Streeter suggested the matter is more important than ever, given that so many recent graduates have been unable to find jobs at law firms and instead have hung out shingles of their own. As solo practitioners, those new attorneys miss out on the mentoring and learning opportunities that law firms provide, he said.

"We want to ensure that everyone who begins the practice of law is ready to meet those obligations," Streeter said. "Law schools have done a yeoman's job in introducing clinical education on a scale that was unworkable two or three decades ago, but they're not there yet. I'd like to see us close that gap."

Stanford's Kramer begs to differ. Many members of the practicing bar don't realize the strides law schools have taken away from the strictly lecture-based model, he said.

Even at law firms, clients are beginning to object to underwriting associates' on-the-job training. The changing demands of the legal job market have put a spotlight on practical skills training and prompted many law schools to increase the number of courses that teach students through real-world legal work such as representing clients in clinics, learning negotiation techniques, and drafting contracts and pleadings.

"I think law schools, even without the bar's intervention, are responding to market pressures and have implemented skills training with plans to add more," Kramer said. "Bar associations are largely populated by lawyers who went to law school a long time ago, when there was no skills training, and their perceptions are out of date."

Better to allow law schools to experiment, Kramer argued. Strict regulations on what and how law schools teach would inevitably stifle innovation and force all California schools into the same mold, he said.

Not all law school administrators in California would oppose a mandate. Chapman University School of Law Dean Tom Campbell said it wouldn't be a particular burden, since his school is already heading toward a much more skills-intensive curriculum. For example, the faculty is considering pairing traditional classroom courses such as real estate and labor law with courses in which students put that classroom knowledge to use in simulations or real-world projects.

"Of course, there will be some schools that feel curriculum is their exclusive prerogative," Campbell said. "But I wouldn't agree with that, because law is a profession and we're a professional school."

Cost certainly is one consideration. Clinics and simulation-based courses generally require a lower student-to-faculty ratio than do traditional lecture courses, and consequently require more resources. Chapman has managed to keep costs down by relying on adjunct professors eager to share their practical experience, Campbell said. Irvine relies on faculty members to teach its required clinics, Chemerinsky said.

Among the issues the task force will examine is how to handle the admission of lawyers from other states. It could impose some sort of a mentorship requirement for those individuals, or grant waivers to attorneys with a certain number of years' experience, Dunn said. The panel will also debate what practical skills should be required and how to evaluate courses. The cost to the bar of overseeing such a requirement is another matter the task force will consider.

State bars in other states have wrestled with the question. For example, the Oregon State Bar and the Oregon Supreme Court worked together to create a mandatory, yearlong mentorship program for new lawyers that was launched in 2011. Delaware requires lawyers to complete a five-month clerkship. Mentorship requirements exist in Georgia, Nevada, Utah and Wyoming. The Washington State Bar Association considered mandatory mentorships and practical-skills training in 2010, but ultimately opted to develop a special CLE course for new lawyers. The practical-skills training requirement was deemed too costly.

As for California, Dunn acknowledged that a bar-coordinated mentorship program would be difficult to manage in so large a state.

Streeter plans to name the members of the task force during the next several weeks. The panel will include three legal academics, five current or former members of the bar's board of trustees, three current or former members of the committee of bar examiners, two state judges, two general counsel, three practicing attorneys and two members of the public, in addition to a chair.

In a second phase, the task force will look at whether to end the practice of allowing graduates of unaccredited law schools to sit for the California bar exam — or whether to impose additional regulations on those schools.

"We're only at the very beginning of the examination of this issue," Streeter said. "Since it came out that we are looking at this, my mail has been running 80 percent enthusiastically in favor of this idea, including from many academics."

Karen Sloan can be contacted at ksloan@alm.com.



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Student law school debt harms Oregon's legal community

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Guest Columnist
By

By Gary Gray

As a recent Oregonian editorial discussed, less funding for courts creates backlogs, which create delays for individuals and businesses in the quest for judicial remedies. But there is another barrier: To get to court, you have to be able to afford an attorney. The rising debt incurred by law students in Oregon is placing them in financial positions that will damage the Oregon legal community in the long run, limit access to attorneys and pose much greater risks than court delays.

I recently graduated from Willamette University College of Law, where tuition and fees this year were \$33,520, up 18 percent from when I started in 2009. I received some financial assistance, but I still had to take out loans. The American Bar Association doesn't allow first-year students to work more than 20 hours a week, limiting opportunities to earn money during the first year.

Among my professors were a former dean and a justice on the Oregon Supreme Court. Both required students to buy a \$200 textbook. Both mentioned that the cost of books was unfair and not right, but both tossed their hands in the air in a what-can-you-do manner. Couldn't a professor simply give us a list of cases to read and not require that a casebook be bought? Yes, in fact I had one professor do just that. Yet two senior members of Oregon's legal community saw the price of books as unfair but out of their control. If anyone in Oregon is in a position to address such injustice, aren't they?

To get experience, the university's career services department informed me, I would need to work in an unpaid internship the summer following my first year. This means spending all of my time working for free and having to pay for my living expenses. This means using more borrowed money. Willamette's students are also encouraged to take part in externships. In these externships, not only does the student work for free, but the student pays the school for course credits.

Then comes the bar exam. The application fee in Oregon is \$625, plus \$140 if you use a laptop. Applicants spend a month or more preparing, and many take a bar preparation class, which costs around \$2,500. And what will the young graduate live on while studying? Not to worry, I began getting offers for "bar loans" last fall. So after living mostly on borrowed money for three years, students must take on more debt.

It is not healthy for the Oregon legal community to have its incoming associates burdened by so much debt. When will the young associate find time for pro bono work when he or she is working around the clock to make payments

on student loans? Even if the courts get their funding, attorneys in Oregon will continue to raise their fees in order to pay down their own debt. They will continue to focus on generating profits for themselves and focus less on helping those who can't afford justice.

