OREGON STATE BAR  
MEETING OF THE BOARD OF GOVERNORS  
Schedule of Events  
November 11-14, 2010

Meeting Place  Timberline Lodge  Phone:  503-272-3311  
Timberline, OR 97028

Thursday, November 11, 2010
2:00 p.m. – 4:30 p.m.  New Member Orientation  
Mt. Hood Room

4:00 p.m.  Check in

6:00 p.m. – 8:00 p.m.  Welcome Dinner  
Raven’s Nest

Friday, November 12, 2010
7:00 a.m. – 9:00 a.m.  Breakfast Buffet  
Raven’s Nest

9:00 a.m. – 12:00 p.m.  Planning Session  
Mt. Hood Room

12:00 p.m. – 1:00 p.m.  Lunch – Raven’s Nest

1:00 p.m. – 3:00 p.m.  Planning Session  
Mt. Hood Room

3:00 p.m. – 4:00 p.m.  Budget and Finance Committee  
(Kent, Larson, Lord, Naucler, Garcia, O’Connor, Haglund)  
Mt. Hood Room

3:00 p.m. – 3:30 p.m.  Member Services Committee  
(Fisher, Johnnie, Matsumonji, DiIaconi, Johnson, Knight, Mitchell-Phillips)  
Mt. Jefferson Room

3:30 p.m. – 4:00 p.m.  Access to Justice Committee  
(Johnnie, Johnson, O’Connor, Lord, Matsumonji, Naucler, Mitchell-Phillips)  
Mt. Jefferson Room
3:30 p.m. – 4:00 p.m.  Appointments Committee (DiIaconi, Haglund, Knight, Fisher, Kent, Piucci)  
Mt. Jefferson Room

4:00 p.m. – 4:30 p.m.  Policy and Governance Committee (Naucler, Kent, DiIaconi, Garcia, O’Connor, Haglund, Knight)  
Mt. Jefferson Room

4:00 p.m. – 5:00 p.m.  Public Affairs Committee (Piucci, Johnson, Mitchell-Phillips, Fisher, Matsumonji, Johnnie, Larson)  
Mt. Hood Room

5:00 p.m. – 6:00 p.m.  Art Walk & Talk with Linny Adamson*  
Meet in Main Lobby by the Fireplace

6:00 p.m. – 7:00 p.m.  Transport to Silcox Hut for Dinner  
Meet in Lower Lobby by Front Desk for transport by SnoCat

6:00 p.m. – 7:00 p.m.  BOG/Guests 6:45 p.m. – Staff & other

7:00 p.m. – 10:00 p.m.  Dinner  
7:00 – Appetizers  7:30p.m. – Dinner  
Silcox Hut

Saturday, November 13, 2010

8:00 a.m. – 10:00 a.m.  Breakfast  
Raven’s Nest

9:30 a.m. – 10:00 a.m.  BarBooks™ Steering Committee (Evans, Kent, Fisher, Naucler, Schmid, Stevens, Wegener)  
Jefferson Room

10:00 a.m. – 12:00 p.m.  Board Meeting  
Mt. Hood Room

12:00 p.m. – 1:00 p.m.  Lunch  
Raven’s Nest

1:00 p.m. – 2:00 p.m.  Board Meeting  
Mt. Hood Room

2:00 p.m. – 4:00 p.m.  Guided Snowshoe/Hiking Tour*  
Meet in Lower Lobby by Front Desk (see instructions below)
6:00 p.m. – 7:00 p.m.  Wine Vault Tour and Tasting*
   Wine Vault
   6:00 p.m. – Group 1*  6:30 p.m. – Group 2*

7:00 p.m. – 9:00 p.m.  Dinner*
   Cascade Dining Room

NO MEETING  Appellate Screening Committee
NO MEETING  Public Member Selection Committee
NO MEETING  Executive Director Evaluation Committee

*Art Walk & Talk with Linny Adamson
   Exclusive group tour with the lodge’s “infamous” curator featuring the art, textiles
   and history of Timberline Lodge.

*Guided Snowshoe Hiking Tour
   Snowshoe rentals available @ $15.00 per person or bring your own. Charge to your
   room and the bar will reimburse. Wear WARM clothing. If there is no snow, wear
   hiking boots or shoes fit for a hike.

*Wine Vault Tour and Tasting
   Tour the wine vault where all wines are on display and sample some wines from the
   lodge’s award-winning wine list. We will form two groups of 12 each, first come,
   first served.

*Board Games Available at Front Desk
   Please return games to Front Desk after use.

*Free WiFi in Lobby and Meeting Rooms (not Guest Rooms)
   No password required.

EMERGENCY NUMBER to reach hotel guests: 503.272.3311
The Open Session Meeting of the Oregon State Bar Board of Governors will begin at 10:00 a.m. on November 13, 2010.

Saturday, November 13, 2010, 10:00 a.m.

1. Call to Order/Finalization of the Agenda

2. Department Presentations
   Facilities & Operations Presentation (lunch) [Mr. Wegener]

3. Nominating Committee
   A. Recommendation for President-elect Action

4. Introduction of New Board Members Inform

5. Report of Officers
   A. Report of the President [Ms. Evans] Inform 8
   B. Report of the President-elect [Mr. Piucci] Inform 9
   C. Report of the Executive Director [Ms. Stevens] Inform 10-13
   D. Oregon New Lawyers Division [Ms. Cousineau] Inform 14

6. Professional Liability Fund [Mr. Zarov]
   A. Approval of Changes to PLF Policy 5.2000(I) Action 15-18
   B. 2011 Changes to Coverage Plans Action 19-21

7. Special Appearances
   A. Report on the 2010 American Bar Association House of Delegates meeting Inform 22-46

8. OSB Committees, Sections, Councils, Divisions and Task Forces
   B. Update on Mentoring Task Force [Ms. Stevens] Inform
9. BOG Committees, Special Committees, Task Forces and Study Groups

