

**Oregon State Bar  
Special Meeting of the Board of Governors  
July 27, 2012  
11:00 a.m.  
Oregon State Bar Center**

- 1. Call to Order**
- 2. Centralized Legal Notice System (Oregon Law Foundation)**
  - A. ONPA Presentation Inform Exhibit
  - B. Centralized Legal Notice System Proposal Action Exhibit
  - C. Board Member Comments Inform Exhibits
- 3. ABA HOD Agenda (Ms. Harbur)**
  - A. Review and Discussion of Resolutions Inform/Action  
(click [here](#) to link to ABA HOD Agenda)
  - B. Requests for positions on ABA HOD Resolution 10A Action Exhibits

July 26, 2012

Board of Governors  
Oregon State Bar  
16037 SW Upper Boones Ferry Rd  
Tigard, OR 97281Re: Proposal before the Oregon State Bar to Eliminate Public Notices  
from Oregon Newspapers

Dear Board of Governors:

Western Communications, Inc. (“WesCom”) has asked me to respond briefly to the last two memoranda provided by the Oregon Law Foundation (“OLF”), and to other recent submissions.

As always, the Board’s consideration of the matter before it will benefit greatly from accurate facts. The following are corrections that will give members of the Board better background.

- Proponents repeatedly argue that: (1) the OLF proposal would result in “substantial cost savings to government”; and (2) “at least 20%” of the cost of all public notices involves government notices, which “significant expense” is “borne by Oregon taxpayers.” The Board should understand the facts. WesCom has determined from its records that public notice costs to local government represent not a few percent of government budgets, or even one percent, but instead some *hundredths* of one percent of government budgets, and in some case some *thousandths* of one percent of budget. The amount that could be saved if there were absolutely *no* cost for notices would not hire a single, lowest level employee, except for a few weeks. Publication gives citizens information about their governments. WesCom’s records also establish that government public notices do not amount to “at least 20%” of all of the costs of all public notices as claimed; the number has held steady at less than 3%.

DWT 20023766v1 0046846-000036

- Other information provided is remarkably erroneous. The data in an OLF document titled “Oct. 2011, March & April 2012 Data on Public Notices,” attached as the last page of the OLF June 22 submission, overstates the rate *The Bulletin*, for example, actually charges for government notices by more than 260%. WesCom has reviewed the claimed rates of other newspapers in that document and they are similarly substantially wrong. Proponents do not understand the information they obtained regarding “open display advertising rates,” as described in ORS 193.090. Such rates may be legally charged for public notices, following the legislature’s decision embodied in ORS 193.090(1), but they often aren’t. Government is also often entitled to further discount, as described in that statute. (As a side note, in addition to the wrong premises about rates charged, the dollar figures claimed in that “Oct. 2011” document depend on other, unstated, suppositions about both length of notice and times run, which result in significantly erroneous conclusions.)
- Proponents claim that the OLF proposal will actually create “far improved access to vitally important information [citizens] need about legal matters” and that the proposal will actually result in “reaching a much larger audience.” According to one proponent the proposal would newly “put [notices] on the Internet.” These statements in support of the proposal are frustrating. As has been described repeatedly, *all public notices are already on the Internet*. The argument about “far improved access” makes no sense. Internet access to *all* public notices is already available and free. The arguments are baffling.
- The Board is presented with the argument that “procedural due process -- notice and an opportunity to be heard -- is constitutional law which promotes justice and access to justice.... We should seize the opportunity to promote it through this proposal.” With all due respect, *even if* one wanted to argue that the complete elimination of newspaper publication would not *diminish* notice, which is not the case, no argument can be made that notice will be *improved* by the proposal, which *duplicates* existing, centralized online notice. Even if one denied the “digital divide,” which remains a significant factor in our democracy and about which an ocean of information exists, and even if one simply ignored all the research that shows how people happen to get and are accustomed to getting information from their newspapers about their governments, described in an earlier submission, no claim can be made that notice will be *improved* under this proposal, which duplicates existing online access while taking away the access citizens quite literally now hold in their hands. The argument that “we should

seize the opportunity to promote [procedural due process],” *i.e.*, notice, does not make sense; the proposal would not “improve” or “promote” notice.

- WesCom has significant experience in the business the Bar is asked to take over. The proposal grossly underestimates both startup costs and annual costs. The idea that this project can be run with a staff of 3.25 FTE is simply wrong. The adjusted proposed business model anticipates handling over 500 notices per week, 52 weeks a year. Proponents must be imagining a business in which they hit computer keys and appropriate, accurate public notices appear online. WesCom’s experience belies this imagining. Some submitted notices are handwritten. Many have significant content and format problems. Notices need to be checked for accuracy. Even if submitted “electronically,” they need to be input and uploaded through a front end system. Proponents do not imagine other aspects of this business; *The Bulletin* alone, for example, receives over 250 inquiries every month concerning the content of submissions, publication requirements, deadlines, and format issues. This number would need to be multiplied on a statewide basis. *The Bulletin*’s full-time legal clerk averages placing six notices per day, because of all the communications incident to this business. Proponents are not aware how many times during the week WesCom papers alone have attorneys and other public notice advertisers rushing to get notices published in order to make important deadlines with a court or a bank. Each notice needs to be checked and approved with a staffer. Even if the proposal were to set aside affidavits concerning adequacy, which raises other issues not addressed, *The Bulletin*’s experienced, full-time clerk, multiplied by 3.25, could reach nothing even remotely approaching the 500 notices per week, every week, projected in the business plan.
- The proposal also substantially understates the cost of making an unknown source of information known throughout the state. To avoid a grave injustice to Oregon’s citizens, the Bar would need to undertake ongoing, diligent, and costly efforts to educate Oregonians about the new, sole source of information about their governments. In the absence of this, the *theoretical* “reach” of information becomes a sham and the adoption of the proposal would become a detriment to our community democracies. Without significant expenditures, on an ongoing basis, the proposal would simply renege on its claim to *actually* reach citizens and *provide notice*.

- The proposal's price structure demonstrates a lack of understanding of public notices. The proposal states that every notice will now cost \$130. (Before this proposal has even begun to leave the station, charges have been raised over 60% in the revised plan.) By comparison, *The Bulletin* has published notices statutorily required by ORS 87.691(2), governing the sale of property subject to lien, for around and sometimes under \$40, *in toto*. That notice will suddenly cost \$130 at the Bar. Those required to publish such notice will certainly wonder about, if not scream about, the fact that they will pay as much as Wells Fargo Bank will pay for the foreclosure of a million dollar property, a notice approximately 16 times the length of a personal property sale notice.
- Proponents strenuously argue that the current system is broken because some public notices are being placed in small newspapers, with little design of having those notices actually seen. That is a curious point for licensed attorneys to raise. The OLF documents tell this Board that "standard practice throughout the State has long been to use small less expensive newspapers." A list serve attorney states that "publication typically occurs in the least expensive (smallest perhaps) newspaper in the jurisdiction." There are several additional mentions made of lawyers choosing to place Marion County public notices in the *Jefferson Review*, which has a stated circulation of 428, because of its extremely low rates.

To any extent the system is "broken" in this regard, it is lawyers who have wrongly broken it, violating clear statutory requirement. ORS 193.010 lays out the set of attributes a newspaper must have in order to be qualified to publish public notices. If two newspapers meet all the requirements of ORS 193.010, it is incumbent upon the person or entity seeking to have a notice published to determine which *one* newspaper is "best suited to give actual notice." ORS 193.020(2). Public notice *must* be placed in the one newspaper that meets all the qualifications in ORS 193.010 *and* is "best suited to give actual notice." The application of Oregon statute always culminates in the determination of a single newspaper in which a public notice *must* be published. The "best suited to give actual notice" language of ORS 193.020(2) begins with the phrase "which the moving party considers ...." That language does not permit whimsical or unsupported decisions but instead posits a rational "moving party" who is rationally considering which newspaper is best suited to provide actual notice. Again, where more than one newspaper in a county meets all of the requirements of ORS 193.010, a person seeking to place notice is additionally required by statute to determine which newspaper is "best

suited to give actual notice,” *not* which newspaper has “the best published rates.”

At least absent some compelling declaration that the matter to be noticed uniquely involves Jefferson, those publishing in the *Jefferson Review*, with its total circulation of 428, are willfully ignoring their statutory duty. Notices published in the *Jefferson Review* are surely subject to legal challenge, to clients’ detriment; identical challenges have recently been successful in foreclosure matters in Oregon trial courts. Those lawyers publishing in the *Jefferson Review*, with its circulation of 428, in order to get lower rates, are simply violating an express statutory requirement.

One Oregon lawyer, quoted by the OLF from one of his many list serve entries, claims that “a practitioner in Marion County can permissibly choose to publish notice in the *Jefferson Review* rather than pay extortionate rates to a Salem daily ....” Absent something extraordinary regarding a connection to Jefferson, “permissibly” willfully ignores the “best suited to give actual notice” requirement. Nearly all of the *Jefferson Review* notices involve foreclosures elsewhere in Marion County; they are placed in violation of statute.

