The Oregon State Bar

Meeting of the Board of Governors
November 18, 2017
Surfsand Resort, Cannon Beach, 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 12:00 pm on November 18, 2017. Items on the agenda will not necessarily be discussed in the order as shown.

Friday, November 18, 2017, 12:00 pm

1. Call to Order

2. 2018 President & President-elect Elections
   A. Confirmation of Chris Costantino for 2018 President-elect [Ms. Nordyke] Inform
   B. Confirmation of Vanessa Nordyke as 2018 OSB President [Mr. Levelle] Inform

3. Strategic Areas of Focus for 2017
   A. Futures Task Force [Ms. Hierschbiel]
      1. Paraprofessional Exploration Committee Action Exhibit
      2. Status Update of Remaining Items Inform Exhibit
   B. Review of New Lawyer Programs Update [Ms. Nordyke] Inform

4. BOG Committees, Special Committees, Task Forces and Study Groups
   A. Board Development Committee [Mr. Ramfjord]
      1. Appointments to Various Bar Groups Action Exhibit/Handout
   B. Budget & Finance Committee [Mr. Chaney]
      1. Financial Update Inform
      2. 2018 Budget Approval Action Posted 11/13
   C. Policy & Governance Committee [Ms. Nordyke]
      1. Approve Revised OSB Bylaws Action Exhibit
      2. Innovations Award Action Exhibit
   D. Public Affairs Committee [Ms. Rastetter]
      1. Legislative Update Inform

5. Professional Liability Fund [Ms. Bernick]
   A. Financial Statements Inform Exhibit
   B. Approve 2018 Plans (Primary, Excess, ProBono) Action Exhibit

6. OSB Committees, Sections, Councils and Divisions
A. Oregon New Lawyers Division Report [Ms. Eder] Inform Exhibit

B. Legal Ethics Committee [Ms. Hierschbiel]

C. MCLE Committee [Ms. Hollister]
   1. Rule Amendments re: Credit for Committee and Council Service Action Exhibit

D. 2017 HOD Meeting Summary of Actions [Mr. Levelle] Inform Exhibit

7. Report of Officers & Executive Staff
   A. President’s Report [Mr. Levelle] Inform
      1. Statement on White Nationalism and Normalization of Violence Inform link
      2. Letter re: Governor Judicial Appointment Process Action Exhibit
   B. President-elect’s Report [Ms. Nordyke] Inform
   C. Executive Director’s Report [Ms. Hierschbiel] Inform Exhibit
   D. Director of Regulatory Services [Ms. Evans] Inform Exhibit
   E. Directory of Diversity & Inclusion [Mr. Puente] Inform
   F. MBA Liaison Report [Ms. Reeves] Inform

8. Consent Agenda
   A. Client Security Fund Committee [Ms. Hierschbiel]
      1. CSF Financial Reports and Claims Paid Inform Exhibit
   B. Approve Minutes of Prior BOG Meetings
      1. Regular Session September 8 2017 Action Exhibit
      2. Special Open Session September 22, 2017 Action Exhibit
      3. Special Open Session October 10, 2017 Action Exhibit
      4. Special Open Session November 1, 2017 Action Exhibit

9. 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

10. Good of the Order (Non-Action Comments, Information and Notice of Need for Possible Future Board Action)
    A. Correspondence
    B. Articles of Interest
    C. BOG Calendar of Events
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.” 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. 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.

MISSION

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.

1 Webster's Dictionary defines jurisprudence as the "philosophy of law or the formal science of law." "The administration of justice" has been defined in case law variously as the "systematic operation of the courts," the "orderly resolution of cases," the existence of a "fair and impartial tribunal," and "the procedural functioning and substantive interest of a party in a proceeding."

2 The OSB’s responsibilities in this area are clearly laid out in the Bar Act, ORS Chapter 9.

3 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
5. Review new lawyer programs (NLMP, ONLD, other?) for adherence to mission, value to members.
OREGON STATE BAR
Board of Governors Agenda

Meeting Date: November 19, 2017
From: Helen M. Hierschbiel, CEO
Re: Futures Task Force Recommendation re: Paraprofessional Licensing

Action Recommended

Reconsider the BOG decision to establish a Paraprofessional Licensing Exploration Committee.

Background

At its September 8, 2017 meeting, the Board of Governors decided to establish a Paraprofessional Licensing Exploration Committee as set forth in the attached memo.

In recruiting members for the committee, staff has encountered issues of concern. Some stakeholders see service on the committee as an opportunity to kill the proposal. Others are reluctant to volunteer their time to develop the proposal further, with the possibility that no action will be taken in the end.

In order to address these issues, staff recommends that the Board reconsider its decision to establish an Exploration Committee. Other options for action include:

1. Adopt the recommendation of the Futures Task Force Regulatory Committee to create a Paraprofessional Licensing Implementation Committee, charged with engaging stakeholders to develop a plan for licensing paraprofessionals consistent with the recommendations set forth in the Futures Task Force Report. Recommend committee members for BOG appointment.
2. Continue to seek feedback from members and reconsider at a set date in the future.
3. Continue efforts to establish Exploration Committee.
4. Do nothing.

Attachment: September 8, 2017 BOG Memo
OREGON STATE BAR
Board of Governors Agenda

Meeting Date: September 8, 2017
From: Policy & Governance Committee
Re: Paraprofessional Licensing Exploration Committee

Action Recommended

Create a Paraprofessional Licensing Exploration Committee, charged with developing a detailed proposal for licensing paraprofessionals consistent with the recommendations set forth in the Futures Task Force and engaging stakeholders in development of the proposal as recommended by the Task Force. Recommend committee members for BOG appointment.

Background

At its June 2017 meeting, the Board of Governors received the OSB Futures Task Force Report. Among other things, the report recommended that Oregon establish a program for licensure of paraprofessionals who would be authorized to provide limited legal services, without attorney supervision, to self-represented litigants in family law and landlord-tenant proceedings. The reason cited for licensing paraprofessionals would be to help close the access-to-justice gap in two areas of the law where statistics show a continued high need despite decades of efforts to increase legal aid funding and pro bono services.

The Board of Governors accepted the report at its meeting in June 2017. In July 2017, the Board of Governors voted to identify possible stakeholders for a committee and send to the BOG Policy & Governance Committee for further action.

At its discussion at the June 2017 meeting, several BOG members expressed an interest in seeking feedback from members prior to approving implementation of a paraprofessional licensing program. Requests for feedback have begun, both through outreach to local bar associations and through an email from Michael Levelle to all bar members inviting feedback. Much of the feedback has been questions about the details of the proposal. At this point, however, the proposal consists of general parameters, not a detailed plan.

An alternative to establishing an implementation committee—which presupposes the adoption of the Task Force recommendation—would be to establish a program exploration committee. The purpose would be to formulate a detailed proposal for paraprofessional licensure and would engage stakeholders in development of the proposal as recommended by the Task Force. Throughout the process of development, the committee could seek input from members of the bar and of the public.

The Policy & Governance Committee recommends the appointment of the following members to the Committee:

- Kelly Harpster, Futures Task Force Paraprofessional Subcommittee Chair
- Two Oregon Circuit Court judges in family law or landlord/tenant law
• A representative from each of the three Oregon law schools, to be chosen by the law school deans
• Aubrey Baldwin, Portland Community College Paralegal Program Chair
• Angela Lucero, Board of Bar Examiners
• Chris Costantino, Board of Governors
• A representative from Disciplinary Counsel’s Office
• A representative from General Counsel’s Office
• One lawyer representative in the family law
• One lawyer representative in the landlord tenant arena
• Two public members
• A paralegal

We recommend that Kelly Harpster be appointed as Chair of the Committee.
I. Changes to Rules of Professional Conduct

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<tr>
<td>A. Adopt Recommendation to Amend Oregon RPC 7.3, which has already been adopted by the Board in substance, with (very slightly) modified wording.</td>
<td>2.1 Pages 36-38</td>
<td>Approved by HOD.</td>
<td>Submit to OR Supreme Court for adoption.</td>
<td>December 2017</td>
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<td>B. Adopt Recommendation to Amend Oregon RPC 5.4 to permit fee-sharing with lawyer referral services, with adequate disclosure to consumers.</td>
<td>2.2 Pages 38-40</td>
<td>Referred back to BOG for further study.</td>
<td>Establish committee for further review and scope of charge. Send to LEC for further review of ethics issue.</td>
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<td>C. Direct the Legal Ethics Committee to consider whether to amend Oregon RPCs to allow fee-sharing or law firm partnership with paraprofessionals and other professionals.</td>
<td>2.3 Pages 40-43</td>
<td>Waiting for BOG decision on whether to license paraprofessionals.</td>
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### II. Regulation/Development of Alternative Legal Service Delivery Models

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<tr>
<td>A. Convene a paraprofessional licensing implementation committee to prepare a detailed proposal for Board and Supreme Court.</td>
<td>1.1 to 1.11 Pages 3-26</td>
<td>Developing exploration committee.</td>
<td>Bring to BOG for discussion and approval.</td>
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<td>B. Direct Public Affairs Committee to craft legislative approach related to online document review and consumer protections generally consistent with the approach outlined by Report.</td>
<td>2.4 Pages 43-45</td>
<td>BOG sent to PAC. PA Director working with stakeholders.</td>
<td>Continue work with stakeholders.</td>
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<tr>
<td>C. Direct Public Affairs Committee to craft legislative approach related to Self-Help Centers and Court facilitation that is generally consistent with the approach outlined by Report.</td>
<td>3.2 Pages 48-51</td>
<td>BOG sent to PAC. PA Director working with stakeholders.</td>
<td>Continue work with stakeholders.</td>
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### III. Support Court and Legal Aid Efforts to Increase Access and Explore Innovation

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<tr>
<td><strong>A. Establish an Ad Hoc committee of stakeholder representatives from OJD/LASO/OSB tasked with streamlining self-navigation resources</strong></td>
<td>3.1 Pages 47-48</td>
<td>BOG sent to CEO. Committee established. First meeting held.</td>
<td>Continue meetings. Coordinate with OSCIIF and OSC CJI re topic areas</td>
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<tr>
<td><strong>B. Direct Staff to Explore Ways to Support Stakeholder Efforts to Improve Family Law and Small Claims Court Processes</strong></td>
<td>3.3-3.4 Pages 51-54</td>
<td>BOG sent to CEO. CEO attending OSC Civil Justice Initiative Task Force meetings.</td>
<td>Continue to attend OSC CJI meetings and report to BOG</td>
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<tr>
<td><strong>C. Develop Blueprint for Nonfamily Law Facilitation Office</strong></td>
<td>5.2 Page 65</td>
<td>BOG sent to CEO. CEO attending OSC Civil Justice Initiative Task Force meetings</td>
<td>Do not pursue as separate initiative. Continue to attend OSC CJI meetings and report to BOG</td>
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<tr>
<td><strong>D. Promote use of technology to increase A2J in Lower Income &amp; Rural Communities</strong></td>
<td>7.2 Page 70</td>
<td>BOG sent to CEO. LSP including technology in accountability review process. CEO attending Civil Justice Initiative Task Force meetings</td>
<td>Continue to attend OSC CJI meetings and report to BOG Conduct accountability review process.</td>
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<tr>
<td><strong>E. Take steps to make legal services more accessible in Rural Areas</strong></td>
<td>7.3 Page 71</td>
<td>BOG sent to CEO. LSP including rural service in accountability review process.</td>
<td>Conduct accountability review process.</td>
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<td>Recommendations</td>
<td>Status</td>
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<td>Rural Opportunity Fellowship under review by D&amp;I Director.</td>
<td>Complete review. Make changes as appropriate.</td>
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<td>Completion of series in OSB Bulletin on rural law practice opportunities.</td>
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<td>ONLD planning Rural Summit at OSB Center to explore access to justice issues on September 21, 2018</td>
<td>Hold Summit.</td>
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## IV. Enhancement of Existing Bar Programs and Resources

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<tr>
<td>A. Ask PSAC to explore ways to increase availability to unbundled services offered through LRS</td>
<td>3.5 Pages 54-55</td>
<td>PSAC/LRS exploring.</td>
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<td>B. Continue to Improve &amp; Enhance Resources for Self-Navigators</td>
<td>3.6 Pages 56-57</td>
<td>BOG sent to CEO. Participating in SFLAC pro se assistance subcommittee. Supporting court funding of self-navigator resources.</td>
<td>Continue SFLAC participation. Continue support of court funding for self-navigator resources.</td>
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<td>C. Work to improve the public perception of lawyers</td>
<td>7.4 Page 72</td>
<td>BOG sent to CEO. Media/public relations manager working with media.</td>
<td>Continue work with media.</td>
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<td>D. Expand the Lawyer Referral Service and Modest Means Program</td>
<td>BOG sent to CEO.</td>
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<td>E. Enhance Practice Management Resources</td>
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<tr>
<td>1. Set Goal to increase LRS Inquiries by 11% by Next 4 Years</td>
<td>5.1 Page 64</td>
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<td>F. Enhance Practice Management Resources</td>
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<tr>
<td>1. Develop Comprehensive Training Curriculum re Modern Law-Practice Management Methods</td>
<td>6.1 Page 65-68</td>
<td>Sent to PLF.</td>
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<tr>
<td>2. Promote unbundled legal services</td>
<td>7.1 Page 69</td>
<td>Sent to PLF. Fee Agreement Compendium being updated to include broader sampling of alternative fee agreements. GCO continues to provide CLEs on ethics of unbundling.</td>
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### V. BOG Policy Development

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<tr>
<td><strong>A. Embrace Data-Driven Decision-Making</strong></td>
<td>4 Page 61</td>
<td></td>
<td>Send to PGC</td>
<td>2018</td>
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<tr>
<td><strong>1. Adopt Data-Driven Decision Making Policy</strong></td>
<td>4.1 Page 61</td>
<td></td>
<td>Send to PGC</td>
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<td><strong>2. Adopt formal Set of Key Performance Indicators to Monitor State of Values</strong></td>
<td>4.2 Page 62</td>
<td></td>
<td>Send to PGC</td>
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<td><strong>3. Adopt Open-Data Policy</strong></td>
<td>4.3 Page 62</td>
<td></td>
<td>Send to PGC</td>
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## VI. Development of New Bar Programs

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<tr>
<td><strong>A. Create Incubator/Accelerator Program</strong></td>
<td>8 Page 86-93</td>
<td>Question included in new lawyer survey</td>
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<td>Under consideration as part of new lawyer program review</td>
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1. **Dedicate staff as project manager**

2. **Form a Program Development Committee to help design and implement the program**

**Questions for discussion:**

- Are there questions regarding the proposal?
- Do we need more information?
- What are the risks of action/no action?
- Is feedback needed before adopting the recommendation? If so, from whom and by when?
- What is the timeline for making a decision?
- What is the timeline for implementation?
- Are there alternatives to this recommendation?
- Other?
OREGON STATE BAR
Board of Governors Agenda

Meeting Date: November 18, 2017
From: Per Ramfjord, Board Development Committee Chair
Re: Appointments to various bar committees, councils, and boards (1 of 2)

Action Recommended

On September 22 the Board Development Committee selected the following members for appointment:

**Advisory Committee on Diversity and Inclusion**
Chair: Jonathan Patterson
Secretary: Kasia Rutledge
Members with terms expiring 12/31/2018:
Adrian Lee Brown
May Low
Members with terms expiring 12/31/2020:
Aruna Masih
SreeVamshi C Reddy
Sarah McGlaughlin
Tomas Hernandez
Toan Nguyen
Julie Reading
Juanita Range (public member)
Janet Tom Cowal (public member)

**Legal Ethics Committee**
Chair: Daniel Keppler
Secretary: Justin Thorp
Members with terms expiring 12/31/2020:
Dayna Underhill
Guy J. Thompson
Raquel Hecht
Barbara Smythe
Andrea Goodwin

**Legal Heritage Interest Group**
Chair: Mark Monson
Secretary: Abby Miller
Members with terms expiring 12/31/2020:
Hollis Ransom
Michael Vergamini
Michael Turner
Darsee Staley

**MCLE Committee**
Chair: Adam Adkin
Secretary: John Mellgren
Members with terms expiring 12/31/2020:
Nicole Abercrombie
Camilla Thurmond
Mary Kronkowski (public member)

**Quality of Life Committee**
Chair: Michelle Ryan
Secretary: Sally Claycomb
Members with terms expiring 12/31/2020:
C. Aaron Johnson
Linda J. Larkin
Meredith Good
James Meiers
State Lawyers Assistance Committee
Chair: John Parsons
Secretary: Ed Versteeg
Members with terms expiring 12/31/2021:
Jered Reid
Robert Cleland

Uniform Criminal Jury Instructions Committee
Chair: Greg Rios
Secretary: Anna Belais
Members with terms expiring 12/31/2020:
Lisa Donnell
Henry LeSueur
Sarah Lundstedt
Mark Millard
Lauren Nweze
Diversity Action Plan
Mission Statement

The Oregon State Bar practices and reflects the values of diversity, inclusion and equity in its service to the public and its members as well as in its internal operations.

**Membership** We strive to build and retain a diverse and inclusive bench and bar. We support members reaching their full professional potential by eliminating barriers and creating opportunities in the law.

**Public Outreach** We strive to achieve equitable access to legal services and to generate public awareness about the legal system and bar services among all Oregon communities.

**Bar Operations** We strive to create a welcoming environment where staff feel a sense of community and are fully engaged to achieve the bar’s mission.
MEMBERSHIP SPHERE
DAP Draft 11/14/17
For BOG Review

Membership Sphere

GOAL 1 Increase and sustain a diverse Oregon State Bar and bench.

STRATEGY 1 Identify and gather information on experiences of diverse lawyers.
ACTION 1 Conduct climate surveys.
  2018 Create climate surveys to identify the barriers and opportunities faced by diverse lawyers in Oregon. COMMUNICATIONS
  2018 Conduct climate surveys. COMMUNICATIONS
  2018 Conduct exit surveys for diverse lawyers who leave the state or withdraw from active practice. COMMUNICATIONS

ACTION 2 Facilitate focus groups to gather feedback on member experiences.
  2019 Create and conduct focus groups utilizing the information gleaned from the climate surveys. COMMUNICATIONS
  2020 Report to bar leadership on the focus group findings. COMMUNICATIONS

ACTION 3 Analyze attorney fee rates and economic survey data to identify disparities for lawyers from non-dominant cultures.
  2018 Correlate information gleaned from A1 and A2. COMMUNICATIONS
  2019 Use the information gathered to identify issues that warrant addressing. MEMBER SERVICES

STRATEGY 2 Ensure the effective retention of diverse bar members.
ACTION 1 Develop D&I programs and other bar resources targeted to support diverse lawyers new to Oregon.
  2019 Use the results from the DAP surveys and focus groups to identify new program needs. DIVERSITY & INCLUSION
  2020 Expand D&I programming to address lateral hire retention. DIVERSITY & INCLUSION
  2020 Expand D&I programming to address new member retention. DIVERSITY & INCLUSION

ACTION 2 Conduct outreach with legal employers to determine best practices for retaining diverse lawyer employees.
  2018 Collect information from legal employers. DIVERSITY & INCLUSION
  2019 Provide revised best practices toolkit to legal employers. DIVERSITY & INCLUSION
  2020 Evaluate toolkit and outreach efforts. DIVERSITY & INCLUSION

ACTION 3 Develop resources to assist legal employers in creating a diverse workforce.
  2018 Create a business case identifying the benefits of employing diverse lawyers. DIVERSITY & INCLUSION
  2019 Create resources to assist employers with lateral hire retention programs. DIVERSITY & INCLUSION
  2020 Begin to assess impact and reach of resources. DIVERSITY & INCLUSION
STRATEGY 3  Encourage, support, and promote diverse bar members in seeking judicial positions.

**ACTION 1**  Review the bar’s process for obtaining feedback on judicial candidates to ensure it is qualitative in nature and supports the DAC’s mission.

- **2018** Modify bar bylaws to eliminate bar polls for judicial selection process. **PUBLIC AFFAIRS**
- **2018** Survey specialty bars regarding judicial screening process. **PUBLIC AFFAIRS**

**ACTION 2**  Increase outreach to diverse bar members regarding judicial positions.

- **2018** Assess notice of judicial vacancy recipient list and webpage placement of notices. **PUBLIC AFFAIRS**
- **2018** Assess placement of judicial vacancy notice to specialty bars and publications. **PUBLIC AFFAIRS**
- **2018** Modify judicial appointment recommendations process to assess cultural competency. **PUBLIC AFFAIRS**

STRATEGY 4  Collaborate with and support specialty bars and other organizations that are composed of diverse memberships (hereinafter “specialty bars”).

**ACTION 1**  Participate in meetings between specialty bars and OSB leadership to learn about specialty bars’ experiences and perceptions of the OSB as an institution and of the OSB leadership. (“OSB leadership” to be defined through the development of the agenda with the specialty bars and the facilitator.)

- **2018** Work with specialty bars as requested in order to choose a facilitator and develop agendas. **EXECUTIVE SERVICES**
- **2018** Provide OSB financial support for facilitating dialogue. **DIVERSITY & INCLUSION**
- **2018** Attend the meetings and ensure OSB leadership participation, and follow up as appropriate. **EXECUTIVE SERVICES**

**ACTION 2**  Increase Board of Governors’ awareness and support of the work engaged in by specialty bars.

- **2018** Organize a reception in conjunction with a BOG meeting, and invite specialty bars to attend and network with the BOG. **EXECUTIVE SERVICES**
- **2018** Invite specialty bars to attend and/or submit reports to BOG meetings, to report on their activities and events. **EXECUTIVE SERVICES**
- **2018** Ensure BOG representation at specialty bar events. **EXECUTIVE SERVICES**
- **2019** Implement changes to the BOG’s participation in specialty bar work as agreed upon during the facilitated joint leadership meetings.

**ACTION 3**  Assist specialty bars in promoting their activities and events to OSB leadership and to OSB membership.

- **2018** Conduct outreach with specialty bars on the services OSB can provide. **MEMBER SERVICES**
- **2018** Improve placement and accessibility of specialty bar information on the OSB website. **MEMBER SERVICES**
- **2019** Include specialty bar events on the OSB website calendar in accordance with OSB communication guidelines. **MEMBER SERVICES**
- **2018** Invite specialty bars to have a table and to include promotional materials at OSB events in order to showcase their organizations and recruit members. **MEMBER SERVICES**
ACTION 4 Increase OSB technical support of specialty bars.

2018 Explore possibilities for adding information about joining specialty bars to membership fee statement (at dues payment/renewal). ACCOUNTING
2018 Enhance administrative support provided to specialty bars, such as managing event RSVPs, maintaining membership lists, and distributing event notices. MEMBER SERVICES
2018 Provide specialty bars free access to OSB membership lists through the public records process. MEMBER SERVICES
2018 Update and enhance resource list of OSB services to support specialty bars. MEMBER SERVICES

STRATEGY 5 Support an effective pipeline of diverse law students who feel sustained, welcomed, and encouraged to practice law in Oregon.

ACTION 1 Increase D&I program effectiveness.

2018 Analyze current effectiveness based on data, current trends, and known issues. DIVERSITY & INCLUSION
2019 Implement changes to D&I programming based on findings of analysis, to provide opportunities for law and pre-law students, including professional connections, legal experience, and financial support. DIVERSITY & INCLUSION
2019 Formalize D&I program applicant criteria and review the application process to ensure fairness, transparency, and applicant pool reach. DIVERSITY & INCLUSION
2020 Review progress based on implemented changes. DIVERSITY & INCLUSION

ACTION 2 Support diverse law students in Oregon through mentorship and community building, to encourage them to practice in Oregon upon graduation.

2018 Collaborate with Oregon law schools and other partners to create a robust and effective OLIO orientation program. DIVERSITY & INCLUSION
2019 Implement Oregon Council on Legal Education and Admissions to the Bar (OCLEAB) agenda item asking Oregon law schools to report on their diversity trends. ADMISSIONS
2020 Review progress based on implemented changes. DIVERSITY & INCLUSION

STRATEGY 6 Increase lawyer engagement in community organizations that encourage diverse individuals to pursue legal education.

ACTION 1 Create awareness in the legal community about existing programs, to encourage diverse individuals to pursue legal education.

2018 Create a list of schools with pre-law programs, high schools with mock trial programs, and other educational organizations with school engagement initiatives. DIVERSITY & INCLUSION
2019 Work with specialty bars, sections, committees and other bar members to encourage member participation in the programs. DIVERSITY & INCLUSION
2020 Obtain program feedback to evaluate effectiveness and reach. DIVERSITY & INCLUSION
GOAL 2 Identify and work to eliminate barriers for diverse members in the legal profession.

STRATEGY 1 Increase OSB efforts to educate members on the value of diversity, equity, and inclusion.

ACTION 1 Review the applicable MCLE rules and regulations to determine whether programs approved for Access to Justice credit support the DAC’s mission.

- 2018 Develop any needed changes to the MCLE rules and regulations. DIVERSITY & INCLUSION
- 2019 Secure approval by MCLE Committee and Supreme Court of changes to MCLE rules and regulations. MCLE

ACTION 2 Sponsor, promote, and encourage elimination-of-bias CLE programming, including implicit bias, equity, systemic racism, institutional racism, etc.

- 2018 Deliver programming regarding ORPC 8.4. CLE SEMINARS

ACTION 3 Promote Legal Employers Toolkit to legal employers.

- 2018 Work with the Diversity Section to complete toolkit. DIVERSITY & INCLUSION
- 2019 Distribute toolkit. DIVERSITY & INCLUSION
- 2020 Obtain feedback from toolkit recipients. DIVERSITY & INCLUSION

ACTION 4 Publish articles in the Bulletin related to diversity, equity, and inclusion.

- 2018 Develop a pool of potential authors and publication schedule. COMMUNICATIONS
- 2018 Develop process for inviting specialty bars to submit article ideas or written submissions for publication in the Bulletin. COMMUNICATIONS
- 2018 Consider developing a regular column on diversity, equity and inclusion. COMMUNICATIONS
- 2019 Publish articles using the pool and according to the schedule. COMMUNICATIONS

STRATEGY 2 The BOG functions in a way that is open and inclusive of different perspectives and experiences.

ACTION 1 Task the Board Development Committee with assessing needs and with using the assessment to provide programming for the BOG on diversity, equity and inclusion.

- 2018 BOG members conduct a self-assessment on bias (e.g. implicit bias test from the Harvard Project Implicit [https://implicit.harvard.edu/implicit/takeatest.html]). CEO
- 2018 Include at least one session on implicit bias, institutional racism, or equity principles for BOG members each year. CEO

ACTION 2 Adopt a BOG policy to review all bar programs, services, and activities with impact on lawyers from diverse backgrounds as a factor for evaluation.

- 2018 Policy reviewed by BOG Policy & Governance Committee and BOG. CEO
- 2018 Implement policy and incorporate into BOG orientation materials and online resources. CEO
STRATEGY 3 Support an open and inclusive award selection process for all OSB groups.

ACTION 1 Encourage transparency in award nomination and selection process.
- **2018** Develop a policy and nomination form template for section awards. MEMBER SERVICES
- **2019** Encourage and assist sections and the ONLD with promoting their award nomination process with specialty bars. MEMBER SERVICES

STRATEGY 4 Review the admissions process to determine whether diverse candidates are disparately impacted.

ACTION 1 Create policies and procedures establishing the lawful collection and use of demographic data from applicants.
- **2018** Review current rules, policies and procedures to determine the legalities of collecting and using demographic data. ADMISSIONS
- **2019** Make changes to policies and procedures as needed in order to safeguard data collected from being used or made available for an admission decision related to any particular applicant. ADMISSIONS
- **2020** Make changes to policies and procedures, where necessary, in order to lawfully collect and use demographic data for statistical analysis. ADMISSIONS

ACTION 2 Collect data from the OSB Admissions Department, Oregon law schools, and applicants, to identify admissions trends of demographic groups.
- **2020** Ask OSB applicants to self-identify as part of the application process. ADMISSIONS
- **2020** Begin to review data in respect to identifying admissions trends by demographic. ADMISSIONS
GOAL 3 Enrich the OSB by increasing representation of diverse members in volunteer and leadership roles.

STRATEGY 1 Educate OSB member groups on the value of diversity, equity, and inclusion.

ACTION 1 Create a benefit statement supporting the value of diversity.
- **2018** Seek input from specialty bars and other stakeholders in creating the benefit statement. **MEMBER SERVICES**
- **2018** Gather baseline data to determine current member involvement in OSB volunteer and leadership roles. **MEMBER SERVICES**
- **2019** Distribute benefit statement to bar groups. **MEMBER SERVICES**
- **2020** Evaluate effectiveness based on change in overall volunteer participation. **MEMBER SERVICES**

STRATEGY 2 Increase diversity on all OSB self-electing boards and in membership elected positions.

ACTION 1 Encourage a diverse pool of candidates for Board of Governors and House of Delegates elections.
- **2018 - 2020** BOG members actively encourage diverse members to run for vacant positions on the BOG and HOD (annually). **MEMBER SERVICES**
- **2018** Encourage specialty and local bars to inform their members of BOG and HOD vacancies, including list serve and website postings. **MEMBER SERVICES**
- **2018** Encourage specialty and local bars to promote the importance of voting in HOD/BOG elections to their membership. **MEMBER SERVICES**

ACTION 2 Increase representation of diverse members serving on self-electing boards to reflect the diversity of the OSB membership.
- **2018** BOG review of ONLD and section bylaws and policies to ensure the election process is transparent and supports equity and inclusion. **CEO**
- **2018** Meet with sections during the annual meeting process to share the benefit statement (S1, A1) **MEMBER SERVICES**
- **2019** Include demographic data on membership lists and rosters. **MEMBER SERVICES**
**STRATEGY 3** Encourage diversity of volunteer speakers and planners for CLE events.

**ACTION 1** Provide a resource list of specialty bar associations to bar groups planning CLE events.

- **2018** Develop a list of specialty bars and include a description of the specialty bar’s mission statement. **CLE SEMINARS**
- **2019** Incorporate the DAC’s mission and specialty bars list in CLE co-sponsorship guidelines. **CLE SEMINARS**

**ACTION 2** Look for opportunities to collaborate with specialty bars for CLE events.

- **2018** Conduct an inventory of existing bar CLE events that would be suitable for collaboration with specialty bars; evaluate available bar resources that could be utilized by specialty bars for their events. **CLE SEMINARS**
- **2019** Create a bar CLE resource guide for specialty bars. **CLE SEMINARS**
- **2020** Distribute the guide and begin CLE event collaboration with specialty bars. **CLE SEMINARS**

**ACTION 3** Look for opportunities to diversify the pool of CLE speakers.

- **2018** Distribute the Leadership and Volunteer Opportunities CLE Speaker reports to Section Executive Committees annually with a reminder that the CLE planning committees have this resource and should consider diversity when selecting CLE subject matter experts. **MEMBER SERVICES**

**STRATEGY 4** Collaborate with the Board of Governors and Board Development Committee to increase the diversity of lawyer and public member volunteers appointed by the Board of Governors.

**ACTION 1** Increase the pool of diverse lawyers and non-lawyers for OSB volunteer positions.

- **2018** Organize an event co-sponsored by OSB’s D&I Department, the BOG, and specialty bars to explain OSB leadership opportunities, selection processes for OSB volunteer appointments, and application processes for BOG and HOD. **DIVERSITY & INCLUSION**
- **2018** Provide notices of volunteer and leadership opportunities to specialty and local bar organizations for distribution to their members and through their respective newsletters and to community organizations that support diverse individuals. **MEMBER SERVICES**
- **2018** Request that specialty and local bars include a link to the OSB Volunteer Survey on their websites. **MEMBER SERVICES**

**ACTION 2** Educate the Board Development Committee members on the need to review appointment recommendations and decisions through an equity lens.

- **2018** Conduct an annual review of appointments with focus on demographic and geographic factors. **MEMBER SERVICES**

**ACTION 3** Ensure the appointment process is efficient and effective and that BOG has enough member information.

- **2018** Board Development Committee reviews and refines internal processes. **MEMBER SERVICES**
STRATEGY 5 Develop a leadership institute for diverse attorneys.

ACTION 1 Address gaps and barriers to leadership positions within the BOG and specialty bars for underrepresented members of the bar.

2018 Identify gaps and barriers. DIVERSITY & INCLUSION
2019 Craft proposed course curriculum. DIVERSITY & INCLUSION
2020 Course implementation. DIVERSITY & INCLUSION

STRATEGY 6 Encourage diversity of volunteer editorial review boards and authors for Legal Publications books.

ACTION 1 Increase representation of diverse members on Legal Publications editorial review boards and as authors.

2018 Contact local and specialty bars when recruiting new editorial board members and authors. LEGAL PUBLICATIONS
2019 Revise Editorial Review Board Guidelines to strongly encourage editorial review boards to consider diversity in identifying potential authors. LEGAL PUBLICATIONS
2020 Evaluate effectiveness of efforts to increase diversity of editorial boards and author pool. LEGAL PUBLICATIONS

ACTION 2 Include more detailed biographical information and pictures of authors in front matter of books, to showcase diversity involvement.

2018 Select two publications to include more detailed biographical information. LEGAL PUBLICATIONS
2019 Increase number of publications that include detailed biographical information. LEGAL PUBLICATIONS

STRATEGY 7 Evaluate the effectiveness of the New Lawyer Mentoring Program (NLMP) in respect to diverse attorneys.

ACTION 1 Survey new lawyer participants to determine level of satisfaction with NLMP.

2018 Review existing new lawyer survey and determine whether additional information needs to be gathered. MEMBER SERVICES
2018 Modify survey as necessary and implement for all new lawyers upon program completion. MEMBER SERVICES
2019 Use the information gathered to identify issues that warrant addressing. MEMBER SERVICES

ACTION 2 Increase the pool of diverse mentors participating in the NLMP.

2018 Evaluate mentor availability and areas of underrepresentation. MEMBER SERVICES
2018 Conduct targeted outreach to ensure adequate availability of mentors from diverse member groups. MEMBER SERVICES

ACTION 3 Review NLMP database fields to ensure adequate information is available when matches are made.

2018 Revise NLMP forms as needed. MEMBER SERVICES
Public Outreach Sphere

GOAL 1 Increase representation and legal services to underserved and hard to reach communities in Oregon.

STRATEGY 1 Assess the civil legal needs of low income Oregonians statewide, including hard to reach populations.

ACTION 1 Conduct planned civil legal needs study (CLNS) that provides comprehensive information about the legal needs of low income Oregonians, including hard to reach populations.

2018 CLNS data has been gathered and analyzed. OLF
2018 CLNS has been published and shared with a wide range of stakeholders. OLF
2018 Conduct media campaign to share the results of the CLNS. COMMUNICATIONS

ACTION 2 Use the results of the CLNS to inform the legal services provided by the integrated statewide legal aid programs pursuant to the OSB Legal Services Standards and Guidelines.

2019 Legal aid providers have reviewed the results, and used these results to set priorities for legal services and to develop access strategies for low income Oregonians, including hard to reach populations. LSP
2020 A plan with goals to implement access strategies has been developed. LSP

ACTION 3 Use the results of the CLNS to inform the access strategies for low income and hard to reach populations by the Oregon State Bar.

2019 The OSB has reviewed the results of the CLNS for possible OSB program changes. LSP
2020 The OSB has developed a plan for implementing access strategies. LSP

STRATEGY 2 Ensure that the integrated statewide legal aid programs are targeting their services based on the most compelling needs of the client community, including hard to reach and diverse populations pursuant to the OSB Legal Services Standards and Guidelines.

ACTION 1 LSP staff conduct the accountability process outlined in the Standards and Guidelines.

2018 Staff, legal aid providers, and the LSP Committee have reviewed the current accountability process and have made changes as necessary, including incorporating review of effective technology. LSP
2018 The accountability process has been completed, and a report has been submitted to the BOG. LSP
2019 Legal aid providers implement recommendations from the 2018 review process. LSP
STRATEGY 3 Increase pro bono representation of low income Oregonians and hard to reach populations.

**ACTION 1** Establish a baseline of current pro bono hours.

*2018 Using ABA survey results and hours reported by OSB Certified Pro Bono Programs, establish a baseline of pro bono hours. LSP*

**ACTION 2** Utilize the results of the ABA pro bono survey to develop strategies that are focused on diverse and hard to reach populations.

*2018 Identify barriers to lawyers doing pro bono work and develop a plan for addressing them. LSP*

*2019 Implement the plan to address barriers to lawyers doing pro bono work. LSP*

*2020 Survey membership on pro bono work. LSP*

**ACTION 3** Continue to monitor the use of the ABA Free Legal Answers resource.

*2018 Determine whether ABA Free Legal Answers will work as a resource for the OSB (given Aptify and implementation concerns). LSP*

*2019 Implement (if it makes sense for the OSB as a service to the public). LSP*
STRATEGY 4 Increase representation through increased funding for the integrated statewide legal aid programs to increase access for low income Oregonians, including underserved and hard to reach communities in Oregon.

ACTION 1 Use the CLNS to inform banks about the scope of the unmet legal needs of low income Oregonians to support increased legal aid funding in Oregon.

- **2018** Increase Leadership Bank Program interest rate tiers to coincide with Federal Reserve Bank increases. **OLF**
- **2018** Incorporate CLNS results into talking points to work with the Oregon Bankers Association and banking community to increase interest rates on IOLTA accounts held in Oregon. **OLF**
- **2019** Continue to monitor interest rate increases and adjust Leadership Bank Program interest rates as needed. **OLF**

ACTION 2 Use the CLNS to inform the legislature about the scope of the unmet legal needs of low income Oregonians to support increased legal aid funding in Oregon.

- **2018** Establish diverse network of leaders to support relevant issues and trends. **PUBLIC AFFAIRS**
- **2018** Meet with justice system partners during the interim to discuss legislative concepts and funding priorities. **PUBLIC AFFAIRS**
- **2019** Present information on access to justice to lawyer-legislators and bar members to ensure message consistency. **PUBLIC AFFAIRS**

ACTION 3 Conduct media outreach campaign to support funding efforts.

- **2018** Develop and execute CLNS media outreach campaign. **COMMUNICATIONS**

ACTION 4 Explore partnering with the philanthropic community on the importance of funding legal aid to alleviate poverty.

- **2018** Work with CEJ and the legal aid providers to develop a plan to partner with the philanthropic community. **OLF**
- **2019** Implement the plan. **OLF**
GOAL 2 Ensure all Oregonians are able to access the bar’s public protection programs.

STRATEGY 1 Engage in outreach to marginalized communities regarding the availability and purpose of the bar’s public protection programs.

ACTION 1 Develop relationships with community organizations working in the public protection arena.
   2018 Identify and create a list of potential community partners. GENERAL COUNSEL
   2019 Have a discussion with a representative from each identified group. GENERAL COUNSEL

ACTION 2 Design and utilize toolkit for member and public outreach on public protection programs.
   2018 Create program description for public protection programs and collect related application/complaint forms. GENERAL COUNSEL
   2019 Discuss and review the toolkit with representatives from community organizations and member representatives. GENERAL COUNSEL
   2020 Share the toolkit with targeted audiences. GENERAL COUNSEL

STRATEGY 2 Develop a comprehensive approach for providing English language learners access to the bar’s public protection programs.

ACTION 1 Develop policy to enable access to programs for persons who speak, read, or write languages other than English.
   2018 Evaluate staffing and other resources in relation to language needs. GENERAL COUNSEL
   2019 Write and adopt a policy providing that individuals who file complaints in languages other than English are heard. GENERAL COUNSEL
   2020 Develop multi-lingual complaint/application forms and informational materials for public protection programs. COMMUNICATIONS

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1 OSB Public Protection Programs include the lawyer disciplinary process, unlawful practice of law complaints, client security fund, and malpractice coverage.
STRATEGY 3 Ensure that the operation of bar’s public protection programs are fair, safe and welcoming to all.

ACTION 1 Collect demographic data and feedback from users who access the bar’s public protection programs.

2018 Explore methods to collect data. COMMUNICATIONS
2019 Collect user demographic data and seek feedback on user experience. COMMUNICATIONS

ACTION 2 Analyze demographic data and feedback from users who access the bar’s public protection programs.

2018 Analyze the data collected. GENERAL COUNSEL
2019-20 Meet with members, stakeholders, and possible community partners identified in Strategy 1 to discuss data and seek additional feedback. CEO
2020 Identify approaches for creating a more safe and welcoming public protection program process. GENERAL COUNSEL
2020 Develop plan to implement approaches. GENERAL COUNSEL

ACTION 3 Coordinate with the work of the Oregon Supreme Court Council on Inclusion and Fairness (OSCCIF).

2018 - 2020 Participate in and support the work of OSCCIF. CEO
GOAL 3 Expand availability of public education, outreach and self-navigation materials for underserved Oregon communities.

STRATEGY 1 Develop public legal informational materials that are accessible to all Oregonians.

ACTION 1 Improve the readability of all OSB public legal information materials.
- **2018** The readability/grade level of existing content has been determined, and a target standard has been set – e.g., “Plain English” (8th grade reading level). COMMUNICATIONS
- **2019** The 30 most-accessed topics have been edited to meet the new standard. COMMUNICATIONS
- **2020** The next 30 most-accessed topics have been edited to meet the new standard. COMMUNICATIONS

ACTION 2 Improve access to legal information materials for English-language-learners.
- **2018** All public information materials have been presented online in formats that are compatible with the Google Translate app; professionally translated materials available to the OSB have been posted online. COMMUNICATIONS
- **2019** Professional translation of the 20 most-accessed topics have been produced in high-frequency languages. COMMUNICATIONS
- **2020** Professional translation of the next 20 most-accessed topics have been produced in high-frequency languages. COMMUNICATIONS

ACTION 3 Increase availability of legal information provided in video and other non-text formats, featuring diverse presenters.
- **2018** The production of Legal Q&A videos in English, Spanish and other high-frequency [define in DAP] languages has continued; video introductions for OSB public protection services in English and Spanish have been produced. COMMUNICATIONS
- **2019** An instructional video for new statewide dissolution forms (petitioner) in English and Spanish has been produced and/or promoted (in collaboration with justice system partners). COMMUNICATIONS
- **2020** Instructional videos for other statewide family law firms have been produced and/or promoted. COMMUNICATIONS

ACTION 4 Increase the availability of legal information materials to people with disabilities and special needs.
- **2018** Online materials have been reviewed for compatibility with screen readers; captioning for public information videos has been added. COMMUNICATIONS
- **2019** Updating and monitoring of materials has continued. COMMUNICATIONS
- **2020** Updating and monitoring of materials has continued. COMMUNICATIONS
STRATEGY 2 Enhance outreach to underserved communities regarding the modest means and lawyer referral programs.

ACTION 1 Assess current service levels and legal needs of underserved communities.

2018 Compile internal statistics on the Lawyer Referral Service and Modest Means Program, including calls from English language learners, languages offered by panelists, and website translations. COMMUNICATIONS

2019 Compare services provided with results of the Civil Legal Needs Study (CLNS) to identify underserved communities and prioritize how the Lawyer Referral service is meeting their legal needs. LSP

ACTION 2 Implement outreach plan to underserved communities, including marketing and coordination with community partners.

2018 Begin outreach to already identified underserved communities. COMMUNICATIONS

2019 - 2020 Continue outreach methods and monitor effectiveness. COMMUNICATIONS

STRATEGY 3 Increase issue-based public education, targeting media outlets with legal trends and issues that affect underserved communities.

ACTION 1 Establish a diverse network of lawyers and bar groups who are leaders in relevant areas of practice.

2018 Work with select committees, sections and specialty bars to support justice system issues. PUBLIC AFFAIRS

2019 Develop a framework to continue the discussion and coordinate ongoing efforts. PUBLIC AFFAIRS

ACTION 2 Adopt a plan for responding to breaking legal news when it offers opportunity to educate and/or enhance awareness of issues affecting underserved communities.

2018 Work with bar leaders on a media response policy. COMMUNICATIONS

2019 Develop and implement the policy. COMMUNICATIONS
GOAL 4 Improve the Administration of Justice to better serve underrepresented and marginalized communities.

STRATEGY 1 Support OSB justice system funding priorities.
ACTION 1 Develop coalitions and collaborate with justice system partners and bar members to achieve OSB legislative priorities.
   2018 Meet with justice system partners during the interim to discuss legislative concepts and funding priorities. PUBLIC AFFAIRS
   2019 Host “Day at the Capitol” to activate members and educate legislative leadership. PUBLIC AFFAIRS
   2019 Present information on access to justice to lawyer-legislators and bar members to ensure message consistency. PUBLIC AFFAIRS

STRATEGY 2 Collaborate with the courts and support the Procedural Fairness in Courts Initiative.
ACTION 1 Develop lunchtime CLE series (Lunch and Learn) at the Capitol for staff and public on implicit bias and procedural justice.
   2018 Lunchtime CLE on procedural justice. PUBLIC AFFAIRS
   2019 Lunchtime CLE on procedural justice. PUBLIC AFFAIRS
   2020 Lunchtime CLE on procedural justice. PUBLIC AFFAIRS

ACTION 2 Determine goals of Oregon State Council on Gender Inclusion and Fairness (OSCGIF) regarding data identification and collection.
   2018 Develop plan on how to best assist. PUBLIC AFFAIRS
STRATEGY 3 Support access to justice in the legislative arena.

ACTION 1 Collaborate with other organizations to support procedural fairness and justice system reinvestment.

   2019 Day at the Capitol: Invite representatives from legal aid, indigent defense services, and coalition partners to participate in events. PUBLIC AFFAIRS

ACTION 2 Develop coalitions to support access to justice initiatives.

   2018 Meet with coalition partners during the interim to discuss legislative concepts and funding priorities. PUBLIC AFFAIRS

ACTION 3 Educate lawyer-legislators, bar members, and coalition partners about the need for legal aid services and indigent defense.

   2018 Host an access to justice event with coalition partners. PUBLIC AFFAIRS
   2019 Host an access to justice event with coalition partners. PUBLIC AFFAIRS
   2020 Host an access to justice event with coalition partners. PUBLIC AFFAIRS

ACTION 4 Pursue Consumer Protection Initiatives

   2018 Pursue Consumer Protection Initiatives related to Futures Task Force. PUBLIC AFFAIRS
   2019 Achieve progress in Consumer Protection Initiatives in 2019 legislative session PUBLIC AFFAIRS

ACTION 5 Improve resources for self-navigators.

   2018 - 2019 (Re. self-navigators) Support Court Initiatives of the Futures Task Force. GENERAL COUNSEL
   2019 Successful legislative session. PUBLIC AFFAIRS

ACTION 6 Use the Civil Legal Needs Study to update legislators about the unmet legal needs of low income Oregonians to support increased legal aid funding.

   2018 Establish diverse network of leaders to support relevant issues and trends. PUBLIC AFFAIRS
   2019 Successful legislative session. PUBLIC AFFAIRS
Bar Operations Sphere

**GOAL 1** Bar employees have a high level of diversity and inclusion competence and ownership.

**STRATEGY 1** Provide educational opportunities for OSB employees.

**ACTION 1** Provide one annual mandatory session focused on inclusion, equity or cultural competence for all staff.

- **2018** Topic and presenter identified and scheduled. HUMAN RESOURCES
- **2019** Topic and presenter identified and scheduled. HUMAN RESOURCES
- **2020** Topic and presenter identified and scheduled. HUMAN RESOURCES

**ACTION 2** Provide one annual mandatory session focused on diversity, inclusion, equity, or cultural competence for managers and directors (in addition to the annual all-staff training).

- **2018** Topic and presenter identified and scheduled. HUMAN RESOURCES
- **2019** Topic and presenter identified and scheduled. HUMAN RESOURCES
- **2020** Topic and presenter identified and scheduled. HUMAN RESOURCES

**ACTION 3** Provide at least one annual cultural awareness day for all employees.

- **2018** Culture to highlight identified; Activity held. DIVERSITY & INCLUSION
- **2019** Culture to highlight identified; Activity held. DIVERSITY & INCLUSION
- **2020** Culture to highlight identified; Activity held. DIVERSITY & INCLUSION

**ACTION 4** Develop a “tip of the month” feature on the intranet that focuses on information and topics relating to diversity, inclusion, equity, or cultural competence.

- **2018** Information sourced and posted monthly on intranet. DIVERSITY & INCLUSION
- **2019** Information sourced and posted monthly on intranet. DIVERSITY & INCLUSION
- **2020** Information sourced and posted monthly on intranet. DIVERSITY & INCLUSION
STRATEGY 2 Ensure managers and directors are held accountable for professional development in relation to diversity, inclusion, equity and cultural competence.

ACTION 1 Update managers’ and directors’ performance evaluation templates to ensure that diversity and inclusion ownership and competence are included as leadership attributes to be evaluated.

2018 Templates reviewed, changed as necessary and implemented for year. HUMAN RESOURCES
2019 Templates reviewed, changed as necessary and implemented for year. HUMAN RESOURCES
2020 Templates reviewed, changed as necessary and implemented for year. HUMAN RESOURCES

ACTION 2 Encourage managers and directors to identify and participate in external educational opportunities that focus on professional development around diversity and inclusion.

2018 D&I professional development discussed during performance evaluation. CEO
2019 D&I professional development discussed during performance evaluation. CEO
2020 D&I professional development discussed during performance evaluation. CEO

STRATEGY 3 Review current OSB language used in relation to diversity and inclusion, and make updates according to current best practices.

ACTION 1 Research best practices around diversity and inclusion language.

2018 Collate findings into a best practices report. DIVERSITY & INCLUSION

ACTION 2 Conduct an assessment of OSB language (including pronouns) used on all internal and external materials.

2018 Identify language (and all language locations) for updating, using the best practices report. DIVERSITY & INCLUSION
2019 Develop a language update implementation plan. DIVERSITY & INCLUSION
2019 Implement consistent language updates per the implementation plan. DIVERSITY & INCLUSION

ACTION 3 Update OSB staff regarding changes to best practices terminology and language.

2019 Best practices language updates are included within the annual staff education session. HUMAN RESOURCES

STRATEGY 4 Ensure the OSB bylaws are consistent with the OSB and DAC mission and goals around diversity and inclusion.

ACTION 1 Review bylaws and identify bylaws that need to be amended.

2019 Bylaws identified. GENERAL COUNSEL
2020 Amendments drafted and presented to the BOG for approval. GENERAL COUNSEL
GOAL 2 Foster a welcoming and inclusive workplace and accessible programs, services and Bar Center.

STRATEGY 1 Acquire an understanding of the bar’s workplace culture.
ACTION 1 Devise and conduct a workplace culture assessment.
   2018 Workplace culture assessment conducted and data analyzed. HUMAN RESOURCES

ACTION 2 Evaluate employees’ reasons for leaving the organization.
   2018 Exit interview process reviewed and changes implemented. HUMAN RESOURCES
   2019 Method for reviewing and analyzing data developed. HUMAN RESOURCES
   2020 Current and historic data analyzed and evaluated. HUMAN RESOURCES

ACTION 3 Conduct an internal salary equity assessment.
   2019 Assessment conducted by third-party contractor and data analyzed. HUMAN RESOURCES

STRATEGY 2 Use results of data collection to identify areas for improvement.
ACTION 1 Develop a plan to address areas that need improvement.
   2020 Plan developed and implemented. HUMAN RESOURCES

STRATEGY 3 Identify and resolve barriers to the OSB being a welcoming environment for all.
ACTION 1 Develop and implement a plan to ensure inclusive restroom access for all employees and visitors.
   2018 Plan developed and needed resources identified. DIVERSITY & INCLUSION
   2019 Plan implemented. FINANCE AND OPERATIONS

ACTION 2 Develop and implement a policy and procedure to create an inclusive environment for gender neutral and transitioning transgender employees.
   2019 Plan developed and needed resources identified. HUMAN RESOURCES
   2020 Plan implemented. HUMAN RESOURCES

STRATEGY 4 Continue to identify and resolve barriers to accessibility for persons with disabilities to OSB programs, services and Bar Center. (BART)
ACTION 1 Develop and implement a plan to identify and resolve barriers to OSB Center Facility.
   2018 Building user feedback reviewed to identify ways to improve building accessibility. GENERAL COUNSEL
   2019 Plan created and needed resources identified to improve building accessibility. GENERAL COUNSEL
   2020 Accessibility plan implemented. GENERAL COUNSEL

ACTION 2 Ensure OSB websites are compatible with screen readers.
   2018 Plan created to continue identifying and updating portions of the website that are not accessible to persons utilizing screen readers. GENERAL COUNSEL
2019 Website accessibility plan implemented. GENERAL COUNSEL

ACTION 3 Continue to educate bar staff and bar leaders about accessibility.

2018 Feedback gathered and areas identified where bar staff and bar leaders may require additional assistance or education on accessibility issues. GENERAL COUNSEL

2019 Bar staff training on accessibility held. GENERAL COUNSEL

2019 Accessibility guides and recommendations developed that respond to bar staff and bar leaders’ needs. GENERAL COUNSEL

2020 Accessibility guidelines and recommendations distributed to bar staff and bar leaders. GENERAL COUNSEL
GOAL 3 Build a workforce that is diverse and inclusive at every level.

STRATEGY 1 Collect demographic data as one benchmark for measuring the diversity of applicants and the workforce.
ACTION 1 Evaluate categories currently used by OSB for measuring staff diversity.
   2018 Categories assessed and expanded as necessary. HUMAN RESOURCES
   2019 Revised data collection implemented. HUMAN RESOURCES
   2020 System developed and implemented for ongoing review and analysis of data. HUMAN RESOURCES

ACTION 2 Investigate options for assessing the diversity of applicants.
   2019 Electronic application systems evaluated. HUMAN RESOURCES
   2020 Application process updated. HUMAN RESOURCES

STRATEGY 2 Ensure that the OSB recruitment process is inclusive and equitable.
ACTION 1 Assess the current OSB recruitment process.
   2018 Method for assessment is developed. DIVERSITY & INCLUSION
   2019 Assessment conducted and data analyzed. DIVERSITY & INCLUSION

ACTION 2 Identify areas for improvement and develop plan for improvement.
   2019 Plan developed. HUMAN RESOURCES
   2020 Plan implemented. HUMAN RESOURCES

STRATEGY 3 Increase the diversity of applicants for vacant positions at the OSB.
ACTION 1 Build relationships with external groups and organizations that are focused on diversity.
   2018 External groups and organizations identified. DIVERSITY & INCLUSION
   2018 Plan developed for building relationship with identified organizations and appropriate to each organization. DIVERSITY & INCLUSION
   2019 Plan implemented. DIVERSITY & INCLUSION

ACTION 2 Expand outreach to a more diverse pool of potential applicants.
   2018 Evaluate current outreach for job openings to identify gaps. HUMAN RESOURCES
   2019 Identify potential resources for additional outreach and their job posting requirements and needs. HUMAN RESOURCES
   2019 Incorporate new resources into current advertising plans. HUMAN RESOURCES
**STRATEGY 4** Explore and utilize bias interrupters in the hiring process.

**ACTION 1** Incorporate hiring committees into the hiring process.

- **2018** Identity opportunities for use of hiring committees. *HUMAN RESOURCES*
- **2018** Investigate and experiment with alternative hiring models that incorporate hiring committees. *HUMAN RESOURCES*

- **2019** Develop training for hiring committee participants. *HUMAN RESOURCES*
- **2019** Identify staff interested in participating on hiring committees and provide training. *HUMAN RESOURCES*

**ACTION 2** Create accountability for hiring process decisions.

- **2018** Implement a step within the hiring process that requires decision makers to state a reason why they did not choose to take applicants to the next stage. *HUMAN RESOURCES*
- **2018** Training provided for managers and directors on bias interrupters. *HUMAN RESOURCES*
GOAL 4 Engage a diverse and inclusive group of contractors, suppliers, vendors, and consultants.

STRATEGY 1 Develop and implement a process for ensuring consideration of a diverse list of third-party vendors.

ACTION 1 Review the current process(es) taking place organization-wide for selecting contractors, suppliers, vendors, and consultants.

2018 Process reviewed and documented. DIRECTOR OF FINANCE AND OPERATIONS

ACTION 2 Create and implement a policy or policies for contracting with third-party vendors that account for the various needs of the organization and consider a diverse vendor pool.

2018 A diverse list of third-party vendors developed. DIRECTOR OF FINANCE AND OPERATIONS
2019 Policy developed. DIRECTOR OF FINANCE AND OPERATIONS
2020 Policy implemented. DIRECTOR OF FINANCE AND OPERATIONS
**PLAN IMPERATIVES**

1. Throughout the Diversity Action Plan implementation process, the effectiveness of the strategies and action items for each goal should be reviewed and adjusted as necessary.
2. The process and criteria for appointment to the Diversity Action Council should be submitted to the BOG for review.
Action Recommended

Approve the recommendation of the Budget & Finance Committee for the 2018 OSB Budget.

Background

The Budget & Finance Committee has reviewed the 2018 OSB Budget in its three previous meetings and will have a recommendation for the board on the final 2018 budget.

The report following this memo reports a net operating revenue of $27,904. This is a considerable drop from the 2017 NOR of $391,912 and the reasons are explained in the report. There is little change from the 2017 budget and any change is due to lower revenue expected in 2018 and the greater increase in personnel costs due to the salary pool and higher PERS costs. The bar’s reserves and contingencies will remain fully funded and an excess reserve should remain in 2018.

The active member fee declines by $5.00, but that is due to the Client Security Fund assessment dropping from $15.00 to $10.00.
November 18, 2017

Report to the Board of Governors

Purpose of This Report

- This is intended to be the last report of the 2018 Budget and any changes from this report will be the final budget for 2018.
- The Budget & Finance Committee reviewed the 2018 Budget at its July 21, September 8 and 22, and November 3 meetings and prior to the November 18 board meeting. The July meeting included numerous scenarios for possible actions for the 2018 and future years’ budgets.
- During the development of the budget a projected net operating expense declined from $117,500 to a small net operating revenue, but a positive one nonetheless.
- At the November 3 meeting the Committee discussed at length the salary pool for 2018 (4% is included in this budget report). The Committee will make its final recommendation at this meeting.

Quick Summary of the 2018 Budget

This report includes the revised budget and now reports a Net Revenue of $27,904.

The Active Membership Fee is reduced to $552.00 from $557.00. A reduction in the Client Security Fund assessment was approved at the September 22 meeting and reported at the November 3 HOD meeting.

Changes from 2017 Budget to 2018 Budget:

- The 2017 Net Revenue is $391,911 and the final Net Revenue will be higher.
- Revenue in 2018 declines $18,400; Expenses increase $344,300.
1. Membership Fees Revenue...

The chart below shows there were 59 more Active Members at October 2017 than October a year ago.

- However, using the same number of changes in membership status in the last two months of 2016 (which had 230 status changes), the Active Member count at the end of 2017 will be 18 less than the end of 2016.
- Since the Inactive Member count is projected to increase slightly in 2018 offsetting a projected slight decline in Active members, the Member Fee revenue remains the same as the 2017 budget.

![Active Membership 2016 and 2017](chart)

**An Interesting Fact**

Will the Inactive Member count increase in 2018?

**Answer:** The Inactive Member count has increased from the previous year EVERY YEAR SINCE 1979 (39 consecutive years).

**CONCLUSION ON MEMBERSHIP FEE REVENUE**

With Active Members transferring to Retired, Inactive, Active Pro Bono status, or deceased, these member categories most likely will cancel any growth in the Active Member category in 2018.

Thus, the 2018 Member Fee revenue remains the same as the 2017 budget.
2. Non-dues (Program Fee) Revenue...

<table>
<thead>
<tr>
<th>Program</th>
<th>Result Compared to 2017 Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>Admissions</td>
<td>The BBX and Director project $28,345 more revenue primarily due to the increase in Investigation Fees for California and Nevada lawyers entering by UBE scores</td>
</tr>
<tr>
<td>CLE Seminars</td>
<td>Due to when and the impact of the new Association Management software (AMS) and the change in Section co-sponsorship, revenue is hard to predict. In this phase revenue is lower by $15,370.</td>
</tr>
<tr>
<td>Disciplinary Counsel</td>
<td>No increase in the Reinstatement Fee is included, but will be evaluated and seek Court approval in 2018 for 2019.</td>
</tr>
<tr>
<td>Lawyer Referral</td>
<td>Percentage Fee revenue is down $70,000 which is closer to the expected revenue for 2017. Revenue is expected to average $59,000 per month as it has for three years</td>
</tr>
<tr>
<td>Legal Publications</td>
<td>Revenue (book sales) is projected $17,035 less than 2017. Sales of print books are expected to slowly decline year-over-year.</td>
</tr>
<tr>
<td>MCLE</td>
<td>Revenue is projected to be $1,000 less in 2018 further affirming that this source of revenue is plateauing.</td>
</tr>
</tbody>
</table>

**CONCLUSION OF NON-DUES REVENUE**

Program Fee, or non-dues, revenue is $47,260 less than the 2017 Budget as generally the major sources of Program Fee revenue decline from 2017.

