

**Oregon State Bar
Meeting of the Board of Governors
September 9, 2016
Oregon State Bar Center, Tigard, OR
Open Session Agenda**

*The Open Session Meeting of the Oregon State Bar Board of Governors will begin at 12:30pm on September 9, 2016.
Items on the agenda will not necessarily be discussed in the order as shown.*

Friday, September 9, 2016, 12:30pm

1. Call to Order / Finalization of Agenda

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

A. Awards Special Committee [Mr. Heysell and Ms. Pulju]

- | | | |
|--------------------------------------|--------|---------|
| 1. Selection of OSB Award Recipients | Action | Handout |
|--------------------------------------|--------|---------|

B. Policy & Governance [Mr. Levelle]

- | | | |
|---|--------|---------|
| 1. Sponsorship Policy Update | Action | Exhibit |
| 2. ABA Pro Bono Survey | Action | Exhibit |
| 3. Futures Task Force | Action | Exhibit |
| 4. Access to Justice Discussion | Inform | Handout |
| 5. Request for Creation of Cannabis Law Section | Action | Exhibit |
| 6. Fee Mediation Task Force | Action | Exhibit |
| 7. Retired Member Status Bylaw Amendment | Action | Exhibit |

C. Board Development Committee [Ms. Nordyke]

- | | | |
|--|--------|-------------|
| 1. Board of Bar Examiners Appointment Input | Action | Exhibit |
| 2. Public Member Appointment to OSB Board of Governors | Action | Handout |
| 3. Appointments to PLF Board of Directors | Action | Exh/Handout |
| 4. Appointments to OSB House of Delegates | Action | Handout |

D. Budget & Finance Committee [Mr. Mansfield]

- | | | |
|--|--------|---------|
| 1. Financial Update | Inform | |
| 2. Additional Fee for Paying Membership Fee after Due Date | Action | Exhibit |

E. Public Affairs Committee [Mr. Ross]

- | | | |
|-----------|--------|--|
| 1. Update | Inform | |
|-----------|--------|--|

3. Professional Liability Fund [Ms. Bernick]

- | | | |
|---|--------|---------|
| A. BOG approval of PLF 2017 Primary Assessment (\$3,500) | Action | Exhibit |
| B. BOG approval of PLF 2017 Primary and Excess Coverage Plans | Action | Exhibit |
| C. June 30, 2016 Financial Statements | Inform | Exhibit |
| D. Revised PLF Financial Audit | Inform | Exhibit |

4. OSB Committees, Sections, Councils and Divisions

- | | | | |
|----|---|--------|------------|
| A. | Discipline System Review Committee Update [Ms. Hierschbiel] | Inform | |
| 1. | Professional Adjudicator Discussion | Inform | Posted 9/6 |
| B. | Oregon New Lawyers Division Report [Mr. Andries] | Inform | Exhibit |
| C. | Legal Services Program Committee [Ms. Baker] | Inform | |
| D. | Client Security Fund Committee [Ms. Hierschbiel] | | |
| 1. | Award Recommendation | | |
| a) | KRULL (Cisneros) 2016-02 | Action | Exhibit |
| 2. | Request for Review | | |
| a) | MILSTEIN (Colvin) 2016-21 | Action | Exhibit |
| b) | BOCCI (Tait) 2016-05 | Action | Exhibit |
| 3. | CSF Financial Reports and Claims Paid | Inform | Exhibit |
| E. | Legal Ethics Committee [Ms. Hierschbiel] | | |
| 1. | Proposed Revised Formal Ethics Opinion | Action | Exhibit |
| 2. | Proposed Amendment to RPC 7.2(b) | Action | Exhibit |
| 3. | Proposed Amendment to RPCs 7.2(c) & 7.3(c) | Action | Exhibit |
| F. | Other | | |
| 1. | Section Feedback on BOG Requirement of Co-Sponsorship | Inform | Posted 9/6 |

5. Consent Agenda

- | | | | |
|----|---|--------|---------|
| A. | Report of Officers & Executive Staff | | |
| 1. | President's Report [Mr. Heysell] | Inform | |
| 2. | President-elect's Report [Mr. Levelle] | Inform | |
| 3. | Executive Director's Report [Ms. Hierschbiel] | Inform | Exhibit |
| 4. | Director of Regulatory Services [Ms. Evans] | Inform | Exhibit |
| 5. | MBA Liaison Report [Mr. Levelle & Mr. Ramfjord] | Inform | |
| B. | Approve Minutes of Prior BOG Meetings | | |
| 1. | Regular Session June 24, 2016 | Action | Exhibit |

6. Closed Sessions – [CLOSED](#) Agenda

- | | | | |
|----|--|--|--|
| A. | Executive Session (pursuant to ORS 192.660(2)(f) and (h) and ORS 192.690(1)) | | |
| 1) | General Counsel/UPL Report | | |

7. Good of the Order (Non-Action Comments, Information and Notice of Need for Possible Future Board Action)

- | | | | |
|----|----------------------|--------|----------------------|
| A. | Correspondence | | |
| B. | Articles of Interest | | |
| C. | ABA Futures Report | Inform | Link |

OREGON STATE BAR

Board of Governance Agenda

Meeting Date: September 9, 2016
Memo Date: September 1, 2016
From: Policy and Governance Committee
Re: Sponsorship Policy

Action Recommended

Adopt a Sponsorship Policy to guide the ED/CEO's award of sponsorships.

Background

At the February 12, 2016 meeting, the BOG adopted revised OSB Bylaw 7.203 Sponsorship, which provides:

The bar does not generally accept proposals for grants, contributions or sponsorships to non-profit or charitable organizations, including law-related organizations. The bar may provide financial support to the Classroom Law Project (CLP) and the Campaign for Equal Justice (CEJ) or any other organization that is germane to the Bar's purposes as set forth in Section 12.1 of these Bylaws. The bar's annual budget shall include an amount dedicated to providing such financial support, although that amount may change from year to year based upon the overall financial needs of the bar. This budgeted amount shall be in addition to any amounts budgeted to allow bar leadership and staff attendance at local bar and community dinners and similar events.

When adopting the revised bylaw, the BOG asked the Policy and Governance Committee to develop a Sponsorship Policy to aid the CEO/Executive Director in making sponsorship decisions.

The Policy and Governance Committee discussed a proposed policy at its July 2016 meeting and recommends that the Board adopt the Sponsorship Policy presented below.

Proposed Sponsorship Policy

The bar does not generally accept proposals for grants, contributions or sponsorships to non-profit or charitable organizations, including law-related organizations. OSB Bylaw 7.203.

As a general matter, the Oregon State Bar supports events that are germane to the Bar's purpose and mission though the purchase of event tickets and attendance of Bar leadership or staff at events of specialty bars, sections and other legal and non-legal organizations.

In limited circumstances, the Bar may participate as a sponsor of an event or program. Except in extraordinary circumstances, the Bar's sponsorship will only exceed \$5,000 if an expenditure is specifically budgeted.

When considering sponsorship requests, the following guidelines will be applied:

1. The Bar's participation as a financial sponsor of an event or program in the amount of \$2,500 or more requires advance approval by the Board of Governors. The Bar's participation as a financial sponsor of an event or program in an amount less than \$2,500 requires approval by the CEO/Executive Director. Such expenditures may only be approved if:
 - a. The sponsorship is consistent with OSB Bylaw 12.1.
 - b. The Board or CEO/Executive Director determines the sponsorship advances one of the Bar's strategic functions; and
 - c. The proposed expenditure has been either specifically budgeted or does not exceed funds allotted for sponsorships.

Recipients must include sponsorship recognition in brochures, programs, or other event materials distributed.

Recipients must utilize awarded funds for the event or program requested. If the recipient is unable to utilize the funds for the awarded purpose, a request must be submitted to the Bar for approval of the alternative proposed use of the funds. If the "alternative use" approval is denied, then the recipient agrees the funds must be returned to the Bar.

Recipients must submit a report to the Board within 30 days of the event or program. The report should summarize how funds have been spent in furthering the strategic functions of the Bar, include copies or photographs of event materials recognizing the Bar as a sponsor, and documents that demonstrate the event or program is consistent with OSB Bylaw 12.1.

A recipient's failure to utilize funds for approved events and/or failure to submit a report will impact the recipient's ability to receive future funds.

The CEO/Executive Director will include information about sponsorships in her regular report to the Board.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: September 9, 2016
From: Policy and Governance Committee
Re: Participation in ABA Pro Bono Survey

Issue

The Oregon State Bar has the option to participate in a detailed pro bono survey, conducted and analyzed by the ABA.

Options

The BOG can choose for the OSB members to participate or not participate in this survey.

Discussion

The ABA is conducting a first-ever, detailed nationwide pro bono public survey, with surveys sent to every Bar member of every state that chooses to participate. The ABA will draft the questions and analyze both the nationwide data and each individual state's data, forwarding the information to each state that participates. The purpose of the survey is to develop a deeper understanding of the reasons why attorneys do, and do not, engage in pro bono work, how organizations who serve low-income clients can best appeal to attorneys to do pro bono work, and how a pro bono practice fits in to different types of practices.

Currently, the Oregon New Lawyers Division conducts a voluntary Pro Bono Challenge, and this is the only pro bono data we can analyze. Typically, just over 9% of Oregon's attorneys report any pro bono hours. These hours are reported, in conjunction with the Pro Bono Challenge, by firms and individuals. Additionally, the OSB Certified Pro Bono Programs are required to report the hours of their volunteers. The OSB Economic Survey often asks a few questions about pro bono work, but cannot do so in any detailed sense.

The OSB often uses the limited data it has to provide information to the legislature when seeking to ensure that legal services funding continues. Having more detailed information will allow the Public Affairs Department to better inform the legislature of the pro bono work provided by Oregon attorneys.

Information provided by the survey responses can be shared with the OSB Certified Pro Bono Programs to help those programs in their attorney recruitment. Further, the data provided by the ABA will help Bar staff better communicate with attorneys about pro bono work.

The survey will take place in January/February, and requires very little from the participating states. Technically, the ABA wants a “leadership team” to raise awareness and raise funds for incentives to participate in the survey. Kay Pulju, Director of Communications believes that incentives are unnecessary in Oregon as Oregon attorneys respond well to well-drafted surveys. She believes that the ABA survey will be helpful and appropriate. The OSB Pro Bono Committee can constitute the leadership team.

Staff may ask the Bar President and the Chief Justice to sign the initial request for attorneys to respond to the survey.

More information about the survey may be found at the ABA’s website, here: http://www.americanbar.org/groups/probono_public_service/research_pro_bono/pro-bono-surveys.html

Project Process and Timeline, as set forth on the ABA link:

June – August, 2016: determine interest among your state’s stakeholders in distributing a survey to your attorney population, confirm interest by **August 31. [The ABA has been informed that confirmation of Oregon’s participation will not happen until the BOG approves the survey.]**

August – December, 2016: develop a leadership team (judiciary, bar association representatives, legal services provider and others); raise or identify funds to be used as an incentive for attorneys to complete the survey. **[Staff has determined that no funds will be necessary to provide an incentive.]**

September – December, 2016: raise awareness among your attorney population by posting announcements in newsletters, on listservs and other social media.

January, 2017: surveys to be distributed by email to all attorneys in your state.

February – March, 2017: distribute reminders and encourage responses

April, 2017 – May 2017: data analyzed by ABA staff

June, 2017: receive analyzed data report and raw data for your state

June – August, 2017: the ABA will facilitate conference calls for your state’s stakeholders to discuss findings and come up with policy and program recommendations.

Summer 2017: the ABA will publish one report summarizing the findings for all of the states that participated.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: September 9, 2016
From: Policy & Governance Committee
Re: Proposed Futures Task Force Committees and Charges

Action Requested

The Board of Governors should approve the creation of the Innovations Committee and the Regulatory Committee as subsets of the Futures Task Force with the charges set forth below.

In addition, the Board of Governors should commit to participation with the court and legal aid organizations to submit an Access to Justice for All grant proposal.

Discussion

At its April 24, 2016 meeting the Board of Governors approved the creation of a Futures Task Force with the following overarching charge:

Examine how the Oregon State Bar can best serve its members by supporting all aspects of their continuing development and better serve and protect the public in the face of a rapidly evolving profession facing potential changes in the delivery of legal services. Those changes include the influence of technology, the blurring of traditional jurisdictional borders, new models for regulating legal services and educating legal professionals, public expectations about how to seek and obtain affordable legal services, and innovations that expand the ability to offer legal services in dramatically different and financially viable ways.

Since then, bar staff and the BOG have been faced with several issues relevant to this overarching charge.

- At its June 24 meeting, the Board received a report from Don Friedman regarding incubator law firms. The Board decided to assign further study of the potential viability of such a program in Oregon to the Futures Task Force.
- Leaders from the Oregon Paralegal Association have approached the OSB president Ray Heysell and CEO/Executive Director Helen Hirschbiel about the possibility of the bar licensing paralegals.
- Some BOG members have asked the Board to consider reopening the discussion of LLLTs. We have received a HOD resolution on this topic as well.
- Recently, OSB General Counsel's Office issued an informal advisory opinion, stating that lawyers who participate in AVVO's Legal Services online marketplace risk professional

discipline under Oregon Rules of Professional Conduct 5.4 (fee sharing) and 7.2 (accepting payments for recommendations). Since then, staff has met with AVVO's general counsel to better understand their position and with the Legal Services Committee to determine whether any changes should be made to the rules of professional conduct.

- The *Justice for All Project*, in coordination with the National Center for State Courts, has issued a request for proposals from state access to justice commissions or their counterparts. Grants will be awarded to conduct a state assessment/inventory that will identify the relevant available resources and design a strategic action plan to achieve access to justice for all. In order to qualify for a grant, the state bar, courts and legal aid organizations must all be committed to working together to overcome fragmentation and create an integrated approach.

In order to address these issues in a more strategic and manageable fashion, the Board should consider dividing the task force into two committees with more discrete charges specific to each.

Legal Innovations Committee

First, the Board should approve the creation of a Legal Innovations Committee with the following charge:

Study and evaluate how the OSB might be involved in and contribute to new or existing programs or initiatives that serve the following goals:

- Help lawyers establish, maintain, and grow sustainable practices that respond to demonstrated low and moderate income community legal needs;
- Encourage exploration and use of innovative service delivery models that leverage technology, unbundling and alternative fee structures in order to provide more affordable legal services; and
- Develop lawyer business management, technology, and other practice skills.

As part of its work, the Committee should consider the viability of an incubator program for new lawyers in Oregon, by:

- Identifying stakeholders, what role they would play in terms of funding and implementation, and their commitment to the project;
- Identifying the legal needs of low and moderate income Oregonians that could be served by an incubator program; and
- Assessing likely structure, costs, benefits and sustainability of an incubator program in Oregon.

The Committee should be asked to provide a written report to the Board of Governors before the summer of 2017 with recommendations for the Board regarding whether and how to proceed with establishing an incubator program in Oregon and whether and how to proceed with alternative projects or initiatives that serve the goals identified above.

Regulatory Committee

Second, the Board should approve creation of a Regulatory Committee charged with examining new models for the delivery of legal services (e.g., online delivery of legal services, online referral sources, paraprofessionals, and alternative business structures) and making recommendations to the BOG regarding the role the OSB should play, if any, in regulating such delivery models. The Committee should be asked to provide a written report to the Board of Governors before the summer of 2017 with the following information:

- A summary of what exists at present, both in terms of existing legal service delivery models and regulatory structures for those models;
- A discussion of the consumer protection and access to justice implications presented by these models and regulatory structures;
- An analysis of the stakeholders involved, including (1) the vendors that have an interest in exploring innovative ways to deliver legal services to consumers, (2) the lawyers who are interested in utilizing these innovative service delivery models, and (3) the regulatory entities that are responsible for ensuring adequate protection for consumers in this quickly evolving legal services market;
- Specific recommendations for proactive steps the OSB should take to address these new models (e.g. should the OSB propose amendments to the rules of professional conduct, the bar rules of procedure, or state law);
- A proposed strategic response in the face of unexpected action at the legislature or elsewhere.

Access to Justice Issues

Rather than create a third committee that relates to access to justice issues at this time, the Board should first partner with the courts and legal aid to attempt to secure funding from the *Access to Justice for All* project to design a state-wide strategic action plan to achieve access to justice. The deadline for grant proposals is October 1, 2016. A letter of commitment from each of these entities, and from the state bar president must be included in the grant application. The Oregon Supreme Court, the Oregon Law Center and Legal Aid Services of Oregon are all interested in partnering on this project. The Board of Governors should approve the president providing a letter of commitment.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: September 9, 2016
From: Policy and Governance Committee
Re: Formation of an OSB Cannabis Law Section

Action Recommended

Consider a request to form an OSB Cannabis Law Section with 2017 membership dues set at \$20.00.

Options

1. Approve the creation of a new Cannabis Law Section.
2. Do not approve the creation of a new Cannabis Law Section.
3. Table the decision until after staff has reported back to the BOG regarding alternative section models.

Background

OSB Bylaw 15.2 states that the Board will consider creating a section upon the petition of 100 bar members who commit to joining the section. In the last 10 years three new sections have been created including Animal Law in 2007, currently with 66 members; Nonprofit Organizations Law in 2011, with 146 members; and Military and Veterans Law in 2013, with 98 members.

Currently with 42 sections, the OSB is considered to have a very high number of sections compared to other states including Washington with 27, Arizona with 28, and California with only 16. Administrative time and expense increases with the addition of each new section. Some smaller sections struggle to find a purpose, while some larger sections have large fund balances and operate as though separate from the bar. Thus, as part of its program review process, the BOG requested that staff explore alternatives to the section model and gather feedback from executive committee leaders about their thoughts on how to meet the professional development and networking needs of members with similar practice areas. We expect to bring this information to the BOG early next year.

Through a petition signed by 102 active bar members, the BOG is asked to consider the creation of a Cannabis Law Section. Dues are proposed at \$20.00 and would be collected in conjunction with the 2017 membership fee process.

The request for formation of a Cannabis Law Section is due to the exponential growth in this area of law and would provide useful application for practitioners in many areas including agricultural, business, criminal, labor & employment, real estate & land use, and tax law.

Cannabis Law Section Goals

- Creation of a Cannabis Law Section website;

- Hosting at least two Cannabis Law CLE's per year;
- Administering a Cannabis Law Section list serve for members to facilitate the sharing of templates and collaboration to solve issues which will continue to arise as we transition from prohibition to legalization;
- Publication and distribution to Cannabis Law Section Members of at least quarterly email newsletters covering latest regulations, and developments in Cannabis law as well as articles from practitioners, academics, and other members in the industry to provide a spectrum of information regarding relevant issues.

Cannabis Law Section Executive Committee

Officers:

Chair: Leland R. Berger of Oregon CannaBusiness in Portland

Chair-Elect: John A. Magliana Jr. from Lake Oswego

Treasurer: Aleece Burgio of Green Light Law Group LLC in Portland

Secretary: Andrew C. DeWeese of Andrew C. DeWeese PA in Portland

Members at large:

Courtney N. Moran of EARTH Law LLC in Portland

Michael R. Hughes of Hughes Law in Bend

Paul T. Loney of Loney Law Group in Portland

Edgar Diaz, Certified Law Student at Willamette University School of Law

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: September 9, 2016
From: Policy and Governance Committee
Re: Fee Mediation Task Force

Action Recommended

Create Fee Mediation Task Force, charged to consider and recommend amendments to OSB Fee Dispute Resolution Rules and forms pertaining to mediation. Appoint members and chair of Task Force.

Background

In early 2016, the Board adopted the OSB Fee Dispute Resolution Rules. The new rules made the Fee Mediation Pilot Program a permanent program offering to Oregon lawyers and clients. Since its inception, the fee mediation program has been a popular option for program participants.

Recently, General Counsel was approached by an experienced mediator who expressed concerns about the rules as drafted. The concerns pertained to exceptions to confidentiality contained in the present rules, the ability of mediation participants to determine the scope of the mediation, and possible inconsistencies between the current rules and widely accepted tenets of mediation (e.g., principles of self-determination). While normally staff would advise waiting until the program has been in effect for some time before revisiting the rules, the issues raised may warrant a more timely review.

In order to seek input from a broad range of stakeholders, staff recommends the formation of a Fee Mediation Task Force, based on the model of the 2009 Fee Arbitration Task Force.

The proposed charge is as follows:

The Fee Mediation Task Force is charged to evaluate the current fee mediation rules and make proposals for changes to the Board of Governors where appropriate. The Fee Mediation Task Force shall also make recommendations to General Counsel regarding fee mediation training and fee mediation forms.

Staff recommends the appointment of the following members to the Task Force:

- Rich Spier, Immediate Past President of the Board of Governors
- The Honorable Kristena LaMar, Past Chair of Fee Arbitration Task Force
- Mark Friel, Immediate Past Chair of ADR Section, Stoll Berne
- Sam Imperati, ICMresolutions Inc.
- Two representatives selected by the Alternative Dispute Resolution Section from the Section Executive Committee, who specialize in mediation

- Three representatives from the Fee Dispute Advisory Committee, selected by General Counsel
- A representative of Disciplinary Counsel's Office, selected by Disciplinary Counsel
- A representative of the Professional Liability Fund, selected by the PLF CEO
- Two public members from the Fee Dispute Resolution Panel, selected by General Counsel

Staff recommends that Rich Spier be appointed as Chair of the Task Force. The Task Force would be staffed by General Counsel and Fee Dispute Resolution Administrator Cassandra Dyke.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: September 9, 2016
From: Policy and Governance Committee
Re: Retired Member Status Implementation

Action Recommended

Recommend that Board amend OSB Bylaw Subsection 6.102(d) regarding transfer from retired member status to active membership status. If the Board does so, recommend that Board waive the one meeting notice requirement.

Background

At its meeting on June 24, 2016, the Board voted to amend the bylaws to implement the new retired status. As part of that change, staff anticipated seeking an amendment to Bar Rule of Procedure 8.14, to reference the new status. Presently, BR 8.14 only references transfer from Active Pro Bono Status, and there is no reference to Retired Status in the Rules.

Staff anticipates that the Bar Rules of Procedure will be amended to reference to Retired Status at the same time the disciplinary review rule changes are implemented.

To avoid member confusion in the interim, staff recommends amending Subsection 6.102(d) to reference additional provisions of the Rules that pertain to transferring from Inactive Status.

Waiving the one meeting notice requirement will allow the bylaws to be updated immediately, and will provide a clear path to members who wish to transfer from Retired to Active status.

Recommendation

Adopt the bylaw amendment outlined below and waive the one meeting notice requirement.

OSB Bylaws

Subsection 6.102 Retired Status

(a) Purpose

The purpose of the Retired category of inactive members in the Bar is to recognize the continuing contributions to the legal profession of members who are at least 65 years of age and are retired from the practice of law.

(b) Eligibility for Retired Status

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 6.100(b)) may be enrolled as a Retired member.

(c) Membership Fees

Retired members are assessed a fee that is equivalent to the inactive membership fee.

(d) Transfer of Membership

Retired members wishing to resume regular active membership status must comply with ~~BR 8.14~~. **BR 8.1 or 8.2, whichever is applicable. Retired members wishing to transfer to Active Pro Bono status must comply with BR 8.14.**

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: September 9, 2016
Memo Date: August 24, 2016
From: Vanessa Nordyke, Board Development Committee Chair
Re: Board of Bar Examiner recommendations

Action Recommended

Ratify the Board Development Committee's input on Board of Bar Examiners (BBX) appointments.

Background

As provided in OSB bylaw 28.2, the Board of Governors has an opportunity to provide input to the BBX as they select candidates to serve as board members and co-graders. Last September the BOG had its first opportunity to provide comment on BBX appointments. Acknowledging new member appointees are traditionally drawn from the pool of existing co-graders, the BOG encouraged the BBX to take steps to increase the diversity of members serving as co-graders. Specifically the BOG suggested considering more lawyers from private practice, from medium or large firms, and from locations outside the Portland and Salem metropolitan areas. The BOG also highlighted the importance of considering candidates with diversity of practice experience and demographic backgrounds.

The Board Development Committee (BDC), and the BOG, considered each of these factors when providing input on co-grader appointments in February of this year. During the July BDC meeting after careful consideration of the applicants and the BOG's earlier encouragement for increased diversity, the following seven members were identified as being well-qualified for service on the BBX:

Hon. Frank R. Alley III

Stephanie Eames

Kendra M. Matthews

Joanna T. Perini-Abbott

Hon. Thomas M. Ryan

Michael J. Slauson

Kate Anne Wilkinson

Based on the BBX's deadline for recommending new member appointments to the Supreme Court, the BDC offered its initial comments to the BBX in the attached July 27, 2016, letter to Stephanie J. Tuttle. This request is to ratify the recommendations the BDC made or to direct the BDC to communicate any additional comments the BOG wishes to provide to the BBX.

Included for reference is a memorandum from Charles Schulz, Oregon State Bar Admissions Director, identifying the candidates the BOG should provide input on for this year's BBX appointments. After submitting its ratification recommendations to BBX, BDC learned that BBX will make its appointment decisions before the BOG meeting. BDC will work with BBX for the next round of appointments to ensure that the BOG's ratification decision precedes BBX appointments.

M E M O R A N D U M

To: BOG Appointments Committee

From: Charles Schulz, Oregon State Bar Admissions Director

Date: July 20, 2016

Re: 2017 Board of Bar Examiners Appointments

Pursuant to Oregon State Bar bylaw 28.2, please accept this memo as the Board of Bar Examiners' request for input from the OSB Board of Governors (BOG) regarding potential candidates for appointment to the Board of Bar Examiners (BBX). The Oregon Supreme Court appoints four attorney members to three year terms, and two public members to one year terms on the board. All terms will begin on October 1, 2016.

Current co-graders were selected by the BBX after receiving input from the BOG earlier this year. Co-graders assist the BBX in developing and grading bar exam questions. The participation of co-graders on the July bar examination allows the BBX to vet them as potential board members.

In addition to preparing and grading the bar exam, BBX duties also include the review of applicant files, conducting interviews, making accommodation decisions based on the ADA, recommending rule changes to the Court, and serving on hearing panels to determine whether to recommend applicants for admission, based on their moral character and fitness to practice law. Because there is a significant learning curve for new BBX members, and because hearings and other BBX business can extend beyond the current term, the BBX often retains members, especially public members, over multiple terms. Experienced BBX members also promote continuity and serve as mentors to newer BBX members.

The BBX seeks to obtain a diverse group of individuals to serve on the board. Diversity includes a lawyer's practice area, firm size, geographic area, admission type, gender identity, and racial/ethnic diversity. In addition, the BBX prefers members who have been attorneys in any jurisdiction for a minimum of five years, who can work as a team, and whose areas of practice relate to bar exam subject matter or common character and fitness and ADA issues.

This year, 15 attorneys were identified by the BOG and their names were forwarded to the BBX for consideration as potential 2016 co-graders. From that list, as well as through direct communication with OSB members expressing interest, the BBX selected 11 Oregon attorneys to serve as co-graders in 2016. The summer grading session is scheduled for August 22-26, 2016.

The Board of Bar Examiners has compiled a list of names for consideration of appointment to the BBX, including current and former co-graders, current BBX members seeking an additional term, and attorneys recommended by the BOG Development Committee who were not used as co-graders this year.

The Board of Bar Examiners must recommend the appointment of four attorney members and two public members to the Oregon Supreme Court. The Board looks forward to receiving input from the Board of Governors to assist it in making its recommendations.

Identified Attorney Members:

Todd E Bofferding – Current and first-time co-grader; BOG recommended.
Hon. Thomas M Ryan – Current BBX member (third year).
Kate Wilkinson – Former BBX member; current co-grader.
Ernest (Ernie) Warren – Current co-grader.
Rosa Chavez – Current co-grader.
Stephanie Eames – Current co-grader.
Kendra Matthews – Current co-grader.
Mandi Philpott – Current co-grader.
Jo Perini-Abbott – Current co-grader.
Lissa Kaufman – Current co-grader.
Michael Slauson – Current co-grader.
Michael Casper – Current co-grader.
Hon. Frank R Alley – BOG recommended.
John R. Huttl – BOG recommended.
Karen A Moore – BOG recommended.
Marisha Childs – BOG recommended.
Patrick Gregg – BOG recommended.

Identified Public (non-attorney) Members:

It is common practice for public members to serve for more than a single one-year term. The BBX would like to reappoint each of its two current public members to additional one-year terms. The public members are:

Dr. Randall (Randy) Green, Ph.D.
Mid-Valley Counseling Center
Salem, Oregon

Dr. Green is a psychologist in private practice. He has served on the BBX for the past eleven years. Dr. Green’s experience and insight are vital to the BBX. Dr. Green spent much of the 2015-2016 term transferring knowledge to the board’s second public member, who is in his first year. Dr. Green is currently involved in multiple, current, contested admissions cases and has expressed his willingness to serve an additional year to complete those cases while also allowing the newest public member to gain experience.

Dr. Richard M Kolbell, Ph. D.
Private Practice
Portland

Dr. Kolbell is currently serving in his first year on the BBX. Dr. Kolbell’s extensive experience in Administrative and Civil Forensic Psychology has already proven to be very useful to the BBX, both on character and fitness matters and on ADA evaluations. Dr. Kolbell is currently active on a contested admission case and the BBX would like to reappoint him so he can continue to develop as a public member of the BBX.

July 27, 2016

Board of Governors

President

R. Ray Heysell, Medford

President-elect

Michael D. Levelle, Portland

Region 1

Timothy L. Williams, Bend

Region 2

James C. Chaney, Eugene

Region 3

R. Ray Heysell, Medford

Region 4

Guy B. Greco, Newport
Ramón A. Pagán, Hillsboro

Region 5

Christine Costantino, Portland
Michael D. Levelle, Portland
Johnathan E. Mansfield, Portland
Per A. Ramfjord, Portland
Joshua L. Ross, Portland
Katharine von Ter Stegge Portland

Region 6

Vanessa A. Nordyke, Salem
Julia C. Rice, Salem

Region 7

Kathleen J. Rastetter, Oregon City

Region 8

John R. Bachofner, Vancouver, WA

Public Members

Robert Gratchner, Gresham
Kerry L. Sharp, Lake Oswego
Charles A. Wilhoite, Portland
Elisabeth Zinser, Ashland

Immediate Past President

Richard G. Spier

**Chief Executive Officer/
Executive Director**

Helen Hirschbiel, Tigard

Stephanie J. Tuttle
DOJ Criminal Justice Division
2250 McGilchrist St SE Ste 100
Salem, OR 97302

Re: Board of Bar Examiners appointments

Dear Ms. Tuttle:

The Board Development Committee (BDC) of the Board of Governors (BOG) welcomes the opportunity to provide input on the recommendations being made by the Board of Bar Examiners (BBX) to the Supreme Court regarding lawyer and public member appointments to the BBX.

Fully recognizing the critical role the BBX plays in the future of the legal profession in Oregon, we agree that developing an expertise in evaluating the character and fitness of applicants and administering all aspects of the bar examination requires experience. For this reason the BDC supports the reappointment of Dr. Randall Green, Ph.D. and Dr. Richard M. Kolbell, Ph.D. as public members to the BBX.

After a thorough review of the 17 lawyer candidates the BBX will consider for appointment, the BDC identified 7 members whom we believe to be well-qualified:

Hon. Frank R. Alley III
Stephanie Eames
Kendra M. Matthews
Joanna T. Perini-Abbott
Hon. Thomas M. Ryan
Michael J. Slauson
Kate Anne Wilkinson

We arrived at this list of candidates after careful consideration of the applicants, and in furtherance of our commitment to providing greater diversity of backgrounds and perspectives to all volunteer boards and committees.

Letter to Stephanie J. Tuttle
July 27, 2016

Page 2 of 2

The aforementioned candidates recommended by the BDC will be reviewed by the BOG during its September 9 meeting. Any additional input you wish to have the BOG consider during its deliberation must be received by August 29.

In closing I want to thank the BBX for its commitment to the important work it performs. We look forward to future opportunities to work collaboratively on volunteer selection. I would also like to extend my personal thanks to Charles Schulz, for attending our recent meeting, and offering his input and insight into this important process.

Sincerely,



Vanessa Nordyke
Chair, BOG Board Development Committee

cc: Ray Heysell, Oregon State Bar President
Richard G. Spier, Oregon State Bar Immediate Past-President



Professional Liability Fund

16037 SW Upper Boones Ferry Road, Suite 300
Tigard, Oregon 97224

PO Box 231600 | Tigard, Oregon 97281-1600

CAROL J. BERNICK
CHIEF EXECUTIVE OFFICER

*Board of Directors
and Officers*

August 22, 2016

ROBERT D. NEWELL
CHAIR
Portland

To: OSB Board Development Committee

TERESA A. STATLER
VICE-CHAIR
Portland

From: Carol J. Bernick, PLF Chief Executive Officer 

TIM MARTINEZ
SECRETARY-TREASURER
(PUBLIC MEMBER)
Salem

Re: 2017 PLF Board Appointments

JULIA I. MANELA
Eugene

The Board of Directors of the Professional Liability Fund met on August 12, 2016 to consider potential applicants for the 2017-2021 Board terms. The BOD is required to send a list of nominees equal to or greater than the number of available positions to the OSB BOG.

DENNIS H. BLACK
Medford

Article 3.4 provides that:

SAVILLE W. EASLEY
Portland

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

ROBERT S. RASCHIO
Canyon City

MOLLY JO MULLEN
Portland

This year, 18 attorneys expressed interest in serving on the PLF Board. (Attorneys express their interest in two ways; either through the OSB Volunteer Preference Form or through direct communication with the PLF in response to a blast e-mail, articles or notices in *In Brief* or the OSB *Bulletin*.)

TOM NEWHOUSE
(PUBLIC MEMBER)
Portland

This year, there are two attorney board positions to fill. The terms of Bob Newell and Julia Manela expire December 31, 2016. Their departure leaves the Board with:

- One member from Medford;
- One member from Canyon City;
- One public member from Salem; and
- Four members from Portland.

In terms of firm size, the Board (minus the two departing directors and not counting the public members) has:

- One member from a large firm (over 25);
- One member from a medium firm (10-24);
- One member from a small firm (2-9); and
- Two solo practitioners.

The substantive expertise includes immigration, domestic relations, litigation (plaintiff), litigation (defense)/mediation, and criminal.

Attorney Appointments

The BOD chose three candidates from a list of eight candidates presented by our nominations committee. Those three candidates are presented in order of preference (resumes attached).

Megan Livermore. OSB #054789, Eugene.

Megan is a native Oregonian. She graduated from Willamette University with her JD in 2005 and is a 1994 graduate of Oregon State. Her practice focuses on representing small businesses, including start-ups, particularly in the high tech and cannabis industries. She does business formation and wind down as well as intellectual property and real estate and litigation at Hutchinson Cox, a 10-person firm. In the 8 years between college and law school she helped launch Digimarc, a high tech company that develops advance data hiding. She was involved in the company's successful \$80 million IPO before leaving for law school. She is actively involved in Lane County Legal Aid and has served on the board of both the Oregon Women Lawyers and the Lane County Bar Association.

Holly Mitchell. OSB #943044, Portland.

Holly is a 1984 graduate of Lewis & Clark law school. She has been with Duffy Kekel, an 18-person business and estate planning firm, since 2001. Before that she worked at a

Memo to OSB Board Development Committee
August 22, 2016
Page 3

handful of Portland firms, including Davis Wright Tremaine in the early 1990's. She currently serves on the Executive Committee of the OSB Estate Planning Section and is a frequent speaker and writer on various estate planning topics. We have wanted an estate planning lawyer on our Board for a number of years and believe the need will continue to grow.

Lisanne Butterfield. OSB #913683, Lake Oswego.

Lisanne is a named partner in the three person Carr Butterfield firm. Their practice is limited to representing financial services professionals, investment advisors and insurance agencies in state and federal courts, FINRA arbitrations and SEC matters. Lisanne started the firm in 2006. Her first 15 years of practice was spent doing mostly insurance defense work (save for a four year "tour" at a firm in Guam while her husband was stationed there). Lisanne most recently served on the Client Security Fund and has served in a number of other volunteer roles for both the Oregon State and the MBA. Lisanne is a 1991 graduate of Willamette University College of Law and has a BA in Economics and Political Science from University of Denver.

Attachments:

Resumes of the three candidates listed above
List of all applicants



Megan I. Livermore
Of Counsel

Telephone: 541/686-9160
mlivermore@eugenelaw.com

Education

J.D., Willamette University College of Law, 2005
Willamette Law Review, Symposium Editor
B.S. cum laude Oregon State University, 1994

Law Practice

Megan is an experienced attorney and litigator with a strong record of professional excellence and a unique background in business and law. She is guided by her entrepreneurial experience, having helped launch a successful high tech start-up, and her decade as an attorney. Megan represents business and individuals and works diligently with clients toward finding practical solutions to their issues.

Megan especially enjoys working with entrepreneurs and emerging businesses from start-up to wind-up, and everything in between. She offers a full-service approach to helping clients create successful businesses through advising on entity formation, intellectual property strategy, navigating customer and vendor relationships, creditor's rights and litigating business disputes, when they arise. Recognizing the clear value of new and emerging markets, Megan also represents clients in the medical marijuana industry and those working toward the implementation of Measure 91 on all aspects of their business.

In addition to her business practice, Megan has a thriving real estate practice. She represents clients in commercial and residential real estate transactions, real estate development, and litigation of real estate related matters.

Before starting law school Megan helped launch Digimarc, a high tech company based in Portland that develops advanced data hiding technology used in a number of consumer, commercial, and document security applications. Megan assisted Digimarc in all aspects of the start up phase of the business and played a central role in the company's highly successful \$80 million initial public offering. After law school, and prior to private practice, she also served as a law clerk to the Honorable Darryl Larson of the Lane County Circuit Court.

Megan is passionate about serving her community, including the legal community, as demonstrated by her time spent volunteering. She is an active participant in the Lane County Legal Aid Tuesday Night clinic, a board member of the HIV Alliance and is past-president of both Oregon Women Lawyers and the Lane County Bar Association. In addition, she instructs high school students about the careful use of credit through the Federal Bankruptcy Court's Credit Abuse Resistance Education (CARE) Program.

Practice areas

- Business Law
- Business Acquisitions/Sales
- Cannabis Law
- Corporations
- Litigation
- Creditors' Rights
- Real Estate Law
- Trademark and Copyright Law

Presentations

- Introduction to Marijuana law and Recent Developments for the Non-Cannabis Practitioner Representing Clients in the Cannabis Industry
- Trademark Basics
- Ethical Issues: Representing Marijuana-Related Businesses
- Fundamentals of Landlord Tenant Law—Collections: How to Enforce Your Judgment
- Oregon Professional Liability Fund, Learning the Ropes CLE
- Panel Speaker, Success Tips from Partners and Associates
- Lane County Women Lawyers, Fourth Annual CLE
 - Moderator, Panel Discussion, Ethics In Mediation
 - Moderator, Panel Discussion, “Whether to Settle or Litigate—Zealous Representation”

Professional Memberships

- Oregon State Bar, admitted 2005
- United State District Court, District of Oregon, admitted 2007
- Oregon Women Lawyers, Past-President (2012-13)
- Lane County Bar Association, Past-President (2013-14)
- Oregon State Bar Diversity Section Executive Committee
- OGALLA The LGBT Bar Association of Oregon, Member
- Oregon State Bar Leadership College Fellow, 2009
- Member, Oregon State Bar Sustainability Task Force, 2009
- Oregon State Bar Debtor/Creditor Section, Local Bankruptcy Rules and Forms Committee

Awards/Honors

- Super Lawyers Oregon Rising Stars, 2011 through present
- Oregon State Bar Convocation on Equality Diversity Champion, 2011
- Daily Journal of Commerce Up & Coming Lawyers honoree, 2010

Community Activities

- Credit Abuse Resistance Education (CARE) Program volunteer
- Lane County Legal Aid & Advocacy Center, Tuesday Night Clinic
- HIV Alliance, President-elect
- Leadership Eugene-Springfield, Class of 2010-11
- Oregon Association of Rowers, Board Member, 2009-2011

Background and Interests

Megan was born and raised in Eugene and enjoys practicing law in her hometown. In her free time, she enjoys spending time with her partner and dogs, hiking the Pacific Northwest, and exploring the vast beauty Oregon has to offer.



Holly N. Mitchell
111 SW 5th Ave, Suite 1500
Portland OR 97204
Direct: (971) 244-1829
Main: (503)226-1371
hmitchell@duffykekel.com

Practice

Holly began practicing in Portland in the areas of estate planning, trust administration, probate, and charitable giving in 1984. Holly joined Duffy Kekel LLP in 2001.

Education

Northwestern School of Law of Lewis & Clark College, J.D.

Lewis & Clark College, B.A.

Professional Associations and Activities

- 2011- Oregon State Bar, Estate Planning and Administration Section, Executive Committee.
- 2008-2013 Oregon State Bar, Estate Planning and Administration Section, CLE Committee; chair 2010-2013.
- 2008- Estate Planning Council of Portland, member.
- 2006- Washington State Bar Association. Member of:
Real Property, Probate and Trust Law Section.
- 2004 Admitted to Practice before the United States Supreme Court.
- 1984- Oregon State Bar. Member of:
Estate Planning and Administration Section.
Taxation Section.

Presentations

- 2012 Oregon State Bar CLE “Administering Oregon Estates” Seminar.
Topic: Preadministration Procedures and Special Considerations.
- 2010 Oregon Society of Certified Public Accountants, Seminar.
Topic: Estate Planning in Oregon.
- 2010 Oregon State Bar CLE “Basic Estate Planning and Administration” Seminar.
Topic: Fiduciary Duties and Risks.
- 2009 Oregon State Bar CLE “Administering the Taxable Estate” Seminar.
Topic: The Oregon Inheritance Tax.
- 2009 Multnomah Bar Association CLE Seminar.
Topic: The Oregon Inheritance Tax.

Publications

- 2012 “Preadministration Procedures,” Oregon State Bar, Advising Oregon Estates.
- 2010 “A Divided Second Circuit Fractionalizes Section 2036 in Estate of Stewart,”
Journal of Taxation, October 2010, Vol. 113 No. 4. Co-author.
- 2010 “Tax Procedure Issues for Estates and Trusts,” Oregon State Bar Estate Planning
and Administration Section Newsletter, July 2010.
- 2009 “Calculating Bequests Under Formula Clauses,” Oregon State Bar Estate
Planning and Administration Section Newsletter, October 2009. Co-author.
- 2009 “Adjusted Taxable Gifts and the Oregon Inheritance Tax,” Oregon State Bar
Estate Planning and Administration Section Newsletter, October 2009.
- 2008 “Inheritance Tax Credit for Farming, Forestry, and Commercial Fishing
Property,” Oregon State Bar, Oregon Legislation Highlights.



Carr Butterfield, LLC
ATTORNEYS AT LAW

LISANNE M. BUTTERFIELD

5285 Meadows Road, Suite 199

Lake Oswego, OR 97035

Telephone: (503) 635-5244 Fax: (503) 635-2955

lbutterfield@carbutterfield.com

PROFESSIONAL EXPERIENCE

Carr Butterfield, LLC

Lake Oswego, Oregon

Aug. 2006 – present

Shareholder and Senior Litigator

Representation of financial services professionals, registered representatives, investment advisors, insurance agencies and other licensed professionals in state and federal courts, FINRA arbitrations, and investigations initiated by the SEC, and state regulatory/licensing agencies. Advise licensed professionals regarding professional liability, regulatory, ethics and employment law matters.

Gordon & Polscer, LLC

Portland, Oregon

December 1999 – July 2005

Senior litigation attorney and Human Resource/Hiring Attorney

Insurance defense practice with primary focus on construction defect and coverage issues related to breach of contract, product liability, and professional liability.

Sussman Shank LLP

Portland, Oregon

July 1997 – August 1999

Associate

Complex business litigation and PLF defense cases, including trials, mediation and arbitration.

Carlsmith Ball Wichman Case & Ichiki

Agana, Guam

September 1993 – July 1997

Associate

Trial attorney for commercial litigation, employment disputes, and insurance defense matters. Cases included complex tax litigation, construction defect, foreclosure proceedings, consumer fraud, maritime/admiralty matters, administrative adverse action claims and employment law.

Hoffman Hart & Wagner

Portland, Oregon

August 1992 – August 1993

Associate

Insurance defense cases, with emphasis on medical malpractice claims and municipal liability.

State of Oregon, Multnomah County Circuit Court

Portland, Oregon

May 1991 – August 1992

Judicial Law Clerk to the Honorable Stephen B. Herrell

Assisted trial court judge in criminal and domestic relations trials.

EDUCATION

Willamette University College of Law (J.D., 1991)
Editor, International Law Journal (1989-91)
University of Denver (B.A., Economics & Political Science, 1987)

PROFESSIONAL MEMBERSHIPS, ACTIVITIES, COMMUNITY SERVICE

American Bar Association (Labor & Employment Law and Litigation Sections)(2010-present)
Clackamas County Court Mock Trial Judge (2011)
Guam State Bar, Legal Ethics Committee (1995-1997)
Lewis & Clark College of Law, Moot Court Judge (2011-2013)
Multnomah County Bar Association CLE Committee, Member (1999-2001)
Multnomah County Bar Association, Judicial Selection Committee (2010-2013)
New York State Bar, *pending*
Oregon State Bar, Commission on Professionalism,
Willamette University College of Law, Orientation Program Facilitator (2012-2014)
Oregon State Bar, Disciplinary Board (Panel Judge 2006-2015)
Oregon State Bar, House of Delegates (2013-2015)
Oregon State Bar, Client Security Fund (2014-present)
Oregon State Bar, Legal Ethics Committee (1999-2002)
Oregon State Bar, Member (1991-present)
Oregon State Bar, Securities Section (2011-present)
Oregon Women Lawyers, Member (2009-present)
Superior Court, Territory of Guam, Indigent Defense Committee (1994-1997)
United States District Court of Guam, Indigent Defense Panel (1995-1997)
United States District Court, Admitted (1992-present)

SCHOOL COMMUNITY INVOLVEMENT

French American International School
Board of Trustees (2013-2016)
Budget Committee (2011-2014)
Site Committee / Legal Liaison for Middle School Expansion Project (2014-present)
Parent Volunteer for field trips and Outdoor Science School (2008-present)

Lincoln High School, Portland, OR
Parent Teacher Organization (legal advisor) (2012-2014)
Alpine Ski Race Team, parent volunteer (2012-2016)
Lincoln High School Boys Lacrosse Team, team parent/chaperone (2013-2014)
Lincoln High School Boys Soccer Team, parent volunteer (2012-2016)

Multnomah Athletic Club, Portland, OR
Freestyle Youth Ski Team, parent volunteer (2015-present)



Carr Butterfield, LLC
ATTORNEYS AT LAW

REPRESENTATIVE CLIENTS

American Guarantee Insurance
Berkley Specialty Underwriting Management
C.N.A. Insurance
Chartis
Chubb & Son
CIGNA
Davis-Frost, Inc.
Efficient Market Advisors, LLC
Evergreen Prosthetics & Orthotics
Fairview Fittings and Manufacturing Ltd.
Farmers Insurance
Federal Express, Inc.
Fireman's Fund
Focus Point Solutions, LLC
Golsan Scruggs Insurance & Risk Management, LLC
Gulf Insurance
Hanover Insurance Group
Liberty Mutual
Lloyds of London
One Beacon Insurance
Oregon Insurance Guaranty Association (OIGA)
Pacific Capital Resources Group, LLC
Pepsi Bottling Group, Inc.
Reliance Insurance
Riverstone Group
Smith Barney
Sowles Construction Co.
Spantec Constructors, Inc.
St. Paul/Travelers Insurance
Sterling Capital
TenBridge Partners, LLC
The H Group, LLC
The Harver Company
TIG Insurance
Timberline Investment Management, LLC
VergePointe, LLP
Victory Builders, Inc.
Western Guaranty Insurance Services (WGIS)
Zing Toys, Inc.

**PLF Board of Directors – Applications
Term Beginning January 1, 2017**

Applicant Name	Email Acknowledgment	Call/Meeting to discuss BOD role	Notes/Recommendation	Decline Letter Sent
Bilyeu, Amy Bar #011651 <i>Amy withdrew her application</i>				
Butterfield, Lisanne M. Bar #913683				
Fisher, Ann L. Bar #840459 <i>Applied via OSB</i>				
Gear, John Bar #073810				
Goodwin, Jeffrey D. Bar #123269				
Hendry, James W. Bar #832350				
Howard, Dan Webb Bar #060041 <i>Applied via OSB</i>				
Livermore, Megan Bar #054789				
Mansfield, William A. Bar #530710				
McGrath, Michael T. Bar #013445 <i>Applied via OSB</i>				

**PLF Board of Directors – Applications
Term Beginning January 1, 2017**

Applicant Name	Email Acknowledgment	Call/Meeting to discuss BOD role	Notes/Recommendation	Decline Letter Sent
Meadows, Christine M. Bar #963603 <i>Applied via OSB</i>				
Mitchell, Holly N. Bar #843044				
O’Neil, Shawn M. Bar #913880				
Robinson, David J. Bar #094887				
Sayles, Sara A.H. Bar #110584 <i>Applied via OSB</i>				
Welsh, Robert J. Bar #115493				
Werner, Peter Bar #091722				
Wilkinson, Kate A. Bar #001705				
18 Applicants				

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: September 9, 2016
Memo Date: August 29, 2016
From: Rod Wegener, CFO
Re: Additional Fee for Paying Membership Fee after Due Date

Action Recommended

Decision on the recommendation of the Budget & Finance Committee to eliminate the second increase in the membership for those members not paying by the deadline; the only additional fee after the deadline is \$100.00 per active member and \$50.00 per inactive member.

Background

The recommendation is the result of the Committee's action at its July meeting. Bar staff recommended the change for two key reasons: 1) the two fee increases will cause additional modifications to the bar's new software; 2) will eliminate the cost and additional required processing staff performs at the two deadline dates. Here are the current statutes addressing the fee payment deadlines.

- ORS 9.191 allows the Board of Governors to "establish the date by which annual membership fees must be paid." Traditionally this date is January 31.
- ORS 9.200 permits the executive director to send via electronic mail a notice of delinquency if not paid timely.

Since 2014 the bar's practice has been to increase the active membership fee by \$50.00 if not paid by the first due date, and another \$50.00 if not paid within 30 days of the due date. The additional fee for Inactive members is \$25.00 and 25.00 for the two dates respectively. If not paid within 90 days after the due date the member is administrative suspended.

Fee Schedule for 2016 Membership Fees (Current Schedule)

Note: Due date was February 1 as January 31 was a Sunday.

Membership Fee Status	Fee through February 1	Fee effective February 2	Fee effective March 3
Active Over Two Years	\$557.00	\$607.00	\$657.00
Active Under Two Years**	\$470.00	\$520.00	\$570.00
Active Pro Bono	\$125.00	\$125.00	\$125.00
Inactive	\$125.00	\$ 150.00	\$175.00

The recommendation would eliminate the additional fee 30 days after the deadline, and the fee on the current schedule of that date (March 3) would become the fee payment after the due date in 2017 (February 1 on the proposed schedule). If not paid by May 1, 2017, the member would be suspended.

Fee Schedule for 2017 Membership Fees (Proposed Schedule)

Note: Due date is January 31, a Tuesday.

Membership Fee Status	Fee through January 31	Fee effective February 1
Active Over Two Years	\$557.00	\$657.00
Active Under Two Years**	\$470.00	\$570.00
Active Pro Bono	\$125.00	\$125.00
Inactive	\$125.00	\$ 175.00

Financial Impact: The amount of revenue to the bar with members paying after the 2016 deadline was \$66,663. This was an increase over 2015, but a few years ago the additional revenue exceeded \$100,000.

- The number of members paying late at February 1, 2016 was 1,241 (6.4% of members billed). Of that total 604 were active members and 638 were inactive.
- At the second deadline 669 (now 3.5% of members) were still late (314 active, 355 inactive).
- There were 118 members suspended on May 3, 2016 for non-payment of their 2016 member fees.

It is uncertain what impact the change will have on 2017 revenue. If the number paying late after January 31, 2017 is the same as the number who paid late at the second deadline in 2016, the additional revenue would approximate \$49,000. However, it is unlikely that the drop-off will be that many in 2017 and it is more likely that the additional revenue in 2017 will approximate the amount received in 2016.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: September 9, 2016
Memo Date: August 22, 2016
From: Carol J. Bernick, PLF CEO
Re: 2017 PLF Assessment

Action Recommended

Approve the 2017Assessment.

Background

On an annual basis, the Board of Governors approves the PLF assessment for the coming year. The Board of Directors proposes that the assessment remain at \$3,500 (unchanged from 2016).

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: September 9, 2016
Memo Date: August 22, 2016
From: Carol J. Bernick, PLF CEO
Re: 2017 PLF Claims Made Primary Plan and Excess Plan

Action Recommended

The Board of Directors (BOD) of the Professional Liability Fund requests that the Board of Governors approve the proposed 2017 PLF Claims Made Primary Plan (EXHIBIT 1) and 2017 Excess Plan (EXHIBIT 2)¹. There are changes to both plans.

Background

The Primary Coverage Plan has not been significantly reviewed for over ten years although changes here and there have occurred in the interim. Madeleine Campbell (Claims Attorney) led the effort in taking a fresh look at the current Plan with an eye toward asking: "What is our purpose in having specific language?" Ms. Campbell did the majority of the rewriting and reorganization. Jeff Crawford, Emilee Preble, Bruce Schafer and I reviewed, edited and commented, along with the PLF's primary outside coverage attorney Bill Earle.

The revised Primary Plan reorganizes current Plan language and shortens its length to eliminate unnecessary or repetitive language and to allow someone to read and understand the Plan in the order it is presented. The revision is intended to make it easier to find and identify related provisions without a lot of going back and forth between pages and provisions. Because the Plan has been completely reworked and reorganized, a red-line version showing the changes would not be useful. Below is a summary of the significant substantive changes.

SECTION 1 – SUMMARY OF PROPOSED PLAN REVISIONS – BOTH PLANS

A. Structural Reorganization

Both revised Plans are reorganized in order to eliminate unnecessary or repetitive language and to make the Plans easier to read and understand.

B. Comments Removed

Over many years, Comments have been added to both the Primary and Excess Plans to clarify intent and meaning. The proposed revised Plans eliminate the Comments. Instead, where appropriate, the Comments have been incorporated into the language of the Plan and examples are added when helpful.

¹ There will also be changes to the Pro Bono Plan consistent with the proposed changes to the Primary Plan. The proposed Pro Bono Plan will be presented to the BOG at its November meeting.

C. “Legally Obligated” Definition Added

Both revised Plans contain a definition for the words “legally obligated,” previously undefined. The need for a definition became particularly important after the Oregon Supreme Court decision in *Brownstone Homes v. Brownstone Forest Heights*, which overturned *Stubblefield*.

D. Arbitration Agreements

The revised Plans adds new language directed at trying to prevent Covered Parties from entering into fee agreements that call for the arbitration of malpractice claims. The PLF does not want to be subject to advance restrictions on the forum for a malpractice claim, or to have no right of appeal.

E. Defense of Certain Excluded Claims

The revised Plans add a specific defense provision stating the PLF will defend, but not indemnify, Claims for malicious prosecution, abuse of process and wrongful initiation of legal proceedings, as well as claims subject to Exclusion 4 of the Plans. This reflects the current policy and practice of the PLF, but Plan language in that respect is relocated and clarified.

F. “Private Practice” Definition Added

Adding a definition for Private Practice allows the PLF to further define activities covered under the Plans and also to exclude from that definition work as an employee of a private entity that is not a Law Entity, or work as a government employee. Currently this type of employment is excluded through Excess Plan Exclusions 14 and 15. The revised Plans will eliminate these exclusions.

G. “Professional Legal Services” and “Special Capacity Services” Definitions Added

In order to bring more clarity and certainty to the scope of what is a Covered Activity, the revised Plans contain definitions for Professional Legal Services and Special Capacity Services.

J. Related Claims

Both revised Plans contain new language regarding Related Claims, currently defined as “SAME OR RELATED.” This new language is intended to make the PLF’s intent with respect to these claims clearer and more apparent. The Primary Revised Plan also contains additional examples in order to clarify how limits work when there are multiple covered parties who are the subject of Related Claims.

K. Exclusions

Proposed changes to exclusions are fully discussed in Exhibits 3 and 4. The following highlights the substantive changes of particular note:

Exclusion 4: Punitive Damages or Certain Fee Awards. The revised exclusion would exclude imposition of attorney fees, costs, fines, penalties or remedies imposed as sanctions under any federal or state statute, administrative rule, court rule, or case law against the Covered Party. If the sanction award is against the client, the exclusion applies unless the Covered Party establishes the sanction was caused by mere negligence on the part of the Covered Party and/or anyone for whose conduct any Covered Party is legally liable; and the sanction was not based, in whole or in part, on a finding of bad faith, malicious conduct, dishonest conduct or misrepresentation on the part of the Covered Party, or on the part of anyone for whose conduct a Covered Party is legally liable. This change means any sanction against a Covered Party is automatically excluded and there is no coverage for any vicarious liability of the Covered Party's firm for such sanction. It further clarifies when there will be coverage when the sanction is against the client and who has the burden of proof.

Exclusion 11: Family Member and Ownership Exclusion. The definition of Family Member was expanded.

Exclusion 20: Confidential or Private Data Exclusion. The purpose of this exclusion was to mirror the cyber coverage found in our Excess Plan. But as currently written, the language was far broader than we intended. The new language is more tailored to the types of cyber losses the endorsement is meant to cover.

SECTION 2 – SUMMARY OF PROPOSED PLAN REVISIONS – EXCESS ONLY

Again, the main change to the Excess Plan is restructure. In this case, the goal was to make the Excess Plan flow from the Primary Plan and eliminate repetition.

The only true substantive change not also in the Primary Plan relates to when a claim is first made and the claim year. The proposed revisions explain the differences of when a claim is "made" between the Primary and Excess Plans. And, when claims are Related, explains how the Plan Year is determined (which can be different with respect to Related claims in Primary vs. Excess).

Attachments:

- Exhibit 1: Proposed - 2017 PLF Primary Coverage Plan
- Exhibit 2: Proposed - 2017 PLF Excess Coverage Plan
- Exhibit 3: Comparison Chart – Primary Coverage Plan Exclusions
- Exhibit 4: Comparison Chart – Excess Coverage Plan Exclusions

2017 PRIMARY COVERAGE PLAN

The Professional Liability Fund ("PLF") is an instrumentality of the Oregon State Bar created pursuant to powers delegated to it in ORS 9.080(2)(a). The PLF Primary Coverage Plan ("Plan") is not intended to cover all claims that can be made against Oregon lawyers. The limits, exclusions, and conditions of the Plan are in place to enable the PLF to meet the statutory requirements and to meet the Mission and Goals set forth in Chapter One of the PLF Policies, including, "To provide the mandatory professional liability coverage consistent with a sound financial condition, superior claims handling, efficient administration, and effective loss prevention." The limits, exclusions, and conditions of the Plan are to be fairly and objectively construed for that purpose.

While mandatory malpractice coverage and the existence of the PLF provide incidental benefits to the public, the Plan is not to be construed as written with the public as an intended beneficiary. The Plan is not an insurance policy.

Because the Plan has limits and exclusions, members of the Oregon State Bar are encouraged to purchase excess malpractice coverage and coverage for excluded claims through general liability and other insurance policies. Lawyers and their firms should consult with their own insurance agents as to available coverages. Excess malpractice coverage is also available through the PLF.

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INTRODUCTION

Throughout this Professional Liability Fund (“PLF”) Primary Coverage Plan (“Plan”): **You** and **Your** refer to the Named Party shown in the Declarations; **Plan Year** means the period of January 1 through December 31 of the calendar year for which this Plan was issued; and **Coverage Period** means the coverage period shown in the Declarations under the heading “Coverage Period.”

When terms appear in bold, with the first letter capitalized, they have the defined meanings set forth in the Plan. A List and Index of Defined Terms is attached as an Appendix.

SECTION I - COVERAGE AGREEMENT

Subject to the terms, conditions, definitions, exclusions and limitations set forth in this Plan and the applicable **Limit of Coverage** and **Claims Expense Allowance**, as defined in Section VII, the coverage provided by this Plan is as follows:

A. Indemnity

The PLF will pay all sums a **Covered Party** is **Legally Obligated** to pay as **Damages** as a result of a **Claim** arising from a **Covered Activity** to which this **Coverage Period** applies, as determined by the rules set forth in Section IV.

A **Claim** means a demand for **Damages**, or written notice to a **Covered Party** of an intent to hold a **Covered Party** liable as a result of a **Covered Activity**, if such notice might reasonably be expected to result in an assertion of a right to **Damages**.

Legally Obligated to pay **Damages** means a **Covered Party** is required to make actual payment of monetary **Damages** and is not protected or absolved from actual payment of **Damages** by reason of any covenant not to execute, other contractual agreement of any kind, or a court order, preventing the ability of the claimant to collect money **Damages** directly from the **Covered Party**.

Damages means monetary compensation a **Covered Party** must pay for harm or loss and does not include: fines; penalties; punitive or exemplary damages; statutorily enhanced damages; rescission; injunctions; accountings; equitable relief; restitution; disgorgement; set-off of any fees, costs or consideration paid to or charged by a **Covered Party**; or any personal profit or advantage to a **Covered Party**.

B. Defense

1. Until the **Claims Expense Allowance** and the **Limit of Coverage** are exhausted, the PLF will defend a **Covered Party** against any **Suit** seeking **Damages** to which this Plan applies. The PLF is not bound by any **Covered Party**'s agreement to resolve a dispute through arbitration or any other

alternative dispute proceeding, and has no duty to defend or indemnify regarding any dispute handled or resolved in this manner without its consent.

Suit means a civil lawsuit. **Suit** also includes an arbitration or other alternative dispute resolution proceeding only if the PLF expressly consents to it.

2. The PLF has the sole right to select and appoint defense counsel, to control the defense and investigation of a **Claim** and, in its discretion, to settle any **Claim** to which this Plan applies. The PLF has no duty to contribute to the settlement of a **Claim** based on projected defense costs or on potential liability arising from uncovered claims. Subject to its sole discretion, the PLF may also elect to take steps, or make expenditures, to investigate, prevent, mitigate, review or repair any **Claim** or matter that may create the potential for a **Claim**.

3. The PLF will pay **Claims Expense** the PLF incurs.

Claims Expense means fees and expenses charged by any attorney designated by the PLF; all other fees, costs and expenses incurred by the PLF resulting from its investigation, adjustment, defense, prevention, mitigation, review, repair or appeal of a **Claim**, or any matter that may create the potential for a **Claim**; or fees charged by any attorney designated by the **Covered Party** with the PLF's written consent. The PLF's costs for compensation of its regular employees are not considered **Claims Expense** and do not reduce the available **Limit of Coverage**.

4. Notwithstanding Exclusions 2 and 4 in Section VI, the PLF will defend **Claims** for which coverage is excluded under Exclusion 4, and **Claims** for malicious prosecution, abuse of process and wrongful initiation of civil proceedings, provided such **Claims** arise out of **Your Covered Activities** and are not otherwise excluded by other applicable exclusions in this Plan. The PLF, however, will not have any duty to indemnify regarding any matter it defends pursuant to this provision.

C. Exhaustion of Limits

The PLF is not obligated to investigate, defend, pay or settle any **Claim** after the applicable **Limit of Coverage** and **Claims Expense Allowance** have been exhausted.

D. No Prior Knowledge or Prior Coverage

This Plan applies only to a **Covered Activity** that occurred after the Retroactive Date shown in the Declarations and either: (a) during the **Coverage Period**, or (b) before the **Coverage Period** if (i) on the effective date of this Plan, **You** had no knowledge of any **Claim** having been asserted or of any facts or circumstances that you were aware, or reasonably should have been aware, could reasonably result in a **Claim** arising out of the **Covered Activity** and (ii) there is no prior Plan or policy that provides coverage for such liability or **Claim**, whether or not the available limits of such prior Plan or policy are sufficient to pay any liability or **Claim**.

E. Coverage Territory

This Plan applies to **Suits** brought in the United States, its territories or possessions, within the jurisdiction of any Indian tribe in the United States or to any **Suit** brought in Canada. It does not apply to **Suits** in any other jurisdiction, or to any **Suit** to enforce a Judgment rendered in any other such jurisdiction.

SECTION II - WHO IS A COVERED PARTY?

Only the following are **Covered Parties** under this Plan:

A. The Individual Attorney Named in the Declarations

You are a **Covered Party** under this Plan, or in the event of **Your** death, adjudicated incapacity or bankruptcy, **Your** conservator, guardian, trustee in bankruptcy, or legal or personal representative, when acting in such capacity, is a **Covered Party**, regarding any **Claim** to which this Plan applies provided, at the time of the error, omission, negligent act or breach of duty on which such **Claim** is based: (1) **You** were engaged in **Private Practice**; (2) **You** were licensed to practice in Oregon; and (3) **Your Principal Office** was in Oregon.

Private Practice means providing **Professional Legal Services** or **Special Capacity Services** through a **Law Entity**. **Private Practice** does not include:

- a. **Your** work or conduct as an employee of any entity that is not a **Law Entity**, including but not limited to any private entity or any governmental body, subdivision or agency, whether or not **You** are employed as a public official or employee, if **You** are subject to the direction and control of the non-**Law Entity** regarding the means and manner of providing services and are paid on a salaried basis, or hourly employee basis, as opposed to being retained as an independent contractor, paid on a fee for service or hourly fee basis; or
- b. **Your** work or conduct in any other capacity that comes within the defense and indemnity provisions of ORS 30.285 and 30.287, unless the public body rejects any duty to defend and indemnify **You**. If the public body rejects **Your** defense and indemnity, the PLF will provide coverage, provided the **Claim** relates to a **Covered Activity** to which this Plan would otherwise apply, and the PLF will be subrogated to all **Your** rights against the public body.

For purposes of determining the location of **Your Principal Office**, a law office is a location held out to the public as **Your** law office. If **You** have only one law office, then that is the location of **Your Principal Office**. If **You** have two or more law offices and any of them is in Oregon, **Your Principal Office** is in Oregon if the total amount of time **You** spend engaged in **Private Practice** in such Oregon law office locations is greater than 50% of the time **You** engage in **Private Practice** in all law office locations when measured over the course of the 12 months prior to January 1st of each year. If **You** do not have a law office **Your Principal Office** is in Oregon if: **You** reside in Oregon; or, if **You** reside outside Oregon but are not an active member of the bar of the jurisdiction where you reside.

B. Law Entities Legally Liable for Your Covered Activities

A **Law Entity** legally liable for any **Claim** against **You**, based on **Your Covered Activities** is also a **Covered Party** under this Plan. However, in the event the **Claim** also involves claims against other attorneys not covered under a PLF Plan, any defense or indemnity for the **Law Entity** under this Plan is limited to that portion of the **Law Entity's** legal liability that relates to **Your Covered Activities**.

A **Law Entity** means a professional corporation, partnership, limited liability partnership, limited liability company or sole proprietorship that engages in the **Private Practice** of law in Oregon.

SECTION III - WHAT IS A COVERED ACTIVITY?

A. What Qualifies as a Covered Activity?

This Plan does not apply to all activities an attorney may engage in while practicing law. To fall within coverage, a **Claim** must arise out of a **Covered Activity**, subject to the following definitions, restrictions and limitations, and all applicable exclusions in this Plan.

A **Covered Activity** is an error, omission, negligent act or breach of duty committed in the course of providing or failing to provide **Professional Legal Services** or **Special Capacity Services**, as limited below, by:

- a. **You**;
- b. Another attorney for whose conduct you are legally liable, in **Your** capacity as an attorney, but only if the attorney was covered under a PLF Plan at the time of the act, error, omission, negligent act or breach of duty; or
- c. **Your Non Attorney** employee, for whose conduct **You** are legally liable in **Your** capacity as an attorney, but only to the extent such employee was assisting **You** in providing **Professional Legal Services** or **Special Capacity Services**.

Non Attorney employee includes employees who are not attorneys, as well as employees who have a law degree, but are not engaged in the practice of law in Oregon, or in any other state.

B. What Are Professional Legal Services?

Professional Legal Services are legal services or legal advice provided in a **Covered Party's** capacity as an attorney in **Private Practice**, including services a **Covered Party** provides as a mediator or arbitrator. **Professional Legal Services** do not include activities such as, but not limited to, the following:

- a. Any conduct in carrying out the commercial or administrative activities associated with practicing law, including but not limited to activities such as collecting fees or costs, guaranteeing a client will pay third party vendors or service providers, such as court reporters, depositing, endorsing or otherwise transferring negotiable instruments, depositing or withdrawing any money or other instruments into or from trust accounts or other bank accounts, any activities relating to or arising from the receipt, transmittal or negotiation of counterfeit or fraudulent checks or instruments, or any activities that require no specialized skill or training, such as paying bills on time or not incurring unnecessary expenses;
- b. Business related activities or services, including operating, managing or controlling any property, business property, business or institution in a manner similar to an owner, officer, director, partner or shareholder, whether as a trustee or otherwise;
- c. Activities as an officer, director, partner, employee, shareholder, member or manager of any entity except a **Law Entity**;

- d. Activities on any board, including but not limited to serving on the board of trustees of a charitable, educational or religious institution, or a real estate or other investment syndication;
- e. Serving as trustee for the liquidation of any business or institution, or as trustee for the control of a union or other institution; or
- f. Non-legal services such as architectural, engineering, accounting, lobbying, marketing, advertising, trade services, public relations, real estate appraisal, real estate development, brokerage services, or other such services.

C. Special Capacity Services

Special Capacity Services provided by a **Covered Party** arising out of a **Special Capacity Relationship**, are **Covered Activities** but only with respect to a **Claim** made by or for the benefit of a beneficiary of the **Special Capacity Relationship** and provided such **Claim** does not arise as a result of a claim by a third party relating to business activities or services provided by the **Covered Party** in the course of the **Special Capacity Relationship**.

Special Capacity Relationship means the **Covered Party** is formally named or designated to act in the capacity of a Personal Representative, Administrator, Conservator, Executor, Guardian Ad Litem, Special Representative pursuant to ORS 130.120, or a successor statute, or a Trustee administering a formal trust instrument for the benefit of a beneficiary.

Special Capacity Services means certain services commonly provided by an attorney in the course of a **Special Capacity Relationship** for the purposes of administering an estate or trust in accordance with applicable law and/or performing the legally required duties and obligations owed to beneficiaries of **Special Capacity Relationships**. **Special Capacity Services** do not include:

- a. Business related services, including but not limited to operating, managing or controlling any property, business property, business or institution, whether owned by the estate or trust or otherwise, in a manner similar to an owner, officer, director, partner or shareholder;
- b. Services provided by a **Covered Party** that generally fall within the scope of services commonly provided by another type of professional such as an accountant, tax professional, financial planner or advisor, appraiser, architect, engineer, surveyor, real estate agent or other such professional, or by a person in another trade or occupation such as a contractor, landscaper, gardener, caregiver, caretaker, housekeeper, or similar service provider.

SECTION IV - WHAT IS THE APPLICABLE COVERAGE PERIOD?

A. Date of Claim

Subject to Subsection IV B, the **Coverage Period** in effect on the earliest of the following dates applies to a **Claim** or matter:

1. The date a lawsuit is first filed, or an arbitration or ADR proceeding is first initiated against a **Covered Party** under this Plan;

2. The date the PLF first becomes aware of a matter involving facts or circumstances that could reasonably result in a **Claim** against a **Covered Party** under this Plan;
3. The date notice of a **Claim** is received by any **Covered Party** under this Plan;
4. The date the PLF receives notice of a **Claim** against a **Covered Party** under this Plan;
5. The date the PLF opens a file in order to take steps and/or make expenditures for a matter that is not a **Claim**, for the purpose of investigation, mitigation, review or prevention of any potential **Claim** against a **Covered Party** under this Plan; or
6. The date a **Covered Party** under this Plan first becomes aware that a claimant intends to make a **Claim**, but the claimant is delaying assertion of the **Claim**, or the **Covered Party** is delaying notice of such intent to make a **Claim**, for the purposes of obtaining coverage under a later Plan.

B. Special Rule Regarding Related Claims

If any **Claim** against a **Covered Party** is **Related** to one or more **Related Claim(s)**, the **Coverage Period** in effect on the earliest of the following dates applies to the **Claim**:

1. The date a lawsuit was first filed, or an arbitration or ADR proceeding was initiated with respect to the earliest of the **Related Claims**;
2. The date the PLF first became aware of facts or circumstances that could reasonably result in the earliest of the **Related Claims**;
3. The date a **Covered Party**, under this Plan, or any attorney covered under any other PLF Plan applicable to a **Related Claim**, received notice of the earliest **Related Claim**;
4. The date the PLF received notice of the earliest **Related Claim**; or
5. The date a **Covered Party**, under this Plan, or any attorney covered under any other PLF Plan applicable to a **Related Claim**, first became aware that a claimant intended to make the earliest **Related Claim**, but the claimant was delaying assertion of the **Claim**, or the **Covered Party** was delaying notice of such intent to make a **Claim**, for the purposes of obtaining coverage under a later Plan.

However, if **You** did not have a PLF Plan in effect on the date applicable to the earliest **Related Claim** pursuant to this subsection IV B, and **You** have no other insurance from any source that is applicable to the **Claim**, regardless of whether the available limits of such policy are sufficient to cover liability for the **Claim**, any applicable **Coverage Period** for the **Related Claim** against **You** is determined using the method set forth in Section IV A.

SECTION V - WHAT ARE RELATED CLAIMS?

A. Related Claims

Two or more **Claims** are **Related** when they are based on or arise out of facts, practices, circumstances, situations, transactions, occurrences, **Covered Activities**, damages, liabilities, or the relationships of the people or entities involved (including clients, claimants, attorneys, and/or other advisors) that are logically or causally connected or linked or share a common bond or nexus. A **Claim** against **You** may be **Related** to another **Claim(s)** against **You** and/or to a **Claim(s)** against other attorneys covered under other PLF Plans. If **Claims** are **Related**, special rules, set forth in Section VII C, govern the total amount the PLF will pay in defense and indemnity of all such **Claims**.

B. General examples of **Related Claims** include, but are not limited to, the following:

1. Secondary or dependent liability. **Claims** such as those based on vicarious liability, failure to supervise, or negligent referral are **Related** to the **Claims** on which they are based.
2. Same transaction or occurrence. Multiple **Claims** arising out of the same transaction or occurrence or series of transactions or occurrences are **Related**. However, provided the **Claims** do not also fall within one of the other categories in this Section V B, the PLF will not treat the **Claims** as **Related** if: (a) the participating **Covered Parties** acted independently of one another; (b) they represented different clients or groups of clients whose interests were adverse; and (c) the claimants do not rely on any common theory of liability or damage.
3. Alleged scheme or plan. If claimants tie together different acts as part of an alleged overall scheme or operation, then the **Claims** are **Related**.
4. Actual pattern or practice. Even if a scheme or practice is not alleged, if **Claims** arise from a method, pattern, or practice in fact used or adopted by one or more **Covered Parties** or **Law Entities** representing multiple clients in similar matters, such **Claims** are **Related**.
5. One loss. When successive or collective errors each cause or contribute to single or multiple clients' and/or claimants' harm, or cumulatively enhance their damages or losses, then the **Claims** are **Related**.
6. Class actions. All **Claims** alleged as part of a class action or purported class action are **Related**.

*For the purposes of assisting a **Covered Party** or Court in interpreting the PLF's intent as to which **Claims** are considered to be **Related**, and subject to the special rules regarding limits under Section VII D, examples illustrating the PLF's intent, not intended to be exhaustive, are as follows:*

*Example 1: Secondary or Dependent Liability - Attorney A is an associate in a firm and commits malpractice. **Claims** are made against Attorney A, various attorneys who were partners in the firm at the time of the malpractice and the firm. Even if Attorney A and some of the other lawyers are at different firms at the time of the **Claim**, all **Claims** are **Related**.*

*Example 2: Same Transaction, Occurrence or Series of Transactions or Occurrences - Attorney A writes a tax opinion for an investment offering. Attorneys B and C, with a different law firm, assemble the offering circular. In 2010, Investors 1 and 2 bring **Claims** relating to the offering. Investor 3 brings a claim in 2011. **Claims** against all attorneys and firms, by all 3 investors, are **Related**.*

Example 3: Independent Representation of Adverse Clients Where There is No Common Theory of Liability or Damage - Attorneys A and B represent husband and wife, respectively, in a divorce. Husband sues A for malpractice in litigating his prenuptial agreement. Wife sues B for not getting her proper custody rights over the children. A's and B's **Claims** are not **Related**.

Example 4: Same Transaction, Occurrence or Series of Transactions or Occurrences/One Loss - An owner sells his company to its employees by selling shares to two employee benefit plans set up for that purpose. The plans and/or their members sue the company, its outside corporate counsel, its ERISA attorney, the owner and his attorney, and the plans' former attorney, contending there were improprieties in due diligence, the form of the agreements and the amount and value of shares issued. The defendants file cross-claims. All **Claims** against the four attorneys are **Related** because they arise out of the same transactions or occurrences. The three necessary elements of the exception described in Section V B 2 are not satisfied because the claimants rely on common theories of liability. In addition, the exception may not apply because not all interests were adverse, theories of damages are common, or the attorneys did not act independently of one another. Even if the exception in Section V B 2 did apply, however, the **Claims** would still be **Related** under Section V B 5 because they involve one loss.

Example 5: Claimants Allege Overall Scheme or Operation - Attorney F represents an investment manager for multiple transactions over multiple years in which the manager purchased stocks in Company A on behalf of various groups of investors. Attorneys G and H represent different groups of investors. Attorney J represents Company A. Attorneys F, G, H, and J are all in different firms. They are all sued by the investors for securities violations arising out of this group of transactions. These **Claims** are all **Related** because, as is often the case in securities claims, the claimants have tied together different acts as part of an alleged overall scheme or operation.

Example 6: Actual Pattern or Practice - Attorneys A, B, and C in the same firm represent a large number of asbestos clients over several years' time, using a firm-wide formula for evaluating large numbers of cases with minimum effort. They are sued by certain clients for improper evaluation. Plaintiffs do not allege a common scheme or plan, but because the firm in fact operated a firm-wide formula for handling the cases, these **Claims** are **Related** based on the **Covered Parties'** own pattern or practice.

Example 7: Successive or Collective Errors - Attorney C represents a group of clients at trial and commits certain errors. Attorney D of the same firm undertakes the appeal, but fails to file the notice of appeal on time. Attorney E is hired by clients to sue Attorneys C and D for malpractice, but misses the statute of limitations. Clients sue all three attorneys. All claims are **Related**.