A. Access to Justice Committee [Ms. Johnnie]
1. Lawyer Referral Service – Pilot Project Action 55
   - Approve, on a pilot basis, RIS participation in a national referral panel for referring clients with issues concerning the Family and Medical Leave Act (FMLA) and Fair Labor Standards Act (FLSA).
2. Revision to Language in the OSB Legal Services Program Standards and Guidelines Action 56-67
   - Approve revision to language in the OSB Legal Services Program Standards and Guidelines found at V. Oversight by OSB Legal Services Program D. Peer Review Process
3. Reallocation of Legal Services Program funding Action 68-70
to legal aid providers.
4. Recommendation on LRS funding approach Action

B. Appellate Screening Committee [Mr. Larson]
   1. Approve Slate to Governor’s Office Action 71

C. Appointments Committee [DiIaconi]
   1. Discuss Appointment to Council on Court Procedures Inform

D. Budget and Finance Committee [Mr. Kent]
   1. 2011 OSB Budget Review and Approval Action 72-85

E. Member Services Committee [Ms. Fisher]
   1. OSB Financial and Staff Support for the 2011 Convocation on Equality Action 86-93

F. Policy and Governance Committee [Ms. Naucler]
   1. Revised Ethics School Rule of Procedure Action 94-96
2. Amendment to MCLE Rule 5.2(c)(2) Action 97-108
3. New Lawyer Training Program Rules Action 109-114
4. Amendment to Bylaw 16 – CLE and Legal Publications Action 115-117

G. Public Affairs Committee [Mr. Piucci]
   1. Public Affairs Update on the Election Inform
2. Update on Court Fees Task Force Inform
3. Formation of Juvenile Dependency/Delinquency Task Force Action 118

10. Consent Agenda
A. Approve Prior BOG Meeting Minutes
   1. Minutes of Open Session
      a. August 13, 2010 Action 119-124
      b. September 24, 2010 Action 125-130
      c. October 29, 2010 Action 131-132
   2. Minutes of Judicial Proceedings
      a. August 13, 2010 Action 133-134
   3. Minutes of Closed Session
      a. August 13, 2010 Action 135-137
B. Member Services Committee
   1. BOG/HOD 2011 Election Dates Action 138
C. Appointments Committee
   1. Appointments to Various Bar Committees, Boards and Councils Action 139-145 (+Handout)
D. Client Security Fund Claims Action 146-149
   1. No. 2009-11 MOTTRAM (Enterprise) $10,000.00 Action
   2. No. 2010-03 HAYES (Reaves) $1,025.00 Action
   3. No. 2010-04 HAYES (Way) $2,050.00 Action
   4. No. 200-06 HAYES (Lowells) $4,000.00 Action
   5. No. 2010-18 HAYES (Hendricks) $1,968.44 Action
   6. No. 2010-24 WILSON (Van Dermark) $1,729.50 Action

11. Default Agenda
A. Executive Director
   1. Oregon Area Jewish Committee Thank You Letter Inform 150
B. Access to Justice Committee
   1. Minutes – September 24, 2010 Inform 151
C. Appellate Screening Committee
   1. N/A

D. Budget and Finance Committee
   1. Minutes – August 12, 2010 (Inform 152-153)

E. Member Services Committee
   1. Minutes – August 12, 2010 (Inform 156)

F. Policy and Governance Committee
   1. Minutes – August 12, 2010 (Inform 157)

G. Public Affairs Committee
   1. Minutes – August 12, 2010 (Inform 158)
   2. Minutes – September 24, 2010 (Inform 159)

H. CSF Claims Report
   Inform 160-162

I. Summary of 2010 House of Delegates Actions
   Inform 163

12. Closed Sessions
   A. Judicial Session (pursuant to ORS 192.690(1))
      Reinstatements
      164-431
   B. Executive Session (pursuant to ORS 192.660(1)(f) and (h))
   General Counsel/UPL Report
      432-446

13. Good of the Order (Non-action comments, information and notice of need for possible future board action)
<table>
<thead>
<tr>
<th>DATE</th>
<th>EVENT</th>
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<tbody>
<tr>
<td>August 18</td>
<td>Participated in the Awards Subcommittee of the Professionalism Commission; participated in orientation at Willamette University College of Law professionalism program; attended meeting of Professionalism Commission in Salem</td>
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<tr>
<td>September 2</td>
<td>Attended Campaign for Equal Justice Advisory Committee in Portland</td>
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<td>September 14</td>
<td>Spoke at Queen’s Bench lunch meeting in Portland</td>
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<td>September 15</td>
<td>Attended Hispanic Heritage Breakfast in Salem</td>
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<td>September 15</td>
<td>Attended the Campaign for Equal Justice fundraising luncheon in Salem, introducing Justice Walters, the keynote speaker</td>
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<tr>
<td>September 23</td>
<td>Met with Rep. Bentz at the Capitol re: funding issues</td>
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<td>September 24</td>
<td>BOG Committee meetings at the Bar Center</td>
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<td>September 27</td>
<td>Met with Albert Menashe to inform him of the Professionalism Award, together with Judge James, in Portland</td>
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<tr>
<td>October 5</td>
<td>Participated in teleconference with PLF Finance Subcommittee re: assessment issues</td>
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<td>October 7</td>
<td>Lunch with the Supreme Court and participation in the swearing-in of new lawyers in Salem</td>
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<td>October 8</td>
<td>PLF Board meeting in Astoria</td>
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<td>October 14</td>
<td>Conducted out-of-state HOD delegate conference call</td>
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<td>October 20</td>
<td>Met with Jackson County Bar in Medford</td>
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<td>October 20</td>
<td>Met with Josephine County Bar in Grant’s Pass</td>
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<td>October 21</td>
<td>Met with Curry County Bar in Gold Beach</td>
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<td>October 21</td>
<td>Met with Coos County Bar in Coos Bay</td>
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<tr>
<td>October 22</td>
<td>Met with Douglas County Bar in Roseburg</td>
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<tr>
<td>October 23</td>
<td>Together with Justice Walters, gave awards at the Pro Bono Fair in Portland</td>
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<tr>
<td>October 23</td>
<td>Attended dinner with the Washington State Board of Governors in Vancouver</td>
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<tr>
<td>October 29</td>
<td>BOG Meeting, HOD Meeting at the Bar Center</td>
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<td>November 1</td>
<td>Meeting with the Chief Justice in Salem</td>
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<td>November 4</td>
<td>Bar Leaders lunch at Learning the Ropes</td>
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<td>November 10</td>
<td>Daily Journal of Commerce “Up and Coming” lawyers awards in Portland</td>
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### President Elect’s Report October 2010

