Oregon State Bar
Meeting of the Board of Governors
April 20, 2018
Oregon State Bar Center
Tigard, OR
Open Session Agenda

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

The Open Session Meeting of the Oregon State Bar Board of Governors will begin at 12:00pm on April 20, 2018. Items on the agenda will not necessarily be discussed in the order as shown.

1. Call to Order & Finalization of Agenda [Ms. Nordyke]

2. Law School Deans
   A. Dean Bridgeman (WU)
   B. Dean Johnson (L&C)
   C. Nicole Commissiong, Assistant Dean for Student Affairs, for Dean Burke (UofO)

3. 2018 Strategic Areas of Focus
   A. New Lawyer Program Review Update [Ms. Costantino] Inform
   B. Futures Task Force Progress Report [Ms. Hierschbiel] Inform Exhibit
   C. Diversity Action Plan Implementation Update [Mr. Puente] Inform

4. BOG Committees, Special Committees, Task Forces and Study Groups
   A. Public Affairs Committee [Ms. Rastetter]
      1. Legislative Update & Law Improvement Package Preview Inform
      2. Standards of Practice – Attorneys Representing Child Welfare Agency Action Exhibit
      3. Non-Unanimous Guilty Verdicts in Felony Cases Action Exhibit
   B. Budget & Finance Committee [Mr. Wade]
      1. Investment Committee Report Inform
   C. Board Development Committee [Mr. Greco]
      1. Appointments to Bar Groups and Affiliated Boards Action Handout
      2. BOG Election Recruitment Update Inform
   D. Policy & Governance Committee
      1. Fee Dispute Resolution Rules Action Exhibit

5. Professional Liability Fund [Ms. Bernick]
   A. February 28, 2018 Financial Statements Inform Exhibit
   B. 2018 Excess Enrollment Report Inform Exhibit
6. OSB Committees, Sections, Councils and Divisions
   A. ONLD Report [Jennifer Nicholls]

   A. Audit of the Disciplinary System

8. Statement Against White Nationalism and Normalization of Violence
   A. Response to comments received from Diane Gruber [Mr. Puente]

9. CONSENT AGENDA
   A. Client Security Fund Committee [Ms. Hollister]
      1. Approval of Claims over $5000
         a) MITCHELL-PHILLIPS (Anderson) 2017-40
      2. CSF Financial Reports and Claims Paid
   B. Report of Officers & Executive Staff
      1. President’s Report [Ms. Nordyke]
      2. President-elect’s Report [Ms. Costantino]
      3. CEO Report [Ms. Hierschbiel]
         a) 2018 OSB Awards
      4. Director of Regulatory Services [Ms. Evans]
      5. Director of Diversity & Inclusion [Mr. Puente]
      6. MBA Liaison Report [Ms. Costantino]
   C. Approve Minutes of Prior BOG Meetings
      1. Regular Session February 23, 2018

10. CLOSED SESSION – CLOSED Agenda
   A. Executive Session (pursuant to ORS 192.660(2)(f) and (h) and ORS 192.690(1))
      1) General Counsel/UPL Report

11. Good of the Order (Non-Action Comments, Information and Notice of Need for Possible Future Board Action)
   A. Correspondence
   B. Articles of Interest
### OSB Futures Task Force Recommendations and Status

#### April 2018

**Progress Report for OSB Futures Task Force Recommendations**

*(Highlighted items are updates.)*

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<tr>
<td><strong>A.</strong> 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>Adopted by Court.</td>
<td>LEC to draft Formal Ethics Opinion</td>
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<td><strong>B.</strong> Adopt Recommendation to Amend Oregon RPC 7.2 and 5.4 to permit fee-sharing with lawyer referral services, with adequate disclosure to consumers.</td>
<td>2.2 Pages 38-40</td>
<td>Committee established. First meeting scheduled.</td>
<td>Bring to BOG for discussion and approval.</td>
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<td><strong>C.</strong> 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 implementation of paraprofessional program.</td>
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II. Regulation/Development of Alternative Legal Service Delivery Models

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<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>Committee and charge being developed.</td>
<td>Appointment and welcome memo from President.</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>PAC Report • HB 4095 Expanding Evidentiary Privilege for Lawyer Referral Services (Passed)</td>
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<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>PAC Report • HB 4097 Legal Resource Centers</td>
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III. Support Court and Legal Aid Efforts to Increase Access and Explore Innovation

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<tr>
<td>A. Establish Ad Hoc committee of stakeholder representatives from OJD/LASO/OSB tasked with streamlining self-navigation resources</td>
<td>3.1 Pages 47-48</td>
<td>BOG sent to CEO. Committee created and meetings being held.</td>
<td>Continue meetings. Coordinate with OSCIIIF and OSC CJI re topic areas</td>
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<td>B. Direct Staff to Explore Ways to Support Stakeholder Efforts to Improve Family Law and Small Claims Court Processes</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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IV. **Enhancement of Existing Bar Programs and Resources**

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<td><strong>A. Ask PSAC to explore ways to increase availability unbundled services offered through LRS</strong></td>
<td>3.5 Pages 54-55</td>
<td>PSAC/LRS exploring.</td>
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<td><strong>B. Continue to Improve &amp; Enhance Resources for Self-Navigators</strong></td>
<td>3.6 Pages 56-57</td>
<td>BOG sent to CEO. Participating in SFLAC pro se assistance subcommittee. Ms. Nordyke testified in favor of HB 4097 Legal Resource Centers.</td>
<td>Continue SFLAC participation. Continue support for self-navigator resources.</td>
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<td><strong>C. Work to improve the public perception of lawyers</strong></td>
<td>7.4 Page 72</td>
<td>BOG sent to CEO. Media relations manager working with media.</td>
<td>Continue work with media.</td>
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<tr>
<td><strong>D. Expand the Lawyer Referral Service and Modest Means Program</strong></td>
<td>5.1 Page 64</td>
<td>BOG sent to CEO. On 2018 Work Plan for B&amp;F and P&amp;G Committees</td>
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<td><strong>E. Enhance Practice Management Resources</strong></td>
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## V. BOG Policy Development

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<td>A. Embrace Data-Driven Decision-Making through adoption of policies and KPIs.</td>
<td>4 Page 61-63</td>
<td>On P&amp;G 2018 Work Plan</td>
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## VI. Development of New Bar Programs

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<tr>
<td>A. Create Incubator/Accelerator Program</td>
<td>8 Page 86-93</td>
<td>New lawyer survey results received and discussed by BOG.</td>
<td>Receive ONLD report.</td>
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Action Recommended

Adopt the Standards of Practice for Attorneys Representing the Child Welfare Agency.

Background

In September of 1996, the Oregon State Bar Board of Governors first approved the Principles and Standards for Counsel in Criminal, Delinquency, Dependency, and Civil Commitment Cases. These standards have been updated and expanded several times in the intervening years. Previous standards applicable in juvenile dependency cases, however, have always focused on the roles of attorneys for parents and children respectively.

These new standards came about as a result of Senate Bill 222, passed during the 2015 Oregon Legislative Session, which created a task force charged with recommending models of legal representation in juvenile dependency proceedings. The Oregon Task Force on Dependency Representation, staffed by the Governor’s office, convened in 2015 and 2016 and issued its final report in July 2016. That report made a number of recommendations for improving services in juvenile dependency proceedings—including the creation of these new performance standards for agency attorneys.

In the fall of 2016, the Oregon State Bar Board of Governors directed the creation of this workgroup. The workgroup was chaired by Joanne Southey (Oregon Department of Justice), and workgroup members included Amy Benedum (Oregon Judicial Department Juvenile Court Improvement Program), Linn Davis (Oregon State Bar), Shannon Dennison (Oregon Department of Justice), Lori Fellows (Multnomah County District Attorney’s Office), Olivia Godinez (Oregon Department of Justice), Amy Miller (Office of Public Defense Services), and Rahela Rehman (Oregon Department of Justice). Additional assistance was provided by Matt Shields (Oregon State Bar) and Adrian Smith (Former Governor’s Task Force Administrator).

The following report pages set forth these new performance standards applicable to attorneys who represent the Oregon Department of Human Services (DHS) Child Welfare Program in juvenile dependency proceedings. These standards should be read alongside
general standards for attorneys, and may be further informed by reference to the
standards applicable to attorneys for parents and children that are presented on the
Oregon State Bar website.
OREGON STATE BAR
Board of Governors Agenda

Meeting Date: April 20, 2018
Memo Date: April 2, 2018
From: Kathleen Rastetter
Re: Non-unanimous jury verdicts

Action Recommended

Determine whether the Oregon State Bar should take a formal position on the question of continuing to allow non-unanimous guilty verdicts in felony cases.

Options to consider include:

1. Endorse the American Bar Association House of Delegates resolution to eliminate the use of non-unanimous juries.
2. Craft a separate statement on the use of non-unanimous verdicts, addressing additional concerns.
3. Delay final decision on any Oregon legislative proposal until precise language of the proposed change to Oregon law is available for review.

Background

Oregon is one of two states in the nation that permit a felony defendant to be convicted by a less than unanimous jury verdict. Since 1932, Oregon law has permitted felonies to be decided by a 10-2 verdict, either to convict or to acquit. The other state – Louisiana – is currently considering legislation that would amend their state constitution to eliminate the use of non-unanimous jury verdicts.

The history and timing of Oregon’s law leads many observers to conclude that the change was enacted with the intention of diluting the power of non-white jurors certain cases.

Over the course of the last year, an increasing number of lawmakers and activists from around the country have begun to question whether it is in the interests of justice to continue to permit non-unanimous jury verdicts, and several Oregon lawmakers have expressed an interest in future legislation addressing the issue.

The American Bar Association has circulated a resolution which they have requested state and local bar associations join:
“RESOLVED, That the American Bar Association urges Louisiana and Oregon, as part of their ongoing efforts to strengthen public confidence in the jury system and in the reliability of jury verdicts, to modify their laws to require unanimous verdicts in criminal cases as do the other 48 states and the federal government.”

This issue is expected to surface in the 2019 legislative session, and a variety of advocates have expressed interest in perusing changes to Oregon law.
RESOLVED, That the American Bar Association urges Louisiana and Oregon to join the other forty-eight states and the federal government in requiring unanimous juries in certain felony criminal cases and to reject the use of non-unanimous juries where currently allowed in felony cases.

REPORT

Introduction

Forty-eight states and the federal system currently afford full Sixth Amendment protections to criminal defendants. Louisiana and Oregon are outliers. They are the only two states that allow non-unanimous juries in their criminal cases. While the motive and means for the change from a unanimous to a non-unanimous system may have differed in Oregon and Louisiana, the range of resulting injustices are consistent in both states.

Under current United States Supreme Court Sixth Amendment jurisprudence, criminal cases heard in federal courts require a unanimous vote in order for a defendant to be convicted. This resolution and supporting report promotes the full incorporation of the Sixth Amendment jury trial right via the Fourteenth Amendment and thus opposes the use of non-unanimous jury trials in state, criminal cases.

Background

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This article is limited to an evaluation of instances where twelve-person juries are allowed to cast a judgment with fewer than twelve individuals voting in favor of a finding of guilt in non-capital, felony, criminal cases. This article does not address civil jury practices or juries in misdemeanor or capital cases.

2 “While no agency or body in the state tracks non-unanimous convictions, a study by Oregon's Office of Public Defense Services in 2009 offered some insight. It found that more than 40 percent of the 662 convictions it surveyed from 2007 and 2008 were non-unanimous.” Shane Dixon Kavanaugh, Campaign to Repeal Oregon's Unusual Non-Unanimous Jury System Begins, The Oregonian, Jan. 10, 2018, available at http://www.oregonlive.com/portland/index.ssf/2018/01/campaign_to_repeal_oregons_unu.html (last visited 02/23/18).
When the Framers adopted the trial guarantee, they did so with a unanimous jury in mind. The Supreme Court of the United States has consistently recognized this. In 1930, the Supreme Court was called upon to resolve the question of whether the constitution allowed a jury of eleven to rule after one of the twelve seated jurors became incapacitated and the defendant agreed to a waiver. During its discussion, the Court did not mince words in expressing its disapproval of a vote by a non-unanimous jury:

If a deficiency of one juror might be waived, there appears to be no good reason why a deficiency of eleven might not be; and it is difficult to say why, upon the same principle, the entire panel might not be dispensed with, and the trial committed to the court alone. It would be a highly dangerous innovation, in reference to criminal cases, upon the ancient and invaluable institution of trial by jury, and the constitution and laws establishing and securing that mode of trial, for the court to allow of any number short of a full panel of twelve jurors, and we think it ought not to be tolerated.

Until its 1972 Apodaca v. Oregon ruling, the view of the Court prevailed that a unanimous verdict was an essential element of a Sixth Amendment jury trial. Apodaca legalized a vote by a less-than-unanimous jury. In Apodaca, the Supreme Court declared that as few as ten jurors did not amount to an unconstitutional practice. Despite definite infirmities, Apodaca remains a precedent.

The Apodaca case resulted from challenges brought by two people convicted by non-unanimous juries (11 to 1 & 10 to 2) in Oregon. Those Oregon defendants raised Sixth and Fourteenth Amendment challenges. The Apodaca court failed to entertain any meaningful discussion of group decision making. Instead, the court focused its attention on the process. It devoted some of its attention to the history of unanimity in this country and on the function of a jury, which it said was to guard against the corrupt or overzealous prosecutor and against the compliant, biased, or eccentric judge. The Apodaca court reasoned that a jury consisting of a group of lay

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4 “As introduced by James Madison in the House, the Amendment relating to jury trial in criminal cases would have provided that: ‘The trial of all crimes...shall be by an impartial jury of freeholders...of the vicinage, with the requisite of unanimity for conviction, of the right of challenge, and other accustomed requisites....’” Williams v. Florida, 399 U.S. 78, 94 (1970).


6 See Apodaca v. Oregon, 406 U.S. 404 (1972); Johnson v. Louisiana, 406 U.S. 356 (1972) was decided the same day as Apodaca and held that a conviction by a 9-3 verdict in certain noncapital cases did not violate the due process clause for failure to satisfy the reasonable-doubt standard; see also Williams v. Florida, 399 U.S. 78 (1970) (allowed for a six member jury and held that the Sixth Amendment did not require a vote of twelve); Ballew v. Georgia, 435 U.S. 223 (1978) (declared a five-member jury to be a violation of the Sixth and Fourteenth Amendments).
persons representative of a cross section of the community who have the duty and
the opportunity to deliberate, free from outside attempts at intimidation was good
enough to satisfy constitutional muster. In the end, the court determined that there
was no difference between a vote of ten, eleven or twelve.

*Apodaca* is a plurality decision, which means that a majority agreement of the
court never existed.\(^7\) Despite this, Louisiana and Oregon courts have deemed
*Apodaca* a precedent and many now refuse to consider the merits of challenges to
the non-unanimous jury system.\(^8\)

**Problems with Non-Unanimous Juries:**

*Promotes Discrimination by Undermining Batson v. Kentucky*

Louisiana and Oregon’s non-unanimous jury laws create a legal means of
discriminating when it comes to jury practices. When it decided *Batson v. Kentucky*\(^9\) in 1986, the Supreme Court outlawed discrimination in jury selection by
preventing prosecutors from using race as a reason not to select someone for jury
service. The non-unanimous jury laws in Oregon and Louisiana allow a prosecutor
to accomplish through a seated jury what the law prevents during the jury selection
process. This is so because the vote of one or two of the jurors can be ignored when
votes are cast, having the same effect of just excluding one or two jurors during the
selection process.

*Ignores research*

Since that 1972 *Apodaca* ruling, much more is known about group thinking. While the research does not show that unanimous juries are flawless or that non-
unanimous juries always fail, the research does show that unanimous verdicts are
more reliable, more careful and more thorough because a rule which insists on

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\(^7\) *Apodaca* was a 4-1-4 decision. Both of the groups of four Justices determined the rule should be the same
for federal and state trials. Justice Powell differed. Justice Powell believed there to be a distinction between
state and federal standards governing the right to a jury trial. In his view, the Sixth Amendment required a
unanimous verdict, while the 14th Amendment did not incorporate that requirement. Justice Powell was the
swing vote so his position became the law. The opinion held that there was no constitutional right to a
unanimous verdict – based on the opinion of only one Justice.

\(^8\) When *Apodaca* was before the Supreme Court, the court was reviewing Oregon’s law and not Louisiana’s
law. The two laws were not identical. Oregon’s law did not allow non-unanimous verdicts in cases of first
degree murder (and still does not); Louisiana does (in non-capital cases).\(^8\) Louisiana’s law explicitly exempts
capital cases; no such language appears in the text of Oregon’s law. In Louisiana, for first degree murder (that
is not a capital case) and second degree murder, the sentence is an automatic term of natural life; this is not
the case in Oregon (where the options span between life with or without parole, death and in excess of
twenty-five years in custody).\(^8\) In other words, in Louisiana—but not Oregon—a person can receive a
sentence of life without parole by a non-unanimous verdict. To require unanimity for capital cases but not
for those resulting in life without parole undermines the insistence on unanimity where the loss of life is at
issue.

unanimity furthers the deliberative process by requiring the minority view to be examined and, if possible, accepted or rejected by the entire jury.\(^{10}\)

**Contributes to Wrongful Convictions**\(^{11}\)

Louisiana is second in the rate of wrongful convictions in the nation. There is reason to believe that Louisiana’s non-unanimous jury system is a contributor. In 2017, the Innocence Project- New Orleans reported that eleven of twenty-five Louisiana exonerations resulted from trials where non-unanimous juries were used.

**Promotes Racism, Oppression & Undermines Public Trust**

Louisiana and Oregon both initially required unanimous juries in all felony cases, as the other 48 states do today. Both made the change to a non-unanimous system for clear and demonstrable racist purposes. In Louisiana, the law was changed after Reconstruction with the express intent of achieving a system of white supremacy. In 1803, when Louisiana became a territory, unanimous verdicts were required. From its creation until the end of Reconstruction and the withdrawal of federal troops, Louisiana required unanimous jury verdicts. Non-unanimous verdicts first were introduced in 1880, after slavery ended, when, through newly enacted codal provisions, defendants could be convicted by vote of only nine of twelve jurors. Non-unanimous verdicts made its way to the Constitution of 1898 by way of article 116 where state officials, announced: “We need a system better adapted to the peculiar conditions existing in our State.”\(^{12}\) At this convention of all


\(^{11}\) In 2014, Oregon changed its status from the last state in the union without an organization dedicated to actively investigating wrongful convictions in criminal cases. Data collection is a predictable challenge of such a new organization. As of the date of this report, the Oregon Innocence Project could not yet provide data explaining how many of their sixteen exonerations resulted from the use of non-unanimous juries.

white males, these words were spoken in reflection: “Our mission was...to establish
the supremacy of the white race...”13 Louisiana citizens were not afforded the
opportunity to vote to adopt the 1898 Constitution.

At the time of the 1898 Convention, 44% of the registered voters in Louisiana
were African American. The change from unanimity was to: (1) obtain quick
convictions that would facilitate the use of free prisoner labor (by means of
Louisiana’s convict leasing system) as a replacement for the recent loss of free slave
labor;14 and, (2) ensure African American jurors would not use their voting power to
block convictions of other African Americans.15 History confirms such illicit
intentions:

[The end of segregation] prompted the State to try new devices to keep
the white citizens in control. The Louisiana Legislature created a
committee which became known as the ‘Segregation Committee’ to seek
means of accomplishing this goal....[T]his committee...helped to
organize...the Association of Citizens Councils, which thereafter acted in
close cooperation with the legislative committee to preserve white
supremacy. The legislative committee and the Citizens Councils set up
programs, which parish voting registrars were required to attend, to
instruct the registrars on how to promote white political control.16

When the 1898 law was revisited at the 1973 Constitutional Convention, the
law was changed to require the vote of at least ten of twelve. As in 1898, “efficiency”
was a stated reason. Some have mistakenly concluded that this sanitized the racial
history surrounding the law. In truth, race was not completely removed from the
discussion at the 1973 Convention. There was a warning that “ugly, poor, illiterate
and mostly minority groups” would be impacted, as well as concerns expressed
about the system undermining the reasonable doubt standard. This system

13 Official Journal, supra, at 374-375.

14 In the post-Civil War South, “recognition of freed slaves as full humans appeared to most white
southerners not as an extension of liberty but as a violation of it, and as a challenge to the legitimacy of their
definition of what it was to be white.” Douglas A. Blackmon, Slavery By Another Name 41 (2008); “The
notion that farms could be operated in some manner other than with groups of black laborers compelled by a
landowner or his overseer to work as many as twenty hours a day was antithetical to most whites.” Id. at 26.

15 See Marjorie R. Esman, Non-Unanimous Jury Verdicts Steeped in Racist Past, The Advocate, Jan. 28,
2016, available at http://www.theadvocate.com/baton_rouge/opinion/our_views/article_e9efca4-c278-
57b6-a0f4-24e1b2932d1.html (last visited 02/19/18); Angela A. Allen-Bell, How The Narrative About
Louisiana's Non-Unanimous Criminal Jury System Became A Person Of Interest In The Case Against
Justice In The Deep South, 67 Mercer L. Rev. 585 (2016); Thomas Aiello, Jim Crow's Last Stand:

survived—not because it was studied and deemed to be in the best interests of justice—but, because of a process that mutes the voices of some and amplifies the voices of others. As one scholar observed: “the constitution of 1974 was written...by a wide and self-interested assortment of assessors, sheriffs, legislators, judges, lackeys and anyone who could get elected or appointed.”

Oregon’s racial history is not much more pleasant than Louisiana’s. Oregon is the only non-slave state admitted to the union with an exclusionary clause prohibiting African Americans from residing or owning property there. Oregon’s law arose in the early 1930s when the “Klu Klux Klan was very popular around the state with a lot of...political power.” Oregon’s switch to a non-unanimous jury system occurred in 1934 in direct response to a single case where it was believed that a single hold-out juror prevented a second degree murder conviction (causing a manslaughter conviction). The murdered victim was Protestant and the defendant was a Jewish man suspected of mob ties. In short, anti-immigrant and anti-Jewish sentiments underlined Oregon’s switch to a non-unanimous jury system, as introduced there by a Louisianian familiar with that state’s system.

Unlike Louisiana, Oregon’s system originated by a constitutional vote of the people. A 1933 Oregon voter pamphlet explicitly said the vote to change from a unanimous system to a non-unanimous system was “to prevent one or two...from controlling the verdict and causing disagreement.”

In a December 2016 opinion, an Oregon Circuit Court concluded that Oregon’s law discriminates against minorities after observing that “race and ethnicity was a motivating factor in the passage of...[Oregon’s non-unanimous jury law], and that the measure was intended, at least in part, to dampen the influence of

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18 Conrad Wilson, *Even When Juries Can't Agree, Convictions Are Still Possible In Oregon*, OPB.org, Dec. 12, 2016, available at http://www.opb.org/news/article/critics-challenge-oregon-non-unanimous-jury-law/ (last visited 02/19/18). It should be noted that the KKK was introduced in Oregon by a man who moved there from Louisiana.


21 *Id.* at 3-4 (2016).

Contributes to Mass Incarcerations & Adversely Impact Voting Rights

Louisiana’s notorious high incarceration rate, with its disproportionate impact on communities of color, is exacerbated by the non-unanimous jury law. By its intent, the jury provision makes felony convictions easier and drives not just convictions but plea bargains. In turn, this has consequences for voting rights and for the fundamental concept of representative democracy.

The Louisiana Constitution bars anyone from voting while “under an order of imprisonment for conviction of a felony.” Louisiana law defines “order of imprisonment” as a "sentence of confinement, whether or not suspended, whether or not the subject of the order has been placed on probation, with or without supervision, and whether or not the subject of the order has been paroled." In other words, even those who never spent a day in prison are denied the right to vote while on probation—and many in Louisiana have sentences consisting solely of probation.

In September 2017, Louisiana had 39,220 probationers and 30,929 parolees, or roughly 70,000 people not incarcerated but ineligible to vote. Of those, roughly 60% of parolees and 50% of probationers were defined as African American, in a state with an African American population of approximately 31%. Louisiana’s restrictive felon re-enfranchisement laws therefore disproportionately disenfranchise African American voters.

Historical records support the assertion that the non-unanimous jury provision of the Louisiana Constitution, if not intended, did increase felony convictions of African American men. Because a collateral consequence is the reduction of voting power among that same population, the non-unanimous jury must be seen as part of a larger voting rights issue with racial overtones.

In Oregon, unlike Louisiana, voting rights are restored upon release from incarceration. While non-unanimous juries in Oregon increase the incarceration

24 Article I, Section 10(A).
25 See La. R.S. 18.2 (8).
27 THERE SUPPORT FOR THIS? IF NOT, DELETE ENTIRE SENTENCE, EITHER AS ORGINALLY DRAFTED OR AS MODIFIED
rate by making convictions easier, the impact on the rights of Oregonians to vote is not as severe as in Louisiana, where the franchise is more broadly denied.

**Marginalizes Women and People of Color**

Women were not included in regular jury service until recently. In Oregon, on the heels of gaining the right to vote in 1912, women suffrage turned to focusing on exercising the rights of citizenship including the right to sit on a jury. Legislation in Oregon did not grant women the right to sit on juries until 1921. It was not until 1975 that the Supreme Court held in *Taylor v. Louisiana* that it was unlawful to exclude women as a class from jury service in Louisiana. Yet the non-unanimous jury laws in Oregon and Louisiana allow the voice and vote of a woman (or person of color) to be effectively eliminated if they disagree with the white male juror majority. This undermines the goals of diversity and equity inherent in the Sixth Amendment legal doctrine that juror diversity promotes justice.

Numerous legal scholars have reviewed the effects of race and sex on jury trials and concluded that race and sex of judges, victims, and defendants can affect trial outcomes. The process of selecting juries and the exclusion of individuals based on race, sex, and other personal characteristics also has been studied in detail. Statistics on the sex and race of jurors are not regularly reported in a consistent manner. Selecting a jury that is representative of one’s peers either by state or county population composition or registered voter lists have not yielded

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J.D. Lieberman & B.D. Sales, *Scientific Jury Selection* (2007);


representative juries in terms of sex, race, age or other personal characteristics. Even when women and non-white individuals are included in the pool of potential jurors, through the jury selection process, and participate in a jury verdict, the non-unanimous jury system allows the majority one last way to silence the voice of minority representation by discounting the voice of these women and non-white jurors completely.

**Results in Differing Standards Between States & The Federal Government**

Louisiana and Oregon’s non-unanimous jury laws result in different Sixth Amendment standards between federal courts (which require unanimous verdicts in criminal cases), and the other forty-eight states’ criminal courts (which require unanimous verdicts) on the one hand, and the Louisiana and Oregon state courts (which allow non-unanimous juries), on the other. This makes consistency impossible and can undermine confidence in state criminal courts, make convictions easier by design, and the rights of defendants thereby less protected.

**Non-Unanimous Juries are at Odds With ABA Standards**

In 1972 when *Apodoca* was decided, the 1968 ABA standard allowed for non-unanimous verdicts. In 1976, the ABA changed its standard to affirm that a jury verdict in criminal trials should be unanimous. In 2005, this was reiterated by the ABA in its Principles for Juries & Jury Trials. The ABA’s official position, consistent with the scientific evidence, is that non-unanimous verdicts reduce the reliability of jury determinations, silence minority viewpoints, erode confidence in the criminal justice system, and do not significantly contribute to a reduction in hung juries and retrials. Further details are set forth in the next section of this report.

**Existing ABA Resolutions and/or Standards**

In 1972, when *Apodaca* was decided, Standard 1.1 of the 1968 Criminal Justice Standards provided, in pertinent part:

1.1 Right to jury trial.
Defendants in all criminal cases should have the right to be tried by a jury of twelve whose verdict must be unanimous, except that where not barred

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35 In *Batson v. Kentucky*, the Court addressed peremptory challenges based on race that systematically removed African American jurors from a petit jury. *Edmonson v. Leesville Concrete Co.* extended *Batson*’s applicability to jury selection in civil cases. See *Edmonson v. Leesville Concrete Co.*, 500 U.S. 614 (1991). However, *Batson* and *Edmonson* have been unable to live up to the promise of their respective holdings.
by applicable constitutional provisions, the right to jury trial may be limited in one or more of the following ways:

****

(d) by permitting less than unanimous verdicts, without regard to the consent of the parties.

In the Commentary to the 1968 Criminal Justice Standard 1.1, the Advisory Committee reviewed current thinking on jury unanimity and “concluded that the minimum standards should recognize the propriety of less than unanimous verdicts, as now permitted in six states.” The 1968 Standards for Criminal Justice, Trial by Jury, was but one volume - volume 15 - of the seventeen volumes that comprised the ABA's Project on Standards for Criminal Justice.

In 1976, another ABA commission, the Commission on Standards of Judicial Administration, published its final draft of the Standards Relating to Trial Courts (hereinafter “1976 Judicial Standards”). Standard 2.10 stated, in pertinent part, “The verdict of the jury [in criminal cases] should be unanimous.” In the Commentary to its 1976 Judicial Standard 2.10, the Commission acknowledged that this was an enlargement of the scope of the jury trial right stated in the 1968 Criminal Justice Standard 1.1, but concluded, “If the question of jury trial in criminal cases is considered from a long range viewpoint, placing the present exigencies of the trial courts in proper perspective, these qualifications [in 1968 Standard 1.1] appear to be both unnecessary and unwarranted by our legal traditions.” The 1976 Judicial Standards were adopted at the ABA's Midyear Meeting in February 1976. In the course of their adoption, the ABA also authorized amendment to the 1968 Criminal Justice Standards to conform to the 1976 Judicial Standards, specifically affirming that, “[i]n criminal cases, the verdict of the jury should be unanimous.” Any support that the ABA's 1968 Trial Court Standards had lent to a position that permitted non-unanimous verdicts had thus ended, by 1976.

When the 1978 edition of Volume 15 of the Standards for Criminal Justice (hereinafter “1978 Criminal Justice Standards”) was published, its Introduction stated: “Incorporating the ABA Standards of Judicial Administration, this updated standard [15-1.1] has been changed by deletion of ... (1) recogn[i]tion] [of] the propriety of nonunanimous jury verdicts.” 1978 Criminal Justice Standards, Introduction at 15.4

Most recently, in 2004, the ABA established the American Jury Project, the result of which was the promulgation of nineteen core jury trial principles that defined the ABA's “fundamental aspirations for the management of the jury system.” Principle 4.B provides that “[a] unanimous decision should be required in all criminal cases heard by a jury.”
Conclusion

Despite plurality permission from the Supreme Court to accept the non-unanimous vote of selected jurors, forty-eight states chose to afford full Sixth Amendment protections to felony defendants. That’s not because unanimity is a neglected topic. Over the years, a number of states have considered abandoning their unanimity requirements. In every instance, after much study and deliberation, change has been rejected and a unanimous verdict system was maintained.\(^{36}\) The Louisiana State Bar Association has done its part by adopting policy on June 9, 2016, urging the Louisiana legislature to adopt legislation amending Article 1, Section 17 of the Louisiana Constitution, “to require all juries in criminal cases to render a unanimous verdict.” Justice dictates that Louisiana and Oregon restore Sixth Amendment rights to their residents and, in so doing, return to a unanimous jury system in non-capital, criminal cases.\(^{37}\) Let’s stand with our Louisiana colleagues and support our Oregon fellow members of the bar by insisting on unanimous verdicts in all felony cases rendered by the American justice system.

Respectfully submitted,

___________________________
Chair, Criminal Justice Section

(Month, Year)


\(^{37}\) “In a remarkable move, Oregon's powerful district attorneys group appears to now not only side with reform advocates but wants to assume a primary role in reversing the law — which could reduce the number of convictions won by prosecutors and increase the number of hung juries.” Shane Dixon Kavanaugh, Campaign to Repeal Oregon’s Unusual Non-Unanimous Jury System Begins, The Oregonian, Jan. 10, 2018, available at http://www.oregonlive.com/portland/index.ssf/2018/01/campaign_to_repeal_oregons_unu.html (last visited 02/23/18).
GENERAL INFORMATION FORM

Submitting Entity: Criminal Justice Section

Submitted By: ________________________, Chair

1. **Summary of Resolution(s).**

   The resolution favors unanimous jury verdicts in felony, criminal cases and opposes non-unanimous jury verdicts in such cases.

2. **Approval by Submitting Entity.** This resolution was passed by the Criminal Justice Council at the ________________ meeting in ________________, in (Month Year).

3. **Has this or a similar resolution been submitted to the House or Board previously?**

4. **What existing Association policies are relevant to this Resolution and how would they be affected by its adoption?**

5. **If this is a late report, what urgency exists which requires action at this meeting of the House?**

6. **Status of Legislation.** (If applicable)

7. **Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates.**

8. **Cost to the Association.** (Both direct and indirect costs)

9. **Disclosure of Interest.** (If applicable)
10. **Referrals.** Concurrent with the filing of this resolution and Report with the House of Delegates, the Criminal Justice Section is sending the resolution and report to the following entities and/or interested groups:

- Public Service and Diversity
- Commission on Veteran’s Legal Services
- Legal Aid & Indigent Defense
- Commission on Disability Rights
- Special Committee on Hispanic Legal Rights & Responsibilities
- Commission on Homelessness and Poverty
- Center for Human Rights
- Commission on Immigration
- Racial & Ethnic Diversity
- Racial & Ethnic Justice
- Youth at Risk
- Young Lawyer's Division
- Civil Rights and Social Justice
- Government and Public Sector Lawyers
- International Law
- Federal Trial Judges
- State Trial Judges
- Law Practice Division
- Science & Technology
- Health Law
- Litigation

11. **Contact Name and Address Information.** (Prior to the meeting. Please include name, address, telephone number and e-mail address)  

    (Resolution drafters and ABA staff)

12. **Contact Name and Address Information.** (Who will present the report to the House? Please include name, address, telephone number, cell phone number and e-mail address.)

    Stephen Saltzburg  
    2000 H Street, NW  
    Washington, D. C. 20052  
    T: 202-994-7089  
    E: ssaltz@law.gwu.edu

    Neal Sonnett  
    2 South Biscayne Blvd., Suite 2600
EXECUTIVE SUMMARY

1. Summary of the Resolution

   The resolution favors unanimous jury verdicts in felony, criminal cases and opposes non-unanimous jury verdicts in such cases.

2. Summary of the Issue that the Resolution Addresses

   The resolution addresses the meaning of the Sixth Amendment right to jury trial as applied to the States by the Fourteenth Amendment.

3. Please Explain How the Proposed Policy Position Will Address the Issue

4. Summary of Minority Views or Opposition Internal and/or External to the ABA
   Which Have Been Identified.
OREGON STATE BAR
Board of Governors Agenda

Meeting Date: February 22, 2018
From: Policy & Governance Committee
Re: Proposed Amendments to the Fee Dispute Resolution Rules

Action Recommended

The Committee recommends that the Board of Governors adopt the attached amendments to the OSB Fee Dispute Resolution Rules to implement the recommendations of the 2017 Fee Mediation Task Force.

Background

Last year, the BOG appointed a task force to review the Fee Dispute Resolution Program and, in particular, the program’s treatment of mediation confidentiality issues. The BOG approved the committee’s report (also attached) in July. This agenda item requests approval of the resulting changes to the program rules.

In January 2018, the Supreme Court approved an amendment to Oregon RPC 8.3 stating that the rule does not require disclosure of mediation communications protected by statute.

The accompanying changes to the program rules are needed to align the program rules with the amended Oregon RPC 8.3 and the task force’s recommendations.

Proposed Amendments

1. Rule 1.1 is amended to remove the prior language providing for a limited waiver of mediation confidentiality in the context of a mandatory RPC 8.3 ethics report to the Client Assistance Office.

2. A new Rule 7.6 is added to clarify that the mediation program is not intended, and may not be used, to mediate a malpractice case or an ethics complaint. The amended rule expressly states that the mediation may resolve disputes over the distribution of client property, including client files.

3. Rules 10.4 and 10.5 are amended to remove references to mediation, and Rule 10.8 is repealed.
# Fee Dispute Resolution Rules

Rules of the Oregon State Bar on Mediation and Arbitration of Fee Disputes  
*Effective September 2015*

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Section 1 Purpose

1.1 The purpose of these Rules is to provide a voluntary method to resolve fee disputes between active members of the Oregon State Bar maintaining offices in Oregon and their clients; between those members and other active members of the Oregon State Bar; and between active members of a state bar other than Oregon and their clients who either are residents of the state of Oregon or have their principal place of business in Oregon. Parties who agree to participate in this program expressly waive the requirements of ORS 36.600 to 36.740 to the extent permitted by ORS 36.610 except as specifically provided herein.

Section 2 Mediation and Arbitration Panels; Advisory Committee

2.1 The Fee Dispute Resolution Administrator ("Administrator") shall appoint attorney members to mediation panels in each board of governors region, from which mediators will be selected. The normal term of appointment shall be three years, and a mediation panelist may be reappointed to a further term. All mediation panelists shall be active or active pro bono members in good standing of the Oregon State Bar with a principal business office in the board of governors region of appointment.

2.2 The Administrator shall appoint attorney and public members to arbitration panels in each board of governors region, from which arbitrators will be selected. The normal term of appointment shall be three years, and an arbitration panelist may be reappointed to a further term. All attorney panelists shall be active or active pro bono members in good standing of the Oregon State Bar with a principal business office in the board of governors region of appointment. All public panelists shall reside or maintain a principal business office in the board of governors region of appointment and shall be neither active nor inactive members of any bar.

2.3 General Counsel shall appoint an advisory committee consisting of at least one attorney panel member from each of the board of governors regions. The advisory committee shall assist General Counsel and the Administrator with training and recruitment of arbitration and mediation panel members, provide guidance as needed in the interpretation and implementation of the fee dispute rules, and make recommendations to the board of governors for changes in the rules or program.

Section 3 Training

3.1 The Oregon State Bar will offer training opportunities to panelists regarding mediation and arbitration techniques and the application of RPC 1.5 in fee disputes.

3.2 The Administrator may request information about panelists’ prior training and experience and may appoint panelists based on their related training and experience.

Section 4 Initiation of Proceedings

4.1 A mediation proceeding shall be initiated by the filing of a written petition and mediation agreement. The mediation agreement must be signed by one of the parties to the dispute and filed with General Counsel’s Office within 6 years of the completion of the legal services involved in the dispute.
4.2 An arbitration proceeding shall be initiated by the filing of a written petition and arbitration agreement. The petition must be signed by one of the parties to the dispute and filed with General Counsel’s Office within 6 years of the completion of the legal services involved in the dispute.

4.3 Upon receipt of a petition and agreement(s) signed by the petitioning party, the Administrator shall forward a copy of the petition and the agreement(s) to the respondent named in the petition by regular first-class mail e-mail or facsimile or by such other method as may reasonably provide the respondent with actual notice of the initiation of proceedings. Any supporting documents submitted with the petition shall also be provided to the respondent. If the respondent desires to submit the dispute to mediation or arbitration the respondent shall sign the agreement(s) and return the agreement(s) to the Administrator within twenty-one (21) days of receipt. A twenty-one (21) day extension of time to sign and return the agreement may be granted by the Administrator. Failure to sign and return the agreement within the specified time shall be deemed a rejection of the request to mediate or arbitrate.

4.4 A lawyer who is retained by a client who was referred by the OSB Modest Means Program or OSB Lawyer Referral Program may not decline to arbitrate if such client files a petition for fee arbitration.

4.5 If the respondent agrees to mediate or arbitrate, the Administrator shall notify the petitioner who shall, within twenty-one (21) days of the mailing of the notice, pay a filing fee of $75 for claims of less than $7500 and $100 for claims of $7500 or more. The filing fee may be waived at the discretion of the Administrator based on the submission of a statement of the petitioner’s assets and liabilities reflecting inability to pay. The filing fee shall not be refunded, except on a showing satisfactory to General Counsel of extraordinary circumstances or hardship.

4.6 If the request to mediate or arbitrate is rejected, the Administrator shall notify the petitioner of the rejection and of any stated reasons for the rejection.

4.7 The petition, mediation agreement, arbitration agreement and statement of assets and liabilities shall be in the form prescribed by General Counsel, provided however, that mediation and arbitration agreements may be modified with the consent of both parties and the approval of General Counsel.

4.8 After the parties have signed a mediation or arbitration agreement, if one party requests that a mediation or arbitration proceeding not continue, the Administrator shall dismiss the proceeding. A dismissed proceeding will be reopened only upon agreement of the parties or receipt of a copy of an order compelling arbitration pursuant to ORS 36.625.

Section 5 Amounts in Dispute

5.1 Any amount of fees or costs in controversy may be mediated or arbitrated. The Administrator may decline to mediate or arbitrate cases in which the amount in dispute is less than $250.00.

5.2 The sole issue to be determined in all fee dispute proceedings under these rules shall be whether the fees or costs charged for the services rendered were reasonable in light of the factors set forth in RPC 1.5.
Section 6 Selection of Mediators and Arbitrators

6.1 Each party to a mediation shall receive with the petition and mediation agreement a list of the members of the mediation panel from the board of governors region in which a lawyer to the dispute maintains his or her law office.

6.2 Each party to an arbitration shall receive with the petition and arbitration agreement a list of the members of the arbitration panel in the board of governors region in which a lawyer to the dispute maintains his or her law office.

6.3 Each party may challenge without cause, and thereby disqualify as mediators or arbitrators, not more than two panelists. Each party may also challenge any panelist for cause. Any challenge for cause must be made by written notice to the Administrator, shall include an explanation of why the party believes the party cannot have a fair and impartial hearing before the panelist, and shall be submitted within the required fee. Challenges for cause shall be determined by General Counsel, based on the reasons offered by the challenging party. Upon receipt of the agreement signed by both parties, the Administrator shall select the appropriate number of panelists from the list of unchallenged panelists to hear a particular dispute.

6.4 All mediations shall be mediated by one lawyer panelist selected from the board of governors region in which a lawyer to the dispute maintains his or her law office. The Administrator shall give the parties notice of the mediator’s appointment.

6.5 Disputed amounts of less than $10,000 shall be arbitrated by one lawyer panelist. Disputed amounts of $10,000 or more shall be arbitrated by three panelists, including two lawyer arbitrators and one public arbitrator. If three (3) arbitrators are appointed, the Administrator shall appoint one lawyer arbitrator to serve as chairperson. The Administrator shall appoint panelists from the board of governors region in which a lawyer to the dispute maintains his or her law office. The Administrator shall give notice of appointment to the parties of the appointment. Regardless of the amount in controversy, the parties may agree that one lawyer arbitrator hear and decide the dispute. If three arbitrators cannot be appointed in a fee dispute from the arbitration panel of the board of governors region in which a dispute involving $10,000 or more is pending, the dispute shall be arbitrated by a single arbitrator. If, however, any party files a written objection with the Administrator within ten (10) days after receiving notice that a single arbitrator will be appointed under this subsection, two (2) additional arbitrators shall be appointed.

6.6 Any change or addition in appointment of mediators or arbitrators shall be made by the Administrator. When necessary, the Administrator may appoint mediators or arbitrators from a region other than the board of governors region in which a lawyer to the dispute maintains his or her law office.

6.7 Before accepting appointment, a mediator or arbitrator shall disclose to the parties and, if applicable, to the other arbitrators, any known facts that a reasonable person would consider likely to affect the impartiality of the mediator or arbitrator in the proceeding. Mediators and arbitrators have a continuing duty to disclose any such facts learned after appointment. After disclosure of facts required by this rule, the mediator or arbitrator may be appointed or continue to serve only if all parties to the proceeding consent; in the absence of consent by all parties, the Administrator
will appoint a replacement mediator or arbitrator and, if appropriate, extend the time for the hearing.

6.8 In the absence of consent by all parties, no person appointed as a mediator may thereafter serve as an arbitrator for the same fee dispute.

Section 7 Mediation

7.1 The mediator shall arrange a mutually agreeable date, time and place for the mediation. The mediator shall provide notice of the mediation date, time and place to the parties and to the Administrator not less than 14 days before the mediation, unless the notice requirement is waived by the parties.

7.2 The mediation shall be held within ninety (90) days of appointment of the mediator by the Administrator. Upon request of a party, or upon his or her own determination, the mediator may adjourn, continue or postpone the mediation as the mediator determines necessary.

7.3 Any communications made during the course of mediation are confidential to the extent provided by law. ORS 36.220. Mediations are not public meetings; the mediator has the sole discretion to allow persons who are not parties to the mediation to attend the proceedings.

7.4 If the parties reach a settlement in mediation, the mediator may draft a settlement agreement consistent with RPC 2.4 to memorialize the parties’ agreement.

7.5 At the conclusion of the mediation, the mediator shall notify the Administrator if the fee dispute was resolved. The mediator shall not provide a copy of the settlement agreement to the bar.

7.6 A program mediation must center on the reasonableness of the fee and the return of client property. Evidence of alleged malpractice or unethical conduct may be considered during mediation in addressing whether the fee charged is reasonable, and the fee may be adjusted accordingly in any mediated resolution, but no other affirmative monetary relief is be permitted in any program mediation.

Section 8 Arbitration Hearing

8.1 The chairperson or sole arbitrator shall determine a convenient time and place for the arbitration hearing to be held. The chairperson or sole arbitrator shall provide written notice of the hearing date, time and place to the parties and to the Administrator not less than 14 days before the hearing. Notice may be provided by regular first class mail, e-mail, or facsimile or by such other method as may reasonably provide the parties with actual notice of the hearing. Appearance at the hearing waives the right to notice.

8.2 The arbitration hearing shall be held within ninety (90) days after appointment of the arbitrator(s) by Administrator, subject to the authority granted in subsection 8.3.

8.3 The arbitrator or chairperson may adjourn the hearing as necessary. Upon request of a party to the arbitration for good cause, or upon his or her own determination, the presiding arbitrator may postpone the hearing from time to time.
8.4 Arbitrators shall have those powers conferred on them by ORS 36.675. The chairperson or the sole arbitrator shall preside at the hearing. The chairperson or the sole arbitrator may receive any evidence relevant to a determination under Rule 5.2, including evidence of the value of the lawyer’s services rendered to the client. He or she shall be the judge of the relevance and materiality of the evidence offered and shall rule on questions of procedure. He or she shall exercise all powers relating to the conduct of the hearing, and conformity to legal rules of evidence shall not be necessary. Arbitrators shall resolve all disputes using their professional judgment concerning the reasonableness of the charges made by the lawyer involved.

8.5 The parties to the arbitration are entitled to be heard, to present evidence and to cross-examine witnesses appearing at the hearing. Any party to an arbitration may be represented at his or her own expense by a lawyer at the hearing or at any stage of the arbitration.

8.6 On request of any party to the arbitration or any arbitrator, the testimony of witnesses shall be given under oath. When so requested, the chairperson or sole arbitrator may administer oaths to witnesses testifying at the hearing.

8.7 Upon request of one party, and with consent of both parties, the panel or sole arbitrator may decide the dispute upon written statements of position and supporting documents submitted by each party, without personal attendance at the arbitration hearing. The chairperson or sole arbitrator may also allow a party to appear by telephone if, in the sole discretion of the chairperson or sole arbitrator, such appearance will not impair the ability of the arbitrator(s) to determine the matter. The party desiring to appear by telephone shall bear the expense thereof.

8.8 If any party to an arbitration who has been notified of the date, time and place of the hearing but fails to appear, the chairperson or sole arbitrator may either postpone the hearing or proceed with the hearing and determine the controversy upon the evidence produced, notwithstanding such failure to appear.

8.9 Any party may have the hearing reported at his or her own expense. In such event, any other party to the arbitration shall be entitled to a copy of the reporter’s transcript of the testimony, at his or her own expense, and by arrangements made directly with the reporter. As used in this subsection, “reporter” may include an electronic reporting mechanism.

8.10 If during the pendency of an arbitration hearing or decision the client files a malpractice suit against the lawyer, the arbitration proceedings shall be either stayed or dismissed, at the agreement of the parties. Unless both parties agree to stay the proceedings within 14 days of the arbitrator’s receipt of a notice of the malpractice suit, the arbitration shall be dismissed.

Section 9 Arbitration Award

9.1 An arbitration award shall be rendered within thirty (30) days after the close of the hearing unless General Counsel, for good cause shown, grants an extension of time.

9.2 The arbitration award shall be made by a majority where heard by three members, or by the sole arbitrator. The award shall be in writing and signed by the members concurring therein or by the sole arbitrator. The award shall state the basis for the panel’s jurisdiction, the nature of the dispute, the amount of the award, if any, the terms of payment, if applicable, and an opinion
regarding the reasons for the award. Awards shall be substantially in the form shown in Appendix A. An award that requires the payment of money shall be accompanied by a separate statement that contains the information required by ORS 18.042 for judgments that include money awards.

9.3 Arbitrator(s) may award interest on the amount awarded as provided in a written agreement between the parties or as provided by law, but shall not award attorney fees or costs incurred in the fee dispute proceeding. An attorney shall not be awarded more than the amount for services billed but unpaid. A client shall not be awarded more than the amount already paid, and may also be relieved from payment of services billed and remaining unpaid.

9.4 The original award shall be forwarded to the Administrator, who shall mail certified copies of the award to each party to the arbitration. The Administrator shall retain the original award, together with the original fee dispute agreement. Additional certified copies of the agreement and award will be provided on request. The OSB file will be retained for six years after the award is rendered; thereafter it may be destroyed without notice to the parties.

9.5 If a majority of the arbitrators cannot agree on an award, they shall so advise the Administrator within 30 days after the hearing. The Administrator shall resubmit the matter, de novo, to a new panel within thirty days.

9.6 The arbitration award shall be binding on both parties, subject to the remedies provided for by ORS 36.615, 36.705 and 36.710. The award may be confirmed and a judgment entered thereon as provided in ORS 36.615, 36.700 and ORS 36.715.

9.7 Upon request of a party and with the approval of General Counsel for good cause, or on General Counsel's own determination, the arbitrator(s) may be directed to modify or correct the award for any of the following reasons:

a. there is an evident mathematical miscalculation or error in the description of persons, things or property in the award;

b. the award is in improper form not affecting the merits of the decision;

c. the arbitration panel or sole arbitrator has not made a final and definite award upon a matter submitted; or

d. to clarify the award.

Section 10 Confidentiality

10.1 The resolution of a fee dispute through the Oregon State Bar Fee Dispute Resolution Program is a private, contract dispute resolution mechanism, and not the transaction of public business.

10.2 Except as provided in paragraph 10.4 below, or as required by law or court order, all electronic and written records and other materials submitted by the parties to General Counsel’s Office, or to the mediators or arbitrators, and any award rendered by the arbitrator(s), shall not be subject to public disclosure, unless all parties to an arbitration agree otherwise. The Oregon State Bar considers all electronic and written records and other materials submitted by the parties to
General Counsel's Office, or to the mediators or arbitrators, to be submitted on the condition that they are kept confidential.

10.3 Mediations and arbitration hearings are closed to the public, unless all parties agree otherwise. Witnesses who will offer testimony on behalf of a party may attend an arbitration hearing, subject to the chairperson's or sole arbitrator's discretion, for good cause shown, to exclude witnesses.

10.4 Notwithstanding paragraphs 10.1, 10.2, and 10.3, lawyer mediators and arbitrators shall inform the Client Assistance Office when they know, based on information obtained during the course of an arbitration proceeding, 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.

10.5 Notwithstanding paragraphs 10.1, 10.2, 10.3 and 10.4, all electronic and written records and other materials submitted to General Counsel's Office or to the mediators or arbitrators during the course of the proceeding, and any award rendered by the arbitrator(s), shall be made available to the Client Assistance Office and/or Disciplinary Counsel for the purpose of reviewing any alleged ethical violation in accordance with BR 2.5 and BR 2.6.

10.6 Notwithstanding paragraphs 10.1, 10.2, 10.3 and 10.4, General Counsel's Office may disclose to the Client Assistance Office or to Disciplinary Counsel, upon the Client Assistance Office's or Disciplinary Counsel's request, whether a dispute resolution proceeding involving a particular lawyer is pending, the current status of the proceeding, and, at the conclusion of an arbitration proceeding, in whose favor the arbitration award was rendered.

10.7 Notwithstanding paragraphs 10.1, 10.2 and 10.3, if any lawyer whose employment was secured through the Oregon State Bar Modest Means Program or Lawyer Referral Program refuses to participate in fee arbitration, the Administrator shall notify the administrator of such program(s).

10.8 Mediators and parties who agree to participate in this program expressly waive the confidentiality provisions of ORS 36.222 to the extent necessary to allow disclosures pursuant to Rule 7.5, 10.4, 10.5 and 10.6.

Section 11 Immunity and Competency to Testify

11.1 Pursuant to ORS 36.660, arbitrators shall be immune from civil liability to the same extent as a judge of a court of this state acting in a judicial capacity. All other provisions of ORS 36.660 shall apply to arbitrators participating in the Oregon State Bar dispute resolution program.
Appendix A

Oregon State Bar
Fee Arbitration

) Case No.
Petitioner )
v. ) Arbitration Award
) Respondent )

Jurisdiction
Nature of Dispute
Amount of Award

Opinion

Award Summary

The arbitrator(s) find that the total amount of fees and costs that should have been charged in this matter is: $

Of which the Client is found to have paid: $

For a net amount due of: $

Accordingly, the following award is made: $

Client shall pay Attorney the sum of: $

(or)

Attorney shall refund to Client the sum of: $

(or)

Nothing further shall be paid by either attorney or client.

