

Oregon State Bar
Meeting of the Board of Governors
February 12, 2016
Salem Conference Center, Salem, OR
Open Session Agenda

*The Open Session Meeting of the Oregon State Bar Board of Governors will begin at 9:00am on February 12, 2016.
Items on the agenda will not necessarily be discussed in the order as shown.*

Friday, February 12, 2016, 9:00am

1. Call to Order / Finalization of Agenda

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

- | | | | |
|--|--|--------|---------|
| A. Board Development Committee [Ms. Nordyke] | | | |
| 1) | Appointments to Various OSB Committees and Affiliated Boards | Action | Handout |
| 2) | Recommendations for Board of Bar Examiners co-Graders | Action | Handout |
| B. Budget & Finance Committee [Mr. Mansfield] | | | |
| 1) | Financial Update | Inform | |
| C. Policy & Governance [Mr. Levelle] | | | |
| 1) | Retired Status Rule Changes | Action | Exhibit |
| 2) | Strategic Planning | Action | |
| D. Public Affairs Committee [Mr. Ross] | | | |
| 1) | Legislative Update | Inform | |
| 2) | Adopt 2016 Legislative Priorities | Action | Exhibit |
| E. Discipline System Review Committee [Mr. Heysell] | | | |
| 1) | Member Feedback emails | Inform | Exhibit |
| 2) | Public Comment Period (1:00pm, Friday, 02/12/16) | Inform | |

3. Professional Liability Fund [Ms. Bernick]

- | | | | |
|----|--|--------|---------|
| A. | 2015 Claims Attorney and Defense Counsel Evaluations | Inform | Exhibit |
| B. | Draft December 31, 2015 Financial Statements | Inform | Exhibit |
| C. | Approve Excess Cyber Extortion Coverage | Action | Exhibit |

4. Board of Bar Examiners [Ms. Tuttle]

- | | | | |
|----|--|--------|---------|
| A. | Comment on International Trade Task Force Recommendation | Inform | Exhibit |
|----|--|--------|---------|

5. OSB Committees, Sections, Councils and Divisions

- | | | | |
|--|---|--------|---------|
| A. | Oregon New Lawyers Division Report [Mr. Andries] | Inform | Exhibit |
| B. MCLE Committee [Ms. Hierschbiel] | | | |
| 1) | Proposed Amendments to MCLE Rules and Regulations | Action | Exhibit |
| C. Client Security Fund Committee [Ms. Hierschbiel] | | | |
| 1) | Request for Review | | |
| a) | BERTONI (Miranda) 2015-02 | Action | Exhibit |
| b) | CAROLAN (Avery) 2015-12 | Action | Exhibit |
| c) | CHIPMAN (Noel) 2015-37 | Action | Exhibit |
| d) | GERBER (Chappue) 2015-18 | Action | Exhibit |

e)	GRECO (Patillo) 2015-34	Action	Exhibit
f)	JORDAN (Hernandez) 2015-22	Action	Exhibit
g)	LANDERS (Koepke) 2015-32	Action	To be Posted
2)	Award Recommendation		
a)	GERBER (Graue) 2015-17	Action	Exhibit
D.	Legal Services Committee [Ms. Baker]		
1)	Approve Recommendation for General Fund Disbursement	Action	Exhibit
E.	Legal Ethics Committee [Ms. Hirschbiel]		
1)	Proposed Amendments to Formal Ethics Opinions	Action	Exhibit
6.	Other Items		
A.	Opt Out of BOG email Requirement [Mr. Williams]	Action	Exhibit
B.	Request for Funding Mendez Exhibit [Ms. Dahab]	Action	Exhibit
C.	Report on ABA HOD Mid-Year Meeting [Ms. Harbur]	Inform	
7.	Consent Agenda		
A.	Report of Officers & Executive Staff		
1)	President's Report [Mr. Heysell]	Inform	Exhibit
2)	President-elect's Report [Mr. Levelle]	Inform	
3)	Executive Director's Report [Ms. Hirschbiel]	Inform	Exhibit
4)	Director of Regulatory Services [Ms. Evans]	Inform	Exhibit
5)	Director of Diversity & Inclusion [Ms. Hirschbiel]	Inform	Handout
6)	MBA Liaison Report [Mr. Ross]	Inform	
B.	2015 ULTA Annual Report	Inform	Exhibit
C.	Approve Minutes of Prior BOG Meetings		
1)	Regular Session November 20, 2015	Action	Exhibit
2)	Special Open Session December 15, 2015	Action	Exhibit
3)	Special Open Session January 8, 2016	Action	Exhibit
8.	Default Agenda		
A.	President's Correspondence		Exhibit
9.	Closed Sessions – <u>CLOSED</u> Agenda		
A.	Executive Session (pursuant to ORS 192.660(1)(f) and (h)) – General Counsel/UPL Report		
10.	Good of the Order (Non-Action Comments, Information and Notice of Need for Possible Future Board Action)		
A.	Correspondence		
B.	Articles of Interest		

OREGON STATE BAR

Governance & Strategic Planning Committee Agenda

Meeting Date: January 9, 2016
From: Helen Hirschbiel, Executive Director
Re: Retired Status Amendments

Action Recommended

Approve the proposed language for a new bylaw establishing Retired membership status and for several statutory and other bylaw amendments necessitated by the creation of the new Retired status.

Discussion

At its meeting on November 20, 2015, after considerable discussion, the committee voted unanimously to create a new membership status for retired members. Set out below is the proposed bylaw amendment to create the new membership status, followed by suggested statutory and other bylaw and rule changes that should be made to incorporate the new status:

Article 6 Membership Classification and Fees **Section 6.1 Classification of Members** **Subsection 6.100 General**

Members of the Bar are classified as follows:

(a) Active member - Any member of the Bar admitted to practice law in the State of Oregon who is not an inactive, [retired](#), or suspended member. Active members include Active Pro Bono members.

(b) Inactive member - A member of the Bar who does not practice law may be enrolled as an inactive member. The "practice of law" for purposes of this subsection consists of providing legal services to public, corporate or individual clients or the performing of the duties of a position that federal, state, county or municipal law requires to be occupied by a person admitted to the practice of law in Oregon.

[\(c\) Retired member – A member of the Bar who is at least 65 years old and who is retired from the practice of law \(as defined in paragraph \(b\)\) may be enrolled as a retired member.](#)

ORS Chapter 9—The Bar Act

9.025 Board of governors; number; eligibility; term; effect of membership. (1) The Oregon State Bar shall be governed by a board of governors consisting of 18 members. Fourteen of the members shall be active members of the Oregon State Bar, who at the time of appointment, at the time of filing a statement of candidacy, at the time of election, and during the full term for which the member was appointed or elected, maintain the principal office of law practice in the region of this state in which the active members of the Oregon State Bar eligible to vote in the election at which the member was elected maintain their principal offices. Four of the members shall be appointed by the board of governors from among the public. They shall be residents of this state and may not be active, ~~or~~ inactive or retired members of the Oregon State Bar. A person charged with official duties under the executive and legislative departments of state government, including but not limited to elected officers of state government, may not serve on the board of governors. Any other person in the executive or legislative department of state government who is otherwise qualified may serve on the board of governors.

9.180 Classes of membership. All persons admitted to practice law in this state thereby shall become active members of the bar. Every member shall be an active member unless, at the member's request, or for reasons prescribed by statute, the rules of the Supreme Court, or the rules of procedure, the member is enrolled as an inactive or retired member. An inactive or retired member may, on compliance with the rules of the Supreme Court and the rules of procedure and payment of all required fees, again become an active member. Inactive and retired members shall not hold office or vote, but they shall have such other privileges as the board may provide.

9.210 Board of bar examiners; fees of applicants for admission to bar. The Supreme Court shall appoint 12 members of the Oregon State Bar to a board of bar examiners. The Supreme Court shall also appoint two public members to the board who are not active, ~~or~~ inactive or retired members of the Oregon State Bar. The board shall examine applicants and recommend to the Supreme Court for admission to practice law those who fulfill the requirements prescribed by law and the rules of the Supreme Court. With the approval of the Supreme Court, the board may fix and collect fees to be paid by applicants for admission, which fees shall be paid into the treasury of the bar.

OSB Bylaws

Article 3 House of Delegates

Section 3.4 Meeting Agenda

After receiving all resolutions, the Board must prepare an agenda for the House. The Board may exclude resolutions from the agenda that are inconsistent with the Oregon or United States constitutions, are outside the scope of the Bar's statutory mission or are determined by the Board to be outside the scope of a mandatory bar's activity under the U.S. Supreme Court decision in Keller v. the State Bar of California. The House agenda, including any resolutions that the Board has excluded, must be published by the Board, with notice thereof, to all ~~active and inactive~~ bar members, at least 20 days in advance of the House meeting.

Article 4 Awards

Section 4.8 President's Public Leadership Award

The criteria for the President's Public Leadership Award are as follows: The nominee must not be an active, ~~or~~ inactive or retired member of the Oregon State Bar and the nominee must have made significant contributions in any of the areas described in the President's Awards (Section 4.2-4.4 above).

Section 4.9 President's Sustainability Award

The criteria for the President's Sustainability Award are as follows: The nominee must be an active, ~~or~~ inactive or retired member of the bar or be an Oregon law firm; the nominee must have made a significant contribution to the goal of sustainability in the legal profession in Oregon through education, advocacy, leadership in adopting sustainable business practices or other significant efforts.

Article 6 Membership Classification and Fees

Subsection 6.101 Active Pro Bono Status

(a) Purpose

The purposes of the Active Pro Bono category of active membership in the Bar is to facilitate and encourage the provision of pro bono legal services to low-income Oregonians and volunteer service to the Bar by lawyers who otherwise may choose inactive or retired status or even resign from membership in the Bar, and by lawyers who move to Oregon.

Subsection 6.102 Transfer of Classification of Membership

An inactive or retired member may be enrolled as an active member only by complying with the Bar Act, the Rules of the Supreme Court, the Rules of Procedure of the Bar and paying required fees. An active member may voluntarily transfer to inactive or retired status on certification by the member that the criteria of that classification are met and on payment of required fees.

Section 6.3 Rights of Members

Subject to the other provisions of these policies, all active members have equal rights and privileges including the right to hold an office of the Bar, the right to vote, and the right to serve on bar committees. Inactive [and retired](#) members may be members, but not officers, of sections. Suspended members may remain members of or join sections during the term of their suspensions, but may not hold an office of the Bar, vote or serve on the Board of Governors, in the House of Delegates or on any bar committee or section executive committee.

Section 6.4 Annual Membership Fees and Assessments

The payment date for annual membership fees and assessments is set by the Board. If the payment date falls on a Saturday, a legal holiday or a day that the bar office is closed for any reason, including inclement weather or natural disaster, the due date of such fees and assessments is the next day that the bar office is open for business. As used in this section, "legal holiday" means legal holiday as defined in ORS 26 187.010 and 187.020, which includes Sunday as a legal holiday. The Board may establish a uniform procedure for proration of membership fees based on admission to practice during the course of the year. No part of the membership fees will be rebated, refunded or forgiven by reason of death, resignation, suspension, disbarment or change from active to inactive [or retired status membership](#) after January 31. However, a bar member who, by January 31, expresses a clear intent to the Bar to transfer to inactive [or retired](#) status and pays the [inactive required](#) membership assessment by that date, but does not timely submit a ~~signed R~~request for [Enrollment enrollment](#) as an ~~inactive~~ [or retired Membermember](#), may be allowed to complete the [inactive](#) transfer without payment of the active membership assessment, if extenuating circumstances exist. The Executive Director's decision regarding the existence of sufficient extenuating circumstances is final.

Section 6.5 Hardship Exemptions

In case of proven extreme hardship, which must entail both physical or mental disability and extreme financial hardship, the Executive Director may exempt or waive payment of annual membership fees and assessments of an active, ~~or~~ inactive [or retired](#) member. Hardship exemptions are for a one-year period only, and requests must be resubmitted annually on or before January 31 of the year for which the exemption is requested. "Extreme financial hardship" means that the member is unemployed and has no source of income other than governmental or private disability payments. Requests for exemption under this bylaw must be accompanied by a physician's statement or other evidence of disability and documentation regarding income.

Article 16 Continuing Legal Education

Section 16.3 OSB Legal Publications Program

Subsection 16.300 Benefit of Membership

The BarBooks™ online library comprises all Legal Publications products as well as other materials as the Bar deems appropriate to include from time to time. BarBooks™ is a benefit of active membership in the Oregon State Bar and is available for purchase by inactive [or retired](#) members, non-members, and libraries.

OSB Bylaw 17 Member Services¹

~~Section 17.2 Insurance~~

~~Providers of Bar-sponsored insurance may use the Bar's logo in their advertising and promotional material with the prior approval of the Executive Director. They may also indicate approval or endorsement by the Board in such material if the Board has approved or endorsed the insurance. Inactive membership status does not affect the eligibility of a member for bar-sponsored insurance.~~

Bar Rules of Procedure

Title 1 – General Provisions

Rule 1.11 Designation of Contact Information.

(a) All attorneys must designate, on a form approved by the Oregon State Bar, a current business address and telephone number, or in the absence thereof, a current residence address and telephone number. A post office address designation must be accompanied by a street address.

(b) All attorneys must also designate an e-mail address for receipt of bar notices and correspondence except (i) attorneys whose ~~se status is~~ [are over the age of 65 and fully](#) retired ~~from the practice of law~~ and (ii) attorneys for whom reasonable accommodation is required by applicable law. ~~For purposes of this rule an attorney is “fully retired from the practice of law” if the attorney does not engage at any time in any activity that constitutes the practice of law including, without limitation, activities described in OSB bylaws 6.100 and 20.2.~~

(c) An attorney seeking an exemption from the e-mail address requirement ~~for the reasons stated in~~ paragraph (b)(ii) must submit a written request to the Executive Director, whose decision on the request will be final.

(d) It is the duty of all attorneys promptly to notify the Oregon State Bar in writing of any change in his or her contact information. A new designation shall not become effective until actually received by the Oregon State Bar.

¹ This bylaw is an overlooked vestige of time when we had a bar-sponsored insurance program in which members could participate, and should have been deleted long ago.

Title 8 – Reinstatement

Rule 8.1 Reinstatement — Formal Application Required.

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

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

* * *

(c) Learning and Ability. In addition to the showing required in BR 8.1(b), each applicant under this rule who has remained in a suspended or resigned status for more than three years or has been enrolled voluntarily or involuntarily as an inactive [or retired](#) member for more than five years must show that the applicant has the requisite learning and ability to practice law in this state. The Bar may recommend and the Supreme Court may require as a condition precedent to reinstatement that the applicant take and pass the bar examination administered by the Board of Bar Examiners, or successfully complete a prescribed course of continuing legal education. Factors to be considered in determining an applicant's learning and ability include, but are not limited to: the length of time since the applicant was an active member of the Bar; whether and when the applicant has practiced law in Oregon; whether the applicant practiced law in any jurisdiction during the period of the

applicant's suspension, resignation or inactive [or retired](#) status in this state; and whether the applicant has participated in continuing legal education activities during the period of suspension or inactive [or retired](#) status in this state.

* * *

Rule 8.2 Reinstatement — Informal Application Required.

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

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

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

* * *

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

* * *

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

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

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

* * *

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

Rule 8.6 Other Obligations Upon Application.

(a) Financial Obligations. Each applicant under BR 8.1 through 8.5 shall pay to the Bar, at the time the application for reinstatement is filed, all past due assessments, fees and penalties owed to the Bar for prior years, and the membership fee and Client Security Fund assessment for the year in which the application for reinstatement is filed, less any active, ~~or~~ inactive, or retired membership fees or Client Security Fund assessment paid by the applicant previously for the year of application. Each applicant shall also pay, upon reinstatement, any applicable assessment to the Professional Liability Fund.

Rule 8.8 Petition To Review Adverse Recommendation.

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

Rule 8.14 Reinstatement and Transfer--Active Pro Bono.

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

Title 12 -- Forms

Rule 12.9 Compliance Affidavit.

A compliance affidavit filed under BR 8.3 shall be in substantially the following form:

COMPLIANCE AFFIDAVIT

In re: Application of

(Name of attorney) (Bar number)

For reinstatement as an active/inactive/retired (circle one) member of the OSB.

1. Full name _____ Date of Birth _____

* * *

Rule 12.10 Compliance Affidavit.

A compliance affidavit filed under BR 7.1(g) shall be in substantially the following form:

COMPLIANCE AFFIDAVIT

In re: Reinstatement of

(Name of attorney) (Bar number)

For reinstatement as an active/inactive/retired (circle one) member of the OSB.

1. Full name _____ Date of Birth _____

* * *

**Minimum Continuing Legal Education
Rules and Regulations**

**Rule One
Terms and Definitions**

1.1 Active Member: An active member of the Oregon State Bar, as defined in Article 6 of the Bylaws of the Oregon State Bar.

* * *

~~**1.12 Retired Member:** An active member who is over 65 years old and is fully retired from the practice of law.~~

* * *

**Regulations to MCLE Rule 1
Terms and Definitions**

1.100 Inactive or Retired Member. An inactive or Retired member of the Oregon State Bar, as defined in Article 3 of the Bylaws.

**Rule Three
Minimum Continuing Legal Education Requirement**

3.7 Reporting Period.

- (a) In General. All active members shall have three-year reporting periods, except as provided in paragraphs (b), (c) and (d).
- (b) New Admittees. The first reporting period for a new admittee shall start on the date of admission as an active member and shall end on December 31 of the next calendar year. All subsequent reporting periods shall be three years.
- (c) Reinstatements.
 - (1) A member who transfers to inactive, retired or Active Pro Bono status, is suspended, or has resigned and who is reinstated before the end of the reporting period in effect at

the time of the status change shall retain the member's original reporting period and these Rules shall be applied as though the transfer, suspension, or resignation had not occurred.

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

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

~~(d) Retired Members:~~

~~(1) A retired member who resumes the practice of law before the end of the reporting period in effect at the time of the member's retirement shall retain the member's original reporting period and these Rules shall be applied as though the retirement had not occurred.~~

~~(2) Except as provided in Rule 3.7(d)(1), the first reporting period for a retired member who resumes the practice of law shall start on the date the member resumes the practice of law and shall end on December 31 of the next calendar year. All subsequent reporting periods shall be three years.~~

~~(3) Notwithstanding Rules 3.7(d)(1) and (2), members resuming the practice of law after retirement who did not submit a completed compliance report for the reporting period immediately prior to retirement will be assigned a new reporting period upon the resumption of the practice of law. This reporting period shall begin on the date of the resumption of the practice of law and shall end on December 31 of the next calendar year. All subsequent reporting periods shall be three years.~~

**Regulations to MCLE Rule 3
Minimum Continuing Legal Education Requirement**

3.500 Reporting Period Upon Reinstatement. A member who returns to active membership status as contemplated under MCLE Rule 3.7(c)(2) shall not be required to fulfill the requirement of compliance during the member's inactive [or retired](#) status, suspension, disbarment or resignation, but no credits obtained during the member's inactive [or retired](#) status, suspension, disbarment or resignation shall be carried over into the next reporting period.

Legislative Priorities for 2016

1. **Support Court Funding.** Support for adequate funding for Oregon's courts.
 - **Citizens Campaign for Court Funding.** Continue with efforts to institutionalize the coalition of citizen and business groups that was formed in 2012 to support court funding.
 - **eCourt Implementation.** Support the Oregon Judicial Department's effort to complete the implementation of eCourt.
 - **Court Facilities.** Continue to work with the legislature and the courts to make critical improvements to Oregon's courthouses.

2. **Support legal services for low income Oregonians.**
 - **Civil Legal Services.**
 - Increase the current level of funding for low income legal services.
 - **Indigent Defense.**
 - **Public Defense Services.** Constitutionally and statutorily required representation of financially qualified individuals in Oregon's criminal and juvenile justice systems:
 - Ensure funding sufficient to maintain the current service level.
 - Support fair compensation for publicly funded attorneys in the criminal and juvenile justice systems.
 - Support reduced caseloads for attorneys representing parents and children.

3. **Continue to engage on 2015 legislative proposals in the 2016 Legislative Session.** These include:
 - A revised Digital Assets proposal from the Uniform Law Commission (SB 369, 2015)
 - A revised Advance Directive proposal from a legislative workgroup (SB 193, 2015)
 - A revised Notario Fraud proposal from a legislative workgroup (HB 3525, 2015)

Camille Greene

From: Mary W Johnson [maryjohnson@orlaw.us]
Sent: Friday, December 18, 2015 4:12 PM
To: OSB President
Subject: Comments to Proposed Changes to Disciplinary Process

Dear Mr. Spier,

I propose that a timeline be established for the disciplinary process. I have defended occupational licensees in the health professions for many years. Board investigations generally last about four months. Investigators have the power of subpoena for records, to interview witnesses, and are required to conduct a personal interview of the licensee. The investigators then prepare reports for presentation to the Board, which meets 10 times per year to discuss and vote on discipline as to each investigation. The Board then directs the investigators what to do, i.e., dismiss, resolve by stipulation, letter of concern, of notice of discipline: reprimand, suspension, probation or revocation of the license. The licensee has a certain number of days to request an administrative contested case hearing before an Administrative Law Judge, and the Judge's decision is sent to the Board for reconsideration.

My experience with the Oregon State Bar is that the disciplinary process is unbounded by time, which allows the investigations to be unnecessarily and excruciatingly long, complex and expensive (i.e., goes on for years) for the lawyers who are being investigated, because there is no timeline in place to require the investigations to be conducted in a timely manner.

Thank you for inviting comments.

Mary W. Johnson, OSB No. 843843
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Camille Greene

From: Tilman Hasche [th@pbl.net]
Sent: Friday, December 18, 2015 1:43 PM
To: OSB President
Subject: RE: Notice of DSRC Report

Dear Rich:

Thank you for your Notice of "DSRC" Report. I actually made an effort to read the reports contained therein, which, given their volume, took up more than an insignificant amount of time.

It would be most helpful if these reports contained either a digest of acronyms used in the report or else – perish the thought! – each report actually defined each acronym when first used. As written, these reports are unintelligible unless one is prepared to waste one's precious time googling a host of acronyms (DSRC, DCO, CAO, SPRB, etc.) in order to know who or what is being talked about.

As an immigration lawyer, I practice in an area of the law full of arcane acronyms only known to the *cognoscenti* with the secret handshake. Fortunately, the literature in our field typically spells out the meaning of each acronym the first time it is used in an article or communication.

The OSB would do well to adopt the same practice. I'm sure I am not the only member of this Bar unwilling to waste his or her time looking up the alphabet soup arcania of Oregon's ethics and Bar governance gurus.

Happy Holidays.

Tilman Hasche

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From: Richard Spier [<mailto:president@osbar.org>]
Sent: Friday, December 18, 2015 11:31 AM
To: Tilman Hasche
Subject: Notice of DSRC Report



Dear OSB Colleagues:

Below is a link to the report of the OSB Discipline System Review Committee, together with minority reports from some of the committee members and materials from the Committee's meetings. The DSRC was appointed by the Board of Governors to review an evaluation of Oregon's disciplinary processes and procedures conducted by the ABA in 2014. The DSRC supports most, but not all of the ABA suggestions. The DSRC has also recommended some changes not proposed by the ABA.

The Board of Governors welcomes and encourages your comments on the DSRC recommendations. Comments must be submitted in writing (letter or email) to president@osbar.org no later than March 2, 2016. The reports will also be made available to the public, with an invitation for public comment under the same guidelines. The Board of Governors will be reviewing the DSRC majority and minority reports and any comments at a special meeting on March 11, 2016. The Board will identify the DSRC recommendations it supports, and forward its own recommendations to the Supreme Court, with the DSRC reports and comments.

Link: <http://bog11.homestead.com/DSRC/Homepage.pdf>. If you have any difficulty accessing the reports and related materials, please contact Executive Assistant Camille Greene at cgreene@osbar.org or (503) 431-6386.

Regards,

Rich Spier
Oregon State Bar President

Oregon State Bar | 16037 SW Upper Boones Ferry Road | Tigard, Oregon 97224

If you would like to receive your e-mails at a secondary e-mail address go to www.osbar.org/secured/login.asp and log in using your bar number and password, then click on Communication Preferences and set up a secondary e-mail address.

From: Theresa M. Kohlhoff, individual member, 803981 January 1, 2016

I recommend the BOG not adopt the task force's recommendations.

My few comments:

1. The BOG only technically initiated the request for the ABA review. The impetus began somewhere else but showed up with short time hire, John Gleason, who specifically wrote, I believe, in the MBA bulletin, that he had been hired to initiate a new disciplinary system, including one with a paid full time presiding disciplinary judge (PDJ). There was some question that the Supreme Court wanted a disciplinary system vetted. The point is that it was not something that the BOG ever thought pressing, at least in the last four years. (As an aside, it would be helpful if the authority over the Bar by its CEO and that of the Supreme Court is made more transparent to the membership and to the BOG.)
2. The premise that disciplinary law is somehow outside of the grasp of volunteer lawyers and therefore "professional" staff is required, is not proven or convincing. Moreover the significant part of the disciplinary process is not the law, but rather fact finding which is something volunteers who are practicing lawyers can do better than anyone else.
3. There is little basis for authority over or guidance to the Oregon Bar from the ABA team's opinion on best practices. What value does it have? This team's view that volunteers cost the process in delay, inefficiency and inconsistency shows a bias for bureaucracy. How would an in house process be better? The personnel would have deadlines? Have access to resources? Have policy standards? Why would these changes, if imposed on staff, work differently than if they were imposed on volunteers? Strengthening the volunteers would save the best aspects of our present system and shore up the worst.
4. The volunteer lawyer, hopefully, has had practice experience. No matter how skilled a judge is or a staff member, years in practice are what count. This is the overwhelming benefit of using lawyers who have been in the trenches - not for a few years before they launched into some non-practice position - making the judgment calls about another lawyer's ethical behavior. No one enjoys being judged but we (and the public) are more apt to be respectful of a judgment if it thoughtfully comes from our peers.
5. The idea that investigation by the LPRC is outdated because the DCO has an investigator is sadly dismissive of the time and energy volunteer lawyers can put into digging into the facts. It is not possible that one investigator can do what the LPRC does. Sunsetting this group is another example of an increasing bureaucracy.
6. Having a presiding disciplinary judge (PDJ) on each panel is one of the most troubling recommendations. It is financially objectionable because the Bar is having to pay for an employee of, uh...(whom?) at a cost of about \$200,000 for the PDJ and supporting staff. We already have one of the most expensive Bars in the country. Yet we are not allowed to do much for fear of controversy over being viewed as political, reduced to a kind of Rotary, presumably because of Keller but also because of general custom. We raised the dues \$50 this last year with the slippery promise that it would not need to be done again for a few years unless there were significant changes in the operating expenses. Given the challenges of cuts, these extra expenses, at least, raise the specter of higher dues in a shorter period. Add on that we are now

being asked to pay for yet another employee(s), wages and 40% or so for benefits, for what could be done and done better by volunteer practicing lawyers. Is this not just bureaucracy getting more intense and more expensive, without benefit to the membership or the public? Who does it benefit then?

The addition of the PDJ is even more objectionable as a substantive matter because who the Supreme Court (unilaterally?) appoints will then be pretty entrenched without obvious accountability, a central pole to a Star Chamber. Who has the right to hire and fire this person? Grade the performance? Influence the decision making? In short, the concept of a PDJ is wholly unnecessary and potentially autocratic and unfair.

And yes, it does chafe that the Bar is still slated to pay for the PDJ and supporting staff, to boot!

7. Although I was a BOG liaison, I was not a voting member of the group. I agree that there may be tweaks needed to the system, but I believe that aspects of the it that are not desirable can be attended to without a big and unwise flip over from sensible reliance on volunteer lawyers to a highly centralized system which could be out of our control and our direction.

I personally do not support these recommendations.

Camille Greene

From: Elden Rosenthal [elden@rgdpdx.com]
Sent: Friday, January 08, 2016 10:10 AM
To: OSB President
Subject: DSRC recommendations

Rich – I believe that Mr. Braun’s minority report is compelling. I urge the Board of Governors to reject the Majority Report, and adopt one of the alternatives proposed in the Minority Report.

As a formal criminal defense lawyer, and as a current civil rights lawyer, I have experienced the injury done to citizens when the prosecutorial function is abused. Granting complete prosecutorial responsibility to Disciplinary Counsel without providing adequate oversight invites opportunity for influence and power to be abused.

Sincerely,

Elden M. Rosenthal
121 S.W. Salmon St., Suite 1090
Portland, Oregon 97204
(503) 228-3015
www.rgdpdx.com

Camille Greene

From: Elizabeth E. Welch [bizwelch@yahoo.com]
Sent: Friday, January 08, 2016 2:18 PM
To: OSB President
Subject: New Disciplinary System

I echo the sentiments of Theresa Kohlhoff:

If the recommendations are accepted, the disciplinary system will be fundamentally changed. I do not like the idea of a PDJ or the idea that the OSB would be paying that person's salary. I don't like the that the LPRC will be eliminated.

If the present volunteer process needs to be more timely, have more standards and be given more resources, then let's fix that. This, however, can be done without increasing expensive bureaucracy and losing the valuable experience of having practicing lawyers making the factual calls.

In my personal opinion, no matter how skilled a judge is or a staff member, years in practice are what count. This is the overwhelming benefit of using lawyers who have been in the trenches making the judgment calls about another lawyer's ethical behavior. No one enjoys being judged but we (and the public) are more apt to be respectful of a judgment if it thoughtfully comes from our peers.

Thank you.



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Camille Greene

From: sam@sampace.com
Sent: Wednesday, January 13, 2016 12:54 PM
To: OSB President
Subject: RE: Regional_conference_calls_scheduled_to_discuss_
OSB_Disciplinary_System_Review_Committee_reports

Dear Ray,

I'm not able to participate in the conference call on Thursday, so I am offering a comment by e-mail.

I'm writing to you regarding item #8 referenced in the October 2015 meeting minutes of the OSB Disciplinary System Review Committee in which committee members Ellis and Bauman reportedly proffered the notion that *"the bar should pay the Respondent's attorney fees and costs when a formal proceeding results in a dismissal of all charges."* The motion failed. I hope the Board of Governors will re-visit the issue for the reasons I identify below.

In opposition to the proposal for the OSB to reimburse the attorney fees of a member when charges brought by the Bar are not sustained, committee member Howes indicated reimbursing attorney fees for an attorney who was vindicated by the disciplinary process would bankrupt the Bar, and he offered a metaphor involving prosecutors.

I'd like to offer three observations, and a suggestion:

1. The prosecutor must meet a much higher standard of proof in a criminal proceeding than the standard the OSB must satisfy in a disciplinary proceeding; as a result, the potential financial burdens on the Bar and a prosecutor's office are not sufficiently comparable to make Mr. Howes' metaphor persuasive.
2. If OSB being required to reimburse attorney fees when charges brought by the Bar are not sustained would bankrupt OSB as Mr. Howes is reported to have claimed (and do so even with the benefit for the Bar of a lower standard of proof than a prosecutor must meet), then I would submit Mr. Howe's reported claim remarks makes the case that it's reasonable to expect some individual attorneys may likewise be bankrupted.
3. In this regard, Mr. Howes' metaphor also fails to acknowledge the difference in the magnitude of the financial impacts if the bar has to pay what are hopefully very few of these reimbursements, and an individual attorney - especially an attorney in a small or solo practice - having to pay for the defense against one of these unsupported OSB cases all by herself or himself.

It seems odd to me that the largest justice-oriented organization in the state would be willing to bankrupt a vindicated attorney in solo practice, especially because (unlike the solo practitioner) the bar has financial support from thousands of attorneys, the ability to make larger assessments to cover the costs of its actions if needed, and the opportunity to prepare a financial analysis of the potential impact on the OSB (which I infer has not been undertaken given the lack of any data being reported in the minutes to support Mr. Howes' claims about bankrupting the Bar).

That said, what would **not** bankrupt the bar, would be for the Governors to require publication in the discipline section of the Bar Magazine of the total sum of attorney fees and costs expended by OSB in each individual case in which the disciplinary charges brought against an attorney are not sustained. (The name of the attorney need not be included if the attorney prefers nondisclosure, but a citation to the legal basis - but not the factual basis - on which the charges were based could be reported.) By inference, one might assume a comparable burden may have been shouldered by the attorney who was forced to vindicate himself or herself.

The Bar has a noble mission, self described as "To Serve Justice."

But that is not - and should not be allowed to become - a limitation on the Bar's opportunity and responsibility to be both transparent and accountable, even if it chooses not to be accountable financially to reimburse vindicated attorneys on what one would hope would be those rare occasions when OSB brings charges against a member that it fails to sustain when evaluated against a much lower standard of proof than prosecutors must meet in the criminal courts.

Regards,

Erwin B. (Sam) Pace, Jr.
OSB # 803340

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

Subject:

Regional_conference_calls_scheduled_to_discuss_OSB_Disciplinary_System_Review_Committee_reports

From: "Ray Heysell" <president@osbar.org>

Date: Wed, January 13, 2016 10:19 am

To: <sam@sampace.com>



Special BOG Update from OSB President Ray Heysell

Colleagues:

I am sending this special update to invite your participation in the Board of Governors' consideration of possible changes to our disciplinary system. The board received a report from the Disciplinary System Review Committee at its Nov. 20, 2015 meeting, and subsequently several minority reports and comments. The reports, comments and background information [are available online here](#).

Your comments are welcome and encouraged. To invite broader discussion we have scheduled a series of conference calls by bar region.

Here is the information for your region:

Region 8: Hosted by John Bachofner

Date: Thursday, January 21

Time: 9:00 a.m.

Phone: 866-910-4857; Passcode: 671660

Please join the discussion if you are interested and available – there is no need to reply to this message. If you are not able to participate I still encourage you to review the materials online and submit any comments via email to president@osbar.org.

Very truly yours,

Ray Heysell

OSB President

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Camille Greene

From: Andrea Ogston [andrea.ogston@lasoregon.org]
Sent: Friday, January 15, 2016 10:39 AM
To: OSB President
Subject: RE: Regional conference calls scheduled to discuss OSB Disciplinary System Review Committee reports

I wish they would stop putting bar discipline in the bulletin.

From: Ray Heysell [mailto:president@osbar.org]
Sent: Wednesday, January 13, 2016 9:33 AM
To: Andrea Ogston
Subject: Regional conference calls scheduled to discuss OSB Disciplinary System Review Committee reports



Special BOG Update from OSB President Ray Heysell

Colleagues:

I am sending this special update to invite your participation in the Board of Governors' consideration of possible changes to our disciplinary system. The board received a report from the Disciplinary System Review Committee at its Nov. 20, 2015 meeting, and subsequently several minority reports and comments. The reports, comments and background information [are available online here](#).

Your comments are welcome and encouraged. To invite broader discussion we have scheduled a series of conference calls by bar region.

Here is the information for your region:

Region 5: Hosted by Josh Ross, Michael Levelle, John Mansfield, Per Ramfjord, Kate von Ter Stegge and Christine Costantino

Date: Thursday, January 21

Time: Noon

Phone: 866-910-4857; Passcode: 671660

Please join the discussion if you are interested and available – there is no need to reply to this message. If you are not able to participate I still encourage you to review the materials online and submit any comments via email to president@osbar.org.

Very truly yours,

Ray Heysell
OSB President

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Camille Greene

From: James C. Chaney
Sent: Wednesday, January 20, 2016 12:06 PM
To: Helen Hierschbiel
Subject: FW: Discipline Meeting Today

From: Brad Litchfield [<mailto:Brad@eugenelaw.com>]
Sent: Wednesday, January 20, 2016 9:07 AM
To: Jim Chaney
Subject: Discipline Meeting Today

Jim,

I had the best of intentions of getting you a strongly worded analysis of what changes I feel are merited in Oregon discipline. I'm in trial and have not been able to get to it.

My quick view of the matter is that SPRB as it exists allows practicing Oregon lawyers to be heavily and actively involved in the discipline structure of the state. The proposals gut that public involvement by turning the SPRB into a rubber stamp for discipline counsel. To be sure, I have the greatest respect for and admiration for our current staff of discipline counsel.

However, in our meetings each month, we as an SPRB board disagree with the discipline counsel regularly and we are able to inject the perspective of a practicing lawyer into the process, that is both healthy and helpful. Oregon lawyers are better served by having professional discipline counsel's work be scrutinized by the working lawyers that compose the SPRB. To eliminate that role would be unwise.

E. Bradley Litchfield | Attorney at Law | **Hutchinson Cox** | 940 Willamette Street, Suite 400, Eugene, OR 97401
| PO Box 10886, Eugene, OR 97440 | **541-686-9160** | 541-343-8693 (fax)

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Camille Greene

From: James C. Chaney
Sent: Wednesday, January 20, 2016 12:06 PM
To: Helen Hierschbiel
Subject: FW: SPRB changes

From: Martha J Rodman [<mailto:rodman@gleaveslaw.com>]
Sent: Wednesday, January 20, 2016 8:59 AM
To: 'jchaney@thechaneyfirm.com'
Cc: 'brad@eugenelaw.com' (brad@eugenelaw.com)
Subject: SPRB changes

Jim,

I won't be able to participate today in the discussion.

I have some thoughts re the proposed changes.

As background, I was on the SPRB several years ago.

First, I do not think that the Trial Judge should be a permanent paid professional, position.

I think that a Professional Trial Judge will be more prosecution oriented.

A Professional Trial Judge is going to have a "cozy" relationship with DC staff (who are great people; this is not personal).

A Professional Trial Judge may be viewed as having "Portland" values; it is very likely that a Professional Trial Judge will live in the Portland area, and will be from that area.

More cases may be tried, because if you have a paid Judge, that Judge will want/need cases to try. That won't be expressed, but I think it will be the inevitable result.

A Professional Trial Judge will end up being out of touch of what the typical lawyer in Oregon faces and will as a result, render harsher decisions than would a volunteer Trial Panel.

A Professional Trial Judge will cost much more than the current system. The judge will be paid a good salary, plus benefits and will have a staff, office equipment, training, etc. All that will end up costing much more than is predicted and much more than is currently paid (I assume).

Second, defense counsel should **not** have access to the DC attorneys' analysis and recommendations.

Not sure if defense counsel should have access to witness statements, etc. Probably yes to that but NOT to the analysis. That would result in DC not fully advising the SPRB and that would not be good.

Third, if we are going to make radical changes, which I don't think are warranted, a change that could be made would be to

Have an intermediate sanction. We currently have a Private Admonition, a Public Reprimand and then Suspension (not to mention disbarment).

On the SPRB, it seemed that there were situations where perhaps a Private Reprimand would have been appropriate.

Professional staff may not realize it, but if you asked various SPRB members, they would tell you that there were cases where we would think (if not say) "Gee, I didn't realize that that was required; I didn't realize you could get in trouble for that; or I don't know what I would have done in that situation". That reaction often came when the charge was the 8.4 "conduct adverse to the administration of justice" (paraphrase because I don't have the Code in front of me). That rule is so vague that a lot of conduct could be charged under it.

Fourth, when defense counsel and DC are negotiating, I agree that DC should not have to consult with the SPRB, as that does cause some delay.

Of course, a way to make delays less likely, would be to have the SPRB say: “settle it from one sanction to another, we trust your discretion”.

The SPRB is enormously hard working. They provide the view of the practicing lawyer to the DC. (I think more of the SPRB should be private lawyers who have not retired---maybe 15 to 25 years of experience.) why does that matter? The disciplinary arm of the bar, should be supported and respected by the practicing lawyers.

(yes, obviously, the public has to respect it also, but the people who may be judged by it, need to respect it, also).

I'd be glad to talk,

Thanks,

Martha Rodman

rodman@gleaveslaw.com

p. (541)686-8833 | f. (541)345-2034 | gleaveslaw.com



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Camille Greene

From: Suzanne Trujillo [suztrujillo@gmail.com]
Sent: Tuesday, January 26, 2016 10:22 AM
To: OSB President
Subject: Fwd: Oregon Minority Lawyers Association Luncheon Invite

Mr. Heysell,

I am writing to follow up on my email from last week about the Oregon Minority Lawyers Association luncheon. We would love to continue the tradition of this event!

Thank you,

Suzanne Trujillo

----- Forwarded message -----

From: **Suzanne Trujillo** <suztrujillo@gmail.com>
Date: Tue, Jan 19, 2016 at 3:07 PM
Subject: Oregon Minority Lawyers Association Luncheon Invite
To: president@osbar.org

Mr. Heysell,

Congratulations on your position as President of the Oregon State Bar!

My name is Suzanne Trujillo and I am a Member-at-Large on the Board of the Oregon Minority Lawyers Association (OMLA). Each year, OMLA hosts a luncheon in Portland with the new President to facilitate a conversation between the legal community and the President in an informal, conversational setting. We have found this to be a very valuable event for everyone. With that, I would like to invite you to speak at the President's Luncheon. Generally the event takes place towards the end of February and is held at Habibi Lebanese Restaurant in downtown Portland.

Are there a few dates in the later part of February, or even early in March, that would work for you? In an attempt to not conflict with other events in the legal community, I'd like to rule out Tuesday February 23 and Thursdays February 25 and March 3 for Multnomah Bar Association lunchtime CLEs.

Again, congratulations!

-Suzanne Trujillo

To: President Ray Heysell, Oregon State Bar
From: Hon. Robert D. Durham, Senior Judge
Re: Comments on Report of Disciplinary System Review Committee
Date: February 5, 2016

I received your January 13, 2016, invitation to submit comments regarding the November 19, 2015, report of the Disciplinary System Review Committee. Thank you for the opportunity to comment. The following comments are mine alone and are not attributable to either the Oregon Supreme Court or the Oregon Judicial Department.

I did participate in the January 21 group telephone conference call with several Oregon State Bar Board of Governors members and other callers regarding the DSRC report. During that conference call, Board of Governors members Joshua L. Ross and Michael D. Levelle requested that I submit my comments in writing. I am happy to do. This memorandum responds to their request.

The DSRC report is generally well-prepared and quite helpful. The report notes that its discussion and recommendations touch on a number of areas of the Bar's rules and not only those topics mentioned in the previous recommendations of the ABA evaluation committee. I too will follow that approach in my comments.

At page 3, footnote 5, the report suggests the use of distinctive terminology in referring to the "dismissal" of complaints from clients to the Client Assistance Office and those complaints approved by the SPRB. I agree with that suggestion but I also conclude that the ambiguity of the word "complaint" creates problems that are not necessary. As that footnote indicates, the term "complaint" can refer to more than one legal act. The resulting uncertainty creates needless confusion for the Bar and the public.

For example, the Bar may inform a lawyer that a client has submitted a "complaint" of misconduct and seek the lawyer's response. After the Bar receives the lawyer's response, the Bar may indicate that it will take no action on the "complaint." Later (perhaps many years later), the lawyer may seek employment or a public office, and may encounter questions about whether the lawyer has been the subject of a "complaint" of professional misconduct. Because the rules do not carefully define what constitutes a "complaint," the lawyer will have to explain that there was a "complaint" of unethical behavior from

a client but that the Bar “dismissed” it after an investigation. That is true even though most lawyers understand that a genuine “complaint” of professional misconduct is a formal complaint issued or approved by the State Professional Responsibility Review Board or the Disciplinary Counsel’s Office, not a letter or telephone call from an unhappy client to the Bar.

To remedy that problem, those who draft the Bar Rules should clarify not only what constitutes a “complaint” of professional misconduct but also what *does not* constitute a complaint. My suggestion assumes, of course, that I am correct in my understanding that a communication to the Bar from an unhappy client, by itself, should not be regarded as a “complaint” of professional misconduct. Clients may communicate to the Bar their unhappiness about their legal representation or their legal circumstances with little or no real understanding of the relevant facts, the law, or the pertinent standards of professional conduct. If the Disciplinary Counsel’s Office looks into a client communication of that sort and concludes that no professional misconduct occurred, the lawyer should not have to report that matter as a “complaint of professional misconduct” for the remainder of his or her legal career.

To that end, the Bar Rules should indicate that a client communication to the Bar about a lawyer’s behavior is a “statement,” “report,” “information,” “notice,” or some synonym of those terms, but should avoid describing the client’s submission as a “complaint” of misconduct. Moreover, the Bar Rules should state that such a client communication *is not* a complaint of professional misconduct under the Bar’s procedures. Finally the Bar Rules should clearly indicate that only a formal charge of misconduct issued or approved by the relevant Bar entity *is* a complaint of professional misconduct under Bar Rules.

The Bar also could help in this regard by avoiding using the term “dismissal” or its equivalent in describing the procedural decision to take no action after an investigation of a client communication about lawyer behavior. The term “dismissal” should be reserved for the determination that a formal complaint of misconduct by the Bar lacks merit and any related legal misconduct proceeding against a lawyer should be terminated.

At page four, in the second bulleted item, the report refers to a lawyer’s failure to answer a formal complaint of misconduct. It is important for the rule drafters to bear in mind that an accused lawyer’s failure to file an answer to a formal complaint of discipline is conceptually distinct from a lawyer’s failure to answer an inquiry from Disciplinary Counsel’s Office about a communication from

an unhappy client. A lawyer has a critically important duty to cooperate with the Bar's efforts to investigate potential charges of misconduct. However, a lawyer is entitled, as a procedural matter, to file an answer to a formal complaint of misconduct from a Bar entity; a lawyer has no duty to do so. The rules should not imply that, by choosing not to file an answer to a formal complaint of discipline, a lawyer is declining to fulfill the duty to cooperate with the Bar.

At page 15, the DSRC report recommends the creation of a new Bar position known as Presiding Disciplinary Judge. The report acknowledges that the new "judge" would not be a "judge" within the legal meaning of that term.

I can predict that the use of the term "judge" for that position likely will be controversial within the community of Oregon judges who do qualify for that label under Oregon law. In 1987, I chaired the Oregon Commission on Administrative Hearings at the request of the Oregon Governor. That Commission studied, among other things, whether to recommend the use of the title "Administrative Law Judge" in statutes describing certain state administrative hearing officers. The Commission received several complaints from sitting judges over the potential application of the term "judge" to administrative hearing officers who were not judges under Oregon law. Despite those complaints, the Commission recommended the change to "Administrative Law Judge" in its report to the Governor and the Legislature. The legislature responded by rejecting that proposed change. However, several sessions later, the Oregon Legislature did adopt that change in terminology for many of the hearing officers who presided over administrative hearings in state government.

I report the foregoing simply to indicate that the deliberations of the Oregon Commission on Administrative Hearings in the late 1980s and the subsequent decision of the legislature, as noted above, may provide helpful context for the recommendation of the DSRC. At present, I take no position on whether the Bar should create a new position known as "Presiding Disciplinary Judge."

At page 17, the report discusses expungement of dismissed complaints of misconduct. Two issues arise from that discussion.

First, the rule drafters must bear in mind the point that I mentioned earlier in this memorandum about the needed distinction between, on the one hand, a communication from an unhappy client about a lawyer's conduct and, on the other hand, a formal complaint of misconduct advanced by a Bar entity. Any discussion of "expungement" must take into account whether the procedural

event that is the subject of “expungement” falls into the first or the second of those distinct categories.

Second, the report must answer the question whether the expungement entitles the affected lawyer thereafter to lawfully treat the expunged event as if it did not ever exist and to so state in any later inquiries about the lawyer’s disciplinary record with the Oregon State Bar from employers, governmental entities, and the like. At present, the report addresses the subject of expungement as if it were only a matter concerning the retention or removal of complaint documents from Bar files.

At pages 17 and 18, the report discusses the subject of reciprocal discipline. The report indicates that the DSRC recommends the adoption of a “rebuttable presumption” that the Bar will impose on an Oregon lawyer disciplined in another state the identical disciplinary penalty imposed by the other state’s disciplinary body or court. The report indicates that the other state’s disciplinary sanction will be imposed by the Bar unless either party “makes a case” for a different sanction.

That passage of the report is difficult to understand. In my view, the adoption of another jurisdiction’s factual findings regarding a disciplinary matter is uncontroversial. However, Oregon has its own standards for appropriate disciplinary sanctions in many cases. There should not be a “rebuttable presumption” (a genuine misuse of that legal term) in favor of another state’s chosen sanction for misconduct committed in another state. That is especially so when Oregon’s rule fails to indicate just what a party must do to “make[] a case” to overcome the so-called “presumption” in favor of the original state’s penalty. At present, the SPRB must make a judgment about what penalty Oregon would impose for similar conduct committed in Oregon. That is a valuable feature of Oregon’s present system and should be retained for any Bar entity or officer responsible for determining the appropriate sanction in the context of reciprocal discipline.

At pages 25 and 26, the report discusses potential changes in the procedures that carry out a lawyer’s involuntary transfer to inactive status. I have two comments.

First, the rules drafters should bear in mind that due process principles apply to a lawyer’s involuntary transfer to inactive status. The affected lawyer must receive, at some meaningful time, a notice of the proposed action and be given an opportunity to respond to the proposed action. In most cases, that

opportunity must precede the formation of the decision to transfer. The rules should expressly provide procedures that comply with the minimum requirements of due process.

Second, the rules should take care not to prescribe requirements that purport to control the proceedings before the Oregon Supreme Court or that may conflict with other aspects of Oregon law. The report's suggestion of a potential request to the court to seal files should be advanced only after the Bar satisfies itself that the sealing of files would be permissible under the Oregon Public Records Law and the "open courts" clause of the Oregon Constitution, Article I, section 10.

Thank you again for the opportunity to comment on the report of the DSRC.



CAROL J. BERNICK
CHIEF EXECUTIVE OFFICER

MEMORANDUM

DATE: January 7, 2016
TO: OSB Board of Governors
FROM: Carol J. Bernick
RE: 2015 Claims Attorney and Defense Counsel Evaluations

Since the early 1990’s, we have sent our Covered Parties evaluation forms at the closure of their claim files for them to complete and return to us. Since we are a mandatory program for the Covered Parties and they have no choice but to buy their professional liability coverage with the PLF, we felt it was important to give them an opportunity to express how their claims have been handled. For your information, I have enclosed a copy of the evaluation form that is sent to each Covered Party upon closure of the file.

We have always received high marks from our Covered Parties. We question them in three major categories about how the claim was handled: 1) overall handling; 2) handling by PLF Claims Attorney; and 3) representation by defense or repair counsel.

We closed 951 claims during 2015. We received 408¹ evaluations (42.9%) from the Covered Parties. The results of the 2015 evaluations are as follows:

PLF OVERALL:

Total Responses	Very Satisfied	%	Satisfied	%	Not Satisfied	%
408	364	89.22%	40	9.8%	4	0.98%

PLF CLAIMS ATTORNEY:

Total Responses	Very Satisfied	%	Satisfied	%	Not Satisfied	%
405	369	91.11%	31	7.65%	5	1.23%

¹ Under “PLF Claims Attorney” the total responses is listed as 405. The apparent inconsistency is caused by some covered parties not responding to this question.

MEMORANDUM

January 7, 2016

Page 2

DEFENSE COUNSEL:

Total Responses	Very Satisfied	%	Satisfied	%	Not Satisfied	%
244	216	88.52%	27	11.07%	1	0.41%

We are pleased with both the level of response (42.9%) and the degree of satisfaction expressed by our Covered Parties. The evaluations reflected 99.02% of our Covered Parties were very satisfied / satisfied with the overall handling of their claim, 98.76% were very satisfied / satisfied with the performance of their PLF Claims Attorneys, and 99.59% were very satisfied / satisfied with the performance of their defense or repair counsel. It is hard to imagine how we could obtain more favorable responses.

CJB/ms
Enclosure



CONFIDENTIAL EVALUATION FORM

Our claims experience indicates that many of our covered parties have ideas, feedback, and information which assist us in preventing future losses. We request your cooperation in answering the following questions. If the space provided is inadequate for your comments, please feel free to attach additional pages. All information will remain confidential.

Covered Party:

Bar No.:

Claimant:

PLF File No:

PLF Claims Staff Attorney:

Assigned Defense Counsel:

I. PLF CLAIMS STAFF:

I. (a) How satisfied were you overall with the handling and disposition of the above referenced matter?

Very Satisfied Satisfied Not Satisfied

I. (b) How satisfied were you overall with the services provided by the PLF staff attorney?

Very Satisfied Satisfied Not Satisfied

I. (c) Were you kept fully informed by the PLF staff attorney? Yes No

I. (d) If this matter was settled, did you find the settlement reasonable? Yes No

I. (e) Other comments or suggestions:

II. DEFENSE OR REPAIR COUNSEL:

(complete only if outside defense or repair counsel was assigned to this matter)

II. (a) How satisfied were you overall with the services of the assigned defense or repair counsel?

Very Satisfied Satisfied Not Satisfied

II. (b) Were you kept fully informed at all stages? Yes No

II. (c) Did you find the fees charged reasonable? Yes No

III. LOSS PREVENTION / GENERAL:

III. (a) What do you feel prompted this legal malpractice claim/repair?

III. (b) What advice would you pass on to others who face similar situations?

III. (c) Using the benefit of hindsight, what would you have done differently?

I would like free and confidential office systems assistance. Please have a PLF Practice Management Advisor contact me. If you would like to call for an appointment, call 503-639-6911 or 1-800-452-1639.

The Oregon Attorney Assistance Program provides free and confidential assistance with alcohol & chemical dependency, career satisfaction, stress management, procrastination, and gambling addiction. If you would like more information, contact Mike Long (503) 226-1057, ext. 11; Shari R. Gregory (503) 226-1057, ext. 14; Doug Querin (503) 226-1057, ext. 12; or Kyra Hazilla (503) 226-1057, ext. 13.

Number of lawyers in your firm at the time the alleged error occurred: _____

Areas of law in which you practiced at the time the alleged error occurred (by percentage):

Business	_____	%	Real Estate	_____	%
Criminal	_____	%	Workers Comp.	_____	%
Domestic Relations	_____	%	Other (specify):	_____	
Estate & Probate	_____	%		_____	%
PI Plaintiff	_____	%		_____	%
			TOTAL:	_____	%

Estimated number of hours you spent on this claim: _____

Thank you for providing us with this feedback. **PLEASE RETURN WITHIN 10 DAYS TO:**

**Professional Liability Fund (Attn.: Nancy)
PO Box 231600
Tigard, OR 97281-1600**

Oregon State Bar
Professional Liability Fund
Financial Statements
12/30/2015

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6	Excess Program Operating Expenses
7	Combined Investment Schedule

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Oregon State Bar
Professional Liability Fund
Combined Primary and Excess Programs
Statement of Net Position
12/30/2015

<u>ASSETS</u>		
	<u>THIS YEAR</u>	<u>LAST YEAR</u>
Cash	\$3,890,668.43	\$7,437,955.20
Investments at Fair Value	49,038,036.08	48,251,030.35
Assessment Installment Receivable	0.00	970.00
Due from Reinsurers	2,939,481.05	246,975.00
Other Current Assets	230,656.40	580,967.12
Net Fixed Assets	752,192.37	852,010.17
Claim Receivables	27,626.98	71,241.19
Other Long Term Assets	<u>11,123.09</u>	<u>11,834.29</u>
TOTAL ASSETS	<u>\$56,889,784.40</u>	<u>\$57,452,983.32</u>
 <u>LIABILITIES AND FUND POSITION</u>		
	<u>THIS YEAR</u>	<u>LAST YEAR</u>
Liabilities:		
Accounts Payable and Other Current Liabilities	\$108,595.35	\$356,800.43
Due to Reinsurers	\$51,724.54	\$36,215.14
Deposits - Assessments	10,847,994.00	10,580,097.17
Liability for Compensated Absences	354,702.17	354,702.17
Liability for Indemnity	15,413,278.55	13,200,000.00
Liability for Claim Expense	12,786,721.71	15,300,000.00
Liability for Future ERC Claims	3,100,000.00	2,700,000.00
Liability for Suspense Files	1,600,000.00	1,500,000.00
Liability for Future Claims Administration (AOE)	2,600,000.00	2,500,000.00
Total Liabilities	<u>\$46,863,016.32</u>	<u>\$46,527,814.91</u>
Change in Net Position:		
Retained Earnings (Deficit) Beginning of the Year	\$10,928,972.39	\$9,270,287.61
Year to Date Net Income (Loss)	<u>(902,204.31)</u>	<u>1,654,880.80</u>
Net Position	<u>\$10,026,768.08</u>	<u>\$10,925,168.41</u>
TOTAL LIABILITIES AND FUND POSITION	<u>\$56,889,784.40</u>	<u>\$57,452,983.32</u>

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2(a)

Oregon State Bar
Professional Liability Fund
Primary Program
Balance Sheet
12/30/2015

<u>ASSETS</u>		
	<u>THIS YEAR</u>	<u>LAST YEAR</u>
Cash	\$2,304,501.70	\$6,232,275.16
Investments at Fair Value	49,969,240.27	45,987,600.43
Due From Excess Fund	0.00	23,214.97
Other Current Assets	230,656.40	557,752.15
Net Fixed Assets	752,192.37	852,010.17
Claim Receivables	27,626.98	71,241.19
Other Long Term Assets	<u>11,123.09</u>	<u>11,834.29</u>
TOTAL ASSETS	<u>\$53,295,340.81</u>	<u>\$53,735,928.36</u>
 <u>LIABILITIES AND FUND EQUITY</u>		
	<u>THIS YEAR</u>	<u>LAST YEAR</u>
Liabilities:		
Accounts Payable and Other Current Liabilities	\$109,204.05	\$330,402.01
Deposits - Assessments	9,538,513.00	9,402,680.67
Liability for Compensated Absences	354,702.17	354,702.17
Liability for Indemnity	15,413,278.55	13,200,000.00
Liability for Claim Expense	12,786,721.71	15,300,000.00
Liability for Future ERC Claims	3,100,000.00	2,700,000.00
Liability for Suspense Files	1,600,000.00	1,500,000.00
Liability for Future Claims Administration (ULAE)	2,600,000.00	2,500,000.00
Total Liabilities	<u>\$45,502,419.48</u>	<u>\$45,287,784.85</u>
Fund Equity:		
Retained Earnings (Deficit) Beginning of the Year	\$8,220,400.92	\$6,561,716.14
Year to Date Net Income (Loss)	<u>(650,846.33)</u>	<u>1,886,427.37</u>
Total Fund Equity	<u>\$7,569,554.59</u>	<u>\$8,448,143.51</u>
TOTAL LIABILITIES AND FUND EQUITY	<u>\$53,071,974.07</u>	<u>\$53,735,928.36</u>

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2(b)

Oregon State Bar
Professional Liability Fund
Excess Program
Balance Sheet
12/30/2015

ASSETS

	<u>THIS YEAR</u>	<u>LAST YEAR</u>
Cash	\$1,586,166.73	\$1,205,680.04
Assessment Installment Receivable	0.00	970.00
Due from Reinsurers	2,939,481.05	246,975.00
Investments at Fair Value	(931,204.19)	<u>2,263,429.92</u>
TOTAL ASSETS	<u>\$3,594,443.59</u>	<u>\$3,717,054.96</u>

LIABILITIES AND FUND EQUITY

	<u>THIS YEAR</u>	<u>LAST YEAR</u>
Liabilities:		
Accounts Payable & Refunds Payable	(\$608.70)	\$3,183.45
Due to Primary Fund	\$0.00	\$23,214.97
Due to Reinsurers	51,724.54	36,215.14
Deposits of Next Year's Assessment	<u>1,309,481.00</u>	<u>1,177,416.50</u>
Total Liabilities	<u>\$1,360,596.84</u>	<u>\$1,240,030.06</u>
Fund Equity:		
Retained Earnings (Deficit) Beginning of Year	\$2,708,571.47	\$2,708,571.47
Year to Date Net Income (Loss)	(251,357.98)	(231,546.57)
Total Fund Equity	<u>\$2,457,213.49</u>	<u>\$2,477,024.90</u>
TOTAL LIABILITIES AND FUND EQUITY	<u>\$3,817,810.33</u>	<u>\$3,717,054.96</u>

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**Oregon State Bar
Professional Liability Fund
Primary Program
Statement of Revenues, Expenses, and Changes in Net Position
12 Months Ended 12/30/2015**

	YEAR TO DATE <u>ACTUAL</u>	YEAR TO DATE <u>BUDGET</u>	<u>VARIANCE</u>	YEAR TO DATE <u>LAST YEAR</u>	<u>ANNUAL BUDGET</u>
REVENUE					
Assessments	\$24,326,359.67	\$24,423,000.00	\$96,640.33	\$24,668,299.67	\$24,423,000.00
Installment Service Charge	334,667.00	335,000.00	333.00	333,808.00	335,000.00
Other Income	91,932.83	0.00	(91,932.83)	45,559.95	0.00
Investment Return	(289,722.15)	444,186.00	733,908.15	2,372,765.60	444,186.00
TOTAL REVENUE	<u>\$24,463,237.35</u>	<u>\$25,202,186.00</u>	<u>\$738,948.65</u>	<u>\$27,420,433.22</u>	<u>\$25,202,186.00</u>
EXPENSE					
Provision For Claims:					
New Claims at Average Cost	\$17,354,000.00			\$19,173,000.00	
Actuarial Adjustment to Reserves	(280,073.01)			(916,159.82)	
Net Changes in AOE Liability	100,000.00			200,000.00	
Net Changes in ERC Liability	400,000.00			300,000.00	
Net Changes in Suspense File Liab.	100,000.00			0.00	
Coverage Opinions	130,516.55			74,063.03	
General Expense	56,935.17			45,149.70	
Less Recoveries & Contributions	24,914.21			(19,502.61)	
Budget for Claims Expense		<u>\$18,602,670.00</u>			<u>\$18,602,670.00</u>
Total Provision For Claims	<u>\$17,886,292.92</u>	<u>\$18,602,670.00</u>	<u>\$716,377.08</u>	<u>\$18,856,550.30</u>	<u>\$18,602,670.00</u>
Expense from Operations:					
Administrative Department	\$2,514,555.46	\$2,616,163.93	\$101,608.47	\$2,529,034.95	\$2,616,163.93
Accounting Department	784,349.79	791,488.75	7,138.96	609,449.54	791,488.75
Loss Prevention Department	2,102,416.81	2,207,362.28	104,945.47	2,019,275.22	2,207,362.28
Claims Department	2,646,097.03	2,707,238.19	61,141.16	2,500,172.95	2,707,238.19
Allocated to Excess Program	(948,415.80)	(948,416.00)	(0.20)	(1,120,788.96)	(948,416.00)
Total Expense from Operations	<u>\$7,099,003.29</u>	<u>\$7,373,837.15</u>	<u>\$274,833.86</u>	<u>\$6,537,143.70</u>	<u>\$7,373,837.15</u>
Contingency (4% of Operating Exp)	\$0.00	\$245,137.00	\$245,137.00	\$0.00	\$245,137.00
Depreciation and Amortization	\$145,767.47	\$169,800.00	\$24,032.53	\$164,677.85	\$169,800.00
Allocated Depreciation	(16,980.00)	(16,980.00)	0.00	(24,366.00)	(16,980.00)
TOTAL EXPENSE	<u>\$25,114,083.68</u>	<u>\$26,374,464.15</u>	<u>\$1,260,380.47</u>	<u>\$25,534,005.85</u>	<u>\$26,374,464.15</u>
NET POSITION - INCOME (LOSS)	<u>(\$650,846.33)</u>	<u>(\$1,172,278.15)</u>	<u>(\$521,431.82)</u>	<u>\$1,886,427.37</u>	<u>(\$1,172,278.15)</u>

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Oregon State Bar
Professional Liability Fund
Primary Program
Statement of Operating Expense
12 Months Ended 12/30/2015

<u>EXPENSE:</u>	<u>CURRENT</u> <u>MONTH</u>	<u>YEAR</u> <u>TO DATE</u> <u>ACTUAL</u>	<u>YEAR</u> <u>TO DATE</u> <u>BUDGET</u>	<u>VARIANCE</u>	<u>YEAR</u> <u>TO DATE</u> <u>LAST YEAR</u>	<u>ANNUAL</u> <u>BUDGET</u>
Salaries	\$513,190.71	\$4,314,896.51	\$4,387,817.84	\$72,921.33	\$4,189,074.39	\$4,387,817.84
Benefits and Payroll Taxes	138,214.65	1,575,694.07	1,653,606.07	77,912.00	1,470,139.14	1,653,606.07
Investment Services	9,665.00	38,314.00	40,000.00	1,686.00	28,095.00	40,000.00
Legal Services	0.00	31,521.01	33,000.00	1,478.99	11,460.88	33,000.00
Financial Audit Services	0.00	22,800.00	23,000.00	200.00	22,800.00	23,000.00
Actuarial Services	0.00	46,565.52	58,800.00	12,234.48	24,208.75	58,800.00
Information Services	2,437.00	42,468.81	56,000.00	13,531.19	83,787.89	56,000.00
Document Scanning Services	0.00	36,007.69	35,000.00	(1,007.69)	44,858.60	35,000.00
Other Professional Services	9,593.45	155,105.30	164,991.50	9,886.20	111,059.15	164,991.50
Staff Travel	1,353.07	21,336.57	19,850.00	(1,486.57)	21,562.35	19,850.00
Board Travel	8,239.77	53,467.80	58,450.00	4,982.20	35,243.74	58,450.00
NABRICO	0.00	13,818.96	13,350.00	(468.96)	7,680.21	13,350.00
Training	74.69	20,621.48	37,500.00	16,878.52	29,807.71	37,500.00
Rent	43,418.92	520,064.54	520,065.00	0.46	512,378.74	520,065.00
Printing and Supplies	6,596.85	84,225.69	80,000.00	(4,225.69)	82,069.05	80,000.00
Postage and Delivery	1,860.25	30,781.27	28,350.00	(2,431.27)	27,481.80	28,350.00
Equipment Rent & Maintenance	896.87	48,940.42	58,250.00	9,309.58	45,569.84	58,250.00
Telephone	4,036.81	50,452.85	49,560.00	(892.85)	49,325.50	49,560.00
L P Programs (less Salary & Benefits)	34,535.42	440,069.34	461,494.00	21,424.66	483,531.78	461,494.00
Defense Panel Training	484.08	94,340.25	95,722.30	1,382.05	1,915.35	95,722.30
Bar Books Grant	16,666.67	200,000.04	200,000.00	(0.04)	200,000.00	200,000.00
Insurance	0.00	38,663.57	41,894.44	3,230.87	38,344.49	41,894.44
Library	7,514.52	32,345.68	31,000.00	(1,345.68)	31,740.69	31,000.00
Subscriptions, Memberships & Other	3,715.80	134,907.89	172,552.00	37,644.11	101,242.94	172,552.00
Allocated to Excess Program	(79,034.65)	(948,415.80)	(948,416.00)	(0.20)	(1,120,788.96)	(948,416.00)
TOTAL EXPENSE	<u>\$723,459.88</u>	<u>\$7,098,993.46</u>	<u>\$7,371,837.15</u>	<u>\$272,843.69</u>	<u>\$6,532,589.03</u>	<u>\$7,371,837.15</u>

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Oregon State Bar
Professional Liability Fund
Excess Program
Statement of Revenue, Expenses, and Changes in Net Position
12 Months Ended 12/30/2015

	YEAR TO DATE <u>ACTUAL</u>	YEAR TO DATE <u>BUDGET</u>	<u>VARIANCE</u>	YEAR TO DATE <u>LAST YEAR</u>	ANNUAL <u>BUDGET</u>
<u>REVENUE</u>					
Ceding Commission	\$762,928.71	\$760,000.00	(\$2,928.71)	\$811,538.33	\$760,000.00
Prior Year Adj. (Net of Reins.)	883.67	0.00	(883.67)	3,437.30	0.00
Profit Commission	(4,264.74)	0.00	4,264.74	(22,021.37)	0.00
Installment Service Charge	40,447.00	42,000.00	1,553.00	39,808.00	42,000.00
Investment Return	(23,272.12)	<u>186,131.00</u>	<u>209,403.12</u>	<u>218,440.03</u>	<u>186,131.00</u>
TOTAL REVENUE	<u>\$776,722.52</u>	<u>\$988,131.00</u>	<u>\$211,408.48</u>	<u>\$1,051,202.29</u>	<u>\$988,131.00</u>
<u>EXPENSE</u>					
Operating Expenses (See Page 6)	\$1,011,100.50	\$998,916.00	(\$12,184.50)	\$1,258,382.86	\$998,916.00
Allocated Depreciation	<u>\$16,980.00</u>	<u>\$16,980.00</u>	<u>\$0.00</u>	<u>\$24,366.00</u>	<u>\$16,980.00</u>
NET POSITION - INCOME (LOSS)	<u>(\$251,357.98)</u>	<u>(\$27,765.00)</u>	<u>\$223,592.98</u>	<u>(\$231,546.57)</u>	<u>(\$27,765.00)</u>

DRAFT

Oregon State Bar
Professional Liability Fund
Excess Program
Statement of Operating Expense
12 Months Ended 12/30/2015

	CURRENT MONTH	YEAR TO DATE ACTUAL	YEAR TO DATE BUDGET	VARIANCE	YEAR TO DATE LAST YEAR	ANNUAL BUDGET
EXPENSE:						
Salaries	\$44,559.08	\$534,708.96	\$534,709.00	\$0.04	\$698,710.15	\$534,709.00
Benefits and Payroll Taxes	15,961.66	191,539.92	191,540.00	0.08	258,653.29	191,540.00
Investment Services	335.00	1,686.00	2,500.00	814.00	1,905.00	2,500.00
Office Expense	0.00	0.00	0.00	0.00	0.00	0.00
Allocation of Primary Overhead	18,513.91	222,166.92	222,167.00	0.08	270,406.08	222,167.00
Reinsurance Placement & Travel	0.00	12,769.68	25,000.00	12,230.32	18,120.48	25,000.00
Training	0.00	0.00	500.00	500.00	0.00	500.00
Printing and Mailing	0.00	6,119.77	5,500.00	(619.77)	1,946.80	5,500.00
Program Promotion	1,110.00	23,169.05	15,000.00	(8,169.05)	8,625.00	15,000.00
Other Professional Services	0.00	299.30	2,000.00	1,700.70	16.05	2,000.00
Software Development	3,072.30	18,640.90	0.00	(18,640.90)	0.00	0.00
TOTAL EXPENSE	<u>\$83,551.95</u>	<u>\$1,011,100.50</u>	<u>\$998,916.00</u>	<u>(\$12,184.50)</u>	<u>\$1,258,382.86</u>	<u>\$998,916.00</u>

DRAFT

Oregon State Bar
Professional Liability Fund
Combined Investment Schedule
12 Months Ended 12/30/2015

	CURRENT MONTH <u>THIS YEAR</u>	YEAR TO DATE <u>THIS YEAR</u>	CURRENT MONTH <u>LAST YEAR</u>	YEAR TO DATE <u>LAST YEAR</u>
Dividends and Interest:				
Short Term Bond Fund	\$1,581.75	\$83,334.20	\$2,381.29	\$98,151.72
Intermediate Term Bond Funds	30,704.21	390,311.40	46,177.73	281,600.17
Domestic Common Stock Funds	52,280.59	189,000.59	54,525.95	173,993.05
International Equity Fund	86,219.48	86,219.48	98,367.91	98,367.91
Real Estate	46,826.13	181,737.55	31,432.66	150,218.20
Hedge Fund of Funds	0.00	0.00	0.00	0.00
Real Return Strategy	<u>130,193.18</u>	<u>288,440.24</u>	<u>167,651.02</u>	<u>336,906.26</u>
Total Dividends and Interest	<u>\$347,805.34</u>	<u>\$1,219,043.46</u>	<u>\$400,536.56</u>	<u>\$1,139,237.31</u>
Gain (Loss) in Fair Value:				
Short Term Bond Fund	(\$2,219.77)	(\$43,605.58)	(\$7,835.36)	\$33,624.99
Intermediate Term Bond Funds	(86,736.66)	(295,102.97)	(65,934.79)	243,437.14
Domestic Common Stock Funds	(248,387.84)	(113,276.72)	(54,098.31)	938,937.43
International Equity Fund	(384,014.80)	(573,498.26)	(479,876.40)	(205,884.44)
Real Estate	127,923.70	512,886.75	76,274.75	312,133.88
Hedge Fund of Funds	0.00	0.00	0.00	0.00
Real Return Strategy	<u>(28,015.76)</u>	<u>(1,019,440.95)</u>	<u>(258,488.47)</u>	<u>129,719.32</u>
Total Gain (Loss) in Fair Value	<u>(\$621,451.13)</u>	<u>(\$1,532,037.73)</u>	<u>(\$789,958.58)</u>	<u>\$1,451,968.32</u>
TOTAL RETURN	<u>(\$273,645.79)</u>	<u>(\$312,994.27)</u>	<u>(\$389,422.02)</u>	<u>\$2,591,205.63</u>
Portions Allocated to Excess Program:				
Dividends and Interest	\$2,886.78	\$38,716.57	\$5,960.07	\$70,758.29
Gain (Loss) in Fair Value	<u>(5,158.04)</u>	<u>(61,988.69)</u>	<u>(19,339.40)</u>	<u>147,681.74</u>
TOTAL ALLOCATED TO EXCESS PROGRAM	<u>(\$2,271.26)</u>	<u>(\$23,272.12)</u>	<u>(\$13,379.33)</u>	<u>\$218,440.03</u>

DRAFT

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: February 11-12, 2016

Memo Date: January 27, 2016

From: Carol J. Bernick, PLF CEO

Re: Cyber Extortion Coverage Added to 2016 Breach Response
Endorsement

Action Recommended

Please approve the recommended changes to the PLF Excess Plan. These changes will be presented to our board at its February 5, 2016 meeting. I will present the actual vote at the BOG meeting.

Background

In late December 2015, the PLF was contacted by our reinsurance brokers at AON with information about an optional enhancement to our current Cyber Liability and Breach Response Endorsement provided by the Beazley Group. Beazley offered, at no additional cost to the PLF or to our covered firms, to add language to our current Cyber Liability Endorsement that would include claims arising from cyber extortion events (the claims were previously excluded under the Endorsement).

Cyber extortion occurs when a business's computer system is attacked and data stored on the computers and/or networks is held under lock and key by extortionists and only released after a payment demand is met. Another term for this type of virus or attack is ransom ware. The PLF is aware of at least one cyber extortion attack made against a Covered Party in 2015. That claim was not covered under the 2015 Excess Breach Response Endorsement.

Beazley recognized that cyber extortion claims were an area of concern for many insurers (including the PLF), and decided to offer coverage for those claims as part of the existing Endorsement. The sublimit available to cover cyber extortion claims under the Endorsement would be \$10,000 with a \$2,000 deductible. Though cyber extortion demands are often quite small (many would not exceed the deductible), Beazley thinks it would be valuable to have these claims submitted and monitored under the Endorsement. This would be particularly valuable if additional claims resulted from the cyber extortion event that would be covered under the Endorsement.

Proposed language for this change to the current Endorsement is included on the following pages. Since this would constitute a change to the 2016 Claims Made Excess Plan, we are submitting it for BOG review and approval.

CYBER LIABILITY AND BREACH RESPONSE ENDORSEMENT

NOTICE

COVERAGE AGREEMENTS I.A., I.C. AND I.D. OF THIS ENDORSEMENT PROVIDE COVERAGE ON A CLAIMS MADE AND REPORTED BASIS AND APPLY ONLY TO CLAIMS FIRST MADE AGAINST A COVERED PARTY DURING THE COVERAGE PERIOD OR THE OPTIONAL EXTENSION PERIOD (IF APPLICABLE) AND REPORTED TO THE PLF DURING THE COVERAGE PERIOD OR AS OTHERWISE PROVIDED IN CLAUSE IX. OF THIS ENDORSEMENT. AMOUNTS INCURRED AS CLAIMS EXPENSES UNDER THIS ENDORSEMENT SHALL REDUCE AND MAY EXHAUST THE LIMIT OF LIABILITY.

COVERAGE AGREEMENT I.B. OF THIS ENDORSEMENT PROVIDES FIRST PARTY COVERAGE ON AN INCIDENT DISCOVERED AND REPORTED BASIS AND APPLIES ONLY TO INCIDENTS FIRST DISCOVERED BY A COVERED PARTY AND REPORTED TO THE PLF DURING THE COVERAGE PERIOD.

THIS ENDORSEMENT IS INTENDED TO COVER CERTAIN CLAIMS EXCLUDED UNDER THE PLF CLAIMS MADE PLAN AND PLF CLAIMS MADE EXCESS PLAN. HOWEVER, THE COVERAGE TERMS OF THIS ENDORSEMENT ARE DIFFERENT FROM THE PLF PLANS AND SHOULD BE REVIEWED CAREFULLY. THIS ENDORSEMENT DOES NOT MODIFY IN ANY RESPECT THE TERMS OF THE PLF CLAIMS MADE PLAN OR CLAIMS MADE EXCESS PLAN.

THIS IS A CLAIMS MADE AND REPORTED ENDORSEMENT.

SCHEDULE

Item 1. **The Firm and Covered Parties** qualifying as such under Section II - WHO IS A COVERED PARTY of the applicable PLF Claims Made Excess Plan and Declarations Sheet to which this endorsement is attached.

Item 2. **Coverage Period:** see Section 3 of the Declarations to which this endorsement is attached.

Item 3. **Limits of Liability:**

Endorsement Aggregate Limit of Liability for Coverage Agreements I.A. (Information Security & Privacy Liability), I.B. (Privacy Breach Response Services), I.C. (Regulatory Defense & Penalties), I.D. (Website and Media Content Liability), ~~and~~ I.E. (Crisis Management & Public Relations), and I.F. (Cyber Extortion Loss):

1-10 attorneys USD 100,000

11+ attorneys: USD 250,000

But sublimited to:

A. Aggregate sublimit of liability applicable to Coverage Agreement I.B. (Privacy Breach Response Services) USD 100,000

B. Aggregate sublimit of liability applicable to Coverage USD 50,000

Agreement I.B.1 (legal and forensic)

C. Aggregate sublimit of liability applicable to Coverage Agreement I.C. (Regulatory Defense & Penalties): USD 50,000

D. Aggregate sublimit applicable to Coverage Agreement I.E. (Crisis Management & Public Relations): USD 10,000

E. Aggregate sublimit of liability for all **Cyber Extortion Loss** under Coverage Agreement I.F.: USD 10,000

~~D.~~ The above sublimit of liability is part of, and not in addition to, the overall **Endorsement Aggregate Limit of Liability** set forth therein.

Item 4. **Retentions:**

A. Coverage Agreements I.A. (Information Security & Privacy Liability), I.C. (Regulatory Defense & Penalties), I.D. (Website and Media Content Liability) and I.E. (Crisis Management & Public Relations): USD 0

B. Coverage Agreement I.B. (Privacy Breach Response Services):

Each Incident, event or related incidents or events giving rise to an obligation to provide **Privacy Breach Response Services:**

1. Costs for services provided under Coverage Agreements I.B.1. (legal and forensic services) and I.B.2. (notification costs) combined: USD 0

2. Services provided under I.B.3. (Call Center Services) and I.B.4. (Credit Monitoring Program): Breaches involving an obligation to notify fewer than 100 individuals

C. Coverage Agreement I.F. (Cyber Extortion Loss):
Each **Extortion Threat** Retention: USD 2,000

Item 5. **Endorsement Retroactive Date:** see Section 7 of the Declarations to which this endorsement is attached.

In consideration for the premium charged for the **PLF Claims Made Excess Plan**, the following additional coverages are added to the **FIRM's PLF Claims Made Excess Plan**. The following provisions in the **PLF Claims Made Excess Plan** shall also apply to this Endorsement: SECTION II – WHO IS A COVERED PARTY, SECTION VIII – COVERAGE DETERMINATIONS, SECTION IX – ASSISTANCE, COOPERATION, AND DUTIES OF COVERED PARTY, paragraphs 1. to 3. of the PLF Claims Made Plan only, SECTION X – ACTIONS BETWEEN THE PLF AND COVERED PARTIES, SECTION XII – RELATION OF THE PLF COVERAGE TO INSURANCE COVERAGE OR OTHER COVERAGE, SECTION XIII – WAIVER AND ESTOPPEL and SECTION XV – ASSIGNMENT. Except as otherwise specifically set forth herein, no other provisions in the **PLF Claims Made Excess Plan** shall apply to this Endorsement.

I. COVERAGE AGREEMENTS

A. **Information Security & Privacy Liability**

To pay on behalf of a **Covered Party**:

Damages and Claims Expenses, in excess of the **Retention**, which a **Covered Party** shall become legally obligated to pay because of any **Claim**, including a **Claim** for violation of a **Privacy Law**, first made against any **Covered Party** during the **Coverage Period** or **Optional Extension Period** (if applicable) and reported in writing to the PLF during the **Coverage Period** or as otherwise provided in Clause IX. of this Endorsement for:

1. (a) theft, loss, or **Unauthorized Disclosure of Personally Identifiable Non-Public Information**; or
(b) theft or loss of **Third Party Corporate Information**;
that is in the care, custody or control of **The Firm**, or a third party for whose theft, loss or **Unauthorized Disclosure of Personally Identifiable Non-Public Information** or **Third Party Corporate Information** **The Firm** is legally liable (a third party shall include a Business Associate as defined by the Health Insurance Portability and Accountability Act (“HIPAA”)), provided such theft, loss or **Unauthorized Disclosure** first takes place on or after the **Retroactive Date** and before the end of the **Coverage Period**;
2. one or more of the following acts or incidents that directly result from a failure of **Computer Security** to prevent a **Security Breach**, provided that such act or incident first takes place on or after the **Retroactive Date** and before the end of the **Coverage Period**;
 - (a) the alteration, corruption, destruction, deletion, or damage to a **Data Asset** stored on **Computer Systems**;
 - (b) the failure to prevent transmission of **Malicious Code** from **Computer Systems** to **Third Party Computer Systems**; or
 - (c) the participation by **The Firm’s Computer System** in a **Denial of Service Attack** directed against a **Third Party Computer System**;
3. **The Firm’s** failure to timely disclose an incident described in Coverage Agreement I.A.1. or I.A.2. in violation of any **Breach Notice Law**; provided such incident giving rise to **The Firm’s** obligation under a **Breach Notice Law** must first take place on or after the **Retroactive Date** and before the end of the **Coverage Period**;
4. failure by a **Covered Party** to comply with that part of a **Privacy Policy** that specifically:
 - (a) prohibits or restricts **The Firm’s** disclosure, sharing or selling of a person’s **Personally Identifiable Non-Public Information**;
 - (b) requires **The Firm** to provide access to **Personally Identifiable Non-Public Information** or to correct incomplete or inaccurate **Personally Identifiable Non-Public Information** after a request is made by a person; or
 - (c) mandates procedures and requirements to prevent the loss of **Personally Identifiable Non-Public Information**;

provided the acts, errors or omissions that constitute such failure to comply with a **Privacy Policy** must first take place on or after the **Retroactive Date** and before the end of the **Coverage Period**, and a **Covered Party** must, at the time of such acts, errors or omissions have in force a **Privacy Policy** that addresses those subsections above that are relevant to such **Claim**; or

B. Privacy Breach Response Services

To provide **Privacy Breach Response Services** to a **Covered Party** in excess of the **Retention** because of an incident (or reasonably suspected incident) described in Coverage Agreement I.A.1. or I.A.2. that first takes place on or after the **Retroactive Date** and before the end of the **Coverage Period** and is discovered by a **Covered Party** and is reported to the PLF during the **Coverage Period**.

Privacy Breach Response Services means the following:

1. Costs incurred:
 - (a) for a computer security expert to determine the existence and cause of any electronic data breach resulting in an actual or reasonably suspected theft, loss or **Unauthorized Disclosure of Personally Identifiable Non-Public Information** which may require a **Covered Party** to comply with a **Breach Notice Law** and to determine the extent to which such information was accessed by an unauthorized person or persons; and
 - (b) for fees charged by an attorney to determine the applicability of and actions necessary by a **Covered Party** to comply with **Breach Notice Law** due to an actual or reasonably suspected theft, loss or **Unauthorized Disclosure of Personally Identifiable Non-Public Information**;

provided amounts covered by (a) and (b) in this paragraph combined shall not exceed the amount set forth in Item 3.B. of the Schedule in the aggregate for the **Coverage Period**.

2. Costs incurred to provide notification to:
 - (a) individuals who are required to be notified by a **Covered Party** under the applicable **Breach Notice Law**; and
 - (b) in the PLF's discretion, to individuals affected by an incident in which their **Personally Identifiable Non-Public Information** has been subject to theft, loss, or **Unauthorized Disclosure** in a manner which compromises the security or privacy of such individual by posing a significant risk of financial, reputational or other harm to the individual.
3. The offering of **Call Center Services** to **Notified Individuals**.
4. The offering of the **Credit Monitoring Product** to **Notified Individuals** residing in the United States whose **Personally Identifiable Non-Public Information** was compromised or reasonably believed to be compromised as a result of theft, loss or **Unauthorized Disclosure**. Such offer will be provided in the notification communication provided pursuant to paragraph I.B.2. above.
5. **The Firm** will be provided with access to educational and loss control information provided by or on behalf of the PLF at no charge.

Privacy Breach Response Services and the conditions applicable thereto are set forth more fully in Clause XIII. of this Endorsement, Conditions Applicable to Privacy Breach Response Services.

Privacy Breach Response Services shall not include any internal salary or overhead expenses of a **Covered Party**.

C. **Regulatory Defense and Penalties**

To pay on behalf of a **Covered Party**:

Claims Expenses and **Penalties** in excess of the **Retention**, which a **Covered Party** shall become legally obligated to pay because of any **Claim** in the form of a **Regulatory Proceeding**, first made against any **Covered Party** during the **Coverage Period** or **Optional Extension Period** (if applicable) and reported in writing to the PLF during the **Coverage Period** or as otherwise provided in Clause IX. of this Endorsement, resulting from a violation of a **Privacy Law** and caused by an incident described in Coverage Agreement I.A.1., I.A.2. or I.A.3. that first takes place on or after the **Retroactive Date** and before the end of the **Coverage Period**.

D. **Website Media Content Liability**

To pay on behalf of a **Covered Party**:

Damages and **Claims Expenses**, in excess of the **Retention**, which a **Covered Party** shall become legally obligated to pay resulting from any **Claim** first made against any **Covered Party** during the **Coverage Period** or **Optional Extension Period** (if applicable) and reported in writing to the PLF during the **Coverage Period** or as otherwise provided in Clause IX. of this Endorsement for one or more of the following acts first committed on or after the **Retroactive Date** and before the end of the **Coverage Period** in the course of **Covered Media Activities**:

1. defamation, libel, slander, trade libel, infliction of emotional distress, outrage, outrageous conduct, or other tort related to disparagement or harm to the reputation or character of any person or organization;
2. a violation of the rights of privacy of an individual, including false light and public disclosure of private facts;
3. invasion or interference with an individual's right of publicity, including commercial appropriation of name, persona, voice or likeness;
4. plagiarism, piracy, misappropriation of ideas under implied contract;
5. infringement of copyright;
6. infringement of domain name, trademark, trade name, trade dress, logo, title, metatag, or slogan, service mark, or service name; or
7. improper deep-linking or framing within electronic content.

E. **Crisis Management and Public Relations**

To pay **Public Relations and Crisis Management Expenses** incurred by **The Firm** resulting from a **Public Relations Event**. **Public Relations Event** means:

1. the publication or imminent publication in a newspaper (or other general circulation print publication) or on radio or television of a covered **Claim** under this Endorsement; or

2. an incident described in Coverage Agreement I.A.1. or I.A.2. which results in the provision of **Privacy Breach Response Services**, or which reasonably may result in a covered **Claim** under this Endorsement and which **The Firm** has notified the PLF as a circumstance under Clause IX.C. of this Endorsement.

Public Relations and Crisis Management Expenses shall mean the following costs, if agreed in advance by the PLF in its reasonable discretion, which are directly related to mitigating harm to **The Firm's** reputation or potential **Loss** covered by this Endorsement resulting from a covered **Claim** or incident:

1. costs incurred by a public relations or crisis management consultant;
2. costs for media purchasing or for printing or mailing materials intended to inform the general public about the event;
3. costs to provide notifications to clients where such notifications are not required by law ("voluntary notifications"), including notices to non-affected clients of **The Firm**;
4. costs to provide government mandated public notices related to breach events (including such notifications required under HIPAA/Health Information Technology for Economic and Clinical Health Act ("HITECH"));
5. costs to provide services to restore healthcare records of **Notified Individuals** residing in the United States whose **Personally Identifiable Non-Public Information** was compromised as a result of theft, loss or **Unauthorized Disclosure**; and
6. other costs approved in advance by the PLF.

Public Relations and Crisis Management Expenses must be incurred no later than twelve (12) months following the reporting of such **Claim** or breach event to the PLF and, with respect to clauses 1. and 2., within ninety (90) days following the first publication of such **Claim** or breach event.

F. Cyber Extortion

To indemnify the Covered Party for:

Cyber Extortion Loss, in excess of the Retention, incurred by The Firm as a direct result of an Extortion Threat first made against The Firm during the Coverage Period by a person, other than the FIRM's employees, directors, officers, principals, members, law partners, contractors, or any person in collusion with any of the foregoing. Coverage under this Coverage Agreement is subject to the applicable conditions and reporting requirements, including those set forth in Clause XIII, Obligations in The Event of an Extortion Threat.

II. DEFENSE AND SETTLEMENT OF CLAIMS

- A. The PLF shall have the right and duty to defend, subject to all the provisions, terms and conditions of this Endorsement:
 1. any **Claim** against a **Covered Party** seeking **Damages** which are payable under the terms of this Endorsement, even if any of the allegations of the **Claim** are groundless, false or fraudulent; or
 2. under Coverage Agreement I.C., any **Claim** in the form of a **Regulatory Proceeding**.

- B. With respect to any **Claim** against a **Covered Party** seeking **Damages** or **Penalties** which are payable under the terms of this Endorsement, the PLF will pay **Claims Expenses** incurred with its prior written consent. The Limit of Liability available to pay **Damages** and **Penalties** shall be reduced and may be completely exhausted by payment of **Claims Expenses**.
- C. If a **Covered Party** shall refuse to consent to any settlement or compromise recommended by the PLF and acceptable to the claimant under this Endorsement and elects to contest the **Claim**, the PLF's liability for all **Damages, Penalties** and **Claims Expenses** shall not exceed:
1. the amount for which the **Claim** could have been settled, less the remaining **Retention**, plus the **Claims Expenses** incurred up to the time of such refusal; plus
 2. fifty percent (50%) of any **Claims Expenses** incurred after the date such settlement or compromise was recommended to a **Covered Party** plus fifty percent (50%) of any **Damages** above the amount for which the **Claim** could have been settled. The remaining fifty percent (50%) of such **Claims Expenses** and **Damages** must be borne by **The Firm** at its own risk and would not be covered;

or the applicable Limit of Liability, whichever is less, and the PLF shall have the right to withdraw from the further defense thereof by tendering control of said defense to a **Covered Party**. The portion of any proposed settlement or compromise that requires a **Covered Party** to cease, limit or refrain from actual or alleged infringing or otherwise injurious activity or is attributable to future royalties or other amounts that are not **Damages** (or **Penalties** for **Claims** covered under Coverage Agreement I.C.) shall not be considered in determining the amount for which a **Claim** could have been settled.

III. TERRITORY

This Coverage applies only to **Claims** brought in the United States, its territories or possessions, Canada, or the jurisdiction of any Indian Tribe in the United States. This Coverage does not apply to **Claims** brought in any other jurisdiction, or to **Claims** brought to enforce a judgment rendered in any jurisdiction other than the United States, its territories or possessions, Canada, or the jurisdiction of any Indian Tribe in the United States.

IV. EXCLUSIONS

The coverage under this Coverage does not apply to any **Claim** or **Loss**;

- A. For, arising out of or resulting from **Bodily Injury** or **Property Damage**;
- B. For, arising out of or resulting from any employer-employee relations, policies, practices, acts or omissions, or any actual or alleged refusal to employ any person, or misconduct with respect to employees, whether such **Claim** is brought by an employee, former employee, applicant for employment, or relative or domestic partner of such person; provided, however, that this exclusion shall not apply to an otherwise covered **Claim** under the Coverage Agreement I.A.1., I.A.2., or I.A.3. by a current or former employee of **The Firm**; or to the providing of **Privacy Breach Response Services** involving current or former employees of **The Firm**;
- C. For, arising out of or resulting from any actual or alleged act, error or omission or breach of duty by any director or officer in the discharge of their duty if the **Claim** is brought by the **Firm**, a subsidiary, or any principals, directors, officers, members or employees of the **Firm**.

- D. For, arising out of or resulting from any contractual liability or obligation, or arising out of or resulting from breach of contract or agreement either oral or written, provided, however, that this exclusion will not apply:
1. only with respect to the coverage provided by Coverage Agreement I.A.1., to any obligation of **The Firm** to maintain the confidentiality or security of **Personally Identifiable Non-Public Information** or of **Third Party Corporate Information**;
 2. only with respect to Coverage Agreement I.D.4., for misappropriation of ideas under implied contract; or
 3. to the extent a **Covered Party** would have been liable in the absence of such contract or agreement;
- E. For, arising out of or resulting from any liability or obligation under a **Merchant Services Agreement**;
- F. For, arising out of or resulting from any actual or alleged antitrust violation, restraint of trade, unfair competition, or false or deceptive or misleading advertising or violation of the Sherman Antitrust Act, the Clayton Act, or the Robinson-Patman Act, as amended;
- G. For, arising out of or resulting from any actual or alleged false, deceptive or unfair trade practices; however this exclusion does not apply to:
1. any **Claim** covered under Coverage Agreements I.A.1., I.A.2., I.A.3. or I.C.; or
 2. the providing of **Privacy Breach Response Services** covered under Coverage Agreement I.B.,

that results from a theft, loss or **Unauthorized Disclosure** of **Personally Identifiable Non-Public Information** provided that no **Covered Party** participated or is alleged to have participated or colluded in such theft, loss or **Unauthorized Disclosure**;

- H. For, arising out of or resulting from:
1. the actual or alleged unlawful collection, acquisition or retention of **Personally Identifiable Non-Public Information** or other personal information by, on behalf of, or with the consent or cooperation of **The Firm**; or the failure to comply with a legal requirement to provide individuals with the ability to assent to or withhold assent (e.g. opt-in or opt-out) from the collection, disclosure or use of **Personally Identifiable Non-Public Information**; provided, that this exclusion shall not apply to the actual or alleged unlawful collection, acquisition or retention of **Personally Identifiable Non-Public Information** by a third party committed without the knowledge of a **Covered Party**; or
 2. the distribution of unsolicited email, direct mail, or facsimiles, wire tapping, audio or video recording, or telemarketing, if such distribution, wire tapping or recording is done by or on behalf of a **Covered Party**;
- I. ~~For, arising out of or resulting from any act, error, omission, incident, failure of **Computer Security**, or **Security Breach** committed or occurring prior to the **Endorsement Retroactive Date**~~Arising out of or resulting from any act, error, omission, incident failure of **Computer Security**, **Extortion Threat**, **Security Breach** or event committed or occurring prior to the Coverage Period start date listed in Section 3 of the Declarations:

1. ~~if any **Covered Party** on or before the **Endorsement Retroactive Date** knew or could have reasonably foreseen that such act, error or omission, incident, failure of **Computer Security**, or **Security Breach** might be expected to be the basis of a **Claim** or **Loss**~~ any member of **The Firm** on or before the **Endorsement Retroactive Date** knew or could have reasonably foreseen that such act, error or omission, failure of **Computer Security**, **Extortion Threat**, or **Security Breach** might be expected to be the basis of a **Claim** or **loss**; or
 2. in respect of which any **Covered Party** has given notice of a circumstance, which might lead to a **Claim**, ~~or **Loss**~~, or an **Extortion Threat**, to the insurer **PLF or Beazley Group** of any other coverage in force prior to the **Endorsement Retroactive Date** inception date of this Coverage;
- J. For, arising out of or resulting from any related or continuing acts, errors, omissions, incidents or events, where the first such act, error, omission, incident or event was committed or occurred prior to the **Endorsement Retroactive Date**;
- K. For, arising out of resulting from any of the following:
1. any actual or alleged violation of the Organized Crime Control Act of 1970 (commonly known as Racketeer Influenced and Corrupt Organizations Act or RICO), as amended, or any regulation promulgated thereunder or any similar federal law or legislation, or law or legislation of any state, province or other jurisdiction similar to the foregoing, whether such law is statutory, regulatory or common law;
 2. any actual or alleged violation of any securities law, regulation or legislation, including but not limited to the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Act of 1940, any state or provincial blue sky or securities law, any other federal securities law or legislation, or any other similar law or legislation of any state, province or other jurisdiction, or any amendment to the above laws, or any violation of any order, ruling or regulation issued pursuant to the above laws;
 3. any actual or alleged violation of the Fair Labor Standards Act of 1938, the National Labor Relations Act, the Worker Adjustment and Retraining Act of 1988, the Certified Omnibus Budget Reconciliation Act of 1985, the Occupational Safety and Health Act of 1970, any similar law or legislation of any state, province or other jurisdiction, or any amendment to the above law or legislation, or any violation of any order, ruling or regulation issued pursuant to the above laws or legislation; or
 4. any actual or alleged discrimination of any kind including but not limited to age, color, race, sex, creed, national origin, marital status, sexual preference, disability or pregnancy;
- however this exclusion does not apply to any otherwise covered **Claim** under Coverage Agreement I.A.1., I.A.2., or I.A.3., or to providing **Privacy Breach Response Services** covered under Coverage Agreement I.B., that results from a theft, loss or **Unauthorized Disclosure of Personally Identifiable Non-Public Information**, provided that no **Covered Party** participated, or is alleged to have participated or colluded, in such theft, loss or **Unauthorized Disclosure**;
- L. For, arising out of or resulting from any actual or alleged acts, errors, or omissions related to any of **The Firm's** pension, healthcare, welfare, profit sharing, mutual or investment plans, funds or trusts, including any violation of any provision of the Employee Retirement Income Security Act of 1974 (ERISA) or any similar federal law or

legislation, or similar law or legislation of any state, province or other jurisdiction, or any amendment to ERISA or any violation of any regulation, ruling or order issued pursuant to ERISA or such similar laws or legislation; however this exclusion does not apply to any otherwise covered **Claim** under Coverage Agreement I.A.1., I.A.2., or I.A.3., or to the providing of **Privacy Breach Response Services** under Coverage Agreement I.B., that results from a theft, loss or **Unauthorized Disclosure of Personally Identifiable Non-Public Information**, provided that no **Covered Party** participated, or is alleged to have participated or colluded, in such theft, loss or **Unauthorized Disclosure**;

- M. Arising out of or resulting from any criminal, dishonest, fraudulent, or malicious act, error or omission, any intentional **Security Breach**, intentional violation of a **Privacy Policy**, or intentional or knowing violation of the law, if committed by a **Covered Party**, or by others if the **Covered Party** colluded or participated in any such conduct or activity; provided this Endorsement shall apply to **Claims Expenses** incurred in defending any such **Claim** alleging the foregoing until such time as there is a final adjudication, judgment, binding arbitration decision or conviction against the **Covered Party**, or written admission by the **Covered Party**, establishing such conduct, or a plea of *nolo contendere* or no contest regarding such conduct, at which time **The Firm** shall reimburse the PLF for all **Claims Expenses** incurred defending the **Claim** and the PLF shall have no further liability for **Claims Expenses**;

provided further, that whenever coverage under this Endorsement would be excluded, suspended or lost because of this exclusion relating to acts or violations by a **Covered Party**, and with respect to which any other **Covered Party** did not personally commit or personally participate in committing or personally acquiesce in or remain passive after having personal knowledge thereof, then the PLF agrees that such Coverage as would otherwise be afforded under this Endorsement shall cover and be paid with respect to those **Covered Parties** who did not personally commit or personally participate in committing or personally acquiesce in or remain passive after having personal knowledge of one or more of the acts, errors or omissions described in above.