Moreover, the list serve claim of “extortionate rates” deserves discussion. According to the OLF, “the *Jefferson Review* charges less than 10% the rate of the *Statesman Journal* to print notices.” Again, that information is wrong. The rate the OLF assumed for the *Statesman Journal*, as wrongfully alleged in the OLF document titled “Oct. 2011, March & April 2012 Data on Public Notices,” is 50% higher than the *Statesman Journal*’s actual rate for public notices. Moreover, with the “best suited to give actual notice” requirement in mind – and it cannot be ignored – the *Statesman Journal* rate is actually a *better* value, not “extortionate.” The *Statesman Journal*’s circulation is more than 90 times greater than that of the *Jefferson Review* on weekdays and more than 100 times greater on weekends. The rate charged is actually *seven* times greater than that in the *Jefferson Review*. Everyone in the “reach” business, which is what the statute ultimately describes, understands that the comparative cost of reach is calculated by “CPM,” the cost per thousand circulation. The “extortionate rate” of the *Statesman Journal* actually represents a lower CPM than the *Jefferson Review*.

- Proponents of the proposal misunderstand rates for public notices. In the same legislation in which the Oregon Legislature enacted the “best suited to give actual notice” provision, it made it illegal for a newspaper to charge more than the rate the newspaper has established as its “open display advertising rate.” ORS 193.090(1). Proponents do not understand that a newspaper would lose its general commercial advertisers if its open display advertising rate was set artificially high for the purpose of “gouging” those placing public notices, as the proponents apparently imagine. Marketplace realities act as an implacable governor on the rates for public notices. The position taken by those who believe that newspapers are wrongfully “gouging” them is simply uninformed. In fact, many newspapers charge only some fraction of their open display advertising rate for public notices.
- As is by now clear, the proposal’s business plan *requires* the *elimination* of public notices from newspapers. The consequences of eliminating newspapers from providing notice to citizens about their government cannot simply be ignored. An extraordinary amount of information exists about the “digital divide” remaining at this time in our society; a simple search will display pages of articles. A move to the Internet, *only*, represents a very significant policy decision about information in our democracy. The implications of such a move are not something that can be ignored by this Board. There is also a wealth of information, outlined in previous submissions by WesCom and the ONPA, concerning the way in which people actually get information about their governments. The rallying claim that “Internet, only,” is simply “better” is not simply hollow. It is detrimental. It sweeps under the rug extremely important policy decisions regarding the vital functioning of our local democracies.

### Conclusion

We can agree that it is understandable, indeed, extremely laudable that the Bar urgently seeks a way to fund legal aid programs. That alone, however, does not answer whether the Bar should adopt the proposal in question. Factual analysis is needed.

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The present debate suffers from too few facts and too many predictions about the future premised in pronounced "truths." The lack of exchange of supportable fact is especially troubling since the Oregon State Bar has been an associate member of the ONPA for decades, and the ONPA has worked closely with the Bar in the Bar Press Broadcasters' Council for approximately 50 years. The funding of legal aid programs is an exceptionally important goal. That noble end does not justify a deeply flawed means.

Very truly yours,

Davis Wright Tremaine LLP

A handwritten signature in black ink, appearing to read "DAB", written in a cursive style.

Duane A. Bosworth

DAB:cp

**OREGON STATE BAR**  
**Board of Governors Agenda**

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**Meeting Date:** July 27, 2012  
**Memo Date:** July 19, 2012  
**From:** Oregon Law Foundation  
**Re:** Centralized Legal Notice System

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**Action Recommended**

Approve putting the Centralized Legal Notice System on the OSB's legislative agenda which if successful will allow the Oregon State Bar to create a website at which all legal notices required under state law would be made available to the public, the net revenue of which would be allocated to the Oregon Law Foundation (OLF) for distribution to organizations that provide legal services to persons of lesser means.

**Background**

**Proposal**

The proposal is to permit public entities and individuals to publish required legal notices on an online centralized notification system created and maintained by the OSB and permit the bar to dedicate any net revenue from such a service to the Oregon Law Foundation for the purpose of funding legal aid programs in Oregon. This proposal addresses two issues.

First, required legal notices must be published in printed newspapers. This is both extremely expensive for government entities and individuals required to publish notice and is less effective than in past years since newspapers do not have the circulation they once did and an ever increasing number of Oregonians instead choose to seek information online. This means that newspaper publication – while extremely expensive --does a less effective job of providing meaningful notice to lawyers and the public than would a centralized online legal notice system. Admittedly the Oregon Newspaper Publishers Association manages an online legal notice system that reposts legal notices that have been published in papers statewide. 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 provide adequate notice.

Second, deep cuts to legal aid are destroying the core service delivery system at a time when the need for services is on the rise. Cuts have been made in both federal and state funding, and there have been reductions in filing fee and IOLTA revenue (\$1 million annually) as well. At the current time, additional state funding is not available, meaning that creative long-term solutions for legal aid funding must be sought.

**Prior Business Plan**

The OLF was asked to submit a business plan giving an overview of the start-up and ongoing operating cost of the Centralized Legal Notice System (CLNS). The OLF submitted a business

plan to the BOG on May 26 that included data gleaned from legal notice postings, a project estimate for building and maintaining the CLNS and a summary budget of the system.

There was a concern raised that the revenue generated from the business plan was inaccurate for two reasons. First, it was based on an elevated number of postings given the increased number of foreclosures and second, the staffing cost for maintaining the CLNS was too low and should be increased to accommodate the customer service needs of those entities required to post notices.

### **Revised Business Plan**

Attached is the CLNS Revised Business Plan. It contains the following documents:

- Centralized Legal Notice System Projected Budget from startup through year 6. This budget reflects three changes from the budget submitted before. The first is a decrease in the number of annual postings from 40,900 to 26,489 based on a reduction of foreclosure numbers. Second is an increase in the amount each posting will cost from \$80 to \$130 (the current average cost to meet the statutory requirement for notices in the newspapers is \$783.16). Third, staff costs have been increased by two additional staff positions.
- Summary Budget of the system summarizing the external and staff cost to both build the website and the ongoing maintenance cost of the system. Two additional full-time staff positions have been added for a total of 3.25 FTE.
- Oregon Legal Notices - Project Estimate which outlines the project description for developing and managing the elements of the CLNS. There are no changes to this document from what was previously submitted.
- March/April 2012 Statistical Summary which summarizes the calculations made to determine the number of notices for budgeting purposes.

### **Conclusion**

The CLNS business plan was revised by reducing the number of annual postings by 35% and tripling staffing. The impact is that the cost to post notices can be reduced by over 80%, saving government entities and private parties a substantial amount of money and still generate enough revenue to cover the cost of maintaining the CLNS and provide a committed revenue source for legal aid.

### Centralized Legal Notice System Projected Budget (a)

	Preliminary	Startup 1st year	2nd year	3rd year	4th year	5th year	6th year
<b>Revenue</b>							
26,489 ads @ \$130 (b)	\$0	\$0	\$3,443,570	\$3,443,570	\$3,443,570	\$3,443,570	\$3,443,570
<b>Expenses</b>							
Outside Legal Consultant (c)	\$84,000						
Startup costs (d)							
Internal (e)		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			213,500	224,200	235,400	247,200	259,600
Existing personnel (management) (f)			27,000	28,400	29,800	31,300	32,900
Administrative Costs			66,500	69,800	73,300	77,000	80,900
Total Expenses	84,000	234,120	362,000	380,200	399,200	419,200	440,300
Gross Revenue	(84,000)	(234,120)	3,081,570	3,063,370	3,044,370	3,024,370	3,003,270
Payback OSB Startup Costs			(318,120)				
Legal Aid Funding			(2,700,000)	(3,000,000)	(3,000,000)	(3,000,000)	(3,000,000)
<b>Net Revenue</b>	<b>(\$84,000)</b>	<b>(\$234,120)</b>	<b>\$63,450</b>	<b>\$63,370</b>	<b>\$44,370</b>	<b>\$24,370</b>	<b>\$3,270</b>
<b>Accumulated Reserve</b>	<b>(\$84,000)</b>	<b>(\$234,120)</b>	<b>\$63,450</b>	<b>\$126,820</b>	<b>\$171,190</b>	<b>\$195,560</b>	<b>\$198,830</b>

Notes

- (a) This projected budget is revised from the budget reviewed at the June 22 board meeting. See memo for changes.
- (b) Number of annual postings reduced from 40,900 to 26,489 due to reducing number of foreclosure postings. See Ad Calculation Summary. Cost of posting increased from \$80 to \$130.
- (c) This cost incurred if project is approved. Cost is for one year, but could be additional cost in second year.
- (d) Startup costs advanced by OSB
- (e) Existing OSB IDT staff and contractors; may include using more outside contractors; full costs allocated as this project delays OSB projects
- (f) Existing OSB manager absorbing this role

