

**Oregon State Bar**  
**Meeting of the Board of Governors**  
April 14, 2017  
Oregon State Bar Center, Tigard, OR  
**Open Session Agenda**

*The mission of the OSB is to serve justice by promoting respect for the rule of law, improving the quality of legal services, and increasing access to justice.*

*The Open Session Meeting of the Oregon State Bar Board of Governors will begin at 11:45am on April 14, 2017. Items on the agenda will not necessarily be discussed in the order as shown.*

**Friday, April 14, 2017, 11:45am**

**1. Call to Order**

**2. Combined Meeting with PLF Board of Directors**

- A. Futures Task Force Update [Ms. Hirschbiel and Ms. Hollister] Inform
- B. Paraprofessional Licensing Review [Kelly Harpster] Inform

**3. BOG Committees, Special Committees, Task Forces and Study Groups**

- A. Appellate Screening Special Committee [Mr. Ramfjord]
- B. Board Development Committee [Mr. Ramfjord]
  - 1. Appointments to Bar Groups and Affiliated Boards Action Handout
  - 2. BPSST Policy Committee Recommendation Action Handout
- C. Budget & Finance Committee [Mr. Chaney]
  - 1. Update Inform
- D. Policy & Governance [Ms. Nordyke]
  - 1. PLF Bylaw Revision Action Exhibit
  - 2. Joint Committee Update re: CLE Co-Sponsorship Inform
- E. Public Affairs Committee [Ms. Rastetter]
  - 1. Legislative Update Inform
  - 2. 2017 Day at the Capitol - May 23<sup>rd</sup>
- F. Discipline System Review Update [Ms. Evans] Inform

**4. Professional Liability Fund [Ms. Bernick]**

- A. General Update Inform
- B. Excess Renewal Update Inform Exhibit
- C. February 28, 2017 Draft Financial Update Inform Exhibit

## 5. OSB Committees, Sections, Councils and Divisions

- A. MCLE Committee
  - 1. MCLE Rules 3.400(a) and 5.300(a) Update Action Exhibit
  - 2. Credit for Serving on Council on Court Procedures Action Exhibit
- B. Oregon New Lawyers Division Report [Mr. Andries] Inform Exhibit
- C. Legal Services Program [Mr. Penn]
  - 1. Release of Unclaimed Funds Action Exhibit

## 6. Report of Officers & Executive Staff

- A. President's Report [Mr. Levelle] Inform
- B. President-elect's Report [Ms. Nordyke] Inform
- C. Executive Director's Report: Program Evaluations [Ms. Hirschbiel] Inform Exhibit
- D. Director of Regulatory Services [Ms. Evans] Inform Exhibit
- E. Director of Diversity & Inclusion [Mr. Puente] Inform
- F. MBA Liaison Report [Ms. Reeves and Mr. Ramfjord] Inform

## 7. Consent Agenda

- A. Client Security Fund Committee [Ms. Hirschbiel]
  - 1. Request for Review
    - a) DARAEE (Claus) 2016-43 Action Exhibit
    - b) STEINMAN (Baldrige) 2016-45 Action Exhibit
  - 2. CSF Financial Reports and Claims Paid Inform Exhibit
- B. Approve Minutes of Prior BOG Meetings
  - 1. Regular Session February 10, 2017 Action Exhibit
  - 2. Special Open Session March 17, 2017 Action Exhibit

## 8. 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

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

- A. Correspondence
- B. Articles of Interest

# OSB Board of Governors

## STATUTORY CHARGE

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.”<sup>1</sup> The Oregon State Bar (OSB) is also responsible, as an instrumentality of the Judicial Department of the State of Oregon, for the regulation of the practice of law.<sup>2</sup> As a unified bar, the OSB may use mandatory member fees only for activities that are germane to the purposes for which the bar was established.<sup>3</sup>

## MISISON

The mission of the OSB 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.

## STRATEGIC FUNCTIONS

The BOG has translated the statutory charge and mission into five core functions that provide overall direction for OSB programs and activities:

### FUNCTION #1 – REGULATORY BODY

**GOAL:** Protect the public by ensuring the competence and integrity of lawyers.

### FUNCTION #2 – PARTNER WITH THE JUDICIAL SYSTEM

**GOAL:** Support and protect the quality and integrity of the judicial system.

### FUNCTION #3 – PROFESSIONAL ORGANIZATION

**GOAL:** Promote professional excellence of bar members.

### FUNCTION #4 – ADVOCATES FOR DIVERSITY, EQUITY AND INCLUSION

**GOAL:** Advance diversity, equity and inclusion within the legal community and the provision of legal services

### FUNCTION #5 – CHAMPIONS FOR ACCESS TO JUSTICE

**GOAL:** Foster public understanding of and access to legal information, legal services, and the justice system.

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<sup>1</sup> 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."

<sup>2</sup> The OSB's responsibilities in this area are clearly laid out in the Bar Act, ORS Chapter 9.

<sup>3</sup> In *Keller v. State Bar of California*, 499 US 1,111 SCt 2228 (1990), the US Supreme Court held that an integrated bar's use of compulsory dues to finance political and ideological activities violates the 1st Amendment rights of dissenting members when such expenditures are not "necessarily or reasonably incurred" for the purpose of regulating the legal profession or improving the quality of legal services.

## **FIDUCIARY ROLE**

In order to advance the mission and achieve its goals, the BOG must ensure that the OSB is effectively governed and managed, and that it has adequate resources to maintain the desired level of programs and activities.

## **AREAS OF FOCUS FOR 2017**

1. Provide direction to and consider recommendations of Futures Task Force.
2. Develop and adopt OSB Diversity Action Plan.
3. Continue review of sections and make policy decisions about how to proceed on the following issues:
  - a. Section Fund Balances
  - b. Number of Sections
  - c. CLE co-sponsorship policy
4. Address House of Delegates quorum issues.
5. Review new lawyer programs (NLMP, ONLD, other?) for adherence to mission, value to members.

# OREGON STATE BAR

## Policy & Governance Committee Agenda

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**Meeting Date:** April 14, 2017  
**From:** Amber Hollister, General Counsel  
**Re:** BOG Bylaws regarding the Professional Liability Fund

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### **Action Recommended**

Recommend that the Board of Governors adopt the attached amendments to Article 23 of the OSB Bylaws relating to the Professional Liability Fund.

### **Background**

The Board has not reviewed the Article 23 of the OSB Bylaws for many years, and some housekeeping amendments are necessary to ensure that the bylaws reflect current practice, and that the PLF and OSB Bylaws are consistent with each other. Bar staff worked closely with PLF staff to draft the proposed amendments. The proposed amendments (attached in redline) are summarized as follows:

#### **1. Require Annual Report to Membership Instead of HOD**

A proposed amendment to Section 23.4 removes the requirement that the PLF present an annual report to the HOD, a practice that has not been in place since 1995. Instead of an annual report to the HOD, the amended bylaw would require an annual report to the membership, which is current practice.

#### **2. Amend Requirement that President-Elect Serve as PLF Board Liaison**

A proposed amendment to Section 23.5 would provide the Bar President greater flexibility in appointing members of the Board to serve as PLF liaisons (instead of requiring one of the liaisons to be President-elect). This amendment will allow the President to appoint a member who has an interest in the liaison role and does not have a conflict of interest. Finally, this amendment will allow the PLF CEO or her designee to report to the Board instead of the liaison, which is common practice.

#### **3. PLF Reports to Board**

A proposed amendment to Section 23.501 moves the PLF rate reporting date from September to October 1, to conform to the actual PLF rate setting calendar, and deletes the requirement that the Board approve excess assessment rates (as excess coverage is voluntary). The proposal would also remove reference to a report on PLF closed claims

(as these claims are included in statistics but it is not practice to release any detail about individual claims).

A proposed amendment to Section 23.504 shifts the requirement that the PLF make an Annual Report to the Board from April to May of each year, to conform to practice. It also deletes the requirement that a predecessor of the OAAP and Practice Management Program (the Personal and Practice Management Committee) gives a separate report to the Board, as that has not been made for some time.

#### **4. Amend Conflicts of Interest Provisions to be Equivalent of Government Ethics Requirements**

A proposed amendment to Subsection 23.503 removes the requirement that upon undertaking the representation of a plaintiff or the PLF, a BOG member must give written notice to the ED/CEO. This separate notice is not required by the Government Ethics Law's conflicts of interest provisions<sup>i</sup>, and the notice has not been given consistently by members.

#### **5. Delete Special Assessment Appeals Process**

The proposed amendment would delete Subsection 23.601, Appeals by Members in its entirety. This section is no longer required, because members were given the right to appeal the imposition of a Special Underwriting Assessment, which no longer exists (it was discontinued approximately 4 years ago).

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<sup>i</sup> 244.120 Methods of handling conflicts; Legislative Assembly; judges; appointed officials; other elected officials or members of boards. \*\*\*

(2) An elected public official, other than a member of the Legislative Assembly, or an appointed public official serving on a board or commission, shall:

(a) When met with a potential conflict of interest, announce publicly the nature of the potential conflict prior to taking any action thereon in the capacity of a public official; or

(b) When met with an actual conflict of interest, announce publicly the nature of the actual conflict and:

(A) Except as provided in subparagraph (B) of this paragraph, refrain from participating as a public official in any discussion or debate on the issue out of which the actual conflict arises or from voting on the issue.

(B) If any public official's vote is necessary to meet a requirement of a minimum number of votes to take official action, be eligible to vote, but not to participate as a public official in any discussion or debate on the issue out of which the actual conflict arises.

(3) Nothing in subsection (1) or (2) of this section requires any public official to announce a conflict of interest more than once on the occasion which the matter out of which the conflict arises is discussed or debated.

(4) Nothing in this section authorizes a public official to vote if the official is otherwise prohibited from doing so.

## **Article 23 Professional Liability Fund**

### **Section 23.1 Board of Directors**

The Professional Liability Fund ("PLF") will conduct its business through a Board of Directors appointed by the Board of Governors. The PLF Board consists of nine members, seven of which must be active, resident members of the Bar and two of which must be non-lawyers. The terms of office of PLF Board members is five years, as staggered by the Board of Governors, with the term of office of each board member beginning on January 1 of each year. The Board of Governors may remove any member of the PLF Board without cause and must fill the positions that become vacant as expeditiously as possible to ensure continuity in the governance of the PLF. Persons appointed to fill vacancies on the Board of Directors serve the unexpired term of the member who is replaced. If a replacement appointment to an unexpired term is for two (2) years or less, the Board of Governors may thereafter reappoint that person to a term of up to five years. In considering the length of the reappointment, the Board will take into account the experience level of the PLF Board of Directors and the effect on the rotation cycle of the Board of Governors.

### **Section 23.2 Authority**

The Board of Governors vests in the Board of Directors of the PLF the authority that is necessary and convenient to carry out the provisions of ORS 9.080 relative to the requirement that all active members of the Oregon State Bar in the private practice of law in Oregon carry professional liability coverage, the establishment of the terms of that coverage and the defense and payment of claims under that coverage. The Board of Directors of the PLF must recommend to the Board of Governors appropriate requirements for PLF coverage and amounts of money that active members in the private practice of law will be assessed for participation in the PLF.

### **Section 23.3 Operation**

Subject to the authority of the Board of Governors to take the action that is authorized by ORS 9.080 and its authority to amend these policies to provide otherwise, the Board of Directors of the PLF has sole and exclusive authority and responsibility to operate and manage all aspects of the PLF. The Board of Directors of the PLF has authority to adopt its own bylaws and policies to assist it in conducting the business of the PLF. No PLF bylaw, coverage plan, or assessment, or amendment thereto, can take effect until approved by the Board of Governors. The policies of the PLF must be consistent with the Bar's Bylaws regarding the PLF and will be effective on approval by the PLF Board of Directors, subject to review and ratification by the Board of Governors within 60 days after notice of the policies has been given to the Board of Governors.

### **Section 23.4 Reports**

The PLF must present an annual report to the bar membership, ~~at the annual meeting of the House of Delegates and must report periodically to the membership.~~

### **Section 23.5 Relationship with the Board of Governors**

#### ***Subsection 23.500 Liaisons***

(a) It is the goal of the Board of Governors that there be free, open, and informal communication between the Board of Governors and PLF Board of Directors. Constructive communication among Board of Governors members, bar management, PLF Board of

Directors members and PLF management is encouraged; however, in such communication it is recognized that the authority to manage the PLF is vested in the PLF Board of Directors.

(b) Each year the President of the Bar appoints ~~the President elect of the Bar, an additional two~~ lawyer members of the Board, and one public member of the Board to serve as liaisons with the PLF Board of Directors. ~~The additional lawyer member of the Board serves at least two years as liaison and will be replaced by a new lawyer member of the Board who will serve at least two years.~~

(c) At least one of the Board's PLF liaisons must be present at each meeting of the PLF Board of Directors and each attending Board of Governors PLF liaison must make every effort to attend those meetings in person rather than by telephone.

(d) ~~The PLF CEO or the CEO's designee~~ ~~One or more of the Board's PLF liaisons~~ must make a report at each meeting of the Board of Governors regarding the significant activities of the PLF and any matters regarding the PLF requiring action by or the attention of the Board of Governors.

(e) The Board of Governors' PLF liaisons are responsible for keeping the Board advised of the activities of the PLF to ensure good communications between the Board of Governors and the PLF Board of Directors and to ensure that the Board is fully informed of the background and rationale for all PLF bylaw, policy, coverage plan, and assessment recommendations to it. The Board's PLF liaisons must not participate in the consideration of any specific PLF claim or other confidential PLF matter except as provided in PLF Policy 4.250(D) (Bar and/or Board of Governors is/are named parties in an action).

#### **Subsection 23.501 Reports**

The PLF must regularly provide to the BOG the following:

(a) All financial statements when completed;

(b) All minutes of meetings of the Board of Directors of the PLF or committees of the Board of Directors, excepting the parts that are made confidential by Oregon Revised Statutes;

(c) All reports of investment performance and changes in investments;

(d) All proposed changes in the primary and excess coverage plans with an explanation of the reasons for and effects of the changes;

(e) On or before ~~September-October~~ 1 of each year, the proposed assessments for primary ~~and excess~~ coverage along with the actuarial reports and the information described in Subsection 23.600 of the Bar's Bylaws to enable the Board of Governors to understand and evaluate the proposed assessments;

~~(f) A report generally describing the previous year's excess enrollment, including total firms enrolled, total lawyers and gross premiums from the excess program.~~

~~(f) All closed claim reports prepared in a manner consistent with the confidentiality requirements of ORS 9.080(2)(a);~~

(g) All projections, forecasts, prospective financial statements and the like prepared by or for the PLF;

(h) Any other information that the Board of Governors may request to assist it in discharging its responsibility to the membership of the Bar.

#### **Subsection 23.502 Release of Information**

All requests by the Board for confidential claim file information from the Professional Liability Fund must be directed by the President of the Board of Governors to the Chair of

the PLF Board of Directors. No such material or information will be released by the Board of Governors without first receiving the approval for release from the Chair of the PLF Board of Directors. The Board of Governors must coordinate and consult with the Chair of the PLF Board of Directors before releasing public statements regarding the PLF and its operations.

***Subsection 23.503 BOG Members Participating in PLF Claims***

A member of the Board of Governors who is representing either the plaintiff or the PLF in a PLF-covered claim shall not participate in any discussion of a PLF-related matter that comes before the Board of Governors. ~~Upon undertaking the representation, the Board of Governors member shall inform the Executive Director in writing as soon as practicable.~~ During the course of the representation, at any time that a PLF-related matter comes before the Board of Governors, the Board of Governors members shall announce the fact of the representation and recuse himself or herself from discussing or otherwise participating in the matter. The minutes of Board of Governors meetings shall reflect the announcement and the recusal.

***Subsection 23.504 Annual Meeting***

The Board of Governors will invite the PLF Board of Directors and the PLF management to meet annually with the Board of Governors to: Discuss the results of the business of the PLF for the preceding calendar year; discuss the PLF's long-range plans and goals; generally inform the Board of Governors of the condition of the PLF and/or discuss matters of common interest to the Board of Governors and the PLF. ~~The meeting must include a report by the Personal and Practice Management Committee of the PLF pursuant to PLF Policy 6.150(C).~~ This meeting must occur as soon as practicable after completion of the year-end financial reports of the PLF, or by ~~April~~ May 1st of each year, whichever is earlier.

***Subsection 23.505 Audit***

The Board of Governors may cause a special audit of the performance and financial statement of the PLF in addition to the statutory audit. Special audits are at the expense of the general membership of the Bar.

***Subsection 23.506 Location of Office***

The physical location of the PLF will be determined by the Board of Governors on recommendation of the PLF Board of Directors.

***Subsection 23.507 Staff Responsibility***

The Executive Director of the Bar and the bar staff have no responsibility or authority with respect to the management of the PLF. However, because the PLF is a function of the Bar, the Executive Director and bar staff will cooperate with the Board of Directors of the PLF, its Chief Executive Officer, and staff in all areas of the PLF's business and activities. Likewise, it is expected that the PLF Chief Executive Officer and staff will cooperate with the Bar, its Executive Director and staff in all areas of the Bar's business and activities. The Executive Director of the Bar will make the PLF aware of all personnel and other policies of the Bar so that there may be uniformity for all bar functions recognizing, however, that the nature of the PLF may justify deviations from such policies in certain circumstances.

**Section 23.6 Assessment**

***Subsection 23.600 Principles***

The Board of Governors recognizes that ~~the assessments~~ for coverage ~~is are~~ derived by the prudent application of actuarial principles, responsible evaluation of past and present

operations and investments of the PLF and judgments about future revenue and losses. Assessments vitally affect the members of the Bar and the public, which must rely on the general availability of a wide range of legal services. The PLF has the responsibility to submit ~~proposals~~ to the Board of Governors ~~its recommended for all recommended assessments for the subsequent year (or any mid-year special assessment)~~ supported by a report evidencing: The actuarial principles and assumptions used in the proposed assessment, the evaluations of the past and current operations and investments of the PLF with respect to their effect on the proposed assessment, the judgments and assumptions employed about future revenue and losses, and all other factors that the PLF believes will or may affect the adequacy and appropriateness of the proposed assessment. The Board of Governors must review the proposed assessment, the PLF's reports, and such other information as may be appropriate. On completion of the review, the Board of Governors must adopt an ~~assessments~~ that it reasonably believes to be actuarially prudent and reasonably believes will provide assurance of continued financial stability of the PLF.

**~~Subsection 23.601 Appeals by Members~~**

~~(a) Review by the Professional Liability Fund Board of Directors~~

~~The PLF Board of Directors must establish and maintain a procedure to permit members to appeal to the PLF Board for relief from any amount claimed by the appealing member to have been improperly assessed against that member. The procedure must assure that:~~

~~(1) All notices of assessments and invoices for assessments to members include language that gives notice to the assessed member of the right to appeal to the PLF, the appeal procedure to be followed, and the time limits to perfect the appeal.~~

~~(2) The PLF Board of Directors' decision on appeal is communicated to the appealing member in writing by certified mail or registered mail with return receipt requested, and that all written notices communicating denial of relief requested on appeal must include the following language or its substantive equivalent:~~

~~"You have the right to request the Board of Governors of the Oregon State Bar to review the action by the PLF Board of Directors in denying the relief requested by your petition. To be entitled to Board of Governors review, a written request for review must be physically received by the Executive Director of the Oregon State Bar within 30 days after the date of this letter. The Executive Director's address is PO Box 231935, Tigard, OR 97281-1935. A request for Board of Governors review constitutes and evidences your consent for the Board of Governors and others designated by the Board to review all pertinent files of the PLF relating to you. Review by the Board of Governors is de novo and on the record. Only the grounds set forth in your petition to the PLF Board of Directors and the written materials that were available to the PLF Board of Directors will be reviewed, unless the Board of Governors, upon its own motion, requests additional materials from the member and from the PLF. The Board of Governors will notify you in writing of its decision and the decision is final. A request for Board of Governors review does not relieve you from paying the assessment, nor does a review pending before the Board of Governors suspend or toll the default date. Please remember that you must pay your total assessment by the default date to avoid the imposition of late payment penalties and suspension proceedings. If an adjustment is necessary as a result of the review, you will receive an appropriate refund together with statutory interest."~~

~~(3) Assure that all steps necessary are taken by the PLF Board of Directors and staff to facilitate the Board of Governors review of the action by the PLF Board of Directors in denying relief requested in the petition.~~

~~(b) Review by the Board of Governors.~~

~~(1) Any member who, after properly and timely filing a petition, is denied requested relief by the PLF Board of Directors has a right to request the Board of Governors to review the action of the PLF Board of Directors in denying the relief requested in that petition. To be entitled to such review, a written request for review must be physically received by the Executive Director of the Oregon State Bar within 30 days after the date of the written notice from the PLF to the member denying the requested relief. Review by the Board of Governors on a timely filed request is de novo and on the record. In making the determination whether to affirm the action of the PLF Board of Directors, only the grounds asserted in the petition and written materials that were available to the PLF Board of Directors will be reviewed, unless the Board of Governors, on its own motion, requests additional materials from the member and from the PLF.~~

~~(2) The President of the Oregon State Bar must appoint a committee of at least three of the members of the Board of Governors, which must meet and review the appropriate materials and make a recommendation to the Board whether to affirm the action of the PLF Board of Directors. The Board of Governors must make a determination and notify the member in writing of its decision, including any adjustment to the assessment. The decision of the Board of Governors is final.~~

~~(3) A request for Board of Governors review does not relieve a member from the obligation to pay the contested assessment, nor does a review pending before the Board of Governors suspend or toll the default date or delay the imposition of late payment penalties or suspension proceedings. If the Board of Governors review results in an adjustment to the assessment requiring a refund to the member, the PLF must pay the member an appropriate refund together with statutory interest thereon.~~



CAROL J. BERNICK  
CHIEF EXECUTIVE OFFICER

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**BOG Meeting Date:** April 14, 2017  
**Memo Date:** March 22, 2017  
**From:** Carol J. Bernick, PLF CEO   
**Re:** 2017 Excess Enrollment Report

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## Action Recommended

No action requested.

## Background

In 2016, the BOG and PLF BOD eliminated the requirement that they approve the PLF Excess base rate. The BOG asked that the PLF report at least annually about the Excess enrollment. The enrollment cycle for the PLF's 2017 Excess program is largely complete. As previously explained, our losses over the last two years were significant. At the same time, our per-attorney premiums were largely under market. Our reinsurers asked that we take steps to improve our financial performance in two ways: 1) increase the per attorney premium across the board and 2) enhance our underwriting for firms doing business investment work (ORS Ch. 59, Oregon securities).

### Enrollment Results

As of March 22, 2017, we have 695 firms (2076 attorneys) enrolled in our Excess program. Ten firms and 17 attorneys purchased Extended Reporting Coverage (ERC). Unlike the Primary program, Excess plans are written for the firm, not the lawyer. Our renewal rate was 91%, slightly lower than we had last year, but consistent with our renewal rates generally over the last five years. This year we sent out a survey to all firms that did not renew to try to determine the reason. We have only received seven responses so far: four said the premiums were too high; two said they did not need excess; and one said they were winding down their practice. Two firms that received the survey said they had meant to renew and promptly submitted their application.

The PLF has three treaties: T1: \$300,000-\$2.7 million; T2: \$3-\$4.7 million; T3: \$10 million. Overall, our total premium increased (for both renewing firms and new firms) by 8.43%. Our per attorney rate increased by 16.47% at T1; 5.3% at T2; and 3.3% at T3. For new firms, the per attorney premium increased 70% at T1 and 40% at T2.

Business Investment Risk (aka Oregon securities - ORS Ch 59)

The PLF's most significant losses over the last five years have been related to claims under ORS Ch 59, which creates liability for lawyers under Oregon's securities statute. My understanding is lawyers' liability under this statute is unique in Oregon and is not a factor in other states.

Because of these losses, our reinsurers asked us to reevaluate how we are underwriting firms engaged in securities work. We have always asked lawyers to identify whether they did "securities" work as part of the application. But what we discovered is that too many lawyers do not understand the risk they are undertaking when doing certain investment work and would regularly deny that they were engaged in securities. Therefore, we have spent a significant part of this year trying to educate lawyers and firm management about what securities encompasses and the accompanying exposure. We are also changing our internal nomenclature from "securities" to "business investment."

This year we hired one of our defense panel members to help us create a Business Law Supplement that firms had to complete if they engaged in certain business work. This allowed us to better identify firms that might have exposure to these risks and evaluate that risk more accurately.

**Oregon State Bar  
Professional Liability Fund  
Financial Statements  
2/28/2017**

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**Oregon State Bar  
Professional Liability Fund  
Combined Primary and Excess Programs  
Statement of Net Position  
2/28/2017**

ASSETS

	<u>THIS YEAR</u>	<u>LAST YEAR</u>
Cash	\$10,800,693.02	\$12,365,050.87
Investments at Fair Value	50,495,059.91	47,751,513.57
Assessment Installment Receivable	9,564,920.20	9,497,586.50
Due from Reinsurers	3,123,374.98	13,825.17
Other Current Assets	78,647.63	173,403.59
Net Fixed Assets	646,544.07	716,606.57
Claim Receivables	70,272.46	23,187.42
Other Long Term Assets	<u>6,100.00</u>	<u>6,550.00</u>
<b>TOTAL ASSETS</b>	<b><u>\$74,785,612.27</u></b>	<b><u>\$70,547,723.69</u></b>

LIABILITIES AND FUND POSITION

	<u>THIS YEAR</u>	<u>LAST YEAR</u>
<b>Liabilities:</b>		
Accounts Payable and Other Current Liabilities	\$79,115.69	\$184,927.80
Due to Reinsurers	\$3,251,991.15	\$4,008,877.08
PERS Pension Liability	2,804,381.04	2,110,907.00
Liability for Compensated Absences	414,472.04	397,427.82
Liability for Indemnity	13,322,343.75	14,630,330.94
Liability for Claim Expense	14,185,338.98	14,931,441.82
Liability for Future ERC Claims	3,100,000.00	3,100,000.00
Liability for Suspense Files	1,600,000.00	1,600,000.00
Liability for Future Claims Administration (AOE)	2,600,000.00	2,400,000.00
Excess Ceding Commission Allocated for Rest of Year	712,645.40	642,393.57
Primary Assessment Allocated for Rest of Year	<u>20,296,955.83</u>	<u>20,443,974.17</u>
<b>Total Liabilities</b>	<b><u>\$62,367,243.88</u></b>	<b><u>\$64,450,280.20</u></b>
<b>Change in Net Position:</b>		
Retained Earnings (Deficit) Beginning of the Year	\$11,055,822.96	\$7,916,263.73
Year to Date Net Income (Loss)	<u>1,362,545.43</u>	<u>(1,818,820.24)</u>
<b>Net Position</b>	<b><u>\$12,418,368.39</u></b>	<b><u>\$6,097,443.49</u></b>
<b>TOTAL LIABILITIES AND FUND POSITION</b>	<b><u>\$74,785,612.27</u></b>	<b><u>\$70,547,723.69</u></b>

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**Oregon State Bar  
Professional Liability Fund  
Primary Program  
Statement of Revenues, Expenses, and Changes in Net Position  
2 Months Ended 2/28/2017**

	YEAR TO DATE <u>ACTUAL</u>	YEAR TO DATE <u>BUDGET</u>	<u>VARIANCE</u>	YEAR TO DATE <u>LAST YEAR</u>	ANNUAL <u>BUDGET</u>
<b><u>REVENUE</u></b>					
Assessments	\$4,005,357.00	\$4,054,166.00	\$48,809.00	\$4,034,565.00	\$24,325,000.00
Installment Service Charge	54,034.17	55,000.00	965.83	54,229.83	330,000.00
Other Income	28,250.00	18,500.00	(9,750.00)	16,700.00	111,000.00
Investment Return	<u>1,453,220.73</u>	<u>291,864.00</u>	<u>(1,161,356.73)</u>	<u>(1,267,499.41)</u>	<u>1,751,183.00</u>
<b>TOTAL REVENUE</b>	<b><u>\$5,540,861.90</u></b>	<b><u>\$4,419,530.00</u></b>	<b><u>(\$1,121,331.90)</u></b>	<b><u>\$2,837,995.42</u></b>	<b><u>\$26,517,183.00</u></b>
<b><u>EXPENSE</u></b>					
<b>Provision For Claims:</b>					
New Claims at Average Cost	\$3,037,500.00			\$3,510,000.00	
Coverage Opinions	12,073.95			20,913.70	
General Expense	1,111.58			6,025.48	
Less Recoveries & Contributions	340.20			(10.44)	
Budget for Claims Expense		<u>\$3,179,166.00</u>			<u>\$19,075,000.00</u>
<b>Total Provision For Claims</b>	<b><u>\$3,051,025.73</u></b>	<b><u>\$3,179,166.00</u></b>	<b><u>\$128,140.27</u></b>	<b><u>\$3,536,928.74</u></b>	<b><u>\$19,075,000.00</u></b>
<b>Expense from Operations:</b>					
Administrative Department	\$450,975.55	\$428,833.00	(\$22,142.55)	\$407,335.21	\$2,656,039.00
Accounting Department	125,101.04	144,023.00	18,921.96	120,505.80	882,350.00
Loss Prevention Department	283,927.45	370,673.00	86,745.55	326,170.74	2,214,830.00
Claims Department	376,464.16	473,438.00	96,973.84	384,585.55	2,923,689.00
Allocated to Excess Program	<u>(184,515.66)</u>	<u>(180,650.00)</u>	<u>3,865.66</u>	<u>(177,663.32)</u>	<u>(1,083,880.00)</u>
<b>Total Expense from Operations</b>	<b><u>\$1,051,952.54</u></b>	<b><u>\$1,236,317.00</u></b>	<b><u>\$184,364.46</u></b>	<b><u>\$1,060,933.98</u></b>	<b><u>\$7,593,028.00</u></b>
Depreciation and Amortization	\$26,760.23	\$26,750.00	(\$10.23)	\$23,576.63	\$160,507.00
Allocated Depreciation	<u>(3,476.34)</u>	<u>(3,392.00)</u>	<u>84.34</u>	<u>(4,043.50)</u>	<u>(20,350.00)</u>
<b>TOTAL EXPENSE</b>	<b><u>\$4,126,262.16</u></b>	<b><u>\$4,438,841.00</u></b>	<b><u>\$312,578.84</u></b>	<b><u>\$4,617,395.85</u></b>	<b><u>\$26,808,185.00</u></b>
<b>NET POSITION - INCOME (LOSS)</b>	<b><u>\$1,414,574.74</u></b>	<b><u>(\$19,645.00)</u></b>	<b><u>(\$1,434,219.74)</u></b>	<b><u>(\$1,779,400.43)</u></b>	<b><u>(\$293,002.00)</u></b>

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**Oregon State Bar  
Professional Liability Fund  
Primary Program  
Statement of Operating Expense  
2 Months Ended 2/28/2017**

	<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>
<b><u>EXPENSE:</u></b>						
Salaries	\$363,824.23	\$634,223.62	\$783,108.00	\$148,884.38	\$639,958.33	\$4,698,648.00
Benefits and Payroll Taxes	129,347.02	249,753.84	286,415.00	36,661.16	254,083.08	1,683,243.00
Investment Services	0.00	0.00	0.00	0.00	0.00	44,000.00
Legal Services	0.00	2,095.00	1,666.00	(429.00)	0.00	10,000.00
Financial Audit Services	0.00	0.00	0.00	0.00	0.00	23,000.00
Actuarial Services	9,937.50	9,937.50	0.00	(9,937.50)	0.00	30,000.00
Information Services	3,642.10	4,909.10	11,834.00	6,924.90	3,314.84	71,000.00
Document Scanning Services	0.00	0.00	5,000.00	5,000.00	0.00	30,000.00
Other Professional Services	8,299.87	21,614.98	14,364.00	(7,250.98)	11,555.91	86,175.00
Staff Travel	249.86	249.86	4,598.00	4,348.14	1,860.50	27,600.00
Board Travel	2,079.20	2,163.20	6,916.00	4,752.80	1,920.30	41,500.00
NABRICO	250.00	250.00	0.00	(250.00)	250.00	15,000.00
Training	2,097.40	4,547.40	6,174.00	1,626.60	2,716.43	37,000.00
Rent	44,400.70	88,470.87	89,298.00	827.13	87,163.47	535,783.00
Printing and Supplies	5,891.71	16,916.14	13,166.00	(3,750.14)	11,387.51	79,000.00
Postage and Delivery	2,409.89	3,455.89	4,418.00	962.11	4,817.75	26,500.00
Equipment Rent & Maintenance	1,129.00	4,709.71	6,960.00	2,250.29	3,763.82	41,761.00
Telephone	4,555.33	8,890.40	8,416.00	(474.40)	8,163.32	50,500.00
L P Programs (less Salary & Benefits)	21,617.31	40,195.18	86,634.00	46,438.82	77,529.30	519,750.00
Defense Panel Training	0.00	0.00	0.00	0.00	0.00	98,448.00
Bar Books Grant	16,666.67	33,333.34	33,334.00	0.66	33,333.34	200,000.00
Insurance	3,655.25	7,310.50	7,166.00	(144.50)	6,884.62	43,000.00
Library	2,339.43	4,326.36	5,250.00	923.64	3,617.24	31,500.00
Subscriptions, Memberships & Other	41,500.71	99,115.31	42,250.00	(56,865.31)	86,277.54	253,500.00
Allocated to Excess Program	<u>(92,257.83)</u>	<u>(184,515.66)</u>	<u>(180,650.00)</u>	<u>3,865.66</u>	<u>(177,663.32)</u>	<u>(1,083,880.00)</u>
<b>TOTAL EXPENSE</b>	<b><u>\$571,635.35</u></b>	<b><u>\$1,051,952.54</u></b>	<b><u>\$1,236,317.00</u></b>	<b><u>\$184,364.46</u></b>	<b><u>\$1,060,933.98</u></b>	<b><u>\$7,593,028.00</u></b>

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**Oregon State Bar  
Professional Liability Fund  
Excess Program  
Statement of Revenue, Expenses, and Changes in Net Position  
2 Months Ended 2/28/2017**

	<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>
<b><u>REVENUE</u></b>					
Ceding Commission	\$142,356.85	\$132,500.00	(\$9,856.85)	\$128,478.71	\$795,000.00
Profit Commission	0.00	5,000.00	5,000.00	0.00	30,000.00
Installment Service Charge	48,977.00	45,000.00	(3,977.00)	44,705.00	45,000.00
Investment Return	(41,453.21)	<u>21,968.00</u>	<u>63,421.21</u>	(19,023.10)	<u>131,809.00</u>
<b>TOTAL REVENUE</b>	<b><u>\$149,880.64</u></b>	<b><u>\$204,468.00</u></b>	<b><u>\$54,587.36</u></b>	<b><u>\$154,160.61</u></b>	<b><u>\$1,001,809.00</u></b>
<b><u>EXPENSE</u></b>					
Operating Expenses (See Page 6)	\$198,433.61	\$200,314.00	\$1,880.39	\$189,536.92	\$1,201,880.00
Allocated Depreciation	<u>\$3,476.34</u>	<u>\$2,866.00</u>	( <u>\$610.34</u> )	<u>\$4,043.50</u>	<u>\$17,200.00</u>
<b>NET POSITION - INCOME (LOSS)</b>	<b><u>(\$52,029.31)</u></b>	<b><u>\$1,288.00</u></b>	<b><u>\$53,317.31</u></b>	<b><u>(\$39,419.81)</u></b>	<b><u>(\$217,271.00)</u></b>

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**Oregon State Bar  
Professional Liability Fund  
Excess Program  
Statement of Operating Expense  
2 Months Ended 2/28/2017**

	<u>CURRENT</u> <u>MONTH</u>	YEAR <u>TO DATE</u> <u>ACTUAL</u>	YEAR <u>TO DATE</u> <u>BUDGET</u>	<u>VARIANCE</u>	YEAR <u>TO DATE</u> <u>LAST YEAR</u>	<u>ANNUAL</u> <u>BUDGET</u>
<b><u>EXPENSE:</u></b>						
Salaries	\$50,883.25	\$101,766.50	\$99,286.00	(\$2,480.50)	\$98,321.16	\$595,720.00
Benefits and Payroll Taxes	16,824.16	33,648.32	33,360.00	(288.32)	32,133.50	200,165.00
Investment Services	0.00	0.00	416.00	416.00	0.00	2,500.00
Office Expense	0.00	0.00	0.00	0.00	0.00	0.00
Allocation of Primary Overhead	24,550.42	49,100.84	48,000.00	(1,100.84)	47,208.66	287,995.00
Reinsurance Placement & Travel	0.00	0.00	3,334.00	3,334.00	290.19	20,000.00
Training	0.00	0.00	834.00	834.00	0.00	5,000.00
Printing and Mailing	0.00	3,549.25	1,750.00	(1,799.25)	3,644.76	10,500.00
Program Promotion	795.00	2,495.00	3,000.00	505.00	1,700.00	18,000.00
Other Professional Services	7,543.10	7,543.10	2,834.00	(4,709.10)	0.00	17,000.00
Software Development	<u>237.50</u>	<u>330.60</u>	<u>7,500.00</u>	<u>7,169.40</u>	<u>6,238.65</u>	<u>45,000.00</u>
<b>TOTAL EXPENSE</b>	<b><u>\$100,833.43</u></b>	<b><u>\$198,433.61</u></b>	<b><u>\$200,314.00</u></b>	<b><u>\$1,880.39</u></b>	<b><u>\$189,536.92</u></b>	<b><u>\$1,201,880.00</u></b>

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**Oregon State Bar  
Professional Liability Fund  
Combined Investment Schedule  
2 Months Ended 2/28/2017**

	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>
<b>Dividends and Interest:</b>				
Short Term Bond Fund	\$5,779.07	\$12,010.71	\$7,857.62	\$15,915.93
Intermediate Term Bond Funds	31,757.99	62,757.39	24,587.25	53,422.00
Domestic Common Stock Funds	0.00	0.00	0.00	0.00
International Equity Fund	0.00	0.00	0.00	0.00
Real Estate	0.00	0.00	0.00	0.00
Hedge Fund of Funds	0.00	0.00	0.00	0.00
Real Return Strategy	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>
<b>Total Dividends and Interest</b>	<b><u>\$37,537.06</u></b>	<b><u>\$74,768.10</u></b>	<b><u>\$32,444.87</u></b>	<b><u>\$69,337.93</u></b>
<b>Gain (Loss) in Fair Value:</b>				
Short Term Bond Fund	\$0.01	\$0.01	\$0.00	\$26,799.92
Intermediate Term Bond Funds	48,520.57	92,594.26	(3,676.29)	27,488.62
Domestic Common Stock Funds	423,680.02	636,514.59	(3,715.73)	(536,922.30)
International Equity Fund	115,166.04	519,699.98	(215,146.69)	(833,337.36)
Real Estate	0.00	0.00	0.00	0.00
Hedge Fund of Funds	0.00	0.00	0.00	0.00
Real Return Strategy	<u>40,260.92</u>	<u>88,190.58</u>	<u>3,230.66</u>	<u>(39,889.32)</u>
<b>Total Gain (Loss) in Fair Value</b>	<b><u>\$627,627.56</u></b>	<b><u>\$1,336,999.42</u></b>	<b><u>(\$219,308.05)</u></b>	<b><u>(\$1,355,860.44)</u></b>
<b>TOTAL RETURN</b>	<b><u>\$665,164.62</u></b>	<b><u>\$1,411,767.52</u></b>	<b><u>(\$186,863.18)</u></b>	<b><u>(\$1,286,522.51)</u></b>
<b>Portions Allocated to Excess Program:</b>				
Dividends and Interest	(\$1,850.58)	(\$2,282.46)	\$1,317.26	\$1,700.95
Gain (Loss) in Fair Value	<u>(30,942.04)</u>	<u>(39,170.75)</u>	<u>(8,903.91)</u>	<u>(20,724.05)</u>
<b>TOTAL ALLOCATED TO EXCESS PROGRAM</b>	<b><u>(\$32,792.62)</u></b>	<b><u>(\$41,453.21)</u></b>	<b><u>(\$7,586.65)</u></b>	<b><u>(\$19,023.10)</u></b>

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**Oregon State Bar  
Professional Liability Fund  
Excess Program  
Balance Sheet  
2/28/2017**

**ASSETS**

	<u>THIS YEAR</u>	<u>LAST YEAR</u>
Cash	\$4,020,028.75	\$3,754,975.69
Assessment Installment Receivable	1,373,021.20	1,231,147.50
Due from Reinsurers	3,123,374.98	13,825.17
Investments at Fair Value	(2,498,556.22)	1,934,146.56
<b>TOTAL ASSETS</b>	<b><u>\$6,017,868.71</u></b>	<b><u>\$6,934,094.92</u></b>

**LIABILITIES AND FUND EQUITY**

	<u>THIS YEAR</u>	<u>LAST YEAR</u>
<b>Liabilities:</b>		
Accounts Payable & Refunds Payable	\$237.50	\$1,629.58
Due to Primary Fund	\$60.68	\$91,143.60
Due to Reinsurers	3,251,991.15	4,008,877.08
Ceding Commission Allocated for Remainder of Year	712,645.40	642,393.57
<b>Total Liabilities</b>	<b><u>\$3,964,934.73</u></b>	<b><u>\$4,744,043.83</u></b>
<b>Net Position</b>		
Net Position (Deficit) Beginning of Year	\$2,104,963.29	\$2,229,470.90
Year to Date Net Income (Loss)	(52,029.31)	(39,419.81)
<b>Total Net Position</b>	<b><u>\$2,052,933.98</u></b>	<b><u>\$2,190,051.09</u></b>
<b>TOTAL LIABILITIES AND FUND EQUITY</b>	<b><u>\$6,017,868.71</u></b>	<b><u>\$6,934,094.92</u></b>

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**Oregon State Bar  
Professional Liability Fund  
Primary Program  
Balance Sheet  
2/28/2017**

ASSETS

	<u>THIS YEAR</u>	<u>LAST YEAR</u>
Cash	\$6,780,664.27	\$8,610,075.18
Investments at Fair Value	52,993,616.13	45,817,367.01
Assessment Installment Receivable	8,191,899.00	8,266,439.00
Due From Excess Fund	60.68	91,143.60
Other Current Assets	78,586.95	82,259.99
Net Fixed Assets	646,544.07	716,606.57
Claim Receivables	70,272.46	23,187.42
Other Long Term Assets	<u>6,100.00</u>	<u>6,550.00</u>
<b>TOTAL ASSETS</b>	<b><u>\$68,767,743.56</u></b>	<b><u>\$63,613,628.77</u></b>

LIABILITIES AND FUND EQUITY

	<u>THIS YEAR</u>	<u>LAST YEAR</u>
<b>Liabilities:</b>		
Accounts Payable and Other Current Liabilities	\$78,817.51	\$92,154.62
PERS Pension Liability	2,804,381.04	2,110,907.00
Liability for Compensated Absences	414,472.04	397,427.82
Liability for Indemnity	13,322,343.75	14,630,330.94
Liability for Claim Expense	14,185,338.98	14,931,441.82
Liability for Future ERC Claims	3,100,000.00	3,100,000.00
Liability for Suspense Files	1,600,000.00	1,600,000.00
Liability for Future Claims Administration (ULAE)	2,600,000.00	2,400,000.00
Assessment and Installment Service Charge Allocated for Remainder of Year	<u>20,296,955.83</u>	<u>20,443,974.17</u>
<b>Total Liabilities</b>	<b><u>\$58,402,309.15</u></b>	<b><u>\$59,706,236.37</u></b>
<b>Net Position</b>		
Net Position (Deficit) Beginning of the Year	\$8,950,859.67	\$5,686,792.83
Year to Date Net Income (Loss)	<u>1,414,574.74</u>	<u>(1,779,400.43)</u>
<b>Total Net Position</b>	<b><u>\$10,365,434.41</u></b>	<b><u>\$3,907,392.40</u></b>
<b>TOTAL LIABILITIES AND FUND EQUITY</b>	<b><u>\$68,767,743.56</u></b>	<b><u>\$63,613,628.77</u></b>

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# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** April 14, 2017  
**From:** MCLE Committee  
**Re:** 1) Amend regulations regarding programs discussing substance abuse and mental health issues for lawyers; and  
2) Correct numbering in several MCLE Rules

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### Action Recommended

Review and approve proposed amendments to MCLE Regulations 3.400(a) and 5.300(a) related to accreditation of courses related to substance abuse, cognitive impairments, and mental health issues, and make housekeeping amendments to ensure consistent numbering.

### Background

The MCLE Committee recommends amending Regulations 4.300(a) and 5.300(a) to provide that CLE courses related to attorney substance abuse, cognitive impairment, and mental health issues qualify for Category I Practical Skills credit.

The MCLE Committee recognizes the importance of educating attorneys about substance abuse, cognitive impairments, and mental health issues within the profession. In 2016, the American Bar Association, in cooperation with the Hazelden Betty Ford Foundation, published the first national study on attorney substance abuse and mental health concerns. The study, published in the *Journal of Addiction Medicine*, reports that 21 percent of licensed, employed attorneys qualify as problem drinkers, 28 percent struggle with some level of depression and 19 percent demonstrate symptoms of anxiety. The study also found that younger attorneys in the first 10 years of practice exhibit the highest incidence of substance abuse and mental health issues.

The proposed amendments would:

1. Allow greater emphasis on attorney education about substance abuse, cognitive impairments, and mental health issues, by providing courses related to these topics qualifying for Category I, Practical Skills credit, instead of Category III Personal Management Assistance credit. This change would also remove the Category III cap of six (6) credits per reporting period for these courses.
2. Remove language from the regulations that implies a negative stigma should be attached to attorneys who may be dealing with substance abuse issues. Currently, MCLE Regulation 3.400(a) allows practical skills credit for programs discussing “the negative aspects of substance abuse to a law practice.” The Committee recommends amending this regulation to remove the “negative” language associated with substance abuse and

focus instead on the impact of substance abuse, cognitive impairment, and mental health related issues to a law practice.

**3.400 Practical Skills Requirement.**

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

Regulation 5.300(a) sets forth the types of activities that may qualify for personal management assistance credit and includes programs addressing alcoholism, drug addiction, depression and anxiety. Personal management assistance credits are in Category III, which is limited to 6.0 credits in a three-year reporting period and 3.0 credits in a shorter reporting period.

**5.300 Category III Activities.**

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

Because of the types of activities that qualify for personal management assistance credit (career transition and satisfaction, for example), members may see these Category III activities as less important than other activities that qualify for general or practical skills credits.

Therefore, in order to elevate the importance of the serious issues of substance abuse and other mental health issues among lawyers in the United States, the Committee recommends amending these regulations as set forth below.

### **3.400 Practical Skills Requirement.**

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

### **5.300 Category III Activities.**

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

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2) Several housekeeping rule amendments were approved by the Board earlier this year but it was recently pointed out to the Committee that there are currently two different MCLE Rules designated as Rule 5.6.

Therefore, in order to be consistent and avoid confusion, the Committee recommends the following rule amendments be approved:

### **5.6 5.7 Teaching Activities.**

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

(b) Credit may be claimed for teaching other courses, provided the activity satisfies the following criteria:

- (1) The MCLE Program Manager determines that the content of the activity is in compliance with other MCLE content standards; and
- (2) The course is a graduate-level course offered by a university; and

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

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

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

**5.7 5.8 Legal Research and Writing.**

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

- (a) It deals primarily with one or more of the types of issues for which group CLE activities can be accredited as described in Rule 5.1(b); and
- (b) It has been published in the form of articles, CLE course materials, chapters, or books, or issued as a final product of the Legal Ethics Committee or a final instruction of the Uniform Civil Jury Instructions Committee or the Uniform Criminal Jury Instructions Committee, personally authored or edited in whole or in substantial part, by the applicant; and
- (c) It contributes substantially to the legal education of the applicant and other attorneys; and
- (d) It is not done in the regular course of the active member's primary employment.

(2) The number of credit hours shall be determined by the MCLE Program Manager, based on the contribution of the written materials to the professional competency of the applicant and other attorneys.

**5.8 5.9 Service as a Bar Examiner.** Credit may be claimed for service as a bar examiner for Oregon, provided that the service includes personally writing or grading a question for the Oregon bar exam during the reporting period.

**5.9 5.10 Legal Ethics Service.** Credit may be claimed for serving on the Oregon State Bar Legal Ethics Committee, Client Security Fund Committee, Commission on Judicial Fitness & Disability, Oregon Judicial Conference Judicial Conduct Committee, Local Professional Responsibility Committees, State Professional Responsibility Board, and Disciplinary Board or serving as volunteer bar counsel or volunteer counsel to an accused in Oregon disciplinary proceedings.

**5.10 5.11 Jury instructions Committee Service.** Credit may be claimed for serving on the Oregon State Bar Uniform Civil Jury Instructions Committee or Uniform Criminal Jury Instructions Committee.

**Accreditation Standards for Category III Activities**

**5.11 5.12 Credit for Other Activities.**

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

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

(c) **Business Development and Marketing Activities.** Credit may be claimed for courses devoted to business development and marketing that are specifically tailored to the delivery or marketing of legal services and focus on use of the discussed techniques and strategies in law practice.

### **Activity Content Standards**

#### **5.12 5.13 Group and Teaching CLE Activities**

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

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

#### **5.13 5.14 Ethics and Access to Justice.**

(a) In order to be accredited as an activity in legal ethics under Rule 3.2(b), an activity shall be devoted to the study of judicial or legal ethics or professionalism, and shall include discussion of applicable judicial conduct codes, rules of professional conduct, or statements of professionalism.

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

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

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

### **Teaching Activity Content Standards**

**5.14 5.15 Other Professionals.** Notwithstanding the requirements of Rules 5.6 and 5.12(a) and (b), credit may be claimed for teaching an educational activity offered primarily to other professions or occupations if the MCLE Program Manager determines that the content of the activity is in compliance with other MCLE accreditation standards and the applicant establishes to the MCLE Program Manager's satisfaction that the teaching activity contributed to the presenter's professional competence as a lawyer.

### **Unaccredited Activities**

**5.15 5.16 Unaccredited Activities.** The following activities shall not be accredited:

(a) Activities that would be characterized as dealing primarily with personal self-improvement unrelated to professional competence as a lawyer; and

(b) Activities designed primarily to sell services or equipment; and

(c) Video or audio presentations of a CLE activity originally conducted more than three years prior to the date viewed or heard by the member seeking credit, unless it can be shown by the member that the activity has current educational value.

(d) Repeat live, video or audio presentations of a CLE activity for which the active member has already obtained MCLE credit.

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** April 14, 2017  
**From:** MCLE Committee  
**Re:** Credit for serving on Council on Court Procedures

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### **Action Recommended**

Review and approve the proposed MCLE Rules and Regulations regarding credit for service or as staff on the Oregon Council on Court Procedures.

### **Background**

The MCLE Committee recently reviewed a request from member Mark Peterson, who is proposing the following rule and regulation amendments. These amendments would allow members who serve as a member or as staff on the Oregon Council on Court Procedures to claim CLE credit under Category II. Credits in this category are limited to 20 in a three-year reporting period.

Based on Mr. Peterson's personal experience, this activity is comparable to serving on the Uniform Jury Instructions Committees. Members may claim credit for service on these committees pursuant to Rule 5.10 and Regulation 5.00(f).

Members serving on the Oregon Council on Court Procedures are volunteers. They spend a tremendous amount of time reviewing the history of the Oregon Rules of Civil Procedure, comparing them to the federal rules and engaging in a comprehensive analysis in determining whether revisions are needed or appropriate. Their level of commitment is substantial.

Therefore, the MCLE Committee recommends amending the MCLE Rules and Regulations as follows to allow Category II credit for this activity. Category II credits are limited to 20 in a three-year reporting period and 10 in a shorter reporting period.

**MCLE Rule 5.12 Oregon Council on Court Procedures. Credit may be claimed for service as a member or as staff on the Oregon Council on Court Procedures.**

#### **MCLE Regulation 5.200**

- (i) Oregon Council on Court Procedures Service. Members may claim three general credits for service per year. To be eligible for credit under MCLE Rule 5.12, a member must attend at least 9 hours of regularly scheduled Council meetings during the year.

In the fall of 2016, a member asked if he could claim credit under Category III for service on this committee. MCLE Committee members discussed this at the December 2016 meeting and determined that Category III credit could be claimed for this volunteer activity. Credits in Category III are limited to 6 in a three-year reporting period.

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** April 14, 2017  
**Memo Date:** March 27, 2017  
**From:** Kaori Tanabe Eder, Oregon New Lawyers Division Chair  
**Re:** ONLD Report

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The Region Four Representative resigned from the Executive Committee in January. After publicizing the opening, receiving and reviewing letters of interest, the Executive Committee selected Ralph Gzik as the new Region Four Representative. The Region Seven Representative resigned from the Executive Committee in February. Staff will publicize the opening and solicit letters of interest. A new member will be selected at the April meeting.

The ONLD is sending four representatives to the mid-year ABA Young Lawyers Division meeting. They will have an opportunity to strengthen relationships with practitioners from around the country and will represent Oregon during the division assembly.

In conjunction with the February Executive Committee meeting in Salem we hosted an Elder Abuse Reporting CLE followed by a social. The events were well attended by local attorneys as well as law students.

While the ONLD was in Eugene for their March executive committee meeting they also held a Networking Panel followed by Speed Networking for law students. The Law School Outreach Subcommittee organized these events in an effort to encourage the Executive Committee to interact with the law students. A social was held following these events giving the law students the opportunity to utilize their new socializing skills with local attorneys.

The Member Services & Satisfaction Subcommittee held one social at Kells Irish Pub in Southwest Portland.

The Continuing Legal Education Subcommittee held various brown bags with topics such as immigration and mediation advocacy.

The Pro Bono Committee has organized a Wills for Heroes event for Clackamas County First Responders, to be held on April 15.

Jaimie Fender has organized a CLE series with the Military & Veterans Law Section. The first CLE is also co-sponsored with the Consumer Law Section and will focus on Defending Veterans from Financial Peril on April 18.

Jaimie is also leading a new project. She plans on having monthly ONLD podcasts for a year. The podcasts will showcase a different theme for each month with the ONLD subcommittees each taking responsibility for the theme of one podcast. This is in the early stages and we'll be sure to update you as this project moves forward.

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** April 5, 2017  
**Memo Date:** April 14, 2017  
**From:** Legal Services Program Committee  
**Re:** Disbursing Unclaimed Client Funds from the Legal Services Program

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### **Action Recommended**

- 1) Approve the LSP Committee's recommendation to disburse \$69,576 from the annual unclaimed client fund but to hold the funds until the legal aid providers make a recommendation for when to disburse the funds and a method for allocation between providers.
- 2) Approve the LSP Committee's recommendation not to disburse the unclaimed client funds from the Strawn v Farmers class action and continue holding the remaining funds in reserve.

### **Background**

Unclaimed or abandoned client funds held in a lawyers' trust account are sent to the Oregon State Bar (OSB), pursuant to ORS 98.386. Revenue received is used for the funding of legal services by legal aid providers, the payment of claims, and the payment of expenses incurred by the OSB in the administration of the Legal Services Program.

In 2012 the committee and subsequently the BOG approved a recommendation regarding the distribution method of the unclaimed client funds. The distribution method is that the LSP will hold \$100,000 in reserve to cover potential claims and distribute the revenue that arrives each year above that amount. The amount disbursed has changed from year to year depending on the unclaimed funds received and claims made each year (see attached ULTA 2016 Report). In addition, the OSB entered into an agreement with the legal aid providers in which the legal aid providers agreed to reimburse the OSB if the remaining reserve gets diminished or depleted.