- N. For, arising out of or resulting from any actual or alleged:
1. infringement of patent or patent rights or misuse or abuse of patent;
 2. infringement of copyright arising from or related to software code or software products other than infringement resulting from a theft or **Unauthorized Access or Use** of software code by a person who is not a **Covered Party** or employee of **The Firm**;
 3. use or misappropriation of any ideas, trade secrets or **Third Party Corporate Information** (i) by, or on behalf of, **The Firm**, or (ii) by any other person or entity if such use or misappropriation is done with the knowledge, consent or acquiescence of a **Covered Party**;
 4. disclosure, misuse or misappropriation of any ideas, trade secrets or confidential information that came into the possession of any person or entity prior to the date the person or entity became an employee, officer, director, **member**, principal, partner or subsidiary of **The Firm**; or
 5. under Coverage Agreement I.A.2., theft of or **Unauthorized Disclosure** of a **Data Asset**;
- O. For, in connection with or resulting from a **Claim** brought by or on behalf of the Federal Trade Commission, the Federal Communications Commission, or any other state, federal, local or foreign governmental entity, in such entity's regulatory or official

capacity; provided, this exclusion shall not apply to an otherwise covered **Claim** under Coverage Agreement I.C. or to the providing of **Privacy Breach Response Services** under Coverage Agreement I.B. to the extent such services are legally required to comply with a **Breach Notice Law**;

P. ~~Reserved.~~ With respect to Coverage Agreement I.F., for, arising out of or resulting from any criminal, dishonest, fraudulent, or malicious act, error or omission, any **Security Breach, Extortion Threat, or intentional or knowing violation of the law, if committed by any of The Firm's directors, officers, principals, members, law partners, or any person in participation or collusion with any of The Firm's directors, officers, principals, members, or law partners;**

Q. For, arising out of or resulting from:

1. any **Claim** made by any business enterprise in which any **Covered Party** has greater than a fifteen percent (15%) ownership interest or made by **The Firm**; or
2. a **Covered Party's** activities as a trustee, partner, member, manager, officer, director or employee of any employee trust, charitable organization, corporation, company or business other than that of **The Firm**;

R. For, arising out of or resulting from any of the following: (1) trading losses, trading liabilities or change in value of accounts; any loss, transfer or theft of monies, securities or tangible property of others in the care, custody or control of **The Firm**; (2) the monetary value of any transactions or electronic fund transfers by or on behalf of a **Covered Party** which is lost, diminished, or damaged during transfer from, into or between accounts; or (3) the value of coupons, price discounts, prizes, awards, or any other valuable consideration given in excess of the total contracted or expected amount;

S. With respect to Coverage Agreements I.A., I.B. and I.C., any **Claim** or **Loss** for, arising out of or resulting from the distribution, exhibition, performance, publication, display or broadcasting of content or material in:

1. broadcasts, by or on behalf of, or with the permission or direction of any **Covered Party**, including but not limited to, television, motion picture, cable, satellite television and radio broadcasts;
2. publications, by or on behalf of, or with the permission or direction of any **Covered Party**, including, but not limited to, newspaper, newsletter, magazine, book and other literary form, monograph, brochure, directory, screen play, film script, playwright and video publications, and including content displayed on an Internet site; or
3. advertising by or on behalf of any **Covered Party**;

provided however this exclusion does not apply to the publication, distribution or display of **The Firm's Privacy Policy**;

T. With respect to Coverage Agreement I.D., any **Claim** or **Loss**:

1. for, arising out of or resulting from the actual or alleged obligation to make licensing fee or royalty payments, including but limited to the amount or timeliness of such payments;
2. for, arising out of or resulting from any costs or expenses incurred or to be incurred by a **Covered Party** or others for the reprinting, reposting, recall, removal or disposal of any **Media Material** or any other information, content or media, including any media or products containing such **Media Material**, information, content or media;

3. brought by or on behalf of any intellectual property licensing bodies or organizations, including but not limited to, the American Society of Composers, Authors and Publishers, the Society of European Stage Authors and Composers or Broadcast Music, Inc;
 4. for, arising out of or resulting from the actual or alleged inaccurate, inadequate or incomplete description of the price of goods, products or services, cost guarantees, cost representations, or contract price estimates, the authenticity of any goods, products or services, or the failure of any goods or services to conform with any represented quality or performance;
 5. for, arising out of or resulting from any actual or alleged gambling, contest, lottery, promotional game or other game of chance; or
 6. in connection with a **Claim** made by or on behalf of any independent contractor, joint venturer or venture partner arising out of or resulting from disputes over ownership of rights in **Media Material** or services provided by such independent contractor, joint venturer or venture partner;
- U. Arising out of or resulting from, directly or indirectly occasioned by, happening through or in consequence of: war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalization or requisition or destruction of or damage to property by or under the order of any government or public or local authority;
- V. For, arising out of or resulting from a Claim covered by the PLF Claims Made Excess Plan or any other professional liability Coverage available to any **Covered Party**, including any self insured retention or deductible portion thereof;
- W. For, arising out of or resulting from any theft, loss or disclosure of **Third Party Corporate Information** by a **Related Party**;
- X. Either in whole or in part, directly or indirectly arising out of or resulting from or in consequence of, or in any way involving:
1. asbestos, or any materials containing asbestos in whatever form or quantity;
 2. the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of any fungi, molds, spores or mycotoxins of any kind; any action taken by any party in response to the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of fungi, molds, spores or mycotoxins of any kind, such action to include investigating, testing for, detection of, monitoring of, treating, remediating or removing such fungi, molds, spores or mycotoxins; and any governmental or regulatory order, requirement, directive, mandate or decree that any party take action in response to the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of fungi, molds, spores or mycotoxins of any kind, such action to include investigating, testing for, detection of, monitoring of, treating, remediating or removing such fungi, molds, spores or mycotoxins;

the PLF will have no duty or obligation to defend any **Covered Party** with respect to any **Claim** or governmental or regulatory order, requirement, directive, mandate or decree which either in whole or in part, directly or indirectly, arises out of or results from or in consequence of, or in any way involves the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of any fungi, molds, spores or mycotoxins of any kind;

3. the existence, emission or discharge of any electromagnetic field, electromagnetic radiation or electromagnetism that actually or allegedly affects the health, safety or condition of any person or the environment, or that affects the value, marketability, condition or use of any property; or
4. the actual, alleged or threatened discharge, dispersal, release or escape of Pollutants; or any governmental, judicial or regulatory directive or request that a **Covered Party** or anyone acting under the direction or control of a **Covered Party** test for, monitor, clean up, remove, contain, treat, detoxify or neutralize Pollutants. Pollutants means any solid, liquid, gaseous or thermal irritant or contaminant including gas, acids, alkalis, chemicals, heat, smoke, vapor, soot, fumes or waste. Waste includes but is not limited to materials to be recycled, reconditioned or reclaimed.

V. DEFINITIONS

As used in this Endorsement:

- A. **Bodily Injury** means physical injury, sickness, disease or death of any person, including any mental anguish or emotional distress resulting therefrom.
- B. **Breach Notice Law** means any United States federal, state, or territory statute or regulation that requires notice to persons whose **Personally Identifiable Non-Public Information** was accessed or reasonably may have been accessed by an unauthorized person.

Breach Notice Law also means a foreign statute or regulation that requires notice to persons whose **Personally Identifiable Non-Public Information** was accessed or reasonably may have been accessed by an unauthorized person; provided, however, that the **Credit Monitoring Product** provided by Coverage Agreement I.B.4. shall not apply to persons notified pursuant to any such foreign statute or regulation.

- C. **Call Center Services** means the provision of a call center to answer calls during standard business hours for a period of ninety (90) days following notification (or longer if required by applicable law or regulation) of an incident pursuant to Coverage Agreement I.B.2. Such notification shall include a toll free telephone number that connects to the call center during standard business hours. Call center employees will answer questions about the incident from **Notified Individuals** and will provide information required by HITECH media notice or by other applicable law or regulation. **Call Center Services** will only be available for incidents (or reasonably suspected incidents) involving one hundred (100) or more **Notified Individuals**.

- D. **Claim** means:

1. a written demand received by any **Covered Party** for money or services, including the service of a suit or institution of regulatory or arbitration proceedings;
2. with respect to coverage provided under Coverage Agreement I.C. only, institution of a **Regulatory Proceeding** against any **Covered Party**; and
3. a written request or agreement to toll or waive a statute of limitations relating to a potential **Claim** described in paragraph 1. above.

Multiple **Claims** arising from the same or a series of related or repeated acts, errors, or omissions, or from any continuing acts, errors, omissions, or from multiple **Security Breaches** arising from a failure of **Computer Security**, shall be considered a single **Claim** for the purposes of this Endorsement, irrespective of the number of claimants or

Covered Parties involved in the **Claim**. All such **Claims** shall be deemed to have been made at the time of the first such **Claim**.

E. **Claims Expenses** means:

1. reasonable and necessary fees charged by an attorney designated pursuant to Clause II., Defense and Settlement of Claims, paragraph A.;
2. all other legal costs and expenses resulting from the investigation, adjustment, defense and appeal of a **Claim**, suit, or proceeding arising in connection therewith, or circumstance which might lead to a **Claim**, if incurred by the PLF, or by a **Covered Party** with the PLF's prior written consent; and
3. the premium cost for appeal bonds for covered judgments or bonds to release property used to secure a legal obligation, if required in any **Claim** against a **Covered Party**; provided the PLF shall have no obligation to appeal or to obtain bonds.

Claims Expenses do not include any salary, overhead, or other charges by a **Covered Party** for any time spent in cooperating in the defense and investigation of any **Claim** or circumstance that might lead to a **Claim** notified under this Endorsement, or costs to comply with any regulatory orders, settlements or judgments.

F. **Computer Security** means software, computer or network hardware devices, as well as **The Firm's** written information security policies and procedures, the function or purpose of which is to prevent **Unauthorized Access or Use**, a **Denial of Service Attack** against **Computer Systems**, infection of **Computer Systems** by **Malicious Code** or transmission of **Malicious Code** from **Computer Systems**. **Computer Security** includes anti-virus and intrusion detection software, firewalls and electronic systems that provide access control to **Computer Systems** through the use of passwords, biometric or similar identification of authorized users.

G. **Computer Systems** means computers and associated input and output devices, data storage devices, networking equipment, and back up facilities:

1. operated by and either owned by or leased to **The Firm**; or
2. systems operated by a third party service provider and used for the purpose of providing hosted computer application services to **The Firm** or for processing, maintaining, hosting or storing **The Firm's** electronic data, pursuant to written contract with **The Firm** for such services.

H. **Coverage Period** means the Coverage period as set forth in Item 2. of the Schedule.

I. **Reserved. Cyber Extortion Loss** means:

1. any **Extortion Payment** that has been made under duress by or on behalf of **The Firm** with the PLF or Beazley Group's prior written consent, but solely to prevent or terminate an **Extortion Threat** and in an amount that does not exceed the covered **Damages and Claims Expenses** that would have been incurred had the **Extortion Payment** not been paid;

2. an otherwise covered **Extortion Payment** that is lost in transit by actual destruction, disappearance or wrongful abstraction while being conveyed by any person authorized by or on behalf of **The Firm** to make such conveyance; and

3. fees and expenses paid by or on behalf of **The Firm** for security consultants retained with the PLF or Beazley Group's prior written approval, but solely to prevent or terminate an **Extortion Threat**.

- J. **Covered Media Activities** means the display of **Media Material** on **The Firm's** web site.
- K. **Covered Party** has the same meaning as set forth in Section II – WHO IS A COVERED PARTY in the PLF Claims Made Excess Plan.
- L. **Credit Monitoring Product** means a credit monitoring product that provides daily credit monitoring from the following credit bureaus: Experian, TransUnion and Equifax.

Notified Individuals who subscribe to the **Credit Monitoring Product** shall also receive:

1. access to their credit report from one of the three credit bureaus at the time of enrollment;
2. ID theft insurance for certain expenses resulting from identity theft;
3. notification of a critical change to their credit that may indicate fraud (such as an address change, new credit inquiry, new account opening, posting of negative credit information such as late payments, public record posting, as well as other factors); and
4. fraud resolution services if they become victims of identity theft as a result of the incident for which notification is provided pursuant to Coverage Agreement I.B.2.

If the Credit Monitoring Product becomes commercially unavailable, it shall be substituted with a similar commercial product that provides individual credit monitoring for potential identity theft. The **Credit Monitoring Product** will only be available for incidents (or reasonably suspected incidents) involving one hundred (100) or more **Notified Individuals**.

- M. **Data Asset** means any software or electronic data that exists in **Computer Systems** and that is subject to regular back up procedures, including computer programs, applications, account information, customer information, private or personal information, marketing information, financial information and any other information maintained by **The Firm** in its ordinary course of business.

- N. **Damages** means a monetary judgment, award or settlement; provided that the term **Damages** shall not include or mean:

1. future profits, restitution, disgorgement of unjust enrichment or profits by a **Covered Party**, or the costs of complying with orders granting injunctive or equitable relief;
2. return or offset of fees, charges, or commissions charged by or owed to a **Covered Party** for goods or services already provided or contracted to be provided;
3. any damages which are a multiple of compensatory damages, fines, taxes or loss of tax benefits, sanctions or penalties;
4. punitive or exemplary damages;
5. discounts, coupons, prizes, awards or other incentives offered to a **Covered Party's** customers or clients;
6. liquidated damages to the extent that such damages exceed the amount for which a **Covered Party** would have been liable in the absence of such liquidated damages agreement;

7. fines, costs or other amounts a **Covered Party** is responsible to pay under a **Merchant Services Agreement**; or
 8. any amounts for which a **Covered Party** is not liable, or for which there is no legal recourse against a **Covered Party**.
- O. **Denial of Service Attack** means an attack intended by the perpetrator to overwhelm the capacity of a **Computer System** by sending an excessive volume of electronic data to such **Computer System** in order to prevent authorized access to such **Computer System**.
- P. **Endorsement Aggregate Limit of Liability** means the aggregate Limit of Liability set forth in Item 3. of the Schedule.
- Q. **Endorsement Retroactive Date** means the date specified in Section 7 of the Declarations Sheet attached to this Endorsement.
- R. **The Firm** means the entities as defined in Section I – Definitions of the applicable Claims Made Excess Plan and Declarations Sheet to which this Endorsement is attached.
- S. **Loss** means **Damages, Claims Expenses, Penalties, ~~Public Relations and Crisis Management Expenses~~ PCI Fines, Expenses and Costs, Cyber Extortion Loss and Privacy Breach Response Services**.
- T. **Malicious Code** means any virus, Trojan horse, worm or any other similar software program, code or script intentionally designed to insert itself into computer memory or onto a computer disk and spread itself from one computer to another.
- U. **Media Material** means any information in electronic form, including words, sounds, numbers, images, or graphics and shall include advertising, video, streaming content, web-casting, online forum, bulletin board and chat room content, but does not mean computer software or the actual goods, products or services described, illustrated or displayed in such **Media Material**.
- V. **Merchant Services Agreement** means any agreement between a **Covered Party** and a financial institution, credit/debit card company, credit/debit card processor or independent service operator enabling a **Covered Party** to accept credit card, debit card, prepaid card, or other payment cards for payments or donations.
- W. **~~Reserved~~ Extortion Payment** means cash, marketable goods or services demanded to prevent or terminate an Extortion Threat.
- X. **Notified Individual** means an individual person to whom notice is given or attempted to be given under Coverage Agreement I.B.2.; provided any persons notified under a foreign **Breach Notice Law** shall not be considered **Notified Individuals**.
- Y. **Optional Extension Period** means the period of time after the end of the **Coverage Period** for reporting **Claims** as provided in Clause VIII., Optional Extension Period, of this Endorsement.
- Z. **Penalties** means:
1. any civil fine or money penalty payable to a governmental entity that was imposed in a **Regulatory Proceeding** by the Federal Trade Commission, Federal Communications Commission, or any other federal, state, local or foreign governmental entity, in such entity's regulatory or official capacity; and
 2. amounts which a **Covered Party** is legally obligated to deposit in a fund as equitable relief for the payment of consumer claims due to an adverse judgment

or settlement of a **Regulatory Proceeding** (including such amounts required to be paid into a “Consumer Redress Fund”); but and shall not include payments to charitable organizations or disposition of such funds other than for payment of consumer claims for losses caused by an event covered by Coverage Agreements A.1., A.2. or A.3.;

but shall not mean (a) costs to remediate or improve **Computer Systems**, (b) costs to establish, implement, maintain, improve or remediate security or privacy practices, procedures, programs or policies, (c) audit, assessment, compliance or reporting costs, or (d) costs to protect the confidentiality, integrity and/or security of **Personally Identifiable Non-Public Information** from theft, loss or disclosure, even if it is in response to a regulatory proceeding or investigation.

AA. **Personally Identifiable Non-Public Information** means:

1. information concerning the individual that constitutes “nonpublic personal information” as defined in the Gramm-Leach Bliley Act of 1999, as amended, and regulations issued pursuant to the Act;
2. medical or health care information concerning the individual, including “protected health information” as defined in the Health Insurance Portability and Accountability Act of 1996, as amended, and regulations issued pursuant to the Act;
3. information concerning the individual that is defined as private personal information under statutes enacted to protect such information in foreign countries, for **Claims** subject to the law of such jurisdiction;
4. information concerning the individual that is defined as private personal information under a **Breach Notice Law**; or
5. the individual’s drivers license or state identification number; social security number; unpublished telephone number; and credit, debit or other financial account numbers in combination with associated security codes, access codes, passwords or pins;

if such information allows an individual to be uniquely and reliably identified or contacted or allows access to the individual’s financial account or medical record information but does not include publicly available information that is lawfully made available to the general public from government records.

BB. ~~**Reserved.**~~ **Extortion Threat** means a threat to breach **Computer Security** in order to:

1. alter, destroy, damage, delete or corrupt an **Data Asset**;
2. prevent access to **Computer Systems** or a **Data Asset**, including a denial of service attack or encrypting a **Data Asset** and withholding the decryption key for such **Data Asset**;
3. perpetrate a theft or misuse of a **Data Asset** on **Computer Systems** through external access;
4. introduce malicious code into **Computer Systems** or to third party computers and systems from **Computer Systems**; or
5. interrupt or suspend **Computer Systems**;

unless an **Extortion Payment** is received from or on behalf of **The Firm**.

Multiple related or continuing **Extortion Threats** shall be considered a single **Extortion Threat** for purposes of this Coverage and shall be deemed to have occurred at the time of the first such **Extortion Threat**.

- CC. **Privacy Law** means a federal, state or foreign statute or regulation requiring **The Firm** to protect the confidentiality and/or security of **Personally Identifiable Non-Public Information**.
- DD. **Privacy Policy** means **The Firm's** public declaration of its policy for collection, use, disclosure, sharing, dissemination and correction or supplementation of, and access to **Personally Identifiable Non-Public Information**.
- EE. **Property Damage** means physical injury to or destruction of any tangible property, including the loss of use thereof.
- FF. **Regulatory Proceeding** means a request for information, civil investigative demand, or civil proceeding commenced by service of a complaint or similar proceeding brought by or on behalf of the Federal Trade Commission, Federal Communications Commission, or any federal, state, local or foreign governmental entity in such entity's regulatory or official capacity in connection with such proceeding.
- GG. Reserved.
- HH. **Retention** means the applicable retention for each Coverage Agreement as specified in Item 4. of the Schedule.
- II. Reserved.
- JJ. **Security Breach** means:
1. **Unauthorized Access or Use of Computer Systems**, including **Unauthorized Access or Use** resulting from the theft of a password from a **Computer System** or from any **Covered Party**;
 2. a **Denial of Service Attack** against **Computer Systems** or **Third Party Computer Systems**; or
 3. infection of **Computer Systems** by **Malicious Code** or transmission of **Malicious Code** from **Computer Systems**,
- whether any of the foregoing is a specifically targeted attack or a generally distributed attack.
- A series of continuing **Security Breaches**, related or repeated **Security Breaches**, or multiple **Security Breaches** resulting from a continuing failure of **Computer Security** shall be considered a single **Security Breach** and be deemed to have occurred at the time of the first such **Security Breach**.
- KK. **Third Party Computer Systems** means any computer systems that: (1) are not owned, operated or controlled by a **Covered Party**; and (2) does not include computer systems of a third party on which a **Covered Party** performs services. Computer systems include associated input and output devices, data storage devices, networking equipment, and back up facilities.
- LL. **Third Party Corporate Information** means any trade secret, data, design, interpretation, forecast, formula, method, practice, credit or debit card magnetic strip information, process, record, report or other item of information of a third party not covered under this Endorsement which is not available to the general public and is provided to a **Covered Party** subject to a mutually executed written confidentiality

agreement or which **The Firm** is legally required to maintain in confidence; however, **Third Party Corporate Information** shall not include **Personally Identifiable Non-Public Information**.

- MM. **Unauthorized Access or Use** means the gaining of access to or use of **Computer Systems** by an unauthorized person or persons or the use of **Computer Systems** in an unauthorized manner.
- NN. **Unauthorized Disclosure** means the disclosure of (including disclosure resulting from phishing) or access to information in a manner that is not authorized by **The Firm** and is without knowledge of, consent, or acquiescence of any **Covered Party**.

VI. LIMIT OF LIABILITY AND COVERAGE

- A. The **Endorsement Aggregate Limit of Liability** stated in Item 3. of the Schedule is the PLF's combined total limit of liability for all **Damages, Penalties, Privacy Breach Response Services, Public Relations and Crisis Management Expenses and Claims Expenses** payable under this Endorsement. The **Endorsement Aggregate Limit of Liability** is in addition to the Limit of Coverage under the PLF Claims Made Excess Plan.

The sublimit of liability stated in Item 3.A. of the Schedule is the aggregate sublimit of liability payable under Coverage Agreement I.B. Privacy Breach Response Services of this Endorsement and is part of and not in addition to the **Endorsement Aggregate Limit of Liability**.

The sublimit of liability stated in Item 3.B. of the Schedule is the aggregate sublimit of liability payable under Coverage Agreement I.B.(1) of this Endorsement and is part of and not in addition to the **Endorsement Aggregate Limit of Liability**.

The sublimit of liability stated in Item 3.C. of the Schedule is the aggregate sublimit of liability payable under Coverage Agreement I.C. Regulatory Defense and Penalties of this Endorsement and is part of and not in addition to the **Endorsement Aggregate Limit of Liability**.

The sublimit of liability stated in Item 3.D. of the Schedule is the aggregate sublimit of liability payable under Coverage Agreement I.E. Crisis Management and Public Relations of this Endorsement and is part of and not in addition to the **Endorsement Aggregate Limit of Liability**.

The sublimit of liability stated in Item 1.E. of the Schedule is the aggregate limit of liability payable under this Coverage for all **Cyber Extortion Loss** covered under Coverage Agreement I.F. and is part of and not in addition to the **Endorsement Aggregate Limit of Liability**.

Neither the inclusion of more than one **Covered Party** under this Endorsement, nor the making of **Claims** by more than one person or entity shall increase the Limit of Liability.

- B. The Limit of Liability for the **Optional Extension Period** shall be part of and not in addition to the **Endorsement Aggregate Limit of Liability**.
- C. The PLF shall not be obligated to pay any **Damages, Penalties, Privacy Breach Response Services, Public Relations and Crisis Management Expenses or Claims Expenses**, or to undertake or continue defense of any suit or proceeding, after the **Endorsement Aggregate Limit of Liability** has been exhausted by payment of **Damages, Penalties, Public Relations and Crisis Management Expenses or Claims Expenses**, or after deposit of the **Endorsement Aggregate Limit of Liability** in a

court of competent jurisdiction. Upon such payment, the PLF shall have the right to withdraw from the further defense of any **Claim** under this Endorsement by tendering control of said defense to a **Covered Party**.

VII. RETENTION

- A. The **Retention** amount set forth in Item 4.A. of the Schedule applies separately to each incident, event or related incidents or events, giving rise to a **Claim**. The **Retention** shall be satisfied by monetary payments by **The Firm of Damages, Claims Expenses, Public Relations and Crisis Management Expenses or Penalties**.
- B. The **Retention** amount set forth in Item 4.B. of the Schedule applies separately to each incident, event or related incidents or events, giving rise to an obligation to provide Privacy Breach Response Services. Services under Coverage Agreements I.B.3. and I.B.4. will only be provided for incidents requiring notification to 100 or more individuals..
- C. The **Retention** set forth in Item 4.C. of the Schedule applies separately to each Extortion Threat. The **Retention** shall be satisfied by monetary payments by **The Firm of covered Cyber Extortion Loss.**

VIII. OPTIONAL EXTENSION PERIOD

- A. In the event **The Firm** purchases Extended Reporting Coverage for its Excess Plan, as provided for in Section XIV of the Excess Plan, **The Firm** will also be provided a corresponding **Optional Extension Period** under this Endorsement. If such **Optional Extension Period** is provided, then the time period for **Claims** to be made and reported to the PLF and Beazley Group will be extended by the same Extended Reporting Coverage Period purchased in the Extended Reporting Coverage; provided that such **Claims** must arise out of acts, errors or omissions committed on or after the **Endorsement Retroactive Date** and before the end of the **Coverage Period**.
- B. The Limit of Liability for the **Optional Extension Period** shall be part of, and not in addition to, the applicable Limit of Liability of the PLF for the **Coverage Period** and the exercise of the **Optional Extension Period** shall not in any way increase the **Endorsement Aggregate Limit of Liability** or any sublimit of liability. The **Optional Extension Period** does not apply to Coverage Agreement I.B.
- C. All notices and premium payments with respect to the **Optional Extension Period** option shall be directed to the PLF and Beazley Group.
- D. At the commencement of the **Optional Extension Period** the entire premium shall be deemed earned, and in the event **The Firm** terminates the **Optional Extension Period** for any reason prior to its natural expiration, the PLF will not be liable to return any premium paid for the **Optional Extension Period**.

IX. NOTICE OF CLAIM, LOSS OR CIRCUMSTANCE THAT MIGHT LEAD TO A CLAIM

- A. If any **Claim** is made against a **Covered Party**, the **Covered Party** shall forward as soon as practicable to both the PLF and Beazley Group, written notice of such **Claim** in the form of an email or express or certified mail together with every demand, notice, summons or other process received by a **Covered Party** or a **Covered Party's** representative. In no event shall such notice be later than the end of the **Coverage Period** or the end of the **Optional Extension Period**. **Notice to the PLF may be made at excess@osbplf.org or PLF Excess Program, PO Box 231600, Tigard, OR 97281. Notice to Beazley Group may be made at: bbr.claims@beazley.com or**

Beazley Group, 1270 Avenue of the Americas, 12th Floor, New York, NY 10020 or Tel: 866-567-8570.

- B. With respect to Coverage Agreement I.B., for a legal obligation to comply with a **Breach Notice Law** because of an incident (or reasonably suspected incident) described in Coverage Agreement I.A.1. or I.A.2., such incident or reasonably suspected incident must be reported as soon as practicable to the persons in paragraph A. above during the **Coverage Period** after discovery by a **Covered Party**.
- C. If during the **Coverage Period**, a **Covered Party** first becomes aware of any circumstance that could reasonably be the basis for a **Claim** it may give written notice to both the PLF through and Beazley Group in the form of a telecopy, email or express or certified mail as soon as practicable during the **Coverage Period**. Such a notice must include:
1. the specific details of the act, error, omission, or **Security Breach** that could reasonably be the basis for a **Claim**;
 2. the injury or damage which may result or has resulted from the circumstance; and
 3. the facts by which a **Covered Party** first became aware of the act, error, omission or **Security Breach**.

Any subsequent **Claim** made against a **Covered Party** arising out of such circumstance which is the subject of the written notice will be deemed to have been made at the time written notice complying with the above requirements was first given to the PLF.

An incident or reasonably suspected incident reported to both the PLF and Beazley Group during the **Coverage Period** and in conformance with Clause IX.B shall also constitute notice of a circumstance under this Clause IX.C.

~~D.~~ ~~D.~~ A **Claim** or legal obligation under paragraph A. or B. above shall be considered to be reported to the PLF when written notice is first received by both the PLF or Beazley Group in the form of a telecopy, email or express or certified mail or email through persons named in paragraph A. above of the **Claim** or legal obligation, or of an act, error, or omission, which could reasonably be expected to give rise to a **Claim** if provided in compliance with paragraph C. above.

E. With respect to the Coverage Agreement, in the event of an **Extortion Threat** to which this Coverage applies, **the Firm shall notify the PLF or Beazley Group by contacting the persons specified in Item IX.A immediately upon receipt of any Extortion Threat, and shall thereafter also provide written notice by telecopy, email or express mail within five (5) days following the Extortion Threat.**

X. MERGERS AND ACQUISITIONS

If during the **Coverage Period** **The Firm** consolidates or merges with or is acquired by another entity, or sells substantially all of its assets to any other entity, then this Endorsement shall remain in full force and effect, but only with respect to a **Security Breach**, or other act or incidents that occur prior to the date of the consolidation, merger or acquisition. There shall be no coverage provided by this Endorsement for any other **Claim** or **Loss**.

XI. THE FIRM AS AGENT

The Firm shall be considered the agent of all **Covered Parties**, and shall act on behalf of all **Covered Parties** with respect to the giving of or receipt of all notices pertaining to this

Endorsement, the acceptance of any endorsements to this Endorsement, and **The Firm** shall be responsible for the payment of all premiums and **Retentions**.

XII. AUTHORIZATION

By acceptance of this Endorsement, the **Covered Parties** agree that **The Firm** will act on their behalf with respect to the giving and receiving of any notice provided for in this Endorsement, the payment of premiums and the receipt of any return premiums that may become due under this Endorsement, and the agreement to and acceptance of endorsements.

XIII. CONDITIONS APPLICABLE TO PRIVACY BREACH RESPONSE SERVICES

The availability of any coverage under Coverage Agreement I.B. for Privacy Breach Response **Services** (called the “Services” in this Clause) is subject to the following conditions.

In the event of an incident (or reasonably suspected incident) covered by Coverage Agreement I.B of this Endorsement, the PLF (referred to as “we” or “us” in this Clause) will provide **The Firm** (referred to as “you” in this Clause) with assistance with the Services and with the investigation and notification process as soon as you notify us of an incident or reasonably suspected incident (an “Incident”).

- A. The Services provided under the Endorsement have been developed to expedite the investigation and notification process and help ensure that your response to a covered Incident will comply with legal requirements and will be performed economically and efficiently. It is therefore important that in the event of an Incident, you follow the program’s requirements stated below, as well as any further procedures described in the *Information Packet* provided with this Endorsement, and that you communicate with us so that we can assist you with handling the Incident and with the Services. You must also assist us and cooperate with us and any third parties involved in providing the Services. In addition to the requirements stated below, such assistance and cooperation shall include, without limitation, responding to requests and inquiries in a timely manner and entering into third party contracts required for provision of the Services.
- B. If the costs of a computer security expert are covered under Coverage Agreement I.B.1, you must select such expert, in consultation with us, from the program’s list of approved computer security experts included in the *Information Packet* provided with this Endorsement, which list may be updated by us from time to time. The computer security expert will require access to information, files and systems and you must comply with the expert’s requests and cooperate with the expert’s investigation. Reports or findings of the expert will be made available to you, us and any attorney that is retained to provide advice to you with regard to the Incident.
- C. If the costs of an attorney are covered under Coverage Agreement I.B.1., such attorney shall be selected by you from the program’s list of approved legal counsel included in the *Information Packet* provided with this Endorsement, which list may be updated by us from time to time. The attorney will represent you in determining the applicability of, and the actions necessary to comply with, **Breach Notice Laws** in connection with the Incident.
- D. If notification to individuals in connection with an Incident is covered under Coverage Agreement I.B.2., such notice will be accomplished through a mailing, email, or other method if allowed by statute and if it is more economical to do so (though we will not provide notice by publication unless you and we agree or it is specifically required by law), and will be performed by a service provider selected by us from the program’s list of approved breach notification service providers included in the *Information Packet*

provided with this Endorsement, which list may be updated by us from time to time. The selected breach notification service provider will work with you to provide the required notifications.

Our staff will assist you with the notification process, but it is important that you timely respond to requests, approve letter drafts, and provide address lists and other information as required to provide the Services. It will be your responsibility to pay any costs caused by your delay in providing information or approvals necessary to provide the Services, mistakes in information you provide, changes to the letter after approval, or any other failure to follow the notification procedure if it increases the cost of providing the Services in connection with an Incident.

- E. If **Call Center Services** are offered under Coverage Agreement I.B.3., such services shall be performed by a service provider selected by us who will work with you to provide the **Call Center Services** as described in Clause V.C. above.
- F. If a **Credit Monitoring Product** is offered under Coverage Agreement I.B.4, such product shall be provided by a service provider selected by us.

XIII. OBLIGATIONS IN THE EVENT OF AN EXTORTION THREAT

A. Covered Party's Duty of Confidentiality

The Firm shall use its best efforts at all times to ensure that knowledge regarding the existence of this Coverage for **Cyber Extortion Loss** afforded by this Coverage is kept confidential. The PLF may terminate coverage for **Cyber Extortion Loss** under this Coverage upon ten (10) days written notice to **The Firm** if the existence of Coverage for **Cyber Extortion Loss** provided by this Coverage becomes public knowledge or is revealed to a person making an **Extortion Threat** through no fault of the PLF.

B. The Firm's Obligation to Investigate Extortion Threat and Avoid or Limit Extortion Payment

Prior to the payment of any **Extortion Payment**, **The Firm** shall make every reasonable effort to determine that the **Extortion Threat** is not a hoax, or otherwise not credible. **The Firm** shall take all steps reasonable and practical to avoid or limit the payment of an **Extortion Threat**.

C. Conditions Precedent

As conditions precedent to this coverage for **Cyber Extortion Loss** under the terms of this Coverage:

1. **The Firm** must be able to demonstrate that the **Extortion Payment** was surrendered under duress; and
 2. **The Firm** shall allow the PLF, Beazley Group, or their representative to notify the police or other responsible law enforcement authorities or any **Extortion Threat**.
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OREGON STATE BOARD OF BAR EXAMINERS

16037 SW Upper Boones Ferry Road, P.O. Box 231935, Tigard, Oregon 97281-1935
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January 25, 2016

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JAN 29 2016

Oregon State Bar
Executive Director

R. Ray Heysell, President
Oregon State Bar's Board of Governors
16037 SW Upper Boones Ferry Rd.
Tigard, OR 97281-1935

RE: *International Trade in Legal Services Task Force*

Dear Mr. Heysell:

The Board of Bar Examiners has reviewed the report of the International Trade in Legal Services Task Force, and we agree that the recommended change to RFA 16.05, described on page eight of the report, would be an appropriate one, for the reasons described on pages six through eight. Subject to any input from the Board of Governors, we are willing to submit the proposed amendments to the Oregon Supreme Court and to recommend that the court adopt them. We agree with the task force's recommendation that no other changes to the rules for admission be made at this time.

As for any action with respect to disciplinary rules, we decline to take any position, as those are outside our purview.

Sincerely,



Stephanie Tuttle, Chairperson
Oregon State Board of Bar Examiners

/vh

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: February 11, 2016
Memo Date: January 29, 2016
From: Colin Andries, Oregon New Lawyers Division Chair
Re: ONLD Report

To begin the year the ONLD Executive Committee met in Hood River for our annual retreat and January Executive Committee meeting. Three new subcommittee chairs were selected during the retreat, Jon Patterson will serve as the CLE Co-Chair with Joel Sturm, Jay Sayles will serve as the Pro Bono Co-Chair with Jaimie Fender, and Andrew Gust will serve as the new Law Related Education Chair.

Late last year the ONLD created a Rural Outreach Task Force to consider ways the division can encourage and support members who begin practicing in less populated areas of the state. During the retreat several ideas were discussed in this regard and the board plans to continue its pursuit of supporting this segment of our membership. One new program discussed is creation of a directory of rural area new lawyers who will act as a resource for law students and new practitioners interested in exploring rural job possibilities. The board is also interested in strengthening relationships with local and specialty bar leaders. Finally, the board is in the beginning stages of planning a NW New Lawyer Leadership Summit for early 2017. We are exploring opportunities for ABA grants to help support such an event.

To jump start the rural initiative, a social was held in Bend on January 22. More than 40 local practitioners and judges attended the event and eight local attorneys volunteered to participate in the rural directory.

Andrew Gust is undertaking a new project to enhance the ONLD website with a list of resources available to new lawyers. The site will be a comprehensive list of services provided by the ONLD and other organizations around the state.

Mae Lee Browning and Jaimie Fender represented the ONLD at the OLIO Employment Retreat on January 23. This is a welcomed opportunity for the ONLD to interact with law students and let them know what resources the ONLD makes available.

The ONLD is sending Mae Lee Browning, Joel Sturm, and Joe Kraus to the mid-year ABA Young Lawyers Division meeting. The three representatives will have an opportunity to strengthen relationships with practitioners from around the country and will represent Oregon during the division assembly.

We look forward to our February meeting in Eugene which will be held in conjunction with the Oregon Law Students Public Interest Fund dinner and auction. Sixteen members of our board are attending the event. The Eugene trip also includes a CLE program on Friday afternoon for students and local bar members. On Saturday we will hold our board meeting and volunteer at Ophelia's Place, an organization providing programs and services to help girls feel safe, valued and empowered.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: February 12, 2016
From: MCLE Committee
Re: Proposed Amendments to MCLE Rules and Regulations

Action Recommended

In preparation for the Oregon State Bar's new association management software, the MCLE Committee spent most of 2015 reviewing and discussing proposed amendments to the current MCLE Rules and Regulations. That review is now complete. The committee recommends amending the MCLE Rules and Regulations as proposed in the attached document (deletions are crossed out; new text is underlined; moved text is double-underlined).

The recommended amendments and the reasons for the recommendations are set forth below. Unless otherwise indicated, all rule and regulation numbers reference the CURRENT MCLE Rules and Regulations.

Background

The following amendments are being proposed by the Committee.

- 1) Throughout the document, any reference to MCLE Administrator is changed to MCLE Program Manager.
- 2) Rules 1.12, 3.4, 3.5, 3.6 and 3.7(c) & (d); Regulations 1.100, 1.140, 3.200, 3.500. Retired Member status is being removed from the MCLE Rules. At its November 20, 2015 meeting, the Board of Governors approved the creation of a separate retired membership status outside of the MCLE Rules. To reflect the new membership status, proposed changes to MCLE Rules 1.12, 3.7(c) and (d) and to Regulations 1.100 and 3.500 were discussed and approved at the January 8, 2016 Policy and Governance Committee meeting. In addition to those amendments approved by the Policy and Governance Committee, the MCLE Committee recommends changes to Rules 3.4, 3.5, and 3.6 and to Regulations 1.140 and 3.200.
- 3) Rule 3.2(b). Amended Rule 3.2(b) regarding the number of legal ethics credits required (five legal ethics required instead of six including one child abuse reporting or elder abuse reporting). Moved text regarding child abuse reporting or elder abuse reporting credit requirement to new Rule 3.2(c).
- 4) Regulation 4.350(e) – At its November 2015 meeting, the Board of Governors approved the MCLE Committee's recommendation to eliminate current Regulation 4.350(e), which exempts local bar associations from payment of the MCLE program sponsor fees. This change will become effective in January 2017 to allow local bar associations time to prepare and budget for this change.
- 5) Regulation 4.400(b)(3) – No CLE credit for breaks.
- 6) Rule Five – Major changes are being recommended for Rule Five.

When the new software is implemented, all members will file their compliance reports electronically. Custom programming for all of the current types of credit and means of achieving those credits will be very costly and complex. Therefore, the Committee recommends lumping the different types of CLE activities into three categories (visualize three “buckets”). Members would add these activities to the compliance report by using a drop-down menu. Many members would have credits in Bucket 1 only, while others may have credits in all three buckets. The Committee’s recommendation as to which activities should go in each bucket is set forth below.

Bucket 1

Credits in this bucket are **unlimited**. Members may earn as many as they wish for attending/screening programs and up to the maximum limits for mentoring and legislative service.

- With the exception of personal management assistance credits (see Bucket 3), any credits earned at an accredited CLE program.
- Credits earned serving as a mentor in the New Lawyer Mentoring Program (NLMP) (Rule 5.2(f) and Reg. 5.100(c)).
- Completion of NLMP by new admittees. (Rule 5.2(f) and Reg. 5.100(d)).
- Legislative Service (Rule 5.2(e) and Reg 5.100(b)).
- Credit earned by attending law school or certain graduate level courses. Rule 5.4.

Bucket 2

Credits in this bucket are limited to 20 in a three-year reporting period and 10 in a shorter reporting period. Members may claim credit for these activities simply by adding them to their compliance report. No accreditation application will be required. If, during the audit process, credit is not allowed for certain activities, the member may be required to complete additional credits to meet the minimum requirement but no late fee will be assessed.

- Teaching and legal research/writing credits. (Rules 5.2(a) and (c)). (Currently limited to 20 in three-year reporting period and 10 in shorter reporting period.)
- Service as a Bar Examiner. (Rule 5.2(b)). (Currently no limit.)
- Legal Ethics Service (Rule 5.2(d)). (Currently no limit.)
- Service on UCJI or UCrJI Committees. (Rule 5.2(g) and Reg. 5.250). (Currently no limit.)

As members add these activities to the compliance report, when they reach the maximum of 20 (or 10 in a shorter reporting period), they will be unable to add additional activities in this category.

Bucket 3

Credits in this bucket are limited to 6 in a three-year reporting period and 3 in a shorter reporting period. Members may claim credit for these activities simply by adding them to their compliance report. No accreditation application will be required. If, during the audit process, credit is not allowed for certain activities, the member may be required to complete additional credits to meet the minimum requirement but no late fee will be assessed.

- Personal Management Assistance Credits (Currently limited to 6 in three-year reporting period and 3 in shorter reporting period.)
- Other Volunteer Activities. See item 13 below.
- Business Development and Marketing Activities. See item 14 below.

As members add these activities to the compliance report, when they reach the maximum of 6 (or 3 in a shorter reporting period), they will be unable to add additional activities in this category.

Calculating Carryover Credits

Staff will continue to calculate carryover manually for a while after we go live with the new software. Credits from all three buckets will be totaled and the minimum credit requirement will be subtracted from that total. The remaining credits, up to 15 including 6 ethics, will be applied as carryover into the next reporting period. These carryover credits will be placed in bucket 1 (unlimited credits in this bucket).

- 7) Accreditation standards are set forth for each category (I, II and III). Content standards are listed separately from the accreditation standards. Current Rules 5.1 (a) and (b) have been moved to Activity Content Standards.
- 8) Category I activities include attending CLE programs, law school classes or other classes that meet the criteria set forth in the rules, legislative service, completing New Lawyer Mentoring Program (for both mentor and new admittee) and attending classes designed for other professionals (depending on program content).
- 9) Category II activities include teaching CLE programs, Legal Research and Writing Activities, service as a Bar Examiner, service on certain OSB committees and boards.
- 10) New Rules 5.6, 5.7, 5.8, 5.9, 5.10 – Reference to how many credits may be claimed for these activities is removed from the rules and placed in the regulations. Currently, some credit limitations are in the rules and some are in the regulations. This change is recommended for consistency purposes. The Committee realizes that removing this information from the rules and placing it in the regulations means that any future amendments to the regulations will not require approval by the Oregon Supreme Court. Regulations amendments require Board of Governors approval only.
- 11) Because Category II and Category III activities will not require an accreditation application, language was changed from “may be accredited” or something similar to

“credit may be claimed” or something similar throughout the Accreditation Standards for Category II and Category III Activities.

- 12) Category III activities include personal management assistance credits, credit for other volunteer activities and attending courses devoted to business development and marketing.
- 13) New Rule 5.11(b) – The MCLE Committee has received several requests recently for rule amendments that will allow members to receive CLE credit for various volunteer activities including pro bono representation, teaching to paralegals, coaching and judging high school mock trial and We the People competitions. Rather than amending the rules to allow credit for specific activities, the committee is proposing the following rule and regulation amendments. This proposal allows members to claim credit for various volunteer activities but caps the number of credits members may claim for these activities. The proposal is to include credits for these activities in Category III, which is capped at 6.0 in a three-year reporting period and 3.0 in shorter reporting periods.

The text of new Rule 5.11(b) and new Regulation 5.300(b) is set forth below.

Rule 5.11(b) Other Volunteer Activities. Credit for volunteer activities for which accreditation is not available pursuant to MCLE Rules 5.3, 5.4, 5.6, 5.7, 5.8, 5.9 or 5.10 may be claimed provided the MCLE Program Manager determines the primary purpose of such activities is the provision of legal services or legal expertise.

Regulation 5.300(b) Other Volunteer Activities. Volunteer activities for which accreditation is not available pursuant to Rules 5.3, 5.4, 5.6, 5.7, 5.8, 5.9 or 5.10 may be claimed at a ratio of one credit hour for each two hours of uncompensated volunteer activities provided that the MCLE Program Manager determines the primary purpose of such activity is the provision of legal services or legal expertise. Such activities include but are not limited to:

- (i) Providing direct pro bono representation to low-income clients referred by certified pro bono programs;
- (ii) Serving as a judge, evaluator, mentor or coach in any type of mock trial, moot court, congressional hearing or client legal-counseling competition, law-related class or law-related program at the high school level and above; and
- (iii) Teaching a legal education activity offered primarily to nonlawyers high school age and older.

- 14) New Rule 5.11(c) – Past-OSB Executive Director Sylvia Stevens asked the MCLE Committee to discuss allowing credit for business development and marketing programs. This request stemmed from discussion among Board of Governors members concerning the number of new lawyers entering the profession who have no idea how to establish themselves. MCLE Committee members had lengthy discussions regarding allowing CLE credit for these types of activities for which CLE credit is not currently allowed pursuant to Regulation 5.400.

5.400 Business Development and Marketing Activities. Activities devoted to enhancing profits or generating revenue through advertising and solicitation of legal business, whether denominated business development, client development, practice development, marketing or otherwise, shall not be accredited. Activities dealing with ethical issues relating to advertising and solicitation under applicable disciplinary rules may be accredited if it appears to the Administrator that the emphasis is on legal ethics rather than on business development or marketing.

Some members felt that credit could be allowed if the program was specifically tailored to the delivery or marketing of legal services. There was also concern about allowing CLE credit for programs dealing with enhancing profits.

After much discussion, the Committee recommends adding new Rule 5.11(c), which allows members to claim credit for certain business development and marketing courses. New Regulation 5.300(c) provides examples of the types of courses for which members may claim credit. The text of new Rule 5.11(c) and Regulation 5.300(c) is set forth below:

5.400 Rule 5.11(c) Business Development and Marketing Courses. Credit may be claimed for Activities courses devoted to business development and marketing that are specifically tailored to the delivery or marketing of legal services and focus on use of the discussed techniques and strategies in law practices. ~~enhancing profits or generating revenue through advertising and solicitation of legal business, whether denominated business development, client development, practice development, or otherwise, shall not be accredited. Activities dealing with ethical issues relating to advertising and solicitation under applicable disciplinary rules may be accredited if it appears to the Administrator that the emphasis is on legal ethics rather than on business development or marketing.~~

5.400 Regulation 5.300(c) Business Development and Marketing Activities. Credit may be claimed for Activities courses devoted to business development and marketing that are specifically tailored to the delivery or marketing of legal services and focus on use of the discussed techniques and strategies in law practices. ~~enhancing profits or generating revenue~~ Examples include but are not limited to courses focusing on business development approaches, strategies and techniques available to attorneys, marketing to clients seeking legal services, and website development to promote one's practice. ~~through advertising and solicitation of legal business, whether denominated business development, client development, practice development, or otherwise, shall not be accredited. Activities dealing with ethical issues relating to advertising and solicitation under applicable disciplinary rules may be accredited if it appears to the Administrator that the emphasis is on legal~~

~~ethics rather than on business development or marketing.~~

If credit for this type of activity is allowed, the credits would be in Category III, which is capped at six credits in a three-year reporting period and three credits in a shorter reporting period.

- 15) Activity Content Standards – New Rule 5.12 sets forth content standards for group and teaching activities. New Rule 5.13 sets forth criteria for ethics, child abuse reporting or elder abuse reporting, and access to justice.
- 16) New Rule 5.14 sets forth standards for claiming credit for teaching to other professionals.
- 17) New Regulation 5.100 – Sets forth the number and type of credits that may be earned for Category I activities other than attending CLE programs.
- 18) New Regulation 5.200 – Explains how teaching and legal research and writing credits will be calculated. Currently, teaching credit is calculated at a ratio of two credits for each sixty minutes of instruction. Members may not claim attendance credit for the same session for which they receive teaching credit. The proposed amendment eliminates the ratio calculation. By allowing members to claim attendance credit, which is in Category I, in addition to the teaching credit, they still receive the same number of credits (two credits for a one-hour presentation) but this will eliminate the need for complex programming that would reduce the attendance credit automatically once teaching credit is claimed. Also, because teaching credit is in Category II and capped at 20 credits in a three-year reporting period, eliminating the ratio calculation will actually allow members to claim credit for more teaching activities than they would if we kept the current 2:1 ratio.
This new regulation also sets forth number and type of credits that may be earned for other Category II activities.
- 19) New Regulation 5.300 – Explains what other types of programs/activities/courses may receive credit in Category III. Sets forth how credit will be calculated for other volunteer activities.
- 20) New Regulation 5.600 – The text is the same as what the Committee and BOG approved earlier this year. The heading “Child and Elder Abuse Reporting” has been added.
- 21) Rules 6.1(a)(b) and (c) – Explains the credit limits in each category.
- 22) Rule 7.3(c) – Explains that late fees will be assessed in certain situations. (Members who claim credits in categories II and III, and end up being in noncompliance due to a reduction or disallowance of the credits after an audit, will be required to make up the credit shortage but will not be assessed a late fee.)
- 23) Regulations 7.100(a)(b) and (c) – Sets forth the types of documents members should keep in the event a compliance report is audited.
- 24) Regulation 7.200 – Members who file a late report and/or completed credits after the end of the reporting period will owe a \$200 late fee. Currently, members who completed the credit requirement by the end of the reporting period but were late in

filing the report have a late fee that starts at \$50 and increases by \$50 for every additional 30 days or part thereof. Members who completed their credits AFTER the end of the reporting period but filed the completed report by the filing deadline have a \$200 late fee. Members who completed their credits AFTER the end of the reporting period AND filed their report late have a \$200 late fee. These \$200 late fees increase by \$50 for every additional 30 days or part thereof after the 60 day cure period has expired. Complex software programming would be required to maintain these late fee schedules. Therefore, the Committee is recommending one \$200 fee that will not increase.

Oregon State Bar
Minimum Continuing Legal Education
Rules and Regulations

(As amended effective ??)

Reviewed by MCLE Committee on 12/11/2015

Purpose

It is of primary importance to the members of the bar and to the public that attorneys continue their legal education after admission to the bar. Continuing legal education assists Oregon lawyers in maintaining and improving their competence and skills and in meeting their obligations to the profession. These Rules establish the minimum requirements for continuing legal education for members of the Oregon State Bar.

Rule One
Terms and Definitions

1.1 Active Member: An active member of the Oregon State Bar, as defined in Article 6 of the Bylaws of the Oregon State Bar.

1.2 Accreditation: The formal process of accreditation of activities by the MCLE ~~Administrator~~ Program Manager.

~~1.4~~ **1.3 BOG:** The Board of Governors of the Oregon State Bar.

~~1.5~~ **1.4 Accredited CLE Activity:** An activity that provides legal or professional education to attorneys in accordance with MCLE Rule 5.

~~1.6~~ **1.5 Executive Director:** The executive director of the Oregon State Bar.

~~1.7~~ **1.6 Hour or Credit Hour:** Sixty minutes of accredited group CLE activity or other CLE activity.

~~1.8~~ **1.7 MCLE Committee:** The Minimum Continuing Legal Education Committee appointed by the BOG to assist in the administration of these Rules.

~~1.9~~ **1.8 New Admittee:** A person is a new admittee from the date of initial admission as an active member of the Oregon State Bar through the end of his or her first reporting period.

~~1.10~~ **1.9 Regulations:** Any regulation adopted by the BOG to implement these Rules.

~~1.11~~ **1.10 Reporting Period:** The period during which an active member must satisfy the MCLE requirement.

~~1.12~~ **Retired Member:** An active member who is over 65 years old and is fully retired from the practice of law.

~~1.13~~ **1.11 Sponsor:** An individual or organization providing a CLE activity.

~~1.14~~ **1.12 Supreme Court:** The Supreme Court of the State of Oregon.

Regulations to MCLE Rule 1 Terms and Definitions

1.100 Inactive or Retired Member. An inactive or retired member of the Oregon State Bar, as defined in Article 6 of the Bylaws.

1.101 Suspended Member. A member who has been suspended from the practice of law by the Supreme Court.

1.110 MCLE Filings.

(a) Anything to be filed under the MCLE Rules shall be delivered to the MCLE ~~Administrator~~ Program Manager, at 16037 SW Upper Boones Ferry Road, PO Box 231935, Tigard, Oregon, 97281-1935.

(b) Filing shall not be timely unless the document is actually received by the MCLE Administrator by the close of business on the day the filing is due.

(c) Timely filing of a completed compliance report as required by Rule 7.1 and 7.4(a)(2) is defined as the actual physical receipt of the signed report at the MCLE office, regardless of the date of posting or postmark, or the date of delivery to a delivery service of any kind. Reports may be delivered by facsimile or electronic transmission. If the due date for anything to be filed under the MCLE Rules is a Saturday or legal holiday, including Sunday, or a day that the Oregon State Bar office is closed, the due date shall be the next regular business day.

1.115 Service Method.

(a) MCLE Compliance Reports shall be sent to the member's email address on file with the bar, except that reports shall be sent by first-class mail (to the last designated business or residence address on file with the Oregon State Bar) to any member who is exempt from having an email address on file with the bar.

(b) Notices of Noncompliance shall be sent via regular mail and email to the member's last designated business or residence address on file with the Oregon State Bar and to the email address on file with the bar on the date of the notice. Email notices will not be sent to any member who is exempt from having an email address on file with the bar.

(c) Service by mail shall be complete on deposit in the mail.

1.120 Regularly Scheduled Meeting. A meeting schedule for each calendar year will be established for the BOG and the MCLE Committee, if one is appointed. All meetings identified on the schedule will be considered to be regularly scheduled meetings. Any other meeting will be for a special reason and/or request and will not be considered as a regularly scheduled meeting.

1.130 Reporting Period. Reporting periods shall begin on January 1 and end on December 31 of the reporting year.

~~**1.140 Fully Retired.** A member is fully retired from the practice of law if the member is over 65 years of age and does not engage at any time in any activity that constitutes the practice of law including, without limitation, activities described in OSB Bylaws 6.100 and 20.2.~~

Rule Two Administration of Minimum Continuing Legal Education

2.1 Duties and Responsibilities of the Board of Governors. The Minimum Continuing Legal Education Rules shall be administered by the BOG. The BOG may modify and amend these Rules and adopt new rules subject to the approval of the Supreme Court. The BOG may adopt, modify and amend regulations to implement these Rules. The BOG may appoint an MCLE Committee to assist in the administration of these rules. There shall be an MCLE ~~Administrator~~ Program Manager who shall be an employee of the Oregon State Bar.

2.2 Duties of the MCLE Administrator–Program Manager. The MCLE Administrator Program Manager shall:

- (a) Oversee the day-to-day operation of the program as specified in these Rules.
- (b) Approve applications for accreditation and requests for exemption, and make compliance determinations.
- (c) Develop the preliminary annual budget for MCLE operations.
- (d) Prepare an annual report of MCLE activities.
- (e) Perform other duties identified by the BOG or as required to implement these Rules.

2.3 Expenses. The executive director shall allocate and shall pay the expenses of the program including, but not limited to staff salaries, out of the bar’s general fund.

Rule Three Minimum Continuing Legal Education Requirement

3.1 Effective Date. These Rules, or any amendments thereto, shall take effect upon their approval by the Supreme Court of the State of Oregon.

3.2 Active Members.

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

(b) **Ethics.** At least ~~six~~ five of the required hours shall be in subjects relating to ethics in programs accredited pursuant to Rule 5.5(a), ~~including one hour on the subject of a lawyer’s statutory duty to report child abuse or one hour on the subject of a lawyer’s statutory duty to report elder abuse (see ORS 9.114). MCLE Regulation 3.300(d) specifies the reporting periods in which the child abuse or elder abuse reporting credit is required.~~

(c) Child Abuse or Elder Abuse Reporting. One hour must be on the subject of a lawyer’s statutory duty to report child abuse or one hour on the subject of a lawyer’s statutory duty to report elder abuse (see ORS 9.114). MCLE Regulation 3.300(d) specifies the reporting periods in which the child abuse or elder abuse reporting credit is required.

~~(e)~~ (d) **Access to Justice.** In alternate reporting periods, at least three of the required hours must be in programs accredited for access to justice pursuant to Rule 5.5(b).

3.3 Reinstatements, Resumption of Practice After Retirement and New Admittees.

(a) An active member whose reporting period is established in Rule 3.7(c)(2) or (d)(2) shall complete 15 credit hours of accredited CLE activity in the first reporting period after reinstatement or resumption of the practice of law in accordance with Rule 3.4. Two of the 15 credit hours shall be devoted to ethics.

(b) New admittees shall complete 15 credit hours of accredited CLE activity in the first reporting period after admission as an active member, including two credit hours in ethics, and ten credit hours in practical skills. New admittees must also complete a three credit hour OSB-approved introductory course in access to justice. The MCLE Administrator Program Manager may waive the practical skills requirement for a new admittee who has practiced law in another jurisdiction for three consecutive years immediately prior to the member’s admission in Oregon, in which event the new admittee must complete ten hours in other areas. After a new admittee’s first reporting period, the requirements in Rule 3.2(a) shall apply.

~~**3.4 Retired Members.** A retired member shall be exempt from compliance with these Rules, provided the member files a compliance report for any reporting period during which the exemption is claimed certifying that the member was or became retired during the reporting period. A retired member shall not resume the practice of law, either on a full or part-time basis, without prior written notice to the MCLE Administrator.~~

3.5 3.4 Out-of-State Compliance.

(a) Reciprocity Jurisdictions. An active member whose principal office for the practice of law is not in the State of Oregon and who is an active member in a jurisdiction with which Oregon has established MCLE reciprocity may comply with these rules by filing a compliance report as required by MCLE Rule 7.1 accompanied by evidence that the member is in compliance with the requirements of the other jurisdiction and has completed the child abuse or elder abuse reporting credit required in ORS 9.114. MCLE Regulation 3.300(d) specifies the reporting periods in which the child abuse or elder abuse reporting credit is required.

(b) Other Jurisdictions. An active member whose principal office for the practice of law is not in the State of Oregon and is not in a jurisdiction with which Oregon has established MCLE reciprocity must file a compliance report as required by MCLE Rule 7.1 showing that the member has completed at least 45 hours of accredited CLE activities as required by Rule 3.2.

~~**3.6 3.5 Retired and Active Pro Bono.** Members who are in Retired or Active Pro Bono status pursuant to OSB Bylaw 6.101 are exempt from compliance with these Rules.~~

3.7 3.6 Reporting Period.

(a) In General. All active members shall have three-year reporting periods, except as provided in paragraphs (b), (c) and (d).

(b) New Admittees. The first reporting period for a new admittee shall start on the date of admission as an active member and shall end on December 31 of the next calendar year. All subsequent reporting periods shall be three years.

(c) Reinstatements.

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

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

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

~~(d) Retired Members.~~

~~(1) A retired member who resumes the practice of law before the end of the reporting period in effect at the time of the member's retirement shall retain the member's original reporting period and these Rules shall be applied as though the retirement had not occurred.~~

~~(2) Except as provided in Rule 3.7(d)(1), the first reporting period for a retired member who resumes the practice of law shall start on the date the member resumes the practice of law and shall end on December 31 of the next calendar year. All subsequent reporting periods shall be three years.~~

~~(3) Notwithstanding Rules 3.7(d)(1) and (2), members resuming the practice of law after retirement who did not submit a completed compliance report for the reporting period immediately prior to retirement will be assigned a new reporting period upon the resumption of the practice of law. This reporting period shall begin on the date of the resumption of the practice of law and shall end on December 31 of the next calendar year. All subsequent reporting periods shall be three years.~~

Regulations to MCLE Rule 3 Minimum Continuing Legal Education Requirement

~~**3.200 Resumption of Law Practice By a Retired Member.** The resumption of the practice of law by a retired member occurs when the member undertakes to perform any activity that would constitute the practice of law including, without limitation the activities described in OSB Bylaws 6.100 and 20.2.~~

~~**3.250 3.100 Out-of-State Compliance.** An active member seeking credit pursuant to MCLE Rule 3.5(b) shall attach to the member's compliance report filed in Oregon evidence that the member has met the requirements of Rules 3.2(a) and (b) with courses accredited in any jurisdiction. This evidence may include certificates of compliance, certificates of attendance, or other information indicating the identity of the crediting jurisdiction, the number of 60-minute hours of credit granted, and the subject matter of programs attended.~~

~~**3.260 3.200 Reciprocity.** An active member who is also an active member in a jurisdiction with which Oregon has established MCLE reciprocity (currently Idaho, Utah or Washington) may comply with Rule 3.5(a) by attaching to the compliance report required by MCLE Rule 7.1 a copy of the member's certificate of compliance with the MCLE requirements from that jurisdiction, together with evidence that the member has completed the child abuse or elder abuse reporting training required in ORS 9.114. No other information about program attendance is required. MCLE Regulation 3.300(d) specified the reporting periods in which the child abuse or elder abuse reporting credit is required.~~

3.300 Application of Credits.

(a) Legal ethics and access to justice credits in excess of the minimum required can be applied to the general or practical skills requirement.

(b) Practical skills credits can be applied to the general requirement.

(c) For members in a three-year reporting period, one child abuse or elder abuse reporting credit earned in a non-required reporting period may be applied to the ethics credit requirement. Additional child-abuse and elder abuse reporting credits will be applied to the general or practical skills requirement. For members in a shorter reporting period, child abuse and elder abuse reporting credits will be applied as general or practical skills credit. Access to Justice credits earned in a non-required reporting period will be credited as general credits.

(d) Members in a three-year reporting period are required to have 3.0 access to justice credits and 1.0 child abuse reporting credit in reporting periods ending 12/31/2012 through 12/31/2014, 12/31/2018 through 12/31/2020 and in alternate three-year periods thereafter. Members in a three-year reporting period ending 12/31/2015 through 12/31/2017, 12/31/2021 through 12/31/2023 and in alternate three-year periods thereafter are required to have 1.0 elder abuse reporting credit.

3.400 Practical Skills Requirement.

(a) A practical skills program is one which includes courses designed primarily to instruct new admittees in the methods and means of the practice of law. This includes those courses which involve instruction in the practice of law generally, instruction in the management of a legal practice, and instruction in particular substantive law areas designed for new practitioners. A practical skills program may include but shall not be limited to instruction in: client contact and relations; court proceedings; negotiation and settlement; alternative dispute resolution; malpractice avoidance; personal management assistance; the negative aspects of substance abuse to a law practice; and practice management assistance topics such as tickler and docket control systems, conflict systems, billing, trust and general accounting, file management, and computer systems.

(b) A CLE course on any subject matter can contain as part of the curriculum a portion devoted to practical skills. The sponsor shall designate those portions of any program which it claims is eligible for practical skills credit.

(c) A credit hour cannot be applied to both the practical skills requirement and the ethics requirement.

(d) A new admittee applying for an exemption from the practical skills requirement, pursuant to Rule 3.3(b), shall submit in writing to the MCLE Administrator a request for exemption describing the nature and extent of the admittee's prior practice of law sufficient for the Administrator to determine whether the admittee has current skills equivalent to the practical skills requirements set forth in this regulation.

3.500 Reporting Period Upon Reinstatement. A member who returns to active membership status as contemplated under MCLE Rule 3.7(c)(2) shall not be required to fulfill the requirement of compliance during the member's inactive or retired status, suspension, disbarment or resignation, but no credits obtained during the member's inactive or retired status, suspension, disbarment or resignation shall be carried over into the next reporting period.

3.600 Introductory Course in Access to Justice. In order to qualify as an introductory course in access to justice required by MCLE Rule 3.3(b), the three-hour program must meet the accreditation standards set forth in MCLE Rule 5.5(b) and include discussion of at least three of the following areas: race, gender, economic status, creed, color, religion, national origin, disability, age or sexual orientation.

Rule Four Accreditation Procedure

4.1 In General.

(a) In order to qualify as an accredited CLE activity, the activity must be given activity accreditation by the MCLE ~~Administrator~~ Program Manager.

(b) The MCLE ~~Administrator~~ Program Manager shall electronically publish a list of accredited programs.

(c) All sponsors shall permit the MCLE ~~Administrator~~ Program Manager or a member of the MCLE Committee to audit the sponsors' CLE activities without charge for purposes of monitoring compliance with MCLE requirements. Monitoring may include attending CLE activities, conducting surveys of participants and verifying attendance of registrants.

4.2 Group Activity Accreditation.

(a) CLE activities will be considered for accreditation on a case-by-case basis and must satisfy the accreditation standards listed in these Rules for the particular type of activity for which accreditation is being requested.

(b) A sponsor or individual active member may apply for accreditation of a group CLE activity by filing a written application for accreditation with the MCLE ~~Administrator~~ Program Manager. The application

shall be made on the form required by the MCLE ~~Administrator~~ Program Manager for the particular type of CLE activity for which accreditation is being requested and shall demonstrate compliance with the accreditation standards contained in these Rules.

(c) A written application for accreditation of a group CLE activity submitted by or on behalf of the sponsor of the CLE activity shall be accompanied by the program sponsor fee required by MCLE Regulation 4.300. An additional program sponsor fee is required for a repeat live presentation of a group CLE activity.

(d) A written application for accreditation of a group CLE activity must be filed either before or no later than 30 days after the completion of the activity. An application received more than 30 days after the completion of the activity is subject to a late processing fee as provided in Regulation 4.300.

(e) The MCLE ~~Administrator~~ Program Manager may revoke the accreditation of an activity at any time if it determines that the accreditation standards were not met for the activity. Notice of revocation shall be sent to the sponsor of the activity.

(f) Accreditation of a group CLE activity obtained by a sponsor or an active member shall apply for all active members participating in the activity.

4.4 Credit Hours. Credit hours shall be assigned in multiples of one-quarter of an hour. The BOG shall adopt regulations to assist sponsors in determining the appropriate number of credit hours to be assigned.

4.5 Sponsor Advertising.

(a) Only sponsors of accredited group CLE activities may include in their advertising the accredited status of the activity and the credit hours assigned.

(b) Specific language and other advertising requirements may be established in regulations adopted by the BOG.

Regulations to MCLE Rule 4 Accreditation Procedure

~~4.300~~ 4.200 Group Activity Accreditation.

(a) Review procedures shall be pursuant to MCLE Rule 8.1 and Regulation 8.100.

(b) The number of credit hours assigned to the activity shall be determined based upon the information provided by the applicant. The applicant shall be notified via email or regular mail of the number of credit hours assigned or if more information is needed in order to process the application.

~~4.350~~ 4.300 Sponsor Fees.

(a) A sponsor of a group CLE activity that is accredited for 4 or fewer credit hours shall pay a program sponsor fee of \$40.00. An additional program sponsor fee is required for every repeat live presentation of an accredited activity, but no additional fee is required for a video or audio replay of an accredited activity.

(b) A sponsor of a group CLE activity that is accredited for more than 4 credit hours shall pay a program sponsor fee of \$75. An additional program sponsor fee is required for every repeat live presentation of an accredited activity, but no additional fee is required for a video or audio replay of an accredited activity.

(c) Sponsors presenting a CLE activity as a series of presentations may pay one program fee of \$40.00 for all presentations offered within three consecutive calendar months, provided:

- (i) The presentations do not exceed a total of three credit hours for the approved series; and
- (ii) Any one presentation does not exceed one credit hour.

(d) A late processing fee of \$40 is due for accreditation applications that are received more than 30 days after the program date. This fee is in addition to the program sponsor fee and accreditation shall not be granted until the fee is received.

~~(e) All local bar associations in Oregon are exempt from payment of the MCLE program sponsor fees. However, if accreditation applications are received more than 30 days after the program date, the late processing fee set forth in MCLE Regulation 4.350(d) will apply.~~

4.400 Credit Hours.

(a) Credit hours shall be assigned to CLE activities in multiples of one-quarter of an hour or .25 credits and are rounded to the nearest one-quarter credit.

(b) Credit Exclusions. Only CLE activities that meet the accreditation standards stated in MCLE Rule 5 shall be included in computing total CLE credits. Credit exclusions include the following:

- (1) Registration
- (2) Non-substantive introductory remarks
- (3) Breaks ~~exceeding 15 minutes per three hours of instruction~~
- (4) Business meetings
- (5) Programs of less than 30 minutes in length

4.500 Sponsor Advertising.

(a) Advertisements by sponsors of accredited CLE activities shall not contain any false or misleading information.

(b) Information is false or misleading if it:

- (i) Contains a material misrepresentation of fact or law or omits a fact necessary to make the statement considered as a whole not materially misleading;
- (ii) Is intended or is reasonably likely to create an unjustified expectation as to the results to be achieved from participation in the CLE activity;
- (iii) Is intended or is reasonably likely to convey the impression that the sponsor or the CLE activity is endorsed by, or affiliated with, any court or other public body or office or organization when such is not the case.

(c) Advertisements may list the number of approved credit hours. If approval of accreditation is pending, the advertisement shall so state and may list the number of CLE credit hours for which application has been made.

(d) If a sponsor includes in its advertisement the number of credit hours that a member will receive for attending the program, the sponsor must have previously applied for and received MCLE accreditation for the number of hours being advertised.

Rule Five **Accreditation Standards for Category I Activities**

5.1 Group CLE Activities. Group CLE activities shall satisfy the following:

~~(a) The activity must have significant intellectual or practical content with the primary objective of increasing the participant's professional competence as a lawyer; and~~

~~(b) The activity must deal primarily with substantive legal issues, legal skills, practice issues, or legal ethics and professionalism, or access to justice; and~~

~~(c) (a) The activity must be offered by a sponsor having substantial, recent experience in offering continuing legal education or by a sponsor that can demonstrate ability to organize and effectively present continuing legal education. Demonstrated ability arises partly from the extent to which individuals with legal training or educational experience are involved in the planning, instruction, and supervision of the activity; and~~

~~(d) (b) The activity must be primarily intended for presentation to multiple participants, including but not limited to live programs, video and audio presentations (including original programming and replays of accredited programs), satellite broadcasts and on-line programs; and~~

~~(e) (c) The activity must include the use of thorough, high-quality written materials, unless the MCLE Administrator determines that the activity has substantial educational value without written materials.~~

~~(f) (d) The activity must have no attendance restrictions based on race, color, gender, sexual orientation, religion, geographic location, age, handicap or disability, marital, parental or military status or other classification protected by law, except as may be permitted upon application from a provider or member, where attendance is restricted due to applicable state or federal law.~~

5.4 5.2 Attending Classes.

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

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

(1) The MCLE Administrator determines that the content of the activity is in compliance with other MCLE accreditation standards; and

(2) The class is a graduate-level course offered by a university; and

(3) The university is accredited by an accrediting body recognized by the U.S. Department of Education for the accreditation of institutions of postsecondary education.

(e) 5.3 Legislative Service. General credit hours may be earned for service as a member of the Oregon Legislative Assembly while it is in session.

(f) 5.4 New Lawyer Mentoring Program (NLMP)

(1) Mentors may earn CLE credit for serving as a mentor in the Oregon State Bar's New Lawyer Mentoring Program.

(2) New lawyers who have completed the NLMP may be awarded CLE credits to be used in their first three-year reporting period.

5.3 5.5 Other Professionals. Notwithstanding the requirements of Rules 5.12(a) and (b), 5.1(b) and (c) and 5.2, participation in or teaching an educational activity offered primarily to or by other professions or occupations may be accredited as a CLE activity if the MCLE Administrator determines that the content of the activity is in compliance with other MCLE accreditation standards. The MCLE Administrator Program Manager may accredit the activity for fewer than the actual activity hours if the MCLE Administrator determines that the subject matter is not sufficient to justify full accreditation.

Accreditation Standards for Category II Activities

~~5.2 Other CLE Activities.~~

~~(a) 5.6 Teaching Activities.~~

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

~~(2) (a) Teaching credit is allowed may be claimed for teaching for accredited continuing legal education activities or for courses in ABA or AALS accredited law schools.~~

~~(3) (b) Credit may be claimed for teaching Teaching other courses may also be accredited as a CLE activity, provided the activity satisfies the following criteria:~~

~~(i) (1) The MCLE Program Manager Administrator determines that the content of the activity is in compliance with other MCLE accreditation content standards; and~~

~~(ii) (2) The course is a graduate-level course offered by a university; and~~

~~(iii) (3) The university is accredited by an accrediting body recognized by the U.S. Department of Education for the accreditation of institutions of postsecondary education.~~

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

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

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

~~5.7 (e) Legal Research and Writing.~~

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

~~(i) (a) It deals primarily with one or more of the types of issues for which group CLE activities can be accredited as described in Rule 5.1(b); and~~

~~(ii) (b) It has been published in the form of articles, CLE course materials, chapters, or books, or issued as a final product of the Legal Ethics Committee or a final instruction of the Uniform Civil Jury Instructions Committee or the Uniform Criminal Jury Instructions Committee, personally authored or edited in whole or in substantial part, by the applicant; and~~

~~(iii) (c) It contributes substantially to the legal education of the applicant and other attorneys; and~~

~~(iv) (d) It is not done in the regular course of the active member's primary employment.~~

~~(2) The number of credit hours shall be determined by the MCLE Program Manager Administrator, based on the contribution of the written materials to the professional competency of the applicant and other attorneys. One hour of credit will be granted for each sixty minutes of~~

~~research and writing, but no credit shall be granted for time spent on stylistic editing.~~

~~(b) 5.8 Service as a Bar Examiner. Credit may be claimed for service Service as a bar examiner for Oregon may be accredited, provided that the service includes personally writing or grading a question for the Oregon bar exam during the reporting period. Up to six (6) credit hours may be earned for writing and grading a question, and up to three (3) credit hours may be earned for grading a question.~~

~~(d) 5.9 Legal Ethics Service. Credit may be claimed for A member serving on the Oregon State Bar Legal Ethics Committee, Client Security Fund Committee, Commission on Judicial Fitness & Disability, Oregon Judicial Conference Judicial Conduct Committee, Local Professional Responsibility Committees, State Professional Responsibility Board, and Disciplinary Board or serving as volunteer bar counsel or volunteer counsel to an accused in Oregon disciplinary proceedings may earn two ethics credits for each twelve months of service.~~

~~(e) Legislative Service. General credit hours may be earned for service as a member of the Oregon Legislative Assembly while it is in session.~~

~~(f) New Lawyer Mentoring Program (NLMP)~~

~~—— (1) Mentors may earn CLE credit for serving as a mentor in the Oregon State Bar's New Lawyer Mentoring Program.~~

~~—— (2) New lawyers who have completed the NLMP may be awarded CLE credits to be used in their first three year reporting period.~~

~~(g) 5.10 Jury instructions Committee Service. Credit may be claimed for A member serving on the Oregon State Bar Uniform Civil Jury Instructions Committee or Uniform Criminal Jury Instructions Committee may earn two general credits for each 12 months of service.~~

~~(h) A member seeking credit for any of the activities described in Rule 5.2 must submit a written application on the form designated by the MCLE Administrator for Other CLE Activities.~~

~~**5.3 Other Professionals.** Notwithstanding the requirements of Rules 5.1(b) and (c) and 5.2, participation in or teaching an educational activity offered primarily to or by other professions or occupations may be accredited as a CLE activity if the MCLE Administrator determines that the content of the activity is in compliance with other MCLE accreditation standards. The MCLE Administrator may accredit the activity for fewer than the actual activity hours if the MCLE Administrator determines that the subject matter is not sufficient to justify full accreditation.~~

~~**5.4 Attending Classes.**~~

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

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

~~(1) — The MCLE Administrator determines that the content of the activity is in compliance with other MCLE accreditation standards; and~~

~~(2) — The class is a graduate level course offered by a university; and~~

~~(3) — The university is accredited by an accrediting body recognized by the U.S. Department of Education for the accreditation of institutions of postsecondary education.~~

Accreditation Standards for Category III Activities

5.6 5.11 Credit for Other Activities

(a) Personal Management Assistance. Credit may be claimed for activities that deal with personal self-improvement may be accredited, provided the MCLE Program Manager Administrator determines the self-improvement relates to professional competence as a lawyer.

(b) Other Volunteer Activities. Credit for volunteer activities for which accreditation is not available pursuant to MCLE Rules 5.3, 5.4, 5.6, 5.7, 5.8, 5.9 or 5.10 may be claimed provided the MCLE Program Manager determines the primary purpose of such activities is the provision of legal services or legal expertise.

~~**5.400 (c) Business Development and Marketing Courses.** Credit may be claimed for Activities courses devoted to business development and marketing that are specifically tailored to the delivery or marketing of legal services and focus on use of the discussed techniques and strategies in law practices. enhancing profits or generating revenue through advertising and solicitation of legal business, whether denominated business development, client development, practice development, or otherwise, shall not be accredited. Activities dealing with ethical issues relating to advertising and solicitation under applicable disciplinary rules may be accredited if it appears to the Administrator that the emphasis is on legal ethics rather than on business development or marketing.~~

Activity Content Standards

(a) 5.12 Group and Teaching CLE Activities

(a) The activity must have significant intellectual or practical content with the primary objective of increasing the participant's professional competence as a lawyer; and

(b) The activity must deal primarily with substantive legal issues, legal skills, practice issues, or legal ethics and professionalism, or access to justice. ; and

5.5 5.13 Ethics and Access to Justice.

~~(a) In order to be accredited as an activity in legal ethics under Rule 3.2(b), an activity shall be devoted to the study of judicial or legal ethics or professionalism, and shall include discussion of applicable judicial conduct codes, disciplinary rules, rules of professional conduct or statements of professionalism. Of the six hours of ethics credit required by Rule 3.2(b), one hour must be on the subject of a lawyer's statutory duty to report child abuse or elder abuse (see ORS 9.114). The child abuse reporting training requirement can be completed only by one hour of training by participation in or screening of an accredited program. MCLE Regulation 3.300(d) specifies the reporting periods in which the child abuse or elder abuse reporting credit is required.~~

~~(b) Child abuse or elder abuse reporting programs must be devoted to the lawyer's statutory duty to report child abuse or elder abuse (see ORS 9.114). MCLE Regulation 3.300(d) specifies the reporting periods in which the child abuse or elder abuse reporting credit is required.~~

~~(b) (c) In order to be accredited as an activity pertaining to access to justice for purposes of Rule 3.2(e), (d) an activity shall be directly related to the practice of law and designed to educate attorneys to identify and eliminate from the legal profession and from the practice of law barriers to access to justice arising from biases against persons because of race, gender, economic status, creed, color, religion, national origin, disability, age or sexual orientation.~~

~~(c)~~ (d) Portions of activities may be accredited for purposes of satisfying the ethics and access to justice requirements of Rule 3.2, if the applicable content of the activity is clearly defined.

~~**5.6 Personal Management Assistance.** Activities that deal with personal self-improvement may be accredited, provided the MCLE Administrator determines the self-improvement relates to professional competence as a lawyer.~~

Teaching Activity Content Standards

~~**5.3 5.14 Other Professionals.** Notwithstanding the requirements of Rules 5.6 and 5.12(a) and (b) 5.1(b) and (c) and 5.2, participation in or credit may be claimed for teaching an educational activity offered primarily to or by other professions or occupations may be accredited as a CLE activity if the MCLE Administrator Program Manager determines that the content of the activity is in compliance with other MCLE accreditation standards and the applicant establishes to the MCLE Program Manager's satisfaction that the teaching activity contributed to the presenter's professional competence as a lawyer. The MCLE Administrator may accredit the activity for fewer than the actual activity hours if the MCLE Administrator determines that the subject matter is not sufficient to justify full accreditation.~~

Unaccredited Activities

~~**5.7 5.15 Unaccredited Activities.** The following activities shall not be accredited:~~

- (a) Activities that would be characterized as dealing primarily with personal self-improvement unrelated to professional competence as a lawyer; and
- (b) Activities designed primarily to sell services or equipment; and
- (c) Video or audio presentations of a CLE activity originally conducted more than three years prior to the date viewed or heard by the member seeking credit, unless it can be shown by the member that the activity has current educational value.
- (d) Repeat live, video or audio presentations of a CLE activity for which the active member has already obtained MCLE credit.

Regulations to MCLE Rule 5 Accreditation Standards

5.050 Written Materials.

- (a) For the purposes of accreditation as a group CLE activity under MCLE Rule 5.1(e), written material may be provided in an electronic or computer-based format, provided the material is available for the member to retain for future reference.
- (b) Factors to be considered by the MCLE Administrator Program Manager in determining whether a group CLE activity has substantial educational value without written materials include, but are not limited to: the qualifications and experience of the program sponsor; the credentials of the program faculty; information concerning program content provided by program attendees or monitors; whether the subject matter of the program is such that comprehension and retention by members is likely without written materials; and whether accreditation previously was given for the same or substantially similar program.

5.100 Category I Activities

~~(b)~~ (a) Credit for legislative service may be earned at a rate of 1.0 general credit for each week or part thereof while the legislature is in session.

~~(c)~~ (b) Members who serve as mentors in the Oregon State Bar's New Lawyer Mentoring Program (NLMP) may earn eight credits, including two ethics credits, upon completion of the plan year. If another lawyer assists with the mentoring, the credits must be apportioned between them.

~~(d)~~ (c) Upon successful completion of the NLMP, new lawyers may earn six general/practical skills credits to be used in their first three-year reporting period.

~~5.100 Other CLE~~ **5.200 Category II Activities.** The application procedure for accreditation of Other CLE Activities shall be in accordance with MCLE Rule 5.2 and Regulation 4.300.

~~(a)~~ (a) Teaching credit may be claimed at a ratio of two one credit hour for each sixty minutes of actual instruction.

~~(a)~~ (b) With the exception of panel presentations, when calculating credit for teaching activities pursuant to MCLE Rule 5.2, for presentations where there are multiple presenters for one session, the number of minutes of actual instruction will be divided by the number of presenters unless notified otherwise by the presenter. Members who participate in panel presentations may receive credit for the total number of minutes of actual instruction. Attendance credit may be claimed for any portion of an attended session not receiving teaching credit.

~~(b)~~ Credit for legislative service may be earned at a rate of 1.0 general credit for each week or part thereof while the legislature is in session.

~~(c)~~ Members who serve as mentors in the Oregon State Bar's New Lawyer Mentoring Program (NLMP) may earn eight credits, including two ethics credits, upon completion of the plan year. If another lawyer assists with the mentoring, the credits must be apportioned between them.

~~(d)~~ Upon successful completion of the NLMP, new lawyers may earn six general/practical skills credits to be used in their first three-year reporting period.

5.200 Legal Research and Writing Activities.

~~(a)~~ (c) For the purposes of accreditation of Legal Research and Writing, all credit hours shall be deemed earned on the date of publication or issuance of the written work.

~~(d)~~ One hour of credit may be claimed for each sixty minutes of research and writing, but no credit may be claimed for time spent on stylistic editing.

~~(b)~~ (e) Credit may be claimed for Legal Research and Writing that supplements an existing CLE publication may be accredited if the applicant provides a statement from the publisher confirming that research on the existing publication revealed no need for supplementing the publication's content.

5.250 (f) Jury Instructions Committee Service. Members may claim two general credits for each 12 months of service. To be eligible for credit under MCLE Rule ~~5.10~~ 5.2(g), a member of a jury instructions committee must attend at least six hours of committee meetings during the relevant 12-month period.

(g) Service as a Bar Examiner. Three (3) credit hours may be claimed for writing a question and three (3) credit hours may be claimed for grading a question.

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

5.300 Category III Activities.

(a) Personal Management Assistance. Credit may be claimed for programs that provide ~~A program may be accredited as a personal management assistance program if it provides assistance with issues that could impair a lawyer's professional competence (examples include but are not limited to programs addressing alcoholism, drug addiction, burnout, procrastination, depression, anxiety, gambling or other addictions or compulsive behaviors, and other health and mental health related issues).~~ Credit may also be claimed for programs ~~A program may also be accredited as a personal management assistance program if it is designed to improve or enhance a lawyer's professional effectiveness and competence (examples include but are not limited to programs addressing time and stress management, career satisfaction and transition, and interpersonal/relationship skill-building).~~

(b) Other Volunteer Activities. Volunteer activities for which accreditation is not available pursuant to Rules 5.3, 5.4, 5.6, 5.7, 5.8, 5.9 or 5.10 may be claimed at a ratio of one credit hour for each two hours of uncompensated volunteer activities provided that the MCLE Program Manager determines the primary purpose of such activity is the provision of legal services or legal expertise. Such activities include but are not limited to:

(i) Providing direct pro bono representation to low-income clients referred by certified pro bono programs;

(ii) Serving as a judge, evaluator, mentor or coach in any type of mock trial, moot court, congressional hearing or client legal-counseling competition, law-related class or law-related program at the high school level and above; and

(iii) Teaching a legal education activity offered primarily to nonlawyers high school age and older.

~~5.400~~ (c) Business Development and Marketing Courses. Credit may be claimed for Activities courses devoted to business development and marketing that are specifically tailored to the delivery or marketing of legal services and focus on use of the discussed techniques and strategies in law practices. enhancing profits or generating revenue ~~Examples include but are not limited to courses focusing on business development approaches, strategies and techniques available to attorneys, marketing to clients seeking legal services, and website development to promote one's practice. through advertising and solicitation of legal business, whether denominated business development, client development, practice development, or otherwise, shall not be accredited. Activities dealing with ethical issues relating to advertising and solicitation under applicable disciplinary rules may be accredited if it appears to the Administrator that the emphasis is on legal ethics rather than on business development or marketing.~~

5.500 5.400 Access to Justice. A program shall not be ineligible for accreditation as an access to justice activity solely because it is limited to a discussion of substantive law, provided the substantive law relates to access to justice issues involving race, gender, economic status, creed, color, religion, national origin, disability, age, or sexual orientation.

~~5.600~~ **5.500 Independent Study.** Members may earn credit through independent screening or viewing of audio-or video-tapes of programs originally presented to live group audiences, or through online programs designed for presentation to a wide audience. A lawyer who is licensed in a jurisdiction that allows credit for reading and successfully completing an examination about specific material may use such credits to meet the Oregon requirement. No credit will be allowed for independent reading of material selected by a member except as part of an organized and accredited group program.

~~5.700~~ **5.600 Child and Elder Abuse Reporting.** In order to be accredited as a child abuse reporting or elder abuse reporting activity, the one-hour session must include discussion of an Oregon attorney's

requirements to report child abuse or elder abuse and the exceptions to those requirements.

Rule Six Credit Limitations

6.1 In General.

(a) Category I Activities. Credits in this category are unlimited. Credit shall be allowed only for CLE activities that are accredited as provided in these Rules, and substantial participation by the active member is required. The MCLE Administrator Program Manager may allow partial credit for completion of designated portions of a CLE activity.

(b) Category II Activities. Credits in this category are limited to 20 in a three-year reporting period and 10 in a shorter reporting period. No accreditation application is required.

(c) Category III Activities. Credits in this category are limited to 6 in a three-year reporting period and 3 in a shorter reporting period. No accreditation application is required.

~~(b) Except as provided in Rule 6.1(c), credit for a particular reporting period shall be allowed only for activities participated in during that reporting period.~~

~~(c) (d) An active member may carry forward 15 or fewer unused credit hours from the reporting period during which the credit hours were earned to the next reporting period.~~

~~(b) (e) Except as provided in Rule 6.1(c)(d), credit for a particular reporting period shall be allowed only for activities participated in during that reporting period.~~

~~**6.2 Teaching and Legal Research and Writing Limitation.** No more than 15 credit hours shall be allowed for each legal research activity for which credit is sought under MCLE Rule 5.2(c) and no more than 20 hours of combined teaching and legal research and writing credit may be claimed in one three year reporting period. Not more than 10 hours may be claimed in any shorter reporting period.~~

~~**6.3 Personal Management Assistance Limitation.** No more than 6 credit hours may be claimed in one three year reporting period and not more than 3 hours may be claimed in a shorter reporting period for personal management assistance activities.~~

Regulations to MCLE Rule 6 Credit Limitations

6.100 Carry Over Credit. No more than six ethics credits can be carried over for application to the subsequent reporting period requirement. Ethics credits in excess of the carry over limit may be carried over as general credits. Child abuse and elder abuse education credits earned in excess of the reporting period requirement may be carried over as general credits, but a new child abuse or elder abuse reporting education credit must be earned in each reporting period in which the credit is required. Access to justice credits may be carried over as general credits, but new credits must be earned in the reporting period in which they are required. Carry over credits from a reporting period in which the credits were completed by the member may not be carried forward more than one reporting period.

6.200 Credits Earned in Excess of Credit Limitations. Any credits earned in excess of the credit limitations set forth in MCLE Rule Six ~~6.2 and 6.3~~ may not be claimed in the reporting period in which they are completed or as carry over credits in the next reporting period.

Rule Seven Compliance

7.1 Reports. Every active member shall file a completed compliance report certifying completion of the member's MCLE requirement, on a form provided by the MCLE ~~Administrator~~ Program Manager, on or before 5:00 p.m. on January 31 of the year immediately following the active member's reporting period.

7.2 Recordkeeping.

(a) Every active member shall maintain records of participation in CLE activities for use in completing a compliance report and shall retain these records for a period of twelve months after the end of the member's reporting period.

(b) The MCLE ~~Administrator~~ Program Manager may maintain records of active members' participation in CLE activities as necessary to verify compliance with the MCLE requirement.

7.3 Audits.

(a) The MCLE ~~Administrator~~ Program Manager may audit compliance reports selected because of facial defects or by random selection or other appropriate method.

(b) For the purpose of conducting audits, the MCLE ~~Administrator~~ Program Manager may request and review records of participation in CLE activities reported by active members.

(c) Failure to substantiate participation in CLE activities in accordance with applicable rules and regulations after request by the MCLE ~~Administrator~~ Program Manager shall result in disallowance of credits for the reported activity, and in certain situations, assessment of the late filing fee specified in 7.5(f).

(d) The MCLE ~~Administrator~~ Program Manager shall refer active members to the Oregon State Bar Disciplinary Counsel for further action where questions of dishonesty in reporting occur.

7.4 Noncompliance.

(a) Grounds. The following are considered grounds for a finding of non-compliance with these Rules:

(1) Failure to complete the MCLE requirement for the applicable reporting period.

(2) Failure to file a completed compliance report on time.

(3) Failure to provide sufficient records of participation in CLE activities to substantiate credits reported, after request by the MCLE ~~Administrator~~ Program Manager.

(b) Notice. In the event of a finding of noncompliance, the MCLE ~~Administrator~~ Program Manager shall send a written notice of noncompliance to the affected active member. The notice shall be sent via regular mail and email 30 days after the filing deadline and shall state the nature of the noncompliance and shall summarize the applicable rules regarding noncompliance and its consequences.

7.5 Cure.

(a) Noncompliance for failure to file a completed compliance report by the due date can be cured by filing the completed report demonstrating completion of the MCLE requirement during the applicable reporting period, together with the late fee specified MCLE Regulation 7.200, no more than 60 days after the notice of noncompliance was sent.

(b) Noncompliance for failure to complete the MCLE requirement during the applicable reporting period can be cured by doing the following no more than 60 days after the notice of noncompliance was sent:

(1) Completing the credit hours necessary to satisfy the MCLE requirement for the applicable

reporting period;

(2) Filing the completed compliance report; and

(3) Paying the late filing fee specified in MCLE Regulation 7.200.

(c) Noncompliance for failure to provide the MCLE ~~Administrator~~ Program Manager with sufficient records of participation in CLE activities to substantiate credits reported can be cured by providing the MCLE ~~Administrator~~ Program Manager with sufficient records, together with the late fee specified in MCLE Regulation 7.200, no more than 60 days after the notice of noncompliance was sent.

(d) Credit hours applied to a previous reporting period for the purpose of curing noncompliance as provided in Rule 7.5(b) may only be used for that purpose and may not be used to satisfy the MCLE requirement for any other reporting period.

(e) When it is determined that the noncompliance has been cured, the MCLE ~~Administrator~~ Program Manager shall notify the affected active member that he or she has complied with the MCLE requirement for the applicable reporting period. Curing noncompliance does not prevent subsequent audit and action specified in Rule 7.3.

7.6 Suspension. If the noncompliance is not cured within the deadline specified in Rule 7.5, the MCLE ~~Administrator~~ Program Manager shall recommend to the Supreme Court that the affected active member be suspended from membership in the bar.

Regulations to MCLE Rule 7 Compliance

7.100. Member Records of Participation.

(a) In furtherance of its audit responsibilities, the MCLE ~~Administrator~~ Program Manager may review an active member's records of participation in Category I CLE activities. Records which may satisfy such a request include, but are not limited to, certificates of attendance or transcripts issued by sponsors, MCLE recordkeeping forms, canceled checks or other proof of payment for registration fees or audio or video tapes, course materials, notes or annotations to course materials, or daily calendars for the dates of CLE activities. For individually screened presentations, contemporaneous records of screening dates and times shall be required.

(b) Members claiming credit for Category II activities should keep course descriptions, course schedules or other documentation verifying the number of minutes of actual instruction, along with a sample of the written materials prepared, if applicable. Members claiming Legal Research and Writing credit should keep a log sheet indicating the dates and number of hours engaged in legal research and writing in addition to a copy of the written product.

(c) Members claiming credit for Category III activities should keep log sheets indicating the dates and number of hours engaged in pro-bono representation and other volunteer activities, along with course descriptions and course schedules, if applicable. Members claiming credit for direct pro-bono representation to low-income clients should also keep documentation establishing the referral by a certified pro bono provider.

7.150 Sponsor Records of Participation. Within 30 days after completion of an accredited CLE activity, the sponsor shall submit an attendance record reflecting the name and Oregon bar number of each Oregon bar member attendee. The record shall be in a compatible electronic format or as otherwise directed by the MCLE ~~Administrator~~ Program Manager.

7.200 Late Fees. Members who complete any portion of the minimum credit requirement after the end of the reporting period or who fail to file a completed compliance report by the filing deadline set forth in Rule 7.1 must pay a \$200 late fee.

~~(a) The late fee for curing a failure to timely file a completed compliance report is \$50 if the report is filed and the late fee is paid after the filing deadline and no more than 30 days after the mailing of the notice of noncompliance and \$100 if the report is filed and the late fee is paid more than 30 days after the mailing of the notice of noncompliance but within the 60 day cure period; if additional time for filing is granted by the MCLE Administrator, the fee shall increase by \$50 for every additional 30 days or part thereof.~~

~~(b) The late fee for not completing the MCLE requirement during the applicable reporting period is \$200 if the requirement is completed after the end of the reporting period but before the end of the 60 day cure period; if additional time for meeting the requirement is granted by the MCLE Administrator, the fee shall increase by \$50 for every additional 30 days or part thereof.~~

Rule Eight Review and Enforcement

8.1 Review.

(a) Decisions of the MCLE ~~Administrator~~ Program Manager. A decision, other than a suspension recommended pursuant to Rule 7.6, affecting any active member or sponsor is final unless a request for review is filed with the MCLE ~~Administrator~~ Program Manager within 21 days after notice of the decision is mailed. The request for review may be by letter and requires no special form, but it shall state the decision to be reviewed and give the reasons for review. The matter shall be reviewed by the BOG or, if one has been appointed, the MCLE Committee, at its next regular meeting. An active member or sponsor shall have the right, upon request, to be heard, and any such hearing request shall be made in the initial letter. The hearing shall be informal. On review, the BOG or the MCLE Committee shall have authority to take whatever action consistent with these rules is deemed proper. The MCLE ~~Administrator~~ Program Manager shall notify the member or sponsor in writing of the decision on review and the reasons therefor.

(b) Decisions of the MCLE Committee. If a decision of the MCLE ~~Administrator~~ Program Manager is initially reviewed by the MCLE Committee, the decision of the MCLE Committee may be reviewed by the BOG on written request of the affected active member or sponsor made within 21 days of the issuance of the MCLE Committee's decision. The decision of the BOG shall be final.

(c) Suspension Recommendation of the MCLE ~~Administrator~~ Program Manager. A recommendation for suspension pursuant to Rule 7.6 shall be subject to the following procedures:

(1) A copy of the MCLE ~~Administrator's~~ Program Manager's recommendation to the Supreme Court that a member be suspended from membership in the bar shall be sent by regular mail and email to the member.

(2) If the recommendation of the MCLE ~~Administrator~~ Program Manager is approved, the court shall enter its order and an effective date for the member's suspension shall be stated therein.

8.2 Reinstatement. An active member suspended for noncompliance with the MCLE requirement shall be reinstated only upon completion of the MCLE requirement, submission of a completed compliance report to the bar, payment of the late filing and reinstatement fees, and compliance with the applicable provisions of the Rules of Procedure.

**Regulations to MCLE Rule 8
Review and Enforcement**

8.100 Review Procedure.

(a) The MCLE ~~Administrator~~ Program Manager shall notify the active member or sponsor of the date, time and place of the BOG or MCLE Committee meeting at which the request for review will be considered. Such notice must be sent no later than 14 days prior to such meeting. If the request for review is received less than 14 days before the next regularly scheduled meeting, the request will be considered at the following regularly scheduled meeting of the BOG or MCLE Committee, unless the member or sponsor waives the 14 day notice.

(b) A hearing before the MCLE Committee may be recorded at the request of the active member or sponsor or the MCLE Committee. In such event, the party requesting that the matter be recorded shall bear the expense of such recording. The other party shall be entitled to a copy of the record of the proceedings at their own expense.

(c) The MCLE ~~Administrator~~ Program Manager shall notify the active member or sponsor of the decision and the reasons therefor within 28 days of the date of the review. A decision of the MCLE Committee shall be subject to BOG review as provided in Rule 8.1.

**Rule Nine
Waivers and Exemptions**

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

**Regulations to MCLE Rule 9
Waivers and Exemptions**

9.100 Waivers and Exemptions . The MCLE ~~Administrator~~ Program Manager will consider requests for waivers and exemptions from the MCLE Rules and Regulations on a case by case basis.

**Rule Ten
Amendment**

These Rules may be amended by the BOG subject to approval by the Supreme Court. Amendments may be proposed by the MCLE Committee, the executive director, or an active member. Proposed amendments shall be submitted and considered in compliance with any regulations adopted by the BOG

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: February 12, 2016
From: Helen Hierschbiel, Executive Director
Re: CSF Claim 2015-02 BERTONI (Miranda-Lopez) Request for BOG Review

Action Requested

Consider the claimant's request for BOG review of the CSF Committee's denial of his claim for reimbursement.

Discussion

Claimant seeks reimbursement of unearned fees paid to Gary Bertoni for post-conviction relief, alleging that Bertoni did not to earn the fee and neglected to recognize that the statute of limitations for seeking PCR had already run.

Claimant was convicted in Washington County in 2004. He was represented by a public defender who Claimant believed did little or no investigation of the case. After his release, Claimant began looking for an attorney to challenge the conviction and have it expunged, but was unable to afford the retainer deposit required by the attorneys he contacted.

In late January 2014, Claimant eventually hired Bertoni to pursue post-conviction relief, and deposited a \$1,500 retainer towards Bertoni's fees. Claimant says Bertoni expressed optimism about the case and they communicated regularly for a few months. Claimant says he then learned from others that there was a two-year statute of limitations on post-conviction relief, so he decided to fire Bertoni. On May 30, 2014, Claimant met with Bertoni, who gave Claimant a check for \$125 while also offering to continue working on the case. Claimant took the refund check, but agreed to Bertoni continuing to work on his case. In mid-June, Claimant again sent a termination letter to Bertoni and refused Bertoni's subsequent request to continue the representation.

In response to the investigator's inquiry, Bertoni claimed to have fully earned the fees he received. Bertoni says he informed Claimant at the outset that the two-year statute of limitations made it extremely unlikely that anything could be done; thereafter, at Claimant's insistence, Bertoni reviewed the court files and transcripts, performed some legal research, spoke to the DA, and discussed the matter with Claimant.

While the Committee questioned the quality and value of Bertoni's services, it found no basis to conclude that Bertoni was dishonest or that he didn't provide some of the services he claimed.

Francisco Miranda
Oregon State Bar
12/2/15

I Francisco Miranda am requesting a review by the O.S.B of Governors
Do to the following: PER ORS 138.510 (3) (a) which states two years was the deadline to file a
post conviction relief after the end of probation from the conviction of 2004

PER ORS 137.225 (5): rape 3 is a class © felony and cannot be set aside

PER ORS 138.084 (3) (a) do to this law the case was years too late for any attorney to succeed in
this case thus Mr. Bertoni should have never taken my money.

Sincerely, Francisco Miranda

CLIENT SECURITY FUND INVESTIGATIVE REPORT

FROM: Steven R. Bennett

DATE: November 12, 2015

RE: CSF Claim No. 2015-2

Claimant: Francisco Miranda (aka Francisco Lopez)

Attorney: Gary Bertoni

Investigator's Recommendation

Recommend denial of claim.

Statement of Claim

This claim seeks reimbursement of the \$1500 retainer fee paid for Post Conviction Relief, on the grounds that the accused did nothing to earn any fees, and neglected to recognize that any relief was barred by the 2-year statute of limitations.

Material Dates

- 3/27/12 Disciplinary Counsel's Office suspended Bertoni for 150 days
- 8/24/12 Bertoni is reinstated
- 1/29/14 Claimant retained Bertoni for Post Conviction Relief (PCR), and paid initial deposit of \$1500; fee agreement signed
- April 2014 Various communications between Claimant and Bertoni; Claimant says he eventually learned from others, there's 2-year time limit on PCR, so client decided to terminate Bertoni
- 5/20/14 Client visited Bertoni's office and left a note terminating services; note demanded refund and return of the court records he provided Bertoni
- 5/29/14 Bertoni told Claimant to come to his office and pick up records and money; Bertoni prepared confirming letter to client
- 5/30/14 Bertoni met with Claimant at his office, and gave check for \$125 along with letter; Claimant says he was surprised to receive check for only \$125, as he expected full refund; by end of meeting, client agreed to keep Bertoni engaged, but client took refund check anyway (\$125)
- 6/19/14 Client sent another termination of Bertoni: "you have done nothing for my case and have failed to communicate with me"
- 6/20/14 Bertoni prepares another letter reciting client's recent communications and offering to continue working on this matter

11/21/14 Disciplinary Counsel's Office suspended Bertoni for 6 months
1/20/15 CSF Claim filed by Claimant

Discussion

Claimant was convicted in 2004 in Washington County, on several counts of non-consensual sex with a minor. He was represented by a public defender who apparently did little or no investigation of the facts. Claimant served his time in the county jail, then immediately began searching for an attorney to challenge the conviction and have it expunged. He made numerous attempts to hire an attorney, but could not afford the retainer deposit each required. Claimant eventually hired Bertoni for post conviction relief. Claimant says Bertoni expressed optimism of obtaining relief due to lack of evidence and lack of competent legal counsel. In contrast, Bertoni confirmed in writing that he warned client from the outset, that 2-year rule made it extremely unlikely that anything could be done.

To investigate this claim, I interviewed the Claimant by phone, and confirmed his version of the facts as set forth in his CSF Application form. I also communicated with Bertoni by email, and eventually spoke with him by phone as well. Bertoni's version of the facts was very different from Claimant's. Bertoni claims to have fully earned all fees paid, having reviewed the court records, performed some research, and contacted the DA. He also claims to have spent substantial time communicating with Claimant and reviewing the court transcript. Of course, the Claimant denies all this and contends that Bertoni did nothing of benefit.

The accused was suspended from the practice for 5 months in 2012, and again for 6 months in November of 2014. Both suspensions appear to have been for conduct different from that alleged in the current CSF claim.

From the available information, it appears the Accused did perform some research and analysis of Claimant's prospects for PCR, and communicated with Claimant about his efforts.

Findings and Conclusions

1. The Claimant was the client of the accused.
2. The accused was an active attorney and member of the Oregon Bar at the time of the loss.
3. The accused maintained an office in Portland, Oregon.
4. Claimant engaged Bertoni to represent him regarding post conviction relief.
5. Claimant filed his claim within 2 years of the discovery of Bertoni's alleged misconduct and Claimant's alleged loss.
6. Bertoni performed material services, having reviewed the court records, performed some research, and contacted the DA; Bertoni also had several communications with Claimant.

7. Claimant demanded a refund of his retainer deposit.
 8. Claimant did not incur a loss and even if he did, it was not the result of dishonest conduct by the Accused.
-

Client Security Fund Application for Reimbursement

Return completed form to:
Oregon State Bar
Client Security Fund
PO Box 231935
Tigard, OR 97281-1935

2015-2

Payments from the Client Security Fund are entirely within the discretion of the Oregon State Bar
Submission of this claim does not guarantee payment.
The Oregon State Bar is not responsible for the acts of individual lawyers.

Please note that this form and all documents received in connection with your claim are public records.
Please attach additional sheets if necessary to give a full explanation.

RECEIVED

JAN 20 2015

Oregon State Bar
Executive Director

1. Information about the client(s) making the claim:

- a. Full Name: FRANCISCO MIRANDA
- b. Street Address: 21900 SE AIDER DR #108
- c. City, State, Zip: RESHAM OR 97030
- d. Phone: (Home) (503) 674-7527 (Cell) (503) 453-0444
(Work) _____ (Other) _____
- e. Email: _____

2. Information about the lawyer whose conduct caused your claim (also check box 10A on page 3)

- a. Lawyer's Name: ~~LATE JAN / EARLY FEB~~ MARY B. BERTON
- b. Firm Name: MARY
- c. Street Address: 520 SW YAMHILL ST STE 430
- d. City, State, Zip: PORTLAND, OR, 97204
- d. Phone: 503 243 2035
- e. Email: _____

3. Information about the representation:

- a. When did you hire the lawyer? LATE JAN / EARLY FEB
- b. What did you hire the lawyer to do? A PRIOR CRIMINAL CONVICTION - FOR EXPUNGEMENT, & INVESTIGATE THE CASE
- c. What was your agreement for payment of fees to the lawyer? (attach a copy of any written fee agreement)
TO FIGHT A WRONGFULL CONVICTION. / VERBAL AGREEMENT
- d. Did anyone else pay the lawyer to represent you? NO
- e. If yes, explain the circumstances (and complete item 10B on page 3).