# Summary Budget

**\*\*This estimate does not cover potential Marketing costs\*\***

Project Budget					
<b>Internal Costs</b>		<b>Internal Costs</b>		<b>External Costs</b>	
L1	\$ 24.00	L3	\$ 69.00	WAM	\$ 85.00
L2	\$ 41.00	Mixed	\$ 45.00	WEB	\$ 95.00
<b>Internal Cost</b>					
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	
		<b>Total Hours</b>	<b>1780</b>		
		<b>Total Cost</b>	<b>\$</b>	<b>97,620.00</b>	
<b>External Cost</b>					
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		
		<b>Total Hours</b>	<b>100</b>		
		<b>Total Cost</b>	<b>\$</b>	<b>91,500.00</b>	
				<b>Total Project Cost</b>	<b>\$ 189,120.00</b>
<b>Post Production Support Costs - YEAR 1</b>					
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				
		<b>Total Support Costs</b>	<b>\$</b>	<b>55,036.00</b>	
<b>Staff Increase a Year</b>					
Description on Cost	Cost				
FTE 3.0 at grade 10 so \$22.00 x .35 (benefits) = \$29.70 per hour	\$ 185,328.00				
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				
		<b>Total Staff Costs</b>	<b>\$</b>	<b>240,084.00</b>	
				<b>Total Yearly Maintenance Co</b>	<b>\$ 295,120.00</b>

# Oregon Legal Notices - Project Estimate

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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

## Number of Ads Calculation Summary

### Centralized Legal Notice System

March/April 2012 Statistical Summary from ONPA Website

(a) Total # of First Runs	6751
(b) Total # of First and Subsequent Runs	15020
(c) Total Dollars Spent on Notices	\$5,881,543
(c)/(b) Average cost to run notice one time	\$ 391.58

Majority of notices are run at least twice:  
 Estimated Average cost of ONPA  
 running a notice (\$392 x 2)

\$ 783.16

Calculation to Determine Number of Notices for Projected Budget	
Non Foreclosure 1st Runs	3,636
Foreclosure 1st Runs	3,115
Total Number of 1st runs (Line a)	<u>6,751</u>
Estimate of Future 1st Run Ads (w/o Foreclosure increase)	
Non Foreclosure Runs + 25% of Foreclosure Runs (2 mos)	4,415
Estimated Number of Yearly 1st Run Ads (4,415 x 6)	<u><b>26,489</b></u>

Transferred to Projected  
Budget to determine  
projected Revenue

# MEMORANDUM

**TO: OSB BOARD OF GOVERNORS**

**FROM: MICHAEL E. HAGLUND, PRESIDENT-ELECT**

**RE: OLF LEGISLATIVE AND NEW PROGRAM PROPOSAL**

**DATE: JULY 23, 2012**

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## **I. INTRODUCTION.**

The Oregon Law Foundation has proposed that the Oregon State Bar take on a major law reform effort to repeal over 300 statutes requiring that public notices be published in Oregon newspapers of general circulation, move all public notices exclusively online and bestow a monopoly over that website on the Oregon State Bar. If the legislative effort is successful, the OSB is then committed to staffing and funding a new business. OLF projects that this business can be launched at a cost of \$234,000 and run for approximately that same amount annually with a total staff of 1.35 FTE.

While it is both easy and tempting to initially support (as I did) a concept that is anticipating the inevitable, will save public bodies substantial funds and provide significant new resources to legal aid organizations, the reality is that this proposal is quite complicated and presents significant policy implications for the Oregon State Bar that require careful thought and analysis.

In the last two months, I have devoted significant energy to examining the OLF proposal. This has included meetings with representatives of the Oregon Association of Counties, the Oregon Newspaper Publishers Association, multiple Oregon lawyers and citizens and discussions with OLF president Norman Williams. Because taking on both a major law reform effort and launching an entirely new program presents so many issues for consideration, I do not believe this matter lends itself well to an hour or so of debate at our July 27 meeting. I am strongly opposed to the OLF proposal, but rather than take significant meeting time to present the detail that I believe is important to a thoughtful decision, I have prepared this memorandum.

By way of overview, my opposition is based upon the following six reasons:

1. The OLF proposal has significant budget consequences that would necessitate a dues increase unless the funds were borrowed, which is inadvisable in these times.
2. What the OLF has put forward so far in the way of a business plan for an unprecedented new program falls far short of the type of comprehensive

business plan one sees in the private sector to support a company entering a new line of business.

3. The OLF proposal assumes both that newspapers are going the way of the dinosaur and that the movement of all public notices online is coming in the very near future. As explained below, both of these assumptions are questionable.
4. Pursuit of this law reform/new program will be highly controversial within the Bar and will be particularly offensive to members who reside in smaller communities and subscribe to community newspapers.
5. This is a fight the Oregon State Bar would likely lose because of a combination of factors: no major allies who will make this effort a centerpiece of their legislative agendas in 2013; the relatively low standing of lawyers generally in the eyes of the public; the numerous lines of attack against this proposal; and the substantial power of the opposition, particularly the Oregon Newspaper Publishers Association.
6. Pursuing the OLF proposal will result in a fierce legislative battle that could easily consume two legislative sessions over the next two years. In these difficult economic times, it would be unwise to expend valuable political capital that should be focused on historic commitments central to our mission, such as ensuring adequate funding of the state court system.

## **II. THE BOG SHOULD DECLINE TO PURSUE THE OLF PROPOSAL.**

### **A. Pursuit of the OLF Proposal Would Necessitate a Dues Increase.**

The Budget and Finance Committee is now in the midst of preparing the budget that will be presented to the BOG for decision at our October meeting. Based on the trends through the first half of 2012, which include lower admissions revenue, and the likelihood of an increase in PERS contributions, our CFO is tentatively projecting a budget deficit of between \$400,000 and \$500,000 in 2013. It will be quite a challenge for the BOG to close this budget gap and avoid a dues increase. A key ingredient to accomplishing this will be avoiding the need to access the \$200,000 in reserves that were included in the 2012 budget, which to date has not been necessary. Even with that \$200,000 in reserves moving into 2013, we will need to find a projected \$200,000 to \$300,000 in new revenues or cost savings or a combination to avoid a dues increase associated with operations.

Ultimately, a modest dues increase is inevitable because we will end the year with Client Security Fund exhausted as a result of the numerous claims involving Bryan

Gruetter. The CSF committee has recently recommended an increase in the CSF assessment from \$15 to \$45. If the BOG accepts this recommendation, the CSF assessment increase will push annual dues from \$492 to \$522. As of 2010, the Oregon State Bar had the seventh highest bar association dues in the U.S.

As detailed below, the OLF proposal would add a minimum of \$341,620 to the 2013 budget, which would necessitate a dues increase of approximately \$25 per active Bar member. There would also be a modest impact to the balance of the 2012 necessitated by hiring the outside lobbyist recommended by Susan Grabe who seeks a year-long contract at \$7,000 a month or \$84,000 per year. With a contract effective date of August 1, the 2012 lobbying costs would total \$35,000. It should also be noted that this lobbyist has stated that this project is a tall task that he believes is winnable, but may well require a substantial effort over two legislative sessions.

If the Bar were successful in the legislative effort proposed by OLF in the 2013 session, the budget impact would be significant. Even if the legislation were not effective until January 1, 2014, the Bar would need to expend what OLF estimates is \$189,120 in website development costs with an outside contractor and underwrite at least one quarter's worth of operational costs in ramping up to roll out the entirely new system by the beginning of 2014. Using OLF's projected annual operational costs of \$234,120, this would add another \$58,500 to the 2013 budget. OLF also estimates \$45,000 in initial marketing costs. All total, funding this project would require a minimum of \$341,620 in 2013 including \$49,000 for outside lobbying through July, website development costs of \$189,120 and start-up costs (including marketing) in the fourth quarter of \$103,500.

OLF's estimated of \$45,000 for marketing is questionable. If the public notice system that has prevailed in Oregon for over a century is to shift completely from newspapers to a centralized online service, it seems only reasonable to expect that a multi-media effort would be required to publicize this major change so that Oregonians become aware of where to look for public notices. The OLF proposal includes \$45,000 for marketing, but this is all for branding, website tutorials and press releases. One would certainly expect that an advertising campaign would be necessary, a cost that could well exceed \$100,000.

Even if one assumes that the OLF cost projections are reasonably accurate, which is risky as discussed in Section B below, dues would have to be increased by approximately \$25 per active member in 2013 in order to cover the projected cost of the legislative effort and implementation of the new system.

**B. OLF's Current Proposal is a Concept, not a Business Plan.**

In addition to undertaking a major law reform effort, the OLF proposes that the Oregon State Bar create a substantial new business with which neither the OSB nor the

OLF has any past experience or expertise. In the private sector, whenever a company considers entering a new business or a start-up seeks capital or bank funding for a new enterprise, it is standard practice that what began as a concept is thoroughly vetted in a comprehensive business plan. That plan includes analysis of the proposed business opportunity, the potential risks, proposed management and a comprehensive set of financial projections based upon a thorough analysis of the relevant market.