Example 8: Class Action or Purported Class Action - Attorneys A, B, and C in the same firm represent a large banking institution. They are sued by the bank's customers in a class action lawsuit for their part in advising the bank on allegedly improper banking practices. All claims are **Related**.

SECTION VI - WHAT IS EXCLUDED FROM COVERAGE?

1. Fraudulent Claims. This Plan does not apply to any **Claim** in which any **Covered Party**, or in which anyone for whose conduct a **Covered Party** is legally liable, has participated in any fraud or collusion with respect to the **Claim**.
2. Wrongful Conduct. This Plan does not apply to any **Claim** based on or arising out of:
 - a. any criminal act or conduct;
 - b. any knowingly wrongful, dishonest, fraudulent or malicious act or conduct, any intentional tort; or
 - c. any knowing or intentional violation of the Oregon Rules of Professional Conduct (ORPC) or other applicable code of ethics.

Exclusion 2 applies regardless of whether any actual or alleged harm or damages were intended. However, it does not apply to any **Covered Party** who did not commit or participate in any acts or conduct set forth in subsections (a) through (c), had no knowledge of any such acts or conduct at the time they occurred and did not acquiesce or remain passive after becoming aware of such acts or conduct.

3. Disciplinary Proceedings. This Plan does not apply to any investigation or disciplinary proceeding by the Oregon State Bar or any similar entity.
4. Punitive Damages, Sanctions or Certain Fee Awards. This Plan does not apply to:
 - a. The part of any **Claim** seeking punitive, exemplary or statutorily enhanced damages against any **Covered Party**, or against anyone for whose conduct a **Covered Party** is legally liable;
 - b. Any **Claim** for or arising out of the imposition of attorney fees, costs, fines, penalties or remedies imposed as sanctions under any federal or state statute, administrative rule, court rule, or case law. However, with respect to any sanction awarded only against the client, this subsection b does not apply if: the **Covered Party** establishes the sanction was caused by mere negligence on the part of the **Covered Party** and on the part of anyone for whose conduct a **Covered Party** is legally liable; and the sanction was not based, in whole or in part, on a finding of bad faith, malicious conduct, dishonest conduct or misrepresentation on the part of the **Covered Party**, or on the part of anyone for whose conduct a **Covered Party** is legally liable; or
 - c. Any attorney fees or costs owed as a result of any statute making any attorney liable or responsible for fees or costs owed by a client.
5. Failure to Pay Lien. This Plan does not apply to any **Claim** based on or arising out of the non-payment of a valid and enforceable lien if actual notice of such lien was provided to any **Covered Party** or to anyone for whose conduct a **Covered Party** is legally liable, prior to the payment of the funds to a client or any person or entity other than the rightful lien-holder.
6. Business Interests. This Plan does not apply to any **Claim** relating to or arising out of any business enterprise:
 - a. In which **You** are a general partner, managing member, or employee, or in which **You** were a general partner, managing member, or employee at the time of the alleged acts, errors, or omissions on which the **Claim** is based;
 - b. That is controlled, operated, or managed by **You**, either individually or in a fiduciary capacity, including the ownership, maintenance, or use of any property in connection therewith, or was so controlled, operated, or managed by **You** at the time of the alleged acts, errors, or omissions on which the **Claim** is based; or
 - c. In which **You** either have an ownership interest, or had an ownership interest at the time of the alleged acts, errors, or omissions on which the **Claim** is based unless: (i) such interest is solely a passive investment; and (ii) **You**, those controlled by **You**, **Your** spouse, parent, step-parent, child, sibling or any member of **Your** household, and those with whom **You** are regularly engaged in the practice of law collectively own, or previously owned, an interest in the business enterprise of less than ten percent.
7. Partner and Employee Exclusion. This Plan does not apply to any **Claim** made by:

- a. A present, former, or prospective law partner, employer, or employee of a **Covered Party**, or of anyone for whose conduct a **Covered Party** is legally liable; or
- b. A present, former, or prospective officer, director, or employee of a professional corporation in which a **Covered Party**, or in which any attorney for whose conduct a **Covered Party** is legally liable, is or was a shareholder.

This exclusion 7 does not apply if the **Claim** arises solely out of conduct in an attorney-client capacity for a person or entity listed in subsections a and b.

8. Business Transaction with Client. This Plan does not apply to any **Claim** based upon or arising out of any business transaction in which any **Covered Party**, or in which anyone for whose conduct a **Covered Party** is legally liable, participated with a client unless any written disclosure required by ORPC 1.8(a), or its equivalent, was properly executed prior to the transaction.

9. Investment Advice. This Plan does not apply to any of the following **Claims** or excluded activities, whether or not they are the sole cause, or a contributing cause, of any resulting loss or damage:

- a. Any **Claim** for investment losses, or for any damages arising from or relating to such losses, as a result of any **Covered Party**, or any person for whose conduct any **Covered Party** is legally liable: advising any person or entity respecting the value of a particular investment; recommending investing in, purchasing, or selling a particular investment; providing any economic analysis of any investment; inducing any person or entity to make any particular investment; making any warranty or guarantee regarding any investment; or making a financial decision or investment choice on behalf of any other person or entity regarding the purchase or selection of any particular investment.

This subsection (a) does not apply, however, to **Claims** made by a purchaser of securities for losses that arise only from **Professional Legal Services** provided to a seller of securities, provided no **Covered Party** nor any attorney for whose conduct a **Covered Party** is legally liable, provided any advice or services, or made any representations, falling within this exclusion, directly to such purchaser.

- b. Any **Claim** arising from any **Covered Party**, or any person for whose conduct any **Covered Party** is legally liable: advising or failing to advise any person in connection with the borrowing of any funds or property by any **Covered Party** for the **Covered Party** or for another; acting as a broker for a borrower or a lender; or giving advice of any nature when the compensation for such advice is, in whole or in part, contingent or dependent on the success or failure of a particular investment.
- c. Managing an investment, or buying or selling an investment for another, except to the limited extent such activities fall within the common and ordinary scope of **Special Capacity Services**.

10. Law Practice Business Activities or Benefits Exclusion. This Plan does not apply to any **Claim**:

- a. For any amounts paid, incurred or charged by any **Covered Party** as fees, costs or disbursements, (or by any **Law Entity** with which any **Covered Party** was associated at the time the fees, costs or expenses were paid, incurred or charged), including but not limited to fees, costs and disbursements alleged to be excessive, not earned, or negligently incurred, whether claimed as restitution of specific funds, forfeiture, financial loss, set-off or otherwise.

- b. Arising from or relating to the negotiation, securing, or collection of fees, costs, or disbursements owed or claimed to be owed to any **Covered Party**, or any **Law Entity** with which any **Covered Party** is now associated, or was associated at the time of the conduct giving rise to the **Claim**; or
- c. For damages or the recovery of funds or property that have or will directly or indirectly benefit any **Covered Party**.

In the event the PLF defends any **Claim** or **Suit** that includes any claim within the scope of this exclusion, the **Covered Party** is required to consent to and cooperate with the PLF's attempt to settle or dismiss any other claim(s) not falling within this exclusion. The PLF will have the right to withdraw from the defense following the settlement or dismissal of any such claim(s). This exclusion does not apply to the extent a **Claim** is based on an act, error or omission that eliminates, reduces or prejudices a client's right or ability to recover fees, costs or expenses from an opposing party.

*The following illustrative examples, not intended to be exhaustive, are provided for the purposes of assisting a **Covered Party** or Court in interpreting the PLF's intent as to the scope of Exclusion 10:*

Example 1: Attorney A sues Client for unpaid fees; Client counterclaims for the return of fees already paid to Attorney A which allegedly were excessive and negligently incurred by Attorney A. Under subsection a, there is no coverage for the claim.

Example 2: Attorney B allows a default to be taken against Client, and bills an additional \$2,500 in attorney fees incurred by Attorney B in his successful effort to get the default set aside. Client pays the bill, but later sues Attorney B to recover the fees paid. Under subsection a, there is no coverage for the claim.

Example 3: Attorney C writes a demand letter to Client for unpaid fees, and then files a lawsuit for collection of the fees. Client counterclaims for unlawful debt collection. Under Subsection b, there is no coverage for the claim. The same is true if Client is the plaintiff and sues for unlawful debt collection in response to the demand letter from Attorney C.

Example 4: Attorney D negotiates a fee and security agreement with Client on behalf of Attorney D's own firm. Other firm members, not Attorney D, represent Client. Attorney D later leaves the firm, Client disputes the fee and security agreement, and the firm sues Attorney D for negligence in representing the firm. Under Subsection b, there is no coverage for the claim.

Example 5: Attorney E takes a security interest in stock belonging to Client as security for fees. Client fails to pay the fees and Attorney E executes on the stock and becomes the owner. Client sues for recovery of the stock and damages. Under Subsection c, there is no coverage for the claim. The same is true if Attorney E receives the stock as a fee and is sued later for recovery of the stock or damages.

11. Family Member and Ownership Exclusion. This Plan does not apply to any **Claim** based on or arising from any **Covered Party**, or anyone for whose conduct a **Covered Party** is legally liable, having provided or failed to provide:

- a. **Professional Legal Services** to any person or entity that is his or her own **Family Member** or **Family Business** at the time any such services are provided or fail to be provided; or
- b. **Special Capacity Services** to a trust or estate: (i) if the **Covered Party**, or person for whose conduct a **Covered Party** is legally liable, is a beneficiary of the trust or estate; or (ii) if at the time any such **Special Capacity Services** are provided, or fail to be provided, any **Family Member** or **Family Business** of that **Covered Party**, or of the person for whose conduct a **Covered Party** is legally liable, is a beneficiary of the trust or estate.

Family Member(s) means spouse, parent, adoptive parent, parent-in-law, step-parent, grandparent, child, adopted child, step-child, grandchild, son or daughter in-law, sibling, adopted sibling,

step-sibling, half sibling, brother or sister-in-law or any member of the **Covered Party's** household and, if the household member is a spousal equivalent of the **Covered Party**, the Family Members of any such person.

Family Business means a business entity in which the **Covered Party**, or person for whose conduct a **Covered Party** is legally liable, and/or the **Family Members**, of such **Covered Party** or person for whose conduct a **Covered Party** is legally liable, collectively or individually, have a controlling interest.

This exclusion does not apply to **Professional Legal Services** or **Special Capacity Services** an attorney provides to another attorney's **Family Member** or **Family Business**.

12. Benefit Plan Fiduciary Exclusion. This Plan does not apply to any **Claim** arising out of any **Covered Party**, or anyone for whose conduct a **Covered Party** is legally liable, having acted as a fiduciary under any employee retirement, deferred benefit, or other similar plan.

13. Notary Exclusion. This Plan does not apply to any **Claim** arising out of any witnessing of a signature or any acknowledgment, verification upon oath or affirmation, or other notarial act without the physical appearance before such witness or notary public.

14. Loss of Client Funds or Property/Certain Disbursements. This Plan does not apply to any **Claim** against any **Covered Party**, or against anyone for whose conduct a **Covered Party** is legally liable, relating to or arising from: conversion, misappropriation, improper commingling, negligent supervision of client funds or trust account property, including loss or reduction in the value of such funds or property; or the disbursement of funds, checks or other similar instruments deposited to a trust, escrow or other similar account in which the deposit was not irrevocably credited to such account.

15. General Tortious Conduct. This Plan does not apply to any **Claim** for:

- a. Bodily injury, sickness, disease, mental anguish, emotional distress or death of any person, except to the limited extent any such harm or injury is directly caused by an error, omission, negligent act or breach of duty in providing or failing to provide **Professional Legal Services** or **Special Capacity Services**; or
- b. Injury to, loss of, loss of use of, or destruction of any real, personal, tangible or intangible property of any kind, except to the limited extent the loss or destruction of any such property materially and adversely affects the provision of **Professional Legal Services** or **Special Capacity Services**.

*The following illustrative examples, not intended to be exhaustive, are provided for the purposes of assisting a **Covered Party** or Court in interpreting the PLF's intent as to the scope of Exclusion 15:*

Example 1: Client gives Attorney C important documents relevant to a legal matter being handled by Attorney C. Following the completion of the matter, the documents are lost or destroyed. Client makes a claim for loss of the documents, reconstruction costs, and consequential damages due to future inability to use the documents. There is no coverage for this claim because the loss of documents did not adversely affect the professional services, which had already been completed.

Example 2: Client gives Attorney B a defective ladder from which Client fell, to be used as critical evidence in his personal injury case. Attorney B loses the ladder and cannot use it as evidence, causing a defense verdict. A claim for the value of the lost personal injury case would not be excluded.

*Example 3: A client makes a claim for bodily injury or emotional distress based on allegations that an attorney engaged in sexual contact with the client, the client suffered injury while riding in an attorney's car or that the client slipped on the floor in an attorney's office. As an initial matter, none of these claims arise out of a **Covered Activity**. They are also excluded by exclusion 15 a, and may also be subject to other exclusions.*

Example 4: An attorney negligently fails to inform a client of a court date in a criminal matter. As a result, the client fails to appear and is arrested, jailed and injured by another inmate. A claim against the attorney alleging damages arising from bodily injury and emotional distress is not excluded by exclusion 15 a.

16. Harassment and Discrimination. This Plan does not apply to any **Claim** based on or arising out of harassment or discrimination on the basis of race, creed, age, religion, sex, sexual orientation, disability, pregnancy, national origin, marital status, or any other basis.

17. Patent Exclusion. This Plan does not apply to any **Claim** based upon or arising out of any **Covered Party**, or anyone for whose conduct a **Covered Party** is legally liable, having prosecuted a patent without being registered with the U.S. Patent and Trademark Office at the time any such services were provided.

18. Contractual Obligation Exclusion. This Plan does not apply to any **Claim**:

- a. Based upon or arising out of any bond or any surety, guaranty, warranty, joint control, or similar agreement, or any assumed obligation to indemnify another, whether signed or otherwise agreed to by a **Covered Party** or by someone for whose conduct any **Covered Party** is legally liable, unless the **Claim** arises out of **Special Capacity Services**, and the **Covered Party**, or person for whose conduct a **Covered Party** is legally liable, signed the bond or agreement solely in a representative capacity arising from the **Special Capacity Relationship**;
- b. For liability based on an agreement or representation, if the **Covered Party** would not have been liable in the absence of the agreement or representation; or
- c. To the extent the **Claim** is based on an actual or alleged promise to obtain a certain outcome or result if the **Covered Party** would not have been liable in the absence of such a promise.

*The following illustrative examples, not intended to be exhaustive, are provided to assist a **Covered Party** or Court in interpreting the PLF's intent as to the scope of Exclusion 18:*

Example 1: Attorney A personally guarantees that a client will secure funding for a real estate development. Any claim against Attorney A arising from the guarantee is not covered.

Example 2: Attorney B enters into an agreement with a client that if there is any dispute arising from the representation, the prevailing party will be able to recover attorney fees. The client sues Attorney C for malpractice and prevails. The contractually based attorney fee award is not covered because it would not exist in the absence of the agreement.

Example 3: Attorney C promises a plaintiff that he will recover at least \$200,000 in a lawsuit, but does not achieve this result. To the extent the client bases any claim against Attorney D solely on a promise to obtain a particular outcome, rather than on negligence in failing to meet the applicable standard of care, there is no coverage for the breach of contract claim.

19. Bankruptcy Trustee Exclusion. This Plan does not apply to any **Claim** arising out of activity as a bankruptcy trustee.

20. Confidential or Private Information/Computer Systems. This Plan does not apply to any **Claim** arising from:

- a. Any loss of, access or potential access by third parties, disclosure to third parties, or publication of **Personally Identifiable Non-Public Information** or **Third Party Corporate Information**, whether or not such information was in electronic form or in paper form;
- b. Any violation of a federal, state or foreign statute or regulation requiring the protection and/or security of information referenced in subsection a, including but not limited to failure to report the loss of such information; or
- c. Any loss of, loss of use of, damage to, corruption of, inability to access, inability to manipulate, compromise of, or breach of any electronically stored information or data; the receipt or transmission of malware or malicious code or other harm resulting from transmission by a computer system to the computer system of a third party; or actual or attempted extortion by anyone who has gained or claims to have gained access to or control of any electronic devices, electronic data systems, electronically stored data, or access to or control of any confidential or private information or data, whether or not it is stored electronically.

Personally Identifiable Non-Public information means any personal information that is not public and that may not be disclosed without proper authorization and/or notice pursuant to any federal, state or foreign law or regulation, 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. This includes, but is not limited to certain medical or health care information, driver's license or state identification information, social security numbers, credit information or financial account information.

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 which is not available to the general public.

This exclusion 20, however, does not apply to a **Claim** to the limited extent it arises solely out of immediate inability to provide **Professional Legal Services** or **Special Capacity Services** caused by the sudden and unexpected loss of documents or information necessary to such services provided: (i) such loss materially and adversely affected the ability to provide such services; and (ii) following the discovery of any such loss of documents or information, the **Covered Party** at the **Covered Party's** own expense, took any and all reasonable and necessary steps as were possible to restore, recover, replace or obtain such documents or information before the time the services had to be provided.

If the PLF agrees to defend a **Suit** that includes a **Claim** falling within this exclusion, and/or a **Claim** falling within the exception set forth in the preceding paragraph, the PLF will not pay any costs such as those relating to privacy notification, credit monitoring, forensic investigation, computer reprogramming, computer security experts, computer services of any kind, call center support costs, public relations costs or any similar costs.

SECTION VII — LIMIT OF COVERAGE, CLAIMS EXPENSE ALLOWANCE AND SPECIAL LIMITS REGARDING RELATED CLAIMS

A. Limit of Coverage

The **Limit of Coverage** for the **Coverage Period** of this Plan is \$300,000. This is a maximum aggregate limit applicable to any and all **Claims** or matters to which this Plan applies. The making of multiple claims or claims against more than one **Covered Party** will not increase the **Limit of Coverage**, which is reduced by the following payments arising from **Claims** or matters to which the **Coverage Period** of this Plan applies:

1. All **Claims Expense** paid by the PLF on behalf of any **Covered Party** under this Plan, that is in excess of any applicable **Claims Expense Allowance**; and
2. The PLF's payment, on behalf of any **Covered Party** under this Plan, of any and all amounts relating to settlements, judgments or any other indemnity payments arising from any and all **Claims**, or matters that may have the potential to create or result in **Claims**, against any **Covered Party** under this Plan.

B. Claims Expense Allowance

In addition to the **Limit of Coverage**, this Plan also provides a separate **Claims Expense Allowance**, meaning an additional allowance in the maximum aggregate amount of \$50,000, applicable to the investigation and/or defense of any and all **Claims** against all **Covered Parties** under this Plan, subject to Section VII C, below. The **Claims Expense Allowance** may be applied only to **Claims Expenses**, and not to any settlements, judgments or any other indemnity payments.

C. Special Rules and Limits for Related Claims

If **Your** Plan and one or more other Plans issued by the PLF to other attorneys apply to **Claims** that are **Related**, then regardless of the number of claims, claimants, clients, attorneys or **Law Entities** involved, the PLF will not pay more than a maximum total of \$300,000, plus a maximum of one \$50,000 **Claims Expense Allowance** to defend and/or indemnify all parties covered under this or any other PLF Plan regarding all such **Related Claims**. This is subject only to the exception stated below regarding **Claims Expense Allowances**. In addition, the portion of this total maximum **Related Claim** limit available to **You** cannot exceed the amount of the available remaining limit of **Your** Plan in effect during the **Coverage Period** that applies to the **Related Claim(s)** against **You**.

The total maximum limit applicable to **Related Claims** is reduced as the PLF makes expenditures on **Related Claims**, whether on **Your** behalf, or on behalf of other attorneys or **Law Entities** against whom **Related Claims** are made. After the total applicable limit for **Related Claims** and any **Claims Expense Allowance** available to **You** has been exhausted, the PLF is not obligated to investigate, defend, pay or settle any **Related Claim** against **You**.

Under the following circumstances, the PLF may grant more than one **Claims Expense Allowance** with respect to **Related Claims**: (1) the **Related Claims** allegedly arise from **Covered Activities** by two or more **Law Entities**; (2) the **Law Entities** were separate entities at the time of the alleged errors,

omissions, negligent acts or breaches of duty; and (3) a **Covered Party** requests, and in the sole judgment of the PLF, should be entitled to separate defense counsel. Not more than one separate **Claims Expense Allowance per Law Entity**, or group of **Law Entities** practicing together as a single firm, will be granted. Any such separate allowance may be used only for the defense of **Claims** arising from the **Covered Activities** of the **Law Entity** or group of **Entities** to which the separate allowance applies. If the **Claims Expense Allowance** for the applicable **Coverage Period** has already been depleted or exhausted by other **Claims** or matters, the amount of the **Claims Expense Allowance** will be limited to whatever remains of the **Claims Expense Allowance** for that **Coverage Period**.

For the purposes of assisting a **Covered Party** or Court in interpreting the PLF's intent as to meaning of Section VII C, illustrative examples, not intended to be exhaustive, are as follows:

Example 1: In 2009 Attorney A, with Firm 1, assists a client in setting up an LLC to obtain investors for real estate development projects, also advising the client as to applicable securities laws requirements. In 2011, Attorneys B and C, with Firm 2, assemble information the LLC provides to investors. In 2013, Investor W brings securities **Claims** against Attorneys B and C. The PLF incurs \$50,000 in **Claims Expense** relating to Investor W's **Claims** against Attorneys B and C and settles the **Claims** against them for a total of \$250,000-\$125,000 for Attorney B and \$125,000 for Attorney C.

In 2014, following the settlement of Investor W's **Claims** against Attorneys B and C, Investor X brings a securities claim against Attorneys A, B and C regarding Investor X's investment in the LLC. Because the **Claims** by Investor X are **Related** to the previous **Claims** against Attorneys B and C, this **Claim** relates back to the 2013 Plans issued to Attorneys A, B and C.

There was another completely unrelated **Claim** against Attorney A in 2013, but the PLF successfully defended Attorney A, using his entire \$50,000 **Claims Expense Allowance** for 2013. Although Attorney A has not used his \$300,000 limit for 2013, because the PLF has already spent \$250,000 settling the **Related Claims** against Attorneys B and C, all the attorneys collectively, now have a total limit of \$50,000, under their 2013 Plans, to respond to the **Claim** by Investor X. Because Attorney A has already used his **Claims Expense Allowance** for 2013, he does not have another **Claims Expense Allowance** for this **Claim**. There is no additional **Claims Expense Allowance** available for Attorneys B and C because they are entitled to only one shared **Claims Expense Allowance** regarding the **Related Claims**, and this was already spent on the **Related Claim** by Investor W.

Example 2: Same facts as in Example 1, except that the previous unrelated 2013 **Claim** against Attorney A was not successfully defended. The PLF spent Attorney A's \$50,000 **Claims Expense Allowance**, plus \$275,000 settling the unrelated 2013 **Claim** against Attorney A. Under this scenario, there is a total maximum limit of \$25,000 for Attorney A to respond to the **Claim** by Investor X. Although the \$50,000 left after settling the **Claim** by Investor W is available collectively to A, B and C, no more than \$25,000 of this amount can be used for Attorney A because that is all that is remaining of his 2013 limit. Assuming \$25,000 is spent to settle the Investor X **Claim** against Attorney A, there is \$25,000 remaining to defend or indemnify Attorneys B and C against Investor X.

Example 3: Same facts as in Example 1, except that \$300,000 is spent settling Investor W's claim against Attorneys B and C. Attorneys B and C have exhausted both their 2013 Limit of Coverage and their 2013 **Claims Expense Allowance**. Attorney A exhausted his 2013 **Claims Expense Allowance** to defend an unrelated **Claim**. The PLF has already paid the most it will pay regarding the **Related Claims**. As a result, there is nothing left to defend or indemnify Attorneys A, B or C against the **Claim** by Investor X under any PLF Primary Coverage Plan.

Example 4: Same facts as Example 1, except the PLF settles Investor W's claim against Attorneys B and C for \$30,000, without incurring any **Claims Expense** for them, and Attorney A has used all but \$5,000 of his 2013 limit, as well as his **Claims Expense Allowance**, for an earlier unrelated **Claim**. Under this scenario, there is a maximum total limit of \$270,000 to respond to the **Claim** by Investor X against all three attorneys, but only \$5,000 of this amount is available to Attorney A because that is the limit remaining under his 2013 Plan. Attorney A has no **Claims Expense Allowance** remaining. Attorneys B and C, however, have a shared \$50,000 **Claims Expense Allowance** for their defense against the **Claim** by Investor X.

Example 5: Same facts as Example 1, except Attorney A already spent both his entire 2013 **Claim Expense Allowance**, plus his entire 2013 limit on an unrelated **Claim**. Attorney A has no coverage for the **Claim** by Investor X under the PLF Primary Coverage Plan.

Example 6: Attorney A performed **Covered Activities** for a client while Attorney A was at two different law firms. Client sues A and both firms. Both firms request separate counsel, each one contending most of the alleged errors took place while A was at the other firm. The defendants are collectively entitled to a maximum of one \$300,000 **Limit of Coverage** and two **Claims Expense Allowances**. For purposes of this provision, Attorney A (or, if applicable, her professional corporation) is not a separate **Law Entity** from the firm at which she worked. Accordingly, two, not three, **Claims Expense Allowances** are potentially available.

Example 7: Attorney A is a sole practitioner, practicing as an LLC, but also working of counsel for a partnership of B and C. While working of counsel, A undertook a case which he concluded involved special issues requiring the expertise of Attorney D, from another firm. D and C work together in representing the client and commit errors in handling the case. Two **Claims Expense Allowances** are potentially available. There are only two separate firms – the BC partnership and D's firm.

SECTION VIII – DUTIES OF COVERED PARTIES

A. Notice of Claims, Suits and Circumstances

As a condition precedent to any right of protection afforded by this Plan, the **Covered Party** must give the PLF, at the address shown in the Declarations, timely written notice of any **Claim, Suit**, or Circumstances, as follows:

1. The **Covered Party** must immediately notify the PLF of any **Suit** filed against the **Covered Party** and deliver to the PLF every demand, notice, summons, or other process received.
2. If the **Covered Party** receives notice of a **Claim**, or becomes aware of facts or circumstances that reasonably could be expected to be the basis of a **Claim** for which coverage may be provided under this Plan, the **Covered Party** must give written notice to the PLF as soon as practicable of: the specific act, error, or omission; any damages or other injury that has resulted or may result; and the circumstances by which the **Covered Party** first became aware of such act, error, or omission.
3. If the PLF opens a suspense or claim file involving a **Claim** or potential **Claim** which otherwise would require notice from the **Covered Party** under subsection 1 or 2 above, the **Covered Party's** obligations under those subsections will be considered satisfied for that **Claim** or potential **Claim**.

B. Assistance and Cooperation in Defense

As a condition of coverage under this Plan, the **Covered Party** will, without charge to the PLF, cooperate with the PLF and will:

1. Provide to the PLF, within 30 days after written request, narrative statements or sworn statements providing full disclosure concerning any **Claim** or any aspect thereof;
2. Attend and testify when requested by the PLF;
3. Furnish to the PLF, within 30 days after written request, all files, records, papers, and documents that may relate to any **Claim** against the **Covered Party**;

4. Execute authorizations, documents, papers, loan receipts, releases, or waivers when requested by the PLF;
5. Submit to arbitration of any **Claim** when requested by the PLF;
6. Permit the PLF to cooperate and coordinate with any excess or umbrella insurance carrier as to the investigation, defense and settlement of all **Claims**;
7. Not communicate with any person, other than the PLF or an insurer for the **Covered Party**, regarding any **Claim** that has been made against the **Covered Party**, after notice to the **Covered Party** of such **Claim**, without the PLF's written consent; and
8. Assist, cooperate, and communicate with the PLF in any other way necessary to investigate, defend, repair, settle, or otherwise resolve any **Claim** against the **Covered Party**.

C. No Voluntary Payments, Admissions or Representations

No **Covered Party** can bind or prejudice the PLF with voluntary payments or admissions or representations. If a **Covered Party**, without the advance written consent of the PLF, voluntarily makes any payment, assumes any obligation or incurs any expense with respect to a **Claim**, makes any representation to a claimant that the claimant will be indemnified or makes any representation as to the value or potential value of the **Claim**, any payment, obligation, expense, obligation to pay, or obligation to pay the represented amount will be the sole obligation of the **Covered Parties**, to be paid or satisfied at the sole cost and expense of the **Covered Parties**.

D. Protection of Subrogation Rights

To the extent the PLF makes any payment under this Plan, it will be subrogated to any **Covered Party's** rights against third parties to recover all or part of these sums. No **Covered Party** will take any action to destroy, prejudice or waive any right of subrogation the PLF may have, and will, if requested, assist the PLF in bringing any subrogation action or similar claim. The PLF's subrogation or similar rights will not be asserted against any **Non Attorney** employee of a **Covered Party** who was acting in the course and scope of employment, except for claims arising from intentional, dishonest, fraudulent, or malicious conduct of such person.

E. Assistance and Cooperation in Coverage Issues

1. Any party claiming coverage under this Plan has a duty and obligation to timely provide, upon the request of the PLF, accurate, complete and truthful information relevant to any claimed right to coverage under this Plan.
2. In the event the PLF proposes, in writing, a settlement to be funded by the PLF but subject to the **Covered Party's** being obligated to reimburse the PLF if it is later determined that the Plan did not cover all or part of the **Claim** settled, the **Covered Party** must advise the PLF in writing that the **Covered Party** either agrees or objects to the PLF's proposal. The written response must be made by the **Covered Party** as soon as practicable and, in any event, must be received by the PLF no later than one business day (and at least 24 hours) before the expiration of any time-limited demand for settlement. A failure to respond, or a response that fails to unequivocally object to the PLF's written proposal, constitutes an agreement to the PLF's proposal. The **Covered Party's** objection to the settlement waives any right to assert the PLF should have settled the **Claim**.

SECTION IX - ACTIONS BETWEEN THE PLF AND COVERED PARTIES OR OTHERS

1. No legal action in connection with this Plan will be brought against the PLF unless all **Covered Parties** have fully complied with all the terms and conditions of the Plan.
2. Absent the PLF's express written consent, the PLF will not be obligated to make any indemnity payments until after the **Covered Party** has been held liable in a **Suit** on the merits, and all applicable coverage issues have been determined by Declaratory Judgment.
3. The bankruptcy or insolvency of a **Covered Party** does not relieve the PLF of its obligations under this Plan, nor deprive the PLF of any of its rights under this Plan.
4. In the event of exceptional circumstances in which the PLF, at the PLF's option, has paid a portion or all of the **Limit of Coverage** toward settlement of a **Claim** before all applicable coverage issues have been finally determined, then resolution of the coverage dispute as set forth in this Section will occur as soon as reasonably practicable following the PLF's payment. In the event it is determined that this Plan is not applicable to the **Claim**, or only partially applicable, then judgment will be entered in Multnomah County Circuit Court in the PLF's favor and against the **Covered Party** (and all others on whose behalf the PLF's payment was made) in the amount of any payment the PLF made on an uncovered portion of the **Claim**, plus interest at the rate applicable to judgments from the date of the PLF's payment. Nothing in this Section creates an obligation by the PLF to pay a portion or all of the PLF's **Limit of Coverage** before all applicable coverage issues have been fully determined.
5. This Plan is governed by the laws of Oregon, regardless of any conflict-of-law principle that would otherwise result in the laws of any other jurisdiction governing this Plan. Any disputes as to the applicability, interpretation, or enforceability of this Plan, or any other issue pertaining to or arising out of any duties or provision of benefits under this Plan, between any **Covered Party** (or anyone claiming through a **Covered Party** or based on any actual or alleged right of direct action) and the PLF, whether any claim against the PLF is based on tort or in contract, is subject to Oregon law and will be tried in the Multnomah County Circuit Court of the State of Oregon which will have exclusive jurisdiction and venue of such disputes at the trial level.
6. No person or entity may recover consequential damages for the PLF's breach of any provision in this Plan. Any damages recoverable for any such breach are strictly limited to those amounts a court rules would have been payable by the PLF, under the provisions of this Plan, if there had been no such breach.
7. The PLF has a right of subrogation and may bring a legal action to recover from a **Covered Party** under this Plan for damages it has paid regarding a **Claim** against another attorney or entity covered under this or another PLF Plan, subject to the following conditions:
 - a. If not for the PLF's right of subrogation, the **Covered Party** against whom recovery is sought could be responsible for contribution, indemnity or otherwise to the person or entity on whose behalf the PLF's payment was made; and
 - b. The PLF's right of subrogation can be alleged based on a theory or theories for which there would not be coverage under this Plan for the **Covered Party** against whom recovery is sought.

In the circumstances outlined in this subsection 7, the PLF reserves the right to sue the **Covered Party**, either in the PLF's name or in the name of the person or entity on whose behalf the PLF has paid, to recover such amounts as the PLF determines appropriate, up to the full amount the PLF has paid under one or more other Plans issued by the PLF. However, this subsection will not entitle the PLF to sue the **Covered Party** if the PLF's alleged rights against the **Covered Party** are premised on a theory of recovery that would entitle the **Covered Party** to indemnity under this Plan if the PLF's action were successful.

The following examples, not intended to be exhaustive, illustrate the effect of Section IX 5:

*Example 1: Attorney A engages in intentionally wrongful conduct in representing Client X. Attorney A's partner, Attorney B, does not know of or acquiesce in Attorney A's wrongful conduct. Client X sues both Attorneys A and B. Attorney A has no coverage for the **Claim** under his Plan, but Attorney B has coverage for her liability under her Plan. If the PLF pays the **Claim** under Attorney B's Plan, it has a right to sue Attorney A for the damages it paid.*

Example 2: Same facts as the prior example, except that the PLF lends funds to Attorney B under terms that obligate Attorney B to repay the loan to the extent she recovers damages from Attorney A in an action for indemnity. The PLF has the right, pursuant to such an arrangement with Attorney B, to participate in her action against Attorney A.

SECTION X — SUPPLEMENTAL ASSESSMENTS

This Coverage Plan is assessable. Each **Plan Year** is accounted for and assessable using reasonable accounting standards and methods of assessment. If the PLF determines that a supplemental assessment is necessary to pay for **Claims, Claims Expense**, or other expenses arising from or incurred during either this **Plan Year** or a previous **Plan Year**, **You** agree to pay **Your** supplemental assessment to the PLF within 30 days of request. The PLF is authorized to make additional assessments against **You** for this **Plan Year** until all the PLF's liability for this **Plan Year** is terminated, whether or not **You** are a **Covered Party** under a Plan issued by the PLF at the time the assessment is imposed.

SECTION XI — RELATION OF PLF COVERAGE TO INSURANCE COVERAGE OR OTHER COVERAGE

If a **Covered Party** has valid and collectible insurance coverage or other source of indemnification that also applies to any loss or **Claim** covered by this Plan, the PLF will not be liable under the Plan until the limits of the **Covered Party's** insurance or other source of indemnification, including any applicable deductible, have been exhausted, unless such insurance or other source of indemnification is written only as specific excess coverage over the **Claims Expense Allowance** and **Limit of Coverage** of this Plan.

SECTION XII — WAIVER AND ESTOPPEL

Notice to or knowledge of the PLF's representative, agent, employee, or any other person will not effect a waiver, constitute an estoppel, or be the basis of any change in any part of this Plan nor will the terms of this Plan be waived or changed except by written endorsement issued and signed by the PLF's authorized representative.

SECTION XIII – AUTOMATIC EXTENDED REPORTING COVERAGE

1. If **You** terminate **Your** PLF coverage during this **Plan Year**, or do not obtain PLF coverage as of the first day of the next year following the expiration of this **Plan Year**, as of **Your** last day of PLF coverage, and until the date specified in Subsection 2, **You** will automatically have extended reporting coverage under this Plan for future **Claims** made against **You**, provided such **Claims** are not based on activities that occurred after **Your** last day of PLF coverage. **Your** extended reporting coverage does not provide **You** with a renewed **Limit of Coverage** or **Claims Expense Allowance**. The remaining **Limit of Coverage** and **Claims Expense Allowance** available under this Plan, after subtracting all amounts spent by the PLF regarding any **Claims** or matters to which this Plan applied or applies, as of the date any such future **Claim** is made, will be the maximum amount available for the defense and indemnity of any such **Claim**.
2. If **You** terminate **Your** PLF coverage during this **Plan Year** and return to PLF coverage later in the same year the extended reporting coverage granted to **You** under Subsection 1 will automatically terminate as of the date **You** return to PLF coverage, the coverage provided under this Plan will be reactivated and **You** will not receive a new **Limit of Coverage** or **Claims Expense Allowance** on **Your** return to coverage.

SECTION XIV — ASSIGNMENT

Any interest of any **Covered Party** under this Plan is not assignable. Any such assignment or attempted assignment without the express written consent of the PLF, voids any coverage under the Plan.

APPENDIX – LIST AND INDEX OF DEFINED TERMS

1. **Claim** means a demand for **Damages**, or written notice to a **Covered Party** of an intent to hold a **Covered Party** liable as a result of a **Covered Activity**, if such notice might reasonably be expected to result in an assertion of a right to **Damages**. (Section I A, p. 1)
2. **Claims Expense** has the meaning set forth in Section I B 3. (p. 2)
3. **Claims Expense Allowance** means the separate allowance for aggregate **Claims Expense** for all **Claims** as provided for in Section VII B. (p. 15)
4. **Coverage Period** means the coverage period shown in the Declarations under the heading, “Coverage Period.” (§1, p. 1)
5. **Covered Activity** has the meaning set forth in Section III A. (p. 4)
6. **Covered Party** means any person or **Law Entity** qualifying as such under Section II. (p. 3)
7. **Damages** means monetary compensation a **Covered Party** must pay for harm or loss and does not include: fines; penalties; punitive or exemplary damages; statutorily enhanced damages; rescission; injunctions; accountings; equitable relief; restitution; disgorgement; set-off of any fees, costs or consideration paid to or charged by a **Covered Party**; or any personal profit or advantage to a **Covered Party**. (Section I A, p. 1)
8. **Family Business** has the meaning set forth in Exclusion 11. (p. 12)
9. **Family Member(s)** has the meaning set forth in Exclusion 11. (p. 12)
10. **Law Entity** means a professional corporation, partnership, limited liability partnership, limited liability company or sole proprietorship that engages in the **Private Practice** of law in Oregon. (Section II B, p. 3)
11. **Legally Obligated** has the meaning set forth in Section I A. (p. 1)
12. **Limit of Coverage** has the meaning set forth under Section VII A. (p. 15)
13. **Non Attorney** employee includes employees who are not attorneys, as well as employees who have a law degree, but are not engaged in the practice of law in Oregon, or any other state. (Section III A, p. 4)
14. **Personally Identifiable Non-Public Information** has the meaning set forth in exclusion 20.(p. 14)
15. **Plan Year** means the period of January 1 through December 31 of the calendar year for which this Plan was issued. (§1, p. 1)
16. “PLF” means the Professional Liability Fund of the Oregon State Bar. (§1, p. 1)

17. **Private Practice** has the meaning set forth in Section II A. (p. 3)
18. **Principal Office** has the meaning set forth in Section II A. (p. 3)
19. **Professional Legal Services** has the meaning set forth under Section III B. (pp. 4 and 5)
20. **Related Claims** has the meaning set forth in Section V. (pp. 6 - 8)
21. **Special Capacity Relationship** has the meaning set forth in Section III C. (p. 5)
22. **Special Capacity Services** has the meaning set forth in Section III C. (p. 5)
23. **Suit** means a civil lawsuit. **Suit** also includes an arbitration or alternative dispute resolution proceeding only if the PLF expressly consents to it. (Section I B, p. 1)
24. **Third Party Corporate Information** has the meaning set forth in exclusion 20. (p. 14)
25. **You** and **Your** refer to the Named Party shown in the Declarations. (¶1, p. 1)

2017

PLF Claims Made Excess Plan

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OREGON STATE BAR PROFESSIONAL LIABILITY FUND CLAIMS MADE EXCESS PLAN

Effective January 1, 2017

INTRODUCTION

This Professional Liability Fund (“PLF”) Excess Plan is excess coverage over the PLF Primary Plan and is also assessable. Although the coverage provided under both the Primary and Excess Plans is similar, not all terms, conditions, definitions and exclusions are the same. Coverage under this Plan is more restrictive and differs in some respects. You should read both the Primary and Excess Plans, in their entirety, to understand your coverage.

When terms appear in bold, with the first letter capitalized, they have the defined meanings set forth, or referenced, in this Plan. Certain definitions and provisions of the PLF Primary Plan are incorporated in this Plan, by reference. A List and Index of Defined Terms is attached as Appendix A. For the purposes of illustrating the PLF’s intent as to certain provisions in this Plan, Appendix B contains related examples.

Plan Year means the period of January 1 through December 31 of the calendar year for which this Excess Plan was issued. **Coverage Period** means the coverage period shown in the Declarations under the heading “Coverage Period.”

Subject to the terms, conditions, definitions, exclusions and limitations set forth in this Excess Plan and the applicable **Excess Limit of Coverage**, as set forth in the Declarations and defined in Section VII, this Plan provides the following coverage:

SECTION I – COVERAGE AGREEMENT

A. Indemnity

The PLF will pay all sums in excess of the **Applicable Underlying Limit** and or applicable Deductible that a **Covered Party** under this Plan, becomes **Legally Obligated** to pay because of **Claims First Made** against a **Covered Party** during the **Coverage Period**, arising from a **Covered Activity**, to which this Plan applies.

Applicable Underlying Limit means the aggregate total of: (1) the amount of coverage afforded by the PLF Plans issued to all persons qualifying as **Covered Parties** under the terms of this Plan; plus (2) the amount of any other coverage available to any **Covered Party** with respect to the **Claim** for which coverage is sought.

Claim, Damages, and **Legally Obligated** have the meanings set forth in the PLF Primary Plan in effect during this **Plan Year**.

B. Defense

1. After the **Applicable Underlying Limit** has been exhausted and the applicable Deductible has been satisfied, the PLF will defend any **Suit** against a **Covered Party** seeking **Damages** to which this Plan applies until the **Excess Limit of Coverage** is exhausted. The PLF is not bound by any **Covered Party's** agreement to resolve a dispute through arbitration or any other alternative dispute proceeding, and has no duty to defend or indemnify regarding any dispute handled or resolved in this manner without its consent.
2. The PLF has the sole right to select and appoint defense counsel, to control the defense and investigation of a **Claim** and, in its discretion, to settle any **Claim** to which this Plan applies. The PLF has no duty to contribute to the settlement of a **Claim** based only on projected defense costs or potential liability arising from uncovered claims. Subject to its sole discretion, the PLF may also elect to take steps, or make expenditures, to investigate, prevent, mitigate, review or repair any **Claim** or matter that may create the potential for a **Claim**.
3. The PLF will pay all **Claims Expense** it incurs, and all such payments will reduce the **Excess Limit of Coverage**.
4. Notwithstanding Exclusions 2 and 4 of the PLF Primary Plan, incorporated in this Plan by reference, the PLF will defend **Claims** for which coverage is excluded under Exclusion 4, and **Claims** for malicious prosecution, abuse of process and wrongful initiation of civil proceedings, provided such **Claims** arise out of **Your Covered Activities** and are not otherwise excluded by other applicable exclusions in this Plan. The PLF, however, will not have any duty to indemnify regarding any matter it defends pursuant to this provision.

Suit and **Claims Expense** have the meanings set forth in the PLF Primary Plan in effect during this **Plan Year**.

C. Exhaustion of Limit

The PLF is not obligated to investigate, defend, pay or settle any **Claim** after the applicable **Excess Limit of Coverage** has been exhausted.

D. Coverage Territory

This Plan applies only to **Suits** brought in the United States, its territories or possessions, within the jurisdiction of any Indian tribe in the United States, or to any **Suit** brought in Canada. It does not apply to **Suits** in any other jurisdiction, or to any **Suit** to enforce a Judgment rendered in any other such jurisdiction.

E. Basic Terms of Coverage

This Plan applies to **Claims** for **Damages** against a **Covered Party** arising from a **Covered Activity**, subject to all definitions, terms, restrictions, limitations and exclusions applicable to this Plan, and the **Excess Limit of Coverage**, provided all the following terms and conditions of coverage are satisfied:

1. The **Claim** must be **First Made**, as determined by the rules set forth in Section VII, during the **Coverage Period**;

2. The **Covered Activity** on which the **Claim** is based must have been rendered on behalf of the **Firm**;
3. The **Covered Activity** on which the **Claim** is based must have occurred after the Retroactive Date listed in the Declarations, or listed in any endorsement to the Declarations;
4. The **Covered Activity** on which the **Claim** is based must have occurred:
 - a. During the **Coverage Period**; or
 - b. Before the **Coverage Period**, but only provided each of the following conditions are met:
 - (i) the **Firm** circulated its Application for Coverage among all attorneys listed in Section 10 of the Declarations as “Firm Attorneys,” and those listed in Section 14 of the Declarations as current “Non Oregon Attorneys”;
 - (ii) before the effective date of this Plan, no **Covered Party** had a basis to believe that the error, omission, negligent act or breach of duty was a breach of the standard of care, or may result in a **Claim**; and
 - (iii) there is no prior policy, policies or agreements to indemnify that provide coverage for such liability or **Claim**, regardless of whether the available limits of any such policy, policies or agreements to indemnify are subject to different limits, or otherwise differ from this Plan, and regardless of whether the limits of any such policy, policies or agreements to indemnify are sufficient to pay any liability or **Claim**.

Subsection 4 b (ii) will not apply as to any **Covered Party** who, before the effective date of this Excess Plan, did not have a basis to believe the error, omission, negligent act or breach of duty was a breach of the standard of care or may result in a **Claim**.

For the purposes of demonstrating the PLF's intent as to how this subsection 4 applies, illustrative examples are set forth in Appendix B of this Plan.

5. There must have been full and timely payment of all assessments relating to this Plan; and
6. There must have been compliance with the Duties of Covered Parties, as set forth in Section IX.

SECTION II - WHO IS A COVERED PARTY UNDER THIS EXCESS PLAN?

Only the following are **Covered Parties**:

A. The Firm

The **Firm** is a **Covered Party** under this Excess Plan but only with respect to liability arising out of the conduct of: an attorney(s) who is not an **Excluded Attorney** and qualifies as a **Covered Party** under Section II B; or a **Non Attorney** employee, subject to the terms and conditions of Section III.

Firm means any **Law Entity** designated in Section 1 or 11 of the Declarations.

Excluded Attorney means an attorney who is designated as such in the Declarations.

Law Entity and **Non Attorney** have the meanings set forth in the PLF Primary Plan in effect during this **Plan Year**.

B. Individual Covered Parties

Only the following individuals, not otherwise listed in the Declarations as **Excluded Attorneys**, are **Covered Parties** under this Excess Plan as to any **Claim** to which this Plan applies, and only with respect to **Claims** arising from **Covered Activities** rendered on behalf of the **Firm**, as attorneys in **Private Practice**:

1. Attorneys who are specifically designated in the Declarations as “Firm Attorney,” “Former Attorney” or “Non Oregon Attorney.”
2. A former partner, shareholder, member or attorney employee of the **Firm** or any attorney formerly in an “of counsel” relationship to the **Firm** who ceased to be affiliated with the **Firm** more than five years prior to the beginning of the **Coverage Period**, but only with respect to **Claims** arising out of a **Covered Activity** that took place while a PLF Primary Plan issued to that attorney was in effect.
3. An attorney who becomes affiliated with the **Firm** after the beginning of the **Coverage Period** and who has been issued a PLF Primary Plan is automatically a **Covered Party** - unless the attorney becomes affiliated with the **Firm** as a result of one of the changes required to be reported to the PLF and newly underwritten pursuant to Section IX D. In that event, the attorney is not covered under the Plan until and unless coverage for the affiliated attorney is underwritten and specifically accepted by the PLF. (*See, Section IXD*)
4. In the event of the death, adjudicated incapacity or bankruptcy of a **Covered Party**, the conservator, guardian, trustee in bankruptcy, or legal or personal representative of the **Covered Party**, when acting in such capacity, is a **Covered Party**.

Private Practice has the meaning set forth in the PLF Primary Plan in effect during this **Plan Year**.

SECTION III – WHAT IS A COVERED ACTIVITY?

For the purposes of this Excess Plan, a **Covered Activity** is an error, omission, negligent act or breach of duty: by a **Covered Party** in the course of providing or failing to provide **Professional Legal Services** or **Special Capacity Services**; or by a **Non Attorney** employee, for whose conduct a **Covered Party** is legally liable who assists in providing such services, provided:

1. The error, omission, negligent act, error, or breach of duty, by the **Covered Party**, on which the **Claim** is based, occurred after any applicable Retroactive Date, before such **Covered Party’s** applicable Separation Date, specified in the Declarations, and satisfies the conditions of Section I E 4;
2. The error, omission, negligent act, error, or breach of duty by the **Covered Party**, on which the **Claim** is based, constituted rendering **Professional Legal Services** or **Special Capacity Services** on behalf of the **Firm**, as an attorney in **Private Practice**; and

3. Any error, omission, negligent act or breach of duty by a **Non Attorney** employee must be directly related to a **Covered Party's** rendering of **Professional Legal Services** or **Special Capacity Services**, on behalf of the **Firm**, that meets the conditions of subsections 1 and 2 above.

Professional Legal Services and **Special Capacity Services** have the meanings set forth in the PLF Primary Plan in effect during this **Plan Year**.

SECTION IV – WHEN IS A CLAIM FIRST MADE?

A. Date of Claim

For the purposes of this Excess Plan, subject to the exception set forth in Section IV B, regarding **Excess-Related Claims**, a **Claim** is **First Made** on the earliest of the following dates:

1. The date a lawsuit is first filed, or an arbitration or ADR proceeding is first initiated against a **Covered Party**;
2. The date the PLF first becomes aware of a matter involving facts or circumstances that could reasonably result in a **Claim** against a **Covered Party**;
3. The date any **Covered Party** receives notice of a **Claim**;
4. The date the PLF receives notice of a **Claim** against a **Covered Party**; or
5. The date a **Covered Party** under this Plan first becomes aware that a claimant intends to make a **Claim**, but the claimant is delaying assertion of the **Claim**, or the **Covered Party** is delaying notice of such intent to make a **Claim**, for the purpose of obtaining coverage under a later Plan.

B. Excess-Related Claims

When a **Claim** is **Excess-Related** to an earlier **Claim** or **Claims** against any **Covered Party** or **Parties** under this Excess Plan, the **Claim** is **First Made** on the date the earliest such **Excess-Related Claim** was **First Made**.

SECTION V – EXCESS-RELATED CLAIMS

A. Definition of Excess-Related Claims

For the purposes of this Excess Plan, two or more **Claims** are **Excess-Related** when the **Claims** are based on or arise out of facts, practices, circumstances, situations, transactions, occurrences, **Covered Activities**, damages, liabilities, or the relationships of the people or entities involved (including clients, claimants, attorneys, and/or other advisors) that are logically or causally connected or linked or share a common bond or nexus; and such **Claims** have been asserted, or are asserted, against **Covered Parties** under this Excess Plan.

General examples of **Excess-Related Claims** include, but are not limited to the following:

1. **Claims** such as those based on vicarious liability, failure to supervise, or negligent referral;
2. Multiple **Claims** arising out of the same transaction or occurrence or series of transactions or occurrences;
3. **Claims** in which the claimants tie together different acts as part of an alleged overall scheme or operation;
4. **Claims** that arise from a method, pattern, or practice used or adopted by one or more **Covered Party** or **Law Entities** representing multiple clients in similar matters;
5. **Claims** in which successive or collective errors each cause or contribute to single or multiple clients' and/or claimants' harm, or cumulatively enhance their damages or losses; or
6. **Claims** alleged as part of a class action or purported class action.

Related Claims, as defined in the PLF Primary Plan, against other attorneys or firms, not **Covered Parties** under this Plan do not necessarily cause a **Claim** to which this Excess Plan applies to relate back to the same excess **Plan Year** applicable to **Related Claims** under the PLF Primary Plan. Prior knowledge of a **Covered Party** or **Parties** of the potential for a **Claim** before the inception date of this Plan however, may cause a **Claim** not to be covered under this Plan under the terms of Section I E 4.

For the purposes of demonstrating the PLF's intent as to what constitutes an Excess-Related Claim, illustrative examples are set forth in Appendix B of this Plan.

B. What Happens When Claims Are Excess-Related?

When **Claims** are **Excess-Related**, they are all considered as having been **First Made** on the date the earliest such **Claim** is **First Made**. This causes all such **Claims** to share the same maximum **Excess Limit of Coverage** that was in effect when the earliest such **Claim** was **First Made**.

SECTION VI – APPLICABLE EXCLUSIONS IN PLF PRIMARY PLAN

All Exclusions in the PLF Primary Plan, in effect during this **Plan Year**, except Exclusion 6 (Business Interests) apply equally to the coverage under this Excess Plan. These exclusions are incorporated by reference and have the same force and effect as if fully set forth in this Plan.

SECTION VII – EXCESS PLAN ADDITIONAL EXCLUSIONS

1. Business Interests. This Plan does not apply to any **Claim** relating to or arising out of any business enterprise:
 - a. In which any **Covered Party** is a general partner, managing member, or employee, or in which any **Covered Party** was a general partner, managing member, or employee at the time of the alleged acts, errors, or omissions on which the **Claim** is based;

- b. That is controlled, operated, or managed by any **Covered Party**, either individually or in a fiduciary capacity, including the ownership, maintenance, or use of any property in connection therewith, or was so controlled, operated, or managed by any **Covered Party** at the time of the alleged acts, errors, or omissions on which the **Claim** is based; or
 - c. In which any **Covered Party** either has an ownership interest, or had an ownership interest at the time of the alleged acts, errors, or omissions on which the **Claim** is based unless: (i) such interest is solely a passive investment; and (ii) the **Covered Party**, those controlled by the **Covered Party** and his or her spouse, parent, step-parent, child, sibling, any member of the **Covered Party's** household, and those with whom the **Covered Party** is regularly engaged in the practice of law collectively own, or previously owned, an interest in the business enterprise of less than ten percent.
2. **Excluded Attorney Exclusion.** This Plan does not apply to any **Claim** against any **Covered Party**:
- a. Arising from or relating to any act, error, or omission of any **Excluded Attorney** in any capacity or context, whether or not the **Covered Party** personally participated in any such act, error, or omission or is vicariously liable; or
 - b. Alleging liability for the failure of a **Covered Party** or any other person or entity to supervise, control, discover, prevent, or mitigate any activities of or harm caused by any **Excluded Attorney**.
3. **Excluded Firm Exclusion.** This Plan does not apply to any **Claim** made against a **Covered Party**:
- a. That arises from or is related to any act, error, or omission of: (i) an **Excluded Firm**, or (ii) a past or present partner, shareholder, associate, attorney, or employee (including any **Covered Party**) of an **Excluded Firm** while employed by, a partner or shareholder of, or in any way associated with an **Excluded Firm**, in any capacity or context, and whether or not the **Covered Party** personally participated in any such act, error, or omission or is vicariously liable therefore; or
 - b. Alleging liability for the failure of a **Covered Party** or any other person or entity to supervise, control, discover, prevent or mitigate any activities of, or harm caused by any **Excluded Firm** or any person described in Subsection (a)(ii) above.

Excluded Firm means a firm designated as such in the Declarations.

4. **Office Sharing Exclusion.** This Plan does not apply to any **Claim** alleging the vicarious liability of any **Covered Party** under the doctrine of apparent partnership, partnership by estoppel, or any similar theory, for the acts, errors, or omissions of any attorney, professional corporation, or other entity not listed in the Declarations with whom the **Firm** or attorney **Covered Parties** shared office space or office facilities at the time of any of the alleged acts, errors, or omissions.

SECTION VIII – EXCESS LIMIT OF COVERAGE AND DEDUCTIBLE

A. Excess Limit of Coverage

1. Regardless of the number of **Covered Parties** under this Excess Plan, the number of persons or organizations who sustain damage, or the number of **Claims** made, the PLF's maximum aggregate **Excess**

Limit of Coverage for indemnity and **Claims Expense** under this Plan will be limited to the amount shown as the **Excess Limit of Coverage** in the Declarations, less the Deductible listed in the Declarations, if applicable. The making of **Claims** against more than one **Covered Party** does not increase the PLF's **Excess Limit of Coverage**.

2. All **Excess-Related Claims** are considered **First Made** during the **Plan Year** when the first such **Excess-Related Claim** was **First Made**. The single **Excess Limit of Coverage** in effect when the first such **Excess-Related Claim** was **First Made** will apply to all such **Claims**.

B. Deductible

1. The Deductible for **Covered Parties** under this Excess Plan who are not also covered under the PLF Primary Plan is either the maximum limit of liability for indemnity and **Claims Expense** under any insurance policy covering the **Claim** or, if there is no such policy or the insurer is either insolvent, bankrupt, or in liquidation, the amount listed in Section 5 of the Declarations.

2. The **Firm** is obligated to pay any Deductible not covered by insurance. The PLF's obligation to pay any indemnity or **Claims Expense** as a result of a **Claim** for which a Deductible applies is only in excess of the applicable amount of the Deductible. The Deductible applies separately to each **Claim**, except for **Excess-Related Claims**. The Deductible amount must be paid by the **Firm** as **Claims Expenses** are incurred or a payment of indemnity is made. At the PLF's option, it may pay such **Claims Expenses** or indemnity, and the **Firm** will be obligated to reimburse the PLF for the Deductible within ten (10) days after written demand from the PLF.

SECTION IX – DUTIES OF COVERED PARTIES

A. Timely Notice of Claims, Suits or Circumstances

1. The **Firm** must, as a condition precedent to the right of protection afforded any **Covered Party** by this coverage, give the PLF, at the address shown in the Declarations, written notice of any **Claim** that is reasonably likely to involve any coverage under this Excess Plan.

2. In the event a **Suit** is brought against any **Covered Party**, that is reasonably likely to involve any coverage under this Excess Plan, the **Firm** must immediately notify and deliver to the PLF, at the address shown in the Declarations, every demand, notice, summons, or other process received by the **Covered Party** or the **Covered Party's** representatives.

3. If during the **Coverage Period**, any **Covered Party** becomes aware of facts or circumstances that reasonably could be expected to be the basis of a **Claim** for which coverage may be provided under this Excess Plan, the **Firm** must give written notice to the PLF as soon as practicable during the **Coverage Period** of: the specific act, error, or omission; the injury or damage that has resulted or may result; and the circumstances by which the **Covered Party** first became aware of such act, error, or omission.

4. If the PLF opens a suspense or claim file involving a **Claim** or potential **Claim** that otherwise would require notice from the **Covered Party** under Subsections 1 through 3 above, the **Covered Party's** obligations under those subsections will be considered satisfied for that **Claim** or potential **Claim**.

B. Other Duties of Cooperation

As a condition of coverage under this Excess Plan, every **Covered Party** must satisfy the duties of cooperation as set forth in Section VIII B through E of the PLF Primary Plan. These conditions are incorporated in this Plan by reference, and have the same force and effect as if fully set forth in this Plan.

C. Duty of Full Disclosure in Application

A copy of the Application the **Firm** submitted to the PLF in seeking coverage under this Excess Plan is attached to and shall be deemed a part of this Excess Plan. All statements and descriptions in the Application are deemed to be representations to the PLF upon which it has relied in agreeing to provide the **Firm** with coverage under this Excess Plan. Any misrepresentations, omissions, concealments of fact, or incorrect statements in the Application will negate coverage and prevent recovery under this Excess Plan if the misrepresentations, omissions, concealments of fact, or incorrect statements:

- (1) are contained in the Application;
- (2) are material and have been relied upon by the PLF; and
- (3) are either: (a) fraudulent; or (b) material either to the acceptance of the risk or to the hazard assumed by the PLF.

Without limiting the foregoing, any misrepresentation, omission, concealment of fact, or incorrect statement that causes the PLF to charge a lower premium than would otherwise have been charged is material to the acceptance of the risk or to the hazard assumed by the PLF.

D. Duty to Notify the PLF of Certain Changes in Risk

The **Firm** must notify the PLF if, after the start of the **Coverage Period**, any of the following events or circumstances occur: (1) the number of Firm Attorneys increases by more than 100 percent; (2) there is a firm merger or split; (3) an attorney joins or leaves a branch office of the **Firm** outside Oregon; (4) a new branch office is established outside Oregon; (5) 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**; or (6) the **Firm** hires an attorney who is not eligible to participate in the PLF’s Primary Coverage Plan.

Upon the occurrence of any of the foregoing events or circumstances, the **Firm’s** coverage will again be subject to underwriting, and a prorated adjustment may be made to the **Firm’s** excess assessment.

SECTION X – ACTIONS BETWEEN THE PLF AND COVERED PARTIES OR OTHERS

The provisions of Section IX of the PLF Primary Plan, applicable to this **Plan Year**, are incorporated into this Plan by reference and have the same force and effect as if fully set forth in this Plan.

SECTION XI - CANCELLATION AND TERMINATION

A. Cancellation by the Firm or the PLF

The **Firm** may cancel this Excess Plan, before the expiration of the **Coverage Period**, by mailing or delivering prior written notice to the PLF stating the date when the cancellation will become effective.

The PLF may cancel this Excess Plan, before the expiration of the **Coverage Period**, for any of the following reasons:

- (1) Failure by the **Firm** to pay an assessment when due;
- (2) Material misrepresentation by any **Covered Party**;
- (3) Substantial breaches of contractual duties, conditions, or warranties by any **Covered Party**; or
- (4) Revocation, suspension, or surrender of any **Covered Party's** license or right to practice law.

The PLF's cancellation of this Plan, for any of the foregoing reasons, is made by mailing or delivering written notice of cancellation to the **Firm**, stating the effective date of cancellation, to occur within no less than 10 days after the date notice of cancellation is mailed or delivered.

The last and final day of the **Coverage Period** will be the date preceding the effective date of cancellation stated in the cancellation notice sent by the **Firm** or the PLF. Coverage will expire at 11:59 pm on the date preceding the specified date of cancellation. If the PLF cancels this Plan, assessments shall be computed and refunded to the **Firm** pro rata. Assessment adjustment may be made either at the time cancellation is effected or as soon as practicable thereafter. If the **Firm** cancels this Plan, the PLF will retain the assessment on a pro rata basis.

B. Termination

This Excess Plan terminates on the date and time shown as the end of the **Coverage Period** in the Declarations, unless canceled by the PLF or by the **Firm** in accordance with the provisions of this Plan before such date and time. There is no automatic renewal.

SECTION XII – SUPPLEMENTAL ASSESSMENTS

This Excess Plan is assessable. Each **Plan Year** is accounted for and assessable using reasonable accounting standards and methods of assessment. If the PLF determines in its discretion that a supplemental assessment is necessary to pay for **Claims, Claims Expense**, or other expenses arising from or incurred during either this **Plan Year** or a previous **Plan Year**, the **Firm** agrees to pay its supplemental assessment to the PLF within thirty (30) days of request. The **Firm** further agrees that liability for such supplemental assessments shall be joint and several among the **Firm** and the partners, shareholders, and professional corporations listed as **Firm Attorneys** in the Declarations.

The PLF is authorized to make additional assessments for this **Plan Year** until all its liability for this **Plan Year** is terminated, whether or not any **Covered Party** maintains coverage under an Excess Plan issued by the PLF at the time assessments are imposed.

SECTION XIII – RELATION OF THE PLF'S COVERAGE TO INSURANCE COVERAGE OR OTHER COVERAGE

If any **Covered Party** has valid and collectible insurance coverage or other obligation to indemnify, including but not limited to self-insured retentions, deductibles, or self-insurance, that also applies to any loss or **Claim** covered by this Excess Plan, the PLF will not be liable under this Excess Plan until the limits of the **Covered Party's** insurance or other obligation to indemnify, including any applicable deductible, have been exhausted, unless such insurance or other obligation to indemnify is written only as specific excess coverage over the **Limit of Coverage** of this Excess Plan.

SECTION XIV – WAIVER AND ESTOPPEL

The provisions of Section XII of the PLF Primary Plan, applicable to this **Plan Year** are incorporated by reference and have the same force and effect as if fully set forth in this Plan.

SECTION XV – EXTENDED REPORTING COVERAGE

After 24 months of continuous excess coverage with the PLF, upon termination or cancellation of this Excess Plan by either the **Firm** or the PLF, the **Firm** may be eligible to purchase an extended reporting endorsement. This endorsement extends the period within which a **Claim** may be **First Made** under this Excess Plan, but does not otherwise change the terms of this Plan. Eligibility to purchase an extended reporting endorsement, the amount of the additional assessment for such coverage and the period during which **Claims** may be **First Made** under the endorsement are determined by the PLF's underwriting department based on the **Firm's** claims experience and other underwriting factors.

SECTION XVI – ASSIGNMENT

Any interest of any **Covered Party** under this Plan is not assignable. Any such assignment or attempted assignment, without the express written consent of the PLF, voids any coverage under this Plan.

APPENDIX A - LIST AND INDEX OF DEFINED TERMS

1. **Applicable Underlying Limit** means the aggregate total of: (1) the amount of coverage afforded by the PLF Plans issued to all persons qualifying as **Covered Parties** under the terms of this Plan; plus (2) the amount of any other coverage available to any **Covered Party** with respect to the **Claim** for which coverage is sought. (Excess Plan, p. 1)
2. **Claim** means a demand for **Damages**, or written notice to a **Covered Party** of an intent to hold a **Covered Party** liable as a result of a **Covered Activity**, if such notice might reasonably be expected to result in an assertion of a right to **Damages**. (Primary Plan, p.1)
3. **Claims Expense** has the meaning set forth in Section I B 3 of the Primary Plan. (p. 2)
4. **Coverage Period** means the coverage period shown in the Declarations under the heading “Coverage Period.” (Excess Plan, p. 1)
5. **Covered Activity** has the meaning set forth in Section III of this Plan. (Excess Plan, p. 4)
6. **Covered Party** means any person or **Law Entity** qualifying as such under Section II of this Plan. (Excess Plan, pp. 3-4)
7. **Damages** means monetary compensation a **Covered Party** must pay for harm or loss and does not include: fines; penalties; punitive or exemplary damages; statutorily enhanced damages; rescission; injunctions; accountings; equitable relief; restitution; disgorgement; set-off of any fees, costs or consideration paid to or charged by a **Covered Party**; or any personal profit or advantage to a **Covered Party**. (Primary Plan, p.1)
8. **Excess Limit of Coverage** has the meaning set forth in Section VIII of this Plan. (Excess Plan, p. 7)
9. **Excess-Related** has the meaning set forth in Section V of this Plan. (Excess Plan, pp. 5-6)
10. **Excluded Attorney** means an attorney who is designated as such in the Declarations. (Excess Plan, p. 3)
11. **Excluded Firm** means a firm designated as such in the Declarations. (Excess Plan, p. 7)
12. **Firm** means any **Law Entity** designated in Section 1 or 11 of the Declarations. (Excess Plan, p. 3)
13. **First Made** has the meaning set forth in Section IV of this Plan. (Excess Plan, p. 5)
14. **Law Entity** means a professional corporation, partnership, limited liability partnership, limited liability company or sole proprietorship that engages in the **Private Practice** of law in Oregon. (Primary Plan, p. 3)
15. **Legally Obligated** has the meaning set forth in Section I A of the Primary Plan. (p. 1)

16. **Non Attorney** employee includes employees who are not attorneys, as well as employees who have a law degree, but are not engaged in the practice of law in Oregon, or any other state. (Primary Plan, p. 4)
17. **Plan Year** means the period of January 1 through December 31 of the calendar year for this Excess Plan was issued. (Excess Plan, p. 1)
18. “PLF” means the Professional Liability Fund of the Oregon State Bar. (Excess Plan p. 1)
19. **Private Practice** has the meaning set forth in Section II A of the Primary Plan. (p. 3)
20. **Professional Legal Services** has the meaning set forth under Section III B of the Primary Plan. (pp. 4 and 5)
21. **Special Capacity Relationship** has the meaning set forth in Section III C of the Primary Plan. (p. 5)
22. **Special Capacity Services** has the meaning set forth in Section III C of the Primary Plan. (p. 5)
23. **Suit** means a civil lawsuit. **Suit** also includes an arbitration or alternative dispute resolution proceeding, but only if the PLF expressly consents to it. (Primary Plan, p. 1)

APPENDIX B – EXCESS PLAN ILLUSTRATIVE EXAMPLES

For the purpose of assisting a **Covered Party** or Court in interpreting the PLF's intent as to the meaning of certain Excess Plan provisions, the PLF provides the following illustrative examples, not intended to be exhaustive regarding Section I E 4 and Section V-**Excess-Related Claims**:

1. Section I E 4:

a. Law firm A maintains excess malpractice coverage with Carrier X in Year 1. The firm knows of a potential malpractice claim in September of that year. Nevertheless, it does not report the matter to Carrier X in Year 1. Law firm A obtains excess coverage from the PLF in Year 2, and the potential claim is actually asserted in April of Year 2. Whether or not the PLF has imposed a Retroactive Date for the firm's Year 2 coverage, there is no coverage for the claim under the firm's Year 2 PLF Excess Plan. This is true whether or not Carrier X provides coverage for the claim.

b. Attorneys A, B, and C practice in a partnership. In Year 1, Attorney C knows of a potential claim arising from his activities, but does not tell the PLF or Attorneys A or B. Attorney A completes a Year 2 PLF excess program application on behalf of the firm, but does not reveal the potential claim because it is unknown to her. Attorney A does not circulate the application to attorneys B and C before submitting it to the PLF. The PLF issues an Excess Plan to the firm for Year 2, and the potential claim known to Attorney C in Year 1 is actually made against Attorneys A, B, and C and the firm in June of Year 2. Because the potential claim was known to a Covered Party (i.e., Attorney C) prior to the beginning of the **Coverage Period**, and because the firm did not circulate its application among the Firm Attorneys and Current Non-Oregon Attorneys before submitting it to the PLF, the claim is not within the Coverage Grant. There is no coverage under the Year 2 Excess Plan for Attorneys A, B, or C or for the firm even though Attorneys A and B did not know of the potential claim in Year 1.

c. Same facts as prior example, except that Attorney A did circulate the application to Attorneys B and C before submitting it to the PLF. Section I E 4 will not be applied to deny coverage for the claim as to Attorneys A and B and the Firm. However, there will be no coverage for Attorney C because the claim falls outside the coverage grant under the terms of Section I E 4, and because Attorney C made a material misrepresentation to the PLF in the application.

2. Section V – Excess Related Claims:

a. Related Under the PLF Primary Plan vs. Excess-Related: Firm G, and one of its members, Attorney A, are sued by a claimant in 2014. The **Claim** is covered under Attorney A's 2014 PLF Primary Plan. Claimant amends the Complaint in 2015, and for the first time, asserts the same **Claim** also against Firm H and one of its members, Attorney B, also covered under the PLF Primary Plan. Under the terms of the PLF Primary Plan, the firms and attorneys all share a single primary Limit of Coverage under the 2014 PLF Primary Plan. This is because the **Claims** are **Related**, for primary purposes, and the earliest **Related Claim** was made in 2014.

Firm H purchased PLF Excess Coverage in 2015, but was previously covered for excess liability, in 2014, by Carrier X. Neither Firm H, nor Attorney B, were aware of the potential claim in 2014, and therefore did not give notice of a potential claim against Attorney B or Firm H to the PLF or Carrier X until 2015. Carrier X denies coverage for the claim because Firm H did not give notice of the claim to Carrier X in 2014 and Firm H did not purchase tail coverage from Carrier X. Under this scenario, any PLF excess coverage

would be under the 2015 PLF Excess Plan because no **Claim** was made against the **Covered Parties** until 2015. (If, however, Firm G and Attorney B did have a basis to believe that the act, error, omission or breach of duty to which the **Claim** relates was a breach of the standard of care, or may result in a **Claim** before the PLF Excess Plan was issued, there would not be coverage for the Claim under the 2015 PLF Excess Plan. Also if they had previously given notice to Carrier X, or purchased applicable tail coverage, there would not be coverage under the PLF 2015 Excess Plan, because other insurance would apply.

b. Secondary or Dependent Liability – Firm A has Excess coverage with the PLF between 2013 and 2015. Attorney X, while an associate in the Firm A, commits malpractice in 2012 and then leaves to work with another firm in 2014. He is listed as a Former Attorney in the Declarations of the PLF Excess Plan. **Claims** are alleged only against Attorney A in 2014, and in 2015, a lawsuit is filed also alleging **Claims** against various attorneys who are partners in Firm A, and the Firm itself, based on vicarious liability for Attorney X's malpractice. The **Claims** are **Excess-Related** and, therefore, were **First Made** in 2014.

c. Same Transaction, Occurrence or Series of Transactions or Occurrences - Attorney A, a partner in a Firm, with PLF excess coverage between 2007 and the present, writes a tax opinion in 2008 for an investment offering. Attorneys B and C, with a different law firm, and then assemble the offering circular in 2007. In 2010, Investors 1 and 2 bring **Claims** against all 3 attorneys relating to the offering. In 2011, Investor 3 also brings a **Claim** against all 3 attorneys. Under the PLF Primary Plan, **Claims** against all attorneys and firms, by all 3 investors, are **Related** and all attorneys and firms share one Primary Limit of Coverage, applicable to all 3 claims. For the purposes of Attorney A's PLF Excess Plan, however, the **Claims** against B and C are not **Excess-Related**. Therefore, the **Claims** against Attorney A are **First Made** in 2010 and Attorney A has a separate 2010 Excess Limit that applies to all 3 Investor Claims.

d. Actual Pattern or Practice - Attorneys A, B, and C, who are all members of a Firm, covered under the PLF Excess Plan for the past 12 years, represent a large number of asbestos clients over several years, using a firm-wide formula for evaluating large numbers of cases with minimum effort. They are sued by various clients in 2014 for improper evaluation and by other clients making similar allegations in 2015. Plaintiffs do not allege a common scheme or plan, but because the Firm in fact operated a firm-wide formula for handling the cases, all claims are Excess-Related, First Made in 2014, and subject to the Limit of the 2014 Excess Plan.

e. Successive or Collective Errors - Attorney C, an associate at a Firm covered under the PLF Excess Plan during all relevant periods, represents a group of clients at trial and commits certain errors. Attorney D, a partner at the Firm, undertakes the appeal, but fails to file the notice of appeal on time. Attorney E is hired by clients to sue Attorneys C and D for malpractice, but misses the statute of limitations. Clients sue all three attorneys. Under the PLF Primary Plan, all three claims are Related and share a single primary limit. Only the Claims against Attorneys C and D, however, are Excess-Related.

f. Class Action or Purported Class Action - Attorneys A, B, and C, all at a Firm covered under the Excess Plan during the relevant periods, represent a large banking institution. They are sued by the bank's customers in a class action lawsuit for their part in advising the bank on allegedly improper banking practices. All the class action claims are **Excess-Related** and subject to the excess limit that was in place at the time the class action **Claim** was **First Made**.