3. The Salary Pool, Taxes & Benefits...

a) The PLF budget was approved on September 8 with a 4% salary pool. This was based on the PLF’s recommendation on a July 2017 release from the Bureau of Labor Statistics that the Portland CPI-U had increased 4.4% from the previous year.

b) The bar and PLF have always maintained the same salary pool, so a 4% pool is included in this phase of the budget.

c) The chart compares the CPI-U and the amount of the salary pool since 2011:

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Portland CPI-U</td>
<td>4.4%</td>
<td>2.1%</td>
<td>1.2%</td>
<td>2.4%</td>
<td>2.5%</td>
<td>2.3%</td>
<td>2.9%</td>
</tr>
<tr>
<td>Pool</td>
<td>3.0%</td>
<td>3.0%</td>
<td>2.0%</td>
<td>2.0%</td>
<td>2.0%</td>
<td>2.0%</td>
<td>3.0%</td>
</tr>
<tr>
<td>Pool Over/(Under) CPI-U</td>
<td>(1.4)</td>
<td>.9%</td>
<td>.8%</td>
<td>(.4%)</td>
<td>(.5%)</td>
<td>(.3%)</td>
<td>.1%</td>
</tr>
</tbody>
</table>

Notes:
- * The 2017 CPI-U number is for the first half of 2017.
- The CPI-U is not known until after the end of the year, i.e. although the CPI-U for 2016 was 2.1%, the 2017 pool of 3% was approved before the end of 2016.
d) A 1% salary pool change is $72,300 in salaries and benefits.

e) The benefit costs of PERS also are a reason for the personnel cost increase. The employer rates increased an average of 4.41% in mid-2017, so those increases are in effect for a full year in 2018. The rate increases added $107,700 to the personnel budget.

This cost increase could have been higher except for the departure of several long-time employees. The amount of salary at the highest PERS rate declined from 38% to 29%, and will continue to decline in the years ahead as more senior staff leave.

**CONCLUSION FOR PERSONNEL COSTS**

*With the salary pool at 4%, the full year of the higher PERS rates, and the full year of new positions, the personnel budget will increase $411,613 from the 2017 budget.*

4. **Direct Program & Administrative (non-Personnel) Expenses**

- Non-personnel costs are $70,298 lower in 2018.
- Generally across the board most programs/departments cut or eliminated operating and administrative costs.
- The 2018 budget does not include costs for an economic survey ($25,000 in 2017).

**CONCLUSION FOR NON-PERSONNEL COSTS**

*Non-personnel costs continue to decline or at least plateau year-over-year.*

The chart shows the challenge in future budgets. Personnel costs are increasing at a larger rate than non-personnel costs. This contradicts with limited or no increase in revenue.

- Personnel costs are expected to be 75.3% of all bar operating expenditures in 2018.
5. Program Changes in the 2018 Budget . . .

After considerable discussion at the two previous meetings, there are few changes in the 2018 budget, and two apply to special assessments and not general bar operations

- A .75 FTE Adjudicator is included and assistant needs are absorbed by existing staff.
- The Client Security Fund assessment is reduced $5.00.
- Diversity & Inclusion program expenses increase $151,015.


<table>
<thead>
<tr>
<th>Member Fee Assessment</th>
<th>The general member fee remains the same, but the fee becomes $552.00 for active members with the reduction of the CSF assessment. The Inactive Member fee remains at $125.00.</th>
</tr>
</thead>
<tbody>
<tr>
<td>PLF Grant</td>
<td>$200,000 grant for an undisclosed period</td>
</tr>
<tr>
<td>Fastcase</td>
<td>$99,000 for the popular legal research library</td>
</tr>
<tr>
<td>Classroom Law Project</td>
<td>$20,000 grant</td>
</tr>
<tr>
<td>Campaign for Equal Justice</td>
<td>$45,000 grant</td>
</tr>
<tr>
<td>Council on Court Procedures</td>
<td>$4,000 grant for council member travel expenses</td>
</tr>
<tr>
<td>Contract Legal Fees</td>
<td>$40,000 for outside counsel</td>
</tr>
<tr>
<td>Outreach Programs</td>
<td>$15,000 for legislative public policy</td>
</tr>
<tr>
<td>Contingency</td>
<td>$25,000 for unusual or unexpected costs</td>
</tr>
<tr>
<td>Client Security Fund claims</td>
<td>$200,000 as the annual placeholder amount</td>
</tr>
</tbody>
</table>

7. What the Five-Year Forecast Looks Like with a Net Revenue in 2018 . . .

| 2019 | • By creating a small net revenue in 2018, the net expense in 2019 becomes a more manageable $216,300.  
|      | • Reserves remain well above the required levels. |
| 2020 | • Expect a fee increase of at least $50.00 per active member. This will create a net revenue that will last for at least three years – four to five if other revisions are made.  
|      | • With a fee increase - reserves are well above the required amounts.  
<p>|      | • Without a fee increase - the net expense will be in excess of $400,000 and the reserve levels are maintained, but there is no excess. |</p>
<table>
<thead>
<tr>
<th>Year</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>2021</td>
<td>With a fee increase in 2020 a net revenue exists and an excess of the reserves remains.</td>
</tr>
</tbody>
</table>
| 2022 | • A manageable net expense exists.  
• The amount of reserve funds available are slightly less than the reserve levels.  
• The mortgage on the bar center is subject to a balloon payment in February. The bar should have no difficulty refinancing the mortgage, and the key factor will be the interest rate. |
| 2023 | |


**2019**

1. **Charge the to the over 50-year members** the Active Member fee
2. **Increase the Reinstatement Fees** by $250 (or another amount) to account for the time to process the reinstatements.
3. Maintaining the non-personnel cost adjustments of 2018 will cut the net expense to a more manageable amount, and possibly lead to a balanced budget.

**2020**

1. **Increase the Active member Fee by $50.00.**

**2019 to 2023**

1. **Consider other sources of revenue** (reserves, service charge to sections, allow paralegals to become members, increase the lawyer referral percentage fee rate, etc.)
2. **The salary pool and another expected mid-year PERS rate increase** in 2019 and 2021 will have the greatest impact on operating costs.
3. **Evaluate programs or services for elimination or reduction** (New lawyers Division, New Lawyer mentoring Program, etc.)
   • The program’s expenditures are $189,516 greater than a year ago. The additional costs are the placeholder of $100,000 for initiating programs on diversity for members, increased costs for OLIO, and filling positions that were vacant for an extended period.
   • The program will begin 2018 with a fund balance of approximately $500,000.

   • At the September 22 Committee and board meetings, the assessment was reduced by $5.00 to $10.00. All active members pay this assessment.
   • The lesser assessment generates $77,800 less revenue. The 2018 net expense for the program is $106,406.
   • The budget includes a placeholder of $200,000 for claims even though fortunately that amount has not been exceeded since 2013.
   • The fund balance at the beginning of 2018 will approximate $1.2 million. If claims remain at the average as this year and the previous three years (a little over $100,000), the assessment can remain at $10.00 for several more years.

11. Fanno Creek Place . . .
   • Two vacancies of 3,138 s.f. are possible beginning 2018 and one other tenant is expected to renew.
   • If those vacancies are filled by April 2018, the net expense will improve by $56,400 over 2017.

12. Recommendation of the Budget & Finance Committee to the Board of Governors
   a. Decision on 2018 salary pool;
      • If a 4% salary pool, the Net Operating Revenue is $27,904;
      • If a 3% salary pool, the Net Operating Revenue is $100,200.
   b. Action on other budget related matters;
   c. Action on the 2018 budget as presented, or with Committee changes.
## OREGON STATE BAR
### 2018 Budget Summary by Program

<table>
<thead>
<tr>
<th>Department / Program</th>
<th>Revenue</th>
<th>Sal &amp; Benefits</th>
<th>Direct Program</th>
<th>Gen &amp; Admin</th>
<th>Total Expense</th>
<th>Indirect Costs</th>
<th>Net Revenue</th>
</tr>
</thead>
<tbody>
<tr>
<td>Admissions</td>
<td>$834,220</td>
<td>$347,613</td>
<td>$266,447</td>
<td>$34,023</td>
<td>$648,083</td>
<td>$144,116</td>
<td>$42,021</td>
</tr>
<tr>
<td>Bulletin</td>
<td>$676,450</td>
<td>$178,400</td>
<td>$354,170</td>
<td>$4,190</td>
<td>$536,760</td>
<td>$137,373</td>
<td>$2,317</td>
</tr>
<tr>
<td>CLE Seminars</td>
<td>$907,815</td>
<td>$489,900</td>
<td>$368,185</td>
<td>$16,288</td>
<td>$874,373</td>
<td>$285,770</td>
<td>($252,328)</td>
</tr>
<tr>
<td>Client Assistance Office</td>
<td>$0</td>
<td>$582,300</td>
<td>$1,700</td>
<td>$17,351</td>
<td>$601,351</td>
<td>$170,214</td>
<td>($771,565)</td>
</tr>
<tr>
<td>Communications</td>
<td>$42,500</td>
<td>$463,100</td>
<td>$6,770</td>
<td>$8,917</td>
<td>$478,787</td>
<td>$143,277</td>
<td>($579,564)</td>
</tr>
<tr>
<td>General Counsel</td>
<td>$1,000</td>
<td>$646,900</td>
<td>$60,025</td>
<td>$24,299</td>
<td>$731,224</td>
<td>$116,175</td>
<td>($846,399)</td>
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<tr>
<td>Governance (BOG)</td>
<td>$0</td>
<td>$360,500</td>
<td>$176,525</td>
<td>$22,918</td>
<td>$559,943</td>
<td>$110,699</td>
<td>($670,642)</td>
</tr>
<tr>
<td>Legal Publications</td>
<td>$258,870</td>
<td>$689,800</td>
<td>$69,660</td>
<td>$20,975</td>
<td>$780,345</td>
<td>$232,078</td>
<td>($753,643)</td>
</tr>
<tr>
<td>Loan Repayment Assistance Progra</td>
<td>$154,200</td>
<td>$0</td>
<td>$185,300</td>
<td>$0</td>
<td>$185,300</td>
<td>$0</td>
<td>($31,100)</td>
</tr>
<tr>
<td>MICLE</td>
<td>$342,700</td>
<td>$194,300</td>
<td>$2,500</td>
<td>$4,490</td>
<td>$201,290</td>
<td>$105,104</td>
<td>$36,306</td>
</tr>
<tr>
<td>Member Services</td>
<td>$0</td>
<td>$233,700</td>
<td>$12,750</td>
<td>$3,325</td>
<td>$249,775</td>
<td>$125,108</td>
<td>($374,883)</td>
</tr>
<tr>
<td>New Lawyer Mentoring Program</td>
<td>$30,000</td>
<td>$209,900</td>
<td>$6,350</td>
<td>$3,402</td>
<td>$219,652</td>
<td>$83,259</td>
<td>($272,911)</td>
</tr>
<tr>
<td>New Lawyers Division</td>
<td>$4,850</td>
<td>$72,600</td>
<td>$88,850</td>
<td>$3,280</td>
<td>$157,130</td>
<td>$49,973</td>
<td>($202,253)</td>
</tr>
<tr>
<td>Public Affairs</td>
<td>$0</td>
<td>$513,200</td>
<td>$21,450</td>
<td>$31,836</td>
<td>$566,486</td>
<td>$119,929</td>
<td>($686,415)</td>
</tr>
<tr>
<td>Referral &amp; Information Services</td>
<td>$830,000</td>
<td>$560,200</td>
<td>$36,000</td>
<td>$9,350</td>
<td>$605,550</td>
<td>$245,472</td>
<td>($212,022)</td>
</tr>
<tr>
<td>Regulatory Services</td>
<td>$95,100</td>
<td>$1,911,000</td>
<td>$108,800</td>
<td>$91,141</td>
<td>$2,110,341</td>
<td>$419,940</td>
<td>($2,435,781)</td>
</tr>
<tr>
<td>Special Projects</td>
<td>$200,000</td>
<td>$113,300</td>
<td>$173,000</td>
<td>$0</td>
<td>$184,300</td>
<td>$0</td>
<td>$15,700</td>
</tr>
<tr>
<td><strong>TOTAL PROGRAMS</strong></td>
<td>$4,377,705</td>
<td>$7,464,113</td>
<td>$1,911,482</td>
<td>$295,785</td>
<td>$9,691,380</td>
<td>$2,488,487</td>
<td>($7,802,162)</td>
</tr>
</tbody>
</table>

### ALLOCATIONS:

| Finance & Operations                  | $7,855,066 | $1,719,900 | $904,844 | $99,997 | $2,724,741 | ($2,503,916) | $7,634,241 |
| Less: Dept Charges/Offsets            |            |            |           |          | ($210,825) | ($210,825)   | $20,825     |
| Oregon State Bar Center               |            |            |           |          |            | $0           | $0          |
| Contingency                           | $15,000    | $25,000     |           |          | $15,000    | (25,000)     | $0          |
| **TOTAL OPERATIONS**                  | $12,232,771 | $9,184,013 | $2,640,501 | $395,782 | $12,220,296 | ($15,429)    | $27,904     |
| Fanno Creek Place                     | $906,796   | $108,600    | $1,585,602 | $32,600  | $1,646,802  | ($160,459)   | ($579,547)  |
| **TOTAL GENERAL FUND**                | $13,139,567 | $9,292,613 | $4,146,103 | $428,382 | $13,867,098 | ($175,888)   | ($551,644)  |

### DESIGNATED FUNDS:

| Diversity Inclusion                   | $715,600   | $335,700    | $401,360 | $34,800 | $771,860    | $110,550      | ($166,810)   |
| Client Security Fund                  | $174,000   | $40,700     | $202,950 | $2,519  | $246,169    | $34,237       | ($106,406)   |
| Legal Services                        | $6,205,000 | $174,200    | $6,033,100 | $9,607  | $6,196,907  | $31,101       | ($23,008)    |
| **TOTAL ALL FUNDS**                   | $20,234,167 | $9,843,213 | $10,763,513 | $475,308 | $21,062,034 | $0            | ($847,868)  |

Print Date: 11/10/2017 1:45:30 PM
OREGON STATE BAR
Board of Governors Agenda

Meeting Date: November 18, 2017
From: Policy & Governance Committee
Re: Bylaws Amendments to Reconcile with Bar Act and Bar Rules of Procedure

Action Recommended

The Committee recommends that the Board of Governors adopt the attached amendments to the OSB Bylaws to reconcile the Bylaws with recent amendments to the Bar Act and the Bar Rules of Procedure.

Background

In the 2017 Regular Session, the Oregon Legislature enacted SB 490 and SB 491, which contained various amendments to the Bar Act.

SB 490 contained various housekeeping and administrative amendments, including:

1. Changing the name of the Executive Director to Chief Executive Officer;
2. Updating descriptions of the election of Board members, to reflect electronic balloting;
3. Deleting reference to Board Vice-Presidents and establishing the position of Immediate Past President; and
4. Providing the Board authority to assess member late fees.

SB 491 contained changes to the bar’s disciplinary process, including:

1. Providing for the Supreme Court’s appointment of the disciplinary Adjudicator;
2. Requiring Court appointment of the State Professional Responsibility Board.
3. Elimination of the Local Professional Responsibility Committees;
4. Extending statutory immunity to disciplinary monitors and NLMP mentors.

In addition, effective January 1, 2018, amended Bar Rules of Procedure will be effective. The amended bar rules contain numerous changes, including:

1. Providing for the Court’s appointment of the State Professional Responsibility Board.
2. Providing for the Court’s appointment of the Unlawful Practice of Law Committee.

Proposed Amendments

The attached proposed amendments seek to reconcile the bylaws with 2017 changes to the bar act and to better reflect current practice in the following ways:
1. The name of Executive Director is changed to Chief Executive Officer throughout the bylaws;
2. Article 9 is updated to provide all votes must be cast by 5:00 p.m. on Election Day, and that only in-state members may vote for ABA delegates. The reference to members being present during the canvassing of votes is deleted, as this process is now electronic and automatic.
3. Section 1.1 is updated to delete the reference to Board Vice-Presidents, which no longer exist.
4. A new Section 6.7 is added to provide that the Board has authority to assess late payment penalties. Changes to late payment penalties are no longer required to be approved by the House of Delegates (although regular fees increases must go to the HOD).
5. A new Section 18.7 is added to provide that the disciplinary Adjudicator is a bar employee who is appointed by the Court.
6. References to the Local Professional Responsibility Committees are deleted.
7. Section 18 is updated to provide that the State Professional Responsibility Board is appointed by the Court, and to ensure that the bylaws are consistent with the Bar Rules of Procedure, as amended.
8. Section 27 is updated to provide that the Unlawful Practice of Law Committee is appointed by the Court, and to ensure that the bylaws are consistent with the Bar Rules of Procedure, as amended.
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*(As amended by the Board of Governors through April 14, 2017)*

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<td>Section 1.2 Purposes</td>
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<td>13</td>
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<td>Subsection 2.303 Vacancies</td>
<td>13</td>
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<td>Subsection 2.400 Robert’s Rules of Order</td>
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<td>Subsection 2.401 Regular Meetings</td>
<td>13</td>
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<td>Subsection 2.402 Special Meetings</td>
<td>13</td>
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<td>Subsection 2.403 Emergency Meetings</td>
<td>13</td>
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<td>Subsection 2.404 Minutes</td>
<td>14</td>
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<td>Subsection 2.405 Oregon New Lawyers Division Liaison</td>
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<td>Section 2.5 Expenses</td>
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<td>Subsection 2.500 General Policy</td>
<td>14</td>
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<td>Subsection 2.501 Conferences</td>
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Article 1 Purpose of Bar and Definitions

Section 1.1 Definition
In these Bylaws, unless the context or subject matter otherwise requires:

(A) "State Bar" and "Bar" mean the Oregon State Bar, as described in ORS Chapter 9.

(B) "State Bar Act" and "Bar Act" mean ORS Chapter 9.

(C) "Board of Governors" and "Board" mean the Board of Governors of the Oregon State Bar.

(D) "House of Delegates" and "House" mean the House of Delegates of the Oregon State Bar created by ORS 9.136.

(E) "President" means the President of the Oregon State Bar.

(F) "President-elect" means the President-elect of the Oregon State Bar.

(G) "Vice President(s)" means the Vice President(s) of the Oregon State Bar.

(G H) "Chief Executive Officer/Executive Director" means the Chief Executive Officer/Executive Director of the Oregon State Bar.

(H I) "Governor" means a member of the Board of Governors of the Oregon State Bar.

(I J) "Member" means a member of the Oregon State Bar.

Section 1.2 Purposes
The mission of the Oregon State Bar is to serve justice by promoting respect for the rule of law, by improving the quality of legal services and by increasing access to justice.

The Bar fulfills that mission through the following functions:

(A) We are a professional organization, promoting high standards of honor, integrity, professional conduct, professional competence, learning and public service among the members of the legal profession.

(B) We are a provider of assistance to the public seeking to ensure the fair administration of justice for all and the advancement of the science of jurisprudence, and promoting respect for the law among the general public.

(C) We are a partner with the judicial system, seeking to ensure a spirit of cooperation between the bench and the Bar.
(D) We are a regulatory agency providing protection to the public, promoting the competence and enforcing the ethical standards of lawyers.

(E) We are leaders helping lawyers serve a diverse community.

(F) We are advocates for access to justice.

**Article 2 Board of Governors**

**Section 2.1 Duties and Responsibilities**

**Subsection 2.100 General**

(a) The Board of Governors governs the Bar, except as provided in ORS 9.139. In doing so, the Board determines the general policies of the Bar and approves its budget each year. The Chief Executive Officer, appointed by and acting under the supervision of the Board, implements, administers and supervises the Bar’s operation and program activities within these Bylaws and ORS Chapter 9.

(b) The Board operates as a review body, a supervisor of top management performance and a representative body of all members. As such, the Board must plan for the welfare of the total Bar ahead of other considerations.

(c) Each board member is unique and contributes special talents to the successful governance of the Bar. Expressing viewpoints and sharing opinions on issues before the Bar is important.

(d) Each lawyer-board member represents a geographic constituency. As a representative, a lawyer-board member is expected to communicate with constituents about board actions and issues and to represent constituent viewpoints to the Board.

(e) In addition to each lawyer-board member’s individual responsibility for communication with his or her constituency as set out in subparagraph (D) above, lawyer members of the Board and staff will have the responsibility to meet with local associations and other lawyer groups. Each year the President and Chief Executive Officer will develop a plan to visit the groups mentioned above with substantial participation by both the President and the Chief Executive Officer.

(f) Board members are committed to attend all board meetings and other functions in person except when, in a board member's judgment, an emergency or compelling circumstance arises that prevents participation. Board members should notify staff of the desire to participate in board meetings by telephone when personal attendance is precluded by an emergency or compelling circumstance. Staff will arrange the telephone link at bar expense based on those requests.

**Subsection 2.101 Election**

(a) The election of lawyer-members of the Board will be conducted according to Article 9 of the Bar’s Bylaws. Newly elected governors and officers of the Bar take office on January 1 of the year following their election.

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

**Subsection 2.102 Board Committee and Other Assignments**

At or shortly after the annual orientation and retreat, board members will be invited to indicate their preferences for board committee and other assignments. Members of the senior class will be invited to identify one or more board committees they would like to chair. The Chief Executive Officer Executive Director and president-elect will develop a slate of assignments based on the preferences. Senior class members shall have priority in the choice of assignments, but the preferences of all member will be honored to the extent possible and appropriate. The proposed slate will be circulated to the board and any board member may request a change of assignments. The president-elect will make reasonable effort to accommodate any change requests, but the president-elect's decision will be final.

**Subsection 2.103 Judicial Campaigns**

The members of the Board must refrain from public involvement in judicial campaigns and appointments that in any way identifies them as members of the Board, officers of the Bar, or otherwise representing the Oregon State Bar.

**Subsection 2.104 Separation of Powers**

The Board will not nominate or appoint persons who work in or for the state executive or legislative departments to the following bodies: State Professional Responsibility Board, Disciplinary Board, Minimum Continuing Legal Education Board and Commission on Judicial Fitness and Disability. In the case of a challenge to the candidacy of a member of the Board of Governors under ORS 9.042, the Board will follow the procedures outlined in the statute.

**Subsection 2.105 Amicus Curiae Briefs**

A section or committee that wishes to enter an amicus curiae appearance before any trial court or appellate court must obtain prior approval from the Board. The request must be in writing and must include a synopsis of the question involved, the posture of the case, the position to be taken in the amicus appearance, and the anticipated cost of appearing amicus curiae including lawyer fees, if any. The question involved must directly or substantially affect admission to the practice of law, the practice of law, discipline of members of the bench or bar, the method of selecting members of the judiciary or other questions of substantial interest to the Bar or a committee or section. The Board will determine whether the question involved can be adequately presented to the court without the amicus appearance of the committee or section. All costs for appearance by a section must be paid by the section; if the Board approves the filing of an amicus appearance by a committee, the Bar will pay any costs for the appearance.

**Subsection 2.106 Indemnification**

The Bar must indemnify its officers, board members, directors, employees and agents and defend them for their acts and omissions occurring in the performance of their duties, to the fullest extent permitted by ORS Chapter 30 relating to indemnification by public bodies, especially the provisions of ORS 30.285. The term
"officers, board members, directors, employees and agents" of the Bar includes subordinate groups established by the Bar or the Supreme Court to perform one or more of the Bar’s authorized functions, including the Board of Bar Examiners, the Professional Liability Fund, the State Professional Responsibility Board, the Disciplinary Board, the Local Professional Responsibility Committees and bar counsel and the State Lawyers Assistance Committee. The right to and method and amount of defense and indemnification are determined in accordance with the provisions of ORS 30.285 or comparable provisions of law governing indemnity of state agents in effect at the time of a claim.

Subsection 2.107 Defense of Disciplinary Complaints and Proceedings

(a) The bar will defend any of its current and former officers, employees and agents (hereafter "Accused"), whether elected or appointed, against any complaint of professional misconduct arising out of an act or omission occurring in the performance of his or her official duties on behalf of the bar as provided in this bylaw.

(b) The duty to defend does not apply in the case of malfeasance, gross negligence or willful or wanton neglect of duty.

(c) If any complaint is made to the Oregon State Bar or other agency or court with disciplinary jurisdiction over the Accused or a disciplinary proceeding is brought by the Oregon State Bar or such agency or court against an Accused which on its face falls within the provisions of subsection (a) of this bylaw, or which the Accused asserts to be based in fact on an act or omission in the performance of his or her official duties on behalf of the bar and not within the scope of subsection (b) of this bylaw, the Accused may file a written request for a defense with the General Counsel, or if the request is by the General Counsel, the President of the bar. The General Counsel or President, as the case may be, will thereupon present his or her recommendations to the Board of Governors regarding the approval of an agreement to pay for the defense of the Accused, including attorney fees and costs during the investigation, prosecution, and appeal of a complaint of professional misconduct. The Board of Governors will approve such terms and conditions of payment for the defense as it deems appropriate under the circumstances, including the Board’s right to select counsel to defend the Accused, unless the Board determines that the complaint does not arise out of an act or omission occurring in the performance of official duties on behalf of the bar, or that the act or omission amounted to malfeasance, gross negligence or willful or wanton neglect of duty, in which case the Board will reject the request.

(d) If the Board agrees to pay for the defense of a complaint or disciplinary proceeding, the Accused shall cooperate fully with the lawyer(s) hired by the bar to defend the Accused. If the Board determines that the Accused has not cooperated with defense counsel or has otherwise acted to prejudice defense counsel’s good faith decisions regarding the proper defense of the matter for which a defense is provided, the Board may at any time terminate the continued defense of the matter and require the Accused to reimburse the bar for all funds it has paid on account of the defense of the Accused. The Board may condition the provision of a defense under this bylaw on the Accused’s agreement to make such reimbursement upon the Board’s good faith determination that the Accused has failed to cooperate with defense counsel or otherwise acted to prejudice defense counsel’s good faith decisions regarding the proper defense of the matter.
(e) If the Board concludes, after undertaking to pay for the Accused’s defense, that the conduct was malfeasance, grossly negligent, or the willful or wanton neglect of duty, the Board will terminate the continued defense of the matter and require the Accused to reimburse the bar for all funds it has paid on account of the defense. The Board may condition the provision of a defense under this bylaw on the Accused’s agreement to make such reimbursement upon the Board’s good faith determination that the Accused has engaged in such conduct.

(f) If the Accused in a disciplinary proceeding is found to have violated the rules of professional conduct, a disciplinary statute or disciplinary regulation, the Accused must reimburse the bar for all funds it has paid on account of the defense of the Accused. The Board may condition the provision of a defense under this bylaw on the Accused’s agreement to make such reimbursement upon the entry of a final judgment imposing discipline on the Accused. Discipline for purposes of this bylaw should be a reprimand or greater sanction imposed by the Disciplinary Board or the Oregon Supreme Court or other court or agency having disciplinary jurisdiction over the Accused. If the discipline is a reprimand, the board may waive the reimbursement requirement.

(g) If the Board denies an Accused a defense under this bylaw or terminates the provision of such a defense under the terms of this bylaw and the Accused is found in any disciplinary proceeding for which a defense was denied or terminated not to have violated any rule of professional conduct or disciplinary statute or regulation, the bar will reimburse the Accused for his or her reasonable attorney fees and costs in defense of such matter so long as the Accused’s conduct occurred in the performance of official duties on behalf of the bar and did not separately constitute malfeasance, gross negligence or willful or wanton neglect of duty, as, in good faith, is determined by the Board. Pro se representation does not qualify for the reimbursement of reasonable attorney fees and costs under this subsection.

Section 2.2 Officers

Subsection 2.200 Duties

(a) President
The President presides at all meetings of the Board and has the authority to exercise the Board’s power between board meetings and to take appropriate action whenever the President finds that a board meeting is not necessary or cannot reasonably be convened. However, the President’s action must be consistent with any actions taken or policies previously adopted by the Board or by the membership. The President must report any such action at the next board meeting. The President performs such other duties as the Board directs.

(b) President-Elect
The President-elect performs the duties of the President in the absence, inability or refusal of the President to perform those duties. The President-elect performs other duties as the Board directs.

(c) Immediate Past President
The Immediate Past President is a non-voting ex officio member of the Board. Upon completion of the term for which the President is elected, the President becomes the Immediate Past-President for one year. The duties of the
Immediate Past President will be as agreed between the Immediate Past President and the Board from time to time. Expenses of the Immediate Past President will be reimbursed as approved by the Board.

**Subsection 2.201 Election**

(a) Time of Election

The President and President-elect are elected at the last regularly scheduled board meeting of the calendar year. The only candidate for President is the President-elect.

(b) President-Elect

Any lawyer member of the second-year class may be a candidate for the office of President-elect by notifying the **Chief Executive Officer** Executive Director by September 1. Each candidate must submit with said notice a statement outlining the candidate’s qualifications, reasons for seeking the position, and vision for the bar. A Nominating Committee, consisting of the fourth–year class and the current President-elect, will interview each candidate and will meet with the remaining board members to discuss their view about each candidate’s respective qualifications. The Nominating Committee will announce its candidate for President-elect at least 30 days prior to the last regularly scheduled board meeting of the calendar year. The Nominating Committee’s selection will be the sole candidate for President-elect unless at least six members nominate another candidate by written petition delivered to the **Chief Executive Officer** Executive Director not less than 15 days prior to the last regularly scheduled board meeting of the calendar year.

(c) Voting

If there is only one candidate for an office, the candidate is deemed elected without a formal vote. When there are two nominees for President-elect, the candidate receiving the most votes will be elected. If there are three nominees for President-elect and no candidate receives more than 50 percent of the votes on the first vote, the candidate receiving the fewest votes is eliminated and another vote will be taken. Only board members present at the meeting may vote.

**Subsection 2.202 Removal**

Any officer of the Bar may be removed with or without cause on a three-fourths affirmative vote of all board members. That position is then filled by the Board, at the same or a subsequent meeting, using the above rules as far as applicable.

**Section 2.3 Public Members**

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

**Subsection 2.300 Appointment**

Any person appointed to a public position on the Board must meet the qualifications set forth in ORS 9.025(1). Public members serve for a term of four years, beginning on January 1 of the year following appointment. Every attempt will be made to maintain geographic distribution; however, the priority will be to match the current needs of the Board with the areas of interest of the public members.
Subsection 2.301 Powers and Duties
Public members of the Board have the same voting rights as the lawyer members of the Board. They take the same oath of office and are charged with the same functions and duties as provided by statute and Board Policies. Public members cannot serve as officers of the Bar.

Subsection 2.302 Removal
Public members of the Board are subject to removal by the Board upon the following grounds and for the following reasons: A public member no longer meets the initial qualifications for appointment set forth in Subsection 2.300 of the Bar's Bylaws; or a public member commits an act substantially similar to the conduct proscribed by ORS 9.527 or fails to perform the duties of the office. If at least ten members of the Board propose that the public member be removed, the public member is given written notice of the proposed removal, together with the reasons therefore. The written notice must be given at least 15 days before the next regularly scheduled board meeting. Thereafter, on a vote of at least ten members of the Board, the public member is removed and the position is vacated.

Subsection 2.303 Vacancies
On the death, resignation or removal of a public member of the Board, the Board must appoint a replacement to serve the unexpired portion of the then vacant position. Any person so appointed must satisfy the qualifications for appointment set forth in Subsection 2.400 of the Bar's Bylaws and is subject to removal as set forth in Subsection 2.302 of the Bar’s Bylaws.

Section 2.4 Meetings

Subsection 2.400 Robert’s Rules of Order
Board meetings are governed by ORS Chapter 9, these bylaws, and the most recent edition of Robert’s Rules of Order.

Subsection 2.401 Regular Meetings
Meetings of the Board are held at such times and places as the Board determines. The Chief Executive Officer Executive Director will provide notice of the time and place of all meetings in accordance with ORS 192.610 to 192.690.

Subsection 2.402 Special Meetings
A special meeting of the Board may be called by the President or by three Governors filing a written request with the Chief Executive Officer Executive Director. If, within five days after a written request by three Governors, the President fails or refuses for any reason to set a time for and give notice of a special meeting, the Chief Executive Officer Executive Director must call the meeting and provide at least 24 hours’ notice of the time and place of the special meeting in accordance with ORS 192.610 to 192.690.

Subsection 2.403 Emergency Meetings
When the President determines that a matter requires immediate attention of the Board, an emergency meeting may be called on less than 24 hours’ notice. Notice must be given to members of the board, the media and other interested persons as
may be appropriate under the circumstances. The notice must indicate the subject matter to be considered. Only the matters for which the emergency meeting is called may be considered at the meeting.

**Subsection 2.404 Minutes**

Accurate minutes of all board meetings must be preserved in writing or in a sound, video or digital recording. The minutes must reflect at least the following information: members present, motions or proposals and their disposition, the substance of any discussion on any matter, and a reference to any document discussed at the meeting. The minutes must reflect the vote of each member of the Board by name if the vote is not unanimous. Draft minutes, identified as such, will be available to the public within a reasonable time after the meeting. Final minutes will be available to the public within a reasonable time after approval by the Board. The minutes of executive sessions will be available to the public except where disclosure would be inconsistent with the purpose of the executive session.

**Subsection 2.405 Oregon New Lawyers Division Liaison**

The Oregon New Lawyers Division ("ONLD") has a non-voting liaison to the Board, who must be a member of the ONLD Executive Committee. The ONLD liaison is appointed by the chair of the ONLD Executive Committee to serve for a one-year term. No person may serve more than three terms as ONLD liaison. If the ONLD liaison is unable to attend a meeting of the Board, the ONLD chair may appoint another member of the ONLD Executive Committee to attend the meeting.

**Section 2.5 Expenses**

**Subsection 2.500 General Policy**

All provisions of Section 7.5 of the Bar’s Bylaws (Expense Reimbursements) apply to the Board of Governors with the following additions. Officers of the Board who, because of their office, must occupy a suite or special room other than the standard room occupied by most board members will be entitled to be reimbursed for the extra expense. Members of the Board who host board dinners will be reimbursed the actual cost of the dinner regardless of whether it is held in the board member’s home or at a restaurant.

**Subsection 2.501 Conferences**

The Bar will reimburse the actual expenses of the President and/or President-elect and their spouses or partners and the Chief Executive Officer, Executive Director, to any out-of-state conference that is included in the annual budget. Other attending board members are not eligible for any reimbursement unless specifically authorized by the Board. Each year the Bar will reimburse the actual expenses of the President-elect and spouse or partner and the Chief Executive Officer, Executive Director, to attend the ABA Bar Leadership Conference or a comparable conference.

**Subsection 2.502 Gifts**

The expense of gifts by the Board to its retiring members is a budgeted expense.
**Section 2.6 Conflicts of Interest**

Bar officials are subject to the provisions of ORS Chapter 244, the Government Standards and Practices Act. Nothing in this section is intended to enlarge or contradict the statutory provisions as they may apply to bar officials. To the extent anything in this section contradicts the provisions of ORS Chapter 244, bar officials shall be bound by the statutory provisions.

**Subsection 2.600 Definitions**

As used in Section 2:

(a) "Actual conflict of interest" means that the person, a relative of the person or a business with which the person or a relative of the person is associated will derive a private pecuniary benefit or detriment as a result of an action, decision or recommendation of the person in the course of bar-related activities.

(b) "Bar official" means members of the Board of Governors; appointees of the Board of Governors, including members of standing committees, Local Professional Responsibility Committees, bar counsel panels, and the State Professional Responsibility Board; section officers and executive committee members; and bar staff.

(c) "Business" means any corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, self-employed person and any other legal entity operated for economic gain, but excluding any income-producing not-for-profit corporation that is tax exempt under IRC §501(c) with which a bar official is associated only as a member or board director or in a non-remunerative capacity.

(d) "Business with which the person is associated" means:

1. any private business or closely held corporation of which the bar official or the bar official’s relative is a director, officer, owner, employee or agent or any business or closely held corporation in which the bar official or the bar official’s relative owns or has owned stock worth $1,000 or more at any point in the preceding year;

2. Any publicly held corporation in which the bar official or the bar official’s relative owns or has owned $100,000 or more in stock or another form of equity interest, stock options or debt instruments at any point in the preceding calendar year; and

3. Any publicly held corporation of which the bar official or the bar official’s relative is a director or officer.

(e) Except as excluded by ORS 244.020(6), "gift" means something of economic value given to or solicited by a bar official, or a relative or member of the household of the bar official:

1. Without valuable consideration of equivalent value, including the full or partial forgiveness of indebtedness, which is not extended to others who are not bar officials or the relatives or members of the household of bar officials on the same terms and conditions; or

2. For valuable consideration less than that required from others who are not bar officials.
(f) "Potential conflict of interest" means that the bar official, a relative of the bar official or a business with which the bar official or a relative of the bar official is associated, could derive a private pecuniary benefit or detriment as a result of an action, decision or recommendation of the person in the course of bar-related activities, unless the pecuniary benefit or detriment arises out of the following:

(1) An interest or membership in a particular business, industry, occupation or other class required by law as a prerequisite to the holding by the bar official of the office or position.

(2) Any action in the bar official’s official capacity which would affect to the same degree a class consisting of all inhabitants of the state, or a smaller class consisting of an industry, occupation or other group including one of which or in which the bar official, or the bar official’s relative or business with which the person or the bar official’s relative is associated, is a member or is engaged.

(3) Membership in or membership on the board of directors of a nonprofit corporation that is tax-exempt under section 501(c) of the Internal Revenue Code.

(g) "Member of the household” means any person who resides with the bar official.

(f) "Relative" means the bar official’s spouse, the bar official’s Oregon Registered Domestic Partner, any children of the bar official or the bar official’s spouse or Oregon Registered Domestic Partner, and siblings and parents of the bar official or the bar official’s spouse or Oregon Registered Domestic Partner. Relative also means any individual for whom the bar official provides benefits arising from the bar official’s public employment or from whom the bar official receives benefits arising from that individual’s employment.

**Subsection 2.601 Prohibited Actions**

Regardless of whether an actual or potential conflict is disclosed:

(a) No bar official may use or attempt to use the person’s official position to obtain any financial gain or the avoidance of any financial detriment that would not otherwise be available to the person, but for the bar official’s holding of the official position, except official salary, reimbursement of expenses for official activities or unsolicited awards for professional achievement for the bar official, a relative of the bar official, a member of the household of the bar official, or for any business with which the bar official or the bar official’s relative is associated.

(b) No bar official may attempt to further the personal gain of the bar official through the use of confidential information gained by reason of an official activity or position.

(c) No bar official or relative or member of the household of a bar official may solicit or receive, during any calendar year, any gift or gifts with an aggregate value of more than $50 from any single source that could reasonably be known to have an economic interest, distinct from that of the general public, in any matter subject to the decision or vote of the bar official acting in the bar official’s official capacity. This provision does not apply to bar officials who are subject to the Oregon Code of Judicial Conduct.

(d) No bar official may solicit or receive a promise of future employment based on an understanding that any official action will be influenced by the promise.
Subsection 2.602 Disclosure of Conflict

When met with an actual or potential conflict of interest, a bar official must disclose the conflict and take any other action required by this bylaw.

(a) If appointed by the Chief Executive Officer Executive Director, the bar official must notify the Chief Executive Officer Executive Director of the nature of the conflict and request the Executive Director to dispose of the matter giving rise to the conflict. Upon receipt of the request, the Chief Executive Officer Executive Director will designate within a reasonable time an alternate to dispose of the matter, or will direct the bar official to dispose of the matter in a manner specified by the Chief Executive Officer Executive Director.

(b) If the bar official is the Chief Executive Officer Executive Director, she/he must notify the Board of Governors, through the President, of the nature of the conflict and request the Board of Governors to dispose of the matter giving rise to the conflict. Upon receipt of the request, the President will designate within a reasonable period of time an alternate to dispose of the matter, or will direct the Chief Executive Officer Executive Director to dispose of the matter in a manner specified by the Board of Governors.

(c) If the bar official is elected to or appointed by the Board of Governors or other appointing authority to serve on a board, committee, council, commission or other public body, the bar official must:

(1) 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 bar official; (2) when met with an actual conflict of interest, announce publicly the nature of the actual conflict, and refrain from participating in any discussion or debate on the issue out of which the actual conflict arises or from voting on the issue, except that if the bar official’s vote is necessary to meet a requirement of a minimum number of votes, the bar official may vote, but may not participate in any discussion or debate on the issue out of which the actual conflict arises.

(d) When a bar official gives notice of an actual or potential conflict of interest under subsection 2.602(c), the conflict must be recorded in the minutes or other official record of the board, committee, council, commission or other public body on which the official serves, together with an explanation of how the conflict was resolved. If there are no minutes or other official record, then the bar official, in addition to the disclosure to the board, committee, council, commission or other public body, must disclose the conflict in writing to the Chief Executive Officer Executive Director.

(e) No decision or action of the any bar official or of any board, committee, council, commission or other public body on which the official serves is invalid or voidable solely by reason of the failure to disclose an actual or potential conflict of interest.

Subsection 2.603 Board Members as Witnesses in Bar Proceedings

As provided in BR 5.3(c), a current member of the Board of Governors must not testify as a witness in any bar admission, discipline or reinstatement proceeding.
except pursuant to subpoena. If requested by a party to be a witness in a bar proceeding, board members should urge the party to present the anticipated testimony through other witnesses. However, the parties ultimately decide whether a board member will be subpoenaed to testify as a witness in a bar proceeding.

Section 2.7 Judicial Selection

Subsection 2.700 General

The Bar plays an important role in state and federal judicial selection by conducting preference polls for contested elections and for circuit court appointments, and by interviewing and evaluating candidates for appellate court appointments. Any poll conducted by the Bar is for informational purposes only and will not constitute an official position of the Bar. Results of evaluations and polls will be made public as soon as practicable to the press, the candidates and the appointing authority.

Subsection 2.701 Statewide and Circuit Court Elections

For statewide and circuit court elections, the Bar will conduct a poll of the members in the affected geographic area in accordance with the election procedures set forth in Article 9 of the Bar’s Bylaws. The ballot will contain all the candidates who will appear on the public election ballot. Each preference poll will contain the following information on each candidate: Name, law firm name (if applicable), principal office address, date admitted to the Bar, professional and community activities, professional history, other pertinent information and a picture. In any general election that includes contested judicial positions, the Bar will conduct a poll only if there was no prior poll in the primary election, there has been a significant reduction in the number of candidates that appeared on the primary election ballot or it appears that the votes were relatively spread out among most of the candidates so that another poll could potentially produce an entirely different result from that of the primary election poll.

Subsection 2.702 Circuit Court Appointments

For circuit court judicial appointments, the Bar will conduct a poll of the members in the affected geographic area in accordance with the election procedures set forth in Article 9 of the Bar’s Bylaws at the request of the Governor of the State of Oregon or the Board. If the Governor's Office or the Board requests a poll, the ballot must include the name of any eligible member of the Bar who has filed a candidate statement with the Bar by the appropriate deadline. Each preference poll will contain the following information on each candidate: Name, law firm name (if applicable), principal office address, date admitted to the Bar, professional and community activities, professional history, other pertinent information and a picture.

Subsection 2.703 Statewide Judicial Appointments

(a) For judicial appointments to a statewide court, the Board will appoint an Appellate Selection Committee to conduct the Board’s appellate recommendation process. Bar members will be notified of the impending appointment and will be invited to participate in the appellate recommendation process. If an appellate recommendation process has been concluded within three months preceding the announcement of a new appellate vacancy, the Board may, in its discretion, forego conducting a separate appellate recommendation process and instead resubmit the
previous list of highly qualified candidates to the Governor without notification to members.

(b) Prior to commencement of the appellate recommendation process, the Appellate Selection Committee shall establish policies and criteria for conducting its review of candidates for each position, which may include, but is not limited to, review of the written applications; interviews of candidates; reports from judges or hearing officers; reports from members of the legal and general community; reports from references supplied by the candidate; and review of writing samples.

(c) The Appellate Selection Committee will recommend to the Board at least three candidates it believes are highly qualified, based on the statutory requirements of the position, information obtained in its review of candidates, and based on at least the following criteria: integrity, legal knowledge and ability, professional experience, cultural competency, judicial temperament, diligence, health, financial responsibility, and public service. The Board will then determine the final list of highly qualified candidates to submit to the Governor. A "highly qualified" or "qualified" recommendation is intended to be objective. Failure to recommend a candidate in any particular selection process is not a finding that the person is unqualified.

(d) In addition to submitting its list of "highly qualified" candidates, the Board will respond to any specific inquiry from the Governor as to whether certain other candidates in the pool meet a "qualified" standard.

(e) Meetings of the Appellate Selection Committee are public meetings except for portions of meetings during which reference reports are presented and discussed. The term "reference reports," for purposes of this section, means information obtained by committee members and staff from persons listed as references by the candidates and information obtained by committee members and staff from other persons knowledgeable about candidates as part of the candidate review process. Discussion of reference reports by the committee and the Board will be in executive session pursuant to ORS 192.660(1)(f).

Section 2.8 Chief Executive Officer Executive Director

Subsection 2.800 Duties

The Chief Executive Officer Executive Director, appointed by and acting under the supervision of the Board, is the principal administrative officer of the Bar. The Chief Executive Officer Executive Director is responsible for the day-to-day operations of the Bar including, without limitation: hiring, managing and terminating bar personnel; negotiating and executing contracts; collecting debts owed to the bar and assigning debts for collection as deemed appropriate; and acquiring (through purchase or lease), managing and disposing of personal property related to the bar’s operations, within the budget approved by the board. The Chief Executive Officer Executive Director will attend all meetings of the Board and the House of Delegates; will keep the Board informed of all agenda items with appropriate background information and staff or committee reports; and will keep a record of the proceedings of all such meetings. The Chief Executive Officer Executive Director is responsible for preparing an annual budget for the Board’s Budget Committee. The Chief Executive Officer Executive Director performs other duties as imposed by the Bar Act, the Bar Bylaws or as otherwise directed by the Board.
**Subsection 2.801 Evaluation**

No later than December 1 of each calendar year, the Board will evaluate and assess the performance of the Chief Executive Officer, Executive Director. The evaluation will relate to the duties and responsibilities of him or her, progress toward established goals and the working relationships among the Chief Executive Officer, Executive Director, staff and the membership. The Board will conduct the evaluation in executive session. The Board or its representative will meet with the Chief Executive Officer, Executive Director to discuss the evaluation.

**Subsection 2.802 Service of Notice**

When a statute or rule requires a petition, notice or other writing to be filed with or served on the Bar or the Board, the Chief Executive Officer, Executive Director is the designated agent for receipt.

**Subsection 2.803 Board Member Contact with Staff**

Board members will bring any requests for information, material or assistance to the Chief Executive Officer’s Executive Director’s or the Chief Executive Officer, Executive Director’s designee. The Chief Executive Officer, Executive Director will assign appropriate staff to respond to board member requests. If a board member is dissatisfied with the Chief Executive Officer’s Executive Director action regarding any request or if the Chief Executive Officer, Executive Director believes a board member’s request is inappropriate or unduly burdensome, the board member and Chief Executive Officer, Executive Director, as the case may be, may bring his or her concerns to the board for resolution. The Chief Executive Officer, Executive Director has the discretion to authorize board member contact with staff regarding designated matters and concerning particular topics. Board members are free to contact staff to pass on compliments and information relevant to bar activities, but only the Chief Executive Officer, Executive Director may be contacted regarding complaints about the conduct of a staff member or concerns about staff activities.

**Article 3 House of Delegates**

**Section 3.1 Duties and Powers**

The House of Delegates ("House") is a forum for the membership of the Bar and representatives of sections and local bars to advise the Board and to debate and decide matters of policy relating to the membership or the administration of justice as provided in the Bar Act, these Bylaws and other rules and regulations of the Bar. (See rules adopted by the House.)

**Section 3.2 Delegates**

On or before February 1 of each year, the Board must determine the number of delegates each region should have and whether there are vacancies. Once elected, however, a delegate may serve a full term even if the lawyer population of the region falls below the number required to entitle the region to the delegate. Elected delegates are subject to recall as provided in the Bar Act. Public member delegates are subject to removal by the Board on the same grounds that a public member of the Board is subject to removal under the Bar Act and these Bylaws.
Section 3.3 Resolutions
House member or bar member resolutions must include the name of the bar member who will present the resolution and an estimate of the financial impact, if any, of the resolution. This information must be submitted at least 45 days before the House of Delegates meeting. The Board must independently evaluate the financial impact of the resolution. If the Board’s evaluation of the financial impact differs from the sponsor’s, both positions must be included when the resolution is presented to the House. Only proposed legislative measures or resolutions that appear in full in the printed agenda may be considered, except that unusually long measures or resolutions may be summarized by bar staff. If this exception applies, then the Bar must provide delegates with copies of the full text of the measures at or before the House meeting at which the proposed measures or resolutions will be discussed and voted on.

Section 3.4 Meeting Agenda
After receiving all resolutions, the Board must prepare an agenda for the House. The Board may exclude resolutions from the agenda that are inconsistent with the Oregon or United States constitutions, are outside the scope of the Bar’s statutory mission or are determined by the Board to be outside the scope of a mandatory bar’s activity under the U.S. Supreme Court decision in Keller v. the State Bar of California. The House agenda, including any resolutions that the Board has excluded, must be published by the Board, with notice thereof, to all bar members, at least 20 days in advance of the House meeting.

Section 3.5 Parliamentarian
The Board must designate a parliamentarian for each House meeting. The parliamentarian should be knowledgeable about parliamentary procedure and familiar with the Bar’s Bylaws. The parliamentarian will serve without compensation; however, the Bar may pay the expenses for the parliamentarian to attend the House meeting as allowed in Subsection 7.501 of the Bar’s Bylaws.

Section 3.6 Initiative Petitions and Referenda
An initiative petition of the membership or a referendum from the Board or House, brought under ORS 9.148, must be submitted to a vote of the active members. The proponent’s question or measure must be printed or circulated to all members of the Bar, along with statements for and against the proposal. The Board determines the manner of circulating the required material. The Board also writes the ballot title and a factual summary of the proposal. Election procedures outlined in Article 9 of the Bar’s Bylaws apply.

Section 3.7 Location
The meetings of the Bar’s House of Delegates must be held within the geographical boundaries of the State of Oregon.
**Article 4 Awards**

**Section 4.1 General Policy**
The Board will select award recipients from among the nominations received from local bars, committees, sections, individual members, affiliated groups and bar groups.

**Section 4.2 President’s Membership Service Award**
The criteria for the President’s Membership Service Award is as follows: The nominee must have volunteered his or her time for the activity in which he or she was involved; the nominee must be an active member of the Bar; the nominee must have made a significant contribution to other lawyers through efforts involving Continuing Legal Education programs or publications, committees, sections, boards or the Bar’s legislative/public affairs process or similar activities through local bar associations or other law-related groups.

**Section 4.3 President’s Public Service Award**
The criteria for the President’s Public Service Awards is as follows: The nominee must have volunteered his or her time for the activity in which she or he was involved; the nominee must be an active member of the Oregon State Bar; the nominee must have made a significant contribution to the public through efforts involving pro bono services; coordination of local public service law-related events, such as those associated with Law Day; service with community boards or organizations or similar activities that benefit the public.

**Section 4.4 President’s Diversity & Inclusion Award**
The criteria for the President’s Diversity & Inclusion Award is as follows: The nominee must be an active member of the Bar or be an Oregon law firm; the nominee must have made a significant contribution to the goal of increasing diversity and inclusion in the legal profession in Oregon through progressive employment efforts, innovative recruitment and retention programs, advocacy or other significant efforts.

**Section 4.5 President’s Special Award of Appreciation**
The President’s Special Award of Appreciation is a discretionary award of the President of the Bar, with the concurrence of the Board, to be presented to a person who has made recent outstanding contributions to the bar, the bench and/or the community. The award will be made in conjunction with the OSB Awards Dinner or House of Delegates events within the following guidelines. In any given year, there may be no award, one award or more than one award. The recipient may be a lawyer or a non-lawyer. The President will present his or her proposed award recipient to the Board at the same time the Board considers the Bar’s other awards.

**Section 4.6 Award of Merit**
The Award of Merit is the highest honor that the Bar can bestow. The recipient may be (1) an Oregon lawyer who has made outstanding contributions to the bench, the bar and the community-at-large, and who exhibits the highest standards of professionalism or (2) a non-lawyer who has made outstanding contributions to the
bar and/or bench, and who exhibits the highest standards of service to the community-at-large. The award does not have to be granted every year and only one award may be bestowed in any year.

Section 4.7 Wallace P. Carson, Jr. Award for Judicial Excellence

The Wallace P. Carson, Jr. Award for Judicial Excellence honors a member of the state’s judiciary. The criteria for the award are as follows: 1) a current or retired state court judge or federal judge; 2) who has made significant contributions to the judicial system; and 3) who is a model of professionalism, integrity, and judicial independence.

Section 4.8 President’s Public Leadership Award

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

Section 4.9 President’s Sustainability Award

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

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

Section 5.1 Selection

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

Section 5.2 Voting

Each delegate to the ABA House of Delegates, as a condition of election, must vote substantially consistent with any position or direction of the Board of Governors, the Oregon State Bar House of Delegates or the Bar’s membership.
Section 5.3 Expenses
The Oregon State Bar will reimburse Oregon State Bar delegates to the ABA House of Delegates their individual expenses in attending the ABA annual and mid-year meetings. Expenses subject to reimbursement under this section do not include those reimbursed by the ABA to individual delegates, and are limited to an amount established each year by the Board of Governors. Bar reimbursement of delegate expenses must not exceed each delegate’s proportionate share of the total amount established by the Board of Governors each year.

Article 6 Membership Classification and Fees

Section 6.1 Classification of Members

Subsection 6.100 General
Members of the Bar are classified as follows:
(a) Active member - Any member of the Bar admitted to practice law in the State of Oregon who is not an inactive or suspended member. Active members include Active Pro Bono members.

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

Subsection 6.101 Active Pro Bono Status

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

(b) Eligibility for Active Pro Bono Status
The Active Pro Bono category of active membership is available to lawyers in good standing: Who agree to provide pro bono legal services to indigent clients referred by pro bono programs certified under Section 13.2 of the Bar’s Bylaws; who do not engage in the practice of law except for providing pro bono services specified above or in volunteer service on the State Professional Responsibility Board, a Local Professional Responsibility Committee, the Disciplinary Board or as bar counsel; who agree to report annually to the Oregon State Bar the number of hours of pro bono service they provide; and who obtain professional liability coverage through the Professional Liability Fund or the program referring the pro bono cases.

(c) Membership Fees
Active Pro Bono members are assessed a fee that is equivalent to the inactive membership fee.
(d) Procedure

The Bar will notify potentially eligible lawyers of the availability of the Active Pro Bono category of membership and provide interested members with an application form. The **Chief Executive Officer** or designee is authorized to determine members’ eligibility for Active Pro Bono status and this determination is final.

(e) Reporting Requirement for Active Pro Bono Status

Bar Certified pro bono programs will report to the Bar no later than January 31 of each year the total hours of pro bono services that Active Pro Bono lawyers provided in the preceding calendar year. Active Pro Bono lawyer must ensure that the certified program reports their hours or must individually report their hours no later than February 15 of each year.

(f) Transfer from Active Pro Bono Status

Active Pro Bono members may continue in that status from year-to-year on certification that they remain eligible for such status and payment of the appropriate membership fees and assessments. Active Pro Bono members wishing to resume regular active membership status must comply with BR 8.14. Active Pro Bono members admitted through Admissions Rule 17.05 are not eligible to transfer their status to any other status.

**Subsection 6.102 Retired Status**

(a) Purpose.

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

(b) Eligibility for Retired Status.

A member of the Bar who is at least 65 years old and who is retired from the practice of law (as defined in paragraph 6.100(b)) may be enrolled as a retired member.

(c) Membership Fees.

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

(d) Transfer of Membership.

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

**Subsection 6.103 Reinstatement**

Upon receipt of an application for reinstatement submitted under BR 8.1 of the Rules of Procedure, the bar shall publish notice of and a request for comment on the application on the bar’s web site for a period of 30 days before the application is considered.
Section 6.2 Register of Members

The **Chief Executive Officer** Executive Director must keep a register of the enrollment of members of the Bar, which must contain such matters of information that the Board determines to be proper and desirable. The register is subject to public inspection in accordance with the Public Records Law (ORS 192.410-192.502). The register may be published in any manner the **Chief Executive Officer** Executive Director determines suitable, including in print or electronically. The published information must include at least the member’s name, bar number, and current status.

Section 6.3 Rights of Members

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

Section 6.4 Annual Membership Fees and Assessments

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

Section 6.5 Hardship Exemptions

In case of proven extreme hardship, which must entail both physical or mental disability and extreme financial hardship, the **Chief Executive Officer** Executive Director may exempt or waive payment of annual membership fees and assessments of an active or inactive member. Hardship exemptions are for a one-year period only, and requests must be resubmitted annually on or before January 31 of the year for which the exemption is requested. “Extreme financial hardship” means that the member is unemployed and has no source of income other than governmental or private disability payments. Requests for exemption under this bylaw must be accompanied by a physician’s statement or other evidence of disability and documentation regarding income.
Section 6.6 Waivers of Fees and Assessments

The Chief Executive Officer Executive Director, may, each year, waive or exempt annual membership fees and assessments for members in active military service, the Peace Corps, VISTA or other volunteer programs serving the national interest or the legal profession, and for which the member receives only a subsistence income, stipend or expense reimbursement that is the member’s principal source of income. Requests for waivers must be received on 15 days before the date that membership fees and assessments are due each year. Waivers will not be granted unless the lawyer’s service encompasses the majority of a year except in the case of military waivers, which may be granted for less than a year under special circumstances such as a war of unknown duration.

Section 6.7 Late Payment Penalty

The amount of the late payment penalty assessed to members delinquent in the payment of fees is set by the Board.

Article 7 Financial Matters

Section 7.1 Management of Funds

Subsection 7.100 General Policy

All funds paid to the Bar will be received by the Chief Executive Officer Executive Director or the Chief Financial Officer and deposited to the account of the Bar in a checking account or accounts with a commercial bank. The Chief Executive Officer Executive Director or the Chief Financial Officer will make all disbursements from such accounts. The Board’s Budget and Finance Committee will adopt the policy governing the investment, reinvestment, sale, conversion or other disposition of funds of the Bar, subject to the approval of the Board.

Subsection 7.101 Audit of the Books

The books of account of the Bar must be audited at least biennially, unless otherwise directed by the Board.

Subsection 7.102 Borrowing

(a) The President and either the Chief Executive Officer Executive Director or the Chief Financial Officer acting for and on behalf of the Bar, are authorized and empowered:

(1) To borrow from any bank, or other lending agency, on the terms agreed on between the officer and the lender and approved by the Board, a sum deemed prudent and necessary to effectuate the mission of the Bar.

(2) To execute and deliver to any lender or other depository, the promissory note or notes or renewals thereof of the Bar at rates of interest and on terms as may be agreed on.

(3) To mortgage, pledge or encumber and deliver to the lender, as security for the payment of loans, any savings of the Bar, regardless of form, on deposit with the lender.
(4) To execute and deliver to any lender any financing statements, security agreements or other instruments in writing, of any kind or nature, that may be necessary to complete a financial transaction.

(5) To draw on or endorse to any lender the savings on deposit or to dispose of the proceeds therefrom as may be deemed advisable.

(6) To perform other acts and to execute and deliver to any lender other documents as may be deemed reasonable, necessary or proper.

(b) The President and either the **Chief Executive Officer** Executive Director or the Chief Financial Officer, acting for and on behalf of the Bar, are also authorized and empowered to execute and deliver documents to any lender to memorialize or otherwise complete any borrowing or other financial transaction that has been previously authorized by the Board of Governors.

**Subsection 7.103 Check Signatures**

Disbursements of $10,000 or more require two of the following signatures: (One from each group or group one alone) Group One: **Chief Executive Officer** Executive Director and Chief Financial Officer. Group Two: General Counsel or Deputy General Counsel.

**Subsection 7.104 Credit Policy**

Generally, credit will be extended to all members of the Bar. However, credit will not be extended further to accounts that are 90 days past due. Credit may be denied to members who have had delinquent accounts in the past. The Chief Financial Officer must approve charges that exceed $5,000. Credit will not be extended for payment of annual membership or regulatory fees. The Bar may take any reasonable and financially prudent methods to collect on accounts, including accounts of members of the Bar, that are 90 days past due.

**Subsection 7.105 Write-offs**

The **Chief Executive Officer** Executive Director has the authority to write off bar receivables that he or she has determined are uncollectible or for other financial reasons should be written off. In the calendar quarter after the fiscal year end, the Chief Financial Officer will prepare a list of all receivables over $500 that the **Chief Executive Officer** Executive Director has written off. The list will be submitted to the Board at the first meeting of the second calendar quarter. The list should include the reason for the write-off.

**Section 7.2 Annual Budget**

The **Chief Executive Officer** Executive Director will develop a draft annual budget for review and approval by the Budget and Finance Committee. The Budget and Finance Committee will submit its recommendation for final approval to the Board.

**Subsection 7.200 Approval by Board of Governors**

After the annual budget is adopted, the Board must approve a substantive programmatic change not anticipated or included in the budget.
Subsection 7.201 Contingency Fund

A contingency fund will be established within the annual operating budget of the Bar, as a line item equal to one percent of the annual expenditure budget. The contingency fund is to be used for unanticipated expenditures that were not identified in the normal budget process. All expenditures from the contingency fund must be approved by the Board.

Subsection 7.202 Approval by Supreme Court

The Board will establish each year the budget of the Bar’s admissions, discipline and Minimum Continuing Legal Education programs in conjunction with the budgets of the other activities of the Bar. The admissions, discipline and Minimum Continuing Legal Education components of the Board’s preliminary budget for the following year must be submitted to the Chief Justice of the Oregon Supreme Court for review and approval by the court. Any changes made by the court in the preliminary budgets of the Bar’s admissions, discipline and Minimum Continuing Legal Education components must be incorporated into the final budget approved by the Board. Additional provisions pertaining to the development and approval of the budget for the admissions component are set out in Article 28.

Subsection 7.203 Grants

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

Section 7.3 Reserve Policy

Subsection 7.300 Purpose

The Bar maintains separate funds for the general and designated operations of the Bar and for its financial welfare. The separate funds are the General Fund, the Client Security Fund, the Affirmative Action Program, Legal Services and all sections funds. A distinct and separate fund balance will be maintained for each fund.