In January 2014, the LSP Program received approximately \$520,000 in one-time unclaimed client funds from the Strawn v Farmers Class Action. The BOG approved distributing the one-time funds in equal amounts over three years with 1/3 of the funds disbursed in 2014 and 1/3 disbursed in 2015. In 2016, the BOG did not disburse any funds from the Strawn v. Farmers Fund.

### ***Annual Unclaimed Fund Disbursement for 2017***

There is currently \$169,576 in the Annual Unclaimed Fund (see attached ULTA 2016 Report). It is recommended that the reserve policy be followed with \$69,576 disbursed to the legal aid providers and \$100,000 held in reserve. It is also recommended that the \$69,576 be held by

the OSB until the legal aid providers request disbursement and advise on an allocation method between the providers.

The legal aid providers are asking that the unclaimed funds not be disbursed until there is a greater understanding of the impact of possible federal funding cuts or even elimination. Federal funding through the Legal Services Corporation (LSC) makes up approximately \$4.5 million of the funding for legal services in Oregon. Presently, the federal government is operating on a continuing budget resolution through April 28, 2017. While under continuing resolution, the federal budget operates at 2016 levels; however, across the board FY 2017 budget cuts are expected for the remainder of FY 2017. FY 2018 funding for LSC remains uncertain. Additional reserves will allow the OSB to better dampen potential federal budget cuts.

***Strawn Farmers Class Action Disbursement for 2017***

During 2016, \$8,366 in claims were paid out of the Strawn Farmers Fund. By the beginning of 2017, claims totaling \$35.525 have been paid leaving \$137.029 in reserve. The 2017 recommendation is to not distribute any Strawn Farmer funds and hold the remainder in reserve. This reserve will be reviewed every year to determine whether it remains reasonable given the value of claims received over time.

## ULTA Annual Report

Annual Unclaimed Fund	Farmers Class Action Fund	Total All Funds
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Statistics since inception of program			
\$ 727,220	\$ 518,900	\$ 1,246,120	Total of all Submitted Unclaimed Property
\$ (94,403)	\$ (35,525)	\$ (129,928)	Total of all Claimed Property
\$ (32,648)	\$ -	\$ (32,648)	Total of Property Returned/Forward to Other Jurisdictions
\$ (440,603)	\$ (346,346)	\$ (786,949)	Total Funds Distributed to Programs
\$ 10,010	\$ -	\$ 10,010	Interest Earned
\$ 169,576	\$ 137,029	\$ 306,605	Balance of Funds on Hand by Fund

### Breakdowns by Year

2016			
\$ 43,099	\$ -	\$ 43,099	Funds Collected
\$ (1,641)	\$ (8,366)	\$ (10,007)	Funds Claimed
\$ (50)		\$ (50)	Funds Returned
\$ 41,408	\$ (8,366)	\$ 33,043	Subtotal
\$ (117,500)		\$ (117,500)	Funds Disbursed
\$ 2,382		\$ 2,621	Interest Earned
\$ 243,286	\$ 145,395	\$ 388,681	Previous Year Fund Balance
\$ 169,576	\$ 137,029	\$ 306,845	Fund Balance

2015			
\$ 155,965	\$ -	\$ 155,965	Funds Collected
\$ (43,154)	\$ (15,708)	\$ (58,862)	Funds Claimed
\$ (216)		\$ (216)	Funds Returned
\$ 112,595	\$ (15,708)	\$ 96,888	Subtotal
\$ -	\$ (155,000)	\$ (155,000)	Funds Disbursed
\$ 2,191		\$ 2,191	Interest Earned
\$ 128,500	\$ 316,102	\$ 444,602	Previous Year Fund Balance
\$ 243,286	\$ 145,395	\$ 388,681	Fund Balance

2014			
\$ 54,420	\$ 518,900	\$ 573,320	Funds Collected
\$ (45,649)	\$ (11,452)	\$ (57,100)	Funds Claimed
\$ (591)		\$ (591)	Funds Returned
\$ 8,180	\$ 507,448	\$ 515,629	Subtotal
\$ (61,103)	\$ (191,346)	\$ (252,449)	Funds Disbursed
\$ 2,416		\$ 2,416	Interest Earned
\$ 179,007	\$ -	\$ 179,007	Previous Year Fund Balance
\$ 128,500	\$ 316,102	\$ 444,602	Fund Balance

## ULTA Annual Report

Annual Unclaimed Fund	Farmers Class Action Fund	Total All Funds	
<b>2013</b>			
\$ 106,952		\$ 106,952	Funds Collected
\$ (1,273)		\$ (1,273)	Funds Claimed
\$ (7,212)		\$ (7,212)	Funds Returned
\$ 98,467	\$ -	\$ 98,467	Subtotal
\$ (137,000)	\$ -	\$ (137,000)	Funds Disbursed
\$ 812		\$ 812	Interest Earned
\$ 216,728	\$ -	\$ 216,728	Previous Year Fund Balance
\$ 179,007	\$ -	\$ 179,007	Fund Balance

<b>2012</b>			
\$ 127,537		\$ 127,537	Funds Collected
\$ (1,146)		\$ (1,146)	Funds Claimed
\$ (7,098)		\$ (7,098)	Funds Returned
\$ 119,292	\$ -	\$ 119,292	Subtotal
\$ (125,000)	\$ -	\$ (125,000)	Funds Disbursed
\$ 1,119		\$ 1,119	Interest Earned
\$ 221,316	\$ -	\$ 221,316	Previous Year Fund Balance
\$ 216,728	\$ -	\$ 216,728	Fund Balance

<b>2011</b>			
\$ 141,092		\$ 141,092	Funds Collected
\$ (1,539)		\$ (1,539)	Funds Claimed
\$ (1,705)		\$ (1,705)	Funds Returned
\$ 137,847	\$ -	\$ 137,847	Subtotal
\$ -	\$ -	\$ -	Funds Disbursed
\$ 1,055		\$ 1,055	Interest Earned
\$ 82,414	\$ -	\$ 82,414	Previous Year Fund Balance
\$ 221,316	\$ -	\$ 221,316	Fund Balance

<b>2010</b>			
\$ 98,156	\$ -	\$ 98,156	Funds Collected
\$ -	\$ -	\$ -	Funds Claimed
\$ (15,776)	\$ -	\$ (15,776)	Funds Returned
\$ 82,379	\$ -	\$ 82,379	Subtotal
\$ -	\$ -	\$ -	Funds Disbursed
\$ 35		\$ 35	Interest Earned
\$ 82,414	\$ -	\$ 82,414	Fund Balance

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** April 5, 2017  
**Memo Date:** March 29, 2017  
**From:** Dawn M. Evans, Disciplinary Counsel  
**Re:** Disciplinary/Regulatory Counsel's Status Report

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### 1. Decisions Received.

#### a. Supreme Court

Since the Board of Governors met in February 2017, the Supreme Court took the following action in disciplinary matters:

- Issued an order in *In re Anthony A. Allen*, accepting this Topanga, California lawyer's stipulation to a 1-year suspension.
- Accepted the Form B resignation from Portland lawyer *Rebecca Dougan*.
- Issued an opinion in *In re Dale Maximiliano Roller*, suspending this Salem lawyer for 4 years. The court affirmed the trial panel opinion finding violations of RPC 1.3, RPC 1.4(a), RPC 1.15-1(d), RPC 1.16(d), RPC 8.1(a)(1), RPC 8.1(a)(2), RPC 8.4(a)(3), and RPC 8.4(a)(4).

#### b. Disciplinary Board

Seven Disciplinary Board trial panel opinions have been issued since February 2017:

- A trial panel recently issued an opinion in *In re Gary B. Bertoni* of Portland (1-year suspension) for conduct involving neglect of a legal matter, failure to keep a client reasonably informed, failure to hold client property separate from the lawyer's, failure to deposit and maintain client funds in trust until earned, failure to account for and provide client property, excessive fee, improper fee agreement, failure to make adequate disclosures of treatment of funds and rights upon termination, failure to segregate and safeguard client funds in trust, failure to take reasonable steps upon termination to protect a client's interest, conversion of client funds, and dishonesty.
- A trial panel recently issued an opinion in *In re Jonathan G. Basham* of Bend (1-year suspension) for conduct involving duty to maintain client information, former client conflict, asserting a legal position without basis in law or fact, criminal conduct that reflects adversely on fitness as a lawyer, and conduct prejudicial to the administration of justice.

- A trial panel recently issued an opinion in *In re Lisa D. T. Klemp* of Redmond (disbarment) for conduct involving failure to take steps to protect a client’s interest upon termination, counsel or assist a client to engage in conduct the lawyer knows is illegal or fraudulent, knowing failure to disclose a material fact when disclosure is necessary to avoid assisting an illegal or fraudulent act by the client, improper communication with an unrepresented person, and conduct involving dishonesty, fraud, deceit, or misrepresentation.
- A trial panel recently issued an opinion in *In re Steven L. Maurer* of Lake Oswego (dismissed) for conduct involving conflict of interest, representation of a client in a matter which a lawyer participated in personally and substantially as a judge, and conduct prejudicial to the administration of justice.
- A trial panel recently issued an opinion in *In re Paul Lars Henderson, III* of Medford (4-month suspension) for conduct involving neglect of a legal matter, failure to respond to client’s reasonable requests for information, failure to withdraw when representation will violate rules of professional conduct, failure to give reasonable notice to client upon termination of representation, and knowing failure to respond to disciplinary office inquiries.
- A trial panel recently issued an opinion in *In re Travis W. Huisman* of Regent, North Dakota (18-month suspension) for conduct involving neglect of legal matter, failure to keep a client reasonably informed, failure to maintain complete records of client funds, failure to deposit client funds into trust, failure to account for and return client property, and failure to respond to disciplinary office inquiries.
- A trial panel recently issued an opinion in *In re Kathleen Y. Rinks* of Portland (disbarment) for conduct involving criminal conduct that reflects adversely on the lawyer’s honesty, trustworthiness, or fitness as a lawyer in other respects, failure to respond to disciplinary office inquiries, and conduct involving dishonesty and misrepresentation.

In addition to these trial panel opinions, the Disciplinary Board approved a stipulation for discipline in: *In re Andrew L. Vandergaw* of Medford (reprimand), *In re Angela T. Lee-Mandlin* of Bend (reprimand), *In re Tyler Friesen* of Bend (6-month suspension), and *In re Lynne B. Morgan* of Portland (reprimand).

The Disciplinary Board Chairperson approved BR 7.1 suspensions in *In re Erika Huebschman* of Portland (2 matters).

**2. Decisions Pending.**

The following matters are pending before the Supreme Court:

*In re Scott W. McGraw* – 18-month suspension; accused appealed; awaiting briefs

*In re James R. Kirchoff* – 2-year suspension; accused appealed; awaiting briefs

*In re Samuel A. Ramirez* – 1-year suspension; accused appealed; awaiting briefs

*In re Shane A. Reed* – stipulation approval pending

*In re Sandy N. Webb* – 2-year suspension; OSB appealed; awaiting filing of the record

The following matters are under advisement before a trial panel of the Disciplinary Board:

*In re Kevin Carolan* – January 23-25, 2017; TPO due April 21

**3. Trials.**

The following matters are on our trial docket in coming weeks/months:

*In re Dale Maximiliano Roller* – April 10-11, 2017

*In re Willard Merkel* – April 14, 2017

*In re Dana C. Heinzelman* – May 9-11, 2017

*In re Stephen R. Rasmussen* – May 15-19, 2017

*In re Karon V. Johnson* – May 23-24, 2017

*In re Robert G. Klahn* – May 31 – June 1, 2017

*In re James C. Jagger* – June 16, 2017

*In re Robert C. Williamson* – June 26-28, 2017

**4. Diversions.**

The SPRB approved the following diversion agreements since February 2017:

None.

**5. Admonitions.**

The SPRB issued 1 letter of admonition in February 2017. The outcome in these matters is as follows:

- 1 lawyer has accepted their admonition;
- 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 #):

<b>MONTH</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>
January	21/21	29/31	18/19	30/30	17/17
February	23/23	24/25	28/28	38/38	49/49
March	30/30	41/45	22/22	28/30	
April	42/43	45/47	17/17	26/26	
May	37/37	23/24	24/24	27/30	
June	31/31	23/24	31/31	38/39	
July	28/30	43/44	27/27	41/42	
August	33/36	19/21	28/29	28/28	
September	26/27	24/24	21/21	25/25	
October	26/26	25/25	38/39	39/39	
November	25/26	19/19	24/25	26/27	
December	19/19	21/23	20/20	25/28	
<b>TOTALS</b>	<b>341/349</b>	<b>336/352</b>	<b>298/302</b>	<b>371/382</b>	<b>66/66</b>

As of March 1, 2017, there were 244 new matters awaiting disposition by Disciplinary Counsel staff or the SPRB. Of these matters, 35% are less than three months old, 25% are three to six months old, and 41% are more than six months old. Twenty-nine of these matters are on the April SPRB agenda.

DME/rh

# 2016 Program Evaluations

Oregon State Bar  
2016 Program Evaluations  
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## **Client Assistance Office (CAO)**

### **Goal Statement**

The primary goal of the Client Assistance Office (CAO) is to promptly review and properly process complaints about the conduct of members of the Oregon State Bar. Our secondary goals include preventing violations by educating lawyers and consumers of legal services, assisting lawyers and their clients to resolve issues, and providing legal consumers with access to general information and resources that may assist them to address their concerns about a lawyer.

### **Program Description**

The CAO was established in 2003 to remove the initial screening and evaluation of complaints about lawyer conduct from Disciplinary Counsel. Complaints and inquiries about lawyers are evaluated by three CAO lawyers with administrative support from a staff of two non-lawyer assistants. If CAO's initial evaluation finds sufficient evidence to support a reasonable belief that a lawyer may have violated the rules of professional conduct, the complaint is referred to Disciplinary Counsel for further evaluation accompanied by a brief memo describing the basis for the referral. Otherwise, it is dismissed with a written explanation for the dismissal provided to the complainant. Complainants may request review of a dismissal by General Counsel.

As appropriate and as resources permit, the CAO also provides information and assistance to legal consumers to address simple problems with their lawyers, such as obtaining file materials or resolving communication issues. When the CAO cannot assist, CAO refers the consumer to other agencies or programs that may address their legal concerns.

In addition to responding to inquiries and complaints about lawyers, CAO engages in efforts to prevent misconduct by educating lawyers about their professional responsibilities and, in support of General Counsel, responding to calls from lawyers seeking advice about complying with their ethical duties.

### **Volunteers/Partnerships**

CAO regularly works with a wide range of partners at the bar including General Counsel, Disciplinary Counsel, Public Records, Referral and Information Services, Communications and Public Services, Information and Design Technology, Client Security Fund, Unlawful Practice of Law Committee, and the State Lawyers Assistance Committee. CAO maintains a good relationship with state courts and the Oregon Attorney Assistance Program regarding issues that may be of common concern. CAO also provides ethics training and education to lawyers in bar sections or other groups around the state.

### **Outcomes and Evaluation**

#### **Outcome #1: Process high volume of inquiries and complaints in a timely manner.**

Program measures call for CAO to process a high volume of inquiries and complaints in a timely manner. In 2016, CAO opened 2,027 matters and disposed of about 1,938 matters. For purposes

of comparison, CAO opened 1,937 matters in 2015 and disposed of about 1,629. In 2014, CAO opened 1,936 matters and disposed of about 1,783.

In addition to these matters, the CAO staff handles a great deal of telephone calls. Substantive calls handled by the department average over 20 per day.

For inquiries that do not warrant further investigation or require a substantive dismissal, CAO practice is to acknowledge and respond to the inquiry within three days of receipt. For complaints that warrant further investigation or require a substantive dismissal, CAO attempts to review the complaint and take such action within 14 days. In the majority of cases, CAO took that action within 7 days.

Program measures call for CAO to dispose of 70% of complaints and inquiries within sixty days of receipt. In 2016, CAO disposed of about 68% of complaints and inquiries within that time. (56% of all dispositions came within 30 days of receipt.) Average disposition time for all dispositions was 54 days.

Disposition time was a bit slower than in prior years. This likely was a result of an overall increase in matters (and dispositions) and the temporary reduction in lawyer staff recounted above.

**Outcome #2: Ensure proper disposition of complaints by making the correct decision to refer to disciplinary counsel or dismiss.**

CAO continues to provide high quality analysis in the disposition of matters. Of the 1,938 matters disposed of in 2016, over 281 (14.5%) were referred to Disciplinary Counsel. (Cf. 2015 12.5% and 2014 13.2%). 1,180 matters were dismissed. In a few but significant instances (about 27) CAO was able to contact the lawyer and resolve the issue. In the remaining matters, CAO provided information or a referral to another program.

Program measures state that at least 90% of CAO dismissals should be affirmed on review by General Counsel. In 2016, there were 246 requests for General Counsel review of CAO dismissals. Only six matters were referred to Disciplinary Counsel after review. 97.6% of CAO dismissals were affirmed.

**Outcome#3: Ensure a high level of competence among staff.**

For staffing reasons discussed above, lawyers were unable to attend any national conference in 2016. However, CAO staff lawyers attend more than their required MCLE programs and participated in other opportunities to maintain and improve skills. Additionally, staff lawyers consult with each other and review each other's work to maintain quality and help ensure a sound decision making process. The competence of the staff is reflected in the timely and accurate dispositions of matters and the quality of the referral memos and dismissal letters associated with those dispositions.

General Counsel and Disciplinary Counsel staff lawyers meet semi-regularly with CAO's staff lawyers to help ensure consistency of analysis and approach. Weekly CAO staff meetings help

CAO staff to spot and address issues as they arise. CAO staff also attended training sessions to familiarize ourselves with the new AMS system.

**Outcome #4: Promote public awareness of CAO and its services.**

CAO worked with the Public Information and Communications departments to create an updated program page on the bar's website, including a video explaining our program to the public. CAO attorneys also contributed approximately 24 total hours of continuing legal education presentations in different programs for lawyers around the state. The presentations included ethics school, mandatory abuse reporting, and other subjects related to lawyers' professional responsibilities.

**Outcome #5: Identify technological and process improvements to improve department efficiencies.**

CAO's continued operation as a mostly paperless office has reduced costs and, especially in connection with public records inquiries, increased the utility of CAO records. CAO staff members intend to apply our energy to improving systems with the advent of the updated AMS.

## **CLE Seminars Department**

### **Program Goal Statement**

The CLE Seminars Department advances the Bar's mission of improving the quality of legal services by providing high-quality seminars and seminar products that are cost-effective, relevant, and widely accessible.

### **Program Description**

As a provider of CLE seminars, the OSB operates in a highly competitive market that includes a large number of CLE providers, multiple options for accessing CLE seminars, and fluctuations in the legal profession and the economy. To meet these challenges while providing a meaningful educational experience for bar members, the Seminars Department provides a wide range of CLE topics in a variety of formats that acknowledge diverse learning styles and changing technologies for delivery of CLE content.

### **Volunteers/Partnerships**

**Volunteers:** 345 attorneys and other professionals volunteered as planners and speakers in 2016, some more than once, to fill 436 opportunities.

**Partnerships:** The CLE Seminars Department cosponsored seminars with OSB sections, OSB Legal Heritage Interest Group and the Washington State Bar Association Creditor-Debtor Rights Section. The CLE Seminars Department also supplemented its original programming with live and online CLE content from six online educational partners: BASF (Bar Association of San Francisco), CLEseminars.com, Georgetown Law CLE, Mesa CLE, Periaktos Productions, and WebCredenza.

### **Outcomes and Evaluation**

**Outcome #1: Meet the needs of members for high-quality, readily accessible CLE that recognizes different learning styles by providing members 24/7 access to OSB CLE Seminars-branded information, services, and products.**

*Measure: Continue a creative and flexible approach to program and product formats to meet changing member needs and market forces.*

CLE Seminars produced 35 live CLE events during 2016, and almost all of them were available online either as a live webcast or on demand. Most live seminars were still available on hard media (CD and DVD), and the membership had online access to 555.75 hours of streaming video, 72.75 hours of streaming audio, and 218.50 hours of MP3 downloads.

The quality and availability of OSB CLE in a variety of formats, from hard media to online, was supported by member correspondence and calls. Although sales of CD and DVD rentals continue to decrease, it is still a viable format for members, as explained in a letter from an Ashland member:

“I now purchase the programs for 2 reasons: (1) the saving in time and expense associated with traveling from Ashland, Oregon; and (2) the great benefit I receive in listening to part of the programs more than once.”

Another member called the department in the fall regarding his experience with a national sponsor’s CLE offerings. He was so disappointed with the program that he wanted to express what a great job OSB CLE Seminars did and how impressed he was with the programming. The member lives in Lakeview and really appreciated that most of the department’s seminars are available in remote areas. He commented that the department’s customer service and programs were “top notch” and that he was proud to be an OSB member. “Too often people complain, but rarely do they call and inform you when you have done a great job and appreciate what you do.”

**Outcome #2: High member and section satisfaction with CLE curriculum, organization, and other CLE-related services.**

*Measure: Survey attendees, speakers, and sponsors regarding their satisfaction with topics, format, and logistics.*

Member satisfaction attending OSB CLE seminars remains high. 89.61% of those who returned seminar evaluations rated the overall quality of the department’s seminars as “excellent” or “very good.” The seminar check-in process was rated as “excellent” or “very good” by 96.36% of those returning evaluations, while 96.39% rated onsite staff as “excellent” or “very good.”

Based upon the Membership Services Department section survey (1-5 scale), the CLE Seminars Department continued to be valued by bar sections. Sections who answered the survey gave the CLE Seminars and staff the following average ratings: courtesy of CLE staff (4.7); assistance with planning and logistics (4.6); timely distribution of notices regarding programs (4.6); and providing accurate information on cosponsoring CLE events (4.2). The difference in rating for the last criteria most likely stemmed from the anticipated changes to section cosponsorship directed by the BOG. As one chair commented, “Kes, Anna, and Karen are really wonderful to work with, very knowledgeable, and always professional. Our Section’s disagreement with CLE cosponsorship has nothing to do with the excellent staff.”

*Evaluate revenue-sharing model for programs cosponsored with sections.*

The department cosponsored seminars with 20 sections. Of those seminars, 13 generated sufficient revenue from the live seminar to participate in the department's current revenue-sharing programs. This model operated on a per capita basis. The department reviewed section revenue sharing figures for the past three years and developed an alternative model using a percentage basis of net revenue that would provide a section a proportional share of net revenue yet not negatively impact the revenue needed to meet seminar and department expenses. This proportional share would be linked to the finances of the seminar and not the number of attendees, as the current revenue share is calculated.

*Promote cosponsorship and other service to sections.*

In 2016 CLE Seminars provided registration services for 14 sections that held 20 CLE events. Of those 20 events, two sections, Labor & Employment and Family Law, requested additional event planning services for multi-day events. Different cosponsorship models were proposed under a directive by the BOG but a final cosponsorship system remained in development for the year.

**Outcome #3: Continue to develop cost-efficient strategies and processes to achieve budget goals and ensure fiscal responsibility.**

*Measure: Implement electronic delivery of speaker confirmation letters and documents to reduce paper costs and postage.*

In mid-fall the department successfully piloted sending speaker confirmation information electronically, which reduced the amount of postage, bar letterhead, envelopes, and copy paper utilized for each speaker. With more than 400 speaker confirmation packets sent annually, this electronic delivery was poised to create future cost savings.

*Measure: Evaluate pricing models and recommend any changes that will enhance ability to achieve budget goals.*

Standard seminar registration rates remained static in 2016, while institute pricing saw minimal increases to reflect increased venue costs. In an effort to respond to the financial constraints of many newer OSB members, discounted registration rates for ONLD were instituted for most live seminars sponsored by the department. The discounts ranged from 15% to 40%. Once the bar's new AMS and in-house webcasting platform are in place, other pricing discounts may be possible for live webcasts and on-demand programming.

*Measure: Identify and implement efficiencies in processes and logistics. Evaluate staffing needs.*

2016 saw significant department staffing changes. With the intra-department promotion of the Seminars Assistant, an opportunity was presented to reevaluate the department's functions

and staffing needs. By utilizing more electronic communication, intermittent temporary employees, and shifting responsibilities to existing department staff, a reduction in overall staff was possible without sacrificing the quality of the CLE program. This reduction resulted in staff cost savings during the last quarter of the year and projected savings for 2017.

**Outcome #4: Promote diversity of CLE speakers and planners.**

*Measures: Work with CLE planners to encourage recruiting CLE presenters that reflect the diversity of the bar membership; review speaker and planner data each year and maintain statistics.*

Based upon the bar's database, the department's 2016 OSB speaker and planner faculty had the following demographics: 59% male, 41% female; 72.5% White, 2.6% Asian, .4% Black, 2% Hispanic, and 1% Native American. In addition, .4% identified themselves as "multi or other," while 21% did not state ethnicity. This is compared to the bar's October, 2016 membership demographics (15,257 active members) of 64% male, 36% female; 65% White, 3% Asian, 1% Black, 1.5% Hispanic, and .5% Native American. Also, 3% identified themselves as "multi or other," and 26% "declined to state their ethnicity."

The geographic diversity of CLE Seminars speakers and planners continued to mirror the state's more populated regions. The majority of the department's 345 CLE speakers came from the following counties: Multnomah (52%), Marion (8%), Clackamas (6%), Washington (4%), and Lane (4%). Nine percent of the department's CLE speakers came from the counties: Benton, Clatsop, Columbia, Crook, Curry, Deschutes, Jackson, Klamath, Lincoln, Linn, Malheur, Polk, Umatilla, Wasco, and Yamhill. Non-Oregon participants (17%) hailed primarily from Washington state.

*Measure: Develop CLE program curriculum that addresses diversity and inclusion issues such as implicit bias and white privilege.*

Two programs cosponsored by the CLE Seminars Department focused on significant diversity and inclusion issues. At the suggestion of the department director, the 2016 Litigation Institute & Retreat featured a presentation by a Japanese female OSB member who represented another Japanese OSB member whose civil rights had been violated 74 years earlier during WWII under Executive Order 9066. The presentation was very well-received; at the conclusion of the presentation the speaker received a standing ovation, a first in the institute's almost 25-year history.

In the spring of 2016, CLE Seminars and the Multnomah Bar Association (MBA) explored the possibility of including an implicit bias presentation at the MBA annual awards lunch. Due to scheduling conflicts with the speaker, that presentation was not possible. Instead, the planners focused on enhancing the OSB BOG/Multnomah Bar Association fall social. This eventually became a 90-minute CLE panel discussion on diversity in hiring, followed by a networking

reception. Members of the Portland metro area specialty bars and other stakeholders were invited to the event and almost 100 individuals attended the two events.

## **Communications & Public Services Department**

### **Program Goal Statement**

The OSB Communications Department advances the bar's mission of promoting respect for the rule of law, improving the quality of legal services, and increasing access to justice through consistent and effective delivery of OSB priority messages to members and the public. For member communications, the primary goals are to provide information that benefits members in their practices and to increase member awareness of bar priorities and services. For public communications, the primary goals are to promote public confidence in the justice system, respect for the rule of law, and an understanding of the importance of Oregon lawyers to an efficient, accessible justice system.

### **Program Description**

The Member Communications group publishes the OSB *Bulletin*, the electronic Bar News and the BOG Update, prepares editorial content for the bar's website and assists other bar programs develop marketing and outreach materials. This group also coordinates the annual Awards event, 50-Year Member Luncheon and other membership projects and events, including membership surveys and research.

Public Communications comprises programs and services designed to educate the public about laws, lawyers, and the legal system, and how to find help with legal problems. Education efforts include: public legal education seminars and cable TV programs, pamphlets and specialty publications, public service announcements and website materials.

The Creative Services group provides art direction and production management of all collateral promoting the programs, services and organizational brand of the OSB. Creative Services also develops and maintains the bar's website and other electronic communications, and works closely with other department staff to coordinate marketing campaigns for the organization and assist bar programs in their individual marketing efforts.

### **Volunteers/Partnerships**

**Volunteers:** Approximately 50 members annually serve as authors and sources for member communications and another 100 or so assist annually with public information materials.

**Partnerships:** Communications partners with OSB sections and committees, county and specialty bars, the Oregon Judicial Department, legal aid programs, social service agencies, schools, and community and business leaders.

## Outcomes and Evaluation

### Outcome #1: OSB members are informed about OSB priorities, programs and events.

Our primary, ongoing goal is to ensure consistent coverage of bar priorities in the editorial and marketing content of the *Bulletin*, bar website and various electronic newsletters and bulk messaging. In 2016 each issue of the *Bulletin* included columns on legal ethics, law practice management and legal writing. The magazine balances features on substantive law and legal trends with features, profiles and opinion pieces that touch on OSB priority issues:

- Access to Justice: “Linking Health & Law” (medical-legal volunteer partnerships), “Lessons for the next Generation” (civics education), “Creative Charity” (lawyers give back).
- Diversity & Inclusion: “Bowling with Barbarians” (implicit bias), “Strangely Absent from History” (Oregon exclusionary laws), “State-Sponsored Sterilization” (disability discrimination);” Land of Opportunity” (immigrants and refugees in Oregon).
- Future of the legal profession: “A Brave New Legal World” (future of the profession), “South of the Gorge” (rural practice opportunities), “No More Pencils, No More Books” (changes in legal education).
- Sustainability: “A Chuckle in the Chain” (bike commuting).

Information on OSB programs and events are included in the *Bulletin* as well as email communications and the BOG Update e-newsletter. In 2016 the department sent out 34 all-bar emails and had an average open rate of 30% and a click-through rate of 7%, substantially the same as the previous year. Ongoing tests have shown that a specific subject line is more closely correlated with high open rates than the timing of the message, and that messages targeted to specific groups, e.g., new lawyers or section members, have higher open rates. The department continues to develop an appropriate presence on social media, with 45 Facebook posts in 2016 promoting CLEs, job openings, publication of the Capitol Insider and various networking events with photo galleries.

A specific goal for the year was to develop an online version of the *Bulletin* that retains its advertising content, which will be key to retaining ad revenues as more members opt for digital delivery in the future. The new online version debuted in May. An added benefit is that the new production process takes approximately 2 hours to produce, where the former process required 12-14 hours to produce.

**Outcome #2: OSB marketing efforts and other communications vehicles are consistent, timely, effective and designed to reinforce the bar's visual brand.**

Along with ongoing design and production work, areas of focus for 2016 were to continue the migration of section websites to a single platform and implement the next stage marketing development for CLE seminars. During 2016 we completed the transition of 26 section sites to the OSB WordPress platform with another 5 sites developed and in review by the sections. Five sites, currently positioned on the public WordPress platform and managed directly by the bar, will be brought over to the OSB platform in 2017. That leaves five sections sites, currently managed independently by the sections, to be migrated in 2017, and discussion has begun with these sections. All of the new sites reinforce the bar's visual brand, are responsive for mobile devices, accessibility ready, with familiar tools that make it easier for volunteers to maintain their sites.

For CLE seminars, staff continued developing new cross-placements with the *Bulletin* and email marketing, plus multiple online placements including the main page carousel, CLE page carousel, member login page and BarBooks. Staff also began developing cross-marketing opportunities between CLE Seminars and Legal Publications, including a combination sale. Additional opportunities will follow upon installation of new association management software in 2017.

An analysis of online sales by delivery type in 2016 shows a continued decline in registration for in-person programs and continuing growth in live webcasts and on-demand products. On-demand products now account for 31% of sales and are our most popular delivery method; revenue from attendance at live programs decreased 14% over 2015 while attendance via live webcast increased 23%. This trend supports our decision to focus on producing more live webcasts and expanding our on-demand library moving forward.

**Outcome #3: OSB offers an array of practical, understandable legal information to help the public access the justice system.**

The communications department provides legal information to the public in multiple forms, primarily delivered through the bar's website. Most visitors access this information through our Legal Topic Index. Topics are updated on an ongoing basis, and 45 topics were reviewed and revised by lawyer volunteers and a staff editor in 2016. The most viewed legal topic pages were: Landlord/Tenant (169,552) and Referral & Information Services (123,736). Several topics had notable increases in page views over 2015, including Marijuana/Cannabis Law (+ 86%), Employment Law (+ 59%), Rent Increases (+ 56%) and Divorce (+ 50%). Others showed declines, which could indicate declining needs for legal assistance in these areas: Employment Rights for People with Disabilities (- 61%) and Understanding Bankruptcy (- 26%).

Our focus for 2016 was to add more video content to the site, which many members of the public prefer to written content. Greater use of video also has an impact of search engine

rankings, which in turn brings more people to our web page for legal information and resources. Working with the Public Service Advisory Committee, we launched “Legal Q&A,” a series of short (2-3 minutes) videos featuring lawyer volunteers answering a single, common legal questions. The first clips posted featured bar staff explaining the services of the OSB Client Assistance Office, Lawyer Referral Service and Modest Means Program. The latter two were produced in both English and Spanish. By the end of the year 31 completed Legal Q&A videos had been posted on the public pages of the bar’s website and have been viewed more than 1,200 times.

Another goal for 2016 was to revise the guidebook Legal Issues for Older Adults as both a print and web-based product. Sections of the guidebook that duplicated online legal topics were removed, and all remaining chapters were revised by a contract legal editor and reviewed by a staff editor. The revision is now in the production/design stages and will be published in the spring of 2017.

**Outcome #4: OSB provides exceptional customer service to both members and the public.**

Our main focus for 2016 was preparing for and communicating service changes related to the Aptify installation. This included working with the implementation team to make avoid service disruptions during the regulatory compliance cycle. Staff maintained the existing notification process for a final year while working to develop a member-friendly interface, including law firm administrator access, for the new Aptify-based processes in 2017.

Bar leaders remain largely satisfied with communication efforts, offering the following ratings on a 1-5 scale:

- Coverage of section and committee events by OSB Communications -- 4.5
- Public education materials (print, online, video, etc.) -- 4.1
- Courtesy of staff -- 4.8

**Outcome 5: Continue to develop cost-efficient strategies and processes to achieve budget goals and ensure fiscal responsibility.**

The department has three distinct budgets, each of which posted good results for 2016. Revenues for our online career center, JobTarget, once again exceeded projections. The *Bulletin* continues to support other bar programs and affiliate groups by providing free ad space. The value of donated space to CLE Seminars totaled \$26,600, with an additional value of \$45,970 to other bar programs and affiliates such as the Campaign for Equal Justice.

## **Disciplinary Counsel's Office**

### **Program Goal Statement**

Disciplinary Counsel's Office (DCO) is a critical component of the bar's regulatory function. The goal of DCO is to administer a fair, efficient, and cost-effective system for the regulation of lawyers; and to promote public and member confidence in the lawyer regulation system.

### **Program Description**

As an instrumentality of the judicial department of the State of Oregon, the bar is responsible for regulating lawyer conduct for the protection of the public and the integrity of the legal profession. DCO administers most of the bar's regulatory programs that are mandated by statute or court rule. Responsibilities include: investigation and prosecution of disciplinary matters; probation and diversion monitoring and, where appropriate, enforcing compliance; conducting a twice-annual ethics school that is required attendance for all lawyers publicly sanctioned; administration of the Trust Account Overdraft Notice program; reviewing, investigating, and making recommendations on reinstatement applications; instituting and managing custodianships over a lawyer's practice; processing status changes; processing and screening pro hac vice applications; processing requests for and issuing certificates of good standing; and responding to public records requests concerning disciplinary matters.

### **Volunteers/Partnerships**

**Volunteers:** The State Professional Responsibility Board, which is responsible for making charging decisions and overseeing the ensuing prosecution, is comprised of eight lawyers and two public members. The lawyer members are representative of the seven bar regions; the public members are at-large. The Disciplinary Board is comprised of 67 geographically-assigned lawyers and public members from whom trial panelists who serve as adjudicatory officers are selected. DCO also occasionally enlists a volunteer bar member to serve as lead counsel in a disciplinary matter. Other members of the bar may serve as attorney monitors in both diversions and probations.

**Partnerships:** Other groups and entities play a role in maintaining high standards of ethics and competency, including the bar's Client Assistance Office, which screens inquiries and complaints; state court judges who observe lawyer conduct; the Professional Liability Fund and its Oregon Attorney Assistance Program; the members of the State Lawyers Assistance Committee, who may be called upon to assist with the monitoring of lawyers on diversion or probation; the State Court Administrator's Office; and the Oregon Supreme Court.

### **Outcomes and Evaluation**

**Outcome #1: Meet or exceed timeline targets for investigation and prosecution of disciplinary matters.**

DCO met or exceed most of its timeline targets in 2016. In the areas where the targets were not met, the delay was typically a consequence of the complexity of the matter or challenges in obtaining the responding lawyer’s response.

<i>Step</i>	<i>Target</i>	<i>2016 Average</i>
Initial Action	14 days from receipt	12 days
Probable cause decision	4 months from receipt	77 days
Recommendation to SPRB	9 months from receipt	7.3 months
SPRB review of staff dismissals	90% upheld	100%
File formal complaint	60 days from SPRB authorization	124 days
Request trial panel	120 days from formal complaint	139 days
Resolve 70% without trial		53%
Initial trial setting	Within 6 months of assignment to a trial panel	11 of 18
Prevail in 90% of formal cases		100%

**Outcome #2: Increase bar and public contacts**

During 2016, outside speaking opportunities continued at a pace consistent with the prior year. Outreach to the larger legal community will continue as a priority.

**Outcome #3: Increase the use of Diversion/Probation and alternatives to discipline in an effort to reduce recidivism**

Diversion under Oregon BR 2.10 continues to be an option considered by the SPRB in eligible cases. Both DCO and SPRB are mindful that the facts of a case and the circumstances of a respondent lawyer must be such that there is an identifiable condition or issue that can be impacted by remedial action in order for diversion to be a successful outcome. An administrative staff member monitors all diversions, probations, conditional admissions, and conditional reinstatements and a single staff attorney handles any enforcement measures that arise from failures to abide by diversionary or probationary terms. The form language of diversion agreements and stipulated probationary orders form are under continued review. As of the end of 2016, 36 different matters are being monitored.

#### **Outcome #4: Proposed and Implemented Changes in DCO Rules and Procedures**

In March of 2016, the Board of Governors reviewed and voted on all but two recommendations made by the Disciplinary System Review Committee (DSRC) regarding changes to the Bar Rules that govern the attorney discipline system. After two subsequent discussions at later meetings, another recommendation was approved, which would, if adopted by the court, result in the establishment of a professional adjudicator who would chair all trial panels and perform many functions now performed by the statewide Disciplinary Board chair. Between March and November, work was done on rule language to implement the proposed recommendations. In November, the BOG tabled until January a vote on the rule language to be proposed to the court.

#### **Outcome #4: Process regulatory work in timely manner**

In 2016, DCO timely processed 504 pro hac vice applications; 14 arbitration registrations; 1112 status transfers, which included 285 resignations and 159 reinstatements; and issued 1,036 good standing certificates. Staff responded to 2,076 public records requests by providing more than 3,801 copies and 140 computer disks of records. Response time was generally within 24 hours.

#### **Outcome #5: Continue with technology improvements**

During 2016, DCO staff members participated in the development and planned launch of the new association management software. DCO continues to enhance, through currently available technology and software, the extent to which documentation is stored and transmitted electronically, in order to reduce paper and postage costs and render records more readily accessible through means other than a paper file, working with IDT to make incremental refinements in the disciplinary database. The continued growth of records pertaining to Oregon courts that are searchable electronically has continued to render the investigation of court records more efficiently accomplished, which has positively impacted disciplinary investigations. Public records requests are increasingly responded to electronically as well.

#### **Outcome #6: Conduct a successful Ethics School**

Two sessions of "Ethics Best Practices" were presented, in May and November, through the combined efforts of lawyers from DCO and the Client Assistance Office. Although the programs are available to any member, the largest proportion of attendees is mandated to attend by reason of disciplinary sanctions. Written program materials and live presentation aids are continually reviewed and refined. Feedback from attendees is overwhelmingly favorable.

## **2016 Program Measures Diversity & Inclusion**

### **Goal Statement**

The goal of the Diversity & Inclusion Department of the Oregon State Bar is to support the mission of the Oregon State Bar: by promoting respect for the rule of law, by improving the quality of legal services, and by increasing access to justice. The Department serves this mission by striving to increase the diversity of the Oregon bench and bar to reflect the diversity of the people of Oregon, by educating attorneys about the cultural richness and diversity of the clients they serve, and by removing barriers to justice.

### **Program Description**

In 1975, the Oregon State Bar established the Affirmative Action Program (AAP) with the goal of “achieving representation of minority persons in the bar in the same proportion as they are represented in the population of Oregon, while at the same time not lowering the standards for admittance...”<sup>1</sup> At that time, there were 27 racial/ethnic minority attorneys in Oregon (.5%). The AAP served only racial/ethnic minority participants through 1998 (466 active OSB racial/ethnic minority members—4.1%). In 1998, eligibility for AAP programs was split—anyone (regardless of race/ethnicity) who could help the program achieve its mission was eligible to apply for programming. Opportunities for Law in Oregon (OLIO) was created as the only program focused on outreach to recruit and retain historically underrepresented racial and ethnic minority law students in Oregon. Historically, OLIO has been funded primarily by private donations and grants.

In August 2011, the bar changed the name of the Affirmative Action Program to the Diversity & Inclusion Department (D&I) and expanded its role to work strategically and in collaboration with OSB leaders to advance diversity and inclusion in all aspects of the OSB’s mission. In 2012, bar leaders developed a definition for diversity and inclusion, and articulated a compelling business case statement explaining why it is important. In 2013, D&I led the bar’s effort to create a Diversity Advisory Council (DAC), which developed and presented a draft Diversity Action Plan (DAP) to the Board of Governors (BOG). The BOG adopted the DAP during its November 2013 meeting. The DAP is a three-year plan that identifies goals, strategies and action items to advance diversity and inclusion in all the bar’s mission areas, including within its internal operations.

In 2013, D&I also continued to assess, administer and enhance the existing OSB D&I Programs with the support of the Advisory Committee on Diversity and Inclusion (ACDI), formerly known as the Affirmative Action Committee (AAC). (The BOG renamed the AAC to the ACDI in 2013 to reflect the bar’s expanded definition of diversity.) This work entailed reducing the expense associated with the 2013 OLIO Orientation conference and examining whether the eligibility criteria for 1L students should be expanded during the 2014 OLIO Orientation.

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<sup>1</sup> The OSB sees the inclusion of racial and ethnic minorities in the legal profession as essential to ensuring that Oregon has a talented pool of lawyers to serve the diverse needs of clients, communities, and businesses.

In November 2013, the House of Delegates approved a funding increase to support the bar’s diversity and inclusion work for the first time in 23 years.

In 2014, in addition to on-going assessment and improvement of its pipeline programs, D&I focused on supporting bar leaders to implement the bar’s Diversity Action Plan year one goals, strategies and action items. After a year of study, the OLIO Orientation eligibility was expanded in 2014.

In 2015 the DAC presented a year one DAP implementation report to the Board of Governors. Efforts in 2015 focused on revising the DAP and implementing year two strategies and action items to achieve our goals.

**Volunteers/Partnerships**

**Volunteers:** D&I works with a variety of volunteers, principally the members of the ACDI and the Diversity Section, as well as leaders of Oregon’s specialty bar organizations.

**Partnerships:** To promote its mission the Department partners with the three Oregon law schools, local bar associations, OSB Sections and Committees, the judiciary, public and private firms, Oregon’s specialty bar associations and various colleges, universities and community organizations.

**Outcomes**

**Outcome #1:** Develop and implement a mandatory online demographic data updating mechanism to increase the percentage of bar members who disclose their race and ethnicity.

**Measure:** 75% of bar members disclose their race and ethnicity by 2016.  
As of the end of 2016, 74.5% of OSB members reported their race and ethnicity, which virtually achieved our program measure for this outcome. A table of the changes from 2014 to 2016 is below:

	2014	2015	2016
<b>Reporting</b>	10,335 (↑ 1,693)	11,183 (↑ 848)	11,251 (↑ 68)
<b>Declined to State</b>	4,826 (↓ 1,610)	3,995 (↓ 831)	3,853 (↓ 142)
<b>Total Members</b>	15,161 (↑ 163)	15,178 (↑ 17)	15,104 (↓ 74)
<b>% Reporting</b>	68.2% (↑ 10.7%)	73.7% (↑ 5.5%)	74.5% (↑ 0.8%)

**Outcome #2** Create an online version of the bar's Diversity Story Wall Exhibit. Develop updated content for the online exhibit on a yearly basis.

**Measure:** Successfully launch the online exhibit in 2015.

Throughout 2016, we continued to maintain and update the online Diversity Story Wall to include 2007 entries for Judge Youlee You (the first female Asian-American judge in Multnomah County and Oregon); Judge Mustafa T. Kasubhai (the first South East Asian and Middle Eastern Judge in Lane County); Judge Valerie Love (the first Asian Pacific American female to serve in Lane County); and Judge Clara Rigmaiden (the first Latina to serve in the Lane County).

**Outcome #3:** Hold an OLIO alumni reunion and build a strong OLIO alumni network.

**Measure:** Organize and hold the first reunion in 2015.

In 2016, the OLIO Alumni Reunion Committee formally joined the Advisory Committee on Diversity & Inclusion (ACDI) as the OLIO Alumni Subcommittee, where it is currently chaired by OLIO alumna Claudia Groberg. During its initial meetings, the OLIO Alumni Subcommittee determined its scope of activities and its priorities in the short and long term, which included holding social events and an awards dinner every few years.

For the short term, the subcommittee sent out an outreach email to its known list of OLIO alumni to solicit volunteers to join the subcommittee and successfully recruited 5 attorneys interested in helping the subcommittee in the future.

**Outcome #4:** Support and encourage OLIO orientation participants to take the Oregon Bar Exam and practice in Oregon.

**Measure:** 35% of OLIO Orientation participants who graduate from law school become Oregon Bar members by April of the year after they graduate.

To evaluate whether we achieved this program measure in 2016, we reviewed the progress of our OLIO 1L students from 2012, who were projected to graduate in 2015 under a three-year law program. Of our OLIO 2012 1Ls who graduated in 2015, 37.9% of them applied for the Oregon Bar Exam and successfully passed by April 2016 (the year after they graduated). Based on these numbers, we achieved this program measure for 2016.

**Outcome #5:** Implement Rural Opportunity Fellowship. Track and monitor the progress of the first recipient. Expand the program to two fellowships in 2016 and cultivate four rural employment sites for potential fellows.

**Measure:** Program implemented and a successful placement occurs.

The D&I Department increased the number of Rural Opportunities Fellowship from one to two in 2016. However, only one student from an Oregon law school applied for this program, and despite receiving a Rural Opportunities Fellowship, chose to pursue employment outside of rural Oregon. However, as a direct result of this underutilization of the Rural Opportunities Fellowship Program, the D&I made changes to the implementation of this Fellowship so that (1) the Rural Opportunities Fellowship is a supplemental award of \$3,360 to an existing \$5,000 Public Honors Fellowship, so that in case a student secures a public position in Oregon, but not in rural Oregon, s/he forfeits only the supplemental \$3,360 and can still utilize the Public Honors Fellowship; and (2) the remaining funding for all of D&I's three fellowship programs were consolidated under the Public Honors Fellowship Program, to be evaluated by the ACDI.

## **Finance & Operations**

### **2016 Program Evaluations**

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#### **Accounting & Finance**

With a Net Operating Revenue (NOR) of \$966,921 exceeded the 2016 Net Operating Revenue budget target of \$855,618.

The amount of funds available for the various reserves, contingencies and fund balances was \$5.853 million compared to the Reserves total of \$5.133 million. This excess of \$720,000 means all reserves are fully-funded. The EOY 2016 excess was \$264,000 higher than a year ago. The long-term investment portfolio grew \$517,000 during 2016.

For the first time since 2006 the general active member fee was increased. The fee was increased by \$50.00 by action of the House of Delegates, and the Client Security Fund assessment was lowered by \$30.00 making the net increase in the active member fee by \$20.00 to \$557.00.

Completed the audit of the 2014-2015 financial statements reporting a net revenue of \$1,825,611 not including the \$3,434,111 expense for unfunded pension expense required by GASB 68. There were no internal control or compliance deficiencies included in the report.

Non-personnel costs were \$13,369 less than 2015 and continued the downward trend of these costs since 2006.

Eliminated the half-time Accounts Payable Assistant position at mid-year and assigned duties to another department employee.

Remedied the unreconciled fixed asset ledger and sub-ledger balances and created a process to more expeditiously reconcile the accounts each month.

Upgraded the Great Plains accounting system from an outdated version to GP 2015 allowing integration with Aptify's accounting features.

Streamlined the printing of the monthly financial statements to improving their availability to staff and sections by 3 to 5 work days.

#### **IT**

The bulk of the IT staff time was dedicated to the Aptify upgrade. The first part of the year was the installation of the software and the latter half dedicated to evaluation, modifications, and testing. Due to the complexity and volume of the project the go-live date was extended into

early 2017. A schedule of program and process go-lives was refined for the end of 2016 through the end of 2017.

Replaced the InReach contract with INXPO to prepare for the content storing of CLE seminars and related systems.

Contracted with Convergence to perform security scanning and increasing redundancy in support to the network and systems.

### **Facilities**

A major tenant's lease expired on September 30, but the bar has been unable to find a willing tenant for the space. Two proposals for portions of the space were declined.

The Fanno Creek Place Net Expense of \$589,014 was the lowest since 2011. This was \$62,700 less than budget and a \$74,700 improvement in cash flow over 2015.

## **General Counsel's Office**

### **Goal Statement**

The primary objective of General Counsel's Office is to provide cost-effective, high-quality legal advice and representation to protect the legal and policy interests of the Oregon State Bar.

Secondary objectives are to administer the Client Assistance Office (see CAO Program Measures), the Fee Dispute Resolution Program and the MCLE Department effectively and efficiently. Additionally, General Counsel's Office supports the Unlawful Practice of Law Committee, the State Lawyers Assistance Committee, and is responsible for providing timely and accurate ethics assistance to members. General Counsel's Office also functions as the Disciplinary Board Clerk's Office. The General Counsel's Office is responsible for the Unclaimed Lawyer Trust Account claims and abandoned funds turned over to the Department of State Lands. The office is also a general resource for questions from the public and others about the role of the bar, the regulation of the profession and related issues.

### **Program Description**

General Counsel's Office provides legal advice to the OSB on internal matters such as personnel, contracts, public meeting and public records compliance and non-disciplinary litigation. The Office also advises and assists the Board of Governors in the development of bar policy on a variety of issues. The Office is a resource to the public, the courts, and other branches of government regarding the role of lawyers and the legal profession, the regulation of lawyers and other issues.

General Counsel oversees the operation of the Client Assistance Office and the MCLE Department. Both programs develop and evaluate their own program measures and day-to-day functions are handled by the CAO Manager and the MCLE Administrator. Ultimate responsibility for personnel and program issues, however, rests with General Counsel. Additionally, General Counsel reviews, upon request, all complaints dismissed by the CAO and makes a final decision.

General Counsel's Office also administers the Fee Dispute Resolution Program, a voluntary mechanism for resolving fee disputes between bar members and their clients, or between bar members. Participants may have their disputes submitted to either mediation or arbitration. Arbitrations are heard by a single arbitrator or a panel of three arbitrators, depending on the amount in dispute. Three-arbitrator panels are comprised of two lawyers and a public member. All mediators and arbitrators are volunteers. The party requesting mediation or arbitration pays a modest fee. Mediators prepare the agreement when the mediation results in resolution of the dispute. Arbitration decisions are binding on the parties, subject to only limited court review.

General Counsel's Office provides administrative support to the Unlawful Practice of Law Committee, which investigates complaints of unlawful practice by persons who are not

members of the Oregon State Bar. Based on the Committee's recommendation, the bar is authorized by statute to seek injunctive relief against unlawful practitioners. The Committee also issues informational letters as appropriate, and engages in public education and outreach through, among other things, the issuance of advisory opinions.

General Counsel's Office provides ethics assistance to bar members, responding to approximately 4,000 telephone requests, 400 e-mail requests, and 20 requests for advice letters each year. General Counsel staff are regular contributors to the Bulletin and to continuing legal education programs of the bar and other organizations. General Counsel's Office serves as a resource to the OSB Legal Ethics Committee, as requested by the CEO/Executive Director, in development of formal ethics opinions and proposed amendments to the Oregon Rules of Professional Conduct. General Counsel provides staff support to special task forces studying rules of professional conduct for lawyers and, occasionally, judges.

General Counsel's Office also supports the State Lawyers Assistance Committee, which is charged with reviewing and resolving complaints about lawyers whose conduct may impair their practice of law. When a lawyer is determined to be within the jurisdiction of SLAC, the committee develops and monitors the lawyer's participation in a remedial program.

General Counsel's Office serves as the Disciplinary Board Clerk's Office, a central repository for all pleadings and official documents relating to formal disciplinary proceedings. The DB Clerk maintains the original record of pleadings and other documents in disciplinary cases, tracks the progress of the proceedings through final disposition, provides periodic notices when events do not occur within the time frame set out in the Bar Rules of Procedure, and assists with the logistics of arranging hearings. General Counsel's Office organizes and presents the annual Disciplinary Board Conference and advises Disciplinary Board members on procedural matters as needed. Recently, General Counsel has provided input and advice to the Board of Governors regarding proposed changes to the Bar Rules of Procedure.

Finally, beginning in mid-2016, General Counsel's Office assumed oversight of the receipt and distribution of Unclaimed Lawyer Trust Account funds appropriated to legal services pursuant to ORS 98.368(2).

### **Volunteers/Partnerships**

General Counsel's Office partners with a variety of members and others in fulfilling its responsibilities. When insurance does not provide coverage, we attempt to recruit members to represent the bar on a *pro bono* or reduced fee basis to help with the more complex non-disciplinary litigation in which the bar is involved. The bar also receives legal representation on employment and some other legal matters either *pro bono* or at reduced fees. Members of the Legal Ethics, State Lawyers Assistance and UPL Committees are all volunteers, including the public members; the same is true of the panelists for the Fee Dispute Resolution Program and the public and lawyer members of the Disciplinary Board. General Counsel's Office also frequently partners with Oregon lawyers, specialty and local bar associations, and the Professional Liability Fund to provide continuing legal education programs.

## Outcomes

### **Outcome #1: Protect the legal and policy interests of the Oregon State Bar.**

The Bar suffered no adverse outcomes in connection with its non-disciplinary and UPL litigation in 2016 and all such litigation was timely processed.

The bar brought one civil injunction in a UPL matter; the bar was aptly represented by *pro bono* counsel. The case resulted in a favorable settlement. The bar, represented by in house counsel, also brought one collection action against a lawyer with a substantial outstanding Client Security Fund judgment; that action resulted in a favorable settlement.

In 2016, four new lawsuits were filed against the OSB and its employees in federal district court. Of the federal lawsuits, in house counsel obtained one dismissal and three cases were never served on the bar. Two of the federal matters were appealed to the Ninth Circuit Court of Appeals. The appeals were handled in house and the Ninth Circuit affirmed the dismissals. Two additional federal matters that appealed to the Ninth Circuit Court of Appeals over three years ago remain pending before the court.

In 2016, two new lawsuits were filed against the OSB and its employees in state court. The bar handled one matter in house, and obtained a dismissal. The other matter was never served on the bar and remains pending.

The bar obtained dismissal of a remaining state court matter, which was originally filed in 2015, through a motion for summary judgment. The bar was aptly represented in that matter by insurance defense counsel.

In 2016, the bar's legal service program was named as a creditor in a significant *cy pres* judgment entered in a class action lawsuit. When that judgment was appealed, the bar retained counsel on a reduced flat-fee basis to represent the bar's interests on appeal. The appeal is ongoing.

An issue with PERS arose last year that presents potential liability for the OSB and PLF. It appears, however, that the matter may reach resolution before the end of the year.