But there is a solution. The legal community itself can stop this trend. Judges, attorneys, professors and deans are not helpless. They don't need legislation to control what students pay for books. Wealthy firms don't need an emergency budget hearing in Salem to begin paying their summer interns or to take on additional paid interns in the interests of the legal community. A community made up of so many intelligent and hardworking people surely can find ways to better itself, to ensure that its services are not only available to the wealthy, and to make sure its newest members are not burdened with insurmountable debt.

Gary Gray lives in Southwest Portland.

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The future of legal employment

<http://bit.ly/HCHnLM>

April 13, 2012

The American legal profession is on the verge of a full-blown jobs crisis. The Bureau of Labor Statistics estimates that over the course of this decade, 440,000 new law graduates will be competing for 212,000 jobs, a 48% employment level. The BLS's projection does assume law school graduation rates will remain steady during that time, and the latest news is that US law school applications are down nearly 25% in the last two years. But fewer applicants won't necessarily translate to smaller classes; it may simply mean that law schools accept a greater percentage of applicants than in the past. Canada and the UK are likely facing similar long-term trends, although not nearly to so devastating a degree.

There's no question this is serious business, and the sooner we take steps to deal with it, the better. Here's something to think about, though: a "jobs" crisis is not necessarily the same thing as an employment crisis. Put differently, it may be that we should focus less on whether new lawyers can "get a job," and more on whether and how lawyers can be gainfully employed for the use of their legal knowledge and skills.

A "job," as we understand the term today, is in some ways a slightly archaic concept. It's an industrial-era unit of production that became a foundational element of the post-War white-collar economy. When an organization pays you a pre-set amount to perform a range of tasks with defined responsibility in a centralized location during specified hours, that's a "job." Boomers, in particular, believe deeply in "jobs" — they were raised in, and flourished in, an environment where jobs were not only plentiful, but were also considered touchstones of personal success and fulfillment. Gen-Xers like me, and the Millennials streaming into the profession right now, were raised in far more uncertain employment environments, yet "jobs" remained the default format for earning a reliable and respectable living.

Today, "jobs" are becoming more difficult to define and measure. A growing number of economists accept that "unemployment rates" are an imperfect metric because they do a poor job of capturing, for example, part-time and itinerant workers or jobless people who've given up looking for work. At the same time, independent workers and entrepreneurs are gaining increasing traction in the economy — I recall one estimate that as many as one-fifth of all American workers now fit into those categories. The concept of "getting a job" — securing a reliable, medium-term engagement of steady activity in return for steady compensation — might yet prove to be a product its economic era.

What does this mean for lawyers? Technically speaking, private-practice lawyers are entrepreneurs — owners rather than employees, independent professionals who contract directly with purchasers without the involvement of an organizational middleman. And for solos and truly small-firm lawyers, I think this still holds true. But most lawyers in midsize and large firms, if we're talking in practical terms, are really holding down "jobs." The associates certainly are, for anywhere from five to ten years at the start of their careers. But even many partners, if they honestly assessed their position, might concede that they're "employees" of the firm more than "owners," their continued association with the firm still governed by productivity demands imposed by others higher in the partnership chain.

And when you move beyond the private practice of law, you realize that the vast majority of lawyers out there are employees, not owners. Government and public-sector lawyers? Corporate law department lawyers? Law school lawyers? Judicial system lawyers? Administrative agency lawyers? All employees: they get paid by an organization to perform a range of tasks with defined responsibility in a centralized location during specified hours. This is hardly surprising: our legal training, which does nothing to prepare us for entrepreneurship, all but destines most of us to organizational employment, and our natural risk-aversion doubles down on the tendency to favour security over independence. Being an entrepreneur is difficult and stressful, and for many people (not just lawyers), the rewards fail to outweigh the costs.

Nonetheless, I'm coming to believe that entrepreneurship is the best weapon we have to get through the legal jobs crisis. Simply put, the "lawyer job" is starting to disappear. Organizations that require legal services are creating fewer full-time lawyer jobs to deliver those services. They're using substitutes like contract lawyers, overseas lawyers, paralegals, LPO companies, and increasingly sophisticated software. There just aren't going to be as many "lawyer jobs," as we've traditionally understood the term, in future. But there should be a growing number of "lawyer opportunities," some of which the market will make for us and some of which we'll have to make for ourselves.

What might these opportunities look like? Richard Susskind gave us seven to start with in *The End of Lawyers?*, including process analyst, project manager, ODR practitioner and risk manager. Others might include:

- General Contractor, assembling the best team of legal professionals to achieve specific goals or solve one-off problems;
- Knowledge Tailor, creating customized banks of legal know-how uniquely designed for specific clients;
- Strategic Auditor, analyzing organizations for legal risk, strategy disconnects, function variances and productivity leakages;
- Accreditation Monitor, reviewing other lawyers' continued fitness to hold a law licence on behalf of regulators;
- Proficiency Analyst, periodically assessing an organization's legal advisors for competence and client awareness;
- Legal Physician, providing individual clients with annual low-cost checkups of their family's legal health;
- Informal Arbitrator, delivering fast, brief, non-binding "judgments" of disputes to facilitate settlements;

I expect there are a handful of lawyers out there doing these things already, but that's not really my point. What I want you to focus on is what many of these potential future lawyer roles share in common:

1. *They envision multiple clients, not just one:* These aren't single-channel "jobs" in the traditional sense; they're more like engagements or opportunities that are customized multiple times to an ever-changing roster of clients.

2. *They require the application of high-end skills or talents:* Lawyers need to deploy judgment, counsel, business analysis or strategic insight to fill these roles — not process or content, which will be systematized and automated by non-lawyers.

