OREGON STATE BAR
MEETING OF THE BOARD OF GOVERNORS
Schedule of Events
September 27-29, 2007
9/20/2007 8:20 AM

Meeting: Salishan Resort
7760 Highway 101 North
Glendale Beach, OR

Phone: 800-890-9316

Dinner: Salishan Deli
Salishan Market Place
Across the highway from Salishan Resort

Thursday, September 27, 2007
3:00 p.m. – 5:00 p.m. Candidates’ Meeting – Sitka Room

4:45 p.m. – 5:30 p.m. Executive Session Board Meeting

6:00 p.m. – 8:00 p.m. Cocktails/Dinner
Salishan Deli in the Salishan Market Place

Friday, September 28, 2007
7:30 a.m. – 9:30 a.m. Breakfast – Sitka Room

8:00 a.m. – 11:00 a.m. Committee Meetings – Council House Rooms A, B, and C

8:00 a.m. – 9:00 a.m. Public Affairs Committee (Gaydos, Eyerman, Fisher, Hill,
Newell, Vieira, Yugler) ** Council House B/C
Call in Number: 888-891-0496
Conference ID: 254704

8:30 a.m. – 9:00 a.m. Policy and Governance Committee (Gerking, Evans, Fabien,
Greene, Lehner, Worcester) ** Council House B/C
Call in Number: 888-737-5834
Conference ID: 934254

9:00 a.m. – 9:30 a.m. Access to Justice Committee (Eyerman, Fabien, Fisher,
Gerking, Skerjanec, Vieira, Wright) Council House A
Call in Number: 888-737-5834
Conference ID: 934254
9:30 a.m. – 10:30 a.m.  **Budget and Finance Committee** (Greene, Gaydos, Hill, Lehner, Newell, Skerjanec, Worcester) * Council House B/C  
**Call in Number:**  888-891-0496  
**Conference ID:**  254704

9:30 a.m. – 10:30 a.m.  **Member Services Committee** (Yugler, Evans, Fabien, Fisher, Wright) * Council House B/C  
**Call in Number:**  888-737-5834  
**Conference ID:**  934254

10:30 a.m. – 11:00 a.m.  **Appointments Committee** (Wright, Evans, Eyerman, Gerking, Skerjanec, Vieira, Yugler) Council House A  
**Call in Number:**  888-737-5834  
**Conference ID:**  934254

11:00 a.m. – 12:00 p.m.  **Board Meeting** – Council House B/C  
**Call in Number:**  888-737-5834  
**Conference ID:**  934254

12:00 p.m. – 1:00 p.m.  Lunch – Sitka Room

1:00 p.m. – 5:00 p.m.  **Board Meeting** – Council House B/C  
**Call in Number:**  888-737-5834  
**Conference ID:**  934254

5:30 p.m. – 6:30 p.m.  **Reception with Local Bar, ONLD, and Leadership College** – Cedar Tree Room

6:30 p.m. – 8:00 p.m.  **Dinner with Local Bar, ONLD, and Leadership College** – Cedar Tree Room

**Saturday, September 29, 2007**

7:30 a.m. – 8:30 a.m.  **Breakfast** – Sitka Room

9:00 a.m. – 10:00 a.m.  **HOD Continental Breakfast** – Council House

9:00 a.m. – 10:00 a.m.  **HOD Registration** – Sitka Room

9:00 a.m. – 9:30 a.m.  **Redistricting Discussion** – Council House

10:00 a.m. – 2:00 p.m.  **House of Delegates Meeting** – Council House
* and ** indicate committees which have no overlap and can meet at the same time.

NO MEETING       Executive Director Evaluation Special Committee (Skerjanec, Fisher, Gaydos, Greene, Menashe) Council House A  
Call in Number:   888-737-5834  
Conference ID:    934254  

NO MEETING       Appellate Screening Committee (Hill, Evans, Eyerman, Gaydos, Gerking, Lehner, Worcester) Council House A  
Call in Number:   888-891-0496  
Conference ID:    254704  

NO MEETING       Public Member Selection Committee (Worcester, Fabien, Hill, Vieira, Yugler) Council House B/C  
Call in Number:   888-891-0496  
Conference ID:    254704
Oregon State Bar  
Meeting of the Board of Governors  
September 28-29, 2007  
Open Session Agenda

The Open Session Meeting of the Oregon State Bar Board of Governors will begin at 11:00 a.m. on September 28, 2007; however, the following agenda is not a definitive indication of the exact order in which items will appear before the board. Any item on the agenda may be presented to the board at any given time during the board meeting.

Friday, September 28, 2007

1. Report of Officers

11:00 a.m.

A. Report of the President [Mr. Menashe]

1. Meeting with Chief Justice Paul J. De Muniz  
   August 6, 2007  
   September 17, 2007
   Inform  
   Handout

2. Reinstatement Protocol
   Inform  
   Staff has drafted an outline for presentations on reinstatements for the board to discuss and approve.

3. OSB President's Schedule of Events
   Inform  
   The exhibit indicates events that the OSB President has attended since the last BOG meeting.

11:15 a.m.

B. Report of the President-elect [Mr. Yugler]

1. Final Board Schedule for 2008  
   Inform  
   7

2. Meetings, Conferences, and Fundraisers  
   Inform
   Rick will update the board on events/meetings he has attended since the last board meeting including NCBP Conference, meetings with Chief Justice, HOD Regional Meetings, Fundraisers, PLF Board Meeting, Defense Panel Conference, and the Investment Committee.

3. Past Presidents' Council  
   Inform
11:25 a.m.

C. Report of the Executive Director [Ms. Garst]

11:30 a.m.

D. Board Member Reports

11:35 a.m.

➢ This section of the BOG agenda is designed for board members to report briefly on news from their regions or contacts with sections, committees, and other bar entities.

2. Professional Liability Fund [Mr. Cannon]

11:55 a.m.

A. General Update [Mr. Cannon, Mr. Cave]

1. Financial Report Inform

2. Moving Update Inform

3. 2008 NABRICO Inform

B. Approve 2008 PLF Budget Action 9

C. Approve 2008 PLF Primary Program Assessment Inform 11-42

D. Actuarial Review of PLF Primary Program Claim Liabilities Inform 43-67

E. Amend PLF Exclusion 5 Relating to the Business Activities of Covered Parties Action 69-71

F. Amend PLF Exclusion 10 Relating to Attorney Fees Action 73-75

G. Amend PLF Exclusions 2 and 4 Relating to Wrongful Conduct Action 77-79

H. Amend PLF Exclusion 20 Relating to Contractual Obligation Exclusion Action 81-83

12:25 p.m.

3. Special Appearances

A. Diversity Section [Mary Crawford]
1. Proposed EOB Resolution

Action 85-87
4. **Rules and Ethics Opinions**

1:00 p.m.

A. Ethics Committee [Ms. Stevens]

1. Proposed Formal Ethics Opinion on Trial Publicity  
   Action 89-102

1:30 p.m.

   Action 103-134

1:50 p.m.

B. SPRB [Mr. Gerking]

1. Proposal for Rule Limiting the Activities Disciplined Lawyers May Perform in a Law Firm  
   Action 135-153

   - SPRB seeks direction from the board whether to continue working on a proposed rule that would restrict the type of activities a disbarred, suspended, or resigned lawyer may perform while employed by a law firm.

5. **OSB Committees, Sections, Councils, Divisions and Task Forces**

2:05 p.m.

A. MCLE Committee [Ms. Skerjanec]

1. OWLS Request for Review of MCLE Committee's Decision  
   Action 155-252

   - Request to review CLE accreditation for a 75 minutes panel presentation entitled Community and Volunteer Involvement. This presentation was a breakout session at the May 4, 2007 Women as Leaders CLE program.
6. **BOG Committees, Special Committees, Task Forces and Study Groups**

A. Access to Justice Committee [Ms. Eyerman]

2:20 p.m.

1. LSPC Recommendation to Increase Administrative Filing Fee
   Action 253-254
   
   ➢ *The Legal Services Program Committee is making a recommendation to OSB Board of Governors to increase the filing fee administrative fee from $90,000 to $108,000.*

2. LSPC Recommendation to Increase General Fund Appropriation for Legal Aid for 2007-2009
   Action 255-259
   
   ➢ *The Legal Services Program Committee is making recommendations to the Board of Governors regarding the General Fund appropriation of $700,000 to the OSB to fund increased costs for legal aid during the 2007-09 biennium.*

B. Budget and Finance Committee [Mr. Greene]

2:25 p.m.

1. New Bar Center
   Inform 261-263
   
   ➢ *The board will be updated on the latest information on the construction and cost of the new bar center.*

C. Policy and Governance Committee [Mr. Gerking]

2:55 p.m.

1. Change in Alcohol Policy
   Action 265-266
   
   ➢ *The committee is recommending a change in bar policy to allow bar funds to be used to purchase alcohol for official events.*

3:10 p.m.

2. Reciprocity with Alaska
   Action 267-268
   
   ➢ *Alaska is willing to enter into a reciprocity agreement with the Oregon State Bar.*
D. Public Affairs Committee [Mr. Gaydos]

3:20 p.m.

1. Political Update
   Inform
   No Exhibit
   - Update on upcoming election cycle, ongoing projects and February special session.

3:30 p.m.

2. Pending Initiatives
   Action 269-275
   - PAC recommendation to BOG on proposed HOD resolutions regarding pending initiatives that affect the justice system.

E. Public Member Selection Committee [Ms. Worcester]

3:50 p.m.

1. Board of Governors Public Member
   Recommendation
   Action 277-280
   - The committee conducted its interviews in August and is recommending a new public member for the board approval.

7. HOD Agenda

   - The board needs to decide if it will take a position on the resolutions and who will present the board’s position.

   *The HOD Agenda items are listed in the order they appear in the agenda.*

3:55 p.m.

1. 2008 Membership Fee
   Action 281

2. Mileage Reimbursement for HOD Members
   Action 281

3. Amend ORS 12.020(1)
   Action 281-282

4. In Memoriam
   Action 282

   - Ms. Fabien will present. The following will be added to the list: Dana A. Anderson and Jack L. Sollis. To be removed from the list John Salisbury. If you know of additional names please let Ms. Fabien know.
5. Record of Proceedings  Action  282-283
6. Support Adequate Funding  Action  283-284
7. Continue the Current Policy Prohibiting the Use of Bar Funds for the Purchase of Alcoholic Beverages  Action  284

8. Consent Agenda  Action  pink
9. Default Agenda  Inform  blue

4:00 p.m. – 5:00 p.m.

10. Special Appearance
   A. Oregon Minority Lawyers Association

11. Closed Session Agenda
   A. Reinstatements (Judicial proceeding pursuant to ORS 192.690(1) – separate packet)  Discuss/Action  lavender agenda
   B. General Counsel/UPL Report (Executive Session pursuant to ORS 192.660(1)(f) and (h) – separate packet)  Discuss/Action  green agenda

12. Good of the Order (Non-action comments, information and notice of need for possible future board action)
Oregon State Bar
Meeting of the Board of Governors
September 28, 2007
Consent Agenda

8. Consent Agenda

A. Approval of Minutes

2. Approve Minutes of Executive Session – June 22-23, 2007 Action 295
4. Approve Minutes of Open Session - July 20, 2007 Action 301-302

B. Appointments Committee

1. Approve Various Appointments Action 303

C. Client Security Fund [Mr. Newell]

1. CSF Claims Recommended for Payment
   a. No. 06-14 Delepierre v. Okai $22,500 Action 305-306
   b. No. 17-16 Calderwood v. Tripp $ 6,044 Action 307-308
      ▶ The committee recommends payment in both cases.

D. Member Services Committee

1. Annual OSB Awards Honorees Action Handout
   ▶ Approve the selection of the annual OSB Awards honorees.
E. Policy and Governance Committee

1. Quorum Requirement for Standing and Special Committees
   - Creates a quorum requirement for board special or standing committees in order to conduct business.
   
2. Amicus Curiae
   - Revises Bar Bylaw 2.105 to make it clear that any submission of an amicus brief must be approved by the BOG. Any new bylaw is subject to the one meeting notice rule (Article 26 of the Bar Bylaws), unless two-thirds of the entire board waive the notice requirement.

3. Appellate Selection Committee
   - Revises Bar Bylaw 2.703 to remove reference to the Judiciary Committee, which the board no longer has. Instead, the generic word “committee” is used for purposes of the appellate selection process. Any new bylaw is subject to the one meeting notice rule (Article 26 of the Bar Bylaws), unless two-thirds of the entire board waive the notice requirement.

4. Animal Law Section
   - Creates an Animal Law Section. Requisite signatures and structure have been provided to the bar.
Oregon State Bar
Meeting of the Board of Governors
September 28, 2007
Default Agenda

9. Default Agenda

A. ABA Updates
   1. 2007 Annual Meeting of the ABA and HOD Inform 321-338

B. Executive Director
   1. Operations Report Inform 339-345
   2. Status of Actions from Past Board Meetings Inform 347

C. Access to Justice Committee [Ms. Eyerman]
   1. Minutes - June 22, 2007 Inform 349

D. Budget and Finance Committee [Mr. Greene]
      Audit of the OSB Financial Statements Inform 357

> The Budget Finance Committee will report on its selection of an auditor for the
  upcoming audit.
   3. Update on 2008 Budget Inform 359-366

E. Member Services Committee [Mr. Yugler]
F. Policy and Governance Committee [Mr. Gerking]
   1. Minutes – June 22, 2007  Inform  375

G. Public Affairs Committee [Mr. Gaydos]
   1. Minutes – June 22, 2007  Inform  381-382

H. Public Member Selection [Ms. Worcester]
   1. Minutes – July 20, 2007  Inform  385

I. CSF Claims Report  Inform  387-392
Meeting with the Chief Justice
Minutes – August 6, 2007

Present: Chief Justice Paul De Muniz, Albert Menashe, Rick Yugler, and Susan Grabe.

Review of 2007 Legislative Session
The Chief Justice reported that the 2007 session was a success with a 19.4% increase in funding for judicial salaries as well as establishment of a commission to study public officials’ salaries and make recommendations to the legislature. The Oregon Judicial Department as a whole also received adequate funding for operations. The Chief Justice attributes the success to the collaborative approach by the courts, the bar, the governor and other interest groups to educate the legislature about the importance of what the judicial department does. This experience reinforces the need for more strategic planning and outreach to the broader community to ensure the courts maintain visibility in the communities and educate the citizenry about the role the courts play in their respective communities. The Chief indicated he would not be imposing motion fees.

Elimination of Bias
The discussion began with a review of the letter from Gary Georgoff regarding his concerns about the process and segued into an update by Albert Menashe on the status of discussions with Justices Walters and Linder regarding the elimination of bias program. The consensus appears to be to maintain the EOB requirement but expand it beyond the classroom and include experiential type programs such as Habitat for Humanity projects. Menashe noted that the quality of this type of program is difficult for the bar to monitor. The idea for future programming would be to maintain the mandatory nature of the requirement but phase it in as part of the practical skills training for new lawyers (a 6 hour program). Thereafter, it would be voluntary. The two justices will meet with the Diversity Section to solicit feedback on this idea. The next step is for the bar to develop a proposed rule and recommendation to submit to the Supreme Court so that it is ultimately a joint recommendation. One of the justices will try to attend the July 20 Policy and Governance meeting to provide the committee with further guidance.

Task Force on Admissions
Albert outlined the idea of creating a task force composed of representatives from the Supreme Court, BOG, BBX, and the law schools to look at the current state of the bar exam and discuss any changes. The Chief expressed his support for this effort. The task force could also look at issues of multi-jurisdictional practice as it intersects with the unlawful practice of law regulations. Rick Yugler indicated the need to have a minimum competency exam and to consider some sort of practice requirement.
This task force will be established after the legislative session has ended and will be a Bench/Bar task force.

Child Support/SSN
No update.

Bar cards/courthouse security
The Chief will ask Judge Lipscomb, the Chair of the Statewide Court Security Committee to invite Albert to make a presentation on the topic to the Statewide Committee. The next step will be to solicit input and develop an approach on a statewide basis, perhaps focusing on the metropolitan areas first with a pilot project to determine its feasibility and work out the bugs.
Board of Governors
Judicial Proceedings (Reinstatements)
Reporting Protocol
For Final Action on BR 8.1 Applications

1. This is the BR 8.1 reinstatement application of: [name]

2. The applicant was admitted to the OSB in: [year of admission]

3. The reason the applicant is not now active and seeks reinstatement is because the applicant:
   ___ has been voluntarily inactive for [x] years
   ___ voluntarily resigned [x] years ago
   ___ was suspended for disciplinary reasons in [year]. See details in the materials.
   ___ was disbarred or resigned Form B prior to 1996. See details in the materials.
   ___ other

4. ___ There are no reasons to question the applicant’s qualifications for reinstatement.
   ___ There are reasons to question the applicant’s qualifications: [briefly describe]

5. Regarding MCLE, the applicant:
   ___ has been practicing elsewhere or employed in law-related work such that added MCLE is not necessary.
   ___ should be required to obtain [x] MCLE credits before reinstatement.

6. I move that the board recommend to the Supreme Court that the reinstatement application of [name] be:
   ___ approved
   ___ approved subject to the applicant obtaining [x] MCLE credits
   ___ approved conditionally, with the following conditions: [briefly describe]
   ___ denied
In a continuing effort to keep the board informed of the activities of the bar's president, Mr. Menashe includes below a list of activities in which he has participated as a representative of the Oregon State Bar.

June 26 Spoke at Lewis & Clark on Professionalism
July 13 Attended lunch with Josephine County Bar
July 13 Attended dinner with Jackson County Bar
July 16 Met in Salem with Justices Linder and Walter regarding elimination of bias
July 19 Met with Clackamas County Bar
July 30 Attended reopening of Clackamas County Courthouse
August 6 Met with Chief Justice in Salem
August 9-11 Attended National Conference of Bar Presidents in San Francisco
August 15 Participated in Professionalism Program at Willamette University College of Law in Salem
August 17-24 Attended OSB CLE at Sea as a speaker
Sept. 7 Attended Bench/Bar Commission on Professionalism Meeting in Salem
Sept. 11 Spoke to Owen Panner Inn of Court regarding: "Dealing with Difficult Clients"
Sept. 17 Met with Chief Justice in Salem
Sept. 19 Attended Multnomah Bar Association Awards Lunch
Sept. 24 Convened first meeting of the Bar Exam Task Force in Salem
# 2008 Board of Governors
## Meeting Schedule

<table>
<thead>
<tr>
<th>Committee Meetings at OSB Center</th>
<th>Board Meeting</th>
<th>Locations</th>
<th>Events</th>
</tr>
</thead>
<tbody>
<tr>
<td>January 17 (Thursday)</td>
<td>February 21-23</td>
<td>Salem – Phoenix Grand</td>
<td>President’s Reception Lunch w/Supreme Court</td>
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<tr>
<td>April 4</td>
<td>May 9-10</td>
<td>Gleneden Beach - Salishan Resort</td>
<td>Joint PLF Mtg., Regional Bar Social</td>
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<td>June 13 and Past BOG Dinner</td>
<td>July 18-19</td>
<td>Klamath Falls – Running Y Ranch</td>
<td>Board Meeting Regional Bar Social</td>
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<tr>
<td></td>
<td>August 1</td>
<td>Conference Call</td>
<td>Approve HOD Agenda</td>
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<td>August 15</td>
<td>September 11</td>
<td>Bend – Sunriver</td>
<td>BOG Meeting, HOD</td>
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<td></td>
<td>September 12</td>
<td>Bend – Riverplace</td>
<td>Futures Conference, Regional Bar Social</td>
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<td></td>
<td>September 13</td>
<td>Bend – Sunriver</td>
<td>HOD Annual Meeting</td>
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<tr>
<td>October 17</td>
<td>November 13-15</td>
<td>Cannon Beach – location Surfsand Resort</td>
<td>BOG Planning Retreat Regional Bar Social</td>
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</table>
Action Recommended

Approve the 2008 Budget and Assessment.

Background

On an annual basis, the BOG approves the PLF budget and the assessment for the coming year. This year, the recommendation is to keep the assessment at $3200.00. The assessment is set based on the actuary report and budget. The attached materials contain the proposed budget and recommendations concerning the assessment. The August 29, 2007 memo that sets PLF liabilities does not need BOG action. It is for your information only.

The budget includes no new FTEs, a 4% salary pool, and added expenses for the PLF move to Fanno Creek.

Attachments
September 14, 2007

To: Oregon State Bar Board of Governors

From: Ira Zarov, Chief Executive Officer
      R. Thomas Cave, Chief Financial Officer

Re: 2008 PLF Budget and 2008 PLF Primary Assessment

I. Recommended Action

At the September 10, 2007 PLF Board of Director meeting, the BOD approved the proposed 2008 PLF Budget and set the Primary Program assessment at $3,200. According to Board of Governor Policies, PLF budgets and assessments are subject to BOG approval. Accordingly, we recommended the following actions:

1. Approve the 2008 PLF budget as attached. This budget uses a 2008 salary pool recommendation of 4.0 percent. This recommendation has been made after consultation with Karen Garst.

2. Approve the 2008 PLF assessment at $3,200, which is unchanged from the 2007 PLF assessment.

II. 2008 PLF Budget

Number of Covered Attorneys

We have provided the number of covered attorneys by period for both the Primary and Excess Programs. These statistics illustrate the growth in the number of lawyers covered by each program, and facilitate period-to-period comparisons.

For the Primary Program, new attorneys paying reduced primary assessments and lawyers covered for portions of the year have been combined into "full pay" units. We currently project 6,585 full-pay attorneys for 2007. Our estimate for 2008 assumes growth of 1 percent from our 2007
projection which translates to 6,651 full-pay attorneys. Although the Excess Program covers firms, the budget lists the total number of attorneys covered by the Excess Program. Participation in the Excess Program has grown much faster than participation in the Primary Program. Some of past growth came from market factors such as the addition of the patent lawyers or commercial insurance providers leaving Oregon. For 2008 we do not expect additional growth from market factors. One new commercial carrier entered the Oregon market in 2007 and there may be additional competition in 2008. However, more Oregon lawyers are recognizing the need for higher coverage limits than the amount provided by the Primary Program and many institutions make higher coverage limits a requirement for their outside lawyers. We currently project 2007 excess program participation at 2,600 lawyers and expect 2008 participation to grow by 3 percent (2,678). If you include the other providers of excess insurance such as ALAS, more than 50% of the practicing lawyers in Oregon have excess insurance.

**Full-time Employee Statistics (Staff Positions)**

We have included "full-time equivalent" or FTE statistics to show PLF staffing levels from year to year. FTE statistics are given for each department on their operating expense schedule. The following table shows positions by department:

<table>
<thead>
<tr>
<th></th>
<th>2007 Projections</th>
<th>2008 Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>Administration</td>
<td>7.34 FTE</td>
<td>6.84 FTE</td>
</tr>
<tr>
<td>Claims</td>
<td>16.80 FTE</td>
<td>17.80 FTE</td>
</tr>
<tr>
<td>Loss Prevention (includes OAAP)</td>
<td>12.13 FTE</td>
<td>11.83 FTE</td>
</tr>
<tr>
<td>Accounting</td>
<td>4.90 FTE</td>
<td>4.90 FTE</td>
</tr>
<tr>
<td>Excess</td>
<td>0.20 FTE</td>
<td>1.00 FTE</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>41.37 FTE</strong></td>
<td><strong>42.37 FTE</strong></td>
</tr>
</tbody>
</table>

We continue to have a number of positions in all PLF departments staffed at part-time levels for both 2007 and 2008. Some staff members work from 20 to 36 hours per week. These part-time arrangements fit the needs of both the employee and the PLF. Part-time and temporary employees are the reason for much of the fractional FTE’s.

The 2007 budget included positions for an additional claims attorney and claims secretary. At the time the budget was prepared, we expected to fill these positions prior to the end of 2006. The claims attorney position was filled in April, 2007 and the claims secretary position has still not been staffed. We expect to fill the claims secretary position early in 2008.

The 2007 budget also included an additional support attorney position in the claims department. It was expected that this position would have responsibilities in both the claims department and the Excess Program. We expect to fill this position in September. The expected duties of this position have evolved since the preparation of the 2007 budget. Currently, we expect that this position will mainly serve the Excess Program, and the FTE has been moved to the Excess Program for the 2008 budget. There will be a reverse allocation of salary and benefits to the Primary Program for the time the individual spends on Primary Program duties.
A long-time OAAP attorney retired midway through 2007. In order to have a smooth transition, there was a duplication of his position for about 9 months prior to his retirement.

In the past, the partial FTE position in the Excess Program was used for a temporary clerical position during the renewal cycle. Because of increases in the participation in Excess Program, an additional person with legal experience is necessary to help with underwriting decisions and other processing. As mentioned above, a new Excess Position will be staffed in the fall of this year.

**Allocation of Costs between the Excess and Primary Programs**

In 1991, the PLF established an optional underwritten plan to provide excess coverage above the existing mandatory plan. There is separate accounting for Excess Program assets, liabilities, revenues and expenses. The Excess Program reimburses the Primary Program for services so that the Primary Program does not subsidize the cost of the Excess Program. A portion of Primary Program salary, benefits, and other operating costs are allocated to the Excess Program. These allocations are reviewed and adjusted each year. The Excess Program also pays for some direct costs, including printing and reinsurance travel.

Salary and benefit allocations are based on an annual review of the time PLF staff spends on Excess Program activities. The current allocation includes percentages of salaries and benefits for individuals specifically working on the Excess Program. After review, some adjustments were made to the 2008 percentages for some individuals in the administration, accounting, and claims departments.

The Excess Program will have a new full-time position filled in the fall of 2007. It is expected that this position will also work with the claims and loss prevention departments. As noted above, there will be a reverse allocation of a portion of this position’s salary and benefits to the Primary Program.

Besides specific individual allocations, fifteen percent of the costs of general claims personnel and fifteen percent of all loss prevention personnel are allocated to the Excess Program. The total 2008 allocation of salary, benefits and overhead is about 19.12 percent of total administrative operating expense.

**Primary Program Revenue**

Projected assessment revenue for 2007 is based upon the $3,200 basic assessment paid by an estimated 6,585 attorneys. The budget for assessment revenue for 2008 is based upon a $3,200 assessment and 6,651 full-pay attorneys. Primary Program revenue also includes our forecast for SUA collections of $179,000 for 2007 and $181,000 for 2008.

We started our calculations of investment revenue using the July 31, 2007 market value for all current investments. Investment revenue was calculated from July forward using conservative (low)
rates of return for the different asset categories (4.0% for the short-term cash flow bond fund, 5.0%
for intermediate bonds, 8.0% for domestic equities, 8.25% for foreign equities, 8.25% for hedge
fund of funds, 7.5% for real estate, and 7.25% for absolute return). These rates of return are lower
than historical figures but reflect the current reduced expectations of our investment consultants.
The overall combined expected rate of return for 2008 is about 6.6 percent.

Primary Program Claims Expense

Past budgets have included a single line item – Provision for Claims. For any given year, this
item includes two factors – (1) the cost of new claims and (2) any additional upward (or
downward) adjustments to estimate of costs for claims pending at the beginning of the year. In any
given year factor 1 (new claims) is much larger and much more important than factor 2. However,
problems would develop if you never considered the effects of factor 2, particularly if there were
consistent patterns of adjustments. The actuarial report calculates an amount for factor 1. They then
discuss the possibility of adding a margin to cover factor 2.

Starting with 2007 projections, we have broken the Provision for Claims into two items that reflect
these two factors – New Claims and Pending Claims. For actual results or projections, adjustments
made to pending claim estimates will be shown in the Pending Claims line. For budget columns,
any margin amount will be shown in the pending line.

We project 800 new claims for 2007 at a cost of $18,700 per claim which is the current
recommendation for new claim average costs made by the actuaries.

The June 30, 2007 actuary report recommended an upward adjustment of about $522,000 to
estimates for pending claims. This is the fourth straight report with an upward adjustment. Since we
seem to a pattern of upward adjustments, we have included an amount for pending claims of
$1,975,500 in the 2007 projections. This amount is equal to $300 times our current projection of
covered attorneys (6,585).

Primary Program claims expense for 2008 was calculated using figures from the actuarial rate
study. The study assumed a frequency rate of 13 percent, 6,651 covered attorneys and an average
claim cost of $19,000. Multiplying these three numbers together gets a 2008 budget for claims
expense of $16,427,970. We have also added a margin of $300 per covered lawyer to cover
adverse development of pending claims or potential increases in frequency. The pending claims
budget is equal to $1,995,300 ($300 times the estimated 6,651 covered attorneys). This concept
using a margin will be discussed again in the staff recommendation section regarding the 2008
assessment.

Salary Pool for 2008

The total dollar amount that is available for staff salary increases in a given year is calculated by
multiplying the salary pool percentage increase by the current employee salary levels. The salary
pool is the only source available for cost of living and merit increases. Although there is no
policy requiring them, the PLF and OSB historically provide increases to staff that are generally consistent with cost-of-living adjustments.

After consultation with Karen Garst, a four percent salary pool increase is recommended for 2008. This salary pool percentage reflects the fiscal status of the PLF and OSB. The salary pool is used to adjust salaries for inflation, to allow normal changes in classifications, and when appropriate to provide a management tool to reward exceptional work. According to the US Department of Labor, the CPI increase for the urban west is 3.0% for the period ending July 31, 2007. Given that the CPI is predicted to continue to rise, the 4% salary pool reflects a very conservative approach to non-inflation driven salary adjustments. This is especially true as the planned move is likely to involve the occasional use of additional staffing and corresponding added expense. As a point of reference, one percent in the salary pool represents $34,470 in PLF salary expense and $10,297 in PLF benefit costs.

Because all salary reclassifications can not be accomplished within the four percent salary pool allocation, we are also requesting $20,000, an additional .5% of the total salary/benefit pool, for potential salary reclassification. Salary reclassifications generally occur in two circumstances, when a person hired at a lower salary classification achieves the higher competency required for the new classification, or when there is a necessity to change job requirements. The bulk of the salary reclassification amount reflects either the reclassification of relatively recently hired exempt employees or addresses an historical lack of parity between the salaries of employees in positions with equivalent responsibilities. (Exempt positions are generally professional positions and are not subject to wage and hour requirements.) Salaries for entry level hires for exempt positions are significantly lower than experienced staff. As new staff members become proficient, they are reclassified and their salaries are adjusted appropriately. As the board is aware, over the past several years three new claims attorneys have been hired. (Reclassification usually occurs after approximately two years, although the process of salary adjustment often occurs over a longer time period.) The other reclassifications are the result of a significant and comprehensive salary classification study done recently by the PLF. The salary classification study examined the job functions within a classification, salaries of other similarly situated members of the local and national workforce, and any changes in the responsibilities of PLF employees that might merit reclassification of the positions.

**Benefit Expense**

When the 2007 budget was prepared in August, 2006, the employer cost of PERS was 18.5 percent for most PLF employees. (The cost of PLF employees hired in the last two years was 14.2 percent.) When preparing the 2007 benefits budget, we used a blended rate of 18 percent.

PERS rates were reduced substantially June of 2007. The PLF employer cost of PERS for most PLF employees is now 11.64% of salary. PERS has reported that the current rate will not be changed until 2009. Projections for 2007 and the 2008 budget were calculated using the current rates (11.64%). As a result, benefit expense projections are substantially below the 2007 budget.
The costs of many other employee benefits are directly tied to salary levels. The cost of medical insurance continues to rise faster than salary levels. Although medical insurance rates are difficult to predict, we have included a 10 percent increase for this portion of the 2008 benefit budget. This amount is consistent with historical trends.

Relocation to the New Bar Building and Capital Budget

When the 2007 budget was prepared, there were many uncertainties relating to the timing and costs of the new bar building. We did not directly include any expense relating to the potential move in the 2007 budget. We reported that we would charge any expenses relating to relocation to the contingency item if they were incurred during 2007.

The bar building will be completed sooner than was expected a year ago. The PLF does expect to spend about $50,000 in 2007, primarily on space planning. This amount has been charged to contingency in the 2007 projections. The 2008 budget anticipates $40,000 moving expense which is reflected in the administration budget (page 4).

The administration budget also reflects anticipated rent expense in the new building. The rent calculation was based on discussions to date with the Bar staff and BOG.

There are a number of items in the 2008 capital budget (page 8) as a result of the move to the new bar building. We estimate the cost of new furniture to be about $100,000. Some of these items will replace built-in items in the current PLF space. We also expect to replace some computer servers and network equipment (computer hardware $20,000). The cost of these capital items will be amortized over three to five years.

The 2008 leasehold improvement budget ($635,000) covers the PLF’s share of tenant improvements at the new bar building. The cost of this item will be amortized over the term of the PLF’s lease (10 or 15 years).

We do not anticipate accepting the Bar’s offer to finance the PLF’s cost of tenant improvements or other capital items related to the move to the new bar building.

The PLF will purchase a new telephone system in September, 2007. Replacement of the current PLF telephone system has been accelerated so it would happen prior to the move. Projections show its cost at about $37,500. The 2008 budget anticipates the cost of a similar system at the OAAP.

Unrelated to the move, the PLF continues to look at document management systems and paperless office concepts. The 2008 budget ($70,000) anticipates the cost of computer hardware and software in this area.

There will some additional one-time accounting charges relating to the early termination of the current PLF lease. Since some of the charges are positive and some are negative, we do not
expect them to have a material financial impact.

Other Primary Operating Expenses

The PLF is scheduled to host NABRICO during 2008 and we have increased the budget for NABRICO from $12,000 to $25,800. This amount is consistent with information provided by other NABRICO companies that have recently hosted the conference. Some expenses (e.g., BOD and staff airfare) will be lower than other years. However, we expect increases in the cost of lodging and meals because of greater participation of Board of Director members and PLF staff. There will be some other extra expenses relating to hosting the event.

The PLF had a claims audit during 2006. We do not expect to have another claims audit for at least three years.

The administration budget (page 4) includes a new item – Offsite System Backup. As part of its emergency contingency planning, the PLF now uses a service to backup its computer data via the internet to a secure remote location.

The PLF has defense panel meetings every other year. The 2007 budget and projections reflect the PLF cost for the recently completed meeting. Defense panel members paid for their own lodging and meal expenses. The PLF does pay the cost of speakers, supplies and staff lodging and meals.

For many years, the PLF Primary Program has included a contingency budget item. Items included in the 2006 contingency item were an unscheduled outside review of PLF accounting controls and some early space planning expense related to the new bar building. As we have explained earlier in accordance with last year’s budget document, 2007 expenses relating to the move to the new bar building have been charged to the 2007 contingency projections. For 2008, we included a contingency budget of equal to 2 percent of operating costs ($121,046).

Total Operating Expenses and the Assessment Contribution to Operating Expenses

Page one of the budget shows projected 2007 Primary Program operating costs to be about $520,000 under the 2007 budget. Some of the savings are the result of unfilled staff positions and savings on benefits, primarily PERS. Many other operating items including loss prevention are expected to be under budget. These lower projections were a factor in setting 2008 budget amounts.

The 2008 Primary Program operating budget is 3.18% less than the 2007 budget and 5.66% greater than the 2007 projections. The increase from the projections is the result of the 4 percent salary and benefit increase, no empty staff positions, and one-time expenses related to relocation to the new bar building and hosting NABRICO.
Excess Program Budget

The major focus of this process is on the Primary Program and the effects of the budget on the 2008 Primary Program assessment. We do include a budget for the Excess Program (page 8). As we discussed earlier, we project 3 percent growth in attorneys covered by the Excess Program.

The major revenue item for the Excess Program is ceding commissions. These commissions represent the portion of the excess assessment that the PLF gets to keep. Most of the excess assessment is turned over to reinsurers who cover the outside costs of resolving excess claims. We currently project ceding commission of $750,000 for 2007. It is difficult to predict 2008 ceding commissions without knowing 2008 rates and the levels of coverage selected by the insured. However, we have estimated a 5 percent increase in ceding commissions as a result of growth in excess participation and some growth in coverage levels or rates.

After three or four years from the start of a given plan year, the two reinsurance treaties covering the first $5 million provide for profit commissions if excess claim payments are reasonably low. If there are subsequent adverse developments, prior profit commissions are returned to the reinsurance companies. For most years, the PLF has received a profit commission. As the Excess Program has grown, the amount submitted to the reinsurers has gotten larger and the potential profit commission increased. We expect very little profit commission for 2007 because of a very large claim received in 2004. We do expect to receive a small profit commission in 2008.

Excess investment earnings were calculated using the same method described in the Primary Program revenue section.

We have already discussed adding a new staff position to the Excess Program.

The major expenses for the Excess Program are the allocations from the Primary Program that were discussed in an earlier section.

III. Actuarial Rate Study for 2008

This is the twelfth time we have received a rate study from our actuaries to assist us in establishing the annual assessment. The attached rate study focuses on the estimate of the cost of 2008 claims. It relies heavily on the analysis contained in the actuaries' claim liability study as of June 30, 2007. The methodology used in that study is discussed by separate memorandum. The rate study only calculates the cost of new 2008 claims. It does not consider adjustments to pending claims, investment results, or administrative operating costs.

The actuaries estimate the 2008 claim cost per attorney using two different methods. The first method (shown on Exhibit 1) uses regression analysis to determine the trends in the cost of claims. Regression analysis is a statistical technique used to fit a straight line to number of points on a graph. It is very difficult to choose an appropriate trend. Because of the small amount and volatility
of data, different ranges of PLF claim years produce very different trend numbers. The selection of the starting and ending points is very significant. For the PLF, including a low starting point such as 1987 or a very high ending point such as 2000 skews the straight line upward. Because of these problems, the actuaries do not favor using this technique to predict future claim costs.

The second method (Exhibit 2) involves selection of expected claim frequency and claim severity (average cost). Claims frequency is defined as the number of claims divided by the number of covered attorneys. For the indicated amount, the actuaries have used a 2008 claims frequency rate of 13 percent and $19,000 as the average cost per claim (severity). Their choice of 13 percent frequency reflects the drop in frequency that the PLF has experienced during the past 24 months. The severity figure of $19,000 is slightly higher than their current recommended average cost per claim ($18,700) and reflects recent trends of increase severity of PLF claims.

We feel both the frequency and severity choices are reasonable. The frequency choice is appropriate given recent trends. However, it should be noted that historically frequency has often been higher than 13%. While $19,000 is higher severity than most claim years, we are concerned about increased defense costs and indemnity payments in recent claim years. We feel that trends clearly indicate increasing severity. The actuaries prefer the result found with this second method. Their indicated average claim cost is $2,470 per attorney. This amount would only cover the estimated funds needed for 2008 new claims.

It is necessary to calculate a provision for operating expenses not covered by non-assessment revenue. As can be seen in the budget, the estimate of non-assessment revenue does not cover the budget for operating expenses. The 2008 shortfall is about $375 per lawyer assuming 6,651 full-pay lawyers.

The actuaries discuss the possibility of having a margin (additional amount) in the calculated assessment. On pages 8 and 9 of their report, the actuaries list pros and cons for having a margin in the assessment.

We feel that there are other arguments in favor of a margin that we will discuss in the staff recommendations section.

IV. Staff Recommendations

If you add the operating expense portion of $375 per lawyer to the actuaries’ indicated claim cost of $2,470, you would have an assessment of $2,845. We feel that there are three strong arguments in favor of including a margin in the calculated assessment.

1. The Board of Directors has set a goal of $9 million of positive combined Primary and Excess Program retained earnings. The programs currently have positive combined retained earnings of $3.4 million. This combined figure includes $5.0 million positive retained earnings from the Excess Program. The Primary Program has made substantial progress but still has negative
retained earnings of $1.6 million as of June 30, 2007. The a margin in the Primary Program assessment calculation should help the PLF to continue its progress toward the retained earnings goal.

2. A margin could also help cover potential future adverse development on pending claims. Claim years since 2002 have “developed adversely”. That is to say, initial actuarial estimates of claim costs had to be adjusted upward, often substantially, in subsequent reports. These estimate revisions initially were fueled by substantial increases in the costs of defending claims. However, indemnity estimates have also been increased for recent claim years. We feel that we are in a period of increasing severity and adverse developments are more likely than not.

The following chart shows the reserve adjustments from the past four actuarial reports:

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<tr>
<td>June 30, 2007</td>
<td>$521,535</td>
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<tr>
<td>December 31, 2006</td>
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<tr>
<td>June 30, 2006</td>
<td>$2,095,462</td>
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<tr>
<td>December 31, 2005</td>
<td>$720,361</td>
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The average adjustment was $958,000 or $1,916,000 per year.

3. The PLF Primary Program has strongly benefited from low claim frequency for the past 24 months. The actuarial frequency factor of 13 percent is lower than many PLF claim years. A margin amount could offset the negative effects of any increase in frequency.

For these reasons, we feel that it is appropriate to maintain a margin of $300 per attorney in the amount calculated above. This amount would equal about $2.0 million. It is reflected in the budget item for pending claims on page 2.

PLF Goal No. 1 requires that the PLF “provide the required professional liability coverage at the least possible assessment consistent with a sound financial condition. Accordingly, we recommend setting the 2008 Primary Program assessment at $3,200.”
OREGON STATE BAR
PROFESSIONAL LIABILITY FUND
2008 PRIMARY PROGRAM BUDGET
Presented to PLF Board of Directors on September 10, 2007

<table>
<thead>
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<td>New Claims</td>
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<td>(1,284,281)</td>
<td>(1,196,155)</td>
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<td>$21,550,311</td>
<td>$23,613,950</td>
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| Net Income (Loss)            | $2,405,996  | $1,532,566  | $1,304,206  | $2,879,299       | $548,419    |

| Number of Full Pay Attorneys | 6,312       | 6,537       | 6,658       | 6,585            | 6,651       |

CHANGE IN OPERATING EXPENSES:
Increase from 2007 Budget -3.18%
Increase from 2007 Projections 5.66%
OREGON STATE BAR  
PROFESSIONAL LIABILITY FUND  
2008 PRIMARY PROGRAM BUDGET  
CONDENSED STATEMENT OF OPERATING EXPENSE  
Presented to PLF Board of Directors on September 10, 2007

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<td><strong>Total Operating Expenses</strong></td>
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<td><strong>$5,411,735</strong></td>
<td><strong>$6,250,868</strong></td>
<td><strong>$5,728,092</strong></td>
<td><strong>$6,052,289</strong></td>
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<td><strong>Allocated to Excess Program</strong></td>
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<td><strong>($1,168,135)</strong></td>
<td><strong>($1,258,047)</strong></td>
<td><strong>($1,258,047)</strong></td>
<td><strong>($1,155,334)</strong></td>
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**Full Time Employees**  
(See Explanation)  
39.10 39.98 43.65 41.17 41.37

Number of Full Pay Attorneys  
6,312 6,537 6,658 6,585 6,651

Non-personnel Expenses  
$1,427,882 $1,439,184 $1,610,155 $1,473,438 $1,651,940

Allocated to Excess Program  
($290,527) ($321,895) ($324,929) ($324,929) ($317,456)

Total Non-personnel Expenses  
1,137,355 1,117,289 1,285,226 1,148,509 1,334,484

**CHANGE IN OPERATING EXPENSES:**  
Increase from 2007 Budget -3.18%  
Increase from 2007 Projections 5.66%
OREGON STATE BAR
PROFESSIONAL LIABILITY FUND
2008 PRIMARY PROGRAM BUDGET
ADMINISTRATION
Presented to PLF Board of Directors on September 10, 2007

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<td>$1,740,989</td>
<td>$1,691,826</td>
<td>$1,794,701</td>
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Allocated to Excess Program

|               | ($386,513) | ($427,025) | ($450,978) | ($450,978) | ($437,368) |

REVIEW AND REVISE
Administration Full Time Employees

|               | 7.00       | 7.30        | 7.25        | 7.34        | 6.84        |

CHANGE IN OPERATING EXPENSES:
Increase from 2007 Budget 3.09%
Increase from 2007 Projections 6.08%
OREGON STATE BAR
PROFESSIONAL LIABILITY FUND
2008 PRIMARY PROGRAM BUDGET
ACCOUNTING
Presented to PLF Board of Directors on September 10, 2007

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<td>($113,267)</td>
<td>($120,522)</td>
<td>($120,522)</td>
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[REVISE]

**Accounting Full Time Employees**
(See Explanation)

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**CHANGE IN OPERATING EXPENSES:**

- Increase from 2007 Budget: -1.20%
- Increase from 2007 Projections: 4.96%
OREGON STATE BAR
PROFESSIONAL LIABILITY FUND
2008 PRIMARY PROGRAM BUDGET
LOSS PREVENTION
Presented to PLF Board of Directors on September 10, 2007

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<td>($271,024)</td>
<td>($300,700)</td>
<td>($300,700)</td>
<td>($251,197)</td>
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REVISE
   L P Depart Full Time Employees
   (Includes OAAP)
   11.30  11.78  12.50  12.13  11.83

CHANGE IN OPERATING EXPENSES:
   Increase from 2007 Budget  -6.37%
   Increase from 2007 Projections  5.46%
OREGON STATE BAR  
PROFESSIONAL LIABILITY FUND  
2008 PRIMARY PROGRAM BUDGET  
CLAIMS DEPARTMENT  
Presented to PLF Board of Directors on September 10, 2007

<table>
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<tr>
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<td><strong>Total Operating Expenses</strong></td>
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<td><strong>$1,747,745</strong></td>
<td><strong>$2,159,488</strong></td>
<td><strong>$1,921,787</strong></td>
<td><strong>$2,030,041</strong></td>
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<td>($355,819)</td>
<td>($385,847)</td>
<td>($385,847)</td>
<td>($348,686)</td>
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REVISE  
Claims Depart Full Time Employees  
15.90  
16.00  
19.00  
16.80  
17.80

CHANGE IN OPERATING EXPENSES:  
Increase from 2007 Budget  
-5.99%  
Increase from 2007 Projections  
5.63%
OREGON STATE BAR  
PROFESSIONAL LIABILITY FUND  
2008 PRIMARY PROGRAM BUDGET  
CAPITAL BUDGET  
Presented to PLF Board of Directors on September 10, 2007

<table>
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<td><strong>$62,438</strong></td>
<td><strong>$875,000</strong></td>
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</table>

Increase from 2007 Budget 1186.76%  
Increase from 2007 Projections 1301.39%
OREGON STATE BAR
PROFESSIONAL LIABILITY FUND
2008 EXCESS PROGRAM BUDGET
Presented to PLF Board of Directors on September 10, 2007

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<tbody>
<tr>
<td><strong>Revenue</strong></td>
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<td><strong>Total Revenue</strong></td>
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<td><strong>$1,456,123</strong></td>
<td><strong>$1,358,476</strong></td>
<td><strong>$1,318,985</strong></td>
<td><strong>$1,266,271</strong></td>
</tr>
</tbody>
</table>

| **Expenses**          |             |             |             |                  |             |
| Allocated Salaries    | $560,907    | $640,869    | $690,121    | $690,121         | $647,008    |
| Direct Salaries       | 3,298       | 18,424      | 5,000       | 7,266            | 62,400      |
| Allocated Benefits    | 158,923     | 205,371     | 242,997     | 242,997          | 190,870     |
| Direct Benefits       | 254         | 1,420       | 383         | 570              | 16,978      |
| Program Promotion     | 0           | 1,000       | 2,000       | 1,000            | 1,000       |
| Investment Services   | 3,937       | 3,615       | 4,100       | 4,100            | 4,500       |
| Allocation of Primary Overhead | 290,527 | 321,895     | 324,929     | 324,929          | 317,456     |
| Reinsurance Placement Travel | 4,611    | 3,037       | 7,000       | 5,000            | 7,500       |
| Training              | 2,475       | 0           | 1,000       | 1,000            | 1,000       |
| Printing and Mailing  | 5,113       | 4,970       | 5,200       | 5,200            | 5,500       |
| Other Professional Services | 2,284 | 144         | 300         | 200              | 300         |
| Software Development  | 0           | 0           | 0           | 0                | 0           |
| **Total Expense**     | **$1,032,319**| **$1,200,745**| **$1,283,030**| **$1,282,383**   | **$1,254,512**|

| **Allocated Depreciation** | **$27,230** | **$28,843** | **$26,234** | **$26,234** | **$40,821** |

| **Net Income**          | **($120,065)** | **$226,535** | **$49,212** | **$10,368** | **($29,062)** |

| **Full Time Employees** | 0.10         | 0.10         | 0.10        | 0.20         | 1.00         |

| **Number of Covered Attorneys** | 2,484 | 2,540 | 2,628 | 2,600 | 2,678 |

**CHANGE IN OPERATING EXPENSES:**
- Increase from 2007 Budget: -2.22%
- Increase from 2007 Projections: -2.17%
August 7, 2007

Mr. Ira Zarov  
Mr. Tom Cave  
Oregon State Bar Professional Liability Fund  
Post Office Box 1600  
Lake Oswego, Oregon 97035-0889

Re: Year 2008 Assessment

Dear Ira and Tom:

At your request, we have analyzed the PLF Primary Fund's historical claims data available through June 30, 2007. Based on this analysis, we have projected the expected claim cost for the Primary Fund for the Calendar Year 2008 (CY 2008) and developed recommendations concerning the CY 2008 assessment for the Primary Fund.

Our assignment for this study was to focus on a projection of the Primary Fund’s projected claim cost for CY 2008. We have not attempted to address the impact of investment income, installment surcharges, underwriting expenses or unallocated loss adjustment expenses. Based on our analysis we estimate that the PLF Primary Fund’s CY 2008 average claim cost per attorney will lie in a range of $2,100 to $3,218 (see table on page 5 of this report) with an indicated average claim cost of $2,470 per attorney.

At June 30, 2007, the PLF Primary Fund has negative retained earnings (the equivalent of surplus for an insurance company) of approximately $1.6 million. Our recent study of claim liabilities recommended an increase in the liability for unpaid claims of approximately $522,000. After that adjustment, the Primary Program had a gain of about $2.7 million for the first six months of 2007. At June 30, 2000, the PLF Primary Fund had retained earnings in excess of $7 million. Shortly after that, a combination of claims experience and investment results eliminated the Primary
Fund’s surplus. With negative retained earnings, it is important that the PLF Primary Fund charge an adequate rate and add a margin to regenerate surplus. Historically, net investment income and installment surcharges have offset the PLF’s operating expenses. However, these items are no longer adequate to cover operating expenses completely. Thus, a supplement to provide for operating expenses is also appropriate. As stated above, a pure premium in the neighborhood of $2,470 per attorney for the 2008 claim year is reasonably likely to cover the Primary Fund’s claim costs. If the Primary Fund covers approximately 6,500 full pay attorneys in CY 2008, then the Primary Fund should expect to decrease its deficit by approximately $650,000 for each $100 that the assessment rate exceeds the Fund’s claim and administrative costs on a per-attorney basis.

In our claim reserve report dated July 30, 2007 we recommended that the Primary Fund keep at least $5 million of surplus to be able to absorb adverse claim or investment experience which may occur in the future. We also described an approach for quantifying desired surplus levels using statistical confidence levels. In prior studies, we have noted the need for caution in establishing assessment rates for the PLF Primary Fund. This has not changed, and there are several reasons for the Board to exercise caution in setting the rate at this time.

1. The Fund’s frequency has been volatile varying from a low rate of 11.4% in 1990 to a high rate of 14.7% in 2004. It has also varied significantly from year to year. This volatility makes it difficult to predict the Fund’s frequency for a given year.

2. The Fund’s claim costs have had a moderately positive trend since 1993, indicating that claim costs are increasing. Since 1999, the average claim cost per attorney has hovered in a range of $2,300 to $2,600 after being in the $1,800 to $2,000 range for most of the 1990’s. The 2000 and 2001 claim years are the exceptions, as the average claim cost in 2000 spiked to $3,206 and the claim cost in 2001 dropped to $1,927.

3. The market value of the Fund’s assets has been volatile, producing large gains in some years and losses in others during the past 13 years.

4. The Fund currently has a negative surplus position after accumulating as much as $10 million at the end of 1999. Volatile asset values tend to exacerbate a low or negative surplus situation. Surplus enables an insurance company or fund to withstand adverse experience (whether it is due to claims or asset values) without having to take drastic measures.
Data and Methodology

The analysis utilizes case incurred amounts for indemnity and expense as of June 30, 2007, provided by the PLF staff. The term "case incurred" is used herein to describe the estimated value placed on a claim by the PLF staff. The value includes both the paid and unpaid portions of the claim. The indemnity and expense components of incurred claims for each semiannual reporting period are reviewed separately. These amounts have been developed based on actuarial development factors, which are used to estimate the amount by which ultimate losses can be expected to differ from the case incurred amounts established by the PLF. We make this determination by analyzing the actual periodic changes (measured at semiannual intervals) in case incurred amounts. The purpose of this approach is to adjust for any pattern of over or under-reserving by the PLF staff that may have appeared in the experience data.

The methodology and judgment utilized in selecting the actuarial development factors for this review are consistent with that utilized in our determination of reserves for unpaid losses as of June 30, 2007. While the development factors used in this analysis represent our best judgment concerning future development patterns, it should be noted that attorneys professional liability insurance is a volatile line of business that is affected by legislation, judicial interpretation and the economy. This may cause future development patterns to differ from those exhibited in the claim data at June 30, 2007.

The PLF has provided information concerning the historical and estimated future number of full pay equivalent attorneys. This has provided the basis for the exposure data used in our analysis. The number of full pay attorneys is determined as the total assessment for a given year divided by the assessment rate for the year. Effective with the 2006 plan year, the PLF reduced the discounts given to attorneys with limited prior PLF coverage (“step rating”). This distorts the calculation of the number of full pay attorneys as the same number and distribution of attorneys will now generate more assessment dollars. Based on data from 2001 through 2005, this change generates approximately 2% more assessment dollars and therefore 2% more full pay equivalent attorneys. Last year we adjusted the number of full pay attorneys for 2006 and 2007 to get the exposure data on a basis consistent with prior years. For this analysis the change in the number of full pay equivalent attorneys does not appear to have a material impact on the results. For that reason we have used the unadjusted number of full pay equivalent attorneys as provided.

In this analysis, we have concentrated only on the claim costs. We have made no calculations of 2008 investment income or operating expenses. It is our
understanding that the PLF staff will include a discussion of those factors in their recommendations regarding the 2008 assessment.

**Provision for Claims**

The foundation for the determination of a provision for claims is the expected claim cost for the assessment period. This analysis anticipates a calendar year 2008 assessment period with the bulk of the policies written January 1, 2008. To determine the expected claim cost for this period, we used the following approach:

1. Claims experience was analyzed for calendar years 1983 through 2006. The ultimate incurred claims used in this analysis are the same as those determined in connection with our estimate of PLF Primary Fund reserves as of June 30, 2007. We have described the methodology used in that determination in separate correspondence.

Exhibit 1 presents a summary of this analysis, including ultimate incurred claims, number of claims, frequency, severity and claim cost for calendar years 1983 through 2006. The average claim cost per attorney for calendar years 1983 through 2006 is displayed in the column captioned "Untrended Claim Cost." The untrended claim cost is determined by dividing (a) the ultimate incurred claim amounts reported during each calendar year by (b) the attorney exposure for that year. Therefore, the claim cost represents the average incurred claims for an average attorney insured for the full calendar year.

2. The current coverage limits ($300,000 per claim) have been in place since 1987. We have focused our analysis on the experience period, which includes calendar years 1997 through 2006. We note that a $25,000 claim expense allowance was implemented in 1995 and an additional $25,000 claim expense allowance (for a total of $50,000) was added in 2005. The experience for periods since 1995 reflects the first allowance. Only the 2005 and 2006 experience reflects the second expense allowance. We do not believe that the impact of the second allowance on claims expense is significant enough to invalidate the use of data from previous periods in our analysis. We have omitted the 2007 claims from the experience period because these claims are new, and there is only six months of data. Each calendar year claim cost is trended to the middle of CY 2008, the approximate midpoint of the exposure to be incurred during the assessment period. The purpose of trending is to recognize the tendency of claim costs to increase over time.
3. Selecting an appropriate trend rate is an important step in applying the methodology described above. The 1987 - 2006 experience period indicates a trend in the range of 2% to 4%. The resulting trend is the product of lower claim costs ($1,200 to $1,500 per attorney) in the 1987 through 1989 claim years and much higher claim costs after 1990. Between 1990 and 1998, claim costs were flat (i.e., no measurable trend) with values in a range of $1,800 to $2,000 per attorney. The 1999 and later claim years give the trend line an upward slope because average claim cost increased by approximately $570 per attorney in 1999 and the average cost has stayed in that neighborhood since that time. The net effect of this experience is that it is difficult to select a specific trend. However, we note that the Primary Fund’s claim cost trend has generally been in the 2% to 4% range.

4. Having established a framework for reviewing the claims experience, we must develop a method for determining the expected cost of claims to be reported in CY 2008. For this purpose, we have employed two different approaches:

a. Based on the analysis described in (1) through (3) above we have selected a range of claim cost trends that we believe to be appropriate. These trends are applied to each calendar year's untrended claim cost to produce for each calendar year a range of claim costs trended to July 1, 2008. The averages of these trended claim costs provide a range of expected claim costs for claims to be reported in 2008. These calculations are displayed in Exhibit 1.

b. As an alternative to the approach described above we have used the claims data and professional judgment to select a range of claim frequencies and a range of average claim severities. Multiplying the claim frequencies by the average severities also produces a range of expected claim costs. This approach is displayed in Exhibit 2.

5. For each of the methods described above parameters representing expected future claim experience must be selected. The following paragraphs describe our rationale for the parameters we have selected.

a. As stated above, the first method requires the selection of appropriate trend rates for annual claim costs. In Exhibit 1, we have selected 1.00%, 3.00%, and 5.00% trends for our range of values. As we noted in the reserve report, the selection of beginning and ending points can have a significant impact on the conclusions about average trend rates. Depending on the period selected, the PLF Primary Fund has had claim cost trends in the 2% to 4% range.
b. To implement the second method, selection of appropriate claim frequency and claim severity parameters is required. At the low end, we have selected a 12% frequency and a $17,500 average severity. Since 1995, there have been only three years with claim frequencies less than 13%. Two of those years, however, have been 2006 and the first six months of 2007. The average claim size has been significantly less than $17,500 only twice since 1999. Certainly, these parameters would be characterized as optimistic.

The indicated estimate is based on 13.00% frequency and $19,500 severity. The PLF Primary Fund's average frequency since 1997 is 13.5%. The average frequency since 2001 is 13.3%. The Primary Fund has experienced claim frequency of 13% or higher every year between 1997 and 2005. The experience of the past seven years leads us to expect that the Primary Fund's claim frequency will be between 13% and 14%. However, the frequency over the past 18 months has been approximately 12%. We believe that we should pick parameters that give the program an excellent chance to be more than adequate. So, an incurred frequency of less than 13.00% would be a welcome (and we believe likely) result.

The Primary Fund's average claim size (i.e., severity) is a more difficult selection. Between 1993 and 1998, the average severity never exceeded $15,000, lying in a range of $12,500 to $14,500. In 1999, severity jumped to $16,599 and spiked to $23,530 in 2000. Current claim severities for the 2004 and 2005 claim years have increased approximately 4.5% over the past year, while claim severities for the 2003 and 2006 claim years have decreased by approximately 1%. In the aggregate, claim development has been slightly greater than expected. Based on recent experience, we believe that $19,000 will prove to be an adequate severity estimate for 2008 claims.

With a deficit of approximately $1.6 million, we believe that the Board should set an assessment rate for 2008 that will not only cover the claim cost and operating expenses, but also continue to recoup some of the Primary Fund's recent financial losses.

At the upper end of the range, we have selected a 15.0% frequency and a $21,000 average severity. The PLF Primary Fund has experienced frequency in excess of 14% in 1995, 1999, 2004, and the first half of 2005. Two of the six full years since 1999 have produced an average severity at or above $19,600. The average severity for claim year 2000 ($23,530) is the largest in the Fund's history.
c. We have noted in the past that attorneys professional liability insurance is a volatile line of business. It is reasonable to expect that there will be years in the future that will have significantly higher than expected claim costs. Years with lower than expected claim costs are also to be expected. This uncertainty with regard to future experience suggests the need for caution in rating.

6. The table below summarizes our estimates of the CY 2008 expected claim cost.

<table>
<thead>
<tr>
<th>Estimate</th>
<th>Method 1</th>
<th>Method 2</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Average Trended Claim Cost</td>
<td>Frequency x Severity</td>
</tr>
<tr>
<td>Low</td>
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<td>$2,100</td>
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<tr>
<td>Indicated</td>
<td>2,832</td>
<td>2,470</td>
</tr>
<tr>
<td>High</td>
<td>3,218</td>
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</table>

As a check on the reasonableness of the results from Method 2, we have determined the trend rates applied to the average trended claim costs over the 1997 – 2006 period, which produce expected claim costs approximately the same as the three estimates. A negative 1.70% trend reproduces the low estimate, while a 0.85% trend produces the indicated estimate and a 4.65% trend is needed for the high estimate. These determinations were made to provide additional perspective to the analysis. The trended claim costs under the three trend assumptions are presented in Exhibit 2.

**Rating Margin: Theoretical Considerations**

Generally, it is appropriate to include in an insurance rate a provision for adverse deviation from expected experience. The purpose of this rating margin is to increase the insurance organization's chances for rating adequacy by making a reasonable provision for adverse fluctuation in claims experience.

Because this methodology utilizes the average trended claim cost from the experience period, statistically, there is a 50% probability that actual results will be better than expected and a 50% probability that actual results will be worse than expected, assuming the trend factor provides an appropriate basis for projection. The typical insurance organization considers it prudent to increase its probability of success substantially above the 50/50 position. This is accomplished by establishing a rating margin either statistically, based on the observed fluctuations in the experience data, or subjectively, based on actuarial and management judgment.
It is sometimes appealing to establish the margin based on a mathematical measure of the statistical fluctuation observed in the experience data, e.g., the standard deviation. Frequently, however, the data is not sufficiently credible for such a purpose and, in any event, the approach may be too esoteric. As a result, it is often convenient and equally effective to establish the margin based on a subjectively chosen percentage of the expected claim cost. The selection of the percentage margin requires management to exercise judgment based on the organization's willingness to accept risk, its ability to withstand adverse experience, its position in the competitive market, etc.

The ability of the typical insurance organization to withstand adverse experience depends in part on the adequacy of its surplus (the equivalent of PLF Primary Fund's retained earnings). A strong surplus position permits a lower rating margin, while a weaker surplus position would require a larger margin. Likewise, an organization's surplus relative to its surplus goal might also influence management's judgment regarding the margin to be included in its rates.

The PLF's unique circumstances allow it to be significantly less conservative than a commercial insurer in establishing its rates. The mandatory participation requirement and PLF's ability to establish future assessments to fund prior deficits provide at least as much protection against adverse experience as a strong surplus position provides the typical commercial insurer. As a result, a rating margin is not nearly as important to the PLF Primary Fund as it is to the typical insurer and management has more discretion in the judgment it exercises in this regard. While there is certainly an argument to be made that under normal circumstances the PLF Primary Fund should incorporate no margin in its rating, some consideration may be in order concerning minimizing the frequency of rate adjustments, retained earnings position and goals, etc.

**Rating Margin: Practical Considerations**

The PLF's unique circumstances allow it to be significantly less conservative than a commercial insurer in establishing rates. Nevertheless, there are several considerations, which indicate that under certain conditions some additional margin in the rate may be appropriate:

1. The Primary Fund presently has negative retained earnings. A margin in the assessment rate would enable the Primary Fund to reduce its deficit as well as provide a cushion to absorb adverse claim experience, such as a higher than
expected number of reported claims or adverse development on existing and future claims.

2. The Primary Fund's assets are reported at market value, and investment results vary from year to year. The PLF uses asset allocation to limit volatility but investment income can not be predicted precisely for rating purposes. Thus, investment risk, as well as claim risk, becomes an important consideration in the rating process.

In spite of the considerations listed above, there are also factors, which indicate that an additional margin in the rate may not be needed at this time:

1. Attorneys are required to participate in the PLF's Primary Fund, and the PLF has the ability to set future rates at whatever level it deems necessary to maintain the financial soundness of the Fund.

2. The PLF also operates an Excess Fund to provide attorneys with coverage in excess of $300,000. The Excess Fund currently (through June 30, 2006) has retained earnings in excess of $5 million. While the accounting on the two Funds is separate and it is not the goal of the PLF staff for the Excess Fund to subsidize the Primary Fund, the assets of the two Funds are commingled, and nothing prevents the two Funds from supporting each other financially.

3. Unlike other members of NABRICO, the PLF's Primary Fund is not constrained by competition. Since the coverage is mandatory, the PLF has the ability to assess policyholders to meet the Primary Fund's financial needs without fear of losing market share. The staff and Board of Directors of the PLF believe that they have an obligation to the attorneys of the state of Oregon not to abuse this privilege. Thus, they are reluctant to overreact to adverse experience. They will implement rate increases when experience clearly dictates that increases are required.

For your consideration, we have developed expected CY 2008 claim costs without a margin and with 10% and 20% margins. A 10% margin is subjective and is a commonly used level in much of our rate work with other insurance entities. For the values displayed in Exhibit 1, one standard deviation is approximately 20% of the expected claim cost. The table below summarizes our estimates of the CY 2008 claim costs:
Prior to 1999, we had recommended rates that proved (with the benefit of hindsight) to be too high. The rates proposed for the 2000 through 2004 rate studies have proven to be inadequate. For the 2000 through 2006 policy years, we have projected pure premiums (i.e., claim costs) between $1,958 and $2,544. At this point, we believe that the actual claim costs for those years will be between $1,927 and $3,206. The table below summarizes these results:

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
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<tr>
<td>2000</td>
<td>$ 1,958</td>
<td>$ 3,206</td>
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<tr>
<td>2007</td>
<td>2,544</td>
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</table>

We believe that $2,470 per attorney is reasonably likely to cover the cost of 2008 claims. This is 3% lower than the claim cost we proposed in the analysis we performed last year. This value reflects lower frequency (13.00% vs 13.75%) and higher claim severity ($19,000 vs $18,500) than we used last year. Please note that this rate is based on professional judgment and a focus on recent claim experience.
Important Considerations

Credibility

Attorneys professional liability insurance is a low frequency, high severity exposure. Accordingly, a block of attorneys professional liability insurance policies generates lower credibility than a similar-sized block of a high frequency, low severity exposure like automobile insurance. Due to its size and nature, the PLF Primary Fund's block of business does not possess as much credibility as an actuary would prefer in developing rates. While one would prefer to enhance the predictability of experience by relying upon an outside source of data to compliment PLF Primary Fund's actual experience, we do not believe that any reasonably comparable body of data exists. This is the result of the lack of industry loss data for this line of coverage and the tremendous variations in risk among jurisdictions. We believe that the economic and judicial climate that exists in Oregon is substantially different from that of other jurisdictions. In addition, due to its mandatory nature, the PLF Primary Fund claim experience can be expected to be substantially different from that of other jurisdictions. This difference renders loss data developed in other jurisdictions inapplicable for the purpose of establishing rates for Oregon attorneys. Accordingly, despite expected weaknesses in the credibility of the historical data, we believe it is the best basis for establishing PLF Primary Fund rates.

Retained Earnings

We understand that the PLF Primary Fund has a goal of maintaining a level of retained earnings (surplus) sufficient to stabilize assessments. The question of how much surplus the PLF Primary Fund should maintain has been considered. In our reserve report dated July 30, 2007, we have discussed an approach that may help the PLF Primary Fund quantify its desired surplus level. It is clear to us that it is beneficial for the Primary Fund to have some surplus. It is also clear that the PLF was not established for the purpose of making a profit. The mandatory nature of the PLF Primary Fund and its ability to assess covered attorneys suggests a significantly smaller amount of surplus than would be appropriate for a commercial insurer or for one of the PLF’s sister organizations in other states.

Miscellaneous Issues

Attorneys professional liability insurance has been a volatile line of coverage subject to sudden adverse change. To the extent that unexpected adverse occurrences influence the PLF Primary Fund's experience, projections of expected claim cost and the assessment based on these conclusions could prove inadequate. Significant
upward trends in the claim cost of attorneys professional liability insurance have occurred in some jurisdictions. The potential for change makes periodic rate analyses necessary. We suggest that these analyses continue to be performed on an annual basis.

While the PLF must cope with the uncertainty and volatility associated with the attorneys professional liability line of coverage, it has significant advantages over other organizations. These advantages enhance the PLF's chances for appropriately establishing the assessment. The mandatory nature of the program avoids the disruption that occurs in a commercial company's block of business that results from consumer response to the competitive market. The PLF is not required to make assumptions regarding its exposure base for the period for which the assessment is to be established. Also, writing one policy form with uniform coverage features and limits and a common renewal date greatly strengthens the rating process. Because of these attributes, the PLF does not have to "aim at a moving target," as do its sister organizations in other states. While periodic analyses are important to the PLF's success, the resulting revisions are more likely to be refinements than sudden large increases.

As in the past, we have enjoyed the opportunity to work with you and we look forward to discussing the results of this analysis. If you have any questions, or if there are other issues that should be addressed, please let us know.

Sincerely,

Charles V. Faerber, F.S.A., A.C.A.S

CVF: ms
Enclosure

cc: Mr. Philip S. Dial

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### Exhibit 1

**Oregon State Bar Professional Liability Fund**

**Historical Claim Analysis and**

**Projection of Expected Claim Cost**

Claims Evaluated as of 6/30/07

<table>
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<tr>
<th>Calendar Year</th>
<th>Ultimate Incurred Claims (000's)</th>
<th>Number of Claims</th>
<th>Exposure</th>
<th>Frequency</th>
<th>Severity</th>
<th>Claim Cost @ 1.00%</th>
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<td>0.134</td>
<td>18,481</td>
<td>2,468</td>
<td>2,543</td>
<td>2,697</td>
</tr>
<tr>
<td>2006</td>
<td>13,968</td>
<td>781</td>
<td>6,537</td>
<td>0.119</td>
<td>17,885</td>
<td>2,137</td>
<td>2,180</td>
<td>2,267</td>
</tr>
<tr>
<td>2007</td>
<td>7,363</td>
<td>398</td>
<td>3,293</td>
<td>0.121</td>
<td>18,500</td>
<td>2,236</td>
<td>2,259</td>
<td>2,303</td>
</tr>
</tbody>
</table>

(6 Mos)

### Experience Period:
--- | --- | ---
Selected Trend: 1.00% | 3.00% | 5.00%
Mean Value for the Period: 0.135 | $17,410 | $2,493 | $2,832 | $3,218
Standard Deviation of Claim Costs: 0.447 | 219 | 646
Standard Deviation as a percent of the Mean Value: 17.94% | 18.32% | 20.07%

(1) Includes loss and loss adjustment expense
(2) Untrended Claim Cost = Ultimate Incurred Claims / Exposure

CLMCST07.xls - Avg Trend Claim Cost

8/7/2007 - 3:57 PM
### Exhibit 2

**Oregon State Bar Professional Liability Fund**

**Historical Claim Analysis and Projection of Expected Claim Cost**

Claims Evaluated as of 6/30/07

<table>
<thead>
<tr>
<th>Calendar Year</th>
<th>(1) Ultimate Incurred Claims (000's)</th>
<th>Number of Claims</th>
<th>Exposure</th>
<th>Frequency</th>
<th>Severity</th>
<th>(2) Untrended Claim Cost</th>
<th>Claim Cost Trended to 7/1/08</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>@-1.70%</td>
<td>@ 8.55%</td>
</tr>
<tr>
<td>1983</td>
<td>$ 7,672</td>
<td>480</td>
<td>4,532</td>
<td>0.106</td>
<td>$ 15,984</td>
<td>$ 1,693</td>
<td>$ 1,103</td>
</tr>
<tr>
<td>1984</td>
<td>7,176</td>
<td>456</td>
<td>4,676</td>
<td>0.098</td>
<td>15,738</td>
<td>1,535</td>
<td>1,017</td>
</tr>
<tr>
<td>1985</td>
<td>8,357</td>
<td>569</td>
<td>4,648</td>
<td>0.122</td>
<td>14,687</td>
<td>1,798</td>
<td>1,212</td>
</tr>
<tr>
<td>1986</td>
<td>8,292</td>
<td>474</td>
<td>4,668</td>
<td>0.102</td>
<td>17,493</td>
<td>1,776</td>
<td>1,218</td>
</tr>
<tr>
<td>1987</td>
<td>5,845</td>
<td>465</td>
<td>4,700</td>
<td>0.099</td>
<td>12,570</td>
<td>1,244</td>
<td>868</td>
</tr>
<tr>
<td>1988</td>
<td>6,381</td>
<td>416</td>
<td>4,786</td>
<td>0.087</td>
<td>15,338</td>
<td>1,333</td>
<td>946</td>
</tr>
<tr>
<td>1989</td>
<td>7,522</td>
<td>505</td>
<td>4,868</td>
<td>0.104</td>
<td>14,895</td>
<td>1,545</td>
<td>1,116</td>
</tr>
<tr>
<td>1990</td>
<td>9,067</td>
<td>569</td>
<td>4,989</td>
<td>0.114</td>
<td>15,936</td>
<td>1,817</td>
<td>1,335</td>
</tr>
<tr>
<td>1991</td>
<td>9,489</td>
<td>635</td>
<td>5,126</td>
<td>0.124</td>
<td>14,943</td>
<td>1,851</td>
<td>1,383</td>
</tr>
<tr>
<td>1992</td>
<td>10,367</td>
<td>640</td>
<td>5,257</td>
<td>0.122</td>
<td>16,198</td>
<td>1,972</td>
<td>1,499</td>
</tr>
<tr>
<td>1993</td>
<td>10,048</td>
<td>700</td>
<td>5,373</td>
<td>0.130</td>
<td>14,355</td>
<td>1,870</td>
<td>1,446</td>
</tr>
<tr>
<td>1994</td>
<td>9,866</td>
<td>681</td>
<td>5,504</td>
<td>0.124</td>
<td>14,487</td>
<td>1,792</td>
<td>1,410</td>
</tr>
<tr>
<td>1995</td>
<td>11,017</td>
<td>825</td>
<td>5,635</td>
<td>0.146</td>
<td>13,354</td>
<td>1,955</td>
<td>1,564</td>
</tr>
<tr>
<td>1996</td>
<td>9,090</td>
<td>721</td>
<td>5,763</td>
<td>0.125</td>
<td>12,607</td>
<td>1,577</td>
<td>1,284</td>
</tr>
<tr>
<td>1997</td>
<td>10,533</td>
<td>769</td>
<td>5,680</td>
<td>0.135</td>
<td>13,698</td>
<td>1,854</td>
<td>1,536</td>
</tr>
<tr>
<td>1998</td>
<td>10,438</td>
<td>761</td>
<td>5,773</td>
<td>0.132</td>
<td>13,716</td>
<td>1,808</td>
<td>1,523</td>
</tr>
<tr>
<td>1999</td>
<td>13,777</td>
<td>830</td>
<td>5,792</td>
<td>0.143</td>
<td>16,599</td>
<td>2,379</td>
<td>2,038</td>
</tr>
<tr>
<td>2000</td>
<td>18,777</td>
<td>798</td>
<td>5,857</td>
<td>0.136</td>
<td>23,530</td>
<td>3,206</td>
<td>2,795</td>
</tr>
<tr>
<td>2001</td>
<td>11,422</td>
<td>775</td>
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<td>14,738</td>
<td>1,927</td>
<td>1,709</td>
</tr>
<tr>
<td>2002</td>
<td>14,271</td>
<td>816</td>
<td>6,006</td>
<td>0.136</td>
<td>17,489</td>
<td>2,376</td>
<td>2,144</td>
</tr>
<tr>
<td>2003</td>
<td>16,008</td>
<td>815</td>
<td>6,108</td>
<td>0.133</td>
<td>19,641</td>
<td>2,621</td>
<td>2,405</td>
</tr>
<tr>
<td>2004</td>
<td>16,441</td>
<td>923</td>
<td>6,276</td>
<td>0.147</td>
<td>17,813</td>
<td>2,620</td>
<td>2,446</td>
</tr>
<tr>
<td>2005</td>
<td>15,580</td>
<td>843</td>
<td>6,312</td>
<td>0.134</td>
<td>18,481</td>
<td>2,468</td>
<td>2,344</td>
</tr>
<tr>
<td>2006</td>
<td>13,968</td>
<td>781</td>
<td>6,537</td>
<td>0.119</td>
<td>17,885</td>
<td>2,137</td>
<td>2,063</td>
</tr>
<tr>
<td>2007</td>
<td>7,363</td>
<td>398</td>
<td>3,293</td>
<td>0.121</td>
<td>18,500</td>
<td>2,236</td>
<td>2,198</td>
</tr>
</tbody>
</table>

(6 Mos)

**Selected Average Claim Severity:**

$17,500

**Selected Frequency:**

$x \times 12.00\%$ $x \times 13.00\%$ $x \times 15.00\%$

$2,100$ $2,470$ $3,150$

**Experience Period:**

1997 - 2006

**Trend Needed To Reproduce Above Results:**

-1.70% 0.85% 4.65%

**Average Trended Claim Cost During Period:**

$2,101$ $2,469$ $3,147$

**Standard Deviation of Claim Costs:**

496 498 569

**Standard Deviation as a percent of the Average Trended Claim Cost:**

23.63% 20.15% 18.07%

(1) Includes loss and loss adjustment expense

(2) Untrended Claim Cost = Ultimate Incurred Claims / Exposure

CLMCST07.xls - Freq x Sev

8/7/2007 - 3:57 PM
August 29, 2007

To: PLF Finance Committee (Tim Martinez, Chair; Bob Cannon and Jim Rice) and PLF Board of Directors

From: Ira Zarov, Chief Executive Officer
       R. Thomas Cave, Chief Financial Officer

Re: June 30, 2007 Actuarial Review of PLF Primary Program Claim Liabilities

I. Recommended Actions

We have received the attached report from our actuaries reviewing PLF Primary Program claim liabilities as of June 30, 2007.

We agree with the indicated estimates made by the actuaries. Accordingly, we suggest that the Finance Committee recommend to the PLF Board of Directors the following actions:

1. Adopt the following liabilities for claims as of June 30, 2007 based on the actuarial study:

   Indemnity Liabilities $12.3 million
   Expense Liabilities 10.2 million
   Total Liabilities $22.5 million

2. Adopt an average claim cost figure of $18,700 ($10,000 indemnity and $8,700 expense) based on the actuarial study, which will be used to calculate claim liabilities for new claims over the next six months.

3. Readopt a goal of $9 million for combined Excess and Primary Program Retained Earnings.
II. Effect of Adopting these Figures

The PLF has actuarial reviews of claim liability estimates every six months because of the great variation of PLF claim severity and frequency. For financial statements prepared between actuarial reviews, claim liabilities are increased for each new claim at an adopted average cost amount and reduced when payments are made on any pending claim.

The financial statement effect of adopting the recommended estimated claim liabilities is an increase in claim costs of $521,535. The changes break down as follows:

<table>
<thead>
<tr>
<th></th>
<th>6/30/07 Liabilities Using 12/31/06 Report plus the First Half of 2007 Claims at $18,500 Average</th>
<th>Liabilities Using 6/30/07 Actuarial Estimates</th>
<th>Difference</th>
</tr>
</thead>
<tbody>
<tr>
<td>Indemnity</td>
<td>$11,996,274</td>
<td>$12,300,000</td>
<td>$303,726</td>
</tr>
<tr>
<td>Expense</td>
<td>$9,982,191</td>
<td>$10,200,000</td>
<td>$217,809</td>
</tr>
<tr>
<td>Total</td>
<td>$21,978,465</td>
<td>$22,500,000</td>
<td>$521,535</td>
</tr>
</tbody>
</table>

In other words, the Primary Program Balance Sheet liability for claims as of June 30, 2007 will be $521,535 higher with the actuarial adjustment than if we simply used the December 31, 2006 study plus the $18,500 average cost figure (adopted last December) for each of the 398 claims made during the first half of the 2007. The Primary Program Income Statement will reflect an increase in claim expense of $521,535 because of this adjustment.

The actuaries recommend using a total average claim cost figure of $18,700 for new claims received during the second half of 2007. This recommendation increases the indemnity portion by $500 and reduces the expense portion by $300. The average claim cost figures to be used in calculating interim financial reports until the next actuarial study would be as follows:

<table>
<thead>
<tr>
<th></th>
<th>6/30/07</th>
<th>12/31/06</th>
<th>Difference</th>
</tr>
</thead>
<tbody>
<tr>
<td>Average Indemnity</td>
<td>$10,000</td>
<td>$9,500</td>
<td>$500</td>
</tr>
<tr>
<td>Average Expense</td>
<td>$8,700</td>
<td>$9,000</td>
<td>($300)</td>
</tr>
<tr>
<td>Total</td>
<td>$18,700</td>
<td>$18,500</td>
<td>$200</td>
</tr>
</tbody>
</table>

III. Discussion of Actuarial Methods

We have discussed the actuarial methods many times in the past. The actuaries use a combination of development ratios and selected average costs.

Development ratios are computed based on the way the past estimates of semi-annual classes of claims have changed over successive six-month periods. For example, an actuary predicts that the total of estimates set by the claim attorneys will increase (or decrease) by a specific percentage between months 18 and 24, another percentage between months 24 and 30, etc. By mapping the ultimate development of PLF claims in this fashion, the actuary calculates what the
ultimate cost will be of each group of claims based upon current claim attorney estimates.

This methodology assumes that there are no changes in the long-term timing of claim estimates and payments. The analogy has been made that using this actuarial technique is like navigating a car by only looking out of the rear window. This works fine when the road is straight or uniformly curved. Unfortunately for the PLF, significant changes may occur in many areas including the number of claim files handled by each claim attorney, claim estimating philosophies, and overall economic conditions. In addition, PLF claims are not homogeneous or numerous from an actuarial standpoint. All of these factors disrupt the pattern of claim estimates and produce a road full of twists and turns. Because of the volatility and small universe of PLF claims, the data does not smooth out as well as other actuarial driven systems.