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
<th>Location</th>
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<tbody>
<tr>
<td>Aug. 30</td>
<td>Mentor Recruitment Subcommittee Meeting</td>
<td>OSB</td>
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<tr>
<td>Sept. 16-18</td>
<td>BOG Representative at the Pendleton Roundup</td>
<td>Pendleton</td>
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<td>Oct. 4</td>
<td>New Lawyer Mentoring Task Force meeting</td>
<td>OSB</td>
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<td>Oct. 6, 13, 20</td>
<td>Teach OTLA New Lawyer Academy Class</td>
<td>Portland</td>
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<tr>
<td>Oct. 7-8</td>
<td>PLF Board Meeting</td>
<td>Astoria</td>
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<td>Oct. 14</td>
<td>Meeting with Chief Justice DeMuniz regarding the “Modified Utah Mentoring” plan</td>
<td>Phone conference</td>
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<tr>
<td>Oct. 18</td>
<td>Confer with Phil Schradle(Chief DeMuniz) regarding iCivics</td>
<td>Phone conference</td>
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</table>
**OSB Programs and Operations**

<table>
<thead>
<tr>
<th>Department</th>
<th>Developments</th>
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<tbody>
<tr>
<td>Accounting &amp; Finance/Facilities</td>
<td>• Our marketing strategy for renting the meeting and conference facilities at the bar center is on track to produce $18,000 in revenue from non-bar groups this year.</td>
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<td></td>
<td>• The building received an Energy Star rating again for 2010.</td>
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<td>• Both the electricity and natural gas consumption for the building are double-digits lower than 2009 consumption.</td>
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<td>• 20/20 continues to be look for a tenant to sublease the space and a local broker has been engaged. The 20/20 letter of credit will cover the rent through 10/15/2011.</td>
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<td>• State Farm Insurance will occupy about half of Fanno Creek Place B beginning late December-early January.</td>
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<td>• We are making great progress with preparations for delivery of Membership Fee Statement Notices via e-mail. The notices are targeted to go out on December 1, 2010.</td>
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<td>• The department is also transitioning to a new Fixed Asset accounting module that is tightly integrated with the accounting system. The change will reduce staff time required for processing transactions and will eliminate the need to maintain a separate fragile system.</td>
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<td>Admissions</td>
<td>• Reciprocity applications in 2010 to date are 146, compared to the usual average of about 70.</td>
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<td>• There is an increasing number of applicants with character &amp; fitness issues.</td>
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<td>• The BBX will be visiting Oregon law schools to talk to 1Ls about character &amp; fitness issues.</td>
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<td>• Staff is working with IDT to refine the new web-based grading program (Jon is on a conference panel next month to discuss this).</td>
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<tr>
<td>CLE Seminars</td>
<td>• The department is continuing to increase the number of seminars available via live webcast. The number of people registering for the webcasts varies from half a dozen (trauma disorders) to more than 60 (child abuse reporting). We have also seen an increase in non-OSB member lawyers who are registering for OSB webcasts. This is a potential area of additional revenue.</td>
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<td></td>
<td>• Karen Lee is developing a low-cost seminar series for 2011 tentatively titled “Solo From the Start,” aimed at the needs of new lawyers going directly into solo or small firm practice. The curriculum will include information on setting up an office, accounting matters, and website development, in addition to the standard topics of ethics, practice management issues, etc.</td>
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<td></td>
<td>• We are looking at creating a more formal structure for accommodating exhibitors and sponsors at one-day CLE events, a trend we are seeing with more bar associations. Another potential area for revenue</td>
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<td>• This year we started sending follow-up electronic evaluations to seminar attendees.</td>
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<tr>
<td><strong>Open Agenda</strong></td>
<td><strong>Communications/RIS (Kay Pulju)</strong></td>
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<td>• Recent and upcoming editions of the Bar News, BOG Updates and Bulletin are communicating BOG actions on BarBooks, the membership directory and other priorities. Feedback on changes to the directory has been largely negative and feedback on BarBooks has been extremely positive.</td>
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<td></td>
<td>• Event planning staff worked on the NAACP foundation dinner, pro bono week activities and the ABA LRS conference, and are preparing for the upcoming OSB Services CLE and annual Awards Dinner.</td>
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<td>• Media inquiries have been focused on a few high-profile disciplinary matters.</td>
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<td>• Department staff continue working with the mentoring and family law task forces, both of which will have preliminary reports for the BOG in November.</td>
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| **General Counsel/CAO/MCLE (Helen Hierschbiel)** | • CAO continues to receive an average of 160 new matters each month, about 87% of those are resolved in CAO, with only 12.6% being referred to DCO. |
|                                                  | • General Counsel’s Office continues to field about a hundred ethics inquiries each week. |
|                                                  | • The Fee Arbitration Task Force will have a report for the BOG at its February 2011 meeting, and will be making a number of recommended changes, including starting a fee mediation pilot project. |
|                                                  | • The UPL Task Force should have its report for the BOG sometime next spring, and is considering a number of changes to its rules, including the possibility of issuing advisory opinions. |
|                                                  | • Chris Mullmann is working with DCO to develop the program for the Ethics School. |