3. *They involve a high degree of customization.* Mass-produced legal products and services will be the province of high-volume, low-cost providers. High-value services will be uniquely tailored, like designer drugs based on a patient's DNA.

4. *They meet a need unfilled by a traditional provider.* Law firms, law schools, legal publishers, CLE providers, governing bodies, and other industry mainstays could provide supply or drum up demand for these roles, but haven't.

5. *They focus far more on preventing problems than on solving them.* Richard Susskind, again, reminds us that clients want a fence at the top of a cliff, not an ambulance at the bottom. These are all fence-building positions.

6. *They presume a high degree of connectedness.* The future of law is collaborative, and successful future law careers will hinge in no small part on the size, quality and effectiveness of

lawyers' networks.

7. *They deliver specific, identifiable, and actionable value to the buyer.* Much of what lawyers now provide is procedural and transactional: hoops that must be jumped through. These roles are rich in direct, verifiable value to clients.

Those seven jobs I dreamed up aren't as important as these seven characteristics. Nobody can actually predict the "jobs of the future" — raise your hand if you thought "app developer" was a viable career as recently as 2005. But we can predict the features people will seek out in their legal professionals, the talents and skills that will deliver value to a more literate, tech-savvy, mobile, frugal and assertive client base than lawyers have served in the past. New lawyers need to understand this; but equally, new lawyers are uniquely positioned to grab this opportunity, because they're not as burdened with assumptions of what a legal career ought to look like. Fresh eyes for a new marketplace are now a distinct advantage.

My message to new lawyers, really, is this: don't gear all your career efforts towards "getting a job," or at least, not one that you'll hold for more than a few years. The legal economy's traditional employment infrastructure is starting to crumble, and if you count on spending your career inside it, you could be caught in the collapse. There are plenty of markets and industries that will continue to make lots of traditional full-time "jobs" available, but I doubt very much that the law will be one of them. If you wind up in a steady law job, that's obviously great; but you should think of that outcome as the exception more than the rule.

So instead, plan for independence. More and more legal employment will be small and entrepreneurial in nature, rewarding the self-starter who builds a reputation for value, effectiveness and foresight. Look at the legal market around you and ask: What's missing? What client needs aren't being met? What needs have clients not even thought of yet? What innovative new industries will flourish in the next ten years, and in what ways will they require assistance that lawyer training and legal skills can deliver? What demographic trends will take full effect in the 2010s, and what are their law-related implications? What technological advances in the legal market, no matter how sophisticated, will still require complementary high-end lawyer services?

The BLS thinks that only 212,000 new law jobs will open up this decade. I say: Prove them wrong. Create new opportunities. Identify and encourage unrealized demand. Find ways to apply your best legal skills — strategic analysis, critical thinking, incisive logic, intellectual coherence, principled persuasion, and more — to *create value for clients*. That's the best way — and it might be the only way — to ensure your ongoing success as a 21st-century lawyer.

Jordan Furlong delivers dynamic and thought-provoking presentations to lawfirms and legal organizations throughout North America on how to survive and profit from the extraordinary changes underway in the legal services marketplace. He is a partner with Edge International and a senior consultant with Stem Legal Web Enterprises.

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The Washington State Bar Association

Membership Study 2012
Executive Summary

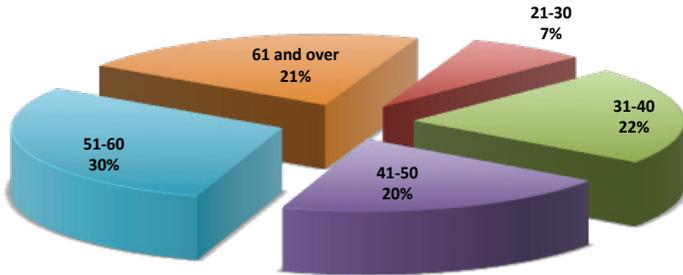


Membership Highlights and Diversity in the WSBA

AVERAGE YEARS OF EXPERIENCE: 19 MEMBERS UNDER AGE 40: 30 PERCENT

Younger and new attorney cohorts tend to be more diverse, bringing distinctive assets, needs, and perspectives to the profession.

MEMBERS OVER AGE 60: 21 PERCENT

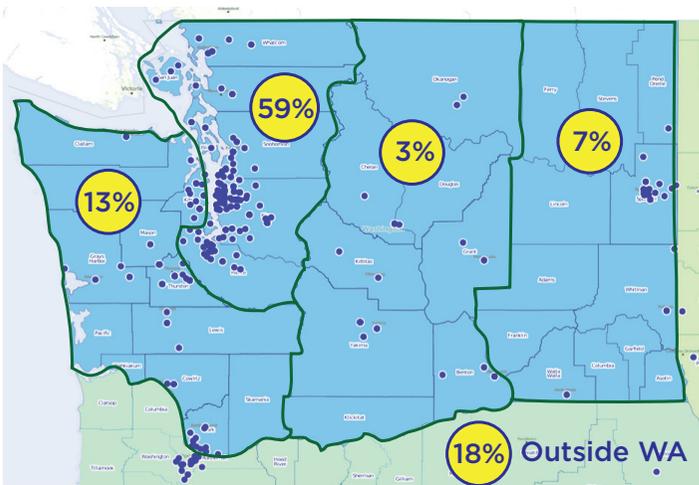


MEMBERS PRACTICING IN LAW FIRMS: 48 PERCENT

MEMBERS IN SOLO PRACTICE: 19 PERCENT

GEOGRAPHY

The WSBA membership is geographically diverse, posing significant communication and access challenges.