CURRENT PRIMARY PLAN	REVISED PRIMARY PLAN
<p>1. Fraudulent Claim Exclusion. This Plan does not apply to a COVERED PARTY for any CLAIM in which that COVERED PARTY participates in a fraudulent or collusive CLAIM.</p>	<p>1. <u>Fraudulent Claims</u>. This Plan does not apply to any Claim in which any Covered Party, or in which anyone for whose conduct a Covered Party is legally liable, has participated in any fraud or collusion with respect to the Claim.</p>
<p>2. Wrongful Conduct Exclusion. This Plan does not apply to the following CLAIMS, regardless of whether any actual or alleged harm or damages were intended by YOU:</p> <p>(a) any CLAIM against YOU arising out of or in any way connected with YOUR actual or alleged criminal act or conduct;</p> <p>(b) any CLAIM against YOU based on YOUR actual or alleged dishonest, knowingly wrongful, fraudulent or malicious act or conduct on the part of any COVERED PARTY;</p> <p>(c) any CLAIM against YOU based on YOUR intentional violation of the Oregon Rules of Professional Conduct (ORPC) or any other applicable code of professional conduct; or</p> <p>(d) This Plan does not apply to any CLAIM based on or arising out of YOUR non-payment of a valid and enforceable lien if actual notice of such lien was provided to YOU, or to anyone employed in YOUR office, prior to the payment of the funds to a person or entity other than the rightful lien-holder.</p>	<p>2. <u>Wrongful Conduct</u>. This Plan does not apply to any Claim based on or arising out of:</p> <p>a. any criminal act or conduct;</p> <p>b. any knowingly wrongful, dishonest, fraudulent or malicious act or conduct, any intentional tort; or</p> <p>c. any knowing or intentional violation of the Oregon Rules of Professional Conduct (ORPC) or other applicable code of ethics.</p> <p>Exclusion 2 applies regardless of whether any actual or alleged harm or damages were intended. However, it does not apply to any Covered Party who did not commit or participate in any acts or conduct set forth in subsections (a) through (c), had no knowledge of any such acts or conduct at the time they occurred and did not acquiesce or remain passive after becoming aware of such acts or conduct.</p>

CURRENT PRIMARY PLAN	REVISED PRIMARY PLAN
<p>3. Disciplinary Proceedings Exclusion. This Plan does not apply to any CLAIM based on or arising out of a proceeding brought against YOU by the Oregon State Bar or any similar entity.</p>	<p>3. <u>Disciplinary Proceedings</u>. This Plan does not apply to any investigation or disciplinary proceeding by the Oregon State Bar or any similar entity.</p>
<p>4. Punitive Damages and Cost Award Exclusions. This Plan does not apply to:</p> <p>a. The part of any CLAIM seeking punitive, exemplary or statutorily enhanced damages; or</p> <p>b. Any CLAIM for or arising out of the imposition of attorney fees, costs, fines, penalties, or other sanctions imposed under any federal or state statute, administrative rule, court rule, or case law intended to penalize bad faith conduct, false or unwarranted certification in a pleading, or the assertion of frivolous or bad faith claims or defenses. The PLF will defend the COVERED PARTY against such a CLAIM, but any liability for indemnity arising from such CLAIM will be excluded.</p>	<p>4. <u>Punitive Damages, Sanctions or Certain Fee Awards</u>. This Plan does not apply to:</p> <p>a. The part of any Claim seeking punitive, exemplary or statutorily enhanced damages against any Covered Party, or against anyone for whose conduct a Covered Party is legally liable;</p> <p>b. Any Claim for or arising out of the imposition of attorney fees, costs, fines, penalties or remedies imposed as sanctions under any federal or state statute, administrative rule, court rule, or case law.</p> <p>However, with respect to any sanction awarded only against the client, this subsection b does not apply if: the Covered Party establishes the sanction was caused by mere negligence on the part of the Covered Party and on the part of anyone for whose conduct a Covered Party is legally liable; and the sanction was not based, in whole or in part, on a finding of bad faith, malicious conduct, dishonest conduct or misrepresentation on the part of the Covered Party, or on the part of anyone for whose conduct a Covered Party is legally liable; or</p> <p>c. Any attorney fees or costs owed as a result of any statute making any attorney liable or responsible for fees or costs owed by a client.</p>

CURRENT PRIMARY PLAN	REVISED PRIMARY PLAN
<p>6. Business Ownership Interest Exclusion. This Excess Plan does not apply to any CLAIM based on or arising out of any business enterprise:</p> <p>a. In which YOU have an ownership interest, or in which YOU had an ownership interest at the time of the alleged acts, errors, or omissions upon which the CLAIM is based;</p> <p>b. In which YOU are a general partner, managing member, or employee, or in which YOU were a general partner, managing member, or employee at the time of the alleged acts, errors or omissions on which the CLAIM is based; or</p> <p>c. That is controlled, operated, or managed by YOU, either individually or in a fiduciary capacity, including the ownership, maintenance, or use of any property in connection therewith, or was so controlled, operated, or managed by YOU at the time of the alleged acts, errors, or omissions upon which the CLAIM is based.</p> <p>Ownership interest, for the purpose of this exclusion, will not include any ownership interest now or previously held by YOU solely as a passive investment, as long as those YOU control, YOUR, spouse, parent, step-parent, child, step-child, siblings, or any member of YOUR household and those with whom YOU are regularly engaged in the practice of law, collectively now own or previously owned an interest of 10 percent or less in the business enterprise.</p>	<p>6. <u>Business Interests.</u> This Plan does not apply to any Claim relating to or arising out of any business enterprise:</p> <p>a. In which You are a general partner, managing member, or employee, or in which You were a general partner, managing member, or employee at the time of the alleged acts, errors, or omissions on which the Claim is based;</p> <p>b. That is controlled, operated, or managed by You, either individually or in a fiduciary capacity, including the ownership, maintenance, or use of any property in connection therewith, or was so controlled, operated, or managed by You at the time of the alleged acts, errors, or omissions on which the Claim is based; or</p> <p>c. In which You either have an ownership interest, or had an ownership interest at the time of the alleged acts, errors, or omissions on which the Claim is based unless: (i) such interest is solely a passive investment; and (ii) You, those controlled by the You, Your spouse, parent, step-parent, child, sibling, any member of Your household, and those with whom the You are regularly engaged in the practice of law collectively own, or previously owned, an interest in the business enterprise of less than ten percent.</p>

CURRENT PRIMARY PLAN	REVISED PRIMARY PLAN
<p>7. Partner and Employee Exclusion. This Plan does not apply to any CLAIM made by:</p> <p>a. YOUR present, former, or prospective partner, employer, or employee; or</p> <p>b. A present, former, or prospective officer, director, or employee of a professional corporation in which YOU are or were a shareholder,</p> <p>unless such CLAIM arises out of YOUR conduct in an attorney-client capacity for one of the parties listed in Subsections a or b.</p>	<p>7. <u>Partner and Employee Exclusion.</u> This Plan does not apply to any Claim made by:</p> <p>a. A present, former, or prospective law partner, employer, or employee of a Covered Party, or of anyone for whose conduct a Covered Party is legally liable; or</p> <p>b. A present, former, or prospective officer, director, or employee of a professional corporation in which a Covered Party, or in which any attorney for whose conduct a Covered Party is legally liable, is or was a shareholder.</p> <p>This exclusion does not apply if the Claim arises solely out of conduct in an attorney-client capacity for one of the parties listed in Subsections a and b.</p>
<p>8. ORPC 1.8 Exclusion. This Plan does not apply to any CLAIM based on or arising out of any business transaction subject to ORPC 1.8(a) or its equivalent in which YOU participate with a client unless any required written disclosure has been properly executed in compliance with that rule and has been fully executed by YOU and YOUR client prior to the business transaction giving rise to the CLAIM.</p>	<p>8. <u>Business Transaction with Client.</u> This Plan does not apply to any Claim based upon or arising out of any business transaction in which any Covered Party, or in which anyone for whose conduct a Covered Party is legally liable, participated with a client unless any written disclosure required by ORPC 1.8(a), or its equivalent, was properly executed prior to the transaction.</p>

CURRENT PRIMARY PLAN	REVISED PRIMARY PLAN
<p>9. Investment Advice Exclusion. This Excess Plan does not apply to any CLAIM based on or arising out of any act, error, or omission committed by YOU (or by someone for whose conduct YOU are legally liable) while in the course of rendering INVESTMENT ADVICE if the INVESTMENT ADVICE is in fact either the sole cause or a contributing cause of any resulting damage. However, if all INVESTMENT ADVICE rendered by YOU constitutes a COVERED ACTIVITY described in Section III.3, this exclusion will not apply unless part or all of such INVESTMENT ADVICE is described in Subsections d, e, f, or g of the definition of INVESTMENT ADVICE in Section I.10.</p> <p>("INVESTMENT ADVICE" refers to any of the following activities:</p> <ul style="list-style-type: none"> a. Advising any person, firm, corporation, or other entity respecting the value of a particular investment, or recommending investing in, purchasing, or selling a particular investment; b. Managing any investment; c. Buying or selling any investment for another; d. (1) Acting as a broker for a borrower or lender, or (2) Advising or failing to advise any person in connection with the borrowing of any funds or property by any COVERED PARTY for the COVERED PARTY or for another; e. Issuing or promulgating any economic analysis of any investment, or warranting or guaranteeing the value, nature, collectability, or characteristics of any investment; f. Giving advice of any nature when the compensation for such advice is in whole or in part contingent or dependent on the success or failure of a particular investment; or g. Inducing someone to make a particular investment.) 	<p>9. <u>Investment Advice.</u> This Plan does not apply to any of the following Claims or excluded activities, whether or not they are the sole cause, or a contributing cause, of any resulting loss or damage:</p> <ul style="list-style-type: none"> a. Any Claim for investment losses, or for any damages arising from or relating to such losses, as a result of any Covered Party, or any person for whose conduct any Covered Party is legally liable: advising any person or entity respecting the value of a particular investment; recommending investing in, purchasing, or selling a particular investment; providing any economic analysis of any investment; inducing any person or entity to make any particular investment; making any warranty or guarantee regarding any investment; or making a financial decision or investment choice on behalf of any other person or entity regarding the purchase or selection of any particular investment. <p>This subsection (a) does not apply, however, to Claims made by a purchaser of securities for losses that arise only from Professional Legal Services provided to a seller of securities, provided no Covered Party, nor any attorney for whose conduct a Covered Party is legally liable, provided any advice or services, or made any representations, falling within this exclusion, directly to such purchaser.</p> <ul style="list-style-type: none"> b. Any Claim arising from any Covered Party, or any person for whose conduct any Covered Party is legally liable: advising or failing to advise any person in connection with the borrowing of any funds or property by any Covered Party for the Covered Party or for another; acting as a broker for a borrower or a lender; or giving advice of any nature when the compensation for such advice is, in whole or in part, contingent or dependent on the success or failure of a particular investment. c. Managing an investment, or buying or selling an investment for another, except to the limited extent such activities fall within the common and ordinary scope of Special Capacity Services.

CURRENT PRIMARY PLAN	REVISED PRIMARY PLAN
<p>10. Law Practice Business Activities or Benefits Exclusion. This Excess Plan does not apply to any CLAIM:</p> <p>a. For any amounts paid, incurred or charged by any COVERED PARTY, as fees, costs, or disbursements, (or by any LAW ENTITY with which the COVERED PARTY, THE FIRM or any other LAW ENTITY was associated at the time the fees, costs or expenses were paid, incurred or charged), including but not limited to fees, costs and disbursements alleged to be excessive, not earned, or negligently incurred, whether claimed as restitution of specific funds, forfeiture, financial loss, set-off or otherwise.</p> <p>b. Arising from or relating to the negotiation, securing, or collection of fees, costs, or disbursements owed or claimed to be owed to a COVERED PARTY, THE FIRM, or any LAW ENTITY with which the COVERED PARTY is now associated, or was associated at the time of the conduct giving rise to the CLAIM; or</p> <p>c. For damages or the recovery of funds or property that have or will directly or indirectly benefit any COVERED PARTY or THE FIRM.</p> <p>In the event the PLF defends any claim or suit that includes any claim within the scope of this exclusion, it will have the right to settle or attempt to dismiss any other claim(s) not falling within this exclusion, and to withdraw from the defense following the settlement or dismissal of any such claim(s).</p> <p>This exclusion does not apply to any CLAIM based on an act, error or omission by any COVERED PARTY regarding the client's right or ability to recover fees, costs, or expenses from an opposing party, pursuant to statute or contract.</p>	<p>10. <u>Law Practice Business Activities or Benefits Exclusion.</u> This Plan does not apply to any Claim:</p> <p>a. For any amounts paid, incurred or charged by any Covered Party as fees, costs or disbursements, (or by any Law Entity with which any Covered Party was associated at the time the fees, costs or expenses were paid, incurred or charged), including but not limited to fees, costs and disbursements alleged to be excessive, not earned, or negligently incurred, whether claimed as restitution of specific funds, forfeiture, financial loss, set-off or otherwise.</p> <p>b. Arising from or relating to the negotiation, securing, or collection of fees, costs, or disbursements owed or claimed to be owed to any Covered Party, or any Law Entity with which any Covered Party is now associated, or was associated at the time of the conduct giving rise to the Claim; or</p> <p>c. For damages or the recovery of funds or property that have or will directly or indirectly benefit any Covered Party.</p> <p>In the event the PLF defends any Claim or Suit that includes any claim within the scope of this exclusion, the Covered Party is required to consent to and cooperate with the PLF's attempt to settle or dismiss any other claim(s) not falling within this exclusion. The PLF will have the right to withdraw from the defense following the settlement or dismissal of any such claim(s).</p> <p>This exclusion does not apply to the extent a Claim is based on an act, error or omission that eliminates, reduces or prejudices a client's right or ability to recover fees, costs or expenses from an opposing party.</p>

CURRENT PRIMARY PLAN	REVISED PRIMARY PLAN
<p>11. Family Member and Ownership Exclusion. This Plan does not apply to: (a) any CLAIM based on or arising out of legal services performed by YOU on behalf of YOUR spouse, parent, step-parent, child, step-child, sibling, or any member of YOUR household, or on behalf of a business entity in which any of them, individually or collectively, have a controlling interest; or (b) any CLAIM, against YOU based on or arising out of another lawyer having provided legal services or representation to his or her own spouse, parent, step-parent, child, step-child, sibling, or any member of his or her household, or on behalf of a business entity in which any of them, individually or collectively, have a controlling interest</p>	<p>11. <u>Family Member and Ownership Exclusion.</u> This Plan does not apply to any Claim based on or arising from any Covered Party, or anyone for whose conduct a Covered Party is legally liable, having provided or failed to provide:</p> <ul style="list-style-type: none"> a. Professional Legal Services to any person or entity that is his or her own Family Member or Family Business at the time any such services are provided or fail to be provided; or b. Special Capacity Services to a trust or estate: (i) if the Covered Party, or person for whose conduct a Covered Party is legally liable, is a beneficiary of the trust or estate; or (ii) if at the time any such Special Capacity Services are provided, or fail to be provided, any Family Member or Family Business of that Covered Party, or of the person for whose conduct a Covered Party is legally liable, is a beneficiary of the trust or estate. <p>Family Member(s) means spouse, parent, adoptive parent, parent-in-law, step-parent, grandparent, child, adopted child, step-child, grandchild, son or daughter-in-law, sibling, adopted sibling, step-sibling, half sibling, brother or sister-in-law or any member of the Covered Party's household and, if the household member is a spousal equivalent of the Covered Party, the Family Members of any such person.</p> <p>Family Business means a business entity in which the Covered Party, or person for whose conduct a Covered Party is legally liable, and/or the Family Members, of such Covered Party or person for whose conduct a Covered Party is legally liable, collectively or individually, have a controlling interest.</p> <p>This exclusion does not apply to Professional Legal Services or Special Capacity Services an attorney provides to another attorney's Family Member or Family Business.</p>

CURRENT PRIMARY PLAN	REVISED PRIMARY PLAN
<p>13. Notary Exclusion. This Plan does not apply to any CLAIM arising out of any witnessing of a signature or any acknowledgment, verification upon oath or affirmation, or other notarial act without the physical appearance before such witness or notary public, unless such CLAIM arises from the acts of YOUR employee and YOU have no actual knowledge of such act.</p>	<p>13. <u>Notary Exclusion.</u> This Plan does not apply to any Claim arising out of any witnessing of a signature or any acknowledgment, verification upon oath or affirmation, or other notarial act without the physical appearance before such witness or notary public.</p>
<p>16. General Tortious Conduct Exclusions. This Plan does not apply to any CLAIM against any COVERED PARTY for:</p> <ul style="list-style-type: none"> a. Bodily injury, sickness, disease, or death of any person; b. Injury to, loss of, loss of use of, or destruction of any real, personal, or intangible property; or c. Mental anguish or emotional distress in connection with any CLAIM described under Subsections a or b. <p>This exclusion does not apply to any CLAIM made under ORS 419B.010 if the CLAIM arose from an otherwise COVERED ACTIVITY.</p>	<p>15. <u>General Tortious Conduct.</u> This Plan does not apply to any Claim for:</p> <ul style="list-style-type: none"> a. Bodily injury, sickness, disease, mental anguish, emotional distress or death of any person, except to the limited extent any such harm or injury is directly caused by an error, omission, negligent act or breach of duty in providing or failing to provide Professional Legal Services or Special Capacity Services; or b. Injury to, loss of, loss of use of, or destruction of any real, personal, tangible or intangible property of any kind, except to the limited extent the loss or destruction of any such property materially and adversely affects a Covered Party's performance of Professional Legal Services.
<p>18. Patent Exclusion. This Plan does not apply to any CLAIM based upon or arising out of professional services rendered or any act, error or omission committed in relation to the prosecution of a patent if YOU were not registered with the U.S. Patent and Trademark Office at the time the CLAIM arose.</p>	<p>17. <u>Patent Exclusion.</u> This Plan does not apply to any Claim based upon or arising out of any Covered Party, or anyone for whose conduct a Covered Party is legally liable, having prosecuted a patent without being registered with the U.S. Patent and Trademark Office at the time any such services were provided.</p>

CURRENT PRIMARY PLAN	REVISED PRIMARY PLAN
<p>20. Contractual Obligation Exclusion.</p> <p>This Plan does not apply to any CLAIM:</p> <p>a. Based upon or arising out of any bond or any surety, guaranty, warranty, joint control, or similar agreement, or any assumed obligation to indemnify another, whether signed or otherwise agreed to by YOU or someone for whose conduct YOU are legally liable, unless the CLAIM arises out of a COVERED ACTIVITY described in SECTION III.3 and the person against whom the CLAIM is made signs the bond or agreement solely in that capacity;</p> <p>b. Any costs connected to ORS 20.160 or similar statute or rule;</p> <p>c. For liability based on an agreement or representation, if the Covered Party would not have been liable in the absence of the agreement or representation; or</p> <p>d. Claims in contract based upon an alleged promise to obtain a certain outcome or result.</p>	<p>18. <u>Contractual Obligation Exclusion.</u> This Plan does not apply to any Claim:</p> <p>a. Based upon or arising out of any bond or any surety, guaranty, warranty, joint control, or similar agreement, or any assumed obligation to indemnify another, whether signed or otherwise agreed to by a Covered Party or by someone for whose conduct any Covered Party is legally liable, unless the Claim arises out of Special Capacity Services and the Covered Party, or person for whose conduct a Covered Party is legally liable, signed the bond or agreement solely in a representative capacity arising from the Special Capacity Relationship;</p> <p>b. For liability based on an agreement or representation, if the Covered Party would not have been liable in the absence of the agreement or representation; or</p> <p>c. To the extent the Claim is based on an actual or alleged promise to obtain a certain outcome or result if the Covered Party would not have been liable in the absence of such a promise.</p>

CURRENT PRIMARY PLAN	REVISED PRIMARY PLAN
<p>22. Confidential or Private Data Exclusion. This Plan does not apply to any CLAIM arising out of or related to the loss, compromise or breach of or access to confidential or private information or data. If the PLF agrees to defend a SUIT that includes a CLAIM that falls within this exclusion, the PLF will not pay any CLAIMS EXPENSE relating to such CLAIM.</p> <p><i>COMMENTS</i></p> <p><i>There is a growing body of law directed at protecting confidential or private information from disclosure. The protected information or data may involve personal information such as credit card information, social security numbers, driver's licenses, or financial or medical information. They may also involve business-related information such as trade secrets or intellectual property. Examples of loss, compromise, breach or access include but are not limited to electronically stored information or data being inadvertently disclosed or released by a COVERED PARTY; being compromised by the theft, loss or misplacement of a computer containing the data; being stolen or intentionally damaged; or being improperly accessed by a COVERED PARTY or someone acting on his or her behalf. However, such information or data need not be in electronic format, and a data breach caused through, for example, the improper safeguarding or disposal of paper records would also fall within this exclusion.</i></p> <p><i>There may be many different costs incurred to respond to a data breach, including but not limited to notification costs, credit monitoring costs, forensic investigations, computer reprogramming, call center support and/or public relations. The PLF will not pay for any such costs, even if the PLF is otherwise providing a defense.</i></p>	<p>20. <u>Confidential or Private Information/Computer Systems.</u> This Plan does not apply to any Claim arising from:</p> <p>a. Any loss of, access or potential access by third parties, disclosure to third parties, or publication of Personally Identifiable Non-Public Information or Third Party Corporate Information, whether or not such information was in electronic form or in paper form;</p> <p>b. Any violation of a federal, state or foreign statute or regulation requiring the protection and/or security information referenced in subsection a, including but not limited to failure to report the loss of such information;</p> <p>c. Any loss of, loss of use of, damage to, corruption of, inability to access, inability to manipulate, compromise of, or breach of any electronically stored information or data; the receipt or transmission of malware or malicious code or other harm resulting from transmission by any Covered Party's computer system to the computer system of a third party; or actual or attempted extortion by anyone who has gained or claims to have gained access to or control of any Covered Party's electronic devices, electronic data systems, electronically stored data, or access to or control of any confidential or private information or data, whether or not it is stored electronically.</p> <p>Personally Identifiable Non-Public information means any personal information that is not public and that may not be disclosed without proper authorization and/or notice pursuant to any federal, state or foreign law or regulation, 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. This includes, but is not limited to certain medical or health care information, driver's license or state identification information, social security numbers, credit information or financial account information.</p>

CURRENT PRIMARY PLAN	REVISED PRIMARY PLAN
	<p>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 which is not available to the general public.</p> <p>This exclusion 20, however, does not apply to a Claim to the limited extent it arises solely out of a Covered Party's immediate inability to provide Professional Legal Services or Special Capacity Services caused by the sudden and unexpected loss of documents or information necessary to such services provided: (a) such loss materially and adversely affected the Covered Party's ability to provide such services; and (b) following the discovery of any such loss of documents or information, the Covered Party at the Covered Party's own expense, took any and all reasonable and necessary steps as were possible to restore, recover, replace or obtain such documents or information before the time the services had to be provided.</p> <p>If the PLF agrees to defend a Suit that includes a Claim falling within this exclusion, and/or a Claim falling within the exception set forth in the preceding paragraph, the PLF will not pay any costs such as those relating to privacy notification, credit monitoring, forensic investigation, computer reprogramming, computer security experts, computer services of any kind, call center support costs, public relations costs or any similar costs.</p>

CURRENT EXCESS PLAN	REVISED EXCESS PLAN
<p>1. Fraudulent Claim Exclusion. This Excess Plan does not apply to any COVERED PARTY for any CLAIM in which that COVERED PARTY participates in a fraudulent or collusive CLAIM.</p>	<p>1. <u>Fraudulent Claims.</u> This Plan does not apply to any Claim in which any Covered Party, or in which anyone for whose conduct a Covered Party is legally liable, has participated in any fraud or collusion with respect to the Claim.</p>
<p>2. Wrongful Conduct Exclusion. This Excess Plan does not apply to the following CLAIMS, regardless of whether any actual or alleged harm or damages were intended:</p> <p>(a) Any CLAIM against any COVERED PARTY arising out of or connected with any actual or alleged criminal act or conduct on the part of any COVERED PARTY;</p> <p>(b) any CLAIM against any COVERED PARTY based on any actual or alleged dishonest, knowingly wrongful, fraudulent or malicious act or conduct on the part of any COVERED PARTY;</p> <p>(c) any CLAIM against any COVERED PARTY based on any COVERED PARTY’S intentional violation of the Oregon Rules of Professional Conduct (ORPC) or any other applicable code of professional conduct; or</p> <p>(d) any CLAIM based on or arising out of the non-payment of a valid and enforceable lien if actual notice of such lien was provided to any COVERED PARTY, or anyone employed by the FIRM, prior to the payment of the funds to any person or entity other than the rightful lien-holder.</p> <p>Subsections (a), (b) and (c) of this exclusion do not apply to any COVERED PARTY who: (i) did not personally commit, direct or participate in any of the acts or conduct excluded by these provisions; <u>and</u> (ii) either had no knowledge of any such acts or conduct, or who after becoming aware of any such acts or conduct did not acquiesce or remain passive regarding any such acts or conduct, and upon becoming aware of any such acts or conduct, immediately notified the PLF.</p>	<p>2. <u>Wrongful Conduct.</u> This Plan does not apply to any Claim based on or arising out of:</p> <p>a. any criminal act or conduct;</p> <p>b. any knowingly wrongful, dishonest, fraudulent or malicious act or conduct, any intentional tort; or</p> <p>c. any knowing or intentional violation of the Oregon Rules of Professional Conduct (ORPC) or other applicable code of ethics.</p> <p>Exclusion 2 applies regardless of whether any actual or alleged harm or damages were intended. However, it does not apply to any Covered Party who did not commit or participate in any acts or conduct set forth in subsections (a) through (c), had no knowledge of any such acts or conduct at the time they occurred and did not acquiesce or remain passive after becoming aware of such acts or conduct.</p>

CURRENT EXCESS PLAN	REVISED EXCESS PLAN
<p>3. Disciplinary Proceedings Exclusion. This Excess Plan does not apply to any CLAIM based upon or arising out of a proceeding brought the Oregon State Bar or any similar entity.</p>	<p>3. <u>Disciplinary Proceedings.</u> This Plan does not apply to any investigation or disciplinary proceeding by the Oregon State Bar or any similar entity.</p>
<p>4. Punitive Damages and Cost Award Exclusions. This Excess Plan does not apply to:</p> <p>a. The part of any CLAIM seeking punitive, exemplary or statutorily enhanced damages; or</p> <p>b. Any CLAIM for or arising out of the imposition of attorney fees, costs, fines, penalties, or other sanctions imposed under any federal or state statute, administrative rule, court rule, or case law intended to penalize bad faith conduct, false or unwarranted certification in a pleading, or the assertion of frivolous or bad faith claims or defenses. The PLF will defend the COVERED PARTY against such a CLAIM, but any liability for indemnity arising from such CLAIM will be excluded.</p>	<p>4. <u>Punitive Damages, Sanctions or Certain Fee Awards.</u> This Plan does not apply to:</p> <p>a. The part of any Claim seeking punitive, exemplary or statutorily enhanced damages against any Covered Party, or against anyone for whose conduct a Covered Party is legally liable;</p> <p>b. Any Claim for or arising out of the imposition of attorney fees, costs, fines, penalties or remedies imposed as sanctions under any federal or state statute, administrative rule, court rule, or case law.</p> <p>However, with respect to any sanction awarded only against the client, this subsection b does not apply if: the Covered Party establishes the sanction was caused by mere negligence on the part of the Covered Party and on the part of anyone for whose conduct a Covered Party is legally liable; and the sanction was not based, in whole or in part, on a finding of bad faith, malicious conduct, dishonest conduct or misrepresentation on the part of the Covered Party, or on the part of anyone for whose conduct a Covered Party is legally liable; or</p> <p>c. Any attorney fees or costs owed as a result of any statute making any attorney liable or responsible for fees or costs owed by a client.</p>

CURRENT EXCESS PLAN	REVISED EXCESS PLAN
<p>6. Business Ownership Interest Exclusion. This Excess Plan does not apply to any CLAIM based on or arising out of any business enterprise:</p> <ul style="list-style-type: none"> a. In which any COVERED PARTY has an ownership interest, or had an ownership interest at the time of the alleged acts, errors, or omissions upon which the CLAIM is based; b. In which any COVERED PARTY is a general partner, managing member, or employee, or was a general partner, managing member, or employee at the time of the alleged acts, errors or omissions on which the CLAIM is based; or c. That is controlled, operated, or managed by any COVERED PARTY, either individually or in a fiduciary capacity, including the ownership, maintenance, or use of any property in connection therewith, or was so controlled, operated, or managed at the time of the alleged acts, errors, or omissions upon which the CLAIM is based. <p>Ownership interest, for the purpose of this exclusion, will not include any ownership interest now or previously held solely as a passive investment, as long as all COVERED PARTIES, those they control, spouses, parents, step-parents, children, step-children, siblings, or any member of their households, collectively now own or previously owned an interest of 10 percent or less in the business enterprise.</p>	<p>Excess Plan - Section VII</p> <ul style="list-style-type: none"> 1. <u>Business Interests.</u> This Plan does not apply to any Claim relating to or arising out of any business enterprise: <ul style="list-style-type: none"> a. In which any Covered Party is a general partner, managing member, or employee, or in which any Covered Party was a general partner, managing member, or employee at the time of the alleged acts, errors, or omissions on which the Claim is based; b. That is controlled, operated, or managed by any Covered Party, either individually or in a fiduciary capacity, including the ownership, maintenance, or use of any property in connection therewith, or was so controlled, operated, or managed by any Covered Party at the time of the alleged acts, errors, or omissions on which the Claim is based; or c. In which any Covered Party either has an ownership interest, or had an ownership interest at the time of the alleged acts, errors, or omissions on which the Claim is based unless: (i) such interest is solely a passive investment; and (ii) the Covered Party, those controlled by the Covered Party and his or her spouse, parent, step-parent, child, sibling, any member of the Covered Party's household, and those with whom the Covered Party is regularly engaged in the practice of law collectively own, or previously owned, an interest in the business enterprise of less than ten percent.

CURRENT EXCESS PLAN	REVISED EXCESS PLAN
<p>7. Partner and Employee Exclusion. This Excess Plan does not apply to any CLAIM made by:</p> <p>a. THE FIRM'S present, former, or prospective partner, employer, or employee; or</p> <p>b. A present, former, or prospective officer, director, or employee of a professional corporation in which any COVERED PARTY is or was a shareholder,</p> <p>unless such CLAIM arises out of conduct in an attorney-client capacity for one of the parties listed in Subsections a or b.</p>	<p>7. <u>Partner and Employee Exclusion.</u> This Plan does not apply to any Claim made by:</p> <p>a. A present, former, or prospective law partner, employer, or employee of a Covered Party, or of anyone for whose conduct a Covered Party is legally liable; or</p> <p>b. A present, former, or prospective officer, director, or employee of a professional corporation in which a Covered Party, or in which any attorney for whose conduct a Covered Party is legally liable, is or was a shareholder.</p> <p>This exclusion does not apply if the Claim arises solely out of conduct in an attorney-client capacity for one of the parties listed in Subsections a and b.</p>
<p>8. ORPC 1.8 Exclusion. This Excess Plan does not apply to any CLAIM based upon or arising out of any business transaction subject to ORPC 1.8(a) or its equivalent in which any COVERED PARTY participated with a client unless any required written disclosure has been properly executed in compliance with that rule and has been properly executed by any COVERED PARTY and his or her client prior to the business transaction giving rise to the CLAIM.</p>	<p>8. <u>Business Transaction with Client.</u> This Plan does not apply to any Claim based upon or arising out of any business transaction in which any Covered Party, or in which anyone for whose conduct a Covered Party is legally liable, participated with a client unless any written disclosure required by ORPC 1.8(a), or its equivalent, was properly executed prior to the transaction.</p>

CURRENT EXCESS PLAN	REVISED EXCESS PLAN
<p>9. Investment Advice Exclusion. This Excess Plan does not apply to any CLAIM based upon or arising out of any act, error, or omission in the course of providing INVESTMENT ADVICE if the INVESTMENT ADVICE is in fact either the sole cause or a contributing cause of any resulting damage. However, if all of the INVESTMENT ADVICE constitutes a COVERED ACTIVITY described in Section III.3, this exclusion will not apply unless part or all of such INVESTMENT ADVICE is described in Subsections d, e, f, or g of the definition of INVESTMENT ADVICE in Section I.10 of the PLF CLAIMS MADE PLAN.</p> <p>("INVESTMENT ADVICE" refers to any of the following activities:</p> <ul style="list-style-type: none"> a. Advising any person, firm, corporation, or other entity respecting the value of a particular investment, or recommending investing in, purchasing, or selling a particular investment; b. Managing any investment; c. Buying or selling any investment for another; d. (1) Acting as a broker for a borrower or lender, or (2) Advising or failing to advise any person in connection with the borrowing of any funds or property by any COVERED PARTY for the COVERED PARTY or for another; e. Issuing or promulgating any economic analysis of any investment, or warranting or guaranteeing the value, nature, collectability, or characteristics of any investment; f. Giving advice of any nature when the compensation for such advice is in whole or in part contingent or dependent on the success or failure of a particular investment; or g. Inducing someone to make a particular investment.) 	<p>9. <u>Investment Advice.</u> This Plan does not apply to any of the following Claims or excluded activities, whether or not they are the sole cause, or a contributing cause, of any resulting loss or damage:</p> <ul style="list-style-type: none"> a. Any Claim for investment losses, or for any damages arising from or relating to such losses, as a result of any Covered Party, or any person for whose conduct any Covered Party is legally liable: advising any person or entity respecting the value of a particular investment; recommending investing in, purchasing, or selling a particular investment; providing any economic analysis of any investment; inducing any person or entity to make any particular investment; making any warranty or guarantee regarding any investment; or making a financial decision or investment choice on behalf of any other person or entity regarding the purchase or selection of any particular investment. <p>This subsection (a) does not apply, however, to Claims made by a purchaser of securities for losses that arise only from Professional Legal Services provided to a seller of securities, provided no Covered Party, nor any attorney for whose conduct a Covered Party is legally liable, provided any advice or services, or made any representations, falling within this exclusion, directly to such purchaser.</p> <ul style="list-style-type: none"> b. Any Claim arising from any Covered Party, or any person for whose conduct any Covered Party is legally liable: advising or failing to advise any person in connection with the borrowing of any funds or property by any Covered Party for the Covered Party or for another; acting as a broker for a borrower or a lender; or giving advice of any nature when the compensation for such advice is, in whole or in part, contingent or dependent on the success or failure of a particular investment. c. Managing an investment, or buying or selling an investment for another, except to the limited extent such activities fall within the common and ordinary scope of Special Capacity Services.

CURRENT EXCESS PLAN	REVISED EXCESS PLAN
<p>10. Law Practice Business Activities or Benefits Exclusion. This Excess Plan does not apply to any CLAIM:</p> <p>a. For any amounts paid, incurred or charged by any COVERED PARTY, as fees, costs, or disbursements, (or by any LAW ENTITY with which the COVERED PARTY, THE FIRM or any other LAW ENTITY was associated at the time the fees, costs or expenses were paid, incurred or charged), including but not limited to fees, costs and disbursements alleged to be excessive, not earned, or negligently incurred, whether claimed as restitution of specific funds, forfeiture, financial loss, set-off or otherwise.</p> <p>b. Arising from or relating to the negotiation, securing, or collection of fees, costs, or disbursements owed or claimed to be owed to a COVERED PARTY, THE FIRM, or any LAW ENTITY with which the COVERED PARTY is now associated, or was associated at the time of the conduct giving rise to the CLAIM; or</p> <p>c. For damages or the recovery of funds or property that have or will directly or indirectly benefit any COVERED PARTY or THE FIRM.</p> <p>In the event the PLF defends any claim or suit that includes any claim within the scope of this exclusion, it will have the right to settle or attempt to dismiss any other claim(s) not falling within this exclusion, and to withdraw from the defense following the settlement or dismissal of any such claim(s).</p> <p>This exclusion does not apply to any CLAIM based on an act, error or omission by any COVERED PARTY regarding the client's right or ability to recover fees, costs, or expenses from an opposing party, pursuant to statute or contract.</p>	<p>10. <u>Law Practice Business Activities or Benefits Exclusion.</u> This Plan does not apply to any Claim:</p> <p>a. For any amounts paid, incurred or charged by any Covered Party as fees, costs or disbursements, (or by any Law Entity with which any Covered Party was associated at the time the fees, costs or expenses were paid, incurred or charged), including but not limited to fees, costs and disbursements alleged to be excessive, not earned, or negligently incurred, whether claimed as restitution of specific funds, forfeiture, financial loss, set-off or otherwise.</p> <p>b. Arising from or relating to the negotiation, securing, or collection of fees, costs, or disbursements owed or claimed to be owed to any Covered Party, or any Law Entity with which any Covered Party is now associated, or was associated at the time of the conduct giving rise to the Claim; or</p> <p>c. For damages or the recovery of funds or property that have or will directly or indirectly benefit any Covered Party.</p> <p>In the event the PLF defends any Claim or Suit that includes any claim within the scope of this exclusion, the Covered Party is required to consent to and cooperate with the PLF's attempt to settle or dismiss any other claim(s) not falling within this exclusion. The PLF will have the right to withdraw from the defense following the settlement or dismissal of any such claim(s).</p> <p>This exclusion does not apply to the extent a Claim is based on an act, error or omission that eliminates, reduces or prejudices a client's right or ability to recover fees, costs or expenses from an opposing party.</p>

CURRENT EXCESS PLAN	REVISED EXCESS PLAN
<p>11. Family Member and Ownership</p> <p>Exclusion. This Excess Plan does not apply to any CLAIM based upon or arising out of an attorney COVERED PARTY’S legal services performed on behalf of the attorney COVERED PARTY’S spouse, parent, step-parent, child, step-child, sibling, or any member of his or her household, or on behalf of a business entity in which any of them, individually or collectively, have a controlling interest, based upon or arising out of the acts, errors or omissions of that COVERED PARTY.</p>	<p>11. <u>Family Member and Ownership Exclusion.</u> This Plan does not apply to any Claim based on or arising from any Covered Party, or anyone for whose conduct a Covered Party is legally liable, having provided or failed to provide:</p> <p>a. Professional Legal Services to any person or entity that is his or her own Family Member or Family Business at the time any such services are provided or fail to be provided; or</p> <p>b. Special Capacity Services to a trust or estate: (i) if the Covered Party, or person for whose conduct a Covered Party is legally liable, is a beneficiary of the trust or estate; or (ii) if at the time any such Special Capacity Services are provided, or fail to be provided, any Family Member or Family Business of that Covered Party, or of the person for whose conduct a Covered Party is legally liable, is a beneficiary of the trust or estate.</p> <p>Family Member(s) means spouse, parent, adoptive parent, parent-in-law, step-parent, grandparent, child, adopted child, step-child, grandchild, son or daughter in-law, sibling, adopted sibling, step-sibling, half sibling, brother or sister-in-law or any member of the Covered Party’s household and, if the household member is a spousal equivalent of the Covered Party, the Family Members of any such person.</p> <p>Family Business means a business entity in which the Covered Party, or person for whose conduct a Covered Party is legally liable, and/or the Family Members, of such Covered Party or person for whose conduct a Covered Party is legally liable, collectively or individually, have a controlling interest.</p> <p>This exclusion does not apply to Professional Legal Services or Special Capacity Services an attorney provides to another attorney's Family Member or Family Business.</p>
<p>13. Notary Exclusion. This Excess Plan does not apply to any CLAIM arising out of any witnessing of a signature or any acknowledgment, verification upon oath or affirmation, or other notarial act without the physical appearance before such witness or notary public, unless such CLAIM arises from the acts of THE FIRM’S employee and no COVERED PARTY has actual knowledge of such act.</p>	<p>13. <u>Notary Exclusion.</u> This Plan does not apply to any Claim arising out of any witnessing of a signature or any acknowledgment, verification upon oath or affirmation, or other notarial act without the physical appearance before such witness or notary public.</p>

CURRENT EXCESS PLAN	REVISED EXCESS PLAN
<p>16. General Tortious Conduct Exclusions. This Excess Plan does not apply to any CLAIM against any COVERED PARTY for:</p> <ul style="list-style-type: none"> a. Bodily injury, sickness, disease, or death of any person; b. Injury to, loss of, loss of use of, or destruction of any real, personal, or intangible property; or c. Mental anguish or emotional distress in connection with any CLAIM described under Subsections a or b. <p>This exclusion does not apply to any CLAIM made under ORS 419B.010 if the CLAIM arose from an otherwise COVERED ACTIVITY.</p>	<p>15. <u>General Tortious Conduct.</u> This Plan does not apply to any Claim for:</p> <ul style="list-style-type: none"> a. Bodily injury, sickness, disease, mental anguish, emotional distress or death of any person, except to the limited extent any such harm or injury is directly caused by an error, omission, negligent act or breach of duty in providing or failing to provide Professional Legal Services or Special Capacity Services; or b. Injury to, loss of, loss of use of, or destruction of any real, personal, tangible or intangible property of any kind, except to the limited extent the loss or destruction of any such property materially and adversely affects a Covered Party's performance of Professional Legal Services.
<p>18. Patent Exclusion. This Excess Plan does not apply to any CLAIM based upon or arising out of professional services performed or any act, error or omission committed in relation to the prosecution of a patent if the COVERED PARTY who performed the services was not registered with the U.S. Patent and Trademark Office at the time the CLAIM arose.</p>	<p>17. <u>Patent Exclusion.</u> This Plan does not apply to any Claim based upon or arising out of any Covered Party, or anyone for whose conduct a Covered Party is legally liable, having prosecuted a patent without being registered with the U.S. Patent and Trademark Office at the time any such services were provided.</p>

CURRENT EXCESS PLAN	REVISED EXCESS PLAN
<p>20. Contractual Obligation Exclusion.</p> <p>This Plan does not apply to any CLAIM:</p> <p>a. Based upon or arising out of any bond or any surety, guaranty, warranty, joint control, or similar agreement, or any assumed obligation to indemnify another, whether signed or otherwise agreed to by a COVERED PARTY or someone for whose conduct any COVERED PARTY is legally liable, unless the CLAIM arises out of a COVERED ACTIVITY described in SECTION III.3 and the person against whom the CLAIM is made signs the bond or agreement solely in that capacity;</p> <p>b. Any costs connected to ORS 20.160 or similar statute or rule;</p> <p>c. For liability based on an agreement or representation, if the Covered Party would not have been liable in the absence of the agreement or representation; or</p> <p>d. Claims in contract based upon an alleged promise to obtain a certain outcome or result.</p>	<p>18. <u>Contractual Obligation Exclusion.</u> This Plan does not apply to any Claim:</p> <p>a. Based upon or arising out of any bond or any surety, guaranty, warranty, joint control, or similar agreement, or any assumed obligation to indemnify another, whether signed or otherwise agreed to by a Covered Party or by someone for whose conduct any Covered Party is legally liable, unless the Claim arises out of Special Capacity Services and the Covered Party, or person for whose conduct a Covered Party is legally liable, signed the bond or agreement solely in a representative capacity arising from the Special Capacity Relationship;</p> <p>b. For liability based on an agreement or representation, if the Covered Party would not have been liable in the absence of the agreement or representation; or</p> <p>c. To the extent the Claim is based on an actual or alleged promise to obtain a certain outcome or result if the Covered Party would not have been liable in the absence of such a promise.</p>

CURRENT EXCESS PLAN	REVISED EXCESS PLAN
<p>22. Confidential or Private Data Exclusion. This Plan does not apply to any CLAIM arising out of or related to the loss, compromise or breach of or access to confidential or private information or data. If the PLF agrees to defend a SUTT that includes a CLAIM that falls within this exclusion, the PLF will not pay any CLAIMS EXPENSE relating to such CLAIM.</p> <p><i>COMMENTS</i></p> <p><i>There is a growing body of law directed at protecting confidential or private information from disclosure. The protected information or data may involve personal information such as credit card information, social security numbers, driver’s licenses, or financial or medical information. They may also involve business-related information such as trade secrets or intellectual property. Examples of loss, compromise, breach or access include but are not limited to electronically stored information or data being inadvertently disclosed or released by a COVERED PARTY; being compromised by the theft, loss or misplacement of a computer containing the data; being stolen or intentionally damaged; or being improperly accessed by a COVERED PARTY or someone acting on his or her behalf. However, such information or data need not be in electronic format, and a data breach caused through, for example, the improper safeguarding or disposal of paper records would also fall within this exclusion.</i></p> <p><i>There may be many different costs incurred to respond to a data breach, including but not limited to notification costs, credit monitoring costs, forensic investigations, computer reprogramming, call center support and/or public relations. The PLF will not pay for any such costs, even if the PLF is otherwise providing a defense.</i></p>	<p>20. <u>Confidential or Private Information/Computer Systems.</u> This Plan does not apply to any Claim arising from:</p> <p>a. Any loss of, access or potential access by third parties, disclosure to third parties, or publication of Personally Identifiable Non-Public Information or Third Party Corporate Information, whether or not such information was in electronic form or in paper form;</p> <p>b. Any violation of a federal, state or foreign statute or regulation requiring the protection and/or security information referenced in subsection a, including but not limited to failure to report the loss of such information;</p> <p>c. Any loss of, loss of use of, damage to, corruption of, inability to access, inability to manipulate, compromise of, or breach of any electronically stored information or data; the receipt or transmission of malware or malicious code or other harm resulting from transmission by any Covered Party’s computer system to the computer system of a third party; or actual or attempted extortion by anyone who has gained or claims to have gained access to or control of any Covered Party’s electronic devices, electronic data systems, electronically stored data, or access to or control of any confidential or private information or data, whether or not it is stored electronically.</p> <p>Personally Identifiable Non-Public information means any personal information that is not public and that may not be disclosed without proper authorization and/or notice pursuant to any federal, state or foreign law or regulation, 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. This includes, but is not limited to certain medical or health care information, driver’s license or state identification information, social security numbers, credit information or financial account information.</p>

CURRENT EXCESS PLAN	REVISED EXCESS PLAN
	<p>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 which is not available to the general public.</p> <p>This exclusion 20, however, does not apply to a Claim to the limited extent it arises solely out of a Covered Party's immediate inability to provide Professional Legal Services or Special Capacity Services caused by the sudden and unexpected loss of documents or information necessary to such services provided: (a) such loss materially and adversely affected the Covered Party's ability to provide such services; and (b) following the discovery of any such loss of documents or information, the Covered Party at the Covered Party's own expense, took any and all reasonable and necessary steps as were possible to restore, recover, replace or obtain such documents or information before the time the services had to be provided.</p> <p>If the PLF agrees to defend a Suit that includes a Claim falling within this exclusion, and/or a Claim falling within the exception set forth in the preceding paragraph, the PLF will not pay any costs such as those relating to privacy notification, credit monitoring, forensic investigation, computer reprogramming, computer security experts, computer services of any kind, call center support costs, public relations costs or any similar costs.</p>

**Oregon State Bar
Professional Liability Fund
Financial Statements
6/30/2016**

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7	Combined Investment Schedule

**Oregon State Bar
Professional Liability Fund
Combined Primary and Excess Programs
Statement of Net Position
6/30/2016**

ASSETS

	<u>THIS YEAR</u>	<u>LAST YEAR</u>
Cash	\$2,767,230.95	\$3,374,536.69
Investments at Fair Value	52,725,145.02	50,855,314.47
Assessment Installment Receivable	4,821,847.00	4,804,121.75
Due from Reinsurers	288,135.54	548,664.02
Other Current Assets	139,473.85	138,826.15
Net Fixed Assets	754,631.24	835,748.81
Claim Receivables	14,301.18	69,922.49
Other Long Term Assets	<u>6,300.00</u>	<u>6,900.00</u>
TOTAL ASSETS	<u>\$61,517,064.78</u>	<u>\$60,634,034.38</u>

LIABILITIES AND FUND POSITION

	<u>THIS YEAR</u>	<u>LAST YEAR</u>
Liabilities:		
Accounts Payable and Other Current Liabilities	\$50,697.11	\$78,963.32
Due to Reinsurers	\$1,043,533.23	\$701,180.99
Liability for Compensated Absences	397,427.82	354,702.17
Liability for Indemnity	13,300,000.00	14,300,000.00
Liability for Claim Expense	15,100,000.01	14,700,110.00
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)	2,400,000.00	2,500,000.00
Excess Ceding Commission Allocated for Rest of Year	390,645.63	380,951.26
Primary Assessment Allocated for Rest of Year	<u>12,267,277.00</u>	<u>12,293,143.33</u>
Total Liabilities	<u>\$49,649,580.80</u>	<u>\$49,509,051.07</u>
Change in Net Position:		
Retained Earnings (Deficit) Beginning of the Year	\$10,027,170.73	\$10,928,972.39
Year to Date Net Income (Loss)	<u>1,840,313.25</u>	<u>196,010.92</u>
Net Position	<u>\$11,867,483.98</u>	<u>\$11,124,983.31</u>
TOTAL LIABILITIES AND FUND POSITION	<u>\$61,517,064.78</u>	<u>\$60,634,034.38</u>

**Oregon State Bar
Professional Liability Fund
Primary Program
Statement of Operating Expense
6 Months Ended 6/30/2016**

EXPENSE:	CURRENT MONTH	YEAR TO DATE ACTUAL	YEAR TO DATE BUDGET	VARIANCE	YEAR TO DATE LAST YEAR	ANNUAL BUDGET
Salaries	\$354,876.32	\$2,057,891.58	\$2,304,048.00	\$246,156.42	\$1,950,377.68	\$4,608,093.00
Benefits and Payroll Taxes	131,951.56	774,895.74	827,384.00	52,488.26	751,797.24	1,647,119.00
Investment Services	10,950.75	21,744.00	20,000.00	(1,744.00)	19,103.00	40,000.00
Legal Services	5,699.00	19,293.95	4,998.00	(14,295.95)	17,811.67	10,000.00
Financial Audit Services	0.00	17,000.00	23,000.00	6,000.00	22,800.00	23,000.00
Actuarial Services	0.00	8,395.00	17,150.00	8,755.00	14,010.00	34,300.00
Information Services	1,132.00	11,714.51	37,999.98	26,285.47	28,136.85	76,000.00
Document Scanning Services	0.00	1,646.72	32,502.00	30,855.28	1,595.81	65,000.00
Other Professional Services	7,053.51	40,165.56	75,795.54	35,629.98	81,023.18	151,592.00
Staff Travel	3,584.47	8,701.57	14,748.00	6,046.43	7,993.25	29,500.00
Board Travel	7,864.97	12,614.10	31,000.02	18,385.92	19,675.40	62,000.00
NABRICO	0.00	250.00	0.00	(250.00)	677.75	13,750.00
Training	11,999.36	25,002.35	19,771.98	(5,230.37)	15,598.02	39,500.00
Rent	44,070.17	283,573.01	263,934.00	(19,639.01)	259,551.02	527,865.00
Printing and Supplies	4,989.69	37,670.34	41,250.00	3,579.66	39,559.21	82,500.00
Postage and Delivery	2,558.83	12,765.91	15,780.00	3,014.09	13,843.64	31,550.00
Equipment Rent & Maintenance	10,476.32	18,671.11	28,501.98	9,830.87	22,558.53	57,000.00
Telephone	4,116.79	24,661.26	25,752.00	1,090.74	24,770.71	51,500.00
L P Programs (less Salary & Benefits)	26,702.51	211,166.88	251,964.00	40,797.12	175,473.86	503,906.00
Defense Panel Training	0.00	0.00	0.00	0.00	1,733.26	0.00
Bar Books Grant	16,666.67	100,000.02	100,002.00	1.98	100,000.02	200,000.00
Insurance	3,655.25	22,719.03	20,946.00	(1,773.03)	20,888.45	41,894.00
Library	184.50	12,687.21	15,750.00	3,062.79	12,374.84	31,500.00
Subscriptions, Memberships & Other	4,621.67	115,623.00	127,748.04	12,125.04	79,426.51	234,300.00
Allocated to Excess Program	<u>(88,831.66)</u>	<u>(532,989.96)</u>	<u>(532,986.00)</u>	<u>3.96</u>	<u>(474,207.90)</u>	<u>(1,065,980.00)</u>
TOTAL EXPENSE	<u>\$564,322.68</u>	<u>\$3,305,862.89</u>	<u>\$3,767,039.54</u>	<u>\$461,176.65</u>	<u>\$3,206,572.00</u>	<u>\$7,495,889.00</u>

**Oregon State Bar
Professional Liability Fund
Excess Program
Statement of Revenue, Expenses, and Changes in Net Position
6 Months Ended 6/30/2016**

	<u>YEAR TO DATE ACTUAL</u>	<u>YEAR TO DATE BUDGET</u>	<u>VARIANCE</u>	<u>YEAR TO DATE LAST YEAR</u>	<u>ANNUAL BUDGET</u>
<u>REVENUE</u>					
Ceding Commission	\$390,645.63	\$381,000.00	(\$9,645.63)	\$380,951.27	\$762,000.00
Prior Year Adj. (Net of Reins.)	0.00	3,450.00	3,450.00	887.07	6,900.00
Profit Commission	46,653.47	0.00	(46,653.47)	0.00	0.00
Installment Service Charge	44,760.00	42,000.00	(2,760.00)	40,447.00	42,000.00
Investment Return	<u>91,675.77</u>	<u>85,440.00</u>	<u>(6,235.77)</u>	<u>39,706.89</u>	<u>170,879.00</u>
TOTAL REVENUE	<u>\$573,734.87</u>	<u>\$511,890.00</u>	<u>(\$61,844.87)</u>	<u>\$461,992.23</u>	<u>\$981,779.00</u>
<u>EXPENSE</u>					
Operating Expenses (See Page 6)	\$581,502.33	\$573,423.00	(\$8,079.33)	\$506,761.95	\$1,146,830.00
Allocated Depreciation	<u>\$12,130.50</u>	<u>\$12,132.00</u>	<u>\$1.50</u>	<u>\$8,490.00</u>	<u>\$24,261.00</u>
NET POSITION - INCOME (LOSS)	<u>(\$19,897.96)</u>	<u>(\$73,665.00)</u>	<u>(\$53,767.04)</u>	<u>(\$53,259.72)</u>	<u>(\$189,312.00)</u>

**Oregon State Bar
Professional Liability Fund
Excess Program
Statement of Operating Expense
6 Months Ended 6/30/2016**

	<u>CURRENT</u> <u>MONTH</u>	<u>YEAR</u> <u>TO DATE</u> <u>ACTUAL</u>	<u>YEAR</u> <u>TO DATE</u> <u>BUDGET</u>	<u>VARIANCE</u>	<u>YEAR</u> <u>TO DATE</u> <u>LAST YEAR</u>	<u>ANNUAL</u> <u>BUDGET</u>
<u>EXPENSE:</u>						
Salaries	\$49,160.58	\$294,963.48	\$294,966.00	\$2.52	\$267,354.48	\$589,927.00
Benefits and Payroll Taxes	16,066.75	96,400.50	96,402.00	1.50	95,769.96	192,801.00
Investment Services	299.25	756.00	1,425.00	669.00	897.00	2,850.00
Office Expense	0.00	0.00	0.00	0.00	0.00	0.00
Allocation of Primary Overhead	23,604.33	141,625.98	141,624.00	(1.98)	111,083.46	283,252.00
Reinsurance Placement & Travel	2,171.97	5,979.87	10,002.00	4,022.13	5,957.55	20,000.00
Training	485.00	485.00	252.00	(233.00)	0.00	500.00
Printing and Mailing	0.00	3,644.76	5,250.00	1,605.24	4,915.65	10,500.00
Program Promotion	1,860.00	7,240.00	12,499.98	5,259.98	13,730.05	25,000.00
Other Professional Services	105.00	8,361.99	1,002.00	(7,359.99)	299.30	2,000.00
Software Development	<u>2,839.55</u>	<u>22,044.75</u>	<u>10,000.02</u>	<u>(12,044.73)</u>	<u>6,754.50</u>	<u>20,000.00</u>
TOTAL EXPENSE	<u>\$96,592.43</u>	<u>\$581,502.33</u>	<u>\$573,423.00</u>	<u>(\$8,079.33)</u>	<u>\$506,761.95</u>	<u>\$1,146,830.00</u>

**Oregon State Bar
Professional Liability Fund
Combined Investment Schedule
6 Months Ended 6/30/2016**

	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	\$13,328.76	\$74,336.62	\$7,318.11	\$61,943.88
Intermediate Term Bond Funds	23,355.56	152,706.15	34,139.36	199,878.85
Domestic Common Stock Funds	42,922.75	86,396.73	41,727.66	91,320.86
International Equity Fund	0.00	0.00	0.00	0.00
Real Estate	46,131.05	89,745.78	44,012.55	86,674.97
Hedge Fund of Funds	0.00	0.00	0.00	0.00
Real Return Strategy	<u>47,227.30</u>	<u>99,603.73</u>	<u>61,749.76</u>	<u>95,134.79</u>
Total Dividends and Interest	<u>\$172,965.42</u>	<u>\$502,789.01</u>	<u>\$188,947.44</u>	<u>\$534,953.35</u>
Gain (Loss) in Fair Value:				
Short Term Bond Fund	\$32,695.00	\$38,290.50	(\$14,362.18)	(\$29,268.95)
Intermediate Term Bond Funds	138,018.64	301,503.65	(108,134.89)	(96,501.42)
Domestic Common Stock Funds	(20,121.28)	256,848.64	(207,578.53)	124,412.07
International Equity Fund	(224,106.02)	(301,496.48)	(216,837.90)	500,393.82
Real Estate	54,066.89	117,238.13	120,718.20	244,110.74
Hedge Fund of Funds	0.00	0.00	0.00	0.00
Real Return Strategy	<u>386,083.46</u>	<u>771,935.49</u>	<u>(298,738.80)</u>	<u>(173,815.49)</u>
Total Gain (Loss) in Fair Value	<u>\$366,636.69</u>	<u>\$1,184,319.93</u>	<u>(\$724,934.10)</u>	<u>\$569,330.77</u>
TOTAL RETURN	<u>\$539,602.11</u>	<u>\$1,687,108.94</u>	<u>(\$535,986.66)</u>	<u>\$1,104,284.12</u>
Portions Allocated to Excess Program:				
Dividends and Interest	\$8,406.12	\$18,946.50	\$8,370.37	\$22,593.73
Gain (Loss) in Fair Value	<u>17,818.54</u>	<u>72,729.27</u>	<u>(32,114.58)</u>	<u>17,113.16</u>
TOTAL ALLOCATED TO EXCESS PROGRAM	<u>\$26,224.66</u>	<u>\$91,675.77</u>	<u>(\$23,744.21)</u>	<u>\$39,706.89</u>

**Oregon State Bar
Professional Liability Fund
Excess Program
Balance Sheet
6/30/2016**

ASSETS

	<u>THIS YEAR</u>	<u>LAST YEAR</u>
Cash	\$251,699.49	\$306,258.13
Assessment Installment Receivable	508,922.00	452,389.75
Due from Reinsurers	288,135.54	548,664.02
Investments at Fair Value	<u>2,597,661.20</u>	<u>2,205,340.22</u>
TOTAL ASSETS	<u>\$3,646,418.23</u>	<u>\$3,512,652.12</u>

LIABILITIES AND FUND EQUITY

	<u>THIS YEAR</u>	<u>LAST YEAR</u>
Liabilities:		
Accounts Payable & Refunds Payable	\$2,666.43	\$2,967.30
Due to Primary Fund	\$0.00	(\$16.59)
Due to Reinsurers	1,043,533.23	701,180.99
Ceding Commission Allocated for Remainder of Year	<u>390,645.63</u>	<u>380,951.26</u>
Total Liabilities	<u>\$1,436,845.29</u>	<u>\$1,085,082.96</u>
Net Position		
Net Position (Deficit) Beginning of Year	\$2,229,470.90	\$2,480,828.88
Year to Date Net Income (Loss)	<u>(19,897.96)</u>	<u>(53,259.72)</u>
Total Net Position	<u>\$2,209,572.94</u>	<u>\$2,427,569.16</u>
TOTAL LIABILITIES AND FUND EQUITY	<u>\$3,646,418.23</u>	<u>\$3,512,652.12</u>

**Oregon State Bar
Professional Liability Fund
Primary Program
Balance Sheet
6/30/2016**

ASSETS

	<u>THIS YEAR</u>	<u>LAST YEAR</u>
Cash	\$2,515,531.46	\$3,068,278.56
Investments at Fair Value	50,127,483.82	48,649,974.25
Assessment Installment Receivable	4,312,925.00	4,351,732.00
Due From Excess Fund	0.00	(16.59)
Other Current Assets	139,473.85	138,842.74
Net Fixed Assets	754,631.24	835,748.81
Claim Receivables	14,301.18	69,922.49
Other Long Term Assets	<u>6,300.00</u>	<u>6,900.00</u>
TOTAL ASSETS	<u>\$57,870,646.55</u>	<u>\$57,121,382.26</u>

LIABILITIES AND FUND EQUITY

	<u>THIS YEAR</u>	<u>LAST YEAR</u>
Liabilities:		
Accounts Payable and Other Current Liabilities	\$48,030.68	\$76,012.61
Liability for Compensated Absences	397,427.82	354,702.17
Liability for Indemnity	13,300,000.00	14,300,000.00
Liability for Claim Expense	15,100,000.01	14,700,110.00
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)	2,400,000.00	2,500,000.00
Assessment and Installment Service Charge Allocated for Remainder of Year	<u>12,267,277.00</u>	<u>12,293,143.33</u>
Total Liabilities	<u>\$48,212,735.51</u>	<u>\$48,423,968.11</u>
Net Position		
Net Position (Deficit) Beginning of the Year	\$7,797,699.83	\$8,448,143.51
Year to Date Net Income (Loss)	<u>1,860,211.21</u>	<u>249,270.64</u>
Total Net Position	<u>\$9,657,911.04</u>	<u>\$8,697,414.15</u>
TOTAL LIABILITIES AND FUND EQUITY	<u>\$57,870,646.55</u>	<u>\$57,121,382.26</u>

8/5/2016

**OREGON STATE BAR
PROFESSIONAL LIABILITY FUND**

FINANCIAL STATEMENTS

Years Ended December 31, 2015 and 2014

DRAFT

8/5/2016

OREGON STATE BAR PROFESSIONAL LIABILITY FUND

FINANCIAL STATEMENTS

Years Ended December 31, 2015 and 2014

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**OREGON STATE BAR
PROFESSIONAL LIABILITY FUND
MANAGEMENT'S DISCUSSION AND ANALYSIS
For the Years Ended December 31, 2015 and 2014**

As management of the Oregon State Bar Professional Liability Fund (PLF), we offer readers of the PLF's financial statements this narrative overview and analysis of the financial activities for the calendar year ended December 31, 2015. Readers are encouraged to consider this information in conjunction with the basic financial statements, which begin on page three.

Background

The Oregon State Bar is a public corporation, and an instrument of the Judicial Department of the State of Oregon. Provisions of Oregon Revised Statutes (ORS) 9.080 were modified in 1977 to authorize the Board of Governors (BOG) of the Oregon State Bar to establish a professional liability insurance program for all attorneys engaged in private practice whose principal office is in Oregon. The BOG established the PLF in 1978. The PLF is a separate but integral unit of the Oregon State Bar. The PLF is not subject to the Insurance Code of the State of Oregon and as a public body, it is also exempt from federal and state income taxes.

All members of the Oregon State Bar, engaged in the private practice of law whose principal office is in Oregon, are required to purchase liability insurance from the PLF's mandatory program ("Primary Program"). Approximately 52% of Oregon lawyers fall outside of the definition of "private practice of law" and are exempt from coverage. The 2015 coverage limits of the Primary Program were \$300,000 per claim / \$300,000 aggregate, with an additional \$50,000 expense allowance.

The PLF also has an optional underwritten plan ("Excess Program") to provide insurance coverage with policy limits in excess of the existing mandatory plan.

Because the PLF covers all Oregon lawyers and must continue to do so in the future, it focuses considerable resources on loss prevention. The PLF has 4 practice management advisors and has a well-funded attorney assistance program with 4 professional staff members. The attorney assistance program responds to lawyers who have issues that hamper their ability to practice law. The Loss Prevention staff reports to the Director of Loss Prevention.

Financial Highlights

- The PLF had a net loss of (\$2.6M) for 2015 largely as a result of increased pension liability and investment portfolio losses.
- 2015 claim expenses (indemnity and defense) were approximately \$1.2M less than 2014.
- The number of lawyers covered by the Primary Program decreased approximately 4% from 2014 to 2015, with 7,420 attorneys covered for at least a portion of 2015.

**OREGON STATE BAR
PROFESSIONAL LIABILITY FUND
MANAGEMENT'S DISCUSSION AND ANALYSIS (CONTINUED)
For the Years Ended December 31, 2015 and 2014**

Description of Basic Financial Statements

The PLF's basic financial statements consist of a Statement of Net Position, Statement of Revenues, Expenses, and Changes in Net Position, Statement of Cash Flows, and notes to the financial statements.

CONDENSED STATEMENT OF NET POSITION

	<u>12/31/2015</u>	<u>12/31/2014</u>	<u>Increase (Decrease)</u>	<u>12/31/2014</u>	<u>12/31/2013</u>	<u>Increase (Decrease)</u>
Cash and Investments	\$ 52,663,201	\$ 55,688,985	\$ (3,025,784)	\$ 55,688,985	\$ 48,030,470	\$ 7,658,515
Other Assets	3,582,586	1,794,809	1,787,777	1,794,809	2,012,639	(217,830)
Capital Assets (Net)	<u>740,183</u>	<u>852,010</u>	<u>(111,827)</u>	<u>852,010</u>	<u>866,683</u>	<u>(14,673)</u>
Total Assets	<u>\$ 56,985,970</u>	<u>\$ 58,335,804</u>	<u>\$ (1,349,834)</u>	<u>\$ 58,335,804</u>	<u>\$ 50,909,792</u>	<u>\$ 7,426,012</u>
Liabilities						
Estimated Liabilities for						
Claims	\$ 35,300,000	\$ 35,200,000	\$ 100,000	\$ 35,200,000	\$ 31,300,000	\$ 3,900,000
Deferred Revenues	10,847,994	10,580,097	267,897	10,580,097	9,794,480	785,617
Other Liabilities	<u>2,921,712</u>	<u>2,031,002</u>	<u>890,710</u>	<u>2,031,002</u>	<u>545,024</u>	<u>1,485,978</u>
Total Liabilities	<u>49,069,706</u>	<u>47,811,099</u>	<u>1,258,607</u>	<u>47,811,099</u>	<u>41,639,504</u>	<u>6,171,595</u>
Net Position	<u>\$ 7,916,264</u>	<u>\$ 10,524,705</u>	<u>\$ (2,608,441)</u>	<u>\$ 10,524,705</u>	<u>\$ 9,270,288</u>	<u>\$ 1,254,417</u>

**OREGON STATE BAR
PROFESSIONAL LIABILITY FUND
MANAGEMENT'S DISCUSSION AND ANALYSIS (CONTINUED)
For the Years Ended December 31, 2015 and 2014**

Financial Position

Cash and Investments – Total cash and investments decreased nearly \$3.0M during 2015 after increasing about \$7.6M in 2014. The loss in fair market value to the investment portfolio from 2014 to 2015 was approximately \$1.5M or 3%.

Investments are stated at fair market value. PLF investments are made in accordance with policy guidelines adopted by the Board of Directors. The guidelines require allocation of investment funds to different asset classes in order to balance risk and return by emphasizing diversification among uncorrelated categories. Non-operating assets are allocated to domestic and foreign equities, intermediate-term bonds, real estate, absolute return, and real return categories. The allocation guidelines are reviewed periodically by the Board of Directors. There were no changes in target allocation percentages during 2015 or 2014.

Other Assets – Other assets include receivables acquired during the course of claim handling and amounts due from reinsurers. There was an increase in other assets of \$1.7M during 2015. This increase is due mainly to a large amount owed from reinsurers for a claim payment made on December 31, 2015.

Capital Assets (Net) – Capital assets represent fixed assets owned by the PLF less accumulated depreciation. These assets are a small portion of PLF total assets. During 2015, depreciation was greater than new asset purchases and capital assets decreased by about \$112K. This followed a similar decline in 2014 of \$15K.

Estimated Liabilities for Claims – Each time a claim is reported to the PLF, estimates of the costs to resolve and defend the claims are established by the assigned PLF claims attorney. Claims often remain unresolved for several years. Consistent with standard insurance practices, the PLF claims attorneys continually reevaluate and change estimates as more information becomes available. Outside actuaries compare the historical estimates to ultimate claim costs every six months. They use this analysis to estimate total claim liabilities. This actuarial estimate is used by the Board of Directors to help determine the amount of claim liabilities stated in the financial statements.

Management believes that the estimated liabilities for claims are reasonable and adequate to cover the ultimate net cost of losses on claims reported. However the liabilities are necessarily based upon estimates, and therefore the ultimate net claim cost may vary up or down from such estimates.

**OREGON STATE BAR
PROFESSIONAL LIABILITY FUND
MANAGEMENT'S DISCUSSION AND ANALYSIS (CONTINUED)
For the Years Ended December 31, 2015 and 2014**

Financial Position (Continued)

Estimated Liabilities for Claims (Continued)

In addition to specific claim liabilities, the PLF also includes estimated liabilities for the cost of future administration of pending claims. The AOE Liability (Adjusting and Other Expenses) represents the potential administrative costs incurred by PLF should the PLF cease operations but still have open claims to defend. The current AOE liability is \$2.4M. Extended reporting coverage (ERC) or "tail coverage" recognizes the liability the PLF holds to ensure an attorney has claims coverage upon ceasing practice for all potential claims incurred while still practicing. The current ERC liability is \$3.1M. Suspense liability represents potential future costs of claims that have as of yet, no monetary demands made against them. The current suspense liability is \$1.6M.

None of the estimated liabilities are discounted for the time value of money.

The total estimated liabilities for claims increased by \$100K (.2%) during 2015 after increasing by \$3.9M during 2014. The frequency of new claims was lower than anticipated throughout both the 2015 and 2014 claim years. The indemnity portion of pending claims developed worse than anticipated during 2015. The trend of increasing severity and decreasing frequency continued through 2015.

Unearned Revenue – Unearned revenue represents prepayment of future PLF assessments for both the Primary and Excess Programs. Although annual PLF assessments are due in early January, many lawyers pay them during the preceding December.

Deferred revenue increased very slightly at 1.5% during 2015 after increasing 12% from 2013 to 2014. The expanded use of credit cards as a method of assessment payment stabilized in 2015 from 2014 causing early payment of the primary assessment to even out year on year.

Other Liabilities – Other liabilities include liabilities for accounts payable and accrued payroll obligations. This item represents a small portion of total liabilities. Other liabilities increased by \$1.7M during 2015. This increase is largely due to the addition of the pensions liability.

Net Position – In the financial statements that follow, the term "net position" represents the difference between assets and liabilities. Negative investment returns and the addition of the pension liability were the two greatest determinants of a loss to net position of \$2.6M. Favorable claims results and positive investment results allowed increases to net position in both the 2014 and 2013 fiscal years. The PLF ended the 2015 fiscal year with a net position balance of \$7.9M, down from \$10.5M in 2014.

The net position goal of the PLF is currently under review by the Board of Directors. In recent years, it has been set at \$12M.

**OREGON STATE BAR
PROFESSIONAL LIABILITY FUND
MANAGEMENT'S DISCUSSION AND ANALYSIS (CONTINUED)
For the Years Ended December 31, 2015 and 2014**

Operations**CONDENSED INCOME STATEMENT**

	12 Months Ending 12/31/2015	12 Months Ending 12/31/2014	Increase (Decrease)	12 Months Ending 12/31/2014	12 Months Ending 12/31/2013	Increase (Decrease)
Revenues						
Net Assessments	\$ 24,326,360	\$ 24,668,300	\$ (341,940)	\$ 24,668,300	\$ 25,042,533	\$ (374,233)
Investment Income (Loss)	(312,994)	2,591,206	(2,904,200)	2,591,206	4,650,149	(2,058,943)
Other Income	1,226,582	1,215,934	10,648	1,215,934	1,265,695	(49,761)
Total Revenues	25,239,948	28,475,440	(3,235,492)	28,475,440	30,958,377	(2,482,937)
Expenses						
Indemnity & Claim	17,686,293	18,856,551	(1,170,258)	18,856,551	18,092,048	764,503
Administrative Expenses	8,455,456	7,960,204	495,252	7,960,204	7,643,297	316,907
Non-Operating (Inc) Exp	1,706,640	404,267	1,302,373	404,267	-	404,267
Total Expenses	27,848,389	27,221,022	627,367	27,221,022	25,735,345	1,485,677
Net Income (Loss)	(2,608,441)	1,254,418	(3,862,859)	1,254,418	5,223,032	(3,968,614)
Net Position - beginning	10,524,705	9,270,287	1,254,418	9,270,287	4,047,255	5,223,032
Net assets (Deficit)	\$ 7,916,264	\$ 10,524,705	\$ (2,608,441)	\$ 10,524,705	\$ 9,270,287	\$ 1,254,418

Total revenues for 2015 were \$3.2M less than in 2014. A substantial decrease in investment income from 2014 to 2015 of \$2.9M is largely responsible for the overall decrease in revenue. Total 2015 expenses were \$627K less than 2014 due to an increase in pension liability. Fiscal year 2015 experienced a net loss of \$902K (before pension expense charges from the implementation of GASB #68) compared to 2014 net income of \$1.66M.

The PLF develops an annual operating budget for planning and control purposes. The budget is approved by both the Professional Liability Fund Board of Directors and Oregon State Bar Board of Governors.

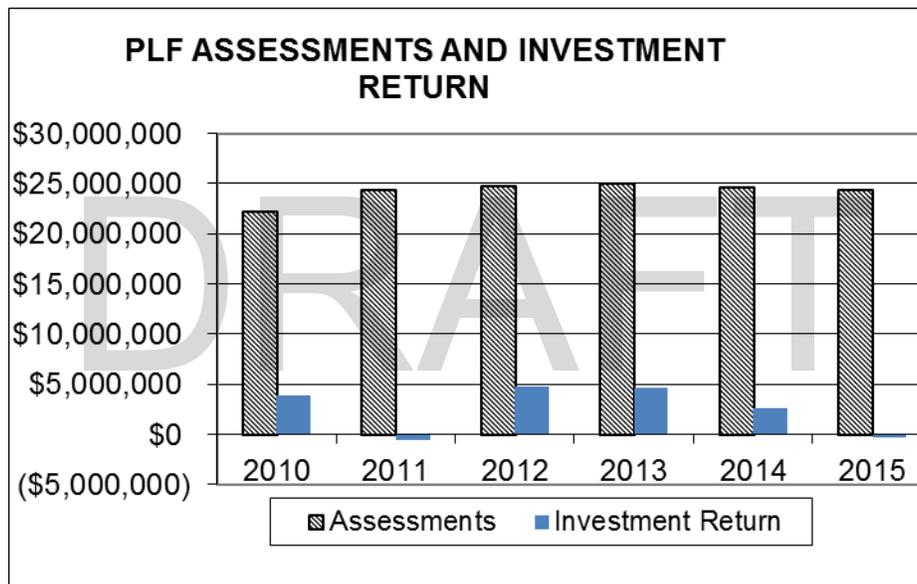
**OREGON STATE BAR
PROFESSIONAL LIABILITY FUND
MANAGEMENT'S DISCUSSION AND ANALYSIS (CONTINUED)
For the Years Ended December 31, 2015 and 2014**

Operations (con't)

Net Assessment Revenue – Net assessment revenue decreased by \$342K during 2015. The primary reason for this decrease is the decline (4%) in the number of lawyers in private practice with principle offices in Oregon. There was no change in the amount of the annual assessment (\$3,500) charged to each lawyer.

Investment Income – The PLF portfolio experienced a negative return of (\$313K).

Other Income – Other income consists of Primary Program installment service charges and Excess Program ceding commissions. Other Income increased marginally by \$10K from 2014 to 2015.



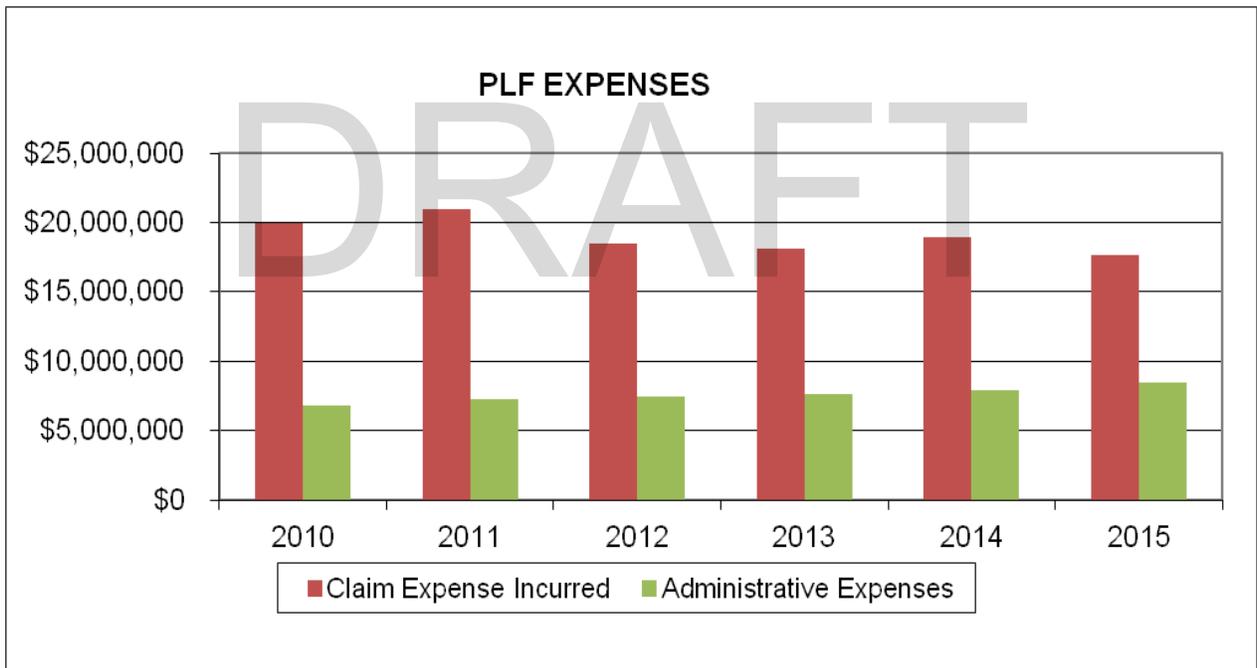
**OREGON STATE BAR
PROFESSIONAL LIABILITY FUND
MANAGEMENT'S DISCUSSION AND ANALYSIS (CONTINUED)
For the Years Ended December 31, 2015 and 2014**

Operations (con't)

Claim Results – Primary Program claim costs (indemnity and defense) are the largest expense item for the PLF. There is no similar expense for the Excess Program because all the liability for excess claims is passed to external insurance companies through reinsurance.

The total provision for claims (total claim costs) for 2015 was about \$17.7M which was \$1.17M or 6.2% less than 2014. While severity is trending upwards, the frequency of claims is dropping off. There were 808 primary claims in 2015 versus 911 claims in 2014.

Administrative Expenses – Administration expenses for 2015 increased \$495K (6.2%) from 2014 levels. This amount was \$85K less than budget (1.2%). Administration expenses for 2014 increased \$317K (4.1K%) from 2013. Expenses increase each year because of gradual increases to salary and benefits along with general increases to operation costs.



8/5/2016

**OREGON STATE BAR
PROFESSIONAL LIABILITY FUND
MANAGEMENT'S DISCUSSION AND ANALYSIS (CONTINUED)
For the Years Ended December 31, 2015 and 2014**

Capital Asset and Debt Administration

Net capital assets for the PLF at December 31, 2015 are \$740K which represents a decrease of \$112K from 2014. The trend of depreciation outstripping expenditures on new capital assets has continued from 2013.

The only long-term liabilities for the PLF are lease obligations and estimated liabilities for claims. The PLF has no plans to issue debt.

Currently Known Facts and Conditions That May Have a Significant Effect on Financial Position

None.

DRAFT

INDEPENDENT AUDITORS' REPORT

To the Board of Directors of
Oregon State Bar Professional Liability Fund
Tigard, Oregon

We have audited the accompanying financial statements of the business-type activities of the Oregon State Bar Professional Liability Fund, a separate enterprise fund established by the Oregon State Bar, an instrumentality of the Judicial Department of the State of Oregon (Professional Liability Fund), as of and for the years ended December 31, 2015 and 2014, and the related notes to the financial statements, which collectively comprise the Professional Liability Fund's basic financial statements as listed in the Table of Contents.

Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

Auditors' Responsibility

Our responsibility is to express an opinion on these financial statements based on our audits. We conducted our audits in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditors' judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Opinion

In our opinion, the financial statements referred to above present fairly, in all material respects, the respective financial position of the business-type activities of the Professional Liability Fund as of December 31, 2015 and 2014, and the respective changes in financial position and cash flows thereof for the years then ended, in accordance with accounting principles generally accepted in the United States of America.

To the Board of Directors of
Oregon State Bar Professional Liability Fund

Emphasis of Matter

As discussed in Note A, the financial statements present only the transactions and balances attributable to the activities of the Professional Liability Fund and are not intended to present fairly the financial position of the Oregon State Bar, and the results of its operations and cash flows for the years then ended in conformity with accounting principles generally accepted in the United States of America. Our opinion is not modified with respect to this matter.

The Professional Liability Fund adopted the provisions of GASB Statement No. 68, *Accounting and Financial Reporting for Pensions*, for the year ended December 31, 2015. Our opinion is not modified with respect to this matter.

Other Matters

Required Supplementary Information

Accounting principles generally accepted in the United States of America require that the management's discussion and analysis and the pension information schedules as listed in the table of contents be presented to supplement the basic financial statements. Such information, although not a part of the basic financial statements, is required by the Government Accounting Standards Board, who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. We have applied certain limited procedures to the required supplementary information in accordance with auditing standards generally accepted in the United States of America, which consisted of inquiries of management about the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We do not express an opinion or provide any assurance on the required supplementary information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.