The actuaries recalculate the development ratios with each study to try to make them more accurate for current conditions. The actuaries compute these ratios for both estimates and actual payments of indemnity and claims expense. (Claims expense is defined as payments made to individuals other than the claimant; e.g., defense costs.)

The term severity is often used in the actuarial study. Severity means the average cost of each claim within a particular set of claims. Indemnity severity is the average amount paid to claimants. Expense severity is the average amount paid for defense and other costs of settling claims. It is often easier to see trends if we compare severity (average costs) from period to period. After the actuary calculates the ultimate total cost of claims for any period using the development ratios, this total cost is divided by the number of claims in the period to get the “developed severity” or “developed average severity”. When the term “developed severity” is used in this report, it means that the average cost was calculated using development factors.

Historically, PLF claims attorneys have based their claim cost estimates on available knowledge. Each claim estimate starts at zero rather than a set minimum value. For very new claims, the development ratios are high due to the fact that subsequent information often pushes estimates higher in later periods. Any small fluctuation up or down in the claim attorney estimates for recent claim periods are greatly magnified when actuarial development factors are applied.

The actuaries have faced additional challenges in recent years. The PLF Primary Program has had essentially the same aggregate $300,000 coverage limit since 1987. Over time, more and more claims have equaled or exceeded these coverage limits. The increase in the number of limit claims has not been even from year to year. For example, the PLF had an unusually large number of limit claims in 1999 and 2000. Many limit claims are subject to excess coverage from providers other than the Primary Program. Because of the aggregate coverage limit, the Primary Program coverage limits are sometimes used for defense payments alone. The excess providers may cover additional defense costs and the eventual indemnity payment. The situation has a tendency to increase overall defense severity and reduce overall indemnity severity for the Primary Program. However, this is only a small factor in the increases we have experienced in expense severity since 2000.
Because of problems in applying development factors to recent periods, the actuaries also
compute average costs using regression analysis. The actuaries describe their use of this method
on pages 3 and 4 of their report. Regression analysis is a statistical technique used to calculate a
trend line given several data points. Unfortunately, regression analysis is of limited value when
the amount of data is small and volatile. Additionally, the starting and ending data points can also
significantly affect the calculated trend. According, the actuary will often use his judgment to
chose an appropriate average for a given period rather than rely upon a mathematical calculation.

For the latest two or three years of claims, the actuaries use a combination of results obtained
from development factors and those obtained from average severity estimates. The table below
summarizes the approach:

<table>
<thead>
<tr>
<th>Year Claims Reported</th>
<th>Weights Applied at June 30, 2007</th>
<th></th>
<th>Weights To Be Applied at December 31, 2007</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Development Factor Results</td>
<td>Average Severity Results</td>
<td>Development Factor Results</td>
</tr>
<tr>
<td>2005</td>
<td>75%</td>
<td>25%</td>
<td>100%</td>
</tr>
<tr>
<td>2006</td>
<td>25</td>
<td>75</td>
<td>50</td>
</tr>
<tr>
<td>2007</td>
<td>0</td>
<td>100</td>
<td>0</td>
</tr>
</tbody>
</table>

The particular average severity figures are selected by the actuaries after reviewing developed
severity and the trends indicated by regression analysis for each year. In this report the actuaries
used average costs of 10,000 for indemnity and $8,500 for expense for 2005 claims. The change
since their last report is an increase of $800 for indemnity. For 2006 claims, the actuaries used
$9,200 for indemnity (and increase of $200 since the last report) and $8,700 for expense (a
decrease of $100 from the last report).

IV. Discussion of Liability Adjustment

During most of the 1990's, the actuarial adjustments were downward. Until 1999, the severity
trends were flat or even negative. When the PLF Primary Program had increases in the frequency
of new claims, usually there were offsetting decreases in claim severity. Starting with the 1999
claim year, the period of stable total claim costs ended. This change was not immediately
apparent. However, the two actuarial reports done for 2000 broke the trend of downward
adjustments. Both reports recommended large increases in estimated claim liabilities because of
higher than expected claim costs for the claim years 1999 and 2000. Since 2000, actuarial reports
have recommended adjustments (sometimes large) both up and down.
The following chart shows the reserve adjustments from the past eleven actuarial reports:

<table>
<thead>
<tr>
<th>Date</th>
<th>Increase/Decrease</th>
</tr>
</thead>
<tbody>
<tr>
<td>June 30, 2007</td>
<td>$521,535</td>
</tr>
<tr>
<td>December 31, 2006</td>
<td>$496,271</td>
</tr>
<tr>
<td>June 30, 2006</td>
<td>$2,095,462</td>
</tr>
<tr>
<td>December 31, 2005</td>
<td>$720,361</td>
</tr>
<tr>
<td>June 30, 2005</td>
<td>($151,868)</td>
</tr>
<tr>
<td>December 31, 2004</td>
<td>($1,116,451)</td>
</tr>
<tr>
<td>June 30, 2004</td>
<td>($143,683)</td>
</tr>
<tr>
<td>December 31, 2003</td>
<td>$2,203,485</td>
</tr>
<tr>
<td>June 30, 2003</td>
<td>($637,550)</td>
</tr>
<tr>
<td>December 31, 2002</td>
<td>$1,334,000</td>
</tr>
<tr>
<td>June 30, 2002</td>
<td>($709,000)</td>
</tr>
</tbody>
</table>

Claims reported before 2005 are discussed on page 5 of the actuaries report. Most of the claims from these years are closed. However, the claims that are open tend to be larger than average and are still subject to change. Estimates for these claims were decreased by $118,000 since the last actuarial report. A decrease of $484,000 in indemnity estimates more than offset an increase of $367,000 in expense estimates.

2005 claims are discussed on page 6 of the actuarial report. The average developed severity for indemnity is $752 per claim higher than the last report. The actuaries have chosen projected average severity figures for indemnity that are very close to the developed average severity ($10,000 projected versus $9,998 developed). The total indemnity estimate is $654,000 higher than the last report. This adverse development is the major bad news of this report. There is also a slight increase in the expense estimate ($21,000) for 2005. If we had not experienced the drop in claim frequency during the second half of the year, 2005 claim results would more expensive than most claim years.

Claims reported in 2006 are discussed on pages 6 and 7 of the report. The drop in the frequency of new claims continued throughout the year and was nearly 2.5 percent below the expected rate. The actuaries have increased their indemnity estimate ($207,000) and decreased their expense estimate ($123,000) since the last report. It is still very early to judge the ultimate severity of these claims. It is very possible that there will be significant severity increases as claims are settled.

V. Estimated Claim Cost for the Second Half of 2007

We base our claim liabilities solely on actuarial figures only twice a year, in June and December. During other months, we use the most recent actuarial figure, then increase the figure by the number of new claims multiplied by average cost and subtract current claim payments.
In their December 31, 2006 report, the actuaries recommended using $18,500 for each new claim during the first half of 2007. The actuaries' recommendations for the next six months are discussed on page 8 of the actuary report. They recommend using $18,700 per claim for new claims during the second six months of 2007. The indemnity average was increased from $9,500 to $10,000 and the expense average was decreased from $9,000 to $8,700. Although historically severity figures have varied both up and down from claim year to claim year, we feel that the current overall trend is clearly upward. The PLF experienced a large increase in expense severity starting with the 2000 claim year. The expense severity for every year since then was about $2,000 higher than the experience in the 1990’s. There has been a large staff focus on these recent increases in expense costs and rightly so. However, the results of the last two actuarial reports indicate that expense severity, while high, is no longer increasing at the same rate. These same two actuarial reports demonstrate that there have also been some significant overall increases in indemnity severity for years 2003 through 2005. As a result, the actuaries recommend increasing the total average cost but allocating a larger portion to indemnity.

We agree with the recommended increase in total average cost and the increased portion allocated to indemnity. Even though the recommended amounts appear to be historically high, there have been four straight actuarial reports that recommended increases to estimated liabilities. These increases indicate that past calculations of average claim costs have been too low and that severity is trending higher.

VI. Confidence Levels and Retained Earnings

On pages 9 and 10 of their report, the actuaries describe appropriate levels of PLF Primary retained earnings and their calculations of confidence levels. Details of their calculations of confidence levels can be found in Exhibit 8. The actuaries report that their calculations indicate that the recommended claim liabilities are “adequate approximately 50 percent of the time”. In other words, the actual claim costs will be at this level or lower 50 percent of the time. An additional $3.2 million increases the confidence level to 70 percent. At that level, the claim liabilities will be too high 69 percent of the time.

The actuaries also mention that the PLF’s recent claim volatility “highlights a fundamental weakness in the confidence level approach.” The confidence level calculations have mirrored the volatility in claim results and have gone up and down significantly with each of the past five actuarial studies. The 70 percent confidence level has varied from $6.1 to $3.2 million. The PLF Board of Directors reviews a goal for combined Primary and Excess Program retained earnings each six months based in part upon information from the actuarial report. In February, 2007, the Board of Directors decided to adopt a goal of $9.0 million combined Primary and Excess Program retained earnings. We feel the BOD should readopt that goal at this time.

The PLF Excess Program has 100 percent reinsurance for losses. As a result, the financial results are relatively predictable. It usually has a small profit or loss each year. This program has had approximate positive retained earnings of $4.7 million for the past five years.
The PLF Primary Program has been much more volatility in its financial results. As the actuaries discuss on page 9 of their report, the PLF Primary Program financial statements showed positive retained earnings of over $9 million at the end of 1999. Extremely poor claim results quickly turned these positive retained earnings negative. As of December 31, 2003, the Primary Program showed negative retained earnings of $8.5 million. Good financial results reduced the negative amount to $4.2 million as of December 31, 2006. After the adjustment recommended in this report, the PLF Primary Program will have net income of about $2.8 million and negative retained earnings of $1.6 million.

Historically, the Board of Directors has felt that combined retained earnings should be used as an indicator of the PLF’s financial condition and its ability to overcome adverse developments. The PLF had negative combined retained earnings of $3.4 million at the end of 2004. This deficit retained earnings was reduced to $1.2 million by the end of the 2005. Additional good results during 2006 turned the deficit into positive retained earnings of $500,000 at the end of 2006. After the adjustment recommended in this report, the PLF will have positive combined retained earnings of $3.4 million as of June 30, 2007. The PLF seems to be making slow but steady progress toward the retained earnings goal.

We continue to feel that actual economic retained earnings are higher because the liabilities are estimated without discounting for the time value of money. It is important to remember that operations of the PLF Primary Program are not compromised by the lack of retained earnings. There will be no need for any special supplemental assessment and operations are not threatened in any way. Because of mandatory participation in the PLF, the PLF can gradually reverse negative past results with a combination of increases in the assessments and hopefully improved claim results.

We feel the most significant results of this study are the following:

1. The actuaries recommend increasing claim estimates (indemnity and expense) by nearly $522,000. Most of the increase came from adverse indemnity developments from the 2005 claim year.

2. Actuarial reports from the recent past have noted substantial increases in expense severity. Expense severity continues to be high but did not continue to increase at the same rate with the past two reports. Unfortunately, these reports did indicate some increases in indemnity severity and it is clear that the overall trends predict increases in severity for both expense and indemnity for future PLF claims.

3. The frequency of new claims has been down substantially since June 30, 2005. The Primary Program has had good financial results in recent years because the low claim frequency has offset the general trends of increasing severity of claims. If there is an increase in the frequency of new claims, the good financial results are very likely to end.
The Finance Committee will discuss the actuarial report during its meeting at 10:00 a.m. on September 6, 2007 and prepare recommendations for the Board of Directors. The full Board of Directors will then act upon the committee’s recommendations at the September 10, 2007 Board Meeting.
Mr. Ira Zarov  
Mr. Tom Cave  
Oregon State Bar Professional  
Liability Fund  
Post Office Box 1600  
Lake Oswego, Oregon 97035-0889

Re: Determination of Reserve for Unpaid Indemnity and Unpaid Expense as of June 30, 2007

Dear Ira and Tom:

At your request, we have performed an actuarial analysis of PLF claims experience from inception through June 30, 2007, to determine the liability for unpaid indemnity and unpaid expense on claims reported as of June 30, 2007. Based on this analysis, we have estimated the reserve for unpaid indemnity to be in a range of $9.2 million to $13.7 million, with $12.3 million as the indicated reserve. Similarly, we estimate the reserve for unpaid expense to be between $8.4 million and $12.0 million, with an indicated reserve of $10.2 million. This report will summarize our analysis.

Methodology

We have used an incurred claim development methodology to determine separately the reserves for unpaid indemnity and unpaid expense on claims reported as of June 30, 2007. Our analysis has been based on claims data provided by the PLF staff. Briefly, we apply the incurred claim development methodology to determine the amount by which ultimate incurred claims are expected to differ from the case incurred estimates (including actual payments on closed claims) established by the PLF staff as of June 30, 2007. Analyzing the actual periodic changes (measured at semiannual intervals) in the case incurred estimates for each PLF claim allows this
determination to be made. The purpose of this approach is to adjust for any pattern of over or under-reserving by the PLF staff that may have appeared in the experience data. This method relies on the key assumption that future development patterns will be similar to those experienced in the past. This methodology is the same as that which was used in developing our reserve estimates for previous valuations. Please refer to the "Actuarial Review" section of our report of November 20, 1992 (pages 7-8) for additional discussion of the methodology.

In recent studies, we have applied the loss development factors to individual claims instead of claims grouped by report date. After selecting loss development factors for both indemnity and expense, we applied the factors to the claims individually and limited the development of any given claim to the maximum payable by the PLF. The maximum amount payable by the PLF for indemnity is $300,000. The maximum amount payable by the PLF in total for a claim increased from $325,000 to $350,000 in 2005. We believe that this adjustment is appropriate because the Fund's claims have increased in both frequency and severity in recent years. Applying factors that develop claims beyond the Fund's retention limit artificially adds to the volatility of the claim experience. As of June 30, 2007 there are 62 claims at or near the Primary Fund's claim limit. There were only 11 such claims in the Fund's history prior to 1999. There were 9 of these claims in 1999, 11 in 2000, and 9 in 2003. The other six years since 2000 have produced three to six claims at the limit. The number of claims at the limit may vary from year to year as claims mature. At the end of 2003 we identified 54 claims that were either already at the $325,000 retention limit or were expected to develop to the limit. The number of claims at the retention limit has varied since then with a high of 67 at the end of 2004 and a low of 60 at the end of 2005. At June 30, 2007 we are back up to 62 claims at the maximum limit with the additional claims focused on the 2005 and 2006 claim years.

Analysis

Loss Development Factors

An important characteristic of attorneys' professional liability claims is their volatility. It is difficult to predict both the frequency and ultimate severity of these claims. As in prior studies, we have made a key assumption that future development patterns will be similar to those experienced in the past. For each actuarial study, we select new development factors for both indemnity and expense portions of the claims to take advantage of the new information available in the updated claim data. As part of our analysis, we test these new factors and compare
them to the factors used in the previous valuation. To test and compare these two sets of factors we apply them to the case incurred amounts from previous valuations to measure how well the factors have predicted the claim development, which has actually occurred. We have used this analysis in all of our previous studies and have described the process in all of our previous reports.

The analysis performed for this study reveals that both the prior and current development factors predict recent claim experience fairly well. Claim development on has been mixed during the first half of 2007. Development on the indemnity portion of claims has been better than expected for claim years 2004 and earlier. The 2005 and 2006 claim years, however, have had greater than expected development, and that has exceeded the gains from the earlier years. Development on the expense portion of claims has generally been greater than expected. The 2004 claim year has the worst experience with ultimate incurred claims approximately 4% higher than the previous estimate. That is partially offset by gains on 2006 claims, which are about 2% lower than they were at December 31, 2006. If we had continued to use the December 31, 2006 factors, then our estimate of ultimate incurred claims and the corresponding liability would have been approximately $184,000 higher for indemnity and approximately $27,000 lower for expense. The factors from June 30, 2006 produce results that would have been approximately $231,000 higher for indemnity and approximately $61,000 lower for expense.

Exhibits 4A (indemnity) and 4B (expense) display the comparison analysis for claim development between December 31, 2006 and June 30, 2007. Similarly, Exhibits 5A and 5B present the analysis for claim development between June 30, 2006 and June 30, 2007. As mentioned earlier, we have applied the development factors selected for this valuation to determine the ultimate incurred amounts for both indemnity and expense portions of incurred claims. The application of these development factors to case incurred claims is presented in Exhibits 3A and 3B for indemnity and expense, respectively.

**Projection of Average Severities**

As we have mentioned in previous reports, the application of unadjusted development factors to case incurred estimates for recent reporting periods often produces projections of claim severity which are inconsistent with those of previous periods and indicated trends. The volatility from period to period in the case estimates of these recently reported claims makes it difficult to project their ultimate incurred value using only development factors. Therefore, we have used
average severities from periods that we believe to be reasonably credible in an exponential regression analysis and professional judgment to project the average severity of the claims reported in 2005, 2006, and 2007.

We have performed the regression analysis over a time period beginning with the 1990 claim year for both indemnity and expense. For the indemnity portion of the claims, the regression analysis indicates that there has been a small trend (0.76%) on average severities since 1990. Since 1993, the trend has been somewhat higher (1.60%). It is important to note that the selection of the beginning and ending points in the regression analysis has an important effect on our conclusions about trend. Between 1987 and 1992, the average severity for the indemnity portion of the claims hovered in the $8,500 to $10,000 range. Between 1993 and 1998, the average severity had fallen into the $7,400 to $9,100 range. Performing our analysis over these years (1987 through 1998) causes the trend to be negative. When we include the 1999 through 2005 claim years, the trend becomes flat (i.e., near zero), largely because of the high severity experienced in 1999 ($10,548) and 2000 ($15,211) followed by lower severities in 2001 ($8,274), 2002 ($9,389), and 2004 (9,197). The projected average severities selected for this valuation were chosen using a combination of the regression analysis, the developed claim experience, and professional judgment. The trends on the expense portion of claims display similar patterns to those of the indemnity portion but have not been as pronounced. The regression analysis indicates a moderately positive trend (3.06%) for the expense portion of the claims.

Exhibits 2A and 2B present the regression analysis on average severity for indemnity and expense, respectively. Our approach for claims, which were reported in the current claim year, has been to apply an average severity with some consideration given to the estimates produced by the development factors.

The developed average severity for the indemnity portion of claims reported in 2003 is somewhat higher than that of other recent years. This is due primarily to the presence of nine claims, which have reached the PLF’s retained limit ($325,000). In a typical year the PLF incurs only three to six claims that reach the retained limit.

The claims reported in 2004 have been volatile. At the end of 2004 it appeared that there would be eight claims that would reach the $325,000 retention limit. Five of those claims have not developed as much as we expected. Consequently, it appears now that there are only three retention limit claims for 2004. The severity for the indemnity portion of 2004 claims has decreased $150 per claim during 2007.
after increasing almost $700 per claim during the second half of 2006. The severity for the expense portion of 2004 claims has increased $300 per claim during the first half of 2007 after increasing by approximately $700 per claim in the first half of 2006. It had remained level during the second half of 2006.

Claim volatility in early durations is due to the small amount of information available. The PLF claim staff has little or no information about claims when they are first reported. As information does become available, case reserves are revised. Thus, it is common to find reported claim values that are under-valued at their first report and over-valued at the next duration. The reverse can also happen. Volatile reporting and development patterns for new claims are the main reason that development factors are not reliable for estimating the value of new claims.

For the current valuation, claims reported in 2005 and 2006 are valued using a weighted average of the results obtained from the development factors and the average severity. The claims reported in 2007 are valued based on a projected average severity. The table below summarizes the approach:

<table>
<thead>
<tr>
<th>Year Claims Reported</th>
<th>Weights Applied at June 30, 2007</th>
<th>Weights To Be Applied at December 31, 2007</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Development Factor Results</td>
<td>Average Severity Results</td>
</tr>
<tr>
<td>2005</td>
<td>75%</td>
<td>25%</td>
</tr>
<tr>
<td>2006</td>
<td>25%</td>
<td>75</td>
</tr>
<tr>
<td>2007</td>
<td>0</td>
<td>100</td>
</tr>
</tbody>
</table>

Claims Reported Prior to 2005

For claims reported prior to 2005, development during the last six months has been less than expected for indemnity and greater than expected for expense. Exhibit 6 displays a comparison of our estimates of ultimate incurred claims to the corresponding estimates at June 30, 2006 and December 31, 2006. Our estimate of the ultimate incurred liability for the indemnity portion of these claims is approximately $77,000 less than we had projected for incurred indemnity at June 30, 2006 and approximately $484,000 less than we had projected at December 31, 2006. The change in the value of indemnity claims is due primarily to less than expected development in the 2000 and 2003 claim years. Our estimate of the ultimate incurred liability for the expense portion of these claims is
approximately $509,000 more than we had projected at June 30, 2006 and approximately $366,000 more than we had projected at December 31, 2006.

Claims Reported in 2005

Beginning with claims reported in 2005, the PLF has raised its claim limit to $350,000 from the previous $325,000 level. Historically, the Fund has incurred only a few policy-limit claims in a given year. Therefore, we do not expect this change to have a material impact on the Fund’s financial results.

During the first half of 2005, 448 claims were reported. Those claims represent a 14.2% claim frequency, which is in line with recent experience and our 14% assumption in the assessment analysis performed in the summer of 2004. Only 395 claims were reported in the second half of 2005. Thus, the frequency for the year was 13.3%. The average developed severity for indemnity is $9,998, which is $752 per claim higher than we saw six months ago. The average developed severity for expense is slightly higher than expected at $8,477.

For claims reported in 2005, our current estimate reflects a 75% emphasis on the results produced by the development factors and a 25% emphasis on the results based on projected average severity. For 2005 claims, we have selected a $10,000 severity for indemnity and an $8,500 severity for expense. These values reflect the experience of 2005 and are higher for indemnity and in total than our recommendation at the end of last year.

Using the assumptions from the 2004 assessment study, we estimated that 2005 would produce 884 claims (14.0% x 6,312 attorneys) with an average severity of $18,000 per claim. As mentioned above, the PLF has actually incurred 843 claims, which we have now valued at $18,481 each [75% x ($9,998 + $8,477) + 25% x ($10,000 + $8,500)]. Thus, the present estimate of claims ($15.58 million = 843 claims x $18,481) is approximately $333,000 less than the expected incurred claims ($15.91 million = 884 claims x $18,000).

Claims Reported in 2006

During the first half of 2006, 414 claims were reported. Those claims represent a 12.7% claim frequency, which is lower than recent experience and our 14.50% assumption in the assessment analysis performed in 2005. In the second half of the year another 367 claims were reported. For the year the Fund had 781 claims reported. That translates to a 11.9% frequency. The average developed severity
for indemnity is comparable to recent years at $9,412. The average severity for expense is also comparable to recent years at $8,426.

For claims reported in 2006, our current estimate reflects a 25% emphasis on the results produced by the development factors and a 75% emphasis on the results based on projected average severity. For 2006 claims, we have selected a $9,200 severity for indemnity and an $8,700 severity for expense. These values reflect the experience of 2006 and are higher for indemnity and lower for expense than our recommendation at the end of last year.

Using the assumptions from the 2005 assessment study, we estimated that 2006 would produce 933 claims (14.50% x 6,437 attorneys) with an average severity of $17,500 per claim. As mentioned above, the PLF has actually incurred 781 claims, which we have now valued at $17,885 each [25% x ($9,412 + $8,426) + 25% x ($9,200 + $8,700)]. Thus, the present estimate of claims ($13.97 million = 781 claims x $17,885) is approximately $2.4 million less than the expected incurred claims ($16.33 million = 933 claims x $17,500).

Claims Reported in 2007

During the first half of 2007, 398 claims were reported. Those claims represent a 12.1% claim frequency, which is lower than recent experience and our 13.75% assumption in the assessment analysis performed last summer. The average developed severity for indemnity is also lower than recent years at $8,716. The average severity for expense is higher than recent years at $9,302.

For claims reported in 2007, we are relying strictly on projected average severities for both indemnity and expense. This is consistent with our treatment of newly reported claims in past studies. While we tend to believe that there is a positive trend inherent in claim costs from year to year, it is difficult to reflect this belief in our selection of projected severities due to the volatility of the Fund’s claim experience. Our initial analysis of 2007 claims indicates that the developed average severity for indemnity is somewhat lower than expected while the developed average severity for expense is higher than expected. Development on new claims is volatile and difficult to predict. For 2007 claims, we have selected a $9,500 severity for indemnity and a $9,000 severity for expense. These values do not reflect the experience of the first six months of 2007 but rather our recommendation at the end of 2006.
Using the assumptions from last year's assessment study, we estimated the first six months of 2007 would produce 453 claims (1/2 year x 13.75% x 6,585 attorneys) with an average severity of $18,500 per claim. As mentioned above, the PLF has actually incurred 394 claims, which we have continued to value at $18,500 each. Thus, the present estimate of claims ($7.36 million = 398 claims x $18,500) is approximately $1.0 million less than the expected incurred claims ($8.38 million = 453 claims x $18,500).

Claims To Be Reported in the Second Half of 2007

In the assessment report last summer, we recommended a total average severity of $18,500 to value each new claim in 2007. For claims reported in 2006, the developed severity on the indemnity portion has been approximately $9,400, while the developed severity on the expense portion has been about $8,400. For claims reported in 2007, the developed severity on the indemnity portion has been approximately $8,700, while the developed severity on the expense portion has been about $9,300. In the aggregate, these two years are remarkably similar in value, and also are too new to be reliable. Although the total average severity for 2006 and 2007 claims appear to be in the $18,000 range, we believe that it is appropriate to use a higher figure for valuing claims reported in the second half of 2007. Because of increases in indemnity severity, we suggest that a total of $18,700 be allocated to each future 2007 claim in the following way:

<table>
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<tr>
<th>2007 Claims</th>
<th>Selected Severity</th>
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<tr>
<td>Reported in Second Half of Year</td>
<td>Indemnity</td>
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<td>$10,000</td>
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Results

A summary of the analysis and a calculation of the indicated point estimate of the reserves are presented in Exhibit 1. We have also developed low and high estimates using methodology similar to that described above and based on somewhat less or more conservative judgment in our selection of development factors. Our ranges of estimates for the June 30, 2007 indemnity and expense reserves are displayed below. As indicated in past reports, these ranges are intended to encompass a realistic degree of variation. However, they are not intended to include all possible values.
To summarize the determination of the reserve estimates:

1. Supplements to the PLF case incurred estimates were developed using a traditional incurred claim development methodology. This analysis is presented in Exhibits 3A and 3B.

2. Adjusted supplements were determined based on an historical analysis of average claims severity as presented in Exhibits 2A and 2B.

3. The adjusted ultimate incurred amounts determined by adding the adjusted supplements to the case incurred estimates were then reduced by payments on open and closed claims to produce the financial statement reserve estimates for unpaid claims as of June 30, 2007.

It should be noted that these estimates do not include provisions for unallocated loss adjustment expenses (ULAE) or reserves for suspense files and extended reporting coverage. It is our understanding that you will make a provision for these items. We generally find that a provision of 5-10% of the claim reserve is adequate for ULAE.

The PLF should maintain an appropriate level of retained earnings or surplus to protect against experience fluctuations and unexpected increases in liability. Attorneys professional liability is an extremely volatile line of coverage and is susceptible to sudden and significant changes. The PLF's recent experience demonstrates this volatility very well. In December 1999, the Primary Program had retained earnings in excess of $9 million. At May 31, 2007 the Primary Program has a deficit of approximately $1.4 million. In the environment of an insurance company writing only this line of business in a single state, a surplus level equal to at least one-third of written premium would be required. For the PLF this would be approximately $7 million, and a higher amount of surplus would be considered prudent. The PLF is, however, a different type of entity with
a significantly different regulatory environment. The Fund’s recent experience provides a good example of the value of surplus. We have seen adverse experience from both claims and investments eliminate a $9 million surplus in a very short time. We recommend that the PLF establish a goal to accumulate and maintain a surplus of at least $5 million to $6 million to absorb adverse claim and investment experience. We note that the PLF raised the Primary Program assessment (premium) by $400 for 2005 and another $200 for 2007. The purpose of these increases was to improve the financial position of the Primary Program. It appears that the Primary Program had a 2006 profit of approximately $1.5 million, and another $2.9 million in the first 5 months of 2007 before adjustments for claim liabilities. We recommend that the PLF continue to set assessment rates that help the Primary Program reduce the current deficit and eventually build some surplus.

The determination of an appropriate level of surplus requires knowledge of the coverage being written, familiarity with the risk involved, and an understanding of the consequences associated with adverse results. An approach that can help quantify desired surplus levels under a variety of situations involves the use of statistical confidence levels. The first step in this approach is the determination of the mean and standard deviation of the age-to-ultimate development factors derived from the PLF’s incurred claim data. Using these parameters and assuming that the development factors will approximately follow a Normal Distribution over time, we can determine aggregate incurred claim amounts at various probability or confidence levels.

In Exhibit 8, we have displayed the work done to determine desired surplus amounts at various confidence levels. Please note that the indicated reserves are expected to be adequate approximately 50% of the time. A confidence level of 70% requires approximately $3.2 million of surplus, and 80% confidence indicates that the Fund should hold $6.1 million of surplus. A 90% confidence level requires $10.1 million of surplus. The corresponding values at the end of 2006 were $4.1 million at 70% confidence, $6.9 million at 80% confidence and $10.9 million at 90% confidence. We have said in the past that we believe a 70% confidence level is adequate. However, given the characteristics of the Fund and its exposures, we would not recommend a surplus goal that is less than $5 million. Thus, setting a surplus goal using an 80% confidence level may be more appropriate.

If we are going to rely on this method, then we must assume that the Fund’s claims can be modeled or approximated by a statistical distribution with these parameters. If we determine that $10.1 million is the appropriate amount of surplus at a 90%
confidence level, then we believe that there is a 90% probability that the claim reserves on the Fund's balance sheet plus $10.1 million will be sufficient to cover the Fund's liability for unpaid claims. The volatility of the Fund's claim experience, however, highlights a fundamental weakness in the confidence level approach. The various confidence level values have decreased in 2004, 2005 and 2006. This demonstrates that there is enough statistical variation in the data to make modeling the PLF's claims a difficult proposition. The confidence level methodology provides a disciplined approach to estimating an appropriate surplus goal. However, the approach is not precise, and it does not address the issue of asset values. The Fund's assets have played a significant role in the Fund's overall financial results over the past five years.

We have once again enjoyed working with you. We look forward to any comments or questions you have regarding this report.

Sincerely,

Charles V. Faerber, F.S.A., A.C.A.S

CVF: ms
cc: Mr. Philip S. Dial
N:\clients\opf\wpfiles\2007\cave0730.doc
### Exhibit 1
Oregon State Bar Professional Liability Fund

**Summary of Incurred Claims at 6/30/07 Using Development Factors from 6/30/07**

<table>
<thead>
<tr>
<th>Period</th>
<th>Case Incurred</th>
<th>Supplement</th>
<th>Ultimate Incurred</th>
<th>Adjusted Ultimate Incurred</th>
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**Total**

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<th>Case Incurred</th>
<th>$162,836</th>
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<th>$169,346</th>
<th>Adjusted Ultimate Incurred</th>
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</table>

**Less Case Incurred:**

| Adjusted Supplement | $6,678 |
Exhibit 1
Oregon State Bar Professional Liability Fund
Summary of Incurred Claims at 6/30/07 Using Development Factors from 6/30/07

<table>
<thead>
<tr>
<th>Period</th>
<th>Case Incurred</th>
<th>Supplement</th>
<th>Ultimate Incurred</th>
<th>Adjusted Ultimate Incurred*</th>
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Total: $106,665 | $4,954 | $111,629 | $111,675

Less Case Incurred: $106,665
Adjusted Supplement: $5,010

Incurred Totals

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(1) Adjusted ultimate incurred claims through 12/31/04 based on development factors from the 6/30/07 valuation.
Adjusted ultimate incurred indemnity amounts for 2005 are based on a weighted average of the developed amount (75%) and an average claim size of $10,000 (25%).
Adjusted ultimate incurred expense amounts for 2005 are based on a weighted average of the developed amount (75%) and an average claim size of $8,500 (25%).
Adjusted ultimate incurred indemnity amounts for 2006 are based on a weighted average of the developed amount (25%) and an average claim size of $9,200 (75%).
Adjusted ultimate incurred expense amounts for 2006 are based on a weighted average of the developed amount (25%) and an average claim size of $8,700 (75%).
Adjusted ultimate incurred indemnity amounts for 2007 are based on an average claim size of $9,500.
Adjusted ultimate incurred expenses for 2007 are based on an average claim size of $9,000.
# Exhibit 2A

**Oregon State Bar Professional Liability Fund**

*Analysis of 6/30/07 Incurred Indemnity Using Development Factors from 6/30/07 Analysis*

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\[
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\text{b} &= 0.0076 \\
\text{Trend} &= 0.76\%
\end{align*}
\]

\[
\begin{align*}
4380 + 1900 &= 6280 \\
3388 + 2550 &= 5937 \\
3017 + 2792 &= 5809 \\
3894 + 3092 &= 6986 \\
3327 + 2249 &= 5576 \\
4300 + 2706 &= 7006 \\
2841 + 2803 &= 5644 \\
4295 + 4460 &= 8755 \\
4839 + 7299 &= 12138
\end{align*}
\]
Exhibit 2A
Oregon State Bar Professional Liability Fund

Analysis of 6/30/07 Incurred Indemnity Using Development Factors from 6/30/07 Analysis

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\[3,894 + 2,519 = 6,412\]
\[4,457 + 3,204 = 7,661\]
\[4,362 + 4,682 = 9,045\]
\[4,515 + 3,975 = 8,489\]
\[.75 \times 8,428 + (.25 \times 843 \text{ Claims} \times 1.000) = 8,429\]
\[.25 \times 7,351 + (.75 \times 781 \text{ Claims} \times 9.200) = 7,227\]
\[398 \text{ Claims} \times 9.500 = 3,781\]
## Exhibit 2B

Oregon State Bar Professional Liability Fund

### Analysis of 6/30/07 Incurred Expenses Using Development Factors from 6/30/07 Analysis

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### Regression Analysis

**Regression Equation:**

\[
y = a + bx
\]

**Coefficients:**

- **Intercept (a):** 1.6091
- **Slope (b):** 0.0301

**Trend:**

\[
\text{Trend} = 3.06\%
\]

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**SUMM0607.XLS - ExpSize**

7/30/2007 - 10:31 AM
### Exhibit 2B
Oregon State Bar Professional Liability Fund

**Analysis of 6/30/07 Incurred Expenses Using Development Factors from 6/30/07 Analysis**

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**Totals**

|           | 111,629          | 18,024       |          |          |
Action Recommended

The PLF requests that the BOG approve changes to Exclusion 5 of the PLF Coverage Plan.

Background

Exclusion 5 is one of several exclusions that bar claims for non-legal business activities that lawyers often engage in. Grouped together, these are referred to as the Business Activity Exclusions. Claims in this area are excluded either because of the risk of a conflict of interest in defending a claim or the nature of the activity is traditionally not considered the private practice of law.

Exclusion 5 addresses claims arising from a lawyer’s activities as an employee, director, or other role of significance in a non-law entity. The most common example is the situation where a lawyer is both independent counsel and a member of the board for an organization. The purpose of the exclusion is to not cover the non-law activities.

Currently, the Comments to Exclusion 5 state: “A COVERED PARTY in addition to his or her role as an attorney may clothe himself or herself as an officer, director...” The key word here is “clothe.” Some have interpreted this to mean that claims arising from a lawyer’s activities undertaken while appearing to be acting in one of the listed roles are excluded whether legal or non-legal in nature. Under this reading, the exclusion would apply to a lawyer’s activities whether the lawyer was in fact acting in the role or not.

We believe the correct interpretation of Exclusion 5 would exclude non-legal activities undertaken by a lawyer while acting in any of the listed roles. Whether the lawyer was “clothed” as being in the role should be evidence, but not definitive evidence, of whether or not the lawyer was acting in the listed role and not as an attorney. To make this clear, we recommend simply substituting the word “acting” in the place of “clothed.” This would shift the emphasis to the actual nature of the lawyer’s activity and role rather than focusing so much on how the lawyer was perceived. This would be consistent with the language in the exclusion itself. The word “conduct” is used. It also
would be consistent with the corresponding exclusion for government activities, Exclusion 14. There, the word “conduct” is used as well.

Exhibit Attached.
5. This Plan does not apply to that part of any CLAIM based on or arising out of YOUR conduct as an officer, director, partner, BUSINESS TRUSTEE, employee, shareholder, member, or manager of any entity except a LAW ENTITY.

COMMENTS

A COVERED PARTY, in addition to his or her role as an attorney, may clothe himself or herself may act as an officer, director, partner, BUSINESS TRUSTEE, employee, shareholder, member, or manager of an entity. This exclusion eliminates coverage for the COVERED PARTY'S liability while acting in these capacities. However, the exclusion does not apply if the liability is based on such status in a LAW ENTITY.
OREGON STATE BAR
Board of Governors Agenda

Meeting Date: September 27-29, 2007
Memo Date: September 12, 2007
From: Ira Zarov, CEO, PLF
Re: Exclusion 10

Action Recommended

The PLF requests that the BOG approve changes to Exclusion 10 of the PLF Coverage Plan.

Background

Exclusion 10 bars coverage for claims related to the recovery of attorney fees. However, it is appropriate to allow claims for attorney’s fees in certain situations where lawyer error imposed attorney fees on a client. We propose the addition of further comments to the exclusion to clarify this distinction. A copy of the current Exclusion 10 and our suggested comments are attached.

The problem is differentiating between a fee shifting statute claim and a failure to tender type claim. In the first situation, reimbursement of fees by the opposing party isn’t an available option until after the case is won. In the second, the client is required to make out-of-pocket payments that need never have been made had the tender been made. In the first, there is no incentive for the lawyer to fail to apply for fees. In the second, the covered party may not be retained by the insurer to represent the client in the tendered claim. We intend to cover the first and not the second.

In the fee shifting situation, the client must make out-of-pocket payments from the onset, regardless of what the lawyer does (if it is a contingent fee agreement, there are no fees to reimburse and no loss to the client). In that case, the lawyer has earned the fees and the client had no reasonable expectation that they would be paid by another until they prevail and the fee shifting statute becomes applicable. In the failure to tender situation, the client should never have made out-of-pocket expenses and had a reasonable expectation that the fees would be paid by another. In that case, we are indemnifying an out-of-pocket cost that was never necessary but for the covered party’s error, and which is reimbursement for fees that the covered party then gets to keep. The underlying principles of the plan argue against coverage for these kinds of claims.

Exhibit Attached.
After reviewing the proposed changes with PLF claims staff and outside coverage counsel, we have modified the proposed revision to Exclusion 10. Please see the attached file. Our apologies for the last minute change but we only just received the final comments today.

[PERSONAL RELATIONSHIP AND BENEFITS EXCLUSIONS]

10. This Plan does not apply to any CLAIM:

a. For the return of any fees, costs, or disbursements paid to a COVERED PARTY (or paid to any other attorney or LAW ENTITY with which the COVERED PARTY was associated at the time the fees, costs, or disbursements were incurred or paid), including but not limited to fees, costs, and disbursements alleged to be excessive, not earned, or negligently incurred;

b. Arising from or relating to the negotiation, securing, or collection of fees, costs, or disbursements owed or claimed to be owed to a COVERED PARTY or any LAW ENTITY with which the COVERED PARTY is now associated, or was associated at the time of the conduct giving rise to the CLAIM; or

c. For damages or the recovery of funds or property that have or will directly or indirectly benefit any COVERED PARTY.

This exclusion does not apply to CLAIMS against a COVERED PARTY for the loss of opportunity to obtain fees, costs or disbursements as a prevailing party pursuant to statute or contract.

COMMENTS

This Plan is intended to cover liability for errors committed in rendering professional services. It is not intended to cover liabilities arising out of the business aspects of the practice of law. Here, the Plan clarifies this distinction by excluding liabilities arising out of fee disputes whether the CLAIM seeks a return of a paid fee, cost, or disbursement. Subsection 1.c, in addition, excludes CLAIMS for damages or the recovery of funds or property that, for whatever reason, have resulted or will result in the accrual of a benefit to any COVERED PARTY.

While Exclusion 10 applies to CLAIMS seeking to recoup attorney fees, the exclusion does not apply to CLAIMS for the loss of opportunity to obtain fees as a prevailing party pursuant to a fee shifting statute. For example, in an action in which a client who has paid the Covered Party on an hourly basis loses the ability to recover attorney fees from another party in litigation because the Covered Party did not seek fees in the relevant pleading or did not file a timely petition for fees, the client’s malpractice CLAIM would not be excluded; coverage and indemnity would be available as otherwise provided by the Plan. In this instance, the failure to apply
properly and timely for fees directly damages the client and the COVERED PARTY does not benefit from the client’s recovery of damages.

The exclusion would apply, however, in the situation where the benefit of the CLAIM for fees would benefit the COVERED PARTY. One such example would be the circumstance in which a COVERED PARTY failed to tender a defense to a responsible insurer after which the client incurred fees with the COVERED PARTY. A CLAIM for such fees would be excluded as the attorney would benefit from his or her negligence, contrary to the intent of the Plan.

Attorneys sometimes attempt to correct their own mistakes without notifying the PLF. In some cases, the attorneys charge their clients for the time spent in correcting their prior mistakes, which can lead to a later CLAIM from the client. The better course of action is to notify the PLF of a potential CLAIM as soon as it arises and allow the PLF to hire and pay for repair counsel if appropriate. In the PLF’s experience, repair counsel is usually more successful in obtaining relief from a court or an opposing party than the attorney who made the mistake. In addition, under Subsection a of this exclusion, the PLF does not cover CLAIMS from a client for recovery of fees previously paid by the client to a COVERED PARTY (including fees charged by an attorney to correct the attorney’s prior mistake).

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

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

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

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

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

Meeting Date: September 27-29, 2007
Memo Date: September 12, 2007
From: Ira Zarov, CEO, PLF
Re: Exclusions 2 and 4

Action Recommended

The PLF requests that the BOG approve changes to Exclusions 2 and 4 of the PLF Coverage Plan.

Background

Exclusions 2 and 4 were addressed because there is redundant language set out in the current Exclusions 2.b. and 4.b. Under the revision, Exclusion 4 would remain the same, and Exclusion 2.b. would be removed. This change does not change the scope of coverage of the PLF Primary Plan.

Exhibit Attached.
SECTION V - EXCLUSIONS FROM COVERAGE

[WRONGFUL CONDUCT EXCLUSIONS]

2. This Plan does not apply to any CLAIM based on or arising out of any intentional, dishonest, fraudulent, criminal, malicious, knowingly wrongful, or knowingly unethical acts, errors, or omissions committed by YOU or at YOUR direction or in which YOU acquiesce or remain passive after having personal knowledge thereof;

COMMENTS

Exclusions 1 and 2 set out the circumstances in which wrongful conduct will eliminate coverage. An intent to harm is not required.

Voluntary Exposure to CLAIMS. An attorney may sometimes voluntarily expose himself or herself to a CLAIM or known risk through a course of action or inaction when the attorney knows there is a more reasonable alternative means of resolving a problem. For example, an attorney might disburse settlement proceeds to a client even though the attorney knows of valid hospital, insurance company, or PIP liens, or other valid liens or claims to the funds. If the attorney disburse the proceeds to the client and a CLAIM arises from the other claimants, Exclusion 2 will apply and the CLAIM will not be covered.

Unethical Conduct. If a CLAIM arises that involves unethical conduct by an attorney, Exclusion 2 may also apply to the conduct and the CLAIM would therefore not be covered. This can occur, for example, if an attorney violates Disciplinary Rule ORPC 8.4(a)(3) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation) or ORPC 5.5(a) (aiding a nonlawyer in the unlawful practice of law) and a CLAIM results.

Example: Attorney A allows a title company to use his name, letterhead, or forms in connection with a real estate transaction in which Attorney A has no significant involvement. Attorney A's activities violate ORPC 8.4(a)(3) and ORPC 5.5(a). A CLAIM is made against Attorney A in connection with the real estate transaction. Because Attorney A's activities fall within the terms of Exclusion 2, there will be no coverage for the CLAIM. In addition, the CLAIM likely would not even be within the terms of the coverage grant under this Plan because the activities giving rise to the CLAIM do not fall within the definition of a COVERED ACTIVITY. The same analysis would apply if Attorney A allowed an insurance or investment company to use his name, letterhead, or forms in connection with a living trust or investment transaction in which Attorney A has no significant involvement.

3. This Plan does not apply to any CLAIM based on or arising out of a proceeding brought against YOU by the Oregon State Bar or any similar entity.

4. This Plan does not apply to:

a. The part of any CLAIM seeking punitive or exemplary damages; or

b. Any CLAIM for or arising out of the imposition of attorney fees, costs, fines, penalties, or other sanctions on the COVERED PARTY or others imposed under any federal
or state statute, administrative rule, court rule, or case law intended to penalize bad faith conduct and/or the assertion of frivolous or bad faith claims or defenses. The PLF will provide coverage for the defense of such a CLAIM, but any liability for indemnity arising from such a CLAIM will be excluded.

COMMENTS

A COVERED PARTY may become subject to punitive or exemplary damages, attorney fees, costs, fines, penalties, or other sanctions in two ways. The COVERED PARTY may have these damages assessed directly against the COVERED PARTY or the COVERED PARTY may have a client or other person sue the COVERED PARTY for indemnity for causing the client to be subjected to these damages.

Subsection a of Exclusion 4 applies to direct actions for punitive or exemplary damages. It excludes coverage for that part of any CLAIM asserting such damages. In addition, such CLAIMS do not involve covered DAMAGES as defined in this Plan. If YOU are sued for punitive damages, YOU are not covered for that exposure.

Subsection b of Exclusion 4 applies to both direct actions against a COVERED PARTY and actions for indemnity brought by others. The courts have become increasingly intolerant of attorneys' improper actions in several areas including trial practice, discovery, and conflicts of interest. Statutes, court rules, and common law approaches imposing various monetary sanctions have been developed to deter such inappropriate conduct. The purpose of these sanctions would be threatened if the PLF were to indemnify the guilty attorney and pay the cost of indemnification out of the assessments paid by all attorneys.

Thus, if YOU cause YOUR client to be subjected to a punitive damage award (based upon the client's wrongful conduct toward the claimant) because of a failure, for example, to assert a statute of limitations defense, the PLF will cover YOUR liability for the punitive damages suffered by YOUR client. Subsection a does not apply because the action is not a direct action for punitive damages and Subsection b does not apply because the punitive damages suffered by YOUR client are not the type of damages described in Subsection b.

On the other hand, if YOU cause YOUR client to be subjected to an award of attorney fees, costs, fines, penalties, or other sanctions imposed because of YOUR conduct, or such an award is made against YOU. Subsection b applies and the CLAIM for such damages (or for any related consequential damages) will be excluded.
OREGON STATE BAR
Board of Governors Agenda

Meeting Date: September 27-29, 2007
Memo Date: September 12, 2007
From: Ira Zarov, CEO, PLF
Re: Exclusion 20

Action Recommended

The PLF requests that the BOG approve changes to Exclusion 20 of the PLF Coverage Plan.

Background

This exclusion is entitled “Bond and Surety Exclusion” and covers such agreements entered into by covered lawyers. Over the years, the PLF has been faced with claims arising out of a variety of situations in which a lawyer contracted or promised certain things beyond the scope of coverage. Consequently, the exclusion was broadened as the PLF faced new types of contract-related claims. We are proposing that a new section be added, the exclusion be reorganized into three subsections, and the title of the exclusion be changed to “Contractual Obligation Exclusion.”

Exhibit Attached.
CONTRACTUAL OBLIGATION EXCLUSION

20. This Plan does not apply to any CLAIM:

A. Based upon or arising out of any bond or any surety, guaranty, warranty, joint control, or similar agreement, or any similar agreement, or any assumed obligation to indemnify another, whether signed or otherwise agreed to by YOU or someone for whose conduct YOU are legally liable, unless the CLAIM arises out of a COVERED ACTIVITY described in SECTION III.3 and the person against whom the CLAIM is made signs the bond or agreement solely in that capacity.

B. Any costs connected to ORS 20.160 or similar statute or rule.

C. For liability based on an agreement or representation, if the Covered Party would not have been liable in the absence of the agreement or representation; or

D. Claims in contract based upon an alleged promise to obtain a certain outcome or result.

COMMENTS

In the Plan, the PLF agrees to assume certain tort risks of Oregon attorneys for certain errors or omissions in the private practice of law; it does not assume the risk of making good on attorneys’ contractual obligations. So, for example, an agreement to indemnify or guarantee an obligation will generally not be covered, except in the limited circumstances described in subsection A. That subsection is discussed further below in this Comment.

Subsection B, while involving a statutory rather than contractual obligation, nevertheless expresses a similar concept: since under ORS 20.160, an attorney who represents a nonresident or foreign corporation plaintiff in essence agrees to guarantee payment of litigation costs not paid by his or her client.

Subsection C states the general rule that contractual liabilities are not covered under the PLF Plan. For example, an attorney who places an attorney fee provision in his or her retainer agreement voluntarily accepts the risk of making good on that contractual obligation. Because a client’s attorney fees incurred in litigating a dispute with its attorney are not ordinarily damages recoverable in tort, they are not a risk that the PLF agrees to assume. In addition, if a Covered Party agrees or represents that he or she will pay a claim, reduce its fee, or the like, a claim based on a breach of that agreement or representation will not be covered under the Plan.

Subsection D involves a specific type of agreement or representation: an alleged promise to obtain a particular outcome or result. One example of this would be an attorney who promises to get a case reinstated or to obtain a particular favorable result at trial or in settlement. In that situation, the attorney can potentially be held liable for breach of contract or misrepresentation regardless of whether his or her conduct met the standard of care. That situation is to be distinguished from an attorney’s liability in tort or under the third party beneficiary doctrine for failure to perform a particular task, such as naming a particular beneficiary in a will or filing and serving a complaint within the statute of limitations, where the liability, if any, is not based solely on a breach of the attorney’s guarantee, promise or representation.

82
Attorneys sometimes act in one of the special capacities for which coverage is provided under Section III.3 (i.e., as a named personal representative, administrator, conservator, executor, guardian, or trustee except BUSINESS TRUSTEE). If the attorney is required to sign a bond or any surety, guaranty, warranty, joint control, or similar agreement while carrying out one of these special capacities, Exclusion 20 does not apply.

On the other hand, when an attorney is acting in an ordinary capacity not within the provisions of Section III.3, Exclusion 20 does apply to any CLAIM based on or arising out of any bond or any surety, guaranty, warranty, joint control, indemnification, or similar agreement signed by the attorney or by someone for whom the attorney is legally liable. In these situations, attorneys should not sign such bonds or agreements. For example, if an attorney is acting as counsel to a personal representative and the personal representative is required to post a bond, the attorney should resist any attempt by the bonding company to require the attorney to co-sign as a surety for the personal representative or to enter into a joint control or similar agreement that requires the attorney to review, approve, or control expenditures by the personal representative. If the attorney signs such an agreement and a CLAIM is later made by the bonding company, the estate, or another party, Exclusion 20 applies and there will be no coverage for the CLAIM.
OREGON STATE BAR
Board of Governors Agenda

Meeting Date: September 28, 2007
Memo Date: September 13, 2007
From: Karen Garst, Ext. 312
Re: Diversity Section Resolution

Action Recommended

Assign the resolution to the Policy and Governance Committee for its consideration in October.

Background

The P and G Committee has been working on the Elimination of Bias requirement, initiative petition, membership vote, task force, report to Supreme Court, and subsequent discussions for at least two years. Most recently, Tim Gerking has spoken with Justice Martha Walters. He will be updating the committee on that conversation at the meeting on September 28.

Justices Walters and Linder were designated by the Chief Justice to meet with representatives of the bar to work out a solution to this issue. After meeting with Albert Menashe, Rick Yugler, Tim Gerking, and me, the justices met with representatives of the Diversity Section and the MBA Equality Committee.

On September 12, the Executive Committee drafted the attached resolution and asked its chair, Mary Crawford to present it to the board. Staff recommends that the board hear the resolution as Mary Crawford will be attending the HOD meeting the next day and will be available at the time of the board meeting. The board should then assign this resolution to the P and G Committee for its consideration at the next meeting. Judge Richard Baldwin who drafted the resolution may also be in attendance.
RESOLUTION Adopted by OSB
Diversity Section Executive Committee
September 12, 2007

Whereas, the MCLE Elimination of Bias (EOB) requirement was approved by the OSB Board of Governors, the OSB House of Delegates and the Oregon Supreme Court after due consideration and is supported by the Professionalism Commission, the Oregon Minority Lawyers Association Board of Directors and this Committee, and

Whereas, the ABA Model Rules for Minimum Continuing Legal Education also recommend a mandatory EOB requirement, and

Whereas, it is a fundamental principle of legal and ethical judicial standards that the appearance of bias is as damaging to public trust and confidence as the reality of bias, and

Whereas, providing lawyers with educational opportunities to obtain the necessary knowledge and skill to identify and eliminate bias in our profession and justice system substantially assists lawyers in meeting their professional responsibility to the public, and

Whereas, the development and approval of high quality EOB courses responsive to this MCLE requirement presents a significant challenge to the Oregon State Bar, and
Whereas, the advisory vote to eliminate the EOB requirement was held before the Oregon State Bar had an opportunity to fully and effectively implement the EOB requirement, and

Whereas, the number of bar members recently voting on the EOB requirement in an advisory capacity represented only 3,877 of 12,598 active bar members with 2,512 of bar members disfavoring the requirement,

Now, therefore, this Committee respectfully urges the OSB Board of Governors to take the following actions:

1) Retain the current MCLE / EOB requirement.

2) Charge the MCLE Administrator with the responsibility of assuring the development and approval of high quality EOB courses facilitated by knowledgeable presenters responsive to the professional needs of lawyers with input from various segments of the bar and submit a progress report to the BOG by the end of 2008, and

3) Establish an Advisory Sub-committee of the MCLE Board which includes lawyers and members of the public committed to the value of diversity and the professional development of lawyers to assist the MCLE Administrator in carrying out the above charge, and

4) Request that the Advisory Sub-committee also draft a proposed MCLE rule designed to maximize the integration of an EOB component into regular CLE programs, and

5) Take other steps as necessary to effectively communicate to lawyers and the public the commitment of the Oregon State Bar to EOB as an essential and valuable component of MCLE.

Respectfully submitted,

Mary Crawford

Mary Crawford, Esq.
Executive Committee Chair
on behalf of the
OSB Diversity Section
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OREGON STATE BAR
Board of Governors Agenda

Meeting Date: September 28, 2007
Memo Date: August 6, 2007
From: Sylvia E. Stevens, General Counsel
Re: Proposed Formal Ethics Opinion on Trial Publicity

Action Recommended

Consider the request of the Legal Ethics Committee that the attached opinion be approved as a formal opinion.

Background

In 2006, the Bar/Press/Broadcasters Council asked the Legal Ethics Committee to respond to three hypotheticals involving trial publicity in the context of criminal and civil cases. The committee has worked diligently on the responsive opinion,¹ and its completion is a testament to critical thinking, persuasive argument, and the very best kind of collaboration.

The Bar/Press/Broadcasters Council requested the opinion in part because there has never been a formal ethics opinion on the obligations of lawyers regarding trial publicity.² Additionally, the Council has discarded its old “guidelines” regarding trial publicity in the face of the press position that they are dated, incorrect and an inappropriate disincentive for lawyers to speak out about their client matters. Whether or not the Council creates new “guidelines,” the lawyer members of the Council believe it would be helpful to have formal guidance based on the Rules of Professional Conduct. The LEC agrees.

The fact situations upon which the proposed opinion is based are fairly extreme, arising in the context of cases with high public interest and the likelihood of considerable publicity.³ During discussions, some members of the LEC were concerned that the opinion didn’t address the more “garden variety” trial publicity situation that commonly arise. Ultimately, however, it was agreed that explicating the extreme edges of permissible conduct was more helpful than a discussion of something more clearly permissible that offers little guidance in more difficult situations.

¹ The requestors submitted the hypotheticals as requests for separate opinions on the civil side and the criminal side; the LEC concluded that a single opinion was the preferred response because, although lengthy, it eliminates unnecessary duplication. Moreover, the committee believes that similar situations can arise in any context and there is value in having criminal law practitioners read the civil case discussion and vice versa.
² Former Op. 94 (1961) concluded only that lawyers who failed to object to a judge allowing the television broadcast of a criminal trial were assisting the judge in a violation of the judicial canons. There was no discussion of the lawyer’s obligations regarding public statements in advance of or during a trial.
³ The scenarios are based on recent high-profile cases in Oregon, although the statements attributed to the lawyers are believed to be fictional.
The opinion begins with a discussion of the balance that RPC 3.6 strikes between the First Amendment rights of lawyers (and their clients) and the interest of the state in fair trials. Several committee members are of the view that the rule is too permissive but could not, despite strenuous efforts, convince the majority that a narrower interpretation would be intellectually honest in light of the plain language of the rule. At the same time, the committee avoided making any editorial comments about the good that might come from trial publicity or the idea that a lawyer may have an ethical duty to protect his client’s interests by speaking to the press notwithstanding the lawyer’s own view of trial publicity.

The overarching premise of the opinion is that RPC 3.6(a) prohibits only extrajudicial statements that the lawyer knows or reasonably should know will have a substantial likelihood of materially prejudicing an imminent lay adjudicative proceeding in which the lawyer is involved, unless the statement is expressly permitted in RPC 3.6(b).

The opinion does a good job of defining the operative terms of “knows or reasonably should know,” “substantial likelihood,” “material prejudice,” and “imminent.” It also makes clear that application of the rule is very fact-specific and a statement that is impermissible in one situation may be permissible in another. No clear time-line can be drawn, but the opinion suggests that statements made in advance of a trial will generally present less of a substantial likelihood of material prejudice than statements made on the eve of trial.

The committee spent considerable time discussing the exception in RPC 3.6(b) for statements concerning “information contained in a public record.” For example, a motion to exclude evidence may include documents or other information that the court ultimately determines is not admissible at trial; the rule permits a lawyer to speak about the content of the motion notwithstanding the risk that public statements about the excluded evidence might influence the fact-finder. While the committee could find no basis in the language of the rule to limit such statements, the opinion suggests that public comment on excluded evidence might violate RPC 8.4(a)(3)’s prohibition on conduct prejudicial to the administration of justice.

Drafts of the opinion have been provided to the Bar/Press/Broadcasters Council and it is believed Council members have shared the drafts with their constituents (prosecutors, defense lawyers, private litigators). Committee members have also provided drafts to public defender organizations. To date, no comments have been received.

The LEC encourages the BOG to issue the attached as a formal opinion, believing it will provide helpful guidance to a broad spectrum of the bar on an issue lawyers face with increasing frequency.

Attachment: Proposed Opinion on Trial Publicity

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4 In other words, the rule does not apply to lawyer-pundits who are not involved in the proceeding, nor to administrative decisions or even to judicial proceedings where the fact-finding will be done by a judge.
PROPOSED
FORMAL OPINION NO. 2007-XXX

Trial Publicity

Facts:

1. *The Civil Case*

Lawyer P has filed a civil action against the well-known XYZ Corporation alleging negligence and other misconduct resulting in injury to Lawyer P’s client. Lawyer P reasonably believes the allegations to be true. Before any discovery has been conducted, Lawyer P wishes to call a press conference in which he intends to assert as fact the allegations of XYZ Corporation’s negligence and misconduct.

Later, during discovery, Lawyer P obtains documents produced by XYZ Corporation that tend to establish negligence and other misconduct by XYZ Corporation. Lawyer P would like to call another press conference to tout the documents as proof of his case against XYZ Corporation.

Lawyer D, the lawyer representing XYZ Corporation in the action, wishes to advise XYZ Corporation to hire a public relations firm to contact local news media in order to publicly dispute or downplay the allegations in the civil action. Based on her own investigation, Lawyer D has learned that the allegations of negligence and misconduct are true, but believes XYZ Corporation may have an affirmative defense based on the statute of limitations.


A. *The Sex Crime.*

A major crimes task force investigating the disappearance of a young woman focuses on a suspect charged with and held for other crimes, after the task force has discovered sexual predilections of the suspect which it considers highly relevant. A prosecutor is assigned to and is supervising the investigation. Investigators reveal the suspect’s sexual predilections to the press. No charging decision is imminent with respect to the young woman’s disappearance. The revelation to the press has a substantial impact on the proceedings in the suspect’s other, unrelated cases.

The task force continues investigating and, later, charges a second individual with the young woman’s abduction and murder. No body has been located. The trial is contentious. The jury deliberates for a week before returning a guilty verdict. Sentencing is pending. The obviously relieved prosecutor is met by a bank of news cameras as she leaves the courthouse following receipt of the verdict; her comments – including the emotionally delivered charge that the defendant is the most evil man she has encountered in her decade as a prosecutor – are broadcast throughout the state.
B. The Eco-Terrorists.

Terrorism task force representatives, including supervising attorneys, hold press conferences announcing the indictment of several individuals for a series of environmental crimes, based on a re-opened “cold case” criminal investigation. Some of the individuals are newly arrested; others are in custody for similar charges brought in an earlier case. Government attorneys term the defendants “terrorists” and announce that the government will not stop in its effort to root out terror attacks on U.S. soils.

A defense attorney allows a reporter to quote him asserting his client’s innocence and, also, asserting that his client’s actions were justified and in keeping with Oregon values. The defense lawyer casts aspersions on the perceived motives of the government.

The defense lawyer files pre-trial motions relating to the admissibility of certain prosecution and defense evidence. After a hearing on the motions, but before a ruling is issued, the defense lawyer holds a press conference on the courthouse steps using stronger language than is used in the official record to characterize the government’s action. When called by the media, the defense lawyer responds by telling reporters that his client has passed a polygraph. Immediately prior to trial, and still before the evidentiary motions have been decided, the prosecutor uses the occasion of a co-defendant’s plea bargain to foreshadow evidence the prosecutor intends to attempt to introduce during the trial.

Questions:

1. May Lawyer P call a press conference in which he asserts as fact the allegations forming the basis of the civil action?

2. May Lawyer P call a second press conference to discuss the documents produced by XYZ Corporation?

3. May Lawyer D advise XYZ Corporation to hire a public relations firm to contact local news media in order to publicly dispute or downplay the allegations forming the basis of the civil action?

4. In the sex-crime case, is the prosecutor subject to discipline for the investigator’s statement to the press regarding the suspect’s sexual predilections?

5. Is the prosecutor’s statement after the verdict, but before sentencing, that the defendant is the most evil man she has encountered as a prosecutor, unethical?

6. In the eco-terrorism case, are any of the following statements unethical:
   a. The prosecutor’s announcement of the indictments?
   b. The prosecutor’s labeling of the defendants as “terrorists” and the statement that the government will “root out terror attacks on U.S. soils”?
   c. The defense lawyer’s assertion of his client’s innocence and of his defenses?
d. The defense lawyer’s aspersions on the government’s motives?

e. The defense lawyer’s press conference using stronger language than is used in the official record to characterize the government’s action?

f. The prosecutor’s foreshadowing of evidence that he hopes to use at trial, but which is subject to a pending motion *in limine*?

(g. The defense lawyer’s statement that his client has passed a polygraph?

**Conclusions:**

1. Yes.

2. See discussion.

3. See discussion.

4. See discussion.

5. No, qualified.

6. a. No.

   b. No, qualified.

   c. No.

   d. No, qualified.

   e. See discussion.

   f. See discussion.

   g. See discussion.

**Discussion:**

Pretrial statements implicate primarily RPC 3.6. As we shall explain below, RPC 3.6 is clearer about what it does not prohibit than it is regarding what it does.

Oregon RPC 3.6 provides:

(a) A lawyer who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that the lawyer knows or reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.
(b) Notwithstanding paragraph (a), a lawyer may state:

(1) the claim, offense or defense involved and, except when prohibited by law, the identity of the persons involved;

(2) information contained in a public record;

(3) that an investigation of a matter is in progress;

(4) the scheduling or result of any step in litigation;

(5) a request for assistance in obtaining evidence and information necessary thereto;

(6) a warning of danger concerning the behavior of a person involved, when there is reason to believe that there exists the likelihood of substantial harm to an individual or to the public interest; and

(7) in a criminal case, in addition to subparagraphs (1) through (6):

   (i) the identity, residence, occupation and family status of the accused;

   (ii) if the accused has not been apprehended, information necessary to aid in apprehension of that person;

   (iii) the fact, time and place of arrest; and

   (iv) the identity of investigating and arresting officers or agencies and the length of the investigation.

(c) Notwithstanding paragraph (a), a lawyer may:

(1) reply to charges of misconduct publicly made against the lawyer; or

(2) participate in the proceedings of legislative, administrative or other investigative bodies.

(d) No lawyer associated in a firm or government agency with a lawyer subject to paragraph (a) shall make a statement prohibited by paragraph (a).

(e) A lawyer shall exercise reasonable care to prevent the lawyer's employees from making an extrajudicial statement that the lawyer would be prohibited from making under this rule.
Unless permitted outright by RPC 3.6(b) or (e), whether a lawyer’s statement is prohibited by RPC 3.6(a) will turn on whether the lawyer knows or reasonably should know that the extrajudicial statement will have a substantial, i.e., highly probable, likelihood of materially, i.e., seriously, prejudicing an imminent fact-finding process in a matter in which the lawyer is involved. This inquiry is always going to depend on the details of the specific statements and the context in which they are made.

Statements that would otherwise violate RPC 3.6(a) may nonetheless be permitted under RPC 3.6(b).¹ We first examine whether, under the factual scenarios posited, there would be any statement that, in the absence of an exception, would subject a lawyer to discipline under RPC 3.6(a), and then examine whether any of the savings provisions of RPC 3.6(b) would make the statements permissible.

RPC 3.6 is matter-specific; it does not directly address the propriety of a statement made by a lawyer in one case that has a tendency to prejudice the fact-finding process in another case. It is possible that a lawyer making such a statement will violate RPC 8.4(a)(4) (conduct prejudicial to the administration of justice). If both cases are being handled by the same office or firm, a lawyer responsible for a statement in one case that has a strong likelihood of prejudicing the other case may violate RPC 3.6(d). Some of the hypothetical statements we have been asked to review are made by people other than lawyers. We will explore the lawyer’s vicarious liability for those statements under RPC 3.6(e) and under RPC 5.3.

RPC 3.6 is the successor to former DR 7-107, which “had its origin in the recommendations made by the American Bar Association’s Advisory Committee on Fair Trial and Free Press after Sheppard v. Maxwell, 384 US 333 (1966).” In re Richmond, 285 Or 469, 475, 591 P2d 728 (1979). In Sheppard, the United States Supreme Court granted habeas relief to the defendant in a notorious murder case because, in part, of the “deplorable manner in which the news media inflamed and prejudiced the public.” 384 US at 356 (footnote omitted).²

The Oregon Supreme Court’s most comprehensive treatment of the former rule is in In re Lasswell, 296 Or 121, 673 P2d 855 (1983). There, the Court attempted to clarify the reach of the former rule, (or at least of former DR 7-107(B), which specifically applied to prosecutors), in light of its potential conflict with a lawyer’s free speech rights under Oregon Constitution, Article I, section 8. 296 Or at 124-25. The Court held that the rule only could be valid if narrowly applied as a sanction for the abuse of the right of free speech. Id. at 125. The Court then attempted to state more precisely the test it had applied in its prior decisions on the scope of the prohibition. Id. at 126:

¹ None of the hypothetically contemplated statements raises a question as to their permissibility under RPC 3.6(c), which protects statements responding to charges of misconduct on the part of the lawyer or made in the course of participation in a legislative, administrative or other investigative process.

² Sheppard was prejudiced both by pretrial publicity and by a “carnival atmosphere” at the trial itself. The Court concluded that, “[s]ince the state trial judge did not fulfill his duty to protect Sheppard from the inherently prejudicial publicity which saturated the community and to control disruptive influences in the courtroom, we must reverse the denial of the habeas petition.” Sheppard v. Maxwell, 384 US 333, 363 (1966).
The disciplinary rule deals with purposes and prospective effects, not with completed harm. It addresses the prosecutor’s professional responsibility at the time he or she chooses what to speak or write. At that time it is incompatible with his or her professional performance in a concrete case to make extrajudicial statements on the matters covered by the rule either with the intent to affect the fact-finding process in the case, or when a lawyer knows or is bound to know that the statements pose a serious and imminent threat to the process and acts with indifference to that effect. In a subsequent disciplinary inquiry, therefore, the question is not whether the tribunal believes that the lawyer’s comments impaired the fairness of an actual trial, which may or may not have taken place. The question, rather, is the lawyer’s intent or knowledge and indifference when making published statements that were highly likely to have this effect.

In a footnote, the Court said that “the accused’s statements must intend or be knowingly indifferent to highly probable serious prejudice to an imminent procedure before lay fact finders.” id. at n 3. RPC 3.6 largely codifies in re Laswell, with one important qualification. While the language of Laswell might be read to permit finding a disciplinary violation under the former rule if the prosecutor intended the proscribed effect, irrespective of whether or not his statements were substantially likely to cause it, there is no violation of RPC 3.6 unless the statement actually has “a substantial likelihood of materially prejudicing” an imminent fact-finding process.

RPC 3.6 is a blend of the language of former DR 7-107 and the ABA Model Rule. RPC 3.6, subject to certain exceptions, proscribes extrajudicial statements that a “lawyer knows or reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.” RPC 1.0(o) provides: “Substantial’ when used in reference to degree or extent denotes a material matter of clear and weighty importance.” Although that definition does not transpose gracefully into the usage of the word “substantial” in RPC 3.6, it is apparent that, in context, “a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter” means the same thing as what the Oregon Supreme Court, in Laswell, described as “a serious and imminent threat to the [fact-finding] process” or “highly probable serious prejudice to an imminent procedure before lay fact finders.” 296 Or at 126 and at n 3.

In order for RPC 3.6 to pass constitutional muster, it must be read to proscribe only “speech that creates a danger of imminent and substantial harm.” Gentile v. State Bar of Nevada, 501 US 1030, 1036 (1991) (emphasis added); accord id. at 1076 (Rehnquist, C.J., concurring in part and dissenting in part), and at 1082 (O’Connor, J., concurring).

There can be no violation of RPC 3.6 unless all of the following are true:

1. There is an actual matter which is being investigated or litigated;
2. The lawyer (or someone vicariously bound to the lawyer under RPC 3.6(d)) is a participant in the investigation or litigation;

3. At the time the lawyer (or someone whom the lawyer is bound to control under RPC 3.6(e)) makes it, the lawyer either knows or reasonably should know that the extrajudicial statement will be disseminated by means of public communication;

4. There is an imminent fact-finding process in the matter; and

5. At the time the statement is made, the lawyer either knows or reasonably should know that the extrajudicial statement will have a substantial (i.e., “highly probable”) likelihood of materially (i.e., “seriously”) prejudicing that imminent fact-finding process.

1. The Civil Case.

Lawyer P contemplates calling press conferences at two separate times: before discovery (presumably early on in the litigation process), “to assert as fact the allegations of [the defendant’s] negligence and misconduct”; and, during or after discovery, “to tout the documents as proof of his case against [defendant].” In both events, the first three elements of RPC 3.6 are met: there is a matter actually being litigated; Lawyer P is involved in the litigation; and, by calling a press conference, Lawyer P clearly knows and intends that the statements will be disseminated by means of public communication.

A press conference at or near the time of the filing of the lawsuit, at which the plaintiff’s lawyer asserts as fact the allegations of his complaint, is unlikely to “pose[] a serious and imminent threat to the fair conduct of [the ultimate] trial.” In re Lasswell, 296 Or at 129. It is not clear from Lasswell whether any trial had actually been scheduled at the time the prosecutor there made his comments, but the Court concluded that the case did not demonstrate that Lasswell “intended his remarks . . . to create seriously prejudicial beliefs in potential jurors in an impending trial, or that he was knowingly indifferent to a highly likely risk that they would have this effect.” 296 Or at 130.\(^3\) The cases do not address precisely how close in time the statement must be to the trial before the statement can violate the Rule. But Lasswell and Gentile appear to require the trial or other fact-finding process to be imminent before a lawyer may be disciplined for making such a statement.

On the limited facts posited, the lawyer’s stating as fact his allegations against the defendant would not be highly likely to create seriously prejudicial beliefs in potential jurors in an impending trial, and would not violate RPC 3.6.

Moreover, under RPC 3.6(b)(1), the lawyer may make extrajudicial statements that state “the claim,” and, under RPC 3.6(b)(2), the lawyer may state information contained in the public record. To the extent that the lawyer calls a press conference to describe his claim, and particularly if he limits his comments to the allegations in the complaint, which are a matter of

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\(^3\) A violation of former DR 7-107 required a finding that the lawyer either intended the statement to affect the fact-finding process or reasonably should have known the statement posed such a threat. By contrast, RPC 3.6 does not require that the lawyer intend to influence the fact-finder, only that the lawyer knows or reasonably should know there is substantial likelihood of material prejudice.
public record, and so long as the lawyer reasonably believes the allegations to be true, RPC 3.6(b) permits the lawyer to make the extrajudicial statements regardless of the lawyer’s knowledge of or disregard for their likely impact.\(^4\)

The propriety of the second contemplated press conference is more problematic. If the trial were “imminent,” and the disclosures sufficiently inflammatory, it could well be that Lawyer P either could intend to create or be indifferent to a high likelihood of creating seriously prejudicial beliefs in potential jurors in an impending trial, such that the disclosure would violate RPC 3.6(a). However, if the documents are in the public record (for example, if they are proper exhibits in a summary judgment motion), then Lawyer P is permitted by RPC 3.6(b) to state what is in the documents.\(^5\)

Lawyer D wants to advise her client to retain a public relations firm to publicly dispute or downplay the allegations forming the basis of the action. Lawyer D knows the allegations against her client to be true, but believes the defendant may have a defense based on the statute of limitations.

Lawyer D may not “engage in conduct involving dishonesty, fraud, deceit or misrepresentation that reflects adversely on the lawyer’s fitness to practice law.” RPC 8.4(a)(3).\(^6\) See Formal Opinion No. 2005-170. Lawyer D may not counsel her client to hire a public relations firm to make statements that she knows to be false. If “publicly disput[ing] or downplay[ing]” the allegations involves knowingly misstating the facts, or denying what Lawyer D knows to be true, her participation in such a scheme would not be ethical, irrespective of its likely impact on the adjudicative process.

To the extent Lawyer D wishes to counsel the client and its public relations firm only to make truthful statements that “dispute” or “downplay” the allegations, the first question is the extent of Lawyer D’s ethical responsibility for the acts of others. RPC 3.6(a) prohibits statements only by the lawyer; RPC 3.6(c) makes the lawyer only responsible for exercising “reasonable care to prevent the lawyer’s employees from making an extrajudicial statement that the lawyer would be prohibited from making under this rule.” (emphasis added). RPC 5.3 imposes vicarious responsibility on the lawyer for the conduct of “a nonlawyer employed or retained, supervised or directed by [the] lawyer” if “the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved.” RPC 5.3(b)(1).\(^7\)

\(^4\) As noted above, a lawyer disciplined on the theory that his or her statements concerning the claim or defense exceeded what was permissible under RPC 3.6(b) would have a potential defense that the Rule is unconstitutionally vague. In re Gentile, 501 US 1030 (1991).

\(^5\) Filing frivolous motions or attaching materials that are clearly not admissible in support of those motions, for the sole purpose of making the discovered materials public record, would be unethical under RPC 3.1 and RPC 8.4(a)(4). Even with properly filed documents, it could be appropriate for the court to issue a protective order prohibiting public comment on potentially prejudicial matters.

\(^6\) Depending on the extent to which the lawyer “employed or retained, supervised or directed” the public relations firm, RPC 5.3 also could be implicated. RPC 5.3 is discussed more fully below.

\(^7\) RPC 5.3 provides:
If Lawyer D merely counsels her client to hire a public relations firm, through truthful statements, to dispute or downplay the allegations, but Lawyer D does not herself employ, direct or supervise the firm or ratify its conduct, she will not be responsible for the firm’s conduct under RPC 5.3. If Lawyer D counsels her client to hire the firm to do something Lawyer D knows, or reasonably should know, that she herself could not do without violating RPC 3.6(a), she may be guilty of “violat[ing] the Rules of Professional Conduct . . . through the acts of another,” in violation of RPC 8.4(a)(1), or of “conduct that is prejudicial to the administration of justice,” in violation of RPC 8.4(a)(4).

The ultimate question is whether the extrajudicial statements Lawyer D wants her client to engage the firm to make would violate RPC 3.6(a) if Lawyer D made them herself. From the facts hypothesized, it is not possible to say with any certainty whether they would, because there is no indication of what specifically will be said or of the point in the process at which these statements will be made. The statements would be improper if, in the context of their nature and their proximity to the trial, they are highly likely to create seriously prejudicial beliefs in potential jurors in the impending trial. Again, to the extent the statements are limited either to statements of the defense or to information contained in a public record, they would be expressly permitted by RPC 3.6(b). Also, in appropriate circumstances, judges can guard against undue prejudice by crafting orders that limit pretrial publicity.

2. The Criminal Cases.

A. The Sex Crime.

The hypothetical criminal case involves two extrajudicial statements. The first is made by investigators supervised by a prosecuting attorney, at a time when no charging decision is imminent. The investigators reveal to the press the suspect’s sexual predilections, which revelation has a substantial impact on proceedings in an unrelated matter for which the suspect has been charged and is being held.

As discussed above, the prosecutor’s responsibility for the investigator’s statements depends on the level of the prosecutor’s authority over the investigator. In this case, assuming the prosecutor’s supervision of the investigation included direct supervisory authority over the investigators, the prosecutor was obligated to “make reasonable efforts to ensure that the

With respect to a nonlawyer employed or retained, supervised or directed by a lawyer:
(a) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person’s conduct is compatible with the professional obligations of the lawyer; and
(b) except as provided by Rule 8.4(b), a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:
(1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or
(2) the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.
[investigator’s] conduct is compatible with the professional obligations of the lawyer.” RPC 5.3(a). If the prosecutor failed to do so, and if the statements would have violated RPC 3.6(a) had the prosecutor made them, then the prosecutor would be subject to discipline. Similarly, RPC 5.3(b)(1) would subject the prosecutor to discipline if the prosecutor “order[ed] or, with the knowledge of the specific conduct, ratifie[d] the conduct involved” by the investigator in making statements that would have violated RPC 3.6(a) had the prosecutor made them.

The question remains whether making the statement would violate RPC 3.6(a). Again, there is an actual matter being investigated, the prosecutor is participating in the investigation, and the statements are revealed to the press, so that their public dissemination is known or obvious. Although the hypothetical assumes that the revelations in fact have a substantial impact, RPC 3.6(a), as did its predecessor, “deals with purposes and prospective effects, not with completed harm.” In re Lasswell, 296 Or at 126. The question is not whether there was actual harm, but whether the prosecutor knew of or was indifferent to the serious risk of prejudice. If the prosecutor knew of the pending matter, then, depending on the precise nature of the “sexual predilections,” it is probable that, at a minimum, indifference to a serious risk would be established. But that risk is to the process in a different matter, and, by its terms, RPC 3.6(a) is matter-specific. RPC 3.6(a) does not expressly prohibit the making of extrajudicial statements that would have a prejudicial impact on fact-finding in an unrelated matter in which the lawyer (or the lawyer’s agency or firm) is not participating.

RPC 3.6(d), however, provides, “No lawyer associated in a firm or government agency with a lawyer subject to paragraph (a) shall make a statement prohibited by paragraph (a).” Under this rule, if the same agency is investigating and/or prosecuting both cases, and if the prosecutor investigating the first case is responsible for the investigator’s statement, and if the statement would violate RPC 3.6(a) if it had been made by a lawyer in the same prosecutor’s office who was prosecuting the other matter, then the prosecutor responsible for the investigator’s statement would be guilty of a violation of Rule 3.6(a).

The prosecutor alternatively may be guilty of conduct prejudicial to the administration of justice, in violation of RPC 8.4(a)(4). A finding of conduct prejudicial to the administration of justice requires

the existence of each of three elements: (1) the lawyer engaged in “conduct,” that is, the lawyer did something that he or she should not have done or failed to do something that the lawyer should have done; (2) the conduct occurred during the “administration of justice,” that is, during the course of a judicial proceeding or another proceeding that has the trappings of a judicial proceeding; and (3) the lawyer’s conduct resulted in “prejudice,” either to the

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8 Furthermore, under RPC 5.1(b), if both matters are being handled by the same prosecutor’s office, the lawyer’s supervisor or manager could be vicariously responsible for the statements if the managing or supervising lawyer “knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.”
functioning of the proceeding or to a party’s substantive interests in the proceeding.

_In re Lawrence_, 337 Or 450, 465, 98 P3d 366 (2004)(citations omitted). “Prejudice may result from repeated acts that cause some harm to the administration of justice or from a single bad act that causes substantial harm.” Id. at 465-65. Conduct in the course of one proceeding that prejudices another proceeding may violate this rule. _In re Gustafson_, 333 Or 468, 484, 41 P3d 1063 (2002) (release of juvenile’s records in a Bar disciplinary matter resulted in prejudice to the administration of justice in the juvenile’s expulsion proceeding). In the case presented by this hypothetical, it is arguable that the statement was not made in the course of a judicial proceeding, because the statement was made in connection with an investigation that had not led to the commencement of any prosecution. Although the prejudice to the administration of justice is just as substantial as it would have been had the statement been made in connection with the matter that it affected, unless there was some “judicial proceeding” in the course of which the statement was made, RPC 8.4(a)(4) does not reach that conduct.