Throughout the year, the Executive Director and the Board of Governors were provided with timely, clear and concise analysis and recommendations on various legal and policy issues. All indications are that the Executive Director and Board of Governors are satisfied with the level and quality of legal and policy assistance from General Counsel's Office.

Managers similarly received prompt and helpful assistance with issues throughout the year including personnel, contracts, public records and meetings, and other issues as they arose. The volume and complexity of contracts to review increases every year, particularly with respect to information technology, and staff is developing the expertise to handle these matters in house as much as possible. For revision of the Association Management Software contract, General Counsel hired outside counsel with specialized expertise in the area.

**Outcome #2: Maintain an efficient and effective fee dispute resolution process for disputes covered by the rules.**

Fee dispute resolution activity continues to be steady, with a total of 86 petitions filed in 2016. The fee dispute program has continued to receive positive feedback from participants.

Because the Fee Dispute Resolution Program is voluntary, approximately 40% of the petitions are closed without resolution, either because of no response from the respondent, or a respondent's open refusal to participate.

In 2016, the Program Administrator opened 32 fee mediation matters; eight of those matters resolved in mediation. Three matters that were mediated were later arbitrated.

In 2016, the Program Administrator opened 19 fee arbitration matters. Of those matters, nine cases resulted in fee arbitration hearings and ten cases resolved prior to a hearing.

In September 2016, the Board of Governors convened a Fee Mediation Task Force to seek feedback and recommendations on the fee mediation component of the Fee Dispute Resolution Program. The Task Force will make its recommendations to the Board in early 2017.

**Outcome #3: Provide timely, accurate and helpful ethics assistance to members.**

This service continues to be one of the most highly valued by members, at least based on the informal feedback received. Call volume continues at a high level (approximately 20-25 calls/day) and nearly every call is answered the day it is received. Written inquiries are also nearly always addressed the day they are received, and no later than three business days from the date of receipt. GCO attorneys attended the ABA's National Conference on Professional Responsibility in 2016 and participated in other activities to keep them abreast of developments in the field. Members continue to complement GCO's regular Bulletin articles and CLE presentations and the office is recognized as a valuable resource on issues of professional responsibility.

The Legal Ethics Committee presented one new formal ethics opinions to the Board of Governors in 2016, and has nearly completed its updates to existing formal ethics opinions based on the amendments to the rules of professional conduct adopted prior years.

**Outcome #4: Assist the UPL Committee in appropriate resolution of UPL complaints.**

The UPL Committee received 47 complaints in 2016, which significant reduction from the 74 complaints received in 2015. The Committee continues to resolve complaints in a timely manner; most cases are resolved within six months.

The Committee continues to focus more time and energy on strengthening its relationships and coordinating enforcement efforts not only with the Oregon Department of Justice and local law enforcement, but also with the American Immigration Lawyers Association (AILA), the

U.S. Immigration and Customs Enforcement, and the Secretary of State with the goal of enhancing outreach to and protection of vulnerable populations.

In 2016, the Committee has focused significant effort on public outreach and education. In addition to publishing online and print versions of pamphlets on *notario* fraud (in Spanish and Russian), the Committee formed a subcommittee focused entirely on its outreach and education efforts. In 2016, staff participated in two community events where it promoted the bar's efforts to stop notario fraud.

**Outcome #5: Maintain accurate records of Disciplinary Board proceedings and contribute to the timely disposition of matters.**

The Disciplinary Board Clerk function enhances the integrity of the disciplinary process by separating the Disciplinary Board's operations from Disciplinary Counsel's Office. There have been no significant errors or unfavorable incidents; on the contrary, the DB Clerk typically provides more service to Disciplinary Board members than is contemplated by the position and consistently receives high praise for the service provided.

Timelines for opinions and other responses from trial panels and regional chairs are not always met, an undoubted (and perhaps unavoidable) consequence of relying on volunteers with full-time jobs. Records management is accurate and timely, and efforts continue toward an entirely electronic filing process. General Counsel responded to a high number of inquiries in 2016 and provided procedural guidance to Disciplinary Board members and State Chair.

General Counsel hosted a Disciplinary Board Conference in 2016 for all Disciplinary Board members which was attended by 58 people. Evaluations reflect that the conference was valuable; the Conference will be held on an annual basis as a way of training the new volunteers for their role.

**Outcome #6: Ensure efficient and effective operation of the Client Assistance Office and timely disposition of appealed dismissals.**

The Client Assistance Office continues to meet its program measures for timely and accurate disposition of complaints. Details can be found in the CAO Program Evaluation. The number of appeals from CAO dismissals continues to be high, but the number of "reversals" is very small, indicating that CAO is conducting the appropriate analysis of complaints received.

General Counsel's Office received 230 requests for review of CAO decisions in 2016, for an average rate of 19 appeals per month. This represents a significant increase over 2015, when the average rate of appeals was only 14 appeals per month.

In 2016, General Counsel's Office made decisions on 246 CAO referrals, for an average of 20.5 a month. General Counsel referred six matters to Disciplinary Counsel's Office for further review. The average number of days it takes for General Counsel's Office to complete its

appellate review has improved since 2015, with the implement of new appellate decision forms and streamlined review processes.

**Outcome #7: Assist the SLA Committee in appropriate handling of referrals.**

In 2016, the Committee received approximately seven new regular referrals, and continued to monitor approximately four other regular referrals from prior years. Committee referrals come from other lawyers, members of the public, judges and the SPRB.

The Committee promptly conducted its initial investigations and made determinations about whether to assert jurisdiction and monitor lawyers. Typically, delay only occurred when the Oregon Attorney Assistance Program notified the Committee that the referred lawyer is fragile, such that immediate contact by the Committee may result in physical harm to the lawyer. During the monitoring time, Committee members maintained close and regular contact with the referred lawyer. The Committee closed approximately five regular cases after investigation with a finding of no jurisdiction, and closed approximately four regular cases after taking jurisdiction.

In addition to these regular referrals, the Committee evaluates and monitors lawyers who are referred from Disciplinary Counsel's Office as part of the conditional admission/reinstatement and diversion/probation process. In 2016, the Committee was named as a disciplinary monitor for four lawyers who were placed on probation, and continued to monitor five existing probation referrals. No lawyer entered into a diversion agreement this year, but the Committee continued to monitor one lawyer pursuant to a diversion agreement. The Committee was named to monitor two new lawyers who were conditionally admitted to practice; the Committee continues to monitor two lawyers who were previously conditionally admitted. The Committee completed monitoring in three disciplinary cases (two diversions; one probation) this year.

In 2016, General Counsel focused on providing training and information to Committee members about age-related cognitive impairments.

**Outcome #8: Manage the receipt and distribution of Unclaimed Lawyer Trust Account (ULTA) funds appropriated to legal services pursuant to ORS 98.368(2).**

General Counsel's Office assumed responsibility for the ULTA program in mid-2016, and has been working to document business processes. With the assistance of the Accounting Department, the office kept accurate accounting records of ULTA funds received by the bar and paid to claimants.

General Counsel's Office promptly responded to regular inquiries from lawyers and members of the public about the program processes. The Office filed monthly ULTA reports with the Accounting Department and quarterly ULTA reports with the Department of State Lands. We are preparing to submit an ULTA Annual Report to the Board of Governors and Department of State Lands later this month.

## Human Resources Department

### Program Goal Statement

The goal of the Human Resources Department is to maintain compliance with all state and federal regulations related to human resources and safety issues; maintain a skilled, qualified, professional, productive, and diverse workforce as required to meet the service demands of the organization and make a positive impact on service areas; manage a comprehensive and cost effective benefit program; and create and enhance training options at all staff levels.

### Program Description

The Human Resources Department provides direct service for all employment, training and development, performance appraisal, staff and member benefit administration, policy development, workers' compensation, and all safety-related activities for all bar departments and personnel. The department ensures compliance with federal and state human resources and safety requirements. Department administrative staff directly assists other Executive Services departments and staff with secretarial and administrative support when requested.

### Volunteers/Partnerships

**Partnerships:** Vendors are used to provide training and products that come with service agreements. The bar utilizes professional insurance brokers to review current policies and advise on market conditions when securing workers' compensation, health, and employment practices coverage. The bar and PLF create a group, where practicable, for health insurance and employee assistance program contracts to ensure best rate premiums.

### Outcomes and Evaluation

**Outcome #1: Fulfill employee placement needs for all regular and temporary vacancies within a reasonable and appropriate amount of time to meet or exceed the needs of the hiring director or manager. Incorporate methods that facilitate a diverse outreach and recruitment.**

Measures: Timely completion of process  
Effective pre-screening to identify sufficient pool of qualified candidates  
Successful retention  
Assist directors with succession planning

There were 23 open positions in 2016. Recruitment for four positions has not started as the positions and needs are being evaluated. Three positions remain unfilled. Of the twelve filled

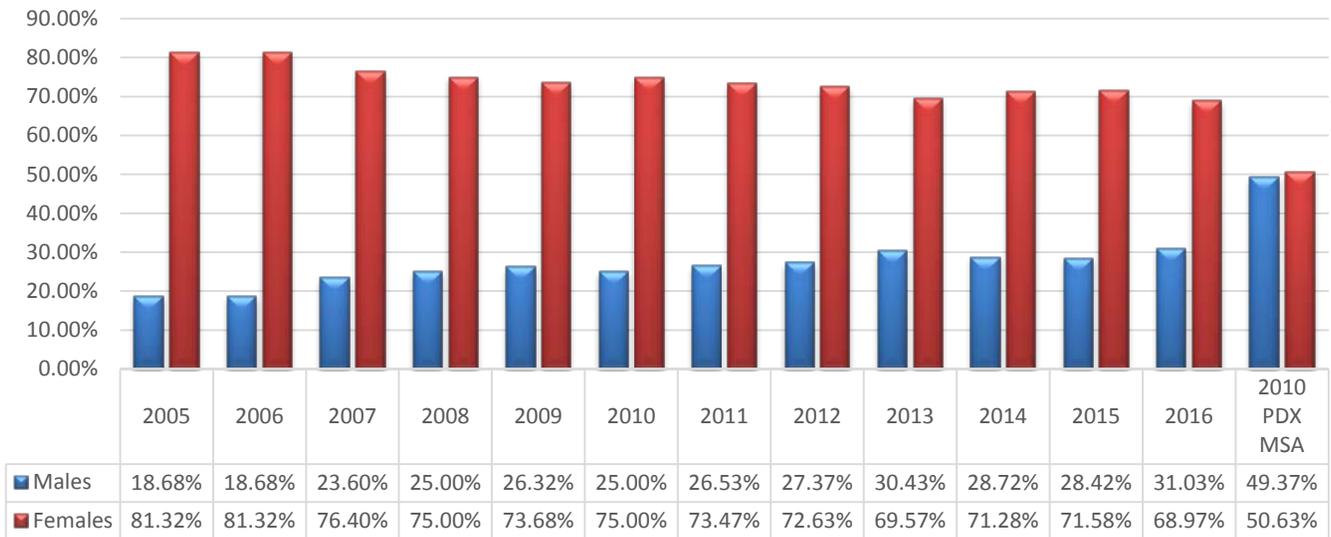
positions, nine were filled from the outside and three were internal fills. Eight of the external hires remain employed with the bar.

### 2016 Open Positions

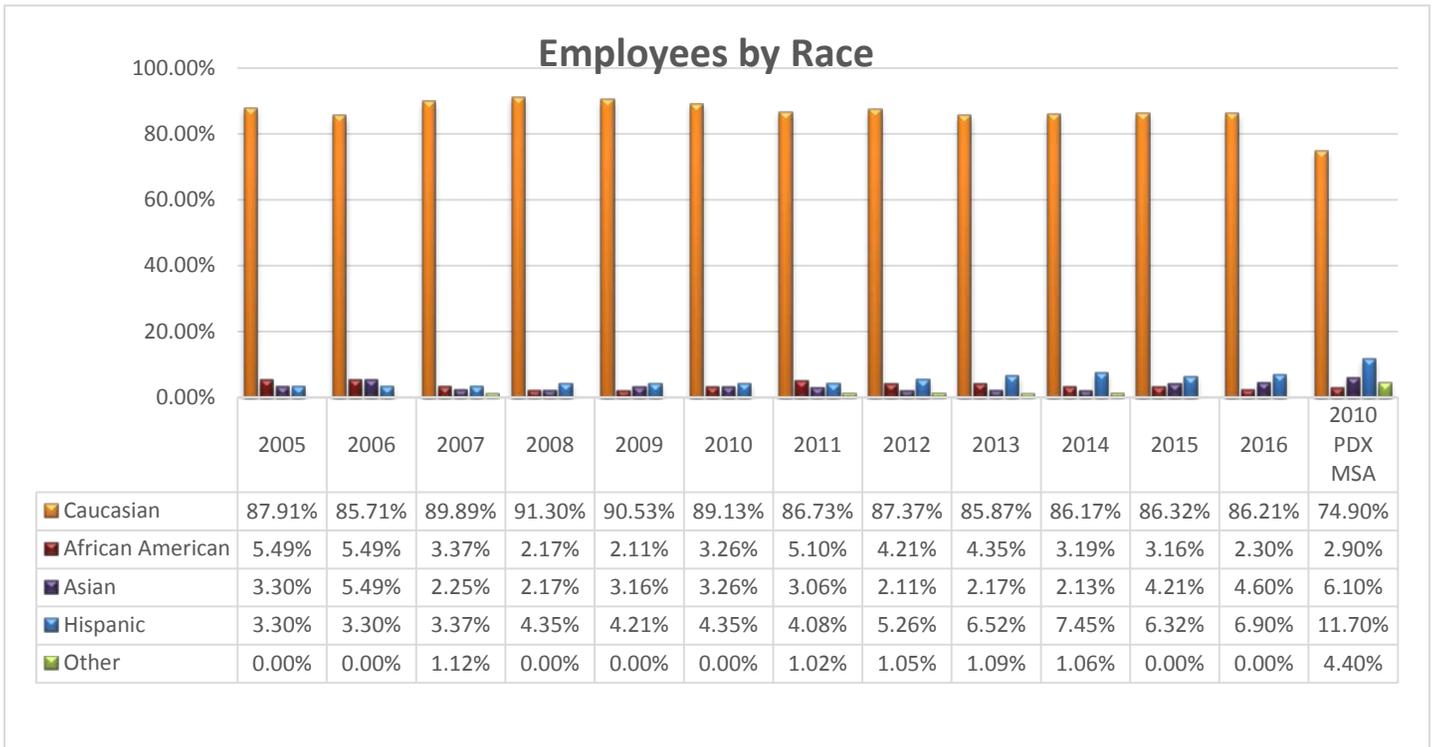
Position Title	Exempt or Non Exempt	Date Recruitment Started	Date Offer Accepted	No. of Days Open	Internal or External Fill	Still Employed	Race	Sex
Accountant	Non Exempt							
Accounting Specialist – A/P	Non Exempt	Position Closed	n/a	n/a	n/a	n/a	n/a	n/a
Administrative Assistant – OLF/LSP	Non Exempt	08/31/16	11/03/16	64	External	Yes	Caucasian	F
Admissions Manager	Exempt							
Assistant Director – OLF/LSP	Exempt	09/08/16	12/12/16	98	External	Yes	Caucasian	M
Assistant Disciplinary Counsel - Investigation	Exempt	04/13/16	05/13/16	30	Internal	Yes	Caucasian	F
Assistant General Counsel and Client Assistance Office Attorney	Exempt	05/19/16	08/25/16	98	External	Yes	Caucasian	M
CLE Customer Service Specialist	Non Exempt	06/13/16	07/20/16	37	Internal	Yes	Hispanic	M
CLE Seminars Assistant	Non Exempt							
CLE Seminars Event Coordinator	Non Exempt	04/18/16	04/18/16	0	Internal	Yes	Caucasian	F
CLE Seminars Marketing Specialist	Non Exempt							
Controller	Exempt	01/21/16	01/27/16	6	External	Yes	Caucasian	M
Director of Diversity & Inclusion	Exempt	08/19/16	12/06/16	109	External	Yes	Hispanic	M
Facilities Assistant	Non Exempt	Position Closed	n/a	n/a	n/a	n/a	n/a	n/a
OLF & LSP Coordinator/Accountant	Non Exempt	Position Closed	n/a	n/a	n/a	n/a	n/a	n/a
Public Affairs Administrative Assistant	Non Exempt	09/16/16	12/19/16	94	External	Yes	Caucasian	F
Referral & Information Services Assistant	Non Exempt	03/30/15	01/11/16	269	External	No	Asian	F
Referral & Information Services Assistant	Non Exempt	01/25/16	01/29/16	4	External	Yes	Caucasian	F
Referral & Information Services Assistant	Non Exempt	10/13/16						
Referral & Information Services Assistant	Non Exempt	11/15/16						
Referral & Information Services Assistant - Bilingual	Non Exempt	07/06/16	08/23/16	48	External	Yes	Hispanic	M
Referral & Information Services Assistant - Bilingual	Non Exempt	08/31/16						
Referral & Information Services Assistant - Bilingual	Non Exempt	10/13/16						

During 2016, the bar hired eight new employees and, of those eight, four were males. Of the fifteen employees who left in 2016, four were males: one left to pursue his dream of becoming a police officer; one relocated to Washington, D.C.; two, who were part time, left for a full-time position. The female employee population decreased by seven and the male population remained the same. The 2016 average turnover rate for males was 1.19% and 1.42% for females. In 2016, the bar hired four females and eleven females left the bar.

### Employees by Gender



The bar continues to focus on increasing the diversity of the applicant pool through outreach to the community, agencies, publications, and websites directed toward a more diverse community. In 2016, the bar hired eight employees: one Asian, one Hispanic, and six Caucasians. Fifteen staff left the bar in 2016: one was African-American, one was Asian, one was Hispanic, and twelve were Caucasian. Overall, bar staff decreased to 87. The 2016 average turnover rate for Caucasians was 1.26%, 2.78% for African-Americans, 1.67% for Asians, and 1.39% for Hispanics. The African-American employee left for a position in a different field, the part time Hispanic employee left for a full-time position, and the Asian employee left to attend law school full time.



While we continued to struggle with filling RIS Assistant positions in 2016, average days to fill all positions decreased by 2.43 days. Hiring exempt staff in 2016 decreased by 16 days and decreased for non-exempt staff by 2.43 days. Eight positions remain open at year end: Admissions Manager, two Referral & Information Services Assistant – Bilingual and one non-bilingual, Accountant, CLE Seminars Assistant, Facilities Coordinator and CLE Seminars Marketing Specialist. The Accountant and the two CLE Seminars positions are being re-evaluated for departmental needs.

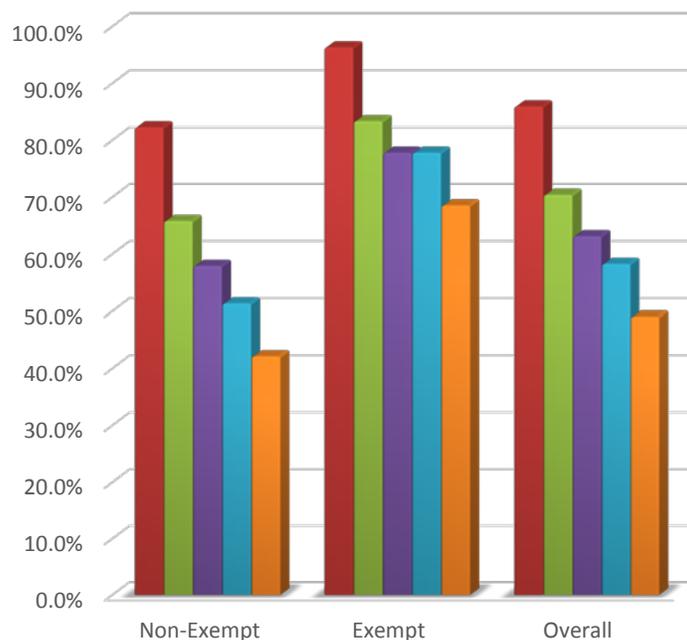
### Number of Days to Hire

	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
<b>Number of Filled Positions</b>	21	15	18	19	13	7	8	24	12	19	15	22	12
<b>Average Days to Fill</b>	56.65	69.67	74.06	76.64	102.46	65.00	22.88	55.42	64.42	65.00	76.47	51.18	48.75
<b>Variance (Days)</b>	NA	13.02	4.39	2.58	25.82	(37.46)	(42.12)	32.54	9	.58	11.47	(25.29)	(2.43)
<b>Number of Filled Non-Exempt Positions</b>	17	8	13	14	11	5	5	21	12	13	11	15	7
<b>Average Days to Fill</b>	60.40	57.63	70.77	69.72	82.82	63.60	23.2	57.57	70.09	44.77	75.18	37.58	35.29
<b>Variance (Days)</b>	NA	(2.77)	13.14	(1.05)	13.10	(19.22)	(40.4)	34.37	12.52	(25.32)	30.41	(37.60)	(2.29)
<b>Number of Filled Exempt Positions</b>	4	7	5	5	2	2	3	3	1	6	4	7	5
<b>Average Days to Fill</b>	46.40	83.43	82.60	96.00	210.50	72.00	22.33	40.33	2	108.83	63.75	83.80	67.60
<b>Variance (Days)</b>	NA	37.03	(.83)	13.40	114.50	(138.5)	(49.67)	18.00	(16.00)	106.83	(45.08)	20.05	(16.20)

Retention Rates of New Hires tracks the to-date retention rate of employees hired since November 2003. During this period, 206 positions have been filled and 107 of those employees have left the bar. Only thirteen have left for the sole reason of leaving for another job. Twenty-two employees have been involuntarily terminated by the bar (three completed a limited duration assignment). The remaining left voluntarily due to geographic relocation, increased commuting expenses, full-time employment, family decisions, health issues, returning to college, internships, entering the military, retirement, and following their dreams, including starting their own businesses or changing career paths.

Exempt position retention rates tend to be more stable as more exempt employees are in chosen careers for which they have dedicated education and training. Non-exempt staff tend to be in a job where there is more ease of movement, including career or life changes.

**Retention Rates of New Hires Since November 2003**



■ < 1 Yr Retention Rate ■ >= 1 Yr Retention Rate ■ >= 2 Yrs Retention Rate ■ >= 3 Yrs Retention Rate ■ >= 4 Yrs Retention Rate

## Annual Average Turnover Rate

2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
.85%	1.55%	1.46%	.73%	.54%	.62%	1.07%	1.21%	1.27%	0.73%	1.24%	1.36%

## Headcount

	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
<b>Exempt Staff</b>	46	45	45	39	38	39	41	40	39	42	42	41
<b>Non-Exempt Staff</b>	45	45	45	53	57	53	57	55	53	52	53	46
<b>Total Staff</b>	91	90	90	92	95	92	98	95	92	94	95	87
<b>Total FTE</b>	82.972	81.975	84.85	86.275	89.05	85.675	88.95	86.275	84.40	87.10	89.35	83.325

There were two retirements in 2016. As of today, there are eleven employees eligible for full retirement. Four of those employees are directors or managers. Two people will retire in 2017. There are three or four other possibilities.

Employees Eligible for Full Retirement	July 2009		Jan 2010		Jan 2011		Jan 2012		Jan 2013		Jan 2014		Jan 2015		Jan 2016		Jan 2017	
	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#
Less than one year	10	9	11	10	10	9	9	9	13	12	11	10	11	10	12	11	13	11
Less than one year to five years	18	17	19	18	20	18	18	18	26	25	23	21	20	19	26	25	15	13
Less than one year to ten years	32	29	33	31	37	34	36	35	41	39	40	37	38	36	39	37	14	12

**Outcome #2: Ensure training and development programs and opportunities are provided and in a cost-efficient manner. Ensure organizational strategy and compliance training needs are met as well as personal and professional growth opportunities.**

Measures: Identify and arrange at least four all-staff presentations each year on issues such as wellness, personal finance, retirement planning, workplace harassment, and diversity.  
Assist directors and managers to identify and organize appropriate areas of training specific to their needs.

This listing does not recognize external training opportunities staff attended through their own department's budget.

### 2016 Staff Training Opportunities

Name of Seminar	Date of Seminar	Cost of Seminar	Employees Invited
Path to Financial Peace of Mind	January 2016	\$0	All staff
Disaster Preparedness	February 2016	\$0	All staff
Making Tax Returns Less Taxing	February 2016	\$0	All staff
CPR (adult & child)/AED/First Aid/Blood-borne Pathogens	May 2016	\$1076	All staff and PLF
Business Writing and Emailing	May 2016	\$29.95	All staff
Miranda: More than Words	May 2016	\$0	All staff and PLF
Implicit Bias	June 2016	\$500	All staff - mandatory
The Aging of the Legal Profession	June 2016	\$29.95	All staff
Whole Person Wellness: Improving Mental Health in the Workplace	September 2016	\$0	All staff
Eye Health in the Work Place	October 2016	\$0	All staff
Project Management	November 2016	\$500	Directors and Managers

**Outcome #3: Ensure proper employee-related risk management exists by securing the most cost effective and comprehensive workers' compensation and employment practices liability insurance coverage. Ensure human and physical resources are prepared, protected, and trained in critical aspects of safety and management skills.**

Measures:      Oversee the work of the Safety Committee  
                    Collaborate with the CFO on security issues  
                    Coordinate periodic safety and security training for staff  
                    Monitor liability coverages and update as appropriate  
                    Provide regular guidance to directors and managers on staff management

All interested staff were trained during the annual first aid, CPR (adult and child), automated external defibrillator, and blood-borne pathogen seminar. We have 12 OSB employees trained for emergencies. Training for new certifications was provided to OSB and PLF staff.

The Safety Committee met once each quarter. The committee reviewed the injury one employee who had a picture fall on her as she climbed the main stairs, computer eye strain, walkers using the sidewalks in the parking lot, sun glare on computer screens, and a visitor's health emergency.

"Tip of the Month" continued throughout 2016 as employment law updates and HR tips were provided to managers and directors at the quarterly meetings. Topics for 2016 included:

- How to Deliver Bad News
- Is Your Age Bias Showing
- 7 Questions to Ask Employees during Coaching Conversations
- How to Write Performance Goals
- HR Urban Legends
- All Managers Can Face Personal Liability for Leave Mistakes
- Jeff Sapiro's Parting Words
- 3 Cardinal Rules to Document Discipline
- The Art of Giving Positive Feedback
- How to Keep Your New Hire from Failing
- Managing the Legal Way
- Employee References
- Lead with Positivity
- What Employers Can and Cannot Say
- The Employee Problem Solver
- Hold That Friend Request

The 2016 Employment Practices Liability (EPL) policy was renewed for \$9,451 per year reflecting a 3.63% increase. The EPL policy carries the same \$2,000,000 limit, \$15,000

deductible, third-party coverage, and directors and officers liability insurance (D&O). The EPL industry is experiencing a rise in employment practice claims as a trailing effect from the recent economic state. As a result, the rates increased across their book of business for not-for-profit organizations. The D&O coverage's deductible increased from \$15,000 to \$25,000 per claim due to increased notices of possible D&O claims, one of which had a \$23,000 payment.

The workers' compensation policy renewed with an \$8,964 premium reflecting a decrease of 9.43%. In addition, we received a \$2,508 dividend. Our experience modification factor decreased from 0.86 to 0.80. This is a contributing factor to the premium decrease.

### Insurance Coverage and Activity

Policy Period	WORKERS' COMPENSATION INSURANCE					EMPLOYMENT PRACTICES LIABILITY INSURANCE		
	Workers' Compensation Claims	Annual Premium	Variance	Dividend Received	Experience Modification Factor	Employment Practices Liability Claims	Annual Premium	Variance
2004 to 2005	1	\$8,450	(4.3%)	n/a	.79	1	\$9,765	(10.49%)
2005 to 2006	1	\$10,474	24.00%	n/a	.80	0	\$11,237	15%
2006 to 2007	0	\$9,819	(6.25%)	n/a	.82	0	\$8,633	(23.17%)
2007 to 2008	5	\$10,136	(0.015%)	\$1,123	.87	0	\$8,643	0.12%
2008 to 2009	2	\$9,873	(2.59%)	n/a	.88	0	\$8,224	(4.85%)
2009 to 2010	0	\$9,982	1.10%	n/a	1.04	0	\$7,961	(3.20%)
2010 to 2011	4	\$9,633	(3.5%)	\$3,832	1.07	0	\$8,119	1.98%
2011 to 2012	1	\$9,425	(2.16%)	\$3,268	1.09	0	\$6,928	(14.67%)
2012 to 2013	0	\$9,681	2.71%	\$3,655	0.98	0	\$6,880	(.69%)
2013 to 2014	1	\$10,447	7.92%	\$2,920	0.99	0	\$8,095	17.66%
2014 to 2015	0	\$10,514	0.64%	\$2,969	0.97	0	\$8,713	7.63%
2015 to 2016	0	\$9,897	(5.87%)	\$2,133	0.86	0	\$9,120	4.67%
2016 to 2017	1	\$8,964	(9.43%)	\$2,508	0.80	0	\$9,451	3.63%

**Outcome #4:           Ensure compliance with regulatory requirements through continual audits of current policies and practices; updating policies and practices when appropriate; managing a fully-functioning Safety Committee; and increasing efficiencies in departmental operations.**

Measures:       Monitor and update personnel policies as needed, including recommending new policies and practices.

The following employee policies and procedures were revised and distributed to all employees in 2016.

- Employee Emergency and Security Handbook
- Policy 2.1       Nature of Employment
- Policy 2.3       Selection of Employees
- Policy 2.10     Equal Employment Opportunity (EEO)
- Policy 3.2       Severe Weather or Emergency Closure
- Policy 5.4       Sick Time (formerly 7.7 Sick Leave)
- Policy 6.1       Discipline and Termination
- Policy 6.2       Standards of Conduct for Bar Employees
- Policy 6.4       Harassment and Intimidation
- Policy 6.7       Dress Policy
- Policy 6.10     Political Activity and Personal Opinions

Policies and guidelines were written for transgender employees. That work is on hold as the bar makes bigger decisions related to the same issue, but the foundation has been laid.

The Safety Committee continues to be active with quarterly meetings. The PLF sends a representative to the meetings. There has been little need for action by the committee. Some of their activity is described in Outcome #3.

## **Legal Publications Department**

### **Program Goal Statement**

The Legal Publications Department supports the members of the Oregon State Bar in the practice of law through the publication of quality research materials.

### **Program Description**

Building on a history of service that began in the 1950s when OSB published its first legal handbook, Legal Publications provides Oregon attorneys with the basic reference tools they need to practice law in a variety of areas. In 2016, print publications were continued primarily on a pre-order basis. All publications, together with one PLF publication and the Disciplinary Board Reporter, are online as BarBooks™, available to all OSB active members as a benefit of membership. In 2016, we upgraded the BarBooks™ platform to be responsive and accessible on different electronic devices such as tablets and smartphones.

The basic library contains 48 titles, ranging from brief “booklets” to five-volume treatises, from A (Administering Oregon Estates) to W (Workers’ Compensation). The publications are distinguished from those of national publishers because they are Oregon-specific and written by Oregon practitioners. The focus is on Oregon statutes, cases, administrative rules, forms, and legal traditions. The publications also provide practice tips, caveats, queries, and notes. Many titles include practice forms. Members consistently indicate that OSB Legal Publications products are very important to their practice.

### **Volunteers/Partnerships**

**Volunteers:** A significant number (between 150 and 200) bar member volunteers serve as authors and editors of OSB publications in a typical year, either individually or in committees.

**Partnerships:** The Legal Publications Department is in partnership with the judiciary through preparation of Uniform Civil and Uniform Criminal Jury Instructions used by the courts. The department also occasionally works with sections both formally and informally to produce new publications and revisions. In 2016, the department began working with the Military and Veterans Law Section on a new publication.

### **Outcomes and Evaluation**

**Outcome #1: Develop a budget with realistic projections for revenue and expense. Review staffing and other expenses and make recommendations to Executive Director regarding appropriate adjustments.**

**Measures:** Actual revenue and expense are within reasonable percentage of budget.

Increased editor page counts.

Evaluation: **[Note:** Final 2016 financial statements are not yet available, so this is a preliminary evaluation based on estimates from Nov. 2016 financial statements and Great Plains queries.]

Actual revenue for 2016 fell short of budget by approximately \$90,000 for print books, but exceeded budget by \$4,575 for BarBooks™ and \$8,520 for royalties [not counting all December royalties]. The BarBooks™ revenue is from law libraries, the three Oregon law schools, and staff accounts for firms. The royalties are for licensing of our jury instructions and books to Bloomberg, LexisNexis, and Thomson Reuters.

The primary reason for the shortfall in print book revenue is the dropping sales of books across the board as more members decide to access Legal Publications resources on BarBooks™. With the exception of *Oregon Administrative Law*, which had a budget of only \$3,600, every other book released in 2016 failed to meet budget, bringing in on average 55% of budgeted revenue. In addition, *Juvenile Law* and *Elder Law*, both scheduled for release in late 2016, were delayed to 2017 because not all chapters were received from volunteer authors. Budgeted revenue for these two books was \$48,250. The department released two unplanned titles that were created in-house to make up some of the shortfall. The *Oregon RPCs Annotated* enjoyed moderate success and helped defer the 42% shortfall in *Oregon Ethics Opinions* revenue. The other title, the *Joint Oregon & Washington Cannabis Codebook*, brought in an extra \$18,765 in un-budgeted revenue. Unfortunately, due to a shipping error most of the revenue will be booked in 2017 instead of 2016.

Actual direct expenses were at or below budget in almost every category. Items warranting special note are as follows:

- Printing expenses were 80% of budget, primarily because of the two books that were not printed.
- Indexing expenses were only 45% of budget primarily because there were no indexing costs for the books that were not completed, and there were no indexing costs for the *Oregon RPCs Annotated*, the *Cannabis Codebook*, or the *Oregon Administrative Law* supplement.

Overall, the direct program expense of the department was approximately \$14,000 below, or only 80% of, the budgeted direct program expense, and the general & administrative expense was approximately 80% of budget.

The total page count of books completed in 2016 was 6,778. An additional 477 pages of *Environmental Law*, *Juvenile Law: Dependency*, *Administering Trusts in Oregon*, and *2016 Legislation Highlights* were posted to the BarBooks™ online

library, for a total of 7,255 published pages. Several jury instructions and ethics opinions were also posted to BarBooks™ and will be included in the 2016 page count when they are published in print form. This continues the trend of publishing in the range of 7,000 pages per year, rather than 5,000 pages per year, that began in 2012.

In addition, 145 CLE Seminars handbooks, including 26 titles from 2016 programs, were added to BarBooks™. Some are posted as PDF only, but where they contain significant original text they were posted to the searchable portion of the library.

**Outcome #2: Produce high quality legal resources that meet members' needs.**

Measures: Publish new titles and updates to existing titles according to an established schedule.

Continue working with IDT to make BarBooks™ format user-friendly.

Develop new publications in conjunction with OSB Sections as appropriate.

Assess membership views on content quality and ease of use, by survey or otherwise.

Evaluation: In 2016, the Legal Publications Department released a complete revision of three titles, two new books titled *Oregon Rules of Professional Conduct Annotated* and the *Joint Oregon & Washington Cannabis Codebook*, supplements for *Oregon Administrative Law*, *Uniform Civil Jury Instructions*, and *Uniform Criminal Jury Instructions*, and the *Disciplinary Board Reporter*.

In 2014, the Legal Publications Department launched its new e-Books project as part of the Diversity Action Plan. The department published e-Books on Amazon.com, each of which includes a Quick Resource Guide on how to find an attorney; eight e-Books were published in the Family Law Series and six were published in the Consumer Law Series. No further titles were published in 2015 pending analysis of the success of the project. At the end of 2015, total revenue for the year from e-Books was only \$129. It was determined that other projects took priority over creating new e-Books. However, links were added to the OSB website to the Amazon site in 2016 and revenue from e-Books increased to \$290 for the year. In anticipation of the launch of the new Aptify e-Store, it was determined that it would be more beneficial to work towards a plan to sell e-Books directly from the OSB rather than on Amazon in the future.

A significant revamp was done on BarBooks™ during 2016. The site was reprogrammed to make it responsive across device platforms and to

accommodate the addition of CLE Seminars handbooks to the library. Following extensive beta testing, the new site was launched in June. Most of the feedback from members has been positive, though a few have expressed dislike of some aspects of the new site that can't be changed without abandoning the responsive platform.

Because of the effort put into the 2016 revamp, the BarBooks™ wiki project has been mothballed for now. In addition, the planned transition from the current book-to-online model to an online-to-book model has been mothballed as well.

**Outcome #3: Protect OSB's intellectual property rights.**

Measure: Maintain records of copyright agreements from authors, and verify copyright notices on published documents.

Evaluation: Legal Publications has obtained a signed Volunteer License Agreement from every author for all books published in 2016. These agreements are maintained electronically organized by book so that they can be easily accessed if needed.

Legal Publications has also filed a copyright registration for each book published in 2016. Although our authors retain their copyright in their individual chapters, OSB claims a copyright in the collected work.

To protect our copyright, each portion of our publications posted to BarBooks™ includes a copyright notice. In addition, all PDFs that were posted to BarBooks™ for the first time in 2012 were embedded with a copyright notice in the file properties.

In addition, *Oregon RPCs Annotated*, which we published in 2016, was previously published by Oregon Law Institute. OLI had not updated or revised the publication in several years. Before proceeding with our publication, we sought and retained permission from OLI to take over the project, thereby avoiding any claim of copyright infringement against the bar.

**Outcome #4: Ensure diversity of Legal Publications authors and editors.**

Measures: Author demographics mirror OSB demographics as nearly as possible.

Develop standards for and assist editorial board with selection of diverse authors.

Evaluation: In 2016, author and editor group was again smaller than in previous years because of the in-house generated projects. The demographics varied quite a bit from the OSB racial demographics in most categories. There is room for increased participation of most racial minorities in this important volunteer role.

Efforts have continued to increase participation by racial minorities by soliciting assistance from the Diversity & Inclusion Department and bringing this important issue to the attention of editorial review boards who select authors.

<b>Racial Demographics for 2016</b>	<b>Authors &amp; Editors</b>	<b>Active Members</b>
Asian	1.2%	2.7%
Black	1.2%	0.8%
Hispanic	0.0%	1.6%
Native Americans	0.0%	0.4%
Multi or Other	2.4%	3.8%
White	76.2%	65.1%
Declined to state	19.0%	25.5%

In 2016, the gender breakdown of Legal Publications authors and editors showed a significant increase in the number of female volunteers, as compared with the membership breakdown that remained steady.

<b>Gender Demographics for 2016</b>	<b>Authors &amp; Editors</b>	<b>Active Members</b>
Female	39%	36%
Male	61%	64%

The Legal Publications Department has supported the bar's commitment to diversity and inclusion in other ways. In particular, every attempt has been made to ensure that diversity issues are considered in the selection of our marketing graphics.

## **Legal Services Program**

### **Goal Statement**

The goal of the Legal Services Program is to use the statutory appropriated revenue designated under ORS 9.572 and 9.577 and other funds granted from the Oregon Legislature to fund an integrated, statewide system of free civil legal services for the poor which is centered on the needs of the client community; and to work with providers to assure delivery of a broad range of quality legal services to low-income Oregonians. The Legal Services Program includes increasing access to civil legal services by increasing the amount of pro bono services by Oregon lawyers and the Loan Repayment Assistance Program (LRAP).

### **Program Description**

The Legal Services Program began in 1998, following the Oregon Legislature's appropriation of a portion of court filing fees to support civil legal services to the poor. The legislation required the OSB to manage the funds. The legislation also mandated the development of Standards and Guidelines for providers, and the creation of a Legal Services Program Committee to provide ongoing oversight, evaluation and support to legal services providers, to ensure compliance with the Standards and Guidelines, and to further the program's goals.

As part of the compliance phase, the Director of the LSP conducts an accountability process and facilitates integration of services between the various legal services providers. The Director also works with other funders, the private bar and other organizations in a statewide collaboration to improve access to civil justice in Oregon. The Director also serves as Executive Director of the Oregon Law Foundation. The dual role enhances the collaboration between the OLF, the LSP and other legal services funding sources.

The LSP includes the Pro Bono Program. Under the general supervision of the Director, a part-time Pro Bono Coordinator works with the OSB Pro Bono Committee to develop and implement strategies that will create a statewide culture of pro bono and greater participation by the private bar. The LSP also manages the receipt and distribution of Unclaimed Lawyer Trust Account funds appropriated to legal services pursuant to ORS 98.368(2) and distribution of pro hac vice funds received pursuant to ORS 9.241 (3).

The Loan Repayment Assistance Program is also part of the LSP. The LRAP was created in 2007 in recognition that substantial educational debt can create a financial barrier for lawyers who wish to pursue a career in public service law. LRAP awards loan to qualified public service lawyers to enable them to practice in their chosen career.

### **Volunteers/Partnerships**

The Legal Services Program Committee is comprised of seven attorney and two public member volunteers. The LRAP Advisory committee is comprised of nine attorney volunteers. The Pro Bono Committee is comprised of eighteen attorney volunteers.

### **Outcomes and Evaluation**

**Outcome #1: Develop and coordinate statewide policies that improve and expand access to legal services for low-income Oregonians.**

Measures: Timely distribution of statutory appropriated revenue and other funding sources.  
Successful collaboration with legal service providers and OSB Public Affairs Department to enhance legislature's understanding of legal services funding.

The LSP continues to distribute the statutory allocated funds to legal aid on a monthly basis totaling \$5,950,000 annually. In addition, the LSP paid out \$257,700 in pro hac vice funds to the legal aid providers in 2016.

The LSP also continues to receive and hold unclaimed funds from lawyer trust accounts and to hold funds from the Strawn Farmers class action received in 2014. The LSP Committee recommended disbursing funds received during the annual cycle amounting to \$117,500. This included approximately \$110,000 from the Ben Franklin Litigation Account collected in 2015. Two-thirds of the Strawn Farmers class action had been distributed previously and due to the number of claims made against those funds the LSP determined that no additional funds should be disbursed. The LSP recommended that the remainder of these funds be held in reserve and reviewed each year to determine whether it remains reasonable given the amount of claims received over time.

In addition to the ongoing funds collected each year the LSP Committee forwarded two recommendations to the BOG to disburse General Fund dollars appropriated from the 2015 and 2016 Legislative Sessions.

- The 2015 Legislative Session appropriated \$600,000 to the LSP for legal aid. The LSP recommended distributing the funds to legal aid based on poverty population. The LSP also recommended that the funds be distributed in two parts with one payment in March 2016 and the other in January 2017 to accommodate new funding developments such as a reduction in the federal appropriation.
- The 2016 Legislative Session appropriated \$200,000 in General Fund dollars to the LSP to be distributed to the four legal aid programs for services relating to housing issues.

In 2015, the Oregon legislature adopted HB 2700 which directs 50% of unclaimed class action funds (cy pres funds) to legal aid programs through the LSP. Although passing HB 2700 was an exciting event for legal aid, it is not believed to solve legal aid's funding shortfall. There are not many class actions filed in Oregon making cy pres funds unpredictable and infrequent. The LSP received \$30,000 from a cy pres award in 2016 and are still being held. The LSP continues to monitor the BP class action case which is now at the Oregon Court of Appeals.

The Director of Legal Services participated on the Legal Aid Strategic Planning Committee. It first met in September 2015 and continued until May 2016. It was charged with drafting a proposed long-term strategic plan to guide the programs in providing efficient and effective services in future years. The Advisory Committee members included representatives from the legal aid programs, the OSB, OLF, CEJ, the Office of the Governor and Oregon Supreme Court.

The Director of Legal Services was also part of the group that planned and implemented the Access to Justice Forum in September. It was an all-day forum with sessions that provided information on the justice gap, current efforts to close the justice gap, and ideas from both within Oregon and from other states to address the gap.

**Outcome #2: Assure that standards are met and quality services are being delivered efficiently and cost effectively.**

Measures: Monitor and report on implementation of new reporting and evaluation system; recommend refinements as appropriate.

The Legal Service Program Accountability Process was conducted in 2015. The providers each completed and submitted a Self-Assessment Report that included both a narrative portion and a statistical portion for services provided in 2014. The information gathered and assessed was used to generate a draft Accountability Report. The Accountability Report was forwarded and accepted by the BOG in April 2016 and not 2015 which is the usual process. The delay was due to the ongoing review of Lane County Law and Advocacy Center (LCLAC).

In 2016 The LSP Committee continued to monitor and receive updates from the subcommittee established in 2015 to review delivery of legal services at LCLAC. The subcommittee concluded its work and forwarded a report and recommendations to the Director of Legal Services Program and the LSP Committee. The report and recommendations were also presented to the executive directors and board members for LCLAC, and several meetings occurred, culminating in a joint decision by LCLAC and the Oregon Law Center to merge their programs. The merger completion date was December 31, 2016.

**Outcome #3: Increase the amount of pro bono services by Oregon lawyers by assisting members in understanding their responsibility to provide pro bono legal services.**

Measures: Identify additional organizations or programs that meet eligibility standards.  
Continue working on proposal to allow MCLE credit for pro bono work.  
Continue developing creative ways for law students and members to contribute pro bono services.  
Explore further ideas to encourage pro bono work.  
Explore ways to highlight the organizations through which attorneys can volunteer to provide pro bono work.

Staff continues to work with organizations to help them through the certification process. The OSB has 19 Certified Programs. These Certified Programs allow Active Pro Bono attorneys, government-employed attorneys and House Counsel further options for engaging in pro bono work. One new program received Certification in 2016 and two additional programs are likely to receive Certification in early 2017.

The Bar supports the Certified Pro Bono Programs in their efforts to recruit and support lawyers who do pro bono work. The Bar now organizes quarterly meetings for the Certified Programs, during which the Programs learn from each other the best ways to further the pro bono mission.

The 2016 Pro Bono Fair was very well-attended. It featured three free CLEs, 15 pro bono providers or support organizations, and the Pro Bono Challenge Awards Ceremony, hosted by OSB Past-President Richard Spier. The Awards Ceremony portion of the evening was well

attended. A smaller event took place in Bend, with one CLE and an acknowledgement of pro bono volunteers.

Staff continues to work with the ONLD and the MBA on promoting and supporting pro bono work. Staff serves on the Legal Aid Services of Oregon Pro Bono Committee and helps select the LASO/OLC pro bono award winners.

The Pro Bono Committee worked on a proposal to allow MCLA credit for pro bono work and in 2016 that became a reality.

**Outcome #4: Maximize the number of LRAP loans that are awarded; ensure that policies and guidelines facilitate the program goals.**

Measures:     Develop a membership outreach plan regarding LRAP and eligibility criteria.  
                  Continue to identify and implement ways to increase available funds.  
                  Continue to refine a membership outreach plan regarding LRAP and eligibility criteria.  
                  Encourage more experienced public service attorneys to apply for the LRAP loans.

For 2016, no changes were recommended for the Policies and Guidelines, although the Advisory Committee recommended changes to the application to ensure that the fullest financial information was available for each applicant. 39 Public Service attorneys applied for an OSB LRAP loan. 23 of the applicants were selected to receive loans ranging from \$2,000 to \$7,500. The Marketing Plan has been honed and is quite successful in reaching public service lawyers throughout the state and with varying backgrounds and jobs. Many very experienced public service attorneys have applied for the LRAP loans in the last few years.

## **Minimum Continuing Legal Education**

### **Program Goal Statement**

Maintain and improve the competence of Oregon lawyers by ensuring their compliance with the minimum continuing legal education requirements established by the Oregon Supreme Court.

### **Program Description**

The MCLE Rules promulgated by the Supreme Court delegate oversight and administration of the MCLE program to the OSB Board of Governors. The BOG is charged with formulating new or amended MCLE Rules for the Court's approval; the BOG is also authorized to adopt regulations to implement the Rules. The MCLE Rules generally require all active members of the bar to complete 45 hours of continuing legal education every three years. Five of the hours must be in legal ethics or professionalism. One hour of training must be on the subject of a lawyer's statutory duty to report child abuse or elder abuse. Members are also required to complete three access to justice credits in alternate reporting periods. New admittees are generally required to include 10 hours of practical skills training during their first reporting period. They must also complete a three credit hour introductory course in access to justice.

An MCLE Committee appointed by the BOG serves as program advisor to the BOG by reviewing and recommending changes to the MCLE Rules and Regulations as appropriate to meet program goals. The MCLE Committee also reviews decisions of the MCLE Program Manager regarding program and sponsor accreditation, eligible credits and waivers or exemptions, upon request by a member or sponsor. The MCLE Program Manager supervises the day-to-day activities and flow of work, accredits programs, and makes decisions about compliance and waivers.

### **Volunteers/Partnerships**

The MCLE program is established by the Board of Governors, subject to the review of the Supreme Court (ORS 9.112). Oversight of the program is delegated by the BOG to the MCLE Committee, which consists of six attorneys and one public member, all volunteers.

### **Outcomes and Evaluation**

#### **Outcome #1: Assure prompt and efficient processing of compliance reports.**

In 2016, staff completed the processing of 4,684 compliance reports for the period ending 12/31/2015. 90% of the reports were reviewed by staff within ten business days of receipt. Notices of Noncompliance were sent to 444 members on March 3, 2016, which was 30 days after the filing deadline.

For the 2016 reporting period, 4,890 compliance reports were sent via email or regular mail in October 2016.

**Outcome #2: Assure prompt and accurate processing of accreditation applications.**

90% of all applications for accreditation were processed within 30 days of receipt of the completed application. For the majority of the year, applications were processed within 3-4 weeks of receipt in our office. During the peak months of January and December 2016, applications were processed only for those members who had a reporting period that just recently ended or a reporting period ending soon (12/31/2015 reporting period for apps processed in January 2016 and 12/31/2016 reporting period ending for apps processed in December 2016). In February and March 2016, all other applications received in December 2015 and January 2016 were processed. After that time, we were back on track to process applications within 3-4 weeks of receipt. (The longer processing time is due to removing the 30 day deadline to process applications from the MCLE Regulations and, for the first time in many years, not hiring temporary help in the MCLE Department during the peak of the compliance cycle.)

**Outcome #2: Assure that MCLE Rules, Regulations and procedures facilitate compliance by members.**

OSB's MCLE Rules are among the most flexible and generous in the country, allowing for a wide range of programs and accredited activities from which members can meet their requirement. 7,780 programs were accredited between January 1 and December 31, 2016. Many members complete their entire requirement by screening online programs.

Several amendments to the MCLE Rules and Regulations became effective on September 1, 2016. One change allows members to claim credit for various activities including teaching, legal research and writing, and grading a bar exam question without having to submit an accreditation application beforehand. The accreditation standards for these activities have not changed but not requiring members to submit applications should make it less cumbersome for them to claim credit for these activities.

Another major change is that members can now claim credit for certain volunteer activities and programs dealing with business development and marketing of legal services. No accreditation application is required in order to claim credit for these activities. Allowing credit (up to 6 in a three-year reporting period) for these activities encourages members to provide pro bono representation. Allowing credit for business development and marketing activities should be particularly helpful for members new to the practice of law as they learn how to set up a law office and make a living.

With the implementation of our new association management software in the summer of 2017, compliance reporting and submission of accreditation applications will be easier for members and sponsors.

Telephone and email inquiries from members and sponsors are almost always answered in less than 24 hours. Members are nearly universally complimentary about the helpful and courteous assistance provided by staff.

The audit of 2015 reports was completed by the end of June 2016. Notices of Noncompliance were sent to three members as a result of the audit.

In May 2016, thirteen members (.003%) were suspended for failure to meet their MCLE obligations. The standard for this outcome is less than 1% of the reporting group suspended for non-compliance.

Several MCLE reminders about upcoming deadlines were posted in the electronic Bar News or *Bulletin* in 2016. In early 2016, an FAQ about 2016 reporting requirements and deadlines was posted on the website. In July, email reminder notices were sent to members about their upcoming reporting period deadline. In March and December, email reminders were sent to new admittees about their introductory access to justice credit requirement.

In preparation for the new software, the Supreme Court approved several amendments to the MCLE Rules, which were effective September 1, 2016. Members were notified about these amendments via our website, in *Bulletin* notices and email notices.

## Media Relations

### Program Goal Statement

The OSB Media Relations Program advances the bar's mission of serving justice through long-term partnerships with statewide media to increase public understanding of the law, the courts, the legal profession, and the rule of law.

### Program Description

Media relations works with statewide news outlets in a variety of forums:

- **Expert sources.** The bar is a relied-upon source of expert sources to provide explanation and analysis of any story with a law-related element.
- **Spokesperson on bar policies.** Staff is the key point of contact for news outlets on stories relating directly to the OSB. This may include promotion of stories regarding bar policies or priorities; support of the OSB's legislative agenda; and explanation of OSB's performance of its regulatory function.
- **Media Training.** OSB staff frequently consults with bar members on working effectively with media, either in seeking positive press or handling negative press.
- **Support of the Judicial Branch.** The bar has a policy for responding to unjust judicial criticism, particularly when the judicial canons may restrict a judge's ability to offer explanation to the public. We also frequently consult with individual judges on managing high-profile cases, and on how judges can play a role in the public outreach and education objectives shared by the OSB and the OJD.
- **Advise leadership on media issues.** Media relations staff serves as the primary advisor to staff and board leadership on media-related issues.
- **Liaison to the Bar Press Broadcasters Council.** Staff plays a key leadership role on this joint council between the OSB, and Oregon Newspaper Publishers Association and the Oregon Association of Broadcasters.

### Volunteers/Partnerships

Volunteers: Approximately 200 members serve on our list of media sources in specific areas of law. They are regularly called by the OSB Media Relations staff to play a public education role in assuring media explanations of law and legal issues is as accurate as possible. The annual Building a Culture of Dialogue event each March involves direct participation from roughly 50 individuals. And the Bar Press Broadcasters Council has 12 lawyer volunteers, working closely with the 12 media volunteers.

Partnerships: Media Relations staff partners with OSB sections and committees, county and specialty bars, the Oregon Judicial Department, legal aid programs, bar leadership, and media outlets statewide to advance goals of enhanced coverage of law-related issues.

## **Outcomes and Evaluation**

### **Outcome #1: The OSB is a trusted source of information and expertise for statewide media.**

Media relations staff strives to make contact with every major media outlet annually, to offer the OSB as a resource in coverage of all law-related stories. Staff in 2016 continued to have regular (weekly) contact with the Oregonian, both on direct bar-related stories and in assisting with myriad law-related stories. Staff was also consulted on a regular basis by Oregon Public Broadcasting, Portland Tribune, Willamette Week and the four television stations in Portland.

Staff also had regular contact with newspapers in Salem, Eugene, Medford, Bend and Pendleton, as well as many small newspapers around state. In addition to providing expert sources, staff reached out directly to editorial staff to revisit the multi-faceted role the OSB is willing to play in assisting journalists in coverage of law-related stories.

Media relations staff works with journalists on average approximately two to four times per week, and during a major breaking news story approximately five to six times per day.

Media relations staff also manages the regular coverage of the Oregon State Bar as a regulatory body. At any given time there are typically between eight and 15 discipline cases being tracked by media, with staff providing regular update and explanation. In late 2016 there was also some coverage of changes proposed by the Disciplinary System Review Committee, which continues into 2017.

Generally, the OSB does not proactively push discipline stories out via press release or otherwise. The exception, however, is when the OSB files for a suspension of a law license while charges are pending, due to a significant threat of public harm. In those cases, the OSB was able to get multiple stories printed specifically in communities where a public threat existed. Although difficult to quantify, we expect that this media attention helped some potential clients from further harm in some limited cases.

### **Outcome #2: Bar members are actively engaged in OSB media and public education efforts.**

Staff continues to maintain and update a list more than 200 bar members with expertise in specific areas of law who are skilled and comfortable serving as sources for media. Staff offers regular training and/or consultation with our media volunteers.