Subsection 7.301 General Fund

The General Fund will maintain cash reserves sufficient to assure fulfillment of obligations to the membership and provide funds for unforeseen future contingencies. The reserves will be used to sustain an acceptable level of operation and continue service to the membership if the standard level of operations is interrupted by unforeseen events. It is also used to offset the effects of an operational reversal until expenditures can be adjusted and to fund specific future capital enhancements and improvements in the operation of the Bar.
**Subsection 7.302 Reserve Funds**

Separate reserve funds will be established and maintained for the general operating fund and the Board-authorized capital reserve fund, defined as follows:

(a) General Operating Reserve Fund: Established and maintained within the annual budget to assure continued operation of the Bar in the event of a non-dues revenue reversal or a catastrophic event.

(b) Capital Reserve Fund: established by policy decisions based on predetermined activities to replace, replenish or preserve capital assets or capital improvements that are purchased or made infrequently, to meet current regulatory requirements or provide enhanced services to the membership. Capital reserve items are capital assets that cost more than $5,000 or items whose implementation or purchase extend into more than one fiscal year or whose purchase is planned for a future year.

(c) Each fund will maintain a separate and distinct level of cash reserves, although the reserve funds may be merged for investment purposes to obtain a higher return on the total funds invested. The operating reserve of the General Fund will be a minimum of $500,000. The capital reserve level will be determined by the Board based on predetermined activities.

**Section 7.4 Investment Policy**

**Subsection 7.400 Purpose**

This investment policy is established to provide direction and limits for the Bar’s Chief Executive Officer and Chief Financial Officer and for any fee-for-service investment manager that have been engaged in investing financial assets held by the Bar. The investment objectives are in order of importance: to ensure the safety of the assets, to ensure sufficient liquidity, and to obtain the highest possible rate of return. The policy consists of objectives for the Bar’s short-term and long-term investments.

The Bar’s short-term investments consist of cash and cash equivalents anticipated to be needed and used within the Bar’s current fiscal year, generally one year or less. The objective shall be to maximize liquidity and minimize or eliminate risk while achieving a reasonable yield within the range of short-term expectations.

The Bar’s long-term investments include all reserve balances and designated funds. The objective of these investments is to provide for long-term growth and stability and to achieve reasonable yields while minimizing exposure to risk. The funds are invested to maximize the return on the investment, consistent with an appropriate level of risk and subject to the generation of adequate current income. The long-term investments shall be diversified to provide reasonable assurance that investment in a single security, a class of securities, or industry will not have an excessive impact on the preservation of capital or returns on investment to the Bar.

**Subsection 7.401 Investment Management**

The Chief Executive Officer or the Chief Financial Officer is authorized and directed to deposit, sell, convert or withdraw cash on deposit in excess of that required for current operations and to invest those funds in accordance with the Bar’s investment policy using expert advice and assistance as the officers may require. The Bar may
engage one or more fee-for-service investment managers with varying styles and expertise and delegate individual investment decisions to such investment managers within the guidelines of the bar’s Investment Policy and the specific direction of the Investment Committee.

**Management and Monitoring of Performance**

Investment Committee. An “Investment Committee” consisting of members of the Budget & Finance Committee and the Bar’s Chief Financial Officer shall manage and monitor the investment policy and portfolio. All policy and bylaw changes will be reviewed and approved by the Budget & Finance Committee.

**Subsection 7.404 Prudent Investor Rule**

The standard of prudence to be used by any fee-for-service investment manager that is engaged by the Bar in managing the overall portfolio will be the Prudent Investor Rule, which states: "Investments shall be made with judgment and care, under circumstances then prevailing, which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not for speculation, but for investment, considering the probable safety of their capital as well as the probable income to be derived."

**Section 7.5 Expense Reimbursements**

**Subsection 7.500 General Policy**

Bar employees and members of the Board of Governors, State Professional Responsibility Board, Disciplinary Board, New Lawyers Division Board or any other special task force or commission named by the Board of Governors will be reimbursed for their expenses in accordance with this policy when acting in their official capacities. Expenses of spouses or guests will not be reimbursed except as specifically approved by the Board of Governors. Requests for expense reimbursement must be received in the Accounting Department not later than 30 days after the expense has been incurred. If an expense reimbursement form is submitted more than 30 days after the expense is incurred, it must be supported by an explanation for the delay. The Chief Financial Officer may deny any late-submitted request for which the justification is deemed insufficient. A person whose request for reimbursement is denied may request that the **Chief Executive Officer** review the decision. Supporting documentation in the form of original receipts or copies of original receipts must be submitted with all requests for reimbursement of expenses while acting on official bar business.

**Subsection 7.501 Eligible Expenses**

Eligible reimbursable expenses while on official business include the following:

(a) Out-of-State Travel:

Out-of-state travel for board members will be reimbursed for those persons and meetings set forth in the Bar’s annual budget or as otherwise approved by the Board of Governors. Employees must obtain prior approval of the **Chief Executive Officer** prior to traveling out-of-state.

(b) Transportation:
Use of a personal automobile is reimbursed at the allowable IRS rate. Airfare is reimbursed at the actual cost of coach fare unless the flight is at least three hours and an upgrade to business class can be obtained for $100 or less. Actual cost of taxi, bus or other public transportation is reimbursable. Actual cost of car rental at economy car rate when other transportation is not readily available.

(c) Lodging:
Actual cost for a moderately priced, double-occupancy room, except when the location of the meeting or conference requires other arrangements. Receipts for lodging must be attached to the reimbursement form.

(d) Meals:
Reimbursement for meals will be made at actual cost of the meal provided that the expense is supported by itemized receipts and meets the standard of reasonableness. A request for reimbursement for meals without receipts will be reimbursed according to the rates published under the Federal Travel Regulations as put out by the U.S. General Service Administration for federal government travel. Meals purchased for members of the Bar or other persons in the course of official bar business will be reimbursed at actual cost with submission of itemized receipts and an explanation provided it meets the standard of reasonableness. Official dinners of the Bar or law-related groups which staff, BOG members or volunteers and their spouses or guests are expected to attend will be paid for by the Bar and, if not, will be eligible for reimbursement.

(e) Miscellaneous Costs:
Telephone, postage, office expense, registration fees and other legitimate business expenses will be reimbursed at actual cost with submission of receipts or an explanation of the business purpose of the expense. Bar funds must not be used to pay the cost of alcoholic beverages.

Subsection 7.502 House of Delegates Meetings
(a) Elected delegates and ex officio delegates from sections and local bars will be reimbursed for their transportation to and from the annual HOD meetings. The reimbursement is limited to roundtrip mileage up to 400 miles at the allowable IRS rate. Requests for mileage reimbursement must be submitted on a form approved by the Bar within 30 days after the meeting.

(b) Public member delegates will be reimbursed for their transportation, meals and lodging as provided in Subsection 7.500 and 7.501.

Section 7.6 Location of Office
Unless otherwise ordered by the Board, the bar office will be maintained in the Portland metropolitan area.
Article 8 Public Records/Meetings

Section 8.1 Public Records

Subsection 8.100 General Policy
The records of the Bar are subject to public inspection in accordance with the Public Records Law (ORS 192.410-192.502).

Subsection 8.101 Public Record Requests and Bar Fees for Public Records Searches and Copies
(a) The Chief Executive Officer Executive Director will assign appropriate staff to respond to requests for public records. The Chief Executive Officer Executive Director will advise the board of any public records disputes that are taken by the requestor to the attorney general for further consideration.

(b) The Chief Executive Officer Executive Director will propose and the board will adopt a fee schedule for public records requests. The fee schedule will include a per-page charge for paper records and a schedule of charges for staff time in locating records; reviewing records to delete exempt material; supervising the review of original records; summarizing, compiling, and tailoring records to the request; and any related activity necessary to respond to requests for public records.

(c) The fee schedule shall be reasonably calculated to reimburse the bar for the actual cost of making the records available. The charges for staff time shall be computed on the basis of the actual salary of the employee or employees engaged in responding to a particular public records request.

(d) The bar may estimate charges for delivering the requested documents and require the requestor to pay the estimated charges prior to the start of staff work to respond to the request. If the estimated cost of producing the records is $25 or more, the bar will provide the estimate in writing and will take no action on the request until the requestor confirms that the bar should proceed. Any estimated fees paid in advance that exceed the actual cost of the search and production of public records will be refunded.

(e) The bar may furnish copies of public records without charge or at a substantially reduced fee if the Chief Executive Officer Executive Director or department manager determines that the waiver or reduction of fees is in the public interest because making the record available primarily benefits the general public.

(f) Public records shall be made available in alternative formats to qualified individuals with disabilities at no additional or at a reduced cost, provided that compliance with the request will not result in undue financial or administrative burden.

Subsection 8.102 Public Disclosure of Client Assistance Office, Discipline Counsel’s Office and Disciplinary Board Clerk Records
(a) Except as provided otherwise herein, the following records of Client Assistance Office, Disciplinary Counsel’s Office and the Disciplinary Board Clerk are open to inspection on request:

(1) Letters inquiring or complaining about the conduct of any member of the bar and all material submitted by inquirers, complainants, accused lawyers and other persons to the bar relating to such inquiries or complaints.
(2) All correspondence by bar employees with inquirers, complainants, accused lawyers, witnesses and other persons in the course of a disciplinary or Client Assistance Office investigation.

(3) Investigative reports and summaries concerning pending Client Assistance Office, disciplinary and reinstatement matters prepared by Client Assistance Office Counsel, Disciplinary Counsel, a Local Professional Responsibility Committee, the SPRB or a bar investigator, to the extent they cover purely factual materials.

(4) The completed minutes of SPRB meetings.

(5) The formal complaint against a member of the bar, the accused lawyer’s answer and all other documents in formal proceedings filed with the Disciplinary Board Clerk pursuant to the Rules of Procedure or statute.

(6) Letters of admonition issued by the SPRB when offered to an accused by Disciplinary Counsel.

(b) The following records are exempt from disclosure and will not be open to public inspection except as might otherwise be required by law:

(1) Investigative assignments made by Disciplinary Counsel or the SPRB to a Local Professional Responsibility Committee or other investigator, to the extent they cover other than purely factual materials.

(2) Investigative reports or summaries concerning pending Client Assistance Office, disciplinary or reinstatement matters prepared by the Client Assistance Office, Disciplinary Counsel’s Office, a Local Professional Responsibility Committee, a bar investigator or the SPRB prior to a finding of probable cause in the matter, to the extent that they cover other than purely factual materials.

(3) The work product of bar counsel or Disciplinary Counsel.

(4) Communications between the Client Assistance Office and Disciplinary Counsel’s Office, between bar counsel and Disciplinary Counsel’s Office and between Disciplinary Counsel and the SPRB, regarding the merits of a prosecution or relating to matters of strategy to the extent they are privileged under OEC 503.

(5) Information of a personal nature submitted to the bar during a Client Assistance Office or disciplinary investigation, a reinstatement proceeding, pursuant to BR 3.2, 3.3 and 3.4 or otherwise, if the requirements of ORS 192.502(2) have been met. “Information of a personal nature” includes but is not limited to physical and mental health records, tax returns, trust and other bank account numbers, social security numbers, fingerprint cards, and credit reports.

(6) Communications between General Counsel’s Office and the board, individual board members, the Chief Executive Officer Executive Director or bar staff that are protected by the attorney-client privilege.

(7) Other records that the bar deems exempt from disclosure under the Public Records Law.

(c) The Board of Governors may direct that member discipline histories be posted on the bar’s web site or otherwise electronically. The nature of the information included and the period covered will be as determined by the Board of Governors from time to time.
Section 8.2 Public Meetings

All regular and special meetings of the Board of Governors, Board of Bar Examiners, committees, sections, and subcommittees or subsections thereof, are subject to the Public Meetings Law (ORS 192.610-192.690).

Subsection 8.201 Judicial Proceedings

(a) Disciplinary and contested reinstatement hearings and hearings conducted pursuant to Title 3 of the Rules of Procedure, are open to the public, subject to the authority of the presiding official to maintain proper decorum and to exclude witnesses at the request of the Bar, an accused or applicant. Panels of the Disciplinary Board and any presiding official will comply with UTCR 3.180 when presented with requests to allow media coverage of proceedings.

(b) Meetings of Local Professional Responsibility Committees and the SPRB, and the deliberations of Disciplinary Board trial panels are closed to the public, pursuant to the exemption set forth in ORS 192.690(1) for judicial proceedings.

(c) Meetings of the Board of Governors relating to disciplinary and reinstatement matters are closed to the public, pursuant to the exemption set forth in ORS 192.690(1) for judicial proceedings. Meetings of the Board of Governors may also be closed to the public in whole or part for consideration of any matter for which a closed session is authorized under ORS 192.660.

(d) The Board of Bar Examiners’ consideration of individual applicants’ qualifications are judicial proceedings for purposes of the Public Meetings Law, pursuant to ORS 9.210(4).

Article 9 Election Procedures

Section 9.1 Date of Elections

The election for members of the Board of Governors will be held annually on the third Monday in October. Bar members who wish to appear on the ballot must present a candidate statement to the Chief Executive Officer Executive Director of the Bar at least 160 days before the election.

In the case of an uncontested election for the Board of Governors, a candidate will be declared elected thirty-one days after the final day on which candidate statements for the Board are required to be filed, provided that a challenge has not been filed pursuant to ORS 9.042. If a challenge has been filed, the candidate will be declared elected at the end of that process unless the challenge is successful.

The election for members of the OSB House of Delegates will be held annually on the third Monday in April. Bar members who wish to appear on the ballot must present candidate statement to the Chief Executive Officer Executive Director of the Bar at least 30 days before the election.

The election for representatives to the ABA House of Delegates will be held annually on the third Monday in April in conjunction with the election to the OSB House of Delegates. Bar members who wish to appear on the ballot must present a candidate statement to the Chief Executive Officer Executive Director of the Bar at least 30 days before the election. Only members with a principle office address in
**Oregon will be eligible to vote for the ABA House of Delegates representatives.**

**Section 9.2 Ballots**

The **Chief Executive Officer Executive Director** will prepare ballots whenever a contest exists and the ballots will be accompanied by the candidate statement that includes the candidate’s name, law firm, principal office address, current full-face photograph, law school from which graduated, date of admission in Oregon, state and local bar activities, offices and other pertinent information. The statement must be submitted on a form prepared by the Bar, which will also indicate that the information supplied by the candidate has not been edited or verified by the Bar. A request for a candidate statement or the submission thereof will be considered public information. Ballots will be electronic.

**Section 9.3 Voting**

Members eligible to vote will be provided a secure link to the candidate statements and an online ballot. Ballots will be tabulated electronically using a secure voting system to assure no duplicate entries. Any member of the Bar will be permitted to be present while the ballots are canvassed. **Voting must be completed on or before 5:00 p.m. on the day of the election.** The **Chief Executive Officer Executive Director** will announce the results of the balloting and will notify each candidate of the results of the election.

**Article 10 Diversity**

The Bar respects the diversity of its membership and its employees. Bar entities, including, but not limited to standing committees, section executive committees and Continuing Legal Education programs and publications, should reflect this diversity. "Reflect," as used in this article, does not require the application of strict quotas, but requires a good faith attempt to achieve representative participation. Reports of such efforts may be required of bar entities. In addition, no bar entity may discriminate on the basis of race, religion, color, gender, sexual orientation, geographic location, age, handicap or disability, marital, parental or military status or other classification protected by law. No professional, business or social functions of the Bar, or any of its sections, committees, affiliates or other authorized entities may be held at any private or public facility, which discriminates, based upon the terms listed above. Furthermore, advertisements or solicitations for employment must offer equal employment opportunities. The United States Armed Forces are exempt from this policy as it regards advertisements in the bar’s communications.

**Article 11 Communications**

**Section 11.1 General Policy**

Communications of the Bar and its constituent groups and entities, including printed material and electronic communications, should be germane to the law, lawyers, the practice of law, the courts and the judicial system, legal education and the Bar in its role as a mandatory membership organization. Communications, other than permitted advertisements, should advance public understanding of the law, legal ethics and the professionalism and collegiality of the bench and Bar.
Section 11.2 Editorial Policy

The Chief Executive Officer Executive Director may establish editorial standards for bar communications and material permitted by the Bar to be included in its communications concerning such matters as advertising, political communication, profanity and obscenity, letters to the editor, use of artwork, photographs and illustrations, story placement, headlines and scheduling, advertising content and rates and similar topics. The Chief Executive Officer Executive Director as sole discretion to determine whether material submitted meets the standards set forth in or adopted pursuant to this policy and to accept or reject material submitted to the Bar for publication based on that determination. Editorial standards must comply with Article 10 Diversity.

Section 11.3 Media Relations

The Bar will be responsive to the needs of the media and will identify persons to speak for the Bar. All statements made to the media, whether oral or by news release, must be informational in nature and must avoid statements of personal opinion or positions not considered or adopted by the Board. The President is the official chief spokesperson for the Bar. If public appearances or statements by the chairperson or other officer or member of any bar committee are deemed necessary, prior authority must be obtained in advance from the President.

Section 11.4 Campaign Advertisements

Judicial candidates and candidates for Board of Governors, House of Delegates and American Bar Association positions may advertise at standard charges in the Bar Bulletin, but partisan political advertising is not allowed. Partisan political announcements or endorsements will not be accepted for publication as letters to the editor or feature articles.

Section 11.5 Membership Surveys and Questionnaires

(A) Any survey or questionnaire to all members of the Bar from a section or non-bar person or group must have the prior approval of the Board regarding purpose and content.

(B) A survey to specific groups of the membership from bar staff must have the prior approval of the President or President-elect. A survey to all members of the Bar must have the prior approval of the President or President-elect.

(C) A section may survey its own membership without prior approval.

Article 12 Legislation and Public Policy

Section 12.1 Guidelines

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

Section 12.2 Initiation of Legislation

Subsection 12.200 House of Delegates and Membership
The Bar must sponsor legislative proposals approved by the House of Delegates or through a membership initiative to the Legislative Assembly directly following the House or membership action. Legislation not enacted may not be sponsored in the following session unless resubmitted by one of the methods set forth above or by action of the Board.

Subsection 12.201 Board of Governors
The Board may sponsor legislative proposals to the Legislative Assembly on its own initiative. The Board and its Public Affairs Committee has the authority between meetings of the House of Delegates to act on legislative and public policy matters pursuant to the guidelines established.

Section 12.3 Legislative Process

Because of the nature of the legislative process, the Board or its Public Affairs Committee retains the right to set priorities regarding the enactment of legislation, to propose amendments or consent to amendments to legislation and to sponsor or take positions on appropriate legislation. In so doing, the Board will make a reasonable effort to do the following:

Encourage as wide a participation of the membership as possible in formulating positions on legislative issues; inform members, especially sections and committees, of the Bar’s legislative positions; respect divergent opinions of subgroups within the legal profession; provide assistance to bar sections and committees; avoid committing bar funds to issues that are divisive or result in creating factions within the profession; present major issues to the House of Delegates for approval; ensure that the Public Affairs Committee encompasses a balance of interest within the Bar and ensure that the Public Affairs Committee consults frequently with the Board.

Section 12.4 Committees and Sections

Any committee or section wishing to sponsor legislation or take a position on any rule or public policy issue will inform the Public Affairs Program, and through that office, the Board, of the exact nature of the legislation proposed. A copy of the bill, proposed rule or policy will be presented for consideration and approval of the Board. A committee or section of the Bar may not represent to the legislature or any individual, committee or agency thereof, a position or proposal or any bill or act, as the position of that committee or section of the Bar without the majority approval of the members of that committee or, in the case of a section, the executive committee and the prior approval of the Board, except as follows. During a legislative session or during the interim, a bar committee or the executive committee of any section must contact the Bar’s Public Affairs Program before taking any position on a bill, rule or public policy issue within its general subject area. The chair of the Board’s Public Affairs Committee will determine, within 72 hours of notice of the issue, whether it is
appropriate for the Bar to take an official position or to allow the section or committee to take a position as requested. The full Public Affairs Committee or the full Board may be consulted before a final decision is made. Bar staff and the Public Affairs Committee of the Board will make every effort to accommodate committees and sections that wish to express positions on relevant issues. The Public Affairs Program shall be kept informed about the status of such positions and related activities.

Section 12.5 Professional Liability Fund Legislation
The Professional Liability Fund ("PLF") may not present to the legislature or any individual, committee or agency thereof, a position or proposal or any bill or act, as the position of the PLF without the majority approval of the Board of Directors of the PLF and the prior approval of the Board of Governors, except as is provided in Section 12.4 of the Bar's Bylaws.

Section 12.6 Objections to Use of Bar Dues

Subsection 12.600 Submission
A member of the Bar who objects to the use of any portion of the member’s bar dues for activities he or she considers promotes or opposes political or ideological causes may request the Board to review the member’s concerns to determine if the Board agrees with the member’s objections. Member objections must be in writing and filed with the Chief Executive Officer of the Bar. The Board will review each written objection received by the Chief Executive Officer at its next scheduled board meeting following receipt of the objection. The Board will respond through the Chief Executive Officer in writing to each objection. The Board’s response will include an explanation of the Board’s reasoning in agreeing or disagreeing with each objection.

Subsection 12.601 Refund
If the Board agrees with the member’s objection, it will immediately refund the portion of the member’s dues that are attributable to the activity, with interest paid on that sum of money from the date that the member’s fees were received to the date of the Bar’s refund. The statutory rate of interest will be used. If the Board disagrees with the member’s objection, it will immediately offer the member the opportunity to submit the matter to binding arbitration between the Bar and the objecting member. The Chief Executive Officer and the member must sign an arbitration agreement approved as to form by the Board.

Subsection 12.602 Arbitration
If an objecting member agrees to binding arbitration, the matter will be submitted to the Oregon Senior Judges Association ("OSJA") for the designation of three active-status retired judges who have previously indicated a willingness to serve as volunteer arbitrators in these matters. The Bar and the objecting member will have one peremptory challenge to the list of arbitrators. The Bar and the objecting member must notify one another of a peremptory challenge within seven days after receiving the list of proposed arbitrators. If there are no challenges or only one challenge, the OSJA will designate the arbitrator. The arbitrator will promptly arrange for an informal hearing on the objection, which may be held at the Oregon State Bar
Center or at another location in Oregon that is acceptable to the parties and the arbitrator. The hearing will be limited to the presentation of written information and oral argument by the Bar and the objecting member. The arbitrator will not be bound by rules of evidence. The presentation of witnesses will not be a part of the hearing process, although the arbitrator may ask the state bar representative and the objecting member and his or her lawyer, if any, questions. The hearing may be reported, but the expense of reporting must be borne by the party requesting it. The Bar and the objecting member may submit written material and a legal memorandum to the arbitrator no later than seven days before the hearing date. The arbitrator may request additional written material or memoranda from the parties. The arbitrator will promptly decide the matter, applying the standard set forth in Keller v. State Bar of California, 496 U.S. 1, 110 S. Ct. 2228, 110 L. Ed. 2d 1 (1990), to the expenditures to which the member objected. The scope of the arbitrator’s review must solely be to determine whether the matters at issue are acceptable activities for which compulsory fees may be used under applicable constitutional law. In making his or her decision, the arbitrator must apply the substantive law of Oregon and of the United States Federal Courts. The arbitrator must file a written decision with the Chief Executive Officer, Executive Director within 14 days after the hearing. The arbitrator’s decision is final and binding on the parties. If the arbitrator agrees with the member’s objection, the Bar will immediately refund the portion of the member’s dues that are reasonably attributable to the activity, with interest at the statutory rate paid on the amount from the date that the member’s fees were received to the date of the Bar’s refund. If the arbitrator agrees with the Bar, the member’s objection is denied and the file in the matter closed. Similar or related objections, by agreement of the parties, may be consolidated for hearing before one arbitrator.

Article 13 Pro Bono

Section 13.1 Aspirational Standard

Pro bono publico or pro bono service includes all uncompensated services performed by lawyers for the public good. Such service includes civic, charitable and public service activities; as well as activities that improve the law, the legal system and the legal profession. The direct provision of legal services to the poor, without an expectation of compensation, is one type of pro bono service. Each lawyer in Oregon should endeavor annually to perform 80 hours of pro bono services. Of this total, the lawyer should endeavor to devote 20 to 40 hours or to handle two cases involving the direct provision of legal services to the poor, without an expectation of compensation. If a lawyer is unable to provide direct legal services to the poor, the lawyer should endeavor to make a comparable financial contribution to an organization that provides or coordinates the provision of direct legal services to the poor.

Section 13.2 Program Certification

Subsection 13.200 Procedure

In order for a pro bono program to obtain bar certification, the program must submit an application and meet the applicable criteria set forth below. The Bar’s Chief Executive Officer, Executive Director determines whether a program is eligible for certification and this determination is final.
Subsection 13.201 Criteria

(a) Purpose:
The pro bono program must be sponsored by a national, state or local bar association, a court with jurisdiction in Oregon or an incorporated, non-profit or governmental organization, and must provide legal services without fee, or expectation of fee, or for a substantially reduced fee to one or more of the following:
   (1) Persons of limited means.
   (2) Underserved populations with special legal needs.
   (3) Charitable, religious, civic, community, governmental and educational organizations in matters which are designed primarily to address the needs of persons of limited means or underserved populations with special legal needs.

(b) Compensation:
The pro bono program must not provide any compensation to the participating lawyers, except to cover filing fees or other out-of-pocket expenses or to provide professional liability insurance for the pro bono activity.

(c) Fees:
The pro bono program must deliver legal services to clients at no fee or for a substantially reduced fee. Nominal administrative fees are allowed. Donations from clients, whether encouraged or not, are not considered fees. The pro bono program should prohibit or limit the handling of cases that are clearly fee-generating, and provide for the referral of such cases.

(d) Quality Control:
The program must demonstrate that it has the necessary expertise and quality control to administer a program involving volunteer lawyers. This should include appropriate matching of pro bono lawyers to cases, an effective grievance procedure and adequate tracking and record keeping systems regarding pro bono involvement.

(e) Diversity:
The program must comply with Article 10 of the Bar’s Bylaws (Diversity), both in regard to participating lawyers and clients.

(f) Professional Liability Coverage
The program will provide professional liability coverage for otherwise uncovered attorney volunteers when those attorneys provide legal services to pro bono clients.

Subsection 13.202 Volunteer Recognition
Recognition under this paragraph is intended to provide encouragement, in tangible form, to those Oregon Pro Bono programs and their volunteer lawyers, who help meet the need for legal services by providing direct representation to low-income individuals. As part of its annual planning process, the Board will consider the ways in which the Bar can acknowledge the volunteer efforts of Oregon lawyers, particularly those lawyers who provided at least 40 hours of pro bono services through programs certified under this policy. In so doing, the Board will seek input from bar staff and appropriate bar committees.
Article 14 Committees

Section 14.1 Standing and Special Committees
Standing or special committees of the Bar or any member or officer of those committees may be appointed or discharged by the President or the Board.

Section 14.2 Joint Committees
The Board has from time to time agreed to create joint committees between the Bar and other professional groups to develop better understanding between the two groups and to assist in resolving problems of mutual concern. These joint committees comprise a certain number of bar members and a certain number of members of other professional associations. All Bar Bylaws relating to committees apply to these joint committees. Lawyer members who participate in these joint committees are prohibited from engaging in any activity that seeks to restrain other groups of professionals from engaging in lawful professional activities.

Section 14.3 Committee Responsibilities
Committees are established so that members can study issues within the committee’s charge and make recommendations to the Board. Before January 1 of each year the Board will forward a committee charge to the chair of each committee. This charge outlines the committee’s ongoing general activities as well as specific issues to be considered for the year. The Board will consult with the previous committee members before adopting the committee charge. Committees may also recommend issues to the Board to be included in the charge at any time.

Section 14.4 Membership
All members of standing committees must be active members of the Bar. 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.

Section 14.5 Financial Issues
Committees have no budget; although they may make recommendations regarding the expenditure of funds already budgeted in a particular program area. A committee cannot incur any expense without prior authorization from the Chief Executive Officer Executive Director.

Section 14.6 Legislation
Each committee must designate a member of the committee as a contact for legislative information and involvement. This member is to work with and coordinate all activities with the Director of Public Affairs and the Public Affairs Committee of the Board.
Section 14.7 Administrative Services
The Bar’s meeting rooms will be available on a first-come first-served basis. All committees are encouraged to use the Bar’s meeting rooms whenever possible. The Bar will assist committees with providing meeting notices in accordance with the requirements of the Public Meetings Law. If the Bar does not produce the meeting notice, the committee member who produces the notice must provide a copy to the Bar. The Bar will assign a bar liaison to each committee. The bar liaison serves as a resource of information for the committee. Each committee will have a contact person who is a member of the Board. It is not anticipated that the board member will attend the meetings of the committee on a regular basis.

Section 14.8 Committee Reports
Each committee must file an annual report of its activities with the Chief Executive Officer for the preceding year by December 1 of each year. Other reports may be required from time to time.

Section 14.9 Quorum for Meetings
A quorum, consisting of a majority of the committee members, is required for the transaction of committee business. No recommendation of a committee to the Board of Governors is valid if made without a quorum present, but the absence of a quorum does not preclude a committee from studying or discussing any issue within the committee’s charge. Action of the committee will be by majority vote of those voting.

Article 15 Sections

Section 15.1 Purpose
Sections are an integral and important part of the Bar. Sections are intended to provide bar members who share particular interests an opportunity to develop and improve skills and to provide a forum for communication and action in matters of common interest.

Section 15.2 Formation
Any 100 members of the Bar who wish to form a section in a particular area of law may submit a petition to the Board to create a section. The petition must state that the signators are committed to becoming members of the section, if the Board approves forming the section. The Board must consider creating a section when it receives the petition and determines that the proposed section does not duplicate another section’s activities or area of legal interest. The Board may merge, reorganize or abolish sections at the request of affected sections or as the Board deems appropriate. Factors that the Board must consider include, but are not limited to, the section’s membership falling below 100 members, failure to conduct Continuing Legal Education activities or failure to hold regular meetings.

Section 15.3 Bylaws
Sections are governed by the Standard Section Bylaws adopted by the Board. Sections may propose and the Board may approve, modified bylaws commensurate with the section’s needs.
Section 15.4 Finances

Subsection 15.400 Dues
The Bar will assess and collect section dues at the same time that bar membership dues are collected. Section dues will be assessed and collected together with bar dues by the Bar. The Board must approve the dues for each section. Each section should set dues at an appropriate level to pay for programs and activities. The Bar charges each section a per capita fee equal to 50 percent of the cost of providing services to the sections. This fee is recalculated periodically as determined by the Chief Executive Officer. No section may maintain a separate bank account. Each section’s receipts and expenditures are handled by the Bar and accounted for in the section’s monthly financial statement provided by the Bar. Interest on section accounts accrues to the Bar’s General Fund and is used to offset the calculation of the per capita fee.

Subsection 15.401 Donations
Sections may make donations to charitable causes or organizations only with prior approval of the Chief Executive Officer. The Chief Executive Officer will allow such donations on a showing by the section that the donation is germane to the Bar’s purposes as set forth in Section 12.1 of these Bylaws. The Chief Executive Officer will maintain a list of approved recipients.

Section 15.5 Administrative Services
Special services of the Bar that are not included in the calculation of the per capita assessment may be made available at cost to the sections upon adequate notification to and negotiation with the Bar. Sections must give the Bar the first opportunity to provide the necessary publications production support services before contracting with outside organizations or individuals. Sections seeking to contract for any goods or services with outside organizations or individuals must contact the General Counsel’s office of the Bar for preparation of appropriate contract documents and must obtain the Chief Executive Officer’s prior approval of all such contracts.

Section 15.6 Continuing Legal Education Activities

Subsection 15.600 CLE Publications and Seminars Scheduling
The Bar is the informational clearinghouse for the CLE activities of each section. Each section should advise the Bar’s CLE Publications and Seminars Departments of any proposed CLE activities at the earliest possible date and in accordance with timelines established by the CLE Committee.

Subsection 15.601 CLE Event Co-sponsorship with Bar
If a section decides to seek co-sponsorship for a CLE event, it is encouraged to first contact Bar’s CLE Seminars Department. If the CLE Seminars Department is unavailable to co-sponsor the seminar event, the section then may seek co-sponsorship with other organizations. The CLE Seminars Department will establish policies for bar co-sponsorship of section CLE events. These policies will address issues such as event revenues and expenses, topic, speakers, date and location.
**Subsection 15.602 Oregon State Bar Logo**

A section that plans a seminar or a publication without the Bar’s co-sponsorship must indicate clearly on all publicity, printed seminar materials and publications that the seminar or publication is a section endeavor and the sponsoring section. The section must not use the Oregon State Bar logo or the phrase Oregon State Bar CLE. A section that plans a seminar without the Bar’s co-sponsorship is responsible for applying for Minimum Continuing Legal Education credit for the seminar.

**Section 15.7 Grants**

Sections may apply for grants only with prior approval of the Board of Governors. The board will allow grants applications only upon a showing that the grant activity is consistent with the section’s purposes and the mission of the bar. The board may disallow any application that the board does not believe is in the best interests of the bar. The grant application must be reviewed and approved by OSB General Counsel before submission to the grant-making organization. Any grant funds received by a section shall be deposited with the bar and will be distributed only upon request of the section treasurer and in accordance with the grant specifications. The section must periodically report to OSB General Counsel regarding the status of the grant project and any reports to the granting organization must be reviewed and approved by OSB General Counsel in advance of submission.

**Article 16 Continuing Legal Education**

**Section 16.1 Purpose**

The mission of the Bar’s CLE Seminars and Legal Publications programs is to produce high quality, practical CLE Seminars, books, and resources on Oregon law in a timely manner, with a goal of ensuring a competent bar by enhancing the knowledge and skills of Oregon lawyers.

Except as otherwise provided herein, participating members of the Bar will not receive compensation for services on behalf of CLE Seminars or Legal Publications, beyond a modest memento or other recognition and payment of expenses within board guidelines.

**Section 16.2 OSB Continuing Legal Education Seminars Program**

**Subsection 16.200 Reduced and Complimentary Registrations; Product Discounts**

(a) Complimentary registration for CLE seminars and scheduled video replays where the CLE Seminars Department is the content provider is available to the following OSB lawyer members: Active Pro Bono members, lawyer-legislators, 50-year members, judges, and judicial clerks.

(b) Complimentary registration does not include the cost of lunch, materials in hard copy for which a separate fee is charged, any fee-based activities held in conjunction with a CLE seminar, or any other item not included in the registration fee.

(c) Reduced registration for webcasts where the CLE Seminars Department is the content provider is available for the following lawyer members: Active Bro Bono members, lawyer-legislators, 50-year members, judges, and judicial clerks.
(d) For purposes this policy, “judges” means full or part-time paid judges and referees of the Circuit Courts, the Court of Appeals, the Tax Court, the Supreme Court, and of tribal and federal courts within Oregon. Complimentary registration at any event for judicial clerks will be limited to one clerk for each trial court judge and two clerks for each appellate court judge.

(e) Complimentary registration for Active Pro Bono members is limited to eight (8) hours of programming in any one calendar year, which may be used in increments.

(f) Reduced registration, tuition assistance and complimentary copies of programs may be available to certain other attendees, at the sole discretion of the CLE Seminars Director.

(g) Discounts for and complimentary copies of archived CLE Seminars products in any format where the CLE Seminars Department is the content provider may be available at the sole discretion of the CLE Seminars Director.

(h) Seminars and seminar products in any format where the CLE Seminars Department is not the content provider are not subject to any discounts, complimentary registration or complimentary copies except at the sole discretion of the CLE Seminars Director.

Subsection 16.201 Expenses of Speakers and Planners

CLE seminar speakers and planners will be admitted free to the seminar and receive seminar materials without charge. CLE seminar speakers and planners are eligible for reimbursement for necessary travel expenses subject to the Bar’s travel reimbursement policies.

Section 16.3 OSB Legal Publications Program

Subsection 16.300 Benefit of Membership

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

Subsection 16.301 Discounts on Print Books

Discounts on the purchase of OSB print legal publications, when available, will be allowed to the following: Law school bookstores, law professors when teaching a course using the particular publication, libraries, and members of the Bar within one year following their admission.

Subsection 16.302 Volunteer Copyright Agreement

Each volunteer author of a legal publication will sign a Volunteer Copyright Agreement under which the author retains the copyright in his or her chapter, and grants to the Oregon State Bar a nonexclusive right to include the chapter within the Publication as a collective work; to use, distribute, or sell the collective work in any manner the OSB deems appropriate; to revise the collective work, including his or her chapter, for use, distribution or sale as a subsequent edition of the collective work, a revision of the collective work, or as an entirely new publication; with the Oregon State Bar and its licensees having similar rights to use, distribute, or sell the collective work in any manner they deem appropriate.
Article 17 Member Services

Section 17.1 Administrative Services
Administrative services, such as mailing services, mailing lists and labels and photocopying will be provided to member and nonmember groups at the cost of providing the service or product. Priority is given to official bar business.

Section 17.2 Bar-sponsored Tours
The Bar may not enter into any agreement concerning, nor may it sponsor or co-sponsor, any travel or tour arrangement, by charter or otherwise, without the prior approval of the Board.

Article 18 Discipline

Section 18.1 State Professional Responsibility Board

Subsection 18.100 Duties
The State Professional Responsibility Board ("SPRB") is authorized to exercise its powers and authority pursuant to statute, the rules of procedure and the Bar's bylaws. The SPRB will meet regularly pursuant to the call of the chairperson to consider complaints and other matters within its jurisdiction. The SPRB will receive the counsel and advice of the Office of Disciplinary Counsel of the Bar. Disciplinary Counsel will regularly report to the Board of Governors regarding actions taken by the SPRB. The SPRB may proceed with business if a quorum of six members is present at any meeting and act by a vote of a majority of those present.

Subsection 18.101 Composition
The SPRB will consist of eight resident active members of the Bar and two at large public members appointed nominated by the Board of Governors and appointed by the Supreme Court. The Board of Governors annually will appoint nominate and request the Supreme Court to appoint one attorney member of the SPRB to act as its chairperson. All lawyer members of the SPRB are appointed for terms of not more than four years from the following regions: two members from region five and one member from each of the other Board of Governors regions located within the state of Oregon. The two public members are appointed for terms of not more than four years consecutively. Members are eligible for reappointment to a nonconsecutive term not to exceed four years. The Board of Governors may nominate and request the Supreme Court to appoint replacement members of the SPRB as the need arises.

Subsection 18.102 Expenses
All members of the SPRB will receive the same reimbursement of expenses as is accorded the members of the Board of Governors.

Subsection 18.103 Notice to the Accused Respondent
Disciplinary Counsel will notify the accused respondent as soon as possible after the SPRB has directed the institution of a formal disciplinary proceeding against the accused respondent. The notice will contain a statement that all communications on
the merits of the matter must be restricted to the lawyers in Disciplinary Counsel’s office and with appointed counsel for the Bar and that an accused must not contact a member of the Board of Governors, the SPRB, any Local Professional Responsibility Committee or any other employee, agent or representative of the Bar regarding the matter.

**Subsection 18.104 Disclosure of Contacts**

If a complainant, an accused **respondent** or their representatives contact a SPRB member concerning the merits of a disciplinary complaint, the SPRB member contacted must make a full disclosure of the nature of the contact before the SPRB takes action on the complaint.

**Section 18.2 Letters of Admonition**

(A) A disciplinary investigation, whether in response to a complaint filed with the Bar or otherwise instituted as authorized by law, may be terminated after investigation by the SPRB’s issuing a letter of admonition.

(B) An admonition does not constitute the imposition of formal discipline. An admonition is, however, a public statement that the lawyer’s conduct, in the opinion of the SPRB, violated the Rules of Professional Conduct of the Bar.

(C) An admonition may be issued, at the discretion of the SPRB, only when a Rule of Professional Conduct has been violated and if in light of all circumstances, the violation was not aggravated, but was of sufficient concern that dismissal would be inappropriate.

(D) The procedure for issuing letters of admonition is provided in the Rules of Procedure. If accepted, a letter of admonition will be placed in the lawyer’s personal file maintained by the Bar.

**Section 18.3 Recovery of Costs/Collection of Judgments**

The bar will pursue, as feasible, collection of those costs and disbursements for which a judgment was awarded to the Bar in a disciplinary or reinstatement proceeding.

**Section 18.4 Disciplinary Correspondence**

Members of the Board of Governors or other bar officials may receive occasional correspondence related to disciplinary matters. All such correspondence, including letters from complainants or accused lawyers, must be forwarded to Disciplinary Counsel for response. Disciplinary Counsel need not send a copy of any response to the board member or bar official to whom the initial correspondence was addressed. Any correspondence alleging an ethics complaint about Disciplinary Counsel or General Counsel must be sent directly to the chairperson of the SPRB pursuant to BR 2.6(gf), with a copy to the staff member named in the complaint.

**Section 18.5 Removing Lawyers from the Lawyer Referral Service Panel of Lawyers**

Members of the Bar against whom charges of misconduct have been approved for filing will be removed from the Lawyer Referral Service panel of lawyers until those charges have been resolved. If a member is suspended as a result thereof, the
member may not be reinstated to the panel until the member is authorized to practice law again. Charges of misconduct include those authorized to be filed pursuant to BR 3.4.

Section 18.6 Suspension of Service

Subsection 18.600 Applicability to BOG, LPRC and SPRB
The service of members of the Board of Governors, local professional responsibility committees, and the State Professional Responsibility Board against whom charges of misconduct have been approved for filing by the State Professional Responsibility Board is suspended until the charges filed against them have been resolved. If a member is suspended as a result thereof, the member may not resume service on the board or committee until the member is once again authorized to practice law or as otherwise provided by ORS 9.025(5)(a). Charges of misconduct include those authorized to be filed pursuant to BR 3.4.

Subsection 18.601 LPRC and SPRB Replacements
In the case of a local professional responsibility committee or the State Professional Responsibility Board, the Board of Governors may nominate and request the Supreme Court to appoint a temporary replacement to serve until the member suspended under this bylaw is again able to serve. The temporary replacement will have the same rights and responsibilities as any other member of the entity.

Section 18.602 Board of Governors Replacement
Upon the suspension of a member of the Board of Governors pursuant to Bar Bylaw 18.6, the board will promptly notify all members from the affected region. Sixty days after the date of suspension, the board will seek the advice of the members of the House of Delegates from the region whether to appoint a temporary replacement for the suspended member, and if so, the name of a suggested temporary replacement who is qualified. If a name is suggested, the board will appoint the suggested candidate as the temporary replacement effective at the next regularly scheduled board meeting. The temporary replacement will serve under the same terms and conditions as the suspended member until the suspension is lifted or the term of the board member ends.

Section 18.7 Adjudicator
The Adjudicator is the Disciplinary Board statewide adjudicator, who is authorized to exercise his or her powers and authority pursuant to statute, the rules of procedure and the Bar’s bylaws. The Adjudicator is appointed by and serves at the pleasure of the Oregon Supreme Court, and is an employee of the Oregon State Bar.

Article 19 Legal Ethics Questions and Opinions

Section 19.1 General Counsel’s Office

Subsection 19.100 Submission and Questions
All legal ethics questions from members or the public regarding the propriety of a course or act of professional conduct or the intent or interpretation of a rule or
The statute regulating the professional conduct of members of the Bar must be submitted or referred to General Counsel’s office. Legal ethics questions may be submitted in writing by mail, e-mail, fax or by telephone.

**Subsection 19.101 Determination by General Counsel**

General Counsel’s office will determine whether the matter appears to present or involve a question of ethics or professional conduct and whether it states facts sufficient to permit the formulation of an opinion based on the facts stated. General Counsel’s office may ask the inquirer to submit necessary additional facts or may advise the inquirer that no question of ethics or professional conduct is presented or involved.

**Subsection 19.102 Ethics Advice to Bar Members**

General Counsel’s office will endeavor to assist bar members in analyzing the ethics of the inquirer’s prospective conduct and may provide reactions to the questions presented. Ethics questions and responses thereto are not confidential and communications with General Counsel’s office are not privileged. No attorney-client relationship is intended or created by such communications with the Bar. Members submitting ethics questions must specify a deadline by which they need a response from the Bar. General Counsel’s office will endeavor to meet the member’s deadline, but General Counsel’s office always has at least three business days after receiving a member’s question to provide a written response to the member.

**Subsection 19.103 Application of Oregon RPC 8.6**

For Oregon RPC 8.5 to apply to a request for ethics assistance, a member must put his or her ethics question in writing. "In writing" includes letters, faxes or e-mails. General Counsel’s office will respond in writing, by fax, e-mail or regular mail, as time allows. The Bar will retain all written ethics assistance requests and General Counsel’s office responses for at least five years and those requests are public records. General Counsel’s office has the discretion to decline to provide a written response, if it determines that the question should be considered by the Legal Ethics Committee due to the difficulty, complexity or novelty that the question raises or the difficulty or complexity of an appropriate response. Members must provide General Counsel’s office and the Legal Ethics Committee with accurate, and as complete as possible, explanations of the facts underlying their ethics questions. General Counsel’s office may ask the inquirer to submit additional or clarifying information and the timeframe for response as set forth in Subsection 19.102 of the Bar’s Bylaws does not begin until General Counsel’s office receives the requested information.

**Section 19.2 Limitation of Advice**

Responses and opinions provided by General Counsel’s office, the Legal Ethics Committee and the Board of Governors are limited to and deemed to address only the facts as submitted by the inquirer.

**Section 19.3 Legal Ethics Committee**

**Subsection 19.300 Response to Inquiries**

A bar member may request that a question be submitted to the Legal Ethics Committee. The chair of the Committee will assign those requests and questions
submitted directly to the Committee to one or more committee members to prepare a response. Inquiries submitted to the Committee should be anonymous, insofar as possible. To preserve anonymity, if the facts are inadequate to permit the formulation of an opinion or a direct answer, General Counsel’s office may ask for submission of necessary additional facts. On receipt of those additional facts, General Counsel’s office will promptly submit them to the assigned member of the Committee. The Committee may, in its discretion, write opinions on subjects that the Committee believes would be helpful to the membership, whether or not the Committee receives a specific inquiry on the subject. Such opinions will be handled in the same fashion as opinions based on specific questions.

Subsection 19.301 Formal Opinion Process

The Committee will review and discuss all responses prepared by individual members and will, by majority vote, determine whether the response should be referred to the Board of Governors to be issued as a formal opinion or whether it should be issued by the Committee as a letter of direct advice to the inquirer. The Committee will establish and will periodically review guidelines for determining the appropriate form of response. Members may use formal opinions and letters of direct advice issued by the Committee in the same manner and to the same effect under Oregon RPC 8.6 as written responses from General Counsel’s office. When the Committee approves an opinion and recommends formal publication, General Counsel’s office will place a copy of the opinion on the Board’s next meeting agenda. All dissents, comments of substance or minority opinions will also be placed on the Board’s agenda. The Board will review the proposed opinion and either approve it for formal publication, refer it back to the Committee for further study or revision or direct that no opinion be issued in the matter. The Board may also distribute the opinion to the membership for comment before making a final decision. All opinions that the Board designates to be issued as formal opinions will be published in Oregon Formal Ethics Opinions (OSB 2005) and on the Bar’s website.

Article 20 Unlawful Practice of Law

Section 20.1 Definitions

For the purpose of this Article, the following definitions apply:

(A) “Administrator” means the Bar employee assigned to provide administrative support to the Committee and Bar Counsel.

(B) "Committee" means the Unlawful Practice of Law Committee of the Oregon State Bar.

(C) "Unlawful practice of law" means (1) the practice of law, as defined by the Oregon Supreme Court, in Oregon, by a person who is not an active member of the Oregon State Bar and is not otherwise authorized by law to practice law in Oregon; or (2) holding oneself out, in any manner, as authorized to practice law in Oregon when not authorized to practice law in Oregon.

(D) "Investigator" means a member of the Unlawful Practice of Law Committee assigned to investigate a complaint of unlawful practice of law.

(E) "Agency" means any federal, state or local agency having an interest in or responsibility for the investigation of conduct related to the unlawful practice of law.
(F) "Accused" means the person or persons who are the subject of a complaint to the committee.

(G) "Complaint" means the matter or occurrence that causes the Committee to open a file for the investigation of the accused’s alleged unlawful practice of law.

Section 20.2 Unlawful Practice of Law Committee
The Board may nominate and request the Supreme Court to appoint as many members as it deems necessary to carry out the Committee’s functions, pursuant to BR 12.1. At least two members of the Committee must be members of the general public and no more than one-quarter of Committee members may be lawyers engaged in the private practice of law.

Section 20.3 Investigative Authority
Pursuant to ORS 9.164 and BR 12.2, the Committee shall investigate complaints of the unlawful practice of law. The Committee may decline to investigate allegations of unlawful practice of law when: the allegations are not made to the Committee in writing; the administrator determines the allegations do not involve the unlawful practice of law, or; the allegations consist only of printed or electronic materials, advertisements or other solicitations describing services that cannot reasonably be construed as legal services.

Section 20.4 Other Investigators
The Administrator may hire a person who is not a member of the Committee to perform further investigation when the Committee determines it is necessary in order to complete the investigation.

Section 20.5 Processing Unlawful Practice of Law Complaints

Subsection 20.500 Investigation
On receiving a complaint of unlawful practice of law, the Administrator will give the complaint a case number and assign it to a committee member for investigation. The committee member may only employ methods in his or her investigation that comply with the Rules of Professional Conduct. Upon completion of the investigation, the investigator will submit a written report to the Committee with an analysis of the relevant facts and law and a recommendation for disposition.

Subsection 20.501 Dispositions
Upon receipt and review of the investigator’s report, the Committee may either continue the matter for further investigation and revisions to the report or make one of the following dispositions:

(a) Closure.
This disposition is appropriate when the Committee has insufficient evidence to prove that the accused engaged in the unlawful practice of law. The Committee may reopen a closed matter if it receives additional information or evidence of the unlawful practice of law by the accused.

(b) Informational Letter.
This disposition is appropriate when the Committee has insufficient facts evidence to prove that the accused has engaged in the unlawful practice of law, and believes that that the accused would benefit from receiving additional information about what the Court has determined constitutes the unlawful practice of law. The letter will notify the accused that the investigation is concluded, and state that the accused may wish to seek legal advice about whether any specific practice constitutes the unlawful practice of law.

(c) Referral to Board of Governors for initiation of proceedings under ORS 9.166.

   (1) Filing suit for injunctive relief is appropriate when (i) the Committee has clear and convincing evidence to establish that the accused engaged in the unlawful practice of law, (ii) the practice is ongoing or likely to recur, and (c) a member of the public has been harmed or is likely to be harmed as a result of the accused’s unlawful practice of law.

   (2) Filing suit for contempt relief is appropriate when a) a court has entered an injunction against the accused b) the Committee has clear and convincing evidence to establish that the accused continues to engage in the unlawful practice of law and c) a member of the public has been harmed or is likely to be harmed as a result of the accused’s unlawful practice of law.

   (3) The Committee may decline to request authorization from the Board to initiate proceedings allowed under to ORS 9.166 in favor of other resolutions provided in these rules.

(d) Referral to or Cooperation with Other Agency or Bar Department.

This disposition is appropriate when the Committee determines that another agency or department is better positioned to investigate or address the complaint, including but not limited to when:

   (1) The allegations involve activity prohibited by law, ordinance or statute within the jurisdiction of a federal, state or local agency;

   (2) The accused is or has been the subject of an investigation, action, injunction or review by a federal, state or local agency;

   (3) An agency, on review of the allegations before the Committee as to an accused, indicates a desire to pursue further investigation;

   (4) The agency has or is likely to have, information regarding the complaint, the accused or parties acting with the accused, or;

   (5) The complaint concerns conduct by a lawyer or bar applicant, or implicates the rules of professional conduct.

**Section 20.6 Bar Counsel**

**Subsection 20.600 Role of Bar Counsel**

After authorization by the Board to pursue an action under ORS 9.166, the Administrator may retain counsel to represent the Bar in the action and will report periodically to the Committee and Board on the status of the litigation. To the extent necessary, the Committee and Administrator will assist bar counsel with preparing and continuing investigation of matters approved for action under ORS 9.166.
Subsection 20.601 Settlement Authority

After authorization by the Board to pursue an action under ORS 9.166, the Administrator may negotiate a settlement of the unlawful practice litigation before or after the filing of a circuit court complaint by way of agreement with the accused to discontinue the unlawful practice of law. The agreement is subject to and does not become effective until approved by the Committee.

Subsection 20.602 Referral to Bar Counsel

When a new complaint of unlawful practice of law involves an accused against whom the Board has already authorized suit, the administrator refer the matter directly to bar counsel without obtaining prior authorization from the Committee or the Board. The administrator and Bar counsel may ask the Committee to conduct an investigation into the new complaint and have discretion to determine whether to include the facts alleged in the new complaint in the prosecution against the accused.

Section 20.7 Public Outreach and Education

Subsection 20.700 Public Outreach

The Committee may engage in public outreach to educate the public about the potential harm caused by the unlawful practice of law, pursuant to BR 12.3(a). The Committee may cooperate in its education efforts with federal, state and local agencies tasked with preventing consumer fraud.

Subsection 7.701 Informal Advisory Opinions

The Committee may write informal advisory opinions on questions relating to what activities may constitute the practice of law, pursuant to BR 12.3(b). Opinions must be approved by the Board before publication. The published opinions are not binding, but are intended only to provide general guidance to lawyers and members of the public about activities that Oregon Supreme Court precedent and Oregon law indicate may constitute the unlawful practice of law.

Section 20.8 Records

When the investigation of a complaint is concluded, the investigator must deliver all records and documents created or obtained in the investigation to the Bar. Records will be kept in accordance with the Bar’s records retention policy.

Article 21 Client Security Fund

The Chief Executive Officer, Executive Director, or General Counsel of the Bar will continue, as feasible, collection efforts in each instance in which Client Security Fund (“CSF”) money is paid out. In each of these cases, the Bar will obtain an assignment of judgment in the amount paid out. The status of any such outstanding judgments shall be reviewed at least annually by the CSF Committee and the Board.

Article 22 Fee Arbitration

(A) The Bar may provide for a fee arbitration procedure whereby fee disputes between attorneys maintaining offices in Oregon and their clients or other attorneys
are submitted to arbitration panels for resolution. Such a procedure shall be administered through General Counsel, pursuant to rules approved by the Board.

(B) The Bar’s fee arbitration procedure is a private, contract dispute resolution mechanism and not the transaction of public business.

(C) Except as provided in (E) below, or unless all parties to an arbitration agree otherwise: all records, documents, papers, correspondence and other material submitted by the parties to General Counsel or to an arbitration panel during the course of an arbitration proceeding and any award rendered by an arbitration panel is not subject to public disclosure.

(D) Arbitration hearings conducted pursuant to the Bar’s fee arbitration procedure will be closed to the public unless all parties to an arbitration agree otherwise. Witnesses who will offer testimony on behalf of a party may, however, attend the arbitration hearing.

(E) Notwithstanding subsection (B), (C) and (D), arbitrators must disclose to Disciplinary Counsel any knowledge obtained during the course of an arbitration proceeding of an apparent violation of the Rules of Professional Conduct or ORS Chapter 9 committed by an attorney and all records, documents, papers, correspondence and other material submitted to General Counsel or to the arbitration panel during the course of the proceeding and any award rendered by the panel must be made available to Disciplinary Counsel for the purpose of investigating alleged ethical violations.

**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.

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 two lawyer members of the Board, and one public member of the Board to serve as liaisons with the PLF Board of Directors.

(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 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 Statues;

(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 October 1 of each year, the proposed assessment for primary 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;

(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. 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 discuss matters of common interest to the Board of Governors and the PLF. This
meeting must occur as soon as practicable after completion of the year-end financial reports of the PLF, or by 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 Chief Executive Officer 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 Chief Executive Officer 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 Chief Executive Officer Executive Director and staff in all areas of the Bar’s business and activities. The Chief Executive Officer 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 assessment for coverage is 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 to the Board of Governors its recommended assessment 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 assessment that it reasonably believes to be actuarially prudent and reasonably believes will provide assurance of continued financial stability of the PLF.
Article 24 Attorney Assistance

Section 24.1 Creation and Purpose
There is hereby created, pursuant to ORS 9.568, the State Lawyers Assistance Committee ("SLAC") and the Professional Liability Fund Personal and Practice Management Assistance Committee ("PLF-PPMAC"). The purpose of the SLAC is to supervise and assist lawyers whose performance or conduct may impair their ability to practice law or their professional competence. The purpose of the PLF-PPMAC is to provide voluntary personal and practice management assistance to lawyers.

Section 24.2 Authority

Subsection 24.200 State Lawyers Assistance Committee
The SLAC has authority:
(a) To receive, review, investigate, process and resolve all complaints and referrals to SLAC regarding lawyers whose performance or conduct may impair their ability to practice law or their professional competence.
(b) To require lawyers within SLAC’s jurisdiction to submit to a professional assessment and diagnosis and to comply with any remedial program that SLAC has established. A remedial program may include conditions on the law practice and other law-related activities of any lawyer found to be within SLAC’s jurisdiction. Conditions may include, but are not limited to, requiring a lawyer to obtain medical or psychological treatment at his or her expense and to discontinue the practice of law and/or law-related activities pending completion of such treatment.
(c) To monitor a lawyer’s compliance with the recommended measures of a remedial program.
(d) To maintain records regarding a lawyer’s assistance referrals.
(e) To prepare an annual report to the Board of Governors.
(f) To recommend, for approval by the Board of Governors, such rules as may be necessary to properly operate SLAC.
(g) To appoint local bar members as it may deem appropriate for carrying out the work and purpose of SLAC.

Subsection 24.201 Professional Liability Fund Personal and Practice Management Assistance Committee
The Professional Liability Fund Personal and Practice Management Assistance Committee ("PLF-PPMAC") has the authority to provide assistance to lawyers and judges who are suffering from impairment or other circumstances that may adversely affect professional competence or conduct and may also provide advice and training in law practice management. The PLF-PPMAC may provide this assistance through the PLF’s Oregon Attorney Assistance Program and the Practice Management Advisor Program and by the use of the PLF staff and volunteers.
Section 24.3 Composition

Subsection 24.300 State Lawyers Assistance Committee
The board may appoint members and public members as it deems appropriate.

Subsection 24.301 Professional Liability Fund Personal and Practice Management Assistance Committee
The PLF-PPMAC consists of the members of the PLF’s Board of Directors. The PLF will have authority to promulgate rules concerning the provision of assistance by the PLF-PPMAC which, on approval by the Board of Governors, will govern its activities.

Section 24.4 State Lawyers Assistance Committee Review and Intake

Subsection 24.400 Complaints and Referrals
(a) Any person may submit directly to SLAC, either orally or in writing, the name of any lawyer whose performance or conduct appears to be impairing the lawyer’s professional competence or ability to practice law. A referral of a lawyer to SLAC should include a description of the circumstances and copies of any relevant documents. SLAC members who are contacted regarding a complaint or referral will obtain preliminary information and refer the matter to the chairperson. The chairperson will confirm receipt of a referral in a letter to the person making the referral. The letter must contain a disclosure substantially as follows:

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

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

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

(c) The OSB Client Assistance Office and the OSB Disciplinary Counsel may refer to SLAC the name of any lawyer whose performance or conduct appears to be impairing the lawyer’s ability to practice law or professional competence. The referral will include a description of the circumstances and copies of any relevant documents. The State Professional Responsibility Board may refer to SLAC any lawyer whose performance or conduct may be impairing the lawyer’s ability to practice or
professional competence whether or not the SPRB authorizes prosecution for misconduct. The chairperson will confirm in writing referrals from the Client Assistance Office, Disciplinary Counsel’s Office, or the SPRB.

Subsection 24.401 Designees

SLAC members, lawyers and other persons assisting SLAC and employees thereof working on a matter related to the Lawyers Assistance Program authorized by ORS 9.568 are designees of SLAC. Designees are subject to SLAC rules, including the confidentiality requirements set forth in Section 24.701. Appointment of a designee who is not a SLAC member will be at the discretion of the chairperson. Considerations for appointment of such a designee include, but are not limited to, the designee’s qualifications, the designee’s previous experience with the referred person or with a situation similar to that of the referred person and the location of the referred person and designee. The chairperson will confirm the appointment of a designee. The chairperson will advise the designee of his or her authority and obligations and will include a copy of the SLAC’s rules and other pertinent SLAC information. The designee will be notified of SLAC meetings while the referral is pending and must give regular progress reports to SLAC. Those reports may be given in person, in writing, by telephone or through the chairperson. The appointment of a designee will remain in effect until the case is concluded or SLAC otherwise provides.

Subsection 24.402 Preliminary Assessment and Intake

Upon receipt of a referral, the chairperson will assign the matter to one or more designees to conduct a preliminary assessment and make a recommendation to the committee. The Intake designee will gather relevant information regarding the referral including, but not limited to, interviewing the referred lawyers and the person who made the referral, and any other person who may have knowledge about the lawyer’s ability to practice law or professional competence.

Prior to making initial contact with the referred lawyer, the SLAC designee will notify the Oregon Attorney Assistance Program (OAAP) of the referred lawyer’s name. If the OAAP informs the SLAC designee that the referred lawyer poses a substantial and imminent risk of harm to the referred lawyer or others, the SLAC designee will wait a reasonable amount of time before contacting the referred lawyer and will coordinate and communicate with OAAP about how to make contact with the referred lawyer.

If, based on the preliminary assessment, the committee determines that the lawyer’s professional competence or ability to practice law may be impaired, SLAC will have jurisdiction over the matter. Otherwise, the matter will be dismissed without further action.