| **Human Resources (Christine Kennedy)** | • Amber Hollister has accepted the Deputy General Counsel position and will begin on January 3, 2011. |
|                                        | • Camille Greene has been hired as Executive Assistant. |
|                                        | • Brenda Baumgart of Barran Liebman presented mandatory harassment training sessions for all staff. |
|                                        | • Dr. Donna Beegle will be presenting staff training on communicating with people living in poverty. |

| **Information & Design Technology (Anna Zanolli)** | • Created the new automated process for sending annual MCLE complainace reports and deadline reminders via e-mail. |
|                                                    | • Developed a new online interface for recording bar exam grades is a manner that responds to current technology, security and data protection standards. Version 1 launched successfully in August for the July bar exam grading. Eliminates need for IT staff expense in Bend because help is obtained online and over the phone. |
|                                                    | • Hired a new graphic designer whose training in photography will bolster our in-house efforts toward video recording and production. |
|                                                    | • Launched the MP3 library for delivering 1-hour section CLE seminar material. The new system integrates with existing online registration and local MCLE reporting systems. |
|                                                    | • Hired CogentIT to help us develop an IT strategy for better providing information and services using technology in a sustainable, supportable and scalable manner. Additional counsel was obtained in the areas of project management, contractor management and system platforms. |

| **Legal Publications (Linda Kruschke)** | • Law libraries have been notified of the change in price for BarBooks. Several who never subscribed before have signed up, many have renewed. |
|                                       | • Almost all PDFs have been prepared with bookmarks to be posted to BarBooks. |
## Legal Services/OLF (Judith Baker)
- We have received approximately $85,000 in unclaimed funds from lawyer trust accounts. These funds will go to legal aid after a distribution protocol is developed and approved.
- Judith Baker is working with Susan Grabe on legislative issues surrounding the filing fees dedicated to legal services that are administered by the bar.
- After the first of the year staff will be implementing a new accountability system to monitor the legal aid providers receiving funds from the bar.
- LRAP Advisory Committee will be meeting on December 6 to award loans to applicants.
- The Pro Bono Fair held on October 28 was a huge success. The planners are hoping to expand the event next year.

## Minimum Continuing Legal Education (Denise Cline)
- Processed over 5,000 program accreditation applications and over 700 applications for other types of CLE credit (teaching, legal research, etc.) during the first nine months of 2010.
- 4,967 members will report for the period ending 12/31/2010. Compliance reports will be sent out in mid-October via e-mail to the extent possible. This will be a savings of at least $2,000 in postage costs alone.

## Member Services (Margaret Robinson)
- The last session of the Leadership College will be November 12 and will feature speakers and panelists addressing “Leadership in the Public Sector”.
- The Pro Bono Fair and Awards was October 28. It featured 2 CLE sessions and a “vendor fair” of service providers in need of pro bono volunteers, followed by a reception honoring lawyers and firms that provided numerous hours of pro bono services in 2009.
- Planning is in process for the 2011 Conference of Bar Leaders which helps prepare incoming section and committee officers for their leadership roles.
- More than 250 new bar members were welcomed during an ONLD-sponsored reception following the Swearing-in Ceremony.
- The process of merging the Member Services and Communications Departments continues.

## Referral & Information Services (George Wolff)
- Participated in Learning the Ropes (Nov. 3-5) as part of new admittee outreach.
- Beta-testing of Department of Labor call center (pre-Nov. 15 activation date).
- Finalizing Resource Fair Preparations (Nov. 19) as part of all-bar outreach.
- Working on Modest Means Program recruitment, particularly in rural areas.
• Revenue for 2010 is anticipated to be about 110% over budget, attributable in large part to more attorneys opting to register multiple office locations in an effort to increase the number of referrals they receive.

**Regulatory Services (Jeff Sapiro)**

- The SPRB continues to meet monthly to review the results of disciplinary investigations and oversee the litigation of formal proceedings. The next meeting is 11/12.
- Reaction from the Supreme Court to an Ethics School was positive, although the rule of procedure implementing the school needs revisions.
- The Organization of Bar Investigators held its annual conference in Seattle in October. The OSB was a co-sponsor.
- Disciplinary Counsel staff members have been presenting at and contributing written materials for various CLEs this fall.
- DCO is on pace to conclude the scanning of all past disciplinary files sometime around spring 2011.

### Executive Director’s Activities October 4-November 10, 2010

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
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<tbody>
<tr>
<td>October 7</td>
<td>Lunch w/Supreme Court; Swearing In Ceremony</td>
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<tr>
<td>October 8</td>
<td>PLF Board meeting—Astoria</td>
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<tr>
<td>October 8</td>
<td>Oregon Native American Chamber Auction &amp; Dinner</td>
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<tr>
<td>October 11-14</td>
<td>HOD Regional Meetings</td>
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<tr>
<td>October 15</td>
<td>Meet w/AAC Chair</td>
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<tr>
<td>October 16</td>
<td>OGLLA Auction &amp; Dinner</td>
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<tr>
<td>October 18</td>
<td>Meeting the Convocation Planners</td>
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<tr>
<td>October 19</td>
<td>MBA Absolutely Social</td>
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<tr>
<td>October 20-22</td>
<td>Southern Oregon Local Bar Tour</td>
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<tr>
<td>October 22</td>
<td>OWLS Workplace Leader Award</td>
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<tr>
<td>October 23</td>
<td>BOWLIO</td>
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<tr>
<td>October 26</td>
<td>Meeting Hon. Darleen Ortega</td>
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<tr>
<td>October 27</td>
<td>Brown Bag @ Garvey Schubert</td>
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<tr>
<td>October 28</td>
<td>Pro Bono Fair; WSBA/BOG dinner</td>
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<tr>
<td>October 30</td>
<td>OSU v. Cal @ Corvallis</td>
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<tr>
<td>November 1</td>
<td>Meeting with Chief Justice</td>
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<tr>
<td>November 3</td>
<td>Brown Bag @ Farleigh Wada Witt</td>
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<td>November 4</td>
<td>Lewis &amp; Clark Law School Minority Lawyer Reception</td>
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<tr>
<td>November 4</td>
<td>Urban League Equal Opportunity Day Awards Dinner</td>
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<tr>
<td>November 9</td>
<td>Brown Bag @ Bullivant Houser</td>
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<tr>
<td>November 10</td>
<td>Lane County Bar New Admittee Luncheon</td>
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Since the last BOG meeting the ONLD met twice to conduct business. In September one of the ONLD Executive Committee members hosted several board members in her Sunriver vacation home while the remainder of the committee utilized two rental houses nearby. This experience not only saved the ONLD money on lodging but also provided the executive committee and subcommittee chairs an opportunity to interact in a more casual setting.