Examples of some of the bigger stories where multiple media outlets sought bar members for guidance would be the stories related to the occupation of the Malheur National Wildlife

Refuge and the related criminal trials; a civil right lawsuit filed against the Attorney General; SEC fraud charges against Lake Oswego firm Aequitas; stories regarding housing crises in several Oregon cities; a natural gas explosion in Portland and numerous stories about local and national elections.

Media Relations staff played an ongoing role with county efforts to communicate with the media and public about the new Multnomah County Courthouse. Kateri served on the Outreach committee, and also facilitated a community dialogue about what several diverse community leaders sought in both the courthouse and the justice system.

Media relations staff will continue to reach out to bar members who are willing to partner with media in educating the public about the law and the judicial system. The program will continue to offer ongoing training and/or consultation with our media volunteers.

Staff reaches out to bar members regularly to identify important trend and issue stories that may be of value to the community, and works closely with media in getting those stories covered in substantive fashion.

**Outcome #3: Media is aware of and engaged in OSB priorities during the legislative session.**

Staff works in partnership with the Board of Governors and the Public Affairs staff in advocating with local and statewide media on priority issues for the OSB. This includes pushing for timely and accurate reporting of priorities with news staff, as well as seeking support from editorial boards and other opinion leaders in statewide media.

Although 2016 did not see the bar push a major piece of legislation akin to the 2015 effort on the Cy Pres bill, media relations and public affairs staff closely coordinated on messaging on several priorities, most notably on issue of court funding and court facilities.

This year also saw the Bar Press Broadcasters Council push forward significant amendments to UTCR 3.180, which governs electronic recording in court rooms, often referred to as the “cameras in court” rule. This was an arduous drafting process involving judges, lawyers, and media representatives. OSB continues to provide the staffing support for the drafting committee. The rule changes were accepted by the UTCR committee in the fall, and now are in a period of public comment, where they are generating considerable discussion among the circuit judges. Media relations staff will continue to work towards an inclusive and constructive amendment process.

**Outcome #4: OSB provides exceptional customer service to media partners.**

The media relations program is one of the key players in assuring the public that the OSB is diligently pursuing its public protection role. This requires maintaining an open and transparent relationship with our media partners, and efficient response to time-sensitive inquiries.

The Oregon State Bar is routinely recognized by media as one of the most responsive public bodies in the state. Part of this is due to the vast majority its records being subject to public disclosure. Yet the timeliness of access to records, and the accessibility of staff to discuss and inform regarding OSB business continues to contribute to a foundation of trust.

## **Member Services**

### **Program Goal Statement**

The Member Services Department advances the OSB's mission by providing professional networking and leadership development opportunities for bar members through administration and support to its committees, sections and the Oregon New Lawyers Division.

### **Program Description**

The Member Services Department conducts recruitment for all lawyer and non-lawyer volunteer positions and coordinates the selection of all BOG appointed positions. The department is responsible for ensuring the integrity of the bar's elections and judicial preference polls, managing the associate and law student membership programs, and maintaining the Defense Counsel Panel.

The department provides full administrative support to the bar's 43 sections, 17 committees, and assists the Oregon New Lawyers Division develop and administer programs of value to new lawyers and law students. The department offers county bar associations support for communication efforts and membership tracking.

The Member Services Department administers the Loan Repayment Assistance Program which was created in 2007 in recognition of the substantial educational debt and the financial barrier it creates for lawyers who wish to pursue a career in public service law.

The department includes the reception team which is the first point of contact for member and public inquiries. Meeting room request for internal and external groups are coordinated by the reception staff as well as all member and firm address changes.

### **Volunteers/Partnerships**

**Volunteers:** Approximately 900 members and non-lawyer volunteers serve on the various bar groups the department supports. In addition, 50 members of the Oregon New Lawyers Division contribute time to develop activities and programs for the division's membership through its executive committee and six subcommittees.

**Partnerships:** The Member Services Department partners with OSB Board of Governors, sections, committees, county and specialty bar associations. The Oregon New Lawyers Division partners with the Multnomah Bar Young Lawyers Section and the American Bar Association.

### **Outcomes and Evaluation**

**Outcome #1: Members have diverse array of high-quality and cost-effective professional networking and leadership opportunities that advance the mission and goals of the OSB.**

Section membership continues to be a popular resource for bar members seeking professional development and networking opportunities within their practice area. In 2016 membership rates for sections remained at a steady level with just over 8,000 members joining one or more sections for nearly 18,000 total memberships purchased.

The review of section services, member benefits, and alternative formats continued in 2016 with a few executive committee officers providing input for the Board of Governors to consider in the spring of 2017. Plans to implement section CLE policy changes were delayed based on feedback provided during the House of Delegates meeting and modified staged implementation of the new association management software.

In an effort to continue meeting the needs of recently admitted practitioners, the Oregon New Lawyers Division (ONLD) hosted several networking events throughout the state. For many of these they partnered with an OSB section or local or specialty bar organization. In addition to the monthly lunch CLE programs, the ONLD hosted a half-day CLE program to educate members about advocating for youth immigrants seeking legal status in the United States. A two-day training program was held in the fall and focused on topics of interest to new litigation practitioners. The program included speakers with diverse backgrounds and received high marks from members who attended.

In partnership with President-Elect Levelle, the department hosted two outreach conference calls with county bar association presidents. Creating an opportunity for open dialog provided bar leaders a chance to discuss trends in their areas, seek feedback and support on a variety of topics, and expand their understanding of services available to each association. As a result the department was able to provide resources to two county bars as they developed their own bylaws, assist one county bar with board elections, and expand the broadcast email communication services offered.

**Outcome #2: Effective volunteer recruitment and retention for the organization.**

Maintaining an adequate and diverse pool of lawyer and non-lawyer volunteer candidates remains a top priority. The department continues to support the BOG Board Development Committee with outreach to a variety of law-related groups, including minority and specialty bar organizations, during the application cycle. More than 200 members were appointed to a bar group this year, nearly all of which came from the 350 volunteers who submitted an online application.

The selection process for BOG-appointed positions continues to evolve under the Board Development Committee's guidance. In the fall of this year the committee drafted a policy outlining how current or prior disciplinary matters factor into appointment consideration. Full implementation of the policy requires bylaw changes which are slated for BOG consideration in February of 2017.

Ensuring a diverse pool of non-lawyer volunteer candidates continues as a focus for the department and the BOG Board Development Committee. As a result of increased outreach efforts and ongoing relationship building with community organizations, the overall number of public member volunteer applicants increased by 27% over last year. Of those who applied, 54% self-identified as a racial or ethnic minority, 7% indicated they had a disability, and 4% indicated a sexual orientation other than heterosexual.

Evaluating the effectiveness of the Volunteer Defense Counsel Panel was a new focus in 2016. The goal of the program is to provide a resource for accused lawyers when complaints are referred to the

Disciplinary Counsel's Office. The list of panel members is primarily made available upon request through the Member Services Department but the Professional Liability Fund and Oregon Attorney Assistance Program also offer the resource when necessary. In recent years there has been an increase in requests for the resource list. Approximately 30 requests are made through the department each year but the PLF and OAAP do not track their requests. On average about 20 volunteers participate on the panel. After connecting with panel members and obtaining feedback from accused attorneys, in the coming year greater effort will be placed on increasing the number of panel members, particularly those from rural areas of the state.

**Outcome #3: Maximize the number of LRAP loans awarded and ensure guidelines and policies facilitate the program goals.**

Based on a recommendation from the LRAP Advisory Committee, the BOG approved increasing the applicant salary cap to \$65,000 in 2015. While no changes were recommended to the policies and guidelines in 2016, improvements were made to the application to ensure complete financial information was available for the Advisory Committee when evaluating applicants.

Of the 39 public service attorneys who applied for an LRAP loan, 23 were selected to receive loans ranging from \$2,000 to \$7,500. In the last year there has been an increase in the number of experienced public service attorney applicants based on increased outreach to this member demographic. Outreach to rural members also resulted in an increase in applicants from around the state, especially those with varying backgrounds and jobs.

**Outcome #4: Excellent customer service to the membership, bar groups, and staff.**

Efforts in this area focused on integrating the bar's reception staff into the department and establishing procedures to handle new tasks assigned to the department. Most notably, the department assumed the role of managing all external meeting room bookings and maintenance of all company and firm database records.

Implementation of the bar's new association management software remains a priority for the department. Most of the department staff serve as an application owner or subject matter expert for at least one application module. Staff have and will continue to dedicate significant amounts of time to testing and refining requirements for the launch of Aptify in 2017.

Feedback from the committee and section department evaluation survey remains positive. On a scale of 1 to 5, where 1 means poor and 5 means excellent, officers rated the department at 4.8 for providing accurate information, 4.7 for timely distribution of meeting notices, and 4.8 for courtesy of staff. Committee chairs rated the department at 4.9 for assistance with the appointment of new members.

**Outcome #5: Events and services are cost-effective and conducted in fiscally responsible manner.**

There are three program budgets within the department: Loan Repayment Assistance Program, Member Services and the Oregon New Lawyers Division. Each are expected to close 2016 within their projections. Most notable efficiencies came once reception staff was incorporated into the department. After evaluating staffing needs based on meeting room reservations, policies were changed to reduce the frequency and use of full time staff providing weekend host coverage.

## **New Lawyer Mentoring Program**

### **Program Goal Statement**

The OSB New Lawyer Mentoring Program advances the OSB's mission to serve justice by improving the quality of legal services, promoting professionalism, and assisting new lawyers in transitioning from students into to competent, ethical and professional lawyers.

### **Program Description**

The New Lawyer Mentoring Program launched in 2011, under Supreme Court rule, to assure that every new lawyer in Oregon would have the benefit of a more senior bar member to welcome them into the profession, and serve as a resource during their transition from student to practitioner.

Soon after admission, new lawyers who are actively practicing are matched to volunteer mentors for a one-year program. The program includes a six-part curriculum, including: introduction to the legal community; ethics and professionalism; law office management; working with clients; career satisfaction; and practical skills. Although this does provide some structure, the requirements within each curriculum area are minimal, allowing participants to shape the program to the specific needs of each new lawyer.

At the completion of the program year, mentors and new lawyers receive eight and six MCLE credits respectively, including two ethics credits.

### **Volunteers/Partnerships**

Since its inception, approximately 3900 bar members have engaged with the program. Each year sees roughly 500 matched pairs moving through the program. Members of the appellate courts and the Oregon Bench Bar Commission on Professionalism have been active participants in our social events, and regular supporters of the program's mission. The NLMP relied on an advisory committee of 12 volunteer bar members in 2016, who worked on policy, events, and program enhancements. That committee was essential in the program's creation and early evolution. As the program reached a more mature state, the committee was less engaged and the BOG moved to sunset the committee at the end of 2016.

The NLMP partners primarily with OSB Sections and committee leadership, county and specialty bars, Inns of Court, the Oregon Bench Bar Commission on Professionalism, and the Oregon Judicial Department.

## **Outcomes and Evaluation**

### **Outcome #1: Bar members are actively engaged in the mentoring program.**

Bar members are engaged with the New Lawyer Mentoring Program as committee members, CLE speakers, and active program participants (mentors and new lawyers). Since its inception, 2,349 bar members have volunteered to serve as mentors, and 1,561 new lawyers have completed the program. In 2016 specifically, approximately 417 new lawyers completed the program, with the same number of mentors actively engaged. We recruited 182 new mentors into the program.

Although those volunteer numbers are gratifying, recruiting new mentors continues to be a key area of focus for the program. In order to make the most effective matches, the program needs a significant surplus of mentors each year. In 2016, the program made strides in increasing its volunteers in the immigration law arena, which had been an area of need. Additionally, we reached out through sections to areas of high need, most notably business law mentors in Multnomah County. Finally, we established a connection with the Oregon Chapter of American Immigration Lawyers Association (AILA) to address another area of particularly high need.

### **Outcome #2: New lawyers who are actively practicing in Oregon are matched with a mentor within two months of enrolling in the program.**

From its inception, two months has been the aspirational goal for connecting new lawyers with a mentor. This was a struggle for the first few years, but we have been largely successful in meeting this goal for the past two years.

That said, we do still have long wait times in select geographic locations and practice areas, and are still encumbered by a dearth of mentors in certain categories. Thus, Outcome Number Two is directly connected to Outcome Number One, and our recruitment objectives this year must address those areas where we continue to see deficits that significantly impact wait time.

### **Outcome #3: The New Lawyer Mentoring Program is creating partnerships throughout the legal community.**

This year, the program began to establish more effective partnerships with several specialty bars and sections, an effort that should continue into 2017. It should be particularly effective to have the NLMP more closely aligned with the ONLD, and this may facilitate other partnerships that are in early stages. The partnership with OWLS has helped us match mentors and new lawyers who have a like interest in that organization. A similar matching partnership with other specialty bars could help them with recruiting, while increasing our chances of effective matches on a personal/organic level. It also opens the door for increased programming and networking, which is an expressed desire of our New Lawyer participants.

## **2016 Program Measures Public Affairs Department**

### **Program Goal Statement**

Apply the public policy knowledge and experience of the legal profession and program staff to the public good.

### **Program Description**

The Public Affairs Department provides information and assistance to bar groups, bar members and government bodies on a wide variety of bar related legislation and public policy issues facing the profession, with special emphasis on access to justice and preserving the independence of the judiciary. The department works closely with OSB sections and committees on law improvement legislation and to identify responses to significant legal trends that affect the practice of law and the bar. The Board of Governors Public Affairs Committee develops the policies that guide the department's work and recommends positions the bar should take on public policy issues affecting the bar and the legal profession.

The focus of the Public Affairs Department (PAD) during 2016 has been legislative advocacy in the short session of the Oregon Legislature, outreach to the bar, legislators, and advocates in preparation for the upcoming long legislative session in 2017, and continued monitoring and support of the Oregon eCourt implementation and judicial funding.

### **Volunteers/Partnerships**

**Volunteers:** In addition to the members of the BOG Public Affairs Committee, the department collaborates with several hundred lawyer volunteers, the vast majority from bar sections and committees working on law improvement projects.

**Partnerships:** The department has working relationships with most other OSB departments. Outside coalition building is an ongoing activity, which currently emphasizes government leaders, business interest groups, political candidates and local legal communities.

### **Outcomes and Evaluation**

**Outcome #1: Ensure successful and high quality work on law-related public policy projects and problems, including law improvement.**

The focus of the Public Affairs Department (PAD) during 2016 has been legislative advocacy in the short session of the Oregon Legislature, outreach to the bar, legislators, and advocates in preparation for the upcoming long legislative session in 2017, and continued monitoring and support of the Oregon eCourt implementation and judicial funding.

In the 2016 session, the bar's priorities were adequate funding for the judicial department, indigent defense and legal services as the bar's highest legislative priorities for 2016. The department was involved in the following activities in connection with these priorities.

- Supported a successful BOG reception in Salem during the legislative session with an impressive turnout of legislative leaders and bar members.
- Supported the Public Defense Services Commission's request for pay parity for indigent defense providers.
- Supported the Oregon Judicial Department's request for an increase in judicial salaries.
- Supported the Oregon Judicial Departments request for funding for the implementation of Oregon eCourt.

During the 2016 session the bar identified three bar priority bills generated by work groups and task forces during the 2015 interim: SB 193 (Advance Directives), SB 1554 (Digital Assets) and HB 4128 (Notario Fraud). The department worked with sections and general counsel to provide testimony in support of these measures in both chambers, met with legislators, and worked out amendments when necessary. The Digital Assets bill and the Notario Fraud bill successfully passed and were signed by the Governor while the Advance Directive bill will be reintroduced during the 2017 legislative session.

In addition, the bar supported and provided testimony on a number of bills and funding requests including:

- Supported the Oregon Department of Justice request for funding for an Elder Abuse Prosecutor and Investigator.
- Supported HB 4009 which established Minoru Yasui Day.
- Supported legislation from the Oregon Law Commission including legislation from the Juvenile Court Records Work Group and the Probate Modernization Work Group.

During the 2016 legislative session, the bar engaged on two bills which could have affected the practice of law.

HB 4067 significantly expanded protections and created an affirmative defense for whistleblowers in state agencies and some nonprofits in Oregon. The bar successfully

worked with the bill's proponents to protect the attorney-client privilege and confidential communications by amending the bill prior to passage.

HB 4093 would have allowed some counties to institute up to a 15 percent surcharge on court filing fees and a \$5 fee on fines and violations to raise funds for courthouse construction and renovation. The bar successfully worked with legislators, stakeholders, and the Oregon Judicial Department to remove the 15 percent surcharge from the bill pending a more in-depth conversation about funding court facilities and Oregon eCourt.

**Outcome #2: Inform customer groups while encouraging participation in the governmental process.**

PAD staff worked closely with sections to keep members informed about legislation that could affect the practices of their members. For the 2016 legislative session, the PAD implemented a new internal bill tracking software system. The system, developed in partnership with the bar's information technology department, allowed PAD staff to track bills as they moved through the legislative process. This system also provides bar sections and groups with the ability to identify, track, and review proposed legislation. Staff helped sections navigate the process by which sections receive authority to take positions on legislation.

Since the end of the short session, the public affairs staff has worked with volunteer authors and editors to produce a comprehensive review of the 2016 session designed to apprise practitioners of changes in virtually all practice areas—2016 Legislation Highlights. To prepare for the 2017 regular session, public affairs staff met with section executive committees and other bar groups to discuss the process by which groups may submit legislative proposals for bar sponsorship, and offered to help these groups through the process.

PAD worked closely with sections to keep members informed about legislation that could affect the practice of their members. Prior to the legislative session, PAD staff reached out to the 42 sections to discuss the legislative process, how to engage in the process and helped identify a legislative contact for each section.

In April, the Public Affairs Committee (PAC) hosted the Oregon State Bar's Legislative Forum where nine sections and groups submitted 15 legislative proposals for the 2017 Legislative Session. The department worked with sections and general counsel to develop legislative concepts, draft bill language, and build consensus within the bar's membership and external stakeholders. The BOG and five sections will be sponsoring seven law improvement bills during the 2017 legislative session.

In addition, Public Affairs staff worked with five sections to address issues that did not culminate in legislative proposals. Over the last year, the PAD has assisted four sections

with rulemaking, educational efforts, and outreach to agencies and stakeholders stemming from five law improvement proposals.

In February, the OSB hosted a very successful BOG reception in Salem during the February legislative session with an impressive turnout of legislative leaders and bar members. In addition, the PAD director accompanied the bar president and an Oregon delegation to the ABA Lobby Day on Capitol Hill in April.

Public Affairs published 11 issues of the Capitol Insider this year, a newsletter on legislative and public affairs issues of interest to bar members. More than one third of the active bar membership has chosen to receive this monthly newsletter. In addition, public affairs collaborated with the Bulletin on articles about the implementation of Oregon eCourt.

The department published a 2016 edition of Legislative Highlights, a comprehensive overview of 2016 legislation organized by practice area.

Public affairs staff has continued to be the liaison between the bar and the Council on Court Procedures (COCP) and between the bar and the Oregon Law Commission (OLC). The COCP is a statutorily created group charged with maintaining the Oregon Rules of Civil Procedure in good working order and proposing suggested improvements which go into effect unless changed by the legislature. The OLC is also a statutory group, but with a broader charge of general law reform, simplification, modernization and consolidation when appropriate.

**Outcome #3: Assure operational efficiency.**

Improvements in program operations continue through the use of technology, e-mail and the bar's website, as well as other record retention and electronic data management tools. Further modifications to the OSB bill tracking database and early alert system continue to improve and will achieve cost and program efficiencies for the bar.

## **Referral and Information Services**

### **Program Goal Statement**

Referral and Information Services (RIS) is designed to increase the public's ability to access the justice system, as well as benefit bar members who serve on its panels.

### **Program Description**

The Lawyer Referral Service (LRS) began as a mandatory program in 1971 when attorney advertising was limited by ethics rules. A voluntary program since 1985, LRS is the oldest and largest program in RIS and the only one that produces revenue. The basic LRS operating systems (e.g., computer hardware and software) support the other department programs. Approximately 550 OSB members participate as LRS panel attorneys. The Referral and Information Services Department (RIS) also offers several other programs that help both the people and the lawyers of Oregon. The Modest Means Program (MMP) is a reduced-fee program assisting low to moderate-income clients in the areas of family law, landlord-tenant disputes, foreclosure, and criminal defense. Problem Solvers is a pro bono program offering legal advice for youth ages 13-17. Lawyer to Lawyer connects Oregon lawyers working in unfamiliar practice areas with experienced lawyers willing to offer informal advice at no charge. The Military Assistance Panel (MAP) connects military personnel and their families in Oregon with pro bono legal assistance. Attorneys volunteering for this program are provided training on the Servicemembers' Civil Relief Act (SCRA) and other applicable law.

### **Outcomes and Evaluation**

#### **Outcome #1: Maintain customer satisfaction by ensuring that client requests are handled in a prompt, courteous, and efficient manner.**

Total call volume from the public increased 1.75% in 2016 with a total of 74,393 calls. Even with increased volume, RIS was able to provide service to more callers and capture more referrals by focusing on reducing the number of callers who abandon the call queue due to long wait times. By maintaining adequate FTE devoted to the phones, only 3% of callers abandoned an RIS call queue in 2016.

A new training schedule was implemented for staff in 2014 and continued throughout 2015 and 2016, with every staff meeting now including a substantive law overview for a different area of law to ensure staff is making accurate referrals. Enhanced training has reduced errors among staff, and use of instant messaging software has helped staff assist each other with referral questions without interrupting active client calls. RIS staff also updated the staff guide used to train new employees. Finally, RIS staff updated the department's resource guide that is used to

provide callers with community organizations that may be able to offer assistance. The guide contains approximately 200 different organizations and community resources and is organized by area of law. The guide will be made available to other legal service providers and will eventually be hosted on the bar's public website.

Maintaining a full RIS staff was a challenge in 2016, with three .5 FTE positions currently remaining open. Working with the HR department, RIS created new advertisements for the open positions that emphasize the benefits of working for the bar and the team-oriented environment of the RIS department. The BOG also approved a .5 FTE increase for the RIS department in order to move all accounting responsibilities into RIS and out of the Accounting Department. This change should improve the department's ability to track remittance payments and make invoice adjustments for the panelists.

**Outcome #2: Increase member and public awareness of RIS programs.**

The public-oriented focus for 2016 was to continue increasing traffic to the OSB website, including the Legal Help page, to inform potential clients about available resources. Throughout 2016, RIS worked with the Communications & Public Services Department to continue the pilot Craig's List and Google Ad Words campaigns. Staff posted a "Need Legal Help?" message at various times on Craig's List. The posting included an embedded link to the "Legal Help" page on the bar's website.

At the same time RIS Staff started two Google Ad Word campaigns. The first campaign, "OSB Website," focused on increasing the use of the OSB public website by people looking for information on legal topics. The second campaign, "RIS," focused on directing potential clients to the online referral request form for the Lawyer Referral Service for a specific area of law. This campaign is coordinated with the release of "Legal Q & A" videos that are produced by the Communications Department. The "key words" used in the ads are the same as the legal topic covered in the videos. This dual approach should draw increased traffic to the OSB website and the online referral page.

Overall call volume increased in 2016, reaching 74,393 calls and 4,676 online referral requests. RIS made 47,772 total referrals – a 2.8% increase in referrals over the previous year. The totals by program area are:

LRS	44,677
Modest Means	2,925
Problem Solvers	136
Military Assistance	34

Outreach to members remained focused on current panelists; with total LRS registration remaining stable in 2016, no active recruitment of new panelists was warranted. However, the MMP is in need of new panelists in some under-served areas, such as Eastern Oregon and some

parts of the coast. RIS staff is working with the Creative Services Department to create several MMP recruitment advertisements for the Bar Bulletin in order to boost attorney participation.

**Outcome #3: Adapt services to meet both public and members' needs.**

Following up on the BOG's directive to explore Modest Means Program expansion, RIS worked with the Public Service Advisory Committee (PSAC) to begin preliminary efforts to create Modest Means panels for Elder Law and Appellate Law. RIS staff met with both sections to gauge attorney interest in participating in these areas of law at a reduced rate. RIS staff and the PSAC will continue these efforts in 2017 with the goal of creating a pilot project.

In 2016 the PSAC voted unanimously to make a recommendation to the BOG on a global change to percentage fees in the form of a \$200 "trigger" amount. If a referral does not result in the panelist earning and collecting at least \$200 on the case, the attorney will not pay a remittance to the bar. The BOG's Budget and Finance Committee will review this recommendation in early 2017. Implementation of the trigger will require approximately 40 hours of programming by the IT department. Depending on the timeline of the AMS implementation, the trigger may be delayed significantly.

Unforeseen circumstances caused the RIS Department to develop its own referral software at the start of 2015. Since the go-live date on April 22, 2015, RIS has made more than 80,000 referrals in the new system with virtually no issues. Bringing the software in-house allowed RIS to implement several new features, including single sign-on with the bar's website, enhanced reporting speed, and a more user-friendly payment system. Member feedback has been uniformly positive since implementation, and the bar is saving \$7,500 per year in fees that were paid to a third-party software developer. RIS staff will continue monitoring the new system and making improvements where needed.

In April 2016, the Board of Governors approved the creation of a Futures Task Force with the following 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.

The task force is currently reviewing existing bar programs including the LRS and MMP. Task Force recommendations could include changes to these programs in order to increase access to justice. The RIS Manager is a member of the task force and will continue providing statistics and input throughout 2017, as well as assisting in any program changes directed by the BOG.

**Outcome #4: Implement break even budget based upon adoption of percentage fees revenue model.**

In 2016 LRS collected \$703,209 in percentage fee revenue, which represents \$5,860,075 in business generated for panelists. 2016 LRS registration revenue was \$107,120 – about \$10,000 less than average. Therefore, total LRS revenue for 2016 was \$810,329. Based on recommendations of staff and the PSAC, the BOG elected to make no changes to the LRS fee structure for the 2016-2017 program year. As stated above, consideration of a threshold amount that would trigger application of percentage fees (with the effect of keeping brief service matters exempt from percentage fees) will be considered by the BOG in 2017.

The combination of registration and percentage fee revenue resulted in a net revenue for the third time in the program's history (2014 and 2015 being the first two), exceeding budget projections. Total revenue since percentage fee implementation is \$2,845,870, which represents \$19,650,000 in business generated for LRS panelists.

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** April 14, 2017  
**From:** Helen Hirschbiel, Executive Director  
**Re:** CSF Claim No. 2016-43 DARAEE (Claus) Request for BOG Review

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### **Action Requested**

Consider claimant's request for BOG review of the CSF Committee's decision to deny his claim.

### **Discussion**

#### *Summary of Facts*

Robert James Claus is a retired, sophisticated, real estate developer. He retained attorney Hafez Daraee on or about January 1, 2015 to pursue various civil claims against his former real estate business associates in three different cases. Over the course of the representation, attorney fees and costs exceeded \$100,000. According to the documents submitted, Mr. Claus owed Mr. Daraee over \$40,000 at the end of July 2015. On July 29, 2015, Mr. Daraee sent Mr. Claus an email, demanding that Mr. Claus pay at least \$25,000 toward the outstanding bill plus another \$10,000 toward expert testimony. On August 1, 2015 Mr. Claus gave Mr. Daraee a check for \$30,000 for "legal fees and experts."

Mr. Claus contends that Mr. Daraee should have deposited \$20,000 of that money into his trust account to pay for expert witnesses and the remaining \$10,000 to the outstanding legal fees. Instead, Mr. Daraee deposited all of the money into his business account in order to pay outstanding legal fees. Mr. Claus maintains that this constitutes theft of the funds paid.

The documents reflect that Mr. Daraee did apply the funds to the outstanding balance owed for legal fees; however, Mr. Daraee maintains that he also did in fact retain experts. The matter was settled prior to trial, so they were not needed in the end. Even so, because Mr. Claus owed Mr. Daraee more than the \$30,000 paid, Mr. Daraee had a right to the full amount of the funds paid.

#### *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. Reimbursement of a legal fee paid is allowed only if (i) the lawyer provided no legal services to the client in the engagement; or (ii) the legal services that the lawyer actually provided were, in the Committee's judgment, minimal or insignificant; or (iii) the claim is supported by a determination of a court, a fee arbitration panel, or an

accounting acceptable to the Committee that establishes that the client is owed a refund of a legal fee. CSF Rule 2.2.3.

In this case, the CSF Committee found no evidence of dishonest conduct. Regardless of whether an expert was retained, Mr. Daraee provided significant legal services to Mr. Claus and was entitled to the money Mr. Claus paid to cover his outstanding legal fees. Therefore, the CSF Committee determined that Claus was not entitled to reimbursement under the CSF Rules and denied the claim.



# Client Security Fund Application for Reimbursement



Return completed form to:

Oregon State Bar  
Client Security Fund  
PO Box 231935  
Tigard, OR 97281-1935

2016-43

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

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

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

- a. Full Name: Robert and Susan Claus
- b. Street Address: 22211 SW Pacific Highway
- c. City, State, Zip: Sherwood, Oregon 97140
- d. Phone: (Home) N/A (Cell) 503-734-0556  
(Work) N/A (Other) \_\_\_\_\_
- e. Email: \_\_\_\_\_

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

- a. Lawyer's Name Hafez Daraee
- b. Firm Name Luby and Daraee
- c. Street Address: 7455 SW Bridgeport Road, Suite #205
- d. City, State, Zip: Tigard, Oregon 97224
- d. Phone: 503-766-4772
- e. Email: hafez@luda-law.com

### 3. Information about the representation:

- a. When did you hire the lawyer? 2015
- b. What did you hire the lawyer to do? Take the case to trial. He knew from the beginning we had limited funds. The \$30,000 in addition to what we already paid him was to take the case to trial including \$20,000 for expert witnesses. He also had other recoverable fees from opposing parties for getting the liens removed.
- c. What was your agreement for payment of fees to the lawyer? (attach a copy of any written fee agreement)  
\_\_\_\_\_
- d. Did anyone else pay the lawyer to represent you? No
- e. If yes, explain the circumstances (and complete item 10B on page 3):  
N/A
- f. How much was actually paid to the lawyer? \$130,000 +-
- g. What services did the lawyer perform? Various for the construction lien case.

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

N/A

4. Information about your loss:

- a. When did your loss occur? Aug 3, 2015 when the \$30,000 check went to his business acct not the client trust acct
- b. When did you discover the loss? About a month later, he demanded the same \$20K again for expert witnesses. He knew we didn't have it. After he knew we couldn't pay it again, he said he would try to "fix it" with his partner.
- c. Please describe what the lawyer did that caused your loss We paid a check of \$30,000 for legal fees and experts for our case. Mr. Daraee never put the check into a client trust fund account to keep \$20,000 of it for the expert witnesses. The entire \$30K was disbursed to him the same day without our permission or knowledge. He explained later he had been living off his savings for a couple months and had bills to pay.
- d. How did you calculate your loss? \$20,000 directly plus he compromised our case because no money for experts.

5. Information about your efforts to recover your loss:

- a. Have you been reimbursed for any part of your loss? *If yes, please explain:* Not at all.
- b. Do you have any insurance, indemnity or a bond that might cover your loss? *If yes, please explain:* No
- c. Have you made demand on the lawyer to repay your loss? When? *Please attach a copy of any written demand.* Yes. We told him there was no more money to pay for the experts again after he took the \$20K reserved for them.
- d. Has the lawyer admitted that he or she owes you money or has he or she agreed to repay you? *If yes, please explain:* He has admitted he took the expert fee money. At mediation with Mr. John Knowles, he said he was going to discount his bill \$30K to cover that and to finish the case. After the mediation he reneged. He said he was in serious financial trouble again. He did an attorney lien, threatened to sue the buyer and title co. for the money.
- e. Have you sued the lawyer or made any other claim? *If yes, please provide the name of the court and a copy of the complaint.* Yes. The Washington County Case 16CV19735.
- f. Have you obtained a judgment? *If yes, please provide a copy* Not yet
- g. Have you made attempts to locate assets or recover on a judgment? *If yes, please explain what you found:* No. PLF advised that you have this service to help recover trust fund monies that were taken.

6. Information about where you have reported your loss:

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

7. Did you hire another lawyer to complete any of the work? *If yes, please provide the name and telephone number of the new lawyer:* Yes. Mark Griffith and Alexander Newgard. Since then, they have acknowledged a severe alcohol problem with one of the partners. They are dissolving their firm and going inactive.

8. Please give the name and the telephone number of any other person who may have information about this claim: Susan Claus, my wife and Nathan Claus, my son.

9. Agreement and Understanding

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

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

10. Claimant's Authorization

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

Name: Robert or Susan Claus

Address: 22211 SW Pacific Highway

Phone: Sherwood, Oregon 97140

11. Claimant's Signature and Verification

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

State of Oregon )

County of Washington ) ss

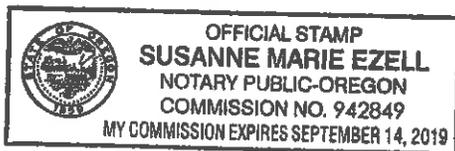
Upon oath or affirmation, I certify the following to be true:

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

Robert Claus

Claimant's Signature

Signed and sworn (or affirmed) before me this 3rd day of October, 2016



Notary's Signature Susanne Ezell

Notary Public for Oregon

My Commission Expires 9/14/19

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

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

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

\_\_\_\_\_  
*Claimant's Signature*

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

Without charge

Under the attached fee agreement

\_\_\_\_\_  
*Attorney's Signature*

\_\_\_\_\_  
*Attorney's Bar No.*

\_\_\_\_\_  
*Attorney's Phone*

\_\_\_\_\_  
*Attorney's Address*

### CSF Application for Reimbursement- Hafez Daraee (con't)

Mr. Daraee discussed that he needed money for some of his accumulated bill. We had already given him \$12,500. Several liens had been filed against our properties. Most of the liens were knocked out and his attorney fees were recoverable from the opposing parties. He said he needed more money to take the case to trial. He sent a few emails in July 2015 saying he needed money for the experts in order to prepare for trial. He said he also needed an interim payment. He said "without money to provide experts as a deposit, I cannot try the Signature cases." and "we cannot present evidence on your damages without expert testimony." He said he needed at least \$10,000 for the numbers expert, Greg Gadawski and the computer expert. He said he also needed to get his construction expert to go over the construction part of the case including costs and mistakes the builder made. We met with him on Saturday, August 1, 2015, and talked it over and ultimately gave him a check for \$30,000 that same day for legal fees and expert witness fees to carry us through to the trial. He was going to apply \$10,000 toward the bills and keep \$20,000 in a trust account so he had enough to work with the experts he needed to get ready for trial. Attached are some emails and the check we made out to him for \$30,000.

On Monday, August 3, 2015, the check was deposited into the Luby/Daraee account at Bank of America, Lake Oswego Branch for Luby/Daraee Law Group PC Account #485009982456. Also on that same day, August 3, 2015, in looking at Mr. Daraee's billings, Mr. Daraee disbursed out the entire \$30,000 to himself:

\$ 2,633.69	Check from Client	8/3/2015
\$ 3,117.80	Check from Client	8/3/2015
\$ 3,367.00	Check from Client	8/3/2015
\$ 10,035.00	Check from Client	8/3/2015
\$ 10,846.51	Check from Client	8/3/2015
-----		
\$ 30,000.00		

About a month later he asked for more money so he could pay the experts. After a heated discussion, and again, telling him we didn't have the extra money, he said he would try to "fix it" with his partner. Nothing happened including getting the experts. Later in December 15, 2015, Mr. Daraee agreed in the Parr Lumber/Signature Homebuilder mediation with John Knowles to cut his fees \$30,000 to a total of \$60,000 which included a reduction for the \$20,000 he took earlier for the expert witness fees. Because he took the original \$20,000 that was for expert witnesses it compromised our ability to go to trial and forced a settlement. It was very telling that he didn't put it in writing, but he did say it in front of Mr. Knowles. After the settlement was done with Signature Homes and entered in the record, Mr. Daraee then picked a fight with Mr. Claus and then said that he wouldn't honor the "discount." He again said he was in financial problems again. His firm's accounting was also in flux and had been for the past several months because they converted over to a different system. He admitted also to overcharging our account another \$14,115.50 which he said he would give a "courtesy adjustment" for the same amount on our final invoice (See excerpt on page 2 from Daraee letter dated December 30, 2015.) He filed a lien against one of our properties, and threatened to sue the buyer and the title company if he didn't get paid \$84,690.24. We almost lost the sale of that property because of his antics.



LAW GROUP, PC

**Billing Address:**

16869 SW 65<sup>th</sup> Avenue, No. 290  
Lake Oswego, OR 97035

EIN 46-1627299

Jim Claus  
22211 SW Pacific Highway  
Sherwood, OR 97140

August 27, 2015  
13239

**File Name: Signature Homes Construction Dispute**

**Summary of Account**

Previous Balance	\$12,453.73
Current Charges	\$3,659.25
New Balance	\$16,112.98
Adjustments	\$0.00
Payments	\$(30,000.00)
Trust Account Balance	\$0.00
<b>Total Due This Invoice</b>	<b>\$16,112.98</b>

**For your convenience, we now accept credit cards. If you wish to pay by credit card, please fill out and return the Credit Card Authorization Form, found on the last page of this Account Statement.**



	issue [.3]; telephone conference with John Knowles regarding continued efforts to settle case [.2].			
8/1/2015	Meet with Jeff Demland to discuss draft of answer to Signature's Second Amended Complaint and to discuss including counter/cross claims against CSB and the Millers personally.	H.D.	.40	\$102.00
SUBTOTAL ATTORNEY FEES THIS INVOICE:			14.35	\$3,659.25

**Costs/Expenses:**

SUBTOTAL COSTS & EXPENSES THIS INVOICE:		\$0.00

**Matter Ledger Activity Since Last Invoice:**

7/23/2015	Balance before last invoice	\$35,643.48
7/23/2015	Invoice 13190	\$6,810.25
8/3/2015	Check from Client	\$(2,633.69)
8/3/2015	Check from Client	\$(3,117.80)
8/3/2015	Check from Client	\$(3,367.00)
8/3/2015	Check from Client	\$(10,035.00)
8/3/2015	Check from Client	\$(10,846.51)
8/27/2015	Invoice 13239	\$3,659.25
CURRENT BALANCE DUE THIS INVOICE:		\$16,112.98

**Trust Account Activity Since Last Invoice:**

8/27/2015	Previous Balance	\$0.00
Currently Available in Trust:		\$0.00



## INVOICE DETAIL

**Attorney Fees:**

Date	Description of Services	Attorney	Time	Cost
7/23/2015	Meet with Jim Claus to discuss budget for litigation and the payment of expected expert expenses, as well as other trial related issues.	H.D.	1.50	\$382.50
7/23/2015	Telephone conference with Francine Beckler regarding Lot 4 closing issues; telephone conference with Jim Claus regarding contractor's demand for payment; review invoices from contractor for work purportedly done on lots 4 and 5; draft email to closing officer instructing escrow to not pay contractor's demand; prepare ORS chapter 87 documentation for depositing cash with county.	H.D.	2.40	\$612.00
7/27/2015	Telephone conference with client regarding status of closing for Lot 5; review Signature's opposition to request for production; telephone conference with Bill Buchanan regarding documents to be produced; discuss issues related to settlement and case management; review email from Luis Serrano; prepare reply to Mr. Serrano; review second email from Mr. Serrano with revised addendum; second telephone conference with client regarding closing lot 5; telephone conference with Francine Beckler at Chicago Title regarding closing.	H.D.	3.00	\$765.00
7/27/2015	Prepare lengthy email to Bill Buchanan regarding earlier conversation related to discover issues.	H.D.	.40	\$102.00
7/27/2015	Lengthy telephone call with client regarding closing Lot 5; review email reply from Bill Buchanan regarding discovery issues.	H.D.	.50	\$127.50
7/29/2015	Lengthy telephone conference with client regarding funding expert witnesses and to	H.D.	2.95	\$752.25



	discuss how this case cannot be tried without expert testimony no matter "how obvious the damages are" in Jim Claus' mind [.9]; prepare motions to postpone the civil trial in all three cases [1.0]; travel to and from Washington County to file motions [.75]; telephone conference with Joel Brilhart regarding time necessary to analyze computer provided by Morteza and arrange for delivery of same on Thursday, 7-30-15 [.3].			
7/30/2015	telephone conference with Jim Green to discuss handwriting analysis needed for case [.3]; prepare dropbox link with documents to examine [.7]; review voicemail from Jim Claus regarding scheduling meeting with Greg Gadawski for Saturday [.1]; telephone call with Mr. Gadawski regarding availability for meeting on Saturday [.1]; lengthy telephone call with Bill Buchana regarding trial related issues and possible settlement [.5].	H.D.	1.70	\$433.50
7/31/2015	Review voicemail from Jim Claus regarding scope of damages and questioning if correct documents showing amount of money paid to Signature for Lots 4 & 5 are in our possession [.1]; consider second voicemail from Jim Claus responding to email send earlier in the week requesting money for experts and for payment of our fees [.1]; lengthy telephone conference with Jim Claus about the manner in which damages are calculated, how the VA conducts fraud investigations and his conclusion that absent evidence to the contrary, Signature Homes and Columbia State Bank conspired to take McFall Estates from him and Mrs. Claus [.4]; second telephone conference with Jim Claus regarding obtaining letter from Dr. Dunn related to his and Mrs. Claus' medical status and the impact of stress on their health [.4]; office meeting with Jeff Demland to discuss preparing pocket brief on Statutes of Frauds and how those might impact the case at	H.D.	1.50	\$382.50





**From:** Hafez Daraee <hafez@luda-law.com>  
**To:** clausssl <clausssl@aol.com>  
**Subject:** Re: Info for Tomorrow's Meeting  
**Date:** Tue, Jun 30, 2015 10:47 pm

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Jim,

You have raised a bunch of issues, some of which are unrelated. In hope of helping you make "heads or tails" out of the predicament you and Susan are in, I have responded to your various points in the body of your initial email (please see below). I hope you get a chance to review this email before our 9 am meeting in the morning.

In addition to the points below, we need to talk about the Hardie case and about getting some money to us. Your bill exceeds \$45,000. I need to get caught up and I need money with which to pay various experts for this case.

I look forward to finding some resolution to these issues, in the morning.

Hafez

**Hafez Daraee**

**Luby/Daraee Law Group, PC**  
7455 SW Bridgeport Road, #205  
Tigard, OR 97224

PH 503 620-3342 | CL 503 998-6171 | FX 503 360-9635



This email does not create an attorney-client relationship unless an explicit and affirmative intent to do so is expressed herein. This email is intended to be seen only by the person(s) to whom it is addressed. If you are not the addressee or a person responsible for delivering this message to the addressee; please delete this message, destroy all copies, and notify the sender. This is a privileged and confidential communication; inadvertent disclosure shall not waive privilege. Unless this email is addressed to an existing and established client, nothing herein shall constitute advice as to the appropriate course of action in any legal matter. If you are not an existing and established client, you should consult and retain an attorney in advance of making or responding to this email, to any legal claim or taking any action that might affect your legal rights.

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**From:** "clausssl@aol.com" <clausssl@aol.com>  
**Date:** Tuesday, June 30, 2015 at 6:37 PM  
**To:** Hafez Daraee <hafez@luda-law.com>  
**Subject:** Re: Info for Tomorrow's Meeting

**From:** Hafez Daraee <hafez@luda-law.com>  
**To:** clausl <clausl@aol.com>  
**Subject:** Re: Attorney-Client Privilege Value and various Damages  
**Date:** Fri, Jul 3, 2015 3:01 pm

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Jim,

I'm not sure why you continue to be confused. When we met earlier this week, we discussed the single biggest difficulty in this case — establishing damages. As I mentioned, showing “some” amount of damage is not the issue. The problem we have is establishing the damages in an amount that you believe is appropriate. For example, you keep telling me Charlie Harp promised you (\$1,000,000) profit out of this subdivision. While I don't doubt the promise, I am not sure that figure is proveable and/or realistic.

Nevertheless, I have engaged an expert, Greg Gadowski, a CPA from Forensic Financials, whose sole job is to help figure out and quantify damages. The problem we have, of course, is that I need money to retain him. Your case is at that point where we need to spend money on experts and expert witnesses. As we discussed, your attorney fees as of now is around \$45,000 to my firm. I have asked you to pay at least \$25,000 to us from the closing with Brad Miller's deal. Without funds, I cannot prove damages to a sufficient level under Oregon law. And, quite frankly, until Greg has done his analysis, I can't promise we can establish the necessary level of damages.

With respect to the balance of your email, some of your statements are not factually accurate. For example, Signature is a general contractor. I am not trying to pain them into being developers. Nevertheless, the fact that they do not have the purchasing power of an Adair Homes or DR Horton, is not material. There are very few builders in this state with that sort of purchasing power.

Again, Jim, you and I don't need to get into a battle of “whose right whose wrong” when it comes to Signature. What I do need is your cooperation with my strategy and your help pulling the necessary figures. For example, for next week's judicial settlement conference with John Knowls, I need you and/or Susan to finish putting the “dollars in/dollars out” account for all funds received form the bank and where that money was spent, including what you spend the money on that you took from the construction loan.

I hope you have a good 4th. I will be out of the office through Monday the 6th, but back in on Tuesday the 7th.

Hafez

**Hafez Daraee**

**Luby/Daraee Law Group, PC**  
7455 SW Bridgeport Road, #205  
Tigard, OR 97224

PH 503 620-3342 | CL 503 998-6171 | FX 503 360-9635



**From:** Hafez Daraee <hafez@luda-law.com>  
**To:** clausl <clausl@aol.com>  
**Subject:** Re: Settlement info– please read – Attorney-Client Privilege  
**Date:** Tue, Jul 14, 2015 10:29 am

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Susan & Jim,

My response is not complete. It is intended to address some of the points that I think are more important. If needed, I will respond more fully to the balance of your email, at a later time.

As to your question #1 below, yes, they are asking you to walk away from the \$50,000 they owe you for lot 3.

As to your point #2 below, I tend to agree that you are “underwater” in this entire subdivision. I don’t think you will be made whole or will be able to recover your investment to get back to “zero” even if you get a large judgment against Signature. I agree that we don’t know for sure if they really are a turnip. I suspect they are, based on what they have done so far, based on the reputation they have in Bend (as I have managed to gather) and the act that they are not running their business like a “business” — at least based on what I have seen.

The “PR” war you are talking about is an interesting concept. Although I don’t know if I agree or disagree with it, I do know that this particular battle only matters when we are before a jury. Based on my discussions with you both, if your respective testimony is not spot-on and surgical, focused exclusively on the issues before the court, we will lose. Washington County jurors do not take kindly to being lectured and are generally unwilling to save folks from themselves. They will side with you if they feel you have been wronged. If they feel that you got yourself into this situation and are unwilling to take “some” level of responsibility, you will get hammered. I am not suggesting you are at fault or have culpability here. I am merely saying the “battle of perception” will be a HUGE part of this case AT TRIAL. As you evaluate what you should do, I urge you to consider whether you can stand to sit in a courtroom for a week, listening to Signature’s lies (they will lie), without reacting. If the answer is “no, I can’t,” then we have another and possibly larger problem.

And I know you are acutely aware of this, but I need money immediately. I am running out of time to prepare this case for trial. I have to schedule depositions and to get experts engaged. I am financially unable to front the out of pocket costs needed to prepare this case. I know and understand the financial pressure you are under. I hope you can appreciate that as a small firm, we share a similar plight. It just happens that we are at the same financial pressure-point, at the same time. Please let me know when I can expect the \$25,000 you indicated I would be paid toward our bill and how/when I can expect funds for experts?

Finally, if you are inclined to settle, I would press for a global settlement. I do not recommend a piece-meal deal, like Signature is proposing.

Hafez

**Hafez Daraee**

**Luby/Daraee Law Group, PC**  
7455 SW Bridgeport Road, Suite 205  
Tigard, OR 97224

**From:** Hafez Daraee <hafez@luda-law.com>  
**To:** clausl <clausl@aol.com>  
**Cc:** Hafez Daraee <hafez@luda-law.com>  
**Subject:** Case Status and Expert Testimony issues  
**Date:** Wed, Jul 29, 2015 12:17 pm

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Jim & Susan,

I am the end of my rope. I have asked you to reduce my bill substantially and for money to get expert witnesses engaged. We began this discussion well before Lot 4 closed earlier this month. I understood I was going to be paid \$25,000 toward my bill, but I was only paid \$10,000, at a time when the unpaid balance of the debt owed to this firm exceeded \$50,000 on the Signature files alone. There is no clarity as to when I will be paid or how much I will be paid.

Today I spend nearly an hour on the phone with Jim, the end result of which was that I am now being blamed for the lot 6 loss we suffered in Bend and how Jim is now forced to "fire sale" more properties to generate the \$60,000 that I lost in Bend. I will not readdress the Bend issues; and I will not take responsibility for the result we achieved there. I am happy to defend my conduct in Bend. I will however reiterate in the strongest way I can that without money to get my bill reduced substantially (I agreed with Jim that I would carry a balance; I have no intention of going back on my word) and without money to provide experts as a deposit, I cannot try the Signature cases — no matter when those matters will be tried.

Apparently, Jim is hung up on the timing of trial. That is not the issue. The issue is that irrespective of when trial is to take place, we cannot present evidence on your damages without expert testimony. Put simply, my problem is with the HOW, not with the WHEN.

You are about to receive nearly \$110,000 from the closing of lot 5. That check will be ready to pick up shortly. I fully expect that I will be very high on the priority list of bills to be paid. I trust I will be paid at least \$25,000 toward the outstanding balance owed my firm. I also expect I will receive at least \$10,000 more to be paid toward expert testimony. I will need a check for \$5,000 made payable to Greg Gadawski's firm (I gave Jim a copy of Greg's CV yesterday ruing a meeting with him and Nathan). I also need a check for \$2,500 payable to Joel Brillhart who is the computer forensic expert. Finally, I need a check for \$900 made payable to the City of Sherwood for a complete copy of their file related to McFall Estates. If you do not wish to get me "mostly" caught up and you do not want to give me money for deposits, I cannot do my job and I will assure you that we will lose at trial.

This is a very serious issue; one that we MUST resolve ASAP if we are to get ready for trial, no matter when it is.

Please let me know via email, when I can expect to get paid.

Hafez

**Hafez Daraee**

**Luby/Daraee Law Group, PC**  
7455 SW Bridgeport Road, Suite 205  
Tigard, OR 97224



LAW GROUP, PC

December 30, 2015

Robert James Claus & Susan S. Claus  
11222 SW Pacific Highway  
Sherwood, OR 97

Re: Notice of Termination of Attorney-Client Relationship

Dear Mr. & Mrs. Claus:

---

HAFEZ DARAEE

LICENSED IN:

OREGON  
WASHINGTON  
ALASKA

*Direct Dial*  
(503) 766-4772

*E-mail*  
hafez@luda-law.com

### ATTORNEY FEES OWED TO MY FIRM

A complete copy of all invoices applicable to your cases is included for you, including the most recent invoice which is dated as of the date of this letter. I have given you all credits owed but have not included debits which were



Robert James & Susan Claus  
December 30, 2015  
Page 2

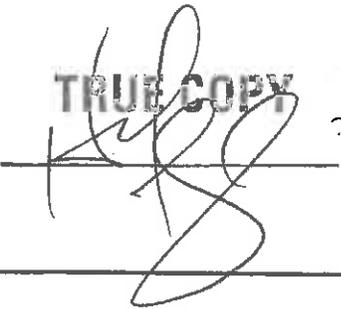
mistakenly left off of your invoices due to a glitch or mistake on our end. For example, the balance of the debt you owed on the Hardie matter was not brought forward when we switched our practice management software from Rocket Matter to Firm Central, this past summer. Our mistake resulted in a roughly \$2,000 benefit to you.

In reviewing these invoices I also noted a problem with the hourly rate associated with certain matters after we switched practice management programs. On certain entries, the hourly rate for Jeff Demland (JD) should have remained at \$185 per hour and the hourly rate of Jeffrey Renshaw (JR) should have remained at \$150. On some matters the correct hourly rates were used but for reasons that have not yet been resolved, on some files this was not done.

The enclosed invoices were not adjusted or altered in any way. However, I have gone through and calculated the correct hourly rate, which amounted to a credit of \$14,115.50. This credit appears as a courtesy adjustment on your final invoice, dated December 30, 2015.

After Recording, Return to:  
 Hafez Daraee  
 16869 SW 65<sup>th</sup> Ave., No. 290  
 Lake Oswego, OR 97035

TRUE COPY




02118999201501058760030035

I, Richard Hobernicht, Director of Assessment and Taxation and Ex-Officio County Clerk for Washington County, Oregon, do hereby certify that the within instrument of writing was received and recorded in the book of records of said county.

Richard Hobernicht, Director of Assessment and Taxation, Ex-Officio County Clerk



CLAIM OF ATTORNEY'S LIEN

PURSUANT TO ORS 87.430 et seq., the Luby Daraee Law Group, PC, hereby claims as follows:

1.	Lien Claimant	Luby Daraee Law Group, PC, an Oregon professional corporation.
2.	Lien Debtors	Robert James Claus & Susan S. Claus, husband and wife, jointly and severally
3.	Lien Amount	\$84,690.24, together with interest at the rate of 9% per annum from the date the debt was incurred, until paid.
4.	Lien Claimant asserts an Attorney's Lien on the following:	<p>a. Pursuant to ORS 87.430 on all papers and other personal property belonging to Lien Debtors, presently in the possession, custody or control of Lien Claimant;</p> <p>b. Pursuant to ORS 87.445, on the proceeds from the sale of Lot 3, McFall Estates, Washington County, Oregon, which is the subject matter of that certain consolidated lawsuit filed in Washington County, Oregon, more commonly known as:</p>

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF WASHINGTON

PARR LUMBER COMPANY, an Oregon corporation,

Plaintiff,

Case No. C145788CV

(Consolidated Cases)

v.

SIGNATURE HOMEBUILDERS, LLC,  
an Oregon limited liability company  
COLUMBIA STATE BANK, a Washington  
bank; FETTIG COMMERCIAL  
CONSTRUCTION, INC., an Oregon  
corporation; THE SHERWIN WILLIAMS  
COMPANY, an Ohio corporation, FLYING H.  
CONSTRUCTION Co., an Oregon  
corporation, SLSI LLC, an inactive Oregon  
corporation; LARRY HARDIE, an individual;  
ROBERT JAMES CLAUS and SUSAN L.  
CLAUS, as tenants by the entirety; MARTY  
KENT, an individual; MARK A. MILLER an  
individual; JEREMY MILLER, an individual;  
and MARY ANN HARP, an individual,

Defendants.

---

ROBERT J. CLAUS and SUSAN L. CLAUS;

Third-Party Plaintiffs,

v.

CHARLES HARP and CHARLOTTE MILLER,

Third-Party Defendants.

---

SIGNATURE HOMEBUILDERS LLC, an  
Oregon limited liability company,

Plaintiff,

v.

ROBERT J. CLAUS; SUSAN L. CLAUS;  
COLUMBIA STATE BANK, a Washington  
bank; and PARR LUMBER COMPANY, an  
Oregon corporation,

Defendants.

Case No. C145342CV

SIGNATURE HOMEBUILDERS, LLC, an Oregon limited liability company,

Case No. C145343CV

Plaintiff,

v.

ROBERT J. CLAUS; SUSAN L. CLAUS; COLUMBIA STATE BANK, a Washington bank; and PARR LUMBER COMPANY, an Oregon corporation

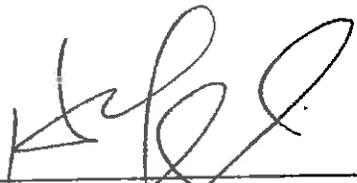
Defendants.