OLDER MEMBERS (40+)

- 79 percent of WSBA
- WSBA's largest diversity group



RACIAL MINORITIES

- 12 percent of WSBA
- Highest frequency of professional barriers experienced among diversity groups



SEXUAL ORIENTATION MINORITIES

- 9 percent of WSBA
- Income is lowest reported among the diversity groups



WOMEN

- 45 percent of WSBA
- Relatively high frequency and intensity of professional barriers
- Younger membership is proportionately more female



PARENTS AND CAREGIVERS

- 38 percent of WSBA
- Development of family-friendly workplace policies a frequently stated concern



PERSONS WITH DISABILITIES OR IMPAIRMENTS

- 21 percent of WSBA
- Rank second on frequency of experienced professional barriers and highest overall in intensity
- Health-and age-related impairments frequently reported, especially among older members



MILITARY PERSONNEL AND VETERANS

- 13 percent of WSBA
- Most likely to be in solo practice among all diversity groups

DIVERSITY AND SOLO PRACTICE

Members of each of the seven diversity groups in the study identify as solo practitioners at a higher rate than the overall membership.

PERCEPTIONS OF WSBA

Members report widely varying perceptions of WSBA's mission, value proposition, and priorities.

TRANSITION-RELATED RECOMMENDATIONS

Prepare for significant levels of retirements, departures, and reductions in practice across the membership. Issues to address include:

- Projected new member inflows
- Personal and professional needs of exiting members

- Retirees as a resource for consultation and mentoring
- Career stability enhancements
- Leadership development and mentoring among early- to mid-career WSBA members

Recommendation Highlights

At a Glance: The WSBA Membership

YEARS OF EXPERIENCE

The average member has 19 years of experience in the profession.

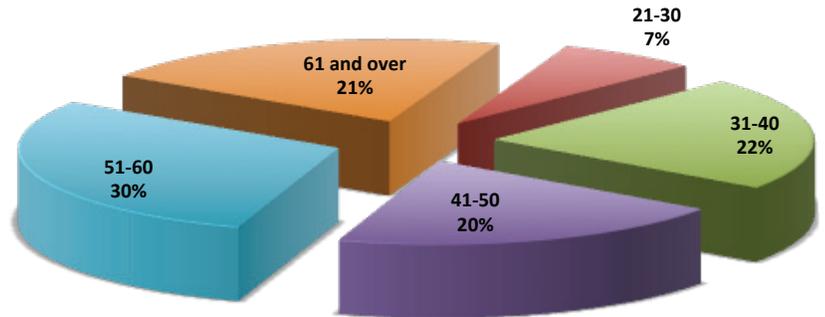
GENDER

45 percent of the WSBA membership is female. The gender gap narrows among younger and new attorneys.

Newer member cohorts are proportionately more diverse in traditional diversity categories.