- f. How much was actually paid to the lawyer? 1500
- g. What services did the lawyer perform? NONE WHAT SO EVER -

h. Was there any other relationship (personal, family, business or other) between you and the lawyer?

NO -

4. Information about your loss:

- a. When did your loss occur? When the attorney was fired
- b. When did you discover the loss? The day the attorney gave me a check for 125⁰⁰ around late May
- c. Please describe what the lawyer did that caused your loss A refusal of my full retainer also he did not explain that under ORS 138.510(3)(a) no lawyer would be able to take my case

d. How did you calculate your loss? Subtracting 125⁰⁰ - 1500 = 1,375

5. Information about your efforts to recover your loss: When I fired him I asked for my money back

a. Have you been reimbursed for any part of your loss? If yes, please explain: only ~~125~~ 125⁰⁰

b. Do you have any insurance, indemnity or a bond that might cover your loss? If yes, please explain: NO

c. Have you made demand on the lawyer to repay your loss? When? Please attach a copy of any written demand. YES - A VERBAL DEMAND

d. Has the lawyer admitted that he or she owes you money or has he or she agreed to repay you? If yes, please explain: NO He HAS NOT

e. Have you sued the lawyer or made any other claim? If yes, please provide the name of the court and a copy of the complaint. NO I HAVE NOT

f. Have you obtained a judgment? If yes, please provide a copy NO

g. Have you made attempts to locate assets or recover on a judgment? If yes, please explain what you found: ~~YES~~
NO

6. Information about where you have reported your loss:

- District attorney
- Police
- Oregon State Bar Professional Liability Fund
If yes to any of the above, please provide copies of your complaint, if available.
- Oregon State Bar Client Assistance Office or Disciplinary Counsel

7. Did you hire another lawyer to complete any of the work? If yes, please provide the name and telephone number of the new lawyer: NO

8. Please give the name and the telephone number of any other person who may have information about this claim: N/A

9. Agreement and Understanding

The claimant agrees that, in exchange for any award from the Oregon State Bar Client Security Fund (OSB CSF), the claimant will:

- a. Transfer to the Oregon State Bar all rights the claimant has against the lawyer or anyone else responsible for the claimant's loss, up to the amount of the CSF award.
- b. Cooperate with the OSB CSF in its efforts to collect from the lawyer, including providing information and testimony in any legal proceeding initiated by the OSB CSF.
- c. Notify the OSB CSF if the claimant receives notice that the lawyer has filed for bankruptcy relief.
- d. Notify the OSB CSF if the claimant receives any payment from or otherwise recovers any portion of the loss from the lawyer or any other person on entity and reimburse the OSB CSF to the extent of such payment.

10. Claimant's Authorization

- a. Release of Files: I hereby authorize the release to the OSB Client Security Fund, upon request, of any records or files relating to the representation of me by the lawyer named in Question 2.
- b. Payment to Third Party: I hereby authorize the OSB Client Security Fund to pay all amounts awarded to me to:

Name: FRANCISCO MIRANDA
 Address: 21900 SE AIDER DR #108 CAPESUMMIT OR 97030
 Phone: (503) 453 0444 / (503) 674 7527

11. Claimant's Signature and Verification

(Each claimant must have a notarized signature page. Please photocopy this page for each person listed in question 1.)

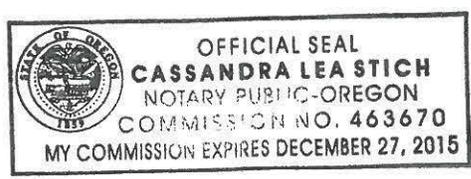
State of Oregon)
 County of Washington) ss

Upon oath or affirmation, I certify the following to be true:

I have reviewed the Rules of the Client Security Fund and the foregoing Application for Reimbursement; and submit this claim subject to the conditions stated therein; and the information which I have provided in this Application is complete and true, to the best of my knowledge and belief.

[Handwritten Signature]
 Claimant's Signature

Signed and sworn (or affirmed) before me this 5/6 day of DECEMBER, 2014 15 (CLS)



[Handwritten Signature]
 Notary's Signature
 Notary Public for State of Oregon
 My Commission Expires 12/27/2015

Please complete page 4 if an attorney is representing you for this claim.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: February 12, 2016
From: Helen Hierschbiel, Executive Director
Re: CSF Claim No. 2015-12 CAROLAN (Avery) Request for BOG Review

Action Requested

Consider claimant's request for BOG review of the CSF Committee's denial of his claim for reimbursement.

Discussion

In March 2009, James Avery pleaded guilty in Maryland to misdemeanor assault of a now-adult step-daughter who alleged that James had sexually abused her when she was a child. The plea was on the advice of James's Maryland defense counsel, who believed the plea would insulate James from being charge in Oregon (where he and the victim had previously resided). Maryland sentenced Avery to 10 years (14 months to be actually served) and required him to register as a sex offender.

In August 2010, James was indicted in Josephine County on felony sex abuse charges involving the same victim. His public defender in Oregon advised James to plead guilty to the Oregon charges because his prior guilty plea in Maryland could be used against him. James took his lawyer's advice and was sentenced to 144 months.

While in prison in Oregon, James reconnected with his former wife, Catherine.¹ In October 2011, Catherine arranged for attorney Kevin Carolan to evaluate whether James had a basis for post-conviction relief, as Catherine and James were concerned that neither of his criminal defense attorneys had given him good advice. According to Catherine, she had an oral agreement with Carolan about the services to be provided for James, and she paid an initial retainer of \$2,000 against what she understood to be an hourly rate of \$165.

James subsequently signed a written agreement on November 11, 2011, which acknowledged receipt of the initial retainer and provided that he would be billed for Carolan's time at the rate of \$200/hour, and for his assistant's time at \$70/hour. The agreement also contained the following: "I understand Mr. Carolan may assign work on my case to an associate within or outside of his firm."

Almost immediately after being retained, Carolan engaged a contract lawyer to research some issues relating to James' convictions; Carolan agreed to pay the contract lawyer \$50/hour. He did not tell James or Catherine that he was using a contract lawyer. His billing statement did

¹ Catherine is not the mother of Avery's step-daughter victim. She and James had apparently been estranged for several years prior to the incidents at issue here.

not indicate a contract lawyer had been hired; rather, the contracted work was billed as Carolan's own and at his hourly rate. Upon receiving the first bill, Catherine contacted Carolan to clarify the billing rate. Carolan agreed to the lower rate of \$165 and adjusted the bill. By December 2011, the initial retainer had been exhausted and he requested another \$2000, which Catherine paid in several installments.

In September 2012, again without informing the client, Carolan replaced the first contract lawyer with a second one, who he paid \$75-100/hour. Again, Carolan's billing statement did not indicate that a contract lawyer did the work shown, which was billed at Carolan's hourly rate.

In early October 2012, James terminated Carolan's representation after a telephone conversation with the new contract lawyer led James to believe that Carolan had been pursuing a flawed strategy. Upon the termination, Carolan refunded an unearned balance of \$614 and delivered a research memo to Catherine. When asked about the records from the underlying cases, Carolan said he had never obtained them.²

James and Catherine complained to the bar, alleging that Carolan had been dishonest and charged an excessive fee. They claimed he never met with either of them and had only a couple of phone calls with James. After a year of "investigating," Carolan lacked a clear understanding of the facts. Carolan responded that he likely mis-remembering a conversation with James, but that it was irrelevant to the issue of whether James received an adequate defense in either state; he also described in some detail his varying theories of what relief might be available to James. In the spring of 2014, the SPRB authorized formal prosecution of Carolan for lack of competence and improper division of a fee between lawyers not in the same firm, in connection with his representation of James.

James requested an award of \$3,386 from the Client Security Fund (representing the \$4,000 paid to Carolan, less the \$614 refund). The committee investigator recommended an award of \$1,438 based on her calculation of the work done by the contract lawyers at their respective rates. After discussion, the CSF Committee rejected that recommendation. Essentially, the denial was based on the Committee's conclusion that it is not dishonest for a lawyer to use contract lawyers to perform services, particularly where it is expressly contemplated in the fee agreement. As for charging his own rates for the contract lawyers' time, the Committee members believed that "upcharging" for a contract lawyer is common practice, as it captures the lawyer's time in assigning and reviewing the work and recognizes that the lawyer is ultimately responsible. The Committee also analogized the practice to the way that firms bill for the services of associate attorneys. The Committee acknowledges that Carolan's services may have been of poor quality, but found no basis to conclude he had been dishonest or had failed to provide services in exchange for the fees he received.

² The CSF Application indicates that the parties participated in fee mediation, during which Carolan offered another \$200 refund that the client rejected.

1824 W Idaho Street
Boise, ID 83702

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DEC 10 2015

Oregon State Bar
Executive Director

December 7, 2015

Sylvia Stevens
Executive Director
Oregon State Bar
PO Box 231935
Tigard OR 97281-1935

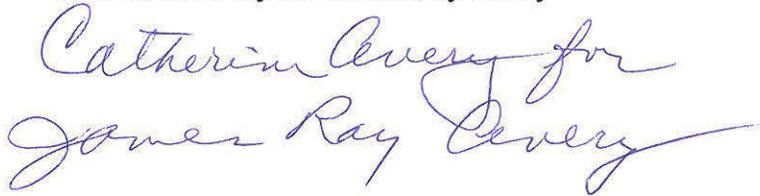
Re: CSF Claim CAROLAN(Avery)

James Ray Avery and Catherine Avery hereby request a review by the Oregon State Bar Board of Governors of the decision to deny our claim for reimbursement in the referenced matter.

Very truly yours,



Catherine Avery and
Catherine Avery for James Ray Avery



CLIENT SECURITY FUND INVESTIGATIVE REPORT

FROM: Karen Park
DATE: 11/14/2015
RE: CSF Claim No.: 2015-12
Claimant: James Ray Avery
Amount of Claim: \$3,386.00
Attorney: Kevin Carolan

Investigator's Recommendation

I recommend denial of the claim for \$3,386.00, but acceptance of the claim in the amount of \$1,438.

Statement of Claim

The claim for \$3,386 is based upon a total of \$4,000 paid in retainer to attorney Carolan, less an unearned amount of \$614 which was refunded to the client by attorney Carolan upon termination of his services by the client. There is no dispute that attorney Carolan did perform some services for the client.

I reviewed approximately 500 pages of documents in the discipline file related to the allegations and claims against attorney Carolan; spoke to Catherine Avery by telephone; spoke to attorney Carolan's lawyer and requested that attorney Carolan call me, but did not receive a call from attorney Carolan. I obtained information regarding the OSB RIS referral of the claimant to attorney Carolan from the OSB office. I reviewed ABA Formal Ethics Opinion 08-451, an article on outsourcing of attorney services written by Helen Hierschbiel printed in the November 2008 Oregon State Bar Bulletin, an on-line Oregonian article dated 02/22/2011 and *In Re Sussman*, 241 Or 246, 405 P2d 355 (1965) (The word "associates" when used in law firm letterhead has acquired a special significance in the practice of law and "has come to be regarded as describing those who are employees of the firm. Because the word has acquired this special significance in connection with the practice of law the use of the word to describe lawyer relationships other than that of employer-employee is likely to be misleading."). I spoke with and emailed contract attorney Sarah Foreman to confirm the amount she was paid by attorney Carolan but have not yet received a substantive response. I assume she was paid the \$520 shown on her invoice to attorney Carolan.

The claimant makes numerous ethical claims and allegations against attorney Carolan, which are the subject of ongoing disciplinary proceedings. The CSF claim revolves around the issue of whether attorney Carolan acted dishonestly in contracting with two attorneys to perform legal services for the claimant at fees significantly lower than the fees he charged the claimant and in not disclosing on his bills that the contract attorneys performed the legal services being billed.

The fee agreement signed by the claimant on 11/11/2011 is on the letterhead of "The Law Firm of Kevin Carolan, PC" and contains the following:

“ATTORNEY FEE AGREEMENT

“Authorization

- I hereby retain Kevin Carolan as my attorney
- * * *

“Basic Fee

- I agree and promise to pay my attorney an initial retainer of \$2000 for his services. It is understood that Catherine Avery has already made this payment. I understand I will be billed at a rate of [\$165] per hour for his time. I understand I will be billed at a rate of \$70 per hour for his assistant’s time.
- I understand I will be billed for any costs incurred in this representation. Copying, scanning, and faxing charges are .10/page. If I provide any original documents, I will be charged per page for copying.

* * *

“Cooperation in Preparation

- * * *
- I understand Mr. Carolan may assign work on my case to an associate within or outside of his firm.”

FINDINGS AND CONCLUSIONS

The claimant, James Ray Avery, is incarcerated at the Snake River Correctional Institution on a 12 year sentence imposed after a guilty plea on multiple counts including Sodomy in the First Degree and Sexual Abuse in the First Degree of his former step-daughter (not related to Catherine Avery). Mr. Avery was facing charges in both Josephine and Coos Counties in Oregon. The State of Oregon’s offer to Mr. Avery of 144 months incarceration and 20 years post-prison supervision was, according to his Oregon defense attorney, accepted by Mr. Avery knowing that he could have faced 100 years in prison if he had gone to trial in both counties. He began serving his sentence on or around 02/22/2011.

An article in the Oregonian written by Tom Hallman, Jr., states that the Oregon State Police began investigating Mr. Avery “in late 2009 after receiving information from a Maryland law enforcement agency” following Mr. Avery’s conviction in Maryland on charges involving the same victim. Catherine Avery told attorney Carolan in an email dated 09/22/2012 that Mr. Avery lived in Oregon with the victim before moving to Maryland. It therefore appears that the State of Maryland, and presumably Mr. Avery’s Maryland defense attorney, were or should have been aware that charges involving the same victim could be brought against Mr. Avery in Oregon, although none were pending at the time of his Maryland conviction.

Mr. Avery was advised by his Maryland defense attorney to plead guilty to a misdemeanor charge of Second Degree Assault involving the same victim and was sentenced in Maryland to 10 years in prison with 18 months imposed and 5 years post-prison supervision. The Maryland sentence included a requirement that Mr. Avery register as a sex offender, which was later reversed on appeal in Maryland.

When asked by contract attorney Jerome Larkin, who had been hired by attorney Carolan, whether the Maryland conviction had any evidentiary value in the Oregon cases against Mr. Avery, Mr. Avery's Oregon attorney stated that "Ryan Mulkins, the DDA on the Oregon cases, certainly did in fact consider the guilty plea and facts behind the Maryland charges as admissions of fact, along with statements made by Mr. Avery when he was initially interviewed by law enforcement in Washington State before being extradited to Maryland" and also considered "a telephone conversation Mr. Avery had with the victim . . . that was recorded by the lead investigator here in Oregon OSP officer Bryan Scott (which phone call took place on 08/20/2010, after Mr. Avery was convicted in Maryland, on probation, and prohibited from having contact with [the victim])."

Mr. Avery's ex-wife, Catherine Avery was referred to attorney Kevin Carolan by the OSB Lawyer Referral Service on or around 10/06/2011. Catherine Avery contacted attorney Carolan on Mr. Avery's behalf regarding obtaining documents related to Mr. Avery's convictions in Maryland and Oregon and potential post-conviction relief in Oregon. Mr. Avery had destroyed any documents in his possession related to his convictions upon his incarceration in Oregon for personal safety reasons. Catherine Avery paid attorney Carolan a \$2,000 retainer.

Attorney Carolan's bills show that he called the prison to set up a telephone conference with Mr. Avery on 10/12/2011 and on 10/13/2011 exchanged emails with Norma Freitas (who handled contract attorney referrals for Oregon Women Lawyers (OWLS)). On 10/18/2011, attorney Carolan left a phone message for attorney Jerome Larkin, an OWLS member who presumably was on the OWLS contract attorney list.

On 11/01/2011, attorney Carolan entered into a contract attorney agreement with attorney Jerome Larkin wherein Mr. Larkin agreed to work for attorney Carolan on an as needed contract basis at the rate of \$50/hour, not to exceed 10 hours without advising attorney Carolan.

Upon receipt of attorney Carolan's first bill, Catherine Avery sent attorney Carolan an email stating: "I had made a note that your hourly fee was \$165 – did I get that wrong?" Attorney Carolan agreed to accept Catherine Avery's recollection of the hourly fee of \$165 and sent a revised bill dated 01/19/2012 for services from 10/06/2011 through 01/20/2012 at that rate, reflecting a balance due of \$706.44.

Attorney Carolan's bill does not identify the attorney actually performing the legal services and bills for all hours of legal services at the rate of \$165/hour. There are billing entries on 11/02/2011 for 2.8 hours of legal research; on 11/03/2011 for 4.2 hours of legal research; on 11/03/2011 for 3 hours of legal research; and an additional 1 hour of time spent between 11/22-23/2011 contacting Mr. Avery's Oregon defense attorney and revising the research memo. Those entries correspond to the billing entries on the billing statements sent to attorney Carolan by contract attorney Larkin.

It is unclear if Catherine Avery paid any of the balance due from the first bill, but on 05/02/2012, she paid the final installment on the second \$2,000 retainer. Attorney Carolan accepted the money for the second \$2,000 retainer and resumed working on the file, however, by that time,

attorney Larkin had gone to work for another attorney and could not resume work on the Avery case.

Attorney Carolan entered into a contract agreement with another contract attorney, Sarah Foreman, who began work on the Avery case on or around 07/31/2012 at the rate of \$75-\$100/hour. Contract attorney Foreman billed attorney Carolan 5.2 hours and \$520. Attorney Carolan billed Mr. Avery for all of the time spent by contract attorney Foreman at the rate of \$165/hour, (plus an additional .6 hours for emails and phone calls with contract attorney Foreman on his end) for a total of \$858 for work performed by contract attorney Foreman.

In summary, attorney Carolan's bills and invoices from the contract attorneys reflect the following:

Carolan Bill Date	Contract Attorney Billed Carolan	Carolan Billed Client	Difference
01/19/2012	\$550	\$1,650	\$1,100
09/25/2012	\$520	\$858	\$338

On 10/03/2012, Mr. Avery terminated attorney Carolan's services after a telephone conversation between Mr. Avery and contract attorney Foreman which Mr. Avery interpreted as showing that attorney Carolan had been pursuing a flawed strategy of investigating a potential collateral attack on the Oregon conviction based upon ineffective assistance of counsel in the Maryland case.

On or around 07/29/2013, after reviewing attorney Carolan's file materials produced in response to a request from OSB Disciplinary Counsel's office, Mr. Avery learned of the involvement of the contract attorneys and the discrepancies with the contract attorney billing and attorney Carolan's bills.

Eligibility Requirements Analysis

1. The claimant is the client and/or the client's personal representative.
2. Attorney Carolan was an active member of the Oregon bar at the time of the loss.
3. Attorney Carolan maintained an office in Oregon.
4. The claimed loss arose from an established attorney/client relationship.
5. The claimed loss does not appear to be covered by any bond, surety agreement or insurance, although the claimant may have a malpractice claim against attorney Carolan.
6. The attorney's conduct is the subject of ongoing disciplinary proceedings. Because the claimant is incarcerated and the attorney fees were paid by the claimant's personal representative who is now nearly 70 years old, unemployed and in financial distress it is my recommendation that the committee proceed with making a claim determination at this time based on a finding of hardship or special circumstances.
7. The CSF application indicates that the claimant's representative and attorney Carolan participated in mediation of the fee dispute which resulted in attorney Carolan offering to pay \$200 to the claimant, which was rejected.

8. The CSF claim was made on April 24, 2015, within two years of discovery of the billing discrepancy.
9. The claimed dollar amount does not include interest, attorney fees or court costs.

The issue in the CSF claim is whether by billing the client for services performed by contract attorneys at a significantly lower hourly rate than that agreed to for services performed by the attorney himself, did attorney Carolan fail to refund an unearned fee or make a false promise to the client that he would provide services in exchange for an advance payment.

The fee agreement clearly states that attorney Carolan's services will be billed at an hourly rate of \$165. It also states that the client understands attorney Carolan has the option of assigning work to an "associate" within or outside the firm, but does not make any provision for what the client would be charged for the work of the "associate."

Although the word "associate" in the context of the practice of law has an accepted meaning of an employee of the law firm, the fee agreement specifically states that the "associate" may be "within or outside the firm" which necessarily would include a contract or temporary attorney. It is my opinion that the client consented to the assignment of work by attorney Carolan to contract attorneys.

However, the fee agreement states only that the hourly rate of \$165 would apply to "his" meaning attorney Carolan's, time rather than the time of any contract attorney. Because the fee agreement does not state otherwise, the fee of hiring a contract attorney can reasonably be assumed to be a "cost" incurred by attorney Carolan, which the client agreed to pay at cost.

The fact that attorney Carolan did not state in his bills that the research and other work performed by the contract attorneys was actually performed by the contract attorneys, but did refer to the contract attorneys in other billing entries where he was communicating with them, indicates that attorney Carolan was trying to hide or misrepresent the identity of the attorney who actually performed the work that was being billed at the rate agreed to by the client for attorney Carolan's time, as opposed to billing the contract attorney fee as a cost. It is that conduct which in my opinion qualifies as dishonest as required by CSF Rule 2.2.

For those reasons, I recommend that the claim be accepted in the amount of the difference between what was billed to the client and the actual cost of the contract attorney's services.



Karen J. Park



Client Security Fund Application for Reimbursement

Return completed form to:

Oregon State Bar
Client Security
Fund PO Box
231935

Tigard, OR 97281-1935

2015-12

Payments from the Client Security Fund are entirely within the discretion of the Oregon State Bar. Submission of this claim does not guarantee payment. The Oregon State Bar is not responsible for the acts of individual lawyers.

Please note that this form and all documents received in connection with your claim are public records.

Please attach additional sheets if necessary to give a full explanation.

1. Information about the client(s) making the claim:

- a. Full Name: CATHERINE AVERY ("CATHERINE") & JAMES RAY AVERY*("AVERY")*AT SRCI
b. Street Address: 1824 W. Idaho Street
c. City, State, Zip: Boise, ID 83702
d. Phone: (Home)(Work) (Cell) (208) 559-5067 Phone: (Home)(Work) (Cell) (208) 559-5067
e. Email: snowyear05@yahoo.com

2. Information about the lawyer whose conduct caused your claim (also check box 10A on page 3):

- a. Lawyer's Name KEVIN CAROLAN ("CAROLAN")
b. Firm Name KEVIN CAROLAN
c. Street Address: PO BOX 2221
d. City, State, Zip: BEND, OR 97701
e. Phone: (541)-318-6059
f. Email: kevin@carolanlaw.com

RECEIVED
April 15 2013
Oregon State Bar
Executive Director

3. Information about the representation:

- a. When did you hire the lawyer? OCTOBER 6, 2011
b. What did you hire the lawyer to do? Obtain records leading to Avery's conviction and investigate post-conviction relief

c. What was your agreement for payment of fees to the lawyer? (attach a copy of any written fee agreement)
VERBAL AGREEMENT BETWEEN CAROLAN AND CATHERINE WAS MADE, THE INITIAL RETAINER WAS PAID BY CATHERINE ON 10/06/2011, AVERY SUBSEQUENTLY RECEIVED AN AGREEMENT FROM CAROLAN AT TWO RIVERS CORRECTIONAL INSTITUTION (TRCI), AVERY SIGNED THE WRITTEN AGREEMENT, BELIEVING IT ACCURATELY REPRESENTED THE DETAILS CAROLAN HAD DISCUSSED WITH CAROLAN. CATHERINE WAS NOT PROVIDED A COPY OF THE AGREEMENT OR AN OPPORTUNITY TO REVIEW THE TERMS EVEN THOUGH CAROLAN KNEW HE WAS ACCEPTING MONEY FROM CATHERINE FOR THE REPRESENTATION OF AVERY, WHO IS INCARCERATED, IN THIS CASE. THE AGREEMENT REFLECTED \$200/HR RATHER THAN \$165 THAT CAROLAN AND CATHERINE HAD AGREED TO VERBALLY. CATHERINE DISCOVERED THAT CAROLAN HAD BEEN BILLING AT \$200 RATHER THAN \$165 ONLY UPON THE FIRST BILLING STATEMENT, WHICH WAS NOT RECEIVED UNTIL OVER 3 MONTHS LATER. THIS WAS THE FIRST TIME CATHERINE RECEIVED A BILLING STATEMENT, AND CAROLAN ONLY PROVIDED TWO BILLING STATEMENTS DURING THE ENTIRE

Please complete page 4 if an attorney is representing you for this claim.

You are not required to have an attorney in order to file this claim. The CSF encourages lawyers to assist claimants in presenting their claims without charge. A lawyer may charge a fee for such work only if the following information is provided.

1. I authorize _____ (print name of attorney)
to act as my attorney in presenting my claim.

Claimant's Signature

2. I have agreed to act as the claimant's attorney: (check one below)

_____ Without charge

_____ Under the attached fee agreement

Attorney's Signature

Attorney's Bar No.

Attorney's Phone

Attorney's Address

9. Agreement and Understanding

The claimant agrees that, in exchange for any award from the Oregon State Bar Client Security Fund (OSB CSF), the claimant will:

- a. Transfer to the Oregon State Bar all rights the claimant has against the lawyer or anyone else responsible for the claimant's loss, up to the amount of the CSF award.
- b. Cooperate with the OSB CSF in its efforts to collect from the lawyer, including providing information and testimony in any legal proceeding initiated by the OSB CSF.
- c. Notify the OSB CSF if the claimant receives notice that the lawyer has filed for bankruptcy relief.
- d. Notify the OSB CSF if the claimant receives any payment from or otherwise recovers any portion of the loss from the lawyer or any other person on entity and reimburse the OSB CSF to the extent of such payment.

10. Claimant's Authorization

- a. YES I Release of Files: I hereby authorize the release to the OSB Client Security Fund, upon request, of any records or files relating to the representation of me by the lawyer named in Question 2.
- b. YES Payment to Third Party: I hereby authorize the OSB Client Security Fund to pay all amounts awarded to me to:

Name: CATHERINE AVERY

Address: GENERAL DELIVERY, PAYETTE, ID 83661

Phone: (208) 559-5069

11. Claimant's Signature and Verification

(Each claimant must have a notarized signature page. Please photocopy this page for each person listed in question 1.)

State of OREGON)
County of MAHEUR)ss

Upon oath or affirmation, I certify the following to be true:

I have reviewed the Rules of the Client Security Fund and the foregoing Application for Reimbursement; and submit this claim subject to the conditions stated therein; and the information which I have provided in this Application is complete and true, to the best of my knowledge and belief.

JAMES RAY AVERY
JAMES RAY AVERY

Signed and sworn (or affirmed) before me this 3RD day of APRIL, 2015.



Notary's Signature Cathy F Bryant Kae
Notary Public for Malheur State of Oregon
My Commission Expires 6/3/17

12. Claimant's Signature and Verification

(Each claimant must have a notarized signature page. Please photocopy this page for each person listed in question 1.)

State of Idaho)

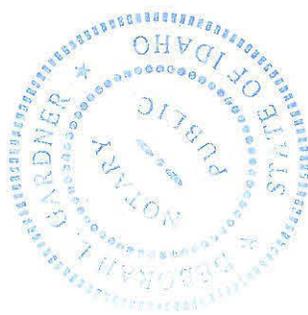
County of Ada)ss)

Upon oath or affirmation, I certify the following to be true:

I have reviewed the Rules of the Client Security Fund and the foregoing Application for Reimbursement; and submit this claim subject to the conditions stated therein; and the information which I have provided in this Application is complete and true, to the best of my knowledge and belief.

Catherine Avery
CATHERINEAVERY

Signed and sworn (or affirmed) before me this 16th day of April, 2015.



Notary's Signature [Signature]
Notary Public for Idaho
My Commission Expires 1-13-2013 2021
DLG

Please complete page 4 if an attorney is representing you for this claim.

You are not required to have an attorney in order to file this claim. The CSF encourages lawyers to assist claimants in presenting their claims without charge. A lawyer may charge a fee for such work only if the following information is provided.

1. I authorize _____ (print name of attorney)
to act as my attorney in presenting my claim.

Claimant's Signature

2. I have agreed to act as the claimant's attorney: (check one below)

_____ Without charge

_____ Under the attached fee agreement

Attorney's Signature

Attorney's Bar No.

Attorney's Phone

Attorney's Address

ATTORNEY FEE AGREEMENT

Authorization

- I hereby retain Kevin Carolan as my attorney and authorize him to research and advise me whether or not I have a case for post conviction relief in my Oregon resulting in my current incarceration in Two Rivers Correctional. If my attorney feels we have a case with which to proceed on, we will proceed with a post conviction relief suit.

Basic Fee

- I agree and promise to pay my attorney an initial retainer of \$2000 for his services. It is understood that Catherine Avery has already made this payment. I understand I will be billed at a rate of \$200 per hour for his time. I understand I will be billed at a rate of \$70 per hour for his assistant's time.
- I understand I will be billed for any costs incurred in this representation. Copying, scanning, and faxing charges are .10 / page. If I provide any original documents, I will be charged per page for copying.

Withdrawal

- I understand and agree that if fees and costs are not paid according to this agreement, then my attorney may withdraw and terminate further representation.
- Interest of up to 16% per anum may be charged for bills unpaid for longer than 30 days.
- My attorney may end the representation at any time for any reason.

Termination of Services

- I understand I have the right to terminate services prior to the completion of my attorney's representation of me in this matter.

Cooperation in Preparation

- I agree to cooperate with my attorney and to appear, upon reasonable notice, for appointments, interviews and court appearances. My attorney and I will determine all policy matters in this case, and neither will act without advice of the other.
- I understand Mr. Carolan may assign work on my case to an associate within or outside of his firm.

Warrantee

- Mr. Carolan promises to deliver conscientious, competent and diligent services and will seek to achieve a resolution of the matter which is just and reasonable for the Client.

Agreement

- I acknowledge that I have read the above provisions and agree to all of the terms and conditions of this attorney fee agreement.

Signed this 11th of Nov., 2011.

Client: James Avery
James Avery

Attorney: Kevin Carolan
Kevin Carolan, Attorney at Law

Kevin Carolan

From: Jerome P. Larkin [jeromeplarkin@hotmail.com]
Sent: Wednesday, November 02, 2011 1:37 PM
To: Kevin Carolan
Subject: Research Report
Importance: High

Kevin: In reviewing the case law on post conviction relief, I came across a statute that I felt you needed to consider ASAP - 138.071 - in light of the fact that you were considering either an appeal or post-conviction relief as avenues for your client. (Excerpt of subsection (5) is attached)

I wanted you to review this ASAP because I do not know how long ago your client was sentenced on the Oregon offense. If it has been less than 90 days ago, there is a possibility of filing a late notice of appeal - Subsection (5)(c) provides:

"The request for leave to file a notice of appeal after the time limits prescribed in subsections (1) to (3) of this section must be filed no later than 90 days after entry of the order or judgment being appealed"

Under subsection (1) of this statute: "Except as provided in this section, a notice of appeal must be served and filed **not later than 30 days** after the judgment or order appealed from was entered in the register."
 Subsection (3) allows a cross-appealing defendant an additional 10 days beyond the period set forth in subsection (1) to file a cross-appeal

Also note that under subsec (5)(e), 1) if less than 90 days have expired, but 2) the Court of Appeals were to deny the motion to file a notice of appeal after the prescribed time limits, that denial is a bar to post conviction relief under ORS 138.510 to 138.680 on the same ground, unless the court provides otherwise.

If we are beyond 90 days then it appears our only route to challenge the Oregon conviction is by way of post-conviction relief.

Knowing the status of the Oregon conviction will help me focus my research. If you don't have this information, then should I try to contact the Public Defender's Office in Grants Pass.

Second issue for clarification on the underlying facts:

Is your client's position that the existence of the out of state conviction led to an enhanced sentence in Oregon, as a result of some repeat offender provision, or the fact that this prior conviction for a similar offense placed him in a higher sentencing matrix? (It's been more than 20 years since I represented criminal defendants here in Washington County, so my terminology may be antiquated).

I really don't see a situation in which he could have been prosecuted in Oregon for the same offense for which he was convicted earlier in Maryland. Each of the two states would not have concurrent jurisdiction over alleged offenses occurring in the other state.

The cases I have researched so far deal with issues in which a prior conviction contained a necessary element (like the use of a firearm), that prior conviction leads to an enhanced sentence when the defendant is later convicted of a similar crime, and the defendant raises a collateral attack against the original conviction on the grounds that 1) he did not have counsel, or 2) that the finding of the requisite element was made by a judge at sentencing, instead of by the finder of fact (i.e. jury) at trial.

- Jerry Larkin

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

Subject:Re: bill

Date:Thu, 04 Oct 2012 13:36:01 -0700

From:Kevin Carolan <kevin@carolanlaw.com>

To:catherine avery <snowyear05@yahoo.com>

Catherine,

We have not obtained the Maryland or Oregon files, so there are no records to turn over to you. We were in the process of obtaining the Oregon file when you discontinued the representation. If you have questions about any specific line items in the bill, please don't hesitate to ask and I will answer them. The name of the attorney who contacted Ray in prison was Sarah Foreman. I will ask her if she is comfortable with me releasing her contact information to you. Please keep in mind that she was working for me, and since you have discontinued the representation she has no obligation to return your calls or work free of charge. I have, however, included her research in the document I sent you previously.

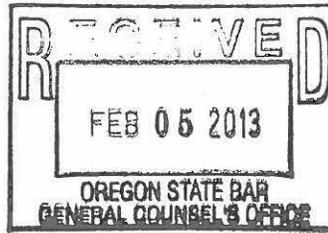
Finally, Ray is not in any line, and we don't have thousands or even hundreds of clients. Also we are not a public defense firm. There was clearly a miscommunication between you and my assistant Christina. I apologize she was not aware of Ray's incarceration when you two spoke, but our front desk assistant is not always up on the details of cases.

If you are deciding whether or not to proceed with another attorney, please have that person contact me so that I can fill that person in on what we have done so you won't have to pay them to duplicate any work.

Sincerely,
Kevin.

Carolan Law
PO Box 2221 Bend, OR 97709
541.318.6059 - 541.388.4707 (fax)

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



PO Box 2221
BEND, OR 97709
541.318.6059

February 1, 2013

RE: Subject: SAM 1201654

Ms. Hierschbiel:

I am in receipt of your January 29, 2013 letter regarding my representation of Mr. Avery, and am happy to provide the requested explanation. Please see the following:

The first allegation is: that I spent a lot of time researching an issue that, had I adequately investigated the facts first, would have been unnecessary.

I assume Ms. Avery is referring to time spent investigating Mr. Avery's Maryland charges. I spent some time looking into the facts surrounding Mr. Avery's entry of a guilty plea to sexual assault in the second degree in Maryland because Mr. Avery advised me that his Oregon defense attorney advised him that Mr. Avery's guilty plea to the Maryland charges would prevent him from prevailing at trial with regard to the Oregon charges (they were of a similar nature, implicating the same alleged victim). In light of this I spent some time working to ascertain whether or not Mr. Avery's Maryland attorney should have advised him to plead no contest, in light of the impending Oregon charges. There was no preliminary factual investigation that could have mitigated the time spent on this investigation.

The second allegation is: that I failed to keep the Averys apprised of the status of the research.

This is simply untrue. I responded to requests for information in phone conversations, phone messages, and emails.

The third allegation is: that I failed to provide them with a complete copy of my file.

This is true. However, the Averys did not ask for a complete copy of my file. On 9.22.12 Ms. Avery terminated the representation in an email requesting copies of "the files and research." Her use of "files" instead of file (singular) is significant. Based on our prior phone conversations and subsequent emails, I know Ms. Avery was referring to the Oregon and Maryland criminal case files. While this office was in the process of obtaining Mr. Avery's Oregon file at the time the representation was terminated, we were not in possession of either the Oregon or Maryland file, so those documents were not provided. A copy of all legal research was emailed Ms. Avery

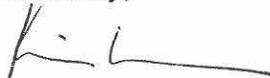
on 9.28.12 (16 pages). If there were any documents in my file that could have helped the Averys going forward (such as pleadings, court filings, letters, etc.) I would have provided those as well. However, my entire representation of Mr. Avery consisted of legal research, so there were no documents outside the research that would have assisted the Averys. I was, and still am, willing to provide copies of emails and any other documents relevant to the representation, but since they weren't requested, since I can't see them being of assistance to the Averys, and since it would take additional time for which I would bill the Averys, I have not provided them. Again, if the Avery's want them, I am happy to provide them. My goal was to ensure as smooth a transition as possible should the Averys retain another attorney. As I stated in my 10.4.12 email to Ms. Avery: "If you are deciding whether or not to proceed with another attorney, please have that person contact me so that I can fill that person in on what we have done so you won't have to pay them to duplicate any work." (see attached email).

Post-conviction relief:

I worked as a public defender in Deschutes County for three years, and continue to represent clients in criminal cases at the trial court level and on appeal. I have argued one criminal appeal at the Oregon Court of Appeals. I have represented a handful of clients (perhaps five) in post-conviction relief matters, and am familiar with the Oregon Post-Conviction Hearing Act and habeas corpus law. I am also an experienced civil litigator, having litigated approximately a dozen cases on behalf of plaintiffs. In addition, I have represented several clients in malpractice suits against their former attorneys. I have tried approximately 25 cases to juries and am experienced and familiar with trial procedure, evidentiary objections, and the standard of care expected of trial counsel.

If I can be of any further assistance please don't hesitate to ask. In addition, I will be out of the country for several months beginning March 5. If you need to reach me after that date please email: kcarolan1@yahoo.com.

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin Carolan". The signature is written in a cursive style with a long horizontal stroke at the end.

Kevin Carolan

DEAR MS. HIERSCHBIEL

2/20/13

I RECEIVED A COPY OF MR. CAROLAN'S LETTER TO YOU EXPLAINING HOW HE HANDLED MY CASE. HIS RESPONSE TO THE FIRST ALLEGATION PROVES HOW THERE WAS A HUGE LACK OF COMMUNICATION ON HIS PART. I NEVER TOLD HIM I PLEAD GUILTY TO SEXUAL ASSAULT IN THE SECOND DEGREE IN MARYLAND. NOR DID I TELL HIM THAT I HAD A CASE PENDING THERE. WHAT I TOLD HIM WAS MY PUBLIC DEFENDER THERE ADVISED ME TO PLEAD GUILTY TO SECOND DEGREE ASSAULT INSTEAD OF NO CONTEST LIKE I SHOULD HAVE DONE, AND THAT MY COURT APPOINTED ^(ATTORNEY) HERE IN OREGON ADVISED ME THAT THE PROSECUTING ATTORNEY WOULD USE THAT GUILTY PLEA AGAINST ME IN THE TRIAL BECAUSE BOTH CASES INVOLVED THE SAME ALLEGED VICTIM.

THERE WAS NEVER A QUESTION THAT MY MARYLAND ATTORNEY GAVE ME THE WRONG ADVICE. IN MY OPINION MR. CAROLAN WASTED A GREAT DEAL OF TIME INVESTIGATING THE MARYLAND CASE UNNECESSARILY WHEN ALL HE HAD TO DO WAS LISTEN TO WHAT I SAID IN THE FIRST PLACE.

IN RESPONSE TO THE SECOND ALLEGATION, MR. CAROLAN CLAIMS HE RESPONDED TO REQUESTS FOR INFORMATION IN PHONE CALLS AND E-MAILS. I DID NOT HEAR ANYTHING FROM HIM IN ALMOST SIX MONTHS. HE DID NOT, IN ALL THAT TIME, ATTEMPT TO KEEP ME OR MS. AVERY APPRISED OF WHAT HE WAS WORKING ON. HAD HE DONE SO, HE WOULD HAVE AT THE VERY LEAST KNOWN WHAT MY CHARGE IN THE MARYLAND CASE WAS, AND THAT I HAD NO OTHER PENDING CHARGES THERE.

MR. CAROLAN IS ARGUING SEMANTICS AS FAR AS MS. AVERY'S USE OF THE WORD "FILES" AS APPPOSED TO "FILE". THE FACT IS SHE ASKED TO SEE WHAT HE'D BEEN WORKING ON SINCE SHE HAD PAID HIM A GOOD DEAL OF MONEY, AND HE HAD NOTHING TO SHOW. I DON'T KNOW HOW MUCH TIME HE'D SPENT ON MY CASE BY THAT POINT, BUT I DO BELIEVE HE SHOULD HAVE HAD SOMETHING TO SHOW FOR HIS EFFORTS. IN FACT, I'M PRETTY SURE WHEN

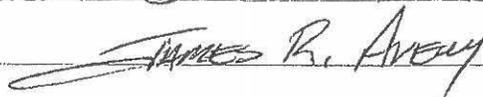
MS. AVERY AND I FINALLY DECIDED TO TERMINATE MR CAROLAN'S REPRESENTATION OF ME, IT WAS SOON AFTER HE INFORMED MS. AVERY THE ATTORNEY HE HAD ASSIGNED TO MY CASE HAD QUIT THE FIRM, AND MY CASE HAD BEEN "PUT ON THE BACK BURNER". HE DID NOT INFORM EITHER MS. AVERY OR MYSELF OF THIS EVENT UNTIL MS. AVERY FINALLY GOT A HOLD OF HIM AFTER MONTHS OF PHONE TAG. WHEN SHE FINALLY DID GET IN TOUCH WITH HIM, HE ASSURED HER, HE WOULD ASSIGN A NEW ATTORNEY TO MY CASE AND IT WOULD BE "PUT ON THE FAST TRACK", HOWEVER WHEN THE ATTORNEY HE ASSIGNED MY CASE GOT IN TOUCH WITH ME, MS. AVERY AND I DECIDED TO TERMINATE HIS FIRMS REPRESENTATION OF ME BECAUSE SHE WAS SO MISINFORMED. SHE KNEW VIRTUALLY NOTHING ABOUT MY CASE AND THIS WAS AFTER NEARLY A YEAR OF MR. CAROLAN'S SO CALLED INVESTIGATING.

I DO NOT CLAIM TO BE ANY KIND OF ATTORNEY, AND HAVE VERY LIMITED KNOWLEDGE OF THE LAW, HOWEVER WHAT MR. CAROLAN HAS DONE IN MY OPINION, IS TAKE ADVANTAGE OF MS. AVERY AND MYSELF. I LIKEN THE WAY HE'S HANDLED MY CASE TO TAKING YOUR CAR TO A MECHANIC TO REPAIR THE TRANSMISSION, AND HE SPENDS A YEAR PLAYING WITH THE STEREO, THEN CHARGING FOR A NEW TRANSMISSION. WHEN HE AGREED TO TAKE MY CASE, HE TOLD MS. AVERY HE WOULD WORK WITH HER AS FAR A THE RETAINER GOES, AND NOW HE IS CLAIMING THAT'S THE REASON FOR HIM NOT GETTING ANYTHING DONE ON MY CASE. HE'S CHANGING HIS STORY. HE EVEN TOLD HER THERE WAS PLENTY OF MONEY LEFT WHEN SHE EXPRESSED CONCERNS ABOUT GETTING MOTIONS FILED IN REGARDS TO THE DEADLINE. I BELIEVE MS AVERY IS SENDING YOU COPIES OF E-MAILS WHICH I OF COURSE DO NOT HAVE.

AT ANY RATE, I APPOLOGIZE FOR THE RAMBLING NATURE OF THIS LETTER, I TRIED TO KEEP EVERYTHING AS FACTUAL AS POSSIBLE, BUT IS DIFFICULT TO SAY THE LEAST. MR. CAROLAN MAY BE AN ACCOMPLISHED ATTORNEY, BUT HIS ETHICS LEAVE MUCH TO BE DESIRED. IF NOTHING ELSE IT IS MY HOPE THAT YOU SEE FIT TO AT LEAST REIMBURSE MS. AVERY SOME OF THE MONEY SHE'S INVESTED INTO THIS FIASCO, AND PERHAPS LOOK INTO MR. CAROLANS ETHICS AS AN ATTORNEY.

THANK YOU FOR YOUR TIME

SINCERELY JAMES R. AVERY



S.R.C.I.

#13351648

777 STANTON AVE.

ONTARIO OR. 97914

P.S. I DID NOT MEAN THAT YOU SHOULD REIMBURSE MS. AVERY, BUT THAT YOU SHOULD MAKE MR. CAROLAN DO SO.

Catherine Avery
1824 W. Idaho Street
Boise, ID 83702
(208) 559-5067
snowyear05@yahoo.com

RECEIVED

APR 24 2015

Oregon State Bar
Executive Director

April 20, 2015

Oregon State Bar
Client Security Fund
PO Box 21935
Tigard, OR 97281-1935

Re: Avery vs. Carolan; OSB Formal Complaint 14-23

Dear OSB CSF Reviewers:

I know that it is time consuming to review all of the written materials in the complaint file; however, Mr. Carolan's own emails and files, present convincing evidence of the claims of Mr. Avery. Because the written materials have been submitted to the OSB in the complaint process, I am not providing them, for the most part, with this claim and was assured by the OSB that the complete complaint file is available for your review. I have relied upon legal counsel at the OSB to review all of the materials that have been provided throughout the complaint process. If you should find anything lacking, please let me know and provide me an opportunity to locate and present it to you. I know in particular that while I have not provided receipts for the payments made to Mr. Carolan, there has been no dispute as to how much money I paid since it is reflected on Mr. Carolan's billing statements and acknowledged in his Answer to the OSB Complaint.

Please note that between the time I prepared the CSF application and sent it to Mr. Avery where he is incarcerated at SRCI for his signature in the presence of a notary, I moved to Boise and **my correct address has been provided to OSB and is shown above**. While the correct address and telephone number are shown on page one of the CSF application, **the notarized page of the CSF reflects an incorrect address and telephone number**. This is an example of the difficulties in exchange of documents and information between Mr. Avery and me.

Mr. Avery and I were out of touch after our divorce for many years, and then I discovered that he was going to prison in 2011. I did not have access to any of the written material or files that led to Mr. Avery's conviction, knew he had lacked any family or financial support during the proceedings, and that he had been through the proceedings with an appointed public defender. Mr. Avery informed me that for his personal safety in prison, he had destroyed any and all copies of documents pertaining to his conviction. I informed Mr. Carolan of this when we first talked, and stated that the biggest problem I faced in attempting to assist Mr. Avery was that neither of us had any records. I believed it would be worth it to pay a lawyer to get copies of the files and help determine the facts upon which the conviction was based on and whether or not there was any post-petition action that might make his situation better. Mr. Avery didn't hold a lot of hope that an attorney could make a difference in a post-conviction action, but allowed that there was no harm in having an attorney look into it.

Mr. Avery never intended to put me through the financial loss, stress and additional work in fighting Mr. Carolan's incompetence. It was Mr. Avery's realization when Sarah Foreman called him and was completely uninformed about the case that he concluded we should fire Mr. Carolan. After a brief conversation with Sarah Foreman, Mr. Avery was able to determine that Mr. Carolan was not offering any competent legal service. Because Mr. Avery appreciated the honesty from Sarah Foreman when she summarized what Mr. Carolan had been doing, I requested her phone number from Mr. Carolan so we could consult with her further. All along, Mr.

Carolan had referred to attorneys as though they were associates in his firm, and since I am familiar with matters being handled by associates in the same law firm, I did not understand Mr. Carolan's behavior. Mr. Carolan stated in an email that we weren't entitled to further services from Sarah Foreman, and refused to provide contact information for her. Mr. Carolan did not inform us that Sarah Foreman was a contract attorney and allow that if we wished to contact her, we were entitled to do so independent of him. At the time, without seeing his files to know that he had never done any of the work himself, and had contracted with outside attorneys who had to agree not to "steal his clients", we were confused and unable to determine what Mr. Carolan's motives were for refusing to provide information about the attorneys who were working on Mr. Avery's case. I have always understood that an "associate" was one of several attorneys or employees working in the same company. While one can associate with an outside professional, I haven't heard the outside professionals referred to as an "associate". Perhaps it is the same tactic used as when Mr. Carolan split hairs when Mr. Avery and I requested a copy of his file, when he tried to say that there we hadn't requested his records because there were different files for the Oregon matter and the Maryland matter and we had not differentiated in that. As far as we were concerned, when we requested his file, we were requesting a copy of all of the materials contained in any files that he had concerning the matter he was hired to handle for Mr. Avery, and that shouldn't have been at all difficult for Mr. Carolan to understand. Mr. Carolan then further refused to provide anything (except the memorandum that had been prepared by another attorney), saying he had no files. As Mr. Avery succinctly summed it up, it was "smoke and mirrors" to avoid having to provide the information in his files that he knew would prove the contentions in our complaint.

I am not an attorney, but have worked as a legal assistant, and I have had to fight this legal battle regarding Mr. Carolan's actions without an attorney. That in itself is a huge burden. I was not familiar with criminal law, Oregon law, did not have the case files for Mr. Avery, was working full time and did not have time to learn the law and try to address post-conviction relief matters for Mr. Avery. **I sought competent legal counsel in post-conviction matters**, and that was the reason I put my trust in an Oregon attorney that was recommended by the OSB. If I were to bill my services in fighting Mr. Carolan, the amount of money owed me would far exceed the amount of money I paid him. If I had tackled Mr. Avery's case on my own I could have accomplished more than Mr. Carolan did, and not spent all of my time and resources fighting Mr. Carolan.

Having to go through every other process to try to recover the money Mr. Carolan took from me has placed a heavy and expensive burden on me and caused me to feel victimized by the whole OSB system. I only hope that this CSF application will result in a refund of my money so that I can use it to stabilize my own life, provide whatever support I can to Mr. Avery, and put Mr. Carolan out of our lives. Mr. Carolan is a discredit to the legal profession.

Sincerely,



Catherine Avery

Catherine Avery for James Ray Avery



OREGON STATE BAR

Board of Governors Agenda

Meeting Date: February 12, 2016
From: Helen Hirschbiel, Executive Director
Re: CSF Claim No. 2015-37 CHIPMAN (Noel) Request for BOG Review

Action Requested

Consider the claimant's request for BOG review of the CSF's denial of his claim for reimbursement.

Discussion

Claimant Sainfort Noel seeks reimbursement of \$385 (an initial consultation fee of \$35 plus a flat fee of \$250) paid to Kerry Chipman, claiming that Chipman didn't do what he was asked or agreed to do and that his services were therefore of no value.

According to his application for reimbursement, Noel hired Chipman on March 26, 2015 "to get a deny [sic] letter from [employment] administration [sic] judge and account showing a 0 balance." Noel alleges that after two weeks with no word, he called Chipman who said he wasn't interested in the case and wouldn't pursue it further.

To get a fuller understanding of the facts, the CSF Committee investigator reviewed Noel's CAO complaint, which included documents from his participation in fee arbitration over the same issue. Based on those documents, the following facts were developed.

Noel hired Chipman to obtain documents from the Oregon Employment Department that he believed were being wrongfully withheld. In November 2014, Noel's application for unemployment benefits had been allowed, but he received no money. He had received an overpayment on a prior claim, but had repaid it. Based on his review of the documents and Noel's explanations, Chipman suspected that Noel may have been wrong, that his new claim had been denied rather than approved, and that he should have received an administrative denial.

Chipman agreed to correspond with the employment department to clarify the situation and obtain copies of what he expected would be a denial letter and an accounting of Noel's reimbursement of the earlier overpayment. Chipman called Heinechen, the employment department person in charge of Noel's case, that very day (March 26), but he was out until March 30. Chipman immediately informed Noel that he wouldn't have any information for him for a few days.

On March 30, Chipman spoke to Heinechen, who confirmed that Noel's fall 2014 application for benefits had been approved (not denied as Chipman expected). However, Heinechen also explained that in Noel's previous claim he had been assessed three penalty weeks in addition to having to reimburse an overpayment of \$464. Those decisions were the result of the department's conclusion that Noel had made misrepresentations in his earlier claim for benefits. Noel had made two payments of \$50 each, reducing the overpayment obligation to \$364.

When he received the hearings decisions and accounting from Heinechen, Chipman explained to Noel that, although his claim had been approved, no benefits were paid during the three penalty weeks. For the following two weeks, the department applied the benefits to the unpaid balance of the overpayment (the entire \$314 benefit one week and \$50 the second).

Noel refused to accept Chipman's explanation of the situation. He complained to CAO and also requested fee arbitration. When the fee arbitrator found for Chipman, Noel also complained to CAO about the arbitrator.

The CSF Committee found no dishonesty here, merely a misunderstanding. Noel has focused on Chipman's initial suspicion that the fall 2014 claim for benefit had been denied and that it is illegal for the department to withhold benefits absent a denial letter. Noel refuses to accept that Chipman provided reasonable services, albeit somewhat different than they both anticipated. As Chipman noted in his response to CAO:

"If [Noel] had told me at the initial LRS consultation that he'd been penalized for misrepresentation; had been assessed an overpayment at the same time; and repaid very little of that overpayment voluntarily, I could have saved him his \$250. That is not what he told me. Rather he accused Mr. Heinechen of personally stealing his money. That does not appear to have been the case."

Despite the fact that Chipman was able to clarify Noel's benefit situation for him, Noel argues that he is entitled to a full refund because Chipman didn't do what he agreed to do, i.e., obtain a copy of a denial letter and an accounting showing that Noel's overpayment obligation had been satisfied. However, there was no denial letter, so Chipman could never have obtained one. Chipman's agreement to do so was based on his initial misunderstanding of Noel's situation and his preliminary conclusion (based on what Noel told him), that benefits had been denied without the proper notice.

Accompanying documents: Noel Application for Reimbursement
Investigator's Report
Chipman Response to CAO Inquiry
Noel Request for Review

Saiort Noel
1005 SE 151 st
Portland or 97233
12 – 5 - 2015

Mr. Rich Spier
Documents
Oregon state bar
16037 SW Upper Boones Ferry Rd
Tigard Or 97233

Dear Mr. Rich Spier :

This letter to inform you I did put my request for review my contract between me and Mr. Kerri Chipman when the committee review my case they did not check any of my documents they went by vote only, now I do not want them to go by vote ,but by documents ,how come you guys want to go by vote, and then you guys ask me to send some documents this is the dishonest part on April 3rd 2015 when I spoke With Mr. Kerri Chipman on the phone he told me he had all the documents he is been request on my behalf from Mr. Rick Heineken is here in my office came get it when I get to Mr. Kerri office he wasn't there is Secretary call him ,told Mr. Noel it's here ,he talked to very bad tell get out of my I 'm not interested on your case anymore .just let know I was hired Mr. Kerri Chipman for very specific job, the job was get a deny letter sign by administration Judge and Zero balance letter ,he doesn't give me none of it for \$285 now I charge interested give you \$385 all I need now is my back because he fail to do the job in resign.

Thank you for prompt attention to this matter

Sincerely,

Sainfort Noel

CLIENT SECURITY FUND

INVESTIGATIVE REPORT

October 13, 2015

From: Rick Braun
Re: Claim No. 2015-37
Claimant: Sainfort Noel
Attorney: Kerri Chipman OSB 790243

Recommendation

This claim should be denied.

Statement of Claim

Mr. Noel was referred to Mr. Chipman by the OSB Lawyer Referral Service. He hired Mr. Chipman in March 2015 to investigate (1) denial of unemployment benefits, and (2) a claim by the Department that Mr. Noel owed money for overpayment of benefits. Mr. Noel paid Mr. Chipman the \$35 LRS initial consultation fee and paid a one time \$250 fee for Mr. Chipman's services. Mr. Noel claims that Mr. Chipman did no work on the case.

Investigation Report.

Mr. Chipman does not deny that he received \$285 from Mr. Noel. However, Mr. Chipman did, in fact do substantial work on the file, obtained the documents Mr. Noel requested, and discovered that Mr. Noel's unemployment case was complex. Mr. Chipman more than earned the fee. This is confirmed by the Oregon State Bar Fee Arbitration Award in Mr. Chipman's favor on the exact same claim Mr. Noel presents to this Committee. Exhibit 1.

I note in passing that Mr. Noel's claim is inexplicably for \$385, one hundred dollars more than he paid Mr. Chipman. I also note that the Unemployment Department found that Mr. Noel made a false claim for benefits. The finding was affirmed on appeal. It appears that Mr. Noel cannot be trusted.

This claim should be denied.



Richard H. Braun, OSB 850065
Investigator

OREGON STATE BAR FEE ARBITRATION

SAINFORT NOEL,)
)
 Petitioner,) No.: 2015-26
)
 and) **ARBITRATION AWARD**
)
 KERRY CHIPMAN,)
)
 Respondent.)

INTRODUCTION

This matter came before Scott T. Downing as sole Arbitrator. Initially a panel was appointed due to an error in the amount of attorney fees at issue. Both parties agreed that it was appropriate that only the sole Arbitrator hear the case. Steven J. Nemirow, the other attorney previously appointed as part of the panel, attended the hearing with the consent of the parties as an observer, but did not participate in the decision or award. As noted in his Petition, Mr. Noel seeks the return of the \$285.00 in total fees paid by him to Mr. Chipman.

A hearing was held on July 20, 2015. Both parties were present and presented documentary evidence and testimony. Based upon the evidence presented, the Arbitrator issues the following Award.

JURISDICTION

Jurisdiction is conferred by written agreement signed by both parties to the prescribed rules of the Oregon State Bar on Fee Disputes. Scott T. Downing was duly appointed as Arbitrator.

FACTS

Petitioner consulted Respondent through the Lawyer Referral Service, regarding a denial of unemployment benefits. Mr. Noel felt that he had been illegally denied certain benefits in late 2014 and early 2015. In his initial conversation with Mr. Chipman, he claimed that a representative of the Unemployment Department had denied the benefits and that no written reason had been received by Mr. Noel for that denial. Mr. Chipman, based on the information provided by Mr. Noel, told him that the Department is required to issue a "denial letter" and if in fact, none was sent or issued, then the denial of his benefits was not lawful. Apparently Mr. Noel had been overpaid some benefits and was having deductions from his current benefit to repay the over-payment. It was later determined that Mr. Noel, in addition to the deductions, had been making payments directly to the Department towards that overpayment. After some discussion, much of which apparently occurred over the phone, Mr. Noel agreed to pay Mr. Chipman a one-time, or set fee, of \$250.00 to obtain the denial letter and an accounting of his benefits to show the payments made. Mr. Chipman sent to Mr. Noel an e-mail dated March 26th, 2015 that

acknowledges the payment of the \$250.00 fee by credit card and sets out what the payment is for. It states:

“This is to confirm that you have paid \$250.00 by charge card to hire me to obtain a copy of an administrative decision in an overpayment accounting from the employment department.”

“/s/ Kerry Chipman”

In addition to the one-time fee, Mr. Noel had paid a \$35.00 office conference fee per the rules of the Lawyer Referral Service of the Oregon State Bar.

Mr. Chipman immediately on March 26th, contacted the representative of the Department, a Mr. Rick Heinichen, by both e-mail and voice mail, seeking copies of the administrative decision denying benefits (the “denial letter”) and an accounting showing payments made towards his overpayment. Mr. Heinichen was out of the office and would return on the 30th.

On March 30th, Mr. Heinichen mailed the requested documents and more to Mr. Chipman’s mailing address. I am not sure when they were actually received. However, Mr. Noel retrieved these documents eventually from Mr. Chipman’s office after they were copied. There was some confusion about that between the parties, but not particularly relevant to the issue of fees.

From the documents received, Mr. Chipman first learned that the situation was different than Mr. Noel had reported. I do not believe that Mr. Noel was being deceitful or otherwise. I simply believe he did not understand what had happened. Apparently in March of 2014, Mr. Noel had been accused by the Department of submitting a fraudulent claim for benefits in a different claim. A hearing was held in which Mr. Noel participated and a decision reached. Mr. Noel appealed that decision to the Employment Appeals Board and the original decision was upheld. These facts were not reported by Mr. Noel to Mr. Chipman, because I think, he felt these were part of a different and unrelated claim. While the merits of his underlying unemployment claim are not really relevant to the issue of fees here, it is worth noting that the decision of the Administrative Law Judge in the original proceeding states:

“Claimant is disqualified from 3 weeks of future benefits under ORS 657.215 and must repay a monetary penalty of \$77.40” (Page 8 of the written decision)

In addition, the Department was entitled to collect the overpayment. Mr. Noel may have in fact already paid back the overpayment with a combination of deductions from other benefits and cash payments made by him. Once he had the documents, Mr. Chipman realized that there was no denial letter. The Department had been assessing the penalty required in the written decision. So in fact, Mr. Noel’s claim for benefits had been approved, but could not be actually paid to him until the 3-week penalty had run its course, the penalty paid and any overpayment taken care of. This was communicated to Mr. Noel again over the phone. It is clear to me that Mr. Noel did not understand this. Mr. Noel remains focused on the original comments made by Mr. Chipman in their first meeting that it was illegal to withhold benefits absent a denial letter, a letter that did not and could not exist.

In addition to the work set out in the e-mail, Mr. Noel was seeking representation to release the "flag" on his file; to open a tort claim of some sort against Mr. Heinichen, against Mr. Heinichen's supervisor, against the Gresham Police on behalf of a friend and against a State Police officer and to pursue the unemployment claim. Mr. Chipman declined.

OPINION

The scope of this proceeding is to determine whether Mr. Chipman charged a reasonable fee for the services he performed and agreed to perform. My first inquiry is to determine what was the agreement of the parties. While there is no written fee agreement per se, there is the e-mail from Mr. Chipman to Mr. Noel referred to above. It clearly sets out the parameters of what Mr. Chipman agreed to do and the fee for doing that. Mr. Chipman agreed to obtain the administrative decision denying benefits and an accounting of the overpayment. For that, Mr. Noel agreed to pay the set fee of \$250.00. Mr. Chipman did just that.

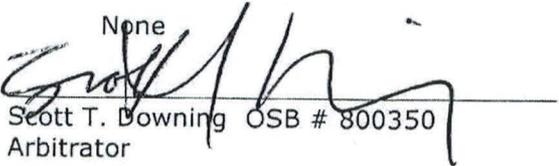
Mr. Chipman did not agree to obtain benefits for Mr. Noel or to pursue any action if the denial had in fact been illegal. Certainly he did not agree to pursue any of the other claims Mr. Noel requested. In addition to the services set out in the e-mail, Mr. Chipman tried to explain to Mr. Noel the importance of the documents he did receive and how it was different from what Mr. Noel believed to be the situation. It is clear to me that Mr. Noel still does not understand what the decision from his hearing in March of 2014 meant to future benefits in any other unemployment claim.

There is no question that this a very important matter for Mr. Noel and that he believes he was wronged by the Employment Department and others and that he is very passionate about it. Unfortunately Mr. Chipman had nothing to do with that and is not responsible for Mr. Noel's predicament.

I find that Mr. Chipman performed the specific services he agreed to perform and that his fee for those services was reasonable. Therefore I find that Mr. Noel is not entitled to any refund of the fee paid.

AWARD

None

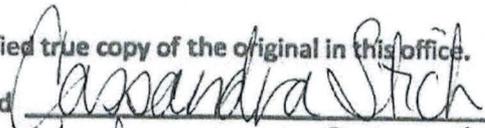

Scott T. Downing OSB # 800350
Arbitrator



Certified true copy of the original in this office.

Signed

Date


July 27, 2015

Bar complaint narrative.

Complainant: Jean Saintfort Noel.
Attorney: Kerry Chipman, OSB 790243.
Reference number: LDD 1501096

Mr. Noel was referred to me by the lawyer referral service on March 25, 2015. He paid thirty-five dollars for a consultation on March 26, 2015. I initially thought we had met in person, but now recall that he dropped off the thirty-five dollars and the documents that I have attached with this e-mail called "client docs". The interview took considerably longer than one half hour because Mr. Noel is quite talkative and had a number of complaints about how he had been treated by the unemployment department. He claimed that the documents he had given me were all that he had ever received from the department. He said he had been informed by telephone in October or November of 2014 that an unemployment claim he had just opened had been allowed, but that he had received no money. He further told me that he had an overpayment from a previous claim and that he had repaid that to the department with cash payments. In looking at his documents, I could only determine that there were three weeks in which he had been denied and a fourth week in which he had been paid zero dollars. He claimed to have no idea what the reference to penalty weeks and a balance due, contained in the department's letter of December 31, 2014 referred to. He insisted he had fully repaid the overpayment.

Based on what he told me, I surmised that, despite what he claimed to have been told by telephone, the department had issued an administrative denial on his fall, 2014 claim. He claimed that the department was refusing to communicate with him and would not send him copies of his documents. I explained to him that I usually charged a flat two hours of time, \$500, to send any kind of letter to a potential defendant, but he persuaded me to accept \$250 from him for that service. I told him I would simply confirm our basic agreement by e-mail rather than draft a formal fee agreement and use telephone/e-mail to reduce the time I normally spend on this type of service. He agreed. The agreement was that I would obtain a copy of what I thought would be a denial letter, again based on what he had told me, and get an accounting of his payments to the department, payments he claimed he had been making for several months.

Mr. Heinechen, the department representative in charge of this case, was not available on the twenty-sixth. His message said he would not be returning to the office until March 30. So I left him a message; left a message at an alternative number on his voicemail; and sent an e-mail. I forwarded the automatic reply to Mr. Noel so he would know that nothing would happen until March 30. He nevertheless telephoned me on the twenty-sixth and again on the twenty-seventh, demanding to know what progress had been made on his case. He also continued to attempt to persuade me to sue the department; several of its employees; and a police officer. I declined, as I had originally done.

I spoke with Mr. Heinechen on March 30, at which time he told me there had been no denial letter issued in the fall of 2014. He explained that Mr. Noel had participated in an administrative hearing as well as an appeal in the spring of 2014, which resulted in the assessment of three penalty weeks and an overpayment, premised on the department's conclusion that Mr. Noel had made misrepresentations in his claims for benefits. He promptly mailed me the hearings

decisions as well as the department's accounting.

When I received the documents, I reviewed them and determined that Mr. Heinechen was correct. Mr. Noel's claim for benefits had been allowed in the fall of 2014. Unfortunately for him, the first week of any unemployment claim is a waiting week for which no one gets paid. The next three weeks showed as denied on the department's records, but in actuality they were satisfying the three-week penalty imposed six months earlier. For the next two weeks, the department collected its overpayment, originally \$464. Mr. Noel had made two \$50 payments in October of 2014, reducing the outstanding total to \$364. The department collected that with one week's check for \$314, and withheld fifty dollars the following week.

I explained this to Mr. Noel over the telephone, since he did not want to come to the office because he would lose time from work. I asked if he wanted me to e-mail him the documents, and he replied that he would pick them up. I told him to make sure to let me know when he was coming in so I could have them ready. Instead, he showed up at the office when I wasn't there, demanding that our receptionist give him his documents. The receptionist called me and I explained to Mr. Noel that he needed to tell me when he was coming in, that I would have them ready later that day. I believe he says this was April 3, and I have no reason to disbelieve that, but I did not keep a record of the exact date. In any event, he came in later that same afternoon and picked up not only his originals but the documents the department had sent me as well. He produced all of these documents for the fee arbitration hearing.

Mr. Noel has never accepted my explanation that there was no denial letter and has never accepted that he had anything to do with my mistaken belief that such a letter existed. If he had told me at the initial LRS consultation that he'd been penalized for misrepresentation; had been assessed an overpayment at the same time; and had repaid very little of that overpayment voluntarily, I could have saved him his \$250. That is not what he told me. Rather, he accused Mr. Heinechen of personally stealing his money. That does not appear to have been the case.

/s/ Kerry Chipman

Bar complaint narrative.

Complainant: Jean Saintfort Noel.
Attorney: Kerry Chipman, OSB 790243.
Reference number: LDD 1501096

Mr. Noel was referred to me by the lawyer referral service on March 25, 2015. He paid thirty-five dollars for a consultation on March 26, 2015. I initially thought we had met in person, but now recall that he dropped off the thirty-five dollars and the documents that I have attached with this e-mail called "client docs". The interview took considerably longer than one half hour because Mr. Noel is quite talkative and had a number of complaints about how he had been treated by the unemployment department. He claimed that the documents he had given me were all that he had ever received from the department. He said he had been informed by telephone in October or November of 2014 that an unemployment claim he had just opened had been allowed, but that he had received no money. He further told me that he had an overpayment from a previous claim and that he had repaid that to the department with cash payments. In looking at his documents, I could only determine that there were three weeks in which he had been denied and a fourth week in which he had been paid zero dollars. He claimed to have no idea what the reference to penalty weeks and a balance due, contained in the department's letter of December 31, 2014 referred to. He insisted he had fully repaid the overpayment.

Based on what he told me, I surmised that, despite what he claimed to have been told by telephone, the department had issued an administrative denial on his fall, 2014 claim. He claimed that the department was refusing to communicate with him and would not send him copies of his documents. I explained to him that I usually charged a flat two hours of time, \$500, to send any kind of letter to a potential defendant, but he persuaded me to accept \$250 from him for that service. I told him I would simply confirm our basic agreement by e-mail rather than draft a formal fee agreement and use telephone/e-mail to reduce the time I normally spend on this type of service. He agreed. The agreement was that I would obtain a copy of what I thought would be a denial letter, again based on what he had told me, and get an accounting of his payments to the department, payments he claimed he had been making for several months.

Mr. Heinechen, the department representative in charge of this case, was not available on the twenty-sixth. His message said he would not be returning to the office until March 30. So I left him a message; left a message at an alternative number on his voicemail; and sent an e-mail. I forwarded the automatic reply to Mr. Noel so he would know that nothing would happen until March 30. He nevertheless telephoned me on the twenty-sixth and again on the twenty-seventh, demanding to know what progress had been made on his case. He also continued to attempt to persuade me to sue the department; several of its employees; and a police officer. I declined, as I had originally done.

I spoke with Mr. Heinechen on March 30, at which time he told me there had been no denial letter issued in the fall of 2014. He explained that Mr. Noel had participated in an administrative hearing as well as an appeal in the spring of 2014, which resulted in the assessment of three penalty weeks and an overpayment, premised on the department's conclusion that Mr. Noel had made misrepresentations in his claims for benefits. He promptly mailed me the hearings

decisions as well as the department's accounting.

When I received the documents, I reviewed them and determined that Mr. Heinechen was correct. Mr. Noel's claim for benefits had been allowed in the fall of 2014. Unfortunately for him, the first week of any unemployment claim is a waiting week for which no one gets paid. The next three weeks showed as denied on the department's records, but in actuality they were satisfying the three-week penalty imposed six months earlier. For the next two weeks, the department collected its overpayment, originally \$464. Mr. Noel had made two \$50 payments in October of 2014, reducing the outstanding total to \$364. The department collected that with one week's check for \$314, and withheld fifty dollars the following week.

I explained this to Mr. Noel over the telephone, since he did not want to come to the office because he would lose time from work. I asked if he wanted me to e-mail him the documents, and he replied that he would pick them up. I told him to make sure to let me know when he was coming in so I could have them ready. Instead, he showed up at the office when I wasn't there, demanding that our receptionist give him his documents. The receptionist called me and I explained to Mr. Noel that he needed to tell me when he was coming in, that I would have them ready later that day. I believe he says this was April 3, and I have no reason to disbelieve that, but I did not keep a record of the exact date. In any event, he came in later that same afternoon and picked up not only his originals but the documents the department had sent me as well. He produced all of these documents for the fee arbitration hearing.

Mr. Noel has never accepted my explanation that there was no denial letter and has never accepted that he had anything to do with my mistaken belief that such a letter existed. If he had told me at the initial LRS consultation that he'd been penalized for misrepresentation; had been assessed an overpayment at the same time; and had repaid very little of that overpayment voluntarily, I could have saved him his \$250. That is not what he told me. Rather, he accused Mr. Heinechen of personally stealing his money. That does not appear to have been the case.

/s/ Kerry Chipman

GENERAL INSTRUCTIONS

- Fill out this form to the best of your ability by printing or typing and return it in an envelope to:
Oregon State Bar, Client Assistance Office, P.O. Box 231935, Tigard, Oregon 97281-1935
Telephone: (503) 620-0222, Toll Free in Oregon: 1-(800) 452-8260
- Read information on the OSB Client Assistance Office, available here: <http://www.osbar.org/cao>
Valuable time can be saved if you understand how the bar functions.
- No particular form is required. This form is provided for your convenience.
- Do not use highlighters on this form. Do not write on the back of any pages.
- Please note that all materials received by the bar are considered public record. A copy of your complaint will be provided to the attorney and a copy retained by the bar in accordance with current OSB records retention policy. Retained records are available for public inspection through the OSB public records clerk.

Name and Address of COMPLAINANT

Today's Date:

August 1, 2015

Name: Mr. Ms.

GAINFORT Noel

Address:

1005 SE 151 st

City/State/Zip:

PORTLAND OR 97233

Primary Telephone:

(503) 821-9186

Secondary Telephone: ()

Name and Address of ATTORNEY

Name: Mr. Ms.

Address:

City/State/Zip:

Primary Telephone: ()

Secondary Telephone: ()

WHAT IS YOUR COMPLAINT?

Please be as specific yet concise as possible and remember to specify **what** your complaint is, **when** it happened; **where** the incident occurred, **why** you went to the attorney and any other factors you can think of which are relevant to your complaint. Use additional sheets of paper if you wish and attach them to this form.

ON MARCH 26TH 2015, I WAS HIRED MR
KERRI CHIPMAN FOR VERY SPECIFIC JOB, THE
JOB IS TO REQUEST A DENY LETTER FROM MR RICK
HEINEKEN AND A ACCOUNT SHOWING ZERO BALANCE
AFTER I PAID HIM \$285 HE TOLD ME HE HAD
EVERYTHING IN HIS OFFICE NEVER GIVE TO ME
AND HE RESIGN I WANT HIM FIRED HIM SO I NEED MY \$285
BACK.

Dear CASSANDRA:

This is SAINFORT Noel, I get the respond back from MR. Scott by email from you, but none of this never talked about my statement or my documents never reviewed by MR. Scott, number one MR. Scott told me I don't have to email nothing to MR. KERRI CHIPMAN, I can bring all my documents to MR. SCOTT'S OFFICE he will forward everything to MR. KERRI, MR. SCOTT never did on July 20th, on the hearing date when I show up for the hearing, or arbitration I ask MR. SCOTT did you have a chance to forward all my documents to MR. KERRI CHIPMAN, or have a chance to review it, he said nope I just get here, when we start I make my request to MR. SCOTT can you review my documents and give a copy to MR. KERRI CHIPMAN, MR. SCOTT never put my documents on consideration and MR. SCOTT put all MR. KERRI'S documents on consideration even I told MR. SCOTT all the documents MR. KERRI has that was a copy of all my ORIGINAL documents, so on that case I want the head of the OREGON state bar to review my case and take all my documents on consideration and a disciplinary action against MR. KERRI'S license he is not in title to represent no one in the world because of dishonesty, no reputation also I want you guys to take action against MR. SCOTT because he told me he knew MR. KERRI for more than 10 years and that's is body MR. SCOTT knows that's illegal to do arbitration between somebody you know. again CASSANDRA I want you please to FORWARD all my documents to the head of OREGON state FOR REVIEW, and give me back my \$285 and legal action against MR. KERRI, MR. SCOTT because he is not suppose to be at that arbitration I put TRUST on you guys.

Cassandra Stich

From: Sainfort Noel <sainfortnoel@gmail.com>
Sent: Friday, July 31, 2015 3:28 PM
To: Cassandra Stich
Subject: Re: Fee Arbitration Award 2015-26
Attachments: cassandra_headofthebar.PDF

Dear Cassandra:

This is Sainfort Noel, I get the respond back from Mr Scott by email from you but none of this never talked about my statement or my document never reviewed by Mr Scott number one Mr Scott told me I don't have to email Mr. Kerri Chipman, I can bring all my documents to Mr Scott's office he will forward everything to Mr Kerri Chipman Mr Scott never did, on July 20th on the hearing date when I show up for the hearing or arbitration I ask Mr Scott did you have a chance to forward all my documents to Mr Kerri Chipman, or have a chance to reviewed it, he said nope I just get here. and when we start I make my request to Mr Scott can you review my documents and give a copy to Mr Kerri Chipman, never put my documents on consideration and Mr Scott put all Mr Kerri's documents on consideration even I told Mr Scott the all the documents Mr Kerri had that was a copy of all my original so on that case I want the head of the Oregon State Bar to review my case and take all my documents on consideration and a disciplinary action against Mr Kerri license he is not in tittle to represent no one in the World because of dishonesty, no reputation also I want you guys to take action against Mr Scott because He told me he knows Mr Kerri for more than 10 years and that's is body Mr Scott knows that's illegal to do arbitration between some body you know again Cassandra I want please to forward all my documents to the head of Oregon State for review and give me back my \$ 285 and a legal action against Mr Kerri, Mr Scott because he is not suppose to be at that arbitration I put trust on you guys and thank you for cooperation

Sainfort Noel

On Mon, Jul 27, 2015 at 11:38 AM, Cassandra Stich <CStich@osbar.org> wrote:

Mr. Sainfort and Mr. Chipman,

Attached please find certified true copies of the original Arbitration Award in the above-entitled matter.

Rule 7.5 of the Rules of Arbitration of Fee Disputes makes this award binding on both parties subject to the remedies available under ORS 36.615, 36.705 and 36.710. If the arbitrator has found that money is owing, and if the parties are unable to agree on a method of satisfying the award, the party in whose favor the award is rendered is entitled to seek confirmation of the award as provided in ORS 36.615, 36.700 and 715.

The Oregon State Bar cannot provide legal advice to the parties regarding their rights and obligations under the award. You should seek the advice of counsel if you have questions.

Sincerely,

Cassandra Stich



Fee Arbitration Program Administrator

General Counsel's Office

503-431-6334

CStich@osbar.org

Oregon State Bar • 16037 SW Upper Boones Ferry Road • PO Box 231935 • Tigard, OR 97281-1935 •
www.osbar.org

Please note: Your email communication may be subject to public disclosure. Written communications to or from the Oregon State Bar are public records that, with limited exceptions, must be made available to anyone upon request in accordance with Oregon's public records laws.

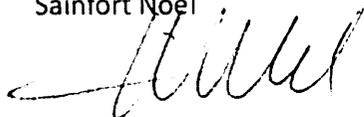
July 11, 2015

Dear Judge:

This is Sainfort Noel, before we start could you please ask Mr. Kerri to provide you, all documents he has been request from Mr. Rick Heineken, like the deny letter from the Administration judge, and envelope poster with the stamp show the mailing date because when I spokes with Mr. Kerri on Monday march 30 the 2015 he told me he talked to Rick Heineken he mail everything to Mr. Kerri so I ' m in the meeting right now a soon I received it I will call you .We have a fee agreement for \$250 to resolve the problem ,request a deny letter from the Administration judge and showing a copy of my payment; and \$35 for consultation, on Thursday March 26th 2015 I pay \$250 Mr. Kerri never call me back on April 1 2015 I call back again Mr. Kerri told me Mr. Rick Heineken said there is no deny letter Mr. Kerri told me he is not interested any more came get my file on Friday April 3th I call the office to see if Mr. Kerri was there so I can come get my file he was very upset tell me I ' m still prepare your documents .your honor I was hired Mr. Kerri for very Specific job after he received all my \$285 from me he refused to do the job all I need is my \$285 back. Mr. Scott can you ask Mr. Kerri did he do that to any one before, and also did he have any complaint like mind before , I hope Mr. Kerri realize he did something wrong all I need from Mr. Kerri is my money back no question ask. I put trust on you Mr. Scott, i hope we come up with the resolution.

Thank you for your cooperation

Sainfort Noel

A handwritten signature in cursive script, appearing to read "Sainfort Noel", written in black ink.

To: Sainfort Noel

**Following is a record of your complaint filed with the Oregon State Bar.
Please retain this for your records.**

Name and Address of COMPLAINANT

Mr Sainfort Noel
1005 se 151 st
Portland, or 97233
Primary Phone: 503 8219186
Secondary Phone:
Email: sainfortnoel@gmail.com

Name and Address of ATTORNEY

Mr Kerri Chipman
1826 ne broadway st
portland, or 97217
Primary Phone: 503 2813436
Secondary Phone:

COMPLAINT

This letter to show you the prove the contract I was hired Mr. Kerri Chipman to do a job for me, the job was to ask Mr. Rick Heineken to give me a deny letter from administration Judge ,and account showing all my payment Mr. Kerri in advance ask \$35 for consultation and \$250 to do the job a week later when I called Mr. Kerri he told me he is in the meeting he will call me back he never did when I called him again he told he has everything's he spokes with Mr. Rick he mail every things coupe days later Mr. Kerri told me he is not interested about that case anymore he will email me the responds from Mr. Rick and letter from Rick never did .all I want you guys to do for me please to ask Mr. Kerri to give me my \$285 dollars back and you guys can decide what to do with is license Thank you for your cooperation and I hope to hear from you soon. Any feel free to call at 503 8219186 Thank you Sainfort Noel

ATTACHMENTS

Fwd Retainer. - sainfortnoel@gmail.com - Gmail.htm
J. Sainfort Noel. - sainfortnoel@gmail.com - Gmail.htm
Fwd Automatic reply J. Sainfort Noel. - sainfortnoel@gmail.com - Gmail.htm



Sainfort Noel <sainfortnoel@gmail.com>

Fwd: Automatic reply: J. Sainfort Noel.

2 messages

Kerry Chipman <chipmanlaw@comcast.net>
To: Jean Noel <sainfortnoel@gmail.com>

Thu, Mar 26, 2015 at 4:44 PM

----- Forwarded Message -----

Subject:Automatic reply: J. Sainfort Noel.

Date:Thu, 26 Mar 2015 23:37:19 +0000

From:HEINICHEN RICK J * OED<RICK.J.HEINICHEN@oregon.gov>

To:Kerry Chipman <chipmanlaw@comcast.net>

I will be out of the office Monday, March 30, 2015. I will respond to your e-mail upon my return.

If you have any questions regarding Work Share, please contact Tammy Aldrich (Tammy.J.Aldrich@oregon.gov).

Thank you.

Rick Heinichen
Records and Redets Manager

Sainfort Noel <sainfortnoel@gmail.com>
To: cao@osbar.org

Sat, Apr 11, 2015 at 3:58 PM

I completed online complaint; here are emails to back up claim

Sainfort Noel

[Quoted text hidden]



Sainfort Noel <sainfortnoel@gmail.com>

J. Sainfort Noel.

2 messages

Kerry Chipman <chipmanlaw@comcast.net>
To: Rick Heinichen <Rick.J.Heinichen@oregon.gov>
Cc: Jean Noel <sainfortnoel@gmail.com>

Thu, Mar 26, 2015 at 4:37 PM

Dear Mr. Heinichen: I'm an attorney who has been hired by Mr. Noel to assist him in dealing with your department. I'm going to repeat the voicemail message I left this afternoon. I'm asking that you send to me or directly to Mr. Noel a copy of the administrative decision denying his claim for benefits issued in November, 2014, as well as an accounting showing the payments made on his overpayment. Thank you. Sincerely, /s/Kerry Chipman. OSB 790243.

Mr. Kerry Chipman
Attorney at Law
PO Box 69512
Portland, OR 97239
503-281-3436
chipmanlaw@comcast.net

Sainfort Noel <sainfortnoel@gmail.com>
To: cao@osbar.org

Sat, Apr 11, 2015 at 3:57 PM

I completed online complaint; here are emails to back up claim
Sainfort Noel
(Quoted text hidden)



Sainfort Noel <sainfortnoel@gmail.com>

Fwd: Retainer.

2 messages

Kerry Chipman <chipmanlaw@comcast.net>
To: Jean Noel <sainfortnoel@gmail.com>

Thu, Mar 26, 2015 at 4:27 PM

----- Forwarded Message -----

Subject:Retainer.

Date:Thu, 26 Mar 2015 16:22:49 -0700

From:Kerry Chipman <chipmanlaw@comcast.net>

To:Jean Noel <sainfortnoel@gmail.com>

This is to inform that you have paid \$1000 by check and to give receipt
of the same to you. I will be glad to have the receipt. In any payment account,
I will be glad to be of service.

Kerry Chipman
503-281-3436
chipmanlaw@comcast.net

Sainfort Noel <sainfortnoel@gmail.com>
To: cao@osbar.org

Sat, Apr 11, 2015 at 3:57 PM

I completed online complaint; here are emails to back up claim

Sainfort Noel

[Quoted text hidden]



FEE ARBITRATION PROGRAM

PETITION TO ARBITRATE FEE DISPUTE

OSB Case No. _____

Petitioner*: Sainfort Noel

Mailing Address: 1005 se 151st Portland or 97233

Phone #: 503821 9186 Cell #: 5038219186

E-mail: sainfortnoel@gmail.com

VS

Respondent*: Kerri Shipman

Mailing Address: 1826 ne broadway st Portland or 97217

Phone #: 5032813436

*Petitioner means the client or attorney requesting mediation/arbitration.
Respondent is the client or attorney responding to the request

PLEASE Answer the questions to the best of your ability.

1. Was the attorney referred by (check one):

- Modest Means Program OSB Lawyer Referral Service Neither

2. What type of case was the attorney hired for? employment

3. Was there a Fee Agreement? Yes No

The fee agreement was: (if written please provide copy)

- Hourly
 Fixed or Flat
 Contingency
 Other (describe) _____

Please return all paperwork to: OSB Fee Arbitration Program PO Box 231935 Tigard, OR 97281

For questions call 503.620.0222 x334 or inside Oregon 800.452.8260 x334

4. Were you billed on a regular basis? Yes No
 Were the charges itemized? Yes No
5. What amount did the attorney charge? \$ 285
6. How much did the client pay in fees? \$ 285
7. When did the attorney-client relationship end? APRIL 1 (approximate date)
8. How much of the fees are in dispute? \$ 285
9. Is there a complaint filed with the Client Assistance Office? Yes No
10. Is there a Small Claims or Circuit Court case pending regarding these fees? Yes No
11. Has the matter been turned over to a Collection Agency? Yes No
12. Is there a bankruptcy case pending? Yes No
13. Have you discussed this fee dispute with the attorney? Yes No
14. Are you represented by an attorney for this fee dispute? Yes No

If yes, please list name of attorney. _____

Why are the fees in dispute? Be specific. Please type, write legibly, or attach a letter of explanation.
 (If additional space is needed please attach separate pages)

we have a fee agreement for \$750
to resolve the deny letter and showing
a copy of my payment, and \$35 for
consultation after I had pay everything
all \$285 MR KERRI send me a email
told me he request everything from
MR RICK, he is waiting for it, and never give it
to me, and when I call him on APRIL 1 he told
me he is not interest can get my file.

Please return all paperwork to: OSB Fee Arbitration Program PO Box 23193 Tigard, OR 97281

For questions call 503.620.0222 x334 or inside Oregon 800.452.8260 x334

Date: 03/30/15 EPAY - PAYMENT LIST Time: 09:19 am
 Page 1 of 1
 SSN 8111 BYE 42 15 SAINFORT J NOEL Prg REG/UI

Pay Week	Pay Adj	Pay Prg	Pay Status	FO	Chk Amt	OPA Offset	CSI Amt	WITHHELD FED/ST	Earnings	DI Amt	Entered
- 10/15		REG	P/ED	200	193	0	0	023 /014	188.00	0	03/16/15
- 09/15		REG	P/ED	200	264	0	0	031 /019	80.00	0	03/09/15
- 08/15		REG	P/ED	200	166	0	0	020 /012	220.50	0	03/02/15
- 07/15		REG	P/ED	200	264	0	0	031 /019	82.25	0	02/23/15
- 06/15		REG	AC-P/ED	200	264	0	0	031 /019	0.00	0	02/17/15
- 53/14		REG	P	200	264	0	0	031 /019	0.00	0	01/05/15
- 52/14		REG	P	200	222	50	0	026 /016	0.00	0	12/29/14
- 51/14		REG	AC-P	200	0	314	0	000 /000	0.00	0	12/22/14
- 47/14		REG	D	200	0	0	0	000 /000	180.00	0	11/24/14
- 46/14		REG	D	200	0	0	0	000 /000	0.00	0	11/17/14
- 45/14		REG	D	200	0	0	0	000 /000	0.00	0	11/10/14
- 44/14		REG	W	200	0	0	0	000 /000	0.00	0	11/03/14

ENT) Display	14) EO10	18) NM/LF	22) Data Cap
3) Customer	11) Modify	15) Frd Hist	23) Clm Mod
	12) Return	16) Monetary	24) OBIS Menu
5) Clm Sum	17) Comments	21) AC/RO	PA1/PA2) Print
4-@ \$	A	Mobius	00.0
		HTCPWSQE	DOC» 7/2



**State of Oregon - Employment Department
Unemployment Insurance Overpayment Billing Statement**

Change of address? Print and Sign Below

New Phone # _____
SIGN _____

CUST ID: 43-630.668.076
BILLING DATE: 02/04/15
PAYMENT DUE DATE: 02/18/15
UNLESS OTHERWISE ARRANGED

SAINFORT J NOEL 1
1005 SE 151ST AVE
PORTLAND OR 97233

NEW INTEREST 0.00
TOTAL AMOUNT DUE 10.92
MINIMUM DUE 10.92
AMOUNT PAID _____

EMPLOYMENT DEPT--COLLECTIONS
UNIT 21
PO BOX 4395
PORTLAND OR 97208-4395

Return the top portion with your payment, made payable to the Employment Department.

Oregon Employment Department CUST ID: 43-630.668.076 Date: 02/04/15

Note: THIS STATEMENT REFLECTS ACTIVITY AND BALANCE THROUGH JANUARY 31, 2015
NEW INTEREST ACCRUED ON JANUARY 31, 2015 0.00

	PREVIOUS BALANCE	PAYMENTS APPLIED	ADJUSTMENTS/ ADDITIONS	CURRENT BALANCE
OVERPAYMENTS	364.40	364.00	0.40-	0.00
INTEREST	10.92	0.00	0.00	10.92
COURT COSTS	0.00	0.00	0.00	0.00
STATE PENALTY	0.00	0.00	0.00	0.00
FED PENALTY	0.00	0.00	0.00	0.00
TOTALS	375.32	364.00	0.40-	10.92

THANK YOU FOR AGREEING TO A PAYMENT PLAN. THE MONTHLY MINIMUM DUE IS SHOWN IN THE UPPER RIGHT-HAND CORNER OF THIS BILLING STATEMENT.

UNTIL THIS DEBT IS PAID, ANY UNEMPLOYMENT BENEFITS WHICH YOU ARE ELIGIBLE TO RECEIVE MUST BE APPLIED IN FULL TO OFFSET THE OVERPAYMENT, PER ORS 657.310. OREGON INCOME TAX REFUNDS WILL ALSO BE APPLIED TOWARD THE DEBT PER ORS 293.250, AND DO NOT TAKE THE PLACE OF YOUR MONTHLY PAYMENTS.

To make a payment online go to www.Employment.Oregon.gov/ocs and click "Make a payment".
We accept VISA, MasterCard and Discover.

To contact the Benefit Payment Control Collection Unit Monday through Friday 8:00 AM - 5:00 PM (except holidays) please call:
IN OREGON (TOLL FREE) 1-800-553-5396
SALEM OR OUTSIDE OREGON 503-947-1710
TTY-TDD 711

WHEN YOU CALL, PLEASE BE PREPARED TO LEAVE YOUR NAME, PHONE NUMBER AND SOCIAL SECURITY NUMBER.
WE WILL RETURN YOUR CALL IN THE ORDER IT WAS RECEIVED.

Per ORS 657.310 payments are applied in the following order: legal fees, interest and the overpayment. Any outstanding debt balance, remaining unpaid on or after the first day of the month following 60 days after the finality date of the administrative decision that established the overpayment, will accrue interest at the rate of one percent per month. In computing interest under this statute, a fraction of a month is counted as a full month. Per ORS 293.250, the Debt Collection Act of 1982 and the Debt Collection Improvement Act of 1996, Oregon State and Federal tax refunds may be intercepted and applied to this debt.

Page 2
SAINFORT J NOEL
43-630.668.076
42-15

Therefore, BENEFITS ARE ALLOWED if otherwise eligible. **Por lo tanto, SE LE CONCEDEN BENEFICIOS** si de otra manera es elegible.

If you do not understand this decision, contact the Unemployment Insurance Center above immediately. You may request an oral interpretation. Si usted no entiende esta decisión póngase en contacto con el Centro de Seguro de Desempleo inmediatamente. Usted puede solicitar un interpretación oral.

IF YOU DO NOT AGREE WITH THIS DECISION SEE THE ENCLOSED INFORMATION FOR YOUR APPEAL RIGHTS. SI USTED NO CONCUERDA CON ESTA DECISIÓN VÉASE LA INFORMACIÓN ADJUNTA PARA SUS DERECHOS DE APELACIÓN.

Date Mailed: March 13, 2015. Any appeal from this decision must be filed on or before April 02, 2015 to be timely. Fecha Enviada por Correo: 13 marzo, 2015. Cualquier apelación a esta decisión debe presentarse el 2 abril, 2015 o antes para considerarse recibida a tiempo.

THE MENTOR NETWORK
C/O ADP
PO BOX 66744
ST LOUIS MO 63166-6744

By: HEKB090
(Authorized Representative)

Decision # 141006
Form DSAL2 Rev 06/2012

August 17, 2015

Kerry Chipman
Attorney at Law
chipmanlaw@comcast.net

Scott Downing
Attorney at Law
sdowning@greshamlaw.com

Re: **Subject: LDD 1501096; LDD 1501097**
Kerry Chipman/Scott Downing (Sainfort Noel)

Dear Mr. Chipman and Mr. Downing:

The Oregon State Bar Client Assistance Office (CAO) has received the attached correspondence from Sainfort Noel. The CAO is responsible for reviewing concerns regarding Oregon lawyers. Under Bar Rule of Procedure 2.5 and as resources permit, CAO determines the manner and extent of review required to determine whether there is sufficient evidence to support a reasonable belief that misconduct may have occurred warranting a referral to Disciplinary Counsel's Office. Misconduct means a violation of the rules of professional conduct and applicable statutes that govern lawyer conduct in Oregon. Mr. Noel's concerns regarding Mr. Downing may implicate the provisions of RPC 1.7(a)(2) [conflict of interest] and RPC 8.4(a)(4) [conduct prejudicial to the administration of justice]. Mr. Noel's concerns regarding Mr. Chipman may implicate the provisions of RPC 1.15-1(d) [return of client property].

In order for me to conduct a fair and informed review, I would like to have your account of the matter no later than September 8, 2015. I am able to grant an extension of the time to respond for good cause, if requested before the deadline. **Please submit your response via email to cao@osbar.org, using the subject line LDD 1501096. It is not necessary to also mail a paper copy of your response.**

A copy of your response will be sent to Mr. Noel. If appropriate, I may request he comment on your response. All material submitted by the parties in the course of this review is public record and both parties will receive copies. Please limit your response and any documents you send to the ethics issues presented. I am confident I will receive your full cooperation in this matter. You should be aware, however, that if you fail to respond to this request, this matter will be referred to Disciplinary Counsel's Office for further review.

After I review all documentation and information gathered in this matter I will determine if there is sufficient evidence warranting a referral to Disciplinary Counsel's Office for further evaluation pursuant to BR 2.5(b)(2). CAO determines the manner and extent of review required for the appropriate disposition of complaints.

Kerry Chipman/Scott Downing
Page 2

Thank you in advance for your cooperation. I look forward to a fair and expeditious review of this matter.

Yours,

A handwritten signature in black ink, appearing to read "L. Davis", with a stylized flourish extending to the right.

Linn D. Davis
Assistant General Counsel
Ext. 332

LDD/jmm
Attachment

cc: Sainfort Noel
01a

Email submissions to: cao@osbar.org Use subject line: LDD 1501096

Bar complaint narrative.

Complainant: Jean Saintfort Noel.
Attorney: Kerry Chipman, OSB 790243.
Reference number: LDD 1501096

Mr. Noel was referred to me by the lawyer referral service on March 25, 2015. He paid thirty-five dollars for a consultation on March 26, 2015. I initially thought we had met in person, but now recall that he dropped off the thirty-five dollars and the documents that I have attached with this e-mail called "client docs". The interview took considerably longer than one half hour because Mr. Noel is quite talkative and had a number of complaints about how he had been treated by the unemployment department. He claimed that the documents he had given me were all that he had ever received from the department. He said he had been informed by telephone in October or November of 2014 that an unemployment claim he had just opened had been allowed, but that he had received no money. He further told me that he had an overpayment from a previous claim and that he had repaid that to the department with cash payments. In looking at his documents, I could only determine that there were three weeks in which he had been denied and a fourth week in which he had been paid zero dollars. He claimed to have no idea what the reference to penalty weeks and a balance due, contained in the department's letter of December 31, 2014 referred to. He insisted he had fully repaid the overpayment.

Based on what he told me, I surmised that, despite what he claimed to have been told by telephone, the department had issued an administrative denial on his fall, 2014 claim. He claimed that the department was refusing to communicate with him and would not send him copies of his documents. I explained to him that I usually charged a flat two hours of time, \$500, to send any kind of letter to a potential defendant, but he persuaded me to accept \$250 from him for that service. I told him I would simply confirm our basic agreement by e-mail rather than draft a formal fee agreement and use telephone/e-mail to reduce the time I normally spend on this type of service. He agreed. The agreement was that I would obtain a copy of what I thought would be a denial letter, again based on what he had told me, and get an accounting of his payments to the department, payments he claimed he had been making for several months.

Mr. Heinechen, the department representative in charge of this case, was not available on the twenty-sixth. His message said he would not be returning to the office until March 30. So I left him a message; left a message at an alternative number on his voicemail; and sent an e-mail. I forwarded the automatic reply to Mr. Noel so he would know that nothing would happen until March 30. He nevertheless telephoned me on the twenty-sixth and again on the twenty-seventh, demanding to know what progress had been made on his case. He also continued to attempt to persuade me to sue the department; several of its employees; and a police officer. I declined, as I had originally done.

I spoke with Mr. Heinechen on March 30, at which time he told me there had been no denial letter issued in the fall of 2014. He explained that Mr. Noel had participated in an administrative hearing as well as an appeal in the spring of 2014, which resulted in the assessment of three penalty weeks and an overpayment, premised on the department's conclusion that Mr. Noel had made misrepresentations in his claims for benefits. He promptly mailed me the hearings

decisions as well as the department's accounting.

When I received the documents, I reviewed them and determined that Mr. Heinechen was correct. Mr. Noel's claim for benefits had been allowed in the fall of 2014. Unfortunately for him, the first week of any unemployment claim is a waiting week for which no one gets paid. The next three weeks showed as denied on the department's records, but in actuality they were satisfying the three-week penalty imposed six months earlier. For the next two weeks, the department collected its overpayment, originally \$464. Mr. Noel had made two \$50 payments in October of 2014, reducing the outstanding total to \$364. The department collected that with one week's check for \$314, and withheld fifty dollars the following week.

I explained this to Mr. Noel over the telephone, since he did not want to come to the office because he would lose time from work. I asked if he wanted me to e-mail him the documents, and he replied that he would pick them up. I told him to make sure to let me know when he was coming in so I could have them ready. Instead, he showed up at the office when I wasn't there, demanding that our receptionist give him his documents. The receptionist called me and I explained to Mr. Noel that he needed to tell me when he was coming in, that I would have them ready later that day. I believe he says this was April 3, and I have no reason to disbelieve that, but I did not keep a record of the exact date. In any event, he came in later that same afternoon and picked up not only his originals but the documents the department had sent me as well. He produced all of these documents for the fee arbitration hearing.

Mr. Noel has never accepted my explanation that there was no denial letter and has never accepted that he had anything to do with my mistaken belief that such a letter existed. If he had told me at the initial LRS consultation that he'd been penalized for misrepresentation; had been assessed an overpayment at the same time; and had repaid very little of that overpayment voluntarily, I could have saved him his \$250. That is not what he told me. Rather, he accused Mr. Heinechen of personally stealing his money. That does not appear to have been the case.

/s/ Kerry Chipman

OREGON STATE BAR FEE ARBITRATION

SAINFORT NOEL,)	
)	
Petitioner,)	No.: 2015-26
)	
and)	ARBITRATION AWARD
)	
KERRY CHIPMAN,)	
)	
Respondent.)	

INTRODUCTION

This matter came before Scott T. Downing as sole Arbitrator. Initially a panel was appointed due to an error in the amount of attorney fees at issue. Both parties agreed that it was appropriate that only the sole Arbitrator hear the case. Steven J. Nemirow, the other attorney previously appointed as part of the panel, attended the hearing with the consent of the parties as an observer, but did not participate in the decision or award. As noted in his Petition, Mr. Noel seeks the return of the \$285.00 in total fees paid by him to Mr. Chipman.

A hearing was held on July 20, 2015. Both parties were present and presented documentary evidence and testimony. Based upon the evidence presented, the Arbitrator issues the following Award.

JURISDICTION

Jurisdiction is conferred by written agreement signed by both parties to the prescribed rules of the Oregon State Bar on Fee Disputes. Scott T. Downing was duly appointed as Arbitrator.

FACTS

Petitioner consulted Respondent through the Lawyer Referral Service, regarding a denial of unemployment benefits. Mr. Noel felt that he had been illegally denied certain benefits in late 2014 and early 2015. In his initial conversation with Mr. Chipman, he claimed that a representative of the Unemployment Department had denied the benefits and that no written reason had been received by Mr. Noel for that denial. Mr. Chipman, based on the information provided by Mr. Noel, told him that the Department is required to issue a "denial letter" and if in fact, none was sent or issued, then the denial of his benefits was not lawful. Apparently Mr. Noel had been overpaid some benefits and was having deductions from his current benefit to repay the over-payment. It was later determined that Mr. Noel, in addition to the deductions, had been making payments directly to the Department towards that overpayment. After some discussion, much of which apparently occurred over the phone, Mr. Noel agreed to pay Mr. Chipman a one-time, or set fee, of \$250.00 to obtain the denial letter and an accounting of his benefits to show the payments made. Mr. Chipman sent to Mr. Noel an e-mail dated March 26th, 2015 that

acknowledges the payment of the \$250.00 fee by credit card and sets out what the payment is for. It states:

“This is to confirm that you have paid \$250.00 by charge card to hire me to obtain a copy of an administrative decision in an overpayment accounting from the employment department.”

“/s/ Kerry Chipman”

In addition to the one-time fee, Mr. Noel had paid a \$35.00 office conference fee per the rules of the Lawyer Referral Service of the Oregon State Bar.