Subsection 24.403 Notice to Referred Lawyer

Prior to assuming jurisdiction, SLAC will notify the referred lawyer and provide an opportunity to respond. If jurisdiction is assumed, the chairperson will assign the matter to a designee for case development, notify the referred lawyer of the matter and direct the lawyer to meet with the designee. Notices to the referred lawyer will include a reminder that failure to respond to or cooperate with SLAC is grounds for discipline under Oregon RPC 8.1(c) and may be reported to the proper authority. If a
case is not opened, the chairperson will notify the source of the referral that the matter is being dismissed without further SLAC action.

Section 24.5 State Lawyers Assistance Committee Investigations

Subsection 24.500 Meeting with Referred Lawyer
Within 30 days after notice has been given as provided in Subsection 24.403 of the Bar's Bylaws, the designee, either individually or with another designee, will meet with the referred lawyer to discuss the nature of the referral, SLAC's function, the general steps that will be taken, any questions that the referred lawyer may have about the process and the lawyer's explanation, opinion or questions about the referral.

Subsection 24.501 Release of Information
The designee may require the referred lawyer to authorize the release of relevant medical or other background information regarding the referred lawyer to SLAC or to a professional selected to evaluate the referred lawyer. Medical or background information is relevant, if it relates to the referred lawyer's professional competence or ability to practice law. The referred lawyer may voluntarily provide additional information.

Subsection 24.502 Professional Evaluation
The designee may require the referred lawyer to obtain a medical or other diagnostic evaluation from a professional or a panel of professionals selected by SLAC. The scope of the medical or other diagnostic evaluation will be limited to issues related to the referred lawyer's professional competence or ability to practice law. The designee may inform the medical or other professional of the general nature of SLAC's concerns but will not disclose to the professional the identity of the referral source or any other confidential information. The lawyer must bear the expenses of the medical or other diagnostic evaluation, except that SLAC may advance the costs in cases of demonstrated financial hardship.

Subsection 24.503 Remedial Action Plan
(a) Based on all the information gathered by the designee, SLAC will consider and determine whether the referred lawyer's performance or conduct may be impairing the lawyer's professional competence or ability to practice law. If SLAC finds that the lawyer's performance or conduct may not impair the lawyer's professional competence or ability to practice law, the matter will be dismissed and the lawyer notified of the disposition of the matter. If SLAC finds that the lawyer's professional competence or ability to practice law is impaired, SLAC will so advise the referred lawyer in writing and require the lawyer to participate in a remedial program of monitoring, treatment, counseling or training.

(b) The referred lawyer will have the opportunity to participate in determining the nature and extent of the remedial program to be undertaken, but SLAC's decision regarding the program is final.

(c) SLAC will set forth the remedial measures to be undertaken in a written agreement to be signed by the lawyer. The agreement will contain the referred lawyer's acknowledgement that failure or refusal to cooperate in the remedial
program is grounds for discipline under Oregon RPC 8.1(c) and may be reported to the proper authority.

(d) SLAC may require the lawyer to submit periodic reports from persons responsible for implementing the remedial program or who have information about the lawyer’s compliance.

(e) The referred lawyer must pay the costs of the remedial program that SLAC requires.

(f) The designee will monitor the referred lawyer’s participation in the remedial program and will report regularly to SLAC.

(g) The remedial program may be revised from time to time, as SLAC deems appropriate, and may include an extended period of monitoring.

(h) When SLAC determines that the referred lawyer has successfully completed the remedial program and that the lawyer’s ability to practice law and professional competence is no longer impaired, the case will be closed.

Section 24.6 State Lawyers Assistance Committee Records

The chairperson will maintain an intake log as a permanent record of SLAC. In it will be noted each referral to SLAC, the date of the referral, the name of the person making the referral, the name of the referred lawyer, action taken on the referral and the ultimate disposition of the referral. Written materials regarding a referral which does not result in a case being opened, will be kept with the intake log. The designee to whom a case is assigned will create a file and will maintain all reports, correspondence, records and other documents pertaining to the case. The designee is responsible for maintaining the confidentiality of the file and the information it contains while the file is in the designee’s possession. The file on a case will be closed when the referral is dismissed, on notice to Disciplinary Counsel of non-cooperation or as provided in Subsection 24.503(H) of the Bar’s Bylaws. Closed files will be maintained for ten years in locked storage at the Bar’s offices. SLAC will notify the referring person of the general disposition of the referral, but not of its detailed findings or the remedial measures taken.

Section 24.7 Other State Lawyers Assistance Committee Policies

Subsection 24.700 Non-cooperation

The failure or refusal of the referred lawyer to respond to SLAC’s initial inquiry; to participate in interviews with designees during the course of SLAC’s investigation; to respond to SLAC requests for information or for a professional evaluation; or to participate in and comply with a remedial program, may result in the lawyer being referred to Disciplinary Counsel for possible action under Oregon RPC 8.1(c).

Subsection 24.701 Confidentiality

SLAC records and any information provided to or obtained by it or its designees including, without limitation, medical information, is confidential. Those records and information are not subject to public disclosure and are inadmissible as evidence in any disciplinary or civil proceeding. Pursuant to ORS 9.568(4), the confidentiality does not apply to information relating to a lawyer’s non-cooperation with SLAC or its designees or to information obtained by the Bar from any other source not connected
with the referral to SLAC. Pursuant to Subsection 24.402 of the Bar’s Bylaws, the SLAC chairperson or designee may release the name of the referred lawyer to the OAAP. SLAC may also release statistical data, pursuant to Subsection 24.703 of the Bar’s Bylaws.

**Subsection 24.702 Duty to Report Unethical Conduct**

SLAC and its designee are exempt from the reporting requirements of Oregon RPC 8.3(a) pursuant to Oregon RPC 8.3(c)(1).

**Subsection 24.703 Statistical Data**

SLAC will prepare a written annual report of its activities. The report will include statistical data such as: the total number of referrals received by SLAC, the number of direct referrals, the number of referrals received from the State Professional Responsibility Board, the number of referrals to the Client Assistance Office as a result of non-cooperation with SLAC, the number and types of cases in which assistance was provided through SLAC, the number of cases completed during the reporting period and other information that will assist the Bar in evaluating the workload and effectiveness of the SLAC program. The report will not include any information that could jeopardize the confidentiality of persons participating in SLAC’s programs. The report will be delivered to the Bar annually as an attachment to SLAC’s annual report.

**Subsection 24.704 Public Meetings**

SLAC meetings are exempt from the provisions of ORS 192.610 to 192.690, pursuant to ORS 9.568(3)(b). OAAP staff may be invited to attend SLAC meetings, including case review of referred lawyers, if appropriate releases have been signed by the referred lawyers.

**Article 25 Law Student Associates**

Any student currently enrolled in an Oregon law school may become a Law Student Associate of the Bar. Law Student Associates are not members of the Bar and, except as provided in this article, do not have any of the rights and responsibilities of members. Law Student Associates must pay an annual fee established by the Chief Executive Officer in an amount sufficient to cover the cost of providing information and services to Law Student Associates. Services and information provided to Law Student Associates will be determined by the Chief Executive Officer.

**Article 26 Sustainability**

The Bar supports the goal of sustainability, generally defined as meeting present needs without compromising the ability of future generations to meet their own needs. Because Bar operations and the practice of law impact the environment and society generally, the Bar will be cognizant of sustainability in its internal operating practices as well as in its service to members. Internally, the Chief Executive Officer will designate a sustainability coordinator for Bar operations, will encourage continuous sustainability improvement in Bar operations, and will report to the Board of Governors at least annually on progress and impediments. In the practice of law, principles of sustainability may be important in
addressing competing economic, social and environmental priorities that impact future generations. The Bar will encourage education and dialogue on how law impacts the needs and interests of future generations relative to the advancement of the science of jurisprudence and improvement of the administration of justice.

Article 27 Unclaimed Lawyer Trust Account Funds

Section 27.100 Purpose

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

Section 27.101 Administration

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

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

Subsection 27.102 Disbursement

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

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

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

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

Subsection 27.103 Claim Adjudication

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

(b) The Chief Executive Officer Executive Director or the Chief Executive Officer’s Executive Director’s designee shall decide whether to approve or deny all claims for amounts under $5000. Claims for amounts of $5000 or more must be reviewed and approved or denied by the Board.

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

(d) If a claim is approved pursuant to this Subsection, the Chief Executive Officer Executive Director or designee shall notify the claimant.

(e) If a claim is denied, the Chief Executive Officer Executive Director or the Chief Executive Officer’s Executive Director’s designee shall notify the claimant. The notice of denial shall include the specific reason for denial and shall include a notice of an opportunity to appeal the denial to the Board.

(f) A claimant may appeal the denial of a claim by making a request in writing to the Chief Executive Officer Executive Director within 60 days after the date of written notice of denial of the claim. A request for appeal shall be in writing and shall identify issues of law or fact raised by the denial and include a summary of the evidence of ownership on which the claim was originally submitted. The Board will review each request for appeal at its next scheduled board meeting following receipt of the request.

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

(h) The Chief Executive Officer Executive Director or designee shall notify the claimant of the Board’s decision on appeal.

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

(j) On a quarterly basis, the Chief Executive Officer Executive Director or designee shall provide a listing of the claims resolved to the Department of State Lands. The Chief Executive Officer Executive Director shall also provide an annual report of the claims resolved to the Board.
Article 28 Admissions

Section 28.1 Board of Bar Examiners
Pursuant to ORS 9.210, the Supreme Court appoints a Board of Bar Examiners (BBX) to carry out the admissions function of the Oregon State Bar. The BBX recommends to the Supreme Court for admission to practice those who fulfill the requirements prescribed by law and the rules of the Court. The BBX’s responsibilities include: investigating applicants’ character and fitness, developing a bar examination, determining the manner of examination, determining appropriate accommodations for applicants, grading the bar examinations and setting standards for bar examination passage. The BBX may appoint co-graders to assist with the grading of examinations. The BBX may also recommend to the Court rules governing the qualifications, requirements and procedures for admission to the bar, by examination or otherwise, for law student appearance, and other subjects relevant to the responsibilities of the BBX.

Section 28.2 Nominations
The bar and the BBX will recruit candidates for appointment to the BBX and for appointment as co-graders. The BBX will solicit input from the Board of Governors before selecting co-graders and nominating candidates for appointment to the BBX.

Section 28.3 Liaisons
The Board of Governors shall appoint one of its members as a liaison to the BBX. The BBX may appoint one of its members as a liaison to the Board of Governors. The liaisons shall be entitled to attend all portions of the BBX and Board of Governor meetings, including executive and judicial sessions.

Section 28.4 Admissions Director
The Admissions Director shall report to and be supervised by the Director of Regulatory Services, under the overall authority of the Chief Executive Officer Executive Director. The Chief Executive Officer Executive Director and Director of Regulatory Services will make the hiring, discipline and termination decisions regarding the Admissions Director. The Chief Executive Officer Executive Director and Director of Regulatory Services will solicit BBX’s input into these decisions and give due consideration to the recommendations and input of the BBX. If the BBX objects to the final hiring decision for the Admission Director, recruitment will be reopened.

Section 28.5 Budget
With the approval of the Oregon Supreme Court, the BBX may fix and collect fees to be paid by applicants for admission. A preliminary annual budget for admissions will be prepared by the Admissions Director and Director of Regulatory Services in consultation with the BBX. Upon approval by the BBX, the budget will be submitted to the Board of Governors. The final budget presented to the Board of Governors will be provided to the BBX. Upon adoption by the Board of Governors, the budget will be submitted to the Supreme Court in accordance with Bylaw 7.202, and the BBX may make a recommendation to the Supreme Court regarding adoption of the budget.
The budget will align with bar policy generally after consideration of the policy goals and objectives of the BBX.

**Section 28.6 Amendments**

Any proposed amendment to Article 28 shall be submitted to the BBX and Supreme Court for consideration and the BBX shall make its recommendation to the Supreme Court regarding adoption of the proposed amendment. Upon Supreme Court approval, the Board of Governors may adopt such amendments in accordance with Article 29.

**Article 29 Amendment of Bylaws**

Any amendment of the Bar’s Bylaws requires notice at a prior Board meeting unless two-thirds of the entire Board waives the notice requirement. The Bar’s Bylaws may be amended by affirmative vote of a majority of the entire Board at any regular meeting or at any special meeting of the Board called for that purpose.
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Vice-President(s), for, 2.201(c)

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Article 4 Awards

Section 4.1 General Policy
The Board will select award recipients from among the nominations received from local bars, committees, sections, individual members, affiliated groups and bar groups.

Section 4.2 President’s Membership Service Award
The criteria for the President’s Membership Service Award is as follows: The nominee must have volunteered his or her time for the activity in which he or she was involved; the nominee must be an active member of the Bar; the nominee must have made a significant contribution to other lawyers through efforts involving Continuing Legal Education programs or publications, committees, sections, boards or the Bar’s legislative/public affairs process or similar activities through local bar associations or other law-related groups.

Section 4.3 President’s Public Service Award
The criteria for the President’s Public Service Awards is as follows: The nominee must have volunteered his or her time for the activity in which she or he was involved; the nominee must be an active member of the Oregon State Bar; the nominee must have made a significant contribution to the public through efforts involving pro bono services; coordination of local public service law-related events, such as those associated with Law Day; service with community boards or organizations or similar activities that benefit the public.

Section 4.4 President’s Diversity & Inclusion Award
The criteria for the President’s Diversity & Inclusion Award is as follows: The nominee must be an active member of the Bar or be an Oregon law firm; the nominee must have made a significant contribution to the goal of increasing diversity and inclusion in the legal profession in Oregon through progressive employment efforts, innovative recruitment and retention programs, advocacy or other significant efforts.

Section 4.5 President’s Special Award of Appreciation
The President’s Special Award of Appreciation is a discretionary award of the President of the Bar, with the concurrence of the Board, to be presented to a person who has made recent outstanding contributions to the bar, the bench and/or the community. The award will be made in conjunction with the OSB Awards Dinner or House of Delegates events within the following guidelines. In any given year, there may be no award, one award or more than one award. The recipient may be a lawyer or a non-lawyer. The President will present his or her proposed award recipient to the Board at the same time the Board considers the Bar’s other awards.

Section 4.6 Award of Merit
The Award of Merit is the highest honor that the Bar can bestow. The recipient may be (1) an Oregon lawyer who has made outstanding contributions to the bench, the bar and the community-at-large, and who exhibits the highest standards of professionalism or (2) a non-lawyer who has made outstanding contributions to the bar and/or bench, and who exhibits the highest standards of service to the community-at-large. The award does not have to be granted every year and only one award may be bestowed in any year.

Section 4.7 Wallace P. Carson, Jr. Award for Judicial Excellence
The Wallace P. Carson, Jr. Award for Judicial Excellence honors a member of the state’s judiciary. The criteria for the award are as follows: 1) a current or retired state court judge or federal judge; 2) who has made significant contributions to the judicial system; and 3) who is a model of professionalism, integrity, and judicial independence.

Section 4.8 President’s Public Leadership Award
The criteria for the President’s Public Leadership Award are as follows: The nominee must not be an active or inactive member of the Oregon State Bar and the nominee must have made significant contributions in any of the areas described in the President’s Awards (Section 4.2-4.4 above).

Section 4.9 President’s Sustainability Award
The criteria for the President’s Sustainability Award are as follows: The nominee must be an active or inactive member of the bar or be an Oregon law firm; the nominee must have made a significant contribution to the goal of sustainability in the legal profession in Oregon through education, advocacy, leadership in adopting sustainable business practices or other significant efforts.

New:

Section 4.10 President’s Technology & Innovation Award
The criteria for the President’s Technology & Innovation Award are as follows: The nominee must be an active or inactive member of the bar or be an Oregon law firm; the nominee must have made a significant contribution toward enhancing access to justice or improving the provision of legal services through new technology or other innovations.
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<th>Page</th>
<th>Description</th>
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</tr>
<tr>
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<td>Primary Program Statement of Revenues, Expenses and Changes in Net Position</td>
</tr>
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<td>Primary Program Operating Expenses</td>
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</tr>
<tr>
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Professional Liability Fund  
Combined Primary and Excess Programs  
Statement of Net Position  
9/30/2017

### ASSETS

<table>
<thead>
<tr>
<th></th>
<th>THIS YEAR</th>
<th>LAST YEAR</th>
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<tbody>
<tr>
<td>Cash</td>
<td>$2,663,783.83</td>
<td>$2,782,708.79</td>
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<tr>
<td>Investments at Fair Value</td>
<td>56,000,365.21</td>
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<tr>
<td>Assessment Installment Receivable</td>
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<td>1,474,487.00</td>
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<tr>
<td>Due from Reinsurers</td>
<td>245,650.91</td>
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<tr>
<td>Other Current Assets</td>
<td>114,165.78</td>
<td>130,963.91</td>
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<tr>
<td>Net Fixed Assets</td>
<td>572,329.34</td>
<td>712,446.48</td>
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<tr>
<td>Claim Receivables</td>
<td>73,313.32</td>
<td>7,630.77</td>
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<tr>
<td>Other Long Term Assets</td>
<td>5,350.00</td>
<td>6,200.00</td>
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</table>

**TOTAL ASSETS**  
$61,343,364.39  
$55,006,256.43

### LIABILITIES AND FUND POSITION

<table>
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<tr>
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<th>THIS YEAR</th>
<th>LAST YEAR</th>
</tr>
</thead>
<tbody>
<tr>
<td>Accounts Payable and Other Current Liabilities</td>
<td>$51,224.00</td>
<td>$91,337.85</td>
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<tr>
<td>Due to Reinsurers</td>
<td>$498,752.26</td>
<td>$453,847.84</td>
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<td>PERS Pension Liability</td>
<td>3,687,715.04</td>
<td>2,110,907.00</td>
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<td>Liability for Compensated Absences</td>
<td>414,472.04</td>
<td>397,427.82</td>
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<td>Liability for Indemnity</td>
<td>13,003,880.31</td>
<td>12,893,034.25</td>
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<td>Liability for Claim Expense</td>
<td>12,940,229.46</td>
<td>14,746,506.06</td>
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<tr>
<td>Liability for Future ERC Claims</td>
<td>3,100,000.00</td>
<td>3,100,000.00</td>
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<tr>
<td>Liability for Suspense Files</td>
<td>1,600,000.00</td>
<td>1,600,000.00</td>
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<td>Liability for Future Claims Administration (AOE)</td>
<td>2,600,000.00</td>
<td>2,400,000.00</td>
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<tr>
<td>Excess Ceding Commission Allocated for Rest of Year</td>
<td>217,797.42</td>
<td>196,076.75</td>
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<tr>
<td>Primary Assessment Allocated for Rest of Year</td>
<td>6,102,404.75</td>
<td>6,140,060.25</td>
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**Total Liabilities**  
$44,216,475.28  
$44,129,197.82

### Change in Net Position:

<table>
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<tr>
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<th>THIS YEAR</th>
<th>LAST YEAR</th>
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<tr>
<td>Retained Earnings (Deficit) Beginning of the Year</td>
<td>$10,172,488.96</td>
<td>$7,916,263.73</td>
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<tr>
<td>Year to Date Net Income (Loss)</td>
<td>6,954,400.15</td>
<td>2,960,794.88</td>
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**Net Position**  
$17,126,889.11  
$10,877,058.61

**TOTAL LIABILITIES AND FUND POSITION**  
$61,343,364.39  
$55,006,256.43
Oregon State Bar  
Professional Liability Fund  
Primary Program  
Statement of Revenues, Expenses, and Changes in Net Position  
9 Months Ended 9/30/2017

<table>
<thead>
<tr>
<th>YEAR TO DATE</th>
<th>YEAR TO DATE</th>
<th>YEAR TO DATE</th>
<th>ANNUAL</th>
<th>VARIANCE</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACTUAL</td>
<td>BUDGET</td>
<td>LAST YEAR</td>
<td>BUDGET</td>
<td></td>
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<tr>
<td><strong>REVENUE</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Assessments</td>
<td>$18,061,804.50</td>
<td>$18,243,747.00</td>
<td>$181,942.50</td>
<td>$18,173,375.25</td>
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<tr>
<td>Installment Service Charge</td>
<td>245,409.75</td>
<td>247,500.00</td>
<td>2,090.25</td>
<td>246,805.50</td>
</tr>
<tr>
<td>Other Income</td>
<td>118,387.23</td>
<td>83,250.00</td>
<td>(35,137.23)</td>
<td>47,927.98</td>
</tr>
<tr>
<td>Investment Return</td>
<td>5,077,108.36</td>
<td>1,313,388.00</td>
<td>(3,763,720.36)</td>
<td>3,134,701.83</td>
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<tr>
<td><strong>TOTAL REVENUE</strong></td>
<td>$23,502,709.84</td>
<td>$19,887,885.00</td>
<td>($3,614,824.84)</td>
<td>$21,602,810.56</td>
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</table>

<table>
<thead>
<tr>
<th><strong>EXPENSE</strong></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>New Claims at Average Cost</td>
<td>$14,059,500.00</td>
<td>$14,782,500.00</td>
<td></td>
<td></td>
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<tr>
<td>Actuarial Adjustment to Reserves</td>
<td>(3,079,536.23)</td>
<td>(1,664,001.84)</td>
<td></td>
<td></td>
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<tr>
<td>Coverage Opinions</td>
<td>57,693.23</td>
<td>99,205.62</td>
<td></td>
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<tr>
<td>General Expense</td>
<td>14,164.99</td>
<td>13,508.26</td>
<td></td>
<td></td>
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<tr>
<td>Less Recoveries &amp; Contributions</td>
<td>(72,312.80)</td>
<td>171.21</td>
<td></td>
<td></td>
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<tr>
<td><strong>Budget for Claims Expense</strong></td>
<td>$14,306,247.00</td>
<td>$19,075,000.00</td>
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<tr>
<td><strong>Total Provision For Claims</strong></td>
<td>$10,979,509.19</td>
<td>$14,306,247.00</td>
<td>$3,326,737.81</td>
<td>$13,231,383.25</td>
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</table>

<table>
<thead>
<tr>
<th><strong>Expense from Operations</strong></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Administrative Department</td>
<td>$1,967,809.26</td>
<td>$2,003,580.00</td>
<td>$35,770.74</td>
<td>$1,886,977.03</td>
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<tr>
<td>Accounting Department</td>
<td>643,414.16</td>
<td>667,747.00</td>
<td>24,332.84</td>
<td>623,687.13</td>
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<tr>
<td>Loss Prevention Department</td>
<td>1,521,391.59</td>
<td>1,661,620.00</td>
<td>140,228.41</td>
<td>1,605,807.21</td>
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<tr>
<td>Claims Department</td>
<td>2,086,834.37</td>
<td>2,218,181.00</td>
<td>131,346.63</td>
<td>1,958,461.79</td>
</tr>
<tr>
<td>Allocated to Excess Program</td>
<td>(812,909.97)</td>
<td>(812,925.00)</td>
<td>(15.03)</td>
<td>(799,484.94)</td>
</tr>
<tr>
<td><strong>Total Expense from Operations</strong></td>
<td>$5,406,539.41</td>
<td>$5,738,203.00</td>
<td>$331,663.59</td>
<td>$5,275,448.22</td>
</tr>
</tbody>
</table>

| Depreciation and Amortization | $117,020.02 | $120,375.00 | $3,354.98 | $122,008.56 | $160,507.00 |
| Allocated Depreciation | (15,262.47) | (15,264.00) | (1.53) | (18,195.75) | (20,350.00) |
| **TOTAL EXPENSE** | $16,487,806.15 | $20,149,561.00 | $3,661,754.85 | $18,610,644.28 | $26,808,185.00 |

<p>| <strong>NET POSITION - INCOME (LOSS)</strong> | $7,014,862.19 | ($263,179.00) | ($7,278,041.19) | $2,992,166.28 | ($293,002.00) |</p>
<table>
<thead>
<tr>
<th></th>
<th>CURRENT MONTH</th>
<th>YEAR TO DATE</th>
<th>YEAR TO DATE</th>
<th>VARIANCE TO DATE</th>
<th>LAST YEAR TO DATE</th>
<th>ANNUAL BUDGET</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>EXPENSE:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Salaries</td>
<td>$344,488.90</td>
<td>$3,396,357.31</td>
<td>$3,523,986.00</td>
<td>$127,628.69</td>
<td>$3,308,588.53</td>
<td>$4,698,648.00</td>
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<td>Benefits and Payroll Taxes</td>
<td>112,593.51</td>
<td>1,206,863.98</td>
<td>1,264,196.00</td>
<td>57,332.02</td>
<td>1,202,507.40</td>
<td>1,683,243.00</td>
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<td>Investment Services</td>
<td>11,970.34</td>
<td>36,646.09</td>
<td>33,000.00</td>
<td>(3,646.09)</td>
<td>32,512.50</td>
<td>44,000.00</td>
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<td>Legal Services</td>
<td>1,260.00</td>
<td>8,588.50</td>
<td>7,497.00</td>
<td>(1,091.50)</td>
<td>25,747.60</td>
<td>10,000.00</td>
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<tr>
<td>Financial Audit Services</td>
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<td>23,000.00</td>
<td>23,000.00</td>
<td>0.00</td>
<td>22,000.00</td>
<td>23,000.00</td>
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<tr>
<td>Actuarial Services</td>
<td>0.00</td>
<td>24,350.00</td>
<td>30,000.00</td>
<td>5,650.00</td>
<td>24,995.00</td>
<td>30,000.00</td>
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<tr>
<td>Claims Audit Services</td>
<td>0.00</td>
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<td>0.00</td>
<td>0.00</td>
<td>1,734.89</td>
<td>0.00</td>
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<tr>
<td>Information Services</td>
<td>7,053.28</td>
<td>48,308.78</td>
<td>53,253.00</td>
<td>4,944.22</td>
<td>28,437.96</td>
<td>71,000.00</td>
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<td>Document Scanning Services</td>
<td>0.00</td>
<td>24,399.32</td>
<td>22,500.00</td>
<td>(1,899.32)</td>
<td>30,105.15</td>
<td>30,000.00</td>
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<tr>
<td>Other Professional Services</td>
<td>8,593.98</td>
<td>76,141.29</td>
<td>64,638.00</td>
<td>(11,503.29)</td>
<td>74,059.46</td>
<td>86,175.00</td>
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<td>Staff Travel</td>
<td>7,029.00</td>
<td>14,269.34</td>
<td>20,691.00</td>
<td>6,421.66</td>
<td>12,793.93</td>
<td>27,600.00</td>
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<td>Board Travel</td>
<td>0.00</td>
<td>34,718.76</td>
<td>31,122.00</td>
<td>(3,596.76)</td>
<td>25,123.11</td>
<td>41,500.00</td>
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<td>NABRICO</td>
<td>2,301.80</td>
<td>5,483.00</td>
<td>15,000.00</td>
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<td>Training</td>
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<td>21,587.57</td>
<td>27,838.00</td>
<td>6,250.43</td>
<td>30,307.84</td>
<td>37,000.00</td>
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<td>Rent</td>
<td>44,731.25</td>
<td>417,393.24</td>
<td>401,841.00</td>
<td>(15,552.24)</td>
<td>415,783.52</td>
<td>535,783.00</td>
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<td>Printing and Supplies</td>
<td>3,368.31</td>
<td>72,962.27</td>
<td>59,247.00</td>
<td>(13,715.27)</td>
<td>47,604.61</td>
<td>79,000.00</td>
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<td>Postage and Delivery</td>
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<td>18,664.63</td>
<td>19,881.00</td>
<td>1,216.37</td>
<td>17,808.54</td>
<td>26,500.00</td>
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<td>Equipment Rent &amp; Maintenance</td>
<td>2,584.57</td>
<td>37,220.94</td>
<td>31,320.00</td>
<td>(5,900.94)</td>
<td>35,938.89</td>
<td>41,761.00</td>
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<tr>
<td>Telephone</td>
<td>4,355.20</td>
<td>40,154.87</td>
<td>37,872.00</td>
<td>(2,282.87)</td>
<td>37,455.34</td>
<td>50,500.00</td>
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<td>L P Programs (less Salary &amp; Benefits)</td>
<td>45,150.35</td>
<td>264,798.54</td>
<td>389,853.00</td>
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<td>Defense Panel Training</td>
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<td>98,448.00</td>
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<td>4,125.00</td>
<td>98,448.00</td>
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<td>Bar Books Grant</td>
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<td>150,000.03</td>
<td>150,033.00</td>
<td>2.97</td>
<td>150,000.03</td>
<td>200,000.00</td>
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<td>Insurance</td>
<td>3,430.84</td>
<td>34,411.79</td>
<td>32,247.00</td>
<td>(2,164.79)</td>
<td>31,301.45</td>
<td>43,000.00</td>
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<td>Library</td>
<td>4,041.14</td>
<td>22,734.81</td>
<td>23,625.00</td>
<td>890.19</td>
<td>21,188.53</td>
<td>31,500.00</td>
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<tr>
<td>Subscriptions, Memberships &amp; C/C Charş</td>
<td>3,310.27</td>
<td>155,103.96</td>
<td>190,125.00</td>
<td>35,021.04</td>
<td>147,685.19</td>
<td>253,500.00</td>
</tr>
<tr>
<td>Allocated to Excess Program</td>
<td>(90,323.33)</td>
<td>(812,909.97)</td>
<td>(812,925.00)</td>
<td>(15.03)</td>
<td>(799,484.94)</td>
<td>(1,083,880.00)</td>
</tr>
</tbody>
</table>

**TOTAL EXPENSE** | **$535,273.18** | **$5,406,539.41** | **$5,738,203.00** | **$331,663.59** | **$5,275,448.22** | **$7,593,028.00** |
Oregon State Bar
Professional Liability Fund
Excess Program
Statement of Revenue, Expenses, and Changes in Net Position
9 Months Ended 9/30/2017

<table>
<thead>
<tr>
<th></th>
<th>YEAR TO DATE ACTUAL</th>
<th>YEAR TO DATE BUDGET</th>
<th>YEAR VARIANCE</th>
<th>YEAR LAST YEAR</th>
<th>ANNUAL BUDGET</th>
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</thead>
<tbody>
<tr>
<td><strong>REVENUE</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ceding Commission</td>
<td>$650,808.80</td>
<td>$596,250.00</td>
<td>($54,558.80)</td>
<td>$588,230.24</td>
<td>$795,000.00</td>
</tr>
<tr>
<td>Profit Commission</td>
<td>(3,317.54)</td>
<td>22,500.00</td>
<td>25,817.54</td>
<td>46,653.47</td>
<td>30,000.00</td>
</tr>
<tr>
<td>Installment Service Charge</td>
<td>49,306.00</td>
<td>45,000.00</td>
<td>(4,306.00)</td>
<td>44,760.00</td>
<td>45,000.00</td>
</tr>
<tr>
<td>Investment Return</td>
<td>124,166.80</td>
<td>98,856.00</td>
<td>(25,310.80)</td>
<td>164,221.70</td>
<td>131,809.00</td>
</tr>
<tr>
<td><strong>TOTAL REVENUE</strong></td>
<td>$820,964.06</td>
<td>$762,606.00</td>
<td>($58,358.06)</td>
<td>$843,865.41</td>
<td>$1,001,809.00</td>
</tr>
</tbody>
</table>

|                        |                     |                     |               |               |               |
| **EXPENSE**            |                     |                     |               |               |               |
| Operating Expenses (See Page 6) | $866,163.63   | $901,413.00         | $35,249.37    | $857,041.06   | $1,201,880.00 |
| Allocated Depreciation | $15,262.47         | $12,897.00          | ($2,365.47)   | $18,195.75    | $17,200.00    |
| **NET POSITION - INCOME (LOSS)** | ($60,462.04)   | ($151,704.00)       | ($91,241.96)  | ($31,371.40)  | ($217,271.00) |
## Oregon State Bar
### Professional Liability Fund
#### Excess Program
#### Statement of Operating Expense
#### 9 Months Ended 9/30/2017

<table>
<thead>
<tr>
<th></th>
<th>CURRENT MONTH</th>
<th>YEAR TO DATE</th>
<th>YEAR TO DATE</th>
<th>YEAR TO DATE</th>
<th>ANNUAL</th>
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<tbody>
<tr>
<td><strong>EXPENSE:</strong></td>
<td></td>
<td>ACTUAL</td>
<td>BUDGET</td>
<td>VARIANCE</td>
<td>LAST YEAR</td>
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<tr>
<td>Salaries</td>
<td>$49,643.33</td>
<td>$446,789.97</td>
<td>$446,787.00</td>
<td>($2.97)</td>
<td>$442,445.22</td>
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<td>Benefits and Payroll Taxes</td>
<td>16,680.41</td>
<td>150,123.69</td>
<td>150,120.00</td>
<td>(3.69)</td>
<td>144,600.75</td>
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<td>Investment Services</td>
<td>404.66</td>
<td>478.91</td>
<td>1,872.00</td>
<td>1,393.09</td>
<td>1,237.50</td>
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<tr>
<td>Office Expense</td>
<td>0.00</td>
<td>87.29</td>
<td>0.00</td>
<td>(87.29)</td>
<td>0.00</td>
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<tr>
<td>Allocation of Primary Overhead</td>
<td>23,999.59</td>
<td>215,996.31</td>
<td>216,000.00</td>
<td>3.69</td>
<td>212,438.97</td>
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<tr>
<td>Reinsurance Placement &amp; Travel</td>
<td>5,241.29</td>
<td>12,968.71</td>
<td>15,003.00</td>
<td>2,034.29</td>
<td>7,768.74</td>
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<td>Training</td>
<td>0.00</td>
<td>0.00</td>
<td>3,753.00</td>
<td>3,753.00</td>
<td>485.00</td>
</tr>
<tr>
<td>Printing and Mailing</td>
<td>60.00</td>
<td>3,609.25</td>
<td>7,875.00</td>
<td>4,265.75</td>
<td>3,846.33</td>
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<tr>
<td>Program Promotion</td>
<td>1,321.40</td>
<td>9,356.40</td>
<td>13,500.00</td>
<td>4,143.60</td>
<td>9,580.00</td>
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<tr>
<td>Other Professional Services</td>
<td>4,483.50</td>
<td>20,490.70</td>
<td>12,753.00</td>
<td>(7,737.70)</td>
<td>8,450.85</td>
</tr>
<tr>
<td>Software Development</td>
<td>232.75</td>
<td>6,262.40</td>
<td>33,750.00</td>
<td>27,487.60</td>
<td>26,187.70</td>
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<tr>
<td><strong>TOTAL EXPENSE</strong></td>
<td><strong>$102,066.93</strong></td>
<td><strong>$866,163.63</strong></td>
<td><strong>$901,413.00</strong></td>
<td><strong>$35,249.37</strong></td>
<td><strong>$857,041.06</strong></td>
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## Combined Investment Schedule

**9 Months Ended 9/30/2017**

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<tr>
<th>Fund Type</th>
<th>Current Month</th>
<th>Year To Date</th>
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</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>THIS YEAR</td>
<td>YEAR TO DATE</td>
<td>LAST YEAR</td>
<td>YEAR TO DATE</td>
</tr>
<tr>
<td><strong>Dividends and Interest:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Short Term Bond Fund</td>
<td>$10,486.44</td>
<td>$79,075.16</td>
<td>$10,142.95</td>
<td>$109,602.28</td>
</tr>
<tr>
<td>Intermediate Term Bond Funds</td>
<td>32,313.76</td>
<td>292,311.52</td>
<td>19,890.62</td>
<td>223,930.06</td>
</tr>
<tr>
<td>Domestic Common Stock Funds</td>
<td>54,198.58</td>
<td>163,057.03</td>
<td>49,299.67</td>
<td>135,696.40</td>
</tr>
<tr>
<td>International Equity Fund</td>
<td>0.00</td>
<td>15,144.31</td>
<td>0.00</td>
<td>0.00</td>
</tr>
<tr>
<td>Real Estate</td>
<td>36,747.68</td>
<td>106,912.53</td>
<td>50,240.25</td>
<td>139,986.03</td>
</tr>
<tr>
<td>Hedge Fund of Funds</td>
<td>0.00</td>
<td>0.00</td>
<td>0.00</td>
<td>0.00</td>
</tr>
<tr>
<td>Real Return Strategy</td>
<td>34,964.79</td>
<td>92,275.34</td>
<td>51,891.81</td>
<td>151,495.54</td>
</tr>
<tr>
<td><strong>Total Dividends and Interest</strong></td>
<td><strong>$168,711.25</strong></td>
<td><strong>$748,775.89</strong></td>
<td><strong>$181,465.30</strong></td>
<td><strong>$760,710.31</strong></td>
</tr>
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<thead>
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</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Gain (Loss) in Fair Value:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Short Term Bond Fund</td>
<td>($12,112.35)</td>
<td>($39,334.70)</td>
<td>$5,457.42</td>
<td>$13,965.52</td>
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<tr>
<td>Intermediate Term Bond Funds</td>
<td>(64,433.08)</td>
<td>253,660.39</td>
<td>(17,736.29)</td>
<td>370,063.43</td>
</tr>
<tr>
<td>Domestic Common Stock Funds</td>
<td>249,450.19</td>
<td>1,393,151.83</td>
<td>(33,430.06)</td>
<td>639,560.26</td>
</tr>
<tr>
<td>International Equity Fund</td>
<td>277,074.33</td>
<td>2,215,298.13</td>
<td>53,575.40</td>
<td>406,810.48</td>
</tr>
<tr>
<td>Real Estate</td>
<td>44,244.32</td>
<td>99,864.88</td>
<td>54,188.10</td>
<td>171,426.23</td>
</tr>
<tr>
<td>Hedge Fund of Funds</td>
<td>0.00</td>
<td>0.00</td>
<td>0.00</td>
<td>0.00</td>
</tr>
<tr>
<td>Real Return Strategy</td>
<td>56,045.36</td>
<td>518,920.53</td>
<td>62,124.64</td>
<td>936,387.30</td>
</tr>
<tr>
<td><strong>Total Gain (Loss) in Fair Value</strong></td>
<td><strong>$550,268.77</strong></td>
<td><strong>$4,441,561.06</strong></td>
<td><strong>$124,179.21</strong></td>
<td><strong>$2,538,213.22</strong></td>
</tr>
</tbody>
</table>

**TOTAL RETURN**

<table>
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<tr>
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<th>Year To Date</th>
<th>Current Month</th>
<th>Year To Date</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Total Dividends and Interest</strong></td>
<td><strong>$168,711.25</strong></td>
<td><strong>$748,775.89</strong></td>
<td><strong>$181,465.30</strong></td>
<td><strong>$760,710.31</strong></td>
</tr>
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<td><strong>$550,268.77</strong></td>
<td><strong>$4,441,561.06</strong></td>
<td><strong>$124,179.21</strong></td>
<td><strong>$2,538,213.22</strong></td>
</tr>
<tr>
<td><strong>TOTAL RETURN</strong></td>
<td><strong>$718,980.02</strong></td>
<td><strong>$5,190,336.95</strong></td>
<td><strong>$305,644.51</strong></td>
<td><strong>$3,298,923.53</strong></td>
</tr>
</tbody>
</table>

**Portions Allocated to Excess Program:**

<table>
<thead>
<tr>
<th>Fund Type</th>
<th>Current Month</th>
<th>Year To Date</th>
<th>Current Month</th>
<th>Year To Date</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Dividends and Interest</strong></td>
<td>$5,716.74</td>
<td>$24,083.90</td>
<td>$8,165.94</td>
<td>$30,492.81</td>
</tr>
<tr>
<td><strong>Gain (Loss) in Fair Value</strong></td>
<td>17,872.29</td>
<td>100,082.90</td>
<td>5,588.06</td>
<td>133,728.89</td>
</tr>
<tr>
<td><strong>TOTAL ALLOCATED TO EXCESS PROGRAM</strong></td>
<td><strong>$23,589.03</strong></td>
<td><strong>$124,166.80</strong></td>
<td><strong>$13,754.00</strong></td>
<td><strong>$164,221.70</strong></td>
</tr>
</tbody>
</table>
Oregon State Bar
Professional Liability Fund
Excess Program
Balance Sheet
9/30/2017

### ASSETS

<table>
<thead>
<tr>
<th></th>
<th>THIS YEAR</th>
<th>LAST YEAR</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cash</td>
<td>$686,163.80</td>
<td>$495,904.83</td>
</tr>
<tr>
<td>Assessment Installment Receivable</td>
<td>917.00</td>
<td>2,033.00</td>
</tr>
<tr>
<td>Due from Reinsurers</td>
<td>245,650.91</td>
<td>54,859.87</td>
</tr>
<tr>
<td>Investments at Fair Value</td>
<td>1,819,889.50</td>
<td>2,297,268.14</td>
</tr>
<tr>
<td><strong>TOTAL ASSETS</strong></td>
<td><strong>$2,752,621.21</strong></td>
<td><strong>$2,850,065.84</strong></td>
</tr>
</tbody>
</table>

### LIABILITIES AND FUND EQUITY

<table>
<thead>
<tr>
<th></th>
<th>THIS YEAR</th>
<th>LAST YEAR</th>
</tr>
</thead>
<tbody>
<tr>
<td>Liabilities:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Accounts Payable &amp; Refunds Payable</td>
<td>$4,605.07</td>
<td>$815.08</td>
</tr>
<tr>
<td>Due to Primary Fund</td>
<td>($13,034.79)</td>
<td>$1,226.67</td>
</tr>
<tr>
<td>Due to Reinsurers</td>
<td>498,752.26</td>
<td>453,847.84</td>
</tr>
<tr>
<td>Ceding Commision Allocated for Remainder of Year</td>
<td>217,797.42</td>
<td>196,076.75</td>
</tr>
<tr>
<td><strong>Total Liabilities</strong></td>
<td><strong>$708,119.96</strong></td>
<td><strong>$651,966.34</strong></td>
</tr>
</tbody>
</table>

|                                |                 |                 |
| Net Position                   |                 |                 |
| Net Position (Deficit) Beginning of Year | $2,104,963.29 | $2,229,470.90 |
| Year to Date Net Income (Loss) | (60,462.04)     | (31,371.40)     |
| **Total Net Position**         | **$2,044,501.25** | **$2,198,099.50** |

**TOTAL LIABILITIES AND FUND EQUITY**

|                                |                 |                 |
|                                | **$2,752,621.21** | **$2,850,065.84** |

Oregon State Bar
Professional Liability Fund
Excess Program
Balance Sheet
9/30/2017

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**TOTAL LIABILITIES AND FUND EQUITY**

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Oregon State Bar
Professional Liability Fund
Excess Program
Balance Sheet
9/30/2017

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**TOTAL LIABILITIES AND FUND EQUITY**

|                                |                 |                 |
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Oregon State Bar
Professional Liability Fund
Excess Program
Balance Sheet
9/30/2017

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**TOTAL LIABILITIES AND FUND EQUITY**

<p>| | | |
|                                |                 |                 |
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<tbody>
<tr>
<td>Cash</td>
<td>$1,977,620.03</td>
<td>$2,286,803.96</td>
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<td>Assessment Installment Receivable</td>
<td>1,667,489.00</td>
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<td>Due From Excess Fund</td>
<td>(13,034.79)</td>
<td>1,226.67</td>
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<td>Other Current Assets</td>
<td>127,200.57</td>
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<td>Net Fixed Assets</td>
<td>572,329.34</td>
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<td>Claim Receivables</td>
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<tr>
<td>Other Long Term Assets</td>
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<td><strong>TOTAL ASSETS</strong></td>
<td><strong>$58,590,743.18</strong></td>
<td><strong>$52,156,190.59</strong></td>
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</table>

<table>
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<tr>
<th>LIABILITIES AND FUND EQUITY</th>
<th>THIS YEAR</th>
<th>LAST YEAR</th>
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<tbody>
<tr>
<td>Liabilities:</td>
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<tr>
<td>Accounts Payable and Other Current Liabilities</td>
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<td>PERS Pension Liability</td>
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<td>Liability for Claim Expense</td>
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<td>Liability for Future ERC Claims</td>
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<td>Liability for Suspense Files</td>
<td>1,600,000.00</td>
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<td>Liability for Future Claims Administration (ULAE)</td>
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<td>Assessment and Installment Service Charge Allocated for Remainder of Year</td>
<td>6,102,404.75</td>
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<tr>
<td><strong>Total Liabilities</strong></td>
<td><strong>$43,508,355.32</strong></td>
<td><strong>$43,477,231.48</strong></td>
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</table>

| Net Position                               |               |               |
| Net Position (Deficit) Beginning of the Year | $8,067,525.67 | $5,686,792.83 |
| Year to Date Net Income (Loss)             | 7,014,862.19  | 2,992,166.28  |
| **Total Net Position**                     | **$15,082,387.86** | **$8,678,959.11** |

**TOTAL LIABILITIES AND FUND EQUITY**

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
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<tbody>
<tr>
<td><strong>$58,590,743.18</strong></td>
<td><strong>$52,156,190.59</strong></td>
<td></td>
</tr>
</tbody>
</table>
MEMORANDUM

DATE:   November 2, 2017
TO:    Oregon State Bar Board of Governors
FROM:  Carol Bernick, PLF CEO
RE:    Proposed Revision of 2018 PLF Primary, Pro Bono and Excess Plans

Following review by the PLF Coverage Committee, the PLF Board unanimously approved changes to the 2018 Primary Plan. Those changes will be incorporated, as appropriate, into the 2018 Pro Bono and Excess Plans. Attached, as Exhibit 1, is a copy of the 2018 Primary Coverage Plan containing the proposed changes. Attached, as Exhibit 2, is a copy of the proposed 2018 Pro Bono Coverage Plan. Attached, as Exhibit 3, is a copy of the proposed 2018 PLF Excess Plan.

The proposed Plan changes for 2018 are as follows:

A.  Recommended Revisions Regarding Applicable Plan Year

1.  Awareness of Potential Claim by Covered Party - Not Reported to the PLF - Triggers Plan Year

We recommend adding language to the PLF Primary Coverage Plan to make it clear that when a Covered Party is aware of a potential claim, even if the Covered Party has not reported the potential claim to the PLF, the applicable Primary Plan Year will be the year of the Covered Party’s knowledge.

Issues regarding applicable Plan Year have come up with some frequency in situations where the Covered Party has knowledge of the likelihood of a Claim, but has not reported the potential claim during the same Plan Year when the Covered Party acquired the knowledge.¹ The intent of the PLF is that the applicable primary Plan Year in these situations is the year in which the Covered Party became aware of facts or circumstances that could reasonably result in a Claim. Currently, there is language in Section I D of the Primary Plan suggesting it is the PLF’s intent that the Plan Year in which the Covered Party becomes aware of the likelihood of a Claim is the applicable Plan Year. Section IV of the Plan, however, which sets forth the method used to determine the applicable Plan Year for a Claim or matter, does not seem to reflect this intent. Instead, it states:

¹ A Covered Party is required to provide the PLF with timely notice of facts or circumstances that could reasonably result in a Claim. If the Covered Party fails to do so, there may not be coverage under any Plan Year. However, in order to prevail in asserting a late notice defense to coverage, it is necessary to show prejudice. Often, this is difficult to establish.
SECTION IV - WHAT IS THE APPLICABLE COVERAGE PERIOD?

A. Date of Claim

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

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

2. The date the PLF first becomes aware of a matter involving facts or circumstances that could reasonably result in a Claim against a Covered Party under this Plan;

3. The date notice of a Claim is received by any Covered Party under this Plan;

4. The date the PLF receives notice of a Claim against a Covered Party under this Plan;

5. The date the PLF opens a file in order to take steps and/or make expenditures for a matter that is not a Claim, for the purpose of investigation, mitigation, review, or prevention of any potential Claim against a Covered Party under this Plan; or

6. The date a Covered Party under this Plan first becomes aware that a claimant intends to make a Claim, but the claimant is delaying assertion of the Claim, or the Covered Party is delaying notice of such intent to make a Claim, for the purpose of obtaining coverage under a later Plan.

Both in past Plans and in the current Plan, we define Claim as “a demand for Damages, or written notice to a Covered Party of an intent to hold a Covered Party liable as a result of a Covered Activity, if such notice might reasonably be expected to result in an assertion of a right to Damages.” Therefore, under subsection 3, relating to the knowledge of a Covered Party, the Covered Party must have received either a demand or the prerequisite written notice in order to trigger the coverage year.

Under subsection 2, even if no Claim has yet been asserted, if the PLF becomes aware of facts or circumstances that could reasonably result in a Claim against a Covered Party, the Plan Year when this occurs is the applicable Plan Year.

Under subsection 6, the Plan Year is triggered based on the undisclosed knowledge of the Covered Party, but only if the Covered Party believes the claimant is delaying the Claim in order to obtain a fresh limit of coverage under a new Plan Year. This makes it sound as if we mean that unless the Covered Party is aware that the claimant is delaying the claim for the express purpose of having the subsequent Plan Year apply, the Plan Year is not triggered, even if the Covered Party is aware of facts or circumstances suggesting a claim is likely.

In order to clarify the PLF’s intent we propose to amend the Plan to add a subsection similar to subsection 2, applicable to a Covered Party’s knowledge. Doing this would also eliminate the need for current
subsection 6 because the change to subsection 2 would encompass the kind of knowledge required by subsection 6.

Proposed new language for Section IV A is on page 5 of Exhibit 1. Changes to the current Plan language are as follows:

**SECTION IV - WHAT IS THE APPLICABLE COVERAGE PERIOD?**

A. Date of **Claim**

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

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

2. The date the PLF first becomes aware of a matter involving facts or circumstances that could reasonably result in a **Claim** against a **Covered Party** under this Plan;

3. The date notice of a **Claim** is received by any **Covered Party** under this Plan first becomes aware of a matter involving facts or circumstances that could reasonably result in a **Claim** against a **Covered Party** under this Plan;

4. The date any **Covered Party** under this Plan receives notice of a **Claim**;

5. The date the PLF receives notice of a **Claim** against a **Covered Party** under this Plan;

6. If Subsections 1 through 5 do not apply, the date the PLF opens a file in order to take steps and/or make expenditures for a matter that is not a **Claim**, for the purpose of investigation, mitigation, review, or prevention of any potential **Claim** against a **Covered Party** under this Plan.

In the case of matters falling only within subsection 6, in the event there is any subsequent **Claim** against—The date a **Covered Party** under this Plan, relating to a matter that is not a **Claim**, for the purpose of investigating, mitigating, reviewing, or preventing a potential **Claim** against a **Covered Party**, the **Limit of Coverage** and/or **Claims Expense Allowance** is reduced by the amount the PLF spends on the matter.

**2. What Happens When a “Matter” Becomes a “Claim”?**

Last year we added language to the Plan to address the situation where we provide defense counsel to a lawyer who has received a subpoena, or whose deposition will be taken, regarding the representation of a client or former client. The intent of this language was to make it clear that even if there is no **Claim**, the **Covered Party’s** coverage limit is reduced by the amount we spend on the deposition/subpoena matter for the year in which the file is opened. It is unclear, however, what happens when a **Claim** arising from
the same matter is not asserted until a subsequent year, or when a different Plan year applies to the subsequent Claim because there is a Related Claim.

To address this issue, we propose to add language to the Plan stating, in essence, that in the case of a matter that is not a Claim, the Plan year applicable to the later Claim is reduced by the amount we spent on the matter. The proposed new language in this regard appears above in the final paragraph of revised Section IV A. Under this language, the trigger year for the subsequent Claim would be the year in which the Claim is alleged.

3. Applicable Plan Year Regarding Related Claims

Under both past and current Plan language, if there are Related Claims against Covered Parties in two or more separate firms, regardless of when the various firms performed the work at issue, the Plan Year that is applicable to the first of the Related Claims against any of the firms applies to all Related Claims against all firms. This means that a Plan Year in effect before the date a firm was even engaged can apply to a Claim that is Related to an earlier Claim against another firm.

One of the anomalies that can result from the current Related Claims rule is that a Covered Party’s Plan limit for the year to which the Claim relates back, may already be reduced because of past Claims. In that event, even though there was no Claim against the Covered Party until the current Plan Year there is not only a shared limit, but also less than a full limit for that Covered Party.

In addition, when an expired Plan applies to a Related Claim, even though it was only recently made against a particular firm, we look at the old Plan language applicable to the earliest of the Related Claims to consider coverage, instead of the most recent Plan provisions and exclusions. In other words, imagine a situation where a Claim is made against Firm A in 2014. Even though no Related Claim is made against Firm B until 2017, and Firm B did not perform the work at issue until 2016, the language of the 2014 Plan will determine whether there is coverage for the Claim against Firm B. Plan provisions that have not been in effect for several years currently apply to such Claims even though the Covered Party may have performed the work in question after the applicable year of coverage and no Claim was alleged against that Covered Party until the current Plan Year.

At this point, we do not propose to change the basic policy that a maximum limit of $300,000, plus one or more applicable Claims Expense Allowances, apply to all Related Claims. However, it seems more logical and consistent with the idea of “claims made” coverage, to have different Plan Years apply where one or more firms performed the underlying work and the Covered Parties sharing a limit were not working together on the underlying matter. This would also mean that the applicable Plan Year for the primary coverage would usually be the same as the applicable Plan Year for any PLF excess coverage, which seems more consistent and less confusing. Currently, in these situations, we may have two different Plan Years applicable to the same Claim for primary and excess.

One complication that could arise from changing the current language regarding the applicable Plan Year for Related Claims is that if we raise the primary limit at some point, there could be two different limits
applicable to one set of **Related Claims**. Perhaps we could address this, however, by giving the **Covered Party** in the later year the benefit of the additional limit for the **Related Claim** against that **Covered Party**. This also seems more consistent with ordinary claims made coverage.

Another possible complication of changing what we currently do is that there could also be Plan language applicable to the later **Claim**, but not to the earlier **Claim**, that would either expand or restrict coverage for some of the **Related Claims**. However, any such complication seems manageable.

Obviously, changing the applicable Plan Year rule for **Related Claims** would also affect the way we track and account for claims expense. This would require some internal administrative changes.

Proposed language new language for Section IV B to effect the changes to the applicable Plan Year when **Claims** are **Related** is on pages 5 and 6 of Exhibit 1. Changes to the current Plan language are as follows:

**B. Special Rule Regarding Coverage Period Applicable to Related Claims Against Associated Attorneys**

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

1. The date a lawsuit was first filed, or an arbitration or alternative dispute resolution proceeding was initiated with respect to the earliest of the **Related Claims**;

2. The date the **PLF** first became aware of facts or circumstances that could reasonably result in the earliest of the **Related Claims**;

3. The date any **Covered Party**, under this Plan **first became aware of facts, or circumstances that could reasonably result in the earliest of the Related Claims**; any attorney covered under any other **PLF Plan** applicable to a **Related Claim**, received notice of the earliest **Related Claim**;

4. The first date any **Associated Attorney** first became aware of facts or circumstances that could reasonably result in the earliest of the **Related Claims**;

5. The date the **PLF** received notice of the earliest **Related Claim**; or

6. The date any **Covered Party**, under this Plan **received notice of the earliest, or any attorney covered under any other **PLF Plan** applicable to a **Related Claim**, received notice of the earliest **Related Claim**; or

7. The first date any **Associated Attorney** received notice of, first became aware that a claimant intended to make the earliest **Related Claim**.

**Associated Attorney** means any attorney who, **at** but the **time** claimant was delaying assertion of the **representation, advice**, or activity at issue, or during any portion of the **Covered Party was delaying notice of such representation, advice, or activity**; (1) was a member, partner, associate, of
counsel, or contract attorney, in the same Law Entity with You; or (2) worked in association with You, or as co-counsel with You, regarding the representation, advice, or activity that is the subject of the Claim(s), intent to make a Claim, for the purpose of obtaining coverage under a later Plan.

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

The Plan Year applicable to Related Claims against attorneys who are not Associated Attorneys is determined pursuant to Section IV A.

The foregoing provisions regarding Related Claims involving Associated Attorneys does not increase the $300,000 total maximum limit applicable to all Related Claims, whether against an Associated Attorney, or against any other attorney or Law Entity.

In order to reflect the proposed changes to Section IV B, we will also need to change some of the current examples that follow Section VII C of the current Plan. The revised examples appear on pages 15 and 16 of Exhibit 1. Proposed changes to the current examples are as follows:

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

Example 1: In 2009, Attorney A, with Firm 1, assists a client in setting up an LLC to obtain investors for real estate development projects, also advising the client as to applicable securities laws requirements. In 2011, Attorneys B and C, with Firm 2, assemble information the LLC provides to investors. In 20162013, Investor W brings securities claims against Attorneys B and C. The Applicable Plan Year for the Related Claims against Attorneys B and C is 2016. The PLF incurs $50,000 in Claims Expense relating to Investor W’s Claims against Attorneys B and C, and settles the Claims against them for a total of $250,000: $125,000 for Attorney B and $125,000 for Attorney C.

In January of 20182014, following the settlement of Investor W’s Claims against Attorneys B and C, Investor X brings a securities claim against Attorneys A, B, and C regarding Investor X’s investment in the same LLC. The Claims by Investor X are Related to the previous Claims against Attorneys B and C. Because Attorneys B and C are Associated Attorneys, this Claim relates back to the 20162013 Plans issued to Attorneys B and C. Therefore, the applicable Plan Year for the Claim by Investor X, as it relates to Attorneys B and C, is 2016. However, because Attorney A acted independently of Attorneys B and C, and is not an Associated Attorney, the applicable Plan Year for the Claim against Attorney A is 2018, the year Investor W first alleged a Claim against Attorneys A, B, and C.

There was another completely unrelated Claim against Attorney A in 20182013, but the PLF successfully defended Attorney A, using his entire $50,000 Claims Expense Allowance for 20182013. Although Attorney A has not used his $300,000 limit for 20182013, because the PLF has already spent $250,000 settling the Related Claims against Attorneys B and C, all the attorneys collectively, now have a total limit of $50,000 under their 2013 Plans, to respond to the Claim by Investor X. Because Attorney A has already used his Claims Expense Allowance for 20182013, he does not have another Claims Expense Allowance for this Claim. There is no additional Claims Expense Allowance available for Attorneys B and C because they are entitled to only one shared Claims Expense
Allowance regarding the Related Claims, and this was already spent on the Related Claim by Investor W.

Example 2: Same facts as in Example 1, except that the previous unrelated 20182013 Claim against Attorney A was not successfully defended. The PLF spent Attorney A’s $50,000 Claims Expense Allowance, plus $275,000 settling the unrelated 20182013 Claim against Attorney A. Under this scenario, there is a total maximum limit of $25,000 for Attorney A to respond to the Claim by Investor X. Although the $50,000 left after settling the Claim by Investor W is available collectively to A, B, and C, no more than $25,000 of this amount can be used for Attorney A because that is all that is remaining of his 20182013 limit. Assuming $25,000 is spent to settle the Investor X Claim against Attorney A, there is $25,000 remaining to defend or indemnify Attorneys B and C against Investor X.

Example 3: Same facts as in Example 1, except that $200,000 is spent settling Investor W’s claim against Attorneys B and C. Attorneys B and C have exhausted both their 20162013 Limit of Coverage and their 2013 Claims Expense Allowance applicable to this Related Claim. Attorney A has already spent $10,000 of his 20182013 Claims Expense Allowance to defend an unrelated Claim, but he has not spent anything on indemnity in 2018. Attorney A has $40,000 of his 2018 limit. The PLF has already paid the most it will pay regarding the Related Claims Expense Allowance. As a result, there is nothing left to defend or indemnify Attorneys A, B, or C against the Investor X claim. Attorneys B and C have exhausted their applicable Claims Expense Allowance. Collectively, all three Attorneys have $100,000 for defense and/or indemnity relating to the claim by Investor W. X under any PLF Primary Coverage Plan.

Example 4: Same facts as Example 1, except the PLF settles Investor W’s Claim against Attorneys B and C for $30,000, without incurring any Claims Expense for them, and Attorney A has used all but $5,000 of his 20182013 limit, as well as his Claims Expense Allowance, for an earlier unrelated Claim. Under this scenario, there is a maximum total limit of $270,000 to respond to the Claim by Investor X against all three attorneys, but only $5,000 of this amount is available to Attorney A because that is the limit remaining under his 20182013 Plan. Attorney A has no Claims Expense Allowance remaining. Attorneys B and C, however, have a shared $50,000 Claims Expense Allowance for their defense against the claim by Investor X.

Example 5: Same facts as Example 1, except Attorney A already spent both his entire 20182013 Claims Expense Allowance, plus his entire 20182013 limit on an unrelated Claim. Attorney A has no coverage for the Claim by Investor X under the PLF Primary Coverage Plan.

B. Recommended Revisions Regarding Exclusions

1. Addition of an Escrow Exclusion

The PLF has encountered a number of claims in which the lawyer has been acting in the role of an escrow agent and then there is a claim arising from the release, or failure to release, funds held in escrow. Because the PLF believes serving as an escrow agent presents unreasonable risks for lawyers, the PLF proposes to exclude engagements in which the lawyer is performing the function of an escrow agent.

For the reasons discussed below, acting as an escrow agent either exposes a lawyer to heightened risks arising from actual or alleged conflicts, or is not the type of professional service a lawyer should perform. Further, the risks of serving as an escrow agent can be disproportionate to the fee charged by the lawyer. As a result, the PLF is of the opinion that if the parties need an
escrow agent, they should hire a title company or some other person or entity that regularly provides these services as a neutral.

As background, the Oregon statute applicable to real estate transactions contains various safeguards regarding funds held in escrow. ORS 696.520(2), however, states that the provisions of ORS 696.505 through 696.590 do not apply to, and the term “escrow agent” does not include: “an attorney at law rendering services in the performance of duties as an attorney at law.”

While persons who are subject to the escrow statute must be both licensed and bonded, there is no bonding requirement for lawyers who qualify for the exemption. The escrow statute also prohibits escrow agents from accepting funds, property, or documents in any escrow transaction without written escrow instructions from the principals to the transaction, or a dated executed agreement between the principals to the transaction. ORS 696.581. When an exempt lawyer is involved in an escrow transaction, however, there is a risk that the same lawyer performing the escrow function may also become involved in actually creating the instructions. Perhaps even worse, there may not be any particular instructions and the parties may be relying on the lawyer to know when, and under what circumstances, the lawyer should release the property.