To date, we have received nothing resembling a sophisticated business plan from OLF. In their presentations, this concept has been presented as an inevitable outcome of what is characterized as the impending demise of the newspaper-based public notice system in this state and elsewhere. However, there is no detailed evidence marshaled in support of this hypothesis, where such a system has been developed in other states and why Oregon is the right place for it. In fact, no centralized mandatory public notice system yet exists in any state in the U.S., yet the BOG is being asked by non-experts in this field to undertake an entirely new high tech business involving tens of thousands of notices annually and millions of dollars of billings and collections without a comparative model or detailed financial projections. When the BOG in 2011 approved a fundamental change in the funding system for the Lawyer Referral Service, a business in which we had been involved in for many years and had significant accumulated expertise, we devoted considerable energy to examining the details of the percentage fee models around the country including presentations from experts involved in those programs and in the transitions made by other bar associations from fixed fees to percentage fees.

In their initial presentations, the OLF emphasized that adoption of their proposal would yield huge benefits to state and local governments and other public bodies. However, later data provided by OLF shows that in a recent three-month time frame only 20% of the total expenditures on public notices were by public bodies in two of those months and less than 5% in the third. Further, on a per government basis, the cost of public notices is a tiny fraction of their budgets, substantially less than 1% for most public agencies.

The OLF financial projection and revenue data (both of which are attached) are quite skimpy. Based upon the data provided for public notices statewide during three months (October 2011 and March/April 2012), nearly 20,000 ads were run statewide in those three months. Assuming that total can be multiplied by four to derive an annual number, some 80,000 public notices were generated last year. The OLF's proposed budget, however, projects 40,900 ads at \$80 an ad. There is no explanation for that projection, nor is there any accounting for what the public notice levels will actually turn out to be once the foreclosure bubble has ended.

The OLF proposal also assumes only 1.35 FTE of staffing, which is a key to the low operating costs compared to the estimated 25 to 30 FTE required by the newspapers to operate the existing public notice system. I consider the 1.35 FTE to be highly

questionable given the fact that the OLF proposal assumes governments and members of the public would submit their proposed notices "either electronically or via mail." If a significant percentage of these notices were sent by mail, considerable staff resources would have to be devoted to reentering mailed notices, proofing them, etc. There also appears to be no allowance for staff to answer the inevitable telephone calls that are part and parcel of the current system and will not be eliminated by the OLF proposal. In my view, even if the legislature approved the concept of eliminating the affidavits of publication now prepared by all newspapers, operating an online public notice business that must accommodate submissions by mail and answer questions over the telephone could well require staffing in the range of five to 10 FTE.

At this stage, there are so many unanswered questions that it is impossible to know whether the OLF's projected budget is even in the ballpark in terms of projected revenues, costs and net funds available to contribute to Legal Aid.

**C. The OLF Proposal Assumes Print Newspapers Will Soon Disappear, A Questionable Theory.**

OLF suggests that it is inevitable that print newspapers will disappear and everything will be online. When did law professors and lawyers become capable futurists predicting business developments in the law, let alone other fields of business? To be sure, large metropolitan dailies are still in the midst of a very difficult period with an uncertain future, but that is certainly not the case for community newspapers. These are important institutions in many small Oregon communities, providing the only source of local news on politics, crime, wedding announcements, divorces and high school sports. Considering that Warren Buffett is buying up community newspapers, it is hard to characterize their business model as broken. From a legislative standpoint, the greatest risk to the OLF proposal is the opposition of community newspapers. Yet the OLF has provided no analysis of why the community newspaper model, which includes both print and online editions, is inferior to a centralized mandatory online notice system, especially when 25% of Oregon's residents have no access to the internet.

From a public policy standpoint, I personally do not favor legislation that would significantly undermine Oregon's community newspapers while granting a monopoly on public notices to the Oregon State Bar. I personally subscribe to the Daily Astorian where our firm has a branch office. My law firm subscribes to two other community newspapers where we have significant clients. These newspapers serve an important role in their communities and have both print and online versions of their newspapers. Last week, I met with Daily Astorian publisher Steve Forrester, whose family has owned multiple community newspapers in Oregon for over a century including the Daily Astorian, Hermiston Herald, Blue Mountain Eagle, and Wallowa County Chieftain. Like most long-time businesses, the financial success of these papers has been cyclical, moving up or down with the times. During the Great Recession, while ad revenues from

business have dropped, a significant share of that decline has been made up through an increase in public notice revenues. For the Forrester family weeklies in Eastern Oregon, the public notice revenues have accounted for 14% to 18% of advertising revenue, which is very close to the range reported earlier by Duane Bosworth on behalf of his client WestCom, which owns multiple community newspapers.

According to Mr. Forrester, print versions of his family's newspapers will continue indefinitely. From his standpoint, it is impossible to predict the percentage split between print and online subscribers into the future, but all of his experience strongly suggests that the print versions will not disappear.

**D. Pursuing the OLF Proposal Will Alienate Rural Members of the OSB.**

In trying to evaluate the OLF proposal, I have talked to multiple lawyers in smaller Oregon communities. Based on my own experience and the feedback from these lawyers, I have no doubt that OSB members in Oregon's small communities (almost all of which are served by community newspapers) will have strong objections to the Oregon State Bar pursuing this project.

In my view, the OLF proposal will exacerbate what we have long recognized as an urban/rural divide within Oregon and within the Bar. It is worth noting that the BOG commissioned an Urban/Rural Task Force in 2009, which studied this issue and issued a report in the fall of 2010. One of the strong recommendations in that report was the importance of the Bar leadership recognizing "that things are different outside of Portland." Of particular relevance here, one of the specific recommendations in the Task Force Report was the following:

For any significant program or policy changes, require a minimum number of meetings around the state to gather input from those outside Portland Metro and engage members in those areas in the decision making to assure that the policy does not present a competitive disadvantage to them.

If we were to take this issue on the road, I am very doubtful that it would have any significant level of support among lawyers in Oregon's rural communities.

**E. This is a Fight the OSB Would Likely Lose.**

The OLF proposal involves a major law reform effort that requires dislodging over 300 statutes specifying newspaper publication of various notices and shifting control over that system to the Oregon State Bar. Even with a top flight outside lobbyist, the OSB has little chance of pulling this off without major allies. Based upon our meeting

with representatives of the Association of Oregon Counties, we will have support from public bodies if there are any legislative committee hearings, but governments likely will not embrace the OLF proposal as a centerpiece of their legislative agendas. If so, we will not have any serious allies from the public sector. As the Executive Director of the AOC stated, "When we tried to shift certain county notices online last session, we were crushed. We did not even move the needle."

The OSB Bulletin is a fine publication that is read by lawyers, but not the general public. From a PR standpoint, we are no match for the collective power of the press in this state.

There are also so many lines of attack against the OLF proposal. With 25% of Oregonians without access to the internet, how can an online only public notice system be the best? Considering that all ONPA newspapers participate in a centralized online system of their own, isn't Oregon better off with the combination of the newspapers' print and online system? Why is the OSB (without any previous experience or expertise) the right body to be granted the proposed monopoly? If a centralized online system is the best, why not put it up for bid and put the annual revenues into the general fund as opposed to giving the OSB control over distribution of the net revenues?

The bottom line: This is a huge project that is most likely unwinnable.

**F. The OSB Should Conserve Its Limited Political Capital.**

In any given legislative session, the Oregon State Bar has limited political capital. In the recent past, it has been devoted primarily to supporting adequate funding for the state court system and for Legal Aid through civil filing fees. On balance, I believe that pursuing the OLF proposal will exhaust a significant share of the OSB's political capital in a losing effort that would significantly diminish our ability to be effective in supporting both the Oregon Judicial Department on court funding and judicial salaries and on behalf of Legal Aid in the allocation of filing fee revenues.

Attachments

## Centralized Public Notice System Projected Budget

	Startup 1st year	2nd year	3rd year	4th year	5th year	6th year
<b>Revenue</b>						
40,900 ads @\$80/ad	\$0	\$3,272,000	\$3,272,000	\$3,272,000	\$3,272,000	\$3,272,000
<b>Expenses</b>						
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
<b>Total Expenses</b>	<b>234,120</b>	<b>210,700</b>	<b>221,300</b>	<b>232,300</b>	<b>243,900</b>	<b>256,100</b>
<b>Gross Revenue</b>	<b>(234,120)</b>	<b>3,061,300</b>	<b>3,050,700</b>	<b>3,039,700</b>	<b>3,028,100</b>	<b>3,015,900</b>
Payback OSB Startup Costs		(234,120)				
Legal Aid Funding		(2,800,000)	(3,000,000)	(3,000,000)	(3,000,000)	(3,000,000)
<b>Net Revenue</b>	<b>(\$234,120)</b>	<b>\$27,180</b>	<b>\$50,700</b>	<b>\$39,700</b>	<b>\$28,100</b>	<b>\$15,900</b>
<b>Accumulated Reserve</b>	<b>(\$234,120)</b>	<b>\$27,180</b>	<b>\$77,880</b>	<b>\$117,580</b>	<b>\$145,680</b>	<b>\$161,580</b>