Mr. Chipman immediately on March 26th, contacted the representative of the Department, a Mr. Rick Heinichen, by both e-mail and voice mail, seeking copies of the administrative decision denying benefits (the “denial letter”) and an accounting showing payments made towards his overpayment. Mr. Heinichen was out of the office and would return on the 30th.

On March 30th, Mr. Heinichen mailed the requested documents and more to Mr. Chipman’s mailing address. I am not sure when they were actually received. However, Mr. Noel retrieved these documents eventually from Mr. Chipman’s office after they were copied. There was some confusion about that between the parties, but not particularly relevant to the issue of fees.

From the documents received, Mr. Chipman first learned that the situation was different than Mr. Noel had reported. I do not believe that Mr. Noel was being deceitful or otherwise. I simply believe he did not understand what had happened. Apparently in March of 2014, Mr. Noel had been accused by the Department of submitting a fraudulent claim for benefits in a different claim. A hearing was held in which Mr. Noel participated and a decision reached. Mr. Noel appealed that decision to the Employment Appeals Board and the original decision was upheld. These facts were not reported by Mr. Noel to Mr. Chipman, because I think, he felt these were part of a different and unrelated claim. While the merits of his underlying unemployment claim are not really relevant to the issue of fees here, it is worth noting that the decision of the Administrative Law Judge in the original proceeding states:

“Claimant is disqualified from 3 weeks of future benefits under ORS 657.215 and must repay a monetary penalty of \$77.40” (Page 8 of the written decision)

In addition, the Department was entitled to collect the overpayment. Mr. Noel may have in fact already paid back the overpayment with a combination of deductions from other benefits and cash payments made by him. Once he had the documents, Mr. Chipman realized that there was no denial letter. The Department had been assessing the penalty required in the written decision. So in fact, Mr. Noel’s claim for benefits had been approved, but could not be actually paid to him until the 3-week penalty had run its course, the penalty paid and any overpayment taken care of. This was communicated to Mr. Noel again over the phone. It is clear to me that Mr. Noel did not understand this. Mr. Noel remains focused on the original comments made by Mr. Chipman in their first meeting that it was illegal to withhold benefits absent a denial letter, a letter that did not and could not exist.

In addition to the work set out in the e-mail, Mr. Noel was seeking representation to release the "flag" on his file; to open a tort claim of some sort against Mr. Heinichen, against Mr. Heinichen's supervisor, against the Gresham Police on behalf of a friend and against a State Police officer and to pursue the unemployment claim. Mr. Chipman declined.

OPINION

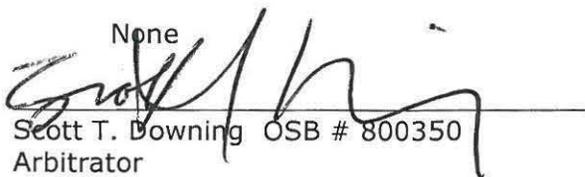
The scope of this proceeding is to determine whether Mr. Chipman charged a reasonable fee for the services he performed and agreed to perform. My first inquiry is to determine what was the agreement of the parties. While there is no written fee agreement per se, there is the e-mail from Mr. Chipman to Mr. Noel referred to above. It clearly sets out the parameters of what Mr. Chipman agreed to do and the fee for doing that. Mr. Chipman agreed to obtain the administrative decision denying benefits and an accounting of the overpayment. For that, Mr. Noel agreed to pay the set fee of \$250.00. Mr. Chipman did just that.

Mr. Chipman did not agree to obtain benefits for Mr. Noel or to pursue any action if the denial had in fact been illegal. Certainly he did not agree to pursue any of the other claims Mr. Noel requested. In addition to the services set out in the e-mail, Mr. Chipman tried to explain to Mr. Noel the importance of the documents he did receive and how it was different from what Mr. Noel believed to be the situation. It is clear to me that Mr. Noel still does not understand what the decision from his hearing in March of 2014 meant to future benefits in any other unemployment claim.

There is no question that this a very important matter for Mr. Noel and that he believes he was wronged by the Employment Department and others and that he is very passionate about it. Unfortunately Mr. Chipman had nothing to do with that and is not responsible for Mr. Noel's predicament.

I find that Mr. Chipman performed the specific services he agreed to perform and that his fee for those services was reasonable. Therefore I find that Mr. Noel is not entitled to any refund of the fee paid.

AWARD

None

Scott T. Downing OSB # 800350
Arbitrator

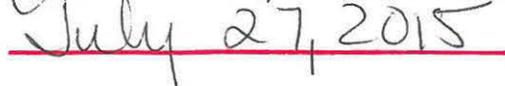


Certified true copy of the original in this office.

Signed



Date



- 1- Details on 4 more payment
- 2- Release The FLAG on my File
- 3- open a claim against RICK H.
- 4- open a claim against his
Supervisor Robin
- 5 open a claim against his friend
on Gresham office on 19421 SE
Stark his name is Robert G.M.
- 6- open a claim against state
Trooper Christina Mainley
- 7- open a claim against Oregon
employment insurance claim
because they let him gave
me hard time event this not
his ^{not} ^{he} department
- THANK YOU -

G.P.
Georges # 50555

Employment Department (/EMPLOY/Pages/default.aspx) / Agency Information (/EMPLOY/Agency/Pages/default.aspx) / About Us / Executive Profiles

Executive Profiles

helper VIRGINIA

Lisa Nisenfeld

ask me to leave
Robert/Mg

Position: Director

Lisa Nisenfeld was appointed Director of the Oregon Employment Department by Governor Kitzhaber in September 2013.

View Profile

Central Administrative Office

Oregon Employment Department
875 Union St. NE
Salem, OR 97311

Hours of Operation

8:00 AM - 5:00 PM

Contact

Phone: 800-237-3710 (in-state only)

Phone: 503-947-1394 (direct)

Fax: 503-947-1472

TTY: 7-1-1

Internet Relay: **Sprint Relay Online (<http://www.sprintrelayonline.com/>)**

If you have an Unemployment Insurance issue, please see below for the correct number to call. The Director's Office is unable to assist or answer questions regarding your claim or Unemployment Insurance.



Oregon

John A. Kitzhaber MD, Governor

Employment Department

875 Union Street NE

Salem, Oregon 97311

(503) 947-1394

TTY-TDD 711

www.WorkingInOregon.org

February 27, 2015

Sent Regular First Class and Certified Mail

J. Sainfort Noel
1005 SE 151st Avenue
Portland, OR 97233-2920



Dear Mr. Noel:

You are continuing to not address your questions or concerns, to Rick Heinichen, in writing as directed in the letter dated September 16, 2014. In that letter we specifically stated that due to your unprofessional verbal communications towards Oregon Employment Department (OED) staff, your mode of communication is restricted to **email or letter only**. On February 25, 2015, I was notified that you were in the OED Gresham office talking with OED staff. You are prohibited from coming into our offices beginning today, February 27, 2015, and shall continue until official notification is issued that the restriction has been removed. If you do come on any OED property, you will be subject to arrest (see attached copy of ORS 164.245 and ORS 164.255). We will review this restriction in six months if you make a written request.

You have also continued to call and talk with various employees of the Oregon Employment Department (OED) for various reasons. Any further telephone contact with OED employees shall be considered harassment and will result in a call to the appropriate law enforcement agency. The Oregon Revised Statute (ORS) 166.090 has a specific definition of telephonic harassment. I have attached a copy of the statute for you to reference.

As a public agency, we will continue to offer you the same range of services, but you must access the service by **email or letter only**. We expect appropriate business behavior in your dealings with us through these alternate methods.

Below please find Rick's contact information:

Email address: Rick.J.Heinichen@oregon.gov
Mailing Address: 875 Union Street NE
Salem, OR 97311

We expect that your future written communication will be calm and professional.

Sincerely,

Bonnie K. Robbins
Safety/Risk & Facilities Manager

Enclosure: ORS 164.245 & ORS 164.255

Cc: Oregon State Police (OSP)

Oregon Revised Statutes (ORS) - CRIMINAL TRESPASS

164.245

1. A person commits the crime of criminal trespass in the second degree if the person enters or remains unlawfully in a motor vehicle or in or upon premises.
2. Criminal trespass in the second degree is a Class C misdemeanor. [1971 c.743 §139; 1999 c.1040 §9]

164.255

1. A person commits the crime of criminal trespass in the first degree if the person:
 - a. Enters or remains unlawfully in a dwelling;
 - b. Having been denied future entry to a building pursuant to a merchant's notice of trespass, reenters the building during hours when the building is open to the public with the intent to commit theft therein;
 - c. Enters or remains unlawfully upon railroad yards, tracks, bridges or rights of way; or
 - d. Enters or remains unlawfully in or upon premises that have been determined to be not fit for use under ORS 453.855 to 453.912
2. Subsection (1)(d) of this section does not apply to the owner of record of the premises if:
 - a. The owner notifies the law enforcement agency having jurisdiction over the premises that the owner intends to enter the premises;
 - b. The owner enters or remains on the premises for the purpose of inspecting or decontaminating the premises or lawfully removing items from the premises; and
 - c. The owner has not been arrested for, charged with or convicted of a criminal offense that contributed to the determination that the premises are not fit for use.
3. Criminal trespass in the first degree is a Class A misdemeanor. [1971 c.743 §140; 1993 c.680 §23; 1999 c.837 §1; 2001 c.386 §1; 2003 c.527 §1]

166.090 Telephonic harassment. (1) A telephone caller commits the crime of telephonic harassment if the caller intentionally harasses or annoys another person:

(a) By causing the telephone of the other person to ring, such caller having no communicative purpose;

(b) By causing such other person's telephone to ring, knowing that the caller has been forbidden from so doing by a person exercising lawful authority over the receiving telephone; or

(c) By sending to, or leaving at, the other person's telephone a text message, voice mail or any other message, knowing that the caller has been forbidden from so doing by a person exercising lawful authority over the receiving telephone.

(2) Telephonic harassment is a Class B misdemeanor.

(3) It is an affirmative defense to a charge of violating subsection (1) of this section that the caller is a debt collector, as defined in ORS 646.639, who engaged in the conduct proscribed by subsection (1) of this section while attempting to collect a debt. The affirmative defense created by this subsection does not apply if the debt collector committed the unlawful collection practice described in ORS 646.639 (2)(a) while engaged in the conduct proscribed by subsection (1) of this section. [1987 c.806 §2; 1999 c.115 §1; 2005 c.752 §1]

CORRECTED (if checked)

**Certain
Government
Payments**

**Copy B
For Recipient**

PAYER'S name, street address, city, state, ZIP code, and telephone no. Oregon Employment Department 875 Union St NE Salem, OR 97311 (503) 947-1320	RECIPIENT'S identification number ***_**-8111	OMB No. 1545-0120 2014 Form 1099-G	
	1 Unemployment compensation \$ 903.00	3 Box 2 amount is for tax year	
PAYER'S federal identification number 93-6001789	2 State or local income tax refunds, credits, or offsets \$	4 Federal income tax withheld \$ 91.00	
RECIPIENT'S name and Street address SAINFORT J NOEL 1005 SE 151ST AVE PORTLAND OR 97233-2920	*****	5 ATAA/RTAA payments \$ 0.00	6 Taxable grants \$
		7 Agriculture payments \$	8 Box 2 is trade or business income <input type="checkbox"/>
		9 Market gain \$	OR-01 Benefits repaid \$ 22.60
Account number	10a State OR	10b State ID no. 0972779	11 State income tax withheld \$ 56.00

Form 1099-G

(keep for your records)

Department of the Treasury - Internal Revenue Service

This is important tax information and is being furnished to the Internal Revenue Service. If you are required to file a return, a negligence penalty or other sanction may be imposed on you if this income is taxable and the IRS determines that it has not been reported.

Instructions for Recipient

Account Number. Not used.

Box 1. Shows the total unemployment compensation paid to you in the calendar year shown. Some payments may have been for weeks occurring in a prior year. NO adjustments have been made for overpayments repaid by you. This information is being furnished to the Internal Revenue Service and the Oregon Department of Revenue. Combine the box 1 taxable amounts from all Forms 1099-G, and report it as income on the unemployment compensation line of your tax return.

Boxes 2 and 3. Not used.

Box 4. Shows the total federal taxes withheld for the calendar year. If you had no federal withholding you may request that federal taxes be deducted by contacting an Unemployment Insurance Center. This information is being furnished to the Internal Revenue Service and the Oregon Department of Revenue. Include this amount on your income tax return as tax withheld.

Box 5. Shows Alternative Trade Adjustment Assistance (ATAA) and/or Reemployment Trade Adjustment Assistance (RTAA) payments you received. This information is being furnished to the Internal Revenue Service and the Oregon Department of Revenue. Include on Form 1040 on the "Other income" line. See the Form 1040 instructions.

Boxes 6, 7, 8 and 9. Not used.

Box 10a. Abbreviation for the state that withheld state income tax.

Box 10b. Oregon Employment Department State identification number.

Box 11. Shows the total state taxes withheld for the calendar year. If you had no state withholding you may request that state taxes be deducted by contacting an Unemployment Insurance Center. This information is being furnished to the Internal Revenue Service and the Oregon Department of Revenue.

Box OR-01. Shows the amount repaid by you towards your unemployment insurance overpayment during the calendar year shown. This amount does not include payments toward penalties, interest or other costs. The amount may exceed "Unemployment Compensation" shown in Box 1 if the repayments were made for the overpayments from prior years. Please refer to the IRS instructions for reporting this amount.

Tax information for prior years can be obtained online at www.WorkinginOregon.org/ocs, or by calling an Unemployment Insurance Center.

Si usted necesita ayuda en Español, podemos darle información sobre todos nuestros servicios.

Form 1099-G (01-12)



Oregon

Kate Brown, Governor

Employment Department

875 Union Street NE

Salem, Oregon 97311

503-947-1394

TTY-TDD 711

www.Employment.Oregon.gov



Sainfort J Noel
1005 SE 151st Ave
Portland OR 97233-2920

Dear Mr. Noel

We have received an email and a fax you sent to our agency addressed to Lisa Nisenfeld. I would like to remind you again that you are only to send correspondence to me, unless you are directed by me to respond to a different individual, in writing.

Email Address: Rick.J.Heinichen@Oregon.gov
Mailing Address: 875 Union Street NE
Salem, OR 97311
Fax Number: 503-947-1335

Failure to follow these instructions will be considered harassment and may result in a call to the appropriate law enforcement agency.

You restarted your claim on February 17, 2015. At that time, you stated you were discharged from The Mentor Network. Before we can release any payments, we must make a determination on your eligibility for benefits based on law. Your claim will be assigned to an adjudicator who will be sending you a list of questions through the mail. Please answer those questions, in writing, as soon as possible and send them back to the adjudicator. If you are allowed benefits, we will release payments for weeks you have claimed.

If you have any further questions, please feel free to send me your question through mail, email, or by fax.

Sincerely,

Rick Heinichen
UI Manager

STATE OF OREGON-EMPLOYMENT DEPARTMENT
PO BOX 14135
SALEM OR 97309-5068
PHONE: (503) 292-2057 FAX: 1-866-345-1878
TOLL-FREE PHONE: 1-877-345-3484

—
—
—
No le podemos pagar la cantidad total de sus beneficios semanales en su reclamo. El mensaje que sigue explica porque. Por favor, llame o escriba al centro del seguro de desempleo indicado arriba si necesita ayuda.

SAINFORT J NOEL
1005 SE 151ST AVE
PORTLAND OR 97233

DATE: 01/08/15
CUST ID: 43-630.668.076
FIELD OFFICE NUMBER: 200
CLAIM EXPIRES: 42-15
(WEEK-YEAR)

You claimed unemployment benefits for the week ending 12-20-14. No check was issued for this week because your payment was applied to an overpayment. Continue to report as scheduled.

STATE OF OREGON-EMPLOYMENT DEPARTMENT
PO BOX 14135
SALEM OR 97309-5068
PHONE: (503) 292-2057 FAX: 1-866-345-1878
TOLL-FREE PHONE: 1-877-345-3484

No le podemos pagar la cantidad total de sus beneficios semanales en su reclamo. El mensaje que sigue explica porque. Por favor, llame o escriba al centro del seguro de desempleo indicado arriba si necesita ayuda.

SAINFORT J NOEL
1005 SE 151ST AVE
PORTLAND OR 97233

DATE: 03/03/15
CUST ID: 43-630.668.076
FIELD OFFICE NUMBER: 200
CLAIM EXPIRES: 42-15
(WEEK-YEAR)

You claimed unemployment benefits for the week of 02-22-15 through 02-28-15. We cannot pay benefits for this week:

No payment was made because an issue is being resolved on your claim. You will be contacted if more information is needed. Please continue to claim benefits as scheduled.

If the issue being resolved is a quit, a discharge, or a refusal of work, and you are disqualified, the disqualification lasts until you have worked after the week you quit/were discharged/refused work and earned at least four times your weekly benefit amount. Self-employment earnings will not satisfy this requirement. In addition, the disqualification will reduce your maximum benefit amount by eight times your weekly benefit amount.

Weeks Claimed Information For: SAINFORT NOEL, SSN: 544-43-8111

In most cases, weekly claims that are payable are paid the next business day after they are received. The payment information below shows all payment information for the last twelve months and is current as of 11:44 PM 03/02/2015. Your weekly benefit amount is currently \$314

Week Ending Date	Date Received	Claim Status	Amt. Paid	Date Processed
02/28/15	03/02/15	Week claimed, not processed yet		
02/21/15	02/23/15	Week claimed, not processed yet		
02/14/15	02/17/15	Week claimed, not processed yet		
01/03/15	01/05/15	Paid	\$ 264	01/07/15
12/27/14	12/29/14	Paid	\$ 222	01/07/15
12/20/14	12/22/14	Paid	\$ 0	01/07/15
11/22/14	11/24/14	Denied		
11/15/14	11/17/14	Denied		
11/08/14	11/10/14	Denied		
11/01/14	11/03/14	Waiting Week		

The following information is from a previous claim.

05/31/14	06/02/14	Excess earnings reported
----------	----------	--------------------------

If you failed to receive a check, a check tracer may be requested 10 days after the date paid.

State of Oregon
Employment Department
875 Union St NE
Salem OR 97311



SAINFORT J. NOEL
1005 SE 151ST AVE
PORTLAND, OR 97233-2920

CUST ID:43-630.668.076
BYE:42/15
Date:March 3, 2015

**Important Eligibility Notice: Your Work Search Requirements
Failure to seek work as required will result in a denial of benefits.**

For each week you claim benefits, you must be able to work, available for work all of the days and hours customary for your occupation, and actively seeking full-time, part-time, permanent and temporary work.

To be considered actively seeking work, you must complete at least **five** work-seeking activities for each week you claim benefits. Work seeking activities include, but are not limited to: attending job placement meetings, updating a resume or searching job placement websites and newspaper listings.

Two of the five work seeking activities you complete each week must be direct contact with an employer who might hire someone with your skills and/or experience. Contact employers either in person, by phone, by mail, or online to ask about and/or apply for jobs, depending on how the employer wants people to apply.

When you claim benefits, your report of work seeking activities must include the date and a description of each activity completed. When you report direct contact with an employer, include the date of contact, the company name, company location (employer phone number and address); or online job posting ID number, how you contacted the employer, the type of work or position applied for and the results.

These requirements apply to each week you claim benefits unless you:

Are laid-off AND have a definite date to return to FULL-TIME work for your employer, AND your definite date to return to work is WITHIN FOUR WEEKS from when you were laid off.

You are actively seeking work if you stay in touch with your employer. If your return to full-time work is delayed, you must call the UI Center and must begin seeking other work immediately.

Note: This exception does NOT apply if you work part-time on a continual basis with your employer.

Or

Are a member in good standing with a union that does not allow you to seek non-union work, AND you are required by your union to get all your work for your usual occupation through your union.

You are actively seeking work if you remain on your union's out-of-work list, stay in contact with your union, and are capable of accepting and reporting for work when dispatched by the union. You can also contact other union employers to seek other union work if your union allows.

If your union allows you to seek non-union work in your trade, you must be actively seeking work as described above.

Work seeking resources are available through your local WorkSource center or online at www.employment.oregon.gov.

OREGON EMPLOYMENT DEPARTMENT
PO Box 14135 * Salem, Oregon 97309 5068
Fax #: 503-947-3010

SAINFORT J NOEL
1005 SE 151ST AVE
PORTLAND OR 97233-2920

Date: December 31, 2014
Cust ID: 43-630.668.076
BYE: 42-15

Mr. Noel,

Thank you for faxing me your request for information.

You restarted your claim on December 22, 2014. At that time, you stated you were discharged from Aaron's Sales & Lease. Before we can release any payments, we must make a determination on your eligibility for benefits based on law. Your claim has been assigned to an adjudicator who will be sending you a list of questions through the mail. Please answer those questions, in writing, as soon as possible and send them back into us.

If you are allowed benefits, we will release payments. You have served all of your penalty weeks, but there is still a balance of \$364 which will be offset from any future paid weeks you are eligible for. In the meantime, please continue to report for your weekly benefits using the weekly claim line or the online claim system.

If you have any further questions, please feel free to send me your question through by mail or fax.

Rick Heinichen, UI Manager
Authorized Representative

Form: BES01

Rev: 06/2012



**State of Oregon - Employment Department
Unemployment Insurance Overpayment Billing Statement**

Change of address? Print and Sign Below

New Phone # _____
SIGN _____

CUST ID: 43-630.668.076
BILLING DATE: 02/04/15
PAYMENT DUE DATE: 02/18/15
UNLESS OTHERWISE ARRANGED

SAINFORT J NOEL 1
1005 SE 151ST AVE
PORTLAND OR 97233

NEW INTEREST 0.00
TOTAL AMOUNT DUE 10.92
MINIMUM DUE 10.92
AMOUNT PAID _____

EMPLOYMENT DEPT--COLLECTIONS
UNIT 21
PO BOX 4395
PORTLAND OR 97208-4395

Return the top portion with your payment, made payable to the Employment Department.

Oregon Employment Department CUST ID: 43-630.668.076 Date: 02/04/15

Note: THIS STATEMENT REFLECTS ACTIVITY AND BALANCE THROUGH JANUARY 31, 2015
NEW INTEREST ACCRUED ON JANUARY 31, 2015 0.00

	PREVIOUS BALANCE	PAYMENTS APPLIED	ADJUSTMENTS/ ADDITIONS	CURRENT BALANCE
OVERPAYMENTS	364.40	364.00	0.40-	0.00
INTEREST	10.92	0.00	0.00	10.92
COURT COSTS	0.00	0.00	0.00	0.00
STATE PENALTY	0.00	0.00	0.00	0.00
FED PENALTY	0.00	0.00	0.00	0.00
TOTALS	375.32	364.00	0.40-	10.92

THANK YOU FOR AGREEING TO A PAYMENT PLAN. THE MONTHLY MINIMUM DUE IS SHOWN IN THE UPPER RIGHT-HAND CORNER OF THIS BILLING STATEMENT.

UNTIL THIS DEBT IS PAID, ANY UNEMPLOYMENT BENEFITS WHICH YOU ARE ELIGIBLE TO RECEIVE MUST BE APPLIED IN FULL TO OFFSET THE OVERPAYMENT, PER ORS 657.310. OREGON INCOME TAX REFUNDS WILL ALSO BE APPLIED TOWARD THE DEBT PER ORS 293.250, AND DO NOT TAKE THE PLACE OF YOUR MONTHLY PAYMENTS.

To make a payment online go to www.Employment.Oregon.gov/ocs and click "Make a payment".
We accept VISA, MasterCard and Discover.

To contact the Benefit Payment Control Collection Unit Monday through Friday 8:00 AM - 5:00 PM (except holidays) please call:
IN OREGON (TOLL FREE) 1-800-553-5396
SALEM OR OUTSIDE OREGON 503-947-1710
TTY-TDD 711

WHEN YOU CALL, PLEASE BE PREPARED TO LEAVE YOUR NAME, PHONE NUMBER AND SOCIAL SECURITY NUMBER.
WE WILL RETURN YOUR CALL IN THE ORDER IT WAS RECEIVED.

Per ORS 657.310 payments are applied in the following order: legal fees, interest and the overpayment. Any outstanding debt balance, remaining unpaid on or after the first day of the month following 60 days after the finality date of the administrative decision that established the overpayment, will accrue interest at the rate of one percent per month. In computing interest under this statute, a fraction of a month is counted as a full month. Per ORS 293.250, the Debt Collection Act of 1982 and the Debt Collection Improvement Act of 1996, Oregon State and Federal tax refunds may be intercepted and applied to this debt.

OREGON EMPLOYMENT DEPARTMENT
PO Box 14135 * Salem, Oregon 97309 5068
(503) 292-2057 or (877) 345-3484 (in Oregon)
(877) 345-3484 (outside Oregon) or Fax to (866) 345-1878

Benefits are Allowed- Usted es elegible para recibir beneficios de desempleo
ADMINISTRATIVE DECISION - DECISIÓN ADMINISTRATIVA

SAINFORT J NOEL
1005 SE 151ST AVE
PORTLAND OR 97233-2920

Cust ID: 43-630.668.076
Employment Office # 200
Claim Expires 42-15 REG/UI
CAT 431 WEEK-YEAR DS 440.00

Laws/Rules

ORS 657.176 and OAR 471-030-0038.

Findings of Fact

1. The claimant was employed by THE MENTOR NETWORK from January 9, 2015 to February 6, 2015.
2. Claimant became unemployed due to a lack of work.
3. Claimant is not expected to return to work for this employer.

Reasoning

Claimant is away from work because of a lack of work. The employment relationship was severed. A lack of work is not a willful or wantonly negligent disregard of an employer's interest.

Legal Conclusion

Claimant was discharged, but not for misconduct connected with work. El Solicitante fue despedido, pero no para mala conducta relacionada con el trabajo.

THE MENTOR NETWORK
C/O ADP
PO BOX 66744
ST LOUIS MO 63166-6744

By: HEKB000
(Authorized Representative)

Decision # 141006
Form: DSA12 Rev: 06/2012

OREGON EMPLOYMENT DEPARTMENT
PO Box 14135 * Salem, Oregon 97309 5068

Mr. Kerry Chipman
PO Box 69512
Portland, OR 97239

Date: March 30, 2015

Per our discussion today, here are the documents you requested. I mentioned the decision to deny benefits was affirmed by the Office of Administrative Hearings, but I had forgotten the Employment Appeals Board also affirmed the decision as well. I included copies of both decisions.

The penalty weeks the claimant served were the weeks ending 11/8/14, 11/15/14 and 11/22/14 (weeks 45/14, 46/14, and 47/14). Following those penalty weeks, we collected the benefits he was overpaid.

If you have any questions, please feel free to contact me.

Rick Heinichen, UI Manager
503-947-1344

Form: BES01 Rev: 06/2012

Date: 03/30/15

COLLECTION PAYMENT DISPLAY

Time: 9:09 am

Page 1

SSN -8111 NAME SAINFORT J NOEL

	Date Applied	Type	Total Payment	OP Payment	Court Payment	Cst Payment	Penalty Payment	Interest Payment
	01/07/15	Ofst	\$364.00	\$364.00	\$.00	\$.00	\$.00	\$.00
0	10/29/14	Cash	\$50.00	\$22.60	\$.00	\$.00	\$.00	\$27.4
0	10/02/14	Cash	\$50.00	\$.00	\$.00	\$19.35	\$.00	\$30.6
5	04/11/12	Ofst	\$189.00-	\$189.00-	\$.00	\$.00	\$.00	\$.00
0	04/10/12	Ofst	\$189.00	\$189.00	\$.00	\$.00	\$.00	\$.00
0	03/19/12	Ofst	\$60.00	\$60.00	\$.00	\$.00	\$.00	\$.00
0	02/11/02	Cash	\$.81	\$.81	\$.00	\$.00	\$.00	\$.00
0	12/07/01	Cash	\$5.04	\$.00	\$.00	\$.00	\$5.04	\$.00
0	12/03/01	Ofst	\$65.00	\$65.00	\$.00	\$.00	\$.00	\$.00
0	11/26/01	Ofst	\$93.00	\$93.00	\$.00	\$.00	\$.00	\$.00
0	11/19/01	Ofst	\$93.00	\$93.00	\$.00	\$.00	\$.00	\$.00
0	11/15/01	Ofst	\$2.00	\$2.00	\$.00	\$.00	\$.00	\$.00
0	11/13/01	Ofst	\$93.00	\$93.00	\$.00	\$.00	\$.00	\$.00
0	11/05/01	Ofst	\$93.00	\$93.00	\$.00	\$.00	\$.00	\$.00
0	10/30/01	Ofst	\$93.00	\$93.00	\$.00	\$.00	\$.00	\$.00
0	10/16/01	Garn	\$104.89	\$104.89	\$.00	\$.00	\$.00	\$.00
0	10/09/01	Garn	\$164.52	\$83.27	\$.00	\$.00	\$81.25	\$.00
0	09/17/01	Ofst	\$96.00	\$96.00	\$.00	\$.00	\$.00	\$.00
0	09/11/01	Garn	\$200.63	\$.00	\$.00	\$.00	\$200.63	\$.00
0	09/10/01	Ofst	\$96.00	\$96.00	\$.00	\$.00	\$.00	\$.00
0	04/12/01	Soil	\$63.00	\$.00	\$27.25	\$.00	\$35.75	\$.00

-----END OF PRINT-----

EO: 200
BYE: 201409
CID: 43630668076
CAT: 625

State of Oregon
Employment Appeals Board
875 Union St. N.E.
Salem, OR 97311

16
MC 010.05

SAINFORT J NOEL
1005 SE 151ST AVE
PORTLAND, OR 97233 2920

EQUIFAX WORKFORCE SOLUTIONS
FOR: FOR: SKY CHEFS
PO BOX 173860
DENVER, CO 80217 3860

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1108

Affirmed
Overpayment and Penalties

PROCEDURAL HISTORY: On April 24, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision assessing a \$387 overpayment, \$77.40 in monetary penalties and 3 penalty weeks based on unreported work and earnings (decision # 195102). Claimant filed a timely request for hearing. On June 6, 2014, ALJ Monroe conducted a hearing, and on June 12, 2014 issued Hearing Decision 14-UI-19550, affirming the Department's decision. On June 27, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's written argument to the extent it was relevant and based on the hearing record.

EAB reviewed the entire hearing record. On *de novo* review and pursuant to ORS 657.275(2), the hearing decision under review is adopted.

DECISION: Hearing Decision 14-UI-19550 is affirmed.

Susan Rossiter and Tony Corcoran;
J. S. Cromwell, not participating.

DATE of Service: July 14, 2014

NOTE: You may appeal this decision by filing a Petition for Judicial Review with the Oregon Court of Appeals within 30 days of the date of service listed above. See ORS 657.282. For forms and information, you may write to the Oregon Court of Appeals, Records Section, 1163 State Street, Salem, Oregon 97310 or visit the website at court.oregon.gov. Once on the website, click on the blue tab for "Materials and Resources." On the next screen, click on the tab that reads "Appellate Case Info." On the next screen, select "Appellate Court Forms" from the left panel. On the next page, select the forms and instructions for the type of Petition for Judicial Review that you want to file.

EAB Decision 2014-EAB-1108
SAINFORT J NOEL

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveymonkey.com/s/5WQXNJH>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.

14026.2744.053.001

CERTIFICATE OF MAILING

On June 12, 2014, I served the following Order No. 14-UI-19550 to the following parties. Any appeal from this Order must be filed on or before July 2, 2014 to be timely.

BY FIRST CLASS MAIL:

EQUIFAX WORKFORCE SOLUTIONS
For: SKY CHEFS
PO Box 173860
Denver CO 80217

SSN/CID: 43-630.668.076
BYE: 201409
Claim Type: UI
FO: 200

SAINFORT J NOEL
1005 SE 151ST AVE
PORTLAND OR 97233

BY ELECTRONIC NOTIFICATION:

CAT CODE 653
Employment Investigations Unit 200 hekps00
875 Union St Rm
Salem OR 97301

HECAC03

Office Specialist
Office of Administrative Hearings
PO Box 14020
Salem, OR 97309-4020
Phone: (503) 947-1812
FAX: 503-947-1531

Referral
2014-UI-16878
12 26 13
EMP
2014-UI-16878_u010a_ISS_20140612_41182444

**BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF OREGON
for the
EMPLOYMENT DEPARTMENT**

IN THE MATTER OF)	FINAL ORDER
)	
SAINFORT J. NOEL, Claimant)	Ref #: 2014-UI-16878
)	
)	
)	NM Code(s):

HISTORY OF THE CASE

On April 24, 2014, the Employment Department issued an administrative decision (#195102) concluding that claimant had earnings which affected the weekly benefit amount, received benefits to which he was not entitled, and willfully made a misrepresentation and failed to report a material fact to obtain benefits. The claimant appealed. Notice of the hearing was mailed to the parties on May 20, 2014. On June 6, 2014, a hearing was held. The claimant participated in the hearing. The employer did not participate in the hearing. The Employment Department participated in the hearing and was represented by Karen Ingram (HEKPS00).

ISSUES

- (1) Was remuneration payable to claimant during the period at issue that would reduce claimant's weekly benefit amount? ORS 657.100, 657.150, 657.155; OAR 471-030-0017.
- (2) Whether claimant was paid benefits to which claimant was not entitled and is liable to repay such benefits or is liable to have the amount of such benefits deducted from future benefits payable. ORS 657.310, 657.315.
- (3) Whether claimant willfully made a false statement or misrepresentation or willfully failed to report a material fact to obtain benefits; and whether claimant should be liable for a penalty in addition to a disqualification. ORS 657.215, 657.310; OAR 471-030-0052.

EVIDENTIARY RULINGS

Exhibit 1 was offered by the Employment Department and admitted into the record. Exhibit 2 was offered by the claimant and admitted into the record. Exhibit 3 was offered by the claimant but not admitted into the record because the documents were duplicative of documents already admitted into the record as part of the other exhibits. See OAR 137-003-0610(2).

FINDINGS OF FACT

1. Claimant filed an initial claim for benefits on March 13, 2013. He claimed benefits for the period February 2 through February 22, 2014 (weeks 6/14 – 8/14), hereinafter referred to as the “period at issue.”
2. The Employment Department (“the Department”) established claimant’s weekly benefit amount at \$129. The maximum weekly benefit amount during the relevant period was \$524.
3. Claimant worked for employer Sky Chefs during the period at issue. The employer pays the employees weekly; the employer’s pay period begins on each Friday and ends the following Thursday.
4. The employer the employer’s representative provided the Department with a timecard for the hours claimant worked during the period at issue as well as a list of the paychecks claimant received, including the amount of earnings the employer paid claimant for services he rendered during the period at issue.
5. Claimant received earnings from the employer each week during the period at issue in the amounts as shown on the Schedule of Adjustments, incorporated by reference into this decision.
6. Each week during the period at issue, claimant answered “No” to the question “Did you work last week?” in each weekly claim, and he entered “0” hours worked and “0” earnings received.
7. Claimant received benefits from the Department each week in the amount of \$129.

CONCLUSIONS OF LAW

- (1) Claimant received remuneration during the period in issue.
- (2) Claimant was paid benefits to which he was not entitled.
- (3) Claimant willfully made a false statement or misrepresentation or willfully failed to report a material fact to obtain benefits.

OPINION

(1) Remuneration

ORS 657.150(6) states:

An eligible unemployed individual who has employment in any week shall have the individual’s weekly benefit amount reduced by the amount of earnings paid or payable that exceeds whichever is the greater of the following amounts:

- (a) Ten times the minimum hourly wage established by the laws of this state; or
- (b) One third of the individual's weekly benefit amount.

(1) Definitions. For purposes of applying ORS 657.100 and 657.150, and as used in this rule:

- (a) "Employment" means:
 - (A) Being in an employer-employee relationship during a period of time for which remuneration was paid or payable; or
 - (B) Providing a service or product for cash or cash value.
- (b) "Earnings" means remuneration;
- (c) Where an employer-employee relationship exists, "remuneration" means compensation resulting from the employer-employee relationship, including wages, salaries, incentive pay, sick pay, compensatory pay, bonuses, commissions, stand-by pay, and tips;

* * * * *

The employer did not appear at the hearing to give testimony regarding the hours claimant worked during the period at issue or the remuneration it paid for the services claimant performed during those weeks. However, the employer's representative provided the Department with a timecard for the hours claimant worked during the period at issue as well as a list of the paychecks claimant received, including the amount of earnings the employer paid claimant for services he rendered during the period at issue. The employer's documents indicate that claimant worked several shifts and received earnings for those services during the period at issue.

Claimant disputes the earnings reported by the employer, and as calculated by the Department, for the period February 2 through February 8, 2014 (week 7/14), and February 16 through February 22, 2014 (week 9/14). Claimant testified at the hearing that during the period February 2 through February 8, 2014 (week 7/14), he worked only 2.5 hours on February 5th, during which time he participated in an orientation. Claimant did not have any specific information but indicated that he did not agree with the earnings allocated to the period February 16 through February 22, 2014 (week 9/14). Claimant does not dispute the amount of earnings he received from the employer during the period February 9 through February 15, 2014 (week 8/14).

Considering the record as a whole, I am persuaded that the schedule and paycheck list submitted by the employer's representative constitutes the most accurate information in the record about the hours claimant worked and the earnings he received during the period at issue, as the employer had access to claimant's work schedule, clock in/clock out times for each day worked, and the amounts of each paycheck paid to him. I find the evidence in the record sufficient to establish that claimant worked and was paid earnings in the amounts as reported by the employer to the Department.

For each week during the period at issue, claimant reported working no hours and receiving no earnings. However, the earnings claimant received from the employer affected the calculation of benefits he should have received from the Department during those weeks. Accordingly, the record reflects that claimant received remuneration during the period at issue.

(2) Overpayment

ORS 657.310 provides, in pertinent part:

The Director of the Employment Department or an authorized representative designated by the director may combine a decision under ORS 657.266, 657.267 or 657.268 with a decision under ORS 657.310 * * *.

(1) If * * * an individual received any benefits under this chapter to which the individual is not entitled because the individual, regardless of the individual's knowledge or intent, made or caused to be made a false statement or misrepresentation of a material fact, or failed to disclose a material fact, the individual is liable:

(a) To repay the amount of the benefits * * *; or

(b) To have the amount of the benefits deducted from any future benefits otherwise payable to the individual * * *.

(2) In addition to the liability described in subsection (1) of this section, an individual who has been disqualified for benefits under ORS 657.215 is liable for a penalty in an amount equal to 15 percent of the amount of benefits the individual received but to which the individual was not entitled.

(3) A decision * * * under this section does not authorize the recovery of the amount of any benefits paid to an individual until the decision is final and the decision specifies:

(a) That the individual, by reason of the false statement, misrepresentation or nondisclosure, is liable to repay the amount * * *;

(b) The nature of the false statement, misrepresentation or nondisclosure;

and

(c) The week or weeks for which the benefits were paid.

* * * * *

During the period at issue, claimant received benefits each week in the amount of \$129. Claimant answered "No" to the question "Did you work last week?" in each weekly claim, and he entered "0" hours worked and "0" earnings received for each week during the period at issue. As noted above, the record reflects that, more likely than not, claimant worked for the employer each week during the period at issue and received earnings from the employer for performing those services.

The employer pays its employees on a weekly basis, although the employer's pay period differs from the calendar weeks used by the Department; the employer's pay period begins on each Friday and ends the following Thursday, while the Department utilizes a Sunday through Saturday calendar. Based upon the paycheck information provided by the employer, the Department reallocated the amount of earnings claimant received for each week during the period at issue.¹ The earnings claimant received for services he performed for the employer during the period at issue

¹ See ORS 657.150(3) ("If the wages paid to an individual are not based upon a fixed period of time or if wages are paid at irregular intervals or in such manner as not to extend regularly over the period of employment, for the purposes of subsections (2) to (5) of this section, the individual's wages shall be

Based on the remuneration actually received from the employer, claimant should have received weekly benefits that are different than the amount of benefits he actually received. Each week during the period at issue, claimant received earnings from the employer in an amount greater than his weekly benefit amount. As such, under ORS 657.100, claimant was not "unemployed" during the period at issue and therefore he is not eligible for the benefits he received during those weeks.²

Claimant received benefits for the period at issue that he was not entitled to receive. Claimant was overpaid a total of \$387 (\$129 each week x 3 weeks = \$387) in regular unemployment insurance benefits during the period at issue. Claimant must repay the amount of overpaid benefits he was not entitled to receive to the Oregon Employment Department, pursuant to ORS 657.310.

(3) Misrepresentation & Penalty

(a) Misrepresentation

ORS 657.310 provides, in pertinent part:

The Director of the Employment Department or an authorized representative designated by the director may combine a decision under ORS 657.266, 657.267 or 657.268 with a decision under ORS 657.310 * * *.

* * * * *

(3) A decision * * * under this section does not authorize the recovery of the amount of any benefits paid to an individual until the decision is final and the decision specifies:

(a) That the individual, by reason of the false statement, misrepresentation or nondisclosure, is liable to repay the amount * * *;

(b) The nature of the false statement, misrepresentation or nondisclosure;
and

(c) The week or weeks for which the benefits were paid.

* * * * *

The Department bears the burden of proof to establish that the individual willfully violated ORS 657.215. *Cook v. Employment Div.*, 47 Or. App. 437 (1980). The

allocated in accordance with rules prescribed by the Director of the Employment Department. Such rules shall, insofar as possible, produce results the same as those which would exist if the individual had been paid wages at regular intervals. The director may adopt rules to attribute hours of work to an individual if the individual is not paid on an hourly basis or if the employer does not report the number of hours worked." See also OAR 471-030-0017 ("For purposes of ORS 657.100 and 657.150(6) remuneration or an applicable pro-rata share thereof shall be allocated as follows: (a) In the case of services, allocated to the week in which the service was performed").

² See ORS 657.100(1) ("An individual is deemed "unemployed" . . . in any week of less than full-time work if the remuneration paid or payable to the individual for services performed during the week is less than the individual's weekly benefit amount.").

Department must show that the individual acted with the intent to misrepresent a fact or facts for the purpose of obtaining unemployment benefits. *Pruett v. Employment Div.*, 86 Or. App. 516 (1987).

Each week during the period at issue, when claimant filed a claim for benefits, he certified to reporting true and accurate information. Claimant answered “No” to the question “Did you work last week?” in his weekly claims for benefits, and he entered “0” hours worked and “0” earnings received for the weeks at issue. Nonetheless, as discussed above, claimant performed services and received earnings from the employer for each week during the period at issue. Therefore, claimant failed to report material facts to the Department in each of the three weekly claims for benefits at issue.

At the hearing, claimant testified that he spoke with two Department representatives who advised him that, so long as he earned less than \$477, he was not required to report the amount of his earnings to the Department. However, claimant’s testimony is inconsistent with the laws and rules of the Department, as well as the information provided to claimants about how to report their earnings.³ Claimant’s failure to disclose his hours and earnings in his weekly claims for benefits is therefore inexplicable and I am not persuaded by his testimony at hearing regarding his reasons for failing to do so.

Considering the record as a whole, I must conclude that, more likely than not, claimant made willful misrepresentations and failed to report material facts for the purpose of obtaining unemployment benefits. Accordingly, the Department met its burden to show that claimant willfully violated ORS 657.215.

(b) *Penalty*

ORS 657.215 provides, in pertinent part:

An individual is disqualified for benefits for a period not to exceed 52 weeks whenever the assistant director finds that the individual has willfully made a false statement or misrepresentation, or willfully failed to report a material fact to obtain any benefits under this chapter. The length of such period of disqualification . . . shall be determined by the assistant director . . . according to the circumstances in each case.

OAR 471-030-0052 provides:

(1) An authorized representative of the Employment Department shall determine the number of weeks of disqualification under ORS 657.215 according to the following criteria:

(a) When the disqualification is imposed because the individual failed to accurately report work and/or earnings, the number of weeks of disqualification shall be determined by dividing the total amount of

³ See “Claimant Handbook,” Oregon Employment Department, http://www.oregon.gov/employ/ui/docsui_forms/ui/pub_350-e_1009.pdf, p. 10 (“How do I report my earnings? . . . “You report your earnings when you file your weekly claim. Keep track of your hours and earnings for each week. Report your earnings for the week you perform the work, not the week you are paid. . .”).

benefits overpaid to the individual for the disqualifying act(s), by the maximum Oregon weekly benefit amount in effect during the first effective week of the initial claim in effect at the time of the individual's disqualifying act(s), rounding off to the nearest two decimal places, multiplying the result by four rounding it up to the nearest whole number.

(b) When the disqualification is imposed because the disqualifying act(s) under ORS 657.215 relates to the provisions of ORS 657.176, the number of weeks of disqualification shall be the number of weeks calculated in the same manner as under subsection (a) above, or four weeks, whichever is greater.

(7) The department will review the number of occurrences of misrepresentation when applying the penalty as described in ORS 657.310(2). An occurrence shall be counted each time an individual willfully makes a false statement or representation, or willfully fails to report a material fact to obtain benefits. The department shall use the date the individual failed to report a material fact or willfully made a false statement as the date of the occurrence. For an individual subject to disqualification by administrative action under 657.215, the penalty will be:

(b) For the third or fourth occurrence within 5 years of the occurrence for which a penalty is being assessed, 20 percent of the total amount of benefits the individual received but to which the individual was not entitled.

ORS 657.310(2) provides:

In addition to the liability described in subsection (1) of this section, an individual who has been disqualified for benefits under ORS 657.215 is liable for a penalty imposed at a rate prescribed by the director of at least 15, but not greater than 30, percent of the amount of benefits the individual received to which the individual was not entitled.

Based on the conclusion herein that claimant willfully made misrepresentations and failed to report material facts to obtain benefits, the Department must assess a 20% monetary penalty in the amount of \$77.40 (20% of the total amount of overpaid benefits (\$387) = \$77.40). See ORS 657.310(2), OAR 471-030-0052(7)(b). Including this monetary penalty, claimant must repay a total amount of \$464.40 (\$387 + \$77.40 = \$464.40).

Under OAR 471-030-0052(1)(b), when a disqualification is imposed because the claimant failed to report earnings, the number of weeks of disqualification shall be determined by dividing the total amount of the benefits overpaid (\$387) by the maximum weekly benefit amount in effect during the first effective week of the initial claim in effect at the time of claimant's disqualifying acts (\$524), multiplying the result by 4 ($\$387 / \$524 = 0.74 \times 4 = 2.95$), then rounding up to the nearest whole number (3). Therefore, claimant is disqualified from three (3) weeks of future benefits otherwise payable to him. See ORS 657.215, OAR 471-030-0052.

ORDER

The administrative decision mailed April 24, 2014, is affirmed. Claimant had earnings which reduced his weekly benefit amount. The Employment Department overpaid claimant benefits in the amount of \$387 and, in addition to the monetary penalty assessed, the total amount claimant is required to repay to the Oregon Employment Department is \$464.40, under ORS 657.310. Claimant willfully made false statements to the Employment Department in order to obtain unemployment benefits. Claimant is disqualified from 3 weeks of future benefits under ORS 657.215 and must repay a monetary penalty of \$77.40.

K. Monroe

Administrative Law Judge
Office of Administrative Hearings

APPEAL RIGHTS

You may appeal this decision by filing the attached form Application for Review with the Employment Appeals Board within 20 days of the date that this decision is mailed. *See* ORS 657.270(4). If you have questions, please refer to the enclosed publication "Rights of Review of a Hearing Decision" (UI Pub 15). If you did not receive a copy of "Rights of Review of a Hearing Decision" with this decision, call the Office of Administrative Hearings at 1-800-311-3394 to request a copy.

Public Assistance and Food Stamps may be denied if a decision denying unemployment insurance benefits becomes final without an appeal.

If you did not appear at the hearing, you may request to reopen the hearing. These requests are governed by OAR 471-040-0040 and 471-040-0041 and should be filed with the Office of Administrative Hearings. Your request to reopen the hearing must: 1) be in writing; 2) show good cause for failing to appear at the hearing; "Good cause" exists when an action, delay, or failure to act arises from an excusable mistake or from factors beyond an applicant's reasonable control; and 3) either be filed within 20 days of when the order from the hearing you missed was mailed, or else show good cause to extend the period the request reopening of your case, and show that you filed your hearing request within seven days of when those factors or circumstances ceased to exist. Include all information regarding your reopen request that you want the Administrative Law Judge to consider when deciding whether to grant your reopen request. Requesting to reopen a hearing with the Office of Administrative Hearings is not the same as seeking review of the order by the Employment Appeals Board.

Servicemembers' Civil Relief Act

No party, unless stated above, has notified the Office of Administrative Hearings (OAH) that any participant is a person in military service subject to the Servicemembers' Civil Relief Act or ORS 399.238. The OAH has no reason to believe that a party to this matter is subject to the Act or ORS 399.238. If a party to the proceeding is a service member and did not appear for the hearing within the service members period of service, or 90 days after his/her termination of service, the OAH will review any request from the service member to reopen or vacate the

decision if the service member can show that he or she has a good and legal defense to the claim and can show prejudice resulting from not being able to appear personally in the matter.

SCOTT DOWNING, P.C.

ATTORNEY AT LAW

SCOTT T. DOWNING
BRIAN J. FREEMAN
of counsel

P.O. Box 13241
PORTLAND, OR 97213
e-mail: sdowning@greshamlaw.com

TEL. (503) 665-4176 EXT 103
FAX (503) 661-3155

September 7, 2015

Linn D. Davis
Oregon State Bar
Via e-mail to: cao@osbar.org

Re: LDD 1501096; LDD 1501097

Mr. Davis;

I am not sure where to begin here. It seems that in my role as an Arbitrator in the OSB Fee Arbitration program; I am being accused of a conflict of interest and somehow conduct prejudicial to the administration of justice.

First some background. I have been a volunteer with the Fee Arbitration program since 1992 and have participated in some way, either as sole Arbitrator, a member of a Fee Arbitration panel or as a Mediator in 17 different matters. This is not my first Arbitration in which the fee in dispute was a relatively small amount, i.e. under \$500. That is not to say that the matter was not important to the client, but that they are relatively straightforward. I try and handle these matters quickly and efficiently.

I was contacted by the Bar to act as chair of a Fee Panel on June 24th by Cassandra Stich at the Bar. A panel was selected originally as the Bar mistakenly believed that the fee in dispute was \$2,850 and not \$285. After some discussion with Cassandra in early July, I agreed to be the sole Arbitrator, assuming the parties approved. I called both Mr. Noel and Mr. Chipman and explained the mistake and gave them the option of continuing with me as sole Arbitrator or having the Bar select a new Arbitrator. Both agreed to allow me to continue. It was during this phone conversation that I told Mr. Noel that I was familiar with Mr. Chipman. In other words, I knew who he was. According to my records, I have never had a case with Mr. Chipman, at least in the last 15 or so years. We may have spoken on the phone in the distant past, but that is it; though I cannot recall ever speaking with him directly. Both Mr. Chipman and I have practiced law in the Portland area for over 35 years and I have no doubt our paths have crossed, whether in passing, at CLE events, at ex-parte or the like. Mr. Chipman and I are not friends, social acquaintances or anything close to that. I explained to Mr. Noel that knowing who Mr. Chipman was would not affect my impartiality, but that if he was concerned, I would ask the Bar to select a new Arbitrator. He agreed to allow me to continue. I certainly never made the statement that Mr. Chipman and I had been friends for 10 years as that is simply not true.

I also spoke with Mr. Noel about scheduling the hearing on July 13th or 14th. It is my practice as Fee Arbitrator to try and schedule hearings quickly and I always try to schedule at the convenience of the client and not the attorneys or other panel members. Mr. Noel wanted a hearing after 2:30 in the afternoon. A date of July 20th beginning at 3:00 PM was acceptable to both parties, though the rules of the OSB Fee Arbitration program require at least 10 days prior notice to General Counsel. I confirmed with Cassandra that we could proceed on less than 10 days notice and then sent an e-mail and letter to both parties. Copies of both are attached.

When I spoke with Mr. Noel, he wanted additional documents submitted. I suggested either e-mail or facsimile so I could possibly make them available to Mr. Chipman. I guess he tried to fax documents to me on more than one occasion, but there was a problem and they were not received. He wanted to drop them off at my office. I told him that I no longer maintained an office. He wanted to drop them off at the location of the hearing, my prior office. I said that was fine, but warned him that I may not be there before the hearing to get the documents and then forward them on to Mr. Chipman. My letter confirmed that.

When I reviewed the documents Mr. Noel had left prior to the hearing, they were essentially a written statement of his dissatisfaction with Mr. Chipman and documents supporting his position in the underlying unemployment compensation claim that he consulted Mr. Chipman for.

I allowed Mr. Chipman to review the documents at the hearing and he did so. I do not think that Mr. Chipman felt prejudiced by the lack of notice. I believe the documents attached to the e-mail I received from you are the documents that Mr. Noel submitted and they deal exclusively with the merits of his unemployment compensation claim. Mr. Chipman already had the documents or most of them already.

I am attaching my written Award in the case as it explains the detail of Mr. Noel's predicament. As noted he feels very strongly that he was wronged by the Unemployment Department regarding unemployment compensation he felt he was due. It certainly was not my role to determine the merits of his claim. My roll was solely to determine the reasonableness of the fee charged by Mr. Chipman. All of Mr. Noel's evidence, statements and testimony related to the merits of the underlying unemployment claim and not whether Mr. Chipman performed the agreed upon services.

I believe that Mr. Noel did focus on Mr. Chipman's initial assessment that it was not proper for the Department to withhold benefits without a "denial letter". When Mr. Chipman received the materials immediately from Mr. Heinrich, Mr. Chipman realized the situation was not as initially described by Mr. Noel. While I continue to believe that Mr. Noel does not understand what happened in the underlying unemployment compensation matter, that was beyond the scope of what I was to decide and that was the fee dispute and nothing more. The merits of his compensation claim were also beyond the services agreed to be provided by Mr. Chipman.

Mr. Noel needs to retain an attorney to pursue the *merits* of his unemployment claim. I do believe he misunderstood the scope of the Fee Arbitration and the process and I tried to make sure he understood what was at issue. It appears I was

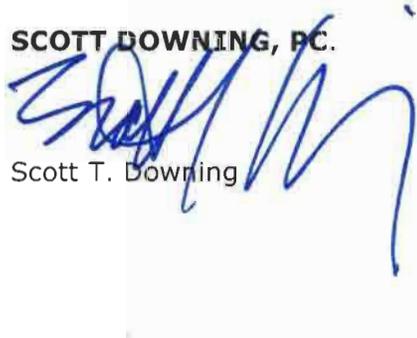
Linn D. Davis
September 7, 2015
Page 3 of 3

unsuccessful. After review, I am assured you will find I have not violated any RPC in my conduct in this matter. Please feel free to contact me if you have additional concerns.

Very Truly Yours

SCOTT DOWNING, PC.

Scott T. Downing

A handwritten signature in blue ink, appearing to read "Scott Downing", is written over the typed name "SCOTT DOWNING, PC." and "Scott T. Downing". The signature is fluid and cursive.

STD:sd
Enclosures

OREGON STATE BAR FEE ARBITRATION

SAINFORT NOEL,)	
)	
Petitioner,)	No.: 2015-26
)	
and)	ARBITRATION AWARD
)	
KERRY CHIPMAN,)	
)	
Respondent.)	

INTRODUCTION

This matter came before Scott T. Downing as sole Arbitrator. Initially a panel was appointed due to an error in the amount of attorney fees at issue. Both parties agreed that it was appropriate that only the sole Arbitrator hear the case. Steven J. Nemirow, the other attorney previously appointed as part of the panel, attended the hearing with the consent of the parties as an observer, but did not participate in the decision or award. As noted in his Petition, Mr. Noel seeks the return of the \$285.00 in total fees paid by him to Mr. Chipman.

A hearing was held on July 20, 2015. Both parties were present and presented documentary evidence and testimony. Based upon the evidence presented, the Arbitrator issues the following Award.

JURISDICTION

Jurisdiction is conferred by written agreement signed by both parties to the prescribed rules of the Oregon State Bar on Fee Disputes. Scott T. Downing was duly appointed as Arbitrator.

FACTS

Petitioner consulted Respondent through the Lawyer Referral Service, regarding a denial of unemployment benefits. Mr. Noel felt that he had been illegally denied certain benefits in late 2014 and early 2015. In his initial conversation with Mr. Chipman, he claimed that a representative of the Unemployment Department had denied the benefits and that no written reason had been received by Mr. Noel for that denial. Mr. Chipman, based on the information provided by Mr. Noel, told him that the Department is required to issue a "denial letter" and if in fact, none was sent or issued, then the denial of his benefits was not lawful. Apparently Mr. Noel had been overpaid some benefits and was having deductions from his current benefit to repay the over-payment. It was later determined that Mr. Noel, in addition to the deductions, had been making payments directly to the Department towards that overpayment. After some discussion, much of which apparently occurred over the phone, Mr. Noel agreed to pay Mr. Chipman a one-time, or set fee, of \$250.00 to obtain the denial letter and an accounting of his benefits to show the payments made. Mr. Chipman sent to Mr. Noel an e-mail dated March 26th, 2015 that

acknowledges the payment of the \$250.00 fee by credit card and sets out what the payment is for. It states:

“This is to confirm that you have paid \$250.00 by charge card to hire me to obtain a copy of an administrative decision in an overpayment accounting from the employment department.”

“/s/ Kerry Chipman”

In addition to the one-time fee, Mr. Noel had paid a \$35.00 office conference fee per the rules of the Lawyer Referral Service of the Oregon State Bar.

Mr. Chipman immediately on March 26th, contacted the representative of the Department, a Mr. Rick Heinichen, by both e-mail and voice mail, seeking copies of the administrative decision denying benefits (the “denial letter”) and an accounting showing payments made towards his overpayment. Mr. Heinichen was out of the office and would return on the 30th.

On March 30th, Mr. Heinichen mailed the requested documents and more to Mr. Chipman’s mailing address. I am not sure when they were actually received. However, Mr. Noel retrieved these documents eventually from Mr. Chipman’s office after they were copied. There was some confusion about that between the parties, but not particularly relevant to the issue of fees.

From the documents received, Mr. Chipman first learned that the situation was different than Mr. Noel had reported. I do not believe that Mr. Noel was being deceitful or otherwise. I simply believe he did not understand what had happened. Apparently in March of 2014, Mr. Noel had been accused by the Department of submitting a fraudulent claim for benefits in a different claim. A hearing was held in which Mr. Noel participated and a decision reached. Mr. Noel appealed that decision to the Employment Appeals Board and the original decision was upheld. These facts were not reported by Mr. Noel to Mr. Chipman, because I think, he felt these were part of a different and unrelated claim. While the merits of his underlying unemployment claim are not really relevant to the issue of fees here, it is worth noting that the decision of the Administrative Law Judge in the original proceeding states:

“Claimant is disqualified from 3 weeks of future benefits under ORS 657.215 and must repay a monetary penalty of \$77.40” (Page 8 of the written decision)

In addition, the Department was entitled to collect the overpayment. Mr. Noel may have in fact already paid back the overpayment with a combination of deductions from other benefits and cash payments made by him. Once he had the documents, Mr. Chipman realized that there was no denial letter. The Department had been assessing the penalty required in the written decision. So in fact, Mr. Noel’s claim for benefits had been approved, but could not be actually paid to him until the 3-week penalty had run its course, the penalty paid and any overpayment taken care of. This was communicated to Mr. Noel again over the phone. It is clear to me that Mr. Noel did not understand this. Mr. Noel remains focused on the original comments made by Mr. Chipman in their first meeting that it was illegal to withhold benefits absent a denial letter, a letter that did not and could not exist.

In addition to the work set out in the e-mail, Mr. Noel was seeking representation to release the "flag" on his file; to open a tort claim of some sort against Mr. Heinichen, against Mr. Heinichen's supervisor, against the Gresham Police on behalf of a friend and against a State Police officer and to pursue the unemployment claim. Mr. Chipman declined.

OPINION

The scope of this proceeding is to determine whether Mr. Chipman charged a reasonable fee for the services he performed and agreed to perform. My first inquiry is to determine what was the agreement of the parties. While there is no written fee agreement per se, there is the e-mail from Mr. Chipman to Mr. Noel referred to above. It clearly sets out the parameters of what Mr. Chipman agreed to do and the fee for doing that. Mr. Chipman agreed to obtain the administrative decision denying benefits and an accounting of the overpayment. For that, Mr. Noel agreed to pay the set fee of \$250.00. Mr. Chipman did just that.

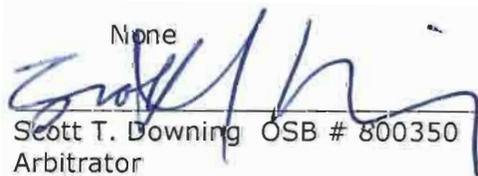
Mr. Chipman did not agree to obtain benefits for Mr. Noel or to pursue any action if the denial had in fact been illegal. Certainly he did not agree to pursue any of the other claims Mr. Noel requested. In addition to the services set out in the e-mail, Mr. Chipman tried to explain to Mr. Noel the importance of the documents he did receive and how it was different from what Mr. Noel believed to be the situation. It is clear to me that Mr. Noel still does not understand what the decision from his hearing in March of 2014 meant to future benefits in any other unemployment claim.

There is no question that this a very important matter for Mr. Noel and that he believes he was wronged by the Employment Department and others and that he is very passionate about it. Unfortunately Mr. Chipman had nothing to do with that and is not responsible for Mr. Noel's predicament.

I find that Mr. Chipman performed the specific services he agreed to perform and that his fee for those services was reasonable. Therefore I find that Mr. Noel is not entitled to any refund of the fee paid.

AWARD

None



Scott T. Downing OSB # 800350
Arbitrator

Gresham Law <sdowning@greshamlaw.com>
To: Kerry Chipman <chipmanlaw@comcast.net>
Cc: "sainfortnoel@gmail.com" <sainfortnoel@gmail.com>
Re: OSB Fee Arbitration # 2015-26

July 14, 2015 7:41 AM



Gentlemen

July 20th works for me. I already spoke with Mr. Noel and that works for him as well. Rule 6.1 of the Fee Arbitration rules require no less than 10 days prior written notice. I am checking with the Bar to see if we can waive that. Assuming we can, the hearing will be held at 1300 NE Linden Avenue in Gresham @ 3 PM on Monday July 20th. I will send official letters out later today once I hear from the Bar. If this date is not convenient for either of you, let me know as soon as possible. Thank you both.

Scott Downing

Scott T. Downing
SCOTT DOWNING, PC
Attorney at Law
P.O. Box 13241
Portland, OR 97213
503-665-4176 ext 103 (voice)
503-661-3155 (facsimile)
sdowning@greshamlaw.com

PLEASE NOTE MY NEW MAILING ADDRESS

SCOTT DOWNING, P.C.

ATTORNEY AT LAW

SCOTT T. DOWNING
BRIAN J. FREEMAN
of counsel

P.O. Box 13241
PORTLAND, OR 97213
e-mail: sdowning@greshamlaw.com

TEL. (503) 665-4176 EXT 103
FAX (503) 661-3155

July 14, 2015

Sainfort Noel
1005 SE 151st
Portland, OR 97233

Kerry Chipman
1826 NE Broadway
Portland, OR 97232

Re: OSB Fee Arbitration, 2015-26

Mr. Noel and Mr. Chipman;

Per the e-mail I sent earlier this morning, I have set the date and time for the hearing in this matter for **Monday, July 20th, 2015 @ 3:00 PM.** The hearing will be held in the conference room at 1300 N.E. Linden Avenue in Gresham, Oregon. I have confirmed with the Oregon State Bar that we may proceed on that date. If either of you is not available, please let me know as soon as possible.

As noted previously, each of you is entitled to record the hearing and to be represented if you so choose. I will not be recording the matter, so if you want it recorded, please bring your own equipment.

I have the documents that Mr. Noel submitted with his Petition. If either of you have additional documents, please get them to me by FAX or e-mail as soon as you can so I can make them available to the other party. Mr. Noel, you may drop the documents off at the address where the hearing is to be held, but frankly I doubt I will be there before Friday.

If either of you have any questions, just call. Thank you both.

Very Truly Yours

SCOTT DOWNING, PC.

Scott T. Downing

STD:sd
cc: General Counsel, Oregon State Bar

Linn Davis

From: OSB CAO Intake
Sent: Thursday, September 10, 2015 10:24 AM
To: 'Gresham Law'
Subject: RE: LDD 1501096, LDD 1501097

Yes, after I review all the responses and determine whether I have further questions for either of you or Mr. Noel, I will forward them all around. In fairness to everyone involved, I can't forward them until I send them to all involved. However, there is nothing inappropriate about copying each other on your responses. You need not await my letter.

 **Linn D. Davis**
Assistant General Counsel and CAO Attorney
503-431-6332
LDavis@osbar.org

Oregon State Bar • 16037 SW Upper Boones Ferry Road • PO Box 231935 • Tigard, OR 97281-1935 • www.osbar.org

Please note: Your email communication may be subject to public disclosure. Written communications to or from the Oregon State Bar are public records that, with limited exceptions, must be made available to anyone upon request in accordance with Oregon's public records laws.

From: Gresham Law [<mailto:sdowning@greshamlaw.com>]
Sent: Thursday, September 10, 2015 10:02 AM
To: OSB CAO Intake
Subject: Re: LDD 1501096, LDD 1501097

Just out of curiosity, will my response be shared with Mr. Chipman and his with me? I know he sent his response late last week.

Scott Downing

On Sep 9, 2015, at 8:04 PM, OSB CAO Intake <cao@osbar.org> wrote:

Thank you,

<image001.gif>Linn D. Davis
Assistant General Counsel and CAO Attorney
503-431-6332
LDavis@osbar.org

Oregon State Bar • 16037 SW Upper Boones Ferry Road • PO Box 231935 • Tigard, OR 97281-1935 • www.osbar.org

Please note: Your email communication may be subject to public disclosure. Written communications to or from the Oregon State Bar are public records that, with limited exceptions, must be made available to anyone upon request in accordance with Oregon's public records laws.

From: Gresham Law [<mailto:sdowning@greshamlaw.com>]
Sent: Tuesday, September 08, 2015 1:59 PM
To: OSB CAO Intake
Subject: LDD 1501096, LDD 1501097

To Whom it may concern

Attached is my response as requested along with additional attachments. Let me know if you require anything else.

Scott Downing

Scott T. Downing

SCOTT DOWNING, PC

Attorney at Law

P.O. Box 13241

Portland, OR 97213

503-665-4176 ext 103 (voice)

503-661-3155 (facsimile)

sdowning@greshamlaw.com

PLEASE NOTE MY NEW MAILING ADDRESS

October 1, 2015

Sainfort Noel
1005 SE 151st Street
Portland, OR 97233

Re: **Subject: LDD 1501096 1501097**
Kerry Chipman/Scott Downing (Sainfort Noel)

Dear Mr. Noel:

Attorneys Kerry Chipman and Scott Downing have sent us the enclosed correspondence in answer to your concerns.

At this point, I believe that there is enough information to analyze the issues we have identified. I will notify you and the accused attorneys of our decision.

Thank you for your cooperation.

Yours,

Linn D. Davis
Assistant General Counsel
Ext. 332

LDD/jmm
Enclosure

cc: Kerry Chipman, Attorney at Law (with copy of Downing response)
Scott Downing, Attorney at Law c/o Christopher Hardman (with copy of Chipman response)

02i

Email submissions to: cao@osbar.org Use subject line: **LDD 1501096**

Client Security Fund
Application for Reimbursement

2015-37 rec'd 10/08/2015

Return completed form to:

Oregon State Bar
Client Security Fund
PO Box 231935
Tigard, OR 97281-1935

Payments from the Client Security Fund are entirely within the discretion of the Oregon State Bar.
Submission of this claim does not guarantee payment.
The Oregon State Bar is not responsible for the acts of individual lawyers.

*Please note that this form and all documents received in connection with your claim are public records.
Please attach additional sheets if necessary to give a full explanation.*

1. Information about the client(s) making the claim:

- a. Full Name: Sainfort Noel
- b. Street Address: 1005 se 151st
- c. City, State, Zip: Portland or 97233
- d. Phone: (Home) 503 8219186 (Cell) _____
(Work) _____ (Other) _____
- e. Email: sainfortnoel@gmail.com

2. Information about the lawyer whose conduct caused your claim (also check box 10A on page 3):

- a. Lawyer's Name Mr Kerri Chipman
- b. Firm Name Oregon State Bar
- c. Street Address: 1826 ne broadway st
- d. City, State, Zip: Portland
- d. Phone: 503 2813436
- e. Email: <chipmanlaw@comcast.net>

3. Information about the representation:

- a. When did you hire the lawyer? 3 26-2015
- b. What did you hire the lawyer to do? _____
to get a deny letter from administration Judge and account showing a 0 balance letter I don't owed money no more
- c. What was your agreement for payment of fees to the lawyer? (attach a copy of any written fee agreement)

- d. Did anyone else pay the lawyer to represent you? _____
- e. If yes, explain the circumstances (and complete item 10B on page 3).
_____ yes my seft \$ 385 full _____
- f. How much was actually paid to the lawyer? \$385
- g. What services did the lawyer perform? nothing after two weeks when I called him he told me is not interested

h. Was there any other relationship (personal, family, business or other) between you and the lawyer?

no

4. Information about your loss:

a. When did your loss occur? N/A

b. When did you discover the loss? No

c. Please describe what the lawyer did that caused your loss

I don't know

d. How did you calculate your loss? all I need is my \$385

5. Information about your efforts to recover your loss:

a. Have you been reimbursed for any part of your loss? *If yes, please explain:* No

b. Do you have any insurance, indemnity or a bond that might cover your loss? *If yes, please explain:* No

c. Have you made demand on the lawyer to repay your loss? When? *Please attach a copy of any written demand.*

NO

d. Has the lawyer admitted that he or she owes you money or has he or she agreed to repay you? *If yes, please explain:* He never said no he din't owed me

e. Have you sued the lawyer or made any other claim? *If yes, please provide the name of the court and a copy of the complaint.* No all I need \$385

f. Have you obtained a judgment? *If yes, please provide a copy.* No

g. Have you made attempts to locate assets or recover on a judgment? *If yes, please explain what you found:* No

6. Information about where you have reported your loss:

District attorney

Police

Oregon State Bar Professional Liability Fund

If yes to any of the above, please provide copies of your complaint, if available.

Oregon State Bar Client Assistance Office or Disciplinary Counsel

7. Did you hire another lawyer to complete any of the work? *If yes, please provide the name and telephone number of the new lawyer:* No

8. Please give the name and the telephone number of any other person who may have information about this claim: _____
N/A

9. Agreement and Understanding

The claimant agrees that, in exchange for any award from the Oregon State Bar Client Security Fund (OSB CSF), the claimant will:

- a. Transfer to the Oregon State Bar all rights the claimant has against the lawyer or anyone else responsible for the claimant's loss, up to the amount of the CSF award.
- b. Cooperate with the OSB CSF in its efforts to collect from the lawyer, including providing information and testimony in any legal proceeding initiated by the OSB CSF.
- c. Notify the OSB CSF if the claimant receives notice that the lawyer has filed for bankruptcy relief.
- d. Notify the OSB CSF if the claimant receives any payment from or otherwise recovers any portion of the loss from the lawyer or any other person on entity and reimburse the OSB CSF to the extent of such payment.

10. Claimant's Authorization

- a. Release of Files: I hereby authorize the release to the OSB Client Security Fund, upon request, of any records or files relating to the representation of me by the lawyer named in Question 2.
- b. Payment to Third Party: I hereby authorize the OSB Client Security Fund to pay all amounts awarded to me to:

Name: _____

Address: _____

Phone: _____

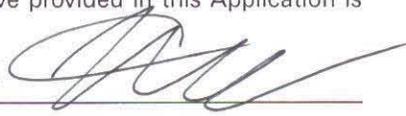
11. Claimant's Signature and Verification

(Each claimant must have a notarized signature page. Please photocopy this page for each person listed in question 1.)

State of Oregon)
County of Multnomah) ss

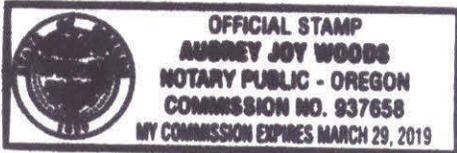
Upon oath or affirmation, I certify the following to be true:

I have reviewed the Rules of the Client Security Fund and the foregoing Application for Reimbursement; and submit this claim subject to the conditions stated therein; and the information which I have provided in this Application is complete and true, to the best of my knowledge and belief.

Sainfort Noel 

Claimant's Signature

Signed and sworn (or affirmed) before me this 6th day of October, 2015.



Notary's Signature Audrey Woods
Notary Public for State of Oregon
My Commission Expires March, 29th, 2019

Please complete page 4 if an attorney is representing you for this claim.

You are not required to have an attorney in order to file this claim. The CSF encourages lawyers to assist claimants in presenting their claims without charge. A lawyer may charge a fee for such work only if the following information is provided.

1. I authorize _____ *(print name of attorney)*
to act as my attorney in presenting my claim.

Claimant's Signature

2. I have agreed to act as the claimant's attorney: *(check one below)*

Without charge

Under the attached fee agreement

Attorney's Signature

Attorney's Bar No.

Attorney's Phone

Attorney's Address

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: February 12, 2016
From: Helen Hierschbiel, Executive Director
Re: CSF Claim No. 2015-08 GERBER (Chappue) Request for BOG Review

Action Requested

Consider the claimant's request for BOG review of the CSF Committee's denial of his claim for reimbursement.

Discussion

Joseph Chappue's conviction on several criminal charges was final in April 2013. He hired Susan Gerber in October 2013 to pursue post-conviction relief. Over time, Chappue's fiancée paid Gerber a total of \$12,800 on his behalf.

Susan Gerber's practice was almost entirely post-conviction relief and criminal appeals. She practiced in Ontario, Oregon, first with the Rader Stoddard Perez firm beginning in 2010, then in early 2014 in a partnership with Vicki Vernon. That arrangement lasted only a few months, and by March 2014, Gerber was on her own.¹

In the spring and summer of 2014, the bar received several complaints from Gerber's clients and a Malheur County judge alleging that Gerber was missing court dates and not attending to her clients' matters. In response to the bar's investigation, Gerber explained that she had become overwhelmed by her workload starting in December 2013. She also attributed her conduct to her addiction to prescription pain medication following knee surgery. In October 2014, Gerber stipulated to an involuntary transfer to inactive status on the ground that her addiction disabled her from "assisting and cooperating with her attorney and from participating in her defense" of disciplinary matters.

In anticipation of her change of status, Gerber entered into an agreement with Vicki Vernon pursuant to which Vernon would take over 12 of Gerber's pending matters in exchange for \$5,000. (Three of the clients subsequently chose not to be represented by Vernon.) The agreement contemplated that Gerber would be reinstated to active practice in 30 days and in the interim would assist Vernon with the transferred cases as a legal assistant or law clerk. If Gerber was not reinstated in 30 days, the agreement provided for an additional \$10,000 payment to be deposited in Vernon's trust account and from which she could withdraw funds at the rate of \$150 hour for her services to the clients whose matters were transferred.

¹ Prior to moving to Ontario, Gerber worked for several years for the Department of Justice handling similar types of cases. She had the reputation of being very good at her work.

Gerber was not reinstated in 30 days and remains on disability inactive status. She never paid Vernon the promised \$10,000, but Vernon received that amount from the PLF.

Court records and documents obtained from Ms. Vernon show that Gerber performed significant services on Chappue's behalf. Gerber's records show that she spent nearly 50 hours on the case. In November 2013, she filed a notice of representation and a motion to allow the filing of a formal petition; thereafter she met with claimant, spoke numerous times with his fiancée, and gathered and reviewed trial transcripts. In July 2014, she drafted and filed a petition for post-conviction relief, an exhibit list and a motion for Chappue to proceed *in forma pauperis*. She also prepared and filed a response to the state's motion to dismiss. Chappue recalls a hearing at which the judge commented that the petition filed by Gerber was "poorly done" and "needed changes."

In October 2014, Gerber informed Chappue that she was going to transfer to involuntary inactive status for an undetermined period, but indicated she could assist Vernon with Chappue's case. In November 2014 Chappue spoke to Gerber and demanded a refund of his fees. He says she admitted having failed in her duties, but that she had done a significant amount of work on the case. Vernon represented Chappue at his post-conviction hearing in October 2015, at which his petition was denied.

The CSF Committee denied this claim on the ground that it does not meet the requirements for a claim for unearned fees.² There was no evidence that Gerber didn't intend to perform the services for which she was hired, and that she performed more than de minimis services. Moreover, CSF Rule 2.2.4 provides that a fee is eligible for reimbursement if the client receives equivalent legal services from another lawyer without cost to the client:

2.2.4 In the event that a client is provided equivalent legal services by another lawyer without cost to the client, the legal fee paid to the predecessor lawyer will not be eligible for reimbursement, except in extraordinary circumstances.

As indicated above, Chappue's post-conviction case was completed by Vernon at no additional cost to him. While the Committee acknowledged that Chappue may have legitimate concerns about the quality and value of Gerber's services, the claim is not eligible for reimbursement from the CSF.

² CSF Rule 2.2 provides: 2.2.1 In a loss resulting from a lawyer's refusal or failure to refund an unearned legal fee, "dishonest conduct" shall include (i) a lawyer's misrepresentation or false promise to provide legal services to a client in exchange for the advance payment of a legal fee or (ii) a lawyer's wrongful failure to maintain the advance payment in a lawyer trust account until earned.

2.2.2 A lawyer's failure to perform or complete a legal engagement shall not constitute, in itself, evidence of misrepresentation, false promise or dishonest conduct.

2.2.3 Reimbursement of a legal fee will be allowed only if (i) the lawyer provided no legal services to the client in the engagement; or (ii) the legal services that the lawyer actually provided were, in the Committee's judgment, minimal or insignificant; or (iii) the claim is supported by a determination of a court, a fee arbitration panel, or an accounting acceptable to the Committee that establishes that the client is owed a refund of a legal fee. No award reimbursing a legal fee shall exceed the actual fee that the client paid the attorney.

November 6, 2015

CLIENT SECURITY FUND
INVESTIGATION REPORT

Re : Client Security Fund Claim No.: 2015-18
Claimant : Joseph D. Chappue
Lawyer : Susan Gerber
Investigators : Ronald W. Atwood; Gregory A. Reinert

RECOMMENDATION

We recommend denial of Mr. Chappue's claim for \$12,800.00.

CLAIM INVESTIGATION SUMMARY

The claimant, Joseph Chappue, hired Ms. Gerber in October of 2013. Ms. Gerber was paid a retainer in the amount of \$10,000.00, for representation in connection with his petition for post conviction relief (PCR). An additional \$2,800.00 was later paid to Ms. Gerber, for a total of \$12,800.00. There was no written fee agreement in the file. We interviewed Mr. Chappue and Katherine Black. We also received some brief comments from Ms. Gerber.

On June 8, 2015, the CSF sent notice to Ms. Gerber's attorney, Wayne Mackeson, the claim had been filed; he later resigned. Nellie Barnard of Holland & Knight was later retained; she also eventually resigned as counsel. Neither counsel filed a substantive response to the claim. On August 20, 2015, Ms. Gerber requested a continuance in order to respond to the claim. Her continuance was granted and she was given a deadline to respond by October 31, 2015. Ms. Gerber submitted a general response on October 30, 2015, which did not specifically address the circumstances of Mr. Chappue's case. She later submitted brief comments.

Joseph Chappue Background

On July 16, 2010, Mr. Chappue was convicted of Robbery I, Burglary I, Coercion, Unlawful User of a Weapon, Menacing, and Theft II. On April 26, 2013, his conviction became final.

Susan Gerber Background

Susan Gerber's practice primarily involved representation of convicts seeking post conviction relief. According to her representations to the Disciplinary Counsel, she had become overwhelmed by her workload starting in December of 2013. On March 24, 2014,

Ms. Gerber was notified of a disciplinary complaint against her. In April of 2014, Ms. Gerber formed a partnership with Vicki Vernon to handle PCR cases. On May 30, 2014, Ms. Gerber, requested additional time to respond to the allegations. Ms. Vernon left the partnership on June 9, 2014. According to Ms. Gerber, this dissolution added to her existing personal and professional turmoil.

A transfer of cases agreement was signed October 14, 2014; Ms. Gerber was allowed to continue to work on the cases as a legal assistant under the supervisor of Vicky Vernon. She was required to pay Ms. Vernon up to \$15,000.00 as part of the agreement, depending on how long her suspension lasted. This case was on the list. However, Ms. Gerber did not effectively communicate with Mr. Chappue regarding her suspension. This is discussed further below.

Ms. Gerber did pay Ms. Vernon \$5,000.00 to be applied to all cases Ms. Vernon took over. Ms. Gerber owed the full \$15,000, if her suspension lasted more than 30 days. It did. However, she refused to pay. Eventually, the PLF paid Vicki Vernon the \$10,000.00. According to Ms. Vernon, the money she received essentially covered her case expenses such as hotel and travel expenses for trips to Ontario. Since Ms. Gerber's suspension did not end quickly, she should have paid Ms. Vernon an additional \$10,000.00 but refused. The \$15,000.00 Ms. Vernon received, for taking over Ms. Gerber's cases, did not include legal fees for her time.

Post Conviction Relief

Mr. Chappue learned of Ms. Gerber through an investigator, Jesse Garcia, sometime in the summer or fall of 2013. He heard Ms. Gerber was a talented attorney so he met with her to discuss his PCR petition. He had been convicted of Robbery I, Burglary I, Coercion, Unlawful Use of a Weapon, menacing and Theft II; it looks like he is serving a sentence of 90 months. Mr. Chappue was in prison in Pendleton during his first meeting with Ms. Gerber, which he recalled lasted around 30 minutes. He hired Ms. Gerber to handle his PCR petition for a flat fee in the amount of \$10,000.00. There was no written fee agreement. Mr. Chappue also alleged a private investigator named Jessie Garcia was supposed to be paid \$5,000.00 by Ms. Gerber but he does not believe the investigator was paid.¹

We obtained records from Vicki Vernon regarding Ms. Gerber's work on Mr. Chappue's PCR. Those records show Ms. Gerber drafted a notice of representation and filed a motion to allow the filing of a formal petition in November of 2013. From November 27, 2013, through September 15, 2014, Ms. Gerber's records show she spent 49.9 hours on his case. She met with the claimant, she spoke to him; she spoke to and communicated with the fiancé numerous times. She gathered and reviewed the trial transcripts. She prepared exhibits, including declarations. She drafted a petition for PCR. She drafted a reply to a motion to dismiss.

¹ Ms. Gerber asserts the investigator received a portion of the fee, but provided no documentation to support the allegation.

Court records show a petition for post-conviction relief was filed by Ms. Gerber on July 31, 2014. She also filed an exhibit list and a motion for leave to proceed *in forma pauperis*. Mr. Chappue recalls there was a hearing on that date and the Judge made comments that the petition was “poorly done,” and “needed changes.”

Sometime in October of 2014, Ms. Gerber and Mr. Chappue spoke on the phone. Ms. Gerber told him she was being investigated and would be suspended for a period of time, not yet determined. However, she indicated to Mr. Chappue she could still do all the work.² Ms. Gerber talked to Mr. Chappue regarding the role of Vicki Vernon, possibly handling his case but he was confused about the precise nature of Ms. Vernon’s role and whether she was his attorney or not. Mr. Chappue recalled he had a couple of phone conversations with Ms. Gerber after October of 2014. On October 9, 2014, Ms. Gerber and the Bar jointly petitioned the Supreme Court to transfer her bar status to inactive, due to disability. The Supreme Court granted the motion on November 20, 2014.

Sometime in November of 2014, Mr. Chappue spoke with Ms. Gerber on the phone to demand repayment. He said she admitted she failed in her duties but said she had done a significant amount of work and could continue to work on his case. In December of 2014 or January of 2015, Mr. Chappue recalled a conversation with Ms. Gerber about whether or not he would work with Ms. Vernon. Mr. Chappue believed Ms. Gerber was asking him to choose between her and Ms. Vernon. She said she would not continue to work on his case if he worked with Ms. Vernon.

On October 8, 2015, Mr. Chappue had a hearing regarding his PCR. Ms. Vernon was his attorney at the hearing. His petition was denied. He is looking into hiring Ms. Vernon to handle appellate work for him.

Analysis

Ms. Gerber was retained to file a petition for post-conviction relief; these petitions are generally not granted. She did all the work needed to file a petition and get it set for hearing. She was found disabled before it was heard and it was eventually denied.

This file does not contain a fee agreement. However, she used the same version of the agreement in each case in which one was provided. They have all stated the fee is earned upon receipt and is non-refundable. It allows the fee to be deposited in her general account. They also indicate a refund may be appropriate if the representation ends early. That could be the case here.

The records in the file indicate some 50 hours were spent in preparing the PCR. Quality is not the gauge here. Dishonesty is the issue. Refusal to return an unearned fee can be dishonesty. The issue in such as case is whether the work was minimal or

² This assumes she did the work as a legal assistant under the supervision of Ms. Vernon.

insignificant. It was neither; substantial work was performed. As a result, it cannot be said this claim qualifies for reimbursement.

If one divides the total paid to Ms. Gerber by the 50 hours she worked on this matter, the hourly rate is in excess of \$250 per hour. In discussing this matter with Ms. Vernon, she indicated an appropriate rate would be \$150 to \$200 hourly. Multiplying 50 hours against those rates would indicate she earned \$7500 and \$10,000. She charged \$12,800; thus, an alternative resolution would be to credit her for the work performed and then provide reimbursement in the range of \$5300 and \$2800, depending upon the rate applied to this matter.

From what we can tell, Ms. Gerber made a number of representations that did not turn out to be true. Further, we are not sure about the quality of her work on this matter. However, the Client Security Fund does not address malpractice claims, ethics issues or fee disputes. This feels more like a fee dispute than dishonesty. Therefore, the claim must be denied.

FINDINGS AND CONCLUSIONS

1. Ms. Gerber was admitted to the Oregon State Bar on September 30, 1999.
2. Joseph Chappue was a client of Susan Gerber. The objective of representation was post conviction relief. She was hired in October of 2013. There is no written fee agreement in the material we have been provided.
3. On March 24, 2014, Ms. Gerber was notified of a disciplinary complaint against her.
4. On October 9, 2014, Ms. Gerber petitioned for her bar status to become inactive, which was approved by the Supreme Court on November 20, 2014.
5. Ms. Gerber spent around 50 hours on Mr. Chappue's case; she prepared and filed a petition for post-conviction relief. Ultimately, Vicki Vernon took his case over.
6. A lawyer's failure to perform or complete a legal engagement is not, in itself, evidence of dishonest conduct. CSF Rule 2.2.2.
7. Refusal to reimburse an unearned fee will be considered dishonesty, if no services were provided or if the services the lawyer actually provided were minimal or insignificant. CSF Rule 2.2.3. In this case, the effectiveness of Ms. Gerber's services is debatable, but it cannot be said her services were insignificant in light of the amount of time she spent on the case and what she accomplished.
8. She spent sufficient time to earn her fee and it cannot be said her conduct rose to the level of dishonest conduct.
9. In the end, this is more of a fee dispute as opposed to a matter of dishonest conduct.
10. This claim does not qualify for reimbursement.

RECEIVED

JUL 06 2015

Oregon State Bar
Executive Director

6-21-15

Dear Mr. Merrill,

Hello. The only thing amended on this complaint is on pg. 4.

I initially forgot to sign the Authorization to have the \$ awarded to me released to my family chaplain, Henry Peter.

Also, I wanted to note that I may change that to my attorney of record, Ms. Vickie Vernon, at a later date. I have to arrange a phone call with Ms. Vernon before determining this.

Also, please let me know if there is anything else you need me to do.

I'm confident that now that the bar is involved there is no way that Ms. Gerber's old firm can refuse to render documentation that I've requested on numerous occasions.

Lastly, Mr. Merrill, I would really like to discuss this with you on the phone, but in order for us to speak on a private line you would have to call the institution a couple days in advance and arrange it. I believe that the person here at the Eastern Oregon Corr. Facility who does all that is Ms. Harsins.

I appreciate your time very much.

Sincerely,


Joe Chappue
7246772
2500 Westgate
Pendleton, OR 97801

Amended

OREGON STATE BAR

Client Security Fund Application for Reimbursement

Return Completed form to: Oregon State Bar Client Security Form PO Box 231935 Tigard, Oregon 97281-1955 Telephone: (503) 620-0222 Toll Free in Oregon: (800) 452-8260

PAYMENTS FROM THE CLIENT SECURITY FUND ARE ENTIRELY WITHIN THE DISCRETION OF THE OREGON STATE BAR. SUBMISSION OF THIS CLAIM DOES NOT GUARANTEE PAYMENT. THE OREGON STATE BAR IS NOT RESPONSIBLE FOR THE ACTS OF INDIVIDUAL LAWYERS.

RECEIVED

JUL 06 2015

Please note that this form and all documents and other information submitted in support of your claim are public records

1) Full names of all persons filing this claim (first, middle, last):

Joseph D. Chappue

Oregon State Bar Executive Director

Address: 2500 WESTGATE Phone (Work) N/A

Street: N N N (Home) N/A

City, State, Zip: PENDLETON, OREGON 97801

2) What is the name, address, telephone number, and firm name (if any) of the lawyer whose conduct is alleged to have caused your loss?

Lawyer's Name: SUSAN R. GERBER BAR # 992651 Lawyers Telephone Number: 503-830-7360

Lawyer's Firm Name: GERBER & VERNON LAW OFFICES LLC (FORMER)

Lawyer's Address: 93 SW 2nd St. OHARIO, OR 97914 (FORMER)

3) What is the amount of your loss? \$ 12,800.00

Describe in detail how you calculated that amount (if the loss was property, include appraisal, receipts, or other evidence of value)

This is money that I directed my FAUCEE Katherine Black (775-721-3355) to pay Susan Gerber for her representation. I have asked verbally, and in written communication(s) several times for Ms. Gerber to send me receipts, she has not (to date).

4) Please describe what the lawyer did that was dishonest and how it caused your loss. Use a separate sheet if necessary. Your claim will not be accepted if this question is not answered.

She told me on 2 separate occasions that she had filed Summary judgment in my case, when in fact she had not, the last time was in 2014. She let my case "drop" on atleast two separate occasions, not meeting time lines, and cause starting in the court dismissing my case (luckily without prejudice) She threatened that if I had anything to do with Vicki Vernon she would not help me further with my case. (Refer to attached complaint for further information.)

5) (a) When did your loss occur? (insert date): Between Oct. 2014 - present DATE

(b) When did you discover the loss? (insert date): Approx. Date: Nov. 2014

Amended

6) (a) Was the lawyer named in Question 2 hired to represent you? Yes No

(b) If Yes, give the approximate date you hired the lawyer: Oct. 2013

(c) If No, describe your relationship to the lawyer: _____

7) (a) What did you hire the lawyer to do? per case # CV141356 (past conviction case in Umatilla)

(b) What was your agreement for payment of fees to the lawyer? (Attach copy of any written agreement) \$10,000⁰⁰, but MS. Barber requested more as time went on (Attempting to locate copy of Agreement)

(c) How much has been paid so far? \$ 12,800⁰⁰

(d) Did anyone else pay the lawyer to represent you? Yes No

If yes, give the name, address and telephone number of that person and explain the circumstances:

My Fiancee, Katherine Black, as a gift to me, P.O. box 2849 Carson City, NV. 89702 phone: 775-721-3355

(e) What services did the lawyer actually perform? the initial part of the petition, which by degrees the judge APPROVES "was in part fully done"

(f) Did you hire another lawyer to finish any of the work? Yes No

If yes, please provide the name and telephone number of the lawyer:

Actually, MS. Vicki Vernon was hired by default - Add: 10211 Sw. Barber Barberant #209A Portland, OR Phone: 971-285-1874 97219

8) Was there at any time a family, personal, business or other relationship between you and the lawyer? Yes No

If Yes, explain: we became friends, and times the relationship was flirtatious. But I see now that this was a effective form of manipulation on MS. Barber's part.

9) (a) Has demand for repayment been made of the lawyer? Yes No

(b) Amount demanded: \$ Full Payment: 12,800⁰⁰

(c) Date(s) when demand was made: Nov. 2014

(d) Who made the demand? ME

(e) Demand was Oral, Written. (If it was written, attach a copy of the demand to this application.)

(PHONE)

10) (a) Has the lawyer (or any other person) ever admitted that he/she owes you money or agreed to reimburse you?

Yes No (b) If Yes, please explain: yes and no, she admitted that she failed her duties but did enough to justify the amount I paid her.

Amended

Regardless of this admission, All of Ms. Gerber's services were performed under the use of heavy narcotics which violated code of ethics.

- 11) (a) Describe what you have done to recover your loss:
- (b) Have you sued the lawyer? Yes No
- (c) Have you obtained a judgment? Yes No
- (d) If yes, in what amount? \$ _____
- (e) Have you made any other claim against the lawyer or the lawyer's assets (such as insurance claims, arbitration claims, etc.)? Yes No
- (f) Have you made attempts to locate assets and / or recover on a judgment? Yes No
- (g) If yes to any of the above, attach copies of all related documents. If no, please explain: _____

- 12) (a) Have you been reimbursed for any part of your claim? Yes No
- (b) If Yes, who paid you and how much did you receive? \$ 0

- 13) (a) Is there any insurance, indemnity or bond which might cover your loss? Yes No [?]
- (b) If Yes, what is the name and address of the insurance company? ?

- 14) (a) This loss has been reported to (check all that apply):
 - District Attorney,
 - Police,
 - Oregon State Bar Professional Liability Fund,
 - Oregon State Bar Disciplinary Counsel
- (b) Explain action taken, and attach a copy of your complaint, if available: this is my initial complaint to the Oregon State Bar.

- 15) (a) Please identify any other person who may have information about this claim:
 - Name: JESSIE GARCIA (investigator) Phone: 541-212-9290
 - Address: current address unknown.

(b) Nature of the information this person can provide:
Jessie Garcia was the investigator in this matter. MADE it explicitly clear that if "Ms. Gerber had not have been messed up on drugs AND dropped the ball in regards to my case I would be out of prison by now".
 (sic)

Amended

And, that the \$5,000⁰⁰ that MS. Gerber purportedly paid Mr. Garcia out of the money I paid her was NOT, in fact, ever paid to him.

16) Agreement and Understanding

The claimant agrees that, in exchange for any payment made by the Client Security Fund (CSF), the claimant will:

- (a) **Transfer** to the CSF any rights the claimant may have against the lawyer or any other person or entity who may be liable, up to the full amount of the CSF's payment;
- (b) **Authorize** the CSF to pursue any claims against the lawyer and any other person or entity who may be liable, either in the name of the CSF or in the name of the claimant, as the CSF deems appropriate;
- (c) **Cooperate** with the CSF in its efforts to recover its payments;
- (d) **Notify** the CSF if the claimant receives any payment from the lawyer or from any other person or entity with regard to the loss for which this claim is made;
- (e) **Reimburse** the CSF if the claimant recovers any portion of the loss from the lawyer or any other person or entity.

17) Claimant's Authorization

Release of Files: I hereby authorize the release to the OSB Client Security Fund, upon request, of any records or files relating to the representation of me by the lawyer named in Question 2.

Payment to Third Party: (This section must be completed if you answered yes to Question 7(d) or if you wish to have payment delivered to someone else for any reason.) I hereby authorize the OSB Client Security Fund to pay all amounts awarded to me to:

Name: HENRY PORTER (FAMILY CHAPLAIN) 541-771-0073
 Address: P.O. Box 7646 BEND, OR 97708
 Signature: [Handwritten Signature]

HENRY PORTER (only)

* MAY AMEND AT LATER DATE TO BE RELEASED TO ATTORNEY OF RECORD MS. VICKI VERNON OSB# 99265

Date 6-9-15

Oregon State Bar
Client Assistance Office
PO Box 231935
Tigard, OR 97281-1935

Complainant: Joseph Duane Chappue
SID7246772
2500 Westgate
Pendleton, OR 97801

Attorney: Susan R. Gerber
992651
93 SW 2nd St.
Ontario, OR 97914 (Primary Phone 503 830-7360)

Complaint

Complainant, Joseph D. Chappue, retained attorney, Susan R. Gerber, on or about October 27, 2013. A flat fee of \$10,000 was agreed upon by both parties to cover all litigation from post-conviction and if complainant prevailed that the attorney agreed would include the new trial representation as well.

The attorney failed to satisfy the terms of the contract and representation of her client. In this regard the following occurred.

Post-conviction Relief

- 1) On three different occasions, the court ordered the attorney to answer the respondent's reply to complainant's post-conviction petition. The attorney's failure to answer the respondent's reply caused complainant's petition to be dismissed without prejudice.
- 2) On at least two different occasions, the attorney lied to complainant about filing legal motions that the court had requested to be filed. The attorney had told complainant that she had filed summary judgments on two different occasions, in November, 2014, when in fact she did not.
- 3) The attorney refused to provide invoices or receipts to complainant's fiancée, Katharine Black, for the money provided in regards to her representation in the amount of \$12,800. This was conducted in monthly payments of \$500, and \$250, each month for a total of \$12,800.
- 4) This attorney was deemed inactive by the bar, during the time of my case. The attorney insured complainant that she would maintain representation of my case in the capacity of a paralegal for the duration or conclusion of my case but has failed to do so.
- 5) This attorney abused her representation and trust, by sending text messages to various friends and family members saying that she would never help me again unless I immediately fired the current attorney, Vicki Vernon. She also demanded that I not share any information regarding my case with fiancée, Katharine Black. During this attorney's

suspension, her associate Ms. Vicki Vernon handled my case. This attorney, Ms. Vernon, decided not to associate her legal profession with the attorney, Ms. Gerber.

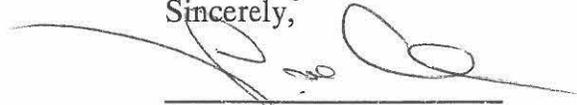
- 6) This attorney has violated numerous ethical boundaries including at one point making a professional and personal promise to me that she was going to walk me out of prison before the beginning of 2015.
- 7) This attorney had stolen complainant's money and has lied numerous times.
- 8) While representing petitioner's case, this attorney was suspended from practicing law.

Please keep the record open for additional documentation and information.

The primary action that I wish taken to resolve this matter is for the attorney to continue representation with the bar monitoring her action.

Thank you for your time and consideration.

Sincerely,



Joseph Chappue
SID 7246772
2500 Westgate
Pendleton, OR 97801

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: February 12, 2016
From: Helen Hierschbiel, Executive Director
Re: CSF Claim No. 2015-34 GRECO (Patillo) Request for BOG Review

Action Requested

Consider the claimant's request for review of the CSF Committee's denial of his claim for reimbursement.

Discussion

Claimant Daniel Patillo hired attorney Guy Greco in late July 2011 for defense against criminal charges and deposited a \$5,000 retainer. On October 19, Greco contacted Patillo about the status of his case and reminded him that an additional \$10,000 retainer would be required for Greco to handle the trial. Patillo declined to pay the additional retainer and Greco obtained court approval to withdraw from the case on November 15, 2011. Shortly thereafter, Greco returned \$1,794.55 to Patillo as the unused portion of the retainer.

Patillo's claim is rambling and nearly incomprehensible, but it appears he believes that Greco received (and misappropriated) an additional \$5,000 of his money. In support of this, Claimant has provided a *Statement of Lawyers Trust Account for Daniel Patillo* from a Michigan attorney who represented Patillo in a workplace injury claim. The statement shows the following debit:

"11-25-11 Overnight retainer Attorney Guy Greco (cashier's check).....\$5,000"

The Michigan attorney has no personal recollection of the transaction, but stands by his accounting that he overnighted a \$5,000 check to Greco at Patillo's request. Greco denies ever having received the check, and says he would have returned it he had, as it would have been received after he withdrew from Patillo's criminal case. Because it was a cashier's check, it is difficult to trace. Greco provided copies of his bank statements from November and December 2011, neither of which reflect a \$5,000 deposit.

Patillo filed a small claims action against Greco in Lincoln County in August 2015 seeking return of the \$5,000 "unearned retainer;" Greco demanded a jury trial and the case has been transferred to circuit court but there has been no activity since the transfer. Patillo has also sued his Michigan attorney in Lincoln County, alleging he did not authorize the distribution to Greco.

Patillo suffers from significant cognitive and emotional difficulties as a result of his 1988 workplace injury and the Committee was unsure of his credibility. The Committee also found it unlikely that Patillo would have authorized a \$5,000 transfer when the additional retainer

requested by Greco was \$10,000; additionally, the supposed transfer came after Greco had withdrawn from the case, so Patillo had no reason to be sending him additional funds. Ultimately the Committee concluded there was insufficient evidence of dishonesty by Greco to support the claim.

THIS IS A APPEAL

RECEIVED

DEC 03 2015

Oregon State Bar
Executive Director

DANIEL PATILLO

Daniel Patillo

157 NW 15th Apt. 3

Newport Oregon 97365

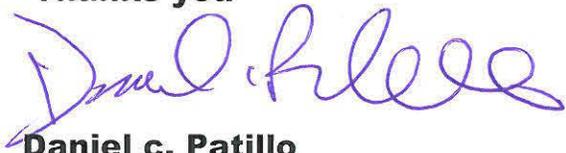
Sylvia Stevens/ Mark G. Reinecke

I, Daniel C. Patillo wrote and call several time in the 2013-14 and received no check Ref# 00456722 of \$5,000.00 dated 9-20-11 advance prior to the Settlement. I did not approval or him (Ronald) or others? I, Daniel C. Patillo no advancement of my Settlement others, call friend name Tim Reyonds or family members. I, Daniel C. Patillo want to know is this person he advanced out his bank account and once by settlement was available Ronald took \$5,000.00 out my settlement.

Secondly 11-25-11 there was Overnight retainer Attorney Guy Greco (cashier's check) amount of \$5,000.00. Greco had him moved from my case by the judge of Lincoln County Newport Oregon USA.

I, Daniel C. Patillo did not approval of this \$10,000.00. I gave notice to Ronald to send me proof of checks from the banks to see who cashed the two checks. Finally the account is not balance to 140,000.00? and there is a overdrawn \$4,769.30? I am requesting Mark G. Reinecke, Investigator. Please See: Patillo letter addressing Sylvia E. Steven/Camile Greene, dated October 24, 2015. Mark G. Reinecke, Investigator in your letter November 7, 2015 no mention of \$75,000,00 numbers side of the check for Ferrbree COAmerica Bank in Michigan. Patillo gave Clamile Greene I give permission to get number from the side of the to get the items clear up soon as possible in Ronald errors in my account and proof of the two checks. Who they are?