Other Reporting Required by Government Auditing Standards

In accordance with *Government Auditing Standards*, we have also issued our report dated April 15, 2015, on our consideration of the Professional Liability Fund's internal control over financial reporting and on our tests of its compliance with certain provisions of laws, regulations, and bylaws. The purpose of that report is to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing, and not to provide an opinion on the internal control over financial reporting or on compliance. That report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the Professional Liability Fund's internal control over financial reporting and compliance.

Portland, Oregon
August 3, 2016

**OREGON STATE BAR
PROFESSIONAL LIABILITY FUND
Statement of Net Position
Proprietary Funds
December 31, 2015 and 2014**

	Primary Program		Excess Program		Totals	
	2015	2014	2015	2014	2015	2014
Current Assets						
Cash and Equivalents	\$ 2,038,998	\$ 6,232,275	\$ 1,586,167	\$ 1,205,680	\$ 3,625,165	\$ 7,437,955
Investments at Fair Market Value	49,038,036	45,987,600	-	2,263,430	49,038,036	48,251,030
Miscellaneous Receivables	405,537	527,089	-	970	405,537	528,059
Due from Reinsurer	-	-	2,939,481	246,975	2,939,481	246,975
Deposits and Prepayments	65,722	65,713	-	-	65,722	65,713
Due To/From	935,580	-	(935,580)	-	-	-
Total Current Assets	<u>52,483,873</u>	<u>52,812,677</u>	<u>3,590,068</u>	<u>3,717,055</u>	<u>56,073,941</u>	<u>56,529,732</u>
Noncurrent Assets						
Claims Receivable	27,627	71,241	-	-	27,627	71,241
Net Pension Asset	-	667,025	-	-	-	667,025
Capital Assets, Net	740,183	852,010	-	-	740,183	852,010
Total Noncurrent Assets	<u>767,810</u>	<u>1,590,276</u>	<u>-</u>	<u>-</u>	<u>767,810</u>	<u>1,590,276</u>
Deferred Outflows of Resources						
Deferred Amounts Related to Pensions	144,219	215,796	-	-	144,219	215,796
Total Assets	<u>\$53,395,902</u>	<u>\$54,618,749</u>	<u>\$ 3,590,068</u>	<u>\$ 3,717,055</u>	<u>\$56,985,970</u>	<u>\$58,335,804</u>
Current Liabilities						
Accounts Payable	\$ 218,042	\$ 330,402	\$ 51,116	\$ 58,810	\$ 269,158	\$ 389,212
Capital Leases Payable	-	-	-	-	-	-
Accrued Vacation Payable	397,428	354,702	-	-	397,428	354,702
Deferred Compensation Funds	-	-	-	-	-	-
Due to Primary Program	-	-	-	-	-	-
Due to Excess Fund	-	-	-	-	-	-
Estimated Liabilities for Claims:						
Indemnity Settlements	7,673,155	7,437,599	-	-	7,673,155	7,437,599
Loss Adjustment Expenses	7,029,024	8,218,452	-	-	7,029,024	8,218,452
Unearned Revenues	9,538,513	9,402,681	1,309,481	1,177,416	10,847,994	10,580,097
Total Current Liabilities	<u>24,856,162</u>	<u>25,743,836</u>	<u>1,360,597</u>	<u>1,236,226</u>	<u>26,216,759</u>	<u>26,980,062</u>
Noncurrent Liabilities						
Estimated Liabilities for Claims:						
Indemnity Settlements	10,515,123	8,249,401	-	-	10,515,123	8,249,401
Loss Adjustment Expenses	10,082,698	11,294,548	-	-	10,082,698	11,294,548
Net Pension Liability	1,813,562	-	-	-	1,813,562	-
Total Noncurrent Liabilities	<u>22,411,383</u>	<u>19,543,949</u>	<u>-</u>	<u>-</u>	<u>22,411,383</u>	<u>19,543,949</u>
Total Liabilities	<u>47,267,545</u>	<u>45,287,785</u>	<u>1,360,597</u>	<u>1,236,226</u>	<u>48,628,142</u>	<u>46,524,011</u>
Deferred Inflows of Resources						
Deferred Amounts Related to Pensions	441,564	1,287,088	-	-	441,564	1,287,088
Net Position						
Invested in Capital Assets	740,183	852,010	-	-	740,183	852,010
Unrestricted	4,946,610	7,191,866	2,229,471	2,480,829	7,176,081	9,672,695
Total Net Position	<u>5,686,793</u>	<u>8,043,876</u>	<u>2,229,471</u>	<u>2,480,829</u>	<u>7,916,264</u>	<u>10,524,705</u>
Total Liabilities and Net Position	<u>\$53,395,902</u>	<u>\$54,618,749</u>	<u>\$ 3,590,068</u>	<u>\$ 3,717,055</u>	<u>\$56,985,970</u>	<u>\$58,335,804</u>

The accompanying notes are an integral part of these financial statements.

OREGON STATE BAR
PROFESSIONAL LIABILITY FUND
Statements of Revenues, Expenses, and Changes in Net Position
Proprietary Funds
Years Ended December 31, 2015 and 2014

	Primary Program		Excess Program		Totals	
	2015	2014	2015	2014	2015	2014
Operating Revenues						
Annual Assessments	\$ 24,326,360	\$ 24,668,300	\$ 4,757,044	\$ 5,035,030	\$ 29,083,404	\$29,703,330
Assessments Paid to Reinsurers	-	-	(4,757,044)	(5,035,030)	(4,757,044)	(5,035,030)
Net Assessments	24,326,360	24,668,300	-	-	24,326,360	24,668,300
Investment Income (Loss)	(289,722)	2,372,766	(23,272)	218,440	(312,994)	2,591,206
Ceding Commission	-	-	762,929	797,386	762,929	797,386
Other Income (Loss)	426,587	379,368	37,066	39,180	463,653	418,548
Total Revenues	24,463,225	27,420,434	776,723	1,055,006	25,239,948	28,475,440
Operating Expenses						
Liability Claims:						
Provision for Indemnity	10,362,499	9,844,149	-	-	10,362,499	9,844,149
Provision for Claim Expenses	7,323,794	9,012,402	-	-	7,323,794	9,012,402
Total Claims Expenses	17,686,293	18,856,551	-	-	17,686,293	18,856,551
Administrative Expense:						
Salaries and Benefits	5,311,666	4,808,831	726,249	957,363	6,037,915	5,766,194
Services and Supplies	1,957,932	1,703,947	301,832	325,385	2,259,764	2,029,332
Depreciation	157,777	164,678	-	-	157,777	164,678
Total Administrative Expenses	7,427,375	6,677,456	1,028,081	1,282,748	8,455,456	7,960,204
Total Expenses	25,113,668	25,534,007	1,028,081	1,282,748	26,141,749	26,816,755
Operating Income (loss)	(650,443)	1,886,427	(251,358)	(227,742)	(901,801)	1,658,685
Non-Operating Income (Expenses)						
Pension income	-	-	-	-	-	-
Pension expense	(1,706,640)	(404,267)	-	-	(1,706,640)	(404,267)
Change in Net Position	(2,357,083)	1,482,160	(251,358)	(227,742)	(2,608,441)	1,254,418
Total Net Position - beginning	8,043,876	6,561,716	2,480,829	2,708,571	10,524,705	9,270,287
Total Net Position - ending	\$ 5,686,793	\$ 8,043,876	\$ 2,229,471	\$ 2,480,829	\$ 7,916,264	\$10,524,705

The accompanying notes are an integral part of these financial statements.

OREGON STATE BAR
PROFESSIONAL LIABILITY FUND
Statements of Cash Flows
Proprietary Funds
Years Ended December 31, 2015 and 2014

Increase (Decrease) in Cash and Cash Equivalents	Primary Program		Excess Program		Totals	
	2015	2014	2015	2014	2015	2014
Cash Flows from Operating Activities:						
Cash Received for Assessments	\$ 24,627,349	\$ 25,676,175	\$ 4,889,109	\$ 4,812,772	\$ 29,516,458	\$ 30,488,947
Premiums Paid to Reinsurers	-	-	(4,757,044)	(5,035,030)	(4,757,044)	(5,035,030)
Dividends and Interest Received in Cash	1,180,327	1,068,479	38,716	70,758	1,219,043	1,139,237
Other Operating Revenues Received	426,587	85,431	799,995	835,596	1,226,582	921,027
Cash Payments for Liability Claims:						
Indemnity Settlements	(7,861,221)	(7,779,132)	-	-	(7,861,221)	(7,779,132)
Loss Adjustment Expenses	(9,725,072)	(7,212,402)	-	-	(9,725,072)	(7,212,402)
Refundable Reinsurance Claims	-	-	(2,691,536)	1,438,968	(2,691,536)	1,438,968
Cash Paid Employees for Salaries and Benefits	(5,268,940)	(4,824,947)	(726,249)	(957,363)	(5,995,189)	(5,782,310)
Cash Paid Vendors for Goods and Services	(2,044,003)	(1,530,430)	(309,526)	(292,324)	(2,353,529)	(1,822,754)
Net Cash Provided (Used) by Operations	<u>1,335,027</u>	<u>5,483,174</u>	<u>(2,756,535)</u>	<u>873,377</u>	<u>(1,421,508)</u>	<u>6,356,551</u>
Cash Flows from Investing Activities:						
Purchase of Investments	(7,832,053)	(20,204,199)	(6,608,005)	(6,328,609)	(14,440,058)	(26,532,808)
Proceeds from Investment Sales	3,311,568	19,170,520	8,809,447	5,241,304	12,121,015	24,411,824
Net Cash Provided (Used) in Investing Activities	<u>(4,520,485)</u>	<u>(1,033,679)</u>	<u>2,201,442</u>	<u>(1,087,305)</u>	<u>(2,319,043)</u>	<u>(2,120,984)</u>
Cash Flows from Capital Financing:						
Advances (To) From Other Funds	(935,580)	-	935,580	-	-	-
Purchase of Equipment, Net	(72,239)	(152,104)	-	-	(72,239)	(152,104)
Net Cash Provided (Used) in Capital Financing	<u>(1,007,819)</u>	<u>(152,104)</u>	<u>935,580</u>	<u>-</u>	<u>(72,239)</u>	<u>(152,104)</u>
Net Increase (Decrease) in Cash and Cash Equivalents	(4,193,277)	4,297,391	380,487	(213,928)	(3,812,790)	4,083,463
Cash and Equivalents - Beginning of Year	6,232,275	1,934,884	1,205,680	1,419,608	7,437,955	3,354,492
Cash and Equivalents - End of Year	<u>\$ 2,038,998</u>	<u>\$ 6,232,275</u>	<u>\$ 1,586,167</u>	<u>\$ 1,205,680</u>	<u>\$ 3,625,165</u>	<u>\$ 7,437,955</u>
Reconciliation of Net Income to Net Cash						
Provided (Used) by Operating Activities:						
Operating Income (Loss)	\$ (650,443)	\$ 1,886,427	\$ (251,358)	\$ (227,742)	\$ (901,801)	\$ 1,658,685
(Gain) Loss on Disposal of Assets	26,289	-	-	-	26,289	-
Depreciation Expense	157,777	164,678	-	-	157,777	164,678
(Increase) Decrease in Fair Value of Investments	1,470,049	(1,304,287)	61,988	(147,682)	1,532,037	(1,451,969)
Change in Receivables and Payables, Net	95,523	(171,519)	(2,699,230)	1,471,058	(2,603,707)	1,299,539
Increase (Decrease) in Estimated Claims Liabilities	100,000	3,900,000	-	-	100,000	3,900,000
Increase (Decrease) in Deferred Revenue	135,832	1,007,875	132,065	(222,257)	267,897	785,618
Net Cash Provided (Used) in Operations	<u>\$ 1,335,027</u>	<u>\$ 5,483,174</u>	<u>\$ (2,756,535)</u>	<u>\$ 873,377</u>	<u>\$ (1,421,508)</u>	<u>\$ 6,356,551</u>

The accompanying notes are an integral part of these financial statements.

**OREGON STATE BAR
PROFESSIONAL LIABILITY FUND
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NOTES TO FINANCIAL STATEMENTS

December 31, 2015 and 2014

NOTE A – DESCRIPTION OF ORGANIZATION

The Oregon State Bar is comprised of the Oregon State Bar Fund and the Professional Liability Fund (PLF). The financial statements and accompanying notes presented herein are for the PLF only. The accounts of the Oregon State Bar Fund are not included in this presentation.

The PLF was created in 1977 under the provisions of the Oregon Revised Statutes (ORS) 9.080. This legislation authorized the Board of Governors of the Oregon State Bar to establish a professional liability (legal malpractice) insurance program for all attorneys engaged in private practice whose principal office is in Oregon. Coverage is mandatory for all attorneys subject to the law. In 2015, 7,420 attorneys were required to have coverage for at least a portion of the year. Any such attorney who fails to pay the annual assessment fee (premium) is suspended from membership in the Bar and is therefore ineligible to practice law in Oregon.

The PLF is a separate but integral unit of the Oregon State Bar. It is administered by a nine-member Board of Directors appointed by the Board of Governors. The Board of Directors appoints a Chief Executive Officer to supervise and administer the PLF. The PLF is not subject to the Insurance Code of the State of Oregon. As a public body, it is also exempt from federal and state income taxes.

The basic financial statements and notes presented herein include the proprietary fund activity of the PLF, namely the insurance programs.

NOTE B – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Basis of Presentation

These statements have been prepared in conformity with generally accepted accounting principles (GAAP) as prescribed by the Governmental Accounting Standards Board (GASB), the Financial Accounting Standards Board (FASB) and the American Institute of Certified Public Accountants (AICPA). The PLF does not apply FASB pronouncements issued after November 30, 1989, unless GASB amends its pronouncements to specifically adopt FASB pronouncements after that date. PLF is accounted for as Proprietary Funds. The Proprietary Fund Types used are Enterprise Funds. Enterprise Funds are used to account for operations that are financed and operated in a manner similar to private business enterprises where the intent of the governing body is that costs of providing goods and services be financed or recovered primarily through user charges.

In 1990, the PLF established an optional underwritten plan to provide insurance coverage with policy limits in excess of the existing mandatory plan. The plan was effective on January 1, 1991. The excess program offers coverage to legal firms, including sole practitioners, as opposed to individual members of a legal entity. Underwriting decisions are based upon the firm as a whole.

For financial reporting purposes, operating activities of the PLF are segregated between the mandatory plan ("Primary Program") and the optional excess coverage plan ("Excess Program"). Investments, investment income (Note C) and administrative expenses have been allocated to the Excess Program.

**OREGON STATE BAR
PROFESSIONAL LIABILITY FUND
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NOTES TO FINANCIAL STATEMENTS (CONTINUED)

December 31, 2015 and 2014

NOTE B – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)

Basis of Accounting

The accounting and financial reporting treatment applied to a fund is determined by its measurement focus. All Proprietary Fund Types are accounted for on a flow of economic resources focus. With this measurement focus, all assets and liabilities associated with the operation of these Fund Types are included on the Statement of Net Assets. Proprietary Fund Type operating statements present increases (e.g., revenues) and decreases (e.g., expenses) in net assets. Proprietary Fund Types utilize the accrual basis of accounting. Revenues are recorded when earned and expenses are recorded at the time liabilities are incurred.

Proprietary Fund Types distinguish operating revenues and expenses from non-operating items. Operating revenues for the PLF are primarily insurance assessments. Operating expenses are all expenses that finance claims and the administration of the programs in the Fund.

Assessment Revenue

Primary Program

The annual assessment (insurance “premium”) is established by the Oregon State Bar Board of Governors upon recommendation of the PLF Board of Directors. A special underwriting assessment may be imposed on attorneys with a history of claim losses and expenses. The special underwriting assessments vary in amount based on prior payments for indemnity and expenses made by the PLF on behalf of the covered attorney. In addition to the basic assessment and special assessment (if any), a supplemental assessment may be imposed on all attorneys if the financial solvency of the PLF is threatened. This option has never been exercised. Assessments collected before the beginning of the coverage year are reflected as deferred revenues in the PLF Statement of Net Assets.

Excess Program

The assessment for excess coverage is established by the Oregon State Bar Board of Governors upon the recommendation of the PLF Board of Directors. The assessment may include debits or credits for firms based on prior claims, practice specialties, the extension of prior acts coverage, and other factors. A supplemental assessment may be imposed on program participants, including firm members. This option has never been exercised.

Like the Primary Program, the period of coverage for the Excess Program is the calendar year. Firms may elect coverage after the start of the year; however, the period of coverage always ends with the end of the calendar year. Excess coverage may be canceled during the coverage period. Assessments collected before the beginning of the coverage year are reflected as deferred revenues in the PLF Statement of Net Assets.

**OREGON STATE BAR
PROFESSIONAL LIABILITY FUND
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NOTES TO FINANCIAL STATEMENTS (CONTINUED)

December 31, 2015 and 2014

NOTE B – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)

Claim Settlement and Defense Costs

Primary Program

Estimated liabilities (often called “reserves”) to settle and defend a claim are established when a claim is reported to the PLF. These estimates are determined by PLF claims attorneys based upon historic experience and current trends and are continually reevaluated and changed as more information becomes available. Changes in estimates resulting from the continuous review process and differences between estimated and actual payments are reflected in financial operations of the period in which the estimates are changed.

The PLF also uses a firm of independent consulting actuaries to review its claims experience and liability estimates every six months. The estimated liabilities for indemnity and expense reported in these financial statements are based on this actuarial analysis.

In addition to the actuarial methodology used above, PLF cost estimates to defend and settle claims in the future include factors for Adjusting and Other Expense (AOE), Extended Reporting Coverage (ERC), and suspense files. AOE represents the PLF’s estimated future administrative costs for processing open and unresolved claims. ERC represents the estimated cost of future claims that may be filed against lawyers who have obtained such coverage upon leaving private practice. Suspense files represent the estimated cost of potential claims for which the PLF has been notified during a coverage year but formal claims have not yet been filed.

Management believes that its aggregate reserve for losses and loss adjustment expenses is reasonable and adequate to cover the ultimate net cost of losses on claims reported, but such provision is necessarily based on estimates, and the ultimate net cost may vary from such estimates. As adjustments to these estimates become necessary, the adjustments are reflected in current operations.

For financial statement purposes, amounts recoverable from other parties (such as subrogation receivables) relating to paid claims are reflected as assets, net of appropriate valuation allowances, in the Statement of Net Assets and as deductions from the provisions for claim settlement and defense costs in the PLF Statement of Revenues, Expenses, and Changes in Fund Net Assets.

Excess Program

As described in the following Reinsurance disclosure, 100% of the liability for any claim filed under the excess plan has been passed to other insurance companies through reinsurance. The possibility of the PLF incurring direct costs under the excess plan is considered remote. Therefore, no provision or liability for such claims has been established. If future operations of the plan indicate that the PLF will incur direct costs, appropriate estimated liabilities for such losses will be established based on plan experience.

**OREGON STATE BAR
PROFESSIONAL LIABILITY FUND
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NOTES TO FINANCIAL STATEMENTS (CONTINUED)

December 31, 2015 and 2014

NOTE B – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)

Reinsurance

Primary Program

Through 1985, the PLF carried “excess of loss” reinsurance with a private reinsurer. Reinsurance coverage has not been purchased for the Primary Program since 1985.

Excess Program

All losses under the excess plan are covered 100% by reinsurance. Although the PLF is ultimately responsible for the payment of successful claims filed under the excess plan, such payments are considered highly unlikely. It is the PLF’s policy to diversify risk by choosing several reinsurance companies. In addition, the PLF selected reinsurance companies with an emphasis on financial solvency. The PLF will secure letters of credit and other means of financial protection when appropriate.

Basis of Coverage

PLF coverage is on a “claims made” basis. Under a “claims made” form of coverage, the attorney is covered for any claim made during a plan period in which he or she has professional liability coverage. Prior to 1992, attorneys who left private practice could obtain “extended reporting coverage” for an additional one-time assessment. Payment of this assessment resulted in continuing coverage for covered acts committed prior to the end of the plan period. After December 31, 1991, no charge has been made for extended reporting coverage for the limits of coverage offered by the Primary Program.

Firms that request to have extended reporting coverage from the Excess Program pay an additional assessment.

Under the 2015 Coverage Plan, primary coverage is limited to a maximum of \$300,000 for both indemnity and defense costs. In addition to the \$300,000 aggregate limit, there is a separate \$50,000 claims expense allowance to be used solely for defense costs. Optional coverage under the excess plan increases basic coverage by \$700,000, \$1,700,000, \$2,700,000, \$3,700,000, \$4,700,000 or \$9,700,000 as elected by the covered firm. Therefore, firms with excess coverage have the option to increase their total limits to \$1 million, \$2 million, \$3 million, \$4 million, \$5 million or \$10 million.

Budgets

The PLF operates under annual budgets, which are adopted and approved by the Board of Directors and the Oregon State Bar Board of Governors.

**OREGON STATE BAR
PROFESSIONAL LIABILITY FUND
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NOTES TO FINANCIAL STATEMENTS (CONTINUED)

December 31, 2015 and 2014

NOTE B – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)

Capital Assets and Depreciation

Capital assets (office and data processing equipment, furniture, and leasehold improvements) are recorded at cost and charged to expense over their useful lives by use of the straight-line method of depreciation. Computer hardware, software, copiers, and telephone systems are depreciated over a three-year period. Furniture is depreciated over a five to ten-year period. Leasehold improvements are depreciated over the term of the lease.

Cash and Cash Equivalents

For financial statement purposes, the PLF considers cash and cash equivalents to include cash on hand, cash in checking accounts, and short-term money market funds which are readily convertible to cash.

Investments

PLF investments are made in accordance with policy guidelines adopted by the Board of Directors. The guidelines emphasize safety, liquidity, and diversification. To better achieve the benefits of professional management, in late 1993 the PLF placed its investments portfolio in shares of widely diversified mutual or commingled fund companies. Investments are stated and carried at fair value. The estimated fair value of certain alternative investments for which prices are not readily available, are generally determined by the investment advisors of the respective private investment funds and may not reflect amounts that could be realized upon immediate sale, nor amounts that ultimately may be realized. Accordingly, the estimated fair values may differ significantly from the values that would have been used had a ready market existed for these investments.

Estimates

The preparation of financial statements in conformity with generally accepted accounting principles requires that management make estimates and assumptions which affect the reporting amounts of assets and liabilities, disclosure of contingent assets and liabilities at the date of the financial statements, and the reported amounts of revenues and expenditures during the reporting period. Actual results could differ from estimates.

Deferred Outflows/Inflows of Resources

In addition to assets, the statement of financial position will sometimes report a separate section for deferred outflows of resources. This separate financial statement element, *deferred outflows of resources*, represents a consumption of net position that apply to a future period and so will not be recognized as an outflow of resources (expense/expenditure) until then.

In addition to liabilities, the statement of financial position will sometimes report a separate section for deferred inflows of resources. This separate financial statement element, *deferred inflows of resources*, represents an acquisition of net position that apply to a future period and so will not be recognized as an inflow of resources (revenue) until then.

**OREGON STATE BAR
PROFESSIONAL LIABILITY FUND
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NOTES TO FINANCIAL STATEMENTS (CONTINUED)

December 31, 2015 and 2014

NOTE B – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)

Pension Retirement Plan

For purposes of measuring the net pension liability, deferred outflows of resources and deferred inflows of resources related to pensions, and pension expense, information about the fiduciary net position of the Oregon Public Employees Retirement System (OPERS) and additions to/deductions from OPERS's fiduciary net position have been determined on the same basis as they are reported by OPERS. For this purpose, benefit payments (including refunds of employee contributions) are recognized when due and payable in accordance with the benefit terms. Investments are reported at fair value.

Adoption of new GASB pronouncements

In June 2012, the GASB issued Statement No. 68, *Accounting and Financial Reporting for Pensions*. This statement provides guidance for accounting for net pension liabilities, including definition of balances to be included in deferred inflows and deferred outflows of resources. The specific accounts impacting the PLF are detailed below.

Net pension liability – Previous standards defined pension liabilities in terms of the Annually Required Contribution. Statement No. 68 defines the net pension liability as the portion of the actuarial present value of projected benefit payments that is attributed to past periods of employee service, net of the pension plan's fiduciary net position.

Deferred inflows of resources and deferred outflows of resources – Statement No. 68 includes recognition of deferred inflows and outflows of resources associated with the difference between projected and actual earnings on pension plan investments. These differences are to be recognized in pension expense using a systematic and rational method over a closed five-year period.

Statement No. 68 is effective for financial statement periods beginning after June 15, 2014, with the effects of accounting change to be applied retroactively by restating the financial statements. The PFL adopted this new pronouncement in the current year and, accordingly, has restated amounts of effected balances within the financial statements as of December 31, 2013:

	As Previously Reported	GASB # 68 Accounting Change Effects on Net Assets	Amounts as Restated
Statement of Net Position			
Deferred outflows of resources:			
Payments made after the initial measurement date	\$ -	\$ 215,796	\$ 215,796
Net pension asset	-	667,025	667,025
Deferred amounts related to pinion	-	(1,287,088)	(1,287,088)
Total net position	10,928,972	(404,267)	10,524,705

**OREGON STATE BAR
PROFESSIONAL LIABILITY FUND
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NOTES TO FINANCIAL STATEMENTS (CONTINUED)

December 31, 2015 and 2014

NOTE C – CASH AND INVESTMENTS

Cash Deposits

At December 31, 2015 and 2014, the carrying amounts of the PLF's deposits in the Primary Program were \$2,038,998 and \$6,232,275 and respectively. Bank balances were \$5,074,774 and \$6,700,715 respectively. In the Excess Program at December 31, 2015 and 2014, the carrying amounts of deposits were \$1,586,167 and \$1,205,680 respectively. Bank balances were \$1,589,066 and \$1,207,354 respectively.

The differences between carrying amounts and bank balances consisted primarily of deposits in transit and outstanding checks. All of the PLF's operating cash is held in non-interest bearing bank accounts. Under the FDIC, the PLF checking accounts are insured by federal depository insurance up to \$250,000 for 2015. As of December 31, 2015, \$6,413,840 of PLF's bank balance of \$6,663,840 was exposed to credit risk because it was uninsured and uncollaterized.

Investments

Equity investments in real estate and absolute return are considered alternative investments, as market value is not readily determined in financial markets. Real estate investments are in RREEF America REIT II and in Cornerstone Patriot Fund, both which invest in well-located income-producing real estate in established markets. The fair value of these investments was determined by obtaining the fund manager's statement of value and assessing these based on the funds' valuation policies.

Interest Rate Risk

Interest rate risk is the risk that changes in interest rates will adversely affect the fair value of an investment. PLF policies specify asset allocation percentages for various investment categories. The amounts invested in fixed income investments, which are subject to interest rate risk, are limited by these policies. PLF forecasts cash needs for the calendar year. This amount is invested in short-term fixed income funds to limit the interest rate risk.

Credit Risk

Credit risk is the risk that the issuer of an investment fails to fulfill its obligations. Average quality rates are not available for fixed income investments. Credit ratings do not apply to other PLF categories of investment. PLF policies specify diversification as to the type of investment, issuer, and industry sector. Investment is not made in individual securities; only commingled funds or mutual funds are used. The PLF investments are a small portion of funds that have investments in many different entities.

Concentration of Credit Risk

Concentration of credit risk refers to potential losses if total investments are concentrated with one or few issuers. The PLF policies specify the sole use of funds where there is a pooling of securities owned by multiple clients for diversification, lower expense, and improved liquidity.

**OREGON STATE BAR
PROFESSIONAL LIABILITY FUND
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NOTES TO FINANCIAL STATEMENTS (CONTINUED)

December 31, 2015 and 2014

NOTE C – CASH AND INVESTMENTS (CONTINUED)

Custodial Credit Risk – Investments

Custodial credit risk refers to PLF investments that are held by others and not registered in the PLF's name. Custodial credit risk does not apply to PLF investments since PLF places its investment portfolio in shares of diversified mutual or commingled fund companies and real estate.

The following table summarizes the fair value of PLF investments held at December 31 by type of investment:

<u>Investment Type</u>	<u>2015</u>		<u>2014</u>	
	<u>Fair Value</u>	<u>%</u>	<u>Fair Value</u>	<u>%</u>
<u>Fixed Income</u>				
Short-term	\$ 5,338,544	11%	\$ 2,698,816	6%
Intermediate	8,634,284	18%	9,794,076	20%
<u>Equities</u>				
Domestic	9,436,084	19%	10,360,360	21%
International	8,075,731	16%	4,368,056	9%
Real Estate	5,361,703	11%	4,667,078	10%
Global Tactical Asset Alloc	6,306,062	13%	4,494,954	9%
Real Return Strategy	5,885,628	12%	11,867,690	25%
Total Investments	<u>\$ 49,038,036</u>	<u>100%</u>	<u>\$ 48,251,030</u>	<u>100%</u>

**OREGON STATE BAR
PROFESSIONAL LIABILITY FUND
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NOTES TO FINANCIAL STATEMENTS (CONTINUED)

December 31, 2015 and 2014

NOTE C – CASH AND INVESTMENTS (CONTINUED)

The following table summarizes the fair value of PLF investments as allocated to the Primary and Excess Programs:

	<u>2015</u>	<u>2014</u>
Allocation:		
Primary Program	\$ 49,038,036	\$ 45,987,600
Excess Program	-	2,263,430
Total Allocation	<u>\$ 49,038,036</u>	<u>\$ 48,251,030</u>

The following table summarizes the composition and allocation by program of investment income for the years ended December 31, 2015 and 2014:

	<u>Fair Value</u>	
	<u>2015</u>	<u>2014</u>
Investment Income:		
Dividends and interest	\$ 1,219,044	\$ 1,139,237
Net Increase (decrease) in the fair value of investments	(1,532,038)	1,451,968
	<u>\$ (312,994)</u>	<u>\$ 2,591,206</u>
Allocation:		
Operating investment income (loss)		
Primary program	\$ (289,722)	\$ 2,372,766
Excess program	(23,272)	218,440
	<u>\$ (312,994)</u>	<u>\$ 2,591,206</u>

Subsequent to December 31, 2015, the market value of the PLF's investments declined approximately \$1.4 million. Due to the volatility of current investment markets, it is not practical to determine whether the decline is temporary.

NOTE D – CLAIMS RECEIVABLE

Claims receivable represent the estimated value of non-cash assets (such as real estate, promissory notes, and various subrogation rights) that the PLF may receive when it settles a claim on behalf of a covered party. Only claims that are reasonably expected to be collected are recorded in the financial statements. Claims receivable are reflected in the financial statements as an asset. Changes to claims receivable are offset against the provision for claim settlements in the operating statement.

**OREGON STATE BAR
PROFESSIONAL LIABILITY FUND
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NOTES TO FINANCIAL STATEMENTS (CONTINUED)

December 31, 2015 and 2014

NOTE E – CAPITAL ASSETS

The following table reflects the cost, accumulated depreciation and amortization, and net book value for each category of capital assets owned by the PLF at December 31, 2015 and 2014:

	Beginning Balance	Increases	Decreases	Ending Balance
Property and equipment				
Data processing equipment	\$ 340,205	\$ 23,824	\$ (11,013)	\$ 353,016
Furniture and equipment	566,923	50,801	(915)	616,809
Leasehold improvements	1,194,686	7,972	(60,790)	1,141,868
Total property and equipment	<u>2,101,814</u>	<u>82,597</u>	<u>(72,718)</u>	<u>2,111,693</u>
Accumulated depreciation				
Data processing equipment	(278,205)	(38,981)	11,013	(306,173)
Furniture and equipment	(451,951)	(39,690)	915	(490,726)
Leasehold improvements	(519,648)	(79,106)	24,143	(574,611)
Total accumulated depreciation	<u>(1,249,804)</u>	<u>(157,777)</u>	<u>36,071</u>	<u>(1,371,510)</u>
Total capital assets, net	<u>\$ 852,010</u>	<u>\$ (75,180)</u>	<u>\$ (36,647)</u>	<u>\$ 740,183</u>

NOTE F – LIABILITY FOR COMPENSATED ABSENCES

PLF employees earn vacation leave at rates from 8 to 20 hours per month depending, in part, upon their length of service. Unused vacation leave is compensable to the employee upon termination of employment. At December 31, 2015 and 2014, the value of vacation leave earned by all PLF employees totaled \$397,428 and \$354,702 respectively, including the employer's share of social security taxes and other payroll related costs.

NOTE G – LIABILITIES FOR UNEMPLOYMENT BENEFITS

PLF employees who qualify are entitled to benefit payments during periods of unemployment. Like state agencies, the PLF does not pay unemployment insurance. The PLF is required to reimburse the Employment Department for actual benefit payments made to its former employees. Management believes any potential liability would not be material to the financial statements. The PLF paid \$24,586 in 2015 and \$20,832 in 2014 for unemployment claim costs.

**OREGON STATE BAR
PROFESSIONAL LIABILITY FUND
PROPRIETARY FUNDS**

NOTES TO FINANCIAL STATEMENTS (CONTINUED)

December 31, 2015 and 2014

NOTE H – PENSION RETIREMENT PLAN

Defined Benefit Pension Plan

General Information about the Pension Plan:

Name of the pension plan: The Oregon Public Employees Retirement System (OPERS) is a cost-sharing multiple-employer defined benefit plan.

Plan description. Employees of the PLF are provided with pensions through OPERS. All the benefits of OPERS are established by the Oregon legislature pursuant to Oregon Revised Statute (ORS) Chapters 238 and 238A. The ORS Chapter 238 Defined Benefit Pension Plan is closed to new members hired on or after August 29, 2003. OPERS issues a publicly available financial report that can be obtained at:

http://www.oregon.gov/pers/Pages/section/financial_reports/financials.aspx

Benefits provided under Chapter 238-Tier One / Tier Two

1. *Pension Benefits.* The ORS 238 Defined Benefit Pension Plan provides benefits to members hired *before* August 29, 2003.

The OPERS retirement benefit is payable monthly for life to covered members upon reaching the minimum retirement age. It may be selected from 13 retirement benefit options. These options include survivorship benefits and lump-sum refunds. The basic benefit is based on years of service and final average salary. A percentage (1.67 percent for general service employees) is multiplied by the number of years of service and the final average salary. Benefits may also be calculated under either a formula plus annuity (for members who were contributing before August 21, 1981) or a money match computation if a greater benefit results.

A member is considered vested and will be eligible at minimum retirement age for a service retirement allowance if he or she has had a contribution in each of five calendar years or has reached at least 50 years of age before ceasing employment with a participating employer. General service employees may retire after reaching age 55. Tier One general service employee benefits are reduced if retirement occurs prior to age 58 with fewer than 30 years of service. Tier Two members are eligible for full benefits at age 60.

2. *Death Benefits.* Upon the death of a non-retired member, the beneficiary receives a lump-sum refund of the member's account balance (accumulated contributions and interest). In addition, the beneficiary will receive a lump-sum payment from employer funds equal to the account balance, provided one or more of the following conditions are met:
 - Member was employed by a OPERS employer at the time of death,
 - Member died within 120 days after termination of OPERS-covered employment,
 - Member died as a result of injury sustained while employed in a OPERS-covered job, or
 - Member was on an official leave of absence from a OPERS-covered job at the time of death.

**OREGON STATE BAR
PROFESSIONAL LIABILITY FUND
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NOTES TO FINANCIAL STATEMENTS (CONTINUED)

December 31, 2015 and 2014

NOTE H – PENSION RETIREMENT PLAN (CONTINUED)

3. *Disability Benefits.* A member with 10 or more years of creditable service who becomes disabled from other than duty-connected causes may receive a non-duty disability benefit. A disability resulting from a job-incurred injury or illness qualifies a member for disability benefits regardless of the length of OPERS-covered service. Upon qualifying for either a non-duty or duty disability, service time is computed to age 58 when determining the monthly benefit.
4. *Benefit Changes after Retirement.* Members may choose to continue participation in a variable equities investment account after retiring and may experience annual benefit fluctuations due to changes in the market value of equity investments.

Under ORS 238.360 monthly benefits are adjusted annually through cost-of-living changes.

Benefits provided under Chapter 238A-OPSRP Pension Program (OPSRP DB).

1. *Pension Benefits.* The ORS 238A Defined Benefit Pension Program provides benefits to members hired *on or after* August 29, 2003.

This portion of the OPSRP provides a life pension funded by employer contributions. Benefits are calculated with the following formula for members who attain normal retirement age:

General Service: 1.5 percent is multiplied by the number of years of service and the final average salary. Normal retirement age for general service members is age 65, or age 58 with 30 years of retirement credit.

A member of the OPSRP pension program becomes vested on the earliest of the following dates: the date the member completes 600 hours of service in each of five calendar years, the date the member reaches normal retirement age, and, if the pension program is terminated, the date on which termination becomes effective.

2. *Death Benefits.* Upon the death of a non-retired member, the spouse or other person who is constitutionally required to be treated in the same manner as the spouse, receives for life 50 percent of the pension that would otherwise have been paid to the deceased member.
3. *Disability Benefits.* A member who has accrued 10 or more years of retirement credits before the member becomes disabled or a member who becomes disabled due to job-related injury shall receive a disability benefit of 45 percent of the member's salary determined as of the last full month of employment before the disability occurred.
4. *Benefit Changes after Retirement.* Under ORS 238A.210 monthly benefits are adjusted annually through cost-of-living changes.

**OREGON STATE BAR
PROFESSIONAL LIABILITY FUND
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NOTES TO FINANCIAL STATEMENTS (CONTINUED)

December 31, 2015 and 2014

NOTE H – PENSION RETIREMENT PLAN (CONTINUED)

Contributions:

OPERS funding policy provides for monthly employer contributions at actuarially determined rates. These contributions, expressed as a percentage of covered payroll, are intended to accumulate sufficient assets to pay benefits when due. This funding policy applies to the PERS Defined Benefit Plan and the Other Postemployment Benefit Plans.

Employer contribution rates during the period were based on the December 31, 2011 actuarial valuation, as subsequently modified by 2013 legislated changes in benefit provisions. The rates based on a percentage of payroll, first became effective July 1, 2013. The State of Oregon and certain schools, community colleges, and political subdivisions have made lump sum payments to establish side accounts, and their rates have been reduced. The PLF has not established any such side accounts.

Employer contributions for the year ended December 31, 2015 were \$683,514, excluding amounts to fund employer specific liabilities. The rates in effect for the fiscal year ended December 31, 2015 were: (1) Tier1/Tier 2 – 8.60%, and (2) OPSRP general service – 5.39%.

Actuarial Valuations:

The employer contribution rates effective July 1, 2013, through June 30, 2015, were set using the projected unit credit actuarial cost method. For the Tier One/Tier Two component of the PERS Defined Benefit Plan, this method produced an employer contribution rate consisting of (1) an amount for normal cost (the estimated amount necessary to finance benefits earned by the employees during the current service year), (2) an amount for the amortization of unfunded actuarial accrued liabilities, which are being amortized over a fixed period with new unfunded actuarial accrued liabilities being amortized over 20 years. For the OPSRP Pension Program component of the PERS Defined Benefit Plan, this method produced an employer contribution rate consisting of (a) an amount for normal cost (the estimated amount necessary to finance benefits earned by the employees during the current service year), (b) an amount for the amortization of unfunded actuarial accrued liabilities, which are being amortized over a fixed period with new unfunded actuarial accrued liabilities being amortized over 16 years.

**OREGON STATE BAR
PROFESSIONAL LIABILITY FUND
PROPRIETARY FUNDS**

NOTES TO FINANCIAL STATEMENTS (CONTINUED)

December 31, 2015 and 2014

NOTE H – PENSION RETIREMENT PLAN (CONTINUED)

Actuarial Methods and Assumptions:

Valuation Date	December 31, 2013 rolled forward to June 30, 2015
Experience Study Report	2014, published September 18, 2015
Actuarial Cost Method	Entry Age Normal
Amortization Method	Amortized as a level percentage of payroll as layered amortization bases over a closed period; Tier One/Tier Two UAL is amortized over 20 years and OPSRP pension UAL is amortized over 16 years.
Asset Valuation Method	Market value of assets
Actuarial Assumptions:	
Inflation Rate	2.75 percent
Investment Rate of Return	7.75 percent
Projected Salary Increases	3.75 percent overall payroll growth; salaries for individuals are assumed to grow at 3.75 percent plus assumed rates of merit/longevity increases based on service.
Mortality	<p>Healthy retirees and beneficiaries:</p> <p>RP-2000 Sex-distinct, generational per Scale AA, with collar adjustments and set-backs as described in the valuation.</p> <p>Active members:</p> <p>Mortality rates are a percentage of healthy retiree rates that vary by group, as described in the valuation.</p> <p>Disabled retirees:</p> <p>Mortality rates are a percentage (65% for males, 90% for females) of the RP-2000 static combined disability mortality sex-distinct table.</p>

Actuarial valuations of an ongoing plan involve estimates of the value of projected benefits and assumptions about the probability of events far into the future. Actuarially determined amounts are subject to continual revision as actual results are compared to past expectations and new estimates are made about the future. Experience studies are performed as of December 31 of even numbered years. The methods and assumptions shown above are based on the 2014 Experience Study which reviewed experience for the four-year period ending on December 31, 2015.

**OREGON STATE BAR
PROFESSIONAL LIABILITY FUND
PROPRIETARY FUNDS**

NOTES TO FINANCIAL STATEMENTS (CONTINUED)

December 31, 2015 and 2014

NOTE H – PENSION RETIREMENT PLAN (CONTINUED)

Discount Rate:

The discount rate used to measure the total pension liability was 7.75 percent for the Defined Benefit Pension Plan. The projection of cash flows used to determine the discount rate assumed that contributions from plan members and those of the contributing employers are made at the contractually required rates, as actuarially determined. Based on those assumptions, the pension plan's fiduciary net position was projected to be available to make all projected future benefit payments of current plan members. Therefore, the long-term expected rate of return on pension plan investments for the Defined Benefit Pension Plan was applied to all periods of projected benefit payments to determine the total pension liability.

Assumed Asset Allocation:

Asset Class/Strategy	Low Range		High Range		OIC Target	
Cash	0.0	%	3.0	%	0.0	%
Debt Securities	15.0		25.0		20.0	
Public Equity	32.5		42.5		37.5	
Private Equity	16.0		24.0		20.0	
Real Estate	9.5		15.5		12.5	
Alternative Equity	0.0		10.0		10.0	
Opportunity Portfolio	0.0		3.0		0.0	
Total					100.0	%

Long-Term Expected Rate of Return:

To develop an analytical basis for the selection of the long-term expected rate of return assumption, in July 2013 the PERS Board reviewed long-term assumptions developed by both the actuary's capital market assumptions team and the Oregon Investment Council's (OIC) investment advisors. The table below shows the actuary's assumptions for each of the asset classes in which the plan was invested at that time based on the OIC long-term target asset allocation. The OIC's description of each asset class was used to map the target allocation to the asset classes shown below. Each asset class assumption is based on a consistent set of underlying assumptions, and includes adjustment for the inflation assumption. These assumptions are not based on historical returns, but instead are based on a forward-looking capital market economic model.

**OREGON STATE BAR
PROFESSIONAL LIABILITY FUND
PROPRIETARY FUNDS**

NOTES TO FINANCIAL STATEMENTS (CONTINUED)

December 31, 2015 and 2014

NOTE H – PENSION RETIREMENT PLAN (CONTINUED)

Asset Class	Target	Compound Annual Return (Geometric)
Core Fixed Income	7.20%	4.50%
Short-Term Bonds	8	3.7
Intermediate-Term Bonds	3	4.1
High Yield Bonds	1.8	6.66
Large Cap US Equities	11.65	7.2
Mid Cap US Equities	3.88	7.3
Small Cap US Equities	2.27	7.45
Developed Foreign Equities	14.21	6.9
Emerging Foreign Equities	5.49	7.4
Private Equity	20	8.26
Opportunity Funds/Absolute Return	5	6.01
Real Estate (Property)	13.75	6.51
Real Estate (REITS)	2.5	6.76
Commodities	1.25	6.07
Assumed Inflation – Mean		2.75

Sensitivity of the PLF's proportionate share of the net pension liability to changes in the discount rate.

The following presents the PLF's proportionate share of the net pension liability calculated using the discount rate of 7.75 percent, as well as what the PLF's proportionate share of the net pension liability would be if it were calculated using a discount rate that is 1 percentage point lower (6.75 percent) or 1 percentage point higher (8.75 percent) than the current rate:

	1% Lower (6.75%)	Current (7.75%)	1% Higher (8.75%)
Proportionate share of the net pension (liability)/asset	\$ <u>4,376,963</u>	\$ <u>1,813,561</u>	\$ <u>(346,712)</u>

**OREGON STATE BAR
PROFESSIONAL LIABILITY FUND
PROPRIETARY FUNDS**

NOTES TO FINANCIAL STATEMENTS (CONTINUED)

December 31, 2015 and 2014

NOTE H – PENSION RETIREMENT PLAN (CONTINUED)

Pension plan fiduciary net position

Detailed information about the pension plan's fiduciary net position is available in the separately issued OPERS financial report.

Pension Liabilities, Pension Expense, and Deferred Outflows of Resources and Deferred Inflows of Resources Related to Pensions:

At December 31, 2015, the PLF reported liabilities of \$1,813,561 for its proportionate share of the net pension liability. The net pension liability was measured as of June 30, 2015, and the total pension liability used to calculate the net pension asset was determined by an actuarial valuation as of December 31, 2013 and rolled forward to June 30, 2015. The PLF's proportion of the net pension asset was based on the PLF's projected long-term contribution effort as compared to the total projected long-term contribution effort of all employers.

Rates of every employer have at least two major components:

1. **Normal Cost Rate:** The economic value, stated as a percent of payroll, for the portion of each active member's total projected retirement benefit that is allocated to the upcoming year of service. The rate is in effect for as long as each member continues in OPERS-covered employment. The current value of all projected future Normal Cost Rate contributions is the Present Value of Future Normal Costs (PVFNC). The PVFNC represents the portion of the projected long-term contribution effort related to future service.
2. **UAL Rate:** If system assets are less than the actuarial liability, an Unfunded Actuarial Liability (UAL) exists. UAL can arise in a biennium when an event such as experience differing from the assumptions used in the actuarial valuation occurs. An amortization schedule is established to eliminate the UAL that arises in a given biennium over a fixed period of time if future experience follows assumption. The UAL Rate is the upcoming year's component of the cumulative amortization schedules, stated as a percent of payroll. The present value of all projected UAL Rate contributions is simply the Unfunded Actuarial Liability (UAL) itself. The UAL represents the portion of the projected long-term contribution effort related to past service.

An employer's PVFNC depends on both the normal cost rates charged on the employer's payrolls, and on the underlying demographics of the respective payrolls. For OPERS funding, employers have up to three different payrolls, each with a different normal cost rate: (1) Tier 1/Tier 2 payroll, (2) OPSRP general service payroll, and (3) OPSRP police and fire payroll.

Analyzing both rate components, the projected long-term contribution effort is simply the sum of the PVFNC and UAL. The PVFNC part of the contribution effort pays for the value of future service while the UAL part of the contribution effort pays for the value of past service not already funded by accumulated contributions and investment earnings. Each of the two contribution effort components are calculated at the employer-specific level. The sum of these components across all employers is the total projected long-term contribution effort.

At December 31, 2015, the PLF's proportion was .06 percent, which did not change from its proportion measured as of December 31, 2014.

**OREGON STATE BAR
PROFESSIONAL LIABILITY FUND
PROPRIETARY FUNDS**

NOTES TO FINANCIAL STATEMENTS (CONTINUED)

December 31, 2015 and 2014

NOTE H – PENSION RETIREMENT PLAN (CONTINUED)

For the year ended December 31, 2015, the PLF recognized pension expense of \$1,706,640. At December 31, 2015, the PLF reported deferred outflows of resources and deferred inflows of resources related to pensions from the following sources:

	<u>Deferred Outflow of Resources</u>	<u>Deferred Inflow of Resources</u>
Differences between expected and actual experience	\$ 97,796	\$ -
Changes of assumptions		
Net defERENCE between projected and actual earnings on investments	-	380,164
Changes in proportion and differences between employer contributions and proportionate share of contributions	<u>46,423</u>	<u>61,400</u>
Total (prior to post-measurement date contributions)	144,219	441,564
Contributions made subsequent to measurement date	<u>-</u>	<u>-</u>
Net deferred outflow/(inflow) of resources	<u>\$ 144,219</u>	<u>\$ 441,564</u>

Deferred outflows of resources related to pensions resulting from PLF contributions subsequent to the measurement date of \$341,757 will be recognized as a reduction of the net pension liability in the year ended December 31, 2016. Other amounts reported as deferred outflows of resources and deferred inflows of resources related to pensions will be recognized in pension expense as follows:

<u>Employer Subsequent Fiscal Years</u>	
2016	\$ (162,095)
2017	(162,095)
2018	(162,095)
2019	182,260
2020	<u>6,680</u>
	<u>\$ (297,345)</u>

**OREGON STATE BAR
PROFESSIONAL LIABILITY FUND
PROPRIETARY FUNDS**

NOTES TO FINANCIAL STATEMENTS (CONTINUED)

December 31, 2015 and 2014

NOTE H – PENSION RETIREMENT PLAN (CONTINUED)

Changes in Assumptions:

A summary of key changes implemented since the December 31, 2011 valuation are described briefly below. Additional detail and a comprehensive list of changes in methods and assumptions can be found in the 2012 Experience Study for the System, which was published on September 18, 2013, and can be found at:

<http://www.oregon.gov/pers/docs/2012%20Exp%20Study%20Updated.pdf>

Changes in Actuarial Methods and Allocation Procedures

Actuarial Cost Method

The Actuarial Cost Method was changed from the Projected Unit Credit (PUC) Cost Method to the Entry Age Normal (EAN) Cost Method. This change will allow PERS to use the same cost method for contribution rate calculations as required for financial reporting under GASB Statements 67 and 68.

Tier 1/Tier 2 UAL Amortization

In combination with the change in cost method, the Board chose to re-amortize the outstanding Tier 1/Tier 2 UAL as of December 31, 2013 over a closed period of 20 years as a level percentage of projected payroll. Gains and losses between subsequent rate-setting valuations will be amortized over a closed 20 year period from the valuation in which they are first recognized.

Contribution Rate Stabilization Method

The “grade-in range” over which the rate collar gradually doubles was modified so that the collar doubles as funded status (excluding side accounts) decreases from 70% to 60% or increases from 130% to 140%. Previously the ranges had been 80% to 70% and 120% to 130%. The modification to the grade-in range was made in combination with the change to actuarial cost method, as discussed at the July 2013 PERS Board public meeting.

Allocation of Liability for Service Segments

For purposes of allocating Tier 1/Tier 2 member’s actuarial accrued liability among multiple employers, the valuation uses a weighted average of the Money Match methodology and the Full Formula methodology used by PERS when the member retires. The weights are determined based on the prevalence of each formula among the current Tier 1/Tier 2 population. For the December 31, 2010 and December 31, 2011 valuations, the Money Match was weighted 40 percent for General Service members and 10 percent for Police & Fire members. For the December 31, 2012 and December 31, 2013 valuations, this weighting has been adjusted to 30 percent for General Service members and 5 percent for Police & Fire members, based on a projection of the proportion of liability attributable to Money Match benefits at those valuation dates.

**OREGON STATE BAR
PROFESSIONAL LIABILITY FUND
PROPRIETARY FUNDS**

NOTES TO FINANCIAL STATEMENTS (CONTINUED)

December 31, 2015 and 2014

NOTE H – PENSION RETIREMENT PLAN (CONTINUED)

Changes in Economic Assumptions

Investment Return and Interest Crediting

The assumed investment return and interest crediting to both regular and variable account balances was reduced to 7.75%. Previously, the assumed investment return and interest crediting to regular account balances was 8.00% and the assumed interest crediting to variable account balances was 8.25%.

OPSRP Administrative Expenses

Assumed administrative expenses for the OPSRP System were reduced from \$6.6 million per year to \$5.5 million per year.

Healthcare Cost Inflation

The healthcare cost inflation for the maximum RHIPA subsidy was updated based on analysis performed by healthcare actuaries. This analysis includes the consideration of the excise tax that will be introduced in 2018 by the Patient Protection and Affordable Care Act.

Changes in Demographic Assumptions

Healthy Mortality

The healthy mortality assumption is based on the RP2000 generational mortality tables with group-specific class and setback adjustments. The group-specific adjustments have been updated to more closely match recently observed system experience.

Disabled Mortality

The disabled mortality assumption base was changed from the RP2000 healthy tables to the RP2000 disabled tables. Gender-specific adjustments were applied to align the assumption with recently observed system experience.

Disability, Retirement from Active Status, and Termination

Rates for disability, retirement from active status, and termination were adjusted. Termination rates were changed from being indexed upon age to being indexed upon duration from hire date.

Changes in Salary Increase Assumptions

Merit Increases, Unused Sick Leave, and Vacation Pay

Assumed merit increases were lowered for School District members. Unused Sick Leave and Vacation Pay rates were adjusted.

**OREGON STATE BAR
PROFESSIONAL LIABILITY FUND
PROPRIETARY FUNDS**

NOTES TO FINANCIAL STATEMENTS (CONTINUED)

December 31, 2015 and 2014

NOTE H – PENSION RETIREMENT PLAN (CONTINUED)

Retiree Healthcare Participation

The RHIA participation rate for healthy retirees was reduced from 48% to 45%. The RHIPA participation rate was changed from a uniform rate of 13% to a service-based table of rates.

Defined Contribution Plan

OPSRP Individual Account Program (OPSRP IAP)

Pension Benefits

Participants in OPERS defined benefit pension plans also participate in the OPSRP Individual Account Program (IAP), a defined contribution pension plan. An IAP member becomes vested on the date the employee account is established or on the date the rollover account was established. If the employer makes optional employer contributions for a member, the member becomes vested on the earliest of the following dates: the date the member completes 600 hours of service in each of five calendar years, the date the member reaches normal retirement age, the date the IAP is terminated, the date the active member becomes disabled, or the date the active member dies.

Upon retirement, a member of the OPSRP Individual Account Program (IAP) may receive the amounts in his or her employee account, rollover account, and vested employer account as a lump-sum payment or in equal installments over a 5-, 10-, 15-, 20-year period or an anticipated life span option. Each distribution option has a \$200 minimum distribution limit.

Death Benefits

Upon the death of a non-retired member, the beneficiary receives in a lump sum the member's account balance, rollover account balance, and vested employer optional contribution account balance. If a retired member dies before the installment payments are completed, the beneficiary may receive the remaining installment payments or choose a lump-sum payment.

Contributions

The PLF has chosen to pay the employees' contributions to the plan. Six percent of covered payroll is paid for general service employees. For fiscal year 2015, the PLF paid \$683,514. OPERS contracts with VOYA Financial to maintain IAP participant records.

**OREGON STATE BAR
PROFESSIONAL LIABILITY FUND
PROPRIETARY FUNDS**

NOTES TO FINANCIAL STATEMENTS (CONTINUED)

December 31, 2015 and 2014

NOTE I – LEASE OBLIGATIONS

On February 15, 2008, PLF signed a fifteen-year office lease with the Oregon State Bar located in the Fanno Creek Place office complex. The base rent under the Oregon State Bar Lease is subject to annual increase during the lease term. Rent expense was \$520,065 for 2015 and \$512,379 for 2014 under this lease. Additionally, the PLF leases office space for its Oregon Attorney Assistance Program (OAAP) in downtown Portland, Oregon. The lease term expires November 20, 2020 and increases on December 1, 2014 and December 1, 2016. Rent expense under this lease was \$87,149 for 2015 and \$96,528 for 2014. Additional space was added to the OAAP lease in 2015.

The future minimum payments for office leases are as follows:

Year Ending December 31:	
2016	\$ 638,362
2017	658,236
2018	670,969
2019	684,682
2020	688,534
Thereafter	<u>1,272,066</u>
	<u>\$ 4,612,849</u>

NOTE J – ANNUAL ASSESSMENTS

Primary Program

The following table summarizes assessment revenues for the Primary Program by type of coverage for fiscal years 2015 and 2014:

<u>Type of Coverage</u>	<u>2015</u>	<u>2014</u>
Basic Annual Assessment	\$ 24,326,360	\$ 24,668,300
Special Underwriting Assessment	<u>-</u>	<u>-</u>
Total Assessments Earned	<u>\$ 24,326,360</u>	<u>\$ 24,668,300</u>

**OREGON STATE BAR
PROFESSIONAL LIABILITY FUND
PROPRIETARY FUNDS**

NOTES TO FINANCIAL STATEMENTS (CONTINUED)

December 31, 2015 and 2014

NOTE J – ANNUAL ASSESSMENTS (CONTINUED)

Excess Program

The following table summarizes assessment revenues earned by the Excess Program for fiscal years 2015 and 2014:

<u>Type of Coverage</u>	<u>2015</u>	<u>2014</u>
\$ 700,000 Limit	\$ -	\$ -
\$ 1,700,000 Limit	3,293,630	3,438,005
\$ 2,700,000 Limit	-	-
\$ 3,700,000 Limit	-	-
\$ 4,700,000 Limit	1,014,086	1,079,491
\$ 9,700,000 Limit	378,033	442,494
Data Breach Coverage	71,295	75,040
Total Assessments Earned	<u>4,757,044</u>	<u>5,035,030</u>
Less Assessments Ceded to	<u>(4,757,044)</u>	<u>(5,035,030)</u>
Net Assessments	<u>\$ -</u>	<u>\$ -</u>

All assessments are ceded to reinsurers. The classification of excess program assessment revenues was changed in 2015 to conform to existing reinsurer treaties.

NOTE K – PROVISION FOR CLAIM SETTLEMENTS AND DEFENSE COSTS

Primary Program

As more fully described in Note B, estimates to settle indemnity and defend liabilities claims are established when claims are reported to the PLF. Subsequent changes in estimates resulting from the case-by-case continuous review process and differences between estimates and ultimate payments are reflected in operations of the fiscal period when the changes occur. Estimates are further adjusted based on studies performed by the PLF's independent consulting actuaries. For financial statement purposes, actual or estimated amounts recoverable from various claims related receivables (such as subrogation receivables) are deducted from estimated expenses in the PLF's operating statement. During 2015, the net provisions for settling and defending liability claims totaled \$10,362,499 and \$7,323,794 indemnity and expenses respectively, for a total provision of \$17,686,293 at year-end. This is a decrease of \$1,170,258 over the total provision of \$18,856,551 during 2014.

The current portions of claims liability were determined by applying the prior three-year average of indemnity and expense payments made on claims pending at the start of the year. In 2015 the current portion of indemnity and expense claims were based on the three year average of 39% and 41% respectively. For the three-year period ending December 31, 2014, the average current portion of indemnity and expense claims were 42% and 41%, respectively.

**OREGON STATE BAR
PROFESSIONAL LIABILITY FUND
PROPRIETARY FUNDS**

NOTES TO FINANCIAL STATEMENTS (CONTINUED)

December 31, 2015 and 2014

NOTE K – PROVISION FOR CLAIM SETTLEMENTS AND DEFENSE COSTS (CONTINUED)

Excess Program

As described in Note B, the primary liability for any claim filed under the excess plan has been passed to other insurance companies through reinsurance. The possibility of the PLF incurring direct costs under the excess plan is considered remote. Therefore, no provision or liability for such claims has been established. If future operations of the plan indicate that the PLF will incur direct costs, appropriate provision for such losses will be established based on plan experience.

NOTE L – ESTIMATED LIABILITIES FOR CLAIMS – PRIMARY PROGRAM

As described in Note B, estimated liabilities to settle (indemnity) and defend (loss adjustment expenses) claims are composed of various factors. The following table shows the composition of these factors by type and the total allocation between indemnity and loss adjustment expenses for the year ending December 31, 2015 and 2014:

	<u>2015</u>	<u>2014</u>
Claim Liabilities:		
Claims Settlements	\$ 13,800,000	\$ 13,200,000
Defense Costs	14,400,000	15,300,000
Future ERC Claims	3,100,000	2,700,000
Suspense Files	1,600,000	1,500,000
Administration of pending Claims	<u>2,400,000</u>	<u>2,500,000</u>
Total Claim Liabilities	<u>\$ 35,300,000</u>	<u>\$ 35,200,000</u>
Allocation:		
Indemnity Settlements	\$ 18,188,278	\$ 15,687,000
Loss Adjustment Expenses	<u>17,111,722</u>	<u>19,513,000</u>
Total Claim Liabilities	<u>\$ 35,300,000</u>	<u>\$ 35,200,000</u>

NOTE M – RISK MANAGEMENT

The PLF is exposed to various risks of loss related to: torts, theft, damage or destruction of assets, errors and omissions, injuries to employees, and natural disasters. Except for unemployment compensation, the PLF purchases commercial insurance to minimize its exposure to these risks. There has been no significant reduction in commercial insurance coverage from fiscal year 2014 to 2015.

NOTE N – SUBSEQUENT EVENTS

Subsequent to December 31, 2015, the PLF entered into an unsecured credit card agreement with a bank providing available combined revolving credit of up to \$500,000.

8/5/2016

REQUIRED SUPPLEMENTARY INFORMATION

DRAFT

**OREGON STATE BAR
PROFESSIONAL LIABILITY FUND**

SCHEDULES OF REQUIRED SUPPLEMENTARY INFORMATION – PENSION INFORMATION

**SCHEDULE OF THE PROPORTIONATE SHARE OF THE NET PENSION LIABILITY
OREGON PUBLIC EMPLOYEES RETIREMENT SYSTEM
Last 10 Fiscal Years***

	<u>2015</u>	<u>2014</u>	<u>2013</u>	<u>2012</u>	<u>2011</u>	<u>2010</u>	<u>2009</u>	<u>2008</u>	<u>2007</u>	<u>2006</u>
Proportion of the net pension liability (asset)	0.03158700%	0.03158700%	N/A							
Proportionate share of the net pension liability (asset)	\$ 1,813,561	\$ (667,024)	\$ N/A							
Covered-employee payroll	4,384,740	4,266,004	N/A							
Proportionate share of the net pension liability (asset) as a percentage of its covered-employee payroll	41.4%	-15.6%	N/A							
Plan fiduciary net position as a percentage of the total pension liability	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A

**SCHEDULE OF CONTRIBUTIONS
OREGON PUBLIC EMPLOYEES RETIREMENT SYSTEM
Last 10 Fiscal Years***

	<u>2015</u>	<u>2014</u>	<u>2013</u>	<u>2012</u>	<u>2011</u>	<u>2010</u>	<u>2009</u>	<u>2008</u>	<u>2007</u>	<u>2006</u>
Contractually required contribution	\$ 683,514	\$ 575,282	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Contributions in relation to the contractually required contribution	<u>683,514</u>	<u>575,282</u>	<u>-</u>							
Contribution deficiency (excess)	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>
Covered-employee payroll	\$ 4,384,740	\$ 4,266,004	\$ N/A							
Contributions as a percentage of covered-employee payroll	15.6%	13.5%	N/A							

* GASB # 68 requires ten-year trend information. However, until a full ten-year trend is established, only the information for the years available is presented.

The accompanying notes and independent auditors' report should be read with the supplemental schedules.

**OREGON STATE BAR
PROFESSIONAL LIABILITY FUND
PROPRIETARY FUNDS**

NOTES TO REQUIRED SUPPLEMENTARY INFORMATION

For the Years Ended December 31, 2015 and 2014

Changes in Benefit Terms:

Effective May 2013, the Oregon legislature eliminated the tax remedy payments for benefit recipients who are not subject to Oregon income tax, because they do not reside in Oregon, and limited the 2013 post-retirement COLA to 1.5% of annual benefit.

Changes in Assumptions:

The Actuarial Cost Method was changed from the Projected Unit Credit (PUC) Cost Method to the Entry Age Normal (EAN) Cost Method. In combination with the change in cost method, the outstanding Tier 1/Tier 2 UAL as of December 31, 2013 were re-amortized over a closed period of 20 years as a level percentage of projected payroll.

Other changes are described in the notes to the accompanying financial statements.

DRAFT

8/5/2016

REPORT REQUIRED BY *GOVERNMENT AUDITING STANDARDS*

DRAFT

**INDEPENDENT AUDITORS' REPORT ON INTERNAL CONTROL OVER
FINANCIAL REPORTING AND ON COMPLIANCE AND OTHER MATTERS
BASED ON AN AUDIT OF FINANCIAL STATEMENTS PERFORMED IN
ACCORDANCE WITH GOVERNMENT AUDITING STANDARDS**

Board of Directors
Oregon State Bar Professional Liability Fund
Tigard, Oregon

We have audited, in accordance with the auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States, the financial statements of the business-type activities of the Oregon State Bar Professional Liability Fund (the PLF) as of and for the year ended December 31, 2015, and the related notes to the financial statements, which collectively comprise the PLF's basic financial statements, and have issued our report thereon dated August 3, 2016.

Internal Control Over Financial Reporting

In planning and performing our audit of the financial statements, we considered the PLF's internal control over financial reporting (internal control) to determine the audit procedures that are appropriate in the circumstances for the purpose of expressing our opinion on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of the PLF's internal control. Accordingly, we do not express an opinion on the effectiveness of the PLF's internal control.

A *deficiency in internal control* exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent or detect and correct misstatements on a timely basis. A *material weakness* is a deficiency, or a combination of deficiencies, in internal control such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented, or detected and corrected on a timely basis. A *significant deficiency* is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

Our consideration of internal control was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control that might be material weaknesses or significant deficiencies. Given these limitations, during our audit we did not identify any deficiencies in internal control that we consider to be material weaknesses. However, material weaknesses may exist that have not been identified.

Compliance and Other Matters

As part of obtaining reasonable assurance about whether the PLF's financial statements are free from material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements, noncompliance with which could have a direct and material effect on the determination of financial statement amounts. However, providing an opinion on compliance with those provisions was not an objective of our audit and, accordingly, we do not express such an opinion. The results of our tests disclosed no instances of noncompliance or other matters that are required to be reported under *Government Auditing Standards*.

8/5/2016

Board of Directors
Oregon State Bar Professional Liability Fund
Tigard, Oregon

Purpose of this Report

The purpose of this report is solely to describe the scope of our testing of internal control and compliance and the results of that testing, and not to provide an opinion on the effectiveness of the PLF's internal control or on compliance. This report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the PLF's internal control and compliance. Accordingly, this communication is not suitable for any other purpose.

Portland, Oregon
August 3, 2016

DRAFT

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: September 9, 2016
Memo Date: September 6, 2016
From: Dawn Evans, Disciplinary Counsel
Amber Hollister, General Counsel
Re: Disciplinary System Adjudicator

Action Recommended

Review the options presented for engaging a disciplinary system adjudicator and determine whether to create the position.

Background

At its March 11, 2016 special meeting, the Board voted to pursue creating a disciplinary system adjudicator position (DSRC Recommendation #16), on the condition that the person be an employee of the Oregon Supreme Court. Board members were concerned that, if the adjudicator were a bar employee, the physical proximity to the Disciplinary Counsel's Office (DCO) might raise a perception that the exercise of independent judgment and decision-making was compromised. At the same time, the Board expressed interest in improving the quality and consistency of trial panel opinions as well as the efficiency of the disciplinary process. Several members believed that an adjudicator would accomplish these goals. Thus, staff was asked to explore whether the Oregon Supreme Court would be willing to employ the adjudicator.

Over the following months, bar staff met with representatives of the Oregon Supreme Court, the State Court Administrator's Office, and the Oregon Judicial Department to discuss the logistics and statutory requirements associated with creating an adjudicator position as an employee of the court. It became apparent that there are significant challenges and serious disadvantages to the Court employing an adjudicator. These challenges and disadvantages were outlined in a memorandum presented at the June 24, 2016 Board meeting, with various options for engaging an adjudicator. That memo is attached hereto.

At the June meeting, the Board voted to continue exploring options for establishing an adjudicator position that would not be an employee of the Supreme Court but that would address concerns about a lack of independence from DCO. Given the Board's input, staff developed the two options outlined below.

Since the Board's last meeting, the bar has also taken preliminary steps to create a framework for a possible adjudicator position. Disciplinary Counsel Dawn Evans has drafted proposed changes to court rules (see attached summary of Proposed Duties of Adjudicator), and the bar has asked legislative counsel to draft a proposed amendment to statute, which could be introduced in the 2017 session.

Description of Options

1. Adjudicator Appointed by Court/Chief Justice and Employed by OSB

Position Description: Under this scenario, the adjudicator would be an Oregon lawyer appointed by the Supreme Court (or the Chief Justice) and an employee of the OSB. The bar would enter into an employment contract with the adjudicator, which could be renewed on an annual basis. Appointment by the Supreme Court would be a requirement for continued employment. Only the Supreme Court (or the Chief Justice) would have the power to remove the adjudicator.

Supervision: The Executive Director would engage in day-to-day supervision of the adjudicator. This would mean that the Executive Director would be responsible for administrative supervision of the individual (e.g. approving timesheets, vacation requests, and reimbursement requests).

The Executive Director would also be responsible for ensuring the adjudicator received adequate support as he or she became accustomed to the position. Part of this support might include asking General Counsel to provide background information on the format of opinions, procedural questions, ethics law, and existing disciplinary precedent.

While the adjudicator would report to the Executive Director, and the Executive Director could furnish general information about the disciplinary system, the Executive Director would not have any decisional authority over disciplinary matters. Any decisions about specific cases would be reserved exclusively for the adjudicator (and other disciplinary panel members appointed to the case).

The adjudicator would be subject to bar policies, including accounting and human resources policies. If an adjudicator violated a bar policy, the Executive Director could report that violation to the Supreme Court and request that the Supreme Court remove the adjudicator. Ultimately, any decision to remove the adjudicator would be up to the Supreme Court.

Benchmarks: The adjudicator would be responsible for meeting performance benchmarks, as approved by the Supreme Court. The Executive Director and adjudicator would submit reports to the Supreme Court on an annual basis on the adjudicator's progress on performance benchmarks. The Executive Director would make available all opinions and orders drafted by the adjudicator throughout the year to the Court (regardless of whether they were appealed).

The performance benchmarks would include measures on timeliness and responsiveness. The Executive Director would also provide the Supreme Court with general feedback about the adjudicator's job performance, training and professional development. In

the reports, the Executive Director would share any feedback she received about the adjudicator from other disciplinary board members, respondent's counsel and DCO.

Office Location: The position would be advertised as an off-site position, so that the individual would be expected to work from home or out of another office space. This off-site location would provide an additional degree of physical separation between bar staff and the adjudicator.

Support: The adjudicator would receive administrative support from the Disciplinary Board Clerk. The Disciplinary Board Clerk would provide assistance as needed in connection with appointment of panels, scheduling of hearings, locating and securing hearing space and court reporters, and other procedural matters. The Disciplinary Board Clerk would also provide example forms of orders, and copies of necessary documents from the Clerk's files, but would not provide secretarial or word processing support to the adjudicator. The Disciplinary Board Clerk would continue to report to General Counsel.

The adjudicator would receive a bar laptop and IT support from bar staff. Although the adjudicator would utilize the bar's server, the adjudicator's electronic files would be not be open for review by disciplinary staff; similarly, the adjudicator would not have access to disciplinary or client assistance office electronic files.

The bar's General Counsel would be available to provide general information about the disciplinary system, case law and rules of procedure, in the same manner she is available to existing disciplinary board members. While General Counsel would offer general input on interpretation of bar rules of procedure and could serve as a resource for legal research questions, General Counsel would not provide input on specific case decisions.

The bar would provide the adjudicator with training, including the opportunity to attend conferences related to ethics and lawyer regulation. The bar could also seek out opportunities for the adjudicator to attend trainings with Oregon judges related to opinion writing and courtroom management.

Cost: A ballpark estimate from our CFO suggests that this position would cost roughly \$92,300 for a half-time employee or \$184,600 for a full-time position (this includes annual salary and benefits only). This approximate cost assumes that the position is filled at the same range as that of the bar's Disciplinary Counsel. If this position were created and assuming implementation of changes to the Rules of Procedure within the same timeframe, it would likely be filled in mid-2017, so any cost would be half of the above amount for the first year.

2. Panel of Independent Contractor Adjudicators, Appointed by Court/Chief Justice

Position Description: Under this scenario, three Oregon lawyers would be appointed as adjudicators by the Supreme Court (or Chief Justice), but would serve as independent

contractors of the OSB. The term of the contract could be for up to one year, but would not be automatically renewed. The adjudicators would only be removable by the Supreme Court.

The adjudicators would need to be able to demonstrate to the bar that they were otherwise engaged in the business of law or a related field, to support their designation as independent contractors.

A contract would detail the OSB and the Court's broad-based expectations for the position, and the tasks required to be completed pursuant to the bar rules of procedure. If an adjudicator had specific questions about contract requirements, the Executive Director or General Counsel could field questions.

Supervision: Because of the nature of the independent contractor relationship, the bar would not (and could not) exercise day-to-day supervision over the adjudicators, or exercise control over the manner in which they complete their assigned tasks. Adjudicators hired as independent contractors would be required to supply their own on-the-job training and would need to have the existing skills to perform the work when retained.

Benchmarks: The adjudicators would be responsible for meeting high-level benchmarks related to timeliness and responsiveness, as approved by the Supreme Court. The adjudicators would submit reports to the Supreme Court on an annual basis (these reports would likely be similar to those already provided by Disciplinary Counsel and the Client Assistance Office). The Executive Director would make available to the Court all opinions and orders drafted by the adjudicators throughout the year (regardless of whether they were appealed).

To the extent that the adjudicators sought others' feedback, they would be charged with obtaining it through their own inquiries. The Executive Director could share her feedback about the adjudicators with the Court (or Chief Justice) to help inform appointment decisions.

Office Location: The adjudicators would be responsible for supplying their own office space and equipment, off of bar premises.

Support: The adjudicators would be responsible for providing for their own staff and administrative support, and could hire and pay assistants. Although the adjudicators would coordinate with and, to some extent, work in concert with the Disciplinary Board Clerk, they would not otherwise receive administrative support from the bar, and would be expected to provide all tools and equipment required to complete their required work.

The bar's General Counsel would be available to provide basic information about the disciplinary system, in the same manner she is available to existing disciplinary board members.

Cost: Using the data from the 2012 survey for a "Government Lawyer" and updated by the CPI to a 2016 estimate, our CFO has estimated that we would hire at a billing rate of approximately \$138 per hour. At 1,080 hours a year (equal to a half-time employee), the cost to

the bar would be \$149,000/year for each half-time contractor. Ultimately, any rate of pay would need to be negotiated with the adjudicators.

The bar could also explore paying adjudicators based on a piece rate, which would depend on the adjudicator's work on any given case (e.g. a flat rate per motion, per opinion, or per day of trial).

If this position were created, and again assuming timely implementation of the rule changes, it would likely be filled in mid-2017, so any cost would be half of the above amount for the first year.

Options – Pro/Con Charts

Option 1 – Adjudicator Appointed by Court, Employed by OSB.

+ Pros	- Cons
The adjudicator would have the opportunity to develop expertise as the presiding member of every disciplinary board panel (unless successfully challenged for cause or otherwise unavailable).	Hiring one adjudicator could lead to the perception that one individual decision maker has significant influence in the disciplinary process (although panels will continue to consist of 3 members).
Having one person serving in this position would increase consistency in trial panel opinions in terms of quality, reasoning and outcome.	Because the individual would be a bar employee , there could be a perception that disciplinary counsel has sway over decision making.
A presiding adjudicator would have the ability to coordinate with regional chairs and the disciplinary board, with the goal of improving efficiency and reducing delay .	
If the bar pursued this option, it could provide direct technical and administrative support to the position, thereby maximizing efficiency .	
Because the individual would work off site and be appointed and removed by the Court, there would be a clear separation between the bar and the adjudicator.	
Initial estimates suggest an adjudicator appointed by the Court, who is an OSB employee, may be retained at a lower cost than an independent contractor.	

Option 2 – Adjudicator Appointed by Court, Employed by OSB.

+ Pros	- Cons
Engaging three adjudicators as independent contractors, rather than as an employees, may foster the appearance of increased separation between the bar’s disciplinary and adjudicatory functions.	Because the work would be divided among a number of individuals, there may be less consistency in decisions – that lack of consistency is precisely the concern the Court has raised about the current system.
Retaining a panel of adjudicators would allow the bar to easily substitute an adjudicator who is challenged for cause.	Each contractor would have less of an opportunity to serve on trial panels, and may develop expertise more slowly .
A panel would also give the bar the opportunity to hire contractors from across Oregon .	The independent contractor model places significant restrictions on how the positions are structured, in order to ensure that the classification withstands scrutiny.
	Adjudicators would also be required to provide their own staff, technical and administrative support , which could lead to logistical complications.
	Initial estimates suggest that this option may come at a higher cost to the bar. Any rate would need to be negotiated.

Option 3 – Abandon DSRC proposal to establish adjudicator position.

+ Pros	- Cons
Retaining current system would mean costs remain the same .	The Court has expressed concern with consistency and quality of opinions.
Allows for increased volunteer participation (three volunteers serve per panel, instead of two).	Relying entirely on volunteers does not allow adjudicators to develop depth of experience and knowledge . (Volunteers typically only serve on a panel every few years.)
Oregon lawyers are familiar with this system.	Volunteers are busy with existing practices and often have limited time and energy to devote to a panel.
	The Court has expressed support for the creation of an adjudicator position.

Proposed Duties of Adjudicator

1. Coordinating and overseeing the activities of the Disciplinary Board – interacting with the Disciplinary Board Clerk and with the Regional Chairs on a regular basis;
2. Presiding member of all trial panels – ruling on challenges to other trial panel members, ruling on all pretrial matters, setting hearings, conducting all pretrial hearings and conferences (other than the BR 4.6 pre-hearing conference, which is more akin to a settlement conference), ruling on all challenges to other trial panel members, presiding at trial, and ruling on any post-hearing motions (such as objections to the record and reviewing statements of cost);
3. Opinion writing – drafting orders, and when in majority, writing all trial opinions;
4. Making appointments – appointing trial panelist who will conduct BR 4.6 pre-hearing conference, trial panelists for cases referred by the Supreme Court (serving a “master” function), and trial panelists on an at-large basis to fill in from other regions as needed;
5. Serving as the sole adjudicator – upon agreement of the parties in lieu of a 3-member panel, ruling on defaults and various special proceedings (BR 7.1 motions, temporary interlocutory suspensions, reciprocal discipline cases, and interim suspensions based upon criminal convictions); and
6. Stipulations – Reviewing and entering orders approving all stipulations imposing six months or less.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: June 24, 2016
From: Helen Hirschbiel, Executive Director
Re: Disciplinary System Professional Adjudicator

Action Recommended

Review the options presented for engaging a disciplinary system professional adjudicator and provide feedback on a general direction.