/Signature(s) of Arbitrator(s)
OREGON STATE BAR
Board of Governors Agenda

Meeting Date: July 21, 2017
From: Richard G. Spier, Chair, BOG Fee Mediation Task Force
Re: Report of the Fee Mediation Task Force

Action Recommended

Consider and adopt the recommendations of the Fee Mediation Task Force (Task Force) to the Board of Bar Governors (BOG) as follows:

1. RPC 8.3(c) should be amended to create an additional exception to RPC 8.3(a)'s reporting requirement for mediators in the OSB's fee dispute program (the program), when the knowledge or evidence of attorney misconduct comes from mediation communications as defined by ORS 36.110(7) and made confidential by ORS 36.220.

1 “Mediation communications” means:
   (a) All communications that are made, in the course of or in connection with a mediation, to a mediator, a mediation program or a party to, or any other person present at, the mediation proceedings; and
   (b) All memoranda, work products, documents and other materials, including any draft mediation agreement, that are prepared for or submitted in the course of or in connection with a mediation or by a mediator, a mediation program or a party to, or any other person present at, mediation proceedings.

See also Alfieri v Solomon, 358 Or 383 (2015) (construing legislature's intended meaning of "mediation communications").

2 ORS 36.220 provides:

   (1) Except as provided in ORS 36.220 to 36.238:
      (a) Mediation communications are confidential and may not be disclosed to any other person.
      (b) The parties to a mediation may agree in writing that all or part of the mediation communications are not confidential.
   (2) Except as provided in ORS 36.220 to 36.238:
      (a) The terms of any mediation agreement are not confidential.
      (b) The parties to a mediation may agree that all or part of the terms of a mediation agreement are confidential.
   (3) Statements, memoranda, work products, documents and other materials, otherwise subject to discovery, that were not prepared specifically for use in a mediation, are not confidential.
   (4) Any document that, before its use in a mediation, was a public record as defined in ORS 192.410 remains subject to disclosure to the extent provided by ORS 192.410 to 192.505.
   (5) Any mediation communication relating to child abuse that is made to a person who is required to report child abuse under the provisions of ORS 419B.010 is not confidential to the extent that the person is required to report the communication under the provisions of ORS 419B.010. Any mediation communication relating to elder abuse that is
2. Once the changes outlined in recommendation 1 are adopted, any references to the reporting requirement in RPC 8.3 should be removed from Oregon Fee Dispute Resolution Rule (Rule) 10.4 and from all other program rules (e.g. Rule 7.5, 10.5, 10.6 and 10.8) and materials addressing program-conducted mediation (program mediation).

3. Any program mediation should center on the reasonableness of the fee and the return of client property. Evidence of alleged malpractice or unethical conduct may be considered during mediation in addressing whether the fee charged is reasonable, and the fee may be adjusted accordingly in any mediated resolution, but no other affirmative monetary relief should be permitted in any program mediation.

4. Mediators participating in the program should complete at least a 32-hour integrated mediation course and complete three mediations before being enrolled in the program. Mediators should also agree to be bound by the ethical requirements in section 1.4 of the Chief Justice’s order on qualification of mediators for court-connected mediation programs.  

5. 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.”

made to a person who is required to report elder abuse under the provisions of ORS 124.050 to 124.095 is not confidential to the extent that the person is required to report the communication under the provisions of ORS 124.050 to 124.095.

(6) A mediation communication is not confidential if the mediator or a party to the mediation reasonably believes that disclosing the communication is necessary to prevent a party from committing a crime that is likely to result in death or substantial bodily injury to a specific person.

(7) A party to a mediation may disclose confidential mediation communications to a person if the party’s communication with that person is privileged under ORS 40.010 to 40.585 or other provision of law. A party may disclose confidential mediation communications to any other person for the purpose of obtaining advice concerning the subject matter of the mediation, if all parties to the mediation so agree.

(8) The confidentiality of mediation communications and agreements in a mediation in which a public body is a party, or in which a state agency is mediating a dispute as to which the state agency has regulatory authority, is subject to ORS 36.224, 36.226 and 36.230.

3 https://www.ojd.state.or.us/web/OJDPublications.nsf/Files/05cER001sh.pdf/$File/05cER001sh.pdf.
6. The BOG should further consider whether mediators in the OSB's program should be required to carry professional liability insurance for mediator malpractice through the PLF (part-time lawyer mediator) or other carrier (full-time lawyer mediator).

Background Information

The OSB has run a mediation and arbitration fee dispute program for many years. The OSB's program provides a quick, inexpensive means for attorneys and clients to resolve fee disputes. It is voluntary, except that lawyers who receive the underlying referral from the OSB must participate. A petitioner who wishes to resolve a fee dispute submits an application, which is sent to the respondent. If the respondent agrees to arbitrate, or if they must participate, the petitioner pays the filing fee and an arbitrator or panel is assigned.

Although the arbitration program is popular and effective, it is as formal as any arbitration. Clients, in particular, have asked over the years for a simpler process that would let them "tell their story" more effectively than is possible in formal testimony. In response, the BOG implemented a pilot fee mediation part to the OSB's program. In 2016, the BOG adopted rules to make that change permanent.

Lawyer mediators have expressed concern about material in the OSB's program documents indicating that a lawyer mediator involved in the OSB's program was still subject to RPC 8.3(a) in circumstances where reporting attorney misconduct was required by that rule. As currently formulated, Rule 10.8 provides that "[m]ediators and parties who agree to participate in this program expressly waive the confidentiality provisions of ORS 36.222 to the extent necessary to allow disclosures pursuant to Rule 7.5, 10.4, 10.5 and 10.6." Whether the parties actually understand and appreciate the

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4 A mediator is "a third party who performs mediation." ORS 36.110(9). Mediation itself is "a process in which a mediator assists and facilitates two or more parties to a controversy in reaching a mutually acceptable resolution of the controversy ...." ORS 36.110(5).

5 "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." RPC 8.3(a).

6 Rule 10.4 addresses the duty to report violations of RPC 8.3. The rule provides:

[L]awyer mediators and arbitrators shall inform the Client Assistance Office when they know, based on information obtained during the course of an arbitration proceeding, 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.

This rule, on its face, does not mention mediation, though it refers to "mediators." To fully implement the
"waiver" language is of additional concern because mediation is based upon the principles of full disclosure, informed consent, and self-determination. These principles are undermined when parties must agree to the "waiver" or not have access to the OSB mediation program.

Where a lawyer mediator knows, based on confidential mediation communications, that another lawyer has committed a violation of the RPCs that raises a substantial question as to that lawyer’s honesty, trustworthiness, or fitness as a lawyer, RPC 8.3’s duty to report is inconsistent with ORS 36.220(1)(a). The BOG created the Task Force to study that and related issues.7

Discussion

Members of the Task Force

Rich Spier, Chair
Thom Brown
Mark Comstock
Bob Earnest, public member
Dawn Evans
Dorothy Fallon, public member
Mark Friel
Judy Henry
Sam Imperati
Chris Kent
Bruce Schafer
Jim Uerlings
Pat Vallerand
Cassandra Dyke, Program Administrator (staff)
Mark Johnson Roberts, Deputy General Counsel (staff)

Meetings of the Task Force

The Task Force met five times between November 2016 and April 2017. A subcommittee of the Task Force was created and met with OSB staff. The subcommittee then deliberated and adopted a final draft of this report that was then considered and

Task Force’s recommendations, the BOG should delete the reference to "mediators" in the rule.

7 "The Fee Mediation Task Force is charged to evaluate the current fee mediation rules and make proposals for changes to the Board of Governors where appropriate. The Fee Mediation Task Force shall also make recommendations to General Counsel regarding fee mediation training and fee mediation forms" (9 Sep 2016).
approved by the entire Task Force.

**Recommendations of the Task Force**

1. **RPC 8.3(c) should be amended to create an additional exception to RPC 8.3(a)’s reporting requirement for lawyer mediators in the OSB’s fee-dispute program, when the knowledge or evidence of attorney misconduct comes from mediation communications as defined by ORS 36.110(7) and made confidential by ORS 36.220.**

The BOG created the Task Force because lawyer mediators questioned whether a lawyer serving as a mediator had an obligation to report an attorney in the circumstances covered under RPC 8.3(a) in light of ORS 36.220. Specifically, lawyer mediators observed that, to the extent the reporting obligation depended on information obtained through “mediation communications,” RPC 8.3(a) was inconsistent with ORS 36.220(1)(a), which prohibits the disclosure of mediation communications by a lawyer mediator “to any other person” in the absence of an agreement by all mediation parties or a legislatively created exception. See also ORS 36.222(1) and (3) (to same effect). Moreover, lawyer mediators also observed that the program materials, and related form agreement to mediate, set forth the RPC 8.3 reporting obligation explicitly notwithstanding ORS 36.220.

To address the concerns raised by lawyer mediators, the Task Force recommends that the BOG ask the Supreme Court to amend RPC 8.3(c)8 to add an exception for lawyer mediators participating in a program mediation. The recommended revised RPC 8.3(c) would read as follows:

>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:

8 In the course of the Task Force’s work, OSB’s General Counsel brought to the Task Force’s attention an important issue. As a separate branch of government, the judicial branch possesses certain inherent powers necessary to ensure the courts’ functioning. In Oregon, “[n]o area of judicial power is more clearly marked off and identified than the courts’ power to regulate the conduct of the attorneys who serve under it.” *Ramstead v. Morgan*, 219 Or 383, 399 (1959). Although the Oregon Supreme Court has acknowledged its inherent power to regulate the practice of law, it has also recognized that the legislature has the power to regulate “some matters which affect the judicial process.” *Id.* The court held that “[t]he limits of legislative authority are reached, however, when legislative action unduly burdens or unduly interferes with the judicial department in the exercise of its judicial functions.” *Id.* The Task Force takes no position on whether—or to what extent—the issue raised by OSB’s General Counsel is implicated by the inconsistency between ORS 36.220 and RPC 8.3(a) addressed in this report.
(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; or

(4) acting as a mediator in the Fee Dispute Resolution Program, if the disclosure would be based on information protected by the confidential mediation communications provisions of ORS 36.220.

(Italics reflect recommended change.)

The Task Force's recommended change to RPC 8.3(c) implements its view that ensuring the legislature's protection of confidential mediation communication exists in any program mediation is critically important for the following reasons:

- The parties in the mediation have a well-established reasonable expectation of confidentiality in mediation.

- The statute-versus-rule conflict presents a potential hazard for all lawyer mediators, who could be vulnerable to accusation of violating the RPCs (e.g., RPC 3.4(c)) and Rule 10.4 while complying with the requirements of ORS 36.220.

- The success of mediation, in large part, depends on the parties' justified expectation of confidentiality, consistent with the policies set out in ORS

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9 RPC 8.3(c) already contains exceptions for SLAC, the PLF, and the PLF loss prevention programs including OAAP. The Task Force believes that the need for confidentiality in any program mediation is similarly weighty in light of the importance confidentiality plays in mediation and in light of the legislative policy statement supporting mediation in other contexts. See ORS 36.100 ("[W]hen two or more persons cannot settle a dispute directly between themselves, it is preferable that the disputants be encouraged and assisted to resolve their dispute with the assistance of a trusted and competent third party mediator, whenever possible, rather than the dispute remaining unresolved or resulting in litigation.").
36.220.

- Volunteer mediators should not be compelled to testify and participate in hearings when all other mediators in the State of Oregon are not required to do so.

- Asking the volunteer mediators in the program to have to get involved after the mediation session is an unfair burden.

2. **Once the changes outlined in recommendation 1 are adopted, any references to the reporting requirement in RPC 8.3 should be removed from Rule 10.4 and from all other program rules (e.g. Rule 7.5, 10.5, 10.6 and 10.8) and materials addressing program-conducted mediation (program mediation).**

To fully implement the Task Force's first recommendation, the Task Force strongly feels that it is essential that the RPC 8.3 language be removed from all rules and materials covering in any way a program mediation.

3. **Any program mediation should center on the reasonableness of the fee and the return of client property. Evidence of alleged malpractice or unethical conduct may be considered during mediation in addressing whether the fee charged is reasonable, and the fee may be adjusted accordingly in any mediated resolution, but no other affirmative monetary relief should be permitted in any program mediation.**

The Task Force examined at some length the appropriate scope of mediation within the program. While the group recognized mediation's core principle of self-determination, it also recognized that the central purpose of any program mediation is

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10 Consistent with the full implementation of this recommendation, the Task Force recommends that the program's rules, handbook, and documents should be amended to clearly advise the potential mediation participants, before selecting the OSB program, that evidence of alleged malpractice or unethical conduct may be considered during mediation in addressing whether the fee charged is reasonable, and the fee may be adjusted accordingly in any mediated resolution, but no other affirmative monetary relief should be permitted in any program mediation. The amendments should also specifically recommend the available alternatives for resolving malpractice claims (including mediation outside the program) and the appropriate ways to address ethics issues.

to determine the appropriate fee, taking into consideration the quality of the services rendered, while avoiding any mediated resolution of malpractice or ethics issues that are too complex to address in this context.

The Task Force’s consensus was that a program mediation should center only on the amount of the fee and the return of client property. However, evidence of alleged malpractice or unethical conduct may be discussed when addressing whether the fee charged is reasonable, and the fee may be adjusted accordingly in mediation, but no other affirmative monetary relief should be permitted in any program mediation.\(^{12}\)

The program rules, handbook, and documents should be amended where necessary to fully implement the Task Force’s consensus including, but not limited to, the inclusion of a clear statement that no program mediation results in any release, waiver, estoppel, or preclusion for issues pertaining to professional liability or unethical conduct.\(^{13}\)

4. Mediators participating in the program should complete at least a 32-hour integrated mediation course and complete three mediations before being enrolled in the program. Mediators should also agree to be bound by the ethical requirements in section 1.4 of the Chief Justice’s order on qualification of mediators for public mediation programs.

The Task Force next considered the issue of participating mediators’ qualifications. The OSB’s program has no formal experience requirements at present, although staff looks in general for people who have either formal mediation training or substantial experience. The consensus of the Task Force was that mediators in this program should

\(^{12}\) The Task Force discussed, but is not addressing, the applicability of this language to arbitration because it concluded that issue went beyond the Task Force’s charge. In the course of that discussion, the Task Force noted that Rule 5.2 states that “[t]he sole issue to be determined in all fee dispute proceedings under these rules shall be whether the fees or costs charged for the services rendered were reasonable in light of the factors set forth in RPC 1.5.” RPC 1.5 does not explicitly state that malpractice or unethical conduct may be discussed when addressing whether the fee charged is reasonable, and the fee may be adjusted accordingly. However, both the program mediator and arbitrator handbooks state clearly that those issues can be discussed and the fee may be adjusted. To ensure full implementation of the Task Force’s recommendations, the Task Force hopes that the BOG considers whether Rule 5.2, RPC 1.5, and all related program provisions should be changed to clearly reflect the current practice in all aspects of the program as outlined in the handbooks.

\(^{13}\) The Task Force discussed, but is not addressing, the applicability of this language to arbitration because it concluded that the issue went beyond the Task Force’s charge. To ensure full implementation of the Task Force’s recommendations, the Task Force hopes that the BOG considers whether similar language (with the addition of “findings”) should be contained in the fee-arbitration program.
be qualified like mediators in court-connected mediation programs. The Chief Justice has issued an order for this purpose.

The Task Force discussed deferring to the Chief Justice’s order, but decided instead to recommend that mediators in the OSB’s program complete at least a 32-hour integrated mediation course and have facilitated three mediations before being enrolled in the program. Mediators would also agree to be bound by the ethical requirements in section 1.4 of the Chief Justice’s order. (A copy of the Chief Justice’s order accompanies this memorandum.)

5. **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.”**

During the Task Force’s work, OSB’s General Counsel raised the issue that lawyers have a duty under RPC 3.4(c) not to “knowingly disobey an obligation under the rules of a tribunal, except for an open refusal based on an assertion that no valid obligation exists.” While that conflict would be eliminated through the Supreme Court’s implementation of the Task Force’s recommend change to RPC 8.3 for any program mediation, the conflict would remain in all other mediations involving a lawyer mediator.

The Task Force was not asked to resolve this broader conflict between ORS 36.220 and RPC 3.4(c) and RPC 8.3(a). Nevertheless, the Task Force concluded that the presence of that broader conflict is a significant concern that should be addressed by the BOG. Accordingly, the Task Force recommends that, as soon as feasible, the BOG ask the Supreme Court to resolve the conflict between ORS 36.220 and all implicated RPCs including, but not limited to, RPC 3.4 and RPC 8.3, by acknowledging that ORS 36.220 protects “confidential mediation communications” in all mediations involving a lawyer mediator just as it would in a program mediation upon implementation of the Task Force’s recommend change to RPC 8.3 in that specific context.

6. **The BOG should further study whether mediators in the program should be required to carry professional liability insurance for mediator malpractice**
through the PLF (part-time lawyer mediator) or other carrier (full-time lawyer mediator).

A question arose about insurance coverage for mediators participating in the program. The OSB does not require that its participating mediators hold professional liability insurance but, as a practical matter, most of them are attorneys and most have liability insurance coverage.

The Oregon State Bar Professional Liability Fund provides coverage through its approved coverage plan for those attorneys who conduct mediations as an adjunct to the private practice of law, but it does not cover full-time lawyer mediators. The Task Force discussed that mediators in the OSB’s program might want liability insurance coverage, notwithstanding their limited liability under ORS 36.210. This issue is again beyond the scope of the Task Force’s charge, but the Task Force suggests that the BOG may wish to consider giving it further study.
Oregon State Bar  
Professional Liability Fund  
Financial Statements  
2/28/2018

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<td>Primary Program Statement of Revenues, Expenses and Changes in Net Position</td>
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<td>Excess Program Statement of Revenues, Expenses and Changes in Net Position</td>
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<td>Excess Program Operating Expenses</td>
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<td>Combined Investment Schedule</td>
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Oregon State Bar  
Professional Liability Fund  
Combined Primary and Excess Programs  
Statement of Net Position  
2/28/2018

**ASSETS**

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<tr>
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<tr>
<td>Cash</td>
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<td>Investments at Fair Value</td>
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<td>Due from Reinsurers</td>
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<td>Other Current Assets</td>
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<td>Net Fixed Assets</td>
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<td>Claim Receivables</td>
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<td>PERS Deferred Outflow of Resources</td>
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<td>Other Long Term Assets</td>
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**LIABILITIES AND FUND POSITION**

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Change in Net Position:

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<td><strong>Net Position</strong></td>
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<td><strong>$12,228,508.43</strong></td>
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**TOTAL LIABILITIES AND FUND POSITION**

|                        | **$81,183,222.92** | **$76,781,954.59** |
Oregon State Bar
Professional Liability Fund
Primary Program

Statement of Revenues, Expenses, and Changes in Net Position
2 Months Ended 2/28/2018

<table>
<thead>
<tr>
<th></th>
<th>YEAR TO DATE</th>
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<th>YEAR TO DATE</th>
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<tr>
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<td>ACTUAL</td>
<td>BUDGET</td>
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<td>Assessments</td>
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|                      |              |              |              |        |        |
| **EXPENSE**          |              |              |              |        |        |
| Provision For Claims:|              |              |              |        |        |
| New Claims at Average Cost | $2,780,000.00 | $3,037,500.00 |         |        |        |
| Coverage Opinions    | 30,017.90    | 12,073.95    |        |        |        |
| General Expense      | 3,036.81     | 1,111.58     |        |        |        |
| Less Recoveries & Contributions | (2,811.92) | 340.20       |        |        |        |
| Budget for Claims Expense |            | $2,992,500.00 |        | $17,955,000.00 |        |
| **Total Provision For Claims** | $2,810,242.79 | $2,992,500.00 | $182,257.21 | $3,051,025.73 | $17,955,000.00 |
| Expense from Operations: |              |              |              |        |        |
| Administrative Department | $470,055.94 | $445,684.00 | ($24,371.94) | $450,975.55 | $2,755,781.00 |
| Accounting Department | 128,867.96   | 152,455.00   | 23,587.04    | 125,101.04 | 933,603.00 |
| Loss Prevention Department | 309,499.85 | 385,306.00 | 75,806.15 | 283,927.45 | 2,301,102.00 |
| Claims Department     | 385,685.78   | 473,890.00   | 88,204.22    | 376,489.16 | 2,826,393.00 |
| Allocated to Excess Program | (170,513.50) | (156,010.00) | 14,503.50   | (180,646.66) | (936,071.00) |
| **Total Expense from Operations** | $1,123,596.03 | $1,301,325.00 | $177,728.97 | $1,055,846.54 | $7,880,808.00 |
| Depreciation and Amortization | $26,038.40 | $22,584.00 | ($3,454.40) | $26,760.23 | $135,500.00 |
| Allocated Depreciation | (2,685.16)   | (3,584.00)   | (898.84)     | (3,391.66) | (21,500.00) |
| **TOTAL EXPENSE**     | $3,957,192.06 | $4,312,825.00 | $355,632.94 | $4,130,240.84 | $25,949,808.00 |

| NET POSITION - INCOME (LOSS) | $311,645.35 | $103,689.00 | ($207,956.35) | $1,410,621.06 | $549,275.00 |
## Oregon State Bar
### Professional Liability Fund
#### Primary Program

### Statement of Operating Expense

#### 2 Months Ended 2/28/2018

<table>
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<tr>
<th>EXPENSE</th>
<th>CURRENT YEAR TO DATE</th>
<th>YEAR TO DATE</th>
<th>VARIANCE</th>
<th>LAST YEAR</th>
<th>BUDGET</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>MONTH ACTUAL</td>
<td>BUDGET</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Salaries</td>
<td>$362,027.24</td>
<td>$636,527.02</td>
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<td>Benefits and Payroll Taxes</td>
<td>142,248.91</td>
<td>266,041.28</td>
<td>320,707.00</td>
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<td>249,753.84</td>
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<td>Investment Services</td>
<td>0.00</td>
<td>0.00</td>
<td>0.00</td>
<td>0.00</td>
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<tr>
<td>Legal Services</td>
<td>445.50</td>
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<td>2,095.00</td>
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<td>Financial Audit Services</td>
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<td>0.00</td>
<td>0.00</td>
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<td>Actuarial Services</td>
<td>8,855.00</td>
<td>8,855.00</td>
<td>0.00</td>
<td>(8,855.00)</td>
<td>9,937.50</td>
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<td>Information Services</td>
<td>4,466.05</td>
<td>8,549.65</td>
<td>10,832.00</td>
<td>2,282.35</td>
<td>4,909.10</td>
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<td>Document Scanning Services</td>
<td>870.94</td>
<td>870.94</td>
<td>3,750.00</td>
<td>2,879.06</td>
<td>0.00</td>
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<tr>
<td>Other Professional Services</td>
<td>5,575.53</td>
<td>16,468.45</td>
<td>12,586.00</td>
<td>(3,882.45)</td>
<td>21,614.98</td>
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<td>Staff Travel</td>
<td>495.00</td>
<td>675.61</td>
<td>2,450.00</td>
<td>1,774.39</td>
<td>249.86</td>
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<td>Board Travel</td>
<td>957.49</td>
<td>1,041.49</td>
<td>9,250.00</td>
<td>8,208.51</td>
<td>2,163.20</td>
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<td>NABRICO</td>
<td>0.00</td>
<td>0.00</td>
<td>0.00</td>
<td>0.00</td>
<td>250.00</td>
</tr>
<tr>
<td>Training</td>
<td>3,172.80</td>
<td>5,622.80</td>
<td>6,840.00</td>
<td>1,217.20</td>
<td>4,572.40</td>
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<tr>
<td>Rent</td>
<td>45,290.37</td>
<td>90,021.62</td>
<td>95,866.00</td>
<td>5,844.38</td>
<td>88,470.87</td>
</tr>
<tr>
<td>Printing and Supplies</td>
<td>3,804.50</td>
<td>14,438.34</td>
<td>10,502.00</td>
<td>(3,936.34)</td>
<td>16,916.14</td>
</tr>
<tr>
<td>Postage and Delivery</td>
<td>290.93</td>
<td>2,256.99</td>
<td>2,132.00</td>
<td>(126.99)</td>
<td>3,455.89</td>
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<tr>
<td>Equipment Rent &amp; Maintenance</td>
<td>975.34</td>
<td>9,878.84</td>
<td>7,416.00</td>
<td>(2,462.84)</td>
<td>4,709.71</td>
</tr>
<tr>
<td>Telephone</td>
<td>4,285.90</td>
<td>8,318.93</td>
<td>8,500.00</td>
<td>181.07</td>
<td>8,890.40</td>
</tr>
<tr>
<td>L P Programs (less Salary &amp; Benefits)</td>
<td>48,857.78</td>
<td>68,655.95</td>
<td>88,118.00</td>
<td>19,462.05</td>
<td>40,195.18</td>
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<td>Bar Books Grant</td>
<td>16,666.67</td>
<td>33,333.34</td>
<td>33,334.00</td>
<td>0.66</td>
<td>33,333.34</td>
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<tr>
<td>Insurance</td>
<td>6,982.83</td>
<td>10,413.66</td>
<td>7,500.00</td>
<td>(2,913.66)</td>
<td>7,310.50</td>
</tr>
<tr>
<td>Library</td>
<td>6,133.57</td>
<td>8,146.64</td>
<td>5,500.00</td>
<td>(2,646.64)</td>
<td>4,326.36</td>
</tr>
<tr>
<td>Subscriptions, Memberships &amp; C/C Change</td>
<td>38,762.46</td>
<td>101,039.88</td>
<td>43,334.00</td>
<td>(57,705.88)</td>
<td>99,115.31</td>
</tr>
<tr>
<td>Allocated to Excess Program</td>
<td>(170,513.50)</td>
<td>(170,513.50)</td>
<td>(156,010.00)</td>
<td>(14,503.50)</td>
<td>(180,646.66)</td>
</tr>
</tbody>
</table>

**TOTAL EXPENSE** | $530,653.31 | $1,123,596.03 | $1,301,325.00 | $177,728.97 | $1,055,846.54 | $7,880,808.00
Oregon State Bar  
Professional Liability Fund  
Excess Program  
Statement of Revenue, Expenses, and Changes in Net Position  
2 Months Ended 2/28/2018

<table>
<thead>
<tr>
<th></th>
<th>YEAR TO DATE ACTUAL</th>
<th>YEAR TO DATE BUDGET</th>
<th>VARIANCE</th>
<th>YEAR TO DATE LAST YEAR</th>
<th>ANNUAL BUDGET</th>
</tr>
</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>$154,137.72</td>
<td>$146,666.00</td>
<td>($7,471.72)</td>
<td>$142,356.85</td>
<td>$880,000.00</td>
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<tr>
<td>Installment Service Charge</td>
<td>49,866.00</td>
<td>56,000.00</td>
<td>6,134.00</td>
<td>48,977.00</td>
<td>56,000.00</td>
</tr>
<tr>
<td>Investment Return</td>
<td>(12,804.45)</td>
<td>14,182.00</td>
<td>26,986.45</td>
<td>(41,453.21)</td>
<td>85,094.00</td>
</tr>
<tr>
<td><strong>TOTAL REVENUE</strong></td>
<td>$191,199.27</td>
<td>$216,848.00</td>
<td>$25,648.73</td>
<td>$149,880.64</td>
<td>$1,021,094.00</td>
</tr>
</tbody>
</table>

| **EXPENSE**          |                     |                     |          |                        |               |
| Operating Expenses (See Page 6) | $174,980.50        | $166,282.00         | ($8,698.50) | $194,564.61         | $997,700.00   |
| Allocated Depreciation | $2,685.16          | $3,666.00          | $980.84  | $3,391.66           | $22,000.00    |

| **NET POSITION - INCOME (LOSS)** | $13,533.61 | $46,900.00 | $33,366.39 | ($48,075.63) | $1,394.00 |
## Oregon State Bar
### Professional Liability Fund
#### Excess Program

**Statement of Operating Expense**

**2 Months Ended 2/28/2018**

<table>
<thead>
<tr>
<th>Expense Description</th>
<th>CURRENT MONTH</th>
<th>YEAR TO DATE</th>
<th>ACTUAL</th>
<th>BUDGET</th>
<th>VARIANCE</th>
<th>LAST YEAR</th>
<th>ANNUAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>Salaries</td>
<td>$99,286.66</td>
<td>$79,166.00</td>
<td>$99,286.66</td>
<td>$99,286.66</td>
<td>($20,120.66)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Benefits and Payroll Taxes</td>
<td>33,360.84</td>
<td>27,166.00</td>
<td>33,360.82</td>
<td>163,000.00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Investment Services</td>
<td>0.00</td>
<td>34.00</td>
<td>0.00</td>
<td>200.00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Office Expense</td>
<td>0.00</td>
<td>0.00</td>
<td>0.00</td>
<td>0.00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Allocation of Primary Overhead</td>
<td>37,866.00</td>
<td>49,500.00</td>
<td>47,999.18</td>
<td>297,000.00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Reinsurance Placement &amp; Travel</td>
<td>0.00</td>
<td>1,334.00</td>
<td>0.00</td>
<td>8,000.00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Training</td>
<td>0.00</td>
<td>84.00</td>
<td>0.00</td>
<td>500.00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Printing and Mailing</td>
<td>817.00</td>
<td>666.00</td>
<td>3,549.25</td>
<td>4,000.00</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Program Promotion</td>
<td>0.00</td>
<td>2,866.00</td>
<td>2,495.00</td>
<td>16,000.00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other Professional Services</td>
<td>1,155.00</td>
<td>3,000.00</td>
<td>7,543.10</td>
<td>18,000.00</td>
<td></td>
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</tr>
<tr>
<td>Software Development</td>
<td>0.00</td>
<td>2,666.00</td>
<td>330.60</td>
<td>16,000.00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Total Expense</strong></td>
<td><strong>$172,485.50</strong></td>
<td><strong>$166,282.00</strong></td>
<td><strong>$194,564.61</strong></td>
<td><strong>$197,700.00</strong></td>
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</tbody>
</table>
## Dividends and Interest:

<table>
<thead>
<tr>
<th>Fund Type</th>
<th>CURRENT MONTH THIS YEAR</th>
<th>YEAR TO DATE THIS YEAR</th>
<th>CURRENT MONTH LAST YEAR</th>
<th>YEAR TO DATE LAST YEAR</th>
</tr>
</thead>
<tbody>
<tr>
<td>Short Term Bond Fund</td>
<td>$18,760.71</td>
<td>$30,742.66</td>
<td>$5,779.07</td>
<td>$12,010.71</td>
</tr>
<tr>
<td>Intermediate Term Bond Funds</td>
<td>29,464.77</td>
<td>57,944.37</td>
<td>31,757.99</td>
<td>62,757.39</td>
</tr>
<tr>
<td>Domestic Common Stock Funds</td>
<td>0.00</td>
<td>0.00</td>
<td>0.00</td>
<td>0.00</td>
</tr>
<tr>
<td>International Equity Fund</td>
<td>0.00</td>
<td>0.00</td>
<td>0.00</td>
<td>0.00</td>
</tr>
<tr>
<td>Real Estate</td>
<td>0.00</td>
<td>0.00</td>
<td>0.00</td>
<td>0.00</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>0.00</td>
<td>0.00</td>
<td>0.00</td>
<td>0.00</td>
</tr>
<tr>
<td><strong>Total Dividends and Interest</strong></td>
<td><strong>$48,225.48</strong></td>
<td><strong>$88,687.03</strong></td>
<td><strong>$37,537.06</strong></td>
<td><strong>$74,768.10</strong></td>
</tr>
</tbody>
</table>

## Gain (Loss) in Fair Value:

<table>
<thead>
<tr>
<th>Fund Type</th>
<th>CURRENT MONTH THIS YEAR</th>
<th>YEAR TO DATE THIS YEAR</th>
<th>CURRENT MONTH LAST YEAR</th>
<th>YEAR TO DATE LAST YEAR</th>
</tr>
</thead>
<tbody>
<tr>
<td>Short Term Bond Fund</td>
<td>($20,455.95)</td>
<td>($50,958.05)</td>
<td>$0.01</td>
<td>$0.01</td>
</tr>
<tr>
<td>Intermediate Term Bond Funds</td>
<td>(111,930.08)</td>
<td>(191,731.51)</td>
<td>48,520.57</td>
<td>92,594.26</td>
</tr>
<tr>
<td>Domestic Common Stock Funds</td>
<td>(541,022.71)</td>
<td>178,172.07</td>
<td>423,680.02</td>
<td>636,514.59</td>
</tr>
<tr>
<td>International Equity Fund</td>
<td>(626,947.24)</td>
<td>111,952.60</td>
<td>115,166.04</td>
<td>519,699.98</td>
</tr>
<tr>
<td>Real Estate</td>
<td>0.00</td>
<td>0.00</td>
<td>0.00</td>
<td>0.00</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>0.00</td>
<td>0.00</td>
<td>40,260.92</td>
<td>88,190.58</td>
</tr>
<tr>
<td><strong>Total Gain (Loss) in Fair Value</strong></td>
<td><strong>($1,300,355.98)</strong></td>
<td><strong>$47,435.11</strong></td>
<td><strong>$627,627.56</strong></td>
<td><strong>$1,336,999.42</strong></td>
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</tbody>
</table>

**TOTAL RETURN**

<table>
<thead>
<tr>
<th>CURRENT MONTH THIS YEAR</th>
<th>YEAR TO DATE THIS YEAR</th>
<th>CURRENT MONTH LAST YEAR</th>
<th>YEAR TO DATE LAST YEAR</th>
</tr>
</thead>
<tbody>
<tr>
<td>($1,252,130.50)</td>
<td>$136,122.14</td>
<td>$665,164.62</td>
<td>$1,411,767.52</td>
</tr>
</tbody>
</table>

## Portions Allocated to Excess Program:

<table>
<thead>
<tr>
<th>Category</th>
<th>CURRENT MONTH THIS YEAR</th>
<th>YEAR TO DATE THIS YEAR</th>
<th>CURRENT MONTH LAST YEAR</th>
<th>YEAR TO DATE LAST YEAR</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dividends and Interest</td>
<td>$3,256.78</td>
<td>$5,275.53</td>
<td>($1,850.56)</td>
<td>($2,282.46)</td>
</tr>
<tr>
<td>Gain (Loss) in Fair Value</td>
<td>(76,302.35)</td>
<td>(18,079.98)</td>
<td>(30,942.04)</td>
<td>(39,170.75)</td>
</tr>
<tr>
<td><strong>TOTAL ALLOCATED TO EXCESS PROGRAM</strong></td>
<td><strong>($73,045.57)</strong></td>
<td><strong>($12,804.45)</strong></td>
<td><strong>($32,792.52)</strong></td>
<td><strong>($41,453.21)</strong></td>
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</table>
Oregon State Bar  
Professional Liability Fund  
Excess Program  
Balance Sheet  
2/28/2018

### ASSETS

<table>
<thead>
<tr>
<th>Description</th>
<th>THIS YEAR</th>
<th>LAST YEAR</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cash</td>
<td>$579,255.50</td>
<td>$4,020,028.75</td>
</tr>
<tr>
<td>Assessment Installment Receivable</td>
<td>1,385,431.00</td>
<td>1,373,021.20</td>
</tr>
<tr>
<td>Due from Reinsurers</td>
<td>412,152.87</td>
<td>3,123,374.98</td>
</tr>
<tr>
<td>Investments at Fair Value</td>
<td>3,491,358.81</td>
<td>(2,498,556.22)</td>
</tr>
</tbody>
</table>

**TOTAL ASSETS**

<table>
<thead>
<tr>
<th>Description</th>
<th>THIS YEAR</th>
<th>LAST YEAR</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>$5,868,198.18</td>
<td>$6,017,868.71</td>
</tr>
</tbody>
</table>

### LIABILITIES AND FUND EQUITY

<table>
<thead>
<tr>
<th>Description</th>
<th>THIS YEAR</th>
<th>LAST YEAR</th>
</tr>
</thead>
<tbody>
<tr>
<td>Accounts Payable &amp; Refunds Payable</td>
<td>$817.00</td>
<td>$237.50</td>
</tr>
<tr>
<td>Due to Primary Fund</td>
<td>$40.00</td>
<td>($3,893.00)</td>
</tr>
<tr>
<td>Due to Reinsurers</td>
<td>3,089,719.74</td>
<td>3,251,991.15</td>
</tr>
<tr>
<td>Ceding Commision Allocated for Remainder of Year</td>
<td>777,404.37</td>
<td>712,645.40</td>
</tr>
</tbody>
</table>

**Total Liabilities**

<table>
<thead>
<tr>
<th>Description</th>
<th>THIS YEAR</th>
<th>LAST YEAR</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>$3,867,981.11</td>
<td>$3,960,981.05</td>
</tr>
</tbody>
</table>

**Net Position**

<table>
<thead>
<tr>
<th>Description</th>
<th>THIS YEAR</th>
<th>LAST YEAR</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net Position (Deficit) Beginning of Year</td>
<td>$1,896,683.46</td>
<td>$2,104,963.29</td>
</tr>
<tr>
<td>Year to Date Net Income (Loss)</td>
<td>13,533.61</td>
<td>(48,075.63)</td>
</tr>
</tbody>
</table>

**Total Net Position**

<table>
<thead>
<tr>
<th>Description</th>
<th>THIS YEAR</th>
<th>LAST YEAR</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>$2,000,217.07</td>
<td>$2,056,887.66</td>
</tr>
</tbody>
</table>

**TOTAL LIABILITIES AND FUND EQUITY**

<table>
<thead>
<tr>
<th>Description</th>
<th>THIS YEAR</th>
<th>LAST YEAR</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>$5,868,198.18</td>
<td>$6,017,868.71</td>
</tr>
</tbody>
</table>
### Oregon State Bar
### Professional Liability Fund
### Primary Program
### Balance Sheet
### 2/28/2018

#### ASSETS

<table>
<thead>
<tr>
<th>Description</th>
<th>THIS YEAR</th>
<th>LAST YEAR</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cash</td>
<td>$7,669,682.90</td>
<td>$6,780,664.27</td>
</tr>
<tr>
<td>Investments at Fair Value</td>
<td>57,852,198.60</td>
<td>52,993,616.13</td>
</tr>
<tr>
<td>Assessment Installment Receivable</td>
<td>7,998,468.00</td>
<td>8,191,899.00</td>
</tr>
<tr>
<td>Due From Excess Fund</td>
<td>40.00</td>
<td>(3,893.00)</td>
</tr>
<tr>
<td>Other Current Assets</td>
<td>76,362.38</td>
<td>78,586.95</td>
</tr>
<tr>
<td>Net Fixed Assets</td>
<td>542,968.08</td>
<td>646,544.07</td>
</tr>
<tr>
<td>Claim Receivables</td>
<td>18,733.32</td>
<td>70,272.46</td>
</tr>
<tr>
<td>Other Long Term Assets</td>
<td>5,000.00</td>
<td>6,100.00</td>
</tr>
<tr>
<td>PERS Deferred Outflow of Resources</td>
<td>1,151,573.46</td>
<td>2,000,296.00</td>
</tr>
<tr>
<td><strong>TOTAL ASSETS</strong></td>
<td><strong>$75,315,024.74</strong></td>
<td><strong>$70,764,085.88</strong></td>
</tr>
</tbody>
</table>

#### LIABILITIES AND FUND EQUITY

<table>
<thead>
<tr>
<th>Description</th>
<th>THIS YEAR</th>
<th>LAST YEAR</th>
</tr>
</thead>
<tbody>
<tr>
<td>Accounts Payable and Other Current Liabilities</td>
<td>$102,189.67</td>
<td>$78,817.51</td>
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<tr>
<td>PERS Pension Liability</td>
<td>4,931,707.98</td>
<td>4,994,537.00</td>
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<td>Liability for Compensated Absences</td>
<td>380,963.74</td>
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<tr>
<td>Liability for Indemnity</td>
<td>11,428,135.86</td>
<td>13,322,343.75</td>
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<td>Liability for Claim Expense</td>
<td>13,084,144.58</td>
<td>14,185,338.98</td>
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<tr>
<td>Liability for Future ERC Claims</td>
<td>2,900,000.00</td>
<td>3,100,000.00</td>
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<tr>
<td>Liability for Suspense Files</td>
<td>1,500,000.00</td>
<td>1,600,000.00</td>
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<tr>
<td>Liability for Future Claims Administration (ULAE)</td>
<td>2,300,000.00</td>
<td>2,600,000.00</td>
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<tr>
<td>Assessment and Installment Service Charge Allocated for Remainder of Year</td>
<td>20,268,190.83</td>
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<tr>
<td><strong>Total Liabilities</strong></td>
<td><strong>$56,895,332.66</strong></td>
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Net Position

<table>
<thead>
<tr>
<th>Description</th>
<th>THIS YEAR</th>
<th>LAST YEAR</th>
</tr>
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<tbody>
<tr>
<td>Net Position (Deficit) Beginning of the Year</td>
<td>$18,108,046.73</td>
<td>$8,760,999.71</td>
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<td>Year to Date Net Income (Loss)</td>
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<tr>
<td><strong>Total Net Position</strong></td>
<td><strong>$18,419,692.08</strong></td>
<td><strong>$10,171,620.77</strong></td>
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**TOTAL LIABILITIES AND FUND EQUITY**

<table>
<thead>
<tr>
<th>Description</th>
<th>THIS YEAR</th>
<th>LAST YEAR</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td><strong>$75,315,024.74</strong></td>
<td><strong>$70,764,085.88</strong></td>
</tr>
</tbody>
</table>
BOG Meeting Date: April 20, 2018
Memo Date: April 3, 2018
From: Carol J. Bernick, PLF CEO
Re: 2018 Excess Enrollment Report

Action Recommended

No action requested.

Background

Beginning with the 2015 Excess renewal, the PLF began using fully underwritten pricing that made the previous Excess base rate mostly irrelevant. Consequently, in 2016, the BOG and PLF BOD eliminated the requirement that the two Boards approve the PLF Excess base rate. Instead, the BOG asked that the PLF report at least annually about the Excess enrollment.

2018 Excess Enrollment

The 2018 Excess enrollment cycle is largely complete. 2018 marked the final year in our effort to bring premiums in line with the risk, as our reinsurers had suffered losses that were not in keeping with the premium. We anticipate excess rates will level off in 2019. Many of these significant losses came from claims under Oregon’s securities aiding and abetting statute (ORS Ch. 59). Consequently, we have enhanced our underwriting for firms doing business investment work.

The PLF has three treaties with reinsurers, which we (creatively) title Treaty 1 (T1), Treaty 2 (T2), and Treaty 3 (T3). Treaty 1 is for policies with limits up to $2.7 million; Treaty 2 is $2.7-4.7 million; and Treaty 3 is $4.7-10 million.

As of April 2, 2018, we have 697 firms (2046 attorneys) enrolled in our Excess Program. Eleven firms purchased Extended Reporting Coverage (ERC). Our renewal rate was 92%, consistent with our renewal rates generally over the last five years.

The 2018 renewal was the first fully electronic renewal. Firms were able to complete the application on-line, receive quotes within ten days, and then bind on line. All Dec Sheets are available through the on-line portal so firms can easily access them when needed. In 2019, we will begin allowing payments on-line up to a (still to be determined) cap.
Beginning with the 2017 Excess renewal, we began offering higher limits for our cyber coverage. Every Excess Plan has an added cyber loss endorsement with limits up to $100,000 (firms 1-10 lawyers) or $200,000 (firms of 11 or more lawyers). We now offer up to $1,000,000 in cyber coverage. In 2018, 14 firms (37 lawyers) purchased additional cyber limits, up from eight firms (18 lawyers) in 2016. The cyber endorsement provides coverage for information security and privacy liability, cyber extortion (aka ransomware), privacy breach response services, regulatory defense and penalties, website media content liability, and crisis management and public relations services. The endorsement covers many claims that would otherwise be excluded under the PLF primary plan.

Attached is a complete Summary of the Excess Program with year to date figures compared to 2017 and 2016.

CJB/clh

Attachment
# PLF Excess Renewal

<table>
<thead>
<tr>
<th></th>
<th>2018</th>
<th>2017</th>
<th>2016</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Total Premium (T1, T2 and T3)</strong></td>
<td>$5,472,543</td>
<td>$5,269,147</td>
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<tr>
<td><strong>Treaty 1</strong></td>
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<tr>
<td>Total Premium</td>
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<td>Renewal Premium</td>
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<td>Firms/Attorneys - Renewing</td>
<td>665/1997</td>
<td>664/2025</td>
<td>655/1922</td>
</tr>
<tr>
<td>Retention Percentage</td>
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<td>91.84%</td>
<td>93.44%</td>
</tr>
<tr>
<td>Firms/Attorneys - New</td>
<td>35/49</td>
<td>56/113</td>
<td>68/222</td>
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<tr>
<td>Per Attorney Rate – Renewing</td>
<td>$1,985</td>
<td>$1,858</td>
<td>$1,663</td>
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<tr>
<td>Per Attorney Rate – New</td>
<td>$1,339</td>
<td>$1,130</td>
<td>$1,663</td>
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<tr>
<td><strong>Treaty 2</strong></td>
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<td></td>
</tr>
<tr>
<td>Total Premium</td>
<td>$1,061,529</td>
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<tr>
<td>Renewal Premium</td>
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<tr>
<td>New Premium</td>
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</tr>
<tr>
<td>Firms/Attorneys - Renewing</td>
<td>198/911</td>
<td>202/935</td>
<td>207/863</td>
</tr>
<tr>
<td>Retention Percentage</td>
<td>91.3%</td>
<td>89.78%</td>
<td>94.09%</td>
</tr>
<tr>
<td>Firms/Attorneys - New</td>
<td>11/25</td>
<td>15/45</td>
<td>21/150</td>
</tr>
<tr>
<td>Per Attorney Rate – Renewing</td>
<td>$1,137</td>
<td>$1,059</td>
<td>$1,064</td>
</tr>
<tr>
<td>Per Attorney Rate – New</td>
<td>$1,039</td>
<td>$734</td>
<td>$613</td>
</tr>
<tr>
<td>Number of Firms with Excess Cyber - Purchased/Applied</td>
<td>14/37</td>
<td>8/18</td>
<td></td>
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<tr>
<td>Business Law Consultant Review</td>
<td>$17,000</td>
<td>$35,000</td>
<td>n/a</td>
</tr>
<tr>
<td>ERC Premiums (T1 and T2)*</td>
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<td>$66,610</td>
<td>$60,101</td>
</tr>
<tr>
<td>ERC Firms / Attorneys</td>
<td>11/12</td>
<td>10/17</td>
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</tbody>
</table>

*ERC firm premium is allocated to the last year of coverage

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1 As of April 2, 2018
April 4, 2018

Vanessa Nordyke  
President of the Oregon State Bar  
1162 Court Street, NE  
Salem, Oregon 97301  
vnordyke@osbar.org

Helen Hierschbiel  
Chief Executive Officer of the Oregon State Bar  
16037 SW Upper Boones Ferry Road  
Tigard, Oregon 97224  
hhierschbiel@osbar.org

RE: Audit of the Disciplinary System

Dear Ms. Nordyke and Ms. Hierschbiel:

I am writing because I have concerns regarding the disciplinary system. My letter today is strictly solution based. My concerns stem from the disciplinary investigation of Donald Scott Upham. The attached letter from Scott Kveton outlines some of the failures of that investigation.

I am not only concerned that the system failed to prevent Mr. Upham from practicing law, but that other members of the bar are disproportionately reprimanded, creating a crisis of due process. I do not believe there was a breakdown at every level of the Upham investigation, for example it appears that the Client Assistant Office managed the file appropriately, but ultimately there was a breakdown.

I recommend an audit of the system by an independent commission comprised of volunteers appointed by the Board of Governors. The mission of the commission would be to review the handling of numerous matters (including Mr. Upham’s) and recommend solutions to ensure due process, oversight and transparency. Recommendations by the commission can be put to a vote at the House of Delegates annual meeting.
I suggest including volunteers from diverse practice areas. Because the commission would consist of volunteers, this would come at no cost to the Oregon State Bar. I know many attorneys that feel passionate about volunteering for such a commission to improve the system. As a member of the House of Delegates and someone familiar with the issues, I would gladly volunteer my time.

Recommendations of the commission will depend on the issues identified. However, for example, potential recommendations/objectives that could be entertained by the commission are as follows:

- Implementation of timelines and practice management tools within the bar, similar to what is provided to practicing attorneys by the Professional Liability Fund.
- Better data collection on discipline recommendations, available to the public to ensure proportional treatment.
- Define good cause and the ability to grant extensions.
- Explore rules on retaliation.
- Allow the complainant and the attorney a short opportunity to provide feedback on the opinion from the disciplinary counsel before it is submitted to the State Professional Responsibility Board (“SPRB”). This suggestion promotes accountability of the analysis provided to the SPRB.
- Oversight on the disciplinary counsel’s work product.
- The weight given to the identity of the complainant.
- Improve transparency.
- Create a system to prioritize complaints.

The only way to prevent further breakdowns in the system or significant disparity is to identify the issues and offer a solution.

The Board of Governors meets on April 20, 2018. I request this issue be placed on the agenda and that the selection process for volunteers can proceed after a commission has been approved.

I would be happy to answer any questions that the Board of Governors may have regarding the need for a commission or how the commission would be implemented. However, I would ask that this issue be placed on the agenda for April 20, 2018. I hope to have your support on this important issue.

Very truly yours,

Sarah Tuthill-Kveton

STK
cc: Chris Costantino, Chair of the Policy and Governance Committee and President Elect
April 4, 2018

Helen Hierschbiel  
Chief Executive Officer of the Oregon State Bar  
16037 SW Upper Boones Ferry Road  
Tigard, Oregon 97224  
hhierschbiel@osbar.org

Re: Donald S. Upham, Bar No. 722705

Dear Ms. Hierschbiel:

I am writing to provide feedback on the outcome of the five formal bar complaints I filed. This feedback is needed because the disciplinary system was created to prevent attorneys like Donald Scott Upham (“Upham”) from practicing law, and the system failed. It is the largest open secret that Upham should not be practicing law. Members of the community and the bar were stunned when the complaints I filed were dismissed. Unfortunately, the opinion issued from the Assistant Disciplinary Counsel simply ignored my complaints entirely or the analysis was ill-reasoned, at best.

I have no information as to whether the leadership of the Oregon State Bar has been alerted to all the issues with the Upham opinion. Therefore, the purpose of my feedback is to shed light on how this conclusion was reached, to inform the leadership at the bar, its members and the public. Moving forward, knowledge of this matter cannot be denied.

The recent publicity surrounding Upham’s representation of criminal defendant Dylan Sullivan highlights why it is so important to have an effective and consistent disciplinary system. I warned the bar in September of 2017, including the leadership at the bar, that Upham’s actions could impact Mr. Sullivan. Because of the issues in the Sullivan case, this was the appropriate time to write to the bar.

As you know, I filed no less than five formal bar complaints against Upham with 44 supporting exhibits and over 1000 pages of materials. My complaints were likely the most comprehensive bar complaints ever filed. I supported each allegation with a citation to a motion, a deposition transcript or email, so the bar did not simply need to take my word for it, but could review the objective evidence. Upham provided no formal response. The evidence I presented was uncontroverted.

So, why is Upham still practicing law?

Here are a few examples of where the bar had significant errors in logic. There are too many to address, in what has become an already long letter, so I will give a few examples.
1. The bar ignored the competency issue in its entirety.

Upham’s ability to competently practice law has always been the largest issue. Significant complaints against Upham were levied under RPC 1.1. That rule requires competency of an attorney. Under the umbrella of competency, Upham violated other rules, for example taking positions without a basis in law or fact, failing to commence lawsuits within the statute of limitations, committing crimes, and exposing his clients to far greater repercussions based on his actions. Ultimately, these issues all circle back to Upham’s lack of competency. Given the emphasis of competency in all the complaints, I was shocked to learn that the bar entirely failed to address the repeated violations of Rule 1.1. Rule 1.1 was absent from the section, “Rules Implicated”.

In all but one of my formal complaints filed, Upham was alleged to have violated Rule 1.1. In my first complaint, the rule was mentioned regarding 12 actions by Upham. In complaint number two, Rule 1.1 was mentioned regarding Upham’s behavior on three separate occasions. In complaint number four, Rule 1.1 was not directly cited, but was mentioned, for example: “[t]his is a waste at the hands of her incompetent counsel.” In complaint number five, Rule 1.1 was mentioned regarding four separate actions by Upham. Therefore, in just the formal complaints, the rule reference regarding no less than 20 separate actions by Upham. The OSB ignored all of it.

Upham’s competency was not just put at issue in the formal complaints, but in correspondence I sent to the bar, too numerous to count. For example, in a letter to the bar on July 15, 2016, I wrote:

> Several of the allegations in my complaint relate to Upham’s incompetence. Upham’s response to the bar, where his arguments are largely in marker, could not better demonstrate that Upham does not have the capacity to practice law.