The second extrajudicial statement in this scenario occurs after another individual has been convicted of murdering the missing victim. Upon leaving the courthouse after receiving the verdict, and before sentencing, the prosecutor delivers to the press an “emotionally delivered charge that the defendant is the most evil man she has encountered in her decade as a prosecutor.”

This statement would violate RPC 3.6(a) if it is likely to prejudice the sentencing fact finder. If the defendant is going to be sentenced by the same jury that convicted him, and if the lawyer knows or reasonably believes that the jury will follow the judge’s admonition against reading, viewing or listening to news reports regarding the trial, then the statement would not violate the rule. And, if the sentencing is to be decided by the judge, the statement would not violate RPC 3.6(a). _In re Lasswell_, 296 Or at 126 n 3 (holding that statements would violate _former_ DR 7-107 if they posed a substantial risk of ‘prejudicing an imminent procedure’ before _lay_ fact finders.”) (emphasis added). But if a second jury were to be empanelled to sentence the defendant, and if the sentencing hearing was going to be close in time to the conviction, then the statement could have a substantial, _i.e._, highly probable, likelihood of materially, _i.e._, seriously, prejudicing an imminent fact-finding process in a matter in which the lawyer is involved, such that it would violate RPC 3.6(a).

_B. The Eco-Terrorists._

We are asked to review three hypothetical statements by the prosecutor: the announcement of the indictments; reference to the defendants as “terrorists” while announcing that the government will not stop in its efforts to root out terror attacks in the United States; and a statement just before trial regarding the evidence that the prosecutor hopes to introduce, though rulings on a pending motion may exclude some or all of the evidence.

We also are asked to review statements from a defense lawyer: asserting his client’s innocence; asserting justification and that the defendant’s actions were in keeping with “Oregon values”; casting aspersions on the motives of the government; using “stronger language” than is
in the public record to characterize the government’s actions; and telling reporters, immediately before trial, that his client has passed a polygraph test.

The prosecutor’s announcement of the indictments and the defense lawyer’s assertions of his client’s innocence and defense of justification are permitted by RPC 3.6(b)(1). The reference to the defendants as “terrorists” and the statement that the government will not stop in its efforts to root out terrorism are not substantially likely to have a prejudicial impact on an impending fact-finding proceeding because no trial has yet been scheduled. The same is true of the defense lawyer’s statement that the defendants’ actions were in keeping with Oregon values.

The cases do not seem to express concern for the possible effect of pre-trial publicity on judges, as opposed to on potential jurors. Therefore, the fact that the judge is still considering the motions regarding the defenses is not enough to implicate RPC 3.6(a). Even if the trial is imminent, and even if the defenses may be disposed of before the trial and might not be considered by the fact finders, RPC 3.6(b)(2) would permit the lawyer to state information that was contained in the public filings. If, however, the lawyer knows that the “stronger language” will prejudice the ultimate fact finders, or if it were so inflammatory that it was substantially likely to do so, the statement would violate RPC 3.6(a).

It is not clear from the hypothetical how exactly the prosecutor “uses the occasion of a co-defendant’s plea bargain to foreshadow evidence the prosecutor intends to attempt to introduce at trial.” Presumably, in announcing the plea bargain, the prosecutor makes statements regarding the evidence the prosecutor intends to use against the remaining defendant(s). The evidence is, at this point, subject to a motion in limine, and, to the extent it is contained in the public record, the reference to it is permitted by RPC 3.6(b)(2). If the lawyer’s purpose in making the statements is to prejudice the fact finder, the statements could violate RPC 8.4 (see discussion above). To the extent the evidence is not contained in a public record, if the lawyer knows that public dissemination of it will prejudice the imminent trial, or if it is so inflammatory that it is substantially likely to do so, the statement would violate RPC 3.6(a).

Finally, there is the question of the defense lawyer’s telling the media that his client has passed a polygraph test. This statement would be improper if the lawyer knows or reasonably should know that the extrajudicial statement will have a substantial, i.e., highly probable, likelihood of materially, i.e., seriously, prejudicing the imminent fact-finding process. It is difficult, without more information regarding the existing climate of publicity regarding the trial and the mood of the community, to gauge what the reasonably predictable effect of this statement would be.
OREGON STATE BAR
Board of Governors Agenda

Meeting Date: September 28, 2007
Memo Date: August 9, 2007
From: Sylvia E. Stevens, General Counsel
Re: Proposed Formal Ethics Opinion on Indigent Defense Caseloads

Action Recommended

Consider the recommendation of the Legal Ethics Committee that the attached opinion be issued as a formal opinion of the Oregon State Bar.

Background

The BOG reviewed this proposed opinion April 2007, but sent it back to the Legal Ethics Committee for further study. The BOG’s principal concern was that the opinion didn’t provide sufficient guidance for lawyers who believed they were assigned excessive caseloads (see minutes from April 20-21, 2007, attached).

The LEC discussed the opinion again at its May meeting, but declined to modify the opinion. The LEC’s views are outlined in the accompanying memo from the chair, Paul Levy.

The LEC again asks the BOG to issue the formal opinion, as directed by the HOD.

Attachments: Proposed EOP on Indigent Defense Caseloads
Memo from Paul Levy
Minutes from April 20-21, 2007 BOG meeting
SES memo from April 20-21, 2007 BOG agenda
PROPOSED
FORMAL OPINION NO. 2007-XXX

Competence, Diligence: Excessive Workloads Of Indigent Defense Providers

Facts:

Lawyer A is employed by a public defender firm ("the firm"), where Lawyer A represents indigent clients accused of criminal offenses. Lawyer B is the direct supervisor of Lawyer A. Lawyer C is the executive director of the firm. A board of directors, which includes some lawyers, oversees the business of the firm. Lawyer C’s responsibilities including negotiating and entering into the firm’s contracts with a state agency pursuant to which the firm agrees to represent a certain number of clients annually.

Lawyer D is a partner in a small firm that is part of a consortium of firms that contract with the state to accept court appointments to represent indigent defendants. Lawyer E, also a member of the consortium, negotiates the contract between the consortium and the state and also administers the contract for the consortium. A board of directors, which includes some lawyers, oversees the business of the consortium.

Lawyer F is a sole practitioner who is paid by the state on an hourly basis to accept court appointments to represent indigent defendants.

Lawyers A, D, and F each believe that they have an excessively large caseload of court-appointed clients.

Questions:

1. What are the ethical obligations of Lawyers A, D, and F with respect to representation of their court-appointed clients?

2. What are the ethical obligations of lawyers who supervise other lawyers who may have excessive caseloads?

Conclusions:

See discussion.

Discussion:

On May 13, 2006, the American Bar Association (ABA) adopted Formal Opinion 06-441, entitled Ethical Obligations of Lawyers Who Represent Indigent Criminal Defendants When Excessive Caseloads Interfere With Competent and Diligent
Representation\(^1\), which includes a comprehensive discussion of the questions presented in this opinion. Because the ABA opinion relies, with one notable exception addressed below, upon Model Rules of Professional Conduct that are identical or very similar to the Oregon RPCs the ABA opinion offers useful guidance for Oregon lawyers. For that reason, the opinion is quoted often and at length herein.

Under Oregon RPCs 1.1\(^2\), 1.2(a)\(^3\), 1.3\(^4\), and 1.4\(^5\), all lawyers are required to provide each client with competent and diligent representation, keep each client reasonably informed about the status of his or her case, explain each matter to the extent necessary to permit the client to make informed decisions regarding the representation, and abide by the decisions that the client is entitled to make. As the ABA Formal Opinion 06-441 observes, the rules “provide no exception for lawyers who represent indigent persons charged with crimes.” For each client, a lawyer is required to, among other things, “keep abreast of changes in the law; adequately investigate, analyze, and prepare cases; act promptly on behalf of clients; and communicate effectively on behalf of and with clients,” among other responsibilities. Id. A lawyer who is unable to perform these duties may not undertake or continue with representation of a client. Oregon RPC 1.16(a).\(^6\)

A caseload is “excessive” and is prohibited if the lawyer is unable to at least meet the basic obligations outlined above. The ABA opinion notes that various jurisdictions have suggested or adopted numerical caseload standards for public defense providers, and Oregon has also approved a “guide” to maximum caseloads.\(^7\) But the ABA opinion

\(^1\) The opinion may be ordered from the ABA at http://www.abanet.org/cpr/pubs/ethicopinions.html.

\(^2\) Oregon RPC 1.1, entitled “Competence,” provides: “A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.”

\(^3\) Oregon RPC 1.2, entitled “Scope of Representation and Allocation of Authority Between Client and Lawyer,” provides in section (a): “Subject to paragraphs (b) and (c), a lawyer shall abide by a client’s decision concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client’s decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client’s decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.”

\(^4\) Oregon RPC 1.3, entitled “Diligence,” provides: “A lawyer shall not neglect a legal matter entrusted to the lawyer.” Cf., ABA Model Rule 1.3, which requires that “[a] lawyer shall act with reasonable diligence and promptness in representing a client.”

\(^5\) Oregon RPC 1.4, entitled “Communication,” provides: “(a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information. (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.” ABA Model Rule 1.4(a) also requires a lawyer to promptly inform the client of any decision or circumstance requiring the client’s informed consent, consult with the client about the means to achieve the client’s objectives, and consult with the client about any relevant limitation on the lawyer’s conduct if the lawyer knows the client expects assistance not permitted by the rules of professional conduct or other law.

\(^6\) Oregon RPC 1.16(a) provides in part that “a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client...if the representation will result in violation of the Rules of Professional Conduct or other law.”

correctly observes that the determining factor is not the number of cases a lawyer may be asked to handle but whether the workload is excessive. While the number of cases may be a major determinant of workload, other factors include "case complexity, the availability of support services, the lawyer’s experience and ability, and the lawyer’s nonrepresentational duties." Id. Thus, if Lawyers A, D, and F believe that their workload prevents them from fulfilling their ethical obligations to each client, then their workload "must be controlled so that each matter may be handled competently." See, ABA Model Rule of Professional Conduct 1.3, Comment [2].

How a lawyer controls his or her workload will depend upon the environment in which that lawyer works, keeping in mind that a lawyer’s primary obligation is to existing clients. Thus, Lawyer A, who works at a public defender firm, should seek supervisor approval from Lawyer B for a variety of remedial measures, which might include transfer of non-representational duties to others within the office, declining appointment on new cases, transferring current cases, and filing motions with the court to withdraw from enough cases to achieve a manageable workload. If a supervisor fails to approve appropriate relief, then Lawyer A should “continue up the chain of command within the office,” ultimately appealing to the executive director, Lawyer C. If satisfactory relief is still not received, Lawyer A “must take further action,” suggesting appeals to the firm’s board of directors and the filing, without firm approval, of motions to withdraw. Lawyer A might also seek assistance from the state agency that administers the firm’s contract, and the Public Defense Services Commission, which approves the contract.

Lawyer D must take similar steps to control her workload, first requesting that Lawyer E, the administrator of the consortium, withhold the assignment of new cases and/or approve the transfer of cases to another lawyer within the consortium, provided another lawyer will be able to provide ethical representation. If Lawyer E does not provide appropriate assistance, then Lawyer D might appeal to the governing body for the consortium. Ultimately, Lawyer D may also move to withdraw from a sufficient number of cases to achieve a manageable workload.

The actions that Lawyer F, the sole practitioner, might take include declining new appointments until that lawyer’s workload is reduced to a level that permits accepting new cases, and/or filing motions to withdraw from a sufficient number of cases to achieve a manageable workload.

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8 The ABA Formal Opinion 06-441 refers to Principle 5 of the ABA’s The Ten Principles of a Public Defense Delivery System (2002), which requires that: “Defense counsel’s workload is controlled to permit the rendering of quality representation.” Similarly, the Qualification Standards for Court-Appointed Counsel to Represent Financially Eligible Persons at State Expense, adopted by the Oregon Public Defense Services Commission on February 6, 2006, provides that “[n]either defender organizations nor assigned counsel should accept workloads that, by reason of their excessive size or complexity, interfere with rendering competent and adequate representation or lead to the breach of professional obligations.” http://www.ojd.state.or.us/osca/odps/CBS/index.html. Further, language from the model contracts signed by public defense providers in Oregon require that providers meet the minimum professional standards of the Oregon State Bar and the American Bar Association, and that each provider maintain “an appropriate and reasonable number of attorneys and support staff to perform its contract obligations.” http://www.ojd.state.or.us/osca/odps/CBS/index.html.
Supervisory lawyers, including a firm director or manager, may violate ethical responsibilities when subordinate lawyers have excessive workloads. The ABA opinion describes two ways such violations may occur. First, under ABA Model Rule 5.1(a) firm managers "shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct." Furthermore, in subsection (b), the Model Rule requires that a lawyer with supervisory authority over another lawyer "shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct." The Oregon RPCs have no counterpart to MR 5.1(a) or (b). However, Oregon RPC 5.1(a) and (b), like ABA Model Rule 5.1(c), make a lawyer responsible for the misconduct of another lawyer if "the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved," or, in the specific case of supervisory lawyers, that lawyer "knows of conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action." 9

If supervisory Lawyer B or executive director Lawyer C know that Lawyer A or other subordinate lawyers have workloads that prevent them from providing competent representation to each client, they are responsible for the misconduct of the subordinate lawyer if they fail to take effective remedial actions. The ABA opinion acknowledges, however, that a supervisory lawyer's assessment of whether a subordinate lawyer's workload is excessive is "a difficult judgment." As a result, "[w]hen a public defender consults her supervisor and the supervisor makes a conscientious effort to deal with workload issues, the supervisor's resolution ordinarily will constitute a 'reasonable resolution of an arguable question of professional duty' as discussed in [ABA Model] Rule 5.2(b)." Where the resolution is "reasonable" on an issue that is "arguable," under either ABA Model Rule 5.2(b) or Oregon RPC 5.2(b), a subordinate lawyer may be excused from misconduct if that lawyer acts at the direction of a supervisory lawyer. However, RPC 5.2(b) does not protect the supervisory lawyer, whose remedial action will still be tested against a "reasonableness" standard." 10

How these rules apply to Lawyer E, who administers the work of a consortium, depends upon the structure of the consortium and the relationship between Lawyer D and Lawyer E. For example, if Lawyer D may not decline new appointments to indigent clients or may not file motions to withdraw from current client cases without the prior approval of Lawyer E, then Lawyer E may have established herself as a de facto supervisory lawyer and incurred potential responsibility under Oregon RPC 5.1. 11

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9 Oregon RPC 5.1, entitled "Responsibilities of Partners, Managers, and Supervisory Lawyers," provides: "A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if: (a) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or (b) the lawyer is a partner or has comparable managerial authority in the law firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action."

10 Oregon RPC 1.0(k) defines "reasonable" as the conduct of a "reasonably prudent and competent lawyer."

11 Oregon RPC 1.0(d), in defining a "law firm," recognizes that even in the absence of a firm agreement or association, lawyers may organize themselves or work together in such a manner to create "indicia sufficient to establish a de facto [sic] law firm among the lawyers involved." Furthermore, Comment 2 to
As noted, the ABA opinion does not address the ethical responsibilities of lawyers involved in the process of contracting for the provision of public defense services. For the reasons discussed above, Lawyer C, who heads a public defender office, and Lawyer E, who negotiates the contract for a consortium, may be responsible for the misconduct of other lawyers if they contract for caseloads knowing that they do not have adequate attorney and other support staff to provide competent representation to each client. Likewise, managers who knowingly “induce” other lawyers to violate the RPCS by knowingly contracting for excessive caseloads may violate Oregon RPC 8.4(a)(1), which makes it “professional misconduct for a lawyer to...violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another.”

Lawyers representing indigent clients must refuse to accept a workload that prevents them from meeting their ethical obligation to each client. Lawyers who work in public defense organizations should seek the assistance of supervisors and managers in achieving manageable workloads. When those supervisors and managers have knowledge of excessive workloads among firm lawyers, they must make reasonable efforts to remedy the problem.

Approved by Board of Governors, ______, 2007

ABA Model Rule 1.0 observes that if lawyers “present themselves to the public in a way that suggests that they are a firm or conduct themselves as a firm, they should be regarded as a firm for the purposes of the Rules” [emphasis added].
the number of covered parties is increasing by 1-2% each year. The primary program enjoyed a good first quarter. The practice management group visited 94 lawyer offices and the OAAP assessed a greater number of lawyers than in the past. There is increasing competition for the excess program and the PLF is looking at ways to maintain its market share. The 2006 audit was clean and copies of the report have been mailed to all BOG members. Investments are doing well.

B. Report on PLF 2007 Projects

Major focuses for 2007 will be migrating to electronic storage and a paperless office; succession planning for senior staff; and containment of defense costs.

6. Rules and Ethics Opinions

A. Proposed New Formal Ethics Opinion

Paul Levy, chair of the Legal Ethics Committee, presented the proposed opinion on excessive indigent defense caseloads to the board. He explained that he believes the opinion responds to the HOD resolution because it adopts the reasoning of ABA Formal Op. 06-411; the committee also followed the HOD directive to consider the ethical issues surrounding the letting of contracts to overburdened public defenders. Mr. Levy explained that the committee discussed that issue at length and ultimately concluded that the law was unclear and the committee believed it was not appropriate to guess at those issues in a formal opinion.

In response to questions, Mr. Levy indicated that he does not believe the opinion says anything remarkable, merely applies existing regulation to a specific practice area. At the same time, he believes the opinion provides some guidance to indigent defense practitioners.

Questions from the board included: does this opinion add anything to our existing regulatory framework? Should it clarify the process for following the chain of command in different practice settings? Will the opinion have any effect on ineffective assistance of counsel claims? What impact will the opinion have on the lawyers doing the work? What if they can't get relief from their supervisors? Will this opinion generate more complaints against busy defense lawyers? Will it reduce the number of people willing to do indigent defense? Does the requirement to complain to one's supervisor mandate insubordination and put the lawyer at risk of termination? Can we really require lawyers to withdraw without permission? How does that help the client?

Action: Ms. Fisher moved, Ms. Worcester seconded, and the board voted unanimously to send the proposed opinion back to the committee for further consideration.
OREGON STATE BAR
Board of Governors Agenda

Meeting Date: April 20-21, 2007
Memo Date: March 9, 2007
From: Sylvia E. Stevens, General Counsel
Re: Proposed New Formal Ethics Opinion

Action Recommended

Consider the recommendation of the Legal Ethics Committee that the attached opinion be issued as a formal opinion of the Oregon State Bar.

Background

In September 2006, the HOD approved a resolution that provided in part:

The Legal Ethics Committee of the Oregon State Bar is directed to issue as soon as practicable an opinion consistent with American Bar Association Formal Opinion 06-441 delineating the ethical obligations of attorneys involved in the contracting process for indigent defense services and the validity of existing contracts for said services that lead to unethically excessive caseloads.

The Legal Ethics Committee approved a draft opinion at its November 18, 2006 meeting for presentation to the BOG in February 2007. That draft followed the approach and conclusions of the ABA opinion regarding the obligations of lawyers representing indigent defendants and their supervisors, but as directed by the HOD, also attempted to address the obligations of attorneys involved in the contracting process and the validity of contracts that lead to excessive caseloads. On that point, the draft opinion said:

As noted, the ABA opinion does not address the ethical responsibilities of those lawyers involved in the process of contracting for the provision of public defense services. As to Lawyer C, who heads a public defender office, and Lawyer E, who negotiates the contract for a consortium, as noted above, they may be responsible for the misconduct of other lawyers, under Oregon RPC 4.1, if the contract for caseloads knowing that they do not have adequate attorney and other support staff to handle the work in conformity with basic ethical obligations. Likewise, under Oregon RPC 8.4(a), which provides in part that it is ‘professional misconduct for a lawyer to… violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another,’ managers who knowingly ‘induce’ other lawyers to violate the RPCs, by knowingly contracting for excessive caseloads, may commit misconduct. This latter rule might also apply to state agency lawyers who negotiate or ratify contracts knowing that a public defense provider will have inadequate attorney and support staff to perform their work in keeping with the basic ethical obligations.
At about the same time that the Committee approved the draft for BOG consideration, copies were shared with various interested parties,\(^1\) including members of the Public Defense Services Commission (PDSC). Almost immediately, I was contacted by Barnes Ellis, Chair of the PDSC, who expressed considerable anxiety about the quoted portion of the draft opinion. He shared his concerns with the Legal Ethics Committee at its January 27, 2007 meeting. He disagreed with the conclusion that a commissioner who approves a contract, even if there is a suspicion that the contracting party may not have sufficient staff to handle the contracted-for caseload, is "inducing" a violation, as that term is used in RPC 8.4. Mr. Ellis also expressed his concern that the opinion could be read to mean that if he asks the legislature for additional funding for the Commission he is acknowledging that current levels of funding are resulting in incompetent representation, and thereby admitting to a violation of RPC 8.4 by himself and other lawyer members of the Commission. One consequence of the opinion as then written, he predicted, was that attorneys might decline to serve on the Commission or at its operating agency, the Office of Public Defense Services.

While the LEC members weren't in unanimous agreement with Mr. Ellis' views, his comments generated a vigorous discussion of several points, including: the LEC is being used as a pawn in a political battle; the issue of excessive caseloads and incompetent representation isn't limited to indigent defense providers and this opinion unfairly singles them out for approbation; what exactly does it mean to "induce another" to violate the RPCs, especially when the supposed inducer isn't the other lawyer's supervisor and has no real control over the manner of the other lawyer's performance; and even if the commissioners might be in violation of RPC 8.4, is that something the bar wants to state formally?

The result of the LEC discussion on January 27 was a vote to withdraw from BOG consideration the November 2006 draft and discuss the opinion again in March after it had been revised to address the concerns raised by Mr. Ellis and the committee, which included members new to the group since its November, 2006 meeting.

The LEC reviewed a revised draft of the opinion on March 3, 2007. The new draft included the following changes to the paragraph quoted above:

As noted, the ABA opinion does not address the ethical responsibilities of lawyers involved in the process of contracting for the provision of public defense services. For the reasons discussed above, as to Lawyer C, who heads a public defender office, and Lawyer E, who negotiates the contract for a consortium, as noted above, they may be responsible for the misconduct of other lawyers; under Oregon RPC 5.1, if they contract for caseloads knowing that they do not have adequate attorney and other support staff to handle the work in conformity with basic ethical obligations. Likewise, managers who knowingly "induce" other lawyers to violate the RPCs by knowingly contracting for excessive caseloads may violate Oregon RPC 8.4(a)(1), which makes provides in part that it is "professional misconduct for a lawyer

\(^1\) To my knowledge, the draft was shared with the sponsors of the HOD resolution, the heads of the major public defender organizations, and the various individuals within Oregon Public Defense Services Commission.
to... violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another, managers who knowingly "induce" other lawyers to violate the RPCs, by knowingly contracting for excessive caseloads, may commit misconduct. This latter rule might also apply to state agency lawyers who negotiate or ratify contracts knowing that a public defense provider will have inadequate attorney and support staff to perform their work in keeping with the basic ethical obligations.

After another energetic discussion of the issues, the LEC voted to eliminate all discussion of the responsibilities of lawyers engaged in the contracting process. They agreed that the scope of RPC 8.4(a)(1) is not clear and that this opinion was not the appropriate place to venture a guess. The committee was also unanimous in its agreement that the political ramifications of being wrong are too great to take that chance.

The committee did wish to commend the Board of Governors, and the work of its recent indigent defense task force, for its support of attorneys providing indigent defense in Oregon. Members of the committee also expressed the view that it had been faithful to the directive of the HOD resolution by considering the ethical obligations of those involved in the contracting process and concluding that the matter was beyond the scope of the ABA opinion and not an appropriate subject for a formal ethics opinion at this time. Thus, the attached opinion is very much consistent with the scope, approach and conclusions of the ABA opinion that the HOD asked the committee to consider. The LEC approved several non-substantive edits, which are reflected in the final version of the attached draft. The committee recommends that the Board adopt this as a formal ethics opinion consistent with the directive of the House of Delegates.

Attachment: Proposed Formal Ethics Opinion No. 2007-XXX (Excessive Caseloads)
To: The Oregon State Bar Board of Governors  
From: Paul Levy, Chair, Oregon State Bar Legal Ethics Committee  
Re: Proposed Formal Ethics Opinion concerning excessive workload, recommended for adoption at the September 28, 2007 meeting of the Board of Governors

The Legal Ethics Committee (LEC) voted unanimously at its May 19, 2007 meeting to again recommend that the Board of Governors (BOG) adopt proposed Formal Ethics Opinion 2007-XXX, addressing the ethical obligations of attorneys who believe they are unable to provide competent and diligent representation to each of their clients because of an excessive current workload.

The opinion recommended for adoption is the same version previously reviewed by the BOG at its meeting on April 21, 2007, at which time it asked that the LEC continue work on the opinion. Following the BOG's action, the LEC reviewed the opinion, and agreed that it is a correct statement of attorney ethical obligations, that the opinion is necessary, and that it offers appropriate and helpful guidance to Oregon attorneys. The LEC directed the Chair to explain its actions to the BOG.

At its May 19 meeting, the LEC heard concerns that the BOG may not have been fully informed about the nature and purpose of the opinion during its previous consideration. For instance, the BOG was provided an “op ed” opinion by Michael Judge, the head of the Los Angeles County public defender office, taking issue with an article by Prof. Norman Lefstein, which had offered a comprehensive introduction to and explanation of American Bar Association (ABA) Formal Opinion 06-441, which serves as the model for the LEC opinion. The BOG should have also had access to the Lefstein article, and it is now appended to this memorandum.

In addition to a discussion of the origins and operation of the ABA opinion, the Lefstein article addresses a number of issues raised by the opinion, including the conclusion of both the ABA opinion and the version recommended by the LEC, that in some circumstances a subordinate lawyer in a public defender office is authorized to challenge a judgment by a supervisor or head of a defender office concerning excessive caseload. This is an issue that concerned the BOG during its previous discussion of the LEC’s opinion. The Lefstein article helps make clear that this approach is a direct result of the dictates of ABA Model Rule 5.2, adopted in Oregon as RPC 5.2. Although it is true, as some BOG members observed, that the application of this rule, and others cited in the opinion, put both subordinate and supervisory attorneys in a difficult position at times, this is the inevitable consequence of recognizing that the duty to provide competent and diligent representation knows no exception for indigent clients.

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1 Oregon RPC 5.2(b) says that “[a] subordinate lawyer does not violate the Rules of Professional Conduct if that lawyer acts in accordance with a supervisory lawyer’s reasonable resolution of an arguable question of professional duty.” As Professor Lefstein notes, “[t]he unmistakable implication of this language is that a lawyer violates professional conduct rules if she follows a supervisor’s instruction that is not a ‘reasonable resolution’ of the matter.”
In this regard, it is should be noted that the American Council of Chief Defenders (ACCD), a body that represents heads of public defender organizations, recently requested that the ABA Ethics Committee revise Formal Opinion 06-441, because of concerns that the opinion invited both insubordination by junior attorneys and unwanted judicial scrutiny. The ABA considered the ACCD's concerns and declined to modify its opinion. Indeed, whether ones sympathies naturally lie with the management or with the subordinates of a law firm should be irrelevant. The foremost concern of any bar association, and especially its ethics mechanisms, should be the protection of the public. Viewed in that light, the LEC’s recommended opinion helps ensure that every public defense client receive the representation that is constitutionally required and mandated by the Rules of Professional Responsibility.

There was also a sense from the BOG’s earlier consideration of this matter that it wished to avoid entry into a “political” matter. Certainly, such a concern is understandable, especially given the tenor of the 2006 House of Delegates (HOD) resolution which directed the BOG to adopt an opinion along the lines of the one recommended here. But the LEC received welcome input on an earlier version of the opinion, which was fairly criticized for commenting unnecessarily on the current administration of Oregon’s public defense system, and made changes accordingly. In many ways, it is unfortunate that the ABA opinion was ever the subject of HOD consideration, since the matter was clearly packaged there as part of a political maneuver. Even without a HOD resolution, though, it was inevitable that the LEC would have written on this subject, given the landmark opinion adopted by the ABA and the gravity of the issue it addresses. The concern now must be the “political” implications of failing to address this critical matter.  

A request also arose from the BOG’s earlier discussion of this matter that the opinion on this subject separately address the ethical considerations of public defense attorneys who practice in public defender offices, attorneys who are associated only within a consortium of private practitioners, and those attorneys or law private law firm that accept appointments on a case-by-case basis. In fact, the opinion separately considers each of these scenarios, in its presentation of the facts, the questions presented, and the analysis of ethical considerations. The LEC agreed that a closer examination of the opinion by the BOG would satisfy their concerns in this area.

Finally, it is worth noting that very recently the ACCD devoted a three-day national meeting to the caseload issue, at which it acknowledged the existence of “caseload crises that are crippling numerous public defense delivery systems throughout the country, making it impossible for them to provide competent services to their clients and undermining the fairness and reliability of many of our nation’s criminal justice systems.”  

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2 We do not mean to suggest, however, that the HOD’s resolutions should not carry significant weight in the BOG’s consideration of this opinion. Indeed, the resolution directing the adoption of an opinion based upon ABA Formal Opinion 06-441 was passed on a nearly unanimous vote with no one speaking in opposition.

Association acknowledged that overwhelming public defense caseloads resulted in routine violations of the right to competent representation. It is widely believed that excessive public defense caseloads are prevalent throughout Oregon as well. There is a clear need for an opinion, such as the one approved by the LEC, that reminds Oregon lawyers and the public that there is “no exception for lawyers who represent indigent persons charged with crimes” to the duties to provide competent and diligent representation, to keep each client reasonably informed about the status of his or her case, to explain each matter to the extent necessary to permit the client to make informed decisions, and to abide by those decisions that the client is entitled to make.

\footnotetext{4 Gideon's Broken Promise: America's Continuing Quest For Equal Justice, ABA Standing Committee on Legal Aid and Indigent Defendants (2004).}
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Restraining Excessive Defender Caseloads: The ABA Ethics Committee Requires Action
By Norman Lefstein; Georgia Vagenas

The most influential ethics body in the United States has now told criminal defense lawyers that having an excessive number of cases can never be an excuse for failing to provide "competent" and "diligent" representation to their clients.1 As stated in Formal Opinion 06-441 by the American Bar Association's Standing Committee on Ethics and Professional Responsibility ("ABA Ethics Committee"), "[t]he [Model] Rules [of Professional Conduct] provide no exception for lawyers who represent indigent persons charged with crimes."2 Until this opinion, the ABA Ethics Committee had never dealt with the pervasive national problem of excessive caseloads of public defenders and other lawyers who represent the indigent accused in criminal proceedings.

In cases where the Supreme Court has held that the U.S. Constitution requires that counsel be provided,3 excessive defender caseloads have been cited repeatedly as a major impediment to effective representation. In December 2004, for example, in Gideon's Broken Promise: America's Continuing Quest for Equal Justice, the American Bar Association's Standing Committee on Legal Aid and Indigent Defendants ("SCLAID") concluded that "[f]unding for indigent defense services is shamefully inadequate."4 As the committee's report further explained, "[l]awyers frequently are burdened by overwhelming caseloads and essentially coerced into furnishing representation in defense systems that fail to provide the bare necessities for an adequate defense (e.g., sufficient time to prepare, experts, investigators, and other paralegals), resulting in routine violations of the Sixth Amendment obligation to provide effective assistance of counsel."5

The report also found that in addition to violating the Sixth Amendment, "defense lawyers for the indigent sometimes are unable to...comply with [ethical]...requirements, and as a nation we tolerate substandard representation in indigent defense that is not acceptable practice on behalf of paying clients. However, ethical violations routinely are ignored not only by the lawyers themselves, but also by judges and disciplinary authorities."6 Similarly, more than 20 years earlier, in Gideon Undone: The Crisis in Indigent Defense Funding, SCLAID complained of "public defenders [who] have too many cases and lack support personnel."7

Because excessive caseloads are so prevalent, several years ago the Bureau of Justice Assistance of the U.S. Department of Justice commissioned The Spangenberg Group, leading experts on indigent defense, to prepare a special report on the subject. 8 In "Keeping Defender Workloads Manageable," The Spangenberg Group described the nature of the caseload problem around the country:

  Today, in some jurisdictions, public defender offices are appointed [in] as many as 80 percent of all criminal cases. As populations and caseloads have increased, many public defender offices have been unable to obtain corollary increases in staff. Every day, defenders try to manage too many clients. Too often, the quality of service suffers. At some point, even the most well-intentioned advocates are overwhelmed, jeopardizing their clients' constitutional right to effective counsel.

The problem is not limited to public defenders. Individual attorneys who contract to accept an
unlimited number of cases in a given period often become overwhelmed as well. Excessive workloads even affect court-appointed attorneys. Rules of professional responsibility make it clear that every lawyer must maintain a reasonable workload. Like all opinions of the ABA Ethics Committee, the new ethics opinion is based substantially upon the ABA Model Rules of Professional Conduct ("Model Rules"). But since state ethics rules largely track the ABA Model Rules, the new opinion is enormously important because it furnishes potent ammunition for defenders seeking relief from excessive caseloads before judges and from those in charge of their offices. The opinion carefully explains how the provisions of the Model Rules must be read together as an integrated whole, and the way in which they direct a course of action for lawyers with excessive caseloads and for lawyers with supervisory responsibilities.

The decision of the ABA Ethics Committee to address the problem of excessive defender caseloads resulted from efforts by SCLAID and the National Legal Aid and Defender Association ("NLADA") to persuade the ABA Ethics Committee to prepare an opinion on the subject. In addition to submitting written requests for such an opinion, during the August 2005 ABA Annual Meeting in Chicago the ABA Ethics Committee met with a SCLAID delegation and an NLADA representative to discuss the SCLAID/NLADA request.

Initially the ABA Ethics Committee was reluctant to issue an opinion on the subject of excessive defender caseloads, asserting that the matter was adequately covered in prior ethics opinions related to civil legal aid lawyers. Ultimately, however, the committee agreed that the problem warranted their attention and differed from burdensome caseloads of legal aid lawyers, who normally are neither court appointed nor under contracts sometimes requiring them to represent large numbers of clients.

The ABA Ethics Committee's Opinion
The opinion addresses the ethical responsibilities of both the individual lawyer who has an excessive caseload and the supervisors of such lawyers. Although the word "public defender" is used in the opinion, a footnote explains that it "means both a lawyer employed in a public defender's office and any other lawyer who represents, pursuant to court appointment or government contract, indigent persons charged with criminal offenses." The logic of the opinion, moreover, extends to juvenile delinquency and other kinds of proceedings in which the defense attorney is faced with an excessive caseload.

Finally, the opinion deals with the duty of heads of defender offices, boards that oversee public defender and assigned counsel programs, if any, and private practice lawyers who serve as supervisors and managers of law firms.

The Lawyer Handling the Case
As for the individual lawyer, the opinion begins by noting that an attorney has a duty to be both competent and diligent, and also to communicate with the client concerning the representation. These obligations require an attorney to "keep abreast of changes in the law; adequately investigate, analyze, and prepare cases; act promptly on behalf of clients; communicate effectively on behalf of and with clients; control workload so each matter can be handled competently; and, if a lawyer is not experienced with or knowledgeable about a specific area of the law, either associate with counsel who is knowledgeable in the area or educate herself about the area."

But what is a defense lawyer to do if the current caseload assigned to the lawyer will prevent the rendering of competent and diligent representation? And what is a defense lawyer to do if taking additional cases will mean that competent and diligent representation cannot be provided? In response to these questions, the opinion is clear and unambiguous: "If a lawyer believes that her workload is such that she is unable to meet the basic ethical obligations required of her in the representation of a client, she must not continue the representation of that client or, if representation has not yet begun, she must decline the representation." The opinion sensibly recognizes that "[n]ational standards as to [annual] numerical caseload limits" cannot be controlling. As the opinion explains, whether a lawyer's caseload is excessive "depends not only on the number of cases, but also on such factors as case complexity, the availability of support services, the lawyer's experience and ability, and the lawyer's nonrepresentational duties."
After noting that "[a] lawyer's primary duty is owed to existing clients," the opinion suggests the courses of action defenders should follow when that duty is threatened by an excessive caseload. This can occur (1) when a lawyer's cases are assigned by the court and (2) when cases are assigned to the lawyer by the public defender's office or other source, such as a law firm. In the first situation, when a caseload has become excessive or additional cases will render the lawyer's workload excessive, appropriate actions include asking that the court not assign new cases until the caseload permits the rendering of competent representation.20 Alternatively, if the matter cannot be resolved through such a request, "the lawyer should file a motion with the trial court requesting permission to withdraw from a sufficient number of cases to allow the provision of competent and diligent representation to the remaining clients."21

In following these steps, must a defender inform her clients of efforts to withdraw from representation? The opinion answers this question in the affirmative, stating in a footnote that a "client should be notified, even if court rules do not require such notification."22 In support of such action, Rule 1.4 is cited: "A lawyer shall keep the client reasonably informed about the status of the matter."23 In other words, if a lawyer seeks to withdraw because she is convinced that competent representation cannot be provided, this is an exceedingly significant development in the client's case, and the client must be told.

What should the defender do if the court denies the request to withdraw from existing cases or refuses to refrain from assigning new cases to the defender? Once again, the opinion is clear. The defender "must take all feasible steps to assure that the client receives competent representation"24 and this includes "any available means of appealing."25 A trial court's adverse ruling. Obviously, there are no provisions in the Model Rules that expressly require that an appeal be taken from an adverse trial court decision refusing to grant relief to an attorney claiming an excessive caseload. But diligence in representing a client, as noted in Comment 1 to Model Rule 1.3, requires that "[a] lawyer...take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor. A lawyer must also act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf."26 Thus, if an attorney is convinced that she must have relief from an excessive caseload and the trial court denies such relief, the ABA Ethics Committee concluded that an appeal, if possible, is essential in pursuit of the client's interest.

However, an interlocutory appeal from a trial court's denial of a defender's motion for relief based upon an excessive caseload appears not to be available anywhere as a matter of right. Invariably, when an appellate court hears an appeal in such a case, it is because the court has decided to do so in the exercise of its discretion. For example, in Arizona appellate review of a court's denial of a defender's motion to withdraw may be reviewed only by "special action."27 Similarly, in New York interlocutory appeals are not allowed as of right, and the review of a denial of a motion to withdraw is likely available only through a "special proceeding."28 In Florida, where there have been several appellate decisions dealing with trial court denials of motions to withdraw, the courts have exercised discretion in deciding whether to hear the cases.29 In the event a defender's motion to withdraw is granted, a state's appellate court may hear the case upon the petition of the county or state, which is what happened in an often-cited Louisiana case.30 It remains to be seen whether the opinion of the ABA's Ethics Committee will lead to litigation in which state appellate courts are more frequently called upon to resolve claims of excessive defender caseloads.

If a defender is unsuccessful in withdrawing from current cases or in stemming the flow of new cases and an appeal is either unavailable or unsuccessful, the opinion states that the court's order must be obeyed while the defender takes "all steps reasonably feasible to insure that her client receives competent and diligent representation."31 The duty of counsel to continue to provide representation despite believing that competent legal services cannot be provided is consistent with Model Rule 1.16 (c): "When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation."32 The Model Rules do not condone civil disobedience as a means of protesting a court's decision to provide legal services, and a lawyer who resists a court's final order to provide representation risks being held in contempt.
In the second situation, where a lawyer's excessive caseload is distributed by the public defender office or other source (e.g., a law firm under contract), the ethics opinion suggests a course that is necessarily different from when the court assigns the caseload. In this situation, the lawyer, with permission of his or her supervisor, must seek a solution by transferring cases to another lawyer in the office whose workload is not excessive or "transferring non-representational responsibilities within the office." 33 The opinion states that if a lawyer's supervisor "makes a conscientious effort to deal with workload issues" there is a presumption that the supervisor's resolution ordinarily will constitute a 'reasonable resolution of an arguable question of professional duty'.. 34 This derives both from the language of Model Rule 5.235 and Comment 2 explaining the rule, which states that a supervisor's judgment should control when a dispute between a lawyer and supervisor is "reasonably arguable." 3

The critical question of who determines whether a supervisor's resolution of a professional dispute is "reasonably arguable" is not addressed in the Model Rules. And, of course, there is no easy way that the rules could resolve this issue since it will always be a matter of professional judgment. Inevitably, when disagreements arise, the supervisor will claim that her resolution is "reasonable" and the subordinate lawyer will insist that it is not.

If the supervisor's decision in the matter is not reasonable, however, the opinion states that "the public defender must take further action." 37 [T]he lawyer should continue to advance up the chain of command within the office until either relief is obtained or the lawyer has reached and requested assistance or relief from the head of the public defender's office. 38 And, if relief is still not obtained, the opinion indicates that there are still two additional steps that the attorney may pursue: (1) take the issue to the governing board of the agency, if any; and, (2) if still no relief is obtained, the lawyer may file a motion seeking to "withdraw from a sufficient number of cases to allow the provision of competent and diligent representation to the remaining clients." 3

The basis for a lawyer taking her concern about an excessive caseload to the agency's governing board is not explained in the ABA Ethics Committee opinion, although in a footnote the opinion references Model Rule 1.13.40 Apparently, the ABA Ethics Committee believes that the language of Section 1.13 (b) is sufficiently broad to cover the situation in which a defender informs an agency's board that the chief of the office refuses to provide relief in the face of the lawyer's excessive caseload. Subsection (b) authorizes a lawyer to go "to the highest authority that can act on behalf of the organization" when "an officer, employee or other person associated with the organization is engaged in action...or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization...." 41 Thus, if the head of an agency fails to provide relief to a lawyer who has an excessive caseload, arguably the agency's leader is failing in her "legal obligation to the organization" to assure that the agency's lawyers provide competent client services.

Aside from the Model Rules, it makes perfectly good sense for a dissatisfied defender to seek relief from the agency's board of directors or trustees. The purpose of such boards is to set policy for the organization, and surely there are few policies more important than determining the size of attorney caseloads. While boards of defender organizations are admonished not to interfere in the details of how lawyers represent their clients, 42 a board's decision to review the overall workload of an attorney to determine whether it is manageable should not be regarded as a violation of this rule.

Of course, it will not be everyday that a lawyer, in disagreement with those in authority in her own organization, files a motion with the court seeking to withdraw and/or to curtail the assignment of additional cases. For this to occur, at a minimum the lawyer would have had to be unsuccessful in appealing to her supervisor, appealing to the head of the agency, and to the agency's governing board, assuming that such a body existed. However, the opinion of the ABA Ethics Committee, predicated on the proposition that each lawyer under the Model Rules is ultimately responsible for his or her own personal representation, is correct. The duty to provide "competent representation" is owed by every lawyer to each client, and under the Model Rules a lawyer cannot avoid this requirement when those in charge of the defender program are unwilling to provide relief or to challenge the system.
Duty of the Supervisor

The foregoing discussion makes clear that the supervisor's judgment respecting a defender's excessive caseload is controlling if the disagreement is "reasonably arguable," although not otherwise. But there is more to be said about the duty of the supervisor. As the opinion points out, consistent with Model Rule 5.1, "lawyers having direct supervisory authority [must] take reasonable steps to ensure that lawyers in the office they supervise are acting diligently in regard to all legal matters entrusted to them, communicating appropriately with the clients on whose cases they are working, and providing competent representation to their clients." 43

If a supervisor determines that a defender's workload is excessive, "the supervisor should take whatever additional steps are necessary to ensure that the subordinate lawyer is able to meet her ethical obligations in regard to the representation of her clients." 44 Among the options set forth in the opinion are the following: (1) transferring non-representational duties to other lawyers in the office; (2) transferring cases to other lawyers in the office who can handle the cases competently; (3) providing additional resources to the overburdened lawyer so that she is able to provide competent service; and (4) supporting the subordinate lawyer's effort to withdraw from client representation.

Beyond the ABA Ethics Opinion

There are a number of issues worthy of consideration in the wake of the ABA Ethics Committee opinion. We address in this section the following questions:

• -Did the ABA Ethics Committee err in concluding that an individual defender should be able to challenge the judgment of her supervisor or chief defender?

• -To what extent is the ABA Ethics Committee opinion consistent with ethics opinions of states and other organizations, as well as national standards related to indigent defense?

• -What should be the content of a defender's motion seeking relief from an excessive caseload and how should the issue be presented to the court?

• -Do chief defenders, supervisors, and board members incur potential civil liability if they fail to support a defender's reasonable claim of excessive caseload? 45

Challenging the Supervisor/Chief Defender

At first blush, it may seem unnecessary to discuss whether the ABA Ethics Committee made a mistake in deciding that a defender, if unreasonably denied relief from an excessive caseload, is authorized to challenge a supervisor or head of a defender program by filing a motion with the trial court seeking to withdraw from pending cases and/or to avoid additional assignments. Are not the Model Rules clear about this issue?

In fact, as noted above, the rules do not leave any real doubt about the matter. Model Rule 5.2 recognizes that "[a] subordinate lawyer does not violate the Rules of Professional Conduct if that lawyer acts in accordance with a supervisory lawyer's reasonable resolution of an arguable question of professional duty." 46 The unmistakable implication of this language is that a lawyer violates professional conduct rules if she follows a supervisor's instruction that is not a "reasonable resolution" of the matter. This approach, moreover, is consistent with Model Rule 1.1, which requires that every lawyer always provide "competent" representation. 47

While the ABA Ethics Committee was preparing its opinion several California public defenders sent letters to the committee and to other ABA officials, arguing that individual defenders must be absolutely bound by the decision of the head defender respecting whether a defender's caseload was excessive. Many chief defenders were aware in advance that the ABA Ethics Committee was preparing an opinion about excessive defender caseloads because the matter was mentioned during a program at the annual meeting of the NLADA in Orlando, Fla., in November 2005. Moreover, public defenders were told that the
committee was being asked to comment on the ethical duties of both the head of the defender office and
the assistant or deputy defender. And it was predicted that the committee would almost certainly declare
that such a defender must be allowed to challenge her supervisor’s judgment about whether the lawyer’s
caseload was excessive.48

Soon after this program, the head of the Los Angeles County Public Defender Office, which is the largest
such program in the country, complained in a letter to the Chair of SCLAID and to the ABA Ethics
Committee of “disastrous” consequences if the requested ethics opinion were to be issued:

It could easily make Public Defender offices unmanageable. It, inter alia, could substitute the
judgment of a rookie lawyer, lacking experience and perspective for the discretion exercised by
my attorney managers and me. Attorney managers in my office are all former trial lawyers who
possess at least 15 years experience. Many like I have more than 30 years of such experience.

-It would set in motion an adversarial relationship between me and my lawyers such that resort
to punitive measures such as discipline would likely occur. . . . The proposed rule (sic: ethics
opinion) would be the source of much grief and mischief. 49

The Los Angeles County public defender also sent a letter to Michael Greco, then President of the
American Bar Association, expressing similar concerns and warning that the proposed ethics opinion
“would be exploited by under performing lawyers, who instead of complying with remedial efforts...would
demand caseload relief and claim retaliation if any personnel action is taken by managers or the Chief
Defender.”50 Chief defenders from several other California counties also wrote letters expressing
concerns similar to those of the Los Angeles County Public Defender.

None of the letters from the California public defenders mention the Model Rules or acknowledge that
Model Rule 5.2 anticipates that a supervisor’s reasonable judgment should be binding upon a
subordinate lawyer. While it is understandable that a chief public defender might prefer that her authority
never be challenged, the evidence of excessive defender caseloads throughout the country51 strongly
suggests, just as a matter of policy if nothing else, that defendants should be permitted to challenge the
leadership of their organizations. But, in addition, under rules of professional conduct, assistant or deputy
defenders everywhere jeopardize their law licenses when less than “competent” representation is
provided.

At the time the California public defenders wrote their letters, the state of California had not yet adopted a
counterpart to Model Rule 5.2 dealing with the duty of subordinate lawyers. This provision also makes
clear that a lawyer is bound by the “Rules of Professional Conduct notwithstanding that the lawyer acted
at the direction of another person.” However, the California State Bar has now proposed a provision
almost identical to ABA Model Rule 5.2 and public comment has been invited.52 In response, the Los
Angeles County Public Defender has strongly urged the State Bar of California not to adopt a California
counterpart to Model Rule 5.2 because it could lead to the ABA Ethics Committee opinion being held
applicable to California public defenders. 53

Just like ABA Model Rule 5.2, the proposed California rule declares that a lawyer does not have an
excuse for failing to provide competent representation simply because she is acting under instructions of
a supervisor. In fact, proposed Comment 1 to California’s proposed Rule 5.2 contains the following
sentence, which is not included within Comment 1 to ABA Model Rule 5.2: “A lawyer under the
supervisory authority of another lawyer is not by the fact of supervision excused from the lawyer’s
obligation to comply with the Rules of Professional Conduct or the State Bar Act.” 54

Almost a decade before the ABA Ethics Committee issued its recent opinion on excessive defender
caseloads, the California Standing Committee on Professional Responsibility and Conduct (“California
Ethics Committee”) prepared an ethics opinion on the same subject. Although the California Ethics
Committee opinion, Formal Opinion Interim No. 97-0007, is still available on the Web site of the
California State Bar,55 following a period of public comment, the opinion was never formally issued by
the California Ethics Committee.56 The California ethics opinion is of interest nevertheless because in
answering the question of an attorney’s duty when faced with too many cases, the California Ethics
Committee dealt with the roles of both a deputy public defender and chief defender, offering opinions substantially similar to those contained in the ABA's new ethics opinion. Moreover, the California opinion invoked ABA Model Rule 5.2 as instructive for California lawyers:

But if Attorney X, the defender heading the office, disagrees, we believe that attorney Y, as a deputy defender [who complains about an excessive caseload and an inability to provide competent representation], may satisfy his ethical duties to his indigent criminal defendant clients by following Attorney X's decision, unless that decision constitutes an unreasonable resolution of a question of ethical duty. (Emphasis added).

- In the absence of California authority on point, we look for guidance to Rule 5.2 of the American Bar Association (ABA) Model Rules of Professional Conduct. Although Model Rule 5.2 is not binding on California attorneys, we believe that the guidance it provides does not conflict with California authority and is both helpful and appropriate for California attorneys in the present situation.

* * *

But if Attorney Y believes that he may not rely on the decision of Attorney X respecting his ability to provide competent representation because that decision constitutes an unreasonable resolution of a question of ethical duty, Attorney Y ... must proceed to invoke, and exhaust, all the remedies available to him in the office. Ultimately, however, in circumstances that we believe are likely to occur only rarely, Attorney Y may have no alternative other than to decline to proceed. 57

Ethics Opinions and Standards
There are several approved ethics opinions of state bars (unlike the unapproved California ethics opinion) dealing with defender caseloads, and these are substantially similar to the approach of the new ABA ethics opinion. But none of the state bar ethics opinions are as comprehensive as the ABA's opinion and none of the other opinions were rendered by an ethics body of comparable prestige that speaks on behalf of the largest group of lawyers in America.

These prior state bar ethics opinions are cited in the ABA's ethics opinion. And in each of the opinions, the state bar's ethics committee concluded that a public defender is not justified in violating rules of ethics due to an excessive caseload. In a 2004 opinion, for example, the Ethics Advisory Committee of the South Carolina Bar recommended that an overburdened public defender should "first raise the matter with [the] attorney's supervising lawyer or the chief public defender."58 In the event relief is not obtained, the committee recommended that a defender present the matter to the agency's board of directors, if any, and if that fails, the defender "should refuse to accept additional appointments until the attorney's caseload is reduced to the level that the attorney can ethically handle."59 As for the cases of pending clients that the defender cannot competently represent, the attorney must seek the court's permission to withdraw. Significantly, the opinion recites that the attorney seeking the ethics opinion is "employed by a Public Defender's Office...[and] has a caseload of 1,000 felonies."60

In 1990, the Ethics Committee of the Arizona State Bar issued an opinion containing conclusions virtually identical to those of the ABA Ethics Committee and the Ethics Advisory Committee of the South Carolina Bar. In addition, the Arizona opinion is noteworthy for its discussion of the deference due to a "lawyer's determination that his or her caseload is excessive and violative of his or her duties of competence and diligence...."61 In the opinion of the Arizona committee, this judgment should be given "great weight."62 The committee then elaborated on its rejection of any formula for deciding on the number of cases that a defender can handle:

Although the law in some contexts may treat Assistant Public Defenders as interchangeable goods, the duties of competence and diligence are peculiarly individual duties. Individual skills are not interchangeable; and what one lawyer may comfortably handle may severely overtax another.

* * *

Just as this committee rejects any mathematically set number of cases a lawyer may handle as an ethical norm, we do not believe that the Rules of Professional Conduct allow a supervisory lawyer to arbitrarily require each lawyer in an office to handle a certain number of cases. Aside from differences in individual skill, differences in the complexity of cases, difficulties in
communication with clients, variances in factual investigation and legal research render it virtually impossible to determine some ideal basket of 160 cases that an 'average' lawyer should handle in a year."63

Still another opinion especially noteworthy is Ethics Opinion 03-01 issued by the American Council of Chief Defenders ("ACCD"), which is part of the NLADA. Since the ACCD is comprised of chief public defenders from across the country, its ethics opinion understandably addresses the excessive workload issue from the standpoint of a defender agency head. The opinion, however, is consistent with the ABA's new ethics opinion and the opinions of state bar ethics committees. Thus, the opinion concludes that "[w]hen confronted with a prospective overloading of cases or reductions in funding or staffing which will cause the agency's attorneys to exceed... capacity [to provide competent, quality representation in every case], the chief executive of a public defense agency is ethically required to refuse appointment to any and all such excess cases."64 The opinion also recognizes that an individual defender breaches his or her duty to provide competent representation if an excessive caseload is accepted, citing the ethics opinions from Arizona mentioned earlier and opinions from Wisconsin. 65

The ABA's Ethics Opinion cites favorably Principle 5 of the ABA Ten Principles of a Public Defense Delivery System ("ABA Ten Principles"). This principle provides that "[d]efense counsel's workload is controlled to permit the rendering of quality representation."66 The opinion, however, does not make any mention of the ABA criminal justice standards on which Principle 5 and the other principles of the ABA Ten Principles are based. As the introduction to the ABA Ten Principles explains, "[t]he more extensive policy statement dealing with indigent defense services is contained within the ABA Standards for Criminal Justice, Providing Defense Services (3d ed. 1992)...."67

In fact, beginning in 1979, the second edition of Providing Defense Services has contained a provision on "workload" that is substantially similar in its approach to the ABA's new ethics opinion.68 Today, much like the second edition, the third edition of the standards published in 1992 admonishes defense organizations and individual lawyers to take such steps as may be necessary to avoid either "pending or projected caseloads" that interfere with rendering "quality representation or lead to the breach of professional obligations."69 The ABA's Defense Function standards contain a comparable provision, so that in both of the ABA's chapters dealing with defense representation, lawyers are told to be mindful of the size of their workloads, its impact on the quality of their representation, and the risk that it "may lead to a breach of professional obligations."70

Standard 5-5.3 of Providing Defense Services also provides that judges should not require either individual lawyers or defense programs to accept so many cases that the quality of representation is jeopardized or professional obligations violated.71 While it is obviously important that judges not force defense lawyers to accept more cases than they can represent and to consider carefully an attorney's plea of case overload, the new ABA ethics opinion does not address the responsibility of judges in dealing with defense requests for relief from excessive caseloads. The reason for this is probably because the ABA Code of Judicial Conduct on which the committee would have had to base its opinion lacks provisions that clearly apply to a judge's duty to grant defendants relief from excessive workloads. In some states, there are workload standards applicable to defenders similar to Standard 5-5.3,72 but there are relatively few court procedure rules that impose on judges a duty to monitor defender workloads and to provide relief if excessive workloads are likely to prevent effective representation.73

Motions to Withdraw
Since the Model Rules do not deal with the content of motions to withdraw when lawyers have too many cases, it is not surprising that the ABA's new ethics opinion does not either. For defenders, however, the content of such motions is extremely important since a successful withdrawal motion may be the only way in which a defender or head of an agency can obtain relief from excessive caseloads.

What should be in a motion to withdraw based upon too many cases? Unless a defender knows in advance that the judge will grant the motion based simply on a request for relief, arguably the motion should be detailed, supported by appropriate affidavits, and contain a request for a hearing. Ideally, the affidavits should include opinions from one or more experts in defense representation who can attest to
the defender's excessive caseload and is prepared to testify in person at a later hearing.

While the motion should undoubtedly express concerns for the Sixth Amendment and effective assistance of counsel, defendants should rely heavily on the state's rules of professional conduct, the ABA's new ethics opinion on excessive caseloads, ABA standards related to workload, and other relevant authorities specific to the jurisdiction. Conceivably, a judge who is reluctant to find that a defender's representation is likely to be ineffective prior to a case actually being heard may be more receptive to concerns for defendants violating their ethical duties, especially since by denying a motion to withdraw, or by refusing to curtail the assignment of new cases, the judge may be deemed complicit in forcing a defender to behave unethically.

Specifically, we suggest that the motion to withdraw include objective data such as the number of pending cases, the rate at which new cases are typically received, the extent of support services, and similar kinds of information. In addition, either for all or a representative sample of the defender's cases, the motion should describe the range of tasks that need to be undertaken in preparation for either a negotiated settlement or trial, including investigations, research, motions, etc. Further, either within the motion to withdraw or when the motion is heard in court, a defender may wish to inform the court that if forced to continue with her current caseload (or to accept additional cases), ineffective assistance of counsel will be rendered and that she will willingly testify about her deficient representation in a post-conviction proceeding.

These recommendations may seem like nothing more than common sense, but they also reflect lessons derived from cases involving excessive caseloads. As might be expected, when appellate and trial courts have granted relief from excessive caseloads, the courts invariably have had before them detailed factual findings. For example, when the Louisiana Supreme Court ruled there was a presumption that defendants were not likely receiving the effective assistance of counsel due to defender caseloads, the court had before it detailed factual findings developed in a series of hearings in the trial court. Similarly, when a federal judge held in a class action lawsuit that the caseloads of the Illinois Office of State Appellate Defender were causing inordinate delays in adjudicating appeals and violating due process, the judge conducted a lengthy hearing in order to determine the facts and heard from expert witnesses, among others.

In a Florida case in which the public defender sought to withdraw from 29 appeals, the Florida Supreme Court explained the difficulty of the courts in deciding such matters, while illustrating the importance of the record developed in the trial court:

We acknowledge the public defender's argument that the courts should not involve themselves in the management of public defender offices. At the same time, we do not believe that courts are obligated to permit the withdrawal automatically upon the filing of a certificate by the public defender reflecting a backlog in the prosecution of appeals. In this instance, however, we conclude that the Public Defender of the Tenth Circuit has presented sufficient grounds to be permitted to withdraw from representation of appeals.

There are at least two other reasons why motions to withdraw based on excessive caseloads should be as detailed as possible. As noted earlier, state rules of criminal procedure do not normally grant defenders the right to appeal the denial of motions to withdraw. Thus, appellate courts that exercise discretion to hear appeals from denials of such motions are not apt to do so unless a full and compelling factual record is developed in the trial court. In addition, as one court has pointed out, "[i]f a public defender can make the requisite showing to be relieved of new cases, a record is established by which the legislature can accurately assess the manpower needs of the public defender system and the financial burdens.... Appropriate legislative responses can then be developed." 78

Civil Liability
In light of the ABA's ethics opinion, it is worth considering the possible civil liability of chief defenders, supervisors and board members who fail to support a defender's reasonable claim of excessive caseload. While there are not many court decisions in this legal area, there is sufficient precedent to suggest that these persons are subject to liability if they fail to support a defender's efforts to withdraw, or
otherwise fail to act, and their conduct leads to a violation of a client's constitutional rights. If the decision of the chief defender, supervisor or board is found to constitute "official policy" and amounts to "deliberate indifference," liability under 42 U.S.C. § 1983 is possible.80

Chief Defender/Head of Office. In *Miranda v. Clark County*, 81 the Ninth Circuit Court of Appeals held that the head of a public defender office is subject to civil liability under § 1983 for policies that lead to a denial of an individual's right to effective representation. After the defendant's conviction was overturned on a claim of ineffective assistance of counsel, the defendant brought a § 1983 action against the head of the county public defender's office, as well as the county and assistant public defender who represented him, alleging a violation of his constitutional rights arising from the office's policies.82 The office allegedly allocated minimal funding to defendants who failed polygraph tests and also assigned the least-experienced defenders to capital murder cases without providing training.83

The court held that the chief defender was subject to suit under § 1983 because in allocating funds based on polygraph test results, he was performing an administrative function that constituted state action.84 The court explained that the office was adhering to "a policy of deliberate indifference to the requirement that every criminal defendant receive adequate representation, regardless of innocence or guilt."85 Likewise, in considering the county's liability for assigning inexperienced and untrained attorneys to capital offenses, the court held that the allegations were sufficient to create a claim that the county was deliberately indifferent to the constitutional rights of those clients accused of capital offenses.86

Supervisor Liability. Generally, the same standards of fault and causation that apply to the head of a public defender office or to other municipal entities govern a supervisor's liability.87 Specifically, three elements must be met to establish a supervisor's liability under § 1983: (1) the supervisor had actual or constructive knowledge that her subordinate was engaged in conduct that posed "a pervasive and unreasonable risk" of constitutional injury; (2) the supervisor's response to that knowledge was so inadequate as to show "deliberate indifference to or tacit authorization of the alleged offensive practices;" and (3) that there was an "affirmative causal link" between the supervisor's inaction and the particular constitutional injury suffered by the plaintiff.88

Board Liability. There are no decisions specifically addressing whether members of an indigent defense board can be held liable if they elect to support the supervisor's and/or chief defender's unreasonable decision not to decrease an assistant's caseload, or for that matter, if they elect to take no action at all. However, cases regarding the liability of local municipal governing boards provide important guidance on this issue. 89

In *Monell v. Department of Social Services*, 90 a leading Supreme Court decision on municipal liability, the Court held that a local governing body cannot be held liable based simply on a theory of respondeat superior. Instead, liability arises only when there is a direct causal link between an official "policy" and the alleged constitutional deprivation.91 In *Monell*, female employees brought an action against, *inter alia*, the Board of Education challenging its policy requiring pregnant employees to take unpaid leaves of absence before medical reasons required a leave of absence.92 The Court held that a board may be sued directly under 42 U.S.C. § 1983 where the action that is alleged to be unconstitutional implements or executes a policy statement . . . or decision officially adopted and promulgated by that board's officers.93 Further, the *Monell* Court found that the board's action was an "official policy" for which the Board could be held liable under § 1983 for constitutional violations.94 Other jurisdictions have held that even a single decision by a municipality's properly constituted legislative body can lead to § 1983 liability, as a single decision may constitute official policy.95

The heightened "deliberate indifference" standard that governs heads of offices and supervisors applies to boards as well. While *City of Canton v. Harris*, 96 applied the standard to a city, there are cases applying the "deliberate indifference" standard to local governing boards, such as school district boards, which are arguably analogous to indigent defense boards.

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In Gonzalez v. Ysleta Independent School Dist., 97 for example, a student and her parents brought an action against a school district's board of trustees under § 1983, claiming that plaintiff was sexually molested (her constitutional right to bodily security violated) due to the board's decision to transfer to plaintiff's school a teacher who two years earlier was accused of sexual indiscretions at another school. In a two-step analysis, the court first determined that, under Monell, the board's decision to transfer the teacher constituted an official policy upon which liability could attach. 98 In the second stage, however, the court found that the board was not ultimately liable because in making that decision, it did not act with deliberate indifference. 99 In other words, the board did not "ignore or turn a blind eye" to the previous complaint about the teacher when the complaint surfaced, but rather, the board requested an investigation and recommended a course of action. 100 The court thus determined that the board's precautions reflected concern, not indifference or apathy. 101

Accordingly, if members of a defender board take no action in the face of excessive caseloads, the board may actually be inviting liability since it may be seen as "turn[ing] a blind eye." 102 In Justice O'Connor's concurrence in City of Canton, she stated, "[w]here a § 1983 plaintiff can establish that the facts available to city policymakers put them on actual or constructive notice that the particular omission is substantially certain to result in the violation of the constitutional rights of their citizens, the dictates of Monell are satisfied." 103 Arguably, if an indigent defense board fails to act by deciding not to review or investigate the denial of a staff attorney's request to withdraw, the board is acting with deliberate indifference. For a board to incur liability, however, there must be "a high degree of fault on the part of city officials before an omission that is not in itself unconstitutional can support liability as a municipal policy under Monell." 104

A Call to Action
The ABA ethics opinion should be understood as a call to action by both individual defenders burdened with excessive caseloads, as well as by supervisors and heads of defender programs. The sad truth is that it seems not to be. The opinion was issued in mid-July 2006 (although dated May 13, 2006), and we are writing this "conclusion" at the start of October. During the past two-and-a-half months, however, the opinion seems to have created barely a ripple among defenders throughout the country. 105

One of the few news articles dealing directly with the ethics opinion appeared in the Chicago Sun-Times on July 24, 2006. The legal affairs reporter for the newspaper interviewed several Cook County assistant public defenders in Chicago. One of those interviewed "working in a misdemeanor courtroom laughed and said, "[w]e have 400 [cases] a month! To be perfectly honest, we're not at liberty to reject any cases." 106 Another public defender handling felony cases admitted she was "handling 140 cases at a time." 107 She further acknowledged that she closed "a minimum of 20 a month. What's that -- 240 a year? They could make this work better by giving us more money to hire more people. Courtrooms that should have three people have two or sometimes one. We've probably had 10 people leave . . . since the end of last year and not be replaced." 108

By their own admissions, these lawyers have excessive caseloads and no matter how dedicated and conscientious they are, they cannot furnish the kind of competent and diligent representation required by the Illinois Rules of Professional Conduct109 and that a client paying for legal services can expect to receive. Yet, as the Chicago Sun-Times article so vividly demonstrates, substandard defense representation that fails to comply with the rules of professional conduct is so common among defenders that it can be publicly admitted without worrying that judges, disciplinary counsel or anyone else will pay any real attention. In Chicago and elsewhere in public defense, just as in the legal profession as a whole, defenders have all too often come to accept burdensome caseloads as normal, apparently believing that representation in compliance with professional responsibility rules and the Constitution is somehow either inapplicable, unattainable, or both.

We believe, however, that defenders and their offices are not as powerless as they may think they are. And the ABA's new ethics opinion tells them that they have a clear duty to take action both to protect fully the legal rights of their clients and themselves from furnishing incompetent representation. But it takes courage to stand up to authority—both the authority of judges and sometimes the heads of defender programs. It also takes courage from the heads of defender programs and their boards of directors.
Nationwide, we really do not know how many defender offices are adamant in forcing their lawyers to furnish incompetent representation in violation of professional conduct rules because defenders rarely challenge the leadership of their office. Similarly, we do not know how many trial judges are willing to force defender offices and individual defenders to proceed with incompetent representation when the case for relief is fully documented. Nor do we know if judges would really force defense lawyers to proceed if the lawyers were to put on the record that they will furnish deficient representation in violation of both professional conduct rules and the Sixth Amendment. Isn't it, finally, about time that we found out?

Notes
1. See ABA Model Rules of Prof'l Conduct R. 1.1 (2006): "A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation." Model Rule 1.3 provides: "A lawyer shall act with reasonable diligence and promptness in representing a client." Although not mentioned in Formal Opinion 06-441, provisions of the ABA Model Rules related to conflicts of interest also are implicated when a defendant has an excessive number of cases. Model Rule 1.7(a)(2) prohibits representation of multiple clients (i.e., a "concurrent conflict of interest") when "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." As stated by the Supreme Court of Florida, "[w]hen an attorney representing indigent defendants is required to make choices between the rights of the various defendants [being represented], a conflict of interest is inevitably created." In re Order on Prosecution of Criminal Appeals by the Tenth Judicial Circuit Public Defender, 561 So.2d 1130, 1132 (Fla. 1990).
2. ABA Committee on Ethics and Prof'l Responsibility, Formal Op. 06-441 (May 13, 2006) ("Formal Op. 06-441").
3. See, e.g., Gideon v. Wainwright, 372 U.S. 335, 341-45 (1963) (Sixth and Fourteenth Amendments to the Constitution guarantee the provision of counsel to indigent persons accused of crimes in state felony proceedings); Argersinger v. Hamlin, 407 U.S. 25, 37 (1972) (right to counsel applies to state misdemeanor proceedings in which actual imprisonment is imposed); In re Gauld, 387 U.S. 1, 41 (1967) (right to counsel extended to state juvenile delinquency proceedings); Alabama v. Shelton, 535 U.S. 654, 662, 674 (2002) (right to counsel applies to state misdemeanor proceedings in which suspended jail sentence imposed); Douglas v. California, 372 U.S. 353, 355-357 (1963) (right to counsel applies to first criminal appeal to an appellate court).
5. Id. at 38.
6. Id. at 39.
9. Id. at 2.
10. Letter from Ross Shepard, Defender Director, NLADA (2004-05), to ABA Standing Committee on Ethics and Prof'l Responsibility ("ABA Ethics Committee"), to George Kuhlman, Ethics Counsel, and Chair, Marvin Karp (Jan. 7, 2005) (requesting that ABA Ethics Committee issue a formal opinion regarding excessive defender caseloads); letter from Norman Lefstein, Indigent Defense Advisory Group (IDAG) Chair and SCLAID member, to ABA Ethics Committee Chair, Charles E. McCallum (May 13, 2005) (requesting reconsideration of denial of request to issue ethics opinion on defender caseloads). All private letters referred to in this article are on file with the authors.
11. The meeting with the ABA Ethics Committee was attended by James R. Neuhard, Michigan State Appellate Defender and IDAG member; Norman Lefstein, IDAG Chair and SCLAID member; Bill Whitehurst, SCLAID Chair (2003-06); and Terrence Brooks, Director, ABA Division of Legal Services. ABA Committee on Ethics and Prof'l Responsibility, Formal Opinions 347 (Dec.1, 1981) and 96-399 (Jan. 18, 1996). These opinions deal with the ethical obligations of civil legal aid attorneys to provide competent representation when funding is inadequate and caseloads excessive.

12. Formal Opinion 06-441 at 2 n.3.

13. Id., at 3.

15. These are obvious questions that cannot be avoided in view of the Model Rules requirement that a lawyer be competent and diligent in representing her clients. Moreover, Comment 2 to Rule 1.3, which is cited in the ABA’s Ethics Opinion, states that a lawyer’s workload “must be controlled so that each matter may be handled competently.” Model Rule 1.3, cmt 2.


17. Id.

18. Id.

19. Id.

20. Id. at 5.

21. Formal Opinion 06-441 at 5.

22. Id. at 5 n.15.


24. Formal Opinion 06-441 at 5.

25. Id. at 1.


27. See Ariz. Rev. Stat. Ann. Sec. 17B, R. 1(a), N. 41 and 25 (2005); Haas v. Colosi, 202 Ariz. 56, 57, 40 P.3d 1249 (2002)(denial of public defender’s motion to withdraw as counsel is non-appealable, interlocutory order and thus appellate review is available only by special action, which is discretionary with the appellate court).


29. See, e.g., Schwarz v. Cianca, 495 So.2d 1208, 1209 (4th Dist. Fla. App. 1986) (trial court denied public defender’s motion to withdraw and appellate court heard the case “upon an application for extraordinary relief,” treating “the application as a petition for writ of certiorari”).

30. State v. Peart, 621 P.2d 780 (La. 1993). In Peart, the Louisiana Supreme Court held that excessive caseloads and insuficient support services for public defenders created a presumption that indigent defendants were not being provided constitutionally required effective assistance of counsel. The Louisiana Supreme Court heard the Peart appeal upon petition of Orleans Parish because the state’s constitution gives jurisdiction to the state’s high court if a statute is held unconstitutional. The trial court in Peart ruled, inter alia, that the state’s system of indigent defense as provided for under Louisiana law was unconstitutional as applied in Orleans Parish.


32. Model Rule 1.16(c) (2006).

33. Formal Opinion 06-441 at 5.

34. Id. at 6.

35. “A subordinate lawyer does not violate the Rules of Professional Conduct if that lawyer acts in accordance with a supervisory lawyer’s reasonable resolution of an arguable question of professional duty.” Model Rule 5.2(b).

36. Model Rule 5.2 cmt. 2.

37. Formal Opinion 06-441 at 6.

38. Id.

39. Id.

40. Id. at 6 n.21. Both sections 1.13 (b) and (c) are cited in the ethics opinion. But section (c) clearly does not apply to the situation; it deals with the release of confidential information protected by Rule 1.6 to persons outside the organization. Model Rules 1.13(b), (c) and 1.6. So the committee must have thought that the language of 1.13 (b) was applicable to the excessive caseload situation.
41. Model Rules 1.13(b).
42. "Boards of Trustees should be precluded from interfering in the conduct of particular cases." ABA Standards for Criminal Justice: Providing Defense Services, Standard 5-1.3 (3rd ed. 1992). The commentary to this black-letter statement explains: "The primary function of a board should be to make general policy, not to attempt to dictate the conduct of particular cases. Consistent with this principle, several public defender statutes explicitly prohibit interference in the handling of specific cases by defenders." Id. at 20. See also NLADA Guidelines for Legal Defense Systems in the U.S., Standard 2.13 (1976); NLADA Standards for the Administration of Assigned Counsel Systems, Standards 3.3.3(a) and 3.2.2(c) (1989).
43. Formal Opinion 06-441 at 7, citing Model Rule 5.1. See also Attorney Grievance Comm'n of Maryland v. Ficker, 706 A.2d 1045, 1051-52 (1998) (supervising lawyer violated Rule 5.1 by, inter alia, assigning too many cases to supervised lawyer).
44. Formal Opinion 06-441 at 7.
45. Another issue that we do not address in this article, but which we believe is worthy of consideration, is whether a defender has any recourse when terminated because of a disagreement over caseload with a supervisor or head of a defender program.
46. Model Rule 5.2.
47. Model Rule 1.1.
48. This prediction was offered by Norman Lefstein, one of the authors of this article, during a November 2005 meeting in Orlando of the NLADA's American Council of Chief Defenders.
49. Michael P. Judge, the Los Angeles County Public Defender, gave permission to the authors of this article to reference and quote from the letters that he sent in opposition to the then proposed ABA ethics opinion. Letter from Michael P. Judge to Bill Whitehurst, SCLAID Chair (2003-06), et al. 4 (Dec. 2, 2005).
50. Letter from Michael P. Judge to Michael S. Greco, ABA President 2-3 (Jan. 11, 2006).
51. See discussion supra notes 3-9 and accompanying text.
54. Id.
59. Id.
60. Id.
62. Id.
63. Id.
65. Id. at 5. Wisconsin Formal Opinion E-84-.1, reaffirmed in Wisconsin Formal Opinion E-91-3, is also
consistent with the new ABA opinion. Two other relevant ethics opinions include Ethics Opinion 751, N.Y. State Bar Assoc. Committee on Professional Ethics (2002) ("an attorney representing a government agency may not undertake more than the attorney can competently handle, but the attorney may accept his superior’s reasonable resolution of an arguable question of professional duty"); and Legal Ethics Opinion 1798, Standing Committee on Legal Ethics, Va. State Bar (2004) (a Commonwealth Attorney with an excessive caseload that precludes competent and diligent representation and the supervisory attorney who assigns the excessive caseload violate ethics rules). These opinions, too, are obviously consistent with the ABA’s new ethics opinion on excessive defender caseloads. In fact, footnote 2 of the Virginia ethics opinion contains the following sentence: "Although this opinion addresses workloads of prosecutors, excessive caseloads for public defenders and court-appointed counsel raise the same ethical problems if each client’s case cannot be attended to with reasonable diligence and competence."


67. Id.


71. Providing Defense Services, Standard 5-5.3 (b) ("Courts should not require individuals or programs to accept caseloads that will lead to the furnishing of representation lacking in quality or to the breach of professional obligations.").


73. But see, e.g., Ind. Sup. Ct. R. 24(B)(3) (2006) (Workload of Appointed and Salaried Capital Counsel), available at http://www.in.gov/judiciary/rules/criminal/#r24 (The Indiana Supreme Court adopted this provision based upon a recommendation of the Indiana Public Defender Commission.); Tenn. Sup. Ct. R. 13(e)(4)(D) (2006) ("The court shall not make an appointment if counsel makes a clear and convincing showing that adding the appointment to counsel’s current workload would prevent counsel from rendering effective representation in accordance with constitutional and professional standards.").

74. See State v. Peart, supra note 30.


76. Stilka v. State, 579 So. 2d 102, 104 (Fla. 1991).

77. See supra notes 27-30 and accompanying text.

78. Escambia County v. Behr, 384 So. 2d 147, 151 (England, C. J., concurring) (Fla. 1980).

79. This section does not address the liability of an assistant defender sued under state tort law for legal malpractice. See e.g., Veneri v. Papape, 424 PA. Super. 394, 622 A.2d 977 (1993). See also Polk County v. Dodson, 454 U.S. 312, 325 (1981) (a public defender representing a client in the lawyer’s traditional adversarial role was not a state actor under § 1983 and is "[h]eld to the same standards of competence and integrity as a private lawyer"); Miranda v. Clark County, 319 F.3d 465, 468 (2003) (public defender representing a client in a traditional adversarial role is acting under the ethical standards of a lawyer-client relationship and is held to the same standards as a private attorney). Some jurisdictions, however, extend statutory immunity to public defenders, protecting them against personal liability in malpractice actions. See Schreiber v. Rowe, 814 So. 2d 396 (Fla. 2002). See also Kennedy v. Carlson, 544 N.W.2d 1 (Minn. 1996); Dzubak v. Mott, 503 N.W.2d 771, 773 (Minn. 1993).

80. Section 1983 authorizes private parties to enforce their federal constitutional rights against state and local officials and municipalities in the federal and state courts. See 42 U.S.C. § 1983.

81. 319 F.3d 465, 469-71 (9th Cir. 2003).
82. Id. at 466-67.
83. Id. at 467.
84. Id. at 469-70. In contrast, the court held that unlike the county and head of the public defender office, the assistant public defender was not subject to § 1983 liability because he was not a state actor. Id. at 468. The court explained that because the assistant enters into an attorney-client relationship, it places him in a role that exempts him from liability under § 1983. Id. at 468-69.
85. Id. at 470.
86. Id. at 471 (citing City of Canton v. Harris, 489 U.S. 378, 388, 109 S.Ct. 1197 (1989). In City of Canton, the Supreme Court made clear that to establish liability there must be a direct causal link between a municipal policy and the alleged constitutional deprivation. Id. at 386. The Court, therefore, adopted the deliberate indifference requirement, holding that before a local government entity may be held liable for failing to act to preserve a constitutional right, the plaintiff must demonstrate that the official policy evidences a deliberate indifference to her constitutional rights. Id. at 386-93.
87. See Doe v. Independent School Dist., 15 F.3d 443, 452-54 (5th Cir. 1994) ("The legal elements of an individual's supervisory liability and a political subdivision's liability... are similar enough that the same standards of fault and causation should govern.").
89. Indigent defense boards may be deemed to have the same characteristics as other municipal boards, such as governing and policy-making functions. Indigent defense boards are general governing boards which are empowered to establish general policy, but may not interfere in the conduct of particular cases. See ABA Standards for Criminal Justice: Providing Defense Services, Standard 5-1.3; NLADA Standards for Legal Defense Systems in the U.S., Standard 2.11 (Functions of the Defender Commission). Defender commissions may provide input and advice to the Defender Director and may also remove the Director from office. NLADA Standard 2.11 (c) and (f).
91. Id. at 690.
92. Id. at 658.
93. Id. at 690. The Monell Court held that the language of § 1983 "plainly imposes liability on a government that, under color of some official policy, "causes" an employee to violate another's constitutional rights." Id. at 692. On the other hand, in a case against the actual perpetrator of a constitutional violation, the standard of liability derives from the particular constitutional provision at issue, not from § 1983. Daniels v. Williams, 474 U.S. 327, 329-30, 106 S.Ct. 662, 664 (1986); Gonzalez v. Ysleta Indep. Sch. Dist., 996 F.2d 745, 759 (5th Cir. 1993).
94. Id. at 690.
95. See also Pembaur v. City of Cincinnati, 475 U.S. 469, 480, 106 S.Ct. 1292 (1986).
96. 489 U.S. 378, 386-93, 109 S. Ct. 1197 (1989) (holding that a city's failure to train subordinates may result in § 1983 liability where the failure amounts to deliberate indifference to the potential violation of a constitutional right).
97. 996 F.2d 745, 746 (5th Cir. 1993).
98. Gonzalez, 996 F.2d at 753-54.
99. Id. at 756-60.
100. Id. at 762.
101. Id.
102. Gonzalez, 996 F.2d at 762.
103. City of Canton, 489 U.S. at 396 (O'Connor, J., concurs) ("The lower courts that have applied the 'deliberate indifference' standard we adopt today have required a showing of a pattern of violations from which a kind of 'tacit authorization' by city policymakers can be inferred.") (Citing, e.g., Languirand v. Hayden, 717 F.2d 220, 227-28 (5th Cir. 1983). See also, Jones v. City of Chicago, 856 F.2d 88, 992-93 (7th Cir. 1988) (defendants "must know about the conduct and facilitate it, approve it, condone it, or turn a blind eye for fear of what they might see. They must act either knowingly or with deliberate, reckless indifference").
104. City of Canton, 489 U.S. at 392, 396.
105. On September 16, 2006, however, an isolated, albeit significant development occurred in Oregon, where the Oregon State Bar House of Delegates passed a resolution to adopt ABA Formal Opinion 06-441 and instructed its state's ethics body to issue a similar opinion applicable to Oregon defenders. This
development was due to the efforts of Ross Shepard, former Defender Director of the NLADA.
107. Id.
108. Id.
109. Ill. Rules of Prof’l Conduct, Rules 1.1 and 1.4 (The Illinois Rules are identical to ABA Model Rules and require competence and diligence.)

The Struggle for Effective Indigent Defense Services
Remarks Delivered Upon Receipt of NACDL’s 2005 Champion of Indigent Defense Award

My commitment to the cause of indigent defense derives from a deep-seated belief that unless our adversary system of criminal justice is strong — unless it protects the weakest and least powerful members of our society as well as the rich — the great promise of the Sixth Amendment’s right to counsel will remain unfulfilled.