Background

At its special meeting on March 11, 2016, the Board voted to recommend engaging a disciplinary system professional adjudicator, on the condition that the person be an employee of the Court.

The Court has expressed general enthusiasm about the prospect of creating a professional adjudicator position. The Court believes that creating a professional adjudicator position would support the Board's goals of improving the quality of disciplinary opinions and the efficiency of the disciplinary system.

Since March, bar staff has engaged in discussions with the Chief Justice, the State Court Administrator, and other representatives of the Oregon Judicial Department to delve into the logistics and statutory limitations of creating such a position.

At the request of the Court, bar staff and OJD staff researched the advantages and disadvantages of the following options for structuring the professional adjudicator position:

1. Professional Adjudicator Employed by Court/OJD
2. Professional Adjudicator who is an Independent Contractor Retained by Court/OJD
3. Professional Adjudicator Appointed by Court, but Employed/Retained by OSB
4. Professional Adjudicator who is an Independent Contractor Retained by OSB
5. Professional Adjudicator Employed by OSB

As a result of this collaborative process, it became apparent that if the Professional Adjudicator was an employee of the Court, there would be several additional challenges to implementation, which can be summarized as follows:

- The Oregon Judicial Department must have specific authority from the legislature to hire additional FTE. Any budget associated with that hire also requires legislative approval. See ORS 8.125(2)(b); ORS 8.105.

-
- Any money paid by the bar to fund an OJD employee may need to be deposited in the General Fund and specially allocated by the legislature to the Court. *See* ORS 8.130.
 - If the Professional Adjudicator is supervised by the Chief Justice, the Chief Justice may be disqualified from hearing a disciplinary case before the Supreme Court. *See* ORS 14.275. Court staff acknowledged the Board's desire to avoid any appearance of an improper connection between an adjudicator and the bar, but pointed out that direct supervision by the Court would likely create significant conflicts.
 - The Professional Adjudicator would be prohibited from engaging in the private practice of law. ORS 8.160. As a result, it may be difficult to find a person interested in a part-time position, if that were what the position required.
 - The Oregon State Court Administrator's Office may be statutorily required to support the Professional Adjudicator's function, with potential added expense. ORS 8.125.

In addition, the Court has made it clear that from a policy perspective, regardless of what entity retains the Professional Adjudicator, the Professional Adjudicator position should be funded entirely out of bar funds rather than OJD funds (which are primarily general funds) in order to avoid shifting the costs of the disciplinary system to the public.

Options

- **Further Explore Options 3-5 (OSB Employee, OSB Independent Contractor, or Appointed by Court but Employed/Retained by OSB).** Given the challenges outlined above, staff recommends completing further research about these options.
- **Abandon proposal to establish position of professional adjudicator.** Given the Court's support for the idea of a professional adjudicator, staff would not recommend this option at this time.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: September 9, 2016
Memo Date: August 25, 2016
From: Colin Andries, Oregon New Lawyers Division Chair
Re: ONLD Report

The following is a list of the activities and events the ONLD conducted since the last BOG meeting:

- Anthony Kuchulis, Andrew Weiner, and chair-elect Kaori Eder, represented Oregon during the ABA Young Lawyers Division (YLD) Annual Meeting in San Francisco. As part of the YLD assembly, the membership voted to support an amendment to Model Rule 8.4 adding anti-discrimination and anti-harassment provisions. The rule amendment was later passed by the larger ABA House of Delegates body. Although the ONLD was not able to officially support the exact wording of this rule change, we are thrilled to have lead the initial attempt to change this rule at the 2015 ABA Young Lawyers Division Annual Meeting.

During the conference the ONLD was honored with ABA Young Lawyers Division's first place Award of Achievement in the Service to the Bar category. This honor came for the ONLD's development of our Firm in a Flash project which is designed as a comprehensive resource for new lawyers interested in opening their own law office.

The ONLD also received special recognition from the ABA Young Lawyers Division in the Awards of Achievement Service to the Public category for our annual pro bono fair and awards ceremony. The BOG is invited to attend this year's event at the Portland World Trade Center on Thursday, October 27.

- The ONLD was asked to return to the OLIO orientation and host a social event. Several executive committee members attended the casino night event in Hood River. A few of our board members and one of our law student liaisons even helped out as dealers. The entire board enjoyed participating in the orientation and building relationships with the students.
- A nominating committee of Colin Andries, Joe Kraus, and Kaori Eder was approved by the executive committee and they plan to have the 2017 slate prepared shortly. Three seats on the executive committee are up for election this year, one member at large seat and positions representing regions 5 and 6.
- Speakers and a location downtown have been confirmed for the half-day CLE program for SIJS cases. The program, "Beyond Borders: Protecting Abused, Neglected, and Abandoned Immigrant Children" will be held on Friday, October 7 from 1-5pm with a social until 6pm at the Hotel Monaco. Speakers include Mark Bowers, Monica Campbell, Bradley Lechman, Mark Kramer, Jordan Bates, and Mackenzie Hogan. There will be an overview of immigration law followed by presentations from a Family Law attorney, Juvenile Law attorney, and Probate attorney.
- The Member Services Subcommittee sponsored two socials including a July 27 social at Yard House and a social on August 17 at Olive or Twist. The second annual Sunset Cruise and social is scheduled for Thursday, September 8 on the Willamette. We are looking forward to having BOG members Chris and Vanessa, as well as Helen, join us on the river.
- The executive committee is meeting in Medford on September 10. During the trip to Southern Oregon the board will host a social for local practitioners and participate in a public service

project through ACCESS. This service project will focus on preparing boxes for organization to fill during the holiday season and deliver to home bound senior citizens in the community.

- The ONLD is accepting nominations for their annual ONLD awards. The awards will be presented at the annual meeting on November 4 at the Hotel Monaco. BOG members are encouraged to attend the annual meeting and awards ceremony to help celebrate the accomplishments of some of the ONLD's outstanding members.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: September 9, 2016
From: Helen Hierschbiel, CEO/Executive Director
Re: CSF Awards Recommended for Payment
KRULL (Cisneros) 2016-02

Action Requested

The Client Security Fund Committee recommends reimbursement of \$7,500 to Guillermo Pahua Cisneros for his loss resulting from the conduct of attorney Julie Krull.

Discussion

Background

Guillermo Pahua Cisneros hired Julie Krull on March 28, 2014 to represent him in immigration removal proceedings. Although Mr. Cisneros resides in Hillsboro, Oregon, the proceedings were filed in Houston, Texas because that is where Mr. Cisneros was detained. The first objective of the representation was to secure a change of venue from Texas to Oregon.

The fee agreement provides for a flat fee of \$11,000. Mr. Cisneros paid Ms. Krull \$7,500 of the retainer. Ms. Krull's file reflects six separate time entries for a total of .5 hours spent on Mr. Cisneros' case, which appear to be for purely administrative tasks. The CSF investigator found no evidence that Ms. Krull took any substantive or meaningful action on behalf of Mr. Cisneros, including no evidence of any efforts to change venue of the removal proceedings.

Ms. Krull resigned Form B effective November 12, 2015. She never returned the money that Mr. Cisneros paid to her.

Analysis

In order to be eligible for reimbursement, the loss must be caused by the lawyer's dishonest conduct. Generally, a lawyer's failure to perform or complete a legal engagement is not, in itself, evidence of dishonest conduct. CSF Rule 2.2.2. However, reimbursement of a legal fee will be allowed if the services the lawyer actually provided were minimal or insignificant. CSF Rule 2.2.3.

The CSF Committee found that Mr. Cisneros' loss was caused by the dishonest conduct of Ms. Krull who promised to provide legal services in exchange for the advance payment of a legal fee. Further, it determined that Ms. Krull's legal services, if any, were minimal or insignificant. Finally, Mr. Cisneros submitted his claim within the required time. Therefore, the

CSF Committee recommends that Mr. Cisneros be reimbursed \$7,500, the full amount of his claim.

CLIENT SECURITY FUND
INVESTIGATION REPORT

Re: Client Security Fund Claim No.: 2016-02
Claimant: Guillermo Pahua Cisneros
Lawyer: Julie Krull
Investigator: Courtney C. Dippel

RECOMMENDATION

I recommend payment of Mr. Cisneros' claim in the amount of \$7,500.

CLAIM INVESTIGATION SUMMARY

The claimant, Guillermo Pahua Cisneros, hired Ms. Krull on March 28, 2014. Ms. Krull's fee agreement provided for a \$11,000 flat fee for representing Mr. Cisneros in immigration removal proceedings that were initially venued in Houston, Texas. The fee agreement specifically describes part of the scope of Ms. Krull's work was to move to change venue of the removal proceedings from Houston to Portland, Oregon and that if Ms. Krull was unsuccessful in changing venue, she would not be required to continue with representing Mr. Cisneros unless Mr. Cisneros and Ms. Krull reached a second agreement regarding covering Ms. Krull's travel costs. The fee agreement states it is non-refundable and immediately earned.

The fee agreement provided that Ms. Krull could resign at any time if "needed" or if Mr. Cisneros failed to comply with the fee agreement. While the original fee agreement was in Spanish, the translated version appears to state that if Ms. Krull resigned, she would be entitled to retain what she had earned and Mr. Cisneros would be entitled to a refund of the unearned portion of the flat fee.

The fee agreement provided that Mr. Cisneros was to pay the flat fee in three installments – \$4,000 on the day the fee agreement was signed (March 28, 2014), \$3,500 on June 1, 2014, and \$3,500 on August 1, 2014.

Ms. Krull's file contains two receipts reflecting payments by Mr. Cisneros of \$4,000 and \$3,500, respectively. Mr. Cisneros has made a claim for the full \$7,500.

Guillermo Pahua Cisneros Background

On August 15, 1995, Mr. Cisneros pled guilty to Unlawful Possession of a Weapon in the Circuit Court for Washington County, Oregon. He was sentenced to one year in prison and a fine of \$5,000.

On January 27, 2014, the United States Department of Homeland Security (“DHS”) issued a “Notice of Hearing in Removal Proceedings,” in Immigration Court located in Houston, Texas to Mr. Cisneros. The grounds for Mr. Cisneros’ removal were that: (1) he was not a citizen or national of the United States; (2) he was a native of Mexico and a citizen of Mexico; (3) on January 30, 1995, he adjusted his status in the United States to that of a lawful permanent resident alien; and (4) on August 15, 1995, he was convicted in Washington County Circuit Court for the offense of Carry Concealed/Possession Firearms.

At the time DHS issued the Removal Notice to Mr. Cisneros, he resided in Hillsboro, Oregon, but was stopped by customs at the Houston airport returning from visiting his wife’s family in Mexico. Mr. Cisneros had come to Oregon in 1991 and had lived in Oregon almost continuously since then except for a brief stint in Washington in 2001. Mr. Cisneros had been married since 1996 and had a clean criminal record since his 1995 conviction.

Julie Krull Background

Ms. Krull was admitted to practice in Oregon on September 20, 1996. At the time of the underlying events, Ms. Krull was representing clients in various immigration matters.

The Oregon State Bar accepted Ms. Krull’s Form B resignation on November 12, 2015.

Analysis

I spoke with Mr. Cisneros by telephone on February 2, 2016. He told me that he and Julie Krull had a “few meetings,” before he signed the fee agreement and gave her the initial \$4,000 retainer. After hiring her, however, he was constantly unable to actually contact her – either through the telephone or when he would show up at her office to discuss his case and the status of the removal proceeding. According to Mr. Cisneros, she was “never at her office,” “never returned calls,” and had no communication with him after he signed the fee agreement. He said they had no communication and there were no emails between the two of them. Mr. Cisneros never received any time records or bills reflecting any actions Ms. Krull (or her staff) took on his behalf. It’s his belief that Ms. Krull took his money, but did nothing.

Fed up, alarmed, and frustrated with Ms. Krull’s lack of communication, he eventually hired another attorney, Elliott Yi, to represent him in the removal proceedings.

I spoke with Mr. Yi by telephone on February 2, 2016. He confirmed Mr. Cisneros belief that Ms. Krull did not do anything with Immigration Court to attempt to change venue. By the time Mr. Yi began representing Mr. Cisneros, Immigration Court had already scheduled both initial pre-trial hearings and trial in Houston, Texas. According to Mr. Yi, Immigration Court staff informed him that Ms. Krull had never filed any paperwork on Mr. Cisneros’ behalf – no notice of appearance alerting the court to her representation of Mr. Cisneros, nor any paperwork to change venue to Portland.

Mr. Yi eventually successfully obtained a change of venue for Mr. Cisneros’ removal proceedings.

I also spoke with Ms. Krull on February 2, 2016 by telephone. While the conversation started out pleasantly enough, it eventually deteriorated into Ms. Krull having a breakdown over the phone. In her words, “you have everything and I don’t know why you keep calling me. The PLF hired someone.” She told me that she had practiced for almost twenty years and lost her career because of one client.

She had no independent recollection of Mr. Cisneros and therefore could not tell me what work, if any, she did on his behalf. She told me that she retained no client files and that all of her client files were with the PLF. She was crying and her distress was severe. She resides in New Orleans, Louisiana and said that the Bar “has taken everything from her.”

I obtained Ms. Krull’s client file for Mr. Cisneros from OSB disciplinary counsel, Angela Bennett. While Ms. Krull’s records do not reflect any work she completed for Immigration Court, her “Log Notes” reflect six separate time entries for a total of 0.5 hours spent on Mr. Cisneros’ case. The last time entry was for August 6, 2014, almost six months after Mr. Cisneros hired Ms. Krull. It is impossible to determine if the time entries were for Ms. Krull or someone else, lawyer or staff. Two of the time entries look like short meetings when Mr. Cisneros dropped off paperwork for his case and some telephone calls that were all identified as lasting .1 (i.e. six minutes or less). There are no descriptions of any legal services or legal work identified in any of the entries – they are for “client drop off documents,” “client drop off finger prints,” and three entries for telephone calls. These entries look administrative.

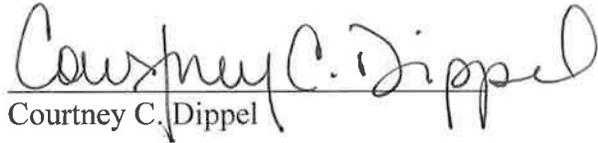
In sum, I could find no evidence that Ms. Krull took any substantive or meaningful actions on behalf of Mr. Cisneros and nothing to change venue of the removal proceedings – the primary purpose for which he retained Ms. Krull.

FINDINGS AND CONCLUSIONS

1. Ms. Krull was admitted to the Oregon State Bar on September 20, 1996. The Bar accepted her Form B resignation on November 12, 2015.
2. Guillermo Cisneros was a client of Ms. Krull. The objective of representation was for Ms. Krull to first change venue of immigration removal proceedings from Houston, Texas to Portland, Oregon and thereafter, to contest Mr. Cisneros’ removal.
3. Mr. Cisneros signed a fee agreement and paid Ms. Krull \$7,500.
4. 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.
5. The legal services provided by Ms. Krull were insignificant. She provided no bills to Mr. Cisneros and her “log notes,” reflect a total amount of 0.5 hours spent generally for someone to receive Mr. Cisneros documents/paperwork and telephone calls. There is no evidence Ms. Krull provided significant legal services for Mr. Cisneros who eventually hired Elliott Yi to handle his removal proceedings.
6. Mr. Cisneros filed his CSF claim on January 11, 2016, less than two years from when he first retained Ms. Krull and paid her the initial \$4,000 on March 28, 2014 and within months of Ms. Krull’s Form B Resignation. This claim is timely pursuant to CSF Rule 2.8.

7. Mr. Cisneros' loss was caused by the dishonest conduct of Ms. Krull who promised to provide legal services in exchange for the advance payment of a legal fee. CSF Rule 2.2.1(9).
8. Ms. Krull's legal services, if any, were minimal or insignificant. CSF Rule 2.2.3(ii).
9. Mr. Cisneros is entitled to a return of his retainer in the sum of \$7,500.

Submitted by:


Courtney C. Dippel

Dated: July 6, 2016

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: September 9, 2016
From: Helen Hirschbiel, Executive Director
Re: CSF Claim No. 2016-21 MILSTEIN (Colvin) Request for BOG Review

Action Requested

Consider claimant's request for BOG review of the CSF Committee's decision to partially approve her claim for reimbursement of \$4,000.

Discussion

Summary of Facts

Kayla Ann Colvin seeks reimbursement of \$4,000 that she paid to Jeff Milstein for legal fees and costs for representation in defense of two charges: Driving Under the Influence of Intoxicants ("DUI") and resisting arrest charges. In late 2013 and early 2014, Ms. Colvin paid \$2,000 (in four installments) pursuant to a Flat Fee Agreement for legal services. In April 2014, Ms. Colvin paid an additional \$2,000 at Mr. Milstein's request for a purported "team of experts" to aid in Ms. Colvin's defense at trial.

Mr. Milstein did provide some legal services for Ms. Colvin. He met with her and communicated with her on numerous occasions regarding her case. In addition, he appeared at several court proceedings and attempted to negotiate a plea bargain. Ms. Colvin saw no evidence of work by Mr. Milstein's "experts," however, and believes the request for these additional funds was a ruse to get more money from her. The only alleged expert that Ms. Colvin was aware of was a childhood friend of Mr. Milstein and disbarred California lawyer who was staying with Milstein on a personal visit. Despite requests from the OSB, Mr. Milstein has not provided an accounting of the \$2,000 cost advance or any description of services provided by any experts. Mr. Milstein did not deposit the funds into a trust account, and has not refunded any of these costs to Ms. Colvin, despite her demand that he do so.

The SPRB found probable cause of misconduct and charged Mr. Milstein with violations of RPC 1.15-1(c)(failing to deposit and maintain in trust until earned or incurred fees or costs paid in advance); RPC 8.4(a)(2)(committing a criminal act that reflects adversely on honesty, trustworthiness or fitness); and RPC 8.4(a)(3)(engaging in conduct involving dishonesty, fraud, deceit or misrepresentation; dishonest conversion of client funds).

Ms. Colvin petitioned for fee arbitration, and an award of \$2,000 was issued in her favor, which remains uncollected. The Client Security Fund Committee approved an award from the CSF to Ms. Colvin of \$2,000.

Ms. Colvin has appealed the CSF Committee decision to award her only \$2,000 and asks that the Board consider awarding her the full \$4,000 that she paid to Mr. Milstein. Ms. Colvin says that she only asked for \$2,000 in the fee arbitration proceeding because she did not feel like she could prove she was entitled to more than that. At the time of the proceedings, she was unable to access text and email messages from Mr. Milstein related to the case because her cell phone was broken. Since then, she has been able to retrieve those text and email messages, and believes she can prove she was entitled the full \$4,000.

CSF Committee Analysis

In order for a loss to be eligible for CSF reimbursement, it must result from a lawyer's dishonest conduct. CSF Rule 2.2.1. In addition, CSF Rule 2.2.3 provides that reimbursement of a legal fee is allowed only if: (i) the lawyer provided no legal services to the client; (ii) the legal services provided were minimal or insignificant; or (iii) the claim is supported by a court or arbitration award that establishes a refund is owed. Finally, as a condition of receiving an award, a claimant must transfer the claimant's rights against the lawyer who may be liable for the claimant's loss. CSF Rule 5.1.1.

The CSF Committee found evidence of dishonesty on the part of Mr. Milstein. However, the Committee determined that Mr. Milstein did provide some legal services to Ms. Colvin, and that such services were not minimal or insignificant. Therefore, the Committee did not find Ms. Colvin to be eligible for reimbursement of the \$2,000 paid for legal services. Further, the fee arbitration award established that Ms. Colvin was entitled to \$2,000, but no more. Because Ms. Colvin cannot transfer rights to collect from Mr. Milstein any more than that established by the fee arbitration award, the arbitration award limits the OSB's subrogation rights. Consequently, the CSF Committee felt bound to award Ms. Colvin no more than the \$2,000.

RECEIVED**AUG 15 2016****Oregon State Bar
Executive Director**

Client Security Fund:

Re: Client Security Fund Claim No. 2016-21
Lawyer: Jeff Milstein

Appeal to the Board:

Thank you for reviewing my case and awarding me the amount of the Arbitration, \$2,000. In light of Mr. Milsteins recent arrest for use of illegal narcotics with a former client, I gained the confidence to ask for the original payment of \$4,000 which I otherwise felt I was not able to provide enough evidence to try. The cell phone containing text messages prior to August 2014 was broken and the evidence lost, that Milstein had consistently asked for my prescription adderal, discussed cocaine and pressured me into allowing his friend "Kenny"(who was hired to work on my case) to stay with me for the duration of the case. He used threats such as, "If he can't stay with you, then he has to fly back to LA and can't work on your case." After the fact he was already given \$2,000 to be useful.

The sole purpose of Mr. Milsteins communications with me were to prolong his actual work on the case, and to further extract money from me. The email messages from November through February 2014-2015, I demanded my money back, with the exception I would allow him \$100 per court visit. He informed me he would seek council from his friends "at the BAR" to see if in fact he did owe me the money, then he would eagerly pay. By December he offered excuses that his clients weren't paying him, and he could begin repaying me until after the Holidays. When he was contacted in January, 2015, I was met with messages from a woman who claimed to be his assistant, informing me Mr. Milstein was unreachable. Giving him the benefit of the doubt, I prolonged filing Arbitration, however eventually did with null communication.

From the moment of hiring Mr. Milstein, who I was referred to through the Modest Means program, I emailed requesting further information about his billing practices. Immediately I felt unsettled, however never having an attorney before, I thought maybe I just didn't know how it worked. Mr. Milstein is a wordsmith. He was able to convince me we had a credible defense and that he would fight through trial. Soon after, Mr. Milstein informed me this was his very first DUII, and he had no experience in criminal law. He stated he was a family law attorney and not an ethical one. Mr. Milstein largely relied on his wife's "witchcraft" to win cases, and informed me he was hoping she could place a spell on the officers so they would not be present during trial. Mr. Milstein was so out of this world, that I caved and decided it would be best if I just took the initial plea offer from Rose Gibson, the original DA prosecuting my DUII. At our court appointment, Mr. Milstein barged out of the DA's chambers and exclaimed, "The deal is off, we are going to trial!" He informed me the deal he had promised me was being reneged, and that Rose Gibson had no recollection of the emails confirming this deal. In shock, I began to cry, and he consoled me,

case file he mailed to me after his dismissal. Only items I had printed and given him myself. The lies are endless, but let me begin to display them for your consideration.

A: An email response from Mr. Milstein to Ms. Cournyer, dated Friday, January 08, 2016
 "Never did I state that the additional 2k was for a "team"

An email from me to Mr. Milstein dated, Wed, Aug 20, 2014

"Hey Jeff. I know you mentioned a bbq last week with your friend. So what came of it? I know our original deal was 2k to trial. Then 2k for Kenny, who hadn't ever done any work on my case. So where are we standing? I want trial. I think we have wasted valuable time working this together. I think we need ample time together going over the police reports and building the case for trial. we have literally wasted months of precious time. Please, lets get into the office and go over trial asap. Please. I have not met any of your "team" and am feeling completely put off at this point. There is still the matter of the personal injury case with Rose City Strip, and I haven't met anyone you mentioned could assist me with that. I desperately want to spend time working the trial aspects together. I don't feel secure in what information we've got so far. If you need witnesses, we need to secure a subpoena for my neighbor, and I am sure Kevin will testify. again, I am feeling very insecure in the process so far. Lets get together tomorrow or friday and begin building the trail information."

Mr. Milstein responds:

"There was a great deal. 1 day. And you said no cause you didn't want the device. And I do not need your help to prepare at this time. Once I decide whether you should testify that's when I need to go over your testimony with you. And you have a new DA just assigned whom I'm going to talk to. And just so you know right now Clackamas is overcrowded and a week means 2 days. And the people that I pay to help on your case are way above anything you've paid out. Im at court on a measure 11. After I talk to the new DA I'll let you know where she stands.

Jeff Milstein "

I respond:

"I don't have any financial means, and can't get a job now because of the Criminal bg check. I have had several great offers but because of the pending litigation, I can't secure work. It was my understanding that the Justice court hearing was postponed due to the duii trail. The court set it over. again, I believe working the police statements against each other with a good jury i believe will be helpful. That is where I'd like to go over the reports with you and make certain we have found all errors to present at trial. There was never, not once a decent deal on the table, the deal with Rose, I was willing to take, did not excist. and you assured me we were going to trial. I want time to sit and work on this before trial, if not I will have to terminate this and retain legal aide elsewhere. I have requested meeting with you over and over. this is now 2 months since the last postponed trial and we have not met once, note have I met the

I know I am not your only client, and to be frank, I don't care. YOU are my ONLY attorney, and have swindled me out of 2k more to hire a team I have never met. So when this is over, I want the extent of my retainer refunded, the portion I paid for a "team" whom I have had no access to and one whom I'd and ended up in the hospital.

As my attorney I expect you to be prepared for trial, but I also expect you to prepare me for trial. This is a requirement I am insisting on if you are to represent me in this matter."

Mr. Milstein responds"

"Go see this guy if you want to help yourself. I've worked my ass off for you. I extended the justice court violation again. I've been all over the new 3rd DA on your case. I got you an amazing deal and you didn't take it cause you didn't want to have to blow into an ignition control device. 3 cops are taking the stand and will lie perfectly. I have other clients and cases besides yours. I will be well prepared for trial and I haven't lost one yet but this case is bad. I'm in court and trials all week. James Thayer is the man. If you go see him and start a program you'll be good come sentencing."

But let me point out that on July 18, 2014 Mr. Milstein told me this about the officers.

"Good. We'll get my colleague on board. His name is James Gregory. Fuck Kenny. This guy is the real deal. And we'll get Kathleen on it. James told me the cops will just take the stand say they remember everything like yesterday and lie their asses off. He said we need a jury that hates the police and/or locate or prove their is dash cam video and audio evidence missing. Kathleen will be our best option to find out about that. And Kevin will make a great witness.

Also...if you guys want to go talk to the only therapist I've ever known that is really good. Call Nancy Potter at northwest catholic counseling center...tell her your my client so you could get in fast. Trust me. She'll help you guys. She fixed a client I have that I thought was not fixable.

And don't get into stupid arguments or drink to much. We'll meet with James and Kathleen soon. We're on this kidnapping case by dhs right now. We're going all out against them. Your case will be next for them.

By the way...im gonna destroy Walther on the stand. I know he's been reported for misconduct and Kathleen will no problem getting that info. Also my paralegal will testify against him also ;)"

C: An email from myself to Mr. Milstein, dated October 15, 2014

"Arbitration is a process used to settle unreturned fees not used appropriately by council, and I plan to pursue this avenue on or before November 19th if we have not reached agreement."

"I am demanding the \$2000 paid to obtain a team. I am demanding to review the case file and fees associated with the original retainer agreement. I am highly in doubt that the information given to me has been accurate up to this point, and not willing to accept anything but documented evidence in consideration of the final fee paid."

"I understand the practice of the retainer is to be held in an account until the services have been rendered and then the attorney may pay themselves. I also understand this is not how you have practiced in my case and this is illegal."

D: Emails between Mr. Milstein and Angela McCracken, dated Thursday, December 24, 2015

"1. I do not have the money to pay the award but I expect to in February. I have been in touch with Cassandra and I will pay interest on it. 2. The **case** number is 14C33370. I attached the order with the names blacked out."

This in response to several excuses about not being in touch, not sending the payments as agreed after my arbitration award, \$200 a month plus interest. Mr. Milstein claims to have been tied up in many cases, and could not ever verify them with the BAR, he used this same excuse in lieu of meeting with me and discussing my case regularly. He continues asking for several continuences.

E: Email from Mr. milstein to Angela McCracken, dated Friday, November 20, 2015

Mr. Milstein claims I am upset because we had no defense. I have stated over and over in emails that there are actions we can legally take to suppress evidence etc. Mr. Milstein insisted regularly we did not need to file motions, we had a solid case and we were taking down corrupt Clackamas county cops. In this email Mr. Milstein claims he was added as the attorney on two separate cases without his knowledge. Mr. Milstein and I met face to face on the steps of Clackamas court house, as I was going in to contest a restraining order by my partner. He consoled me, and informed me, "On the attorney line, you list me, I'll get you out of this, family law is what I do." "Kenny" and a middle eastern indian man he claimed was his new paralegal were present for the conversation. I was able to make amends with my partner and the order was dropped before any court appearances took place. Mr. Milstein never appeared in this matter. Furthermore he claimed he has never done drugs or traded services for drugs, and exclaims, "Mr. Sharris made that up." This was not Mr. Sharris claim, this was my claim, and I continued to press Mr. Milstein with the knowledge that I had the texts to incriminate him. Mr. Milstein continues, "Miss Colvin only said that she came to the office where we looked hung over." I can emphatically tell you, I admitted partaking in cocaine with "Kenny" and Mr. Milstein after 5 hours in his office. He accepted my \$2,000 additional payment, got on his phone and said he'd be right back, I sat with "Kenny" asking questions while he drunkenly fumbled through

In addition:

A letter dated July 11, 2016

Re: Case No. 16-78-- Jeffrey Scott Milstein

Refers to Formal Disciplinary proceedings addressing alleged: RPC 1.15-1(c), RPC 8.4(a)(2), and RPC 8.4(a)(3)

Including: BR 3.1 Petition for Interim Suspension

Thank you for consideration.

A handwritten signature in black ink, appearing to read "K. Colwell". The signature is written in a cursive, flowing style with a large initial "K" and a prominent loop at the end.

Kayla Colvin
10621 Selinwood Ave
Milwaukie, OR 97222

PORTLAND OR 970
11 AUG 2016 PM 5 L



Heben Hirschbiel
- CEO / Executive Director
PO Oregon State Bar
P.O. Box 231935
Tigard, OR 97281-1935

97281-193535



CLIENT SECURITY FUND INVESTIGATIVE REPORT

FROM: Lisanne Butterfield (investigating attorney)
DATE: July 14, 2016
RE: CSF Claim No. 2016-21
Claimant: Kayla Ann Colvin
Accused Attorney: Jeff Milstein

Investigator's Recommendation

It is recommended that the CSF vote to approve reimbursement of fees in the amount of \$2,000 to Kayla Ann Colvin.

Statement of the Claim

In this case, the Claimant, Kayla Ann Colvin (the "Claimant") seeks reimbursement of \$4,000 that Claimant paid as legal fees and costs to attorney Jeff Milstein (the "Accused"). On November 29, 2013, the Claimant was charged with Driving Under the Influence of Intoxicants ("DUII") and Resisting Arrest (collectively, the "Charges"). In December of 2013, Claimant retained the Accused to represent her in the DUII and Resisting Arrest charges. Claimant and the Accused entered into a Flat Fee Agreement in the amount of \$2,000, which the parties apparently agreed would cover all legal services through trial on the Charges.

Claimant paid the \$2,000 through 4 (four) installment checks in the amount of \$500 each. In April of 2014, the Accused requested an additional \$2,000 for a "team of experts" to aid in the Claimant's defense at trial. Upon the Accused's request, Claimant paid the Accused \$4,000 for legal fees and costs to defend against the Charges.

In support of her application for reimbursement of attorneys' fees, the Claimant further alleged that:

- On several occasions, the Accused physically met (formally and informally) with the Claimant to discuss the Charges and the defense of same.
- The Accused and the Claimant had numerous email and interpersonal interactions regarding the Charges and other issues personal in nature.
- On the Claimant's behalf, the Accused attended several hearings (yet, the number and value of those appearances are controverted by the Accused and the Claimant).
- The Accused attempted to (but did not succeed in) negotiating a plea agreement for the Claimant.
- The Accused solicited Claimant to give the Accused prescribed medication that belonged to Claimant.
- The Accused exploited Claimant by proposing that she compensate the Accused by giving her prescribed drugs in exchange for legal services to be provided by the Accused to the Claimant.

- The Accused requested an additional \$2,000 for a “team of experts.”
- Despite the Accused’s repeated reference to a “team of experts” that the Accused represented would be assigned to assist him at trial, the Claimant only met one “expert” named Kenneth R. Markman, a former Deputy District Attorney and disbarred California counsel.
- The Accused solicited the Claimant to provide housing accommodations for the Accused’s friend and “trial expert,” Kenneth R. Markman.
- Claimant never met any other alleged retained experts.
- Claimant eventually terminated Accused and was represented by public defenders (Maryann Meaney and Ronald Gray).

Within the course and context of the investigation of the subject claim, the following facts were independently confirmed by the undersigned investigator:

- On September 15, 2015, the Claimant and the Accused attended a hearing before arbitrator Lawrence Sherris on the petition of Claimant for arbitration of a fee dispute. The arbitrator issued an award of \$2,000 to Claimant. That award remains uncollected.
- On March 16, 2016, Claimant submitted an application for reimbursement to the OSB Client Security Fund.
- On June 6, 2016, undersigned investigator participated in a telephone conference with the Claimant, who presented credible evidence of her claim.
- On June 21, 2016, this investigator participated in a telephone conference with the Accused, who presented an inconsistent, rambling and incoherent narrative to attempt to justify the fact that the Accused failed to provide legal services to the Claimant as promised. The Accused did not explain why he misrepresented information to the Claimant regarding the second \$2,000 payment that the Accused requested from the Claimant.

In interviews with the Accused, he admitted the following facts:

- That the Accused received the total of \$4,000 from the Claimant, \$2,000 of which was “earned upon receipt.”
- That the Accused owes Claimant \$2,000 for the uncollected fee arbitration award, which the Accused claims he has “tried to honor in accordance with a payment plan.”
- That the Accused received prescription medications from the Claimant “when [the Claimant] thought she was going to jail [and would become] homeless.”
- That Kenneth R. Markman is the Accused’s childhood friend from Los Angeles, CA and also that he is a former Deputy District Attorney, who was disbarred in California due to alcoholism.
- That Kenneth Markman, the “trial expert” selected and retained by the Accused, relapsed close in time to the underling DUII case involving the Claimant, and the Accused ultimately required him to abruptly depart the Accused’s home, where his wife and young child lived.

Based on undersigned investigator's review, the Accused provided legal services to the Claimant to earn the \$2,000 that the Claimant paid the Accused. (The value and effectiveness of the Accused's legal services are disputed; however, it's clear that the Accused performed *some* work for the Claimant's benefit.) The additional \$2,000 paid by the Claimant to the Accused for the "expert witnesses," however, added no value and thus was not earned by the Accused. The alleged "team of experts" performed no compensable work to assist with the resolution of the case; therefore, the second \$2,000 collected by the Accused should be reimbursed to the Claimant.

Findings and Conclusions

1. The Claimant formally retained the Accused to represent her in the DUII and Resisting Arrest case. *See* Exhibit 1, the OJIN Court docket for CASE NO. CR1410079, *State of Oregon v. KAYLA ANN COLVIN*. (Date Filed: 01/09/2014) (Clackamas County).
2. The Accused, Jeffrey Milstein, was an active attorney and member of the Oregon State Bar at the time of the alleged loss.
3. The Claimant paid \$4,000 to the Accused, and the Accused appeared in at least one court proceeding on behalf of the Claimant.
4. On behalf of the Claimant, the Accused also attempted to negotiate a plea bargain, and therefore provided legal services to or for the Claimant's benefit.
5. The additional \$2,000 paid to the Accused for the "expert witnesses" added no value and thus was not earned by the Accused.
6. The "experts" performed no compensable work to assist with a resolution of the case.
7. On or about July 7, 2016, the State Professional Responsibility Board ("SPRB") approved prosecution of claims against the Accused in an unrelated case (Connolly), and the SPRB is expected to soon recommend to the Supreme Court a 3.1 suspension during prosecution of disciplinary proceedings.
8. The Accused has a documented history and demonstrated pattern of drug and alcohol abuse. *See* Exhibit 2, Criminal History Record for Jeffrey Milstein (Multnomah County, State of Oregon); and *see also* Exhibit 3, article by Everton Bailey Jr., *The Oregonian*, May 26, 2016, ("A Portland defense attorney was arrested at the Clackamas County Courthouse Wednesday on a Lincoln County arrest warrant on suspicion of heroin and methamphetamine possession... The accusations against Jeffrey Milstein include a May 16 incident outside the Chinook Winds Casino in Lincoln City... Two people, including a client of Milstein, were arrested early the next morning and booked into the Lincoln County Jail on the same drug charges.")
9. In accordance with CSF Rule 2.2.3(iii), the undersigned investigator recommends that the CSF approve the claim in the amount of \$2,000.00 on the basis that "*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 [Claimant] is owed a refund of a legal fee..*"

Respectfully submitted:

/s/ Lisanne M. Butterfield

Charges: COLVIN, KAYLA ANN

1. Driving Under the Influence of Intoxicants
2. Resisting Arrest

Statute

813.010(4)
162.315

Level

Misdemeanor Class A
Misdemeanor Class A

Date

11/29/2013
11/29/2013

EVENTS & ORDERS OF THE COURT

DISPOSITIONS	
04/15/2015	<p>Plea (Judicial Officer: Unassigned, Judge)</p> <ol style="list-style-type: none"> 1. Driving Under the Influence of Intoxicants Guilty 2. Resisting Arrest Guilty <p>Created: 04/15/2015 12:00 AM</p>
05/01/2015	<p>Disposition (Judicial Officer: Unassigned, Judge)</p> <ol style="list-style-type: none"> 1. Driving Under the Influence of Intoxicants Convicted 2. Resisting Arrest Convicted <p>Created: 05/01/2015 12:00 AM</p>
05/01/2015	<p>Sentence (Judicial Officer: Unassigned, Judge)</p> <ol style="list-style-type: none"> 1. Driving Under the Influence of Intoxicants Converted Disposition: Status: Superseded on: Jun 26 2015 12:00AM Fine \$1000.00 Unitary Assessment \$60.00 State Obligation \$255.00 Attorney Fees \$173.00 Waived Converted Disposition: Status: Superseded on: Jun 26 2015 12:00AM Sentence Status:Superseded Sentence Date:06/26/2015 Probation Cond..... All General Conditions Apply Jail - Day(s): 5.00 Probation to Community Corrections - Month(s): 24.00 Drivers License Suspension - Year(s): 1.00 02 Pay Fines/Fees/Rst Ord 09a No Drv w/o Lic/Insr 11 Victim Impact Panel 22 No Frequenting 23 Substance Abuse Eval 24 No Alcohol/Drugs 25 No Paraphernalia 26 Submit to Search 27 Attend AA/NA 28 Antabuse 29 Submit to Tests 03 Inform Ct Chng Address 69 No Medical Marijuana 01 Violate No Laws 04 Report to Collections 06 Report to Corrections Credit for Time Served <p>Created: 05/04/2015 12:00 AM</p>
05/01/2015	<p>Sentence (Judicial Officer: Unassigned, Judge)</p> <ol style="list-style-type: none"> 2. Resisting Arrest Converted Disposition: Status: Superseded on: Jun 26 2015 12:00AM Fine \$250.00 Unitary Assessment \$60.00 Converted Disposition: Status: Superseded on: Jun 26 2015 12:00AM Probation Cond..... All General Conditions Apply Sentence Status:Superseded Sentence Date:06/26/2015 Probation to Community Corrections - Month(s): 24.00 02 Pay Fines/Fees/Rst Ord 09a No Drv w/o Lic/Insr 11 Victim Impact Panel 22 No Frequenting 23 Substance Abuse Eval 24 No Alcohol/Drugs 25 No Paraphernalia 26 Submit to Search 27 Attend AA/NA 28 Antabuse 29 Submit to Tests 03 Inform Ct Chng Address 69 No Medical Marijuana 01 Violate No Laws 14 Community Service Work 48 Hour(s) 06 Report to Corrections 04 Report to Collections <p>Created: 05/04/2015 12:00 AM</p>
05/01/2015	<p>Amended Sentence (Judicial Officer: Unassigned, Judge) Reason: Supersedes Previous Judgment</p> <ol style="list-style-type: none"> 1. Driving Under the Influence of Intoxicants Converted Disposition: Status: Superseded on: Sep 11 2015 12:00AM Fine \$1000.00 Unitary Assessment \$60.00 State Obligation \$255.00 Attorney Fees \$173.00 Waived Converted Disposition: Status: Superseded on: Sep 11 2015 12:00AM Probation Cond..... All General Conditions Apply Sentence Status:Superseded Sentence Date:09/11/2015 Jail - Day(s): 5.00 Probation to Community Corrections - Month(s): 24.00 Drivers License Suspension - Year(s): 1.00 02 Pay Fines/Fees/Rst Ord 09a No Drv w/o Lic/Insr 11 Victim Impact Panel 22 No Frequenting 23 Substance Abuse Eval 24 No Alcohol/Drugs 25 No Paraphernalia 26 Submit to Search 27 Attend AA/NA 28 Antabuse 29 Submit to Tests 03 Inform Ct Chng Address 69 No Medical Marijuana 01 Violate No Laws 04 Report to Collections 06 Report to Corrections 200 PV: Continued 205 PV: Jail w/CTS 10 Day(s) 17 Electronic Supervision 30 Day(s) Credit for Time Served <p>Created: 06/26/2015 12:00 AM</p>
05/01/2015	<p>Amended Sentence (Judicial Officer: Unassigned, Judge) Reason: Supersedes Previous Judgment</p> <ol style="list-style-type: none"> 2. Resisting Arrest Converted Disposition: Fine \$250.00 Unitary Assessment \$60.00 Converted Disposition: Probation Cond..... All General Conditions Apply Probation to Community Corrections - Month(s): 24.00 02 Pay Fines/Fees/Rst Ord 09a No Drv w/o Lic/Insr 11 Victim Impact Panel 22 No Frequenting 23 Substance Abuse Eval 24 No Alcohol/Drugs 25 No Paraphernalia 26 Submit to Search 27 Attend AA/NA 28 Antabuse 29 Submit to Tests 03 Inform Ct Chng Address 69 No Medical Marijuana 01 Violate No Laws 14 Community Service Work 48 Hour(s) 06 Report to Corrections 04 Report to Collections 200 PV: Continued <p>Created: 06/26/2015 12:00 AM</p>
09/10/2015	<p>Amended Sentence (Judicial Officer: Unassigned, Judge) Reason: Supersedes Previous Judgment</p> <ol style="list-style-type: none"> 1. Driving Under the Influence of Intoxicants Converted Disposition: Fine \$1000.00 Unitary Assessment \$60.00 State Obligation \$255.00 Attorney Fees \$173.00 Waived Converted Disposition: Probation Cond..... All General Conditions Apply Jail - Day(s): 5.00 Probation to Community Corrections - Month(s): 24.00 Drivers License Suspension - Year(s): 1.00 02 Pay Fines/Fees/Rst Ord 09a No Drv w/o Lic/Insr 11 Victim Impact Panel 22 No Frequenting 23 Substance Abuse Eval 24 No Alcohol/Drugs 25 No Paraphernalia 26 Submit to Search 27 Attend AA/NA 28 Antabuse 29 Submit to Tests 03 Inform Ct Chng Address 69 No Medical Marijuana 01 Violate No

Laws 04 Report to Collections 06 Report to Corrections 200 PV: Continued 205 PV: Jail w/CTS 10 Day(s) 200 PV: Continued Credit for Time Served
Created: 09/11/2015 12:00 AM

03/23/2016 **Amended Sentence** (Judicial Officer: Unassigned, Judge) Reason: Supersedes Previous Judgment, Probation Amended - Supervising Officer

1. Driving Under the Influence of Intoxicants

Converted Disposition:

Fine \$1000.00 Unitary Assessment \$60.00 State Obligation \$255.00 Attorney Fees \$173.00 Waived

License Suspension, Drivers License

Effective Date: 05/01/2015

Estimated End Date: 05/01/2016

Duration: 1 Year

Suspend: Yes

Sentencing Details

Decision Date: 05/01/2015

Suspend Imposition

Probation Bench (Continued)

Start Date: 05/01/2015

Duration: 24 Months

Estimated End Date: 05/01/2017

Judicial Officer: VanDyk, Douglas V

Condition Behavior: The following conditions apply

General Conditions: No - Violate No Laws, 05/01/2015, Obey all laws, court orders, and conditions of probation including HOPE Court conditions if ordered.

Pay Fines/Fees/Restitution as Ordered, 05/01/2015, Pay all fines, fees, costs, assessments and restitution set forth in the Money Judgment section of this order.

Inform Court of Change of Address, 05/01/2015, Keep the court advised of current mailing address at all times.

Substance Abuse Evaluation, 05/01/2015, Obtain a substance abuse evaluation as directed by the probation officer and follow through with any treatment recommendations, including inpatient treatment and comply with all follow-up treatment. Defendant shall be responsible for the evaluation fee and successfully complete and pay for any treatment recommendation by the evaluator.

No - Alcohol, 05/01/2015, Not use or possess alcoholic beverages (includes near beer), illegal drugs or narcotics, and shall notify the probation officer of any prescription given by a doctor.

No - Entry Bar/Tavern/OLCC Licensed Premises, 05/01/2015, Not enter or frequent any establishment whose primary income is derived from the sale of alcohol beverages and shall not frequent places where narcotics are used, sold, or kept.

No - Drug Paraphernalia, 05/01/2015, Not possess any narcotics paraphernalia, including smoking devices, and shall not associate with any person known to use, sell or possess illegal drugs or narcotics.

Submit - Blood/Breath/Urine Test, 05/01/2015, Submit to monitored testing at the direction of the probation officer at defendant's expense.

Antabuse if Medical Able, 05/01/2015, Take Antabuse if medically able and if directed by the probation officer.

No Drive Without License, 05/01/2015, Not drive without license and insurance and shall be subject to the requirements of the Guardian Interlock System per DMV policies for a hardship license.

Program - Victim Impact Panel, 05/01/2015, If the crime of conviction is a DUII, attend a DUII Victim's Panel within 60 days of this judgment.

Attend AA, 05/01/2015, Attend Alcoholics/Narcotics Anonymous meetings at the direction of the probation officer.

Submit - Search, 05/01/2015, Submit defendant's person, residence, vehicle or property, including computers, to search by the probation officer at any time without benefit of a search warrant when the probation officer has reasonable grounds to believe that such a search will reveal evidence of a violation of this probation.

No - Medical Marijuana Card, 05/01/2015, The defendant shall not possess, apply for, or obtain a medical marijuana card, or act as a caregiver.

Report as Required, 05/01/2015, Report as required and abide by the direction of the supervising officer.

Submit - Reports to Court, 05/01/2015, Report to collections clerk, Clackamas County Courthouse, 807 Main Street, Room 104 to set up a payment plan immediately following court or w/in 24 hours of release.

Report to Corrections, 05/01/2015, Report to Clackamas County Corrections, 1024 Main Street, Oregon City immediately following court or w/in 24 hours of release.

Incarceration

Duration: 5 Days

Agency: County Jail

Comments: No EHD or RMOMS.

Remand

Credit Time Served

Statute: 137.752

Eligibility: Not Eligible

Fee Totals:

	Amount	Reduction	Owed
Bench Probation Fee	\$100.00		\$100.00
Fee Totals \$	\$100.00		\$100.00
Fee Modifier			

Created: 04/04/2016 12:13 PM

03/23/2016 **Amended Sentence** (Judicial Officer: Unassigned, Judge) Reason: Supersedes Previous Judgment, Probation Amended - Supervising Officer

2. Resisting Arrest

Converted Disposition:

Fine \$250.00 Unitary Assessment \$60.00

Sentencing Details

Decision Date: 05/01/2015

Suspend Imposition

Probation Bench (Continued)

Start Date: 05/01/2015

Duration: 24 Months

Estimated End Date: 05/01/2017

Condition Behavior: The following conditions apply

General Conditions: No - Violate No Laws, 05/01/2015, Obey all laws, court orders, and conditions of probation including HOPE Court conditions if ordered.

Pay Fines/Fees/Restitution as Ordered, 05/01/2015, Pay all fines, fees, costs, assessments and restitution set forth in the Money Judgment section of this order.

Inform Court of Change of Address, 05/01/2015, Keep the court advised of current mailing address at all times.

Substance Abuse Evaluation, 05/01/2015, Obtain a substance abuse evaluation as directed by the probation officer and follow through with any treatment recommendations, including inpatient treatment and comply with all follow-up treatment. Defendant shall be responsible for the evaluation fee and successfully complete and pay for any treatment recommendation by the evaluator.

No - Alcohol, 05/01/2015, Not use or possess alcoholic beverages (includes near beer), illegal drugs or narcotics, and shall notify the probation officer of any prescription given by a doctor.

No - Entry Bar/Tavern/OLCC Licensed Premises, 05/01/2015, Not enter or frequent any establishment whose primary income is derived from the sale of alcohol beverages and shall not frequent places where narcotics are used, sold, or kept.

No - Drug Paraphernalia, 05/01/2015, Not possess any narcotics paraphernalia, including smoking devices, and shall not associate with any person known to use, sell or possess illegal drugs or narcotics.

Submit - Blood/Breath/Urine Test, 05/01/2015, Submit to monitored testing at the direction of the probation officer at defendant's expense.

Antabuse if Medical Able, 05/01/2015, Take Antabuse if medically able and if directed by the probation officer.

No Drive Without License, 05/01/2015, Not drive without license and insurance and shall be subject to the requirements of the Guardian Interlock System per DMV policies for a hardship license.

Program - Victim Impact Panel, 05/01/2015, If the crime of conviction is a DUII, attend a DUII Victim's Panel within 60 days of this judgment.

Attend AA, 05/01/2015, Attend Alcoholics/Narcotics Anonymous meetings at the direction of the probation officer.

Submit - Search, 05/01/2015, Submit defendant's person, residence, vehicle or property, including computers, to search by the probation officer at any time without benefit of a search warrant when the probation officer has reasonable grounds to believe that such a search will reveal evidence of a violation of this probation.

No - Medical Marijuana Card, 05/01/2015, The defendant shall not possess, apply for, or obtain a medical marijuana card, or act as a caregiver.

Report as Required, 05/01/2015, Report as required and abide by the direction of the supervising officer.

Submit - Reports to Court, 05/01/2015, Report to collections clerk, Clackamas County Courthouse, 807 Main Street, Room 104 to set up a payment plan immediately following court or w/in 24 hours of release.

Report to Corrections, 05/01/2015, Report to Clackamas County Community Corrections to set up community service.

Community Service Work, 05/01/2015, Complete 48 hour(s) community service work within 60 days.

Created: 04/04/2016 12:15 PM

OTHER EVENTS AND HEARINGS

- 01/09/2014 **Information**
Created: 01/09/2014 12:00 AM
- 01/23/2014 **Arraignment** (Judicial Officer: Stewart, Kenneth B)
Comment: Atty Milstein; Room: ARR ; Judge: Kenneth B Stewart; District Attorney: COUNTY LAW CLERK CLACKAMAS Defendant: KAYLA ANN COLVIN Clerk: BNM Reporter: FTR
Created: 01/23/2014 12:00 AM
- 01/23/2014 **Arraignment - Count**
Created: 01/23/2014 12:00 AM
- 01/23/2014 **Remove - Inactive Status**
Created: 01/23/2014 12:00 AM
- 01/23/2014 **Arraignment** (3:00 PM) ()
Created: 01/09/2014 12:00 AM
- 03/04/2014 **Hearing - Case Management** (Judicial Officer: Jones, Jeffrey S)
Room: CMA ; Judge: Jeffrey S Jones; District Attorney: MATTHEW J SEMRITC Bailiff: ANDREW DANIES Clerk: AJP Defendant: KAYLA ANN COLVIN Reporter: FTR Privately Retained: JEFFREY SCOTT MILSTEIN
Created: 03/04/2014 12:00 AM
- 03/04/2014 **Hearing - Case Management** (10:30 AM) ()
Created: 01/23/2014 12:00 AM
- 04/02/2014 **Hearing - Case Management** (Judicial Officer: Steele, Kathie F)
Room: CMA ; Judge: Kathie F Steele; Reporter: FTR District Attorney: BRYAN JOSEPH CENSONI Defendant: KAYLA ANN COLVIN Clerk: KDR Bailiff: GRANT COLE Privately Retained: JEFFREY SCOTT MILSTEIN
Created: 04/02/2014 12:00 AM
- 04/02/2014 **Hearing - Case Management** (10:30 AM) ()
Created: 03/04/2014 12:00 AM
- 04/25/2014 **Motion - Continuance**
Comment: Motion GRANTED; Privately Retained: JEFFREY SCOTT MILSTEIN
Created: 04/25/2014 12:00 AM
- 04/25/2014 **Affidavit**
Privately Retained: JEFFREY SCOTT MILSTEIN
Created: 04/25/2014 12:00 AM
- 04/25/2014 **Order - Continue** (Judicial Officer: Jones, Jeffrey S)
Comment: GRANTED; Court Action: Signed; Court Action Date: 05/07/2014; Judge: Jeffrey S Jones;
Signed: 05/07/2014
Created: 05/07/2014 12:00 AM
- 05/07/2014 **Appearance** (Judicial Officer: Jones, Jeffrey S)
Room: CTR1 ; Judge: Jeffrey S Jones; District Attorney: ERIKS R BERZINS Clerk: TAE Bailiff: SARAH DANDURAND Defendant: KAYLA ANN COLVIN Reporter: FTR Privately Retained: JEFFREY SCOTT MILSTEIN
Created: 05/07/2014 12:00 AM
- 05/07/2014 **Appearance** (9:00 AM) ()
Comment: app/rst/m/c granted;
Created: 04/28/2014 12:00 AM
- 05/07/2014 **CANCELED Trial - Six Person Jury** (9:00 AM) ()
Set-Over Def
Comment: m/c filed by atty; Event Status: Set-Over Def; Event Status Date: 04/28/2014;
Created: 04/02/2014 12:00 AM
- 07/10/2014 **Trial - 6 Person Jury** (Judicial Officer: Selander, Robert R.)
Judge: Robert R. Selander; Reporter: FTR Bailiff: BONNIE POPIVCHAK Defendant: KAYLA ANN COLVIN Privately Retained: JEFFREY SCOTT MILSTEIN
Created: 07/11/2014 12:00 AM

07/10/2014 **CANCELED Trial - Six Person Jury** (9:00 AM) ()
Set-Over Court
Comment: No Judges; Event Status: Set-Over Court; Event Status Date: 07/10/2014; Est length of time: 8 Hour(s)
 Created: 05/07/2014 12:00 AM

09/03/2014 **Hearing - Plea** (Judicial Officer: Selander, Robert R.)
Room: CTR9; Judge: Robert R. Selander; Clerk: TAE District Attorney: COUNTY LAW CLERK CLACKAMAS Defendant: KAYLA ANN COLVIN
Reporter: FTR Privately Retained: JEFFREY SCOTT MILSTEIN Bailiff: CANDICE LUCAS
 Created: 09/03/2014 12:00 AM

09/03/2014 **Hearing - Plea** (9:00 AM) ()
 Created: 09/02/2014 12:00 AM

09/03/2014 **CANCELED Trial - Six Person Jury** (9:00 AM) ()
Set-Over Def
Event Status: Set-Over Def; Event Status Date: 09/02/2014;
 Created: 07/11/2014 12:00 AM

09/19/2014 **Hearing - Plea** (Judicial Officer: Rastetter, Thomas J)
Comment: ATTY ALLOWED TO W/DRAW; Room: PLEA; Judge: Thomas J Rastetter; Defendant: KAYLA ANN COLVIN Bailiff: LINDA
THOMPSON District Attorney: WILLIAM K STEWART Reporter: FTR Clerk: KDR Privately Retained: JEFFREY SCOTT MILSTEIN
 Created: 09/19/2014 12:00 AM

09/19/2014 **Affidavit - Eligibility - ACP**
 Created: 09/19/2014 12:00 AM

09/19/2014 **Order - Appointing Counsel** (Judicial Officer: Herndon, Robert D)
Court Action: Signed; Court Action Date: 09/19/2014; Judge: Robert D Herndon; Court Appointed: MARYANN MEANEY
 Signed: 09/19/2014
 Created: 09/19/2014 12:00 AM

09/19/2014 **Notice - Advise Appeal Rights**
Comment: ACP;
 Created: 09/19/2014 12:00 AM

09/19/2014 **Hearing - Plea** (1:30 PM) ()
 Created: 09/03/2014 12:00 AM

09/19/2014 **Judgment - Limited Creates Lien**
Court Action: Signed; Court Action Date: 09/19/2014; Judge: Robert D Herndon;
 Created: 09/19/2014 3:28 PM

10/14/2014 **Return - Mail**
Comment: unable to forward per usps;
 Created: 10/14/2014 12:00 AM

10/17/2014 **Case Notes**
Comment: updated def adr per cw;
 Created: 10/17/2014 12:00 AM

11/17/2014 **Motion - Continuance**
Comment: Motion GRANTED; Court Appointed: MARYANN MEANEY
 Created: 11/17/2014 12:00 AM

11/17/2014 **Affidavit - Supporting Motion**
Court Appointed: MARYANN MEANEY
 Created: 11/17/2014 12:00 AM

11/19/2014 **Appearance** (Judicial Officer: Steele, Kathie F)
Room: CTR8; Judge: Kathie F Steele; Court Appointed: MARYANN MEANEY Defendant: KAYLA ANN COLVIN Reporter: FTR Clerk: AEM
Bailiff: JESSICA PEZLEY District Attorney: WILLIAM K STEWART
 Created: 11/19/2014 12:00 AM

11/19/2014 **Order - Continue** (Judicial Officer: Steele, Kathie F)
Court Action: Signed; Court Action Date: 11/19/2014; Judge: Kathie F Steele;
 Signed: 11/19/2014
 Created: 11/19/2014 12:00 AM

11/19/2014 **Appearance** (9:00 AM) ()
Comment: app/rst; m/c granted ACP \$137;
 Created: 11/18/2014 12:00 AM

11/19/2014 **CANCELED Trial - Six Person Jury** (9:00 AM) ()
Set-Over Def
Comment: M/C filed by atty ACP \$137; Event Status: Set-Over Def; Event Status Date: 11/18/2014;
 Created: 09/19/2014 12:00 AM

01/26/2015 **Motion - Continuance**
Comment: Motion GRANTED; Court Appointed: MARYANN MEANEY
 Created: 01/26/2015 12:00 AM

01/26/2015 **Affidavit - Supporting Motion**
Court Appointed: MARYANN MEANEY
 Created: 01/26/2015 12:00 AM

01/27/2015 **Memorandum**
Comment: objecting to Defendant's motion to continue; Plaintiff: State of Oregon
 Created: 01/27/2015 12:00 AM

01/27/2015 **Order - Continue** (Judicial Officer: Jones, Jeffrey S)
Court Action: Signed; Court Action Date: 01/28/2015; Judge: Jeffrey S Jones;
 Signed: 01/28/2015
 Created: 01/29/2015 12:00 AM

01/28/2015 **Appearance** (Judicial Officer: Jones, Jeffrey S)
Room: CTR1; Judge: Jeffrey S Jones; Clerk: TAE Bailiff: SARAH DANDURAND Reporter: FTR Defendant: KAYLA ANN COLVIN District
Attorney: JEFFREY NITSCHKE Court Appointed: MARYANN MEANEY
 Created: 01/28/2015 12:00 AM

01/28/2015 **Appearance** (9:00 AM) ()
Comment: ACP \$137 app/rst; m/c granted;
 Created: 01/27/2015 12:00 AM

01/28/2015 **CANCELED Trial - Six Person Jury** (9:00 AM) ()
Set-Over Def
Comment: ACP \$137 m/c filed by atty; Event Status: Set-Over Def; Event Status Date: 01/27/2015;
 Created: 11/19/2014 12:00 AM

04/15/2015 **Hearing - Plea** (Judicial Officer: VanDyk, Douglas V)
Room: CTR4; Judge: Douglas V VanDyk; Defendant: KAYLA ANN COLVIN District Attorney: JEREMY J MORROW Reporter: FTR Bailiff: MATTHEW BROWN Court Appointed: MARYANN MEANEY Clerk: KDR
 Created: 04/15/2015 12:00 AM

04/15/2015 **Petition - Guilty Plea**
 Created: 04/15/2015 12:00 AM

04/15/2015 **Plea - Guilty**
 Created: 04/15/2015 12:00 AM

04/15/2015 **Hearing - Plea** (9:00 AM) ()
Comment: ACP \$137;
 Created: 04/14/2015 12:00 AM

04/15/2015 **CANCELED Trial - Six Person Jury** (9:00 AM) ()
Set-Over Def
Comment: ACP \$137; Event Status: Set-Over Def; Event Status Date: 04/14/2015;
 Created: 01/28/2015 12:00 AM

05/01/2015 **Convicted**
 Created: 05/01/2015 12:00 AM

05/01/2015 **Hearing - Sentencing** (Judicial Officer: VanDyk, Douglas V)
Room: PLEA; Judge: Douglas V VanDyk; Reporter: FTR Defendant: KAYLA ANN COLVIN Court Appointed: MARYANN MEANEY Clerk: KDR District Attorney: JEFFREY NITSCHKE Bailiff: MATTHEW BROWN
 Created: 05/01/2015 12:00 AM

05/01/2015 **Sentence - Suspend Imposition**
 Created: 05/04/2015 12:00 AM

05/01/2015 **Sentence - Suspend Imposition**
 Created: 05/04/2015 12:00 AM

05/01/2015 **Uniform Criminal Judgment** (Judicial Officer: VanDyk, Douglas V)
Judge: Douglas V VanDyk;
 Created: 05/04/2015 12:00 AM

05/01/2015 **Hearing - Sentencing** (10:30 AM) ()
Comment: ACP \$137;
 Created: 04/15/2015 12:00 AM

05/01/2015 **Creates Judgment Lien**
 Created: 05/04/2015 9:37 AM

05/01/2015 **Creates Judgment Lien**
 Created: 05/04/2015 9:37 AM

05/04/2015 **Notice - Advise Appeal Rights**
 Created: 05/04/2015 12:00 AM

05/04/2015 **Closed**
 Created: 05/04/2015 12:00 AM

05/05/2015 **Other**
Comment: Monitor probation; Room: 104 ;
 Created: 05/05/2015 12:00 AM

05/08/2015 **Disposition - Reported**
Defendant: KAYLA ANN COLVIN
 Created: 05/08/2015 12:00 AM

06/04/2015 **Judgment - Payment Schedule Assessment**
 Created: 06/04/2015 11:27 PM

06/15/2015 **Filing - Probation Violation**
Comment: det;
 Created: 06/15/2015 12:00 AM

06/15/2015 **Detainer**
 Created: 06/15/2015 12:00 AM

06/15/2015 **Affidavit - Eligibility - ACP**
 Created: 06/15/2015 12:00 AM

06/15/2015 **Order - Appointing Counsel** (Judicial Officer: Herndon, Robert D)
Court Action: Signed; Court Action Date: 06/15/2015; Judge: Robert D Herndon; Court Appointed: RONALD L GRAY
 Signed: 06/15/2015
 Created: 06/15/2015 12:00 AM

06/15/2015 **Notice - Advise Appeal Rights**
Comment: acp;
 Created: 06/15/2015 12:00 AM

06/15/2015 **Arraignment - Probation Violation** (Judicial Officer: Wetzel, Michael C.)
Comment: no bail; Room: IC ; Judge: Michael C. Wetzel; Bailiff: L DUPREE District Attorney: ALFRED J FRENCH Defendant: KAYLA ANN COLVIN Clerk: BNM Reporter: FTR
 Created: 06/15/2015 12:00 AM

06/15/2015 **Arraignment - Probation Violation** (3:00 PM) (Judicial Officer Rastetter, Thomas J)
 Created: 06/15/2015 12:00 AM

06/25/2015 **Report**
Comment: Violation; from Jason Ridgeway dated 6/25/15;
 Created: 06/25/2015 12:00 AM

06/26/2015 **Hearing - Probation Violation** (Judicial Officer: VanDyk, Douglas V)
Comment: I/C stip to pv; prob cont; Room: PVRM; Judge: Douglas V VanDyk; Clerk: AJP Court Appointed: RONALD L GRAY Defendant: KAYLA ANN COLVIN Reporter: FTR District Attorney: MICHAEL R SALVAS Bailiff: MATTHEW BROWN
 Created: 06/26/2015 12:00 AM

06/26/2015 **Probation - Violation Status Removed**
 Created: 06/26/2015 12:00 AM

06/26/2015 **Sentence - Suspend Imposition**
 Created: 06/26/2015 12:00 AM

06/26/2015 **Sentence - Suspend Imposition**
 Created: 06/26/2015 12:00 AM

06/26/2015 **Judgment - Probation** (Judicial Officer: VanDyk, Douglas V)
Comment: stip to pv;prob cont;10dys jail w/cts;30dys SCRAM;obtain ADES eval and engage in txmt; Court Action: Signed; Court Action Date: 06/26/2015; Judge: Douglas V VanDyk;
 Signed: 06/26/2015

- Created: 06/26/2015 12:00 AM
- 06/26/2015 **Hearing - Probation Violation** (9:00 AM) ()
Created: 06/15/2015 12:00 AM
- 07/10/2015 **Report**
Comment: SPECIAL; FROM JASON RIDGEWAY DATED 06/30/2015;
Created: 07/10/2015 12:00 AM
- 07/22/2015 **Order - Show Cause** (Judicial Officer: VanDyk, Douglas V)
Comment: Set show cause hrg; Court Action: Signed; Court Action Date: 07/22/2015; Judge: Douglas V VanDyk;
Signed: 07/22/2015
Created: 08/11/2015 12:00 AM
- 08/11/2015 **Notice - Arraignment**
Created: 08/11/2015 12:00 AM
- 08/11/2015 **Filing - Probation Violation**
Created: 08/11/2015 12:00 AM
- 09/10/2015 **Arraignment - Probation Violation** (Judicial Officer: Stewart, Kenneth B)
Comment: Amended 6/26/15 PV Order-See order for details;Dismiss PV; Room: ARR ; Judge: Kenneth B Stewart; Reporter: FTR Defendant; KAYLA ANN COLVIN Bailiff: JOSHUA SPANSAIL District Attorney: COUNTY LAW CLERK CLACKAMAS Clerk: JLL
Created: 09/10/2015 12:00 AM
- 09/10/2015 **Sentence - Suspend Imposition**
Created: 09/11/2015 12:00 AM
- 09/10/2015 **Arraignment - Probation Violation** (1:30 PM) ()
Comment: PV report;
Created: 08/11/2015 12:00 AM
- 09/11/2015 **Probation - Violation Status Removed**
Created: 09/11/2015 12:00 AM
- 09/11/2015 **Judgment - Probation** (Judicial Officer: Stewart, Kenneth B)
Comment: PV dism;Prob cont;/Def may use AA mtngs bgn bfr this order; Amnd 6/26/15 JGPV to eliminate SCRAM brclt&rplc w/90 AA mtgs in 90 dys w/proof of cmplt n to PO; Court Action: Signed; Court Action Date: 09/10/2015; Judge: Kenneth B Stewart;
Signed: 09/10/2015
Created: 09/11/2015 12:00 AM
- 01/15/2016 **Declaration**
From criminal restitution collections
Created: 01/15/2016 11:27 AM
- 03/02/2016 **Motion**
CONVERT TO BENCH PROBATION
Created: 03/08/2016 2:58 PM
- 03/23/2016 **Judgment - Offense General Creates Lien**
Created: 04/04/2016 12:13 PM
- 03/24/2016 **Order** (Judicial Officer: VanDyk, Douglas V)
COVERT TO BENCH
Signed: 03/23/2016
Created: 04/04/2016 12:16 PM

FINANCIAL INFORMATION

Defendant COLVIN, KAYLA ANN			
	Total Financial Assessment		2,086.00
	Total Payments and Credits		161.00
	Balance Due as of 06/23/2016		1,925.00
06/06/2014	Transaction Assessment		2.50
06/06/2014	Counter Payment	Receipt # 1998321	(2.50)
09/19/2014	Transaction Assessment		157.00
05/04/2015	Transaction Assessment		1,000.00
05/04/2015	Transaction Assessment		60.00
05/04/2015	Transaction Assessment		255.00
05/04/2015	Transaction Assessment		250.00
05/04/2015	Transaction Assessment		60.00
06/04/2015	Transaction Assessment		200.00
04/04/2016	Transaction Assessment		100.00
05/19/2016	Transaction Assessment		1.50
05/19/2016	xWeb Accessed Payment	Receipt # 2016-2173859	(1.50)

EXHIBIT 2

6/23/2016

<https://publicaccess.courts.oregon.gov/PublicAccessLogin/Search.aspx?ID=100>

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Record Count: 13

Search By: Defendant **Exact Name:** on **Party Search Mode:** Name **Last Name:** Milstein **First Name:** Jeffrey **All All** **Sort By:** Filed Date

Case Number	Citation Number	Defendant Info	Filed/Location	Type/Status	Charge(s)
PRL0136895	PRL0136895	MILSTEIN, JEFFREY	01/19/2012 Multnomah	Offense Violation Closed	Failure to Obey Traffic Control Device
HA12380077	HA12380077	MILSTEIN, JEFFREY SCOTT 1970	04/29/2014 Multnomah	Municipal Parking Closed	No Meter Receipt
14V130907	EU0241479 EU0241479	Milstein, Jeffrey Scott 1970	06/24/2014 Multnomah	Offense Violation Closed	Operate MV using a Mobile Communication Device Failure to Drive Within a Lane
14V152495	PRL0181949	MILSTEIN, JEFFREY SCOTT 1970	08/13/2014 Multnomah	Offense Violation Closed	Failure to Obey Traffic Control Device
16PK40522	HA31101710	MILSTEIN, JEFFREY SCOTT 1970	02/26/2016 Multnomah	Municipal Parking Closed	No Meter Receipt
16CN00818		MILSTEIN, JEFFREY SCOTT 1970	02/27/2016 Clackamas	Procedural Matters - Contempt of Court Open	Contempt of Court/Punitive
16PK53251	U363967	MILSTEIN, JEFFREY SCOTT 1970	03/14/2016 Multnomah	Municipal Parking Closed	Overtime Parking - Meter
16PK62409	HA31227029	MILSTEIN, JEFFREY SCOTT 1970	03/26/2016 Multnomah	Municipal Parking Closed	Improper Display Meter Receipt
16PK65858	HA30168093	MILSTEIN, JEFFREY SCOTT 1970	03/29/2016 Multnomah	Municipal Parking Closed	Overtime Parking - Meter
16PK83680	HA31227605	MILSTEIN, JEFFREY SCOTT 1970	04/20/2016 Multnomah	Municipal Parking Notice Sent	Reserved Zone
16PK84478	HA31227672	MILSTEIN, JEFFREY SCOTT 1970	04/21/2016 Multnomah	Municipal Parking Notice Sent	Overtime Parking - Meter
16CR30172		Milstein, Jeffrey Scott 1970	05/20/2016 Lincoln	Offense Felony Open	Possession of Heroin Possession of Methamphetan
16PK121172	HA30365697	MILSTEIN, JEFFREY SCOTT 1970	06/13/2016 Multnomah	Municipal Parking Notice Sent	No Meter Receipt

Defense attorney accused of smoking meth, heroin with client in car outside casino



By **Everton Bailey Jr.** | [The Oregonian/OregonLive](#)

[Email the author](#) | [Follow on Twitter](#)

on May 26, 2016 at 5:25 PM, updated May 26, 2016 at 5:35 PM

A Portland defense attorney was arrested at the Clackamas County Courthouse Wednesday on a Lincoln County arrest warrant on suspicion of heroin and methamphetamine possession.

The accusations against Jeffrey Milstein stem from a May 16 incident outside the Chinook Winds Casino in Lincoln City, court records show. Two people, including a client of Milstein, were arrested early the next morning and booked into the Lincoln County Jail on the same drug charges.

Milstein, 46; his 28-year-old client Brock Kelland and 30-year-old Candice Gooch were indicted on possession of meth and heroin charges on May 20, court records show.

Milstein, a member of the Oregon State Bar since 2008, was temporarily held at the Clackamas County Jail before he was transferred Thursday to the Lincoln County Jail in Newport, according to the Clackamas County Sheriff's Office. He was at the courthouse in Oregon City on an unrelated matter when he was arrested on the warrant.

Milstein represented Kelland in a 2015 driving while suspended case in Clackamas County. Court records show they last appeared in court on the case in January where a judge extended Kelland's probation by one year.

According to a probable cause affidavit, casino staff called Lincoln City police after someone spotted a woman and two men inside a white Chevy Impala smoking drugs. Police later located the car and found several methamphetamine pipes, a "glob" of heroin and other drug paraphernalia.

A date has not yet been set for Milstein to appear in Lincoln County Circuit Court, a court clerk said Thursday.

-- Everton Bailey Jr.

ebailey@oregonian.com

503-221-8343; [@EvertonBailey](#)

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: September 9, 2016
From: Helen Hierschbiel, Executive Director
Re: CSF Claim No. 2016-05 BOCCI (Tait) 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

Summary of Facts

On July 30, 2009, Mr. J.H. Tait paid a flat fee of \$1,000 to the Christopher Bocci and Associates law firm for representation in the appeal of two traffic convictions in Salem Municipal Court—one for speeding and one for failing to use a seatbelt. William Carl was initially responsible for the case; Mr. Bocci took over the case when Mr. Carl was suspended in January 2010 (for reasons unrelated to Mr. Tait's case).

The Flat Fee Agreement did not state that the fee was "earned on receipt" as required under RPC 1.5(c)(3) and RPC 1.15-1(c). Therefore, the funds should have been deposited into Mr. Bocci's lawyer trust account. Mr. Bocci admits that he mistakenly deposited the funds into his general account instead. As a result of this violation of RPC 1.15-1(c), Mr. Bocci received a letter of admonition from Disciplinary Counsel's Office.

Mr. Carl filed a Notice of Appeal and a Motion to Stay the Salem Municipal Court and DMV Action on Appeal and paid the filing fee of \$189. The motion was granted on August 6, 2009. Due to court staff error the file did not get transferred to Circuit Court until nearly three years later, in May 2012. Even so, the Circuit Court still showed no record of the case as late as March 2014. Mr. Bocci prepared a Motion to Dismiss based on speedy trial grounds in July 2013, but because the Circuit Court had no record of the case, he could not file the motion. Ultimately, the Salem Municipal Court deemed the case to be transferred back to its jurisdiction and Mr. Bocci appeared on May 6, 2014 to request that the Municipal Court dismiss the charges due to the unreasonable delay in transferring the file. The request was denied.

Mr. Tait was unhappy with the outcome of the case and with the representation. Mr. Bocci says he reached an agreement with Mr. Tait in which Mr. Bocci would pay Mr. Tait's fines in order to settle Mr. Tait's claims against Mr. Bocci. Mr. Bocci did in fact pay the court fines of \$217.09 on May 9, 2014. In the end, Mr. Bocci paid Mr. Tait's court fees and fines of approximately \$421; he retained \$579 of the original retainer as payment for the 6.9 hours of time he devoted to the case.

In November 2014, Mr. Tait contacted Mr. Bocci and made a demand for \$825 plus “statutory interest” of \$405. In his ethics complaint to the bar, Mr. Tait claimed that Mr. Bocci owed him \$825. On January 1, 2016, Mr. Tait made a claim against the CSF for the full \$1,000 retainer he paid to the Bocci law firm.

In reviewing Mr. Tait’s ethics complaints against Mr. Carl and Mr. Bocci, the SPRB determined that the fee collected was not clearly excessive.

CSF Committee Analysis

In order for a loss to be eligible for CSF reimbursement, it must result from a lawyer’s dishonest conduct. CSF Rule 2.2.1. The CSF Committee found no evidence of dishonesty on the part of Mr. Bocci or his law firm. Rather, it appeared to the Committee that Mr. Tait’s complaint was in the nature of a fee dispute.

From: [Helen Hirschbiel](#)
To: [Camille Greene](#)
Subject: FW: Client Security Fund Claim #2016-05 C. C. BOCCI
Date: Thursday, May 19, 2016 3:11:16 PM

Let's chat about this tomorrow.

Helen Hirschbiel
CEO/Executive Director
503-431-6361
HHirschbiel@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: jj tt [mailto:jht@justice.com]
Sent: Wednesday, May 18, 2016 9:35 PM
To: Helen Hirschbiel <HHirschbiel@osbar.org>
Subject: Client Security Fund Claim #2016-05 C. C. BOCCI

Complying with your letter dated May 10, 2016(deposited in my postbox May17),

This is my request for a review of my claim by the Oregon State Bar Board of Governors.

Meanwhile, you can send me your "investigators" file for my review into how his

"investigation " could have been completed without any contact with the claimant.

Sincerely,

J. H. TA IT

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CLIENT SECURITY FUND INVESTIGATIVE REPORT

FROM: Rod M. Jones
DATE: May 4, 2016
RE: CSF Claim No. 2016.05
CLAIMANT: J. H. Tait
ATTORNEY: Chris Bocci

INVESTIGATOR'S RECOMMENDATION

Recommend denial of the claim.

STATEMENT OF CLAIM

Claimant seeks reimbursement of \$1,000.00 paid to the Christopher Bocci and Associates law firm ("the Bocci firm") for representation of Claimant to appeal Municipal Court traffic violation convictions for speeding and failing to use a seatbelt.

On July 30, 2009, Claimant retained William Carl, and associate in the Bocci firm, to appeal the convictions, and Claimant paid the Bocci firm a \$1,000.00 retainer pursuant to a "Flat Fee Agreement," which designated the retainer as non-refundable. However, the agreement did not state that the retainer was "earned upon receipt" and did not cite an hourly rate or other terms as to how the retainer would be earned. Mr. Bocci has acknowledged that the retainer was not deposited into his Client Trust account, and that it was mistakenly deposited into his office general account.

The Bocci firm filed a Notice of Appeal and a Motion to Stay the Municipal Court and DMV Action on Appeal, and paid the filing fee of \$189.00. The Motion was granted on August 6, 2009. Due to an error by the Municipal Court staff, the Municipal Court did not transfer the file to the Circuit Court until May 17, 2012, but the Circuit Court took no action on the matter.

In March 2013, the claimant made a \$100.00 payment to the Municipal Court on his fine. The Court refunded the payment because the case was on appeal.

In April of 2013, Claimant filed Bar Ethics Complaints against Mr. Carl and Mr. Bocci. The complaint against Mr. Carl was dismissed. The State Professional Responsibility Board reviewed the Bocci complaints, and addressed, among other issues, whether the fee collected by Bocci was clearly excessive. The SPRB determined that the fee was not excessive. The Board did however eventually find that Mr. Bocci failed to deposit the \$1,000 retainer fee paid by the claimant into the attorney trust account. The Board issued Mr. Bocci a letter of admonition to that effect on August 25, 2014, indicating that Bocci violated former RPC 1.15-1(c).