5.	Legal Description of Property at issue in the above case:	Lot 3, MCFALL ESTATES, according to the official plat thereof, recorded May 9, 2013, as Fee No. 201304178 in the City of Sherwood, County of Washington and State of Oregon.
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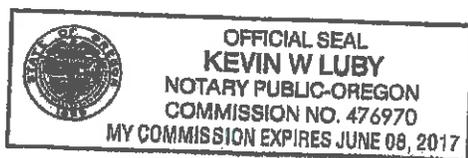
State of Oregon                    )  
   ) ss.  
 County of Washington         )

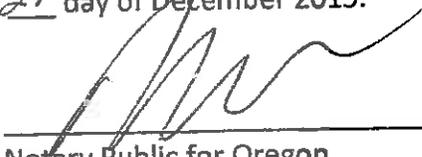
I, Hafez Daraee, having been duly sworn do hereby depose and say that the information provided in this Claim of Attorney's Lien is true as I verily believe. I further depose and say that the debt identified in paragraph 3 above is a true and bona fide existing debt as the date of this Claim of Attorney's Lien.

DATED this 29<sup>th</sup> day of December, 2015.

  
 \_\_\_\_\_  
 Hafez Daraee, Authorized Agent for  
 The Luby Daraee Law Group, PC

SUBSCRIBED AND SWORN before me on this 27<sup>th</sup> day of December 2015.



  
 \_\_\_\_\_  
 Notary Public for Oregon  
 My Commission Expires: 6-8-17

From: claussl <claussl@aol.com>

To: hafez <hafez@luda-law.com>

Subject: Re: Your text from earlier today

Date: Thu, Dec 31, 2015 1:50 pm

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Hafez— I started to text you back but I am not much of a texter unless it is a quick sentence or two. I appreciate the tone of your text because it is the reasonable side of you. Those are not all of the facts though and you are not just making “simple” motions. You have filed a lien against Lot 3— not for \$60,000, but for more than \$84,000. We had already made arrangements for the money to be held until we had the approved Settlement and billings paperwork. In the settlement room you said you wanted \$60,000. You were giving us a huge discount off a huge bill that we were going to go over together. I thought you said \$60,000 less what you had been paid. You thought you received \$30,000. I said it was over \$40,000. You said you would sit down with me to go over all the invoices to verify them because you needed the money. When we showed up at your office, your numbers were different. You then said in the meeting at your office that it was \$60,000 additional to everything we paid even though you were off by over \$10,000. You know how shocked I was Hafez—you saw it on my face. Now you have filed a lien on Lot 3 when we had already arranged for the monies to be held until the Settlement document was done and your billings were reviewed. You broke that settlement apart—filing a lien is not part of “simple” motions as you describe in your text. It is really disappointing.

Signature took over \$85,000 in proceeds that were designated to pay the likes of Parr, Macadam and Fettig. Offering Buchanan \$150,000 the Friday before without discounts off of what they already had was a mistake and negatively impacted the Knowles mediation. Jim hadn’t authorized the \$150,000 from before and it was used against us. You told Mr. Knowles about that \$150,000 offer you made. You were the one that brought up “taking a haircut” on your fees to get this thing settled. You put that \$60,000 number on the table. I am not saying any of this in an accusatory way. You were “living to fight another day” with the Columbia Bank litigation and the Keeler contingency.

So what do we do now? What is the next step so we can transition? Will we get our files and paperwork from you? You have held up paperwork in the past. We have not received a copies of items such as the complaint from a few months ago you drew against Columbia State Bank and were negotiating a settlement with them. You said you already had them up to \$125,000. What about the Washington County Order for the Judge on the Settlement? We don’t know on the Columbia case if the Washington County settlement can be used to stop them from cross complaining against Signature. Can it be used against us? We never agreed to sell Lot 7 to Signature Homes so how can that be stated in the settlement document?

I am also hoping this is a professional transition with the attorney(s) you will be transitioning the cases to. Please do not harm us by any negative on or off-the-record comments to the attorneys, John Knowles or to the judges or any of their staffs. Please tell us what the steps are to get this behind us. What about that lien? What about the billings? What about the settlement with Washington County Court? What about our files? When will you give them to us and under what circumstances? What are the ramifications of the settlement to the action with Columbia Bank? You are still in control of everything. Jim’s health is at risk—you know that. **Please make the transition professional. — Susan**

**From:** Hafez Daraee <hafez@luda-law.com>  
**To:** clausssl <clausssl@aol.com>  
**Subject:** Re: Your text from earlier today  
**Date:** Fri, Jan 1, 2016 10:14 am

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Dear Mrs. Claus,

Thank you for your email. I do not intend to respond to every comment in your email. I have never found a "point-counterpoint" approach to be useful. You clearly believe what you believe. I believe your recollection of certain facts/statements is not entirely correct. I think we should agree to disagree, and to leave it at that.

Regarding the orderly transition of your files, I again wish to make it clear that my withdrawal as your attorney was put into motion by you husband's comments and accusations during our telephone conference on 12/28. Based on what he said to me during that call, I was left with no choice but to withdraw from these cases. Indeed, remaining as the attorney of record after the comments and accusations that were leveled at me by Mr. Claus would, itself, be unethical. Just to be clear, I will appear at morning ex parte on Monday, 1/4/16 to withdraw from the Signature & Keeler cases.

Finally, regarding the attorney's lien, that lien only attaches to the proceeds that were supposed to go to you and your husband. I had no choice but to file it, after Mr. Claus made it clear that he had no intention of paying the \$60,000 we had agreed upon, through escrow. I think a bit of background will be helpful here because I suspect your husband has not shared all of the facts with you. On December 24th, your husband made it clear to me that he had no intention of closing the Lot 3 sale until the settlement with Signature was finalized and signed. I assumed that this task would be picked up and finished sometime this week. On Monday morning, 12/28, at 7:45 am, I received a call from Chicago Title that you and he were coming in to sign and to close the Lot 3 transaction. What caused me distress, however, was not the fact that your husband had told me one thing but was proceeding in a different direction. Rather, the source of distress for me was the comment from Francine that, "Jim Claus has instructed me to remove the \$60,000 payment to your firm from the settlement statement because he does not intend to pay this sum to your firm." When I spoke to your husband about my conversation with Chicago Title this, I told him that one of the reasons I was willing to discount my fee was so I could get paid directly out of escrow. I told him that I did not want to continue chasing you and he to get paid. That conversation ended with your husband calling me a "son of a bitch" for suggesting he does not pay his bills.

At this point, there is no longer any agreement on the table with respect to a reduction of my invoices. The total owed to my firm is slightly more than \$84,000. You should also have a complete copy of every invoice I've ever sent you, which was included in the packet of documents I hand delivered to Chicago Title yesterday, at your husband's request. The letter contained in that packet is self-explanatory. While I remain open to finding a reasonable solution here, please keep in mind that I am unwilling to negotiate against myself.

Hafez

**Hafez Daraee**

**Luby/Daraee Law Group, PC**  
7455 SW Bridgeport Road, #205  
Tigard, OR 97224

PH 503 620-3342 | CL 503 998-6171 | FX 503 360-9635



This email does not create an attorney-client relationship unless an explicit and affirmative intent to do so is expressed herein. This email is intended to be seen only by the person(s) to whom it is addressed. If you are not the addressee or a person responsible for delivering this message to the addressee; please delete this message, destroy all copies, and notify the sender. This is a privileged and confidential communication; inadvertent disclosure shall not waive privilege. Unless this email is addressed to an existing and established client, nothing herein shall constitute advice as to the appropriate course of action in any legal matter. If you are not an existing and established client, you should consult and retain an attorney in advance of making or responding to this email, to any legal claim or taking any action that might affect your legal rights.

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**From:** "[clausssl@aol.com](mailto:clausssl@aol.com)" <[clausssl@aol.com](mailto:clausssl@aol.com)>  
**Date:** Thursday, December 31, 2015 at 1:50 PM  
**To:** Hafez Daraee <[hafez@luda-law.com](mailto:hafez@luda-law.com)>  
**Subject:** Re: Your text from earlier today

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action with Columbia Bank? You are still in control of everything. Jim's health is at risk—you know that. Please make the transition professional. — Susan

**From:** Hafez Daraee <hafez@luda-law.com>

**To:** claussl <claussl@aol.com>

**Subject:** Re: Title Company and other matters

**Date:** Fri, Jan 1, 2016 9:23 am

**Attachments:** Settlement Agreement.pdf (139K), Order.pdf (254K)

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Dear Mr. Claus,

The majority of your email contains inaccuracies, half-truths or outright fictional comments/statements. Suffice it to say that I have no intention of dignifying the majority of your email with a response.

You have, however, made two inquiries that do require a response:

1. With respect to your request to review the paperwork for the settlement with signature, those documents (settlement agreement & limited judgment) were initially emailed to you on 12/18. After our meeting on 12/21, I revised the form judgment and converted it to a form order, which was forwarded to you for review via email on 12/23. As for the settlement agreement, you dropped of a draft with hand written comments, a great many of which I could not decipher because I could not read your handwriting. I did my best to include the comments I could read, into the agreement. As to the questions you posed in your comments on the settlement and during our meeting on the 21st, I sent you a lengthy email dated 12/23 that answered your questions. I suggest you review my 12/23 email again. Finally, copies of the last version of the settlement agreement and order are, once again, attached to this email for your convenience.

2. Regarding your request to review the statements applicable to ALL of your files, a complete copy of all of the invoices for all of your files, was prepared on 12/22 and ready for pickup. You asked me to email those statements to you, but due to the file size, I could not get them sent via email. I notified you of my difficulties and indicated that the invoices were available for pickup in my email dated 12/23. Copies of invoices have been available for you to pick up, since then. Based on my telephone conversation with Mary Jo yesterday, I understood that you wanted all of the invoices dropped of with her at Chicago Title. I dropped off a packet of material, addressed to you and contained within in a sealed envelope, with her yesterday, around noon. A complete set of all invoices was included with what was dropped of with Mary Jo. If you have not picked those up, you should arrange to do so.

Finally, I wish to again reiterate that I ended our attorney-client relationship on 12-28-15.

Hafez

**Hafez Daraee**

**Luby/Daraee Law Group, PC**  
7455 SW Bridgeport Road, #205  
Tigard, OR 97224

PH 503 620-3342 | CL 503 998-6171 | FX 503 360-9635



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**From:** "[clausssl@aol.com](mailto:clausssl@aol.com)" <[clausssl@aol.com](mailto:clausssl@aol.com)>  
**Date:** Thursday, December 31, 2015 at 12:45 PM  
**To:** Hafez Daraee <[hafez@luda-law.com](mailto:hafez@luda-law.com)>  
**Subject:** Re: Title Company and other matters

TO: Hafez  
Client Privilege  
FROM: Jim Claus

Attorney-

This is a difficult communication to you because you have as bad of a temper as anyone I have seen. It is both open and directly confrontational and in other cases it is, in my opinion, the type of anger that hides your intensions and waits to strike. Once you are angry and think you have been wronged and jinn up your logic, you will harm people. What you are doing right now is the best example of what you do. You are withdrawing. That's fine. When you said in the John Knowles mediation that you were like most lawyers, a congenital liar and thought it was funny, is when we caught you in one of your misstatements- no one was giving you any slack. Now I am going to make a request that you stop your hit back and vindictive behavior. There is a reason that you act this way and I believe that you know it. In other words, please don't continue with acting with bad intent and trying to poison the waters for our future in the legal cases.

We are asking nothing but legitimate questions regarding that Court Order with Washington County and the settlement. We asked to see all of your billings which you said in front of John Knowles that you would get to us. We set a time up to go over it all. We went to your office and you didn't have the billings. All you had was a one page summary sheet. That is not going over your billings. That is you presenting us with your decision. Now, instead of going through the process to get these things done, you blew up and in the past three days, filed a lien, started sending out all kinds of motions and correspondence designed to make us look bad and cover up your lack of getting clarity on settlement documents and billings. Your emotional tirade is harmful.

The time Nathan and I came into your office and sat down with you, you started to badger me about money. You were screaming and ranting and raving at the two of us. Then when I tried to get out of the office and you yelled at me that if I left and did not allow you to continue your rant, you were done with our account. I was forced to put up with your rant. I repeatedly told you that because of the Bend loss, if the money was demanded and if you couldn't get your fee award off sets against it, we couldn't pay your fees without leaving us with nothing. At a point, you again clamped down, became rational and said you were sorry that you said we ruined your business. You were sorry you didn't know how much we paid you. The point is that I left that meeting and I went to see my heart doctor, Dr. Liam Shaw. For three weeks after that meeting with you and first accusing me of ruining your life and law practice, then trying to apologize for your outbursts, I had pains in my chest to the point they sent me to do expensive nuclear testing. The testing showed it was stress that had caused the new condition. I was on the mend. That's right Hafez, in spite of the difficulties and lack of

progress, I was on the mend. Please note and look through your emails. You knew what you were doing and putting pressure on us and saying over and over things like, "better broke and alive, than rich and dead". Anyone who would have written anything like that needs psychological care. If you were to walk this off the cliff it would lead to forced sales of everything. It would have destroyed our retirement and you mocked us and put pressure on us to take deals that were harmful.

Why do I tell this? You are perhaps the best example of why there needs to be statutes for the protection of the elderly. You have no respect of the elderly. If they are sick it is something for you to merely take advantage of. You are shameless. In the last meeting with Susan and I, you agreed to go over the supposed \$140,000+ (the number keeps changing) in your billings along with providing a plan for the future strategies in this case. These things were conditions for you to receive the settlement for the \$60,000. Not once did Susan and I ever agree to just hand you over the \$60,000. Yet, in her ever so polite way and you didn't speak disrespectfully to her, you openly insulted her when she asked a simple question of why the settlement paperwork said "Limited Judgment." Your reply was said with a direction and intensity that was threatening-- then an amazing thing happened. The other Hafez came out. The mild mannered wonderful other Hafez. It was like turning off hot and cold water. You agreed it could just say ORDER - it didn't need to say "Limited Judgment." Too bad that Hafez doesn't come to stay for long.

What's the point of this letter? You are doing every single thing to harm Susan and I through increasing the stress and costs. You know our health situations. You are like an angry boy that has to hit back. You are never wrong, you just got caught with your hand in the cookie jar and it is the adults problem you were caught. Why am I writing this to you? Because I want to get out of the relationship with you and I want an attorney that is working for my family's best interest. This is why I tell you bluntly that the triple damages with attorney fees may be needed when dealing with an erratic attorney like you.

You have done the same thing at the title company and you are now sending things to other lawyers. We are separating and we have jointly deemed it. What you have done is hit back. It is your way or no way. I am sorry for your financial troubles, I am sorry your wife wants you to take a job elsewhere and I am most sorry you are not a liar, you can't add and I am sorry we are parting ways. Please don't see how much stress you can put on us. If my wife's health deteriorates, you are the one that is the pushing the envelope to see how much you need to "check yourself before you wreck yourself".

I want this done today so we can get the settlement finished with Buchanan and the new attorney. You are supposed to give Chicago Title some documents; everyone has changed position in reliance. Please get your paperwork done for that transaction immediately. You need to get in contact with Francine or Mary Jo or the attorney.

You made specific promises to us when you finally settled your demand at \$60,000. We would get the full documentation of your billings with Susan sitting down with you to go over it. There would be a full accord and satisfaction on the billing and you would be paid through the end of this year--- no additional bills. Those are just two of the conditions you agreed to meet to get your \$60,000 which we thought was about \$15,000. Your changing the agreement is what upset me. Please keep your word and get this done. It looks like you are trying to hold a process hostage so you can inflict additional damage and costs on Susan and me.

## Client Security Fund Investigative Report

From: Dave Malcolm, Investigator  
Date: March 3, 2017  
RE: CSF Claim #2016-43  
Claimant: Robert Claus and Susan Claus  
Attorney: Hafez Daraee

**Recommendation.** Investigator recommends denying this claim.

**Statement of Claim.** Claimant Claus was involved in multiple real estate development deals that went bad for various reasons. Claimant retained Attorney Daraee on or about January 1, 2015 to pursue his civil claims against his former business associates (residential home builder, bank, co-investor and Claimant's former attorney, collectively "Associates"). Claimant and Attorney had a falling out over money and personality differences. Claimant alleges Attorney wronged him in several non-specific ways. Claimant never distinctly articulated Attorney's specific wrongful acts or damages.

**Discussion.** Claimant is a retired, sophisticated, real estate professional who is intelligent, often abusive, generally poor company and squanders others' time. He was involved in real estate development (of residential subdivisions and home construction) in the Bend and Sherwood areas. It appears some players may have acted dishonestly and/or unethically and Claimant has some valid claims beyond the scope of this investigation. Some deals went bad and Claimant lost substantial sums (probably 6 digits worth). Claimant generally blames everyone else, particularly Attorney. Claimant states the system is out to take advantage of him (all attorneys and judges are dishonest and Investigator is in on the grand scheme).

Attorney sued Claimant's Associates. Attorney prevailed in a construction lien case (the wrongful liens on Claimant's assets were removed). Claimant also sued a home builder for breach of contract and Claimant's former attorney for malpractice.

One of Claimant's imprecise claims is that Attorney failed to retain necessary expert witnesses for a trial with Claimant's funds (\$20,000) and instead Attorney paid himself, and therefore Claimant did not prevail at trial. This was a little before the time Claimant and Attorney had their falling out. Shortly thereafter Attorney withdrew from representing Claimant (before a trial). The following timeline details the situation:

July 15, 2015	Claimant pays Attorney \$10,000 towards the amount due in a case;
July 23, 2015	Attorney submitted invoices (3 cases) totaling \$45,402 (\$37,203 past due);
Aug 3, 2015	Claimant pays Attorney \$30,000 towards the amount due in a case, Attorney deposits the check in Attorney's business account, Attorney partially pays Claimant's bill and doesn't use \$20,000 to secure expert witnesses;
Aug 27, 2015	Attorney submitted invoices (3 cases) totaling \$19,137 (\$15,402 past due);
Aug 29, 2015	Attorney changed billing software and resubmits invoices (2 cases) totaling \$35,547 (\$16,237 past due).

Attorney found some errors with the new billing system. Attorney fixed the errors as appropriate and credited Claimant's accounts yet Claimant accused Attorney of wrongdoing and cheating Claimant. Some time later Attorney withdrew from representing Claimant. Claimant and Attorney settled their dispute; Claimant agreed to pay Attorney's reduced fee from the soon to be completed sale of a residential home lot. At closing, Claimant changed his mind and decided not to pay Attorney from escrow. Attorney then rescinded his reduced fee offer and liened the property. Attorney was paid soon thereafter. In total, Claimant paid Attorney more than \$100,000 for legal services.

Claimant neither filed a complaint against Attorney with the OSB Client Assistance Office nor sought OSB fee arbitration. Claimant personally sued Attorney last year for malpractice, elder financial abuse and breach of contract (Washington County Case #16CV19735). Defendant Attorney filed Rule 21 motions and prevailed. The case was dismissed with prejudice and Claimant did not appeal.

### **Findings & Conclusions.**

1. An attorney-client relationship existed between Claimant and Attorney. The parties had written fee agreements.
2. Attorney provided extensive legal services in several cases to Claimant during a year of litigation before withdrawing from representing Claimant. (Rule 2.2.3 not applicable)
3. During much of the time Attorney represented Claimant, Claimant owed Attorney substantial sums (5 digits worth) for legal services.
4. Claimant alleges Attorney wronged Claimant when Attorney applied all of Claimant's \$30,000 payment towards past due fees and did not use \$20,000 of that amount for expert witness fees instead.
5. Claimant did not file a disciplinary complaint or fee arbitration application with the Oregon State Bar.
6. Claimant timely filed this Claim.
7. Investigator reviewed many documents and spoke repeated with the parties yet Investigator has not found evidence of Attorney's dishonesty. (Rule 2.6 not applicable)
8. Investigator recommends denying this claim as there is no evidence of a dishonest act by Attorney.

Respectfully submitted,  
/s/ Dave Malcolm

Robert J. Claus  
22211 SW Pacific Highway  
Sherwood, Oregon 97140



HAND DELIVERED

March 14, 2017

Ms. Helen Hierschbiel   
CEO and Executive Director, OSBAR  
16037 SW Upper Boones Ferry Road  
P.O. Box 231935  
Tigard, Oregon 97281-1935

RE: Client Security Fund Claim #2016-43  
Hafez Daraee

Dear Ms. Hierschbiel:

Per your letter, the client security fund rule 4.10.1 this is the written request hand delivered to your office this day. We want to know when and where and the conditions under which we can appear in front of the Board of Governors for their review of this file.

Thank you,

**Jim Claus**

Jim Claus

*P.S. This is a formal request for appeal of the Hafez Daraee trust fund decision - please supply our details to address appeal  
Julius*

To: Helen Heirschbiel  
For the Board of Governors  
From: Jim/Susan Claus  
Date: 30 March 2017



9:47am  
CB

RE: Trust Fund Complaint appeal Against Hafez Daraee

Please excuse the brevity of this. Both my wife and I are interested how you handle and review funds taken by an attorney under false pretenses. We write this also because there is a small chance for the next three years that any future client of Mr. Daraee may read this file and be able to protect themselves against Mr. Daraee's severe intellectual and professional weaknesses. We made a business deal with Mr. Daraee. He took a certain amount of money, then would carry the balance because he said his legal practice was doing very well. He and his partner subsequently did lose an appeal in a separate case, which probably reversed his revenues dramatically- in fact, my understanding is they had to hire a lawyer to defend them.

Regardless, he made a deal with us. His defense after the fact on taking the \$20,000 and not hiring the experts, was that he had been unable to take a draw for over two months, so he needed our expert money. He did not mask or hide it, and in his mind I guess we could live with it. The problem with that explanation is that he took the \$20,000 the same day he received the check. Why did he desperately lie? Many attorneys have been faced with "shortfalls" but never considered misusing client monies designated for experts. His actions not only compromised himself, they compromised our case. It is difficult to believe your Board of Governors would condone such "professional" and "licensed" behavior. Would any of you done what he did and felt justified?

*If we had known how desperate he was for money, we would have never hired him.*

In the litigation, we kept supplying him with all the same numbers, and we finally realized he could not consistently do basic math operations. As hard as it is to believe, he apparently is severely handicapped in arithmetic. As he admitted in the Signature Homebuilders LLC deposition, "numbers do nothing" for him and his partner is the one at their law firm who handles their "books." Even that however, does not relieve him of his responsibilities toward our expert monies. As an example of this unfolding tale of his inability with numbers, we were thousands of dollars in payments ahead of the individuals we were having a dispute with, yet he could not figure it out. I will never forget when he told the mediator the issue was over \$2,000. ***The contractor had taken almost \$85,000 from us and not paid the bills owing--*** and the numbers just swam around Mr. Daraee like little fish—he could not catch them or understand the pond he was in. He couldn't even get a "numbers" expert in to help him understand because he already took that money for himself.

Mr. Daraee lied and took and misused our trust fund money—the same day he received it. That is not right and he should return the funds. Something so fundamental like an attorney should never take trust fund money and use it to pay his own bills, or an attorney should never "bait and switch" their client by assuring the client that the money he received from them would go to expert witnesses, is so basic, we were stunned that the original decision justified his

behavior and characterized the event as “a disagreement.” Look at the Memo line on the check. The bank records show that he deposited the check in their law firm’s business account and immediately dispersed the entire amount for purposes other than experts. There is no argument that the entire amount was used for other purposes and he never deposited even one dollar in a trust account to keep for expert fees.

We are hopeful that the Board of Governors will see the error in the initial ruling. This reflects on the profession’s ability to govern and police itself—not just on Mr. Daraee. The public should be able to rely on your group of professionals to call out wrong doing and get it corrected; instead of stretching to invent a justification for the same. We asked to be available for any questions when you discussed this matter but were told by the staff that we could not talk to the BOG or be available for questions at your review of this file.

We can hope you and your organization will do the right thing.

*R. James Claus*

*Susan Claus*

R. James & Susan Claus

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** April 14, 2017  
**From:** Helen Hirschbiel, Executive Director  
**Re:** CSF Claim No. 2016-45 STEINMAN (Baldrige) Request for BOG Review

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### Action Requested

Consider claimant's request for BOG review of the CSF Committee's decision to deny his claim.

### Discussion

#### *Summary of Facts*

Merle Baldrige retained Dennis Steinman in August 2011 to represent him in a disability discrimination lawsuit against the Oregon Department of Corrections. The fee agreement provided that Mr. Steinman would receive 40% of the recovery if the case was settled after a lawsuit was filed. It also provided that if Mr. Steinman was awarded fees by the court or tribunal, he was entitled to receive the greater of the award or the percentage of the settlement amount.

The lawsuit was settled following partial summary judgment in favor of Mr. Baldrige. The settlement included both economic and noneconomic damages; the economic damages were \$150,000. Rather than taking \$60,000--40% of the settlement--Mr. Steinman took \$100,000 as his fee, leaving Mr. Baldrige with a net recovery of \$50,000. Mr. Steinman's position appears to have been that he would be entitled to an attorney fee award based on prevailing at summary judgment, and his firm had put in \$200,000 worth of time on the case.

Mr. Baldrige disputed the legal fee, and hired Levi Merrithew to file a breach of contract and conversion lawsuit against Mr. Steinman's firm, seeking to recover \$40,000. At arbitration, the conversion claim was denied, but the parties subsequently settled the matter in mediation for \$34,244.05. Mr. Merrithew kept \$10,273.21 as his fee and Mr. Baldrige received \$23,970.84 for breach of contract. In exchange for this payment, Mr. Baldrige signed a release of all claims.

It is unclear exactly how much Mr. Baldrige seeks to recover from the Client Security Fund. Mr. Baldrige notes in his CSF application that he was reimbursed for his loss, but that his new attorney cost him \$10,273.21. So he may be claiming reimbursement for his attorney fees. On the other hand, he may want to recover the difference between what he actually received in settlement and the amount he claimed in the lawsuit ( $\$40,000 - \$34,244.05 = \$5,755.95$ ).

*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. Reimbursement of a legal fee paid is allowed only if (i) the lawyer provided no legal services to the client in the engagement; or (ii) the legal services that the lawyer actually provided were, in the Committee's judgment, minimal or insignificant; or (iii) the claim is supported by a determination of a court, a fee arbitration panel, or an accounting acceptable to the Committee that establishes that the client is owed a refund of a legal fee. CSF Rule 2.2.3.

In this case, the CSF Committee found no evidence of dishonest conduct. The conversion claim was dismissed by the arbitrator and not considered in the settlement. In addition, because Mr. Baldrige signed a release of all claims against Mr. Steinman's firm, he has no rights against Mr. Steinman to assign to the bar as required under CSF Rule 5.1.1. Finally, CSF Rule 2.9 provides that a claim for reimbursement shall not include an award of attorney's fees in an attempt to make a recovery. To the extent that Mr. Baldrige's claim is an effort to recover fees paid to Mr. Merrithew, it is not eligible for reimbursement under the CSF rules. For all these reasons, the CSF Committee denied Mr. Baldrige's claim for reimbursement from the Client Security Fund.



# Client Security Fund Application for Reimbursement

Return completed form to:

Oregon State Bar  
Client Security Fund  
PO Box 231935  
Tigard, OR 97281-1935

2016-45

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

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

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

a. Full Name: Merle Baldrige  
b. Street Address: 13407 NE 93rd Cir  
c. City, State, Zip: Vancouver Washington 98682  
d. Phone: (Home) 360-216-1109 (Cell) \_\_\_\_\_ (Work) \_\_\_\_\_ (Other) \_\_\_\_\_  
e. Email: MrMerlebaldrige@gmail.com

RECEIVED

OCT 26 2016

Oregon State Bar  
Executive Director

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

a. Lawyer's Name Dennis Steinman  
b. Firm Name Kell, Alterman and Runstein L.L.P.  
c. Street Address: 520 SW Yamhill Street Suite 600  
d. City, State, Zip: Portland Oregon 97204  
e. Phone: 503-222-3531  
f. Email: dsteinman@kelrun.com

### 3. Information about the representation:

a. When did you hire the lawyer? August 15, 2011  
b. What did you hire the lawyer to do? File a lawsuit and settled out of court. Based on (American with Disabilities Act Law Violations).

c. What was your agreement for payment of fees to the lawyer? (attach a copy of any written fee agreement)

Copy attached

d. Did anyone else pay the lawyer to represent you? NO

e. If yes, explain the circumstances (and complete item 10B on page 3):

f. How much was actually paid to the lawyer? \$100 thousand

g. What services did the lawyer perform? same as above 3.b.

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

NO

4. Information about your loss:

a. When did your loss occur? Jan 20, 2014

b. When did you discover the loss? Jan 20, 2014

c. Please describe what the lawyer did that caused your loss He refused to let me have \$90 thousand as agreed on the contract.

d. How did you calculate your loss? myself.

5. Information about your efforts to recover your loss:

a. Have you been reimbursed for any part of your loss? If yes, please explain: yes the attorney<sup>old</sup> paid in full to my new attorney. But my new attorney cost me \$10,273.21

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

c. Have you made demand on the lawyer to repay your loss? When? Please attach a copy of any written demand. Yes,

d. Has the lawyer admitted that he or she owes you money or has he or she agreed to repay you? If yes, please explain: Yes. Mr Steinman paid my new attorney Mr Merrithew \$34,244.05

e. Have you sued the lawyer or made any other claim? If yes, please provide the name of the court and a copy of the complaint. ~~No~~ See attachment

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

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

6. Information about where you have reported your loss:

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

7. Did you hire another lawyer to complete any of the work? If yes, please provide the name and telephone number of the new lawyer: Mr. Jesse Merrithew office 971-229-1241  
Cell 503-539-6685

8. Please give the name and the telephone number of any other person who may have information about this claim: Mr. Matthew Ellis 503-345-5497

9. Agreement and Understanding

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

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

10. Claimant's Authorization

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

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

11. Claimant's Signature and Verification

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

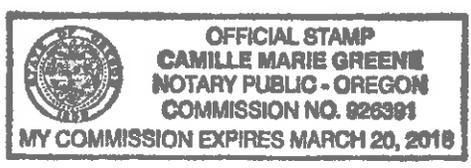
State of Oregon )  
County of Multnomah ) ss

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

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

[Handwritten Signature]  
Claimant's Signature

Signed and sworn (or affirmed) before me this 26 day of October, 2016.



Notary's Signature [Handwritten Signature]  
Notary Public for Oregon  
My Commission Expires 03-20-18

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

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

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

\_\_\_\_\_  
*Claimant's Signature*

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

Without charge

Under the attached fee agreement

\_\_\_\_\_  
*Attorney's Signature*

\_\_\_\_\_  
*Attorney's Bar No.*

\_\_\_\_\_  
*Attorney's Phone*

\_\_\_\_\_  
*Attorney's Address*

**KELL, ALTERMAN & RUNSTEIN**  
520 S.W. Yamhill, Suite 600  
Portland, OR 97204  
503/222-3531

## **CONTINGENCY FEE AGREEMENT**

**IMPORTANT: PLEASE READ THIS CAREFULLY**

### **I. AGREEMENT TO EMPLOY**

I, Merie Baldrige, employ the law firm of Kell, Alterman & Runstein to represent me regarding disability discrimination by the Oregon Department of Corrections (DOC). Kell, Alterman & Runstein shall take whatever steps are necessary to pursue a recovery against the responsible parties. Kell, Alterman & Runstein, LLP also reserves the right to determine if representation will include commencing litigation on my behalf.

### **II. ATTORNEY FEES**

If Kell, Alterman & Runstein obtains money for me, it will receive a percentage of it as attorney fees; said fees will be paid on the following basis:

- If my case is settled without filing a lawsuit, 33-1/3% of settlement;
- After a lawsuit has been filed, 40% of settlement or recovery; or,
- On appeal, 50% of settlement or recovery.

### **III. STRUCTURED SETTLEMENTS**

If I accept a structured settlement (that is, a settlement which includes collection of part or all of the settlement money at a later time), I agree that the fee due to Kell, Alterman & Runstein will be based on the fair market value of the total settlement at the time of settlement as determined by a qualified economic consultant. I agree that Kell, Alterman & Runstein may choose at the time of settlement whether to receive their fee immediately or on a structured basis at a later time.

### **4 IV. ATTORNEY'S LIEN AGAINST RECOVERY**

I agree that there shall be an attorney's lien on any amount recovered in this case and that the lien will be for the amount due to Kell, Alterman & Runstein under this Agreement.

### **5 V. SEPARATE AWARD FOR ATTORNEY FEES**

In the event that the court or other tribunal makes a separate award of attorney fees for Kell, Alterman & Runstein in this case, Kell, Alterman & Runstein shall be entitled to recover the greater of: (1) the award of attorney fees; or, (2) the percentage applicable under Section II of this Agreement calculated on both the recovery and the attorney fee award. This provision also applies to a separate payment of attorney fees as part of a settlement agreement.

**KELL, ALTERMAN & RUNSTEIN**  
520 S.W. Yamhill, Suite 600  
Portland, OR 97204  
503/222-3531

**6 VI. CHANGE OR SUBSTITUTION OF ATTORNEY**

In the event of a change of attorney by discharge, withdrawal, or substitution prior to the conclusion of this case, Kell, Alterman & Runstein will be entitled to a pro rata share of the attorneys' fees for time devoted to this case prior to discharge or substitution. This amount will not be less than ten percent (10%) of the gross amount of the money collected for this case unless Kell, Alterman & Runstein modifies or releases me from this obligation in writing. If I change attorneys after the value of the claim has been set by either a settlement or award, I agree that Kell, Alterman & Runstein shall be paid the percentage fee set forth in Section II of this Agreement.

**7 VII. NO RECOVERY, NO FEE**

If Kell, Alterman & Runstein does not recover any money, I will owe Kell, Alterman & Runstein no legal fees for pursuing my case.

**8 VIII. PAYMENT OF COSTS AND EXPENSES INCURRED**

In addition to attorney fees for services, Kell, Alterman & Runstein shall be repaid money which it advanced as costs and expenses in my case. These expenses and costs include payments for police and medical reports, witness and trial fees, filing fees, depositions, expert witness fees, investigation fees, and certain in-house costs customarily charged to clients such as photocopy charges, facsimile charges, and long distance telephone charges.

Kell, Alterman & Runstein shall be entitled to be paid whether or not a recovery is made. I understand that I may be required at any time to pay costs and expenses necessary for the prosecution of my claim.

**9 IX. AUTHORIZATION TO PAY PROVIDERS**

I understand that doctors and other medical care providers or other persons or organizations such as private or group insurance companies, welfare, or other service providers may be entitled to payment out of my recovery. I authorize Kell, Alterman & Runstein to pay any unpaid medical providers and to reimburse any other persons or organizations entitled to be paid from my share of the recovery.

**10 X. SETTLEMENT AUTHORIZATION**

I agree not to make any settlement unless a representative of Kell, Alterman & Runstein is present and receives the amount to which Kell, Alterman & Runstein is entitled under this Agreement.

Kell, Alterman & Runstein agrees not to accept or make any offer of settlement without prior authority from me.

**XI. RIGHT OF KELL, ALTERMAN & RUNSTEIN TO RESIGN**

Kell, Alterman & Runstein may resign upon one or more of the following:

- (a) Investigation of the facts or other pertinent reasons leads them to believe that my case is not one which Kell, Alterman & Runstein wishes to pursue;
- (b) I am not truthful with them;
- (c) I do not fully cooperate with them; or
- (d) A conflict of interest develops which makes it ethically impossible for them to continue to represent me.

**XII. CLIENT'S RIGHT TO CANCEL THIS AGREEMENT**

I understand that I have the right to cancel this Agreement by notifying Kell, Alterman & Runstein in writing within 24 hours after this Agreement is signed or by the same time on the next business day. Thereafter I may discharge Kell, Alterman & Runstein at any time. However, if I terminate this Agreement at any time after the first 24 hours, Kell, Alterman & Runstein is entitled to be paid fees and to be repaid for expenses paid on my behalf pursuant to this Agreement.

I accept the terms of this Agreement as stated above and acknowledge receipt of a copy of this Agreement.

**CLIENT:**

Merle Baldrige  
**Merle Baldrige**

Dated: 8-8-11

**Kell, Alterman & Runstein, L.L.P.**

By [Signature]

Dated: 8/15/11

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release (this "Agreement") is entered into this 18<sup>th</sup> day of August, 2016, by and between Merle Baldrige ("Baldrige") and Kell, Alterman & Runstein, L.L.P., an Oregon limited partnership ("KAR").

RECITALS

WHEREAS, on or about July 29, 2015, Baldrige filed a complaint against KAR alleging breach of contract and conversion in Multnomah County Circuit Court titled *Merle Baldrige v. Kell, Alterman & Runstein*, Case No. 15CV20084 (the "Lawsuit"), which claims KAR denies; and

WHEREAS, on or about September 3, 2015, KAR filed an answer containing a counter-claim for attorney fees, which claim Baldrige denies; and

WHEREAS, the parties herein have agreed to settle any claims between them, known or unknown, arising out of or related to the Lawsuit and up through the date of this Agreement;

NOW, THEREFORE, the parties agree:

AGREEMENT

1. The above recitals are true.
2. Within 30 days of execution of this Agreement, KAR will pay to Baldrige as full and final settlement the amount of \$34,244.05. Payment will be made to Baldrige through his legal counsel Levi Merrithew Horst PC.
3. The parties will file a Stipulated Judgment of Dismissal with prejudice and without attorney fees or costs.
4. Each party hereto agrees to refrain from making disparaging or defamatory remarks to any third person about Baldrige, KAR, or Dennis Steinman.
5. No party hereto shall reveal the terms of this Agreement or any or the allegations underlying the Lawsuit to anyone whatsoever, except to a legal representative or accountant only as may be necessary for his or its legal or accounting affairs. If asked by any third party about the settlement of this matter or the terms of this Agreement, the parties agree to state only that "the matter has been resolved."
6. Except for the obligations contained within this Agreement, Baldrige and KAR, and their successors, predecessors, assigns, agents, partners, employees, officers, insurers, and all other affiliated persons, firms, or corporations whomsoever, forever release and discharge each other, and their successors, predecessors, assigns, agents, partners, employees, officers, insurers, and all other affiliated persons, firms, or corporations whomsoever, of and from any and all past, present, and future claims, demands, obligations, causes of action, or damages of any kind, known and unknown, relating to the Lawsuit, or any fact, event, act, or omission occurring at any time, through the date of this Agreement, including fraud in inducing this Agreement.

7. The parties herein expressly acknowledge and agree that the release set forth in Paragraph 6 is a general release of the matters described above. In that context, the parties expressly waive and assume the risk of any and all claims for damages or otherwise that exist as of this date, but of which they do not know or suspect to exist, whether through ignorance, oversight, error, negligence, or otherwise and which, if known, would materially affect their decision to enter into this Agreement.

8. The parties herein agree that time is of the essence with regard to all provisions, covenants, and conditions of this Agreement.

9. This Agreement shall not be modified except in writing signed by the parties hereto, or their duly authorized representatives.

10. This Agreement shall be construed in accordance with, and governed by, the laws of the state of Oregon.

11. Any dispute, claim or controversy arising out of or relating to this Agreement, including, without limitation, the breach, termination, enforcement, interpretation or validity of this Agreement and the applicability or scope of arbitration to this Agreement, shall be determined by final and binding arbitration. The arbitration shall be conducted in Multnomah County, Oregon, and unless otherwise mutually agreed to by the parties, the arbitration shall be administered by Arbitration Service of Portland, Inc. in accordance with its then effective arbitration rules ("Rules"). The arbitration shall be before a single arbitrator, who shall be selected in accordance with those Rules. Judgment on the arbitration award may be entered in any court of competent jurisdiction. The exclusive venue for any such action shall be Multnomah County, Oregon, and for this purpose, each party consents and submits to the jurisdiction of any local, state, or federal court located in Multnomah County, Oregon.

12. If an arbitration or other proceeding (including an action in Bankruptcy Court) of any nature whatsoever, is filed by any party to this Agreement in connection with any of the terms of this Agreement, the prevailing party shall be entitled to reasonable attorney fees, and all other fees, costs and expenses actually incurred in connection therewith as fixed by the Court or Arbitrator in which this suit or action, including any appeal or review, is tried, heard or decided, in addition to all other amounts determined by law.

13. Baldrige has been represented by Jesse Merrithew of Levi Merrithew Horst PC. KAR has been represented by Thomas R. Rask, III of Kell, Alterman & Runstein, L.L.P. The parties acknowledge and agree that they have consulted with their respective attorneys (or have had the opportunity to be so represented), and that their attorneys have satisfactorily answered any questions they may have had about this Agreement.

14. The parties acknowledge, warrant, represent, and agree that in executing and delivering this Agreement, they do so freely, knowingly and voluntarily, that they are fully aware of the contents and effect thereof, and that the execution and delivery of this Agreement is not the result of any fraud, duress, mistake, or undue influence.

15. Any person or entity purporting to have the authority to enter into this Agreement on behalf of or for the benefit of any other person or entity hereby warrants that he or she has such authority.

16. The parties herein hereby acknowledge and agree that this Agreement constitutes and contains the entire agreement and understanding of the parties and supersedes and replaces all prior negotiations and proposed agreements, whether written or oral. The parties warrant that no other party or any agent or attorney of any other party has made any promise, representation, or warranty not contained herein to induce them to execute this Agreement. The parties represent that they have not executed this Agreement or any other document in reliance on any promise, representation or warranty not contained herein.

17. The parties herein acknowledge and agree that the language of this Agreement shall be construed as a whole according to its fair meaning and not strictly for or against any of the parties.

18. Should any part, term, or provision of this Agreement be declared or determined to be illegal, invalid or unenforceable, any illegal, invalid or unenforceable part, term, or provision shall be deemed stricken from this Agreement and all other parts, terms and provisions of this Agreement shall remain in full force and effect to the fullest extent permitted by law.

19. The parties further agree to execute any and all documents necessary to complete execution of this Agreement or facilitate the enforcement of this Agreement.

20. This Agreement may be signed in counterparts, and each counterpart shall have the same force and effect as though the signatures were contained in a single document. Facsimile copies and computer-generated copies such as PDF copies of all signatures may be treated the same as original signatures.

IN WITNESS WHEREOF, the parties hereto have executed this Settlement Agreement and Mutual Release as of the date first above written.

KELL, ALTERMAN & RUNSTE, L.L.P.

  
Melé Baldridge

BY \_\_\_\_\_  
Thomas R. Rask, III, Managing Partner



## Contingent Fee Agreement

THIS AGREEMENT made this \_\_\_\_ day of June, 2015, between Merle Baldrige, hereinafter referred to as "Client," and LEVI MERRITHEW HORST PC, hereinafter referred to as, "Attorney," to wit:

Merle Baldrige (Client) retains Levi Merrithew Horst PC (Attorney) and authorizes him to act on Client's behalf in all matters relating to **a claim against Kell Alterman & Runstein and Dennis Steinman for breach of contract and professional malpractice related to the settlement of a case wherein they represented Client.**

### **A. Fee Schedule**

Client promises and agrees to compensate Attorney for all services rendered by attorney as follows:

- (1) If recovery is obtained out of court, Attorney shall receive as compensation **10%** (ten percent) of the gross recovery. Out of court is defined as a claim being settled without any of the following events occurring: filing of a lawsuit, or any form of arbitration or mediation.
- (2) If recovery is obtained after a case goes to court, Attorney shall receive as compensation **30%** (thirty percent) of the gross recovery. A case that goes to court is defined as any claim (excluding appeals from a trial), whether settled or litigated, that does not fall under the definition of a case settled out of court.
- (3) If any attorney's fees are awarded by the court or by an arbitrator, or as part of any settlement, Attorney will take the larger of (a) the attorney fee award, or (b) the percentage which Attorney is entitled to of the sum of the gross recovery plus attorney fees. Attorney's fees shall be collected from the defendant(s) at the same time and in proportion (according to the relative size of the recovery and attorney's fees) to the collection of Client's recovery. All attorney fees are assigned to Attorney. Client may not waive attorney fees.
- (4) This fee agreement does not cover appeals.

### **B. Expenses**

- (1) All court costs in connection with Client's case shall be reimbursed to Attorney.
- (2) Attorney shall be reimbursed by Client for all expenses paid in connection with the presentation of Client's claim notwithstanding any other provision of this agreement and that the attorney fee received does not cover any advancements for expenses. Client is responsible for reimbursing Attorney for any costs advanced whether the case is won or lost. If no recovery is procured for Client, Client does not have to pay Attorney for her services, but is responsible for reimbursing Attorney for any costs advanced. Costs advanced are deducted from any recovery after attorney fees.

All expenses, such as, but not limited to, long-distance telephone calls, copies, investigator's fees, expert fees, recorder fees, postage, express mail, and deposition costs incurred by Attorney shall be paid by Client. Client further understands that Attorney is under no obligation to advance fees on behalf of Client, and that Client is responsible for advancing any fees necessary for the presentation of his/her claim or defense.

(3) Client agrees to maintain an e-mail address and agrees to receive all correspondence via e-mail. Client also agrees to receiving any necessary documentation electronically in Adobe Acrobat format. Client agrees to keep Attorney notified, via e-mail, of any change of e-mail address. In the event that Client does not maintain an e-mail address, client will be charged for any costs (e.g. photocopies, postage) associated with keeping Client properly informed of his/her case.

(4) Should Client wish for a copy of his/her file, Client agrees to receive a copy of the file either electronically or on a CD in Adobe Acrobat format, and such copy shall be free of charge. Should Client request a paper copy of his/her file, Client will be charged at the rate of 30 cents per page if copies are produced in house, or the actual charge incurred by Attorney if copies are produced by a vendor.

#### **B. Additional Provisions**

(1) Although the attorney-client relationship may terminate, Attorney shall still be entitled to a pro-rata share of any recovery by Client related to the subject-matter of this representation. Attorney's share will be the greater of (a) Attorney's portion of any offer received during Attorney's representation of Client, or (b) the amount of time spent by Attorney determined at the rate of \$300 per hour.

(2) In the event of recovery, certain insurers, and providers may have subrogation rights which will be satisfied from the proceeds of any settlement, judgment or award.

(3) Client has the right to unilaterally rescind this agreement within 24 hours of signing, but only if Client transmits or mails written notice to Attorney within that initial 24 hour period.

DATED: June 12, 2015

Merle Baldrige  
Merle Baldrige, Client

DATED: \_\_\_\_\_

\_\_\_\_\_  
Jesse Merrithew, Attorney

## **EXPLANATION OF CONTINGENT FEE AGREEMENT**

This is an explanation of your Contingent Fee Agreement with me. Please read it and sign it before you sign the Agreement.

The Contingent Fee Agreement says:

1. I agree to handle your case.
2. If I handle your case to completion and do not recover any money for you, you do not have to pay me for my services.
3. If I handle your case to completion and recover some money for you, you must pay me for my services. My fee will be a percentage of what I recover for you. The percentage is set forth in the Contingent Fee Agreement.
4. If I advance money for filing fees, witness fees, doctors' reports, court reporters' service or other expenses on your behalf, you must repay me whether the case is won or lost.
5. You may cancel the Contingent Fee agreement by notifying me in writing within 24 hours after you sign it.
6. If you cancel the agreement within the 24 hour period, you will have no obligation to me.

**I HAVE READ THE FOREGOING EXPLANATION BEFORE I SIGNED A CONTINGENT FEE AGREEMENT WITH LEVI MERRITHEW HORST LLP.**

DATED: June 12, 2015

Mark Baldy  
Client



610 SW Alder Street  
Suite 415  
Portland, OR 97205  
P: 971.229.1241  
F: 971.544.7092  
www.lmhlegal.com

4

**FINAL ACCOUNTING**

**TO: Merle Baldrige**  
**FROM: Levi Merrithew Horst PC**  
**DATE: September 22, 2016**  
**RE: Final Accounting for Kell Alterman Matter**

---

Total Settlement: \$34,244.05

Amount to LMH (30% per Contingency Agreement): \$10,273.21

Total to Client: \$24,070.84 (\$23,970.84 settlement, \$100 trust balance for expenses)

Total Case Expenses (Paid by Client): \$852

2,410

## SETTLEMENT AGREEMENT AND MUTUAL RELEASE

18<sup>th</sup> This Settlement Agreement and Mutual Release (this "Agreement") is entered into this day of August, 2016, by and between Merle Baldrige ("Baldrige") and Kell, Alterman & Runstein, L.L.P., an Oregon limited partnership ("KAR").

### RECITALS

WHEREAS, on or about July 29, 2015, Baldrige filed a complaint against KAR alleging breach of contract and conversion in Multnomah County Circuit Court titled *Merle Baldrige v. Kell, Alterman & Runstein*, Case No. 15CV20084 (the "Lawsuit"), which claims KAR denies; and

WHEREAS, on or about September 3, 2015, KAR filed an answer containing a counter-claim for attorney fees, which claim Baldrige denies; and

WHEREAS, the parties herein have agreed to settle any claims between them, known or unknown, arising out of or related to the Lawsuit and up through the date of this Agreement;

NOW, THEREFORE, the parties agree:

### AGREEMENT

1. The above recitals are true.
2. Within 30 days of execution of this Agreement, KAR will pay to Baldrige as full and final settlement the amount of \$34,244.05. Payment will be made to Baldrige through his legal counsel Levi Merrithew Horst PC.
3. The parties will file a Stipulated Judgment of Dismissal with prejudice and without attorney fees or costs.
4. Each party hereto agrees to refrain from making disparaging or defamatory remarks to any third person about Baldrige, KAR, or Dennis Steinman.
5. No party hereto shall reveal the terms of this Agreement or any or the allegations underlying the Lawsuit to anyone whatsoever, except to a legal representative or accountant only as may be necessary for his or its legal or accounting affairs. If asked by any third party about the settlement of this matter or the terms of this Agreement, the parties agree to state only that "the matter has been resolved."
6. Except for the obligations contained within this Agreement, Baldrige and KAR, and their successors, predecessors, assigns, agents, partners, employees, officers, insurers, and all other affiliated persons, firms, or corporations whomsoever, forever release and discharge each other, and their successors, predecessors, assigns, agents, partners, employees, officers, insurers, and all other affiliated persons, firms, or corporations whomsoever, of and from any and all past, present, and future claims, demands, obligations, causes of action, or damages of any kind, known and unknown, relating to the Lawsuit, or any fact, event, act, or omission occurring at any time, through the date of this Agreement, including fraud in inducing this Agreement.

7. The parties herein expressly acknowledge and agree that the release set forth in Paragraph 6 is a general release of the matters described above. In that context, the parties expressly waive and assume the risk of any and all claims for damages or otherwise that exist as of this date, but of which they do not know or suspect to exist, whether through ignorance, oversight, error, negligence, or otherwise and which, if known, would materially affect their decision to enter into this Agreement.

8. The parties herein agree that time is of the essence with regard to all provisions, covenants, and conditions of this Agreement.

9. This Agreement shall not be modified except in writing signed by the parties hereto, or their duly authorized representatives.

10. This Agreement shall be construed in accordance with, and governed by, the laws of the state of Oregon.

11. Any dispute, claim or controversy arising out of or relating to this Agreement, including, without limitation, the breach, termination, enforcement, interpretation or validity of this Agreement and the applicability or scope of arbitration to this Agreement, shall be determined by final and binding arbitration. The arbitration shall be conducted in Multnomah County, Oregon, and unless otherwise mutually agreed to by the parties, the arbitration shall be administered by Arbitration Service of Portland, Inc. in accordance with its then effective arbitration rules ("Rules"). The arbitration shall be before a single arbitrator, who shall be selected in accordance with those Rules. Judgment on the arbitration award may be entered in any court of competent jurisdiction. The exclusive venue for any such action shall be Multnomah County, Oregon, and for this purpose, each party consents and submits to the jurisdiction of any local, state, or federal court located in Multnomah County, Oregon.

12. If an arbitration or other proceeding (including an action in Bankruptcy Court) of any nature whatsoever, is filed by any party to this Agreement in connection with any of the terms of this Agreement, the prevailing party shall be entitled to reasonable attorney fees, and all other fees, costs and expenses actually incurred in connection therewith as fixed by the Court or Arbitrator in which this suit or action, including any appeal or review, is tried, heard or decided, in addition to all other amounts determined by law.

13. Baldrige has been represented by Jesse Merrithew of Levi Merrithew Horst PC. KAR has been represented by Thomas R. Rask, III of Kell, Alterman & Runstein, L.L.P. The parties acknowledge and agree that they have consulted with their respective attorneys (or have had the opportunity to be so represented), and that their attorneys have satisfactorily answered any questions they may have had about this Agreement.

14. The parties acknowledge, warrant, represent, and agree that in executing and delivering this Agreement, they do so freely, knowingly and voluntarily, that they are fully aware of the contents and effect thereof, and that the execution and delivery of this Agreement is not the result of any fraud, duress, mistake, or undue influence.

15. Any person or entity purporting to have the authority to enter into this Agreement on behalf of or for the benefit of any other person or entity hereby warrants that he or she has such authority.

16. The parties herein hereby acknowledge and agree that this Agreement constitutes and contains the entire agreement and understanding of the parties and supersedes and replaces all prior negotiations and proposed agreements, whether written or oral. The parties warrant that no other party or any agent or attorney of any other party has made any promise, representation, or warranty not contained herein to induce them to execute this Agreement. The parties represent that they have not executed this Agreement or any other document in reliance on any promise, representation or warranty not contained herein.

17. The parties herein acknowledge and agree that the language of this Agreement shall be construed as a whole according to its fair meaning and not strictly for or against any of the parties.

18. Should any part, term, or provision of this Agreement be declared or determined to be illegal, invalid or unenforceable, any illegal, invalid or unenforceable part, term, or provision shall be deemed stricken from this Agreement and all other parts, terms and provisions of this Agreement shall remain in full force and effect to the fullest extent permitted by law.

19. The parties further agree to execute any and all documents necessary to complete execution of this Agreement or facilitate the enforcement of this Agreement.

20. This Agreement may be signed in counterparts, and each counterpart shall have the same force and effect as though the signatures were contained in a single document. Facsimile copies and computer-generated copies such as PDF copies of all signatures may be treated the same as original signatures.

IN WITNESS WHEREOF, the parties hereto have executed this Settlement Agreement and Mutual Release as of the date first above written.

KELL, ALTERMAN & RUNSTE, L.L.P.

  
Menle Bairdridge

BY \_\_\_\_\_  
Thomas R. Rask, III, Managing Partner



## Contingent Fee Agreement

THIS AGREEMENT made this 12<sup>th</sup> day of June, 2015, between Merle Baldrige, hereinafter referred to as "Client," and LEVI MERRITHEW HORST PC, hereinafter referred to as, "Attorney," to wit:

Merle Baldrige (Client) retains Levi Merrithew Horst PC (Attorney) and authorizes him to act on Client's behalf in all matters relating to a claim against Kell Alterman & Runstein and Dennis Steinman for breach of contract and professional malpractice related to the settlement of a case wherein they represented Client.

### **A. Fee Schedule**

Client promises and agrees to compensate Attorney for all services rendered by attorney as follows:

(1) If recovery is obtained out of court, Attorney shall receive as compensation **10%** (ten percent) of the gross recovery. Out of court is defined as a claim being settled without any of the following events occurring: filing of a lawsuit, or any form of arbitration or mediation.

(2) If recovery is obtained after a case goes to court, Attorney shall receive as compensation **30%** (thirty percent) of the gross recovery. A case that goes to court is defined as any claim (excluding appeals from a trial), whether settled or litigated, that does not fall under the definition of a case settled out of court.