I am sometimes asked how our country is progressing in implementing the right to counsel now that the Gideon decision is more than 40 years old and we are well past virtually all of the Supreme Court’s other “right to counsel” landmark decisions. Clearly, we have made important progress during the past 40 years. In 1963, which was two years after I graduated from law school, organized and vigorous defense services of the kind that exist today (in at least some jurisdictions) were just beginning to be formed. But in assessing the state of indigent defense in America today, there is absolutely no reason to rejoice or even to be moderately satisfied.

Despite the wealth of this country and its historic commitment to due process of law, implementation of the right to counsel for the indigent is — overall — in sad shape!

In 2005, the major problems of America’s indigent defense system were set forth in an American Bar Association report that I co-authored, titled “Gideon’s Broken Promise: America’s Continuing Quest for Equal Justice.” The report concluded that, “40 years after Gideon v. Wainwright, indigent defense in the United States remains in a state of crisis, resulting in a system that lacks fundamental fairness and places poor persons at constant risk of wrongful conviction.” The reasons: “shamefully inadequate funding,” as well as “defense systems that frequently lack basic oversight and accountability, impairing the provision of uniform quality.” The report and its conclusions were based upon public hearings held in 2004 throughout the country in recognition of Gideon’s 40th anniversary.

In recent years, we all have witnessed a major development that has measurably strengthened the case for substantial government support of effective criminal defense services. Permit me to illustrate with a reflection from my past.

During the 1970s I headed the public defender service in Washington, D.C., and I testified annually before congressional committees on behalf of the agency’s budget. But it never occurred to me then that I should argue for adequate agency funding because of our absolute knowledge that innocent people are being wrongfully convicted in our justice system, and that the risk of wrongful conviction is greatly increased when defendants are not well represented.

Today, thanks to DNA evidence and the pioneering work of Barry Scheck and Peter Neufeld, as well as many others, we know that innocent people are sometimes convicted and that miscarriages of justice are an unfortunate reality of our justice system. We also know, as Janet Reno remarked when she was attorney general: “In the end, a good lawyer is the best defense against wrongful conviction.”

Thomas Jefferson once said that “eternal vigilance is the price of liberty.” Our history suggests that no less vigilance is required to assure adequate defense services for the poor. Unless criminal defense lawyers are genuinely independent, adequately compensated and able to fully and effectively represent their clients, the capacity of government to overreach — and also to make mistakes — will not be challenged. And the great
protections of our Bill of Rights will not be realized for all people.

The struggle on behalf of fully funded and effective indigent defense services is not won with a single victory. Rather, it is a battle that needs to be constantly waged one skirmish at a time. But it is an exceedingly vital struggle, well worth the fight.

— Norman Lefstein

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Oregon State Bar
Board of Governors Agenda

Meeting Date: September 28, 2007
Memo Date: August 31, 2007
From: State Professional Responsibility Board
(through Jeffrey Sapiro, Disciplinary Counsel)
Re: Proposal for Rule Limiting the Activities Disciplined Lawyers May Perform in a Law Firm

Action Recommended

Give direction to the State Professional Responsibility Board (SPRB) regarding whether to continue work on a proposed rule or rules that would limit the activities that disbarred, suspended or resigned lawyers may perform while working in a law firm.

Background

In 2005, the SPRB began to consider whether Oregon should adopt a rule or rules that place some limitations on how a disbarred or suspended lawyer, or a lawyer who resigned with disciplinary charges pending, may be utilized in a law firm setting. Over the years, the board has heard occasional allegations about a disbarred, suspended or resigned lawyer working as a paralegal or legal assistant in a law firm ostensibly under the supervision of a licensed lawyer, but in reality continuing to practice law. These reports of alleged circumvention of a disciplinary sanction have not been numerous, and proof of actual misconduct has been hard to come by when staff has looked into these matters. Nevertheless, the SPRB decided to examine the rules of other jurisdictions and begin work on draft rules that could be adopted in Oregon.

A survey of other states conducted in late 2005 revealed the following:

- Eleven states (including Washington) had a fairly categorical prohibition on the employment of disbarred or suspended lawyers in any capacity within a law firm;
- Eight states set out in a rule a list of prohibited activities and/or a list of permitted activities applicable to disbarred or suspended lawyers;
- Two states placed limitations on where or for whom a disbarred or suspended lawyer could work, so that the lawyer could not work in the same office in

1 Presently, Oregon has some rules of general application in this area, but nothing specific. See, RPC 5.1 (holding a supervising lawyer accountable for the misconduct of another lawyer under certain circumstances); RPC 5.3 (general rule requiring supervising of non-lawyer staff); RPC 5.5 (general prohibition on the unauthorized practice of law). See, also, “Suspended Animation: A Lawyer’s Life as a Legal Assistant,” Elkanich, Jarvis & Stevens, OSB Bulletin, January 2006.
which he or she formerly practiced or be supervised by someone who formerly was a subordinate;

- Six states required licensed lawyers who employed a disbarred or suspended lawyer to register or file a certification with the state bar or licensing authority advising of the employment and acknowledging the limitations to which the former lawyer was subject;

- Two states had a requirement that firm clients be informed when a disbarred or suspended lawyer would be working on the clients' legal matters;

- Remaining states did not respond to the survey and were presumed to have no restriction or rule addressing the employment of disbarred or suspended lawyers.

After consideration of what other states had done, and in recognition that the bar has limited enforcement authority over lawyers who already are disbarred or resigned, the SPRB drafted a proposed addition to the Rules of Professional Conduct (RPCs) that places the burden of limiting the activities of disciplined lawyers on those licensed lawyers who supervise them. In brief, the proposed rule restricted communication between a former lawyer and firm clients, opposing parties or opposing counsel; required the supervising lawyer to review, approve and sign documents drafted by the former lawyer; prohibited the former lawyer from handling client money or having access to the trust account; and prohibited any appearance by the former lawyer before any court, tribunal, arbitrator or mediator. In addition, the proposed rule required the firm to notify the bar when a former lawyer was to be employed, and also required client notification and consent, among other things.

In February 2006, the SPRB circulated its draft to the Legal Ethics Committee and the UPL Committee, and requested comment. The reaction from these committees was not favorable. Some of the negative reaction stemmed from a belief that the burdens imposed on the supervising firm, particularly the notice and consent provisions, were too onerous. Others apparently felt that the issue of former lawyers attempting to circumvent their discipline was not common enough to warrant the rule changes. We do not know whether these committees would have been more favorably disposed if the rule draft had been more modest in scope.

After much discussion, the SPRB decided in August 2006, to table further work on this issue and wait to see over the following months whether the bar received new reports of additional alleged abuses by disciplined lawyers. We have not. However, a trial panel recently issued an opinion in a disciplinary case in which the panel was “very troubled” that the accused lawyer, already serving a suspension from a prior case, had continued to work as a paralegal in 2004 under the ostensible supervision of a licensed lawyer. The panel

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3 Companion additions to the Bar Rules of Procedure (BRs) applicable directly to the disciplined lawyers were also drafted, but the BRs are not substantive rules of conduct and are not enforceable to the extent the RPCs are.
commented that "[a]t some point, it would be of assistance if we could obtain guidance on what type of activities a lawyer can engage in while under suspension." *In re Allan Knappberger*, Nos. 05-54, 05-109, 05-110, panel opinion at p. 20 (3/7/07).

The SPRB revisited this issue at its meeting on August 17, 2007. A majority of the SPRB feels strongly that Oregon should adopt some type of rule in this area, as many other states have done. This is an opportunity for the bar to address this issue at a time when it is not in the public spotlight from any particular case or crisis. However, the SPRB concluded that it was not inclined to spend further time drafting rules or proposals concerning the employment of disbarred, suspended or resigned lawyers unless the Board of Governors directed or encouraged the SPRB to do so.

Attached is the material the SPRB circulated to the Legal Ethics Committee and UPL Committee in February 2006. Also attached is a *Bulletin* article on this topic authored by David Elkanich, Peter Jarvis and Sylvia Stevens, that appeared in January 2006.

JDS
February 24, 2006

Wendy J. Baker
Legal Ethics Committee Chairperson
360 E 10th Avenue, Suite 300
Post Office Box 11620
Eugene, OR 97440

Bruce A. Bornholdt
Unlawful Practice of Law Chairperson
SAIF Corporation
400 High Street SE
Salem, OR 97312

Re: Request from SPRB for comment on draft rules

Dear Ms. Baker and Mr. Bornholdt:

The Oregon State Bar State Professional Responsibility Board (SPRB) would appreciate your committees' review of and input concerning draft rules prepared by the board. The rules establish certain limitations on the employment in a law firm or law office of suspended, disbarred, resigned or involuntarily inactive lawyers.

At least nineteen states have some form of regulation regarding the use of suspended or disbarred lawyers in a law office. Rules from other jurisdictions range from an absolute ban on such employment of any kind (e.g., Washington's RPC 5.5(d)), to restrictions or limitations on the type of activities a suspended or disbarred lawyer may perform (e.g., California Rule 1-311). Some states also have registration and/or notice requirements (e.g., Alaska Bar Rule 15(c)). Presently, Oregon has no rule in this area beyond the general admonition not to engage or assist in the unauthorized practice of law. From its experience evaluating lawyer conduct and the imposition of disciplinary sanctions, the SPRB believes that there is a need for Oregon to consider adopting a more specific rule.

Enclosed are the draft rules prepared by the SPRB, which include proposed amendments to both the Rules of Professional Conduct (RPCs) and the Bar Rules of Procedure (BRs). The proposed amendments to the RPCs, if adopted, would apply to bar members who employ or supervise suspended, disbarred, resigned or involuntary inactive
Letter to Wendy J. Baker and Bruce A. Bornholdt
February 24, 2006
Page 2

lawyers. The proposed amendments to the BRs, if adopted, would apply to the suspended, disbarred, resigned or inactive lawyers themselves.

The enclosed draft rules have not yet been submitted to the Board of Governors for consideration. The SPRB first wanted to solicit comment from the Legal Ethics Committee and the Unlawful Practice of Law Committee, as these two bar groups are most likely to have an interest in the subject matter of the rule drafts.

The SPRB would be most grateful for any input your committee wishes to share. Feedback by April 1, 2006, would permit the SPRB to consider your comments and adhere to a timetable that allows for possible review by the Board of Governors and the House of Delegates this year.

Thank you for your anticipated input. Please direct any written comment to me.

Very truly yours,

Jeffrey D. Sapiro
Disciplinary Counsel
Extension 319

JDS:rh
Enclosures
cc: Sarah Bostwick, SPRB Chairperson
Amy Alpern, SPRB
Doug Minson, BOG Liaison to SPRB
Sylvia Stevens, Staff Liaison to LEC
Linn Davis, Staff Liaison to UPLC
(all w/enclosures)
RPC 5.3 Responsibilities Regarding Non-lawyer Assistants

With respect to a non-lawyer employed or retained, supervised or directed by a lawyer:

(a) a lawyer having direct supervisory authority over the non-lawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and

(b) except as provided by Rule 8.4(b), a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:

(1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action; and

(c) a lawyer who employs or contracts with a formerly admitted lawyer (defined for the purposes of this subsection (c) as a lawyer who, in any jurisdiction, has been disbarred or suspended, has resigned with a disciplinary charge or investigation pending, or has been transferred involuntarily to inactive membership status) for services to be performed by the formerly admitted lawyer as a paralegal, legal assistant or other position in connection with the practice of law shall:

(1) provide to the Oregon State Bar, within 10 days of employing or contracting with the formerly admitted lawyer and every year thereafter, written notice of the employment or contract. The written notice shall include:

(i) the identity and bar number of the formerly admitted lawyer;

(ii) a full description of the formerly admitted lawyer's current bar status in all jurisdictions in which the formerly admitted lawyer is or was admitted to practice law;

(iii) the identity and bar number of the lawyer having direct
supervisory responsibility over the formerly admitted lawyer throughout the duration of the employment or contract;

   (iv) the scope of duties and activities to be assigned to the formerly admitted lawyer during the employment or contract;

   (v) the amount of any and all compensation and method for calculating any such compensation of the formerly admitted lawyer;

   (vi) a statement by the employing or contracting lawyer that includes a consent to random compliance audits, to be conducted by the Office of Disciplinary Counsel, at any time during the employment of or contract with the formerly admitted lawyer; and

   (vii) a statement that the employing or contracting lawyer has read the order, opinion or action giving rise to the suspension, disbarment, resignation or inactive status of the formerly admitted lawyer;

(2) provide a copy of the written notice referred to in subsection (c)(1) and a copy of RPC 5.3 to each client on whose legal matter the formerly admitted lawyer will work, prior to or at the time of assigning the formerly admitted lawyer to the client's legal matter, and further identify for the client at that time the basis for and duration of the disbarment, suspension, resignation or inactive transfer of the formerly admitted lawyer;

(3) obtain written authorization from each affected client for the formerly admitted lawyer to work on the client's legal matter;

(4) retain proof of delivery of each written notice referred to in subsection (c)(2) and of each written authorization referred to in subsection (c)(3) for two years following termination of the formerly admitted lawyer's employment or contract;

(5) take all reasonable steps to ensure that the formerly admitted lawyer:

   (i) does not communicate with the lawyer's clients regarding legal matters;

   (ii) does not communicate with opposing parties or opposing counsel regarding legal matters;

   (iii) does not prepare and file any document in court, or prepare and send correspondence concerning a client's legal
matter unless the pleading or correspondence is reviewed and signed by a supervising lawyer;

(iv) does not appear on behalf of a client in any hearing or proceeding before a court, tribunal, administrative agency, arbitrator, mediator or hearings officer, or in any deposition, unless otherwise authorized by law;

(v) does not accept for payment or deposit, or otherwise handle client funds, and does not have access to or signatory authority for a lawyer trust account;

(vi) does not perform any service that is not reviewed and approved by a supervising lawyer; or

(vii) does not engage in the practice of law.

(6) promptly provide the Oregon State Bar with written notice upon the termination of the employment of or contract with the formerly admitted lawyer.
Bar Rule 3.2 Mental Incompetency Or Addiction—
Involuntary Transfer To Inactive Membership Status.

(2)

(i) An attorney transferred to inactive status under this rule shall not practice law after the effective date of the transfer. This rule shall not preclude such an attorney from providing information on the facts of a case and its status to a succeeding attorney, and such information shall be provided on request.

(ii) It shall also be the duty of an attorney transferred to inactive status under this rule to immediately take all reasonable steps to avoid foreseeable prejudice to any client and to comply with all applicable laws and disciplinary rules.

(iii) An attorney transferred to inactive status under this rule who is employed by or contracts with an attorney, law firm, business entity or public body for services to be performed by the inactive attorney as a paralegal, legal assistant or other position in connection with the practice of law shall not:

(A) communicate with clients regarding legal matters;

(B) communicate with opposing parties or opposing counsel regarding legal matters;

(C) prepare and file any document in court, or prepare and send correspondence concerning a client’s legal matter unless the pleading or correspondence is reviewed and signed by a supervising attorney;

(D) appear on behalf of a client in any hearing or proceeding before a court, tribunal, administrative agency, arbitrator, mediator or hearings officer, or in any deposition, unless otherwise authorized by law;

(E) accept for payment or deposit, or otherwise handle client funds, or have access to or signatory authority for a lawyer trust account.
(F) perform any service that is not reviewed and approved by a supervising attorney; or

(G) engage in the practice of law.

(iii) Disciplinary Counsel may petition the Supreme Court to hold an attorney transferred to inactive status under this rule in contempt for failing to comply with the provisions of BR 3.2(h)(2)(i), (ii) and (iii). The court may order the attorney to appear and show cause, if any, why the attorney should not be held in contempt of court and sanctioned accordingly.

* * * * *

Bar Rule 6.3 Duties Upon Disbarment or Suspension.

(a) Attorney to Discontinue Practice. A disbarred or suspended attorney shall not practice law after the effective date of disbarment or suspension. This rule shall not preclude a disbarred or suspended attorney from providing information on the facts of a case and its status to a succeeding attorney, and such information shall be provided on request.

(b) Responsibilities. It shall be the duty of a disbarred or suspended attorney to immediately take all reasonable steps to avoid foreseeable prejudice to any client and to comply with all applicable laws and disciplinary rules.

(c) Employment Limitations. A disbarred or suspended attorney who is employed by or contracts with an attorney, law firm, business entity or public body for services to be performed by the disbarred or suspended attorney as a paralegal, legal assistant or other position in connection with the practice of law shall not:

   (1) communicate with clients regarding legal matters;

   (2) communicate with opposing parties or opposing counsel regarding legal matters;

   (3) prepare and file any document in court, or prepare and send correspondence concerning a client’s legal matter unless the pleading or correspondence is reviewed and signed by a supervising attorney;

   (4) appear on behalf of a client in any hearing or proceeding before a court, tribunal, administrative agency, arbitrator, mediator or hearings officer, or in any deposition, unless
otherwise authorized by law;

(5) accept for payment or deposit, or otherwise handle client funds, or have access to or signatory authority for a lawyer trust account;

(6) perform any service that is not reviewed and approved by a supervising attorney; or

(7) engage in the practice of law.

(d) Contempt. Disciplinary Counsel may petition the Supreme Court to hold a disbarred or suspended attorney in contempt for failing to comply with the provisions of BR 6.3(a), or (b) or (c). The court may order the attorney to appear and show cause, if any, why the attorney should not be held in contempt of court and sanctioned accordingly.

* * * * *

Bar Rule 9.3 Duties Upon Resignation.

(a) Attorney to Discontinue Practice. An attorney who has resigned membership in the Oregon State Bar shall not practice law after the effective date of the resignation. This rule shall not preclude an attorney who has resigned from providing information on the facts of a case and its status to a succeeding attorney, and such information shall be provided on request.

(b) Responsibilities. It shall be the duty of an attorney who has resigned to immediately take all reasonable steps to avoid foreseeable prejudice to any client and to comply with all applicable laws and disciplinary rules.

(c) Employment Limitations. An attorney who resigned under Form B of these rules and is employed by or contracts with an attorney, law firm, business entity or public body for services to be performed by the resigned attorney as a paralegal, legal assistant or other position in connection with the practice of law shall not:

(1) communicate with clients regarding legal matters;

(2) communicate with opposing parties or opposing counsel regarding legal matters;

(3) prepare and file any document in court, or prepare and send correspondence concerning a client's legal matter unless the pleading or correspondence is reviewed and signed by a supervising attorney.
(4) *appear on behalf of a client in any hearing or proceeding before a court, tribunal, administrative agency, arbitrator, mediator or hearings officer, or in any deposition, unless otherwise authorized by law;*

(5) *accept for payment or deposit, or otherwise handle client funds, or have access to or signatory authority for a lawyer trust account;*

(6) *perform any service that is not reviewed and approved by a supervising attorney; or*

(7) *engage in the practice of law.*

(d) Contempt. Disciplinary Counsel may petition the Supreme Court to hold an attorney who has resigned in contempt for failing to comply with the provisions of BR 9.3(a), (b) or (c). The court may order the attorney to appear and show cause, if any, why the attorney should not be held in contempt of court and sanctioned accordingly.

* * * *
March 21, 2006

Jeffrey D. Sapiro
Disciplinary Counsel
PO Box 1689
Lake Oswego, OR 97035

Re: Request from SPRB for comment on draft rules

Dear Mr. Sapiro:

At your request, the Legal Ethics Committee has reviewed and discussed the rules proposed by the State Professional Responsibility Board regarding law firm employment of suspended, resigned or involuntarily inactive lawyers.

The Committee respectfully disagrees with the conclusion of the Board that there is a need for Oregon to consider adopting specific rules regarding such employment. The Committee is aware of isolated instances in which involuntarily inactive lawyers may have engaged in employment activities that could be viewed as practicing law. However, it is the consensus of the Committee that the Board’s rules as proposed are much too restrictive. The Committee is not comfortable taking a sledgehammer approach to an issue that is better addressed with a fly swatter.

We appreciated the opportunity to weigh in on your proposed changes before you submit them to the Board of Governors. However, we cannot support your recommendations as currently drafted.

Sincerely,

Wendy J. Baker
Chair, Legal Ethics Committee

WJB/plp
cc: Bruce Bornholdt, UPLC Chairperson
    Sarah Bostwick, SPRB Chairperson
    Amy Alpern, SPRB
    Doug Minson, BOG Liaison to SPRB
    Sylvia Stevens, Staff Liaison to LEC
    Linn Davis, Staff Liaison to UPLC
Oregon State Bar Bulletin — JANUARY 2006

Managing Your Practice

Suspended Animation: A lawyer's life as a legal assistant
By David Elkanich, Peter Jarvis & Sylvia Stevens

Anyone who reads the "Discipline" section of the Bulletin knows that lawyers are suspended every month and that lawyers facing suspension must address critical questions about what to do with their practices and how to support themselves during their suspension.

This follows because suspended lawyers cannot practice law or even hold themselves out as authorized to practice law. See, e.g., ORS 9.160(1); In re Devers, 328 Or 230, 974 P2d 191 (1999).

A suspension from the practice of law requires, as a first step, that the suspended lawyer make appropriate arrangements to cease the practice of law for the requisite period. Affected clients must be notified of the suspension and their cases transitioned to temporary or permanent successor counsel unless, with the client's informed consent, further action on a client's matter can wait until the suspended lawyer is again eligible to practice law. Notice to the clients is particularly important because the choice of successor counsel is the client's choice. Client funds in trust must be returned to the client or delivered to successor counsel, unless otherwise agreed by the client and successor counsel. Affected opposing counsel, pro se parties and courts or agencies before whom appearances are required during the period of suspension must be notified. Suspended lawyers must also take reasonable steps to assure that their phones are not answered in a manner that suggest a present authorization to practice, and changes may have to be made to firm signage, letterhead and websites.

On the other hand, and in contrast to many jurisdictions, Oregon does not prohibit suspended lawyers from working in law offices and performing tasks that may be performed by other non-lawyers, including legal assistants. See, e.g., OSB Legal Ethics Op No 2005-24. This is appropriate since, under the right circumstances, suspended lawyers may bring with them a level of experience that can be of real value to the lawyers who employ them and their clients.

Neither the Oregon RPCs nor the Oregon statutes contain clear black-letter guidance concerning what is and is not the practice of law. This article attempts to provide some guidance as to what a suspended lawyer may do in the capacity of a legal assistant and what only a lawyer in good standing may do.

What a Legal Assistant or Suspended Lawyer May Do

A. Acceptance of a Subordinate Role
This may be the most difficult aspect of a suspended lawyer's employment as a legal assistant. A suspended lawyer who is accustomed to working independently and making decisions on complex issues about which she has considerable expertise may well find it difficult to step back and take direction completely from someone else. The suspended lawyer must recognize and accept that she cannot practice law and does not have her own clients during the period of suspension.
Put another way, a lawyer in good standing must be responsible for and must review and approve documents prepared or other work performed by a non-lawyer subordinate. The required degree of review of a non-lawyer's work will necessarily depend upon the non-lawyer's level of experience and the complexity of the task at hand. Nevertheless, good sense dictates careful and consistent supervision to assure both that the work is competent and that the subordinate is not practicing law. In addition to the malpractice risk that flows from inadequate supervision of a subordinate's work, lawyers are subject to disciplinary sanctions for failing to properly supervise their non-lawyer assistants.  

We cannot stress strongly enough that the relationship of supervision between the supervisory lawyer and the suspended lawyer must exist in fact and not just on paper. Supervision is particularly likely to be inadequate if the ostensibly subordinate but suspended lawyer is, in fact, significantly more competent in a practice area than the ostensibly supervisory lawyer. On this point, Florida Bar v. Forrester, 818 So. 2d 477 (2005) is instructive. The Florida Supreme Court found disbarment to be the only appropriate sanction for a lawyer who, while suspended, actively supervised a novice attorney she had supposedly hired to run her office during the period of suspension. The court observed, for example, that as a matter of fact, Forrester did much more supervision of the novice attorney's work than vice versa and that Forrester even directed what her supposed supervisor should say to clients in phone calls. In other words, an arrangement by which a suspended but experienced lawyer is supervised by a lawyer who is in good standing but is inexperienced is likely inadequate and may be improper. Effective supervision can only be provided by someone with the skills to give it.

B. No Legal Advice

Only lawyers in good standing may give legal advice to third parties. See, e.g., In re Kraus, 295 Or 743, 670 P2d 1012 (1983) (refusing to reinstate a suspended lawyer who continued to practice law during the suspension period); In re Whipple, 320 Or 476, 886 P2d 7 (1994) (suspended lawyer's discussions with a client regarding a probate and the duties of the personal representative constituted the unlawful practice of law).

Nevertheless, lawyers frequently deliver their advice through letters that the lawyers dictate but which are typed or even signed for the lawyers by their non-lawyer staff. Lawyers may also direct their non-lawyer staff to convey certain information orally or in writing to their clients. For the most part, however, information conveyed by non-lawyer staff must be limited to facts or simple statements of the lawyer's conclusions or opinions. For instance, a lawyer may properly instruct her legal assistant to telephone a client to say that the lawyer has researched the client's question and the answer is "no." The lawyer may also ask the legal assistant to perform the legal research and suggest the answer; after reviewing the research and confirming the assistant's conclusions, the lawyer may then instruct the assistant to relay the lawyer's conclusion. The lawyer may not, however, authorize the assistant to research the question and answer the client's question on her own. The lawyer must also instruct the assistant not to elaborate on the answer or attempt to answer a different question. Matters of professional judgment must be decided by lawyers in good standing.

When a suspended lawyer is asked to or is in a position to repeat past advice given by the suspended lawyer prior to the suspension, this can be problematic depending on the circumstances. The problem can become acute because of the difficulty in distinguishing the repetition of past advice from what is in reality is the rendering of present or future advice. Consider the following:

The former client calls suspended lawyer and asks for a copy of part (or all) of the former client's pre-existing file. In this circumstance, suspended lawyer may, and probably must, meet this request. Cf. OSB Legal Ethics Op No 2005-125 (governing a lawyer's general duties to provide files to former clients).
The supervising lawyer, for whom suspended lawyer is working as a legal assistant, asks for suspended lawyer's opinions and analysis, including reasons for advice previously given to a former client now represented by the supervising lawyer. The suspended lawyer may, and again probably must do so, as long as the decision whether the client should act on that previous advice is a judgment only made by the supervising lawyer.

Suppose, on the other hand, that the former client, not the supervising lawyer, calls the suspended lawyer and asks for a repetition of advice given while the suspended lawyer was in good standing. On its face this appears identical to the delivery of a document previously prepared containing legal advice. However, the former client's question, though nominally a request for repetition of prior oral advice, may in fact be a request for ongoing or future advice.

For instance, what if the former client announces that she has just encountered a situation that she believes is similar to one on which suspended lawyer advised her last year and wants to know what suspended lawyer's past advice was so that she can follow it now? Or what if the former client asks the lawyer to read from a letter or memorandum in the file that contained the desired advice? There is no question that the suspended lawyer cannot advise the client about her new situation even if his advice would be identical to what he gave her previously. Moreover, it will often be difficult to argue compellingly that repeating advice is meaningfully different than giving legal advice. The suspended lawyer is still applying the law and legal reasoning to a specific set of facts in a context in which the difference between past and present issues may be anything but clear to the ostensibly former client.

In the absence of clear guidance from the court on this point, we caution suspended lawyers that the verbal repetition of past advice to former clients is a relatively high risk activity since, if nothing else, the line between past and present will often be unclear.

C. Drafting of Documents
According to State ex rel Oregon State Bar v. Lenske, 284 Or 23, 31, 584 P2d 759 (1978), a suspended lawyer or legal assistant may compose and draft legal documents such as contracts, complaints, research memoranda and the like so long as they are reviewed and approved by a lawyer in good standing before they are sent out of the office or otherwise acted upon.

The Lenske court cited with approval ABA Opinion 316 (1967), which reads:

A lawyer can employ law secretaries, * * * law researchers, * * * nonlawyer draftsmen or nonlawyer researchers. In fact, he may employ nonlawyers to do any task for him except counsel clients about law matters, engage directly in the practice of law, appear in court or appear in formal proceedings that are a part of the judicial process, so long as it is he who takes the work and vouches for it to the client and becomes responsible for it to the client. In other words, we do not limit the kind of assistants the lawyer can acquire in any way to persons who are admitted to the Bar, so long as the nonlawyers do not do things that lawyers may not do or do the things that the lawyers only may do.

Consistent with the non-lawyer's subordinate role as discussed above, such written work must be materially reviewed by the supervising lawyer unless it is a "please find enclosed" type of letter or a similar document that does not require the suspended lawyer to offer any legal advice.

D. Verbal Communications
Dr. Verbal Communications

When a non-lawyer speaks directly with a client of a lawyer, there is considerable risk that the non-lawyer may stray into the giving of legal advice or may be understood by an unsophisticated client as having done so. This risk is greater for suspended lawyers, who are used to giving legal advice as a matter of course, than for other non-lawyers. There may also be a similar temptation to take legal positions when suspended lawyers, as distinct from other non-lawyers, speak directly with an opposing lawyer or an unrepresented person.

For this reason, suspended lawyers should be particularly careful to keep their verbal communications with others to a minimum and to monitor their content with care. In any verbal communications, the best practice is for the suspended lawyer to remind the supervising lawyer's clients, and third parties, that the suspended lawyer is acting only as a legal assistant.

E. Payment

Suspended lawyers may collect legal fees for work performed prior to the suspension. For work performed during a period of suspension, however, the rules against fee splitting apply equally to suspended lawyers and to other non-lawyers. At the risk of some oversimplification, Oregon RPC 5.4 permits non-lawyers to be paid a salary, to be paid on an hourly basis without respect to the lawyer's collection of fees from specific clients, and to be paid as part of a firm's profit-sharing plan. A non-lawyer cannot, however, simply be given a percentage of the fees received. As a corollary matter, the supervising lawyer must ensure that charges to clients for the suspended lawyer's work as a legal assistant are within the range of charges for comparable services in the community. To do otherwise risks that the supervising lawyer will charge her clients an excessive fee.

Specific Questions

We turn now to four more specific questions about law-related work:

1. Can a legal assistant or suspended lawyer work for more than one firm at a time? There is no black letter prohibition against multiple employment. On the other hand, such employment could raise conflict of interest issues or issues relating to the need to protect confidential client information that could require further action by the lawyers involved. Cf. OSB Legal Ethics Op No 2005-50.

2. May a legal assistant or suspended lawyer provide services from her own office? Once again, there is no black letter prohibition, and the development of telecommuting suggests that legal assistants — either as employees or independent contractors — could work from their own offices, their homes or from other locations separate from the hiring lawyer. As an independent contractor, a suspended lawyer working as a legal assistant would also be able to employ others to assist in the performance of the work. The difficulty with the "off-site" scenario is the increased likelihood that the suspended lawyer will be working without adequate supervision, a situation that puts both the suspended lawyer and the supervising lawyer at risk. Oregon RPC 5.3 requires an adequate degree of supervision by the licensed lawyer, which is problematic when the legal assistant is not in the same office. There is also a significant risk of confusion to clients, opposing parties and counsel, and the courts, if the suspended lawyer operates from an office that is entirely independent of the supervising lawyer.

As discussed above, it cannot be overemphasized that both the suspended lawyer and the supervising lawyer must see to it that the suspended lawyer neither gives legal advice nor holds himself out as authorized to give legal advice or have ultimate responsibility for a client matter. Cf. Oregon State Bar v. Smith, 149 Or App 171, 942 P2d 793 (1997).

3. May legal assistants or suspended lawyers be included on a firm's letterhead? If they are employed by a firm, the answer is "yes," as long as they clearly are.
they are employed by a firm, the answer is yes, as long as they clearly are identified as non-lawyers. Cf. OSB Legal Ethics Op No 2005-65.

Conclusion
A period of suspension can be a difficult time for any lawyer. During that period the suspended lawyer cannot "have clients" in the sense that a lawyer in good standing has clients, cannot hold herself out as eligible to practice law and cannot practice law. As the Florida Supreme Court made clear in Forrester, the suspended lawyer may not create an "alternate reality" in which it only appears her work is being supervised by a lawyer in good standing.

At the same time, suspension does not mean that the suspended lawyer must be completely removed from providing services to his or her former clients. Working as a legal assistant for the supervising lawyer who has taken over the suspended lawyer’s former clients will help to minimize the disruption of the clients’ matters resulting from the suspension and transition of the case to new counsel. Of course, this assumes that the client is fully informed about the suspended lawyer’s circumstances and wishes to have the suspended lawyer’s continued connection to the client’s legal matters.

Above all, suspended lawyers must be truly subordinate. Both the suspended and the supervisory lawyer must understand their roles and have a commitment to ensure that their conduct complies with relevant law and rules of professional conduct.

Endnotes

1. A lawyer in good standing is an active member of the bar who is not under a disciplinary or other suspension.

2. RPC 5.3 provides:

   With respect to a nonlawyer employed or retained, supervised or directed by a lawyer:

   (a) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person’s conduct is compatible with the professional obligations of the lawyer; and

   (b) except as provided by Rule 8.4(b), a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:

       (1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or

       (2) the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action

ABOUT THE AUTHOR
Peter Jarvis is a partner at Hinshaw & Culbertson, whose practice emphasizes professional responsibility and risk management issues. He can be reached at pjarvis@hinshawlaw.com or by calling (503) 243-3243. David Elkanich is an associate at Hinshaw & Culbertson. He can be reached at delkanich@hinshawlaw.com. Sylvia Stevens is assistant general counsel of the Oregon State Bar. She can
OREGON STATE BAR
Board of Governors Agenda

Meeting Date: September 28, 2007
Memo Date: September 6, 2007
From: Denise Cline, Ext. 315
Re: Request for review of MCLE Committee Decision

Action Recommended

Review the request of Heather Van Meter of Oregon Women Lawyers for CLE accreditation for a 75 minute panel presentation entitled Community and Volunteer Involvement. This presentation was a breakout session at the May 4 Women as Leaders CLE program.

Background

Ms. Van Meter is seeking 1.25 elimination of bias credits for a Community and Volunteer Involvement session, which was held during the Women as Leaders CLE program earlier this month. She provided the following information regarding this session:

With respect to our "Community and Volunteer Involvement" panel at 2:30, Elaine Hallmark, Helle Rode, and Penny Serurier will discuss how fulfilling the OSB BOG aspirational goal for pro bono service can help women and minority attorneys in advancing their legal career, how pro bono service can be used and directed towards a legal practice area, programs available for these purposes including low income legal clinics and taking on low income cases for improvement of client and trial skills for new lawyers (e.g. discrimination in housing cases for consumer/disability lawyers, family law pro bono cases for new family law attorneys, Cascade AIDS Clinic volunteering for increasing client contacts and referral business), advising to non-profit companies and community boards to improve legal skills and increase community contacts to develop legal practice (e.g. getting on Oregon Zoo board as a bond/public finance lawyer and being on school board as a school/disability law lawyer), how women and minority lawyers particularly can use their unique skills and backgrounds to advance their legal career through community and volunteer involvement (e.g. Hispanic Bar Association, National Bar Association, Hispanic Business Owners Association, ABA Commission on Women in the Profession, etc.), and providing a "decision tree" for helping
attorneys decide whether and when to get involved in particular activities. This session relates to "practice issues," "legal skills," and "legal ethics and professional responsibility" as required by MCLE Rule 5.1, and also constitutes "an activity directly related to the practice of law and designed to educate attorneys to identify and eliminate from the legal profession and from the practice of law, biases against persons because of race, gender... and sexual orientation" pursuant to MCLE Rule 5.5(b). This panel is entitled to 1.25 EOB CLE credits.

At its June 29 meeting, the MCLE Committee upheld my decision to deny credit for this session because it appears to focus on how to develop and advance one's legal career through volunteer service. Programs relating to business development and marketing do not qualify for CLE credit pursuant to MCLE Regulation 5.400, which is set forth below:

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

Ms. Van Meter questioned how this activity would not qualify for CLE credit when a PLF program entitled What Do You Want To Do With Your Law Degree qualifies for credit. I explained that the PLF program was approved for personal management assistance credits pursuant to MCLE Regulation 5.300, which is set forth below:

5.300 Personal Management Assistance. A personal management assistance program is one that includes assistance with alcoholism, drug addiction, burnout, career change and satisfaction, depression, anxiety, gambling addiction, procrastination, relationship issues, stress management, time management or other related issues.

No more than six personal management assistance credits may be claimed in a three year reporting period.

Ms. Van Meter requests elimination of bias credit for this 75 minute session. If it is determined that this program does not qualify for elimination of bias credit, Ms. Van Meter believes it qualifies for general credit because it meets the accreditation standards set forth in MCLE Rule 5.1. Because the focus of this
session appears to be on helping one’s career, the MCLE Committee does not believe it qualifies for any type of CLE credit.

Ms. Van Meter’s letter of September 6 and supporting documents are attached.

attachments
From The Desk Of Heather J. Van Meter

September 6, 2007

Denise Cline
Oregon State Bar
Via E-Mail

Dear Ms. Cline:

This letter follows up on your email of September 5, notifying me for the first time that I should submit materials to you for the Board of Governors upcoming meeting and agenda packets. I am providing these written materials to you within the 48 hours you required. I would appreciate your providing these materials to the Board for their next meeting. I would also appreciate your providing me with a copy of the agenda once it is set, as I plan to appear on this issue if possible.

Oregon Women Lawyers' Spring CLE - Community and Volunteer Involvement Panel

On May 4, 2007, Elaine Hallmark, Helle Rode and Penny Serrurier spoke on a panel that I moderated. Based on my notes, which I took due to Ms. Cline's denial of CLE credit, the panel specifically discussed the following:

- OSB aspirational goal for pro bono service and volunteer opportunities available to fulfill the aspirational goal,
- specific volunteer opportunities for women attorneys and how to use those opportunities,
- ethical issues for lawyers serving on boards,
- malpractice insurance and PLF issues for lawyers volunteering,
- statutory protection for non-compensated service to not-for-profit entities, and
- expectations of women to be the “social chair” or secretary, and how to get around those expectations.

The written materials for the panel, which are enclosed, also focused on the OSB aspirational goal and volunteer opportunities available to fulfill that goal.

Despite the content of the written materials and actual discussion at the panel presentation, Ms. Cline has continued to deny any CLE credit for this panel. Ms. Cline's stated basis for the denial is that the session “focused on how to advance one's legal career through volunteer service.”

I reviewed the elimination of bias CLE applications from April 4 through May 11, 2007, and found the following: a PGE “diversity summit” with four pages of written materials was granted 4.5 hours of EOB credit; a discussion of two school affirmative action cases was granted .75 hours of EOB credit; two ABA webcasts on employment discrimination law were granted 1.5
hours of EOB credit without written materials; Judge Wohlheim's talk to the city attorney association on "access to justice" was granted 1 hour of EOB credit without written materials; an ALI-ABA education conference was granted 5.25 hours of EOB credit without agenda or written materials; and DRI's employment law conference was granted .75 hours of EOB credit for its sexual harassment law panel.

The only other application to be denied credit during the time frame for which I reviewed applications was the American Association for Justice's "Successful Women Trial Lawyers" CLE in Florida. The CLE was a three-day long event with 12.75 hours of content, but for this, the only other program directed to women during the time frame I reviewed, Ms. Cline again granted only limited CLE credit. Notably, Ms. Cline granted CLE credit for segments entitled "Business Planning 101," "Women as Owners of Their Own Firm" and "What's Unique About Women: Developing and Honing Your Presentation Skills," as well as EOB credit for "I've Made Partner, Now What? Gender Issues in a Small Firm" and practice management credit for "Being Superwoman: Perspectives on Balancing Career and Family." Ms. Cline did not allow credit for "Developing a Marketing Plan for You and Your Firm" or "Becoming a Leader in the Political Arena and Maintaining Your Practice." It is difficult to determine any consistent pattern in Ms. Cline's decisions to grant or deny CLE credit to the OWLS Spring CLE and the American Association for Justice CLE, other than to note that the two programs directed to women attorneys and women's issues were denied significant CLE credit. Particularly, it is difficult to understand how a "Business Planning 101" program was entitled to a half hour of general CLE credit while OWLS was denied credit because its program allegedly focused on how to advance one's legal career.

Although I hesitate to draw any conclusions based on my limited review, it appears there is a bias against CLE programs directed to women attorneys and an inconsistent application of the MCLE rules as applied to CLE programs directed to women attorneys.

Based on the foregoing information and attached documentation, Oregon Women Lawyers would greatly appreciate the Board of Governors granting 1.25 hours of CLE credit for the Community and Volunteer Involvement panel, of whatever type of CLE credit it deems appropriate, EOB or ethics or general.

Sincerely,

Heather J. Van Meter
Cle Information and Correspondence with Denise Cline
UNIFORM APPLICATION FOR ACCREDITATION OF CONTINUING LEGAL EDUCATION

To the state of: Oregon

1. Name: American Association for Justice
   Address: 1050 31st Street, NW
   Washington, DC 20007
   Telephone: 800-424-2725X335 Fax: 202-625-7084
   Email: morgan.murphy@justice.org

2. Title of educational activity: Successful Women Trial Lawyers: Rising Above and Staying There

3. Date(s) and location(s): April 19-21, 2007 - Fort Myers, FL

4. Registration fee: $545 - $645

5. Writing surface available? Yes No

6. Delivery Method(s): X faculty in room with participants; ☐ telephone to broadcast site; ☐ interactive video; ☐ satellite; ☐ audiotape presentation; ☐ videotape presentation; Interactive computer/Internet ☐ discussion leader present

7. Type of Law code(s): 1 SKL 2. (Optional) 3. (Optional)
   Difficulty Level: ☐ Beginner; X Intermediate; ☐ Advanced

8. Advertised to: X Lawyers; ☐ Clients; ☐ Others (specify, list %)

9. List any admission restrictions: None

10. "In-house activity" requirement (see local rules to determine applicability):
    ☐ open/publicized to outside lawyers; ☐ outsiders are ________ % of faculty; ☐ clients are ________ % of audience

11. Method of evaluation: ☐ participant critique; ☐ independent evaluator; ☐ none
    ☐ other

12. Description of materials to be distributed: total pages 150 ☐ looseleaf ☐ bound
    Distributed: ☐ Before Program; X At program; ☐ Other

13. REQUIRED ATTACHMENTS to this application: 14.
    a. time schedule (brochure, course outline, course description)
    b. table of contents or equivalent
    c. faculty name(s) and credentials (if not in brochure or description)
    d. complete set of materials (only in states where required) Other:
    e. fees (only in states where required)

15. Approval by other states: Granted by California
    Denied by none

16. Submitted by: X employee of sponsor/provider;
    ☐ Individual lawyer

SPONSOR OBLIGATIONS: Sponsor acknowledges and agrees to comply with all local rules and regulations attached.

Sponsor Representative: Morgan Murphy
Title: CLE Assistant
Signature: __________
Date: 3/18/07

STATE ACCREDITATION OFFICE
NOTICE OF DECISION
Course No. 25 7328
(To be completed by the state accreditation office and returned to applicant)

The following action has been taken on this application:
☐ RETURNED for more information.
☐ APPROVED for MCLE credits:
   Including: ☐ Ethics credits
   0.25 per mgmt.
☐ DENIED Reference
☐ SEE ATTACHED MATERIALS.
Date: 9/16/07 MCLE Staff: Denise China

RECEIVED
MAR 30 2007
MCLE

ORACLE Form 1
Revised 06/17/96

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Thursday, April 19

Registration opens: 12:00 pm

Box Lunches or Tea Sandwiches / Beverages / Salads

Afternoon Session: 1:00 pm – 5:00 pm

Leadership Skills in Your Community and in Your Practice

1:00 pm  Moderator Introductions and Welcome
Mary Beth Ramey, IN

1:15 pm  Business Planning 101

Management styles and skills  
Income statements and balance sheets  
Reducing overhead without sacrifice  
Running a professional meeting
TBD

1:45 pm  Women as Owners of Their Own Firms: Making the Leap to Becoming a Leader
Martha Marie Eastman, TN

2:30 pm  Break

2:45 pm  Developing a Marketing Plan for You and Your Firm

Analyzing the market  
Marketing through the written word  
Marketing through the spoken word  
Establishing referral relationships
Kathleen Flynn Peterson, MN
3:45 pm  Becoming a Leader in the Political Arena and Maintaining Your Practice  
45 min  
Nancy J. Turbak, SD  

4:30 pm  Panel Discussion / Q&A  
45 min  

5:15 pm  Adjourn  

6:00 – Cocktail Reception and Roundtable dinner (included)  
8:00 pm  

Friday, April 20  
Afternoon Session: 1:00 pm – 5:00 pm  

Communication Skills  

Moderator: Rhonda Hill Wilson, PA  

1:00 pm  From Voir Dire to Closing: The Female Perspective  
45 min  
Randi McGinn, NM  

1:45 pm  Negotiation and Settlement Strategies for Women: Maximizing Damages for Your Client  
45 min  
Dianne Jay Weaver, FL  

2:30 pm  What AAJ Is Learning: Reframing the Debate (not for CLE credit)  
Julie Braman Kane, FL  

2:45 pm  Break  

3:00 pm  What's Unique About Women? Developing and Honing Your Presentation Skills  
120 min  
Katherine James, ACT of Communication, CA  

5:00 pm  Panel Discussion/Q&A  
30 min  

5:30 pm  Adjourn  

Dinner: Dinearounds – reservations will be made at various restaurants—participants can sign up
3/21/2007

Saturday, April 21
11:00 am – 3:00 pm

Balance: Your Cases, Your Clients, Your Office, and Your Life

9:00 am: Tai Chi on the Beach (Optional)

Moderator: Staci Yandle, IL

11:00 am  Handling a Big Case in a Small Office: Tips and Strategies
60 min

12:00 pm  I've Made Partner: Now What? Gender Issues in a Small Firm
30 min Elise Sanguinetti, CA

12:30 pm  Working Lunch

1:00 pm  Being Superwoman: Perspectives on Balancing Career and Family
75 min Julie Braman Kane, FL, Rhonda Hill Wilson, PA, Dianne Jay Weaver, FL

2:15 pm  Questions and Answers
45 min

3:00 pm  Adjourn

Total Minutes = 675 general
Successful Women Trial Lawyers: Rising Above and Staying There
April 19-21, 2007
Sanibel Harbour Resort & Spa, Ft. Myer, FL
FACULTY LIST

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Successful Women Trial Lawyers: Rising Above and Staying There
April 19-21, 2007
Sanibel Harbour Resort & Spa, Ft. Myers, FL
ABOUT THE FACULTY

Martha Marie Eastman concentrates her practice in the areas of nursing home negligence and medical negligence. She is a past chair of AAJ’s Nursing Home Litigation Group and the author of Establishing Relief for the Most Innocent of All AIDS Victims: Liability for Perinatal Transmission of AIDS. Ms. Eastman is a frequent speaker and teacher on issues regarding nursing home abuse and neglect, as well as trial advocacy, deposition techniques, and medical negligence. The Eastman Law Office is in Louisville, Kentucky.

Julie Braman Kane, course advisor, practices in the areas of class action litigation, products liability, and personal injury. She is also actively involved in various charitable organizations as well as with legal societies such as the American Association for Justice, where she serves on the Executive Committee, the Budget Committee, the National College of Advocacy Board of Trustees as co-chair, and as a member of the AAJ Board of Governors. Ms. Kane has previously served as chair of both AAJ’s Products Liability Section and the Women’s Caucus. A frequent lecturer throughout the United States and Canada, Ms. Kane also serves as an officer of the Miami-Dade Florida Association of Women Lawyers and sits on the Board of Directors of the Academy of Florida Trial Lawyers, where she is past Chair of both the Young Lawyers Division and the Women’s Caucus. Ms. Kane is a partner at Colson Hicks Eidson in Coral Gables, Florida.

Katherine James is cofounder, with Alan Blumenfeld, of Act of Communication in Culver City, California whose workshops have trained more than 20,000 lawyers and whose work as part of trial teams has taken more than 700 cases to trial. Her expertise is in helping to make attorneys more effective in live communication as well as to prepare witnesses for deposition, mediation, arbitration, and trial. She has been a part of the faculty at various trial colleges, universities, and law schools including AAJ’s Ultimate Trial Advocacy Course: Art of Persuasion. Act of Communication’s newest project, What Can Lawyers Learn From Actors?, takes their nationally acclaimed workshops and translates them into a packaged video series with workbooks to maximize the interactive learning experience.

Randi McGinn lectures and teaches around the country on trial skills and use of PowerPoint and other creative demonstrative exhibits. Ms. McGinn is a past president of the New Mexico Trial Lawyers Association and current member of their Board of Directors. She serves on the Board of Governors for the Association of Trial Lawyers of America and is also a member of the Inner Circle, the International Academy of Trial Lawyers, and the American Board of Criminal Lawyers. An adjunct professor at the University of New Mexico Law School, Ms. McGinn is the UNM Women’s Law Caucus Recipient of the 2005 Justice Mary Walters Award. McGinn, Carpenter, Montoya & Love, P.A. is in Albuquerque, New Mexico.

Kathleen Flynn Peterson is a Civil Trial Specialist certified by the Civil Litigation Section of the Minnesota State Bar Association. She limits her practice to medical malpractice representing individuals and families who have experienced injury or death as a result of medical negligence.
and civic organizations including Delta Sigma Theta Sorority, Inc., The Jackie Joyner-Kersee Foundation Board of Directors, and the NAACP. Ms. Yandle is a partner at The Rex Carr Law Firm, LLC in East Saint Louis, Illinois.
This CLE is designed to provide valuable information for both the new attorney and the seasoned practitioner. The featured speakers are successful women and minority attorneys, judges and politicians who will share their insights and strategies to help identify and value your professional worth and encourage a commitment to community involvement. This CLE aims to cultivate leaders among women and minorities and equip them with tools to help transform the legal profession.
SCHEDULE

12:30  REGISTRATION (light fare provided)

1:00 - 2:15  PLENARY SESSION

How to Use Our Power, Human Capital & Money to Effect Change

Corbett Gordon  
Sr. Counsel, Fisher & Phillips

Donna Sandoval Bennet  
Sr. Assistant Attorney General
Labor & Employment Section  
Oregon Dept. of Justice

Elizabeth Harchenko  
Director, Oregon Dept. of Revenue

2:30 - 3:45  PANELS (please choose one)

A) Making the Case for Your Worth: Knowing and negotiating for it.

Stella Manabe  
Administrator, Ore. State Bar
Affirmative Action Program

R. Elaine Hallmark  
Director, Oregon Consensus Program

Deborah Guyol  
Contract Attorney and Author

Helle Rode  
Mediator- Arbitrator
President, Federal Bar Assoc., Ore. Chapter

Hon. Katherine Tennyson  
Circuit Court Judge

Penny Serrurier  
Partner, Stoel Rives LLP

B) Community & Volunteer Involvement: Making time, helping your career.

4:00 - 4:45  KEYNOTE ADDRESS

Kate Brown  
Senate Majority Leader  
Oregon State Senate

Kate Brown (D-Portland, Dist. 21) is Oregon's first woman Senate Majority Leader. Senator Brown began her career in the Oregon Legislature in 1991, serving two terms in the House of Representatives and being elected to the Senate in 1996. In 1998, Senator Brown was elected Democratic Leader. Throughout her career, Senator Brown has been praised for her ability to thoughtfully consider difficult issues and find the consensus needed to move the state forward.

WOMEN AS LEADERS IN LAW, SOCIETY & POLITICS

Friday, May 4, 2007  1:00 - 4:45 p.m.

Registration at 12:30 (light fare provided)

Heathman Hotel
1001 SW Broadway, Portland, Oregon

Registration Deadline: April 27, 2007

CLE registrants receive a drink coupon for the no-host bar during the Past Presidents' Reception immediately following the event.

Name: ____________________________

Bar No.: __________________________

Firm/Organization: __________________________

Address: __________________________

City, State, Zip: __________________________

Phone: __________________________

E-mail: __________________________

Please choose the panel you wish to attend:

□ A) Negotiations  or  □ B) Volunteering

Registration Fees:

OWLS Members: $70
Students: $20
Non-OWLS Members: $85
Additional Late Fee for Registration received after April 27, 2007: $15
Total Enclosed $_____

Register by sending a copy of this form and your payment (checks only, payable to Oregon Women Lawyers) by April 27, 2007 to:

Oregon Women Lawyers
PO Box 40393
Portland, OR 97240

For more information about OWLS or this CLE, go to www.oregonwomenlawyers.com

MCLE Credits: 3.25 General/Diversity credits pending
Denise - As I mentioned on the telephone with you today, I am extremely surprised and disappointed to hear your preliminary opinion that our application for CLE credit did not appear to be entitled to any CLE credit. As we talked, you indicated that you were "in the process of reviewing" the written materials we submitted. You also mentioned that you received a call from OWLS executive director Catherine Carlo this morning, and that you had "reviewed" our submission briefly yesterday. It sounded as though you had not spent any significant time reviewing our application at the time we talked. I am sure that once you have an opportunity to review our application you will find that our CLE is entitled to the EOB CLE credit for which we applied. As you requested, below is additional information on the speakers and topics for the CLE. I also restate the applicable MCLE rules for your review. I would appreciate your getting back to me as soon as possible, and if your response remains the same as your "preliminary opinion," I would appreciate your providing me with your supervisor's contact information so that I may renew our application with appropriate supervisory personnel, and I would appreciate you sending me copies of the MCLE applications for all of this year's EOB CLEs so that I may compare our program with those previously receiving EOB CLE credit.

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

(a) The activity must have significant intellectual or practical content with the primary objective of increasing the participant's professional competence as a lawyer; and (b) The activity must deal primarily with substantive legal issues, legal skills, practice issues, or legal ethics and professional responsibility; and (c) The activity must be offered by a sponsor having substantial, recent experience in offering continuing legal education or by a sponsor that can demonstrate ability to organize and effectively present continuing legal education. Demonstrated ability arises partly from the extent to which individuals with legal training or educational experience are involved in the planning, instruction, and supervision of the activity; and (d) The activity must be primarily intended for presentation to multiple participants, including but not limited to live programs, video and audio presentations (including original programming and replays of accredited programs), satellite broadcasts and on-line programs; and (e) The activity must include the use of thorough, high-quality written materials, unless the MCLE Administrator determines that the activity has substantial educational value without written materials. (f) The activity must have no attendance restrictions based on race, color, gender, sexual orientation, religion, geographic location, age, handicap or disability, marital, parental or military status or other classification protected by law, except as may be permitted upon application from a provider or member, where attendance is restricted due to applicable state or federal law.

5.5 Ethics and Elimination of Bias.

(a) In order to be accredited as an activity in legal ethics under Rule 3.2(b), an activity shall be devoted to the study of judicial or legal ethics or professionalism, and shall include discussion of applicable judicial conduct codes, disciplinary rules, or statements of professionalism. Of the six hours of ethics credit required by Rule 3.2(b), one hour must be on the subject of a lawyer's statutory duty to report child abuse (see ORS 9.114). (b) In order to be accredited as an activity pertaining to the elimination of bias under Rule 3.2(b), an activity shall be directly related to the practice of law and designed to educate attorneys to identify and eliminate from the legal profession and from the practice of law, biases against persons because of race, gender, economic status, creed, color, religion, national origin, disability, age or sexual orientation. (c) Portions of activities may be accredited for purposes of satisfying the ethics and elimination of bias requirements of Rule 3.2, if the applicable content of the activity is clearly defined.

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

With respect to our plenary panel at 1:00 p.m., Cortett Gordon, Elizabeth Harchenko and Donna Sandoval Bennett will discuss how women and minority lawyers in Oregon can and should direct their legal practices and law-related activities to eliminate the
"glass ceiling," reduce bias in the legal profession against women and minorities, work towards a bias-free workplace and legal system, improving awareness of bias issues in the practice of law and in the legal system (statistical and anecdotal information), promote equitable treatment of women and minority clients within the legal system, and will discuss the means to effect a bias-free legal system including structuring the practice of law in such a way to be more female- and minority-friendly, including a discussion of applicable ethical standards, BOG rules and goals on pro bono service and non-discrimination. Including Donna Bennett discussing employment non-discrimination laws including the new non-discrimination law on sexual orientation. This session relates to "practice issues," "substantive legal issues," "legal skills," and "legal ethics and professional responsibility" as required by MCLE Rule 5.1, and also constitutes "an activity directly related to the practice of law and designed to educate attorneys to identify and eliminate from the legal profession and from the practice of law, biases against persons because of race, gender ... and sexual orientation" pursuant to MCLE Rule 5.5(b). This panel is entitled to 1.25 EOB CLE credits.

With respect to our "Making the Case for Your Worth" panel at 2:30, Stella Manabe, Deb Guyol and Judge Tennyson will discuss the cultural divide among women and minorities in the legal profession in determining their "worth" for salary and bonus and other compensation purposes, including the gender and race gap in salary and other forms of compensation within the legal profession, the fears that women and minorities have in asking for "equal pay for equal work," federal and state laws prohibiting gender- and race-based variations in compensation, OSB BOG aspirational goals and non-discrimination statements relating to legal compensation, the cultural reasons that women and minorities may be compensated less for the same work, how to determine the appropriate compensation (research skills), and related discussions. This session relates to "practice issues," "substantive legal issues," "legal skills," and "legal ethics and professional responsibility" as required by MCLE Rule 5.1, and also constitutes "an activity directly related to the practice of law and designed to educate attorneys to identify and eliminate from the legal profession and from the practice of law, biases against persons because of race, gender ... and sexual orientation" pursuant to MCLE Rule 5.5(b). This panel is entitled to 1.25 EOB CLE credits.

With respect to our "Community and Volunteer Involvement" panel at 2:30, Elaine Hallmark, Helle Rode, and Penny Serurier will discuss how fulfilling the OSB BOG aspirational goal for pro bono service can help women and minority attorneys in advancing their legal career, how pro bono service can be used and directed towards a legal practice area, programs available for these purposes including low income legal clinics and taking on low income cases for improvement of client and trial skills for new lawyers (e.g. discrimination in housing cases for consumer/disability lawyers, family law pro bono cases for new family law attorneys,Cascade AIDS Clinic volunteering for increasing client contacts and referral business), advising to non-profit companies and community boards to improve legal skills and increase community contacts to develop legal practice (e.g. getting on Oregon Zoo board as a bond/public finance lawyer and being on school board as school disability law lawyer), how women and minority lawyers particularly can use their unique skills and backgrounds to advance their legal career through community and volunteer involvement (e.g. Hispanic Bar Association, National Bar Association, Hispanic Business Owners Association, ABA Commission on Women in the Profession, etc.), and providing a "decision tree" for helping attorneys decide whether and when to get involved in particular activities. This session relates to "practice issues," "legal skills," and "legal ethics and professional responsibility" as required by MCLE Rule 5.1, and also constitutes "an activity directly related to the practice of law and designed to educate attorneys to identify and eliminate from the legal profession and from the practice of law, biases against persons because of race, gender ... and sexual orientation" pursuant to MCLE Rule 5.5(b). This panel is entitled to 1.25 EOB CLE credits.

With respect to our keynote address by Kate Brown on "Women as Leaders in Law, Society & Politics," Ms. Brown will discuss her personal experiences as a women lawyer and political leader and the first female Senate Majority Leader in Oregon, identifying the bias she faced in the legal and governmental arenas, how she broke through the "glass ceiling" for women lawyers and women in politics, how her gender helped and hindered her progress, providing tips for other women lawyers in eliminating/avoiding/handling the biases faced, what to expect along the way for women lawyers towards partnership in law firms or as sole practitioners or within governmental agencies, and also discussing the new legislation on sexual orientation equality and non-discrimination in Oregon and how this legislation fits in with Oregon's pre-existing non-discrimination laws. This session relates to "practice issues," "substantive legal issues," "legal skills," and "legal ethics and professional responsibility" as required by MCLE Rule 5.1, and also constitutes "an activity directly related to the practice of law and designed to educate attorneys to identify and eliminate from the legal profession and from the practice of law, biases against persons because of race, gender ... and sexual orientation" pursuant to MCLE Rule 5.5(b). This session is entitled to 0.75 EOB CLE credits.

As I mentioned on the phone, I am both an attorney as well as a board and executive committee member of Oregon Women Lawyers, as well as co-chair of the Oregon Women Lawyers Spring CLE. I appreciate your considering our application materials and this additional information and getting back to me as soon as possible.

Heather J. Van Meter  mailto:hvanmeter@wkg.com
Attorney
Williams, Kastner & Gibbs PLLC
Portland, Oregon
Phone: (503) 944-6973
Fax: (503) 222-7281
www.wkg.com

5/1/2007  171
Van Meter, Heather

From: Denise Cline [dccline@osbar.org]
Sent: Thursday, May 03, 2007 11:33 AM
To: Van Meter, Heather
Subject: RE: Oregon Women Lawyers Spring CLE - application for CLE credit

Heather,

Yes, I'll provide you with the conference number before the meeting.

The information regarding 2007 programs that have been approved for elimination of bias credit is in our program database, which is accessible via our website at www.osbar.org.

Thanks.
Denise

-----Original Message-----
From: Van Meter, Heather [mailto:hvanmeter@wkg.com]
Sent: Thursday, May 03, 2007 11:27 AM
To: Denise Cline
Cc: Catherine Clario, Executive Director
Subject: RE: Oregon Women Lawyers Spring CLE - application for CLE credit

Denise - I would like to participate in the call, please provide me with any call-in information. I would also appreciate receiving information on all other EOB CLE programs receiving accreditation in 2007 before the call.
Thank you for your assistance,

Heather J. Van Meter  mailto:hvanmeter@wkg.com
Attorney
Williams, Kastner & Gibbs PLLC
Portland, Oregon
Phone: (503) 944-6973
Fax: (503) 222-7261
www.wkg.com

From: Denise Cline [mailto:dccline@osbar.org]
Sent: Thursday, May 03, 2007 10:23 AM
To: Van Meter, Heather
Subject: RE: Oregon Women Lawyers Spring CLE - application for CLE credit

Heather,

Your request for MCLE Committee review of my decision to deny accreditation for Panel B of the May 4 program will be placed on the June 8 MCLE Committee meeting agenda. The committee will meet via teleconference at noon on that date. If you would like to participate in the call, please let me know.

Please provide me with any documents you want me to include with the agenda materials.


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The PLF program entitled "What To Do With Your Law Degree" was approved for 4.5 personal management assistance credits. The types of programs that may qualify for personal management assistance credit are listed in MCLE Regulation 5.300. No more than 6.0 personal management assistance credits may be claimed in a three year reporting period.

Your session on volunteerism focuses on how to advance one’s legal career through volunteer service. It also touches on how to develop one’s legal practice through volunteer service. Programs relating to business development and marketing do not qualify for CLE credit pursuant to MCLE Regulation 5.400.

Please let me know if you have any questions.

Thank you.

Denise

---Original Message---
From: Van Meter, Heather [mailto:hvanmeter@wkg.com]
Sent: Wednesday, May 02, 2007 4:32 PM
To: Denise Cline
Cc: Catherine Clarlo, Executive Director; Kellie Johnson
Subject: RE: Oregon Women Lawyers Spring CLE - application for CLE credit

Denise - I appreciate your reviewing the information and submissions we made, and appreciate your approval of 3.25 hours of EOBL CLE credit for all sessions except Session B on volunteerism. With respect to Session B, I would appreciate your further consideration of that issue. Just yesterday I saw an announcement for a "what to do with your law degree" seminar by an OKAP career advisor person that was granted 4.5 CLE credit hours for discussing such subjects as "developing clarity on who you are." Our Session B certainly relates to practice issues, legal skills and legal ethics/professional responsibility at least as much as a CLE relating to "what to do with your law degree."

More importantly, the BOG aspirational goal aspires for all OSB lawyers to spend 80 hours on pro bono service, which is any volunteer service to the legal or greater community, 40 of which should be in direct legal services to the poor. I am very familiar with this goal as I am past chair of the OSB Pro Bono Committee. This session certainly relates to "practice issues," "legal skills," and "legal ethics and professional responsibility" as required by MCLE Rule 5.1, even if you do not determine that it relates to elimination of bias. I would appreciate your further consideration of this session for CLE credit.

Thank you for your further attention to this matter.

Heather J. Van Meter mailto:hvanmeter@wkg.com
Attorney
Williams, Kastner & Glabs PLLC
Portland, Oregon
Phone: (503) 944-6973
Fax: (503) 222-7261
www.wkg.com

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From: Denise Cline [mailto:dcline@osbar.org]
Sent: Wednesday, May 02, 2007 9:02 AM
To: Van Meter, Heather

Subject: RE: Oregon Women Lawyers Spring CLE - application for CLE credit

Heather,

Thanks for providing the requested information regarding Friday's program.

The following sessions qualify for elimination of bias credit:

1:00-2:15
2:30-3:45 - session A
4:00-4:45

Session B. Community and Volunteer Involvement, does not qualify for any type of CLE credit. This session focuses how to advance one's legal career through volunteer service.

Please see MCLE Rule 8.1(a) regarding review of decisions of the MCLE Administrator.

Also, the MCLE program database is accessible via our website at www.osbar.org.

A copy of the application will be mailed to you today. The program is approved for 3.25 elimination of bias credits.

Thanks,
Denise

----Original Message----
From: Van Meter, Heather [mailto:hvanmeter@wkg.com]
Sent: Tuesday, May 01, 2007 12:16 PM
To: Denise Cline
Cc: Kellie Johnson; catherine@oregonwomenlawyers.org
Subject: Oregon Women Lawyers Spring CLE - application for CLE credit

Denise - As I mentioned on the telephone with you today, I am extremely surprised and disappointed to hear your preliminary opinion that our application for CLE credit did not appear to be entitled to any CLE credit. As we talked, you indicated that you were "in the process of reviewing" the written materials we submitted. You also mentioned that you received a call from OWLS executive director Catherine Clarico this morning, and that you had "reviewed" our submission briefly yesterday. It sounded as though you had not spent any significant time reviewing our application at the time we talked. I am sure that once you have an opportunity to review our application you will find that our CLE is entitled to the EOB CLE credit for which we applied.

As you requested, below is additional information on the speakers and topics for the CLE. I also restate the applicable MCLE rules for your review. I would appreciate your getting back to me as soon as possible, and if your response remains the same as your "preliminary opinion," I would appreciate your providing me with your supervisor's contact information so that I may renew our application with appropriate supervisory personnel, and I would appreciate your sending me copies of the MCLE applications for all of this year's EOB CLEs so that I may compare our program with those previously receiving EOB CLE credit.

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

(a) The activity must have significant intellectual or practical content with the
primary objective of increasing the participant’s professional competence as a lawyer; and (b) The activity must deal primarily with substantive legal issues, legal skills, practice issues, or legal ethics and professional responsibility; and (c) The activity must be offered by a sponsor having substantial, recent experience in offering continuing legal education or by a sponsor that can demonstrate ability to organize and effectively present continuing legal education. Demonstrated ability arises partly from the extent to which individuals with legal training or educational experience are involved in the planning, instruction, and supervision of the activity; and (d) The activity must be primarily intended for presentation to multiple participants, including but not limited to live programs, video and audio presentations (including original programming and replays of accredited programs), satellite broadcasts and on-line programs; and (e) The activity must include the use of thorough, high-quality written materials, unless the MCLE Administrator determines that the activity has substantial educational value without written materials. (f) The activity must have no attendance restrictions based on race, color, gender, sexual orientation, religion, geographic location, age, handicap or disability, marital, parental or military status or other classification protected by law, except as may be permitted upon application from a provider or member, where attendance is restricted due to applicable state or federal law.

5.5 Ethics and Elimination of Bias.

(a) In order to be accredited as an activity in legal ethics under Rule 3.2(b), an activity shall be devoted to the study of judicial or legal ethics or professionalism, and shall include discussion of applicable judicial conduct codes, disciplinary rules, or statements of professionalism. Of the six hours of ethics credit required by Rule 3.2 (b), one hour must be on the subject of a lawyer’s statutory duty to report child abuse (see ORS 9.114). (b) In order to be accredited as an activity pertaining to the elimination of bias under Rule 3.2(b), an activity shall be directly related to the practice of law and designed to educate attorneys to identify and eliminate from the legal profession and from the practice of law, biases against persons because of race, gender, economic status, creed, color, religion, national origin, disability, age or sexual orientation. (c) Portions of activities may be accredited for purposes of satisfying the ethics and elimination of bias requirements of Rule 3.2, if the applicable content of the activity is clearly defined.

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

With respect to our plenary panel at 1:00 p.m., Corbett Gordon, Elizabeth Harchenko and Donna Sandoval Bennett will discuss how women and minority lawyers in Oregon can and should direct their legal practices and law-related activities to eliminate the “glass ceiling,” reduce bias in the legal profession against women and minorities, work towards a bias-free workplace and legal system, improving awareness of bias issues in the practice of law and in the legal system (statistical and anecdotal information), promote equitable treatment of women and minority clients within the legal system, and will discuss the means to effect a bias-free legal system including structuring the practice of law in such a way to be more female- and minority-friendly, including a discussion of applicable ethical standards, BOG rules and goals on Pro Bono service and non-discrimination, Including Donna Bennett discussing employment non-discrimination laws including the new non-discrimination law on sexual orientation. This session relates to “practice issues,” “substantive legal issues,” “legal skills,” and “legal ethics and professional responsibility” as required by MCLE Rule 5.1, and
also constitutes “an activity directly related to the practice of law and designed to educate attorneys to identify and eliminate from the legal profession and from the practice of law, biases against persons because of race, gender .. and sexual orientation” pursuant to MCLE Rule 5.5(b). This panel is entitled to 1.25 EOB CLE credits.

With respect to our "Making the Case for Your Worth" panel at 2:30, Stella Manabe, Deb Guyol and Judge Tennyson will discuss the cultural divide among women and minorities in the legal profession in determining their "worth" for salary and bonus and other compensation purposes, including the gender and race gap in salary and other forms of compensation within the legal profession, the fears that women and minorities have in asking for "equal pay for equal work," federal and state laws prohibiting gender- and race-based variations in compensation, OSB BOG aspirational goals and non-discrimination statements relating to legal compensation, the cultural reasons that women and minorities may be compensated less for the same work, how to determine the appropriate compensation (research skills), and related discussions. This session relates to "practice issues," "substantive legal issues,“ "legal skills,” and "legal ethics and professional responsibility" as required by MCLE Rule 5.1, and also constitutes "an activity directly related to the practice of law and designed to educate attorneys to identify and eliminate from the legal profession and from the practice of law, biases against persons because of race, gender .. and sexual orientation” pursuant to MCLE Rule 5.5(b). This panel is entitled to 1.25 EOB CLE credits.

With respect to our "Community and Volunteer Involvement" panel at 2:30, Elaine Hallmark, Helle Rode, and Penny Saruer will discuss how fulfilling the OSB BOG aspirational goal for pro bono service can help women and minority attorneys in advancing their legal career, how pro bono service can be used and directed towards a legal practice area, programs available for these purposes including low income legal clinics and taking on low income cases, for improvement of client and trial skills for new lawyers (e.g. discrimination in housing cases for consumer/disability lawyers, family law pro bono cases for new family law attorneys, Cascade AIDS Clinic volunteering for increasing client contacts and referral business), advising non-profit companies and community boards to improve legal skills and increase community contacts to develop legal practice (e.g. getting on Oregon Zoo board as a bond/public finance lawyer and being on school board as a school/disability law lawyer), how women and minority lawyers particularly can use their unique skills and backgrounds to advance their legal career through community and volunteer involvement (e.g. Hispanic Bar Association, National Bar Association, Hispanic Business Owners Association, ABA Commission on Women in the Profession, etc.), and providing a "decision tree" for helping attorneys decide whether and when to get involved in particular activities. This session relates to "practice issues," “legal skills,” and "legal ethics and professional responsibility" as required by MCLE Rule 5.1, and also constitutes "an activity directly related to the practice of law and designed to educate attorneys to identify and eliminate from the legal profession and from the practice of law, biases against persons because of race, gender .. and sexual orientation” pursuant to MCLE Rule 5.5(b). This panel is entitled to 1.25 EOB CLE credits.

With respect to our keynote address by Kate Brown on "Women as Leaders in Law, Society & Politics," Ms. Brown will discuss her personal experiences as a woman lawyer and political leader and the first female Senate Majority Leader in Oregon, identifying the bias she faced in the legal and governmental arenas, how she broke through the "glass ceiling" for women lawyers and women in politics, how her gender helped and hindered her progress, providing tips for other women lawyers in eliminating/avoiding/handling the biases faced, what to expect along the way for women lawyers towards leadership in law firms or as sole practitioners or within governmental agencies, and also discussing the new legislation on sexual orientation equality and non-discrimination in Oregon and how this legislation fits in with Oregon’s pre-existing non-discrimination laws. This session relates to "practice issues," "substantive legal issues," "legal skills," and "legal ethics and professional responsibility" as required by MCLE Rule 5.1, and also constitutes "an activity directly related to the practice of law and designed to educate attorneys to identify and eliminate from the legal profession and from the practice of law, biases against persons because of race, gender .. and sexual orientation” pursuant to MCLE Rule 5.5(b). This session is entitled to 0.75 EOB CLE credits.
As I mentioned on the phone, I am both an attorney as well as a board and executive committee member of Oregon Women Lawyers, as well as co-chair of the Oregon Women Lawyers Spring CLE. I appreciate your considering our application materials and this additional information and getting back to me as soon as possible.

Heather J. Van Meter  mailto:hvanmeter@wkg.com
Attorney
Williams, Kastner & Gibbs PLLC
Portland, Oregon
Phone: (503) 944-6973
Fax: (503) 222-7261
www.wkg.com
June 29, 2007

Heather J Van Meter
Williams Kastner & Gibbs PLLC
888 SW 5th Ave Ste 600
Portland, OR 97204

Re: MCLE Committee Meeting

Dear Ms. Van Meter:

At its meeting today, the MCLE Committee discussed your request for CLE accreditation for the breakout session entitled Community and Volunteer Involvement that was held at the Oregon Women Lawyers May 4 CLE program.

The committee upheld my decision to deny accreditation for this session because it focused on obtaining business by serving on boards and volunteering for various opportunities. Pursuant to MCLE Regulation 5.400, sessions focusing on business development and marketing do not qualify for CLE credit.

Please see MCLE Rule 8.1(b) regarding review of decisions of the MCLE Committee.

Thank you.

Sincerely,

Denise Cline
MCLE Administrator

RECEIVED
JUL 02 2007
WILLIAMS, KASTNER & GIBBS PLLC
Van Meter, Heather

From: Denise Cline [dcline@osbar.org]
Sent: Friday, June 22, 2007 8:36 AM
To: Van Meter, Heather
Subject: MCLE Committee meeting

Heather,

The MCLE Committee meeting scheduled for 6/8 has been rescheduled. The new date is Friday, June 29. It will be at noon via teleconference. The conference call information is the same as I provided previously.

Please let me know if you want to participate.

Thanks.
Denise

Denise Cline
MCLE Administrator
Oregon State Bar
5200 SW Meadows Road, Lake Oswego, OR 97035
(503) 620-0222, ext. 315
FAX: (503) 598-6915
e-mail: dcline@osbar.org
http://www.osbar.org
Van Meter, Heather

From: Van Meter, Heather
Sent: Monday, July 02, 2007 4:32 PM
To: 'Denise Cline'
Subject: MCLE committee meeting

Denise - I am sorry that I was unable to attend the committee meeting last Friday at noon by conference call, as I was in a lengthy deposition that day that could not be changed.

Not surprisingly, I am disappointed with the committee's ruling, and intend to appeal to the BOG. I understand from your letter that the committee determined that the session was "focused on obtaining business by serving on boards and volunteering for various opportunities." I believe I explained in my May 1 and subsequent email correspondence that the session (which I moderated) had quite a different focus.

In support of my appeal to the BOG, I would appreciate receiving all documents, e-mails and other information provided to the MCLE Committee during the conference call, as well as any notes or minutes of the discussion during the conference call. I would also appreciate your sending me any rules or bylaws that apply to the MCLE Committee meetings so that I can confirm that the June 29 conference call was a proper "regular meeting" of the committee, and that the meeting was properly noticed.

I would also appreciate your sending copies of the EOB CLE application documents I reviewed and marked for copying many weeks ago for copying at my expense, which to my recollection have never been copied or sent to me as I requested and as I understood you would do.

Heather Van Meter
Attorney at Law
Williams Kastner
888 SW Fifth Avenue, Suite 600
Portland, OR 97204
Main: 503.228.7967
Direct: 503.944.6973
Fax: 503.222.7261
hvanmeter@williamskastner.com
www.williamskastner.com
Van Meter, Heather

From: Van Meter, Heather  
Sent: Saturday, July 07, 2007 2:00 PM  
To: 'skerjanec@valelawyers.com'; 'amenashe@gevurtzmenashe.com' 
Cc: 'twenzel@osbar.org' 
Subject: FW: MCLE committee decision appeal

Dear Carol and AI - I am appealing a decision of the MCLE Committee regarding denial of OSB CLE credit to a panel at the recent Oregon Women Lawyers Spring CLE. I am a HOD member, secretary of Oregon Women Lawyers, and was co-chair for the OWLS Spring CLE. I also moderated the panel which was denied CLE credit of any kind. I attempted to work with Denise Cline and the MCLE Committee through the appropriate means, but the result was unfavorable. Therefore, in accordance with MCLE rules, I am appealing to the BOG. I first notified the OSB of the appeal on July 2, in the below message. If there is a form or other manner in which I should present the appeal, please let me know.

I would appreciate this matter being placed on the next available BOG meeting agenda. I have communications between myself and Denise Cline relating to this matter, and am attempting to obtain additional information that may have provided to the MCLE Committee in making its decision, although I have not received the information to date. Please let me know what information or materials I can provide to the BOG relating to this matter, and let me know when and where the matter may be addressed by the BOG.

Thank you for your attention to this matter,

Heather Van Meter  
Attorney at Law  
Williams Kastner  
888 SW Fifth Avenue, Suite 600  
Portland, OR 97204  
Main: 503.228.7967  
Direct: 503.944.6973  
Fax: 503.222.7261  
hvanmeter@williamskastner.com  
www.williamskastner.com

-----Original Message-----
From: Van Meter, Heather [mailto:hvanmeter@williamskastner.com]  
Sent: Monday, July 02, 2007 4:32 PM  
To: Denise Cline  
Subject: MCLE committee meeting

Denise - I am sorry that I was unable to attend the committee meeting last Friday at noon by conference call, as I was in a lengthy deposition that day that could not be changed.

Not surprisingly, I am disappointed with the committee's ruling, and intend to appeal to the BOG. I understand from your letter that the committee determined that the session was "focused on obtaining business by serving on boards and volunteering for various opportunities." I believe I explained in my May 1 and subsequent email correspondence that the session (which I moderated) had quite a different focus.
In support of my appeal to the BOG, I would appreciate receiving all documents, e-mails and other information provided to the MCLE Committee during the conference call, as well as any notes or minutes of the discussion during the conference call. I would also appreciate your sending me any rules or bylaws that apply to the MCLE Committee meetings so that I can confirm that the June 29 conference call was a proper "regular meeting" of the committee, and that the meeting was properly noticed.

I would also appreciate your sending copies of the EO8 CLE application documents I reviewed and marked for copying many weeks ago for copying at my expense, which to my recollection have never been copied or sent to me as I requested and as I understood you would do.

Heather Van Meter
Attorney at Law
Williams Kastner
888 SW Fifth Avenue, Suite 600
Portland, OR 97204
Main: 503.228.7967
Direct: 503.944.6973
Fax: 503.222.7261
hvanmeter@williamskastner.com
www.williamskastner.com
July 9, 2007

Heather J Van Meter
Williams Kastner & Gibbs PLLC
888 SW 5th Ave Ste 600
Portland, OR 97204

Re: Request for materials

Dear Ms. Van Meter:

Pursuant to your July 2 e-mail request, I have enclosed the following:

- Meeting notice dated May 25 notifying the June 8 MCLE Committee meeting
- My memo to the MCLE Committee regarding your request for review
- Copy of my June 6 e-mail to MCLE Committee forwarding entire set of written materials from the OWLS program per your request
- Copy of June 8 e-mails between you and me regarding the conference call mix-up
- Copy of June 20 e-mail notifying MCLE Committee of new meeting date (June 29)
- Copy of my June 22 e-mail notifying you of new meeting date
- Minutes from June 29 meeting

Pursuant to your July 7 e-mail to me, you have received the copies of the elimination of bias CLE applications you requested in May.

The MCLE Rules and Regulations are on our website at www.osbar.org.
Heather Van Meter
July 9, 2007
Page 2

Please submit your request for review to me no later than August 13. The next Board of Governors meeting is scheduled for September 27-29, 2007 at Salishan Lodge in Gleneden Beach. I will provide you with more detailed information regarding this meeting once the agenda has been set.

Please let me know if you have any questions.

Thank you.

Sincerely,

Denise Cline
MCLE Administrator
Ext. 315, Fax: (503) 598-6915
Email: dcline@osbar.org

Enclosures

cc: Albert Menashe, President, Oregon State Bar
    Carol Skerjanec, BOG Contact, MCLE Committee
    Kara Davis, Chair, MCLE Committee
    Karen Garst, Executive Director, Oregon State Bar
    (all without enclosures)
May 25, 2007

TO: All Members of the Oregon State Bar
MINIMUM CONTINUING LEGAL EDUCATION COMMITTEE

FROM: Kara K. Davis, Chair

SUBJECT: Meeting Notice

Date: Friday, June 8, 2007
Time: Noon
Place: TELECONFERENCE

The dial-in conference call number is 1-866-670-5107, Pass Code 438115.