**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

Oct 2011, March & April 2012 Data on Public Notices

Publication	Values		
	Sum of Total cost	# of Runs	Cost Per Inch
Albany Democrat-Herald	\$241,652.72	293	\$43.06
Appeal Tribune (Silverton)	\$2,177.70	20	\$18.30
Argus Observer (Ontario)	\$23,023.00	143	\$13.00
Ashland Daily Tidings	\$15,362.62	55	\$20.93
Baker City Herald	\$14,399.84	100	\$11.18
Bandon Western World	\$10,480.90	61	\$16.30
Beaverton Valley Times	\$13,363.16	85	\$15.22
Blue Mtn. Eagle (John Day)	\$7,714.16	92	\$9.14
Bulletin, The (Bend)	\$1,060,873.10	1182	\$50.15
Burns Times-Herald	\$13,024.50	86	\$9.50
Canby Herald	\$317.55	4	\$10.95
Central Oregonian	\$54,757.50	290	\$10.50
Clackamas Review	\$5,302.50	48	\$10.50
Clatskanie Chief	\$7,288.75	101	\$8.33
Columbia Press	\$9,038.10	50	\$7.05
Corvallis Gazette-Times	\$168,106.24	215	\$43.06
Cottage Grove Sentinel	\$156,051.28	574	\$13.16
Creswell Chronicle	\$24,890.00	108	\$10.00
Curry Coastal Pilot (Brookings)	\$25,166.10	114	\$14.90
Curry County Reporter (Gold Beach)	\$5,162.50	45	\$8.75
Daily Astorian	\$41,073.45	187	\$17.05
Daily Journal of Commerce	\$1,899,301.56	3509	\$26.41
Douglas County News (Sutherlin)	\$0.00	7	
Drain Enterprise	\$3,361.75	66	\$4.25
East Oregonian (Pendleton)	\$17,661.07	78	\$18.97
Estacada News	\$860.08	6	\$13.32
Eugene Weekly	\$3,608.72	36	\$11.42
Grants Pass Daily Courier	\$51.52	1	\$12.88
Grants Pass Daily Courier	\$147,269.92	611	\$12.88
Headlight-Herald (Tillamook)	\$68,493.60	288	\$13.59
Hells Canyon Journal (Halfway)	\$1,190.40	24	\$6.40
Heppner Gazette-Times	\$3,960.48	72	\$5.92
Herald and News (Klamath Falls)	\$3,547.98	4	\$25.71
Herald and News (Klamath Falls)	\$241,159.80	542	\$25.71
Hermiston Herald	\$8,965.88	52	\$11.48
Hillsboro Argus	\$2,855.70	25	\$17.10
Hood River News	\$30,726.80	189	\$12.35
Jefferson Review, The	\$267,885.00	1291	\$9.00
Keizertimes	\$22,720.32	115	\$14.49
Lake County Examiner (Lakeview)	\$6,105.60	62	\$9.60
Lake Oswego Review	\$5,238.24	29	\$15.59
Lebanon Express	\$23,218.00	81	\$12.35
Madras Pioneer	\$54,096.00	238	\$10.50
Mail Tribune (Medford)	\$480,048.56	489	\$52.66
Malheur Enterprise (Vale)	\$14,334.10	111	\$7.85
Malilla Pioneer	\$700.80	13	\$10.95
Mountain Times	\$1.75	1	\$0.35
Myrtle Point Herald	\$22,180.00	127	\$10.00
New Era	\$1,747.50	9	\$11.65
Newberg Graphic	\$18,241.30	99	\$12.65
News Guard (Lincoln City)	\$42,704.00	164	\$13.60
News-Register (McMinnville)	\$45,356.80	389	\$6.40
News-Review (Roseburg)	\$352,276.21	469	\$37.07
News-Times (Forest Grove)	\$1,452.00	18	\$12.00
News-Times (Newport)	\$70,696.50	273	\$23.17
Oregonian (Portland)	\$4,351.05	15	\$26.37
Oregonian (Portland)	\$693,372.78	1934	\$26.37
Outlook (Gresham)	\$93,264.00	222	\$16.00
Pendleton Record	\$1,130.00	7	\$5.00
Polk County Itemizer-Observer	\$74,462.61	356	\$9.47
Portland Tribune	\$6,960.00	9	\$20.00
Record-Courier (Baker City)	\$13,524.00	80	\$7.00
Redmond Spokesman	\$156,747.15	394	\$19.95
Register-Guard, The (Eugene)	\$873,003.30	697	\$77.10
Rogue River Press	\$6,706.50	29	\$8.50
Sandy Post	\$4,093.77	16	\$10.47
Scio News	\$37,845.00	196	\$9.00
Seaside Signal	\$792.00	5	\$9.00
Siuslaw News (Florence)	\$10,653.68	44	\$16.34
South County Spotlight (Scappoose)	\$15,223.38	60	\$10.47
Springfield Times	\$32,371.25	180	\$11.75
St. Helens Chronicle	\$24,751.00	139	\$9.34
Statesman Journal	\$249,195.54	136	\$92.09
Stayton Mail	\$5,118.20	21	\$16.30
The Dalles Chronicle	\$56,113.75	247	\$13.75
The Nugget Newspaper (Sisters)	\$2,366.00	11	\$13.00
The Observer (La Grande)	\$41,628.30	171	\$13.83
The Sun, Sheridan	\$13,070.40	50	\$16.80
The Times (Brownsville)	\$6,305.00	27	\$13.00
The Times (Tigard)	\$65,172.04	216	\$15.22
The World (Coos Bay)	\$155,750.60	390	\$24.11
Times-Journal (Condon)	\$9,909.03	99	\$5.57
Umpqua Post (Reedsport)	\$83,798.30	257	\$16.30
Valley Herald (Milton-Freewater)	\$1,356.00	7	\$6.00
Wallowa County Chieftain (Enterprise)	\$15,472.25	86	\$9.95
West Linn Tidings	\$77,372.48	222	\$13.76
Wilsonville Spokesman	\$151.80	2	\$12.65
Woodburn Independent	\$80,226.30	255	\$12.65
<b>Grand Total</b>	<b>\$8,673,501.07</b>	<b>19921</b>	<b>\$23.88</b>

Row Labels	Values		Percentage of Whole
	# of Runs	Sum of Total cost	
Mar	6825	\$3,090,598.97	
Public	1508	\$883,570.96	28.59%
Private	5317	\$2,207,028.01	71.41%
Apr	8200	\$3,214,184.75	
Public	2179	\$379,979.29	11.82%
Private	6021	\$2,834,205.46	88.18%
Oct	4896	\$2,368,717.35	
Public	559	\$117,909.76	4.98%
Private	4337	\$2,250,807.59	95.02%
<b>Grand Total</b>	<b>19921</b>	<b>\$8,673,501.07</b>	

March & April 2012

Date	Values		Percentage of Whole
	# of Runs	Sum of Total cost	
(Multiple Items)			
Public	3687	\$1,263,550.25	20.04%
Private	11338	\$5,041,233.47	79.96%
<b>Grand Total</b>	<b>15025</b>	<b>\$6,304,783.72</b>	

Central Registry Memo  
From: Theresa M. Kohlhoff  
Date: 7/23/12

The single most important point for me on the issue of the central registry proposal is whether it is an appropriate task for the Oregon State Bar. Assuming we have the financial resources to get it started, then all the other factors are judgment calls, yours to be as respected as mine.

The concept of notice and the opportunity to be heard are central to the principle of procedural due process, a constitutional doctrine. It arose from case law and then became incorporated into statutes, not the other way around. It's not about being a good neighbor or a cash cow. It is about access to justice.

Flowing from this constitutional principle, Oregon has over 300 cites where notice is required, but it can be broken down into two major groups: civil and municipal law. Civil would be probate and publication for service purposes, change of name, etc... Municipal would be for public notices. It is understood that notice by publication in the civil arena is in addition to more effective notice: it is back up when actual notice may not be possible or may not cast a wide enough net. Municipal notice lets citizens know what is on the agenda and allows them to be present and to testify. In all of these cases though, the key is that something could happen to a person and as part of due process, he or she is being given this warning and this chance to speak up. That is the procedural part of due process.

Notice can be by publication in newspaper, or by posting. It can be by mail. How it is published is not a part of the constitutional principle. In other words, there is nothing unique or sacred about publication by newspaper, even now. For the situations where it is specifically required, it can be changed.

The central registry proposal would put the notice on the internet. It is clear that the internet is the preferred vehicle for information and social interaction in modern society and our law on publication of notice is 15 years behind. We can argue whether this should be, but we cannot argue with the fact that it is so and continues to be so. Many of us are glad it is so because we believe access to information and specifically the internet is fundamental for our democracy. This does not mean that we don't keep notes or hand write thank you letters. It does not mean that books in paper are going to be replaced entirely by kindles. It simply means we are becoming accustomed to everything digital. We expect to know what is happening in an election in Cairo by reading Twitter, we assume we will get less scripted news through various internet blogs or networks, we do our daily work by accessing comprehensive data from public and private sites, etc... The internet is so important that when the legislation was proposed to allow private shut down on a corporation's view that it was being infringed, the major argument against such a grant was that it would endanger a free society. And it would. So the internet is the logical place for the registry.