September and October have been two busy months for the ONLD. Since the last BOG report the Executive Committee and Subcommittees have provided their members and the public with the following services:

- Organized 16 middle and high school classroom presentations focusing on the U.S. Constitution. Several schools outside the metro area participated in the event including schools in Pendleton, Roseburg, Springfield, Salem, and La Grande.

- Hosted a presentation at each of the law schools focusing on employment searches after passing the bar exam.

- Considered changes to the ONLD bylaws. The proposed changes will go to the ONLD membership in November before moving to the BOG in February 2011.

- Sponsored and participated in AAP’s fundraiser BOWLIO event.

- Executed the Pro Bono Fair, Awards Ceremony, and free CLE programs.

- Began working on the creation of an Oregon disaster relief manual for volunteers to use after a natural disaster is declared.

- Held three brown bag lunch CLE programs in Portland in addition to SuperSaturday, a full-day CLE program with 15 sessions.

- Welcomed new bar members during a reception following the swearing in ceremony.

- Sponsored three after-work socials (held monthly in August, September and October).

- The Chair as well as several executive committee members and subcommittee chairs attended the HOD meeting.
OREGON STATE BAR
Board of Governors Agenda

Meeting Date: November 11-14, 2010
Memo Date: October 27, 2010
From: Ira Zarov, CEO PLF
Re: PLF Bylaws and Policy Changes

Action Recommended

The PLF Board of Directors requests approval of changes to PLF Policy 5.200(I).

Background

Periodically the PLF receives an asset allocation study from its investment advisor, R.V. Kuhns & Associates. The asset allocation study is designed to identify the best growth potential at the lowest risk. As a result of the most recent allocation study, a small change in the PLF’s asset allocation was recommended and adopted by the PLF Board of Directors. The change provides for a 3% reduction in the allocation to equities (domestic and foreign) and a 3% increase in investments correlated with inflation.

A copy of the proposed change is attached.

Attachment
5.200 **INVESTMENT GUIDELINES**

The funds of the Oregon State Bar Professional Liability Fund are to be invested in the following manner:

(A) **Prudence:** All participants in the investment process shall act responsibly. The standard of prudence to be applied by the Board of Directors, the Investment Committee, PLF staff and external service providers shall be the “prudent investor” rule, as provided in ORS 128.196.

(B) **Ethics and Conflicts of Interest:** The Board of Directors, Investment Committee, PLF staff, and outside managers and advisors involved in the investment process shall refrain from personal business activity that could conflict with the proper execution and management of the investment program, or that could impair their ability to make impartial decisions. These parties are required to reveal all relationships that could create or appear to create a conflict of interest in their unbiased involvement in the investment process. The Board of Directors and PLF staff shall be subject to applicable State statutes and opinions of the Oregon Government Standards and Practices Commissions. All external service providers shall be governed by the Standards of Professional Conduct established by the Association of Investment Management and Research (AIMR) and applicable State statutes.

(C) **Diversification:** The investments of the Oregon State Bar Professional Liability Fund shall be diversified as to type of investment, issuer, and industry sector. Investments will not be made in individual securities. Commingled funds or mutual funds will be used as investment instruments. For commingled funds or mutual funds there is a pooling of securities owned by multiple clients for diversification, lower expense, and improved liquidity. Investments in real estate will be implemented through a diversified commingled fund structure. For absolute return investments, only “funds of funds” will be used to promote diversification and limit volatility. A fund of funds is defined as a pool of investments managed by multiple organizations that have different investment strategies or approaches. Investments in the real return strategy shall be made in an investment vehicle targeting a “real” return in excess of inflation, utilizing a core investment in inflation protected securities.

(D) **Investment Committee:** The role of the Investment Committee is to advise the Board of Directors. The Board of Directors will approve the hiring of the investment advisor / consultant, the selection of all investment managers, and all changes to the investment guidelines including the asset allocation.

(E) **Investment Advisor/Consultant:** The Board of Directors will hire an independent consulting organization to provide expert advice and assistance regarding investments. This organization shall not be involved in any investment management of PLF funds. This organization will monitor investment results and report to the Board of Directors as soon as practicable after each calendar quarter. A representative of the investment consultant will meet with the Investment Committee to review each manager’s
performance. Any noncompliance with the PLF Investment Guidelines will be reported to the Board of Directors as quickly as possible. The quarterly investment performance report will also be distributed to the Board of Governors of the Oregon State Bar.

The investment consultant may offer the Investment Committee and Board of Directors other expert assistance including formulating investment policies, preparation of asset allocation reports, and selection of investment managers.

(F) Investment Managers: The Board of Directors will select investment managers, including commingled funds, mutual funds and funds of funds, after reviewing recommendations from the Investment Committee. For each investment manager, an applicable index or indices will be selected as a gauge to evaluate future performance. For some asset classes, a fixed or absolute return percentage may be used instead of an index. In addition, performance will be evaluated with a universe of other managers within the same asset class. Generally performance measurement shall be based on total rate of return and shall be monitored over a sufficient time period to reflect the investment expertise of the investment manager over one full market cycle, or three years, whichever is less. Investment managers are requested to meet with the Investment Committee at least annually to review past performance and the investment forecast for the following year.