> Upham’s response to the bar, which was a bunch of irrelevant documents, and incomplete sentences written in Sharpie (literally marker) seemingly should have raised red flags, but these complaints regarding competency were ignored.

> I was not the first to bring up competency concerns, nor will I be the last so long as Upham continues to practice. In Roger Hanlon’s complaint from October of 2013, competency and the ability to apply the law, were Mr. Hanlon’s largest complaints. In Upham’s recent representation of Mr. Sullivan, the biggest concern with that representation was competency, resulting in a plethora of arguments without a basis in fact or law. I shared these concerns with the bar six months prior to Upham’s courtroom behavior on March 21, 2018. The distress Upham put his own client through and distress/costs forced on Deschutes County based on his incompetent representation could have and should have been avoided. See below.
Dear Ms. Owen,

It was recently brought to my attention that Donald Scott Upham has taken on a very serious criminal matter. He is currently representing Dylan Todd Sullivan on the following criminal allegations (17CR38909):

1. Luring a minor, two counts (Class C Felony)
2. Online Sexual Corruption of a Child-First Degree (Class B Felony)
3. Sexual abuse in the Third Degree (Misdemeanor Class A)
4. Attempt to Commit a Class A Felony, Four Counts (Class B Felony).


It is one thing to allow Upham to represent people where only financial harm is at stake during the pendency of the investigation, even though he has caused large financial damage, but it is another to have someone freedom in his hands. I would not be so concerned if this was a misdemeanor DUII, but it is not. Mr. Sullivan could go to prison for a long time because of Upham's representation, regardless of guilt or innocence. In this country, every defendant is entitled to the competent advice of defense counsel. That is not just a principal of the OSB, but that which is fundamental in the United States Constitution. Despite practicing for over 40 years, Upham does not even know what a protective order is (as objectively shown in my bar complaints) and he does not understand the basic rules of discovery. Further, he cannot even understand the questions you have submitted to him and often times responds to the bar in felt tip marker. How is he going to provide competent advice to this defendant with six felony charges, where he faces up to 10 years for just one of those counts?

Given that the bar has had Upham's file for 21 months and that the disciplinary counsel has had this case for almost one year, in the event that this person receives a miscarriage of justice, that is 100% on the Oregon State Bar. This will especially be the case after this email which further warns the bar that Upham is representing Mr. Sullivan on these serious charges.

Mr. Sullivan's trial is in April of 2018 so the time to act is now so that he may get another attorney. However, if a plea deal is made, which is the only outcome because Upham cannot litigate a case, there is no telling when that will be and what advice the plea is made on or other reasonable deals are rejected on Upham's advice.

If I cannot appeal to the bar from a logical standpoint than maybe I can from an ethical humanistic standpoint; this is awful. Even if this man is guilty, he deserves competent advice and with Upham's advice he will spend twice the time in prison he should have. Do the right thing.

I understand that Ms. Owen is out until the 11th, but I copied Mr. Davis and Ms. Hierschbriel because I think that there is an immediate harm by allowing this to go unaddressed. I also know that when Ms. Hierschbriel took over as the CEO of the OSB, one of her main objectives was the timely resolution and/or prosecution of bar complaints. It has been 21 months. ECO has not provided a formal opinion and has had the case for almost one year. We are still far from the end of the process. Given this new information, I encourage you to issue prompt decision and an emergency suspension under BR 3.1.

Please keep me apprised of your efforts in this matter,

Of the complaints levied against Mr. Upham, his inability to competently practice law is at the top of the list. It was the clear cause of his other violations. The OSB ignored the allegations of incompetence.

2. The bar ignored the repeated contact with a represented party.

Rule 4.2 prevents an attorney from contacting a represented party. If a person is represented, they can only be contacted through their attorney. I had been represented by a team of attorneys since January of 2014. In fact, on July 13, 2015, my attorney sent Upham the following correspondence:

But let me be clear—crystal clear—about one thing. **Do not ever directly or indirectly contact my client again for any purpose.** On July 1, 2015, you attempted to
Despite the “crystal clear” instructions that demonstrate this had been a problem for Upham in the past, Upham directly contacted me on July 31, 2016, resulting in bar complaint number three. In the disciplinary counsel’s opinion, the bar implausibly argued that Upham must not have known that I was represented, therefore, they did not find Upham in violation of RPC 4.2. Although, this is not a well-reasoned analysis of the facts, this finding is not as ridiculous as what was to follow.

After I filed bar complaint number three, Upham did the very same thing again and contacted me on September 5, 2016, just over a month later. This resulted in complaint number four. I wrote to the bar the following: “If there was any question that I was a represented party on July 31, 2016 (and there is not any question), those questions were definitively put to rest when I filed a bar complaint for contact with a represented party.” Despite my bar complaint alleging Upham had improperly contacted me, just over a month later, he did it again. This could not be a more blatant violation of RPC 4.2. Despite this blatant violation, the bar completely ignored this allegation in its entirety: 100% ignored, no analysis, no mention. There is a distinct pattern here.

I even expressed that Upham’s increased desire to violate the rules of ethics to contact me directly, combined with Upham’s mental instability, now created a physical safety concern. In fact, I initiated a complaint with the Washington County Sheriff’s Department to document the continued unwanted contact, such that if Upham showed up at my house, I could request Upham’s arrest. With no help from the bar, Upham is now civilly prohibited from contacting me and my family. That is telling.1

In recent events, like the shooting in Parkland Florida, various agencies were warned about the shooters likelihood for violence. Recently, an Oregon attorney was arrested after allegedly firing shots into another attorney’s office. Based on that reporting, the bar was on notice because that attorney already had a pending complaint, unresolved by the bar. Here, I made repeated complaints about Upham’s obsession on directly contacting me and his temper. On September 5, 2016, I wrote to the bar: “I believe his behavior/obsession is only escalating, particularly with his determination to contact me directly, and he will push the boundaries of physical safety. He might be an old man, but I am no match to a mentally unstable man brandishing a weapon.” I am concerned that the bar will be the next agency that fails to protect members of the public. By allowing unstable attorneys to remain in a position that requires constant contact with others in what is already an adversarial system, it creates a potentially dangerous situation.

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1 Part of my agreement with Upham in the lawsuits is that he would not contact me. The agreement reached in these cases in general is interesting. Pursuant to the resolution between myself and Upham’s client in October of 2015, of the nearly $5 million demanded, I was required to pay $15,000 immediately (according to the woman these were costs/fees incurred) and $25,000 by September of 2017. In exchange, I received a mutual no contact agreement with the woman, something I had been requesting since 2010. Because of Upham’s incompetence in filing additional lawsuits, Upham, was required to pay the $25,000 due in September of 2017 to his own client. This is not a typical arrangement and the bar knew that this occurred. With respect to the five lawsuits Upham’s client filed against me and her demand for $5 million, Upham paid more on that than I did.
In sum, with respect to the violations in bar complaint number four, the bar could not have dismissed the complaints, if it was forced to provide an analysis on complaint number four and the violation of RPC 4.2 contained within. Therefore, it was simply ignored.

3. No basis in law or fact.

Because Upham is incompetent, he often takes positions without a basis in law or fact, which are violations of RPC 3.1. I have no desire to rehash all the facts of the many cases that led to the complaints, those are in the complaints themselves, but to understand the missteps of the bar, some portions of those facts must be discussed.

Upham filed a lawsuit on behalf of his client and alleged dissemination of sexually explicit materials. At the onset, there were two things wrong with that lawsuit. First the materials were not disseminated and second, the woman in the photo alleged to be “disseminated” was fully clothed.2 The statute logically requires some degree of nudity for the claim dissemination of sexually explicit materials.

When Upham’s client was asked about this photo/email in the her deposition, Upham instructed his client not to answer, alleging that even showing her that email/photo, the basis for her lawsuit, during her deposition, was dissemination. Because questions about the actual claims in the lawsuit could not be asked, the deposition was pointless and required suspension and court intervention. If attorneys could instruct their clients not to answer questions about the actual lawsuit filed, in Oregon we would have no use for depositions. There would be no point to that discovery method. I logically argued that Upham’s position in the deposition had no basis in law or fact and therefore violated RPC 3.1 and RPC 1.1 (competency).

The disciplinary counsel recommended dismissal and explained, “[t]hat Kveton disagreed with Upham’s objections on the record during the deposition does not mean that it lacked any legal or factual basis. Disagreement with opposing counsel is inherent in litigation matters. Kveton’s allegation did not appear to implicate the RPCs.” This logic is absurdly flawed. If a plaintiff could refuse to answer questions about the lawsuit they filed, there would be no depositions. Depositions are one of the basic tools of discovery in civil lawsuits. I know of no State or Federal law in civil court that would allow a plaintiff, in a case like this, not to answer questions about the basis for their own lawsuit. This is not a “disagreement”, but a position that contradicts the fundamental and universal principal of civil procedure and the American civil judicial system.3 A first-year law student would understand why Upham was wrong, or even someone searching Wikipedia for acceptable conduct during depositions. As explained above, some of the bar’s positions were ill-reasoned and other allegations were simply ignored, this analysis falls into the category of ill-reasoned. The following actions on this same topic fall into the category of being completely ignored.

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2 In simply reading the complaint it is clear that there is no legally valid claim for disseminated based on the allegations within.

3 Depositions are expensive. Interfering with the taking of a deposition causes real financial harm, including paying additional attorney fees to get a ruling by the court on opposing counsel’s unreasonable position and delays the case. Upham’s conduct is not some flippant comment in an email, but this type of conduct creates real harm.
Upham actually sent the OSB the photo and email that halted the deposition. This is the email/photo that was the entire basis for a dissemination lawsuit where Upham claimed that even showing the client the picture of herself fully clothed, during her deposition was dissemination of sexually explicit materials. But, Upham sent it, or one could say disseminated it, to the bar. This is proof that Upham did not even subjectively believe that the photo was explicit or providing it was dissemination of sexually explicit materials.

Upham sending this photo/email to the bar was a twofold admission. First, it is an admission that his objections during the deposition had no basis in law or fact. Second, it is an admission that the entire lawsuit around this material lacked a basis in law or fact and, Upham knew it lacked a basis in law and fact. I identified this as an issue in follow up correspondence with the bar. Again, allegations the bar ignored in their entirety.

4. The opinion explains that one act is not sufficient for punishment.

The bar said on multiple occasions that “one act” does not warrant punishment. I agree, one act or one mistake may not warrant punishment, although members of the bar are often punished for one act. I have never alleged that Upham committed one bad act. Upham’s repeated actions create a pattern of misconduct. That said, how often in one opinion can separate actions be categorized by the bar as one bad act before it becomes multiple? The bar’s analysis is flawed.

5. Upham failed to respond to the bar and the bar cited this as a lack of evidence.

It was my understanding that as a member of the bar, when a letter is issued asking for an attorney’s account or explanation of conduct, that an attorney must respond, or the attorney will be disciplined. Apparently, that is not the case.

Upham never formally responded to the allegations, despite multiple requests by the bar to provide his account. He did not respond because he had no explanation. When specific questions were posed to Upham he refused to answer at times, others he indicated he did not understand the questions and if he provided anything in response it only solidified concerns. On one occasion, Upham refused to answer the bar regarding whether he personally served a subpoena in the Sheraton matter. He claimed this information was “privileged.” Privilege generally relates to communications, not actions like serving a subpoena. Further, attorney client privilege does not apply to persons that are not the attorney’s client. Upham has been a member of the bar for over 40 years. Upham’s explanation of why he could not answer the bar should have been another example of his incompetence. Wikipedia could provide better legal analysis than Upham.5

Upham also first refused to answer the bar, stating that he was bound to silence based on a confidentiality clause in an agreement with me. Upham’s representation delayed the process for six months. That agreement was produced to the Oregon State Bar because Upham’s

4 It is important to note that if Upham or his client actually believed this material is explicit, by submitting it to the bar, Upham made that email/photo one of public record.
5 [https://en.wikipedia.org/wiki/Attorney%E2%80%93client_privilege](https://en.wikipedia.org/wiki/Attorney%E2%80%93client_privilege)
representation to the bar was false. Nothing restricted Upham’s ability to discuss the five lawsuits, the underlying facts or his conduct. Even after it was pointed out to the bar that Upham lied to delay his response, he was not reprimanded, he was allowed additional improper extensions of time, and the bar ignored this in its final opinion. It takes a blatant disregard for all authority and reasonableness for an attorney to blatantly lie to the Oregon State Bar, especially when there are documents that objectively prove that lie. But, the bar took no issue with this in its formal opinion. Alternatively, if Upham was not lying and truly believed the agreement prevented him from discussing the facts of the case, that argument had competency implications about his ability to interpret the plain language in a document. Yet again, 100% ignored by the bar.

Upham’s refusal to respond worked out for him. The bar cited “lack of evidence” in its opinion on multiple occasions and this reason was reported on by local media as one of the reasons the complaints were not pursued. This “lack of evidence” excuse however, is without merit. If the bar lacked evidence, the disciplinary counsel had the power to conduct a further investigation, but evidence was not lacking. My first bar complaint alone was supported by no less than 28 exhibits, totaling 965 pages. For all five formal complaints, 44 Exhibits were provided. Each allegation against Upham was supported with an exhibit and page number indicating where the objective evidence was located that supported the claim. The bar would not need to rely just on the written allegations, but could verify them in documents. The allegations were uncontroverted.

Upham’s case provides a bad example for other attorneys. That example is there is no need to respond to the bar or to provide truthful information. If any attorney is later reprimanded for this type of conduct, they can point to this case as an example of why they should not be reprimanded. This is bad precedent.

6. The Disciplinary Counsel’s opinion on Upham’s retaliation lawsuit was ill-reasoned and ignored the issues.

Attorneys are prohibited from suing someone in retaliation for a good faith bar complaint. Upham threatened to sue me on multiple occasions and did. He also threatened Natalie Hedman, an attorney in the Kempster matter, for her response to Upham’s bar complaint against her where she expressed concerns with Upham’s ability to competently practice. The lawsuit Upham filed against me was dismissed and I was entitled to attorney fees. The analysis on this issue from the bar was both short and illogical.

Kveton alleged that Upham filed a lawsuit against him in retaliation for Kveton’s complaints to the Bar about Upham’s conduct and that suit was later dismissed. The fact that a claim or lawsuit has been dismissed does not lead to the conclusion that an attorney lacks any plausible theory for his claim. In re Marandas, 351 Or 521, 533-540 (2012). It did not appear that there was sufficient evidence to warrant additional investigation of this issue.
The writer\(^6\) completely missed the point and combined two separate issues that each required an independent analysis. The writer understands that the lawsuit was filed in retaliation for the bar complaint but does not perform an analysis regarding the fact that attorneys are not allowed to retaliate for bar complaints. Next, she alleges that because the case was dismissed, it does not mean the lawsuit was frivolous. Although, that is an accurate statement of law, it is not supported by any analysis of the facts in this case.

In bar complaint four I warned Upham that his claims would be dismissed because his claim lacked merit, I had immunity under ORS 9.537, and the case would also be dismissed under ORS 31.150. I explained the exact theory of why I would be successful and how Upham should know that he would get nailed because this happened to him in a separate lawsuit in 2007. I even wrote in the complaint, “[w]hen these lawsuits against me are dismissed, the only remaining question will be, what accounts Mr. Upham and Ms. McCoy would like to use to pay my attorney fees”. Upham proceeded full force ahead, I won, and I was entitled to fees. If Upham’s claim did in fact have merit, how was it so easy to predict exactly what would occur, how it would occur, that he would encounter the same issue that he did in the previous lawsuit, and that I would be collecting fees based on the statute that allowed for dismissal? I’m either able to predict the future, or it is objectively true that the claim had no basis in law or fact.

It is easy to see why the State Professional Responsibility Board agreed with the Assistant Disciplinary Counsel, when it does not appear that there was an understanding of the issues, no analysis was presented and the recommendation was simply dismissal.

7. Conclusion

Members of the public and the legal community have been stunned by the bar’s dismissal of my complaints against Upham. There is a general sense of, “how did this happen?” In examining the Assistant Disciplinary Counsel’s opinion it becomes clear how the bar reached this recommendation. The bar reached its recommendation of dismissal of the claims against Upham by ill-reasoned analysis or by simply ignoring allegations and the evidence presented.

It is the bar’s turn to act. As you know, the bar has the authority to open an independent investigation, especially in light of the most recent publicity surrounding the Sullivan matter. Additionally, the issues in the Kempster case and the award of $10,000 against Upham’s client for attorney fees in that matter also remain available for prosecution. Given the bar’s stamp of approval on Upham’s retaliation efforts, it seems prudent that this time, the bar takes initiative.

Sincerely,

Scott Kveton

CC: Linn Davis
    Stacy Owen

---

\(^6\) The Assistant Disciplinary Counsel, which is one person handling the review and issuing an opinion.
OREGON STATE BAR
Board of Governors Agenda

Meeting Date: April 20, 2018
From: Amber Hollister, General Counsel
Re: CSF Award Recommended for Payment
MITCHELL-PHILLIPS (Anderson) 2017-40

Action Requested

The Client Security Fund Committee recommends reimbursement of $10,000 to Terri Anderson for her loss resulting from the conduct of attorney Kenneth Mitchell-Phillips.

Discussion

Background

Claimant Terri Anderson was a former client of attorney Kenneth Mitchell-Phillips. In 2015, she hired Mr. Mitchell-Phillips to bring claims against her HOA and its contractor for damage to her condominium. On June 15, 2015 she paid him a $1,500 retainer by credit card. At that time, Mr. Mitchell-Phillips performed some work, including meeting with the Claimant twice, drafting a demand letter, filing a civil complaint, and attending a deposition.

Trial was set for June 5, 2017. Around late April 2017, Claimant asserts that Mr. Mitchell-Phillips obtained a settlement offer from defendants for $10,000 in return for a full release. Claimant agreed to accept the settlement on the condition that she receive the entire settlement payment and the release be mutual.

On May 1, 2017, Mr. Mitchell-Phillips withdrew from representing Claimant.

On May 31, 2017, Claimant received a notice from the court that the case had been reported as settled and would be dismissed in 28 days. Even though he had withdrawn, sometime thereafter, Mr. Mitchell-Phillips obtained a settlement offer of $12,500. An email dated June 30, 2017 shows that the increase in settlement from $10,000 to $12,500 was designed to ensure that Mr. Mitchell-Phillips received $2,500 in fees.

On June 5, 2017, Mr. Mitchell-Phillips filed a notice of lien on the settlement claiming he was owed 1/3 or $4,125 of the settlement funds. As support for the notice of lien, Mr. Mitchell-Phillips attached an unsigned contingent fee agreement which the investigator believed was fraudulent. Claimant asserts that Mr. Mitchell-Phillips never sent her the contingent fee agreement, and she never signed it. At that time, Defendants refused to pay Claimant directly unless the lien was released. Mr. Mitchell-Phillips agreed to release the attorney lien once he received the settlement funds.
Claimant submitted records from Defense counsel documenting that the full settlement amount was sent to Mr. Mitchell-Phillips on August 3, 2017.

On August 28, 2017, Mr. Mitchell-Phillips claimed he sent Ms. Anderson a settlement check “2 weeks ago” and stated “I am not sure why you have not gotten it.” He offered to “cancel the check” and “send a new check.” However, Claimant has not received any settlement funds. Mr. Mitchell-Phillips failed to provide Ms. Anderson with any accounting for trust funds or for settlement proceeds.

Mr. Mitchell-Phillips was admitted to the bar in 2007. He opened a solo practice around 2009. At some point in mid-2017 he closed his practice and took a position at the Portland City Attorney’s Office. His tenure at the City was brief and he did not resume his private practice.

Beginning in 2016, the bar began receiving disciplinary complaints regarding Mr. Mitchell-Phillips’s conduct, which were forwarded to disciplinary counsel. Claimant Terri Anderson filed a bar complaint alleging theft of funds on November 28, 2016. After the SPRB authorized charges against Mr. Mitchell-Phillips, he indicated he wished to resign Form B. The Supreme Court accepted his Form B resignation on November 9, 2017.

The CSF investigator’s attempts to contact Mr. Mitchell-Phillips were unsuccessful. At the investigator’s request the Bar issued a subpoena for Mr. Mitchell-Phillips’ bank records, but he evaded service of process.

Analysis

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

The CSF Committee found that Ms. Anderson’s $10,000 loss of the settlement proceeds was caused by the dishonest conduct of Mr. Mitchell-Phillips.

The CSF Committee found that Mr. Mitchell-Phillips was not entitled to more than his $4,000 fee, as the contingent fee agreement was never executed.

Attachments: Investigator’s Report, Application for Reimbursement
CLIENT SECURITY FUND

INVESTIGATIVE REPORT
March 8, 2018

From: Rick Braun
Re: Claim No. 2017-40
Claimant: Terri Anderson
Attorney: Kenneth Mitchell-Phillips

Introduction

This is one of several claims against former attorney Kenneth Mitchell-Phillips, ("KMP"). KMP was originally licensed in Oregon in 2007. He opened a solo practice in 2009. For unknown reasons, in mid-2017 KMP abandoned his practice. The Supreme Court accepted his Form B resignation on November 9, 2017. My attempts to contact him are unsuccessful. At my request the Bar issued a subpoena for his bank records, but to date, KMP has evaded service of process. In each of the present cases KMP failed to provide his clients with any accounting for trust funds or for settlement proceeds.

Recommendation

This claim should be paid in the amount of $10,000.00

Statement of Claim

Claimant hired KMP in 2015 to bring claims against her property owner association and its contractor for property damage to her condominium. KMP did not have a written fee agreement with claimant. On June 15, 2015 claimant paid KMP a $1,500.00 retainer by credit card. KMP did some work including drafting a demand letter. KMP billed claimant $725 for that work which he paid from the retainer.

KMP terminated his representation and withdrew as claimant’s lawyer on May 1, 2017. Sometime thereafter, the case settled for $12,500.00. On June 5, 2017 KMP filed an notice of lien on the settlement claiming he was owed 1/3 or $4,125.00 of the settlement funds. Defendants refused to pay unless the lien was released. Defendants then sent the settlement funds to KMP. Claimant has not received a penny of the settlement funds, nor any accounting.

Investigation Report.

Claimant is adamant that KMP had no written fee agreement with claimant. However, he required that she pay a $1,500 retainer, and he billed her by the hour for services. His bills indicate he drafted a demand letter, and filed a civil complaint. He did no discovery. The court set trial for June 5, 2017. KMP did nothing to prepare for trial. According to claimant, KMP obtained a $10,000 “global” settlement offer and demanded that claimant sign the release provided by the
defendants. Claimant agreed to accept the settlement on two conditions, (1) that she receive the entire $10,000 payment, (2) that the release be mutual between her and the defendants.

KMP was in extremis. He was unprepared for trial and could not try the case as scheduled. In fact, he had no intention of preparing for trial. We know from other CSF claims that as of July 2017 KMP had notified other clients that he intended to “transition out of private practice and am closing my law firm”. Thus, on May 1, 2017 in response to claimant’s settlement conditions, KMP withdrew as her attorney “due to lack of bandwidth and irreconcilable differences”. On May 31 the court sent notice directly to claimant advising that the case had been reported as settled, and that it would be dismissed within 28 days. On June 1 KMP sent claimant an email explaining that claimant’s shifting settlement positions were a problem, and that the case had been settled for $10,000. Despite having resigned and withdrawn as claimant’s attorney KMP continued to negotiate settlement with defense counsel and eventually obtained an offer of $12,500, apparently to ensure himself payment of $2,500 in fees.

On June 5, 2017 KMP filed notice of lien on the settlement claiming a 1/3 contingent fee.¹

Defense counsel caused two checks, each for $6,250, to be sent to KMP on account of his filed lien. We do not know what became of those funds. Claimant has never been paid anything. Claimant’s entitlement to $10,000 is unquestionable. The remaining $2,500 is subject to a fee dispute between KMP and claimant which need not concern the CSF. I recommend payment of the claim in the amount of $10,000.00.

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¹KMP’s notice of lien attached a purported copy of a contingent fee agreement between claimant and KMP dated October 28, 2015. There are several reasons to believe that fee agreement is fraudulent. First, the agreement is not signed by claimant. Second, the agreement was made by “Mitchell-Phillips Malcolm, PLLC a Washington professional limited liability company”, not an Oregon law firm. Third, the agreement makes no reference to the retainer paid in June 2015 or to the prior payment for services. Fourth, KMP’s email to claimant dated June 1, 2017 says, “If you want an amended agreement between you and I which discusses fees, I am happy to provide that to you.” Clearly, the fee arrangement between KMP and claimant was in question. Finally, the agreement does not comply with the requirements of ORS 20.340.
Client Security Fund
Application for Reimbursement

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

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

1. Information about the client(s) making the claim:
   a. Full Name: Terri Lynn Anderson
   b. Street Address: 200 SW Florencia # D-15
   c. City, State, Zip: Gresham, OR 97030
   d. Phone: (Home) 503-348-4784 (Cell) Same as home (Work) 503-845-8959 (Other)
   e. Email: anderson3855@gmail.com

2. Information about the lawyer whose conduct caused your claim (also check box 10A on page 3):
   a. Lawyer's Name: Ken Phillips
   b. Firm Name: Mitchell Phillips/Malcolm
   c. Street Address: 1217 NE Bannister Rd Ste C 801-D
   d. City, State, Zip: Gresham, OR 97030
   e. Phone: 503-1.888.335.4val ext.3
   e. Email: mitchellphillipsmalcolm.com

3. Information about the representation:
   a. When did you hire the lawyer? Yes
   b. What did you hire the lawyer to do? To represent me in a conflict with my condo association
   c. What was your agreement for payment of fees to the lawyer? (attach a copy of any written fee agreement)

   I was my understanding that is was $374 if we win he never
   d. Did anyone else pay the lawyer to represent you? No
   e. If yes, explain the circumstances (and complete item 10B on page 3):

   f. How much was actually paid to the lawyer? (please attach proof of payment, if any)
   g. What services did the lawyer perform? 2 meeting with Deposition

   meeting with mediator judge went wrote told about after the front
h. Was there any other relationship (personal, family, business or other) between you and the lawyer? 


4. Information about your loss:
   a. When did your loss occur? 
   b. When did you discover the loss? 
   c. Please describe what the lawyer did that caused your loss
   d. Total amount of your loss 
   e. How did you calculate your loss? 
   f. Amount you are requesting to be reimbursed 

5. Information about your efforts to recover your loss:
   a. Have you been reimbursed for any part of your loss? If yes, please explain: no
   b. Do you have any insurance, indemnity or a bond that might cover your loss? If yes, please explain: no
   c. Have you made demand on the lawyer to repay your loss? When? Please attach a copy of any written demand. Yes Email's attached
   d. Has the lawyer admitted that he or she owes you money or has he or she agreed to repay you? If yes, please explain: yes again in Email see attachment
   e. Have you sued the lawyer or made any other claim? If yes, please provide the name of the court and a copy of the complaint. Not yet but will be
   f. Have you obtained a judgment? If yes, please provide a copy no
   g. Have you made attempts to locate assets or recover on a judgment? If yes, please explain what you found:

6. Information about where you have reported your loss:
   ☑ District attorney
   ☑ Police
   ☑ Oregon State Bar Professional Liability Fund
     If yes to any of the above, please provide copies of your complaint, if available.
   ☑ Oregon State Bar Client Assistance Office or Disciplinary Counsel

7. Did you hire another lawyer to complete any of the work? If yes, please provide the name and telephone number of the new lawyer: not yet
8. Please give the name and the telephone number of any other person who may have information about this claim: 

9. Agreement and Understanding

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

a. Transfer to the Oregon State Bar all rights the claimant has against the lawyer or anyone else responsible for the claimant's loss, up to the amount of the CSF award.

b. Cooperate with the OSB CSF in its efforts to collect from the lawyer, including providing information and testimony in any legal proceeding initiated by the OSB CSF.

c. Notify the OSB CSF if the claimant receives notice that the lawyer has filed for bankruptcy relief.

d. Notify the OSB CSF if the claimant receives any payment from or otherwise recovers any portion of the loss from the lawyer or any other person on entity and reimburse the OSB CSF to the extent of such payment.

10. Claimant's Authorization

a. ☑️ Release of Files: I hereby authorize the release to the OSB Client Security Fund, upon request, of any records or files relating to the representation of me by the lawyer named in Question 2.

b. ☐ Payment to Third Party: I hereby authorize the OSB Client Security Fund to pay all amounts awarded to me to:

Name: Terri Anderson
Address: 200 S W Florence # D45, Eugene, OR 97402
Phone: 503-348-4794

11. Claimant's Signature and Verification

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

State of Oregon )
County of Multnomah )ss

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

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

Claimant's Signature

Signed and sworn (or affirmed) before me this 12th day of October 2017

Notary's Signature

Please complete page 4 if an attorney is representing you for this claim.
You are not required to have an attorney in order to file this claim. The CSF encourages lawyers to assist claimants in presenting their claims without charge. A lawyer may charge a fee for such work only if the following information is provided.

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

   ___________________________
   Claimant’s Signature

2. I have agreed to act as the claimant’s attorney: (check one below)
   □ Without charge
   □ Under the attached fee agreement

   ___________________________  Attorney’s Bar No.  ___________________________  Attorney’s Phone
   Attorney’s Signature

   ___________________________
   Attorney’s Address
(no subject)

Terri Anderson <anderson3855@gmail.com>
to Ken

I wanted to find out if you did get the other check yet?

Terri

--

Anderson Therapeutic Massage Clinic
Terri Anderson LMT CIMI
1217 NE Burnside Suite 701
Gresham, Or. 97030
503-665-8959
License# 4028
www.andersontherapeuticmassage.com

:DISCLAIMER:
> This message is intended for the sole use of the addressee, and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If you are not the addressee you are hereby notified that you may not use, copy, disclose or distribute to anyone the message or any information contained in the message. If you have received this message in error, please immediately advise the sender by reply email and delete this message.

Ken Mitchell-Phillips <Ken@lawofficesofkenmitchellphillips.com>
to me

Yes...received it yesterday and will be sending a check out on Saturday.

Ken Mitchell-Phillips, J.D., M.S.
Attorney
*Admitted in Oregon, Washington, and U.S. Federal Courts
Terri, 

I did send your check 2 weeks ago to your home address and I am not sure why you have not gotten it. However, I will cancel the check and send a new check to you by expedited mail when I get back in town on September 4, 2017.

Thanks,

Ken

Sent from my iPad

[Quoted text hidden]
(no subject)

I still have not seen any check.

[Quoted text hidden]
August 3, 2017

VIA REGULAR MAIL AND EMAIL
Ken Mitchell-Phillips
City of Portland
Office of Government Relations
1221 SW 4th Avenue, Ste 410
Portland, OR 97215

Re:  Terri Anderson v. Greenbrook Condominium Homeowners’ Association, et al
Multnomah County Circuit Court Case No. 16CV12031
Our File No. AME049.0183

Dear Ken,

Enclosed please find American Family’s check in the amount of $6,250 representing its fifty-percent share of the settlement in this case. You and your client are authorized to negotiate this check once the signed Release and Settlement Agreement and the Stipulated General Judgment of Dismissal are executed and returned to Mr. Bravo’s office for filing. If you have any questions, please do not hesitate to give me a call.

Sincerely,

[Signature]

Jeffrey W. Hansen

JWH/bas
Enclosure
cc: Earl Bravo; Charles Fleury
    by email only
I received one check but not the other one... I was willing to receive the other one so as to make out one check to you.

To: Teri Anderson <andersto855@gmail.com>
Ken Mitchell-Phillips <ken@lawofficemitchellphillips.com>

From: Teri Anderson <andersto855@gmail.com>

(no subject)
AMERICAN FAMILY INSURANCE GROUP
6000 AMERICAN PKWY
MADISON WI 53783 0001

AMERICAN FAMILY INSURANCE GROUP
EXPLANATION OF REMITTANCE
CLAIM 00-225-136068-0086 NUMBER 0018240637 TIN xxxxx6907 TYPE CLAIMANT PAYMENT
PRODUCER 036/503 PAYEE CODE
IN PAYMENT OF A LOSS OCCURRING ON 01/19/2015
FULL/FINAL SETTLEMENT OF ANY/ALL CLAIMS RE DOL 01/19/2015
PAYMENT INFORMATION DETAIL

ANDERSON, TERRY
PROPERTY DAMAGE

$6,250.00

COMMENTS

ANK

DETACH AND REFER TO THIS STUB IF CORRESPONDING ON THIS CLAIM.
IF QUESTIONS CALL 1-800-MYAMFA1.

AMERICAN FAMILY INSURANCE GROUP - MADISON, WISCONSIN
U.S. BANK NATIONAL ASSOCIATION - WWW.USBANK.COM
WAUSAU, WISCONSIN

OFFICE 018
CLAIM NO. 00-225-136068-0086 POLICY NO. 36-X43354-01
PAY TO THE ORDER OF KEN MITCHELL-PHILLIPS ATTORNEY TRUST ACCOUNT
PAY SIX THOUSAND TWO HUNDRED FIFTY 00/100 DOLLARS
INSURED GREENBROOK CONDOMINIUM ON

POLICY ISSUED BY AMERICAN FAMILY MUTUAL INSURANCE COMPANY, S.I.
Bravo, Earle Q. <bravo@rmlaw.com>  
To: Terri Anderson <anderson3855@gmail.com>, Jeff.hansen@chockbarhoum.com <Jeff.hansen@chockbarhoum.com>, Karen <Karen@lawofficesofkenmitchellphillips.com>, Ken Mitchell-Phillips <Ken@lawofficesofkenmitchellphillips.com>  
Tue, Jul 11, 2017 at 2:11 PM

Terri,

Thank you for forwarding the agreement with your signature. I have sent out the same to my client for signature as well and will provide you a copy upon receipt from my client.

I will instruct my legal assistant to send out the settlement check this afternoon. It will be sent to Ken Mitchell-Phillips.

Thank you,

Earle

---

From: Terri Anderson
Sent: Tuesday, July 11, 2017 2:06 PM
To: Jeff.hansen@chockbarhoum.com; Bravo, Earle Q. <bravo@rmlaw.com>; Karen <Karen@lawofficesofkenmitchellphillips.com>; Ken Mitchell-Phillips <Ken@lawofficesofkenmitchellphillips.com>
Subject:  

Confidentiality:
The preceding message (including attachments) is covered by the Electronic Communication Privacy Act, 18 U.S.C. sections 2510-2521, is confidential and may also be protected by attorney-client or other privilege. If you believe that it has been sent to you in error, please delete it. Thank you.
Your settlement funds. E thru 6 2017 at 1:48 PM.

Thu, Jul 6, 2017 at 1:48 PM

Teri Anderson <teri.anders@gmail.com>

To: Teri Anderson <teri.anders@gmail.com>

Sent from my iPhone

2600

Ken Michael-Phillips <ken@lawofficeofmichaelphillips.com>

Sent: Thursday, July 6, 2017 at 1:48 PM

Subject: Settlement

Thanks.

Teri,

[Redacted]

Etha Bravo asked me to contact you regarding your settlement to let you know that I agreed to remove the attorney lien once I receive

and how much are you holding?

On Fri, Jun 30, 2017 at 8:34 AM, Ken Michael-Phillips <ken@lawofficeofmichaelphillips.com> wrote:

O n Fri, Jun 30, 2017 at 8:34 AM, Ken Michael-Phillips <ken@lawofficeofmichaelphillips.com> wrote:

On Jun 30, 2017 at 8:34 AM, Ken Michael-Phillips <ken@lawofficeofmichaelphillips.com> wrote:

On Jun 30, 2017 at 8:34 AM, Ken Michael-Phillips <ken@lawofficeofmichaelphillips.com> wrote:

On Fri, Jun 30, 2017 at 8:34 AM, Ken Michael-Phillips <ken@lawofficeofmichaelphillips.com> wrote:

On Thu, Jul 6, 2017 at 1:48 PM, Teri Anderson <teri.anders@gmail.com> wrote:

On Thu, Jul 6, 2017 at 1:48 PM, Teri Anderson <teri.anders@gmail.com> wrote:

On Thu, Jul 6, 2017 at 1:48 PM, Teri Anderson <teri.anders@gmail.com> wrote:

On Thu, Jul 6, 2017 at 1:48 PM, Teri Anderson <teri.anders@gmail.com> wrote:
Dear Ken Mitchell-Phillips,

I hope this email finds you well.

I wanted to follow up on the settlement agreement we discussed last week. As per our agreement, you will receive the settlement amount once I am cleared by the attorney. I have been working closely with the attorney to ensure that the process moves smoothly.

Thank you for your patience and cooperation throughout this process. If you have any further questions or concerns, please don't hesitate to reach out.

Best regards,

[Signature]

[Name]

P.S. I have attached the updated settlement agreement for your review.

[File Attachment]
Sent from my iPhone

On Jun 30, 2017, at 9:05 AM, Terri Anderson <anderson3855@gmail.com> wrote:

and how much are you with holding?

On Fri, Jun 30, 2017 at 8:54 AM, Ken Mitchell-Phillips <Ken@lawofficesofkenmitchellphillips.com> wrote:

Terri,

Earle Bravo asked me to contact you regarding your settlement to let you know that I agreed to remove the attorney lien once I receive your settlement funds.

Thanks,

[Quoted text hidden]

[Quoted text hidden]

---

2 attachments

C3E50A1E-40C9-4289-B3A9-E65CC38E040B.png
23K

C27B620C-2D6B-4847-97E6-C2D38DDD4769.png
22K
The Law Offices of Ken Mitchell-Phillips, P.C.

650 NE Holladay, Suite 1600
Portland, Oregon 97232
United States

Ms. Terri Anderson

2-ANDERSON,T-00001

Representing Client in Civil Litigation involving homeowner's association and contractor.

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<tr>
<th>Type</th>
<th>Date</th>
<th>Description</th>
<th>Quantity</th>
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<td>04/28/2016</td>
<td>Reimbursable expense: Process Service fees</td>
<td>1.00</td>
<td>$110.00</td>
<td>$110.00</td>
</tr>
</tbody>
</table>

Total $643.83

Detailed Statement of Account

Current Invoice

<table>
<thead>
<tr>
<th>Invoice Number</th>
<th>Due On</th>
<th>Amount Due</th>
<th>Payments Received</th>
<th>Balance Due</th>
</tr>
</thead>
<tbody>
<tr>
<td>86</td>
<td>05/21/2016</td>
<td>$643.83</td>
<td>$0.00</td>
<td>$643.83</td>
</tr>
</tbody>
</table>

Outstanding Balance $643.83

Total Amount Outstanding $643.83
INVOICE

INVOICE NUMBER: 36
INVOICE DATE: OCTOBER 05, 2015
DUE DATE: OCTOBER 15, 2015
PAYMENT TERMS: NET 10 DAYS

Terri L. Anderson/GR180-001RE
Civil Litigation (Homeowner Association Dispute)
200 S.W. Florence
#D-15
Gresham, OR 97080

Account #GR180-001RE
Civil Litigation (Homeowner Association Dispute)

<table>
<thead>
<tr>
<th>DATE</th>
<th>DESCRIPTION</th>
<th>HOURS</th>
<th>AMOUNT</th>
</tr>
</thead>
<tbody>
<tr>
<td>SEP-15-15</td>
<td>Discussion with Atty regarding status of case (.5)</td>
<td>0:30</td>
<td>$125.00</td>
</tr>
<tr>
<td>SEP-17-15</td>
<td>Discussion with Client regarding status of dispute (.2).</td>
<td>0:12</td>
<td>$50.00</td>
</tr>
<tr>
<td></td>
<td>Total hours for this invoice</td>
<td>0:42</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Total amount of this invoice</td>
<td></td>
<td>$175.00</td>
</tr>
</tbody>
</table>

ACCOUNT INFORMATION

Prior account balance as of AUG-01-2015  ($775.00)
Invoice 36 OCT-05-2015  $175.00
Current account balance  ($600.00)
IOLTA TRUST Account

<table>
<thead>
<tr>
<th>Date</th>
<th>Type</th>
<th>Description</th>
<th>Matter</th>
<th>Receipts</th>
<th>Payments</th>
<th>Balance</th>
</tr>
</thead>
<tbody>
<tr>
<td>06/25/2015</td>
<td>Retainer</td>
<td></td>
<td>2-ANDERSON,T-00001</td>
<td>$1,500.00</td>
<td>$1,500.00</td>
<td></td>
</tr>
<tr>
<td>03/13/2016</td>
<td>Payment for</td>
<td></td>
<td>2-ANDERSON,T-00001</td>
<td>$1,500.00</td>
<td></td>
<td>$0.00</td>
</tr>
<tr>
<td></td>
<td>invoice #40</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

IOLTA TRUST Account Balance $0.00

Please make all amounts payable to: The Law Offices of Ken Mitchell-Phillips, P.C.

Please pay within 10 days.
INVOICE

Terri L. Anderson/GR180-001RE
Civil Litigation (Homeowner Association Dispute)
200 S.W. Florence
#D-15
Gresham, OR 97080

Account #GR180-001RE

Civil Litigation (Homeowner Association Dispute)

<table>
<thead>
<tr>
<th>DATE</th>
<th>DESCRIPTION</th>
<th>HOURS</th>
<th>AMOUNT</th>
</tr>
</thead>
<tbody>
<tr>
<td>JUL-13-15</td>
<td>Draft Demand Letter (1.5).</td>
<td>1:30</td>
<td>$375.00</td>
</tr>
<tr>
<td>JUL-16-15</td>
<td>Discussion with Client regarding updates to Demand Letter (.2).</td>
<td>0:12</td>
<td>$50.00</td>
</tr>
<tr>
<td>JUL-31-15</td>
<td>Revise Demand Letter (1.0).</td>
<td>1:00</td>
<td>$250.00</td>
</tr>
<tr>
<td>JUL-31-15</td>
<td>Revise contract incorporating suggested changes by Client (.2).</td>
<td>0:12</td>
<td>$50.00</td>
</tr>
<tr>
<td></td>
<td>Total hours for this invoice</td>
<td>2:54</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Total amount of this invoice</td>
<td></td>
<td>$725.00</td>
</tr>
</tbody>
</table>

ACCOUNT INFORMATION

| Prior account balance | $0.00 |
| Payment JUN-25-2015   | ($1,500.00) |
| Invoice 26 AUG-01-2015 | $725.00 |
| Current account balance | ($775.00) |
## Summary of Account Activity

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Previous Balance</td>
<td></td>
</tr>
<tr>
<td>Payments</td>
<td></td>
</tr>
<tr>
<td>Other Credits</td>
<td></td>
</tr>
<tr>
<td>Purchases</td>
<td></td>
</tr>
<tr>
<td>Cash Advances</td>
<td>+$0.00</td>
</tr>
<tr>
<td>Fees Charged</td>
<td>+$2.00</td>
</tr>
<tr>
<td>Interest Charged</td>
<td>+$0.00</td>
</tr>
<tr>
<td>New Balance</td>
<td></td>
</tr>
<tr>
<td>Past Due Amount</td>
<td>$0.00</td>
</tr>
</tbody>
</table>

## Payment Information

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>New Balance</td>
<td></td>
</tr>
<tr>
<td>Minimum Payment Due</td>
<td></td>
</tr>
<tr>
<td>Payment Due Date</td>
<td>May 4, 2015</td>
</tr>
</tbody>
</table>

**Late Payment Warning:** If we do not receive your minimum payment by the date listed above, you may have to pay a late fee up to $35.

**Minimum Payment Warning:** If you make only the minimum payment each period, you will pay more in interest and it will take you longer to pay off your balance. For example:

- If you make the minimum payment on this statement in full, you could pay as much as $508 more in interest and it could take you 13 months to pay off the balance.

**Credit Limit**
- Available Credit
- Cash Advance Limit
- Available Cash Limit
- Amount Over Credit Limit: +$0.00
- Statement Closing Date: 04/07/2015
- Next Statement Closing Date: 06/08/2015
- Days in Billing Cycle: 30

---

**Transactions**

<table>
<thead>
<tr>
<th>Transaction Date</th>
<th>Transaction Description</th>
<th>Reference #</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>03/08</td>
<td></td>
<td>2524780240G38FKY</td>
<td>$</td>
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<tr>
<td>03/13</td>
<td></td>
<td>85121062060H66XM8</td>
<td>$</td>
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<tr>
<td>03/14</td>
<td></td>
<td>0540684262PQ9D01</td>
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</tr>
<tr>
<td>03/19</td>
<td></td>
<td>50203522322AH805F</td>
<td>$</td>
</tr>
<tr>
<td>03/20</td>
<td></td>
<td>855003852966D388M7</td>
<td>$75.00</td>
</tr>
<tr>
<td>03/21</td>
<td></td>
<td>05410192EABS866V</td>
<td>$</td>
</tr>
<tr>
<td>03/22</td>
<td></td>
<td>054108428698BNKN2</td>
<td>$</td>
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<tr>
<td>04/22</td>
<td></td>
<td>054108428698BNK6X7KASH</td>
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<tr>
<td>05/22</td>
<td></td>
<td>502035229311MX4D2</td>
<td>$</td>
</tr>
</tbody>
</table>

---

Your Available Point Balance is 5,785.

See page 3 to view your Rewards Summary this period.

---

This Account is issued by Citibank, N.A.

---

Your Account Number is 5121 0715 6549 1713

---

GIVE A GIFT CARD. SMILES INCLUDED.

Get your Sears & Kmart gift cards in-store or online.

---

Payment Due Date: May 4, 2015
New Balance
Past Due Amount
Minimum Payment Due

---

Please print address changes on the reverse side.
Make Checks Payable to Sears Credit Cards

---

TERRI L. ANDERSON
200 SW FLORENCE AVEAPT D15
GRESHAM, OR 97080-7341

---

02100 000200 0028063 0009000 0512107195349713 0314
**Summary of Account Activity**

<table>
<thead>
<tr>
<th>Previous Balance</th>
<th>Payments</th>
<th>Other Credits</th>
<th>$0.00</th>
</tr>
</thead>
<tbody>
<tr>
<td>Purchases</td>
<td></td>
<td>Cash Advances</td>
<td>+$0.00</td>
</tr>
<tr>
<td>Fees Charged</td>
<td></td>
<td>Interest Charged</td>
<td>+$16.82</td>
</tr>
<tr>
<td>New Balance</td>
<td></td>
<td>Past Due Amount</td>
<td>$0.00</td>
</tr>
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</table>

<table>
<thead>
<tr>
<th>Credit Limit</th>
<th>Available Credit</th>
<th>Cash Advance Limit</th>
<th>0.00</th>
</tr>
</thead>
<tbody>
<tr>
<td>Available Cash Limit</td>
<td>$0.00</td>
<td>Statement Closing Date</td>
<td>07/08/2015</td>
</tr>
<tr>
<td>Amount Over Credit Limit</td>
<td>$0.00</td>
<td>Next Statement Closing Date</td>
<td>08/07/2015</td>
</tr>
<tr>
<td>Days in Billing Cycle</td>
<td>31</td>
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**Payment Information**

<table>
<thead>
<tr>
<th>New Balance</th>
<th>$0.00</th>
</tr>
</thead>
<tbody>
<tr>
<td>Minimum Payment Due</td>
<td>$0.00</td>
</tr>
<tr>
<td>Payment Due Date</td>
<td>August 4, 2015</td>
</tr>
<tr>
<td>Late Payment Warning: If we do not receive your minimum payment by the date listed above, you may have to pay a late fee up to $35.</td>
<td></td>
</tr>
<tr>
<td>Minimum Payment Warning: If you make only the minimum payment each period, you will pay more in interest and it will take you longer to pay off your balance. For example,</td>
<td></td>
</tr>
<tr>
<td>If you make no additional charges using this card and only pay the minimum payment each month, you pay:</td>
<td></td>
</tr>
<tr>
<td>You will pay off the balance shown on the statement in about:</td>
<td></td>
</tr>
<tr>
<td>Minimum payment: 10 years</td>
<td></td>
</tr>
<tr>
<td>Only the minimum payment: 3 years</td>
<td></td>
</tr>
<tr>
<td>$66 : 3 years</td>
<td></td>
</tr>
<tr>
<td>$2,447 : (Savings = $1,196)</td>
<td></td>
</tr>
<tr>
<td>$66 : 3 years</td>
<td></td>
</tr>
<tr>
<td>$2,447 : (Savings = $1,196)</td>
<td></td>
</tr>
</tbody>
</table>

If you would like information about credit counseling services, call 1-877-357-8187.

**TRANSACTIONS**

<table>
<thead>
<tr>
<th>Trans Date</th>
<th>Description</th>
<th>Reference #</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>06/06</td>
<td></td>
<td>5549320140266257L5</td>
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<tr>
<td>06/06</td>
<td></td>
<td>55493202400012FAV</td>
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<td>06/06</td>
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<td>0693566447198534J8F9</td>
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<tr>
<td>06/06</td>
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<td>55464614985802553K</td>
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<td>06/06</td>
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<td>5546614117359535AN7</td>
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<tr>
<td>06/14</td>
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<td>555473566767654769</td>
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</tr>
<tr>
<td>06/25</td>
<td>THE LAW OFFICES OF PORTLAND OR</td>
<td>8500308353666256225</td>
<td>$1,500.00</td>
</tr>
<tr>
<td>06/26</td>
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<td>55453265533005735X7</td>
<td>$5.00</td>
</tr>
<tr>
<td>06/27</td>
<td></td>
<td>85121068854747185</td>
<td>$5.00</td>
</tr>
</tbody>
</table>

**Your Available Point Balance is 8,820.**

See page 3 to view your Rewards Summary this period.

---

**Account Statement**

Please update your phone number, including cell phone number on the back of the payment coupon.

---

**Smiles Guaranteed.**

Get Sears & Kmart gift cards in stores or online. Visit giftcard.sears.com and giftcard.kmart.com for details.

**Statement Enclosed**

**TERRI L ANDERSON**

200 SW FLORENCE AVE

D15

GRESHAM, OR 97030-7341

---

**SEARS CREDIT CARDS**

PO BOX 688957

DES MOINES, IA 50388-8957

---

**02100 0003582 0189956 003200 0512071953491713 0314**
Summary of Account Activity

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Previous Balance</td>
<td></td>
</tr>
<tr>
<td>Payments</td>
<td></td>
</tr>
<tr>
<td>Other Credits</td>
<td></td>
</tr>
<tr>
<td>Purchases</td>
<td></td>
</tr>
<tr>
<td>Cash Advances</td>
<td></td>
</tr>
<tr>
<td>Fees Charged</td>
<td></td>
</tr>
<tr>
<td>Interest Charged</td>
<td></td>
</tr>
<tr>
<td>New Balance</td>
<td></td>
</tr>
<tr>
<td>Past Due Amount</td>
<td>$0.00</td>
</tr>
</tbody>
</table>

Payment Information

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>New Balance</td>
<td></td>
</tr>
<tr>
<td>Minimum Payment Due</td>
<td></td>
</tr>
<tr>
<td>Payment Due Date</td>
<td>August 4, 2016</td>
</tr>
</tbody>
</table>

Late Payment Warning: If we do not receive your minimum payment by the due date listed above, you may have to pay a late fee up to $37.

Minimum Payment Warning: If you make only the minimum payment each period, you will pay more in interest and it will take you longer to pay off your balance. For example:

- Only the minimum payment
- 12 years
- $4,896

- 3 years
- $3,183
- (Savings: $1,713)

If you would like information about credit counseling services, call 1-877-337-8187.

Credit Limit

Available Credit

Cash Advance Limit

Available Cash Limit

Amount Over Credit Limit

Statement Closing Date

Next Statement Closing Date

Days in Billing Cycle

Transactions

<table>
<thead>
<tr>
<th>Date</th>
<th>Description</th>
<th>Reference #</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>06/07</td>
<td>THE LAW OFFICES OF KEN</td>
<td>8550986586JKW7F</td>
<td>$843.89</td>
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<tr>
<td>06/11</td>
<td>ORELAND, OR</td>
<td>5550509B69A1EK35</td>
<td></td>
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<td>06/24</td>
<td>ORELAND, OR</td>
<td>5545296J00RDY71S</td>
<td></td>
</tr>
<tr>
<td>07/07</td>
<td>ORELAND, OR</td>
<td>8512107934XTPY4G</td>
<td></td>
</tr>
<tr>
<td>07/08</td>
<td>ORELAND, OR</td>
<td>5545296JE0KSLZBE</td>
<td></td>
</tr>
</tbody>
</table>

Fees

<table>
<thead>
<tr>
<th>Date</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>07/04</td>
<td>Late Fee</td>
<td>$27.00</td>
</tr>
</tbody>
</table>

Total Fees for This Period

$27.00

Your ThankYou® Points Total Is: 11,290

Thank you from Citi

Please see important information on pages 2 and 4.

This Account is issued by CitiBank, N.A.

Please detach and return lower portion with your payment to insure proper credit. Retain upper portion for your records.

Your Account Number is 5121 0719 8349 1713

Smiles Guaranteed.