But should the Oregon State Bar step up to provide this notice and opportunity to be heard? Should the recipient of this activity be legal aid?

Yes.

First, let's take the question of the Oregon State Bar. It is part of the judiciary, which is a constitutional governmental entity deciding controversies between various parties. It does not make executive or legislative policy decisions, except indirectly. It is of equal importance to the other branches and must be funded fairly and adequately in order to fulfill its unique function. It must sit at the table with the other two deciders and have an equal say.

This is my perspective: In a perfect, logical, free world, everyone would understand how adequate funding for all three branches benefit our democracy. But in fact, there are forces that do not want to see the judiciary perform its role. I dare say they do not want a democracy at all. Look at all of the circumstances where corporations in the last legislature wanted immunity. Look at Monsanto wanting to have legislation exempting it from any judicial review, at all! Look at those who have fought long and hard to put homeowners in foreclosure rocket docket. Look at the BP debacle where harmed individuals were actively counseled not to get a lawyer and coerced into a crammed down settlement or told they would wait indefinitely for uncertain judicial relief. We know that there is increasingly only one place where people have an opportunity to prove their cases against the most formidable defendants. And it is in our courts and it is in our jury trial. We know this is true because the thrust of the efforts of these formidable defendants is to fight to take away individual standing, co opt the regulatory agencies, more or less purchase our legislators and there you have it! A complete tsunami under the theory of "free market capitalism" devastating everyone and everything in its path.

Without a doubt, the judiciary must be adequately funded in order to protect some modicum of equality for all citizens. This larger question of funding for the judiciary must be a core concern of the Oregon State Bar in order to fulfill its mission of promoting justice and access to justice.

Second, it follows that assisting in funding a major path to access to the courts, i.e Legal Aid is also a core concern of the Oregon State Bar. For example, what about those cases where there is only a right under statute or otherwise which is no right at all if it cannot be enforced? The person with the right has little money, little means to enforce it, and insufficient skill to do it on his or her own? Years ago these people were served by Legal Aid. What Legal Aid could do even before the recent enormous cuts was hugely curtailed. What has replaced it, if at all, are non-lawyer facilitators at the court house for pro se litigants (or now maybe tutorials?), legal Clinics at St. Andrews and St. Matthews which are still too expensive for many people and my personal favorite, people retyping legal documents prepared for totally different people and wishing and hoping they will work for them. (To be fair, fee generating statutes such as the elder abuse statutes have helped, where applicable, as well.)

The bottom line is without Legal Aid there is not only no justice for a huge group of people but more importantly, no access to it. Worse, in today's political world there appears to be no political will to adequately fund it either. Where there is injustice and out right suffering, the deciders are shrugging their shoulders---"that's life in the big city."

So whatever funding is going to take place, it isn't going to be through the system in place right now or anytime relevant.

But should the Oregon State Bar be the one to actually accept responsibility for helping to adequately fund Legal Aid?

Again, Yes.

Again, the Oregon State Bar is an entity under the judiciary and the Board of Governors is part of its leadership. The Bar's main purpose, and frankly the purpose of the entire legal profession, is to promote justice and access to justice. Procedural due process - notice and an opportunity to be heard - is constitutional law which promotes justice and access to justice. It is clearly within the Bar's mission. We should seize the opportunity to promote it through this proposal. If we have learned anything about commerce it's that timing is everything. We can work through the fine points, but we should act now.

To close, awhile back I was at a BOG committee meeting and a board member said something to the effect that we should be a Bar that stands for something. I was so stunned to hear that. That's the whole point entirely. We need never fear our membership or anyone else in society if we know who we are and we act in accordance with that. We are not the Rotary. We are not Shriners. We are not Make a Wish. And we are not the Chamber of Commerce. They may and do have their purposes but we are not them. We are a legal organization which stands for justice and access to justice. That's what we stand for. It's really that simple and that complex. It's what we care about and what we should put our energies into. If we focus and not get sidetracked with collateral issues or cross talk we will achieve results.

But if we are not tough fighters engaged in that conflict, then we need to Leave. The Profession. Now.

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**"That perfect liberty they sigh for is the liberty of making slaves of other people." Abraham Lincoln, 1854**



## MEMORANDUM

**TO: OSB BOARD OF GOVERNORS**  
**FROM: PATRICK J. EHLERS, BOG MEMBER DISTRICT 5**  
**RE: WHY THE BOG SHOULD SUPPORT THE OLF PROPOSAL**  
**FOR A CENTRALIZED NOTIFICATION SYSTEM**  
**DATE: JULY 24, 2012**

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### **I. INTRODUCTION**

Change is never easy and most things worth doing take some work. Centralizing the legal notification system in Oregon will be a big change, it will take hard work, and its worth doing. We can either standby and watch it happen or we can lead in this area. It is an idea that is likely overdue and as such it will only be a matter of time before such a system is put in place.

The only real question is whether the members of the BOG are willing to take a leadership role in implementing a system that will improve access to justice by making notification on legal matters easier for all involved while reducing costs. I am in favor of leading.

As members of the OSB we fulfill our mission by being advocates for access to justice. Centralized notification will improve access to justice in two major ways. First, by creating a centralized web based notification system, people across Oregon will have far improved access to vitally important information they need about legal matters. Second, by taking responsibility for the system, the OSB, in conjunction with the OLF, will be able to recoup revenue that can be passed on to legal aid organizations in Oregon.

The primary focus of such organizations is, of course, to improve access to justice to those most in need. Given the unfortunate state of funding for these organizations, they are drastically in need of financial resources. The revenue available through a centralized notification system will not solve the funding issue entirely but it will certainly improve the situation on an ongoing basis.

Centralized notification is both a great idea and a time sensitive opportunity. I am strongly in favor of the BOG moving forward with implementing and maintaining a centralized notification system. Below I will address some of the concerns that have been raised and attempt to illustrate why they can and should overcome.

### **II. Centralized Notification will not require a dues increase**

A dues increase may be required due to budget deficits resulting from payments made from the Client Security Fund, as well as other issues. Such an increase does

not need to be connected to the implementation and maintenance of a centralized notification system. Dues have not been increased for approximately seven years. Without some significant cost saving measures, an increase in dues at some point is inevitable.

State-wide newspaper notification has been estimated to involve more than 30 million dollars in revenue. The aggregate costs for implementation of a centralized notification system, including lobbying, marketing, capital outlay for start up infrastructure, and staffing, are dwarfed by the overall revenues reaped by the current system. Since notification is mandatory, controlling it presents very little downside financial risk. It is essentially a system that pays for itself while generating revenue.

In light of presently available low interest rates, borrowing funds to bring about centralized notification makes good sense. Keeping a new centralized notification system separate from a dues increase of any kind is also smart politically. No dues increase will be popular. Change of any kind will spawn some criticism. Connecting the start of a new notification system with a dues increase would be unwise and it is not necessary.

### **III. The OLF proposal can and should be developed into a detailed implementation plan**

Bringing about a new state-wide centralized notification system is going to require a detailed plan. The proposal submitted by OLF is a good start but it can and should be improved upon. In order to obtain funding for the project the BOG and the OLF should work together to formulate a clearly articulated plan that addresses the concerns that have been raised.

The criticism that the OLF's proposal leaves many questions unanswered is not a good reason for abandoning this idea in its entirety. The OLF's proposal was never meant to function as a business plan or a proposal for obtaining funding for implementation. The proposal was just that, a proposal of an idea. It appears to be an excellent one and if we need more detailed answers to certain questions we should get them and move forward.

Notably, even the mention of a centralized notification system has drawn some immediate criticism from newspapers. Why? Money. There is substantial revenue at issue here and the reason for such quick criticism is financially based.

### **IV. The OSB has no role in protecting community newspapers whether they exist in reality or not**

The idea of a community based newspaper is a vision of the past, a fiction separated from present day by both economic and technological realities. Consider the following from a recent New York Times article on this exact point:

The U-T, the daily newspaper of San Diego, published a two-week-old blog post — on its front page. And most notoriously, “This American Life” revealed that Journatic, a content farm owned in part by the Tribune Company that produces local articles on the cheap, was using fake bylines. Some of those hyperlocal pieces, which ran in newspapers like The Chicago Tribune, The Chicago Sun-Times, The Houston Chronicle and The San Francisco Chronicle, were written in the Philippines.

Equally confounding, when The Times-Picayune of New Orleans got around to offering jobs to some of its employees in its lower-cost digital news operation — the print newspaper will come out three times a week — many of the more prominent staff members took a look at the business plan and said, “No thanks.”

Or maybe not so confounding. Maybe they were making a choice to pull back from an industry that by all appearances was starting to come apart. Between operational fiascos and flailing attempts to slash costs on the fly, it’s clear that the print newspaper business, which has been fretting over a looming crisis for the last 15 years, is struggling to stay afloat. There are smart people trying to innovate, and tons of great journalism is published daily, but the financial distress is more visible by the week.