(G) Short Term Investments: The Chief Executive Officer and Chief Financial Officer will project the annual cash needs for PLF administration and claim payments. Based upon these projections, amounts shall be allocated to short term investments including fixed income funds, money market funds or bank accounts. The Chief Executive Officer or Chief Financial Officer may withdraw funds or liquidate any short term investments as needed to pay claims or cover the cost of PLF operations.

(H) Long Term Investments: Investment funds intended to be held more than one year shall be called long term investments. The Chief Executive Officer or Chief Financial Officer may withdraw funds or liquidate long term investments as needed to pay claims or cover the cost of PLF operations.

(I) Asset Allocation: An important component of an investment strategy for long term investments is the asset mix, or the resource allocation, among the various classes of securities available for PLF investments. The Board of Directors will be responsible for minimum, target and maximum asset allocation for investments intended to maximize investment return with limited volatility. The Board of Directors shall make use of formal asset allocation studies to help set allocations. These studies, reviewing the appropriate asset mix for the PLF, will be completed every two years at a minimum. The investment portfolio shall be diversified among the asset classes listed in the asset allocation table below, and such holdings themselves shall be prudently diversified.

The Board of Directors will adopt a long-term “target” strategic asset allocation. The Board of Directors will periodically review the asset allocation to deem that it is appropriate for the PLF investment objectives. Within each asset class, the Board of
Directors shall adopt portfolio implementation strategies and investment styles to meet
the overall investment objective of each asset class.

The following is intended to represent the current target mix of asset classes for long term
investments:

<table>
<thead>
<tr>
<th>ASSET CLASS</th>
<th>MINIMUM PERCENT</th>
<th>TARGET PERCENT</th>
<th>MAXIMUM PERCENT</th>
</tr>
</thead>
<tbody>
<tr>
<td>U.S. Equities</td>
<td>14.0% 13.0%</td>
<td>21.0% 20.0%</td>
<td>28.0% 27.0%</td>
</tr>
<tr>
<td>International Equities</td>
<td>12.0% 10.0%</td>
<td>21.0% 19.0%</td>
<td>30.0% 28.0%</td>
</tr>
<tr>
<td>Fixed Income</td>
<td>16.0%</td>
<td>22.0%</td>
<td>28.0%</td>
</tr>
<tr>
<td>Real Estate</td>
<td>5.0%</td>
<td>10.0%</td>
<td>15.0%</td>
</tr>
<tr>
<td>Absolute Return</td>
<td>9.0%</td>
<td>14.0%</td>
<td>19.0%</td>
</tr>
<tr>
<td>Real Return Strategy</td>
<td>7.0% 10.0%</td>
<td>12.0% 15.0%</td>
<td>17.0% 20.0%</td>
</tr>
</tbody>
</table>

(J) **Rebalancing:** The Chief Executive Officer and Chief Financial Officer, on an
ongoing basis and in accordance with market fluctuations, shall rebalance the investment
portfolio so it remains within the range of minimum and maximum allocations.
OREGON STATE BAR
Board of Governors Agenda

Meeting Date: November 11-14, 2010
Memo Date: October 27, 2010
From: Ira Zarov, PLF CEO
Re: 2011 Changes to Coverage Plans

Action Recommended

The Board of Directors of the PLF request that the BOG approve changes to the PLF Coverage Plan. The changes are to Section III.3, Section IV.2, Section V., Exclusion 11 and Section V., Exclusion 16. These changes also apply to the Pro Bono Coverage Plan and the Excess Plan.

Background

Scope of “Beneficiary” in Section III.3

Issue: The coverage for Special Capacities requires that the claim be “brought by or for the benefit of the beneficiary of the special capacity relationship.” Does the term “beneficiary” mean the “named beneficiary” or may it also include a third party claimant who claims to be a beneficiary of some sort?

Discussion: It is recommended that the PLF Plan clearly provides the broader coverage, to include third party claimants.

Change Section III.3 as follows:

Any act, error, or omission committed by YOU in YOUR capacity as a personal representative, administrator, conservator, executor, guardian, guardian ad litem, special representative pursuant to ORS 128.179, or trustee (except BUSINESS TRUSTEE); provided that the act, error, or omission arose out of a COVERED ACTIVITY as defined in Subsections 1 and 2 above, and the CLAIM is brought by or for the benefit of the a beneficiary of the special capacity relationship and arises out of a breach of that relationship.

**********

Discretionary Expense – Section IV.2

Issue: Do the various types of discretionary expenses paid by the PLF (e.g., repair, assistance in responding to a subpoena or in preparing for/attending a deposition) reduce the limits/claims expense allowance? Sections IV and VI allow for reduction of limits for defense or indemnity of claims, but do not explicitly allow for reduction in those cases where no claim has actually been made.
**Discussion:** It appears to have generally been understood by the PLF and Covered Parties that all types of discretionary expenses reduce the CLAIMS EXPENSE ALLOWANCE, regardless of whether an actual claim has been made.

Clarify the language in Section IV.2 as follows:

a. Until the CLAIMS EXPENSE ALLOWANCE and the Limits of Coverage extended by this Plan are exhausted, the PLF will defend any SUIT against a COVERED PARTY seeking DAMAGES to which this coverage applies. The PLF has the sole right to investigate, repair, settle, designate defense attorneys, and otherwise conduct the defense, or repair, or prevention of any CLAIM or potential CLAIM.

b. With respect to any CLAIM or potential CLAIM the PLF defends or repairs, the PLF will pay all CLAIMS EXPENSE the PLF may incur. All payments for EXCESS CLAIMS EXPENSE will reduce the Limits of Coverage.

c. If the CLAIMS EXPENSE ALLOWANCE and Limits of Coverage extended by this Plan are exhausted prior to the conclusion of any CLAIM, the PLF may withdraw from further defense of the CLAIM.

**********

**Claims By Family Members – Section V. Exclusion 11**

**Issue:** Exclusion 11 excludes claims “asserted by” family members (not claims asserted by third parties arising out of work done for family members). The Comment to that exclusion is arguably broader than the actual exclusion, as it states that “work performed for family members is not covered.”