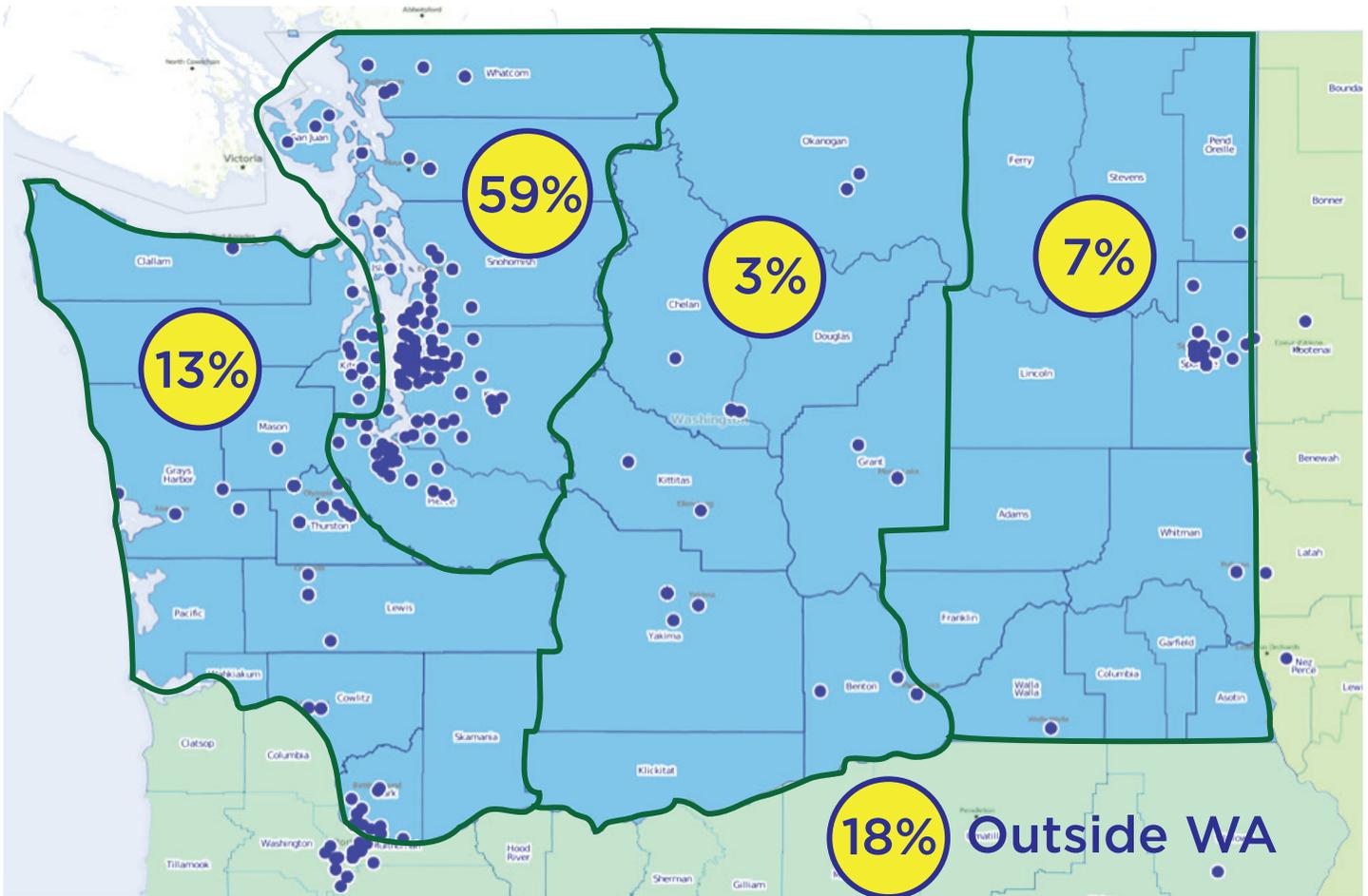
AGE

Slightly over half of the membership is over 50 years of age.



GEOGRAPHY

The WSBA faces distinctive challenges in providing relevant and accessible services to a membership that is geographically diverse within Washington State, as well as nationally and internationally.

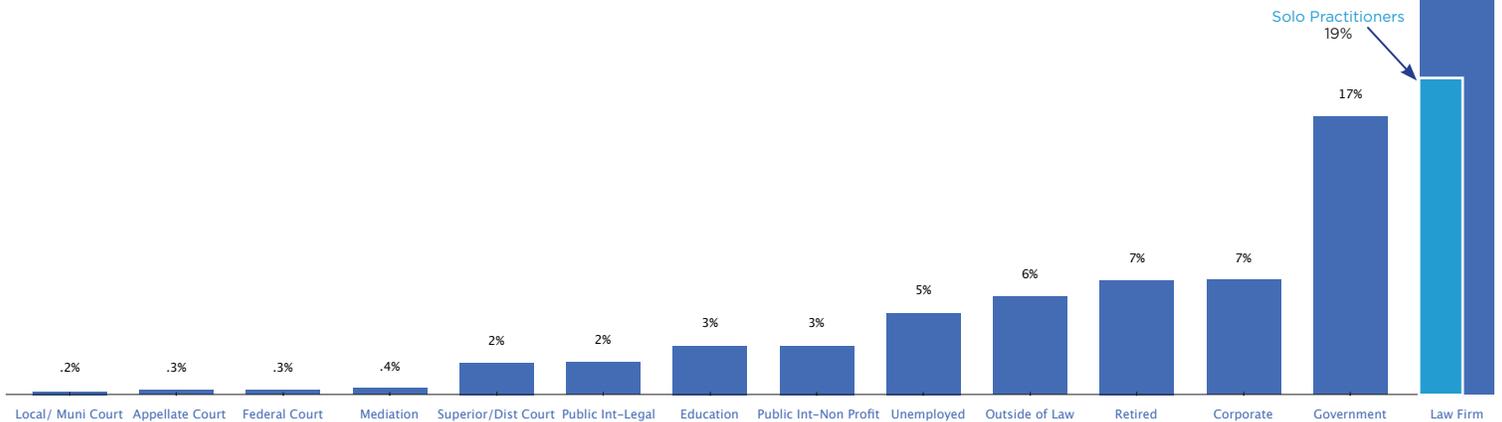


EMPLOYMENT SETTING

Forty-eight percent of all members practice in a law firm setting.

Of those members in a law firm setting, 40 percent identify themselves as solo practitioners.

At 19 percent of the membership, solo practitioners represent by far the largest single mode of practice and one that reports a distinctive set of professional priorities and perceived needs.



Employment Settings of WSBA Membership

TRANSITIONS

A historically large percentage of the WSBA membership is projected to leave the profession during the next five years.

- Nearly one-quarter of the membership - over 7,200 members - is actively considering retirement during the next five years.
- Approximately seven percent - over 2,200 members - is actively considering departing the profession other than through retirement during the next five years.
- An additional 25 percent - 7,500 members - plan to reduce professional practice during the next five years.

Altogether, 56 percent of the existing membership is projected to either retire, depart the profession or significantly reduce their practices during the next five years.

These figures do not account for inflows of new graduates, attorneys entering or leaving the state, and other factors. Nevertheless, these findings represent a major challenge to WSBA, the legal profession, and the public in Washington State in the coming years.

At a Glance: Diversity in WSBA

This study provides the first reliable data on diversity groups in WSBA. These findings provide an opportunity to acknowledge the presence of these groups and to articulate issues they value.

DIVERSITY GROUP	TRENDS AND FINDINGS
<p>OLDER MEMBERS (40+)</p> <p>79% OF WSBA MEMBERSHIP</p> 	<p>Largest diversity group in the overall membership.</p> <p>This group includes a high percentage of solo practitioners.</p> <p>An unprecedentedly large portion of these members anticipate retiring during the next five years.</p>
<p>RACIAL MINORITIES</p> <p>12% OF WSBA MEMBERSHIP</p> 	<p>This group has a median of 9 years of professional experience- the lowest among all diversity groups.</p> <p>Mentoring cited as particularly important for facilitating positive career trajectories, especially for younger and newer attorneys.</p> <p>Experience greatest incidence of social, opportunity, and advancement barriers among all diversity groups.</p>
<p>SEXUAL ORIENTATION MINORITIES</p> <p>9% OF WSBA MEMBERSHIP</p> 	<p>Professional experiences vary widely based on geographic location; connecting with other GLBT members and joining support networks improves professional satisfaction.</p> <p>Job satisfaction is a particularly important factor in determining whether these members expect to stay in the legal profession.</p> <p>Reported incomes lag notably behind the overall median and are the lowest of all diversity groups, despite comparable years of experience.</p>
<p>WOMEN</p> <p>45% OF WSBA MEMBERSHIP</p> 	<p>Rank third on experienced professional barriers and second on intensity of such barriers.</p> <p>Mentoring was frequently cited as particularly important for facilitating positive career trajectories, especially for younger and newer attorneys in this diversity group.</p>
<p>PARENTS AND CAREGIVERS</p> <p>38% OF WSBA MEMBERSHIP</p> 	<p>No significant difference in hours worked as compared to the overall membership.</p> <p>Cite the need for family-friendly workplace policies, flexible schedules and hours, and health benefits for dependents.</p> <p>Rank fourth among diversity groups in reported frequency of professional barriers encountered and lowest in the intensity of those barriers.</p>