To confirm your attendance at the meeting, please contact Committee Secretary, Pamela Palmer, ppalmer@gordon-polscher.com
OREGON STATE BAR
MCLE Committee Agenda

Meeting Date: June 8, 2007
Memo Date: May 31, 2007
From: Denise Cline, Ext. 315
Re: Request for review

Action Recommended

Review the request of Heather Van Meter of Oregon Women Lawyers for CLE accreditation for a 75 minute panel presentation entitled Community and Volunteer Involvement. This presentation was a breakout session at the May 4 Women as Leaders CLE program.

Background

Ms. Van Meter is seeking 1.25 elimination of bias credits for a Community and Volunteer Involvement session, which was held during the Women as Leaders CLE program earlier this month. She provided the following information regarding this session:

With respect to our "Community and Volunteer Involvement" panel at 2:30, Elaine Hallmark, Helle Rode, and Penny Serurier will discuss how fulfilling the OSB BOG aspirational goal for pro bono service can help women and minority attorneys in advancing their legal career, how pro bono service can be used and directed towards a legal practice area, programs available for these purposes including low income legal clinics and taking on low income cases for improvement of client and trial skills for new lawyers (e.g. discrimination in housing cases for consumer/disability lawyers, family law pro bono cases for new family law attorneys, Cascade AIDS Clinic volunteering for increasing client contacts and referral business), advising to non-profit companies and community boards to improve legal skills and increase community contacts to develop legal practice (e.g. getting on Oregon Zoo board as a bond/public finance lawyer and being on school board as a school/disability law lawyer), how women and minority lawyers particularly can use their unique skills and backgrounds to advance their legal career through community and volunteer involvement (e.g. Hispanic Bar Association, National Bar Association, Hispanic Business Owners Association, ABA Commission on Women in the Profession, etc.), and providing a "decision tree" for helping
attorneys decide whether and when to get involved in particular activities. This session relates to "practice issues," "legal skills," and "legal ethics and professional responsibility" as required by MCLE Rule 5.1, and also constitutes "an activity directly related to the practice of law and designed to educate attorneys to identify and eliminate from the legal profession and from the practice of law, biases against persons because of race, gender.. and sexual orientation" pursuant to MCLE Rule 5.5(b). This panel is entitled to 1.25 EOB CLE credits.

I denied credit for this session because it appears to focus on how to develop and advance one's legal career through volunteer service. Programs relating to business development and marketing do not qualify for CLE credit pursuant to MCLE Regulation 5.400, which is set forth below:

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

A copy of the written material distributed at this session is attached. It includes statistical information on volunteer rates throughout the country and the OSB Volunteer Opportunities Directory.

Ms. Van Meter questioned how this activity would not qualify for CLE credit when a PLF program entitled What Do You Want To Do With Your Law Degree qualifies for credit. I explained that the PLF program was approved for personal management assistance credits pursuant to MCLE Regulation 5.300, which is set forth below:

5.300 Personal Management Assistance. A personal management assistance program is one that includes assistance with alcoholism, drug addiction, burnout, career change and satisfaction, depression, anxiety, gambling addiction, procrastination, relationship issues, stress management, time management or other related issues.

No more than six personal management assistance credits may be claimed in a three year reporting period.

Ms. Van Meter requests elimination of bias credit for this 75 minute session. If it is determined that this program does not qualify for elimination of
bias credit, Ms. Van Meter believes it qualifies for general credit because it meets the accreditation standards set forth in MCLE Rule 5.1. Because the focus of this session appears to be on helping one's career, I do not believe it qualifies for any type of CLE credit.

attachment
Community and Volunteer Involvement: Making the Time, Helping Your Career

R. Elaine Hallmark, Director, Oregon Consensus Program, Portland State University

Currently the Director of the Oregon Consensus Program (OCP) in the Hatfield School of Government at Portland State University in Portland, Oregon, R. Elaine Hallmark was a practicing public policy mediator from 1988 through 2003. She was a founding partner of Confluence Northwest and President and Senior Mediator of Hallmark Pacific Group, LLC. She has convened, facilitated and managed a large number of consensus processes and policy dialogues, conducted partnering workshops and trained numerous audiences in consensus and mediation processes.

Elaine served four years on Oregon’s Dispute Resolution Commission, three years as the first Chair, beginning in 1989. She received the 1998 Sidney I. Lezak Award of Merit for Outstanding Achievement in Appropriate Dispute Resolution from the Oregon State Bar’s ADR Section and the 1998 Distinguished Environmental Law Graduate Award from Lewis and Clark’s Northwestern School of Law. She practiced law and served as an assistant General Counsel in the Bonneville Power Administration, US Department of Energy, in the mid-1980’s, and worked for the Oregon Children’s Services Division prior to law school.

Education
B.A. George Washington University, Washington, DC
J.D. Lewis and Clark Law School, Portland, OR

Helle Rode, Mediator-Arbitrator

Helle Rode recently opened her own practice as a mediator and arbitrator. Her practice focuses on mediation and arbitration of employment, labor, civil rights, tort, and personal injury disputes. Helle was a litigator and advisory attorney in these areas prior to opening her dispute resolution practice. Most recently, she was a Senior Assistant Attorney General in the Labor and Employment Section of the Oregon Department of Justice and previously she was a shareholder in the Portland labor and employment firm of Bullard Smith Jernstedt Wilson and a partner in Dunn Carney where she defended tort, personal injury and sexual abuse cases.

Helle was President of Oregon Women Lawyers in 1994-1995 and is currently the President of the Oregon Chapter of the Federal Bar Association. She has served on several OSB and MBA committees, including the OSB Uniform Civil Jury Instructions Committee and the MBA Professionalism Committee. Helle has particularly enjoyed
serving as a mentor to women and minority law students through the University of Oregon School of Law and Willamette School of Law.

Helie's non-law volunteer work has included serving as a co-leader for the past seven years of an inner SE Portland Girl Scout troop (the girls are now in the 8th grade), a member of Sheriff Dan Noelle's Citizen's Advisory Board, the Neighborhood Watch representative for her neighborhood, and the treasurer for her daughter's school auction. She and her husband have two girls, ages 14 and 19, and have worked to instill the volunteer ethic in them also.

Education
B.A. Portland State University, Portland, OR
J.D. University of Oregon School of Law, Eugene, OR

Penny Serrurier, Partner, Stoll Rives, LLP

Penny Serrurier is a partner at Stoll Rives, LLP, practicing in the areas of tax-exempt organizations, charitable giving, estate planning and administration, business succession planning, and personal tax planning.

Penny is a member of The American College of Trusts and Estates Counsel, the Estate Planning Council of Portland, the Northwest Planned Giving Roundtable, the Oregon State Bar Business Law, Estate Planning and Administration, and Taxation sections, the American Bar Association Taxation Section, the Multnomah Bar Association and Oregon Women Lawyers.

She is an Adjunct Professor of Law at Lewis & Clark Law School and serves on the boards of numerous nonprofit organizations and foundations. She is also a volunteer attorney for the North Portland Legal Aid Clinic, and offers legal and planned giving advisor for various local non-profit organizations.

Penny was honored as an Oregon Super Lawyer in Estate Planning and Probate (2006), and was selected by her peers for inclusion in The Best Lawyers in America in Non-Profit/Charities Law, and in Trusts and Estates.

Education
B.A. Middlebury College, Middlebury, VT
J.D. Cornell Law School, Ithaca, NY
Board of governors' policies,
13.1 Pro Bono Aspirational Standard

CATEGORIES
The reporting categories follow the Oregon State Bar's Aspirational Standard.

A. PRO BONO
(direct provision of legal services for the poor)
Pro Bono is the direct provision of legal services to the poor without an expectation of compensation.
Included are all volunteer services through a legal aid office or non-profit organization's pro bono program.

B. LEGAL PUBLIC SERVICE
This category includes free legal services that benefit the public or legal activities that improve the law, the legal system and the legal profession. Examples of this category include:
• helping an organization obtain its nonprofit status;
• serving on an OSB committee, section or task force,
• giving legal advice to a non-profit board,
• coaching a mock trial team.

C. NON-LEGAL PUBLIC SERVICE
This category covers the contribution of lawyers' time in a non-legal capacity. This would include providing non-legal volunteer services to community organizations such as Meals on Wheels or Habitat for Humanity.
Statement of Professionalism

Adopted by the Oregon State Bar House of Delegates and
Approved by the Supreme Court of Oregon effective November 16, 2006

As lawyers, we belong to a profession that serves our clients and the public good. As officers of the court, we aspire to a professional standard of conduct that goes beyond merely complying with the ethical rules. Professionalism is the courage to care about and act for the benefit of our clients, our peers, our careers, and the public good. Because we are committed to professionalism, we will conduct ourselves in a way consistent with the following principles in dealing with our clients, opposing parties, opposing counsel, the courts, and the public.

- I will promote the integrity of the profession and the legal system.
- I will work to ensure access to justice for all segments of society.
- I will avoid all forms of unlawful or unethical discrimination.
- I will protect and improve the image of the legal profession in the eyes of the public.
- I will promote respect for the courts.
- I will support the education of the public about the legal system.
- I will work to achieve my client's goals, while at the same time maintain my professional ability to give independent legal advice to my client.
- I will always advise my clients of the costs and potential benefits or risks of any considered legal position or course of action.
- I will communicate fully and openly with my client, and use written fee agreements with my clients.
- I will not employ tactics that are intended to delay, harass, or drain the financial resources of any party.
- I will always be prepared for any proceeding in which I am representing my client.
- I will be courteous and respectful to my clients, to adverse litigants and adverse counsel, and to the court.
- I will only pursue positions and litigation that have merit.
- I will explore all legitimate methods and opportunities to resolve disputes at every stage in my representation of my client.
- I will support pro bono activities.
Every lawyer has a professional responsibility to provide legal services to those unable to pay. A lawyer should aspire to render at least (50) hours of pro bono publico legal services per year. In fulfilling this responsibility, the lawyer should:

(a) provide a substantial majority of the (50) hours of legal services without fee or expectation of fee to:

(1) persons of limited means or

(2) charitable, religious, civic, community, governmental and educational organizations in matters which are designed primarily to address the needs of persons of limited means; and

(b) provide any additional services through:

(1) delivery of legal services at no fee or substantially reduced fee to individuals, groups or organizations seeking to secure or protect civil rights, civil liberties or public rights, or charitable, religious, civic, community, governmental and educational organizations in matters in furtherance of their organizational purposes, where the payment of standard legal fees would significantly deplete the organization's economic resources or would be otherwise inappropriate;

(2) delivery of legal services at a substantially reduced fee to persons of limited means; or

(3) participation in activities for improving the law, the legal system or the legal profession.

In addition, a lawyer should voluntarily contribute financial support to organizations that provide...
legal services to persons of limited means.

Comment

[1] Every lawyer, regardless of professional prominence or professional workload, has a responsibility to provide legal services to those unable to pay, and personal involvement in the problems of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer. The American Bar Association urges all lawyers to provide a minimum of 50 hours of pro bono services annually. States, however, may decide to choose a higher or lower number of hours of annual service (which may be expressed as a percentage of a lawyer's professional time) depending upon local needs and local conditions. It is recognized that in some years a lawyer may render greater or fewer hours than the annual standard specified, but during the course of his or her legal career, each lawyer should render on average per year, the number of hours set forth in this Rule. Services can be performed in civil matters or in criminal or quasi-criminal matters for which there is no government obligation to provide funds for legal representation, such as post-conviction death penalty appeal cases.

[2] Paragraphs (a)(1) and (2) recognize the critical need for legal services that exists among persons of limited means by providing that a substantial majority of the legal services rendered annually to the disadvantaged be furnished without fee or expectation of fee. Legal services under these paragraphs consist of a full range of activities, including individual and class representation, the provision of legal advice, legislative lobbying, administrative rule making and the provision of free training or mentoring to those who represent persons of limited means. The variety of these activities should facilitate participation by government lawyers, even when restrictions exist on their engaging in the outside practice of law.

[3] Persons eligible for legal services under paragraphs (a)(1) and (2) are those who qualify for participation in programs funded by the Legal Services Corporation and those whose incomes and financial resources are slightly above the guidelines utilized by such programs but nevertheless, cannot afford counsel. Legal services can be rendered to individuals or to organizations such as homeless shelters, battered women's centers and food pantries that serve those of limited means. The term "governmental organizations" includes, but is not limited to, public protection programs and sections of governmental or public sector agencies.

[4] Because service must be provided without fee or expectation of fee, the intent of the lawyer to render free legal services is essential for the work performed to fall within the meaning of paragraphs (a)(1) and (2). Accordingly, services rendered cannot be considered pro bono if an anticipated fee is uncollected, but the award of statutory lawyers' fees in a case originally accepted as pro bono would not disqualify such services from inclusion under this section. Lawyers who do receive fees in such cases are encouraged to contribute an appropriate portion of such fees to organizations or projects that benefit persons of limited means.

[5] While it is possible for a lawyer to fulfill the annual responsibility to perform pro bono services exclusively through activities described in paragraphs (a)(1) and (2), to the extent that any hours of service remained unfulfilled, the remaining commitment can be met in a variety of ways as set forth in paragraph (b). Constitutional, statutory or regulatory restrictions may prohibit or impede government and public sector lawyers and judges from performing the pro bono services outlined in paragraphs (a)(1) and (2). Accordingly, where those restrictions apply, government and public sector lawyers and judges may fulfill their pro bono responsibility by performing services outlined in paragraph (b).

[6] Paragraph (b)(1) includes the provision of certain types of legal services to those whose incomes and financial resources place them above limited means. It also permits the pro bono
lawyer to accept a substantially reduced fee for services. Examples of the types of issues that may be addressed under this paragraph include First Amendment claims, Title VII claims and environmental protection claims. Additionally, a wide range of organizations may be represented, including social service, medical research, cultural and religious groups.

[7] Paragraph (b)(2) covers instances in which lawyers agree to and receive a modest fee for furnishing legal services to persons of limited means. Participation in judicare programs and acceptance of court appointments in which the fee is substantially below a lawyer's usual rate are encouraged under this section.

[8] Paragraph (b)(3) recognizes the value of lawyers engaging in activities that improve the law, the legal system or the legal profession. Serving on bar association committees, serving on boards of pro bono or legal services programs, taking part in Law Day activities, acting as a continuing legal education instructor, a mediator or an arbitrator and engaging in legislative lobbying to improve the law, the legal system or the profession are a few examples of the many activities that fall within this paragraph.

[9] Because the provision of pro bono services is a professional responsibility, it is the individual ethical commitment of each lawyer. Nevertheless, there may be times when it is not feasible for a lawyer to engage in pro bono services. At such times a lawyer may discharge the pro bono responsibility by providing financial support to organizations providing free legal services to persons of limited means. Such financial support should be reasonably equivalent to the value of the hours of service that would have otherwise been provided. In addition, at times it may be more feasible to satisfy the pro bono responsibility collectively, as by a firm's aggregate pro bono activities.

[10] Because the efforts of individual lawyers are not enough to meet the need for free legal services that exists among persons of limited means, the government and the profession have instituted additional programs to provide those services. Every lawyer should financially support such programs, in addition to either providing direct pro bono services or making financial contributions when pro bono service is not feasible.

[11] Law firms should act reasonably to enable and encourage all lawyers in the firm to provide pro bono legal services called for by this Rule.

[12] The responsibility set forth in this Rule is not intended to be enforced through disciplinary process.

Model Code Comparison

There was no counterpart of this Rule in the Disciplinary Rules of the Model Code. EC 2-25 stated that the "basic responsibility for providing legal services for those unable to pay ultimately rests upon the individual lawyer . . . . Every lawyer, regardless of professional prominence or professional work load, should find time to participate in serving the disadvantaged." EC 8-9 stated that "[t]he advancement of our legal system is of vital importance in maintaining the rule of law . . . [and] lawyers should encourage, and should aid in making, needed changes and improvements." EC 8-3 stated that "[t]hose persons unable to pay for legal services should be provided needed services."
Volunteering Decision Tree

Do you want to do this activity? Why? Is it an activity that you will enjoy and be comfortable doing?

Who will benefit?

- You and/or your family
- Your community/the world
- Your law firm/employer
- The legal community

How will you benefit? What are your personal goals?

- Personal satisfaction
- Better job satisfaction
- Contribute to your community or the world
- Spend more time with friends, children, clients
- Business/community contacts
- Bar contacts
- Case referrals; income
- Build your reputation
- Develop long-lasting client relationships
- Develop your leadership skills and potential
- Make new friends
- Broaden your horizons
- People to consult on work and career issues
- Inexpensive CLE credit
- Open doors to other career opportunities
- Feel part of the group
- Travel opportunities
- Meet your firm’s marketing goals
- Public speaking opportunities

How will your firm/employer benefit? What are its goals?

- Improve firm’s reputation
- Business contacts
- Case referrals; income
- Improve client relationships
- Lawyer retention
- Recruitment of diverse lawyers
When will you/employer benefit?

Long-term vs. short-term
Don’t expect immediate results

Do you have the time or can you make the time?

Other work and family commitments
Nights and weekends
Longer days
Limited participation
Understand the time commitment before you say “yes”

Does your firm/employer appreciate and recognize your efforts?

Are you increasing the bottom line?
Are you improving the reputation of the firm/office?
What are your firm’s “culture” and policies?
What are other lawyers in your firm/office doing?
Does your volunteer work decrease or increase your productive billable hours?

Should you ever say “no, thank you”?

Think it through and decide
Don’t take on too much
Do a quality job
Do something you will enjoy
Discuss it in advance with your firm/supervisor

How can your firm/office assist your efforts?

Financial assistance to the lawyer
Financial contributions to the organization
Allowing you to take time away from the office
Staff assistance to you and the organization
Mentoring and making connections for you
Verbal support and recognition of your efforts
Consideration in the compensation process
OSB Volunteer Opportunities Directory — OSB CERTIFIED

<table>
<thead>
<tr>
<th>Home</th>
<th>Reporting</th>
<th>Honor Roll</th>
<th>Pro Bono Attorney Resources</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alphabetical</td>
<td>Geographical</td>
<td>Substantive</td>
<td></td>
</tr>
</tbody>
</table>

**Catholic Charities Immigration Legal Services**

231 SE 12th Ave.

Portland, OR 97214

Contact: M. Renee Cummings (503) 231-4866 ext. 136

Email: mcummings@catholiccharitiesoregon.org

**OPPORTUNITIES:** A wide variety of immigration cases, including removal defense, family visas, self-petitions by battered spouses, and others. Volunteers may perform any level of assistance ranging from discrete tasks up to full representation in immigration court.

**TRAINING:** Informal and as needed, through experienced immigration attorney. Extensive library of training materials. Occasional opportunities for formal seminars, when offered in the region.

**OTHER:** Spanish (or other) language skills greatly appreciated! Agency provides insurance. No specific time commitments.

**Center for NonProfit Legal Services**

225 W Main St.

Medford, OR 97501

Contact: Debra Fi Lee (541) 779-7292

Email: debris @ charter internet.com

**OPPORTUNITIES:** Handling of conflict overflow cases representing the adverse party. Cases are usually in the areas of family law, housing, consumer, employment, immigration, individual rights and public benefits law.

**TRAINING:** Training manuals provided; information sharing with experienced practitioners.

**Columbia County Legal Aid Program**

PO Box 1400

St. Helens, OR 97051

Contact: Teresa Py (503) 397-1628

Email: cca@adcs.com

**OPPORTUNITIES:** Cases involving family law and landlord-tenant.

**Community Development Law Center, a project of Legal Aid Services of Oregon, Inc. and the Campaign for Equal Justice**

921 SW Washington, Suite 454, Portland, OR 97205

Contact: Leon Lasko (503) 471-1180

Email: lasko@lasoregon.org

**OPPORTUNITIES:** Varied. Everything from brief consultations to extended representation for community-based, nonprofit, charitable organizations (typically community development corporations and community action agencies) throughout Oregon providing affordable housing for low-income families and managing community development projects. Most of our assistance is to community development corporations related to the acquisition, development, construction, financing, and management of low-income, multi-family housing projects. Limited
Lawyer Referral
Military Assistance Panel

OSB Information
About the Bar
Directions to the Bar
Staff Roster
Contact Us
OSB Job Opportunities
Booking Meeting Rooms

Learning and development at OSB are mandatory. Please complete the training program for dispute resolution and no litigation.

TRAINING: None.

OTHER: PLF coverage for pro bono referrals is provided for exempt attorneys; no specific time commitment.

Immigration Counseling
519 SW Park Ave. Ste. 610
Portland, OR 97205
Contact: Susan Rossiter (503) 221-1889 ext. 103
Email: srossiter@immigrationcounseling.org

OPPORTUNITIES: Cases involving family unity defense and unification, protection from persecution, deportation defense, and protection for victims of domestic violence.

TRAINING: Experienced attorneys available.

OTHER: Foreign language helpful, but not required. Agency provides insurance for exempt attorneys.

Lane County Legal Aid Volunteer Lawyers Program
376 E 11th Ave.
Eugene, OR 97401
Contact: Ralph Saltus (541) 342-6056 ext. 140
Email: rsaltus@lcias.org

OPPORTUNITIES: Civil law cases for low income clients, serve seniors and victims of domestic violence on an appointment basis.

TRAINING: On the job. Volunteers have use of law library and expertise of legal services attorneys.

OTHER: Minimum time commitment is 2 hours.

Lane County Law & Advocacy Center
Senior Law Project
376 E 11th Ave.
Eugene, OR 97401
Contact: Jean Beachdel (541) 342-6056 ext. 131
Email: jbeachdel@lcias.org

OPPORTUNITIES: Advice and counsel to seniors by appointment at senior centers.

TRAINING: On the job. Volunteers have use of law library and expertise of legal services attorneys.

OTHER: Minimum time commitment is 2 hours.

Legal Aid Services of Oregon, Multnomah County Office
921 SW Washington, Suite 500
Portland, OR 97205
Contact: Cathy Keenan
(503) 224-4066
catherine.keenan@lasoregon.org

OPPORTUNITIES:
Bankruptcy Clinic. The Oregon State Bar Debtor-Creditor Section and LASO co-sponsor this clinic. The clinic begins with a 45-minute class which is taught by a member of the bankruptcy bar or bench. Volunteer attorneys then meet with clients, help them assess whether bankruptcy is appropriate, and if so, provide ongoing representation. The monthly clinic rotates between a Beaverton and downtown Portland location. Training materials are available.

Domestic Violence Project. The Domestic Violence Project provides representation to victims of domestic violence in contested Family Abuse
Prevention Act restraining orders, Elderly Persons and Persons with Disabilities Abuse Prevention Act restraining orders, and stalking protective order hearings. These cases tend to have short timelines, limited issues, and require a court appearance. This project is an excellent volunteer opportunity for young lawyers, lawyers seeking court experience, and lawyers who cannot commit to taking long-term cases. Videotapes, training materials and mentors are available.

Pro Se Assistance Project. The Multnomah County Family Court and LASO co-sponsor this clinic in which attorneys provide pro bono consultations to individuals served by the Family Court Facilitation Program who require legal advice or document review. Attorneys meet with three clients, each for a 45-minute appointment. Clinics are held from 2:30 to 5:00 p.m. at the Multnomah County Courthouse. Attorneys respond to discrete family law questions and/or review documents prepared by unrepresented litigants and are NOT expected to provide ongoing representation to clients. Training materials are available.

Senior Law Project. Attorneys meet with clients over the age of 60 at nine senior center locations in Multnomah County. Attorneys provide 30-minutes of advice for up to six clients per clinic and provide additional free services for low-income clients. Common legal issues include estate planning, probate, consumer issues, contracts and insurance matters. LASO sponsors a monthly Elder Law Discussion Group to provide information and support on issues of concern to the volunteers.

Social Security Panel. Attorneys represent disabled clients in the Social Security administrative appeals process—specifically relating to overpayment and representative payee issues. This project fits both young lawyers and lawyers with backgrounds in medical or disability issues, including personal injury and workers compensation. Training materials are available.

Steel Rives Night Clinic. The firm of Steel Rives, LLP sponsors a legal clinic every other Thursday evening. The clinic is held at the offices of Steel Rives and the firm is responsible for recruiting the volunteer attorneys. Two volunteer meet with up to four clients each clinic. The following issues are referred to the clinic: consumer, small claims, criminal record expungements, landlord/tenant damage claims, Social Security cases, estate planning, uncontested guardianships, uninsured motorist defense, veterans benefits, and nonprofit incorporation.

OTHER: PLF coverage is available for all of these projects. All of these projects are OSB-certified and 40 hours or more of service qualifies volunteers for recognition by the OSB.

Legal Aid Services of Oregon and the Oregon Law Center
These organizations coordinate the pro bono programs in 32 counties in Oregon through local offices. Listed below are the projects:

OPPORTUNITIES: Varied opportunities available ranging from brief consultations to full case representation for low-income clients on cases involving general practice legal issues including: restraining orders, family, housing, consumer, senior, civil rights, employment, administrative and individual rights.

TRAINING: Access to program training materials, state and national back-up centers, sample pleadings, research, etc. as needed.

OTHER: PLF coverage for pro bono referrals is provided for exempt attorneys; no specific time commitment.

Baker, Grant, Harney, & Malheur Counties,
Oregon Law Center 2
225 SW 1st Ave. #6
Ontario, OR 97914
Contact: David Henrotty (541) 889-3121
Benton & Linn Counties
Legal Aid Services of Oregon *
433 4th Ave., SW
Albany, OR 97321
Contact: Tami Smith (541) 926-8578
toll free (800) 817-4605
Email: tamils@lasoregon.org

Central Oregon, Klamath and Lake Counties,
Legal Aid Services of Oregon *
1029 NW 14th
Bend, OR 97701
Contact: Denise Newman (541) 385-6944
Email: denise.newman@lasoregon.org

Clackamas, Gilliam Hood River, Sherman, Wasco, and Wheeler Counties Volunteer Lawyers Project,
Legal Aid Services of Oregon *
421 High St., Ste. 110
Oregon City, OR 97045
Contact: Sonya Hildebrandt (503) 655-2518
Email: sonya.hildebrandt@lasoregon.org

Coos, Curry, and Western Douglas County,
Oregon Law Center *
415 S. 4th, Suite 5, PO Box 1098
Coos Bay, OR 97420
Contact: Mark Vincent (541) 269-2616 ext. 201
Email: marksvincent2003@yahoo.com

Douglas County Volunteer Lawyers Project,
Legal Aid Services of Oregon *
700 SE Kane St., PO Box 219
Roseburg, OR 97470
Contact: Sharon Lee Schwartz (541) 673-1182 ext. 205
Email: sharonlee.schwartz@lasoregon.org

Gilliam, Morrow, Umatilla, Union, Wallowa, & Wheeler Counties
Pro Bono Program,
Legal Aid Services of Oregon *
365 SE 3rd St.
Pendleton, OR 97801
Contact: Arron Guevara (541) 966-1420
Email: arron.guevara@lasoregon.org

Josephine County Volunteer Lawyers Project,
Oregon Law Center *
424 NW 6th St., #102, PO Box 429
Grants Pass, OR 97528
Contact: Eric Dahlin (541) 476-2154
Email: elcop@yahoo.com

Lincoln County,
Legal Aid Services of Oregon *
304 SW Coast Hwy, PO Box 1970
Newport, OR 97365
Contact: Linda Gast (541) 265-2833
Multnomah County Volunteer Lawyers Project,
Legal Aid Services of Oregon *
921 SW Washington #520
Portland, OR 97205
Contact: Catherine Keenan (503) 224-4086
This office offers a number of projects: Self Help Divorce Classes,
Domestic Violence Project, Bankruptcy Clinic, AIDS Legal Project,
Social Security Panel and Senior Law Project.

Oregon Law Center Pro Bono Program *
921 SW Washington #516
Portland, OR 97205
Contact: Lori Alton (503) 473-0326
Email: lori.alton@yahoo.com
OLC sponsors neighborhood legal clinics for the Portland Metro area that provide assistance with a wide range of civil law matters. Opportunities also exist for in house pro bono assistance as well as special projects.

Oregon Law Center Children's Representation Project:
Attorneys are appointed by the court to represent children who are involved in custody disputes in Multnomah County. Cases are placed at the request of the Multnomah County Family Law Court. Attorneys with family law experience are especially needed for this project.

Oregon Law Center Neighborhood Legal Clinic: Weekly clinics are conducted from 4:30 to 6:30 p.m. in Portland. Each clinic services three to four clients. Common legal needs include collection, contract, landlord/tenant, unemployment, small estates and insurance defense issues. Currently, there are two clinics, one of which is geared toward Spanish-speaking clients.

Washington, Columbia, Clatsop, Tillamook and Yamhill County Volunteer Lawyers Project,
Legal Aid Services of Oregon *
230 NE 2nd Ave., Ste. A
Hillsboro, OR 97124
Contact: Leslie S Smith (503) 648-7163 ext. 105
Email: leslie.smith@lasoregon.org

Yamhill County Volunteer Lawyers Project,
Legal Aid Services of Oregon *
720 E 3rd St.
McMinnville, OR 97128
Contact: Lynda Bevier (503) 472-9561
Email: lynda.bevier@lasoregon.org

Lewis & Clark Legal Clinic *
310 SW 4th Ave., Ste. 1018
Portland, OR 97204
Contact: Richard Stoblee (503) 768-6500

OPPORTUNITIES: Assist and mentor students in representation of low-income clients in family law, consumer, and employment issues. Provide assistance in developing micro business.
TRAINING: Backup assistance provided by clinical professors.
COURSE: Must have BIF Course. Time commitment varies.
Lewis & Clark Law School
Small Business Legal Clinic (SBLC)
222 NW Fifth Street
Portland, OR 97209
Telephone: (503) 768-6940
Fax: (503) 546-8863
Contact: Professor Maggie Finnerty
Email: finnerty@lcclark.edu
Website: http://www.lclark.edu/law/law/shic.html

The Small Business Legal Clinic is an Oregon State Bar certified pro bono program. Staffed by a clinical law professor, and student interns, the SBLC assists low income, women and minority entrepreneurs with all manner of business transactional work, including:

- **Choice of entity and entity creation** (including drafting of articles of incorporation and organization, bylaws and partnership agreements)
- **Contract review and drafting** (real estate and leases, noncompetition and employment contracts, franchises, licensing agreements)
- **Debt problems** (obtaining, reviewing and correcting credit reports)
- **Business financing** (review of lending contracts and advice about loans)
- **Compliance with consumer, licensing and regulatory issues**
- **Copyright and trademark creation**

**OPPORTUNITIES:** In addition to its teaching clinic, the SBLC operates the SBLC pro bono project, providing opportunities for business transactions lawyers to meet with clients at the SBLC on selected days. The SBLC sets up appointments and runs conflict checks. Lawyers are able to specify time slots that work for them to come to the office and meet with pre-screened clients. Volunteer law students who earn pro bono hours credit are available to assist pro bono attorneys.

**TRAINING:** The SBLC runs brown-bag training series.

**OTHER:** Call Clinical Law Professor Maggie Finnerty for additional information on volunteer times and for additional information.

Oregon Advocacy Center, Disability Law
620 SW 5th Ave., 5th floor
Portland, OR 97204
Contact: Barbara Herget (503) 243-2081
Email: welcome@oradvocacy.org

**OPPORTUNITIES:** Representation of individuals with disabilities with issues related to special education, abuse and neglect, access and individual rights.

**TRAINING:** Mentor Attorneys available; other training as needed.

**OTHER:** OAC is a non-profit, law office providing free advocacy services to people who have a legal issue related to their disability. Volunteer attorneys need to have PLF coverage; time commitment varies as case requires.

Oregon State Bar Military Assistance Panel
5200 SW Meadows Rd.
Lake Oswego, OR 97035
Contact: Kay Pulju (503) 620-0222 ext. 402
Email: koufju@osbar.org
OPPORTUNITIES: Volunteer panelists should expect to give at least one hour of advice and counseling regarding the Servicemembers’ Civil Relief Act (SCRA), Oregon’s consumer protection laws, and general information on the rights of families with a member in active duty to a client free of charge. It is up to the attorney and client to decide whether to continue the attorney/client relationship beyond the pro bono consultation.

TRAINING: OSB provides free video training sessions and written materials covering specific legal issues addressed by SCRA and applicable provisions of related areas of law.

OTHER: The state bar will maintain a list of pro bono attorneys and lawyers offering reduced fees who are available to assist Oregon’s mobilized service members and their dependents. The list will be available to both the National Guard’s JAG Corps and individual military personnel.

St. Andrew Legal Clinic, Family Law
807 NE Alberta St
Portland, OR 97211
Contact: Joel Overland (503) 281-1500

232 NE Lincoln St, Ste. H
Hillsboro, OR 97124
Contact: Susana Alba (503) 646-1600

421 High St. #210
Oregon City, OR 97045
Contact: Elaine Hartm (503) 557-9800

OPPORTUNITIES: Provide intake and consultation services in the area of family law only in clinic setting.

TRAINING: Written information and on-site training. First visit spent observing only. Mentor attorneys available.

OTHER: PLF coverage not required for exempt attorneys; flexible time commitment, clinics held every Wednesday and alternate Tuesdays.

* Indicates that the Program is an OSB Certified Program and that the program may provide malpractice coverage for PLF Exempt Attorneys for work being done for the program. Attorneys should always check to make sure the coverage is still in effect.
Web-based Resources:

Oregon State Bar Volunteer Opportunities Directory – www.osbar.org/probono

Volunteer Match, a national directory of volunteer opportunities searchable by city, state, distance, type of volunteering, type of activity, duration of activity, etc. – www.volunteermatch.org

Women’s Services – many listings statewide at www.sboard.org/SHELTERS/OR.HTM

Catholic Charities – www.catholiccharitiesoregon.org

Health-related charities – www.healthcharities.org or www.oregonhospice.org

Environmental charities – www.solv.org or www.nature.org or local parks & rec agency

Habitat for Humanity – www.habitat.org
OREGON

Volunteers in Oregon

<table>
<thead>
<tr>
<th>Year</th>
<th>Millions</th>
</tr>
</thead>
<tbody>
<tr>
<td>1974*</td>
<td>N/A</td>
</tr>
<tr>
<td>1989*</td>
<td>N/A</td>
</tr>
<tr>
<td>2002</td>
<td>0.6</td>
</tr>
<tr>
<td>2003</td>
<td>0.6</td>
</tr>
<tr>
<td>2004</td>
<td>0.7</td>
</tr>
<tr>
<td>2005</td>
<td>0.8</td>
</tr>
<tr>
<td>2006</td>
<td>0.9</td>
</tr>
</tbody>
</table>

Oregon Volunteer Rate

<table>
<thead>
<tr>
<th>Year</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>1974*</td>
<td>N/A</td>
</tr>
<tr>
<td>1989*</td>
<td>N/A</td>
</tr>
<tr>
<td>2002</td>
<td>20.1%</td>
</tr>
<tr>
<td>2003</td>
<td>20.5%</td>
</tr>
<tr>
<td>2004</td>
<td>21.4%</td>
</tr>
<tr>
<td>2005</td>
<td>22.6%</td>
</tr>
<tr>
<td>2006</td>
<td>23.6%</td>
</tr>
</tbody>
</table>

Trends and Highlights

- In 2006, 940,000 Oregon volunteers dedicated 136.5 million hours of service.
- Oregon had the sixth-highest number of volunteer service hours per capita in the nation.
- Oregon was one of five states that experienced an increase in the percent of volunteers serving with a hospital or other health organization between 1999 and 2006.
- Oregon was one of 17 states in the nation in which providing professional services was one of the top four activities for volunteers.
- In addition to the 940,000 Oregon volunteers in 2006, almost 105,000 people participated informally by working with their neighbors to improve the community.
- Overall, 38.5% of people in Oregon engaged in civic life by volunteering, working with their neighbors, or attending public meetings.
- Oregon ranked 23rd in the nation on the Civic Life Index with a score of 15.7.

Oregon Volunteering by Age and Gender

<table>
<thead>
<tr>
<th>AGE</th>
<th>MEDIAN HOURS</th>
<th>STATE RATE</th>
<th>NATIONAL RATE</th>
<th>CATEGORY</th>
<th>MEDIAN HOURS</th>
<th>STATE RATE</th>
<th>NATIONAL RATE</th>
</tr>
</thead>
<tbody>
<tr>
<td>16 - 24 years</td>
<td>30</td>
<td>26.2%</td>
<td>23.4%</td>
<td>Young Adults</td>
<td>40</td>
<td>32.7%</td>
<td>29.4%</td>
</tr>
<tr>
<td>25 - 34 years</td>
<td>40</td>
<td>27.9%</td>
<td>24.7%</td>
<td>College Students</td>
<td>48</td>
<td>32.5%</td>
<td>29.8%</td>
</tr>
<tr>
<td>35 - 44 years</td>
<td>66</td>
<td>41.5%</td>
<td>33.3%</td>
<td>Baby Boomers</td>
<td>56</td>
<td>36.6%</td>
<td>32.2%</td>
</tr>
<tr>
<td>45 - 64 years</td>
<td>52</td>
<td>36.5%</td>
<td>32.2%</td>
<td>Middle-Aged</td>
<td>52</td>
<td>27.6%</td>
<td>24.3%</td>
</tr>
<tr>
<td>65+ years</td>
<td>72</td>
<td>35.8%</td>
<td>29.3%</td>
<td>Senior</td>
<td>72</td>
<td>33.8%</td>
<td>31.6%</td>
</tr>
</tbody>
</table>

*For more detailed state-level information on volunteering and civic life, go to www.nationalservice.gov
WEST REGION

Volunteers in the West

Trends and Highlights
- In 2006, 14.1 million Western volunteers dedicated 2 billion hours of service.
- Volunteers in the West served the most average hours per capita among all regions.
- The West's volunteer rate increased by 5 percentage points between 1989 and the present.
- Participation with education or youth-service organizations increased from a rate of 16.6% in 1989 to 29% in 2006.
- On average, 66% of volunteers in the West who served in 2005 continued to serve in 2006.
- In addition to the 14.1 million West volunteers in 2006, almost 1.2 million people participated informally by working with their neighbors to improve the community.
- Overall, 31.3% of people in the West engaged in civic life by volunteering, working with their neighbors, or attending public meetings.
- The West's Civic Life Index was 100.2, slightly higher than the national Civic Life Index of 100.

Western Volunteering by Age and Gender

<table>
<thead>
<tr>
<th>AGE</th>
<th>MEDIAN HOURS</th>
<th>REGIONAL RATE</th>
<th>NATIONAL RATE</th>
<th>CATEGORY</th>
<th>MEDIAN HOURS</th>
<th>REGIONAL RATE</th>
<th>NATIONAL RATE</th>
</tr>
</thead>
<tbody>
<tr>
<td>16 - 24 years</td>
<td>45</td>
<td>23.8%</td>
<td>23.4%</td>
<td>Age Group</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>25 - 34 years</td>
<td>40</td>
<td>24.6%</td>
<td>24.7%</td>
<td>College Students</td>
<td>48</td>
<td>30.5%</td>
<td>29.6%</td>
</tr>
<tr>
<td>35 - 44 years</td>
<td>52</td>
<td>32.8%</td>
<td>33.3%</td>
<td>Baby Boomers</td>
<td>60</td>
<td>32.6%</td>
<td>32.2%</td>
</tr>
<tr>
<td>45 - 54 years</td>
<td>60</td>
<td>32.1%</td>
<td>32.2%</td>
<td>Gender</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>55 - 64 years</td>
<td>72</td>
<td>30.8%</td>
<td>29.3%</td>
<td>Male</td>
<td>60</td>
<td>24.1%</td>
<td>24.3%</td>
</tr>
<tr>
<td>65+ years</td>
<td>104</td>
<td>25.1%</td>
<td>24.4%</td>
<td>Female</td>
<td>60</td>
<td>32.4%</td>
<td>31.6%</td>
</tr>
</tbody>
</table>

*For more detailed state-level information on volunteering and civic life, go to www.nationalservice.gov.
**Volunteers in the U.S.**

- Volunteers in the U.S. have increased since 1974.
- The number of volunteers peaked in 2001.

**U.S. Volunteer Rate**

- The volunteer rate has generally remained stable since 1974.
- The volunteer rate decreased slightly from 2001 to 2005.

**Trends and Highlights**

- In 2006, 61.2 million volunteers dedicated 9.1 billion hours of volunteer service.
- The nation's volunteer rate increased by 3.1 percentage points since 1974 and 6.5 percentage points since 1989.
- The percentage of volunteers serving in an education or youth services organization nearly doubled from 15.1% in 1989 to 27% in 2006.
- Data from 1989 to 2006 show that religious institutions are the most popular organization choice among volunteers.
- On average, two-thirds (66%) of volunteers who served in 2005 continued to serve in 2006.
- In addition to the 61.2 million volunteers in 2006, over 0.8 million people participated informally by working with their neighbors to improve their community.
- Overall, 21.2% of people in the nation engaged in civic life by volunteering, working with their neighbors, or attending public meetings.

*For more detailed state-level information on volunteering and civic life, go to www.nationalservice.gov.*
Total Hours Volunteered Per Year

Activities

Fundraise or sell items to raise money
Collect, prepare, distribute or serve food
Engage in general labor
Tutor or teach

Where Do People in the U.S. Volunteer?

1989
- Sport, hobby, cultural or arts: 7.8%
- Social or community service: 9.9%
- Educational or youth service: 15.1%
- Hospital or other health: 10.4%
- Religious: 27.4%
- Civic, political, professional or international: 13.2%

2006
- Sport, hobby, cultural or arts: 3.6%
- Social or community service: 13.1%
- Educational or youth service: 27.0%
- Hospital or other health: 7.9%
- Religious: 33.3%
- Civic, political, professional or international: 6.1%
- Other: 6.6%

How Civically Engaged Is the U.S.?

The Civic Life Index includes 12 indicators. For more information, go to www.nationalservice.gov.
Authors

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The mission of the Corporation for National and Community Service is to improve lives, strengthen communities, and foster civic engagement through service and volunteering. Each year, the Corporation provides opportunities for approximately 2 million Americans of all ages and backgrounds to serve their communities and country through Senior Corps, AmeriCorps, and Learn and Serve America.

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April 2007
CEO MESSAGE

It is my pleasure to present *Volunteering in America: 2007 State Trends and Rankings in Civic Life.*

For the second consecutive year, the Corporation for National and Community Service, in partnership with the Bureau of Labor Statistics and the U.S. Census Bureau, has produced a detailed breakdown of America’s volunteering habits and patterns by state and region. This report is a valuable tool for states, community leaders, and service organizations to expand the ranks of American volunteers and help build a culture of service and citizenship as President George W. Bush called for in his 2002 State of the Union Address.

Since issuing last year’s *Volunteering in America* report, the Corporation released another report that for the first time tracked volunteer rates over a 30-year period. The report illustrates how volunteer rates in the first decade of the 21st century are at a historic high—a trend not totally unexpected given the renewed national interest in volunteering and civic engagement after the terror attacks of 2001 and the hurricanes of 2005.

Indeed, these events have helped build Americans’ understanding that service and volunteering aren’t just nice things to do but are necessary parts of how our nation deals with its challenges. What’s more, the events taught the nation to look beyond occasional manmade and natural disasters to ongoing social and economic needs that are disasters in their own right: the 15 percent of American children who live below the poverty line, the 16 million children who need mentors, and the millions of elderly people who need help living independently in their homes. As the nation continues to face competing social needs, service and volunteering—as well as an increasingly engaged and active citizenry—are cost-effective ways to improve lives and strengthen communities.

This year’s report includes several new features and findings that present a deeper understanding of volunteering and its connection to the broader civic health of our nation. With input from national experts in civic engagement, we’ve created a new Civic Life Index based on such factors as voting rates, attendance at public meetings, and the prevalence of civic associations. This report also looks at volunteer retention and finds that one-third of volunteers do not continue to serve the following year—an alarming fact that calls out for action to improve volunteer management practices and strengthen non-profit infrastructure.

For the first time, this report also provides us with a sense of the level of “informal” volunteering in America—an additional 5.3 million Americans worked with their neighbors to fix or improve their communities. This trend shows that the strength of the American tradition of volunteering runs even deeper than previously measured. Informal volunteering is also factored into the Civic Life Index.

In short, out of the tragedy of 9/11 and the devastation of hurricanes has come an unmistakable good: a strong interest in volunteering and community involvement. But even though volunteer rates remain at historically high levels, we have a long road ahead to tap the full potential of American compassion. In traveling that road, reports such as this can be a useful tool in achieving our national goal of increasing the number of volunteers in America to 76 million by 2010.

David Eisner, Chief Executive Officer
Corporation for National and Community Service
VOLUNTEERING IN AMERICA: 2007 STATE TRENDS AND RANKINGS IN CIVIC LIFE

The mission of the Corporation for National and Community Service (the Corporation) is to improve lives, strengthen communities, and foster civic engagement through service and volunteering. In support of our mission, Volunteering in America: 2007 State Trends and Rankings in Civic Life provides a national, regional, and state analysis of volunteering trends, and represents a valuable step in building service and volunteering. In 2006, 61.2 million adults volunteered throughout the United States, representing 26.7 percent of the population. While this is a decline from the 65.4 million volunteers (28.8% of the population) in 2005, the national volunteer rate remains at historically high levels compared to past decades and close to the volunteer rate the year after the terrorist attacks of 9/11.

Today, Americans are making more time to improve their community through service. In fact, people of all ages are volunteering on college campuses, through religious communities, at schools, and in social service organizations in a wide range of volunteer activities. Many volunteers teach and mentor children, help older individuals live independently, and work with communities to recover from hurricanes and other disasters. By examining historical volunteer trends, it is clear that Americans are turning out in record numbers to volunteer.

The growth in volunteering from 1974 to 2006 has primarily been driven by three age groups: young adults; mid-life adults; and older adults. In particular, volunteer rates among the young adult population (16-19 years old) showed a dramatic rise between 1974 and today. While volunteer rates among young adults declined between 1974 and 1989 (20.9% and 13.4%, respectively), the percentage of young adults who volunteer almost doubled between 1989 and 2006 (from 13.4% to 26.4%, respectively). Similarly, the Higher Education Research Institute (HERI) recently reported that the percentage of entering college students who believe that it is “essential” or “very important” to help others who are in difficulty reached a 25-year high in 2005 and that rate slightly increased in 2006.¹

The mid-life adult population (45-64 years old) also experienced an increase in volunteering over the last 30 years. The mid-life adult volunteer rate declined between 1974 and 1989 (23.2% to 22%, respectively) but rebounded to 29.8 percent in 2006. Baby Boomers, who make up the majority of this group, are the primary reason for the increase in volunteering among mid-life Americans.

While the overall adult volunteer rate declined substantially from 1974 to 1989, the volunteer rate for older adults (ages 65 and older) actually increased during that period. In fact, older adults have been increasing their volunteer activities through the last three decades, going from 14.3 percent in 1974 to 23.8 percent in 2006.8

Recognizing that the civic health of our nation entails more than volunteering, the Corporation has begun measuring civic engagement through its Civic Life Index. This is the first time that the Corporation has attempted to gauge overall civic engagement both at the national and state levels. Created in conjunction with leading experts in community life, the index is based on volunteering, voting, neighborhood engagement, and civic infrastructure. As with the volunteer results, the hope is that tracking civic life over time will help build stronger, more vibrant communities.

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INTRODUCTION

The Corporation also realizes that volunteer retention and management are critical for community organizations to develop a stable volunteer base and increase volunteer participation. For the first time, we report that one out of every three people who volunteer in a year do not volunteer the following year. Of the 65.4 million volunteers in 2005, 20.9 million did not continue to volunteer in 2006. While the good news is that most volunteers choose to continue volunteering, the dramatic cycling of people in and out of volunteering reinforces the fact that volunteer management is critically important and that creating positive volunteer experiences is key to growing a widespread culture of service.

Volunteering in America: 2007 State Trends and Rankings in Civic Life is a powerful tool for states, community leaders, service organizations, and volunteers nationwide to develop a volunteer growth strategy, set goals to increase the level of individual engagement in volunteer activities, and build the infrastructure of nonprofits and communities to support more volunteer opportunities. This report also provides valuable information on civic engagement, which enhances our ability to bolster and maintain healthy, civically engaged communities. Together with our partners, including volunteer and service organizations across the country, we are committed to working toward a national goal of expanding the number of Americans who volunteer to 75 million by 2010.

Methodology

The Corporation has partnered with the U.S. Department of Labor's Bureau of Labor Statistics (BLS), the U.S. Census Bureau, and the USA Freedom Corps to add a volunteer supplement to the Current Population Survey (CPS). The CPS is a monthly survey of about 60,000 households (100,000 individuals). The U.S. Census Bureau administers the CPS volunteer supplement in September of each year to collect data on volunteering at the national, regional, and state levels. The volunteering supplement includes information on volunteering through an organization (formal volunteering), the frequency and intensity of volunteering, the types of organizations where individuals volunteer, and the volunteer activities performed. Starting in 2006, the CPS volunteer supplement also asked questions related to respondents' level of civic engagement in their community, including informal efforts such as working with neighbors to improve the community and attendance at public meetings.
Organization of the Report

This report is divided into two sections: A National Profile and State Rankings of Volunteering and Civic Life.

1. National Profile:
The national profile provides readers an opportunity to examine volunteering at the national level. In the profile of the Nation, we present a number of key findings on volunteering, including the numbers of volunteers and the volunteer rates for each of the past five years as well as historical trends. In addition, we present the hours and rates of the volunteer demographics, total volunteer hours, most common activities performed by volunteers, the types of organizations at which volunteer activities are performed, indicators of civic engagement, and a Civic Life Index score.

2. State Rankings of Volunteering and Civic Life:
This section consists of rankings and key indicators of volunteering and civic life. The section's maps and tables include state level volunteer rates, volunteering rate changes, volunteer retention rate, and an index of civic life that includes voting, working within the community, and civic infrastructure. Volunteering among key demographic groups, such as older adults, Baby Boomers, young adults and college students, is also ranked. The volunteer rankings are based on three years of data in order to increase the reliability of the estimates and ensure more accurate comparisons across states. For more information, please see the Technical Note.
UNITED STATES

Volunteers in the U.S.

Trends and Highlights
- In 2006, 61.2 million volunteers dedicated 8.1 billion hours of volunteer service.
- The nation's volunteer rate increased by 3.1 percentage points between 1974 and 2006 and 6.3 percentage points between 1989 and 2006.
- The percentage of volunteers serving in an education or youth-services organization nearly doubled from 15.1% in 1989 to 27% in 2006.
- Data from 1989 to 2006 show that religious institutions are the most popular organization choice among volunteers.
- On average, two-thirds (66%) of volunteers who served in 2005 continued to serve in 2006.
- In addition to the 61.2 million volunteers in 2006, over 5.3 million people participated informally by working with their neighbors to improve the community.
- Overall, 31.2% of people in the nation engaged in civic life by volunteering, working with their neighbors, or attending public meetings.

*For more detailed state-level information on volunteering and civic life, go to www.nationalservice.gov.

U.S. Volunteer Rate

U.S. Volunteering by Age and Gender

<table>
<thead>
<tr>
<th>AGE</th>
<th>MEDIAN HOURS</th>
<th>NATIONAL RATE</th>
</tr>
</thead>
<tbody>
<tr>
<td>16 - 24 years</td>
<td>39</td>
<td>23.4%</td>
</tr>
<tr>
<td>25 - 34 years</td>
<td>37</td>
<td>24.7%</td>
</tr>
<tr>
<td>35 - 44 years</td>
<td>38</td>
<td>33.3%</td>
</tr>
<tr>
<td>45 - 54 years</td>
<td>50</td>
<td>32.2%</td>
</tr>
<tr>
<td>55 - 64 years</td>
<td>60</td>
<td>29.3%</td>
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<tr>
<td>65 + years</td>
<td>100</td>
<td>24.4%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>CATEGORY</th>
<th>MEDIAN HOURS</th>
<th>NATIONAL RATE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Age Group</td>
<td></td>
<td></td>
</tr>
<tr>
<td>College Students</td>
<td>40</td>
<td>25.6%</td>
</tr>
<tr>
<td>Baby Boomers</td>
<td>52</td>
<td>32.2%</td>
</tr>
<tr>
<td>Gen X</td>
<td>60</td>
<td>29.3%</td>
</tr>
<tr>
<td>Male</td>
<td>52</td>
<td>24.3%</td>
</tr>
<tr>
<td>Female</td>
<td>50</td>
<td>31.6%</td>
</tr>
</tbody>
</table>
Total Hours Volunteered Per Year

Where Do People in the U.S. Volunteer?

1989

- Sport, hobby, cultural or arts: 7.9%
- Social or community service: 9.9%
- Religious: 37.4%
- Civic, political, professional or international: 13.2%

2006

- Educational or youth services: 13.1%
- Civic, political, professional or international: 6.6%
- Religious: 35.3%
- Hospital or other health: 7.9%

How Civically Engaged Is the U.S.?

- Attended public meeting: 9.0% 6.6%
- Worked with neighbors to improve the community: 8.0%
- Voted in 2006 presidential election: 59.3%
- Voted in 2006 midterm election: 37.0%

Note: The Civic Life Index includes 13 indicators. For more information, go to www.nationalservice.gov.
VOLUNTEER RATES BY STATE

This map illustrates the differences among state volunteer rates. In 2006, 61.2 million Americans volunteered, representing 26.7% of the adult population. Between 2004 and 2006, the average state volunteer rates ranged from 17.5% to 45.9%.
VOLUNTEER RATES BY STATE

This table displays a state-by-state comparison of volunteer rates. States are listed in order of the highest volunteer rate to the lowest. As shown, states varied greatly in their reported volunteer rates over the three-year period, ranging from a high of 45.9% to a low of 17.5%.

<table>
<thead>
<tr>
<th>RANK</th>
<th>STATE</th>
<th>RATE</th>
<th>RANK</th>
<th>STATE</th>
<th>RATE</th>
<th>RANK</th>
<th>STATE</th>
<th>RATE</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Utah</td>
<td>45.9%</td>
<td>17</td>
<td>Michigan</td>
<td>32.2%</td>
<td>34</td>
<td>New Mexico</td>
<td>27.8%</td>
</tr>
<tr>
<td>2</td>
<td>Nebraska</td>
<td>43.4%</td>
<td>19</td>
<td>New Hampshire</td>
<td>32.0%</td>
<td>34</td>
<td>Texas</td>
<td>27.8%</td>
</tr>
<tr>
<td>3</td>
<td>Minnesota</td>
<td>40.4%</td>
<td>20</td>
<td>Missouri</td>
<td>31.8%</td>
<td>37</td>
<td>Delaware</td>
<td>26.3%</td>
</tr>
<tr>
<td>4</td>
<td>Alaska</td>
<td>38.8%</td>
<td>21</td>
<td>District of Columbia</td>
<td>31.3%</td>
<td>38</td>
<td>California</td>
<td>25.5%</td>
</tr>
<tr>
<td>5</td>
<td>Kansas</td>
<td>38.3%</td>
<td>22</td>
<td>Connecticut</td>
<td>30.7%</td>
<td>39</td>
<td>Tennessee</td>
<td>25.3%</td>
</tr>
<tr>
<td>6</td>
<td>Iowa</td>
<td>38.0%</td>
<td>23</td>
<td>Ohio</td>
<td>30.3%</td>
<td>40</td>
<td>Rhode Island</td>
<td>25.3%</td>
</tr>
<tr>
<td>7</td>
<td>Montana</td>
<td>37.7%</td>
<td>24</td>
<td>Oklahoma</td>
<td>30.3%</td>
<td>41</td>
<td>New Jersey</td>
<td>25.2%</td>
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<tr>
<td>8</td>
<td>Wyoming</td>
<td>37.3%</td>
<td>25</td>
<td>Kentucky</td>
<td>29.7%</td>
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<td>West Virginia</td>
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<tr>
<td>9</td>
<td>South Dakota</td>
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<td>Indiana</td>
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<td>Hawaii</td>
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<tr>
<td>9</td>
<td>Vermont</td>
<td>37.2%</td>
<td>27</td>
<td>Pennsylvania</td>
<td>29.5%</td>
<td>44</td>
<td>Arizona</td>
<td>24.9%</td>
</tr>
<tr>
<td>11</td>
<td>Wisconsin</td>
<td>36.5%</td>
<td>28</td>
<td>Maryland</td>
<td>29.4%</td>
<td>45</td>
<td>Arkansas</td>
<td>24.7%</td>
</tr>
<tr>
<td>12</td>
<td>North Dakota</td>
<td>35.6%</td>
<td>29</td>
<td>Illinois</td>
<td>29.0%</td>
<td>46</td>
<td>Georgia</td>
<td>24.4%</td>
</tr>
<tr>
<td>12</td>
<td>Washington</td>
<td>35.6%</td>
<td>30</td>
<td>North Carolina</td>
<td>29.0%</td>
<td>47</td>
<td>Mississippi</td>
<td>24.3%</td>
</tr>
<tr>
<td>14</td>
<td>Idaho</td>
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<td>31</td>
<td>South Carolina</td>
<td>28.6%</td>
<td>48</td>
<td>Florida</td>
<td>21.8%</td>
</tr>
<tr>
<td>15</td>
<td>Oregon</td>
<td>33.3%</td>
<td>32</td>
<td>Virginia</td>
<td>28.5%</td>
<td>49</td>
<td>Louisiana</td>
<td>21.2%</td>
</tr>
<tr>
<td>16</td>
<td>Maine</td>
<td>33.0%</td>
<td>33</td>
<td>Alabama</td>
<td>28.2%</td>
<td>50</td>
<td>New York</td>
<td>20.1%</td>
</tr>
<tr>
<td>17</td>
<td>Colorado</td>
<td>32.2%</td>
<td>34</td>
<td>Massachusetts</td>
<td>27.8%</td>
<td>51</td>
<td>Nevada</td>
<td>17.5%</td>
</tr>
</tbody>
</table>

Rankings are based on a three-year moving average.
VOLUNTEER RATE CHANGES FROM 1989 TO 2006

This map illustrates how state volunteer rates changed between 1989 and the present. Volunteer rates are currently at historically high levels, with 26.7% of the adult population volunteering in 2006, compared to 20.4% in 1989.
VOLUNTEER RATE CHANGES FROM 1989 TO 2006

This table displays a state-by-state comparison of volunteer rate changes between 1989 and the present. States are listed in order of the highest volunteer rate change to the lowest. Volunteer rate changes varied greatly across the states over this time period, ranging from an increase of 14.6 percentage points to a decrease of 3.8 percentage points.

<table>
<thead>
<tr>
<th>Rank</th>
<th>State</th>
<th>Rate Change</th>
<th>Rank</th>
<th>State</th>
<th>Rate Change</th>
<th>Rank</th>
<th>State</th>
<th>Rate Change</th>
</tr>
</thead>
<tbody>
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<td>18</td>
<td>Rhode Island</td>
<td>+9.3%</td>
<td>35</td>
<td>Mississippi</td>
<td>+6.2%</td>
</tr>
<tr>
<td>2</td>
<td>Alabama</td>
<td>+13.6%</td>
<td>19</td>
<td>Maryland</td>
<td>+9.2%</td>
<td>36</td>
<td>Oregon</td>
<td>+6.2%</td>
</tr>
<tr>
<td>3</td>
<td>Vermont</td>
<td>+12.9%</td>
<td>20</td>
<td>West Virginia</td>
<td>+9.0%</td>
<td>37</td>
<td>Maine</td>
<td>+5.9%</td>
</tr>
<tr>
<td>4</td>
<td>New Hampshire</td>
<td>+12.6%</td>
<td>21</td>
<td>North Carolina</td>
<td>+8.8%</td>
<td>38</td>
<td>Minnesota</td>
<td>+5.6%</td>
</tr>
<tr>
<td>5</td>
<td>Missouri</td>
<td>+11.8%</td>
<td>22</td>
<td>Colorado</td>
<td>+8.7%</td>
<td>39</td>
<td>Arizona</td>
<td>+5.4%</td>
</tr>
<tr>
<td>6</td>
<td>South Carolina</td>
<td>+11.6%</td>
<td>23</td>
<td>Montana</td>
<td>+8.2%</td>
<td>40</td>
<td>Georgia</td>
<td>+5.3%</td>
</tr>
<tr>
<td>7</td>
<td>Nebraska</td>
<td>+10.9%</td>
<td>24</td>
<td>Utah</td>
<td>+8.2%</td>
<td>41</td>
<td>Arkansas</td>
<td>+5.2%</td>
</tr>
<tr>
<td>8</td>
<td>Michigan</td>
<td>+10.7%</td>
<td>25</td>
<td>Pennsylvania</td>
<td>+7.7%</td>
<td>42</td>
<td>Wyoming</td>
<td>+5.1%</td>
</tr>
<tr>
<td>9</td>
<td>Kansas</td>
<td>+10.6%</td>
<td>26</td>
<td>California</td>
<td>+7.1%</td>
<td>43</td>
<td>Iowa</td>
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<tr>
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<td>New York</td>
<td>+6.9%</td>
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<tr>
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<tr>
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<td>+1.7%</td>
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<td>Nevada</td>
<td>+1.0%</td>
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<tr>
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<td>Texas</td>
<td>+6.5%</td>
<td>51</td>
<td>North Dakota</td>
<td>-3.8%</td>
</tr>
</tbody>
</table>

Rankings are based on a three-year moving average.
VOLUNTEER RATE CHANGES FROM 2002 TO 2006

This map illustrates how the state volunteer rates more recently changed between 2002 and 2006. The states have been classified into three categories: increase, nominal change, and decrease. The "increase" states had an increase higher than one percentage point in their volunteer rates. The "nominal change" states exhibited little to no change in their volunteer rates. The "decrease" states had a decline of greater than one percentage point.

Top States

1. District of Columbia
2. Massachusetts
3. New York
4. North Carolina
5. Rhode Island
6. West Virginia
7. Minnesota
8. Pennsylvania

Legend:

- Increase
- Nominal change
- Decrease
VOLUNTEER RATE CHANGES FROM 2002 TO 2006

This table displays a state-by-state comparison of volunteer rate changes between 2002 and 2006. States are grouped into three categories: increase, nominal change, and decrease. Volunteer rate changes show differences across the states over this time period, ranging from an increase of 2.6 percentage points to a decrease of 2.8 percentage points.

<table>
<thead>
<tr>
<th>STATE</th>
<th>RATE CHANGE</th>
<th>STATE</th>
<th>RATE CHANGE</th>
<th>STATE</th>
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</tr>
</thead>
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<td>Texas</td>
<td>-0.2%</td>
</tr>
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<td>New Mexico</td>
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<td>-0.9%</td>
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<td>-1.0%</td>
</tr>
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<tr>
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<td>-0.2%</td>
<td>Mississippi</td>
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</tbody>
</table>

Rankings are based on a three-year moving average.
VOLUNTEER HOURS

This map illustrates differences among the states in their average volunteer hours per state resident per year. Between 2004 and 2006, the nation had an average per capita of 36.5 hours. During this same period, the states' average volunteer hours per capita ranged from 22.1 hours to 51.9 hours.
VOLUNTEER HOURS

This table displays a state-by-state comparison of the average volunteer hours per state resident per year. States are listed in order of the highest average volunteer hours per capita to the lowest. Hours reported varied greatly across the states over this three-year period, ranging from 81.9 hours to 22.1 hours.

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<th>RANK</th>
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<td>Louisiana</td>
<td>22.1</td>
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</tbody>
</table>

Rankings are based on a three-year moving average.
VOLUNTEER RETENTION RATES

This map illustrates differences among the states in their volunteer retention rates. The retention rate is the percentage of volunteers who continue their service over more than one year. Of the 65.4 million volunteers in 2005, 44.5 million also volunteered in 2006, resulting in a retention rate of 68.1%. The remaining 31.9% of volunteers in 2005 did not serve in 2006.
VOLUNTEER RETENTION RATES

This table displays a state-by-state comparison of volunteer retention rates. The retention rate is the percentage of volunteers who continue their service for more than one year. States are listed from the highest to lowest volunteer retention rate. As shown, volunteer retention rates varied widely across the states, ranging from a high of 76.4% to a low of 47.2%.

<table>
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<th>Rank</th>
<th>State</th>
<th>Rate</th>
<th>Rank</th>
<th>State</th>
<th>Rate</th>
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<td>64.7%</td>
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<td>Mississippi</td>
<td>47.2%</td>
</tr>
</tbody>
</table>

Rankings are based on volunteer retention from 2004 to 2005 and 2005 to 2006.
CIVIC LIFE INDEX

The Civic Life Index includes 12 indicators in the following categories: Volunteering (volunteer rate, volunteer hours per capita, and regular volunteering), Neighborhood Engagement (attendance at public meetings [percent and frequency] and working with neighbors to improve the community [percent and frequency]), Voting (the 2004 Presidential election and 2006 Congressional mid-term election), and Civic Infrastructure (the number of large and small nonprofit organizations and religious institutions per capita). For more information, go to www.nationalservice.gov.

Top States

1. Montana
2. Vermont
3. Alaska
4. South Dakota
5. New Hampshire

118 and above 108 - 112 103 - 107 96 - 102 95 and below
CIVIC LIFE INDEX

This table displays a state-by-state comparison of the Civic Life Index. The Civic Life Index includes 12 indicators of civic engagement including volunteering, neighborhood engagement, voting and civic infrastructure. The score for the United States in 2006—the first year of the Civic Life Index—was set to 100, and all states were ranked based on their individual index score. The Civic Life Index varied greatly across the states, ranging from a high of 126 to a low of 86.3.

<table>
<thead>
<tr>
<th>RANK</th>
<th>STATE</th>
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<th>RANK</th>
<th>STATE</th>
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For more information on the Civic Life Index, go to www.nationalservice.gov.
OLDER ADULT VOLUNTEER RATES

This map illustrates differences among the states in their rates of volunteering among older adults (ages 65 years and older). From 2004 to 2006, the average national volunteer rate for older adults was 24.4%. During this same period, state volunteer rates for older adults ranged from 12.7% to 49.7%.
OLDER ADULT VOLUNTEER RATES

This table displays a state-by-state comparison of volunteer rates among adults (ages 65 years and older). As shown, volunteer rates among older adults varied widely across the states over the three-year period, ranging from a high of 49.7% to a low of 12.7%.

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Rankings are based on a three-year moving average.
BABY BOOMER VOLUNTEER RATES

This map illustrates differences among the states in their rates of volunteering among Baby Boomers (those born between 1946 and 1964). Between 2004 and 2006, the national average Baby Boomer volunteer rate was 32.2%. During this same period, state Baby Boomer volunteer rates ranged from 20.2% to 49.3%.

Top States

- Nevada
- Idaho
- Utah
- Minnesota
- Kansas
- Iowa
- Mississippi
- South Dakota
- Wisconsin
- Vermont

Legend:
- Rate = 44% and above
- Rate = 37% - 43%
- Rate = 32% - 36%
- Rate = 28% - 31%
- Rate = 27% and below

22 VOLUNTEERING IN AMERICA 2007
BABY BOOMER VOLUNTEER RATES

This table displays a state-by-state comparison of volunteer rates among Baby Boomers (those born between 1946 and 1964). Volunteer rates among Baby Boomers varied greatly across the states over the three-year period, ranging from a high of 49.3% to a low of 20.2%.

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</table>

Rankings are based on a three-year moving average.
YOUNG ADULT VOLUNTEER RATES

This map illustrates differences among the states in their rates of volunteering by young adults (ages 16 to 24). Between 2004 and 2006, the average national young adult volunteer rate was 23.4%. During this same period, state young adult volunteer rates ranged from 11.1% to 39%.
YOUNG ADULT VOLUNTEER RATES

This table displays a state-by-state comparison of volunteer rates by young adults (ages 16 to 24). States are listed in order of the highest young adult volunteer rate to the lowest. As shown, volunteer rates among young adults varied greatly across the states, ranging from a high of 39% to a low of 11.1%.

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</table>

Rankings are based on a three-year moving average.

25 VOLUNTEERING IN AMERICA 2007
COLLEGE STUDENT VOLUNTEER RATES

This map illustrates differences among state rates of volunteering by college students. From 2004 to 2006, the national college student volunteer rate was 29.6%. During this same period, the state college student volunteer rate ranged from 17.3% to 55.4%.

Top States

1. Utah
2. Idaho
3. Minnesota
4. Oklahoma
5. Colorado
6. Virginia
7. North Dakota
8. Nebraska

Legend:
- Rate = 43% and above
- Rate = 34% - 42%
- Rate = 30% - 33%
- Rate = 26% - 29%
- Rate = 25% and below
# COLLEGE STUDENT VOLUNTEER RATES

This table displays a state-by-state comparison of volunteer rates among college students. States are listed in order of the highest college student volunteering rate to the lowest. Volunteer rates among college students varied greatly across the states over the three-year period, ranging from a high of 55.4% to a low of 17.3%.

<table>
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<td>Delaware</td>
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<td>Virginia</td>
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Rankings are based on a three-year moving average.
Acknowledgments

The report's authors wish to acknowledge the contributions of many individuals to this study. We are thankful to the U.S. Census Bureau and the Bureau of Labor Statistics for providing data on volunteering. We are also grateful to Robert Putnam and Tom Sander for their input on the project and for providing us with insightful ideas on civic life. We especially want to recognize the members of our State Service Commissions and national service programs who provided valuable feedback and helped shape the development of this report, including Greg Webb, Scott Kimmell, Kathleen Joy, David Muraki, Maryalice Crofton, Kitty Burke, Claire Strohmeyer, John Gompertz and Michelle Hynes. Their thoughtful comments and recommendations contributed to improving the quality of the report. We thank David Reingold and Rebecca Nesbit for their partnership on the 1974 and 1989 data in the report. Finally, this report would not be possible without the valuable support of our colleagues. We thank the staff at the Corporation for National and Community Service who provided thoughtful advice and participated in the development and production of this report.

The Office of Research and Policy Development

The Office of Research and Policy Development (RPD) is part of the CEO’s Office within the Corporation for National and Community Service. RPD’s mission is to develop and cultivate knowledge that will enhance the mission of the Corporation and of volunteer and community service programs.
Related Research Reports on Volunteering


*Volunteer Growth in America: A Review of Trends Since 1974* (2006). Provides an in-depth look at volunteering over the past 30 years, with particular attention paid to changing historical volunteer patterns by select age groups.


*Volunteers Mentoring Youth: Implications for Closing the Mentoring Gap* (2006). Provides a greater understanding of the characteristics and traits that distinguish individuals whose volunteering includes mentoring youth from volunteers who do not mentor.

*Kidnapping Baby Boomers Volunteering* (2007). Describes volunteering trends for Baby Boomers and projections for older Americans. Also provides strategies to harness Baby Boomer’s experience and energy and identifies the factors likely to impact their decision to volunteer.


*Youth Helping America Series. Building Active Citizens: The Role of Social Institutions in Teen Volunteering* (2005). Explores the state of youth volunteering and the connections to the primary social institutions to which youth are exposed—family, schools, and religious congregations.

*Youth Helping America Series. Leveling the Path to Participation: Volunteering and Civic Engagement Among Youth from Disadvantaged Circumstances* (2007). Examines the attitudes and behaviors of young people from disadvantaged circumstances including volunteering and other forms of civic engagement.

To read or download our reports, visit [www.nationalservice.gov](http://www.nationalservice.gov)
Denise Cline

From: Denise Cline
Sent: Wednesday, June 06, 2007 9:08 AM
To: attorneykaradavis@yahoo.com; ppmaler@gordon-poliscer.com; mdirkm@teleport.com; seasley@gevirtzmenashe.com; Jennifer Niegel; sbgordon@gapac.com
Cc: (e) Carol DeHaven Skerjanec; Denise Cline
Subject: FW: OWLS cle materials - final

Heather Van Meter asked that I forward the entire set of written materials distributed at the May 4 OWLS CLE program to you before Friday’s meeting.

The program was approved for 3.25 elimination of bias credits. However, I did not approve CLE credit for the Panel B breakout session which focused on community and volunteer involvement. In the agenda packet that was mailed last week, I provided you with a copy of the written material from this session. Ms. Van Meter is seeking MCLE Committee review of my decision to deny credit for this breakout session.

The attachment to this message is the ENTIRE set of written materials from the program.

Let me know if you have any questions.

I’ll talk to you all on Friday.

Thanks,
Denise

-----Original Message-----
From: Van Meter, Heather [mailto:hvanmeter@williamskastner.com]
Sent: Thursday, May 24, 2007 3:00 PM
To: Denise Cline
Subject: FW: OWLS cle materials - final

Denise - I wanted to forward to you the final version of the CLE materials we used. I assume you can forward these to the members of the CLE committee prior to their meeting. Could you please provide me with the call-in information for that meeting?

Heather Van Meter
Attorney at Law
Williams Kastner
888 SW Fifth Avenue, Suite 600
Portland, OR 97204
Main: 503.228.7867
Direct: 503.944.6973
Fax: 503.222.7261
hvanmeter@williamskastner.com
www.williamskastner.com

7/9/2007
244
Denise Cline

From: Van Meter, Heather [hvanmeter@williampkastner.com]
Sent: Friday, June 08, 2007 1:50 PM
To: Denise Cline
Subject: RE: MCLE Committee

No problem, I completely understand. June and Rose Festival are a bad time to try to schedule things anyway. I had an Inns of Court meeting at our office this morning and only 2 people showed up. Separately, I was just working on a prosecution of Michel Wagner for the unauthorized practice of law, and in looking through the documents going back to 2000 or 2001 on it, your name was on there as a notary for his signature on the stipulated settlement. Small world!
Heather

From: Denise Cline [mailto:dcline@osbar.org]
Sent: Friday, June 08, 2007 12:44 PM
To: Van Meter, Heather
Subject: MCLE Committee

Heather,

I apologize for the screw-up with today's conference call. Apparently, the one person we were waiting on had dialed in to the conference call but was never connected to the rest of us. How frustrating!!!

Anyway, just wanted to let you know that I'm trying to get this meeting rescheduled and as soon as I do, I'll let you know the new meeting date.

Sorry for the confusion.

Thanks.
Denise

Denise Cline
MCLE Administrator
Oregon State Bar
5200 SW Meadows Road, Lake Oswego, OR 97035
(503) 620-0222, ext. 315
FAX: (503) 598-6915
e-mail: dcline@osbar.org
http://www.osbar.org
Denise Cline

From: Denise Cline
Sent: Wednesday, June 20, 2007 4:28 PM
To: 'attorneykaradavis@yahoo.com'; 'ppalmer@gordon-polscer.com'; 'mdirkm@teleport.com'; 'seasley@gevurtzmenashe.com'; Jennifer Niegel; 'sbgordon@gapac.com'
Cc: (e) Carol DeHaven Skerjanec; Denise Cline
Subject: MCLE Committee meeting - rescheduled

The MCLE Committee meeting that was to be held on 6/8 has been rescheduled. The new date is Friday, 6/29 at noon via teleconference.

If you are unable to participate in the conference call, please let me know as soon as possible. Otherwise, I will talk to you all on Friday, 6/29.

Thanks.
Denise

Denise Cline
MCLE Administrator
Oregon State Bar
5200 SW Meadows Road, Lake Oswego, OR 97035
(503) 620-0222, ext. 315
FAX: (503) 598-6915
e-mail: dcline@osbar.org
http://www.osbar.org
Denise Cline

From: Denise Cline
Sent: Friday, June 22, 2007 8:36 AM
To: 'Heather J Van Meter'
Subject: MCLE Committee meeting

Heather,

The MCLE Committee meeting scheduled for 6/8 has been rescheduled. The new date is Friday, June 29. It will be at noon via teleconference. The conference call information is the same as I provided previously.

Please let me know if you want to participate.

Thanks.
Denise

Denise Cline
MCLE Administrator
Oregon State Bar
5200 SW Meadows Road, Lake Oswego, OR 97035
(503) 620-0222, ext. 315
FAX: (503) 588-6915
e-mail: dcline@osbar.org
http://www.osbar.org
Minutes from the MCLE Meeting (June 29, 2007)

Present: Kara Davis, Pamela Palmer, Denise Cline, Jennifer Nieg, Stace Gordon and Michael McNichols

Absent: Carol Skerjanec and Saville Easley

1. Approval of Minutes of the March 2, 2007 Meeting – Approved.

2. Statement of Revenue and Expenses – Denise explained the increased postage expenses were related to mailing of notices of suspension to the court and attorneys for failure of the particular attorneys to complete CLE.

3. Requests for Committee Review – CLE Accreditation
   a. Oregon Women Lawyers (Van Meter) – The Committee denied the request for credit on the basis that the program focused on obtaining business by serving on boards and volunteering for various pro bono opportunities rather than on elimination of bias and/or personal management assistance.
   b. CLE Authority (La Casella) –
      i. Financial Management for First Year Attorneys – The Committee denied the request on the basis that the program focused primarily on personal financial management.
      ii. Impression Management for Lawyers – The Committee denied the request on the basis that the program was not focused on the use of specific skills for attorneys.
      iii. Reading People: How to Understand People and Predict Their Behavior - The Committee denied the request on the basis that the program was not focused on the use of specific skills for attorneys.

4. Requests for Committee Review – Late fees (Rees) – The Committee denied Ms. Rees’s request for a waiver of the late fee as it was not based on the type of hardship typically approved by the Committee.
Van Meter, Heather

From: Denise Cline [dccline@osbar.org]
Sent: Wednesday, May 02, 2007 9:02 AM
To: Van Meter, Heather
Subject: RE: Oregon Women Lawyers Spring CLE - application for CLE credit

Heather,

Thanks for providing the requested information regarding Friday's program.

The following sessions qualify for elimination of bias credit:

1:00-2:15
2:30-3:45 - session A
4:00-4:45

Session B, Community and Volunteer Involvement, does not qualify for any type of CLE credit. This session focuses how to advance one's legal career through volunteer service.

Please see MCLE Rule 8.1(a) regarding review of decisions of the MCLE Administrator.

Also, the MCLE program database is accessible via our website at www.osbar.org.

A copy of the application will be mailed to you today. The program is approved for 3.25 elimination of bias credits.

Thanks,
Denise

-----Original Message-----
From: Van Meter, Heather [mailto:hvanmeter@wkg.com]
Sent: Tuesday, May 01, 2007 12:18 PM
To: Denise Cline
Cc: Kellie Johnson; catherine@oregonwomenlawyers.org
Subject: Oregon Women Lawyers Spring CLE - application for CLE credit

Denise - As I mentioned on the telephone with you today, I am extremely surprised and disappointed to hear your preliminary opinion that our application for CLE credit did not appear to be entitled to any CLE credit. As we talked, you indicated that you were "in the process of reviewing" the written materials we submitted. You also mentioned that you received a call from OWLS executive director Catherine Ciarlo this morning, and that you had "reviewed" our submission briefly yesterday. It sounded as though you had not spent any significant time reviewing our application at the time we talked. I am sure that once you have an opportunity to review our application you will find that our CLE is entitled to the EOB CLE credit for which we applied.

As you requested, below is additional information on the speakers and topics for the CLE. I also restate the applicable MCLE rules for your review. I would appreciate your getting back to me as soon as possible, and if your response remains the same as your "preliminary opinion," I would appreciate your providing me with your supervisor's contact information so that I may renew our application with appropriate supervisory personnel, and I would appreciate your sending me copies of the MCLE applications for all of this year's EOB CLEs so that I may compare our program with those previously receiving EOB CLE credit.
5.1 Group CLE Activities. Group CLE activities shall satisfy the following:

(a) The activity must have significant intellectual or practical content with the primary objective of increasing the participant's professional competence as a lawyer; and (b) The activity must deal primarily with substantive legal issues, legal skills, practice issues, or legal ethics and professional responsibility; and (c) The activity must be offered by a sponsor having substantial, recent experience in offering continuing legal education or by a sponsor that can demonstrate ability to organize and effectively present continuing legal education. Demonstrated ability arises partly from the extent to which individuals with legal training or educational experience are involved in the planning, instruction, and supervision of the activity; and (d) The activity must be primarily intended for presentation to multiple participants, including but not limited to live programs, video and audio presentations (including original programming and replays of accredited programs), satellite broadcasts and on-line programs; and (e) The activity must include the use of thorough, high-quality written materials, unless the MCLE Administrator determines that the activity has substantial educational value without written materials. (f) The activity must have no attendance restrictions based on race, color, gender, sexual orientation, religion, geographic location, age, handicap or disability, marital, parental or military status or other classification protected by law, except as may be permitted upon application from a provider or member, where attendance is restricted due to applicable state or federal law.

5.5 Ethics and Elimination of Bias.

(a) In order to be accredited as an activity in legal ethics under Rule 3.2(b), an activity shall be devoted to the study of judicial or legal ethics or professionalism, and shall include discussion of applicable judicial conduct codes, disciplinary rules, or statements of professionalism. Of the six hours of ethics credit required by Rule 3.2(b), one hour must be on the subject of a lawyer's statutory duty to report child abuse (see ORS 9.114). (b) In order to be accredited as an activity pertaining to the elimination of bias under Rule 3.2(b), an activity shall be directly related to the practice of law and designed to educate attorneys to identify and eliminate from the legal profession and from the practice of law, biases against persons because of race, gender, economic status, creed, color, religion, national origin, disability, age or sexual orientation. (c) Portions of activities may be accredited for purposes of satisfying the ethics and elimination of bias requirements of Rule 3.2, if the applicable content of the activity is clearly defined.

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

With respect to our plenary panel at 1:00 p.m., Corbett Gordon, Elizabeth Harchenko and Donna Sandoval Bennett will discuss how women and minority lawyers in Oregon can and should direct their legal practices and law-related activities to eliminate the "glass ceiling," reduce bias in the legal profession against women and minorities, work toward a bias-free workplace and legal system, improving awareness of bias issues in the practice of law and in the legal system (statistical and anecdotal information), promote equitable treatment of women and minority clients within the legal system, and will discuss the means to effect a bias-free legal system including structuring the practice of law in such a way to be more female- and minority-friendly, including a discussion of applicable ethical standards, BOG rules and goals on Pro Bono service and non-discrimination, including Donna Bennett discussing employment non-discrimination laws including the new non-discrimination law on sexual orientation. This session relates to "practice issues," "substantive legal issues," "legal skills," and "legal ethics and professional responsibility" as required by MCLE Rule 5.1, and also constitutes "an activity directly related to the practice of law and designed to educate attorneys to identify and eliminate from the legal profession and from the practice of law, biases
against persons because of race, gender.. and sexual orientation" pursuant to MCLE Rule 5.5(b). This panel is entitled to 1.25 EOB CLE credits.