Thanks you



Daniel c. Patillo

Daniel C. Patillo

157 NW 15th Apt. 3

Newport, Oregon 97365

Pro Se

October 24, 2015

THE STATE OF OREGON BAR

Dear, Sylvia E. Steven/Camile Greene,

Client Security Claim Fund No. 2015-34. Ms. Greene I told you over the telephone former personal injuries lawyer Ronald A. Ferrebee and his false trust record is fake. Exhibit 1

I need from the investigation into COAmerican Bank in Michigan and see if there is a Greco check and unknown. Compare Account of the \$75,000.00 to Daniel Patillo. Ferrebee made me offer \$10,000.00 of my own money what a liar. See top two the catch 22 is Guy Greco and Tim Reynold. Exhibit 2



Daniel C. Patillo

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: February 12, 2016
From: Helen Hierschbiel, Executive Director
Re: CSF Claim No. 2015-22 JORDAN (Hernandez) Request for BOG Review

Action Requested

Consider the claimant's request for BOG review of the CSF Committee's denial of her claim for reimbursement.

Discussion

Hernandez retained Keith Jordan in March 2007 to represent her in an immigration removal proceeding arising out of criminal convictions for which she was incarcerated. Through her friend and employer (Kundelius), Hernandez paid \$2,000 towards the \$12,000 fixed fee requested by Jordan. Jordan did not tell Hernandez that in December 2006 he had entered into a stipulation with the California State Bar for a two-year disciplinary suspension that was awaiting approval from the California Supreme Court.¹

On April 12, Jordan filed a motion to allow him to appear by telephone at a hearing set for April 16; the motion also sought termination of the removal proceeding, and asked that Hernandez be released on bond. Jordan did not appear on April 16 and the hearing was reset to April 23. Jordan again failed to appear and the hearing was reset to April 26. Jordan appeared and the court denied his motions to terminate the proceeding and release Hernandez.

On May 9, Jordan missed another hearing that was reset to August 13. On May 15, Kundelius deposited another \$5,000 toward Jordan's fee. On May 29, the California Supreme Court ordered Jordan's suspension, effective June 28, 2007.² The Executive Office for Immigration Review (EOIR) and the US Department of Homeland Security initiated disciplinary sanction against Jordan, but Jordan did not convey that information to Hernandez.

On July 17, Kundelius paid Jordan another \$500. On July 20, EOIR suspended Jordan from practicing in immigration matters. On August 10, Jordan told Hernandez about his suspension and did nothing more on her case. Hernandez appeared by herself at the August 13 removal hearing and prevailed.

¹ In subsequent disciplinary proceedings in Oregon, Jordan claimed he didn't realize that a suspension of his California license would affect his ability represent clients in immigration matter because he expected to remain an active member of the Oregon State Bar.

² The California suspension was for two years, with all but nine months stayed, and a three-year probation. That resulted in Jordan's reciprocal nine-month suspension in Oregon, beginning January 1, 2008.

In September 2009 (two years after the completion of her immigration case), Hernandez filed a complaint about Jordan with the OSB. In July 2012, Jordan stipulated to an 18-month suspension arising in part from his representation of Hernandez, acknowledging that he had charged her an excessive fee.

In May 2012, Kundelius submitted a claim for reimbursement from the CSF for the \$7,500 he had paid to Jordan on Hernandez' behalf. On June 4, Sylvia Stevens notified Kundelius in writing that under CSF rules, only the client is eligible for reimbursement from the CSF, and providing a new application for Hernandez to submit.

Nothing further was heard from Hernandez until August 2015, when she submitted her application for reimbursement. In response to the CSF investigator's inquiry as to why she had waited so long to submit a claim to the CSF, Hernandez said she thought a payment from the CSF would be automatic in light of the "favorable disciplinary proceeding" against Jordan. The CSF Committee didn't disagree that Jordan was dishonest in failing to refund the unearned portion of the fee (which the CSF calculated at \$5,500), but found the claim to be untimely.

CSF Rule 2.8 provides that a claim must be filed:

"...within two years after the latest of the following: (a) the date of the lawyer's conviction; or (b) in the case of a claim of loss of \$5,000.00 or less, the date of the lawyer's disbarment, suspension, reprimand or resignation from the Bar; or (c) the date a judgment is obtained against the lawyer, or (d) the date the claimant knew or should have known, in the exercise of reasonable diligence, of the loss. In no event shall any claim against the Fund be considered for reimbursement if it is submitted more than six (6) years after the date of the loss.

Hernandez filed her claim three years after Jordan's suspension and more than 8 years after Jordan's representation of her ended. The Committee believed she should have known of her loss in August 2007 when Jordan refused to refund any of the fees he had been paid. The Committee also noted that Hernandez has made no effort to collect from Jordan, other than one telephone call in which he agreed he owed her the \$500 that was paid three days before his EOIR suspension.

In her request for BOG review, Hernandez argues that her claim should be deemed filed when Kundelius submitted an application in May 2012, because he had her power of attorney.³ Unfortunately, Kundelius' application doesn't indicate he is acting under a power of attorney, nor did he so indicate in response to Ms. Stevens' letter returning his application. Hernandez offers no explanation for the three year delay between Kundelius' application and hers.

³ CSF Rule 2.1: A loss of money or other property of a lawyer's client is eligible for reimbursement if...the claim is made by the injured client or the client's conservator, personal representative, guardian ad litem, trustee, or attorney in fact.

1062

Anacely Hernandez

11-26-15

IS 09079

Washington County Jail
215 SW Adams St MS35
Hillsboro, OR 97123

RECEIVED

DEC 03 2015

Oregon State Bar
Executive Director

claim No. 2015-22
Keith Jordan

Sylvia Stevens
Executive Director
Oregon State Bar
PO Box 231935
Tigard, OR 97281-1935

Dear Mrs. Stevens

I am writing you to request a review of the denial to refund my money from attorney Keith Jordan. I do not know if my request is late or not because I do not know the exact date the decision was made and the letter of denial sent to me, all I know is that a letter from the Oregon State Bar arrived at my address. I would have had appreciated attorney Dave Malcom if he would have taken the time to send me a copy of the denial letter to the jail I am currently lodged in. He called me twice to the jail and when we spoke on the phone I told him I have trial on December 22nd

Therefore a copy of the letter in which he tells me that I have 30 days to seek a Board review of said discussion but I see he lacks said courtesy and professionalism.

Furthermore I don't think he actually did the necessary research in this case to

have had reach said outcome. The law says that I have 6 years to claim a refund but I recall it looks specific as to when does the 6 years time limitation begins count down if either at the time Keith Jordan was found guilty or at the time his probation is completed and case is closed according to my understanding this is an ongoing case. Keith Jordan is still on probation and temporarily suspended at the present time.

about 3 years ago Anthony Kundelius claim a refund on my behalf since he is my power of attorney since December 2006 IT TOOK me by surprise to know that he was unsuccessful in doing so therefore I went ahead and made the claim two or three months ago my self.

Anthony has a written power of attorney over me he loaned me the \$7,500.00

2062

Anthony Kundelius was the one that made the payments on my behalf, Anthony made a timely claim and was denied. many times me and Anthony tried to get our money back from Keith Jordan due to his failure to reimburse our money we sought the assistance of the Oregon State Bar.

initially I truly believed that an automatic win was an automatic refund as a matter of logic.

I have made several trips to the local church St. Matthews for free food and almost everytime I end up getting bread that is expired and has white or green bunnies in various parts of the loaf of bread my reaction and most logical move on my part is that I either cut off the bunnies and eat what is left good of the loaf of bread but if the loaf is not salvagable I through it away in the garbage, thank God and do not make complaints because I had no loss but if I go to Winco and buy a loaf of bread and when I get home I realize it is expired and moldy I take it

to win or either for an exchange or a refund as a matter of logic but if I don't get either or then I go to the Department of Justice consumers help desk and make a complaint because I want my money back.

I spent hours many, many hours preparing to represent my self before a federal judge after paying Jordan \$7,500.00 and later on I spent numerous endless hours preparing a claim against Jordan then a long wait for an outcome of the case and as you know was to my favor so that at the end you keep my money had I know I was not getting my money back I would have never bother Jordan with a complaint a matter of logic.

Because I was not properly notified of the jail
Because Anthony Kundelius made a timely claim,
Because the case is still going and open,
Because the law is not clear as to when exactly the 6 year time limitation begins to click and because it caught me by surprise to know that Anthony was not refunded the \$7500.00 I am seeking a review in a timely manner
Sincerely: Gracely Hernandez

Client Security Fund Investigative Report

From: Dave Malcolm, Investigator
Date: November 13, 2015
RE: CSF Claim #2015-22
Claimant: Aracely Hernandez
Attorney (status): Keith Jordan (suspended)

Recommendation. Investigator recommends denying this claim as it is time barred by the Rules and Claimant did not make a good faith effort to collect the Claim.

Statement of Claim. Claimant Hernandez retained Attorney Jordan to represent her in an immigration case in 2007. Anthony Kundelius (Claimant's friend and employer) paid Attorney a \$7,500. Claimant is dissatisfied with Attorney's services and wants the \$7,500 refunded to her or Kundelius.

Discussion. Claimant filed her CSF claim (this "Claim") on August 21, 2015 while she was incarcerated in the Washington County jail. Claimant states that when Attorney represented her in 2007, he provided minimal services on her behalf.

The following timeline (all dates are on or about) is helpful in understanding this matter:

- December 6, 2006: Attorney and the California State Bar ("CA Bar") entered into a *Stipulation re Facts, Conclusions of Law and Disposition* ("Stipulation") that would subject Attorney to a 2-year suspension.
- January 31, 2007: Attorney learned that CA Bar approved the Stipulation and the California Supreme Court ("CA SC") is expected to approve the Stipulation.
- March 19, 2007: While incarcerated, Claimant retained Attorney and Attorney filed a *Notice of Entry of Appearance* with the US Immigration Court. Kundelius paid Attorney a \$2,000 retainer towards a \$12,000 fixed fee agreement.
- April 12, 2007: Attorney filed a two-page motion that sought permission for Attorney to appear by telephone at the April 16, 2007 hearing, termination of the removal proceeding against Claimant and setting bond to release Claimant.
- April 16, 2007: Attorney did not appear at the hearing. The hearing is rescheduled to April 23, 2007 and Attorney did not appear at that hearing. The hearing is rescheduled to April 26, 2007 and Attorney appears and did little at that hearing. At the April 26, 2007 hearing, the court generally denies Attorney's motions.
- May 9, 2007: Attorney did not appear at that hearing. The hearing is rescheduled to August 13, 2007.
- May 15, 2007: Kundelius paid Attorney \$5,000.
- May 29, 2007: CA SC approved the Stipulation.
- June 28, 2007: Attorney's California suspension began. The Executive Office for Immigration Review ("EOIR") and US Department of Homeland Security began proceedings seeking disciplinary sanctions against Attorney. Attorney did not inform Claimant or the court of his suspension.
- July 17, 2007: Kundelius paid Attorney \$500.
- July 20, 2007: EOIR suspended Attorney from practicing immigration law matters.
- Friday August 10, 2007: Attorney informed Claimant he's suspended from practicing law, cannot represent Claimant thereafter and did nothing else.
- Monday August 13, 2007: Claimant defended herself at the hearing and prevailed.

- September 1, 2009: Claimant filed a disciplinary complaint (the "Complaint") against Attorney.
- July 16, 2012: Attorney signed *Order Accepting Stipulation for Discipline* (attached) as a result of the Complaint.
- May 30, 2012: Kundelius filed a CSF claim against Attorney for the same events as this Claim (since he paid Attorney).
- June 4, 2012: CSF informed Kundelius that he is the wrong person to file the claim and Claimant must file the claim as she was Attorney's client.

Claimant states: (a) she thought CSF would automatically pay her after a favorable disciplinary proceeding against Attorney; (b) she waited for the CSF payment after the disciplinary proceeding; (c) she discovered her loss after the August 2012 disciplinary proceeding when she was not paid; (d) in this Claim's application, Claimant wrote she discovered her loss two months before filing this Claim (in June 2015; a contradictory statement); and (e) Attorney apologized to her during a phone call and admitted his retaining \$500 was wrong since he was suspended from practicing law (in California) at the time he received the \$500.

Investigator reasons that Claimant knew or should have known of her loss on August 13, 2007 when she defended herself at the hearing after Attorney stopped representing her. Investigator believes that Claimant: (a) did not correctly understand the differences between the disciplinary and CSF processes; (b) mistakenly believed a favorable disciplinary proceeding would result in CSF paying her; and (c) failed to act timely based upon her mistaken assumptions that delayed this Claim.

Findings & Conclusions.

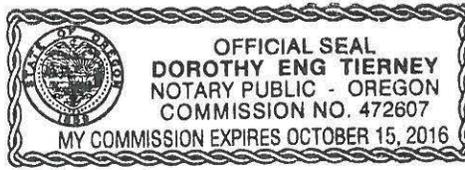
1. Claimant has good English language skills.
2. An attorney-client relationship existed between Claimant and Attorney.
3. Attorney acted dishonestly by representing Claimant when he knew, at the time Claimant retained Attorney, that shortly thereafter he would be suspended by the California State Bar and could not represent Claimant.
4. Attorney provided minimal or insignificant legal services to or for Claimant. Besides the March 19 notice, the April 12 motion and the April 26 hearing noted above, Claimant stated she had a 15-minute call with Attorney (date unknown).
5. Attorney acted dishonestly by representing Claimant when Attorney knew at the time Claimant retained Attorney that shortly thereafter he would be suspended by CA Bar and could not represent Claimant.
6. Claimant is dissatisfied with Attorney's services and results and wants the \$7,500 attorney fees refunded with interest from the start of Attorney's representation of Claimant.
7. Claimant states she demanded repayment by Attorney during a phone call and Attorney admitted he owed her \$500 for the last payment made when he was suspended.
8. Claimant did not sue Attorney or attempt to collect her alleged damages. There is no civil conviction related to this Claim.
9. Claimant returned to the Washington County Jail August 1, 2015 and expects to be released a few days before Christmas 2015.
10. The Oregon Supreme Court twice suspended Attorney for unrelated disciplinary matters in 2008 and 2010. Claimant filed the Complaint on September 1, 2009. The Complaint was decided in her favor on August 16, 2012. The Court suspended Attorney for 18 months effective August 23, 2012 as a result of the Complaint. At this time, Attorney has not been reinstated to practice law.
11. Claimant filed this Claim almost three years after Attorney was suspended. Claimant filed this Claim over seven years after Attorney represented her.

///

12. Rule 2.8 does not allow reimbursement: (a) over two years after Claimant knew or should have known of her loss; or (b) over six years after the date of loss.
 - (a) Claimant arguably knew (or should have known) of her loss on August 13, 2007 at the court hearing where she defended herself after Attorney quit representing Claimant on August 10, 2007. At the least, Claimant knew (or should have known) of her loss before September 1, 2009 when she filed the Complaint. Both dates are more than two years before Claimant filed this Claim.
 - (b) The actual date of loss was August 13, 2007. This is more than six years before Claimant filed this Claim.
13. If Claimant timely filed this Claim, Investigator would recommend reimbursing Claimant \$5,500.
14. This Claim should be denied.

Respectfully submitted,

/s/Dave Malcolm



Client Security Fund Application for Reimbursement

2015-22

Return completed form to:

Oregon State Bar
Client Security Fund
PO Box 231935
Tigard, OR 97281-1935

Payments from the Client Security Fund are entirely within the discretion of the Oregon State Bar. Submission of this claim does not guarantee payment. The Oregon State Bar is not responsible for the acts of individual lawyers.

Please note that this form and all documents received in connection with your claim are public records. Please attach additional sheets if necessary to give a full explanation.

TODAY'S DATE: August 18, 2015

1. Information about the client(s) making the claim:

- a. Full Name: Aracely Hernandez
- b. Street Address: 747 SE Cedar Street
- c. City, State, Zip: Hillsboro, OR 97123
- d. Phone: (Home) 503-640-0855 (effective 11/29/12) (Cell) _____ (Work) _____ (Other) _____
- e. Email: aracelystaxes@frontier.com

RECEIVED

AUG 21 2015

Oregon State Bar
Executive Director

2. Information about the lawyer whose conduct caused your claim (also check box 10A on page 3):

- a. Lawyer's Name Keith Jordan
- b. Firm Name Jordan Law Firm
- c. Street Address: 720 SW Washington #750
- d. City, State, Zip: Portland, OR 97205
- e. Phone: 503 869-5000
- f. Email: kgjordan123@gmail.com

3. Information about the representation

- a. When did you hire the lawyer? March 13 2007
- b. What did you hire the lawyer to do? Represent me in an immigration case in Washington state, including any hearings.
- c. What was your agreement for payment of fees to the lawyer? (attach a copy of any written fee agreement) \$5,000 retainer into account he designated, then \$2,000 cash, then \$500 cash.
- d. Did anyone else pay the lawyer to represent you? _____ Yes
- e. If yes, explain the circumstances (and complete item 10B on page 3):
Anthony Kundelius, 570 N 10th Ave #25, Cornelius, OR 97113, made the payments directly to Mr. Jordan, as I was incarcerated and could not pay Mr. Jordan directly.
- f. How much was actually paid to the lawyer? \$7,500
- g. What services did the lawyer perform? Virtually none. He attended by telephone one 14 minute hearing. I met him while incarcerated and hired him as I needed a lawyer. I knew nothing about him or his reputation.



h. Was there any other relationship (persona, family, business or other) between you and the lawyer?

No.

4. Information about your loss:

a. When did your loss occur? in 2007

b. When did you discover the loss? 2 months ago when I was not reimbursed after his disciplinary hearing. The person who loaned me the money is upset about no payment from Mr Jordan

c. Please describe what the lawyer did that caused your loss He failed to represent me. I ended up representing myself. Mr. Jordan delayed hearings, spent very little time with me, did not inform me as to the status of my case, or that he was undergoing disciplinary action in California or that he was suspended in California. He abandoned me after taking what funds I had available.

d. How did you calculate your loss? Actual funds paid to him. He should pay interest from date 3/13/2007.

5. Information about your efforts to recover your loss:

a. Have you been reimbursed for any part of your loss? *If yes, please explain:* No

b. Do you have any insurance, indemnity or a bond that might cover your loss? *If yes, please explain:* No

c. Have you made demand on the lawyer to repay your loss? When? *Please attach a copy of any written demand.*
Yes. Over the telephone.

d. Has the lawyer admitted that he or she owes you money or has he or she agreed to repay you? *If yes, please explain:* Yes. He appologized by phone, but admitted liability of \$500 only, saying that was the amount paid after he found out he was suspended from the practice of law.

e. Have you sued the lawyer or made any other claim? *If yes, please provide the name of the court and a copy of the complaint.* No, I filed an OSB disciplinary complaint which was decided in my favor.

f. Have you obtained a judgment? *If yes, please provide a copy* No

g. Have you made attempts to locate assets or recover on a judgment? *If yes, please explain what you found:* No

6. Information about where you have reported your loss:

District attorney

Police

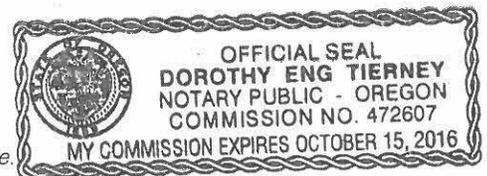
Oregon State Bar Professional Liability Fund

If yes to any of the above, please provide copies of your complaint, if available.

Oregon State Bar Client Assistance Office or Disciplinary Counsel

7. Did you hire another lawyer to complete any of the work? *If yes, please provide the name and telephone number of the new lawyer:* No. I could not afford more as all available funds were paid to Mr. Jordan.

I represented myself.



COMMISSION NO. 472607
MY COMMISSION EXPIRES OCTOBER 15, 2016

8. Please give the name and the telephone number of any other person who may have information about this claim: Anthony Kundelius, 570 N 10th Avenue, #25, Cornelius, OR 97113
503-724-5949

9. Agreement and Understanding

The claimant agrees that, in exchange for any award from the Oregon State Bar Client Security Fund (OSB CSF), the claimant will:

- a. Transfer to the Oregon State Bar all rights the claimant has against the lawyer or anyone else responsible for the claimant's loss, up to the amount of the CSF award.
- b. Cooperate with the OSB CSF in its efforts to collect from the lawyer, including providing information and testimony in any legal proceeding initiated by the OSB CSF.
- c. Notify the OSB CSF if the claimant receives notice that the lawyer has filed for bankruptcy relief.
- d. Notify the OSB CSF if the claimant receives any payment from or otherwise recovers any portion of the loss from the lawyer or any other person on entity and reimburse the OSB CSF to the extent of such payment.

10. Claimant's Authorization

- a. Release of Files: I hereby authorize the release to the OSB Client Security Fund, upon request, of any records or files relating to the representation of me by the lawyer named in Question 2.
- b. Payment to Third Party: I hereby authorize the OSB Client Security Fund to pay all amounts awarded to me to:

Name: _____

Address: _____

Phone: _____

11. Claimant's Signature and Verification

(Each claimant must have a notarized signature page. Please photocopy this page for each person listed in question 1.)

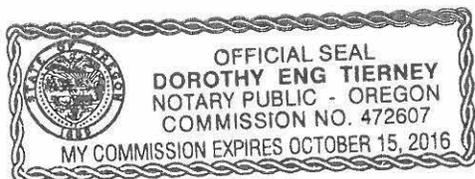
State of Oregon)
 County of Washington) ss

Upon oath or affirmation, I certify the following to be true:

I have reviewed the Rules of the Client Security Fund and the foregoing Application for Reimbursement; and submit this claim subject to the conditions stated therein; and the information which I have provided in this Application is complete and true, to the best of my knowledge and belief.

Arachly Helz
 Claimant's Signature

Signed and sworn (or affirmed) before me this 18 day of June ^{At} August, 2015.



Notary's Signature Dorothy Eng Tierney
 Notary Public for STATE of Oregon - Commission
 My Commission Expires October 15, 2016 472607

Please complete page 4 if an attorney is representing you for this claim.

8-18-15

Dear Oregon State Bar
Security Fund

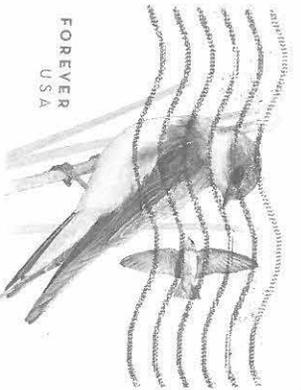
Can you please send me a ^{✓ 8-21-15} copy of the NOTARIZED and Dated claim enclosed for re-embursement. currently I am at the Washington County jail and have trial on the 1st of September 2015 can you please forward a copy of any correspondence to 747 SE Cedar St Hillsboro OR 97123 that is my regular permanent address.

Thank you

Aracely Htz

Name Aracely Hernandez
Bkg. # 15-04079
WASHINGTON COUNTY JAIL
215 SW Adams MS35
Hillsboro, Oregon 97123-3874

PORTLAND OR 970
19 AUG 2015 PM 4 L



Oregon State Bar
Client Security Funds
P O Box 231935
Treasr, OR 97281-1935

97281 193535



OREGON STATE BAR

Board of Governors Agenda

Meeting Date: February 12, 2016
From: Helen Hirschbiel, Executive Director
Re: CSF Awards Recommended for Payment

Action Requested

Consider the following claim for which the Client Security Fund Committee recommends awards:

GERBER (Graue)	\$12,500.00
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Discussion

SUSAN GERBER COMMON FACTS

Beginning sometime in 2010, Susan Gerber practiced in Ontario, Oregon, first with the Rader Stoddard Perez firm, then in a brief partnership with Vicki Vernon, and by 2013 on her own. She represented clients in post-conviction relief cases and criminal appeals.

In the spring and summer of 2014, the bar received several complaints from Gerber's clients and a Malheur County judge alleging that Gerber was missing court dates and not attending to her clients' matters. In response to the bar's investigation, Gerber explained that she had become overwhelmed by her workload starting in December 2013. She also attributed her conduct to her addiction to prescription pain medication following knee surgery. In October 2014, Gerber stipulated to an involuntary transfer to inactive status on the ground that her addiction disabled her from "assisting and cooperating with her attorney and from participating in her defense" of disciplinary matters.

In anticipation of her change of status, Gerber entered into an agreement with Vicki Vernon pursuant to which Vernon would take over 12 of Gerber's pending matters in exchange for \$5,000. The agreement contemplated that Gerber would be reinstated to active practice in 30 days and in the interim would assist Vernon with the transferred cases as a legal assistant or

law clerk. If Gerber was not reinstated in 30 days, the agreement provided for an additional \$10,000 payment to be deposited in Vernon's trust account and from which she could withdraw funds at the rate of \$150 hour for her services to the clients whose matters were transferred.

Gerber was not reinstated in 30 days and remains on disability inactive status. She never paid Vernon the promised \$10,000, but Vernon received that amount from the PLF. Three of Gerber's clients declined to be represented by Vernon, but she continues to represent the remainder.

Susan Gerber's practice was almost entirely post-conviction relief and criminal appeals. She practiced in Ontario, Oregon, first with the Rader Stoddard Perez firm beginning in 2010, then in early 2014 in a partnership with Vicki Vernon. That arrangement lasted only a few months, and by March 2014, Gerber was on her own.¹

In the spring and summer of 2014, the bar received several complaints from Gerber's clients and a Malheur County judge alleging that Gerber was missing court dates and not attending to her clients' matters. In response to the bar's investigation, Gerber explained that she had become overwhelmed by her workload starting in December 2013. She also attributed her conduct to her addiction to prescription pain medication following knee surgery. In October 2014, Gerber stipulated to an involuntary transfer to inactive status on the ground that her addiction disabled her from "assisting and cooperating with her attorney and from participating in her defense" of disciplinary matters.

In anticipation of her change of status, Gerber entered into an agreement with Vicki Vernon pursuant to which Vernon would take over 12 of Gerber's pending matters in exchange for \$5,000. (Three of the clients subsequently chose not to be represented by Vernon.) The agreement contemplated that Gerber would be reinstated to active practice in 30 days and in the interim would assist Vernon with the transferred cases as a legal assistant or law clerk. If Gerber was not reinstated in 30 days, the agreement provided for an additional \$10,000

¹ Prior to moving to Ontario, Gerber worked for several years for the Department of Justice handling similar types of cases. She had the reputation of being very good at her work.

payment to be deposited in Vernon's trust account and from which she could withdraw funds at the rate of \$150 hour for her services to the clients whose matters were transferred.

Gerber was not reinstated in 30 days and remains on disability inactive status. She never paid Vernon the promised \$10,000, but Vernon received that amount from the PLF.

[DATE]

CLIENT SECURITY FUND
INVESTIGATION REPORT

Re : Client Security Fund Claim No.: 2015-09 s/b 2015-17 cmg
Claimant : Scott V. Graue
Lawyer : Susan Gerber
Investigators : Ronald W. Atwood; Gregory A. Reinert

RECOMMENDATION

We recommend payment of Mr. Graue's claim in the amount of \$12,500.00.

CLAIM INVESTIGATION SUMMARY

The claimant, Scott Graue, hired Ms. Gerber on August 20 2014. He paid her a flat fee in the amount of \$12,500.00 to prepare a petition for post conviction relief (PCR). Ms. Gerber provided us with an unsigned copy of the fee agreement. It is an earned upon receipt agreement that allows her to put the fee into the general account. Although it says the fee is non-refundable, it also provides for reimbursement of the fee in the event the representation ends prior to completion of the work. We interviewed Mr. Graue.

On June 8, 2015, the CSF sent notice to Ms. Gerber's attorney, Wayne Mackeson, that a claim had been filed; he later resigned. Nellie Barnard of Holland & Knight was later retained; she also eventually resigned as counsel. Neither counsel submitted a substantive response on behalf of Ms. Gerber. On August 20, 2015, Ms. Gerber requested a continuance in order to respond to the claim. Her continuance was granted and she was given a deadline to respond by October 31, 2015. Ms. Gerber submitted a general response on October 30, 2015. She provided some more specific comments on November 5, 2015.

Scott Graue Background

On March 28, 2013, Mr. Graue was convicted of twelve counts of Sodomy I, and ten counts of Sexual Abuse I.

Susan Gerber Background

Ms. Gerber began practice in 1999; at all times material to this matter, she primarily represented convicts seeking PCR. According to Ms. Gerber's representations to disciplinary counsel, she had become overwhelmed by her workload starting in December of 2013. On March 24, 2014, Ms. Gerber was notified of a disciplinary complaint against her. In April of 2014, Ms. Gerber formed a partnership with Vicki Vernon to handle PCR

cases. On May 30, 2014, Ms. Gerber requested additional time to respond to the allegations. Ms. Vernon left the partnership on June 9, 2014. Ms. Gerber said this dissolution added to her existing personal and professional turmoil.

A transfer of cases agreement was signed October 29, 2014; Ms. Vernon was to take over the cases with consent of the client. Ms. Gerber could continue to work on the cases as a legal assistant. Ms. Gerber was also required to pay Ms. Vernon up to \$15,000.00, depending on the amount of time she was suspended; she only paid \$5000 and the PLF contributed \$10,000 to cover all cases. She eventually moved to Illinois.

This matter is on the list. However, Mr. Graue did not believe he approved Ms. Vernon take over his case. He understood Ms. Vernon's involvement was just for court appearances while Ms. Gerber was inactive. He understood Ms. Gerber was to continue doing the actual work on his PCR. We have been provided a copy of a letter written by Ms. Vernon dated January 20, 2015 in which she confirmed she was not counsel for Mr. Graue.

Post Conviction Relief

Mr. Graue first heard about Susan Gerber around March of 2014. At the time, his direct appeal was still active. He recalls a visit from Ms. Gerber sometime after that where they generally discussed his case; she did not provide him with a fee quote. During the next conversation, Mr. Graue understood the cost for his PCR petition would be a flat fee of \$10,000.00 but Ms. Gerber quoted him an additional \$2,000.00 to deal with a bail issue. Mr. Graue understood an additional \$500.00 was included in the flat fee to pay for an investigator.¹

Ms. Gerber sent Mr. Graue a retainer and "flat fee" agreement on August 20, 2014.² The agreement did not mention the bail issue or the investigator. The agreement stated the \$12,500.00 fee was "earned upon receipt" but also included a provision for refund if the services were not completed. Sometime in August or September of 2014, Mr. Graue recalled calling Ms. Gerber's office and getting strange comments from her staff about whether Ms. Gerber should be told about the receipt of his file materials. Mr. Graue then recalled speaking with Ms. Gerber in October of 2014, in regards to her bar status becoming inactive. Mr. Graue understood Ms. Gerber would be doing the work on his case and Vicki Vernon would handle court appearances. On November 4, 2014, Ms. Vernon sent a letter to Mr. Graue asking if he had consented to her substitution for Ms. Gerber. There is a letter in the file dated January 20, 2015 in which she confirms she was not retained as counsel. I suspect he was still in contact with Ms. Gerber and assumed she would finish his case.

Mr. Graue recalled speaking with Ms. Gerber on several occasions over the next few months. Around March of 2015, Ms. Gerber told him she would be active again in about 30 days. Mr. Graue said she was still very optimistic about his case. He did not have

¹ There is no evidence the investigator was paid.

² The copy sent by Ms. Gerber is unsigned; the copy sent by Mr. Graue is signed.

communication with Susan Gerber after that. He did not directly request a refund from Ms. Gerber, but his sister first raised the issue of a refund in January of 2015. At that time, Ms. Gerber represented she would be able to handle Mr. Graue's PCR.

On January 20, 2015, Ms. Vernon sent a letter to Mr. Graue confirming he did not consent to Ms. Vernon taking over for Ms. Gerber. Ms. Vernon indicated she did not possess any of his client funds. On April 17, 2015, Shannon Winterton, Mr. Graue's sister, explicitly requested a refund of the \$12,500.00 fee. Ms. Gerber did not respond to the demand.

On May 8, 2015, Mr. Graue filed a PCR petition without the assistance of counsel. He also requested the appointment of a public defender; he could not confirm the status of that request. He said he has not been able to get his file back from Ms. Gerber.

Ms. Gerber alleges she read every word of every transcript in this matter. The file is in storage in Idaho. The time log she provided does not support that statement. Further, it shows contact with the Graue family after she was in inactive status and at a time when there was no supervising attorney.

After Mr. Graue filed his PCR petition, he was appointed an attorney, Cheryl Ann Richardson, via the Office of Public Defense Services. Ms. Richardson's fees are provided through the State. There was a filing deadline on November 6, 2015, but Ms. Richardson requested an extension on November 9, 2015. The extension was granted and the new deadline is on March 5, 2015. However, Ms. Richardson has not been able to obtain Mr. Graue's file from Susan Gerber despite several requests. Ms. Richardson contacted Ms. Gerber by email and by letter, but received no response as of December 30, 2015. Ms. Richardson will visit Mr. Graue in-person in February of 2016, but without the file from Ms. Gerber she anticipates another extension will be necessary.

Analysis

Ms. Gerber did work on this matter after Mr. Graue hired her to handle his petition for PCR and to recover bail money. Her log shows some 24 hours. Thus, she spent considerable time on the matter; she also alleges she has a large file in storage.³ However, she did not produce a product useful to the client.

Rule 2.2.3 provides that reimbursement of a legal fee will be allowed where the work performed was minimal or insignificant. In this case, it is hard to say the work was minimal with 24 hours spent. However, there is no evidence of a significant product being produced. There is no draft PCR petition. All that a subsequent lawyer could use would be the documents gathered by the lawyer; that cannot occur since the file is locked up in Idaho. There is no evidence the petition that was filed relied upon anything developed by Ms. Gerber. As such, we conclude the work performed was insignificant.

³ Mr. Graue has complained he has asked for the file, but it has not yet been provided.

FINDINGS AND CONCLUSIONS

1. Ms. Gerber was admitted to the Oregon State Bar on September 30, 2009.
2. On March 24, 2014, Ms. Gerber was notified of a disciplinary complaint against her.
3. Scott Graue was a client of Susan Gerber. The objective of representation was to obtain post conviction relief and recovery of bail money. She was hired on August 20, 2014.
4. Mr. Graue signed a fee agreement and paid Ms. Gerber \$12,500.00.
5. The fee agreement indicates the fee was earned upon receipt. However, there was also a provision unearned amounts would be returned if the representation was terminated before the object of the representation was obtained.
6. On October 9, 2014, Ms. Gerber petitioned for her bar status to become inactive, based upon a disability, which was approved by the Supreme Court on November 20, 2014.
7. The legal services provided by Ms. Gerber were insignificant. At the time she was hired, Ms. Gerber was aware a disciplinary action had been filed against her; she had already requested an extension of time to respond to it.
8. Ms. Gerber became overwhelmed starting in December of 2013 due to a combination of personal and professional issues. She developed a pattern of untimeliness.
9. Ms. Gerber communicated with Mr. Graue about her inactive bar status but also told him she could continue to work on his case. There is no evidence she provided significant legal services for Mr. Graue; he eventually had to file his PCR petition pro se on May 8, 2015. He now has an attorney provided by the State, but she has not been able to do significant work on the PCR because Ms. Gerber has not released Mr. Graue's file.
10. Mr. Graue is entitled to a return of his retainer in the sum of \$12,500.00.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: February 12, 2016
Memo Date: January 29, 2016
From: Judith Baker, Director Legal Services Program and LSP Committee
Re: Disbursement of General Fund Revenue to Legal Aid Providers

Action Recommended

Approve the following recommendation from the Legal Services Program Committee disbursing the general fund revenue held by the Oregon State Bar to the legal aid providers.

Background

The four legal aid programs, Legal Aid Services of Oregon (LASO), Oregon Law Center (OLC), Lane County Legal Aid and Advocacy Center (LCLAC) and Center for Nonprofit Legal Services (CNPLS), ask the OSB Legal Services Committee and the Board of Governors to distribute the general fund revenue based on poverty population. The American Community Survey (ACS) data provides the most reliable population estimates. Legal aid uses this demographic data in strategic planning. According to the ACS data, 11.34% of the individuals living in Oregon who are financially eligible for legal aid, because they have incomes below 125% of the national poverty guidelines, live in Lane County. Therefore, 11.34% of the \$600,000 should be sent to LCLAC. Similarly, 5.76% of the \$600,000 should be sent to CNPLS because that is the percentage of people who are eligible for legal aid who live in Jackson County. LASO and OLC serve the remainder of the state and should receive 82.9% of the \$600,000 to serve the low-income people living in the regions where they have primary responsibility. LASO and OLC will divide their share equally. This would breakout as follows:

- LCLAC \$68,040 ($\$600,000 \times .1134 = \$68,040$)
- CNPLC \$34,560 ($\$600,000 \times .0576 = \$34,560$)
- LASO \$248,700 ($\$600,000 \times .82.9 = \$497,400/2 = \$248,700$)
- OLC \$248,700 ($\$600,000 \times .82.9 = \$497,400/2 = \$248,700$)

The legal aid programs in Oregon ask that this revenue be distributed by OSB to each legal aid program in two equal payments, with one payment distributed in March 2016 and one payment distributed in January of 2017. To the extent that there are new developments, the programs may ask the OSB Legal Services Committee and the OSB to make adjustments to the payments scheduled for January of 2017. For example, further reductions in the federal appropriation for the Legal Services Corporation for FY2017 could cause the programs to request that a higher percentage be sent to LASO in order to maintain a stable statewide delivery system.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: February 12, 2016
From: Legal Ethics Committee
Re: Updating OSB Formal Ethics Opinions 2005-30, 2005-68, 2005-77, 2005-94, 2005-121, 2005-128, 2005-157 and 2005-166

Issue

The Board of Governors must decide whether to adopt the proposed amendments to the formal ethics opinions.

Options

1. Adopt the proposed amendments to the formal ethics opinions.
2. Decline to adopt the proposed amendments to the formal ethics opinions.

Discussion

The Oregon Supreme Court adopted numerous amendments to the Oregon Rules of Professional Conduct over the last couple of years. In addition, there have been several court decisions on matters of professional responsibility. The Committee continues its review of the formal ethics opinions to determine whether and how the opinions need to be amended to bring them into conformance with the new rules and case law.

OSB Formal Op No 2005-128 has been amended to reflect the amendment to RPC 1.6(b) that allows for limited disclosure of client confidences in order to detect and resolve conflicts of interest when a lawyer moves firms. The amendments to this opinion include swapping out the relevant prior rule with the amended rule and providing additional explanation to the extent necessary. The committee made no changes to the substantive positions taken in the opinion.

OSB Formal Op No 2005-94 has been amended to bring it in conformance with the Oregon Supreme Court's decision in *In re Spencer*, 355 Or 679 (2014), which clarified that a lawyer who serves as both lawyer and real estate broker for a client does not have a conflict under RPC 1.7(a)(2) solely by virtue of the fact that the lawyer may receive a sales commission.

OSB Formal Op Nos 2005-30, 2005-68, 2005-77, 2005-121, 2005-157, 2005-166 have been amended to include a footnote that clarifies that the tripartite relationship that is generally presumed to exist in the insurance defense context can be overcome by the specific facts and circumstances in a particular matter.

Staff recommends adopting the proposed amended opinions.

Attachments: Redline versions of OSB Formal Ethics Op Nos. 2005-30, 2005-68, 2005-77, 2005-94, 2005-121, 2005-128, 2005-157 and 2005-166.

FORMAL OPINION NO. 2005-30

Conflicts of Interest, Current Clients: Simultaneous Representation of Insurer and Insured

Facts:

Insured has a property damage insurance policy with Insurer. When Insured's property is damaged by the negligent conduct of a third party, Insurer pays Insured to the extent required by the policy, minus the applicable deductible. The policy provides that, to the extent that Insurer pays Insured, Insurer is subrogated to Insured's claims against third parties.

Insurer now proposes to pay Lawyer to represent both Insurer and Insured in an action against a third party to recover damages not reimbursed by Insurer to Insured as well as the sums that Insurer paid to Insured. At the time that Insurer makes this request, it does not appear that the interests of Insurer and Insured do or may diverge.

Question:

May Lawyer undertake to represent both Insurer and Insured in an action against the third party?

Conclusion:

Yes, qualified.

Discussion:

In undertaking this representation, Lawyer would have both Insurer and Insured as clients, even though the action may be prosecuted solely in Insured's name.¹ See, e.g., ABA Informal Ethics Op No 1476

¹ [Any assumption that a tripartite relationship exists can be overcome by the specific facts and circumstances in a particular matter. See *In re Weidner*, 310 Or 757, 801 P2d 828 \(1990\) \(articulating the test for an attorney-client relationship\); *Evraz Inc., N.A., v. Continental Ins. Co.*, Civ. No. 3:08-cv-00447-AC, 2013 WL 6174839 \(D.Or. 2013\) \(finding no tripartite relationship where insurer did not hire lawyer and where lawyer had made it clear to insurer that she only represented insured\).](#)

(1981); ABA Formal Ethics Op No 282 (1950); 1 *Insurance* ch 14 (Oregon CLE 1996 & Supp 2003). Since Insurer would be paying Lawyer's fee, Lawyer must comply with the requirements of Oregon RPC 1.8(f):

A lawyer shall not accept compensation for representing a client from one other than the client unless:

- (1) the client gives informed consent;
- (2) there is not interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and
- (3) information related to the representation of a client is protected as required by Rule 1.6.

Oregon RPC 5.4(c) is also relevant:

A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.

As long as Lawyer does not permit improper influence within the meaning of Oregon RPC 5.4(c) and obtains informed consent from Insured pursuant to Oregon RPC 1.8(f)(1) and [Oregon RPC 1.0\(g\)](#),² the simultaneous representation would not be prohibited. There also is no reason this representation should be prohibited by Oregon RPC 1.7.³ As

² Oregon RPC 1.0(g) provides:

"Informed consent" denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct. When informed consent is required by these Rules to be confirmed in writing or to be given in a writing signed by the client, the lawyer shall give and the writing shall reflect a recommendation that the client seek independent legal advice to determine if consent should be given.

³ Oregon RPC 1.7 provides:

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

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

discussed in OSB Formal Ethics Op No 2005-27, a lawyer may represent multiple clients without special disclosure and consent if it does not reasonably appear that a conflict is present. *Cf. In re Stauffer*, 327 Or 44, 48 n 2, 956 P2d 967 (1998) (citing *In re Samuels & Weiner*, 296 Or 224, 230, 674 P2d 1166 (1983)).

Approved by Board of Governors, August 2005.

COMMENT: For more information on this general topic and other related subjects, see *The Ethical Oregon Lawyer* §§ 3.36, 9.17 (Oregon CLE 2003); *Restatement (Third) of the Law Governing Lawyers* § 134 (2003); and ABA Model Rule 1.8(f). See also OSB Formal Ethics Op Nos 2005-166 (insurance defense lawyer may not agree to comply with insurer's billing guidelines if to do so requires lawyer to materially compromise his or her ability to exercise independent judgment on behalf of client in violation of RPCs), [OSB Formal Ethics Op No 2005-115](#) (lawyer may not

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

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

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

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

(2) the representation is not prohibited by law;

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

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

Formal Opinion No 2005-30

ethically permit representation of client to be controlled by others), [OSB Formal Ethics Op No 2005-98](#) (lawyer may ethically agree with insurer to handle number of cases for insurer at flat rate per case regardless of amount of work required as long as overall fee is not clearly excessive and as long as lawyer does not permit existence of agreement to limit work that lawyer would otherwise do for particular client).

FORMAL OPINION NO. 2005-68

Trust Accounts: Claims of Two or More Persons

Facts:

Lawyer represents Insurer and Insured in an action against a third party to recover damages allegedly caused by a third party's negligence. Insurer tells Lawyer that when settlement funds are received, Lawyer must forward all funds to Insurer and that Insurer will be the one to decide how much Insurer keeps by way of subrogation and how much is forwarded to Insured for uninsured losses.

Question:

May Lawyer honor Insurer's request?

Conclusion:

No.

Discussion:

Under these facts, Lawyer has two clients, Insurer and Insured.¹ OSB Formal Ethics Op No 2005-30. Any settlement proceeds would represent funds of both of Lawyer's clients.

Oregon RPC 1.15-1(d) and (e) provide:

(d) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon

¹ [Any assumption that a tripartite relationship exists can be overcome by the specific facts and circumstances in a particular matter. See In re Weidner, 310 Or 757, 801 P2d 828 \(1990\) \(articulating the test for an attorney-client relationship\); Evraz Inc., N.A., v. Continental Ins. Co., Civ. No. 3:08-cv-00447-AC, 2013 WL 6174839 \(D.Or. 2013\) \(finding no tripartite relationship where insurer did not hire lawyer and where lawyer had made it clear to insurer that she only represented insured\).](#)

Formal Opinion No 2005-68

request by the client or third person, shall promptly render a full accounting regarding such property.

(e) When in the course of representation a lawyer is in possession of property in which two or more persons (one of whom may be the lawyer) claim interests, the property shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the property as to which the interests are not in dispute.

On the facts as presented, Insurer is not “entitled to receive” the full amount of settlement funds collected within the meaning of Oregon RPC 1.15-1(d). *Cf. In re Conduct of Howard*, 304 Or 193, 204, 743 P2d 719 (1987); OSB Formal Ethics Op No 2005-52. If Insurer and Insured agree on how to divide the money, Lawyer must make the agreed-on division. If not, Lawyer must either retain any disputed sums pending resolution of the dispute, as provided in Oregon RPC 1.15(e), or interplead the disputed funds. *Cf. OSB Formal Ethics Op No 2005-52.*

Approved by Board of Governors, August 2005.

COMMENT: For additional information on this general topic and related subjects, see *The Ethical Oregon Lawyer* §§ 9.17, § 11.3, §§ 11.7–11.8 (Oregon CLE 2003); *Restatement (Third) of the Law Governing Lawyers* §§ 45, § 46 comment d, 134 (2003); and ABA Model Rule 1.15.

FORMAL OPINION NO. 2005-77

**Conflicts of Interest, Current Clients:
Representation of Insured
After Investigation of Matter for Insurer**

Facts:

Lawyer is retained by Insurer to review an insurance policy issued to Insured because of a complaint filed by a third party against Insured. Lawyer advises Insurer that Insurer has a duty to defend Insured but may well not have a duty to pay any ultimate judgment. After that work is completed, Insurer asks Lawyer to represent Insurer and Insured in defense of the underlying litigation subject to a reservation of rights.

Question:

May Lawyer represent Insurer and Insured in defense of the underlying litigation?

Conclusion:

See discussion.

Discussion:

As discussed in OSB Formal Ethics Op No 2005-30, both Insured and Insurer would be Lawyer's clients in the defense of the underlying action.¹ Simultaneous representation in insurance defense cases is generally permissible: a conflict that falls within Oregon RPC 1.7

¹ [Any assumption that a tripartite relationship exists can be overcome by the specific facts and circumstances in a particular matter. See In re Weidner, 310 Or 757, 801 P2d 828 \(1990\) \(articulating the test for an attorney-client relationship\); Evraz Inc., N.A., v. Continental Ins. Co., Civ. No. 3:08-cv-00447-AC, 2013 WL 6174839 \(D.Or. 2013\) \(finding no tripartite relationship where insurer did not hire lawyer and where lawyer had made it clear to insurer that she only represented insured\).](#)

generally will not exist because the clients have common interest in defeating the claim.² *See also* OSB Formal Ethics Op No 2005-121.

² If the representation of one client will be directly adverse to the other client, the proposed representation would be impermissible even if both Insurer and Insured consented. *See In re Holmes*, 290 Or 173, 619 P2d 1284 (1980) (under former DR 5-105, consent would not have cured actual conflict of interest between lawyer's two clients). If there a significant risk that the representation of one client will be materially limited by the lawyer's responsibilities to the other client, the representation would be permissible, but only if Lawyer reasonably believes that he or she is able to competently represent both clients, and Insurer and Insured give informed consent, confirmed in writing. *Cf. In re Conduct of Barber*, 322 Or 194, 904 P2d 620 (1995).

Oregon RPC 1.7 provides:

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

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

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

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

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

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

(2) the representation is not prohibited by law;

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

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

In this situation, however, the fact of Lawyer’s recently completed work for Insurer on the coverage question must also be considered. Because of that work, if there is a significant risk that Lawyer’s representation of Insured in defense of the underlying claim will be materially limited by Lawyer’s responsibilities to Insurer, a conflict will be present under Oregon RPC 1.7(a). Consequently, Lawyer could not represent both Insurer and Insured in the underlying action without a reasonable belief that Lawyer could competently represent both clients, and only after receiving informed consent, confirmed in writing, from both Insurer and Insured pursuant to Oregon RPC 1.7(b), Oregon RPC 1.0(b), and ~~1.0~~(g). The disclosure to Insured must include a discussion of the fact of the prior representation of Insurer on the coverage question and its potential significance. *Cf. In re Germundson*, 301 Or 656, 661, 724 P2d 793 (1986); *In re Conduct of Montgomery*, 292 Or 796, 802–804, 643 P2d 338 (1982); *In re Benson*, 12 DB Rptr 167 (1998); *In re Rich*, 13 DB Rptr 67 (1999).

Oregon RPC 1.0(b) and (g) provide:

(b) “Confirmed in writing,” when used in reference to the informed consent of a person, denotes informed consent that is given in writing by the person or a writing that a lawyer promptly transmits to the person confirming an oral informed consent. . . . If it is not feasible to obtain or transmit the writing at the time the person gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter.

. . . .

(g) “Informed consent” denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct. When informed consent is required by these Rules to be confirmed in writing or to be given in a writing signed by the client, the lawyer shall give and the writing shall reflect a recommendation that the client seek independent legal advice to determine if consent should be given.

Oregon RPC 1.8(f) and [Oregon RPC 5.4\(c\)](#) also apply to this situation.³ On the present facts, however, these rules do not create any additional requirements beyond those created by Oregon RPC 1.7.

Approved by Board of Governors, August 2005.

³ Oregon RPC 1.8(f) provides:

(f) A lawyer shall not accept compensation for representing a client from one other than the client unless:

- (1) the client gives informed consent;
- (2) there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and
- (3) information related to the representation of a client is protected as required by Rule 1.6.

Oregon RPC 5.4(c) provides:

(c) A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.

COMMENT: For additional information on this general topic and other related subjects, see *The Ethical Oregon Lawyer* §§ 3.36, § 9.2, §§ 9.8–9.11, § 9.13, § 9.17, § 9.20, §§ 20.1–20.15 (Oregon CLE 2003); *Restatement (Third) of the Law Governing Lawyers* §§ 121–122, § 128, § 130, § 134 (2003); and ABA Model Rules 1.0(b) and (e), 1.7, 1.8(f), 5.4(c). See also OSB Formal Ethics Op No 2005-157; Washington Informal Ethics Op No 943 (unpublished).

FORMAL OPINION NO. 2005-94
Conflicts of Interest:
Lawyer's Spouse as Real Estate Broker

Facts:

Lawyer is married to Real Estate Broker but does no legal work for Real Estate Broker.

Questions:

1. May Lawyer represent a seller in drafting a listing agreement with Real Estate Broker?
2. May Lawyer represent the seller or buyer in a transaction from which Real Estate Broker will earn a commission?

Conclusions:

1. Yes, qualified.
2. Yes, qualified.

Discussion:

Because Real Estate Broker is ~~by hypothesis~~, not a client of Lawyer, it is unnecessary to consider the potential applicability of Oregon RPC 1.7 as it relates to a current client conflict between two clients.¹ However, Lawyer must consider whether Lawyer's own personal interests, or Lawyer's interests in and responsibilities to Lawyer's spouse, would create a conflict in representing seller under either scenario. Oregon RPC 1.7 is relevant in regard to Lawyer's personal interest in the matter.²

Oregon RPC 1.7 provides, in pertinent part:

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

...

(2) there is a significant risk that the representation of one or more clients will be materially limited . . . by a personal interest of the lawyer.

....

¹ For opinions discussing the point at which a lawyer-client relationship is formed, see, e.g., OSB Formal Ethics Op No 2005-46; *In re Harrington*, 301 Or 18, 718 P2d 725 (1986); and *In re Weidner*, 310 Or 757, 801 P2d 828 (1990).

² For opinions discussing the point at which a lawyer-client relationship is formed, see, e.g., OSB Formal Ethics Op No 2005-46; *In re Harrington*, 301 Or 18, 718 P2d 725 (1986); and *In re Weidner*, 310 Or 757, 801 P2d 828 (1990).

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

- (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
- (2) the representation is not prohibited by law;
- (3) the representation does not obligate the lawyer to contend for something on behalf of one client that the lawyer has a duty to oppose on behalf of another client; and
- (4) each affected client gives informed consent, confirmed in writing.

~~Oregon RPC 1.8(a) provides:~~

~~A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:~~

~~(1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client;~~

~~(2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and~~

~~(3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.~~

Oregon RPC 1.0(b) and (g) provide:

(b) "Confirmed in writing," when used in reference to the informed consent of a person, denotes informed consent that is given in writing by the person or a writing that a lawyer promptly transmits to the person confirming an oral informed consent. . . . If it is not feasible to obtain or transmit the writing at the time the person gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter.

. . . .

(g) "Informed consent" denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct. When informed consent is required by these Rules to be confirmed in writing or to be given in a writing signed by the client, the lawyer shall give and the writing shall reflect a recommendation that the client seek independent legal advice to determine if consent should be given.

Marriage is a civil contract (ORS 106.010) carrying with it a myriad of rights and responsibilities under federal and state law.³ The degree to which spouses share common rights,

³ Spouses may file joint tax returns becoming jointly and severally liable for income taxes for relevant years; they may incur joint and several liabilities for acquisition of major assets; they share government regulated benefits, including those regulated by ERISA; if they have lived in a community property state, community property rights may have attached to their assets as they move from state to state; upon filing a petition for dissolution, assets become shared, as a matter of law.

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liabilities and interests may affect how significant the risk that the representation of a client will be materially affected by Lawyer's interests in or responsibility to his or her spouse.⁴ See Restatement (Third) of the Law Governing Lawyers §125 (2003).

The Oregon Supreme Court recently discussed a similar situation in which Lawyer served as both lawyer and broker for a client, addressing whether there was a significant risk that representation of the client in a bankruptcy and real estate transaction would be materially limited by the lawyer's personal interest in receiving a sales commission. The Court determined that the prospect of receiving a commission was not enough, standing alone, to create a conflict under RPC 1.7(a)(2). *In re Conduct of Spencer*, 355 Or. 679, 692 (2014). Even so, the Court cautioned:

If, as other jurisdictions have held, additional aspects of a real estate transaction (on which the Bar does not rely here) can result in a current conflict under RPC 1.7(a)(2), careful lawyers who seek to serve as both a client's legal advisor and broker in the same real estate transaction would be advised to satisfy the advice and consent requirements of both RPC 1.8(a) and RPC 1.7(b). See ABA Model Rules, Rule 1.8, comment [3] (recognizing that the same transaction can implicate both rules and require that both consent requirements be satisfied).

Id. at 697.

It seems unlikely that Lawyer can successfully deny that there is a significant risk there is either personal interest or a duty to a third person (a spouse) creating a current conflict of interest. Lawyer should take the steps described in Oregon RPC 1.7(2) to advise client of the current conflict and obtain "informed consent" to representation.

Oregon RPC 1.7(a)(2) would clearly be violated if Lawyer were to represent a buyer or seller in a real property transaction in which Lawyer's spouse stood to earn a commission unless Lawyer's client gives informed consent, confirmed in writing. Cf. *In re Baer*, 298 Or 29, 688 P2d 1324 (1984); *In re Henderson*, 10 DB Rptr 51 (1996). Assuming, without concluding, that representation of a client under these circumstances also constitutes a "business transaction with a client" within the meaning of Oregon RPC 1.8(a), the client's informed consent would also be required to avoid a violation of that rule. Cf. *In re Luebke*, 301 Or 321, 722 P2d 1221 (1986).

Approved by Board of Governors, August 2005.

⁴ Oregon courts have long recognized that a husband and wife do not deal at arms' length and have imposed a fiduciary duty of the highest degree in transactions between them. *Matter of Marriage of Eltroth*, 67 Or.App. 520 (1984). Arguably, this duty alone may trigger Lawyer's duties under Oregon RPC 1.7(a)(2).

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COMMENT: For additional information on this general topic and other related subjects, see THE ETHICAL OREGON LAWYER §§8.2–8.5, 8.9–8.12, 8.14, 9.22, 20.1–20.15 (Oregon CLE 2003); RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS §§122, 125–126 (2003); and ABA Model Rules 1.0(b), (e), 1.7–1.8.

FORMAL OPINION NO. 2005-121

**Conflicts of Interest, Current Clients:
Insurance Defense**

Facts:

Plaintiff files a complaint against Insured that includes two claims for relief. Insured has an insurance policy pursuant to which Insurer owes a duty to defend against, and a duty to pay damages on, the first claim for relief. Insurer would have no such duties, however, if Plaintiff had sued only on the second claim for relief. The amount of damages sought on the second claim exceeds policy limits.

Insured tenders the defense of the entire action to Insurer. Insurer accepts the tender of defense of both claims subject to a reservation of rights with respect to the second claim. Insurer then hires Lawyer to represent Insured in the case brought by Plaintiff.

After reviewing the pleadings and investigating the facts, Lawyer concludes that the first claim for relief may be subject to a motion to dismiss or a summary judgment motion or that it may be possible, for a sum that Insurer would be willing to pay, to settle the first claim only. The second claim, however, is not potentially subject to such motions and cannot be settled. Lawyer also knows that Insured does not want Lawyer to bring such a motion or effect such a partial settlement because doing so would leave Insured without an Insurer-paid defense on the second claim for relief and would diminish the ability of Insured to get funds from Insurer to help settle the case as a whole.

Question:

May Lawyer file a motion against the first claim or settle it?

Conclusion:

No.

Discussion:

As a general proposition, a lawyer who represents an insured in an insurance defense case has two clients: the insurer and the insured.¹ OSB Formal Ethics Op Nos 2005-77, [OSB Formal Ethics Op No 2005-30](#). Consequently, a lawyer in such a situation must be mindful of the restrictions in Oregon RPC 1.7 on current-client conflicts of interest:

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

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

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

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

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

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

(2) the representation is not prohibited by law;

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

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

¹ [Any assumption that a tripartite relationship exists can be overcome by the specific facts and circumstances in a particular matter. See In re Weidner, 310 Or 757, 801 P2d 828 \(1990\) \(articulating the test for an attorney-client relationship\); Evraz Inc., N.A., v. Continental Ins. Co., Civ. No. 3:08-cv-00447-AC, 2013 WL 6174839 \(D.Or. 2013\) \(finding no tripartite relationship where insurer did not hire lawyer and where lawyer had made it clear to insurer that she only represented insured\).](#)

For the definitions of *informed consent* and *confirmed in writing*, see Oregon RPC 1.0(b) and (g).²

The relationship between Lawyer, Insured, and Insurer is both created and limited by the insurance policy. As the court stated in *Nielsen v. St. Paul Companies*, 283 Or 277, 280, 583 P2d 545 (1978), for example:

When a complaint is filed against the insured which alleges, without amendment, that the insured is liable for conduct covered by the policy, the insurer has the duty to defend the insured, even though other conduct is also alleged which is not within the coverage. . . . The insurer owes a duty to defend if the claimant can recover against the insured under the allegations of the complaint *upon any basis* for which the insurer affords coverage. [Emphasis in original; citations omitted.]

See also ABA Formal Ethics Op No 282 (1950), which notes that simultaneous representation of insurers and insureds in actions brought by third parties generally does not raise conflict problems because of the “community of interest” growing out of the insurance contract.

When an insurer defends an insured without any reservation of rights (by which the insured reserves its right to deny coverage), there is

² Oregon RPC 1.0(b) and (g) provide:

(b) “Confirmed in writing,” when used in reference to the informed consent of a person, denotes informed consent that is given in writing by the person or a writing that a lawyer promptly transmits to the person confirming an oral informed consent. . . . If it is not feasible to obtain or transmit the writing at the time the person gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter.

. . . .

(g) “Informed consent” denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct. When informed consent is required by these Rules to be confirmed in writing or to be given in a writing signed by the client, the lawyer shall give and the writing shall reflect a recommendation that the client seek independent legal advice to determine if consent should be given.

little or no opportunity for a conflict of interest because the community of interest between the insurer and insured should be complete. When an insurer defends subject to a reservation of rights, however, a risk of conflict is present. To minimize this risk and to permit joint representation in such cases, both the ethics rules and insurance law require that a lawyer hired by the insurer to defend an insured must treat the insured as “the primary client” whose protection must be the lawyer’s “dominant” concern. *See, e.g.*, ABA Informal Ethics Op No 1476 (1981); 1 *Insurance* chs 6, 14 (Oregon CLE 1996 & Supp 2003).³ Consequently, a lawyer who is hired to defend the insured in a situation such as the one described in this opinion cannot file a motion that would adversely affect the insured’s right to a defense or to coverage but must indeed act in a manner that is consistent with the interests of the insured.⁴ *See Insurance, supra. See also Barmat v. John and Jane Doe Partners A–D*, 155 Ariz 519, 747 P2d 1218, 1219 (~~Ariz~~1987).

Approved by Board of Governors, August 2005.

COMMENT: For additional information on this general topic and other related subjects, see *The Ethical Oregon Lawyer* §9.17 (Oregon CLE 2003); *Restatement (Third) of the Law Governing Lawyers* §134 (2000); and ABA Model Rules 1.0(b), (e), 1.7.

³ The law also provides that if there is a potential conflict between the insurer and the insured, the facts found by the court in the action by the third party against the insured will not be given collateral estoppel effect as to either the insurer or the insured in a subsequent coverage dispute. *See, e.g., Ferguson v. Birmingham Fire Ins. Co.*, 254 Or 496, 509–~~5~~11, 460 P2d 342 (1969).

⁴ The insurer is free to hire other counsel to litigate the coverage issue.

FORMAL OPINION NO. 2005-128

**Conflicts of Interest, Current and Former Clients:
Lawyer Changing Firms, Imputed Disqualification**

Facts:

While Lawyer was at ~~Old~~ Former Firm, Lawyer was the only lawyer who worked on or acquired information relating to the representation of Client. Subsequently, Lawyer left ~~Old~~ Former Firm to start New Firm, and Client directed all pending or further work to New Firm.

Question:

May ~~Old~~ Former Firm represent parties adversely to Client without Client's consent?

Conclusion:

Yes, qualified.

Discussion:

Oregon RPC 1.10(b) provides:

(b) When a lawyer has terminated an association with a firm, the firm is not prohibited from thereafter representing a person with interests materially adverse to those of a client represented by the formerly associated lawyer and not currently represented by the firm, unless:

- (1) the matter is the same or substantially related to that in which the formerly associated lawyer represented the client; and
- (2) any lawyer remaining in the firm has information protected by Rules 1.6 and 1.9(c) that is material to the matter.

Oregon RPC 1.6 provides:

- (a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).
- (b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:
 - ~~(1) to disclose the intention of the lawyer's client to commit a crime and the information necessary to prevent the crime;~~
 - ~~(2) to prevent reasonably certain death or substantial bodily harm;~~
 - ~~(3) to secure legal advice about the lawyer's compliance with these Rules;~~~~(4) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client;~~
 - ~~(5) to comply with other law, court order, or as permitted by these Rules; or~~

~~_____ (6) _____ to provide the following information in discussions preliminary to the sale of a law practice under Rule 1.17 with respect to each client potentially subject to the transfer: the client's identity; the identities of any adverse parties; the nature and extent of the legal services involved; and fee and payment information. A potential purchasing lawyer shall have the same responsibilities as the selling lawyer to preserve confidences and secrets of such clients whether or not the sale of the practice closes or the client ultimately consents to representation by the purchasing lawyer. (6) _____ in connection with the sale of a law practice under Rule 1.17 or to detect and resolve conflicts of interest arising from the lawyer's change of employment or from changes in the composition or ownership of a firm. In those circumstances, a lawyer may disclose with respect to each affected client the client's identity, the identities of any adverse parties, the nature and extent of the legal services involved, and fee and payment information, but only if the information revealed would not compromise the attorney-client privilege or otherwise prejudice any of the clients. The lawyer or lawyers receiving the information shall have the same responsibilities as the disclosing lawyer to preserve the information regardless of the outcome of the contemplated transaction.~~

~~_____ (7) _____ to comply with the terms of a diversion agreement, probation, conditional reinstatement or conditional admission pursuant to BR 2.10, BR 6.2, BR 8.7 or Rule for Admission Rule 6.15. A lawyer serving as a monitor of another lawyer on diversion, probation, conditional reinstatement or conditional admission shall have the same responsibilities as the monitored lawyer to preserve information relating to the representation of the monitored lawyer's clients, except to the extent reasonably necessary to carry out the monitoring lawyer's responsibilities under the terms of the diversion, probation, conditional reinstatement or conditional admission and in any proceeding relating thereto.~~

~~(c) _____ A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.~~

Oregon RPC 1.9(c) provides:

(c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:

(1) use information relating to the representation to the disadvantage of the former client except as these Rules would permit or require with respect to a client, or when the information has become generally known; or

(2) reveal information relating to the representation except as these Rules would permit or require with respect to a client.

~~Ordinarily, OldFormer Firm's representation in matters adverse to Client might may give rise to former client conflicts that could be waived only with the informed consent of all affected clients, confirmed in writing. See, e.g., Oregon RPC 1.0(b), and 1.0(g) as; cited in OSB Formal Ethics Op Nos 2005-17 and 2005-11.~~

Because Lawyer has left OldFormer Firm, however, OldFormer Firm will need conflicts waivers to pursue matters involving its former Client only when ~~“the matter is the same or substantially related to that in which Lawyer formerly represented Client while associated with OldFormer Firm, and~~ any lawyer remaining in ~~OldtheFormer Ffirm~~ has information protected by Rules 1.6 and 1.9(c) that is material to the matter.²² Oregon RPC 1.10(b).

As presented in these facts, no lawyer ~~who is~~ still at OldFormer Firm worked on, or actually acquired information relating to the representation of Client while Lawyer was at Old Firm~~protected by these rules~~. Cf. OSB Formal Ethics Op No 2005-120 and sources cited; *Gas-A-Tron v. Union Oil Co.*, 534 F2d 1322 (9th Cir 1976).¹ The sole remaining question, then, is whether it can be said that any lawyer remaining at OldFormer Firm subsequent to Lawyer's departure acquired information or is deemed to "have" "has" information relating to the representation of Client while Lawyer was at OldFormer Firm, and whether if OldFormer Firm has retained files, including electronic documents, of Client that contain information that is material to the matter.

If OldFormer Firm takes sufficient steps to assure that no lawyer at OldFormer Firm has or will actually acquire ~~the~~ information relating to the representation of Client while Lawyer was at OldFormer Firm in the future—by, for example, by segregating, restricting access to, or destroying such materials or returning them to Client without retaining copies—OldFormer Firm has or will have established that no lawyer remaining at OldFormer Firm will have such information, and any obligations under Oregon RPC 1.10(b) will clearly have been met.² *See also* OSB Formal Ethics Op No 2005-174.

Approved by Board of Governors, August 2005.

¹ Cf. Oregon RPC 1.9(b), which prohibits a lawyer from being adverse to a client of the lawyer's former law firm if the lawyer "had acquired information" about the former firm's client that is protected by Oregon RPC 1.6 and 1.9(c) and is material to the matter. ABA Model Rule 1.9 comment [5] explains that Model Rule 1.9(b) operates to disqualify the lawyer who has *actual* knowledge of protected information.

² Cf. Oregon RPC 1.18, which permits a firm to undertake a representation adverse to a prospective client who consulted with one member of a firm, provided the consulting member is adequately screened from participating in the matter, and written notice is promptly given to the prospective client. Adequate screening means employing procedures reasonably adequate to protect information that the isolated lawyer is obligated to protect.

COMMENT: For additional information on this general topic, and other related subjects, see THE ETHICAL OREGON LAWYER §§9.3–9.6, 9.25 (Oregon CLE 2006 rev.2003); RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS §§121–124, 132 (2003); and ABA Model Rules 1.6, 1.9–1.10.

FORMAL OPINION NO 2005-157

[REVISED 2014]

Information Relating to the Representation of a Client: Submission of Bills to Insurer's Third-Party Audit Service

Facts:

Lawyer represents Client whose insurance carrier is paying the bills. The insurance carrier asks Lawyer to submit Client's detailed bills to a third-party audit service.

Questions:

1. May Lawyer submit Client's bills to a third-party audit service at the request of Client's insurance carrier?

2. May Lawyer ethically seek Client's consent to submit Client's bills, which contain information relating to the representation of a client, to a third-party audit service?

Conclusions:

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

Discussion:

Absent an agreement to the contrary, an Oregon lawyer who represents an insured in an insurance defense case will generally have two clients: the insurer and the insured.¹ OSB Formal Ethics Op Nos 2005-121, [OSB Formal Ethics Op No 2005-77](#), [OSB Formal Ethics Op No 2005-30](#). Both the Oregon RPCs and insurance law as interpreted in Oregon require that a lawyer hired by the insurer to defend an insured

¹ Any assumption that a tripartite relationship exists can be overcome by the specific facts and circumstances in a particular matter. See In re Weidner, 310 Or 757, 801 P2d 828 (1990) (articulating the test for an attorney-client relationship); Evraz Inc., N.A., v. Continental Ins. Co., Civ. No. 3:08-cv-00447-AC, 2013 WL 6174839 (D.Or. 2013) (finding no tripartite relationship where insurer did not hire lawyer and where lawyer had made it clear to insurer that she only represented insured).

must treat the insured as “the primary client” whose protection must be the lawyer’s “dominant” concern. OSB Formal Ethics Op No 2005-121.

One of a lawyer’s most important duties is the preservation of information relating to the representation of a client. Oregon RPC 1.6 provides:

(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).

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

(1) to disclose the intention of the lawyer’s client to commit a crime and the information necessary to prevent the crime;

(2) to prevent reasonably certain death or substantial bodily harm;

(3) to secure legal advice about the lawyer’s compliance with these Rules;

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

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

(6) in connection with the sale of a law practice under Rule 1.17 or to detect and resolve conflicts of interest arising from the lawyer’s change of employment or from changes in the composition or ownership of a firm. In those circumstances, a lawyer may disclose with respect to each affected client the client’s identity, the identities of any adverse parties, the nature and extent of the legal services involved, and fee and payment information, but only if the information revealed would not compromise the attorney-client privilege or otherwise prejudice any of the clients. The lawyer or lawyers receiving the information shall have the same responsibilities as the disclosing lawyer to preserve the information regardless of the outcome of the contemplated transaction.

(7) to comply with the terms of a diversion agreement, probation, conditional reinstatement or conditional admission pursuant to BR 2.10, BR 6.2, BR 8.7 or Rule for Admission Rule 6.15. A lawyer serving as a monitor of another lawyer on diversion, probation, conditional reinstatement or conditional admission shall have the same responsibilities as the monitored lawyer to preserve information relating to the representation of the monitored lawyer's clients, except to the extent reasonably necessary to carry out the monitoring lawyer's responsibilities under the terms of the diversion, probation, conditional reinstatement or conditional admission and in any proceeding relating thereto.

(c) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.

1. *Submission of Bills to Third Party.*

If the bills contain no information protected by Oregon RPC 1.6, Lawyer may submit the bills to the third-party audit service. On the other hand, if the bills contain such information, Lawyer may not disclose them unless one of the exceptions contained in Oregon RPC 1.6 applies. In effect, this means that absent Client's consent, Lawyer must not reveal the information. Depending on the facts of the matter and the substantive law applicable to such situations, Lawyer may need to discuss with Client the risks, if any, that the submission of the detailed bills to the third-party audit service may entail. This might include, for example, a risk of inappropriate disclosure of protected information, a risk of waiver of the lawyer-client privilege,² or a risk of adverse effects on the insurer-insured relationship.

2. *Seeking Consent to Disclose Bills.*

Oregon RPC 1.7 provides:

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

² For a discussion regarding the waiver of lawyer-client privilege on the disclosure of bills to a government auditor, see *United States v. Massachusetts Institute of Technology*, 129 F3d 681, [97-2 US Tax Cas P 50955](#) (1st Cir 1997).

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

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

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

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

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

(2) the representation is not prohibited by law;

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

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

Oregon RPC 1.0(b) and (g) provide:

(b) "Confirmed in writing," when used in reference to the informed consent of a person, denotes informed consent that is given in writing by the person or a writing that a lawyer promptly transmits to the person confirming an oral informed consent. See paragraph (g) for the definition of "informed consent." If it is not feasible to obtain or transmit the writing at the time the person gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter.

....

(g) "Informed consent" denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct. When informed consent is required by these Rules to be confirmed in writing or to be given in a writing signed by the client, the lawyer shall give and the writing shall reflect a recommendation that the client seek independent legal advice to determine if consent should be given.

Whether an insurer's demand for Lawyer to provide confidential client information to a third party would give rise to a conflict and, if so, whether the conflict would be waivable or nonwaivable, will depend on the specific facts of the matter. *Cf.* Washington Formal Ethics Op No 195 (1999) ("it is almost inconceivable that it would ever be in the client's best interests to disclose confidences or secrets to a third party"). *See also* New York Formal Ethics Op No 716 (1999); Massachusetts Informal Ethics Op No 1997-T53 (1997) (auditor must take steps to protect confidentiality of disclosed information). Unless a conflict exists that cannot be waived, it is permissible for Lawyer to ask Client for consent.

Approved by the Board of Governors, April 2014.

COMMENT: For additional information on this general topic and other related subjects, see *The Ethical Oregon Lawyer* §§ 6.8, 9.15 (Oregon CLE 2006); *Restatement (Third) of the Law Governing Lawyers* §§ 59–60, 62, 121, 128 (2003); and ABA Model Rules 1.6–1.7.

FORMAL OPINION ~~NO.~~NO 2005-166

Competence and Diligence: Compliance with Insurance Defense Guidelines

Facts:

Insurer has an ongoing professional relationship with Lawyer to defend claims asserted against its insureds. As a part of that relationship, Insurer requires Lawyer to agree to comply with its Litigation Billing/Management Guidelines (the “Guidelines”).¹ The Guidelines may mandate, among other things, (1) approval by Insurer before Lawyer may schedule and take depositions, conduct legal research, prepare substantive motions, or hire experts, (2) delegation of particular tasks to paralegals, and (3) submission to Insurer of status reports or litigation plans or both.

A cause of action is filed against defendant Insured. Insurer retains Lawyer to provide a defense for Insured. Insurer sends Lawyer a cover letter confirming representation, along with the claim file. The letter contains a reminder to Lawyer to comply with Insurer’s Guidelines. Insurer also requests that Lawyer sign an acknowledgement form that Lawyer has received the claim file and the Guidelines.

Question:

May Lawyer agree to comply with the Guidelines without regard to their effect on Lawyer’s clients?

Conclusion:

No.

Discussion:

Lawyer may sign and return the acknowledgment letter to indicate that Lawyer has accepted the *assignment* of the matter, but must advise

¹ The Guidelines may also be referred to as “case handling” or “case management” guidelines.

Insurer that he or she cannot agree to comply with Guidelines that might compromise Lawyer's ethical obligations as discussed below.

Lawyer may comply with the Guidelines only if Lawyer has an opportunity to review and evaluate the Guidelines with respect to each case and, based on that review, Lawyer reasonably concludes that compliance with the Guidelines will not materially compromise Lawyer's professional, independent judgment or Lawyer's ability to provide competent representation to Insured. Lawyer cannot agree to comply with the Guidelines before reviewing and analyzing the facts and issues of each case because such an advance agreement would potentially surrender Lawyer's professional judgment. Moreover, throughout the case, Lawyer has an ongoing ethical obligation to reevaluate whether his or her continued compliance with the Guidelines impedes his or her ability to exercise independent judgment.

In Oregon, a lawyer retained by an insurer to represent both the insurer and the insured must treat the insured as the "primary client" whose protection must remain the lawyer's "dominant concern."² OSB Formal Ethics Op Nos 2005-121, [OSB Formal Ethics Op No 2005-77](#), [OSB Formal Ethics Op No 2005-30](#).

Oregon RPC 1.8(f) provides:

(f) A lawyer shall not accept compensation for representing a client from one other than the client unless:

- (1) the client gives informed consent;
- (2) there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and
- (3) information related to the representation of a client is protected as required by Rule 1.6.

² [Any assumption that a tripartite relationship exists can be overcome by the specific facts and circumstances in a particular matter. See In re Weidner, 310 Or 757, 801 P2d 828 \(1990\) \(articulating the test for an attorney-client relationship\); Evraz Inc., N.A., v. Continental Ins. Co., Civ. No. 3:08-cv-00447-AC, 2013 WL 6174839 \(D.Or. 2013\) \(finding no tripartite relationship where insurer did not hire lawyer and where lawyer had made it clear to insurer that she only represented insured\).](#)

Oregon RPC 1.1 requires that Lawyer provide “competent representation” to Insured, which requires the “legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.” Notwithstanding the directives set forth in the Guidelines, Lawyer must not allow his or her professional judgment or the quality of his or her legal services to be compromised materially by Insurer.

Under Oregon RPC 5.5(a), Lawyer also must not assist a nonlawyer in the unauthorized practice of law. Thus, Lawyer may comply with the Guidelines requirements that certain tasks be delegated to a paralegal only if, in Lawyer’s independent professional judgment, the particular task is appropriate for performance by a paralegal in the particular case and the paralegal is appropriately supervised.

Insurer may require Lawyer to inform Insurer about the litigation process through periodic status reports, detailed billing statements, and the submission of other information. Lawyer’s compliance with this aspect of the Guidelines does not necessarily violate Lawyer’s ethical obligations if the disclosure of such information advances the interests of both Insured and Insurer, and does not otherwise compromise Lawyer’s duty to maintain his or her independent judgment. *Cf.* OSB Formal Ethics Op No 2005-157.

In the final analysis, Lawyer must determine on a case-by-case and step-by-step basis whether compliance with the Guidelines will restrict Lawyer’s ability to perform tasks that, in Lawyer’s professional judgment, are necessary to protect Insured’s interests. Lawyer cannot commit in advance to comply with Guidelines that restrict Lawyer’s representation of Insured, possibly to Insured’s detriment. Lawyer also must continue to monitor the effect of the Guidelines during the entire course of representation. If Lawyer cannot ethically comply with any particular aspect of the Guidelines, Lawyer must obtain a modification of the Guidelines from Insurer, or decline or withdraw from the representation.

Approved by Board of Governors, August 2005.

Formal Opinion No 2005-166

COMMENT: For additional information on this general topic and other related subjects, see *The Ethical Oregon Lawyer* §§3.36, 9.17 (Oregon CLE 2003); *Restatement (Third) of the Law Governing Lawyers* §§3, 16, 134 (2003); and ABA Model Rule 1.8.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: February 12, 2016
Memo Date: February 1, 2016
From: Amber Hollister, General Counsel
Re: Board of Governors' Bar Email Accounts

Action Recommended

Consider Board's use of bar email accounts.

Background

Beginning in 2016, at the Board's request, the Bar established email accounts for each member of the Board. This memorandum addresses how maintaining Board email accounts may impact the bar's ability to respond to public records requests and to implement litigation holds.

A. Oregon's Public Records Law

Using bar email accounts may streamline responding to public records requests. The bar is subject to Oregon's Public Records Act. ORS 9.010(3)(e). Accordingly, the bar regularly receives requests for its records which are fielded by the bar's public records custodian.

From time to time, the bar may receive public records requests that include requests for Board member emails. Emails to and from Board members related to bar business are public records that must be produced unless they are subject to an exemption to the public records law.¹

By maintaining email accounts for members of the Board, the bar may be able to simplify responses to public record requests. In theory, if all emails are contained in osbar.org accounts, bar staff could search for responsive emails and produce them when necessary.

If emails related to bar business are located in other accounts, searching for responsive emails may be more complicated. If emails related to bar business are in an email account with confidential client communications it could be difficult for bar staff to provide assistance locating responsive emails.

B. Litigation Holds

Utilizing bar email accounts may also aid the bar in creating effective litigation holds. On occasion, the bar is a party to litigation. The bar has a duty, like any other potential litigant, to preserve evidence when there is a reasonable likelihood of litigation.

¹ Under the Act, a public record is broadly defined to include "any writing that contains information relating to the conduct of the public's business" that is "prepared, owned, used or retained by a public body." ORS 192.410(4).

In modern day litigation, much of the relevant evidence is in electronic form. Board member email accounts allow the bar to maintain records of potentially relevant electronic discovery throughout the pendency of litigation. If all Board member email related to bar business is contained in the bar's email system, the bar will be able to preserve evidence on behalf of Board members. Bar email could potentially save Board members the time and energy required to segregate and preserve email when the bar implements a litigation hold.

Conclusion

Ultimately, whether to maintain Board member email accounts is the prerogative of the Board. A number of Board members have reported technical difficulties in using the bar's email system, and it is unclear at this point whether those difficulties may be overcome.

The Board has the following options:

1. **Require the Use of Bar Email Accounts.** This option could create efficiencies when responding to public records requests or implementing litigation holds. However, even with bar email accounts in place, Board members may, from time to time, receive emails in their personal email accounts related to bar business. Board members could make a practice of only using bar email accounts to respond to inquiries related to bar business, and of forwarding all email related to bar business received in personal accounts to their bar accounts.
2. **Make Use of Bar Email Accounts Discretionary.** This option would provide Board members with maximum flexibility, but would not ensure the bar maintains a complete record of emails related to bar business. In many ways, this is the least desirable option because the bar would maintain Board email accounts without reaping the efficiencies of a consistent practice. I do not recommend this option.
3. **Discontinue Bar Email Accounts.** This option would require Board members to rely on their existing email accounts for bar related communications. Bar staff would need to work with Board members as necessary to respond to public records requests or implement litigation holds. This option may create additional risks for Board members who wish to protect client confidences. This option may also increase costs to the Bar.

From: [Timothy L. Williams](#)
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Subject: RE: OSB BOG: new BOG emails - how to log on
Date: Thursday, January 14, 2016 12:25:31 PM

This is distinctly more cumbersome than getting our e-mails on our main accounts. Is there a way to opt out of the online e-mail, or is it mandatory we use it?

Tim Williams

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From: Camille Greene [mailto:CGreene@osbar.org]
Sent: Thursday, January 14, 2016 12:13 PM
To: 'john.bachofner@jordanramis.com' <john.bachofner@jordanramis.com>; James C. Chaney <jchaney@osbar.org>; 'chris.costantino@samuelslaw.com' <chris.costantino@samuelslaw.com>; 'robgratchner@live.com' <robgratchner@live.com>; Guy Greco <greco@pioneer.net>; Ray Heysell <rrh@roguelaw.com>; Michael D. Levelle <mlevelle@sussmanshank.com>; John Mansfield <john@mansfieldlaw.net>; Vanessa A. Nordyke <vanessa.a.nordyke@doj.state.or.us>; Ramon A. Pagan <rpagan@outlook.com>; Per A. Ramfjord <paramfjord@stoel.com>; Kathleen J. Rastetter <kathleenras@clackamas.us>; 'j.rice@edenrosebrown.com' <j.rice@edenrosebrown.com>; Joshua L. Ross <jross@stollberne.com>; Kerry L. Sharp <kerrysharp@earthlink.net>; Richard Spier <rspier@spier-mediate.com>; 'katevts@multco.us' <katevts@multco.us>; Charles A. Wilhoite <cawilhoite@willamette.com>; Tim Williams <Tim@rdwyer.com>; Elisabeth A. Zinser <elisabethz@charter.net>
Subject: OSB BOG: new BOG emails - how to log on
Importance: High

The way that you will access your new BOG email mailbox created for you is through WebEx.

You just have open a web browser like IE, Google and Fire Fox will work also. In the address bar type in: exchange.osbar.org. Outlook web Access page will come up. They type in user name: first initial last name. The password: OregonStateBar1935 (or your new password if you created one) and the

mailbox will open.

If you have any questions please let me know. Thank you!

Camille Greene

Executive Assistant

503-431-6386

CGreene@osbar.org

Oregon State Bar • 16037 SW Upper Boones Ferry Road • PO Box 231935 • Tigard, OR 97281-1935 • www.osbar.org

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From: [Nadia Dahab](#)
To: [Camille Greene](#)
Cc: [Audrey Marrache](#)
Subject: FBA -- Sponsorship Proposal for Mendez Exhibit at Hatfield Courthouse
Date: Friday, January 29, 2016 4:22:18 PM
Attachments: [Mendez BOG Sponsorship Proposal.pdf](#)

Hi Camille, thanks again for reaching out this week. I've updated our sponsorship proposal based on some additional information that we provided to the Federal Bar Association Foundation as part of our grant application to their organization. Please see attached. As you can see, we continue to request that the Board of Governors approve a sponsorship in the amount of \$2000 for this project. Please let me know if you have any additional questions or need additional information. Thanks very much!

Nadia

Nadia Dahab
ndahab@stollberne.com

STOLL BERNE
STOLL STOLL BERNE LOKING & SHLACHTER P.C. LAWYERS

209 SW OAK ST, SUITE 500
PORTLAND, OR 97204

PHONE (503) 227-1600

FAX (503) 227-6840

www.stollberne.com

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From: Nadia Dahab [mailto:dahab.nadia@gmail.com]
Sent: Thursday, January 28, 2016 8:16 AM
To: Camille Greene; Nadia Dahab
Subject: Re: Inquiry re: Mendez Exhibit at Hatfield District Courthouse

Hi Camille, thanks so much for your e-mail. Yes, we'd still like to be on the agenda for the Feb. 12 meeting. I'd like to send an updated proposal, if that's OK. I'll send that over this afternoon or tomorrow.

Thanks!

Nadia

On Tue, Jan 26, 2016 at 11:39 AM, Camille Greene <CGreene@osbar.org> wrote:
Dear Ms. Dahab,

We are assembling the agenda for the Board of Governors meeting and wanted to confirm that you would still like to present to the board at their 9:00am meeting in Salem on Friday, Feb 12, 2016 at the Salem Conference Center. Your exhibit from November is attached for you to update and return to me if you still want to be on the agenda. THANK YOU

Camille Greene

Executive Assistant
[503-431-6386](tel:503-431-6386)
CGreene@osbar.org

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From: Camille Greene
Sent: Tuesday, November 24, 2015 7:07 AM
To: 'Nadia Dahab'
Cc: Joshua L. Ross; Sylvia Stevens; Helen Hierschbiel
Subject: RE: Inquiry re: Mendez Exhibit at Hatfield District Courthouse

Thank you Nadia. The date to submit your exhibit for the Feb 12, 2016 Board of Governors agenda is January 29, 2016. About a week prior to the meeting a schedule will be posted on the board's meeting website at <http://bog11.homestead.com/2016/feb12/20160212SCHEDULE.pdf> Until then, this link is inactive. THANK YOU.

Camille Greene
Executive Assistant
[503-431-6386](tel:503-431-6386)
CGreene@osbar.org

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From: Nadia Dahab [<mailto:dahab.nadia@gmail.com>]
Sent: Monday, November 23, 2015 5:16 PM
To: Sylvia Stevens
Cc: Camille Greene; Joshua L. Ross
Subject: Re: Inquiry re: Mendez Exhibit at Hatfield District Courthouse

Thanks, Sylvia, and no problem at all.

We really want to have the OSB involved in this project somehow--I think it falls squarely within the Diversity & Inclusion program and would be a great addition to OSB programming. If, in light of this potential new BOG policy, funding is not the best way, we'll continue to brainstorm other ideas. In the meantime, please mark us down for February 12, where I'd like to make an in-person pitch.

Thanks very much!

Nadia

On Mon, Nov 23, 2015 at 5:09 PM, Sylvia Stevens <sstevens@osbar.org> wrote:
Oh, Nadia, I am so sorry and embarrassed! On reviewing my notes I see that Josh is correct. There was a motion but no second, so no action. The BOG's Governance & Strategic Planning Committee had just reported on its plan to develop a formal policy for handling requests of this type, so I suspect the BOG thought it was premature to respond to any more sponsorship requests.

The BOG meets next on February 12, and you are welcome to resubmit your request at that time (please send it to Camille 10 days before the meeting). The meeting will be in Salem; if you plan to attend in person, you can let Camille know what would be a good time for you to appear.

Sylvia Stevens

Executive Director

[503-431-6359](tel:503-431-6359)

sstevens@osbar.org

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From: Nadia Dahab [mailto:dahab.nadia@gmail.com]
Sent: Monday, November 23, 2015 3:53 PM
To: Sylvia Stevens
Subject: Fwd: Inquiry re: Mendez Exhibit at Hatfield District Courthouse

Hi Sylvia, I hate to undermine our own efforts here, but I just talked with Josh Ross in my office, who said that the BOG didn't approve the request and that I should resubmit it for January and make an in-person pitch. Can you confirm either way on this?

Thanks!

Nadia

----- Forwarded message -----

From: Camille Greene <CGreene@osbar.org>
Date: Mon, Nov 23, 2015 at 3:20 PM
Subject: RE: Inquiry re: Mendez Exhibit at Hatfield District Courthouse
To: Nadia Dahab <dahab.nadia@gmail.com>, Sylvia Stevens <sstevens@osbar.org>
Cc: Ray Heysell <rrh@roguelaw.com>, Julia Art <jart@osbar.org>

Nadia,

I believe this email string is sufficient for me to submit a check request to our accounting department and will cc Julia in our design department for a logo to be sent to you.

Camille Greene

Executive Assistant

[503-431-6386](tel:503-431-6386)

CGreene@osbar.org

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From: Nadia Dahab [mailto:dahab.nadia@gmail.com]

Sent: Monday, November 23, 2015 2:03 PM

To: Sylvia Stevens

Cc: Ray Heysell; Camille Greene

Subject: Re: Inquiry re: Mendez Exhibit at Hatfield District Courthouse

Hi Sylvia -- thank you so much! We're thrilled that the OSB will participate in this project. Camille, our address is below -- let me know what additional information you need from us at this point.

Sylvia, who should I talk with about getting the OSB logo, etc. for our marketing materials?

Thanks!

Nadia

Address:

Attn: Nadia Dahab

Oregon Federal Bar Association

209 SW Oak Street

Ste. 500

Portland, OR 97204

On Mon, Nov 23, 2015 at 1:02 PM, Sylvia Stevens <sstevens@osbar.org> wrote:

Nadia, I am pleased to inform you that the BOG approved a contribution of \$2,000 for the Mendez exhibit. Please work directly with my assistant, Camille Greene, as to when and to whom our check should be sent.

Sylvia Stevens

Executive Director

[503-431-6359](tel:503-431-6359)

sstevens@osbar.org

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From: Nadia Dahab [mailto:dahab.nadia@gmail.com]
Sent: Thursday, November 19, 2015 4:02 PM
To: Sylvia Stevens; Nadia Dahab

Subject: Re: Inquiry re: Mendez Exhibit at Hatfield District Courthouse

Hi Sylvia, I'm so sorry, I've been in a mediation all day and didn't make it by 11 -- here is the proposal. I might just go ahead and making timing easier by allowing John Mansfield to answer any questions -- so I won't plan to attend.

As far as copies, will you be able to make them? Let me know if/how I can help with that, and thanks so much for understanding this delay!

Look forward to working with you.

Nadia

On Thu, Nov 19, 2015 at 7:57 AM, Sylvia Stevens <sstevens@osbar.org> wrote:
Nadia, one more thing. I am leaving the office today about 11. Will you be able to get your proposal to me before then? I'll need to make copies for the meeting.

Sylvia Stevens

Executive Director

[503-431-6359](tel:503-431-6359)

sstevens@osbar.org

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From: Nadia Dahab [mailto:dahab.nadia@gmail.com]
Sent: Wednesday, November 18, 2015 6:58 PM

To: Sylvia Stevens

Subject: Re: Inquiry re: Mendez Exhibit at Hatfield District Courthouse

Hi Sylvia, my apologies; the 11/13 date got away from me and I'm just now ready with a proposal. Is it too late to send your way, or can I do so and still plan to be considered at Friday's meeting? I was hoping to attend in person.

Thanks,

Nadia

Nadia Dahab
Sent from my iPhone

On Oct 28, 2015, at 3:48 PM, Sylvia Stevens <sstevens@osbar.org> wrote:

Nadia,

I am happy to put this request on the November 20 BOG agenda. The BOG meeting is Friday afternoon, November 20, at the Surfsand Resort in Cannon Beach. I suspect this item would come up toward the end of the afternoon, around 4 p.m. It is not necessary for you to present your proposal in person, but you will need to submit something in writing (along the lines of your initial email) explaining the request (and the amount requested) and how the project supports the Bar's mission.

Please get your written memo to me by November 13 and let me know whether you intend to present it in person or rely on your written submission.

Sylvia Stevens

Executive Director

[503-431-6359](tel:503-431-6359)

sstevens@osbar.org

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From: Nadia Dahab [<mailto:dahab.nadia@gmail.com>]

Sent: Wednesday, October 28, 2015 3:43 PM

To: Mariann Hyland

Cc: Sylvia Stevens; Nadia Dahab

Subject: Re: Inquiry re: Mendez Exhibit at Hatfield District Courthouse

Hi Mariann and Sylvia,

Hoping to follow up on our Mendez project. The FBA would love to confirm a spot on the November meeting agenda to request an OSB donation to host the Mendez exhibit. Can you help me with that?

Thanks very much!

Nadia

On Mon, Aug 10, 2015 at 12:12 PM, Mariann Hyland <mhyland@osbar.org>

wrote:
Hi Nadia,

See the response from Sylvia below. I would be happy to discuss this process with you during our meeting on Friday.

Best,
Mariann

Sent from my iPhone

Begin forwarded message:

From: Sylvia Stevens <sstevens@osbar.org>
Date: August 10, 2015 at 12:07:45 PM PDT
To: Mariann Hyland <mhyland@osbar.org>
Subject: RE: Inquiry re: Mendez Exhibit at Hatfield District Courthouse

Deadlines for submission of agenda items are 8/28 for the September meeting and 11/5 for the November meeting.

Sylvia Stevens
Executive Director
[503-431-6359](tel:503-431-6359)
sstevens@osbar.org

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Please note: Your email communication may be subject to public disclosure. Written communications to or from the Oregon State Bar are public records that, with limited exceptions, must be made available to anyone upon request in accordance with Oregon's public records laws.

From: Mariann Hyland
Sent: Monday, August 10, 2015 12:03 PM
To: Sylvia Stevens
Subject: Re: Inquiry re: Mendez Exhibit at Hatfield District Courthouse

I think the donation request will come from the 9th Circuit Court of Appeals Committee that Nadia is representing.

What is her deadline for submitting a written request for the Board's Consideration in September, and alternatively in November?

Thanks,
Mariann

Sent from my iPhone

On Aug 10, 2015, at 11:58 AM, Sylvia Stevens
<sstevens@osbar.org> wrote:

If you are looking for an OSB donation, I think it should go on the September BOG agenda with an explanation of how the donation supports the bar's mission (as it relates to diversity).

<image001.gif>Sylvia Stevens

Executive Director

[503-431-6359](tel:503-431-6359)

sstevens@osbar.org

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From: Mariann Hyland
Sent: Monday, August 10, 2015 11:20 AM
To: Nadia Dahab
Cc: Sylvia Stevens
Subject: Re: Inquiry re: Mendez Exhibit at Hatfield District Courthouse

Hi Nadia,

I think this exhibit is a great idea, and I believe many organizations will support it, including Oregon's diverse specialty bars, law schools, and universities.

Recently, the Oregon State Bar created an exhibit featuring our diverse pioneers. Here's a link to the online version:

<https://storywall.osbar.org>.

I am copying the Executive Director of the OSB for her input regarding how to officially request sponsorship funds from the bar.

In addition, I'm hoping we can talk about how I can further support your efforts. Do you have time to talk in August 14th at 2:30?

Thanks for your work on this important project!

Warm regards,

Mariann

Sent from my iPhone

On Aug 7, 2015, at 4:50 PM, Nadia Dahab
<dahab.nadia@gmail.com> wrote:

Hello Mariann,

I hope this e-mail finds you well! My name is Nadia, and I am a law clerk at the U.S. Court of Appeals for the Ninth Circuit and a member of the Executive Board for the Oregon Chapter of the Federal Bar Association. I write with an inquiry about one of the FBA's upcoming programs.

In the Spring of 2016, the FBA is hoping to host an exhibit entitled "A Class Action: A Grassroots Struggle for School Desegregation in California." The exhibit was created by the Museum of Teaching and Learning and the Ninth Judicial Circuit Historical Society. It depicts the history of school segregation and the desegregation of Mexican American students in Los Angeles, focusing on the Ninth Circuit's decision in Mendez v. Westminster School District. As you may know, that case was, in all respects, the precursor to Brown v. Board of Education. The Mendez exhibit would be on display at Hatfield for 10 weeks; it includes several large towers and panels that depict photos, descriptions of the historical events, and artifacts. It's very interactive, for both adults and children.

At this point, we understand from the Historical Society that the total cost to host the exhibit (including a significant shipping cost) will be about \$10,800. Our local chapter plans to contribute \$2000 to that cost, and we plan to request funds from our national organization as well. The U.S. District Court of Oregon has also committed to fund a portion of it.

So now, my request of you and your expertise: do you have a sense of what other

bar associations (general or minority) would be particularly interested in partnering with us on this? Or whether the Oregon State Bar would be interested in being involved? We not only are looking for funding sources, but also would love to partner with others and make this a really big deal that includes outreach to the community, perhaps some educational materials for local schools, and an exhibit welcome/kickoff event. We think it'd be a great way to educate, honor, and welcome community members into the courthouse, and it would be great to make that a collective effort from many in our legal community.

So, while I realize this is a pretty open-ended question, any insight or thoughts you might have would be great! We'll continue to brainstorm and reach out to individuals and organizations as we deem appropriate, but I look forward to hearing from you in the meantime!

Thanks very much!

All the best,

Nadia Dahab

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Nadia Dahab
dahab.nadia@gmail.com

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Nadia Dahab
dahab.nadia@gmail.com

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Nadia Dahab
dahab.nadia@gmail.com

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Nadia Dahab

dahab.nadia@gmail.com

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Nadia Dahab
dahab.nadia@gmail.com

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Nadia Dahab
dahab.nadia@gmail.com

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Nadia Dahab
dahab.nadia@gmail.com

Oregon State Bar Sponsorship Proposal
District of Oregon Chapter
“A Class Action: The Grassroots Struggle for School Desegregation”
Amount of Proposed Sponsorship: \$2000

Project Description:

The Oregon Chapter of the Federal Bar Association plans to host “**A Class Action: The Grassroots Struggle for School Desegregation,**” at the Mark O. Hatfield U.S. District Courthouse between April and June 2016. This traveling exhibit, created by the Museum of Teaching and Learning (MOTAL) and the Ninth Judicial Circuit Historical Society, depicts the history of school segregation and desegregation, particularly with respect to Mexican American elementary school students. It focuses on the Ninth Circuit’s landmark decision in Mendez v. Westminster School District, which was, in all respects, the precursor to Brown v. Board of Education. It further tells the story of how community organizing and grassroots activism can produce positive change in schools and communities across the United States.

At present, the Mendez exhibit has been hosted at various courthouses throughout California, including the Ninth Circuit’s James R. Browning Courthouse in San Francisco and the Edward J. Schwartz Courthouse in the Southern District of California (San Diego). It is a traveling exhibit, and MOTAL’s goal is to provide more opportunities throughout the Ninth Circuit for bar and community members to explore the case, learn about its origins, and engage in discussions about how its legacy has inspired change in recent years.

The Oregon Chapter of the Federal Bar Association has chosen to host the Mendez exhibit in Portland to provide the opportunity for our local bar and community members to participate in the important dialogue that the exhibit inspires. We believe that it will serve to educate not only members of our local bar, but also elementary and high school students, parents, and citizens in our community. It will encourage members of the public to visit our courthouse, learn about the justice system, and engage with their local judges, lawyers, and courthouse staff. In light of the exhibit’s theme, we further believe that the exhibit will teach members of our community the value of engaging or continuing to be engaged in issues of local and national importance.

In addition to hosting the traveling exhibit, our chapter will plan and host the following exhibit-related programs, which will be open to members of the bar and the community:

- A welcome reception, featuring Mary H. Murguia, Circuit Judge, U.S. Court of Appeals for the Ninth Circuit;
- A community lecture addressing issues related to the Mendez case;
- A lunch CLE series for members of the bar, which will include 2-3 lunch programs addressing civil rights class action litigation, grassroots organizing, and issues of discrimination in our schools and communities;
- Chapter-member-led tours of the Mendez exhibit at the Hatfield U.S. District Courthouse.

Oregon State Bar Sponsorship Proposal
 District of Oregon Chapter
 “A Class Action: The Grassroots Struggle for School Desegregation”
 Amount of Proposed Sponsorship: \$2000

Objectives:

The table below summarizes the objectives of the Mendez project.

Target Audience	Objectives	Expected Benefits and Results	Method of Implementation
Local Bar	<ul style="list-style-type: none"> - Promote education and awareness; - Facilitate the science and development of jurisprudence; - Foster engagement with the community and within the bar, for the purposes of furthering our understanding of community legal needs and current concerns. 	<ul style="list-style-type: none"> - Education surrounding current issues of racial discrimination; - Opportunities to engage with community members and colleagues; - Increased understanding of the process of grassroots activism; - Opportunities to engage and develop relationships with students, schools, and civic organizations; - Increased understanding of community needs beyond those addressed with this project. 	<ul style="list-style-type: none"> - CLE lunch/speaker series addressing topics related to the <u>Mendez</u> case; - Bar-member-led tours of the <u>Mendez</u> exhibit; - Community lecture.
Students	<ul style="list-style-type: none"> - Promote education and awareness through a visual and interactive experience; - Foster engagement with our judicial system; - Inspire grassroots activism. 	<ul style="list-style-type: none"> - Education surrounding current issues of racial discrimination; - Inspired appreciation for and interest in community activism; - Increased understanding of the 	<ul style="list-style-type: none"> - Participation in exhibit tours and community lecture.