(3) If any attorney's fees are awarded by the court or by an arbitrator, or as part of any settlement, Attorney will take the larger of (a) the attorney fee award, or (b) the percentage which Attorney is entitled to of the sum of the gross recovery plus attorney fees. Attorney's fees shall be collected from the defendant(s) at the same time and in proportion (according to the relative size of the recovery and attorney's fees) to the collection of Client's recovery. All attorney fees are assigned to Attorney. Client may not waive attorney fees.

(4) This fee agreement does not cover appeals.

### **B. Expenses**

(1) All court costs in connection with Client's case shall be reimbursed to Attorney.

(2) Attorney shall be reimbursed by Client for all expenses paid in connection with the presentation of Client's claim notwithstanding any other provision of this agreement and that the attorney fee received does not cover any advancements for expenses. Client is responsible for reimbursing Attorney for any costs advanced whether the case is won or lost. If no recovery is procured for Client, Client does not have to pay Attorney for her services, but is responsible for reimbursing Attorney for any costs advanced. Costs advanced are deducted from any recovery after attorney fees.

All expenses, such as, but not limited to, long-distance telephone calls, copies, investigator's fees, expert fees, recorder fees, postage, express mail, and deposition costs incurred by Attorney shall be paid by Client. Client further understands that Attorney is under no obligation to advance fees on behalf of Client, and that Client is responsible for advancing any fees necessary for the presentation of his/her claim or defense.

(3) Client agrees to maintain an e-mail address and agrees to receive all correspondence via e-mail. Client also agrees to receiving any necessary documentation electronically in Adobe Acrobat format. Client agrees to keep Attorney notified, via e-mail, of any change of e-mail address. In the event that Client does not maintain an e-mail address, client will be charged for any costs (e.g. photocopies, postage) associated with keeping Client properly informed of his/her case.

(4) Should Client wish for a copy of his/her file, Client agrees to receive a copy of the file either electronically or on a CD in Adobe Acrobat format, and such copy shall be free of charge. Should Client request a paper copy of his/her file, Client will be charged at the rate of 30 cents per page if copies are produced in house, or the actual charge incurred by Attorney if copies are produced by a vendor.

#### **B. Additional Provisions**

(1) Although the attorney-client relationship may terminate, Attorney shall still be entitled to a pro-rata share of any recovery by Client related to the subject-matter of this representation. Attorney's share will be the greater of (a) Attorney's portion of any offer received during Attorney's representation of Client, or (b) the amount of time spent by Attorney determined at the rate of \$300 per hour.

(2) In the event of recovery, certain insurers, and providers may have subrogation rights which will be satisfied from the proceeds of any settlement, judgment or award.

(3) Client has the right to unilaterally rescind this agreement within 24 hours of signing, but only if Client transmits or mails written notice to Attorney within that initial 24 hour period.

DATED: June 12, 2015

Merle Baldrige  
Merle Baldrige, Client

DATED: 6/12/15

Jesse Merrithew  
Jesse Merrithew, Attorney

## **EXPLANATION OF CONTINGENT FEE AGREEMENT**

This is an explanation of your Contingent Fee Agreement with me. Please read it and sign it before you sign the Agreement.

The Contingent Fee Agreement says:

1. I agree to handle your case.
2. If I handle your case to completion and do not recover any money for you, you do not have to pay me for my services.
3. If I handle your case to completion and recover some money for you, you must pay me for my services. My fee will be a percentage of what I recover for you. The percentage is set forth in the Contingent Fee Agreement.
4. If I advance money for filing fees, witness fees, doctors' reports, court reporters' service or other expenses on your behalf, you must repay me whether the case is won or lost.
5. You may cancel the Contingent Fee agreement by notifying me in writing within 24 hours after you sign it.
6. If you cancel the agreement within the 24 hour period, you will have no obligation to me.

**I HAVE READ THE FOREGOING EXPLANATION BEFORE I SIGNED A  
CONTINGENT FEE AGREEMENT WITH LEVI MERRITHEW HORST LLP.**

DATED: June 12, 2015

Mark Baldy  
Client



610 SW Alder Street #415  
 Portland, OR 97205  
 Phone: 971-229-1241

# INVOICE

Invoice # 1406  
 Date: 06/17/2016  
 Due On: 07/17/2016

Merle Baldrige

## Baldrige: KAR Lawsuit

### Claim against Dennis Steinman for breach of contract; 15CV20084

Type	Date	Description	Total
Expense	07/30/2015	Complaint filing fee; paid online.	\$252.00
Expense	11/09/2015	Arbitration initial fee deposit, paid with check #2001	\$50.00
Expense	12/04/2015	Arbitration split fee deposit; paid with check #2024	\$450.00
<b>Subtotal</b>			<b>\$752.00</b>
<b>Total</b>			<b>\$752.00</b>
<b>Payment (06/17/2016)</b>			<b>-\$752.00</b>
<b>Balance Owing</b>			<b>\$0.00</b>

Please make all amounts payable to: Levi Merrithew Horst PC  
 We accept credit cards - please call to arrange payment.

LMH Tax ID: 47-2644547



610 SW Alder Street #415  
Portland, OR 97205  
Phone: 971-229-1241

# INVOICE

Invoice # 1407  
Date: 06/24/2016  
Due On: 07/24/2016

Merle Baldrige

## Baldrige: KAR Lawsuit

### Claim against Dennis Steinman for breach of contract; 15CV20084

Type	Date	Description	Total
Expense	06/23/2016	Summary judgment filing fee; paid online.	\$100.00
<b>Subtotal</b>			<b>\$100.00</b>
<b>Total</b>			<b>\$100.00</b>
<b>Payment (06/24/2016)</b>			<b>-\$100.00</b>
<b>Balance Owing</b>			<b>\$0.00</b>

Please make all amounts payable to: Levi Merrithew Horst PC  
We accept credit cards - please call to arrange payment.

LMH Tax ID: 47-2644547

# Trust Ledger Report (09/22/2016)

Merle Baldrige

Albina IOLTA account

Date	Source/Recipient	Reference	Matter	Funds Out	Funds In	Balance
06/17/2016	Client	Cash	Baldrige: KAR Lawsuit		\$200.00	\$200.00
06/24/2016	Transferred to: Albina Operating Account for invoice #1407		Baldrige: KAR Lawsuit	\$100.00		\$100.00
Payment for invoice #1407						
09/16/2016	Kell Alterman	Settlement paid with check #132468	Baldrige: KAR Lawsuit		\$34,244.05	\$34,344.05
09/19/2016	Levi Merrithew Horst	30% per Contingency Agreement	Baldrige: KAR Lawsuit	\$10,273.21		\$24,070.84
09/19/2016	Merle Baldrige	Kell Alterman Settlement (\$23970.84) + \$100 trust balance for expenses; paid with check #1736.	Baldrige: KAR Lawsuit	\$24,070.84		\$0.00
<b>Closing Balance:</b>				<b>\$34,444.05</b>	<b>\$34,444.05</b>	<b>\$0.00</b>
<b>Client Total:</b>				<b>\$34,444.05</b>	<b>\$34,444.05</b>	<b>\$0.00</b>

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IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF MULTNOMAH

MERLE BALDRIDGE,

Plaintiff,

vs.

KELL, ALTERMAN & RUNSTEIN, an  
Oregon limited liability partnership,

Defendant.

No. 15CV20084

PLAINTIFF'S ARBITRATION  
MEMORANDUM

This case presents the arbitrator with only one factual dispute—whether a valid contract was formed to alter the original contract in this case. However, that factual dispute is unnecessary to resolve to find in favor of Plaintiff.

*The Original Contract Between The Parties*

Mr. Baldrige seeks to enforce the contract he entered into with Defendant for the provision of legal services. The parties agree that they entered into a written contract on August 15, 2011. The nature of the contract was a contingent fee agreement. Plaintiff at that time was an inmate at the Oregon Department of Corrections (“ODOC”). He is deaf. The ODOC discriminated against him in various ways as a result of this disability. Defendant agreed to represent Plaintiff relative to that discrimination.

1 Defendant filed a lawsuit in Multnomah County on Plaintiff's behalf alleging violations  
2 of Oregon's ADA-equivalent law. The case eventually proceeded to a formal mediation. At the  
3 time of the mediation, Plaintiff had won a partial summary judgment. The result of the  
4 arbitration was that ODOC agreed to pay a lump sum settlement of \$150,000 and agreed to  
5 certain equitable relief. Under the terms of the written contract, Defendant was entitled to 40%  
6 of the settlement as a fee for legal services (\$60,000). ODOC paid Defendant the \$150,000  
7 agreed upon. Defendant only paid Plaintiff \$50,000. Defendant retained the remaining \$100,000  
8 as its fee. Simply put, Plaintiff sues Defendant to enforce the original contract and recover the  
9 \$40,000 he is still owed under the contract.

10 *Defendant's Claimed Modification*

11 Based on its pleadings and statements, Defendant contends that Plaintiff and Defendant  
12 agreed to a binding modification of the original contract during the course of the mediation.

13 Plaintiff denies entering into any binding modification. In his view, Defendant  
14 repeatedly insisted on taking more of the settlement than agreed to in the original contract based  
15 on the amount of work Defendant put in to the case. Plaintiff eventually relented and simply  
16 accepted what was given to him.

17 Regardless of the circumstances of Plaintiff's acceptance of only \$50,000 when he was  
18 entitled to \$90,000, no consideration was exchanged in order to form a binding contract to  
19 modify the original contract. Defendant does not admit that no consideration was exchanged,  
20 presumably claiming that some consideration was exchanged. Defendant has not, however,  
21 explained what consideration was exchanged. Defendant has agreed that no documents exist  
22 that document or demonstrate any exchange of consideration.

23 *No Binding Modification Was Possible Under The Circumstances*

24 Whether or not Plaintiff and Defendant made an agreement that would ordinarily be  
25 enforceable is immaterial in this case. When Defendant entered into the contract to provide legal

1 services to Plaintiff, which Defendant admits it did, Defendant took on a fiduciary duty to  
2 Plaintiff by operation of law. *See, e.g., Dunkin v. Dunkin*, 162 Or App 500, 507 (1999) (“A  
3 fiduciary duty exists when there is a relationship of special confidence, in which one party to  
4 the relationship is bound to act in good faith and with due regard to the interests of the other.”)  
5 Therefore, a presumption of undue influence attaches to any subsequent contractual agreements  
6 between the parties. *Smith v. Ellison*, 171 Or App 289, 294 (2000); *see also* Restatement  
7 (Second) of Contracts § 177, comment a (1981) (cited approvingly in *Smith*).

8         Once a presumption of undue influence is raised, the burden shifts to the Defendant to  
9 rebut the presumption. *Smith*, 171 Or App at 297. Defendant must show that the presumption is  
10 inappropriate, because the Plaintiff actually did exercise independent judgment and was not  
11 subject to influence. *Id.* at 294. Defendant will not be able to do so here. That would require the  
12 finder of fact to conclude that a deaf prisoner, entitled under the contract to \$90,000, in need of  
13 the money to help himself through an inevitably difficult financial time upon his release,  
14 decided to simply take \$40,000 and give it to his lawyer’s law firm, without getting anything in  
15 return, that he did so without any influence being placed on him by his lawyer, and without  
receiving independent legal advice.

16         Although the issue has not been directly decided in Oregon, every other state to confront  
17 this issue has found that a lawyer cannot modify a fee agreement in his own favor without  
18 proving by clear and convincing evidence that “(1) the attorney made a full and fair disclosure  
19 to the client of all the material facts affecting the transaction, and (2) the transaction is fair.”  
20 *Durr v. Beatty*, 491 NE 2d 902, 907-908 (Ill App 1986); *Ward v. Richards & Rossano, P.S.*, 51  
21 Wash App 423, 428-429, 754 P2d 120 (1988). Those two cases are cited by the Oregon State  
22 Bar in support of its statement that “A modification of a fee agreement in the lawyer’s favor  
23 requires client consent based on an explanation of the reason for the change and its effect on  
24 the client.” Oregon Formal Ethics Opinion 2005-97.

1 *Conclusion*

2 Defendant agreed to represent Plaintiff knowing that, while his claim of liability was  
3 strong, his damages were low. Knowing that, it still decided to invest substantial time into the  
4 case. Defendant worked hard for Plaintiff and got a good result for him. In the end, the client  
5 (Plaintiff) decided that he wanted to settle the case on terms that meant Defendant did not  
6 receive compensation for the fair market value of the services provided. That is the risk inherent  
7 in representing plaintiffs in contingency fee agreements, a risk that Defendant was well aware  
8 of, when it entered into the contract with Plaintiff. It cannot avoid that risk by modifying the  
9 contract to the detriment of its Client, to whom Defendant owes a fiduciary obligation, after the  
10 case is settled.

11 DATED this 8th day of December, 2015.

12  
13 By: s/ Jesse Merrithew  
14 Jesse Merrithew, OSB #074564  
15 610 SW Alder St. Ste. 415  
16 Portland, OR 97205  
17 jesse@lmhlegal.com  
18 P. 971.229.1241  
19 F. 971.544.7092  
20 Of Attorneys for Plaintiff  
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IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF MULTNOMAH

MERLE BALDRIDGE,  
  
Plaintiff,  
  
v.  
  
KELL, ALTERMAN & RUNSTEIN, an  
Oregon limited liability partnership,  
  
Defendant.

Case No. 15CV20084  
  
**DEFENDANT'S PREHEARING  
STATEMENT OF PROOF**

Defendants submit the following Prehearing Statement of Proof in advance of the arbitration set to occur on December 9, 2015.

**A. EXHIBIT LIST**

1. Original Contingency Fee Agreement, dated August 2011;
2. Order on Cross-Motions for Summary Judgment, dated July 19, 2013;
3. Kell, Alterman & Runstein, L.L.P. statement of attorney fees and costs, dated February 6, 2014; and
4. Letter to Merle Baldrige enclosing the final accounting and check, dated February 12, 2014.

**B. WITNESS LIST**

1. Dennis Steinman  
Kell, Alterman & Runstein, L.L.P.  
520 SW Yamhill St., Suite 600  
Portland, OR 97204  
(503) 222-3531

1 Mr. Steinman, represented Mr. Baldrige in the lawsuit filed against the Oregon Depart-  
2 ment of Corrections in 2012, alleging Disability Discrimination, Employment Discrimination,  
3 Retaliation, Negligence, and Declaratory Judgment. Mr. Steinman will testify about the litiga-  
4 tion process, the mediation process, and the representation of Mr. Baldrige.

5 2. Jacqueline Sadker Kamins  
6 Multnomah County Attorney's Office  
7 501 SE Hawthorne Blvd., Suite 500  
8 Portland, OR 97214  
9 (503) 988-3138

10 Ms. Kamins, formerly with the Oregon Department of Justice, represented the defendant  
11 in the lawsuit. Ms. Kamins will testify about the litigation, the mediation process, and the  
12 Oregon Department of Corrections' valuation of the Baldrige claim.

### 13 C. SUMMARY OF EVIDENCE TO BE PRESENTED

14 Our firm represented Mr. Baldrige for a number of claims including, disability discrimi-  
15 nation under Oregon law. Other claims included employment discrimination and retaliation. As  
16 part of our representation, Mr. Baldrige executed a contingency fee agreement, which also  
17 allowed for the recovery of attorney fees. From the beginning and continuing throughout our  
18 representation, Mr. Baldrige kept stating that the amount of his economic recovery was not  
19 important—he only wanted to change the way the prisons treated deaf people.

20 The evidence will show that the litigation was very involved with substantial discovery  
21 and pleadings practice. Eventually, the parties filed cross-motions for summary judgment. The  
22 defendant's motion focused on the disability discrimination. Judge David Rees denied all of the  
23 State's motion relating to disability discrimination (he granted its motion on the employment  
24 claim, negligence, and constitutional claim). The judge granted plaintiff's motion as to a number  
25 of instances of disability discrimination, and allowed others to go to the jury. Through the grant-  
26 ing of plaintiff's motions for summary judgment, we established liability conclusively, entitling  
us to an award of attorney fees, regardless of what happened at trial on the remaining claims.

///

1 The State and plaintiff agreed to mediate the case once the judge's Order was issued.  
2 Judge Sid Brockley was the mediator. At the time of mediation, our fees were in excess of  
3 \$200,000. The evidence will show that at mediation, the State offered a minimal amount to  
4 plaintiff (approximately \$1,000) and wanted to pay the balance as attorney fees. The State really  
5 only saw this as an attorney fee claim. On behalf of Mr. Baldrige, we pushed back and said that  
6 we wanted both attorney fees as well as damages. The defendant refused for much of the media-  
7 tion wanting only to pay attorney fees. We even tried to get the defendant to have the attorney  
8 fees decided by the Court later and for us to focus on the damages only at mediation and the  
9 State refused.

10 Before the mediation, our firm sent our attorney fee statement to Mr. Baldrige. He was  
11 aware of the amount of our fees (he brought this to the mediation with him). The evidence will  
12 show that Mr. Baldrige was informed at the mediation that we were entitled to our fees because  
13 the Court granted plaintiff's summary judgment motion, but that we were concerned as his  
14 attorneys that if we went to trial, that Mr. Baldrige would not get very much in damages. The  
15 evidence will further show that Mr. Baldrige was told the same thing by the mediator—who  
16 was very concerned that Mr. Baldrige's criminal conviction for sex with a minor would be  
17 allowed into evidence and would influence a jury. Mr. Baldrige understood that if we went to  
18 trial, it could result in him getting very little money. The mediator and we believed that the  
19 mediation was the best opportunity to get the most amount of money for Mr. Baldrige.  
20 Mr. Steinman will testify that Mr. Baldrige was told that our firm would be willing to reduce  
21 the attorney fees to which we were entitled under the motion for summary judgment if we got a  
22 high enough settlement at mediation, and that the parties could amend their attorney fee agree-  
23 ment and determine a fair division between the parties. Mr. Steinman explained that if we did  
24 this, it would be different from the written contingency fee agreement. Mr. Steinman spoke with  
25 Mr. Baldrige directly in sign language whenever necessary to make sure Mr. Baldrige  
26

1 understood clearly what was said to him. Mr. Baldrige agreed to amend the contingency fee  
2 agreement, as he believed our firm was entitled to get as much in attorney fees as possible.

3 The case settled at mediation for significant equitable relief (which is what Mr. Baldrige  
4 wanted from the beginning, including getting videophone services for deaf inmates) plus  
5 \$150,000 in total settlement. The evidence will show that Mr. Baldrige understood at the  
6 mediation that the majority of the settlement would be apportioned to attorney fees. In fact,  
7 Mr. Baldrige indicated that he wanted to speak with his parents to think about what was a fair  
8 division of the \$150,000, and he did so prior to executing the final accounting confirming what  
9 the firm would receive for attorney fees.

10 There were several phone calls following the settlement (via relay service) and eventually  
11 Mr. Baldrige informed Mr. Steinman that he would agree to \$50,000 for him and \$100,000 for  
12 our fees. Mr. Steinman will testify that the calculation and amount of the split was  
13 Mr. Baldrige's idea. The evidence will show that Mr. Steinman offered to come to the prison  
14 with the final accounting, which he did. The accounting identified costs and disbursements  
15 totaling \$5,755.95. The final accounting deducted that amount from Mr. Baldrige's \$50,000  
16 share. When Mr. Steinman met with Mr. Baldrige in prison, Mr. Baldrige said he wanted to  
17 clear \$50,000 and asked that the firm absorb the amount of costs and disbursements.  
18 Mr. Steinman agreed and initialed the change on the final accounting, which Mr. Baldrige then  
19 signed. The firm's representation of Mr. Baldrige concluded with him stating that "I am very  
20 happy and very satisfied."

21 The evidence will show that Mr. Baldrige amended the contingency fee agreement by  
22 acknowledging in writing his acceptance of the settlement proceeds by executing the final  
23 accounting and accepting the settlement proceeds. Our firm did not receive any communication  
24 from Mr. Baldrige indicating his unhappiness with the amended contingency fee agreement for  
25 over a year—until we received the initial correspondence from his legal counsel on June 17,  
26 2015.

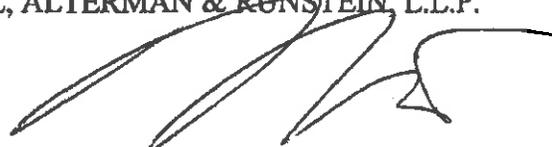
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D. PLEADINGS PROVIDED

1. Complaint;
2. Answer;
3. Plaintiff's Responses to Defendant's Request for Admissions; and
4. Defendant's Response to Plaintiff's First Request for Admissions.

DATED this 7<sup>th</sup> day of December, 2015.

KELL, ALTERMAN & RUNSTEIN L.L.P.



BY

Thomas R. Rask, III, OSB #934031  
Telephone: (503) 222-3531  
Fax: (503) 227-2980  
trask@kelrun.com@kelrun.com  
Of Attorneys for Defendant

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**CERTIFICATE OF SERVICE**

I certify that I caused to be served the foregoing DEFENDANT'S PREHEARING STATEMENT OF PROOF on the following recipient:

Jesse Merrithew  
Levi Merrithew Horst PC  
610 SW Alder St., Suite 415  
Portland, OR 97205-3605

Attorney for Plaintiff

by hand delivering a true copy to said recipient at the above-listed address.

DATED this 8<sup>th</sup> day of December, 2015.

KELL, ALTERMAN & RUNSTEIN, L.L.P.

BY   
Thomas R. Rask, III, OSB No. 934031  
Attorney for Defendant

CERTIFICATE OF SERVICE

KELL, ALTERMAN & RUNSTEIN, L.L.P.

SCOTT J. ALDWORTH  
SUSAN T. ALTERMAN \*\*, \*\*\*\*  
JOHN P. ASHWORTH \*\*  
DOUGLAS S. CHIAPUZIO.CPA \*\*, ++  
GARY P. COMPA ‡  
WILLIAM DICKAS  
ROBERT E. KABACY \*\*  
LEE DAVIS KELL \*, \*\*  
ROBERT B. LOWRY ++  
MELISSA MAY\*\*\*\*\*  
WAYNE D. PALMER  
EMILY C. RAKE  
PAUL A. RANEY \*\*\*  
THOMAS R. RASK, III \*\*  
ROBIN M. RUNSTEIN  
TED E. RUNSTEIN  
ERIC SOGGE  
DENNIS STEINMAN  
ZACHARY WALKER\*\*

ATTORNEYS AT LAW  
SUITE 600  
520 S.W. YAMHILL STREET  
PORTLAND, OREGON 97204-1329  
TELEPHONE (503) 222-3531  
FACSIMILE (503) 227-2980  
WWW.KELRUN.COM  
E-MAIL: dsteinman@kelrun.com

RAYMOND M. KELL  
(1911-1991)  
CLIFFORD B. ALTERMAN  
(1925-1995)  
ALSO ADMITTED IN  
\*CALIFORNIA  
\*\*WASHINGTON  
\*\*\*GEORGIA  
\*\*\*\*COLORADO  
\*\*\*\*\*WASHINGTON, DC  
LL.M. IN  
‡TAXATION  
++OF COUNSEL

February 12, 2014

**HAND DELIVERED**

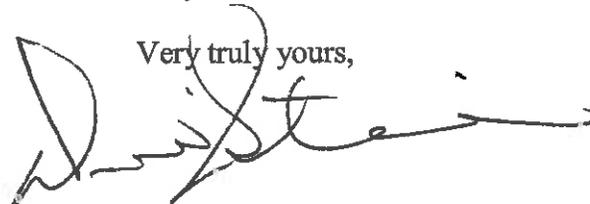
Merle Baldridge, SID # 10177818  
Columbia River Correctional Institution  
9111 NE Sunderland Avenue  
Portland, OR 97211

Re: **Merle Baldridge v. Oregon Department of Corrections**  
**Multnomah County Circuit Court Case No. 1204-04976**  
**Our File No.: 15697/002**

Dear Merle:

Pursuant to the terms of the settlement reached in your case against the Oregon Department of Corrections (ODOC) in the total amount of \$150,000, enclosed is our firm trust account check in the amount of \$50,000, representing your share of the settlement proceeds as shown on the enclosed Final Accounting. A copy of the Final Accounting, which you agreed to and signed on January 20, 2014, is enclosed. During that visit, I agreed to waive all costs that the firm advanced on your behalf during our representation of you against ODOC. Also enclosed is a copy of your file, which is copied on to the enclosed disc.

This now concludes this matter, and I will close my file. Thank you again for allowing us to represent you in this matter and best of luck to you in the future. Thank you.

Very truly yours,  
  
Dennis Steinman

DS:lb  
Enclosures

**FINAL ACCOUNTING**  
**Merle Baldrige**  
**15697\002**

**Gross Recovery:** **\$150,000.00**

**Less Disbursements:**

State of Oregon-Complaint Filing Fee	\$505.00
Ace Messenger Service-Service Fees	\$102.00
Rose City Messenger Service	\$6.25
Olivia R. Caranate: Copies Mult. County Court	\$1.25
State of Oregon: Motion Fee	\$100.00
Kim Allison Johnston Court Report: Transcript	\$408.80
State of Oregon: Record of Hearing	\$10.00
Bank of America: Oregon Secretary of State Archives Division – Hearing Recordings	\$14.00
Edward Shawn Ray Simpson: Witness Fee	\$50.00
Synergy Legal: Deposition of Blake Hasley	\$848.45
Syndergy Legal: Depositions of Kirk Bennett and Elizabeth LaCarney	\$945.20
Synergy Legal: Deposition of Brad Paynter	\$829.60
Sid Brockley Mediation: Mediation Services	<u>\$1,600.00</u>
<b>Total Disbursements</b>	

**Less Costs**

Photocopies	<u>\$335.40</u>
<b>Total Costs</b>	

**Less Attorney Fees**

**NET RECOVERY TO CLIENT:**

<\$5,420.55> inclusive  
<\$335.40>  
<\$100,000.00>  
\$50,000  
\$44,244.05

Merle Baldrige  
Merle Baldrige

1-20-14  
Date

KELL, ALTERMAN & RUNSTEIN, L.L.P.  
ATTORNEYS AT LAW  
LAWYER TRUST ACCOUNT  
520 S.W. YAMHILL ST., SUITE 800  
PORTLAND, OR 97204  
PH: 503-222-3531

BANK OF THE WEST  
PORTLAND, OR 97204  
90-78/1211

3638

DATE  
Feb/ 6/2014

AMOUNT  
\$ 50,000.00

Fifty Thousand \*\*\*\*\* 00/100

PAY  
TO THE  
ORDER  
OF: Merle Baldrige



AUTHORIZED SIGNATURE

⑈003638⑈ ⑆121100782⑆ 144105996⑈

Details on Back  
Security Features Included

KELL, ALTERMAN & RUNSTEIN, L.L.P.

3638

DATE : Feb/ 6/2014  
CHE # : 3638  
AMOUNT : \$50,000.00  
ACCOUNT: TRUST - 5  
PAID TO: Merle Baldrige

Settlement Proceeds

CLIENT: 15697 - Baldrige, Merle  
MATTER: 15697002

Write ~~Bill~~  
Pay to the order of  
Henry Biddidge.

---

KELL, ALTERMAN & RUNSTEIN, L.L.P.

SCOTT J. ALDWORTH  
SUSAN T. ALTERMAN \*\*,\*\*\*\*  
JOHN P. ASHWORTH \*\*  
DOUGLAS S. CHIAPUZIO.CPA \*\*,++  
GARY P. COMPA ‡  
WILLIAM DICKAS  
ROBERT E. KABACY \*\*  
LEE DAVIS KELL \*,\*\*  
ROBERT B. LOWRY \*\*  
MELISSA MAY\*\*\*\*\*  
WAYNE D. PALMER  
EMILY C. RAKE  
PAUL A. RANEY \*\*\*  
THOMAS R. RASK, III \*\*  
ROBIN M. RUNSTEIN  
TED E. RUNSTEIN  
ERIC SOGGE  
DENNIS STEINMAN  
ZACHARY WALKER\*\*

ATTORNEYS AT LAW  
SUITE 600  
520 S.W. YAMHILL STREET  
PORTLAND, OREGON 97204-1329  
TELEPHONE (503) 222-3531  
FACSIMILE (503) 227-2980  
WWW.KELRUN.COM  
E-MAIL: dsteinman@kelrun.com

RAYMOND M. KELL  
(1911-1991)  
CLIFFORD B. ALTERMAN  
(1925-1995)  
ALSO ADMITTED IN  
\*CALIFORNIA  
\*\*WASHINGTON  
\*\*\*GEORGIA  
\*\*\*\*COLORADO  
\*\*\*\*\*WASHINGTON, DC  
LL.M. IN  
‡TAXATION  
\*\*OF COUNSEL

February 12, 2014

**HAND DELIVERED**

Merle Baldrige, SID # 10177818  
Columbia River Correctional Institution  
9111 NE Sunderland Avenue  
Portland, OR 97211

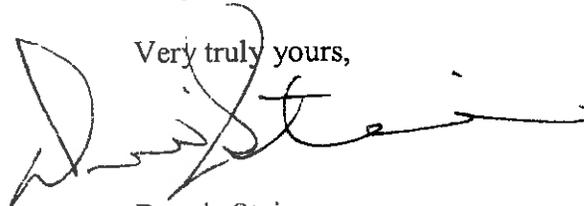
Re: **Merle Baldrige v. Oregon Department of Corrections**  
**Multnomah County Circuit Court Case No. 1204-04976**  
**Our File No.: 15697/002**

Dear Merle:

Pursuant to the terms of the settlement reached in your case against the Oregon Department of Corrections (ODOC) in the total amount of \$150,000, enclosed is our firm trust account check in the amount of \$50,000, representing your share of the settlement proceeds as shown on the enclosed Final Accounting. A copy of the Final Accounting, which you agreed to and signed on January 20, 2014, is enclosed. During that visit, I agreed to waive all costs that the firm advanced on your behalf during our representation of you against ODOC. Also enclosed is a copy of your file, which is copied on to the enclosed disc.

This now concludes this matter, and I will close my file. Thank you again for allowing us to represent you in this matter and best of luck to you in the future. Thank you.

Very truly yours,



Dennis Steinman

DS:lb  
Enclosures

**FINAL ACCOUNTING**  
**Merle Baldrige**  
**15697\002**

**Gross Recovery:**

**\$150,000.00**

**Less Disbursements:**

State of Oregon-Complaint Filing Fee	\$505.00
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Synergy Legal: Depositions of Kirk Bennett and Elizabeth LaCarney	\$945.20
Synergy Legal: Deposition of Brad Paynter	\$829.60
Sid Brockley Mediation: Mediation Services	<u>\$1,600.00</u>
<b>Total Disbursements</b>	

**Less Costs**

Photocopies	<u>\$335.40</u>
<b>Total Costs</b>	

**Less Attorney Fees**

**NET RECOVERY TO CLIENT:**

<\$5,420.55> inclusive  
<\$335.40>  
<\$100,000.00>  
~~\$50,000~~  
~~\$44,244.05~~

Merle Baldrige  
Merle Baldrige

1-20-14  
Date

**SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS**

This matter was brought by Plaintiff Merle Baldrige (“Plaintiff”) against the Oregon Department of Corrections (“Defendant” or “ODOC”) in the matter Baldrige v. ODOC, Multnomah County Circuit Case 1204-04976 (“the case”). The parties have agreed that the Judgment dismissing the case be based on the stipulation and consent of the parties as outlined below.

**A. ECONOMIC RELIEF**

1. Contemporaneous with the execution of the this Agreement and Judgment by the Parties, Defendant shall pay the sum of One Hundred Fifty Thousand Dollars (\$150,000.00) payable to Kell, Alterman and Runstein LLP Lawyer Trust Account. This payment shall be delivered to Dennis Steinman, Esq., 520 S.W. Yamhill Street, Suite 600, Portland, Oregon 97204.

**B. NON-ECONOMIC RELIEF**

2. Within 30 days of the date of this Agreement and Judgment, Defendant shall fully comply with the following terms:

A. Defendant agrees to follow its Effective Communication for Deaf/Hearing Impaired Inmates policy (“Effective Communication Policy”), the Americans with Disabilities Act (“ADA”) and ORS 659A.142. Defendant agrees that any future modifications to its Effective Communication Policy shall not result in materially diminished access to its services, programs, or activities for deaf and hearing impaired inmates. This provision does not limit Defendant’s authority to make modifications to its policy or operations that Defendant determines necessary or advisable to carry out its lawful duties to provide for the personal safety and security of inmates, staff, volunteers and contractors, and for the safe, secure and orderly operation of Defendant’s correctional institutions. This provision does not require that Defendant maintain particular operational policies or procedures that amount to an undue burden or fundamental alteration of any program, benefit or service offered by Defendant to inmates in its correctional institutions.

- B. For the remainder of Plaintiff's current incarceration, Defendant agrees to provide Plaintiff with a qualified, non-inmate interpreter for 10 additional hours each week so that Plaintiff may attend organized programs and services of his choosing for circumstances where a qualified non-inmate interpreter is not otherwise required by this Agreement and Judgment. Any unused portion of each week's 10-hour allotment shall accrue to future use in addition to the weekly base amount, except that no more than 15 hours may be used in any single week.
- C. Defendant agrees to institute a program instructing all employees that have any interaction with inmates on the proper and legal obligations to individuals with disabilities, including the requirements of the Effective Communication Policy.
- D. Defendant agrees to develop and implement written materials for disabled inmates, which will be provided to them at the time of their arrival at ODOC facilities, providing disabled inmates notice of their rights pursuant to, and of the availability of accommodations under, ORS 659A.142.
- E. Defendant agrees to meet with Holly Delcambre, the ADA Compliance Manager for Washington State Department of Corrections, about best practices for accommodating deaf individuals.
- F. If a hearing impaired inmate requests a qualified, non-inmate interpreter, and an interpreter is required either under the ADA, ORS 659A.142, or Defendant's Effective Communication Policy, then Defendant shall provide one.
- G. Defendant shall review the provision of inmate interpreters across its facilities statewide. Within six months of the effective date of this Agreement and Judgment, Defendant agrees to provide hearing-impaired inmates with a qualified non-inmate interpreter for circumstances in which it would otherwise provide a qualified inmate interpreter if no qualified inmate interpreter is housed at their facility.
- H. Defendant shall provide video conferencing technology that allows a hearing impaired inmate to (1) communicate with other hearing impaired individuals, and (2) communicate

with video relay service. Access to video conferencing technology for communications with other hearing impaired individuals shall be provided to hearing impaired inmates at a cost no greater than the cost of a telephone call for a hearing inmate. Calls made through the video relay service shall be at no cost, per FCC guidelines.

- I. Defendant agrees to review and modify its inmate work assignment requirements to require good oral communication skills only for those positions where such skills are essential functions of the position and to eliminate those requirements for those positions where such skills are incidental to the performance of the position and a hearing impaired inmate applies for such a position.
- J. Defendant agrees to implement some method of notifying hearing impaired inmates of yard out bells, meal bells, and any form of simple communication from defendant to all inmates in the block or prison population.
- K. Defendant agrees to permit qualified deaf volunteers to obtain the same volunteer status as hearing volunteers.
- L. Defendant agrees to transfer Inmate David VanValkenburg to Columbia River Correctional Institution. This provision does not alter Defendant's right to operate its institutions in any manner that it determines necessary to further Defendant's interests in safety, security, or population management, including Defendant's ability to transfer any inmate in the future.

### **C. GENERAL PROVISIONS**

3. As part of this Agreement and Judgment, and in exchange for the consideration described in paragraphs 1 and 2, Plaintiff does hereby release, acquit and forever discharge State Defendants and the State of Oregon, and all those in interest with it, including its heirs, successors, trustees, administrators, assigns, officers, current and former employees, attorneys, insurers, agents and all other persons, firms, state or federal agencies, departments, institutions or corporations, liable or who might be claimed to be liable, none of whom admits liability, but each of whom expressly denies liability (hereafter "Released Parties"), of and from any and all

claims raised in the Action, including but not limited to all demands, actions, suits, causes of action, obligations, controversies, debts, costs, attorney fees, expenses, all form of damages, losses, judgments, orders, liens and liabilities of any, every and whatever kind or nature, whether in law, equity, or otherwise, whether based in contract, tort, statute, regulation, tariff, rule, indemnification, contribution, or any other theory of recovery, whether known or unknown, whether suspected or unsuspected, and whether or not concealed or hidden, which have existed or may have existed, or which do exist or which hereafter shall or may exist, based on any facts, events, or omissions that in any manner or fashion relate to or arise out of Plaintiff's claims against the State Defendants in the Action. This includes any and all of Plaintiff's damages, including any damages, injuries and claims which are not anticipated or which develop in the future, including those based on facts not currently known to Plaintiff relating to the subject matter of this Agreement and Judgment. Plaintiff hereby expressly waives and relinquishes any and all rights under any law or statute to the contrary. It also includes any claim arising from the negotiation and execution of this Agreement and Judgment, including fraud in the inducement.

4. The parties acknowledge that this Agreement and Judgment is a voluntary and full settlement of the disputed complaints for the purpose of making a full compromise, adjustment and settlement of any and all claims of, or in any way, arising out of the filing of the above-referenced lawsuit. The parties affirm that they have read and fully understand the terms set forth herein. No party has been coerced, intimidated, threatened or in any way forced to become a party to this Agreement and Judgment.

5. It is fully understood, agreed and stipulated by the parties that this settlement is by way of a compromise of a disputed claim and that payment herein is not to be construed as an admission of liability on the part of Defendant, or by any other person, persons, firm or corporation, insurer, representative, attorneys, or any other individual by whom liability is hereby expressly denied.

6. This Agreement and Judgment is binding upon and enforceable against Defendant, its employees, heirs, successors and assigns and all others in active concert with them in the operation of Oregon Department of Corrections.

7. No amendment to, modification of, or waiver of any provisions of this Agreement and Judgment shall be effective unless: (a) all signatories or their successors to the Agreement and Judgment agree in writing to the amendment, modification or waiver; and (b) the amendment, modification or waiver is in writing.

8. This Agreement and Judgment contains the entire stipulation and agreement between the parties hereto and the terms of this stipulation are contractual and not a mere recital. This Agreement and Judgment shall be final and binding on Plaintiff and Defendant and upon their respective heirs, representatives, executors, administrators, successors and assigns, and shall inure to the benefit of each party and to their respective heirs, representatives, executors, administrators, successors and assigns.

9. Plaintiff hereby acknowledges that in executing this stipulation he has not relied upon any representations or statements of Defendant, Defendant's attorneys or representatives regarding the subject, basis, or effect of this Agreement and Judgment which is not expressly set forth herein. It is understood that Plaintiff has carefully reviewed this document, knows the contents thereof, and that it is fully understood and voluntarily accepted and that there is no other agreement, promise or inducement for this release.

10. The parties to this Agreement and Judgment agree that no party warrants or represents how the United States Internal Revenue Service ("IRS"), the Oregon Department of Revenue, or other governmental authority will treat the payment described in paragraph 4 for tax purposes, and agree that no further payment of money from Released Parties will be due in the event that the payments or the release of the claims embodied in this Agreement and Judgment or any portion thereof is found by the IRS, the Oregon Department of Revenue, or other governmental authority to be, or result in, taxable income to any party. *The State of Oregon, as part of its reporting requirements, may have to communicate with the IRS, including*

*submitting IRS form 1099. The State of Oregon reserves the right to respond to inquiries by said authorities and to make any additional disclosures requested by the governmental authority or as required by law.* Plaintiff agrees to defend, indemnify, and hold harmless Released Parties from any and all manner of liability if any should be imposed on Released Parties regarding the payment to Plaintiff under this Agreement and Judgment specified above. Upon receipt of written notification from the State of Oregon that such liability has been imposed by the IRS, the Oregon Department of Revenue, or any other governmental authority and the amount thereof, Plaintiff agrees to fully remit such monies to the demanding entity within thirty (30) days from his receipt of such notification or upon any such terms as the demanding entity may permit. Plaintiff understands that he is solely responsible for the tax consequences of the payments outlined above in paragraph 1.

11. Plaintiff waives, releases, and forever discharges Released Parties from any obligations for any claim, known or unknown, arising out of the failure of Released Parties to provide for a primary payment or appropriate reimbursement pursuant to 42 U.S.C. § 1395y(b)(3)(A).

12. Plaintiff acknowledges that he understands this settlement may impact, limit or preclude Plaintiff's right or ability to receive future Medicare benefits arising out of the injuries alleged in this lawsuit, and nevertheless wishes to proceed with the settlement.

13. Plaintiff further agrees that he shall execute and deliver to the State of Oregon copies of all documents or agreements and do such further acts and things as the State of Oregon may reasonably request when necessary to effectuate the purposes of the Agreement and Judgment, including but not limited to providing copies of all documents between Plaintiff and Medicare regarding the reduction in the amount owed Medicare for Conditional Payments, either for financial hardship, equity and good conscience, or due to procurement costs, or any other reason.

14. Should any person or entity not a party hereto challenge the validity of this Agreement and Judgment, or any term thereof, pursue recovery of monies from the Released

Parties or bring a claim or claims against the Released Parties arising out of 42 U.S.C. § 1395y(b) related to payment for items or services related to the injuries claimed in this action, Plaintiff shall provide to Released Parties such cooperation and assistance as Released Parties may reasonably request in order to resist such a challenge or defend such a claim and Plaintiff further agrees to defend, indemnify and hold the Released Parties harmless from any and all such claims of any nature.

15. Plaintiff acknowledges that all subrogation and lien claims arising out of contract or under state or federal law, including, but not limited to, subrogation or lien claims of Plaintiff's health care providers, insurance carriers (including PIP), state workers' compensation, attorneys, and any federal agency or programs such as Medicare, Medicaid, or Social Security, are the sole and separate obligation of Plaintiff which Plaintiff agrees to pay or otherwise resolve. Plaintiff further hereby covenants to defend, indemnify and hold harmless the Released Parties from and against all such lien and subrogation claims brought against the Released Parties.

16. Defendant hereby forever waives, releases, and covenants not to sue Plaintiff, his successors, assigns, agents, officers, board members, employees and attorneys with regard to any and all claims, damages and injuries of whatever nature, arising out of the same matter as this case or which could have been filed in any action or suit arising from the same matter.

17. If any of the provisions of this Agreement and Judgment are declared or determined by any court to be illegal, invalid, or otherwise unenforceable, the remaining portions, terms and provisions shall nevertheless remain in full force and effect. In any action to enforce the terms of this Agreement and Judgment, the prevailing party shall be entitled to seek reasonable costs and attorney fees.

18. In the event of a material breach of the terms of the settlement agreement, the parties agree that, in addition to other available remedies, Plaintiff may utilize the following expedited process. Unless Plaintiff seeks immediate injunctive relief, Plaintiff will provide notice and 30 days for Defendant to correct the perceived breach. Further, should the alleged

material breach remain uncorrected after the notice is given and 30 days have passed, the parties agree that Plaintiff will file a petition or complaint in Multnomah County Circuit Court. In the event that notice and an opportunity to correct were given, Defendant will make no objection to expedited consideration of the matter through the procedure outlined in SLR 5.025, except that Plaintiff shall provide Defendant with three business days' written notice rather than the one day provided for in SLR 5.025. Defendant agrees not to object to the assignment of the matter to the trial judge assigned to *Baldrige v. ODOC*, Mult. Co. Case No. 1204-04976. Notice shall be to:

Dennis Steinman  
Kell, Alterman & Runstein, LLP  
520 SW Yamhill Street, Suite 600  
Portland, OR 97204

Jef VanValkenburgh  
Oregon Department of Justice  
1162 Court Street NE  
Salem, OR 97301

Jacqueline Kamins  
Oregon Department of Justice  
1515 SW Fifth Avenue, Suite 410  
Portland, OR 97201

Kimberly Hendricks  
Oregon Department of Corrections  
Office of the Inspector General  
2575 Center Street NE  
Salem, OR 97301

19. No person or entity not a party to this proceeding shall have any rights to enforce this Agreement and Judgment or intervene in a proceeding seeking enforcement of the Agreement and Judgment. This Agreement and Judgment does not impair or limit any non-parties' rights to pursue any and all relief from Defendant relating to the subject matter of this proceeding, or with respect to any other claims, but nothing in this Agreement and Judgment shall limit or estop Defendant from asserting any claims or defenses in any separate proceeding.

20. Plaintiff retains standing to seek enforcement of this Agreement and Judgment related to any acts or omissions by Defendant occurring while Plaintiff is in the custody of the Oregon Department of Corrections until March 2015. Nothing in this provision shall limit the right of either party to bring a breach of contract claim arising out of a material breach of this Agreement or reduce the length of any applicable statute of limitations.

DATED this \_\_\_\_ day of January, 2014

DATED this \_\_\_\_ day of January, 2014.

ELLEN F. ROSENBLUM  
Attorney General

---

Jacqueline Sadker Kamins, OSB #064972  
Senior Assistant Attorney General  
Attorney for Oregon Department of  
Corrections

COPY

---

Merle Baldrige

30 days starts on wednesday  
Jan 22, 2014.

30th day is on February 26, 2014.

we will send you an email tomorrow

Do you have picture i.d.?

See attached

No Rush.

All thanks to Senator Boss

Anyone else to receive the payment?

We have a notary \$Ø

They might ask you to sign again  
in front of them.

Do you have a lawyer helping  
you fill out NO

Are you going to take the whole folder?

I can copy it all and give it back



January 3, 2017

CLIENT SECURITY FUND  
INVESTIGATION REPORT

RE : Client Security Fund Claim No.: 2016-45  
Claimant : Merle Baldrige  
Lawyer : Dennis Steinman  
Investigator : Ronald W. Atwood

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RECOMMENDATION

The recommendation is to deny the claim. The record shows this case involves a fee dispute between Mr. Baldrige and Mr. Steinman, the fee dispute was the subject of a lawsuit, the lawsuit was settled, and the settlement agreement precludes other claims.

CLAIM INVESTIGATION SUMMARY

Mr. Baldrige, who is deaf, retained Dennis Steinman and the firm of Kell, Alterman & Runstein to represent him in litigation against the Oregon Department of Corrections. At the time, Mr. Baldrige was incarcerated for having sex with a minor. Mr. Steinman was admitted to the Oregon State Bar on September 22, 1995. At all times relevant to this case, has been a partner in the firm Kell, Alterman & Runstein. There are no disciplinary sanctions against him.

The parties signed a contingent fee agreement on August 15, 2011. The agreement provided the lawyer would receive 40% of the recovery if the case was settled after a lawsuit was filed. The agreement also provided that if the attorney was awarded fees by the court or tribunal, then the lawyer received the greater of the award or the percentage of the settlement amount.

A lawsuit was filed in Multnomah County. The primary claim was disability discrimination. The Court issued partial summary judgment in favor of Mr. Baldrige. The parties then settled the case in mediation, and the case was dismissed without trial on the remaining claims.

The settlement included economic and noneconomic relief. The amount of the economic relief was \$150,000.00. Mr. Baldrige believes that under the terms of the fee agreement he was entitled to \$90,000, which was 60% of the settlement amount. The problem here is that the case was litigated extensively and by the time the case settled, the firm likely had \$200,000 into the matter. Further, although the economic award is a good one, the primary benefit to the client related to changes that would be made to how deaf inmates would be treated in prison. Claiming there had been a modification of the fee

agreement during mediation, the lawyer paid Mr. Baldrige \$50,000.00, thus claiming \$100,000 as his fee.

Following settlement of the discrimination case, Mr. Baldrige retained Jesse Merrithew and the law firm of Levi Merrithew Horst, PC to represent him in a breach of contract and conversion suit against the Kell, Alterman law firm over attorney's fees. He alleged that he was entitled to 40 percent of the \$150,000.00 economic relief, equal to \$90,000.00.

The breach of contract case was filed in Multnomah County and went to mandatory arbitration in December 2015. The arbiter initially ruled against Mr. Baldrige; however, the parties then settled in mediation on August 18, 2016. The settlement amount was \$34,244.05. Mr. Merrithew kept \$10,273.21 as his fee and Mr. Baldrige received \$23,970.84 in the settlement of the breach of contract case. The important term for our purposes is as follows:

"6. Except for the obligations contained within this Agreement, [Merle] Baldrige and KAR [Kell, Alterman & Runstein], and their successors, predecessors, assigns, agents, partners, employees, officers, insurers, and all other affiliated persons, firms, or corporations whomsoever, forever release and discharge each other, and their successors, predecessors, assigns, agents, partners, employees, officers, insurers, and all other affiliated persons, firms, or corporations whomsoever, of and from any and all past, present, and future claims, demands, obligations, causes of action, or damages of any kind, known and unknown, relating to the Lawsuit [*Merle Baldrige v. Kell, Alterman & Runstein*, Case No. 15CV20084], or any fact, event, act, or omission occurring at any time, through the date of this Agreement, including fraud in inducing this Agreement."

It is difficult to tell just how much the claimant is seeking. On the one hand, the form filed out to start this case would lead you to the conclusion that he was seeking \$10,273.21. That is the amount of the fees taken out of the settlement amount recovered by Merrithew. On the other hand, it is possible he is really seeking \$16,029.16. We get to that figure in this fashion. The original settlement amount was \$150,000. Less 40% paid to the attorney, he expected to receive \$90,000. He initially got \$50,000, leaving a deficit of \$40,000. He sued for that amount and recovered \$34,244.05. However, he only got \$23,970.84, so if you subtract \$50,000 and \$23,970.84 from \$90,000, the balance is \$16,029.16.

This CSF case is rooted in a fee dispute between Mr. Baldrige and the Kell, Alterman firm. The fee dispute was the subject of a separate lawsuit and settlement. The settlement included a release of any and all past, present, and future claims, demands, obligations, causes of action or damages of any kind that related to the lawsuit or any fact, event, act, or omission occurring at any time through the date of the agreement.

Rule 2.7 requires a claimant to make a good faith effort to collect the amount claimed. He did what he is directed to do and filed suit to recover what he considered to be the balance of the settlement amount owed to him. He settled that matter; the settlement amount was \$34,244.05. By the terms of the agreement, he is barred from filing other claims. The release language is pretty standard.

Rule 2.9 provides that a claim shall not include an award of attorney's fees in an attempt to make a recovery. One reading of his claim is he wants to Client Security Fund to pay the amount his lawyer was paid to recover a portion of the settlement amount he claimed was due him. Arguably, that claim is barred by this rule.

I can see why the lawyer attempted to get a greater fee. He got a very good result, put in \$200,000 worth of time and looked to receive a fee of \$60,000. He relied on a portion of the attorney fee agreement that I do not think applies. He also claimed there was a modification of the fee agreement during mediation, even though there is no documentation to support the claim. In short, I am convinced the conduct of the lawyer was bad. Fortunately, the claimant retained another lawyer to try to set it right and that lawyer made a good recovery, under the circumstances. This is an argument over the extent of the fee and that dispute was settled prior to coming before us.

As a final note. Merrithew attempted to prove fraud against Steiman; the arbiter denied that claim. Recognizing that dishonest conduct under our rules is broader than fraud, it is hard to believe the facts support a claim for dishonest conduct if fraud cannot be proven. Again, this is a dispute over a fee that was resolved in litigation.

#### FINDINGS AND CONCLUSIONS

1. Dennis Steinman was admitted to the Oregon State Bar on September 22, 1995.
2. At all times relevant to this case, Mr. Steinman was a partner in the Kell, Alterman, Runstein law firm.
3. There are no disciplinary sanctions for Mr. Steinman.
4. Mr. Baldrige was a client of Mr. Steinman and the Kell, Alterman, Runstein law firm between August 2011 and February 2014.
5. The parties signed a contingent fee agreement on August 15, 2011. The agreement included provisions about attorney's fees.
6. Mr. Steinman and the Kell, Alterman firm represented Mr. Baldrige in a disability discrimination lawsuit against the Oregon Department of Corrections.
7. The lawsuit was settled following partial summary judgment in favor of Mr. Baldrige. The economic damages portion of the settlement totaled \$150,000.00.
8. On January 20, 2014, Mr. Baldrige signed a final accounting, which provided a net recovery to him of \$50,000.00.

9. The Kell Alterman firm disbursed \$50,000.00 to Mr. Baldrige on February 6, 2014.
10. On June 12, 2015, Mr. Baldrige and Jesse Merrithew of the law firm of Levi Merrithew Horst, PC., signed a contingent fee agreement.
11. Mr. Merrithew and the Levi Merrithew firm filed a lawsuit on Mr. Baldrige's behalf against Kell, Alterman & Runstein alleging breach of contract and conversion and seeking recovering of \$40,000.00.
12. The lawsuit against Kell, Alterman & Runstein was settled. The settlement included any and all past, present, and future claims, demands, obligations, causes of action, or damages of any kind, known and unknown.
13. Mr. Baldrige made a good faith effort to collect the disputed fee.
14. The rules bar recovery of attorney fees incurred attempting to recover money from a lawyer.
15. Ultimately, this is a fee dispute.
16. Mr. Baldrige's claim must be denied.

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IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF MULTNOMAH

MERLE BALDRIDGE,

Plaintiff,

vs.

KELL, ALTERMAN & RUNSTEIN, an  
Oregon limited liability partnership,

Defendant.

No. 15CV20084

PLAINTIFF’S RESPONSE TO  
DEFENDANT’S CROSS-MOTION FOR  
SUMMARY JUDGMENT AND REPLY IN  
SUPPORT OF PLAINTIFF’S MOTION FOR  
SUMMARY JUDGMENT

**Hearing Date: August 11, 2016**  
**Hearing Time: 8:30 AM**  
**Hon. Henry C. Breithaupt**

The fundamental and fatal flaw underlying all of defendant’s arguments is the notion that defendant ever had any “right” or “entitlement” to the collection of its claimed attorney fees at any point in the underlying litigation. That assertion ignores both the statutory authority for attorney fee awards and the nature of a contract between a lawyer and a client. Because the firm never had a right to any attorney fee award, it did not give up anything of value when it “agreed” to pursue the client’s best interests in course of the mediation—it merely did what it was already required to do under both the contract and the Oregon Rules of Professional Conduct.

1 **FACTS**

2 The facts alleged in the second half of defendant’s “Undisputed Facts” are anything  
3 but. As Mr. Baldrige made clear in his *Declaration* supporting the motion, he protested that  
4 he was not receiving what he was entitled to under the contract. The nature of those  
5 communications between Mr. Baldrige and Mr. Steinman are hotly disputed as further  
6 evidenced by the *Declaration of Matthew C. Ellis*. None of that matters, however, because the  
7 simple fact is that KAR gave Mr. Baldrige nothing of value *that it was not already required*  
8 *to give*, in exchange for his alleged agreement to alter the contract in KAR’s favor to the tune  
9 of \$40,000. Nothing that it claims as consideration actually qualifies. That is a purely legal  
10 conclusion and thus appropriate for resolution at summary judgment.

11 In its memorandum, KAR attempts to spin a tale of woe—of a law firm that took on a  
12 case on principle, that buried more hours than they expected to into the case, and found out  
13 only too late that their client’s economic damages were minimal and they needed to alter the  
14 original agreement to keep from losing their shirts, all in an effort to serve the client. None of  
15 it is true. KAR knew before Mr. Baldrige ever saw a fee agreement that his damages were  
16 small to nonexistent, they knew about his crimes of conviction, they knew that the  
17 Department of Justice litigates prisoner cases like no other, and they knew that it would take  
18 countless hours. KAR knew exactly the type of case they were taking on when they drafted  
19 the original fee agreement, and they chose the terms of the fee agreement. Furthermore, their  
20 entire strategy to increase the value of the case was to litigate in a way that increased the  
21 likelihood of a large attorney fee award to gain leverage for settlement. Everything about the  
22 case from start to finish went exactly as planned. But even if it didn’t, KAR was still required  
23 to hold up its end of the contract.

24 ///

25 ///



1 against the will of Mr. Baldrige. RPC 1.2 explicitly prohibits that. By suggesting to Mr.  
2 Baldrige that KAR did have a right to go to court and collect the attorney fees it claimed  
3 without his consent (as Mr. Steinman swears he did in his declaration), KAR made a material  
4 misrepresentation to Mr. Baldrige during the formation of their claimed modification.