With respect to our "Making the Case for Your Worth" panel at 2:30, Stella Manabe, Deb Guyol and Judge Tennyson will discuss the cultural divide among women and minorities in the legal profession in determining their "worth" for salary and bonus and other compensation purposes, including the gender and race gap in salary and other forms of compensation within the legal profession, the fears that women and minorities have in asking for "equal pay for equal work," federal and state laws prohibiting gender- and race-based variations in compensation, OSB BOG aspirational goals and non-discrimination statements relating to legal compensation, the cultural reasons that women and minorities may be compensated less for the same work, how to determine the appropriate compensation (research skills), and related discussions. This session relates to "practice issues," "substantive legal issues," "legal skills," and "legal ethics and professional responsibility" as required by MCLE Rule 5.1, and also constitutes "an activity directly related to the practice of law and designed to educate attorneys to identify and eliminate from the legal profession and from the practice of law, biases against persons because of race, gender.. and sexual orientation" pursuant to MCLE Rule 5.5(b). This panel is entitled to 1.25 EOB CLE credits.

With respect to our "Community and Volunteer Involvement" panel at 2:30, Elaine Hallmark, Helle Rode, and Penny Sperner will discuss how fulfilling the OSB BOG aspirational goal for pro bono service can help women and minority attorneys in advancing their legal career, how pro bono service can be used and directed towards a legal practice area, programs available for these purposes including low income legal clinics and taking on low income cases for improvement of client and trial skills for new lawyers (e.g. discrimination in housing cases for consumer/disability lawyers, family law pro bono cases for new family law attorneys, Cascade AIDS Clinic volunteering for increasing client contacts and referral business), advising on non-profit companies and community boards to improve legal skills and increase community contacts to develop legal practice (e.g. getting on Oregon Zoo board as a bond/public finance lawyer and being on school board as a school/disability law lawyer), how women and minority lawyers particularly can use their unique skills and backgrounds to advance their legal career through community and volunteer involvement (e.g. Hispanic Bar Association, National Bar Association, Hispanic Business Owners Association, ABA Commission on Women in the Profession, etc.), and providing a "decision tree" for helping attorneys decide whether and when to get involved in particular activities. This session relates to "practice issues," "legal skills," and "legal ethics and professional responsibility" as required by MCLE Rule 5.1, and also constitutes "an activity directly related to the practice of law and designed to educate attorneys to identify and eliminate from the legal profession and from the practice of law, biases against persons because of race, gender.. and sexual orientation" pursuant to MCLE Rule 5.5(b). This panel is entitled to 1.25 EOB CLE credits.

With respect to our keynote address by Kate Brown on "Women as Leaders in Law, Society & Politics," Ms. Brown will discuss her personal experiences as a woman lawyer and political leader and the first female Senate Majority Leader in Oregon, identifying the bias she faced in the legal and governmental arenas, how she broke through the "glass ceiling" for women lawyers and women in politics, how her gender helped and hindered her progress, providing tips for other women lawyers in eliminating/avoiding/handling the biases faced, what to expect along the way for women lawyers towards partnership in law firms or as sole practitioners or within governmental agencies, and also discussing the new legislation on sexual orientation equality and non-discrimination in Oregon and how this legislation fits in with Oregon's pre-existing non-discrimination laws. This session relates to "practice issues," "substantive legal issues," "legal skills," and "legal ethics and professional responsibility" as required by MCLE Rule 5.1, and also constitutes "an activity directly related to the practice of law and designed to educate attorneys to identify and eliminate from the legal profession and from the practice of law, biases against persons because of race, gender.. and sexual orientation" pursuant to MCLE Rule 5.5(b). This session is entitled to 0.75 EOB CLE credits.

As I mentioned on the phone, I am both an attorney as well as a board and executive committee member of Oregon Women Lawyers, as well as co-chair of the Oregon Women Lawyers Spring CLE. I appreciate your considering our application materials and this additional information and getting back to me as soon as possible.

Heather J. Van Meter  mailto:hvanmeter@wkg.com
Attorney
OREGON STATE BAR
Board of Governors Agenda

Meeting Date: September 28, 2007  
Memo Date: September 12, 2007  
From: Legal Services Program (LSP) Committee  
Re: Increase in Filing Fee Administrative Funds

Action Recommended

The Legal Services Program (LSP) LSP Committee is asking the OSB Board of Governors to approve an increase in the filing fee administrative fee from $90,000 to $108,000 pursuant to the attached 5 year projected budget. This increase will start in 2008.

Background

The LSP Committee is making this recommendation Pursuant to LSP Standards and Guidelines II.B.2 in which the OSB LSP Committee is responsible for making recommendations to the OSB Board of Governors regarding the Legal Services Program including disbursement of funds and the Legal Services Program budget.

In 1997, the Oregon Legislature appropriated the filing fee revenues for legal services to the poor to the Oregon State Bar and required that it create a Legal Services Program. At that time an administrative fee was established at $90,000 to pay for the bar’s overhead to coordinate the Legal Services Program. This fee is taken monthly in the amount of $7,500 from the filing fee remittance prior to the filing fee being distributed to the legal aid providers. Because of increased costs in overhead including staffing and indirect cost allocations, the LSP Committee is requesting an increase in the annual administrative fee from $90,000 to $108,000. The attached budget reflects a proposed Legal Services Program budget for 2007 through 2012. Pursuant to the budget the increase in administrative fee should sustain the Legal Services Program overhead through 2012.
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OREGON STATE BAR
Board of Governors Agenda

Meeting Date: September 28, 2007
Memo Date: September 12, 2007
From: Legal Services Program Committee
Re: General Fund Appropriation

Action Recommended

The Legal Services Program (LSP) Committee is making the following recommendation to the Board of Governors regarding the one-time $700,000 General Fund appropriation to the OSB to fund increased costs for legal aid during the 2007-09 Biennium.

1. That the $700,000 in general fund money be sent to the OSB Legal Services Program to be distributed over the biennium pursuant to the existing LSP Standards and Guidelines;

2. That the funds be held and invested by the OSB, with earnings going back into the Legal Services Program, until the five legal aid service providers complete a strategic planning process and return to make a new recommendation.

3. That a small portion of the funds be distributed over the next six months resulting in a $2,390 monthly increase to the Center for Nonprofit Legal Services (Jackson County) and $1,730 monthly increase to Lane County Law and Advocacy Center;

Background

During the 2007 Legislative Session it was decided that the legal aid programs should get more funding and Senate Bill 5549 Section 36 (attachment A) was enacted. Section 36 appropriated to the Judicial Department, out of the General Fund, the amount of $700,000, which is to be forwarded as a one-time grant to the OSB for legal aid services. House Bill 2331 was also enacted which increases the filing fee amounts going to legal aid starting on July 1, 2009. This increase in filing fee will increase revenue to legal aid by $700,000 per biennium. The OSB Legal Services Program received a letter from David Thornburgh, Executive Director of the Oregon Law Center requesting that the LSP Committee make recommendations to the Board of Governors regarding the $700,000 one-time grant (attachment B).

Pursuant to LSP Standards and Guidelines II.B.2 the OSB LSP Committee is responsible for making recommendations to the OSB Board of Governors regarding the Legal Services Program including disbursement of funds and legislative issues. The recommendations are discussed as follows:
1. Giving the $700,000 general fund money to the OSB Legal Services Program to be distributed over the biennium pursuant to the existing LSP Standards and Guidelines.

The ORS 9.572 directed the OSB to establish a Legal Services Program funded from filing fees collected under ORS 21.480. The $700,000 one-time grant is coming to the bar but is not directed to go to the OSB Legal Services Program. The LSP Committee recommends to the OSB Board of Governors that the general fund appropriation of $700,000 be overseen and distributed by the existing Legal Services Program and LSP Standards and Guidelines.

2. Distribute a portion of the funds to the Center for Nonprofit Legal Services (Jackson County) and Lane County Law and Advocacy Center with the remainder held by the OSB until legal aid completes a strategic planning process.

The five legal aid providers (Columbia County Legal Aid included) are participating in a strategic planning process to evaluate client needs and to make recommendations to distribute or redistribute existing and new funding to provide relatively equal access to legal services for low-income clients regardless of where they live. This process is scheduled to be completed before the start of 2008. The legal aid providers prefer that the bar hold the $700,000 one-time grant, with one exception, until the strategic planning process has been completed. At that time they will return and make a new recommendation to the LSP Committee. The exception is to distribute a limited amount of funds to the Lane and Jackson County (Center for Nonprofit Legal Services) programs to alleviate the low salaries paid by these programs. The low salaries create an emergency situation related to recruitment and retention of employees that needs to be addressed. The legal aid providers asked that the distribution be completed by dividing the $700,000 by 24 then further divide the amount by the percentage of the total that the Lane and Jackson County programs historically have received. The distribution will happen the first six months on a monthly basis. LSP staff calculated the increase and determined that Lane County would receive a monthly increase of $2,390 and Jackson County would receive a monthly increase of $1,730.

Finally, the LSP Committee is asking that the $700,000 not disbursed be invested by the OSB in the Local Government Investment Pool through the State Treasury Department with the earnings going back into the Legal Services Program.
74th OREGON LEGISLATIVE ASSEMBLY—2007 Regular Session

Enrolled

Senate Bill 5549

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with presession filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Budget and Management Division, Oregon Department of Administrative Services)

CHAPTER ....................

AN ACT

Relating to state financial administration; appropriating money; limiting expenditures; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. { + In addition to and not in lieu of any other appropriation, there is appropriated to the Emergency Board, for the biennium beginning July 1, 2007, out of the General Fund, the amount of $30,000,000 for the purposes for which the Emergency Board lawfully may allocate funds. + }

* * *

SECTION 35b. { + In addition to and not in lieu of any other appropriation, there is appropriated to the Oregon Military Department, for the biennium beginning July 1, 2007, out of the General Fund, the amount of $500,000, which may be expended for costs associated with the Oregon Military Emergency Financial Assistance Fund established by ORS 396.364. + }

SECTION 36. { + In addition to and not in lieu of any other appropriation, there is appropriated to the Judicial Department, for the biennium beginning July 1, 2007, out of the General Fund, the amount of $700,000, which may be expended for a one-time grant to the Oregon State Bar for legal aid services. + }

* * *

SECTION 42. { + This 2007 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2007 Act takes effect on its passage. + }

Attachment A

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MEMORANDUM

To: Judith Baker
Fm: David Thornburgh
Re: Distribution of General Fund Money
Da: September 12, 2007

The executive directors of Lane County Legal Aid and Advocacy Law Center, Center for Nonprofit Legal Services (Jackson County), Legal Aid Services of Oregon (LASO) and Oregon Law Center (OLC), met by phone to discuss what we would ask the Oregon State Bar to do with the $700,000 “one-time grant to the Oregon State Bar for legal aid services” for the biennium. As you know, Michael Mason, working as a lobbyist employed by the Oregon Law Center, in coordination with Susan Grabe, Public Affairs Director for the Oregon State Bar, convinced the ‘07 session that the legal aid programs should get more funding. Attached is a copy of the relevant sections of SB 5549, the committee notes from the 6/21/07 meeting of the Joint Committee on Ways and Means and the materials distributed by Michael Mason and Susan Grabe to leadership, committee members and other members of the legislature to document the unmet need.

We ask for the following: that the $700,000 in general fund money be sent to the OSB Legal Services Program to be distributed over the biennium pursuant to the existing standards and guidelines; that the current annual presumptive funding amount in the standards and guidelines be increased by $350,000, with continuing future cost-of-living adjustments, to achieve the legislative intent; that the OSB Legal Services Program governing committee distribute a smaller amount over the next six months to address the emergency needs described below; and that that the OSB Legal Services Program prudently invest the larger amount for distribution over the remainder of the biennium pursuant to a vote of the OSB Legal Services Program governing committee taken after the programs complete the current strategic planning process.

The four legal aid services providers, described above, are currently participating in a strategic planning process to evaluate client needs and to make recommendations to distribute or redistribute existing and new funding to provide relatively equal access to legal services for low-income clients regardless of where they live or their status, as recommended by the existing standards and guidelines of the OSB Legal Services Program. Tom Matsuda is asking the Columbia County Legal Aid to participate, but the most active member of that board recently became a judge. The strategic planning process requires gathering extensive updated information about client demographics, client needs and projected future trends. This process is scheduled to be completed before the start of 2008. This group prefers to hold most of the increased funding until this strategic planning process has been completed so that the process can be used to help

Attachment B

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the group create a recommendation to the governing body of the OSB Legal Services Program and so the governing body can use the updated data to help guide it in decision making.

These programs believe that the low salaries in the Lane and Jackson County programs create an emergency situation related to recruitment and retention of employees that needs to be addressed as quickly as possible and therefore support making a distribution to these programs over the next six months that would be consistent with maintaining the status quo while the programs finish the strategic planning process. This group recommends taking the $700,000 that the legislature intended to have spent on legal aid service programs over this biennium and dividing this amount by 24, then further dividing the amount by the percentage of the total that the Lane and Jackson County programs historically received, and then distributing the first six months on a monthly basis to them. The money that might have otherwise been distributed to LASO and OLC would be retained and prudently invested by OSB until the programs submit a recommendation after completion of their strategic planning process.

Since this group did not include a representative from Columbia county Legal Aid (CCLA), the independent program in St. Helens, we did not make a recommendation on how to handle the percentage of the total fees that might have otherwise have been sent to CCLA. Tom Matsuda is in the process of contacting CCLA discern whether there is an emergency, similar to the one faced in Lane and Jackson Counties, that would justify releasing some of the funding over the next six months before the strategic planning process has been completed. The four programs described above will invite the CCLA to join them in making a recommendation after the end of the strategic planning process.

At the end of the strategic planning process, this group will return to make a new recommendation for distributing the remaining amount over the biennium and provide detailed data that may help the governing committee in evaluating whether the recommendation is appropriate.

Please let us know how we can help you, staff at OSB, committee members or the Board of Governors understand this proposal and why we are making it.
OREGON STATE BAR
Board of Governors Agenda

Meeting Date: September 27-28, 2007
Memo Date: September 14, 2007
From: Ward Greene, chair, Budget & Finance Committee
Re: New Bar Center

Action Recommended

No action required. This is an update on the matters surrounding the construction and financing of the new building. The Budget & Finance Committee may present recommendation(s) to the board based on new and current information discussed at its meeting.

Background

Vacating the Old/Move to New Bar Center

Opus still uses December 20 as the completion and occupancy date of the new building even though its construction team states it is behind schedule. The bar has planned moving for the days before and after that date with staff in their new offices on December 26. Opus has agreed to permit the security, A/V, and telephone companies with whom the bar has contracts to install its systems prior to the occupancy date, but has not agreed to allow the installation and moving of office furniture and modular equipment before then.

There are CLE’s at the old bar center the last week of December, and Mike Kelley (the new owner) has been informed the last days in the bar center will be between December 31 and mid January. The bar must give 60 days notice to Kelley of the bar’s vacating, so the bar must have a good idea of access to the new building between November 1 and 15.

Status of Construction

Opus states it is behind schedule because of various delays over the tenant improvements drawings and resolution to changes (the bar had its TI drawings to Opus within the expected period). Opus has added additional crews at times to catch up, and has stated that by early November will know if it still can attain its December 20 completion date.

Agreement with Opus

Opus withdrew its addendum to relinquish its right to extend the closing date on the sale of the building if the bar would agree the commencement date on the master lease would be one-year later. The Budget & Finance Committee met via conference call on
August 10 to discuss other options. An update of those options will be discussed at the committee meeting.

The risk to the bar with the existing agreement is that Opus can delay closing on the sale of the building at its discretion for up to 12 months, and charge the bar (including the PLF space) rent at $99,305 per month. The disadvantage to the bar is that a closing beyond March 6, 2008 means the terms of its existing loan commitment will expire.

Change Orders /Tenant Improvements

The bar’s excess TI allowance on the TI drawings approved by the city is $1,115,948. The allowance included in the $35 allowance of the $255 purchase price is $1,290,520. With the costs excluded in the agreement (telephone system, audio/visual system, security system, architects and consultants, furniture, et al), the total costs added to the building will approximate $2.34 million – about the same amount presented at the last Budget & Finance Committee meeting. An updated schedule will be presented at the board meeting.

The PLF’s excess TI allowance is $510,286. The dollar amount included in the $40 allowance in the building cost was $761,120.

The agreement with Opus states that the excess allowance is to be deposited with Opus. On September 5, the bar sent $1,115,948 to Opus. The PLF excess has not been deposited yet. The PLF indicated it is not in position to deposit the funds now and has asked the bar to make the deposit on its behalf. The terms of that arrangement are being negotiated by committee members and the result will be reported at the board meeting.

The bar executed change orders totaling $308,520 for such additions as the flag pole and exterior monument, the additional restrooms, additions to the main conference rooms, and changes to the main entrances shortly after construction began. Additional change orders are expected before the building is finished. The latest building cost included a $100,000 allowance for change orders.

Property Tax Exemption

An “Application for Real and Personal Property Tax Exemption for Lease or Lease-Purchase Property Owned by a Taxable Owner and Leased to an Exempt Public Body, Institution, or Organization” has been filed with Clackamas County. The application is for the bar to retain its real and personal property exemption while in the existing bar center. A critical condition of the exemption is to provide proof that the rent the bar is paying is below “market rent.” The bar had not received notification as of the date of this memo.

PLF Lease Terms

A condition by the lender is that the bar and the PLF have a formal lease agreement. Mr. Menashe asked Gerry Gaydos to negotiate the terms of the lease with the PLF and Mr. Gaydos will report on the status at the meeting.
Financing

The bar’s loan of up to $13.5 million is committed through March 6, 2008. If the bar closes within 30 days prior to then, the interest rate will be 5.99%. The interest rate to the bar is calculated on three components: the 10-year treasury rate; a spread set by the lender; and points added if the loan does not close by a certain date.

The bar is locked into these rates assuming the sale closes by March 6, 2008:

- 10-year treasury rate 4.51%
- spread 1.3%
- points (2.27 basis points after four months)
  8 months at 2.27 is 182 basis points, or .182%
These three rate components total 5.992%.

The commitment letter states if the loan does not close by March 6, 2008, “Lender may grant an additional extension of up to three (3) additional months” for an additional 4 basis points each month.

In conversations with the bar’s broker, he stated the bar is fortunate to have the loan commitment at our existing terms. The credit market now is much more volatile. The broker indicates if the bar were seeking its commitment now, the spread would be 1.90% or higher. (That is 60 basis points more than the bar’s commitment.) The broker recently closed a loan with a 2.25% spread.

He also indicated the three-month extension is at the option by the lender, and under the current market conditions, the lender will not grant the additional three month extension. Thus, if the bar would not use the funds by March 6, 2008, the terms will change to reflect market terms when the bar receives a new commitment. The dollar amount commitment would remain, but the interest rate and other terms will be different, and if present credit market volatility exists in March 2008, the terms will be less favorable and the bar’s 5.99% interest rate and other favorable terms undoubtedly will expire.

Since March 6, 2007, the ten-year treasury rate has fluctuated from a high of 5.25% on June 12 to a low of 4.32% on September 7. The rate has dropped consistently since mid July.

Generally, for every basis point, the bar pays an additional $1,000 annually in debt service. Thus, in a worse case scenario, the bar would pay almost $75,000 more a year in debt service ($1.125 million over 15 years) if the 10-year treasury rate is at 5.25%, and $60,000 more in debt service ($900,000 over 15 years) if the spread is at 1.9%.
OREGON STATE BAR
Board of Governors Agenda

Meeting Date: September 28, 2007
Memo Date: July 24, 2007
From: Tim Gerking, Chair, Policy and Governance Committee
Re: Alcohol Policy

Action Recommended

Adopt the change to the Bar Bylaws listed at the end of the memo.

Background

At its June board meeting, the BOG considered a recommendation by the Policy and Governance Committee to change Bar Bylaw 7.501(e) to allow bar funds to be used to purchase alcoholic beverages at official events. The board did not waive the one meeting notice requirement. Thus the issue is before the board at this meeting. The committee revisited the issue at its July 20 meeting.

Sections have voiced opposition to the current policy at various times in the past because they are unable to host events that include alcoholic beverages. This may be for social events, section annual meetings, special award dinners, etc. Section chairs were polled prior to the committee meeting. An e-mail was sent on April 27 to all section chairs asking their opinion of a change in policy. There are 39 sections. 14 sections responded by the May 18 committee meeting. 11 favored some kind of a change to the policy, two were mixed, and one favored no change.

The proposal made at the June board meeting was as follows.

Section 7.5 Expense Reimbursements

Subsection 7.500 General Policy

(e) Miscellaneous Costs:

Telephone, postage, office expense, registration fees and other legitimate business expenses will be reimbursed at actual cost with submission of receipts or an explanation of the business purpose of the expense. Bar funds must not be used to pay the cost of alcoholic beverages. Bar funds may be used to pay for or reimburse the cost of alcoholic beverages only at official events sponsored by the bar or individual sections.

Several comments were raised by board members: because of the disease of alcoholism, bar funds should not be used to purchase alcoholic beverages; it’s okay for sections because their money is obtained by members joining sections voluntarily, but bar fees are mandatory; if drinks are free, people may imbibe too much; we should adopt the changes, it makes sense particularly given the amount of time bar volunteers spend on bar
activities; and there should be a cap on funds otherwise it would have a big budgetary impact.

At its July meeting, the committee discussed the proposed Bylaw and also considered whether the board should recommend a BOG resolution to the HOD to deal with this issue. It rejected the idea of a HOD resolution as unnecessary. A committee member recommended the following change to the bylaw as an alternative.

Section 7.5 Expense Reimbursements

Subsection 7.500 General Policy

(e) Miscellaneous Costs:

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

The committee discussed this proposal and felt that there were enough safeguards in regard to expenditures. First, the sections, whose fees are not mandatory, can decide at what times and places alcohol may be paid for through their executive committees. Second, the BOG through its budgetary process can also make determinations at what functions alcohol will be paid for. Karen indicated that it would still be prohibited for staff to use bar funds to buy alcohol in their individual capacity. This means that she would not reimburse an alcohol expense for a glass of wine with a meal if the bar staff were traveling on bar business. The committee agreed to recommend this alternative to the board.
OREGON STATE BAR
Board of Governors Agenda

Meeting Date: September 28, 2007
Memo Date: July 24, 2007
From: Tim Gerking, Chair, Policy and Governance Committee
Re: Reciprocity with Alaska

Action Recommended

The committee recommends that the BOG propose to the BBX an expansion of Oregon’s reciprocity program to include Alaska.

Background

Last year OSB President Menashe had a conversation with the president of the Alaska Bar at which they discussed Alaska’s interest in reciprocal admission between Alaska and Oregon. At its May 2007 meeting, the Alaska Bar Board of Governors affirmed its interest in exploring reciprocal admission with Oregon.

Oregon’s current rule on reciprocity admission (Rule 15.05 of the Rules for Admission of Attorneys) applies to members in good standing who were admitted by examination to the Idaho, Utah or Washington bars, who possess good character, and who have practiced law for “no less than three of the four years immediately preceding their application.” Additionally, the applicants must complete, between the time of application and admission, fifteen hours of CLE on Oregon practice and procedure and ethics.

Oregon’s reciprocity rule was created after extensive study and discussion among the participating bars and the determination that the admission requirements of the four states were sufficiently similar\(^1\) that each jurisdiction could be confident in a reciprocity admittee’s character and fitness to practice law.

Alaska’s rule on reciprocity provides:

Section 2. (a) An applicant who meets the requirements of (a) through (d) of Section 1 of this Rule\(^2\) and

(1) has passed a written bar examination required by another reciprocal state, territory, or the District of Columbia for admission to the active practice of law, and

(2) has engaged in the active practice of law in one or more states, territories or the District of Columbia for five of the seven years immediately preceding the date of his or her application, may, upon motion be admitted to the Alaska Bar Association without taking the bar examination. The motion shall be served on the executive director of the

\(^1\) As indicated, Oregon’s reciprocity rule is limited to lawyers admitted in the named states. Oregon’s is the minority approach, as 34 jurisdictions, including Idaho, Utah and Washington, have true reciprocity (also called admission on motion) which grants admission to lawyers from any jurisdiction that also permits admission by motion on substantially similar standards.

\(^2\) Age, character and fitness standards.
Alaska Bar Association. An applicant will be excused from taking the bar examination upon compliance with the conditions above, and payment of a non-refundable fee to be set by the Board for applicants seeking admission on motion. For the purposes of this section, "reciprocal state, territory or district" shall mean a jurisdiction which offers admission without bar examination to attorneys licensed to practice law in Alaska, upon their compliance with specific conditions detailed by that jurisdiction, providing the conditions are not more demanding than those set forth in this Rule.

Unlike Oregon, Alaska does not require the completion of any CLE courses as a condition of reciprocal admission. Notwithstanding the language in Alaska's Rule 2(a) that reciprocal admission is limited to lawyers in jurisdictions that do not impose conditions more demanding than Alaska's, the Alaska Board of Governors is apparently prepared to make an exception for Oregon lawyers if Oregon will expand its limited reciprocity to Alaska lawyers.

We have no statistics or other hard evidence about the number of Alaska lawyers who would seek reciprocal admission in Oregon, but anecdotal information suggests that there are enough to make this a priority for the Alaska Bar.

The committee recommends that the board pursue an expansion of our reciprocity rule and convey that interest to the BBX with a request that it consider the issue at an upcoming meeting. The Rules of Admission in Oregon are the exclusive province of the Oregon Supreme Court. Traditionally, proposals for amendments to the admission rules have been presented to the Court by the Board of Bar Examiners, although there is no statutory mandate for that process. It would be preferable for the proposal to have the support of the BBX, but nothing in ORS Chapter 9 or the Rules of Admission limit the ability of the Board of Governors to make the proposal directly to the Court on its own.
OREGON STATE BAR

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<td>Memo Date:</td>
<td>September 14, 2007</td>
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<td>From:</td>
<td>Gerry Gaydos, Public Affairs Committee Chair</td>
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<td>Re:</td>
<td>HOD resolution(s) on pending Initiative Petitions</td>
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**Action Recommended**

Consider Public Affairs Committee recommendation regarding a board position on initiatives #2 relating to elimination of designation of incumbency for judges, #51 relating to caps on contingency fees, and #53 relating to frivolous litigation.

**Background**

Attached you will find a draft resolution for the House of Delegates that combines all three pending initiative petitions (#2, #51, and #53) into one comprehensive resolution for consideration. Alternatively, you will also find three individual resolutions that deal with each initiative separately to allow the board more flexibility in determining whether to consider them separately or together. Public Affairs will discuss these issues and make a recommendation to the board at its September 28, 2007 meeting.
Draft BOG Resolution in opposition to pending ballot initiatives

Whereas, Oregon Revised Statutes 9.080(1) charges the Board of Governors to “direct its power to the advancement of the science of jurisprudence and the improvement of the administration of justice,” and

Whereas, the mission of the Oregon State Bar includes promoting the application of the knowledge and experience of the profession to the public good; and

Whereas, three initiative petitions have been filed for the November 2008 elections which, if approved by the voters, would adversely affect the administration of justice; and

Whereas, Initiative Petition #2 would prohibit an appointed judge from being considered an incumbent or designated as such in the first election following the judge’s appointment, depriving voters of truthful and objective information about those candidates; and

Whereas, although lawyers are already prohibited from charging clearly excessive fees, Initiative Petition #51 would limit access to the courts and the justice system for persons having meritorious cases as a result of the imposition of an arbitrary cap on the fees recoverable in all cases having a contingent fee agreement; and

Whereas, although courts already have the authority to sanction litigants for filing frivolous claims and motions, Initiative Petition #53 would mandate court-imposed sanctions against attorneys for filing frivolous litigation; and

Whereas, all three initiatives petitions are unnecessary, one-sided and will adversely effect the administration of justice in Oregon; now, therefore be it

Resolved, That:

1. The Oregon State Bar opposes Initiative Petitions #2, 51, and 53;
2. All members of the Oregon State Bar are urged to communicate to their clients and others the harmful effect that these initiatives would have on informed choices in judicial elections, the public’s access to justice, the operation of the free market to regulate contracts, and the orderly administration of justice; and
3. The Board of Governors should take reasonable and necessary action to oppose such initiatives.

Proponent’s Statement

The Board of Governors believes that three initiative petitions filed for the November 2008 election would, if passed, have a deleterious effect on the legal system and the administration of justice.

Initiative petition #2 would prohibit appointed judges from being designated as incumbents on the ballot in the first election after appointment. Information that a
judicial candidate already holds office is especially important to the public, since
information about judicial candidates in general is scarce. If passed this initiative would
deny the public basic, useful information about judicial candidates. It is unnecessary and
a waste of taxpayer dollars. The Bar has previously opposed, and the public has
previously rejected, similar initiatives.

Initiative petition #51 would regulate contingent fee contracts by capping the amount of
contingent fees that lawyers and clients may otherwise chose to negotiate. It would limit
fees to 25 percent of the first $25,000 recovered, and 10 percent of recoveries over
$25,000. This initiative is unnecessary and one sided. This initiative would affect every
type of case and circumstance, including business litigation, contract disputes, collection
claims, real estate, personal injury and products liability cases, property and
environmental claims, construction defect cases, employment disputes, wage claims, anti-
trust and investment disputes, consumer protection cases, and many other cases in which
contingent fees are used and allowed. Access to justice, especially for middle and low
income individuals, working families, and small businesses would be severely restricted.
This initiative also is unbalanced because it does not restrict the fees that may be
collected in defense of cases where an opponent has extensive financial resources. This
initiative would result in the growth of the use of hourly fees charged to clients, hurting
all businesses in Oregon who would lose flexibility, and ultimately may pay more in
attorney fees to resolve legitimate claims. This initiative is also unnecessary because
Oregon already has rules in place to limit excessive attorney fees, and has a competitive
market for legal services that permits clients to freely negotiate the most economical
terms for legal representation. Finally, Measure 51, proposed and financed by interests
outside the state, does not reflect the values of Oregonians.

Initiative petition #53 requires the court to sanction attorneys for filing frivolous
pleadings or motions. This initiative is unnecessary because existing state and federal
rules of civil procedure, already allow the court to impose sanctions against attorneys. If
the intent is to discourage frivolous litigation, existing rules are better tools, since they
allow the court to impose sanctions against litigants as well as attorneys.

The proponents of these initiatives have until July 3, 2008 to submit the requisite
signatures for the initiatives to be on the November 2008 ballot. All three initiatives are
statutory changes; none amend the constitution. News accounts report that such measures
are likely to qualify for the Ballot prior to the next meeting of the House of Delegates.

Approval of this resolution will put the Oregon State Bar on record as opposed to these
initiative petitions based on their adverse effects on judicial elections, the public’s access
to justice, and the orderly administration of justice.
Draft BOG Resolution in opposition to pending ballot initiative #2

Whereas, Oregon Revised Statutes 9.080(1) charges the Board of Governors to "direct its power to the advancement of the science of jurisprudence and the improvement of the administration of justice," and

Whereas, the mission of the Oregon State Bar includes promoting the application of the knowledge and experience of the profession to the public good; and

Whereas, three initiative petitions have been filed for the November 2008 elections which, if approved by the voters, would adversely affect the administration of justice; and

Whereas, Initiative Petition #2 would prohibit an appointed judge from being considered an incumbent or designated as such in the first election following the judge’s appointment, depriving voters of truthful and objective information about those candidates; and

Whereas, all three initiatives petitions are unnecessary, one-sided and will adversely effect the administration of justice in Oregon; now, therefore be it

Resolved, That:

1. The Oregon State Bar opposes Initiative Petitions #2;
2. All members of the Oregon State Bar are urged to communicate to their clients and others the harmful effect that this initiative would have on informed choices in judicial elections, the public’s access to justice, the operation of the free market to regulate contracts, and the orderly administration of justice; and
3. The Board of Governors should take reasonable and necessary action to oppose such an initiative.

Proponent’s Statement

The Board of Governors believes that three initiative petitions filed for the November 2008 election would, if passed, have a deleterious effect on the legal system and the administration of justice.

Initiative petition #2 would prohibit appointed judges from being designated as incumbents on the ballot in the first election after appointment. Information that a judicial candidate already holds office is especially important to the public, since information about judicial candidates in general is scarce. If passed this initiative would deny the public basic, useful information about judicial candidates. It is unnecessary and a waste of taxpayer dollars. The Bar has previously opposed, and the public has previously rejected, similar initiatives.

The proponents of these initiatives have until July 3, 2008 to submit the requisite signatures for the initiatives to be on the November 2008 ballot. All three initiatives are statutory changes; none amend the constitution. News accounts report that such measures are likely to qualify for the Ballot prior to the next meeting of the House of Delegates.

Approval of this resolution will put the Oregon State Bar on record as opposed to these initiative petitions based on their adverse effects on judicial elections, the public’s access to justice, and the orderly administration of justice.

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Draft BOG Resolution in opposition to pending ballot initiative #51

Whereas, Oregon Revised Statutes 9.080(1) charges the Board of Governors to “direct its power to the advancement of the science of jurisprudence and the improvement of the administration of justice,” and

Whereas, the mission of the Oregon State Bar includes promoting the application of the knowledge and experience of the profession to the public good; and

Whereas, three initiative petitions have been filed for the November 2008 elections which, if approved by the voters, would adversely affect the administration of justice; and

Whereas, although lawyers are already prohibited from charging clearly excessive fees, Initiative Petition #51 would limit access to the courts and the justice system for persons having meritorious cases as a result of the imposition of an arbitrary cap on the fees recoverable in all cases having a contingent fee agreement; and

Whereas, all three initiatives petitions are unnecessary, one-sided and will adversely effect the administration of justice in Oregon; now, therefore be it

Resolved, That:

1. The Oregon State Bar opposes Initiative Petition #51;
2. All members of the Oregon State Bar are urged to communicate to their clients and others the harmful effect that this initiative would have on informed choices in judicial elections, the public’s access to justice, the operation of the free market to regulate contracts, and the orderly administration of justice; and
3. The Board of Governors should take reasonable and necessary action to oppose such an initiative.

Proponent's Statement

The Board of Governors believes that three initiative petitions filed for the November 2008 election would, if passed, have a deleterious effect on the legal system and the administration of justice.

Initiative petition #51 would regulate contingent fee contracts by capping the amount of contingent fees that lawyers and clients may otherwise chose to negotiate. It would limit fees to 25 percent of the first $25,000 recovered, and 10 percent of recoveries over $25,000. This initiative is unnecessary and one sided. This initiative would affect every type of case and circumstance, including business litigation, contract disputes, collection claims, real estate, personal injury and products liability cases, property and environmental claims, construction defect cases, employment disputes, wage claims, antitrust and investment disputes, consumer protection cases, and many other cases in which contingent fees are used and allowed. Access to justice, especially for middle and low income individuals, working families, and small businesses would be severely restricted. This initiative also is unbalanced because it does not restrict the fees that may be
collected in defense of cases where an opponent has extensive financial resources. This initiative would result in the growth of the use of hourly fees charged to clients, hurting all businesses in Oregon who would lose flexibility, and ultimately may pay more in attorney fees to resolve legitimate claims. This initiative is also unnecessary because Oregon already has rules in place to limit excessive attorney fees, and has a competitive market for legal services that permits clients to freely negotiate the most economical terms for legal representation. Finally, Measure 51, proposed and financed by interests outside the state, does not reflect the values of Oregonians.

The proponents of these initiatives have until July 3, 2008 to submit the requisite signatures for the initiatives to be on the November 2008 ballot. All three initiatives are statutory changes; none amend the constitution. News accounts report that such measures are likely to qualify for the Ballot prior to the next meeting of the House of Delegates.

Approval of this resolution will put the Oregon State Bar on record as opposed to these initiative petitions based on their adverse effects on judicial elections, the public’s access to justice, and the orderly administration of justice.
Draft BOG Resolution in opposition to pending ballot initiative #53

Whereas, Oregon Revised Statutes 9.080(1) charges the Board of Governors to “direct its power to the advancement of the science of jurisprudence and the improvement of the administration of justice,” and

Whereas, the mission of the Oregon State Bar includes promoting the application of the knowledge and experience of the profession to the public good; and

Whereas, three initiative petitions have been filed for the November 2008 elections which, if approved by the voters, would adversely affect the administration of justice; and

Whereas, although courts already have the authority to sanction litigants for filing frivolous claims and motions, Initiative Petition #53 would mandate court-imposed sanctions against attorneys for filing frivolous litigation; and

Whereas, all three initiatives petitions are unnecessary, one-sided and will adversely effect the administration of justice in Oregon; now, therefore be it

Resolved, That:

1. The Oregon State Bar opposes Initiative Petition #53;
2. All members of the Oregon State Bar are urged to communicate to their clients and others the harmful effect that this initiative would have on informed choices in judicial elections, the public’s access to justice, the operation of the free market to regulate contracts, and the orderly administration of justice; and
3. The Board of Governors should take reasonable and necessary action to oppose such an initiative.

Proponent’s Statement

The Board of Governors believes that three initiative petitions filed for the November 2008 election would, if passed, have a deleterious effect on the legal system and the administration of justice.

Initiative petition #53 requires the court to sanction attorneys for filing frivolous pleadings or motions. This initiative is unnecessary because existing state and federal rules of civil procedure, already allow the court to impose sanctions against attorneys. If the intent is to discourage frivolous litigation, existing rules are better tools, since they allow the court to impose sanctions against litigants as well as attorneys.

The proponents of these initiatives have until July 3, 2008 to submit the requisite signatures for the initiatives to be on the November 2008 ballot. All three initiatives are statutory changes; none amend the constitution. News accounts report that such measures are likely to qualify for the Ballot prior to the next meeting of the House of Delegates.

Approval of this resolution will put the Oregon State Bar on record as opposed to these initiative petitions based on their adverse effects on judicial elections, the public’s access to justice, and the orderly administration of justice.
OREGON STATE BAR
Board of Governors Agenda

Meeting Date: September 28, 2007
Memo Date: August 28, 2007
From: Bette Worcester, Public Member Selection Committee Chair
Re: Board of Governors Public Member Recommendation

Action Recommended

Appoint Audrey T. Matsumonji as Public Member to the Board of Governors to a four-year term.

Background

The Public Member Selection Committee conducted interviews on August 21 and 28. The committee recommends Audrey T. Matsumonji, from the City of Gresham, to a four-year term as a Public Member of the Board of Governors. Ms. Matsumonji works as an Equal Opportunity Specialist with the U.S. Department of Labor, her resume is attached for your review. Should Ms. Matsumonji not accept the appointment, the committee recommends considering Mary Lou Hazelwood.

The Public Member Selection Committee interviewed six candidates, all of whom were impressive. The Committee would like to recommend that the candidates not selected for the BOG be recommended to serve the bar in some other capacity. Those candidates include:

Roger Alvey
Mary Lou Hazelwood
Dr. Martin Johnson
Daniel Polzin
Alfred Willstatter
# Oregon State Bar Public Member Application

**Name:** (First, Middle, Last) 
Audrey T. Matsumonji

**Residence Address:** (number, street, city, state, zip)  
4153 SE 12th Street  
Gresham, OR 97080

**County:** Multnomah

**Residence Phone:**  
503/492-0848

**Office Address:** (number, street, city, state, zip)  

**Office Phone:**  
503/326-5587

**E-Mail Address:**  
Healingum@worldnet.att.net

**Occupation: (and job title, if any)**  
Equal Opportunity Specialist

## College and Post-Graduate Education:

<table>
<thead>
<tr>
<th>School</th>
<th>Location</th>
<th>Dates</th>
<th>Degrees</th>
</tr>
</thead>
<tbody>
<tr>
<td>Colorado State University</td>
<td>Fort Collins, Colorado</td>
<td>9/77 to 5/82</td>
<td>BS</td>
</tr>
<tr>
<td>Civil Engineering</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bastyr University</td>
<td>Seattle, Washington</td>
<td>6/98 to 6/00</td>
<td>MA</td>
</tr>
<tr>
<td>Behavioral Sciences/System</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Counseling</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

## Employment: List major paid employment chronologically beginning with most recent experiences.

<table>
<thead>
<tr>
<th>Dates (from/to)</th>
<th>Employer and Position Held</th>
<th>Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>3/27/00 to Present</td>
<td>U.S. Dept. of Labor/Office of Federal Contract Compliance Programs Equal Opportunity Specialist</td>
<td>620 SW Main Street, Suite 411 Portland, OR 97205</td>
</tr>
<tr>
<td>6/22/97 to 3/26/00</td>
<td>U.S. Forest Service, Mt. Hood National Forest Civil Engineer</td>
<td>16400 Champion Way Sandy, Oregon 97055</td>
</tr>
<tr>
<td>5/3/93 to 6/21/97</td>
<td>U.S. Forest Service, Mt. Hood National Forest Recreation/Public Affairs District Staff</td>
<td>16400 Champion Way Sandy, Oregon 97055</td>
</tr>
<tr>
<td>6/4/89 to 5/2/93</td>
<td>U.S. Forest Service, Siuslaw National Forest District Engineer</td>
<td>18591 Alsea Highway Alsea, Oregon 97324</td>
</tr>
</tbody>
</table>

## Community/Volunteer Services: List major volunteer employment and significant volunteer activities chronologically beginning with most recent services.

<table>
<thead>
<tr>
<th>Dates (from/to)</th>
<th>Employer and Position Held</th>
<th>Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>7/98 to 3/00</td>
<td>Shared Neutrals Board Board Member for ADR Govt. Agencies Neighborhood Health Clinic and Lutheran Family Services Counseling Internship</td>
<td>Portland, Oregon</td>
</tr>
<tr>
<td>1/6/99 to 5/31/00</td>
<td></td>
<td>Portland, Oregon</td>
</tr>
</tbody>
</table>

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Statement: Describe why you are interested in serving as a public member of the Oregon State Bar. Include information not already mentioned about yourself and your experiences and background that supports your interests.

I have an interest in Civil Rights and Affirmative Action not only because that is the nature of my job but also because I have a personal interest in Civil Rights. My position with the Department of Labor, Office of Federal Contract Compliance Programs gives me the background and expertise in Civil Rights issues. I assure Federal Contractors adhere to Federal Laws on Affirmative Action and Equal Employment. I also investigate disability complaints, veteran's complaints and class complaints based on race or gender. In my position, I deal with attorneys as an everyday basis from both the contractor position, as well as our own internal solicitors. Therefore, I have knowledge of the legal aspects of civil rights and affirmative action. I am and have always been interested in Civil Right whether my involvement is as a Compliance Officer, Equal Employment Specialist as well as my own personal interest.

In my early career as an engineer in the Forest Service, I was usually the first professional in the engineering department. This was a challenge and I developed an interest both in civil rights and in recruiting both minorities and females in the science and math fields so I would not be the only one. Therefore, my civil rights interest is both personal and professional.

I have varied legal interests such as environmental law as well as civil rights laws. My interests are varied but the overall theme is fairness. Whether it is in my job, my volunteer positions or my life I believe in fairness and believe in oversight. My Masters Degree in Systems Counseling gave me the training that I need to be fair and objective and the skill of listening rather than making judgments. I believe that I have training to be fair and impartial.

Miscellaneous:
Have you ever been convicted or have you pleaded guilty to any crime or violation? Do not include minor traffic offenses or juvenile convictions if expunged.

☐ Yes  ☑ No

Have you ever been the subject of any professional disciplinary proceeding or had any professional license or permit revoked, suspended or restricted?

☐ Yes  ☑ No

If your answer to either of these questions is "yes," please give full details on a separate sheet of paper.

Opportunities:
If you have a particular interest in a committee or board, please indicate your preference. A brief description of OSB public member opportunities is included with this application.

☐ Board of Governors  ☑ Disciplinary Board  ☐ Fee Arbitration  ☐ House of Delegates
☐ Local Professional Responsibility Committee  ☐ State Professional Responsibility Committee
☐ Professional Liability Fund - Board of Directors

Committees:  ☑ Affirmative Action  ☐ Client Security Fund  ☐ Minimum Continuing Legal Education
☐ Judicial Administration  ☐ Legal Services  ☐ Quality of Life
☐ State Lawyers Assistance  ☐ Unlawful Practice of Law

References: List names, addresses, and phone numbers of three people who may be contacted as references.

<table>
<thead>
<tr>
<th>Name</th>
<th>Address</th>
<th>Phone</th>
</tr>
</thead>
<tbody>
<tr>
<td>Laura Ward</td>
<td></td>
<td>503/799-5198</td>
</tr>
<tr>
<td>Bill Otani</td>
<td></td>
<td>503/808-2972</td>
</tr>
<tr>
<td>Delanne Ferguson</td>
<td></td>
<td>541/278-8131</td>
</tr>
</tbody>
</table>

Applicant's Signature: (Signature)

Today's Date: 6/28/09

Where did you learn about the public member opportunities available at the Oregon State Bar?
An announcement in the Oregonian Volunteer opportunities section.

Application deadline is June 22, 2007. Return applications to Danielle Edwards, Oregon State Bar, 5200 SW Meadows Road, Lake Oswego, OR 97035

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7. 2008 Membership Fee Resolution (Board of Governors Resolution No. 1)

Resolved, that the 2008 Oregon State Bar membership fees and assessments are as follows:

<table>
<thead>
<tr>
<th>Membership Category</th>
<th>If paid by due date</th>
<th>Paid after due date but by last business day in February 2008</th>
<th>Paid after the last business day in February 2008</th>
</tr>
</thead>
<tbody>
<tr>
<td>Regular active members admitted in any jurisdiction before 1/1/06</td>
<td>$482.00</td>
<td>$532.00</td>
<td>$582.00</td>
</tr>
<tr>
<td>Active members admitted in any jurisdiction on or after 1/1/06</td>
<td>$403.00</td>
<td>$453.00</td>
<td>$503.00</td>
</tr>
<tr>
<td>Inactive members</td>
<td>$110.00</td>
<td>$135.00</td>
<td>$160.00</td>
</tr>
<tr>
<td>Active Emeritus/Active Pro Bono members</td>
<td>$115.00</td>
<td>$115.00</td>
<td>$115.00</td>
</tr>
</tbody>
</table>

Notes:
1. Membership fees are apportioned for members admitted in 2008; the Affirmative Action and Client Security Fund assessments are not apportioned.
2. Members admitted to practice law in Oregon prior to January 1, 1958 are exempt from the payment of all membership fees and assessments.

Background
This resolution does not increase the basic membership fees over the 2007 amounts. Rather, it raises the amount by which the membership fee is increased if not paid by the due date. The increased fee structure was established in 1992 to encourage members to pay promptly and to defray the additional administrative costs associated with sending the notices required by ORS 9.191. The amount of the increase has not changed since 1992, although the Bar’s administrative costs have increased steadily during that period. Approximately 400 members fail to pay their dues until shortly before the suspension date established in ORS 9.191, which is approximately five months after the due date. Increasing the fees paid after the due date will help cover the bar’s increased administrative costs for sending required notices and processing late payments, and the two-step structure is intended to act as an incentive to more timely payment.

Presenter: S. Ward Greene, Chair Board of Governors Budget and Finance Committee

8. Mileage Reimbursement for HOD Members (Board of Governors Resolution No. 2)

Whereas, the House of Delegates (HOD) is an important body within the governance structure of the Oregon State Bar;

Whereas, the HOD is designed to represent bar members throughout the state;

Whereas, the expense of attending the HOD annual or special meetings may be a deterrent to participation; therefore, be it

Resolved, That the HOD direct the Board of Governors (BOG) to devise a policy that would reimburse all lawyer delegates who attend HOD annual or special meetings for roundtrip mileage of 400 miles or less at the allowable IRS rate. The BOG may establish deadlines and other details of the policy.

Background
A similar resolution was presented at the 2006 HOD meeting. Even though it did not pass, the Board of Governors’ Member Services Committee raised the issue when it discussed volunteerism earlier this year. The committee revisited the idea and is presenting a revised resolution for the HOD’s consideration. The previous resolution called for round-trip reimbursement up to 1000 miles. This one is up to 400 miles round-trip.

Financial
It is estimated that the cost based upon 100% attendance would vary from about $27,000 if the meeting were held at the coast; $36,000 if the meeting were held near Bend; and $15,000 if the meeting could be accommodated at the new bar center in Tigard.

Presenter: Rick Yugler, OSB President-elect

9. Amend ORS 12.020(1) (House of Delegates Resolution No. 1)

Whereas, ORS 12.020(1) and ORS 12.020(2) provide that, in Oregon, for an action to be deemed commenced on the date the Complaint is filed, the Summons and Complaint must be served within 60 days of filing the Complaint;

Whereas, the brevity of the 60-day period gives rise to unnecessary procedural skirmishes and costs;

Whereas, an amendment to ORS 12.020 would bring Oregon into conformance with the Federal Rules of Civil Procedure while greatly reducing service timing issues, therefore be it

Resolved, That, the House of Delegates recommend and encourage the appropriate committees to amend ORS 12.020(1) to provide that an action shall be deemed commenced on the date the Complaint is filed or,
alternatively, to require that Summons and Complaint be
served within a period of 120 days after filing the
Complaint.

Presenter: Derek D. Simmon, President
Douglas County Bar Association

Background

The February 2006 Issue (No. 97) of the Professional
Liability Fund publication “IN BRIEF” recites that
“filing and service mistakes form a large percentage of
the claims handled each year by the Professional Liability
Fund.” Issues generally arise from the requirement in
ORS 12.020(1) and ORS 12.020(2) that, for an action to
be deemed commenced on the date the Complaint is filed,
the Summons and Complaint must be served within 60
days of filing the Complaint. Many of these issues (and
associated costs borne by both Plaintiffs and Defendants,
via cost bill) could be avoided by separating service from
the statute of limitations or by allowing additional time
for service.

By providing that an action is deemed commenced upon
the filing of the Complaint (rather than upon service
of the Complaint) many claims handled each year by the
PLF could be avoided. Alternatively, by extending the
service period to 120 days, Oregon would conform to the
timeline of the Federal Rules of Civil Procedure. In either
case, the problem would be alleviated.

Other Resolutions

10. In Memoriam (Board of Governors Resolution
No. 3)

Warren H. Albright
Scott W. Bennett
W. Scott Bridges
Keith Burns
Mildred J. Carmack
Hugh B. Collins
Donald H. Coulter
Keith A. Cushing
Theodore W. Deloose
Russell M. Dickson
Thomas C. Donaca
Kathryn E. Eaton
G. Bernhard Fedde
James F. Fel
The Honorable Clifford L. Freeman
S. E. Gjerde
Susan Y. Hager
Omar W. Halvorson
Carolyn V. Hansen
Harold C. Hart
Herman P. Hendershott
Marshall C. Hjelte
Robert R. Howe
Mark K. Irick
Frederick A. Jahnke
Margy J. Lampkin

11. Record of Proceedings (Board of Governors
Resolution No. 4)

Whereas, HOD Rule 4.1 requires that the proceedings be
recorded stenographically;

Whereas, the transcript that is made from the HOD
meeting sometimes has blank spots because the reporter is
unable to identify or hear the speaker;

Whereas, there is no audio recording or video recording to
review to fill in the gaps;

Whereas, the cost of video recording the meeting would
be a more cost-effective process; therefore be it

Resolved, That House of Delegates Rule 4.1 be changed
as follows:

Garth S. Ledwith
Mary Porter Leistner
The Honorable Harlow F. Lenon
The Honorable Howard S. Lichtig
R. William Linden
William Timothy Lyons
Dorsten Stamn Margolin
Jeanette Thatcher Marshall
Barney J. Mason
Rodney R. Mills
Malcolm J. Montague
Laurie Ann Mount
Michael T. Muniz
The Honorable Albert R. Musick
James A. Pearson
A. Duane Pinkerton
Lois J. Portnow
Thomas J. Reeder
Raymond R. Reif
Paul Robben
Edward A. Rosenburg
John P. Salisbury
Harold M. Sliger
Gordon W. Sloan
Justin M. Smith
Nancy J. Snow
Caroline P. Stoel
Edwin N. Storz
Constance E. Sullivan
Gretz E. Tanner
Jonathan H. Tressy
Robert R. Trethewy
William E. Van Atta
Shaun M. Wardinsky
Joseph Wetzel
Grace K. Williams
Thomas D. Wood

Presenter: Marva Fabien, Vice-president
Board of Governors
House of Delegates Rule 4 – Record of Proceedings

4.1 Proceedings of the House of Delegates shall be recorded. Meeting recordings shall be maintained at the OSB Center.

Presenter: Timothy C. Gerking, Chair
Board of Governors Policy and Governance Committee

Background

The Court Reporters Association has recorded the House of Delegates meeting each year. The bar, in exchange, has given them a donation of $700 and has reimbursed their expenses for travel to the meeting. The recording of the HOD meeting is not easy as people often do not identify themselves and speakers sometimes either do not go to the microphone or do not speak clearly. Without any audio or video recording, it is impossible to go back and try to figure out who and what they said. With a video recording, a permanent record of the proceedings will be maintained. With both video and audio, it should be clearer who spoke and what they said. If a person wants a portion of the recording, it can be provided either in whole or in part digitally. In addition, it can be placed on the website for bar members to watch if they were unable to attend the meeting. As a recording, it will also be available immediately after the HOD meeting when most of the questions arise. Finally, as an historical record, it will be really interesting to watch 20 years from now.

The HOD was polled in February to see who might be in favor of the resolution. Because of the overwhelming support, the board decided to try a video recording for this HOD meeting.

Financial

The amount for the current process is about $1000 with the video about $500. However, this is more an issue of a complete record that is digitally available right after the meeting, rather than a financial savings.

12. Support Adequate Funding for Legal Services for Low-Income Oregonians (House of Delegates Resolution No. 2)

Whereas, providing equal access to justice and high quality legal representation to all Oregonians is central to the mission of the Oregon State Bar;

Whereas, equal access to justice plays an important role in the perception of fairness of the justice system;

Whereas, programs providing civil legal services to low income Oregonians are a fundamental component of the Bar’s effort to provide such access;

Whereas, legal aid programs in Oregon are currently able to meet less than 20% of the legal needs of Oregon’s poor;

Whereas, federal funding for Oregon’s civil legal services programs is substantially less than it was in 1980 and there have been severe restrictions imposed on the work that programs, receiving LSC funding, may undertake on behalf of their clients;

Whereas, assistance from the Oregon State Bar and the legal community is critical to maintaining and developing resources that will provide low-income Oregonians meaningful access to the justice system, therefore, be it

Resolved, That the Oregon State Bar strengthen its commitment and ongoing efforts to improve the availability of a full range of legal services to all citizens of our state, through the development and maintenance of adequate support and funding for civil legal services programs for low-income Oregonians.

Request that Congress and the President of the United States make a genuine commitment to equal justice by adequately funding the Legal Services Corporation.

Actively participate in the efforts of the Campaign for Equal Justice to increase contributions by establishing goals of a 100% participation rate by members of the House of Delegates and of a 50% contribution rate by all lawyers.

Support the Oregon Law Foundation and its efforts to increase resources through the interest on Lawyers Trust Accounts (IOLTA) program.

Encourage Oregon lawyers to support civil legal services programs through enhanced pro bono work.

Presenter: Dennis Karnopp
Region 1, House of Delegates

Background

“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.” Section 1.2 of the Oregon State Bar Bylaws. One of the four main functions of the Bar is to be, “A provider of assistance to the public. As such, the bar seeks to ensure the fair administration of justice for all * * *.” Id.

The Board of Governors and the House of Delegates have adopted a series of resolutions supporting adequate funding for civil legal services in Oregon (Delegate Resolution No. 14 in 2006, 7 in 2005, BOG Resolution No. 7 in 2002, BOG Resolution No. 6 in 1999, BOG Resolution No. 3 in 1997, and Delegate Resolution No. 11 in 1996). The 2006 resolution is identical to the one being proposed here.

The legal services organizations in Oregon were established by the State and local bar associations to increase access for low-income clients. The majority of the boards of the legal aid programs are appointed by State and local bar associations. The Oregon State Bar operates the Legal Services Program pursuant to ORS 9.572 to distribute filing fees for civil legal services and provide methods for evaluating the legal services programs. Finally, the Bar, the Oregon Law Foundation,
and the Campaign for Equal Justice, have jointly operated the Access to Justice Endowment Fund.

In a comprehensive assessment of legal needs study, which was commissioned by the Oregon State Bar, the Office of the Governor, and the Oregon Judicial Department found that equal access to justice plays an important role in the perception of fairness of the justice system. The State of Access to Justice in Oregon (2000). Providing access to justice and high quality legal representation to all Oregonians is a central and important mission of the Oregon State Bar. The study also concluded that individuals who have access to a legal aid lawyer have a much-improved view of the legal system compared with those who do not have such access. A fall 2005 study by the national Legal Services Corporation confirms that in Oregon we are continuing to meet less than 20% of the legal needs of low-income Oregonians. Legal Services Corporation, “Documenting the Justice Gap in America: The unmet Civil Legal Needs of the Low-Income Americans” (Fall 2005). Although we have made great strides in increasing lawyer contributions to legal aid, there remains a significant deficit in providing access to justice to low-income Oregonians.

Currently, only about 20% of lawyers contribute to the Campaign for Equal Justice. Last year, about 50% of HOD members contributed, and 100% of the Board of Governors. The Campaign supports statewide legal aid programs in Oregon which have offices in 16 different Oregon communities. The offices focus on the most critical areas of need for low-income clients. About 40% of legal aid’s cases involve family law issues relating to domestic violence.

13. Continue the Current Policy Prohibiting the Use of Bar Funds for the Purchase of Alcoholic Beverages (House of Delegates Resolution No. 3)

Whereas, the OSB Bylaws prohibit the use of bar funds for the purchase of alcoholic beverages, a policy that has worked for years and is easy to understand and administer; and,

Whereas, the Board of Governors is considering a change to that policy to allow the use of bar funds to pay for alcohol at official bar events, therefore, be it

Resolved, That the Board of Governors should continue the current policy prohibiting the use of bar funds for the purchase of alcoholic beverages.

Presenter: Donna G. Goldian, Chair
Sole and Small Firm Practitioners

Background

OSB bylaw subsection 7.501(e) prohibits the use of bar funds, including section funds, for the purchase of alcoholic beverages.

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

The Board of Governors is considering a change to the policy, so that "Bar funds may be used to pay the cost of alcoholic beverages only if there is an official bar event that is sponsored by a bar entity." We believe that such a change is ill-advised.

First, it is a waste of member dues to provide alcoholic beverages at bar functions. Each attorney is required to pay bar dues and the bar has a fiduciary obligation to its members with regard to those mandatory fees. Buying alcohol could widen the gap between bar members and those who are perceived to be running the bar.

Also, members are concerned about the liability of the OSB if an accident occurs after a bar function for which the bar provided alcohol. This is a developing area of the law and we delude ourselves if we think that no one will drink too much at a bar function or if we think that plaintiff's attorneys will refrain from suing the bar and potentially the individual members of the Board of Governors. Any change in policy will open us up to unlimited liability and increased insurance premiums to protect the HOD, BOG, staff or others if the current alcohol policy is changed.

Furthermore, the bar is a diverse organization with many divergent views about the use of alcoholic beverages. This would be a slap in the face to those who do not favor the use of intoxicants. Since bar membership is mandatory with mandatory fees, we need to respect those of our members who oppose the use of alcohol on moral or religious grounds. Members should not have to forego their religious or moral precepts in order to participate in bar activities;

There also is a concern that decision-making is compromised when intoxicating beverages are provided and member confidence is undermined when there is perception that executive decisions are alcohol fueled.

Finally, changing the policy would be inconsistent with the mission of the bar. The bar currently funds and encourages treatment programs for impaired attorneys. We should support the continued sobriety of our members by not providing alcohol at official bar programs. We need to support our colleagues in recovery.

Excluded Resolutions

The Board of Governors has excluded the following resolution on the ground that it is not within the authority of the House of Delegates.
At the 2006 HOD meeting, the HOD voted down a resolution that would have required the OSB to allow military recruitment advertising notwithstanding the anti-discrimination policy articulated in OSB Bylaw 10. Subsequently, a membership petition requested that the Board of Governors put to a membership vote the question of whether the Bar should accept military advertising. The membership vote approved military advertising; following the membership vote, the BOG amended OSB Bylaw 10 to remove the language in Bylaw 10 that applied the anti-discrimination policy to OSB publications.

The respective authority of the HOD and the OSB membership on bar governance issues is established by statute. No court case has ever analyzed the statutory scheme or otherwise decided that the membership has primacy over the HOD or vice versa. However, the language of the statutory scheme and OSB history offers guidance.

ORS 9.025 states that the Oregon State Bar “shall be governed by a board of governors...,” but the Board’s governance power is not exclusive. ORS 9.139(1) authorizes the House of Delegates, to “modify or rescind an action or decision of the board of governors” or “direct the board of governors as to future action.” 1 The Board of Governors is bound by a properly made decision of the HOD. ORS 9.139(2).

At the same time, ORS 9.148(4) provides that “active members of the state bar, by written petition ..., may request that the board of governors submit to a vote of the members any question or measure.” The Board of Governors must comply with the request if the proposed question or measure “is appropriate for a vote of the members,” but the statute does not indicate that the board is bound by the membership vote.

Prior to the creation of the HOD in 1995, governance decisions were made by the membership as a whole at the annual “town hall” meeting under the authority of former ORS 9.130. Under the pre-1995 statutory scheme, the vote of the attendees at the town hall meeting would bind the Board of Governors on the issue unless the issue was referred to a vote of the full membership at the request of the board or by member petition. Unstated, but implicit, in the referral process was that the membership vote would be binding on the Board of Governors. Former ORS 9.130 was also silent on the binding effect of issues brought to a membership vote by member initiative. The only logical interpretation of former ORS 9.130, however, is that membership votes were meant to be binding so long as they didn’t exceed the limitations of membership’s authority.

1 The HOD’s authority does not extend to invalidating payments previously made by the board; to directing, modifying or rescinding assessments for the PLF established by the board; or to actions or decisions by the board that are subject to the control or approval of the Supreme Court. ORS 9.139(3).

The question of whether to create a House of Delegates was itself submitted by the Board to the membership by a mail ballot in July 1992 pursuant to former ORS 9.130(2). There was considerable member discussion about the pros and cons of eliminating the town hall structure and replacing it with the HOD. From a review of the bar’s records relating to the creation of the HOD, it is apparent that the creation of the HOD was meant only to replace the town hall, and not to eliminate the members’ initiative power.

Because an all-member vote could override a town hall vote before the creation of the HOD, it follows that an all-member vote now can override a HOD decision and the subsequent membership vote is what binds the BOG.

The HOD may elect to include the excluded resolution on the agenda; the BOG is satisfied, however, that an affirmative vote on the resolution will be a nullity, as the HOD lacks the authority to override a decision of the membership.

14. Restore Decision to Ban Military Advertisement in OSB Publications (House of Delegates Resolution No. 4)

Whereas, ORS 9.139(1) states that:

The Delegates at a meeting of the House of Delegates may, by a vote of the majority of the Delegates attending the meeting, do either of the following:

(a) Modify or rescind an action or decision of the Board of Governors.

(b) Direct the Board of Governors as to future action.

Whereas, ORS 9.139(2) states that:

The Board of Governors is bound by a decision of the House of Delegates made in the manner prescribed by subsection (1) of this section.

Whereas, the House of Delegates, at its 2006 meeting, voted to maintain the OSB’s policy, pursuant to Article 10 of the OSB Bylaws, to ban military advertisement in bar publications.

Whereas, the Board of Governors, by action at its April 20-21, 2007, meeting, voted to amend Bylaws 10 and 11.2 to allow military ads in bar publications, in direct contradiction of the decision of the House of Delegates, therefore, be it

Resolved, That, the House of Delegates hereby rescinds the action of the Board of Governors and restores its prior decision to maintain the ban on military advertisement in OSB publications.

Present: Robert C. Joondeph
Region 5, House of Delegates Member
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List of Expected Speakers
4:00-5:00 p.m.
Board of Governors meeting
Salishan Resort
September 28 (Friday), 2007
(Twelve 5-minute time slots)

1. Dennis Karnopp
2. Lisa Umscheid
3. Tom Kranovich
4. Minority Law Student Association representative
5. J.B. Kim
6. Manasi Kumar
7. Kellie Johnson
8. Oregon Minority Lawyers Association representative
9. Larry Seno
10. Susan Felstiner
11. Other speaker
12. Other speaker
Open Letter from the Board of Governors to Oregon Minority Lawyers and Law Students and Other Interested Persons

Over the last few weeks, many people have expressed concern that recent OSB organizational changes signal a retreat by the Board of Governors and the bar from its long-standing commitment to the Affirmative Action Program and a diverse Oregon State Bar. We assure you that is not the case. On the contrary, the decision to move the Affirmative Action Program into the Member Services Department was carefully and thoughtfully considered with a view toward providing more—not less—organizational support to a program we and the members of the Bar value highly. The deep commitment for and pride in the Affirmative Action Program was demonstrated by the House of Delegates in renewing the program last year. We want to emphasize that these management changes are not a change in bar policy, only in the mechanics of bar operations. There is no change in budget and no less support for the goals of the program.

For many years, AAP was part of the Member and Public Services Department, and the administrator reported to the manager of that department. From April 1998 to March 2006, the AAP was part of the Executive Services Department, with the administrator reporting to General Counsel. In March 2006, due principally to a vacancy in the General Counsel position, the Affirmative Action Program administrator began to report directly to the Executive Director. Recently, it became apparent that the program needs a level of support that the Executive Director is not able to provide. There was also a concern that the program may be hindered by its isolation from other bar functions, support services and personnel.
Member Services has been a priority for the Board of Governors for several years. Member Services works with a variety of bar groups including the New Lawyers Division and the Leadership College. Incorporating AAP into Member Services is a natural fit and will provide new opportunities for contact and interaction between minority law students, new lawyers, and future bar leaders, open new lines of communication, and create positive synergy. We are confident it will give the AAP needed operational support and will free the program staff to devote more of their time and energy to the continued success of the program. All of this will contribute to the increased success of the program.

Because this change was a shift in reporting relationships and departmental structure, it was a decision that was entirely appropriate for the Executive Director to make. That said, she made the realignment with input from a variety of people, including several current and past Affirmative Action Committee members and members of the Board of Governors. The board fully supports the decision. We believe this realignment is a good one both for the Oregon State Bar and its AAP.

We acknowledge and appreciate the passion and creativity that Stella Manabe brought to the program in her ten years with the OSB. Many people have expressed that they are reacting more to her resignation than to a change in internal OSB structure and we know she will be missed. Under Stella’s leadership the Affirmative Action Program had many successes, including the creation of Olio, a nationally recognized program. We hope and expect to continue building on the foundation she laid.

Again, we want to be clear that the OSB Board of Governors remains fully committed to the AAP and its goals, and we are not abandoning or diminishing our commitment to diversity in the legal profession and to equal access to the justice system. We will continue to do everything possible to ensure that the Affirmative Action Program is adequately funded and supported in every way. With this letter, we have tried to respond to the issues and concerns expressed by many of you and invite you to contact any of us individually if you have additional questions. We hope all of you will appreciate that this organizational realignment was done to strengthen the program and that you will continue working with us in a positive spirit to meet that objective.

Sincerely,

Albert A. Menashe
President
Open Letter from Oregon Minority Lawyers and Law Students and Other Interested Persons

I appreciate the time many of you took to attend the meeting last Friday, September 14. I am fully supportive of the Affirmative Action Program. I have worked closely with the Affirmative Action Program Administrator and the Affirmative Action Committee in the past in crafting the program's goals and outcomes as well as other issues.

I would like to answer in writing some of the questions that were posed at the meeting.

1. In response to comments made on September 14, the title of Affirmative Action Program Administrator will be retained.

2. The AAP Administrator will continue to have responsibility for developing the program's direction and outcomes with input from the Affirmative Action Committee. The AAP Administrator will continue to be responsible for the day-to-day implementation of program activities.

3. The AAP Administrator will be responsible for drafting the program budget with input from the Affirmative Action Committee.

4. The AAP staff will continue to report to the AAP Administrator, who will draft their performance evaluations. These evaluations will be reviewed as they are with every other program through the reporting structure which ends with a complete review by the HR Manager.

5. I have asked the Affirmative Action Committee to designate two people to participate in final interviews for the top candidates for the AAP Administrator position. The salary for the new AAP Administrator will take into account the person's qualifications and experience.

6. On October 12, I will meet with the AAC to present the draft budget for 2008 based on the dedicated $30 per active bar member. The draft budget will include several options for 2008 program activities and staffing for the committee to consider.
7. I will also offer my services to the FrOLIO board if it chooses to move forward. I have already drafted a fundraising plan for its review.

If you have additional questions or comments, please let me know.

Sincerely,

Karen L. Garst

Karen L. Garst
Executive Director
September 26, 2007

Dear Members of the Board of Governors,

We are writing to you today to ask a few questions regarding the recent organizational change in the Oregon State Bar’s Affirmative Action Program (AAP), and to comment on the procedure that was followed in making that decision.

We are first going to go through certain parts of President Menashe’s open letter of September 21, 2007, to members of the Oregon legal community and law students. Sections of the letter are placed in bold font and our responses directly follow. In places we have listed our questions and concerns, in others we are simply making some general comments. We also refer to the minutes of the Affirmative Action Committee’s meeting of September 14, 2007, to support certain assertions we are making. We would recommend reading those minutes so you have a better idea of what information the Executive Director, Karen Garst, has given us.

On the contrary, the decision to move the Affirmative Action Program into the Member Services Department was carefully and thoughtfully considered with a view toward providing more—not less—organizational support to a program we and the members of the Bar value highly.

Our understanding of the new organizational support is that it will be limited to answering phone calls by students asking for details regarding AAP events. Karen Garst was unable to give us more specifics, though she did let us know, in a personal conversation following the AAC meeting that the Member Services staff would most certainly not be present at AAP events. This leads us to conclude that the organizational support is minimal at best and thus cannot be the main reason for moving the AAP staff from their offices.

Additionally, because Karen Garst seemed concerned about the lack of AAP staff answering calls from students, we wonder if she has received any complaints from AAP participants. If not, it would be an arbitrary move to make. We also cannot help but note that the same result, of having well-informed program participants, could have been reached by other means. For example, having a better webpage, which would require less organizational upheaval.

Therefore, we are unimpressed by this reason as it stands currently.

There is no change in budget and no less support for the goals of the program.

We are very pleased to hear this and grateful for the Bar's support.
For many years, AAP was part of the Member and Public Services Department, and the administrator reported to the manager of that department.

Angel Lopez, a previous Administrator for the AAP, disagrees. He was never aware that he had to respond to anybody, and never did. Please refer to the September 14, 2007 minutes.

Recently, it became apparent that the program needs a level of support that the Executive Director is not able to provide.

What kind of support would this be? What precisely will the Member Services Manager, Margaret Robinson, do? Would her only duty be to collaborate with the AAP Administrator in drafting the budget? If not, what would the other tasks be?

There was also a concern that the program may be hindered by its isolation from other bar functions, support services and personnel.

This kind of a decision should be one that is taken after consultations with the AAC. Otherwise we see absolutely no purpose for the AAC. This is not a mere shift in departmental structure, but has the lofty goal of increasing collaboration between other bar functions. Therefore, not only is such a decision not for the Executive Director to make unilaterally, but the lack of consultation with the AAC leads people to doubt the sincerity of the Bar's commitment to the AAP. Even if Karen Garst is convinced that it was within her sound discretion to make the decision unilaterally, the events that have unfolded show her to be an ineffective communicator lacking the ability to lead the bar in a collaborative and unifying manner. She may defend herself by saying that she is naïve; we do not believe that naiveté is a defense, but consider it a demonstration of bad management.

**Incorporating AAP into Member Services is a natural fit and will provide new opportunities for contact and interaction between minority law students, new lawyers, and future bar leaders, open new lines of communication, and create positive synergy.**

Will Margaret Robinson be holding Member Services workshops with all the AAP students to expose them to the other programs? What is her plan of action to open the lines of communication and create synergy?

We believe that the same goal, of opening lines of communication, would have been accomplished by simply providing the AAP Administrator with a list of lawyers who are willing to serve as contacts. The AAP Administrator would then invite all these attorneys to the AAP events.

Because we do not see exactly how this interaction will pan out and President Menashe’s letter uses ambiguous language, we respectfully disagree that this is a "natural fit."
Because this change was a shift in reporting relationships and departmental structure, it was a decision that was entirely appropriate for the Executive Director to make. That said, she made the realignment with input from a variety of people, including several current and past Affirmative Action Committee members and members of the Board of Governors.

Not a single AAC member stated that they had been consulted about this change during the September 14, 2007 AAC meeting. Please refer to the minutes from the September 14, 2007 meeting. We would like to have a list of AAC members who were consulted so that we may discuss matters with them as well.

While it is entirely appropriate for the Executive Director to make the decision unilaterally, it is additionally entirely appropriate for the AAP members, who will be the ones directly impacted by the change, to ask questions. While doing so it would be helpful if the Executive Director did not accuse us of over-reacting or tell us that we do not matter. We, as law students, will soon be members of the OSB. We already feel heavily invested in the Bar and would like to educate ourselves about it. It is counter-productive to come to open Bar meetings only to hear the Executive Director dismiss our opinions, suggestions and questions as unimportant. This is yet again an example of poor management by Karen Garst.

We hope all of you will appreciate that this organizational realignment was done to strengthen the program and that you will continue working with us in a positive spirit to meet that objective.

We are nothing but committed to the Oregon State Bar and the Affirmative Action Program. We share your goals of making the AAP more efficient and effective. That being said, we are uncertain, at this point in time, as to whether this is the right step to achieve those goals.

We have the best interests of the Bar and the AAP at heart and thus will continue working with you constructively in the future. Our loyalties as law students lie with this Bar because of its progressive actions and passion for the diversification of the Bar. However, our questions must be answered for us to engage in this process productively and fully.

Respectfully,

[signature]
Manasi Kumar
3L Law Student at Lewis & Clark Law School

[signature]
Jeanice Chieng
3L Law Student at Lewis & Clark Law School
The meeting was called to order by President Albert Menashe on Friday, June 22, 2007, at 1:00 p.m. at the Cannery Pier Hotel in Astoria. The meeting adjourned at 4:55 p.m.; the board reconvened at 9:00 a.m. on Saturday, June 23, 2007, at the same location and adjourned at 12:00 p.m. Present from the Board of Governors were Albert Menashe, Rick Yugler, Kathy Evans, Jon Hill, Bette Worcester, Bob Vieira, Terry Wright, Bob Lehner, Ann Fisher, Gerry Gaydos, Bob Newell, Carol Skerjanec, Linda Eyerman, and Ward Greene. Staff members present were Karen Garst, Sylvia Stevens, Jeff Sapiro (Friday only), Rod Wegener, Susan Grabe, and Teresa Wenzel. Present from the PLF (Friday only) were Jim Rice, Rodney Lewis, Jeff Crawford, Bob Cannon, Suzanne Chanti, Jim Schafer, Ronald Bryant, Lisa Almay Miller, and Cindy Hill. Also present, Friday only, was Josh Newton (ONLD).

Friday, June 22, 2007

1. Report of Officers

   Mr. Menashe welcomed the PLF board members and staff to the joint meeting.

   A. Report of the President

   1. Meeting with Chief Justice Paul J. De Muniz - June 8, 2007

      The Chief Justice appreciated the efforts and results of the board and bar’s participation in the legislative session. The Chief Justice and the Supreme Court want to see the Elimination of Bias requirement continue; the Chief Justice has appointed Justices Walters and Linder to work with representatives of the bar to develop a proposal. An Admissions Task Force is being created to study how qualification to practice is determined. The task force will consist of two Supreme Court justices, two members of the Board of Governors members, two representatives from the Board of Bar Examiners, and a professor from each of the three law schools. Mr. Menashe will be one of the members from the BOG and Ms. Wright and Mr. Hill volunteered to be considered for the other BOG position. The Supreme Court has not yet determined how it will respond to the DOJ’s request that the OSB collect social security numbers of bar members to aid in child support enforcement.

      The bar is continuing to study the creation of a new bar card, which would allow lawyers to bypass regular courthouse security. This is complicated because courthouse security is under the jurisdiction of the various county sheriffs, not the courts. With the current level of technology, however, it appears there should be a resolution to this matter in the foreseeable future.
2. OSB President’s Schedule of Events

Mr. Menashe directed the board’s attention to the agenda memo showing events he had attending since the last board meeting. Former OSB President Nena Cook stood in for him at one of the judicial investitures. His attendance at the Northwest Bar Association meeting reinforced his belief that the OSB does things better than most bars. He also mentioned that because of low pay for judges in Oregon, there is a concern that in the near future many judges may be leaving the bench to pursue private practice.

B. Report of the President-elect

Mr. Yugler thanked Ms. Garst for hosting the House Judiciary Committee dinner at her home and encouraged board members to attend as many local bar social events as they can to make themselves known to bar members.

1. Northwest Bars meeting in Seattle

Mr. Yugler commented favorably on the Washington State Bar Association’s disciplinary courtroom in its new space. He suggested that the Oregon State Bar should do the same, as it makes the disciplinary process more formal and more dignified. Ms. Garst said there would be hearing rooms available in the new bar building for this purpose, although special fixtures for a “bench” might have to wait.

2. Eugene Register-Guard Editorial Meeting

Mr. Yugler praised Mr. Menashe on various editorial visits. It is a helpful way of presenting the bar’s views and helping with issues during the legislative session.

3. New Bar Admittee Ceremony

Mr. Yugler encouraged the board to attend the new admittees’ ceremony as the admittees appreciate the board being there.

4. Klamath Falls Legal Aid Opening

Mr. Yugler attended the opening of the Klamath Falls Legal Aid Office. He observed that it reinforces the bar’s connection to the Campaign for Equal Justice. It was noted that because much of the money for legal aid comes through the Oregon Law Foundation, the board should find ways of encouraging law firms to use the “leadership banks” from which the OLF gets a great deal of its interest income. A list of leadership banks is available in the OLF brochure and on its website at oregonlawfoundation.org.
C. Report of the Executive Director
   1. Results of Second Year of Five-year Longitudinal Study of 2005 New Admittees
      Ms. Garst highlighted the information about the study, which was included in the agenda.
   2. New Bar Logo
      Ms. Garst introduced concepts for a new bar logo. The board did not favor any of the proposed designs; the consensus was to continue having trees in the logo but that modernizing the overall look of the logo would be acceptable.

D. Oregon New Lawyers Division
   1. Update
      Josh Newton presented the ONLD report. Since the ONLD's last report it has held an ethics CLE in Bend, presented by Helen Hierschbiel; a social event in Bend, which was well attended; and provided a public information booth at the Pole Pedal Paddle in Bend. The ONLD has completed reviewing submissions from the high school essay contest and was very impressed with the participation level and the content of the essays. The ONLD will have booths at the Lane and Clackamas County fairs.

2. Joint Meeting with Professional Liability Fund
   A. Professional Liability Fund
      1. Update
         a. Financial Status
            The PLF's financial status is better than expected with an income at $3 million for the first five months of 2007. The rate of new claims is down and the administrative costs are below budget. The actuarial report is expected in June. Recently the report has been more negative than positive and the claims' costs are expected to remain high, with the expectation that June will be mildly bad. The PLF board will review the assessment and make its recommendation in late August. Its recommendation will to be presented to the BOG in September.
         b. Claims Update
            The frequency of claims was at an all time high in 2005 and is much lower this year. Claims seem to be consistent with the 1990s, with frequency
down and severity up. Trial results and recoveries this year have been good. The biennial Defense Panel training will be held this year at Salishan.

c. OAAP and Practice Management

Mike Sweeney has retired and Doug Querin will take over his duties.

d. Excess Program Developments

The excess program is at 5% penetration this year. There are more firms but fewer solo practitioners participating.

e. PLF Audit

The PLF is pleased with the audit report. The PLF is “in the black” and there were no major exceptions noted.

f. Evaluation of Non-Traditional Assets

Mr. Zarov directed the board’s attention to the exhibit explaining the valuation of the PLF’s non-traditional assets, but noted that most observers do not find it as interesting as he does.

g. Miscellaneous

In the next five to seven years, the PLF expects to loose one-half of its employees to retirement and 75% of those leaving will be from management, which will result in a loss of considerable historical and traditional knowledge. Mr. Zarov noted that national statistics indicate that 80% of attorneys have no plan for someone to take over their practice on death or retirement; there is concern that this will be a serious issue as baby-boomer lawyers reach retirement age.

3. Board Member Reports

Ms. Skerjanec reported on her participation in the President’s Eastern Oregon tour in Union, Wallowa, Baker, and Malheur Counties; she has attended executive committee meetings of the sections she is assigned, as well as hosted the HOD Region 1 meeting. While attendance was low, she believes the HOD regional meetings were a good idea. She also relayed a story about a new Oregon Law Center attorney who spent two nights sleeping at the Law Center because she could only afford the community’s cheapest hotel, which was completely inadequate.

Mr. Gaydos attended the Lane County Bar’s spring meeting and indicated it was well attended. He praised Mssrs. Menashe and Yugler for their interview with the Register Guard. Mr. Gaydos hosted the HOD meeting for Region 6 and was concerned that some of its members had not heard about the bar’s new building or did not know the bar would be
moving to its new location in the near future. Additionally, Mr. Gaydos reported that the Futures Committee is moving forward with spirited discussions. It has a date and place and is now lining up speakers.

Ms. Fisher reported she had attended local bar meetings in Columbia and Washington Counties and her section’s meeting. She joined Mr. Menashe’s meeting with the local newspaper for an interview. She participated in her region’s HOD meetings, which were hosted by John Tyner, and added that some in Region 4 also were not aware of the new bar center.