New Balance

Past Due Amount

Minimum Payment Due

Amount Enclosed

Payment Due Date: August 4, 2016

Make Checks Payable to: Sears Credit Cards

TERRI L ANDERSON
200 SW FLORENCE Ave Apt D15
GRESHAM, OR 97080-7341

SEARS CREDIT CARDS
PO BOX 78051
PHOENIX, AZ 85082-9051
## IOLTA TRUST Account

<table>
<thead>
<tr>
<th>Date</th>
<th>Type</th>
<th>Description</th>
<th>Matter</th>
<th>Receipts</th>
<th>Payments</th>
<th>Balance</th>
</tr>
</thead>
<tbody>
<tr>
<td>06/25/2015</td>
<td>Retainer</td>
<td></td>
<td>2-ANDERSON,T-00001</td>
<td></td>
<td>$1,500.00</td>
<td>$1,500.00</td>
</tr>
<tr>
<td>03/13/2016</td>
<td>Payment for invoice #40</td>
<td></td>
<td>2-ANDERSON,T-00001</td>
<td>$1,500.00</td>
<td></td>
<td>$0.00</td>
</tr>
</tbody>
</table>

**IOLTA TRUST Account Balance** $0.00

---

Please make all amounts payable to: The Law Offices of Ken Mitchell-Phillips, P.C.

Please pay within 10 days.
CLAIM CLAIM
CLAIMANT
year
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Kitchen, Kimberly A.
Boone, Charles P
Roden, Joseph
Cruz, Lourdes
McLaren Hall, Rebecca Jean
Powell, Terry Scott
Schwengels‐Loe, Denyse Marie
Clymer, Joseph & Deborah
Jay, Sandra
Tupper, Robert Thompson
Frazier, Justin
Cooper, James Adam
Ashpole, Mathew Thomas
Allen, Thomas John Robert
Torrance, Glen M
Lopez‐Contreras, Rosalina
Roebuck, William
Jacob, Avishaq
Vega‐Flores, Gustavo
Martinez, Ernesto Vazquez
Taylor, Marnie
Niklas, Louise (Trustee: Eubanks, Anne C)
Dillon, Tammi lee
Grishkevich, Alex
Bateman, Donald L
Richman, Tommy J. and Nicole
Anderson, Terri Lynn
Bingham, Cory Lee
Gardner, Evan
Sherman, Julie Annette
Zuniga, Lourexel
Brown, Carol
Wise, Daniel Kevin
Smarr, Linda for James Lound Trust
Yovan, Stefan Shawn
Frackowiak, James
Evered, Andrea Burke
Huebner, Jocelyn M.
Grotz, David G
Ho, Amy
Beutler, Stuart J
Taffese, Aster A.
Lasota, Tom
Clausen, Ginger Lorraine
Williams, Curtis
Stone, Jeffrey Arlo
Cleaver, Barbara
Harris, Matthew
Petersen, Robert Gary
Mitchell, Harold
Mitchell, Harold
McNeal, Cyndee A.

LAWYER

Wood, Alan K.
Morningstar, Jonah
Morningstar, Jonah
Milstein, Jeffrey S.
Merrill, Nick
Milstein, Jeffrey S.
Milstein, Jeffrey S.
Campbell, Jefferson G. Jr
Milstein, Jeffrey S.
Milstein, Jeffrey S.
Milstein, Jeffrey S.
Milstein, Jeffrey S.
Milstein, Jeffrey S.
Milstein, Jeffrey S.
Roller, Dale
Hudson, Howard
Roller, Dale
Johnson, Ron
Coran, Theodore C
Martinez, Leslie
Mitchell‐Phillips, Kenneth
Bauer, Henry L. ESTATE
Smith, Robert J. ESTATE
Mitchell‐Phillips, Kenneth
Smith, Robert J. ESTATE
Hall, Brett
Mitchell‐Phillips, Kenneth
Perry, Megan M
Mitchell‐Phillips, Kenneth
Smith, Robert J. ESTATE
Mitchell‐Phillips, Kenneth
Deveny, Lori E.
Smith, Robert J. ESTATE
Gray, Roger
Campbell, Jefferson G. Jr
Long, Andrew
Johnson, Ron
Long, Andrew
Long, Andrew
Solomon, Glenn
Long, Andrew
Long, Andrew
Wilson, Matthew A.
Deveny, Lori E.
Bernstein, James E
Long, Andrew
Hediger, Pamela S.
Long, Andrew
Johnson IV, Rankin
Long, Andrew
Long, Andrew
Hediger, Pamela S.

CLAIM AMT

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3,000.00
8,000.00
9,385.50
1,750.00
2,500.00
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7,500.00
1,300.00
10,000.00
1,800.00
2,500.00
24,000.00
1,500.00
1,525.54
1,750.00
26,000.00
6,250.00
6,000.00
300.00
46,110.93
4,454.00
66,667.00
2,000.00
2,000.00
17,921.57
3,400.00
3,952.50
200.00
19,581.00
4,575.00
1,200.00
5,000.00
50,000.00
51,666.00
2,000.00
1,500.00
18,813.51
400.00
5,000.00
9,000.00
9,000.00
111,520.94

PENDING

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3,000.00
8,000.00
9,385.50
1,750.00
1,500.00
3,000.00
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1,235.00
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3,000.00
11,500.00
4,800.00
28,000.00
11,000.00
6,410.00
7,500.00
1,300.00
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10,000.00
6,000.00
300.00
46,110.93
3,500.00
50,000.00
2,000.00
2,000.00
17,921.57
3,400.00
3,952.50
200.00
19,581.00
4,575.00
1,200.00
5,000.00
50,000.00
50,000.00
2,000.00
1,500.00
18,813.51
400.00
5,000.00
9,000.00
9,000.00
50,000.00

AMOUNT PAID

$
$

1,750.00
1,500.00

$

2,500.00

$

1,525.54

$

3,500.00

INVESTIGATOR

STATUS

Raher
Steinberg
Steinberg
Butterfield
Young
Taylor/Stamm
Taylor/Stamm
Ledgerwood
Taylor/Stamm
Taylor/Stamm
Taylor/Stamm
Taylor/Stamm
Taylor/Stamm
Taylor/Stamm
Stamm
Jones
Stamm
Roy
Young
Braun
Braun
Cooper
Roy
Braun
Roy
Cooper
Braun
Atwood
Braun
Roy
Braun
Jones
Roy
Cooper
Ledgerwood
Hisey
Roy
Hisey
Hisey
Whitlock
Hisey
Hisey
Sage
Jones
Whitlock
Hisey
Young
Hisey
Ledgerwood
Hisey
Hisey
Young

9/24/16 to CSF. Wait for client response.
9/24/16 CSF stayed. Re‐assigned 1/20/18
9/24/16 CSF stayed. Re‐assigned 1/20/18
4/12/18 ck sent $1750
12/21/17 ck sent $1500
wait for her new address 971.930.5610
claimant has rep
Ms. Wicht (G'ma) paid.

atty pd ‐ Rod will send proof

3/10/18 CSF approve $1800
4/2/18 Ck sent $2500

4/2/18 Ck sent $1525.54

3/10/18 CSF Approve $10K, 4/20 to BOG
3/10/18 CSF deny
3/10/18 CSF approve $300
4/2/18 Ck sent $3500

atty has rep

pay spouse: Brandy Gehrke
pay Robert but send ck to James
claimant has rep
claimant has rep
claimant has rep


<table>
<thead>
<tr>
<th>CLAIM year</th>
<th>CLAIM #</th>
<th>CLAIMANT</th>
<th>LAWYER</th>
<th>CLAIM AMT</th>
<th>PENDING</th>
<th>AMOUNT PAID</th>
<th>INVESTIGATOR</th>
<th>STATUS</th>
</tr>
</thead>
<tbody>
<tr>
<td>2018</td>
<td>19</td>
<td>Chulim, Miguel Avila</td>
<td>Long, Andrew</td>
<td>$1,640.00</td>
<td>$1,640.00</td>
<td></td>
<td>Hisey</td>
<td></td>
</tr>
<tr>
<td>2018</td>
<td>20</td>
<td>Getty, Barbara M.</td>
<td>Deveny, Lori E.</td>
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<td>$20,000.00</td>
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<td>Jones</td>
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</tr>
<tr>
<td>2018</td>
<td>21</td>
<td>Chavez, Patricia</td>
<td>Hediger, Pamela S.</td>
<td>$1,500.00</td>
<td>$1,500.00</td>
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<td>Young</td>
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</tr>
<tr>
<td>2018</td>
<td>22</td>
<td>Hangartner, Gwendolyn</td>
<td>Hediger, Pamela S.</td>
<td>$2,749.32</td>
<td>$2,749.32</td>
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<td>Young</td>
<td></td>
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<tr>
<td>2018</td>
<td>23</td>
<td>Hilliard, Muriel ESTATE</td>
<td>Hediger, Pamela S.</td>
<td>$54,607.35</td>
<td>$50,000.00</td>
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<td>Young</td>
<td>PR - Lester Whittle</td>
</tr>
<tr>
<td>2018</td>
<td>24</td>
<td>Jordan, Roberta</td>
<td>Hediger, Pamela S.</td>
<td>$94,664.22</td>
<td>$50,000.00</td>
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<td>Young</td>
<td></td>
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<tr>
<td>2018</td>
<td>25</td>
<td>Turner, Justin</td>
<td>Hediger, Pamela S.</td>
<td>$29,511.67</td>
<td>$29,511.67</td>
<td></td>
<td>Young</td>
<td></td>
</tr>
<tr>
<td>2018</td>
<td>26</td>
<td>Whipple, Bryan</td>
<td>Hediger, Pamela S.</td>
<td>$1,999.50</td>
<td>$1,999.50</td>
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<td>Young</td>
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</tr>
<tr>
<td>2018</td>
<td>27</td>
<td>Whittle, Lester</td>
<td>Hediger, Pamela S.</td>
<td>$15,597.39</td>
<td>$15,597.39</td>
<td></td>
<td>Young</td>
<td></td>
</tr>
<tr>
<td>2018</td>
<td>28</td>
<td>Andrews, Emily Toohey</td>
<td>Hediger, Pamela S.</td>
<td>$21,431.67</td>
<td>$21,431.67</td>
<td></td>
<td>Young</td>
<td></td>
</tr>
<tr>
<td>2018</td>
<td>29</td>
<td>Ngai, Stephen</td>
<td>Deveny, Lori E.</td>
<td>$6,000.00</td>
<td>$6,000.00</td>
<td></td>
<td>Jones</td>
<td></td>
</tr>
<tr>
<td>2018</td>
<td>30</td>
<td>Chavez, Aimee</td>
<td>Hediger, Pamela S.</td>
<td>$7,934.93</td>
<td>$7,934.93</td>
<td></td>
<td>Young</td>
<td></td>
</tr>
<tr>
<td>2018</td>
<td>31</td>
<td>Hart, Henry Roy</td>
<td>Hediger, Pamela S.</td>
<td>$70,000.00</td>
<td>$50,000.00</td>
<td></td>
<td>Young</td>
<td>4/2 sent to client for signature</td>
</tr>
<tr>
<td>2018</td>
<td>32</td>
<td>Moore, Mary</td>
<td>Howe, Nancy</td>
<td>$3,500.00</td>
<td>$3,500.00</td>
<td></td>
<td>Sage</td>
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</tbody>
</table>

|             |         |             |                 | $810,205.03 | $1,396,941.00 | $586,735.97 |             |        |

Funds available for claims and indirect costs allocation as of January 31, 2018
## March YTD Budget % of March YTD Change

<table>
<thead>
<tr>
<th>Description</th>
<th>February 2018</th>
<th>YTD 2018</th>
<th>Budget 2018</th>
<th>% of Budget</th>
<th>February Prior Year</th>
<th>YTD Prior Year</th>
<th>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>$1,864</td>
<td>$3,432</td>
<td>$19,600</td>
<td>17.5%</td>
<td>$1,061</td>
<td>$2,048</td>
<td>67.6%</td>
</tr>
<tr>
<td>Judgments</td>
<td>50</td>
<td>100</td>
<td>1,000</td>
<td>10.0%</td>
<td>50</td>
<td>100</td>
<td>0.0%</td>
</tr>
<tr>
<td>Membership Fees</td>
<td>(120)</td>
<td>143,805</td>
<td>153,400</td>
<td>93.7%</td>
<td>(150)</td>
<td>215,385</td>
<td>(33.2%)</td>
</tr>
<tr>
<td><strong>TOTAL REVENUE</strong></td>
<td>$1,794</td>
<td>147,337</td>
<td>174,000</td>
<td>84.7%</td>
<td>961</td>
<td>217,533</td>
<td>(32.3%)</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>2,634</td>
<td>5,267</td>
<td>28,900</td>
<td>18.2%</td>
<td>1,112</td>
<td>2,206</td>
<td>138.8%</td>
</tr>
<tr>
<td>Employee Taxes &amp; Benefits - Reg</td>
<td>902</td>
<td>1,828</td>
<td>11,800</td>
<td>15.5%</td>
<td>441</td>
<td>784</td>
<td>133.1%</td>
</tr>
<tr>
<td><strong>TOTAL SALARIES &amp; BENEFITS</strong></td>
<td>$3,536</td>
<td>7,095</td>
<td>40,700</td>
<td>17.4%</td>
<td>$1,553</td>
<td>2,990</td>
<td>137.3%</td>
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<tr>
<td><strong>DIRECT PROGRAM</strong></td>
<td></td>
<td></td>
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<td></td>
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<td></td>
</tr>
<tr>
<td>Claims</td>
<td>0</td>
<td>0</td>
<td>200,000</td>
<td>0.0%</td>
<td>0</td>
<td>3,525</td>
<td>(100.0%)</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>31</td>
<td>31</td>
<td>150</td>
<td>20.7%</td>
<td>0</td>
<td>0</td>
<td>0.0%</td>
</tr>
<tr>
<td>Travel &amp; Expense</td>
<td>1,239</td>
<td>1,239</td>
<td>1,800</td>
<td>68.8%</td>
<td>0</td>
<td>0</td>
<td>0.0%</td>
</tr>
<tr>
<td><strong>EXPENSE</strong></td>
<td>$1,270</td>
<td>1,270</td>
<td>202,950</td>
<td>0.6%</td>
<td>0</td>
<td>3,525</td>
<td>(64.0%)</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>
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<tr>
<td>Postage</td>
<td>1</td>
<td>22</td>
<td>150</td>
<td>14.7%</td>
<td>5</td>
<td>20</td>
<td>10.9%</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>14</td>
<td>14</td>
<td>200</td>
<td>7.0%</td>
<td>0</td>
<td>20</td>
<td>(29.6%)</td>
</tr>
<tr>
<td>Training &amp; Education</td>
<td>0</td>
<td>480</td>
<td>600</td>
<td>80.0%</td>
<td>575</td>
<td>575</td>
<td>(16.5%)</td>
</tr>
<tr>
<td>Staff Travel &amp; Expense</td>
<td>0</td>
<td>0</td>
<td>1,169</td>
<td>0.0%</td>
<td>0</td>
<td>0</td>
<td>0.0%</td>
</tr>
<tr>
<td><strong>TOTAL G &amp; A</strong></td>
<td>$15</td>
<td>516</td>
<td>2,519</td>
<td>20.5%</td>
<td>$580</td>
<td>615</td>
<td>(16.1%)</td>
</tr>
<tr>
<td><strong>TOTAL EXPENSE</strong></td>
<td>$4,821</td>
<td>8,881</td>
<td>246,169</td>
<td>3.6%</td>
<td>2,133</td>
<td>7,130</td>
<td>24.6%</td>
</tr>
<tr>
<td><strong>NET REVENUE (EXPENSE)</strong></td>
<td>(3,027)</td>
<td>138,456</td>
<td>(72,169)</td>
<td>(1,172)</td>
<td>210,403</td>
<td>(34.2%)</td>
<td></td>
</tr>
<tr>
<td>Indirect Cost Allocation</td>
<td>2,853</td>
<td>5,706</td>
<td>34,237</td>
<td>16.7%</td>
<td>2,779</td>
<td>5,558</td>
<td>2.7%</td>
</tr>
<tr>
<td><strong>NET REV (EXP) AFTER ICA</strong></td>
<td>(5,880)</td>
<td>132,750</td>
<td>(106,406)</td>
<td>(3,951)</td>
<td>204,845</td>
<td>(35.2%)</td>
<td></td>
</tr>
</tbody>
</table>

Fund Balance beginning of year 1,258,312
Ending Fund Balance 1,391,061
OSB Programs and Operations

<table>
<thead>
<tr>
<th>Department</th>
<th>Accounting</th>
<th>Facilities</th>
</tr>
</thead>
<tbody>
<tr>
<td>Accounting &amp; Finance/ Facilities</td>
<td>No report.</td>
<td>No report.</td>
</tr>
</tbody>
</table>

Communications & Public Services (includes RIS and Creative Services) (Kay Pulju)

<table>
<thead>
<tr>
<th>Communications</th>
<th>The handbook “Legal Issues for Older Adults” (LIOA) has been completed and professionally translated into Spanish, Russian, Mandarin and Vietnamese. The translation costs, along with printing charges for copies provided to public libraries, were covered through grant funding secured by our partner in this project, the Oregon Department of Human Services.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>o Staff are promoting the LIOA handbook through a media outreach campaign. It has been featured prominently in the Eugene Register Guard and on KBOO radio. The Oregonian and Bend Bulletin have pieces in development. OPB Radio has expressed interest. The next targets includes many smaller community-based news outlets. Where possible, we are coupling our outreach with a local elder law attorney to further localize the story and highlight the positive impact of the legal profession’s role. In addition to the media outreach, we are partnering with the statewide network of libraries. Thus far, we have requests from 26 community libraries. The final phase of the outreach will be targeted to foreign language media.</td>
</tr>
<tr>
<td></td>
<td>o After one month of posting on the bar’s website, the LIOA home page has been viewed more than 1,300 times and pdf versions of the publications have been downloaded more than 600 times, including 39 non-English versions. An additional 35 print copies have been purchased at cost through the OSB Order Desk.</td>
</tr>
<tr>
<td></td>
<td>▪ Recent issues of the bar Bulletin included features on the</td>
</tr>
</tbody>
</table>
importance of pipelining to increase diversity and inclusion within the bar; issues and strategies for dealing with law school debt; a report on the recently completed 2017 Economic survey; and a conversation about sexual harassment in Oregon, including the legal profession.

- The OSB Judicial Voters Guide for the May primary elections will be posted to the bar’s website by April 13. It features information on Oregon courts, the role of judges and the unique nature of judicial elections along with candidate profiles. With this year’s unusually high number of contested races, we expect the guide to be a valuable resource for voters. Chief Justice Balmer has been very supportive, encouraging all judicial candidates to participate.

- Media staff are currently managing 12-14 CAO and/or DCO cases being actively tracked by media. In addition to managing requests from media, staff has actively sought publicity about several recent cases where the attorneys facing prosecution are considered to pose a significant threat to the public. Staff are also providing media outreach planning and assistance to the UPL Committee, most notably about one group of out-of-state perpetrators who are also being pursued by the DOJ. On a more positive note, staff responds on a daily basis to calls from journalists seeking guidance or expert sources on all variety of law-related stories, and strives to use these opportunities to shed light on the expertise and positive role legal professionals play issues of impact to community.

- Recent additions to the Legal Q&A online video library include an overview of the OSB Client Assistance Office (in both English and Spanish) along with updates of several previously recorded and some new immigration topics. The Q&A library now has nearly 100 titles, with several new topics in development. Staff are also coordinating updates of our online legal information topics, working with staff from LASO, the OJD and the MBA to reduce duplication of services.

**Creative Services**

- Staff are focused on Aptify implementation and associated web integrations. Phase two, which is now underway, involves CLE Seminars and Legal Publications. For seminars, this includes a new event registration system with member access through the same sign-on used for other OSB and PLF services. It also merges the publications bookstore and event registration into a new e-commerce platform that will become the bases for all future online financial transactions with the bar.

- The creative team continues to work with bar sections on website
development, as well as section newsletters and CLE marketing materials.

**Referral & Information Services (RIS)**
- RIS has begun implementing the Diversity Action Plan by conducting an outreach campaign with community partners. The goal is to raise awareness of the Modest Means Program and other bar services to underserved communities in Oregon.
- LRS revenue is on track to meet budget projections for 2018. Revenue for the first two months of the year is 148,074, which is 18% of the projected revenue for the year. Total revenue since percentage fee implementation is $3,322,198. This represents over $27,500,000 in legal fees LRS attorneys have billed and collected from LRS-referred cases over the past five years.
- RIS is currently seeking four new employees due to recent turnover.

<table>
<thead>
<tr>
<th>CLE Seminars (Karen Lee)</th>
<th>CLE Seminars</th>
</tr>
</thead>
<tbody>
<tr>
<td>- In January, CLE Seminars held the bar’s first combined mandatory abuse reporting seminar for the current MCLE reporting cycle and had a very strong member response: 162 attended via the live webcast, 30 attended the in-person event at the OSB Center, and as of March 31, 2018, 15 purchased on-demand products after the live event.</td>
<td></td>
</tr>
<tr>
<td>- We offered a very limited (one week) purchase opportunity for an on-demand seminar that previously was available only as an in-person or live webcast presentation. This generated 10 additional sales and almost $2500 in gross revenue.</td>
<td></td>
</tr>
<tr>
<td>- Successfully transitioned the entire CLE Seminars on-demand product catalog from the bar’s current platform (InReach) to Aptify.</td>
<td></td>
</tr>
<tr>
<td>- Successfully launched online event registration on Aptify for CLE events taking place in May.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>General Counsel (includes CAO and MCLE) (Amber Hollister)</th>
<th>General Counsel</th>
</tr>
</thead>
<tbody>
<tr>
<td>- The bar’s public records function is transitioning to General Counsel. To that end, Liza Arellano Boudon has accepted the position of Public Records Coordinator and General Counsel Assistant and will start on April 16, 2018.</td>
<td></td>
</tr>
<tr>
<td>- The bar’s Professional Adjudicator Mark Turner has begun scheduling disciplinary hearings across the state in his new role as presiding disciplinary board member.</td>
<td></td>
</tr>
<tr>
<td>- The bar hosted a Disciplinary Board Conference on April 13, 2018 which was attended by approximately 50 of the bar’s disciplinary board members. At the conference, Judges Naan Waller and</td>
<td></td>
</tr>
</tbody>
</table>
| **Human Resources (Christine Ford)** | **Human Resources**  
- Continued leading a committee working on an emergency plan for short-term emergencies such as a power outage.  
- Began working on 2018 Action Items from the Diversity Action Plan.  
- Continued to develop the cultural assessment survey with outside consultants.  
- Completed meetings with MBA Group Health Insurance Trust for the 2018-2019 health insurance plan year. |
| **I.T. (Gonzalo Gonzalez)** | **Internet Technology**  
- **Aptify**  
  - Approved the Project Plan for the remainder of 2018  
  - CLE transitioning out of InReach, testing in-progress  
  - Testing the Case Management Aptify Module for deployment within 30 days  
  - Procured and Installed a new Bank Reconciliation (Encore) Program for Finance Staff  
- **Help Desk**  
  - Replaced (8) Workgroup HP Laser Printers  
  - Replaced (3) Slave HP Laser Printers  
  - Procured and installed (2) new HP Scanners for the MCLE group  
  - Closed (98) reported incidents for March 2018  

Maureen McKnight presented on procedural justice.  
- General Counsel has accepted an invitation to serve on the Association of Professional Responsibility Lawyers’ Future of Lawyering Committee.  

**CAO**  
- The Client Assistance Office continues to receive an increasing number of bar complaints as compared to this same time in 2017. Staff is managing the increased workload, and staying within response time performance benchmarks.  

**MCLE**  
- Jade Priest-Maoz, who formerly served as the MCLE Program Assistant, has accepted the position of MCLE Program Manager. She will fill the vacancy left by the retirement of Denise Cline after 26 years of bar service.  
- On April 10, 2018, the Supreme Court accepted the Board’s recommendation to make housekeeping changes to the MCLE Rules to ensure consistent numbering and to remove outdated references.
<table>
<thead>
<tr>
<th>Development</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Modified and improved the Member Central System and created efficiencies to the Single Sign-On Platform</td>
</tr>
<tr>
<td>- Updated the Regulatory Notice Process to allow Staff to create notices without IT Assistance</td>
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<tr>
<td>Other</td>
</tr>
<tr>
<td>- Coordinated efforts to sign and execute a new 5-years lease for a new Pitney Bowes postage machine. Collaborated with Facilities &amp; General Counsel Staff</td>
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</tbody>
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<table>
<thead>
<tr>
<th>Legal Publications (Linda Kruschke)</th>
</tr>
</thead>
<tbody>
<tr>
<td>No report.</td>
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</table>

<table>
<thead>
<tr>
<th>Legal Services (Judith Baker) (includes Pro Bono and an OLF report)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Legal Services Program</strong></td>
</tr>
<tr>
<td>- The LSP Committee and staff are coordinating a review of Oregon’s legal aid programs for 2018. The review process will focus on the effectiveness of the providers in meeting the needs of individual clients and the larger client community. The goals of the review are to assure compliance with the OSB LSP Standards and Guidelines. The review will consist of a self-assessment report submitted by providers, including a narrative portion and a statistical/financial portion. It will also consist of onsite visits and staff interviews.</td>
</tr>
<tr>
<td>- Two new certified pro bono program applications are just about through the certification process. They are Oregon Justice Resource Center and Metro Public Defender Community Law Project. There are a total of 22 OSB Certified Pro Bono Programs.</td>
</tr>
<tr>
<td>- The Pro Bono committee is working on outreach to pro bono programs and local bar associations across the state to take stock of offerings. Additionally, the committee is working on planning a day of service event, the tentative plan is to have it during Pro Bono week in October and tie advertising to the Celebration and Awards.</td>
</tr>
<tr>
<td>- Staff is reviewing the benefits of the Pro Bono Fair &amp; Celebration. Part of that review is conducting a survey of the programs that have participated in the fair.</td>
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<thead>
<tr>
<th>Oregon Law Foundation</th>
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<tbody>
<tr>
<td>- The OLF continues to move forward with the civil legal needs study. The completed surveys have been received and the information is being analyzed by OLF’s research partner. It is anticipated that the study will be published in the fall of 2018.</td>
</tr>
<tr>
<td>- February 1 marked the date for OLF Leadership Banks to increase IOLTA interest rates by .25% in response to the FRB interest rate</td>
</tr>
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</table>
increase in December. Most of the Leadership Banks agreed to increase rates resulting in approximately $350,000 in additional revenue for access to justice. The OLF will continue to monitor the predicted increase of interest rates in 2018 and continue to partner with banks to maximize IOLTAL revenue.

- On April 17 the OLF will hold a reception at the Oregon Historical Society honoring its Leadership Banks and grantees.

### Member Services & New Lawyer Mentoring Program & LRAP (Dani Edwards)

<table>
<thead>
<tr>
<th>Member Services</th>
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<tbody>
<tr>
<td>The OSB and ABA House of Delegates election began on April 2 in conjunction with 13 contested circuit court judicial preference polls. There are 48 OSB HOD seats up for election this year and an astounding 110 candidates are running. An additional six candidates are running for the two open ABA HOD seats. Results for the election will be posted online on April 17.</td>
</tr>
<tr>
<td>Candidate recruitment for the BOG elections in region 4, 5, 6, and 7 continues through May 8. Interested candidates should review the information available at <a href="http://www.osbar.org/leadership/bog">http://www.osbar.org/leadership/bog</a>.</td>
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<table>
<thead>
<tr>
<th>New Lawyer Mentoring Program</th>
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<tbody>
<tr>
<td>No report</td>
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<thead>
<tr>
<th>Loan Repayment Assistance Program</th>
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<tbody>
<tr>
<td>LRAP 2018 applications are due by April 16, and the LRAP Advisory Committee will meet on Saturday, May 19 to determine which applicants will receive forgivable loans.</td>
</tr>
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</table>

### Public Affairs (Susan Grabe)

<table>
<thead>
<tr>
<th>2018 Oregon Legislative Session</th>
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<tbody>
<tr>
<td>The 2018 short legislative session adjourned on March 3, 2018. Approximately 260 bills were introduced in the short session and a little over half passed, many of which will have an impact on the practice of law and the justice system. The bar submitted testimony on eight policy bills as well as the Oregon Judicial Department’s budgetary requests. In addition, the bar actively monitored between 20 and 30 bills.</td>
</tr>
<tr>
<td>Evidentiary Privilege Expansion – The OSB successfully passed HB 4095 which expands the attorney-client privilege found in Rule 503 of the Oregon Evidentiary Code to include communications between a lawyer referral service and its clients to ensure that a consumer’s confidentiality continues to be protected. Often people share information with the bar’s lawyer referral service in order to be matched with a lawyer in the appropriate area of practice in the corresponding area of the state. (80,000 requests for referrals in</td>
</tr>
</tbody>
</table>
2016).

• Legal Resources – HB 4097: OJD with OSB support successfully passed legislation to create self-help centers to assist self-navigators or pro se litigants, including the use of dedicated and trained court staff and volunteers. The legislation allows counties over a certain size (essentially Multnomah County) to establish a court facilitation program to provide litigants with educational material, court forms, information on court processes and referrals to other agencies. The OSB Futures Task Force also explored and supported the use of court facilitators and legal resource centers.

Outreach to bar groups re 2019 Legislation

• Public Affairs staff have been meeting with sections and committees regarding the law improvement program and proposals for the 2019 legislative session and assistance that the bar can provide.
• The deadline for Law Improvement proposals for the 2019 session from sections and committees was April 2, 2018.

2018 Public Affairs Legislative Forum

• The Public Affairs Legislative Forum will be held on May 2, 2018. The Legislative Forum is a public meeting and an opportunity for proponents to provide background and answer questions regarding proposed legislation. Historically, PAC members, as well as other members of the bar, have attended to ask questions and provide feedback.
• This program facilitates greater awareness of the contents of the bar’s proposed legislative package as well as highlights issue areas of concern that may need to be addressed.
• The Public Affairs Committee will take these comments into account when deciding whether to recommend to the Board of Governors approval of bar sponsorship of the bills before them.

Capitol CLEs

• At the request of the Senate Judiciary Committee, Public Affairs sponsored lunchtime CLES for legislators, staff and lawyers in the Capitol. Thus far we have sponsored statutory interpretation, elder abuse, and procedural fairness CLEs.

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 and instructions, guardianship, administrative hearings, due process and cost shifting as well as changes to the parenting time and child custody statutes.

**Appellate Screening**
- The Appellate Screening Committee has not met in the recent months.

<table>
<thead>
<tr>
<th>Regulatory Services (Dawn Evans)</th>
<th>Admissions Office</th>
</tr>
</thead>
<tbody>
<tr>
<td>• The grading of the February bar examination is being completed during the week beginning March 26th. Exam results will be available April 20, 2018, at 2:00 p.m., posted on the Bar’s website, and physically posted at the OSB Center and the Oregon Supreme Court.</td>
<td></td>
</tr>
<tr>
<td>• On March 21, 2018, the Oregon Supreme Court appointed Ernest Warren, Jr., of Warren and Sugarman in Portland, to serve the unexpired term of Stephanie Eames on the Board of Bar Examiners. Mr. Warren has had several years’ experience as a co-grader before beginning his service on the Board.</td>
<td></td>
</tr>
<tr>
<td>• The Board of Bar Examiners is considering an amendment to the reciprocity rule that would permit the passage of a bar examination in any other United States jurisdiction to satisfy the bar examination component of the application.</td>
<td></td>
</tr>
</tbody>
</table>

**Disciplinary Counsel’s Office**
- The State Professional Responsibility Board (SPRB), which meets approximately every six weeks, convened at the OSB Center on Saturday, March 10, for a half-day meeting in which some 46 separate matters were discussed and voted upon. Members of the SPRB are each assigned cases which they review and present. Staff attorneys from the Disciplinary Counsel’s Office are on hand to answer questions and provide input when it sought.
- Since amendments to the Bar Rules became effective on January 1, Disciplinary Counsel attorneys have begun exercising their ability to negotiate diversion agreements on appropriate cases without requiring pre-approval of the SPRB. The majority of diversion agreements stem from trust account overdraft notification cases involving minor errors that lawyers could avoid, given adequate training. Other cases might involve a need for practice management education and monitoring. Consistent with the ability to bring petitions seeking an interim suspension based upon a reasonable belief of irreparable harm to clients or the public without prior SPRB
approval, two such petitions have been filed since January.

*Regulatory Services*
- Regulatory Services staff is participating in testing anticipated components of the Aptify software that will facilitate member ease in paying for routine services its provides, such as obtaining certificates of good standing. Launch of this application will take place later this spring.

### Executive Director’s Activities February 24 to April 11, 2017

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
</tr>
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<tbody>
<tr>
<td>2/26</td>
<td>Lunch w/ Samrach; ACDI Meeting</td>
</tr>
<tr>
<td>2/27</td>
<td>Lunch w/ Linda Odermott</td>
</tr>
<tr>
<td>3/2</td>
<td>CFO interview; Meet w/ Paul Kim</td>
</tr>
<tr>
<td>3/5</td>
<td>Lunch w/ PLF CEO; CFO interview; meet w/ Bob Joondeph</td>
</tr>
<tr>
<td>3/6</td>
<td>CFO interviews; WSBC teleconference</td>
</tr>
<tr>
<td>3/7</td>
<td>CFO interviews</td>
</tr>
<tr>
<td>3/8</td>
<td>Lunch w/ Sylvia Stevens; Paraprofessional licensing planning meeting</td>
</tr>
<tr>
<td>3/9</td>
<td>CFO interview; ACLU dinner</td>
</tr>
<tr>
<td>3/12</td>
<td>Meet w/ Convergence Networks</td>
</tr>
<tr>
<td>3/13-3/16</td>
<td>Bar Leader Institute – Chicago, IL</td>
</tr>
<tr>
<td>3/20-3/24</td>
<td>Western States Bar Conference – Santa Barbara, CA</td>
</tr>
<tr>
<td>3/26</td>
<td>CFO interviews</td>
</tr>
<tr>
<td>3/27</td>
<td>Lunch w/ Mike Green; D. Henkels conference call</td>
</tr>
<tr>
<td>3/28</td>
<td>Law firm lunch at Schwabe</td>
</tr>
<tr>
<td>4/2</td>
<td>WMAA for Lawyers; lunch w/ PLF CEO</td>
</tr>
<tr>
<td>4/3</td>
<td>Lunch &amp; demo – Housing Justice League Hackathon App; Alternative Pathways Committee</td>
</tr>
<tr>
<td>4/4</td>
<td>Lunch w/ OCDLA Board</td>
</tr>
<tr>
<td>4/5</td>
<td>Lunch w/ Fred</td>
</tr>
<tr>
<td>4/6</td>
<td>Lunch w/ Jennifer (L&amp;C Law Dean)</td>
</tr>
<tr>
<td>4/7</td>
<td>The Origins &amp; Mutations of Racism</td>
</tr>
<tr>
<td>4/10</td>
<td>Meeting with Sarah Tuthill-Kveton</td>
</tr>
<tr>
<td>4/11</td>
<td>OSCCIF Evidence Based Leadership</td>
</tr>
</tbody>
</table>
OREGON STATE BAR
Board of Governors Agenda

Meeting Date: April 20, 2018
Memo Date: April 5, 2018
From: Dawn M. Evans, Disciplinary Counsel
Re: Disciplinary/Regulatory Counsel’s Status Report

1. Decisions Received.

   a. Supreme Court

      Since the Board of Governors met in February 2018, the Supreme Court took the following action in disciplinary matters:

      • Accepted the Form B resignation from Corvallis lawyer Pamela S. Hediger.

      • Issued an order in In re S. Amanda Marshall, accepting this McMinnville lawyer’s stipulation to a 1-year suspension, all but 90 days stayed, 2-year probation.

   b. Disciplinary Board

      One Disciplinary Board trial panel opinion has been issued since February 2018:

      • A trial panel recently issued an opinion in In re Matthew A. Wilson of Redding, California (disbarment).

      In addition to these trial panel opinions, the Disciplinary Board/Adjudicator approved stipulations for discipline in: In re Loren Andrew Gramson of Portland (60-day suspension, all stayed, 2-year probation), In re Cory J. Larvik of La Grande (120-day suspension, all but 30 days stayed, 2-year probation), and In re Rodolfo A. Camacho of Salem (6-month suspension, all but 30 days stayed, 2-year probation).

      The Disciplinary Board Chairperson/Adjudicator approved BR 7.1 suspensions in In re Andrew Long of Portland (5 matters), In re Lori E. Deveny of Portland, and In re Sean Michael Handlery of Roseburg.

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 Sandy N. Webb – 2-year suspension; OSB appealed; oral argument November 9, 2017; under advisement
In re Gary B. Bertoni – 1-year suspension; accused appealed; oral argument January 22, 2018; under advisement
In re Lisa D. T. Klemp – disbarment; accused appealed; oral argument January 22, 2018; under advisement
In re Steven L. Maurer – dismissed; OSB appealed; oral argument June 27, 2018
In re Andrew Long – BR 3.1 petition pending, hearing February 12-13, 2018; under advisement
In re James R. Eckley – reciprocal discipline matter pending
In re Megan M. Perry – Form B resignation pending
In re Allen R. Peters – stipulation pending

The following matters are under advisement before the Adjudicator of the Disciplinary Board:

In re Erin C. Walters – BR 3.1 petition pending
In re Lori E. Deveny – BR 3.1 petition pending

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

In re Brian A. Buchanan – March 22-23, 2018

3. Trials.

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

In re Eric J. Nisley – April 17-18, 2018
In re Roger Gray – June 6-7, 2018
In re Mark G. Obert – June 11-13, 2018
In re J. Kevin Hunt – July 10, 2018
In re Greg Hendrix – July 18-20, 2018
In re Andrew Long – August 21-24, 27, 2018
In re Lewis Irwin Landerholm – October 1-3, 2018

4. Diversions.

The following diversion agreement has been entered into since February 2018:

In re Michael John Turner – April 1, 2018
5. **Admonitions.**

The SPRB issued 6 letters of admonitions in March 2018. The outcome in these matters is as follows:

- 5 lawyers have accepted their admonitions;
- 0 lawyers have rejected their admonitions;
- 0 lawyers have asked for reconsiderations;
- 1 lawyer has time in which to accept or reject their admonition.

6. **New Matters.**

Below is a table of complaint numbers in 2018, 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>2014</th>
<th>2015</th>
<th>2016</th>
<th>2017</th>
<th>2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>January</td>
<td>29/31</td>
<td>18/19</td>
<td>30/30</td>
<td>17/17</td>
<td>34/34</td>
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<tr>
<td>February</td>
<td>24/25</td>
<td>28/28</td>
<td>38/38</td>
<td>49/49</td>
<td>25/25</td>
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<tr>
<td>March</td>
<td>41/45</td>
<td>22/22</td>
<td>28/30</td>
<td>19/20</td>
<td>33/33</td>
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<tr>
<td>April</td>
<td>45/47</td>
<td>17/17</td>
<td>26/26</td>
<td>22/22</td>
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<tr>
<td>May</td>
<td>23/24</td>
<td>24/24</td>
<td>27/30</td>
<td>48/51</td>
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<tr>
<td>June</td>
<td>23/24</td>
<td>31/31</td>
<td>38/39</td>
<td>19/20</td>
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<tr>
<td>July</td>
<td>43/44</td>
<td>27/27</td>
<td>41/42</td>
<td>31/31</td>
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<tr>
<td>August</td>
<td>19/21</td>
<td>28/29</td>
<td>28/28</td>
<td>24/27</td>
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<tr>
<td>September</td>
<td>24/24</td>
<td>21/21</td>
<td>25/25</td>
<td>15/15</td>
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<tr>
<td>October</td>
<td>25/25</td>
<td>38/39</td>
<td>39/39</td>
<td>37/37</td>
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<tr>
<td>November</td>
<td>19/19</td>
<td>24/25</td>
<td>26/27</td>
<td>36/40</td>
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<tr>
<td>December</td>
<td>21/23</td>
<td>20/20</td>
<td>25/28</td>
<td>27/28</td>
<td></td>
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<tr>
<td><strong>TOTALS</strong></td>
<td>336/352</td>
<td>298/302</td>
<td>371/382</td>
<td>344/357</td>
<td>92/92</td>
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</table>

As of April 1, 2018, there were 282 new matters awaiting disposition by Disciplinary Counsel staff or the SPRB. Of these matters, 29% are less than three months old, 21% are three to six months old, and 50% are more than six months old. Thirty-six of these matters were on the March SPRB agenda.

DME/rlh
In the absence of President Vanessa Nordyke, President-elect Chris Costantino called the meeting to order at 9:02 a.m. on February 23, 2018. Ms. Nordyke conducted the remainder of the meeting. The meeting adjourned at 11:45 a.m. Members present from the Board of Governors were Colin Andries, John Bachofner, Eric Foster, John Grant, Rob Gratchner, Guy Greco, Tom Peachey, Per Ramfjord, Kathleen Rastetter, Liani Reeves, Julia Rice, Michael Rondeau, Traci Rossi, Kerry Sharp, and David Wade. Not present were Whitney Boise, Michael Levelle, and Eddie Medina. Staff present were Helen Hierschbiel, Amber Hollister, Dawn Evans, Susan Grabe, Dani Edwards, Jonathan Puente, Judith Baker, Troy Wood, Catherine Petrecca, and Camille Greene. Also present was Jennifer Nicholls, ONLD Chair, and Stephanie Tuttle, Board of Bar Examiners.

1. **Call to Order/Finalization of Agenda**

   The board accepted the agenda, as presented, by consensus.

2. **2018 Strategic Areas of Focus**

   A. Ms. Costantino presented the Policy & Governance Committee’s recommended BOG Areas of Focus for 2018. [Exhibit A].

   **Motion:** Mr. Bachofner moved, Mr. Greco seconded, and the board voted unanimously in favor of adopting the 2018 BOG Areas of Focus. The motion passed.

   B. **New Lawyer Program Review**

   New Lawyer Mentoring Changes

   Ms. Costantino asked the board to consider changes to the New Lawyer Mentoring Program (NLMP) based on results from ongoing participant surveys, responses from the 2017 new lawyer survey, and the experience of the NLMP staff. The changes include integrating the program with the MCLE program, streamline the reporting requirements, and exempt certain attorneys from paying the fee based on annual salary less than $65,000 or if their employer pays the fee. This third change was amended by the committee before presenting to the board. [Exhibit B]

   **Motion:** The board voted unanimously to accept the changes as presented and amended by the committee. The Policy & Governance committee motion passed.

   Oregon New Lawyer Division Update

   Ms. Nicholls updated the board on current ONLD activities. At its retreat in January, the ONLD began its review of existing structure and programming. Over the course of the next several months, they will be looking at: governance structure; creating an *ex-officio* position on bar sections and committees; travel expenses; incorporating the Diversity Action Plan strategies into the ONLD; other programming changes.
C. Futures Task Force Progress Report.

Ms. Hierschbiel presented the Futures Task Force progress report, as written, highlighting the following: progress of the Self-Navigator’s WorkGroup; the PLF response to enhancing practice management resources; completion of the OSB economic survey; progress on the legal needs survey; hiring of a new I.T. Director, Gonzalo Gonzalez; AMS launch of phase two; the OSC Civil Justice Initiative Task Force. [Exhibit C]

Ms. Costantino asked the board to adopt the Policy & Governance Committee recommendation to amend OSB Bylaw 4.10 to create an Innovations Award. [Exhibit D]

Motion: The board voted unanimously to approve the Policy & Governance Committee motion to amend the bylaw to add an award for Technology & Innovation.

Ms. Costantino asked the board to approve the Policy & Governance recommendation to create a Fee Sharing Special Committee. [Handout E]

Motion: The board voted unanimously to create the Fee Sharing Special Committee as recommended. The Policy & Governance Committee motion passed.

D. Diversity Action Plan Update

Mr. Puente updated the board on the final version of the Diversity Action Plan and their target measures for 2018. Ms. Hierschbiel encouraged the board to look at the plan in detail as there are action items that related specifically to the board members. Mr. Puente reported that Ms. Pulju is working on a climate survey that will result in hardline data for the board to consider. Ms. Nordyke reminded the board that they are responsible for considering diversity in the appointment process. She is meeting with specialty bar leaders, one on one, and recommended board members reach out to diverse members in their regions.

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

A. Policy and Governance Committee

Ms. Costantino presented the committee motion to amend OSB Bylaw 1.2 to reflect changes to the bar’s strategic functions and goals adopted by the Board of Governors in February 2017. [Exhibit F]

Motion: The board voted unanimously in favor of accepting the Policy & Governance Committee’s recommended bylaw amendments. The motion passed.

Ms. Costantino presented the committee motion to form an “Alternative Pathways to Becoming a Lawyer” committee. There was consensus that law school representatives should be invited to participate. [Exhibit G]

Motion: The board voted unanimously in favor of the committee motion to form the new committee. The motion passed.

B. Public Affairs Committee

Ms. Rastetter presented the OJD/OSB eCourt Implementation TF Final Report & Survey for the board’s approval and adoption. [Exhibit H]
The bar’s legislative packages are moving along. The proposal to do away with non-unanimous juries is supported by an ABA Resolution that is on the ABA agenda for their annual meeting in August.

Motion: The board voted unanimously in favor of the Public Affairs Committee motion to accept the report and survey. The motion passed.

C. Budget & Finance Committee

Mr. Wade presented the 2017 Financial Report. The past two years resulted in nearly the same net revenue, which is not projected for the future due to declining membership and the increase in PERS costs. The Investment Committee met with the two portfolio/investment managers: Becker Capital and Washington Trust Bank. In an effort to increase revenue for the operating budget, Mr. Wade proposed that the Investment Committee recommend: a change in strategy to tap excess reserves and pay out 2-3% of reserves into operating fund over the next few years; and a legislative change to charge a fee to 50-year OSB members. Ms. Rastetter said the Public Affairs Committee is discussing how to frame this legislative change to give the bar the discretion to charge certain categories of 50-year members license fees in the future. In order to keep options open, the Board must approve including a proposal as part of its legislative package now; it can withdraw the proposal later if it decides not to pursue it.

Motion: The board voted to approve the Budget & Finance Committee motion to allow the Public Affairs Committee to draft a legislative proposal for the full board’s consideration. Mr. Greco abstained, Mr. Bachofner was opposed. The motion passed.

Mr. Wade reported that the committee is considering changes to the fees charged to section members and the ONLD. The Budget & Finance Committee will determine the cost of the ONLD while the Policy & Governance Committee will determine the benefits of the ONLD.

D. Board Development Committee

Mr. Greco presented the appointments to various bar groups. [Exhibit I]

Motion: The board voted unanimously in favor of the committee motion to accept the appointments. The motion passed.

Mr. Greco presented the Board of Bar Examiners co-grader recommendations. [Exhibit J]

Motion: The board voted unanimously in favor of the committee motion to accept the recommendations. The motion passed.

Mr. Greco presented the Board of Bar Examiners appointment of Ernest Warren, Jr. to replace Stephanie Eames who resigned from the BBX. [Exhibit K]

Motion: The board voted unanimously in favor of the committee motion to accept the appointment. The motion passed.

Mr. Greco discussed the BOG and HOD election outreach before the filing deadlines. There are several open positions in the HOD regions.
4. **Professional Liability Fund**

   In Ms. Bernick’s absence, a report was presented in writing. No action was required.

5. **Board of Bar Examiners**

   Ms. Tuttle thanked the board for approving their new appointment and their list of co-graders. She asked the board to consider a $125 application fee increase. The last increase was in 2009 in the amount of $100. Their expenses have increased due to the UBE exam fee, and their revenues have decreased due to fewer applicants. Mr. Wood added that the cost of exam sites and other exam expenses have increased. [Exhibit L]

**Motion:** Mr. Greco moved, Mr. Bachofner seconded, and the board voted unanimously to approve the BBX’s request to send the fee increase to the Oregon Supreme Court for approval.

6. **OSB Committees, Sections, Councils and Divisions**

   **A. Legal Ethics Committee**

   Ms. Hierschbiel asked the board to decide whether to adopt or reject the attached Proposed OSB Formal Op No 2018-XX Representing Husband and Wife in Preparation of Estate Plan Involving Waiver of Elective Share. Mr. Greco proposed to amend Question 4: “After spouse A and spouse B have agreed executed an agreement to waive the elected share” [Exhibit M]

   **Motion:** Mr. Foster moved, Mr. Greco seconded, and the board voted unanimously to adopt the opinion as amended.

   Ms. Hierschbiel asked the board to decide whether to adopt or reject the attached Proposed OSB Formal Op No 2018-XX Disqualification of Judges.

   **Motion:** Mr. Bachofner moved, Mr. Peachey seconded, and the board voted unanimously to adopt the opinion.

   **B. MCLE Committee**

   Ms. Hollister presented the MCLE committee request for the board to:

   1. Approve the proposed amendment to MCLE Regulation 5.200(g) to clarify that members may claim CLE credit for writing or grading a local component bar exam question.

   2. Approve several rule and regulation amendments to reflect recent legislative amendments.

   3. Seek limited housekeeping amendment authority from Supreme Court to correct rule numbering when needed. [Exhibit N]

   **Motion:** Mr. Greco moved, Mr. Bachofner seconded, and the board voted unanimously to approve the three amendments.
C. Legal Services Program

Ms. Baker asked the board to approve the Legal Services Committee’s revisions to Standards and Guidelines to align them more closely to the authority of the statute. [Exhibit O]

Motion: Mr. Greco moved, Mr. Ramfjord seconded, and the board voted unanimously to approve the revisions.

7. ABA HOD Delegates

Ms. Meadows updated the board on the ABA Midyear HOD meeting.

8. Consent Agenda

Ms. Nordyke asked if any board members would like to remove any items from the consent agenda for discussion and a separate vote. No one asked to do so.

Report of Officers & Executive Staff

Report of the President
As written.

Report of the Executive Director
As written.

Director of Diversity & Inclusion
As written.

Motion: Mr. Greco moved, Ms. Rice seconded, and the board voted unanimously to approve the consent agenda and past meeting minutes.

9. Closed Sessions – see CLOSED Minutes

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

The board went into closed session.
The board reconvened in open session to vote on the action item on the closed agenda.

Motion: Mr. Greco moved, Mr. Bachofner seconded, to approve the motion. The motion passed unanimously.

10. Good of the Order (Non-action comments, information and notice of need for possible future board action)
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 presented the UPL committee’s recommendation for the board to approve the initiation of a lawsuit seeking to enjoin persons from the unlawful practice of law under ORS 9.166.

B. Pending Non-Disciplinary Litigation

Ms. Hollister informed the board of non-action items.
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.”¹ 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.² 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.³

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.

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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 2018

1. Follow-up on Futures Task Force items
   a. Develop charge and plan for RPC 5.4 Committee. Consider recommendations.
   b. Consider recommendations of Paraprofessionals Implementation Committee
   c. Receive reports on progress of other items and identify action items as appropriate.
   d. Develop charge and plan for Committee on Alternative Pathways to Becoming a Lawyer. Consider recommendations.

2. Continue review of new lawyer programs for adherence to mission, value to members and adopt changes as appropriate.
   a. Consider recommendations for changes to the New Lawyer Mentoring Program.
   b. Seek feedback from ONLD regarding survey results and alternative governance models.
   c. Consider adding ex-officio member to section executive committees.

3. Continue review of sections and make policy decisions about how to proceed on the following issues:
   a. Number of sections
   b. Section fund balances

4. Evaluate potential forms of revenue and cost-savings for 2019 budget and beyond.

OREGON STATE BAR
Policy and Governance Committee Agenda

Meeting Date: February 22, 2018
From: Catherine Petrecca, New Lawyer Programs Coordinator
       Danielle Edwards, Director of Member Services
Re: Proposed Changes to the New Lawyer Mentoring Program

Action Recommended

Consider changes to the New Lawyer Mentoring Program (NLMP) based on results from ongoing participant surveys, responses from the 2017 new lawyer survey, and the experience of the NLMP staff.

Background

The NLMP launched in 2011, under Supreme Court Rule, to assure that every new lawyer in Oregon would have the benefit of a more senior bar member to welcome them into the profession and serve as a resource during their transition from student to practitioner. At the time of its creation, the NLMP was the third mandatory mentoring program in the country. Two more states have since created mandatory mentoring programs.

The NLMP requires each new lawyer to complete up to four activities in five separate areas, and then suggests another six activities in each of those areas. It also requires the new lawyer to complete ten practice area activities. (See attached Mentoring Plan Checklist.) Each new lawyer is required to turn in the Mentoring Plan, complete with the dates each practice area activity was completed.

Currently, all new lawyers pay a $100 fee upon completion of the program. Participants may apply for a waiver, but very few do so – an average of three participants per year have requested waivers so far.

See the attached New Lawyer Mentoring Program Review from May 2017 for further details on the program.

Items for Discussion

1. Integrate the NLMP and MCLE Rules

   The NLMP is a regulatory program designed to educate new lawyers on Oregon’s high standards of integrity, professional conduct, professional competence and service to the public. After completing the program new lawyers receive six MCLE credits applied to their first full MCLE reporting cycle. Currently the NLMP rules are free-standing. Both the NLMP and the MCLE rules are promulgated and amended by the Supreme Court, following recommendations from the BOG.
Staff recommends that NLMP rules be integrated into the MCLE rules. This will help new lawyers understand the focus of the program, set their expectations for other bar regulatory compliance processes, and make internal administration of the program more efficient. This would require revisions of the MCLE rules to include an amended version of the NLMP rules. If the BOG supports this change, staff will work with the MCLE Committee on the proposed changes and bring those amendments to the BOG for consideration before review by the Supreme Court.