Oregon State Bar Sponsorship Proposal
 District of Oregon Chapter
 “A Class Action: The Grassroots Struggle for School Desegregation”
 Amount of Proposed Sponsorship: \$2000

		judicial system’s role in the lives of all citizens, no matter their age, race, sex, or other status.	
Community Members	<ul style="list-style-type: none"> - Promote education and awareness through visual and interactive exhibit experience; - Foster engagement with our judicial system; - Inspire grassroots activism. 	<ul style="list-style-type: none"> - Education surrounding current issues of racial discrimination; - Inspired appreciation for and interest in community activism; - Increased understanding of the judicial system’s role in the lives of all citizens, no matter their age, race, sex, or other status. 	<ul style="list-style-type: none"> - Participation in exhibit tours and community lecture.
Minority Bar Associations	<ul style="list-style-type: none"> - Promote education and awareness; - Facilitate the science of jurisprudence; - Foster engagement with the community and other bar associations. 	<ul style="list-style-type: none"> - Education surrounding current issues of racial discrimination; - Inspired appreciation for and interest in community activism; - Better understanding of jurisprudence in areas related civil rights and discrimination; - Increased engagement with students, schools, and civic organizations. 	<ul style="list-style-type: none"> - CLE lunch/speaker series addressing topics related to the <u>Mendez</u> case; - Community lecture and welcome reception.
Law Firms	<ul style="list-style-type: none"> - Promote education and awareness; 	<ul style="list-style-type: none"> - Education surrounding current 	<ul style="list-style-type: none"> - CLE lunch/speaker

Oregon State Bar Sponsorship Proposal
 District of Oregon Chapter
 “A Class Action: The Grassroots Struggle for School Desegregation”
 Amount of Proposed Sponsorship: \$2000

	<ul style="list-style-type: none"> - Foster engagement with the community and other bar associations; - Facilitate the science of jurisprudence; Foster engagement with the community and other bar associations. 	<ul style="list-style-type: none"> issues of racial discrimination; - Inspired appreciation for and interest in community activism; - Better understanding of jurisprudence in areas related civil rights and discrimination; - Increased engagement with students, schools, and civic organizations; - Understanding of community needs beyond those addressed with this project. 	<ul style="list-style-type: none"> series addressing topics related to the <u>Mendez</u> case; - Community lecture and welcome reception.
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Budget:

The cost to host this exhibit is such that we intend to partner with a number of local bar associations to fund the project. Below is an estimate of the costs associated with travel, community outreach, and programming associated with the exhibit:

Travel:	\$10,800
Community Outreach and Tour Materials:	\$500
Welcome Reception and Community Lecture:	\$3500
 Total:	 \$14,800

Our local chapter plans to contribute \$2500 to the event, and the U.S. District Court for the District of Oregon has agreed to contribute \$1500. We have also applied for a grant from the Federal Bar Association Foundation in the amount of \$5000. **We hope that the Oregon State Bar will be willing to contribute \$2000 to the project.** Other potential funding sources, which we are currently pursuing, include minority bar associations, local bar association foundations, and private law firms.

Community outreach costs include providing curriculum materials to local schools, materials for exhibit tours, and preparation/distribution of education materials addressing civil rights, judicial

Oregon State Bar Sponsorship Proposal
District of Oregon Chapter
“A Class Action: The Grassroots Struggle for School Desegregation”
Amount of Proposed Sponsorship: \$2000

administration, and community activism. Costs associated with the welcome reception and the CLE lunch series will be paid separately by the chapter. We plan to use the Oregon State Bar funding to pay for a portion of the exhibit’s travel cost.

Timing

We will host the exhibit starting in April 2016. The exhibit would be housed at the Hatfield U.S. Courthouse for 10 weeks. When the exhibit arrives in April, we will have a welcome reception featuring Mary H. Murguia, Circuit Judge, U.S. Court of Appeals for the Ninth Circuit. We anticipate hosting 2-3 lunchtime CLEs over the course of the 10-week period, and at least one community lecture during that time. The specific dates of the CLE programs and community lecture are not yet determined.

Publicity:

We plan to conduct local and regional publicity in the following manner:

- **School (4th Grade) and Community Outreach:** We are currently working with MOTAL to develop curriculum materials that we can make available to local schools and community organizations. Our membership will be reaching out to all local school districts and certain community organizations to invite groups of students and children to tour the exhibit, attend the welcome reception, and incorporate the curriculum materials into the classroom.
- **FBA Membership Publicity:** We will use our local chapter listserv to publicize events to our membership. Members of our executive board will be tasked with publicity within their respective law firms or offices. Executive board members will also conduct community outreach efforts described above.
- **Cosponsor Publicity:** Should we secure funding from the Oregon State Bar and other bar associations and law firms, we expect that you and others will help us publicize the event through your available channels, including websites, listservs, and newsletters.

JANUARY 2016 PRESIDENT'S REPORT

I want to complement all Board members on the first Board and Committee meetings of 2016. Every one of you was engaged and had worthwhile comments. It made for a great start to the new year. I encourage everybody to continue to participate and provide their thoughts in the coming Committee and Board meetings.

In January, I sat in on all of the bar member conference calls regarding the DSRC report. The participation was not large in any of the regions. However, in every region, the bar members who participated provided meaningful and articulate opinions and asked insightful questions. The opinions were diverse and covered a number of the areas in the report. As was expected, probably the most comments had to do with the proposed change in the role of the SPRB. At our February meeting in Salem, there will be opportunity for the public to provide their comments and opinions. The lawyer comments and opinions expressed in the regional meetings were excellent, and I think will be useful to the Board in our March deliberations. All comments from the members will be provided to Board members in advance of our March meeting.

In early February, I will be attending the ABA Mid-Year Conference in San Diego. Hopefully, there will be relevant and timely presentations at the Conference that I will be able to bring back and share with the whole Board of Governors.

R. Ray Heysell, President

2015 Program Evaluations

Oregon State Bar
2015 Program Evaluations
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Client Assistance Office (CAO)

Goal Statement

The primary goal of the Client Assistance Office (CAO) is to promptly review and properly process complaints about the conduct of members of the Oregon State Bar. Our secondary goals include preventing violations by educating lawyers and consumers of legal services, assisting lawyers and their clients to resolve issues in order to avoid or mitigate ethics violations, and providing consumers with access to general information and resources that may assist them to address their legal concerns.

Program Description

The CAO was established in 2003 to remove the initial screening and evaluation of complaints about lawyer conduct from Disciplinary Counsel's Office (DCO). If CAO's initial screening finds sufficient evidence to support a reasonable belief that a violation of the rules of professional conduct may have occurred, the matter is referred to DCO for further investigation. Otherwise, it is dismissed and an explanation of the dismissal is provided to the complainant. As appropriate and as resources permit, the CAO attempts to assist clients address simple problems with their lawyers, such as obtaining file materials or resolving communication issues. When the CAO cannot assist, the CAO refers the public to other agencies or programs that may address their legal concerns. Finally, the CAO not only engages in outreach efforts to educate lawyers about their professional responsibilities, the CAO also provides valuable assistance to the bar's General Counsel by responding to calls from lawyers seeking advice about complying with ethical standards.

Volunteers/Partnerships

The CAO occasionally calls on members and others to provide training on specific practice areas, common problems and other resources available to the public and members. For instance, this year we met with a lawyer counselor from the OAAP and deputy general counsel regarding methods for handling difficult contacts and stressful situations, and we volunteered for speaking engagements at local bar associations and groups around the state. We frequently work with other entities that play a role in maintaining high standards of ethics and professional conduct, including the courts, the bar's General Counsel, Disciplinary Counsel, Professional Liability Fund, Oregon Attorney Assistance Program, and State Lawyers Assistance Committee. We work with the bar's Public Records Clerk to promptly respond to public records requests. We also provided information to the Disciplinary System Review Committee and its Task Force.

Outcomes and Evaluation

Outcome #1: Process high volume of inquiries and complaints in a timely manner.

CAO disposed of 1629 matters in 2015, down from 1782 in 2014. (Statistics derived on or about December 18, 2015). CAO was staffed by only two lawyers for a significant part of the first third of the year. That reduced capacity may account for some of the difference. As discussed below,

CAO attorneys and staff also have spent increased time in electronic file creation and management, some of which we may be able to reduce in 2016 through revised policies.

CAO staff resolved over 19% of matters on the same day they arose. Over 11% were resolved within two days, 13.6% were resolved within three to six days, 10.5% were resolved within one to two weeks, and just over 7% (117) were resolved in less than one month. 200 (12.4%) were resolved within 31 to 60 days. In sum, 75% of all complaints were resolved in less than 60 days, exceeding CAO's goal of disposing of 70% of inquiries within 60 days of receipt. The average disposition time was 37 days. In virtually all cases, contacts were acknowledged or responded to within at least three days.

As the result of moving to a chiefly digital ("paperless") system, the processing of complaints has enlarged to include document scanning and other efforts to create, organize and maintain digital files. Document scanning was formerly conducted after a complaint had been closed, by an additional employee, at additional cost. Other efforts to create, organize and maintain electronic files had not been required at all; for instance, naming of files to provide a time stamp and descriptive information, or conversion of digital files to a pdf format for inclusion in a digital binder. It is a better use of bar resources to create digital files as materials are received. The bar and the public benefit from the increased usefulness of a digital file. However, the addition of those procedures has increased the workload of CAO lawyer and non-lawyer staff.

Outcome #2: Ensure proper disposition of complaints, particularly those that involve accusations of disciplinary violations by making the correct decision to refer or dismiss.

CAO has successfully focused on improving the quality of analysis in referrals and dismissal letters. Of the 1629 matters disposed of in 2015, 204 (12.5%) were referred to Disciplinary Counsel's Office. The number of referrals is a slight decrease from the 236 (13.2%) referred in 2014.

There were 176 appeals to General Counsel of CAO dismissals. All but 3 were upheld. CAO exceeded its goal, correctly disposing of 98.3% of cases in which review was requested. By way of comparison, 92.8% of appeals were affirmed in 2014.

Outcome#3: Ensure a high level of competence among staff.

CAO staff lawyers attend more than their required MCLE programs. In addition to programs on ethics and professional responsibility, they attended national conferences for ethics and regulatory counsel. They also attended selected programs that increased their understanding of practice areas from which complaints arise or generally enhanced their ability to deal with a diverse population of complainants and lawyers. CAO lawyer and non-lawyer staff attended programs on better dealing with difficult or stressful contacts and clients suffering from mental illnesses.

Complex or unusual cases are discussed by the staff lawyers prior to a decision being made. Interesting cases are also discussed with support staff to help them understand how those decisions are made so that they can better respond to questions from the public.

General Counsel and DCO meet regularly with CAO staff to help ensure consistency of analysis and approach.

Outcome #4: Promote public awareness of CAO and its services.

The internet has become the chief means for disseminating and receiving information. CAO's website is easily located (for instance, our program is the first result returned for a Google search of "oregon lawyer complaint"). The site provides general information regarding attorney responsibilities, the bar's regulation of attorneys, and other bar programs that assist the public. The website also provides an online complaint form that is easily utilized by the vast majority of complainants. CAO also responds to telephone calls, walk-ins, direct email contacts and letters from the public. Although CAO has shifted to a "paperless" office, CAO continues to send and receive information via U.S. Postal Service or other means as appropriate (for instance, where a complainant is incarcerated, or where it is required to accommodate a disability or other special need.)

CAO lawyers give CLEs to members to explain our rules of professional conduct and regulatory process. Similar presentations are available for civic groups. We continue to refine our template letters, forms and brochures. CAO will conduct a review and update of the website in 2016. CAO will also seek out other forums for educating the lawyers and the public about the bar's programs to assist lawyers and legal consumers.

Outcome #5: Identify technological and process improvements to improve department efficiencies.

CAO's paperless office project was finally implemented beginning June 1, 2015. Based upon our experience so far, CAO recently conducted a half-day retreat to discuss and improve our electronic systems, work flow, and other processes such as the handling of calls and accommodation of special needs. 2016 will see additional improvements.

CAO cooperated in the selection and ongoing implementation of the AMS software. We also continue to review our processes to ensure the most efficient handling of files and to refine the current data base. We look forward to opportunities to train in and implement the AMS software.

CLE Seminars Department

Program Goal Statement

The CLE Seminars Department advances the Bar's mission of improving the quality of legal services by providing high-quality seminars and seminar products that are cost-effective, relevant, and widely accessible.

Program Description

As a provider of CLE seminars, the OSB operates in a highly competitive market that includes a large number of CLE providers, multiple options for accessing CLE seminars, and fluctuations in the legal profession and the economy. To meet these challenges while providing a meaningful educational experience for bar members, the Seminars Department provides a wide range of CLE topics in a variety of formats that acknowledge diverse learning styles and changing technologies for delivery of CLE content.

Volunteers/Partnerships

334 attorneys and other professionals volunteered as planners and speakers in 2015, some more than once, to fill 407 opportunities.

The CLE Seminars Department cosponsored seminars with OSB sections and the Professionalism Commission, as well as the Washington State Bar Association Creditor Debtor Rights Section and Business Law Section, WSBA CLE, and the NW State-Federal-Provincial Securities Conference. The CLE Seminars Department also offered live and online CLE from seven educational partners: State Bar of Arizona, Ohio State Bar, Bar Association of San Francisco, Georgetown Law, MCLE+, Periaktos Productions, and WebCredenza.

Outcomes and Evaluation

Outcome #1: Meet the needs of members for high-quality, readily accessible CLE that recognizes different learning styles by providing members 24/7 access to OSB CLE Seminars-branded information, services, and products.

Measure: Continue a creative and flexible approach to program and product formats to meet changing member needs and market forces.

CLE Seminars produced 56 CLE events during 2015, with almost of them available to the membership online (either a live webcast or on demand) in addition to live in-person presentations. Most live seminars were still available on hard media (CD and DVD), and the membership could access the following on-demand programming 24/7: 452 video hours, 211.25 audio hours, and 361 hours of MP3 downloads.

Outcome #2: High member and section satisfaction with CLE curriculum, organization, and other CLE-related services.

Measure: Survey attendees, speakers, and sponsors regarding their satisfaction with topics, format, and logistics.

Member satisfaction attending OSB CLE seminars remains high. 91.20% of those who returned seminar evaluations rated the overall quality of the department's seminars as "excellent" or "very good." The seminar check-in process was rated as "excellent" or "very good" by 95.36% of those returning evaluations, while 96.87% rated onsite staff as "excellent" or "very good."

Of the 12 sections returning the Membership Services department survey, 100% rated the courtesy of CLE staff as "excellent." 100% rated CLE staff as "excellent" and "very good" at (1) providing accurate information on cosponsoring CLE events; (2) timely distribution of notices regarding programs; and (3) staff assistance with planning and logistics.

Measure: Evaluate revenue-sharing model for programs co-sponsored with sections.

The department co-sponsored seminars with 18 OSB sections. Of those seminars, 12 generated sufficient revenue from the live seminar to participate in the department's revenue-sharing programs. The current revenue sharing model does not require co-sponsoring sections to share in any net losses with the department. Any changes to the current model should be part of a broader review of section activities.

Measure: Promote co-sponsorship and other service to sections.

The department offers registration and event planning services to sections. In 2015 CLE Seminars provided registration services for 22 sections. Of those 22, two sections requested additional event planning services for multi-day events.

Outcome #3: Continue to develop cost-efficient strategies and processes to achieve budget goals and ensure fiscal responsibility.

Measure: Implement electronic delivery of written materials as the default, with print versions available at cost.

The number of seminar attendees requesting print on demand copies of course materials continued to decrease. Compared to 641 print copies requested in 2014, 475 attendees received print copies. Of the 475 print copies distributed 423 were purchased, while 52 were distributed as complimentary copies to CLE speakers and planners.

Measure: Evaluate pricing models and recommend any changes that will enhance ability to achieve budget goals.

The presence of low cost, “all you can eat” national online CLE providers continued to grow in the Oregon CLE market, most noticeably among newer OSB members who operate on very tight budgets. One online provider offered Oregon-approved CLE seminars, either unlimited credits or 45 credits, for the price of a regular full-day registration for an OSB CLE seminar (\$200). While the speakers are not local and the quality of the seminar content varies widely, the credit and price offering are extremely attractive to unemployed and underemployed Oregon lawyers. For those with limited financial resources, as well as those who are simply looking for a bargain, it is an offer hard to refuse. During 2015 the department received a noticeable number of inquiries about this type of bulk pricing for OSB CLE online programs.

The department successfully experimented with a limited number of special online CLE pricing during 2015. Throughout the year, the department offered elder abuse reporting webcasts with an early registration discount, which resulted in 496 registrants, compared to 118 attending two live elder abuse reporting seminars. A two-week August promotion offered increased discounts with multiple seminar purchases and generated almost \$17,000 in gross revenue during a typically slow CLE sales period. A “Cyber Monday” discount in November was very successful, generating gross sales of \$22,000 during the 24-hour period. And December webcast replays with an early registration discount yielded 273 registrants and more than \$9,000 in gross revenue. Not surprisingly, the most popular programs were elder abuse reporting and ethics.

After the bar’s new online content delivery platform is launched in late 2016 the department plans to test additional types of discount pricing, including a one-price bundle similar to that offered by national online providers.

Measure: Identify and implement efficiencies in processes and logistics. Evaluate staffing needs.

In 2015 the department became more involved with non-cosponsored section CLE events by acting as a gatekeeper for the different bar services provided to sections. New forms were developed to capture section event information. Processes were developed to transmit the information to other departments, and additional levels of review were implemented to ensure accuracy with marketing materials.

As the bar moves towards consolidating almost all section CLE events within the CLE Seminars Department, it is anticipated that additional efficiencies will be created in conjunction with the bar’s new AMS and online content delivery system. Online content (webcast-only live seminars or webcast replays) require fewer staff and financial resources than live programs.

Outcome #4: Promote diversity of CLE speakers and planners.

Measure: Review speaker and planner data each year and maintain statistics.

Based upon the bar's database, the department's 2015 speaker and planner faculty had the following demographics: 58.17% male, 41.83% female; 51.06% White, 1.94% Asian, 0.92% Black, 1.66% Hispanic, and 0.65% Native American. In addition, 0.28% identified themselves as "multi or other," while 39.17% did not state ethnicity. This is compared to bar membership demographics (as of November 31, 2015) of 64.25% male, 35.75% female; 64.37% White, 2.66% Asian, 0.78% Black, 1.58% Hispanic, and 0.45% Native American. Also, 3.66% identified themselves as "multi or other," and 26.51% "declined to state their ethnicity."

The Diversity & Inclusion Department continued communicating to bar members the importance of reporting their ethnicity to give an accurate depiction of bar demographics. In 2014, 59.87% of the bar membership self identified as White, while 31.83% "declined to state their ethnicity." In 2015 those percentages shifted, resulting in a 4.5% increase in members identifying themselves as White and a 5.32% decrease in the number of members who "declined to state" an ethnicity.

The geographic diversity of CLE Seminars speakers continues to mirror the state's more populated regions. The majority of the department's 334 CLE speakers came from Multnomah County (56%), followed by out-of-state speakers (14%), Marion County (8%), Washington County (5%), Lane County (6%), Clackamas County (5%), and Deschutes County (1%). The remaining six percent of the CLE speakers came from Benton, Columbia, Crook, Deschutes, Hood River, Jackson, and Lincoln counties.

Measure: Work with the Director of Diversity & Inclusion to develop strategies for identifying diverse candidates, including outreach to the Diversity Section and minority lawyer organizations.

The CLE Seminars Department and the Diversity & Inclusion Department organized two CLE speaker workshops in February 2015. The workshops were offered on a complimentary basis to members of OWLs and ethnic minority bar groups. While the workshops did not reach capacity, the attendee evaluations were very positive and provided skills to support and encourage female and ethnic minority lawyers to become CLE presenters.

The CLE Seminars and Diversity & Inclusion Departments were represented by their respective directors at the OAPABA (Oregon Asian Pacific Islander Attorney Bar Association) gala in May.

Communications & Public Services Department

Program Goal Statement

The OSB Communications Department advances the bar's mission of promoting respect for the rule of law, improving the quality of legal services, and increasing access to justice through consistent and effective delivery of OSB priority messages to members and the public. For member communications, the primary goals are to provide information that benefits members in their practices and to increase member awareness of bar priorities and services. For public communications, the primary goals are to promote public confidence in the justice system, respect for the rule of law, and an understanding of the importance of Oregon lawyers to an efficient, accessible justice system.

Program Description

The Member Communications group publishes the OSB Bulletin, the electronic Bar News and the BOG Update, prepares editorial content for the bar's website and assists other bar programs develop marketing and outreach materials. This group also coordinates the annual Awards event, 50-Year Member Luncheon and other membership projects and events, including membership surveys and research.

Public Communications comprises programs and services designed to educate the public about laws, lawyers, and the legal system, and how to find help with legal problems. Education efforts include: public legal education seminars and cable TV programs, pamphlets and specialty publications, public service announcements and website materials.

The Creative Services group provides art direction and production management of all collateral promoting the programs, services and organizational brand of the OSB. Creative Services also develops and maintains the bar's website and other electronic communications, and works closely with other department staff to coordinate marketing campaigns for the organization and assist bar programs in their individual marketing efforts.

Volunteers/Partnerships

Approximately 50 members annually serve as authors and sources for member communications and another 100 or so assist annually with updating public information materials.

Communications partners with OSB sections and committees, county and specialty bars, the Oregon Judicial Department, legal aid programs, social service agencies, schools, and community and business leaders.

Outcomes and Evaluation

Outcome #1: OSB members are informed about OSB priorities, programs and events.

Information on bar programs and services, including dates and deadlines, appeared in each issue of the Bulletin as well as timely coverage in the Bar News and BOG Update e-newsletters. Featured programs and events were also featured on the bar's website (home page carousel, news section, online calendar) and video display in the bar center lobby. High priority items, including regulatory notices and updates on e-filing, were sent as stand-alone emails delivered to all bar members.

The Bulletin presents a balanced mix of articles on substantive law/legal trends with articles featuring OSB priority issues. Coverage of board-identified priorities in 2015 included two separate articles on opportunities for practice in rural Oregon, three related to judicial independence issues, four on access to justice issues, and multiple profiles, columns and briefs touching on professionalism, work/life balance and diversity and inclusion.

A special area of focus for 2015 was to monitor and measure the effectiveness of the bar's email outreach. All broadcast emails sent by the Communications team are sent through a program that tracks how many recipients open an email and how many click on any hyperlinks embedded in the email message. (Note this system does not track individual member responses or ISP information.) Analysis of "open" and "click" rates over time informs decisions about message format and timing, which in turn can increase the impact of member communications. The results for three categories of bulk email sent in 2015 are:

E-newsletters: Regular email publications sent to all members, including Bar News and the regional BOG Updates (38 total messages)

Average open rate: 30% (increase of 3% over 2014)

Average click-through: 6% (increase of 2.5% over 2014)

Targeted emails: Survey invitations, special messages, etc., sometimes all-bar messages on a single topic and sometimes limited to a certain segment of the membership. (28 total messages)

Average open rate: 40% (includes 47% open rate for DSRC comment message)

Average click-through: 12%

Lawyer Referral Service: Monthly reporting and payment reminders, program updates, etc. (28 total messages)

Average open rate: 60%

Average click-through: 23%

Outcome #2: OSB marketing efforts and other communications vehicles are consistent, timely and designed to reinforce the bar's visual brand.

The Creative Service group maintains a comprehensive style guide and works with other bar programs and bar sections to design web pages, newsletters and marketing materials that support the bar's visual brand and messaging. Along with ongoing work, the team monitors communication trends and advises on priorities for product development. For example, responsive design upgrades are needed to make various web pages and email communications compatible with tablets and smart phones. This is an ongoing effort, balanced with other priorities based on identified member needs. In 2015 only 9% of people who registered online for a CLE seminar used a tablet or smartphone to access the site, but staff continue to monitor and develop mobile-friendly applications to keep pace with changing bar demographics and search engine requirements.

The team's first focus for 2015 was to support the marketing efforts of the CLE Seminars Department. Over the course of the year, this included production of marketing materials in multiple formats for 31 seminars. New templates make it easier to retain branding in multiple sizes and formats (e.g., brochures, postcards, email and web carousel tiles). Staff also successfully launched a new "centerfold" spread for the *Bulletin* featuring CLE seminars and legal publications. The new spread is branded to the bar, incorporates design features from the online CLE plan and gives members a consistent place to find information on upcoming programs and publications. Special marketing campaigns included CLE 24/7, with an earlier start date in its second year to increase exposure, and a special "plan ahead for next year" component, resulting in a 25% sales increase over 2014.

Positioning the CLE page as the "go to" place for information on CLE seminars is the centerpiece of the programs' long-term marketing plan. In addition to ongoing promotions, in 2015 the seminars handbook library was added to the site, along with other new features marketed to members through various channels. Overall, page views for the CLE Seminars page on the OSB website increased by 112%, from 53,560 in 2014 (the year it debuted) to 113,468 in 2015.

A second marketing focus was to work with the Referral & Information Services Department to provide cost-effective targeted marketing for the Lawyer Referral Service (LRS). Staff developed and tested different approaches and text for use in two separate Google Ad Words campaigns, which drove traffic to specific new web pages, allowing the use of web analytics to measure results. These campaigns resulted in a combined 7,767 clicks and 2,534,987 impressions in 2015. This in turn resulted in a 6% increase in visits to the RIS "finding the right lawyer" web page, with 86,780 visits in 2015.

Our final priority goal in this area was to work with bar sections to migrate their websites onto the bar's WordPress platform. The goal is to have all section sites hosted on the main OSB site for member convenience, ease of content management and consistent visual branding. In addition, having all sites on the same platform will simplify development of new services, such

as section membership directories. In 2015 staff assisted in communicating the new requirements to bar sections with the goal of having all new sites completed by July of 2016.

Seven new sites were completed in 2015 and seven more are currently under construction or being reviewed by the sections and set to begin early this year. All of the new sites are branded to the OSB but still allow each section some flexibility to personalize their pages and also easily update their own content. Along with visual branding and mobile responsiveness, the Creative Services group has worked to ensure that all section sites and OSB web pages are accessible to people with disabilities. The Disability Law Section was key in this effort, reviewing its own revised site several times with a focus on accessibility issues and providing helpful feedback.

Outcome #3: OSB offers an array of practical, understandable legal information to help the public access the justice system.

The OSB's public-centered web pages are both part of the main bar site and accessible directly as www.oregonstatebar.org. The public pages include basic legal information on more than a hundred substantive legal topics, updated on an ongoing basis, with the most popular pages dedicated to landlord/tenant law and family law. Total page views for public legal information topics exceeded 1,000,000 in 2015. The most popular topic was "Rights and Duties of Tenants," viewed 130,140 times. A new topic, "Marijuana and Hemp (Cannabis) Law" was posted in August and was viewed nearly 20,000 times by the end of the year. A Google translate tool embedded in the site makes these materials available in multiple languages, allowing the bar to make information available to underserved communities at no cost.

Outcome #4: OSB provides exceptional customer service to both members and the public.

Efforts in this area for 2015 centered on preparations for the bar's new association management software. Staff continued to refine the process for annual regulatory notices and also improve electronic communications and website usability. Multiple department staff were involved in the software selection process, and have received training on the product ultimately selected, Aptify. Integration of Aptify with the bar's website and electronic communications tools will be an ongoing focus for 2016.

Improving the accessibility of OSB information to people with disabilities was a new focus for 2015. In addition to work on section websites, the bar's webmaster attended a day-long training on advanced methods for ensuring online materials are accessible to people with disabilities. Multiple bar staff also attended Adobe software trainings, with follow-up instructions on how to save documents in Adobe format so they work with screen readers. The Creative Services team worked with software vendor Survey Monkey to improve the accessibility of OSB surveys, including one sent to all bar members who have self-identified as having a disability. The bar's accessibility review team is using the survey results for planning purposes.

Outcome 5: Continue to develop cost-efficient strategies and processes to achieve budget goals and ensure fiscal responsibility.

The department includes three program budgets: Communications, Creative Services and Bulletin. All three are projected to close the year close to their projections. Notable variances include revenue for Job Target, the bar's online career center, which brought in approximately \$25,000 against a projected \$13,500. This is both positive budgetary news and a possible indicator that the legal job market in Oregon has improved. The Bulletin also supports the outreach efforts of other bar programs and legal community partners by offering free ad space. In 2015, the retail value of ad space provided to OSB programs totaled \$83,970, and the value of space donated to affiliates, e.g., the PLF, OWLS, Campaign for Equal Justice, totaled \$30,125.

Disciplinary Counsel's Office

Program Goal Statement

Disciplinary Counsel's Office (DCO) is a critical component of the bar's regulatory function. The goal of DCO is to administer a fair, efficient, and cost-effective system for the regulation of lawyers; and to promote public and member confidence in the lawyer regulation system.

Program Description

As an instrumentality of the judicial department of the State of Oregon, the bar is responsible for regulating lawyer conduct for the protection of the public and the integrity of the legal profession. DCO administers most of the bar's regulatory programs that are mandated by statute or court rule. Responsibilities include: investigation and prosecution of disciplinary matters; probation and diversion monitoring and, where appropriate, enforcing compliance; conducting a twice-annual ethics school that is required attendance for all lawyers publicly sanctioned; administration of the Trust Account Overdraft Notice program; reviewing, investigating, and making recommendations on reinstatement applications; instituting and managing custodianships over a lawyer's practice; processing status changes; processing and screening pro hac vice applications; processing requests for and issuing certificates of good standing; and responding to public records requests concerning disciplinary matters.

Volunteers/Partnerships

Volunteers: The State Professional Responsibility Board, which is responsible for making charging decisions and overseeing the ensuing prosecution, is comprised of eight lawyers and two public members. The lawyer members are representative of the seven bar regions; the public members are at-large. The Disciplinary Board is comprised of 73 geographically-assigned lawyers and public members from whom trial panelists who serve as adjudicatory officers are selected. Additionally, there are 16 volunteers serving on geographically-based local professional responsibility committees who stand ready to receive investigation assignments from DCO. DCO also occasionally works with a volunteer bar member who serves as lead counsel in disciplinary trials.

Partnerships: Other groups and entities play a role in maintaining high standards of ethics and competency, including the bar's Client Assistance Office, which screens inquiries and complaints; state court judges who observe lawyer conduct; the Professional Liability Fund and its Oregon Attorney Assistance Program; the members of the State Lawyers Assistance Committee, who may be called upon to assist with the monitoring of lawyers on diversion or probation; the State Court Administrator's Office; and the Oregon Supreme Court.

Outcomes and Evaluation

Outcome #1: Meet or exceed timeline targets for investigation and prosecution of disciplinary matters.

DCO met or exceed most of its timeline targets in 2015. In the areas where the targets were not met, the delay was typically a consequence of the complexity of the matter or challenges in obtaining the responding lawyer's response.

<i>Step</i>	<i>Target</i>	<i>2015 Average</i>
Initial Action	14 days from receipt	12 days
Probable cause decision	4 months from receipt	117 days
Recommendation to SPRB	9 months from receipt	7.5 months
SPRB review of staff dismissals	90% upheld	100%
File formal complaint	60 days from SPRB authorization	123 days
Request trial panel	120 days from formal complaint	212
Settlement pursued	Resolve 70% without trial	81%
Ready for first trial setting	Within 6 months of assignment to a trial panel	2 of 5*
Formal resolutions	Prevail in 90% of formal cases	96%

*All 5 had first trial setting within 6 months. 3 had setovers due to trial panel or accused. We were ready at first trial setting.

Outcome #2: Increase bar and public contacts

During 2015, outside speaking opportunities continued as a pace consistent with the prior year. Outreach to the larger legal community will continue as a priority.

Outcome #3: Increase the use of Diversion/Probation and alternatives to discipline in an effort to reduce recidivism

Diversion under Oregon BR 2.10 continues to be an option considered by the SPRB in eligible cases. Both DCO and SPRB are mindful that the facts of a case and the circumstances of a respondent lawyer must be such that there is an identifiable condition or issue that can be impacted by remedial action in order for diversion to be a successful outcome. An administrative staff member monitors all diversions, probations, conditional admissions, and conditional reinstatements. A single staff attorney is designated to handle any enforcement measures that arise from failures to abide by diversionary or probationary terms, in order to

promote and insure consistency. Refinement of diversion agreements and stipulated probationary orders form has been a focus as well. As of the end of 2015, 35 different matters are being monitored.

Outcome #4: Proposed and Implemented Changes in DCO Rules and Procedures

During 2015, the Disciplinary System Review Committee (DSRC), an ad hoc committee appointed by then-Bar president Tom Kranovich to study recommendations made by the ABA's Center for Professional Responsibility's review team, met nearly every month before issuing its report in December. Representatives of DCO lent staff support to the Committee's work, participating in the meetings and assisting in the production of materials for meetings of the full committee and subcommittees.

Outcome #5: Process regulatory work in timely manner

In 2015, DCO timely processed 501 pro hac vice applications; 30 arbitration registrations; 1,291 status transfers, which included 345 resignations and 246 reinstatements; and 1,030 good standing certificates. Staff responded to 2,128 public records requests by providing more than 3,691 copies and 106 computer disks of records. Response time was generally within 24 hours.

Outcome #6: Continue with technology improvements

During 2015, DCO participated in a team monitoring the development of a new association management software scheduled to launch in 2016. DCO continues to enhance, through currently available technology and software, the extent to which documentation is stored and transmitted electronically, in order to reduce paper and postage costs and render records more readily accessible through means other than a paper file. Again in 2015, DCO worked with IDT to make incremental refinements in the disciplinary database. As an increasing percentage of Oregon courts adopt e-court filing systems, investigation of court records has been made easier and more efficiently accomplished, which has positively impacted disciplinary investigations. Public records requests are increasingly responded to electronically as well.

Outcome #7: Conduct a successful Ethics School

Two sessions of "Ethics Best Practices" were presented, in May and November, through the combined efforts of lawyers from DCO and the Client Assistance Office. Although the programs are available to any member, the largest proportion of attendees is mandated to attend by reason of disciplinary sanctions. Written program materials and live presentation aids are continually reviewed and refined. Feedback from attendees is overwhelmingly favorable.

Diversity & Inclusion Department

Goal Statement

The goal of the Diversity & Inclusion Department of the Oregon State Bar is to support the mission of the Oregon State Bar: by promoting respect for the rule of law, by improving the quality of legal services, and by increasing access to justice. The Department serves this mission by striving to increase the diversity of the Oregon bench and bar to reflect the diversity of the people of Oregon, by educating attorneys about the cultural richness and diversity of the clients they serve, and by removing barriers to justice.

Program Description

In 1975, the Oregon State Bar established the Affirmative Action Program (AAP) with the goal of “achieving representation of minority persons in the bar in the same proportion as they are represented in the population of Oregon, while at the same time not lowering the standards for admittance...”¹ At that time, there were 27 racial/ethnic minority attorneys in Oregon (.5%). The AAP served only racial/ethnic minority participants through 1998 (466 active OSB racial/ethnic minority members—4.1%). In 1998, eligibility for AAP programs was split—anyone (regardless of race/ethnicity) who could help the program achieve its mission was eligible to apply for programming. Opportunities for Law in Oregon (OLIO) was created as the only program focused on outreach to recruit and retain historically underrepresented racial and ethnic minority law students in Oregon. Historically, OLIO has been funded primarily by private donations and grants.

In August 2011, the bar changed the name of the Affirmative Action Program to the Diversity & Inclusion Department (D&I) and expanded its role to work strategically and in collaboration with OSB leaders to advance diversity and inclusion in all aspects of the OSB’s mission. In 2012, bar leaders developed a definition for diversity and inclusion, and articulated a compelling business case statement explaining why it is important. In 2013, D&I led the bar’s effort to create a Diversity Advisory Council (DAC), which developed and presented a draft Diversity Action Plan (DAP) to the Board of Governors (BOG). The BOG adopted the DAP during its November 2013 meeting. The DAP is a three-year plan that identifies goals, strategies and action items to advance diversity and inclusion in all the bar’s mission areas, including within its internal operations.

In 2013, D&I also continued to assess, administer and enhance the existing OSB D&I Programs with the support of the Advisory Committee on Diversity and Inclusion (ACDI), formerly known as the Affirmative Action Committee (AAC). (The BOG renamed the AAC to the ACDI in 2013 to reflect the bar’s expanded definition of diversity.) This work entailed reducing the expense associated with the 2013 OLIO Orientation conference and examining whether the eligibility criteria for 1L students should be expanded during the 2014 OLIO Orientation.

In November 2013, the House of Delegates approved a funding increase to support the bar’s

¹The OSB sees the inclusion of racial and ethnic minorities in the legal profession as essential to ensuring that Oregon has a talented pool of lawyers to serve the diverse needs of clients, communities, and businesses.

diversity and inclusion work for the first time in 23 years.

In 2014, in addition to on-going assessment and improvement of its pipeline programs, D&I focused on supporting bar leaders to implement the bar's Diversity Action Plan year one goals, strategies and action items. After a year of study, the OLIO Orientation eligibility was expanded in 2014.

In 2015 the DAC presented a year one DAP implementation report to the Board of Governors. Efforts in 2015 focused on revising the DAP and implementing year two strategies and action items to achieve our goals.

Volunteers/Partnerships

D&I works with a variety of volunteers, principally the members of the ACDI and the Diversity Section, as well as leaders of Oregon's specialty bar organizations. In addition, the Department partners with the three Oregon law schools, local bar associations, OSB Sections and Committees, the judiciary, public and private firms, Oregon's specialty bar associations and various colleges, universities and community organizations.

Outcomes and Evaluation

Outcome #1: Develop and implement a mandatory online demographic data updating mechanism to increase the percentage of bar members who disclose their race and ethnicity.

Measure: 75% of bar members disclose their race and ethnicity by 2016.

The bar developed and implemented an online mechanism for members to report their diversity demographic information toward the end of 2012, but only 57% of members had shared this information with the bar effective December 30, 2013, a slight decline from 2012. This result indicated that the bar needed to change its approach to increase the accuracy of its membership demographic data.

The 2014 Diversity Action Plan contains a strategy to significantly increase the percentage of members who self-report this information. This strategy was implemented in November 2014, and the percentage of bar members reporting their race and ethnicity increased to 68% by the end of 2014. By the end of 2015, 74% of OSB members had reported their race and ethnicity.

Outcome #2 Create an online version of the bar's Diversity Story Wall Exhibit. Develop updated content for the online exhibit on a yearly basis.

Measure: Successfully launch the online exhibit in 2015.

The Diversity Story Wall Exhibit was unveiled on November 7, 2014. Sponsors pledged and donated a total of \$33,850 to fund the \$37,000 project. Ongoing fundraising is planned through the sale of posters of the exhibit, which were updated and finalized in 2015. We

launched of the online version in September 2015, which can be found here:
<https://diversity.osbar.org/2015/09/02/september-2015/>.

Outcome #3: Hold an OLIO alumni reunion and build a strong OLIO alumni network.

Measure: Organize and hold the first reunion in 2015.

D&I recruited a team of volunteers to assist with planning the first alumni reunion, which occurred during the August 2015 OLIO Orientation. An award was given to Stella Manabe. The ACDI will assist with future OLIO alumni reunion and network planning.

A strong OLIO alumni network will help the bar achieve several important goals: 1) better understand the needs of lawyers who participate in the OLIO programs; 2) build a support network to recruit and retain OLIO alumni in Oregon; 3) develop and recruit bar volunteers and leaders from the alumni network; and 5) build ties and connections to assist with OLIO fundraising and development.

Outcome #4: Support and encourage OLIO orientation participants to take the Oregon Bar Exam and practice in Oregon.

Measure: 35% of OLIO Orientation participants who graduate from law school become Oregon Bar members by April of the year after they graduate.

Overall, Oregon bar passage rates have significantly declined over the past couple of years. Nevertheless, we surpassed our goal in 2015. By April 2015, 45% of the OLIO Orientation participants who graduated in 2014 become members of the Oregon bar. Currently, 25% of OLIO Orientation participants who graduated from law school in 2015 became Oregon Bar members. We will know whether we achieve our 35% goal for 2016 after the February 2016 bar exam.

Outcome #5: Implement Rural Opportunity Fellowship. Track and monitor the progress of the first recipient. Expand the program to two fellowships in 2016 and cultivate four rural employment sites for potential fellows.

Measure: Program implemented and a successful placement occurs.

A University of Oregon student was the inaugural recipient of the fellowship. She clerked for a judge in Klamath Falls. Both the student and the judge reported a successful experience working with one another in D&I's December 2015 newsletter:
<https://diversity.osbar.org/2015/12/01/december-2015/>.

Finance & Operations

Accounting & Finance

Exceeded 2015 Net Operating Revenue (NOR) budget target of \$92,271. The November NOR was \$524,779. The final 2015 data is available the end of February 2016 and the final NOR will well exceed the budget, but be less than the November NOR.

The bar's reserves remained substantially above the required levels through eight months of 2015 until the stock market declined and the excess dropped considerably yet remained above the required levels (final data will be available late February 2016).

Completed the tenth consecutive year of no increase in the general active member fee through general operations cost containment and consistent program fee revenue.

A successful completion of the 2016 budget after debate over whether a member fee increase was needed or if so the amount, and eventually leading to a balanced budget with a successful 5-year forecast after a lower than earlier projected \$50.00 general member fee increase.

Rolled out a new payroll system mid-year (replacing a system with poor performance and service) with an online timekeeping reporting and other various online reports and data available to all staff.

Completed an inventory count of all OSB fixed assets.

Hired a new employee for the vacant Accounts Payable Assistant position with a person providing excellent performance and quality service.

IT

Self-designed and customized lawyer referral software to replace and complete the components not completed by the contract vendor for participants to file invoices and make payment of the fee due the bar. Completed a one password sign on for the participant greatly enhancing the participant's experience.

Association Management System process successes:

- Completed Statement of Work (SOW) 1 of the AMS project and signed SOW 2.
- Completed 500 plus pages of the System Design Document.
- Created the test plans

Engaged Convergence to perform a thorough analysis of the bar's technology infrastructure and network and IT processes (report available to the bar in January 2016)

Completed software upgrades and improvements for these bar programs and services:

- Developed a database for unclaimed funds
- Updated the New Lawyer Mentoring database so members could pay online
- Rebuilt the Volunteer database to replace an inferior Survey Monkey product allowing Member Services to provide much more information on volunteers

Facilities

Replaced the bar parking lot lights with more energy efficient LED lights. Worked with adjacent building manager to agree to replace its lights also. Fulfills bar's commitment to sustainability and cost savings as new lights eliminate replacing costly units as they begin to burn out and energy savings payback time is projected at approximately four years

Leased last vacant space at the bar center beginning September 1, 2015. Building is now 100% occupied.

Fanno Creek Place Net Expense will be a slight improvement over its budget. (The November 2015 net expense is below budget by 0.9% and is expected to remain so when the final report is available.)

General Counsel's Office

Program Goals

The primary objective of General Counsel's Office is to provide cost-effective, high-quality legal advice and representation to protect the legal and policy interests of the Oregon State Bar.

Secondary objectives are to administer the Client Assistance Office (see CAO Program Measures), the Fee Arbitration Program and the MCLE Department effectively and efficiently. Additionally, General Counsel's Office supports the Unlawful Practice of Law Committee, the State Lawyers Assistance Committee and the Legal Ethics Committee, and is responsible for providing timely and accurate ethics assistance to members. General Counsel's Office also functions as the Disciplinary Board Clerk's Office. The office is also a general resource for questions from the public and others about the role of the bar, the regulation of the profession and related issues.

Program Description

General Counsel's Office provides legal advice to the OSB on internal matters such as personnel, contracts, public meeting and public records compliance and non-disciplinary litigation. The Office also advises and assists the Board of Governors in the development of bar policy on a variety of issues. The Office is a resource to the public, the courts, and other branches of government regarding the role of lawyers and the legal profession, the regulation of lawyers and other issues.

General Counsel oversees the operation of the Client Assistance Office and the MCLE Department. Both programs develop and evaluate their own program measures and day-to-day functions are handled by the CAO Manager and the MCLE Administrator. Ultimate responsibility for personnel and program issues, however, rests with General Counsel. Additionally, General Counsel reviews, upon request, all complaints dismissed by the CAO and makes a final decision.

General Counsel's Office also administers the Fee Arbitration Program, a voluntary mechanism for resolving fee disputes between bar members and their clients, or between bar members. Matters submitted are heard by a single arbitrator or a panel of three arbitrators, depending on the amount in dispute. All arbitrators are volunteers. Three-arbitrator panels are comprised of two lawyers and a public member. The party requesting arbitration pays a modest fee. Arbitration decisions are binding on the parties, subject to only limited court review. The Fee Arbitration Program added a mediation component on a three-year trial basis beginning mid-2012.

General Counsel's Office provides administrative support to the Unlawful Practice of Law Committee, which investigates complaints of unlawful practice by persons who are not members of the Oregon State Bar. Based on the Committee's recommendation, the bar is authorized by statute to seek injunctive relief against unlawful practitioners. The Committee

also enters into voluntary cease and desist agreements, issues cautionary and notice letters as appropriate, and engages in public education and outreach through, among other things, the issuance of advisory opinions.

General Counsel's Office provides ethics assistance to bar members, responding to approximately 4,000 telephone requests, 400 e-mail requests, and 20 requests for advice letters each year. General Counsel staff are regular contributors to the Bulletin and to continuing legal education programs of the bar and other organizations. General Counsel's Office is liaison to the OSB Legal Ethics Committee, assisting in the development of formal opinions that are issued by the Board of Governors, and in the development of proposed amendments to the Oregon Rules of Professional Conduct. General Counsel provides staff support to special task forces studying rules of professional conduct for lawyers and, occasionally, judges.

General Counsel's Office also supports the State Lawyers Assistance Committee, which is charged with reviewing and resolving complaints about lawyers whose conduct may impair their practice of law. When a lawyer is determined to be within the jurisdiction of SLAC, the Committee develops and monitors the lawyer's participation in a remedial program.

General Counsel's Office serves as the Disciplinary Board Clerk's Office, a central repository for all pleadings and official documents relating to formal disciplinary proceedings. The DB Clerk maintains the original record of pleadings and other documents in disciplinary cases, tracks the progress of the proceedings through final disposition, provides periodic notices when events do not occur within the time frame set out in the Bar Rules of Procedure, and assists with the logistics of arranging hearings. General Counsel's Office organizes and presents the annual Disciplinary Board Conference and advises Disciplinary Board members on procedural matters as needed.

Volunteers/Partnerships

General Counsel's Office partners with a variety of members and others in fulfilling its responsibilities. Although more difficult than in the past, we are still able to recruit members to represent the bar on a *pro bono* or reduced fee basis to help with the more complex non-disciplinary litigation in which the bar is involved. The bar also receives legal representation on employment and some other legal matters either *pro bono* or at reduced fees. Members of the Legal Ethics, State Lawyers Assistance and UPL Committees are all volunteers, including the public members; the same is true of the panelists for the Fee Arbitration Program and the public and lawyer members of the Disciplinary Board. General Counsel's Office also frequently partners with Oregon lawyers and the Professional Liability Fund to provide continuing legal education programs.

Outcome #1: Protect the legal interests of the Oregon State Bar.

The Bar suffered no adverse outcomes in connection with its non-disciplinary and UPL litigation in 2015 and all such litigation was timely processed. Two matters that were filed against the

bar and dismissed over two years ago remain pending before the Ninth Circuit Court of Appeals. Five new lawsuits were filed against the OSB and its employees. Four were dismissed; one remains pending. The bar is represented by insurance defense counsel on the pending case, and a motion for summary judgment has been filed.

An issue with PERS arose this year that presents potential liability for the OSB and PLF. It appears, however, that the matter may reach resolution either before the end of the year or in early 2016.

Throughout the year, the Executive Director and the Board of Governors were provided with timely, clear and concise analysis and recommendations on various legal and policy issues. All indications are that the Executive Director and Board of Governors are satisfied with the level and quality of legal and policy assistance from General Counsel's Office.

Managers similarly received prompt and helpful assistance with issues throughout the year including personnel, contracts, public records and meetings, and other issues as they arose. The volume and complexity of contracts to review increases every year, particularly with respect to information technology, and staff is developing the expertise to handle these matters in house as much as possible. For negotiation and revision of the Association Management Software contract, we hired outside counsel with specialized expertise in the area.

Outcome #2: Maintain an efficient and effective fee arbitration process for disputes covered by the rules.

Fee arbitration activity continues at a somewhat reduced level with 74 cases in 2015, as opposed to 84 in 2014 and 101 cases in 2013. General Counsel is unsure of the reason for this reduction, but has continued to receive positive feedback about the program. Of the cases opened, there were 46 requests for mediation, 5 of which resolved through mediation, and 1 of which went on to arbitration. In many cases although one party expressed a willingness to mediate, the respondent did not agree. The Board of Governors approved amendments to the Fee Arbitration Rules to formally incorporate mediation as an option for fee dispute resolution. In recognition of this change, the program name was changed in 2015 to the Fee Dispute Resolution Program.

In 2015, twelve fee arbitrations were held and four cases resolved without a hearing. Because the fee arbitration program remains voluntary, approximately 40% of the petitions are closed without resolution, either because of no response or an open refusal to participate, usually from the lawyer. The program is served by a sufficient supply of volunteer arbitrators and mediators.

Changes have been made to the Fee Arbitration and Mediation forms to accommodate the implementation of the newly approved rules and new program name.

Outcome #3: Provide timely, accurate and helpful ethics assistance to members.

This service continues to be one of the most highly valued by members, at least based on the informal feedback received. Call volume continues at a high level (approximately 20-25 calls/day) and nearly every call is answered the day it is received. Written inquiries are also nearly always addressed the day they are received, and no later than three business days from the date of receipt. GCO attorneys attended the ABA's National Conference on Professional Responsibility in 2015 and participated in other activities to keep them abreast of developments in the field. Members continue to compliment GCO's regular Bulletin articles and CLE presentations and the office is recognized as a valuable resource on issues of professional responsibility.

The Legal Ethics Committee presented one new formal ethics opinions to the Board of Governors in 2015, and continued its project of updating existing formal ethics opinions based on the amendments to the rules of professional conduct adopted in 2012 and 2013.

Outcome #4: Assist the UPL Committee in appropriate resolution of UPL complaints.

The UPL Committee received 74 complaints in 2015, a few more than in 2014. The Committee continues to resolve complaints in a timely manner, most within six months. The quality of investigations and reports remains good, and the Committee has been thoughtful and consistent in their decisions.

The Committee continues to focus more time and energy on strengthening its relationships and coordinating enforcement efforts not only with the Oregon Department of Justice and local law enforcement, but also with the American Immigration Lawyers Association (AILA), the U.S. Immigration and Customs Enforcement, and the Secretary of State with the goal of enhancing outreach to and protection of vulnerable populations.

Outcome #5: Maintain accurate records of Disciplinary Board proceedings and contribute to the timely disposition of matters.

The Disciplinary Board Clerk function enhances the integrity of the disciplinary process by separating the DB's operations from Disciplinary Counsel's Office. There have been no significant errors or unfavorable incidents; on the contrary, the DB Clerk typically provides more service to DB members than is contemplated by the position and consistently receives high praise for the service provided. Timelines for opinions and other responses from trial panels and regional chairs are not always met, an undoubted (and perhaps unavoidable) consequence of relying on volunteers with full-time jobs. Records management is accurate and timely, and efforts continue toward an entirely electronic filing process. GC responds to inquiries and provides procedural guidance to DB members as necessary. We had a DB Conference in 2015 for all Disciplinary Board members which was attended by 46 people. Evaluations reflect that the conference was valuable for attendees, who have asked that the conference be held annually in order to ensure the competence of Board members.

Outcome #6: Ensure efficient and effective operation of the Client Assistance Office and timely disposition of appealed dismissals.

The Client Assistance Office continues to meet its program measures for timely and accurate disposition of complaints. Details can be found in the CAO Program Evaluation. The number of appeals from CAO dismissals continues to be high, but the number of “reversals” is very small, indicating that CAO is conducting the appropriate analysis of complaints received. General Counsel’s Office received 168 requests for review of CAO decisions in 2015, for an average of 14 per month. General Counsel’s Office made decisions on 177 CAO referrals, for an average of 14.5 a month. In spite of this, the average number of days it takes for review continues to be high and exceed the goal for the office.

Outcome #7: Assist the SLA Committee in appropriate handling of referrals.

In 2015, the Committee received seven new regular referrals. These referrals come from other lawyers, members of the public, judges and the SPRB. The Committee promptly conducted its initial investigations and made determinations about whether to assert jurisdiction and monitor lawyers. Typically, delay only occurred when the Oregon Attorney Assistance Program notified the Committee that the referred lawyer is fragile, such that immediate contact by the Committee may result in physical harm to the lawyer. During the monitoring time, Committee members maintained close and regular contact with the referred lawyer. The committee was able to close nine regular cases this year.

In addition to these standard referrals, the Committee evaluates and monitors lawyers who are referred from Disciplinary Counsel’s Office as part of the conditional admission/reinstatement and diversion/probation process. The Committee is currently monitoring twelve disciplinary cases. The committee has also had nine successful completions of disciplinary cases this year.

Human Resources Department

Program Goal Statement

The goal of the Human Resources Department is to maintain compliance with all state and federal regulations related to human resources and safety issues; maintain a skilled, qualified, professional, productive, and diverse workforce as required to meet the service demands of the organization and make a positive impact on service areas; manage a comprehensive and cost effective benefit program; and create and enhance training options at all staff levels.

Program Description

The Human Resources Department provides direct service for all employment, training and development, performance appraisal, staff and member benefit administration, policy development, workers' compensation, and all safety-related activities for all bar departments and personnel. The department ensures compliance with federal and state human resources and safety requirements. Department administrative staff directly assists other Executive Services departments and staff with secretarial and administrative support when requested.

Volunteers/Partnerships

Vendors are used to provide training and products that come with service agreements. The bar utilizes professional insurance brokers to review current policies and advise on market conditions when securing workers' compensation, health, and employment practices coverage. The bar and PLF create a group, where practicable, for health insurance and employee assistance program contracts to ensure best rate premiums.

Outcomes and Evaluation

Outcome #1: Fulfill employee placement needs for all regular and temporary vacancies within a reasonable and appropriate amount of time to meet or exceed the needs of the hiring director or manager. Incorporate methods that facilitate a diverse outreach and recruitment.

Measures:

- Timely completion of process
- Effective pre-screening to identify sufficient pool of qualified candidates
- Successful retention
- Assist directors with succession planning

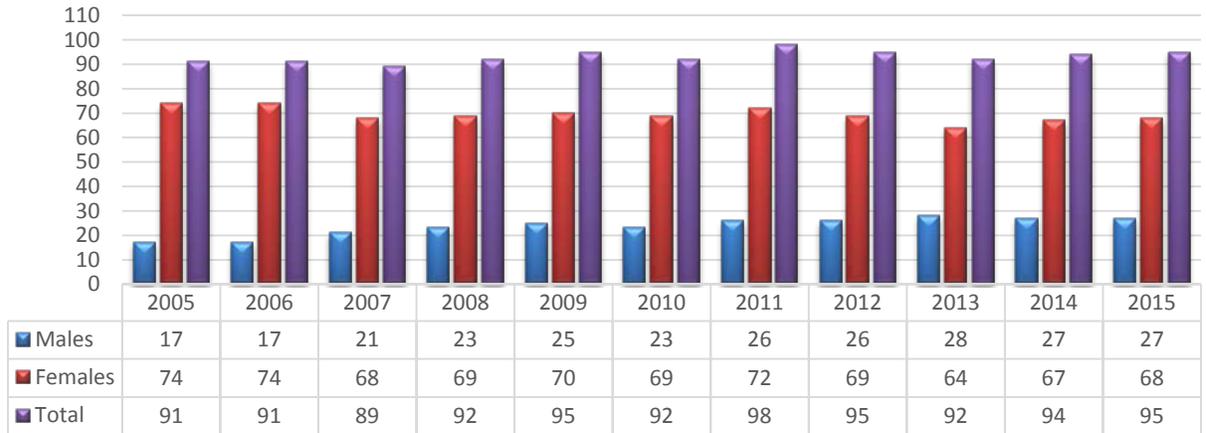
There were 22 open positions in 2015. Two positions remain unfilled and recruitment has not started for one position. Of the 19 newly-filled positions, 12 were filled from the outside, 7 were internal fills. 10 of the external hires remain employed with the bar. One was a limited duration assignment that ended and the other was an involuntary termination.

2015 Open Positions

Position Title	Exempt or Non-Exempt	Date Recruitment Started	Date Offer Accepted	No. of Days Open	Internal or External Fill	Still Employed	Race	Sex
Administrative Assistant - Communications	Non Exempt	03/17/15	04/02/15	16	Internal	Yes	Caucasian	M
Assistant Disciplinary Counsel	Exempt	03/27/15	06/26/15	91	External	Yes	Asian	M
Assistant Disciplinary Counsel	Exempt	03/27/15	07/07/15	102	External	Yes	Caucasian	M
Assistant General Counsel and CAO Manager	Exempt	03/05/15	03/24/15	19	Internal	Yes	Caucasian	M
CLE Seminars Assistant	Non Exempt	07/07/15	08/13/15	37	External	Yes	Caucasian	F
CLE Seminars Event Coordinator	Non Exempt	03/04/15	04/02/15	29	External	No	Caucasian	F
CLE Seminars Event Coordinator	Non Exempt							
Deputy General Counsel	Exempt	09/16/15						
Discipline Legal Secretary	Non Exempt	04/28/15	07/10/15	73	External	Yes	Caucasian	F
Diversity & Inclusion Coordinator	Non Exempt	03/17/15	06/12/15	87	External	Yes	Asian	M
Executive Director	Exempt	03/04/15	06/26/15	114	Internal	Yes	Caucasian	F
Facilities Assistant	Non Exempt	05/08/15	06/11/15	34	External	Yes	Caucasian	M
General Counsel	Exempt	08/11/15	08/11/15	0	Internal	Yes	Caucasian	F
Legal Opportunities Coordinator – Limited Duration	Non Exempt	01/23/15	01/23/15	0	External	No	Caucasian	F
Legal Publications Attorney Editor	Exempt	07/15/15	10/16/15	93	External	Yes	Caucasian	M
Production Artist	Non Exempt	04/24/15	06/10/15	47	External	Yes	Caucasian	F
Public Records Coordinator	Non Exempt	05/04/15	05/12/15	8	Internal	Yes	Caucasian	F
Public Records Coordinator	Non Exempt	07/07/15	07/07/15	0	Internal	Yes	Hispanic	M
Receptionist	Non Exempt	07/10/15	10/23/15	105	External	Yes	Caucasian	F
Referral & Information Services Assistant	Non Exempt	03/30/15						
Referral & Information Services Assistant (Bilingual)	Non Exempt	10/27/15	10/29/15	2	External	Yes	Hispanic	M
Regulatory Services Coordinator	Non Exempt	06/18/15	07/01/15	13	Internal	Yes	Caucasian	F

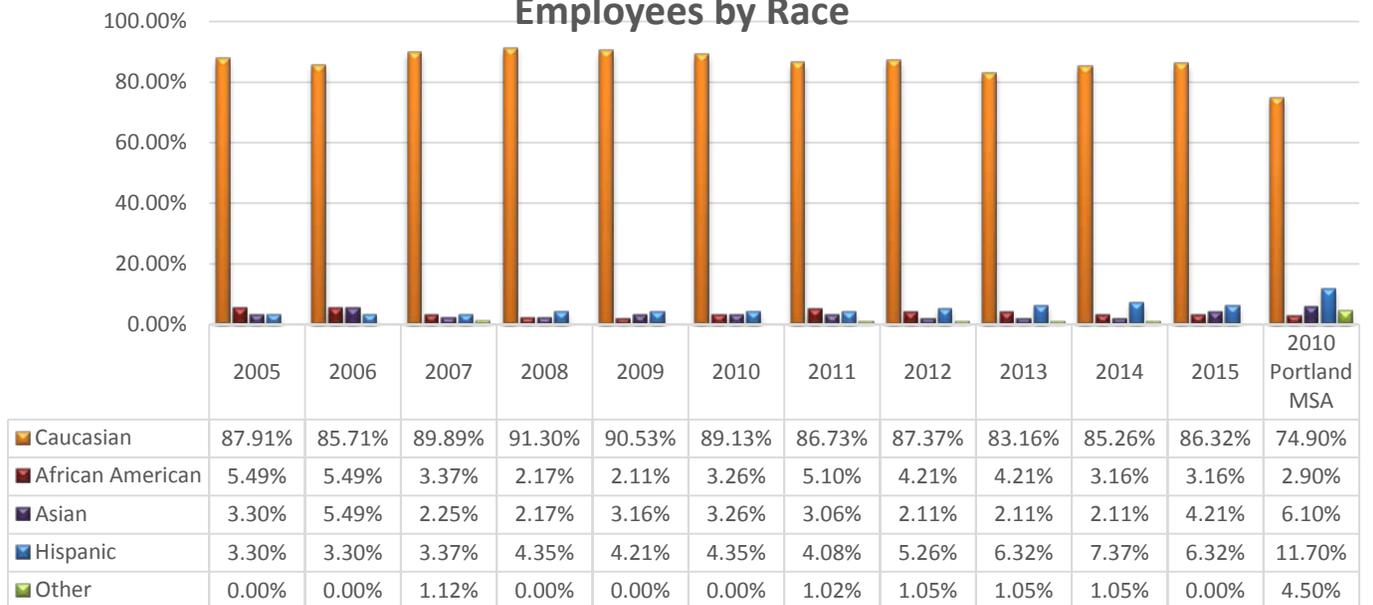
During 2015, the bar hired six males and, of the fourteen employees who left in 2015, six were males: one retired, one left due to personal issues, one started his own business, two relocated, and one graduated and began his chosen career path. The female employee population increased by one and the male population stayed even. The 2015 average turnover rate for males was 1.94% and 0.97% for females. In 2015, the bar hired 12 females and 8 females left the bar.

Employees by Gender



The bar continues to focus on increasing the diversity of the applicant pool through outreach to the community, agencies, publications, and websites directed toward a more diverse community. In 2015, the bar hired two Asians, one Hispanic, and twelve Caucasians were hired. Of the fourteen staff that left the bar in 2015, one identified as Other, two were Hispanic, and eleven were Caucasian. Overall, bar staff remained even at 95. The 2015 average turnover rate for Caucasians was 1.12% and 2.58% for Hispanics. The employee who identified as Other passed the bar exam and started a private practice, one Hispanic employee left for health reasons, and one Hispanic employee graduated and began his chosen career path.

Employees by Race



While we continue to struggle to fill RIS Assistant positions in 2015, average days to fill all positions decreased by 21 days. Hiring exempt staff in 2015 increased by 20 days. One reason was hiring the Executive Director position with a BOG committee and the other was the slow process for hiring the two Assistant Disciplinary Counsel positions. Three positions remain open at year end: Deputy General Counsel and RIS Assistant, for which we are actively recruiting, and CLE Seminars Event Coordinator, for which we have not started recruiting at the request of the Director.

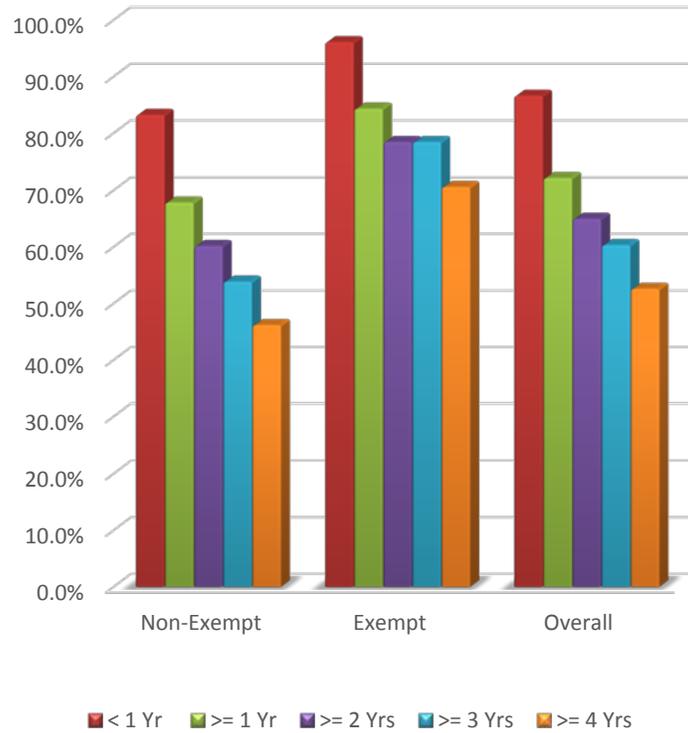
Number of Days to Hire

	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
Number of Filled Positions	21	15	18	19	13	7	8	24	12	19	15	22
Average Days to Fill	56.65	69.67	74.06	76.64	102.46	65.00	22.88	55.42	64.42	65.00	76.47	51.18
Variance (Days)	NA	13.02	4.39	2.58	25.82	(37.46)	(42.12)	32.54	9	.58	11.47	(25.29)
Number of Filled Non-Exempt Positions	17	8	13	14	11	5	5	21	12	13	11	15
Average Days to Fill	60.40	57.63	70.77	69.72	82.82	63.60	23.2	57.57	70.09	44.77	75.18	37.58
Variance (Days)	NA	(2.77)	13.14	(1.05)	13.10	(19.22)	(40.4)	34.37	12.52	(25.32)	30.41	(37.60)
Number of Filled Exempt Positions	4	7	5	5	2	2	3	3	1	6	4	7
Average Days to Fill	46.40	83.43	82.60	96.00	210.50	72.00	22.33	40.33	2	108.83	63.75	83.80
Variance (Days)	NA	37.03	(.83)	13.40	114.50	(138.5)	(49.67)	18.00	(16.00)	106.83	(45.08)	20.05

Retention Rates of New Hires tracks the to-date retention rate of employees hired since November 2003. During this period, 194 positions have been filled and 94 of those employees have left the bar. Only ten have left for the sole reason of leaving for another job. Twenty-two employees have been involuntarily terminated by the bar (three completed a limited duration assignment). The remaining left voluntarily due to geographic relocation, increased commuting expenses, full-time employment, family decisions, health issues, returning to college, internships, entering the military, retirement, and following their dreams, including starting their own businesses or changing career paths.

Exempt position retention rates tend to be more stable as more exempt employees are in chosen careers for which they have dedicated education and training. Non-exempt staff tend to be in a job where there is more ease of movement including for career or life changes.

Retention Rates of New Hires Since November 2003



Annual Average Turnover Rate

2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
.85%	1.55%	1.46%	.73%	.54%	.62%	1.07%	1.21%	1.27%	0.73%	1.24%

Headcount

	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
Exempt Staff	46	45	45	39	38	39	41	40	39	42	42
Non-Exempt Staff	45	45	45	53	57	53	57	55	53	52	53
Total Staff	91	90	90	92	95	92	98	95	92	94	95
Total FTE	82.972	81.975	84.85	86.275	89.05	85.675	88.95	86.275	84.40	87.10	89.35

There were three retirements in 2015. As of today, there are eleven employees eligible for full retirement. Three of those employees are directors or managers. One person will retire in 2016. There are three or four other possibilities.

Employees Eligible for Full Retirement	July 2009		Jan 2010		Jan 2011		Jan 2012		Jan 2013		Jan 2014		Jan 2015		Jan 2016	
	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#
Less than one year	10	9	11	10	10	9	9	9	13	12	11	10	11	10	12	11
Less than one year to five years	18	17	19	18	20	18	18	18	26	25	23	21	20	19	26	25
Less than one year to ten years	32	29	33	31	37	34	36	35	41	39	40	37	38	36	39	37

Outcome #2: Ensure training and development programs and opportunities are provided and in a cost-efficient manner. Ensure organizational strategy and compliance training needs are met as well as personal and professional growth opportunities.

Measures: Identify and arrange at least four all-staff presentations each year on issues such as wellness, personal finance, retirement planning, workplace harassment, and diversity.
Assist directors and managers to identify and organize appropriate areas of training specific to their needs.

2014 Staff Training Opportunities

Name of Seminar	Date of Seminar	Cost of Seminar	Employees Invited
Working in a Changing Environment	March 2015	\$0	All staff - mandatory
Money Basics: Spending, Borrowing, Saving	March 2015	\$0	All staff
Appropriate Workplace Conduct: Anti-Harassment and Anti-Discrimination	March 2015	\$1,823	All staff - mandatory
CPR/AED/First Aid/Bloodborne Pathogens	May 2015	\$812	All staff and PLF
Fire Extinguishers	October 2015	\$405	All staff – mandatory

There have been so many mandatory trainings in 2014 and 2015 that we tried not to overwhelm staff with training opportunities in 2015. This listing does not recognize external training opportunities staff attended such as the computer training sessions organized by Helen Hierschbiel.

Outcome #3: Ensure proper employee-related risk management exists by securing the most cost effective and comprehensive workers' compensation and employment practices liability insurance coverage. Ensure human and physical resources are prepared, protected, and trained in critical aspects of safety and management skills.

Measures: Oversee the work of the Safety Committee
Collaborate with the CFO on security issues
Coordinate periodic safety and security training for staff
Monitor liability coverages and update as appropriate
Provide regular guidance to directors and managers on staff management

All interested staff were trained during the annual first aid, CPR (adult and child), automated external defibrillator, and bloodborne pathogen seminar. We have 14 OSB employees trained for emergencies. Training for new certifications was provided to OSB and PLF staff.

In 2015, we complied with OSHA regulations requiring training of all staff in the use of fire extinguishers. This will be ongoing training for all new staff.

"Tip of the Month" continued throughout 2015 as employment law updates and HR tips were provided to managers and directors at the monthly meetings. Topics for 2015 included:

- Can't We All Just Get Along?
- Management Hack: Boost Productivity by Asking for Feedback
- Coaching Costs Less Than Hiring: 8 Steps to Mentoring Problem Employees
- The Top 5 Ways Managers Can Improve Performance Reviews
- Recognizing Domestic Violence
- Rest and Meal Periods Requirements
- Vacation Policy
- Wage and Hour Lawsuits: Beware "The Big Three"
- 10 Things Your Employees Are Dying to Hear You Say
- Taking the Dread out of Performance Reviews

The 2015 Employment Practices Liability (EPL) policy was renewed for \$9,120 per year reflecting a 4.67% increase. The EPL policy carries the same \$2,000,000 limit, \$15,000 deductible, third-party coverage, and directors and officers liability insurance (D&O). The EPL industry is experiencing a rise in employment practice claims as a trailing effect from the recent economic state. As a result, the rates increased across their book of business for not-for-profit organizations. The D&O coverage's deductible increased from \$15,000 to \$25,000 per claim due to increased notices of possible D&O claims, one of which had a \$23,000 payment. The workers' compensation policy renewed with a 5.87% premium decrease. In addition, we received a \$2,133 dividend. Our experience modification factor decreased from 0.97 to 0.86. This is a contributing factor to the premium decrease.

Insurance Coverage and Activity

Policy Period	WORKERS' COMPENSATION INSURANCE					EMPLOYMENT PRACTICES LIABILITY INSURANCE		
	Workers' Compensation Claims	Annual Premium	Variance	Dividend Received	Experience Modification Factor	Employment Practices Liability Claims	Annual Premium	Variance
2004 to 2005	1	\$8,450	(4.3%)	n/a	.79	1	\$9,765	(10.49%)
2005 to 2006	1	\$10,474	24.00%	n/a	.80	0	\$11,237	15%
2006 to 2007	0	\$9,819	(6.25%)	n/a	.82	0	\$8,633	(23.17%)
2007 to 2008	5	\$10,136	(0.015%)	\$1,123	.87	0	\$8,643	0.12%
2008 to 2009	2	\$9,873	(2.59%)	n/a	.88	0	\$8,224	(4.85%)
2009 to 2010	0	\$9,982	1.10%	n/a	1.04	0	\$7,961	(3.20%)
2010 to 2011	4	\$9,633	(3.5%)	\$3,832	1.07	0	\$8,119	1.98%
2011 to 2012	1	\$9,425	(2.16%)	\$3,268	1.09	0	\$6,928	(14.67%)
2012 to 2013	0	\$9,681	2.71%	\$3,655	0.98	0	\$6,880	(.69%)
2013 to 2014	1	\$10,447	7.92%	\$2,920	0.99	0	\$8,095	17.66%
2014 to 2015	0	\$10,514	0.64%	\$2,969	0.97	0	\$8,713	7.63%
2015 to 2016	0	\$9,897	(5.87%)	\$2,133	0.86	0	\$9,120	4.67%

Outcome #4: Ensure compliance with regulatory requirements through continual audits of current policies and practices; updating policies and practices when appropriate; managing a fully-functioning Safety Committee; and increasing efficiencies in departmental operations.

Measures: Monitor and update personnel policies as needed, including recommending new policies and practices.

The only policy revised this year was 4.8 Phone Purchase and Reimbursement. Policy 5.14 Personal Digital Assistant and Planning Organizers was deleted.

The Safety Committee continues to be active with quarterly meetings. The PLF sends a representative to the meetings. There has been little need for action by the committee. The most frequent issue is employees blocking an easy exit way from their work areas. These issues are easily remedied.

Legal Publications Department

Program Goal Statement

The Legal Publications Department supports the members of the Oregon State Bar in the practice of law through the publication of quality research materials.

Program Description

Building on a history of service that began in the 1950s when OSB published its first legal handbook, Legal Publications provides Oregon attorneys with the basic reference tools they need to practice law in a variety of areas. In 2015, print publications were continued primarily on a pre-order basis. All publications, together with several PLF publications and the Disciplinary Board Reporter, are online as BarBooks™, available to all OSB active members as a benefit of membership. In 2015, we worked to also add CLE Seminars handbooks to BarBooks™ with a plan to launch the new site with the handbooks by the end of the year.

The basic library contains 48 titles, ranging from brief “booklets” to five-volume treatises, from A (Administering Oregon Estates) to W (Workers’ Compensation). The publications are distinguished from those of national publishers because they are Oregon-specific and written by Oregon practitioners. The focus is on Oregon statutes, cases, administrative rules, forms, and legal traditions. The publications also provide practice tips, caveats, queries, and notes. Many titles include practice forms. Members consistently indicate that OSB Legal Publications products are very important to their practice.

Volunteers/Partnerships

A significant number (between 150 and 200) bar member volunteers serve as authors and editors of OSB publications in a typical year, either individually or in committees.

The Legal Publications Department is in partnership with the judiciary through preparation of Uniform Civil and Uniform Criminal Jury Instructions used by the courts. The department also occasionally works with sections both formally and informally to produce new publications and revisions.

Outcomes and Evaluation

Outcome #1: Develop a budget with realistic projections for revenue and expense. Review staffing and other expenses and make recommendations to Executive Director regarding appropriate adjustments.

Measures: Actual revenue and expense are within reasonable percentage of budget.

Increased editor page counts.

[**Note:** Final 2015 financial statements are not yet available, so this is a preliminary evaluation based on estimates from Oct. 2015 financial statements, Great Plains queries, and December revenue estimate based on prior years.]

Actual revenue for 2015 fell short of budget by approximately \$76,000 for print books, but exceeded budget by approximately \$1,370 for BarBooks™ and \$3,100 for royalties [not counting November and December royalties]. The BarBooks™ revenue is from law libraries, the three Oregon law schools, and staff accounts for firms. The royalties are for licensing of our jury instructions and books to Bloomberg, LexisNexis, and Thomson Reuters.

The primary reason for the shortfall is that the 5-volume *Oregon Real Estate Deskbook* experienced several delays and was significantly more pages than anticipated. In addition, we had four months in which we were short an Attorney Editor. As a result, two other smaller books were delayed and not completed by year end. In addition, because of the possibility of revised Oregon Formal Ethics Opinions being approved at the November Board of Governors meeting, the decision was made to delay publication of the revision of that book as well. Budgeted revenue for the three books delayed until 2016 was \$90,400.

Actual direct expenses were well below budget in almost every category. Items warranting special note are as follows:

- Printing expenses were 43% of budget, primarily because printing costs for *Oregon Real Estate Deskbook* were less than budgeted and because of the books that were not printed.
- Indexing expenses were only 50% of budget primarily because there were no indexing costs for the books that were not completed, and because the indexing costs for *Oregon Real Estate Deskbook* were lower than budgeted because we weren't charged per page to index forms.

Overall, the direct program expense of the department was only 61% of the budgeted direct program expense, and the general & administrative expense was approximately 81% of budget.

The total page count of books completed in 2015 was 7,428. An additional 260 pages of *Creditors' Rights and Remedies* and *Damages*, as well as 54 pages of *Environmental Law: Vol 2*, were posted to the BarBooks™ online library, for a total of 7,742 published pages. Numerous jury instructions and ethics opinions were also posted to BarBooks™ and will be included in the 2016 page count when they are published in print form. This continues the upward trend of pages published that began in 2012.

Outcome #2: Produce high quality legal resources that meet members' needs.

Measures: Publish new titles and updates to existing titles according to an established schedule.

Evaluate and report to BOG on “member input” aspect of BarBooks™.

Complete analysis of and implement, if appropriate, new chapter/author model.

Continue working with IDT to make BarBooks™ format user-friendly.

Transition from a book-to-online focus to an online-to-book focus for how resources are updated.

Assess membership views on content quality and ease of use, by survey or otherwise.

In 2015, the Legal Publications Department released a complete revision of six and one-half existing titles (five and one-half of which were reorganized into the new *Oregon Real Estate Deskbook*), one new book titled *Oregon Real Estate Codebook*, supplements for *Uniform Civil* and *Uniform Criminal Jury Instructions*, and the *Disciplinary Board Reporter*.

In 2014, the Legal Publications Department launched its new e-Books project as part of the Diversity Action Plan. The department published e-Books on Amazon.com, each of which includes a Quick Resource Guide on how to find an attorney; eight e-Books were published in the *Family Law Series* and six were published in the *Consumer Law Series*. No further titles were published in 2015 pending analysis of the success of the project and determination of what title(s) might be released next.

In 2015, we continued to see the fruit of our work to shorten the time between submission of materials by authors and final publication on BarBooks™ and in print. Authors and editorial board members alike have expressed satisfaction with the process.

Substantial work was done on BarBooks™ during 2015. Although the BarBooks™ wiki project remains a low priority among the other IT projects, the current site was revamped to make it responsive across device platforms and to accommodate the addition of CLE Seminars handbooks to the library. As of early December, this project is in the beta testing phase with plans to launch the new version of BarBooks™ by the end of 2015.

Additional feedback on BarBooks™ was received from members throughout the year, and the feedback was almost exclusively positive. Numerous members expressed their appreciation that BarBooks™ is now available to them as a member benefit. No formal surveys were conducted in 2015.

The planned transition from a book-to-online model to an online-to-book model is contingent on implementation of the BarBooks™ wiki project, and so no further work has been done on this aspect of this department outcome.

Outcome #3: Protect OSB’s intellectual property rights.

Measure: Maintain records of copyright agreements from authors, and verify copyright notices on published documents.

Legal Publications has obtained a signed Volunteer License Agreement from every author for all books published in 2015. These agreements are maintained electronically organized by book so that they can be easily accessed if needed. In one instance, the refusal of an author to sign a Volunteer License Agreement resulted in the removal of that author from the project so as to not jeopardize the Bar’s intellectual property rights.

Legal Publications has also filed a copyright registration for each book published in 2015. Although our authors retain their copyright in their individual chapters, OSB claims a copyright in the collected work.

To protect our copyright, each portion of our publications posted to BarBooks™ includes a copyright notice. In addition, all PDFs that were posted to BarBooks™ for the first time in 2012 were embedded with a copyright notice in the file properties.

Outcome #4: Ensure diversity of Legal Publications authors and editors.

Measures: Author demographics mirror OSB demographics as nearly as possible.

Develop standards for and assist editorial board with selection of diverse authors.

In 2015, author and editor group was again smaller than in previous years. The demographics again mirrored the OSB racial demographics in most categories, though there is still room for increased participation of most racial minorities in this important volunteer role. Efforts have continued to increase participation by racial minorities by soliciting assistance from the Diversity & Inclusion Department.

Racial Demographics for 2014	Authors & Editors	Active Members
Asian	1.0%	2.7%
Black	2.9%	0.8%
Hispanic	1.0%	1.6%
Native Americans	0.0%	0.4%
Other	1.0%	3.7%
White	67.6%	64.4%
Declined to state	26.5%	26.5%

In 2015, the gender breakdown of Legal Publications authors and editors showed a significant decline in the number of female volunteers, as compared with the membership breakdown that remained steady. The primary reason is that the majority of authors and editors were on our *Oregon Real Estate Deskbook*, which is still an area of law heavily dominated by males.

Gender Demographics for 2015	Authors & Editors	Active Members
Female	25%	36%
Male	75%	64%

The Legal Publications Department has supported the bar’s commitment to diversity and inclusion in other ways. In particular, every attempt has been made to ensure that diversity issues are considered in the selection of our marketing graphics.

Legal Services Program

Program Goal Statement

The goal of the Legal Services Program is to use filing fee revenues collected under ORS 21.480 and other funds granted from the Oregon Legislature to fund an integrated, statewide system of free civil legal services for the poor which is centered on the needs of the client community; and to work with providers to assure delivery of a broad range of quality legal services to low-income Oregonians. The Legal Services Program includes increasing access to civil legal services by increasing the amount of pro bono services by Oregon lawyers and the Loan Repayment Assistance Program (LRAP).

Program Description

The Legal Services Program began in 1998, following the Oregon Legislature's appropriation of a portion of court filing fees to support civil legal services to the poor. The legislation required the OSB to manage the funds. The legislation also mandated the development of Standards and Guidelines for providers, and the creation of a Legal Services Program Committee to provide ongoing oversight, evaluation and support to legal services providers, to ensure compliance with the Standards and Guidelines, and to further the program's goals.

As part of the compliance phase, the Director of the LSP conducts peer reviews and facilitates integration of services between the various legal services providers. The Director also works with other funders, the private bar and other organizations in a statewide collaboration to improve access to civil justice in Oregon. The Director also serves as Executive Director of the Oregon Law Foundation. The dual role enhances the collaboration between the OLF, the LSP and other legal services funding sources.

The LSP includes the Pro Bono Program. Under the general supervision of the Director, a part-time Pro Bono Coordinator works with the OSB Pro Bono Committee to develop and implement strategies that will create a statewide culture of pro bono and greater participation by the private bar. The LSP also manages the receipt and distribution of Unclaimed Lawyer Trust Account funds appropriated to legal services pursuant to ORS 98.368(2).

The Loan Repayment Assistance Program is also part of the LSP. The LRAP was created in 2007 in recognition that substantial educational debt can create a financial barrier for lawyers who wish to pursue a career in public service law. LRAP awards loan to qualified public service lawyers to enable them to practice in their chosen career.

Volunteers/Partnerships

The Legal Services Program Committee is comprised of seven attorney and two public member volunteers. The LRAP Advisory committee is comprised of nine attorney volunteers. The Pro Bono Committee is comprised of eighteen attorney volunteers.

Outcomes and Evaluation

Outcome #1: Develop and coordinate statewide policies that improve and expand access to legal services for low-income Oregonians.

Measures: Timely distribution of filing fee revenues.
Successful collaboration with legal service providers and OSB Public Affairs Department to enhance legislature's understanding of legal services funding.

In 2015, the Oregon legislature adopted HB 2700 which directs 50% of unclaimed class action funds (cy pres funds) to legal aid programs through the LSP. Many stakeholders worked together with the OSB Public Affairs Department to get the bill passed. They included BOG members, LSP Committee members, the Director of Legal Services, the Director, Media Relations, CEJ and the Legislative Committees of Legal Aid (OLC and LASO). Although passing HB 2700 is an exciting event for legal aid, it is not believed to solve legal aid's funding shortfall. There are not many class actions filed in Oregon making cy pres funds unpredictable and infrequent.

In addition, the 2015 legislature awarded \$600,000 in general fund support to the LSP to fund legal aid programs. It is anticipated that these funds will be disbursed the first quarter of 2016.

LSP staff continued to work with General Counsel to monitor, evaluate and further develop policies and procedures for the unclaimed client funds that are forwarded to the bar's LSP. In 2015 the LSP continued to receive and hold unclaimed funds from lawyer trust accounts and to hold funds from the Strawn Farmers class action received in 2014. The LSP Committee recommended not disbursing funds received during the annual cycle due to a decrease in funds received and increase in claims made by owners. One-third of the Strawn Farmers funds were disbursed pursuant to the 2014 LSP Committee recommendation to disburse them over a three year period.

The LSP received \$110,000 from the Benj. Franklin Litigation Fund account in the first quarter of 2015. The account held money from shareholders who contributed to the Benj. Franklin Litigation Fund (Litigation Fund). Don Willner, who passed away, was the attorney on the case.

In 2006, the FDIC issued a check to Don Willner to reimburse all of the shareholders that contributed to the Litigation Fund. Checks were mailed to the last known address of the shareholders but many of the checks were never cashed or were returned. Staff conducted due diligence and worked with General Counsel to figure out a strategy to claim those funds in the

account as unclaimed client funds that belong to the LSP. In 2014, the BOG approved moving forward to petition the court with pro bono counsel to have the bar take custody of Don Willner's practice which consisted mainly of the Litigation Fund. A hearing was held in February 2015, at which time the unclaimed client funds were awarded to the LSP.

The Director of Legal Services is participating on the Legal Aid Strategic Planning Committee. It first met in September 2015 and continues into 2016. The goals of the strategic planning process are to:

- Make recommendations for enhancing efficient and effective services with existing resources.
- Make recommendations for new positions if legal aid receives new resources in routinely-expected amounts.
- Make recommendations for service delivery if legal aid receives substantial new resources.

Outcome #2: Assure that standards are met and quality services are being delivered efficiently and cost effectively.

Measures: Monitor and report on implementation of new reporting and evaluation system; recommend refinements as appropriate.

The Legal Service Program Accountability Process was conducted in 2015. The providers each completed and submitted a Self Assessment Report that included both a narrative portion and a statistical portion for services provided in 2014. The information gathered and assessed was used to generate a draft Accountability Report. The draft report is still being reviewed by the LSP Committee and was not forwarded to be accepted by the BOG in 2015. Also in 2015 the executive director of the Lane County Legal Aid and Advocacy Center retired.

Based on the considerations of the accountability process coupled with the opportunities presented by the transitions at LCLAAC, the LSP Committee formed a subcommittee. The subcommittee's charge is to recommend mechanisms or procedures to review, and if needed, address the issues that have been identified with the delivery of legal services at LCLAAC. The subcommittee started its work in 2015 and will continue it into 2016.

Outcome #3: Increase the amount of pro bono services by Oregon lawyers by assisting members in understanding their responsibility to provide pro bono legal services.

Measures: Identify additional organizations or programs that meet eligibility standards. Continue working on proposal to allow MCLE credit for pro bono work. Continue developing creative ways for law students and members to contribute pro bono services.

Explore further ideas to encourage pro bono work.

Explore ways to highlight the organizations through which attorneys can volunteer to provide pro bono work.

Staff continues to work with organizations to help them through the certification process. The OSB has 19 Certified Programs having gained one new program in 2015. These Certified Programs allow Active Pro Bono attorneys, government-employed attorneys and House Counsel further options for engaging in pro bono work. Staff expects one or two new programs to become certified in 2016.

The 2015 Pro Bono Fair was very well-attended. It featured three free CLEs, 15 pro bono providers or support organizations, and the Pro Bono Challenge Awards Ceremony, hosted by OSB President Richard Spier. The Awards Ceremony portion of the evening was well attended. A smaller event took place in Bend, with one CLE and acknowledgement of pro bono volunteers.

Staff continues to work with the ONLD and the MBA on promoting and supporting pro bono work. Staff serves on the Legal Aid Services of Oregon Pro Bono Committee and helps select the LASO/OLC pro bono award winners.

Staff coordinated a Pro Bono Best Practices Roundtable for the Certified Pro Bono Programs and intends to support those Programs in quarterly meetings starting in 2016.

The OSB Pro Bono Committee was instrumental in creating panels for the law schools about pro bono work and in supporting the Pro Bono Fair. One Subcommittee worked with the CLE Committee to gain support for the award of CLE credits for pro bono work. The Committee nominated a pro bono attorney for an OSB President's award.

Outcome #4: Maximize the number of LRAP loans that are awarded; ensure that policies and guidelines facilitate the program goals.

Measures: Develop a membership outreach plan regarding LRAP and eligibility criteria.
Continue to identify and implement ways to increase available funds.
Continue to refine a membership outreach plan regarding LRAP and eligibility criteria.
Encourage more experienced public service attorneys to apply for the LRAP loans.

Staff worked with the Advisory Committee in successfully requesting that the BOG increase the LRAP budget for 2015. In addition the Advisory Committee reviewed the policies and guidelines to make any changes that will make the program more successful. For 2015, the changes made to policy and the approach taken by the LRAP Advisory Committee were minor and designed to accommodate the increase in budget approved by the BOG. The Advisory recommended raising the salary cap to \$65,000. For 2016, no changes were recommended for the Policies and Guidelines, although the Advisory Committee recommended changes to the application to ensure that the fullest financial information is available for each applicant.

Minimum Continuing Legal Education

Program Goal Statement

Maintain and improve the competence of Oregon lawyers by ensuring their compliance with the minimum continuing legal education requirements established by the Oregon Supreme Court.

Program Description

The MCLE Rules promulgated by the Supreme Court delegate oversight and administration of the MCLE program to the OSB Board of Governors. The BOG is charged with formulating new or amended MCLE Rules for the Court's approval; the BOG is also authorized to adopt regulations to implement the Rules. The MCLE Rules generally require all active members of the bar to complete 45 hours of continuing legal education every three years. Five of the hours must be in legal ethics or professionalism. One hour of training must be on the subject of a lawyer's statutory duty to report child abuse or elder abuse. Members are also required to complete three access to justice credits in alternate reporting periods. New admittees are generally required to include 10 hours of practical skills training during their first reporting period. They must also complete a three credit hour introductory course in access to justice.

An MCLE Committee appointed by the BOG serves as program advisor to the BOG by reviewing and recommending changes to the MCLE Rules and Regulations as appropriate to meet program goals. The MCLE Committee also reviews decisions of the MCLE Program Manager regarding program and sponsor accreditation, eligible credits and waivers or exemptions, upon request by a member or sponsor. The MCLE Program Manager supervises the day-to-day activities and flow of work, accredits programs, and makes decisions about compliance and waivers.

Volunteers/Partnerships

The MCLE program is established by the Board of Governors, subject to the review of the Supreme Court (ORS 9.112). Oversight of the program is delegated by the BOG to the MCLE Committee, which consists of six attorneys and one public member, all volunteers.

Outcomes and Evaluation

Outcome #1: Assure prompt and efficient processing of compliance reports.

In 2015, staff completed the processing of 5,043 compliance reports for the period ending 12/31/2014. 90% of the reports were reviewed by staff within ten business days of receipt. Notices of Noncompliance were sent to 461 members on March 4, 2015, which was 30 days after the filing deadline.

For the 2015 reporting period, 4,684 compliance reports were sent via email or regular mail in October 2015.

Outcome #2: Assure prompt and accurate processing of accreditation applications.

All applications for accreditation were processed within 30 days of receipt of the completed application. For the majority of the year, applications were processed within 2-3 weeks of receipt in our office. During the peak months of January, November and December, applications were processed within 25-27 days of receipt.

Outcome #2: Assure that MCLE Rules, Regulations and procedures facilitate compliance by members.

OSB's MCLE Rules are among the most flexible and generous in the country, allowing for a wide range of programs and accredited activities from which members can meet their requirement. 7,280 programs were accredited between January 1 and December 7, 2015. Many members complete their entire requirement by screening online programs.

MCLE Committee members and staff are excited about the new association management software that will be implemented in the summer of 2016. The Committee has recommended numerous rule and regulation amendments that should make compliance reporting and submission of accreditation applications easier for members and sponsors.

Telephone and email inquiries from members and sponsors are almost always answered in less than 24 hours. Members are nearly universally complimentary about the helpful and courteous assistance provided by staff.

The audit of 2014 reports was completed by the end of May 2015. Notices of Noncompliance were sent to two members as a result of the audit.

In June 2015, sixteen members (.003%) were suspended for failure to meet their MCLE obligations. The standard for this outcome is less than 1% of the reporting group suspended for non-compliance.

Several MCLE reminders about upcoming deadlines were posted in the electronic Bar News or *Bulletin* in 2015. In early 2015, an FAQ about 2015 reporting requirements and deadlines was posted on the website. In July, email reminder notices were sent to members about their upcoming reporting period deadline. In March and December, email reminders were sent to new admittees about their introductory access to justice credit requirement.

Media Relations

Program Goal Statement

The OSB Media Relations Program advances the bar's mission of serving justice through long-term partnerships with statewide media to increase public understanding of the law, the courts, the legal profession, and the rule of law.

Program Description

Media relations works with statewide news outlets in a variety of forums:

- **Expert sources.** The bar is a relied-upon source of expert sources to provide explanation and analysis of any story with a law-related element.
- **Spokesperson on bar policies.** Staff is the key point of contact for news outlets on stories relating directly to the OSB. This may include promotion of stories regarding bar policies or priorities; support of the OSB's legislative agenda; and explanation of OSB's performance of its regulatory function.
- **Media Training.** OSB staff frequently consults with bar members on working effectively with media, either in seeking positive press or handling negative press.
- **Support of the Judicial Branch.** The bar has a policy for responding to unjust judicial criticism, particularly when the judicial canons may restrict a judge's ability to offer explanation to the public. We also frequently consult with individual judges on managing high-profile cases, and on how judges can play a role in the public outreach and education objectives shared by the OSB and the OJD.
- **Advise leadership on media issues.** Media relations staff serves as the primary advisor to staff and board leadership on media-related issues.
- **Liaison to the Bar Press Broadcasters Council.** Staff plays a key leadership role on this joint council between the OSB, and Oregon Newspaper Publishers Association and the Oregon Association of Broadcasters.

Volunteers/Partnerships

Approximately 200 members serve on our list of media sources in specific areas of law. The annual Building a Culture of Dialogue event each March involves direct participation from roughly 50 individuals. And the Bar Press Broadcasters Council has 12 lawyer volunteers, working closely with the 12 media volunteers.

Media Relations staff partners with OSB sections and committees, county and specialty bars, the Oregon Judicial Department, legal aid programs, bar leadership, and media outlets statewide to advance goals of enhanced coverage of law-related issues.

Outcomes and Evaluation

Outcome #1: The OSB is a trusted source of information and expertise for statewide media.

Media relations staff strives to make contact with every major media outlet annually, to offer the OSB as a resource in coverage of all law-related stories. Staff in 2015 had regular (weekly) contact with the Oregonian, both on direct bar-related stories and in assisting with myriad law-related stories. Staff was also consulted on a regular basis by Oregon Public Broadcasting, Portland Tribune, Willamette Week and the four television stations in Portland.

Staff had regular contact with newspapers in Salem, Eugene, Medford, Bend and Pendleton, as well as many small newspapers around state. In addition to providing expert sources, staff reached out directly to editorial staff to revisit the multi-faceted role the OSB is willing to play in assisting journalists in coverage of law-related stories.

Media relations staff works with journalists on average approximately two to four times per week, and during a major breaking news story approximately five to six times per day.

Media relations staff also manages the regular coverage of the Oregon State Bar as a regulatory body. At any given time there are typically between eight and 15 discipline cases being tracked by media, with staff providing regular update and explanation. In late 2015 there was also emerging coverage of the Disciplinary System Review, which is carrying over into 2016.

Outcome #2: Bar members are actively engaged in OSB media and public education efforts.

Staff continues to maintain and update a list more than 200 bar members with expertise in specific areas of law who are skilled and comfortable serving as sources for media. Staff will offer ongoing training and/or consultation with our media volunteers.

Examples of some of the bigger stories where multiple media outlets sought out bar members for guidance would be the stories related to former Governor John Kitzhaber, the new marijuana laws, the Supreme Court PERS decision, and allegations of failures in the state's foster care system.

Media relations staff will continue to reach out to bar members who are willing to partner with media in educating the public about the law and the judicial system. The program will continue to offer ongoing training and/or consultation with our media volunteers.

Staff reaches out to bar members regularly to identify important trend and issue stories that may be of value to the community, and works closely with media in getting those stories covered in substantive fashion.

Outcome #3: Media is aware of and engaged in OSB priorities during the legislative session.

Staff works in partnership with the Board of Governors and the Public Affairs staff in advocating with local and statewide media on priority issues for the OSB. This includes pushing for timely and accurate reporting of priorities with news staff, as well as seeking support from editorial boards and other opinion leaders in statewide media.

In 2015 the Media Relations staff coordinated a major media campaign in support of implementation of the cy pres doctrine in Oregon class action cases. We shaped coverage of that issue every major newspaper in the state, as well as numerous smaller publications and several national outlets. New coverage for this complicated issue was substantive and expansive, and editorial support was positive at every newspaper with the exception of the Oregonian. Legal aid leaders were particularly gratified by the positive attention given to the issue of legal services for the poor, and the OSB is trusted as a key advisor on media outreach for the legal services community in Oregon.

Significant positive coverage was also achieved on issues of court facilities, funding of the Oregon Courts, and the issue of diversity of the OSB and the justice system generally.

Staff referred many journalists to bar member sources in support of law improvement bills addressing judicial foreclosures, custodianships, and digital assets.

Outcome #4: OSB provides exceptional customer service to media partners.

The media relations program is one of the key players in assuring the public that the OSB is diligently pursuing its public protection role. This requires maintaining an open and transparent relationship with our media partners, and efficient response to time-sensitive inquiries.

The Oregon State Bar is routinely recognized by media as one of the most responsive public bodies in the state. Part of this is simply due to the vast majority our records being subject to public disclosure. Yet the timeliness of access to records, and the accessibility of staff to discuss and inform regarding OSB business continues to contribute to a foundation of trust.

Member Services

Program Goal Statement

Provide professional networking and leadership development opportunities for bar members through support to bar groups including sections, committees, local and specialty bars and the Oregon New Lawyers Division.

Program Description

The Member Services Department provides administrative support services to the bar's 42 sections and 20 committees. These services include the scheduling of meeting rooms, maintenance of rosters, recruitment and appointment of volunteers, distribution of meeting and membership notices, bar leadership training, and compiling annual reports. The department provides similar services to county bars and the Oregon New Lawyers Division.

The department is responsible for administering the bar's elections and judicial preference polls, managing the associate membership program, and maintaining the list of Volunteer Defense Counsel members. The director of the department serves as administrative staff to the Board Development Committee of the Board of Governors.

Outcomes and Measures

Outcome #1: Provide members with professional networking and leadership opportunities that advance the mission and goals of the OSB.

In general, section membership enrolment trends tend to mirror OSB active membership rates. In 2011 however, section membership enrolment plummeted by 14%. The bar responded by offering additional support to section leaders, running ads to highlight the benefits of joining bar sections, and eliminating barriers for sections willing to offer complementary memberships. In early 2015 the department distributed notices to section list serve participants who had not renewed their membership. The department also provided additional support to sections wishing to reach out to newly admitted bar members. The increase from January's section enrolments to December's membership levels was 22%, more than double the increase seen in 2014.

In an effort to continue meeting the needs of recently admitted practitioners, the Oregon New Lawyers Division (ONLD) offered two multi-day training programs in 2015. Evaluations from the CLE events, which focused on civil litigation and family law, were positive with 88% of attendees rating the overall program as 'very good' or 'excellent'.

The ONLD hosted several networking opportunities including a sunset cruise on the Willamette River. The social event offered more than 100 law students, attorneys, and judges an opportunity for extended networking in a beautiful and unusual setting. The ONLD continued strengthening their relationship with several county and specialty bars as well. When executive

committee meetings were held around the state they invited local practitioners to a reception and welcomed county bar leaders at their board dinner. Monthly socials held in Portland were often co-hosted with specialty bar associations including the Oregon Gay and Lesbian Lawyers Association, the Oregon Chapter of the National Bar Association, Oregon Hispanic Bar Association, Oregon Asian Pacific American Bar Association, and the Oregon Minority Lawyers Association.

Outcome #2: Maintain an effective volunteer recruitment and retention program for the organization.

Ensuring a diverse pool of volunteer candidates remains a top priority for the department. With guidance from the Board Development Committee of the Board of Governors, the selection and appointment process for bar volunteers continues to advance. This year more than 220 members were appointed to serve on a bar committee, council, or board. A vast majority of these members were selected from the 407 volunteers who submitted an online application. This represents a 65% increase over the number of members who applied last year. Progress was also made in the appointment of diverse candidates. Of those who provided their demographic information, 15% are from historically underrepresented groups; this represents an increase of 6% over last year.

The bar utilizes non-lawyer volunteers on a variety of boards and committees within each level of bar governance. The number of public member volunteers has declined each year over the last decade. This year the number of volunteers doubled over last year, and the candidate diversity increased significantly as well. Of the 22 non-lawyer volunteers, more than 54% of the candidates self-identified as a minority in one or more of the demographic categories.

Outcome #3: Provide excellent customer service to the membership, bar groups, and staff.

Feedback from the committee and section department evaluation survey remains positive. On a scale of 1 to 5, where 1 means poor and 5 means excellent, officers rated the department at 4.8 for providing accurate information, 4.8 for timely distribution of meeting notices, and 4.9 for courtesy of staff. Committee chairs rated the department at 4.8 for assistance with the appointment of new members.

Outcome #4: Frequently review department budgets to ensure events and services are conducted using the most financially responsible approach.

After a thorough review of the budget the Member Services Department program expenses were reduced by 15% for the 2016 calendar year. The savings are a result of changes to partnership outreach methods and travel expense reductions.

New Lawyer Mentoring Program

Program Goal Statement

The OSB New Lawyer Mentoring Program advances the OSB's mission to serve justice by improving the quality of legal services, promoting professionalism, and assisting new lawyers in transitioning from students into to competent, ethical and professional lawyers.

Program Description

The New Lawyer Mentoring Program launched in 2011, under Supreme Court rule, to assure that every new lawyer in Oregon would have the benefit of a more senior bar member to welcome them into the profession, and serve as a resource during their transition from student to practitioner.

Soon after admission, new lawyers who are actively practicing are matched to volunteer mentors for a one-year program. The program includes a six-part curriculum, including: introduction to the legal community; ethics and professionalism; law office management; working with clients; career satisfaction; and practical skills. Although this does provide some structure, the requirements within each curriculum area are minimal, allowing participants to shape the program to the specific needs of each new lawyer.

At the completion of the program year, mentors and new lawyers receive eight and six MCLE credits respectively, including two ethics credits.

Volunteers/Partnerships

Since its inception, approximately 2500 bar members have engaged with the program. Each year sees roughly 500 matched pairs moving through the program. The program also hosts two annual CLE/Social events, enlisting another eight to ten bar members as speakers. Members of the appellate courts and the Oregon Bench Bar Commission on Professionalism have been active participants in our social events, and regular supporters of the program's mission. The NLMP relies on an advisory committee of 12 volunteer bar members who work on policy, events, and program enhancements.

The NLMP partners primarily with OSB Sections and committee leadership, county and specialty bars, Inns of Court, the Oregon Bench Bar Commission on Professionalism, and the Oregon Judicial Department.

Outcomes and Evaluation

Outcome #1: Bar members are actively engaged in the mentoring program.

Bar members are engaged with the New Lawyer Mentoring Program as committee members, CLE speakers, and active program participants (mentors and new lawyers). Since its inception, more than 1,350 bar members have volunteered to serve as mentor, and more than 1,000 new lawyers have completed the program. In 2015 specifically, approximately 520 new lawyers were engaged in mentoring relationships through the OSB, with the same number of mentors actively engaged. We recruited 245 new mentors into the program.

Although those volunteer numbers are gratifying, recruiting new mentors will always be a key area of focus for the program. In order to make the most effective matches, the program needs a significant surplus of mentors each year. In 2015, the program made strides in increasing its volunteers in Lane County, which had been an area of need. Additionally, a recruitment letter signed by Chief Justice Balmer to all bar members, which had not been done since the program's launch in 2011, was particularly effective. Additionally, we reached out through sections to areas of high need, most notably business law mentors in Multnomah County. Finally, we established a connection with the Oregon Chapter of American Immigration Lawyers Association (AILA) to address another area of particularly high need.