5 Even if they did have a right to collect attorney fees, the amount of the fees was far  
6 from certain. The fact that KAR did not advise Mr. Baldrige to walk out of the mediation and  
7 simply go to court and collect their \$262,325, rather than accept \$150,000, strongly suggests  
8 that KAR knew the collection of these fees was far from an entitlement. ORS 20.075 directs a  
9 court to consider 16 factors in determining the amount of any attorney fee award. Only one of  
10 those factors is addressed by the fee statement provided by KAR. *See* ORS 20.075(2)(a). The  
11 idea that KAR would recover all of its claimed fees even if Mr. Baldrige only won a nominal  
12 amount of damages on a couple discreet acts of discrimination is contradicted by factor (2)(d).  
13 That directs the trial court to consider “The amount involved in the controversy and the results  
14 obtained.” Judge Stewart, in interpreting this statute, refused to award fees for time spent  
15 preparing unsuccessful claims. *Malbco Holdings, LLC v. AMCO Ins. Co.*, CV-08-585-ST,  
2010 US Dist LEXIS 61825, at 8 (Or Dist Ct June 22, 2010).

16 The only other claim that KAR makes is that “Defendant foregoing its right to collect  
17 the costs under the original attorney fee agreement” was valid consideration. This is simply  
18 nonsensical. The costs in the case were \$4,574. KAR’s claim is that it exchanged their right to  
19 collect \$4,574 for Mr. Baldrige’s right to collect \$35,426 under the original contract. These  
20 numbers were fixed at the time of the mediation. That argument is not worthy of serious  
21 consideration by the Court.

## 22 CONCLUSION

23 Boiled down to its essentials, KAR’s claim is simple: they claim that they only agreed  
24 to pursue the settlement that was in their client’s best interests in exchange for the client’s

1 agreement to take less than he was entitled to under the fee agreement. Pursuing the client's  
2 best interests in maximizing his settlement is something they were already obligated to do  
3 under the original fee agreement. Therefore, they offered no additional consideration in  
4 exchange for their claimed modification and this Court must enforce the original contract.

5  
6 DATED this 5th day of August, 2016.

7  
8 By: s/ Jesse Merrithew  
9 Jesse Merrithew, OSB #074564  
10 610 SW Alder St. Ste. 415  
11 Portland, OR 97205  
12 jesse@lmhlegal.com  
13 P. 971.229.1241  
14 F. 971.544.7092  
15 Of Attorneys for Plaintiff  
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**IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF MULTNOMAH**

**MERLE BALDRIDGE,**

Plaintiff,

v.

**KELL, ALTERMAN & RUNSTEIN, LLP,**

Defendant.

Case No. 15CV20084

**DECLARATION OF MATTHEW C.  
ELLIS**

I, **MATTHEW C. ELLIS**, declare under penalty of perjury:

1. From 2007 – October 2013, I was an associate at Kell Alterman and Runstein, LLP. I left the firm in late October 2013 to start my own practice. The primary partner I worked with at the firm was Dennis Steinman, with whom I had a good working relationship.

2. I was one of the primary attorneys for the plaintiff in his lawsuit against the Department of Corrections. I drafted some of the summary judgment and discovery motions, argued some of the summary judgment and discovery motions, attended all meetings with the client prior to my leaving the firm in October 2013 and conducted many of the depositions in the case.

3. It is true that, at the time we undertook representation, Mr. Steinman and I were aware that if we were to prevail in the lawsuit that we would receive an award of attorneys fees. However, I understood that, under the fee agreement with Mr. Baldrige, as with all of our clients, we would only receive an award of attorneys fees if the Court decided to award those fees. If any case of ours resolves without an award of fees, we would only be entitled to a percentage of the total recovery. I knew that there could only be an award of fees in Mr. Baldrige's case if we won at trial.

4. I do recall deciding, along with Mr. Steinman, that filing a Motion for Summary Judgment was a good strategy because it could vastly increase the value of the case. This was helpful for Mr. Baldrige's case because his damages were fairly nebulous. As a result, if we could increase the value of his case by winning summary judgment even in part on liability, that would be a positive result. I knew that we would not be awarded attorneys fees soon after our summary judgment motion—regardless of the merits of the motion—because it was, from what I recall, a partial motion for summary judgment. As a result, there was not a mechanism to be awarded fees without a trial because a judgment would almost certainly not be entered at that point in the case.

5. The Court denied the vast majority of our Motion for Summary Judgment. The only portion the Court granted was the issue of not providing interpreters for medical, dental and mental health examinations. The Court denied our Motion as to whether Defendant discriminated against Plaintiff at all other times while in incarceration. As a result, there were substantial issues on liability that were not resolved at summary judgment and it was far from a foregone conclusion, at that point, that we would be entitled to an award of attorneys fees for the claims that we had not prevailed on summary judgment since liability had not been determined yet. As a result, my understanding as of the time of the mediation was that we did not have a right to go to court to get our attorneys fees.

6. I attended the mediation with Mr. Baldrige and Mr. Steinman on October 15, 2013. As is our standard practice, we hired two ASL interpreters to interpret during the mediation, even though Mr. Steinman and Mr. Baldrige both speak ASL. Once we had come to some common ground on the equitable changes that Mr. Baldrige wished DOC to make, we discussed the monetary portion of the proposed settlement in more detail with Mr. Baldrige during the second half of the mediation. Mr. Steinman was adamant that the firm should take \$100,000 of the \$150,000 and that Mr. Baldrige should only take \$50,000, nearly switching the attorneys fee provision so that the firm would receive 2/3 and the client would only get 1/3. Mr. Steinman told Mr. Baldrige that this would be fair because we would be entitled to attorneys fees for the time spent on winning summary judgment. After Mr. Steinman repeated this several times, I asked Mr. Steinman to step outside of the room so I could speak with him in the hallway.

7. In the hallway, I told Mr. Steinman that the negotiations were making me uncomfortable. I told him I thought it was important that we remind Mr. Baldrige that we had a contract which entitled him, legally, to \$90,000 of a \$150,000 settlement, not \$50,000. Mr. Steinman told me that Mr. Baldrige already knew that. I asked him to remind him of the terms of the contract—since it had not been discussed at all during the mediation—and Mr. Steinman agreed to do so. I was very uncomfortable talking to a partner in this regard, even though I had already given notice, but I felt an ethical obligation to do so. When he said he would tell Mr. Baldrige that we would honor our deal, I felt relieved.

8. When we got back in the room, Mr. Steinman did immediately tell Mr. Baldrige that we had a fee agreement that entitled him to 60% of the recovery. However, he added that the firm should still get more than that. At that point, Mr. Steinman asked the two ASL interpreters to stop interpreting what he was saying and Mr. Steinman spoke to Mr. Baldrige directly, without interpreters. I was upset by his choice to do this. I believe that the only reason there was for them to communicate without ASL interpreters was so that he could continue trying to

convince Mr. Baldrige to take less than he was owed without my knowledge after I objected to the negotiations. This was the only time during the full day mediation that the interpreters were told not to interpret what was being said. Furthermore, in attending numerous other mediation and meetings with Mr. Steinman and deaf clients, this was the only time I recall him telling the interpreters not to interpret, thereby leaving me in the dark as to their communication.

9. In October or November 2013, Mr. Baldrige contacted me and informed me that he felt he was being forced by Mr. Steinman into taking less than he was owed under the fee agreement. He indicated he felt he had no choice but to agree to his demands and wanted to know if I was open to representing him in claims against the firm. I told him I could not represent him but that he should stand firm in his position.

**I HEREBY DECLARE THAT THE ABOVE STATEMENT IS TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF, AND THAT I UNDERSTAND IT IS MADE FOR USE AS EVIDENCE IN COURT AND IS SUBJECT TO PENALTY OF PERJURY.**

EXECUTED this 5<sup>th</sup> day of August, 2016.

s/Matthew C. Ellis  
**MATTHEW C. ELLIS, OSB No. 075800**

1 **CERTIFICATE OF SERVICE**

2 I certify under penalty of perjury under the laws of the State of Oregon, that the  
3 following is true and correct:

4 I am employed by the law firm of Levi Merrithew Horst, PC.

5 At all times hereinafter mentioned, I was and am a citizen of the United States of  
6 America, a resident of the State of Oregon, over the age of eighteen (18) years, not a party to  
7 the above-entitled action, and competent to be a witness herein.

8 On the date set forth below I served the document(s) to which this is attached, in the  
9 manner noted on the following person(s):  
10

<b>PARTY/COUNSEL</b>	<b>DELIVERY INSTRUCTIONS</b>
<b><u>Clerk of the Court</u></b> Multhomah County Circuit Court Multnomah County Courthouse 1021 SW 4 <sup>th</sup> Ave. Portland, OR 97204	<input type="checkbox"/> <b>Via U.S. Mail</b> <input checked="" type="checkbox"/> <b>Via Odyssey E-File</b> <input type="checkbox"/> <b>Via Facsimile</b> <input type="checkbox"/> <b>Via E-Mail</b>
<b><u>Counsel for Defendant</u></b> Thomas R. Rask III Kell Alterman & Runstein LLP 520 SW Yamhill St. Ste. 600 Portland, OR 97204	<input checked="" type="checkbox"/> <b>Via U.S. Mail</b> <input type="checkbox"/> <b>Via Odyssey E-File</b> <input type="checkbox"/> <b>Via Facsimile</b> <input type="checkbox"/> <b>Via E-Mail</b>
<b><u>Hearing Judge</u></b> Hon. Henry C. Breithaupt Oregon Tax Court 1163 State St. Salem, OR 97301	<input checked="" type="checkbox"/> <b>Via U.S. Mail</b> <input type="checkbox"/> <b>Via Odyssey E-File</b> <input type="checkbox"/> <b>Via Facsimile</b> <input type="checkbox"/> <b>Via E-Mail</b>

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21 DATED this 5<sup>th</sup> day of August, 2016 at Portland, Oregon.

22  
23 s/ Sarah Noble  
Sarah Noble

CLAIM year	CLAIM #	CLAIMANT	LAWYER	CLAIM AMT	PENDING	AMOUNT PAID	INVESTIGATOR	STATUS
2014	02	Kitchen, Kimberly A.	Wood, Alan K.	\$ 3,000.00	\$ 3,000.00		Raher	9/24/16 to CSF. Inform only.
2015	39	Boone, Charles P	Morningstar, Jonah	\$ 8,000.00	\$ 8,000.00		Raher	9/24/16 CSF stayed.
2016	27	Roden, Joseph	Morningstar, Jonah	\$ 9,385.50	\$ 9,385.50		Raher	9/24/16 CSF stayed.
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	33	Malgarejo, Micaela	Henderson, Paul	\$ 2,535.00	\$ 2,535.00		Thompson	3/4/17 CSF denied.
2016	36	Cruz, Lourdes	Milstein, Jeffrey S.	\$ 1,750.00	\$ 1,750.00		Butterfield	5/6/17 to CSF
2016	42	Heredia, Keeley	Krull, Julie	\$ 9,000.00	\$ 9,000.00		Dippel	
2016	43	Claus, Robert and Susan	Daraee, Hafez	\$ 20,000.00	\$ 20,000.00		Malcolm	3/4/17 CSF denied. 04/14/17 Appeal to BOG
2016	45	Baldrige, Merle	Steinman, Dennis	\$ 11,125.21	\$ 11,125.21		Atwood	1/7/17 CSF denied. 04/14/17 Appeal to BOG
2016	46	Castellano, Adolfo	Howlett, Bruce M	\$ 7,500.00	\$ 7,500.00		Raher	
2016	47	Bierbrauer, Randy Russell	Foraker, Peggy S	\$ 21,896.19	\$ 21,896.19		Park	
2016	48	Hoodenpyle, Todd A	Dougan, Rebecca	\$ 4,000.00	\$ 4,000.00		Braun	3/4/17 CSF approved, pay to judgemnts
2017	01	Bostwick, Aaron Paul	Rader, Mark	\$ 8,500.00	\$ 8,500.00		Roy	
2017	02	McLaren Hall, Rebecca Jean	Merrill, Nick	\$ 2,500.00	\$ 2,500.00		Young	
2017	03	Brooks, Shawn Micheal	Roller, Dale	\$ 4,000.00	\$ 4,000.00		Stamm	
2017	04	Powell, Terry Scott	Milstein, Jeffrey S.	\$ 3,000.00	\$ 3,000.00		Taylor	
2017	05	Schwengels-Loe, Denyse Marie	Milstein, Jeffrey S.	\$ 5,100.00	\$ 5,100.00		Taylor	
2017	06	Frost, Forrest Robert	Heinzelman, Dana C	\$ 7,500.00	\$ 7,500.00		Cooper	
2017	07	Clymer, Joseph & Deborah	Campbell, Jefferson G. Jr	\$ 1,235.00	\$ 1,235.00		Thompson	
2017	08	Jay, Sandra	Milstein, Jeffrey S.	\$ 2,730.00	\$ 2,730.00		Taylor	
2017	09	Tupper, Robert Thompson	Milstein, Jeffrey S.	\$ 2,100.00	\$ 2,100.00		Taylor	
2017	10	Frazier, Justin	Milstein, Jeffrey S.	\$ 3,000.00	\$ 3,000.00		Taylor	
2017	11	Scott, Andrew L.	Allen, Sara Lynn	\$ 5,000.00	\$ 5,000.00		Atwood	
2017	13	Shreffler, Bryce Thomas	Roller, Dale	\$ 10,000.00	\$ 10,000.00		Stamm	
2017	14	Cooper, James Adam	Milstein, Jeffrey S.	\$ 11,500.00	\$ 11,500.00		Taylor	
2017	15	Ashpole, Mathew Thomas	Milstein, Jeffrey S.	\$ 4,800.00	\$ 4,800.00		Taylor	
					\$ 171,556.90	\$ -		
		Funds available for claims and indirect costs allocation as of February 2017		Total in CSF Accou	\$ 1,335,605.00			
				<b>Fund Excess</b>	<b>\$ 1,164,048.10</b>			

**OREGON STATE BAR**  
**Client Security - 113**  
**For the Two Months Ending Tuesday, February 28, 2017**

Description	February 2017	YTD 2017	Budget 2017	% of Budget	February Prior Year	YTD Prior Year	Change v Pr Yr
<b>REVENUE</b>							
Interest	\$1,061	\$2,048	\$12,500	16.4%	\$620	\$1,249	64.0%
Judgments	50	100	1,000	10.0%	90	140	(28.5%)
Membership Fees	(150)	215,385	231,200	93.2%	(660)	217,110	(0.8%)
<b>TOTAL REVENUE</b>	<b>961</b>	<b>217,533</b>	<b>244,700</b>	<b>88.9%</b>	<b>50</b>	<b>218,499</b>	<b>(0.4%)</b>
<b>EXPENSES</b>							
<b>SALARIES &amp; BENEFITS</b>							
Employee Salaries - Regular	1,112	2,206	32,700	6.7%	1,068	2,103	4.9%
Employee Taxes & Benefits - Reg	441	784	13,000	6.0%	414	833	(5.9%)
<b>TOTAL SALARIES &amp; BENEFITS</b>	<b>1,553</b>	<b>2,990</b>	<b>45,700</b>	<b>6.5%</b>	<b>1,482</b>	<b>2,936</b>	<b>1.8%</b>
<b>DIRECT PROGRAM</b>							
Claims	0	3,525	200,000	1.8%	0	28,485	(87.6%)
Collection Fees	0	0	1,000	0.0%	0	0	0.0%
Committees	0	0	150	0.0%	0	0	0.0%
Travel & Expense	0	0	1,800	0.0%	0	470	(100.0%)
<b>EXPENSE</b>	<b>0</b>	<b>3,525</b>	<b>202,950</b>	<b>1.7%</b>	<b>0</b>	<b>28,955</b>	<b>(87.8%)</b>
<b>GENERAL &amp; ADMINISTRATIVE</b>							
Office Supplies	0	0	150	0.0%	0	0	0.0%
Photocopying	0	0	50	0.0%	0	0	0.0%
Postage	5	20	150	13.2%	19	32	(38.7%)
Professional Dues	0	0	200	0.0%	0	0	0.0%
Telephone	0	20	200	9.9%	0	15	28.4%
Training & Education	575	575	600	95.8%	545	545	5.5%
Staff Travel & Expense	0	0	1,094	0.0%	0	0	0.0%
<b>TOTAL G &amp; A</b>	<b>580</b>	<b>615</b>	<b>2,444</b>	<b>25.1%</b>	<b>564</b>	<b>592</b>	<b>3.7%</b>
<b>TOTAL EXPENSE</b>	<b>2,133</b>	<b>7,130</b>	<b>251,094</b>	<b>2.8%</b>	<b>2,046</b>	<b>32,483</b>	<b>(78.1%)</b>
<b>NET REVENUE (EXPENSE)</b>	<b>(1,172)</b>	<b>210,403</b>	<b>(6,394)</b>	<b>(3290.6%)</b>	<b>(1,996)</b>	<b>186,016</b>	<b>13.1%</b>
Indirect Cost Allocation	2,779	5,558	33,349	16.7%	2,655	5,310	4.7%
<b>NET REV (EXP) AFTER ICA</b>	<b>(3,951)</b>	<b>204,845</b>	<b>(39,743)</b>	<b>(515.4%)</b>	<b>(4,651)</b>	<b>180,706</b>	<b>13.4%</b>
Fund Balance beginning of year		1,130,760					
<b>Ending Fund Balance</b>		<b>1,335,605</b>					

**Oregon State Bar**  
**Meeting of the Board of Governors**  
February 10, 2017  
**Open Session Minutes**

President Michael Levelle called the meeting to order at 9:00 a.m. on February 10, 2017. The meeting adjourned at 11:30 a.m. Members present from the Board of Governors were John Bachofner, Jim Chaney, Eric Foster, Guy Greco, Ray Heysell, John Mansfield, Eddie Medina, Vanessa Nordyke, Tom Peachey, Per Ramfjord, Kathleen Rastetter, Liani Reeves, Julia Rice, Traci Rossi, and Kerry Sharp. Not present was Chris Costantino, Rob Gratchner, Kate von Ter Stegge, and Elisabeth Zinser. Staff present were Helen Hierschbiel, Amber Hollister, Susan Grabe, Dani Edwards, and Camille Greene. Also present was Carol Bernick, PLF CEO, and Tim Martinez, PLF Board of Directors.

**1. Call to Order/Finalization of Agenda**

The board accepted the agenda, as presented, by consensus.

**2. 2016 Retreat Debrief and Next Steps**

The three takeaways from the November 2016 retreat were: develop clear, concise, achievable goals; focus regularly on strategic and policy issues versus operational issues; and improve development of the board. Moving forward the board will develop a meaningful action plan for each year and keep the mission, strategic function and action plan up front at all BOG meetings.

In addition, the BOG expressed interest in having generative discussions during its meetings. Ms. Hierschbiel gave a brief overview of what generative discussions are and possible topics for generative discussions in 2017.

Mr. Levelle would like the first topic to be 'what is inclusion and equity?' Ms. Hierschbiel announced that we will have a speaker on implicit bias on April 13. Mr. Greco suggested that we schedule any generative discussions for the days only the committees meet. The board, by consensus, agreed to begin in May. The board also discussed other possible generative topics for future meetings.

Ms. Nordyke presented the strategic functions developed by the Policy & Governance Committee over the last year and the Committee's recommended areas of focus for 2017. [Exhibit A].

**Motion:** The board voted unanimously in favor of accepting the Policy & Governance committee recommendations for 2017 areas of focus. The motion passed.

**3. BOG Committees, Special Committees, Task Forces and Study Groups**

**A. Appellate Screening Special Committee**

Mr. Ramfjord updated the board on the detailed process to recommend replacements for Justice Baldwin who announced he will step down from the court in December 2016. The

board's recommendations to the court, approved by President Levelle, are posted on the Oregon State Bar website. **[Exhibit B]**

**Motion:** The board voted to ratify the letter to the court. The committee motion passed. Ms. Reeves abstained.

**B. Board Development Committee**

Mr. Ramfjord presented the committee's recommendations for several committee and board appointments: Steven B. Taylor to the Client Security Fund, Elizabeth Schwartz to the State Lawyers Assistance Committee, James Brown to the Unlawful Practice of Law Committee, Nicole Krishnaswami and Abby K. Miller, and Paul Nickell to the Legal Heritage Interest Group **[Exhibit C]**

**Motion:** The board voted in favor of accepting the committee recommendations. The motion passed.

Mr. Ramfjord presented the committee's expression of support for the BBX co-graders. **[Exhibit D]**

**Motion:** The board voted in favor of accepting the committee recommendations. The motion passed.

Mr. Ramfjord asked the board to defer the vote on the committee's recommended appointment to the BPSST Policy Committee.

**C. Budget & Finance Committee**

Mr. Chaney updated the board on a working version of the 2016 Financial Report. Six long-term bar employees have left in the past 12 months resulting in lower employee wage costs in the next year. The committee will be working with the Policy & Governance Committee on the reduction of the number of sections.

**D. Policy and Governance Committee**

Ms. Nordyke presented the committee motion to accept the revision to the Futures Task Force charge. **[Exhibit E]**

**Motion:** The board voted in favor of accepting the committee recommendations. The motion passed.

Ms. Nordyke asked the board to waive the one-meeting notice requirement.

**Motion:** By consensus, the board voted in favor of waiving the one-meeting notice. The motion passed.

Ms. Nordyke presented the committee motion to accept the proposed amendments to OSB Bylaw 14.4 regarding committee appointments. **[Exhibit F]**

**Motion:** The board voted in favor of accepting the committee-recommended bylaw amendments. The motion passed.

**E. Public Affairs Committee**

Ms. Rastetter gave a general update on legislative activity, including Ms. Hollister's testimony regarding the changes to the OSB disciplinary rules. The committee meets via conference call every two weeks to receive updates on the legislative session and bills of interest. **[Exhibit G]** On May 23, 2017 the committee will conduct its 'Day at the Capitol' where members meet with

the legislators. Board members are encouraged to attend and will be updated with talking points.

#### **4. Professional Liability Fund**

Ms. Bernick gave an update on the PLF's efforts to supply immigration law support, the office's progression towards paperless billing, the increasing number of people who do not have the correct amount of insurance, and the risk attorneys are facing when doing work in securities regulation.

Ms. Bernick presented the 2016 Claims Attorney and Defense Counsel Evaluations which were very positive.

The PLF's 40th anniversary will take place in 2018.

Mr. Martinez reported the Board of Directors is pleased with the financial investments of the PLF. He asked the board to approve the proposed revisions to PLF Policy 5.200. **[Exhibit H]**

**Motion:** Mr. Greco moved, Mr. Foster seconded, and the board voted to approve the revisions. Mr. Chaney, Mr. Peachey, and Mr. Bachofner abstained. The motion passed.

#### **5. OSB Committees, Sections, Councils and Divisions**

##### **A. MCLE Committee**

Ms. Hollister presented the MCLE committee request for the board to approve the changes to MCLE Rules re: UBE Admittees. **[Exhibit I]**

**Motion:** Mr. Greco moved, Mr. Bachofner seconded, and the board voted unanimously to approve the changes.

##### **B. Oregon New Lawyers Division Report**

In addition to the written report from Ms. Eder, Ms. Edwards mentioned the ONLD partnership with the Military and Veterans section to present housing CLEs, and the proposal to participate in the ABAs diversity challenge working with students in the state to encourage them to apply to and attend law schools.

#### **6. Consent Agenda**

Mr. Levelle asked if any board members would like to remove any items from the consent agenda for discussion and a separate vote.

Mr. Greco asked for an explanation of the LEC's proposed formal opinion regarding lawyer production of client files. Ms. Hirschbiel provided clarification.

##### **A. Report of Officers & Executive Staff**

###### **Report of the President**

Mr. Levelle reported on his recent testimony in Salem, the meeting with the Chief Justice, and the discussion at the BBX meeting regarding Oregon's high 'cut rate' and its effect on the declining number of new admittees. He introduced Jonathan Puente, the new OSB Director of

Diversity & Inclusion, who reported on the Diversity Action Plan and the efforts to increase the number attorneys of color in Oregon and how to track the progress of these efforts. Mr. Levelle has graciously offered his firm, Sussman Shank, as the location for the ACIDI meetings.

Report of the Executive Director

Ms. Hirschbiel presented the 2016 OSB Program Evaluations and its function of measuring the progress of OSB programs. Mr. Ramfjord asked that the program evaluations be included in the next meeting agenda to give the BOG more of an opportunity to review and give feedback.

Director of Diversity & Inclusion

Mr. Puente introduced himself and gave a brief report.

**Motion:** Mr. Greco moved, Mr. Peachey seconded, and the board voted unanimously to approve the consent agenda and past meeting minutes. **[Exhibit J]**

**7. Closed Sessions – see CLOSED Minutes**

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

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

Mr. Greco called the board's attention to the article in the agenda regarding California's future struggle with its status as a unified bar.

Mr. Levelle reported on his handout regarding Indian law legal issues in Oregon and encouraged board members to use their status as section liaisons to inform members of this problem. **[Exhibit K]**

**Oregon State Bar  
Board of Governors Meeting  
February 10, 2017  
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 informed the board of a non-action item.

B. Pending Non-Disciplinary Litigation

Ms. Hollister informed the board of non-action items.

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## 2016 Retreat Debrief and Next Steps

- I. Retreat board self-assessment summary and takeaways
  - A. Board needs to develop clear, concise, and achievable goals.
  - B. Board should focus regularly on strategic and policy issues versus operational issues.
  - C. Board could improve development of the board
    - A. Identify and cultivate qualified candidates (recruitment)
      - 1. What are the attributes, abilities and skills that the OSB needs
      - 2. Ensure the board represents the diversity of Oregon lawyers
      - 3. Plan for leadership succession
    - B. Provide job descriptions for board members (education & orientation)
    - C. Ensure new members are familiar with the organization and general board practices (education & orientation)
    - D. Ensure that board members are valued and skills utilized (recognition & engagement)
    - E. Foster inclusion in discussions and meeting planning
- II. Suggestions for moving forward
  - A. Keep mission, strategic functions, and areas of focus up front at all BOG meetings
  - B. Develop a meaningful action plan and keep it “front and center” at board meetings—a short list of big issues
  - C. Mission, strategic functions, tactics in place; ensure BOG is familiar with them
- III. Implementation
  - A. Rearrange agenda
    - 1. Mission will be at top of agenda,
    - 2. Generative discussion to start (recommend two per year)
    - 3. Strategy/Action Plan review of progress
    - 4. Items added to consent agenda
  - B. Create Board Development Plan
  - C. Other?
- IV. Generative Discussions
  - A. What is generative thinking?
    - 1. A cognitive process for deciding what to pay attention to

2. “Making sense” by probing assumptions, logic, and values
3. Problem-framing NOT problem-solving
4. Not expected to result in a decision
5. May inspire subsequent discussions of strategy, plans, tactics, execution

B. What is a generative topic?

1. An issue that is open to multiple interpretations and touches on core values
2. Something new to the board that we haven’t talked to death already
3. Something significant, having major impact
4. Ambiguous; no obvious way to look at it

C. What does it mean for the meetings

1. No discussion about some topics
2. Possible increase in length of meetings

D. Possible generative topics

1. Who do we serve? To whom do we owe duties?
  - Fiduciary v Representative
  - Public v Members
2. Why a unified bar? What’s the advantage? What is deeper purpose? What are the dilemmas? Opportunities? What would happen if we split?
3. What are we trying to accomplish with the Futures Task Force?
4. What are the implications of a no-growth or negative growth membership?
5. What is our diversity paradigm?
6. What if we didn’t have a HOD?
7. What does it mean to promote respect for the rule of law?

V. BOG Buy-In

- A. Ask BOG to approve new agenda format (MICHAEL)
- B. Ask BOG to approve devoting time to two generative discussions (MICHAEL)
- C. Ask BOG to identify generative discussion topics (MICHAEL)
  - A. Michael—you may want to suggest one topic on D&I and get BOG buy-in on implicit bias educations session
- D. Ask BOG to approve strategic functions (VANESSA)
- E. Ask BOG to approve areas of focus (VANESSA)

VI. Diversity deep-dive

A. Major Trends/Challenges in Diversity, Equity and Inclusion

- a. Demographics of OSB does not reflect demographics of Oregon
- b. Pipeline issues
- c. Leadership barriers
- d. Communication and inclusion issues
- e. Education and awareness
- f. Equity and access/institutional bias
- g. Leadership buy-in

B. How our Lenses Shape our Legacy

- a. What D, E, I conversations does the board need to have in the future?
  - i. Improving awareness
- b. What makes governance experiences with outside groups a win-win? What would it take to create more of them?
- c. What might be legacy I.D.E.A.S?
- d. What needs more or less investment in the future?
- e. How do we break down silos and build up collaboration with other groups?
- f. How will we acknowledge success? What does it take to institutionalize D, E, I?

# MINUTES

## BOG Appellate Screening Committee

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Meeting Date: January 6, 2017

Location: OSB Center

Chair: Per Ramfjord

Attendance: Eric Foster, Guy Greco (by phone), Vanessa Nordyke, Eddie Medina, Tom Peachey, Kathleen Rastetter, Julia Rice, Traci Rossi, Kate Von Ter Stegge, Kerry Sharp, Michael Levelle.

Staff Present: Susan Grabe, Kellie Bagnani

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The committee met in executive session to consider confidential documents (A governing body may go into executive session to consider "information or records that are exempt by law from public inspection." ORS 192.660(2)(f)). Our documents/notes are confidential per:

Confidential Submissions: ORS 192.502(4)

Internal Advisory Communication: ORS 192.502(1)

**1. Review appellate screening bylaws, process and timelines.** The committee reviewed OSB Bylaw 2.703(f) of the Judicial Selection Bylaws as well as the process, criteria and timelines for the Supreme Court vacancy. The committee also discussed that the bar's Appellate Selection process is driven by the Governor's timeline. In this case, the bar has been requested to provide its results to the Governor's office by February 8, 2017. The committee discussed the need to ensure the perspective of an appellate judge and decided to extend an invitation to former Chief Judge Mary Deits to participate in the process.

**2. Candidate and reference check questions.** The committee reviewed and revised its questions to solicit feedback that would best help inform their deliberations.

**3. Interview dates and follow up.** The committee determined that, based on member availability, the best dates for interviewing candidates was January 16<sup>th</sup> and 18<sup>th</sup>, to be followed by a final meeting on January 23<sup>rd</sup> to discuss reference materials, background checks and candidate interviews.

**4. Background reference check assignments.** Background reference checks were assigned to committee members.

# MINUTES

## BOG Appellate Screening Committee

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**Meeting Date:** January 23, 2017

**Location:** OSB Center

**Chair:** Per Ramfjord

**Attendance:** Jim Chaney, Eric Foster, Guy Greco (by ph), Vanessa Nordyke, Eddie Medina, Kathleen Rastetter, Julia Rice (by ph), Traci Rossi, Kate Von Ter Stegge, Judge Deits

**Staff Present:** Susan Grabe, Misha Isaak

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The committee met in executive session to consider confidential documents (A governing body may go into executive session to consider “information or records that are exempt by law from public inspection.” ORS 192.660(2)(f)). Our documents/notes are confidential per:

Confidential Submissions: ORS 192.502(4)

Internal Advisory Communication: ORS 192.502(1)

- 1. Appellate Screening recommendations.** The committee met to deliberate on the committee’s recommendations to the Board of Governors of those “Highly Qualified” candidates for consideration by Governor Brown. The committee discussion leading up to the recommendations included discussion of reference materials and were conducted in confidential executive session pursuant to subsection 2.703(f) of the Judicial Selection Bylaws. The final recommendations were unanimously adopted by the committee.
- 2. Next Steps.** The committee discussed further revisions to the process for the future and finalizing the letter in a timely fashion to meet the Governor’s timeline.



# Oregon State Bar

February 9, 2017

Governor Kate Brown  
State Capitol Building  
900 Court St. NE, Suite 254  
Salem, OR 97301

## Board of Governors

*President*

Michael D. Levelle, Portland

*President-elect*

Vanessa A. Nordyke, Salem

*Region 1*

Thomas C. Peachey, The Dalles

*Region 2*

James C. Chaney, Eugene

*Region 3*

Eric R. Foster, Medford

*Region 4*

Guy B. Greco, Newport  
Eddie D. Medina, Hillsboro

*Region 5*

Christine R. Costantino, Portland  
Michael D. Levelle, Portland  
Johnathan E. Mansfield, Portland  
Per A. Ramfjord, Portland  
Liani JH Reeves, Portland  
Katherine 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  
Traci Rossi, Portland  
Kerry L. Sharp, Lake Oswego  
Elisabeth Zinser, Ashland

*Immediate Past President*

R. Ray Heysell, Medford

## CEO/Executive Director

Helen Hirschbiel, Tigard

Dear Governor Brown:

The Oregon State Bar's Appellate Screening Committee has completed its review of the candidates who have applied for appointment to the Oregon Supreme Court and who agreed to disclose their application materials to the OSB. Pursuant to OSB Bylaws, the Committee has conducted an in-depth review of each application and candidate, including in-person interviews of all candidates who opted to participate in the process.

The Committee's review process is intended to provide you with relevant, reliable, and descriptive information to help inform your appointment decision. As instructed by OSB Bylaws, our recommendation of candidates as "highly qualified" is based on "the statutory requirements of the position, as well as information obtained in the review process, and the following criteria: integrity, legal knowledge and ability, professional experience, cultural competency, judicial temperament, diligence, health, financial responsibility, and public service." A "highly qualified" recommendation is intended to be objective, and the Committee's failure to identify any specific candidate as "highly qualified" should not be viewed as a finding that the person is unqualified. A "highly qualified" recommendation is intended to reflect the candidate's overall ability to serve on the court.

The Board of Governors is pleased that members from around the state, including a public member, serve on the Appellate Screening Committee. Hon. Mary Deits, former Chief Judge of the Oregon Court of Appeals, also volunteered her time as a Committee member during this review process, for which the Board of Governors is especially grateful. We also deeply appreciate the assistance and leadership of your counsel and your office during this process.

Pursuant to OSB Bylaw 2.703, the Oregon State Bar Board of Governors has approved the following list of candidates deemed “highly qualified” for appointment to the Oregon Supreme Court:

Allen, Beth A.  
Aoyagi, Robyn E.  
Auerbach, Harry  
Brown, Marc D.  
Bushong, Stephen K.  
Cook, Nena  
Duncan, Rebecca  
Flynn, Meagan A.  
Garrett, Chris  
Leith, David E.  
Ortega, Darleen R.  
Rasmussen, Karsten H.  
Rubin, Bruce A.

The Board of Governors appreciates that there were many qualified candidates for the positions and that the review process presented a challenging task. According to OSB Bylaw 2.700, a press release will be issued with the list of the “highly qualified” candidates and the results will be posted on the OSB webpage. Also pursuant to OSB Bylaws, we will gladly respond to any requests from your office as to whether certain other candidates meet a “qualified” standard.

Sincerely,

*MICHAEL D. LEVELLE*

Michael D. Levelle  
OSB President



Per Ramfjord  
OSB Board of Governors  
Appellate Screening Committee Chair

Cc: Ben Souede, General Counsel, Office of the Governor  
Misha Isaak, Deputy General Counsel, Office of the Governor

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** February 10, 2017  
**Memo Date:** February 9, 2017  
**From:** Per Ramfjord, Board Development Committee Chair  
**Re:** Appointments to various bar groups

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### Action Recommended

Approve the Board Development Committee's recommendations for new member appointments to the Client Security Fund Committee, State Lawyers Assistance Committee, Unlawful Practice of Law Committee, and the Legal Heritage Interest Group.

### Background

#### Client Security Fund Committee

The Client Security Fund Committee investigates and recommends acceptance or rejection of claims for reimbursement of lawyer theft or misappropriation of client money. The committee is in need of one member appointment and **Steven B Taylor** (821285) is recommended from the OSB volunteer list. Mr. Taylor has 25 years of civil practice experience and after closing his office several years ago he began teaching paralegal courses including those focused on ethics. He served on the CSF Committee in the early 90's and offers a significant amount of experience serving on various non-legal related boards. If appointed, Mr. Taylor's term on the CSF Committee would expire December 31, 2019.

#### State Lawyers Assistance Committee

The State Lawyers Assistance Committee investigates and resolves complaints about lawyers whose conduct impairs their ability to practice law. One new member is needed to fill a partial term expiring December 31, 2019. **Elizabeth Schwartz** (961121) offers experience as a practicing lawyer and recently earned her license as a mental health therapist. These two perspectives are beneficial for work on this committee.

#### Unlawful Practice of Law Committee

The Unlawful Practice of Law Committee investigates complaints of unlawful practice and recommends prosecution where appropriate. **James Brown** (670129) offers a varied practice experience and he is recommended for appointment based on his reputation for hard work. Mr. Brown offers geographic diversity and would serve a term through December 31, 2020.

#### Legal Heritage Interest Group

The Legal Heritage Interest Group preserves and communicates the history of the OSB to interested groups. **Nicole Krishnaswami** (104293), an existing interest group member, volunteered to serve as secretary for the remainder of 2017. **Abby K. Miller** (094443) is recommended as a new member and offers additional gender balance on the group. If appointed Ms. Miller would serve through December 31, 2019. **Paul Nickell**, a current OSB employee, is recommended for appointment as a public member. If approved, his term would begin on March 1, 2017, after his retirement from the OSB, and expire December 31, 2019.

## Oregon Board of Bar Examiners

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**To:** Board of Governors Development Committee  
**Memo Date:** January 30, 2017  
**Meeting Dates:** February 9 – 10, 2017  
**From:** Dawn Evans, Director of Regulatory Services  
**Re:** Proposed Co-Graders for the July 2017 Bar Exam

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As requested by this committee, the Board of Bar Examiners has provided information for each of the candidates proposed to serve as co-graders for the July 2017 grading session.

<b>STEFFAN ALEXANDER</b> Portland Black Male	Admitted 2013 Private Practice, Litigation No Experience as Co-Grader
<b>TODD E. BOFFERDING</b> Hood River White Male	Admitted 1988 Private Practice, Real Estate/Family Has Co-Graded in the Past
<b>ROSA CHAVEZ</b> Eugene Hispanic Female	Admitted in 2003 University of Oregon Has Co-Graded in the Past
<b>MARISHA CHILDS</b> Vancouver Black Female	Admitted 2012 (Reciprocity) Private Practice, Elder Law & Estates No Experience as a Co-Grader
<b>CHRISTY A. DOORNINK</b> Portland White Female	Admitted 2003 Private Practice, Workers Comp. No Experience as a Co-Grader
<b>DENISE FJORDBECK</b> Salem White Female	Admitted 1982 DOJ, Admin & Environmental No Experience as a Co-Grader
<b>LISSA K. KAUFMAN</b> Portland White Female	Admitted 1997 Private Practice, Family & Consumer Has Co-Graded in the Past

<b>NICOLE KRISHNASWAMI</b> Portland White Female	Admitted 2010 Oregon Medical Bd. No Experience as a Co-Grader
<b>KENDRA MATTHEWS</b> Portland White Female	Admitted 1996 Private Practice, Admin & Criminal Has Co-Graded in the Past
<b>SARAH A. PETERS</b> Eugene White Female	Admitted 2007 Private Practice, Environmental No Experience as a Co-Grader
<b>MANDI PHILPOTT</b> Gladstone White Female	Admitted 2002 Private Practice, Family Law Has Co-Graded in the Past
<b>ANTHONY ROSILEZ</b> CA in 2016) Klamath Falls Hispanic Male	Admitted 1996 (Never practiced in OR, moved from Klamath Community College, Labor & Employment No Experience as a Co-Grader
<b>MICHAEL J. SLAUSON</b> Salem White Male	Admitted 2001 DOJ, Criminal & Constitutional Has Co-Graded in the Past
<b>ADRIAN T. SMITH</b> Portland White Lesbian Female	Admitted 2012 Juvenile & Criminal No Experience as a Co-Grader
<b>MIRANDA SUMMER</b> Portland Bi-Racial Lesbian Female	Admitted 2007 Private Practice, Family Law & Workers Comp No Experience as a Co-Grader
<b>KATHERINE E. WEBER</b> Oregon City White Female	Admitted 1994 Circuit Ct Judge No Experience as a Co-Grader

**ERNEST WARREN, JR.**

Portland  
Black Male

Admitted 1989  
Private Practice, Criminal/land use  
Has Co-Graded in the Past

**SIMON WHANG**

Portland  
Asian Male

Admitted 2003  
Office of City Attorney  
Has Co-Graded in the Past

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# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** February 10, 2017  
**From:** Policy & Governance Committee  
**Re:** Proposed revision to Futures Task Force charge

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### Action Recommended

Approve revision of the charge for the Futures Task Force.

### Options

1. Approve the recommended change to the Futures Task Force charge and forward the amended charge to the BOG for adoption.
2. Decline to approve the proposed revision.

### Background

In April 2016, the Board of Governors approved the creation of a Futures Task Force with the following 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.

The BOG subsequently approved the creation of two committees for the Task Force, one focused on regulatory issues, and the other focused on exploring innovative legal service delivery models that would both allow for more sustainable law practices and improved access to justice.

The committees have met several times over the last few months. In their meetings they have reviewed and questioned the charge for the Futures Task Force. Specifically, they noted a difference in its treatment of the public and bar members. The charge directs an examination of how the bar “can best serve its members ....and better serve and protect the public....” As written, the charge seems to suggest that member service is a higher priority than public service. Given the bar’s statutory mandate as a regulatory entity in service to the public, the committees believe this difference in treatment is unintentional.

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The committees have asked that the BOG consider amending the charge to reflect the bar's interest in best serving both members and the public. The following proposal seeks to do just that:

Examine how the Oregon State Bar can best protect the public and support lawyers' professional development in the face of the rapid evolution of the manner in which legal services are obtained and delivered. Such changes have been spurred by the blurring of traditional jurisdictional borders, the introduction of new models for regulating legal services and educating legal professionals, dynamic public expectations about how to seek and obtain affordable legal services, and technological innovations that expand the ability to offer legal services in dramatically different and financially viable ways.

At its meeting on January 6, 2017, the Policy & Governance Committee reviewed this matter and now recommends that the BOG approve the proposed revised charge for the Futures Task Force.

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# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** February 10, 2017  
**From:** Policy & Governance Committee  
**Re:** Proposed amendment to OSB Bylaw 14.4 regarding committee appointments

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### Action Recommended

Waive the one-meeting notice requirement and approve the proposed amendment to OSB Bylaw 14.4 to reflect the Board Development Committee's practice for committee appointments.

### Options

1. Approve the recommended revisions to OSB Bylaw 14.4 and forward the amendments to the BOG for adoption.
2. Decline to amend the bylaws.

### Background

The Board Development Committee routinely evaluates and makes new member appointment recommendations for various bar committees, councils, and boards. There are a number of factors the committee considers during its selection process including the group's membership balance with regard to age, disability status, gender and gender identity, geographic location, race and ethnicity, sexual orientation, as well as type and years of practice.

During its November 2016 meeting, the committee approved the following policy describing its practice of considering disciplinary matters during the appointment process:

#### OSB Board Development Committee Policy

##### Prior or Pending Disciplinary Matters

In making appointment recommendations to the Board of Governors, the OSB Board Development Committee may consider the applicant's pending or prior disciplinary proceedings. In so doing, the Committee recognizes that, because the vast majority of bar complaints before the Client Assistance Office do not move forward, the mere existence of such a complaint will not preclude appointment. However, the existence of a pending complaint where charges of misconduct have been approved for filing by the State Professional Responsibility Board will disqualify an applicant until the charges have been resolved. In addition, the Committee will not appoint to any committee a member currently subject to disciplinary probation or suspension. In considering

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past disciplinary conduct, the Committee will take account of the nature and severity of such conduct as well as the length of time that has passed since they occurred.

OSB Bylaw 14.4 pertains to committee membership and should be amended to reflect the Board Development Committee's practice in making appointments. Based on the aforementioned policy, the following bylaw change is recommended.

#### **Section 14.4 Membership**

All members of standing committees must be active members of the Bar. No member shall be eligible for appointment to a standing committee if charges of misconduct have been approved for filing or if the member is subject to current disciplinary probation or suspension. All members of standing committees typically serve on a three-year rotating basis. The Board may reappoint members to a committee, if the Board makes a finding of extraordinary circumstances that warrant a reappointment. Each year the Board appoints new members constituting one third of each committee. Terms begin on January 1. The Board will solicit member preference for serving on committees throughout the year. The Board appoints members to fill vacancies that occur throughout the year. These vacancies occur because members resign or are unable to participate fully in the committee. The board may appoint advisory members or public members, as it deems appropriate.

The Policy & Governance Committee reviewed this proposal at its January 6, 2017 meeting and recommends that the Board waive the one meeting notice requirement and adopt the proposed bylaw changes immediately.

**2017 Legislative Session**

BILL	SUMMARY	RELATING TO	READING	COMMITTEE	STATUS	RECOMMENDED POSITIONS	SUGGESTED BY & NOTES
<b>OSB SPONSORED BILLS</b>							
<a href="#">SB 491</a>	This bill includes changed proposed by the OSB Discipline Review Committee. These include: Creation of professional adjudicator; elimination of LRPCs; SPRB member appointed by Supreme Court; statutory immunity for mentors; and probation and diversion monitors.	Relating to regulation of attorneys; declaring an emergency.	S 1st - 1 /9	Senate Committee On Judiciary	1 /17 - Referred to Judiciary; 2 /7 - Public Hearing and Work Session held.		
<a href="#">SB 490</a>	This bill includes several issues, including changes necessitated by the implementation of AMS software, clarification of the role of the past-president, elimination of the obsolete vice-president position, and the renaming of the Executive Director position.	Relating to administration of the Oregon State Bar; declaring an emergency.	S 1st - 1 /9	Senate Committee On Judiciary	1 /17 - Referred to Judiciary; 2 /7 - Public Hearing and Work Session held.		
<a href="#">HB 2610</a>	This bill was proposed by the Business Law Section and incorporates concepts from the Uniform Electronic Transmissions Act and the Electronic Signatures in Global and National Commerce Act	Relating to corporation documents.	H 1st - 1 /9	House Committee On Judiciary	1 /17 - Referred to Judiciary; 2 /7 - Public Hearing and Work Session held.		Business Law Section
<a href="#">HB 2608</a>	Proposed by the Estate Planning Section, this bill corrects the effective date of HB 2331 (2015).	Relating to the Oregon Uniform Trust Code; declaring an emergency.	H 1st - 1 /9	House Committee On Judiciary	1 /17 - Referred to Judiciary; 2 /7 - Public Hearing and Work Session held.		Estate Planning Section
<a href="#">SB 492</a>	Proposed by the Family Law Section, this bill is a redraft of HB 2332 (2015), and is intended to streamline the process for parties to determine if a modification of spousal support is appropriate.	Relating to exchange of information in spousal support proceedings.	S 1st - 1 /9	Senate Committee On Judiciary	1 /17 - Referred to Judiciary		Family Law Section
<a href="#">SB 552</a>	Proposed by the Family Law Section, this bill will provide courts with the ability to claim against a third party that is named as the beneficiary of life insurance that was ordered for the benefit of a child or former spouse.	Relating to concealed handgun licenses.	S 1st - 1 /9	Senate Committee On Judiciary	1 /17 - Referred to Judiciary		Family Law Section
<a href="#">HB 2609</a>	Proposed by the Nonprofit Organizations Law Section, this bill updates and modernizes ORS Chapter 65, the nonprofit code.	Relating to nonprofit corporations.	H 1st - 1 /9	House Committee On Business and Labor	1 /17 - Referred to Business and Labor; 2 /8 - Work Session scheduled.		Nonprofit Section
<b>POTENTIAL POSITIONS</b>							
<a href="#">SB 506</a>	Judges reporting elder abuse	Relating to abuse reporting; declaring an emergency.	S 1st - 1 /9	Senate Committee On Human Services; Senate Committee On Judiciary	1 /17 - Referred to Human Services, then Judiciary. 2 /6 - Public Hearing held.	<b>may need amended language.</b>	SG testified. Don't think it is moving - 2/7

**2017 Legislative Session**

BILL	SUMMARY	RELATING TO	READING	COMMITTEE	STATUS	RECOMMENDED POSITIONS	SUGGESTED BY & NOTES
<a href="#">SB 337</a>	exempts attorneys from registration if debt management services. DOJ has grave concerns	Relating to exempting attorneys from regulation as debt management service providers in certain circumstances; prescribing an effective date.	S 1st - 1 /9	Senate Committee On Judiciary	1 /17 - Referred to Judiciary	DOJ unofficially has reached out with concerns	
<a href="#">HB 2166</a>	Debt Buyer bill - same bill as Fagan's in 2015	Relating to debt collection practices; declaring an emergency.	H 1st - 1 /9	House Committee On Business and Labor	1 /17 - Referred to Business and Labor	Nothing official but members of DC already expressed concerns	
<a href="#">HB 2329</a>	permits the Board of Psychologist Examiners to assess disciplinary costs against the psychologist but no reciprocal right to recover costs and attorney fees for the psychologist/licensee who is successful at the hearing.	Relating to assessment of disciplinary costs by State Board of Psychologist Examiners.	H 1st - 1 /9	House Committee On Health Care	1 /17 - Referred to Health Care. 2 /3 - Public Hearing held.	request to oppose from the Admin Law section. Section has also provided possible amendments. Bill is going to be amended. Work Group is going to be convened	
<a href="#">HB 2356</a>	Establishes requirements under which debt buyer may bring legal action to collect debt	Relating to debt collection practices.	H 1st - 1 /9	House Committee On Business and Labor	1 /17 - Referred to Business and Labor		
<a href="#">HB 2359</a>	Removes requirement for beneficiary in trust deed to send, and Attorney General to receive, copy of notice that beneficiary has denied grantor's eligibility for foreclosure avoidance measure.	Relating to copies of notices of a denial of eligibility for a foreclosure avoidance measure.	H 1st - 1 /9	House Committee On Business and Labor	1 /17 - Referred to Business and Labor; 2 /8 - Public Hearing scheduled.		
<a href="#">SB 254</a>	Requires financial institutions to participate in data match system established by Department of Revenue to identify assets held at financial institutions by delinquent debtors.	Relating to collection of debts owed to state; declaring an emergency.	S 1st - 1 /9	Senate Committee On General Government and Accountability	1 /17 - Referred to General Government and Accountability		
<a href="#">SB 362</a>	Changes legal rate of interest from nine percent per annum to greater of one percent per annum or rate equal to weekly average one-year constant maturity Treasury yield.	Relating to the legal rate of interest.	S 1st - 1 /9	Senate Committee On Judiciary	1 /17 - Referred to Judiciary		
<a href="#">SB 381</a>	Requires certain notices related to real estate loans to be mailed to all addresses on file for recipient, including post office boxes.	Relating to mailing of notices.	S 1st - 1 /9	Senate Committee On Business and Transportation	1 /17 - Referred to Business and Transportation		
<a href="#">SB 59</a>	Authorizes Long Term Care Ombudsman to petition for protective order regarding person in long term care facility or residential facility when ombudsman believes person who is subject of petition is in need of protective services.	Relating to the Long Term Care Ombudsman; declaring an emergency.	S 1st - 1 /9	Senate Committee On Human Services; Senate Committee on Judiciary.	1 /17 - Referred to Business and Transportation; 2 /13 - Public Hearing Scheduled.		Elder Law
<a href="#">SB 95</a>	Requires certain securities professionals to report suspected financial exploitation of elderly, disabled or vulnerable individual to Department of Consumer and Business Services and Department of Human Services.	Relating to reporting of suspected financial abuse.	S 1st - 1 /9	Senate Committee On Human Services; Senate Committee on Judiciary.	1 /17 - Referred to Human Services, then Judiciary; 2 /13 - Public Hearing Scheduled.		Elder Law

**2017 Legislative Session**

BILL	SUMMARY	RELATING TO	READING	COMMITTEE	STATUS	RECOMMENDED POSITIONS	SUGGESTED BY & NOTES
<a href="#">SB 5</a>	Modifies laws related to student athlete agents	Relating to student athlete agents.	S 1st - 1 /9	Senate Committee On Judiciary	1 /17 - Referred to Judiciary. 2 /2- Public Hearing and Work Session held; 2 /14 - Work Session scheduled.		OJD
<a href="#">SB 11</a>	Modifies annual salaries of judges of Supreme Court, Court of Appeals, Oregon Tax Court and circuit courts.	Relating to compensation of judges; prescribing an effective date.	S 1st - 1 /9	Senate Committee On Judiciary; Joint Committee On Ways and Means	1 /17 - Referred to Judiciary, then Ways and Means; 2 /14 - Public Hearing and Work Session Scheduled.		OJD
<a href="#">SB 34</a>	Expands "move over law" to include any motor vehicle that is displaying warning or hazard lights or specific indications of distress.	Relating to the offense of failure to maintain a safe distance from a motor vehicle.	S 1st - 1 /9	Senate Committee On Judiciary	1 /17 - Referred to Judiciary; 2 /14 - Public Hearing and Work Session Scheduled.		OJD
<a href="#">SB 76</a>	Defines "unarmed combat sports." Authorizes Oregon State Athletic Commission to regulate unarmed combat sports.	Relating to unarmed combat sports; declaring an emergency.	S 1st - 1 /9	Senate Committee On Judiciary	1 /17 - Referred to Judiciary; 2 /14 - Public Hearing and Work Session Scheduled.		OJD
<b>OTHER BILLS OF INTEREST</b>							
<a href="#">HB 2026</a>	DOJ budget	Relating to state finance; declaring an emergency.	H 1st - 1 /9	House Committee On Judiciary; Joint Committee on Ways and Means	1 /17 - Referred to Judiciary with subsequent referral to Ways and Means.		
<a href="#">HB 2101</a>	Public Records	Relating to public records.	H 1st - 1 /9	House Committee On Rules	1 /17 - Referred to Rules.		
<a href="#">HB 2178</a>	Requires witness before statutory, standing, special or interim legislative committee to sign declaration that witness's testimony is true to best of witness's knowledge and belief, and that witness understands testimony is subject to penalty for perjury.	Relating to legislative testimony.	H 1st - 1 /9	House Committee On Rules	1 /17 - Referred to Rules.		
<a href="#">HB 2263</a>	Increases fee from \$500 to \$625 for third mediation session conducted by mediator assigned by Employment Relations Board to resolve labor dispute or labor controversy.	Relating to fees charged by the Employment Relations Board.	H 1st - 1 /9	House Committee On Business and Labor; Joint Committee on Ways and Means	1 /17 - Referred to Business and Labor with subsequent referral to Ways and Means. 2 /1 - Public Hearing held. 2 /8 - Work Session held.		
<a href="#">HB 2264</a>	Increases application fee for individual who applies to be included on State Conciliation Service list of qualified arbitrators for labor controversy.	Relating to fees paid to State Conciliation Service by qualified arbitrators.	H 1st - 1 /9	House Committee On Business and Labor; Joint Committee on Ways and Means	1 /17 - Referred to Business and Labor with subsequent referral to Ways and Means. 2 /1 - Public Hearing held. 2 /8 - Work Session held.		
<a href="#">HB 2299</a>	Repeals requirement that Oregon Government Ethics Commission pay attorney fees for person prevailing in certain contested case hearings.	Relating to Oregon Government Ethics Commission payment of attorney fees.	H 1st - 1 /9	House Committee On Rules	1 /17 - Referred to Rules; 2 /14 - Public Hearing scheduled.		