**Discussion:** The Comment more accurately stated the PLF’s intent, which is that if an attorney performs legal services for a family member, there is no coverage, but there could be coverage if one attorney in the firm performs legal work for another firm attorney’s family member.

Retain the Comment to Exclusion 11 as is and change the Exclusion itself as follows:

This Plan does not apply to any CLAIM asserted by based upon or arising out of YOUR legal services to performed on behalf of YOUR spouse, parent, step-parent, child, step-child, sibling, or any member of YOUR household, or on behalf of a business entity in which any of them, individually or collectively, have a controlling interest.

**********

**Computer Data Loss – Section V. Exclusion 16**
**Issue:** This is an issue about which the PLF has recently recognized. Commercial insurers are also concerned with computer data lose. Currently the Plan does not include an exclusion that explicitly applies to such loss.

**Discussion:** The PLF approach to the loss of computer data should be similar to the loss of property, i.e., no coverage for the loss itself, but potential coverage for consequential damages as part of a legal malpractice claim.

Change Exclusion 16 as follows:

This Plan does not apply to any CLAIM against any COVERED PARTY for:

a. Bodily injury, sickness, disease, or death of any person;

b. Injury to, loss of, or destruction of any real, personal, or intangible property or loss of use thereof; or

c. Mental anguish or emotional distress in connection with any CLAIM described under Subsections a or b.

This exclusion does not apply to any CLAIM made under ORS 419B.010 if the CLAIM arose from an otherwise COVERED ACTIVITY.

And a modification of the comments for Exclusion 16 as follows:

**COMMENTS**

Subsection b of this exclusion is intended to encompass a broad definition of property. For these purposes, property includes real, personal and intangible property (e.g. electronic data, financial instruments, etc.) held by an attorney. However, Subsection b is not intended to apply to the extent the loss or damage of property materially and adversely affects an attorney's performance of professional services, in which event a CLAIM resulting from the loss or damage would not be excluded by Exclusion 16.
MEMORANDUM

TO: Oregon State Bar of Governors (OSB) and Sylvia Stevens, OSB Executive Director

FROM: Hon. Adrienne Nelson, Ben Eder, Marilyn Harbur, Christine Meadows

SUBJECT: 2010 Annual Meeting of the American Bar Association and Meeting of the House of Delegates

DATE: September 24, 2010

REPORT ON THE ABA ANNUAL MEETING

The 132nd Annual Meeting of the American Bar Association (the “ABA”) was held August 5-10, 2010, at the Moscone 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 day and a half session. The Nominating Committee also met.

The Nominating Committee sponsored a “Meet the Candidates” Forum on Sunday, August 8, 2010. Laurel G. Bellows of Illinois, candidate for President-Elect, seeking nomination at the 2011 Midyear Meeting gave a speech to the Nominating Committee and to the members of the Association present.

THE HOUSE OF DELEGATES

The House of Delegates of the American Bar Association (the “House”) met on Monday, August 9, and Tuesday, August 10, 2010. William C. Hubbard of South Carolina presided as Chair of the House.

The Travis Air Force Base Honor Guard presented the colors. The invocation for the House was delivered by The Honorable J. Michelle Childs of South Carolina. The Chair of the House Committee on Credentials and Admissions, C. Elisia Frazier of Georgia, 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.

Chair Hubbard recognized all House members serving in the House longer than 25 years.

Judy Perry Martinez of Louisiana, 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 list of individuals who sought privileges of the floor. All three motions were approved. Ms. Martinez noted that the deadline for submission of Reports with Recommendations for the
2011 Midyear Meeting is November 17, 2010, while the deadline for Informational Reports is December 3, 2010. 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.

Later in the day, Judy Perry Martinez moved the items remaining on the consent calendar. 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

Welcome by the Mayor of San Francisco

Chair Hubbard recognized the Mayor of San Francisco, Gavin Newsom, who was escorted to the well of the House by the California delegation. Mayor Newsom welcomed the delegates to San Francisco. He described its history and heritage. He told the delegates that San Francisco is a city that celebrates diversity and excels because of it, and therefore, is an example for others.

Statement by the Chair of the House

William C. Hubbard of South Carolina, Chair of the House of Delegates, reviewed procedural matters. He announced that while the proceedings of the House would not be webcast in real time, the House Committee on Technology and Communications had arranged for the proceedings to be summarized on Twitter at ABAEsq. Daniel Schwartz of Connecticut would be providing the summaries. In addition, the ABA Communication Division had developed a strategic plan to keep for incoming ABA members, the legal community and the general public apprised about developments in the House of Delegates, which would include real time updates of House action on the ABAnow website.

He recognized the Committee on Rules and Calendar and the staff members who support the committee. Chair Hubbard introduced the Tellers Committee and reviewed procedures for speaking. He recognized and thanked all the members who serve on House committees.

He discussed the obligations and responsibilities of House members to take legislative priorities to lawmakers in Washington, D.C. He asked each delegate to be part of the Grassroots Action Team and attend ABA Day on April 12-14, 2011 in Washington, D.C. He also asked members to make a difference by talking to the legislators from their communities regarding justice issues.

He highlighted the work of the Legal Opportunity Scholarship Fund which was started in 1999. It funds scholarships to minority law students and over the last 10 years has provided over $3 million in 200 minority scholarships. He urged the delegates to
support it financially.

Chair Hubbard addressed the importance and need for the work of the Fund for Justice and Education ("FJE") and urged every House member to support it financially. Chair Hubbard urged delegates to make a contribution and ensure 100% participation by the House.

Statement by the Secretary

Hon. Bernice B. Donald of Tennessee, Secretary of the Association, moved approval of the House of Delegates Summary of Action from the 2010 Midyear Meeting, which was approved by the House.

On behalf of the Board of Governors, Secretary Donald presented and referred the House to Report Nos. 177 and 177A, the Board’s Informational and Transmittal Reports to the House. She moved the approval of the continuation of the list of special committees and commissions as contained in Report 177A. The motion was approved.