Outcome #2: New lawyers who are actively practicing in Oregon are matched with a mentor within two months of enrolling in the program.

From its inception, two months has been the aspirational goal for connecting new lawyers with a mentor. 2015 was the first year we met that goal in the vast majority of cases, with many matches happening significantly faster than that two month goal.

That said, this success belies some remaining challenges in this area. The wait times depend heavily on geographic location and practice areas, and are still encumbered by a dearth of mentors in certain categories. Thus, Outcome Number Two is directly connected to Outcome Number One, and our recruitment objectives this year must address those areas where we continue to see deficits that significantly impact wait time.

Outcome #3: The New Lawyer Mentoring Program is creating partnerships throughout the legal community.

With the NLMP in its fourth year in 2015, and seeing the operational elements well established, the program began to expand its presence throughout the statewide bar. The program began to establish a process for partnerships with local and specialty bars, sections, Inns of Court, law firms, and other law-related organizations. The first pilot, now under way, is a partnership whereby OWLS membership is used as a factor in matching, and then staff works with OWLS leadership in creating those matches. We expect this will enhance the quality of matches, and

offer additional benefits for both OWLS and the NLMP in recruiting and member benefits to participating members.

It also opens the door for increased programming and networking, which is an expressed desire of our New Lawyer participants. The pilot partnership had some minor glitches, most notably in slowing down the matching process in its earliest iteration. Staff and leadership of both organizations are working to enhance the process, which we then will replicate with other specialty bars or partnership organizations.

Public Affairs Department

Program Goal Statement

Apply the public policy knowledge and experience of the legal profession and program staff to the public good.

Program Description

The Public Affairs Department provides information and assistance to bar groups, bar members and government bodies on a wide variety of bar related legislation and public policy issues facing the profession, with special emphasis on access to justice and preserving the independence of the judiciary. The department works closely with OSB sections and committees on law improvement legislation and to identify responses to significant legal trends that affect the practice of law and the bar. The Board of Governors Public Affairs Committee develops the policies that guide the department's work and recommends positions the bar should take on public policy issues affecting the bar and the legal profession.

The focus of the Public Affairs Department (PAD) during 2015 has been legislative advocacy in the regular session of the Oregon Legislature and outreach to the bar after the session about its results. This took the form of a summary of legislation of interest to practitioners that passed as well as CLE presentations across the state. The last quarter of 2015, PAD staff spent reaching out to bar groups to inform them of the bar's process for submitting legislative proposals for the 2017 session. PAD staff also continued to monitor and support the Oregon eCourt implementation and judicial funding.

Volunteers/Partnerships

In addition to the members of the BOG Public Affairs Committee, the department collaborates with several hundred lawyer volunteers, the vast majority from bar sections and committees working on law improvement projects.

The department has working relationships with most other OSB departments. Outside coalition building is an ongoing activity, which currently emphasizes government leaders, business interest groups, political candidates and local legal communities.

Outcomes and Evaluation

Outcome #1: Ensure successful and high quality work on law-related public policy projects and problems, including law improvement.

The focus of the Public Affairs Department (PAD) during 2015 has been legislative advocacy in the regular session of the Oregon Legislature and outreach to the bar after the session about its

results. This took the form of a summary of legislation of interest to practitioners that passed as well as CLE presentations across the state. The last quarter of 2015, PAD staff spent reaching out to bar groups to inform them of the bar's process for submitting legislative proposals for the 2017 session. PAD staff also continued to monitor and support the Oregon eCourt implementation and judicial funding.

The Public Affairs Committee designated adequate funding for the legal services and indigent defense and for the judicial department as the bar's highest legislative priorities. During the 2015 legislative session, the department was involved in the following activities in connection with these priorities:

- Organized the bar's Day at the Capitol in May, at which members met with legislators about bar priorities.
- Advocated for an increase in legal aid funding through HB 2700, the cy pres bill. The bill was signed by the Governor on March 4, 2015.
- Recruited members to testify at judiciary committee meetings in support of the valuable services legal aid programs provided throughout Oregon.
- Coordinated with stakeholders and supporters throughout the state to ensure legislators developed a comprehensive understanding of the services legal aid programs provide to the most vulnerable Oregonians.
- Worked with stakeholders to develop and implement a statewide media campaign in support of civil legal services.
- Travelled to Washington DC for the ABA Lobby day in support of adequate federal funding for the Legal Services Corporation.
- Received an additional \$600,000 to bridge the gap between the expected reduction in federal funding with a General Fund appropriation.

Outcome #2: Inform customer groups while encouraging participation in the governmental process.

PAD staff worked closely with sections to keep members informed about legislation that could affect the practices of their members. For the 2015 legislative session, the PAD continued to implement the new internal bill tracking software system. The system, developed in partnership with the bar's information technology department, allowed PAD staff to track bills as they moved through the legislative process. This system also provides bar sections and groups with the ability to identify, track, and review proposed legislation. PAD staff helped bar groups formulate official positions (supporting, opposing, or commenting) on 15 bills during the regular session. PAD staff worked with section volunteers to draft position requests and testimony as necessary. Further, PAD staff supported 16 sections which actively tracked approximately 350 bills throughout the legislative session.

Since the end of the regular session, the public affairs staff has worked with volunteer authors and editors to produce a comprehensive review of the 2015 session designed to apprise practitioners of changes in virtually all practice areas—*2015 Oregon Legislation Highlights*. To

prepare for the 2017 regular session, public affairs staff is meeting with section executive committees and other bar groups to discuss the process by which groups may submit legislative proposals for bar sponsorship, and assist these groups through the process.

Public Affairs hosted a very successful Day at the Capitol, attended by approximately 70 lawyers to express their support of the bar's legislative priorities. Bar members met with most of the lawyer legislators, Ways and Means Committee members as well as members of judiciary committees. The bar also hosted a reception in February during the legislative session with an impressive turnout of legislative leaders and bar members.

In November, PAD staff hosted the National Association of Bar Executives Government Relations Section Annual Meeting in Portland. Over 30 members attended the 3 day event including evening events with attendance of local lawyers and legislators.

Public Affairs published 12 issues of the Capitol Insider this year, a newsletter on legislative and public affairs issues of interest to bar members. Approximately one third of the active bar membership has chosen to receive this monthly newsletter.

The department published a 2015 edition of *Oregon Legislative Highlights*, a comprehensive overview of 2015 legislation organized by practice area.

Public affairs staff has continued to be the liaison between the bar and the Council on Court Procedures (COCP) and between the bar and the Oregon Law Commission (OLC). The COCP is a statutorily created group charged with maintaining the Oregon Rules of Civil Procedure in good working order and proposing suggested improvements which go into effect unless changed by the legislature. The OLC is also a statutory group, but with a broader charge of general law reform, simplification, modernization and consolidation when appropriate.

Outcome #3: Assure operational efficiency.

Improvements in program operations continue through the use of technology, e-mail and the bar's website, as well as other record retention and electronic data management tools. Further modifications to the OSB bill tracking database and early alert system have continued to improve and will continue to achieve cost and program efficiencies for the bar.

Referral and Information Services

Program Goal Statement

Referral and Information Services (RIS) is designed to increase the public's ability to access the justice system, as well as benefit bar members who serve on its panels.

Program Description

The Lawyer Referral Service (LRS) began as a mandatory program in 1971 when attorney advertising was limited by ethics rules. A voluntary program since 1985, LRS is the oldest and largest program in RIS and the only one that produces revenue. The basic LRS operating systems (e.g., computer hardware and software) support the other department programs. Approximately 550 OSB members participate as LRS panel attorneys. The Referral and Information Services Department (RIS) also offers several other programs that help both the people and the lawyers of Oregon. The Modest Means Program (MMP) is a reduced-fee program assisting low to moderate-income clients in the areas of family law, landlord-tenant disputes, foreclosure, and criminal defense. Problem Solvers is a pro bono program offering legal advice for youth ages 13-17. Lawyer to Lawyer connects Oregon lawyers working in unfamiliar practice areas with experienced lawyers willing to offer informal advice at no charge. The Military Assistance Panel (MAP) connects military personnel and their families in Oregon with pro bono legal assistance. Attorneys volunteering for this program are provided training on the Servicemembers' Civil Relief Act (SCRA) and other applicable law.

Outcomes and Evaluation

Outcome #1: Maintain customer satisfaction by ensuring that client requests are handled in a prompt, courteous, and efficient manner.

Total call volume from the public increased 3.5% in 2015 with a total of 73,094 calls. Even with increased volume, RIS was able to provide service to more callers and capture more referrals by focusing on reducing the number of callers who abandon the call queue due to long wait times. By maintaining adequate FTE devoted to the phones, only 2.66% of callers abandoned an RIS call queue in 2015.

A new training schedule was implemented for staff in 2014 and continued throughout 2015, with every staff meeting now including a substantive law overview for a different area of law to ensure staff is making accurate referrals. Enhanced training has reduced errors among staff, and use of instant messaging software has helped staff assist each other with referral questions without interrupting active client calls.

Outcome #2: Increase member and public awareness of RIS programs.

The public-oriented focus for 2015 was to increase traffic to the OSB website, including the Legal Help page, to inform potential clients about available resources. Throughout 2015, RIS worked with the Communications & Public Services Department to continue the pilot Craig's List and Google Ad Words campaigns. Staff posted a "Need Legal Help?" message at various times on Craig's List. The posting included an embedded link to the "Legal Help" page on the bar's website. At the same time RIS Staff started two Google Ad Word campaigns. The first campaign, "OSB Website," focused on increasing the use of the OSB public website by people looking for information on legal topics. The second campaign, "RIS," focused on directing potential clients to the online referral request form for the Lawyer Referral Service for a specific area of law. These campaigns have resulted in a combined 7,767 clicks and 2,534,987 impressions in 2015. This in turn resulted in a 6% increase in visits to the RIS "finding the right lawyer" web page, with 86,780 visits in 2015.

Overall call volume increased in 2015, reaching 73,094 calls and resulting in 46,474 total referrals – an 11% increase in referrals over the previous year. The totals by program area are:

LRS	43,025
Modest Means	3,268
Problem Solvers	108
Military Assistance	73

Outreach to members remained focused on current panelists; with total registration remaining stable in 2015, no active recruitment of new panelists was warranted.

Outcome #3: Adapt services to meet both public and members' needs.

Following up on the BOG's directive to explore Modest Means Program expansion, including possible methods to address concerns about percentage fees expressed by the Workers' Compensation Section, PSAC members and/or bar staff met with the executive committees of the following sections over eighteen months: Elder Law, Estate Planning and Administration, Criminal Law, Disability Law, and Workers' Compensation. In November of 2013 the BOG voted to move forward with creation of new MMP panels for disability (SSI/SSD and VA benefits) and workers' compensation. Based on input from the respective bar sections, RIS staff and the PSAC drafted new policies and implemented a new modest means "Disability Benefits" panel pilot program that includes workers' compensation, VA benefits and SSI/SSD subpanels. Panelists can designate referrals under these panels as modest means if the client meets the financial eligibility and subject matter criteria.

The pilot launched at the start of the 2014-2015 LRS program year on September 1, 2014 and was scheduled to end on August 31, 2015. However, the PSAC decided to extend the pilot an additional year in order to obtain more data prior to making a final determination. The committee also considered and rejected a proposal from the workers' comp section regarding

percentage fees in workers' comp cases. Instead, the committee voted unanimously to make a recommendation to the BOG on a global change to percentage fees in the form of a \$200 "trigger" amount. If a referral does not result in the panelist earning and collecting at least \$200 on the case, the attorney will not pay a remittance to the bar. The BOG's Budget and Finance Committee will review this recommendation in early 2016.

Unforeseen circumstances caused the RIS Department to develop its own referral software at the start of 2015. Working closely with the IT Department, RIS was able to design, test and implement proprietary referral software between January and April of 2015. Since the go-live date on April 22, RIS has made more than 30,000 referrals in the new system with virtually no issues. Bringing the software in-house allowed RIS to implement several new features, including single sign-on with the bar's website, enhanced reporting speed, and a more user-friendly payment system. Member feedback has been uniformly positive since implementation, and the bar is saving \$7,500 per year in fees that were paid to a third party software developer. RIS staff will continue monitoring the new system and making improvements where needed.

Outcome #4: Implement break even budget based upon adoption of percentage fees revenue model.

In 2015 LRS collected \$696,192 in percentage fee revenue, which represents \$5,801,600 in business generated for panelists. 2015 LRS registration revenue was \$115,420. Therefore, total LRS revenue for 2015 was \$811,612. Due to the typical delay between referral and case resolution in contingency fee matters, budget projections will increase in accuracy and begin to stabilize within the next 12-24 months. Based on recommendations of staff and the PSAC, the BOG elected to make no changes to the LRS fee structure for the 2015-2016 program year. As stated above, consideration of a threshold amount that would trigger application of percentage fees (with the effect of keeping brief service matters exempt from percentage fees) will be considered by the BOG in 2016.

The combination of registration and percentage fee revenue resulted in a net revenue for the second time in the program's history (2014 being the first), far exceeding budget projections and resulting in the program's best financial year *ever*. Total revenue since percentage fee implementation is \$1,655,833, which represents \$13,798,608 in business generated for LRS panelists.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: February 12, 2016
Memo Date: January 29, 2016
From: Dawn M. Evans, Disciplinary Counsel
Re: Disciplinary/Regulatory Counsel's Status Report

1. Decisions Received.

a. Supreme Court

Since the Board of Governors last met in November 2015, the Supreme Court took the following action in disciplinary matters:

- Accepted the Form B resignation from Salem lawyer *Kevin E. Mayne*; and
- Issued an order in *In re Zachary Wayne Light*, accepting this Medford lawyer's stipulation to a 7-month suspension, all but 30 days stayed pending successful completion of a 3-year probation; and
- Accepted the Form B resignation from Portland lawyer *Julie A. Krull*; and
- Issued an order transferring Silverton lawyer *James F. Little* to involuntary inactive status pursuant to BR 3.2; and
- Issued an order in *In re Dirk D. Sharp* suspending this Bend lawyer for 1 year in a reciprocal discipline proceeding following a 1-year suspension, 6 months stayed pending completion of a 2-year probation in California for failing to perform meaningful or competent work, failing to respond to client requests for information, misrepresenting the status of a case to his client, and failing to account for funds paid in advance; and,
- Issued an order in *In re David Stanley Aman*, accepting this Portland lawyer's stipulation to a 1-year suspension, all but 6 months stayed pending successful completion of a 2-year probation; and
- Issued an order in *In re Theodore F. Sumner*, accepting this Beaverton lawyer's stipulation to a 3-year suspension; and
- Accepted the Form B resignation from Coos Bay lawyer *Brenda S. Whiteley*.

b. Disciplinary Board

Four Disciplinary Board trial panel opinions have been issued since November 2015:

- A trial panel recently issued an opinion in *In re Larry Wright* of Keizer (120-day suspension with formal reinstatement) for failure to respond to lawful request for information from a disciplinary authority; and
- A trial panel recently issued an opinion in *In re Jeffrey Dickey* of Portland (disbarment) for numerous violations involving several clients including engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation that reflects adversely on the lawyer’s fitness to practice law; and
- A trial panel recently issued an opinion in *In re Kirk Tibbetts* of Albany (30-month suspension) for failure to respond to clients’ requests to obtain files, failure to respond to lawful request for information from a disciplinary authority, criminal conduct reflecting adversely on honesty, trustworthiness or fitness as a lawyer, and misrepresentation that reflects adversely on fitness to practice law; and
- A trial panel recently issued an opinion in *In re David Brian Williamson* of St. Helens (disbarment) for numerous violations involving failure to notify a client of receipts of funds, failure to hold disputed funds, misrepresentation by omission to the court, dishonesty, and failure to supervise an employee who admitted to stealing funds and allowing employee to retain her position and continue to steal funds.

In addition to these trial panel opinions, the Disciplinary Board approved stipulations for discipline in: *In re Paul H. Krueger* of Portland (6-month suspension, 90 days stayed, 2-year probation), *In re David C. Noren* of Hillsboro (30-day suspension), *In re Milton E. Gifford* of Cottage Grove (60-day suspension), *In re Nick Merrill* of Portland (120-day suspension, all but 30 days stayed, 2-year probation), *In re Michael James Buroker* of Damascus (reprimand), *In re William Bryan Porter* of Tillamook (reprimand), *In re Rene Erm, II* of Walla Walla, Washington (30-day suspension), and *In re William Ghiorso* of Salem (reprimand).

The Disciplinary Board Chairperson granted the bar’s petition to revoke the probation of Medford lawyer *John P. Eckrem* and impose the balance of his 90-day suspension (60 days of which had been stayed) in 2014.

The Disciplinary Board Chairperson approved BR 7.1 suspensions in *In re Tyler Friesen* of Bend, *In re Nick Merrill* of Medford, *In re Jonah Morningstar* of Ashland (in seven separate matters), *In re Edward T. LeClaire* of Portland, *In re John P. Eckrem* of Medford (in two separate

matters), *In re Kathleen Y. Rinks* of Portland, *In re Mary E. Landers* of Springfield, and *In re Jessica S. Cain* of Newberg.

2. Decisions Pending.

The following matters are pending before the Supreme Court:

In re Rick Sanai – reciprocal discipline matter referred to Disciplinary Board for hearing on defensive issues; trial panel opinion issued (disbarment); accused appealed.

In re Robert Rosenthal – BR 3.4 petition pending.

In re Shane A. Reed – BR 3.4 petition pending.

In re Christian V. Day – BR 3.4 petition pending.

In re John P. Eckrem – BR 3.1 petition pending.

In re David Brian Williamson – BR 3.1 petition pending.

The following matters are under advisement before a trial panel of the Disciplinary Board:

In re G. Jefferson Campbell – October 29-30, 2015

In re Scott W. McGraw – January 19-21, 2016

3. Trials.

The following matters are on our trial docket in coming weeks/months:

In re Gerald Noble – February 9-10, 2016

In re James R. Kirchoff – February 18-19, 2016

In re Franco Dorian Ferrua – February 19, 2016

In re Eric M. Bosse – March 17-18, 2016

In re Thomas O. Carter – April 21, 2016

In re Dale Maximiliano Roller – May 9-11, 2016

4. Diversions.

The SPRB approved the following diversion agreements since November 2015:

In re Tomas Finnegan Ryan – January 1, 2016

In re Diane Henkels – February 1, 2016

5. Admonitions.

The SPRB issued 5 letters of admonition in November 2015 and January 2016. The outcome in these matters is as follows:

- 4 lawyers have accepted their admonitions;
- 0 lawyers have rejected their admonitions;
- 0 lawyers have asked for reconsiderations;
- 1 lawyers has time in which to accept or reject their admonition.

6. New Matters.

Below is a table of complaint numbers in 2015, compared to prior years, showing both complaints (first #) and the number of lawyers named in those complaints (second #):

MONTH	2011	2012	2013	2014	2015
January	19/20	46/49	21/21	29/31	18/19
February	35/36	27/27	23/23	24/25	28/28
March	21/25	38/39	30/30	41/45	22/22
April	40/42	35/38	42/43	45/47	17/17
May	143/146*	19/20	37/37	23/24	24/24
June	20/20	39/40	31/31	23/24	31/31
July	27/28	22/22	28/30	43/44	27/27
August	22/23	35/35	33/36	19/21	28/29
September	29/29	22/22	26/27	24/24	21/21
October	22/23	23/23	26/26	25/25	38/39
November	27/27	18/18	25/26	19/19	24/25
December	39/40	26/26	19/19	21/23	20/20
TOTALS	444/459	350/359	341/349	336/352	298/302

* = includes IOLTA compliance matters

As of January 1, 2016, there were 169 new matters awaiting disposition by Disciplinary Counsel staff or the SPRB. Of these matters, 43% are less than three months old, 22% are three to six months old, and 35% are more than six months old. Thirty-four of these matters were on the SPRB agenda in January. Staff continues its focus on disposing of oldest cases, with keeping abreast of new matters.

7. Reinstatements.

Since the last board meeting, there are no reinstatements ready for board action.

8. Staff Outreach.

On January 22, Assistant Disciplinary Counsel Susan Cournoyer participated as a table discussion leader at a seminar entitled Implicit Bias, which was co-sponsored by the Bar’s Office of Diversity and Inclusion.

DME/rh

ULTA 2015 Report

Annual Unclaimed Fund	Farmers Class Action Fund	Total All Funds	
Statistics since inception of program			
\$ 684,121	\$ 518,900	\$ 1,203,021	Total of all Submitted Unclaimed Property
\$ (92,762)	\$ (27,159)	\$ (119,921)	Total of all Claimed Property
\$ (32,598)	\$ -	\$ (32,598)	Total of Property Returned/Forward to Other Jurisdictions
\$ (323,103)	\$ (346,346)	\$ (669,449)	Total Funds Distributed to Programs
\$ 235,658	\$ 145,395	\$ 381,053	Balance of Funds on Hand by Fund

Breakdowns by Year

2015			
\$ 155,965	\$ -	\$ 155,965	Funds Collected
\$ (43,154)	\$ (15,708)	\$ (58,862)	Funds Claimed
\$ (216)		\$ (216)	Funds Returned
\$ 112,595	\$ (15,708)	\$ 96,888	Subtotal
\$ -	\$ (155,000)	\$ (155,000)	Funds Disbursed
\$ 123,063	\$ 316,102	\$ 439,165	Previous Year Fund Balance
\$ 235,658	\$ 145,395	\$ 381,053	Fund Balance

2014			
\$ 54,420	\$ 518,900	\$ 573,320	Funds Collected
\$ (45,649)	\$ (11,452)	\$ (57,100)	Funds Claimed
\$ (591)		\$ (591)	Funds Returned
\$ 8,180	\$ 507,448	\$ 515,629	Subtotal
\$ (61,103)	\$ (191,346)	\$ (252,449)	Funds Disbursed
\$ 175,986	\$ -	\$ 175,986	Previous Year Fund Balance
\$ 123,063	\$ 316,102	\$ 439,165	Fund Balance

2013			
\$ 106,952		\$ 106,952	Funds Collected
\$ (1,273)		\$ (1,273)	Funds Claimed
\$ (7,212)		\$ (7,212)	Funds Returned
\$ 98,467	\$ -	\$ 98,467	Subtotal
\$ (137,000)	\$ -	\$ (137,000)	Funds Disbursed
\$ 214,519	\$ -	\$ 214,519	Previous Year Fund Balance
\$ 175,986	\$ -	\$ 175,986	Fund Balance

2012			
\$ 127,537		\$ 127,537	Funds Collected
\$ (1,146)		\$ (1,146)	Funds Claimed
\$ (7,098)		\$ (7,098)	Funds Returned
\$ 119,292	\$ -	\$ 119,292	Subtotal
\$ (125,000)	\$ -	\$ (125,000)	Funds Disbursed
\$ 220,226	\$ -	\$ 220,226	Previous Year Fund Balance
\$ 214,519	\$ -	\$ 214,519	Fund Balance

Annual Unclaimed Fund	Farmers Class Action Fund	Total All Funds	
2011			
\$ 141,092		\$ 141,092	Funds Collected
\$ (1,539)		\$ (1,539)	Funds Claimed
\$ (1,705)		\$ (1,705)	Funds Returned
\$ 137,847	\$ -	\$ 137,847	Subtotal
\$ -	\$ -	\$ -	Funds Disbursed
\$ 82,379	\$ -	\$ 82,379	Previous Year Fund Balance
\$ 220,226	\$ -	\$ 220,226	Fund Balance

2010			
\$ 98,156	\$ -	\$ 98,156	Funds Collected
\$ -	\$ -	\$ -	Funds Claimed
\$ (15,776)	\$ -	\$ (15,776)	Funds Returned
\$ 82,379	\$ -	\$ 82,379	Subtotal
\$ -	\$ -	\$ -	Funds Disbursed
\$ 82,379	\$ -	\$ 82,379	Fund Balance

Oregon State Bar
Meeting of the Board of Governors
November 20, 2015
Open Session Minutes

The meeting was called to order by President Richard Spier at 1:00 p.m. on November 20, 2015. The meeting adjourned at 4:19 p.m. Members present from the Board of Governors were Guy Greco, R. Ray Heysell, Theresa Kohlhoff, John Mansfield, Audrey Matsumonji, Vanessa Nordyke, Ramón A. Pagán, Travis Prestwich, Per Ramfjord, Kathleen Rastetter, Joshua Ross, Kerry Sharp, Michael Levelle, Charles Wilhoite, Timothy Williams and Elisabeth Zinser. Staff present were Sylvia Stevens, Helen Hirschbiel, Rod Wegener, Dawn Evans, Kay Pulju, Susan Grabe, Mariann Hyland, Amber Hollister, Dani Edwards, Kateri Walsh, and Judith Baker. Also present was 2016 BOG members John Bachofner, Christine Costantino, Robert Gratchner, Julia Rice, and Kate von Ter Stegge; Carol Bernick, PLF CEO and Tim Martinez, PLF BOD; Karen Clevering, ONLD Chair and Colin Andries, ONLD Chair-elect.

1. Report of Officers & Executive Staff

A. Report of the President

As written. Mr. Spier informed the board of the status of the Uniform Bar Exam, the Selection of the OCLEAB representative, and the new role of OSB Immediate Past-President.

B. Report of the President-elect

Mr. Heysell relayed his enthusiasm for serving as president next year.

C. Report of the Executive Director

As written. Ms. Stevens reminded the board about 2016 committee and liaisons assignments.

D. Director of Regulatory Services

As written. Ms. Evans reported a recent trend in settling more disciplinary cases before trial.

E. Director of Diversity & Inclusion

Ms. Hyland updated the board on the success of this year's first rural opportunities fellowship and highlighted positive feedback about the public honors scholarship recipient placed with Governor Brown's Office.

F. MBA Liaison Reports

Mr. Spier reported on the October 27 MBA Board meeting including their discussion of the membership fee increase resolution on the HOD agenda.

G. Oregon New Lawyers Division Report

In addition to the written report, Ms. Clevering reported on the ONLD's five major accomplishments this year and introduced incoming chair, Colin Andries.

2. 2016 President & President-elect Elections

At the request of Mr. Heysell, the board unanimously confirmed Mr. Levelle as 2016 President-elect.

At the request of Mr. Spier, the board unanimously confirmed Mr. Heysell as 2016 President.

3. Professional Liability Fund

Mr. Martinez provided an overview of the PLF financial statements.

Ms. Bernick presented the PLF Board of Directors' requests that the Board of Governors approve the 2016 PLF Excess Application, PLF Excess Base Rate, and chapter 7 bylaw and policy changes for board approval. **[Exhibit A]**

Motion: Mr. Prestwich moved, Ms. Nordyke seconded, and the board voted unanimously to approve the 2016 excess application, base rate, and bylaw changes as presented.

Ms. Bernick presented the PLF Board of Directors' request for the Board of Governors to amend Section 5.100 of the PLF Policies to raise the threshold from \$500 to \$10,000 for checks requiring two signatures. **[Exhibit B]**

Motion: Ms. Matsumonji moved, Mr. Levelle seconded, and the board voted unanimously to approve changes to Section 5.100 of the PLF Policies as presented.

4. OSB Committees, Sections and Councils

A. MCLE Committee

Ms. Pulju reminded the board that during its deliberations about CLE seminars, the board also suggested reviewing the MCLE policies that impact CLE-related revenue. Ms. Hierschbiel then asked the board to consider the MCLE Committee's recommendation to eliminate Regulation 4.350(e) which exempts local bar associations in Oregon from paying the sponsor accreditation application fee. **[Exhibit C]**

Motion: Mr. Greco moved, seconded by Ms. Matsumonji, to eliminate Regulation 4.350(e). After discussion Mr. Levelle moved to amend the motion to allow any organization offering a free CLE program to receive the MCLE accreditation fee waiver. Mr. Levelle's motion failed for lack of a second. Returning to the original motion, Mr. Lavelle, Ms. Matsumonji, Ms. Nordyke, Mr. Ramfjord, Mr. Ross, Mr. Williams, and Ms. Zinser voted no; all others voted yes.

B. NLMP Committee

Ms. Walsh asked the board to consider the request of the New Lawyer Mentoring Program Committee to amend the NLMP rules as proposed. **[Exhibit D]**

Motion: Mr. Greco moved, Mr. Ramfjord seconded, and the board voted unanimously to forward a request to the Supreme Court to modify the NLMP Rules.

C. Client Security Fund Committee

Claim 2014-32 ALLEN (Scott)

Ms. Stevens asked the board to consider the request of the Claimant that the BOG reverse the CSF Committee's denial of his claim, as presented in her memo. **[Exhibit E]**

Motion: Mr. Greco moved, Ms. Matsumonji seconded, and the board voted unanimously to uphold the CSF Committee's denial of the claim.

Claim 2013-24 GOFF (Mantell)

Ms. Stevens asked the board to consider the request of the Claimant that the BOG reverse the CSF Committee's denial of his claim, as presented in her memo. **[Exhibit F]**

Motion: Mr. Wilhoite moved, Ms. Rastetter seconded, and the board voted unanimously to uphold the CSF Committee's denial of the claim.

Ms. Stevens asked the board to approve the CSF Committee's recommended awards in the following matters: **[Exhibit G]**

a. HALL (Meier-Smith)	\$9,333.92
b. ROLLER (Games)	\$12,252.00
c. DICKY (Patapoff)	\$25,485.00
d. STEDMAN (Husel)	\$6,500.00
e. CYR (Hallam)	\$20,207.24
f. GERBER (Koepke)	\$13,500.00
g. GERBER (Lawson)	\$10,000.00
h. GERBER (Moore)	\$5,000.00
i. GERBER (Roelle)	\$9,740.00

Motion: Ms. Matsumonji moved, Mr. Prestwich seconded, and the board voted unanimously to approve the CSF Committee's recommendations.

D. Legal Services Committee

Ms. Baker updated the board on the resignation of the Lane County Legal Aid Services Executive Director and Legal Aid's overall evaluation of their service model.

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

A. Board Development Committee

Ms. Matsumonji presented the committee's recommendations for appointments. **[Exhibit H]**

Motion: The board voted unanimously to approve the committee motion on the recommended appointments.

B. Budget and Finance Committee

Ms. Kohlhoff presented the committee's recommended 2016 OSB Budget for board approval. **[Exhibit I]**

Motion: The board voted unanimously to approve the committee motion to adopt the 2016 OSB Budget as presented.

C. Governance and Strategic Planning Committee

Mr. Heysell updated the board on plans to create a subcommittee to review the BOG's policy on sponsorship activities.

Mr. Heysell asked the board to consider the committee recommendation to amend ULTA Bylaws Article 27. **[Exhibit J]**

Motion: The board voted unanimously to amend the bylaws.

Mr. Heysell asked the board to consider the committee recommendation for a retired member status for members over the age of 65 who are retired from practicing law; they will be exempt from MCLE and IOLTA reporting and will pay fees equivalent to the inactive member fee.

Motion: The board voted unanimously to approve the committee's recommendation to create a retired member status.

Mr. Heysell asked the board to consider the committee recommendation to approve up to \$10,000 for the Accelerator Program Feasibility Study on the condition that each Oregon law school provides support for the program.

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

D. Public Affairs Committee

Mr. Prestwich and Ms. Grabe updated the board on the interim legislative session activities.

E. OSB Knowledge Base Task Force Report

Ms. Stevens asked the board to accept the task force recommendation with no action requested at this time. **[Exhibit K]**

F. Discipline System Review Committee

Mr. Johnson-Roberts introduced the Discipline System Review Committee's report and presented recommendations outlined in the exhibit. He acknowledged opposing viewpoints and indicated minority reports are likely to be sent to the board.

Motion: The board accepted the report. Mr. Greco moved, Ms. Zinser seconded to allow until mid-December for acceptance of minority reports before publishing all reports and allowing the membership 60 days to provide comment. Ms. Kohlhoff amended the motion to allow a comment period of 90 days. Mr. Ross moved, Mr. Prestwich seconded the motion and the board unanimously approved a 90 day comment period. **[Exhibit L]**

6. Other Action Items

Ms. Pulju updated the board on the section policy discussions.

Ms. Stevens asked the board if it wished to provide comments on the ABA issues paper concerning new categories of legal service providers.

Ms. Stevens reported that the Workers' Compensation Board has requested written input on proposed attorney fee rules to implement statutory changes enacted by the 2015 legislature. .

Motion: Ms. Rastetter moved, Ms. Zinser seconded, and the board voted to give Ms. Stevens authority to forward feedback from the Workers' Compensation Section to the Workers' Compensation Board as requested.

Mr. Mansfield presented a request for a \$2,000 donation to the Federal Bar Association to help fund a traveling exhibit depicting the history of school segregation and desegregation. **[Exhibit M]**

Motion: Mr. Ross moved that the donation be made, but the motion failed for lack of a second.

Mr. Spier updated the board on the HOD meeting and the Summary of Actions

Ms. Stevens reminded the board that it has Ms. Wright's Legal Opportunities Coordinator's report. The Governance and Strategic Planning Committee will continue to review the report in 2016.

Mr. Levelle asked for approval to send board members to an Implicit Bias CLE sponsored by an OSB member and co-sponsored by a number of specialty bars. Ms. Hyland indicated that the Diversity & Inclusion Department had made a contribution. **[Exhibit N]**

Motion: For a lack of a motion the request was denied.

Consent Agenda

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

7. Closed Session (Executive Session pursuant to ORS 192.660(1)(f) and (h)) **General Counsel/UPL Report – see CLOSED Minutes**

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

**Oregon State Bar
Board of Governors Meeting
November 20, 2015
Executive Session Minutes**

Exhibit A

Discussion of items on this agenda is in executive session pursuant to ORS 192.660(2)(f) and (h) to consider exempt records and to consult with counsel. This portion of the meeting is open only to board members, staff, other persons the board may wish to include, and to the media except as provided in ORS 192.660(5) and subject to instruction as to what can be disclosed. Final actions are taken in open session and reflected in the minutes, which are a public record. The minutes will not contain any information that is not required to be included or which would defeat the purpose of the executive session.

A. Unlawful Practice of Law Litigation

The UPL Committee recommends the Board seek injunctive relief against Mr. Reeves and Mr. Griffen to prevent their continued unlawful practice of law.

Motion: Mr. Greco moved, Ms. Kohlhoff seconded, and the board voted unanimously to approve the committee's recommendation to seek injunctive relief.

B. Pending or Threatened Non-Disciplinary Litigation

Ms. Hirschbiel reported on non-action issues.

C. Other Action Items

PERS Issues

Ms. Hirschbiel asked the board to authorize the Executive Director to sign a tolling agreement relating to claims that PLF employees have asserted against the OSB and PLF for alleged losses of PERS retirement account benefits.

Motion: Mr. Mansfield moved, Ms. Matsumonji seconded, and the board voted unanimously to sign the tolling agreement.

Youngblood ULTA Claim

Ms. Hirschbiel asked the board to approve Jon K. Youngblood's claim for the return of \$5,461.45.

Motion: Mr. Greco moved, Mr. Wilhoite seconded, and the board voted unanimously to approve the claim.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: November 20, 2015
Memo Date: November 3, 2015
From: Carol J. Bernick, PLF CEO 
Re: 2016 PLF Excess Coverage Application

Action Recommended

The 2016 PLF Excess Coverage Application is included for your review and approval.

Background

Very minor changes were made to the application to coincide with the new rating model. These changes are summarized as follows:

- Addition of question A.2 regarding the use of a law firm website;
- Addition of question A.7 regarding the number of non-attorney staff in the law firm;
- Addition of question A.8 regarding the use of a full-time office manager; and
- Addition of two fields in form C.1 (Current Attorney List), regarding CLE credit earned in prior year, and whether the attorney works fewer than 250 hours per year (the addition here necessitated the removal of the specific semi-retired attorney question asked in prior years).

The remainder of the application remains unchanged from 2015. The PLF Board of Directors unanimously approved these changes at its October 16, 2015 board meeting.

Attachment

PLF Excess Coverage

16037 SW Upper Boones Ferry Road, Suite 300
Tigard, Oregon 97224

PO Box 231600 | Tigard, Oregon 97281-1600

Phone: 503.639.6911
Oregon Toll-Free: 800.452.1639
Email: excess@osbplf.org
Website: www.osbplf.org

2016 NEW FIRM APPLICATION

Please fill out this Application completely and accurately. If you have questions about certain sections, refer to the Application Instructions. You may supplement any answer by attaching additional pages. Please email completed applications to excess@osbplf.org.

SECTION A – FIRM INFORMATION

- A.1 Firm Name: _____
Mailing Address: _____
City: _____ State: _____ Zip Code: _____
Phone: _____
- A.2 Does your firm have a website? Yes No
Website Address: _____
- A.3 Application Contact Name: _____
Contact Email: _____
- A.4 Type of Firm: Sole Practitioner Partnership PC LLC LLP Other: _____
- A.5 Date Firm in A.1 Began Business: ____ / ____ / ____
- A.6 Number of Attorneys in Firm (include of counsel): _____
- A.7 Number of Non-Attorney Staff in Firm: _____
- A.8 Does your firm employ a full-time office manager? Yes No
- A.9 Desired Beginning Coverage Date: ____ / ____ / ____

A.10 **Requested Coverage level:** You may check more than one box to request multiple quotations. Please note: new firms may apply only for the \$700,000 or \$1.7 million coverage levels, unless the attorneys are moving from a firm with higher limits of coverage, or unless sufficient explanation for the higher limits request is provided.

- | | |
|--|---|
| <input type="checkbox"/> \$700,000 / \$700,000 | <input type="checkbox"/> \$3.7 million / \$3.7 million |
| <input type="checkbox"/> \$1.7 million / \$1.7 million | <input type="checkbox"/> \$4.7 million / \$4.7 million |
| <input type="checkbox"/> \$2.7 million / \$2.7 million | <input type="checkbox"/> \$9.7 million / \$9.7 million* |

* Higher Coverage Limits Supplement required.

SECTION B – PREDECESSOR FIRMS

B.1 A former firm qualifies as a Predecessor Firm if it was a sole proprietorship, partnership, professional corporation, or other entity (a) that is no longer engaged in the practice of law; **and** (b) at least 50% of whose attorneys are affiliated with the Firm listed in A.1.

List **all** of the Predecessor Firms that meet **all parts** of the above definition.

Predecessor Firm	Year Established/Ended	No. of Attorneys	Location
------------------	------------------------	------------------	----------

- 1. _____
- 2. _____
- 3. _____
- 4. _____
- 5. _____

At the PLF's discretion, a former firm that does not meet the definition of a Predecessor Firm may be added by special endorsement. If you would like to request that a former firm(s) be added by special endorsement, please list it below.

Former Firm	Year Established/Ended	No. of Attorneys	Location
-------------	------------------------	------------------	----------

- 1. _____
- 2. _____
- 3. _____
- 4. _____
- 5. _____

SECTION C – FIRM ATTORNEYS AND FORMER ATTORNEYS

C.1 **Current Attorneys:** Please list the following information for each attorney presently working for the Firm, including of counsel attorneys.

Attorney Name	OSB No.	Year Started with Firm	Role/Status*	3 hours of CLE Credit in Past Year? Yes/No	Part time? Yes/No (less than 250 hours per year)
1.					
2.					
3.					
4.					
5.					
6.					
7.					
8.					
9.					
10.					
11.					
12.					
13.					
14.					
15.					
16.					
17.					
18.					

* SP = Sole Practitioner. P = Partner, S = Shareholder, PC = Professional Corporation. A = Associate, C = Of Counsel. M = Member, O = Other (explain)

C.2 Do all of the attorneys listed in C.1 above carry primary PLF Coverage?

Yes No If no, please explain. _____

C.3 **Former Attorneys:** Name of each attorney **not presently** working for the Firm who worked for the Firm, or a qualifying or specially endorsed Predecessor Firm listed in Section B, at any time during the past five years.

Former Attorney's Name	OSB No.	Employment Dates (in years)	Role/Status*
------------------------	---------	-----------------------------	--------------

- | | | | |
|----|-------|-------|-------|
| 1. | _____ | _____ | _____ |
| 2. | _____ | _____ | _____ |
| 3. | _____ | _____ | _____ |
| 4. | _____ | _____ | _____ |
| 5. | _____ | _____ | _____ |

*SP = Sole Practitioner, P = Partner, S = Shareholder, PC = Professional Corporation, A = Associate, C = Of Counsel, M = Member, O = Other (explain)

C.4 Did all attorneys listed in C.4 carry primary PLF coverage while working for the Firm or a Predecessor Firm?

Yes No If no, please explain. _____

C.5 Does your Firm include any **current or former** attorneys who are not Oregon bar members **OR** whose principal office is outside Oregon? If yes, please list the attorneys below and fill out a non-Oregon Attorney Supplement for each attorney. Yes No

Non-Oregon Attorney's Name	OSB/ Bar No.	Employment Dates
----------------------------	--------------	------------------

- | | | |
|----|-------|-------|
| 1. | _____ | _____ |
| 2. | _____ | _____ |
| 3. | _____ | _____ |
| 4. | _____ | _____ |
| 5. | _____ | _____ |

SECTION D – CLAIMS EXPERIENCE

D.1 Is any attorney in the Firm aware of any claim(s) against the Firm, a Predecessor Firm, or any attorney who worked for the Firm or a Predecessor Firm that has NOT been reported to the PLF? If yes, please provide details, including the name of the claimant, name of the responsible attorney, and a description of the claim and alleged damages.

Yes No

- D.2 Is any attorney in the Firm aware of any act, error, or omission or any possible claim, which might reasonably be expected to be the basis of a professional liability claim or suit against him or her, against the Firm or any Predecessor Firm, or against any present or former attorney of the Firm or any Predecessor Firm that has NOT been previously reported to the PLF? If yes, please explain. Yes No
- D.3 Has any excess carrier paid any amount above the PLF's primary limit during the past 10 years? If yes, please explain. Yes No
- D.4 Has this Application or a Firm Attorney Questionnaire been provided to all current firm attorneys for their verification? (Sole practitioners check "YES".) If no, please explain. Yes No

SECTION E – TYPE OF PRACTICE

E.1 Please complete the chart below to describe the Firm's practice by indicating the percentage of the Firm's professional time or billings in the private practice of law devoted to each area within the most recent 12-month period for which you have data. **The total must equal 100%. Please round to the nearest whole number.**

Administrative/Regulatory	_____ %	Land Use	_____ %
Admiralty/Maritime	_____ %	Litigation (see below)	
Antitrust/Trade Reg.	_____ %	Negligence/Defense	_____ %
Bankruptcy	_____ %	Negligence/Plaintiff	_____ %
Business	_____ %	Business Litigation	_____ %
Collection/Repossession	_____ %	Mediation/Arbitration	_____ %
Communications (FCC)	_____ %	Municipal	_____ %
Construction	_____ %	Oil, Gas and Coal	_____ %
Criminal	_____ %	Patents/Copyright/Trademark	_____ %
Domestic Relations	_____ %	Public Utilities	_____ %
Employment	_____ %	Real Estate*	_____ %
Entertainment/Sports	_____ %	Securities Law*	_____ %
ERISA/Employee Benefits	_____ %	Taxation (excl. Tax Opinions)*	_____ %
Estate/Probate/Wills/Trusts	_____ %	Workers' Comp. (see below)	
Financial Institution Law	_____ %	Defense/Employer	_____ %
Immigration	_____ %	Claimant/Employee	_____ %
Health	_____ %	Other (describe if over 5%)	_____ %
Investment Counseling	_____ %		
Labor Relations	_____ %		

* See Instructions for specific definitions.

E.2 Has any present or former attorney with the Firm or Predecessor Firm practiced in the last **10 years** in the area of Securities Law (including federal and state securities law)? **See Instructions for definition of Securities Law.** If yes, please submit a Securities Law Supplement Application. Yes No

E.3 Does any client, case, or group of related clients or cases currently represent more than 30% of the Firm's business (or has represented more than 30% in any year in the past three years)? If yes, please explain. Yes No

E.4 Does your Firm now include anyone, or has it included anyone during the past five years, who is or was registered with the U.S. Patent and Trademark Office? If yes, please complete a Patent Attorney Supplement for each Patent attorney. Yes No

SECTION F – OTHER INFORMATION

F.1 Does the Firm have excess coverage at the present time? Yes No

If yes, please complete the Firm's and all Predecessor Firms' history of prior excess professional liability insurance below for the past five years **AND PLEASE PROVIDE A COPY OF THE DECLARATIONS PAGE** from your current excess policy or policies and copies of any endorsements.

	Policy Period From/To	Insurance Co.	Policy Limits	Name of Firm Issued Coverage
1.	_____	_____	\$ _____	_____
2.	_____	_____	\$ _____	_____
3.	_____	_____	\$ _____	_____
4.	_____	_____	\$ _____	_____
5.	_____	_____	\$ _____	_____

F.2 During the past five years, has any insurance carrier declined to issue, cancelled, refused to renew, or agreed to accept only on special terms, professional liability coverage for the Firm, any Predecessor Firm, or any attorney in the Firm or a Predecessor Firm? If yes, please explain. Yes No

F.3 Does your Firm share office space with any other firm, attorney, or organization? Yes No

IF YES:

(a) Do you share letterhead? Yes No

(b) Do you routinely refer or share cases? If yes, please explain. Yes No

(c) Names of individuals, firms, or organizations with whom your Firm shares offices:

**Please note that the PLF Excess Plan does not cover liability you may have from office sharing arrangements under the doctrine of apparent partnership, partnership by estoppel, or similar theory.*

F.4 Does the Firm use multiple letterheads? Include all firm letterhead. Yes No

F.5 In the past five years, has any attorney in your Firm or a Predecessor Firm been refused admission to practice, disbarred, suspended from practice, or formally reprimanded by any bar association or court? If yes, please explain. Yes No

F.6 In the past five years:

(a) has any current attorney in your Firm or a Predecessor Firm been convicted of a felony or a Class A misdemeanor (or equivalent crime in other states)? If yes, please explain. Yes No

(b) has any current or former attorney in your Firm or Predecessor Firm engaged in any of the following activities: (1) conduct which is or could be the subject of bar discipline, (2) dishonest conduct or (3) unauthorized borrowing from the Firm or a client? If yes, please explain. Yes No

F.7 Does your Firm have other office locations? If yes, please attach a list of all such locations, including the street address, city, state, and zip code, and explain whether control and supervision rest with the principal business office. Yes No

F.8 Does the Firm maintain any of counsel relationship or share letterhead with any other firm or any attorney not listed as a Firm Attorney in C.1? If yes, please explain. Yes No

F.9 Does your Firm maintain a joint venture, partnership, or ownership relationship with any other businesses or receive any compensation for referrals to such businesses? If yes, please explain. Yes No

F.10 Does your Firm use temporary or contract legal services, or retain attorneys as independent contractors, on behalf of clients of the Firm? If yes, please explain the volume and nature of the work performed and contractor relationship with the Firm. Yes No

F.11 Does the Firm, any Firm Attorney, or any Firm Attorney's spouse or immediate family member possess any beneficial interest in a client business entity? If yes, please attach a list describing the percentage of ownership and the nature of the ownership interest (ex., family business, stock in lieu of fees, etc.). Yes No

If you answered "Yes" above, have the proper disclosures and notices required to maintain coverage under the PLF's Claims Made Plans (primary and excess) been made? If no, please explain. Yes No

SECTION G – PRACTICE MANAGEMENT

If you answer “NO” to any of the questions in this section, please provide supplemental explanations.

- G.1 Does the Firm have a way to reliably track client appointments, court dates, hearing dates, or other deadlines so all firm obligations are met? Yes No

Name of system used: _____

- G.2 Does your Firm put reminders on the calendar prior to key deadline dates, such as the running of a statute of limitations? Yes No

- G.3 Does your Firm follow up to verify that deadline-related tasks were actually performed? For example, do you confirm when service of process is completed? Yes No

- G.4 Does your system for tracking deadlines capture long-range or future work beyond the current calendar year? For example: yearly reminders to file annual accounting for conservatorships. Yes No

- G.5 Does your Firm screen new clients and cases for potential conflicts of interest prior to receiving confidential information? Yes No

- G.6 Does your Firm provide written disclosures when there is a potential conflict and obtain written consent from clients to continue representation? Yes No

- G.7 Does your Firm use “engagement” letters or fee agreements with all new clients? (These letters can be one agreement or separate agreements.) Yes No

- G.8 Does your Firm use “disengagement” letters or, if the client is an ongoing client, a letter at the conclusion of each legal matter that advises the client that the matter is concluded. Yes No

- G.9 Does your Firm use “non-engagement” letters with declined clients? Yes No

- G.10 When your Firm accepts a new case from an existing client, do you open a separate file for the new matter? Yes No

- G.11 When your Firm accepts a new case from an existing client, do you re-confirm the terms of representation? Yes No

SECTION H – OTHER PROVISIONS

- H.1 **Representations**: The undersigned represents that the information contained herein is true and correct as of the date this Application is executed, and that it shall be the basis of the Excess Plan and deemed to be incorporated therein if the Professional Liability Fund accepts this Application by issuance of an Excess Plan. It is hereby agreed and understood that this representation constitutes a continuing obligation to report to the Professional Liability Fund as soon as practicable any material change in the circumstances of the applicant's practice of law, including, but not limited to, the size of the Firm and the information contained on each Supplemental Application submitted herewith.
- H.2 **Release of Claim Information**: The undersigned hereby authorizes release of claim information from any prior insurer to the Professional Liability Fund. The undersigned understands that the PLF will use for underwriting purposes internal PLF claims information about the firm attorneys listed in Sections C.1, C.4, and C.6. The undersigned warrants that he or she has authority from the attorneys listed at Section C.1, C.4, and C.6 to receive claim information from the PLF as part of the underwriting process.
- H.3 **Claims Made Excess Plan**: The undersigned understands and accepts that the Excess Plan applied for provides coverage on a "claims made" basis for only those claims that are made against the applicant while the Excess Plan is in force, that defense costs are included within coverage limits, and that all coverage ceases with the termination of the Excess Plan unless the undersigned exercises certain extended reporting coverage options available in accordance with the terms of the Excess Plan.
- H.4 **Failure to Report Claims**: The undersigned agrees that failure to report any claims made against the applicant or any attorney in the applicant's firm under any current or previous coverage or policy of insurance, or failure to reveal known facts that may give rise to a claim against any prior, current, or future coverage or insurers, may result in the absence of coverage for any matter that should have been reported or in the failure of coverage altogether.

SECTION I – ASSESSABILITY

I.1 **Supplemental Excess Assessment:** The undersigned acknowledges that the Excess Plan is assessable as provided in Section XI of the Excess Plan. Assessment may be made during the Coverage Period or in future years to cover Excess Program claims and expenses in such fashion as may be provided in the Excess Plan. The undersigned warrants that he or she has authority to sign for and bind the Firm and its partners, shareholders, members, and professional corporations for payment of supplemental assessments in accordance with the terms of the Excess Plan.

It is agreed that completion of this Application does not obligate the Firm to purchase excess coverage from the Professional Liability Fund, nor does it bind the Professional Liability Fund to issue coverage. If coverage is issued, this Application, along with the Declaration Sheets, and any applicable endorsements, will be deemed a part of the Firm's Excess Plan.

It is agreed that any coverage provided by the Professional Liability Fund will be according to the applicable Claims Made Excess Plan, and that any representations made in this Application or in the related instructions and question and answer sheet or any requests made by the Firm in this Application will not expand coverage beyond that stated in the Declarations Sheet, applicable Claims Made Excess Plan, and any Endorsements issued to the Firm.

Signature: _____ Date: _____

Print/Type Name: _____ Capacity: _____

**** This application must be signed by a partner, member, or shareholder of applicant Firm.***

REMINDER – PLEASE INCLUDE COPY OF FIRM'S LETTERHEAD – THANK YOU

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: November 20, 2015
Memo Date: November 2, 2015
From: Carol J. Bernick, PLF CEO
Re: 2016 Excess Rates

Action Recommended

The PLF Board of Directors (BOD) requests that the Board of Governors approve a base rate of \$1,150 for 2016 excess coverage.

Background

In addition to its primary coverage, the PLF provides optional excess coverage to Oregon attorneys. The excess coverage is completely reinsured. Rates are determined through negotiations between the PLF and the excess reinsurers, usually Lloyds of London syndicates. Each year's rates are based on the ongoing PLF experience and predicted future trends, as well as in-person discussions between representatives of the PLF and reinsurers.

Since the PLF began offering excess coverage, we approached pricing in a way similar to that of the primary program: a single rate. For excess, we did charge a high rate for lawyers practicing in high risk areas (primarily securities and certain types of real estate) or who had a history of claims that met a certain severity threshold (not something we do at primary). We also had two rates for out-of-state attorneys.

As I have been reporting in my updates to the BOG, the PLF completely changed its excess rating system for 2016. We have discontinued the two-rate model in favor of a fully underwritten approach that begins with a base rate. At the October 16, 2015 PLF Board meeting, the Board approved a base rate of \$1150. This rate was developed after extensive modeling provided by our broker in London, Aon, working closely with our largest reinsurer. Our goal in the changed pricing structure is to price excess coverage according to the risk. In general terms, under the old model our pricing was often too high for lower risk firms and too low for higher risk firms. This resulted in poor loss development for our reinsurers which were becoming increasingly unacceptable to them. In short, we risked losing reinsurance from the Class A carriers that the PLF has always used and believe we should use to protect the interests of our covered parties and, ultimately, the public.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: November 20, 2015
Memo Date: November 3, 2015
From: Carol J. Bernick, PLF CEO
Re: 2016 PLF Bylaws and Policies Changes

Action Recommended

Proposed changes to the 2016 PLF Bylaws and Policies are included for your review and approval. These changes were unanimously approved by the PLF Board of Directors at its October 16, 2015 board meeting.

Background

The proposed changes are summarized as follows:

- Section 1.250 – Goal No. 2 and Section 7.100(B) – “Retained Earnings” was replaced with “Net Position” to provide a more accurate description of the objective;
- Section 7 – Various changes were made to this section to clear up language and intent. These changes include: cleaning up cross-references in document, fixing capitalization issues, clarifying the role of the Excess Committee of the BOD, renumbering subsections, etc.;
- Section 7.300(A) – changes were made to Section 7.300 to simplify and clarify criteria to be used in the new rating model. Rather than list out the various criteria in detail, Section 7.300(A) was redrafted to explain the criteria for evaluating law firm applications, while leaving open the possibility that these criteria can change from year to year;
- Section 7.350 was omitted entirely for the same reasons as described above;
- Section 7.300(E) was modified to replace the former section 7.400(A), which described what the Board of Governors approves each year with regard to Excess Coverage. In prior years, the BOG approved the excess rates. Those different rates at specific coverage levels no longer exist. To align the Policies with the new rating model, the language of this section was modified to require BOG approval for the base rate used in the new excess rating model;
- Former Section 7.700(B), describing semi-retired attorneys, was removed. This class of attorneys is still relevant to the rating model, but it is best addressed under section 7.300(A), where it now resides;
- Former Section 7.700(G) was removed. This section required Board approval of application questions addressing former Section 7.300(A)(8) (questions about

- Practice Management). Questions related to this topic remain relevant and a part of the application, but the requirement of Board approval of only those questions was removed. The Board is provided with a complete copy of the upcoming year's Excess application for review each year. Specific review and approval of one section of the application is unnecessary;
- New Section 7.600(I) was edited to remove redundant information. The discretionary continuity credit is described sufficiently in the text of (I)(1) so as to not merit a duplicative chart; and
- Section 7.600(J), regarding Extended Reporting Coverage (ERC), was modified to make clear on which coverage year the cost of ERC will be based.

Attachment

1.250 MISSION STATEMENT AND GOALS OF THE PROFESSIONAL LIABILITY FUND

STATEMENT OF MISSION: The mission of the Professional Liability Fund is to provide primary professional liability coverage to Oregon lawyers in the private practice of law. In doing so, the public is served. We also provide additional coverage and services that support our primary coverage program.

GOAL NO. 1 – To provide the mandatory professional liability coverage consistent with a sound financial condition, superior claims handling, efficient administration, and effective personal and practice management assistance.

(BOD 8/27/04; BOG 10/13/04)

GOAL NO. 2 - Full Funding of Claims and ~~Retained Earnings~~ Net Position: To maintain full funding of estimated claim liabilities net of reinsurance. In addition to full funding, ~~retained earnings~~ a positive net position may be maintained to stabilize assessments.

(BOD 5/14/04; BOG 6/11/04)

will be provided only with the prior approval of the attorney who is subject of the reports.

(BOD 6/18/99; BOD 8/6/99; BOG 9/16/99; BOD 8/27/04; BOG 10/13/04; BOD 12/11/09; BOG 02/19/10)

6.450 SHORT-TERM LOANS FOR TREATMENT

The Chief Executive Officer may authorize loans to attorneys in an amount not to exceed \$2,500 for the purpose of obtaining immediate treatment for alcohol, chemical dependency, or other problems which impair a lawyer's ability to practice law. The loan will be used only for the purpose of such treatment, and will be evidenced by a promissory note of the attorney.

(BOD 2/21/92, BOG 3/13/92; BOD 4/23/93, BOG 8/13/93; BOD 6/18/99; BOD 8/6/99; BOG 9/16/99)

6.500 MULTIPLE CLAIMS

It will be the responsibility of the Chief Executive Officer and staff of the PLF to contact any attorney with multiple claims to attempt to mitigate future damages.

(BOD 6/18/99; BOD 8/6/99; BOG 9/16/99)

CHAPTER 7 EXCESS COVERAGE PROGRAM

7.100 EXCESS COVERAGE PROGRAM

(A) The PLF will offer excess coverage through an excess program within the PLF as authorized under ORS 9.080(2)(a). The Board of Directors of the PLF will be responsible for the excess program (subject to the ultimate control of the Board of Governors as in other matters), but delegates underwriting to the ~~Excess Committee and~~ Chief Executive Officer.

(B) The excess program may maintain ~~retained earnings~~ a positive net position established from capital contribution, profit commissions, ceding commissions, investment income, and other sources. The purpose of the excess program ~~retained earnings~~ net position is

to provide excess program stability, capital to permit the PLF to retain some risk in its reinsurance agreements, and reserves against the possibility of failure by a reinsurer.

(BOD 6/30/97; BOG 7/26/97; BOD 10/3/97; BOG 11/15/97; BOD 5/14/04; BOG 6/11/04)

7.150 MANAGEMENT

The Professional Liability Fund will manage the excess program in accordance with the policies of the PLF Board of Directors. The excess program will reimburse the Professional Liability Fund for services so that the cost of the excess program is borne by the participants in the excess program through their excess coverage assessments and is not subsidized by the primary fund. All assets, liabilities, revenues and expenses of the excess program will be accounted for as a separate fund.

7.200 EXCESS CLAIMS SETTLEMENT

(A) The Board of Directors will have settlement authority for all claims in the primary and excess layers. In each case, settlement decisions are to be made by the ~~B~~Board considering only the interest of each respective fund, with due consideration to the duties owed under law by a primary carrier to an excess carrier, and vice versa. In the event of uncertainty or potential conflict as to appropriate trial strategy or settlement of a particular claim between the interests of the primary and excess programs, the Board of Directors may establish one or more advisory committees, seek legal or expert advice, or take such other action as the Board deems appropriate.

(B) All discussions regarding the handling of specific claims covered by the excess program will be conducted in executive sessions for reasons of confidentiality pursuant to ORS 192.660(2) (f) and (h).

(C) Excess claims will be settled according to the procedures stated at Policy 4.400. The member of the Board of Directors designated to review a

claim for settlement purposes under Policy 4.400(A) will have authority over the claim at both the primary and excess layers.

(BOD 8/11/95; BOG 11/12/95; BOD 6/30/97; BOG 7/26/97)

7.250 APPLICATION AND UNDERWRITING

(A) The PLF may require firms seeking excess coverage to complete an application form designated by the PLF. The PLF may request additional relevant information at any stage of the underwriting process. Firms will be underwritten based upon this application, such other information as the PLF deems relevant, and the underwriting guidelines established in sections 7.300 and 7.350. Because the information requested from firms is personal, sensitive, confidential, and relates to litigation matters, applications and other underwriting materials will be exempt from disclosure under the Public Records Law, ORS 192.410 et seq. Because some meetings of the Excess Committee ~~are~~ may be for the purpose of considering and discussing the information contained in the applications submitted by firms as well as the confidential claims information maintained by the PLF, the meetings of the Excess Committee ~~will~~ may be held in executive session under the Public Meetings Law, ORS 192.610 et seq., pursuant to the provisions of ORS 192.660 (1)(f) and other applicable sections.

(B) No final decisions or action on an application will be made by the Excess Committee. ~~The committee's function is limited to committee may review and discussion of firm applications, and but~~ all final decisions or action on applications will be taken by the Chief Executive Officer or the Chief Executive Officer's designee with a right of appeal to the PLF Board of Directors.

(C) For underwriting purposes the PLF may limit the excess coverage offered to a firm in such areas as, but not limited to, imposition of a retroactive date as to a firm or individual members; imposition of an exclusion as to claims

from particular claimants, transactions, events, or subject matters; imposition of an exclusion as to claims from business entities in which the firm, firm members, or their families have an ownership or management interest or for which they serve as an officer or director; and other coverage limitations. For underwriting purposes the PLF may impose additional requirements as a condition to obtaining coverage including, but not limited to, higher assessment rates, additional surcharges, or a requirement that the firm or firm members undertake specified education or personal and practice management assistance.

(BOD 8/27/04; BOG 10/13/04; BOD 10/9/09; BOG 10/30/09)

(D) In order to ensure the integrity and quality of the underwriting process and to maintain the viability of the excess program, the individual underwriting decisions of the PLF will be final and will not be reviewed by the Board of Governors.

(E) Excess plans are underwritten and issued on an annual basis and are not renewable.

(F) No information from the Oregon Attorney Assistance Program or the PLF's other assistance programs will be obtained or used in the underwriting process unless both the applicant firm and affected firm member(s) request that it be considered. See PLF Policy 6.300.

(BOD 2/18/94; BOG 3/12/94; BOD 6/30/97; BOG 7/26/97; BOD 10/3/97; BOG 11/15/97; BOD as rev. 11/21/97; BOD 8/16/02; BOG 10/3/02; BOD 8/27/04; BOG 10/13/04)

7.300 APPLICATIONS ACCEPTABLE FOR UNDERWRITING EXCESS COVERAGE ASSESSMENT

(A) Applications will be accepted submitted for underwriting will be evaluated against a variety of factors, including, but not limited to: prior claims experience, area of practice, CLE history, firm size, amount of excess insurance sought, ratio of attorneys to non-attorneys in firm, and the use and quality of

recommended standard practice management systems] if all of the following criteria are met:

~~(1) No claim has been made against any firm member during the prior five calendar years in which the total of expense plus indemnity paid equals or exceeds \$100,000;~~

~~(2) No firm member has any open claim for which the total of PLF expense and indemnity reserves equals or exceeds \$100,000;~~

~~(3) No firm member has any open claim reserved at less than \$100,000 with potential damages which equal or exceed \$100,000;~~

~~(4) No firm member has two or more claims made during the prior five calendar years for which any indemnity was paid;~~

~~(5) No firm member has two or more open claims pending;~~

~~(6) No firm member has any claim made since July 1, 1978 for which the indemnity paid equals or exceeds applicable PLF indemnity limits;~~

~~(7) No present member maintains his or her principal office as defined in ORS 9.080(2)(c) outside the state of Oregon or is not a member of the Oregon State Bar.~~

~~(8) Neither the firm nor any member practices in any Higher Risk Practice Area, and neither the firm nor a predecessor firm, nor any present or former member of the firm or a predecessor firm, has practiced in any Higher Risk Practice Area during the prior three calendar years; and~~

~~(9) Neither the firm nor any firm member provides an answer on the application which is different from answers approved by the PLF Board of Directors as indicating good practices or acceptable levels of risk.~~

~~(10) In the course of underwriting, no information becomes known to the PLF that indicates that the firm presents an unacceptable risk of excess claims.~~

~~(B) As used in these policies, "firm member" includes any partner, associate, professional corporation, professional corporation shareholder, and of counsel attorney of the firm or a predecessor firm for whom excess liability coverage is being sought.~~

~~(C) As used in these policies, Higher Risk Practice Areas include:~~

~~(1) Living Trust Law, which is defined as preparation of living trusts and related documents in connection with mass or general advertising and marketing of the service to the general public.~~

~~(2) Securities Law, which is defined as:~~

~~(a) The preparation of any part of a subscription document, prospectus, offering circular, disclosure statement or tax opinion in connection with the issuance, offer, sale, or transfer of a security.~~

~~(b) Providing services to a seller or underwriter relating to the offer or sale of a security, which is required to be registered under state or federal law.~~

~~(c) Providing services to an issuer or other seller relating to the offer or sale of a security, which is exempt from federal or state registration requirements.~~

~~(d) Providing services relating to the preparation or filing of periodic and special reports (e.g., Form 10-K, 10-Q or 8-K filings) with the Securities and Exchange Commission.~~

~~(e) Advising clients regarding reporting obligations under the securities laws.~~

~~(f) Providing advice to clients under the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940, or the Investment Advisers Act of 1940.~~

~~(g) Providing advice to clients on broker dealer or investment adviser compliance.~~

~~(h) Advising unregistered broker-dealers (i.e. "finders") on transactions where they receive compensation for assisting with an offering of a security.~~

~~(i) Acting as bond counsel or special counsel in connection with the issuance of a security.~~

~~(j) Involvement in the direct sale to an individual purchaser of any security. (This category is intended to measure potential "seller" liability under state and federal securities laws, such as Section 12 of the Securities Act of 1933 or ORS 59.115 (1)).~~

~~(RCG 10/23/01, RCG 11/8/01, RCG 5/23/02, 10/1/02, RCG 11/13/02, RCG 5/24/03, RCG 11/19/03, RCG 8/15/04, RCG 6/25/04, RCG 10/19/04, RCG 11/15/08, RCG 5/16/02, RCG 10/23/02, RCG 10/19/09, RCG 10/19/09)~~

7.350 ADDITIONAL UNDERWRITING BASES FOR ACCEPTANCE

(A) An application that is not accepted for underwriting under the criteria listed in Section 7.300 (A) may nevertheless be accepted for underwriting if the PLF determines that one or more of the following provisions apply as appropriate:

(1) Prior claims against a firm member causing a failure under criteria 7.300(A)(1) (6) do not indicate a greater than average likelihood of future claims, either because of the nature of the claims, changes in the firm's or the firm members' practice, or for other reasons;

(2) Despite a failure under 7.300(A)(8), the firm and its members have adequate skills and ability to engage in Higher Risk Practice Areas without posing an unacceptable risk of excess claims and previous work by the firm, predecessor firm, firm member, or former member in Higher Risk Practice Areas does not pose an unacceptable risk of excess claims;

~~(RCG 10/29/09, RCG 10/10/09)~~

~~(3) Notwithstanding a failure of 7.300(A)(9) because any answer on the application is different from answers approved by the Board as indicating good practices or acceptable levels of risk, the firm or firm member has taken adequate steps to eliminate any unacceptable level of risk, the answer on the application has been satisfactorily explained to the PLF so that it no longer indicates an unacceptable level of risk, or refers the firm for personal or practice management assistance that is likely to mitigate any unacceptable level of risk;~~

~~(RCG 8/27/04, RCG 10/11/04)~~

(4) Despite a failure of 7.300(A)(7), the excess program is able to offer coverage to the firm based upon the underwriting standards stated in Section 7.300(A) and reinsurance requirements that allow the PLF to extend to any firm member who maintains his or her principal office as defined in ORS 9.080(2) (c) outside the state of Oregon or to a non-Oregon attorney whose principal office is in Oregon; and

(5) The firm has presented a response to a failure under Section 7.300(A)(10) which, in the opinion of the PLF, indicates that the firm does not present an unacceptable risk of excess claims and no other underwriting criteria prohibits coverage.

The PLF may request additional information from the applicant to determine whether or not the additional criteria stated in this section are met.

(B) In addition to the bases for acceptance listed in 7.350(A), the PLF may accept an application that has failed any of the criteria under Section 7.300(A) if the PLF is convinced, after considering all relevant underwriting criteria and information, including any additional information provided by the firm and any assessment rate adjustment, condition or restrictions imposed under Section 7.250(C), that the firm does not present an unacceptable risk of excess claims.

~~(B) 10/29/09; BOG 10/30/09~~

~~(CB)~~ If the PLF determines that an application is unlikely to be accepted for underwriting under the applicable criteria of Sections 7.300 and 7.350, the PLF will notify the applicant of its likely decision and the reasons. The applicant will be offered an opportunity (1) to present additional information to the PLF to demonstrate why its application meets the criteria for acceptance, (2) to withdraw its application, or (3) to have its application rejected by the PLF. If the applicant does not withdraw its application, ~~t~~The PLF will thereafter notify the applicant of its final underwriting decision and the reasons.

~~(BOD 10/9/09; BOG 10/30/09)~~

~~(CD)~~ If a firm has not been accepted for underwriting in a given year, the firm will not be considered for underwriting in the following two years unless there is a showing of an acceptable change in circumstances. It will be the responsibility of the firm seeking excess coverage to show an acceptable change in circumstances.

~~(ED)~~ If in a given year the PLF has offered excess coverage to a firm on the basis of any special coverage or practice limitations, restrictions, or conditions, those same limitations, restrictions, or conditions will apply to any offers of excess coverage in the following two years unless there is a showing of an acceptable change in circumstances. It will be the responsibility of the firm seeking excess coverage to show an acceptable change in circumstances.

~~(BOD 10/2/91, BOG 11/8/91; BOD 9/23/92, BOG 11/13/92; BOD 9/24/93, BOG 11/19/93; BOD 10/3/97, BOG 11/15/97; BOD 8/16/02, BOG 10/2-3/02; BOD 10/28/03; BOG 11/15/03)~~

7.400 EXCESS COVERAGE ASSESSMENT

(EA) Assessments for excess coverage will be determined through an underwriting formula and rate sheet. Base rates will be set by the PLF in agreement with reinsurers and will be approved by the Board of Governors upon recommendation of the PLF Board of Directors.

~~The assessment rates for excess coverage will be established by the Board of Governors upon the recommendation of the PLF Board of Directors. ^(a) The assessment may include debits or credits for firms based on prior claims, practice specialties, the extension of prior acts coverage (waiver of retroactive date), and other factors.~~

~~(EB) The Board may establish requirements and procedures concerning the payment of excess coverage assessments including, but not limited to, payment due dates, cancellation for non-payment, and financing of assessments.~~

~~(GC) The excess program may be assessable against the program participants, including firm members. Supplemental assessments will be made if required according to the terms of the excess coverage plan.~~

~~(BOD 12/6/91, BOG 3/13/92; BOD 9/23/92, BOG 11/13/92; BOD 10/9/09; BOG 10/30/09)~~

7.4050 REINSURANCE

The Professional Liability Fund may obtain such reinsurance for the excess program as it deems appropriate and economically advantageous. ~~The Board of Directors will be PLF will obtain provided~~ a formal reinsurance security report at least annually concerning the reinsurers participating in the excess program.

~~(BOD 9/24/93, BOG 11/19/93; BOD 6/30/97; BOG 7/26/97)~~

7.500 REPORTS

On a quarterly basis, the ~~C~~Chief Executive Officer will report to the Board of Directors concerning the status of claims with excess liability potential and will furnish such additional information as the Board of Directors may request.

~~(BOD 6/30/97; BOG 7/26/97)~~

7.6700 ADDITIONAL EXCESS PROGRAM RULES

~~(A) Excess Coverage Inquiries: Former firm attorneys may inquiry-inquire in writing regarding~~

their former law firm's excess coverage status. Information provided may include whether the former attorney's firm had or has excess coverage, the coverage period (and applicable coverage limits, if any), and whether the former attorney is listed on the firm's coverage documents.

~~(D) Of Counsel/Part time Attorneys: There is no charge for attorneys who: (1) are over 65 years of age, (2) are in an "Of Counsel" relationship with the firm, (3) who practice no more than 250 hours per year, and (4) do not practice in any Higher Risk Practice Area.~~

(B) Coverage Limits and Primary Coverage: A firm which obtains excess coverage from the PLF must obtain the same amount of excess coverage for each member of the firm. Excess coverage will not be extended to any firm which includes any attorney who does not maintain current primary PLF coverage unless the firm obtains coverage for the attorney under the provisions of Section (D) below. Firms will not be offered excess coverage limits over \$1.7 million unless they have maintained excess coverage of at least \$1.7 million with some carrier for one year prior to applying for PLF excess coverage. Firms may be offered coverage excess coverage over \$1.7 million without having had excess coverage of at least \$1.7 million with some carrier for one year prior to applying for PLF excess coverage if the firm does not present an unacceptable level of risk and the firm can demonstrate that the reason for the limits increase is due solely to client coverage requirements (See Section (M) below regarding coverage limits restrictions at the \$9.7 million level).

(C) Prior Acts Coverage/Retroactive Date:

(1) The retroactive date applicable to claims made under the excess coverage plan will be the same retroactive date that applies under the applicable primary PLF Claims Made Plan or Plans or the

firm's retroactive date, whichever date is more recent.

(2) The PLF may give a credit to firms with recent excess coverage retroactive dates according to the following schedule:

<u>Period between Firm Retroactive Date and Start of Coverage Period</u>	<u>Excess Assessment Credit</u>
0 months to 18 months	50 percent
Over 18 months to 30 months	30 percent
Over 30 months to 42 months	15 percent
Over 42 months	No credit

The PLF may choose not to offer the credit to a firm for the underwriting considerations stated at Policies 7.250 and 7.350.

(D) Non-Oregon Attorneys and Out-of-State Branch Offices:

(1) Firms with non-Oregon attorneys or out-of-state branch offices may be offered coverage subject to the Excess Program underwriting criteria, the restrictions of this section and any other additional underwriting and coverage limitations imposed by the PLF or its reinsurers. For the purposes of PLF Policy 7.700(E), registered patent agents will be treated the same as non-Oregon attorneys. Non-Oregon attorneys whose principal office is in Oregon must be practicing in areas of law that do not require Oregon bar membership.

(a) Excess coverage may be offered to firms which maintain out-of-state branch offices if the attorneys in such branch offices meet the underwriting criteria established for Oregon firms and such additional criteria as may be established by the PLF and the reinsurers. Coverage will not be offered for branch offices in any state determined by the PLF to represent an unacceptable level of risk.

(b) Excess coverage may be offered to firms with non-Oregon attorneys if the non-Oregon attorneys maintain principal offices in Oregon and if the non-Oregon attorneys meet the underwriting criteria established for Oregon firms and such additional criteria as may be established by the PLF and its reinsurers.

(2) The PLF may establish conditions, terms, and rates for coverage for firms with non-Oregon attorneys and/or out-of-state branches, including additional endorsements and exclusions. The PLF may offer "drop-down" coverage for the firm for any firm members not covered by the PLF primary fund, subject to such deductibles or self-insured retentions as the PLF may establish.

(3) The PLF ~~will~~ may not offer excess coverage to any firm if the total number of out-of-state lawyers in the firm exceeds more than 30% of total firm lawyers at the time of application or at any time during the past five years.

(4) Unless otherwise determined by the PLF, firms will be charged for excess coverage for non-Oregon and out-of-state attorneys at a per-attorney rate equal to the current primary rate plus the rate for excess coverage applicable to other firm attorneys.

(5) Coverage for non-Oregon and out-of-state attorneys will be subject to a deductible of \$5,000 per claim.

(BOD 10/21/05; BOG 11/19/05; BOD 6/27/08; BOG 7/18/08; BOD 10/9/09; BOG 10/30/09)

(EF) Installment Payment Plan:

(1) Firms will have the option of paying the excess coverage assessment on an installment basis as follows:

<u>Payment Due Date</u>	<u>Percent of Total</u>
January 1	40%
May 1	35%

(2) Firms ~~which~~ that choose the installment payment plan will be charged a service charge equal to \$25 plus interest of 7% per annum on the outstanding balance. The service charge must be paid with the first installment and is non-refundable. Installment payments are only available in a given year if the coverage period for a firm begins prior to March 1; if the coverage period for a firm begins on March 1 or later, the firm will be required to pay its annual excess assessment in a single payment.

(3) Firms will have a ten-day grace period for payment of installments. If payments ~~are~~ not received during the grace period, the firm's excess coverage plan will be canceled as provided under the excess coverage plan. The PLF may, but will not be required to, reinstate coverage if payment of an installment is made within ten days after the expiration of a grace period, and may require that the balance of the firm's assessment for the year be paid in full as a condition of reinstatement.

~~(G) Application: The Board of Directors approves the answers shown on the marked copy of the application and supplements attached to these rules as indicating good practices or acceptable levels of risk in accordance with Policy 7.300(A)(8).~~

(FH) Cancellation: If an excess coverage plan is canceled by the PLF, the assessment will be determined on a pro rata basis. If excess coverage is canceled, the firm will still remain liable for supplemental assessment but on a pro rata basis according to the period of coverage during the year.

~~(I) (Reserved)~~

(G) Predecessor Firm Endorsement:

(1) A former firm which does not meet the Excess Plan definition of a “predecessor firm” may be added for underwriting reasons as a “predecessor firm” by special endorsement. The following conditions, among others, must ordinarily be met:

(a) The former firm is no longer engaged in the practice of law;

(b) The former firm is not covered by any excess policy, including extended reporting coverage under such policy;

(c) The former firm and the attorneys who worked for the firm do not present an unacceptable level of risk in the view of the PLF; and

(d) At least 50 percent of the firm attorneys who were with the former firm during its last year of operation and who are presently engaged in the private practice of law in Oregon will carry current PLF excess coverage during the year.

The PLF may impose special limitations or conditions, and may impose an additional assessment for underwriting reasons as a condition to granting the endorsement, or may decline to grant the endorsement for underwriting reasons.

(2) No firm may be listed as a predecessor firm (by endorsement or otherwise) for the same or an overlapping period of time on more than one Excess Plan.

(K) Firm Changes After the Start of the Coverage Period:

(1) Except as provided in subsection (2), firms are not required to notify the PLF if an attorney joins or leaves the firm after the start of

the Coverage Period, and will neither be charged a prorated excess assessment nor receive a prorated refund for such changes. New attorneys who join after the start of the Coverage Period will be covered for their actions on behalf of the firm during the remainder of the year, but will not be covered for their actions prior to joining the firm. All changes after the start of the Coverage Period must be reported to the PLF on a firm’s renewal application for the next year.

(2) Firms are required to notify the PLF after the start of the Coverage Period if:

(a) The total number of current attorneys in the firm either increases by more than 100 percent or decreases by more than 50 percent from the number of current attorneys at the start of the Coverage Period.

(b) There is a firm merger. A firm merger is defined as the addition of one attorney who practiced as a sole practitioner or the addition of multiple attorneys who practiced together at a different firm (the “merging firm”) immediately before joining the firm with PLF excess coverage (the “current firm”). It is only necessary to report a firm merger to the PLF if the current firm is seeking to add the merging firm as a predecessor firm or specially endorsed predecessor firm to the current firm’s Excess Plan.

(c) There is a firm split. A firm split is defined as the departure of one or more attorneys from a firm with PLF Excess Coverage if one or more of the departing attorneys form a new firm which first seeks PLF Excess Coverage during the same Coverage Period.

(d) An attorney joins or leaves an existing branch office of the firm outside of Oregon.

(e) The firm establishes a new branch office outside of Oregon.

(f) The firm or a current attorney with the firm enters into an "of counsel" relationship with another firm or with an attorney who was not listed as a current attorney at the start of the Coverage Period.

(g) A non-Oregon attorney joins, or leaves the firm.

In each case under this subsection (2), the firm's coverage will again be subject to underwriting, and a prorated adjustment may be made to the firm's excess assessment.

(L) Discretionary Continuity Credit:

(1) Discretionary Continuity Credit: Firms that are offered excess coverage may receive a continuity credit for each year of continuous PLF Excess Coverage (2% for one year, up to a maximum credit of 20% for ten years – see table below) at the underwriters discretion if the firm has no negative claims experience, does not practice in a Higher Risk Practice Area, and meets acceptable practice management criteria. See PLF Policy 7.300(A)&(C). A renewing firm currently receiving a continuity credit may see a reduction in that credit if, at the time of renewal, the firm had a negative claims experience, is practicing in a High Risk Practice Area, or fails to meet acceptable practice management criteria.

(BOD 02/14/14, BOG 02/05/14)

Full Years of Continuous PLF Coverage of Applicable Firm
 Continuity Credit
 (As Percentage Assessment)

10 or more	20%
9	18%
8	16%
7	14%
6	12%
5	10%
4	8%
3	6%
2	4%
1	2%

(2) — No firm will be entitled to receive a continuity credit if the firm is receiving a credit for a recent retroactive date under Policy 7.700(D)(2).

(BOD 6/20/03; BOG 9/18/03)

(JAA) Extended Reporting Coverage:

(1) ~~Firms which~~ that purchase excess coverage ~~for two full years will~~ may be offered the following extended reporting coverage (ERC) options at the following prices (stated as a percentage of the firms' annual excess assessment for the last full or partial year of coverage):

~~(1)(2)~~

<u>Extended Reporting Coverage Period</u>	<u>ERC Premium</u>
12 months	100%
24 months	160%
36 months	200%
60 months	250%

~~If the last day of a firm's excess coverage is on or after July 1, the ERC premium will be calculated based on the firm's annual excess assessment for the year; if the last day of a firm's excess coverage is prior to July 1, the ERC premium will instead be calculated based on the firm's annual excess assessment for the prior calendar year if the firm carried excess coverage with the PLF during that year.~~

(2) A firm must exercise its right to purchase ERC and must pay for the ERC coverage within 30 days of termination or cancellation of its PLF excess coverage. The Chief Executive Officer may include wording in the Excess Coverage Plan to indicate that ERC options vary from year to year, and that any particular option may be unavailable in a future year.

(KAN) Continuous Coverage: The PLF will not offer a renewing firm continuous coverage from January 1 unless the firm's renewal application is received by the PLF in substantially completed

form by January 10 (or the next business day if January 10 is a weekend or holiday). If a renewal application is received after that date and the firm is approved for underwriting, the coverage period offered to the firm will begin on the day the renewal application was approved for underwriting and the assessment will be prorated accordingly. Renewing firms may qualify for the discretionary continuity credits pursuant to subsection (L) so long as the firm renews its coverage no later than January 31. Renewal after January 31 will result in the automatic loss of any accumulated discretionary continuity credit.

(BOD 08/14/14; BOG 09/05/14)

(L) Current and Former Attorneys:

(1) _____ (1) No attorney may be listed as a current attorney for the same or an overlapping period of time on more than one Excess Plan.

(2) _____ (2) No attorney may be listed as a former attorney for the same or an overlapping period of time on more than one Excess Plan.

rates proposed by the PLF Board of Directors and approved by the OSB Board of Governors. These rates are subject to reinsurer adjustment for firms meeting certain underwriting criteria.

(2) Firms will not be offered higher limits coverage above \$4.7 million unless they have maintained excess coverage with limits of at least \$4.7 million with the PLF or some other carrier for the prior two years.

(NQ) Non-Standard Excess Coverage: Firms who do not meet the underwriting criteria established by the PLF and its reinsurers under PLF Policies 7.300 and 7.350, may be eligible to purchase non-standard excess coverage offered by the PLF and its reinsurers. In accordance with reinsurance agreements, firms applying for non-standard excess coverage may be subject to additional underwriting considerations and may not be eligible for credits available with the standard excess program coverage.

(BOD 10/2/91; BOG 11/8/91; BOD 12/6/91; BOG 3/13/92; BOD 9/23/92; BOG 11/13/92; BOD 9/24/93; BOG 11/19/93; BOD 2/18/94; BOG 3/12/94; BOD 8/12/94; BOG 9/26/94; BOD 9/26/94; BOG 11/12/94; BOD 8/11/95; BOG 11/12/95; BOD 8/9/96; BOG 9/25/96; BOD 8/15/97; BOG 9/26/97; BOD 10/3/97; BOG 11/15/97; BOD 8/14/98; BOG 9/25/98; BOD 8/6/99; BOG 9/16/99; BOD 11/19/99; BOG 1/28/00; BOD 10/20/00; BOG 11/20/00; BOD 12/7/01; BOG 12/6/01; BOD 12/3/02; BOG 12/16/02; BOD 10/28/03; BOG 11/15/03; BOD 10/22/04; BOG 11/20/04; BOD 6/27/08; BOG 7/18/08)

(MP) Higher limits coverage: Firms who meet the additional underwriting criteria and procedures established by the PLF and its reinsurers may be eligible to purchase limits in excess of the \$4.7 million excess limits offered by the PLF's standard excess program. In accordance with reinsurance agreements, firms applying for higher limits coverage may be subject to additional underwriting considerations and may not be eligible for credits available with the standard excess program coverage.

(1) The higher limits coverage will be an additional \$5 million in excess of the \$4.7 million standard excess coverage. Firms will be charged for higher limits excess coverage at

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: November 20, 2015
Memo Date: November 3, 2015
From: Carol J. Bernick, PLF CEO
Re: PLF Policy 5.100

Action Recommended

The PLF Board of Directors asks you to approve the attached changes to Section 5.100 of the PLF Policies.

Background

The proposed changes raise the threshold to \$10,000 (from the current \$500) for checks requiring two signatures. This change is in keeping with the Bar's practices and was unanimously approved by the PLF Board on November 2, 2015. The second change vests with the CEO the responsibility to determine who may be a check signer, reporting any changes to the Board when they occur. The current policy requires the Board to approve any new check signer. Determining who should sign checks is an administrative function that is properly vested with the CEO. The Board approved this change in a 5-2 vote (two members were absent) on November 2, 2015. The PLF auditors expressed that both changes were acceptable to them.

Attachment

**CHAPTER 5
FINANCIAL**

5.100 BANKING

(A) The Board of Directors will designate bank depositories under the standard bank resolution forms. Authorized signatories to such bank accounts will be the Chief Executive Officer or Chief Financial Officer or one or more employees ~~recommended-designated~~ by the Chief Executive Officer and reported to the Board of Directors. ~~and authorized by the Board of Directors.~~ One signature will be required on any check under ~~\$2,500~~10,000, with two signatures required on any check of ~~\$2,500~~10,000 or more. At least one signature on any check of \$25,000 or more will be the signature of the Chief Executive Officer or the Chief Financial Officer. In the absence of the CEO and CFO, either one may designate either the Director of Administration, Director of Claims, or Director of Personal and Practice Management.

(B) Any check payable to a Director, the Chief Executive Officer, or the Chief Financial Officer will bear two signatures, not to include the signature of the payee.

(C) The Chief Executive Officer or Chief Financial Officer will review a copy or record of any check not signed by either of them, together with supporting documentation, within ten days of disbursement.

(BOD 12/6/91; BOG 3/13/92; BOD 12/3/93; BOG 3/12/94)

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: November 19, 2015
From: MCLE Committee
Re: MCLE Sponsor Accreditation Fee Policy

Action Recommended

Consider and approve the MCLE Committee's proposal to eliminate Regulation 4.350(e), which provides an exemption from payment of the sponsor fee by local bar associations in Oregon.

Background

At its December 2014 meeting, the MCLE Committee began discussion of the Board of Governors' request to recommend a sponsor accreditation fee policy that applies equally (or at least more equitably) to all applicants. The focus of the discussion was on Regulation 4.350(e), which is set forth below.

Reg 4.350 (e) All local bar associations in Oregon are exempt from payment of the MCLE program sponsor fees. However, if accreditation applications are received more than 30 days after the program date, the late processing fee set forth in MCLE Regulation 4.350(d) will apply.

A 2005 House of Delegates resolution that expressed concerns about small, rural bar associations that charge low or no member fees and offer a small number of CLE programs as a way to promote networking opportunities for their members resulted in this regulation being approved by the Board of Governors at its November 2005 meeting. The regulation also applies to the larger local bars that offer frequent CLEs and realize significant savings from not having to pay the sponsor accreditation fee.

The Committee has set forth two options for review by the Board of Governors. Option 1, which is favored, is to eliminate the exemption entirely.

Option 1:

~~Reg 4.350 (e) All local bar associations in Oregon are exempt from payment of the MCLE program sponsor fees. However, if accreditation applications are received more than 30 days after the program date, the late processing fee set forth in MCLE Regulation 4.350(d) will apply.~~

Reasons why this option is favored:

- It addresses the BOG's concern that the existence of any exemption does not fairly apportion the costs of this regulatory program among CLE providers.
- Even without a specific exemption for local bars, a sponsor could still use the workaround already in the rules (having an OSB member submit an accreditation application as an individual member rather than a sponsor). See Rules 4.3(b) and (f).

Rule 4.3(b) A sponsor or individual active member may apply for accreditation of a CLE activity by filing a written application for

accreditation with the MCLE Administrator. The application shall be made on the form required by the MCLE Administrator for the particular type of CLE activity for which accreditation is being requested and shall demonstrate compliance with the accreditation standards contained in these Rules.

Rule 4.3 (f) Accreditation of a CLE activity obtained by a sponsor or an active member shall apply for all active members participating in the activity.

- The sponsor fee is only \$40 for programs that are four or fewer credit hours, which is the majority of programs offered by local bars. In addition, many of the programs would qualify for the series rate, which is set forth in Regulation 4.350(c):

Reg 4.350(c) Sponsors presenting a CLE activity as a series of presentations may pay one program fee of \$40.00 for all presentations offered within three consecutive calendar months, provided:

- (i) The presentations do not exceed a total of three credit hours for the approved series; and
- (ii) Any one presentation does not exceed one credit hour.

Please note that the Committee is aware that eliminating this exemption will have a financial impact on all local bar associations but, given the workaround in Rule 4.3, the low cost of the sponsor fee and the series rate available, believes the economic impact will not be significant.

The current regulation applies only to local bar associations in Oregon. It does not apply to specialty bars. Around the same time that the BOG asked the MCLE Committee to recommend a sponsor accreditation fee policy that applies equally (or at least more equitably) to all applicants, the Oregon Women Lawyers ("OWLS") asked the MCLE Committee to exempt it from the sponsor accreditation fee as well.

In order to address these two competing requests, the MCLE Committee also proposes a second option for the BOG to consider.

Option 2:

Reg 4.350 (e) All local and specialty bar associations in Oregon are exempt from payment of the MCLE program sponsor fees if the program is offered at no charge, excluding meal costs, to its members. However, if accreditation applications are received more than 30 days after the program date, the late processing fee set forth in MCLE Regulation 4.350(d) will apply.

Committee members agreed that this proposed regulation is more equitable than the current regulation because it also applies to specialty bars. It also limits the exemption only to local and specialty bars that offer the program at no charge to its members. Thus, the Multnomah Bar Association, which is the second largest bar association in the state and currently exempt from payment of the sponsor fee, would be required to pay the sponsor fee unless it is offering free programs to its members.

Because of the stipulations in this option, it may require significant additional software programming, which will result in increased costs for the OSB. It will also require developing a definition

of a “specialty bar.” Such a definition may look something like this:

A specialty bar is an association that represents a particular demographic segment (age, gender, race, ethnicity) of the Oregon State Bar and addresses the issues or concerns of that group.

Many OSB Sections offer free programs to their members and they likely will want to be included in the exemption. It is also possible that other providers that offer free programs, such as the Oregon New Lawyers Division and the Professional Liability Fund, will want to be included in the exemption. Therefore, even if the BOG adopted a narrow definition of “specialty bar” at the outset, it is likely that other providers will ask the MCLE Committee and Board of Governors to apply the exemption to them in the future.

Therefore, although both options are acceptable to the MCLE Committee, because of the reasons set forth above, it recommends the BOG approve Option 1.

New Lawyer Mentoring Program Rule

(adopted by the Oregon Supreme Court December 6, 2010; revised January 16, 2013)

- 1. Applicability.** All lawyers admitted to practice in Oregon after January 1, 2011 must complete the requirements of the Oregon State Bar's New Lawyer Mentoring Program (NLMP) except as otherwise provided in this rule.
- 2. Administration of the NLMP; MCLE Credit.**
 - 2.1. The OSB Board of Governors shall develop the NLMP curriculum and requirements in consultation with the Supreme Court and shall be responsible for its administration. The OSB Board of Governors shall appoint a standing committee to advise the BOG regarding the curriculum and administration of the NLMP.
 - 2.2. The OSB Board of Governors may establish a fee to be paid by new lawyers participating in the NLMP.
 - 2.3. The OSB Board of Governors shall establish by regulation the number of Minimum Continuing Legal Education credits that may be earned by new lawyers and mentors for participation in the NLMP.
- 3. New Lawyer's Responsibilities.**
 - 3.1. Unless deferred or exempt under this rule, new lawyers must enroll in the manner prescribed by the OSB.
 - 3.2. The new lawyer shall be responsible for ensuring that all requirements of the NLMP are completed within the requisite period including, without limitation, filing a Completion Certificate executed by the assigned mentor attesting to successful completion of the NLMP.
- 4. Appointment of Mentors.**
 - 4.1 The Supreme Court may appoint mentors recommended by the NLMP Committee. Except as otherwise provided in this rule, ~~To~~ to qualify for appointment, the mentor must be a member of the OSB in good standing, with at least five years of experience in the practice of law, and have a reputation for competence and ethical and professional conduct.
 - 4.2 Attorneys who are not members of the Oregon State Bar, but are qualified to represent clients before the Social Security Administration, the Internal Revenue Service, the United States Patent and Trademark Office, or the United States Citizenship and

Immigrations Services office, are eligible to serve as a mentors, provided they meet the other requirements of Section 4.1 of this rule.

4.3 Attorneys who are not members of the Oregon State Bar may be appointed with the recommendation of the NLMP Administrator.

4.4 Attorneys described in Section 4.2 or Section 4.3 must be licensed to practice law in at least one U.S. state, possession, territory, commonwealth, or the District of Columbia, and shall be subject to the same additional criteria included in section 4.1 of this rule.

5. Deferrals.

5.1. The following new lawyers are eligible for a temporary deferral from the NLMP requirements:

5.1.1. New lawyers on active membership status whose principal office is outside the State of Oregon and for whom the OSB determines that no mentorship can be arranged conveniently; and

5.1.2. New lawyers serving as judicial clerks; and

5.1.3. New lawyers who are not engaged in the practice of law.

5.2. The NLMP administrator may approve deferrals for good cause shown. Such deferrals shall be subject to the continued approval of the administrator.

5.3. A new lawyer who is granted a deferral under section 5.1.1 of this Rule and who, within two years of beginning to practice law in any jurisdiction, establishes a principal office within the State of Oregon, must enroll in the next NLMP session. A new lawyer whose participation in the NLMP was deferred under sections 5.1.2 or 5.1.3 of this rule must enroll in the next NLMP session following the conclusion of the judicial clerkship or the lawyer's entering into the practice of law.

6. Exemptions.

6.1. New lawyers who have practiced law in another jurisdiction for two years or more are exempt from the requirements of the NLMP.

6.2 . The NLMP administrator may grant exemptions for good cause shown.

7. Certificate of Completion; Noncompliance.

- 7.1. Each new lawyer is expected to complete the NLMP ~~within 12 months of the date of enrollment, but in no event later than December 31 of the first full year of admission to the bar by the deadline assigned to them by the OSB,~~ unless the new lawyer has been granted an extension of time ~~by the OSB.~~ The Certificate of Completion must be filed with the bar on or before that date.
- 7.2. A new lawyer who fails to file a Certificate of Completion by ~~December 31 of the first full year of admission the assigned deadline~~ shall be given written notice of noncompliance and shall have 60 days from the date of the notice to cure the noncompliance. Additional time for completion of the NLMP may be granted for good cause shown. If the noncompliance is not cured within the time granted, the OSB Executive Director shall recommend to the Supreme Court that the affected member be suspended ~~from membership in the bar.~~
- 8. Reinstatement.** A new lawyer suspended for failing to timely complete the NLMP may seek reinstatement by filing with the OSB Executive Director a Certificate of Completion and a statement attesting that the applicant did not engage in the practice of law during the period of suspension except where authorized to do so, together with the required fee for the NLMP and a reinstatement fee of \$100. Upon receipt of the foregoing, the Executive Director shall recommend to the Supreme Court that the member be reinstated. The reinstatement is effective upon approval by the Court. Reinstatement under this rule shall have no effect upon the member's status under any proceeding under the Bar Rules of Procedure.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: November 20, 2015
From: Sylvia E. Stevens, Executive Director
Re: CSF Claim No. No. 2014-12 ALLEN (Scott) Request for BOG Review

Action Requested

Consider the claimant's request for BOG review of the Client Security Fund Committee's denial of his claim for reimbursement.

Discussion

Claimant retained Sara Allen in April 2013 to represent him in obtaining custody of his two children. Shortly after being retained, Allan prepared and filed the initial pleadings and a motion seeking an immediate ex parte grant of custody based on alleged emergency. That motion was denied for lack of evidence of urgency. Communication between Claimant and Allen was sporadic, although the court docket indicates she continued to work on the matter. A limited judgment was entered in early September, and later in the month it appears Allen submitted a second emergency custody motion, which was also denied.

Claimant's last contact with Allen was in October 2013, when she reported having attended a status conference, that a custody evaluator had been agreed upon, and that Claimant's case was set for hearing in February 2014. Despite many attempts to contact Allen by telephone and email, Claimant heard nothing more from Allen. In January 2014 Claimant retained other counsel to complete his matter.

Claimant contends he had to "start over" with the new attorney and seeks an award of the entire \$5,000 he paid to Allen. There was no written fee agreement and the terms are not clear. In his application to the CSF, Claimant describes the fee as "a \$5,000 retainer and with agreement of further billing if necessary." However, in response to DCO's inquiry¹ Claimant said his understanding was that the \$5,000 was a flat fee for the representation.

CSF Rule 2.2 allows a reimbursement only when the loss is caused by the lawyer's dishonest conduct. In the case of the lawyer's refusal to refund the unearned portion of a fee, there must be evidence either that the lawyer (1) made a false promise to provide services in exchange for the fee or (2) failed to maintain the advance payment in trust until earned. A lawyer's failure to complete a legal engagement does not by itself constitute dishonest conduct. (CSF Rule 2.2.2.)

¹ Prior to filing his application with the CSF, Claimant had not made a disciplinary complaint to the bar. As is our practice, the CSF application was shared with DCO, who opened a file and began an investigation.

Allen clearly provided some services in exchange for the fees advanced by Claimant; it is not clear whether the fees were properly maintained in trust until earned.

Even if Allen failed to maintain the advance fees in trust CSF Rule 2.2.3 allows reimbursement of a legal fee only if:

- (1) the lawyer provided no legal services to the client in the engagement;
- (2) the legal services that the lawyer actually provided were, in the Committee's judgment, minimal or insignificant; or
- (3) the claim is supported by a determination of a court, a fee arbitration panel, or an accounting acceptable to the Committee that establishes that the client is owed a refund of a legal fee. No award reimbursing a legal fee shall exceed the actual fee that the client paid the attorney.

While the CSF Committee was sympathetic to the difficulty faced by a client who is abandoned by his lawyer in the middle of a case and the consequent additional costs that flow from that, the Committee denied Claimant's application on its conclusion that the services provided by Allen were more than "minimal or insignificant," and on the absence of an independent determination of any refund owed to the Claimant.

In his request for BOG review, Claimant alleges he received no value from Allen's services, because he eventually secured custody of his children through the services of the new lawyer (albeit based on the same information offered by Allen in the temporary custody motions). It does not appear his new lawyer had to refile the pleadings or re-do other work performed by Allen, but merely picked up where she had left off.

Attachments: Application for Reimbursement
Investigator's Report
Claimant's Request for Review

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: November 20, 2015
From: Sylvia E. Stevens, Executive Director
Re: CSF Claim 2013-24 GOFF (Mantell) Request for BOG Review

Action Requested

Consider claimant's request for BOG review of the Client Security Fund Committee's denial of his application for reimbursement.

Discussion

Procedural History of Claim

In March 2013, Elliott Mantell submitted a claim for reimbursement of \$47,609, comprised of \$37,500 for fees paid together with accrued interest at 9%.¹ The CSF Committee considered the claim at its meeting in November 2013 and voted unanimously to deny it on the grounds that there was insufficient evidence of dishonesty, the lawyer provided more than minimal services, and there was no independent determination that Mantell was entitled to a refund.

Upon being informed of the Committee's decision, Goff asked that the BOG review the Committee's decision. Because he claimed to have additional information that the Committee had not seen and wanted to make an oral presentation, he agreed to have the claim returned to the Committee for further evaluation. As it turned out, however, although the Committee waited throughout 2014, Mantell was unable to make any of the Committee's meetings and also did not provide any additional material for the committee to consider. The Committee discussed Mantell's claim again at some length in November 2014, reaching the same conclusion as it had initially.

At its January 2015 meeting, based on Mantell's failure to provide more information, the Committee decided that Mantell's request for review should be submitted to the BOG. When Mantell learned of that decision, he again asked for more time; he eventually appeared at the Committee's July 2015 and September 2015 meetings. At each appearance, he reiterated his belief that Goff had not earned the fees, but was not able to provide any information the CSF Committee had not already considered. After discussion, the Committee again denied Mr. Goff's claim and he made a timely request for BOG review.

¹ CSF Rule 2.9 provides that awards shall not include interest on a judgment or any amount in excess of funds actually misappropriated by the lawyer.

Goff's Representation

Mantell hired Eugene attorney Daniel Goff on April 7, 2007 in connection with several pending matters, including defense against a claim for outstanding legal fees and a possible legal malpractice action against his prior attorney. Goff agreed to handle Mantell's several legal matters for a fixed fee of \$50,000. On May 14, Goff sent Mantell a proposed fee agreement requiring payment of the \$50,000 fee in advance, plus an advance of \$5,000 toward costs. Mantell rejected the agreement and over the next few weeks there was an exchange of correspondence about the terms and scope of the representation. Mantell's principal objection was with the "earned upon receipt" language, preferring that Goff earn fees incrementally as work was completed. No fee agreement was ever signed.

Despite the absence of a fee agreement, between April 7 and June 7, 2007 Mantell deposited \$42,500 with Goff (which included a \$5,000 advance for costs), which Goff deposited into his trust account. Between April 10 and July 6, 2007 Goff withdrew most of the funds. Mantell terminated Goff's representation on July 6, complaining that Goff wasn't providing timely representation.

Mantell requested an accounting and a refund of the fees he'd paid. On July 24, Goff provided an accounting for costs of \$3,294.65 and enclosed a check for \$1,705.35, representing the balance of the \$5,000 cost advance. Goff refused to refund any of the \$37,500 allocated to his fees, claiming to have worked more hours than he had been paid for. On July 12 and July 26, Goff withdrew the last of Mantell's funds, totaling \$2,673, from his trust account.