Mr. Bocci prepared a Motion to Dismiss based on speedy trial grounds in July 2013, but because the Circuit Court had “no record of the case,” he could not file it with the Circuit Court. The Bocci firm contacted the Municipal Court staff several times, and were told that someone would “look into the matter.” The Bocci attorneys decided to wait until the Court sent a Notice of Bench Trial date, and they would then file a Motion to Dismiss on speedy trial grounds.

On April 24, 2014, in response to the OSB ethics complaint that Claimant had against him, Bocci proposed several remedies to the problem and complaint, including an offer to “refund whatever portion of Mr. Tait’s fee you [the Bar] suggest is fair and reasonable under the circumstances to resolve this most unfortunate situation.”

On April 25, 2014, the OSB wrote to Claimant and addressed a number of issues, including Bocci's offer to reimburse Claimant for a portion of the fees. Assistant Disciplinary Counsel Susan Cournoyer indicated in her letter to the Claimant that she had suggested to Bocci that he "determine how much of the appeal work [Claimant] had paid his firm to handle was completed and refund an amount commensurate with the portion that remained uncompleted."

The Municipal Court eventually deemed the case to be transferred back to its jurisdiction, and Bocci and the Claimant appeared before the Municipal Court on May 6, 2014 and requested that the Court Dismiss the charges due to the Court's unreasonable delay in transferring the file to the Circuit Court for Appeal. Judge Aiken of the Salem Municipal Court denied the request to dismiss the traffic charges.

Mr. Bocci has indicated that he then reached an agreement with the Claimant in which Bocci would pay all of Claimants financial obligations associated with the case (i.e. fines) to settle the matter of Claimant's claim against Bocci. Claimant has denied this assertion, and said that he only agreed to let Bocci use some of the money to pay his fine.

Bocci paid Claimants Court fines of \$217.09, on May 9, 2014.

The Claimant has repeatedly referred to Bocci and other attorneys as "a lying sack of shyster shit." Claimant has in contrast, referred to himself as "a 90 year old doubly disabled (hearing and vision) victim of a traffic-ticket-trap operated by the Salem Police Dept. and a fraudulent Salem muny (sic) Court session misjudged (prosecuted) by pro-tem shyster Vance Day (912487) who probably stole that file weeks later."

In November of 2014, the Claimant contacted Bocci and made a demand for payment of \$825.00 plus "statutory interest" of \$405.00.

Claimant then again contacted the Bar, claiming that Bocci owed him \$825.00 and claiming that the Bar should pay him that amount. The Bar informed Claimant that it did not have jurisdiction to resolve civil disputes, and suggested to Claimant that if he believed he had a legal malpractice claim against Mr. Bocci he should contact the PLF, and if the Claimant believed that he had a claim for reimbursement of funds lost as a result of dishonest conduct by Mr. Bocci, he should submit a claim for reimbursement with the CSF, which he did on Jan. 1, 2016, claiming a loss of \$1,000.00.

FINDINGS AND CONCLUSIONS

1. Claimant was the client of The Bocci Firm and Chris Bocci.
2. Claimant paid a “flat fee” of \$1,000.00 that was deposited to the office general account. The attorney fee agreement did not state that the funds were “earned upon receipt” and did not address how the fees would be earned or disbursed.
3. The Oregon State Bar issued a letter of admonition to Bocci for violation of former RPC 1.15-1(c), for failing to deposit the fees into his Trust Account.
4. Bocci and his firm spent a reasonable amount of time working on Claimant’s file, although the outcome was not favorable to the Client.
5. The Bocci firm paid the \$189.00 filing fee when filing the original motion, paid a \$15.00 fee for documents requested from the court and, eventually, paid the \$217.00 assessment/fine entered against the Claimant. The firm

retained the balance of \$579.00 for legal fees for 6.9 hours of work on the matter.

6. There was no evidence of dishonesty/defalcation on the part of Chris Bocci or his firm.
7. This claim should be denied, as it appears to be a fee dispute.

CLAIM year	CLAIM #	CLAIMANT	LAWYER	CLAIM AMT	PENDING	INVESTIGATOR	STATUS
2014	02	Kitchen, Kimberly A.	Wood, Alan K.	\$ 3,000.00	\$ 3,000.00	Raher	9/12/15 CSF defer til DCO resolved. cc Smith
2015	21	Barnes, Gary D.	Wood, Alan K.	\$ 4,000.00	\$ 3,477.00	Naucler	08/25/16 ck sent \$3477
2015	23	Ballantyne, Robert	Smith, Fred T	\$ 1,500,000.00	\$ 50,000.00	Thompson	7/16/16 CSF denied. 9/9/16 BOG review.
2015	31	Connolly, Joe	Milstein, Jeffrey S.	\$ 3,000.00	\$ 3,000.00	Butterfield	
2015	39	Boone, Charles P	Morningstar, Jonah	\$ 8,000.00	\$ 8,000.00	Butterfield	
2015	41	Erwert, Anna M.	Merrill, Nick	\$ 2,031.00	\$ 2,031.00	Braun	3/5/16 CSF denied.
2015	42	Sumandea, Magdalena	Daily, Matthew C	\$ 3,000.00	\$ 3,000.00	Naucler	
2016	02	Cisneros, Guillermo Pahua	Krull, Julie	\$ 7,500.00	\$ 7,500.00	Dippel	7/16/16 CSF approved \$7500. 9/9/16 to BOG.
2016	05	Tait, J.H.	Bocci, Christopher C	\$ 1,000.00	\$ 1,000.00	Jones	5/7/16 CSF denied. 9/9/16 BOG Review
2016	06	Lucas, Craig	Krull, Julie	\$ 8,000.00	\$ 3,435.00	Dippel	8/19/16 ck mailed \$3435.
2016	07	Gonzalez Sierra, Florencio E.	Krull, Julie	\$ 6,000.00	\$ 6,000.00	Dippel	
2016	12	Shaw, Donald Clayton	Gerber, Susan R.	\$ 5,000.00	\$ 5,000.00	Atwood	7/16/16 CSF denied.
2016	13	Davis, Cole Wyatt	Sharp, Dirk D.	\$ 2,500.00	\$ 1,106.00	Raher	7/16/16 CSF approved \$1106.
2016	14	Starr, Anna	Krull, Julie	\$ 2,000.00	\$ 2,000.00	Dippel	
2016	19	Ryan, Christina	Eckrem, John P	\$ 1,500.00	\$ 1,500.00	Cooper	
2016	20	Lammi, Sharon Patricia	Campbell, G. Jefferson Jr.	\$ 1,130.00	\$ 1,130.00	Malcolm	7/25/16 ck req \$1130. 7/28 A/P mailed ck.
2016	21	Colvin, Kayla Ann	Milstein, Jeffrey S.	\$ 4,000.00	\$ 2,000.00	Butterfield	7/16/16 CSF app \$2000. 9/9/16 BOG Review.
2016	23	Sansome, Dain	Hawes, Jason C.	\$ 12,500.00	\$ 12,500.00	Park	
2016	24	Davis, Madeline	Hunt, John Kevin	\$ 500.00	\$ 500.00	Bennett	7/16/16 CSF approved \$500.
2016	26	Sommerauer, Patrizia June	Merrill, Nick	\$ 200.00	\$ 200.00	Braun	
2016	27	Roden, Joseph	Morningstar, Jonah	\$ 9,385.50	\$ 9,385.50	Butterfield	
2016	28	Henson, Wendy	Roller, Dale	\$ 1,200.00	\$ 1,200.00	Jones	
2016	29	Silajdzic, Sasa	Roller, Dale	\$ 1,200.00	\$ 1,200.00	Jones	
2016	30	Mandelberg, Arthur	McCart, Rachel	\$ 505,000.00	\$ 505,000.00	Malcolm	
2016	31	Cline, Russell Warren Brent	Wieselman, Jacob	\$ 300,000.00	\$ 300,000.00	Raher	
2016	32	Harbison, Abigail Franky Diane	Eckrem, John P	\$ 2,500.00	\$ 2,500.00	Cooper	
2016	33	Malgarejo, Micaela	Henderson, Paul	\$ 2,535.00	\$ 2,535.00	Thompson	
2016	34	Padilla-Pena, Pablo Sergio	Krull, Julie	\$ 2,000.00	\$ 2,000.00	Dippel	
2016	35	Lopez-Diaz, Marcelino	Ferrua, Franco Dorian	\$ 17,500.00	\$ 17,500.00	Atwood	
2016	36	Cruz, Lourdes	Milstein, Jeffrey S.	\$ 1,750.00	\$ 1,750.00	Butterfield	
2016	37	Hildenbrand, Angela Danielle	Eckrem, John P	\$ 2,000.00	\$ 2,000.00	Cooper	
2016	38	Bellinger, Joseph Edward	Smith, Davis S.	\$ 2,600.00	\$ 2,600.00	Bennett	
2016	39	Scheid, Heather	Griffith, Mark O.	\$ 975.00	\$ 975.00	Naucler	
2016	40	Shorb, Charles Ray	Gerber, Susan R.	\$ 5,000.00	\$ 5,000.00	Atwood	
2016	41	Dau, Sherri Lee	Hawes, Jason C.	\$ 2,518.00	\$ 2,518.00	Park	
					\$ 972,542.50		
		Funds available for claims and indirect costs allocation as of July 2016	Total in CSF Account		\$ 1,208,536.00		
			Fund Excess		\$ 235,993.50		

OREGON STATE BAR
Client Security - 113
For the Seven Months Ending July 31, 2016

Description	July 2016	YTD 2016	Budget 2016	% of Budget	July Prior Year	YTD Prior Year	Change v Pr Yr
REVENUE							
Interest	\$768	\$4,859	\$6,900	70.4%	\$542	\$3,050	59.3%
Judgments	50	390	1,000	39.0%		600	-35.0%
Membership Fees	420	221,170	230,000	96.2%	990	659,501	-66.5%
TOTAL REVENUE	1,238	226,419	237,900	95.2%	1,532	663,151	-65.9%
EXPENSES							
SALARIES & BENEFITS							
Employee Salaries - Regular	1,111	8,065	32,000	25.2%	3,897	20,130	-59.9%
Employee Taxes & Benefits - Reg	367	2,957	11,500	25.7%	1,188	6,617	-55.3%
TOTAL SALARIES & BENEFITS	1,479	11,022	43,500	25.3%	5,084	26,747	-58.8%
DIRECT PROGRAM							
Claims	8,500	84,081	200,000	42.0%	45,000	65,532	28.3%
Collection Fees			1,000			93	-100.0%
Committees			150		42	42	-100.0%
Travel & Expense		1,349	1,800	74.9%	1,170	1,760	-23.4%
TOTAL DIRECT PROGRAM EXPENSE	8,500	85,429	202,950	42.1%	46,212	67,428	26.7%
GENERAL & ADMINISTRATIVE							
Office Supplies			150				
Photocopying			50			5	-100.0%
Postage	11	88	150	58.7%	10	109	-19.2%
Professional Dues			200			200	-100.0%
Telephone		34	200	17.1%	22	188	-81.7%
Training & Education		545	600	90.8%			
Staff Travel & Expense	230	295	1,094	27.0%	424	734	-59.8%
TOTAL G & A	241	962	2,444	39.4%	457	1,235	-22.1%
TOTAL EXPENSE	10,220	97,413	248,894	39.1%	51,754	95,410	2.1%
NET REVENUE (EXPENSE)	(8,982)	129,006	(10,994)		(50,222)	567,741	-77.3%
Indirect Cost Allocation	2,655	18,586	31,861		2,527	17,689	5.1%
NET REV (EXP) AFTER ICA	(11,637)	110,420	(42,855)		(52,749)	550,052	-79.9%
Fund Balance beginning of year		1,098,116					
Ending Fund Balance		1,208,536					

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: September 9, 2016
From: Legal Ethics Committee
Re: Proposed OSB Formal Ethics Opinions 2016-XXX: Client Property: Electronic-Only or “Paperless” Client Documents and Files

Issue

The Board of Governors must decide whether to adopt the proposed formal ethics opinion regarding electronic-only or paperless client documents and files.

Options

1. Adopt the proposed the formal ethics opinion.
2. Decline to adopt the proposed formal ethics opinion.

Discussion

More and more lawyers are converting their offices to an electronic-only or paperless format. With most courts moving to e-filing and many businesses operating entirely with electronic documents and communications, paper documents are becoming virtually obsolete. As a result of these changes, OSB and PLF staff receive countless calls from lawyers about whether they may maintain all or portions of their client files in—or convert them to—an electronic format. Because of the number of inquiries received, the Legal Ethics Committee decided that it would be helpful for bar members to have a formal ethics opinion on the issue.

The Legal Ethics Committee concludes that, with the exception of documents that are valuable only as original paper documents—such as securities, negotiable instruments, deeds and wills—there is no ethical prohibition against maintaining the client file in electronic or paperless form. The opinion reminds lawyers of their duty to safeguard the confidentiality of electronic documents through reference to OSB Formal Op No 2011-188 and notes the value of entering into an agreement with the client about the format in which the file will be stored.

Attachments: Proposed OSB Formal Ethics Op Nos. 2016-XXX

FORMAL OPINION NO. 2015-xxx

**Client Property:
Electronic-Only or “Paperless” Client Documents and Files**

Facts:

Lawyer prefers to maintain client file documents in electronic form only, to the greatest extent possible. For open matters, Lawyer plans to convert documents to electronic form and contemporaneously destroy the paper copies as they are received.

Lawyer’s closed matters contain a mix of paper and electronic documents. Lawyer plans to similarly convert the paper documents in her closed files to electronic form and destroy the paper copies of the documents.

Question:

May Lawyer maintain electronic-only files and convert existing paper files to electronic form?

Conclusion:

Yes, qualified.

Discussion:

With limited exceptions for documents that are intrinsically significant or are valuable original paper documents, such as securities, negotiable instruments, deeds, and wills, there is no ethical prohibition against maintaining the “client file” solely in electronic or paperless form.¹

Lawyers must take appropriate steps to safeguard client property (RPC 1.15(a)), maintain confidentiality of client information (RPC 1.6(c), RPC 1.9(c)(2)), and communicate with the client regarding the terms of the representation and relevant developments affecting the representation (RPC 1.4). Accordingly, lawyers who maintain electronic-only client files should take reasonable steps to ensure the security² and availability³ of electronic file documents during appropriate time periods, including following the completion of the matter or termination of the representation.

¹ For a discussion of what constitutes the “client file,” see OSB Formal Ethics Op 2005-125 [Client Property: Photocopy Charges for Client Files, Production or Withholding of Client Files].

² See, e.g., OSB Formal Ethics Opinion 2011-188 [Information Relating to the Representation of a Client: Third-Party Electronic Storage of Client Materials], explaining that a “Lawyer may store client materials on a third-party server so long as Lawyer complies with the duties of competence and confidentiality to reasonably keep the client’s information secure within a given situation.”

³ Whether and how long to maintain a client file is a matter of substantive law and beyond the scope of this opinion. The Professional Liability Fund generally recommends that files be kept for a minimum of 10 years to ensure the file will be available to defend the lawyer against malpractice claims. See, e.g., “File Retention and Destruction,” part of the PLF practice aid and form collection in the “File Management” category on the PLF’s website, www.osbplf.org.

Lawyers and clients may enter into reasonable agreements regarding how the lawyer will maintain the client's file during and after the conclusion of a matter. A lawyer who chooses to convert paper file documents in closed files to electronic-only documents should confirm that doing so will not violate the terms of the retention agreement with the client. The lawyer should also consider the former client's circumstances—e.g., whether an electronic-only file might present a hardship for the former client if the former client needs to access and work with the documents in paper form.⁴ Even after a lawyer has taken reasonable steps to electronically preserve original documents created by a client, the lawyer should not destroy original client documents without the client's express consent.

⁴ Examples may include indigent or incarcerated former clients, or other clients who may have difficulty using electronic-only documents.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: September 9, 2016
From: Helen M. Hirschbiel, Executive Director
Re: Revision to Oregon RPC 7.2(b)

Action Recommended

Consider the recommendation of the Legal Ethics Committee (“LEC”) to amend Oregon RPC 7.2(b).

Background

At the 2013 HOD meeting, the HOD approved a package of changes to the advertising rules—including RPC 7.2—with the goal of bringing Oregon’s advertising rules more in line with the ABA Model Rules.¹ The changes were not intended to be substantive. Rather, the purpose of the amendments was to provide Oregon practitioners with advertising guidelines that are clear, simple, and more consistent with other jurisdictions.

Over the course of the last year and a half, the Legal Ethics Committee has been revising the formal ethics opinions to bring them in line with the new advertising rules. Recently, it was brought to the LEC’s attention that one of the rule amendments resulted in a substantive change to the former advertising rules.

Prior to the January 1, 2014 amendment of RPC 7.2, Oregon lawyers were permitted to pay referral fees to any lawyer referral service, if certain conditions were met. Former Oregon RPC 7.2 provided:

(a) A lawyer may pay the cost of advertisements permitted by these rules and may hire employees or independent contractors to assist as consultants or advisors in marketing a lawyer's or law firm's services. A lawyer shall not otherwise compensate or give anything of value to a person or organization to promote, recommend or secure employment by a client, or as a reward for having made a recommendation resulting in employment by a client, except as permitted by paragraph (c) or Rule 1.17.

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

¹ The LEC developed the proposal at the BOG’s request in response to a 2010 HOD resolution to conform Oregon’s advertising rules to Washington’s. Because Washington’s advertising rules are similar to the ABA Model Rules, the LEC decided to look to the ABA Model Rules for overall guidance and eventually modelled its proposal on the ABA Model Rules, rather than the Washington Rules of Professional Conduct.

lawyer learns that employment by a client has resulted from false or misleading communications about the lawyer or the lawyer's firm, the lawyer shall so inform the client.

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

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

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

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

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

Under this former version of the rule, Oregon lawyers could utilize lead services or for-profit lawyer referral services, as long as the service complied with the additional restrictions of RPC 7.2(c)(1)-(4).

As amended, Oregon's RPC 7.2 currently provides:

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

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

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

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

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

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

Under this amended version of the rule, payments to for-profit referral services are simply not allowed. Nothing in the LEC Agendas, BOG minutes or HOD minutes from that time suggest that

that the bar intended to implement an across-the-board prohibition of all lawyer payments to for-profit lawyer referral services. Therefore, it appears that prohibiting all lawyer payments to for-profit lawyer referral services was an unintended consequence of the 2014 amendments.

The question of whether Oregon lawyers may pay a for-profit lawyer referral service for recommendations is not merely theoretical. In July, General Counsel received a request for an informal written ethics opinion from a lawyer interested in receiving referrals from Avvo, which is a for-profit entity. The request raised a number of issues, one of which was whether the lawyer could pay Avvo for leads or referrals under any circumstance. Given the current rules, General Counsel advised that RPC 7.2 prohibited making payments to Avvo for client referrals.

The Legal Ethics Committee considered a number of options to remedy this oversight, the first of which was to revert back to the language from the original rule. In keeping with its original directive to simplify the advertising rules, however, the LEC ultimately decided to recommend the following change to Oregon RPC 7.2(b):

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

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

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

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

If the BOG approves this amendment, it will be placed on the November 2016 HOD Agenda for the HOD's approval before being submitted to the Oregon Supreme Court for final adoption.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: September 9, 2016
From: Helen M. Hirschbiel, Executive Director
Re: Revision to Oregon RPC 7.2(c) and RPC 7.3(c)

Action Recommended

Consider the Legal Ethics Committee recommendation to amend Oregon RPC 7.2(c) and RPC 7.3(c).

Background

In response to a resolution presented at the 2010 HOD meeting, the BOG directed the Legal Ethics Committee (“LEC”) to study and make recommendations to the BOG regarding conforming Oregon’s advertising rules to those of our neighboring states. After more than a year of work, the LEC submitted its recommendations to the BOG at the June 22, 2012 meeting. The BOG asked that the rules be submitted to the membership for comment prior to adoption.

Comments received were nominal and generally supportive of the changes. In late August 2013, however, shortly before the rules were to be submitted to the HOD for approval, one Oregon lawyer expressed concern that RPC 7.2(c) and RPC 7.3(c) are unconstitutional as they relate to electronic communications. The rules at issue are set forth in their entirety below, with the alleged offending language in bold.

RULE 7.2 ADVERTISING

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

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

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

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

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

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

RULE 7.3 SOLICITATION OF CLIENTS

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

(1) is a lawyer; or

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

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

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

(2) the target of the solicitation has made known to the lawyer a desire not to be solicited by the lawyer; or

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

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

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

Rather than halt the amendment process and start over with a review of two provisions in a package of multiple rule revisions, the BOG decided to move forward with the proposed amendments as they were. The new advertising rules were approved by the HOD in November 2013 and adopted by the Supreme Court effective January 1, 2014. The Board of Governors then asked the Legal Ethics Committee to revisit the issue of whether RPC 7.2(c) and 7.3(c) are constitutional.

The Legal Ethics Committee has completed its review and, for the reasons set forth in more detail below, recommends that RPC 7.3(c) be stricken entirely and that RPC 7.2(c) be amended to require the inclusion of contact information rather than the office address.

Analysis

Free Speech Protections

The Supreme Court has long held that lawyer advertising that is truthful and not misleading is protected by the First Amendment to the United States Constitution. See e.g., *Zauderer v. Office of Disciplinary Counsel of Supreme Court*, 417 US 626 (1985)(state may not prohibit non-deceptive illustrations in advertising); *Shapiro v. Kentucky Bar Ass'n*, 486 US 466 (1988)(state may not prohibit non-deceptive direct mailing). Under the First Amendment, a state may regulate lawyer advertising if that regulation satisfies the three-part test for regulation of commercial speech generally. *Florida Bar v. Went For It, Inc.*, 515 US 618 (1995), citing *Central Hudson Gas & Electric v. Public Serv. Comm. Of New York*, 447 US 557 (1980). First, the state must assert a substantial interest in support of its regulation; second, the restriction on speech must “directly and materially advances that interest”; and third, the regulation must be “narrowly drawn.” *Central Hudson*, 447 US at 624.

Lawyers in other jurisdictions have challenged advertising rules similar to those at issue here, with mixed results. Compare *Public Citizen Inc. v. Louisiana Attorney Disciplinary Bd.*, 632 F.3d 212 (5th Cir. 2011) (discussing potential constitutional issues with advertising rules and upholding rules as constitutional); and *Rubenstein v. Florida Bar*, 72 F. Supp. 3d 1298 (S.D. Fla. 2014) (holding certain advertising rules were unconstitutional).

It is well-established that Article I, Section 8 of the Oregon Constitution provides greater protections to speech than the Federal First Amendment. The Oregon Supreme Court applies its own approach to free speech analysis under the Oregon Constitution. First, the Court distinguishes between laws that restrict the *content* of speech and laws that restrict the *results or effects* of speech. *State v. Robertson*, 293 Or 402, 416-417 (1982). Content-based restrictions are prohibited “unless the scope of the restraint is wholly confined within some historical exception that was well established when the first American guarantees of freedom of expression were adopted and that the guarantees then or in 1859 demonstrably were not intended to reach. Examples are perjury, solicitation or verbal assistance in crime, some forms of theft, forgery, and fraud, and their contemporary variants.” *Id.* at 412. As noted by the 2009 OSB Advertising Task Force report, this historical exception is particularly significant as to lawyer advertising because before 1859, and into the early 20th century, advertising and solicitation by Oregon lawyers was not prohibited.

Laws that focus on “forbidden effects, but expressly prohibit expression used to achieve to those affects” are analyzed for overbreadth. Laws that focus on “forbidden effects but without referring to expression at all” are analyzed to determine whether they are unconstitutionally vague or unconstitutional as applied. *Id.* at 417-418. Generally, reasonable restrictions on the time, place or manner of speech (as opposed to outright prohibitions) are allowed as long as they are narrowly tailored to meet specific, clearly expressed and permissible objectives. See, e.g., *In re Lasswell*, 296 Or 121 (1983)(pretrial publicity limitation on lawyer speech upheld as long as there was a “serious and imminent threat” to a fair trial.)

LEC Analysis

In 2009, the OSB Advertising Task Force issued a report which gave an overview of the federal and state constitutional free speech protections as applied to the advertising rules. It concluded that significant changes to the advertising rules were necessary in order to strike a proper balance in terms of constitutional law and public policy. Among the changes proposed were significant changes to the provisions at issue here.

Although the Legal Ethics Committee did discuss these constitutional restrictions on the regulation of advertising, it did not engage in an in-depth analysis of whether these provisions actually violate free speech protections under the Oregon and Federal Constitutions. Instead, it focused on whether the provisions actually serve the purposes for which they exist. The LEC determined that the sections provide no additional consumer protection and risk violating free speech.

Oregon RPC 7.2(c) requires that lawyers include their office address in all advertising. In practice, this means that lawyers may be unable to use modern electronic advertising mediums with character restrictions (e.g. Twitter has a 140 character limit, GoogleAd Words is also limited) because of the length of the address. Arguably, requiring an office address is out of step with today's legal culture, in which lawyers interact with potential clients through various mediums and not just the mail. In fact, many lawyers operate primarily online through "virtual offices."

The purpose of RPC 7.2(c) is to enable members of the public to identify the lawyer or law firm advertising, and to give them the tools to find out more about the lawyer and report the lawyer to the bar if necessary. This same purpose would be served by simply requiring the lawyer to include some contact information in the advertising (e.g. telephone number, email address or twitter handle). Requiring contact information is unlikely to limit lawyers; after all, advertising that does not provide the potential client a method to contact the lawyer is poor advertising.

The purpose of RPC 7.3(c) is to ensure that members of the public are not led to believe that an advertisement or solicitation from a lawyer is some type of legal process or other official communication that requires their response. The concern with the rule—as with the "laundry list" of prohibitions contained in former RPC 7.1(a)—is that it is overbroad. Lawyers are already prohibited from making false or misleading communications. See RPC 7.1(a). Thus, a lawyer who sends an advertisement that looks like a summons (with the hope that the prospective client will open it and respond, rather than throw it away) would violate RPC 7.1(a) because the communication is misleading.

Oregon RPC 7.3(c) does not provide any additional protection against this type of misleading conduct. Instead, like RPC 7.2(c), it unduly restricts lawyers from advertising in mediums with character restrictions. Perhaps more troubling is that including the phrase "Advertising Material" on lawyer solicitations might lead persons in need of legal services to simply discard a communication that may help them recognize a legal need and access legal services. In other words, the limitations on lawyer speech in RPC 7.3(c) do not protect against consumer harm and instead limit the public's access to legal services.

Recommendation

The Legal Ethics Committee recommends that RPC 7.3(c) be stricken entirely, and that RPC 7.2(c) be amended as follows:

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

The proposed new rules are set forth below in their entirety.

RULE 7.2 ADVERTISING

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

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

- (1) pay the reasonable costs of advertisements or communications permitted by this Rule;
- (2) pay the usual charges of a legal service plan or a not-for-profit lawyer referral service; and
- (3) pay for a law practice in accordance with Rule 1.17.

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

RULE 7.3 SOLICITATION OF CLIENTS

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

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

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

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

(2) the target of the solicitation has made known to the lawyer a desire not to be solicited by the lawyer; or

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

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

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

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: September 9, 2016
From: Helen M. Hirschbiel, CEO/Executive Director
Re: Section Co-Sponsorship with CLE Seminars

Action Recommended

None. This is for information purposes only.

Background

Current Situation

The OSB Labor & Employment Law Section has prepared a draft resolution for the House of Delegates that would direct the Board of Governors to reverse a policy decision it made in 2014 regarding co-sponsorship of CLE seminars. The new policy, slated to take effect in 2017, would give the bar's CLE Seminars Department the right of co-sponsorship with any section program four hours or more in length. The CLE Seminars Department would have discretion over which programs to co-sponsor, and as a practical matter has the capacity to add only 3-4 new cosponsored programs per year.

Background

For the past several years, the Board of Governors has been engaged in a review of bar programs and services in order to ensure that bar programs are aligned with the bar's mission and operate with maximum effectiveness and efficiency. In 2014, the BOG undertook a year-long, in-depth examination of the CLE Seminars Department. Former OSB President Tom Kranovich summarized the board's discussions and sought input from the membership about the policy questions involved in a column published in the August/September 2014 issue of the OSB Bulletin, a copy of which is attached.

As a result of its review, the BOG approved a number of policy changes intended to advance two goals. The first and most important goal was to make quality CLE programs that appeal to a broad cross-section of the membership available and accessible to all members. Secondly, the BOG sought to avoid using member license fees to subsidize CLE programs.

For section CLE programs, the policies establish new requirements to use registration services for all section CLE seminars, and to co-sponsor longer programs with the CLE Seminars Department. During 2015 and early 2016, staff met with each section executive committee at least once to communicate the policy changes and to seek input on how to implement the policies in a way that would best serve section needs while still advancing the Board's primary goals. Past President Tom Kranovich attended several of these section meetings; President Rich Spier, who attended even more, wrote about the process in the November 2015 issue of the OSB Bulletin, a copy of which is attached.

Many of the sections offered suggestions, several of which were incorporated into the implementation plan. On June 8, 2016, all section leaders were invited to a Section Summit at the bar center, with live webcasting available for those unable to attend in person. The purpose of the summit was to communicate the implementation plan for the registration and co-sponsorship requirements and to seek input on other section issues that the Board had identified as ripe for review. The presentation slides are attached.

The primary point of contention raised at the summit (and during the individual section meetings) was the co-sponsorship requirement. A follow-up communication was sent to summit participants and section chairs in June, and section leaders were invited to submit comments to the board in writing. The follow-up communication and written comments received are attached.

Because the CLE policy changes were the primary focus of conversations with the sections, discussion of other section issues was limited at many of the individual section meetings and those issues were not addressed at all at the summit. A summary of those issues, which is also attached, was sent to all summit participants and section chairs on August 26, 2016 requesting feedback for the BOG's review in early 2017.

Attachments:

- Kranovich, *A Business, or a Service? CLE Seminars*, OSB Bulletin (Aug/Sept 2014)
- Spier, *A Work in Progress: Considering CLE Seminars and Sections*, OSB Bulletin (Nov 2015)
- Section Summit Power Point presentation slides
- Hirschbiel post-summit email to section leaders
- Written comments received from sections
- Hirschbiel email soliciting feedback on other section issues

Oregon State Bar Bulletin — AUGUST/SEPTEMBER 2014

August/September 1: ▾

President's Message

A Business, or a Service?

CLE Seminars

By Tom Kranovich

Last month I referred to bar services and products such as BarBooks, Fastcase, lawyer referral services and CLE programming as being part of the bar's efforts to meet its statutory mission of "advancement of the science of jurisprudence and the improvement of the administration of justice." I emphasized that the programs provided to carry out this obligation are discretionary and, accordingly, potentially the most vulnerable to reduction or elimination. From last month's article you know that the Board of Governors is reviewing all of the bar's programs and services, beginning with the OSB CLE Seminars Department, to assure that bar resources are used appropriately and efficiently.

Historically, the Board of Governors has set policies and bar staff has implemented procedures that have not only maintained but increased services to the membership. Through the exercise of sound fiscal decisions, new services, such as BarBooks and Fastcase, have been provided to all members, statewide, without any fee increase or assessment. Through the program review process, the board and bar staff reduced expenses and made relevant programs more efficient to the degree that there has not been a fee increase in 10 years.

Our program reviews have focused on service programs that generate supplemental income separate from annual membership fees. As a result of earlier program reviews, the board eliminated the printed membership directory and decided to make BarBooks a member service, foregoing an earlier subscription model (and the associated revenue) to make sure this valuable service and resource was available to all members. Other than occasional (and diminishing) laments to bring back the printed directory, no one is proposing we do anything differently with bar publications.

Several years back, the lawyer referral service went through a stringent review and the flat-fee registration system was changed to a percentage recovery system. Until that time, the Lawyer Referral Service had been running at a \$240,000 yearly deficit. Lawyers who participate in the LRS program have the potential of making money from the referrals generated. Accordingly, changing to a percentage system seemed a more equitable way to minimize and recover the bar's costs for the service of connecting potentially profitable clients with proficient attorneys. While the LRS deficit has not yet been eliminated, it has been significantly reduced and continues to shrink at a rate greater than what was originally forecast.

Of the bar's remaining revenue-generating services, at least for this year's board, the discussion on CLE seminars has been the most protracted and, dare I say it, contentious topic. As of the July meeting, the board seems to have reached a consensus that the bar should continue to provide CLE seminars to its members. The unresolved issue under discussion is: should the bar provide CLE seminars on a strict business model, or should the bar subsidize CLE seminars as a service to members?

Unlike lawyer referral, continuing legal education is mandatory (although there is no requirement to obtain CLE credits from the OSB). Like lawyer referral, the CLE seminars program has never "run in the black," and the CLE seminars department is now under similar scrutiny as was the LRS program. The questions before the board are 1) should we take steps to require the CLE seminars department to run "in the black" as a business model (and if we cannot, should the department be eliminated?); or 2) should we continue to "subsidize" CLE programs as a bar service, albeit after implementing as many efficiencies as are reasonably possible? To answer these questions, we need look at the circumstances defining the deficit, the limitations preventing the CLE seminars department from minimizing the deficit and the prior policy decisions that have promoted, contributed to and/or exacerbated the situation.



Defining the deficit. The OSB CLE Seminars Department produces and markets 45 to 55 programs a year. Of those, 18-20 are co-sponsored with sections and other bar groups in multiple formats that provide convenient statewide participation options, including: live webcasts; DVDs; online, on-demand video; and audio-only formats. In 2013 the CLE seminars department generated revenues of \$984,855 with direct expenses (staff salary and benefits, materials, promotional and venue expenses) of \$832,258, for a net revenue of \$152,597. The department made more than it cost in direct expenses but the analysis does not stop there.

After allocating the department's share of indirect costs it had a net expense of \$230,000. Indirect costs include the department's percentage of building floor space and pro rata allocations for I.T., human resources, creative services and other "overhead" expenses. Eliminating the department would only cause its share of the indirect expenses to be reallocated back against the remaining departments while at the same time giving up the \$984,855.00 in revenue that it brought in last year.

Competing interests. Although the bar was once the primary provider of continuing legal education for members, that is no longer the case. Many bar-related groups such as the Oregon New Lawyers Division, bar sections and the Professional Liability Fund offer discounted or free CLEs to their members. There is a myriad of other nonprofit and for-profit CLE providers in the market, some who offer online CLE "blocks" of 45 hours of CLE for under \$200. I offer no opinion on the quality of such "block" programming, but I recognize that for our under-employed attorneys or others in tight financial circumstances, these offerings are a godsend. Similarly, while most other states require a certain percentage of credits to be earned in settings that allow participation (live programs, live webcasts and moderated replays), our board and the court have historically been reluctant to do the same lest it make meeting MCLE requirements more onerous for members, especially those in rural areas.

Past policy decisions. The board does what it can to promote the availability of low cost CLEs. Currently, if someone buys or streams an online OSB program, anyone else can watch it and claim credit for having seen it without paying for its use. Law libraries offer CDs of OSB CLEs for no charge. Additionally, over the years the board has adopted "complimentary admission" policies to support member involvement in certain events (serving on CLE panels, grading bar exams, teaching law school classes, participating in the New Lawyer Mentoring Program) or in recognition of certain status (judges and their staff, 50-year members). The board also promotes and subsidizes the CLE offerings of our sections by charging less than what it costs us for support services, especially the handling of checks by our accounting staff. We also try to minimize CLE costs for those providing low-cost or free legal service for underrepresented people. From a public service point of view and as a policy matter, this all makes sense, but from a break-even business point of view, revenue is not being optimized.

Considerations to be discussed (not comprehensive or exhaustive):

- Should the bar stop offering CLEs that have historically proven unprofitable because they relate to less common practice areas of law?
- Should we require that a minimum number of MCLE credits come from seminars with program formats that allow live interaction among participants?
- Should all sections be required to use OSB support services for their CLEs and if so, should the cost to the section be directly proportionate to OSB's cost?
- Should all sections be required to provide a certain percentage of discounted or free CLE?
- Should our pricing take into consideration the lack of availability for CLEs in remote areas of the state?
- Should the bar continue to offer free registration for 50-year members, active pro bono members, and judges and their attorney staff?
- Do our current policies and efforts to hold down CLE prices help keep down the prices from outside vendors and, if so, should that be a concern? What will happen to outside vendor prices if the OSB is no longer in the market?
- Should MCLE credit be given for listening to a CD for which the listener has made no payment?
- Should OSB be more stringent on quality control and exercise more rigorous MCLE approval criteria for all CLEs regardless of who puts them on?

The bar staff has been diligent in finding ways, consistent with board policy, to efficiently deliver quality CLE programs at the lowest cost possible while at the same time seeking to maintain or increase our market share. Expect to see some new products and new delivery platforms in the next year or so, including more emphasis on live webcasting so lawyers can participate remotely in real time for more seminars. We are also watching developments in other states, many of which are seeing declines in CLE revenue despite more business-oriented policies.

We on the board will continue our review. Are we in the business of providing CLEs or are we providing CLEs as a member service? Are CLE seminars an essential part of the bar's core mission in providing necessary services for the benefit of the public and the membership, or are they an opportunity to promote the bottom line?

Write me at president@osbar.org or send a letter to the editor. I invite you to weigh in.

ABOUT THE AUTHOR

OSB President Tom Kranovich practices law in Lake Oswego. Reach him at president@osbar.org.

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Oregon State Bar Bulletin — NOVEMBER 2015

November Issue ▼

President's Message

A Work in Progress:

Considering CLE Seminars and Sections

By Rich Spier

For several years, the Board of Governors has conducted program reviews to ensure that the bar's discretionary programs are run effectively and efficiently and adhere closely to our mission. Through this process, we have contained costs and managed our resources to the degree that there has not been a general fee increase in 11 years. Earlier program reviews have led to the elimination of the printed membership directory, the decision to make BarBooks a member benefit instead of a subscription service, and the adoption of a percentage-fee funding model for the Lawyer Referral Service. Although some of you still miss the printed directory, we stand by that decision for reasons of efficiency, sustainability and accuracy of our posted membership records. The BarBooks decision has always been popular — like BarBooks itself, which is averaging more than 12,000 page views per work day this year — but it did mean a substantial decrease in revenue to the bar. The lawyer referral changes, like the membership directory, were contentious, but they have achieved the intended result of making the program self-supporting through user fees rather than general membership fees.

Last year, we turned our attention to continuing legal education. The OSB CLE Seminars Department has been unable to meet its goal of a break-even budget for many years. We took a hard look at market conditions, including internal and external competition, and reviewed a number of bar policies regarding CLE. We considered several courses of action, including eliminating our program and allowing bar sections to carry the weight of live, local CLE production. The problem with that, we discovered, was it would actually cost us much more.

Here's the situation: About half of the bar's 42 sections work with the CLE Seminars department to put on their seminars. Financially that's a break-even proposition since the fees paid by the sections cover the costs. The sections that host seminars without involving our CLE Seminars department, on the other hand, actually cost the bar money. The reason is that no fees are charged but costs are still incurred, most notably for processing registration payments. Bar groups that don't contract for registration services can only accept payment by check (due to accounting standards that apply to the bar) and those checks need to be processed by the bar's accounting department. Check processing is much more expensive than credit card processing, plus we have had repeated issues with tracking down missing checks and getting checks submitted months after they were written.

Once we understood the financial situation, it was clear that something needed to change. We saw three possibilities: charge a fee for processing checks for section CLE registrations; increase the per-member "support assessment" currently charged to all sections; or require sections to use registration services. The first option would be an administrative nightmare and the second would have a broad, negative impact on all section budgets. The third option not only seemed the most fair, it also offered other benefits: every seminar would have online registration 24/7 with payment by credit card; cancellation and refund processing would be included; sections would get registration lists for check-in purposes; MCLE attendance reporting would be simplified; date conflicts would be reduced with a single-source entry point for scheduling; and all programs would be automatically included in the bar's online event calendar, giving members a convenient place to find and register for any seminar sponsored by the bar or one of its affiliate groups.

The Board of Governors decided to move forward with requiring the use of registration services for all section CLE events. To make the changes easier to implement, we decided to wait until after installation of the bar's new database software (scheduled for mid-2016) to make them effective. This gives us time to work with the sections to address any concerns and work on



implementation details. By waiting for the new software, which allows us to bring registration services in house, we also expect to decrease costs and lower the fees we charge for registration services.

The financial realities were not the only reason we decided to continue offering OSB CLE. Last year, while the Board of Governors was conducting its review, President Tom Kranovich wrote about the situation in this space. The responses he received were strongly in support of continuing the program. I personally was most persuaded by the many comments I have heard from bar members in rural areas, who greatly appreciate the live webcasts offered by OSB CLE. These programs allow lawyers to participate in real time from any remote location, and are currently only available with bar-sponsored programs. As a statewide organization, we need to provide more of these live webcasts, not fewer.

Which brings us to a second area of section CLE: co-sponsorship. Many sections co-sponsor with CLE Seminars to present programs, with the section responsible for the legal content and the seminars staff responsible for administration and logistics. Because of the benefits of a coordinated approach, and the desirability of promoting live webcasting and other delivery methods, we have decided to require sections to offer co-sponsorship to CLE Seminars for all programs longer than three hours. Again, the new policy will not take effect immediately; to give sections time to adjust, the policy will not take effect until 2017. The policy does not envision that all section programs will be co-sponsored — which is the rule in other states — or that co-sponsorship will necessarily work the same way it does today. We are open to new models and suggestions that further our goals of increased efficiency and greater access to live CLE programming.

With these preliminary decisions made, the Board of Governors directed bar staff to meet with each section to talk about the changes and discuss any concerns. I have attended several of these meetings, as has Tom Kranovich, who wanted to continue with the project that consumed much of his term as OSB president. We have received a lot of feedback, both positive and negative, and some excellent suggestions. The Board of Governors will be discussing that feedback at our annual retreat in November.

One takeaway from the section meetings that troubles me is that some sections clearly do not see themselves as part of the larger bar organization. I suspect we do not interact enough to maintain strong relationships. While that may be understandable given the number of sections we have, I think the Board of Governors could do a better job of connecting sections to the larger organization. That's why we will be hosting a special session for section leaders next spring to talk about the final outcome of all these discussions. This is still a work in progress.

Not coincidentally, the board's next area of program review is bar sections. While each section has its own executive committee and budget, their operations are subsidized by general membership fees. The Board of Governors has always supported that subsidy because of the unquestioned importance of bar sections. Sections promote lawyer networking and collegiality, are active in law improvement and legislative activities and provide valuable educational resources for their members. We do not want any of that to stop. We remain, however, committed to ensuring that all voluntary bar programs operate efficiently and effectively. I would like to share some of the information and questions we have been asking sections (and will continue to ask) in advance of our review.

First, the OSB has a very high number of sections, currently 42 with some talk of number 43 soon to come. State bars of comparable size include Alabama with 27 and Oklahoma with 24. Even larger bars have fewer sections: Washington and Arizona each have 28 and California only 16. Administrative time and expenses increase with the addition of each new section. Some smaller sections struggle to find a purpose, while some larger sections have large fund balances and pay independent contractors to work for them. Questions for discussion include:

Should large sections with adequate means be encouraged to form independent organizations if they want more independence from the OSB?

Should there be a minimum number of members required to maintain a section?

Could some sections be merged?

Do we need a different type of group structure, perhaps with fewer constraints? For example, we could establish online forums open to any bar member interested in a particular area of law, allowing them to communicate and share information without a formal structure.

Second, some sections are carrying large fund balances. The total fund balance for all sections has been increasing year after year, and totaled \$713,337 at the end of 2014. This is not a cost to the bar, but is not a "best practice" for membership organizations and nonprofits. Questions for section leaders include:

Should the OSB have a policy or offer guidelines on appropriate reserves for bar sections?

Should sections with large fund balances be encouraged to decrease membership fees?

Currently the bar's administrative charge to sections is set at 50 percent of the actual cost. Is it necessary to keep subsidizing sections that have fund balances exceeding two or three years of their projected dues revenue?

The Board of Governors will not take up the broader discussion about sections until next year, but your input is welcome now and in the future. If you are a section leader, look for an invitation to the meeting next spring. And please feel free to share your thoughts with me any time by sending an email to president@osbar.org.

ABOUT THE AUTHOR

OSB President Rich Spier is a mediator in Portland.

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SECTION SUMMIT

OREGON STATE BAR

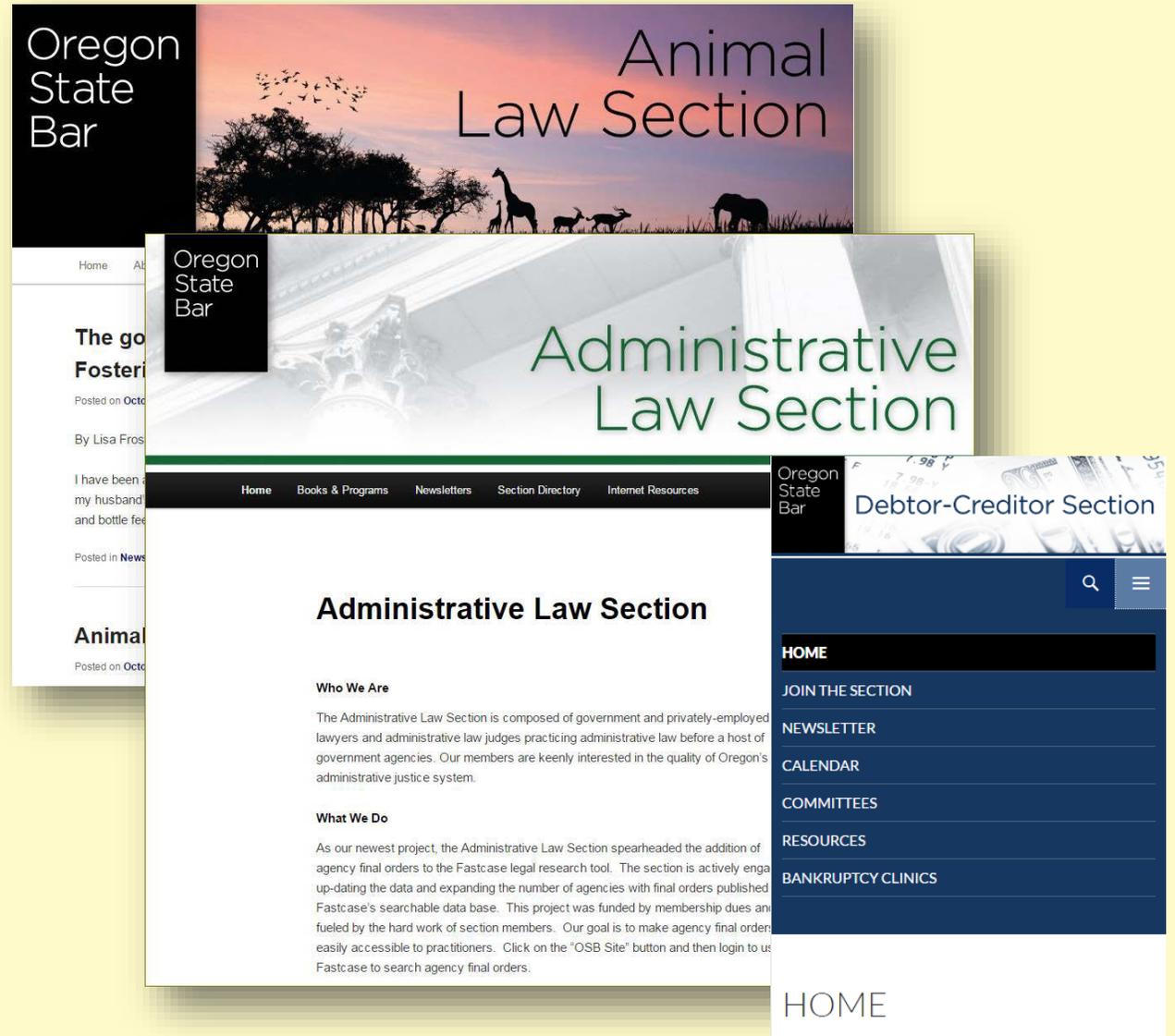


WEBSITES

MIGRATION TO OSB WORDPRESS

OSB WORDPRESS PLATFORM

- Set up and hosting of basic sites provided by the OSB
- Themes that are both mobile responsive and ADA accessible
- OSB branded for ready ID
- Easy-to-use content management system
- Free training for editors
- 17 section sites currently migrated to the OSB WordPress platform with another 7 in process





EVENT REGISTRATION

OPTIONS FOR SECTIONS

Registration Service Levels

	Standard	Basic	Special
Cost to section	\$10 per	\$5 per	\$100 flat fee
CLE hours	≤ 4 hrs.	≤ 4 hrs.	≤ 2 hrs.
Event limit per year	Unlimited	Unlimited	4
Registration pricing options	3 (\$2 >3)	2	Free only
<i>Services included:</i>			
Email announcements sent by OSB	3	1	1
Registration link for use on section websites and list serves	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Registration help from CLE Service Center	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Automatic registration confirmation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Listing on OSB events calendar	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Generic forms, attendee name badges and speaker name tents	<input type="radio"/>		
Attendance reporting to MCLE	<input type="radio"/>		
Course materials posted online	<input type="radio"/>		
Audio recording - optional for mp3 download	<input type="radio"/>		

- Right of co-sponsorship with CLE Seminars
- on subjects of broad general interest or special content needs
- made accessible to all bar members, including members with disabilities and lawyers in rural areas

CO-SPONSORSHIP

Co-sponsored Event Services

- All registration services offered above
Plus...
- Program, speaker and event planning and project management
- Course material collection and production
- Customized marketing materials
- On-site staffing
- Webcasting (when available)
- Video and/or audio recording (when available)
- Scholarships and tuition assistance
- Credit card merchant fees paid by OSB
- MCLE application and payment

CO-SPONSORSHIP

- Right of co-sponsorship with CLE Seminars
- on subjects of broad general interest or special content needs
- made accessible to all bar members, including members with disabilities and lawyers in rural areas



Q & A



Section Fund Balances

\$733,778 at the end of 2015

Section Structure & Alternatives

42 sections in 2016



SECTION SUMMIT

OREGON STATE BAR

Section Officers:

Thanks to all who participated in the recent Section Summit, and to all of you who hosted us at your section executive committee meetings over the past year and a half.

A summary of the new CLE seminar registration options, as well as more detail on co-sponsorship, is available here <http://www.osbar.org/docs/sections/SectionCLEoptions.pdf>. This document will continue to evolve based on your suggestions and a better understanding of how event registration will work with the new software platform we are installing later this year. I apologize for the delay in getting this to you.

I also want to clarify that we are not attempting to limit section CLE or prevent sections from offering free or low-cost programs to their members. Our concern is that under our existing policies some of those programs are effectively subsidized with mandatory bar fees. The new policies reflect the board's commitment to ensuring all bar CLE programs cover their costs, whether they are offered by our CLE Seminars Department or a bar committee, section or division. We are also committed to making high-quality CLE available to all members and think the policy changes will advance that goal.

We have tried to be responsive to feedback received over the last year about how to implement the policy changes, and we will continue to adjust as we move forward. I welcome your comments and suggestions, which I will present to the Board of Governors. I will write again soon with any updates, including the questions about section structure and section fund balances that we did not have time to address at the summit.

Helen Hirschbiel, CEO/Executive Director

hhirschbiel@osbar.org

(503) 620-0222 ext. 361

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

If you would like to request accommodations for a Section meeting or event, please contact Sarah Hackbart at shackbart@osbar.org or 503 431-6385 as soon as possible but no later than 48 hours before the scheduled event. More information about accommodations can be found [here](#)

Change how the bar communicates with you! Do you want email from certain bar groups sent to a secondary email address? Just visit www.osbar.org/secured/login.asp and log in using your bar number and password, then click on the Manage Your Profile tab from the Dashboard to adjust your communication preferences.

Please note that while you can opt out of some bar communications, you cannot opt out of regulatory notices that may affect your membership status. Also note that other groups – including the Professional Liability Fund – maintain their own email and contact lists. Please contact these groups directly with any questions about their lists.



LAWYERS FOR ORGANIZED LABOR IN THE PACIFIC NORTHWEST

Oregon Office
3021 N.E. BROADWAY
PORTLAND, OR 97232
TELEPHONE: 866.697.6015
FACSIMILE: 503.210.9847

Alaska Office
500 W. INTERNATIONAL
AIRPORT RD.
ANCHORAGE, AK 99518
TELEPHONE: 866.697.6015
FACSIMILE: 503.210.9847

MICHAEL J. TEDESCO*
miketlaw@miketlaw.com

SARAH K. DRESCHER*
sarah@miketlaw.com

ANIL S. KARIA**
anil@miketlaw.com

KATELYN S. OLDHAM**
katelyn@miketlaw.com

HALEY ROSENTHAL*
haley@miketlaw.com

TREVOR R. CALDWELL*
trevor@miketlaw.com

* Admitted in OR
** Admitted in OR, WA, AK

January 20, 2016

Helen Hirschbiel
Chief Executive Officer/Executive Director
Oregon State Bar
16037 SW Upper Boones Ferry Rd.
PO Box 231935
Tigard, OR 97281

Re: OSB's Proposed Changes to Section Programming

Dear Helen:

Several months ago, representatives from the Oregon State Bar met with the labor and employment section's executive committee to discuss potential changes to section programming. One of the proposed changes would require sections to use OSB staff and services when sponsoring continuing legal education seminars (CLEs) and to split revenue from section CLEs with the Bar.

The labor and employment section sponsors an annual CLE. In the past, the section has cosponsored its CLE with the Bar, using the Bar's services and staff and sharing revenue with the Bar. The section discontinued cosponsorship with the Bar after finding that it is more cost effective to use limited services provided by the Bar and rely on volunteers from the section's executive committee instead. By using volunteers from the committee, the section has been able to increase its programming on a limited budget.

For the September 2015 CLE, the section incurred the following expenses from the Bar, using only limited services:

Table with 4 columns: Service, Quantity, Cost, Expenses. Rows include Registration, Materials Production, and Total.

Using only limited services from the Bar, the section was able to save enough money to provide five (5) scholarships to the 2015 CLE, which included registration and hotel accommodations to section members who would not have otherwise been able to attend the CLE. The section was also able to provide free registration, hotel accommodations, and travel reimbursement to speakers, and reduced registration fees for law students and recent law school graduates. While CLEs held outside the Portland area typically result in a net financial loss for the section, the 2015 CLE held at Salishan generated net revenue. Had the section been required to cosponsor the 2015 CLE with the Bar, it is unlikely that the section would have been able to provide the same benefits for section members without incurring additional costs.

The last time the section cosponsored a CLE with the Bar was in 2012. The net revenue for the 2012 program was \$3,351.45. However, the section only received \$304. The Bar received the remaining \$3,047.45 under the Bar's revenue sharing formula. Notably, the 2012 CLE did not provide any scholarships similar to those provided at the 2015 CLE.

When the section used the Bar's limited registration services for its 2014 CLE, the net revenue was approximately \$13,927. The section received the entire amount because it chose not to cosponsor the event with the Bar. The section was able to use this revenue to provide scholarships to the annual CLE and provide programs to section members at little to no cost, including the highly successful 2015 Labor & Employment Law Boot Camp and several breakfast briefings.

Requiring sections to use the Bar's staff and services and share revenue with the Bar will reduce section revenues and ultimately lead to reduced services and benefits for section members. Surely the Bar shares the section's concerns for maintaining member access to programming and providing scholarships and networking opportunities for all members. A better approach would allow sections to use the Bar's services at a reasonable cost without requiring cosponsorship and revenue sharing with the Bar. The Bar could allow sections to choose from a variety of services, including event registration, production/printing of materials, advertising, on-site staff assistance, catering planning, A/V assistance, and general event coordination. I am confident sections will continue to take advantage of such services, which would allow the Bar to generate revenue from section CLEs without risk of depleting section revenues to the point of compromising event programming.

Please feel free to contact me if you have questions or would like to discuss this. Representatives from the labor and employment executive committee would appreciate the opportunity to present these concerns to the Board of Governors or any other committee or work group reviewing the proposed changes.

Sincerely,

Sarah K. Drescher

Sarah K. Drescher
Chair, OSB Labor & Employment Section



Oregon

Office of Public Defense Services

1175 Court Street NE
Salem, Oregon 97301-4030
Telephone (503) 378-3349
Fax (503) 378-2163
www.oregon.gov/opds

May 27, 2016

Ms. Helen Hierschbiel
Oregon State Bar
PO Box 231935
Tigard, OR 97281-1935

Re: OSB's Proposed Changes to Section CLE Programming

Dear Ms. Hierschbiel,

The Constitutional Law Section's Executive Committee joins in the letter dated January 20, 2016, from the Labor & Employment Section's Chair Sarah Drescher. A better approach is to allow section to use the Bar's services at a reasonable cost without requiring cosponsorship or revenue sharing with the Bar.

The Constitutional Law Section used to cosponsor its annual CLE with the Bar. The Constitutional Law Section discontinued cosponsorship in 2014 after growing discontent with the limits the Bar sought to impose on the section's CLE. We were told that these restrictions were necessary because our annual CLE, which has historically attracted around 100 attendees each year, could not meet its expenses. However, over the past two years, the Constitutional Law Section has found that it is able to provide its annual CLE at a significantly reduced cost to most of its members without running a deficit. Instead, the CLE has generated a small profit for the section.

The Constitutional Law Section is concerned about the proposal to give the Bar the "right-of-first-refusal" for all section CLE programming. When you visited our section last July, you explained that the right-of-first refusal option will help the CLE Seminar's Department avoid "subsidizing" competing section CLE programming and break even financially. However, in the section's view, requiring mandatory CLE cosponsorship is not necessary to achieve those goals. In our case, the section produced the CLE without running a deficit; something we had not achieved in recent years with Bar cosponsorship. Additionally, the Bar can

avoid subsidizing section-led CLE programming by charging an appropriate amount for the à la carte services it provides.

We join in the Labor & Employment Section's view that a better approach would be to allow sections to use the Bar's services at a reasonable cost without requiring cosponsorship and revenue-sharing with the Bar. We have always enjoyed working with the CLE Seminar Department's staff and would continue to take advantage of the Bar's services.

I and another representative from the Constitutional Law Section Executive Committee are planning on attending the summit on June 8, and we look forward to the opportunity to discuss our section's experience in person with Bar leadership. But, please feel free to contact me if you would like to discuss this or have any questions before then.

Sincerely,



ERIN J. SNYDER SEVERE
Deputy Public Defender
Criminal Appellate Section



PORTLAND OFFICE
eleventh floor
121 sw morrison street
portland, oregon 97204-3141
TEL 503 228 3939 FAX 503 226 0259

anchorage, alaska
beijing, china
new york, new york
seattle, washington
washington, d.c.
GSBLAW.COM

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Please reply to JENNIFER BRAGAR
jbragar@gsblaw.com
Telephone 503 553 3208

June 13, 2016

Board of Governors
Oregon State Bar
16037 SW Upper Boones Ferry Rd.
P.O. Box 231935
Tigard, OR 97281

RE: Real Estate and Land Use Section's Preliminary Comments about the
Proposed Changes to Section Programming

To the Board of Governors,

I am the Chair of the Real Estate and Land Use Section (RELU) of the Oregon State Bar (OSB) and submit these comments on behalf of the RELU Executive Committee (RELU EC). The RELU EC understands that the Board of Governors (BOG) is contemplating changes to co-sponsorship of continuing legal education seminars (CLEs) at its June 2016 meeting. Please consider these comments before presenting a draft policy to the Bar Sections for formal comment.

Annually, RELU offers three types of CLEs, its Spring Day-long CLE at the Bar that is successfully co-sponsored with OSB; and two Section-organized event types - Annual Summer Conference and Luncheon CLEs - where the Section wishes to retain flexibility in its staffing. The following describes each type in more detail.

1) Spring Day-Long CLE at the Oregon State Bar Center - This event has been a successful day-long seminar co-sponsored by the OSB. Attendees and the RELU EC appreciate the service by the staff, the venue, and the technological assistance (preparation of CLE materials and webinar interface) provided by OSB. This event previously took place in the Fall, but after communication with OSB staff, we moved the event to the Spring in 2016. Attendance was up and we appreciate the suggestion by staff to move the date. The RELU EC believes this co-sponsored event is a success and do not see a need to change how it is run and coordinated between the RELU CLE Subcommittee and the OSB.

2) Annual Summer Conference - The RELU Annual Summer Conference is a multi-day event, beginning Thursday night through Saturday morning in early August. The long-standing event annually switches location between the Oregon Coast (Salishan) and Bend (typically the

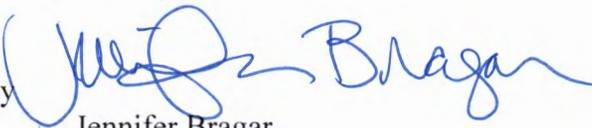
Riverhouse). The conference draws between 200-300 attendees from all around the state depending on the year and location. The event has successfully been organized by our Annual Summer Conference CLE Subcommittee with the guidance and participation of our long-time conference director, Norma Freitas. Last year, RELU relied on the OSB staff to run the on-location event. We found the staff pleasant and well-intentioned, but overall felt they were not familiar enough with the venue or the policies and practices of the event, and had to find and ask our coordinating committee members to address questions that arose. Our members and coordinating committee were not served as well as when Norma Freitas staffed the event. As a result, the RELU EC entered into a contract with Norma Freitas for 2016 to attend and staff the Annual Summer Conference, as she had for more than 10 years. We want to be able to continue to contract with outside consultants to staff the Annual Conference and ensure that funds are available for the Section to do so under the proposed co-sponsorship policy.

3) Luncheon CLEs - RELU sponsors approximately 6 lunchtime CLEs at a downtown Portland location. The effort is coordinated by our Luncheon CLE Subcommittee and payments for the luncheon are collected by one of the committee members and submitted to OSB for processing. In terms of this luncheon programming, the RELU EC's desired outcome is a co-sponsorship that streamlines payment collection and processing through OSB but retains the Subcommittee's ability to respond to current events for luncheon topics. In other words, these luncheons would not be successful if we do not have flexibility in terms of choosing the date for the luncheon (this is venue driven). In addition, the Luncheon Subcommittee would not want to have to decide topics too far in advance because the new co-sponsorship policy would impose earlier deadlines for topic choice and mailings. Last, the lunchtime CLEs are videotaped at a fee to the Section, and made available on our website for free viewing. If RELU can gain a better understanding of pricing for the recording fees under the co-sponsorship policy and whether we would be required to charge for the later viewing, that would be helpful to our future planning efforts.

Thank you for your consideration of these comments. We look forward to working with OSB to create a co-sponsorship program that works for the RELU Section and OSB.

Sincerely,

GARVEY SCHUBERT BARER

By 
Jennifer Bragar

cc: Amanda Lunsford (by e-mail)
Dani Edwards (by e-mail)
Karen Lee (by e-mail)



Oregon

Office of Public Defense Services

Appellate Division

1175 Court Street NE

Salem, Oregon 97301-4030

Telephone (503) 378-3349

Fax (503) 378-2163

www.oregon.gov/opds

August 4, 2016

Ms. Helen Hierschbiel
Oregon State Bar
PO Box 231935
Tigard, OR 97281-1935

Re: OSB's Changes to Section CLE Programming

Dear Ms. Hierschbiel,

The Criminal Law Section's Executive Committee joins the executive committees of the Labor and Employment Section and the Constitutional Law Section in opposing the changes undertaken by the Bar granting a "right of first refusal" to cosponsor section CLE events. Many of the reasons for our disagreement with the Bar's changes are ably expressed in Sarah Drescher's letter to you dated January 20, 2016, and Erin Severe's letter to you dated May 27, 2016. I write separately to highlight our specific concerns.

The large majority of our section members are (1) attorneys who work in district attorney offices, and (2) attorneys in firms, groups, or solo practices who are appointed by the court to represent indigent clients. Those attorneys serve the public good while being compensated at rate significantly less than their colleagues in the private bar.

The financial needs of the section members has always guided the executive committee's actions. In the six years that I have served on the committee, our section dues have remained at \$20. The cost of our annual CLE, which typically allows attendees to claim five to six hours of MCLE credits, including an hour of ethics, elder or child abuse reporting, diversity, etc., has remained around \$120 for section members, with discounts available for new attorneys and early registrants. My understanding is that those rates predate my tenure on the committee by several years.

Long ago, the executive committee made the decision that the benefits of co-sponsoring our annual CLE with the Bar were substantially outweighed by the resulting costs to section members. We have continued to use the Bar Center as the CLE venue, and utilize the Bar's CLE Services division for marketing, registration, etc. All other things being equal, I would predict that we would continue to use those services; the Bar Center is centrally located and suitably sized for our event, and Bar staff are responsive, courteous, and professional.

Requiring co-sponsorship, however, would significantly increase the costs to section members, without a corresponding increase in benefits. I have reviewed video of the section summit convened to explain the Bar's reasoning for the new co-sponsorship policy. While the Bar's goals in implementing the changes are laudable, the executive committee does not believe that the changes will further those goals for our section members.

For example, one of the reasons proffered for the changes is insuring that all of the Bar's CLE offerings have a consistent, high level of quality. The Criminal Law Section's annual CLE has consistently received high praise in evaluations submitted by attendees. Another reason offered for the changes is accessibility, with an emphasis on making CLE programs available online for those who are unable to travel to Tigard. The executive committee shares the Bar's focus on accessibility. To that end, for the past four years the section has presented regional CLEs in the fall, including CLE programs in central, eastern, and southern Oregon. The section has also experimented with making the CLE programs available online; however, the lack of interest in such offerings on the part of our section members has rendered the cost-benefit analysis relatively easy to resolve in favor of not incurring that expense.

In short, the Criminal Law Section has for years offered a high-quality annual CLE to its members at a reasonable rate. While the Bar's interest in co-sponsoring more sectional CLE programs is no doubt fueled by good intentions, the executive committee believes that the increased cost of co-sponsorship to its members will far outweigh the relatively few benefits they receive in return.

Sincerely,

Shawn Wiley
Chair, Executive Committee
Criminal Law Section

Thanks to all of you who responded to my last message regarding section CLE policies. I have received comments from several sections and will forward those comments to the Board of Governors. This message is intended to start a discussion of two issues we did not have time to cover at the summit: section fund balances and possible alternative structures for bar groups. We did get feedback from some of our meetings with sections last year, but would appreciate additional feedback and comments.

The first issue is our section fund balance. For accounting purposes, section reserves are pooled together in a single fund — the section fund — with each individual section retaining ownership of its own share. There is no reserve policy for the section fund, and no reserve policy for individual sections. The only guidance we offer is through the standard section bylaws, which require all section budgets to include a target reserve plan and a short description of any long-range plans that require an accumulation of funds.

At various points over the past 20 years or so the bar has encouraged sections to “spend down” their reserves. Despite those efforts (and acknowledging that some sections consistently maintain modest reserves) the section fund has continued to grow. At the end of 2005 the fund total was approximately \$508,000; by the end of 2015 it had reached approximately \$734,000. Nonprofit and government organizations commonly set reserve goals equivalent to 2-6 months of operating expenses; currently nearly half of the bar’s sections have reserves exceeding two years of operating expenses.

Our questions for you: Do you think this a problem? If not, why not? If yes, how should it be addressed? Should we have a policy or guidelines on appropriate reserves? Should sections with large fund balances be encouraged to decrease membership fees, offer scholarships or donate excess funds? Should the bar continue subsidizing the administrative costs of sections with large fund balances? [1] Is it even feasible to have a standard reserve policy given our large number of sections, each of which operates somewhat differently?

That last question relates to our second issue, which is whether the section model is too “one size fits all” for our members. The OSB has a very high number of sections — currently 42. Washington has 27, Arizona 28 and California only 16. Some small sections struggle to provide services to their members and maintain a full roster of executive committee members. Others have expressed dissatisfaction with the constraints that come with the OSB umbrella, such as limits on legislative activities. Crafting policies that are acceptable to all 42 sections can be difficult, and administrative costs increase when new sections, or even new section programs, are added.

Our questions for you: Does the OSB have too many sections? Should large sections with adequate means be encouraged to form independent organizations? Are there any sections that could merge? Should we create “interest groups” or some other less-formal structure as an alternative to sections? Should there be a minimum number of members required to retain the section format?

Again, these are discussion items only. I hope you will discuss these issues with your executive committee members, and that your discussions generate ideas that you are willing to share. I will present your comments and suggestions to the board early next year. Thanks in advance for your consideration.

Helen Hirschbiel, CEO/Executive Director

hhirschbiel@osbar.org

(503) 620-0222 ext. 361

[1] The OSB subsidizes sections by sharing the administrative costs of basic section services. Administrative costs include: dues collection, general accounting services, legislative coordination, bar liaison expenses, maintenance of membership and executive committee rosters, coordination of meeting notices and agendas, and electronic communications (primarily broadcast emails and list serve maintenance). As a policy matter, since 1992 the assessment has been set at 50% of the actual costs. The cost-sharing policy reflects the importance of sections to the bar, the financial needs of smaller sections and the reality that reliance on administrative services varies by section as well as by year.

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OREGON STATE BAR

Board of Governors Agenda

Meeting Date: September 9, 2016
From: Helen M. Hirschbiel, Executive Director
Re: Operations and Activities Report

OSB Programs and Operations

Department	
Accounting & Finance/ Facilities/IT (Rod Wegener)	<p><i>Accounting</i></p> <ul style="list-style-type: none"> ▪ Staff has been juggling three projects in addition to the normal work load. The Aptify member fee and product modules require substantial creation and testing. Simultaneously GP Dynamics, the accounting software package, was upgraded to comply with Aptify and it also requires learning new features and then rigorously testing them. Finally, the audit report is not complete and more research and analysis was required. The report is mostly delayed by the analysis of the PERS unfunded liability notes that are required to be included in the report. <p><i>Facilities</i></p> <ul style="list-style-type: none"> ▪ The Joffe-Medicenter lease expires at the end of September. The 6,015 square foot space is completely vacant and the realtor is looking for a replacement tenant. <p><i>Information Technology</i></p> <ul style="list-style-type: none"> ▪ Staff is deeply involved in and consumed by user acceptance testing of the various Aptify modules configured for the OSB. We have determined that the original plan to roll out all modules at once in mid-October was overly-ambitious; therefore, we have changed that plan to roll out in stages, beginning with the Constituent Management module in mid-October. The current plan is to have all modules live by the middle of next year. Stay tuned.
Communications & Public Services (includes RIS and Creative Services) (Kay Pulju)	<p><i>Communications & Public Services</i></p> <ul style="list-style-type: none"> ▪ Feature articles in the July and August/September issues of the Bulletin covered, among other topics: features on rural practice opportunities, legal writing, the current state of law school education and law-related education programs for young people. Columns and profiles touched on mentoring, professionalism, the criminal justice system, and ethics rules related to bias and conflicts of interest. ▪ The first segments of a new video series, Legal Q&A, are now available on the bar's website in the "For the Public" pages. The series poses common legal questions, which are then answered by Oregon lawyers via

embedded video presentations. An update of the handbook “Legal Issues for Older Adults” is also in the works.

- Staff continue to prepare for implementation of Aptify, including member communications regarding website logins and MCLE program changes. The communications team also assists with organizational communications regarding sections, BOG issues and program news and updates.

Creative Services

- Recent web development work has been focused on developing the single sign on (SSO) system to the website. This new SSO will provide a single point of entry for access to members only content on both the OSB and PLF websites. New passwords will also be a part of this SSO, which will require a communication plan to promote this change in time for completion before the 2017 fee and compliance cycle begins.
- Section website migration to the OSB WordPress platform continues with Civil Rights the latest to go live: <https://civilrights.osbar.org/> Four others are ready for review and can go live as soon as we receive permission from the sections: RELU, Products Liability, Workers’ Compensation and Elder Law.
- A new BarBooks application was launched in early July. With its responsive new interface, the display configures to the screen size. Members can continue to use it on their desktops or use it on smartphones, iPads and tablets while they're on the go. A new ad module was created for increased cross marketing of CLE seminar and legal publication products in this environment.

Referral & Information Services (RIS)

- Staff is concluding the annual Lawyer Referral Service (LRS) renewal campaign. Approximately 550 attorneys received registration materials through the mail in early July with a return deadline in mid-August. The new program year begins on September 1st, and will be the fourth full year under the new percentage fee model.
- LRS revenue is on track to meet or exceed budget projections for 2016. Current revenue is at \$444,299 as of July 31st, which is 62% of the budgeted revenue and does not include the estimated \$115,000 from registrations that will be reflected in the August financials. Total revenue generated since percentage-fee implementation in 2012 is \$2,481,220. This revenue represents over \$17,300,000 in legal fees LRS attorneys have billed and collected from LRS-referred cases over the past four years.
- RIS continues to monitor a pilot program for several new Modest Means Program panels. At the end of the program year RIS will report results to

	<p>the Public Service Advisory Committee.</p> <ul style="list-style-type: none"> ▪ RIS is continuing its marketing campaign, focusing on Google Ads and Craigslist. RIS is also sponsoring and assisting with the revision of “Legal Issues for Older Adults.” ▪ The department is currently seeking two new bilingual employees due to recent turnover.
<p>CLE Seminars (Karen Lee)</p>	<ul style="list-style-type: none"> ▪ Solo and Small Firm Conference: While this first-time event did not quite reach its attendance (i.e. budget) goal, those who attended were very pleased with the education offerings and rated the speakers and sessions very highly. The location (Riverhouse in Bend) was also well received. This event has the potential to grow and the department is currently working with the SSF Section to plan another conference in 2017. ▪ Futures Conference: Another first-time event, this invitation-only conference for the bar leadership was also very well received, even by skeptical attendees. The speakers were informative and engaging and helped initiate what hopefully will be a larger discussion among the membership about how the legal profession will continue to change and how lawyers can address those changes.
<p>General Counsel (includes CAO and MCLE) (Amber Hollister)</p>	<ul style="list-style-type: none"> ▪ The Supreme Court approved a MCLE rule amendment, which allows statewide officers in the executive branch to receive credit for their service (legislators already receive credit). ▪ The MCLE department is working with the communications department to roll out rule changes that allow members to receive credit for pro bono service and additional practice management activities effective September 1. ▪ The Client Assistance Office has hired attorney Daniel Atkinson to start on September 12. ▪ General Counsel has continued to provide abuse reporting and ethics CLE's to members statewide, including in Lincoln, Marion and Jackson Counties. ▪ General Counsel is convening an informal group to discuss possible amendments to the OSB Fee Dispute Resolution Rules regarding fee mediation.
<p>Human Resources (Christine Ford)</p>	<ul style="list-style-type: none"> ▪ Recruitment Activities <ul style="list-style-type: none"> ○ Replacements Hired <ul style="list-style-type: none"> ● Daniel Apodaca Valenzuela promoted from RIS Assistant – Bilingual to CLE Customer Service Specialist replacing Mike Blythe ○ Active Searches <ul style="list-style-type: none"> ● Assistant General Counsel and Client Assistance Office Attorney ● Director of Diversity & Inclusion

	<ul style="list-style-type: none"> • RIS Assistant – Bilingual (2) ▪ Completed mid-year performance evaluation meetings with all directors and managers
<p>Legal Publications (Linda Kruschke)</p>	<ul style="list-style-type: none"> ▪ The following have been posted to BarBooks™ since June 16, 2016: <ul style="list-style-type: none"> ○ Eleven supplement chapters of <i>Oregon Administrative Law</i>. ○ Eight chapters of <i>Damages</i>. ○ Six revised <i>Uniform Criminal Jury Instructions</i>. ○ The PDF of the 2016 <i>Oregon Legislation Highlights</i>. ▪ The first week in July we launched the new version of BarBooks™ that works on any device because it has a responsive interface. It currently includes over 134 CLE Seminar handbooks. ▪ We printed and shipped the preorders for <i>Creditors’ Rights and Remedies</i> in early June. <ul style="list-style-type: none"> ○ Revenue to date = \$15,081 ○ Budget = \$31,800 ▪ We’ve been taking preorders for the <i>Oregon RPCs Annotated</i> and <i>Oregon Formal Ethics Opinions</i>, and they will go to the printer by the end of this week: <ul style="list-style-type: none"> ○ ORPCs Annotated: Budget = \$0; Revenue to date = \$8,488 ○ Or. Formal Ethics Ops: Budget = \$22,500; Revenue to date = \$8,624 ▪ We started taking preorders for Oregon Administrative Law supplement last month: <ul style="list-style-type: none"> ○ Revenue to date: \$2,490 ○ Budget: \$3,600 ▪ Other books that will be completed in 2016, barring any unforeseen delays, include <i>Damages</i> revision and <i>Elder Law</i> revision. ▪ <i>Oregon Real Estate Deskbook</i> won the ACLEA Best Publications Award. An article about it will be featured in the RELU Digest newsletter.
<p>Legal Services (Judith Baker) (includes LRAP, Pro Bono and an OLF report)</p>	<p><i>Legal Services Program</i></p> <ul style="list-style-type: none"> ▪ Lane County Legal Aid and Advocacy Center’s (LCLAC) board agreed to initiate merger discussions with the Oregon Law Center. The OLC board has assigned Beverly Pearman, OLC’s Board President to engage in discussions, complete due diligence, and make a recommendation to OLC’s full board. The goal of both organizations as they engage in exploring merger is to assure that any change in the statewide legal aid structure is in the best interest of Oregon legal aid clients. ▪ Assisting with planning the Access to Justice Forum which will be held on September 8. ▪ The first of the year’s LRAP checks went out to the participants in June. This includes the 22 new participants selected in May. All participants will receive their second check in November.

	<ul style="list-style-type: none">▪ Hosted quarterly Certified Pro Bono Program meeting to discuss various topics related to their pro bono programs.▪ Staff continues to work on the Pro Bono Celebration. This year’s Fair/Awards Ceremony is scheduled for Thursday, October 27. There will be three free CLEs: 1.) Prioritizing Pro Bono in your Practice: Ethics & Opportunities for New Lawyers; 2.) LASO Domestic Violence Project: Representing DV Survivors in Restraining Order Cases; and 3.) Pro Bono Service in Federal Court: Always a Treat.▪ Staff has undergone some training for, and continues to monitor the development of, the ABA on-line pro bono website. The OSB will not participate until next year, due to the IT demands of implementing Aptify.▪ The OSB has a new opportunity to participate in a nationwide ABA pro bono survey. Staff is in contact with the ABA about the survey and will provide coordination for the project. <p><i>Oregon Law Foundation</i></p> <ul style="list-style-type: none">▪ Due to a critical staff departure the OLF is making changes to how it is staffed and has put on hold announcing the availability of the Bank of America Settlement Funds.
Media Relations and Public Outreach (Kateri Walsh)	<ul style="list-style-type: none">▪ Serving as media and public outreach advisor to a group seeking public input into community elements to be built into the new Multnomah County Courthouse.▪ The Bar Press Broadcasters Council is drafting proposed amendments to UTCR 3.180, the trial court rule addressing cameras and other electronic video equipment in courtrooms. The Council is seeking to modernize the rule to account for technologies such as cell phone cameras, notebooks and other potential recording instruments.▪ Co-presented a program with Jeff Manning of the Oregonian in August to a joint conference of the National Conference of Bar Examiners and Council of Bar Admissions Administrators regarding managing media stories about declining bar passage rates, which continues to be the subject of media scrutiny across the country.▪ Leading the effort to produce a video “town-hall” format of the annual “Building a Culture of Dialogue” program hosted by the Bar Press Broadcasters Council, in partnership with KGW TV.▪ Providing media relations strategy and support to the Multnomah Bar Foundation Public Outreach Committee, which will launch a new judicial outreach and civic education effort beginning this year.▪ Providing informal guidance to Oregon courts and judges on media issues and questions as they arise.▪ Managing approximately 10-12 CAO and/or DCO cases being actively tracked by media.