Options:

1. Integrate the NLMP Rules into the MCLE Rules.
2. Make no changes.

2. **Streamline the NLMP requirements**

   The results of the new lawyer survey support this idea: respondents were almost-evenly split when asked if *all* curriculum activities should be optional, but only 1/3 of respondents said they think the program should exempt new lawyers who don’t think they would benefit from participation. New lawyers and mentors are, however, supportive of reducing the number of requirements, with the writing requirement receiving the most criticism. (Currently, all participants are required to select and complete at least ten practice area activities in a substantive law area, with at least one writing project reviewed by their mentor.) Making the writing requirement optional would not likely have a negative impact on participants who opted out, but would still provide support for those who wanted the chance to have a mentor critique their writing.

   It is important to note that staff are currently working on re-formatting the program resource materials to more clearly indicate which activities are optional and which are required.

 Options:

1. Change the writing requirement to make it optional.
2. Make no changes.

3. **Streamline the Reporting Requirement**

   In order to streamline the reporting process, staff recommends that new lawyers only be required to turn in the Certificate of Compliance (without the accompanying mentoring plan) and that the Certificate of Compliance be replaced with an MCLE accreditation form submitted upon completion of the program. Seventy-six percent of survey respondents agreed that “the only reporting requirement should be filing a
certificate of completion.” In addition, staff time would be reduced if staff does not need to review the mentoring plan for each participant.

We also recommend that participants be obligated to maintain their mentoring plan for the duration of their current MCLE reporting period, in case an audit needs to be done for MCLE purposes. These changes would need to be incorporated into any new MCLE rules created by the integration of the NLMP Rules into the MCLE Rules.

Streamlining the NLMP certification process and integrating it into the MCLE reporting framework will allow the bar to utilize components of the bar’s new association management software when it comes online.

**Options:**

1. Eliminate the requirement to file the Mentoring Plan.
2. Change the reporting requirement to an MCLE form.
3. Make no changes

**4. Changes to the Program Fee**

The NLMP participation fee brings in $25,000 to $30,000 in revenue per year. Both the staff program review and the new lawyer survey identified the fee as an area ripe for change, with over 80% of new lawyers agreeing that the fee should be adjusted based on income. In addition, both the survey and statistics from the ABA show that law school debt continues to rise.

For some new lawyers, however, the payment is not a burden. Over half of the fees for the program are paid by employers. Also, upon receipt of the completion fee, each new lawyer receives six MCLE credits. Staff recommends that the reporting form allow new lawyers to self-report their qualification for a fee waiver if their income is below $60,000, or if payment of the fee would be an undue burden. Staff can include guidelines for the definition of an undue burden in the program materials.

**Options:**

1. Eliminate the $100 program fee.
2. Exempt certain attorneys from paying the fee.
3. Make no changes.

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1 The $60,000 waiver amount is recommended as it is just below the median income reported in the 2017 Economic Survey for lawyers with 0 to 3 years practice.
### February 2018 Progress Report for OSB Futures Task Force Recommendations

**Highlighted items are updates.**

<table>
<thead>
<tr>
<th>I. Changes to Rules of Professional Conduct</th>
</tr>
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<tbody>
<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>
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<tr>
<td>B. Adopt Recommendation to Amend Oregon RPC 7.2 and 5.4 to permit fee-sharing with lawyer referral services, with adequate disclosure to consumers.</td>
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<tr>
<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>
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## II. Regulation/Development of Alternative Legal Service Delivery Models

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<tbody>
<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>Committee and charge being developed.</td>
<td>Appointment and welcome memo from President.</td>
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<tr>
<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>PAC Report • HB 4095 Expanding Evidentiary Privilege for Lawyer Referral Services (Passed)</td>
<td></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>PAC Report • HB 4097 Legal Resource Centers</td>
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## III. Support Court and Legal Aid Efforts to Increase Access and Explore Innovation

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<tr>
<td>A. Establish Ad Hoc committee of stakeholder representatives from OJD/LASO/OSB tasked with streamlining self-navigation resources</td>
<td>3.1 Pages 47-48</td>
<td>BOG sent to CEO. Committee created and meetings being held. <a href="https://example.com">See minutes for full report.</a></td>
<td>Continue meetings. Coordinate with OSCIIF and OSC CJI re topic areas</td>
<td></td>
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<tr>
<td>B. Direct Staff to Explore Ways to Support Stakeholder Efforts to Improve Family Law and Small Claims Court Processes</td>
<td>3.3-3.4 Pages 51-54</td>
<td>BOG sent to CEO. CEO attending OSC Civil Justice Initiative Task Force meetings. See NCSC Report.</td>
<td>Continue to attend OSC CJI meetings and report to BOG</td>
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<tr>
<td>A. Ask PSAC to explore ways to increase availability of unbundled services offered through LRS</td>
<td>3.5 Pages 54-55</td>
<td>PSAC/LRS exploring.</td>
<td></td>
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<tr>
<td>C. Work to improve the public perception of lawyers</td>
<td>7.4 Page 72</td>
<td>BOG sent to CEO. Media relations manager working with media.</td>
<td>Continue work with media.</td>
<td></td>
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<tr>
<td>D. Expand the Lawyer Referral Service and Modest Means Program</td>
<td>5.1 Page 64</td>
<td>BOG sent to CEO.</td>
<td></td>
<td>On 2018 Work Plan for B&amp;F and P&amp;G Committees</td>
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<tr>
<td>E. Enhance Practice Management Resources</td>
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## V. BOG Policy Development

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<tr>
<td>A. Embrace Data-Driven Decision-Making through adoption of policies and KPIs.</td>
<td>4 Page 61-63</td>
<td>On P&amp;G 2018 Work Plan</td>
<td></td>
<td>2018</td>
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## VI. Development of New Bar Programs

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<tr>
<td>A. Create Incubator/Accelerator Program</td>
<td>8 Page 86-93</td>
<td>New lawyer survey results received and discussed by BOG. Given to ONLD for consideration.</td>
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OREGON STATE BAR
Board of Governors Agenda

From: Policy & Governance Committee
Meeting Date: February 23, 2018
Re: Proposed Amendments to Bylaw 4.10

Action Recommended

Approve the proposed amendment to OSB Bylaws Article 4 to add an award for Technology & Innovation.

Options

1. Approve the amendment.
2. Send back to the Policy & Governance Committee for further work.
3. Do nothing.

Background and Discussion

A prevailing theme in the Futures Task Force Report was to encourage the use of technology and innovation to increase access to justice—particularly in lower income and rural communities in Oregon. In fact, recommendations 7.2 and 7.3 in the task force report specifically call out the need for the bar to promote the use of technology and innovation as a means to support both the court and legal aid efforts to improve access to justice. The challenge, as always, is how to effectively accomplish that goal in a cost-effective manner.

With that goal in mind, the Policy & Governance Committee began to discuss in 2017 the possibility of creating an OSB Technology and Innovation Award in order to highlight and give recognition to those who use technology and innovation in ways that advance the bar’s mission. The award would be yet another tool to provide appreciation for and awareness of such work, with the ultimate goal of stimulating further innovation that serves the bar’s mission. At its January 2018 meeting, the Policy & Governance Committee settled on the criteria for such an award, which is set forth below:

Section 4.10 President’s Technology & Innovation Award
The criteria for the President’s Technology & Innovation Award are as follows: The nominee may be an individual or entity; the nominee must have made a significant contribution in Oregon toward promoting respect for the rule of law, improving the quality of legal services or increasing access to justice through new technology or other innovations.

The Policy & Governance Committee now recommends that the Board of Governors adopt the proposed changes to Article 4 of the OSB Bylaws in order to establish the Technology & Innovation Award.
OREGON STATE BAR
Policy and Governance Committee Agenda

Meeting Date: February 22, 2018
From: Helen M. Hierschbiel, CEO
Re: Proposed Referral Fees/Fee Sharing Committee

Action Recommended

Recommend the Board of Governors approve creation of a committee to study the rules of professional conduct related to lawyers’ payment for referrals and sharing of legal fees. Decide on a charge for the committee. Provide feedback regarding makeup of the committee.

Background

At the November 4, 2017 House of Delegates meeting, the HOD voted to refer back to the Board for further study BOG Resolution #3, which resolved that amendments to Oregon Rules of Professional Conduct 5.4(a)(5) and 7.2(b) be submitted to the Oregon Supreme Court for adoption. The proposed amendments to RPC 5.4(a)(5) and 7.2(b) arose out of the Futures Task Force Regulatory Committee. The Futures Task Force charge was to:

Examine how the Oregon State Bar can best protect the public and support lawyers’ professional development in the face of the rapid evolution of the manner in which legal services are obtained and delivered. Such changes have been spurred by the blurring of traditional jurisdictional borders, the introduction of new models for regulating legal services and educating legal professionals, dynamic public expectations about how to seek and obtain affordable legal services, and technological innovations that expand the ability to offer legal services in dramatically different and financially viable ways.

The Regulatory Committee was charged to:

Examine new models for the delivery of legal services (e.g., online delivery of legal services, online referral sources, paraprofessionals, and alternative business structures) and make recommendations to the BOG regarding the role the OSB should play, if any, in regulating such delivery models.

The discussion at the HOD meeting revealed that members of the HOD were unified in their commitment to improve access to justice. Further, members expressed an interest in exploring ways to ensure that lawyers have the ability to utilize modern tools to connect with clients, but wanted to avoid making changes to the rules that could erode consumer protection.

There are a number of factors to consider in deciding what charge to give a committee appointed to continue study of these rules and the makeup of such a committee. First, in light of the conversation at the HOD meeting, and because the HOD resolution that proposed
amendments to RPC 5.4(a)(5) and 7.2(b) arose out of the Futures Task Force, the P&G Committee should consider whether the Futures Task Force and Regulatory Committee charges and findings should serve as a backdrop for continued study of these rules.

Second, the P&G Committee should consider whether to expand the scope of study to include alternative business structures. An alternative business structure (ABS) is an entity that provides legal services but is not exclusively owned by lawyers. In essence, it allows non-lawyers to own or invest in law firms. Alternative business structures are likely the wave of the future and, like referral fees, also implicate RPC 5.4. The issues at play for ABS are somewhat different than those for referral fees, however. In addition, a study of ABS would likely necessitate an exploration of entity regulation, which would promise to be a major undertaking. Thus, the Policy & Governance Committee may want to recommend that the BOG limit the scope of study to whether lawyers should be allowed to pay for-profit entities for referrals and, if so, by what model.

If the P&G Committee were to keep the scope of study narrow, but retain the Futures Task Force work as a backdrop, the charge for the special committee might be to:

Study the rules that govern the circumstances under which a lawyer may pay a for-profit company for directing clients to that lawyer (esp. 5.4(a)(5) and 7.2(b)), in light of changing models for obtaining and delivering legal services. Consider how such rules should be amended in order to account for these changes, while still protecting the public and allowing for greater access to legal services.

If the P&G Committee wants to cast a broader net for issues to tackle, the charge for such a committee might be to:

Study RPC 7.2 and 5.4 in light of the findings of the Futures Task Force and consider whether such rules should be amended to allow for payment of referrals and alternative business structures. If so, make recommendations for how such rules should be amended in order to better address the needs of legal consumers while still providing protection to the public.

Whatever the scope of study for this special committee, any renewed effort to consider amendments to Oregon RPC 5.4 and 7.2 should include a broad range of stakeholders from a variety of practice areas, as well as persons well-versed in the needs of legal consumers and modern methods of meeting those needs.

Options

1. **Adopt special committee charge with narrow focus.** This approach would enable a more limited, structured conversation about ethics issues related to payment of referral and advertising fees, as outlined above.

2. **Adopt special committee charge with a broader focus.** This approach would allow the Committee to study a broad range of ethics issues related to collaboration with nonlawyers, including referral fees and alternative business structures.
OREGON STATE BAR
Board of Governors Agenda

From: Policy & Governance Committee
Meeting Date: February 23, 2018
Re: Proposed Amendments to Bylaw 1.2

Action Recommended

Approve the proposed amendments to OSB Bylaw 1.2 to reflect changes to the bar’s strategic functions and goals adopted by the Board of Governors in February 2017.

Options

1. Approve the amendments.
2. Send back to the Policy & Governance Committee for further work.
3. Do nothing.

Background and Discussion

At its retreat in November 2015, the Board of Governors expressed an interest in undertaking a review of its functions in order to ensure that they are still aligned with the mission and accurately reflect the work of the Oregon State Bar. During the course of 2016, the Policy & Governance Committee reviewed and discussed the functions and goals and ultimately submitted the attached for the Board of Governors’ approval at its meeting in February 2017. The BOG approved the committee’s recommendation.

The bylaws now require amendment, so that they reflect the functions and goals adopted by the BOG. The proposed bylaw amendments are set forth below.

Proposed Amendments

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.

(A) We are a regulatory body, protecting the public by ensuring the competence and integrity of lawyers.

(B) We are a partner with the judicial system, supporting and protecting the quality and integrity of the judicial system.

(C) We are a professional organization, promoting the professional excellence of bar members.

(D) We are advocates for diversity, equity and inclusion within the legal community and the provision of legal services.

(E) We are champions for access to justice, fostering the public’s understanding of and access to legal information, legal services, and the justice system.
OREGON STATE BAR

Board of Governors Agenda

Meeting Date: February 23, 2018
From: Policy & Governance committee
Re: Proposed Alternative Pathways to Becoming a Lawyer Committee

Action Recommended

Approve creation of a committee to study alternative pathways to becoming a lawyer.

Background

At the November 2016 House of Delegates meeting, the HOD approved a resolution directing the Board of Governors to

appoint a Volunteer Committee to study the advantages of implementing a ‘Writing for the Bar Mentorship Program,’ by which a Diversity of well-qualified persons would have the opportunity to take the Bar Exam and become valued Member of the Oregon State Bar.

Because staff resources were consumed by the Futures Task Force during 2017, this initiative was stalled until now. We have, however, several eager volunteers who have been waiting patiently in the wings to begin work on this topic.

In addition to being a directive from the HOD, this initiative is aligned with the BOG’s strategic focus over the last couple of years. The Board of Governors has repeatedly expressed concern about mounting law school debt and the pressure such debt places on new lawyers who often have struggled to find law-related jobs and make ends meet. Citing findings from the ABA Commission on the Future of Legal Services, the OSB Futures Task Force noted that new lawyers remain un- and underemployed, notwithstanding the persistent access to justice gap:

Total student debt burdens now average in excess of $140,000—challenging new lawyers’ ability to sustain traditional law practices that might address some of the unmet legal need—while legal education remains essentially unchanged.¹

If the law school debt burden could be reduced—or even eliminated—then lawyers may be in a better position to charge less money and thereby help to meet some of the unmet legal need. The BOG has little, if any, influence on the cost of a legal education or on the economy surrounding legal services. Further, it does not set the admissions requirements; the Supreme Court makes those decisions upon the recommendation of the Board of Bar Examiners. That

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¹ OSB Futures Task Force Executive Summary, page 4.
said, the BOG can make recommendations to the BBX for changes in the admission requirements that may help ease the cost of a legal education.

“Writing for the Bar” is a concept that would allow a person to sit for the Oregon Bar Exam and become licensed as a lawyer without attending law school. It would require a change to the admissions rules and provide one option to reduce law school debt. Another option would be to change the admissions rules to require only two years of law school in order to become a lawyer in Oregon, rather than the current requirement of three years.

Policy & Governance Committee recommends that a committee be appointed to study these two options and report back to the Board of Governors with a recommendation about whether to pursue implementation of either or both. If the recommendation is to pursue a program, the report should provide details of the essential elements of the program, the anticipated cost of implementation and operation, and how success will be measured.

A list of potential committee members will be provided at the meeting.
The Oregon State Bar/Oregon Judicial Department (OSB/OJD) eCourt Implementation Task Force convened for the first time in May 2008. The original membership consisted of a mixture of lawyers, judges, and OSB and OJD staff who came together to strategize on ways to ensure that Oregon eCourt was successfully implemented. Over time, the membership expanded to include other court stakeholders, such as representatives from companies doing business with OJD and the courts.

The Task Force’s original charge was:

*To work cooperatively with the Oregon Judicial Department to assist in the implementation of the Oregon eCourt initiative over the next five years; provide input and feedback from bar members on the implementation of Oregon eCourt; develop a strategy to communicate with and educate bar members about Oregon eCourt programs; and provide periodic updates to the Board of Governors.*

Over the next eight years, the group served as a conduit between practicing attorneys, OSB, the Professional Liability Fund (PLF), other stakeholders, and OJD, helping to ensure that the manner in which the Oregon eCourt system was implemented took into account the needs of the public and of attorneys working with the courts every day. With Oregon eCourt’s final implementation in mid-2016, the Task Force transitioned to less frequent meetings but continued to monitor the system’s usage and provided feedback to the OJD regarding questions or concerns raised by OSB members.

The Task Force was chaired by former OSB Board of Governors member Mark Comstock. Over the eight years between its creation and OJD's final Oregon eCourt implementation, dozens of OSB members as well as numerous OJD staff members regularly participated in meetings, which were generally held either in the OSB offices in Tigard or at the chair’s office in Salem. Meetings were open to the public, and meeting notices were distributed via an email list that grew to include nearly 200 recipients.

**Pre-Implementation**

In the early years, the Task Force coordinated with OJD extensively on changes that needed to be made to the Uniform Trial Court Rules, to provide a framework for the statewide transition to an electronic court environment. That work involved outreach to bar members, especially through bar sections and committees, as well as the PLF, to gather feedback on proposed rules, and resulted in many changes to alleviate practicing lawyers concerns.

One of the major areas in which the Task Force sought early feedback regarded the scope and manner of providing online document access. As reported in the Task Force's First Interim Report:
All members of the Task Force and court staff acknowledge that a tension exists between two important policy goals: the need to provide as much information to the public through eCourt as possible about cases within the court system, and the responsibility to maintain reasonable data security to safeguard sensitive information provided to the courts.

The Task Force sent draft proposals to the chairs of the Business Law, Business Litigation, Computer and Internet Law, Juvenile Law, Family Law, Estate Planning and Administration, and Criminal Law Sections as well as other interested groups to solicit feedback. Many of those groups provided extensive feedback either in writing or in person at future Task Force meetings, and many of those groups’ concerns were accommodated in OJD’s ongoing efforts to plan a structure for providing online document access with an accompanying new Draft UTCR Chapter 22. OJD has followed the initial structure of the draft rule to date in opening up statewide remote online access to certain users, which -- since early 2014 -- includes all active OSB members.

The Task Force also worked to communicate proposed UTCR changes -- both regarding document access and otherwise -- to the general OSB membership through numerous media, including the Bar Bulletin, Capitol Insider, Bar News email alerts, and on the OSB’s website.

Early on, the Task Force -- as well as OJD workgroups tasked with creating the draft UTCRs -- struggled with a large number of very specific and often very technical questions. For example, it was initially unclear what kinds of personally identifying information would be available through remote electronic document access. Intuitively, many lawyers imagined a state system working similarly to the federal PACER system in which almost all information contained in filings is made public. However, the difference in variety of cases and filings in state court -- each with their own unique complications and problems -- in conjunction with the high number of self-represented litigants in state court - made that approach unfeasible. Those concerns led to months, and in some cases years, of discussions about the appropriate manner in which to make court information available to the public.

The Task Force also provided input on a package of Supplementary Local Rules that OJD adopted to apply to each Oregon eCourt that went live, once implementation began.

**Pilot Courts and Early Implementation**

Oregon eCourt implementation initially began in 2009-10, with several pilot courts around the state, but including only electronic content management in small claims and landlord-tenant cases, in four pilot courts. In early 2011, OJD transitioned to Tyler Technology’s Odyssey single-solution system -- an integrated system that includes case management, document management, eFiling, financial, and other components. OJD planned a new staged, five-year rollout, where the Odyssey case management, document management, and financial system went live in all case types in a court at once. OJD began implementation with a pilot court (Yamhill County) in mid-2012, followed by three early adopter courts (Crook-Jefferson, Linn, Jackson) over the next nine months. Beginning in mid-2013, it then followed a rolling schedule where groups of courts around the state went online every several months through mid-2016, with the largest courts going live as stand-alone events (Multnomah, Clackamas, Washington-Oregon Tax Court). OJD has configured and added other integrated components to the Oregon eCourt system over time, including eFiling (see next section), interactive forms, and jury management.
The Task Force’s major role during these early stages transitioned to reviewing the efficacy of implementation at each stage of the rollout and discussing problems encountered by local bar members, as well as issues surrounding statewide consistency. The OSB, in its role in facilitating the Task Force’s work, solicited feedback from local bar associations and practicing attorneys in local counties as to the successes and failures encountered during implementation. The goal in all cases was to advise the OJD – through the Task Force – of any issues that would compromise access to justice or otherwise cause problems for local attorneys and look for solutions before moving on to the next group of counties.

In most cases, local implementation went smoothly. In general, implementation in earlier counties progressed more slowly and was more likely to run into unexpected problems, but OJD learned from each rollout, and later counties tended to progress more and more smoothly and experience fewer issues as part of implementation.

Examples of issues that the Task Force addressed in the early rollouts were (1) necessary shut-downs of the Oregon Judicial Information Network (OJIN) during go-live -- including access issues for lawyers and other stakeholders, such as title companies -- and how to most effectively communicate that information to OSB members and minimize disruption; (2) how to provide critical judgment-entry information to title companies, OSB members, and others; and (3) generally, many issues relating to the transition from paper-based to electronic-based courthouses.

During this time, the Task Force decided to encourage attorneys to contact OSB directly with questions or concerns about Oregon eCourt, which OSB would then pass along to the Task Force as necessary. To that end, OJD added significant information to its website informing attorneys about resources available if they have questions, including contact information for staff who would be able to direct them to the appropriate person to address their concerns. Also, OJD, OSB, and PLF staff developed effective working relationships and consistent channels of communication that facilitated problem-solving in this time period.

**eFiling Implementation**

OJD began rolling out the eFiling and eService component of the Oregon eCourt system, File & Serve, in 2013, about a year after the initial pilot court implementation. OJD followed the same court implementation schedule for File & Serve, first implementing in the courts that already had gone live and then making File & Serve part of a staged implementation for those that remained -- installing File & Serve in the remaining courts about six weeks after each court’s initial system implementation. In December 2014, OJD implemented mandatory eFiling for OSB members, for all courts who then were using File & Serve; in the remaining courts, mandatory eFiling rules were triggered about six weeks after File & Serve implementation. OJD added mandatory eFiling for the appellate courts in 2015.

Throughout the planning and rollout of File & Serve, the Task Force addressed many issues relating to eFiling and eService -- including input on multiple updates to UTCR Chapter 21 (Filing and Service by Electronic Means; Electronic Files of the Court), practical, mechanical, and transactional cost concerns, and statewide consistency issues. OJD also worked with OSB and PLF staff to facilitate eFiling trainings around the state, as well as providing notifications to OSB members about eFiling implementations, mandatory transitions, and system down-times.
Late and Post-Implementation

As the statewide rollout progressed, the Task Force continued to address issues that arose over time, for example: (1) vetting and facilitating OSB section and member comment on proposed amendments to Oregon eCourt-related UTCRs, such as UTCR 5.100 (proposed orders and judgments), UTCR 21.120 (retention of documents by eFilers), and many other rules (eFiling/eService and otherwise); (2) raising and addressing lawyer needs in the system, such as automatic email notification of entry of orders and judgments, and consistency improvements in accepting eFilings; and (3) discussing updated subscription plans for case and document access. The Task Force also provided a forum for discussing legislative proposals regarding Oregon eCourt funding – including funding derived from fees paid by the civil bar – that ultimately informed decisions later made by the Oregon Legislature. And, the Task Force discussed additional ongoing system updates, such as OJD's 2015 implementation of interactive online forms, with new form packets being added each year to assist self-represented litigants and the courts alike.

As implementation moved into the later stages, some of the Task Force’s focus shifted to issues related to maintaining and improving upon the existing system. With the new focus came a new charge for the Task Force during its final year:

To work cooperatively with the Oregon Judicial Department and OSB members to monitor the ongoing operation of Oregon eCourt; to gather input and feedback from OSB members on how well Oregon eCourt is working for them and their staff; to propose solutions for problems identified by OSB members and court staff, to maintain communication with OJD and continue to educate bar members about Oregon eCourt programs; and to provide periodic updates to the Board of Governors.

Ongoing Task Force discussions included both technical issues related to the capabilities of the system itself and policy issues regarding how the system will be managed and funded in the future. Many of those discussion are likely to continue, as access to Oregon eCourt becomes more and more synonymous with access to the court system itself.

Two User Satisfaction Surveys

The final group of counties to go live with Oregon eCourt did so at the end of June 2016, with eFiling for those counties added in August. During the spring leading up to the end of formal implementation, the OSB – at the request of OJD’s independent quality assurance consultant – conducted a survey of OSB members and their staff regarding their overall satisfaction with Oregon eCourt. While the survey was not conducted by the Task Force itself, the responses are instructive as to the success of the statewide implementation.

The OSB received 850 survey responses, and the demographic information suggests that a broad cross-section of Oregon attorneys and their staff responded. Overall, the survey results showed a large degree of satisfaction with Oregon eCourt. Significant majorities of respondents indicated separately that eFiling had expanded access to the courts, increased productivity, and lowered costs for their practice. Likewise with the new subscription-based service that provides OSB members with case information and
remote document access (the Oregon Judicial Case Information Network (OJCIN)), the vast majority of respondents indicated both that they were able to successfully use the system to find the information they were looking for and that the system was more efficient than their previous experiences with the old case management system and the courts.

Survey respondents also provided extensive feedback regarding difficulties they have had and suggested improvements to the Oregon eCourt system, which are worth discussing in their own right. Overall, however, the survey responses were quite positive.

A follow-up survey was conducted in conjunction with creating this report in December of 2017. The second survey asked some questions, which were similar to the original survey, to assess any significant changes in responses, as well as addressing some new areas that had been topics of discussion within the task force. Some of the new issues addressed in the second survey included compliance with UTCR 21.100 and the observed time for entry of documents into OECI.

The second survey largely received similar results to the first, with more than 70% of respondents indicating that eFiling had expanded their ability to file pleadings and approximately the same number indicating that it had improved the productivity of their office. A plurality of respondents indicated that it also reduced operating expenses and client costs.

**Conclusion**

The OSB/OJD Oregon eCourt Task Force has proved to be a successful partnership for OSB and OJD that has provided great benefit to Oregon's lawyers and to the courts as a whole. Through the Task Force, the OSB has had an ongoing opportunity to advance the interest of its members relating to their work in the courts, provide practical input to the OJD, and obtain information about the development, implementation, and maintenance of Oregon eCourt. In turn, OJD has been able to learn -- from the perspective of lawyers, staff, and others who interact with the courts on a daily basis -- how it can develop and use Oregon eCourt to most effectively serve the citizens of Oregon, who rely on the courts to enforce laws, resolve disputes in a fair and timely manner, and ensure access to justice.
2017 eCourt User Survey Results

Executive Summary

In December of 2017 the OSB Public Affairs Department, on behalf of the OSB/OJD eCourt Implementation Task Force, released a survey for OSB members soliciting feedback on Oregon eCourt. This new survey followed up on a survey in May of 2016 that accompanied the formal end of eCourt implementation. The intention of this new survey was to inform the creation of the final task force report that accompanies the formal end of the Implementation Task Force.

Many questions were repeated for the purpose of comparing the answers between the two surveys and seeing if there were any major shifts in opinion. Some additional questions were also included in the new survey for the purpose of looking at specific issues that had more recently been raised by the task force.

Overall Favorability

Most responses were generally favorable, with over 71% of respondents indicating that electronic filing had expanded their ability to file pleadings (Q3) and approximately 70% indicating that it had increased the productivity of their office (Q4). In both of these cases favorable responses were about 5% higher than in the previous survey.

A plurality of respondents – just over 43% - indicated that it had reduced expenses, while only 17% indicated it had increased expenses (Q5). These results are almost identical to the results in the 2016 survey.

Both surveys asked essentially the same question regarding the user’s overall experience with OJD File and Serve, in which they were asked to rate their level of satisfaction on a scale of 0-10. Users showed a notably higher level of overall satisfaction in the 2017 survey.

2016 – 21.2% responded 0-4; 30.3% responded 5-6; 39.7% responded 7-8; 8.8% responded 9-10.
2017 – 12.71% responded 0-4; 25% responded 5-6; 44.25% responded 7-8; 18% responded 9-10.

Questions Regarding eService

Once complaint that had been made by respondents in the 2016 survey is that some attorneys do not add their service contact information to each case when they use the eFiling system, despite being required to do so by UTCR 21.100. A question was added to the 2017 survey to address this specific issue.

The reality of this problem was borne out by the survey results, with only 58% of respondents indicating they always comply with the rule, and further 12% indicating they comply “most of the time”. About 12% of respondents answered that they comply “never”, “almost never”, or “sometimes”; while 17% of
respondents indicated they were unaware of the rule. (Q6) A large number of respondents specifically commented on this issue, and suggested some version of not allowing attorneys to file at all without first including service information. (Q8) Practitioners who self-identified as practicing in Family Law, Criminal Law, and Litigation/Dispute Resolution appear to have reported somewhat higher levels of familiarity and compliance with the rule, although the sample sizes are relatively small.

A related question asked about what methods of service users are choosing to employ. Only 41% of respondents indicated they primarily serve documents through OJD File and Serve. (Q7) Most respondents indicated they still choose to use a different method of service. While many respondents commented that they employ multiple methods of service, some indicated a lack of trust in File and Serve’s eService system. Practitioners who self-identified as practicing in Criminal Law and Juvenile Law appear to most frequently use electronic services through OJD File and Serve.

Delay in documents appearing in the register

Two new questions were also added addressing what is sometimes called “latency” – in this case referring to the amount of time between the submission of a document for filing and notification that the document has been entered in the register. While these questions don’t address the technical functioning of the system, they do address the attorney’s experience in filing documents.

In the case of documents other than unsigned orders, 77% of respondents indicated that on average a document posted to the register within 3 days, while less than 5% indicated it took 10 days or longer. (Q10)

However, in the case of orders submitted for judicial signature, only 26% indicated the document had generally been processed within 3 days. 34% indicated it averaged 10 days or longer, and 10% indicated that it generally took 21 days or longer. (Q11)

Conclusions

Overall the survey provided similar results to the 2016 survey, but displayed a modest increase in satisfaction with the system that we might expect to see 18 months after final implementation.

Comments provided by respondents provide a wealth of information regarding specific concerns and experiences and are worth reading. While the comments point to a number of areas where it would be nice to ultimately see improvement, many complaints reflect more on policy decisions that have been made regarding the nature of changing services than point to any failure in the system itself.
Oregon State Bar
Board of Governors Agenda

Meeting Date: February 22, 2018
From: Guy Greco, Board Development Committee Chair
Re: Appointments to various bar groups

Action Recommended

Approve the Board Development Committee’s recommendations for member and non-member appointments to the following groups.

Background

Legal Services Program Committee

The Legal Services Program Committee oversees the OSB Legal Services Program and the funds appropriated to the bar by the Oregon Legislature. The committee is in need of one new member and Laurie Craighead (922663) is recommended based on her demonstrated commitment to access to justice and the geographic balance she brings to the committee. If appointed, Ms. Craighead’s term would expire on December 31, 2020.

Loan Repayment Assistance Program Committee

The Loan Repayment Assistance Program Committee selects program recipients and sets program policy guidelines. One new member is needed to fill the seat designated for a practitioner from civil area of public service law. Meghan Collins (101834), a Legal Aid Services of Oregon lawyer, is recommended for the position. If appointed her term would expire December 31, 2020.

Minimum Continuing Legal Education Committee

The MCLE Committee provides input, analysis and evaluation of the program that accredits education programs for Oregon attorneys. One new public member is needed through December 31, 2020. Oksana Davletshina is recommended based on her experience as a lawyer from Russia.

State Lawyers Assistance Committee

The State Lawyers Assistance Committee investigates and resolves complaints about lawyers whose conduct impairs their ability to practice law. The committee is in need of one new member and Chris Shaffner (021662) is recommended to help balance the gender and geographic balance. Ms. Shaffner’s term would expire December 31, 2021.

Uniform Criminal Jury Instructions Committee

The Uniform Criminal Jury Instructions Committee develops uniform jury instructions for use in criminal trials. One new member is needed and Courtney Quale-Conrad (085811) is recommended based on her geographic area and the perspective she offers from her employment experience on both sides of criminal cases. Ms. Quale-Conrad’s term would expire December 31, 2019.
Oregon Law Commission

The Oregon Law Commission was created by the legislature to conduct law reform and propose new substantive and procedural provisions to improve Oregon law. One new member is needed and Christa Obold Eshleman (043801) is recommended based on her experience in juvenile dependency issues and the Commission’s ongoing need for a practitioner with this perspective.

The Supreme Court makes appointments to the following bar groups based on recommendations from the Board of Governors. The Board Development Committee identified the following new member appointment recommendations for the BOG and Supreme Court’s consideration.

Disciplinary Board

The Disciplinary Board is a component of the disciplinary process where board members act as judges in possible ethics violation cases. Panels consist of an adjudicator, a lawyer, and a public member. They determine if the accused lawyer has violated the Rules of Professional Conduct and, if so, the appropriate sanctions to be imposed. New members are needed to fill vacant seats in region 3 and region 5.

Kelly L. Andersen (791464) is an experienced litigator offering a history of service as bar counsel for disciplinary cases. His appointment would aid in the gender balance of region 3 board members. If appointed his term would end on December 31, 2019.

Rebecca Cambreleng (133209) has a well-rounded legal career and experience as a lawyer from another state. If approved for appointment Ms. Cambreleng would bring better gender balance to region 5 and would serve through December 31, 2020.

Unlawful Practice of Law Committee

The Unlawful Practice of Law Committee investigates complaints of unlawful practice and recommends prosecution where appropriate. As required by OSB bylaw 20.2, only ¼ of the committee’s membership can be in private practice. Two new members are needed and Halah A. Ilias (143449) and Vanessa L. Crakes (032436) are recommended for terms through December 31, 2020.
The Board of Bar Examiners (BBX) wishes to consider the following candidates to possibly serve as co-graders for the August 2018 grading session. Pursuant to Section 28.2 of the Oregon State Bar Bylaws, the BBX hereby solicits the input of the Oregon State Bar’s Board of Governors regarding these candidates. In making these selections, the BBX considered the lawyer’s career experience, their area legal expertise, their demographic and geographic diversity and their experience grading or assisting the BBX in other matters.

**STEFFAN ALEXANDER**
- Admitted 2013
- Portland
- Black Male
- Private Practice, Litigation
- No Experience as Co-Grader
- No other service

**TODD E. BOFFERDING**
- Admitted 1988
- Hood River
- White Male
- Private Practice, Real Estate/Family
- Has Co-Graded in the Past
- No other service

**ROSA CHAVEZ**
- Admitted in 2003
- Eugene
- Hispanic Female
- University of Oregon
- Has Co-Graded in the Past
- No other service

**MARISHA CHILDS**
- Admitted 2012
- Vancouver
- Black Female
- Private Practice, Elder Law & Estates
- Has Co-Graded in the Past
- No other service

**CHRISTY A. DOORNINK**
- Admitted 2003
- Portland
- White Female
- Private Practice, Workers Comp.
- No Experience as a Co-Grader
- No other service
<table>
<thead>
<tr>
<th>Name</th>
<th>Admitted Year</th>
<th>Location/Practice Area</th>
<th>Race/Gender</th>
<th>Experience as Co-Grader</th>
<th>Other BBX Service</th>
</tr>
</thead>
<tbody>
<tr>
<td>DENISE FJORDBECK</td>
<td>1982</td>
<td>Salem, DOJ, Admin &amp; Environmental</td>
<td>White Female</td>
<td>Has Co-graded in the Past</td>
<td>Prior BBX member</td>
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<tr>
<td>LISSA K. KAUFMAN</td>
<td>1997</td>
<td>Portland, Private Practice, Family &amp; Consumer</td>
<td>White Female</td>
<td>Has Co-graded in the Past</td>
<td>No other service</td>
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<tr>
<td>RICHARD A. WEILL</td>
<td>1982</td>
<td>Troutdale, Private Practice, Family law</td>
<td>White Male</td>
<td>No Experience as a Co-Grader</td>
<td>Served as a C&amp;F Special Investigator</td>
</tr>
<tr>
<td>KENDRA MATTHEWS</td>
<td>1996</td>
<td>Portland, Private Practice, Admin &amp; Criminal</td>
<td>White Female</td>
<td>Has Co-graded in the Past</td>
<td>No other service</td>
</tr>
<tr>
<td>SARAH A. PETERS</td>
<td>2007</td>
<td>Eugene, Private Practice, Environmental</td>
<td>White Female</td>
<td>No Experience as a Co-Grader</td>
<td>No other service</td>
</tr>
<tr>
<td>MANDI PHILPOTT</td>
<td>2002</td>
<td>Gladstone, Private Practice, Family Law</td>
<td>White Female</td>
<td>Has Co-graded in the Past</td>
<td>No other service</td>
</tr>
<tr>
<td>ANTHONY ROSILEZ</td>
<td>1996</td>
<td>Klamath Falls, Klamath Community College, Labor &amp; Employment</td>
<td>Hispanic Male</td>
<td>No Experience as a Co-Grader</td>
<td>No other service</td>
</tr>
<tr>
<td>MICHAEL J. SLAUSON</td>
<td>2001</td>
<td>Salem, DOJ, Criminal &amp; Constitutional</td>
<td>White Male</td>
<td>Has Co-graded in the Past</td>
<td>No other service</td>
</tr>
<tr>
<td>Name</td>
<td>Admitted Year</td>
<td>Location</td>
<td>Gender</td>
<td>Race</td>
<td>Experience as a Co-Grader</td>
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<tr>
<td>ADRIAN T. SMITH</td>
<td>2012</td>
<td>Portland</td>
<td>White</td>
<td>Lesbian Female</td>
<td>Has Co-Graded in the Past</td>
</tr>
<tr>
<td>MIRANDA SUMMER</td>
<td>2007</td>
<td>Portland</td>
<td>Bi-Racial</td>
<td>Lesbian Female</td>
<td>No Experience as a Co-Grader</td>
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<tr>
<td>KATHERINE E. WEBER</td>
<td>1994</td>
<td>Oregon City</td>
<td>White</td>
<td>Female</td>
<td>No Experience as a Co-Grader</td>
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<tr>
<td>GLEN H. UJIFUSA, JR.</td>
<td>2006</td>
<td>Portland</td>
<td>Asian</td>
<td>Male</td>
<td>No Experience as a Co-Grader</td>
</tr>
<tr>
<td>SIMON WHANG</td>
<td>2003</td>
<td>Portland</td>
<td>Asian</td>
<td>Male</td>
<td>Has Co-Graded in the Past</td>
</tr>
<tr>
<td>JENNIFER JANE MARTIN</td>
<td>1984</td>
<td>Portland</td>
<td>White</td>
<td>Female</td>
<td>No Experience as a Co-Grader</td>
</tr>
</tbody>
</table>
January 29, 2018

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:

Stephanie Eames resigned from the Oregon State Board of Bar Examiners (BBX) effective December 31, 2017. This necessitates the appointment of a new member to serve out the rest of Ms. Eames’ three-year term (ending September 30, 2019). At our January 19, 2018 meeting, the BBX determined that they would recommend Ernest Warren, Jr. to replace Ms. Eames.

Mr. Warren is highly qualified for the BBX. Ernie has been approved by the Board of Governors as an exam co-grader and has regularly co-graded bar exams in the past. He is an efficient and reliable grader.

While our rules do not dictate a process for replacing a board member, in the spirit of OSB and BBX cooperation and OSB Bylaws Section 28.2, the BBX hereby solicits input from the Board of Governors related to Mr. Warren’s appointment as a BBX member.

Our goal is to have Mr. Warren’s appointment 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,

Thomas M. Ryan, Chair
Oregon State Board of Bar Examiners

cc: Ernest Warren, Jr.
February 14, 2018

Helen Hierschbiel
Oregon State Bar
PO BOX 231935
Tigard, Oregon 97281-1935

Re: Increasing Bar Exam Application Fees.

Dear Ms. Hierschbiel:

The Oregon Board of Bar Examiners (BBX) is considering raising its application fees. While such an increase requires approval only from the Oregon Supreme Court (ORS 9.210(3)), the BBX recognizes that the Oregon State Bar (OSB) is a stakeholder in the total amount of admission fees recovered and wishes to consult with and receive support from the Board of Governors (BOG) for this fee increase proposal.

The BBX proposes a $125 increase to the OSB application fee, bringing the total application fee to $750, with the hope that it could be in place for February 2019 bar exam applicants. The last time the Application Fee was increased was in 2009, when it was raised from $525 to $625. See History of Admission Fees attached.

This increase is sought to defray increased bar exam administration costs, including those charged by the National Conference of Bar Examiners (NCBE) to Uniform Bar Examination (UBE) jurisdictions. The fee increase also accounts for the fact that the number of bar applicants is likely to diminish in coming years. The data and factors considered by the BBX in making this proposal includes the following:

Bar exam expenses are greater today than they were in 2009.

<table>
<thead>
<tr>
<th>Bar Exam Expenses in 2009</th>
<th>Exam Expenses in 2017</th>
<th>Difference</th>
</tr>
</thead>
<tbody>
<tr>
<td>$265.94 per applicant</td>
<td>$365.57 per applicant</td>
<td>+$99.63</td>
</tr>
<tr>
<td>(with 858 applicants)</td>
<td>(with 667 applicants)</td>
<td>(-191 applicants)</td>
</tr>
</tbody>
</table>

The two primary factors that impact the costs per applicant are: 1) as a result of becoming a UBE jurisdiction, the NCBE charges the OSB approximately $50 more per applicant for exam materials; and 2) we have almost 200 fewer bar exam applicants than we had in 2009.
While consistently generating surpluses that have been paid into the Bar’s treasury, we have for many years operated on thin margins. The BBX 2018 Budget calls for a surplus of only $34,023 from projected revenues of $834,220 (a 4% margin). See 2018 Budget attached.

This surplus would be entirely eliminated if we have 54 fewer applicants than we did in 2017. 2017’s applicant totals were 41 less than 2016. Already, it appears that this year’s February Bar exam will be a handful less than last February’s exam totals, which was a near record low for recent February exams. The last time any BBX fee was increased was 2012 when the investigation fee for out-of-state lawyers was increased by $200.

**A $750 application fee would be in close proximity to the mean of all UBE jurisdictions and below the mean of all Western States.**

The mean application fee of all UBE states is approximately $724. A $750 Oregon Application Fee would be within 3.6% of the UBE mean. However, Oregon has the 6th most expensive cost of living among all UBE jurisdictions. When each UBE State’s application fee is adjusted to Oregon’s cost of living, the mean application fee is approximately $873, far below what we propose.

The mean bar application fee for Western States is approximately $773. A $750 Oregon Application Fee would be approximately 3.1% below the Western State mean.

**Oregon’s Application fee has not kept up with inflation since its last raise in 2009.**

According to CPI data provided by the Oregon Department of Administrative Services, Oregon’s Application Fee would need to be $788.75 in order to have the same buying power that the $625 application fee had in 2009. In other words, inflation has eroded the value of the 2009 application fee by approximately 26%. However, the BBX is only looking to increase its application fee by 20%.

**BBX revenues and losses are paid into and from the treasury of the Oregon State Bar.**

As previously mentioned, The BBX budget has operated with a razor thin margin the last few years. Some unforeseen expense or circumstance could easily move the BBX’s financials into the red, forcing the OSB to cover those losses. That has not happened in recent memory, and we presume the BOG would like to continue to avoid that.

I assure the BOG that the BBX is mindful of its expenses. In the last 5 years, the admissions department has been reduced from 4.5 fte positions to 3.0 fte positions. We
continue to explore ways to reduce expenses, as we are not interested in charging applicants any more than is absolutely necessary.

In the light of the current status of the BBX’s finances and the foregoing data, the BBX hopes that this application fee increase proposal will receive support from the Oregon State Bar and the Board of Governors.

The chair of the BBX Finance Committee, Stephanie Tuttle, will present this concern at the next BOG meeting. Please let me know if you require any additional information before that meeting.

Sincerely,

Thomas M. Ryan, Chair

Enclosures: History of Admission Fees
2018 Budget

CC: Camille Green
    Stephanie Tuttle
<table>
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<tr>
<th>Year</th>
<th>Amount(s)</th>
<th>Explanation</th>
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<td>1861</td>
<td>$5.00</td>
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<td>1913</td>
<td>$10.00</td>
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<tr>
<td></td>
<td>$20.00</td>
<td>Attorney Certificates</td>
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<tr>
<td>1936</td>
<td>$20.00</td>
<td></td>
</tr>
<tr>
<td>1945</td>
<td>$35.00</td>
<td></td>
</tr>
<tr>
<td>1949</td>
<td>$35.00</td>
<td>Any applicant for admission upon examination, except as next noted:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>$85.00</td>
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<tr>
<td></td>
<td></td>
<td>$35.00</td>
</tr>
<tr>
<td></td>
<td></td>
<td>$125.00</td>
</tr>
<tr>
<td>1951</td>
<td>$35.00</td>
<td>Any applicant for admission upon the Student Examination, except as next noted:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>$85.00</td>
</tr>
<tr>
<td></td>
<td></td>
<td>$35.00</td>
</tr>
<tr>
<td></td>
<td></td>
<td>$125.00</td>
</tr>
</tbody>
</table>
where the common law of England exists as a basis of its jurisprudence, where the requirements for admission are substantially equivalent to those of the state of Oregon, and has been actively, substantially and continuously engaged in the practice of law for at least three of the five years immediately preceding the filing of the application, and

<table>
<thead>
<tr>
<th>Year</th>
<th>Fee</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1956</td>
<td>$ 50.00</td>
<td>Any applicant for admission upon the Student Examination, except as next noted:</td>
</tr>
<tr>
<td></td>
<td>$ 100.00</td>
<td>Any applicant for admission upon the first Student Examination who has been previously admitted to the bar of another state, District of Columbia, federal territory, or a foreign country where the common law of England exists as a basis of its jurisprudence, and</td>
</tr>
<tr>
<td></td>
<td>$ 50.00</td>
<td>For each subsequent examination</td>
</tr>
<tr>
<td></td>
<td>$ 125.00</td>
<td>By an applicant for the first Attorney Examination -an applicant who has been admitted to the bar of another state, the District of Columbia, federal territory, or foreign country where the common law of England exists as a basis of its jurisprudence, where the requirements for admission are substantially equivalent to those of the state of Oregon, and has been actively, substantially and continuously engaged in the practice of law for at least three of the five years immediately preceding the filing of the application, and</td>
</tr>
<tr>
<td></td>
<td>$ 75.00</td>
<td>For each subsequent examination</td>
</tr>
<tr>
<td>1961</td>
<td>$ 50.00</td>
<td>Any applicant for admission upon the Student Examination, except as next noted:</td>
</tr>
<tr>
<td></td>
<td>$ 125.00</td>
<td>For first Student Examination by an applicant who has been admitted to the bar of another state, the District of Columbia, federal territory, or foreign country where the common law of England exists as a basis of its jurisprudence, and</td>
</tr>
<tr>
<td></td>
<td>$ 50.00</td>
<td>For each subsequent examination</td>
</tr>
</tbody>
</table>
Application Fee History
Page 3 of 5

$150.00 For first Attorney Examination -- an applicant who has been admitted to the bar of another state, the District of Columbia, federal territory, or foreign country where the common law of England exists as a basis of its jurisprudence, where the requirements for admission are substantially equivalent to those of the state of Oregon, and has been actively, substantially and continuously engaged in the practice of law for at least three of the five years immediately preceding the filing of the application, and

$75.00 For each subsequent examination.