Ms. Eyerman reported on activities of the LRAP Advisory Board. Although it was intending to make only four grants each year, because there were funds available from 2006 and 2007, the board was able to select seven recipients for 2007 from 64 very qualified applicants.

Ms. Wright attended her sections’ meetings. The Consumer Law Section purchased a library, which it found online, that it will provide at no cost to its members. The UPL Committee is doing great and each member gives a great deal of effort to the group. She also attended her region’s HOD meeting and indicated a new member was appreciative of the information provided through the meetings and written materials.

Mr. Newell attended his section’s meeting and met with Multnomah Bar’s Managing Partners’ Roundtable where he noted that several firms had moved their IOLTA accounts to OLF leadership banks. Mr. Newell encouraged more notice to bar members regarding the new building and indicated the message needs to be repeated over and over and over.

Mr. Greene attended the MBA annual meeting and again, noted some were not aware of the new building.

Ms. Evans reported that her sections are doing well and members communicate regularly via the internet. In July, she will be meeting with women lawyers from the Ukraine who will be visiting Salem. Ms. Evans also noted that more than one Region 6 lawyer has indicated interest in running for Ms. Fabien’s position this fall.

Mr. Menashe commended the public members for the time and energy they give to the bar because they really do not have “a horse in the race.”

Mr. Lehner reiterated Ms. Evans’ comment that his sections also do a great deal of communications via the internet. It has been a great way for him to become more acquainted with the sections and their concerns.

Mr. Vieira is reacquainting himself with his groups and also finds the e-mail communications helpful.
4. Closed Session Agenda
   A. Reinstatements (Judicial proceeding pursuant to ORS 192.690(1) – separate packet)
   B. General Counsel/UPL Report (Executive Session pursuant to ORS 192.660(1)(f) and (h) – separate packet)

5. Rules and Ethics Opinions
   A. Legal Ethics Committee
      1. Revision of OSB Formal Ethics Opinion No. 2005-120
         Ms. Stevens presented information concerning the revision of OSB Formal Ethics Opinion No. 2005-120. The opinion needs correcting to eliminate the suggestion that lawyers in a government office are subject to imputed disqualification.

   Action: The board unanimous approved the committee motion to approve the revision to Legal Ethics Opinion No. 2005-120.

6. OSB Committees, Sections, Councils, Divisions and Task Forces
   A. Unlawful Practice of Law Committee
      1. Changes to Article 20 of the Bar Bylaws

   Action: Ms. Worcester moved, Ms. Wright seconded, and the board unanimous passed a motion to waive the one meeting notice requirement for bylaw change.

   Ms. Wright presented information concerning a proposed change to OSB Bylaw Article 20 to create a “demand letter” instead of the current “admonition.” The UPL Committee is concerned that an admonition might give rise to due process concerns if not accepted by the affected nonlawyer. The board discussed whether the demand letter may have less “teeth” than the admonition and that unless the bar is willing to take action, it should walk away rather than just demand the party cease action. Another thought was that at least the demand letter provided a paper trail in the event the bar takes action at a later date.

   Action: Ms. Eyerman moved, Mr. Vieira seconded, and the board passed a motion to table the matter until its September meeting (yes, 12 [Yugler, Evans, Hill, Worcester, Vieira, Wright, Menashe, Fisher, Gaydos, Newell, Skerjanec, Eyerman]; no, 2 [Greene, Lehner]; absent, 2 [Fabien, Gerking]).
B. Appellate Practice Section

1. Request for Amicus Curiae Appearance

The Appellate Section requested that the board authorize it to submit an amicus memorandum in State v. Ortiz as requested by the Court of Appeals. The board felt it did not have enough information concerning the issues and the stance the section desires to take.

Action: Mr. Yugler moved, Mr. Greene seconded, and the board passed a motion to seek an extension of time for filing the amicus memorandum and that the section provide the board with more information so it can take final action at a special meeting on July 20, 2007. The motion included determining whether the Criminal Law or other interested sections have a position on the issues. (yes, 13 [Yugler, Evans, Hill, Greene, Vieira, Wright, Menashe, Fisher, Gaydos, Newell, Skerjanec, Eyerman, Lehner]; no, 1 [Worcester]; absent, 2 [Fabien, Gerking]).

Mr. Menashe directed the Policy & Governance Committee to look at Bar Bylaw 2.105 and ensure it clearly expresses the requirements for getting authority to file amicus briefs.

C. Client Security Fund

Ms. Stevens presented information concerning the CSF Committee’s denial of the Jensen v. Carroll claim (No. 04-10). The Jensens are in negotiations with the PLF and Mr. Carroll’s former law firm, which might provide them with more than the amount of money misappropriate by Mr. Carroll. The committee felt the fund was intended as a recovery of last resort and should only provide payment in cases where the claimant could not obtain funds from other sources.

Action: The board voted unanimously to affirm the CSF committee’s denial of the claim.

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

A. Budget and Finance Committee

1. New Bar Center

Construction of the new bar center is moving ahead smoothly and the projected move-in date is now December 22. The total cost of the building will be closer to $21 million, more than the earlier estimate of $18 million, when consultant fees, furniture, and equipment are included. Staff is continuing to make careful decisions on tenant improvements. Mr. Wegener provided the board with a balance sheet of the projected building and loan costs over the next fifteen years. At the end of that period, the cost of the new building will be the same as the projected cost of maintaining and upgrading the current building. At the six-year mark there appears to be a shortfall because (a) the bar may need to expand the space it is using or (b) leases for new lessees will be expiring. The shortfall should
be covered by the $600,000 reserve fund. Through prudent decisions the bar and consultants have been able to save approximate $9.5 million over the life of the new building cost by selling the current bar building for more than expected and obtaining a favorable interest rate on the new loan. Budget & Finance will continue to update the balance sheet and provide the board with an updated version at its July 20, 2007, special meeting.

**Saturday, June 23, 2007**

**B. Member Services Committee**

1. **Episodic Volunteerism**

   To increase participation by volunteers, Member Services has printed a new volunteer form brochure, which provides for episodic volunteerism rather than volunteerism for long periods of time. Board members are encouraged to take the brochures to meetings they attend and explain the new volunteer method to boost volunteerism. The committee will observe the results for a year and report back to the board.

2. **Past Bar Presidents’ Involvement and Recognition**

   The committee recommended that the board create a President’s Council to utilize the expertise and experience of past presidents. Several past bar presidents (Cook, Rawlinson, Harnden, Menashe) have indicated their willingness to participate in the council. Each year the council will be asked to choose a project and bring it to fruition. The committee suggested that the first project for the Council could be a tent show for 2008. The board felt that the President’s Council should choose its own project and did not want to assign a project to the new council. The first meeting of the council would take place prior to the BOG retreat and the project for the coming year would be submitted for BOG approval at the retreat.

**Action:** The committee presented a motion to create a President’s Council consisting of past bar presidents and to have the council make preparations for a tent show for 2008. By consensus, the motion was revised to include only the creation of the council. The motion passed unanimously.

3. **2008 Volunteer Recruitment Brochure**

**Action:** The board unanimously passed the committee motion to send the 2008 Volunteer Recruitment Brochure to all active bar members.
C. Policy and Governance Committee

1. Clarification of CAO Standard

Action: The board unanimously approved the committee recommendation to forward Bar Rule of Procedure 2.5 (Client Assistance Office) to the Supreme Court for approval.

2. Grants to Classroom Law Project and Campaign for Equal Justice

Action: Mr. Gaydos moved, Mr. Vieira seconded, and the board unanimously passed a motion to waive the one meeting notice requirement for bylaw change.

Action: The board unanimously passed the committee motion to change the bylaw as indicated in the agenda.

3. Mileage Reimbursement for HOD Members

Action: Mr. Yugler moved, Ms. Eyerman seconded, and the board unanimously passed a motion to waive the one meeting notice requirement for bylaw change.

The committee motion was to adopt a new bylaw allowing for reimbursement of up to 400 miles for HOD delegates attending the annual HOD meeting. Discussion points include whether it is inappropriate for the BOG to implement this change when the HOD voted against a similar policy in 2006; the $35,000 projected cost for reimbursement was not realistic; there is lack of evidence that reimbursement would lead to more volunteerism; adoption of this policy would have a substantial financial impact; and it may open the door for other volunteers to seek reimbursement.

Action: Mr. Greene moved, Ms. Wright seconded, and the board passed a motion to submit a proposal as a BOG resolution to the HOD (yes, 12 [Yugler, Evans, Hill, Greene, Vieira, Wright, Menashe, Fisher, Gaydos, Worcester, Skerjanec, Lehner]; no, 2 [Newell, Eyerman]; absent, 2 [Fabien, Gerking]).

4. Change to Alcohol Policy

Action: Ms. Fisher moved, Ms. Worcester seconded, but there was not a 2/3 vote to waive the one meeting notice for a bylaw change (yes, 7 [Fisher, Gaydos, Lehner, Menashe, Skerjanec, Vieira, Worcester]; no, 7 [Evans, Eyerman, Greene, Hill, Newell, Wright, Yugler]; absent, 2 [Fabien, Gerking]).

Discussion ensued and included the following observations and questions: Morals and mores change throughout the years; is this a matter of morality or finance? Many sections, individual lawyers, etc. are in favor of allowing the use of bar funds to purchase alcoholic beverages. Social events are important to the bar as means of communicating with its members and alcohol is the customary element of hospitality in our society; making guests pay for their own drinks is “chintzy.”
Making drinks free may cause some to abuse alcohol, but it was also observed that this does not appear to be a problem at official bar functions. Is this a wise use of bar funds? Law firms and other organizations could be asked to underwrite alcohol at official bar events. Different treatment might be appropriate for sections, since no one is required to be a member of a section; while bar members do not have that option. The Indian Law Section does not want to impose its ban on alcohol on the entire bar and supports the policy for the bar as a whole. This is an issue that should be brought to the HOD for its input. Sponsoring drinks is a way of saying thank you to those who give a great deal of time and energy to the bar through volunteerism.

5. Update on Policy Issues

The committee is working on redistricting, including whether the size of the board should be increased. The committee is also focusing on the EOB matter with Chief Justice DeMuniz, Justices Walters and Linder, Mr. Menashe, Mr. Yugler, Mr. Gerking, and Ms. Garst to find a solution that will be acceptable to bar members and the Supreme Court. Input from the board and other bar members is appreciated. Suggestions included: Meeting prior to the BOG meeting of July 20; meeting with HOD members who originally objected to EOB; revising the requirements; and revising the programs presented.

D. Public Affairs Committee

1. Political Update

Mr. Gaydos highlighted the following issues for the board: Bar bills are doing well and there has been a $32 million increase to the judicial budget with the Public Official Salary Commission projected to look at judicial salaries; Senator Kate Brown and Representative Greg McPherson are to be commended for their work with the bar; the lack of lawyer-legislators makes it more difficult for the bar to get its issues through the legislature; bar staff is greatly respected by the legislators; funding for court facilities continues to be an important issue; public defenders did not receive a salary increase and Mr. Gaydos asked board members to call Representative Jeff Merkley at 503-986-1200 and encourage his committee to implement an increase; board members also were encouraged to attend as many legislative events as they can to help forward the bar’s agenda in the legislature; currently the money for court facilities comes from filing fees and motion fees will be added for more funding; there will be a HOD resolution recognizing Senator Brown, Representative McPherson, and others from the legislature; and Mr. Menashe will send a letter, drafted by Ms. Grabe to Senator Brown and Representative McPherson, thanking them for their assistance.
8. Consent Agenda

The quorum requirement for board committees on Page 115 was removed from the Consent Agenda by request of Mr. Yugler. This item will appear on the board September 2007 agenda after the staff has determined whether standing committee leaders have any concerns.

Action: Ms. Wright moved, Mr. Yugler seconded, and the board unanimously passed the motion to accept the Consent Agenda with the removal of the quorum requirement.

9. Default Agenda

10. Good of the Order (Non-action comments, information and notice of need for possible future board action)

None
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Oregon State Bar
Board of Governors Meeting
June 22-23, 2007
Executive (Closed) Session Minutes

Discussion of items on this agenda is in executive (closed) 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.

I. Unlawful Practice of Law [Ms. Wright]
   A. Recommendation of UPL Committee
      1. OSB v. Douglas Palaschak, (UPL No. 06-64)
         Action: The board voted to table a decision in OSB v. Douglas Palaschak until its September 2007 meeting.
      B. Pending UPL Litigation
         Ms. Wright updated the board on pending UPL litigation.

II. General Counsel’s Report
   A. Ms. Stevens updated the board on disciplinary, non-disciplinary, pending, and threatened litigation.
Reinstatements and disciplinary proceedings are judicial proceedings and are not public meetings (ORS 192.690). This portion of the BOG meeting is open only to board members, staff, and any other person the board may wish to include. This portion is closed to the media. The report of the final actions taken in judicial proceedings is a public record.

A. Reinstatements

1. Michael S. Balavage – 925646

   **Action:** Mr. Hill presented information concerning this BR 8.1 and 8.7 reinstatement application. The board passed a motion to reinstate temporarily Mr. Balavage to active status and to consider unconditional reinstatement at its September 2007 meeting.

2. David C. Brownmiller – 790860

   **Action:** Ms. Worcester presented information concerning this BR 8.1 reinstatement application. The board passed a motion to recommend to the Supreme Court that Mr. Brownmiller be denied reinstatement as an active member of the Oregon State Bar.

3. Marlee Buckson – 990320

   **Action:** Ms. Wright presented information concerning this BR 8.1 reinstatement application to satisfy the one meeting notice requirement of Bylaw 6.103. The application will come before the board at its September 2007 meeting.

4. Aviva Groner – 925740

   **Action:** Mr. Newell presented information concerning this BR 8.1 reinstatement application. The board passed a motion to recommend to the Supreme Court that Ms. Groner be reinstated as an active member of the Oregon State Bar, conditional upon her obtaining 45 CLE credits before reinstatement becomes effective.
5. Mark R. Humphrey – 903031

Action: Ms. Wright presented information concerning this BR 8.1 reinstatement application. The board failed to pass a motion to recommend to the Supreme Court that Mr. Humphrey be reinstated as an active member of the Oregon State Bar, conditional upon Mr. Humphrey maintaining a two year mentoring relationship with Katherine Pratt.

Action: The board passed a motion to recommend to the Supreme Court that Mr. Humphrey be reinstated as an active member of the Oregon State Bar.

6. Steven D. Marsh – 010749

Action: Mr. Gaydos presented information concerning this BR 8.1 reinstatement application to satisfy the one meeting notice requirement of Bylaw 6.103. The application will come before the board at its September 2007 meeting.

7. Kenneth McWade – 700899

Action: Mr. Yugler presented information concerning this BR 8.1 reinstatement application. The board failed to second a motion to postpone a decision until its next meeting.

Action: The board passed a motion to recommend to the Supreme Court that Mr. McWade be reinstated as an active member of the Oregon State Bar.

8. Maureen Michael – 920966

Action: Mr. Vieira presented information concerning this BR 8.1 reinstatement application to satisfy the one meeting notice requirement of Bylaw 6.103. The application will come before the board at its September 2007 meeting.
9. Courtney O’Connor – 050815

Action: Mr. Lehner presented information concerning this BR 8.1 reinstatement application. The board passed a motion to recommend to the Supreme Court that Ms. O’Connor be conditionally reinstated, subject to a term of probation that requires her to comply with the existing agreement with SLAC and any extension of that agreement recommended by SLAC.

10. Roger Perry – 915190

Action: Ms. Fisher presented information concerning this BR 8.1 and 8.7 reinstatement application. The board passed a motion to reinstate temporarily Mr. Perry to active status and to consider this unconditional reinstatement at its September 2007 meeting.

11. Lawrence S. Shaw – 764098

Action: Ms. Evans presented information concerning this BR 8.1 reinstatement application. The board passed a motion to recommend to the Supreme Court that Mr. Shaw be reinstated as an active member of the Oregon State Bar.

12. Graeme Strickland – 732960

Action: Ms. Skerjanec presented information concerning this BR 8.1 reinstatement application. The board passed a motion to recommend to the Supreme Court that Mr. Strickland be denied reinstatement as an active member of the Oregon State Bar.


Action: Mr. Yugler presented information concerning this BR 8.1 reinstatement application to satisfy the one meeting notice requirement of Bylaw 6.103. The application will come before the board at its September 2007 meeting.

B. Disciplinary Counsel’s Report

As written.
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Oregon State Bar
Meeting of the Board of Governors
July 20, 2007
Open Session Minutes

The special meeting of the Oregon State Bar Board of Governors was called to order by President Albert Menashe on Friday, July 20, 2007, at 1:00 p.m. at the Oregon State Bar Center, Lake Oswego. The meeting adjourned at 1:27 p.m. Present from the Board of Governors were Albert Menashe, Rick Yugler, Kathy Evans, Jon Hill, Bette Worcester, Bob Vieira, Bob Lehner, Ann Fisher, Linda Eyerman, Marva Fabien, Tim Gerking, and Ward Greene. Staff members present were Karen Garst, Sylvia Stevens, Susan Grabe, Kay Pulju, Anna Zanolli, and Teresa Wenzel.

Friday, July 20, 2007

1. Bar Logo

Kay Pulju, OSB Communications Manager, presented information regarding a proposed new OSB “logotype.” She explained the strategy of branding OSB materials with a simple logotype that will be both very recognizable as being from the Oregon State Bar and yet versatile enough in color and design to be used in conjunction with various font styles, in various media (website, brochures, etc.), and by various bar groups. Staff asked the board to authorize going forward to refine the design to accommodate the timetable for the new building. Ms. Pulju acknowledged that the board, at the June meeting, indicated a desire to see trees incorporated into the new logotype or to start with a new design. She reported that staff chose the second option because the trees in the current logo create many difficulties when used in digital and print formats; is very busy, which makes is awkward when used with other designs; the font is not compatible with other fonts; etc. Though the trees would not be included in the proposed logotype, Ms. Pulju indicated it would be relatively easy to include the trees as part of a watermark or in some other capacity. The board agreed by consensus to go with the new proposed logotype. Ms. Evans and Mr. Greene dissented.

2. Appellate Practice Section

A. Request for Amicus Curiae Appearance

Ms. Stevens presented information and answered questions concerning the Appellate Practice Section’s desire to present an amicus brief in State v. Ortiz. The Criminal Law Section had been consulted on the matter and was agreeable to the action.

Motion: Mr. Yugler moved, Mr. Gerking seconded, and the board unanimously approved the motion to approve the Appellate Practice Sections request to submit an amicus brief to the court in State v. Ortiz.
3. Budget and Finance Committee

A. New Building Financial Project Update

Mr. Greene updated the board on the progress of the new building. The building is moving quickly toward completion and it will be decided shortly whether the move-in date will be in December or after the first of the year. The bar staff continues to hold the line on costs and is making frugal decisions with the future and the “greenness” of the building in mind.

4. Policy and Governance Committee

A. HOD Reimbursement Resolution

Mr. Gerking presented the Policy and Governance Committee’s recommendation that the board present a resolution to the HOD to reimburse HOD members for mileage up to 400 miles. The committee motion passed unanimously.
OREGON STATE BAR
Board of Governors Agenda

Meeting Date: September 28, 2007
Memo Date: September 28, 2007
From: Terry Wright, Appointments Committee Chair
Re: Appointments Committee Items for the Consent Agenda

Action Recommended

Approve the following recommendations from the Appointments Committee.

Certified Public Accountants Joint Committee
Recommendation: Vivian M. Lee, Secretary, term expiring, 12/31/2007

Judicial Administration Committee
Recommendation: Eric J. Waxler, term expiring, 12/31/2009

Pro Bono Committee
Recommendation: Maya Crawford, Secretary, term expiring, 12/31/2007

Council on Court Procedures
Recommendation: David F. Rees, term expiring, 8/31/2011
Recommendation: Mark R. Weaver, term expiring, 8/31/2011

Ninth Circuit Judicial Conference
Recommendation: Nena Cook, term expiring, 1/1/2011
Recommendation: Liane Richardson, term expiring, 1/1/2011
Recommendation: Stephen Manning, term expiring, 1/1/2011
Recommendation: Thomas Flaherty, term expiring, 1/1/2011
Recommendation: Ginger Skinner, term expiring, 1/1/2011
OREGON STATE BAR
Board of Governors Agenda

Meeting Date: September 27-28, 2007
Memo Date: August 28, 2007
From: Sylvia E. Stevens, General Counsel
Re: CSF Claims Recommended for Payment

Action Recommended

Consider the recommendation of the Client Security Fund that the following claims be paid:

<table>
<thead>
<tr>
<th>Claim Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>No. 06-14 Delepierre v. Okai</td>
<td>$22,500.00</td>
</tr>
<tr>
<td>No. 07-06 Calderwood v. Tripp</td>
<td>$6,044.00</td>
</tr>
<tr>
<td>Total</td>
<td>$28,544.00</td>
</tr>
</tbody>
</table>

Discussion

No. 06-14 Delepierre v. Okai ($22,500)

In the fall of 2005, Duane Delepierre decided he wanted to petition for post-conviction relief. His family knew Ontario attorney Thomas Okai from his previous representation of family members in a business matter and they felt they could trust him. The family inquired of Okai whether he handled PCR cases and he said he would think about it and let them know. Some time later, Okai informed the family that he would take the case and that it would cost approximately $20,000. Mr. Delepierre’s parents used their savings and mortgaged their home to pay a retainer of $22,500,1 which was paid in several installments between November 2005 and September 2006. There was no written fee agreement, but the Delepierres understood Okai would charge by the hour for his services.

There was an initial flurry of work and Okai filed a petition for post-conviction relief. The family tried to meet with Okai to discuss the case, but Okai avoided them other than responding to one phone call with assurances that “things were going well.” The PCR trial was set for September 16, 2006, but Okai presented to poorly that the court terminated the proceedings and rescheduled it to allow Okai to better prepare. On October 10, 2006, Okai’s office informed Delepierre’s family that Okai would not be representing Delepierre further and did not have any money to refund the unearned retainer, and referred Delepierre to the PLF.

The legal services performed by Okai were of extremely poor quality and of no use to Delepierre. (It appears no investigation of the trial was done.) In order to pursue Delepierre’s PCR claim, successor counsel will need to start over with a new petition.

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1 The Delepierres later learned that the going rate for a PCR case in Ontario was about $10,000.
Delepierre filed his claim with the CSF in December 2006. To satisfy the requirement that he have a civil judgment and make reasonable efforts to collect from Okai, Delepierre hired Portland attorney Richard Maizels. Okai did not respond to the suit filed by Maizels and a default judgment in the amount of $22,500 plus costs and disbursements was entered on August 15, 2007.

There are currently six disciplinary matters pending against Okai. The first was filed in June 2006; a Malheur County judge filed one on October 13, 2006 and the Delepierres filed one on October 31, 2006. The most recent complaint was filed by the Malheur County DA. An interim suspension order against Okai was entered August 13, 2007. Okai is believed to be living with his family in Ontario; he is not working and was recently in jail for unrelated matters. Maizels has concluded that further efforts to collect from Okai would be fruitless.

The committee concluded that this claim is eligible for reimbursement because the services provided by Okai were of no value and the claimant has made a good faith effort to recover from Okai. The committee recommends that Duane Delepierre be awarded $22,500 and that Mr. Maizels' contingency fee of 20% be approved, as required by CSF Rule 2.10.

07-06 Calderwood v. Tripp ($6,044)

In approximately 1988, Donald and Shirlee Calderwood were represented by attorneys Dennis Tripp, Greg Howe, Joseph Mendez and Greg Pfister\(^1\) in connection with a civil claim against Lawrence Cummings for sexual battery of their two daughters. Although the parties stipulated to judgment for $500,000, the Calderwoods subsequently agreed to accept $45,000 in full satisfaction, that being the total value of Cummings' assets. Under the terms of that agreement Cummings was to satisfy his obligation in monthly payments of $227.43 each, and from each payment the lawyers would receive their 1/3 contingency fee. Tripp was in charge of collecting and disbursing the payments.

Things went smoothly for about seven years, with Cummings making payments and Tripp disbursing to the Calderwoods and the lawyers in their respective shares. However, after March 1999, neither the Calderwoods or the other lawyers received any further disbursements.

Tripp died in April 2005.\(^3\) In the course of assisting Tripp's widow settle his affairs, Howe found that Tripp had been receiving payments regularly from Cummings. Among Tripp's papers, Howe found 11 uncashed money orders and 1 uncashed check from

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\(^1\) At the time, Howe was an associate in the firm of Pfister, Tripp & Mendez. Howe and Mendez both left the firm in the early 1990's. Pfister and Tripp continued as partners until 1996. Howe space with Tripp for several years before Tripp's death.

\(^3\) To date, the CSF has made awards to five of Tripp's former clients in the total amount of $63,342. Two other claims are pending.
Cummings, issued between 2004 and 2005. Howe contacted the Calderwoods to alert them to his discovery and turned over the uncashed money orders and checks. The Calderwoods retained an attorney, who contacted Cummings and since October 2005, payments have been made directly to the Calderwoods.

Neither the Calderwoods nor Howe have an explanation as to why Tripp’s failure to disburse payments went undiscovered for so many years. The Calderwoods’ lawyer suggests that they are unsophisticated and might not have thought to ask. It is also possible that they called Tripp and were told that Cummings had stopped making payments. As for the lawyers, Mendez left private practice in about 1998 and while the others continue to practice, the absence of the small payments each month may have gone unnoticed.

The Committee recommends that this claim be paid, finding that the loss arose from an established attorney-client relationship and from Tripp’s obvious misappropriation of the clients’ funds.

The Committee also recommends that, pursuant to CSF Rule 2.11, the time limits for making a claim for reimbursement be waived. CSF Rule 2.8 requires that claims be presented within two years of when the claimants “knew or should have known, in the exercise of reasonable diligence, of the loss.” The rule also provides that “[i]n no event shall any claim against the Fund be considered for reimbursement if it is submitted more than six years after the date of the loss.” The Calderwoods learned of their loss in 2005, approximately seven years after the first misappropriation by Tripp but only about one year after Tripp’s last misappropriation in approximately mid-2004. The Calderwoods presented their claim in May 2007; while more than two years of their discovery of Tripp’s last misappropriation, it was still within the six year ultimate limitations period. Their delay in filing with the CSF was due in part to their initial efforts to recover through the PLF.

In their claim for reimbursement, the Calderwoods asked for $18,649.26. That amount is based on the Calderwoods’ calculation that between 1999 and 2004, Tripp diverted payments from Cummings totaling $15,692.67. It also includes $2,956.59 for the unnegotiated payments found in Tripp’s office after his death, which apparently have been paid by the PLF. (The Calderwoods’ claim makes no allowance for the 1/3 contingency fee the Calderwoods would have owed their lawyers; if that is figured in, their claim would be for $12,432.84.)

The Committee figured the Calderwoods’ loss a different way and recommends an award in the amount of $6,044. The Committee’s calculation began with the $30,000 that the Calderwoods expected to net from Cummings under their agreement. From that the Committee subtracted the 92⁴ payments it found the Calderwoods received from Tripp, the sums they have or will receive directly from Cummings, and the money they received from the PLF:

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⁴ My review of the ledgers submitted by the Calderwoods identified only 88 payments before Tripp stopped making them.
<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net expected recovery</td>
<td>$30,000.00</td>
</tr>
<tr>
<td>Rec'd from Tripp</td>
<td>(13,949.00)</td>
</tr>
<tr>
<td>Rec'd from Cummings</td>
<td>($7,050.00)</td>
</tr>
<tr>
<td>Rec'd from PLF</td>
<td>($2,957.00)</td>
</tr>
<tr>
<td>Amount Lost to Tripp</td>
<td>$6,044.00</td>
</tr>
</tbody>
</table>

The Committee finally recommends that the Calderwoods be reimbursed without the necessity of having a civil judgment against Tripp’s estate, which is insolvent.
OREGON STATE BAR
Board of Governors Agenda

Meeting Date:         September 28, 2007
Memo Date:           September 26, 2007
From:               Rick Yugler, Member Services Committee
Re:                 OSB Award Recipients for 2007

Action Recommended

Approve the recommendations of the Member Services Committee for the OSB Award of Merit and President’s Awards.

Background

The board’s Member Services Committee recommends the following recipients for 2007:

President’s Award:
- Doug G Houser
- Eric C. Larson

President’s Affirmative Action Award:
- Hon. David Schuman

President’s Public Service Award:
- Lisa LeSage
- Mark Wada
- Hon. Adrienne Nelson

President’s Membership Service Award:
- Steven Janik
- Harvey Rogers
- Brad Tellam

Wallace P. Carson, Jr.,
Award for Judicial Excellence:
- Hon. Richard Barron

Award of Merit:
- Kate Brown

The OSB awards will be presented at a dinner on December 7 at the Benson Hotel in Portland. The ONLD and Oregon Bench & Bar Commission on Professionalism will also present their awards at the dinner.
OREGON STATE BAR
Board of Governors Agenda

Meeting Date: September 28, 2007
Memo Date: July 24, 2007
From: Tim Gerking, Chair, Policy and Governance Committee
Re: Quorum Requirement for Standing Committees

Action Recommended

Approve an amendment to the OSB Bylaws that would establish a quorum requirement in order for board standing committees to make recommendations to the board.

Background

ORS 9.010(1) provides that the bar is subject to ORS 192.610 to 192.690, which comprises most, but not all, of the Public Meetings Law. OSB Bylaw 8.2 echoes that in providing that “All regular and special meetings of the Board, committees, sections, and subcommittees or subsections thereof, are subject to the Public Meetings Law (ORS 192.610-192.690).” The principal thrust of the Public Meetings Law is to ensure that meetings at which the public’s business is done are open to the public, that the public has notice of the time and place of the meetings, and that decisions and other actions are memorialized in minutes that are also available to the public.

The Public Meetings Law applies to all meetings of a governing body of a public body for which a quorum is required in order to make a decision or to deliberate toward a decision on any matter. ORS 9.610(5). A governing body is one that has authority to make recommendations to a public body on policy or administration. ORS 192.610(3). Standing committees of the bar exist for the purpose of making recommendations to the BOG on specific matters, and thus fall clearly within the definition of governing body.

The Public Meetings Law does not apply if the members of a committee are charged with making recommendations individually rather than as a group. Moreover, even if the committee is required to make decisions as a group, there is no “meeting” within the meaning of the Public Records Law if there is no quorum requirement or if there is a gathering of less than a quorum.

OSB Bylaw 2.400 provides that meetings of the Board of Governors are governed by Robert’s Rules of Order, which in turn provides that in the absence of a rule or bylaw

1 The Bar has 19 standing committees. Several of them (Affirmative Action, Client Security Fund, Legal Ethics, MCLE and Unlawful Practice of Law) are committees that advise the administrators of OSB programs and make recommendations to the BOG regarding those programs. The other committee (e.g., Judicial Administration, Procedure and Practice, Quality of Life) study issues within their charge and make recommendations to the board.
specifying some other number, a quorum is a majority of the members. The bylaws are silent on quorum requirements for committees, with the exception of Bylaw 20.703, which requires that the UPL Committee must have a quorum to act on a report of an investigation.

Notwithstanding Bylaw 8.400, it appears that in the absence of a quorum requirement, meetings of OSB standing committees are not “meetings” under the Public Meetings Law. At the same time, we have historically treated committee meetings as public meetings, including issuing public meeting notices and keeping minutes, and Bylaw 8.400 suggests that the BOG intended that committee meetings be public in the same way as meetings of the BOG. The only real anomaly is the lack of an express quorum requirement for committees.

Many of the standing committees have long assumed they are subject to a quorum requirements, although the lack of any clarity has been the source of considerable confusion over the years. Committees generally recognize that the purpose of the quorum requirement is to ensure that action taken is representative of the group. Also, decisions made by only a small number of the committee members may be viewed as less legitimate.

In order to resolve the confusion among bar standing committees about their authority to act and to give the activities of such committees more legitimacy, the committee recommends adoption of the following addition to the bylaws relating to standing committees. Robert’s Rules of Order indicates that committees generally have the same quorum as the larger body to which they are responsible. Following this “common parliamentary law,” the quorum would a majority of the membership of the committee. The committee recommends adoption of the following new bylaw:

**Article 14 Committees**

**Section 14.9 Quorum**

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

When this recommendation was brought to the board in June, the board asked staff to ask committees if this would be a burden. An e-mail was sent on June 28 to all chairs and secretaries of standing committees for whom we had e-mail addresses. They were asked to notify us if they had a problem with the above proposal. Responses were received from the following committees indicating they did not see a problem or this is how they were operating at present: Quality of Life Committee; Judicial Administration; State Lawyers Assistance Committee; and Steve Johansen (Professionalism Commission). There were two concerns raised which are quoted below.

I have no argument with the proposed rule or with Sylvia’s memo. I would encourage the adoption of the rule, however, only if the BOG determines that a quorum requirement for
Committee actions is in the best interest of the Bar. That is, as Sylvia points out, the Public Meetings Law does not require a quorum; the applicability of the PML is triggered by the presence of a quorum requirement in some other source of law. And nothing prohibits the Bar from directing its committees to practice the procedures set out for public meetings in the PML even if the law does not require them. So, if the mandatory presence of a quorum furthers some decision-making, process or other interest of the Bar, separate from the dictates of the PML, go ahead and adopt the rule. Otherwise, if the Bar's interest is just in making sure that the notice, public access, and recordkeeping requirements of the PML are met, adopt a rule requiring the committees to do those things.

Harry Auerbach
Chief Deputy City Attorney, Portland
Secretary, Legal Ethics Committee

The Oregon State Bar Legal Heritage Interest Group, of course, is not a true "committee" of the bar. So, perhaps I am wasting my time in this response. Still, I have some thoughts.

As you no doubt noticed at the June 16, meeting; we almost never could achieve quorum for business or make a recommendation to the BOG under the proposed language. We almost never get a majority of our appointed members at any meeting. A quorum rule like proposed would make most of our meetings mere social gatherings, without impact on the bar.

In addition, I have a problem with folk, especially lawyers, who "vote" or block action by being absent from meetings of committees upon which they agree to serve. I would favor a much smaller quorum. Say 1/3rd of appointed members IF at a regularly scheduled and noticed meeting. Either that or some provision for obtaining votes by mail or e-mail.

David B. Avison, Chair
OSB Legal Heritage Interest Group

Because this matter was on the agenda in July and discussed briefly, the one-meeting notice of Bylaw 26 has been met.
OREGON STATE BAR
Board of Governors Agenda

Meeting Date: September 28, 2007
Memo Date: July 24, 2007
From: Tim Gerking, Chair, Policy and Governance Committee
Re: Bylaw 2.105 Amicus Curiae Briefs

Action Recommended

Approve the following amendments to Bylaw 2.105.

Background

At the June meeting, OSB President Menashe asked the Policy and Governance Committee to review OSB Bylaw 2.105 to ensure it clearly states the requirements and process for Board approval of an amicus appearance.

OSB Bylaw 2.105 provides:

Subsection 2.105 Amicus Curiae Briefs

Whenever a request is made by a section, a member or a committee for the appearance amicus curiae by the Bar before any trial court or appellate court, the request must be submitted to the Board for prior approval. The request to the Board must set forth a synopsis of the question involved, the action to be taken or already taken in the trial court and if on appeal, the question to be presented on appeal. The request must specify whether the amicus curiae brief is to be filed on behalf of the Bar or a committee or section of the Bar. The question involved must directly or substantially affect admission to the practice of law, the practice of law, discipline of members of the bench or bar, the method of selecting members of the judiciary or other questions of substantial interest to the Bar or a committee or section. The Board must determine whether the question involved can be adequately presented to the court without the amicus appearance of the Bar or the committee or section requesting authority to appear as amicus. Before final approval of an appearance by the Bar amicus curiae, the Board must first determine the possible cost of such an appearance, including lawyer fees, if any. The Bar must pay all costs, if any, for appearance by the Bar amicus curiae. All costs for appearance by a section must be paid by the respective section. Nothing in this section is intended to limit the powers of the Board to file an amicus curiae brief on its own authority.

Since sections and committees are part of the OSB, any brief or memorandum submitted as amicus is actually the position of the Oregon State Bar; hence the rationale for prior Board approval. The same is true if a member wishes to make an amicus appearance on behalf of the bar. The committee recommends making the following changes to make this clear.

Whenever a request is made by a section, a member or a committee that wishes to enter an amicus curiae appearance by the Bar before any trial court or appellate court must obtain prior approval from the Board. The request must be submitted to the Board for prior approval. The request must contain the following: a synopsis of the question involved, the position of the case, and the anticipated cost of appearing as amicus curiae including lawyer fees, if any. The request must also state whether the amicus curiae brief is to be filed on behalf of
the Bar or a committee or section of the Bar. The question involved must directly or substantially affect admission to the practice of law, the practice of law, discipline of members of the bench or bar, the method of selecting members of the judiciary or other questions of substantial interest to the Bar or a committee or section. The Board must determine whether the question involved can be adequately presented to the court without the amicus appearance of the Bar or the committee or section requesting authority to appear as amicus. Before final approval of an appearance by the Bar amicus curiae, the Board must first determine the possible cost of such an appearance, including lawyer fees, if any. The Bar must pay all costs, if any, for appearance by the Bar amicus curiae. All costs for appearance by a section must be paid by the respective section; if the Board approves the filing of an amicus appearance by a committee, the Bar will pay any costs for the appearance. Nothing in this section is intended to limit the powers of the Board to file an amicus curiae brief on its own authority.

In addition to putting in one place the information the requesting section or committee must present to the BOG in seeking approval, the foregoing proposal eliminates any reference to an amicus appearance initiated by the BOG. The existing references are confusing and unnecessary.
OREGON STATE BAR
Board of Governors Agenda

Meeting Date: September 28, 2007
Memo Date: July 24, 2007
From: Tim Gerking, Chair, Policy and Governance Committee
Re: Amendment to OSB Bylaw 2.703 (Statewide Judicial Appointments)

Action Recommended

Revise OSB Bylaw 2.703 as discussed below.

Background

OSB Bylaw 2.703 governs the BOG's recommendations for statewide judicial appointments. Subsection (c) explains the process by which the Board appoints a committee to interview candidates and make recommendations to the BOG. It currently refers to a "Committee on the Judiciary," although that name is no longer used for the committee. Deletion of reference to the Committee on the Judiciary was overlooked when the bylaw was last revised to accommodate the change in the recommendation process. The committee recommends that Bylaw 2.703 be amended as follows:

(c) The Board will appoint on a yearly basis, pursuant to Subsection 2.102 of the Bar's Bylaws, a Committee on the Judiciary to make candidate qualification recommendations to the Board using the criteria set forth in this section. Meetings of the Committee on the Judiciary, including interviews of candidates, are public meetings, except for portions of meetings during which reference reports are presented and discussed. The term "reference reports," for purposes of this section, means information obtained by committee members and staff from persons listed as references by the candidates and information obtained by committee members and staff from other persons knowledgeable about candidates as part of the candidate background check process. The Committee on the Judiciary will discuss reference reports in executive session pursuant to ORS 192.660(1)(f). The committee will vote on its recommendations to the Board in a public meeting. The selection process will include, but is not limited to, review of the written applications; interviews of each candidate, unless waived; contacts with judges or hearings officers before whom the candidate has practiced; contacts with opposing counsel in recent cases or other matters; contacts with references; and review of writing samples.
OREGON STATE BAR
Board of Governors Agenda

Meeting Date: September 28, 2007
Memo Date: July 24, 2007
From: Tim Gerking, Chair, Policy and Governance Committee
Re: Formation of the Animal Law Section

Action Recommended

Approve:
1. Formation of an Animal Law Section.
2. Dues in the amount of $10.
3. Appointment of officers (detailed below).

Background

Board Policy 15.2 states that the Board will consider creating a section upon the petition of 100 active bar members who also commit to joining the section. As of June 29, 2007, 107 active bar members had signed a petition to form the Animal Law Section and also committed to joining the section, if formed.

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

Dues are proposed at $10 and would become effective January 1, 2008. The Accounting Department will add the Animal Law section to the 2008 Membership Fee Statement and the Member Services Department will send out a notice to those members that signed the petition.

A request for the formation of the Animal Law Section is due to the exponential growth in this area of law and would provide useful applications for practitioners in many areas including contracts, landlord/tenant, criminal law, wills and trusts, personal injury and tort claims, non-profit corporations, agricultural, local government and administrative law.
Animal Law Section Goals

- Hosting three animal law CLE's per year;
- Creation of an Animal Law Section list serve for members;
- Publication of a quarterly e-mail or paper newsletter to section members covering developments in animal law and containing articles from practitioners, academics, and others covering the full spectrum of legal issues related to animals;
- Creation of an Animal Law Section website;
- Drafting and distribution of animal law-related pamphlets for the public;
- Free animal law clinics;
- Organizing brown-bag lunches and roundtables to address timely topics in animal law.

The executive committee structure follows. Recruitment has begun to fill these positions and names will be provided once recruited.

Diversity Section Executive Committee

Officers:

1. Chair
   Laura Ireland Moore
2. Secretary
   Jami Pannell
3. Treasurer
   Scott Beckstead

Executive Committee Members-at-Large:

________________________________________

________________________________________

________________________________________

________________________________________

________________________________________
June 15, 2007

Sarah Hackbart
Oregon State Bar
5200 SW Meadows
P.O. Box 1689
Lake Oswego, OR 97035

Dear Ms. Hackbart,

In recent years the field of animal law has experienced exponential growth. Today it is a flourishing and respected mainstream field of legal expertise. Not only are there a growing number of lawyers with thriving practices based on this area of law but there are also a growing number of State Bar Associations that have sections devoted to this important area of legal expertise with useful applications for practitioners in many areas including contracts, landlord/tenant, criminal law, wills and trusts, personal injury and tort claims, non-profit corporations, agricultural, local government and administrative law.

In response to the unprecedented growth in the field of animal law we hope to form an Animal Law Section of the Oregon Bar. In addition to providing a forum for members to exchange ideas, keep abreast of continuing developments, and expand their knowledge and understanding of all areas of animal law, initial goals of the Animal Law Section include:

- Hosting three animal law CLEs per year;
- Creation of an animal law e-mail listserv for members;
- Publication of a quarterly email or paper newsletter to section members covering developments in animal law and containing articles from practitioners, academics, and others covering the full spectrum of legal issues related to animals;
- Creation of an animal law section website;
- Drafting and distribution of animal law-related pamphlets for the public;
- Free animal law clinics; and,
- Organizing brown-bag lunches and roundtables to address timely topics in animal law.

The original board will be comprised of:

Laura Ireland Moore, Chairperson
Jami Pannell, Treasurer
Scott Beckstead, Secretary
We recommend that dues for the section be $10, free for new admits with expenses including:

$400 for printing and distribution of newsletter
$500 for printing and distribution of animal law pamphlets
$100 for travel and miscellaneous expenses

Please feel free to contact me with any questions at lireland@lclark.edu or 503.768.6849. Thank you for your assistance.

Truly yours,

Laura Ireland Moore
MEMORANDUM

TO: OSB Board of Governor and Karen Garst
FROM: Adrienne Nelson, Marilyn Harbur, George Derr
SUBJECT: 2007 Annual Meeting of the American Bar Association and Meeting of the House of Delegates
DATE: September 7, 2007

REPORT ON THE ABA ANNUAL MEETING

The 126th Annual Meeting of the American Bar Association (the “ABA”) was held August 9-14, 2007 at the Moscone West Convention Center in San Francisco, California. A wide variety of programs were sponsored by committees, sections, divisions, and affiliated organizations. The House of Delegates met for a two-day session. The Nominating Committee also met.

The Nominating Committee sponsored a “Meet the Candidates” Forum on Sunday, August 12, 2007. The following candidates seeking nomination at the 2008 Midyear Meeting gave speeches to the Nominating Committee and to the members of the Association present: William C. Hubbard of South Carolina, candidate for Chair of the House of Delegates; and Carolyn B. Lamm of the District of Columbia, Paul T. Moxley of Utah and James R. Silkenat of New York, candidates for President-Elect.

THE HOUSE OF DELEGATES

I. SPEECHES AND REPORTS MADE TO THE HOUSE OF DELEGATES


On August 13, the Twenty-Third Marine Color Guard presented the colors. The invocation for the House was delivered by Past ABA President Dennis W. Archer of Michigan. The Chair of the House Committee on Credentials and Admissions, Palmer Gene Vance II, of Kentucky, welcomed the new members of the House and moved that the signed roster be approved as the permanent roster for this meeting of the House. The motion was approved.

Linda A. Klein of Georgia, Chair of the Committee on Rules and Calendar, provided a report on the Final Calendar for the House, including recently filed reports. She moved to consider the late-filed reports, adopt the final calendar and approve the revised list of
individuals who sought privileges of the floor. All three motions were approved. Ms. Klein noted that the deadline for submission of Reports with Recommendations for the 2008 Midyear Meeting is November 14, 2007, while the deadline for Informational Reports is December 7, 2007. She also referred to the consent calendar, noting the deadline for removing an item from the consent calendar or from the list of resolutions to be archived.

Chair Bellows introduced James R. Silkenat of New York to provide an update on the development of the on-line directory for members of the House. Mr. Silkenat noted that nearly half of the Delegates had provided some biographical information in their entries. He said that after about seventy-five percent have done so, the directory may be published in hard copy. He and Chair Bellows encouraged House members to take advantage of this opportunity to share information about their individual practices and to network within the ABA.

Deceased members of the House were named by the Secretary of the Association, Armando Lasarte-Ferrer of Puerto Rico, and were remembered by a moment of silence. Past ABA President Robert J. Grey, Jr., of Virginia offered remarks about 2000 ABA Medal Honoree Oliver W. Hill of Virginia, who recently passed away.

Later in the day, Linda A. Klein moved the items remaining on the consent calendar. The motion was approved. Ms. Klein also moved the adoption of 11-3 and 11-6(A) from the consent calendar, both of which required a two-thirds vote. The motion was approved. Ms. Klein also indicated that three items were removed from the archival list: 43, 44 and 45.

On August 14, Ellen F. Rosenblum of Oregon led the House in singing the Star Spangled Banner, as this date marks the anniversary of the incarceration of Francis Scott Key when he saw the battle that inspired him to write the Star Spangled Banner. Linda A. Klein moved the adoption of an updated calendar of special orders for August 14. The motion was approved.

For more details of the House meeting, see the following two-part report of the House session. The first part of the report provides a synopsis of the speeches and reports made to the House. The second part provides a summary of the action on the recommendations presented to the House.

I. SPEECHES AND REPORTS MADE TO THE HOUSE OF DELEGATES

Statement by the Chair of the House of Delegates

Laurel G. Bellows of Illinois, Chair of the House, recognized the efforts of the members of the Rules and Calendar Committee and the Tellers who make the House operations possible and productive. Chair Bellows encouraged all House members to stay and participate throughout the meeting, and offered information about filing a salmon slip to participate in debate.

Chair Bellows reported that the ABA continues to send many communications to House members electronically, resulting in substantial cost savings.
Chair Bellows announced that many members of the House continue to support the program efforts of the Fund for Justice and Education. She encouraged all members of the House to contribute to the fund. She also asked members to consider making a donation to the ABA Legal Opportunity Scholarship Fund, which provides twenty law school scholarships annually.

Chair Bellows noted that the ABA's lobbying though ABA Day 2007 led to an increase in funding for the Legal Services Corporation of at least twenty-eight million dollars and also highlighted the need for congressional action on preservation of the attorney-client privilege. She encouraged members of the House to participate in ABA Day next year, scheduled for April 16-17, 2008, in Washington, D.C.

Statement by the Secretary

Armando Lasa-Ferrer of Puerto Rico, Secretary of the Association, moved approval of the House of Delegates Summary of Action from the 2007 Midyear Meeting, which was approved by the House. On behalf of the Board of Governors, Secretary Lasa-Ferrer presented and referred the House to Report Nos. 177 and 177A, the Board's Informational and Transmittal Reports to the House, and Report No. 177C, the Report of the Section of Legal Education and Admissions to the Bar.

Statement by the ABA President

ABA President Karen J. Mathis of Colorado greeted the House and discussed some of the highlights of her year as President. She spoke of her visit with a thirteen-year-old girl in Ecuador, an e-mentoring program developed by lawyers to reduce the high school dropout rate, and a woman she met who is attending law school on a scholarship after having a child at age fifteen and living with an abusive partner.

President Mathis noted that this year focused on two themes: service and the rule of law. She discussed the work of the ABA Commission on Youth at Risk, which hosted twenty community roundtables to address the needs of our nation's youth. She told the House about partnerships with the Girl Scouts of the USA and Boys and Girls Clubs of America to promote an anti-violence program. The year featured the first status offenders conference in over three decades, which 7,000 people attended by videoconference. The Commission on Youth at Risk also looked at the issue of youth aging out of foster care, who are at great risk of becoming homeless, poor and suffering from a mental disorder. She thanked the Commission for its work this year, including the creation of three resolutions being considered by the House. She also thanked the Board of Governors for agreeing to fund the Commission in 2007-08.

President Mathis talked about the Commission on Second Season of Service and its goal of encouraging those retiring from the practice of law to volunteer in their communities. One highlight of this initiative is a website that lists volunteer opportunities state-by-state, facilitating the matching of volunteers and those in need. President Mathis thanked the Commission for its efforts and the Board of Governors for continuing the Commission in 2007-08.
With respect to the rule of law, President Mathis discussed the ABA’s continued efforts to convince the federal government to repeal policies that have pressured defendants to waive the attorney-client privilege. She said the ABA will also continue to fight for the rights of detainees and incarcerated persons, including the right of habeas corpus review. She noted that the ABA has for years actively worked to promote the rule of law and mentioned a joint meeting held with the International Bar Association in 2006 in Chicago that discussed rule of law issues. She said President-Elect William H. Neukom will continue to address the rule of law through his World Justice Project.

Finally, President Mathis thanked her family, friends and colleagues for their support during her term as President. The House recognized President Mathis for her service to the ABA.

ABA Medal Presentation

President Mathis introduced the 2007 ABA Medal Honoree, United States Supreme Court Associate Justice Anthony M. Kennedy. She recognized his efforts to promote civility in the legal profession, civics education, sentencing reform and the rule of law.

Justice Kennedy expressed his deep gratitude for the award, noting his admiration for the ABA and the countless lawyers in the United States who are likewise dedicated to the law. He also thanked his family for their continued support.

Justice Kennedy encouraged the ABA to continue promoting the rule of law throughout the world. He noted that the task is great, given that many people in developing countries lack legal documents such as birth certificates, and many work in illegal or informal sectors, where the law is seen as a predator rather than a guardian. He said to promote change in these countries, we cannot simply suggest they replicate our legal structure. Rather, it will require us to work with their young people, emphasizing that the law need not be a barrier to progress and instead can be an instrument for opportunity. He emphasized that the work of freedom has just begun.

Remarks by President of the International Bar Association

Fernando Pombo, President of the International Bar Association (IBA), addressed the House, passing on greetings from lawyers around the world. He discussed the history of the IBA, noting that it began as the dream of some ABA members in the 1930s. Although plans for the organization were interrupted by World War II, the IBA was created in 1946 and has continued to grow since then.

Mr. Pombo said that there are 30,000 individual members of the IBA and representatives of national and local bars from 190 nations. He mentioned some of the IBA’s projects, including prevention of corruption in Thailand and implementation of the rule of law in Russia. President Pombo thanked the ABA for its efforts throughout the world, and for participating in the joint rule of law conference in 2006.
Statement by the Treasurer

The Treasurer, Wm. T. (Bill) Robinson III of Kentucky, referred members of the House of Delegates to his written report. He noted that the ABA is now a $300+ million organization with approximately 400,000 members, 900 employees and 2,000 entities. He reported that this year the ABA is $8.3 million ahead of budget in revenue and only $1.6 million ahead of budget in expenses. Given this financial health, Mr. Robinson said he is hopeful the ABA can stretch the current dues cycle to four and maybe even five years.

Treasurer Robinson thanked Executive Director Hank White and the numerous staff who support the work of the finance committee. He also thanked Finance Committee Chair James Baird of Illinois and the Finance Committee. In addition, he noted the creation of the Enterprise Fund to promote cooperation and collaboration among ABA entities. He thanked Mark D. Agrast of Washington, D.C. for overseeing the grants process this year, and the Board of Governors for its support of the project. Finally, he recognized the work of the Standing Committee on Audit, led by Chair John A. Krusel of Michigan, noting that the Committee has become an integral part of the ABA’s operations.

Presentation by Vice-President of the American Bar Endowment

Roderick B. Mathews of Virginia, Vice-President of the American Bar Endowment (ABE), announced that the ABE was providing annual grants to the Fund for Justice and Education (FJE) and the American Bar Foundation (ABF) of $3.7 million each. Sheila Slocum Hollis, Chair of the Council of the FJE, and David K. Y. Tang, President of the ABF Board of Directors, accepted the grants. Mr. Mathews encouraged members of the House to support the work of the Endowment by purchasing insurance from the ABE and its for-profit subsidiary, American Bar Insurance (ABI).

Statement by the Executive Director

Executive Director Henry F. White, Jr., thanked President Mathis and Chair Bellows for their assistance during his first year, as well as the many people who responded to his questions about the ABA. He said that what has surprised him most has been the staff’s extraordinary competence and professionalism, and the extraordinary breadth of programs in which the ABA engages on a daily basis. He thanked the staff for helping him manage this large organization.

Mr. White noted that the ABA is the only institution in America whose work touches every single American, every single day, in every single way. He asked the House to consider why the ABA boasts only one-third of the nation’s lawyers. He suggested that we must consider how the ABA is perceived and not fall prey to self-talk. Rather, he said, as national representatives of the legal profession, we must strive daily to: increase membership so that the substantial majority of the nation’s lawyers become ABA members; be the standard for ethics and professionalism; be the pinnacle of diversity in any profession; and work continually with our sister state and local bar associations. Mr. White asserted that the ABA must be seen as inclusive and a welcoming place for lawyers of all backgrounds and those interested in the law. He said the ABA should be an institution
dedicated to nurturing leadership skills of all lawyers and to developing forums for open
debate so that a wide range of perspectives may be heard.

Mr. White asserted that the ABA must be seen as the institution to which every
American lawyer must belong. He asked members of the House to help promote
membership and referred to a letter and enrollment card that was provided to every
member of the House.

Passing of the President’s Gavel

ABA President Mathis introduced President-Elect William H. Neukom of Washington
and wished him well during his year as President. President-Elect Neukom thanked the
many people and entities of the ABA that have supported him in preparation for his year as
President, as well as his family, his law firm and his fellow lawyers from Washington. He
recognized President Mathis’ efforts and led a round of applause thanking her for her
service.

President-Elect Neukom spoke of his travels over the last year, meeting with local,
state, national and multi-national bar associations, as well as leaders of organizations
representing other disciplines. He said he has learned a lot about lawyers and judges, and
has recognized that all countries share a common interest in liberty and justice. He
asserted that all people deserve a legal process in which to assert and protect their rights,
access to a justice system, and a diverse, fair, impartial and independent legal profession
and judiciary.

President-Elect Neukom pledged to have an open and nimble administration and
encouraged input on how to improve the working of the ABA and the ABA member
experience. He said he has several priorities for next year, including looking at the structure
and management of the ABA, increasing collaboration among ABA entities and with other
organizations, fighting discrimination and advancing the rule of law. The World Justice
Project, will build a multi-disciplinary movement to advance the rule of law in the U.S. and
abroad, through multi-disciplinary meetings in all U.S. states and other countries, a
scholars program, a rule of law index designed to measure adherence to the rule of law,
and a meeting of 600-700 leaders in Vienna in the summer of 2008.

President-Elect Neukom encouraged each of the Delegates to rededicate
themselves to the work and growth of the ABA and the pursuit of justice.

Election of Officers and Members of the Board of Governors

The Nominating Committee met on Sunday, August 12, 2007. On behalf of the
committee, Thomas R. Curtin of New Jersey, Chair of the Steering Committee of the
Nominating Committee, reported on the following nominations for the terms indicated:

Officers of the Association

President-Elect (2007-2008)
H. Thomas Wells, Jr. of Alabama
Secretary for 2008-2011; to serve as Secretary-Elect in 2007-2008
Hon. Bernice B. Donald of Tennessee

Treasurer for 2008-2011; to serve as Treasurer-Elect in 2007-2008
Alice E. Richmond of Massachusetts

Members of the Board of Governors (2007-2010)

District Members

District 7: H. Ritchey Hollenbaugh of Ohio
District 8: Richard Pena of Texas
District 10: David R. Gienapp of South Dakota
District 11: Don Bivens of Arizona
District 13: Katherine H. O'Neil of Oregon
District 18: Kathleen J. Hopkins of Washington

Section Members-at-Large

Section of Administrative Law and Regulatory Practice

John Hardin Young of the District of Columbia

Section of Science and Technology Law

Scott F. Partridge of Texas

Woman Member-at-Large

Paulette Brown of New Jersey

Remarks by President-Elect Nominee

President-Elect Nominee H. Thomas Wells, Jr. of Alabama expressed his appreciation and happiness at being elected. He thanked the members of his family, friends and colleagues who were on hand to celebrate the occasion with him.

President-Elect Wells said he believes the ABA needs to focus on the common core values that unite us as lawyers. He said that our aim is, and always will be, to serve and strengthen our association, our profession, our justice system and our society, under the rule of law. He said that under his leadership the ABA would continue many important programs, including those initiated in recent years by Past Presidents Michael S. Greco, Karen J. Mathis and William H. Neukom. The ABA will highlight and build on the contributions made by pathbreakers like Past Presidents Dennis W. Archer, Robert J.
Grey, Jr., Roberta Cooper Ramo and Martha W. Barnett. President-Elect Wells also recognized Past President N. Lee Cooper, his law partner, who first introduced him to the ABA.

President-Elect Wells said the ABA should focus on the ABA programs and activities that are central to the ABA’s core values, particularly as they relate to access to justice, independence of the bar and the judiciary, diversity in the legal profession and strengthening the rule of law. He said we will call on the ABA’s numerous entities as well as state, local and specialty bars and affiliate organizations to work on these issues.

President-Elect Wells identified several concerns that lawyers share, including the forced waiver of the attorney-client privilege, the lack of sufficient legal aid funding to serve eighty percent of the indigent population, the systematic barriers that prevent women and men of diverse backgrounds from entering the legal profession, the criticism of judges, and others. President-Elect Wells also noted the importance of ABA Day in Washington. He observed that he will take office shortly before a new United States president is elected. He pledged to hit the ground running and leverage our influence in Washington, D.C. on the important issues in which the legal profession has a stake. In closing, he urged the House to work together to make our association and the legal profession more vibrant and relevant than ever.

**Scope Nominating Committee**

Christel E. Marquardt of Kansas, Chair of the Committee on Scope and Correlation of work, nominated Mitchell A. Orpett of Illinois to be the next member of its committee for a five-year term. She moved that nominations be closed. The motion was approved. Chair Bellows later moved the election of Mr. Orpett. The motion was approved.

**Delegate-at-Large Election Results**

Chair Bellows announced the election of the following members to three-year terms as Delegates-at-Large: Mark D. Agrast of Washington, D.C., John J. Bouma of Arizona, José C. Feliciano of Ohio, Thomas M. Fitzpatrick of Washington, Robert A. Stein of Minnesota and Carole Lynch Worthington of Tennessee. John M. Vittone of Washington, D.C. was elected to a one-year term to fill a Delegate-at-Large vacancy.

**Resolution and Impact Review Committee**

Chair Bellows explained that she asked the newly-created Resolution and Impact Review Committee to review the resolutions adopted by the House and analyze the effects they had on the public, the judiciary and the profession. She acknowledged the significant efforts of the Committee and thanked them for their service.

Committee Chair C. Elisia Frazier of Georgia thanked the Committee and the staff who helped review 280 resolutions that were passed between 2001 and 2005. Some of the resolutions were the focus of lobbying, some led to the filing of amicus briefs, some became model rules adopted by states, and others have been aspirational. The Committee reported on three recommendations that have had a significant impact.
Committee member Jennifer A. Rymell of Texas reported that after the 2004 Midyear passage of a resolution on model lawyer assistance programs, ten states that did not previously have lawyer assistance programs created them. Four states hired additional clinical staff for their programs. In addition, ABA standards were revised to make the disease of addiction a mitigating factor in attorney discipline cases. Finally, increased awareness of the issue led to more lawyers seeking assistance.

Committee member Timothy J. Kirven of Wyoming reported on nine recommendations of the ABA Commission on Multi-Jurisdictional Practice that the House passed in August 2002. One of the recommendations was the amendment of Model Rule 5.5 to allow lawyers to practice law on a temporary basis in another jurisdiction, which thirty-four states have now adopted. Mr. Kirven said another focus of the House action was to encourage states to update and amend their rules governing the practice of law and the promotion of a model pro hac vice rule. Mr. Kirven explained that the action of the House in August 2002 was significant, coming at a time when regulation of the practice of law was increasingly being challenged nationally and internationally. He said adoption of the recommendations reaffirmed the admission and disciplinary schemes of the states while safeguarding the interests of lawyers.

Committee member James Dimos of Indiana reported on the August 2005 resolution urging Congress, the United States Postal Service and other appropriate federal entities to ensure access to U.S. Mail to people experiencing homelessness. Mr. Dimos explained this resolution was designed to help the 840,000 Americans who experience homelessness in any given week. He reported that the federal legislation supporting this resolution has not yet passed, but efforts continue to promote it.

Committee Vice-Chair L. Jonathan Ross of New Hampshire thanked the individual Committee members for their reports and referred the House to a fact sheet provided by the Committee. He also noted that there is a fact sheet on the Commission on Law and Aging, one of the ABA entities the Committee highlighted this year. He said the Committee will report again at the 2008 Midyear Meeting.

II. RECOMMENDATIONS VOTED ON BY THE HOUSE

A brief summary of the action taken on recommendations brought before the House follows. The recommendations are categorized by topic areas and the number of the recommendation is noted in brackets.

ABA CONSTITUTION, BYLAWS AND HOUSE RULES OF PROCEDURE

[11-1] Secretary Armando Lasa-Ferrer of Puerto Rico moved Report 11-1 on behalf of Edward Haskins Jacobs of the U.S. Virgin Islands, who presented Report 11-1 amending §1.2 of the Constitution to include the following language as one of the purposes of the Association: “to defend the right to life of all innocent human beings, including all those conceived but not yet born.” James R. Silkenat of New York, Chair of the Standing Committee on Constitution and Bylaws, reported the action of the Standing Committee.
W. Scott Welch III, of Mississippi moved to postpone indefinitely consideration of the proposal. The House approved the motion to postpone indefinitely.

[11-2] Kay H. Hodge of Massachusetts withdrew Report 11-2 amending §2.1(g) of the Constitution to realign Massachusetts into District 4 which is a two-state district and Virginia into District 2 which is a three-state district based on changes in lawyer population figures.

[11-3] The House approved by consent Report 11-3 amending §10.1 of the Constitution to change the name of the Section of Real Property, Probate and Trust Law to the Section of Real Property, Trust and Estate Law.

[11-4] Susan Raridon Lambrecht of Tennessee moved Report 11-4 amending §30.5 of the Bylaws to provide that Non-U.S. lawyer associates may serve on the Council of the Law Practice Management Section. James R. Silkenat of New York, Chair of the Standing Committee on Constitution and Bylaws, reported the action of the Standing Committee. The proposal was approved.

[11-5] The House approved by consent Report 11-5 amending §31.7 of the Bylaws to revise the jurisdictional statement of the Standing Committee on Professionalism to increase the size of the Committee from seven to nine members.

[11-6] The Standing Committee on Constitution and Bylaws proposed the following housekeeping amendments to the Association’s Constitution, Bylaws and House Rules of Procedure:

[Report 11-6(A)] The House approved by consent Report 11-6(A) amending §6.6 of the Constitution to delete the following sentence, “In 1991 and in each succeeding third year, a section with more than 6,000 Association members and Non-U.S. Lawyer Associates shall elect from its membership one additional delegate to the House.”

[Report 11-6(B)] The House approved by consent Report 11-6(B) amending §30.1 and §30.2 of the Bylaws to read as follows: “The House of Delegates, by a two-thirds vote of the members present and voting, may....”

[Report 11-6(C)] The House approved by consent Report 11-6(C) amending §31.7 of the Bylaws to reference the Standing Committee on Federal Judiciary as the Standing Committee on the Federal Judiciary.

BOARD OF GOVERNORS RECOMMENDATION AND REPORT WITH RECOMMENDATION ON ARCHIVING

[177A] On behalf of the Board of Governors, Secretary Armando Lasa-Ferrer of Puerto Rico moved approval of the continuation of Special Committees and Commissions as listed in the Board of Governors Transmittal Report to the House of Delegates. The list of Special Committees and Commissions was approved.
The House approved by consent Report 400 as amended recommending that certain Association policies that pertain to public issues and are 10 years old or older be archived. Items 43, 44 and 45 were removed from the archival list and will remain current policy of the Association.

CRIMINAL JUSTICE

On behalf of the Bar Association of the District of Columbia, Robert L. Weinberg of Virginia moved Report 10C supporting in principle that the appointment, retention and replacement of United States Attorneys and career government attorneys, and the exercise of their professional judgment and discretion, should be insulated from improper partisan political considerations. Lois J. Schiffer of Washington, D.C. moved to amend the recommendation. Stephen A. Saltzburg of Washington, D.C. and Neal R. Sonnett of Florida spoke in opposition to the amendment. The amendment failed. Melvin White of Washington, D.C., spoke in favor of the recommendation. The recommendation was approved.

On behalf of the Commission on Effective Criminal Sanctions, Stephen A. Saltzburg of Washington, D.C. withdrew Report 119 urging federal, state, territorial, tribal and local governments to limit access to and use of criminal history records for non-law enforcement purposes, to the extent permitted by the First Amendment, except by agencies and employers that are engaged in law enforcement, and urging governments to adopt policies in connection with limits on access to criminal records.

On behalf of the Criminal Justice Section, Neal R. Sonnett of Florida moved Revised Report 122 urging federal, state, local and territorial governments to maintain the Medicaid eligibility of otherwise-eligible incarcerated persons and provide continuity of Medicaid eligibility to persons newly-released from custody. Stephen A. Saltzburg of Washington, D.C. spoke in favor of the recommendation. The recommendation was approved as revised.

DOMESTIC VIOLENCE

On behalf of the Standing Committee on Domestic Violence, the Hon. Pamila J. Brown of Maryland moved Revised Report 109 adopting the black letter Standards of Practice for Lawyers Representing Victims of Domestic Violence, Sexual Assault and Stalking in Civil Protection Order Cases, including the preface, dated August 2007. Peter F. Langrock of Vermont raised of point of inquiry. The recommendation was approved as revised.

ELECTION LAW

On behalf of the Commission on Law and Aging, Joseph D. O’Connor of Indiana moved Revised Report 121 urging federal, state, local and territorial governments to improve the administration of elections to facilitate voting by all individuals with disabilities, including people with cognitive impairments that increase in frequency with age. The recommendation was approved as revised.
EMPLOYMENT LAW

[302] On behalf of the Commission on Women in the Profession, Pamela J. Roberts of South Carolina moved Report 302 urging Congress to amend Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-5(e), and federal age and disability employment discrimination laws to ensure that in claims involving discrimination in compensation, the statute of limitations runs from each payment reflecting the claimed unlawful disparity. David C. Weiner of Ohio moved to amend the recommendation. The amendment was approved. Kenneth G. Standard of New York opposed the resolution and moved to postpone indefinitely. The motion to postpone indefinitely failed. Past ABA President Robert J. Grey of Virginia, Robert N. Weiner of Washington, D.C., Past ABA President R. William Ide III, of Georgia and ABA President-Elect William H. Neukom of Washington spoke in favor of the recommendation. James Baird of Illinois spoke in opposition to the recommendation. The recommendation was approved as amended.

FAMILY LAW


HEALTH LAW

[120A] On behalf of the Health Law Section, Gregory L. Pemberton of Indiana moved Report 120A encouraging lawyers, law firms, legal services agencies, law schools and bar associations to develop medical-legal partnerships with hospitals, community-based health care providers, and social service organizations to help identify and resolve diverse legal issues that affect patients' health and well-being. The recommendation was approved.

[120B] On behalf of the Health Law Section, Howard T. Wall of Tennessee moved Revised Report 120B supporting the study of regionalization of the nation's Emergency Care System and Emergency Departments and the enactment of legislation and promulgation of rules, specifically as it relates to disaster preparedness, as an effective and efficient means of improving patient safety, health care quality, cost reduction, coordination of care, and increased accountability of the system. Gregory L. Pemberton of Indiana spoke in favor of the recommendation. The recommendation was approved as revised.

HOMELESSNESS AND POVERTY

[107] On behalf of the Commission on Homelessness and Poverty, Casey Trupin of Washington moved Revised Report 107 urging Congress to amend Subtitle VII-B, Part C of the McKinney-Vento Homeless Assistance Act to clarify that the Act applies to all children and youth in foster care and to significantly increase funding to support the school stability, enrollment, attendance, and success of all eligible children and youth. The recommendation was approved as revised.
INDIVIDUAL RIGHTS AND RESPONSIBILITIES

[116A] On behalf of the Section of Individual Rights and Responsibilities, Richard M. Macias of California moved Revised Report 116A supporting procedures and standards designed to ensure that whenever possible, federal civil cases are not dismissed based solely on the state secrets privilege. Lawrence J. Fox of Pennsylvania and Neal R. Sonnett of Florida spoke in favor of the recommendation. The recommendation was approved as revised.

[116B] On behalf of the Section of Individual Rights and Responsibilities, C. Elisia Frazier of Georgia moved Revised Report 116B urging Congress to create an independent, bipartisan commission to investigate and recommend the appropriate measures to rebuild the infrastructure of the Gulf Coast damaged by Hurricanes Katrina and Rita, to provide reasonable hurricane and flooding protection for the people living in disaster prone areas, and to recommend appropriate measures designed to prevent or mitigate problems in responding to natural disasters in the future. Harry S. Hardin, III of Louisiana spoke in favor of the recommendation. The recommendation was approved as revised.

INTERNATIONAL LAW

[10B] On behalf of the Association of the Bar of the City of New York, Barbara Berger Opotowsky moved Report 10B urging Congress to override the President’s Executive Order of July 20, 2007, which alters the U.S. government’s international obligations under the Geneva Conventions of August 12, 1949, regarding the treatment of detainees under its authority or control, and to reaffirm those obligations. James R. Silkenat of New York, Albert C. Harvey of Tennessee and Kathryn Grant Madigan of New York spoke in favor of the recommendation. The recommendation was approved.

[118A] On behalf of the Section of International Law, Michael H. Byowitz of New York moved Report 118A urging the U.S. Patent and Trademark Office (USPTO) to amend 37 CFR §§ 11.6 and 11.7 to permit the registration and continued qualification to practice before the USPTO of any attorney who: (1) demonstrates the necessary scientific, technical, character and language qualifications; and (2) passes the USPTO examination for registration without regard to the citizenship, country of residence or immigration status of such person. Peter D. Ehrenhaft of Washington, D.C., Gabrielle M. Buckley of Illinois and Richard M. Steuer of New York spoke in support of the recommendation. Donald R. Dunner of Washington, D.C., Q. Todd Dickinson of Connecticut, Scott Francis Partridge of Texas and Leslie W. Jacobs of Ohio spoke in opposition to the recommendation. The recommendation failed by a vote of 149 to 238.

[118B] On behalf of the Section of International Law, A. Joshua Markus of Florida moved Report 118B supporting the International Trade Commission’s adoption of certain procedures relevant to its compliance with the Government in the Sunshine Act, 5 U.S.C § 552(b). The recommendation was approved.
[300] On behalf of the Section of International Law, A. Joshua Markus of Florida moved Report 300 urging the United States to sign and ratify the amended Article 1 and Protocol III, Protocol IV, and Protocol V of the United Nations Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed To Be Excessively Injurious or To Have Indiscriminate Effects, which ban the use of incendiary weapons and blinding laser weapons, as well as set standards on marking, clearance, removal, and destruction of unexploded or abandoned mortar shells, grenades, artillery rounds, and bombs. The recommendation was approved.

INTERNATIONAL RULE OF LAW SYMPOSIA

[110A] On behalf of the Task Force on International Rule of Law Symposia, Secretary Armando Lasa-Ferrer of Puerto Rico moved Report 110A urging governments, businesses, nongovernmental organizations and other organizations to consider and integrate Rule of Law initiatives with global environmental issues. Howard Kenison of Colorado presented the resolution. The recommendation was approved.

[110B] On behalf of the Task Force on International Rule of Law Symposia, C. Elisia Frazier of Georgia moved Revised Report 110B encouraging corporations, lawyers, law firms and other professionals to promote corporate citizenship by supporting: compliant and ethical corporate behavior globally; global pro bono services; promotion of the rule of law; encouraging governments to pursue policies that support corporate citizenship and the rule of law; and sharing best practices in corporate citizenship. Laura Stein of California and Robert MacCrate of New York spoke in favor of the recommendation. The recommendation was approved as revised.

[110C] On behalf of the Task Force on International Rule of Law Symposia, Secretary Armando Lasa-Ferrer of Puerto Rico moved Revised Report 110C urging federal, state, local, territorial and tribal governments to pass legislation, authorize funding that strengthens protection and assistance for victims of trafficking in persons, within the United States or abroad, as well as bolsters prevention efforts and encouraging bar associations to engage members of the legal profession in raising awareness of trafficking in persons in their communities and in providing pro bono legal services to victims of trafficking. J. Anthony Patterson, Jr., of Texas presented the recommendation. The recommendation was approved as revised.


[110E] On behalf of the Task Force on International Rule of Law Symposia, Robert A. Stein of Minnesota moved Report 110E supporting the following international standards on judicial independence: The United Nations Basic Principles on the Independence of the Judiciary; The International Bar Association Minimum Standards for Judicial Independence; and The Bangalore Principles of Judicial Conduct, and urging the United States government to support these standards. The recommendation was approved.
LAW AND AGING


[105] On behalf of the Senior Lawyers Division, Anthony R. Palermo of New York moved Revised Report 105 urging bar associations and courts to develop, adopt, promote and implement programs and procedures to encourage and enable lawyers to plan for law practice contingencies by designating in advance another lawyer who is willing and able to assume the lawyer’s practice or to assist in the transfer of client matters and paper and electronic files, in the event that the lawyer has any physical or mental disability that significantly impairs the lawyer’s ability to practice law, or the lawyer has died, disappeared, been suspended or disbarred, or otherwise been restricted from the practice of law. The recommendation was approved as revised.

LAWYER ASSISTANCE

[117] On behalf of the Commission on Lawyer Assistance Programs, the Hon. Robert L. Childers of Tennessee withdrew Report 117 adopting the Model Rule on Conditional Admission to Practice Law including the commentary, dated August 2007, and urging all admissions authorities to implement conditional admission rules that do not discriminate against an eligible candidate for the bar because of the candidate’s past treatment for addiction or mental health.

LEGAL EDUCATION

[103A] On behalf of the Section of Legal Education and Admissions to the Bar, Sidney S. Eagles, Jr. of North Carolina moved Revised Report 103A concurring in the action of the Council of the Section of Legal Education and Admissions to the Bar in adopting Interpretation 302-10 concerning opportunities for law student participation in pro bono activities, dated August 2007, as an addition to the Standards for Approval of Law Schools and the Interpretations of the Standards. The recommendation was approved as revised.

[103B] The House approved by consent Report 103B, as submitted by the Section of Legal Education and Admissions to the Bar, concurring in the action of the Council of the Section of Legal Education and Admissions to the Bar in amending Standard 801(a) and adopting Interpretation 509-3, dated August 2007, of the Standards for Approval of Law Schools.
[103C] On behalf of the Section of Legal Education and Admissions to the Bar, Jose Garcia-Pedrosa of Florida moved Report 103C concurring in the action of the Council of the Section of Legal Education and Admissions to the Bar in adopting amendments to Rule 13 (Action Concerning Apparent Non-Compliance with Standards); Rule 18 (Compliance with Sanctions or with Remedial or Probationary Requirements); Rule 20 (Major Change in the Organizational Structure of a Provisionally or Fully Approved Law School); and Rule 21 (Major Change in the Program of Legal Education of a Provisionally or Fully Approved Law School) of the Rules of Procedure for Approval of Law Schools, dated August 2007. The recommendation was approved.

LITIGATION

[113] On behalf of the Section of Litigation, Joanne A. Epps of Pennsylvania moved Revised Report 113 adopting twelve principles to govern the planning, preparation and training for responses to a major disaster to ensure that the legal system maintains fidelity to the rule of law. The recommendation was approved as revised.

[301] On behalf of the Section of Litigation, Patricia Lee Refo of Arizona moved Report 301 adopting the black letter of the revised and/or new Standards that have been integrated into The Civil Trial Practice Standards to become the Updated Civil Trial Practice Standards which address practical aspects of trial that regularly recur but are not fully addressed by rules of evidence or procedure. Dennis J. Drasco of New Jersey spoke in favor of the recommendation. The recommendation was approved.

MENTAL AND PHYSICAL DISABILITY

[108] On behalf of the Commission on Mental and Physical Disability Law, Scott C. LaBarre of Colorado moved Revised Report 108 urging those in the legal profession to make their websites accessible to individuals with visual, hearing, manual and other disabilities and to make legal entities aware of the problems associated with inaccessible websites. The recommendation was approved as revised.

PARALEGALS

[101] The House approved by consent Report 101, as submitted by the Standing Committee on Paralegals, granting approval, reapproval and extension of the term of approval to several paralegal education programs, and withdrawing the approval of four programs at the request of the institutions.

PUBLIC EDUCATION

[114] On behalf of the Standing Committee on Public Education, Dwight L. Smith of Oklahoma moved Revised Report 114 urging amendment of the No Child Left Behind Act, if reauthorized, or the adoption of other legislation, to ensure that all students experience high quality civic learning. Robert H. Rawson, Jr. of Ohio, Gregory L. Ulrich of Michigan and Past ABA President Michael S. Greco of Massachusetts spoke in support of the recommendation. The recommendation was approved as revised.
PUBLIC CONTRACT

[115] On behalf of the Section of Public Contract Law, John S. Pachter of Virginia moved Report 115 urging all bar associations and other appropriate regulatory bodies to adopt a policy that provides for the waiver or suspension of association dues, CLE requirements and other membership obligations for members who are serving in the U.S. Armed Forces and are performing services in a Combat Zone as designated by an Executive Order of the President of the United States. Gregory L. Ulrich of Michigan and Robert L. Weinberg of Virginia spoke in support of the recommendation. The recommendation was unanimously approved.

REAL PROPERTY, PROBATE AND TRUST LAW

[102A] On behalf of the Section of Real Property, Probate and Trust Law, Leopold Z. Sher of Louisiana moved Revised Report 102A urging Congress to amend Section 363(f) of the Federal Bankruptcy Code, 11 U.S.C. $363(f) to clarify that a sale of real property free and clear of an unexpired lease under which the debtor is the lessor, can be accomplished only if the non-debtor lessee is granted the same rights afforded to non-debtor lessees when their leases are rejected. The recommendation was approved as revised.

[102B] On behalf of the Section of Real Property, Probate and Trust Law, David M. English of Missouri withdrew Report 102B recommending that Section 67(e) of the Internal Revenue Code be interpreted to allow a trust or estate a full deduction from gross income for investment management and advisory fees arriving at its adjusted gross income and that these expenses not be subject to the general rule of Section 67(a).

SPECIALIZATION

[100] The House approved by consent Report 100, as submitted by the Standing Committee on Specialization, recommending that accreditation be continued for several lawyer specialty certification programs as reorganized.

SUBSTANCE ABUSE

[106A] The House approved by consent Report 106A, as submitted by the Standing Committee on Substance Abuse, affirming the principle that dependence on alcohol or other drugs is a disease and supporting the principle that insurance coverage for the treatment of alcohol and drugs disorders should be at parity with that for other diseases.

[106B] On behalf of the Standing Committee on Substance Abuse, Edward Jurith withdrew Report 106B urging state, tribal and territorial legislative bodies to adopt strategies to reduce the incidence of prescription drug diversion and abuse, including the enactment of legislation to authorize and implement Prescription Drug Monitoring Programs, which are instrumental in protecting the integrity of the process of prescribing and filling legitimate prescriptions and thereby preventing prescription drug abuse.
UNIFORM STATE LAWS

[111] The House approved by consent Report 111, as submitted by the National Conference of Commissioners on Uniform State Laws, approving the Revised Uniform Limited Liability Company Act (2006), promulgated by the National Conference of Commissioners on Uniform State Law since 2006 as an appropriate Act for those states desiring to adopt the specific substantive law suggested therein.

YOUTH AT RISK

[104A] On behalf of the Commission on Youth at Risk, Paula J. Frederick of Georgia moved Revised Report 104A encouraging bar associations, judges and attorneys to lead and promote efforts to create comprehensive support and services for youth who “age out” of foster care (“transitioning youth”) and other former foster youth until at least age 21, and urging amendment of applicable law, and court and child welfare practices. The Hon. Pamila J. Brown of Maryland spoke in support of the recommendation. The report was approved as revised.

[104B] On behalf of the Commission on Youth at Risk, Dwight L. Smith of Oklahoma moved Report 104B encouraging measures to promote the permanent placement of lesbian, gay, bisexual, transgender and questioning (LGBTQ) youth in the foster care system in LGBTQ-friendly homes and that protect LGBTQ youth in the homeless youth and foster care systems from discrimination and violence. The recommendation was approved.

[104C] On behalf of the Commission on Youth at Risk, Laura V. Farber of California moved Report 104C encouraging jurisdictions to pass laws that require the provision of evidence-based pre-court diversion and early intervention services for youth who are alleged to have committed status offenses, such as truancy, ungovernability or running away and supporting the use of in-home or community-based services as an alternative to secure detention. The recommendation was approved.