**2017 Legislative Session**

BILL	SUMMARY	RELATING TO	READING	COMMITTEE	STATUS	RECOMMENDED POSITIONS	SUGGESTED BY & NOTES
<a href="#">SB 106</a>	Creates Public Records Advocate and Public Records Advisory Council.	Relating to public accountability in administering the public records law; prescribing an effective date.	S 1st - 1 /9	Senate Committee On General Government and Accountability; Joint Committee On Ways and Means	1 /17 - Referred to General Government and Accountability, then Ways and Means. 2 /6 - Public Hearing held.		
<a href="#">SB 11</a>	Modifies annual salaries of judges of Supreme Court, Court of Appeals, Oregon Tax Court and circuit courts.	Relating to compensation of judges; prescribing an effective date.	S 1st - 1 /9	Senate Committee On Judiciary; Joint Committee On Ways and Means	1 /17 - Referred to Judiciary, then Ways and Means; 2 /14 - Public Hearing and Work Session Scheduled.		
<a href="#">SB 12</a>	Authorizes Oregon Business Development Department to require fingerprints of certain persons for purpose of requesting state or nationwide criminal records check.	Relating to criminal records checks by the Oregon Business Development Department.	S 1st - 1 /9	Senate Committee On General Government and Accountability	1 /17 - Referred to General Government and Accountability. 2 /6 - Public Hearing held.		
<a href="#">SB 140</a>	Appropriates moneys from General Fund to Oregon Youth Authority for gang intervention services in Multnomah County.	Relating to state financial administration; declaring an emergency.	S 1st - 1 /9	Senate Committee On Human Services; Joint Committee On Ways and Means	1 /17 - Referred to Human Services, then Ways and Means.		
<a href="#">SB 141</a>	Appropriates moneys from General Fund to Department of Education for Youth Development Division for gang prevention services in city of Gresham.	Relating to state financial administration; declaring an emergency.	S 1st - 1 /9	Senate Committee On Human Services; Joint Committee On Ways and Means	1 /17 - Referred to Human Services, then Ways and Means.		
<a href="#">SB 16</a>	Prohibits Department of Corrections facilitated dialogue or responsibility letter bank program facilitator, advisory committee member or staff person from being compelled to testify or produce evidence concerning facilitated dialogue and responsibility letter bank program communications, except as provided by department rule.	Relating to Department of Corrections restorative justice program communications; declaring an emergency.	S 1st - 1 /9	Senate Committee On Judiciary	1 /17 - Referred to Judiciary.		
<a href="#">SB 191</a>	Directs State Chief Information Officer to provide sections on Oregon transparency website relating to energy tax incentives, cleanups of brownfields, tourism and affordable housing.	Relating to Oregon transparency website; declaring an emergency.	S 1st - 1 /9	Senate Committee On General Government and Accountability	1 /17 - Referred to General Government and Accountability.		
<a href="#">SB 194</a>	Permits elector or chief petitioner to file action in circuit court to challenge determination by Secretary of State or elections official to reject elector's signature on initiative or referendum petition during signature verification process.	Relating to ballot measures.		Senate Committee On Judiciary; Senate Committee On Rules	1 /17 - Referred to Judiciary, then Rules.		
<a href="#">SB 21</a>	Authorizes Oregon Board of Accountancy to disclose confidential information to certain public entities.	Relating to accounting; declaring an emergency.	S 1st - 1 /9 S 2nd - 2/7	Senate Committee On Business and Transportation	1 /17 - Referred to Business and Transportation. 2 /1 - Public Hearing and Possible Work Session held; 2 /7 - Recommendation: Do pass		
<a href="#">SB 210</a>	Authorizes counties, cities and special districts to publish public notices required by law on websites of Association of Oregon Counties, League of Oregon Cities and Special Districts Association of Oregon, respectively.	Relating to publication of public notices.	S 1st - 1 /9	Senate Committee On General Government and Accountability; Senate Committee on Judiciary	1 /17 - Referred to General Government and Accountability, then Judiciary.		

## 2017 Legislative Session

BILL	SUMMARY	RELATING TO	READING	COMMITTEE	STATUS	RECOMMENDED POSITIONS	SUGGESTED BY & NOTES
<a href="#">SB 224</a>	Requires Public Employees' Benefit Board and Oregon Educators Benefit Board to provide benefit plan option that includes Oregon Health and Science University as in-network provider.	Relating to Oregon Health and Science University as an in-network provider for state benefit plans.	S 1st - 1 /9	Senate Committee On Health Care	1 /17 - Referred to Health Care; 2 /14 - Public Hearing Scheduled.		
<a href="#">SB 244</a>	Establishes notification requirements of Department of Human Services regarding reported or suspected deficiencies, violations or failures of child-caring agency to comply with full compliance requirements and regarding reports of suspected child abuse of child in care.	Relating to notifications required regarding child-caring agencies; declaring an emergency.	S 1st - 1 /9	Senate Committee On Human Services	1 /17 - Referred to Human Services. 2 /1 - Public Hearing held. 2 /6 - Work Session held.		
<a href="#">SB 253</a>	Requires institutions of higher education to provide fact sheet to each applicable student detailing amount of education loans received, estimate of total amount of education loans student will owe at graduation, estimate of amount student will have to pay each month to service loans and percentage of borrowing limit student has reached for each type of federal loan.	Relating to student loan disclosure.	S 1st - 1 /9	Senate Committee On Education	1 /17 - Referred to Education.		
<a href="#">SB 309</a>	Eliminates option of members of individual account program of Public Employees Retirement System to receive distributions as installment payments upon retirement.	Relating to distributions under the individual account program of the Public Employees Retirement System.	S 1st - 1 /9	Senate Committee On Workforce	1 /17 - Referred to Workforce.		
<a href="#">SB 317</a>	Requires public bodies that conduct public meetings to post online instructions explaining how public may access written records and other informational materials presented at public meetings.	Relating to public meetings.	S 1st - 1 /9	Senate Committee On General Government and Accountability	1 /17 - Referred to General Government and Accountability.		
<a href="#">SB 321</a>	Provides that member of Legislative Assembly has standing to intervene and participate in proceeding in which constitutionality of Oregon statute or provision of Oregon Constitution is challenged.	Relating to proceedings challenging the constitutionality of provisions; declaring an emergency.	S 1st - 1 /9	Senate Committee On Judiciary; Senate Committee On Rules.	1 /17 - Referred to Judiciary, then Rules.		
<a href="#">SB 337</a>	Exempts attorney and law firm that employs attorney or with which attorney is affiliated from regulation as debt management service provider if attorney or law firm provides debt management services in course of practicing law.	Relating to exempting attorneys from regulation as debt management service providers in certain circumstances; prescribing an effective date.	S 1st - 1 /9	Senate Committee On Judiciary	1 /17 - Referred to Judiciary.		
<a href="#">SB 358</a>	Modifies requirements for appearance in small claims department of circuit court or justice court.	Relating to small claims.	S 1st - 1 /9	Senate Committee On Judiciary	1 /17 - Referred to Judiciary.		
<a href="#">SB 362</a>	Changes legal rate of interest from nine percent per annum to greater of one percent per annum or rate equal to weekly average one-year constant maturity Treasury yield.	Relating to the legal rate of interest.	S 1st - 1 /9	Senate Committee On Judiciary	1 /17 - Referred to Judiciary.		
<a href="#">SB 386</a>	Prohibits public employer from participating in collection of labor organization dues.	Relating to restricting public employer from using resources to participate in collection of labor organization dues.	S 1st - 1 /9	Senate Committee On Workforce	1 /17 - Referred to Workforce.		

## 2017 Legislative Session

BILL	SUMMARY	RELATING TO	READING	COMMITTEE	STATUS	RECOMMENDED POSITIONS	SUGGESTED BY & NOTES
<a href="#">SB 388</a>	Establishes Whistleblower Commission.	Relating to whistleblowing.	S 1st - 1 /9	Senate Committee On Judiciary; Joint Committee On Ways and Means	1 /17 - Referred to Judiciary, then Ways and Means.		
<a href="#">SB 394</a>	Allows President of Senate, Speaker of House of Representatives, Minority Leader of Senate or Minority Leader of House of Representatives to petition Supreme Court for injunction requiring agency of executive department to execute law.	Relating to petitions by members of the Legislative Assembly for injunctions to require executive department agencies to execute the law.	S 1st - 1 /9	Senate Committee On General Government and Accountability; Senate Committee on Judiciary.	1 /17 - Referred to General Government and Accountability, then Judiciary.		
<a href="#">SB 397</a>	Directs Department of Human Services to convene work group to develop common client confidentiality release form to be used by public bodies and community organizations to enable and facilitate appropriate sharing of confidential information.	Relating to the sharing of information between social services providers; declaring an emergency.	S 1st - 1 /9	Senate Committee On Human Services; Joint Committee On Ways and Means	1 /17 - Referred to Human Services, then Ways and Means. 2 /8 - Public Hearing scheduled.		
<a href="#">SB 413</a>	Establishes Legislative Committee on Accountability as joint committee of Legislative Assembly.	Relating to joint committees of the Legislative Assembly.	S 1st - 1 /9	Senate Committee On General Government and Accountability; Senate Committee on Judiciary.	1 /17 - Referred to General Government and Accountability, then Judiciary.		
<a href="#">SB 415</a>	Requires executive department public body that, as of January 1, 2017, maintained two or more full-time equivalent positions predominantly dedicated to public relations work on behalf of public body to repurpose one full-time equivalent position so as to prioritize responding to public records requests above all other duties and work responsibilities.	Relating to executive department public body responses to public records; declaring an emergency.	S 1st - 1 /9	Senate Committee On General Government and Accountability	1 /17 - Referred to General Government and Accountability.		
<a href="#">SB 428</a>	Exempts collection, storage or use of diffuse surface water from falling rain, melting snow or other precipitation from requirement to obtain water right permit or certificate.	Relating to diffuse surface water.	S 1st - 1 /9	Senate Committee On Environment and Natural Resources	1 /17 - Referred to Environment and Natural Resources.		
<a href="#">SB 43</a>	Subject to certain exemptions, expands definition of lobbying to include person who holds position with public body or private entity and whose work responsibilities include lobbying.	Relating to lobbying.	S 1st - 1 /9	Senate Committee On Rules	1 /17 - Referred to Rules.		
<a href="#">SB 430</a>	Requires insurer to pay claims up to coverage limits for insured's uninsured motorist coverage, less amounts recovered from other motor vehicle liability insurance policies.	Relating to amounts insurers must pay under limits for uninsured motorist coverage.	S 1st - 1 /9	Senate Committee On Business and Transportation	1 /17 - Referred to Business and Transportation; 2 / 13 - Public Hearing and Possible Work Session scheduled.		
<a href="#">SB 431</a>	Requires insurer to pay claims up to coverage limits for insured's uninsured motorist coverage, less amounts recovered from other motor vehicle liability insurance policies.	Relating to amounts that insurers must pay under the limits for uninsured motorist coverage.	S 1st - 1 /9	Senate Committee On Business and Transportation	1 /17 - Referred to Business and Transportation; 2 / 13 - Public Hearing and Possible Work Session scheduled.		
<a href="#">SB 44</a>	Permits executive director of Oregon Government Ethics Commission to designate employee of commission to fulfill any duty or responsibility assigned to executive director by law or by commission.	Relating to the executive director of the Oregon Government Ethics Commission.	S 1st - 1 /9	Senate Committee On Rules	1 /17 - Referred to Rules.		

**2017 Legislative Session**

BILL	SUMMARY	RELATING TO	READING	COMMITTEE	STATUS	RECOMMENDED POSITIONS	SUGGESTED BY & NOTES
<a href="#">SB 451</a>	Sunsets certain exemptions from disclosure for public records.	Relating to public records.	S 1st - 1 /9	Senate Committee On General Government and Accountability	1 /17 - Referred to General Government and Accountability.		
<a href="#">SB 479</a>	Prohibits courts from applying Sharia law.	Relating to Sharia law.	S 1st - 1 /9	Senate Committee On Judiciary	1 /17 - Referred to Judiciary.		
<a href="#">SB 481</a>	Establishes state policy regarding public access to public records.	Relating to public records.	S 1st - 1 /9	Senate Committee On General Government and Accountability	1 /17 - Referred to General Government and Accountability.		
<a href="#">SB 482</a>	Permits city to issue citation for speeding using red light camera in conjunction with other technology that is capable of measuring speed.	Relating to traffic violations; prescribing an effective date.	S 1st - 1 /9	Senate Committee On Judiciary	1 /17 - Referred to Judiciary.		
<a href="#">SB 487</a>	Restricts limitation on award of noneconomic damages to claims in actions for wrongful death.	Relating to damages in actions for wrongful death; declaring an emergency.	S 1st - 1 /9	Senate Committee On Judiciary	1 /17 - Referred to Judiciary.		
<a href="#">SB 489</a>	Eliminates obsolete terms and procedures in statutes relating to court records.	Relating to court records; declaring an emergency.	S 1st - 1 /9 S 2nd- 2 /7	Senate Committee On Judiciary	1 /17 - Referred to Judiciary. 2 /1 - Public Hearing and Work Session held; 2 /7 - Recommendation: Do pass		
<a href="#">SB 490</a>	Changes title of executive director of Oregon State Bar to chief executive officer of Oregon State Bar.	Relating to administration of the Oregon State Bar; declaring an emergency.	S 1st - 1 /9	Senate Committee On Judiciary	1 /17 - Referred to Judiciary; 2 /7 - Public Hearing and Work Session held.		
<a href="#">SB 491</a>	Directs Supreme Court to appoint state professional responsibility board.	Relating to regulation of attorneys; declaring an emergency.	S 1st - 1 /9	Senate Committee On Judiciary	1 /17 - Referred to Judiciary; 2 /7 - Public Hearing and Work Session held.		
<a href="#">SB 492</a>	Permits parties to judgment that contains spousal support award to request required exchange of certain documents without filing request for modification of judgment with court.	Relating to exchange of information in spousal support proceedings.	S 1st - 1 /9	Senate Committee On Judiciary	1 /17 - Referred to Judiciary.		
<a href="#">SB 494</a>	Establishes Advance Directive Rules Adoption Committee for purpose of adopting form of advance directive to be used in this state.	Relating to health care decisions; prescribing an effective date.	S 1st - 1 /9	Senate Committee On Judiciary; Joint Committee On Ways and Means	1 /17 - Referred to Judiciary, then Ways and Means.		
<a href="#">SB 496</a>	Directs presiding judges of judicial districts within state to ensure proceedings before grand jury are recorded.	Relating to recording of grand jury proceedings; declaring an emergency.	S 1st - 1 /9	Senate Committee On Judiciary; Joint Committee On Ways and Means	1 /17 - Referred to Judiciary, then Ways and Means.		
<a href="#">SB 5</a>	Modifies laws related to student athlete agents.	Relating to student athlete agents.	S 1st - 1 /9	Senate Committee On Judiciary	1 /17 - Referred to Judiciary. 2 /2- Public Hearing and Work Session held; 2 /14 - Work Session scheduled.		
<a href="#">SB 504</a>	Eliminates limitation of liability for owner of land used for trail or recreational purposes when owner is public body.	Relating to immunity of public bodies.	S 1st - 1 /9	Senate Committee On Judiciary	1 /17 - Referred to Judiciary.		

**2017 Legislative Session**

BILL	SUMMARY	RELATING TO	READING	COMMITTEE	STATUS	RECOMMENDED POSITIONS	SUGGESTED BY & NOTES
<a href="#">SB 505</a>	Directs district attorney to ensure proceedings before grand jury are recorded.	Relating to recording of grand jury proceedings; declaring an emergency.	S 1st - 1 /9	Senate Committee On Judiciary; Joint Committee On Ways and Means	1 /17 - Referred to Judiciary, then Ways and Means.		
<a href="#">SB 506</a>	Exempts public or private official from reporting child or elder abuse when official acquires information that official reasonably believes has already been reported and is already known by law enforcement agency or Department of Human Services.	Relating to abuse reporting; declaring an emergency.	S 1st - 1 /9	Senate Committee on Human Services; Senate Committee on Judiciary	1 /17 - Referred to Human Services, then Judiciary. 2 /6 - Public Hearing held.		
<a href="#">SB 519</a>	Allows polygraph test as condition of employment for preemployment screening of law enforcement officers, subject to applicable collective bargaining agreement.	Relating to polygraph tests.	S 1st - 1 /9	Senate Committee On Judiciary	1 /17 - Referred to Judiciary; 2 /16 - Public Hearing and Work Session scheduled.		
<a href="#">SB 525</a>	Extends sunset on provision authorizing Department of Human Services to appear as party in juvenile court proceeding without appearance of Attorney General.	Relating to legal representation in the child welfare system; declaring an emergency.	S 1st - 1 /9	Senate Committee On Judiciary	1 /17 - Referred to Judiciary.		
<a href="#">SB 558</a>	Requires Oregon Health Authority to convene work group to advise and assist in implementing targeted outreach and marketing for Health Care for All Oregon Children program.	Relating to improving the health of Oregon children; declaring an emergency.	S 1st - 1 /9	Senate Committee On Health Care; Joint Committee On Ways and Means.	1 /17 - Referred to Health Care, then Ways and Means.		
<a href="#">SB 57</a>	Prohibits court from appointing deputy public guardian and conservator as fiduciary and requires court to appoint Oregon Public Guardian and Conservator as fiduciary.	Relating to the Oregon Public Guardian and Conservator.	S 1st - 1 /9	Senate Committee On Judiciary; Joint Committee On Ways and Means	1 /17 - Referred to Judiciary, then Ways and Means.		
<a href="#">SB 58</a>	Modifies duties and authority of Long Term Care Ombudsman.	Relating to the Long Term Care Ombudsman; declaring an emergency.	S 1st - 1 /9	Senate Committee On Human Services	1 /17 - Referred to Human Services; 2 /13 - Public Hearing Scheduled.		
<a href="#">SB 95</a>	Requires certain securities professionals to report suspected financial exploitation of elderly, disabled or vulnerable individual to Department of Consumer and Business Services and Department of Human Services.	Relating to reporting of suspected financial abuse.	S 1st - 1 /9	Senate Committee On Human Services; Senate Committee on Judiciary.	1 /17 - Referred to Human Services, then Judiciary; 2 /13 - Public Hearing Scheduled.		
<a href="#">SB 97</a>	Provides that Director of Department of Consumer and Business Services must act as, or acknowledge another regulatory official as, group-wide supervisor for internationally active insurance group.	Relating to modernizing insurance corporate governance; declaring an emergency.	S 1st - 1 /9	Senate Committee On Business and Transportation	1 /17 - Referred to Business and Transportation; 2 /15 - Public Hearing and Possible Work Session scheduled.		

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** February 10, 2017  
**Memo Date:** December 22, 2016  
**From:** Carol J. Bernick, PLF CEO  
**Re:** 2017 PLF Investment Portfolio Reallocation – PLF Policy 5.200

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### Action Recommended

Approve proposed revisions to PLF Policy 5.200.

### Background

The PLF Board of Directors requests approval of its current asset allocation to include a Senior Secured Bank Loan Strategy. The PLF Investments Committee received presentations from VOYA and CREDIT SUISSE. The Investments Committee has determined that VOYA most closely meets the needs of the PLF. At its December 9, 2016 meeting, the Board of Directors recommended the following:

1. Approve the re-allocation of investment portfolio assets to effect -5% from Real Return Strategies (Diversified Inflation Strategies) and +5% to Senior Secured Bank Loans.

Attachment: PLF Policy 5.200

ASSET CLASS	MINIMUM PERCENT	TARGET PERCENT	MAXIMUM PERCENT
U.S. Equities	17%	24%	31%
International Equities	12%	21%	30%
Fixed Income	20%	<del>26%</del> 31%	32%
Real Estate	5.0%	10.0%	15.0%
Absolute Return	9.0%	14.0%	19.0%
Real Return Strategy	5%	<del>5%</del> 0%	5%

(BOD 12/12/03; BOG 01/31/04; BOD 5/14/04; BOG 6/11/04; BOD 6/23/06; BOG 7/7/06; BOD 10/8/10; BOG 11/12/10; BOD 10/14/16; BOG 11/19/16)

(J) **Rebalancing:** The Chief Executive Officer and Chief Financial Officer, on an ongoing basis and in accordance with market fluctuations, shall rebalance the investment portfolio so it remains within the range of minimum and maximum allocations.

reported in detail to the Board on at least an annual basis.

(BOD 7/16/93; BOG 8/13/93)

### 5.350 BUDGET

A budget for the Primary and Excess Programs will be as approved by the Board of Directors and the Board of Governors. The budget will reflect the PLF's mission and goals as stated at Policy 1.250. The Excess Program will be allocated a portion of all common costs based upon the benefits received from PLF departments and programs. The budget will be prepared and submitted for approval of the Board of Governors in the same manner as budgets of other functions of the bar. The Primary Program budget will be presented to the Board of Governors in conjunction with the recommended Primary Program assessment for the coming year.

(BOD 5/17/91; BOG 10/1/91; BOD 8/14/92; BOG 9/22/92; BOD 12/3/93; 12/17/93; 2/18/94; BOG 3/12/94; BOD 8/11/95; BOG 11/12/95; BOD 8/15/97; BOG 9/25/97; BOD 2/12/99; BOG 4/3/99; BOD 1/28/00; BOG 6/3/00; BOD 8/9/01; BOG 11/17/01; BOD 4/19/02; BOG 8/3/02)

### 5.250 AUDITING AND ACCOUNTING ASSISTANCE

The Board of Directors hires the independent financial auditor subject to the requirements of the Oregon Secretary of State. Any audit report will be made directly to the Board of Directors. The Board of Directors may retain additional outside accounting advice whenever it deems necessary.

(BOD 5/14/04; BOG 6/11/04)

### 5.300 CLAIMS RESERVES

The estimated liability for claims is the major item in the Liabilities and Equity portion of the Professional Liability Fund's Balance Sheet. The accuracy of this item is crucial when presenting the financial condition of the PLF. The Chief Executive Officer will periodically review the case-by-case indemnity and expense reserves required under section 4.350 and will adjust these figures to present at all times as accurate a picture as possible of the total claims liabilities incurred by the PLF. The Chief Executive Officer will use consulting actuaries when appropriate. The method of calculating estimated liabilities will be

(BOD 10/2/91; BOG 12/13/91; BOD 10/25/02; BOG 11/16/02; BOD 5/14/04; BOG 6/11/04)

### 5.400 REPORTS TO BOARD OF DIRECTORS

The Board of Directors will receive on a monthly basis a copy of the PLF's financial statement, a copy of any investment reports prepared by the PLF's investment advisors, and such other financial reports as the Chief Executive Officer may present. In addition, the Board of Directors will receive copies of all reports from consulting actuaries and any consultants who evaluate the performance of the PLF's investment advisors. All members of the Board of Directors and Board of Governors will receive a copy of the final annual audit of the PLF.

(BOD 7/16/93; BOG 8/13/93)

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** February 10, 2017  
**From:** MCLE Committee  
**Re:** Amend MCLE Rules for New Uniform Bar Examination Admittees and Adopt Housekeeping Changes

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### **Action Recommended**

Review and recommend approval by the Supreme Court of an MCLE Rule requiring admittees who are admitted to the Oregon State Bar after taking the Uniform Bar Exam to complete Oregon-specific MCLE credits. Also recommend approval of housekeeping changes necessary to ensure consistent numbering of MCLE Rules and Regulations.

### **Background**

The Oregon Supreme Court has determined that Oregon will administer the Uniform Bar Exam (UBE) starting with the July 2017 exam. New Rules for Admission (RFA) provide that Oregon will begin accepting transferred UBE scores from other jurisdictions on August 21, 2017, for scores earned in other UBE jurisdictions in the July 2017 or subsequent exam administrations.

Because applicants admitted via the UBE may not have received any education on Oregon law prior to admission, the Court also promulgated RFA 8.21, which requires new admittees to complete credits emphasizing Oregon law during their first MCLE reporting period.

#### **RFA 8.21 Continuing Legal Education on Oregon Law**

As part of completing the 15 hours of accredited CLE activity required by MCLE Rule 3.3(b) to be completed in the first reporting period after admission as an active member, every applicant admitted by examination after June 1, 2017, shall complete and certify that, of the 15 required hours, 1 hour of the 2 credit hours in ethics is devoted to Oregon ethics and professionalism, and 4 hours of the 10 credit hours in practical skills is devoted to Oregon practice and procedure, as regulated and approved by the Board.

The Rules for Admission, however, apply only to applicants for admission to the Oregon State Bar. Members of the OSB are not required to comply with the RFAs. To require compliance by members, MCLE Requirements imposed by the Court need to be incorporated into the MCLE Rules and Regulations.

To accomplish this, the MCLE Committee recommends the adoption of the below proposed amendment to MCLE Rule 3.3; this would align the MCLE Rules with the Rules for Admission.

To provide further guidance to new UBE admittees, the MCLE Committee will consider and recommend the adoption of MCLE Regulations, interpreting the new Oregon-specific MCLE requirements in the near future. To this end, the Board of Bar Examiners has convened a Task Force, including a liaison from the MCLE Committee, which will consider what programs should qualify for credit as “Oregon ethics and professionalism” and “Oregon practice and procedure.”

In addition to the UBE changes, this memorandum also recommends a number of housekeeping changes necessary to ensure consistent numbering.

### **Proposed Amendments**

In order to align the requirement in RFA 8.21 with the MCLE Rules, the MCLE Committee recommends amending MCLE Rule 3.3(b) as follows:

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

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

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

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In addition, the MCLE Committee asks the BOG to review and recommend approval of the following amendments so that the rules and regulations are consistently numbered:

#### **3.2 Active Members.**

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

(b) Ethics. At least five of the required hours shall be in subjects relating to ethics in programs accredited pursuant to Rule ~~5.5(a)~~ 5.13(a).

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

(d) Access to Justice. In alternate reporting periods, at least three of the required hours must be in programs accredited for access to justice pursuant to Rule ~~5.5(b)~~ 5.13(c).

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

(a) An active member whose reporting period is established in Rule ~~3.7(c)(2) or (d)(2)~~ 3.6(c)(2) or 3.6(c)(3) shall complete 15 credit hours of accredited CLE activity in the first reporting period after reinstatement ~~or resumption of the practice of law in accordance with Rule 3.4~~. Two of the 15 credit hours shall be devoted to ethics.

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

### **3.6 Reporting Period.**

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

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

(c) Reinstatements.

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

(2) Except as provided in Rule ~~3.7~~ 3.6(c)(1), the first reporting period for a member who is reinstated as an active member following a transfer to inactive, retired or Active Pro Bono status or a suspension, disbarment or resignation shall start on the date of reinstatement

and shall end on December 31 of the next calendar year. All subsequent reporting periods shall be three years.

(3) Notwithstanding Rules ~~3.7~~ 3.6 (c)(1) and (2), reinstated members who did not submit a completed compliance report for the reporting period immediately prior to their transfer to inactive, retired or Active Pro Bono status, suspension or resignation will be assigned a new reporting period upon reinstatement. This reporting period shall begin on the date of reinstatement and shall end on December 31 of the next calendar year. All subsequent reporting periods shall be three years.

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

**3.100 Out-of-State Compliance.** An active member seeking credit pursuant to MCLE Rule ~~3.5(b)~~ 3.4(b) shall attach to the member's compliance report filed in Oregon evidence that the member has met the requirements of Rules ~~3.2(a) and (b)~~ with courses accredited in any jurisdiction. This evidence may include certificates of compliance, certificates of attendance, or other information indicating the identity of the crediting jurisdiction, the number of 60-minute hours of credit granted, and the subject matter of programs attended.

**3.200 Reciprocity.** An active member who is also an active member in a jurisdiction with which Oregon has established MCLE reciprocity (currently Idaho, Utah or Washington) may comply with Rule ~~3.5(a)~~ 3.4(a) by attaching to the compliance report required by MCLE Rule 7.1 a copy of the member's certificate of compliance with the MCLE requirements from that jurisdiction, together with evidence that the member has completed the child abuse or elder abuse reporting training required in ORS 9.114. No other information about program attendance is required. MCLE Regulation 3.300(d) specified the reporting periods in which the child abuse or elder abuse reporting credit is required.

**3.500 Reporting Period Upon Reinstatement.** A member who returns to active membership status as contemplated under MCLE Rule ~~3.7(c)(2)~~ 3.6(c)(2) shall not be required to fulfill the requirement of compliance during the member's inactive or retired status, suspension, disbarment or resignation, but no credits obtained during the member's inactive or retired status, suspension, disbarment or resignation shall be carried over into the next reporting period.

**3.600 Introductory Course in Access to Justice.** In order to qualify as an introductory course in access to justice required by MCLE Rule 3.3(b), the three-hour program must meet the accreditation standards set forth in MCLE Rule ~~5.13(c)~~ 5.5(b) and include discussion of at least three of the following areas: race, gender, economic status, creed, color, religion, national origin, disability, age or sexual orientation.

### **Rule Five Accreditation Standards for Category II Activities**

#### **5.7 Legal Research and Writing.**

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

(a) It deals primarily with one or more of the types of issues for which group CLE activities can be accredited as described in Rule ~~5.1(b)~~ 5.12(b); and

**Regulations to MCLE Rule 5  
Accreditation Standards**

**5.050 Written Materials.**

(a) For the purposes of accreditation as a group CLE activity under MCLE Rule 5.1(e) ~~(c)~~, written material may be provided in an electronic or computer-based format, provided the material is available for the member to retain for future reference.

DRAFT

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** February 10, 2017  
**From:** Helen Hierschbiel, Executive Director  
**Re:** CSF Claim No. 2015-23 SMITH (Ballantyne) Request for BOG Review

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### Action Requested

Consider claimant's request for BOG review of the CSF Committee's decision to deny his claim.

### Discussion

#### *Summary of Facts*

Robert Ballantyne hired Michael Morey in 2001 to represent him in a lawsuit against the Archdiocese of Portland. Mr. Ballantyne had a duly executed contingent fee agreement with Mr. Morey. After Mr. Morey worked on the case for two and a half years, the Archdiocese made a settlement offer of \$650,000, which Mr. Ballantyne refused. Mr. Ballantyne became dissatisfied with Mr. Morey's performance and sought advice from his long-time family friend, retired attorney Jeffrey Boly. Mr. Boly helped connect Mr. Ballantyne with attorney Frederick Smith.

On June 26, 2003, Mr. Ballantyne executed a fee agreement that provided that Mr. Morey's contingent fee would be paid based on the most recent offer from the Archdiocese (\$650,000) and that Mr. Smith's contingent fee would be based on any further amount Mr. Smith obtained over and above the initial offer. Mr. Smith refused to sign the proposed fee agreement. Nevertheless—and without a fully executed fee agreement—Mr. Smith undertook to represent Mr. Ballantyne at the July 7, 2003 mediation. At the time, Mr. Smith was aware of Mr. Ballantyne's fee agreement with Mr. Morey. The mediation continued through July 10, 2003, at which time Mr. Ballantyne agreed to a settlement offer of \$900,000.

When he learned of the settlement agreement, Mr. Morey attempted to contact Mr. Smith to discuss division of the contingent fee. Mr. Smith, however, did not participate in any discussions with Mr. Morey. Therefore, on July 22, 2003, Mr. Morey filed a notice of attorney's lien and action to recover his costs and a reasonable fee.

On July 23, 2003, Mr. Smith drafted and presented Mr. Ballantyne with a contingent fee agreement different from the agreement that Mr. Ballantyne signed on June 26, 2003. This new fee agreement provided that Mr. Smith would receive a one-third contingent fee of all sums recovered. Mr. Ballantyne signed the agreement and, at Mr. Smith's instruction, interlined above his signature, "as of July 1, 2003."

Mr. Smith then represented Mr. Ballantyne in a malpractice case against Mr. Morey. Mr. Smith lost the malpractice case both at the circuit court level and on appeal. In the end, because of the attorney fee agreements he had signed with Mr. Morey and Mr. Smith, Mr. Ballantyne received a small fraction of the total settlement. Mr. Ballantyne was ordered to pay Mr. Morey \$527,000, and Mr. Smith kept the \$300,000 that he thought he was due.<sup>1</sup>

Mr. Ballantyne then sued Mr. Smith, his daughter Jaculin Smith, and Mr. Boly for malpractice, alleging they gave him bad legal advice by encouraging him to fight Mr. Morey every step of the way. In her response to the CSF Committee investigator, Ms. Smith indicates that the PLF paid Mr. Ballantyne nearly \$210,000 in order to settle those claims; however, we do not have access to that settlement agreement.

Mr. Ballantyne also filed an ethics complaint against all the attorneys involved. Formal disciplinary proceedings were initiated against only Mr. Smith and Mr. Boly. The complaint against Mr. Smith included allegations of dishonesty, fraud, deceit or misrepresentation that reflects adversely on a lawyer's fitness to practice. Mr. Smith passed away on May 3, 2013, prior to conclusion of the disciplinary proceedings. Therefore, the bar dismissed the cases against Mr. Smith. Mr. Boly was ultimately disciplined for engaging in the unauthorized practice of law by providing legal advice and assistance to Mr. Ballantyne in this matter. *See In re Boly*, 27 DB Rptr 136 (2013).

Mr. Ballantyne alleged a loss caused by Mr. Smith of \$1.5 million and submitted a claim for reimbursement of that amount from the CSF.

#### *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, a loss must not be covered by some other fund, bond, surety agreement or insurance contract. CSF Rule 2.3. Generally, claims must be submitted within two years after the claimant knew or should have known of the loss, but in any event, claims are not allowed if submitted more than six years after the date of the loss. CSF Rule 2.8. In the cases of extreme hardship or special and unusual circumstances, the Committee may approve or recommend for payment a claim that would otherwise be denied due to noncompliance with one or more of the rules. See CSF Rule 2.11.

The CSF Committee struggled with this claim. In some respects, Mr. Ballantyne presents a very sympathetic case. Even so, the Committee spent considerable time discussing whether Mr. Smith's conduct in securing and taking the \$300,000 fee was dishonest. Mr. Ballantyne did sign the subsequent contingent fee agreement and because of Mr. Smith's death, no court or panel ever made any findings of dishonesty by Mr. Smith. In addition, the Committee found it

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<sup>1</sup> The Oregonian covered the case in 2011 and again in 2013 when the case concluded, noting that "[t]he suit also has upset the legal community, raising questions about the professionalism of at least one of the attorneys involved—and fueled concerns about potential damage to the public image of attorneys."

relevant that Mr. Ballantyne had secured payment of over \$200,000 from the PLF for the malpractice claims against Mr. Smith. Although the CSF Committee did not have access to the PLF settlement documents, several members noted that the PLF standard release is very broad and likely would have covered all claims. Thus, Mr. Ballantyne would have no rights against Mr. Smith to assign to the bar as required under CSF Rule 5.1.1. Finally, as noted by the investigator, the claim was submitted more than two years after Mr. Ballantyne should have known of the loss and more than six years after the date of the loss.

On balance, given the numerous defects with Mr. Ballantyne's claim, the CSF Committee decided not to exercise its discretion to waive noncompliance with the rules, and to deny Mr. Ballantyne's claim.

DRAFT

**OREGON STATE BAR INDIAN LAW SECTION**  
**Indian Law Legal Issues in Oregon<sup>1</sup>**

The goal of the Indian Law Section (ILS) is to encourage a greater understanding of Indian law among Oregon legal professionals and improve the practice of Indian law throughout Oregon. The ILS represents a wide spectrum of attorneys who handle cases, transactions and other matters involving Indian law, including attorneys in private practice, attorneys who work as in-house attorneys for Indian tribes, attorneys for non-profit organizations advocating for tribal rights, federal and state attorneys, and attorneys who serve as tribal court judges for Indian tribes in Oregon. The ILS was organized in 1995 by practitioners working in Indian Country in Oregon and is open to all members of the Bar as well as non-attorneys. Membership can include persons who are attorneys, tribal court judges, tribal leaders and tribal members, or anyone else interested in Indian law issues.

A. Serving Tribal Governments

Many ILS attorneys represent the tribal governments and other tribal entities of Oregon's nine federally recognized Indian tribes and serve as outside or in-house counsel. In this role, these attorneys are called upon to:

1. Ensure that tribal members are safe, have adequate employment opportunities, and access to education and health care.
2. Create and maintain healthy government-to-government relationships between tribal governments and city, county, state, and federal agencies. Ensure consultation with federal and state agencies on all actions which affect tribal members and Indian land.
3. Drive economic development and entrepreneurship on Indian reservations. Ensure that tribal gaming operations are successful, primarily benefit Indian tribes, and remain free from criminal activity.
4. Ensure that federal agencies meet their treaty and trust obligations to Oregon tribes and their members.
5. Empower Oregon tribes to independently administer their own affairs pursuant to the Indian Self-Determination and Education Assistance Act.

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<sup>1</sup>This document was approved by a majority of the Indian Law Section's Executive Committee. The opinions expressed in this document reflect the views of certain Executive Committee members acting in their personal capacity and do not necessarily reflect the views of that individual's employer or other entities or organizations in which that individual participates.

## B. Accountability for Treaty and Trust Obligations

Oregon's Indian tribes and their members enjoy rights negotiated for in treaties with the United States government. These treaties were not a grant of rights to the tribes, but rather a reservation of inherent tribal rights. Likewise, the law of the United States describes a federal trust obligation to Indian tribes which is akin to a fiduciary responsibility. ILS attorneys who represent tribes protect these rights and obligations before various government agencies and in the courts. It is the priority of Indian tribes and their counsel to:

1. Ensure that the U.S. Indian Health Service is fully funded and creates access to health care for Native American families living both on and off Oregon's reservations.
2. Ensure that the U.S. Bureau of Indian Education provides excellent education for tribal children.
3. Ensure that the United States protects the subsistence hunting, gathering and fishing rights that are both vital to native culture and key to meeting the nutritional needs of Oregon's native population.
4. Protect existing Indian land, restore the Indian land base, and maintain an adequate water supply to serve reservation communities.

## C. Economic Development in Indian Country

Many ILS attorneys represent tribally owned as well as non-tribal businesses working to create mutually beneficial business relationships with Indian tribes and on Indian land. In this regard, ILS attorneys may:

1. Make non-tribal businesses aware of investment opportunities in Indian Country.
2. Negotiate contracts with Indian tribes that include limited waivers of sovereign immunity, choice of law, and choice of venue.
3. Take advantage of various federal preference and grant programs that promote investment in reservation businesses.

## D. Environmental and Energy Law Issues

The dominance of hydroelectric power generation in the Northwest raises energy production and environmental concerns which directly impact Oregon's Indian tribes. Accordingly, Oregon tribes must be consulted and involved in all decisions affecting the natural environment and related to energy production and transmission in Oregon. In addition, Indian tribes and their counsel may work to:

1. Ensure that the Columbia River and its adjacent sites remain free of pollution. Ensure that the CERCLA “Superfund” cleanup operations at the Hanford Nuclear Reservation and the Portland Harbor are effective.
2. Ensure that fish species central to native culture in the Northwest flourish.
3. Participate in revisions to the Columbia River Treaty, the international agreement between Canada and the United States for the cooperative development and operation of the water resources of the Columbia River Basin.
4. Ensure cooperation between federal, state and tribal governments in the siting of energy transmission infrastructure.
5. Advocate for Indian tribes as rate payers in the regulation by the State of investor owned utilities.
6. Develop tribally owned energy generation and distribution infrastructure and participate in the development of and sponsor clean energy projects in Oregon.

E. Criminal Jurisdiction, Child Welfare, Law Enforcement and Tribal Courts

The complicated framework of federal, tribal, and state criminal and police jurisdiction on Indian reservations has resulted in jurisdictional gaps which can leave reservation communities vulnerable to crime. Indian tribal courts are expanding jurisdiction to fill these gaps. The federal Indian Child Welfare Act (ICWA) also protects the rights of tribes and Native American children and parents in state dependency hearings. In this regard, ILS attorneys may work to:

1. Address the need for coordination between state and tribal courts and establish procedures for comity/full faith and credit between tribal and state courts.
2. Establish intergovernmental and inter-agency jurisdictional agreements with law enforcement agencies to eliminate jurisdictional gaps that endanger reservation communities.
3. Address individual tribal members’ need for competent tribal court counsel in child custody matters. Remove financial barriers to tribal participation in ICWA cases by eliminating the *pro hac vice* fee and requirement that out-of-state counsel associate with local counsel in ICWA cases.
4. Address the need of individual tribal members and non-native criminal defendants for competent tribal courts in criminal matters. Design and fund support services and procedures that protect crime victims while also representing the rights of both native and non-native criminal defendants in tribal courts.

5. Hold tribal governments accountable to their members in their own tribal courts under their own laws as well as the federal Indian Civil Rights Act.
6. Represent tribal interests in child welfare matters, ensuring that ICWA rules and guidelines are adhered to in both state and tribal courts, and protect the interests of tribal children and tribal members involved in child welfare cases, in accordance with ICWA.

F. Legal Education

Tribal law predates the United States and continues to this day. Indian Tribes have constantly advocated for their rights throughout United States history, but many Americans, and even attorneys, are unaware of or confused by the nature of tribal rights, tribal law, and federal Indian law. Accordingly, it is incumbent on ILS attorneys, and all members of the Oregon State Bar, to:

1. Familiarize themselves with the sovereign status of Indian tribal governments and of the federal laws and treaties that protect tribal sovereignty and inform decision makers and legislators on these issues.
2. Educate their non-tribal private and government clients about Indian law.
3. Follow legislation and committee reports affecting Indian tribes, including juvenile dependency issues.
4. Advocate that Indian law be taught in Oregon's law schools.
5. Advocate that Indian law subjects be tested in the Oregon State Bar exam.

**Oregon State Bar**  
**Special Open Session of the Board of Governors**  
**March 17, 2017**  
**Minutes**

President Michael Levelle called the meeting to order at 8:57 a.m. on March 17, 2017. The meeting adjourned at 9:39 a.m. Members present from the Board of Governors were John Bachofner, Jim Chaney, Chris Costantino, Eric Foster, Rob Gratchner, Guy Greco, Ray Heysell, John Mansfield (by telephone), Eddie Medina, Tom Peachey, Per Ramfjord, Kathleen Rastetter, Liani Reeves (by telephone), Julia Rice, Traci Rossi, Kerry Sharp, and Kate von Ter Stegge. Not present were Vanessa Nordyke and Elisabeth Zinser. Staff present were Helen Hirschbiel, Amber Hollister, Dawn Evans, Kay Pulju, Susan Grabe, Catherine Petrecca, Judith Baker, Dani Edwards, Kateri Walsh and Camille Greene.

**1. Call to Order**

**2. Public Policy Statements on Controversial Issues**

Mr. Levelle and Ms. Hirschbiel led a discussion of the question “How might the bar respond to controversial political issues that could have (or are having) an adverse impact on the judicial system?” The intent of the discussion was to engage in a generative discussion that explores some of the issues that have arisen recently. Mr. Levelle also sought perspectives and concerns of the board members related to controversial issues so he can keep those perspectives in mind when speaking on behalf of the BOG. The discussion centered around the implications of the ICE round-ups and disparagement of judges. Bar staff gave the board examples of statements it had issued in the past in support of the judiciary and actions it has taken recently to help inform the public of rights and responsibilities under the law.

The board reached general consensus that any bar statement or action regarding these issues should focus on their effect on the integrity of the judicial system and the equitable administration of justice. Members agreed that statements should focus on the principles, not the politics. By way of example, several board members pointed to the recent statement issued by the Chief Justice of the California Supreme Court. Board members mentioned not only the need to be mindful of *Keller* restrictions, but also of the bar’s commitment to inclusion. Finally, board members felt it important to reach out to courts and the Oregon Supreme Court Chief Justice, when possible, prior to issuing any statement in order to ensure that the bar is supporting the judiciary and coordinating its educational efforts.

## TECHNOLOGY

# A.I. Is Doing Legal Work. But It Won't Replace Lawyers, Yet.

By **STEVE LOHR** MARCH 19, 2017

Impressive advances in artificial intelligence technology tailored for legal work have led some lawyers to worry that their profession may be Silicon Valley's next victim.

But recent research and even the people working on the software meant to automate legal work say the adoption of A.I. in law firms will be a slow, task-by-task process. In other words, like it or not, a robot is not about to replace your lawyer. At least, not anytime soon.

"There is this popular view that if you can automate one piece of the work, the rest of the job is toast," said Frank Levy, a labor economist at the Massachusetts Institute of Technology. "That's just not true, or only rarely the case."

An artificial intelligence technique called natural language processing has proved useful in scanning and predicting what documents will be relevant to a case, for example. Yet other lawyers' tasks, like advising clients, writing legal briefs, negotiating and appearing in court, seem beyond the reach of computerization, for a while.

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“Where the technology is going to be in three to five years is the really interesting question,” said Ben Allgrove, a partner at Baker McKenzie, a firm with 4,600 lawyers. “And the honest answer is we don’t know.”

Dana Remus, a professor at the University of North Carolina School of Law, and Mr. Levy studied the automation threat to the work of lawyers at large law firms. **Their paper** concluded that putting all new legal technology in place immediately would result in an estimated 13 percent decline in lawyers’ hours.

A more realistic adoption rate would cut hours worked by lawyers by 2.5 percent annually over five years, the paper said. The research also suggests that basic document review has already been outsourced or automated at large law firms, with only 4 percent of lawyers’ time now spent on that task.

Their gradualist conclusion is echoed in broader research on jobs and technology. In January, the **McKinsey Global Institute** found that while nearly half of all tasks could be automated with current technology, only 5 percent of jobs could be entirely automated. Applying its definition of current technology — widely available or at least being tested in a lab — McKinsey estimates that 23 percent of a lawyer’s job can be automated.

Technology will unbundle aspects of legal work over the next decade or two rather than the next year or two, legal experts say. Highly paid lawyers will spend their time on work on the upper rungs of the legal task ladder. Other legal services will be performed by nonlawyers — the legal equivalent of nurse practitioners — or by technology.

Corporate clients often are no longer willing to pay high hourly rates to law firms for junior lawyers to do routine work. Those tasks are already being automated and outsourced, both by the firms themselves and by outside suppliers like Axiom, Thomson Reuters, Elevate and the Big Four accounting firms.

So the law firm partner of the future will be the leader of a team, “and more than one of the players will be a machine,” said Michael Mills, a lawyer and chief strategy

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## Surprising Spread

The pace of technology improvement is notoriously unpredictable. For years, labor economists said routine work like a factory job could be reduced to a set of rules that could be computerized. They assumed that professionals, like lawyers, were safe because their work was wrapped in language.

But advances in artificial intelligence overturned that assumption. Technology unlocked the routine task of sifting through documents, looking for relevant passages.

So major law firms, sensing the long-term risk, are undertaking initiatives to understand the emerging technology and adapt and exploit it.

Dentons, a global law firm with more than 7,000 lawyers, established an innovation and venture arm, Nextlaw Labs, in 2015. Besides monitoring the latest technology, the unit has invested in seven legal technology start-ups.

“Our industry is being disrupted, and we should do some of that ourselves, not just be a victim of it,” John Fernandez, chief innovation officer of Dentons, said.

Last month, Baker McKenzie set up an innovation committee of senior partners to track emerging legal technology and set strategy. Artificial intelligence has stirred great interest, but law firms today are using it mainly in “search-and-find type tasks” in electronic discovery, due diligence and contract review, Mr. Allgrove said.

More than 280 legal technology start-ups have raised \$757 million since 2012, according to the research firm CB Insights.

At many of these start-ups, the progress is encouraging but measured, and each has typically focused on a specific area of law, like bankruptcy or patents, or on a certain legal task, like contract review. Their software learns over time, but only after it has been painstakingly trained by human experts.

When Alexander Hudek, a computer scientist whose résumé includes

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automating the review of legal contracts in 2011, he figured that he would tweak standard algorithms and that it would be a four-month job.

Instead, it took two and a half years to refine the software so it could readily identify concepts such as noncompete contract clauses and change-of-control, said Mr. Hudek, chief technology officer of Kira Systems.

The Kira program sharply winnows the number of documents read by people, but human scrutiny is still required.

Yet the efficiency gains can be striking. Kira's clients report reducing the lawyer time required for contract review by 20 percent to 60 percent, said Noah Waisberg, chief executive of Kira.

In Miami, Luis Salazar, a partner in a five-lawyer firm, began using software from the start-up Ross Intelligence in November in his bankruptcy practice. Ask for the case most similar to the one you have and the Ross program, which taps some of IBM's Watson artificial intelligence technology, reads through thousands of cases and delivers a ranked list of the most relevant ones, Mr. Salazar said.

Skeptical at first, he tested Ross against himself. After 10 hours of searching online legal databases, he found a case whose facts nearly mirrored the one he was working on. Ross found that case almost instantly.

Mr. Salazar has been particularly impressed by a legal memo service that Ross is developing. Type in a legal question and Ross replies a day later with a few paragraphs summarizing the answer and a two-page explanatory memo.

The results, he said, are indistinguishable from a memo written by a lawyer. "That blew me away," Mr. Salazar said. "It's kind of scary. If it gets better, a lot of people could lose their jobs."

Not yet. The system is pretty good at identifying the gist of questions and cases, but Ross is not much of a writer, said Jimoh Ovbiagele, the chief technology officer of Ross. Humans take the rough draft that Ross produces and create the final

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The start-up's engineers are trying to fully automate the memo-writing process, but Mr. Ovbiagele said, "We are a long way from there at this point."

## The Good Old Days

James Yoon, a lawyer in Palo Alto, Calif., recalls 1999 as the peak of the old way of lawyering. A big patent case then, he said, might have needed the labor of three partners, five associates and four paralegals.

Today, a comparable case would take one partner, two associates and one paralegal.

Two obvious factors have led to that downsizing: tightened legal spending and digital technologies that automated some tasks, like document searches, said Mr. Yoon, a partner at Wilson Sonsini Goodrich & Rosati.

Mr. Yoon uses software tools like Lex Machina and Ravel Law to guide litigation strategy in his patent cases. These programs pore through court decisions and filing data to make profiles and predictions about judges and lawyers.

What are the chances a certain motion will be approved by a particular judge, based on all his or her past rulings? Does the opposing counsel go to trial often or usually settle cases?

Mr. Yoon compares what he does to the way baseball and football analysts assess the tendencies of players and coaches on other teams.

The clever software, he said, is "changing how decisions are made, and it's changing the profession."

But its impact on employment would seem to be far less than, say, electronic discovery. The data-driven analysis technology is assisting human work rather than replacing it. Indeed, the work that consumes most of Mr. Yoon's time involves strategy, creativity, judgment and empathy — and those efforts cannot yet be

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Mr. Yoon, who is 49, stands as proof. In 1999, his billing rate was \$400 an hour. Today, he bills at \$1,100 an hour.

“For the time being, experience like mine is something people are willing to pay for,” Mr. Yoon said. “What clients don’t want to pay for is any routine work.”

But, he added, “the trouble is that technology makes more and more work routine.”

Follow Steve Lohr on Twitter @SteveLohr

A version of this article appears in print on March 20, 2017, on Page B1 of the New York edition with the headline: I, Robot, Esq.? Not Just Yet.

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# The Commercialization Of Legal Ethics, And The Avvo Defense

<http://abovethelaw.com/2017/01/the-commercialization-of-legal-ethics-and-the-avvo-defense/>

By [Carolyn Elefant](#)

Jan 31, 2017 at 6:22 PM

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While perusing the Interwebs for a topic for this week's column, I came across what sounded like an interesting article, [The Commercialization of Legal Ethics](#) by Professor [Renee Knake](#). From the title, I thought that the piece might be proposing ways to move ethics regulation from the stodgy, old-school grievance committees – perhaps through an artificial intelligence program that could answer open-ended ethics questions more quickly than a human-manned hotline, or a mobile app that would make the obscure and often [pay-walled](#) ethics regulation more accessible to the average lawyers. To my disappointment, however, the sexy-sounding title turned out to be nothing more than a rebranding of the concept of [e-shaming as a means to promote ethics compliance](#) – an idea that's been making its rounds [amongst bloggers](#) for [over a decade](#). Essentially, Knake argues that lawyer-rating sites like [Avvo](#) and [UpCounsel](#), or even non-lawyer review sites like [Yelp](#), can supplement or replace traditional ethics regulation.

To me, however, the commercialization of legal ethics means something different: it contemplates a system where VC-backed legal tech companies that seek to push the envelope on legal ethics invest their expansive resources in changing the rules either directly (such as through a constitutional challenge) or indirectly (by simply proceeding however they wish in the face of regulatory risk), then let the benefits trickle down to solo and small-firms that are more risk-averse. Call it the “Avvo Defense.”

For years, I've argued that the reason that many solos and small law firms don't innovate isn't because of a guild-mentality but rather, because of uncertainty regarding adoption of a new technology, be it cloud computing or social media or online advertising. As many solos and smalls have told me, they don't want to be a “test case” and they prefer to proceed cautiously,

waiting for bar regulators to issue an opinion approving the proposed conduct instead of taking the “well, nothing says that I *can't* do that” approach. Yet by the time regulators get around to issuing an opinion, the opportunity to gain a first-mover advantage is lost, and solos and smalls find themselves in a perpetual state of catch-up.

Legal tech companies don't take this approach – indeed, if they sat around waiting for certainty, they'd be a glimmer in someone's eye rather than a \$800 million industry giving lawyers a run for their money. Now, legal tech has some advantages over solos and smalls. With money, they can afford to hire in-house ethics counsel and pay the cost of purchasing insurance to cover the cost of defending against adverse actions. As a result, they can get issues resolved much faster than an individual lawyer.

Take the case of [Total Attorneys](#). Back in 2008, its “pay per click” advertising system was challenged before every bar association in the United States, including Connecticut, which decided to initiate a [grievance proceeding](#) against four lawyers who used the service. (Total Attorneys paid for their defense and they were exonerated). But guess what? As a result of the Total Attorneys litigation, just two years later, in 2011, the typically molasses-slow ABA [issued guidance on pay per click](#), finding the practice consistent with ethics obligations.

Even if a legal tech company doesn't challenge or defend against an ethics regulatory action, that they move forward into the questionable area may be a potential defense to lawyers. For example, take the Avvo [Legal Services](#) program where clients can obtain legal services for a matter for a flat fee. Clients pay the fee to Avvo which retains a percentage for marketing and administrative services and then passes it on to lawyers. Several regulators have taken the position that this practice constitutes fee-splitting – though [Avvo disagrees](#). Now, I don't know if Avvo (and other [similarly impacted companies](#)) plan to challenge the jurisdictions that issued adverse decisions. But I know that these programs are continuing, and soon will become accepted practice by default. Yet lawyers don't have to sit back and wait for that day to come. We can implement similar programs – and if the bar comes after us, we can assert that we're just doing what Avvo is doing. The same holds true for other stupid bar decisions. For example, when the New York Bar Association prohibited lawyers from listing “specialties” on LinkedIn, I [noted that Axiom — an #altlaw company that markets itself as a new kind of law firm](#) — was doing it too.

Until state bars can come up with a more efficient way to resolve uncertainty over ethics regulation, risk-averse solos and smalls will be left behind. Meanwhile, legal tech companies will grow, buying up more market share and making it difficult for solos and smalls to compete. Instead of trying to beat #alt law into submission by erecting more regulatory barriers, solos and smalls should ride into the future of law on their coattails. To me, that's what the commercialization of legal ethics is all about.

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*Carolyn Elefant has been blogging about solo and small firm practice at [MyShingle.com](http://MyShingle.com) since 2002 and operated her firm, the [Law Offices of Carolyn Elefant PLLC](#), even longer than that. She's also authored a bunch of books on topics like [starting a law practice](#), [social media](#), and [21st century lawyer representation agreements](#) (affiliate links). If you're really that interested in learning more about Carolyn, just Google her. The Internet never lies, right? You can contact Carolyn by email at [elefant@myshingle.com](mailto:elefant@myshingle.com) or follow her on Twitter at [@carolynelefant](#).*