**CURRENT FEE STRUCTURE BEGINS**

<table>
<thead>
<tr>
<th>Year</th>
<th>Fee</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1966</td>
<td>$75.00</td>
<td>Application Fee - Student and Attorney Examination Applicants and, in addition:</td>
</tr>
<tr>
<td></td>
<td>$75.00</td>
<td>Investigation Fee by any applicant who:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(a) On the date of the first application in Oregon is, or at any time has, engaged in the practice of law; or</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(b) On the date of the second or any subsequent application in Oregon is, or at any time since the last previous application in Oregon has, engaged in the practice of law.</td>
</tr>
<tr>
<td></td>
<td>$25.00</td>
<td>Late Filing Fee</td>
</tr>
<tr>
<td>1970</td>
<td>$125.00</td>
<td>Application Fee - Student and Attorney Examination Applicants - increased by $50.</td>
</tr>
<tr>
<td></td>
<td>$100.00</td>
<td>Investigation Fee by any applicant who: (Please see 1966 for provisions) - increased by $25.</td>
</tr>
<tr>
<td></td>
<td>$50.00</td>
<td>Late Filing Fee increased by $25.</td>
</tr>
<tr>
<td>Year</td>
<td>Fee</td>
<td>Description</td>
</tr>
<tr>
<td>--------</td>
<td>------</td>
<td>-------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>1974</td>
<td>$150.00</td>
<td>Application Fee - Student and Attorney Examination Applicants - increased by $25.</td>
</tr>
<tr>
<td>1979</td>
<td>$200.00</td>
<td>Application Fee - Student and Attorney Examination Applicants ($10.00 non-refundable portion to obtain application kit) increased by $50.</td>
</tr>
<tr>
<td>July 1985</td>
<td>$250.00</td>
<td>Application Fee - All Applicants - Entire Examination -- NO Attorney Examination -- increased by $50.</td>
</tr>
<tr>
<td>1987</td>
<td>$325.00</td>
<td>Application Fee increased by $75.</td>
</tr>
<tr>
<td>1991</td>
<td>$400.00</td>
<td>Application Fee increased by $75.</td>
</tr>
<tr>
<td></td>
<td>$150.00</td>
<td>Investigation Fee for applicants who are admitted elsewhere (see July 1985 for provisions) and are applying for the first time. Increased by $50.</td>
</tr>
<tr>
<td></td>
<td>$100.00</td>
<td>Investigation Fee for applicants who are admitted elsewhere (see July 1985 for provisions) who are reapplying within 12 months of having paid the $150.00 Investigation Fee. Increased by $50.</td>
</tr>
<tr>
<td></td>
<td>$100.00</td>
<td>Late Filing Fee increased by $50.</td>
</tr>
<tr>
<td>July, 1999</td>
<td>$450.00</td>
<td>Application Fee increased by $50.</td>
</tr>
<tr>
<td></td>
<td>$200.00</td>
<td>Late Filing Fee increased by $100.</td>
</tr>
<tr>
<td>2000</td>
<td>$525.00</td>
<td>Application Fee increased by $100.</td>
</tr>
<tr>
<td>2002</td>
<td>$225.00</td>
<td>Investigation Fee for applicants who are admitted elsewhere (see July 1985 for provisions) and are applying for the first time.</td>
</tr>
</tbody>
</table>
### Application Fee History

<table>
<thead>
<tr>
<th>Year</th>
<th>Fee</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>2009</td>
<td>$625.00</td>
<td>Application Fee increased by $100.</td>
</tr>
<tr>
<td></td>
<td>$250.00</td>
<td>Late Filing Fee increased by $50.</td>
</tr>
<tr>
<td>2012</td>
<td>$425.00</td>
<td>Investigation Fee increased by $200.</td>
</tr>
<tr>
<td></td>
<td>$350.00</td>
<td>Late Filing Fee increased by $100.</td>
</tr>
</tbody>
</table>

Investigation Fee for applicants who are admitted elsewhere (see July 1985 for provisions) who are reapplying within 12 months of having paid the $225.00 Investigation Fee.
## Admissions
### 2018 Budget

<table>
<thead>
<tr>
<th>Account #</th>
<th>Account Description</th>
<th>Y-T-D As of 8/30/2017</th>
<th>Current Budget</th>
<th>2018 Budget</th>
<th>Budget Inc (Dec)</th>
</tr>
</thead>
<tbody>
<tr>
<td>101-4070-000</td>
<td>Applications - Bar Exam</td>
<td>442,375</td>
<td>473,750</td>
<td>463,125</td>
<td>-10,625</td>
</tr>
<tr>
<td>101-4070-100</td>
<td>Applications - W/O Bar Exam</td>
<td>75,000</td>
<td>120,000</td>
<td>121,250</td>
<td>1,250</td>
</tr>
<tr>
<td>101-4180-000</td>
<td>Supreme Court Certificate revenue</td>
<td>3,520</td>
<td>9,000</td>
<td>9,000</td>
<td>0</td>
</tr>
<tr>
<td>101-4320-000</td>
<td>Investigation Fees - Bar Exam</td>
<td>62,725</td>
<td>60,625</td>
<td>89,950</td>
<td>29,325</td>
</tr>
<tr>
<td>101-4320-100</td>
<td>Investigation Fees - W/O Bar Exam</td>
<td>51,000</td>
<td>81,600</td>
<td>82,450</td>
<td>850</td>
</tr>
<tr>
<td>101-4355-000</td>
<td>Lane Fees - Bar Exam</td>
<td>32,900</td>
<td>21,000</td>
<td>28,000</td>
<td>7,000</td>
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<tr>
<td>101-4490-000</td>
<td>Photocopies</td>
<td>1,010</td>
<td>5,000</td>
<td>5,000</td>
<td>0</td>
</tr>
<tr>
<td>101-4560-000</td>
<td>Registration Packets - Bar Exam</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>101-4560-100</td>
<td>Registration Packets - W/O Bar Exam</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>101-4620-013</td>
<td>Sales - Prior Year Bar Exams</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>101-4670-000</td>
<td>Services to Other Bars</td>
<td>125</td>
<td>250</td>
<td>250</td>
<td>0</td>
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<tr>
<td>101-4750-000</td>
<td>Laptop Fees</td>
<td>10,247</td>
<td>34,650</td>
<td>35,195</td>
<td>545</td>
</tr>
<tr>
<td>101-4999-000</td>
<td>Miscellaneous Income</td>
<td>0</td>
<td>0</td>
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<td>0</td>
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</table>

**Total Revenues**

<table>
<thead>
<tr>
<th></th>
<th>Y-T-D As of 8/30/2017</th>
<th>Current Budget</th>
<th>2018 Budget</th>
<th>Budget Inc (Dec)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>$678,902</td>
<td>$805,875</td>
<td>$834,220</td>
<td>$28,345</td>
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</table>

### Salaries & Benefits

<table>
<thead>
<tr>
<th>Account #</th>
<th>Account Description</th>
<th>Y-T-D As of 8/30/2017</th>
<th>Current Budget</th>
<th>2018 Budget</th>
<th>Budget Inc (Dec)</th>
</tr>
</thead>
<tbody>
<tr>
<td>101-6100-000</td>
<td>Employee Salaries - Regular</td>
<td>122,930</td>
<td>220,900</td>
<td>245,400</td>
<td>24,500</td>
</tr>
<tr>
<td>101-6105-000</td>
<td>Employee Taxes &amp; Benefits - Regular</td>
<td>48,920</td>
<td>87,900</td>
<td>100,400</td>
<td>12,500</td>
</tr>
<tr>
<td>101-6150-000</td>
<td>Employee Recognition Bonus</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>101-6200-000</td>
<td>Employee Salaries - Temporary</td>
<td>237</td>
<td>1,800</td>
<td>1,648</td>
<td>-152</td>
</tr>
<tr>
<td>101-6205-000</td>
<td>Employee Taxes &amp; Benefits - Temporary</td>
<td>18</td>
<td>180</td>
<td>165</td>
<td>-15</td>
</tr>
<tr>
<td>101-6300-000</td>
<td>Long Term Temporary Employee - Agency</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
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</tbody>
</table>

**Total Salaries & Benefits**

<table>
<thead>
<tr>
<th></th>
<th>Y-T-D As of 8/30/2017</th>
<th>Current Budget</th>
<th>2018 Budget</th>
<th>Budget Inc (Dec)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>$172,105</td>
<td>$310,780</td>
<td>$347,615</td>
<td>$36,833</td>
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</tbody>
</table>

### Direct Program Expenses

<table>
<thead>
<tr>
<th>Account #</th>
<th>Account Description</th>
<th>Y-T-D As of 8/30/2017</th>
<th>Current Budget</th>
<th>2018 Budget</th>
<th>Budget Inc (Dec)</th>
</tr>
</thead>
<tbody>
<tr>
<td>101-7090-000</td>
<td>Bank Fees-Credit card</td>
<td>0</td>
<td>6,500</td>
<td>150</td>
<td>-6,350</td>
</tr>
<tr>
<td>101-7100-000</td>
<td>Bar Exam Analysis</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>101-7110-000</td>
<td>Bar Exam Multistate Fees - MBE</td>
<td>13,312</td>
<td>46,400</td>
<td>84,474</td>
<td>38,074</td>
</tr>
<tr>
<td>101-7110-100</td>
<td>Bar Exam Multistate Fees - MPT</td>
<td>5,225</td>
<td>20,300</td>
<td>0</td>
<td>-20,300</td>
</tr>
<tr>
<td>101-7120-000</td>
<td>Bar Exam Multistate Fees - MEE</td>
<td>5,225</td>
<td>20,300</td>
<td>0</td>
<td>-20,300</td>
</tr>
<tr>
<td>101-7130-000</td>
<td>Bar Exam Special Testing Conditions</td>
<td>558</td>
<td>15,600</td>
<td>15,600</td>
<td>0</td>
</tr>
<tr>
<td>101-7135-000</td>
<td>Laptop Exp - Special Testing Conditions</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>101-7135-100</td>
<td>Bar Exam Laptop Testing Exp - Electrical</td>
<td>4,490</td>
<td>6,000</td>
<td>5,850</td>
<td>-150</td>
</tr>
<tr>
<td>101-7140-000</td>
<td>Bar Exam Specific expenses</td>
<td>4,732</td>
<td>7,000</td>
<td>7,000</td>
<td>0</td>
</tr>
<tr>
<td>101-7170-000</td>
<td>Bar Exam Cards and Certificates</td>
<td>0</td>
<td>100</td>
<td>0</td>
<td>-100</td>
</tr>
<tr>
<td>101-7175-000</td>
<td>Supreme Court Certificates</td>
<td>1,335</td>
<td>1,500</td>
<td>1,500</td>
<td>0</td>
</tr>
<tr>
<td>101-7265-000</td>
<td>Contract Services</td>
<td>0</td>
<td>0</td>
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<td>0</td>
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<tr>
<td>101-7360-000</td>
<td>Facilities</td>
<td>19,155</td>
<td>28,060</td>
<td>14,790</td>
<td>-13,210</td>
</tr>
<tr>
<td>101-7415-000</td>
<td>Hearings</td>
<td>0</td>
<td>500</td>
<td>3,000</td>
<td>2,500</td>
</tr>
<tr>
<td>101-7450-000</td>
<td>Investigation - Character/Fitness</td>
<td>1,382</td>
<td>2,500</td>
<td>2,500</td>
<td>0</td>
</tr>
<tr>
<td>101-7500-000</td>
<td>Office Equipment - $500, tagged</td>
<td>0</td>
<td>100</td>
<td>500</td>
<td>400</td>
</tr>
<tr>
<td>101-7570-000</td>
<td>Maintenance - Equipment</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>101-7765-000</td>
<td>Legal Research</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>101-7930-016</td>
<td>Travel &amp; Expense - Board</td>
<td>46,136</td>
<td>124,650</td>
<td>129,013</td>
<td>4,363</td>
</tr>
<tr>
<td>101-7940-000</td>
<td>Travel &amp; Expense - Others</td>
<td>0</td>
<td>2,000</td>
<td>2,070</td>
<td>70</td>
</tr>
</tbody>
</table>

**Total Direct Program Expenses**

<table>
<thead>
<tr>
<th></th>
<th>Y-T-D As of 8/30/2017</th>
<th>Current Budget</th>
<th>2018 Budget</th>
<th>Budget Inc (Dec)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>$101,550</td>
<td>$281,450</td>
<td>$266,447</td>
<td>($15,003)</td>
</tr>
</tbody>
</table>

### General & Administrative Expenses

Print Date: 11/7/2017 4:46:40 PM
## Admissions
### 2018 Budget

<table>
<thead>
<tr>
<th>Account #</th>
<th>Account Description</th>
<th>Y-T-D</th>
<th>Current Budget</th>
<th>2018 Budget</th>
<th>Budget Inc (Dec)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>As of 8/30/2017</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>101-9400-000</td>
<td>Messenger &amp; Delivery Services</td>
<td>0</td>
<td>100</td>
<td>100</td>
<td>0</td>
</tr>
<tr>
<td>101-9500-000</td>
<td>Office Supplies</td>
<td>631</td>
<td>2,000</td>
<td>2,000</td>
<td>0</td>
</tr>
<tr>
<td>101-9600-000</td>
<td>In House Printing</td>
<td>1,533</td>
<td>3,000</td>
<td>3,000</td>
<td>0</td>
</tr>
<tr>
<td>101-9620-000</td>
<td>Postage</td>
<td>1,258</td>
<td>4,500</td>
<td>4,500</td>
<td>0</td>
</tr>
<tr>
<td>101-9640-000</td>
<td>Professional Dues</td>
<td>303</td>
<td>200</td>
<td>1,023</td>
<td>823</td>
</tr>
<tr>
<td>101-9680-000</td>
<td>Publications &amp; Subscriptions</td>
<td>0</td>
<td>200</td>
<td>200</td>
<td>0</td>
</tr>
<tr>
<td>101-9700-000</td>
<td>Small furn &amp; equip &lt; $500</td>
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<td>0</td>
<td>0</td>
<td>0</td>
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<tr>
<td>101-9800-000</td>
<td>Telephone</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
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<tr>
<td>101-9830-000</td>
<td>Training &amp; Education</td>
<td>39</td>
<td>1,500</td>
<td>2,178</td>
<td>678</td>
</tr>
<tr>
<td>101-9850-000</td>
<td>Travel &amp; Expense - Staff</td>
<td>6,500</td>
<td>19,356</td>
<td>21,022</td>
<td>1,666</td>
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<tr>
<td>101-9999-000</td>
<td>Miscellaneous Expense</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

**Total General & Administrative Expenses**

```
|                        | $10,264 | $30,856 | $34,023 | $3,167 |
```

**Total Expenses**

```
|                        | $283,919 | $623,086 | $648,083 |
```

**Net Operating Revenue (Expense)**

```
|                        | $394,983 | $182,789 | $186,137 |
```

**101-9000-000 Less: Indirect Cost Allocation**

```
|                        | $81,887 | $140,378 | $144,589 |
```

**Net Revenue (Expense)**

```
|                        | $313,096 | $42,411  | $41,548  |
```
FORMAL OPINION 2016:xxxx

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 do 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 whether they should waive their 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-executed an agreement 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 consistently 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. Formal Opinion 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,

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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.
might 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 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).


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).


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.
OREGON STATE BAR
Board of Governors Agenda

Meeting Date: February 23, 2018
Memo Date: February 5, 2018
From: MCLE Committee
Re: Review Regulation Amendment and Housekeeping matters re rule numbering

Action Recommended

1. Approve the proposed amendment to MCLE Regulation 5.200(g) to clarify that members may claim CLE credit for writing or grading a local component bar exam question.

2. Approve several rule and regulation amendments to reflect recent legislative amendments.

3. Seek limited housekeeping amendment authority from Supreme Court to correct rule numbering when needed.

Background – Item #1

Oregon is now a Uniform Bar Exam (UBE) jurisdiction, which means that the BBX no longer writes any bar exam questions. However, the BBX has the option of creating a local component exam and, if the BBX exercises this option, members would be required to draft their own local questions. Presently, we satisfy the local component by requiring UBE applicants to comply with MCLE Rule 3.3(b).

Therefore, the BBX requested that Regulation 5.200(g) be amended as set forth below to reflect the new reality of the UBE. The MCLE Committee approved this regulation amendment at its December 2017 meeting.

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

Regulation 5.200(g) Service as a Bar Examiner. Three (3) credits may be claimed for writing a bar exam or local component question and three (3) credits may be claimed for grading a bar exam or local component question.

Background – Item #2

During the 2017 Legislative Session, ORS Chapter 9 and the OSB’s Rules of Procedure were amended to remove the Local Professional Responsibility Committee from the disciplinary process. Therefore, references to the LPRC must be deleted. Rule 5.10 should be amended as follows:
Rule 5.10 Legal Ethics Service. Credit may be claimed for serving on the Oregon State Bar Legal Ethics Committee, Client Security Fund Committee, Commission on Judicial Fitness & Disability, Oregon Judicial Conference Judicial Conduct Committee, Local Professional Responsibility Committees, State Professional Responsibility Board, and Disciplinary Board or serving as volunteer bar counsel or volunteer counsel to an accused in Oregon disciplinary proceedings.

Background – Item #3

Recently, the Oregon Supreme Court indicated it would be open to considering a grant of authority to the bar to correct rule numbering errors on an ongoing basis. This authority would save bar staff and court staff time and reduce member confusion.

For instance, several rule and regulation amendments were approved in 2017 which resulted in new rule numbering. Once the rules were approved, the numbering of remaining rules and regulations were no longer accurate. Further cross-references must be updated.

Specific rule and regulation numbering corrections are set forth below. However, staff proposes that the bar seek broader authority to generally make numbering changes to ensure accuracy and consistency, as needed.

Rule Amendments

Rule 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) 5.15(a).

1 The following rule amendments, which were approved by the BOG in November 2017, will be submitted to the Supreme Court for approval:

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 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 Supreme Court approves these amendments, this will be Rule 5.14(a).
(c) Abuse Reporting. One hour must be on the subject of a lawyer’s statutory duty to report child abuse and elder abuse (see ORS 9.114). 2

(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) 5.15(c). 3

Rule 5.6 Other Professionals. Notwithstanding the requirements of Rules 5.12 5.14 (a) and (b), participation in an educational activity offered primarily to or by other professions or occupations may be accredited as a CLE activity if the MCLE Program Manager determines that the content of the activity is in compliance with other MCLE accreditation standards. The MCLE Program Manager may accredit the activity for fewer than the actual activity hours if the MCLE Program Manager determines that the subject matter is not sufficient to justify full accreditation.

Rule 5.8 Legal Research and Writing.

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

(a) It deals primarily with one or more of the types of issues for which group CLE activities can be accredited as described in Rule 5.12-5.14(b); and

Rule 5.16 Other Professionals. Notwithstanding the requirements of Rules 5.6 and 5.12 5.14(a) and (b), credit may be claimed for teaching an educational activity offered primarily to other professions or occupations if the MCLE Program Manager determines that the content of the activity is in compliance with other MCLE accreditation standards and the applicant establishes to the MCLE Program Manager’s satisfaction that the teaching activity contributed to the presenter’s professional competence as a lawyer.

Note: If the Supreme Court approves the amendments set forth in Footnote 1, the following rule numbering will change:

Current Rule 5.12 – will be deleted (merged with Rule 5.11)
Current Rule 5.13 – will change to 5.12
Current Rule 5.14 – will change to 5.13
Current Rule 5.15 – will change to 5.14
Current Rule 5.16 – will change to 5.15

2 The Supreme Court approved this rule amendment effective January 1, 2018.

3 If the Supreme Court approves the amendments in Footnote 1 above, this will be Rule 5.14(c).
Regulation Amendments

Regulation 3.600 Introductory Course in Access to Justice. In order to qualify as an introductory course in access to justice required by MCLE Rule 3.3(b), the three-hour program must meet the accreditation standards set forth in MCLE Rule 5.13(c) and include discussion of at least three of the following areas: race, gender, economic status, creed, color, religion, national origin, disability, age or sexual orientation.

Regulation 5.200(h) Legal Ethics Service. Members may claim two ethics credits for each twelve months of service on committees and boards listed in Rule 5.9.

\[ ^4 \text{If the Supreme Court approves the amendments in Footnote 1, this will be Rule 5.14(c).} \]
OREGON STATE BAR
Board of Governors Agenda

Meeting Date: February 22, 2018
Memo Date: February 9, 2018
From: Judith Baker Legal Services Program Director
Re: Updates to Legal Services Program Standards and Guidelines

Action Recommended

The Legal Services Program (LSP) Committee is recommending that the BOG approve revisions to the LSP Standards and Guidelines.

Background

The Legal Services Program Standards and Guidelines (Standards and Guidelines) were developed in 1998 and apply to all programs providing civil legal aid services in Oregon who receive funding from the OSB Legal Services Program (LSP). The Standards and Guidelines outline the OSB’s governing structure and oversight authority as well as provider structure and use of fund requirements.

The LSP Committee is charged with reviewing and making recommendations to the BOG on the Standards and Guidelines and their periodic review. The LSP Committee has reviewed and is recommending approval of the revisions to the Standards and Guidelines (see attached). The revisions fit into three categories:

1. Small style and heading changes distributed throughout the Standards and Guidelines
2. The addition of a reference to ORCP 32 O in the Statutory Authority Section on page 7 and the addition of the text of ORCP 32 O regarding Cy-près awards.
3. Updates to pages 7, 8, and 19 prepared by Bar Counsel to align the standards and guidelines with ORS 9.572 et seq., the statute authorizing the Legal Services Program. The changes clarify the roles of the Legal Services Program Committee and the Director of the Legal Services Program
Legal Services Program

Standards and Guidelines

May 29, 1998

Revised February 22, 2018

Deleted: Revised September 5, 2014
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I. Mission Statement

It is the mission of the Oregon State Bar Legal Services Program:

To use the filing fee revenue to fund an integrated, statewide system of legal services centered on the needs of the client community as identified in the Mission Statement of the OSB Civil Legal Services Task Force Final Report, May 1996; and

To use its oversight authority to work with Providers to insure that the delivery of services is efficient and effective in providing a full spectrum of high-quality legal services to low-income Oregonians.

To work to eliminate barriers to the efficient and effective delivery of legal services caused by maintaining legal and physical separation between providers of general legal services to low-income Oregonians in the same geographical area, while maintaining Providers’ ability to offer the broadest range of legal services required to serve the needs of clients.

OSB Civil Legal Services Task Force Final Report, May 1996, Appendix I, Page 1 & 2

“Legal services programs exist to ensure that institutions and organizations created to serve public interests and needs, particularly governmental and civic institutions, treat individuals equally no matter what their economic situation. This is not a radical notion; it is the cornerstone of American concepts of justice and fair play.

The mission of Oregon’s statewide legal services delivery system should continue to be centered on the needs of its client community. It should be expansive, recognizing that equal justice contemplates more than simply providing a lawyer in every family law or unlawful detainer case (though it certainly includes this goal as well). This mission must contemplate lawyering in its broadest sense, acknowledging that the interests of low income clients can only be served if the delivery system is dedicated to providing full and complete access to the civil justice system in a way that empowers this segment of the population to define, promote, and protect its legitimate interests. As such, the mission must be to:

- Protect the individual rights of low income clients;
- Promote the interest of low income individuals and groups in the development and implementation of laws, regulations, policies and practices that directly affect their quality of life;
- Employ a broad range of legal advocacy approaches to expand the legal rights of low income individuals and groups where to do so is consistent with considerations of fundamental fairness and dignity; and

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• Empower low income individuals and groups to understand and effectively assert their legal rights and interests within the civil justice system, with or without the assistance of legal counsel."
II. Governing Structure

A. Statutory Authority

On September 24, 1997, the Oregon State Bar Legal Services Program (OSB LSP) was established by the Board of Bar Governors as directed by ORS 9.572 to 9.578 (Appendix A1). The OSB LSP is charged with: the administration of funds appropriated to the OSB by ORS 9.577, ORS 98.386 (2), ORS 9.241 (3) and ORCP 32 (Appendix A2) for funding legal services programs; the establishment of standards and guidelines for the funded legal services programs (Providers); and the development of evaluation methods to provide oversight of the Providers.

B. Governing Committee

1. Purpose: The Board of Governors has created the Governing Committee (OSB LSP Committee) pursuant to ORS 9.572(3) to advise the bar in the operation of the Legal Services Program, as outlined in these Standards and Guidelines, ORS 9.572(1). The OSB LSP Committee receives direction from the Board of Governors.

2. Relationship to the Legal Services Program Director: The Legal Services Program Director appointed by the bar, pursuant to ORS 9.572(2), is charged with periodically reviewing legal service providers who receive funding from the Legal Services Program, ORS 9.576(1). The OSB LSP Committee is charged to assist and advise the LSP Director in carrying out the LSP program review among other duties to assist and advise.

3. Duties to the OSB Board of Governors: The OSB LSP Committee will be responsible for reviewing and reporting to or making recommendations to the OSB Board of Governors on the following:
   - The Standards and Guidelines for the OSB LSP and their periodic review
   - Applications for funding to the OSB LSP
   - Disbursement of funds and annual OSB LSP budget
   - Assessment of Provider Programs
   - Annual reporting by the Providers
   - Legislative issues involving the legal aid filing fee funds
   - Complaints and grievances about Providers
   - Additional work of the OSB LSP

4. Membership
   a. Appointment: Appointment of members to the OSB LSP Committee shall be made by the Oregon State Bar Board of Governors.
b. **Membership:** The OSB LSP Committee will consist of 9 members: 7 members, in good standing, of the Oregon State Bar; and 2 public members. The membership should be representative of the statewide aspect of the OSB LSP and should reflect the diversity of the service areas. No more than 3 attorney members should be from the Portland metropolitan area. The following criteria should be considered in selecting members:

1) Commitment to the basic principles of access to justice
2) Ability to advance the mission of the OSB LSP
3) Knowledge and understanding of providing quality legal services to low-income people.
4) History of support for legal services providers
5) Representation of a geographic area with special attention given to practice area specialties.

5. **Term of Appointment:** Appointments will be made for 3-year terms with the exception of the initial attorney appointments. To stagger vacancies on the OSB LSP Committee and to provide continuity, the initial appointments will be: 3 attorneys appointed for 3 years; 2 attorneys appointed for 2 years, and 2 attorneys appointed for 1 year.

6. **Liaisons to Committee:** The Oregon Law Foundation and the Campaign for Equal Justice are invited and encouraged to each have a liaison to the OSB LSP.

7. **Meetings:** The OSB LSP Committee will meet as needed. The Chair can call Special Meetings as needed. Meeting notices and agendas will be sent out according to public meeting law. Members can participate by telephone.

8. **Quorum:** Five members constitute a quorum for voting purposes.

9. **Subcommittees:** The OSB LSP Committee Chair has the authority to appoint additional subcommittees to make recommendations on specific issues as needed.

C. **Program Staff**

1. **Director of Legal Services Program:** The OSB Director of Legal Services Program (OSB LSP Director) is hired and supervised by the Executive Director of the Oregon State Bar. The OSB LSP Director staffs the OSB LSP Committee and receives advice and assistance from the OSB LSP Committee when conducting Legal Services Program Review. The OSB LSP Director may also support other work assigned by the Board of Governors to the LSP Committee.

   a. The LSP Director will be responsible for monitoring, reviewing, reporting and making recommendations to the OSB LSP Committee on the following:
b. The LSP Director will be responsible for providing technical assistance to Providers to ensure compliance with these Standards and Guidelines.
III. Standards and Guidelines for Providers

The following standards and guidelines shall apply to all programs providing civil legal services in Oregon who receive, or who may apply to receive, funding from the Oregon State Bar Legal Services Program (OSB LSP) pursuant to ORS 9.572 et seq. These Standards and Guidelines apply only to services funded by filing fees received from the OSB LSP.

A. Statement of Goal

It is the goal of the OSB LSP that all Providers shall be an integral part of an integrated delivery system for civil legal services which incorporates the Mission, Values and Core Capacities set forth in the OSB Civil Legal Services Task Force Final Report, May 1996 (Appendix C). The filing fee money should be used to fund providers in an integrated system designed to provide relatively equal levels of high-quality client representation throughout the state of Oregon and designed to address the core capacities identified in the OSB Legal Services Task Force Report. The integrated delivery system should be structured to eliminate the legal and physical separation of offices serving the same geographical area, avoid duplication of administrative functions and costs, reduce the burdens on staff and clients, and minimize other barriers to the efficient delivery of legal services described in the Declaration of Angel Lopez and Charles Williamson authorized by the Board of Bar Governors in January 2002 (Appendix D), while maintaining the Provider’s ability to offer a broad array of high quality legal services consistent with the Mission Statement.

B. Provider Structure

1. Non Profit: A Provider shall be an Oregon nonprofit corporation, incorporated as a public benefit corporation under ORS Chapter 65, and be recognized as tax exempt under section 501(c)(3) of the Internal Revenue Code.

2. Board of Directors: A Provider shall have a Board of Directors which reasonably reflects the interests of the eligible clients in the area served, and which consists of members, each of whom has an interest in, and knowledge of, the delivery of quality legal services to the poor. Appointments to the Board of Directors shall be made so as to ensure that the members reasonably reflect the diversity of the legal community and the population of the areas served by the Provider including race, ethnicity, gender, and similar factors.
   a. A majority of the directors should be active or active emeritus members of the Oregon State Bar, appointed by the county bar association(s) in the Provider’s service area, or by the Oregon State Bar.
   b. At least one-third of the directors should be persons who are eligible to be clients, but are not current clients, when appointed. The directors who are eligible clients should be appointed by a variety of appropriate groups designated by the program that may include, but are not limited to, client and neighborhood associations and...
community-based organizations which advocate for or deliver services or resources to the client community served by the Provider.

3. **Staff Attorney Model**: A Provider shall have at least one active member of the Oregon State Bar on staff.

4. **Pro Bono Program**: A Provider shall maintain a Pro Bono Program, certified by the Oregon State Bar pursuant to section 13 of the Oregon State Bar Board Bylaws (Appendix B), as a part of its system of delivery of legal services.

5. **Efficient Use of Resources**: A provider should, to the maximum extent practicable, integrate its operations and staff into existing programs that provide general legal services to low-income Oregonians in the same geographical area and meet the criteria set out in paragraphs B.1 – B.4, rather than maintain organizations that are legally and physically separate. If separate organizations currently exist, the Provider should take whatever actions are required to achieve program integration that will eliminate unnecessary, costly, and inefficient duplication without compromising the Provider’s ability to offer the full range of legal services contemplated by these Standards and Guidelines including, but not limited to, challenging federal restrictions that impede such integration.

C. **Provider Use of Funds and Eligibility Guidelines**

1. **Use of Funds**: A Provider shall use funds received pursuant to ORS 9.572 et seq. only for the provision of civil legal services to the poor.

The use of funds from the OSB LSP or compliance with these Standards and Guidelines is a matter between the Provider and the OSB. Nothing in these rules shall be construed to provide a basis to challenge the representation of a client. The sole remedy for non-compliance with these Standards and Guidelines is found in the procedures under non-compliance in ORS 9.572 and in these rules, Section V.E. & F.

2. **Eligibility Guidelines**: The Board of Directors of a Provider shall adopt income and asset guidelines, indexed to the Federal poverty guidelines, for determining the eligibility of individuals seeking legal assistance from the program. A copy of the income and asset guidelines shall be provided as a part of the application for these funds and shall be consistent with the Provider’s mission and written priorities.

3. **Payment of Costs**: Eligible clients shall not be charged fees for legal services provided by a Provider with funds pursuant to ORS 9.572 et seq. However, a Provider may require clients to pay court filing fees or similar administrative costs associated with legal representation.

4. **Recovery of Attorney Fees**: A Provider may also recover and retain attorney fees from opposing parties as permitted by law.
D. Procedures for Priorities and Policy for Avoiding Competition with Private Bar

1. **Procedures for Establishing Priorities**: A Provider shall adopt procedures for establishing priorities for the use of all of its resources, including funds from the OSB LSP. The Board of Directors shall adopt a written statement of priorities, pursuant to those procedures, that determines cases and matters which may be undertaken by the Provider. The statement of priorities shall be reviewed annually by the Board.

   a. The procedures adopted shall include an effective appraisal of the needs of eligible clients in the geographic area served by the recipient, and their relative importance, based on information received from potential or current eligible clients that is solicited in a manner reasonably calculated to obtain the views of all significant segments of the client population. The appraisal shall also include and be based on information from the Provider’s employees, Board of Directors, local bar, and other interested persons. The appraisal should address the need for outreach, training of the program’s employees, and support services.

   b. In addition to the appraisal described in paragraph a, of this section, the following factors shall be among those considered by the Provider in establishing priorities.

      1) The population of eligible clients in the geographic area served by the Provider, including all segments of that population with special legal problems or special difficulties of access to legal services;

      2) The resources of the Provider;

      3) The availability of free or low-cost legal assistance in a particular category of cases or matters;

      4) The availability of other sources of training, support, and outreach services;

      5) The relative importance of particular legal problems to the individual clients of the Provider;

      6) The susceptibility of particular problems to solution through legal processes;

      7) Whether legal efforts by the Provider will complement other efforts to solve particular problems in the areas served;

      8) Whether legal efforts will result in efficient and economic delivery of legal services; and

      9) Whether there is a need to establish different priorities in different parts of the Provider’s service area.

2. **Avoidance of Competition with Private Bar**: The Board of Directors of a Provider shall adopt a written policy to avoid using funds received from the OSB LSP to provide
representation in the types of cases where private attorneys will provide representation to low-income clients without charge in advance as with contingency fee cases. A copy of the policy shall be provided as a part of the application for these funds and shall be consistent with the Provider’s mission and written priorities.

E. Provider Grievance Committee and Process

1. Grievance Committee: The Board of Directors of a Provider shall establish a grievance committee, composed of lawyer and client members in approximately the same proportion as the makeup of the Board.

2. Grievance Process: The Provider shall establish procedures for determining the validity of a complaint about the manner or quality of legal assistance that has been rendered, or about the denial of legal assistance due to a determination that a potential client is financially ineligible.

   a. The procedures shall minimally provide:

      1) Information to a client at the time of the initial visit about how to make a complaint;

      2) Prompt consideration of each complaint by the director of the program, or the director’s designee; and

      3) If the director is unable to resolve the matter, an opportunity for a complainant to submit an oral and written statement to the grievance committee.

F. Additional Standards for Providers

A Provider shall conduct all of its operations, including provision of legal services, law office management, and operation of the pro bono program in conformity with the following recognized standards, as applicable:

- American Bar Association Standards for the Provision of Civil Legal Aid, August 2006.
- “Standards for Programs Providing Civil Pro Bono Legal Services to Persons of Limited Means,” as adopted by the American Bar Association House of Delegates, August 2013.
- Oregon Rules of Professional Conduct.
IV. Cooperative Collaboration by Providers

A. Mechanism for Cooperation:

Providers will create a mechanism for cooperation among themselves and other programs providing services to low-income Oregonians:

- To facilitate additional communication between organizations;
- To coordinate and integrate key functions across program lines;
- To create a forum for identifying client needs;
- To collaborate and strategize how best to meet the needs of the client community;
- To discuss funding needs and potential funding mechanisms;
- To work with the court system, the legislature, the OSB, local bars, and members of the private bar to create a broad network to develop better access to the justice system.
- To eliminate the legal and physical separation among the programs in order to minimize the duplication of administrative and other costs of delivering legal services to low-income Oregonians.
V. Oversight by OSB Legal Services Program

The filing fees collected for legal services by the OSB LSP will continue to be used to support programs providing basic civil legal assistance to low-income Oregonians. The increase in court fees was calculated to replace decreased funding by other sources to legal services in Oregon and to enhance the broad-based, full range of advocacy approaches and services to clients.

A. Funding of Providers

1. Presumptive Funding: To maintain the current statewide level of service the OSB LSP will continue to fund those legal services providers receiving filing fees at the enactment of 1997 Oregon Laws Chapter 801 Section 73 and the 2003 legislative increase in filing fee funds. These providers will receive the funds from the OSB LSP after administrative fees, up to 5.1 million dollars (2003 filing fee level adjusted for inflation increased by the 1.6 million dollar gap to meet the legal needs of the poor assessed in 2003) with an annual cost-of-living increase. The increase in the presumptive funding level meets the 1997 and 2003 legislative intent to provide additional funding for legal services to the poor at the same time continuing the approach adopted by the Interim Civil Legal Services Task Force who developed the Standards and Guidelines in 1998.

   a. Initial Funding: Providers will be required to complete the Initial Compliance Determination Application. Providers must complete the application and demonstrate compliance with these Standards and Guidelines within two months after this document becomes effective to qualify for funding under the OSB LSP beginning September 1998.

      Funding will continue under presumptive funding until:

      1) Provider is found not in compliance at which point Section V.F. will be implemented

      2) Provider discontinues provision of services at which point Section V. F. 5. will be implemented; or

      3) OSB LSP no longer receives funding under ORS 9.572 et seq.

   b. Distribution of Funds: Presumptive funding will be based on the same distribution formula that was in effect at the enactment of 1997 Oregon Laws Chapter 801 Section 73. The Providers will be encouraged to utilize provisions c. and d. of this Section to modify grants and subcontract to meet unmet needs, to provide services to the under-served populations and to encourage a full range of services throughout Oregon.
c. Modification of Grants: A Provider receiving presumptive funding may request that the OSB LSP transfer funds allocated to it to another Provider receiving presumptive funding in order to maintain the existing statewide level of service or to improve the statewide availability of services. The OSB LSP will consider the request and submit its recommendation to the BOG.

d. Subcontracting of Funds: Providers may subcontract with others to provide specific services or to enhance services under the following conditions:

1) The subcontract is for no more than one year;
2) All subcontracts must be approved by the OSB when the aggregate total of the subcontracts for the year or when any one subcontract equals or exceeds $50,000 or is greater than 25% of the Provider’s annualized grant;
3) The subcontract is for services within the parameters of these Standards and Guidelines;
4) The subcontract includes language insuring compliance with Sections III. C. 1, 3, 4 and III. F. of these Standards and Guidelines if the subcontract is with an organization, other than a current Provider, providing legal services to low-income people, or with a law firm or attorney;
5) The Provider must include provisions to obtain the needed information on the services performed by subcontract for inclusion in its annual report; and
6) For all subcontracts, the Provider must give the OSB LSP 30 days' notice of intent to subcontract along with a copy of the proposed subcontract.

2. Additional Funds: If there are funds over those allocated for presumptive funding, the OSB LSP may award those funds to current Providers or applicants who demonstrate the ability to provide services that address the unmet needs and emerging needs of low-income Oregonians and the needs of the uncounted and under-served, low-income populations. The OSB LSP will determine the process for application for those funds.

B. Performance Evaluation of Providers

The OSB LSP has the responsibility to ensure that filing fees funds are effectively being used to provide high-quality legal services to low-income Oregonians. The Annual Reporting Requirements and the Accountability Process are designed to provide the OSB LSP with the information necessary for the oversight required by Statute and not to be unduly burdensome on Providers.

All oversight activities shall be conducted in accordance with the American Bar Association’s Standards for Monitoring and Oversight of Civil Legal Services Programs.
C. Annual Reporting Requirements

1. **Annual Audit**: All Providers shall annually undergo a financial audit by an independent auditor, which meets generally acceptable accounting practices. A copy of the final audit report shall be submitted to the OSB LSP.

2. **Annual Report**: Each Provider shall annually file with the OSB LSP a report detailing its activities in the previous year. The report will be due by the first day of October and needs to contain the following information in the requested format:
   
   a. The numbers and types of cases and matters in which legal services were delivered;
   
   b. A listing of the Provider’s staff and Governing Body;
   
   c. A copy of its budget;
   
   d. A narrative description of the Provider’s operations, including a description of its needs assessment, priority setting, and grievance processes, which is sufficient to demonstrate that the Provider is in compliance with these Standards and Guidelines.

A Provider may comply with this requirement by submitting copies of reports or applications to the Legal Services Corporation, the Oregon Law Foundation or other funding agencies that provide the requested information.

D. Accountability Process

1. **Process**: The process will focus on the effectiveness of the providers in meeting the needs of individual clients and the larger client community, and in the development and use of resources. The goals of the review are to assure compliance with OSB LSP Standards and Guidelines; assure accountability to clients, the public and funders; and to assist with provider’s self-assessment and improvement.

   The process has three components:

   a. A periodic self-assessment report submitted by providers, including a narrative portion and a statistical/financial portion;
   
   b. A periodic accountability report provided by the OSB LSP to the OSB Board of Governors and other stakeholders summarizing the information from the providers’ self-assessment reports and other information including ongoing contacts with providers by OSB LSP staff and annual program financial audits; and
   
   c. Ongoing evaluation activities by the OSB LSP including peer reviews, desk reviews, ongoing contacts and other evaluation activities consistent with the OSB LSP Standards and Guidelines.
E. Complaint Procedure

1. Complaints about Legal Services Providers
   a. Each Provider under the OSB LSP is required to have a written internal grievance procedure to address complaints about the manner or quality of legal assistance provided in individual cases or about the denial of legal assistance in individual cases. Any such complaint received by the OSB LSP will be directed to the Providers’ internal process except when there appears to be a pattern to the complaints or when the complaint falls into one of the categories listed below. Providers will furnish the OSB LSP with the resolutions to the referred complaints.
   b. Ethics complaints and malpractice claims will be referred to the appropriate department of the Bar.
   c. Complaints that Providers are acting outside the scope of the statute, ORS 9.574, not in compliance with these Standards and Guidelines, or misusing funds will be addressed by the OSB LSP’s Committee or Grievance Committee through the Director of the OSB LSP.
   d. Complaints regarding the overall quality of legal assistance or the performance of the Provider will be addressed by the OSB LSP Committee or Grievance Committee through the Director of the OSB LSP.
   e. The OSB LSP Committee, the Executive Director of the Bar, and the General Counsel of the Bar will be notified of the complaints against Providers. A listing of all complaints, which will include synopses and resolutions, will be kept by the OSB LSP Program Director.
   f. Each complaint will be investigated (except ethics and malpractice complaints which will be referred to the appropriate body) and responded to timely. If a Provider is found not to be in compliance with these Standards and Guidelines, the procedure under Non-Compliance by Provider (F of this section) will be implemented.

2. Complaints from Applicants to the OSB LSP: Applicants who are not granted funds by the OSB LSP may make a written presentation to the Board of Governors during the OSB LSP Committee’s funding recommendation.

F. Non-Compliance by Provider

1. Informal Negotiation: When it is found that a Provider is not in substantial compliance with these Standards and Guidelines, the OSB LSP Director (the Director) will negotiate and work with the Provider to assist it in coming into compliance. This period of negotiation will last no more than 60 days and no less than 15 days.

The Director will notify the OSB LSP Committee and the OSB Executive Director that the Provider is out of compliance prior to formal notice being given.
2. **Formal 30 Day Notice**: If the Provider continues to be out of substantial compliance, the Provider and the Provider’s Board Chair will be given a formal 30 day written notice that details how it is out of compliance and the steps necessary to achieve compliance. The Director will continue to assist the Provider in resolving the problem.

3. **Mediation**: If after 30 days from the receipt of the formal notice, the Provider still has not demonstrated compliance, the Director will immediately send a second notice to the Provider and the Provider’s Board Chair, pursuant to ORS 9.576(2). The second notice will list three names of mediators and give the Provider 15 days from receipt of the second notice to agree to one of the mediators or suggest another mediator. If the Provider and the Director cannot agree on a mediator within the 15 day period, the Director will petition the presiding judge for a judicial district to appoint a mediator.

In the mediation, the OSB LSP will be represented by the Director or by the Chair of the OSB LSP Committee. The Provider will be represented by its Executive Director or Board Chair. Within one week of the mediation, a written decision will be forwarded to the OSB LSP Committee, the OSB Executive Director, the OSB Board of Governors and the Provider’s Board Chair.

4. **Hearing**: If the mediation fails to produce a resolution in the matter, the Director shall give the Provider and Provider’s Board Chair a written notice of hearing pursuant to ORS 9.576(3). The hearing will be held no sooner than 30 days after Provider’s receipt of notice of hearing.

The Provider will have the opportunity to present evidence that it has come into compliance or is making satisfactory progress towards compliance. The OSB LSP Committee will make up the hearing panel. Prior to suspension of funding, a written report will be presented to the OSB Board of Governors and OSB Executive Director within 5 days after the hearing is held which outlines the facts and decision. If after the hearing, the OSB LSP Director determines that based upon the written report, the provider is not in compliance with these Standards and Guidelines and that the provider has failed to show satisfactory progress toward achieving compliance, the OSB LSP Director shall suspend further funding of the program until such time that the provider makes a showing of compliance, ORS 9.576(3).

5. **Suspension of Funding**: If the report indicates that the Provider is still not in compliance and is not making satisfactory progress towards compliance based on the decision of the hearing, the Director shall suspend funding until the Provider is able to demonstrate compliance. Notice of suspension shall be served on the Provider in person or by certified mail and will be effective immediately upon service.

The OSB LSP Director, in consultation with the OSB LSP Committee, the OSB Executive Director and the OSB General Counsel, will determine if during the suspension all or part of the suspended funds should be used to contract with another Provider for legal services. If the Provider continues to provide legal services as defined under the funding agreement during the suspension, any unused funds accrued during the suspension will be paid to the Provider.
6. **Termination of Services**: If the Provider terminates its provision of legal services as defined under these Standards and Guidelines, funding will cease and all unexpended funds shall revert back to the OSB LSP. The OSB LSP Committee will meet to determine the reallocation of those funds to other Providers or to new applicants.
Legal Services Program

9.572 Bar to establish Legal Services Program; director; advisory and technical committees.

(1) The Oregon State Bar shall by rule establish a Legal Services Program. The program shall provide standards and guidelines for legal service providers receiving funding from the program. The rules shall also provide methods for evaluating legal service providers. Funding received under the program may be used only for the provision of legal services to the poor without charge and for expenses incurred by the Oregon State Bar in the administration of the Legal Services Program.

(2) The Oregon State Bar shall appoint a director of the Legal Services Program established under this section. The bar shall prescribe the duties of the director and fix the salary of the director.

(3) The Oregon State Bar may establish any advisory or technical committees it deems necessary to advise the bar in establishing and operating the Legal Services Program.

[1997 c.801 §73; 2011 c.595 §99]

9.574 [1997 c.801 §72; 2003 c.737 §98; repealed by 2011 c.595 §97a]

9.576 Review of providers; mediation; hearing; suspension of funding.

(1) The director of the Legal Services Program appointed under ORS 9.572 shall periodically review legal service providers who receive funding from the program. If the director determines that there are reasonable grounds to believe that a provider is not in substantial compliance with the standards and guidelines adopted under ORS 9.572, the director shall negotiate with the provider in an attempt to bring the program into compliance.

(2) If the director of the Legal Services Program is unable to negotiate satisfactory compliance with the standards and guidelines of the program established by the Oregon State Bar under ORS 9.572, the director shall give the provider 30 days in which to bring the program into compliance. If the director concludes that the program is not in compliance at the end of the 30-day period, the matter shall be submitted to mediation. The director and the provider shall jointly select a mediator. If the director and provider are unable to select a mediator within 15 days after the expiration of the 30-day period, any presiding judge for a judicial district may appoint a mediator upon the petition of the director.

(3) If mediation under subsection (2) of this section fails to produce a resolution of the matter, the director shall give the provider notice that a hearing will be held not sooner than 30 days after the date the notice is given. If, after hearing, the director determines that the provider is not in compliance with the standards and guidelines of the program and that the provider shall be suspended from receiving funding under the program.
provider has failed to show satisfactory progress toward achieving compliance, the director shall suspend further funding of the program until such time as the provider makes a showing of compliance.

[1997 c.801 §74; 2011 c.595 §100]

9.577 Legal Aid Account.

(1) The Legal Aid Account is established in the General Fund of the State Treasury. All moneys in the account are continuously appropriated to the State Court Administrator for the purpose of the distributions required by this section. Interest earned by the account shall be credited to the General Fund.

(2) Each month, the State Court Administrator shall transfer to the Legal Aid Account, from amounts collected by the State Court Administrator as fees and charges in the circuit courts, the amounts necessary to make the distributions required by subsection (3) of this section.

(3) Each biennium, the State Court Administrator shall distribute to the Oregon State Bar $11.9 million from the Legal Aid Account. Distributions under this section shall be made by the State Court Administrator in eight quarterly installments of equal amounts, with the first distribution to be made as soon as possible after July 1, 2011. Amounts distributed to the Oregon State Bar under this subsection may be used only for the funding of the Legal Services Program established under ORS 9.572.

[2011 c.595 §3a]

Note: 9.577 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 9 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

9.578 Other funding sources.

The Oregon State Bar may apply for, accept and expend moneys from any public or private source, including the federal government, made available for the purpose of establishing or funding legal service programs in Oregon.

[1997 c.801 §75]
Appendix A2 – Statutory Authority – Funding

Statutory Allocation

9.577 Legal Aid Account.

(1) The Legal Aid Account is established in the General Fund of the State Treasury. All moneys in the account are continuously appropriated to the State Court Administrator for the purpose of the distributions required by this section. Interest earned by the account shall be credited to the General Fund.

(2) Each month, the State Court Administrator shall transfer to the Legal Aid Account, from amounts collected by the State Court Administrator as fees and charges in the circuit courts, the amounts necessary to make the distributions required by subsection (3) of this section.

(3) Each biennium, the State Court Administrator shall distribute to the Oregon State Bar $11.9 million from the Legal Aid Account. Distributions under this section shall be made by the State Court Administrator in eight quarterly installments of equal amounts, with the first distribution to be made as soon as possible after July 1, 2011. Amounts distributed to the Oregon State Bar under this subsection may be used only for the funding of the Legal Services Program established under ORS 9.572.

[2011 c.595 §3a]

Note: 9.577 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 9 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

Unclaimed Lawyer Trust Account Funds

98.386 Deposit of funds.

(1) Except as provided in subsection (2) of this section, all funds received under ORS 98.302 to 98.436 and 98.992, including the proceeds from the sale of unclaimed property under ORS 98.382, shall be deposited by the Department of State Lands in the Common School Fund Account with the State Treasurer. Before making the deposit the department shall record the name and last-known address of each person appearing from the holders’ reports to be entitled to the unclaimed property and the name and last-known address of each insured person or annuitant, and with respect to each policy or contract listed in the report of a life insurance corporation, its number, the name of the corporation, and the amount due.

(2) Any amounts identified as lawyer trust account funds in the report required by ORS 98.352 shall be paid or delivered by the person holding the amounts to the Oregon State Bar along with a copy of the report. All amounts paid or delivered to the Oregon State Bar under this section are continuously appropriated to the Oregon State Bar, and may be used only for
the funding of legal services provided through the Legal Services Program established under ORS 9.572, the payment of claims allowed under ORS 98.392 (2) and the payment of expenses incurred by the Oregon State Bar in the administration of the Legal Services Program.

(3) Before making a deposit to the credit of the Common School Fund Account, the department may deduct:

(a) Any costs in connection with sale of unclaimed property;

(b) Any costs of mailing and publication in connection with efforts to locate owners of unclaimed property as prescribed by rule; and

(c) Reasonable service charges.

[1957 c.670 §20; 1983 c.716 §16; 1989 c.183 §2; 1993 c.694 §15; 2009 c.462 §2]

Pro Hac Vice Fees

9.241 Practice of law by attorneys licensed in other jurisdictions; rules; fee.

(1) Notwithstanding ORS 9.160, the Supreme Court may adopt rules to govern the appearance in judicial and administrative proceedings by attorneys who have not been admitted to practice law in this state. Subject to those rules, an attorney who has not been admitted to practice law in this state may appear as counsel for a party in an action or proceeding before a court, or may appear as counsel for a party in an administrative proceeding, if the attorney is associated with an active member of the Oregon State Bar.

(2) Notwithstanding ORS 9.160, the Supreme Court may adopt rules pursuant to the procedures established by ORS 9.490 that allow attorneys who have not been admitted to practice law in this state to practice law in Oregon on a temporary basis, including performing transactional or prelitigation work.

(3) The Supreme Court may by rule require the payment of a fee by an attorney appearing as counsel for a party in an action or proceeding before a court under the provisions of subsection (1) of this section. All amounts collected from any fee imposed by the Supreme Court under the provisions of this subsection shall be deposited with the Oregon State Bar and are continuously appropriated to the Oregon State Bar. Amounts appropriated to the Oregon State Bar under this subsection may be used only for the funding of legal services provided through the Legal Services Program established under ORS 9.572 and for expenses incurred by the Oregon State Bar in the administration of the Legal Services Program and in collecting fees imposed under this subsection.

[1993 c.213 §1; 2001 c.223 §1; 2003 c.260 §5]
Cy-près Awards

ORCP 32 O – Payment of damages.

As part of the settlement or judgment in a class action, the court may approve a process for the payment of damages. The process may include the use of claim forms. If any amount awarded as damages is not claimed within the time specified by the court, or if the court finds that payment of all or part of the damages to class members is not practicable, the court shall order that:

(1) At least 50 percent of the amount not paid to class members be paid or delivered to the Oregon State Bar for the funding of legal services provided through the Legal Services Program established under ORS 9.572; and

(2) The remainder of the amount not paid to class members be paid to any entity for purposes that the court determines are directly related to the class action or directly beneficial to the interests of class members.

[§O added by 2015 c.2 §3]
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 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 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.
OSB CIVIL LEGAL SERVICES TASK FORCE
FINAL REPORT
May, 1996

This Appendix Contains the Key Findings and Recommendations from the Report. For a Full Copy of the Report Please call the OSB at 620 0222 - Ext. 323
OSB CIVIL LEGAL SERVICES TASK FORCE
FINAL REPORT

May, 1996

Chair: Stephen S. Walters, Portland
Members: Hon. David V. Brewer, Eugene
Hon. Neil R. Bryant, Bend
Edward L. Clark, Jr., Salem
Michael E. Haglund, Portland
Hon. Jack L. Landau, Salem
James T. Massey, Sisters
Katherine A. McDowell, Portland
Katherine H. O’Neil, Portland
Lawrence B. Rew, Pendleton
Martha L. Walters, Eugene

BOG Liaison: Barrie Herbold
Legal Services Program Liaison: Ira Zarov
OSB Staff Liaison/Reporter: Ann Bartsch
OSB CIVIL LEGAL SERVICES TASK FORCE
FINAL REPORT

Stephen S. Walters, Chair
May 24, 1996

Introduction; Task Force Charge

In the summer of 1995 Oregon, like every state in the United States, faced a crisis in its
delivery of civil legal services to low-income residents. The new Congress was considering
legislation which would ultimately eliminate the Legal Services Corporation, the federal entity
which provides funding to local legal services programs (including four programs in Oregon).
At the very least, it appeared inevitable that 1996 federal funding for legal services would be
reduced by as much as 35% from 1995 levels. Congress was also prepared to impose severe
restrictions on the activities of all programs receiving LSC funding, which would have a
serious impact upon the ability of LSC program attorneys to provide a full range of high
quality legal services to their clients.

In response to this crisis, OSB President Judy Henry, in consultation with Chief Justice
Wallace P. Carson, appointed the OSB Civil Legal Services Task Force. Stating that “the
organized bar has an important role to play in assisting our programs in planning for the future
and in assuring the continuing availability of legal assistance to all of the people of our state,”
the OSB gave the Task Force the general charge to “develop a plan for civil legal services in
Oregon for 1996 and future years, which will, when implemented, effectively provide a full
range of legal services to low income Oregonians with all available resources.” Steve Walters
of Portland was appointed Chair of the Task Force; its members were Judge David Brewer,
Neil Bryant, Ned Clark, Mike Haghbord, Judge Jack Landau, Jim Massey, Katherine
McDowell, Katherine O’Neill, Larry Rew, and Martha Walters. Barrie Herbold served as
liaison to the BOG. Ann Bartsch was the OSB staff liaison and reporter. Ira Zarov of Oregon
Legal Services served as the liaison to the legal services programs.

Following its initial meeting in September, the Task Force organized itself into four
subcommittees, each with a separate charge. Each subcommittee was asked to invite
participation and otherwise to secure information from other interested persons, including
program board and staff, representatives of the Multnomah Bar Association, and the OSB Low
Income Legal Services Committee. (A complete list of all participants is attached to this report
as Appendix 5.) The full Task Force met periodically to review the recommendations as they
were developed by the subcommittees.

Task Force participants contributed hundreds of volunteer hours to the consideration and final
drafting of the reports and recommendations which follow. Complete reports from all of the
Task Force subcommittees are included as appendices to this report. The following is a
digested description of each subcommittee’s activities, along with a listing of its key findings
and recommendations.

Subcommittee 1: Client Need/Priorities; Delivery System

This subcommittee was chaired by Judge David Brewer of Eugene. The subcommittee was asked to gather information on Oregon’s existing civil legal services delivery system, for use by the other subcommittees, addressing the following questions:

What legal needs of client community are programs currently addressing? Are there any areas of need which are not being addressed, and which should be incorporated into Oregon’s legal services delivery system?

What delivery systems are in place in Oregon to meet these needs? What systems could be developed or expanded?

The subcommittee was also asked to develop an overall mission statement for Oregon’s civil legal services delivery system, for adoption by the full Task Force and ultimately by the Board of Governors, as well as by other entities concerned with civil legal services (e.g. the Oregon Law Foundation).

The subcommittee’s initial report and Mission Statement were presented to the full Task Force in December and to the Board of Governors in January, 1996. That document is attached as Appendix 1 to this report. The Mission Statement was also adopted by the Board of Directors of the Oregon Law Foundation in February.

Key Findings:

1. Not more than one third of the legal needs of Oregon’s low income population were being addressed by legal services programs before the funding cuts.

2. However, as of December, 1995, Oregon did have in place a legal services delivery system capable of providing a full range of civil legal services to low income Oregonians. Key components of that system were federally funded LSC programs and a network of locally based volunteer attorney programs providing supplemental services to the staffed offices. That system will be undercut by the adoption of pending federal legislation providing for severe funding cuts to LSC programs, and for severe restrictions on the activities of those programs which were inconsistent with the Task Force’s mission statement for civil legal services.

Subcommittee 2: Structure and Organization

This subcommittee was chaired by Jim Massey of Sisters. It was asked to address the following questions:
Will existing legal entities and organizations be able to perform or facilitate the performance of the work identified by the previous working group? Are there opportunities for resource savings through reconfiguration of existing programs? If the existing structure will not be able to perform the work, what other entities can be developed to perform it?