CLOSING BUSINESS

At the conclusion of the meeting of the House on Tuesday, August 14, Chair Bellows thanked numerous people for their assistance with the House meeting, including the Committee on Rules and Calendar and the ABA staff who support the House. She recognized the various committees of the House for their contributions before and during the meeting and the members of the House for their spirited debate and careful attention over the course of two days.

Chair Bellows thanked the bar associations of San Francisco and California for their generous hospitality. A resolution was approved in appreciation of those who hosted the meeting. It was noted that the 2008 Midyear Meeting will also take place in California, in Los Angeles. The California delegation encouraged everyone to attend.

Finally, Chair Bellows recognized Linda A. Klein of Georgia who moved that the House adjourn sine die.
OREGON STATE BAR
Board of Governors Agenda

Meeting Date: September 27-28, 2007
Memo Date: September 10, 2007
From: Karen L. Garst, Ext. 312
Re: Operations Report

Action Recommended

None.

Background

In order to fully inform the Board of key administrative activities, I have developed the following format for my reports. Please let me know if this is useful to you and covers the issues that you would like to be informed of prior to each BOG meeting.

Board of Governors

Policy and Governance Committee: The committee considered several issues at its interim meeting including redistricting (still working on this); a revised policy regarding alcoholic beverages; and reciprocity with Alaska. Albert, Rick, Tim and I attended a meeting with two justices regarding the MCLE EOB requirement on July 16. Subsequently, Justices Linder and Walters met with representatives of the OSB Diversity Section and the MBA Equality Committee.

Paulson disciplinary case: I was subpoenaed to testify and did so at his disciplinary trial on June 21.

PLF: The OAAP/SLAC task force has not yet met.

Building: Much of my time has been devoted to working with Rod and other staff, the architects, and OPUS to finish the Tenant Improvements for the bar space and decide a myriad of other issues including security and audio-visual design.

Member Contacts

Brown Baggers:
Ball Janik. These will start again in September.

County Bar Associations: None during the summer months.

Specialty bars: None.
Commission on Professionalism: A meeting was held on September 7. The Commission made the decision on its annual award and asked the BOG’s Member Services Committee to consider making law student membership in the bar easier.

Campaign for Equal Justice: I attended their June 18 Board meeting as well as their kick-off meeting on September 6. The goal is set for $1 million. Our accounting manager, Michelle Peterson, will be helping them with some budgetary issues.

Legislative Update

Legislation Highlights Notebook. Public Affairs has been working with CLE Publications to coordinate editors and authors for the 2007 Legislation Highlights publication which should be ready in time for the October 11 Legislative CLE prepared in conjunction with the CLE Seminars Department. The Seminar will be followed by a joint dinner with the board, immediate past president’s council and joint interim judiciary committees.

Legislative Activities. Interim legislative committee have been named and as a result of the election cycle shuffling of positions, Sen. Burdick is now chair of the Senate Revenue Committee and Sen. Floyd Prozanski, an attorney from Eugene, is now chair of the Senate Judiciary Committee. This is a welcome change; although Sen. Burdick did an excellent job as chair of the Judiciary Committee, it will be nice to have a lawyer chair the committee. Activities are geared toward the upcoming limited February session which will deal with more substantive issues than previously thought.

April 1 Deadline. Public Affairs staff is meeting with bar groups to offer assistance and prepare them for the April 1 deadline for legislative proposals originated with bar groups.

Elections and Initiatives. The election cycle is already underway and in light of national political races and ballot initiatives already circulating, the season will be highly charged. Public Affairs will be involved in developing strategies on a number of initiatives that attack the justice system (#2 eliminates designation of incumbency for judges in the next election cycle, #51 limits attorney contingency fees, #53 sanctions frivolous litigation) that will also be considered at the House of Delegates.

Susan and I hosted the final soiree for the House Judiciary Committee meeting at my home on June 20. Chairperson Greg McPherson appreciated the bar’s support of this event. The bar paid for the food which was not catered and the BOG’s alcohol account paid for the wine for the event.

OSB Operations

Bar Programs and Services: I asked each department to provide me with updated information on their activities since the last board meeting.

Accounting Department: The department activity is vigorously ramping up with the beginning of our annual budget process which involves a lot of accounting staff participation. Along with that, we are working on the Economic survey sample. In August,
we issued Requests For Proposals to seven Oregon CPA firms for the bi-annual financial audit. Only three firms proposed. Evaluation of these firms is in process. The department began the process of upgrading its financial software to the new version. This project is currently in the pilot installation phase with a project completion goal of year end.

**Admissions (Board of Bar Examiners):** A total of 531 applicants sat for the July, 2007, examination. This compares to 603 applicants in July of 2006, 552 applicants for July of 2005, 458 applicants for July of 2004, and 481 applicants for July of 2003. The bar examination results are scheduled for release at 2:00 p.m. on Friday, September 14. The admission ceremony is scheduled to be held on September 28, at Smith Auditorium, Willamette University Campus, in Salem. The Board is recommending to the Oregon Supreme Court that the following be appointed to serve on the Board for three year terms beginning on October 1, 2007 and ending on September 30, 2010: Mustafa T. Kasubhai, Salem, Jennifer Lloyd, Salem, Lisa Murphy, Portland, and Cody Weston, Portland, and Randall L. Green, Salem, and Jennifer Huwe, Newberg, as public members to serve one year terms beginning on October 1, 2007, and ending on September 30, 2008.

**Affirmative Action Program:** OLIO Orientation, 4 day orientation for new law students, was held August 9-12, 2007 at Mt. Bachelor Village Resort in Bend, Oregon:

2007 OLIO attendees were comprised of:

- 56 ethnic minority entering law students
- 1 PSU ethnic minority student interested in law school – pipe line
- 32 upper division ethnic minority students and allies who mentor entering law students
- 3 law school recruiters
- 44 Lawyers from small, medium and large firms, public sector firms, federal and state government offices attended.
- 4 Supreme Court Justices
- 3 Judges from Court of Appeals
- 1 Circuit Court Judge
- 30 supporters, staff members, and volunteers

**Client Assistance Office:** One of the biggest changes in the CAO department was the Supreme Court's approval of the modification of BR 2.5 regarding the standard of review to be applied by CAO attorneys in deciding whether to refer a matter to DCO. The court replaced the "credible evidence" standard to allow a referral if there “is sufficient evidence to support a reasonable belief that misconduct may have occurred.” BR 2.5 (a) was also amended to make clear the CAO will determine the manner and extent of review required for the appropriate disposition of any complaint. One of our intake coordinators, Angie Almasy, resigned to accept a job closer to home and Erin Reel was promoted to take her position. Effective September 10, 2007 Jennifer Mount will be taking over as the CAO administrative assistant. Chris Mullmann attended the National Association of Bar Counsel meeting in San Francisco during the first week in August. CAO will be available at the state judges’ conference in October to provide information.
**Client Security Fund:** The CSF Committee continues to review claims for reimbursement. Claims activity is up quite a bit over 2006 and several claims raise complex issues for the committee. The committee is also focusing this year on enhancing the CSF’s web presence and has presented a draft of new web content to IDT.

**Communications/KIS:** Recent issues of the Bulletin have featured stories on women in the law, the 2007 legislative session and billable hours. Staff responsibilities have been temporarily reassigned to cover for the absence of editor Paul Nickell, who is on sabbatical. The Legal Links crew taped two programs in August, "Homicide" with Angel Lopez and Kellie Johnson and "Legal Myths & Misconceptions" with Terry Wright and Todd Cleek. Work on the 30-Second Law School series continues along with review of all Tel-Law/Web-Law scripts. In September Dustin Dopps will join the communications team as a marketing specialist.

A new Oregon Bar Press Guidebook is in development. This will replace the Bar Press Guidelines, which were recently abandoned by the Bar Press Broadcasters Council. The guidebook will be a tool for lawyers and journalists involved with high-profile criminal cases. In addition to ongoing media work, staff has worked with the OLF and Oregon Bankers Association to get attention for leadership banks, including an article in the Business Journal and potential articles in non-metro newspapers.

**CLE Publications:** *Advising Oregon Businesses* Vol. 18 & 2 supplement and 2007 *Oregon Legislation Highlights* are scheduled for release in early October 2007. The department is also in the process of editing revisions of *Juvenile Law*, *Documentation of Real Estate Transactions*, and *Fee Agreement Compendium*, as well as a cumulative supplement to *Family Law*. The department had a typically slow summer in terms of revenue, but anticipates a brisk fourth quarter with the release of a number of popular titles as well as a Moving Sale to reduce old inventory. To date, the 2007 revenue for BarBooks™ is $202,777 and the 2008 revenue for BarBooks™ is $45,018. The department is launching another BarBooks™ e-mail marketing campaign in September.

**CLE Seminars:** CLE Seminars kicked off the fall CLE season with AllDay PowerPlay, a triple combination of ethics, child abuse reporting, and elimination of bias credits offered all in one day. This year’s program featured nationally know ethics presenter Jack Marshall in his production of "Ethics Rock!" This seminar poses ethical questions to the audience in a framework of musical parodies using classic rock songs from the 1960s and 1970s. The elimination of bias program will focus on understanding poverty and working with low-income people. The department’s newest CLE format, CLE at Sea, met with great success. This event combined CLE classes during a week-long cruise to Alaska’s Inside Passage. Classes were held during at-sea periods and covered legal writing, employment law, workers’ compensation, family law, and ethics. Participants were able to obtain 12.75 credits. All the presentations were well-received, and the department has already received inquiries as to the next sailing of CLE at Sea.
Discipline: The SPRB continues to meet monthly to review disciplinary complaints and oversee prosecutions. The next meeting is set for September 21, 2007. Forty-three disciplinary proceedings have been resolved in 2007, as of September 1. The Supreme Court has issued seven contested case opinions (all suspensions) and accepted five Form B resignations. The Disciplinary Board approved 19 stipulations for discipline (ten suspensions and nine reprimands); and also issued ten contested case opinions (one disbarment and nine suspensions) which became final when neither party appealed. Three additional Form B resignations are pending before the court, as is the bar's petition to suspend a lawyer on an interim basis while the disciplinary case involving that lawyer is prosecuted. Two recent trial panel opinions (one reprimand and one suspension) also may soon be final unless the accused lawyers file a timely notice of appeal.

Staff continues its efforts to implement the new records retention policy for past disciplinary complaints. Under the policy, complaints dismissed for no probable cause are retained for ten years, rather than permanently as before. We have completed the process of locating, verifying and deleting 20,000 complaints (hard copy and computer entries) from our records. With the recent installation of new software, staff now has begun to scan all retained, closed files so that the paper files may be destroyed before the bar's move to the new building in December.

Facilities: Mike Kelley visits the bar center occasionally to surmise how he can use the building. One plan includes moving his bank into the space of meeting rooms 1 and 2. He has been told the bar will vacate the building between December 31 and early January, and the bar must notify him of our departure 60 days prior. There are CLEs in meeting rooms 1 and 2 the last week of December and the A/V equipment in that room will be relocated to the new bar center. Fortunately there have been no major repairs to the HVAC system, although there have been consistent minor repairs all summer. The bar is sending RFPs to several area printers with the intent to engage a print/mail house for the bar to outsource the shipping and mailing of its large-volume ship print pieces and thereby minimize storage and equipment needs in the new facility.

Fee Arbitration: The program continues to run smoothly. Requests for arbitration remain at the same level as in recent years.

General Counsel: General Counsel's review of complaints dismissed by the Client Assistance Office continues to be a significant area of responsibility. We also devote a large chunk of time to providing informal ethics advice, principally by telephone and email. Telephone requests for ethics advice average 15 calls/day and requests for written assistance (e-mail and otherwise) average 5/week. General Counsel has been assisting with preparation for the 2007 HOD meeting and is also working on several policy issues for the BOG. Deputy General Counsel has been working with the UPL Committee to clarifying the mission and scope of the bar's UPL function, including revising the UPL bylaw. She also monitors outside counsel who are assisting with UPL prosecutions. The bar is a defendant
in three pending legal matters. One is being handled by General Counsel; we have engaged outside counsel for the other two and are working closely with them. We are close to completing our review and scanning of GCO files in anticipation of moving to the new building. Both GC and DGC continue outreach to the legal community through speaking engagements.

**Human Resources:** Positions filled - RIS Assistant, RIS Administrator, Help Desk Support Technician, Public Affairs Administrative Assistant, MCLE Program Assistant, Marketing Specialist, CAO Assistant, and CAO Intake Coordinator. Open positions - Administrative Bookkeeper for the OLF, two Admissions Assistants, Pro Bono and LRAP Program Coordinator, and RIS Assistant. The Supervisor's Evaluation Survey was moved to mid-year. Results have been distributed to respective managers. Overall average ratings reflected an improvement of supervisors and managers as rated by their staff. All performance appraisals have been reviewed with the supervisor or manager who wrote them to review goals met and progress toward areas of improvement. The workers' compensation insurance policy was renewed for an annual premium decrease of 0.015%.

**Information Technology Department:** Access to BarBooks™ was provided for the county law libraries through a new system designed to provide a single, secure entrance to the wide variety of equipment and systems that are available throughout the counties in Oregon. Design work on the new member profile module was completed and is set for release on the bar's website in September to coincide with the fall address change cycle. The new system automates the export of new data from the bar's website directly into the local membership database which will significantly decrease the amount of manual entry required each year. A new electronic voting system was prepared and tested for introduction and use at the annual HOD meeting in late September. Design efforts centered around the creation of the bar's new logo and its integration into all print and web products and materials, the rollout for which will accompany the move to the new bar center. Projects connected with the new bar center included a thorough assessment of the Fanno Creek access control system and review of a third phone system, contracts for both of which have now been signed, and a review of potential for fiber option internet connections in the new building. The new IDT help desk position was filled in late August and adds necessary in-house technical support and training for bar staff and systems.

**Legal Services Program:** The peer review conducted on Legal Aid Services of Oregon (LASO) revealed that LASO is in compliance with the Legal Service Program Standards and Guidelines. The 2007 Legislative Session appropriated to the Judicial Department, out of the General Fund, the amount of $700,000, which is to be forwarded as a one-time grant to the OSB for legal aid services. The Legal Services Program (LSP) Committee met and will make a recommendation to the BOG regarding the $700,000 grant at the September 28 meeting. The LSP Committee will also make a recommendation to the BOG concerning increasing the administrative fee from the filing fees received to pay for the bar's overhead to coordinate the Legal Services Program. The Pro Bono and Loan Repayment Assistance Program Coordinator left the bar to attend law school. Efforts are being made to hire for
that position.

**Member Services:** The ONLD has created a New Lawyers Resource List for use by law students. Law students will be able to access this list on the bar's website in order to contact lawyers who practice in certain areas of the law for information and advice. Because this list has areas of practice listed, it will be updated by staff according to the forms completed by the participating attorney. As of September 7, 175 new lawyers have volunteered to participate in the program. The ONLD is also sponsoring the Constitution Day Pilot Program on September 17 featuring volunteer lawyers in middle and high school classrooms highlighting the legal aspects of the Bill of Rights. Over 50 lawyers volunteered for this project. The Public Member interviews were held. Six candidates were interviewed, one will be recommended to the BOG and one will be an alternate. The Affirmative Action Program is now one of the programs managed by the Member Services Department. It is with regret that the resignation of Stella Manabe, AAP Coordinator has been accepted. Another AAP staff member, Fay Stetz-Waters, will be leaving the bar in October. A total of 126 volunteer opportunity forms were received and the data is being entered in preparation for the October Appointments Committee meeting. A session of the Leadership College featuring Diversity as a topic will be held in Salishan on September 28.

**MCLE:** Over 3,500 accreditation applications have been processed so far this year. Reminder notices were sent on July 10 to members whose reporting period ends 12/31/2007. Many expressed appreciation for the early reminder. Transcripts are available for online viewing. Staff continues to process accreditation applications, post attendance information, clean out files in accordance with the new retention policy and prepare for the move. An MCLE Program Assistant, Jenni Abalan, was recently hired and will begin working on September 10. Compliance reports will be mailed out by the end of October to approximately 4,700 members.

**Referral and Information Services**

The Lawyer Referral Service program year began July 1, 2007. New and renewal registrations have brought in $113,530 in earned revenue as of August 31, 2007 (as compared to $93,320 as at August 31, 2006). The 22% bump in revenue is largely the result of a new fee schedule implemented in the 2007-2008 program year. RIS budgeted $135,000 for the program year, leaving 10 months to generate $21,470 in additional revenue from late renewals, new admittees, and new recruits. RIS replaced former RIS Administrator Jon Benson (now Admissions Administrator) with George Wolff, who took over in July, and is recruiting for an afternoon-shift Referral and Information Services Assistant.

**Professional/Community Development**

I am working on an oral history of the founding presidents of Oregon’s community colleges and recently met with a history professor at PSU who is going to be my “coach” for this effort. As you can imagine, many of these founders (community colleges were started in Oregon in the late 1960’s) are quite elderly.
# Status of Actions

**Board of Governors Meetings**

*Updated – September 11, 2007*

<table>
<thead>
<tr>
<th>Date</th>
<th>Action</th>
<th>Assg. to</th>
<th>Completion</th>
</tr>
</thead>
<tbody>
<tr>
<td>February 23-24, 2007</td>
<td>Continue to work with UPL Committee on contested admonition proposal.</td>
<td>Helen</td>
<td>Issue is now on back burner. Will go off list.</td>
</tr>
<tr>
<td>April 20-21, 2007</td>
<td>Forward Supreme Court proposal to adopt ORPC 5.5 permanently</td>
<td>Sylvia</td>
<td>DONE (will ask Chief status on 9/17)</td>
</tr>
<tr>
<td>April 20-21, 2007</td>
<td>Create Post-Conviction Relief Task Force</td>
<td>Susan/Danielle - appointments</td>
<td>Working with PDSC, expect for October Appointments Committee agenda</td>
</tr>
<tr>
<td>June 22-23, 2007</td>
<td>Implement revision of OSB Formal Ethics Opinion No. 2001-120</td>
<td>Sylvia</td>
<td>DONE</td>
</tr>
<tr>
<td>June 22-23, 2007</td>
<td>Request extension to consider Amicus Brief involving Appellate Law Section, consult Criminal Law Section</td>
<td>Sylvia</td>
<td>DONE</td>
</tr>
<tr>
<td>June 22-23, 2007</td>
<td>Inform claimant’s attorney of affirmation of CSF Committee denial of claim</td>
<td>Sylvia</td>
<td>DONE</td>
</tr>
<tr>
<td>June 22-23, 2007</td>
<td>Create Past President’s Council – letter from Albert, set meeting prior to retreat</td>
<td>Karen – letter from Albert, meeting – Margaret</td>
<td>Set for evening before October 11 Legislative CLE</td>
</tr>
<tr>
<td>June 22-23, 2007</td>
<td>Send volunteer brochure to membership</td>
<td>Margaret</td>
<td>DONE</td>
</tr>
<tr>
<td>June 22-23, 2007</td>
<td>Send proposed revision to BR 2.5 (CAO Standard) to court</td>
<td>Chris/Sylvia</td>
<td>DONE</td>
</tr>
<tr>
<td>June 22-23, 2007</td>
<td>Amend Bar Bylaw 7.203</td>
<td>Sylvia</td>
<td>DONE</td>
</tr>
<tr>
<td>June 22-23, 2007</td>
<td>Draft HOD Resolution for mileage issue</td>
<td>P and G, Karen</td>
<td>DONE</td>
</tr>
<tr>
<td>June 22-23, 2007</td>
<td>Alcohol Policy – revise at P and G, represent next board meeting, consider HOD resolution</td>
<td>Karen</td>
<td>DONE, on this agenda</td>
</tr>
<tr>
<td>June 22-23, 2007</td>
<td>Implement Appointments</td>
<td>Danielle</td>
<td>DONE</td>
</tr>
<tr>
<td>June 22-23, 2007</td>
<td>Finalize board minutes</td>
<td>Teresa</td>
<td>DONE</td>
</tr>
<tr>
<td>June 22-23, 2007</td>
<td>Quorum issue – survey sections, committees, back to P and G</td>
<td>Karen</td>
<td>On this meeting’s agenda</td>
</tr>
</tbody>
</table>

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Minutes
Access to Justice Committee
OSB Board of Governors
June 22, 2007
Lake Oswego, Oregon

Committee Members Present: Linda Eyerman (Chair), Carol Skerjanec, Terry Wright, Robert L. Vieira, Ann Fisher Staff: Judith Baker and Debra Maryanov

1. Minutes of the May 18, 2007 Meeting.

The minutes were approved as submitted.

2. Loan Assistance Repayment Program Update
Debra Maryanov was present to update the committee on LRAP. She explained that seven participants and one alternate had been selected to receive a $5,000 annual payment toward their student loans. Changes were made to the promissory note and it is now called a Letter of Agreement. These changes were made pursuant to Helen Hierschbiel’s recommendation. The Letter of Agreements have been executed by the participants. A Bar Bulletin article will be coming out next month highlighting the program. In addition, the Portland Tribune will feature an article on the high debt load carried by many college graduates. The article will mention the bar’s LRAP. Linda Eyerman explained that seven applicants were chosen which is more than originally planned. None of the seven applicants selected were from Portland. There were only a small number of men who applied and all the applicants selected were female. This speaks to the high number of women who go into public interest law. The committee asked staff to call those applicants who were disqualified due to an incomplete packet and let them know why they were disqualified and encourage them to apply next year. The committee thought that the threshold debt amount to receive an LRAP maybe too low since the debt amount of all the applicants applying exceeded the threshold. Because of the large applicant pool it was mentioned that the BOG may consider a small dues increase to provide increased funding for LRAP.

3. Unbundled Legal Services
The committee asked staff to prepare a memo for the next meeting that gives an overview of the conclusions drawn by the bar and taskforces that have reviewed the issue of unbundled legal services. Staff recommended that information regarding unbundled legal services can be put on the bar’s webpage so that Oregon lawyers can glean information and therefore have a better understanding of unbundled legal services.

4. Next Meeting
The next meeting will be in Lake Oswego on July 20, 2007.
Minutes  
Access to Justice Committee  
OSB Board of Governors  
July 20, 2007  
Lake Oswego, Oregon

Committee Members Present: Linda Eyneman (Chair), Carol Skerjanec (phone), Bob Vieira, Ann Fisher, Tim Gerking  
Guests: Rick Yugler  
Staff: Debra Maryanov

1. Minutes of the June 22, 2007 Meeting.

The minutes were approved with one change to the LRAP update.

2. Unbundled Legal Services

Staff provided an update to the committee on unbundled legal services in Oregon. The committee suggested that the term “discrete task representation” may be more descriptive and better received than “unbundled legal services.” The committee discussed whether the bar’s role in ensuring access to justice should be limited to regulating lawyers to provide maximum services to the public. The consensus was that the bar’s role should extend to helping people use the courts when they cannot afford to see a lawyer for all of their needs, and that unbundling should be a part of the effort to ensure access to justice. Staff will prepare a webpage that provides lawyers with information, rules, and materials referenced in the unbundled legal services update memo. The committee requests that Sylvia Stevens review the webpage to ensure its accurateness and timeliness before publication. In addition, staff will prepare brief information for the public on the availability of unbundled legal services, noting that lawyers have rules regulating the practice of discrete task representation. In coordination with this effort, staff suggested that the committee recommend that the courts educate the public about using unbundled legal services. This suggested recommendation might be appropriate for an upcoming report by the State Family Law Advisory Committee’s Subcommittee on Self-Representation on next steps in self-representation in Oregon’s family law cases.

3. Expansion of LRAP

While the LRAP was able to select seven participants for its first year, the current budget can support only four new participants in each subsequent year of the program. Linda noted that the program received over 50 meritorious applications in 2007 and suggested proposing a second $5.00 membership dues increase to expand the LRAP in 2008. The committee agreed that an expansion of the LRAP should be considered in the future but did not think a dues increase should be requested at this time. Bar members might be reticent about a dues increase at the same time the bar is moving into a new building, and the LRAP needs a chance to show its worth. The committee should also wait to see the outcome of pending federal legislation that would provide loan forgiveness for civil legal services lawyers. The
committee thought it would be useful to educate members about the LRAP now, such as presenting to the HOD in September. The LRAP Advisory Committee can bring the issue of expanding the LRAP to the Access to Justice Committee in the future.

4. Next Meeting

The next meeting will be in Salishan on September 27, 2007.
Narrative Summary

The Net Revenue after eight months is a healthy $555,541, which is a $126,000 positive budget variance. Part of the positive variance is due to August having a net expense of only $14,082. Typically August has a much higher net expense. Unless there are unusual circumstances in the last four months of the year, the bar should end the year with a Net Revenue of $250,000 to $300,000. The budget calls for a $412,035 Net Revenue.

The largest portion of the positive variance is in Other Income, which includes the approximately $32,700 of interest income earned monthly on the proceeds from the sale of the bar center.

EXECUTIVE SUMMARY

<table>
<thead>
<tr>
<th></th>
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<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Member Fees</td>
<td>$4,095,742</td>
<td>$4,118,354</td>
<td>($22,612)</td>
<td>-0.5%</td>
<td>$3,986,160</td>
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<tr>
<td>Program Fees</td>
<td>2,798,478</td>
<td>2,805,937</td>
<td>(7,459)</td>
<td>-0.3%</td>
<td>2,823,554</td>
</tr>
<tr>
<td>Other Income</td>
<td>270,102</td>
<td>174,064</td>
<td>96,038</td>
<td>55.2%</td>
<td>195,590</td>
</tr>
<tr>
<td>Total Revenue</td>
<td>7,164,322</td>
<td>7,098,355</td>
<td>65,967</td>
<td>0.9%</td>
<td>7,005,404</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Expenses</th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Salaries &amp; Benefits</td>
<td>4,174,617</td>
<td>4,191,523</td>
<td>(16,906)</td>
<td>-0.4%</td>
<td>4,010,023</td>
</tr>
<tr>
<td>Direct Program</td>
<td>2,244,474</td>
<td>2,198,385</td>
<td>46,089</td>
<td>2.1%</td>
<td>2,070,812</td>
</tr>
<tr>
<td>General &amp; Admin</td>
<td>189,690</td>
<td>245,486</td>
<td>(55,796)</td>
<td>-22.7%</td>
<td>161,733</td>
</tr>
<tr>
<td>Contingency</td>
<td>0</td>
<td>33,333</td>
<td>(33,333)</td>
<td>-100.0%</td>
<td>5,575</td>
</tr>
<tr>
<td>Total Expense</td>
<td>6,608,781</td>
<td>6,668,727</td>
<td>(59,946)</td>
<td>-0.9%</td>
<td>6,248,143</td>
</tr>
<tr>
<td>Net Rev Bef Mkt Adj</td>
<td>555,541</td>
<td>$429,628</td>
<td>125,913</td>
<td></td>
<td>757,261</td>
</tr>
<tr>
<td>Market Adjustment</td>
<td>123,469</td>
<td></td>
<td></td>
<td></td>
<td>132,977</td>
</tr>
<tr>
<td>Inventory decrease</td>
<td>(154,467)</td>
<td></td>
<td></td>
<td></td>
<td>(150,934)</td>
</tr>
<tr>
<td>Net Rev before gain</td>
<td>524,543</td>
<td></td>
<td></td>
<td></td>
<td>739,304</td>
</tr>
<tr>
<td>Gain on sale of OSBC</td>
<td>5,473,625</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Net Revenue</td>
<td>$6,522,711</td>
<td></td>
<td></td>
<td></td>
<td>$739,304</td>
</tr>
</tbody>
</table>

Positive Budget Variance
Eight Month Financial Fragments

- CLE Seminars revenue is $50,000 more than a year ago after an above-normal revenue month in August. The Net Expense is $112,000 which is $30,000 more than a year ago, as some expenses are prepaid for upcoming events. September through December are the highest revenue months, so the activity's bottom line will be determined in the next four months.

- CLE Publications sales are $41,000 below a year ago and Net Expense is $222,533. BarBooks revenue is only 50% of its budgeted revenue of $414,070. However, an above-average number of eight books are scheduled to be available the last quarter this year. If 75% of the budgeted sales of those books occur this year, the revenue budget on printed books will be achieved.

- The two activities with the largest net revenue are Admissions ($225,879 Net Revenue) and MCLE ($77,071). These two activities also had the highest net revenues in 2006 ending the year at $143,777 and $67,891 respectively.

- The contracted legal costs in General Counsel are $37,456 to date. The total cost in 2006 was $52,290. For both years the budget was $100,000 with a carryover of unused amounts to a dedicated fund.

- Lawyer Referral raised its base fee by $25.00 this year, but will fall short of its budgeted revenue by about $12,000. This is 9% below the budget which is the same percentage below the budget in 2006.

- The eight months of disbursements to the legal aid offices through the bar's collection of filing fees are $2.643 million, or 5.1% more than a year ago.

- Although this number can change quickly with a few large claims, CSF claims paid to date are $69,671. The total claims paid in 2006 were only $46,332, one of the lowest years on record.

Bar Center Expenses

The bar pays $45,000 monthly in rent. Offsetting this is approximately $32,700 in additional interest earned on the proceeds from the building sale and not paying the monthly mortgage payment of $14,997. Thus, since June the bar is ahead about $2,600 each month by renting the building. Additionally, the monthly depreciation of $9,700 for the building is no longer expensed.
OREGON STATE BAR  
General Fund Financial Statements  
For the Eight Months Ending August 31, 2007

<table>
<thead>
<tr>
<th>Description</th>
<th>August 2007</th>
<th>YTD 2007</th>
<th>Budget 2007</th>
<th>% of Budget</th>
<th>August Pr Yr</th>
<th>YTD Pr Yr</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>REVENUE</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>GENERAL MEMBERSHIP FEES</strong></td>
<td>$520,593</td>
<td>$4,095,742</td>
<td>$6,225,500</td>
<td>65.8%</td>
<td>$499,380</td>
<td>$3,986,160</td>
</tr>
<tr>
<td>Admissions</td>
<td>8,300</td>
<td>595,340</td>
<td>600,825</td>
<td>99.1%</td>
<td>25,583</td>
<td>889,203</td>
</tr>
<tr>
<td>Bulletin</td>
<td>4,941</td>
<td>210,809</td>
<td>312,580</td>
<td>63.4%</td>
<td>1,981</td>
<td>196,224</td>
</tr>
<tr>
<td>CLE - Publications</td>
<td>21,256</td>
<td>602,408</td>
<td>1,068,870</td>
<td>56.4%</td>
<td>53,025</td>
<td>643,169</td>
</tr>
<tr>
<td>CLE - Seminars</td>
<td>113,522</td>
<td>837,492</td>
<td>1,521,345</td>
<td>55.0%</td>
<td>95,248</td>
<td>786,958</td>
</tr>
<tr>
<td>Client Assistance Office</td>
<td>13</td>
<td>85</td>
<td></td>
<td>0.0%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Communications</td>
<td>515</td>
<td>13,914</td>
<td>24,500</td>
<td>56.8%</td>
<td>728</td>
<td>7,676</td>
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<tr>
<td>Disciplinary Counsel</td>
<td>3,332</td>
<td>53,057</td>
<td>81,000</td>
<td>65.5%</td>
<td>4,713</td>
<td>44,890</td>
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<tr>
<td>General Council</td>
<td>100</td>
<td>2,363</td>
<td>2,850</td>
<td>115.3%</td>
<td>217</td>
<td>1,522</td>
</tr>
<tr>
<td>Governance</td>
<td>355</td>
<td></td>
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<td>0.0%</td>
<td></td>
<td>585</td>
</tr>
<tr>
<td>Loan Repayment Assistance Pgm</td>
<td></td>
<td></td>
<td></td>
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<td></td>
</tr>
<tr>
<td>MCLE</td>
<td>18,145</td>
<td>183,300</td>
<td>205,400</td>
<td>89.2%</td>
<td>17,295</td>
<td>166,370</td>
</tr>
<tr>
<td>Member Services</td>
<td>100</td>
<td>400</td>
<td></td>
<td>0.0%</td>
<td></td>
<td>1,200</td>
</tr>
<tr>
<td>New Lawyer Division</td>
<td>460</td>
<td>2,660</td>
<td>4,000</td>
<td>66.5%</td>
<td>1,120</td>
<td>3,610</td>
</tr>
<tr>
<td>Production Services</td>
<td>1,260</td>
<td>180,129</td>
<td>202,200</td>
<td>89.1%</td>
<td>650</td>
<td>187,978</td>
</tr>
<tr>
<td>Public Affairs</td>
<td>11</td>
<td></td>
<td></td>
<td>0.0%</td>
<td>12</td>
<td>449</td>
</tr>
<tr>
<td>Referral &amp; Information Services</td>
<td>4,688</td>
<td>116,155</td>
<td>135,000</td>
<td>86.0%</td>
<td>3,680</td>
<td>93,320</td>
</tr>
<tr>
<td><strong>Total Program Fees</strong></td>
<td>176,691</td>
<td>2,798,478</td>
<td>4,177,770</td>
<td>67.0%</td>
<td>204,251</td>
<td>2,823,554</td>
</tr>
<tr>
<td><strong>OTHER INCOME</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Investment Income</td>
<td>40,426</td>
<td>242,030</td>
<td>250,700</td>
<td>92.8%</td>
<td>20,551</td>
<td>166,585</td>
</tr>
<tr>
<td>Rent</td>
<td>2,195</td>
<td>16,950</td>
<td>26,380</td>
<td>64.3%</td>
<td>1,932</td>
<td>16,461</td>
</tr>
<tr>
<td>Other</td>
<td>76</td>
<td>11,122</td>
<td>22,300</td>
<td>47.3%</td>
<td>76</td>
<td>12,626</td>
</tr>
<tr>
<td><strong>Total Other Income</strong></td>
<td>43,697</td>
<td>270,102</td>
<td>319,380</td>
<td>87.0%</td>
<td>22,559</td>
<td>195,698</td>
</tr>
<tr>
<td><strong>TOTAL REVENUE</strong></td>
<td>$779,921</td>
<td>$7,164,324</td>
<td>$10,713,850</td>
<td>66.87%</td>
<td>$726,191</td>
<td>$7,085,404</td>
</tr>
</tbody>
</table>
### EXPENSES

<table>
<thead>
<tr>
<th>Description</th>
<th>August 2007</th>
<th>YTD 2007</th>
<th>Budget 2007</th>
<th>% of Budget</th>
<th>August Pr Yr</th>
<th>YTD Pr Yr</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>SALARIES &amp; BENEFITS</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Salaries</td>
<td>$384,098</td>
<td>$3,216,966</td>
<td>$4,915,720</td>
<td>65.4%</td>
<td>$168,565</td>
<td>$3,092,413</td>
</tr>
<tr>
<td>Taxes and Benefits</td>
<td>117,652</td>
<td>957,651</td>
<td>1,404,844</td>
<td>64.1%</td>
<td>114,724</td>
<td>917,611</td>
</tr>
<tr>
<td>Total Salaries &amp; Benefits</td>
<td><strong>501,750</strong></td>
<td><strong>4,174,617</strong></td>
<td><strong>6,320,564</strong></td>
<td><strong>65.1%</strong></td>
<td><strong>483,299</strong></td>
<td><strong>4,010,023</strong></td>
</tr>
<tr>
<td><strong>DIRECT PROGRAM</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Admissions</td>
<td>1,811</td>
<td>66,292</td>
<td>186,560</td>
<td>35.6%</td>
<td>8,614</td>
<td>65,695</td>
</tr>
<tr>
<td>Bulletin</td>
<td>7,020</td>
<td>188,003</td>
<td>274,500</td>
<td>68.5%</td>
<td>1,650</td>
<td>172,661</td>
</tr>
<tr>
<td>CLE - Publications</td>
<td>5,314</td>
<td>127,798</td>
<td>230,600</td>
<td>55.4%</td>
<td>10,070</td>
<td>151,955</td>
</tr>
<tr>
<td>CLE - Seminars</td>
<td>39,716</td>
<td>406,202</td>
<td>726,660</td>
<td>55.9%</td>
<td>46,668</td>
<td>341,520</td>
</tr>
<tr>
<td>Client Assistance Office</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Communications</td>
<td>822</td>
<td>31,540</td>
<td>76,245</td>
<td>41.4%</td>
<td>970</td>
<td>39,875</td>
</tr>
<tr>
<td>Disciplinary Counsel</td>
<td>7,547</td>
<td>53,621</td>
<td>99,000</td>
<td>54.2%</td>
<td>15,702</td>
<td>62,448</td>
</tr>
<tr>
<td>Finance &amp; Operations</td>
<td>54,637</td>
<td>508,512</td>
<td>779,120</td>
<td>63.3%</td>
<td>58,358</td>
<td>543,037</td>
</tr>
<tr>
<td>General Counsel</td>
<td>14,081</td>
<td>46,524</td>
<td>121,263</td>
<td>38.4%</td>
<td>3,810</td>
<td>52,366</td>
</tr>
<tr>
<td>Governance</td>
<td>10,624</td>
<td>92,784</td>
<td>192,300</td>
<td>48.2%</td>
<td>21,129</td>
<td>107,903</td>
</tr>
<tr>
<td>Loan Repayment Assistance Program</td>
<td>21</td>
<td>627</td>
<td>350</td>
<td>179.2%</td>
<td>35</td>
<td>312</td>
</tr>
<tr>
<td>MICLE</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Member Services</td>
<td>(1,212)</td>
<td>33,572</td>
<td>52,000</td>
<td>64.6%</td>
<td>1,632</td>
<td>120,060</td>
</tr>
<tr>
<td>New Lawyers Division</td>
<td>2,387</td>
<td>35,548</td>
<td>73,250</td>
<td>48.5%</td>
<td>3,521</td>
<td>41,918</td>
</tr>
<tr>
<td>Oregon State Bar Center</td>
<td>56,496</td>
<td>314,801</td>
<td>327,602</td>
<td>96.1%</td>
<td>27,864</td>
<td>229,323</td>
</tr>
<tr>
<td>Production Services</td>
<td>1</td>
<td>130,187</td>
<td>131,910</td>
<td>98.7%</td>
<td>728</td>
<td>125,595</td>
</tr>
<tr>
<td>Public Affairs</td>
<td>105</td>
<td>6,673</td>
<td>14,600</td>
<td>47.1%</td>
<td>34</td>
<td>1,073</td>
</tr>
<tr>
<td>Referral &amp; Information</td>
<td>1,692</td>
<td>17,215</td>
<td>25,270</td>
<td>67.7%</td>
<td>1,491</td>
<td>19,937</td>
</tr>
<tr>
<td>Special Projects - Board of Governors</td>
<td>148,963</td>
<td>219,888</td>
<td>219,888</td>
<td>67.7%</td>
<td>14,911</td>
<td>19,937</td>
</tr>
<tr>
<td>Total Direct Program</td>
<td>261,461</td>
<td>2,244,474</td>
<td>3,588,810</td>
<td>62.5%</td>
<td>202,077</td>
<td>2,879,812</td>
</tr>
<tr>
<td><strong>GENERAL AND ADMINISTRATIVE</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Computer</td>
<td>29,858</td>
<td>129,288</td>
<td>156,410</td>
<td>82.7%</td>
<td>5,284</td>
<td>88,179</td>
</tr>
<tr>
<td>Messenger and Delivery Services</td>
<td>420</td>
<td>2,255</td>
<td>18,630</td>
<td>16.6%</td>
<td>190</td>
<td>921</td>
</tr>
<tr>
<td>Office Supplies</td>
<td>1,795</td>
<td>12,778</td>
<td>32,625</td>
<td>38.8%</td>
<td>5,928</td>
<td>21,433</td>
</tr>
<tr>
<td>Postage</td>
<td>37,343</td>
<td>240,737</td>
<td>405,040</td>
<td>61.5%</td>
<td>62,271</td>
<td>274,150</td>
</tr>
<tr>
<td>Professional dues</td>
<td>550</td>
<td>21,318</td>
<td>23,501</td>
<td>90.4%</td>
<td>858</td>
<td>20,533</td>
</tr>
<tr>
<td>Publications and Subscriptions</td>
<td>1,081</td>
<td>14,944</td>
<td>27,676</td>
<td>54.0%</td>
<td>1,825</td>
<td>18,327</td>
</tr>
<tr>
<td>Telephone</td>
<td>4,345</td>
<td>33,947</td>
<td>60,750</td>
<td>48.7%</td>
<td>3,798</td>
<td>28,490</td>
</tr>
<tr>
<td>Training and Education</td>
<td>564</td>
<td>18,098</td>
<td>35,210</td>
<td>46.2%</td>
<td>1,003</td>
<td>19,670</td>
</tr>
<tr>
<td>Travel and Expense - Staff</td>
<td>8,463</td>
<td>79,601</td>
<td>106,076</td>
<td>74.5%</td>
<td>11,768</td>
<td>62,510</td>
</tr>
<tr>
<td>Other</td>
<td>2,722</td>
<td>55,124</td>
<td>126,282</td>
<td>43.6%</td>
<td>6,317</td>
<td>98,085</td>
</tr>
<tr>
<td>Total General &amp; Administrative</td>
<td><strong>89,772</strong></td>
<td><strong>614,326</strong></td>
<td><strong>999,448</strong></td>
<td><strong>62.1%</strong></td>
<td><strong>99,242</strong></td>
<td><strong>592,298</strong></td>
</tr>
<tr>
<td>Less: Support Services to others</td>
<td>163,756</td>
<td>1,396,801</td>
<td>2,050,928</td>
<td>68.1%</td>
<td>157,977</td>
<td>1,328,676</td>
</tr>
<tr>
<td>Plus: Expense offsets</td>
<td>(26,211)</td>
<td>(240,015)</td>
<td>(494,400)</td>
<td>48.5%</td>
<td>(47,387)</td>
<td>(268,901)</td>
</tr>
<tr>
<td>Plus: Service Reimbursements</td>
<td>(4,867)</td>
<td>(30,034)</td>
<td>(68,000)</td>
<td>56.8%</td>
<td>(3,760)</td>
<td>(40,863)</td>
</tr>
<tr>
<td>Indirect Cost Allocations</td>
<td>156,352</td>
<td>1,250,814</td>
<td>1,626,221</td>
<td>66.7%</td>
<td>150,985</td>
<td>1,207,876</td>
</tr>
<tr>
<td>Net Total General &amp; Admin</td>
<td><strong>51,191</strong></td>
<td><strong>189,690</strong></td>
<td><strong>252,341</strong></td>
<td><strong>75.2%</strong></td>
<td><strong>41,162</strong></td>
<td><strong>161,733</strong></td>
</tr>
<tr>
<td><strong>CONTINGENCY</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total Expense</td>
<td><strong>724,062</strong></td>
<td><strong>6,608,782</strong></td>
<td><strong>10,301,815</strong></td>
<td><strong>64.3%</strong></td>
<td><strong>731,978</strong></td>
<td><strong>6,248,143</strong></td>
</tr>
<tr>
<td><strong>NET OPERATING REVENUE (EXPENSE)</strong></td>
<td><strong>(14,082)</strong></td>
<td><strong>(555,839)</strong></td>
<td><strong>412,035</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Unrealized Investment Gains /Losses</td>
<td>155,025</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>64,604</td>
</tr>
<tr>
<td>YR Inventory Increase/(Decrease)</td>
<td>(14,173)</td>
<td>(154,467)</td>
<td></td>
<td></td>
<td></td>
<td>(12,233)</td>
</tr>
<tr>
<td>Gain on sale of OSB Center</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>(150,934)</td>
</tr>
<tr>
<td><strong>NET REVENUE (EXPENSE)</strong></td>
<td><strong>(123,255)</strong></td>
<td><strong>(6,609,721)</strong></td>
<td><strong>412,035</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

For the Eight Months Ending August 31, 2007
OREGON STATE BAR
Board of Governors Agenda

Meeting Date: September 27-28, 2007
Memo Date: September 14, 2007
From: Ward Greene, chair, Budget & Finance Committee
Re: Selection of Auditing Firm for 2006-2007 Audit of OSB Financial Statements

Action Recommended

The Budget & Finance Committee will act on the staff recommendation for the selection of an auditing firm to perform the audit of the bar’s financial statements for 2006-2007.

Background

At the June 22-23 Budget & Finance Committee meeting, the committee resolved to distribute a RFP for the selection of an auditor for the bar’s financial statements for 2006 and 2007, and at the July 20 meeting authorized the bar’s CFO and accounting supervisor to evaluate the responses and make a recommendation to the committee.

The RFP was sent to seven firms. Two indicated they would not submit a response, two did not reply, and three submitted a response. The three which responded were Moss Adams, Merina & Company, and Pauly Rogers (the firm which performed the past two audits). This was the first time Moss Adams received the RFP and Merina & Company has performed the PLF’s audit for the past five years. All firms were asked to submit cost bids for the 2006-2007 and the 2008-2009 audits.

The bar staff will complete the evaluation and have a recommendation for the Budget & Finance Committee at the meeting.

In October 2003, the bar received authorization from the Secretary of State Audits Division to contract directly with independent auditing firms to audit the bar’s financial statements “through the report period ending December 31, 2007.” On August 22, 2007, the bar received another letter from the Audits Division with authorization to contract directly with a firm to audit the bar’s financial statements “for a period of five years, through the report for the period ending December 31, 2012.”
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OREGON STATE BAR
Board of Governors Agenda

Meeting Date: September 27-28, 2007
Memo Date: September 14, 2007
From: Ward Greene, chair, Budget & Finance Committee
Re: Update on 2008 Budget – Executive Summary Budget

Action Recommended

None required.

Background

The Budget & Finance Committee reviewed the 2008 Executive Summary Budget (a copy follows this memo) at its July 20 meeting. The committee took no substantive action on the report (see the July 20 Budget & Finance Committee minutes). The budget development process is condensed this year due to the earlier dates of the upcoming meetings. The staff managers and supervisors currently are preparing the line item budgets for their respective activities and the committee will review the next phase of the budget at its October 12 meeting.

The board members should review section 5, "Program, Policy, and Operational Considerations for 2008" beginning on page 4 as that section addresses potential changes or additions to the 2008 budget.

Even though the board can approve the budget at its November meeting, there probably will be changes that won’t be known until later this year or earlier next year. The most obvious is when the bar will occupy the new building and under what condition—owner or tenant. Additionally, the bar will change considerably its printing, mailing, order fulfillment, shipping, and warehousing process as it moves to the new building. Most likely many of these processes will be outsourced to a contract print and mail house, and this process will phase in during 2008.
OREGON STATE BAR
2008 EXECUTIVE SUMMARY BUDGET

Report to the Budget & Finance Committee
July 20, 2007

CONTENTS OF THIS REPORT

1. Purpose of the Executive Summary Budget
2. Schedule for Development of 2008 Budget
3. Summary of 2007 and 2006 Budgets
4. General Overview for 2008
5. Program, Policy, and Operational Considerations for 2008
6. Operating and Capital Reserve
7. Recommendations of the Budget & Finance Committee to the Board of Governors

1 PURPOSE

The purpose of the Executive Summary budget is a “first look” at the 2008 budget and to identify and evaluate the fiscal implications on the next and subsequent year’s budgets and forecast for:

- new or revised policy approved by the board;
- planning or recommendations of the Policy & Governance Committee or other committees;
- new programs or modifications to current programming;
- the member fee for the next year;
- the impact of financial decisions today on future budgets.

This executive summary budget report is an abbreviated version compared to prior years, partially due to the development of the new building budget and the changes to the normal budget presentation. The five-year forecast normally included with this report will be demonstrated in this new format at the meeting.

2 SCHEDULE FOR DEVELOPMENT OF 2008 BUDGET

The Board of Governors and committees are not scheduled to meet again until September 27-29 prior to the House of Delegates meeting. The Budget & Finance
Committee is scheduled to meet on October 12 and the board on November 1-3. Bar staff will prepare the line item budgets during September. These dates are more condensed than prior years, and so this is the tentative schedule for the development of the 2008 budget.

<table>
<thead>
<tr>
<th>Date(s)</th>
<th>Activity</th>
</tr>
</thead>
<tbody>
<tr>
<td>July 20</td>
<td>Budget &amp; Finance Committee reviews and approves Executive Summary budget.</td>
</tr>
<tr>
<td>Week of July 23</td>
<td>Report of the Committee's action on the Executive Summary budget sent to other Board of Governors asking reaction to the Committee's actions.</td>
</tr>
<tr>
<td>Month of September</td>
<td>Bar staff prepare line item department budgets.</td>
</tr>
<tr>
<td>September 27</td>
<td>Budget &amp; Finance Committee reviews responses from other Board of Governors members; refines Executive Summary as needed.</td>
</tr>
<tr>
<td>October 4</td>
<td>First draft of 2008 Budget report sent to the Committee.</td>
</tr>
<tr>
<td>October 12</td>
<td>Committee reviews 2008 budget report.</td>
</tr>
<tr>
<td>November 1-3</td>
<td>Board of Governors approves 2008 budget.</td>
</tr>
</tbody>
</table>

### SUMMARY OF 2007 AND 2006 BUDGETS

Before we look at 2008, here's a summary of matters approved by the board the last two years.

-- 2007 --

The 2007 budget reports a Net Revenue of $412,035. If the mid-year projection follows the trend of past years, the 2007 end-of-year Net Revenue will be $200,000 to $300,000. Here are specific budgetary decisions incorporated into the 2007 budget.

1. **Economic Survey - $15,000**
   
   This is funding for an economic survey of the members. The previous economic survey was in 2002.

2. **Increased Fees for OSB Lawyer Referral Service panels**
   
   The Lawyer Referral Service basic panel fees were increased by $25.00. The fees had not increased since 1985.

   At the February 23-24, 2007 board meeting it was reported the 2007 budget can be amended as the cost of PERS included in the budget approved in November will be $104,400 less than budgeted due to a reduction in employer rates approved by the PERS board in November. This decrease in expenses caused the board to make these modifications to the 2007 budget.
3. **Futures Conference - $25,000**  
   Placeholder amount for a future tends in the legal profession conference.

4. **Increased cost of BOG meetings - $24,500**  
   Additional funding for upgrade of board meeting venue for facilities, lodging, and meal service.

5. **Overlap of new and retiring Admissions Administrator - $28,400**  
   The BBX requested an overlap of training up to five months for the new Admissions Administrator with the retirement of the long-time administrator in fall 2007.

At the March 16 and April 20, 2007 Budget & Finance Committee meetings, the committee approved reallocation of the funding for the futures conference which had been rescheduled to 2008. The $25,000 was allocated to the Campaign for Equal Justice and the Classroom Law Project.

6. **Grants to the Campaign for Equal Justice and the Classroom Law Project**  
   Increased the amount granted to the CEJ and the CLP approved in November 2006 (which were the same amounts in the 2006 budget - $30,000 and $10,000 respectively) by $15,000 to the CEJ and $10,000 to the CLP.

--- 2006 ---

Here are the major financial issues approved during the development of the 2006 budget.

1. **Active member fee**  
   Increased by $50.00 and approved by the House of Delegates.

2. **Leadership College - $28,000**  
   New program.

3. **Contract Legal Services - $50,000**  
   The amount in this line item was raised from $50,000 to $100,000 to offset the expected need for more outside counsel. Any amount not used in one year would be placed in a “reserve” for future needs.

4. **Loan Repayment Assistance Program (LRAP) - $65,000**  
   New program. Five dollars of the $50.00 membership fee increase was allocated for this program. In board action this year, this program will rollover any unused funds to the next year and its fund balance will earn interest.

5. **Additional Scanning Equipment and Services - $15,000**  
   Used to expedite the conversion of paper files into electronic files for better paper management and warehouse space reduction.

6. **Notable Activities Reduced in the 2006 budget**
   - Grant to the Campaign for Equal Justice reduced by $20,000
• Grant to the Classroom Law Project reduced by $10,000
• Out of state travel reduced by $13,000

4 GENERAL OVERVIEW FOR 2008

The biggest impact on the bar’s budget in 2008 is the purchase and operation of the new office building. The operation of the building will be approximately a $1.3 million annual budget considering debt service, operating cost and management fees for all tenants, and rental income from the PLF and other tenants. In the future, budget summaries will be two-part: all program/department operations and a facilities budget.

With the approval of the 2007 budget, the five-year forecast indicated a Net Revenue of $141,000 for 2008. Year 2008 will be the third year of the five-year cycle of member fee increases, and if history holds, the 2009 and 2010 budgets will report a growing Net Expense indicating a member fee increase in 2011.

No member fee increase is included in the 2008 budget, except the Committee will consider a change to the increase in the member fee for those members who do not pay by the fee due date, as another item on the Committee’s July 20 agenda.

The presentation of the five-year forecast of the two-part budget and an update of the Net Revenue or Net Expense for 2008 and the five years thereafter will be at the committee meeting on July 20.

5 PROGRAM, POLICY, AND OPERATIONAL CONSIDERATIONS FOR 2008

The items in this section are additions or carryovers from the 2007 budget for which the Committee should make a recommendation.

Additions to the Budget --

1. Reinstating the Futures Conference - $25,000
   Funding for the conference was approved with the 2007 budget, but once the conference was deferred until 2008, the $25,000 was allocated to the Campaign for Equal Justice and the Classroom Law Project. The conference is scheduled for September 12, 2008.

2. Mileage Reimbursement for HOD Members - $25,000 to $35,000
   This dollar amount will change due to certain variables: the location of the meeting (at Sunriver in 2008) the number of HOD delegates who attend ($25,000 is 70% attendance estimate), and the number of members who actually submit for reimbursement within 60 days.
3. **Change in the Alcohol Policy - $5,000**
   This is a placeholder dollar amount. Through various discussions, the bar sponsored events at which alcohol would be paid for by the bar are: the 50-year member celebration, the past BOG members dinner, and dinners held in conjunction with BOG meetings.
   This topic is on the September 2007 BOG meeting agenda. If changed, the effective date of the policy will be determined then.

4. **Other Additions**
   There are some smaller cost activities the board has acted on, or will act on, that may be incorporated into various program/department budgets. Those activities are: past presidents' involvement and recognition: the volunteer recruitment brochure, and free subscriptions to BarBooks for certain libraries.

**Carryover from Prior Budgets --**

The following three programs are grants to legal related organization. At the June 22-23 meeting, the board approved a bylaw change that stated that although the bar “does not accept proposals for grants ... the bar may provide financial support to the Classroom Law Project and the Campaign for Equal Justice or any other organization that ... furthers the mission of the bar. The amount allocated to any such organization is determined in the consideration and adoption of the bar’s annual budget and may change from year to year based upon the overall financial needs of the bar.”

Assuming these items remain in the budget, the dollar amount should be established. The amounts listed are the amounts expended in 2007.

5. **Grant to Campaign for Equal Justice - $45,000**
   The first commitment of $50,000 was made in 2001. In 2004 and 2005, the support has been specified for the endowment ($30,000) and legislative issues ($20,000). In 2006, no distinction was made in the separation of funds, although the amount granted was decreased to $30,000 to aid in balancing the 2006 budget. For 2007, the original grant was again $30,000, but was increased to $45,000 by later action of the board.

6. **Grant to Classroom Law Project - $20,000**
   From 1999 to 2005, $20,000 was granted. The grant was reduced to $10,000 in 2006 to aid in balancing the 2006 budget. For 2007, the original grant was again $10,000, but was increased to $20,000 by later action of the board.

7. **Council on Court Procedures - $4,000**
   Beginning in 2004, these funds were designated for operational expenses of the CCP, rather than reimburse the council members’ travel expenses. The bar has committed $4,000 per year since 1994.
Operational Matters for Consideration --

8. Casemaker - $135,888
   The contract with Lawriter to provide Casemaker, the online legal research library, to all active bar members expires in September 2008. The monthly cost of the service is $11,324 and other bars which have renewed the service have experienced a slight percentage increase in cost. The bar funded the service for the first time in the 2003 budget by increasing the member fee by $15.00.

   The bar must decide if it wants to continue the contract.

9. Effect of CLE Publications and Seminars
   Based on subscriptions in the first six months of 2007, it appears the revenue projection for BarBooks, the online CLE publications library, may be overstated. CLE Publications has operated with a Net Expense in nine of the last ten years (only 2005 exceeded at net expense in excess of $100,000). The online library was projected to create a breakeven budget for Publications. Although the service has been well-received by the subscribers, subscription renewals will begin in early 2008 and will be a better indication of the financial success of the activity.

   CLE Seminars also has had a net expense in nine of the last ten years. Based on the increasing competition for CLE products and services, past discussion has reevaluated whether these activities can be financially break-even.

10. Salary Pool
    The executive directors of the bar and the PLF tentatively have set the 2008 salary merit pool at 4%. The pool in the 2007 budget was 5%. The pool is a combination of the Consumer Price Index (CPI) and merit.

OPERATING AND CAPITAL RESERVE

The Operating Reserve policy is fixed at $500,000 since the approval of the Executive Summary Budget in 1999.

The Capital Reserve is based on the expected equipment and capital improvement needs of the bar in the future. Moving to a new building reduces the amount needed in this fund initially. The estimated capital Reserve in 2008 is $610,000, which is $350,000 for building and furniture replacement costs and $260,000 for technology related capital purchases.

Mortgage Prepayment Fund --

At the end of 2007, this fund balance will approximate $554,000. With the new building and the pay off of the former mortgage, this fund should be reallocated – either by
applying the cash to the purchase of the new building or reallocating to a "Landlord Contingency" as suggested in the Committee's July 20 meeting agenda.

7 RECOMMENDATIONS OF THE BUDGET & FINANCE COMMITTEE TO THE BOARD OF GOVERNORS

The committee's action or direction on the following sections of the summary budget:

1. No changes in the general membership fee ($447.00), the Affirmative Action Program assessment ($30.00), and the Client Security Fund assessment ($5.00), pending the recommendation on the member fee paid after the due date.

2. Program or policy considerations for 2008 (Section 5)

3. Reallocation of Mortgage Prepayment Fund (Section 6)

4. Guidance to bar staff budget preparers for 2008 budget

(End of report)
Minutes
Budget & Finance Committee
June 22-23, 2007
Cannery Pier Hotel
Astoria, Oregon

Committee Members Present: Ward Greene, chair; Gerry Gaydos; Carol Skerjanec; Bob Lehner; Bob Newell; Bette Worcester; Jon Hill. Other BOG members: Albert Menashe; Ann Fisher. Staff: Karen Garst; Sylvia Stevens; Rod Wegener.

1. Minutes – April 20, 2007 Committee Meeting
The minutes of the April 20, 2007 meeting were approved.

Mr. Wegener reported the Net Revenue remains above budget after five months. The reason for the positive net revenue is that most all program’s/department’s revenue exceeds its respective budget after five months and is greater than a year ago. CLE Publications may not attain its budgeted revenue even though it is in line with budget now as BarBooks subscriptions probably will not attain its budget for 2007.

3. Budget Recommendations from the Policy & Governance Committee
The committee discussed the bylaw changes proposed by the Policy & Governance Committee to reimburse HOD members for attendance at HOD meetings and allow bar funds to be used for alcoholic beverages at official bar events. Both changes have financial impact on the bar’s budget. The committee was in general agreement on the change to allow reimbursing HOD members for travel to and from the meeting.

The committee discussed at length the pros and cons of changing the bar’s policy of not reimbursing for alcoholic beverages on bar business. Discussion included statements that mandatory membership fees should not be used for alcohol, the current policy was a moralistic position, should sections be allowed to pay for alcohol since its dues are voluntary, what is a bar sponsored event, and the unknown cost to the bar. The Multnomah Bar will be contacted to try to determine a cost of alcohol based on its practices. The committee took no position on this bylaw change.

4. New Bar Center
Mr. Greene updated the committee on the status of the new building project. Opus intends to have the building complete in December and Ms. Garst stated that if the building is ready for occupancy, bar staff will move the weekend of December 22-23. Mr. Wegener distributed an updated schedule of the building cost and financing estimates and the twelve-year projections of the cost of the new building vs. the current bar center. The schedule indicated that the tenant improvements and related costs now may approach $2.5 million. This estimate is based on the TI budget developed by Opus the previous day. The twelve-
year projections still indicate the bar will not need a member fee increase to fund the new building. Even with the tenant improvements increase, a lower interest rate causing lower debt service and more proceeds from the sale of the bar center, improve the projections from last July prior to the execution of the agreement with Opus.

Ms. Gass reported the final tenant improvement budget will be presented by Opus to the bar next week and Opus and the bar must agree on the TI budget during the week of July 2 so not to delay construction. Mr. Greene reported he will attend the June 27 meeting at which the TI budget will be reviewed.

Mr. Menashe asked Mr. Wegener to prepare talking points on the development of the new bar center for his and other BOG members’ presentation to members.

5. Audit for 2006-2007

Action: The Budget & Finance Committee recommends that the bar send a RFP to auditing firms to solicit proposals for the bar’s financial audit for fiscal years 2006 and 2007.

6. Items with Financial Implications for 2008 Budget

No discussion. Mr. Wegener reminded the committee that the July 20 committee meeting will include the first look at the 2008 budget.

7. Tenants Improvements at New Bar Center

The committee reconvened the morning of June 23 to evaluate further the 12-year forecast of operations and the total cost budget of the new building distributed by Mr. Wegener. The building cost estimate, including tenant improvements for the bar and PLF, furniture and fixtures, and consultants, now is $20.8 million. The increase since the last estimate is due to the expected tenant improvements cost (including new furniture and fixtures) to approximate $2.5 million instead of $1.5 million, including the tenant improvement costs of the PLF, which adds another approximately $366,000, and including change orders estimated at $406,000. Mr. Wegener commented that with that cost estimate and the bar borrowing $12.405 million, the cash flow for building operations for the next twelve years would be break-even (assuming numerous assumptions) compared to the bar remaining in the existing bar center.

The committee accepted the cost estimate and forecast. Opus expects to have a final tenant improvement cost budget in early July. Mr. Greene indicated he will attend the upcoming meetings with Opus wherein the tenant improvements budget and design are discussed. The committee asked for an update on the building and tenant improvement costs for its next meeting.

8. Next committee meeting

The committee will meet next on Friday, July 20 at the bar center in Lake Oswego.
Minutes
Budget & Finance Committee
July 20, 2007
Oregon State Bar Center
Lake Oswego, Oregon

Committee Members Present: Ward Greene, chair; Jon Hill; Bob Lehner; Bette Worcester. Via conference phone: Gerry Gaydos; Carol Skerjanec. Staff: Karen Garst; Sylvia Stevens; Rod Wegener.

1. Minutes – June 22-23, 2007 Committee Meeting
The minutes of the June 22-23, 2007 meeting were approved.

Mr. Wegener referred to the two points highlighted in the written financial report. If the trends of past years continue, the bar’s Net Revenue at year end will be between $200,000 and $300,000, which is below the budget of $412,000. With the sale of the bar center, the bar’s balance sheet now includes $14.2 million in investments, which is the conversion of land and building to the investment in the Local Government Investment Pool.

3. New Bar Center
The committee was updated on the various aspects of the new building project. The budget for the tenant improvements remains in development as several meetings with Opus and various subcontractors continue. The lighting system and fixtures have been upgraded from Opus’ original proposal and the bar expects to recover some of the cost through the greater efficiency of the system. The A/V system budget also has been higher than budgeted, but bar staff continue to work with the vendor to reduce the features to the most feasible for the new building.

The committee rejected the execution of the addendum from Opus in which the bar would forego the first year’s rent under the master lease in return for Opus’ relinquishing its right to delay closing of the sale. Mr. Greene will convey that message to Opus. The committee is to be updated on the addendum or any revisions at the September meeting.

If Opus will complete construction in December, the bar staff still will move then. The PLF will not move in December, but probably at the end of February.

The committee was in favor of establishing a contingency to offset any vacancies or delays in tenant occupancy or unexpected costs during the first few years of ownership. The amount of the contingency will be established later as the construction completion and the purchase closing date becomes more certain.
4. **2008 Executive Summary Budget**

Mr. Wegener directed the committee to pages 4 to 6 in the report. These pages identified the matters that most likely will be decision matters for the committee and board in the approval of the 2008 budget. The Casemaker contract expires in September 2008. The committee acknowledged that the 2003 member fee included $15.00 to fund the Casemaker subscription and any change must be brought to the House of Delegates. Ms. Skerjanec reported on the value of Casemaker to her firm and encouraged its renewal. The committee expected the contract would be renewed.

5. **Increasing Member Fee for Late Payments**

The committee considered other options for increasing the additional member fee for those members who do not pay by January 31. Any change in the existing fee, including the increase in the fee after January 31, must be approved by the House of Delegates.

*Action:* The committee recommended maintaining the member fee at $50.00 for the first 30 days that the fee payment is late and thereafter increasing the fee by $50.00 to $100.00.

6. **Selection of Auditor for 2006-2007**

At its last meeting the committee resolved to distribute a RFP for the preparation of the 2006-07 audit of the bar’s financial statements. Mr. Wegener asked the committee whether the bar should include the last auditor, Pauly Rogers. The committee stated that Pauly Rogers is to receive the RFP. The committee also was satisfied that Michelle Peterson, the bar’s accounting supervisor, and Mr. Wegener will review and rank the responses and make a recommendation to the committee at its September meeting. No members of the committee will participate in the review of the responses to the RFP.

7. **Next committee meeting**

The committee will meet next on September 27 or 28 prior to the Board of Governors meeting at Salishan.
Member Services Committee  
Board of Governors  
June 22, 2007

Present: Rick Yugler, Chair, Terry Wright, Vice Chair, Ann Fisher, Kathleen Evans  
Staff: Margaret Robinson  
Absent: Marva Fabien

Minutes of May 18, 2007  
The minutes of the May 18 meeting were approved as corrected.

Member Communications  
Economics Survey 2007  
There will be a general survey followed by a section-specific survey. Sections are invited to participate in the section-specific portion by submitting questions to which they would like to have answers. The Member Services Committee would like to see the section survey questions as submitted by the sections. The Committee would like a list of the sections participating in the section surveys and the text of the letter going with the section surveys.

Past Bar Presidents  
It is in the interest of the bar to create a tradition of having past presidents involved in projects. It was decided to create a Past Presidents’ Council and to have that group decide, with the BOG, what task or project to do. The importance of the selection of a task being an interactive process between the Council and the BOG was discussed. It was suggested that the Council should meet prior to the annual BOG retreat in November and that, for its first year, the Council should be encouraged to have the Tent Show as a project.

OSB Awards  
The Committee discussed the importance of diversity in the selection of the honorees. The selection of honorees will be on the September agenda.

MyBar Communications and Branding of Member Communications  
An observation was made that the process of developing the member profile feature on the website has been lengthy. This topic will be on the July agenda of the Committee.

Public Education Series  
Chair Yugler stated that it was his understanding that Les Swanson and Wally Carson were in discussions with OPB about producing a program on the Oregon experience with the court system. Staff was requested to follow-up with this. This topic will be on the July agenda.

Bar Center Open House Series  
Leaders of the bar with common interests, i.e., section officers, committee officers, etc. should be invited to open houses in the new bar center, Fanno Creek Place. The open
houses should last from 30-60 minutes and have a social component along with tours of
the new facility. Staff was directed to develop a concept to be discussed at the July
Committee meeting.

Joint Meeting of the Member Services Committee and the Appointments Committee

Appointments Committee members:
Present: Terry Wright, Chair; Kathleen Evans, Linda Eyerman, Carol Skerjanec, Robert
Vieira, Rick Yugler
Staff: Margaret Robinson, Danielle Edwards (phone)
Absent: Tim Gerking

Volunteer Opportunities Brochure
The committee concluded that the brochure should be sent to all members via snail mail.
This item is on the June BOG agenda for approval.

Episodic Volunteering Piece
The pamphlet developed as a template for groups to use in utilizing episodic volunteering
is on the June BOG agenda as an informational item. The Committee suggested that the
New Lawyers Division be asked to suggest ways to utilize this way of volunteering. It
was also suggested that members who have volunteered in general should be cross-
referenced with section membership and those lists given to section leaders for their use.

Membership Congratulations Letter
The Committee was of the opinion that sending a letter to 5 year and 20 year members is
a good idea. This letter will be sent with a volunteer opportunity form. It was emphasized
that it is very important to assure that there are volunteer opportunities available if
members are to be solicited to volunteer.

Bulletin Article Discussion
The article on Philip Morris and the ongoing saga of punitive damages in the U.S.
Supreme Court printed in the June issue of The Bulletin was discussed. Two concerns
were expressed 1) the case is pending – there is no law yet; 2) the authors are San
Francisco lawyers representing the tobacco industry and this is not disclosed.

The question arose if The Bulletin has policies in place pertaining to the publication of
articles and if there is a checking of content to see if it covers an active area of litigation.

Paul Nickel, Bulletin editor, and Kay Pulju, Communications Manager, will be asked to
explain the policies and procedures at the July meeting.
Member Services Committee
Board of Governors
July 20, 2007

Present: Rick Yugler, Chair, Ann Fisher, Kathleen Evans, Linda Eyerman, Marva Fabien, Albert Menashe
Staff: Margaret Robinson, Danielle Edwards, Kay Pulju, Anna Zanolli, Paul Nickell
Absent: Terry Wright

Minutes of June 22, 2007
The minutes of the June 22 meeting were approved.

Bulletin Article Discussion
An article titled Smoke Signals regarding Philip Morris and the ongoing saga of punitive damages in the U.S. Supreme Court printed in the June issue of The Bulletin was discussed. The two concerns expressed during June’s meeting were 1) the case is pending – there is no law yet; 2) the authors are San Francisco lawyers who work for a firm that has previously represented Philip Morris and this information was not disclosed.

Paul Nickel, Bulletin editor, explained the procedures he uses when screening articles for the publication. The only current policy regulating the Bulletin is bylaw 11.2, which gives the executive director sole discretion as to the content of bar communications and printed material. Members of the committee felt it would be appropriate for the Bulletin to create written policies regarding Bulletin content and author disclosure for use in the future. Kay Pulju will bring a draft of these suggested policies to the September meeting.

Past Bar Presidents Council
Past bar presidents will be asked to meet and create a council for social and project oriented tasks. The first project the BOG will ask the council to consider is an event similar to the Tent Show. The council’s first meeting will take place before the BOG retreat in November, and Rick and/or Albert will attend to provide direction and represent the BOG.

Member Communications
Economics Survey 2007
There will be a general survey sent to random bar members which will go out in September. Each section will also be given the opportunity to participate in a practice-specific survey. For a nominal fee of $150, the bar will conduct a survey of all participating section members. These section specific surveys will be sent out in October. Both surveys will be conducted online using Survey Monkey.

MyBar Communications and Branding of Member Communications
Anna Zanolli, Information Technology Manager, presented the committee with examples of the new “MyBar”. With this new member profile account each bar member will be able to select their communication preferences. Eventually the committee would like to see a way for members to have an “unlisted” e-mail address in order to limit the number
of vendor solicitations caused by bar membership list sales. The new member profile is expected to launch in the next two weeks.

Public Education Series
Staff has been working with Les Swanson, The Constitutional Law Section and OPB with regard to a public education series on the judiciary. Board members suggested using judges in the educational series and providing a history of the referendum process. More information will follow after communications between the groups progress.

Bar Center Open House Series
After the bar moves to its new location, sections, committees, and various other groups will be invited to a series of open houses. These open houses will last from 30-60 minutes and include a discussion of the history of the bar, what the new bar center can do for you and how each group can utilize the new bar center. A tour and social reception will follow the discussion. Committee members emphasized the importance of finding ways to include those members located outside of the tri-county area.
Policy and Governance Committee
Minutes – June 22, 2007

Committee members: Kathy Evans (chaired meeting), Ward Greene, Bob Lehner, and Bette Worcester. Other Board members: Albert Menashe. Staff: Sylvia Stevens and Karen Garst.

1. Minutes
Minutes from the May 18, 2007 meeting were approved.

2. UPL
The committee discussed the revised proposal that would create a "demand" letter. This letter would state that the person is doing something we deem inappropriate and that we reserve the right to prosecute. It gives the UPL a new tool and deals with due process issues raised previously.

ACTION: Recommend approval.

3. Elimination of Bias
The OSB president, president-elect and chair of the P and G Committee will meet with Justices Walters and Linder prior to the July committee meeting.

4. Next Meeting
The next meeting of the committee will be July 20 at the bar center.
Policy and Governance Committee
Minutes – July 20, 2007

Committee members: Tim Gerking (chair), Marva Fabien (vice-chair), Kathy Evans Ward Greene, Bob Lehner, and Bette Worcester. Other Board members: Albert Menashe. Staff: Sylvia Stevens and Karen Garst.

1. Minutes
Minutes from the June 23, 2007 meeting were approved.

2. Animal Law Section
The committee discussed the proposal to create an Animal Law Section. Staff confirmed that the requisite signatures had been collected and verified.

ACTION: Recommend approval. Place on the consent agenda.

3. Quorum requirement
The committee reviewed the proposed bylaw to clarify that bar standing committees require a quorum (a simple majority) to conduct official business. This will create a new section 14.9 to the Bar Bylaws. Staff had solicited input from the committees whose comments were mostly positive.

ACTION: Recommend approval. Place on the consent agenda.

4. Alcohol policy
The committee discussed the language proposed at the last BOG meeting. It also considered a HOD resolution, but decided it was unnecessary. Bette proposed an alternative: just deleting the reference to alcohol.

Section 7.5 Expense Reimbursements

Subsection 7.500 General Policy

(e) Miscellaneous Costs:

Telephone, postage, office expense, registration fees and other legitimate business expenses will be reimbursed at actual cost with submission of receipts or an explanation of the business purpose of the expense.

The committee discussed this proposal and felt that there were enough safeguards in regard to expenditures. First, the sections, whose fees are not mandatory, can decide at what times and places alcohol may be paid for through their executive committees. Second, the BOG through its budgetary process can also make determinations at what functions alcohol will be paid for. Karen indicated that it would still be prohibited for staff to use bar funds to buy alcohol in their individual capacity. This means that she would not reimburse an alcohol expense for a glass of wine with a meal if the bar staff
were traveling on bar business. The committee agreed to recommend this alternative to the board.

**ACTION:** Recommend to the full board adoption of the alternative bylaw change.

5. **Redistricting**
Tim introduced revised Plan B. This plan would add four lawyer members to the board, one for each class. The additions would come from the following regions: Region 2 – one more; Region 4 – one more; Region 5 – one more; and one for a new Region 7 (Clackamas County). He indicated that the HOD should be consulted regarding this change and that Plan B would require a statutory change because it adds members to the board. Committee members expressed concerns about personal contact with the increased size of the board; all new members would be from the “metro areas” or Willamette Valley; with smaller regions, members may know their board members better; 20 versus 16 is not a big change; and board members would be able to serve on fewer committees. After discussion, the committee indicated a preference for Plan B subject to comments received by the HOD. The match-up of counties to regions makes more sense under Plan B than Plan A. A decision will be made at the September BOG meeting. Redistricting is required by the statute every ten years.

**ACTION:** Prepare a communication with the HOD to solicit their feedback prior to the committee’s September meeting. List the pros and cons of Plans A and B. Show them the maps. Run the draft by Tim before sending.

6. **Reciprocity with Alaska**
There has been a communication back and forth with Alaska regarding reciprocity. Even though we have some stiffer requirements (they don’t require CLE for their reciprocity), they are willing to enter into a reciprocity arrangement with the OSB. The committee favored the proposal which must go to the BOG with a subsequent discussion at the Board of Bar Examiners and be approved by the Supreme Court.

**ACTION:** Recommend the outlined process for approval of reciprocity with Alaska with the BOG. Place on the open agenda.

7. **Amicus curiae**
The committee approved the proposed revision to Bar Bylaw 2.105 to make it clear that any submission of an amicus brief must be approved by the BOG.

**ACTION:** Recommend the revision to the full board, place on the consent agenda.

8. **Appellate selection**
The committee reviewed a housekeeping revision to Bar Bylaw 2.703 to remove reference to the Judiciary Committee which the board no longer has. Instead the generic word “committee" is used for purposes of the appellate selection process.

**ACTION:** Recommend change to the full board. Place on consent agenda.

9. **Elimination of Bias**
The OSB president, president-elect and chair of the P and G Committee met with Justices Walters and Linder prior to the committee meeting. Justice Walters, in particular, stated that it is important that the requirement remain. Staff is drafting a proposal for a six hour CLE on EOB for new lawyers accompanied by a homework assignment that would be experiential in nature. The two justices are meeting with representatives from the Diversity Section and the MBA Equality Committee in early August. The same board members will then meet with them prior to the next board meeting.

10. **Next Meeting**
The next meeting of the committee will be September 28 in conjunction with the board meeting at Gleneden Beach/Salishan.
Others present: Carol Skerjanec Staff: Susan Grabe.

1. Minutes. The minutes from the May 18, 2007 meeting were approved.

2. End of session update. The committee spent most of its time discussing the end-of-session machinations at the Capitol. Staff reported that leadership discussions regarding the use of filing fee increases to fund judicial salaries and other judicial department activities have been tense. Nonetheless, most are optimistic that the courts will ultimately get what they need. HB 2331 passed out of the General Government Subcommittee on Ways and Means with significant portions of the courts budget and included the following:
   a. Increases in certain filing fees
   b. Grants Chief Justice authority to institute motion fees
   c. Establishes interim legislative committee on Court Facilities
   d. Establishes interim legislative committee on court technology
   e. Allocates a one-time appropriation of $700,000 from the General Fund to OJD for a grant to the OSB for legal aid
   f. Amends into the bill SB 456/SB 279 re judicial salary increase of 14% in July 2007 with a 3% additional increase in July 2008. (This was later increased)

Most of the committee discussion revolved around whether the judges would be able to gain more for salaries in the end-of-session negotiations; whether indigent defense would be able to get closer to the additional $5 million needed and concerns regarding motion fees. Committee members were heartened to learn that SB 700 relating to the creation of a Public officials compensation commission also passed. As part of the two-pronged approach encouraged by the board of governors, this will provide a routine and systematic look at judicial salaries in the future which will help depoliticize the process.

The committee also discussed the need to publicly acknowledge those who had helped the bar and the courts achieve their goals, and in particular, Senator Kate Brown, the governor and the co-chairs of Ways and Means.

3. Legislative Notebook and CLE. Staff is working to compile the end of session summary of what legislation passed and its impact on the practice of law. The CLE seminar followed by a dinner with the Board of Governors and the House and Senate Judiciary Committees is scheduled for October 11 in Portland.

4. Interim issues. The committee decided not to pursue bar involvement in the Guantánamo Bay habeas corpus cases.
5. **Future items.** Public Affairs would like to spend time on future agendas discussing what role the Oregon State Bar should play in coordinating activities with other interest groups and community partners on initiatives that affect the judicial system in Oregon.
Committee Members Present: Gerry Gaydos (by phone), Linda Eyerman, Ann Fisher, Jon Hill, Bob Vieira and Rick Yugler. Staff: Susan Grabe, David Nebel, Sally LaJoie.

1. Minutes. The minutes from the June 22, 2007 meeting were approved.

2. Final session update. Staff reported that the results of the 2007 session were generally positive for the justice system. Judges received a 16 percent salary increase on July 1, 2007 and will receive an additional three percent increase on July 1, 2008. The legislature also revitalized a Public Officials Compensation Commission, which will recommend salary increases for elected officials including judges in the future. An interim legislative committee was authorized to assess court facilities and make recommendations for addressing court facility needs, and the legal services network will receive $700,000 in general fund for operating expenses for the biennium. The committee discussed the wisdom of using filing fee increases to raise the funds needed for these purposes. In addition, the legislature raised indigent defense reimbursement rates for the first time since 1991. The bar’s law improvement package was largely successful: of 26 bills submitted 22 passed, 2 failed, and 2 were withdrawn.

3. Legislative Notebook and CLE. Work continues on the 2007 Legislative Highlights publication and the half day CLE seminar on new legislation scheduled for October 11 at the Governor Hotel in Portland. The Interim Judiciary Committees will be meeting at the Governor on the same day, as will the OSB Past Presidents’ Council. The Judiciary Committee members will be dining with the BOG that evening and the PAC will explore including the past presidents in this event.

4. 2008 and 2009 Sessions. The committee discussed the prospects of the legislative session planned for February, 2008; it is too early to know the scope of what the legislature will be considering. In regard to 2009, the committee will be exploring how it might encourage lawyers to run, especially in light of the legislative retirements of Sen. Kate Brown and Rep. Greg Macpherson. With respect to possible initiatives, several measures have been filed that would limit attorney fees, but none has been filed yet attacking judicial accountability.
Minutes
Public Member Selection Committee
July 20, 2007
OSB Center

Present: Bette Worcester-Chair, Jon Hill-Vice Chair, Marva Fabien, Robert Vieira and Rick Yugler
Staff: Danielle Edwards, Shelley Dobson

Candidate Selection
The committee selected nine candidates to interview for the public member position on the BOG. Interviews will be held at the bar center on beginning at 7:30 a.m. on Tuesday, August 21 (the backup date for interviews is Tuesday, August 28). Below is a list of the candidate’s names.
Roger D. Alvey
Jeanne M. Book
Mary Lou Hazelwood
Dr. Martin C. Johnson
Audrey T. Matsumonji
Daniel L. Polzin
Julie H. Simon
George Winn
Alfred Willstatter

Interview Questions
Last year’s interview questions were reviewed and no changes were made. Committee members felt that candidates should be given an idea of the interview pace and nature. Therefore, candidates will be told to dress casually and that each interview will last approximately 30 minutes.

Next meeting
The committee will conduct candidate interviews on August 21, 2007.
OREGON STATE BAR  
Client Security - 113  
For the Five Months Ending May 31, 2007

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<th>Description</th>
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<th>Budget 2007</th>
<th>% of Budget</th>
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<th>YTD Pr Yr</th>
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- **Fund Balance beginning of year**: 733,736
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Funds available for claims and indirect costs allocation as of May 2007

Total Paid 2006 | $46,331.50

Fund Excess (Deficit) | $739,749.00

$474,816.74
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TOTAL POTENTIAL CLAIMS: $434,255.59
# Client Security Fund Pending Cases

*Updated June 26, 2007*

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**TOTAL** $629,408.17