DIVERSITY GROUP

TRENDS AND FINDINGS

PERSONS LIVING WITH DISABILITIES OR IMPAIRMENTS

21% OF WSBA MEMBERSHIP



A notable segment of this group reports a wide range of health- or age-related impairments, especially among older members.

Rank second on experienced professional barriers and highest on reported intensity of such barriers.

MILITARY PERSONNEL AND VETERANS

13% OF WSBA MEMBERSHIP



Oldest and most experienced relative to other non-age-based diversity groups and to the average overall membership.

Most likely to be solo practitioners.

Rank lowest on experienced professional barriers and second lowest in the intensity of those barriers.

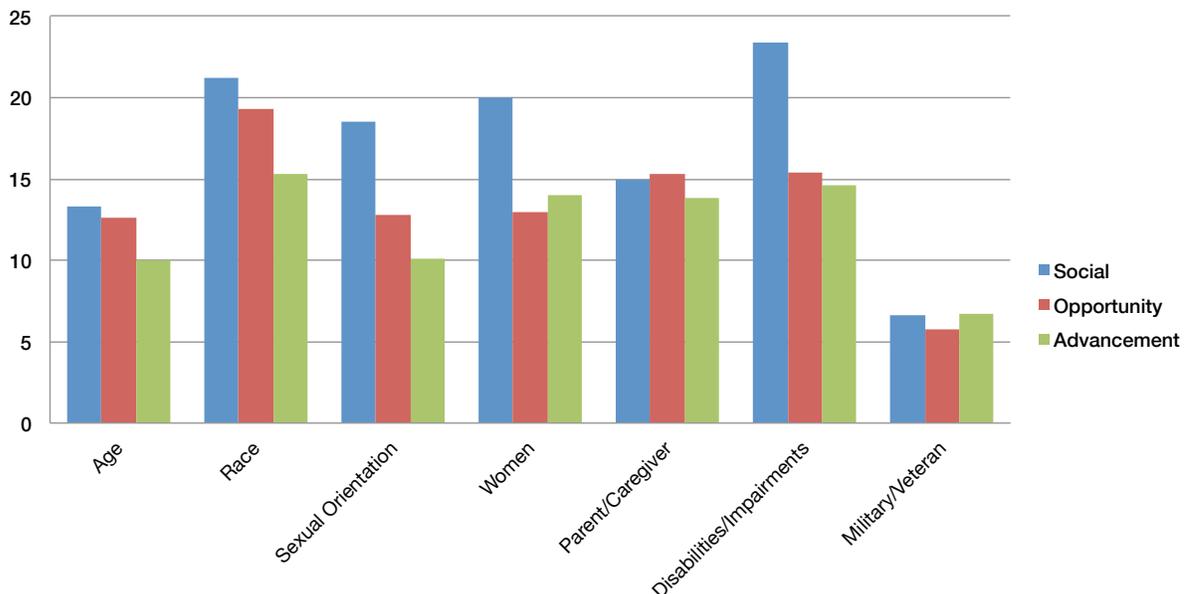
Members of every diversity group are far more likely to be in solo practice than members overall. The reasons behind this trend and its effect upon career development among diversity groups bear further investigation. **It is important to note that initiatives benefitting solos will not only benefit the membership overall but also will positively impact these groups.**

Professional Barriers and Diversity Groups

Diversity groups reported distinctive patterns of barriers experienced in their professional practice:

- Social barriers, including being excluded, misunderstood, or treated differently by one's supervisor, colleagues, or clients due to membership in a particular diversity group.
- Barriers to opportunity, including being given fewer opportunities to work with clients, limited responsibility, or less training due to membership in a particular diversity group.
- Barriers to advancement, including not receiving a raise or promotion due to membership in a particular diversity group.

Percent of Diversity Group Members Reporting Social, Opportunity and Advancement Barriers



At a Glance: Professional Transitions

Historic generational and vocational trends are underway, reflecting a confluence of societal trends that includes the Boomer generation's quickly approaching retirement, rapid changes in the profession, and the current economic climate.

THIS STUDY CONSIDERED TWO FORMS OF PROFESSIONAL TRANSITION

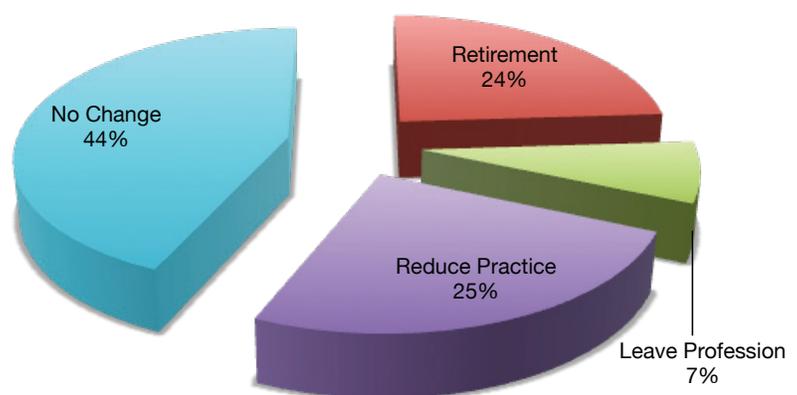
JOB STABILITY: Persistence in a particular employment setting or area of practice over time.