This subcommittee met five times in the fall and winter of 1995-96. It invited board and staff representatives of Oregon’s existing, and developing, legal aid and volunteer attorney programs to meet with the full Task Force to share their plans for necessary restructuring in light of the anticipated LSC funding cuts and restrictions on program activities. The subcommittee made no recommendations on questions it considered to be internal to the programs and their boards of directors, e.g., whether particular programs should or should not merge. However, subcommittee members did participate in ongoing discussions which were taking place among the programs, and the subcommittee’s meetings provided an opportunity for strategizing and planning among the programs, bringing in the expertise of the broader legal community.

The subcommittee’s full report is attached as Appendix 2. Its key findings and recommendations are as follows.

Key Findings:

1. In late April, 1996, Congress enacted HR 3019, the fiscal year 1996 appropriations bill which includes funds for the Legal Services Corporation. The legislation incorporated a long-anticipated series of restrictions on activities of LSC funded programs, including prohibition of most legislative and administrative advocacy, participation in class actions or welfare reform litigation, and representation of undocumented aliens (including undocumented migrant workers). The legislation further provides that LSC recipient programs may not use non-LSC funds, including state generated funds, to undertake any of these activities.

   The 1996 restrictions on LSC funding and substantive work threaten the historic commitment to key Oregon legal services delivery system values.

2. Oregon’s four LSC funded programs (Oregon Legal Services, Multnomah County Legal Aid Service, Marion-Polk Legal Aid, and Lane County Legal Aid) will continue to receive LSC funding, and will comply with the new restrictions in conducting their work on behalf of low-income Oregonians.

   Consistent with the Task Force’s mission statement for Oregon’s civil legal services delivery system, Oregon’s legal community must take responsibility for developing and nurturing other non-LSC entities capable of providing services which fill in the gaps
which the new Congressional restrictions will otherwise impose.

3. As of the date of this report, the following structural changes have been made (or are in the process of being made) in Oregon's civil legal services delivery system.

Organization of Full Service Law Centers In response to the imposition of restrictions on programs which receive Legal Services Corporation funding, new entities have been and are being organized to provide critically important services to clients, which LSC recipients will no longer be able to provide. Oregon Law Center has been incorporated in Portland and will receive funding from OLF and other sources. The Lane County Law and Advocacy Center has been established in Eugene. A similar "Full Service Law Center" may be established to serve Marion and Polk counties.

MCLAS/OLS Reconfiguration Effective May 13, 1996, Oregon Legal Services' Central Support Office and Multnomah County Legal Aid Service are sharing office space (at the former MCLAS office), resulting in an estimated savings of about $100,000 per year. The two programs are discussing possible merger later this year. Marion-Polk There have been no structural changes so far at Marion-Polk Legal Aid, although the question of merger with other entities is on the table. One attorney position has been lost because of resource limitations.

Jackson County There have been no structural changes so far in Jackson County (Center for Non-Profit Legal Services). A ballot measure which would have provided county funding for the Center and other social service agencies, was defeated by the voters on May 21. It appears that it will be necessary for the program to continue to receive LSC funding as a subgrantee of Oregon Legal Services for its private attorney involvement program.

Campaign for Equal Justice The Campaign for Equal Justice is now separately incorporated, free-standing 501(c)(3) corporation.

Volunteer Lawyers Project The Volunteer Lawyers Project in Multnomah County considered a merger with Multnomah County Legal Aid, but declined to do so in light of the restrictions which would be placed on its activities. It now appears that parts of VLP's program will be taken up by MCLAS (along with financial support from the Multnomah Bar Association), and others will pass to the newly organized Oregon Law Center.

Staffing losses Programs report various levels of staff attrition in the wake of the Congressional action. So far, one local office -- Oregon Legal Services' branch office in Klamath Falls -- has been closed. Most full-time staff at Multnomah County Legal Aid Service have been reduced to 80% time.
Key Recommendations:

1. Three fundamental premises should drive organizational and structural issues:

   A. Quality and Independence

      Legal services delivery in Oregon should not be driven by or be dependent on LSC funding or mandates. Legal services programs will continue to be an important and vital resource — of many — for providing access to the justice system for low income Oregonians.

   B. Preservation of Funding Allocation

      Funding levels for service to low-income client groups no longer eligible for LSC funded services, and for all other restricted forms of legal services representation, including welfare reform, class litigation, legislative and administrative advocacy, group representation and client education and training, must be maintained at levels sufficient to provide adequate representation to low-income clients.

   C. Independence and Access

      Planning and selection of substantive work, and prioritization of delivery to particular client groups or populations, should be based upon sound commitment to principles of equal access to justice consistent with DR 7-101 and EC 2-26, 27 and 28 of the Code of Professional Responsibility, and without regard to the disfavored social, political or economic status of any eligible client.

2. Consortium for Delivery of Services

   There should be an ongoing independent consortium of Oregon legal aid providers. Membership would be open to any organization providing legal services to low income Oregonians, as well as any organization which sponsors the delivery of such services (e.g. the MBA). The consortium would provide a forum for ongoing identification of unmet client needs to which resources should be targeted, while avoiding duplication of efforts by member programs. The consortium would allow for coordination and integration of key functions across program lines, and facilitate communication among program funding sources.

   The consortium should include:
Current LSC recipient programs
Non-profit legal centers
Public Interest Law Firms
Law school clinics
Campaign for Equal Justice
Bars, particularly OSB and MBA

3. Reorganization/Restructuring for Efficiency of Delivery

The existing legal services programs should continue the ongoing process of internal evaluation to identify means of streamlining, reducing costs and gaining new efficiencies. The programs should continue to evaluate, within the consortium context, whether program mergers, consolidation or sharing of particular functions or services or development of new means or methods of access and delivery are appropriate. Areas of continued discussion and evaluation should be:

- Merger;
- Consolidation of programs/services/shared systems; and
- Appropriate use of technology.
- Intake and referral improvements;
- Coordination among programs with the Bar;
- Coordination with ADR programs.

The various programs should continue to inform and advise one another as this process continues.

4. Development of Non-Restricted Entities

In response to the imposition of restrictions (on and after April 26, 1996) on programs which receive Legal Services corporation funding, new entities have been and are being organized to provide critically important services to clients, which LSC recipients will no longer be able to provide. Oregon Law Center has been incorporated and will receive funding from OLF and other sources; the Lane County Law and Advocacy Center has been established in Eugene. The Task Force makes the following recommendations regarding these "Full Service Law Centers:"

Should be an entity or entities capable of performing legislative and
administrative advocacy.

Should be an entity or entities capable of providing representation to underserved populations with cultural barriers, language barriers, or local access programs, e.g. migrant workers. Should be capable of providing services all over the state.

Should develop pro bono capacities of the bar statewide -- not just as supplement (to take individual cases overflowing from legal services programs), but in such areas as class actions, legislative advocacy, policy development, low income housing development, etc.

Should include all LSC restricted work, particularly class actions on issues affecting low income populations, such as welfare reform and administration of public benefit programs.

As indicated above, the question whether there should ultimately be one such program, with branch offices in key locations (e.g. Salem) was left for study by the OSB legal aid oversight group.

5. Development/Expansion of New Resources

The Subcommittee recommends development and expansion of new and non-legal services resources to complement consortium activities:

There are currently some regional hotlines operated by all legal services programs. Development of additional hotlines could be beneficial; a prime topic would be a (statewide) Child Support hotline.

Local and statewide bar groups should expand their pro bono efforts, working in cooperation with offices statewide. As a corollary, all programs should consider using emeritus attorneys in their area, on the model of the "ELVIS" program in Marion-Polk Legal Aid Service.

There should be strategic, thoughtful realignment of OLF funding, filing fee surcharge resources, and other available funds to provider programs.

Courts, Bar and OLF should continue to support efforts to increase ADR resources (e.g. farmworker mediation program) and self help mechanisms (Oregon Family Law Task Force is investigating the Maricopa County model).

The OSB should expand its existing Tel-Law program to cover new topics.
The OSB Order Desk/Pamphlet distribution efforts could include legal aid brochures, which are already available from the programs.

OSB should expand its Modest Means program as far as possible.
6. OSB Oversight and Support

The Oregon State Bar should take on an expanded role in oversight and provision of technical assistance to legal aid programs. This oversight/technical assistance role should be assigned to a small group (not more than five persons) who would be directly accountable to the Board of Governors. Members of the group should be OSB members who are knowledgeable in the areas of law office management and legal services/pro bono delivery, and who are independent of the programs. The group should develop defined standards for ongoing assessment of the programs' operations based on existing national standards (e.g. ABA's SCLAID standards, LSC Performance Criteria, Code of Professional Responsibility). Their assessments should concentrate on outcomes, with the emphasis on achieving quality results for clients.

If the Oregon legislature is willing to delegate allocation of filing fee surcharge revenues to the Oregon State Bar Board of Governors, this group would be an appropriate entity to take on this task, or at least, to evaluate and make recommendations to the BOG. (A significant minority of Task Force members believe that, while it is critically important that the OSB assume an oversight/technical assistance role with respect to civil legal services programs, this role should be separated from that of allocation of actual amounts of filing fee surcharge funding.)

Subcommittee 3: Funding

This subcommittee was chaired by Katherine O'Neil of Portland. The subcommittee was asked to address the following questions:

What current funding sources are in place to support legal services delivery in Oregon? How can they be expanded to meet future needs? What new financial resources can be developed to support a reconfigured delivery system?

The subcommittee gathered information from each of the programs on their present financial base — components and amounts, short term and long term financial prospects. The subcommittee gathered similar information from the major non-LSC funding sources for legal services and volunteer attorney programs in Oregon, specifically the Campaign for Equal Justice, the Oregon Law Foundation, the Multnomah Bar Association, and the legislature (the source of the filing fee surcharge legislation). Members of the group also researched funding mechanisms which have had success in other states, using information supplied by the American Bar Association's PERLS (Project to Expand Resources for Legal Services) Project. The goal was to develop insights for the BOG on how the organized bar could best step in and help alleviate the anticipated shortfalls.

The subcommittee's full report is attached as Appendix 3. Its key findings and recommendations are as follows.
Key Findings:

1. In FY 1996, funding to the Legal Services Corporation (the federal agency which funds local legal services programs across the country, was cut by approximately 30 percent, to a total of $278 million. This translates into a loss of approximately $1 million (of total 1995 funding of approximately $6 million from all sources) for Oregon's civil legal services programs. There are proposals in the current Congress to reduce LSC funding to $141 million in FY 1997 ($1.5 million shortfall for Oregon) and to eliminate it entirely by FY '98. If these proposals are successful, states like Oregon will be charged with all responsibility for providing civil legal services for their low income residents.

2. Oregon programs report the following projected shortfalls in their geographic service areas for 1996:
   - Jackson County (Center for Nonprofit Legal Services): $70,000
   - Lane County (Lane County Legal Aid Service, Lane County Law and Advocacy Center): $125,000
   - Marion and Polk Counties (Marion-Polk Legal Aid): $125,000
   - Multnomah County (Multnomah County Legal Aid Service): $440,000
   - Remaining Oregon counties (Oregon Legal Services): $210,000

3. Oregon is relatively fortunate in having developed significant sources of non-federal funding for civil legal services at the state and local level. Non-federal funding constituted approximately 51% of the resources available to the legal aid/volunteer attorney programs in 1995. The most significant sources of in-state funding are:

   Campaign for Equal Justice  Now incorporated as an independent 501(c)(3) entity, the Campaign solicits contributions from Oregon attorneys and law firms, and solicits grants and other assistance from a wide variety of private sector sources, on behalf of legal services programs. In 1995, a total of $322,000 was raised.

   Filing Fee Surcharge  Pursuant to ORS 21.480-.490 (appendix 3A to this report), circuit and district courts collect a surcharge on filing fees paid by moving parties in civil suits, which is paid to the legal aid program in that county by the State Court Administrator. This mechanism produces approximately $1.5 million annually.
income Oregonians have been (and should continue to be) the major recipients of funding from OLF’s IOLTA (Interest on Lawyers Trust Accounts) program. In 1996, OLF will make a total of $359,000 in grants, with approximately $496,000 going to programs in the legal services category.

Without assistance from the Oregon State Bar, the courts, and the legal community generally, these funding sources will not be able to make up the shortfall in federal funding in the foreseeable future.

Key Recommendations:

1. **Filing Fees surcharge** Oregon’s circuit and district courts will be consolidated effective January 15, 1998. Currently, legal services programs receive a surcharge on each filing fee paid into circuit court in the amount of $22.00. In cases currently being filed in district court, the surcharge is $8.50.

   The BOG should urge Chief Justice Carson to exercise his discretion to maintain the $22 filing fee for all courts after merger of Circuit and District courts in January, 1998.

   Alternately, the BOG should make its #1 Legislative agenda for the ’97 Legislature a revision in the laws related to filing fees with the fees going to the OSB for distribution.

2. **OSB dues assessment** The FY ’96 shortfall could be met by a $100 per attorney contribution made with the annual OSB dues. Subsequent Congressional cuts would require a greater per attorney contribution.

   The BOG should exercise its leadership and choose a method of per capita contribution among the following:

   a. Voluntary contribution collected with OSB dues: "$100 or other."

   b. Voluntary first year or so and then make it compulsory: "$100".

   c. Compulsory contribution collected with OSB dues: "$100" FY ’97, "$250" in subsequent years to make up for continued cuts in Congressional funding. With an option to do 40 hours (or another figure) of pro bono work in an OSB certified pro bono program.

   Any compulsory contribution should first be approved by the new OSB House of Delegates with a referral to the general membership following the meeting at which it is approved.
3. **Greater OSB/local bar support for Campaign for Equal Justice**  The CJE would greatly benefit from open, public, frequent support for CJE from the BOG and other bar leaders. The BOG members can mention the campaign in stump speeches, write about it in all publications. Make CJE the “lawyers’ charity,” a part of the legal culture. If BOG members and the county bar presidents did an hour of intake at a legal aid office, they would gain a perspective that would fire their support of the CJE.

4. **Increase income to OLF/IOLTA**  The Oregon Law Foundation should be asked to pursue various mechanisms, for which national models exist, to increase IOLTA income. These include “sweep” accounts for IOLTA funds (cash management or sweep account which sweeps all or part of the IOLTA balance that is over a specified threshold amount from low-yield checking accounts into an investment in Treasury backed securities on a daily basis, producing higher yields for the IOLTA account); ongoing negotiations with banks for higher interest rates, and lower service charges, paid on IOLTA accounts.

The Oregon State Bar should assist OLF in investigating mechanisms for increasing income to the Foundation through legislation providing for, among other possibilities: direction of interest on funds in the hands of title insurance companies to OLF; direction of a portion of state abandoned property funds to OLF; direction of unclaimed client trust funds to OLF.

5. **Potential funding sources for consideration by legal services programs**  include implementation of sliding scale fees for service to clients in the moderate income range (125% - 200% of poverty guidelines); local and county bond issue funding (Jackson County example); retainer contracts with Indian tribes and social service agencies; and gaming revenues.

**Subcommittee 4: Ethical Responsibility/Quality Assurance/Transition**

This subcommittee was chaired by Judge Jack Landau of the Court of Appeals. It was asked to consider how the bar could best assist the LSC programs’ attorneys in meeting their ethical responsibilities to clients in light of the restrictions imposed by Congress.

The subcommittee also reviewed a memorandum from James N. Gardner of Portland, outlining a potential 10th Amendment challenge to the conditions and restrictions imposed on the Legal Services Corporation and its grantees by Congress.

The subcommittee’s full report is attached as Appendix 4. Its key findings and recommendations are as follows.

**Key Findings:**
1. ABA Formal Opinion 96-399 In February, 1996, the American Bar Association Standing Committee on Ethics and Professional Responsibility released Formal Opinion 96-399, "Ethical Obligations of Lawyers Whose Employers Receive Funds for the Legal Services Corporation to their Existing and Future Clients When such Funding Is Reduced and When Remaining Funding Is Subject to Restrictive Conditions." At approximately the same time, Oregon Legal Services prepared its own proposed response to the anticipated funding and practice restrictions. Rather than duplicate the foregoing efforts, the subcommittee focused on a review of the analysis and recommendations of the ABA Standing Committee and OLS.

In general, the OLS policy appears to follow from, and is entirely consistent with, the formal opinion of the ABA Standing Committee.

Copies of ABA Formal Opinion 96-399, and of OLS' internal memorandum "Implementing New Restrictions," are attached to the full subcommittee report at Appendices 4A and 4B.

Key Recommendations

1. The ABA Standing Committee's formal opinion is, of necessity, based on the Model Rules and not on the rules of professional responsibility governing any particular jurisdiction. So far as the Task Force is aware, however, the Oregon Code of Professional Responsibility is consistent with the Model Rules in all respects material to the questions before the ABA Standing Committee. The Task Force has little reason to believe that the ethical obligations of Oregon legal services lawyers will be substantially different under the Oregon Code and, therefore, regards the ABA Standing Committee's formal opinion as a useful source of advice to legal services lawyers in this state. Nevertheless, the Task Force believes that it may be of value to Oregon lawyers to have the Oregon State Bar Legal Ethics Committee review the ABA Standing Committee's formal opinion in the light of the particular requirements of the Oregon Code, to determine the extent to which the obligations of Oregon legal services attorneys are anticipated to be different than those of lawyers generally in the context of the Model Rules. Accordingly, the Task Force has prepared an opinion request to that effect.

2. The Task Force has considered, at least preliminarily, the possibility of other responses to the anticipated funding and practice restrictions than accommodation through modification of legal services policies and practices. Of particular note is the suggestion that the constitutionality of the restrictions be challenged in federal court. Although the Task Force expresses no opinion on the likelihood of success of such a challenge, it does recommend that the option be explored by the appropriate authorities.
In essence, the theory of the proposed lawsuit is that the imposition of federal restrictions on the provision of legal services violates the Tenth Amendment to the federal Constitution. The major premise of the argument is that the operation of state court systems is at the core of powers reserved to the states by the Tenth Amendment and that the operation of state court systems includes the promulgation and enforcement of rules of professional responsibility. The minor premise of the argument is that the anticipated restrictions on legal services practice will necessitate a modification of such rules of professional responsibility. The key, of course, is the minor premise, namely, whether the expected practice restrictions actually require a modification of state professional responsibility rules or other matters properly regarded as core areas of state sovereignty.

Assuming the potential viability of a Tenth Amendment claim, the question arises: Who would be the proper plaintiff(s)? In all likelihood, the proper party plaintiff would be the State of Oregon, or the Chief Justice, or both; in all events, the matter would be subject to the advice and representation of the Attorney General. The Task Force recommends that the Attorney General be requested to evaluate the possibility of initiating a lawsuit to challenge the constitutionality of the anticipated funding and practice restrictions.

Conclusion

Hundreds of hours of volunteer effort, energy, and emotion have gone into the creation of this final report. The issues with which the Task Force has wrestled with are critically important to the future of access to justice for low-income Oregonians, both in the short and the long term. The Task Force members urge the Board of Governors to put these issues at the head of the bar’s agenda for this year and the years to come. As the BOG’s original charge to the Task Force stated, the organized bar has a critically important role to play in assuring the continuing availability of legal assistance to all of the people of our state. We urge the Board to take up this work.
# Declaration of Angel Lopez and Charles Williamson

**UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK**

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<th>CARMEN VELAZQUEZ, et al.,</th>
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**DECLARATION OF ANGEL LOPEZ AND CHARLES WILLIAMSON**

Angel Lopez and Charles Williamson, declare as follows:

1. **I, Angel Lopez, am the President of the Oregon State Bar (“OSB”).**
2. I, Charles Williamson, am the President Elect of the Oregon State Bar, and will serve as President in 2003. I am currently a member of the Board of Governors of the OSB and am the Chair the OSB Access to Justice Committee.

3. We make this declaration on behalf of the Oregon State Bar in support of the plaintiffs' request for a preliminary injunction enjoining the enforcement of restrictions imposed by the Legal Services Corporation ("LSC") on the professional activities of lawyers employed by non-profit corporations receiving funding from LSC, especially when those activities are funded entirely from non-LSC private and governmental sources, because the Bar believes that the restrictions interfere significantly with OSB's effort to use state funding to provide comprehensive legal services. More specifically, we make this declaration to demonstrate that LSC's program integrity regulation requirement of physical separation between LSC-funded and non-LSC-funded activities imposes an undue burden on First Amendment activities of legal services providers. Because the separation requirement inevitably imposes significant costs, the plaintiffs should be permitted to challenge LSC's claimed justification for those costs, and should not be required to exhaust administrative remedies prior to testing the legality of the requirement. Finally, we make this declaration to describe particular ways in which certain other legal services restrictions infringe on plaintiffs' First Amendment rights.

4. The Oregon Legislature directed the Oregon State Bar to by rule establish a Legal Services Program to provide legal services to the poor without charge (ORS 9.572 to 9.578). The legislature funded this program through state filing fees. In 1998, OSB adopted the mission of the state legal services program as follows:

To use the filing fee revenue to fund a coordinated, statewide system of legal services centered on the needs of the client community as identified
in the Mission Statement of the OSB Civil Legal Services Task Force
Final Report, May 1996.

To use its oversight authority to work with Providers to insure that the
delivery of services is efficient and effective in providing a full spectrum
of high quality legal services to low-income Oregonians.

Legal services programs exist to ensure that institutions and organizations
created to serve public interests and needs, particularly governmental and
civic institutions, treat individuals equally no matter what their economic
situation. This is not a radical notion; it is the cornerstone of American
concepts of justice and fair play.

The mission of Oregon’s statewide legal services delivery system should
continue to be centered on the needs of its client community. It should be
expansive, recognizing that equal justice contemplates more than simply
providing a lawyer in every family law or unlawful detainer case (though
it certainly includes this goal as well). This mission must contemplate
lawyering in its broadest sense, acknowledging that the interests of low
income clients can only be served if the delivery system is dedicated to
providing full and complete access to the civil justice system in a way that
empowers this segment of the population to define, promote, and protect
its legitimate interests. As such, the mission must be to:

* Protect the individual rights of low income clients;
* Promote the interests of low income individuals and groups in the
development and implementation of laws, regulations, policies and
practices that directly affect their quality of life;
* Employ a broad range of legal advocacy approaches to expand the
legal rights of low income individuals and groups where to do so is
consistent with considerations of fundamental fairness and dignity;
and
* Empower low income individuals and groups to understand and
effectively assert their legal rights and interests within the civil
justice system, with or without the assistance of legal counsel.

5. The mission of the OSB Legal Services Program, as set out above, was written by
the OSB Civil Legal Services Task Force. In the summer of 1995, Judy Henry, the President of
the Oregon State Bar, in consultation with Oregon Supreme Court Chief Justice Wallace P.
Carson, Jr., appointed ten distinguished Oregonians to serve on the OSB Civil Legal Services Task Force and gave the Task Force the general charge to “develop a plan for civil legal services in Oregon for 1996 and future years, which will, when implemented, effectively provide a full range of legal services to low income Oregonians with all available resources.” The Task Force included several prominent private attorneys from some of the most respected firms in Oregon, a trial judge who was later appointed to the Court of Appeals, a judge from the Court of Appeals, a State Senator who was Chair of the Joint Judiciary Committee and two representatives from the OSB. The Task Force appointed subcommittees bringing in a much larger number of participants with extensive knowledge and expertise. Task Force participants contributed hundreds of volunteer hours in the consideration and final drafting of the reports and recommendations.

6. The Oregon Legislature directed OSB to provide standards and guidelines for legal service providers (ORS 9.572). The OSB guidelines require using the filing fee revenue to fund a coordinated, statewide system of legal services centered on the needs of the client community as identified in the mission statement set out above in paragraph 4. In addition, OSB adopted the “Standards for Providers of Civil Legal Services to the Poor,” as approved by the American Bar Association House of Delegates, August 1986, “Standards for Programs Providing Civil Pro Bono Legal Services to Persons of Limited Means,” as adopted by the American Bar Association House of Delegates, February, 1996, “The Legal Services Corporation Performance Criteria,” 1996 and the Oregon Code of Professional Responsibility.

7. The LSC restrictions – including restrictions on class actions, attorney fees, lobbying, and representing certain categories of clients – make it significantly more difficult for the Oregon State Bar to implement the mission, standards and goals of the state Legal Services
Program. These restrictions effectively prevent many legal services offices in Oregon from meeting key needs of their clients, both by directly restricting advocacy financed by LSC funds and by restricting advocacy financed by non-LSC funds in programs that also receive some LSC funds. The federal restrictions on the use of state money increase costs of providing state funded services to low income Oregonians, increase the administrative expense and reduce the quality of service for the reasons explained below.

8. The OSB Legal Services Program distributed approximately $2,793,000 to service providers in 2001. These funds went to twenty offices serving low income clients in all 36 counties in Oregon. Fourteen of these offices also accepted federal funding from LSC and therefore provided a limited range of legal services in compliance with the LSC restrictions. Six legal services offices in Oregon receive no federal LSC money and therefore provide a full range of legal services to low income clients without the LSC federal restrictions.

9. There is inadequate funding for civil legal services in Oregon. The Oregon State Bar, Oregon Judicial Department and Office of Governor John Kitzhaber, M.D. sponsored an assessment of legal needs in Oregon that was published March 31, 2000. The needs survey established that fewer than two in ten low-income people with a need for civil legal services get legal services in Oregon (including services provided by non-profits, pro bono and private practitioners working for a fee). This determination was based on surveys of judges, lawyers, social service providers, legal service providers and low income people.

Quantity of Services

10. Based on the Oregon experience, the cost of creating and sustaining separate non-profit corporations and separate offices, as required by the LSC “program integrity” regulation, reduces the quantity of services that can be provided by the OSB Legal Services Program.
because it requires increasing operating expenses necessary to rent additional space, pay for separate executive directors, pay for separate accounting departments, operate separate computer networks, and operate separate telephone systems.

11. For example, the Oregon Law Center ("OLC"), which receives funding from OSB, the Oregon Law Foundation (OLF), Campaign for Equal Justice (CEJ) and from other foundations, was established to provide unrestricted services through offices located in Portland, Ontario, Coos Bay and Grants Pass. Legal Aid Services of Oregon ("LASO") provides LSC restricted services through offices located in Portland, Bend, Pendleton, Roseburg, McMinnville, Hillsboro, Woodburn, Newport, Oregon City, and Albany. The same individuals serve on the board at LASO and the board at OLC. The two corporations maintain separate offices and do not share employees. Both non-profit corporations deliver services to low-income clients living in thirty-three of Oregon’s thirty-six counties. Rural offices are paired by region so that, for example, one LSC funded office in Northeastern Oregon can refer restricted cases or clients to a state funded office located in another town within the same region. Both programs maintain separate offices located in Portland. There are administrative costs inherent in coordinating a system with two separate corporations serving a geographical area that would be better served by one. The additional administrative costs necessary to maintain the separate entities could be better used to open another rural office or to hire more staff attorneys to provide additional service to clients if LSC permitted the OSB Legal Services Program to pay for one staff attorney assigned to do class actions, seek attorney fees, work on legislative and administrative lobbying, and represent immigrants, who was permitted to work in the same office and program as a staff attorney paid for by LSC to represent individual clients.
12. In addition, there is a financial cost imposed by the LSC restriction that prohibits seeking attorney fees. Because current funding is only adequate to serve two in ten people with a civil legal problem, the OSB Legal Services Program seeks to increase the number of clients served with the state filing fee money by directing non-profit service providers to recover statutory attorney fees when available. The money earned through attorney fees is then used to increase the quantity of civil legal services available for low income clients. Attorneys funded by state filing fee money who are working for a non-profit service providers who also accept federal LSC funding cannot seek or retain attorneys fees. Money that should be available to provide more services is lost. For example, attorney fees that could be earned under statutes like the federal Equal Access to Justice Act are never collected.

Quality of Service

13. The harms caused by the legal services restrictions are compounded by Oregon’s large geographical area, widely distributed clients and limited funding. This task of providing high quality legal services throughout the state is made far more difficult or even impossible when the federal restrictions prohibit using state money to pay for restricted work that is done within an office that also receives any federal money from LSC. The federal requirement of “program integrity” requires maintaining a separate non-LSC-funded office to provide the full range of high quality legal services. It is not possible to have two legal services offices in a small rural county, and certainly not in each of the thirty-six counties in Oregon, with current funding.

14. The OSB recognizes that technological advances can help address some of the problems posed by underfunded, understaffed and restricted offices serving a large client base over vast distances. Video telephones, hotlines, pro se forms and classes, courthouse facilitators,
web sites and booklets are used legal services providers in Oregon. However, none of the technological advances are a real substitute for having a legal services office representing clients in a community. It remains crucial to have a presence in communities across Oregon. Legal services attorneys working in rural offices become an important part of the community. By their mere presence there is less likely to be major problems for low income people. Legal services attorneys living in rural communities understand local client needs, the local economy, social structure, politics and judges. They are respected by the clients, judges, office holders, social service providers, the private bar and opposing parties.

15. High quality civil legal services for the poor cannot be provided across long distances. The “separate entity” restriction has forced legal services providers in Oregon to support an OLC office in Ontario (no federal money) and an LASO office in Pendleton (some LSC federal money). For example, in theory, a person lacking eligible alien status, needing representation in a class action, requiring administrative or legislative advocacy, or bringing a case where attorneys fees are available could go to OLC in Ontario to seek legal services. There are two staff attorneys in Ontario and four staff attorneys in Pendleton. However, it is 167 miles from Pendleton to Ontario. In addition, many of the low income people in the region served by each office live even farther away. The Blue Mountains are located between the two offices with two treacherous sections of the highway often closed in winter. Low income families usually lack the reliable transportation, money for gas and time off from low wage jobs necessary to make such a trip. Lawyers have to take time to travel to court hearings that are far away; they handle fewer cases and provide lower quality legal representation because they work as outsiders in the distant community. Some routine legal services cases like domestic violence and evictions require going to court quickly on little notice. A lobbyist from another town is less
effective at city hall or with the county commissioners. Clients would receive far better service if OSB Legal Services Program money were used to finance one attorney in Ontario and one attorney in Pendleton to do the work that needs to be done to provide equal access to justice, while LSC funded three attorneys in Pendleton and one in Ontario to do the work currently permitted by LSC. Having the "program integrity" requirement precludes this approach. The same problem is repeated in Bend (241 miles to the paired OLC office in Grants Pass), Roseburg (85 miles to the paired office in Coos Bay), Newport (98 miles to the paired office in Coos Bay), Albany (69 miles to Portland), Woodburn (30 miles to Portland), and McMinnville (38 miles to Portland).

16. The LSC restriction prohibiting attorneys from seeking attorneys fee award also reduces the quality of services that can be provided to clients through Oregon’s coordinated delivery system. Oregon has many fee shifting statutes that are designed to encourage settlement and to discourage the litigation of uncertain claims. The prevailing party is entitled to attorney fees. Clients represented by an attorney who is free to seek attorney fees are better served because the parties are more likely to reach a reasonable settlement quickly. Indeed, it is sometimes essential for lawyers to move for contempt but even in those circumstances, which often are not predictable at the outset, the attorneys in LSC-funded programs are prohibited from seeking fees. Although the Oregon planning process has attempted to provide individuals with access to attorneys who can do unrestricted work, it is inevitable and unavoidable that LASO will take some cases where the client would be entitled to seek fees but for the barrier presented by the federal LSC restrictions.

17. The LSC restrictions prohibiting attorneys from working on class actions also reduces the quality of services. One of the Key Recommendations in the OSB Civil Legal
Services Final Report was to support “Full Service Law Centers” that provide all LSC restricted work, “particularly class actions on issues affecting low income populations, such as welfare reform and administration of public benefit programs.” The following example is illustrative of the problem: The plaintiff alleged that a welfare office in one county had a pattern and practice of improperly processing applications for general assistance. General assistance is made available to very low income people who are extremely vulnerable, often people who have a mental disability and are not receiving any other benefits. State law required that the office adequately develop an evidentiary record when processing applications. The local welfare office was not following this requirement and was routinely denying benefits to a large number of qualified applicants.

18. Because of inadequate resources, OLC could not take the case and LASO filed a lawsuit in state court seeking an order directing the state agency to change its policy in order to follow the law. The court denied the order on grounds that the plaintiff could have corrected the harm done to plaintiff as an individual by asking for an administrative hearing where the hearings officer would have followed the state law, developed the record and granted benefits to plaintiff. The judge told the LASO attorney from the bench that she would have to file a class action in order to change the local welfare office’s pattern and practice. When she told the judge that federal LSC regulations prohibited her from filing a class action, he expressed concern.

19. The LASO office does not have the staff necessary to accept every case on behalf of general assistance applicants, ask for a hearing and make certain that the individual client gets benefits. It is a much more efficient and effective use of an attorney’s time in this type of case to file a class action forcing the local welfare office to follow the law and grant benefits in response to the first application. Even if there were adequate staff to accept each individual case, many
desperate low income clients, especially those with a mental disability, would be unlikely to understand their legal rights and get the help they need to enforce their legal rights. Oregon courts do not recognize standing based on capable of repetition yet evading review.

20. The “program integrity” restriction effectively precludes the OSB Legal Services Program from funding one attorney to do this work in each legal services office while permitting an LSC funded attorney to do different work in the same office. Instead, the OSB is unable to do more than to fund attorneys who are located at a great distance in many cases. The result is that, as a consequence of the program integrity restriction, important work simply cannot be done.

21. We were authorized to sign a declaration on behalf of the Oregon State Bar by a resolution of the Board of Governors adopted on the 25th day of January 2002.
We declare under penalty of perjury that the foregoing is true and correct.
Executed on June 14, 2002
Portland, Oregon

OREGON STATE BAR

Angel López
President

Charles Williamson
President Elect
Legal Services Program

Standards and Guidelines

May 29, 1998

Revised February 22, 2018
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I. Mission Statement

It is the mission of the Oregon State Bar Legal Services Program:

To use the filing fee revenue to fund an integrated, statewide system of legal services centered on the needs of the client community as identified in the Mission Statement of the OSB Civil Legal Services Task Force Final Report, May 1996; and

To use its oversight authority to work with Providers to insure that the delivery of services is efficient and effective in providing a full spectrum of high-quality legal services to low-income Oregonians.

To work to eliminate barriers to the efficient and effective delivery of legal services caused by maintaining legal and physical separation between providers of general legal services to low-income Oregonians in the same geographical area, while maintaining Providers’ ability to offer the broadest range of legal services required to serve the needs of clients.

OSB Civil Legal Services Task Force Final Report, May 1996, Appendix I, Page 1 & 2

“Legal services programs exist to ensure that institutions and organizations created to serve public interests and needs, particularly governmental and civic institutions, treat individuals equally no matter what their economic situation. This is not a radical notion; it is the cornerstone of American concepts of justice and fair play.

The mission of Oregon’s statewide legal services delivery system should continue to be centered on the needs of its client community. It should be expansive, recognizing that equal justice contemplates more than simply providing a lawyer in every family law or unlawful detainer case (though it certainly includes this goal as well). This mission must contemplate lawyering in its broadest sense, acknowledging that the interests of low income clients can only be served if the delivery system is dedicated to providing full and complete access to the civil justice system in a way that empowers this segment of the population to define, promote, and protect its legitimate interests. As such, the mission must be to:

- Protect the individual rights of low income clients;
- Promote the interest of low income individuals and groups in the development and implementation of laws, regulations, policies and practices that directly affect their quality of life;
- Employ a broad range of legal advocacy approaches to expand the legal rights of low income individuals and groups where to do so is consistent with considerations of fundamental fairness and dignity; and
Empower low income individuals and groups to understand and effectively assert their legal rights and interests within the civil justice system, with or without the assistance of legal counsel."
II. Governing Structure

A. Statutory Authority

On September 24, 1997, the Oregon State Bar Legal Services Program (OSB LSP) was established by the Board of Bar Governors as directed by ORS 9.572 to 9.578 (Appendix A1). The OSB LSP is charged with: the administration of funds appropriated to the OSB by ORS 9.577, ORS 98.386 (2), ORS 9.241 (3) and ORCP 32 O (Appendix A2) for funding legal services programs; the establishment of standards and guidelines for the funded legal services programs (Providers); and the development of evaluation methods to provide oversight of the Providers.

B. Governing Committee

1. Purpose: The Board of Governors has created the Governing Committee (OSB LSP Committee) pursuant to ORS 9.572(3) to advise the bar in the operation of the Legal Services Program, as outlined in these Standards and Guidelines, ORS 9.572(1). The OSB LSP Committee receives direction from the Board of Governors.

2. Relationship to the Legal Services Program Director: The Legal Services Program Director appointed by the bar, pursuant to ORS 9.572(2), is charged with periodically reviewing legal service providers who receive funding from the Legal Services Program, ORS 9.576(1). The OSB LSP Committee is charged to assist and advise the LSP Director in carrying out the LSP program review among other duties to assist and advise.

3. Duties to the OSB Board of Governors: The OSB LSP Committee will be responsible for reviewing and reporting to or making recommendations to the OSB Board of Governors on the following:

   - The Standards and Guidelines for the OSB LSP and their periodic review
   - Applications for funding to the OSB LSP
   - Disbursement of funds and annual OSB LSP budget
   - Assessment of Provider Programs
   - Annual reporting by the Providers
   - Legislative issues involving the legal aid filing fee funds
   - Complaints and grievances about Providers
   - Additional work of the OSB LSP

4. Membership

   a. Appointment: Appointment of members to the OSB LSP Committee shall be made by the Oregon State Bar Board of Governors.
b. **Membership**: The OSB LSP Committee will consist of 9 members: 7 members, in good standing, of the Oregon State Bar; and 2 public members. The membership should be representative of the statewide aspect of the OSB LSP and should reflect the diversity of the service areas. No more than 3 attorney members should be from the Portland metropolitan area. The following criteria should be considered in selecting members:

1) Commitment to the basic principles of access to justice

2) Ability to advance the mission of the OSB LSP

3) Knowledge and understanding of providing quality legal services to low-income people.

4) History of support for legal services providers

5) Representation of a geographic area with special attention given to practice area specialties.

5. **Term of Appointment**: Appointments will be made for 3-year terms with the exception of the initial attorney appointments. To stagger vacancies on the OSB LSP Committee and to provide continuity, the initial appointments will be: 3 attorneys appointed for 3 years; 2 attorneys appointed for 2 years, and 2 attorneys appointed for 1 year.

6. **Liaisons to Committee**: The Oregon Law Foundation and the Campaign for Equal Justice are invited and encouraged to each have a liaison to the OSB LSP.

7. **Meetings**: The OSB LSP Committee will meet as needed. The Chair can call Special Meetings as needed. Meeting notices and agendas will be sent out according to public meeting law. Members can participate by telephone.

8. **Quorum**: Five members constitute a quorum for voting purposes.

9. **Subcommittees**: The OSB LSP Committee Chair has the authority to appoint additional subcommittees to make recommendations on specific issues as needed.

C. **Program Staff**

1. **Director of Legal Services Program**: The OSB Director of Legal Services Program (OSB LSP Director) is hired and supervised by the Executive Director of the Oregon State Bar. The OSB LSP Director staffs the OSB LSP Committee and receives advice and assistance from the OSB LSP Committee when conducting Legal Services Program Review. The OSB LSP Director may also support other work assigned by the Board of Governors to the LSP Committee.

   a. The LSP Director will be responsible for monitoring, reviewing, reporting and making recommendations to the OSB LSP Committee on the following:
• These Standards and Guidelines and their periodic review
• Applications for funding
• Disbursement of funds and Annual OSB LSP budget
• Assessment of Provider Programs
• Annual Reporting by the Providers
• Legislative Issues regarding the filing fee funds
• Complaints and grievances about Providers
• Additional work of the OSB LSP

b. The LSP Director will be responsible for providing technical assistance to Providers to ensure compliance with these Standards and Guidelines.
III. Standards and Guidelines for Providers

The following standards and guidelines shall apply to all programs providing civil legal services in Oregon who receive, or who may apply to receive, funding from the Oregon State Bar Legal Services Program (OSB LSP) pursuant to ORS 9.572 et seq. These Standards and Guidelines apply only to services funded by filing fees received from the OSB LSP.

A. Statement of Goal

It is the goal of the OSB LSP that all Providers shall be an integral part of an integrated delivery system for civil legal services which incorporates the Mission, Values and Core Capacities set forth in the OSB Civil Legal Services Task Force Final Report, May 1996 (Appendix C). The filing fee money should be used to fund providers in an integrated system designed to provide relatively equal levels of high-quality client representation throughout the state of Oregon and designed to address the core capacities identified in the OSB Legal Services Task Force Report. The integrated delivery system should be structured to eliminate the legal and physical separation of offices serving the same geographical area, avoid duplication of administrative functions and costs, reduce the burdens on staff and clients, and minimize other barriers to the efficient delivery of legal services described in the Declaration of Angel Lopez and Charles Williamson authorized by the Board of Bar Governors in January 2002 (Appendix D), while maintaining the Provider’s ability to offer a broad array of high quality legal services consistent with the Mission Statement.

B. Provider Structure

1. Non Profit: A Provider shall be an Oregon nonprofit corporation, incorporated as a public benefit corporation under ORS Chapter 65, and be recognized as tax exempt under section 501(c)(3) of the Internal Revenue Code.

2. Board of Directors: A Provider shall have a Board of Directors which reasonably reflects the interests of the eligible clients in the area served, and which consists of members, each of whom has an interest in, and knowledge of, the delivery of quality legal services to the poor. Appointments to the Board of Directors shall be made so as to ensure that the members reasonably reflect the diversity of the legal community and the population of the areas served by the Provider including race, ethnicity, gender, and similar factors.

   a. A majority of the directors should be active or active emeritus members of the Oregon State Bar, appointed by the county bar association(s) in the Provider’s service area, or by the Oregon State Bar.

   b. At least one-third of the directors should be persons who are eligible to be clients, but are not current clients, when appointed. The directors who are eligible clients should be appointed by a variety of appropriate groups designated by the program that may include, but are not limited to, client and neighborhood associations and
community-based organizations which advocate for or deliver services or resources to the client community served by the Provider.

3. **Staff Attorney Model**: A Provider shall have at least one active member of the Oregon State Bar on staff.

4. **Pro Bono Program**: A Provider shall maintain a Pro Bono Program, certified by the Oregon State Bar pursuant to section 13 of the Oregon State Bar Board Bylaws (Appendix B), as a part of its system of delivery of legal services.

5. **Efficient Use of Resources**: A provider should, to the maximum extent practicable, integrate its operations and staff into existing programs that provide general legal services to low-income Oregonians in the same geographical area and meet the criteria set out in paragraphs B.1 – B.4, rather than maintain organizations that are legally and physically separate. If separate organizations currently exist, the Provider should take whatever actions are required to achieve program integration that will eliminate unnecessary, costly, and inefficient duplication without compromising the Provider’s ability to offer the full range of legal services contemplated by these Standards and Guidelines including, but not limited to, challenging federal restrictions that impede such integration.

C. **Provider Use of Funds and Eligibility Guidelines**

1. **Use of Funds**: A Provider shall use funds received pursuant to ORS 9.572 et seq. only for the provision of civil legal services to the poor.

The use of funds from the OSB LSP or compliance with these Standards and Guidelines is a matter between the Provider and the OSB. Nothing in these rules shall be construed to provide a basis to challenge the representation of a client. The sole remedy for non-compliance with these Standards and Guidelines is found in the procedures under non-compliance in ORS 9.572 and in these rules, Section V.E. & F.

2. **Eligibility Guidelines**: The Board of Directors of a Provider shall adopt income and asset guidelines, indexed to the Federal poverty guidelines, for determining the eligibility of individuals seeking legal assistance from the program. A copy of the income and asset guidelines shall be provided as a part of the application for these funds and shall be consistent with the Provider’s mission and written priorities.

3. **Payment of Costs**: Eligible clients shall not be charged fees for legal services provided by a Provider with funds pursuant to ORS 9.572 et seq. However, a Provider may require clients to pay court filing fees or similar administrative costs associated with legal representation.

4. **Recovery of Attorney Fees**: A Provider may also recover and retain attorney fees from opposing parties as permitted by law.
D. Procedures for Priorities and Policy for Avoiding Competition with Private Bar

1. Procedures for Establishing Priorities: A Provider shall adopt procedures for establishing priorities for the use of all of its resources, including funds from the OSB LSP. The Board of Directors shall adopt a written statement of priorities, pursuant to those procedures, that determines cases and matters which may be undertaken by the Provider. The statement of priorities shall be reviewed annually by the Board.

a. The procedures adopted shall include an effective appraisal of the needs of eligible clients in the geographic area served by the recipient, and their relative importance, based on information received from potential or current eligible clients that is solicited in a manner reasonably calculated to obtain the views of all significant segments of the client population. The appraisal shall also include and be based on information from the Provider’s employees, Board of Directors, local bar, and other interested persons. The appraisal should address the need for outreach, training of the program’s employees, and support services.

b. In addition to the appraisal described in paragraph a, of this section, the following factors shall be among those considered by the Provider in establishing priorities.

1) The population of eligible clients in the geographic area served by the Provider, including all segments of that population with special legal problems or special difficulties of access to legal services;

2) The resources of the Provider;

3) The availability of free or low-cost legal assistance in a particular category of cases or matters;

4) The availability of other sources of training, support, and outreach services;

5) The relative importance of particular legal problems to the individual clients of the Provider;

6) The susceptibility of particular problems to solution through legal processes;

7) Whether legal efforts by the Provider will complement other efforts to solve particular problems in the areas served;

8) Whether legal efforts will result in efficient and economic delivery of legal services; and

9) Whether there is a need to establish different priorities in different parts of the Provider’s service area.

2. Avoidance of Competition with Private Bar: The Board of Directors of a Provider shall adopt a written policy to avoid using funds received from the OSB LSP to provide
representation in the types of cases where private attorneys will provide representation to low-income clients without charge in advance as with contingency fee cases. A copy of the policy shall be provided as a part of the application for these funds and shall be consistent with the Provider’s mission and written priorities.

E. Provider Grievance Committee and Process

1. **Grievance Committee**: The Board of Directors of a Provider shall establish a grievance committee, composed of lawyer and client members in approximately the same proportion as the makeup of the Board.

2. **Grievance Process**: The Provider shall establish procedures for determining the validity of a complaint about the manner or quality of legal assistance that has been rendered, or about the denial of legal assistance due to a determination that a potential client is financially ineligible.

   a. The procedures shall minimally provide:

      1) Information to a client at the time of the initial visit about how to make a complaint;

      2) Prompt consideration of each complaint by the director of the program, or the director’s designee; and

      3) If the director is unable to resolve the matter, an opportunity for a complainant to submit an oral and written statement to the grievance committee.

F. Additional Standards for Providers

A Provider shall conduct all of its operations, including provision of legal services, law office management, and operation of the pro bono program in conformity with the following recognized standards, as applicable:

- [American Bar Association Standards for the Provision of Civil Legal Aid, August 2006](#).
- “Standards for Programs Providing Civil Pro Bono Legal Services to Persons of Limited Means,” as adopted by the American Bar Association House of Delegates, August 2013.
- [Legal Services Corporation Performance Criteria, 2007](#).
- [Oregon Rules of Professional Conduct](#).
IV. Cooperative Collaboration by Providers

A. Mechanism for Cooperation:

Providers will create a mechanism for cooperation among themselves and other programs providing services to low-income Oregonians:

- To facilitate additional communication between organizations;
- To coordinate and integrate key functions across program lines;
- To create a forum for identifying client needs;
- To collaborate and strategize how best to meet the needs of the client community;
- To discuss funding needs and potential funding mechanisms;
- To work with the court system, the legislature, the OSB, local bars, and members of the private bar to create a broad network to develop better access to the justice system.
- To eliminate the legal and physical separation among the programs in order to minimize the duplication of administrative and other costs of delivering legal services to low-income Oregonians.
V. Oversight by OSB Legal Services Program

The filing fees collected for legal services by the OSB LSP will continue to be used to support programs providing basic civil legal assistance to low-income Oregonians. The increase in court fees was calculated to replace decreased funding by other sources to legal services in Oregon and to enhance the broad-based, full range of advocacy approaches and services to clients.

A. Funding of Providers

1. **Presumptive Funding:** To maintain the current statewide level of service the OSB LSP will continue to fund those legal services providers receiving filing fees at the enactment of 1997 Oregon Laws Chapter 801 Section 73 and the 2003 legislative increase in filing fee funds. These providers will receive the funds from the OSB LSP after administrative fees, up to 5.1 million dollars (2003 filing fee level adjusted for inflation increased by the 1.6 million dollar gap to meet the legal needs of the poor assessed in 2003) with an annual cost-of-living increase. The increase in the presumptive funding level meets the 1997 and 2003 legislative intent to provide additional funding for legal services to the poor at the same time continuing the approach adopted by the Interim Civil Legal Services Task Force who developed the Standards and Guidelines in 1998.

   a. **Initial Funding:** Providers will be required to complete the Initial Compliance Determination Application. Providers must complete the application and demonstrate compliance with these Standards and Guidelines within two months after this document becomes effective to qualify for funding under the OSB LSP beginning September 1998.

       Funding will continue under presumptive funding until:

       1) Provider is found not in compliance at which point Section V.F. will be implemented

       2) Provider discontinues provision of services at which point Section V. F. 5. will be implemented; or

       3) OSB LSP no longer receives funding under ORS 9.572 et seq.

   b. **Distribution of Funds:** Presumptive funding will be based on the same distribution formula that was in effect at the enactment of 1997 Oregon Laws Chapter 801 Section 73. The Providers will be encouraged to utilize provisions c. and d. of this Section to modify grants and subcontract to meet unmet needs, to provide services to the under-served populations and to encourage a full range of services throughout Oregon.
c. Modification of Grants: A Provider receiving presumptive funding may request that the OSB LSP transfer funds allocated to it to another Provider receiving presumptive funding in order to maintain the existing statewide level of service or to improve the statewide availability of services. The OSB LSP will consider the request and submit its recommendation to the BOG.

d. Subcontracting of Funds: Providers may subcontract with others to provide specific services or to enhance services under the following conditions:

1) The subcontract is for no more than one year;

2) All subcontracts must be approved by the OSB when the aggregate total of the subcontracts for the year or when any one subcontract equals or exceeds $50,000 or is greater than 25% of the Provider’s annualized grant;

3) The subcontract is for services within the parameters of these Standards and Guidelines;

4) The subcontract includes language insuring compliance with Sections III. C. 1, 3, 4 and III. F. of these Standards and Guidelines if the subcontract is with an organization, other than a current Provider, providing legal services to low-income people, or with a law firm or attorney;

5) The Provider must include provisions to obtain the needed information on the services performed by subcontract for inclusion in its annual report; and

6) For all subcontracts, the Provider must give the OSB LSP 30 days’ notice of intent to subcontract along with a copy of the proposed subcontract.

2. Additional Funds: If there are funds over those allocated for presumptive funding, the OSB LSP may award those funds to current Providers or applicants who demonstrate the ability to provide services that address the unmet needs and emerging needs of low-income Oregonians and the needs of the uncounted and under-served, low-income populations. The OSB LSP will determine the process for application for those funds.

B. Performance Evaluation of Providers

The OSB LSP has the responsibility to ensure that filing fees funds are effectively being used to provide high-quality legal services to low-income Oregonians. The Annual Reporting Requirements and the Accountability Process are designed to provide the OSB LSP with the information necessary for the oversight required by Statute and not to be unduly burdensome on Providers.

All oversight activities shall be conducted in accordance with the American Bar Association’s Standards for Monitoring and Oversight of Civil Legal Services Programs.
C. Annual Reporting Requirements

1. Annual Audit: All Providers shall annually undergo a financial audit by an independent auditor, which meets generally acceptable accounting practices. A copy of the final audit report shall be submitted to the OSB LSP.

2. Annual Report: Each Provider shall annually file with the OSB LSP a report detailing its activities in the previous year. The report will be due by the first day of October and needs to contain the following information in the requested format:
   a. The numbers and types of cases and matters in which legal services were delivered;
   b. A listing of the Provider’s staff and Governing Body;
   c. A copy of its budget;
   d. A narrative description of the Provider’s operations, including a description of its needs assessment, priority setting, and grievance processes, which is sufficient to demonstrate that the Provider is in compliance with these Standards and Guidelines.

A Provider may comply with this requirement by submitting copies of reports or applications to the Legal Services Corporation, the Oregon Law Foundation or other funding agencies that provide the requested information.

D. Accountability Process

1. Process: The process will focus on the effectiveness of the providers in meeting the needs of individual clients and the larger client community, and in the development and use of resources. The goals of the review are to assure compliance with OSB LSP Standards and Guidelines; assure accountability to clients, the public and funders; and to assist with provider’s self-assessment and improvement.