Member Services (Dani Edwards)	<ul style="list-style-type: none">▪ Due to Ramón’s resignation, a special filing deadline of September 16 is set for region 4 Board of Governors candidates. The election for this position will be conducted during the annual BOG election held from October 3 through 17. Members interested in serving can obtain more information at http://www.osbar.org/leadership/bog.▪ The Board Development Committee will conduct interviews for next year’s BOG public member position during the committee meetings on September 9. The BDC’s recommendation is expected to go to the full board during the meeting that same day.▪ In September the bar will conduct a preference poll for contested judicial positions appearing on Oregon General Election ballot. As of this writing, there are contested races in Douglas County and Malheur County.▪ The annual volunteer recruitment period ended with a healthy list of members interested in participating in bar activities and programs. More than 200 of the nearly 350 volunteers will be slated for appointment to a committee, council, or board during the October and November Board Development Committee meetings. Nearly 20 public member volunteers expressed an interest in serving on a bar committee or board; these public member candidates will be evaluated for appointment consideration during the same time period.▪ Department staff have focused considerable effort preparing for implementation of the new association management software. The module containing all member and some non-member data is in testing and expected to launch in mid-October.▪ Following the June 8 Section Summit, numerous bar leaders reached out in preparation of upcoming CLE policy changes effective January 1. Several sections are acclimating well but overall feedback has varied. Section leaders will soon be asked to share their opinions on fund balance accumulation and the increasing number of sections.
New Lawyer Mentoring (Kateri Walsh)	<ul style="list-style-type: none">▪ Finalized a new Law Firm Certification policy which will allow firms with well-established in-house mentoring programs to streamline the administrative requirements for the new associates’ participation in the NLMP. We are developing the certification process, and crafting a plan for publicizing the new program. Meanwhile, we may extend the program beyond firms to specialty bars and sections with mentoring programs, both of whom have expressed interest in partnering.▪ Actively seeking our first participants to complete a “Mentoring through Pro Bono” program. We hope to get several cases handled over the next six to nine months, and then partner with statewide pro bono programs to offer this more assertively as a way to structure a mentoring year.▪ Working with the NLMP Committee to craft a plan for a thorough

	<p>evaluation of the NLMP, which has not been done since the conclusion of its first year of operation in 2012. We are now in our 5th year and are interested in aggregating program data to seek opportunities for program or process improvements. The committee and staff are formulating a comprehensive plan, to be done either independently, or as part of the broader examination of our statewide services to new lawyers.</p> <ul style="list-style-type: none">▪ Processing NLMP completion packets that continue to come in from the program’s 5/31/16 completion deadline. Certifying completions and working with non-compliant new lawyers on repairing their status.▪ Enrolling and educating new members sworn in since the April 2016 ceremony and working on matching. We currently have roughly 900 bar members working through the program (471 matched pairs), and 37 new lawyers awaiting a mentor match.▪ Instituting new mentor recruitment efforts based on needs we see from our newest class of participants. We are in need of mentors in the areas of family law, immigration, business law and in-house counsel.
<p>Public Affairs (Susan Grabe)</p>	<ul style="list-style-type: none">▪ <u>2017 Law Improvement Package</u>: On behalf of the Board of Governors, the Public Affairs Committee forwarded its package of Law Improvement proposals to Legislative Counsel’s office for pre-session drafting for the 2017 Legislative Session. Thus far, we have received 6 drafts back, 2 of which have been finalized. Public Affairs staff continues to reach out to bar groups and stakeholders to address concerns regarding law improvement legislation.▪ <u>Oregon eCourt</u>: Public Affairs has worked with the OSB/OJD eCourt Implementation Task Force to assist the court with the Oregon eCourt rollout and to develop new Uniform Trial Court Rules regarding Oregon eCourt. Active members of the bar will be required to eFile in all Oregon circuit courts as well as the Oregon Tax Court effective August 29, 2016. Public Affairs has worked to ensure outreach to and training opportunities for OSB members regarding the move to mandatory eFiling.▪ <u>Interim legislative workgroups</u>: Public Affairs will be engaging in a number of interim work group projects. At this point, we have identified the following issues:<ul style="list-style-type: none">○ Advance Directive○ Definition for elder abuse reporting○ Uniform Collateral Consequences of Conviction Act○ Uniform Collaborative Law Act○ Guardianship, Due Process and cost shifting in contested case hearings○ Probate Modernization○ Power of Attorney

	<ul style="list-style-type: none">▪ <u>Liaison activities</u>: The Public Affairs Department continues to monitor and liaison with external stakeholder groups such as the Council on Court Procedures, the various Oregon Law Commission workgroups including direct criminal appeals and receivership, as well as the OSB/OJD eCourt Task Force.▪ <u>Legislative cycle and budget</u>: The Public Affairs Department has begun preparation for the 2017 legislative cycle and budget. The move to Annual Sessions has changed timeframes, workflow and speed of response time. This has, in turn, has required a shift in bar operations to ensure effective participation in the process.
<p>Regulatory Services (Dawn Evans)</p>	<p><i>Admissions Office</i></p> <ul style="list-style-type: none">▪ The Admissions Department was the host jurisdiction for a recent meeting of the National Conference of Bar Examiners/Conference of Bar Admissions Administrators held in Portland August 11-13. Participants included representatives from across the United States who work as professional staff and volunteers in the field of bar admissions. Sessions covered topics related to bar examinations and character and fitness investigations. The attendance was the highest to date for the organization’s annual business meeting.▪ The Board of Bar Examiners (BBX) met during the week of August 22 for the grading of the July bar examination and its regular meeting to discuss pending applications and various committee reports. The BBX continues planning toward implementation of the Uniform Bar Examination (UBE) in Oregon, with emphasis on the development of an Oregon law component. The committee focused on that work is scheduled to meet on September 28. <p><i>Disciplinary Counsel’s Office</i></p> <ul style="list-style-type: none">▪ Dawn Evans spoke as a panelist in two presentations at the recent meeting of the National Organization of Bar Counsel (NOBC), which met in conjunction with the ABA annual meeting in San Francisco, August 3-6. Ms. Evans spoke on a panel discussing the management of challenging employees and on a panel reviewing the history and evolution of attorney regulation and the NOBC.▪ Work on proposed changes to the Bar Rules of Procedure as a result of the Board of Governors’ review of the Disciplinary System Review Committee’s recommendations has continued over the course of the summer, as a result of collaboration between bar and court staff. A completed draft should be delivered soon.

Executive Director’s Activities June 24 to September 8, 2016

Date	Event
6/24/16	BOG committee & Board meetings in Bend.
6/27/16	Met with Monica Herranz, chair of the Oregon Hispanic Bar Association
6/29/16	Monthly meeting w/ PLF CEO, Carol Bernick
7/11/16	Attended Campaign for Equal Justice Board Meeting
7/12/16	Region 4 HOD meeting
7/13/16	Region 6 HOD meeting
	Region 2 HOD meeting
7/14/16	Region 8 HOD meeting
	Region 5 HOD meeting
	Meeting w/Legal Aid, Campaign for Equal Justice, and Court representatives regarding <i>Justice for All</i> grant proposal
7/16/16	Client Security Fund Meeting
7/19/16	Aptify meetings all day
7/20/16	Monthly meeting with local bar association executive directors
	Meeting with PSU Center for Public Service
7/21/16	Futures Conference at OSB
7/22/16	BOG Committee meetings
7/26/16	Met w/Paula Littlewood at WSBA; met with Dan Lear and Mark Britton at Avvo
7/28/16	OMLA Social/Auction
	K&L Gates International Summer Social
7/29/16	Attended PLF Claims Attorney Steve Carpenter memorial service
	Meeting with PSU Center for Public Service
8/1/16	Monthly lunch w/ PLF CEO, Carol Bernick
8/2—8/4	Attended National Association of Bar Executives Annual Meeting
8/5—8/6	Attended OLIO Orientation
8/9/16	Meeting w/ Josh King, General Counsel of Avvo
8/10/16	Met w/Labor & Employment law section re: new section policies
	Meeting w/PSU Center for Public Service
8/12/16	Attended PLF Board Meeting
	Attended Judge Maurer retirement party
8/16/16	Orientation regarding CEJ and Legal Aid
	Legal Ethics Subcommittee meeting regarding Avvo
8/17/16	Professionalism Orientation at Willamette University
8/20/16	Legal Ethics Committee meeting in Bend (Saturday)
8/23/16	Conf call w/ Ryan Collier & Ray Heysell re: HOD resolution
8/24/16	Lewis & Clark 1L Professionalism Discussion
	Professionalism Commission Meeting
8/25/16	Breakfast meeting w/Judge Ortega and Michael Levelle

8/30/16	Breakfast meeting w/David Bartz
8/31/16	Breakfast meeting with Chief Justice Balmer
	Attended CEJ Board Meeting
9/7/16	Lunch meeting w/ Ray Heysell and John Grant
9/8/16	Access to Justice Conference
	ONLD River Cruise

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: September 9, 2016
Memo Date: August 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 met in June 2016, the Supreme Court took the following action in disciplinary matters:

- Accepted the Form B resignation from Medford lawyer *G. Jefferson Campbell*; and
- Accepted the Form B resignation from Beaverton lawyer *Alan K. Wood*.

b. Disciplinary Board

Four Disciplinary Board trial panel opinions have been issued since June 2016:

- A trial panel recently issued an opinion in *In re James R. Kirchoff* of Grants Pass (2-year suspension) for conduct involving manufacturing an email with opposing counsel that he then submitted to the court in an attempt to avoid a default judgment for his client.
- A trial panel recently issued an opinion in *In re Dale Maximiliano Roller* of Salem (4-year suspension) for conduct in several matters involving neglect of a legal matter, dishonesty, fraud, deceit, or misrepresentation reflecting adversely on the fitness to practice law, failure to adequately communicate with a client, failure to return client property upon termination of representation, charge or collect an excessive fee, and conduct prejudicial to the administration of justice.
- A trial panel recently issued an opinion in *In re Robert S. Simon* of Santa Monica, California (185-day suspension) for conduct involving charging a clearly excessive fee, former client conflict, and conduct involving dishonesty.
- A trial panel recently issued an opinion in *In re Eric Einhorn* of Mosier (disbarment) for conduct involving impropriety with client funds and fees and dishonesty.

In addition to these trial panel opinions, the Disciplinary Board approved a stipulation for discipline in: *In re Lindsay H. Fowler* of Eugene (reprimand).

The Disciplinary Board Chairperson approved BR 7.1 suspensions in *In re Eric Einhorn* of Mosier, *In re Paul Lars Henderson, III*, of Medford, *In re Jeffrey Scott Milstein* of Portland (12 matters), and *In re Jason C. Hawes* of Lake Oswego (3 matters).

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; oral argument June 15, 2016

In re Scott W. McGraw – 18-month suspension; accused appealed; awaiting briefs

In re Eric M. Bosse – 24-month suspension; accused appealed; awaiting briefs

In re James R. Kirchoff – 2-year suspension; accused appealed; awaiting briefing schedule

The following matters are under advisement before a trial panel of the Disciplinary Board:

In re Sarah Lynn Allen – July 22, 2016 (sanctions memo filed)

In re Shawn E. Abrell – August 5, 2016 (sanctions memo filed)

3. Trials.

The following matters are on our trial docket in coming weeks/months:

In re Sandy N. Webb – September 15-16, 2016

In re Gary B. Bertoni – September 28-30, 2016

In re Lane D. Lyons – September 30 – October 1, 2016

In re Samuel A. Ramirez – October 3-5, 2016

In re Shannon M. Kmetic – November 2-3, 2016

In re Edward T. LeClaire – November 15-17, 2016

In re Jonathan G. Basham – December 5-7, 2016

In re Steven L. Maurer – December 13-14, 2016

4. Diversions.

The SPRB approved the following diversion agreements since June 2016:

In re Michael B. McCord – August 1, 2016

5. Admonitions.

The SPRB issued 3 letters of admonition in July 2016. The outcome in these matters is as follows:

- 3 lawyers have accepted their admonitions;
- 0 lawyers have rejected their admonitions;
- 0 lawyers have asked for reconsiderations;
- 0 lawyers have time in which to accept or reject their admonition.

6. New Matters.

Below is a table of complaint numbers in 2016, compared to prior years, showing both complaints (first #) and the number of lawyers named in those complaints (second #):

MONTH	2012	2013	2014	2015	2016
January	46/49	21/21	29/31	18/19	30/30
February	27/27	23/23	24/25	28/28	38/38
March	38/39	30/30	41/45	22/22	28/30
April	35/38	42/43	45/47	17/17	26/26
May	19/20	37/37	23/24	24/24	27/30
June	39/40	31/31	23/24	31/31	38/39
July	22/22	28/30	43/44	27/27	41/42
August	35/35	33/36	19/21	28/29	
September	22/22	26/27	24/24	21/21	
October	23/23	26/26	25/25	38/39	
November	18/18	25/26	19/19	24/25	
December	26/26	19/19	21/23	20/20	
TOTALS	350/359	341/349	336/352	298/302	228/235

As of August 1, 2016, there were 200 new matters awaiting disposition by Disciplinary Counsel staff or the SPRB. Of these matters, 50% are less than three months old, 22% are three to six months old, and 28% are more than six months old. Twenty-seven of these matters were on the SPRB agenda in July.

DME/rjh

Oregon State Bar
Meeting of the Board of Governors
June 24, 2016
Open Session Minutes

President Ray Heysell called the meeting to order at 1:05 p.m. on June 24, 2016. The meeting adjourned at 4:30 p.m. Members present from the Board of Governors were John Bachofner, Jim Chaney, Chris Costantino, Rob Gratchner, Guy Greco, Michael Levelle, John Mansfield, Vanessa Nordyke, Ramón A. Pagán, Per Ramfjord, Kathleen Rastetter, Julia Rice, Kerry Sharp, Kate von Ter Stegge, Tim Williams, and Elisabeth Zinser. Not present were Josh Ross, Richard Spier and Charles Wilhoite. Staff present were Helen Hierschbiel, Amber Hollister, Rod Wegener, Dawn Evans, Susan Grabe, Dani Edwards and Camille Greene. Present from the PLF were Carol Bernick and Tim Martinez. Also present was Colin Andries, ONLD Chair, Jennifer Nichols, ONLD, and Don Friedman, Incubator Study.

1. Call to Order/Finalization of Agenda

The board accepted the agenda, as presented, by consensus.

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

A. Awards Special Committee

Ms. Hierschbiel asked the board for volunteers to form an awards committee, chaired by the President, and including all interested board members. The following board members volunteered: Mr. Pagan, Mr. Greco, Ms. Nordyke and Mr. Ramfjord. Mr. Heysell will contact board members to form the committee and report back to the board in September.

B. Policy and Governance Committee

Motion: Mr. Ramfjord moved, Ms. Rice seconded, and the board voted unanimously to waive the one-meeting notice for all bylaw changes presented.

Mr. Levelle presented the committee's two requests regarding the Judicial Administration Committee as outlined in the committee memo **[Exhibit A]**:

1. Approve changes to the strategies contained in the 2014 Action Plan that support the OSB function as a partner with the judiciary.

Motion: The board voted unanimously in favor of the committee motion to approve changes to the strategies. The motion passed.

2. Sunset the Judicial Administration Committee.

Motion: The board voted unanimously in favor of the committee motion to sunset the Judicial Administration Committee. The motion passed.

Mr. Levelle presented the committee motion to approve the proposed language for new bylaws establishing retired membership status as a subcategory of inactive bar membership. The

adoption of these bylaws would be in lieu of the bylaws adopted by the Board on January 9, 2016. **[Exhibit B]**

Motion: The board voted unanimously in favor of the committee motion to approve the proposed language for the new bylaw. The motion passed.

Mr. Levelle presented the committee motion to approve the proposed language for a revision to Article 19 of the bylaws to clarify that information and materials provided to General Counsel as part of an ethics question or request for ethics opinion are not confidential, and may be shared with the public or other bar departments. **[Exhibit C]**

Motion: The board voted unanimously in favor of the committee motion to approve the proposed language for a revision to Article 19 of the bylaws. The motion passed.

Mr. Levelle presented the committee motion to waive the one meeting notice requirement and approve changes to the appellate screening bylaws in OSB bylaw 2.703. **[Exhibit D]**

Motion: The board voted unanimously in favor of the committee motion to approve the proposed changes to OSB bylaw 2.703 re: Appellate Screening Committee. The motion passed.

C. Board Development Committee

Ms. Nordyke presented the Board Development Committee's recommendation to appoint Nancy Cozine and reappoint Mark Comstock to the Oregon Law Commission.

Motion: The board voted unanimously in favor to accept the committee motion. The motion passed.

Ms. Nordyke presented the Board Development Committee's recommendation to appoint Scott Lucas, John Mellgren, James Nobel Miner, and Lish Whitson as new members to the OSB House of Delegates. **[Exhibit E]**

Motion: The board voted unanimously in favor to accept the committee motion. The motion passed.

Ms. Nordyke presented the committee's recommendations for lawyer representatives for the 9th Circuit Judicial Conference: Christopher Cauble, Nadia Dahab, Patrick Ehlers, Erin Galli and Charles Robinowitz. **[Exhibit E]**

Mr. Chaney recommended removing Mr. Cauble from the list of recommended lawyers.

Motion: Mr. Ramfjord moved, Mr. Williams seconded, to amend the committee recommendation and remove Mr. Cauble from the list of committee recommendations.

Motion: The board voted unanimously in favor of accepting the committee recommendation as amended. The motion passed.

D. Budget and Finance Committee

Mr. Mansfield presented a general financial update. The committee will present amendments to the bylaws at the June 24, 2016 BOG meeting. The review of the reserve and contingency funds revealed that uses of the funds are appropriate and prudent. Mr. Levelle suggested the committee develop standards for the use of these funds.

Mr. Mansfield presented the committee's request to review the recommendation from Budget & Finance Committee for changes to bylaw 7.4 Investment Policy and create an Investment Committee Policy. **[Exhibits F & G]**

Motion: The board voted unanimously in favor of the committee motion to approve the proposed changes to OSB bylaw 7.4 and create an Investment Committee Policy. The motion passed.

Mr. Mansfield noted that the committee discussed whether to adjust the Client Security Fund assessment and determined there would be no changes for the 2017 budget.

E. Public Affairs Committee

Mr. Williams gave a general update on legislative activity, the *Horton vs. OHSU* case, HB 4042, and the committee discussion about whether the OSB Public Affairs department needs greater staffing to do its work.

Mr. Williams noted that the committee does not have an action item from the Civil Rights Section for the board to consider at this meeting.

3. Professional Liability Fund

Mr. Martinez gave a financial update for the PLF. The PLF changed "retained earnings" to "net position" and are working on determining the assessment.

Ms. Bernick stressed the importance of a net position that allows them to not raise assessments when the market shifts. She announced there are two openings for the board and asked the BOG to get the word out. The PLF will continue to support Bar Books. The Excess Program was changed this year and for the first time in four years they had an increase in enrollment.

Ms. Bernick asked the board to approve proposed changes to PLF Policies 3.300 and 3.350 re: installment payments. **[Exhibit H]**

Motion: Mr. Greco moved, Mr. Mansfield seconded, and the board voted to approve the changes to the PLF policies. Mr. Bachofner and Mr. Chaney abstained.

4. OSB Committees, Sections, Councils and Divisions

A. Discipline System Review Committee

Ms. Evans gave the board an update on the current status of the draft changes to the disciplinary system process and the creation of a professional adjudicator position. Ms. Evans submitted a draft to the Court's general counsel, and hopes to have a final draft for the BOG's consideration at their September meeting.

Ms. Hirschbiel and Ms. Evans presented the Oregon Supreme Court's letter in response to the DSRC Report and BOG recommendations for changes to the disciplinary rules of procedure.

With respect to the Court's comments regarding DSRC Recommendation #4, Disciplinary Counsel's Office is working to enhance its ability to track and report information, as requested by the Court. With respect to DSRC Recommendation #19, Ms. Evans has drafted the proposed amended rules with the Court's concerns in mind.

Regarding DSRC Recommendation #31, the Court asked for clarification regarding the BOG's reason for declining to approve. Ms. Evans explained that the way the recommendation was worded, it effectively eliminated any ability of the parties to agree to waive a 3-person trial panel. The Court believes the parties should have a right to agree to waive the panel; however, the Court understood the recommendation to give the respondent the right to elect to proceed before a single adjudicator before other panel members are appointed, in addition to having the ability to agree to waiver thereafter.

In response to this explanation, board members expressed support for giving the respondent the right to unilaterally waive the trial panel prior to filing an answer. The board asked that Ms. Evans draft the rules in accordance with that interpretation if the Court so desires.

Regarding DSRC Recommendation #16, Ms. Hirschbiel reported that although the Court is in favor of establishing a professional adjudicator, the Court is not in favor of being the entity to hire and pay for a professional adjudicator. Ms. Hirschbiel asked the board to review the options presented in her memo [Exhibit xx] for engaging a disciplinary system professional adjudicator (PA) and provide feedback on whether to proceed with exploring other options or to abandon the PA option entirely. Mr. Chaney suggested the bar hire the PA on a part-time basis from the Office of Administrative Hearings. Ms. Hirschbiel has received negative feedback from members when she proposed that solution. Mr. Pagan suggested the part-time PA not be an employee of the bar but be an independent contractor. Ms. Hirschbiel noted that option was one that bar staff recommended exploring further.

Motion: Mr. Ramfjord moved, Mr. Levelle seconded, to authorize Ms. Evans to work with the court to draft rules with one or more options for the professional adjudicator and funding options. The motion passed. Mr. Greco and Mr. Sharp abstained.

B. Incubator Feasibility Study

Ms. Hirschbiel introduced Mr. Friedman who presented the Oregon Incubator Status Report. Mr. Friedman researched the cost of programs designed to train law students to serve the underserved community. He learned that implementing incubator programs requires more resources and a higher level of participation than he anticipated. The Oregon law schools are interested but unwilling or unable to start a program on their own. Mr. Friedman recommended that the Board direct the Futures Task Force to further examine the creation of an incubator program.

Board members then discussed whether an incubator program should be focused on serving rural communities. Mr. Heysell said the rural communities are aging-out and this needs to be part of a larger Legal Futures discussion.

Ms. Hirschbiel asked the board to consider whether and how to proceed:

- 1) Discontinue exploring the feasibility of an ncubator program.
- 2) Add studying the feasibility of forming an incubator program to the work of the BOG's Futures Task Force.

Motion: Mr. Bachofner moved, Mr. Greco seconded, and the board voted unanimously to continue exploring whether to start an incubator program in Oregon through the Futures Task Force. The motion passed.

C. Oregon New Lawyers Division Report

In addition to the written report, Mr. Andries encouraged the board to talk to the ONLD about the incubator program and Futures Task Force.

Jennifer Nicholls, the ONLD chair-elect, is researching what other states are doing to better serve rural communities, and would be interested in serving on the Task Force.

Mr. Andries presented the Oregon New Lawyers Division (ONLD) request for approval to introduce the ABA Standing Committee on Ethics and Professional Responsibility's Resolution and Report to the ABA Young Lawyer's Division General Assembly at the annual meeting in August. **[Exhibit I]**

Ms. Hollister pointed out that the ABA proposed bias rule does not include the word "knowingly", but the Oregon rule does.

Mr. Bachofner recommended the ONLD introduce the resolution including the word "knowingly." Mr. Andries did not think he could add an amendment to this resolution at this point in time. The Board feels bound to including the word "knowingly" or they cannot support the resolution.

Motion: Mr. Ramfjord moved, Mr. Mansfield seconded, that ONLD report back to the ABA that ONLD cannot sponsor the proposed ABA Model Rule because it conflicts with the existing OSB rule. However, the bar champions efforts to pass a rule on this subject. The final motion passed unanimously.

D. Legal Services Program Committee

Ms. Hirschbiel presented the committee request to approve the following recommendation forwarded from the Legal Services Program (LSP) Committee for disbursement of the \$200,000 general fund revenue held by the Oregon State Bar.

LCLAC \$22,680 ($\$200,000 \times .1134 = \$22,680$)

CNPLC \$11,520 ($\$200,000 \times .0576 = \$11,520$)

LASO \$82,900 ($\$200,000 \times .82.9 = \$165,800/2 = \$82,900$)

OLC \$82,900 ($\$200,000 \times .82.9 = \$165,800/2 = \$82,900$)

Motion: Mr. Greco moved, Ms. Zinser seconded, and the board voted unanimously in favor to accept the proposed recommendation to disburse the funds. The motion passed.

E. Client Security Fund Committee

Claim 2015-43 GERBER (Middleton)

Ms. Hirschbiel asked the board to consider the Client Security Fund Committee recommendation for reimbursement of \$8,500 to Kenneth Middleton for his loss resulting from the conduct of attorney Susan Gerber. **[Exhibit J]**

Motion: Mr. Greco moved, Mr. Mansfield seconded, and the board voted to approve the committee's recommendation for reimbursement. Ms. von Ter Stegge and Ms. Nordyke abstained.

Claim 2016-01 ECKREM (Smith)

Ms. Hirschbiel asked the board to consider the request of the Claimant that the BOG reverse the CSF Committee's denial of the claim, as presented in her memo. **[Exhibit K]**

Motion: Mr. Pagan moved, Mr. Greco seconded, and the board voted unanimously to uphold the committee's denial of the claim.

Claim 2015-19 WIESELMAN (Lowry)

Ms. Hirschbiel asked the board to consider the request of the Claimant that the BOG reverse the CSF Committee's denial of the claim, as presented in her memo. **[Exhibit L]**

Motion: Mr. Greco moved, Mr. Mansfield seconded, and the board voted unanimously to uphold the committee's denial of the claim.

Ms. Hirschbiel presented the committee's financials for information purposes.

F. Legal Ethics Committee

Ms. Hirschbiel presented the committee's request for board approval of proposed updates to formal ethics opinion 2005-73 re: lawyer referral gifts. **[Exhibit M]**

Motion: Mr. Pagan moved, Ms. Rastetter seconded, and the board voted to approve the amendments as recommended by the committee. Mr. Ramfjord abstained.

G. MCLE Committee

Ms. Hirschbiel presented the committee's request to review and approve proposed amendments to Rule 5.2 and Regulation 5.100 exempting Executive Branch statewide elected officials from the general CLE credit requirement during term of office. **[Exhibit N]**

There was much pro/con discussion about the necessity for attorneys who are elected officials to update their legal education when they are not practicing law.

Motion: Mr. Levelle moved, Mr. Pagan seconded, and the board voted to approve the amendments as recommended by the committee. Mr. Chaney, Ms. Costantine, Mr. Ramfjord, Mr. Sharp, Mr. Pagan, Mr. Levelle, Mr. Bachofner, Ms. Zinser, Mr. Williams, Mr. Greco, Ms. Rice, and Ms. Rastetter voted in favor. Mr. Mansfield, Mr. Gratchner and Ms. von Ter Stegge were opposed. Ms. Nordyke abstained.

H. OSB Sponsorship

Ms. Hirschbiel asked the board to approve sponsorship of the Access to Justice Conference up to \$5,000. **[Exhibit O]**

Motion: Mr. Ramfjord moved, Mr. Levelle seconded, and the board voted unanimously to approve the sponsorship.

5. Consent Agenda

A. Report of Officers & Executive Staff

Mr. Heysell reported on his three days of meeting with attorneys in Eastern Oregon.

Report of the President-elect
None.

Report of the Executive Director
As written.

Director of Regulatory Services
As written.

MBA Liaison Report
None.

Motion: Mr. Pagan moved, Mr. Levelle seconded, and the board voted unanimously to approve the consent agenda of past meeting minutes.

6. Closed Sessions – see CLOSED Minutes

A. Executive Session (pursuant to ORS 192.660(1)(f) and (h)) - General Counsel/UPL Report

Motion: Ms. Rice moved, and Ms. Rastetter seconded, to recommend to the Supreme Court that Ms. Beach's reinstatement application be approved. The motion passed. Mr. Chaney abstained.

Motion: Mr. Greco moved, M seconded, and the board voted to deny the authority to the UPL Committee to file suit. The motion passed. Mr. Bachofner was opposed.

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

None.

DRAFT

**Oregon State Bar
Board of Governors Meeting
June 24, 2016
Executive Session Minutes**

Discussion of items on this agenda is in executive session pursuant to ORS 192.660(2)(f) and (h) to consider exempt records and to consult with counsel. This portion of the meeting is open only to board members, staff, other persons the board may wish to include, and to the media except as provided in ORS 192.660(5) and subject to instruction as to what can be disclosed. Final actions are taken in open session and reflected in the minutes, which are a public record. The minutes will not contain any information that is not required to be included or which would defeat the purpose of the executive session.

A. Unlawful Practice of Law Litigation

Ms. Hollister asked the board to consider the UPL Committee request for authority to file suit and obtain an injunction against Angel Kavanaugh & Angel's Mobile Notary and Paralegal Services.

B. Pending or Threatened Non-Disciplinary Litigation

Ms. Hollister informed the board of non-action items.

C. Other Action Items

Ms. Hollister informed the board of non-action items.

DRAFT

**Oregon State Bar
Board of Governors Meeting
June 24, 2016
Judicial Proceedings Minutes**

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

A. Reinstatements

1. Tami S.P. Beach – 964738

Ms. Evans presented information concerning the BR 8.1 reinstatement application of Ms Beach.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: June 24, 2016
From: Policy & Governance and Public Affairs Committees
Re: Judicial Administration Committee

Actions Recommended

1. Approve changes to the strategies contained in the 2014 Action Plan that support the OSB function as a partner with the judiciary.
2. Sunset the Judicial Administration Committee.

Background

On May 13, 2016, the Policy & Governance Committee had a joint meeting with the Public Affairs Committee to discuss a request from the Judicial Administration Committee ("JAC") that the Board approve a bar-wide survey regarding a wide variety of judicial administration matters. The intent of the survey was to solicit feedback from the membership about what the JAC charge and function should be. Seeking to understand the reason for the request (and to determine whether to recommend a survey to the BOG), the Committees took a broader look at the JAC and its current charge in the context of the OSB overall efforts to advance the bar's goal to support and protect the judiciary. This memo provides the background reviewed by the Committees and its recommendations for changes related to the strategies and means used to advance those strategies.

Partner with Judiciary Function

The OSB Board of Governors (BOG) is charged by the legislature (ORS 9.080) to "at all times direct its power to the advancement of the science of jurisprudence and the improvement of the administration of justice."¹ The OSB is also responsible, as an instrumentality of the Judicial Branch of the State of Oregon, for the regulation of the practice of law. As a unified bar, the OSB can use mandatory member fees only for activities that are germane to the purposes for which the bar was established. *Keller v. State Bar of California*, 496 US 1 (1990). The BOG has translated its statutory purposes into the following mission:

The mission of the Oregon State Bar is to serve justice by promoting respect for the rule of law, by improving the quality of legal services and by increasing access to justice.

¹ Webster's Dictionary defines jurisprudence as the "philosophy of law or the formal science of law." "The "administration of justice" has been defined in case law variously as the "systematic operation of the courts," the "orderly resolution of cases," the existence of a "fair and impartial tribunal," and "the procedural functioning and substantive interest of a party in a proceeding."

The Board has identified one of its five core functions to fulfill its mission as Guardian of the Judicial System, with a goal to support and protect the quality and integrity of the judicial system. The current strategies, and related activities, that the bar employs to advance that goal are:

1. Support adequate funding for the Judicial Branch
 - The BOG's top legislative priority for the last several years has been adequate funding for Oregon's courts. The Public Affairs Department advances this priority with advocacy related to funding for the judicial system as a whole, and more recently, with a focus on funding for Oregon eCourt, courthouse facilities and judicial compensation.
 - The Public Affairs Department also assists OJD in its legislative efforts around judicial funding, provides legal expertise to lawmakers regarding judicial system issues, supports the Citizens Campaign on Court Funding, and works with the bar's Media Relations team to increase public awareness of court funding issues.
2. Respond appropriately to challenges to the independence of the judiciary
 - The Public Affairs Department monitors legislative developments that could negatively impact judicial independence and manages the development of issues to facilitate an appropriate response and best outcome.
 - The bar has a policy for responding to unjust judicial criticism, particularly when the judicial canons may restrict a judge's ability to offer explanations to the public. Responses are coordinated by the Media Relations staff.
 - The Media Relations Director is a regular presenter at the annual new judge's conference, and frequently consults with individual judges on managing high-profile cases.
 - The Media Relations Director coordinates programs for the Bar/Press/Broadcasters council that work to improve media coverage of judicial system issues.
3. Participate meaningfully in judicial selection processes
 - The BOG's Appellate Screening Special Committee interviews candidates for appellate court appointments and makes recommendations to the Governor, and also serves as a resource for local bar screening committees.
 - The Member Services team conducts preferences polls for contested judicial elections, both at the primary and general election stages, and also will conduct preference polls for appointed positions at the request of the Governor.
 - The Media Relations team produces a popular Judicial Voter's Guide, which is posted on the bar's website and frequently cited by media sources.

- The bar plays a key role in notifying members about upcoming judicial vacancies and the application process for both state and federal positions.
4. Promote understanding of and respect for the rule of law and the legal profession
- The Communications & Public Services group produces a comprehensive online “library” of legal information topics intended for the public. Along with substantive law, there are topics on the courts, small claims court, judicial settlement conferences, hiring a lawyer, etc.
 - Past Legal Links programs have addressed the role of the judge in the U.S. justice system, and the new OSB Q&A video series will include questions on judges, lawyers and the rule of law.
 - The Media Relations Director works with the media to generate and shape media coverage that reflects on the courts and the legal profession.
 - The BOG provides monetary support to the Classroom Law Project, which supports civics education, teaching high school students the importance of active citizenship in a democratic government.
 - The Public Affairs Department produces and distributes an electronic newsletter, the Capitol Insider, which covers issues of importance to the judicial system and the legal profession.

Revisions to strategies

The Committees recommend that the Board amend Strategy #2. Referring to the “independence” of the judiciary has become somewhat controversial and arguably does not fully capture the types of challenges faced by the judiciary. A more apt strategy might be: “respond appropriately to challenges to a fair and impartial judiciary.”

In addition, Strategy #4 omits a key component of the bar’s historic public education piece, that is, to promote an understanding of the importance of the judicial system. The Committees recommend that the Board add that component to the fourth strategy, so that it reads “promote understanding of and respect for the rule of law, *the judicial system*, and the legal profession.”

Finally, the Committees noted that the current strategies do not fully capture the bar’s work in support of its efforts to protect the quality and integrity of the judicial system. For example, notably absent is any reference to the bar’s statutory purpose to “improve the administration of justice.” The Committees recommend that the Board include a strategy to “pursue improvements to the administration of justice.” The bar has been working to that end for years through the Public Affairs Department. Each year, the BOG approves a “law improvement package,” which includes legislative proposals that have been identified as

improvements to the administration of justice and sets forth the positions the bar will take on legislative proposals expected to arise in session. This work should be reflected in the bar's overall strategic functions and goals.

Judicial Administration Committee

The Judicial Administration Committee has historically helped the Board with its work to support and protect the judicial system by studying and making recommendations to the Board on a variety of system-wide judicial administration issues. It has ten specific responsibilities that are outlined in the attached charge.

Over the years, much of what the Committee was originally charged to do has been delegated to and is now being handled by other committees, commissions and groups. For example, the monitoring of eCourt implementation is now handled by the Oregon eCourt Implementation Task Force. Court facilities issues are now handled by the Court. The Board of Governors provides support to the Court on many issues of judicial administration—including facilities and funding—by making these issues a priority for the Public Affairs Committee and Department, and by approving a law improvement package for each legislative session. Judicial selection matters are handled by the BOG Appellate Screening Committee, and preference polling is handled by staff.

Finally, the Public Affairs Department identifies and monitors legislative developments that may be of interest to the BOG and bar members. The BOG Public Affairs Committee develops the policies that guide the Public Affairs Department work, and makes recommendations to the Board about positions the bar should take on legislative proposals. In turn, the Public Affairs Committee provides expertise and influence in the legislative process on issues affecting the legal profession and the justice system. In addition to members of the BOG Public Affairs Committee, the Public Affairs Department collaborates with hundreds of lawyer volunteers, most of whom are from bar sections and committees, both within and outside the bar, to accomplish this work. These include the following, with their corresponding charges:

- OSB Judicial Administration Committee
Study and make recommendations to the Board on matters concerning state judicial administration and the judiciary. Monitor and recommend improvement in technology, operation, discipline and funding with the judicial system.
- OSB Procedure and Practice Committee
Study and make recommendations to the Board on matters concerning the practice of law and procedural issues and rules matters governing disputes in Oregon. Monitor and recommend improvements in technology, court operations and the judicial system to facilitate the practice of law.
- OSB/OJD Task Force on Oregon eCourt
To work cooperatively with the Oregon Judicial Department and OSB members to monitor the ongoing operation of Oregon eCourt; to gather input and feedback from OSB members on how well Oregon eCourt is working for them and their staff; to propose solutions for problems identified by OSB members and court

staff, to maintain communication with OJD and continue to educate bar members about Oregon eCourt programs; and to provide periodic updates to the Board of Governors.

- Council on Court Procedures

Oregon public body responsible for creating, reviewing and amending the Oregon Rules of Civil Procedure that govern procedure and practice in all Oregon circuit courts.

- Uniform Trial Court Rules Committee

Chief Justice of Oregon Supreme Court appoints to review proposed changes to rules and make recommendations to Chief Justice, who has final authority to adopt, not adopt, or change the proposed UTCRs. See ORS 1.1002(a)(1); 1.006.

- State Family Law Advisory Committee (SFLAC)

Chief Justice of Oregon Supreme Court appoints to advise the State Court Administrator on family law issues in the courts. Researches and provides technical assistance on specific issues of concern in family law or pertaining to family courts. See ORS 3.436.

Because of the changing landscape and needs, the JAC has served, as a practical matter, primarily in only two roles over the last several years. First, it serves as a resource for staff and the board when system-wide issues arise for the judiciary that are not being addressed by other sections, committees, or groups. For example, when issues arose in the legislature around bail bonds, grand juries and eCourt, the JAC was able to provide expertise and assistance in developing a plan for response. In these cases, the JAC's role has not been long term; instead, it is typically short-term and reactionary.

Second, the JAC has worked with the courts to improve awareness of the important role of the judiciary in civil society. To that end, the speaker's bureau project has been a key area of focus for the Committee over the last several years. Committee members have spent considerable effort to develop a set of presentations for use by the courts to educate business and community leaders about how the judicial system works and the importance of a fair, impartial, and adequately funded judiciary. The JAC provides these materials to the county courts and assists the courts with identifying speaking opportunities in their communities.

At present, there appears to be limited interest in the speaker's bureau project and there are no obvious system-wide judicial administration issues for the committee to address. The 2015 JAC Annual Report noted that the JAC experienced a high rate of membership turnover in 2015. Several members resigned their membership, and those who remained had a low level of participation. The JAC recommended that the JAC and the bar consider whether there are other ongoing tasks that the group can participate in to improve membership interest and involvement.

Recommendation for the JAC

After a lengthy and thoughtful discussion, the P&G and Public Affairs Committees decided to recommend to the Board of Governors that the JAC be sunsetted. While the limited

remaining roles for the JAC are important, they do not warrant the time commitment required by full committee service. Further, the Committees identified no other activities that the JAC might undertake to advance the Board's goal to support and protect the judiciary. The speaker's bureau can be continued as a panel of volunteers and be administered by bar staff. The panel could do both community outreach and provide testimony to the legislature on court and legal services funding issues, as needed. All other system-wide judicial administration issues could be run through the Public Affairs Committee alone or through a task force or work group appointed as needed of individuals with backgrounds relevant to the particular judicial administration issue or issues at hand.

The Committees were chagrined that JAC had been slowly divested of its work and that volunteers were being appointed to serve without clear or meaningful purpose. In order to show that the BOG values the remaining JAC members, the Committees also suggest that the staff and BOG work with those members to find alternative volunteer opportunities at the OSB.

Staff has discussed this recommendation with the Chair of the JAC and has shared the Committees' recommendation with current JAC members. The JAC chair and one other committee member have commented that while they are sad to say goodbye to the JAC, they understand the decision to sunset and hope that they can provide assistance in some other realm. At the time of writing this memo, staff has received no other comments to the proposal.

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OREGON STATE BAR

Board of Governors Agenda

Meeting Date: June 24, 2016
From: Policy & Governance Committee
Re: Inactive Retired Status Amendments

Action Recommended

Approve the proposed language for a new bylaws establishing Retired membership status as a category of inactive bar membership. The adoption of these bylaws would be in lieu of the bylaws adopted by the Board on January 9, 2016.

Discussion

At its meeting on January 9, 2016, after considerable discussion, the Board voted to enact bylaw amendments to create the new Retired membership status. In order to fully implement Retired status, the bar planned to also seek related statutory and MCLE Rule changes.

After the January board meeting, staff began to explore ways in which the bar might avoid pursuing statutory amendments to implement the new retired status. Amending the bylaws to provide that Retired status be a subcategory of inactive status would obviate the need for statutory changes, and simplify implementation. With this approach Retired Status would become a subcategory of Inactive Status in the same way Active Pro Bono status is a subcategory of Active status.

The new status would still be called "Retired" status. Lawyers who transfer to Retired status would be entitled to hold themselves out as Retired members of the bar. As the board previously recognized, one benefit of a retired status is to significant contributions to the legal community that are made by members who are age 65 or better after they cease practicing law.

Recommendation

Adopt the bylaw amendment and rule changes outlined below, in lieu of the bylaw amendment and rule changes adopted on January 9, 2016 to make Retired status a subcategory of Inactive 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 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. Inactive members include Retired members.

Subsection 6.102 Retired Status

(a) Purpose

(b) The purpose of the Retired category of inactive members in the Bar is to recognize the continuing contributions to the legal profession of members who are at least 65 years of age and are retired from the practice of law.

(c) -Eligibility for Retired Status

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 6.100(b)) may be enrolled as a retired member.

(d) Membership Fees.

Retired members are assessed a fee that is equivalent to the inactive membership fee.

(e) Transfer of Membership

Retired members wishing to resume regular active membership status must comply with BR 8.14.

Other 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 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 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.~~

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.

(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.

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OREGON STATE BAR

Governance & Strategic Planning Committee Agenda

Meeting Date: June 24, 2016
From: Amber Hollister, General Counsel
Re: Revision to Legal Ethics Questions and Opinions
OSB Bylaw Article 19

Action Recommended

Approve the proposed language for a revision to Article 19 of the bylaws to clarify that information and materials provided to General Counsel as part of an ethics question or request for ethics opinion are not confidential, and may be shared with the public or other bar departments.

Background

General Counsel regularly provides prospective ethics advice to members about their own conduct – both over the phone and in writing. The “ethics hotline” is a popular member benefit, utilized by hundreds of members every year.

Bar staff who field ethics inquiries habitually remind members that because there is no attorney-client relationship between the members and bar staff, members should not share client confidences. After all, information and materials submitted to General Counsel as part of an ethics inquiry are public records, subject to disclosure upon request. The current bylaws, General Counsel’s “Ethics Home” web page, and various bar bulletin articles reinforce this message.

Even so, members have requested that the bar provide greater clarity on how information and materials provided to General Counsel during an ethics inquiry might be used by the bar. Amending OSB Bylaw Article 19, which outlines how and when General Counsel provides ethics guidance to members, would provide some degree of additional clarity.

The amendments proposed below reinforce the message that information shared with General Counsel is not confidential in two ways. First, the amendments direct members to submit their ethics questions in hypothetical form or obtain client informed consent prior to making any disclosure of confidential information. Second, the amendments plainly state that information and materials shared with General Counsel may be shared with the public, the Client Assistance Office or Disciplinary Counsel.

As a housekeeping measure, the proposed amendments also explain that General Counsel will not provide an opinion to members about the conduct of other members, except

to provide advice on whether they have a duty to report misconduct under Oregon RPC 8.3 (this is not a new limitation – the current bylaws already state the inquiry must be about the inquirer’s own conduct). As a practical matter, General Counsel gives lawyers who ask about other lawyers’ conduct general information about the application of the rules, and points the lawyers to the Client Assistance Office should they wish to make a complaint. The proposed amendments also delete the timeline for a response to an ethics inquiry. The General Counsel departmental performance measures already contain the same timeline for response to ethics questions; while benchmarks are important, this level of detail seems out of place in the bylaws.

Options

1. Adopt the recommended amendments to OSB Bylaw Article 19 outlined below.
2. Decline to amend the bylaws.

DRAFT

Article 19 Legal Ethics Questions and Opinions

Section 19.1 General Counsel's Office

Subsection 19.100 Submission and Questions

All legal ethics questions ~~from members or the public~~ regarding the propriety of a proposed course or act of professional conduct or the intent or interpretation of a rule or statute regulating the professional conduct of members of the Bar must be submitted or referred to General Counsel's office. Legal ethics questions may be submitted in writing ~~by mail, e-mail, fax~~ or by telephone.

Subsection 19.101 Determination by General Counsel

General Counsel's office will determine whether the matter appears to present or involve a question of ethics or professional conduct and whether ~~it the inquirer states has provided~~ facts sufficient to permit the formulation of an opinion ~~based on the facts stated~~. General Counsel's office may ask the inquirer to submit necessary additional facts or may advise the inquirer that no question of ethics or professional conduct is presented or involved.

Subsection 19.102 Ethics Advice to Bar Members

General Counsel's office will endeavor to assist bar members in analyzing the ethics of the inquirer's prospective conduct and may provide reactions to the questions presented. General Counsel will not offer an ethics opinion on past conduct by other members, except to assist a member to determine whether conduct described implicates the inquiring member's duty to report another lawyer's misconduct under Oregon RPC 8.3. Ethics questions and responses ~~thereto~~ are not confidential and communications with General Counsel's office are not privileged. No attorney-client relationship is intended or created by such communications with the Bar. Members should submit ethics questions in a hypothetical form that does not disclose client confidences, or obtain their client's informed consent prior to disclosure. Members submitting ethics questions must specify a deadline by which they need a response from the Bar. General Counsel's office will endeavor to meet the member's deadline, but General Counsel's office always has at least three business days after receiving a member's question to provide a written response to the member. Materials submitted to General Counsel in connection with ethics inquiries are public records, and may be disclosed by General Counsel to the public, the Client Assistance Office or Disciplinary Counsel's Office.

Subsection 19.103 Application of Oregon RPC 8.6

For Oregon RPC 8.~~5-6~~ to apply to a request for ethics assistance, a member must put his or her ethics question in writing. ~~"In writing" includes letters, faxes or e-mails.~~ General Counsel's office will respond in writing ~~, by fax, e-mail or regular mail,~~ as time allows. The Bar will retain all written ethics assistance requests and General Counsel's office responses for at least five years and those requests are public records. General Counsel's office has the discretion to decline to provide a written response, if it determines that the question should be considered by the Legal Ethics Committee due to the difficulty, complexity or novelty that the question raises or the difficulty or complexity of an appropriate response. Members must provide General Counsel's office and the Legal Ethics Committee with accurate, and as complete as possible, explanations of the facts underlying their ethics questions. ~~General Counsel's office may ask the inquirer to submit additional or clarifying information and the timeframe for response as set forth in Subsection 19.102 of the Bar's Bylaws does not begin until General Counsel's office receives the requested information.~~

Section 19.2 Limitation of Advice

Responses and opinions provided by General Counsel's office, the Legal Ethics Committee and the Board of Governors are limited to and deemed to address only the facts as submitted in writing by the inquirer.

Section 2.7 Judicial Selection

Subsection 2.703 Statewide Judicial Appointments

(a) For judicial appointments to a statewide court, the Board will appoint an Appellate Selection Committee to conduct the Board's appellate recommendation process. ~~Bar~~ members will be notified of the impending appointment and will be invited to participate in the ~~Board's~~ appellate recommendation process. If an appellate recommendation process has been concluded within three months preceding the announcement of a new appellate vacancy, the Board may, in its discretion, forego ~~has the option of not~~ conducting a separate appellate recommendation process and instead resubmit ~~, but resubmitting~~ the previous list of highly qualified candidates to the Governor without notification to members.

~~(b) In addition to submitting its list of "highly qualified" candidates, the Board will respond to any specific request of the Governor whether certain other candidates in the pool meet a "qualified" standard. A "highly qualified" or "qualified" recommendation is intended to be objective. Failure to recommend a candidate in any particular selection process is not a finding that the person is unqualified.~~

~~(be) Prior to commencement of the appellate recommendation process, t~~The Appellate Selection Committee shall establish policies and criteria for conducting its review of candidates for each position, which may ~~bar's review process will~~ include, but is not limited to, review of the written applications; interviews of ~~each candidate~~s, ~~unless waived~~; reports from judges or hearings officers ~~before whom the candidate has appeared~~; reports from ~~opposing counsel in recent cases or other matters~~members of the legal and general community; reports from references supplied by the candidate; and review of writing samples.

~~(cd) Upon completion of the due diligence review, t~~The Board's appellate Selection Committee will recommend to the Board at least three candidates it believes are highly qualified, based on the statutory requirements of the position, ~~as well as~~ information obtained in ~~the~~its review of ~~candidates~~process, and based on at least the following criteria: integrity, legal knowledge and ability, professional experience, cultural competency, judicial temperament, diligence, health, financial responsibility, and public service. The Board will then determine the final list of highly qualified candidates to submit to the Governor. ~~A "highly qualified" or "qualified" recommendation is intended to be objective. Failure to recommend a candidate in any particular selection process is not a finding that the person is unqualified.~~

~~(e) A lawyer who seeks appointment to the same position within two years of first having received a "highly qualified" rating will not be required to submit another application or to be re-interviewed. The Board will request that those candidates update the previously submitted information prior to deciding whether to resubmit the candidate's name to the Governor.~~

~~(bd) In addition to submitting its list of "highly qualified" candidates, the Board will respond to any specific request inquiry from of the Governor as to whether certain other candidates in the pool meet a "qualified" standard. A "highly qualified" or "qualified" recommendation is intended to be objective. Failure to recommend a candidate in any particular selection process is not a finding that the person is unqualified.~~

(f) Meetings of the ~~committee~~Appellate Selection Committee, including interviews of candidates, are public meetings, except for portions of meetings during which reference reports are presented and

discussed. The term "reference reports," for purposes of this section, means information obtained by committee members and staff from persons listed as references by the candidates and information obtained by committee members and staff from other persons knowledgeable about candidates as part of the candidate background check review process. Discussion of reference reports by the committee and the Board will be in executive session pursuant to ORS 192.660(1)(f).

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OREGON STATE BAR

Board of Governors Agenda

Meeting Date: June 24, 2016
Memo Date: June 24, 2016
From: Vanessa Nordyke, Board Development Committee Chair
Re: HOD Appointments and 9th Circuit Judicial Conference Recommendations

Action Recommended

Approve the Board Development Committee's recommendation to appoint new members to the OSB House of Delegates and to recommend members for appointment consideration as lawyer representatives for the Ninth Circuit Judicial Conference.

Background

The **House of Delegates** has four vacant seats requiring appointment. The Board Development Committee unanimously recommends the following appointments:

Scott Lucas, Region 2 member, term expires 4/16/2018
John Mellgren, Region 2 member, term expires 4/15/2019
James Nobel Miner, Region 7, term expires 4/16/2018
Lish Whitson, Region 8, term expires 4/16/2018

Chief Judge Michael Mosman requested recommendations for Lawyer Representatives for the Ninth Circuit Judicial Conference. The Board Development Committee unanimously recommends the following candidates:

Christopher Cauble, 962374
Nadia Dahab, 125630
Patrick Ehlers, 041186
Erin Galli, 952696
Charles Robinowitz, 691497

Budget & Finance Committee

Revisions to OSB Bylaws Related to the Investment Policy (DRAFT)

~~June~~ ~~April~~ 24~~2~~, 2016

CURRENT BYLAW WITH PROPOSED REVISIONS

Section 7.4 Investment Policy

Subsection 7.400 Purpose

This investment policy is established to provide direction and limits for the Bar's Chief Executive Officer and Chief Financial Officer and for any fee-for-service investment manager that have been engaged in investing financial assets held by the Bar. . The investment objectives are in order of importance: to ensure the safety of the assets, to ensure sufficient liquidity and to obtain the highest possible rate of return. The policy consists of objectives for the Bar's short-term and long-term investments.

The Bar's short-term investments consist of cash and cash equivalents anticipated to be needed and used within the Bar's current fiscal year, generally one year or less. The objective shall be to maximize liquidity and minimize or eliminate risk while achieving a reasonable yield within the range of short-term expectations.

The Bar's long-term investments include all reserve balances and designated funds. The objective of these investments is to provide for long-term growth and stability and to achieve reasonable yields while minimizing exposure to risk. The funds are invested to maximize the return on the investment, consistent with an appropriate level of risk and subject to the generation of adequate current income. The long-term investments shall be diversified to provide reasonable assurance that investment in a single security, a class of securities, or industry will not have an excessive impact on the preservation of capital or returns on investment to the Bar. .

Subsection 7.401 Investment Management

The Chief Executive Officer or the Chief Financial Officer is authorized and directed to deposit, sell, convert or withdraw cash on deposit in excess of that required for current operations and to invest those funds in accordance with the Bar's investment policy using expert advice and assistance as the officers he or she may require. ~~The Investment Committee will maintain a list of all institutions that are approved for purposes of this investment advice and assistance. The Bar may engage one or more fee-for-service investment managers with varying styles and expertise and delegate individual investment decisions to such investment managers within the guidelines of the bar's Investment Policy and the specific direction of the Investment Committee.~~

Management and Monitoring of Performance

Investment Committee. ~~The An~~ "Investment Committee" consisting of members of the Budget & Finance Committee and the Bar's Chief Financial Officer ~~(AND WHO ELSE? BOG MEMBERS ONLY? NON-BOG MEMBERS? LENGTH OF TERM? APPOINTED BY WHOM?)~~ shall manage and monitor the investment policy and portfolio. All policy and bylaw changes will be reviewed and approved by the Budget & Finance Committee.

The next deleted sections are included in the Investment Committee policy.

~~The Investment Committee will seek and receive guidance from the Budget and Finance Committee, CEO and CFO concerning anticipated cash needs/surpluses in amount and~~

timing, so as to insure the Bar's portfolio is managed to best support the Bar's requirements. This Investment Committee shall monitor the portfolios' asset allocation and performance of the Bar's investments, consistent with the purpose and objectives of this Investment Policy.

Investment(s). The Bar may engage one or more fee for service investment managers with varying styles and expertise and delegate individual investment decisions to such investment managers within the guidelines of this policy and the specific direction of the Investment Committee. The selection of and allocation of funds to the investment managers is approved by the Investment Committee. The investment managers are expected to communicate through the Bar's Chief Financial Officer between meetings of the Investment Committee to propose and or implement changes in investments or strategy. If necessary, the Investment Committee may meet by telephone to consider changes in investments or strategies.

Committee Meetings. The fee for service investment manager(s) shall prepare quarterly reports of the portfolio's performance. The Investment Committee will meet as needed, but at least quarterly to monitor the performance of the portfolio And to summarize and report results to the Budget & Finance Committee.

Performance Standards. The Investment Committee will evaluate the fee for service investment managers using a number of factors including performance relative to the most applicable market benchmarks, quality of communications with the Investment Committee, and adherence to the Bar's investment policy.

Annual Review. The Budget & Finance Committee shall review the investment policy including the investment objectives, approved investments, and limitations (??) at least annually.

Subsection 7.402 Approved Investments

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

- (a) The State of Oregon Local Government Investment Pool (LGIP) no percentage limit for this issuer.
- (b) U.S. Treasury obligations—no percentage limitation for this issuer.
- (c) Federal Agency Obligations—each issuer is limited to \$250,000, but not to exceed 25 percent of total invested assets.
- (d) U.S. Corporate Bond or Note—each issuer limited to \$100,000.
- (e) Commercial Paper—each issuer limited to \$100,000.
- (f) Mutual funds that commingle one or more of the approved types of investments, or securities meeting the minimum credit quality standards of this policy.
- (g) Mutual funds of U.S. and foreign equities.
- (h) Federal deposit insurance corporation insured accounts up to the amount insured by the FDIC.
- (i) Individual publicly traded stocks, excluding margin transactions, short sales, and derivatives.
- (j) Mutual funds investing in infrastructure, in commodities, and in instruments such as high yield bonds, adjustable rate bonds, derivatives, futures, currencies, mortgage backed securities, and ETFs, but not swaps or speculative instruments or mortgage backed securities, and only for the purpose of both managing risk and diversifying the portfolio and not at all for purposes of leveraging, with all such investments in total not to exceed 35% of the total invested assets.

Security	Minimum credit quality
Interest bearing deposits of banks, savings and loans and credit unions	The issuing financial institution must be rated "well capitalized" as defined by the financial institution's regulator. Those that are not "well capitalized" will be limited by the level of their deposit insurance.
Obligations issued or guaranteed by U.S., local, city and state governments and agencies	A-/A ₃ as defined by Standard & Poor's and Moody's
Money Market Funds	The issuing financial institution must be rated "well capitalized" as defined by the financial institution's regulator. Those that are not "well capitalized" will be limited by the level of their deposit insurance.
Money Market Mutual Accounts	The issuing financial institution must be rated "well capitalized" as defined by the financial institution's regulator. Those that are not "well capitalized" will be limited by the level of their deposit insurance.
Obligations issued or guaranteed by the U.S. Federal government	Not applicable
Obligations issued or guaranteed by U.S. Federal agencies	AAA/AAA as defined by Standard & Poor's and Moody's
Obligations issued or guaranteed by U.S. government-sponsored enterprises	AAA/AAA as defined by Standard & Poor's and Moody's
Obligations issued or guaranteed by local, city and state governments and agencies.	A-/A ₃ as defined by Standard & Poor's and Moody's
Obligations of U.S. corporations	A-/A ₃ as defined by Standard & Poor's and Moody's

Subsection 7.403 Limitations

At the discretion of the Budget & Finance Committee, the entire investment portfolio may be invested in any combination of the Local Government Investment Pool, U.S. Treasury obligations or federal agency obligations. The maturities of the investment obligations will be the investment manager's estimate of the Bar's cash needs, subject to the specific fund liquidity requirements. No maturity period will exceed 84 months.

Subsection 7.404 Prudent Investor Rule

The standard of prudence to be applied by any fee-for-service investment manager that is engaged by the Bar in managing the overall portfolio will be the Prudent Investor Rule, which states: "Investments shall be made with judgment and care, under circumstances then prevailing, which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not for speculation, but for investment, considering the probable safety of their capital as well as the probable income to be derived."

Investment Committee (Policy Draft 6/24/2016)

1. **Members:** The Investment Committee (hereinafter "Committee") will consist of at least three members of the Board of Governors and the bar's CFO. Board of Governors' members may volunteer to be on the Committee and membership is nominated by the chair of the Budget & Finance Committee and approved by the bar President. The Committee members shall self-select the chair of the Committee.
2. **Advisory Members:** If deemed valuable the Committee can select a professional investment consultant to be as an advisory, non-voting member. The consultant cannot receive a fee for any services and cannot solicit business while a member of the IC.
3. **Terms:** Members are selected or volunteer on or before the first Budget & Finance Committee of each year
4. **Length of Term:** One year with no limit on the number of years a member can serve.
5. **Meetings:** The Committee will meet at least once each calendar quarter at a time and place agreeable to the Committee members and at least two will include meeting with the bar's fee-for-service investment management firms.
6. **Role of the Committee:** The Committee will:
 - a) maintain a list of all fee-for-service authorized institutions that are approved for purpose of investment advice and assistance;
 - b) monitor the portfolios' performance consistent with the purpose and objectives of the bar's Investment Policy and bylaws;
 - c) determine, review and approve the target asset allocation, the asset classes, **the approved investments**, and the investment structure;
 - d) allocate the amount of funds to the respective fee-for-service investment managers;
 - e) at the end of each quarter receive, review, and evaluate reports of the investment managers and the portfolio's performance;
 - f) evaluate the services, performance, and fees of the fee-for-service investment management firms using a number of factors including performance relative to the most applicable market benchmarks, quality of communication with the Committee, and adherence to the Investment Policy and bylaws;
 - g) at least once a year review the Investment Policy and the related bylaws for appropriateness and validity.
7. **Communication with and Reports to the Budget & Finance Committee:** The Committee will:
 - a) seek and receive guidance from the Budget and Finance Committee, CEO and CFO concerning anticipated amount and schedule of the bar's cash needs and surpluses to insure the bar's portfolio is managed to best support the bar's requirements;
 - b) summarize and report the results of the investment managers and the portfolio's performance;
 - c) recommend to the Budget & Finance Committee changes:

- to the target asset allocation, the asset classes, **the approved investments**, and the investment structure of the portfolio;
- in the fee-for-service management firms;
- in the Investment Policy and the related bylaws.

8. Approved Investments: Investments are limited to the following obligations and subject to the portfolio limitations as to issuer, **and must meet or exceed the credit quality standards.**

- a) The State of Oregon Local Government Investment Pool (LGIP) no percentage limit for this issuer.
- b) U.S. Treasury obligations - no percentage limitation for this issuer.
- c) Federal Agency Obligations - each issuer is limited to \$250,000, but not to exceed 25 percent of total invested assets.
- d) U.S. Corporate Bond or Note - each issuer limited to \$100,000.
- e) Commercial Paper - each issuer limited to \$100,000.
- f) Mutual funds that commingle one or more of the approved types of investments, or securities meeting the minimum credit quality standards of this policy.
- g) Mutual funds of U.S. and foreign equities.
- h) Federal deposit insurance corporation insured accounts up to the amount insured by the FDIC.
- i) Individual publicly-traded stocks, excluding margin transactions, short sales, and derivatives.
- j) Mutual funds investing in infrastructure, in commodities, and in instruments such as high yield bonds, adjustable rate bonds, derivatives, futures, currencies, mortgage-backed securities, and ETFs, but not swaps or speculative instruments or mortgage backed securities, and only for the purpose of both managing risk and diversifying the portfolio and not at all for purposes of leveraging, with all such investments in total not to exceed 35% of the total invested assets.

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

9. Limitations: Upon recommendation of the Committee, the Budget & Finance Committee may state the entire investment portfolio be invested in any combination of the Local Government Investment Pool, U.S. Treasury obligations or federal agency obligations. The maturities of the investment obligations will be the investment manager's estimate of the Bar's cash needs, subject to the specific fund liquidity requirements. No maturity period will exceed 84 months.

3.300 INSTALLMENT PRIVILEGES

(A) Installment payment of the annual assessment shall be allowed as follows: An attorney may elect to pay the annual assessment in four quarterly installments. The default date for the first installment is January 10 together with full payment of an installment service charge, and the default dates for the remaining installments are April 10, July 10, and October 10 or the first regular business day thereafter. The installment service charge shall be calculated as an administrative charge of \$10 plus a finance charge of 7% on the total assessment due. The service charge may be rounded up or down to the nearest whole dollar. Attorneys who fail to pay the first installment and full service charge together with any applicable late payment charges, reinstatement charges, and other amounts due to the Bar or the PLF by February 10 or the first regular business day thereafter ~~within two weeks after the applicable default date~~ may not thereafter elect to pay on the installment payment plan for the balance of the year.

(B) If the assessment default date is after January 10, the number of installments available will be fewer than four and will be equal to the number of full quarters left in the year after the default date. No installment payment plan is available if the default date is after June 30.

(C) Attorneys who elect to pay the annual assessment in installments but who fail to make any payment by one month following the applicable installment default date shall be required to pay the entire remaining assessment balance immediately and shall not be entitled to a partial or full refund of any installment service charge previously paid. The attorney shall be charged a late payment charge of \$100 per month for each partial or full calendar month the attorney is in default. The PLF will also begin the notice requirements pursuant to statute.

(D) Attorneys who elect to pay the annual assessment in installments and who subsequently choose to pay some or all of the remaining balance

before the default dates shall not be entitled to a partial or full refund of any installment service charge previously paid.

(E) Attorneys employed by OSB-certified pro bono programs may elect to pay the annual assessment in quarterly installments without paying the installment service charge described in subsection (A).

(BOD 4/10/92; BOG 5/1/92; BOD 7/16/93; BOG 8/16/93; BOD 2/18/94; BOG 3/12/94; BOD 8/9/96; BOG 9/25/96; BOD 4/25/97; BOG 5/31/97; BOD 2/20/04; BOG 4/02/04; BOD 10/11/13; BOG 11/23/13)

3.350 PAYMENT DEFAULT AND LATE PAYMENT CHARGES

(A) Late Payment Charges: The default date for assessment payment will be listed on assessment notices and will be at least 10 days after the start of coverage. In the event a payment which is due is not received by the initial default date, ~~the attorney shall be charged an additional late payment charge of \$50 for a default of up to two calendar weeks; if an attorney is in default for more than two calendar weeks,~~ the attorney shall be charged a late payment charge of \$100 per month for each partial or full calendar month the attorney is in default. Late payment charges shall be considered a part of the assessment which is in default.

(BOD 6/21/02; BOG 8/3/02; BOD 2/20/04; BOG 4/02/04)

(B) The chief executive officer may waive or reduce late payment charges for newly-admitted attorneys during the first partial year of PLF coverage upon a showing of good cause for the delay in payment.

(C) Attorneys Who Fail to Respond to Billing Statements: An active member of the Oregon State Bar whose official mailing address (as maintained by the member with the Oregon State Bar) is in Oregon is provisionally presumed to be engaging in the private practice of law in Oregon and shall be obliged to pay the annual assessment unless an appropriate Request for Exemption is filed with the PLF. A member who fails to pay either the required full or installment assessment amount (plus any applicable late payment

charges) or to file a Request for Exemption by the default date and who is suspended as a result shall be provided with coverage provisionally under the applicable Coverage Plan for claims arising from acts, errors, or omissions occurring during the period covered by the billing statement but prior to the date of suspension. Such provisional coverage shall be subject to verification that the member was, in fact, eligible and required to purchase coverage during the period from the PLF. The burden of establishing that the member was, in fact, eligible and required to purchase coverage during the period from the PLF shall be on the claimant and/or the member, and the PLF may challenge the member's right and obligation to obtain coverage based upon the facts. Once the claimant and/or the member has met this burden, (1) the PLF shall provide applicable coverage for the member (subject to all Coverage Plan terms and conditions) regardless of whether or not the member has paid for the coverage, (2) the member shall be required to pay the PLF immediately for the cost of the coverage, together with all applicable late payment charges, (3) if the member does not pay, the PLF shall pursue collection efforts against the member for payment of the assessment and other charges and interest, and (4) the PLF shall report the attorney to Bar Discipline for appropriate disciplinary action.

(D) Attorneys Who Incorrectly Claim Exemption: An attorney who claims exemption from participation in the PLF during any period when the attorney is not, in fact, eligible to claim exemption shall be subject to the following provisions:

(1) The PLF will provide coverage to the attorney (subject to all Coverage Plan terms and conditions) for the period when the attorney was not eligible to claim exemption.

(2) The attorney will be required to pay the PLF for coverage for the period when the attorney was not eligible to claim exemption, together with all applicable late payment charges to a maximum of three months' late payment charges. Payment will be due immediately upon billing. Failure to pay shall result in suspension

from membership according to the same procedures as apply to any other late payment of a PLF assessment.

(3) The coverage provided to the attorney under this Subsection (D) will be provisional, subject to verification that the attorney was, in fact, eligible and required to obtain PLF coverage for the period in question. The attorney will be required to provide the PLF with such information as the PLF may request in order to determine the attorney's eligibility for coverage, and the PLF shall have the sole authority to make that determination, subject to applicable statutes and policies governing eligibility. If the PLF provisionally provides coverage to an attorney and later determines that the attorney was not, in fact, eligible for coverage, the PLF shall not be estopped from withdrawing coverage and the attorney shall be required to reimburse the PLF for all expense and indemnity incurred during the period of provisional coverage.

(E) Emergency Provisions: The PLF CEO has the authority to take reasonable and necessary actions, including extending deadlines and suspending late fees, if national or statewide events occur that severely disrupt the normal course of business.

(BOD 2/18/94; BOG 3/12/94; BOD 4/25/97; BOG 5/31/97; BOD 6/30/97; BOG 7/26/97; BOD 11/21/97; BOD 2/6/98; BOG 4/4/98; BOD 11/9/01; BOG 11/17/01; BOD 6/21/02; BOG 8/3/02)

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: June 24, 2016
From: Helen Hirschbiel, Executive Director
Re: Disciplinary System Professional Adjudicator

Action Recommended

Review the options presented for engaging a disciplinary system professional adjudicator and provide feedback on a general direction.

Background

At its special meeting on March 11, 2016, the Board voted to recommend engaging a disciplinary system professional adjudicator, on the condition that the person be an employee of the Court.

The Court has expressed general enthusiasm about the prospect of creating a professional adjudicator position. The Court believes that creating a professional adjudicator position would support the Board's goals of improving the quality of disciplinary opinions and the efficiency of the disciplinary system.

Since March, bar staff has engaged in discussions with the Chief Justice, the State Court Administrator, and other representatives of the Oregon Judicial Department to delve into the logistics and statutory limitations of creating such a position.

At the request of the Court, bar staff and OJD staff researched the advantages and disadvantages of the following options for structuring the professional adjudicator position:

1. Professional Adjudicator Employed by Court/OJD
2. Professional Adjudicator who is an Independent Contractor Retained by Court/OJD
3. Professional Adjudicator Appointed by Court, but Employed/Retained by OSB
4. Professional Adjudicator who is an Independent Contractor Retained by OSB
5. Professional Adjudicator Employed by OSB

As a result of this collaborative process, it became apparent that if the Professional Adjudicator was an employee of the Court, there would be several additional challenges to implementation, which can be summarized as follows:

- The Oregon Judicial Department must have specific authority from the legislature to hire additional FTE. Any budget associated with that hire also requires legislative approval. See ORS 8.125(2)(b); ORS 8.105.

- Any money paid by the bar to fund an OJD employee may need to be deposited in the General Fund and specially allocated by the legislature to the Court. *See* ORS 8.130.
- If the Professional Adjudicator is supervised by the Chief Justice, the Chief Justice may be disqualified from hearing a disciplinary case before the Supreme Court. *See* ORS 14.275. Court staff acknowledged the Board's desire to avoid any appearance of an improper connection between an adjudicator and the bar, but pointed out that direct supervision by the Court would likely create significant conflicts.
- The Professional Adjudicator would be prohibited from engaging in the private practice of law. ORS 8.160. As a result, it may be difficult to find a person interested in a part-time position, if that were what the position required.
- The Oregon State Court Administrator's Office may be statutorily required to support the Professional Adjudicator's function, with potential added expense. ORS 8.125.

In addition, the Court has made it clear that from a policy perspective, regardless of what entity retains the Professional Adjudicator, the Professional Adjudicator position should be funded entirely out of bar funds rather than OJD funds (which are primarily general funds) in order to avoid shifting the costs of the disciplinary system to the public.

Options

- **Further Explore Options 3-5 (OSB Employee, OSB Independent Contractor, or Appointed by Court but Employed/Retained by OSB).** Given the challenges outlined above, staff recommends completing further research about these options.
- **Abandon proposal to establish position of professional adjudicator.** Given the Court's support for the idea of a professional adjudicator, staff would not recommend this option at this time.

AMERICAN BAR ASSOCIATION
STANDING COMMITTEE ON ETHICS
AND PROFESSIONAL RESPONSIBILITY
SECTION ON CIVIL RIGHTS AND SOCIAL JUSTICE
COMMISSION ON DISABILITY RIGHTS
DIVERSITY & INCLUSION 360 COMMISSION
COMMISSION ON RACIAL AND ETHNIC DIVERSITY IN THE PROFESSION
COMMISSION ON SEXUAL ORIENTATION AND GENDER IDENTITY
COMMISSION ON WOMEN IN THE PROFESSION

REPORT TO THE HOUSE OF DELEGATES

RESOLUTION

1 RESOLVED, That the American Bar Association amends Rule 8.4 and Comment of the ABA
2 Model Rules of Professional Conduct as follows (insertions underlined, deletions ~~struck~~
3 ~~through~~):

4
5 Rule 8.4: Misconduct

6
7 It is professional misconduct for a lawyer to:

8
9 (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or
10 induce another to do so, or do so through the acts of another;

11
12 (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness
13 or fitness as a lawyer in other respects;

14
15 (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

16
17 (d) engage in conduct that is prejudicial to the administration of justice;

18
19 (e) state or imply an ability to influence improperly a government agency or official or to
20 achieve results by means that violate the Rules of Professional Conduct or other law; ~~or~~

21
22 (f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable
23 rules of judicial conduct or other law; or

24
25 (g) harass or discriminate on the basis of race, sex, religion, national origin, ethnicity,
26 disability, age, sexual orientation, gender identity, marital status or socioeconomic status in

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27 conduct related to the practice of law. This Rule does not limit the ability of a lawyer to accept,
28 decline, or withdraw from a representation in accordance with Rule 1.16.

29

30 Comment

31

32 [1] Lawyers are subject to discipline when they violate or attempt to violate the Rules of
33 Professional Conduct, knowingly assist or induce another to do so or do so through the acts of
34 another, as when they request or instruct an agent to do so on the lawyer's behalf. Paragraph (a),
35 however, does not prohibit a lawyer from advising a client concerning action the client is legally
36 entitled to take.

37

38 [2] Many kinds of illegal conduct reflect adversely on fitness to practice law, such as offenses
39 involving fraud and the offense of willful failure to file an income tax return. However, some
40 kinds of offenses carry no such implication. Traditionally, the distinction was drawn in terms of
41 offenses involving "moral turpitude." That concept can be construed to include offenses
42 concerning some matters of personal morality, such as adultery and comparable offenses, that
43 have no specific connection to fitness for the practice of law. Although a lawyer is personally
44 answerable to the entire criminal law, a lawyer should be professionally answerable only for
45 offenses that indicate lack of those characteristics relevant to law practice. Offenses involving
46 violence, dishonesty, breach of trust, or serious interference with the administration of justice are
47 in that category. A pattern of repeated offenses, even ones of minor significance when
48 considered separately, can indicate indifference to legal obligation.

49

50 ~~[3] A lawyer who, in the course of representing a client, knowingly manifests by words or~~
51 ~~conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual~~
52 ~~orientation or socioeconomic status, violates paragraph (d) when such actions are prejudicial to~~
53 ~~the administration of justice. Legitimate advocacy respecting the foregoing factors does not~~
54 ~~violate paragraph (d). A trial judge's finding that peremptory challenges were exercised on a~~
55 ~~discriminatory basis does not alone establish a violation of this rule.~~

56

57 [3] Discrimination and harassment by lawyers in violation of paragraph (g) undermines
58 confidence in the legal profession and the legal system. Such discrimination includes harmful
59 verbal or physical conduct that manifests bias or prejudice towards others because of their
60 membership or perceived membership in one or more of the groups listed in paragraph (g).
61 Harassment includes sexual harassment and derogatory or demeaning verbal or physical conduct
62 towards a person who is, or is perceived to be, a member of one of the groups. Sexual
63 harassment includes unwelcome sexual advances, requests for sexual favors, and other
64 unwelcome verbal or physical conduct of a sexual nature. The substantive law of
65 antidiscrimination and anti-harassment statutes and case law may guide application of paragraph
66 (g).

67

68 [4] Conduct related to the practice of law includes representing clients; interacting with
69 witnesses, coworkers, court personnel, lawyers and others while engaged in the practice of law;
70 operating or managing a law firm or law practice; and participating in bar association, business

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71 or social activities in connection with the practice of law. Paragraph (g) does not prohibit
72 conduct undertaken to promote diversity.

73
74 [5] Paragraph (g) does not prohibit legitimate advocacy that is material and relevant to factual or
75 legal issues or arguments in a representation. A lawyer does not violate paragraph (g) by
76 limiting the scope or subject matter of the lawyer's practice or by limiting the lawyer's practice
77 to members of underserved populations in accordance with these Rules and other law. A lawyer
78 may charge and collect reasonable fees and expenses for a representation. Rule 1.5(a). Lawyers
79 also should be mindful of their professional obligations under Rule 6.1 to provide legal services
80 to those who are unable to pay, and their obligation under Rule 6.2 not to avoid appointments
81 from a tribunal except for good cause. See Rule 6.2(a), (b) and (c). A lawyer's representation of
82 a client does not constitute an endorsement by the lawyer of the client's views or activities. See
83 Rule 1.2(b).

84
85 ~~[4]~~ [6] A lawyer may refuse to comply with an obligation imposed by law upon a good faith
86 belief that no valid obligation exists. The provisions of Rule 1.2(d) concerning a good faith
87 challenge to the validity, scope, meaning or application of the law apply to challenges of legal
88 regulation of the practice of law.

89
90 ~~[5]~~ [7] Lawyers holding public office assume legal responsibilities going beyond those of other
91 citizens. A lawyer's abuse of public office can suggest an inability to fulfill the professional role
92 of lawyers. The same is true of abuse of positions of private trust such as trustee, executor,
93 administrator, guardian, agent and officer, director or manager of a corporation or other
94 organization.

95

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REPORT

“Lawyers have a unique position in society as professionals responsible for making our society better. Our rules of professional conduct require more than mere compliance with the law. Because of our unique position as licensed professionals and the power that it brings, we are the standard by which all should aspire. Discrimination and harassment . . . is, and unfortunately continues to be, a problem in our profession and in society. Existing steps have not been enough to end such discrimination and harassment.”

ABA President Paulette Brown, February 7, 2016 public hearing on amendments to ABA Model Rule 8.4, San Diego, California.