David Carr, *The Fissures Are Growing for Papers*, N.Y. Times, Jul. 8, 2012, [http://www.nytimes.com/2012/07/09/business/media/newspapers-are-running-out-of-time-to-adapt-to-digital-future.html?\\_r=1&pagewanted=all](http://www.nytimes.com/2012/07/09/business/media/newspapers-are-running-out-of-time-to-adapt-to-digital-future.html?_r=1&pagewanted=all). *Attachment A*.

A primary role of the Bar is to advocate for access to justice. The present notification system in Oregon is at best broken. Community papers are, in some cases, being bought up for the purpose of creating less notice not more. Moreover, as with many things, smaller entities are bought out by larger entities leaving the appearance of a community paper actually owned and run by a much larger corporation. Still other supposed community papers are run by skeleton staffs that get their news product from stand alone web based content farms operated from overseas. The home town paper is in many instances simply a thing of the past.

Regardless of all of this, the fate of community papers should not be the concern of the BOG or the OSB. The BOG is the leadership body of a Bar that exists for the improvement of the judicial system. A core concept of a functioning judiciary is appropriate, timely, accessible notice. Centralized notification would serve that goal far more effectively and efficiently than the fractured decentralized system that currently exists, literally, on paper.

**V. Rural members of the community will be served far better with a centralized notification system**

The great equalizer of rural and urban communities, rich and poor communities, majorities and minorities of all kinds, is the internet. Centralized notification would be available to anyone with a smart phone or a library internet connection. Those seeking notice would not even have to pay for a subscription to their local newspaper.

If local papers are of use, if they are desired by the communities they serve, then they will be paid for by those communities and will continue to thrive based on their local news coverage. Centralized notification does nothing to interfere with local news papers providing local news to paying local subscribers.

**VI. Centralized notification is achievable and is a worthwhile undertaking**

Even if the process of implementation and maintenance of a centralized notification system took two legislative sessions to achieve it would certainly be worth doing. This is a system that will vastly improve notification, make it more available to the public, and make it cheaper for all involved.

This is an idea that is a win-win for both sides of the notification equation. Those giving notice will pay less for doing so and those receiving notice will get that information free of charge in almost all instances.

The New York Times and Wall Street Journal have long realized the fundamental principals underlying web-based information distribution. Facebook, Google, Twitter, and Instagram are all companies that have capitalized on the ubiquity of internet based information. The course the BOG should follow is a path that has already been well traveled. Winning this issue might not nearly be the task it has been made out to be.

**VII. Done correctly the OSB will be commended publically for making a great idea a reality**

Using technology to level the playing field for all, while bringing better access to justice to those among us who are the least financially able, is what centralized notification can and will do. The time is now for the BOG to lead and make this idea a reality. In doing so, we will not be burning political capital we will be building it.

The OSB can put in place a system that will be seen as a national example of how and why Oregon is both different and, in at least some ways, doing things better than many states.

## **VIII. CONCLUSION**

Lawyers by our very nature are often risk adverse. We are trained to foresee the next worst thing and determine how to avoid it on behalf of our clients. As BOG members we find ourselves in a different role. We are responsible for leading the OSB and one of our primary charges is advocating for access to justice. We should carry out that charge now with developing, implementing, and maintaining a centralized notification system that will stand as a state-wide, and likely national example, of smart forward thinking leadership. For all these reasons I am strongly in favor of the OSB moving forward with the OLF's proposal for a centralized notification system.

## **Attachment A**

**The New York Times**

July 8, 2012

# The Fissures Are Growing for Papers

By DAVID CARR

While the rest of us were burning hot dogs on the grill last week, the newspaper industry seemed to be lighting itself on fire.

There have been cracks in publishing operations that are both hilarious and terrifying. The Times-Tribune in Scranton, Pa., published a box score for a baseball game that was never played, after one of the coaches made up a result to spare the other team the embarrassment of a forfeit.

The U-T, the daily newspaper of San Diego, published a two-week-old blog post — on its front page. And most notoriously, “This American Life” revealed that Journatic, a content farm owned in part by the Tribune Company that produces local articles on the cheap, was using fake bylines. Some of those hyperlocal pieces, which ran in newspapers like The Chicago Tribune, The Chicago Sun-Times, The Houston Chronicle and The San Francisco Chronicle, were written in the Philippines.

Equally confounding, when The Times-Picayune of New Orleans got around to offering jobs to some of its employees in its lower-cost digital news operation — the print newspaper will come out three times a week — many of the more prominent staff members took a look at the business plan and said, “No thanks.”

Or maybe not so confounding. Maybe they were making a choice to pull back from an industry that by all appearances was starting to come apart. Between operational fiascos and flailing attempts to slash costs on the fly, it’s clear that the print newspaper business, which has been fretting over a looming crisis for the last 15 years, is struggling to stay afloat. There are smart people trying to innovate, and tons of great journalism is published daily, but the financial distress is more visible by the week.

“Most newspapers are in a place right now that they are going to have to make big cuts somewhere, and big seams are bound to show up at some point,” said Rick Edmonds, a media business analyst at the Poynter Institute.

Some of the bigger cracks can’t be papered over by financial engineering. Hedge funds, which thought they had bought in at the bottom, are scrambling for exits that don’t exist. Many newspaper companies are hugely overburdened with debt from ill-timed purchases.

And though it is far less discussed, newspapers are being clobbered by paltry returns on underfunded pension plans.

Two highly placed newspaper executives told me last week that while the industry had already experienced a number of strategic bankruptcies, more will most likely take place to deal with pension obligations.

As Mike Simonton of Fitch Ratings pointed out to me, very few bond investors are even willing to lend to papers. He said the pension obligations “represent a call on capital at a time when newspapers desperately need to deploy capital toward evolving their business models and adapting to the digital world.”

The global pension plan at Gannett, which owns 82 daily papers, is underfunded by \$942 million, and McClatchy, which owns 30 dailies, is short \$383 million, according to Mr. Simonton, even though both companies have been pouring tens of millions in precious cash into the plans to shore them up. Many United States companies have onerous pension obligations, but the decline in revenue gives newspapers a tougher hill to climb.

The employees who earn those pensions are quick to point out that management in many of the companies still found money for ill-advised stock buybacks, along with lucrative dividends and executive compensation, neither of which was supported by results.

Journalists who are constantly being asked to do more with less wonder why the owners didn't invest to meet the coming threat and to add the funds to honor commitments to employees back when they were making great gobs of money.

People take heart that Warren Buffett has been buying newspapers, but it is worth noting that when he bought Media General newspapers, he left the pension liabilities with Media General's parent company.

(The New York Times has taken a very hard line at the bargaining table over the issue of pensions, which it cites as a risk to investors in its forward-looking statements. The paper's pension plan is short \$522 million even after the company made a \$151 million contribution last year.)

Those of us who work inside the racket like to think of our business as unique, but with underfunded pension plans, unserviceable debt and legacy manufacturing processes and union agreements, the newspaper industry looks a lot like, well, steel, autos and textiles.

The bread and butter for most of the industry is local information. But it has become seemingly impossible to make money creating daily compendiums and throwing it on

people's doorsteps. Journatic, the content provider, proceeds from the bold premise that generating community news can function on a call-center model, where a staff unrelated by geography or affiliation will serve customer needs. The company allowed employees to gin up fake bylines to give the appearance of a connection.

And it's not just newspapers. AOL's ambitious local news effort, called Patch, is losing \$150 million a year, by some estimates, and is no closer to cracking the code.

Given that context, it's not hard to see why Advance Publications is making huge moves in some of the 25 cities where it publishes newspapers, most notably in New Orleans, where it is spending the summer reducing the staff.

Advance's regional Web sites have generated traffic and have active forums, but they are a miserable place to consume news. Balky and ugly, with a digital revenue base below much of the rest of the industry, they seem like a shaky platform on which to build a business. Some recent traffic trends are not encouraging. According to Nielsen, The Times-Picayune's site, Nola.com, had 639,000 unique visitors in May, compared with over a million in that month a year ago.

Once upon a time, the Newhouse family kept unions at bay by promising lifetime employment, but now the company wants to shed people, and legacy costs, as quickly as it can. The plan is built on accounting, not strategy, which is why some of the newspaper's heavy hitters have declined offers from the newly reconfigured enterprise.

David Hammer, who played a large role in The Times-Picayune's coverage of the rebuilding efforts after Hurricane Katrina in 2005, took a job with the New Orleans CBS affiliate, WWL-TV, doing investigative work; he will be joined by Brendan McCarthy, one of the newspaper's young stars.

Stephanie Grace, a former statewide columnist, declined a job as a reporter, and Bill Barrow, a longtime reporter who covered health care, is going to work for The Associated Press. Bob Marshall, a Pulitzer Prize winner and the newspaper's outdoors editor, took a pass as well.

They are the kind of people that separate The Times-Picayune from, well, Journatic. "When you look at it, they were asking us to take a job where the revenues are still very dependent on the print product," Mr. Barrow said. "But that newspaper is no longer a priority and no one knows what it is going to look like or what it will have in the way of news when it comes out. There are too many unknowns."