   The process has three components:
   a. A periodic self-assessment report submitted by providers, including a narrative portion and a statistical/financial portion;
   b. A periodic accountability report provided by the OSB LSP to the OSB Board of Governors and other stakeholders summarizing the information from the providers’ self-assessment reports and other information including ongoing contacts with providers by OSB LSP staff and annual program financial audits; and
   c. Ongoing evaluation activities by the OSB LSP including peer reviews, desk reviews, ongoing contacts and other evaluation activities consistent with the OSB LSP Standards and Guidelines.
E. Complaint Procedure

1. Complaints about Legal Services Providers

   a. Each Provider under the OSB LSP is required to have a written internal grievance procedure to address complaints about the manner or quality of legal assistance provided in individual cases or about the denial of legal assistance in individual cases. Any such complaint received by the OSB LSP will be directed to the Providers’ internal process except when there appears to be a pattern to the complaints or when the complaint falls into one of the categories listed below. Providers will furnish the OSB LSP with the resolutions to the referred complaints.

   b. Ethics complaints and malpractice claims will be referred to the appropriate department of the Bar.

   c. Complaints that Providers are acting outside the scope of the statute, ORS 9.574, not in compliance with these Standards and Guidelines, or misusing funds will be addressed by the OSB LSP’s Committee or Grievance Committee through the Director of the OSB LSP.

   d. Complaints regarding the overall quality of legal assistance or the performance of the Provider will be addressed by the OSB LSP Committee or Grievance Committee through the Director of the OSB LSP.

   e. The OSB LSP Committee, the Executive Director of the Bar, and the General Counsel of the Bar will be notified of the complaints against Providers. A listing of all complaints, which will include synopses and resolutions, will be kept by the OSB LSP Program Director.

   f. Each complaint will be investigated (except ethics and malpractice complaints which will be referred to the appropriate body) and responded to timely. If a Provider is found not to be in compliance with these Standards and Guidelines, the procedure under Non-Compliance by Provider (F of this section) will be implemented.

2. Complaints from Applicants to the OSB LSP: Applicants who are not granted funds by the OSB LSP may make a written presentation to the Board of Governors during the OSB LSP Committee’s funding recommendation.

F. Non-Compliance by Provider

1. Informal Negotiation: When it is found that a Provider is not in substantial compliance with these Standards and Guidelines, the OSB LSP Director (the Director) will negotiate and work with the Provider to assist it in coming into compliance. This period of negotiation will last no more than 60 days and no less than 15 days.

The Director will notify the OSB LSP Committee and the OSB Executive Director that the Provider is out of compliance prior to formal notice being given.
2. **Formal 30 Day Notice:** If the Provider continues to be out of substantial compliance, the Provider and the Provider's Board Chair will be given a formal 30 day written notice that details how it is out of compliance and the steps necessary to achieve compliance. The Director will continue to assist the Provider in resolving the problem.

3. **Mediation:** If after 30 days from the receipt of the formal notice, the Provider still has not demonstrated compliance, the Director will immediately send a second notice to the Provider and the Provider's Board Chair, pursuant to ORS 9.576(2). The second notice will list three names of mediators and give the Provider 15 days from receipt of the second notice to agree to one of the mediators or suggest another mediator. If the Provider and the Director cannot agree on a mediator within the 15 day period, the Director will petition the presiding judge for a judicial district to appoint a mediator.

In the mediation, the OSB LSP will be represented by the Director or by the Chair of the OSB LSP Committee. The Provider will be represented by its Executive Director or Board Chair. Within one week of the mediation, a written decision will be forwarded to the OSB LSP Committee, the OSB Executive Director, the OSB Board of Governors and the Provider's Board Chair.

4. **Hearing:** If the mediation fails to produce a resolution in the matter, the Director shall give the Provider and Provider’s Board Chair a written notice of hearing pursuant to ORS 9.576(3). The hearing will be held no sooner than 30 days after Provider's receipt of notice of hearing.

The Provider will have the opportunity to present evidence that it has come into compliance or is making satisfactory progress towards compliance. The OSB LSP Committee will make up the hearing panel. Prior to suspension of funding, a written report will be presented to the OSB Board of Governors and OSB Executive Director within 5 days after the hearing is held which outlines the facts and decision. If after the hearing, the OSB LSP Director determines that based upon the written report, the provider is not in compliance with these Standards and Guidelines and that the provider has failed to show satisfactory progress toward achieving compliance, the OSB LSP Director shall suspend further funding of the program until such time that the provider makes a showing of compliance. ORS 9.576(3).

5. **Suspension of Funding:** If the report indicates that the Provider is still not in compliance and is not making satisfactory progress towards compliance based on the decision of the hearing, the Director shall suspend funding until the Provider is able to demonstrate compliance. Notice of suspension shall be served on the Provider in person or by certified mail and will be effective immediately upon service.

The OSB LSP Director, in consultation with the OSB LSP Committee, the OSB Executive Director and the OSB General Counsel, will determine if during the suspension all or part of the suspended funds should be used to contract with another Provider for legal services. If the Provider continues to provide legal services as defined under the funding agreement during the suspension, any unused funds accrued during the suspension will be paid to the Provider.
6. **Termination of Services**: If the Provider terminates its provision of legal services as defined under these Standards and Guidelines, funding will cease and all unexpended funds shall revert back to the OSB LSP. The OSB LSP Committee will meet to determine the reallocation of those funds to other Providers or to new applicants.
Legal Services Program

9.572 Bar to establish Legal Services Program; director; advisory and technical committees.

(1) The Oregon State Bar shall by rule establish a Legal Services Program. The program shall provide standards and guidelines for legal service providers receiving funding from the program. The rules shall also provide methods for evaluating legal service providers. Funding received under the program may be used only for the provision of legal services to the poor without charge and for expenses incurred by the Oregon State Bar in the administration of the Legal Services Program.

(2) The Oregon State Bar shall appoint a director of the Legal Services Program established under this section. The bar shall prescribe the duties of the director and fix the salary of the director.

(3) The Oregon State Bar may establish any advisory or technical committees it deems necessary to advise the bar in establishing and operating the Legal Services Program.

[1997 c.801 §73; 2011 c.595 §99]

9.574 [1997 c.801 §72; 2003 c.737 §98; repealed by 2011 c.595 §97a]

9.576 Review of providers; mediation; hearing; suspension of funding.

(1) The director of the Legal Services Program appointed under ORS 9.572 shall periodically review legal service providers who receive funding from the program. If the director determines that there are reasonable grounds to believe that a provider is not in substantial compliance with the standards and guidelines adopted under ORS 9.572, the director shall negotiate with the provider in an attempt to bring the program into compliance.

(2) If the director of the Legal Services Program is unable to negotiate satisfactory compliance with the standards and guidelines of the program established by the Oregon State Bar under ORS 9.572, the director shall give the provider 30 days in which to bring the program into compliance. If the director concludes that the program is not in compliance at the end of the 30-day period, the matter shall be submitted to mediation. The director and the provider shall jointly select a mediator. If the director and provider are unable to select a mediator within 15 days after the expiration of the 30-day period, any presiding judge for a judicial district may appoint a mediator upon the petition of the director.

(3) If mediation under subsection (2) of this section fails to produce a resolution of the matter, the director shall give the provider notice that a hearing will be held not sooner than 30 days after the date the notice is given. If, after hearing, the director determines that the provider is not in compliance with the standards and guidelines of the program and that the

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provider has failed to show satisfactory progress toward achieving compliance, the director shall suspend further funding of the program until such time as the provider makes a showing of compliance.

[1997 c.801 §74; 2011 c.595 §100]

9.577 Legal Aid Account.

(1) The Legal Aid Account is established in the General Fund of the State Treasury. All moneys in the account are continuously appropriated to the State Court Administrator for the purpose of the distributions required by this section. Interest earned by the account shall be credited to the General Fund.

(2) Each month, the State Court Administrator shall transfer to the Legal Aid Account, from amounts collected by the State Court Administrator as fees and charges in the circuit courts, the amounts necessary to make the distributions required by subsection (3) of this section.

(3) Each biennium, the State Court Administrator shall distribute to the Oregon State Bar $11.9 million from the Legal Aid Account. Distributions under this section shall be made by the State Court Administrator in eight quarterly installments of equal amounts, with the first distribution to be made as soon as possible after July 1, 2011. Amounts distributed to the Oregon State Bar under this subsection may be used only for the funding of the Legal Services Program established under ORS 9.572.

[2011 c.595 §3a]

Note: 9.577 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 9 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

9.578 Other funding sources.

The Oregon State Bar may apply for, accept and expend moneys from any public or private source, including the federal government, made available for the purpose of establishing or funding legal service programs in Oregon.

[1997 c.801 §75]
Appendix A2 – Statutory Authority – Funding

Statutory Allocation

9.577 Legal Aid Account.

(1) The Legal Aid Account is established in the General Fund of the State Treasury. All moneys in the account are continuously appropriated to the State Court Administrator for the purpose of the distributions required by this section. Interest earned by the account shall be credited to the General Fund.

(2) Each month, the State Court Administrator shall transfer to the Legal Aid Account, from amounts collected by the State Court Administrator as fees and charges in the circuit courts, the amounts necessary to make the distributions required by subsection (3) of this section.

(3) Each biennium, the State Court Administrator shall distribute to the Oregon State Bar $11.9 million from the Legal Aid Account. Distributions under this section shall be made by the State Court Administrator in eight quarterly installments of equal amounts, with the first distribution to be made as soon as possible after July 1, 2011. Amounts distributed to the Oregon State Bar under this subsection may be used only for the funding of the Legal Services Program established under ORS 9.572.

[2011 c.595 §3a]

Note: 9.577 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 9 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

Unclaimed Lawyer Trust Account Funds

98.386 Deposit of funds.

(1) Except as provided in subsection (2) of this section, all funds received under ORS 98.302 to 98.436 and 98.992, including the proceeds from the sale of unclaimed property under ORS 98.382, shall be deposited by the Department of State Lands in the Common School Fund Account with the State Treasurer. Before making the deposit the department shall record the name and last-known address of each person appearing from the holders’ reports to be entitled to the unclaimed property and the name and last-known address of each insured person or annuitant, and with respect to each policy or contract listed in the report of a life insurance corporation, its number, the name of the corporation, and the amount due.

(2) Any amounts identified as lawyer trust account funds in the report required by ORS 98.352 shall be paid or delivered by the person holding the amounts to the Oregon State Bar along with a copy of the report. All amounts paid or delivered to the Oregon State Bar under this section are continuously appropriated to the Oregon State Bar, and may be used only for
the funding of legal services provided through the Legal Services Program established under ORS 9.572, the payment of claims allowed under ORS 98.392 (2) and the payment of expenses incurred by the Oregon State Bar in the administration of the Legal Services Program.

(3) Before making a deposit to the credit of the Common School Fund Account, the department may deduct:

(a) Any costs in connection with sale of unclaimed property;

(b) Any costs of mailing and publication in connection with efforts to locate owners of unclaimed property as prescribed by rule; and

(c) Reasonable service charges.

[1957 c.670 §20; 1983 c.716 §16; 1989 c.183 §2; 1993 c.694 §15; 2009 c.462 §2]

Pro Hac Vice Fees

9.241 Practice of law by attorneys licensed in other jurisdictions; rules; fee.

(1) Notwithstanding ORS 9.160, the Supreme Court may adopt rules to govern the appearance in judicial and administrative proceedings by attorneys who have not been admitted to practice law in this state. Subject to those rules, an attorney who has not been admitted to practice law in this state may appear as counsel for a party in an action or proceeding before a court, or may appear as counsel for a party in an administrative proceeding, if the attorney is associated with an active member of the Oregon State Bar.

(2) Notwithstanding ORS 9.160, the Supreme Court may adopt rules pursuant to the procedures established by ORS 9.490 that allow attorneys who have not been admitted to practice law in this state to practice law in Oregon on a temporary basis, including performing transactional or prelitigation work.

(3) The Supreme Court may by rule require the payment of a fee by an attorney appearing as counsel for a party in an action or proceeding before a court under the provisions of subsection (1) of this section. All amounts collected from any fee imposed by the Supreme Court under the provisions of this subsection shall be deposited with the Oregon State Bar and are continuously appropriated to the Oregon State Bar. Amounts appropriated to the Oregon State Bar under this subsection may be used only for the funding of legal services provided through the Legal Services Program established under ORS 9.572 and for expenses incurred by the Oregon State Bar in the administration of the Legal Services Program and in collecting fees imposed under this subsection.

[1993 c.213 §1; 2001 c.223 §1; 2003 c.260 §5]
Cy-près Awards

**ORCP 32 O – Payment of damages.**

As part of the settlement or judgment in a class action, the court may approve a process for the payment of damages. The process may include the use of claim forms. If any amount awarded as damages is not claimed within the time specified by the court, or if the court finds that payment of all or part of the damages to class members is not practicable, the court shall order that:

1. At least 50 percent of the amount not paid to class members be paid or delivered to the Oregon State Bar for the funding of legal services provided through the Legal Services Program established under ORS 9.572; and

2. The remainder of the amount not paid to class members be paid to any entity for purposes that the court determines are directly related to the class action or directly beneficial to the interests of class members.

[§O added by 2015 c.2 §3]
Appendix B – Oregon State Bar Bylaws, 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 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.
OSB CIVIL LEGAL SERVICES TASK FORCE
FINAL REPORT

May, 1996

This Appendix Contains the Key Findings and Recommendations from the Report. For a Full Copy of the Report Please call the OSB at 620 0222 - Ext. 323
OSB CIVIL LEGAL SERVICES TASK FORCE
FINAL REPORT

May, 1996

Chair: Stephen S. Walters, Portland
Members: Hon. David V. Brewer, Eugene
         Hon. Neil R. Bryant, Bend
         Edward L. Clark, Jr., Salem
         Michael E. Haglund, Portland
         Hon. Jack L. Landau, Salem
         James T. Massey, Sisters
         Katherine A. McDowell, Portland
         Katherine H. O’Neil, Portland
         Lawrence B. Rew, Pendleton
         Martha L. Walters, Eugene

BOG Liaison: Barrie Herbold
Legal Services Program Liaison: Ira Zarov
OSB Staff Liaison/Reporter: Ann Bartsch
OSB CIVIL LEGAL SERVICES TASK FORCE
FINAL REPORT

Stephen S. Walters, Chair
May 24, 1996

Introduction; Task Force Charge

In the summer of 1995 Oregon, like every state in the United States, faced a crisis in its delivery of civil legal services to low-income residents. The new Congress was considering legislation which would ultimately eliminate the Legal Services Corporation, the federal entity which provides funding to local legal services programs (including four programs in Oregon). At the very least, it appeared inevitable that 1996 federal funding for legal services would be reduced by as much as 35% from 1995 levels. Congress was also prepared to impose severe restrictions on the activities of all programs receiving LSC funding, which would have a serious impact upon the ability of LSC program attorneys to provide a full range of high quality legal services to their clients.

In response to this crisis, OSB President Judy Henry, in consultation with Chief Justice Wallace P. Carson, appointed the OSB Civil Legal Services Task Force. Stating that "the organized bar has an important role to play in assisting our programs in planning for the future and in assuring the continuing availability of legal assistance to all of the people of our state," the OSB gave the Task Force the general charge to "develop a plan for civil legal services in Oregon for 1996 and future years, which will, when implemented, effectively provide a full range of legal services to low income Oregonians with all available resources." Steve Walters of Portland was appointed Chair of the Task Force; its members were Judge David Brewer, Neil Bryant, Ned Clark, Mike Haglund, Judge Jack Landau, Jim Massey, Katherine McDowell, Katherine O’Neil, Larry Rew, and Martha Walters. Barrie Herbold served as liaison to the BOG. Ann Bartsch was the OSB staff liaison and reporter. Ira Zarov of Oregon Legal Services served as the liaison to the legal services programs.

Following its initial meeting in September, the Task Force organized itself into four subcommittees, each with a separate charge. Each subcommittee was asked to invite participation and otherwise to secure information from other interested persons, including program board and staff, representatives of the Multnomah Bar Association, and the OSB Low Income Legal Services Committee. (A complete list of all participants is attached to this report as Appendix 5.) The full Task Force met periodically to review the recommendations as they were developed by the subcommittees.

Task Force participants contributed hundreds of volunteer hours to the consideration and final drafting of the reports and recommendations which follow. Complete reports from all of the Task Force subcommittees are included as appendices to this report. The following is a digested description of each subcommittee’s activities, along with a listing of its key findings.
and recommendations.

**Subcommittee 1: Client Need/Priorities; Delivery System**

This subcommittee was chaired by Judge David Brewer of Eugene. The subcommittee was asked to gather information on Oregon's existing civil legal services delivery system, for use by the other subcommittees, addressing the following questions:

- What legal needs of client community are programs currently addressing? Are there any areas of need which are not being addressed, and which should be incorporated into Oregon's legal services delivery system?

- What delivery systems are in place in Oregon to meet these needs? What systems could be developed or expanded?

The subcommittee was also asked to develop an overall mission statement for Oregon's civil legal services delivery system, for adoption by the full Task Force and ultimately by the Board of Governors, as well as by other entities concerned with civil legal services (e.g. the Oregon Law Foundation).

The subcommittee's initial report and Mission Statement were presented to the full Task Force in December and to the Board of Governors in January, 1996. That document is attached as Appendix 1 to this report. The Mission Statement was also adopted by the Board of Directors of the Oregon Law Foundation in February.

**Key Findings:**

1. Not more than one third of the legal needs of Oregon's low income population were being addressed by legal services programs before the funding cuts.

2. However, as of December, 1995, Oregon did have in place a legal services delivery system capable of providing a full range of civil legal services to low income Oregonians. Key components of that system were federally funded LSC programs and a network of locally based volunteer attorney programs providing supplemental services to the staffed offices. That system will be undercut by the adoption of pending federal legislation providing for severe funding cuts to LSC programs, and for severe restrictions on the activities of those programs which were inconsistent with the Task Force's mission statement for civil legal services.

**Subcommittee 2: Structure and Organization**

This subcommittee was chaired by Jim Massey of Sisters. It was asked to address the following questions:
Will existing legal entities and organizations be able to perform or facilitate the performance of the work identified by the previous working group? Are there opportunities for resource savings through reconfiguration of existing programs? If the existing structure will not be able to perform the work, what other entities can be developed to perform it?

This subcommittee met five times in the fall and winter of 1995-96. It invited board and staff representatives of Oregon’s existing, and developing, legal aid and volunteer attorney programs to meet with the full Task Force to share their plans for necessary restructuring in light of the anticipated LSC funding cuts and restrictions on program activities. The subcommittee made no recommendations on questions it considered to be internal to the programs and their boards of directors, e.g. whether particular programs should or should not merge. However, subcommittee members did participate in ongoing discussions which were taking place among the programs, and the subcommittee’s meetings provided an opportunity for strategizing and planning among the programs, bringing in the expertise of the broader legal community.

The subcommittee’s full report is attached as Appendix 2. Its key findings and recommendations are as follows.

**Key Findings:**

1. In late April, 1996, Congress enacted HR 3019, the fiscal year 1996 appropriations bill which includes funds for the Legal Services Corporation. The legislation incorporated a long-anticipated series of restrictions on activities of LSC funded programs, including prohibition of most legislative and administrative advocacy, participation in class actions or welfare reform litigation, and representation of undocumented aliens (including undocumented migrant workers). The legislation further provides that LSC recipient programs may not use non-LSC funds, including state generated funds, to undertake any of these activities.

   The 1996 restrictions on LSC funding and substantive work threaten the historic commitment to key Oregon legal services delivery system values.

2. Oregon’s four LSC funded programs (Oregon Legal Services, Multnomah County Legal Aid Service, Marion-Polk Legal Aid, and Lane County Legal Aid) will continue to receive LSC funding, and will comply with the new restrictions in conducting their work on behalf of low-income Oregonians.

   Consistent with the Task Force’s mission statement for Oregon’s civil legal services delivery system, Oregon’s legal community must take responsibility for developing and nurturing other non-LSC entities capable of providing services which fill in the gaps
which the new Congressional restrictions will otherwise impose.

3. As of the date of this report, the following structural changes have been made (or are in the process of being made) in Oregon's civil legal services delivery system.

**Organization of Full Service Law Centers** In response to the imposition of restrictions on programs which receive Legal Services Corporation funding, new entities have been and are being organized to provide critically important services to clients, which LSC recipients will no longer be able to provide. Oregon Law Center has been incorporated in Portland and will receive funding from OLIF and other sources. The Lane County Law and Advocacy Center has been established in Eugene. A similar "Full Service Law Center" may be established to serve Marion and Polk counties.

**MCLAS/OLS Reconfiguration** Effective May 13, 1996, Oregon Legal Services' Central Support Office and Multnomah County Legal Aid Service are sharing office space (at the former MCLAS office), resulting in an estimated savings of about $100,000 per year. The two programs are discussing possible merger later this year. Marion-Polk. There have been no structural changes so far at Marion-Polk Legal Aid, although the question of merger with other entities is on the table. One attorney position has been lost because of resource limitations.

**Jackson County** There have been no structural changes so far in Jackson County (Center for Non-Profit Legal Services). A ballot measure which would have provided county funding for the Center and other social service agencies, was defeated by the voters on May 21. It appears that it will be necessary for the program to continue to receive LSC funding as a subgrantee of Oregon Legal Services for its private attorney involvement program.

**Campaign for Equal Justice** The Campaign for Equal Justice is now separately incorporated, free-standing 501(c)(3) corporation.

**Volunteer Lawyers Project** The Volunteer Lawyers Project in Multnomah County considered a merger with Multnomah County Legal Aid, but declined to do so in light of the restrictions which would be placed on its activities. It now appears that parts of VLP's program will be taken up by MCLAS (along with financial support from the Multnomah Bar Association), and others will pass to the newly organized Oregon Law Center.

**Staffing losses** Programs report various levels of staff attrition in the wake of the Congressional action. So far, one local office -- Oregon Legal Services' branch office in Klamath Falls -- has been closed. Most full-time staff at Multnomah County Legal Aid Service have been reduced to 80% time.
Key Recommendations:

1. Three fundamental premises should drive organizational and structural issues:

   A. Quality and Independence

   Legal services delivery in Oregon should not be driven by or be dependent on LSC funding or mandates. Legal services programs will continue to be an important and vital resource — of many — for providing access to the justice system for low income Oregonians.

   B. Preservation of Funding Allocation

   Funding levels for service to low-income client groups no longer eligible for LSC funded services, and for all other restricted forms of legal services representation, including welfare reform, class litigation, legislative and administrative advocacy, group representation and client education and training, must be maintained at levels sufficient to provide adequate representation to low-income clients.

   C. Independence and Access

   Planning and selection of substantive work, and prioritization of delivery to particular client groups or populations, should be based upon sound commitment to principles of equal access to justice consistent with DR 7-101 and EC 2-26, 27 and 28 of the Code of Professional Responsibility, and without regard to the disfavored social, political or economic status of any eligible client.

2. Consortium for Delivery of Services

   There should be an ongoing independent consortium of Oregon legal aid providers. Membership would be open to any organization providing legal services to low income Oregonians, as well as any organization which sponsors the delivery of such services (e.g. the MBA). The consortium would provide a forum for ongoing identification of unmet client needs to which resources should be targeted, while avoiding duplication of efforts by member programs. The consortium would allow for coordination and integration of key functions across program lines, and facilitate communication among program funding sources.

   The consortium should include:
Current LSC recipient programs
Non-profit legal centers
Public Interest Law Firms
Law school clinics
Campaign for Equal Justice
Bars, particularly OSB and MBA

3. Reorganization/Restructuring for Efficiency of Delivery

The existing legal services programs should continue the ongoing process of internal evaluation to identify means of streamlining, reducing costs and gaining new efficiencies. The programs should continue to evaluate, within the consortium context, whether program mergers, consolidation or sharing of particular functions or services or development of new means or methods of access and delivery are appropriate. Areas of continued discussion and evaluation should be:

- Merger;
- Consolidation of programs/services/shared systems; and
- Appropriate use of technology.
- Intake and referral improvements;
- Coordination among programs with the Bar;
- Coordination with ADR programs.

The various programs should continue to inform and advise one another as this process continues.

4. Development of Non-Restricted Entities

In response to the imposition of restrictions (on and after April 26, 1996) on programs which receive Legal Services Corporation funding, new entities have been and are being organized to provide critically important services to clients, which LSC recipients will no longer be able to provide. Oregon Law Center has been incorporated and will receive funding from OLF and other sources; the Lane County Law and Advocacy Center has been established in Eugene. The Task Force makes the following recommendations regarding these “Full Service Law Centers:”

Should be an entity or entities capable of performing legislative and
administrative advocacy.

Should be an entity or entities capable of providing representation to underserved populations with cultural barriers, language barriers, or local access programs, e.g. migrant workers. Should be capable of providing services all over the state.

Should develop pro bono capacities of the bar statewide — not just as supplement (to take individual cases overflowing from legal services programs), but in such areas as class actions, legislative advocacy, policy development, low income housing development, etc.

Should include all LSC restricted work, particularly class actions on issues affecting low income populations, such as welfare reform and administration of public benefit programs.

As indicated above, the question whether there should ultimately be one such program, with branch offices in key locations (e.g. Salem) was left for study by the OSB legal aid oversight group.

5. Development/Expansion of New Resources

The Subcommittee recommends development and expansion of new and non-legal services resources to complement consortium activities:

There are currently some regional hotlines operated by all legal services programs. Development of additional hotlines could be beneficial; a prime topic would be a (statewide) Child Support hotline.

Local and statewide bar groups should expand their pro bono efforts, working in cooperation with offices statewide. As a corollary, all programs should consider using emeritus attorneys in their area, on the model of the “ELVIS” program in Marion-Polk Legal Aid Service.

There should be strategic, thoughtful reassignment of OLF funding, filing fee surcharge resources, and other available funds to provider programs.

Courts, Bar and OLF should continue to support efforts to increase ADR resources (e.g. farmworker mediation program) and self help mechanisms (Oregon Family Law Task Force is investigating the Maricopa County model).

The OSB should expand its existing Tel-Law program to cover new topics.
The OSB Order Desk/Pamphlet distribution efforts could include legal aid brochures, which are already available from the programs.

OSB should expand its Modest Means program as far as possible.
6. OSB Oversight and Support

The Oregon State Bar should take on an expanded role in oversight and provision of technical assistance to legal aid programs. This oversight/technical assistance role should be assigned to a small group (not more than five persons) who would be directly accountable to the Board of Governors. Members of the group should be OSB members who are knowledgeable in the areas of law office management and legal services/pro bono delivery, and who are independent of the programs. The group should develop defined standards for ongoing assessment of the programs’ operations based on existing national standards (e.g. ABA’s SCLAIID standards, LSC Performance Criteria, Code of Professional Responsibility). Their assessments should concentrate on outcomes, with the emphasis on achieving quality results for clients.

If the Oregon legislature is willing to delegate allocation of filing fee surcharge revenues to the Oregon State Bar Board of Governors, this group would be an appropriate entity to take on this task, or at least, to evaluate and make recommendations to the BOG. (A significant minority of Task Force members believe that, while it is critically important that the OSB assume an oversight/technical assistance role with respect to civil legal services programs, this role should be separated from that of allocation of actual amounts of filing fee surcharge funding.)

Subcommittee 3: Funding

This subcommittee was chaired by Katherine O’Neil of Portland. The subcommittee was asked to address the following questions:

What current funding sources are in place to support legal services delivery in Oregon? How can they be expanded to meet future needs? What new financial resources can be developed to support a reconfigured delivery system?

The subcommittee gathered information from each of the programs on their present financial base — components and amounts, short term and long term financial prospects. The subcommittee gathered similar information from the major non-LSC funding sources for legal services and volunteer attorney programs in Oregon, specifically the Campaign for Equal Justice, the Oregon Law Foundation, the Multnomah Bar Association, and the legislature (the source of the filing fee surcharge legislation). Members of the group also researched funding mechanisms which have had success in other states, using information supplied by the American Bar Association’s PERLS (Project to Expand Resources for Legal Services) Project. The goal was to develop insights for the BOG on how the organized bar could best step in and help alleviate the anticipated shortfalls.

The subcommittee’s full report is attached as Appendix 3. Its key findings and recommendations are as follows.
Key Findings:

1. In FY 1996, funding to the Legal Services Corporation (the federal agency which funds local legal services programs across the country, was cut by approximately 30 percent, to a total of $278 million. This translates into a loss of approximately $1 million (of total 1995 funding of approximately $6 million from all sources) for Oregon’s civil legal services programs. There are proposals in the current Congress to reduce LSC funding to $141 million in FY 1997 ($1.5 million shortfall for Oregon) and to eliminate it entirely by FY ’98. If these proposals are successful, states like Oregon will be charged with all responsibility for providing civil legal services for their low income residents.

2. Oregon programs report the following projected shortfalls in their geographic service areas for 1996:

   Jackson County (Center for Nonprofit Legal Services): $70,000

   Lane County (Lane County Legal Aid Services, Lane County Law and Advocacy Center): $125,000

   Marion and Polk Counties (Marion-Polk Legal Aid): $125,000

   Multnomah County (Multnomah County Legal Aid Service): $440,000

   Remaining Oregon counties (Oregon Legal Services): $210,000

3. Oregon is relatively fortunate in having developed significant sources of non-federal funding for civil legal services at the state and local level. Non-federal funding constituted approximately 51% of the resources available to the legal aid/volunteer attorney programs in 1995. The most significant sources of in-state funding are:

   **Campaign for Equal Justice** Now incorporated as an independent 501(c)(3) entity, the Campaign solicits contributions from Oregon attorneys and law firms, and solicits grants and other assistance from a wide variety of private sector sources, on behalf of legal services programs. In 1995, a total of $322,000 was raised.

   **Filing Fee Surcharge** Pursuant to ORS 21.480-490 (appendix 3A to this report), circuit and district courts collect a surcharge on filing fees paid by moving parties in civil suits, which is paid to the legal aid program in that county by the State Court Administrator. This mechanism produces approximately $1.5 million annually.

   **Oregon Law Foundation/IOLTA** Programs providing civil legal services to low
income Oregonians have been (and should continue to be) the major recipients of funding from OLF’s IOLTA (Interest on Lawyers Trust Accounts) program. In 1996, OLF will make a total of $599,000 in grants, with approximately $496,000 going to programs in the legal services category.

Without assistance from the Oregon State Bar, the courts, and the legal community generally, these funding sources will not be able to make up the shortfall in federal funding in the foreseeable future.

Key Recommendations:

1. **Filing Fees surcharge** Oregon’s circuit and district courts will be consolidated effective January 15, 1998. Currently, legal services programs receive a surcharge on each filing fee paid into circuit court in the amount of $22.00. In cases currently being filed in district court, the surcharge is $8.50.

   The BOG should urge Chief Justice Carson to exercise his discretion to maintain the $22 filing fee for all courts after merger of Circuit and District courts in January, 1998.

   Alternately, the BOG should make its #1 Legislative agenda for the ‘97 Legislature a revision in the laws related to filing fees with the fees going to the OSB for distribution.

2. **OSB dues assessment** The FY ‘96 shortfall could be met by a $100 per attorney contribution made with the annual OSB dues. Subsequent Congressional cuts would require a greater per attorney contribution.

   The BOG should exercise its leadership and chose a method of per capita contribution among the following:

   a. Voluntary contribution collected with OSB dues: "$100 or other."

   b. Voluntary first year or so and then make it compulsory: "$100."

   c. Compulsory contribution collected with OSB dues: "$100" FY ’97, "$250" in subsequent years to make up for continued cuts in Congressional funding. With an option to do 40 hours (or another figure) of pro bono work in an OSB certified pro bono program.

   Any compulsory contribution should first be approved by the new OSB House of Delegates with a referral to the general membership following the meeting at which it is approved.
3. Greater OSB/local bar support for Campaign for Equal Justice The CEJ would greatly benefit from open, public, frequent support for CEJ from the BOG and other bar leaders. The BOG members can mention the campaign in stump speeches, write about it in all publications. Make CEJ the “lawyers’ charity,” a part of the legal culture. If BOG members and the county bar presidents did an hour of intake at a legal aid office, they would gain a perspective that would fire their support of the CEJ.

4. Increase income to OLF/IOLTA The Oregon Law Foundation should be asked to pursue various mechanisms, for which national models exist, to increase IOLTA income. These include “sweep” accounts for IOLTA funds (cash management or sweep account which sweeps all or part of the IOLTA balance that is over a specified threshold amount from low-yield checking accounts into an investment in Treasury backed securities on a daily basis, producing higher yields for the IOLTA account); ongoing negotiations with banks for higher interest rates, and lower service charges, paid on IOLTA accounts.

The Oregon State Bar should assist OLF in investigating mechanisms for increasing income to the Foundation through legislation providing for, among other possibilities: direction of interest on funds in the hands of title insurance companies to OLF; direction of a portion of state abandoned property funds to OLF; direction of unclaimed client trust funds to OLF.

5. Potential funding sources for consideration by legal services programs include implementation of sliding scale fees for service to clients in the moderate income range (125% - 200% of poverty guidelines); local and county bond issue funding (Jackson County example); retainer contracts with Indian tribes and social service agencies; and gaming revenues.

Subcommittee 4: Ethical Responsibility/Quality Assurance/Transition

This subcommittee was chaired by Judge Jack Landau of the Court of Appeals. It was asked to consider how the bar could best assist the LSC programs’ attorneys in meeting their ethical responsibilities to clients in light of the restrictions imposed by Congress.

The subcommittee also reviewed a memorandum from James N. Gardner of Portland, outlining a potential 10th Amendment challenge to the conditions and restrictions imposed on the Legal Services Corporation and its grantees by Congress.

The subcommittee’s full report is attached as Appendix 4. Its key findings and recommendations are as follows.

Key Findings:
1. ABA Formal Opinion 96-399 In February, 1996, the American Bar Association
Standing Committee on Ethics and Professional Responsibility released Formal Opinion
96-399, "Ethical Obligations of Lawyers Whose Employers Receive Funds for the
Legal Services Corporation to their Existing and Future Clients When such Funding Is
Reduced and When Remaining Funding Is Subject to Restrictive Conditions." At
approximately the same time, Oregon Legal Services prepared its own proposed
response to the anticipated funding and practice restrictions. Rather than duplicate the
foregoing efforts, the subcommittee focused on a review of the analysis and
recommendations of the ABA Standing Committee and OLS.

In general, the OLS policy appears to follow from, and is entirely consistent with, the
formal opinion of the ABA Standing Committee.

Copies of ABA Formal Opinion 96-399, and of OLS' internal memorandum
"Implementing New Restrictions," are attached to the full subcommittee report at
Appendices 4A and 4B.

Key Recommendations

1. The ABA Standing Committee's formal opinion is, of necessity, based on the Model
Rules and not on the rules of professional responsibility governing any particular
jurisdiction. So far as the Task Force is aware, however, the Oregon Code of
Professional Responsibility is consistent with the Model Rules in all respects material to
the questions before the ABA Standing Committee. The Task Force has little reason to
believe that the ethical obligations of Oregon legal services lawyers will be substantially
different under the Oregon Code and, therefore, regards the ABA Standing
Committee's formal opinion as a useful source of advice to legal services lawyers in
this state. Nevertheless, the Task Force believes that it may be of value to Oregon
lawyers to have the Oregon State Bar Legal Ethics Committee review the ABA
Standing Committee's formal opinion in the light of the particular requirements of the
Oregon Code, to determine the extent to which the obligations of Oregon legal services
attorneys are anticipated to be different than those of lawyers generally in the context of
the Model Rules. Accordingly, the Task Force has prepared an opinion request to that
effect.

2. The Task Force has considered, at least preliminarily, the possibility of other responses
to the anticipated funding and practice restrictions than accommodation through
modification of legal services policies and practices. Of particular note is the
suggestion that the constitutionality of the restrictions be challenged in federal court.
Although the Task Force expresses no opinion on the likelihood of success of such a
challenge, it does recommend that the option be explored by the appropriate authorities.
In essence, the theory of the proposed lawsuit is that the imposition of federal restrictions on the provision of legal services violates the Tenth Amendment to the federal Constitution. The major premise of the argument is that the operation of state court systems is at the core of powers reserved to the states by the Tenth Amendment and that the operation of state court systems includes the promulgation and enforcement of rules of professional responsibility. The minor premise of the argument is that the anticipated restrictions on legal services practice will necessitate a modification of such rules of professional responsibility. The key, of course, is the minor premise, namely, whether the expected practice restrictions actually require a modification of state professional responsibility rules or other matters properly regarded as core areas of state sovereignty.

Assuming the potential viability of a Tenth Amendment claim, the question arises: Who would be the proper plaintiff(s)? In all likelihood, the proper party plaintiff would be the State of Oregon, or the Chief Justice, or both; in all events, the matter would be subject to the advice and representation of the Attorney General. The Task Force recommends that the Attorney General be requested to evaluate the possibility of initiating a lawsuit to challenge the constitutionality of the anticipated funding and practice restrictions.

Conclusion

Hundreds of hours of volunteer effort, energy, and emotion have gone into the creation of this final report. The issues with which the Task Force has wrestled with are critically important to the future of access to justice for low-income Oregonians, both in the short and the long term. The Task Force members urge the Board of Governors to put these issues at the head of the bar’s agenda for this year and the years to come. As the BOG’s original charge to the Task Force stated, the organized bar has a critically important role to play in assuring the continuing availability of legal assistance to all of the people of our state. We urge the Board to take up this work.
# Appendix D – Declaration of Angel Lopez and Charles Williamson

UNITED STATES DISTRICT COURT FOR THE 
EASTERN DISTRICT OF NEW YORK

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<th>CARMEN VELAZQUEZ, et al.,</th>
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DECLARATION OF ANGEL LOPEZ AND CHARLES WILLIAMSON

Angel Lopez and Charles Williamson, declare as follows:

1. I, Angel Lopez, am the President of the Oregon State Bar (“OSB”).

1
2. I, Charles Williamson, am the President Elect of the Oregon State Bar, and will serve as President in 2003. I am currently a member of the Board of Governors of the OSB and am the Chair the OSB Access to Justice Committee.

3. We make this declaration on behalf of the Oregon State Bar in support of the plaintiffs' request for a preliminary injunction enjoining the enforcement of restrictions imposed by the Legal Services Corporation ("LSC") on the professional activities of lawyers employed by non-profit corporations receiving funding from LSC, especially when those activities are funded entirely from non-LSC private and governmental sources, because the Bar believes that the restrictions interfere significantly with OSB's effort to use state funding to provide comprehensive legal services. More specifically, we make this declaration to demonstrate that LSC's program integrity regulation requirement of physical separation between LSC-funded and non-LSC-funded activities imposes an undue burden on First Amendment activities of legal services providers. Because the separation requirement inevitably imposes significant costs, the plaintiffs should be permitted to challenge LSC's claimed justification for those costs, and should not be required to exhaust administrative remedies prior to testing the legality of the requirement. Finally, we make this declaration to describe particular ways in which certain other legal services restrictions infringe on plaintiffs' First Amendment rights.

4. The Oregon Legislature directed the Oregon State Bar to by rule establish a Legal Services Program to provide legal services to the poor without charge (ORS 9.572 to 9.578). The legislature funded this program through state filing fees. In 1998, OSB adopted the mission of the state legal services program as follows:

To use the filing fee revenue to fund a coordinated, statewide system of legal services centered on the needs of the client community as identified
in the Mission Statement of the OSB Civil Legal Services Task Force Final Report, May 1996, and

To use its oversight authority to work with Providers to insure that the delivery of services is efficient and effective in providing a full spectrum of high quality legal services to low-income Oregonians.

Legal services programs exist to ensure that institutions and organizations created to serve public interests and needs, particularly governmental and civic institutions, treat individuals equally no matter what their economic situation. This is not a radical notion; it is the cornerstone of American concepts of justice and fair play.

The mission of Oregon’s statewide legal services delivery system should continue to be centered on the needs of its client community. It should be expansive, recognizing that equal justice contemplates more than simply providing a lawyer in every family law or unlawful detainer case (though it certainly includes this goal as well). This mission must contemplate lawyering in its broadest sense, acknowledging that the interests of low income clients can only be served if the delivery system is dedicated to providing full and complete access to the civil justice system in a way that empowers this segment of the population to define, promote, and protect its legitimate interests. As such, the mission must be to:

* Protect the individual rights of low income clients;

* Promote the interests of low income individuals and groups in the development and implementation of laws, regulations, polices and practices that directly affect their quality of life;

* Employ a broad range of legal advocacy approaches to expand the legal rights of low income individuals and groups where to do so is consistent with considerations of fundamental fairness and dignity; and

* Empower low income individuals and groups to understand and effectively assert their legal rights and interests within the civil justice system, with or without the assistance of legal counsel.

5. The mission of the OSB Legal Services Program, as set out above, was written by the OSB Civil Legal Services Task Force. In the summer of 1995, Judy Henry, the President of the Oregon State Bar, in consultation with Oregon Supreme Court Chief Justice Wallace P.
Carson, Jr., appointed ten distinguished Oregonians to serve on the OSB Civil Legal Services Task Force and gave the Task Force the general charge to “develop a plan for civil legal services in Oregon for 1996 and future years, which will, when implemented, effectively provide a full range of legal services to low income Oregonians with all available resources.” The Task Force included several prominent private attorneys from some of the most respected firms in Oregon, a trial judge who was later appointed to the Court of Appeals, a judge from the Court of Appeals, a State Senator who was Chair of the Joint Judiciary Committee and two representatives from the OSB. The Task Force appointed subcommittees bringing in a much larger number of participants with extensive knowledge and expertise. Task Force participants contributed hundreds of volunteer hours in the consideration and final drafting of the reports and recommendations.

6. The Oregon Legislature directed OSB to provide standards and guidelines for legal service providers (ORS 9.572). The OSB guidelines require using the filing fee revenue to fund a coordinated, statewide system of legal services centered on the needs of the client community as identified in the mission statement set out above in paragraph 4. In addition, OSB adopted the “Standards for Providers of Civil Legal Services to the Poor,” as approved by the American Bar Association House of Delegates, August 1986, “Standards for Programs Providing Civil Pro Bono Legal Services to Persons of Limited Means,” as adopted by the American Bar Association House of Delegates, February, 1996, “The Legal Services Corporation Performance Criteria,” 1996 and the Oregon Code of Professional Responsibility.

7. The LSC restrictions – including restrictions on class actions, attorney fees, lobbying, and representing certain categories of clients – make it significantly more difficult for the Oregon State Bar to implement the mission, standards and goals of the state Legal Services
Program. These restrictions effectively prevent many legal services offices in Oregon from meeting key needs of their clients, both by directly restricting advocacy financed by LSC funds and by restricting advocacy financed by non-LSC funds in programs that also receive some LSC funds. The federal restrictions on the use of state money increase costs of providing state funded services to low income Oregonians, increase the administrative expense and reduce the quality of service for the reasons explained below.

8. The OSB Legal Services Program distributed approximately $2,793,000 to service providers in 2001. These funds went to twenty offices serving low income clients in all 36 counties in Oregon. Fourteen of these offices also accepted federal funding from LSC and therefore provided a limited range of legal services in compliance with the LSC restrictions. Six legal services offices in Oregon receive no federal LSC money and therefore provide a full range of legal services low income clients without the LSC federal restrictions.

9. There is inadequate funding for civil legal services in Oregon. The Oregon State Bar, Oregon Judicial Department and Office of Governor John Kitzhaber, M.D. sponsored an assessment of legal needs in Oregon that was published March 31, 2000. The needs survey established that fewer than two in ten low-income people with a need for civil legal services get legal services in Oregon (including services provided by non-profits, pro bono and private practitioners working for a fee). This determination was based on surveys of judges, lawyers, social service providers, legal service providers and low income people.

Quantity of Services

10. Based on the Oregon experience, the cost of creating and sustaining separate non-profit corporations and separate offices, as required by the LSC "program integrity" regulation, reduces the quantity of services that can be provided by the OSB Legal Services Program
because it requires increasing operating expenses necessary to rent additional space, pay for separate executive directors, pay for separate accounting departments, operate separate computer networks, and operate separate telephone systems.

11. For example, the Oregon Law Center ("OLC"), which receives funding from OSB, the Oregon Law Foundation (OLF), Campaign for Equal Justice (CEJ) and from other foundations, was established to provide unrestricted services through offices located in Portland, Ontario, Coos Bay and Grants Pass. Legal Aid Services of Oregon ("LASO") provides LSC restricted services through offices located in Portland, Bend, Pendleton, Roseburg, McMinnville, Hillsboro, Woodburn, Newport, Oregon City, and Albany. The same individuals serve on the board at LASO and the board at OLC. The two corporations maintain separate offices and do not share employees. Both non-profit corporations deliver services to low-income clients living in thirty-three of Oregon's thirty-six counties. Rural offices are paired by region so that, for example, one LSC funded office in Northeastern Oregon can refer restricted cases or clients to a state funded office located in another town within the same region. Both programs maintain separate offices located in Portland. There are administrative costs inherent in coordinating a system with two separate corporations serving a geographical area that would be better served by one. The additional administrative costs necessary to maintain the separate entities could be better used to open another rural office or to hire more staff attorneys to provide additional service to clients if LSC permitted the OSB Legal Services Program to pay for one staff attorney assigned to do class actions, seek attorney fees, work on legislative and administrative lobbying, and represent immigrants, who was permitted to work in the same office and program as a staff attorney paid for by LSC to represent individual clients.
12. In addition, there is a financial cost imposed by the LSC restriction that prohibits seeking attorney fees. Because current funding is only adequate to serve two in ten people with a civil legal problem, the OSB Legal Services Program seeks to increase the number of clients served with the state filing fee money by directing non-profit service providers to recover statutory attorney fees when available. The money earned through attorney fees is then used to increase the quantity of civil legal services available for low income clients. Attorneys funded by state filing fee money who are working for a non-profit service providers who also accept federal LSC funding cannot seek or retain attorneys fees. Money that should be available to provide more services is lost. For example, attorney fees that could be earned under statutes like the federal Equal Access to Justice Act are never collected.

Quality of Service

13. The harms caused by the legal services restrictions are compounded by Oregon’s large geographical area, widely distributed clients and limited funding. This task of providing high quality legal services throughout the state is made far more difficult or even impossible when the federal restrictions prohibit using state money to pay for restricted work that is done within an office that also receives any federal money from LSC. The federal requirement of “program integrity” requires maintaining a separate non-LSC-funded office to provide the full range of high quality legal services. It is not possible to have two legal services offices in a small rural county, and certainly not in each of the thirty-six counties in Oregon, with current funding.

14. The OSB recognizes that technological advances can help address some of the problems posed by underfunded, understaffed and restricted offices serving a large client base over vast distances. Video telephones, hotlines, pro se forms and classes, courthouse facilitators,
web sites and booklets are used legal services providers in Oregon. However, none of the technological advances are a real substitute for having a legal services office representing clients in a community. It remains crucial to have a presence in communities across Oregon. Legal services attorneys working in rural offices become an important part of the community. By their mere presence there is less likely to be major problems for low income people. Legal services attorneys living in rural communities understand local client needs, the local economy, social structure, politics and judges. They are respected by the clients, judges, office holders, social service providers, the private bar and opposing parties.

15. High quality civil legal services for the poor cannot be provided across long distances. The “separate entity” restriction has forced legal services providers in Oregon to support an OLC office in Ontario (no federal money) and an LASO office in Pendleton (some LSC federal money). For example, in theory, a person lacking eligible alien status, needing representation in a class action, requiring administrative or legislative advocacy, or bringing a case where attorneys fees are available could go to OLC in Ontario to seek legal services. There are two staff attorneys in Ontario and four staff attorneys in Pendleton. However, it is 167 miles from Pendleton to Ontario. In addition, many of the low income people in the region served by each office live even farther away. The Blue Mountains are located between the two offices with two treacherous sections of the highway often closed in winter. Low income families usually lack the reliable transportation, money for gas and time off from low wage jobs necessary to make such a trip. Lawyers have to take time to travel to court hearings that are far away; they handle fewer cases and provide lower quality legal representation because they work as outsiders in the distant community. Some routine legal services cases like domestic violence and evictions require going to court quickly on little notice. A lobbyist from another town is less
effective at city hall or with the county commissioners. Clients would receive far better service if OSB Legal Services Program money were used to finance one attorney in Ontario and one attorney in Pendleton to do the work that needs to be done to provide equal access to justice, while LSC funded three attorneys in Pendleton and one in Ontario to do the work currently permitted by LSC. Having the “program integrity” requirement precludes this approach. The same problem is repeated in Bend (241 miles to the paired OLC office in Grants Pass), Roseburg (85 miles to the paired office in Coos Bay), Newport (98 miles to the paired office in Coos Bay), Albany (69 miles to Portland), Woodburn (30 miles to Portland), and McMinnville (38 miles to Portland).

16. The LSC restriction prohibiting attorneys from seeking attorneys fee award also reduces the quality of services that can be provided to clients through Oregon’s coordinated delivery system. Oregon has many fee shifting statutes that are designed to encourage settlement and to discourage the litigation of uncertain claims. The prevailing party is entitled to attorney fees. Clients represented by an attorney who is free to seek attorney fees are better served because the parties are more likely to reach a reasonable settlement quickly. Indeed, it is sometimes essential for lawyers to move for contempt but even in those circumstances, which often are not predictable at the outset, the attorneys in LSC-funded programs are prohibited from seeking fees. Although the Oregon planning process has attempted to provide individuals with access to attorneys who can do unrestricted work, it is inevitable and unavoidable that LASO will take some cases where the client would be entitled to seek fees but for the barrier presented by the federal LSC restrictions.

17. The LSC restrictions prohibiting attorneys from working on class actions also reduces the quality of services. One of the Key Recommendations in the OSB Civil Legal
Services Final Report was to support "Full Service Law Centers" that provide all LSC restricted work, "particularly class actions on issues affecting low income populations, such as welfare reform and administration of public benefit programs." The following example is illustrative of the problem: The plaintiff alleged that a welfare office in one county had a pattern and practice of improperly processing applications for general assistance. General assistance is made available to very low income people who are extremely vulnerable, often people who have a mental disability and are not receiving any other benefits. State law required that the office adequately develop an evidentiary record when processing applications. The local welfare office was not following this requirement and was routinely denying benefits to a large number of qualified applicants.

18. Because of inadequate resources, OLC could not take the case and LASO filed a lawsuit in state court seeking an order directing the state agency to change its policy in order to follow the law. The court denied the order on grounds that the plaintiff could have corrected the harm done to plaintiff as an individual by asking for an administrative hearing where the hearings officer would have followed the state law, developed the record and granted benefits to plaintiff. The judge told the LASO attorney from the bench that she would have to file a class action in order to change the local welfare office's pattern and practice. When she told the judge that federal LSC regulations prohibited her from filing a class action, he expressed concern.

19. The LASO office does not have the staff necessary to accept every case on behalf of general assistance applicants, ask for a hearing and make certain that the individual client gets benefits. It is a much more efficient and effective use of an attorney's time in this type of case to file a class action forcing the local welfare office to follow the law and grant benefits in response to the first application. Even if there were adequate staff to accept each individual case, many
desperate low income clients, especially those with a mental disability, would be unlikely to understand their legal rights and get the help they need to enforce their legal rights. Oregon courts do not recognize standing based on capable of repetition yet evading review.

20. The “program integrity” restriction effectively precludes the OSB Legal Services Program from funding one-attorney to do this work in each legal services office while permitting an LSC funded attorney to do different work in the same office. Instead, the OSB is unable to do more than to fund attorneys who are located at a great distance in many cases. The result is that, as a consequence of the program integrity restriction, important work simply cannot be done.

21. We were authorized to sign a declaration on behalf of the Oregon State Bar by a resolution of the Board of Governors adopted on the 25th day of January 2002. We declare under penalty of perjury that the foregoing is true and correct.

Executed on June 14, 2002

Portland, Oregon

OREGON STATE BAR

Angel Lopez
President

Charles Williamson
President Elect

11
March 29, 2018

Dear Judicial Candidate:

With the May primary election fast approaching, I wanted to extend my best wishes to you in your conversations with Oregonians about the role the state judiciary plays in our system of government and in promoting community welfare — and ask that you contribute to that conversation by completing the Oregon State Bar’s Judicial Voters Guide questionnaire.

As you may know, the Bar publishes an extensive Judicial Voters Guide in each election cycle. The guide makes available to the news media, voters, and interested parties a detailed professional history and background information on all candidates who provide that information to the Bar.

This project has been extremely well-received by news media statewide as an effective means of increasing accessibility and transparency in judicial elections. It also can serve as another tool for demonstrating to both the legislature and the public our commitment to openness and accessibility, within the bounds of the Code of Judicial Conduct.

Finally, this Voters Guide can serve as a helpful response for those of us who are asked to complete multiple surveys from media outlets or interest groups, including some that could threaten to politicize judicial elections or bring into question the fairness and impartiality of our judiciary. Directing interested parties to the Voters Guide, which is extremely thorough, can be useful if you are asked to respond to questionnaires that are of a more political nature, or otherwise are drafted without a full understanding of the need for an impartial and independent judiciary.

I encourage all judicial candidates — in contested and uncontested elections — to participate in the Bar’s Judicial Voters Guide process. If you did not receive a survey or have questions or comments, please direct them to Kateri Walsh at the Oregon State Bar. She can be reached at (503) 431-6406 or kwalsh@osbar.org. The deadline for returning the completed questionnaire is April 5, 2018.

Thank you for your hard work, and best of luck in your campaign.

Sincerely,

Thomas Balmer
Chief Justice