Beyond the lack of statutory requirements that reduce risk relating to escrows, taking on the role of an escrow agent is unreasonably risky if the lawyer is representing one of the parties in the transaction. In this case, the lawyer is in a position of conflict and is in violation of ethical rules when purporting to act as a neutral. See, Formal Opinion No. 2005-55.

Where the lawyer is supposed to be acting only as a neutral, and does not represent any of the parties, there is no attorney-client relationship to create the type of liability for legal malpractice that should be within the scope of the PLF Plan. In addition, even when the lawyer does not actually represent any of the parties in such a transaction, there is a risk of confusion. One or more of the parties may subjectively believe that the lawyer was representing one or more of the parties.

The proposed escrow/holding exclusion is intended to apply to cases in which the lawyer is doing the type of work that the PLF believes should be performed by a title company or professional escrow agent. It is not intended to apply to a lawyer holding funds for settlement purposes or to the situation where a domestic relations lawyer is applying funds held in trust to make payments pursuant to a judgment. Possibly, after the exclusion is in place, the PLF will learn of other situations that typically arise in practice where the lawyer is not acting in the type of role intended to fall within the exclusion. If so, the PLF may need to make some reasonable exceptions going forward and then adjust the language accordingly.

To exclude coverage where the lawyer is performing an escrow function, the PLF proposes the following language, which appears on page 13 of Exhibit 1:
21. Escrow/Holding Exclusion. This Plan does not apply to any Claim arising from a Covered Party entering into an express or implied agreement with two or more parties to a transaction that in order to facilitate the transaction, the Covered Party will hold documents, money, instruments, titles, or property of any kind until certain terms and conditions are satisfied, or a specified event occurs. This exclusion does not apply to a Claim based on: (a) a Covered Party’s distribution of settlement funds received from the Covered Party’s client, or from an opposing party, in order to close a settlement; or (b) a Covered Party’s distribution of funds pursuant to and consistent with a limited or general judgment in a domestic relations proceeding.

The following illustrative examples, not intended to be exhaustive, are provided for the purpose of assisting a Covered Party or court in interpreting the PLF’s intent as to the scope of Exclusion 21:

Example 1: Lawyer is hired to act as a neutral third party to hold money in a transaction between non-clients. The parties do not provide written instructions, but agree that the lawyer should determine when it is appropriate to release the money and deliver it to one of the parties. Claims arising from this engagement are excluded. Even if the parties agreed upon and provided the lawyer with written instructions regarding when the money should be delivered, the claims are excluded.

Example 2: Lawyer represents one party to a transaction with another party and pursuant to instructions from both parties, holds money or other property to disburse in accordance with those instructions. Claims arising from this engagement, including the wrongful disbursement or withholding of money or property, are excluded.

Example 3: Lawyer represents one party in a dispute and, upon settlement of the dispute, receives settlement proceeds from the adverse party’s lawyer with instructions not to distribute the funds until various contingencies have occurred. Because of an innocent mistake, Lawyer incorrectly believes all contingencies are satisfied and distributes the settlement funds prematurely. Exclusion 21 does not apply to a claim based on this distribution. (But note that Exclusions 2 and 14 would apply to knowingly wrongful distributions or conversion of settlement funds.)

Example 4: Lawyer represents the trustee of a trust and is holding money to be distributed to the trust beneficiaries pending the payment of debts owed by the trust. After payment of the debts, and distribution to the beneficiaries, one of the beneficiaries claims the lawyer negligently paid a debt that was not owed. This claim is not excluded by Exclusion 21 because the lawyer has not “entered into an express or implied agreement with two or more parties to a transaction” within the intended meaning of Exclusion 21.

2. Amendment of Exclusion 14:

In considering the proposed Escrow/Holding Exclusion we discussed the need to make sure it would not apply to the situation where a lawyer is, for example, holding settlement funds while
waiting for a Dismissal or the signing of a settlement agreement and makes an innocent mistake in prematurely distributing funds. Consequently, we included language in proposed Exclusion 21 that specifically exempts this kind of error from its scope. At the same time, we want to make sure it is clear that if a lawyer deliberately releases funds knowing that the required prerequisites have not been satisfied, there is no coverage. To do this, we propose to amend Exclusion 14 so that it will apply not only to client funds held in trust, but also to funds belonging to third parties.

Proposed Exclusion 14 is on page 11 of Exhibit 1. The change to the current Plan language is as follows:

14. Loss of Client Funds or Property/Certain Disbursements. This Plan does not apply to any Claim against any Covered Party, or against anyone for whose conduct a Covered Party is legally liable, relating to or arising from: conversion of any funds or property; misappropriation of any funds or property; misappropriation, improper commingling, negligent supervision of client funds or trust account property, including loss or reduction in the value of such funds or property; or the disbursement of funds, checks or other similar instruments deposited to a trust, escrow, or other similar account in which the deposit was not irrevocably credited to such account.
2018
PLF Primary Coverage Plan

Exhibit 1
The Professional Liability Fund ("PLF") is an instrumentality of the Oregon State Bar created pursuant to powers delegated to it in ORS 9.080(2)(a). The PLF Primary Coverage Plan ("Plan") is not intended to cover all claims that can be made against Oregon lawyers. The limits, exclusions, and conditions of the Plan are in place to enable the PLF to meet the statutory requirements and to meet the Mission and Goals set forth in Chapter One of the PLF Policies, including, “To provide the mandatory professional liability coverage consistent with a sound financial condition, superior claims handling, efficient administration, and effective loss prevention.” The limits, exclusions, and conditions of the Plan are to be fairly and objectively construed for that purpose.

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

Because the Plan has limits and exclusions, members of the Oregon State Bar are encouraged to purchase excess malpractice coverage and coverage for excluded claims through general liability and other insurance policies. Lawyers and their firms should consult with their own insurance agents as to available coverages. Excess malpractice coverage is also available through the PLF.
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INTRODUCTION
Effective 1.1.2017

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

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

SECTION I – COVERAGE AGREEMENT

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

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

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

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

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

B. Defense
1. Until the Claims Expense Allowance and the Limit of Coverage are exhausted, the PLF will defend a Covered Party against any Suit seeking Damages to which this Plan applies. The PLF is not bound by any Covered Party’s agreement to resolve a dispute through arbitration or any other alternative dispute resolution proceeding and has no duty to defend or indemnify regarding any dispute handled or resolved in this manner without its consent.

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

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

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

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

C. Exhaustion of Limits

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

D. No Prior Knowledge or Prior Coverage

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

E. Coverage Territory

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

SECTION II – WHO IS A COVERED PARTY?

Only the following are Covered Parties under this Plan:

A. The Individual Attorney Named in the Declarations

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

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

Your work or conduct as an employee of any entity that is not a Law Entity, including but not limited to any private entity or any governmental body, subdivision, or agency, whether or not You are employed as a public official or employee, if You are subject to the direction and control of the non-Law Entity regarding
the means and manner of providing services and are paid on a salaried basis, or hourly employee basis, as opposed to being retained as an independent contractor, paid on a fee for service or hourly fee basis; or

Your work or conduct in any other capacity that comes within the defense and indemnity provisions of ORS 30.285 and 30.287, unless the public body rejects any duty to defend and indemnify You. If the public body rejects Your defense and indemnity, the PLF will provide coverage, provided the Claim relates to a Covered Activity to which this Plan would otherwise apply, and the PLF will be subrogated to all Your rights against the public body.

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

B. Law Entities Legally Liable for Your Covered Activities

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

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

SECTION III – WHAT IS A COVERED ACTIVITY?

A. What Qualifies as a Covered Activity?

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

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

a. You;

b. Another attorney for whose conduct You are legally liable, in Your capacity as an attorney, but only if the attorney was covered under a PLF Plan at the time of the act, error, omission, negligent act, or breach of duty; or

c. Your Non Attorney employee, for whose conduct You are legally liable in Your capacity as an attorney, but only to the extent such employee was assisting You in providing Professional Legal Services or Special Capacity Services.

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

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

a. Any conduct in carrying out the commercial or administrative activities associated with practicing law, including but not limited to activities such as collecting fees or costs, guaranteeing a client will pay third party vendors or service providers such as court reporters, depositing, endorsing, or otherwise transferring negotiable instruments, depositing or withdrawing any money or other instruments into or from trust accounts or other bank accounts, any activities relating to or arising from the receipt, transmittal, or negotiation of counterfeit or fraudulent checks or instruments, or any activities that require no specialized skill or training, such as paying bills on time or not incurring unnecessary expenses;

b. Business-related activities or services, including operating, managing, or controlling any property, business property, business, or institution in a manner similar to an owner, officer, director, partner, or shareholder, whether as a trustee or otherwise;

c. Activities as an officer, director, partner, employee, shareholder, member, or manager of any entity except a Law Entity;

d. Activities on any board, including but not limited to serving on the board of trustees of a charitable, educational, or religious institution, or a real estate or other investment syndication;

e. Serving as trustee for the liquidation of any business or institution, or as trustee for the control of a union or other institution; or

f. Non-legal services such as architectural, engineering, accounting, lobbying, marketing, advertising, trade services, public relations, real estate appraisal, real estate development, brokerage services, or other such services.

C. Special Capacity Services

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

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

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

a. Business-related services, including but not limited to operating, managing, or controlling any property, business property, business, or institution, whether owned by the estate or trust or otherwise, in a manner similar to an owner, officer, director, partner, or shareholder; or

b. Services provided by a Covered Party that generally fall within the scope of services commonly provided by another type of professional such as an accountant, tax professional, financial planner or advisor, appraiser, architect, engineer, surveyor, real estate agent, or other such professional, or by a person in another trade or occupation such as a contractor, landscaper, gardener, caregiver, caretaker, housekeeper, or similar service provider.
SECTION IV – WHAT IS THE APPLICABLE COVERAGE PERIOD?

A. Date of Claim

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

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

2. The date the PLF first becomes aware of a matter involving facts or circumstances that could reasonably result in a Claim against a Covered Party under this Plan;

3. The date any Covered Party under this Plan first becomes aware of a matter involving facts or circumstances that could reasonably result in a Claim against a Covered Party under this Plan;

4. The date any Covered Party under this Plan receives notice of a Claim;

5. The date the PLF receives notice of a Claim against a Covered Party under this Plan; or

6. If Subsections 1 through 5 do not apply, the date the PLF opens a file in order to take steps and/or make expenditures, for the purpose of investigation, mitigation, review, or prevention of any potential Claim against a Covered Party under this Plan.

In the case of matters falling only within subsection 6, in the event there is any subsequent Claim against a Covered Party under this Plan, relating to or arising from such matter, the Limit of Coverage and/or Claims Expense Allowance for the Plan Year applicable to such Claim is reduced by the amount the PLF spends on the matter.

B. Special Rule Regarding Coverage Period Applicable to Related Claims Against Associated Attorneys

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

1. The date a lawsuit was first filed, or an arbitration or alternative dispute resolution proceeding was initiated with respect to the earliest of the Related Claims;

2. The date the PLF first became aware of facts or circumstances that could reasonably result in the earliest of the Related Claims;

3. The date any Covered Party under this Plan first became aware of facts or circumstances that could reasonably result in the earliest of the Related Claims;

4. The first date any Associated Attorney first became aware of facts or circumstances that could reasonably result in the earliest of the Related Claims;

5. The date the PLF received notice of the earliest Related Claim;

6. The date any Covered Party under this Plan received notice of the earliest Related Claim; or

7. The first date any Associated Attorney received notice of the earliest Related Claim.

Associated Attorney means any attorney who, at the time of the representation, advice, or activity at issue, or during any portion of such representation, advice, or activity: (1) was a member, partner, associate, of counsel, or contract attorney, in the same Law Entity with You; or (2) worked in association with You, or as co-counsel with You, regarding the representation, advice, or activity that is the subject of the Claim(s).
If You did not have a PLF Plan in effect on the date applicable to the earliest Related Claim pursuant to this subsection IV B, and You have no other insurance from any source that is applicable to the Claim, regardless of whether the available limits of such policy are sufficient to cover liability for the Claim, any applicable Coverage Period for the Related Claim against You is determined using the method set forth in Section IV A.

The Plan Year applicable to Related Claims against attorneys who are not Associated Attorneys is determined pursuant to Section IV A.

The foregoing provisions regarding Related Claims involving Associated Attorneys does not increase the $300,000 total maximum limit applicable to all Related Claims, whether against an Associated Attorney, or against any other attorney or Law Entity.

SECTION V – WHAT ARE RELATED CLAIMS?

A. Related Claims

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

B. General Examples

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

1. Secondary or dependent liability. Claims such as those based on vicarious liability, failure to supervise, or negligent referral are Related to the Claims on which they are based.

2. Same transaction or occurrence. Multiple Claims arising out of the same transaction or occurrence or series of transactions or occurrences are Related. However, provided the Claims do not also fall within one of the other categories in this Section V B, the PLF will not treat the Claims as Related if: (a) the participating Covered Parties acted independently of one another; (b) they represented different clients or groups of clients whose interests were adverse; and (c) the claimants do not rely on any common theory of liability or damage.

3. Alleged scheme or plan. If claimants tie together different acts as part of an alleged overall scheme or operation, then the Claims are Related.

4. Actual pattern or practice. Even if a scheme or practice is not alleged, if Claims arise from a method, pattern, or practice in fact used or adopted by one or more Covered Parties or Law Entities representing multiple clients in similar matters, such Claims are Related.

5. One loss. When successive or collective errors each cause or contribute to single or multiple clients' and/or claimants' harm, or cumulatively enhance their damages or losses, then the Claims are Related.

6. Class actions. All Claims alleged as part of a class action or purported class action are Related.

For the purpose of assisting a Covered Party or court in interpreting the PLF's intent as to which Claims are considered to be Related, and subject to the special rules regarding limits under Section VII C, examples illustrating the PLF's intent, not intended to be exhaustive, are as follows:
Example 1: Secondary or Dependent Liability – Attorney A is an associate in a firm and commits malpractice. Claims are made against Attorney A, various attorneys who were partners in the firm at the time of the malpractice, and the firm. Even if Attorney A and some of the other lawyers are at different firms at the time of the Claim, all Claims are Related.

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

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

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

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

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

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

Example 8: Class Action or Purported Class Action – Attorneys A, B, and C in the same firm represent a large banking institution. They are sued by the bank’s customers in a class action lawsuit for their part in advising the bank on allegedly improper banking practices. All Claims are Related.
SECTION VI – WHAT IS EXCLUDED FROM COVERAGE?

1. **Fraudulent Claims.** This Plan does not apply to any Claim in which any Covered Party, or in which anyone for whose conduct a Covered Party is legally liable, has participated in any fraud or collusion with respect to the Claim.

2. **Wrongful Conduct.** This Plan does not apply to any Claim based on or arising out of:
   a. any criminal act or conduct;
   b. any knowingly wrongful, dishonest, fraudulent, or malicious act or conduct;
   c. any intentional tort; or
   d. any knowing or intentional violation of the Oregon Rules of Professional Conduct (ORPC) or other applicable code of ethics.

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

3. **Disciplinary Proceedings.** This Plan does not apply to any investigation or disciplinary proceeding by the Oregon State Bar or any similar entity.

4. **Punitive Damages, Sanctions, or Certain Fee Awards.** This Plan does not apply to:
   a. The part of any Claim seeking punitive, exemplary, or statutorily enhanced damages against any Covered Party, or against anyone for whose conduct a Covered Party is legally liable;
   b. Any Claim for or arising out of the imposition of attorney fees, costs, fines, penalties, or remedies imposed as sanctions under any federal or state statute, administrative rule, court rule, or case law. However, with respect to any sanction awarded only against the client, this subsection (b) does not apply if: the Covered Party establishes that the sanction was caused by mere negligence on the part of the Covered Party and on the part of anyone for whose conduct a Covered Party is legally liable; and the sanction was not based, in whole or in part, on a finding of bad faith, malicious conduct, dishonest conduct, or misrepresentation on the part of the Covered Party, or on the part of anyone for whose conduct a Covered Party is legally liable; or
   c. Any attorney fees or costs owed as a result of any statute making any attorney liable or responsible for fees or costs owed by a client.

5. **Failure to Pay Lien.** This Plan does not apply to any Claim based on or arising out of the non-payment of a valid and enforceable lien if actual notice of such lien was provided to any Covered Party or to anyone for whose conduct a Covered Party is legally liable, prior to the payment of the funds to a client or any person or entity other than the rightful lien-holder.

6. **Business Interests.** This Plan does not apply to any Claim relating to or arising out of any business enterprise:
   a. In which You are a general partner, managing member, or employee, or in which You were a general partner, managing member, or employee at the time of the alleged acts, errors, or omissions on which the Claim is based;
   b. That is controlled, operated, or managed by You, either individually or in a fiduciary capacity, including the ownership, maintenance, or use of any property in connection therewith, or was so controlled, operated, or managed by You at the time of the alleged acts, errors, or omissions on which the Claim is based; or
c. In which You either have an ownership interest, or had an ownership interest at the time of the alleged acts, errors, or omissions on which the Claim is based unless: (i) such interest is solely a passive investment; and (ii) You, those controlled by You, Your spouse, parent, stepparent, child, sibling, or any member of Your household, and those with whom You are regularly engaged in the practice of law, collectively own, or previously owned, an interest in the business enterprise of less than 10%.

7. Partner and Employee Exclusion. This Plan does not apply to any Claim made by:
   a. A present, former, or prospective law partner, employer, or employee of a Covered Party, or of anyone for whose conduct a Covered Party is legally liable; or
   b. A present, former, or prospective officer, director, or employee of a professional corporation in which a Covered Party, or in which any attorney for whose conduct a Covered Party is legally liable, is or was a shareholder.

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

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

9. Investment Advice. This Plan does not apply to any of the following Claims or excluded activities, whether or not they are the sole cause, or a contributing cause, of any resulting loss or damage:
   a. Any Claim for investment losses, or for any damages arising from or relating to such losses, as a result of any Covered Party, or any person for whose conduct any Covered Party is legally liable: advising any person or entity respecting the value of a particular investment; recommending investing in, purchasing, or selling a particular investment; providing any economic analysis of any investment; inducing any person or entity to make any particular investment; making any warranty or guarantee regarding any investment; or making a financial decision or investment choice on behalf of any other person or entity regarding the purchase or selection of any particular investment.

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

b. Any Claim arising from any Covered Party, or any person for whose conduct any Covered Party is legally liable: advising or failing to advise any person in connection with the borrowing of any funds or property by any Covered Party for the Covered Party or for another; acting as a broker for a borrower or a lender; or giving advice of any nature when the compensation for such advice is, in whole or in part, contingent or dependent on the success or failure of a particular investment.

c. Managing an investment, or buying or selling an investment for another, except to the limited extent such activities fall within the common and ordinary scope of Special Capacity Services.

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

   a. For any amounts paid, incurred, or charged by any Covered Party as fees, costs, or disbursements (or by any Law Entity with which any Covered Party was associated at the time the fees, costs, or expenses were paid, incurred, or charged), including but not limited to fees, costs, and disbursements alleged to be excessive, not earned, or negligently incurred, whether claimed as restitution of specific funds, forfeiture, financial loss, set-off, or otherwise.
b. Arising from or relating to the negotiation, securing, or collection of fees, costs, or disbursements owed or claimed to be owed to any Covered Party, or any Law Entity with which any Covered Party is now associated or was associated at the time of the conduct giving rise to the Claim; or

c. For damages or the recovery of funds or property that have benefitted or will directly or indirectly benefit any Covered Party.

In the event the PLF defends any Claim or Suit that includes any claim within the scope of this exclusion, the Covered Party is required to consent to and cooperate with the PLF’s attempt to settle or dismiss any other claim(s) not falling within this exclusion. The PLF will have the right to withdraw from the defense following the settlement or dismissal of any such claim(s).

This exclusion does not apply to the extent a Claim is based on an act, error, or omission that eliminates, reduces, or prejudices a client’s right or ability to recover fees, costs, or expenses from an opposing party.

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

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

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

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

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

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

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

   a. **Professional Legal Services** to any person or entity that is his or her own Family Member or Family Business at the time any such services are provided or fail to be provided; or

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

   **Family Member(s)** means spouse, parent, adoptive parent, parent-in-law, stepparent, grandparent, child, adopted child, stepchild, grandchild, son-in-law, daughter-in-law, sibling, adopted sibling, stepsibling, half sibling, brother-in-law, sister-in-law, or any member of the Covered Party’s household and, if the household member is a spousal equivalent of the Covered Party, the Family Members of any such person.
**Family Business** means a business entity in which the **Covered Party**, or person for whose conduct a **Covered Party** is legally liable, and/or the **Family Members** of such **Covered Party**, or person for whose conduct a **Covered Party** is legally liable, collectively or individually, have a controlling interest.

This Exclusion 11 does not apply to **Professional Legal Services** or **Special Capacity Services** an attorney provides to another attorney’s **Family Member** or **Family Business**.

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

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

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

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

a. Bodily injury, sickness, disease, mental anguish, emotional distress, or death of any person, except to the limited extent any such harm or injury is directly caused by an error, omission, negligent act, or breach of duty in providing or failing to provide **Professional Legal Services** or **Special Capacity Services**; or

b. Injury to, loss of, loss of use of, or destruction of any real, personal, tangible, or intangible property of any kind, except to the limited extent the loss or destruction of any such property materially and adversely affects the provision of **Professional Legal Services** or **Special Capacity Services**.

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

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

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

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

**Example 4:** An attorney negligently fails to inform a client of a court date in a criminal matter. As a result, the client fails to appear and is arrested, jailed, and injured by another inmate. A claim against the attorney alleging damages arising from bodily injury and emotional distress is not excluded by Exclusion 15 a.
16. **Harassment and Discrimination.** This Plan does not apply to any **Claim** based on or arising out of harassment or discrimination on the basis of race, creed, age, religion, sex, sexual orientation, disability, pregnancy, national origin, marital status, or any other basis.

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

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

   a. Based on or arising out of any bond or any surety, guaranty, warranty, joint control, or similar agreement, or any assumed obligation to indemnify another, whether signed or otherwise agreed to by a **Covered Party** or by someone for whose conduct any **Covered Party** is legally liable, unless the **Claim** arises out of **Special Capacity Services**, and the **Covered Party**, or person for whose conduct a **Covered Party** is legally liable, signed the bond or agreement solely in a representative capacity arising from the **Special Capacity Relationship**;

   b. For liability based on an agreement or representation, if the **Covered Party** would not have been liable in the absence of the agreement or representation; or

   c. To the extent the **Claim** is based on an actual or alleged promise to obtain a certain outcome or result if the **Covered Party** would not have been liable in the absence of such a promise.

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

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

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

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

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

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

   a. Any loss of **Personally Identifiable Non-Public Information** or **Third Party Corporate Information**, or any access or potential access by third parties, disclosure to third parties, or publication of **Personally Identifiable Non-Public Information** or **Third Party Corporate Information**, whether or not such information was in electronic form or in paper form;

   b. Any violation of a federal, state or foreign statute or regulation requiring the protection and/or security of information referenced in subsection (a), including but not limited to failure to report the loss of such information; or

   c. Any loss of, loss of use of, damage to, corruption of, inability to access, inability to manipulate, compromise of, or breach of any electronically stored information or data; the receipt or transmission of malware or malicious code or other harm resulting from transmission by a computer system to the computer system of a third party; or actual or attempted extortion by anyone who has gained or claims to have gained access to or control of any electronic devices, electronic data systems, electronically stored data, or access to or control of any confidential or private information or data, whether or not it is stored electronically.
Personally Identifiable Non-Public Information means any personal information that is not public and that may not be disclosed without proper authorization and/or notice pursuant to any federal, state, or foreign law or regulation, if such information allows an individual to be uniquely and reliably identified or contacted or allows access to the individual’s financial account or medical record information. This includes, but is not limited to, certain medical or health care information, driver’s license or state identification information, social security numbers, credit information, or financial account information.

Third Party Corporate Information means any trade secret, data, design, interpretation, forecast, formula, method, practice, credit or debit card magnetic strip information, process, record, report, or other item of information of a third party that is not available to the general public.

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

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

21. Escrow/Holding Exclusion. This Plan does not apply to any Claim arising from a Covered Party entering into an express or implied agreement with two or more parties to a transaction that in order to facilitate the transaction, the Covered Party will hold documents, money, instruments, titles, or property of any kind until certain terms and conditions are satisfied, or a specified event occurs. This exclusion does not apply to a Claim based on: (a) a Covered Party’s distribution of settlement funds received from the Covered Party’s client, or from an opposing party, in order to close a settlement; or (b) a Covered Party’s distribution of funds pursuant to and consistent with a limited or general judgment in a domestic relations proceeding.

The following illustrative examples, not intended to be exhaustive, are provided for the purpose of assisting a Covered Party or court in interpreting the PLF’s intent as to the scope of Exclusion 21:

Example 1: Lawyer is hired to act as a neutral third party to hold money in a transaction between non-clients. The parties do not provide written instructions, but agree that the lawyer should determine when it is appropriate to release the money and deliver it to one of the parties. Claims arising from this engagement are excluded. Even if the parties agreed upon and provided the lawyer with written instructions regarding when the money should be delivered, the claims are excluded.

Example 2: Lawyer represents one party to a transaction with another party and pursuant to instructions from both parties, holds money or other property to disburse in accordance with those instructions. Claims arising from this engagement, including the wrongful disbursement or withholding of money or property, are excluded.

Example 3: Lawyer represents one party in a dispute and, upon settlement of the dispute, receives settlement proceeds from the adverse party’s lawyer with instructions not to distribute the funds until various contingencies have occurred. Because of an innocent mistake, Lawyer incorrectly believes all contingencies are satisfied and distributes the settlement funds prematurely. Exclusion 21 does not apply to a claim based on this distribution. (But note that Exclusions 2 and 14 would apply to knowingly wrongful distributions or conversion of settlement funds.)

Example 4: Lawyer represents the trustee of a trust and is holding money to be distributed to the trust beneficiaries pending the payment of debts owed by the trust. After payment of the debts, and distribution to the beneficiaries, one of the beneficiaries claims the lawyer negligently paid a debt that was not owed. This Claim is not excluded by Exclusion 21 because the lawyer has not “entered into an express or implied agreement with two or more parties to a transaction” within the intended meaning of Exclusion 21.
SECTION VII – LIMIT OF COVERAGE, CLAIMS EXPENSE ALLOWANCE, AND SPECIAL LIMITS REGARDING RELATED CLAIMS

A. Limit of Coverage

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

1. All **Claims Expense** paid by the PLF on behalf of any **Covered Party** under this Plan that is in excess of any applicable **Claims Expense Allowance**; and

2. The PLF’s payment, on behalf of any **Covered Party** under this Plan, of any and all amounts relating to settlements, judgments, or any other indemnity payments arising from any and all **Claims**, or matters that may have the potential to create or result in **Claims**, against any **Covered Party** under this Plan.

B. Claims Expense Allowance

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

C. Special Rules and Limits for Related Claims

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

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

Under the following circumstances, the PLF may grant more than one **Claims Expense Allowance** with respect to **Related Claims**: (1) the **Related Claims** allegedly arise from **Covered Activities** by two or more **Law Entities**; (2) the **Law Entities** were separate entities at the time of the alleged errors, omissions, negligent acts, or breaches of duty; and (3) a **Covered Party** requests and, in the sole judgment of the PLF, should be entitled to separate defense counsel. Not more than one separate **Claims Expense Allowance** per **Law Entity**, or group of **Law Entities** practicing together as a single firm, will be granted. Any such separate allowance may be used only for the defense of **Claims** arising from the **Covered Activities** of the **Law Entity** or group of Entities to which the separate allowance applies. If the **Claims Expense Allowance** for the applicable **Coverage Period** has already been depleted or exhausted by other **Claims** or matters, the amount of the **Claims Expense Allowance** will be limited to whatever remains of the **Claims Expense Allowance** for that **Coverage Period**.
For the purpose of assisting a Covered Party or court in interpreting the PLF’s intent as to the meaning of Section VII C, illustrative examples, not intended to be exhaustive, are as follows:

**Example 1:** In 2009, Attorney A, with Firm 1, assists a client in setting up an LLC to obtain investors for real estate development projects, also advising the client as to applicable securities laws requirements. In 2011, Attorneys B and C, with Firm 2, assemble information the LLC provides to investors. In 2016, Investor W brings securities claims against Attorneys B and C. The Applicable Plan Year for the Related Claims against Attorneys B and C is 2016. The PLF incurs $50,000 in Claims Expense relating to Investor W’s Claims against Attorneys B and C and settles the Claims against them for a total of $250,000 - $125,000 for Attorney B and $125,000 for Attorney C.

In January of 2018, following the settlement of Investor W’s Claims against Attorneys B and C, Investor X brings a securities claim against Attorneys A, B, and C regarding Investor X’s investment in the same LLC. The Claims by Investor X are Related to the previous Claims against Attorneys B and C. Because Attorneys B and C are Associated Attorneys, this Claim relates back to the 2016 Plans issued to Attorneys B, and C. Therefore, the applicable Plan Year for the claim by Investor X, as it relates to Attorneys B and C, is 2016. However, because Attorney A acted independently of Attorneys B and C, and is not an Associated Attorney, the applicable Plan Year for the Claim against Attorney A is 2018, the year Investor W first alleged a Claim against Attorney A.

There was another completely unrelated Claim against Attorney A in 2018, but the PLF successfully defended Attorney A, using his entire $50,000 Claims Expense Allowance for 2018. Although Attorney A has not used his $300,000 limit for 2018, because the PLF has already spent $250,000 settling Related Claims against Attorneys B and C, all the attorneys collectively, now have a total limit of $50,000 to respond to the Claim by Investor X. Because Attorney A has already used his Claims Expense Allowance for 2018, he does not have another Claims Expense Allowance for this Claim. There is no additional Claims Expense Allowance available for Attorneys B and C because they are entitled to only one shared Claims Expense Allowance regarding the Related Claims, and this was already spent on the Related Claim by Investor W.

**Example 2:** Some facts as in Example 1, except that the previous unrelated 2018 Claim against Attorney A was not successfully defended. The PLF spent Attorney A’s $50,000 Claims Expense Allowance, plus $275,000 settling Related Claims against Attorneys B and C, all the attorneys collectively, now have a total limit of $50,000 to respond to the Claim by Investor X. Although the $50,000 left after settling the Claim by Investor W is available collectively to A, B, and C, no more than $25,000 of this amount can be used for Attorney A because that is all that is remaining of his 2018 limit. Assuming $25,000 is spent to settle the Investor X Claim against Attorney A, there is $25,000 remaining to defend or indemnify Attorneys B and C against Investor X.

**Example 3:** Some facts as in Example 1, except that $200,000 is spent settling Investor W’s Claim against Attorneys B and C. Attorneys B and C have exhausted their 2016 Claims Expense Allowance applicable to this Related Claim. Attorney A has already spent $10,000 of his 2018 Claims Expense Allowance to defend an unrelated Claim, but he has not spent anything on indemnity in 2018. Attorney A has $40,000 of his 2018 Claims Expense Allowance to defend against the Investor X claim. Attorneys B and C have exhausted their applicable Claims Expense Allowance. Collectively, all three Attorneys have $100,000 for defense and/or indemnity relating to the claim by Investor W.

**Example 4:** Some facts as Example 1, except the PLF settles Investor W’s Claim against Attorneys B and C for $30,000, without incurring any Claims Expense for them. Attorney A has used all but $5,000 of his 2018 limit, as well as his Claims Expense Allowance, for an earlier unrelated Claim. Under this scenario, there is a maximum total limit of $270,000 to respond to the Claim by Investor X against all three attorneys, but only $5,000 of this amount is available to Attorney A because that is the limit remaining under his 2018 Plan. Attorney A has no Claims Expense Allowance remaining. Attorneys B and C, however, have a shared $50,000 Claims Expense Allowance for their defense against the claim by Investor X.

**Example 5:** Some facts as Example 1, except Attorney A already spent both his entire 2018 Claims Expense Allowance, plus his entire 2018 limit on an unrelated Claim. Attorney A has no coverage for the Claim by Investor X under the PLF Primary Coverage Plan.
Example 6: Attorney A performed Covered Activities for a client while Attorney A was at two different law firms. Client sues A and both firms. Both firms request separate counsel, each one contending most of the alleged errors took place while A was at the other firm. The defendants are collectively entitled to a maximum of one $300,000 Limit of Coverage and two Claims Expense Allowances. For purposes of this provision, Attorney A (or, if applicable, her professional corporation) is not a separate Law Entity from the firm at which she worked. Accordingly, two, not three, Claims Expense Allowances are potentially available.

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

SECTION VIII – DUTIES OF COVERED PARTIES

A. Notice of Claims, Suits, and Circumstances

1. The Covered Party must immediately notify the PLF of any Suit filed against the Covered Party and deliver to the PLF every demand, notice, summons, or other process received.

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

3. If the PLF opens a suspense or claim file involving a Claim or potential Claim that otherwise would require notice from the Covered Party under subsection 1 or 2 above, the Covered Party’s obligations under those subsections will be considered satisfied for that Claim or potential Claim.

B. Assistance and Cooperation in Defense

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

1. Provide to the PLF, within 30 days after written request, narrative statements or sworn statements providing full disclosure concerning any Claim or any aspect thereof;

2. Attend and testify when requested by the PLF;

3. Furnish to the PLF, within 30 days after written request, all files, records, papers, and documents that may relate to any Claim against the Covered Party;

4. Execute authorizations, documents, papers, loan receipts, releases, or waivers when requested by the PLF;

5. Submit to arbitration of any Claim when requested by the PLF;

6. Permit the PLF to cooperate and coordinate with any excess or umbrella insurance carrier as to the investigation, defense, and settlement of all Claims;

7. Not communicate with any person, other than the PLF or an insurer for the Covered Party, regarding any Claim that has been made against the Covered Party, after notice to the Covered Party of such Claim, without the PLF’s written consent; and

8. Assist, cooperate, and communicate with the PLF in any other way necessary to investigate, defend, repair, settle, or otherwise resolve any Claim against the Covered Party.
C. No Voluntary Payments, Admissions, or Representations

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

D. Protection of Subrogation Rights

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

E. Assistance and Cooperation in Coverage Issues

1. Any party claiming coverage under this Plan has a duty and obligation to timely provide, upon the request of the PLF, accurate, complete, and truthful information relevant to any claimed right to coverage under this Plan.

2. In the event the PLF proposes, in writing, a settlement to be funded by the PLF but subject to the Covered Party’s being obligated to reimburse the PLF if it is later determined that the Plan did not cover all or part of the Claim settled, the Covered Party must advise the PLF in writing that the Covered Party either agrees or objects to the PLF’s proposal. The written response must be made by the Covered Party as soon as practicable and, in any event, must be received by the PLF no later than one business day (and at least 24 hours) before the expiration of any time-limited demand for settlement. A failure to respond, or a response that fails to unequivocally object to the PLF’s written proposal, constitutes an agreement to the PLF’s proposal. The Covered Party’s objection to the settlement waives any right to assert that the PLF should have settled the Claim.

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

1. No legal action in connection with this Plan may be brought against the PLF unless all Covered Parties have fully complied with all the terms and conditions of the Plan.

2. Absent the PLF’s express written consent, the PLF will not be obligated to make any indemnity payments until after the Covered Party has been held liable in a Suit on the merits, and all applicable coverage issues have been determined by Declaratory Judgment.

3. The bankruptcy or insolvency of a Covered Party does not relieve the PLF of its obligations under this Plan, nor deprive the PLF of any of its rights under this Plan.

4. In the event of exceptional circumstances in which the PLF, at the PLF’s option, has paid a portion or all of the Limit of Coverage toward settlement of a Claim before all applicable coverage issues have been finally determined, then resolution of the coverage dispute as set forth in this Section will occur as soon as reasonably practicable following the PLF’s payment. In the event it is determined that this Plan is not applicable to the Claim, or only partially applicable, then judgment will be entered in Multnomah County Circuit Court in the PLF’s favor and against the Covered Party (and all others on whose behalf the PLF’s payment was made) in the amount
of any payment the PLF made on an uncovered portion of the Claim, plus interest at the rate applicable to judgments from the date of the PLF’s payment. Nothing in this Section creates an obligation by the PLF to pay a portion or all of the PLF’s Limit of Coverage before all applicable coverage issues have been fully determined.

5. This Plan is governed by the laws of Oregon, regardless of any conflict-of-law principle that would otherwise result in the laws of any other jurisdiction governing this Plan. Any disputes as to the applicability, interpretation, or enforceability of this Plan, or any other issue pertaining to or arising out of any duties or provision of benefits under this Plan, between any Covered Party (or anyone claiming through a Covered Party or based on any actual or alleged right of direct action) and the PLF, whether any claim against the PLF is based in tort or in contract, is subject to Oregon law and will be tried in the Multnomah County Circuit Court of the State of Oregon, which will have exclusive jurisdiction and venue of such disputes at the trial level.

6. No person or entity may recover consequential damages for the PLF’s breach of any provision in this Plan. Any damages recoverable for any such breach are strictly limited to those amounts a court rules would have been payable by the PLF, under the provisions of this Plan, if there had been no such breach.

7. The PLF has a right of subrogation and may bring a legal action to recover from a Covered Party under this Plan for damages it has paid regarding a Claim against another attorney or entity covered under this or another PLF Plan, subject to the following conditions:

   a. If not for the PLF’s right of subrogation, the Covered Party against whom recovery is sought could be responsible for contribution, indemnity, or otherwise to the person or entity on whose behalf the PLF’s payment was made; and

   b. The PLF’s right of subrogation can be alleged based on a theory or theories for which there would not be coverage under this Plan for the Covered Party against whom recovery is sought.

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

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

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

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

SECTION X – SUPPLEMENTAL ASSESSMENTS

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

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

SECTION XII – WAIVER AND ESTOPPEL

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

SECTION XIII – AUTOMATIC EXTENDED REPORTING COVERAGE

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

2. If You terminate Your PLF coverage during this Plan Year and return to PLF coverage later in the same year, the extended reporting coverage granted to You under subsection 1 will automatically terminate as of the date You return to PLF coverage, the coverage provided under this Plan will be reactivated, and You will not receive a new Limit of Coverage or Claims Expense Allowance on Your return to coverage.

SECTION XIV – ASSIGNMENT

Any interest of any Covered Party under this Plan is not assignable. Any such assignment or attempted assignment without the express written consent of the PLF, voids any coverage under the Plan.
APPENDIX A – LIST AND INDEX OF DEFINED TERMS

1. **Associated Attorney** means any attorney who, at the time of the representation, advice, or activity at issue, or during any portion of such representation, advice, or activity: (1) was a member, partner, associate, of counsel, or contract attorney, in the same **Law Entity** with **You**; or (2) worked in association with **You**, or as co-counsel with **You**, regarding the representation, advice, or activity that is the subject of the **Claim(s)**. (p. 5)

2. **Claim** means a demand for **Damages**, or written notice to a **Covered Party** of an intent to hold a **Covered Party** liable as a result of a **Covered Activity**, if such notice might reasonably be expected to result in an assertion of a right to **Damages**. (Section I A, p.1)

3. **Claims Expense** has the meaning set forth in Section I B 3. (p. 2)

4. **Claims Expense Allowance** means the separate allowance for aggregate **Claims Expense** for all **Claims** as provided for in Section VII B. (p. 13)

5. **Coverage Period** means the coverage period shown in the Declarations under the heading, “Coverage Period.” (¶1, p. 1)

6. **Covered Activity** has the meaning set forth in Section III A. (p. 3)

7. **Covered Party** means any person or **Law Entity** qualifying as such under Section II. (p. 2)

8. **Damages** means monetary compensation a **Covered Party** must pay for harm or loss and does not include: fines; penalties; punitive or exemplary damages; statutorily enhanced damages; rescission; injunctions; accountings; equitable relief; restitution; disgorgement; setoff of any fees, costs, or consideration paid to or charged by a **Covered Party**; or any personal profit or advantage to a **Covered Party**. (Section I A, p. 1)

9. **Family Business** has the meaning set forth in Exclusion 11. (p. 10)

10. **Family Member(s)** has the meaning set forth in Exclusion 11. (p. 10)

11. **Law Entity** means a professional corporation, partnership, limited liability partnership, limited liability company, or sole proprietorship that engages in the **Private Practice** of law in Oregon. (Section II B, p. 3)

12. **Legally Obligated** has the meaning set forth in Section I A. (p. 1)

13. **Limit of Coverage** has the meaning set forth under Section VII A. (p. 13)

14. **Non Attorney** employee includes employees who are not attorneys, as well as employees who have a law degree but are not engaged in the practice of law in Oregon or any other state. (Section III A, p. 3)

15. **Personally Identifiable Non-Public Information** has the meaning set forth in Exclusion 20. (p. 12)

16. **Plan Year** means the period of January 1 through December 31 of the calendar year for which this Plan was issued. (¶1, p. 1)

17. “**PLF**” means the Professional Liability Fund of the Oregon State Bar. (¶1, p.1)

18. **Private Practice** has the meaning set forth in Section II A. (p. 2)

19. **Principal Office** has the meaning set forth in Section II A. (p. 3)

20. **Professional Legal Services** has the meaning set forth under Section III B. (p. 4)

21. **Related Claims** has the meaning set forth in Section V. (p. 6)

22. **Special Capacity Relationship** has the meaning set forth in Section III C. (p. 4)

23. **Special Capacity Services** has the meaning set forth in Section III C. (p. 4)

24. **Suit** means a civil lawsuit. **Suit** also includes an arbitration or alternative dispute resolution proceeding only if the PLF expressly consents to it. (Section I B, p. 1)

25. **Third Party Corporate Information** has the meaning set forth in exclusion 20. (p. 12)

26. **You** and **Your** refer to the Named Party shown in the Declarations. (¶1, p. 1)
INTRODUCTION

The Professional Liability Fund (“PLF”) provides limited coverage regarding Oregon attorneys who claim exemption from PLF Primary coverage and who volunteer their time for Pro Bono Programs jointly certified by the Oregon State Bar and the Professional Liability Fund. Because this coverage is provided at no cost, it is intended to apply only to claims based on or arising from the actual or alleged conduct of volunteer attorneys when there is no other plan or insurance coverage that would apply to any such claim. The coverage provided under this Plan is not the same, in some respects, as the coverage provided under the PLF Primary Plan. The Pro Bono Program and its volunteers should review this Plan carefully in order to understand its restrictions, limitations, exclusions, conditions, and the applicable limit of coverage.

Throughout this Professional Liability Fund (“PLF”) Pro Bono Coverage Plan (“Plan”), issued to the Pro Bono Program, identified in the Declarations: Pro Bono Program refers to the Named Program shown in the Declarations; Plan Year means the period of January 1 through December 31 of the calendar year for which this Plan was issued; and Coverage Period means the coverage period shown in the Declarations under the heading “Coverage Period.”

When terms appear in bold, with the first letter capitalized, they have the defined meanings set forth, or referenced, in this Plan. Certain definitions and provisions of the PLF Primary Plan are incorporated in this Plan, by reference. A List and Index of Defined Terms is attached as Appendix A.

SECTION I - COVERAGE AGREEMENT

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

A. Indemnity

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

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

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

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

B. Defense

1. Until the Claims Expense Allowance and applicable Limit of Coverage are exhausted, the PLF will defend a Covered Party against any Suit seeking Damages to which this Plan applies. The PLF is not bound by any Covered Party’s agreement to resolve a dispute through arbitration or any other alternative dispute resolution proceeding, and has no duty to defend or indemnify regarding any dispute handled or resolved in this manner without its consent.

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

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

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

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

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

C. Exhaustion of Limits

The PLF is not obligated to investigate, defend, pay, or settle any Claim after the applicable Limit of Coverage and Claims Expense Allowance have been exhausted.
D. **No Prior Knowledge or Prior Coverage**

This Plan applies only to a Covered Activity that occurred either: (a) during the Coverage Period; or (b) before the Coverage Period if (i) on the effective date of this Plan, the Covered Party had no knowledge of any Claim having been asserted or of any facts or circumstances of which the Covered Party was aware, or reasonably should have been aware, could reasonably result in a Claim arising out of the Covered Activity; (ii) the actual or alleged error, omission negligent act or breach of duty on which the Claim is based occurred during a period in which a previous PLF Pro Bono Plan applied to the Pro Bono Program; and (iii) there is no prior plan or policy that provides coverage for such liability or Claim, whether or not the available limits of such prior plan or policy are sufficient to pay any liability or Claim.

E. **Coverage Territory**

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

**SECTION II - WHO IS A COVERED PARTY UNDER THIS PRO BONO PLAN?**

Only the following are Covered Parties under this Plan:

A. **Individual Volunteer Attorneys**

An individual Volunteer Attorney is a Covered Party, but only with respect to a Claim arising from Covered Activities rendered on behalf of the Pro Bono Program, and only if there is no other plan or insurance coverage that applies to such Claim.

Volunteer Attorney means an Oregon attorney who: (1) is not otherwise covered under a PLF Primary Plan; (2) provided pro bono Professional Legal Services or Special Capacity Services to clients of the Pro Bono Program; (3) is not employed or compensated in any way by the Pro Bono Program; and (4) was eligible to provide voluntary Professional Legal Services or Special Capacity Services under the applicable rules of the Oregon State Bar at the time such services were provided.

Pro Bono Program means the Pro Bono Program named in the Declarations.

B. **The Pro Bono Program**
The Pro Bono Program is also a Covered Party under this Plan, but only to the limited extent it is legally liable for any Claim based on or arising from a Volunteer Attorney’s Covered Activities, and only provided the Pro Bono Program has no other applicable plan or insurance coverage for any such liability. In the event any Claim against a Volunteer Attorney also involves Claims against employees of the Pro Bono Program, any defense or indemnity under this Plan is limited to that portion of the Pro Bono Program’s legal liability that relates to a Volunteer Attorney’s Covered Activities.

SECTION III – WHAT IS A COVERED ACTIVITY?

For the purposes of this Plan, a Covered Activity is an error, omission, negligent act, or breach of duty by a Volunteer Attorney in the course of providing or failing to provide Professional Legal Services or Special Capacity Services to a client or clients of the Pro Bono Program, but only if such services are within the scope of duties assigned to the Volunteer Attorney by the Pro Bono Program.

Professional Legal Services and Special Capacity Services have the meanings set forth in the PLF Primary Plan in effect during this Plan Year and are subject to all the same limitations and conditions set forth in subsections B and C of Section III of the PLF Primary Plan for this Plan Year.

SECTION IV - WHAT IS THE APPLICABLE COVERAGE PERIOD?

A. Date of Claim:

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

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

2. The date the PLF first becomes aware of a matter involving facts or circumstances that could reasonably result in a Claim against a Covered Party under this Plan;

3. The date any Covered Party under this Plan first becomes aware of a matter involving facts or circumstances that could reasonably result in a Claim against a Covered Party under this Plan; notice of a Claim is received by any Covered Party under this Plan;

4. The date the PLF receives notice of a Claim against a any Covered Party under this Plan receives notice of a Claim;

5. The date the PLF receives notice of a Claim against a Covered Party under this Plan; opens a file in order to take steps and/or make expenditures for a matter that is not a Claim, for the purpose of investigation, mitigation, review or prevention of any potential Claim against a Covered Party under this Plan; or
6. If subsections 1 through 5 do not apply, the date the PLF opens a file in order to take steps and/or make expenditures, for the purpose of investigation, mitigation, review, or prevention of any potential Claim against a Covered Party under this Plan. The date a Covered Party under this Plan first becomes aware that a Claimant intends to make a Claim, but the Claimant is delaying assertion of the Claim, or the Covered Party is delaying notice of such intent to make a Claim, for the purposes of obtaining coverage under a later Plan.

In the case of matters falling only within subsection 6, in the event there is any subsequent Claim against a Covered Party under this Plan, relating to or arising from such matter, the Limit of Coverage and/or Claims Expense Allowance for the Plan Year applicable to such Claim is reduced by the amount the PLF spends on the matter.

B. Special Rule Regarding Coverage Period Applicable to Related Claims Against Associated Attorneys Related Claims:

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

1. The date a lawsuit was first filed, or an arbitration or alternative dispute resolution proceeding was initiated with respect to the earliest of the Related Claims;

2. The date the PLF first became aware of facts or circumstances that could reasonably result in the earliest of the Related Claims;

3. The date any Covered Party, under this Plan first became aware of facts or circumstances that could reasonably result in the earliest of the Related Claims, or any attorney covered under any other PLF Plan applicable to a Related Claim, received notice of the earliest Related Claim;

4. The first date any Associated Attorney first became aware of facts or circumstances that could result in the earliest of the Related Claims; the PLF received notice of the earliest Related Claim, or

5. The date the PLF received notice of the earliest Related Claim; a Covered Party, under this Plan, or any attorney covered under any other PLF Plan applicable to a Related Claim, first became aware that a claimant intended to make the earliest Related Claim, but the claimant was delaying assertion of the Claim, or the Covered Party was delaying notice of such intent to make a Claim, for the purposes of obtaining coverage under a later Plan.

6. The date any Covered Party under this Plan received notice of the earliest Related Claim; or
7. The first date any Associated Attorney received notice of the earliest Related Claim.

Associated Attorney means any attorney who, at the time of the representation, advice, or activity at issue, or during any portion of such representation, advice, or activity: (1) was working with or for the Pro Bono Program; or (2) worked in association or as co-counsel with any Covered Party under this Plan regarding the representation, advice, or activity that is the subject of the Claim(s).

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

SECTION V – RELATED CLAIMS

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

Examples of Related Claims set forth in the PLF Primary Plan, in effect during this Plan Year, not intended to be exhaustive, illustrate the intended meaning of Related Claims under this Plan. These examples are incorporated by reference and have the same force and effect as if fully set forth in this Plan.

SECTION VI – APPLICABLE EXCLUSIONS IN PLF PRIMARY PLAN

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

SECTION VII – PRO BONO PLAN ADDITIONAL EXCLUSIONS

1. Activities outside Pro Bono Program Exclusion. This Plan does not apply to any Claim against a Covered Party arising from or related to work or services beyond the scope of activities assigned to the Volunteer Attorney by the Pro Bono Program.

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

b. That is controlled, operated, or managed by any **Covered Party**, either individually or in a fiduciary capacity, including the ownership, maintenance, or use of any property in connection therewith, or was so controlled, operated, or managed by any **Covered Party** at the time of the alleged acts, errors, or omissions on which the **Claim** is based; or

c. In which any **Covered Party** either has an ownership interest, or had an ownership interest at the time of the alleged acts, errors, or omissions on which the **Claim** is based unless: (i) such interest is solely a passive investment; and (ii) the **Covered Party**, those controlled by the **Covered Party** and his or her spouse, parent, step-parent, child, sibling, any member of the **Covered Party**’s household, and those with whom the **Covered Party** is regularly engaged in the practice of law collectively own, or previously owned, an interest in the business enterprise of less than ten percent.

**SECTION VIII – LIMIT OF COVERAGE, CLAIMS EXPENSE ALLOWANCE, AND SPECIAL LIMITS REGARDING RELATED CLAIMS**

**A. Limit of Coverage**

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

1. All **Claims Expense** paid by the **PLF**, on behalf of any **Covered Party** under this **Plan**, that is in excess of any applicable **Claims Expense Allowance**; and

2. The **PLF’s** payment, on behalf of any **Covered Party** under this **Plan**, of any and all amounts relating to settlements, judgments or any other indemnity payments based on or arising from any and all **Claims**, or matters that may have the potential to create or result in **Claims**, against any **Covered Party** under this **Plan**.

The shared single $300,000 **Limit of Coverage** under this **Plan** applies both to **Claims** against any and all **Volunteer Attorneys** to whom this **Plan** applies and to **Claims** against the **Pro Bono Program** for any and all **Claims** based on or arising from the actual or alleged conduct of any and all such **Volunteer Attorneys**. **Multiple Claims** against the **Pro Bono Program** and/or against any **Volunteer Attorney(s)** will not increase this $300,000 single **Limit of Coverage**. If, for example, there is a **Claim** based on the conduct of one **Volunteer Attorney** that consumes or reduces the **Limit of Coverage** under this **Plan**, there is either no further coverage under this **Plan** for any **Covered Party**, or a reduced **Limit of Coverage**. This **Limit of Coverage** is also subject to Section VII C below regarding **Related Claims**.
B. Claims Expense Allowance

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

The shared single $50,000 Claims Expense Allowance under this Plan applies both to Claims against any and all Volunteer Attorneys to whom this Plan applies and/or to Claims against the Pro Bono Program. Multiple Claims against the Pro Bono Program and/or against any Volunteer Attorney(s) will not increase this single $50,000 Claims Expense Allowance. If, for example, there is a Claim based on the conduct of one Volunteer Attorney that consumes or reduces the Claims Expense Allowance, there is either no further Claims Expense Allowance under this Plan for any Covered Party, or a reduced Claims Expense Allowance.

C. Special Rules and Limits for Related Claims

If a Claim against a Covered Party is Related to another Claim against that Covered Party, to any Claim against any other Covered Party under this Plan, or to a Claim against any other attorney, law entity, or Pro Bono Program covered by the PLF under this or any other PLF Plan, then regardless of the number of Claims, Claimants, clients, attorneys, volunteer attorneys, pro bono programs or law entities involved, the PLF will not pay more than a maximum total of $300,000, plus a maximum of one $50,000 Claims Expense Allowance. In addition, the portion of this total maximum Related Claim limit available for any Claim based on or arising from the actual or alleged conduct of a Covered Party cannot exceed the amount of the remaining limit available under this Plan for the applicable Coverage Period.

The total maximum limit applicable to Related Claims is reduced as the PLF makes expenditures on Related Claims, whether on behalf of any Covered Party under this Plan, or on behalf of any other parties covered under any other PLF Plans against whom Related Claims are made. After the total applicable limit for Related Claims and any Claims Expense Allowance has been exhausted, the PLF is not obligated to investigate, defend, pay or settle any Related Claim against any Covered Party.

Only one Claims Expense Allowance applies regarding Related Claims against any and all Covered Parties under this Plan and against any parties covered under any other PLF Plan. In the sole discretion of the PLF, however, it may grant separate Claims Expense Allowances when there are Related Claims against other parties covered under other PLF Plans.

If the Claims Expense Allowance for the applicable Coverage Period has already been depleted or exhausted by other Claims or matters, the amount of the Claims Expense Allowance will be limited to whatever remains of the Claims Expense Allowance for that Coverage Period.
SECTION IX – DUTIES OF COVERED PARTIES

A. Notice of Claims, Suits and Circumstances

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

1. The Covered Party must immediately notify the PLF of any Suit filed against the Covered Party and deliver to the PLF every demand, notice, summons, or other process received.

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

3. If the PLF opens a suspense or Claim file involving a Claim or potential Claim which otherwise would require notice from the Covered Party under subsection 1 or 2 above, the Covered Party’s obligations under those subsections will be considered satisfied for that Claim or potential Claim.

B. Other Duties of Cooperation

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

SECTION X – ACTIONS BETWEEN THE PLF AND COVERED PARTIES

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

SECTION XI – RELATION OF THE PLF’S COVERAGE TO INSURANCE COVERAGE OR OTHER COVERAGE

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

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

SECTION XIII — ASSIGNMENT

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

SECTION XIV — TERMINATION

This Plan will terminate immediately and automatically in the event the Pro Bono Program is no longer certified as a Pro Bono Program by the Oregon State Bar.
APPENDIX A—LIST AND INDEX OF DEFINED TERMS

1. **Claim** means a demand for **Damages**, or written notice to a **Covered Party** of an intent to hold a **Covered Party** liable as a result of a **Covered Activity**, if such notice might reasonably be expected to result in an assertion of a right to **Damages**. (Section I A, p. 1)

2. **Claims Expense** has the meaning set forth in Section I B 3. (p. 2)

3. **Claims Expense Allowance** means the separate allowance for aggregate Claims Expense for all **Claims** as provided for in Section VIII B. (p. 7)

4. **Coverage Period** means the coverage period shown in the Declarations under the heading, “Coverage Period.” (¶2, p. 1)

5. **Covered Activity** has the meaning set forth in Section III. (p. 4)

6. **Covered Party** means any **Volunteer Attorney** or **Pro Bono Program** qualifying as such under Section II. (pp. 3 - 4)

7. **Damages** means monetary compensation a **Covered Party** must pay for harm or loss and does not include: fines; penalties; punitive or exemplary damages; statutorily enhanced damages; rescission; injunctions; accountings; equitable relief; restitution; disgorgement; set-off of any fees, costs, or consideration paid to or charged by a **Covered Party**, or any personal profit or advantage to a **Covered Party**. (Section I A, p. 2)

8. **Legally Obligated** has the meaning set forth in Section I A. (p. 1)

9. **Limit of Coverage** has the meaning set forth under Section VIII A. (p. 6)

10. **Plan** means Pro Bono Coverage Plan. (¶2, p. 1)

11. **Plan Year** means the period of January 1 through December 31 of the calendar year for which this Plan was issued. (¶2, p. 1)

12. “PLF” means the Professional Liability Fund of the Oregon State Bar. (¶1, p. 1)

13. **Pro Bono Program** refers to the Named Program shown in the Declarations. (¶2, p. 1)

14. **Professional Legal Services** has the meaning set forth in Section III. (p. 4)

15. **Related Claims** has the meaning set forth in Section V. (p. 5)

16. **Special Capacity Relationship** has the meaning set forth in Section III. (p. 4)

17. **Special Capacity Services** has the meaning set forth in Section III. (p. 4)
18. **Suit** means a civil lawsuit. **Suit** also includes an arbitration or alternative dispute resolution proceeding only if the PLF expressly consents to it. (Section I B, p. 2)

19. **Volunteer Attorney** has the meaning set forth in Section II B. (pp. 3-4)
2018
PLF Claims Made Excess Plan
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This Professional Liability Fund ("PLF") Excess Plan is excess coverage over the PLF Primary Plan and is also assessable. Although the coverage provided under both the Primary and Excess Plans is similar, not all terms, conditions, definitions, and exclusions are the same. Coverage under this Plan is more restrictive and differs in some respects. You should read both the Primary and Excess Plans, in their entirety, to understand your coverage.

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

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

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

**SECTION I – COVERAGE AGREEMENT**

**A. Indemnity**

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

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

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

**B. Defense**

1. After the **Applicable Underlying Limit** has been exhausted and the applicable Deductible has been satisfied, the PLF will defend any **Suit** against a **Covered Party** seeking **Damages** to which this Plan applies until the **Excess Limit of Coverage** is exhausted. The PLF is not bound by any **Covered Party’s** agreement to resolve a dispute through arbitration or any other alternative dispute proceeding, and has no duty to defend or indemnify regarding any dispute handled or resolved in this manner without its consent.

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

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

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

### C. Exhaustion of Limit

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

### D. Coverage Territory

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

### E. Basic Terms of Coverage

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

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

2. The **Covered Activity** on which the **Claim** is based must have been rendered on behalf of the **Firm**;

3. The **Covered Activity** on which the **Claim** is based must have occurred after the Retroactive Date listed in the Declarations, or listed in any endorsement to the Declarations;

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

Subsection 4 b (ii) will not apply as to any **Covered Party** who, before the effective date of this Excess Plan, did not have a basis to believe the error, omission, negligent act, or breach of duty was a breach of the standard of care or may result in a **Claim**.
For the purposes of demonstrating the PLF’s intent as to how this subsection 4 applies, illustrative examples are set forth in Appendix B of this Plan.

5. There must have been full and timely payment of all assessments relating to this Plan; and

6. There must have been compliance with the Duties of Covered Parties, as set forth in Section IX.

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

Only the following are Covered Parties:

A. The Firm

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

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

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

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

B. Individual Covered Parties

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

1. Attorneys who are specifically designated in the Declarations as “Firm Attorney,” “Former Attorney,” or “Non Oregon Attorney.”

2. A former partner, shareholder, member, or attorney employee of the Firm or any attorney formerly in an “of counsel” relationship to the Firm who ceased to be affiliated with the Firm more than five (5) years prior to the beginning of the Coverage Period, but only with respect to Claims arising out of a Covered Activity that took place while a PLF Primary Plan issued to that attorney was in effect.

3. An attorney who becomes affiliated with the Firm after the beginning of the Coverage Period and who has been issued a PLF Primary Plan is automatically a Covered Party – unless the attorney becomes affiliated with the Firm as a result of one of the changes required to be reported to the PLF and newly underwritten pursuant to Section IX D. In that event, the attorney is not covered under the Plan until and unless coverage for the affiliated attorney is underwritten and specifically accepted by the PLF. (See, Section IX D.)

4. In the event of the death, adjudicated incapacity, or bankruptcy of a Covered Party, the conservator, guardian, trustee in bankruptcy, or legal or personal representative of the Covered Party, when acting in such capacity, is a Covered Party.

Private Practice has the meaning set forth in the PLF Primary Plan in effect during this Plan Year.
SECTION III – WHAT IS A COVERED ACTIVITY?

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

1. The error, omission, negligent act, or breach of duty, by the **Covered Party**, on which the **Claim** is based, occurred after any applicable Retroactive Date, before such **Covered Party’s** applicable Separation Date, specified in the Declarations, and satisfies the conditions of Section I E 4;

2. The error, omission, negligent act, or breach of duty by the **Covered Party**, on which the **Claim** is based, constituted rendering **Professional Legal Services** or **Special Capacity Services** on behalf of the **Firm**, as an attorney in **Private Practice**; and

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

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

SECTION IV – WHEN IS A CLAIM FIRST MADE?