- Over the last five years, 25 percent of study participants reported having changed their area of practice at least once.
- In the same period, thirty-five percent changed their employment setting at least once (in some cases, these changes occurred concurrently).
- Of those reporting employment setting changes, seven percent became unemployed.

CAREER STABILITY: Persistence in the practice of law over the natural course of a member's career.

- Fourteen percent of respondents do not believe they will continue to practice law for the remainder of their professional careers, and another 22 percent were unsure or neutral on this issue.
- Annual projections:
 - Retirement: Annual projected rate of 4.8 percent is double the expected pattern.
 - Departure: Annual projected rate (other than retirement) is 1.5 percent.
 - Reduction of practice: Annual projected rate is 5 percent.
- Cumulative five-year projections:
 - Over the next five years, retirements and departures will accumulate to a gross reduction of 31 percent of the existing membership roster - a total of 9,500 members exiting the profession.
 - In addition, over 25 percent of the membership - approximately 7,500 members - plan to reduce involvement in the practice of law over the course of the next five years.

Five-Year Projection of Career Transitions among WSBA Members



These figures do not account for inflows of new graduates, attorneys entering the state, and other factors. Nevertheless, they are consistent with national demographic trends, and represent a major challenge to WSBA and to the legal profession in Washington State in the coming years.

PREDICTORS OF CAREER STABILITY

The study explored factors that promote career stability in order to give WSBA and other stakeholders the conceptual tools necessary to respond to threats to healthy career stability among WSBA members.

Job stability does not predict career stability *per se*. However, the circumstances surrounding a change of area of practice or employment (e.g. layoff, forced change, or the deliberate execution of a career strategy) may have important implications for professional development.

Job satisfaction has by far the strongest impact on career stability of all variables examined in this study. Job satisfaction consists of four elements:

- Positive perceptions of relationships at work
- Sense of job autonomy and task integrity
- Work meaning and stimulation
- Perception of extrinsic factors such as income and benefits

PREDICTORS OF JOB SATISFACTION

The study found four factors to be strongly associated with job satisfaction, and therefore important in promoting career stability.



Job satisfaction's role in promoting career stability was strong in the membership overall as well as within every diversity group.

These findings reveal that in the legal profession in Washington State a significant loss of senior professional experience is underway that will continue for at least five years, and most likely for a considerable period of time beyond that. This will create significant challenges as well as remarkable opportunities for the Association in terms of managing exit-related issues, fostering emerging leaders, preserving valuable professional and institutional knowledge, and ensuring an equitable and effective transition.

At a Glance: Recommendation Highlights

TRANSITION-RELATED RECOMMENDATIONS

Prepare for historic levels of transition in the membership during at least the next five years.

- Develop analysis of the numbers and characteristics of attorneys projected to enter WSBA during this period
- Explore personal and professional concerns of exiting members
- Consider retirees as a consultation and mentoring resource to membership
- Explore strategies to enhance career stability
- Support leadership development and mentoring efforts among early- to mid- career members

Enhance member career stability through strategies that address:

- Mentoring and leadership development opportunities
- Spousal and familial support
- Income and other extrinsic work benefits
- Work-life balance

DIVERSITY-RELATED RECOMMENDATIONS

Explore strategies to support positive mentoring relationships and effective leadership development opportunities;

Acquire a more complete understanding of social, opportunity, and advancement barriers experienced by diverse members of the bar in order to proactively address them in the profession; and

Investigate the predominance of attorneys in solo practice, particularly those belonging to diversity groups, in order to better understand whether this setting represents opportunity or necessity.

Members 40 and over

Support efforts to better understand and address upcoming professional challenges related to leadership and professional transition.

Foster efforts to provide professional guidance and resources to navigate upcoming life events such as aging and retirement.

Racial minorities

Support efforts to better understand and address the particularly high level of this group's experience of professional barriers.

Develop an understanding of the need for suitable mentoring relationships as expressed by this group and promote efforts to facilitate mentoring and provide training.

Sexual orientation minorities

Explore and seek to address income disparities relative to other diversity groups and the overall membership.

Gather information from geographically diverse members of this group to better understand professional experiences and address geographic barriers.

Women

Support efforts to better understand and address the relatively high level of this group's experience of professional barriers.

Since female members of WSBA tend to be younger and newer to the profession, they will likely benefit from efforts to better understand and address issues important to new attorneys, and efforts in the areas of mentoring and professional support.

Efforts to support career stability for parents and caregivers will likely be of particular benefit to women over the course of their careers.

Parents and caregivers

Support efforts to educate employers and managers regarding practical issues faced by this group including strategies to prevent turnover.

Promote the adoption of flexible schedules, billing methods, and the use of technology to encourage job and career stability.

Persons living with disabilities or impairments

Support efforts to better understand and address the particularly high frequency and intensity of this group's experience of professional and other experienced barriers.

Develop a broad definition of this group to incorporate age-and health-related impairments for policy and programmatic purposes.

Military personnel and veterans

Explore and address dynamics related to solo practice as the predominant setting for this group, seeking insight into whether this setting represents an opportunity or necessity.

Since military personnel and veterans tend to be older, they will likely benefit from efforts to better understand and address issues important to members over 40.

Young and new attorneys

Support efforts to better understand and address these members' expressed need for mentoring, practical professional consultation and resources, and other assistance related to launching a career in the law.

Solo practitioners

Foster initiatives to clarify and address expressed needs for training, resources and professional support in the form of mentoring or consultation.