I. Introduction and Background

The American Bar Association has long recognized its responsibility to represent the legal profession and promote the public’s interest in equal justice for all. Since 1983, when the Model Rules of Professional Conduct (“Model Rules”) were first adopted by the Association, they have been an invaluable tool through which the Association has met these dual responsibilities and led the way toward a more just, diverse and fair legal system. Lawyers, judges, law students and the public across the country and around the world look to the ABA for this leadership.

Since 1983, the Association has also spearheaded other efforts to promote diversity and fairness. In 2008 ABA President Bill Neukum led the Association to reformulate its objectives into four major “Goals” that were adopted by the House of Delegates.¹ Goal III is entitled, “Eliminate Bias and Enhance Diversity.” It includes the following two objectives:

1. Promote full and equal participation in the association, our profession, and the justice system by all persons.
2. Eliminate bias in the legal profession and the justice system.

A year before the adoption of Goal III the Association had already taken steps to address the second Goal III objective. In 2007 the House of Delegates adopted revisions to the Model Code of Judicial Conduct to include Rule 2.3, entitled, “Bias, Prejudice and Harassment.” This rule prohibits judges from speaking or behaving in a way that manifests, “bias or prejudice,” and from engaging in harassment, “based upon race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation.” It also calls upon judges to require lawyers to refrain from these activities in proceedings before the court.² This current proposal now before the House will further implement the Association’s Goal III objectives by placing a similar provision into the Model Rules for lawyers.

¹ ABA MISSION AND GOALS, http://www.americanbar.org/about_the_aba/aba-mission-goals.html (last visited May 9, 2016).

² Rule 2.3(C) of the ABA Model Code of Judicial Conduct reads: “A judge shall require lawyers in proceedings before the court to refrain from manifesting bias or prejudice, or engaging in harassment, based upon attributes including but not limited to race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, against parties, witnesses, lawyers, or others.”

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When the Model Rules were first adopted in 1983 they did not include any mention of or reference to bias, prejudice, harassment or discrimination. An effort was made in 1994 to correct this omission; the Young Lawyers Division and the Standing Committee on Ethics and Professional Responsibility (SCEPR³) each proposed language to add a new paragraph (g) to Rule 8.4, “Professional Misconduct,” to specifically identify bias and prejudice as professional misconduct. However, in the face of opposition these proposals were withdrawn before being voted on in the House. But many members of the Association realized that something needed to be done to address this omission from the Model Rules. Thus, four years later, in February 1998, the Criminal Justice Section and SCEPR developed separate proposals to add a new anti-discrimination provision into the Model Rules. These proposals were then combined into Comment [3] to Model Rule 8.4, which was adopted by the House at the Association’s Annual Meeting in August 1998. This Comment [3] is discussed in more detail below. Hereinafter this Report refers to current Comment [3] to 8.4 as “the current provision.”

It is important to acknowledge that the current provision was a necessary and significant first step to address the issues of bias, prejudice, discrimination and harassment in the Model Rules. But it should not be the last step for the following reasons. It was adopted before the Association adopted Goal III as Association policy and does not fully implement the Association’s Goal III objectives. It was also adopted before the establishment of the Commission on Sexual Orientation and Gender Identity, one of the co-sponsors of this Resolution, and the record does not disclose the participation of any of the other Goal III Commissions—the Commission on Women in the Profession, Commission on Racial and Ethnic Diversity in the Profession, and the Commission on Disability Rights—that are the catalysts for these current amendments to the Model Rules.

Second, Comments are not Rules; they have no authority as such. Authority is found only in the language of the Rules. “The Comments are intended as guides to interpretation, but the text of each Rule is authoritative.”³

Third, even if the text of the current provision were in a Rule it would be severely limited in scope: It applies (i) only to conduct by a lawyer that occurs in the course of representing a client, and (ii) *only* if such conduct is also determined to be “prejudicial to the administration of justice.” As the Association’s Goal III Commissions noted in their May 2014 letter to SCEPR:

It [the current provision] addresses bias and prejudice only within the scope of legal representation and only when it is prejudicial to the administration of justice. This limitation fails to cover bias or prejudice in other professional capacities (including attorneys as advisors, counselors, and lobbyists) or other professional settings (such as law schools, corporate law departments, and employer-employee relationships within law firms). The comment also does not address harassment at all, even though the judicial rules do so.

In addition, despite the fact that Comments are not Rules, a false perception has developed over the years that the current provision is equivalent to a Rule. In fact, this is the only example in the

³ MODEL RULES OF PROF’L CONDUCT, Preamble & Scope [21] (2016).

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Model Rules where a Comment is purported to “solve” an ethical issue that otherwise would require resolution through a Rule. Now—thirty-three years after the Model Rules were first adopted and eighteen years after the first step was taken to address this issue—it is time to address this concern in the black letter of the Rules themselves. In the words of ABA President Paulette Brown: “The fact is that skin color, gender, age, sexual orientation, various forms of ability and religion still have a huge effect on how people are treated.”⁴ As the Recommendation and Report of the Oregon New Lawyers to the Assembly of the Young Lawyers Division at the Annual Meeting 2015 stated: “The current Model Rules of Professional Conduct (the “Model Rules”), however, do not yet reflect the monumental achievements that have been accomplished to protect clients and the public against harassment and intimidation.”⁵ The Association should now correct this omission. It is in the public’s interest. It is in the profession’s interest. It makes it clear that discrimination, harassment, bias and prejudice do not belong in conduct related to the practice of law.

II. Process

Over the past two years, SCEPR has publicly engaged in a transparent investigation to determine, first whether, and then how, the Model Rules should be amended to reflect the changes in law and practice since 1998. The emphasis has been on open discussion and publishing drafts of proposals to solicit feedback, suggestions and comments. SCEPR painstakingly took that feedback into account in subsequent drafts, until a final proposal was prepared.

This process began on May 13, 2014 when SCEPR received a joint letter from the Association’s four Goal III Commissions: the Commission on Women in the Profession, Commission on Racial and Ethnic Diversity in the Profession, Commission on Disability Rights, and the Commission on Sexual Orientation and Gender Identify. The Chairs of these Commissions wrote to the SCEPR asking it to develop a proposal to amend the Model Rules of Professional Conduct to better address issues of harassment and discrimination and to implement Goal III. These Commissions explained that the current provision is insufficient because it “does not facially address bias, discrimination, or harassment and does not thoroughly address the scope of the issue in the legal profession or legal system.”⁶

In the fall of 2014 a Working Group was formed under the auspices of SCEPR and chaired by immediate past SCEPR chair Paula Frederick, chief disciplinary counsel for the State Bar of

⁴ Paulette Brown, *Inclusion Not Exclusion: Understanding Implicit Bias is Key to Ensuring An Inclusive Profession*, ABA J. (Jan. 1, 2016, 4:00 AM),

http://www.abajournal.com/magazine/article/inclusion_exclusion_understanding_implicit_bias_is_key_to_ensuring.

⁵ In August 2015, unaware that the Standing Committee on Ethics and Professional Responsibility was researching this issue at the request of the Goal III Commissions, the Oregon State Bar New Lawyers Division drafted a proposal to amend the Model Rules of Professional Conduct to include an anti-harassment provision in the black letter. They submitted their proposal to the Young Lawyers Division Assembly for consideration. The Young Lawyers Division deferred on the Oregon proposal after learning of the work of the Standing Committee on Ethics and Professional Responsibility and the Goal III Commissions.

⁶ Letter to Paula J. Frederick, Chair, ABA Standing Committee on Ethics and Professional Responsibility 2011-2014.

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Georgia. The Working Group members consisted of one representative each from SCEPR, the Association of Professional Responsibility Lawyers (“APRL”), the National Organization of Bar Counsel (“NOBC”) and each of the Goal III Commissions. The Working Group held many teleconference meetings and two in-person meetings. After a year of work Chair Frederick presented a memorandum of the Working Group’s deliberations and conclusions to SCEPR in May 2015. In it, the Working Group concluded that there was a need to amend Model Rule 8.4 to provide a comprehensive anti-discrimination provision that was nonetheless limited to the practice of law, in the black letter of the rule itself, and not just in a Comment.

On July 8, 2015, after receipt and consideration of this memorandum, SCEPR prepared, released for comment and posted on its website a Working Discussion Draft of a proposal to amend Model Rule of Professional Conduct 8.4. SCEPR also announced and hosted an open invitation Roundtable discussion on this Draft at the Annual Meeting in Chicago on July 31, 2015.

At the Roundtable and in subsequent written communications SCEPR received numerous comments about the Working Discussion Draft. After studying the comments and input from the Roundtable, SCEPR published in December 2015 a revised draft of a proposal to amend Rule 8.4(g), together with proposed new Comments to Rule 8.4. SCEPR also announced to the Association, including on the House of Delegates listserv, that it would host a Public Hearing at the Midyear Meeting in San Diego in February 2016.⁷ Written comments were also invited.⁸ President Brown and past President Laurel Bellows were among those who testified at the hearing in support of adding an anti-discrimination provision to the black letter Rule 8.4.

After further study and consideration SCEPR made substantial and significant changes to its proposal, taking into account the many comments it received on its earlier drafts.

III. Need for this Amendment to the Model Rules

As noted above, in August 1998 the American Bar Association House of Delegates adopted the current provision: Comment [3] to Model Rule of Professional Conduct 8.4, *Misconduct* which explains that certain conduct may be considered “conduct prejudicial to the administration of justice,” in violation of paragraph (d) to Rule 8.4, including when a lawyer knowingly manifests, by words or conduct, bias or prejudice against certain groups of persons, while in the course of representing a client *but only* when those words or conduct are also “prejudicial to the administration of justice.”

Yet as the Preamble and Scope of the Model Rules makes clear, “Comments do not add obligations to the Rules but provide guidance for practicing in compliance with the Rules.”⁹ Thus, the ABA did not squarely and forthrightly address prejudice, bias, discrimination and

⁷ *American Bar Association Public Hearing* (Feb. 7, 2016), http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/aba_model_rule%208_4_comments/february_2016_public_hearing_transcript.authcheckdam.pdf.

⁸ MODEL RULE OF PROFESSIONAL CONDUCT 8.4 DEC. 22 DRAFT PROPOSAL COMMENTS RECEIVED, http://www.americanbar.org/groups/professional_responsibility/committees_commissions/ethicsandprofessionalresponsibility/modruleprofconduct8_4.html (last visited May 9, 2016).

⁹ MODEL RULES OF PROF'L CONDUCT, Preamble & Scope [14] & [21] (2016).

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harassment as would have been the case if this conduct were addressed in the text of a Model Rule. Changing the Comment to a black letter rule makes an important statement to our profession and the public that the profession does not tolerate prejudice, bias, discrimination and harassment. It also clearly puts lawyers on notice that refraining from such conduct is more than an illustration in a comment to a rule about the administration of justice. It is a specific requirement.

Therefore, SCEPR, along with our co-sponsors, propose amending ABA Model Rule of Professional Conduct 8.4 to further implement Goal III by bringing into the black letter of the Rules an anti-discrimination and anti-harassment provision. This action is consistent with other actions taken by the Association to implement Goal III and to eliminate bias in the legal profession and the justice system.

For example, in February 2015, the ABA House of Delegates adopted revised *ABA Standards for Criminal Justice: Prosecution Function and Defense Function* which now include anti-bias provisions. These provisions appear in Standards 3-1.6 of the Prosecution Function Standards, and Standard 4.16 of the Defense Function Standards.¹⁰ The Standards explain that prosecutors and defense counsel should not, “manifest or exercise, by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation, gender identity or socioeconomic status.” This statement appears in the black letter of the Standards, not in a comment. And, as noted above, one year before the adoption of Goal III, the Association directly addressed prejudice, bias and harassment in the black letter of Model Rule 2.3 in the 2007 Model Code of Judicial Conduct.

Some opponents to bringing an anti-discrimination and anti-harassment provision into the black letter of the Model Rules have suggested that the amendment is not necessary—that the current provision provides the proper level of guidance to lawyers. Evidence from the ABA and around the country suggests otherwise. For example:

- Twenty-two states and the District of Columbia have not waited for the Association to act. They already concluded that the current Comment to an ABA Model Rule does not adequately address discriminatory or harassing behavior by lawyers. As a result, they have adopted anti-discrimination and/or anti-harassment provisions into the black letter of their rules of professional conduct.¹¹ By contrast, only thirteen jurisdictions have

¹⁰ ABA FOURTH EDITION CRIMINAL JUSTICE STANDARDS FOR THE PROSECUTION FUNCTION, http://www.americanbar.org/groups/criminal_justice/standards.html (last visited May 9, 2016); ABA FOURTH EDITION CRIMINAL JUSTICE STANDARDS FOR THE DEFENSE FUNCTION, http://www.americanbar.org/groups/criminal_justice/standards/DefenseFunctionFourthEdition.html (last visited May 9, 2016).

¹¹ See California Rule of Prof'l Conduct 2-400; Colorado Rule of Professional Conduct 8.4(g); Florida Rule of Professional Conduct 4-8.4(d); Illinois Rule of Prof'l Conduct 8.4(j); Indiana Rule of Prof'l Conduct 8.4(g); Iowa Rule of Prof'l Conduct 8.4(g); Maryland Lawyers' Rules of Prof'l Conduct 8.4(e); Massachusetts Rule of Prof'l Conduct 3.4(i); Minnesota Rule of Prof'l Conduct 8.4(h); Missouri Rule of Prof'l Conduct 4-8.4(g); Nebraska Rule of Prof'l Conduct 8.4(d); New Jersey Rule of Prof'l Conduct 8.4(g); New Mexico Rule of Prof'l Conduct 16-300; New York Rule of Prof'l Conduct 8.4(g); North Dakota Rule of Prof'l Conduct 8.4(f); Ohio Rule of Prof'l Conduct 8.4(g); Oregon Rule of Prof'l Conduct 8.4(a)(7); Rhode Island Rule of Prof'l Conduct 8.4(d); Texas Rule of Prof'l

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decided to address this issue in a Comment similar to the current Comment in the Model Rules.¹² Fourteen states do not address this issue at all in their Rules of Professional Conduct.¹³

- As noted above, the ABA has already brought anti-discrimination and anti-harassment provisions into the black letter of other conduct codes like the *ABA Standards for Criminal Justice: Prosecution Function and Defense Function* and the 2007 ABA Model Code of Judicial Conduct, Rule 2.3.
- The Florida Bar's Young Lawyer's Division reported this year that in a survey of its female members, 43% of respondents reported they had experienced gender bias in their career.¹⁴
- The supreme courts of the jurisdictions that have black letter rules with anti-discrimination and anti-harassment provisions have not seen a surge in complaints based on these provisions. Where appropriate, they are disciplining lawyers for discriminatory and harassing conduct.¹⁵

IV. Summary of Proposed Amendments

Conduct 5.08; Vermont Rule of Prof'l Conduct 8.4(g); Washington Rule of Prof'l Conduct 8.4(g); Wisconsin Rule of Prof'l Conduct 8.4(i); D.C. Rule of Prof'l Conduct 9.1.

¹² See Arizona Rule of Prof'l Conduct 8.4, cmt.; Arkansas Rule of Prof'l Conduct 8.4, cmt. [3]; Connecticut Rule of Prof'l Conduct 8.4, Commentary; Delaware Lawyers' Rule of Prof'l Conduct 8.4, cmt. [3]; Idaho Rule of Prof'l Conduct 8.4, cmt. [3]; Maine Rule of Prof'l Conduct 8.4, cmt. [3]; North Carolina Rule of Prof'l Conduct 8.4, cmt. [5]; South Carolina Rule of Prof'l Conduct 8.4, cmt. [3]; South Dakota Rule of Prof'l Conduct 8.4, cmt. [3]; Tennessee Rule of Prof'l Conduct 8.4, cmt. [3]; Utah Rule of Prof'l Conduct 8.4, cmt. [3]; Wyoming Rule of Prof'l Conduct 8.4, cmt. [3]; West Virginia Rule of Prof'l Conduct 8.4, cmt. [3].

¹³ The states that do not address this issue in their rules include Alabama, Alaska, Georgia, Hawaii, Kansas, Kentucky, Louisiana, Mississippi, Montana, Nevada, New Hampshire, Oklahoma, Pennsylvania, and Virginia.

¹⁴ The Florida Bar, *Results of the 2015 YLD Survey on Women in the Legal Profession* (Dec. 2015), [http://www.floridabar.org/TFB/TFBResources.nsf/Attachments/13AC70483401E7C785257F640064CF63/\\$FILE/RESULTS%20OF%202015%20SURVEY.pdf?OpenElement](http://www.floridabar.org/TFB/TFBResources.nsf/Attachments/13AC70483401E7C785257F640064CF63/$FILE/RESULTS%20OF%202015%20SURVEY.pdf?OpenElement).

¹⁵ In 2015 the Iowa Supreme Court disciplined a lawyer for sexually harassing four female clients and one female employee. *In re Moothart*, 860 N.W.2d 598 (2015). The Wisconsin Supreme Court in 2014 disciplined a district attorney for texting the victim of domestic abuse writing that he wished the victim was not a client because she was "a cool person to know." On one day, the lawyer sent 19 text messages asking whether the victim was the "kind of girl who likes secret contact with an older married elected DA . . . the riskier the better." One day later, the lawyer sent the victim 8 text messages telling the victim that she was pretty and beautiful and that he had a \$350,000 home. *In re Kratz*, 851 N.W.2d 219 (2014). The Minnesota Supreme Court in 2013 disciplined a lawyer who, while acting as an adjunct professor and supervising law students in a clinic, made unwelcome comments about the student's appearance; engaged in unwelcome physical contact of a sexual nature with the student; and attempted to convince the student to recant complaints she had made to authorities about him. *In re Griffith*, 838 N.W.2d 792 (2013). The Washington Supreme Court in 2012 disciplined a lawyer, who was representing his wife and her business in dispute with employee who was Canadian. The lawyer sent two ex parte communications to the trial judge asking questions like: are you going to believe an alien or a U.S. citizen? *In re McGrath*, 280 P.3d 1091 (2012). The Indiana Supreme Court in 2009 disciplined a lawyer who, while representing a father at a child support modification hearing, made repeated disparaging references to the facts that the mother was not a U.S. citizen and was receiving legal services at no charge. *In re Campiti*, 937 N.E.2d 340 (2009). The Indiana Supreme Court in 2005 disciplined a lawyer who represented a husband in an action for dissolution of marriage. Throughout the custody proceedings the lawyer referred to the wife being seen around town in the presence of a "black male" and that such association was placing the children in harm's way. During a hearing, the lawyer referred to the African-American man as "the black guy" and "the black man." *In re Thomsen*, 837 N.E.2d 1011 (2005).

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A. Prohibited Activity

SCEPR's proposal adds a new paragraph (g) to Rule 8.4, to prohibit conduct by a lawyer related to the practice of law that harasses or discriminates against members of specified groups. New Comment [3] defines the prohibited behavior.

Proposed new black letter Rule 8.4(g) does not use the terms “manifests . . . bias or prejudice”¹⁶ which appear in the current provision. Instead, the new rule adopts the terms “harass or discriminate” which are based on the words “harassment” and “discrimination” that already appear in a large body of substantive law, antidiscrimination and anti-harassment statutes, and case law nationwide and in the Model Judicial Code. For example, in new Comment [3], “harass” is defined as including “sexual harassment and derogatory or demeaning language towards a person who is, or is perceived to be, a member of one of the groups. . . . unwelcome sexual advances, requests for sexual favors, and or other unwelcome verbal or physical conduct of a sexual nature.” This definition is based on the language of Rule 2.3(C) of the ABA Model Code of Judicial Conduct and its Comment [4], adopted by the House in 2007 and applicable to lawyers in proceedings before a court.¹⁷

Discrimination is defined in new Comment [3] as “harmful verbal or physical conduct that manifests bias or prejudice towards others because of their membership or perceived membership in one or more of the groups listed in paragraph (g).” This is based in part on ABA Model Code of Judicial Conduct, Rule 2.3, Comment [3], which notes that harassment, one form of discrimination, includes “verbal or physical conduct,” and on the current rule, which prohibits lawyers from manifesting bias or prejudice while representing clients.

Proposed new Comment [3] also explains, “The substantive law of antidiscrimination and anti-harassment statutes and case law may guide application of paragraph (g).” This provision makes clear that the substantive law on antidiscrimination and anti-harassment is not necessarily dispositive in the disciplinary context. Thus, conduct that has a discriminatory impact alone, while possibly dispositive elsewhere, would not necessarily result in discipline under new Rule 8.4(g). But, substantive law regarding discrimination and harassment can also guide a lawyer's conduct. As the Preamble to the Model Rules explains, “A lawyer's conduct should conform to the requirements of the law, both in professional service to clients and in the lawyer's business and personal affairs.”¹⁸

B. Mens Rea Requirement

Proposed new Rule 8.4(g) does not use the term “knowingly.” SCEPR received many comments about whether new paragraph (g) should include a specifically stated requirement that the misconduct be “knowing” discrimination or harassment. SCEPR concluded that a “knowing” or “knowingly” requirement in new paragraph (g) is neither necessary nor appropriate.

¹⁶ The phrase, “manifestations of bias or prejudice” is utilized in proposed new Comment [3].

¹⁷ ABA Model Code of Judicial Conduct Rule 2.3, Comment [4] reads: “Sexual harassment includes but is not limited to sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature that is unwelcome.”

¹⁸ MODEL RULES OF PROF'L CONDUCT, Preamble & Scope [5] (2016).

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Rule 8.4(d), which current Comment [3] illuminates, prohibits “conduct that is prejudicial to the administration of justice.” It does not include an additional requirement that such conduct be “knowing.” Current Rule 8.4(d) does not require one to “knowingly” engage in conduct that is prejudicial to the administration of justice.

Some commentators suggested that the term “knowingly” should be preserved from the current Comment, which explains that “a lawyer who, in the course of representing a client, knowingly manifests by words or conduct, bias or prejudice ... violates paragraph (d) when such actions are prejudicial to the administration of justice.” As noted above, Comments provide interpretive guidance but are not elements of the Rule.

“Knowingly” as used in the Model Rules denotes “actual knowledge of the fact in question. A person’s knowledge may be inferred from circumstances.” Rule 1.0(f).¹⁹ And the use of the term “knowingly” in the current provision makes sense in the context of that comment, which deals with bias and prejudice. Bias and prejudice are states of mind that can only be observed when they are made manifest by knowing acts (words or conduct). So it was appropriate to require a “knowing” manifestation as the basis for discipline.

By contrast, “harassment” and “discrimination” are terms that denote actual conduct. As explained in proposed new Comment [3], both “harassment” and “discrimination” are defined to include verbal and physical conduct against others. The proposed rule would not expand on what would be considered harassment and discrimination under federal and state law. Thus, the terms used in the rule—“harass and discriminate”—by their nature incorporate a measure of intentionality while also setting a minimum standard of acceptable conduct. This does not mean that complainants should have to establish their claims in civil courts before bringing disciplinary claims. Rather, it means that the rule intends that these words have the meaning established at law. The well-developed meaning and well-delineated boundaries of these terms in legal doctrine rebuts any notion that the standard imposes strict liability based on a vague and subjective proscription.

Also, the mens rea of the respondent, as well as the harm caused by the conduct, are factors that could be taken into account under the Standards for Imposing Lawyer Sanctions, for example, when determining what sanctions, if any, would be appropriate for the conduct.

C. Scope of the Rule

Proposed Rule 8.4(g) makes it professional misconduct for a lawyer to harass or discriminate while engaged in “conduct related to the practice of law.” The rule is constitutionally limited; it does not seek to regulate harassment or discrimination by a lawyer that occurs outside the scope of the lawyer’s practice of law, nor does it limit a lawyer’s representational role in our legal system. It does not limit the scope of the legal advice a lawyer may render to clients, which is addressed in Model Rule 1.2. It permits legitimate advocacy. It does not change the

¹⁹ Thus, for example, where the word “knowingly” is used elsewhere in the Model Rules—in paragraphs (a) and (f) to Rule 8.4 and in Rule 3.3(a) for example—the lawyer’s state of mind and knowledge or lack thereof can readily be inferred from the conduct involved and the circumstances surrounding that conduct.

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circumstances under which a lawyer may accept, decline or withdraw from a representation. To the contrary, the proposal makes clear that Model Rule 1.16 addresses such conduct. The proposal also does not limit a lawyer's ability to charge and collect a reasonable fee for legal services, which remains governed by Rule 1.5. And, as new Comment [4] makes clear, the proposed Rule does not impose limits or requirements on the scope of a lawyer's professional expertise.

Note also that while the provision in current Comment [3] limits the scope of Rule 8.4(d) to situations where the lawyer is representing clients, Rule 8.4(d) itself is not so limited. In fact, lawyers have been disciplined under Rule 8.4(d) for conduct that does not involve the representation of clients.²⁰

Some commenters expressed concern that the phrase, "conduct related to the practice of law," is vague. "The definition of the practice of law is established by law and varies from one jurisdiction to another."²¹ The phrase "conduct related to" is elucidated in the proposed new Comments and is consistent with other terms and phrases used in the Rules that have been upheld against vagueness challenges.²² The proposed scope of Rule 8.4(g) is similar to the scope of existing anti-discrimination provisions in many states.²³

Proposed new Comment [4] explains that conduct related to the practice of law includes, "representing clients; interacting with witnesses, coworkers, court personnel, lawyers and others while engaged in the practice of law; operating or managing a law firm or law practice; and participating in bar association, business or social activities *in connection with the practice of law.*" (Emphasis added.) The nexus of the conduct regulated by the rule is that it is conduct lawyers are permitted or required to engage in because of their work as a lawyer.

²⁰ See, e.g., *Neal v. Clinton*, 2001 WL 34355768 (Ark. Cir. Ct. Jan. 19, 2001).

²¹ MODEL RULES OF PROF'L CONDUCT R. 5.5 cmt. [2].

²² See, e.g., *Grievance Adm'r v. Fieger*, 719 N.E.2d 123 (Mich. 2016) (rejecting a vagueness challenge to rules requiring lawyers to "treat with courtesy and respect all person involved in the legal process" and prohibiting "undignified or discourteous conduct toward [a] tribunal"); *Chief Disciplinary Counsel v. Zelotes*, 98 A.3d 852 (Conn. 2014) (rejecting a vagueness challenge to "conduct prejudicial to the administration of justice"); *Florida Bar v. Von Zamft*, 814 So. 2d 385 (2002); *In re Anonymous Member of South Carolina Bar*, 709 S.E.2d 633 (2011) (rejecting a vagueness challenge to the following required civility clause: "To opposing parties and their counsel, I pledge fairness, integrity, and civility . . ."); *Canatella v. Stovitz*, 365 F.Supp.2d 1064 (N.D. Cal. 2005) (rejecting a vagueness challenge to these terms regulating lawyers in the California Business and Profession Code: "willful," "moral turpitude," "dishonesty," and "corruption"); *Motley v. Virginia State Bar*, 536 S.E.2d 97 (Va. 2000) (rejecting a vagueness challenge to a rule requiring lawyers to keep client's "reasonably informed about matters in which the lawyer's services are being rendered"); *In re Disciplinary Proceedings Against Beaver*, 510 N.W.2d 129 (Wis. 1994) (rejecting a vagueness challenge to a rule against "offensive personality").

²³ See Florida Rule of Professional Conduct 4-8.4(d) which addresses conduct "in connection with the practice of law"; Indiana Rule of Prof'l Conduct 8.4(g) which addresses conduct a lawyer undertakes in the lawyer's "professional capacity"; Iowa Rule of Prof'l Conduct 8.4(g) which addresses conduct "in the practice of law"; Maryland Lawyers' Rules of Prof'l Conduct 8.4(e) with the scope of "when acting in a professional capacity"; Minnesota Rule of Prof'l Conduct 8.4(h) addressing conduct "in connection with a lawyer's professional activities"; New Jersey Rule of Prof'l Conduct 8.4(g) addressing when a lawyer's conduct is performed "in a professional capacity"; New York Rule of Prof'l Conduct 8.4(g) covering conduct "in the practice of law"; Ohio Rule of Prof'l Conduct 8.4(g) addressing when lawyer "engage, in a professional capacity, in conduct"; Washington Rule of Prof'l Conduct 8.4(g) covering "connection with the lawyer's professional activities"; and Wisconsin Rule of Prof'l Conduct 8.4(i) with a scope of conduct "in connection with the lawyer's professional activities."

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The scope of proposed 8.4(g) is actually narrower and more limited than is the scope of other Model Rules. “[T]here are Rules that apply to lawyers who are not active in the practice of law or to practicing lawyers even when they are acting in a nonprofessional capacity.”²⁴ For example, paragraph (c) to Rule 8.4 declares that it is professional misconduct for a lawyer to engage in conduct “involving dishonesty, fraud, deceit or misrepresentation.” Such conduct need not be related to the lawyer’s practice of law, but may reflect adversely on the lawyer’s fitness to practice law or involve moral turpitude.²⁵

However, insofar as proposed Rule 8.4(g) applies to “conduct related to the practice of law,” it is broader than the current provision. This change is necessary. The professional roles of lawyers include conduct that goes well beyond the representation of clients before tribunals. Lawyers are also officers of the court, managers of their law practices and public citizens having a special responsibility for the administration justice.²⁶ Lawyers routinely engage in organized bar-related activities to promote access to the legal system and improvements in the law. Lawyers engage in mentoring and social activities related to the practice of law. And, of course, lawyers are licensed by a jurisdiction’s highest court with the privilege of practicing law. The ethics rules should make clear that the profession will not tolerate harassment and discrimination in all conduct related to the practice of law.

Therefore, proposed Comment [4] explains that operating or managing a law firm is conduct related to the practice of law. This includes the terms and conditions of employment. Some commentators objected to the inclusion of workplace harassment and discrimination within the scope of the Rule on the ground that it would bring employment law into the Model Rules. This objection is misplaced. First, in at least two jurisdictions which have adopted an anti-discrimination Rule, the provision is focused entirely on employment and the workplace.²⁷ Other jurisdictions have also included workplace harassment and discrimination among the conduct prohibited in their Rules.²⁸ Second, professional misconduct under the Model Rules already applies to substantive areas of the law such as fraud and misrepresentation. Third, that part of the management of a law practice which includes the solicitation of clients and

²⁴ MODEL RULES OF PROF’L CONDUCT, Preamble [3].

²⁵ MODEL RULES OF PROF’L CONDUCT R. 8.4 cmt. [2].

²⁶ MODEL RULES OF PROF’L CONDUCT, Preamble [1] & [6].

²⁷ See D.C. Rule of Prof’l Conduct 9.1 & Vermont Rule of Prof’l Conduct 8.4(g). The lawyer population for Washington DC is 52,711 and Vermont is 2,326. Additional lawyer demographic information is available on the American Bar Association website: http://www.americanbar.org/resources_for_lawyers/profession_statistics.html.

²⁸ Other jurisdictions have specifically included workplace harassment and discrimination among the conduct prohibited in their Rules. Some jurisdictions that have included workplace harassment and discrimination as professional misconduct require a prior finding of employment discrimination by another tribunal. See California Rule of Prof’l Conduct 2-400 (lawyer population 167,690); Illinois Rule of Prof’l conduct 8.4(j) (lawyer population 63,060); New Jersey Rule of Prof’l Conduct 8.4(g) (lawyer population 41,569); and New York Rule of Prof’l Conduct 8.4(g) (lawyer population 175,195). Some jurisdictions that have included workplace harassment and discrimination as professional misconduct require that the conduct be unlawful. See, e.g., Iowa Rule of Prof’l Conduct 8.4(g) (lawyer population of 7,560); Ohio Rule of Prof’l Conduct 8.4(g) (lawyer population 38,237); and Minnesota Rule of Prof’l Conduct 8.4(h) (lawyer population 24,952). Maryland has included workplace harassment and discrimination as professional misconduct when the conduct is prejudicial to the administration of justice. Maryland Lawyers’ Rules of Prof’l Conduct 8.4(e), cmt. [3] (lawyer population 24,142).

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advertising of legal services are already subjects of regulation under the Model Rules.²⁹ And fourth, this would not be the first time the House of Delegates adopted policy on the terms and conditions of lawyer employment. In 2007, the House of Delegates adopted as ABA policy a recommendation that law firms should discontinue mandatory age-based retirement policies,³⁰ and earlier, in 1992, the House recognized that “sexual harassment is a serious problem in all types of workplace settings, including the legal profession, and constitutes a discriminatory and unprofessional practice that must not be tolerated in any work environment.”³¹ When such conduct is engaged in by lawyers it is appropriate and necessary to identify it for what it is; professional misconduct.

This Rule, however, is not intended to replace employment discrimination law. The many jurisdictions which already have adopted similar rules have not experienced a mass influx of complaints based on employment discrimination or harassment. There is also no evidence from these jurisdictions that disciplinary counsel became the tribunal of first resort for workplace harassment or discrimination claims against lawyers. This Rule would not prohibit disciplinary counsel from deferring action on complaints, pending other investigations or actions.

Equally important, the ABA should not adopt a rule that would apply only to lawyers acting outside of their own law firms or law practices but not to lawyers acting within their offices, toward each other and subordinates. Such a dichotomy is unreasonable and unsupportable.

As also explained in proposed new Comment [4], conduct related to the practice of law includes activities such as law firm dinners and other nominally social events at which lawyers are present solely because of their association with their law firm or in connection with their practice of law. SCEPR was presented with substantial anecdotal information that sexual harassment takes place at such events. “Conduct related to the practice of law” includes these activities.

Finally with respect to the scope of the rule, some commentators suggested that because legal remedies are available for discrimination and harassment in other forums, the bar should not permit an ethics claim to be brought on that basis until the claim has first been presented to a legal tribunal and the tribunal has found the lawyer guilty of or liable for harassment or discrimination.

SCEPR has considered and rejected this approach for a number of reasons. Such a requirement is without precedent in the Model Rules. There is no such limitation in the current provision. Legal ethics rules are not dependent upon or limited by statutory or common law claims. The ABA takes pride in the fact that “the legal profession is largely self-governing.”³² As such, “a lawyer’s failure to comply with an obligation or prohibition imposed by a Rule is a basis for invoking the disciplinary process,” not the civil legal system.³³ The two systems run on separate tracks.

²⁹ See MODEL RULES OF PROFESSIONAL CONDUCT R. 7.1 - 7.6.

³⁰ ABA HOUSE OF DELEGATES RESOLUTION 10A (Aug. 2007).

³¹ ABA HOUSE OF DELEGATES RESOLUTION 117 (Feb. 1992).

³² MODEL RULES OF PROFESSIONAL CONDUCT, Preamble & Scope [10].

³³ MODEL RULES OF PROFESSIONAL CONDUCT, Preamble & Scope [19].

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The Association has never before required that a party first invoke the civil legal system before filing a grievance through the disciplinary system. In fact, as a self-governing profession we have made it clear that “[v]iolation of a Rule should not itself give rise to a cause of action against a lawyer nor should it create any presumption in such a case that a legal duty has been breached.”³⁴ Thus, legal remedies are available for conduct, such as fraud, deceit or misrepresentation, which also are prohibited by paragraph (c) to Rule 8.4, but a claimant is not required as a condition of filing a grievance based on fraud, deceit or misrepresentation to have brought and won a civil action against the respondent lawyer, or for the lawyer to have been charged with and convicted of a crime.³⁵ To now impose such a requirement, only for claims based on harassment and discrimination, would set a terrible precedent and send the wrong message to the public.

In addition, the Model Rules of Professional Conduct reflect ABA policy. Since 1989, the ABA House of Delegates has adopted policies promoting the equal treatment of all persons regardless of sexual orientation or gender identity.³⁶ Many states, however, have not extended protection in areas like employment to lesbian, gay, or transgender persons.³⁷ A Model Rule should not be limited by such restrictions that do not reflect ABA policy. Of course, states and other jurisdictions may adapt ABA policy to meet their individual and particular circumstances.

D. Protected Groups

New Rule 8.4(g) would retain the groups protected by the current provision.³⁸ In addition, new 8.4(g) would also include “ethnicity,” “gender identity,” and “marital status.” The anti-discrimination provision in the ABA Model Code of Judicial Conduct, revised and adopted by the House of Delegates in 2007, already requires judges to ensure that lawyers in proceedings before the court refrain from manifesting bias or prejudice and from harassing another based on that person’s marital status and ethnicity. The drafters believe that this same prohibition also should be applicable to lawyers in conduct related to the practice of law not merely to lawyers in proceedings before the court.

“Gender identity” is added as a protected group at the request of the ABA’s Goal III Commissions. As used in the Rule this term includes “gender expression” which is as a form of gender identify. These terms encompass persons whose current gender identity and expression

³⁴ MODEL RULES OF PROFESSIONAL CONDUCT, Preamble & Scope [20].

³⁵ *E.g.*, *People v. Odom*, 941 P.2d 919 (Colo. 1997) (lawyer disciplined for committing a crime for which he was never charged).

³⁶ A list of ABA policies supporting the expansion of civil rights to and protection of persons based on their sexual orientation and gender identity can be found here:

http://www.americanbar.org/groups/sexual_orientation/policy.html.

³⁷ For a list of states that have not extended protection in areas like employment to LGBT individuals see:

<https://www.aclu.org/map/non-discrimination-laws-state-state-information-map>.

³⁸ Some commenters advised eliminating references to any specific groups from the Rule. SCEPR concluded that this would risk including within the scope of the Rule appropriate distinctions that are properly made in professional life. For example, a law firm or lawyer may display “geographic bias” by interviewing for employment only persons who have expressed a willingness to relocate to a particular state or city. It was thought preferable to specifically identify the groups to be covered under the Rule.

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are different from their designations at birth.³⁹ The Equal Employment Opportunities Commission interprets Title VII as prohibiting discrimination against employees on the basis of sexual orientation and gender identity.⁴⁰ In 2015, the ABA House adopted revised Criminal Justice Standards for the Defense Function and the Prosecution Function. Both sets of Standards explains that defense counsel and prosecutors should not manifest bias or prejudice based on another's gender identity. To ensure notice to lawyers and to make these provisions more parallel, the Goal III Commission on Sexual Orientation and Gender Identity recommended that gender identity be added to the black letter of paragraph (g). New Comment [3] notes that applicable law may be used as a guide to interpreting paragraph (g). Under the Americans with Disabilities Act discrimination against persons with disabilities includes the failure to make the reasonable accommodations necessary for such person to function in a work environment.⁴¹

Some commenters objected to retaining the term “socioeconomic status” in new paragraph (g). This term is included in the current provision and also is in the Model Judicial Code. The term has not been applied indiscriminately or irrationally in any jurisdiction which has adopted it. The Indiana disciplinary case *In re Campiti*, 937 N.E.2d 340 (2009) provides guidance as to the meaning of the term. In that matter, a lawyer was reprimanded for disparaging references he made at trial about a litigant's socioeconomic status: the litigant was receiving free legal services. SCEPR concluded that the unintended consequences of removing this group would be more detrimental than the consequences of keeping it in.

Discrimination against persons based on their source of income or acceptance of free or low-cost legal services would be examples of discrimination based on socioeconomic status. However, new Comment [5] makes clear that the Rule does not limit a lawyer's ability to charge and collect a reasonable fee and reimbursement of expenses, nor does it affect a lawyer's ability to limit the scope of his or her practice.

SCEPR was concerned, however, that this Rule not be read as undermining a lawyer's pro bono obligations or duty to accept court-appointed clients. Therefore, proposed Comment [5] does encourage lawyers to be mindful of their professional obligations under Rule 6.1 to provide legal services to those who are unable to pay, and their obligation under Rule 6.2 to not avoid appointments from a tribunal except for “good cause.”

E. Promoting Diversity

³⁹ The U.S. Office of Personnel Management Diversity & Inclusion Reference Materials defines gender identity as “the individual's internal sense of being male or female. The way an individual expresses his or her gender identity is frequently called ‘gender expression,’ and may or may not conform to social stereotypes associated with a particular gender.” See *Diversity & Inclusion Reference Materials*, UNITED STATES OFFICE OF PERSONNEL MANAGEMENT, <https://www.opm.gov/policy-data-oversight/diversity-and-inclusion/reference-materials/gender-identity-guidance/> (last visited May 9, 2016).

⁴⁰ https://www.eeoc.gov/eeoc/newsroom/wysk/enforcement_protections_lgbt_workers.cfm

⁴¹ A reasonable accommodation is a modification or adjustment to a job, the work environment, or the way things usually are done that enables a qualified individual with a disability to enjoy an equal employment opportunity. Examples of reasonable accommodations include making existing facilities accessible; job restructuring; part-time or modified work schedules; acquiring or modifying equipment; changing tests, training materials, or policies; providing qualified readers or interpreters; and reassignment to a vacant position.

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Proposed new Comment [4] to Rule 8.4 makes clear that paragraph (g) does not prohibit conduct undertaken by lawyers to promote diversity. As stated in the first Goal III Objective, the Association is committed to promoting full and equal participation in the Association, our profession and the justice system by all persons. According to the ABA Lawyer Demographics for 2016, the legal profession is 64% male and 36% female.⁴² The most recent figures for racial demographics are from the 2010 census showing 88% White, 5% Black, 4% Hispanic, and 3% Asian Pacific American, with all other ethnicities less than one percent.⁴³ Goal III guides the ABA toward greater diversity in our profession and the justice system, and Rule 8.4(g) seeks to further that goal.

F. How New Rule 8.4(g) Affects Other Model Rules of Professional Conduct

When SCEPR released a draft proposal in December 2015 to amend Model Rule 8.4, some commenters expressed concern about how proposed new Rule 8.4(g) would affect other Rules of Professional Conduct. As a result, SCEPR's proposal to create new Rule 8.4(g) now includes a discussion of its effect on certain other Model Rules.

For example, commenters questioned how new Rule 8.4(g) would affect a lawyer's ability to accept, refuse or withdraw from a representation. To make it clear that proposed new Rule 8.4(g) is not intended to change the ethics rules affecting those decisions, the drafters included in paragraph (g) a sentence from Washington State's Rule 8.4(g), which reads: "This Rule does not limit the ability of a lawyer to accept, decline, or withdraw from a representation in accordance with Rule 1.16." Rule 1.16 defines when a lawyer shall and when a lawyer may decline or withdraw from a representation. Rule 1.16(a) explains that a lawyer shall not represent a client or must withdraw from representing a client if: "(1) the representation will result in violation of the rules of professional conduct or other law." Examples of a representation that would violate the Rules of Professional Conduct are representing a client when the lawyer does not have the legal competence to do so (*See* Rule 1.1) and representing a client with whom the lawyer has a conflict of interest (*See* Rules 1.7, 1.9, 1.10, 1.11, 1.12).

To address concerns that this proposal would cause lawyers to reject clients with unpopular views or controversial positions, SCEPR included in proposed new Comment [5] a statement reminding lawyers that a lawyer's representation of a client does not constitute an endorsement by the lawyer of the client's views or activities, with a citation to Model Rule 1.2(b). That Rule reads: "A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities."

Also, with respect to this rule as with respect to all the ethics Rules, Rule 5.1 provides that a managing or supervisory lawyer shall make reasonable efforts to insure that the lawyer's firm or practice has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct. Such efforts will build upon efforts already being made to

⁴² American Bar Association, *Lawyer Demographics Year 2016* (2016), http://www.americanbar.org/content/dam/aba/administrative/market_research/lawyer-demographics-tables-2016.authcheckdam.pdf.

⁴³ *Id.*

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give reasonable assurance that lawyers in a firm conform to Rule 8.4(d) and are not manifesting bias or prejudice in the course of representing a client that is prejudicial to the administration of justice.

G. Legitimate Advocacy

New Comment [5] to Rule 8.4 includes the following sentence: “Paragraph (g) does not prohibit legitimate advocacy that is material and relevant to factual or legal issues or arguments in a representation.” This retains and updates the statement on legitimate advocacy that is contained in the current provision. The current provision reads: “Legitimate advocacy respecting the foregoing factors does not violate paragraph (d).”

H. Peremptory Challenges

The following sentence appears in the current provision: “A trial judge’s finding that peremptory challenges were exercised on a discriminatory basis does not alone establish a violation of this rule.” This statement is analogous to a statement in Disciplinary Rule 4-101 of the 1969 Model Code of Professional Responsibility, where the ethical obligation of confidentiality was linked to the legal evidentiary standard of attorney-client privilege.⁴⁴ Just as the Model Rules subsequently separated the evidentiary standard from the ethical standard, so too SCEPR determined to separate a determination by a trial judge on peremptory challenges from a decision as to whether there has been discrimination under the Model Rules. The weight given to the trial judge’s determination should be decided as part of the disciplinary process, not determined by a comment in the Model Rules of Professional Conduct. Thus, SCEPR concluded that this question might more appropriately be addressed under the Model Rules for Lawyer Disciplinary Enforcement or the Standards for Imposing Lawyer Sanctions.

V. CONCLUSION

As noted at the beginning of this Report the Association has a responsibility to lead the profession in promoting equal justice under law. This includes working to eliminate bias in the legal profession. In 2007 the Model Judicial Code was amended to do just that. Twenty-three jurisdictions have also acted to amend their rules of professional conduct to address this issue directly. It is time to follow suit and amend the Model Rules. The Association needs to address such an important and substantive issue in a Rule itself, not just in a Comment.

Proposed new paragraph (g) to Rule 8.4 is a reasonable, limited and necessary addition to the Model Rules of Professional Conduct. It will make it clear that it is professional misconduct to harass or discriminate while engaged in conduct related to the practice of law. And as has already been shown in the jurisdictions that have such a rule, it will not impose an undue burden on lawyers.

⁴⁴ A LEGISLATIVE HISTORY: THE DEVELOPMENT OF THE ABA MODEL RULES OF PROFESSIONAL CONDUCT, 1982-2013 114 (Art Garwin ed., 2013).

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As the premier association of attorneys in the world, the ABA should lead anti-discrimination, anti-harassment, and diversity efforts not just in the courtroom, but wherever it occurs in conduct by lawyers related to the practice of law. The public expects no less of us. Adopting the Resolution will advance this most important goal.

Respectfully submitted,

Myles V. Lynk, Chair
Standing Committee on Ethics and Professional Responsibility
August 2016

DRAFT

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GENERAL INFORMATION FORM

Submitting Entity: Standing Committee on Ethics and Professional Responsibility

Submitted By: Dennis Rendleman, Ethics Counsel

1. Summary of Resolution(s). The resolution would amend Model Rule of Professional Conduct 8.4, *Misconduct*, to create new paragraph (g) that would create in the black letter of the Rules an anti-discrimination and anti-harassment provision. The resolution also amends Comment [3], creates new Comments [4] and [5] to Rule 8.4 and renumbers current Comments [4] and [5].
2. Approval by Submitting Entity. The Standing Committee on Ethics and Professional Responsibility approved filing this resolution in April 2016. Co-sponsors, the Civil Rights & Social Justice Section, the Commission on Disability Rights, the Diversity & Inclusion 360 Commission, the Commission on Racial and Ethnic Diversity in the Profession, the Commission on Sexual Orientation and Gender Identity, and the Commission on Women in the Profession signed on during the months of April and May 2016. The Commission on Hispanic Legal Rights & Responsibilities and the Center for Racial and Ethnic Diversity voted to support the resolution in May 2016.
3. Has this or a similar resolution been submitted to the House or Board previously? This resolution is new. But, the House has acted on similar resolutions. For example, in February 1994 the Young Lawyers Division authored a resolution to bring an anti-discrimination and anti-harassment provision into the black letter of the ABA Model Rules of Professional Conduct. It was withdrawn. Also in February 1994, the Standing Committee on Ethics and Professional Responsibility authored a similar provision. It, too, was withdrawn.

In February 1995, the House adopted Resolution 116C submitted by the Young Lawyers Division. Through that resolution the Association condemned lawyer bias and prejudice in the course of the lawyer's professional activities and opposed unlawful discrimination by lawyers in the management or operation of a law practice.

In February 1998, the Criminal Justice Section recommended that the Model Rules of Professional Conduct include within the black letter an anti-discrimination provision. At the same meeting, the Standing Committee on Ethics and Professional Responsibility submitted a resolution recommending a Comment that included an anti-discrimination provision. Both resolutions were withdrawn.

In August 1998, a joint resolution of the Standing Committee on Ethics and Professional Responsibility and the Criminal Justice Section was submitted and was adopted. The resolution created Comment [3] to Rule 8.4 suggesting that it could be misconduct that is prejudicial to the administration of justice when a lawyer, in the course of representing a client, knowingly manifest by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status.

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4. What existing Association policies are relevant to this Resolution and how would they be affected by its adoption? The adoption of this resolution would result in amendments to the ABA Model Rules of Professional Conduct. Goal III of the Association—to promote full and equal participation in the Association, the profession, and the justice system by all persons and to eliminate bias in the legal profession and the justice system—would be advanced by the adoption of this resolution.
5. If this is a late report, what urgency exists which requires action at this meeting of the House? N/A
6. Status of Legislation. (If applicable) N/A
7. Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates. The Center for Professional Responsibility will publish any updates to the ABA Model Rules of Professional Conduct and Comments, and also will publish electronically other newly adopted policies. The Policy Implementation Committee of the Center for Professional Responsibility has in place the procedures and infrastructure to successfully implement any policies proposed that are adopted by the House of Delegates.
8. Cost to the Association. (Both direct and indirect costs) None.
9. Disclosure of Interest. (If applicable) N/A
10. Referrals. The Standing Committee on Ethics and Professional Responsibility has been transparent in its research and drafting process for this resolution. First, the Committee appointed a Working Group to research and craft a proposal. The Working Group included representatives from the following Goal III Commissions: Disability, Racial and Ethnic Diversity in the Profession, Sexual Orientation and Gender Identity, and Women in the Profession. The Ethics Committee then hosted two public events—an informal Roundtable in July 2015 at the ABA Annual Meeting in Chicago on its summer 2015 Working Discussion Draft and a formal public hearing in February 2016 at the ABA MidYear Meeting in San Diego on its draft proposal. At these two events, the Ethics Committee accepted written and verbal comments on two different discussion drafts.

The Ethics Committee developed a Rule 8.4 website to communicate information about its work. Drafts and comments received were posted. Through this website, the Committee received more than 450 comments to its December 2015 draft rule.

Using email, the Ethics Committee reached out directly to numerous sections and committees communicating with both the entity's chairman and the entity's staff person about the public hearings and procedure for providing comments. Groups solicited included: the Standing Committees on Professional Discipline, Professionalism, Client Protection, Specialization, Legal Aid and Indigent Defendants, the Commissions on Law and Aging and Hispanic

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Rights and Responsibilities, the Sections on Business Law, Litigation, Criminal Justice, Family Law, Trial Tort and Insurance Practice, and the Judicial Division, the Solo, Small Firm and General Practice Section, the Senior Lawyers Division, and the Young Lawyers Division.

The Ethics Committee's work on this issue was the subject of news articles in the Lawyers' Manual on Professional Conduct and the ABA Journal.

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

Dennis Rendleman, Ethics Counsel
American Bar Association
321 N. Clark Street
Chicago, IL 60654
W: 312-988-5307
C: 312.753.9518
Dennis.rendleman@americanbar.org

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

Myles V. Lynk, Chair
Standing Committee on Ethics and Professional Responsibility
Arizona State University College of Law
Armstrong Hall
P.O. Box 877906
Phoenix, AZ 85287-7906
W: 480-965-0433
C: 480-721-4062
Myles.lynk@asu.edu

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EXECUTIVE SUMMARY

1. Summary of the Resolution

The resolution amends Model Rule of Professional Conduct 8.4, *Misconduct*, to create new paragraph (g) that establishes a black letter rule prohibiting discrimination and harassment. The resolution also amends Comment [3], creates new Comments [4] and [5] to Rule 8.4 and renumbers current Comments [4] and [5].

Discriminate and harass are both defined in amended Comment [3]. Discrimination is harmful verbal or physical conduct that manifests bias or prejudice towards others because of their membership or perceived membership in one or more of the groups listed in paragraph (g). Harassment includes sexual harassment and derogatory or demeaning verbal or physical conduct towards a person who is, or is perceived to be, a member of one of the groups. Protected persons include those listed in current Comment [3] (persons discriminated on the basis of race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status) and also includes persons discriminated on the basis of ethnicity, gender identity, and marital status. This brings the Model Rules more into line with the Model Code of Judicial Conduct and the Criminal Justice Standards for the Prosecution Function and Standards for the Defense Function.

The scope of new paragraph (g) is “conduct related to the practice of law.” The resolution defines covered conduct as “representing clients; interacting with witnesses, coworkers, court personnel, lawyers and others while engaged in the practice of law; operating or managing a law firm or law practice; and participating in bar association, business or social activities in connection with the practice of law.” Adoption of policy on the terms and conditions of lawyer employment is not foreign to the House of Delegates.

New Rule 8.4(g) includes the statement, “This Rule does not limit the ability of a lawyer to accept, decline, or withdraw from a representation in accordance with Rule 1.16.” ABA Model Rule of Professional Conduct 1.16(a) explains that a lawyer shall not represent a client or must withdraw from representing a client if “the representation will result in violation of the rules of professional conduct or other law.” Examples of a representation that would violate the Rules of Professional Conduct is representing a client when the lawyer does not have the legal competence to do so (Rule 1.1) and representing a client with whom the lawyer has a conflict of interest under the Rules including Rule 1.7 (current client) and Rule 1.9 (former client).

2. Summary of the Issue that the Resolution Addresses

This Resolution is a reasonable and rational implementation of ABA’s Goal III: to eliminate bias in the justice system. The ABA has adopted anti-discrimination and anti-bias provisions in the black letter of the Model Code of Judicial Conduct and in the black letter of the Criminal Justice Standards for the Prosecution Function and the Defense Function. Twenty-three jurisdictions have already adopted anti-discrimination or anti-harassment provisions in the black letter of their ethics rules. It is time for the Association to now address bias and prejudice squarely in the black letter of the Model Rules of Professional Conduct.

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3. Please Explain How the Proposed Policy Position will address the issue

In the 23 jurisdictions that have adopted a black letter rule that provides it is misconduct for a lawyer to discriminate or harass another, disciplinary agencies have investigated and successfully prosecuted lawyers for discriminatory and harassing behavior.

For example, in 2015 the Iowa Supreme Court disciplined a lawyer for sexually harassing four women clients and one female employee. In Wisconsin, the Supreme Court disciplined a district attorney for texting the victim of domestic abuse writing that he wished the victim was not a client because she was “a cool person to know.” On one day, the lawyer sent 19 text messages asking whether the victim was the “kind of girl who likes secret contact with an older married elected DA . . . the riskier the better.” One day later, the lawyer sent the victim 8 text messages telling the victim that she was pretty and beautiful and that he had a \$350,000 home. The victim reported she felt that if she did not respond, the district attorney would not prosecute the domestic violence complaint.

The Minnesota Supreme Court in 2013 disciplined a lawyer who, while acting as an adjunct professor and supervising law students in a clinic, made unwelcome comments about the student’s appearance; engaged in unwelcome physical contact of a sexual nature with the student; and attempted to convince the student to recant complaints she had made to authorities about him.

The Washington Supreme Court in 2012 disciplined a lawyer, who was representing his wife and her business in dispute with employee who was Canadian. The lawyer sent two ex parte communications to the trial judge asking questions like: are you going to believe an alien or a U.S. citizen? The Indiana Supreme Court in 2005 disciplined a lawyer who represented a husband in an action for dissolution of marriage. Throughout the custody proceedings the lawyer referred to the wife being seen around town in the presence of a “black male” and that such association was placing the children in harm’s way. During a hearing, the lawyer referred to the African-American man as “the black guy” and “the black man.”

Those states are leading while the ABA has not kept pace.

This proposal is a measured response to a need for a revised Model Rule of Professional Conduct that implements the Association’s Goal III – to eliminate bias in the legal profession and the justice system.

4. Summary of Minority Views

As explained in the Report, over the past two years, SCEPR has publicly engaged in a transparent investigation to determine, first whether, and then how, the Model Rules should be amended to reflect the changes in law and practice since 1998.

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In December 2015, SCEPR published a revised draft of a proposal to amend Rule 8.4(g), together with proposed new Comments to Rule 8.4. SCEPR also announced to the Association, including on the House of Delegates listserv, that it would host a Public Hearing at the Midyear Meeting in San Diego in February 2016. Written comments were also invited.

After the comment period closed in March 2016, SCEPR made substantial and significant changes to the Resolution based on minority views submitted. Changes include:

- At the request of the ABA Section of Real Property, Trust and Estate Law, the Resolution now defines discriminate in Comment [3]; it explains that disciplinary counsel may use the substantive law of antidiscrimination and anti-harassment to guide application of paragraph (g) in Comment [3]; and provides additional guidance including a statement that lawyers who charge and collect reasonable fees do so without violating paragraph (g)'s prohibition on discrimination based on socioeconomic status in Comment [5].
- At the request of the ABA Labor and Employment Law Section, this Report now explains that the terms and conditions of employment are included within the scope of "operating or managing a law firm." Labor and Employment Law requested that the proposal include a statement that the Rule be interpreted and implemented in accordance with Title VII case law. This Report explains why the Sponsors rejected this recommendation and the Sponsors' position that legal ethics rules are not dependent upon or limited by statutory or common law claims.
- At the request of the ABA Business Law Section Professional Responsibility Committee, the Resolution defines "conduct related to the practice of law" in Comment [4]; it includes guidance on how lawyers may ethically limit their practice under Model Rule 1.16; and it explains that paragraph (g) does not prohibit conduct to promote diversity.

In response to the language released April 12, 2016, concerns have been expressed to the Sponsors about the following:

- That paragraph (g) should include a mens rea of "knowing." The Report addresses this issue and explains why the Sponsors did not include a mens rea.
- That the Comment should retain the statement, "A trial judge's finding that peremptory challenges were exercised on a discriminatory basis does not alone establish a violation of this rule." This Report addressed this issue and explains why the Sponsors did not want to mix evidentiary law with the professional responsibility rules.
- That current Comment language, "Legitimate advocacy respecting the foregoing factors does not violate paragraph (d)," should be retained. The Report addresses this issue and explains why the Sponsors did retain this sentence, as amended.

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- That social activities in connection with the practice of law should be more clearly defined. The Sponsors concluded that the definition provided in the Comment is sufficient for the variety of activities addressed. The critical common factor of such activities is their relationship to the practice of law.
- That Sponsors delete “operating and managing a law firm” from the scope of the Rule or that the Rule require a prior adjudication of discrimination or harassment by a competent tribunal. The Report addresses this issue and explains why the Sponsors determined that creating two separate spheres of conduct, one inside the law firm and one outside the law firm, was inappropriate.
- Finally, some opponents express the opinion that no black letter rule is necessary.⁴⁵

⁴⁵ Not every concern raised is listed here but we have identified the significant concerns that were expressed.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: June 24, 2016
From: Helen Hierschbiel, CEO/Executive Director
Re: CSF Awards Recommended for Payment

Action Requested

The Client Security Fund Committee recommends reimbursement of \$8,500 to Kenneth Middleton for his loss resulting from the conduct of attorney Susan Gerber.

Discussion

Background

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 in early 2014, and by March 2014 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 Ms. 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.

Kenneth Middleton

On April 26, 2011, Mr. Middleton was sentenced to 12 years for several convictions in connection with a motor vehicle accident: Manslaughter I, Assault II, Reckless Driving, DUII, and

three counts of Reckless Endangering. Mr. Middleton hired Ms. Gerber in March of 2013. His mother, Donna Violette paid her a flat fee in the amount of \$13,000 to prepare a petition for post-conviction relief (PCR). Ms. Gerber did not provide a retainer or fee agreement, although she confirmed receipt of payment in a letter dated March 20, 2013 to Ms. Violette.

Mr. Middleton lost contact with Ms. Gerber and she stopped returning his phone calls. Ms. Vernon contacted him in October of 2014 and filed a petition in November or December 2015. Dissatisfied with Ms. Vernon's representation, Mr. Middleton hired attorney Larry Rolof in December 2015 to handle his PCR case for a flat fee of \$7500.00.

According to Ms. Gerber's records, she spent approximately 42.4 hours on the case; however, other evidence suggests those records may overstate her time. Much of the work provided no value to the client and Ms. Gerber never completed or filed the petition for PCR.

Analysis

In order to be eligible for reimbursement, the loss must be caused by the lawyer's dishonest conduct. Generally, a lawyer's failure to perform or complete a legal engagement is not, in itself, evidence of dishonest conduct. CSF Rule 2.2.2. Further, reimbursement of a legal fee will be allowed only if the services the lawyer actually provided were minimal or insignificant. CSF Rule 2.2.3. However, a claim may be approved if there are unusual circumstances that justify payment despite noncompliance with one or more rule. The Committee found such circumstances in this case.

Ms. Gerber's fee agreement stated the fee was earned upon receipt and non-refundable, and allowed her to put the fee directly into her general account; however, the agreement also provided for reimbursement of the unearned fee if the object of the representation was not completed. In this case, it was not. In fact, the fee charged was substantially higher than the amount of work she provided. No petition for post-conviction relief was ever filed. Moreover, Ms. Gerber told Mr. Middleton that she had experts lined up, but never actually spoke with them.

The Committee credited Ms. Gerber for 20 hours of work at \$150 per hour, which is the same rate used in prior claims against Ms. Gerber. Ms. Gerber also hired an investigator whom she paid \$1500. Thus, the Committee concluded that the value of services totals \$3,000 and the value of the investigator \$1500, for a total of \$4,500. Deducting that amount from the \$13,000 paid, the Committee found a total unearned fee of \$8500.00, and recommends payment of that amount.

In addition, the Committee recommends waiving the requirement that Mr. Middleton demand repayment. Ms. Gerber was essentially unavailable after she became inactive and being incarcerated leaves Mr. Middleton with limited ability to seek restitution directly from Ms. Gerber.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: June 24, 2016
From: Helen Hierschbiel, Executive Director
Re: CSF Claim No. 2016-01 ECKREM (Smith) 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

Summary of Facts

In June 2015, Sheri Smith retained John Eckrem to represent her in defense of domestic violence charges. She paid him \$3,000 and signed a written fee agreement. Although Ms. Smith did not submit a copy of the fee agreement, fee agreements provided by other Eckrem clients state that the fees are earned upon receipt, and it is likely that Claimant's agreement with Eckrem was the same.

Claimant contends that Eckrem knew he was going to be suspended at the time he took her money. The evidence does not support this. At the time Eckrem agreed to represent Ms. Smith, he was on probation with the bar for a prior disciplinary matter. His probation was revoked on October 21, 2015 for failure to submit the quarterly compliance report that was due on July 1, 2015. Mr. Eckrem was given notice of the bar's intent to pursue revocation when the bar's motion for order to show cause was filed on August 17, 2015. An executed Order to Show Cause was sent to Eckrem on August 21 and he acknowledged receipt on August 23, 2015. Eckrem was ultimately suspended for 60 days effective November 19, 2015.

Claimant also contends that Eckrem did nothing for her, but at the same time admits that Eckrem attended at least two court appearances on her behalf and asked for several continuances on the case. Delaying the proceedings appeared to be a strategy, because the criminal case was ultimately dismissed in early 2016 without further action.

CSF Committee Analysis

This is one of approximately one dozen claims for CSF reimbursement stemming from John Eckrem's representation of clients and his failure to return unearned fees. In order for a loss to be eligible for reimbursement, it must result from a lawyer's dishonest conduct. CSF Rule 2.2.1. The CSF Committee has found dishonest conduct in several of the cases handled by Eckrem and approved those claims. The Client Security Fund Committee denied this claim because it found no evidence of dishonesty by Eckrem; instead it determined that this was a dispute over the value of the services provided by Eckrem. Oregon Supreme Court case law does not automatically equate the failure to return unearned fees with dishonesty.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: June 24, 2016
From: Helen Hierschbiel, Executive Director
Re: CSF Claim No. 2015-19 WIESELMAN (Lowry) 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

Summary of Facts

In the early 00's, Shaun D. Lowry ("Claimant") worked as a software salesman for Omniture. While employed at Omniture, Claimant negotiated a large deal, for which he felt Omniture owed him a commission of \$4.5 million. Omniture disagreed about the amount of the commission. Sometime in 2004, Claimant hired Matthew Samwick to represent him in litigation against Omniture (*Omniture I*).

In late 2004, the bar began prosecution of Samwick for mishandling of client funds. In May 2008, Samwick tendered a Form B resignation and sought to sell his law firm. Sometime in late 2008, Jacob Wieselmann entered into a contract with Samwick for the purchase of Samwick's firm ("Firm.") Samwick continued to be employed by the Firm as a paralegal and to exercise control over the Firm's IOLTA account.

Wieselmann took over the *Omniture I* litigation and settled the case on December 31, 2008. Under the terms of the settlement, Omniture was to pay Claimant \$990,000 within ten days. Bank records show this amount was wired into the Firm's IOLTA account at Northwest Bank on January 14, 2009. All parties agree that none of the \$990,000 was disbursed to claimant. What exactly happened to the funds, however, is hotly contested and unclear.

In March 2009, Omniture filed a declaratory action against Claimant (*Omniture II*). Claimant signed a new engagement letter with Wieselmann the following month, agreeing to pay Wieselmann on an hourly basis for representation in the *Omniture II* matter. Claimant agreed to leave the Omniture settlement funds in trust to cover the litigation fees. Omniture eventually dismissed the suit in December 2012. Thereafter, in early 2013, Claimant began asking for an accounting and refund of his retainer. He received neither.

Wieselmann says that at the time the *Omniture I* case settled, Claimant owed the Firm \$444,841.62, which was paid to the Firm from the settlement proceeds. The *Omniture I* settlement agreement also recited that \$400,000 of the settlement was attributable to attorney's fees and costs. Further, Wieselmann alleges that Claimant agreed to retain the Firm on the *Omniture II* matter for a flat fee of \$400,000.

Claimant disputes these allegations. In addition, bank records and the engagement letter don't support Wieselmann's version of events. On the other hand, Claimant himself signed a declaration on January 26, 2010—which he submitted during his divorce proceedings—that is completely in line with Wieselmann's story.¹ That said, even assuming that Wieselmann's story is accurate, it does not fully account for the \$990,000 settlement funds—approximately \$124,000 remains unaccounted for which Claimant did not receive.

Claimant filed a claim with the Client Security Fund for the full \$990,000. Claimant also filed a civil suit against Wieselmann and the Firm on June 4, 2015, alleging legal malpractice, fraud, and negligence. On January 22, 2016, Wieselmann entered into an Agreement for Stipulation to Judgment (“Settlement Agreement”) that includes a stipulated judgment (“Judgment”) against Wieselmann and the Firm. Notably, the Judgment specifically provides for judgment only on the malpractice and negligence actions; the fraud claim is dismissed with prejudice.

In addition to the Settlement Agreement and Judgment, the parties executed an Assignment of Claims and Covenant Not to Execute (“Assignment”). Two provisions in the Assignment are worth noting. First, to the extent that Wieselmann or the Firm have any claims against the PLF, such claims are assigned to Claimant. Second, Claimant agrees not to execute on or otherwise enforce the Judgment against Wieselmann or the Firm. The covenant not to execute is not limited in duration.

Finally, the Settlement Agreement includes a declaration by Wieselmann stating that he never knowingly converted or directed others to convert Claimant's funds. The clear implication is that Samwick and the legal assistant were responsible for any misappropriation. Interestingly, although Wieselmann had filed a third-party claim (for contribution and indemnity) against Samwick, that claim was not assigned to Claimant and was instead dismissed with prejudice. Claimant and Samwick did enter into a separate Settlement Agreement, Mutual Release, and Covenant Not to Sue (the “Samwick Agreement”). The Samwick Agreement contains the following releases: (1) both parties mutually release any and all claims arising from or related to the *Lowry v. Wieselmann* litigation, and (2) Claimant covenants not to sue Samwick for “any act, omission, or claim whatsoever, known or unknown, that exists as of the date of this Agreement.” The agreement further calls for Samwick to pay Claimant \$25,000, which he has done.

CSF Committee Analysis

The CSF investigator noted, and the Committee agreed, that settlement of the civil suit was notable for several reasons. First, without any evidentiary hearings or dispositive motions,

¹Wieselmann has argued that this declaration was a strategy for Claimant to hide money from his wife during the divorce, although at the same time Wieselmann relies heavily on the validity of the Declaration (in fact, he admits that the Declaration is the only written memorialization of the alleged flat-fee agreement for *Omniture II*). Claimant insists that he fully disclosed the settlement funds to his ex-wife, and that the Declaration was not an attempt to hide assets. Claimant's explanation of the declaration is essentially that he signed it based on the trust he placed in his counsel.

it is unlikely the bar could establish the facts with any certainty. Second, the Judgment against Wieselmann is for malpractice and negligence, not for dishonest conduct. In fact, in his Declaration attached to the Settlement Agreement Wieselmann continues to assert that he never knowingly converted Claimant's funds.² Third, Claimant has effectively extinguished all of the rights that he could have assigned to the OSB. CSF Rule 5.1.1 states that in exchange for receiving an award, a claimant must assign to the OSB any rights he holds against the lawyer and "the person or entity who may be liable for the claimant's loss." Although Rule 5.1.1 does not require claimant to give any value in exchange for an award, it is notable that Claimant is seeking compensation from CSF and PLF after having helped to insulate the two most likely wrongdoers from liability.

In order for a loss to be eligible for reimbursement, it must result from a lawyer's dishonest conduct. CSF Rule 2.2.1. In the end, the CSF Committee simply was unable to conclude with any certainty that Claimant's loss resulted from Wieselmann's dishonesty. In addition, the CSF Committee was mindful of the fact that awards from the Fund are discretionary. CSF Rule 4.12. Given the unresolved disputed facts and the settlement agreements between Claimant and Wieselmann and Samwick, the CSF Committee did not believe an award from the Fund was appropriate.

² The bar initiated formal disciplinary proceedings against Wieselmann in February 2016. The formal complaint includes a charge of dishonesty related to the alleged misappropriation of Claimant's funds. However, Wieselmann submitted a Form B resignation shortly thereafter, which was accepted by the Court on March 24, 2016. Consequently, the disciplinary proceedings also did not result in any finding of dishonesty by Wieselmann.

FORMAL OPINION NO. 2005-73**Information aAbout Legal Services:
Acceptance of Referrals****Facts:**

Lawyer is social friends with X, is known to Y as a competent professional, and has a lawyer-client relationship with Z. Lawyer is aware that, from time to time, X, Y, and Z may refer potential clients to Lawyer. Although Lawyer has thanked X, Y, and Z for doing so, Lawyer has not compensated X, Y, or Z for their referrals and has not affirmatively requested that future referrals be made. Lawyer would like to send a small gift to X, Y, and Z after learning about the referrals as a token of appreciation.

Question:

1. May Lawyer accept future referrals from X, Y, and Z?
- 1.2. May Lawyer send a small gift to X, Y, and Z as a token of appreciation?

Conclusion:

1. Yes.
- 1.2. Yes, qualified.

Discussion:

Oregon RPC 7.2 provides, in pertinent part:

- (a) ~~A lawyer may pay the cost of advertisements permitted by these rules and may hire employees or independent contractors to assist as consultants or advisors in marketing a lawyer's or law firm's services. A lawyer shall not otherwise compensate or give anything of value to a person or organization to promote, recommend or secure employment by a client, or as a reward for having made a recommendation resulting in employment by a client, except as permitted by paragraph (c) or Rule 1.17. Subject to the requirements of Rules 7.1 and 7.3, a lawyer may advertise services through written, recorded or electronic communication, including public media.~~

Formal Opinion No 2005-73

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

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

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

~~_____ (3) pay for a law practice in accordance with Rule 1.17.~~

On the facts as presented, there does not appear to be a violation of any Oregon RPC by accepting referrals, so. ~~There is no reason~~ Lawyer may ~~not~~ continue to accept the referrals. *See also* OSB Formal Ethics Op No 2005-35 (rev 2015).

Lawyer also may provide de minimis gifts in the ordinary course of social or business hospitality as long as the proposed gifts are not payments in exchange for X, Y, or Z recommending the Lawyer's services.¹ Lawyer should therefore be careful to not run afoul of the rule by providing something of value *in exchange for* the referral. Where the intent is not compensation for the referral, it does not violate the rule.

Approved by Board of Governors, August 2005.

COMMENT: For additional information on this general topic and other related subjects, see *The Ethical Oregon Lawyer* § 2.6-4 (limitations on obtaining employment

¹ See, e.g., Arizona Ethics Op 02-01; Phil. Ethics Op. 93-26. Lawyer should be advised that many other states prohibit an attorney from giving any gift to a person in exchange for a client referral, no matter how de minimis. See, e.g., Conn. Informal Op. 92-24 (noting lawyer could not discount services as compensation for clients for referring another client); Rhode Island Op. 89-05 (5/29/89) (noting gift of less than \$100 ran afoul of the rule against giving anything of value for recommending a lawyer's services); Alabama Formal Op. 1999-01 (prohibiting attorney from paying another attorney's advertising expenses in exchange for receiving referrals).

through the recommendation of a third party), § 2.6-5 (lawyer-referral services, prepaid legal-services plans, and legal-services organizations)§ 2.27-2.28, § 13.2-1(d) (group legal plans)12.8 (Oregon CLE 2003 OSB Legal Pubs 2015); Restatement (Third) of the Law Governing Lawyers § 47 (2000) (supplemented periodically); and ABA Model RPC Rule 7.2.

DRAFT

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: June 24, 2016
From: MCLE Committee
Re: CLE Credit for Service - Executive Branch Statewide Elective Office

Action Recommended

Review and approve proposed amendments to rules and regulations exempting Executive Branch statewide elected officials from the general CLE credit requirement during term of office.

Background

The MCLE Committee recommends amending Rule 5.2 and Regulation 5.100 to exempt members who serve in certain statewide public offices in the Executive Branch from MCLE credit requirements other than those credits required in Rules 3.2(b) and (c) -- ethics, access to justice, child abuse and elder abuse reporting. This exemption would apply to the following offices in Oregon: Governor, Secretary of State, Commissioner of the Bureau of Labor and Industries, Attorney General and Treasurer.

Applying the exemption to those whose term in office includes all or part of a reporting period will prevent an unintended consequence of leaving an official with an abbreviated amount of time to complete a three-year credit requirement after a term in office.

MCLE Committee members recognize that statewide elected officials in the Executive Branch provide a tremendous service to our state, and are closely engaged in the legislative process and administration of law. Therefore, the Committee recommends amending Rule 5.2 and Regulation 5.100 as follows:

MCLE Rule 5.2 Other CLE Activities

(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) Service in Executive Branch Statewide Elected Office. Members serving as statewide elected officials in Oregon's Executive Branch, whose term in office includes all or part of a reporting period, are exempt from all MCLE requirements except those credits required in Rules 3.2(b) and (c).

(f) (g) 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)~~ (h) Jury instructions Committee Service. 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)~~ (i) 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.

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

(a) 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 serving as Governor, Secretary of State, Commissioner of the Bureau of Labor and Industries, Attorney General and Treasurer during all or part of a reporting period are required to complete the minimum credit requirements in the following categories – ethics, access to justice, child abuse and elder abuse reporting – during the reporting periods set forth in MCLE Regulation 3.300(d). These members are exempt from any other credit requirements during the reporting period in which they serve.

~~(e)~~ (d) 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)~~ (e) 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.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: June 24, 2016
From: Helen Hierschbiel, CEO/Executive Director
Re: Sponsorship of Access to Justice Conference

Action Requested

Approve sponsorship of the Access to Justice Conference up to \$5,000.

Discussion

The Oregon Supreme Court Chief Justice Balmer has recommended that Oregon hold an Access to Justice Conference in the fall of 2016 as a means for the courts, the bar, legal aid providers, and others working on access to justice issues, to share information, evaluate efforts, and generate new ideas. A small group of representatives from the Court, the Campaign for Equal Justice, Legal Aid, and the OSB have met several times this year to discuss the details and planning of such a conference. Mercy Corps has offered to donate its space in downtown Portland for a conference on Thursday, September 8. We anticipate that other expenses (food, bringing in national speakers, etc.) could be as much as \$10,000. The Oregon Law Foundation has committed to providing \$2,500 toward those costs, and we anticipate the Court will contribute funds as well. The CEJ will provide staff support for planning the logistics of the conference. The group is now turning to the bar for additional financial support.

At its April 22, 2016 meeting, the Board of Governors approved amendments to OSB Bylaw 7.203 as follows:

The bar does not generally accept proposals for grants, contributions or sponsorships to non-profit or charitable organizations, including law-related organizations. The bar may provide financial support to the Classroom Law Project (CLP) and the Campaign for Equal Justice (CEJ) or any other organization that is germane to the Bar's purposes as set forth in Section 12.1 of these Bylaws. The bar's annual budget shall include an amount dedicated to providing such financial support, although that amount may change from year to year based upon the overall financial needs of the bar. This budgeted amount shall be in addition to any amounts budgeted to allow bar leadership and staff attendance at local bar and community dinners and similar events.

The Board has not yet established a budget or a policy for implementation of this bylaw. Therefore, I am bringing this request for sponsorship to the Board, rather than making the decision on my own. Sponsoring an Access to Justice Conference is clearly germane to the purposes for which the bar exists. OSB Bylaw 12.1 provides that bar activities be focused on, among other things, "improving the functioning of the courts... [and] making legal services available to society..." Therefore, I recommend that the Board approve sponsorship of the conference up to \$5,000.



Dear Anna,

Thank you so much for creating
a new, accessible website for our section.
We love the website and are so grateful
that we could work with you on this
project. Thanks again for all of your
work.

Sincerely,
The Disability Law Section
Executive Committee



RL
Dora
Katie
Maura
Piss
Bill



(

STUNZ, FONDA, KIYUNA, & HORTON, LLP
ATTORNEYS AT LAW

GENE STUNZ (1959-1992)
STEPHEN B. FONDA (1966-2006)
RETIRED

GARY K. KIYUNA
MICHAEL W. HORTON*

*ADMITTED TO PRACTICE
IN IDAHO AND OREGON

106 MAIN STREET
P.O. Box 1565
NYSSA, OREGON 97913

TEL (541)372-2268
FAX 5413722848

July 12, 2016

Helen Hierschbiel
Oregon State Bar
16037 SW Upper Boones Ferry Road
Tiggard, OR 97224

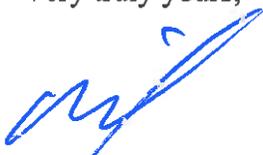
RE: Visit to Malheur County

Dear Helen:

I wanted to personally thank you for visiting with our local bar association. I know it takes a lot of time and effort to get this far east. The information that you and Ray provided was both timely and informative. I appreciate your willingness to listen to our tales of woe.

It was a pleasure meeting you.

Very truly yours,



Michael W. Horton

MWH/kg

RECEIVED

JUL 18 2016

**Oregon State Bar
Executive Director**