A. Date of Claim

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

1. The date a lawsuit is first filed, or an arbitration or alternative dispute resolution proceeding is first initiated against a **Covered Party**;

2. The date the PLF first becomes aware of a matter involving facts or circumstances that could reasonably result in a **Claim** against a **Covered Party**;

3. The date any **Covered Party** receives notice of a **Claim**;

4. The date the PLF receives notice of a **Claim** against a **Covered Party**; or

5. The date a **Covered Party** under this Plan first becomes aware that a claimant intends to make a **Claim**, but the claimant is delaying assertion of the **Claim**, or the **Covered Party** is delaying notice of such intent to make a **Claim**, for the purpose of obtaining coverage under a later Plan.

B. Excess-Related Claims

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

A. Definition of Excess-Related Claims

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

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

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

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

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

B. What Happens When Claims Are Excess-Related?

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

SECTION VI – APPLICABLE EXCLUSIONS IN PLF PRIMARY PLAN

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

1. **Business Interests.** This Plan does not apply to any **Claim** relating to or arising out of any business enterprise:
   a. In which any **Covered Party** is a general partner, managing member, or employee, or in which any **Covered Party** was a general partner, managing member, or employee at the time of the alleged acts, errors, or omissions on which the **Claim** is based;
   b. That is controlled, operated, or managed by any **Covered Party**, either individually or in a fiduciary capacity, including the ownership, maintenance, or use of any property in connection therewith, or was so controlled, operated, or managed by any **Covered Party** at the time of the alleged acts, errors, or omissions on which the **Claim** is based; or
   c. In which any **Covered Party** either has an ownership interest, or had an ownership interest at the time of the alleged acts, errors, or omissions on which the **Claim** is based unless: (i) such interest is solely a passive investment; and (ii) the **Covered Party**, those controlled by the **Covered Party** and his or her spouse, parent, step-parent, child, sibling, any member of the **Covered Party**'s household, and those with whom the **Covered Party** is regularly engaged in the practice of law, collectively own, or previously owned, an interest in the business enterprise of less than ten percent (10%).

2. **Excluded Attorney Exclusion.** This Plan does not apply to any **Claim** against any **Covered Party**:
   a. Arising from or relating to any act, error, or omission of any **Excluded Attorney** in any capacity or context, whether or not the **Covered Party** personally participated in any such act, error, or omission or is vicariously liable; or
   b. Alleging liability for the failure of a **Covered Party** or any other person or entity to supervise, control, discover, prevent, or mitigate any activities of or harm caused by any **Excluded Attorney**.

3. **Excluded Firm Exclusion.** This Plan does not apply to any **Claim** made against a **Covered Party**:
   a. That arises from or is related to any act, error, or omission of: (i) an **Excluded Firm**, or (ii) a past or present partner, shareholder, associate, attorney, or employee (including any **Covered Party**) of an **Excluded Firm** while employed by, a partner or shareholder of, or in any way associated with an **Excluded Firm**, in any capacity or context, and whether or not the **Covered Party** personally participated in any such act, error, or omission or is vicariously liable therefore; or
   b. Alleging liability for the failure of a **Covered Party** or any other person or entity to supervise, control, discover, prevent, or mitigate any activities of, or harm caused by, any **Excluded Firm** or any person described in subsection (a)(ii) above.

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

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

A. Excess Limit of Coverage
1. Regardless of the number of Covered Parties under this Excess Plan, the number of persons or organizations who sustain damage, or the number of Claims made, the PLF’s maximum aggregate Excess Limit of Coverage for indemnity and Claims Expense under this Plan will be limited to the amount shown as the Excess Limit of Coverage in the Declarations, less the Deductible listed in the Declarations, if applicable. The making of Claims against more than one Covered Party does not increase the PLF’s Excess Limit of Coverage.

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

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

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

SECTION IX – DUTIES OF COVERED PARTIES

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

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

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

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

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

C. Duty of Full Disclosure in Application

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

(1) are contained in the Application;

(2) are material and have been relied upon by the PLF; and

(3) are either: (a) fraudulent; or (b) material either to the acceptance of the risk or to the hazard assumed by the PLF.

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

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

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

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

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

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

SECTION XI – CANCELLATION AND TERMINATION

A. Cancellation by the Firm or the PLF

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

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

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

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

**B. Termination**

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

**SECTION XII – SUPPLEMENTAL ASSESSMENTS**

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

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

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

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

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

SECTION XV – EXTENDED REPORTING COVERAGE

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

SECTION XVI – ASSIGNMENT

Any interest of any Covered Party under this Plan is not assignable. Any such assignment or attempted assignment, without the express written consent of the PLF, voids any coverage under this Plan.
1. **Applicable Underlying Limit** means the aggregate total of: (1) the amount of coverage afforded by the PLF Plans issued to all persons qualifying as **Covered Parties** under the terms of this Plan; plus (2) the amount of any other coverage available to any **Covered Party** with respect to the **Claim** for which coverage is sought. (Excess Plan, p. 1)

2. **Claim** means a demand for **Damages**, or written notice to a **Covered Party** of an intent to hold a **Covered Party** liable as a result of a **Covered Activity**, if such notice might reasonably be expected to result in an assertion of a right to **Damages**. (Primary Plan, p. 1)

3. **Claims Expense** has the meaning set forth in Section I B 3 of the Primary Plan. (Primary Plan, p. 2)

4. **Coverage Period** means the coverage period shown in the Declarations under the heading “Coverage Period.” (Excess Plan, p. 1)

5. **Covered Activity** has the meaning set forth in Section III of this Plan. (Excess Plan, p. 4)

6. **Covered Party** means any person or **Law Entity** qualifying as such under Section II of this Plan. (Excess Plan, pp. 3-4)

7. **Damages** means monetary compensation a **Covered Party** must pay for harm or loss and does not include: fines; penalties; punitive or exemplary damages; statutorily enhanced damages; rescission; injunctions; accountings; equitable relief; restitution; disgorgement; set-off of any fees, costs, or consideration paid to or charged by a **Covered Party**; or any personal profit or advantage to a **Covered Party**. (Primary Plan, p. 1)

8. **Excess Limit of Coverage** has the meaning set forth in Section VIII of this Plan. (Excess Plan, p. 7)

9. **Excess-Related** has the meaning set forth in Section V of this Plan. (Excess Plan, pp. 5-6)

10. **Excluded Attorney** means an attorney who is designated as such in the Declarations. (Excess Plan, p. 3)

11. **Excluded Firm** means a firm designated as such in the Declarations. (Excess Plan, p. 7)

12. **Firm** means any **Law Entity** designated in Section 1 or 11 of the Declarations. (Excess Plan, p. 3)

13. **First Made** has the meaning set forth in Section IV of this Plan. (Excess Plan, p. 5)

14. **Law Entity** means a professional corporation, partnership, limited liability partnership, limited liability company or sole proprietorship that engages in the **Private Practice** of law in Oregon. (Primary Plan, p. 3)

15. **Legally Obligated** has the meaning set forth in Section I A of the Primary Plan. (Primary Plan, p. 1)

16. **Non Attorney** employee includes employees who are not attorneys, as well as employees who have a law degree, but are not engaged in the practice of law in Oregon, or any other state. (Primary Plan, p. 4)

17. **Plan Year** means the period of January 1 through December 31 of the calendar year for which this Excess Plan was issued. (Excess Plan, p. 1)

18. “**PLF**” means the Professional Liability Fund of the Oregon State Bar. (Excess Plan, p. 1)

19. **Private Practice** has the meaning set forth in Section II A of the Primary Plan. (Primary Plan, p. 3)

20. **Professional Legal Services** has the meaning set forth under Section III B of the Primary Plan. (Primary Plan, pp. 4 and 5)

21. **Special Capacity Relationship** has the meaning set forth in Section III C of the Primary Plan. (Primary Plan, p. 5)

22. **Special Capacity Services** has the meaning set forth in Section III C of the Primary Plan. (Primary Plan, p. 5)

23. **Suit** means a civil lawsuit. **Suit** also includes an arbitration or alternative dispute resolution proceeding, but only if the PLF expressly consents to it. (Primary Plan, p. 1)
APPENDIX B – EXCESS PLAN
ILLUSTRATIVE EXAMPLES

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

1. Section I E 4:
   a. Law firm A maintains excess malpractice coverage with Carrier X in Year 1. The firm knows of a potential malpractice claim in September of that year. Nevertheless, it does not report the matter to Carrier X in Year 1. Law firm A obtains excess coverage from the PLF in Year 2, and the potential claim is actually asserted in April of Year 2. Whether or not the PLF has imposed a Retroactive Date for the firm’s Year 2 coverage, there is no coverage for the claim under the firm’s Year 2 PLF Excess Plan. This is true whether or not Carrier X provides coverage for the claim.
   b. Attorneys A, B, and C practice in a partnership. In Year 1, Attorney C knows of a potential claim arising from his activities but does not tell the PLF or Attorneys A or B. Attorney A completes a Year 2 PLF excess program application on behalf of the firm but does not reveal the potential claim because it is unknown to her. Attorney A does not circulate the application to attorneys B and C before submitting it to the PLF. The PLF issues an Excess Plan to the firm for Year 2, and the potential claim known to Attorney C in Year 1 is actually made against Attorneys A, B, and C and the firm in June of Year 2. Because the potential claim was known to a Covered Party (i.e., Attorney C) prior to the beginning of the Coverage Period, and because the firm did not circulate its application among the Firm Attorneys and Current Non-Oregon Attorneys before submitting it to the PLF, the claim is not within the Coverage Grant. There is no coverage under the Year 2 Excess Plan for Attorneys A, B, or C or for the firm even though Attorneys A and B did not know of the potential claim in Year 1.
   c. Same facts as prior example, except that Attorney A did circulate the application to Attorneys B and C before submitting it to the PLF. Section I E 4 will not be applied to deny coverage for the claim as to Attorneys A and B and the Firm. However, there will be no coverage for Attorney C because the claim falls outside the coverage grant under the terms of Section I E 4, and because Attorney C made a material misrepresentation to the PLF in the application.

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

   Firm H purchased PLF Excess Coverage in 2015 but was previously covered for excess liability in 2014 by Carrier X. Neither Firm H nor Attorney B were aware of the potential Claim in 2014, and therefore did not give notice of a potential Claim against Attorney B or Firm H to the PLF or Carrier X until 2015. Carrier X denies coverage for the claim because Firm H did not give notice of the claim to Carrier X in 2014 and
Firm H did not purchase tail coverage from Carrier X. Under this scenario, any PLF excess coverage would be under the 2015 PLF Excess Plan because no Claim was made against the Covered Parties until 2015. (If, however, Firm G and Attorney B did have a basis to believe that the act, error, omission, or breach of duty to which the Claim relates was a breach of the standard of care or may result in a Claim before the PLF Excess Plan was issued, there would not be coverage for the Claim under the 2015 PLF Excess Plan. Also, if they had previously given notice to Carrier X or purchased applicable tail coverage, there would not be coverage under the PLF 2015 Excess Plan, because other insurance would apply.)

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

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

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

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

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

<table>
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<tr>
<th><strong>Meeting Date:</strong></th>
<th>November 17, 2017</th>
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<tr>
<td><strong>Memo Date:</strong></td>
<td>November 6, 2017</td>
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<tr>
<td><strong>From:</strong></td>
<td>Kaori Tanabe Eder, Oregon New Lawyers Division Chair</td>
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<td><strong>Re:</strong></td>
<td>ONLD Report</td>
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The ONLD Annual Meeting was Friday, November 3. At that meeting the following Officers and Executive Committee members were confirmed:

**Officers:**
- **Chair:** Jennifer Nicholls
- **Chair-Elect:** Joel Sturm
- **Past Chair:** Kaori Eder
- **Secretary:** Ralph Gzik
- **Treasurer:** Mae Lee Browning

**Open Regional Positions:**
- **Region 1:** Sean Pank
- **Region 3:** Jennifer Nicholls
- **Region 4:** Ralph Gzik
- **Region 5:** Joel Sturm
- **At Large 8:** Mae Lee Browning
- **At Large 9:** Vincci Lam

Also at the Annual Meeting the ONLD honored five individuals for their work in 2017: Ralph Gzik (Member Service Award), Banafsheh Violet Nazari (Public Service Award), Gabrielle Richards (Advancing Diversity Award), Jaimie Fender (Project of the Year and Volunteer of the Year), and Kelly Andersen (Hon. John V. Acosta Professionalism Award).

The CLE Chairs coordinated with Barbara Fishleder of the PLF to market the PLF’s Learning the Ropes seminar, which was co-sponsored this year by the ONLD. The CLEs Chairs (along with Exec. Comm. member Ralph Gzik) also attended the ABA Fall Conference and learned of some interesting projects being done in other states. They intend to implement some of those ideas in next year’s CLE programming.

The Pro Bono Subcommittee hosted the Pro Bono Celebration with its attendant Fair, CLEs and award presentation. Four law firms, four individual attorneys, and three law students received awards under the ONLD Pro Bono Challenge for reporting the most pro bono hours in 2016. Two of the three CLEs were also simulcast to four locations around the state: Salem, Bend, Medford and St. Helens.

The Law Related Education Subcommittee expects to get out the high school essay contest information in February or March.
The Law Student Outreach Subcommittee hosted October events at Lewis and Clark and University of Oregon. Executive Committee member Anthony Kuchulis spoke to 25 students at Lewis and Clark about networking tips, and a panel of in-house lawyers spoke to a group of U of O students.

The Member Services Subcommittee held a joint social with the MBA YLS on October 4, and will co-host a social with the Solo and Small Firm Section in November.

At the October meeting, the ONLD Executive Committee had a generative discussion about cultural competency, working with specialty bars and ensuring that the connection with those bars remains strong. They also discussed organizing a financial literacy fair to educate law students and young lawyers about budgeting, loan repayment, planning for their retirement and managing or becoming a partner at a firm.

Also at the October meeting the Executive Committee discussed plans to hold a Financial Literacy Fair for new lawyers, perhaps in conjunction with the Debtor/Creditor Section, and a Technology Fair, in conjunction with the PLF. After the meeting the Chair, Kaori Eder, met with Hong Dao from PLF to talk about a potential partnership to organize the fair in the Spring of 2018.

The ONLD organized a project inspired by an ABA initiative aimed at diversifying the Bar. 54 Franklin High School students attended a panel presentation at the Multnomah County courthouse consisting of a local attorney, discussing the pathway to become a lawyer, a representative from PSU, discussing financial aid options and admission criteria at the college level, and a representative from Lewis & Clark law school who discussed financial aid options and admission criteria at the law school level. After the presentation, the students were matched with local attorneys who took the students out to lunch and gave them a tour of their law firms. After the tour, the students watched a mini mock trial with Bill Uhle, Sam Leineweber from the Multnomah County District Attorney's office, the Hon. Stephen Bushong and Multnomah County Deputy Hunter. Over 60 attorneys, judges and other members of our community volunteered in the program, and we received positive feedback from both the students and the volunteers.

The ONLD continues with planning a Regional Rural Summit with the WSBA YLS, scheduled for Friday, September 21, 2018 at the OSB. The focus areas of the summit are recruitment, retention and retirement in rural communities.

The ONLD contributed their ideas for the new lawyer survey put out by the OSB, and looks forward to reviewing the results at their Annual Retreat, set for January 6 and 7.
Issue

The Board of Governors must decide whether to adopt the attached proposed formal ethics opinion.

Options

1. Adopt the proposed the formal ethics opinion.
2. Decline to adopt the proposed formal ethics opinion.

Discussion

This proposed opinion arises out of the OSB Estate Planning Section’s request for a formal ethics opinion to resolve issues of professional conduct that arise when a lawyer is representing both a husband and wife in preparation of estate plans involving the waiver of the spousal elective share. The opinion differs from that offered and expected by the Estate Planning Section. Because of the difference of opinion, the Legal Ethics Committee has reached out to the section on several occasions to discuss the proposal and get feedback. The LEC has received no substantive feedback and now offers the opinion for adoption by the BOG.

Conflicts of Interest, Current Clients: Representing Husband and Wife in Preparation of Estate Plan Involving Waiver of Elective Share

Facts:

Married Couple approaches Lawyer jointly and asks Lawyer to represent both of them in the matters described below.

Married Couple have been married for 15 years and both have children from their previous marriages. They have no children from their current marriage.

Married Couple own their house as tenants by the entirety, but have kept the majority of their assets separate. Spouse A has substantially more assets than Spouse B. They inform Lawyer that it is their individual intent that they would prefer that their estate plans provide that their separate assets be distributed to their children by their previous marriages and their jointly owned assets pass to the surviving spouse by right of survivorship.

Because of the value of Spouse A’s separate property, it is clear to Lawyer that Spouse B would have an elective share claim if Spouse A were to die first. An elective share claim would defeat Married Couple’s current intentions for their estate plan.

Married Couple does not have a prenuptial agreement.

Questions:

1. May Lawyer provide information to Married Couple as to their respective elective share rights under ORS 114.600 to 114.725?

2. May Lawyer advise both Spouse A and Spouse B as to their respective elective share rights as provided in ORS 114.620(1)?

3. May Lawyer prepare an agreement to mutually waive the elective share rights of Married Couple?

4. After Spouse A and Spouse B have agreed to waive the elective share, may Lawyer advise Married Couple concerning their estate plan?
Conclusions:

1. Yes.
2. No, qualified.
3. No, qualified.
4. Yes.

Discussion:

Oregon RPC 1.7 provides:

“(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a current conflict of interest. A current conflict of interest exists if:

(1) the representation of one client will be directly adverse to another client;

(2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer=s responsibilities to another client, a former client or a third person or by a personal interest of the lawyer; or

(3) the lawyer is related to another lawyer, as parent, child, sibling, spouse or domestic partner, in a matter adverse to a person whom the lawyer knows is represented by the other lawyer in the same matter.

b) Notwithstanding the existence of a current conflict of interest under paragraph (a), a lawyer may represent a client if:

(1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;

(2) the representation is not prohibited by law;

(3) the representation does not obligate the lawyer to contend for something on behalf of one client that the lawyer has a duty to oppose on behalf of another client; and
(4) each affected client gives informed consent, confirmed in writing.”

1. **Lawyer May Provide Information About The Elective Share And Its Potential Waiver To Both Spouses.**

Under Oregon’s elective share statute, a surviving spouse may elect to receive a percentage share of the decedent’s estate according to a formula based on the length of the marriage. ORS 114.605. Absent a waiver of that right, the elective share will override a contrary provision in the decedent’s will. *Id.* However, that legal right can be waived. Under ORS 114.620, a spouse may enter into a written agreement, before or after the marriage, to waive his or her elective share. Such agreement to waive the elective share is a type of pre-nuptial or post-nuptial agreement. *In re Estate of Richard B. Wilber*, 75 A3d 1096, 1099 (2013).

Providing general information about the elective share does not create a significant risk that Lawyer’s responsibility to one client will be materially impaired by his responsibilities to the other. Each spouse has a fiduciary obligation to the other requiring full disclosure and fairness. *Day v. Vitus*, 102 Or App 97, 792 P2d 1240 (1990); *Matter of Marriage of Eltzroth*, 67 Or App 520, 526, 679 P2d 1369 (1984); *Bauer v. Bauer*, 1 Or App 504, 464 P2d 710 (1970). Providing information about the elective share and its waiver to both spouses is consistent with each spouse’s duty to each other. Therefore, it does not create a significant risk of impairing Lawyer’s obligation to either spouse for Lawyer to provide such information to both spouses.

2. **Advice to Waive Elective Share Presents A Current Client Conflict Of Interest.**

Spouses often seek joint representation in estate planning. Typically, the interests of the spouses will be aligned for such purposes. However, there are exceptions in which simultaneous representation would be prohibited. OSB Formal Opinion No. 2005-86. “For example, spouses with children by prior marriages may have very different opinions concerning how their estates should be divided.” *Id.* Thus, an attorney was reprimanded for representing both spouses in revising their estate plans in *In re Plinski*, 16 DB Rptr 114 (2002). In that case, the spouses’ interests were adverse because they had children from prior marriages, their respective estates were of different values, they had ongoing financial disagreements, and one spouse was, for reasons of health and disposition, likely susceptible to pressure from the other. *Id.*

An agreement to waive the elective share presents such conflicting interests. As with any pre-nuptial or post-nuptial agreement, it requires one or both spouses to give up potentially valuable legal rights. Such agreement may be particularly fraught with issues that could impair a lawyer’s ability to provide competent and diligent representation to both spouses. By definition, it contemplates that the spouses might leave the majority of their estates to others. One or both spouses may wish to provide for children from another marriage. There may be a potential imbalance between the spouses’ respective estates, such that the right to an elective share could be more important to one spouse than the other. One spouse may be more sophisticated than the other; one may be in better health and more likely to benefit from the elective share. Waiver elective shares might even require renegotiation of the terms of a prenuptial agreement. Any of those factors creates “a significant risk
that the representation of one or more clients will be materially limited by the lawyer=s responsibilities to another client.” RPC 1.7(a)(2).

Some conflicts may be waivable with informed consent confirmed in writing. RPC 1.7(b)(1) allows such waiver if “the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client.” Comment 15 to the ABA Model Rule 1.7 notes that “[c]onsentability is typically determined by considering whether the interests of the clients will be adequately protected if the clients are permitted to give their informed consent to representation burdened by a conflict of interest.” The Restatement of Law Governing Lawyers § 122, comment g.iv, explains:

“The general standard . . . assesses the likelihood that the lawyer will, following consent, be able to provide adequate representation to the clients. The standard includes the requirements both that the consented-to conflict not adversely affect the lawyer=s relationship with either client and that it not adversely affect the representation of either client. In general, if a reasonable and disinterested lawyer would conclude that one or more of the affected clients could not consent to the conflicted representation because the representation would likely fall short in either respect, the conflict is nonconsentable.”

Were Lawyer to represent both spouses with respect to an agreement to waive the elective share, Lawyer would be literally representing both sides of an agreement likely to benefit one client more than the other. Such conflict may be waivable in limited circumstances, but it is perilous. The Oregon Supreme Court observed, in a case where an attorney drafted an employment contract while representing both the employer and the employee, that “[i]t is never proper for a lawyer to represent clients with conflicting interests no matter how carefully and thoroughly the lawyer discloses the possible effect and obtains consent.” In re Jans, 295 Or 289, 295, 666 P2d 830 (1983). It explained:

“It is of the utmost importance that the attorney representing both parties to a transaction reflect upon the rationales behind conflict of interest proscriptions. It is not sufficient that the attorney believes himself able adequately to represent potentially differing interests, or even that all parties have consented. The possibility of subconsciously favoring the interests of either party, the appearance of impropriety that may arise from even the slightest dissatisfaction, the likelihood of receiving confidential information from one party that is damaging or helpful to the other, and the possibility that a court will subsequently disagree with the attorney=s decision that he was able adequately to represent both interests—all dictate extreme caution in these situations.
The temptation to represent potentially conflicting interests is particularly difficult to resist in family disputes. Often the attorney is the ‘family lawyer’ and has represented husband, wife, and even the children on previous occasions. . . . If the parties have not clearly understood the lawyer's ethical responsibilities ab initio, the ensuing rancor may be directed toward him.”

Id. at 295 n 7 (quoting Aronson, Conflict of Interest, 52 Wash L Rev 807, 826–27 (1977)); see also In re Robertson, 290 Or 639, 648, 624 P2d 603 (1981) (lawyer is disciplined for representing both buyer and seller of real property).

Comment 30 to ABA Model Rule 1.7 notes that “[a] particularly important factor in determining the appropriateness of common representation is the effect on client-lawyer confidentiality.” Attorney-client privilege is typically waived among clients who are jointly represented. OEC 503(4)(e). Such lack of confidentiality may make it difficult for Lawyer to explore whether one spouse has concerns about waiving the elective share, since that spouse may be reluctant to fully share those concerns with the other spouse. That, in turn, impairs Lawyer’s ability to fully advise each spouse.

In addition to potentially impairing the lawyer’s ability to represent the spouse who might object to waiving the elective share, the conflict also creates risk for the other spouse. A spouse may make certain estate planning decisions based on what he or she believes to be other spouse’s waiver of the elective share. A later finding that the waiver was invalid, due to the attorney’s conflictive representation, would likely frustrate the decedent’s estate plan that counted on that waiver of elective share.

Under the facts as presented here, the conflict is very likely to be nonconsentable. The facts listed are likely to impair Lawyer’s ability to give complete, competent and diligent advice to both spouses as to waiver of the elective share. In particular, the existence of children from previous marriages and the imbalance between the spouses’ separate estates heightens their need for thorough and independent advice. One may reasonably expect Lawyer’s ability to render such advice to be impaired by Lawyer’s duties to the other spouse.

There may be other circumstances in which a lawyer could reasonably believe that he or she could provide competent and diligent representations to both parties to an agreement to waive the elective share. That is more likely if the elective share appears unlikely to substantially affect the estate plan,1 the spouses do not have children from prior marriages, their separate assets are similar in value, they are both highly sophisticated and unlikely to be susceptible to pressure, and they are similarly positioned with respect to life expectancy. See In re Plinski, 16 DB Rptr 114 (2002).

Additionally, Formal Opinion No. 2005-86 set forth a list of factors that, in rare circumstances, might

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1 It is not always clear, at the time an estate plan is created, whether a devise is likely to be more or less than the elective share. The value of the estate and the devise may be changed by fluctuating values of joint and separate assets, unforeseen expenses, and other inheritances or gifts. Additionally, the statutory percentage of the elective share changes with the length of the marriage.
allow for joint representation during a divorce. Although that opinion addressed different circumstances, some of the listed factors may be applicable here, including:

“(3) The marital estate must not contain substantial assets or liabilities;

(4) The parties must have fully agreed on the disposition of all assets and liabilities [or, here, waiver of the elective share] before consulting the lawyer;

(5) The lawyer must be in a position to conclude that each party has provided full disclosure of all assets . . .”

To sum up, the more important the elective share appears to be to either spouse, the less likely the conflict is to be waivable, and vice versa.

A lawyer weighing the totality of these factors might reasonably believe that he or she could competently and diligently represent both spouses with respect to an agreement to waive of the elective share. Even in a case where the conflict is waivable, the lawyer would still be required to obtain both clients’ informed consent pursuant to RPC 1.7(b).

3. **Preparation of Agreement Waiving Elective Share.**

The same analysis applies with respect to preparing the agreement to waive the elective share. Once Lawyer has undertaken to represent both spouses with respect to estate planning, there is a conflict if he represents either spouse with respect to drafting an agreement to waive the elective share. For example, an attorney drafted a property settlement on behalf of divorcing spouses in *Matter of Marriage of Eltzroth*, 67 Or App 520, 679 P2d 1369 (1984). The lawyer “acted only as a scrivener” and “did not provide independent advice to either party.” *Id.*, 67 Or App at 526. Nonetheless, the Court of Appeals noted that it did “not condone the conduct of the attorney in continuing to represent both parties” to the agreement. *Id.* at n 7.

This conflict may be avoided if Lawyer has not yet undertaken representation of one of the spouses with respect to estate planning. As attorney for only one of the spouses, Lawyer may prepare an agreement mutually waiving the elective share on behalf of the spouse that Lawyer represents. It is not mandatory that both parties to a prenuptial or postnuptial agreement be represented by counsel, although that is a factor in determining whether such agreement is enforceable. *Matter of Marriage of Leathers*, 98 Or App 152, 779 P2d 619 (1989).

4. **Advice Concerning Estate Plan after Execution of Agreement to Waive Elective Share.**

Once the issue of waiver of the elective share has been eliminated by execution of an agreement, Lawyer may represent Spouse A and Spouse B in preparation of their estate planning, absent other circumstances that would create a conflict of interest under RPC 1.7.
Action Recommended

Approve the MCLE Committee’s recommendation to amend the MCLE Rules and Regulations to allow members to claim Category II credit for service on certain committees and councils that are responsible for drafting court legal rules or jury instructions.

Background

At its April 2017 meeting, Board of Governors reviewed and approved the following MCLE rule and regulation amendments, which allow members to claim Category II MCLE credit for service on the Oregon Council on Court Procedures:

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.

This proposed rule amendment was approved by the Oregon Supreme Court on June 14, 2017.

1. Board’s Interest in Uniform Approach

While the Board approved the recommendation to allow Category II Credit for service on the Oregon Council on Court Procedures, some members expressed concern about adding committee service to Category II on a piecemeal basis. Board members voiced a belief many members serve on similar rulemaking committees, such as the Uniform Trial Court Rules
MCLE Committee
November 16, 2017

Committee¹ and the Federal Bar Association’s Local Rules Advisory Committee², which may be equally deserving of Category II credit.

Currently, members who serve on most committees that require them to provide legal advice or rely on their legal expertise will only qualify for Category III credit, which is capped at six credits per three-year reporting period. Category II credit is capped at twenty credits per three-year reporting period, and is therefore seen as more valuable to members.

Based on the Board’s input, the MCLE Committee reexamined MCLE 5.11, 5.12 and related regulations and discussed whether it would be possible to take a more uniform approach to granting Category II credit.

2. MCLE Committee Proposal

After discussion, the MCLE Committee determined that a more uniform approach to committee service MCLE credit is possible. The Committee recommends that rules on committee service be amended to focus on the utility of a committee’s service to the judicial system and judicial process. The MCLE Committee concluded that committees with a focus on rulemaking or drafting jury instructions are likely to require rigorous service and demand in-depth legal analysis from their membership. Further, the bar has a general interest in encouraging lawyers to engage in and support the work of the judicial branch. On either basis, a case can be made that such activities should be entitled to Category II credit.

Accordingly, the MCLE Committee recommends amending Rule 5.11 as follows and deleting Rule 5.12, rather than separately enacting a rule for each committee:

Rule 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. Credit for Committee and Council Service. Credit may be claimed for serving on committees that are responsible for drafting court legal rules or jury instructions that are designed to

¹ Uniform Trial Court Rules Committee – Members are appointed by the Chief Justice of the Oregon Supreme Court to review proposed changes to the rules each year. The rules must be consistent with state law and with the Oregon Rules of Civil Procedure. This committee also reviews all of the Supplementary Local Rules of the Oregon Trial Courts.

² FBA’s Local Rules Advisory Committee – Members are appointed by the Chief Judge to review proposed changes to the FBA’s Local Rules of Civil Procedure. This committee is currently being restructured in respect to defining member terms, meeting schedule and refining the committee’s charge.
aid the judicial system and improve the judicial process. Examples include service on the Oregon State Bar Uniform Civil Jury Instructions Committee, Uniform Criminal Jury Instructions Committee, Oregon Council on Court Procedures, Uniform Trial Court Rules Committee, and the Federal Bar Association’s Local Rules Advisory Committee.

**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.

If the above-proposed amendments are approved, the MCLE Committee recommends that the following regulations also be amended:

**Regulation 5.300**

(f) **Credit for Committee and Council Service:** Members may claim three general credits for service per year. To be eligible for credit under MCLE Rule 5.11, a member must attend at least 9 hours of regularly scheduled committee or council meetings during the year.

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

(h) **Service as a Bar Examiner.** Three (3) credits may be claimed for writing a question and three (3) credits may be claimed for grading a question.

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

(l) **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.
Summary of 2017 House of Delegates Actions  
November 3, 2017

Passed

In Memoriam  
(BOG Resolution No. 1)

Veterans Day Remembrance extending gratitude to those serving in the military service and offering condolences to the families of those who have died in service to their country  
(BOG Resolution No.2)

Amendment to RPC 7.3 re: Solicitation of Clients  
(Board of Governors Resolution No. 4)

Amendment to ORPC 8.3 re: Reporting Professional Misconduct  
(Board of Governors Resolution No. 5)

Support for Adequate Funding for Legal Services to Low-Income Oregonians  
(Delegate Resolution No. 1)

Failed

Study the PLF Program Flat Per Capita Rate Structure  
(Delegate Resolution No. 3)

Give Members the Right to Redirect Funds Directed for Them to LRAP  
(Delegate Resolution No. 4)

Other

Amendment to ORPCs 5.4(a)(5) and 7.2(b)(2) re: Professional Independence of a Lawyer, and Advertising  
(BOG Resolution No. 3)  
*Returned to BOG for further study.*

Excluded from HOD Agenda

CLE Credit for HOD Delegates  
(Delegate Resolution No. 2)
Disregarding Local Input in Selecting Judges

The governor's recent judicial appointments demonstrate a dangerous departure from the proper vetting procedures for judges in this state. By appointing a legislator to the Clackamas County bench and appointing her own lawyer to the Multnomah County bench, the governor wholly disregarded input from the local bar associations in her selection process.

Traditionally, the Clackamas Bar Association's standing committee on judicial recommendations, composed of attorneys and judges from different areas of practice, reviewed the applications, interviewed the applicants and investigated the applicants' experiences and conduct in prior court proceedings. Those investigations included confidential interviews with judges in front of whom the applicant would have appeared; the opposing counsel in those cases; and, where appropriate, clients and co-counsel. Additionally, pro tem judges who were applicants for full-time paid positions would also be considered, as their actual judicial conduct could be evaluated. The committee would then prepare a list of applicants by ranking along with comments, if any.

Upon completion of the vetting process, included in the ranking would be those candidates who would be "highly qualified," "qualified" and "not qualified." As a result of those rankings, governors would traditionally consider and closely follow the recommendations of the local bar.

Here, the governor has stepped away from this deliberate vetting process and procedure from the local bar associations in favor of what can only be viewed from the outside as political paybacks and cronyism. (See, "Kate Brown Taps Own Lawyer, lawmaker as Judges," the Oregonian, July 12, 2017.)

The backbone and health of the state bar depends upon the support and confidence of the local bars. The role and function of the local bar, similar to the state bar, is to educate, enhance and promote public confidence and service in a just and fair system of justice — staffed by highly qualified and experienced judges. When the appointing authority fails to follow or even consider the local bar's recommendations in favor of appointing political friends, the public and the judicial system are not well served.

As the immediate past president of the Clackamas bar, I would ask the Oregon State Bar to publicly present its policy on judicial selection and criteria in favor of enfranchisement of the well-considered local selection process. The alternative to the governor's unilateral and untraditional selection process is for qualified judicial candidates to forgo the governor's distorted process and seek appointment to the bench through the ballot box.

Lawrence K. Peterson, Lake Oswego

Don't Forget Other Lawyer Authors

Jennie Bricker's enjoyable piece about lawyer authors omitted reference to Oregon author/poet Ron Tatley. He wrote the poem that appears on the Portlandia statue. (See "Writing Portlandia: My 15 Minutes of Fame," October 2010.) He has authored several articles and publications, is a columnist for the Lake Oswego Review and author of the book Nookers Up!

Kurt Engelstad, Gresham

Clarification

A letter in the July Bulletin ("Suiting Up Isn't Just for Courtrooms") misstated dress code requirements at Barran Liebman. To clarify, the firm does not require women to wear high heels. As the article under discussion ("Suit Up!" May 2017) states, Barran Liebman has no written dress code. The Bulletin regrets the error.

We Love Letters

In general, letters should pertain to recent letters to the editor, articles or columns published in the Bulletin and should be limited to 250 words. Letters may be edited for errors, style or length.

Anonymous letters will not ordinarily be published. We do not reprint letters addressed to other publications, to whom it may concern, etc.

Send letters to: Editor, OSB Bulletin, P.O. Box 231935, Tigard, OR 97281. Or you may email them to editor@osbar.org.
OSB Programs and Operations

<table>
<thead>
<tr>
<th>Department</th>
<th>Accounting &amp; Finance/ Facilities/IT (Rod Wegener)</th>
<th>Accounting</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>• Donna Wuennecke joins the bar as the Accounts Payable/Payroll Specialist. Donna first came to the bar as a contract worker and was hired as a regular employee of the bar on October 30.</td>
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<td></td>
<td>IT</td>
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<td></td>
<td>• With the vacancy in the IT Manager position, the position which oversaw the Aptify AMS system project, the bar hired Brent Mason to lead the project. In mid-September the first Aptify module went live. This required bar members to create a new log on password to enhance security and for the member to access bar services like BarBooks and Fastcase.</td>
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<td></td>
<td>Facilities</td>
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<tr>
<td></td>
<td>• Mark Soloos joins the bar on November 6 as the new Facilities Manager. Mark comes to the bar with years experience in the senior retirement housing business.</td>
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</tbody>
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<thead>
<tr>
<th>Department</th>
<th>Communications &amp; Public Services (includes RIS and Creative Services) (Kay Pulju)</th>
<th>Communications</th>
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</thead>
<tbody>
<tr>
<td></td>
<td>• As part of the password update campaign, and to spread awareness of futures issues, an on-demand version of the 2016 Futures CLE was linked to the new login page, making it available free of charge to all members who update their passwords. As of November 1, a total of 1,670 members have accessed the CLE and 150 have completed it. The MCLE department has received many positive comments from members reporting their completion of the program.</td>
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<td></td>
<td>• Recent issues of the Bulletin have covered topics such as the future of the legal profession, proposed changes to the ethics rules, rural practice opportunities and sports and small-business law. A new associate editor, Michael Austin, joined the team in October.</td>
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<td></td>
<td>• Data collection for the 2017 OSB Economic Survey is complete; the research team expects to complete its report by December 1. Multiple other surveys are underway, including on addressing what new lawyers most want from the OSB.</td>
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<td></td>
<td>• An update of the 120-page handbook <em>Legal Issues for Older Adults</em> was completed in September, and was subsequently professionally translated into Spanish, Mandarin, Russian and Vietnamese. All versions will be available in print and online in November.</td>
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</table>
### Creative Services

- The launch of the web user interface for the new membership database system has been the major focus in recent months. Notice was given to membership through Bulletin ads, website instructions and e-newsletters, and a broadcast email sent to all active members one week prior to the Sept. 12 cutover. Membership response was immediate, with over 600 members setting up new passwords each day that first week.

- As of today, which is 7 weeks out, 8,691 or 58% of active members have signed in to the new system and updated their passwords to meet the new security requirements. Pro bono, inactive and retired members have also responded with 20%, 4% and 8% respective response rates. Collectively, this sets a good stage for the 2018 annual compliance cycle, formal notice for which will be emailed in early December.

### Referral & Information Services (RIS)

- The annual Lawyer Referral Service (LRS) renewal campaign is complete, and the new program year began on September 1. This will be the fifth full year under the percentage fee revenue model.

- LRS revenue is on track to meet budget projections for 2017. As of August 31, annual percentage fee revenue was at $487,112, which is 62% of the budgeted revenue with four months remaining in the fiscal year. Registration revenue was at $69,000, which is typical at this time of year and slightly higher than in 2016. Total revenue generated since percentage fee implementation in October of 2012 is $3,341,142. This revenue represents more than $27,842,700 in legal fees LRS attorneys have billed and collected from LRS-referred cases.

### CLE Seminars (Karen Lee)

- The department kicked off the CLE season in September with its annual “All Day PowerPlay” ethics sessions. The two-half day programs featured original video vignettes and discussion groups lead by a facilitator. Attendance was very strong. Between the two programs, 116 watched via webcast and 87 attended in person. The audiences were engaged with form of interactive learning.

- The department sponsored an ethics program on Sept. 29 addressing the upcoming ethics rules changes regarding in-person lawyer advertising and referral fee sharing. In-person attendance was 33; live webcast attendance was 23.

- With the closure of the Oregon Law Institute as a CLE provider, the Elder Law Section cosponsored a seminar on guardianships and conservatorships with the department for the first time since 1996.

- CLE Seminars staff continue to work with on the Aptify launch with the new project manager Brent Mason.

### General Counsel (includes CAO and MCLE)

- The bar is in the process of scheduling the first round of interviews for the bar’s new Adjudicator. Justice Linder and Whitney Boise have agreed to
| (Amber Hollister)  | participate in the first round of interviews.  
|-------------------|------------------------------------------------|
|                    | - General Counsel Office and CAO attorneys have presented a total of 24 ethics and abuse reporting CLEs to the membership since the last BOG meeting on September 22.  
|                    | - General Counsel attended the National Client Protection Organization Workshop to learn about developments and best practices for client security fund organizations  
|                    | - General Counsel was invited to speak on ethics and regulation at the ABA Unlawful Practice of Law School, ABA Lawyer Referral & Information Service Workshop, and Wisconsin State Bar Solo & Small Firm Conference.  

| CAO                | This year CAO is on track to process approximately 2,000 bar complaints.  

| MCLE               | Compliance reports for the 2017 reporting period were sent via email in mid-October.  
|                    | - The Oregon Supreme Court approved the BOG’s recommendation to combine the child abuse reporting and elder abuse reporting credit requirements into one single abuse reporting credit.  
|                    | - Over 6,000 accreditation applications have been processed since the first of the year.  

| Human Resources    | Attended the Society for Human Resource Management Conference on Diversity & Inclusion.  
| (Christine Ford)   | - Attended the Barran Liebman Annual Conference on employment law.  
|                    | - Continued leading a committee working on an emergency plan for emergencies such as a power outage.  
|                    | - Actively recruiting for six open positions.  

| Legal Publications | The following have been posted to BarBooks™ since August 30, 2017:  
| (Linda Kruschke)   |   - Final PDF of *Juvenile Law: Dependency*.  
|                    |   - Last 14 chapters of *Advising Oregon Businesses*, vol. 1&2.  
|                    |   - 3 chapters of the all-new *Veterans, Military Servicemembers, and the Law*.  
|                    |     - 3 revised *Uniform Civil Jury Instructions*.  
|                    |     - Final PDF of *2017 Oregon Legislation Highlights*.  
|                    | - We printed and shipped orders for *Juvenile Law: Dependency* in October:  
|                    |     - Revenue to date: $14,903  
|                    |     - Budget: $12,250  
|                    |     - This is the first book to use our new binder, which are both more professional looking and more cost-effective.  
|                    | - *ORPCs Annotated* supplement orders were printed and shipped in September.  
|                    |     - Revenue to date: $2,570  
|                    |     - Budget: $2,450  
<p>|                    | - <em>Oregon Formal Ethics Opinions</em> supplement orders were printed and |</p>
<table>
<thead>
<tr>
<th>Legal Services (Judith Baker) (includes Pro Bono and an OLF report)</th>
<th>Legal Services Program</th>
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<tbody>
<tr>
<td>• The LSP Committee’s 2017 focus has been to visit legal aid offices across Oregon and hold committee meetings outside of the Portland area. The committee members went to Medford in June, Bend in August and Eugene in October and will visit a Portland office in December. The goal is to help the committee understand how a legal aid office operates and sets priorities for service. The visits have been successful with committee members placing a high value on what they have learned.</td>
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<td>• General Counsel revised the LSP Standards and Guidelines to make them consistent with the statutory framework. The LSP Committee will make a recommendation on the revisions in December.</td>
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<td>• Staff continues to work with the committee and legal aid to review the accountability process and implement changes in 2018.</td>
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<tr>
<td>• Three new certified pro bono program applications were recently approved by the PLF and OSB. They were The Commons, Innovation Law Lab and the Oregon Court of Appeals. Metro Public Defenders recently submitted an application.</td>
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<td>• Staff is holding a quarterly Certified Pro Bono Roundtable before the end of the year.</td>
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<td>• The pro bono committee continues to push out information on getting CLE credit for pro bono work to local bar associations to make sure pro bono programs and attorneys across the state are aware of the credit.</td>
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<tr>
<th>Oregon Law Foundation</th>
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<tbody>
<tr>
<td>• The OLF has approved funding for a civil legal needs study. The survey tool has been developed and the OLF’s research partner, Portland State University, is getting the survey out to designated zip codes for completion. It is anticipated that the study will be published in 2018.</td>
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<tr>
<td>• The OLF Grants Committee meets in November to approve $1.2 million in grants to legal aid and other organizations that provide civil legal services to Oregonians of lesser means.</td>
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<tr>
<td>• The OLF staff and board are meeting with leadership banks to let those partnership banks know that the leadership rate tiers will be increased in response to the next Federal Reserve Board interest rate increase.</td>
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<tr>
<th>Member Services &amp; New Lawyer Mentoring</th>
<th>Member Services</th>
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</thead>
<tbody>
<tr>
<td>• The special election to select a new partial-term BOG member ended in late October with 13% voter participation. Whitney Boise will serve in the</td>
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</tbody>
</table>
Program & LRAP  
(Dani Edwards)

region 5 position until December 31, 2019.

- The new association management software launched on September 12 which required members to create a new password. Providing member assistance through this process has been a focus for the department staff, particularly the two receptionists. In addition to the new password requirement, the initial launch included a user interface for member address changes, demographic data, and directory preferences.
- The Section annual meeting season is coming to an end with only four sections still awaiting election of their 2018 slates. This year each annual meeting notice included information about the section’s fund balance and a link to the financial statement for further review.
- New bar members were welcomed during an ONLD-sponsored reception following the October Swearing-in Ceremony at Willamette University. Sections providing complementary membership to new members were given the opportunity to participate in the reception as a way of providing new members access to bar groups offering professional development and networking activities.

New Lawyer Mentoring Program

- Recent mentor recruitment efforts have seen positive results with an uptick in available mentors. The Intellectual Property and Debtor-Creditor Sections have been particularly helpful with recruitment efforts.
- Fall marks the busy season for enrolling the OSB’s newest members into the program and finding mentor matches. Currently 90 new members are awaiting a match and nearly 500 are working through the program with their mentors.
- Of the more than 400 new lawyers with a program completion deadline this year, approximately half have submitted their compliance material and completed the program. The remaining members have until December 31 to complete the program or request an extension.

Loan Repayment Assistance Program

- The LRAP advisory committee will hold their final meeting in November to review policies and guidelines. No changes are anticipated for 2018.

Public Affairs  
(Susan Grabe)

2017 Oregon Legislation Highlights

- The 2017 Oregon Legislation Highlights publication highlights legislative changes with practice tips to assist lawyers on changes to the law that will impact their practice. In 2017, approximately 40% of the legislation passed had an emergency clause or specially prescribed effective date. This meant about 1/3 of the bills went into effect in early October, earlier than the default effective date of January 2018. This made it especially important for the bar to publish its overview in a timely manner to inform members about the statutory changes.

eCourt Survey

- Now that eCourt has been fully implemented across the state, the joint bench/bar task force on eCourt is drawing to an end. In advance of a final report the task force will conduct a survey to flush out any other comments and constructive suggestion to continue to improve the system.
A final report will be submitted to the Chief Justice and the Board of Governors at its January meeting.

**Interim Workgroups**

- Public Affairs staff continue to engage in outreach and involvement with numerous interim workgroups through the Oregon Law Commission (Probate Modernization, Criminal Appeals, Election Law Update, Uniform Collateral Consequences of Conviction Act, Collaborative Law, and Juvenile Records).
- Other legislative groups through the legislature include a rewrite of the advance directive form, guardianship, administrative hearings, due process and cost shifting as well as changes to the parenting time and child custody statutes.
- Public Affairs provided staff support for the development of the Juvenile Dependency Parent and Child Performance Standards and Agency Standards. The Parent/Child Standards were approved and the Agency Standards will be completed in early 2018.

**Capitol CLEs**

- At the request of the Senate Judiciary Committee, Public Affairs has sponsored lunchtime CLES for legislators, staff and lawyers in the Capitol. Thus far we have sponsored Legislative Tips, Elder Abuse, and Procedural Fairness CLEs.

**2019 Legislative Proposals Outreach to bar groups re Law Improvement**

- Public Affairs staff have begun meeting with sections and committees regarding the law improvement program and assistance that the bar can provide.
- The deadline for Law Improvement proposals for the 2019 session from sections and committees is April 1, 2018.

**Appellate Screening**

- The Appellate Screening Committee met to review interview questions, background materials and to conduct background checks and candidate interviews for vacancies on the Tax Court as well as the Supreme Court. A list of “Highly Qualified” candidates will be sent to the Governor’s office at the beginning of November.

**Admissions Office**

- On October 20, the Oregon Council on Legal Education and Admission to the Bar (OCLEAB), which consists of a representative from the Oregon Supreme Court, representatives from each of Oregon’s law schools, members of the Board of Bar Examiners, the Bar president, and the Bar’s Chief Executive Officer. Participants discussed the Bar’s first full UBE bar examination, which took place in July. The group also discussed resources available to law students struggling with drug or alcohol use issues through the Oregon Attorney Assistance Program. Bar staff spoke about the positive outcomes that have taken place in the area of conditional admissions since its inception. Both bar staff and OAAP personnel expressed availability to present at law schools in educating law students.
about both the importance of recognizing the potential impact that substance use and mental health issues can have on their future fitness as lawyers and the availability of OAAP services while they are in law school.

**Disciplinary Counsel's Office**

- On October 24, a dress rehearsal of the planned twice-a-year trust account school, which is the result of a collaborative effort between the PLF’s Practice Management Advisors and Disciplinary Counsel staff, was presented. Audience members provided suggestions and posed questions during the three and a half hour program. The anticipated roll-out of the half-day program is for two offerings in March and September of 2018. The core audience will be lawyers who are either on a diversion program or on a stipulation that includes probationary terms that require attendance. The seminar provides basic education about the rules of professional conduct that pertain to a lawyer's handling of client funds and trust accounts and practical information about record keeping and trust account reconciliation.

- On November 17, the Bar’s twice annual ethics school will be held at the Oregon Bar Center, covering basic principles set forth in the Rules of Professional Conduct and providing insight through the use of hypotheticals that originate in actual reported cases. Speakers include Bar staff lawyers from the Client Assistance Office and Disciplinary Counsel’s Office as well as representation from the Oregon Attorney Assistance Program. Registration to this event is open to Oregon lawyers.
## Executive Director's Activities September 7 to November 16, 2017

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
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<tbody>
<tr>
<td>9/7</td>
<td>Generative Discussion, BOG/ONLD Dinner</td>
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<tr>
<td>9/8</td>
<td>BOG &amp; Committee meetings at OSB Center; Investiture of Ulanda Watkins</td>
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<tr>
<td>9/12</td>
<td>Launch Aptify Phase I</td>
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<tr>
<td>9/14</td>
<td>conf call w/ L. Tsai, D. Snyder, J. Puente</td>
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<td>9/15</td>
<td>Hispanic Heritage Month Breakfast; Lunch w/ D. Wade, OSCCIF Fall Council meeting.</td>
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<tr>
<td>9/16</td>
<td>Client Security Fund Committee meeting</td>
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<td>9/18</td>
<td>Meet w/ Brent Mason – Aptify PM candidate; ACDI meting &amp; Student Social</td>
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<tr>
<td>9/19</td>
<td>Law Firm visit – Ptl'd City Attys; Women’s Leadership Alliance mtg</td>
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<tr>
<td>9/20</td>
<td>Rebecca Duncan Investiture &amp; Reception</td>
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<tr>
<td>9/21</td>
<td>DAC Ops Meeting w/ HR</td>
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<tr>
<td>9/22</td>
<td>Special BOG meeting, Committee meetings; OCJI TF meeting</td>
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<tr>
<td>9/25</td>
<td>Conf call w/ Aptify re PM services; coffee w/ Justice Walters re incubator options; Judge Bronson James investiture</td>
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<tr>
<td>9/26</td>
<td>Urban League dinner</td>
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<td>9/27</td>
<td>OAPABA dinner</td>
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<tr>
<td>9/28</td>
<td>Futures TF Ethics CLE, Investiture of Kate von Ter Stegge</td>
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<tr>
<td>10/2</td>
<td>Lunch w/ PLF CEO Carol Bernick; Conf call w Donna Maxey and Shaina Pomerantz</td>
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<tr>
<td>10/3</td>
<td>Directors Mtg; Mtg w/Brent Mason AMS PM; Lunch w/ Colin Adries, incoming BOG mbr</td>
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<td>10/4</td>
<td>Lunch w/Akira Heshiki; Conf call w OTLA re lawyer fee sharing rule;</td>
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<tr>
<td>10/5</td>
<td>OSB meet w/ Chief Justice; Swearing-in Ceremony; meet w/V Nordyke; ONAC dinner</td>
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<tr>
<td>10/9</td>
<td>Lunch w/ PLF CFO re OSB CFO recruitment and assistance in interim</td>
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<tr>
<td>10/10</td>
<td>Conf Call w/Darien Fleming re directors/managers training; Lunch w/ Kristin &amp; Shannon from Holland &amp; Knight re D&amp;I support; BOG conf call</td>
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<tr>
<td>10/11-10/12</td>
<td>Northwest Bars Conf in Salt Lake City</td>
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<td>10/13</td>
<td>Lunch w/ A. Fisher; CEJ La-Off</td>
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<tr>
<td>10/16</td>
<td>Lunch w/ Doug Querin, OAAP Counsellor</td>
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<tr>
<td>10/17</td>
<td>Diversity Advisory Council mtg; HOD Region 4 mtg; MBA Absolutely Social</td>
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<tr>
<td>10/18</td>
<td>HOD Region 6 mtg; HOD Region 2 mtg</td>
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<tr>
<td>10/19</td>
<td>HOD Region 8 mtg; DAC Ops mtg; HOD Region 5 mtg; DAC Plan, Stoll Berne Annual Fall Party; AILA Annual Gala</td>
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<tr>
<td>10/20</td>
<td>OCLEAB mtg; OGALLA Dinner/Auction</td>
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<tr>
<td>10/24</td>
<td>Lunch w/ Jennifer Johnson, L&amp;C Law School Dean</td>
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<tr>
<td>10/26</td>
<td>Meet w/ Judge Nelson; DAC Ops Plan, conf call w/ Justice Walters re incubator options</td>
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<tr>
<td>10/27</td>
<td>OCJI TF mtg;</td>
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<tr>
<td>10/28</td>
<td>Legal Ethics Comm mtg</td>
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<tr>
<td>10/31</td>
<td>DAC Ops Plan</td>
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<tr>
<td>11/1</td>
<td>Special BOG Meeting</td>
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<td>11/2</td>
<td>Learning the Ropes luncheon; Meet w/ Michael, Alice and Amber – HOD prep</td>
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<tr>
<td>11/3</td>
<td>Budget &amp; Finance Comm Mtg; Annual HOD meeting</td>
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<tr>
<td>11/4</td>
<td>CSF Committee Meeting</td>
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<tr>
<td>11/5</td>
<td>Breakfast w Peggy Nagae</td>
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<tr>
<td>11/7</td>
<td>Lunch w Whitney Boise, incoming BOG member; meet w D Fleming re staff training</td>
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<tr>
<td>Date</td>
<td>Event Description</td>
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<tr>
<td>11/8</td>
<td>OSB Awards Luncheon; mtg w Judge Nelson re court collaboration</td>
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<tr>
<td>11/9</td>
<td>Lunch w R Vangelisti re OSB fee mediation volunteer opportunities and HOD resolutions</td>
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<tr>
<td>11/13</td>
<td>ACDI Auxiliary Comm Mtg re DAP</td>
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<tr>
<td>11/14</td>
<td>Center for Women’s Leadership Big Talk Series</td>
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<tr>
<td>11/15</td>
<td>Mtg w local bar organizations executive directors</td>
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</tbody>
</table>
1. Decisions Received.

   a. Supreme Court

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

   • Accepted the Form B resignation from former Portland lawyer Michael D. Hoffman.
   • Accepted the Form B resignation from Salem lawyer Glenn Solomon.
   • Accepted the Form B resignation from Bellevue, Washington lawyer Kyung Joon Hahm.

   b. Disciplinary Board

   One Disciplinary Board trial panel opinion has been issued since September 2017:

   • A trial panel recently issued an opinion in In re Robert G. Klahn of Pendleton (75-day suspension).

   In addition to these trial panel opinions, the Disciplinary Board approved stipulations for discipline in: In re Stephen R. Rasmussen of Portland (6-month suspension, all but 60 days stayed, 2-year probation), In re Lawrence A. Castle of Canby (reprimand), In re Tomas Finnegan Ryan of Portland (60-day suspension), In re Eric J. Fjelstad of Gresham (60-day suspension), and In re Russell Lipetzky of Salem (6-month suspension with formal reinstatement).

   The Disciplinary Board Chairperson approved a BR 7.1 suspension in In re Dana C. Heinzelman of Salem.

2. Decisions Pending.

   The following matters are pending before the Supreme Court:

   In re Scott W. McGraw – 18-month suspension; accused appealed; oral argument September 21, 2017; under advisement
In re Samuel A. Ramirez – 1-year suspension; accused appealed; oral argument November 13, 2017
In re Sandy N. Webb – 2-year suspension; OSB appealed; oral argument November 9, 2017
In re Gary B. Bertoni – 1-year suspension; accused appealed; awaiting briefs
In re Lisa D. T. Klamp – disbarment; accused appealed; awaiting briefs
In re Steven L. Maurer – dismissed; OSB appealed; awaiting briefs
In re Michael James Buroker – failure to attend Ethics School pending
In re Dale Maximiliano Roller – disbarment; accused appealed; no brief timely filed and no response to court’s request for good cause why appeal should not be dismissed
In re Kenneth Stephen Mitchell-Phillips – Form B pending
In re J. Andrew Keeler – stipulation approval pending
In re William M. Keller – BR 3.2 petition pending
In re Jonathan Stuart – BR 3.4 petition pending

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

In re David R. Ambrose – August 28-29, 2017; TPO due November 15
In re James C. Jagger – September 29, 2017
In re Dirk D. Sharp – sanctions memo filed October 13, 2017; TPO due November 10

3. Trials.

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

In re Matthew A. Wilson – November 6-8, 2017
In re Jennifer Barrett – December 1, 2017
In re Clifford G. Collard – December 15, 2017
In re Dale Maximiliano Roller – January 17-18, 2018
In re Michael James Buroker – January 18-19, 2018
In re Amber N. Wolf – January 19, 2018
In re Melvin D. Ferguson – January 24-26, 2018
In re Manuel C. Hernandez – February 9, 2018
In re Raylynn J. Peterson – February 20-21, 2018
In re Cory J. Larvik – March 13-14, 2018
In re Brian A. Buchanan – March 22-23, 2018
In re Loren Andrew Gramson – April 5, 2018
In re Eric J. Nisley – April 17-18, 2018
4. **Diversions.**

The SPRB approved the following diversion agreements since September 2017:

*In re Stefanie L. Burke* – September 1, 2017  
*In re Brian T. Hemphill* – September 1, 2017  
*In re Benjamin L. Cecil* – November 1, 2017

5. **Admonitions.**

The SPRB issued 6 letters of admonitions in August and October 2017. The outcome in these matters is as follows:

- 6 lawyers have accepted their admonitions;  
- 0 lawyers have rejected their admonitions;  
- 0 lawyers have asked for reconsiderations;  
- 0 lawyers have time in which to accept or reject their admonition.

6. **New Matters.**

Below is a table of complaint numbers in 2017, compared to prior years, showing both complaints (first #) and the number of lawyers named in those complaints (second #):

<table>
<thead>
<tr>
<th>MONTH</th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
<th>2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>January</td>
<td>21/21</td>
<td>29/31</td>
<td>18/19</td>
<td>30/30</td>
<td>17/17</td>
</tr>
<tr>
<td>February</td>
<td>23/23</td>
<td>24/25</td>
<td>28/28</td>
<td>38/38</td>
<td>49/49</td>
</tr>
<tr>
<td>March</td>
<td>30/30</td>
<td>41/45</td>
<td>22/22</td>
<td>28/30</td>
<td>19/20</td>
</tr>
<tr>
<td>April</td>
<td>42/43</td>
<td>45/47</td>
<td>17/17</td>
<td>26/26</td>
<td>22/22</td>
</tr>
<tr>
<td>May</td>
<td>37/37</td>
<td>23/24</td>
<td>24/24</td>
<td>27/30</td>
<td>48/51</td>
</tr>
<tr>
<td>June</td>
<td>31/31</td>
<td>23/24</td>
<td>31/31</td>
<td>38/39</td>
<td>19/20</td>
</tr>
<tr>
<td>July</td>
<td>28/30</td>
<td>43/44</td>
<td>27/27</td>
<td>41/42</td>
<td>31/31</td>
</tr>
<tr>
<td>August</td>
<td>33/36</td>
<td>19/21</td>
<td>28/29</td>
<td>28/28</td>
<td>24/27</td>
</tr>
<tr>
<td>September</td>
<td>26/27</td>
<td>24/24</td>
<td>21/21</td>
<td>25/25</td>
<td>15/15</td>
</tr>
<tr>
<td>October</td>
<td>26/26</td>
<td>25/25</td>
<td>38/39</td>
<td>39/39</td>
<td>37/37</td>
</tr>
<tr>
<td>November</td>
<td>25/26</td>
<td>19/19</td>
<td>24/25</td>
<td>26/27</td>
<td></td>
</tr>
<tr>
<td>December</td>
<td>19/19</td>
<td>21/23</td>
<td>20/20</td>
<td>25/28</td>
<td></td>
</tr>
<tr>
<td><strong>TOTALS</strong></td>
<td>341/349</td>
<td>336/352</td>
<td>298/302</td>
<td>371/382</td>
<td>281/289</td>
</tr>
</tbody>
</table>

As of November 1, 2017, there were 280 new matters awaiting disposition by Disciplinary Counsel staff or the SPRB. Of these matters, 26% are less than three months old, 23% are three
to six months old, and 51% are more than six months old. Thirty-seven of these matters were on the October SPRB agenda.