The diminution of The Times-Picayune is a profound loss and a bet on some very wobbly

assets. Still, who is to say that the Newhouse family is any more misguided than the rest of an industry that is scrambling for safe ground? After all, the math is daunting, and there is a shortage of magic bullets.

But as they proceed, the Newhouses should remember that cutting corners ignores a fundamental fact: great journalism, on any platform, is the one sure hedge against irrelevancy.

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**ILLINOIS STATE  
BAR ASSOCIATION**

**John E. Thies • President**  
jthies@webberthies.com

From: John E. Thies, President, Illinois State Bar Association

To: Presidents and Executive Directors of State Bar Associations Co-Sponsoring  
Resolution 10A

Re: Update on 10A

Date: July 17, 2012

Dear Colleague:

We greatly appreciate your state's co-sponsorship of Resolution 10A in the ABA House of Delegates. As of this date, there are eleven (11) states that are co-sponsors of the Joint ISBA/ Senior Lawyers Division Resolution. The states that are behind 10A currently include: Arizona, Illinois, Indiana, Iowa, Maryland, Mississippi, New Jersey, Nevada, North Carolina, Oregon, South Dakota and Tennessee. We expect several others to join us shortly.

In preparation for our conference call next week (which is in the process of being scheduled), I want to let you know the strategy that the opposition will likely use to try to defeat our Resolution. At some point in the debate on 10A, there will likely be a motion to defer indefinitely. If passed, such a deferral would effectively kill our resolution. The argument that will be used to support of this Motion to Defer will be that the 20/20 Commission has not decided whether it will go forward with its earlier recommendations to amend the Model Rules to permit fee splitting with non-lawyers and within law firms owned by non-lawyers. The argument will be that the House should wait until the 20/20 Commission has made that decision (if ever).

In anticipation of this strategy, we must be prepared to present our argument that, while the Commission has not filed its "choice of law" proposal in the House, it has clearly communicated its conclusion that the Model Rule changes included in this proposal should be adopted. It has been nearly eight (8) months since this proposal was circulated, and it has not been withdrawn, despite overwhelming negative feedback filed with the Commission.

Our second argument against deferral is the fact that there has been such wide distribution of Commission-related proposals and recommendations (including, e.g., within the *New York Times*) which have encouraged the public perception that the profession is interested in allowing non-lawyers to invest in and own law firms.

Accordingly, we need to be prepared to present our argument that the ABA should wait no longer to make it clear to the public that this is not going to happen.

It will be important that we have strong debate for the Resolution and also in opposition to the motion to defer. I hope that the presidents (or their designee) of each of the sponsoring state bars will be prepared to speak on either of these points in the debate. As this needs to be coordinated, please let me know if we can count on you to do this.

In addition to the conference call next week, we are asking the co-sponsors and other supporters of the Resolution to meet together on Sunday, August 5, 2012 at 3:30 p.m. at a place to be determined between now and the meeting in Chicago. I hope that you and as many representatives from your state as you wish to have present will attend the meeting.

Thanks again for your continued strong support of 10A and the core values of our profession that it represents! If there are other states that you are aware of that we can get to co-sponsor the Resolution, do not hesitate to contact them and get them on board with their co-sponsorship.

With warmest best wishes.

Sincerely,

A handwritten signature in black ink, appearing to read "John E. Thies", written over a horizontal line.

John E. Thies, President  
Illinois State Bar Association

JET/meb

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July 17, 2012

Dear Colleagues:

I urge you to oppose Resolution 10A, filed jointly by the Illinois State Bar Association (ISBA) and the ABA Senior Lawyers Division, because it attempts to reach the merits of a subject that is not before the House at the August meeting and therefore is not a good process.

Let me be clear. The Ethics 20/20 Commission does NOT support nonlawyer ownership of law firms. Nothing that the Commission may do with regard to the choice of law issues discussed below will change that.

The Commission has NOT made any final proposal recommending adoption of amendments to Model Rules 1.5 and 5.4 relating to lawyers and law firms dividing or sharing fees with nonlawyers. On December 2, 2011, the Commission released for comment a document captioned "initial draft proposal" that set forth what the Commission concluded at that time was a possible way to address an existing choice of law issue in a manner protective of clients and that would not offend the public policy of jurisdictions that retain the prohibition on nonlawyer ownership of law firms. BUT, the cover memo to that document makes clear that this was not a final proposal. It makes clear that the Commission "**plans to release subsequent drafts** of its proposals over the coming months and will solicit additional comments on those new drafts at that time. The Commission will submit to the ABA House of Delegates **final versions** of many of its proposals in May 2012, several months before the House of Delegates considers those proposals at its August 2012 Annual Meeting... proposals that are not considered in August will be considered during the February 2013 Midyear Meeting (**emphasis added**)."

The proponents of Resolution 10A have taken that snapshot in time, using select language from the cover memo to convey something very different than intended. They do the same with a December 28, 2011 summary document posted by the Commission.

Given this misuse of the Commission's effort to keep the profession engaged in its work by circulating an initial draft for comment, as well as other information, perhaps the Commission--and I speak simply as one member--might have used language so explicit and unequivocal and so attended by disclaimers and qualifications that it could not be misconstrued by anyone reading it.

Moreover, the proponents of Resolution 10A know and have been told explicitly that the Commission has not yet decided whether to submit a proposal to the House on the choice of law issue. Commissioners told them this before, at and after the 2012 ABA Midyear Meeting. On April 16, 2012, the Commission's Co-Chairs released broadly, including to the media, an unequivocal statement on the subject, providing that "[T]he Commission previously released draft proposals on these issues, and will decide at its October 2012 meeting **whether (emphasis added)** to submit formal proposals to the ABA House of Delegates for consideration in February 2013. Meanwhile, the Commission welcomes additional comments on the previously released drafts." The Report of the proponents of Resolution 10A acknowledges this, stating that the Commission "...would decide at its October 2012 meeting whether to submit those proposals or similar proposals to the House at its February 2013 meeting." Thus, their continued reliance on the Commission's December 2011 documents to try to convince you that the Commission has made a recommendation for House of Delegates' consideration makes no sense.

So let's focus on the facts. There is no denying that multijurisdictional law offices have increased over the past decade, domestically and internationally, as has the cross-border practice of law. This will continue. It is a fact that small law firms from multiple jurisdictions often join together to serve a client's interests on large and/or complex matters. U.S. lawyers and law firms in jurisdictions that do not permit nonlawyer ownership increasingly have branch offices or work on client matters with firms in jurisdictions where forms of nonlawyer ownership are permitted (e.g., the District of Columbia, Canada, England, and Australia). This will continue, because working with those firms may be in the best interest of clients just as having branch offices in those locations serves the same purpose.

Because of the multijurisdictional legal practice environment that we and our clients must do business in, choice of law problems connected with fee division and sharing with firms that are permitted to have nonlawyer owners present challenges now. The issues are complicated. They will continue to exist despite the retention of the prohibition in ABA policy on any form of nonlawyer ownership of law firms.

Lawyers from firms of all sizes recognize this, and have told the Commission about the paucity of guidance to help them in written comments, testimony and at educational panels presented by the Commission. Lawyers are seeking guidance from their state bar associations about these issues too. As former ABA President Tommy Wells, one of the leaders of the opposition to 10A, has pointed out in his message to the House, the Commission continues to study these problems to see if there is a way, consistent with core professional values, to offer that help which lawyers seek.

Resolution 10A is both premature and unnecessary. The state of the legal profession in the U.S. and around the world has changed tremendously since 2000. We need to discuss these changes and what our response in this country should be. We are a profession that is going to have many difficult and challenging dialogues in the very near future. The Commission is doing exactly what it was charged to do. The ISBA and Senior Lawyers Division cleverly argue that they seek to facilitate dialogue on the subject, not preclude it. But their Report states their true goal — to send a "message" to the Commission as to how its work should proceed.

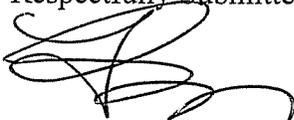
The Report states that "The American concept and practice of lawyer independence is as important to proclaim and advocate throughout the world as is due process and the rule of law abroad." Certainly, lawyer independence is important just as due process is. Before the House deliberates and proclaims what it thinks is best, I suggest that it grant to the Commission the due process it deserves and has earned. Let it finish its work so that the House can make any decision on this complex subject in light of a considered recommendation and report from the Commission in February, if the Commission makes one.

No professional association should pretermite a dialogue or attempt an end run around the process it has established for fair consideration of the pros and cons of any subject. This is especially true of a professional association which is charged with so much responsibility for regulating that same profession.

Resolution 10A offends the value of open inquiry and debate. We need to talk more about what the future of our profession is going to look like. Why should anyone volunteer their time to take on the tough questions facing our profession if they know that their dialogue can be silenced at any time?

This motion is a threat to the institution. I would urge you to vote against it.

Respectfully Submitted,



Frederic S. Ury

Member, ABA Commission on Ethics 20/20, Past President of the Connecticut State Bar Association, and former Member of the ABA House of Delegates