Support efforts to better understand and address solo practitioners' experienced barriers in terms of transitioning from solo practice to another employment setting.

OTHER RECOMMENDATIONS

Clarify WSBA's mission and value proposition.

Foster an ongoing dialogue to engage the membership around WSBA's mission as well as its consequent policies and program priorities.

Seek ways to improve member communication and access.

Explore the use of emerging online technologies, such as collaborative media and survey panels, for members to access WSBA staff and resources and engage in WSBA activities.

Consider new ways to mitigate geographic barriers faced by many members in accessing WSBA services and activities.

Conduct a timely review of member concerns and suggestions that are documented in the open-ended portions of the survey as well as the fora.

Update WSBA institutional data collection strategy and methods, and aligning the institutional database with future research goals.

“ “ I appreciate the WSBA reaching out to members to ask how we might be better served. It's a good first step. ” ”

“ “ I'd like to take advantage of many of the services the bar provides, but Seattle is just too far away. It's the 21st century- most members I know would use more online and other methods to access WSBA services. ” ”

Professional Transitions

This study considered two forms of professional transition: job stability and career stability.

JOB STABILITY

Persistence in a particular area of practice or employment setting over time.

During the past five years, the percent of members who have changed:

- Area of practice: **25 PERCENT**
- Employment setting: **35 PERCENT**

Employment changes resulting in unemployment: **7 PERCENT**

CAREER STABILITY

Persistence in the practice of law over the natural course of a member's career

During the next five years:

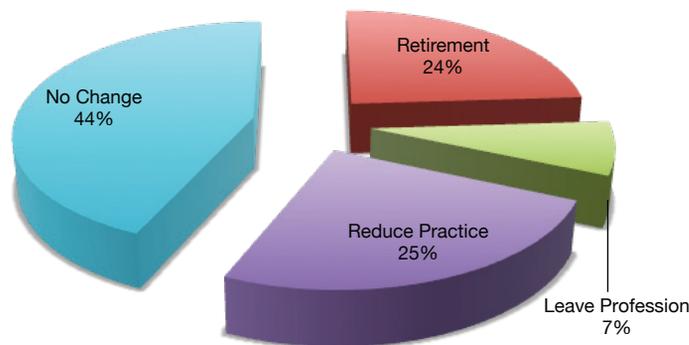
Planning or contemplating retirement: **24 PERCENT | 7,200 MEMBERS**

Planning to leave the profession apart from retirement: **7 PERCENT | 2,300 MEMBERS**

Planning to reduce practice: **25 PERCENT | 7,500 MEMBERS**

THE HISTORIC CHALLENGES FACING THE BAR CREATE OPPORTUNITIES FOR WSBA AND ITS MEMBERSHIP TO COLLABORATE IN PRODUCTIVE WAYS TO IMPROVE BOTH THE EXPERIENCE OF PRACTICING LAW AND THE PRODUCT OF THAT PRACTICE.

Five-year Projection of Career Transitions among WSBA Members



These data are consistent with national demographic trends and indicate that historic changes in the attorney workforce are underway.

FACTORS AFFECTING CAREER STABILITY

- Job satisfaction is the strongest predictor of career stability found in this study.
- The study found four factors to be strongly associated with job satisfaction, and therefore important in promoting career stability.



DIVERSITY-RELATED RECOMMENDATIONS:

Explore and consider responses to:

- The distinctive experience of professional barriers for each diversity group;
- The potential benefit of mentoring in diversity groups;
- The experience of solo practice among diversity groups;
- Ways in which diversity groups may be well-positioned to contribute to solutions that can potentially benefit all members, such as addressing the challenges of solo practice and meeting the leadership gap created by member retirements and departures.

OTHER RECOMMENDATIONS

- Clarify WSBA's mission and value proposition in ongoing dialogue with members.
- Consider strategies to improve member communication and access.
- Conduct a timely review of member concerns and suggestions documented in the open-ended portions of the survey as well as the fora.
- Update WSBA institutional data collection strategy and methods.

Context

The WSBA initiated this Membership Study in the spring of 2011 in order to achieve four interlocking goals:

- 1) Gather reliable demographic and career-related data about the WSBA membership overall;
- 2) Initiate an exploration of the characteristics and work experiences of diverse segments of the membership;
- 3) Explore patterns of professional transitions among the WSBA membership, identifying causal factors where possible, and
- 4) Establish a statistically reliable database that can serve as:
 - a practical benchmark for understanding membership trends,
 - a guide to policy and program planning, and
 - a clear baseline for use in future program evaluation.

TrueBearing LLC, a research and evaluation firm in Seattle, collaborated on all aspects of the Study design with the WSBA Study Team, comprising representatives from the WSBA leadership, governance and staff.

Methods

In order to build a statistically reliable database of the professional experiences and perceptions of the WSBA members, TrueBearing and the Study Team employed a multi-method strategy:

Phase 1. Online randomized survey, targeting random sample of ten percent of the entire WSBA membership, including former members who exited the membership within the past five years.

Phase 2. A series of online fora, focusing on selected themes and drawing from diverse segments of the membership identified by the WSBA Study Team. These confidential interactive discussions among WSBA members add qualitative depth to the findings.

Phase 3. An open survey was offered to all WSBA members. The results of the open survey provide valuable qualitative information, feedback, and recommendations from participating members.

Status and Next Steps

This Membership Study has achieved the four primary goals set by the WSBA, and the resulting database offers a versatile and statistically reliable blueprint for the leadership of WSBA in setting future policy and program priorities.

This Membership Study identifies several challenges and opportunities that may require responses not only from WSBA but also from other institutional stakeholders in the legal profession. These findings provide a common framework for collaboration in the shared responsibility to protect and nurture the legal profession in the State of Washington for years to come.