DME/rlh
### August YTD Budget % of August YTD Change

<table>
<thead>
<tr>
<th>Description</th>
<th>August 2017</th>
<th>YTD 2017</th>
<th>Budget 2017</th>
<th>% of Budget</th>
<th>August Prior Year</th>
<th>YTD Prior Year</th>
<th>Change v Pr Yr</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>REVENUE</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Interest</td>
<td>$1,327</td>
<td>$9,349</td>
<td>$12,500</td>
<td>74.8%</td>
<td>$779</td>
<td>$5,638</td>
<td>65.8%</td>
</tr>
<tr>
<td>Judgments</td>
<td>50</td>
<td>449</td>
<td>1,000</td>
<td>44.9%</td>
<td>50</td>
<td>440</td>
<td>2.1%</td>
</tr>
<tr>
<td>Membership Fees</td>
<td>225</td>
<td>219,772</td>
<td>231,200</td>
<td>95.1%</td>
<td>330</td>
<td>221,500</td>
<td>(0.8%)</td>
</tr>
<tr>
<td><strong>TOTAL REVENUE</strong></td>
<td>1,602</td>
<td>229,570</td>
<td>244,700</td>
<td>93.8%</td>
<td>1,159</td>
<td>227,578</td>
<td>0.9%</td>
</tr>
<tr>
<td><strong>EXPENSES</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>SALARIES &amp; BENEFITS</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Employee Salaries - Regular</td>
<td>13,526</td>
<td>21,993</td>
<td>32,700</td>
<td>67.3%</td>
<td>1,276</td>
<td>9,341</td>
<td>135.4%</td>
</tr>
<tr>
<td>Employee Taxes &amp; Benefits - Reg</td>
<td>944</td>
<td>4,672</td>
<td>13,000</td>
<td>35.9%</td>
<td>387</td>
<td>3,344</td>
<td>39.7%</td>
</tr>
<tr>
<td><strong>TOTAL SALARIES &amp; BENEFITS</strong></td>
<td>14,470</td>
<td>26,665</td>
<td>45,700</td>
<td>58.3%</td>
<td>1,663</td>
<td>12,685</td>
<td>110.2%</td>
</tr>
<tr>
<td><strong>DIRECT PROGRAM</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Claims</td>
<td>0</td>
<td>16,429</td>
<td>200,000</td>
<td>8.2%</td>
<td>8,042</td>
<td>92,123</td>
<td>(82.2%)</td>
</tr>
<tr>
<td>Collection Fees</td>
<td>0</td>
<td>0</td>
<td>1,000</td>
<td>0.0%</td>
<td>0</td>
<td>0</td>
<td>0.0%</td>
</tr>
<tr>
<td>Committees</td>
<td>176</td>
<td>176</td>
<td>150</td>
<td>117.1%</td>
<td>0</td>
<td>0</td>
<td>0.0%</td>
</tr>
<tr>
<td>Travel &amp; Expense</td>
<td>60</td>
<td>1,204</td>
<td>1,800</td>
<td>66.9%</td>
<td>0</td>
<td>1,349</td>
<td>(10.7%)</td>
</tr>
<tr>
<td><strong>EXPENSE</strong></td>
<td>236</td>
<td>17,809</td>
<td>202,950</td>
<td>8.8%</td>
<td>8,042</td>
<td>93,472</td>
<td>(80.9%)</td>
</tr>
<tr>
<td><strong>GENERAL &amp; ADMINISTRATIVE</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Office Supplies</td>
<td>0</td>
<td>0</td>
<td>150</td>
<td>0.0%</td>
<td>0</td>
<td>0</td>
<td>0.0%</td>
</tr>
<tr>
<td>Photocopying</td>
<td>0</td>
<td>0</td>
<td>50</td>
<td>0.0%</td>
<td>0</td>
<td>0</td>
<td>0.0%</td>
</tr>
<tr>
<td>Postage</td>
<td>43</td>
<td>73</td>
<td>150</td>
<td>49.0%</td>
<td>12</td>
<td>101</td>
<td>(26.9%)</td>
</tr>
<tr>
<td>Professional Dues</td>
<td>0</td>
<td>0</td>
<td>200</td>
<td>0.0%</td>
<td>0</td>
<td>0</td>
<td>0.0%</td>
</tr>
<tr>
<td>Telephone</td>
<td>11</td>
<td>47</td>
<td>200</td>
<td>23.7%</td>
<td>0</td>
<td>34</td>
<td>38.2%</td>
</tr>
<tr>
<td>Training &amp; Education</td>
<td>0</td>
<td>4,575</td>
<td>600</td>
<td>762.5%</td>
<td>0</td>
<td>545</td>
<td>739.4%</td>
</tr>
<tr>
<td>Staff Travel &amp; Expense</td>
<td>60</td>
<td>1,229</td>
<td>1,094</td>
<td>112.3%</td>
<td>0</td>
<td>295</td>
<td>316.8%</td>
</tr>
<tr>
<td><strong>TOTAL G &amp; A</strong></td>
<td>114</td>
<td>5,924</td>
<td>2,444</td>
<td>242.4%</td>
<td>12</td>
<td>975</td>
<td>507.9%</td>
</tr>
<tr>
<td><strong>TOTAL EXPENSE</strong></td>
<td>14,820</td>
<td>50,398</td>
<td>251,094</td>
<td>20.1%</td>
<td>9,717</td>
<td>107,132</td>
<td>(53.0%)</td>
</tr>
<tr>
<td><strong>NET REVENUE (EXPENSE)</strong></td>
<td>(13,218)</td>
<td>179,172</td>
<td>(6,394)</td>
<td>48.8%</td>
<td>(8,558)</td>
<td>120,446</td>
<td>(53.0%)</td>
</tr>
<tr>
<td>Indirect Cost Allocation</td>
<td>2,779</td>
<td>22,233</td>
<td>33,349</td>
<td>66.7%</td>
<td>2,655</td>
<td>21,241</td>
<td>4.7%</td>
</tr>
<tr>
<td><strong>NET REV (EXP) AFTER ICA</strong></td>
<td>(15,997)</td>
<td>156,939</td>
<td>(39,743)</td>
<td>(11,213)</td>
<td>99,205</td>
<td>58.2%</td>
<td></td>
</tr>
</tbody>
</table>

Fund Balance beginning of year 1,130,760

Ending Fund Balance 1,287,699
<table>
<thead>
<tr>
<th>CLAIM year</th>
<th>CLAIM #</th>
<th>CLAIMANT</th>
<th>LAWYER</th>
<th>CLAIM AMT</th>
<th>PENDING</th>
<th>INVESTIGATOR</th>
<th>STATUS</th>
</tr>
</thead>
<tbody>
<tr>
<td>2014</td>
<td>02</td>
<td>Kitchen, Kimberly A.</td>
<td>Wood, Alan K.</td>
<td>$3,000.00</td>
<td>$3,000.00</td>
<td>Raher</td>
<td>9/24/16 to CSF. Inform only.</td>
</tr>
<tr>
<td>2014</td>
<td>39</td>
<td>Boone, Charles P</td>
<td>Morningstar, Jonah</td>
<td>$8,000.00</td>
<td>$8,000.00</td>
<td>Raher</td>
<td>9/24/16 CSF stayed. Re-open in July 2017</td>
</tr>
<tr>
<td>2015</td>
<td>27</td>
<td>Roden, Joseph</td>
<td>Morningstar, Jonah</td>
<td>$9,385.50</td>
<td>$9,385.50</td>
<td>Raher</td>
<td>9/24/16 CSF stayed. Re-open in July 2017</td>
</tr>
<tr>
<td>2016</td>
<td>36</td>
<td>Cruz, Lourdes</td>
<td>Milstein, Jeffrey S.</td>
<td>$1,750.00</td>
<td>$1,750.00</td>
<td>Butterfield</td>
<td>5/6/17 CSF Approved $1750</td>
</tr>
<tr>
<td>2016</td>
<td>42</td>
<td>Heredia, Keeley</td>
<td>Krull, Julie</td>
<td>$9,000.00</td>
<td></td>
<td>Dippel to Atwood</td>
<td>11/04/17 CSF deny</td>
</tr>
<tr>
<td>2017</td>
<td>01</td>
<td>Bostwick, Aaron Paul</td>
<td>Rader, Mark</td>
<td>$8,500.00</td>
<td></td>
<td>Roy</td>
<td>9/16/17 CSF deny</td>
</tr>
<tr>
<td>2017</td>
<td>02</td>
<td>McLaren Hall, Rebecca Jean</td>
<td>Merrill, Nick</td>
<td>$2,500.00</td>
<td>$1,500.00</td>
<td>Young</td>
<td>11/04/17 CSF deny $1500</td>
</tr>
<tr>
<td>2017</td>
<td>04</td>
<td>Powell, Terry Scott</td>
<td>Milstein, Jeffrey S.</td>
<td>$3,000.00</td>
<td>$3,000.00</td>
<td>Taylor</td>
<td></td>
</tr>
<tr>
<td>2017</td>
<td>05</td>
<td>Schwengels-Loe, Denyse Marie</td>
<td>Milstein, Jeffrey S.</td>
<td>$5,100.00</td>
<td>$5,100.00</td>
<td>Taylor</td>
<td></td>
</tr>
<tr>
<td>2017</td>
<td>07</td>
<td>Clymer, Joseph &amp; Deborah</td>
<td>Campbell, Jefferson G. Jr</td>
<td>$1,235.00</td>
<td>$1,235.00</td>
<td>Thompson</td>
<td></td>
</tr>
<tr>
<td>2017</td>
<td>08</td>
<td>Jay, Sandra</td>
<td>Milstein, Jeffrey S.</td>
<td>$2,730.00</td>
<td>$2,730.00</td>
<td>Taylor</td>
<td></td>
</tr>
<tr>
<td>2017</td>
<td>09</td>
<td>Tupper, Robert Thompson</td>
<td>Milstein, Jeffrey S.</td>
<td>$2,100.00</td>
<td>$2,100.00</td>
<td>Taylor</td>
<td></td>
</tr>
<tr>
<td>2017</td>
<td>10</td>
<td>Frazier, Justin</td>
<td>Milstein, Jeffrey S.</td>
<td>$3,000.00</td>
<td>$3,000.00</td>
<td>Taylor</td>
<td></td>
</tr>
<tr>
<td>2017</td>
<td>14</td>
<td>Cooper, James Adam</td>
<td>Milstein, Jeffrey S.</td>
<td>$11,500.00</td>
<td>$11,500.00</td>
<td>Taylor</td>
<td></td>
</tr>
<tr>
<td>2017</td>
<td>15</td>
<td>Ashpole, Mathew Thomas</td>
<td>Milstein, Jeffrey S.</td>
<td>$4,800.00</td>
<td>$4,800.00</td>
<td>Taylor</td>
<td></td>
</tr>
<tr>
<td>2017</td>
<td>16</td>
<td>Allen, Thomas John Robert</td>
<td>Milstein, Jeffrey S.</td>
<td>$28,000.00</td>
<td>$28,000.00</td>
<td>Taylor</td>
<td></td>
</tr>
<tr>
<td>2017</td>
<td>17</td>
<td>Torrance, Glen M</td>
<td>Roller, Dale</td>
<td>$11,000.00</td>
<td>$11,000.00</td>
<td>Stamm</td>
<td></td>
</tr>
<tr>
<td>2017</td>
<td>19</td>
<td>Pointer, Kelly Renee</td>
<td>Roller, Dale</td>
<td>$1,000.00</td>
<td>$1,000.00</td>
<td>Stamm</td>
<td>11/04/17 CSF approve $1000</td>
</tr>
<tr>
<td>2017</td>
<td>24</td>
<td>Lopez-Contreras, Rosalina</td>
<td>Hudson, Howard</td>
<td>$6,410.00</td>
<td>$6,410.00</td>
<td>Jones</td>
<td></td>
</tr>
<tr>
<td>2017</td>
<td>25</td>
<td>Roebuck, William</td>
<td>Roller, Dale</td>
<td>$7,500.00</td>
<td>$7,500.00</td>
<td>Stamm</td>
<td></td>
</tr>
<tr>
<td>2017</td>
<td>26</td>
<td>Jacob, Avishaq</td>
<td>Johnson, Ron</td>
<td>$1,300.00</td>
<td>$1,300.00</td>
<td>Roy</td>
<td></td>
</tr>
<tr>
<td>2017</td>
<td>27</td>
<td>Yang, Wai Thomas</td>
<td>Gerber, Susan R.</td>
<td>$10,000.00</td>
<td></td>
<td>Atwood</td>
<td>11/04/17 CSF deny $1000</td>
</tr>
<tr>
<td>2017</td>
<td>29</td>
<td>Vega-Flores, Gustavo</td>
<td>Coran, Theodore C</td>
<td>$10,000.00</td>
<td>$10,000.00</td>
<td>Young</td>
<td></td>
</tr>
<tr>
<td>2017</td>
<td>31</td>
<td>Martinez, Ernesto Vazquez</td>
<td>Martinez, Leslie</td>
<td>$1,800.00</td>
<td>$1,800.00</td>
<td>Braun</td>
<td></td>
</tr>
<tr>
<td>2017</td>
<td>32</td>
<td>Taylor, Marnie</td>
<td>Mitchell-Phillips, Kenneth</td>
<td>$2,500.00</td>
<td>$2,500.00</td>
<td>Braun</td>
<td></td>
</tr>
<tr>
<td>2017</td>
<td>33</td>
<td>Niklas, Louise (Trustee: Eubanks, Anne C)</td>
<td>Bauer, Henry L. ESTATE</td>
<td>$24,000.00</td>
<td>$24,000.00</td>
<td>Cooper</td>
<td></td>
</tr>
<tr>
<td>2017</td>
<td>34</td>
<td>Dillon, Tammi Lee</td>
<td>Smith, Robert J. ESTATE</td>
<td>$1,500.00</td>
<td>$1,500.00</td>
<td>Roy</td>
<td></td>
</tr>
<tr>
<td>2017</td>
<td>36</td>
<td>Grishkevich, Alex</td>
<td>Mitchell-Phillips, Kenneth</td>
<td>$1,525.44</td>
<td>$1,525.44</td>
<td>Braun</td>
<td>pay any reward to Hanna</td>
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<tr>
<td>2017</td>
<td>37</td>
<td>Bateman, Donald L</td>
<td>Smith, Robert J. ESTATE</td>
<td>$1,750.00</td>
<td>$1,750.00</td>
<td>Roy</td>
<td>$155,385.94</td>
</tr>
</tbody>
</table>

Funds available for claims and indirect costs allocation as of August 2017: $1,287,699.00

Fund Excess: $1,132,313.06
President Michael Levelle called the meeting to order at 12:00 p.m. on September 8, 2017. The meeting adjourned at 3:00 p.m. Members present from the Board of Governors were John Bachofner, Jim Chaney, Chris Costantino, Eric Foster, Ray Heysell, John Mansfield, Eddie Medina, Vanessa Nordyke, Tom Peachey, Kathleen Rastetter, Liani Reeves, Julia Rice, Traci Rossi, Kerry Sharp and Elisabeth Zinser. Not present were Rob Gratchner, Guy Greco and Per Ramfjord. Staff present were Helen Hierschbiel, Amber Hollister, Rod Wegener, Dawn Evans, Susan Grabe, Dani Edwards, Jonathan Puente, Judith Baker, Catherine Petrecca, and Camille Greene. Also present: Kaori Eder, ONLD Chair, Jennifer Nicholls, ONLD Chair-elect; Jeff Crawford, PLF; Teresa Statler, PLF Board of Directors Chair; Christine Meadows, ABA HOD Delegate; Myah Kehoe, Alternative Dispute Resolution Chair; and Steven Raher, Client Security Fund Committee Chair.

1. Call to Order/Finalization of Agenda

The board accepted the agenda, as presented, by consensus.

2. Strategic Areas of Focus for 2017

Ms. Nordyke presented the Policy & Governance Committee’s recommendation to the Board of Governors that it create a Paraprofessional Licensing Exploration Committee, charged with developing a detailed proposal for licensing paraprofessionals consistent with the recommendations set forth in the Futures Task Force Report and engaging stakeholders in development of the proposal as recommended by the Task Force. Recommended committee members for BOG appointment are listed in [Exhibit A].

Discussion ensued. Ms. Reeves requested clarification on whether the proposed committee would include members from rural areas and whether it would be charged with further exploration or implementation of a paraprofessional licensing program. Ms. Hierschbiel responded that the committee would be charged with fleshing out the details of a proposal for further board consideration, not with implementation. Ms. Rice confirmed that exploration was the intention of the Policy & Governance Committee, not implementation.

Motion: The board voted unanimously to approve the committee creation as presented by the P&G committee. The motion passed.

Ms. Nordyke gave an update on the feedback received by HOD delegates after use of InXPO for the first round of HOD regional meetings in July. The technology will not be used at the HOD meeting in November for voting purposes but will be used for others to livestream.

Ms. Nordyke presented an update on the review of the new lawyer programs. The ONLD has been invited to provide feedback on the new lawyer program survey. New lawyer programs will be the subject of further discussion at the BOG retreat.

Mr. Puente presented an update on development of the OSB Diversity Action Plan. The goal is to have a draft plan for the BOG to approve at its November 2017 meeting.
3. **BOG Committees, Special Committees, Task Forces and Study Groups**

**Board Development Committee**

In Mr. Ramfjord’s absence, Ms. Costantino asked the board to approve the Board Development Committee’s recommendation to appoint Michael Rondeau to the Board of Governors Public Member position beginning January 1, 2018.

**Motion:** The board voted unanimously in favor of accepting the committee recommendation. The motion passed.

During the July meeting the BOG approved the appointment of all but one new member of the Council on Court Procedures and asked OTLA to provide one additional recommendation for new member appointment. Ms. Costantino asked the board to approve the Board Development Committee’s recommendation to appoint Meredith Holley (125647) for the remaining position.

**Motion:** The board voted unanimously in favor of accepting the committee recommendation. The motion passed.

Appointments to the Board of Bar Examiners (BBX) are made by the Supreme Court. Pursuant to Oregon State Bar bylaw 28.2, the BOG has the opportunity to provide feedback on the candidates the BBX plans to recommend for appointment. The BBX met on August 24 and provided the attached memo for the BOG’s consideration. Ms. Costantino asked the board to provide feedback.

[Exhibit B]

**Motion:** The board voted unanimously in favor of accepting the committee recommendation. The motion passed.

Ms. Costantino asked the board to approve the committee’s recommendations for the Disciplinary Board. [Exhibit C]

**Motion:** The board voted unanimously in favor of accepting the committee recommendations. The motion passed.

Ms. Costantino asked the board to approve the committee’s recommendations for the State Professional Responsibility Board. [Exhibit C]

**Motion:** The board voted unanimously in favor of accepting the committee recommendations. The motion passed.

Ms. Costantino asked the board to approve the committee’s recommendations for the Unlawful Practice of Law Committee. [Exhibit C]

**Motion:** The board voted unanimously in favor of accepting the committee recommendations. The motion passed.

Ms. Costantino asked the board to approve the committee’s recommendations for the Ninth Circuit Judicial Conference Representative: Erin Nicole Biencourt, 131669, Michael Fuller, 093570, Mark Sherman, 095055.

**Motion:** The board voted unanimously in favor of accepting the committee recommendations. The motion passed.
Ms. Costantino asked the board to approve the committee’s recommendations of Susan Marmaduke for the attorney position on the PLF Board of Directors. For the public member, the PLF board asked Tim Martinez to remain on the board for one more year.

**Motion:** The board voted unanimously in favor of accepting the committee recommendation. The motion passed.

**Budget & Finance Committee**

Mr. Chaney gave a financial update and presented Mr. Wegener’s seven financial scenarios on how to close the budget gap. Mr. Chaney asked the board members to send comments to the committee for consideration at the next committee meeting.

**Public Affairs Committee**

In Ms. Rastetter's absence, Mr. Mansfield gave a general update on legislative activity and asked the board to ratify the letter sent to Senators Grassley, Feinstein, Flake, and Franken re: The Proposal to Restructure the United States Court of Appeals for the Ninth Circuit.

**Motion:** The board voted unanimously in favor of ratifying the letter. The motion passed.

Mr. Mansfield asked the board to approve the Futures TF recommendation re: the 2018 Legislative cycle and to explore possible legislation for online document creation.

**Motion:** The board voted unanimously in favor of approving the committee recommendation. The motion passed.

Mr. Mansfield asked the board to approve the Futures TF recommendation re: the 2018 Legislative cycle and to explore possible legislation for changes to the OSB 50-year member fees.

**Motion:** The board voted unanimously in favor of approving the committee recommendation. The motion passed.

**4. Professional Liability Fund**

On behalf of Ms. Bernick, Ms. Statler gave a general update and presented the 2016 Final Audited Financial Statements. Claims are low and investments are up, resulting in a net surplus over the PLF’s goal. Mike Long has retired after 23 years with the OAAP, and Bruce Schafer’s retirement party will be December 12, 2017.

Mr. Crawford asked the board to approve the PLF 2018 budget which includes a 4% salary pool and their continued contribution to the cost of Bar Books.

**Motion:** Ms. Reeves moved, Mr. Mansfield seconded, and the board voted in favor of approving the budget. Mr. Bachofner, Mr. Chaney, and Mr. Peachey abstained. The motion passed.

Ms. Statler asked the board to approve the PLF 2018 assessment without change for the ninth consecutive year. The PLF is considering reducing the assessment in the near future if the current trend continues.

**Motion:** Mr. Sharp moved, Ms. Nordyke seconded, and the board voted in favor of approving the assessment. Mr. Bachofner, Mr. Chaney, and Mr. Peachey abstained. The motion passed.

**5. OSB Committees, Sections, Councils and Divisions**
Legal Ethics Committee

Proposed Amendment to RPC 5.6 – Collaborative Law Participation

Ms. Hierschbiel presented the Legal Ethics Committee request for the Board of Governors to consider how to respond to the Oregon Law Commission’s request for input on a proposal to enact the Uniform Collaborative Law Act into Oregon law. The committee recommends the board choose Option 3: Oppose the prospective disqualification provisions of the Act, but offer to explore amendments to the Rules of Professional Conduct. [Exhibit D]

Ms. Maya Kehoe provided additional information about the collaborative law process and the UCLA and expressed hope that the BOG would not oppose collaborative law as a concept but engage members of the collaborative law community in fashioning solutions to the board’s concerns about the disqualification provisions.

Motion: Ms. Reeves moved, Ms. Rice seconded, and the board voted unanimously to support the committee's suggested Option 3. The motion passed.

Mediation Rule 8.3 Amendment

Ms. Hierschbiel presented the Legal Ethics Committee recommendation to the Board of Governors to amend the lawyer’s duty to report misconduct under Oregon RPC 8.3 to resolve potential inconsistency with duty to maintain confidentiality of mediation communications. [Exhibit E]

Motion: Mr. Bachofner moved, Ms. Reeves seconded, and the board voted unanimously to approve the recommendation as presented. The motion passed.

Legal Ethics Opinion

Ms. Hierschbiel presented the Legal Ethics committee’s recommendation to the Board of Governors to adopt the proposed formal ethics opinion regarding the disqualification of judges via affidavits of prejudice. [Exhibit F] Mr. Bachofner had concerns about use of the term “affidavit of prejudice” given recent changes to the law.

Motion: Mr. Chaney moved, Ms. Reeves seconded, to send the opinion back to the committee to ensure that the language used in the opinion reflects the current statutory language. The board voted unanimously to send the opinion back to the committee. The motion passed.

Client Security Fund Rule Amendments

Mr. Raher presented the Client Security Fund Committee (CSF Committee) recommendation that the Board of Governors adopt the proposed amendments to the Client Security Fund Rules (CSF Rules). [Exhibit G]
Motion: Mr. Chaney moved, Mr. Bachofner seconded, and the board voted unanimously to approve the recommendation as presented. The motion passed.

MCLE Committee Rule Amendment

Ms. Hollister presented the MCLE Committee request that the Board of Governors approve its proposed recommendation to combine the child abuse reporting and elder abuse reporting credit requirements into a single one-hour program. The program would include discussion of the differences between the two types of abuse, an Oregon lawyer’s obligations to report the abuse and the exceptions to reporting. [Exhibit H]

Motion: Mr. Peachey moved, Mr. Bachofner seconded, and the board voted unanimously to approve the recommended amendment as presented. The motion passed.

ABA HOD Delegate Report

Ms. Meadows updated the board on the ABA HOD Resolutions, including opposition to the restructuring of the Ninth Circuit. Another resolution she presented would prevent blocking admission to the bar for non-documentated aliens. She encouraged the board to consider presenting resolutions to the ABA HOD. The next deadline is this November for the ABA Mid-Year meeting in February 2018. ABA Lobbying Day in April 2018 has been extended to three days, up from two days in previous years.

Report of the President

Mr. Levelle reported that attending the meetings of the Advisory Committee on Diversity and Inclusion (ACDI) would be educational for BOG members to become informed about the activities of the OSB Diversity & Inclusion Program.

Report of the President-elect

Ms. Nordyke concurred with Mr. Levelle regarding the importance of the ACDI and reported on her experience attending the OLIO Orientation in August. Her theme for 2018 is "The Next Generation."

Report of the Executive Director

Ms. Hierschbiel highlighted the following items from her written report: Phase one of the Aptify launch will take place on Tuesday, September 12, and will require all members to change their password; Rod Wegener is retiring effective December 1, 2017; Publication of the OSB handbook "Legal Issues for Older Adults" is final, and DHS is paying for publication of the handbook in four languages; Media attention around the pass score for the bar exam seems to have subsided, but if questions arise, please contact Kateri Walsh; The economic survey results should be completed before the end of the year; House of Delegates members will be offered a discounted price on the CLE on September 29 regarding the proposed changes to the rules of professional conduct that will be on the HOD agenda on November 3; There is a Region 5 vacancy on the BOG to fill the position held by Ms. von Ter Stegge prior to her appointment to the Multnomah County bench. The deadline for applications is September 29.

Director of Regulatory Services. As written.
Director of Diversity & Inclusion. OLIO was attended by 52 law students from the three Oregon law schools last month. They have debriefed with the three law schools to see how they can improve the OLIO program. One main goal is to have Oregon law students stay and practice in Oregon after graduation. They organized the ACDI to be a more effective committee to develop the OSB Diversity & Inclusion program. They are gathering data to develop effective programs for Oregon's diverse attorneys.

MBA Liaison Report.
No MBA meetings were held in summer months.

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. There was no request to do so.

Motion: Mr. Chaney moved, Ms. Costantino seconded, and the board voted unanimously to approve all items on the consent agenda.

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. Mansfield asked the board to support the Federal Bar Associations Annual Conference with a donation of $1500. Mr. Levelle approved. Mr. Heysell supported the idea. Ms. Hierschbiel asked Mr. Mansfield to forward the request to her for approval within her discretion from the existing budget.

Ms. Reeves asked that the BOG Calendar of Events be included on each BOG agenda.
Oregon State Bar
Board of Governors Meeting
September 8, 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.
OREGON STATE BAR
Board of Governors Agenda

Meeting Date: September 8, 2017
From: Policy & Governance Committee
Re: Paraprofessional Licensing Exploration Committee

Action Recommended

Create a Paraprofessional Licensing Exploration Committee, charged with developing a detailed proposal for licensing paraprofessionals consistent with the recommendations set forth in the Futures Task Force and engaging stakeholders in development of the proposal as recommended by the Task Force. Recommend committee members for BOG appointment.

Background

At its June 2017 meeting, the Board of Governors received the OSB Futures Task Force Report. Among other things, the report recommended that Oregon establish a program for licensure of paraprofessionals who would be authorized to provide limited legal services, without attorney supervision, to self-represented litigants in family law and landlord-tenant proceedings. The reason cited for licensing paraprofessionals would be to help close the access-to-justice gap in two areas of the law where statistics show a continued high need despite decades of efforts to increase legal aid funding and pro bono services.

The Board of Governors accepted the report at its meeting in June 2017. In July 2017, the Board of Governors voted to identify possible stakeholders for a committee and send to the BOG Policy & Governance Committee for further action.

At its discussion at the June 2017 meeting, several BOG members expressed an interest in seeking feedback from members prior to approving implementation of a paraprofessional licensing program. Requests for feedback have begun, both through outreach to local bar associations and through an email from Michael Levelle to all bar members inviting feedback. Much of the feedback has been questions about the details of the proposal. At this point, however, the proposal consists of general parameters, not a detailed plan.

An alternative to establishing an implementation committee—which presupposes the adoption of the Task Force recommendation—would be to establish a program exploration committee. The purpose would be to formulate a detailed proposal for paraprofessional licensure and would engage stakeholders in development of the proposal as recommended by the Task Force. Throughout the process of development, the committee could seek input from members of the bar and of the public.

The Policy & Governance Committee recommends the appointment of the following members to the Committee:

- Kelly Harpster, Futures Task Force Paraprofessional Subcommittee Chair
- Two Oregon Circuit Court judges in family law or landlord/tenant law
• A representative from each of the three Oregon law schools, to be chosen by the law school deans
• Aubrey Baldwin, Portland Community College Paralegal Program Chair
• Angela Lucero, Board of Bar Examiners
• Chris Costantino, Board of Governors
• A representative from Disciplinary Counsel’s Office
• A representative from General Counsel’s Office
• One lawyer representative in the family law
• One lawyer representative in the landlord tenant arena
• Two public members
• A paralegal

We recommend that Kelly Harpster be appointed as Chair of the Committee.
August 25, 2017

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

RE: Board of Governors’ Approval of Board of Bar Examiners Actions

Dear Ms. Hierschbiel:

As required by OSB Bylaws Section 28.2, the Oregon State Board of Bar Examiners (BBX) hereby solicits input from the Board of Governors (BOG) related to the reappointment of the following persons to continue serving as BBX members:

Lawyer Members:

Misha Isaak  
Kelly Skye  
Cassandra McLeod-Skinner  
Caroline Wong

Public Members:

Randall Green  
Richard Kolbell

Our goal is to have the appointment of these nominees placed on the earliest possible public meeting agenda of the Oregon Supreme Court. Please let me know if you need anything further from the BBX. Thank you in advance for your assistance in this process.

Sincerely,

Jeffrey A. Howes, Chair  
Oregon State Board of Bar Examiners
OREGON STATE BAR
Board of Governors Agenda

Meeting Date: June 23, 2017
Memo Date: June 23, 2017
From: Chris Costantino, Board Development Committee Member
Re: Recommendations for appointments to the Disciplinary Board, State Professional Responsibility Board, and Unlawful Practice of Law Committee

Action Recommended

Approve the Board Development Committee’s recommendations for new member appointments to the following bar groups. Send these recommendations to the Oregon Supreme Court.

Background

Disciplinary Board
Region 1:
Jennifer Kimble, chair
Paul Heatherman
John Laherty
Ronald Roome
Steven Bjerke, public member

Region 2:
Jet Harris, chair
Chas Horner
Teena Killian
Debra Velure

Region 3:
John (Jack) E. Davis, chair
Thomas Pyle, public member

Region 4:
Kathy Proctor, Chair
Arnie Polk
Bryan Penn, public member

Region 5:
Ronald Atwood, chair
Andrew Schpak
Duane Bosworth
Richard Josephson
Samuel Kauffman
Frank Weiss

Region 6:
James C. Edmonds, chair
Paul Mark Gehlar, public member

Region 7:
Andrew Cole, chair
S. Michael Rose

State Professional Responsibility Board
Chair: Ankur Doshi
Region 1 member: Todd Grover
Region 3 member: Joel Benton
Public member: Dr. Zena Polly

Given changes to BR 2.3 that are effective January 1, 2018, all of the members of the SPRB whose present terms will not have expired must be appointed by the Supreme Court. The following members are recommended for appointments to expire on the date indicated:
Carolyn Alexander, term expiring 12/31/19
Heather Bowman, term expiring 12/31/19
Ankur Hasmuhk Doshi, term expiring 12/31/18
Randall Green, Ph.D, public member, term expiring 12/31/18
Christine M. Meadows, term expiring 12/31/20
Elaine D. Smith-Koop, term expiring 12/31/18
Amanda Walkup, term expiring 12/31/20

**Unlawful Practice of Law Committee**
Chair: Jay Bodzin
Chair-Elect: Mary Briede
Secretary: John Marandas
Members:
Travis A Flynn
Jennifer Schade
Amanda Benjamin

Effective January 1, 2018, BR 12.1, provides the Supreme Court authority to appoint members to the UPL Committee. The following existing members are recommended for appointments to expire on the dates indicated.

Jay Bodzin, term expiring 12/31/2018
Mary Ellen Briede, term expiring 12/31/2019
James M. Brown, term expiring 12/31/2020
Monica A. Goracke, term expiring 12/31/2018
Jacob O. Kamins, term expiring 12/31/2018
Andrea K. Malone, term expiring 12/31/2019
John J. Marandas, term expiring 12/31/2019
Alexander S. Ogurek, term expiring 12/31/2019
Dylan S.R. Potter, term expiring 12/31/2020
Stephen A. Raher, term expiring 12/31/2020
Theresa L. Wright, term expiring 12/31/2019
Morad B. Noury, public member, term expiring 12/31/2019
Samuel D. Reese, public member, term expiring 12/31/2019
OREGON STATE BAR
Board of Governors Agenda

Meeting Date: September 8, 2017
From: Legal Ethics Committee
Re: Collaborative Law in Oregon

Action Recommended

Consider how to respond to the Oregon Law Commission’s request for input on a proposal to enact the Uniform Collaborative Law Act into Oregon law.

Background Information

The Oregon Law Commission has received a proposal to enact the Uniform Collaborative Law Act (UCLA) into Oregon law. The Commission has requested input from the Bar and has asked for a response by fall 2017. Because enacting the UCLA may implicate ethics rules, the Legal Ethics Committee is providing feedback.

In collaborative law, the parties agree in a “collaborative law participation agreement” not to seek a judicial resolution, but instead to “negotiat[e] a mutually acceptable settlement without court intervention, to engag[e] in open communication and information sharing, and to creat[e] shared solutions that meet the needs of both clients.” See ABA Formal Ethics Op No 07-447 (discussing core elements of collaborative practice).

The UCLA was drafted by the Uniform Law Commission, and is designed to implement a uniform system of “collaborative law” through court rule or statute. A UCLA collaborative participation agreement specifically provides for prospective disqualification of collaborative lawyers if their clients decline to continue the collaborative law process. In other words, either party can terminate the collaborative process at any time, but in order to do so both of their lawyers must “withdraw from representing their respective clients” and agree not to “handle any subsequent court proceedings.” Id. Practically, this prospective disqualification acts as a penalty, because if the collaborative process is unsuccessful the parties must retain (and pay for) new lawyers. Further, the clients may not rely upon any of the information obtained during the collaborative process in subsequent litigation; instead, they must rely on the usual discovery processes.

In the family law context, collaborative law enjoys sufficient popularity among the public and family law practitioners to have come to the Oregon Law Commission’s attention. While some version of the UCLA has been adopted in sixteen states, its
acceptance among lawyers is not as widespread. Instead, the UCLA was soundly rejected by the American Bar Association’s House of Delegates (by a margin of 2-1), as well as by the Board of Governors of the American Academy of Matrimonial Lawyers. Based on anecdotal information, some Oregon practitioners are presently marketing “collaborative law” services, although it is unclear whether they are practicing in the manner described by the UCLA.

Although little empirical data exists on the benefits of collaborative law, its proponents promise a “more civilized” process for divorce litigation: one that gives the clients more control over the process and the outcome and is generally more satisfactory in terms of preserving cooperative family relationships following the divorce. A useful overview of the legal and practical issues presented by collaborative law is provided by John Lande, Possibilities for Collaborative Law: Ethics and Practice of Lawyer Disqualification and Process Control in a New Model of Lawyering, 64 Ohio St L J 1315 (2003).

Discussion

1. Oregon Lawyers May Already Practice Collaboratively.

Any discussion of collaborative law in Oregon must begin with the observation that much of what collaborative lawyers and their family law clients seek to accomplish under the UCLA can already be accomplished under existing Oregon law. For instance,

- Oregon lawyers are explicitly allowed to limit their representation of clients (e.g. to only pre-filing non-litigation matters), so long as the limitation is a reasonable one under the circumstances, and the client can rely on the advice provided. See RPC 1.2(b).
- Recently, the courts explicitly authorized limited-scope representation in family law cases and provided special procedures for lawyers appearing in a limited capacity. See UTCR 8.110.
- In family law disputes, parties often choose to mediate their disputes using third-party mediators. Under existing law, mediation communications are confidential. See ORS 36.222. In addition, the parties to a dispute may agree to confidentiality provisions for their negotiations that they find desirable.

2. The Court Is In the Best Position to Make Decisions Regarding Lawyer Disqualification.
The Oregon Law Commission has signaled it is considering recommending that the Legislature enact the entire UCLA, including its disqualification provision, by statute. It has long been the position of the bar, however, that regulating lawyer conduct, including lawyer disqualification, is the province of the court. After all, the court is in the best position to regulate legal practice, and control the proceedings before it.

Under the UCLA, clients agree to disqualification of both lawyers and their respective law firms in the event that the collaborative process fails, and the Act itself purports to disqualify the lawyers from further representation:

“SECTION 9. DISQUALIFICATION OF COLLABORATIVE LAWYER AND LAWYERS IN ASSOCIATED LAW FIRM.

(a) Except as otherwise provided in subsection (c),¹ a collaborative lawyer is disqualified from appearing before a tribunal to represent a party in a proceeding related to the collaborative matter.

(b) Except as otherwise provided in subsection (c) and Sections 10 and 11, a lawyer in a law firm with which the collaborative lawyer is associated is disqualified from appearing before a tribunal to represent a party in a proceeding related to the collaborative matter if the collaborative lawyer is disqualified from doing so under subsection (a).

***”

Enacting this provision of the UCLA by statute would be inconsistent with the current scheme for the regulation of lawyers. The Oregon Rules of Professional Conduct place the power to disqualify lawyers or remove them from cases squarely with the court. For instance, if a lawyer identifies an existing conflict of interest in a pending case, the rules provide the lawyer must seek permission prior to withdrawal if court rules require the lawyer to do so. RPC 1.16(c). If the court decides that withdrawal is not warranted or it serves the interests of justice for the lawyer to remain, the court may order the lawyer to continue the representation. *Id.* Similarly, in instances where a lawyer is an advocate in a trial in which the lawyer is likely to be a witness on behalf of the lawyer’s client, the rules allow the court discretion to determine whether disqualification of the lawyer would “work a substantial hardship on the client.” RPC 3.7(a)(3).

¹ Section 9(c) of the Uniform Collaborative Law Act contains exceptions for lawyers who are asking for court approval of an agreement resulting from the collaborative law process, or “to seek or defend an emergency order to protect the health, safety, welfare, or interest of a party” if successor counsel is not “immediately available.”
Finally, in instances where lawyers seek to disqualify opposing counsel, the court exercises its inherent authority to determine whether disqualification is appropriate. The court’s right to disqualify stems from its duty to “prevent breaches of trust and to control the proceedings before it.” The Ethical Oregon Lawyer §10.3-5, citing State ex rel. Bryant v. Ellis, 301 Or 633, 638–39 (1986).

Ensuring that judges retain the power to make decisions regarding lawyer disqualification is fundamental to ensuring the court’s power to regulate the practice of law. Such an approach is also well grounded in practical reality – after all, judges have the ability to examine the facts and law before them, and to rule in a manner that serves justice. Enabling statutory provisions to determine when and whether lawyers are disqualified from practicing law could have unintended consequences. Therefore, if any disqualification provision is enacted, the Committee recommends it be enacted by court rule.

3. Collaborative Law Participation Agreements Authorized by the UCLA May Implicate the Oregon Rules of Professional Conduct and Confuse Lawyers

The UCLA’s form of collaborative law may also implicate the Oregon Rules of Professional Conduct, and potentially place lawyers in jeopardy of running afoul of the prohibition on restrictions on the right to practice.

The Oregon Rules of Professional Conduct do not permit lawyers to participate in offering or making an agreement, as a part of the settlement of a dispute that limits the lawyer’s right to practice. Instead, Rule 5.6(b) provides:

“A lawyer shall not participate in offering or making:
***
(b) an agreement in which a direct or indirect restriction on the lawyer's right to practice is part of the settlement of a client controversy.”

See OSB Formal Ethics Op 2005-47 (Neither plaintiff’s counsel nor defense counsel may offer or agree to settle litigation on the condition that plaintiff’s counsel agree not to sue the defendant again).

The policy rationale for this limitation is both to protect the autonomy of lawyers and to prevent “limits” on “the freedom of clients to choose a lawyer.” Comment [1] to ABA Model Rule 5.6. The prohibition is intended prohibit all such restrictions, “except for
restrictions incident to provisions concerning retirement benefits for service with the firm.” Id.

There is no Oregon case law or ethics opinion addressing whether a collaborative participation agreement’s prospective disqualification of the collaborative lawyers implicates Rule 5.6(b). 2 Likely, any analysis by an Oregon court regarding Rule 5.6 would turn on whether such an agreement would be deemed an “indirect or direct” limitation on a lawyer’s right to practice that is “part of” the settlement of a client controversy.

Because the purpose of the collaborative participation agreement is to set out a framework for settlement negotiations, it seems plausible that a court could find such an agreement implicates RPC 5.6(b). It appears that collaborative law participation agreements under the UCLA would both limit the lawyer’s right to take the client to trial if that is what the lawyer and the lawyer’s own client decide is the best option, and would limit the lawyer’s ability to represent that client in future court proceedings related to the underlying dispute (e.g. post-judgment matters).

Some state ethics opinions have suggested that collaborative law participation agreements may give rise to a lawyer self-interest conflict, because a lawyer interested in maintaining a collaborative practice may be self-interested in advising the client to agree to a participation agreement. RPC 1.7(a)(2). These authorities typically conclude that, with proper informed consent, it may be possible to waive any self-interest conflicts created by a lawyer’s involvement in negotiating a collaborative law participation agreement, as long as the lawyer reasonably believes he or she can provide competent and diligent representation. See RPC 1.7(b). 3

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2 The authorities are split on whether collaborative law participation agreements are ethical. Interestingly, the formal ethics opinion of the American Bar Association, widely cited as approving the practice of collaborative law, does not address the potential RPC 5.6 issue. Ethical Considerations in Collaborative Law Practice, ABA Standing Comm. on Ethics and Prof’l Responsibility, Formal Op 07-447 (2007). Similarly, many state ethics opinions that address the ethical implications of collaborative law participation agreements do not discuss whether mandatory prospective disqualification implicates Rule 5.6. See Maine Ethics Op. 208 (March 6, 2014); Orange County Bar Association Formal Opinion 2011-01; North Dakota Opinion 12-01 (July 31, 2012); New Jersey Ethics Opinion 711 (July 23, 2007).

3 A number of state ethics opinions discuss collaborative law participation agreements and conclude they give rise to a waivable conflict, under Rule 1.7, without analyzing the Rule 5.6 question. See South Carolina Opinion 10-01 (March 31, 2010); Alaska Opinion 2011-3 (May 3, 2011); Washington Opinion 2170 (2007); Kentucky Opinion E-425 (June 2005); Missouri Opinion 124 (August 20, 2008).
Colorado is the only state, to our knowledge, to determine that collaborative law participation agreements with prospective disqualification provisions may run afoul of ethics requirements. See Colorado Opinion 115 (February 24, 2007). The Colorado opinion concludes that a lawyer may not use a collaborative law retainer agreement that requires the lawyer to withdraw if the client or adversary chooses to litigate the matter rather than continue the collaborative process. The opinion explains that such a provision would create an unwaivable conflict between the lawyer and client, because it would allow an opposing party to exercise the disqualification provision over the objections of the client; therefore, it concludes, such an agreement would run afoul of Rule 1.7.

The UCLA attempts to overcome any potential inconsistencies with Rules of Professional Conduct by merely stating that the Act “does not affect ... the professional responsibility obligations and standards applicable to a lawyer or other licensed professional.” UCLA at Section 13. This provision does very little to provide clarity to practicing lawyers. The Committee is concerned that enacting the UCLA in its current form could create needless confusion among Oregon attorneys about the propriety of collaborative law participation agreements that contain prospective disqualification provisions.


Given this background, the Committee proposes that the Board oppose adoption of the provisions of the UCLA pertaining to prospective disqualification, on the principle that any such provisions should be enacted by court rule. This approach would be consistent with Comments to the UCLA (as Amended in 2010), which provide, “The Drafting Committee recommends that Section 9 [pertaining to disqualification] be enacted by judicial rule rather than legislation.”

With this approach, upon enactment of the UCLA without disqualification provisions, the bar could explore an amendment to the Oregon Rules of Professional Conduct to enable lawyers to participate in offering or making collaborative law agreements that contain a prospective disqualification provision.

This Committee would welcome the opportunity to propose a rule amendment at the Board’s request at a later date, if the UCLA is enacted. Because no version of the UCLA has been adopted, it is difficult to propose language at this time.
Conclusion

In conclusion, everything about a collaborative participation agreement, except the prospective disqualification provision, can be accomplished under current law.

What is unique and different about the UCLA’s version of collaborative law is the disqualification provision itself; the utility of that provision to any particular client is unclear. Allowing the courts to remain engaged in decisions about lawyer disqualification would help protect vulnerable litigants and support the bar’s access to justice mission.

Options

Option 1: Take no position at this time. Refer matter to Public Affairs Committee to provide a response to the Oregon Law Commission. This option would provide the PAC with flexibility to respond and take positions during the legislative session, but would not provide a clear path to amending the Oregon Rules of Professional Conduct.

Option 2: Oppose Act as written and not propose amending the RPCs. This option would support the status quo, but political realities may result in the Act’s passage, as written.

Option 3: Oppose the prospective disqualification provisions of the Act, but offer to explore amendments to the Rules of Professional Conduct. This option would recognize Oregon family law lawyers’ interest in the practice collaborative law, while working to ensure the court’s continued involvement in questions of disqualification of lawyers.
OREGON STATE BAR  
Board of Governors Agenda  

Meeting Date: September 8, 2017  
From: Legal Ethics Committee  
Re: Proposed Amendment to Oregon RPC 8.3 Mediation Communication Confidentiality  

Action Recommended

Amend lawyer’s duty to report misconduct under Oregon RPC 8.3 to resolve potential inconsistency with duty to maintain confidentiality of mediation communications.

Background

At the July 21, 2017 Board of Governors’ meeting, Rich Spier presented the Fee Mediation Task Force Report and asked the BOG to consider its recommendations. After accepting the report, the BOG directed the Legal Ethics Committee to consider how to best resolve the inconsistency between the duty to report attorney misconduct under Oregon RPC 8.3 and statutory protections for mediation communications.

In its report, the Fee Mediation Task Force recommended:

“The BOG should ask the Legal Ethics Committee to address appropriately, whether by an ethics opinion, rule amendment, or other vehicle, the inconsistency between the prohibition from disclosing confidential mediation communications under ORS 36.220 and a lawyer mediator's duty under RPC 3.4(c) and the duty under RPC 8.3 to report certain ethical misconduct when knowledge of the perceived misconduct is based solely on "confidential mediation communication."

Oregon RPC 8.3(a), provides that a lawyer who “know that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer’s honesty, trustworthiness or fitness as a lawyer” must report the other lawyer to the bar. If, however, the lawyer learns of another lawyer’s RPC violation in the course of a mediation—the communications of which are confidential under ORS 36.220—the lawyer may be uncertain whether to report the misconduct. A lawyer under those circumstances may rightfully be wary of making a bar complaint that discloses confidential mediation communications. After all, lawyers can be disciplined for disclosing confidential mediation communications. See In re Dodge, 22 DB Rptr 271 (2008) (lawyer disciplined for disclosing confidential mediation communications pursuant to Rule 3.4(c)).

This issue is most likely to arise for lawyers serving as mediators. If a lawyer is serving as a lawyer to a party in mediation then it is very likely that any report that comes up in the context of a mediation will be prohibited by Rule 8.3(c)’s exception for information “otherwise protected by Rule 1.6 or ORS 9.460(3)” and the issue will not arise.
DISCUSSION

Determining whether it is appropriate to amend the Rules to provide an exception for reports based upon mediation communications requires weighing the interests of the regulatory system in learning information about potential lawyer misconduct against the interests of mediation participants (and the public at large) in maintaining confidentiality.

The Legal Ethics Committee weighed these interests and concluded that lawyers have a legitimate interest in having a clear understanding of when it is appropriate to report in the context of mediations. The potential inconsistency between Oregon RPC 8.3 and ORS 36.222 may create a scenario where lawyers have no clear path forward. The Committee also noted that the Legislature made a policy decision that it is in the best interest of Oregonians to facilitate alternative dispute resolution by allowing for the confidentiality of mediation communications. In light of this legislative decision, the Committee determined an amendment to Oregon RPC 8.3 was in order.

The Committee recommends that the Board adopt the following amendment, which would add a new section (d) to Oregon RPC 8.3, as follows:

RULE 8.3 REPORTING PROFESSIONAL MISCONDUCT

(a) A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects shall inform the Oregon State Bar Client Assistance Office.

(b) A lawyer who knows that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall inform the appropriate authority.

(c) This rule does not require disclosure of information otherwise protected by Rule 1.6 or ORS 9.460(3), or apply to lawyers who obtain such knowledge or evidence while:

(1) acting as a member, investigator, agent, employee or as a designee of the State Lawyers Assistance Committee;

(2) acting as a board member, employee, investigator, agent or lawyer for or on behalf of the Professional Liability Fund or as a Board of Governors liaison to the Professional Liability Fund; or

(3) participating in the loss prevention programs of the Professional Liability Fund, including the Oregon Attorney Assistance Program.

(d) This rule does not require disclosure of mediation communications otherwise protected by ORS 36.220.

OPTIONS

1. Adopt Proposed Amendment to Oregon RPC 8.3 and Place Matter on 2017 HOD Agenda.
   Amend Oregon RPC 8.3 to provide an exception for confidential mediation communications.
This option would resolve the potential inconsistency between a lawyer’s duty to report misconduct and obligation not to disclose mediation communications.

2. **Provide Guidance.** Direct Legal Ethics Committee to draft a formal ethics opinion addressing lawyer-mediator’s duty to report misconduct. This option would help lawyers better understand their obligations, but would not resolve the underlying inconsistency between the duty to report misconduct and the duty not to disclose mediation communications.

3. **Take No Action.** The Board could decline to recommend a rule change, and maintain the status quo. Ultimately, any inconsistency may be resolved through a disciplinary decision or legislative action. This option would leave members without clear guidance.
Lawyer practices primarily in ABC County and represents Defendant in a personal injury litigation. Judge X, a Circuit Court judge in ABC County, is assigned to preside over the case. Lawyer has no reason to believe that Judge X has any specific bias against Lawyer or Defendant personally. However, Lawyer believes that Judge X has a reputation for doing just about everything that can be done to support personal injury plaintiffs—e.g., by consistently construing facts and law against personal injury defendants, by frequently granting motions to add punitive damages, by refusing to grant summary judgment to personal injury defendants, etc.

Lawyer is considering whether to file an “affidavit of prejudice” and motion to disqualify Judge X pursuant to ORS 14.260. Lawyer believes that there are potential pros and cons to doing so. Lawyer is also concerned, however, that if Lawyer files an affidavit of prejudice against Judge X in Defendant’s case he will need to start regularly filing affidavits of prejudice against Judge X in all of Lawyer’s personal injury cases. As a result, Lawyer’s reputation could be tarnished. For example, one or more other Circuit Court judges in ABC County may take offense and treat Defendant or Lawyer’s other clients more harshly. In addition, Lawyer’s ability to represent other clients before Judge X in non-personal injury cases, or when the time for filing an affidavit of prejudice has passed, could be adversely affected.

Questions:

1. May Lawyer file an affidavit of prejudice against Judge X in Defendant’s case?

2. May Lawyer consider the impact that filing an affidavit of prejudice could have on Lawyer’s other clients or the Lawyer’s reputation generally?

3. Must Lawyer advise Defendant about Judge X’s reputation and the option to potentially disqualify Judge X?

Conclusions:

1. See discussion.
2. No, qualified.

3. See discussion.

Discussion:

One method for seeking a judge’s disqualification in Oregon is set forth in ORS 14.250 to 14.260, referred to as disqualification by “affidavit of prejudice.” Under ORS 14.260(1), a lawyer or party may (but is not required to) seek disqualification of a judge by filing a motion and supporting affidavit stating that “the party or attorney believes that the party or attorney cannot have a fair and impartial trial or hearing before the judge, and that it is made in good faith and not for the purpose of delay.” An affidavit of prejudice need not state specific grounds for the attorney’s or party’s belief. ORS 14.250(1). In addition, the motion must be granted unless the challenged judge contests disqualification. Id. If contested, the challenged judge bears the burden of proof to establish that the attorney or party filed the affidavit of prejudice in bad faith. Id. The motion and affidavit must be filed within certain statutory time limits, and a party or attorney may not file more than two affidavits of prejudice in any one case. ORS 14.260(4)-(6).

1. May Lawyer File an Affidavit of Prejudice Against Judge X?

The first question implicates the ethical restrictions that govern a lawyer’s decision as to whether to file an affidavit of prejudice when there is concern about a judge’s perceived reputation against a certain class of litigants, rather than the specific parties or attorneys in the case. There are several relevant Oregon RPCs.

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2 See also State ex rel. Kafoury v. Jones, 315 Or 201, 207 (1992).

3 For a more thorough discussion of affidavits of prejudice, see 1 Criminal Law § 12.6-2 (OSB Legal Pub 2013).

4 We emphasize that this opinion does not address whether a judge’s reputation for bias against a certain class of litigants is or should be a proper basis alone for disqualification under ORS 14.260—that issue is for the Legislature and courts to decide. This Committee is authorized to construe statutes and regulations pertaining directly to lawyers, but not to construe substantive law generally. See OSB Formal Ethics Opinion 2006-176 (rev 2015). This opinion addresses only the circumstances under which an attorney’s filing of an affidavit of prejudice under the provisions of ORS 14.260 is ethically permissible under the Oregon Rules of Professional Conduct.
Oregon RPC 3.3(a)(1) provides, in pertinent part:

(a) A lawyer shall not knowingly:

(1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer . . . .

Oregon RPC 8.2(a) provides:

(a) A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard to its truth or falsity concerning the qualifications or integrity of a judge . . . .

Oregon RPC 8.4(a) provides, in pertinent part:

(a) It is professional misconduct for a lawyer to:

. . . .

(3) engage in conduct involving dishonesty, fraud, deceit or misrepresentation that reflects adversely on the lawyer’s fitness to practice law; or

(4) engage in conduct that is prejudicial to the administration of justice . . . .

Taken together, Oregon RPCs 3.3(a)(1), 8.2(a), and 8.4(a)(3)-(4) prohibit lawyers from making any false statements in an affidavit of prejudice. The critical issue, therefore, is whether Lawyer can truthfully state in an affidavit under ORS 14.260 that: (1) Lawyer believes Defendant or Lawyer cannot receive a fair and impartial trial or hearing before Judge X; and (2) Lawyer is filing the disqualification motion in “good faith and not for the purpose of delay.” These are subjective inquiries. Lawyer must consider each question independently in light of the specific facts, procedural posture, and applicable law of his or her case. Only if Lawyer can truthfully answer yes to both questions may Lawyer ethically file a motion to disqualify Judge X under ORS 14.260.

As to the first question, Lawyer must consider whether his or her concern about Judge X is significant enough that Lawyer honestly believes that Defendant cannot receive a fair and impartial trial or hearing before Judge X. However, even if Lawyer concludes (after conducting this analysis) that he or she honestly believes that Defendant or Lawyer cannot receive a fair and impartial trial or hearing before Judge X, that does not end the inquiry. Lawyer must then consider the second question—can Lawyer truthfully state that the motion would be brought in “good faith and not for the purpose of delay”?
In considering the second question, Lawyer must draw a careful distinction between seeking to disqualify Judge X to ensure a fair and impartial proceeding for Defendant versus doing so to obtain a tactical advantage in the litigation. The former situation would constitute good faith; the latter would not. For example, it would not be “good faith” for Lawyer to file an affidavit of prejudice against Judge X if Lawyer’s primary reason was to delay resolution of the case, or to maximize the chances that a more favorable judge will be assigned to Defendant’s case, or as an attempt to get Defendant’s case transferred to a more favorable venue. Using affidavits of prejudice as a form of judge or forum shopping, or for other strategic advantage, is a form of bad faith and, thus, Lawyer would violate Oregon RPCs 3.3, 8.2, and 8.4 by filing an affidavit of prejudice primarily for those reasons.

2. **May Lawyer Consider the Impact Filing an Affidavit of Prejudice Might Have on Lawyer’s Other Clients or Lawyer’s Own Reputation?**

Filing an affidavit of prejudice can have significant consequences for a lawyer. Lawyers may be concerned about the effect that filing an affidavit of prejudice could have on their own reputation or practice, or on their other clients in the future. This is particularly true for lawyers who practice in smaller counties where the local Bar and pool of available judges are relatively small, and for lawyers who typically represent only one class of litigants (such as in criminal and personal injury contexts).

Oregon RPC 2.1 provides, in pertinent part, that “in representing a client, a lawyer shall exercise independent professional judgment.” In addition, Oregon RPC 1.7(a) provides, in pertinent part:

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a current conflict of interest. A current conflict of interest exists if:

. . . .

(2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer’s responsibilities to another client, a former client or a third person or by the personal interest of the lawyer . . .

The duties to exercise “[l]oyalty and independent judgment are essential elements in the lawyer’s relationship to a client.” ABA Model Rules, Rule 1.7, cmt. [1]. Generally speaking, Oregon RPC 2.1 and 1.7 require a lawyer to make

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5 These examples are not intended to be exhaustive.
decisions with only his or her client’s interests in mind, not the lawyer’s personal interests or the interests of other clients or third parties.6

In the context of a disqualification motion, this means that Lawyer must evaluate whether to file an affidavit of prejudice on a case-by-case basis, without regard to lawyer’s personal interests or the interests of others. Lawyer may consider only the impact that seeking disqualification of Judge X could have on Defendant’s case. Lawyer may not consider the effect, if any, that seeking Judge X’s disqualification could have on Lawyer’s own practice, or on Lawyer’s other current or future clients or cases.

Moreover, if there is a significant risk that Lawyer’s analysis of the disqualification issue in Defendant’s case will be materially limited by his or her concerns about Lawyer’s personal interests, or the interests of other clients or third parties, then under Oregon RPC 1.7(a)(2) Lawyer must withdraw from the representation unless Lawyer’s continued representation complies with the requirements of Oregon RPC 1.7(b).

This is not to say that Lawyer may never consider the potential impact a disqualification motion would have on Lawyer’s own credibility, reputation, or relationship with Judge X or other judges in ABC County. Lawyer may ethically consider such factors to the extent Lawyer believes they could impact Lawyer’s representation of Defendant. For example, it would be permissible for Lawyer to consider whether filing an affidavit of prejudice against Judge X could negatively affect how other judges in ABC County (who might preside over Defendant’s case if Judge X is disqualified) might treat Lawyer or Defendant in Defendant’s specific proceeding.

3. Whether Lawyer Has a Duty to Advise Client about the Option to file an Affidavit of Prejudice

Question No. 3 asks whether Lawyer has an affirmative duty to advise Defendant about Judge X’s reputation and the potential option to file a motion to disqualify Judge X.

6 For a broader discussion on the duties to exercise loyalty and independent judgment, see the Annotation to ABA Model Rule 2.1.
Oregon RPC 1.4 provides:

(a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit client to make informed decisions regarding the representation.

In addition, Oregon RPC 1.2(a) provides, in pertinent part:

(a) Subject to paragraphs (b) and (c), lawyer shall abide by a client’s decision concerning the objectives of representation, and as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client’s decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client’s decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

In this hypothetical, the first question is whether there is even a decision for Lawyer to potentially discuss with Defendant. In other words, Lawyer must first determine initially whether he or she can even file a motion to disqualify Judge X. If Lawyer has concluded that he or she cannot legally and ethically file a motion to disqualify Judge X (see supra discussion Part 1), then there is nothing to discuss with Defendant, and Lawyer would have no duty under Oregon RPCs 1.2 or 1.4 to advise Defendant of any potential option to file an affidavit of prejudice against Judge X.7

If, however, Lawyer has concluded that he or she could legally and ethically file an affidavit of prejudice against Judge X, Lawyer has a duty under Oregon RPC 1.2 and 1.4 to reasonably consult with Defendant about that decision. At a minimum, Lawyer should inform Defendant about the basis of his or her concerns about Judge X, the available options and procedure under ORS 14.260, and the potential advantages and disadvantages to filing a motion to disqualify.

In doing so, Lawyer must disclose sufficient information for Defendant to intelligently participate in a discussion about whether to file an affidavit of prejudice. As the Restatement (Third) of the Law Governing Lawyers states:

7 Of course, should Defendant ask Lawyer to explain why a motion to disqualify cannot be filed, Lawyer would need to provide a reasonable response to the client inquiry under Oregon RPC 1.2(a).
The lawyer’s duty to consult goes beyond dispatching information to the client. The lawyer must, when appropriate, inquire about the client’s knowledge, goals, and concerns about the matter, and must be open to discussion of the appropriate course of action. . . .

The level of consultation is measured by a standard of reasonableness and depends on such factors as the importance of the decision, the extent to which disclosure or consultation has already occurred, the client’s sophistication level and interest, and the time and money that reporting or consulting will consume.8

The timing of that discussion will depend on the specific circumstances of the representation and how the issue regarding potential disqualification arises. The identity of a judge is an important issue in any case, and, if feasible, lawyers should consult with their clients before making a decision about whether to file an affidavit of prejudice. In some situations, however, a lawyer may be required to decide about filing an affidavit of prejudice without any reasonable opportunity to consult with the client beforehand—such as when the lawyer faces an impending deadline or when substantive law requires the lawyer to either file an affidavit of prejudice immediately or risk waiver. If reasonably necessary under the circumstances, a lawyer may decide whether to file an affidavit of prejudice without first consulting with his or her client; however, even then, the lawyer must reasonably inform the client about the lawyer’s decision within a reasonable time thereafter.