Bar Complaint and Civil Proceedings

In April 2008, Mantell filed a complaint with the Bar. In December 2008 he filed a civil suit against Goff seeking return of the fees he'd paid. In a mediated settlement in which he admitted no liability, Goff agreed to confess judgment for \$37,500 and Mantell agreed not to file the judgment so long as Goff made \$500 monthly payments. Goff made three of the monthly payments, before filing a no-asset Chapter 7 bankruptcy petition in August 2010.

Four disciplinary matters, including Mantell's complaint, were consolidated and tried over five days in late 2010. The trial panel issued an opinion on March 28, 2011 finding that Goff had violated several rules and recommending an 18-month suspension. The opinion was affirmed by the Supreme Court on June 2012. Goff filed a Form B resignation on December 13, 2012.

Among the charges relating to Goff's representation of Mantell were allegations that Goff had charged and collected an excessive fee, and the bar sought restitution for Mantell. Witnesses before the trial panel included Mantell, the adverse attorney during the time Goff represented Mantell, and one of the attorneys who took over Mantell's legal matters after Goff was discharged. Goff was examined and cross-examined at length.

Goff submitted a recap of the time he spent on Mantell's case showing 183.2 hours between April 7 and July 7 (plus another 3.5 between July 8 and July 18, after he had been discharged). Most entries cover periods of 7-10 days each and the first five periods reflect 20, 25, 25, 30 and 33 hours worked, respectively. Because there were no daily contemporaneous records of the time Goff spent, the bar argued the recap was very likely created after-the-fact and had no probative value. At the same time, the record contains numerous exhibits reflecting frequent communications between Goff and Mantell about a myriad of issues during the three months of the representation.

Trial Panel and Supreme Court Decisions

The trial panel found that Goff "was not a credible witness on his own behalf." It also found that Mantell was a difficult, argumentative, demanding and time-consuming client. The excessive fee charge and request for restitution were dismissed with the following explanation:

Whether or not [Goff] performed all of the work he claims cannot be established; but the work he undertook to perform was substantial, time lines were short, and Mr. Mantell was a difficult client who interrupted [Goff] on a nearly daily basis.

The trial panel also found that the bar had not proven by clear and convincing evidence that Goff hadn't earned the fees he withdrew from his trust account and declined to order restitution to Mantell. The Supreme Court affirmed the trial panel opinion in its entirety, including the denial of restitution for Mantell.

Committee Decision

For a claim of unearned fees, CSF Rule 2.2 requires proof of dishonesty as well as evidence that the lawyer provided no or only minimal services to the client:

2.2.1 In a loss resulting from a lawyer's refusal or failure to refund an unearned legal fee, "dishonest conduct" shall include (i) a lawyer's misrepresentation or false promise to provide legal services to a client in exchange for the advance payment of a legal fee or (ii) a lawyer's wrongful failure to maintain the advance payment in a lawyer trust account until earned.

2.2.2 A lawyer's failure to perform or complete a legal engagement shall not constitute, in itself, evidence of misrepresentation, false promise or dishonest conduct.

2.2.3 Reimbursement of a legal fee will be allowed only if (i) the lawyer provided no legal services to the client in the engagement; or (ii) the legal services that the lawyer actually provided were, in the Committee's judgment, minimal or insignificant; or (iii) the claim is supported by a determination of a court, a fee arbitration panel, or an accounting acceptable to the Committee that establishes that the client is owed a refund of a legal fee. No award reimbursing a legal fee shall exceed the actual fee that the client paid the attorney.

The CSF Committee concluded there was insufficient evidence of dishonesty on Goff's part. It appears he began work immediately on Mantell's matter, so there was no "false

promise to provide legal services.” Additionally, the record shows that Goff deposited all funds received from Mantell into his trust account.

The difficulty in this case was the nature of the fee agreement. Goff seems to have treated the fees initially as earned on receipt and withdrawn from trust without regard to the amount of time he worked. In response to the disciplinary complaint and at trial, however, he relied on a recap of his time spent on Mantell’s matter to justify his fee. Mantell, on the other hand, insists that he and Goff agreed to a fixed fee and disagreed only as to whether it was earned on receipt or in stages as work was completed.

If the fee was a fixed fee, it is undisputed that Goff did not earn all of it, as he did not complete the matters for which he was engaged. However, the Committee concluded that the requirements of Rule 2.2.3 were not met. The Committee found no basis to conclude that Goff’s services were only “minimal or insignificant.” Moreover, there was no independent determination of the amount of refund to which Mantell was entitled.² The Committee was strongly influenced by the decision of the trial panel, affirmed by the Supreme Court, that it was impossible to determine the amount of work performed by Goff and the refusal to order restitution in any amount. The Committee gave no weight to the fact that Goff stipulated to a judgment in favor of Mantell for the entire amount of the fees paid.

Request for Review

Mantell has not provided any new information in conjunction with the Committee’s reconsideration of his claim or his request for review, referring only to the volume of material accumulated by DCO in its prosecution of Goff. He also argues that weight should be given to the faith that Disciplinary Counsel’s Office had in his view of Goff’s work. In a series of emails, Mantell expressed his objection to the Committee’s conclusion thusly:

“Mr. Goff did virtually no work. If he billed for more than 7- 8 hours of work it was fraudulent. He lied at the hearing....

Other attorneys who have looked over his billing statement which was 1 single sheet of paper listing 186 hours of work noted to me that it was fraudulent and absurd. They said that if he did do the hours he stated I would have had to be his only client the first 5 weeks he billed for. Also of note it was not an hourly agreement but a fixed fee agreement. The boxes of documents he said he reviewed were clearly never opened....

I hope the Board and committee understood that I had to hire another lawyer Robert Snee and pay him about \$10,000 in my civil suit to get Goff's confession of judgment [sic] as well as hire Margaret Lieberhan [sic] and Matthew McKean and one other attorney at the cost of approximately \$25,000 (note this is from memory at this time) to finish up the work that I had contracted Goff to do....

² In his deposition, Goff apparently admitted that he should not have withdrawn the last \$3,673 from trust, as he had been discharged and knew that Mantell was disputing Goff’s right to the fees. However, he never returned the funds to trust or reimbursed Mantell, claiming to be waiting for the trial panel to tell him what to do.

Additionally I am now speaking to another attorney on these issues who was of the opinion that perhaps my case came at a difficult time for the CSF in light of the Gruetter and McBride pay outs.”

While this was not a close case for the CSF Committee and it was dubious about the quantum of work performed by Goff, the Committee was not persuaded that Goff was dishonest or provided only minimal services. As indicated, the Committee decision was strongly influenced by the findings and conclusions of the trial panel and the Supreme Court and found no compelling basis to reach a different result.

Attachments: Mantell Application for Reimbursement
 Committee Report
 Goff Billing Statement
 Trial Panel Opinion

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: November 20, 2015
From: Sylvia E. Stevens, Executive Director
Re: CSF Awards Recommended for Payment

Action Requested

Consider the following claims for which the Client Security Fund Committee recommends awards:

HALL (Meier-Smith)	\$ 9,333.92
ROLLER (Games)	12,252.00
DICKEY (Patapoff)	25,485.00
STEDMAN (Husel)	6,500.00
CYR (Hallam)	20,207.24
GERBER (Koepke)	13,500.00
GERBER (Lawson)	10,000.00
GERBER (Moore)	5,000.00
GERBER (Roelle)	9,740.00
TOTAL	\$111,518.16

Discussion

HALL (Meier-Smith) - \$9,333.92

Claimant retained C. David Hall in 2009 to pursue claims against two drivers for injuries sustained in a motor vehicle accident. She was unable to provide much detail about the representation, other than it had been a contingent fee case. The investigator developed information by reviewing the court file, contacting opposing counsel, and examining Hall's subpoenaed bank records.

Hall filed suit in 2011 and the case was resolved by a settlement of \$27,000 in mid-2012. Hall deposited the settlement funds into his trust account, then paid himself \$9,510 for his fees and costs, leaving \$17,490 as Claimant's share.

Hall made payments to two of Claimant's medical providers totaling \$7,277.08, leaving a balance of \$10,212.92 owed to claimant. His bank records show one payment to her of \$879, but the remaining \$9333.92 was never delivered or accounted for prior to Hall's suspension on unrelated charged in May 2013. At the time Claimant filed her request for reimbursement with the CSF, Hall's trust account had a balance of \$52.

The CSF Committee concluded that Hall misappropriated his client's funds, entitling Claimant to an award of \$9,333.92. Given that Hall has never sought reinstatement and his whereabouts are unknown, the committee recommends waiving the requirement that she obtain a civil judgment against him.

ROLLER (Games) - \$12,252

Claimant hired Dale Roller in May 2013 to represent him on two felony charges in Curry County. Claimant paid \$17,000 for what Roller's fee agreement characterized as "earned on receipt" and "non-refundable" fee. Claimant also gave Roller \$10,000 for bail. Claimant was subsequently released from custody and Roller received a bail refund of \$7,491.36 (there is no explanation of why the entire bail wasn't refunded).

Games terminated Roller's representation within a few months (and before his criminal case concluded). When Roller refused to refund any of the prepaid fee, Games complained to the bar. The SPRB authorized formal proceedings alleging that Roller had charged an excessive fee and failed to include required language in his fixed fee agreement. The case resulted in a Diversion Agreement that included Roller's stipulation that he would resolve the fee dispute with Claimant through the OSB Fee Arbitration Program and pay any amount found to be unearned.

The fee arbitration panel concluded that Roller was only entitled to \$5,000 of the \$15,000 he had collected for fees and awarded Claimant \$19,491.36 (the excess \$12,000 in fees collected plus the \$7,491.36 bail refund).

Roller disagreed with the fee arbitration award and filed a petition in court to have it vacated. Among other arguments, he disputed the arbitrators' jurisdiction over the bail refund, since it didn't constitute "fees." When asked why he didn't return the bail refund to Claimant, Roller explained that Claimant had refused to accept less than the full \$10,000, but that Roller failed to follow up and determine why the court refunded a lesser sum. He also claimed to be holding the money to avoid being sued. The bail money had been put up by Claimant's sister and Roller feared he'd be sued by her if he returned the money to Claimant or by Claimant if he delivered the bail refund to the sister.

Roller's petition to vacate the arbitration award was unsuccessful and his petition was dismissed.¹ Through negotiation facilitated by the CSF investigator and Claimant's attorney, Roller eventually refunded the bail money to Claimant. However, he continues to fail and refuse to pay the remaining \$12,000 of the arbitration award.

¹ Roller's petition was premature. ORS 36.700 allows the prevailing party in arbitration to petition for an order confirming the award. The other party may then petition for vacation or modification of the award. Roller filed his petition before Claimant had a chance to seek confirmation; Claimant's *pro bono* counsel in the matter has cautioned him against doing so now because Roller has made it clear that he will continue to challenge the award.

The CSF doubts that Roller has the ability to pay Claimant. At one point in the representation Roller apparently told Claimant he was “bankrupt and living in a trailer.” While he was on diversion, the bar received more complaints against Roller, including another from Claimant for Roller’s mishandling of the bail refund. In addition to authorizing prosecution on those, the SPRB revoked Roller’s diversion for his failure to refund the unearned fees to Claimant.

The CSF recommends an award to Claimant of \$12,252, which includes the court fee he paid to respond to Roller’s petition to vacate the arbitration award. (CSF Rule 2.9 allows for an award to include a claimant’s costs awarded by the court, but subsequent inquiry establishes that the court did not award Claimant his costs in responding Roller’s petition.)

DICKEY (Patapoff) - \$25,485

Claimant hired Jeffrey Dickey in March 2013 to defend him against criminal case and to pursue a forfeiture recovery. Claimant was incarcerated and gave Dickey his power of attorney for the purpose of vacating Claimant’s apartment, selling or storing his personal property, paying his bills and generally acting on Claimant’s behalf while he was incarcerated.

Dickey agreed to handle the forfeiture recovery on a 40% contingency fee. It is not clear on what basis he agreed to handle Claimant’s other legal matters. Claimant has virtually no information of how Dickey disposed of his personal effects; Dickey’s responses are incomplete and he offers no supporting documentation. Claimant values his personal property at nearly \$42,000 and believes Dickey sold it for a fraction of its value; he has seen none of the proceeds and Dickey hasn’t provided an accounting.

The power of attorney gave Dickey access to Claimant’s account at Wells Fargo, into which Claimant’s monthly Social Security payments were deposited. Dickey’s assistant and domestic partner, Zeke, also had access to the Wells Fargo account. Between March 2013 and September 2014 when Claimant fired Dickey, there were hundreds of cash withdrawals and debit card expenditures from the Wells Fargo account for things other than paying Claimant’s bills. Rather, it appears that Dickey used Claimant’s account for their own use, making withdrawals at bars and casinos, and making purchases for restaurant meals, gas, home improvement, and entertainment. Dickey initially blamed the misuse on Zeke, but Zeke was arrested and jailed in April 2014, and the bank activity continued for another several months.

In response to inquiries from DCO, Dickey said some of the withdrawals were payment for legal and other services provided to Claimant, but despite requests, he has never invoiced Claimant or documented the services he provided. In general, Dickey had no credible explanation for his handling of Claimant’s affairs.

The investigation revealed that during the time Dickey (and Zeke) had access to the Wells Fargo account, a little over \$28,000 was withdrawn. Claimant believes that only about

\$5,500 was for authorized expenditures (car insurance and the like). The investigator's reconciliation indicates that Dickey misappropriated at least \$22,260 from the Wells Fargo account.

On the forfeiture matter, Dickey received \$9,800 from the US Treasury in October 2013. Dickey's 40% share of that was \$3,920, leaving \$5,580 for Claimant. Bank records reflect a \$500 disbursement to Claimant in November. The state of the records makes it impossible to determine what happened to the remaining \$5,080, although there are unaccounted-for deposits as well as withdrawals during the month. Ultimately, the CSF concluded that Dickey misappropriated at least \$3,225 of the forfeiture recovery.

DCO is investigating Claimant's and three other complaints against Dickey, who was suspended on September 24, 2014 for failure to respond to their inquiries. Dickey stipulated to an interim suspension during the pendency of the various disciplinary matters, claiming to be experiencing serious health issues. Dickey did not respond to the formal complaint and a default order was entered August 31, 2015. The bar is seeking disbarment based on the severity of Dickey's misconduct.

The CSF recognizes that the documentation for its findings is confusing, but is satisfied that the losses have been sufficiently established to justify an award of \$24,485 (\$22,260 + \$3,225). Given that Claimant remains incarcerated and Dickey is likely judgement-proof, the Committee also recommends that the requirement for a civil judgment be waived.

STEDMAN (Husel) - \$6,500

Claimant, a resident of Nevada, hired Michael Stedman in January 2012 to represent him in a Jackson County criminal case. Claimant paid an initial \$2,500 retainer. In March 2012 Stedman demanded and Claimant paid a \$4,000 "trial fee." Over the next year, Stedman repeatedly broke telephone appointments. In July 2013, however, Stedman told Claimant he could resolve the criminal charges through a civil compromise if he wired Stedman \$5,000 immediately, which Claimant did.

There was, in fact, no such compromise, and a month later Claimant received a notice to appear, but Stedman told him he could ignore it. In October 2013, Claimant received another notice to appear or be arrested. He called Stedman, who said he was quitting practice to travel the world, but if Claimant would advance \$14,000, Stedman would handle the upcoming trial. Claimant asked for time to think it over, but when he called Stedman two days later, his telephone had been disconnected. Claimant then hired another lawyer, who was quickly able to effect a civil compromise. He was also able to get a refund from Stedman of the \$5,000 Claimant had previously deposited for that purpose.

Other than filing a notice of representation and seeking several continuances, there is no evidence that Stedman did anything on Claimant's case.

Stedman has failed and refused to refund any of the \$6,500 advanced for fees. He has not responded to inquiries from the CSF investigator or to DCO, which is pursuing formal charges on this and other matters. Stedman was suspended in May 2014 for failure to pay his annual fees and to comply with his IOLTA reporting requirement. His current whereabouts are unknown.

CYR (Hallam) - \$20,207.24

Claimant retained Steven Cyr in August 2013 to handle the administration of Claimant's sister's estate. According to Claimant, Cyr initially told her the probate would be relatively straightforward and estimated his fees would be in the \$5000-8000 range. Over the course of the representation, however, Cyr billed and Claimant paid \$22,207.24.

Cyr filed a petition to have Claimant appointed personal representative in October 2013. Thereafter, Cyr failed to appear at several scheduled hearings, offered no explanation to the court, and sought no continuances or postponements. In September 2014, Claimant received a letter from the probate court indicating that she and Cyr had missed a hearing and inquiring about the status of the case. The letter also indicated the court was concerned about Cyr's requested fees. Claimant contacted Cyr who claimed he didn't get the court letter, but she shouldn't worry. Despite Claimant's continued prodding, Cyr failed to provide information the court wanted to close the probate. Claimant eventually hired another lawyer to complete the matter.

In the final judgement, the court ordered that

“Reasonable attorney's fees and costs for attorney...Cyr is \$2,500. Any amount which...Cyr receives or has received in regard to services provided in this probate proceeding over and above that amount is unreasonable and excessive.”

Following entry of the judgement, Claimant's new counsel made demand on Cyr for a refund of the fees declared by the court to be excessive, but he has refused.

In response to the CSF investigator's inquiry, Cyr claims his fees were reasonable because the case was complicated by the search for a distant “other beneficiary.” He also claims to have paid an investigator \$5,000 to conduct a search, but the investigator refutes Cyr's claim both as to the amount paid and the complexity of the work she performed. The Probate Court Administrator reported that this was a simple, low asset case and that Cyr's fee petition was “way out of line” with the work required. He also confirmed that Cyr appeared to have done little work on the case and collected fees prior to obtaining court approval in contravention of ORS 125.095.

Shortly before Claimant hired Cyr, he was indicted for tax fraud and in October 2013 he pleaded guilty to those charges. Based on his conviction, the bar began investigating him in October 2013. Cyr was sentenced in June 2014 to 2 years' probation. In August 2014, the SPRB authorized formal prosecution against Cyr; he resigned Form B in June 2015.

The CSF Committee recommends an award to Claimant of \$20,207.24, the difference between what she paid Cyr and what the court determined was a reasonable fee for his services. The committee also recommends against requiring Claimant to obtain a judgment against Cyr.

SUSAN GERBER COMMON FACTS

Beginning sometime in 2010, Susan Gerber practiced in Ontario, Oregon, first with the Rader Stoddard Perez firm, the in a brief partnership with Vicki Vernon, and by 2013 on her own. She represented clients in post-conviction relief cases and criminal appeals.²

In the spring and summer of 2014, the bar received several complaints from Gerber's clients and a Malheur County judge alleging that Gerber was missing court dates and not attending to her clients' matters. In response to the bar's investigation, Gerber explained that she had become overwhelmed by her workload starting in December 2013. She also attributed her conduct to her addiction to prescription pain medication following knee surgery. In October 2014, Gerber stipulated to an involuntary transfer to inactive status on the ground that her addiction disabled her from "assisting and cooperating with her attorney and from participating in her defense" of disciplinary matters.

In anticipation of her change of status, Gerber into an agreement with Vicki Vernon pursuant to which Vernon would take over 12 of Gerber's pending matters in exchange for \$5,000. The agreement contemplated that Gerber would be reinstated to active practice in 30 days and in the interim would assist Vernon with the transferred cases as a legal assistant or law clerk. If Gerber was not reinstated in 30 days, the agreement provided for an additional \$10,000 payment to be deposited in Vernon's trust account and from which she could withdraw funds at the rate of \$150 hour for her services to the clients whose matters were transferred.

Gerber was not reinstated in 30 days and remains on disability inactive status. She never paid Vernon the promised \$10,000, but Vernon received that amount from the PLF. Three of Gerber's clients declined to be represented by Vernon, but she continues to represent the remainder.

² Prior to moving to Ontario, Gerber worked for several years for the Department of Justice handling similar types of cases. She had the reputation of being very good at her work.

GERBER (Koepke) - \$13,500

Gerber consulted with Koepke in the fall of 2013 and offered to start right away with his PCR petition. Koepke formally hired Gerber in January 2014; his parents paid her fixed fee of \$15,000. Koepke recalls meeting with Gerber about six times between January and October 2014, but there was no real movement on the case because the appeal of his conviction wasn't final until October 2014. In November 2014, Koepke talked to Gerber about Vernon becoming involved in the case on what he understood was a temporary basis. It was not clear to him until January 2015 that Gerber's inactive status continued and that Vernon was his attorney for the PCR case. His petition was filed in September 2015.

The CSF recommends an award of \$13,500 to Koepke. While Vernon says Gerber did perform some initial work that Vernon was able to use, it is clear that Gerber did not earn the flat fee she collected. Gerber's records indicate she spent 30 hours on the case, but the Committee was unwilling to credit her with more than 10 because most of what she did could not be used by Vernon. The Committee used an hourly rate of \$150/hour to calculate a fee of \$1500 by Gerber, and the remainder of \$13,500 to be awarded to Koepke.

In reaching its decision, the Committee also discussed at length CSF Rule 2.2.4, which provides:

2.2.4 In the event that a client is provided equivalent legal services by another lawyer without cost to the client, the legal fee paid to the predecessor lawyer will not be eligible for reimbursement, except in extraordinary circumstances.

Koepke has not been required to pay Vernon anything more for her services, but the Committee believes this situation constitutes "extraordinary circumstances." Vernon is not obliged to provide extended services Koepke without remuneration and the \$10,000 she received from the PLF barely covers her expenses for the nine cases she took. The Committee also wants to avoid giving Koepke a windfall, but didn't want to intercede in the attorney-client relationship or decide, as between Koepke and his parents, what should happen to the money they paid for Gerber's services. The Committee's solution was for Vernon to make aware when an award is approved and that the claimant be asked where the funds should be directed. That will enable Vernon. If she is so inclined, to request payment for her services in order to continue the representation.³

Finally, the Committee recommends waiving the requirement that this and the other claimant pursue civil judgments against Gerber. Not only do these incarcerated claimants lack the resources to do so, the likelihood of a judgment against Gerber being collectible in the foreseeable future is slim. She has no assets that we know of (other than a PERS account that is exempt from execution); she currently lives with her parents in the Chicago area, attending therapy sessions in the mornings and working at Home Depot in the afternoons.

³ The Committee recommends that this approach be used in all four cases.

GERBER (Lawson) - \$10,000

Lawson first met with Gerber around June of 2014; there were about three meetings around that time. After the second meeting Lawson decided to retain Gerber and they spent the third meeting discussing fees. However, after Lawson arranged payment of Gerber's \$10,000 fixed fee, he says he never heard from her again.

Lawson says he got a call from Vernon in September 2014 and they discussed his case but he did not agree that she could take over the representation, as he was unsure of Gerber's status. He met with Vernon again in October to discuss additional investigation necessary for his PCR petition. He is unsure of the status of his case, but believes a hearing on the petition is scheduled for some time in November 2015.

Lawson could not provide a fee agreement, nor could Gerber. Her standard agreement, however, provides that the client is entitled to a refund if the representation ends before completion of the agreed work. Gerber claims to have worked on Lawson's case, but there are no records or other indication that her services were anything more than de minimis; moreover, Gerber never mentioned the difficulty she was having or that she was facing disciplinary charges that might prevent her from handling the case. The Committee concluded that her acceptance of the case and failure to refund the unearned fee was dishonest and that he should receive an award of the full \$10,000.

GERBER (Moore) - \$5,000

Moore retained Gerber on June 19, 2014. He recalls a couple of telephone calls thereafter, but Gerber never produced any work product relating to his PCR petition. In early 2015, Moore became concerned about the lack of communication from Gerber. When his aunt confronted Gerber and demanded a refund, she explained her inactive status and said Vernon would be handling Moore's case until Gerber became active again. In the meantime, she offered to "help" with Moore's case.

In a letter to the CSF investigator, Gerber admitted providing no meaningful services to Moore and acknowledging that he is entitled to a full refund of the \$5,000 flat fee he advanced. Moore was not included on the case transfer list and is not represented by Vernon; we have no information about the status of his PCR claim.

GERBER (Roelle) - \$9,740

Roelle hired Gerber in June 2014 after hearing about her good reputation from other inmates.⁴ He paid a flat fee of \$9,740, which he says was for a PCR petition and potential representation at retrial. Roelle met with Gerber the following month and explained his desire

⁴ Some of you may recall that Roelle submitted a claim to the CSF alleging that his trial attorneys, Des and Shannon Connall, had not properly investigated his case. The committee denied the claim and the denial was upheld by the BOG in July 2013.

to initiate the PCR process as soon as his appeal rights were exhausted, which he estimated to be in December 2014. Roelle provided Gerber with documents relating to his trial, and says he had a few conversations with Gerber over the next few months.

In November or December 2014, Roelle talked to Gerber about whether he should agree to have Vernon take over his case, which he ultimately declined to do, based at least in part on Gerber's assurance that her inactive status would only last a few months. In early 2015, Roelle talked to Gerber about the status of his PCR case, and was apparently assured that it was moving along.

On March 15, one of Roelle's family members requested a status update on his behalf. Gerber replied that she had amended the PCR petition, which she claimed to have filed the week prior. A week or so later Roelle that the court had no record of a PCR petition filed on his behalf, and again contacted Gerber. She reminded him she could not act as his attorney until she returned to active status, but offered to help as a paralegal in the interim. In June 2015, Roelle filed his own PCR petition and moved for appointment of a public defender.

Gerber provided a time log showing that she performed some legal research, reviewed trial transcripts and wrote a couple of letters. The total of her time is less than 10 hours. She did not prepare or file anything on his behalf and the Committee concluded that her services were insignificant and that he should receive a full refund of the fees he paid.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: November 20, 2015
Memo Date: November 10, 2015
From: Audrey Matsumonji, Board Development Committee Chair
Re: Appointments to various bar committees, councils, and boards (1 of 2)

Action Recommended

On October 9 the Board Development Committee selected the following members for appointment:

Advisory Committee on Diversity and Inclusion

Chair: Jacqueline Alarcon
Secretary: Daniel Simon
Members with terms expiring 12/31/2018:
Bryson E Davis
Claudia G Groberg
Gary W Glisson
Jollee Faber Patterson
Kyle Kazuo Nakashima
Alex Cook, public member

Bar Press Broadcasters Council

Chair: Lisa Ludwig
Members with terms expiring 12/31/2018:
Dawn Andrews
Kevin Ray McConnell
Lisa J Ludwig
Rachel Philips
Patrick Joseph Ehlers

Client Security Fund Committee

Chair: Ronald Atwood
Secretary: Stephen Raheer
Members with terms expiring 12/31/2018:
Rick Braun
Courtney Dippel
Nancy Cooper
Carrie Hooten, public member

Judicial Administration Committee

Chair: Bernadette Bignon
Secretary: Jessica Fleming
Members with terms expiring 12/31/2018:
Adina Matasaru
Celia A Howes
Jeffrey M Wallace
Laura B Rufolo
Lauren F Blaesing

Legal Ethics Committee

Chair: Kristin Asai
Secretary: Ankur Doshi
Members with terms expiring 12/31/2017:
Ankur Doshi
Members with terms expiring 12/31/2018:
Sarah E. Harlos
Kyann C. Kalin
John Klor
W. Greg Lockwood
Justin M. Thorp

Legal Heritage Interest Group

Chair: Jamie Lynne Dickinson
Secretary: Mary Anne Anderson
Members with terms expiring 12/31/2018:
Alfred Frank Bowen
Susan Hogg

Legal Services Committee

Chair: Kamala Shugar
Secretary: Andrea Thompson
Members with terms expiring 12/31/2018:
Kristin Bremer Moore
Andrea H. Thompson
Ari Halpern

Loan Repayment Assistance Committee

Members with terms expiring 12/31/2018:

Micah Maskowitz

Richard Wesenberg

William Penn, Advisory Member

MCLE Committee

Chair: Allison Banwarth

Secretary: Katherine Zerkel

Members with terms expiring 12/31/2018:

Douglas Olsen

Eugene Thompson

New Lawyer Mentoring Program Committee

Chair: Sarah Petersen

Members with terms expiring 12/31/2018:

Paul Duden

Martin McKeown

Monica Martinez

Lolly Anderson

Kathryn Brown

Pro Bono Committee

Chair: Christo de Villiers

Members with terms expiring 12/31/2016:

Meagan Robbins

Members with terms expiring 12/31/2018:

Stephen Galloway

David Goldfried

Melissa Haggerty

Natalie Hedman

Sandra Gustitus

Kuyng Duk Ko

State Lawyers Assistance Committee

Chair: Vaden Francisco

Secretary: John Parsons

Members with terms expiring 12/31/2019:

Kevin E. Lucey

Jerilyn Krier

Josh Soper

Uniform Civil Jury Instructions Committee

Secretary: Kim Sewell

Members with terms expiring 12/31/2018:

Jeffrey Armistead

Rob Beatty-Walters

Beth Creighton

Shannon Armstrong

Kate Wilkinson

Uniform Criminal Jury Instructions Committee

Chair: Andrew Robinson

Secretary: Erik Blumenthal

Members with terms expiring 12/31/2018:

Gregory Rios

Paul Maloney

Ryan O'Connor

Stacey Reding

Graham Fisher

The committee selected the following members to recommend to the Supreme Court for appointment:

State Professional Responsibility Board

Chair: E. Bradley Litchfield, term expires 12/31/2016

Members:

Heather Bowman, region 5, term expires 12/31/2019

Carolyn Alexander, region 5, terms expires 12/31/2019

After discussion and thorough review by the committee, Mr. Lavelle motioned and Ms. Nordyke seconded a motion to not make appointments to the Local Professional Responsibility Committee for 2016 members. The motion was unanimously approved by the committee.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: November 20, 2015
Memo Date: November 20, 2015
From: Audrey Matsumonji, Board Development Committee Chair
Re: Appointments to various bar committees, councils, and boards (2 of 2)

Action Recommended

During the November 20 meeting, the Board Development Committee selected the following members to recommend for appointment:

Advisory Committee on Diversity and Inclusion

Members with terms expiring 12/31/2018:
Leslie Williams, public member

Loan Repayment Assistance Committee

Members with terms expiring 12/31/2018:
Jennifer Geller

Procedure & Practice Committee

Chair: Chin See Ming
Secretary: Kristen Roggendorf
Members with terms expiring 12/31/2018:
Benjamin Cox
Erin Galli
Sarah Mae Kutil
Samantha D. Malloy
Amanda C. Thorpe

Pro Bono Committee

Member with term expiring 12/31/2017
Davis Smith

Public Service Advisory Committee

Chair: Debra Cohen
Secretary: Shayna Rogers
Members with terms expiring 12/31/2018:
Keith Leitz
Ann Lechman-Su
Diana Winther
Nena Cook
Leanne T. L'Hommedieu, public member

Quality of Life Committee

Chair: Ruben Medina
Members with terms expiring 12/31/2018:
Michelle Ryan
Sally Claycomb
Andrew Evenson
Justin Howe
Bruce Nishioka

State Lawyers Assistance Committee

Members with terms expiring 12/31/2018:
Keyunna Baker

Uniform Civil Jury Instructions Committee

Chair: Charles Henderson

Unlawful Practice of Law Committee

Chair: David Doughman
Chair-Elect: Erin Fitzgerald
Secretary: Monica Goracke
Members with terms expiring 12/31/2019:
John Marandas
Andrea K. Malone
Terry Wright
Mary Ellen Briede
Alexander S. Ogurek
Kevin Ray McConnell
Morad B. Noury
Samuel Reese

Oregon Law Foundation Board

David Rosen, term expires 12/31/2019

Elise Dozono, term expires 12/31/2019

Commission on Judicial Fitness and Disability

Jeffrey M. Wallace, term expires 1/28/2020

The committee selected the following members to recommend to the Supreme Court for appointment:

Disciplinary Board

State Chair: Robert A. Miller, term expires 12/31/2016

State Chair-Elect: William G. Blair, term expires 12/31/2016

Region 1:

Bill Hopp, Chair, term expires 12/31/2016

Region 2:

Jet Harris, Chair, term expires 12/31/2016

James K. Walsh, term expires 12/31/2018

George A. McCully, public member, term expires 12/31/2018

Region 3:

John E. Davis, Chair, term expires 12/31/2016

Penny Lee Austin, term expires 12/31/2018

Eric Foster, term expires 12/31/2017

Region 4:

Kathy Proctor, Chair, term expires 12/31/2016

Marcia Buckley, term expires 12/31/2018

Sim Rapoport, term expires 12/31/2018

Region 5:

Ronald Atwood, Chair, term expires 12/31/2016

Bryan D. Beel, term expires 12/31/2018

Anne Talcott, term expires 12/31/2018

Craig Crispin, term expires 12/31/2018

Courtney C. Dippel, term expires 12/31/2018

David Hercher, term expires 12/31/2018

Robert Schulhof, term expires 12/31/2018

Ulanda Watkins, term expires 12/31/2018

Stephen Butler, term expires 12/31/2018

JoAnn Jackson, public member, term expires 12/31/2018

Virginia Symonds, public member, term expires 12/31/2018

Michael Wallis, public member, term expires 12/31/2018

Jim Parker, public member, term expires 12/31/2018

Region 6:

James C. Edmonds, Chair, term expires 12/31/2016

John T. Bagg, term expires 12/31/2018

Lorena Reynolds, term expires 12/31/2018

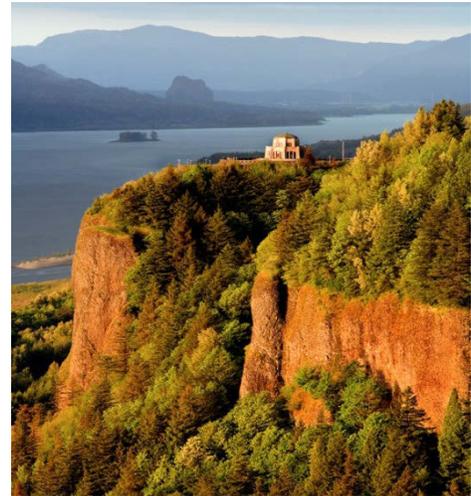
Sylvia Rasko, term expires 12/31/2016

Region 7:

Kelly Harpster, Chair, term expires 12/31/2016

Oregon State Bar

2016 FINAL BUDGET



November 21, 2015

Report to the Board of Governors

Summary

At the October 9 meeting, the Board of Governors resolved to increase the 2016 active member fee by \$50.00 and reduce the Client Assessment by \$30.00. The House of Delegates approved the \$50.00 active fee increase.

The purpose of this report is to identify changes included in this report from the October 9 budget report to attain the final 2016 budget.

The biggest change is the October 9 report which included a \$30.00 fee increase, but the BOG later approved a \$50.00 increase.

Exhibit A is the Program by Program summary of the budget.

Exhibit B is the 2016 budget with the \$50.00 fee increase and the five-year implications of that increase.

- **The final 2016 Budget includes a \$854,048 Net Operating Revenue.**
- **By vote of the House of Delegates, the General Member Fee is increased by \$50.00.**
- **By BOG action at the October meeting, the Client Security Fund assessment is reduced by \$30.00 to \$15.00.**
- **The total active Member Fee in 2016 will be \$557.00 - a \$20.00 increase over 2015.**

Changes in Revenue

❖ Membership Fees Revenue

The \$50.00 active member fee increase (\$47.00 for under 2-year members) generates \$773,600 additional revenue. Of that amount approximately \$733,100 is due to the fee increase and \$40,000 for the increase in the number of members.

❖ Other Revenue Changes

With the additional revenue the *investment income* increased \$6,000. This amount assumes the funds have remained in the short-term investment portfolio. *Legal Publications* increased \$7,225 with the addition of another book for sale in 2016.

Changes in Expenses

❖ Personnel Costs

The BOG approved the 3% salary pool at the October meeting. That meeting's budget report included the pleasant surprise of lower than expected personnel costs due to lower than initially expected PERS costs and the position vacancies at the end of 2014 and the personnel changes during 2015 filled by lower salaried personnel (and staff participating in the lower cost OPSRP of PERS).

Even with a 3% salary pool, the 2016 increase in personnel costs from the 2015 budget is 1.1%.

Since the October 9 report personnel costs have dropped further since the bar received notice that the cost of the UAL bond payment is reduced from 6.7% to 6.0% beginning November 1, 2015. Now personnel costs are even lower than budgeted in October, and are only \$86,500, or 1.1%, more than the 2015 budget.

❖ Other Expense Accounts

With updated information non-personnel changes were made to the following accounts (some increased, some decreased): Legal Publications (added a new book), postage, and property and liability insurance. The net increase in expenses was only \$3,138.

Five-Year Forecast

As anticipated with the various forecast scenarios, a \$50.00 fee increase will delay the next fee increase to 2020. Although the forecast includes a \$30.00 fee increase in 2020, the amount would be set on the financial conditions at that time and how long before the next fee increase thereafter. However, in the next four to five year period these are some of the issues that will determine the when and how much of the next increase:

- the implementation and full execution of the new Association Management Software;
- the uncertainty of a number of the non-dues revenue of certain programs, e.g. Admissions, CLE Seminars, Lawyer Referral percentage fees;

- the cost of PERS – will increased rates expected in 2017 and 2019 be offset by fewer Tier 1/2 employees;

What to Look for in 2016

- Although **Member Fee revenue** shows a small growth in 2016 and subsequent years, will this revenue source decline in the near future as members leave or retire at a faster rate than applicants join? One-half of 1% is included in the next years' forecasts, and that amounts to approximately \$40,000 in additional revenue from member fees.
- Admissions revenue** did not decline as much as initially forecast. However, the number of bar exam applicants could be less than projected, and could decline even further for a few years. This means lower Admissions revenue and eventually lower Member Fee revenue.
- The cost of **grading the two bar examinations** is budgeted at \$124,100. This is the cost for the graders' two weeks of grading in Sunriver. Staff recommend that alternative sites be considered and a RFP for a venue issued.
- CLE Seminars** is undergoing new revenue models and relationship with sections. Will the revenue optimism in the 2016 be achieved?
- Revenue from the **percent fees on lawyer referrals** has been a steady climb. At some point will the referrals not generate the level of revenue as the last three years?
- The **rate the bar pays for PERS** has vacillated wildly the past several years. The rate will change again at July 2017. Based on preliminary information from PERS, rates are expected to increase in mid 2017. That rate will be known in late 2016.
- Unknown is the impact of the **AMS software installation** in summer 2016. The system will create greater service to members and new roles, responsibilities, and efficiencies for staff, but probably not until 2017. How much will the efficiencies of the new system improve the bar's budget?
- Since the fee increase generates more revenue than needed in 2016, the Budget & Finance Committee should evaluate with the CFO **the best use of the excess funds**. Options could be: leave it in short-term investments; develop a longer-term investment strategy with the investment managers; or use it to fund the AMS costs without using any reserve funds.

... the Budget & Finance Committee should evaluate the best use of the excess funds

Recommendations of the Budget & Finance Committee to the Board of Governors

- Approval, with any changes, of the 2016 budget.
- Recommended Changes: _____

OREGON STATE BAR

2016 Budget Summary by Program

<i>Department / Program</i>	<i>Revenue</i>	<i>Sal & Benefits</i>	<i>Direct Program</i>	<i>Gen & Admin</i>	<i>Total Expense</i>	<i>Indirect Costs</i>	<i>Net Revenue</i>
Admissions	\$705,985	\$293,280	\$247,768	\$29,565	\$570,613	\$134,115	\$1,257
Bulletin	\$675,306	\$173,400	\$351,818	\$6,725	\$531,943	\$127,839	\$15,524
CLE Seminars	\$1,030,490	\$488,100	\$388,990	\$19,236	\$896,326	\$265,941	(\$131,777)
Client Assistance Office	\$0	\$533,200	\$1,100	\$21,956	\$556,256	\$158,401	(\$714,657)
Communications	\$26,750	\$469,516	\$19,550	\$7,167	\$496,233	\$133,334	(\$602,817)
General Counsel	\$2,500	\$409,400	\$66,300	\$18,321	\$494,021	\$108,112	(\$599,633)
Governance (BOG)	\$0	\$299,500	\$171,850	\$22,133	\$493,483	\$103,017	(\$596,500)
Legal Publications	\$294,520	\$585,500	\$74,199	\$24,625	\$684,324	\$215,972	(\$605,776)
Loan Repayment Assistance Progra	\$152,000	\$0	\$142,400	\$0	\$142,400	\$0	\$9,600
MCLE	\$301,500	\$176,000	\$1,750	\$11,308	\$189,058	\$97,810	\$14,632
Member Services	\$0	\$168,500	\$13,250	\$2,865	\$184,615	\$116,426	(\$301,041)
New Lawyer Mentoring Program	\$20,200	\$248,300	\$9,800	\$6,039	\$264,139	\$77,481	(\$321,420)
New Lawyers Division	\$5,350	\$67,300	\$83,850	\$2,880	\$154,030	\$46,505	(\$195,185)
Public Affairs	\$0	\$456,700	\$20,900	\$32,276	\$509,876	\$111,606	(\$621,482)
Referral & Information Services	\$715,000	\$446,400	\$42,000	\$8,900	\$497,300	\$228,436	(\$10,736)
Regulatory Services	\$87,350	\$1,708,600	\$111,800	\$92,170	\$1,912,570	\$390,797	(\$2,216,017)
Special Projects	\$200,000	\$9,800	\$173,200	\$375	\$183,375	\$0	\$16,625
TOTAL PROGRAMS	\$4,216,951	\$6,533,496	\$1,920,525	\$306,541	\$8,760,561	\$2,315,792	(\$6,859,402)
ALLOCATIONS:							
Finance & Operations	\$7,738,450	\$1,613,164	\$837,029	\$108,992	\$2,559,185	(\$2,319,015)	\$7,498,280
Less: Dept Charges/Offsets			(\$240,170)		(\$240,170)		\$240,170
Oregon State Bar Center							\$0
Contingency			\$25,000		\$25,000		(\$25,000)
TOTAL OPERATIONS	\$11,955,401	\$8,146,660	\$2,542,384	\$415,533	\$11,104,576	(\$3,223)	\$854,048
Fanno Creek Place	\$841,523	\$122,200	\$1,509,977	\$21,475	\$1,653,652	(\$160,459)	(\$651,670)
TOTAL GENERAL FUND	\$12,796,924	\$8,268,860	\$4,052,361	\$437,008	\$12,758,228	(\$163,682)	\$202,378
DESIGNATED FUNDS:							
Diversity Inclusion	\$719,850	\$323,200	\$243,880	\$35,691	\$602,771	\$102,878	\$14,201
Client Security Fund	\$237,900	\$43,500	\$202,950	\$2,444	\$248,894	\$31,861	(\$42,855)
Legal Services	\$6,155,000	\$111,400	\$6,599,200	\$9,586	\$6,720,186	\$28,943	(\$594,129)
TOTAL ALL FUNDS	\$19,909,674	\$8,746,960	\$11,098,391	\$484,729	\$20,330,079	\$0	(\$420,405)

2016 Budget

Oregon State Bar

Five-Year Forecast

		Operations	\$50.00 Increase in 2016					
		November-15						
Proposed Fee increase for Year →		\$50	\$0	\$0	\$0	\$30	\$0	
Operations	BUDGET	BUDGET	F O R E C A S T					
	2015	2016	2017	2018	2019	2020	2021	
REVENUE								
MEMBER FEES								
General Fund	\$7,157,000	\$7,197,500	\$7,970,000	\$8,009,900	\$8,049,900	\$8,090,100	\$8,591,800	
Active Member Fee Increase		733,100	0	0	0	459,000	0	
% of Total Revenue	64.8%	66.3%	66.5%	66.5%	66.4%	63.5%	66.9%	
PROGRAM FEES:								
Admissions	716,643	705,985	635,400	635,400	667,200	733,900	733,900	
CLE Seminars	953,350	1,030,490	1,030,490	1,051,100	1,051,100	1,051,100	1,051,100	
Legal Publications (print sales)	362,597	294,520	280,000	250,000	200,000	200,000	200,000	
Lawyer Referral New Model fees	485,900	600,000	588,000	550,000	550,000	550,000	550,000	
All Other Programs	1,024,162	1,037,456	1,058,200	1,079,400	1,101,000	1,123,000	1,139,800	
Total Program Fees	3,542,652	3,668,451	3,592,090	3,565,900	3,569,300	3,658,000	3,674,800	
OTHER INCOME								
PLF Contribution	200,000	200,000	200,000	200,000	200,000	200,000	200,000	
Investment & Other Income	145,350	156,350	225,800	260,600	303,800	327,400	372,700	
TOTAL REVENUE	11,045,002	11,955,401	11,987,890	12,036,400	12,123,000	12,734,500	12,839,300	
EXPENDITURES								
SALARIES TAXES & BENEFITS								
Salaries - Regular	5,888,800	5,985,600	6,097,100	6,210,600	6,326,100	6,443,600	6,563,200	
Benefits - Regular	2,155,300	2,147,900	2,383,500	2,446,400	2,570,900	2,699,200	2,815,000	
Salaries & Taxes - Temp	16,058	13,160	30,000	20,000	30,000	20,000	30,000	
Total Salaries & Benefits	8,060,158	8,146,660	8,510,600	8,677,000	8,927,000	9,162,800	9,408,200	
% of Total Revenue	73.0%	68.1%	71.0%	72.1%	73.6%	72.0%	73.3%	
DIRECT PROGRAM:								
CLE Seminars	401,225	388,990	392,900	396,800	402,800	406,800	412,900	
Legal Publications	113,999	74,199	112,000	100,000	80,000	80,000	80,000	
AMS Impact	0	0	88,000	35,000	35,000	35,000	35,000	
All Other Programs	1,950,348	2,054,195	2,085,000	2,126,700	2,169,200	2,234,300	2,301,300	
Total Direct Program	2,465,572	2,517,384	2,677,900	2,658,500	2,687,000	2,756,100	2,829,200	
GENERAL & ADMIN (incl offsets)	402,002	412,309	418,500	426,900	435,400	448,500	462,000	
CONTINGENCY	25,000	25,000	25,000	25,000	25,000	25,000	25,000	
TOTAL EXPENSES	10,952,732	11,101,353	11,632,000	11,787,400	12,074,400	12,392,400	12,724,400	
NET REVENUE/(EXPENSE) - OPERATIONS	\$92,270	\$854,048	\$355,890	\$249,000	\$48,600	\$342,100	\$114,900	

Fanno Creek Place

Fanno Creek Place	BUDGET	BUDGET	F O R E C A S T				
	2015	2016	2017	2018	2019	2020	2021
REVENUE							
RENTAL INCOME							
PLF	\$520,065	\$527,865	\$535,783	\$543,820	\$551,977	\$560,257	\$568,661
First Floor Tenant - Suite 175 - Zip Realty	44,966	46,315	47,704	49,136	50,610	39,096	53,692
First Floor Tenant - Suite 150 - Joffe	132,580	100,550	138,089	142,231	146,498	150,893	155,420
First Floor Tenant - Suite 100 - Simpson Prop	24,191	24,917	25,700	26,500	27,300	28,119	28,963
First Floor Tenant - Suite 110 - Prof Prop Gp	28,808	29,672	30,562	31,479	31,479	32,423	32,423
First Floor Tenant - Suite 165 - ALA	22,638	47,378	48,799	50,263	51,771	53,324	26,662
OLF	30,264	31,176	32,100	33,100	34,100	35,100	36,200
Meeting Rooms	30,000	32,000	30,000	25,000	24,000	24,000	24,000
Operating Expense Pass-through	0	0	3,000	3,100	3,200	3,300	3,400
INTEREST	1,890	1,650	2,000	2,200	2,500	2,800	3,000
TOTAL REVENUE	835,402	841,523	893,738	906,829	923,435	929,313	932,420
EXPENDITURES							
OPERATING EXPENSE							
Salaries & Benefits	119,600	122,200	124,600	128,300	132,100	136,100	140,200
Operations	336,340	323,909	330,400	340,300	350,500	361,000	371,800
Depreciation	506,100	512,600	512,600	517,600	517,600	527,600	527,600
Other	19,500	16,059	16,100	16,100	16,100	16,100	16,100
DEBT SERVICE							
Interest	693,700	678,884	663,158	646,462	628,739	609,924	589,951
TOTAL OPERATING EXPENSES	1,675,240	1,653,652	1,646,858	1,648,762	1,645,039	1,650,724	1,645,651
ICA to Operations	(160,459)	(160,459)	(165,300)	(165,300)	(165,300)	(165,300)	(169,400)
NET EXPENSES	1,514,781	1,493,193	1,481,558	1,483,462	1,479,739	1,485,424	1,476,251
NET REVENUE/(EXPENSE) - FC Place	(\$679,379)	(\$651,670)	(\$587,820)	(\$576,633)	(\$556,304)	(\$556,111)	(\$543,831)
ACCRUAL TO CASH ADJUSTMENT							
SOURCES OF FUNDS							
Depreciation Expense	506,100	512,600	512,600	517,600	517,600	527,600	527,600
Landlord Contingency Fund	51,000	30,000				200,000	
Loan Proceeds							
USES OF FUNDS							
Assign PLF Subtenants' Leases (Net)							
TI's - First Floor Tenants	(51,000)	(30,000)					
Principal Pmts - Mortgage	(240,608)	(255,424)	(271,150)	(287,846)	(305,569)	(324,384)	(344,357)
NET CASH FLOW - FC Place	(\$413,887)	(\$394,494)	(\$346,370)	(\$346,879)	(\$344,273)	(\$152,895)	(\$360,588)

Funds Available/Reserve Requirement

	BUDGET		F O R E C A S T				
	2015	2016	2017	2018	2019	2020	2021
FUNDS AVAILABLE							
Funds Available - Beginning of Year	\$ 1,844,000	\$1,144,683	\$1,226,437	\$1,435,457	\$1,673,277	\$1,391,404	\$1,281,609
SOURCES OF FUNDS							
Net Revenue/(Expense) from operations	92,270	854,048	355,890	249,000	48,600	342,100	114,900
Depreciation Expense	114,100	92,200	94,000	95,900	97,800	98,800	99,800
Provision for Bad Debts	36,300	49,000	40,000	40,000	40,000	40,000	40,000
Increase in Investment Portfolio MV	53,000	53,000	59,000	65,000	0	85,000	102,000
Allocation of PERS Reserve	64,440		108,500	217,000	108,500		
Projected HIGHER Net Operating Revenue	50,000						
USES OF FUNDS							
Capital Expenditures	(62,150)	(73,350)	(70,000)	(80,000)	(80,000)	(120,000)	(80,000)
Capital Expenditures - Building	(15,000)	0	(30,000)		(50,000)		(50,000)
Capital Reserve - AMS Software	(552,000)	(497,000)					
Capital Reserve Expenditures - Building						(200,000)	
Landlord Contingency Interest	(1,890)	(1,650)	(2,000)	(2,200)	(2,500)	(2,800)	(3,000)
Net Cash Flow - Fanno Creek Place	(413,887)	(394,494)	(346,370)	(346,879)	(344,273)	(152,895)	(360,588)
Addition to PERS Reserve	(64,500)				(100,000)	(200,000)	(100,000)
Projected LOWER Net Operating Revenue	0						
CHANGE IN FUNDS AVAILABLE	(699,317)	81,754	209,020	237,821	(281,873)	(109,796)	(236,888)
Funds Available - End of Year	\$1,144,683	\$1,226,437	\$1,435,457	\$1,673,277	\$1,391,404	\$1,281,609	\$1,044,721
RESERVE REQUIREMENT							
Operating Reserve	500,000	500,000	500,000	500,000	500,000	500,000	500,000
Capital Reserve	500,000	500,000	500,000	500,000	500,000	500,000	500,000
Total - Reserve Requirement	\$1,000,000						
RESERVE VARIANCE							
Over/(Under) Reserve Requirement	\$144,683	\$226,437	\$435,457	\$673,277	\$391,404	\$281,609	\$44,721
RECONCILIATION							
CASH to ACCRUAL							
	BUDGET	BUDGET	FORECAST				
	2015	2016	2017	2018	2019	2020	2021
NET REVENUE/(EXPENSE) - Operations	92,270	854,048	355,890	249,000	48,600	342,100	114,900
NET REVENUE/(EXPENSE) - FC Place	(679,379)	(651,670)	(587,820)	(576,633)	(556,304)	(556,111)	(543,831)
NET REVENUE/(EXPENSE) - OSB	(\$587,109)	\$202,378	(\$231,930)	(\$327,633)	(\$507,704)	(\$214,012)	(\$428,931)

	A	B	C	D	E	F
1	Reserves vs Funds Available					
2	12/31/					
3						
4	Fund Balances					
5	CSF	50,801				
6	AAP	32,816				
7	Legal Services	20,434			\$20,434	
8	Sections	706,568			\$706,568	
9	Total		\$ 810,619			
10						
11	Contingencies					
12	Legal Fees	187,825			\$187,825	\$0
13	PERS	240,500			\$240,500	
14	Landlord	361,059			361,059	(\$30,000)
15	LRAP	48,460				
16	Total		837,844			
17						
18	Reserves					
19	Operating	500,000			\$500,000	
20	Capital	500,000			\$500,000	\$0
21	Total		1,000,000		\$2,516,386	(\$30,000)
22						
23	Total - All Reserves		\$ 2,648,463		Net	\$2,486,386
24						
25						
26	Funds Available					
27	Wash Trust Bank	2,250,044				
28	Becker Capital	2,633,533				
29		4,883,577				
30	Short-Term	-				
31	Total - Funds Available		\$ 4,883,577			
32						
33	Excess Reserve		\$2,235,114			
34						
35						
36	Five Year Forecast					
37	Operating	500,000				
38	Capital	500,000				
39	Reduction of Capital Reserve in 2011	(150,000)				
40	Total		850,000			
41			2,235,114			
42	Add: Capital Reserve Reduction to Funds					
43	Available		150,000			
44	Funds Available - Five Year Forecast		3,235,114			
45						
46	ROUNDED TO - Beginning 2011		\$ 3,235,100			
47						
48						
49						
50	21-Jul-11					
51						
52						
53						

Funds Available to MV Change Applicable to General Funds	\$20,434	
	\$706,568	
	\$187,825	\$0
	\$240,500	
	361,059	(\$30,000)
	\$500,000	
	\$500,000	\$0
	\$2,516,386	(\$30,000)
	Net	\$2,486,386
	"Net" is total on Line 160 in Five-Year Forecast.	

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: November 20, 2015
From: Governance and Strategic Planning Committee
Re: Unclaimed Lawyer Trust Account Funds

Action Recommended

The Board of Governors should adopt the proposed amendments to Article 27 of the OSB Bylaws relating to Unclaimed Lawyer Trust Account Funds.

Background

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

Although the OSB receives unclaimed funds from lawyer trust accounts, the Oregon Department of State Lands ("DSL") continues to maintain records of abandoned property and provide the online portal for individuals to submit claims for abandoned property. In order to ensure that DSL records are accurate, the OSB provides DSL with a listing of claims it resolves. Under OSB Bylaw 27.103(j), the bar is required to provide DSL with a listing on a monthly basis. Because the number of claims the bar receives is relatively small, OSB staff has discussed with DSL whether we can change the bar's reporting to quarterly, rather than monthly. DSL has agreed to this change.

The Governance and Strategic Planning Committee recommends that OSB Bylaw 27.103(j) be amended as follows:

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

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: November 20, 2015
Memo Date: November 4, 2015
From: Sylvia Stevens, Emilee Preble, Anna Zanolli
Re: Staff Response to Knowledge Base Task Force Report

Action Recommended

No action recommended at this time.

Background

The Knowledge Base Task Force (KBTF) was established by the Board of Governors in response to a resolution passed at the 2012 House of Delegates meeting. The task force was given the following assignment:

- Identify written materials that could be included in the Knowledge Base,
- Explore the feasibility of a single database for searching the materials,
- Develop a “business plan” for creating and implementing the database that includes the direct and indirect costs and anticipated time line for completion, and
- Recommend to the BOG whether the project should go forward.

The KBTF report recommends that the bar create a single online comprehensive search engine and include all new OSB materials and as much archived OSB material as possible. The report recognizes that the bar’s current efforts to implement a new association management software platform will provide the basis for accessing available OSB content, while technological, financial and political considerations will serve as guidelines for determining what content can be included in a comprehensive knowledge base.

While not mentioned in the KBTF report, the PLF’s recent development of a new website provides a contemporary interface for access to the PLF content and a new OSB interface is in development along with the bar’s new AMS platform. Both the PLF and OSB will continue to look for opportunities to find information that can be shared by both entities—e.g., select PLF publications have been integrated into the BarBooks library.

Merging all content from the OSB, PLF, OSB sections and other bar groups into a single database with a shared search engine is not a practical solution. Rather, focusing attention and resources on the optimization of the respective data sources—so each can be easily searched by current industry standard search engines, such as Google—and increasing clarity and communication to OSB members about where different resource materials and information are located, are current and ongoing efforts within both the bar and the PLF.

We also have concerns about the KBTF’s recommendation for creation of a searchable archive for “selected list serve messages.” The objective is to make available to all OSB

members the wisdom and expertise of section members. While we agree that many section list serves are a source of valuable practical help, the scope of the proposal is daunting. First, many sections believe that their list serves are a valuable benefit of section membership and should be available only to their section members. Second, and perhaps most important, the KBTF does not suggest who would curate the list serves to determine which messages are worth archiving.

In conclusion, it is staff's view that existing and planned enhancements to our software already do or soon will provide sufficient access (and search functionality) to bar and PLF written materials, and that the marginal benefit to members that would result from implementing the KBTF recommendations does not justify that significant investment of additional time and resources that would be required.

DRAFT

OREGON STATE BAR

Knowledge Base Task Force Report

Date: September 21, 2015
From: James Oberholtzer
Re: Report to the Board of Governors

Introduction

Opportunity. The OSB and its affiliate organization, the PLF, generate a wide variety of written materials useful (and some essential) in the practice of law in the state of Oregon. Wider dissemination of curated information in a standardized format that can be accessed easily by OSB members would improve the quality of service provided to the public. The advent of digital communication, particularly widespread use of the internet, has dramatically increased the participation of OSB members on the internet and lowered the cost of the distribution through digital delivery.

Quick, convenient access to the knowledge in these materials can raise the quality of practice of law across the state. Large law firms often have internal digital knowledge bases that serve this purpose for them. These recommendations present the opportunity for solos, disabled, members of small law firms, in small towns and outlying areas to have access to OSB materials around the clock regardless of distance or other barriers to access.

Current Situation. The bar currently provides a body of knowledge on its website and provides access to this information through navigation tools and search engines. The task force recommends expanding the curated data sources on the bar's website and increasing the capabilities of the search engine to increase the bar's support of our members in their practice of law.

OSB Published Materials. Currently the bar publishes the following areas of information on its website:

For Lawyers:

- Online directory of members that is updated daily with current contact information
- BarBooks™
- Bulletin Archive
- Career Center
- Fastcase™
- Judicial Vacancies
- Legal Ethics Opinions
- OSB Group Listings
- OSB Rules & Regulations
- SLAC Info
- Surveys and Reports
- Volunteer Opportunities
- CLE Seminars

Bar Programs:

Diversity & Inclusion, Fee Arbitration/Mediation, Legal Services Program, Legislative/Public Affairs, Loan Repayment Assistance Program, Oregon Law Foundation, Pro Bono.

Member Groups:

Board of Governors, Committees, House of Delegates, Local Bars, Oregon New Lawyers Division, OSB Sections (including links to individual section websites), Professionalism Committee, Volunteer Opportunities.

About The Bar:

Bar mission, functions and values, ADA Notice, Contact Info, Copyright Notice, Directions to the Bar, Meeting Room Rentals, OSB Job Opportunities, Privacy Policy, Staff Directory, Terms of use.

Licensing/Compliance:

Admissions; Client Assistance Office; Client Security Fund; IOLTA Certification; Lawyer Discipline; MCLE; Member Fee FAQ; New Lawyer Mentoring Program; Professional Liability Fund; Status Changes; Unlawful Practice of Law.

The member portion of the website provides a dashboard with links and information customized to the logged in member:

Regulatory notifications with links to fee payment; IOLTA certification; MCLE reporting; member profile and demographic information; communication preferences; PLF exemptions; fee payments; proof of coverage. Access to section rosters, newsletter archives, and list serves are also provided in the member portion of the website.

The balance of the website contains information for the public:

Lawyer Referral Service; Legal Information Topical Index; Juror Handbook; Finding The Right Lawyer; Hiring A Lawyer; Lawyers Fees; Client Assistance Office; Public Records Request; Unlawful Practice of Law; Fee Arbitration/Mediation; Client Security Fund; Volunteer Opportunities for the Public.

In addition, valuable information is often shared on Section list-serves. The PLF publishes a variety of materials and practice aids on its website (www.osbplf.org).

Additional resources are found on Fastcase™ and the Career Center, two third-party providers accessible through the bar's website.

The OSB has a large archive of past publications in a variety of digital formats. Until recently, written materials were published in digital formats optimized for paper distribution. Most archived materials are in these formats. For the last fifteen years, most OSB materials, produced by the bar, have been created in digital formats that are optimized for digital publication for viewing over the internet. But, not in many cases for searching in a database.

Access. Currently, access is available in hard copy, through a variety of unconnected search engines, and as downloadable pdfs.

OSB members receive a hard copy of the monthly *Bar Bulletin*. It is also published in OSB website and searchable by the OSB website engine. BarBooks™ is searchable by all members on the website by its own BarBooks engine. Section newsletters are often available on Section websites; some are searchable by native engines on each Section website. The bar maintains a searchable archive of many section newsletters on the main site, behind the member login using the OSB search engine.

CLE presentations are available to members who attend the CLE either in person, concurrently over the internet or at a later date through the website. CLE materials are available in hard copy or digital copy. The bar will be adding new CLE materials to the main website where they can be searched using the OSB search engine. List-serve messages are exchanged by email to Section members.

A general archive of list-serve messages is not maintained so it is not possible to search for list-serve messages. PLF materials are searchable on the PLF website by its engine.

A Google search engine is used for retrieving access to most areas of information on the OSB website. A proprietary search engine was built to retrieve information in the BarBooks™ and Ethics Opinions, and section newsletter areas of the site. Both the Google and proprietary search engines deliver both web pages and other document formats, with the section newsletter library limited to the pdfs of available issues. Section list serve messages are not archived, curated or included in the website database.

The current OSB website search function operates with basic search parameters:

1. Search terms. The search terms must be a simple word or phrase.
2. Search function. The search matches the search terms with the content of the database records. The user cannot limit the search to a subset of the database; for example, date range, designated materials or other subsets of data. The search does not allow for gaps between words (e.g., search term #1 within 25 words of search term #2).
3. Returns.
 - a. The search returns a series of return message composed of 4 to 5 lines of information:
 - i. A title for the document returned
 - ii. The file format of the document
 - iii. An excerpt from the document showing the search terms in bold
 - iv. A link to the document on the OSB website
 - b. The messages are ordered in terms of relevance (frequency that the search term appears in a document).
 - c. The user cannot search the found set to find a subset of the records.

Some Section websites are also searchable by native search engines (within the Section website) limited to the Section website. In addition, some Sections have made their materials searchable by a general Google internet search. Other Section materials are not searchable.

CLE materials and list serve messages are not searchable. PLF materials do not appear in online Google searches.

Recommendations

Key Recommendations. The Task Force recommends that the OSB take the following actions:

1. Create by July 1, 2016 a single online comprehensive search engine for all current and selected archived OSB and PLF materials (excluding list serve messages).
2. Create by July 1, 2016 a message archive for selected list serve messages and make it searchable in by the comprehensive search engine.

Specific Recommendations.

1. Establish a standard comprehensive search engine software capable of maintenance and upgrades. Avoid custom designed software.
2. Solicit participation of Sections to make their materials available in the comprehensive search engine.
3. Include new and archived CLE materials in the comprehensive search engine.
4. Establish parameters for the search terms for comprehensive search engine, including:
 - a. Filters for search terms to limit searches (establish advance search parameters and filters)
5. Establish parameters for the returns from a search:
 - a. sufficient information to evaluate document
 - b. Ranking by users of utility of a document
 - c. Reviews by users of utility of a document
 - d. Suggestions of related documents that users who found the initial documents also used.

Challenges to Implementing Recommendations.

A comprehensive search engine that delivers information from the OSB, PLF and Sections will be a challenge to achieve while these materials are located on multiple systems and servers. Steps can be taken to identify bodies of information that should be curated and added to the bar's website and desired improvements for the Google search engine currently used to deliver the data on the bar's website can be priced and compared to other options.

Most importantly, the OSB is in the process of acquiring an association management software system that will provide a centralized database of bar information. The systems under consideration contain modern search engines that will enhance the ability to make the available information accessible to our membership. These systems could be concurrently evaluated on how they could assist or impede the effort to open up OSB material to the members using the internet.

Specific Issues:

1. Technological.
 - a. Legacy records from each digital era are in a variety of formats with varying degrees of difficulty in using with modern search software.
 - b. The legacy search software programs have some limitations on converting records to new search software.
 - c. Integration of existing billing, member demographic and other OSB databases with new search software.
2. Financial.
 - a. Costs of conversion of existing legacy records from various eras.
 - b. Cost of new search software.
 - c. Installation and integration of new search software into existing systems including website and
3. Political.
 - a. Section Newsletters. Some Sections do not want to share their Section materials to non-Section members. One key objection is that Section members have paid a fee to join the Section and have access to the materials.
 - b. Section List serves. Section list serves contain a wide variety of messages. The current rule (and expectation) is that the messages are distributed only to the members of the section list serves. This closed list feature is valued by many list serve users. In order to preserve this feature, the author of a list serve comment should have the election to authorize the republication of a list serve message to a wider audience (possibly in the form of an OSB Blog open to members).

Conclusion

In the digital world there are two things: content and access. OSB already does the difficult thing: it produces high quality content. It only needs to add access. It has already started this process. It should broaden its efforts to produce a single online comprehensive search engine and include all new OSB materials and as much archived OSB material as possible. The benefits to its members and the public can be enormous.

Respectfully submitted,

James Oberholtzer
Chair of the OSB Knowledge Base Task Force

Members of the Committee:

John Gear
Amy Hill
Joseph Kraus

Colin Lebens
Charles Starkey

Staff Liaisons: Sylvia Stevens, Emilee Preble, Anna Zanolli

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: November 20, 2015
From: Sylvia E. Stevens, Executive Director
Re: Discipline System Review Committee Report Implementation

Action Requested

None at this time; this is for the Board's information only.

Discussion

On November 5, Rich Spier, Ray Heysell, Helen Hierschbiel and I discussed the DSRC Report with the Chief Justice and his staff counsel, Lisa Norris-Lampe. After we reviewed some of the Committee's more significant recommendations, our discussion turned to identifying the best approach for eliciting member comment and presenting the report to the Supreme Court.

After discussion, the Chief Justice expressed a preference for deferring submission of the report to the Court until after members have had time to comment and the BOG has decided which of the Committee's recommendations it wishes to forward to the Court. The DSRC Report (and any minority reports) can be published on the OSB web site by the end of November and the comment period can run to the end of January.

The BOG can then use its February meeting to review the DSRC Report and any member comments received, and determine what DSRC recommendations it wishes to recommend to the Supreme Court. The Court will have a special public meeting (probably in March) to review the DSRC Report, member comment, and the BOG's recommendations. The Court will then advise which recommendations it favors.

Staff will then proceed to draft amendments to the BRs to implement the favored recommendations. A realistic goal for presentation of the rule amendments to the BOG is the August 2016 meeting. Presumably the Court would act on the proposed rules promptly, adopting them with an effective date of January 1, 2017.

Proposal to the Oregon State Bar
Board of Governors Meeting – November 20, 2015

Funding Request: \$2000

Thank you all for considering our request for funds to help us host “**A Class Action: The Grassroots Struggle for School Desegregation.**” This traveling exhibit, created by the Museum of Teaching and Learning (MOTAL) and the Ninth Judicial Circuit Historical Society, depicts the history of school segregation and desegregation, particularly with respect to Mexican American students. It focuses on the Ninth Circuit’s decision in Mendez v. Westminster School District, which was, in all respects, the precursor to Brown v. Board of Education. The exhibit consists of five large panels, three rectangular towers, and three smaller cases containing artifacts related to the case.

At present, the Mendez exhibit has been hosted at various courthouses throughout California, including the Ninth Circuit’s James R. Browning Courthouse in San Francisco and the Edward J. Schwartz Courthouse in the Southern District of California (San Diego). It is a traveling exhibit, and MOTAL’s goal is to provide more opportunities throughout the Ninth Circuit for bar and community members to explore the case, learn about its origins, and engage in discussions about how its legacy has inspired change in recent years.

The Oregon Chapter of the Federal Bar Association would like to host the Mendez exhibit at the Mark O. Hatfield U.S. Courthouse here in Portland. The cost is such that we intend to partner with a number of local bar associations to make that happen. Below is a ballpark summary of costs associated with travel, community outreach, and events associated with the exhibit:

Travel:	\$10,800
Community Outreach:	\$200
Welcome Reception	\$3000
Total:	\$14,000

Timing:

We anticipate hosting the exhibit this spring, starting in early April. The exhibit would stay in the Hatfield Courthouse for 10 weeks.

Curriculum Materials and Community Outreach:

We are currently working with MOTAL to develop curriculum materials that we can make available to local schools and community organizations. With those materials and some community outreach by our members, we hope that the exhibit will provide opportunities for local students to visit the courthouse, learn about the case and its origins, and better understand the importance of our judicial system in initiating change.

Welcome Reception:

We plan to host a reception welcoming the exhibit to Portland and members of the community into our courthouse. We anticipate that the Honorable Mary H. Murguia, Circuit Judge on the U.S. Court of Appeals for the Ninth Circuit, will be our featured speaker. We are also considering inviting family members of the school children involved in the case to speak at that reception.

Funding Request:

The Federal Bar Association plans to contribute \$2500 toward the total event cost, and the District of Oregon, by way of the Attorney Admissions Fund, has agreed to contribute \$1500. **We hope that the Oregon State Bar will consider contributing \$2000 to the total cost of the event.** We would also like to involve members of the Board of Governors and OSB staff in the welcome reception and in any other events related to the exhibit. Of course, should you agree to help sponsor the event, we will include the OSB on all marketing materials, pamphlets, and online advertising associated with the exhibit.

DRAFT

IMPLICIT BIAS **CLE** *January 22, 2016*

In the PORTLAND *U of O* WHITE STAG BUILDING

SCHEDULE

<p>8:30-9:00 AM REGISTRATION AND BAGEL BREAKFAST Art Exhibition: The Black Portlanders, Intisar Abioto</p>	<p>11:30-12:00 BEST PRACTICES PANEL I: HIRING, MENTORING AND RETENTION OF ATTORNEYS OF COLOR Hon. Darleen Ortega, Oregon Court of Appeals Clarence Belnavis, Fisher & Philips, LLP Banafsheh Violet Nazari, Nazari Law Pro. Erik J. Girvan, University of Oregon Law</p>	<p>2:30-3:30 ZOOM IN: MICROAGGRESSIONS AND DISABILITY Documentary Film and Discussion Barbara J. Diamond, Diamond Law</p>
<p>9:00-9:15 WELCOMING REMARKS Prof. Henry H. Drummonds, Lewis & Clark Law School</p>	<p>12:30-1:30 PM CATERED LUNCH Luncheon Speaker: Hon. Adrienne Nelson, Multnomah County Circuit Court</p>	<p>3:30-4:30 Best Practices Panel II: HIRING, MENTORING AND RETENTION OF LGBTQ AND DISABLED ATTORNEYS Dana L. Sullivan, Buchanan, Angeli, Altschul & Sullivan, LLP Lin Hendler, Attorney at Law Talia Stoessel, Bennett, Hartman, Morris & Kaplan LLC. Prof. Erik J. Girvan, University of Oregon Law School</p>
<p>9:15-10:30 THE SCIENCE OF BIAS Prof. Erik J. Girvan, University of Oregon Law School</p>	<p>1:30-2:30 WHAT ARE YOU? MICROAGGRESSIONS & LGBTQ Documentary Film and Discussion Jess Guerriero, MSW Barbara J. Diamond, Diamond Law</p>	<p>4:30-5:30 EVALUATIONS VIDEO TESTIMONIALS SOCIAL HOUR</p>
<p>10:30-11:30 REVEAL MOMENTS: MICROAGGRESSIONS AND RACE & ETHNICITY Professor Roberta Hunte, Portland State University Kenya Budd, Consultant Documentary Film and Discussion</p>		

Cost: \$150 PER PERSON / 6 CLE CREDITS

Please contact us at least 14 days in advance to make arrangements to make this event accessible to you. We welcome attendance by everyone!



IMPLICIT BIAS



Registration Form

JANUARY 22, 2016 8:30 TO 5:30 PM | UO WHITE STAG BUILDING, 70 NW COUCH ST, PORTLAND, OR 97209

NAME _____ OSB NO. _____

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MEAL OPTIONS (SELECT ONE)

- VEGAN
- VEGETARIAN
- CHICKEN
- BEEF
- PORK
- FISH



ACCOMMODATION REQUESTS?

- SIGN LANGUAGE INTERPRETER
- AUDIO DESCRIPTION FOR FILMS
- EVENT PROGRAM INFORMATION IN ALTERNATE FORMAT
- SPECIAL SEATING LOCATION
- ALLERGIES/SPECIAL FOOD NEEDS
- OTHER ACCOMMODATIONS (PLEASE SPECIFY)

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ARUNA MASIH,
TED HEID,
JIM YOCOM,
MARK JOHNSON ROBERTS,
LIANI REEVES,
STEVE GOLDBERG,
HON. JOHN ACOSTA,
HON. MARTHA WALTERS,
HON. ROBERT DURHAM,
MARIANN HYLAND,
HON. SUZANNE CHANTI,
HON. DAVID SCHUMAN,
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EMILY TEMPLIN FOX,
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SUSAN COURNOYER,
EMILEE S. PREBLE,
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CANCELLATION: TUITION FOR CANCELLATIONS PRIOR TO JANUARY 1, 2016 WILL BE REFUNDED MINUS A \$25 CANCELLATION FEE.



**Oregon State Bar
Special Open Session of the Board of Governors
December 15, 2015
Minutes**

President Richard Spier called the meeting to order at 8:00 a.m. on December 15, 2015. The meeting adjourned at 8:15 a.m. Members present from the Board of Governors were Jim Chaney, Ray Heysell, Theresa Kohlhoff, John Mansfield, Vanessa Nordyke, Ramón A. Pagán, Travis Prestwich, Per Ramfjord, Kathleen Rastetter, Josh Ross, Kerry Sharp, Michael Levelle and Tim Williams. Not present were Guy Greco, Audrey Matsumonji, Charles Wilhoite and Elisabeth Zinser. Staff present were Helen Hirschbiel, Susan Grabe and Camille Greene.

1. Call to Order and Roll Call

Mr. Spier determined we have a quorum.

2. Consideration of Board of Bar Examiners UBE Proposal to the Supreme Court

Mr. Spier reported that the BBX proposal to the Court for transferring to a UBE will not be available until after their January 22, 2016 board meeting. No action necessary at this time.

3. Reconsider the length of the member comment period for the Discipline system Review Committee Report

Ms. Hirschbiel offered the board two suggested options to consider:

- a) Leave the comment period at 90 days and put the DSRC report on the Board's agenda for the April 22, 2016 meeting.
- b) Change the comment period to 75 days and hold a special meeting on March 11, 2016, after the Board Committee meetings.

Mr. Spier recommended that the BOG choose option b) as that is sufficient time to consider a proposal that has been in process for over two years. Mr. Ross had concerns that the board would not have adequate time to consider the member feedback if they add it to the full April agenda. Mr. Heysell agreed with Mr. Ross that a special board meeting would allow more time for consideration.

Motion: Mr. Heysell moved, Mr. Chaney seconded, and the board voted 8-5 to change the comment period to 75 days. In favor were Mr. Chaney, Mr. Heysell, Mr. Mansfield, Ms. Nordyke, Mr. Pagan, Mr. Ramfjord, Mr. Sharp and Mr. Levelle. Opposed were Ms. Kohlhoff, Mr. Prestwich, Ms. Rastetter, Mr. Ross and Mr. Williams. **[Exhibit A]**

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: December 15, 2015
From: Sylvia E. Stevens, Executive Director
Re: Comment Period for the Disciplinary System Review Committee Report

Issue

Reconsider the comment period for the Disciplinary System Review Committee report.

Options

1. Leave the comment period at 90 days and put the DSRC report on the Board's agenda for the April 22, 2016 meeting.
2. Change the comment period to 75 days and hold a special meeting on March 11, 2016, after the Board Committee meetings.

Discussion

The Board of Governors received the Disciplinary System Review Committee report at its November 20, 2015 meeting. It decided to publish the report for a period of 90 days beginning December 18, 2015 (the deadline for receipt of any minority reports) and ending on March 17, 2016. Under this timeline, the next available date for the BOG to consider and discuss the recommendations and comments would be its regular meeting on April 22, 2016.

If the Board reduced the comment period to 75 days (until March 2, 2016), the Board could hold a special meeting dedicated to discussion of the DSRC report on March 11, the Board's regular committee meeting day.

After the Board's last meeting, president-elect Ray Heysell suggested scheduling a series of telephone conferences in each of the eight BOG regions to give members the opportunity to express their comments orally, in addition to allowing for written comment. We have scheduled those meetings for the week of January 19, 2016.

Oregon State Bar
Special Open Session of the Board of Governors
January 8, 2016
Minutes

President Ray Heysell called the meeting to order at 8:45 a.m. on January 8, 2016. The meeting adjourned at 9:45 a.m. Members present from the Board of Governors were John Bachofner, Jim Chaney, Chris Costantino, Rob Gratchner, Guy Greco, Michael Levelle, John Mansfield, Per Ramfjord, Kathleen Rastetter, Julia Rice, Josh Ross, Kerry Sharp, Rich Spier, Kate von Ter Stegge, Tim Williams and Elisabeth Zinser. Not present were Ramón A. Pagán, Vanessa Nordyke and Charles Wilhoite. Staff present were Helen Hirschbiel, Amber Hollister, Dawn Evans, Susan Grabe, Mark Johnson Roberts, Charles Schulz and Camille Greene. Also present was David White, OSB Board of Bar Examiners.

1. Call to Order

Mr. Heysell swore in new board members John Bachofner, Chris Costantino, Rob Gratchner, Julia Rice and Kate von Ter Stegge.

Mr. Heysell asked the board to consider the ABA Commission on the Future of Legal Services Resolution to Adopt Model Regulatory Objectives. Mr. Levelle presented a handout with additional material. **[Exhibit A]**

Motion: Mr. Bachofner moved, Ms. Rice seconded, and the board voted (8-6) in favor of asking the Policy and Governance Committee to consider whether the Oregon State Bar should adopt regulatory objectives for Oregon similar to those proposed by the ABA Futures Commission. (In favor: Levelle, Ramfjord, Bachofner, Chaney, Williams, Rice, Rastetter and Costantino. Opposed: Ross, von Ter Stegge, Mansfield, Greco, Gratchner and Sharp. Ms. Zinser called into the meeting after discussion and voting.)

Mr. Spier asked the board to consider the Board of Bar Examiner's (BBX) recommendation to the Oregon Supreme Court to adopt the Uniform Bar Exam (UBE) with either testing or CLE requirements on Oregon law and ethics. Mr. White informed the board on the pros and cons of the UBE and noted that the BBX will have input as the National Conference of Bar Examiners (NCBE) committee develops future UBE questions.

Motion: Mr. Greco moved, and Mr. Mansfield seconded, and the board voted unanimously to support the BBX's recommendation to the court.

Ms. Hirschbiel updated the board on the process for member comments on the Discipline System Review Committee (DSRC) report. On January 19, 20 and 21, 2016 the membership will have an opportunity to comment during one of the regional conference calls hosted by board members in their regions. A public meeting notice will be sent the week of January 11, 2016 as well as notices in each regional BOG update. Mr. Heysell will invite public comment during the February 12, 2016 board meeting in Salem, OR. The Board plans to consider the report and comments received at a special meeting on March 11.

**AMERICAN BAR ASSOCIATION
COMMISSION ON THE FUTURE OF LEGAL SERVICES**

INFORMATIONAL REPORT TO THE HOUSE OF DELEGATES

December 2015

The Commission on the Future of Legal Services submits this informational report to the House of Delegates in order to provide an update on its activities since its August 2015 report and identify the work that remains.

I. INTRODUCTION

Access to affordable legal services is critical in a society that depends on the rule of law. Yet legal services are growing more expensive, time-consuming, and complex. Many who need legal advice cannot afford to hire a lawyer and are forced to represent themselves. Even those who can afford legal services often do not use them or turn to less expensive alternatives. For those whose legal problems require use of the courts, various challenges arise due to serious underfunding of the court system.

At the same time, technology, globalization, and economic and other forces continue to transform how, why, and by whom legal services are accessed and delivered. Familiar and traditional practice structures are giving way in a marketplace that continues to evolve. New providers are emerging, online and offline, to offer a range of services in dramatically different ways.

The American Bar Association is well-positioned to lead the effort to improve the delivery of, and the public's access to, legal services in the United States. The ABA can inspire innovation, leverage technology, encourage new models for regulating legal services and educating tomorrow's legal professionals, and foster the development of financially viable approaches to delivering legal services that more effectively meet the public's needs.

To advance these essential goals, American Bar Association President William Hubbard established the Commission on the Future of Legal Services in August 2014. The Commission consists of prominent lawyers from a wide range of practice settings as well as judges, academics, and other professionals who have important perspectives on the delivery of legal services in the United States. Judy Perry Martinez serves as chair, and Andrew Perlman serves as vice chair. (A full Commission roster is available [here](#)).

The Commission is charged with the following tasks:

- conduct a series of community-based grassroots meetings and a national summit designed to encourage bar leaders, judges, court personnel, practitioners,

- businesses, clients, technologists, and innovators to share their vision for more efficient and effective ways to deliver legal services;
- seek information at the Commission’s public meetings and solicit comments from the legal profession and public;
 - analyze and synthesize the insights and ideas gleaned from this process;
 - establish internal working groups to assess developments, and recommend innovations, in accessing and delivering legal services; and
 - propose new approaches that are not constrained by traditional models for delivering legal services and are rooted in the essential values of protecting the public, enhancing diversity and inclusion, and pursuing justice for all.

II. THE COMMISSION’S EFFORTS

A. Working Groups and Project Teams

During its first year, the Commission organized its efforts around a number of different subject areas, engaged in extensive study and fact-finding, and began the process of developing preliminary recommendations. Shortly after its creation, the Commission arranged itself into six working groups:

- **Data on Legal Services Delivery.** This working group has assessed the availability of current, reliable data on the delivery of legal services, such as data on the public’s legal needs, the extent to which those needs are being addressed, and the ways in which legal and law-related services are being delivered; identified areas where additional data would be useful; and considered ways to make existing data more readily accessible to practitioners, regulators, and the public.
- **Dispute Resolution.** This working group has assessed innovations in dispute resolution. Examples include innovations in: (a) court processes, such as streamlined procedures for more efficient dispute resolution, the creation of family, drug and other specialized courts, the availability of online filing and video appearances, and the effective and efficient use of interpreters; (b) delivery mechanisms, such as kiosks and court information centers; (c) criminal justice, such as veterans’ courts and cross-innovations in dispute resolution between civil and criminal courts; (d) alternative dispute resolution, including online dispute resolution services; and (e) administrative and related tribunals.
- **Preventive Law, Transactions, and Other Law-Related Counseling.** This working group has assessed innovations in the delivery of legal and law-related

services that do not involve courts or other forms of dispute resolution, such as contract drafting, wills, trademarks, and incorporation of businesses.

- Access Solutions for the Underserved. This working group has assessed innovations that facilitate access to legal services for underserved communities.
- Blue Sky. This working group has assessed innovations that do not necessarily fit within the other working groups, but could improve how legal services are delivered and accessed, such as innovations developed in other professions to improve effectiveness and efficiency, collaborations with other professions, and leveraging technology to improve the public's access to law-related information.
- Regulatory Opportunities. This working group is studying existing regulatory innovations, assessing developments in this area, and recommending regulatory innovations most likely to improve the delivery of, and the public's access to, competent and affordable legal services. To date, this work includes:
 - (1) [Resolution and Report on Regulatory Objectives](#), submitted for consideration by the House of Delegates at the 2016 Midyear Meeting. This Resolution recommends that each state's highest court, and those of each territory and tribe, use clearly identified regulatory objectives to help (1) assess the court's existing regulatory framework and (2) identify and implement regulatory innovations related to legal services beyond the traditional regulation of the legal profession. The ABA Model Regulatory Objectives are intended to advance these important goals. The Commission solicited comments from all ABA entities (including the Standing Committee on Ethics and Professional Responsibility and the Standing Committee on Professional Discipline), state and local bar associations, and the public. (Comments can be viewed on the Commission [website](#).)
 - (2) [Legal Services Providers \(LSP\) Issues Paper](#), posted for public comment. This issues paper seeks feedback on whether United States jurisdictions should be encouraged to create new categories of judicially-authorized-and-regulated LSPs to perform discreet and limited legal tasks with the goal of improving access to legal services. The deadline for submitting comments is December 31, 2015.
 - (3) Ongoing discussion and study of additional regulatory opportunities, including but not limited to alternative business structures and entity regulation.

These working groups have met regularly, either in-person or via teleconference. Each working group gathered and assessed relevant literature on challenges and opportunities; engaged with members of the bar, ABA entities, and the public; read comments submitted to the Commission in response to an Issues Paper released in November 2014 (see the more than 60 comments on [Commission's website](#)); listened to and analyzed

testimony at public hearings from the bar and beyond; participated in and learned from the National Summit on Innovation in Legal Services as well as thought-leader webinars and state-based grassroots meetings and futures presentations (see below); and developed preliminary recommendations for consideration by the full Commission.

At the start of its second year, the Commission reviewed numerous potential innovations projects and programs that its working groups had identified and collected within each group's area of responsibility. The working groups then made recommendations to the full Commission as to those projects that the members believed would be most impactful and bring meaningful progress toward closing the justice gap. The Commission synthesized the preliminary recommendations from the working groups and identified five priority project teams to craft concrete proposals and final recommendations. The projects include:

- ABA Center for Innovation. The purpose of the Center will be to identify and advance ideas that improve legal services and legal education. The Center for Innovation would be similar to other centers within the ABA in that it would include staff with substantive expertise and skills. As currently envisioned, after the infrastructure is built out in year one, the Center would host post-JD and mid-career lawyers as visiting fellows and serve as an incubator for law students, all in the context of a competitive selection process. The Center will be a hub for the design and creation of innovative thoughts and tools that will equip lawyers as they serve consumers of justice in the twenty-first century. In concept, the Center would have a 12-member Governing Council. Operationally, the Center would undertake a variety of endeavors designed to foster, identify and advance innovation. The ABA, through its unparalleled convening power, can offer innovators a way to share their thoughts through physical and virtual interaction, an international annual innovation summit, and an ongoing web-based presence that influences national dialogue. The Center itself would be the leading national resource for the development of ideas that improve legal services and also those that demonstrate the value of lawyer-driven solutions. In the long-term, the Center might be able to generate revenue by incubating, and taking an equity stake in, legal technology startups. The work of the Center for Innovation would reshape the image of the ABA and help to redefine it as an even more forward-looking professional organization. Young lawyers would see the ABA in a new light: as an entity on the cutting edge of the future. By doing so, the Center would help to attract the next generation of ABA members.
- ABA Annual Legal Checkup Program. The annual legal checkup program in concept is similar to an annual medical checkup. One format for the annual legal checkup would be an online triage website that could, through a series of questions, examine legal risks and the need to consult a lawyer. A nationwide public information campaign would accompany this effort. Other related possible recommendations may include that the ABA cultivate partnerships beyond the

legal profession, such as those with medical associations, community colleges, credit counseling entities, public libraries, etc. to support this effort.

- **ABA Online Dispute Resolution System.** The ODR project focuses on promotion and expansion of government agency or court annexed online dispute resolution. One potential consideration is a proposal to partner with a court system that is already developing a state-of-the art online dispute resolution system. The partnership would be an opportunity for the ABA to develop and apply best practices in the context of a live ODR system. The ABA could document the ODR process, report on the impacts and outcomes and promote outreach to government and courts on how to copy and scale the project to other dispute forums. This project would advance the courts' interests in maintaining their essential role in dispute resolution in an efficient manner that reduces docket backups. It also will conserve government resources and reduce administrative delays. It is envisioned that the Center for Innovation would be a partner in the advancement of the ODR project.
- **ABA Platform.** The ABA Platform would be an ABA-branded, national online platform designed to direct users to resources, including state and local portals providing access to legal information or assistance. The platform also would serve as the online home for the (1) ABA Innovation Center, (2) ABA Online Dispute Resolution System, and (3) ABA Annual Legal Checkup Program. The ABA Platform would be housed in the Center for Innovation. The ABA Platform Team will work in coordination with SJI, NCSC and LSC's current collaborative effort on platform/portal development.
- **Challenges to the Delivery of Criminal Legal Services.** The Commission's current Challenges to the Delivery of Criminal Legal Services Project Team is exploring and making recommendations about innovations in the delivery of criminal legal services, including (1) decriminalization of minor offenses to alleviate racial discrepancies and over-incarceration; (2) holistic approaches to legal services that encompass both criminal and civil matters when they are inter-related; and (3) expansion of programs that provide training and mentorship for those who are incarcerated.

B. Communication

The Commission maintains a website that serves to enhance communication with ABA membership and the public about the Commission's work and that provides a source of information about the future of legal services. This information includes a toolkit for bar associations, documents related to the Commission's work, comments received by the Commission, and links to view recordings of Commission hearings, the [National Summit on Innovation in Legal Services](#), and webinars. The Commission has engaged in media communication; for example, the Commission's reporter authored an article published in

the Jan./Feb. 2015 issue of Law Practice Management magazine, *ABA Launches Commission on the Future of Legal Services*. In addition, numerous media outlets have covered the Commission's work, including over two dozen news articles and blogs.

C. National Summit on Innovation in Legal Services, Webinars, Grassroots Meetings, and Futures Presentations

The Commission's outreach and study have included the National Summit on Innovation in Legal Services, monthly webinars, grassroots meetings, and futures presentations. The Commission convened the Summit in partnership with Stanford Law School on May 2-4, 2015. The Summit was designed to challenge thought-leaders from within and outside the legal profession to develop action plans for ensuring access to justice for all. The two hundred invited attendees included more than a dozen chief justices of state supreme courts, members of the state and federal bench, as well as bar leaders, lawyers from diverse practice settings, innovators, academics, non-governmental organization leaders, new entrants in legal services, and law students. Additional information about the Summit, including the full agenda and list of speakers, can be found on the [Commission's website](#).

The Commission has sponsored monthly webinars on topics relevant to the Commission's mission for both members of the Commission and the ABA Board of Governors. The webinar topics have included *The Emerging Legal Ecosystem* (Professor William Henderson, Indiana Law); *Multi-pathing the Delivery of Legal Services for the 79%* (Will Hornsby, ABA); *21st Century Technology and 19th Century Law Practice: The Coming Clash* (Michael Mills, Neota Logic); *A Conversation on the Task Force to Expand Access to Civil Service in New York* (Helaine Barnett, Chair of the Task Force, and Chief Judge Jonathan Lippman); *It's the Client, Stupid* (Susan Hackett, Executive Leadership, LLC); *Innovation in Legal Education* (Dean Dan Rodriguez, Northwestern Law); *A2J Author and the Future of the Delivery of Legal Services* (John Mayer, CALI); *Regulating the Future Delivery of Legal Services* (Professor Gillian Hadfield, USC Law, and Larry Fox, Drinker Biddle & Reath). Recordings of webinars are publicly available on the [Commission's website](#).

Grassroots meetings and futures presentations are an integral component of the Commission's information gathering process. The grassroots meetings involve bar leadership, the judiciary and court personnel, local practitioners, local businesses and clients, local government, and innovation experts. Participants are charged with identifying more effective and affordable ways to deliver legal services. To help facilitate the grassroots meetings, the Commission produced a grassroots toolkit that includes sample agendas, possible invitation lists and letters, briefing papers on issues for discussion, moderator and facilitator guides, background and resource materials for posting to local bar websites, and data collection forms and formats. The futures presentations have been presented by the chair, vice chair, reporter, and commissioners such as Fred Ury, Honorable Lora Livingston, Paula Littlewood, Dean Daniel Rodriguez,

Chief Justice Barbara Madsen, Chief Justice Mark Martin, and others who have provided valuable insight to state and local bar associations and ABA entities about the Commission's work.

During the first year, the Commission held grassroots meetings and futures presentations in nearly 20 locations. During the second year, additional events have been held (or are scheduled) in the following locations:

- ABA Board of Governors (June 5, 2015)
- Louisiana State Bar Association (June 8, 2015)
- Florida Supreme Court and Florida State Bar (June 23, 2015)
- Collaborative Bar Leadership Academy Futures Presentation (June 25-27, 2015)
- Australian Bar Conference (July 8, 2015)
- Conference of Chief Justices Professionalism and Competence of the Bar Committee (July 21, 2015)
- National Organization of Bar Counsel (July 30, 2015)
- National Conference of Bar Presidents (August 1, 2015)
- Client-centric Legal Services Conference (August 14-15, 2015)
- Ohio State Judicial Conference (September 3, 2015)
- USDC Northern District of Oregon Federal Judges (October 2, 2015)
- New England Bar Association (October 2-3, 2015)
- Missouri Bar/Missouri Judicial Conference (October 7-9, 2015)
- College of Law Practice Management (October 8-9, 2015)
- Section of International Law Fall Meeting, Montreal Canada (October 21, 2015)
- Center for Professional Responsibility Fall Leadership Conference (October 23, 2015)
- State Bar of Michigan Annual Justice Initiatives Summit (October 28, 2015)
- Illinois Supreme Court Commission on Professionalism (November 2015)
- NLADA Annual Meeting (November 4-7, 2015)
- National Asian Pacific American Bar Association Board of Governors (November 4, 2015)

- New Jersey State Bar Association Board of Trustees (November 5, 2015)
- Making Justice Accessible Symposium, American Academy of Arts and Sciences (November 11-12, 2015)
- ABA Standing Committee on Bar Activities and Services (November 14, 2015)
- North Carolina Commission on the Administration of Law and Justice (December 1, 2015)
- AALS Annual Meeting (January 6-10, 2015)
- ABA Judicial Division Lawyers Conference and National Conference of Administrative Law Judges Joint Dinner (February 5, 2016)
- Western States Bar Conference (March 31, 2016)
- ABA Tech Show (April 17, 2016)
- Maryland State Bar Association's Planning Conference (April 8, 2016)
- Section of International Law Spring Meeting (April 12, 2016)
- National Conference of Bar Examiners Bar Admissions Conference (April 15-16, 2016)
- National Conference of Bar Examiners Annual Conference- Washington, D.C. (April 15, 2016)
- Inter-Court Federal and State Judicial Conference (September 29-30, 2016)

To be scheduled:

- Idaho State Bar Evolution of the Legal Profession
- Florida Grassroots Meeting
- Illinois Grassroots Meeting
- Arkansas Grassroots Meeting
- New Mexico Grassroots Meeting
- Iowa Grassroots Meeting
- Rhode Island Bar Association

More details about these events, as well as the grassroots toolkit, can be found on the [Commission website](#).

D. Hearings

The Commission heard public testimony at the American Bar Association Midyear Meeting in Houston, Texas, on February 7, 2015, from nearly 20 individuals and again at the ABA Annual Meeting in Chicago on August 1, 2015, from over a dozen individuals who represented a range of interests, including practicing lawyers, legal services providers, the judiciary, ABA entities, state bar associations, members of the public, the American Association of Law Librarians, and the Department of Justice. This testimony is available for public review on the [Commission website](#). The Commission plans to hold an additional hearing in conjunction with the ABA Midyear Meeting in February 2016.

E. Focus Groups Study and Public Opinion Survey

To better understand public attitudes and concerns about access to legal services, and to receive input from outside the legal profession, the Commission in collaboration with the National Center for State Courts conducted two focus groups in April 2015. The results from the focus groups were used to inform additional quantitative research—a national public opinion survey on access to legal services by the NCSC in the fall of 2015. The responses to the public opinion survey have been collected and are being analyzed.

F. White Papers

The Commission has sought to compile helpful data on the delivery of legal services and to make this information more readily accessible to practitioners, regulators, and the public. To this end, the Commission is overseeing the creation of fifteen white papers that will be published as a single issue in the South Carolina Law Review (anticipated publication date January 2016). The white paper authors and topics include:

- Raymond Brescia (Albany Law)
What We Know and Need to Know about Disruptive Technology
- Tonya Brito (Wisconsin Law)
What We Know and Need to Know about Civil Gideon
- Deborah Eisenberg (Maryland Law)
What We Know and Need to Know about Alternative Dispute Resolution
- Jim Greiner (Harvard Law)
What We Know and Need to Know about Intake by Legal Services Providers
- Elly Jordan (Michigan State Law)
What We Know and Need to Know about Immigration and Access to Justice
- Stephanie Kimbro (Stanford Law/Center for Law Practice Technology)
What We Know and Need to Know about Online Engagement with Lawyers

- Ellen Lawton (National Center for Medical-Legal Partnership)
What We Know and Need to Know about Medical-Legal Partnerships
- Dan Linna (Michigan State Law)
What We Know and Need to Know About Legal Start-Ups
- Paul Lippe (Legal OnRamp)
What We Know and Need to Know about Watson, Esq.
- Paul Paton (Alberta Law)
What We Know and Need to Know about Regulatory Innovations
- Deborah Rhode (Stanford Law)
What We Know and Need to Know about Service Delivery by Nonlawyers
- Fred Rooney (Touro Law)
What We Know and Need to Know about Law Firm Incubators
- Becky Sandefur (Illinois Sociology/American Bar Foundation)
What We Know and Need to Know about Community Legal Needs
- Steve Scudder (ABA Standing Committee on Pro Bono and Public Service)
What We Know and Need to Know about Pro Bono Service Delivery
- Silvia Hodges Silverstein (Buying Legal Counsel)
What We Know and Need to Know About Legal Procurement

G. Commission Meetings

The Commission held an organizational meeting in Boston in conjunction with the 2014 ABA Annual Meeting, as well as meetings in Chicago (September 2014) and in Houston (February 2015). The Commission met again in Chicago June 30-July 1, 2015, during the Annual Meeting in early August 2015, and in Chicago on September 25-26, 2015. The Commission anticipates meeting at the February 2016 Midyear Meeting in San Diego as well as at the August 2016 Annual Meeting in San Francisco to complete its work.

H. Presentations and Engagements

In addition to participating in the grassroots meetings across the country, the chair, vice chair, and other commissioners appeared before 35 ABA entities at the Houston Midyear Meeting and before 52 ABA entities at the Annual Meeting in 2015. Additionally, commission members have made presentations to the following entities to discuss the Commission's work and solicit input: Conference of Chief Justices; American Bar Association Board of Governors; the Program, Evaluation, and Planning Committee of the Board of Governors; the Section Officers Conference; and the National Conference of Bar Presidents. The quarterly substantive sessions with the Program, Evaluation, and Planning Committee and with the full Board have been an effort to not only update Association leadership at the highest levels regarding the Commission's work but also to integrate the work of the Commission into the long-range planning strategy of the Board, in close coordination with its Board Governance Committee.

III. CONCLUSION

The Commission anticipates that its work will be concluded in August 2016. The Commission's final report may include, among additional items, recommendations concerning the five above-described projects, innovative best-practices and business models, new approaches for the delivery of legal services, and possible additional resolutions in the area of regulation.

Respectfully submitted by the Commission on the Future of Legal Services this 4th day of December, 2015.

Judy Perry Martinez, Chair
Andrew Perlman, Vice Chair
Renee Knake, Co-Reporter
Ben Cooper, Co-Reporter

DRAFT

From: [Richard Spier](#)
To: [Mariann Hyland](#); [Sylvia Stevens](#); [Kay Pulju](#); [Helen Hierschbiel](#)
Cc: [Camille Greene](#)
Subject: FW: Thank you
Date: Friday, December 11, 2015 4:15:05 PM

Camille, perhaps include as agenda exhibit for February.

From: John_Acosta@ord.uscourts.gov [mailto:John_Acosta@ord.uscourts.gov]
Sent: Friday, December 11, 2015 3:47 PM
To: rspier@spier-mediate.com
Subject: Thank you

Hi Rich --

This is a short note to express my thanks to the bar and particularly to those who chose me as this year's recipient of the President's Diversity & Inclusion Award. And a separate thanks to you for the very generous introduction. The award and your comments were very humbling. I am most happy that others believe they have benefitted from my efforts to support and guide them.

Thanks again.

Best regards,

JVA

Hon. John V. Acosta
United States Magistrate Judge
District of Oregon
1127 U.S. Courthouse
1000 S.W. Third Avenue
Portland, Oregon 97204-2944
Phone: (503) 326-8280 | Fax: (503) 326-8289
Email: John_Acosta@ord.uscourts.gov

December 16, 2015

Oregon State Bar
Attn: Helen Hierschbiel
PO Box 231935
Tigard OR 97281

Dear Helen:

This letter is to acknowledge receipt of check number 108019 on October 26, 2015, in the amount of \$1,000 in payment of the Bar's sponsorship of Laf-Off on October 24, 2015.

I apologize for the delay in sending this acknowledgement. As always, we thank the Bar for its generous support of legal aid in Oregon!

Best regards,



Shari C Nilsson
Programs & Information Specialist

Youth, Rights & Justice

ATTORNEYS AT LAW

November 10, 2015

Camille Greene
PO Box 231935,
Tigard, OR 97281

RECEIVED

NOV 30 2015

Oregon State Bar
Executive Director

Dear Camille,

Thank you so much for attending our 40th Anniversary Wine & Chocolate Extravaganza. With your help, Youth, Rights & Justice was able to raise \$100,000 to help build a just future for Oregon's children.

Attached is a detailed receipt for your contributions, and this acknowledgement verifies that we have received your payment of \$750.00.

Thank you for your outstanding dedication to Oregon's vulnerable children. You truly have made a difference in their lives.

Best regards,



Mark McKechnie
Executive Director
Federal Tax ID#: 93-0900864

Thanks so much!

Youth, Rights & Justice

ATTORNEYS AT LAW

An independent, not-for-profit law firm, Est. 1975

Receipt for Camille Greene
2015 YRJ Gala Donation Receipt
Date of Contribution: October 24, 2015

Please save for your tax records.

Purchases:

Pkg.#	Package Name	Qty.	Value	P.A.V.	Sale Price
920	Individual Ticket (5 admissions)	5	\$325.00	\$425.00	\$750.00
Value / Paid Above Value (Charitable Donations)			\$325.00	\$425.00	
GRAND TOTAL:					\$750.00

Youth, Rights & Justice is a 501 (c) (3) non-profit.

The amount of this payment deductible for federal income tax purposes is limited to the excess of the amount contributed over the value of the goods and services provided by Youth, Rights & Justice. Please note that the Golden Ticket Raffle (\$75) is not tax deductible.

Tax ID: 93-0900864