Finally, there may be circumstances where the lawyer and client, even after consultation, disagree about whether to file a disqualification motion. Such a decision goes to the “means,” not the “objectives,” of the representation. Moreover, filing a motion to disqualify is not one of the enumerated decisions listed in Oregon RPC 2.1(a) that is expressly reserved to the client (e.g., whether to accept a settlement). Accordingly, the lawyer is ethically permitted to make the final decision as to whether to seek disqualification, even over his or her client’s objection, provided the lawyer has adequately consulted with the client, as discussed above.9

In the criminal context, we note that the lawyer may need to consider other factors besides ethical considerations in resolving such a disagreement. Criminal defendants possess constitutional rights that are not implicated in civil cases. “[T]he decision-making authority of a criminal defendant is therefore broader than that of a client in a civil matter.”10 Criminal defense lawyers should consider, among other

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9 Of course, the client retains the ultimate right to resolve any disagreement by discharging the lawyer. See Oregon RPC 1.16(a)(3); ABA Model Rules, Rule 1.2, cmt. [2].
10 Annotation to ABA Model Rule 1.4 at 36-37 (citing various authorities).
things, whether) the decision to file an affidavit of prejudice in his or her client’s specific case implicates the client’s fundamental rights under the Sixth Amendment. That issue is beyond the scope of what this Committee can opine on.
Section 1. Definitions.

For the purpose of these Rules of Procedure, the following definitions shall apply:

1.1 "Administrator" means the OSB Executive Director or other person designated by the Executive Director to oversee the operations of the Client Security Fund.

1.2 "Bar" means the Oregon State Bar.

1.3 "Committee" means the Client Security Fund Committee.

1.4 "Fund" means the Client Security Fund.

1.5 "Lawyer" means one who, at the time of the act or acts complained of, was an active member of the Oregon State Bar and maintained an office for the practice of law in Oregon.

1.6 "Claimant" means one who files a claim with the Fund.

1.6 "Client" means the individual, partnership, corporation, or other entity who, at the time of the act or acts complained of, had an established attorney-client relationship with the lawyer.

1.7 "Committee" means the Client Security Fund Committee.

1.8 "Dishonest conduct" has the meaning prescribed in Rule 2.1.2.

1.9 "Dishonest conduct" "Lawyer" means the person named in a statement of claim as the attorney whose dishonest conduct caused the loss, and who, at the time of the act or acts ...
complained of, was an active member of the Oregon State Bar.

1.9 "Statement of claim" means the form designated by the administrator pursuant to CSF Rule 3.1.

Section 2. Reimbursable Losses.

2.1 A loss of money or other property of a lawyer's client is eligible for reimbursement if:

2.1.1 The claim is made by the injured client or the client's conservator, personal representative, guardian ad litem, trustee, or attorney in fact.

2.2.1.2 The loss was caused by the lawyer's dishonest conduct. 2.2.1 In a loss resulting from For purposes of this rule, dishonest conduct includes: (i) a lawyer's refusal, willful act against a client's interest by defalcation, embezzlement, or failure to refund an unearned legal fee, "dishonest conduct" shall include (i) other wrongful taking; (ii) a lawyer's misrepresentation or false promise to provide legal services to a client in exchange for the advance payment of a legal fee or (ii) fee; or, (iii) a lawyer's wrongful failure to maintain the advance payment in a lawyer trust account until earned. 2.2.2 A lawyer's failure to perform or complete a legal engagement shall does not constitute, in itself, evidence of misrepresentation, false promise, or dishonest conduct.

2.2.3 Reimbursement of a legal fee will be allowed only if (i) the lawyer provided no legal services to the client in the engagement; or (ii) the legal services that the lawyer actually provided were, in the Committee's judgment, minimal or insignificant; or (iii) the claim is supported by a determination of a court, a fee arbitration panel, or an accounting acceptable to the Committee that establishes that the client is owed a refund of a legal fee. No award reimbursing a legal fee shall exceed the actual fee that the client paid the attorney.

2.2.4 In the event that a client is provided equivalent legal services by another lawyer without cost to the client, the legal fee paid to the predecessor lawyer will not be eligible for reimbursement, except in extraordinary circumstances.

2.3.1.3 The loss was is not covered by any similar fund in another state or jurisdiction, or by a bond, surety agreement or insurance contract, including losses to which any bonding agent, surety or insurer is subrogated.

2.4.1.4 The loss was is not to incurred by a financial institution covered by a "banker's blanket bond" or similar insurance or surety contract.

2.5.1.5 The loss arose from, and was because of: 2.5.1 (i) an established lawyer-client relationship; or 2.5.2 or, (ii) the failure to account for money or property entrusted to the lawyer in connection with the lawyer's practice of law or while acting as a fiduciary in a matter related to the lawyer's practice of law.

2.6.1.6 As a result of the dishonest conduct, either: (i) the lawyer was found guilty of a crime; (ii) a civil judgment was entered against the lawyer, which remains unsatisfied; (iii) the claimant holds an allowed claim against the lawyer's probate or bankruptcy estate, and that judgment which remains unsatisfied; or (iv) in the case of a claimed loss of
$5,000 or less, the lawyer was disbarred, suspended, or reprimanded in disciplinary proceedings, or the lawyer resigned from the Bar.

2.7 2.1.7 A good faith effort has been made by the claimant to collect the amount claimed, to no avail.

2.8 2.1.8 The statement of claim was filed with the Bar within two years after the latest of the following: (a). (i) the date of the lawyer's conviction; or (b). (ii) in the case of a claim of loss of $5,000 or less, the date of the lawyer's disbarment, suspension, reprimand or resignation from the Bar; or (c). (iii) the date a judgment is obtained against the lawyer, or (d). (iv) the date the claimant knew or should have known, in the exercise of reasonable diligence, of the loss. In no event shall any claim against may the Fund be considered Committee approve a claim for reimbursement if it the statement of claim is submitted more than six (6) years after the date of the loss.

2.9 2.1.9 The loss arose from the lawyer's practice of law in Oregon. In determining whether the loss arose from the lawyer’s practice of law in Oregon, the Committee may consider all relevant factors including the parties' domiciles, the location of the lawyer's office, the location where the attorney-client relationship was formed, and the location where legal services were rendered.

2.2 Reimbursement of a legal fee will be allowed only if: (i) the lawyer provided no legal services to the client in the engagement; or (ii) the legal services that the lawyer actually provided were, in the Committee's judgment, minimal or insignificant; or (iii) the claim is supported by a determination of a court, a fee arbitration panel, or an accounting or other evidence acceptable to the Committee that establishes that the client is owed a refund of a legal fee. No award reimbursing a legal fee may exceed the actual fee that the client paid the lawyer.

2.3 In the event that a client is provided equivalent legal services by another lawyer attorney without cost to the client, the legal fee paid to the predecessor lawyer will not be eligible for reimbursement, except in extraordinary circumstances.

2.4 A claim approved by the Committee shall may not include attorney's fees, interest on a judgment, prejudgment interest, any reimbursement of expenses of a claimant in attempting to make a recovery-recovery, or prevailing party costs authorized by statute, except that a claim may include the claimant's actual expense incurred for court costs, as awarded by the court.

2.10 2.5 Members of the Bar are encouraged to assist claimants without charge in preparing and presenting a claim to the Fund. Nevertheless, a member of the Bar may contract with a claimant for a reasonable attorney fee, which contract must be disclosed to the Committee at the time the claim is filed or as soon thereafter as an attorney has been retained. The Committee may disapprove an attorney fee that it finds to be unreasonable. No attorney shall charge a fee in excess of the amount the Committee has determined to be reasonable, and the attorney fee shall be paid from, and not in addition to the award. In determining a reasonable fee, the Committee may refer to factors set out in ORS 20.075.

2.11 2.6 In 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 provisions in Section 2 of these rules.


3.1 All claims for reimbursement must be submitted on the form prepared in a format designated by the Bar administrator.

3.2 The statement of claim form shall require, as minimum, must include, at a minimum, the following information:

   3.2.1 The name and address of the lawyer alleged to have engaged in "dishonest conduct;"

   3.2.2 The amount of the alleged loss;

   3.2.3 The date or period of time during which the alleged loss occurred;

   3.2.4 A general statement of facts relative to the claim, including a statement regarding efforts to collect any judgment against the lawyer;

   3.2.5 The name and address of the claimant and a verification of the claim by the claimant under oath; and

   3.2.6 The name of the attorney, if any, who is assisting the claimant in presenting the claim to the Client Security Fund Committee.

3.3 The Statement of Claim shall contain substantially the following statement: ALL DECISIONS REGARDING PAYMENTS FROM THE CLIENT SECURITY FUND ARE DISCRETIONARY. Neither the Oregon State Bar nor the Client Security Fund are responsible for the acts of individual lawyers.

Section 4. Processing Statements of Claim.

4.1 All statements of claim shall be submitted to Client Security Fund, Oregon State Bar, 16037 SW Upper Boones Ferry Rd., P. O. Box 1689, Tigard, Oregon 97281-1935.

4.2 The Administrator shall cause each statement of claim to be sent to a member of the Committee for investigation and report. Such member shall be reimbursed by the State Bar for reasonable out of pocket expenses incurred in making such investigation. A copy of the statement of claim shall be sent by regular mail to the lawyer who is the subject of the claim at the lawyer's last known address. Before transmitting a statement of claim for investigation, the Administrator may request further information from the claimant.

4.3. A Committee member to whom a statement of claim is referred for investigation shall conduct such investigation as seems necessary and desirable to determine whether the claim is for a "reimbursable loss" and is otherwise in compliance with these rules in order to guide the Committee in determining the extent, if any, to which the claimant may receive an award from the Fund.
4.4 Reports with respect to claims shall be submitted by the [the a] Committee member to whom the claim is assigned for investigation shall submit an investigative report to the Administrator administrator within a reasonable time after the referral assignment of the claim to that member. Reports submitted by the member shall contain include in such report a discussion of the criteria for payment set by these rules and shall include the recommendation of the member for the regarding payment of any amount on such claim from the Fund.

4.5 The Committee shall meet from time to time upon the call of the chairperson. At the request of at least two members of the Committee and with reasonable notice, the chairperson shall promptly call a meeting of the Committee.

4.6 At any meeting of the Committee, claims may be considered for which an investigation has been completed. In determining each claim, the Committee shall be considered the representative of the Board of Governors and, as such, shall be vested with the authority conferred by ORS 9.655.

4.7 Records of the Client Security Fund are public records within the meaning of the Public Records Law and meetings of the Committee are public meetings within the meaning of the Public Meetings Law. The claimant, the claimant’s attorney, the lawyer or the lawyer’s attorney may attend meetings and, at the discretion of the chair, present their respective positions on a claim.

4.8 No award shall may be made to any claimant if the statement of claim has not been submitted and reviewed pursuant to these rules. No award shall be made to any claimant unless rules, and approved by a majority of at a quorum duly noticed meeting of the Committee.

4.7 No award from the Fund on any one claim shall may exceed $50,000.

4.8 The Committee shall determine the amount of loss, if any, for which any claimant shall may receive an award from the Fund. The Committee may give final approval to an award of less than $5,000 and shall submit regular reports to the Board of Governors reflecting all awards finally approved by the Committee since the Board's last Board meeting.

4.10 The Committee’s denial of a claim shall be is final unless a claimant's written request for review by the Board of Governors is received by the Executive Director of the Bar administrator within 20 days of the Committee's decision. The 20 days runs from the date the Committee's decision is sent to the claimant by mail, exclusive of the date of mailing.

4.11 Claims for which the Committee finds an award determines that a claim should be approved in an amount of $5,000 or more shall be submitted more, the Committee must submit its recommendation to the Board for approval, and decisions of the Committee which are reviewed by Governors for approval. When reviewing such claims, the Board of Governors shall be considered under conduct its review pursuant to the criteria stated in provisions of these rules. The Board shall of Governors may approve or deny each claim presented to it for review, or it may refer a claim back to the Committee for further
investigation prior to making a decision.

4.12 Awards from the Fund are discretionary. The Committee or Board of Governors may deny claims in whole or part for any reason.

4.12 The Board of Governors may determine the order and payment of awards; may defer or pro-rate awards based on CSF-funds available in any calendar year; and may allow a further award in any subsequent year to a claimant who received only partial payment of an award. In exercising its discretion, the Board of Governors shall be guided by the following objectives:

4.12.1 Timely and complete payment of approved awards;
4.12.2 Maintaining the integrity and stability of the Fund; and
4.12.3 Avoiding frequent or significant fluctuations in the member assessment.

4.13 A finding of "dishonest conduct" by the Committee or the Board shall be for the sole purpose of resolving a claim and shall not be construed as a finding of misconduct for purposes of discipline or otherwise in any other proceeding.

4.14 The Committee may recommend to the Board of Governors that information obtained by the Committee about a lawyer's conduct be provided to any agency or entity that the Committee determines may be helpful in resolving the claimant's concerns. In the Committee's opinion, a single serious act or a series of acts by the lawyer might constitute a violation of criminal law or of a civil fraud or consumer protection statute.

Section 5. Subrogation for Reimbursements Made.

5.1.1 As a condition of receiving an award, a claimant shall provide the Bar with a pro tanto transfer assignment of the claimant's rights against the lawyer, the lawyer's legal representative, estate or assigns, and of the claimant's rights against person or entity who may be liable for the claimant's loss. 5.1.2 Upon receipt of such assignment, the following rules govern the relationship between the Bar and the claimant:

5.1.1 Upon commencement of an action by the Bar as subrogee or assignee of a claim, it shall advise the claimant, who may then join in such action to recover the claimant's unreimbursed losses.

5.1.2 In the event that the claimant commences an action to recover unreimbursed losses against the lawyer or another person or entity who may be liable for the claimant's loss, the claimant shall notify the Bar of such action in writing, within 14 days of the commencement of such action.

5.1.3 The claimant shall agree to cooperate in all efforts that the Bar undertakes to achieve restitution for the Fund.

5.1.4 The claimant shall not release the lawyer from liability or otherwise impair the Bar's assignment of judgment or subrogated interest without the prior approval of the Board of Governors.
5.3 The Administrator shall be responsible for collection of Fund receivables and shall have sole discretion to determine when such efforts would be futile. The Administrator may undertake collection efforts directly or may assign subrogated claims to a collection agency or outside counsel. The Administrator may authorize the expenditure of money from the Client Security Fund for reasonable costs and expenses of collection.


6.1 The members and officers of the Committee will be appointed and discharged pursuant to applicable provisions of the Bar Bylaws.

6.2 The Committee may only act pursuant to the quorum provisions contained in section 14.9 of the Bar Bylaws.

4.5 The Committee shall meet from time to time upon the call of the chairperson. At the request of at least two members of the Committee and with reasonable notice, the chairperson shall promptly call a meeting of the Committee.

4.6 These Rules may be changed at any time by a majority vote of a quorum the entire membership of the Committee, subject to approval by the Board of Governors of the Oregon State Bar. A quorum is a majority of the entire Committee membership.

6.3 No award from the Fund on any one claim shall exceed $50,000.

6.5 In determining each When investigating, reviewing, or acting on a claim, the Committee shall be considered and its members are deemed to be the representative of the Board of Governors and, as such, shall be vested with the authority conferred by ORS 9.655.

4.7 Records of the Client Security Fund are public records within the meaning of the Public Records Law, Oregon's public records law, and meetings of the Committee are public meetings within the meaning of the Public Meetings Law, Oregon's public meetings law. The claimant, the claimant's attorney, the lawyer or the lawyer's attorney may attend meetings and, at the discretion of the chair, present their respective positions on a claim.

6.8 These Rules shall apply to all claims pending at the time of their enactment.

6.9 The Administrator shall prepare an annual report to the membership of the Bar and may from time to time issue press releases or other public statements about the Fund and awards that have been made. The annual report and any press releases and other public statements shall include the name of the lawyer, the amount of the award, the general nature of the claim, the lawyer's status with the Bar, and whether any criminal action has been instituted against the lawyer for the conduct giving rise to the loss. If the claimant has
previously initiated criminal or civil action against the lawyer, the press release or public statement may also include the claimant’s name. The annual report, press release or other public statement may also include general information about the Fund, what claims are eligible for reimbursement, how the Fund is financed, and who to contact for information.
OREGON STATE BAR
Board of Governors Agenda

Meeting Date: September 8, 2017
Memo Date: June 22, 2017
From: MCLE Committee
Re: Child Abuse Reporting and Elder Abuse Reporting credit requirements

Action Recommended

Approve the Committee’s recommendation to combine the child abuse reporting and elder abuse reporting credit requirements into a single one-hour program. The program would include discussion of the differences between the two types of abuse, an Oregon lawyer’s obligations to report the abuse and the exceptions to reporting.

Background

During the 1999 Legislative Session, the legislature passed HB 2998, which required active Oregon lawyers to complete one hour of training every three years on their duty to report child abuse. The law became effective July 1, 2000. Beginning with the reporting period ending 12/31/2000, all active members were required to complete 1.0 child abuse reporting credit in each reporting period.

During the 2013 Legislative Session, House Bill 2205 was passed. Among other changes, Section 5 of HB 2205 amended ORS 124.050 to add lawyers to the list of mandatory reporters for elder abuse. Section 7 of HB 2205 amended the mandatory child abuse reporting training requirement set forth in ORS 9.114 to remove the details of the training requirement from the statute but required the Oregon State Bar to “…adopt rules to establish minimum training requirements for all active members of the bar relating to the duties of attorneys under ORS 124.060 and 419B.010.” The amendments to HB 2205 became effective January 1, 2015.

The rules establishing minimum training requirements must be approved by the Supreme Court. In April 2014, the Court approved the following amendments to the MCLE Rules. These amendments became effective January 1, 2015.

Rule 3.2 (b) Ethics. At least six of the required hours shall be in subjects relating to ethics in programs accredited pursuant to Rule 5.5(a), including one hour on the subject of a lawyer’s statutory duty to report child abuse (see ORS 9.114) 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.

Rule 3.2(c) 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). For purposes of this rule, the first reporting period that may be
skipped will be the one ending on December 31, 2009.¹

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 (including one in child abuse reporting).

(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 (including one in child abuse reporting), and ten credit hours in practical skills. New admittees admitted prior to December 31, 2008 must also complete one access to justice credit in their first reporting period. New admittees admitted on or after January 1, 2009 must also complete a three credit hour OSB-approved introductory course in access to justice. The MCLE Administrator 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.

3.5 Out-of-State Compliance.

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

MCLE Regulation 3.300(d) specifies the reporting periods in which the child abuse or elder abuse reporting credit is required.

5.5 Ethics and Access to Justice.

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

¹ Reference to past date was deleted for housekeeping purposes.
² References to past dates were deleted for housekeeping purposes.
accredited program. MCLE Regulation 3.300(d) specifies the reporting periods in which the child abuse or elder abuse reporting credit is required.

After the above-referenced rule amendments were approved by the Court, the following regulations were also amended.

Regulation Amendments

3.260 Reciprocity. An active member who is also an active member whose principal office for the practice of law is in a jurisdiction with which Oregon has established MCLE reciprocity (currently, Idaho, Utah or Washington) may comply with Rule 3.5(a) by attaching to the compliance report required by MCLE Rule 7.1 a copy of the member’s certificate of compliance with the MCLE requirements from that jurisdiction of the state in which the member’s principal office is located, 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) specifies the reporting periods in which the child abuse or elder abuse reporting credit is required.

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

After this year’s reporting period ends on 12/31/2017, all active members in a three-year reporting period (2015, 2016 and 2017) will have completed one elder abuse reporting credit.

Based on comments MCLE staff have received, members find this alternating requirement very confusing. Also, requiring separate stand-alone programs for each abuse reporting requirement is confusing and encourages people to think that the reporting obligations are more different than alike, which is not the case.

Therefore, the Committee recommends amending the rules and regulations to combine these reporting requirements into a single one-hour program. The program would meet the requirement set forth in ORS 9.114 and include discussion of the differences between child abuse and elder abuse, an Oregon lawyer’s obligations to report the abuse and the exceptions to reporting.

If the BOG agrees that these credit requirements should be combined into a single requirement, the rule and regulation amendments, which could be effective on January 1, 2018, are set forth below.
Proposed Rule Amendments

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 5.13(a).

(c) Child Abuse or Elder Abuse Reporting. 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 and 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 5.13(c).

3.4 Out-of-State Compliance.

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

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

5.13 Ethics, Child and Elder Abuse Reporting 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 Child and elder abuse reporting programs must be devoted to the lawyer’s statutory duty to report child abuse or and 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.

Proposed Regulation Amendments

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 3.4(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 a child and elder abuse reporting training required in ORS 9.114. No other information about program attendance is required. MCLE Regulation 3.300(d) specified the reporting periods in which the child abuse or elder abuse reporting credit is required.

3.300 Application of Credits.

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

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

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

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

5.600 Child and Elder Abuse Reporting. In order to be accredited as a child abuse reporting or elder abuse a child and elder abuse reporting activity, the one-hour session must include discussion of an Oregon attorney’s requirements to report child abuse and elder abuse and the exceptions to those requirements.

6.100 Carry Over Credit. No more than six ethics credits can be carried over for application to the subsequent reporting period requirement. Ethics credits in excess of the carry over limit may be carried over as general credits. Child abuse and elder abuse education credits earned in excess of the reporting period requirement may be carried over as general credits, but a new child abuse or elder abuse reporting education credit must be earned in each reporting period in which the credit is required. Access to justice credits may be carried over as general credits, but new credits must be earned in the reporting period in which they are required. Carry over credits from a reporting period in which the credits were completed by the member may not be carried forward more than one reporting period.
President Michael Levelle called the meeting to order at 12:25 p.m. on September 22, 2017. The meeting adjourned at 1:55 p.m. Members present from the Board of Governors were John Bachofner, Jim Chaney, Chris Costantino, Eric Foster, Rob Gratchner, Ray Heysell, John Mansfield, Eddie Medina, Vanessa Nordyke, Tom Peachey, Kathleen Rastetter, Liani Reeves, Julia Rice, Traci Rossi, Kerry Sharp and Elisabeth Zinser. Not present were Guy Greco, and Per Ramfjord. Staff present were Helen Hierschbiel, Amber Hollister, Rod Wegener, Dawn Evans, Susan Grabe and Camille Greene.

1. Call to Order

Mr. Levelle called the meeting to order.

2. Board Development Committee

In Mr. Ramfjord’s absence, Ms. Costantino presented the committee’s recommendations for the Disciplinary Board Appointments.

Motion: The board voted unanimously to approve the committee recommendations as presented by the Board Development Committee: Faith Morse (Region 3), Amy Bilyeu and Jill Tanner (Region 5), Charlie Van Rossen (Public Member), and Tawnya Stiles-Johnson (Region 7). The motion passed.

3. Budget & Finance Committee - 2018 Budget

Mr. Chaney asked Mr. Wegener to update the board on the Budget & Finance Committee’s proposed budget for 2018. The Budget & Finance Committee will present the final budget to the board for approval on November 18, 2017. Mr. Chaney reported the Committee discussion regarding the Client Security Fund Committee’s recommendation that the CSF assessment be reduced by $5 beginning in 2018.

Motion: Mr. Bachofner moved, Mr. Peachey seconded, and the board voted unanimously to reduce the annual Client Security Fund assessment from $15 to $10 beginning in 2018. The motion passed.

4. Approve 2017 HOD Agenda

Mr. Levelle presented the preliminary HOD agenda.

Ms. Rice moved, Mr. Peachey seconded, and the board voted unanimously to reorder the HOD agenda items to place the In Memoriam and Veterans Day resolutions at the end of the agenda.

Mr. Levelle asked for volunteers to present the In Memoriam and Veterans Day resolutions. Mr. Chaney volunteered to present the Veteran's Day resolution. Mr. Peachey, Ms. Rastetter, and Mr. Bachofner volunteered to present the In Memoriam resolution.
Mr. Levelle asked whether any of the four delegate resolutions should be excluded from the HOD agenda and whether the board wanted to take a position in support of or opposition to any of the delegate resolutions.

The board agreed by consensus to support Delegate Resolution #1 re: Adequate Funding for Legal Services.

Motion: Ms. Nordyke moved, Mr. Peachey seconded, and the board voted unanimously to exclude Delegate Resolution #2 re: “CLE Credit for HOD Delegates” from the HOD agenda because the resolution asks the board to do something that is outside of its authority. The motion passed.

Motion: Mr. Foster moved, Ms. Zinser seconded, and the board voted to oppose Delegate Resolution #3 re: “Study the PLF Program Flat Per Capita Rate Structure.” Mr. Bachofner, Mr. Chaney and Mr. Peachey abstained. The motion passed.

Motion: Mr. Mansfield moved, Ms. Rastetter seconded, to exclude Delegate Resolution #4 re: “Give Members the Right to Redirect Funds Directed for Them to LRAP” from the HOD agenda based on Keller issues. After lengthy discussion, the board voted 7 in favor and 8 opposed to the motion to remove the resolution from the HOD agenda. In favor: Ms. Rastetter, Mr. Mansfield, Ms. Rice, Ms. Costantino, Mr. Medina, Mr. Chaney, and Ms. Zinser. Opposed: Mr. Gratchner, Ms. Rossi, Ms. Reeves. Mr. Foster, Ms. Nordyke, Mr. Sharp, Mr. Bachofner, and Mr. Peachey. The motion was defeated.

Mr. Bachofner will present the BOG’s position of opposition to Delegate Resolution #4 at the HOD meeting.

Motion: Ms. Rastetter moved, Mr. Mansfield seconded, and the board voted unanimously to adopt the preliminary HOD agenda as presented. [Exhibit A]

Mr. Levelle announced that the Nominating Committee had not yet decided its candidate for the 2018 President-elect but would be continuing its deliberations that afternoon.
Oregon State Bar
2017 House of Delegates Meeting
Oregon State Bar Center
16037 SW Upper Boones Ferry Road
Tigard, Oregon 97224
503.620.0222
Friday, November 3, 2017
10:00 a.m.

Dear Oregon State Bar Member:

I am pleased to invite you to the 2016 OSB House of Delegates meeting, which will begin at 10:00 a.m. on Friday, November 3, 2017, at the Oregon State Bar Center.

I am pleased to report that the Board of Governors is not requesting an increase in the annual membership fee for 2017. The preliminary agenda for the meeting includes proposed amendments to the rules of professional conduct. Other items on the meeting agenda are the annual recognition of deceased members and honoring of veterans and service personnel, and resolutions to support adequate funding for low-income legal services and public defense providers.

All bar members are welcome and encouraged to participate in the discussion and debate of HOD agenda items, but only delegates may vote on resolutions. If you are unable to attend, please contact one of your delegates to express your views on the matters to be considered. Delegates are listed on the bar’s website at www.osbar.org/_docs/leadership/hod/hodroster.pdf.

If you have questions concerning the House of Delegates meeting, please contact Camille Greene, Executive Assistant by e-mail at cgreene@osbar.org or by phone at 503-431-6386, toll free inside Oregon at 800-452-8260 ext 386.

Remember that delegates are eligible for reimbursement of round-trip mileage to and from the HOD meeting. Reimbursement is limited to 400 miles and expense reimbursement forms must be submitted within 30 days after the meeting.

I look forward to seeing you at the HOD Meeting on November 3, and I thank you in advance for your thoughtful consideration and debate of these items.

[Signature]

Michael Levelle, OSB President
OREGON STATE BAR
2017 House of Delegates Meeting AGENDA
Oregon State Bar Center, 16037 SW Upper Boones Ferry Road, Tigard, Oregon 97224
10:00 a.m., Friday, November 3, 2017
Presiding Officer: Michael Levelle, OSB President

Reports

1. Call to Order
   Michael Levelle
   OSB President

2. Adoption of Final Meeting Agenda
   Michael Levelle
   OSB President

3. Report of the President
   Michael Levelle
   OSB President

4. Report on behalf of the Chief Justice of the Oregon Supreme Court
   Hon. Rives Kistler, Justice
   Oregon Supreme Court

5. Report of the Board of Governors Budget and Finance Committee & Notice of 2018 Annual Fees
   Jim Chaney, Chair
   BOG Budget & Finance Committee

6. Overview of Parliamentary Procedure
   Alice Bartelt, Parliamentarian

Resolutions

7. In Memoriam
   (Board of Governors Resolution No. 1)
   Tom Peachey, BOG, Region 1
   Guy Greco, BOG, Region 4
   Chris Costantino, BOG, Region 5

8. Veterans Day Remembrance
   (Board of Governors Resolution No. 2)
   Jim Chaney, BOG, Region 2

9. Amendment to ORPC 5.4(a)(5) and 7.2(b)(2)
   re: Professional Independence of a Lawyer, and Advertising
   (Board of Governors Resolution No. 3)
   Amber Hollister, OSB General Counsel

10. Amendment to ORPC 7.3 re: Solicitation of Clients
    (Board of Governors Resolution No. 4)
    Amber Hollister, OSB General Counsel

11. Amendment to ORPC 8.3 re: Reporting Professional Misconduct
    (Board of Governors Resolution No. 5)
    Amber Hollister, OSB General Counsel

12. Support for Adequate Funding for Legal Services to Low-Income Oregonians
    (Delegate Resolution No. 1)
    Kathleen Evans, HOD, Region 6
    Ed Harnden, HOD, Region 5
    Ross Williamson, HOD, Region 2

13. CLE Credit for HOD Delegates
    (Delegate Resolution No. 2)
    Danny Lang, HOD, Region 3

14. Study the PLF Program Flat Per Capita Rate Structure
    (Delegate Resolution No. 3)
    John Gear, HOD, Region 6

15. Give Members the Right to Redirect Funds Directed for Them to LRAP
    (Delegate Resolution No. 4)
    John Gear, HOD, Region 6
7. In Memoriam  
(Board of Governors Resolution No. 1)

Resolved, That the OSB House of Delegates and members assembled stand for a moment of silence in honor of the members of the Oregon State Bar who have died since the 2016 House of Delegates Meeting.

John D. Albert  
Richard D. Barber  
Melvin J. Beck  
John W. Billington  
William D. Brewer  
Sid Brockley  
Melinda J. Davison  
Richard Egner  
Charles S. Evans  
Walter H. Evans  
William O. Geny  
Clarence H. Greenwood  
Dale M. Harlan  
Isaac R. Jackson  
Henry Kane  
Hon. William L. Lasswell  
Richard D. Lee  
Hon. Michael H. Marcus  
James E. McCobb  
Deborah J. Mitchell  
Daryl M. Pulley  
Garret L. Romaine  
Sheldon I. Rubin  
Robert J. Smith  
Harold A. Snow  
Katherine S. Somervell  
Robert E. Thompson  
James L. Wolfe  
Denny Z. Zikes

Presenters:  
Tom Peachey, BOG, Region 1  
Guy Greco, BOG, Region 4  
Chris Costantino, BOG, Region 5

8. Veterans Day Remembrance  
(Board of Governors Resolution No. 2)

Whereas, Military service is vital to the perpetuation of freedom and the rule of law; and

Whereas, Thousands of Oregonians have served in the military, and many have given their lives; now, therefore, be it

Resolved, That the Oregon State Bar hereby extends its gratitude to all those who have served and are serving in the military, and further offers the most sincere condolences to the families and loved ones of those who have died serving their country.

Presenter: Jim Chaney  
Board of Governors, Region 2

9. Amendment to ORPC 5.4(a)(5) and 7.2(b)(2) re: Professional Independence of a Lawyer, and Advertising  
(Board of Governors Resolution No. 3)

Whereas, the Board of Governors has formulated the following amendment to the Oregon Rules of Professional Conduct pursuant to ORS 9.490(1); and

Whereas, the Oregon State Bar House of Delegates must approve any changes in the rules of professional conduct before they are presented to the Oregon Supreme Court for adoption pursuant to ORS 9.490(1); now, therefore, be it

Resolved, that the amendment of Oregon Rule of Professional Conduct 5.4(a)(5) and 7.2(b)(2) as set forth below is approved and shall be submitted to the Oregon Supreme Court for adoption:

RULE 5.4 PROFESSIONAL INDEPENDENCE OF A LAWYER
(a) A lawyer or law firm shall not share legal fees with a nonlawyer, except that:

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

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

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

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

(5) a lawyer may pay the usual charges of a bar-sponsored or operated not-for-profit lawyer-referral service, including sharing legal fees with the service, only if:

(i) the lawyer communicates to the client in writing at the outset of the representation the amount of the charge and the manner of its calculation, and

(ii) the total fee for legal services rendered to the client combined with the amount of the charge would not be a clearly excessive fee pursuant to Rule 1.5 if it were solely a fee for legal services, including fees calculated as a percentage of legal fees received by the lawyer from a referral.

(b) A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law.

(c) A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer’s professional judgment in rendering such legal services.

(d) A lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for a profit, if:

(1) a nonlawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration;

(2) a nonlawyer is a corporate director or officer thereof or occupies the position of similar responsibility in any form of association other than a corporation, except as authorized by law; or

(3) a nonlawyer has the right to direct or control the professional judgment of a lawyer.

(e) A lawyer shall not refer a client to a nonlawyer with the understanding that the lawyer will receive a fee, commission or anything of value in exchange for the referral, but a lawyer may accept gifts in the ordinary course of social or business hospitality.

**RULE 7.2 ADVERTISING**

(a) Subject to the requirements of Rules 7.1 and 7.3, a lawyer may advertise services through written, recorded, or electronic communication, including public media.
(b) A lawyer shall not give anything of value to a person for recommending the lawyer’s services except that a lawyer may:

1. pay the reasonable costs of advertisements or communications permitted by this Rule;
2. pay the usual charges of a legal service plan or a lawyer-referral service in accordance with Rule 5.4; and
3. pay for a law practice in accordance with Rule 1.17.

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

Financial Impact

None stated.

Presenter: Amber Hollister
OSB General Counsel

10. Amendment to ORPC 7.3 re: Solicitation of Clients
(Board of Governors Resolution No. 4)

Whereas, The Board of Governors has formulated the following amendment to the Oregon Rules of Professional Conduct pursuant to ORS 9.490(1);

Whereas, The Oregon State Bar House of Delegates must approve any changes in the rules of professional conduct before they are presented to the Oregon Supreme Court for adoption pursuant to ORS 9.490(1); now, therefore, be it

Resolved, that the amendment of Oregon Rule of Professional Conduct 7.3 as set forth below is approved and shall be submitted to the Oregon Supreme Court for adoption:

RULE 7.3 SOLICITATION OF CLIENTS

(a) A lawyer shall not by in-person, live telephone or real-time electronic contact solicit professional employment by any means if when a significant motive for the lawyer’s doing so is the lawyer’s pecuniary gain, unless the person contacted:

1. is a lawyer, or
2. has a family, close personal, or prior professional relationship with the lawyer.

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

(a) (1) the lawyer knows or reasonably should know that the physical, emotional or mental state of the person who is the target subject of the solicitation is such that the person could not exercise reasonable judgment in employing a lawyer;
(b) (2) the person who is the subject target of the solicitation has made known to the lawyer a desire not to be solicited by the lawyer; or
(c) (3) the solicitation involves coercion, duress or harassment.
(c) Notwithstanding the prohibitions in paragraph (a), a lawyer may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer that uses in-person or telephone contact to solicit memberships or subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan.

Financial Impact

None stated.

11. Amendments to ORPC 8.3 re: Reporting Professional Misconduct
(Board of Governors Resolution No. 5)

Whereas, The Board of Governors has formulated the following amendment to the Oregon Rules of Professional Conduct pursuant to ORS 9.490(1);

Whereas, The Oregon State Bar House of Delegates must approve any changes in the rules of professional conduct before they are presented to the Oregon Supreme Court for adoption pursuant to ORS 9.490(1); now, therefore, be it

Resolved, that the amendment of Oregon Rule of Professional Conduct 8.3 as set forth below is approved and shall be submitted to the Oregon Supreme Court for adoption:

RULE 8.3 REPORTING PROFESSIONAL MISCONDUCT

(a) A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects shall inform the Oregon State Bar Client Assistance Office.

(b) A lawyer who knows that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge’s fitness for office shall inform the appropriate authority.

(c) This rule does not require disclosure of information otherwise protected by Rule 1.6 or ORS 9.460(3), or apply to lawyers who obtain such knowledge or evidence while:

1. acting as a member, investigator, agent, employee or as a designee of the State Lawyers Assistance Committee;

2. acting as a board member, employee, investigator, agent or lawyer for or on behalf of the Professional Liability Fund or as a Board of Governors liaison to the Professional Liability Fund; or

3. participating in the loss prevention programs of the Professional Liability Fund, including the Oregon Attorney Assistance Program.

(d) This rule does not require disclosure of mediation communications otherwise protected by ORS 36.220.

Financial Impact

None stated.
12. Support of Adequate Funding for Legal Services for Low-Income Oregonians
(Delegate Resolution No. 1)

Whereas, providing equal access to justice and high quality legal representation to all Oregonians is central to the mission of the Oregon State Bar;

Whereas, equal access to justice plays an important role in the perception of fairness of the justice system;

Whereas, programs providing civil legal services to low-income Oregonians is a fundamental component of the Bar’s effort to provide such access;

Whereas, since 1998, pursuant to ORS 9.575, the Oregon State Bar has operated the Legal Services Program to manage and provide oversight for the state statutory allocation for legal aid in accordance with the Bar’s Standards and Guidelines (which incorporate national standards for operating a statewide legal aid program);

Whereas, during the great recession the staffing for legal aid programs was reduced while the poverty population in Oregon increased dramatically, thus broadening “the justice gap” in Oregon;

Whereas, Oregon’s legal aid program currently has resources to meet about 15% of the civil legal needs of Oregon’s poor creating barriers to justice for low-income and vulnerable Oregonians in recent history;

Whereas, Oregon currently has 2 legal aid lawyers for every 17,000 low-income Oregonians, but the national standards for a minimally adequately funded legal aid program is 2 legal aid lawyers for every 10,000 low-income Oregonians;

Whereas, assistance from the Oregon State Bar and the legal community is critical to maintaining and developing resources that will provide low-income Oregonians meaningful access to the justice system; now, therefore, be it

Resolved, that the Oregon State Bar;

(1) Strengthen its commitment and ongoing efforts to improve the availability of a full range of legal services to all citizens of our state, through the development and maintenance of adequate support and funding for Oregon’s legal aid programs and through support for the Campaign for Equal Justice.

(2) Request that Congress and the President of the United States make a genuine commitment to equal justice by adequately funding the Legal Services Corporation, which provides federal support for legal aid.

(3) Work with Oregon’s legal aid programs and the Campaign for Equal Justice to preserve and increase state funding for legal aid and explore other sources of new funding.

(4) Actively participate in the efforts of the Campaign for Equal Justice to increase contributions by the Oregon legal community, by establishing goals of a 100% participation rate by members of the House of Delegates, 75% of Oregon State Bar Sections contributing $50,000, and a 50% contribution rate by all lawyers.

(5) Support the Oregon Law Foundation and its efforts to increase resources through the interest on Lawyers Trust Accounts (IOLTA) program, and encourage Oregon lawyers to bank at OLF Leadership Banks that pay the highest IOLTA rates.

(6) Support the Campaign for Equal Justice in efforts to educate lawyers and the community about the legal needs of the poor, legal services delivery and access to justice for low-income and vulnerable Oregonians.

(7) Encourage Oregon lawyers to support civil legal services programs through enhanced pro bono work.

(8) Support the fundraising efforts of those nonprofit organizations that provide civil legal services to low-income Oregonians that do not receive funding from the Campaign for Equal Justice.

Presenters:
13. CLE Credit for HOD Delegates
   (Delegate Resolution No. 2)

Whereas, Members of the House of Delegates, who are also Members of the Oregon State Bar, have and continue to generously donate travel time, preparation, and participation at the Annual Meeting of the House of Delegates;

Whereas, the foregoing voluntary contribution by Delegates, on behalf of the Membership in General, benefits all Members of the Oregon State Bar;

Whereas, Delegates, who participate by attending the Annual HOD Meeting, voluntarily contribute time that Delegates could otherwise devote to Professional Practice, Community Service, or other Personal Interests;

Whereas, the Annual HOD Meeting provides a forum that includes presentations by the Chief Justice of the Oregon Supreme Court [Report of the Judicial Branch]; President of the Oregon State Bar; Executive Director of the Oregon State Bar and Members of the Board of Governors;

Whereas, such Presentations, and Debate of Agenda Items, address past, present, and future significant issues, practices, and policies have substantial Professional Legal Educational Value;

Whereas, in prior years Delegates attending Annual HOD Meetings were courteously provided with a complimentary CLE Program [i.e. scheduled earlier on the morning of the HOD Meeting]; which, provided both a benefit and incentive for attendance needed to ensure a Quorum; now, therefore, be it;

Resolved, that the House of Delegates recommend that the Board of Governors provide Delegates, who are Members of the Oregon State Bar, a “CLE Credit for an appropriate amount of hours” in consideration of the Educational Value derived from attending the Annual House of Delegates Meeting.

Financial Impact

None stated.

Presenter: Danny Lang, HOD, Region 3

14. Study the Professional Liability Fund Program Flat Per Capita Rate Structure
   (Delegate Resolution No. 3)

Whereas, the flat-rate, per-capita Professional Liability Fund assessment ignores differences in payout risks across attorney practice areas, practice volume (full- vs. part-time vs. occasional practice), firm revenue and case size, and clientele (such as attorneys serving clients with modest means for small cases);

Whereas, the current PLF fee structure may be creating a barrier to newer lawyers, lawyers who primarily serve the poor with low-value but very real problems of poverty, and lawyers who would like to maintain a reduced caseload without sacrificing the ability to remain in private practice; now, therefore, be it;

Resolved, that the Board of Directors shall form a committee to carefully survey the entire PLF-paying bar membership and study the effects of the current PLF rate structure on new lawyers, lawyers who predominantly serve low-income clientele, lawyers who wish to reduce their caseloads while remaining in active practice and quantify the cost-benefit ratio of the PLF assessment on each income quintile of the bar’s members who pay into the PLF.
Pursuant to OSB Bylaw Section 3.3, the OSB Board of Governors provides the following financial impact statement:

(Staff will provide the financial impact estimate.)

15. Give Members the Right to Redirect Funds Currently Directed for them to the Loan Repayment Assistance Program (LRAP)  
(Delegate Resolution No. 4)

Whereas, the Loan Repayment Assistance Program offers a select few attorneys who are employed in public service positions a series of forgivable loans of up to $22,500 to reduce their student loan debts;

Whereas, attorneys eligible for LRAP typically do not pay their own Professional Liability Fund premium or are not required to carry it at all (government service exemption); do not pay their own bar dues in may instances; and hold steady, gainful employment with good to excellent benefits;

Whereas, the funds for LRAP are provided by all attorney members of OSB;

Whereas, many attorneys ineligible for LRAP have the same student loan debt loads, pay their own annual PLF premium, their own bar dues, and have no employment benefits or salary;

Whereas, there are attorneys ineligible for LRAP who are earning so little that they are eligible for SNAP (“food stamp”) benefits and who are working non-law jobs just to earn the money to pay bar dues and PLF assessments; now, therefore, be it;

Resolved, the Board of Directors shall either discontinue the LRAP or develop a program by which each bar member can designate whether they want their share of the LRAP grants to be used for that purpose or to designate instead a particular grant recipient whose work increases access to justice in Oregon (such as the Northwest Workers Justice Project, the ACLU, the NAACP Legal Defense Fund, the Institute for Justice, etc.)

Financial Impact

None stated.  

Presenter:  
John Gear, HOD, Region 6

Pursuant to OSB Bylaw Section 3.3, the OSB Board of Governors provides the following financial impact statement:

(Staff will provide the financial impact estimate.)
President Michael Levelle called the meeting to order at 4:32 PM on October 10, 2017. The meeting adjourned at 4:55 PM. Members present from the Board of Governors were John Bachofner, Jim Chaney, Chris Costantino, Eric Foster, Guy Greco, Ray Heysell, Eddie Medina, Vanessa Nordyke, Tom Peachey, Per Ramfjord, Kathleen Rastetter, Liani Reeves and Elisabeth Zinser. Not present were Rob Gratchner, John Mansfield, Julia Rice, Traci Rossi and Kerry Sharp. Staff present were Helen Hierschbiel, Amber Hollister, Susan Grabe and Camille Greene.

1. Call to Order

Mr. Levelle called the meeting to order.

2. Consider BOG Resolution on HOD Agenda

Mr. Levelle asked Ms. Hierschbiel to present, for board discussion, the letter from the Oregon Trial Lawyers Association (OTLA), which included a request that the Board remove from the HOD agenda its resolution to amend RPC 5.4(a)(5) and RPC 7.2(b)(2).

Ms. Hierschbiel summarized the origin and purpose of the resolution—as set forth in the Futures Task Force Report—as well as conversations with OTLA members in September, during which they expressed concerns as outlined in their letter to the BOG. Ms. Hierschbiel noted that there were three options for the BOG to consider: remove the resolution from the agenda; develop an amendment to the resolution that would send the matter back for further study, or; leave the item on the agenda. Removing the resolution or amending it would require action by the BOG.

Members discussed the OTLA letter and resolution and noted that consumer protections exist within the rule as proposed and additional protections can be explored through avenues such as formal ethics opinions. There was no motion to remove or amend the resolution.

Mr. Levelle ended the meeting.
President Michael Levelle called the meeting to order at 9:00 AM on November 1, 2017. The meeting adjourned at 10:09 AM. Members present from the Board of Governors were John Bachofner, Jim Chaney, Eric Foster, Guy Greco, Ray Heysell, Eddie Medina, Vanessa Nordyke, Tom Peachey, Per Ramfjord, Kathleen Rastetter, Julia Rice, Kerry Sharp, Whitney Boise, and Elisabeth Zinser. Not present were Chris Costantino, Rob Gratchner, John Mansfield, Liani Reeves, and Traci Rossi. Staff present were Helen Hierschbiel, Amber Hollister, Dawn Evans, Susan Grabe and Camille Greene.

1. Call to Order

Mr. Levelle called the meeting to order.

2. Discuss House of Delegates Meeting

Mr. Levelle asked Ms. Hierschbiel to present, for board discussion, feedback to the board re: the HOD agenda resolution to amend RPC 5.4(a)(5) and RPC 7.2(b)(2). Ms. Hierschbiel reported that since the last meeting, the bar had received a public records request, seeking records of conflicts of interest for those involved in the Futures Task Force. In addition, the current president of the Oregon Trial Lawyers Association Greg Zeuthen sent an email to Michael Levelle, stating that OTLA members had expressed concerns about staff presenting about the Futures Task Force at an out of state conference. Ms. Hierschbiel also noted the numerous emails that OTLA members had sent to the HOD delegates expressing their concerns about BOG Resolutions 7 and 8. Finally, some board members had expressed concerns to her about moving forward with the resolutions. In light of these events, Ms. Hierschbiel asked the board if they are still comfortable moving forward with the resolutions versus moving to amend to study further.

The Board members discussed the advantages and disadvantages of moving forward with the resolutions versus moving to amend to study further.

Mr. Bachofner suggested that the Board present the resolutions in a more neutral way and state that in light of all the feedback, the BOG would entertain a motion by the HOD to table the resolution for further review by the BOG.

Ms. Rice related that the feedback she received is that the BOG is not listening, and that the BOG should present a message that shows it is listening. Ms. Zinser noted that this is a wonderful opportunity to build trust.

Mr. Levelle reminded BOG members that the work of the Futures Task Force has been highly publicized and not hidden. He would like to hear a discussion of the recommendations at the HOD.
Mr. Foster and Mr. Medina concurred with wanting to hear the HOD discussion, but also agree that the message to the HOD should be that we hear you and the concerns raised and we are not opposed to studying the issues further.

Mr. Peachey stated he is not in favor of removing the resolutions from the HOD agenda, but rather hearing the arguments from the HOD.

Mr. Bachofner feels that in order to maintain a good relationship with HOD members, the resolutions must be considered and voted upon and not amended for further study.

Mr. Sharp said the HOD is more focused on discussing the process than the merits of the RPC change. He prefers we let the resolution proceed as usual with discussion and a vote. Ms. Rastetter agreed.

Ms. Nordyke also supports leaving the resolutions on the agenda, hopes there is a robust debate, and is comfortable with the vote determining the outcome and future board action. She is in favor of building trust with the members of the bar in general and the HOD members specifically.

Mr. Levelle asked if any board member wanted to make a motion to amend the resolution, but there was no interest in doing so. Mr. Chaney volunteered to present Resolutions 7 and 8 at the HOD meeting.

3. Appellate Screening committee Recommendations

Mr. Ramfjord presented the Appellate Screening Committee’s recommendation to forward to the Governor’s Office the following list of “Highly Qualified” candidates for the Oregon Tax Court:

Boomer, Allison
Manicke, Robert
Rastetter, Kathleen

Ms. Rastetter recused herself from the discussion, declared her conflict of interest, and abstained from voting.

Mr. Ramfjord presented the Appellate Screening Committee’s recommendation to forward to the Governor’s Office the following list of “Highly Qualified” candidates for the Oregon Supreme Court:

Allen, Beth
Cook, Nena
Kasubhai, Mustafa
Lageson, Erin
Nelson, Adrienne
Ortega, Darleen
Runkles-Pearson, P.K.
Shorr, Scott
Tookey, Douglas
Motion: Pursuant to OSB Bylaw 2.703, the Oregon State Bar Board of Governors voted to approve the Appellate Screening Committee’s recommendations for the list of candidates deemed “highly qualified” for appointment to the Oregon Tax Court and the Oregon Supreme Court, and to approve the letters as presented by the Appellate Screening Committee to the Governor’s office by the November 3rd deadline.

Ms. Rastetter declared a conflict and abstained from the discussion and vote. Ms. Reeves took no part in the discussion or consideration of any judicial candidates, and was not present for the vote.

Mr. Levelle will sign the letters prepared by Ms. Grabe for mailing by Friday, November 3, 2017.

Mr. Levelle ended the meeting.
September 19, 2017

Hon. Thomas A. Balmer  
Chief Justice, Oregon Supreme Court  
Supreme Court Building  
1163 State Street  
Salem, OR 97301

Chief Justice Balmer,

On behalf of the OSB Board of Governors, I’d like to thank you for your thoughtful response to our comments on the proposed fee structure for OJCIN. I know that we both share the goal of ensuring that Oregon eCourt improves access to justice for all Oregonians, and I appreciate all of the work you have done to help make that a reality.

I hope that during the next budget cycle it will be possible for the Bar and the courts to work together to help see to it that eCourt is funded fully, and sustainably, and in a manner that promotes our shared goals.

Thank you again for your efforts this past session and, I look forward to continuing this work with bar and yourself in the years to come.

Sincerely,

Michael Levelle  
President, Oregon State Bar
September 11, 2017

Michael D. Levelle, President
Kathleen J. Rastetter, Public Affairs Chair
Oregon State Bar

_Sent by e-mail only_

Dear Michael and Kathi:

Thank you for forwarding the Board of Governors’ comments on the proposed fee structure for the Oregon Judicial Case Information Network (OJCIN). I appreciate the Bar’s long-standing support for access to justice, for developing and operating Oregon eCourt, and for the constructive and collaborative way the Bar – and our many other stakeholders – worked together to implement eCourt. A critical part of funding the continuing operation of Oregon eCourt is OJD’s State Court Technology Fund, including fees for accessing some features of Oregon eCourt, as authorized by the legislature during the 2017 session.

For that reason, I wanted to respond to your comments about the fee structure that we proposed earlier this summer and summarize some of the changes that we made based on the diverse comments we received from Oregon eCourt users across the state.

For the 2017-19 biennium, the Bar suggested that OJD adopt temporary fees to allow development of a usage-based fee system, review the proposed fee structure for disproportionate impact on sole practitioners and small law firms, and appoint a joint OJD/Bar work group to develop a usage-based fee structure. On a longer-term basis, you asked that OJD request the legislature to impose separate assessments on state agencies and on local government to pay for public users and to implement a permanent usage-based fee structure.

On the BOG’s longer-term goals, I have authorized OJD staff to develop 2018 legislation that would direct OJD to work with the Department of Administrative Services to develop a state agency assessment to support OJCIN access by state agencies. Unfortunately, the concept of a state agency assessment arose too late to be included in the 2017-19 state budget development process, but I support having one in place for the next budget cycle.

In addition, I believe we already have successfully implemented the spirit of another of your suggestions, which was asking the legislature to institute an assessment on cities and counties for each convicted offense to support OJCIN usage by local government entities. The 2017 legislature increased violation fines and transferred the increased fine amount on violation...
convictions in state and local courts to OJD’s Technology Fund. I hope you agree that this is a better solution than a separate assessment on convictions, which would run counter to the streamlining of fees and fines accomplished in 2010 and 2011 following work by the Bar, OJD, and an interim legislative committee.

In the final Chief Justice Order on fees, effective September 1, we have limited the fee increase for sole practitioners to $5 per month, significantly less than the proposed increase of $15 per month.

Although I share your goal of developing a usage-based fee system for OJCIN in 2017-19, our current technology does not allow us to do that. We continue to work with our technology vendor to develop the capacity to measure system usage, and would be pleased to work with you when that capacity becomes available.

The final fee structure does retain some usage-based characteristics, by continuing the usage-based fees paid by OJCIN customers if they were greater than the proposed fixed-rate fee – primarily businesses that need access to OJCIN data, such as title and debt collection companies. In other words, dozens of users who paid usage-based fees for access to OJCIN’s predecessor system – OJIN – will continue to pay fees based on that usage level, instead of receiving sometimes-significant reductions – unless and until they demonstrate a change in usage.

Again, I appreciate the Bar’s ongoing willingness to support OJD and its technology systems, which not only make court operations more efficient, but also increase access to justice and provide significant convenience and cost-saving for attorneys.

Sincerely,

Thomas A. Balmer
Chief Justice

ecce: Kingsley Click, OJD
Phil Lemman, OJD
Helen Herschbiel, OSB
Susan Grabe, OSB
Camille Greene, OSB
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<tr>
<th>Date</th>
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<td>January 5</td>
<td>BOG / MBA Reception w/ Specialty Bars</td>
<td>River’s Edge Hotel (Aquariva)</td>
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<td>January 6</td>
<td>BOG Committee Meetings</td>
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<td>January 6</td>
<td>OSB Employee Luncheon</td>
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<td>January 16</td>
<td>Dr. Martin Luther King Breakfast**</td>
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<td>February 1-7</td>
<td>ABA Midyear</td>
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<td>PLF Board Meeting</td>
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<td>BOG Lunch w/ Courts &amp; Pres. Reception</td>
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<td>BOG Meetings</td>
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<td>CEJ Annual Awards Lunch**</td>
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<td>February 21-22</td>
<td>Bar Exam</td>
<td>Holiday Inn – Portland Airport</td>
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<td>March 10 17</td>
<td>BOG Committee Meetings</td>
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<td>March 10 17</td>
<td>50-Year Luncheon</td>
<td>Tualatin Country Club</td>
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<td>March 10 17</td>
<td>OWLs Roberts-Deiz Awards Dinner**</td>
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<td>March 15-17</td>
<td>ABA BLI</td>
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<td>March 29 – April 1</td>
<td>WSBC</td>
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<td>BOG Board Meeting w/ PLF Board</td>
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<td>April 25-27</td>
<td>ABA Day in WA, D.C.</td>
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<td>CLP Legal Citizen of the Year Award Dinner**</td>
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<td>May 9</td>
<td>BOG Candidate Statements Due</td>
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<td>May 12</td>
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<td>BOG Alumni Dinner</td>
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<td>May 16</td>
<td>MBA Annual Dinner</td>
<td>Marriott Downtown Waterfront</td>
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<td>May 18</td>
<td>New Admittees Swearing In Ceremony*</td>
<td>Smith Auditorium – Willamette University</td>
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<td>May 20</td>
<td>SPRB Meeting</td>
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<td>May 31 – June 2</td>
<td>National Conference on Professional Responsibility</td>
<td>St. Louis, MO</td>
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<td>June 9</td>
<td>PLF Board Meeting – G.Greco liaison</td>
<td>Cannon Beach</td>
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<td>June 22-23</td>
<td>BOG Meetings /Local Bar Social</td>
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<td>July 25-26</td>
<td>Bar Exam</td>
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<td>July 27</td>
<td>OMLA Social/Auction**</td>
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<td>August 10-15</td>
<td>ABA Annual</td>
<td>New York, NY</td>
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<td>August 24</td>
<td>PLF Board Meeting – C.Costantino liaison</td>
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<td>September 7</td>
<td>BOG / ONLD Dinner &amp; Generative Discussion</td>
<td>OSB Center &amp; McCormick &amp; Schmick’s</td>
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<td>September 7</td>
<td>Hispanic Heritage Celebration Dinner**</td>
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<td>BOG Meetings</td>
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<td>September 15</td>
<td>Hispanic Heritage Month Breakfast**</td>
<td>Salem Convention Center</td>
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Updated 10/24/2017
September 19  | HOD Resolution Deadline  | Received by OSB
September 22 | BOG Committee & Special BOG Meeting  | OSB Center
September 28 | OAPABA Annual Dinner**  | Sentinal Hotel

October 5  | New Admittees Swearing In Ceremony  | Smith Auditorium – Willamette University
October 5  | ONAC Gathering Dinner & Auction  | Portland Exchange Ballrom
October 6  | 2017 District of Oregon Court Conference  | OMSI
October 10 | BOG Election Ballots Sent  | online voting only
October 11-12 | NWBC  | Salt Lake City, UT
October 13 | HOD Agenda Published  | Distributed by OSB
October 13 | CEJ Laf-Off (only in ODD years)  | Mission Theater
October 14 | SPRB Meeting  | OSB Center

October 17-19 | HOD Regional Meetings  | Various Locations
October 20 | PLF Board Meeting – K.Sharp liaison  | Ashland
October 20 | OGALLA Dinner & Silent Auction**  | Portland Art Museum
October 23 | BOG Ballots due to OSB by 5pm  | online voting only
October 26 | Pro Bono Fair*  | World Trade Center
October 27 | OWLs Workplace Leader CLE & Reception**  | Courtyard Marriott

November 3 | HOD Meeting  | OSB Center
November 8 | OSB Annual Awards Luncheon*  | Sentinel Hotel
November 17 | NAYA Auction & Gala**  | Portland Art Museum

November 16-18 | BOG Meetings & Retreat  | Cannon Beach

December 8 | PLF Board Meeting & Annual Dinner – G.Greco  | Tigard
December 9 | SPRB Meeting  | OSB Center

** indicates sponsored events which OSB Board members have made a commitment to attend.

2018 – Items in red do not have dates yet

January 4 | BOG / MBA Reception w/ Specialty Bars  | River’s Edge Hotel (Aquariva)
January 5 | BOG Committee Meetings  | OSB Center
January 5 | OSB Employee Luncheon  | OSB Center
January 15 | Dr. Martin Luther King Breakfast**  | Oregon Convention Center

January 31 - February 6 | ABA Midyear  | Vancouver, BC
February 22 | BOG Lunch w/ Courts & Pres. Reception  | Salem
February 23 | BOG Meetings  | Salem
February | Oregon Hispanic Bar Assoc. Dinner**  | The Benson Hotel, Portland
February | CEJ Annual Awards Lunch**  | Sentinel Hotel

March 16 | 50-Year Luncheon  | Tualatin Country Club
March | OWLs Roberts-Deiz Awards Dinner**  | Portland Art Museum
March 14-16 | ABA BLI  | Chicago, IL
March 21-23 | WSBC  | Santa Barbara, CA

April 19 | OSB BOG / PLF BOD Dinner  | TBD
April 20 | BOG Board Meeting w/ PLF Board  | OSB Center
April 10-12 | ABA Day in WA, D.C.  | WA, D.C.
April | CLP Legal Citizen of the Year Award Dinner**  | Sentinel (Governor) Hotel

May | BOG Candidate Statements Due  | For October Election
May 18 | BOG Committee Meetings  | OSB Center
May 18 | BOG Alumni Dinner  | TBD

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<td>ONAC Gathering Dinner &amp; Auction</td>
<td>Portland Exchange Ballroom</td>
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<tr>
<td>October 10-11</td>
<td>2018 District of Oregon Court Conference</td>
<td>OMSI</td>
</tr>
<tr>
<td>October 12</td>
<td>HOD Agenda Published</td>
<td>Tigard, OR</td>
</tr>
<tr>
<td>n/a</td>
<td>CEJ Laf-Off (only in ODD years)</td>
<td>Distributed by OSB</td>
</tr>
<tr>
<td>October 16-18</td>
<td>HOD Regional Meetings</td>
<td>Various Locations</td>
</tr>
<tr>
<td>October</td>
<td>OWLS Workplace Leader CLE &amp; Reception**</td>
<td>Courtyard Marriott</td>
</tr>
<tr>
<td>October</td>
<td>BOG Ballots due to OSB by 5pm</td>
<td>online voting only</td>
</tr>
<tr>
<td>October</td>
<td>OGALLA Dinner &amp; Silent Auction**</td>
<td>TBD</td>
</tr>
<tr>
<td>October or November</td>
<td>OSB Annual Awards Luncheon*</td>
<td>Sentinel Hotel</td>
</tr>
<tr>
<td>November 2</td>
<td>HOD Meeting</td>
<td>OSB Center</td>
</tr>
<tr>
<td>November</td>
<td>NAYA Auction &amp; Gala**</td>
<td>Portland Art Museum</td>
</tr>
<tr>
<td>November 15-17</td>
<td>BOG Meetings &amp; Retreat</td>
<td>Ashland</td>
</tr>
</tbody>
</table>

**BOG Meetings and Committee Meetings are in BOLD type.**

Events updated since last BOG meeting are highlighted in **yellow**.

* OSB Board members are encouraged to attend.

** indicates **sponsored** events which OSB Board members have made a commitment to attend.