Deceased members of the House were named by the Secretary of the Association, Hon. Bernice B. Donald of Tennessee, and were remembered by a moment of silence. Chair Hubbard also asked for recognition of those who had given their lives in Iraq and Afghanistan.

Chair Hubbard recognized Stephen Younger of New York on a point of personal privilege to speak in honor of Stephen C. Krane of New York, former member of the ABA Board of Governors. Mr. Younger described Mr. Krane as a friend, lawyer’s lawyer and internationally known legal ethics scholar. He lamented his untimely death at 53. He recalled that Steve would note you make a life by what you give. By that standard, what a life Steve had lived. He noted his instant recall, bigger than life personality, his wit and his love of the law, particularly ethics. He was the youngest New York State bar president in history and was a champion for volunteerism. He pushed for loan assistance to public service attorneys. He spearheaded efforts to help people affected by the 9/11 tragedy. He was a pioneer in legal ethics. He served the House for seven years, served on the ABA Board of Governors and chaired the ABA Standing Committee Ethics and Professional Responsibility. He noted that Mr. Krane had challenged each of us to do one thing to improve the law or improve society. Mr. Younger closed by asking delegates to imagine the difference that could be made if that challenge was accepted by all delegates.

Statement by the ABA President

ABA President Carolyn B. Lamm of the District of Columbia reminded the House of Delegates that American lawyers face many challenges and our Association’s role is to make sure they do not face them alone. She noted the responsibility of the Association to lead the way, not to be ahead of the curve or behind the curve, but to set the curve. She reviewed our history and the key roles of American lawyers: Thomas Jefferson at the beginning of the American Revolution, Abraham Lincoln in the Civil War and Thurgood Marshall in the landmark case of Brown v. Board of Education. She called on delegates to follow in the footsteps of these American lawyers.
She said we must be deliberate, reassured and thoughtful, but we must respond faster and so must our Association. To survive and prosper, the ABA must set the curve for service to the public and service to our members. She noted this will require difficult choices and great effort. She acknowledged the officers and members of the Board of Governors and thanked them for their work.

She noted that change is not easy, but that the Association must change as our world changes. As she leaves, she described the ABA as stronger and better situated for the future.

She recounted the many internal changes during the year. These included the work of Chair William Hubbard as he led the search committee for our new Executive Director. She recognized the ABA staff and the House expressed its appreciation.

President Lamm emphasized the renewed membership focus of all ABA entities. She acknowledged Patricia Refo and her work as chair of the Standing Committee on Membership, as well as the work of Laurel Bellows and Maury Poscover on the Segment Value Initiative.

She thanked the House for taking action on reducing dues for solo practitioners, judges, government lawyers and legal services lawyers. She recognized the work of Bob Clifford, Steve Weiss and Ogilvy & Mather on web site initiatives. She noted further membership outreach efforts such as the Young Lawyers Division’s Touch 10,000 Campaign, the President’s Council for managing partners and general counsel of ABA group membership law firms and companies, and the work with national bars of color.

She also described external changes. She reviewed the issues of globalization and the role of lawyers. She highlighted the ABA’s Commission on Ethics 20/20, which is reviewing the Model Rules of Professional Conduct in light of globalization and technology use. She informed the House that the commission is investigating issues this year, and next year they will be dealing with solutions. She encouraged members to communicate their views to the Commission.

She spoke of the impact of the global economic crisis and reviewed the efforts and contributions of the Commission on the Impact of the Economic Crisis on the Profession and Legal Needs including the policy on debt relief for law school graduates.

President Lamm discussed her focus on diversity and thanked Ellen Rosenblum and others for the report of the ABA Presidential Diversity Commission, whose "Next Steps" report describes what the profession can do to advance diversity.

She highlighted increased advocacy efforts of the Association and the importance of our collective voice in Washington as our strongest value to members. She thanked Bill Robinson, chair of the Standing Committee on Governmental Affairs, and Tom Susman, director of the Governmental Affairs Office, for their fine work. She noted the Association's work for legal services funding, on the "Red Flags" identity-theft rule and in the consumer financial protection area where lawyers were threatened with unnecessary federal
regulation. She discussed the Association’s support of the Gulf state bars in responding to the oil spill crisis.

She applauded chair Kim Askew and the members of the Standing Committee on the Federal Judiciary for their work in reviewing two United States Supreme Court nominees and 74 judicial candidates. She urged action on all nominees. She reviewed the work of the Association promoting adequate pay for the judiciary.

President Lamm stressed the importance of lawyers because of the subtle threats to the rule of the law. These threats take the form of attacks on the attorney-client privilege, independence of the judiciary and law school legal clinics. As an Association, she called on us to defend the self-regulation of the profession, the independence of the judiciary and the academic freedom of law schools because these are linked to the freedom of the society we serve. She noted that it is essential and fundamental that the first thing we must do is to defend the rule of law. She also emphasized that the American Bar Association must be the first to do it.

She concluded by stating we have begun a transformation of the ABA. She reiterated her thanks to the board, the officers and staff. She acknowledged her firm, White & Case, and thanked them for their outstanding support. She thanked her husband and sons for their support and sacrifice. She thanked the House for the opportunity to serve as our president.

Chair Hubbard thanked her for her Herculean efforts this year as she led our Association.

ABA Medal Presentation

ABA President Carolyn Lamm of the District of Columbia introduced Justice Ruth Bader Ginsburg as an esteemed lawyer, teacher, academic, judge and justice who has made vast and lasting contributions to the law and to the profession in her lifetime of service in the pursuit of justice. She announced that the American Bar Association conferred upon Justice Ruth Bader Ginsburg its highest honor, the American Bar Association Medal.

President Lamm described Justice Ginsburg’s early years of academic success. She became the first woman to be on two major law reviews – the Harvard Law Review and the Columbia Law Review, graduating first in her class. She described her early struggles to find work at a time when society openly discouraged women with professional ambitions. She noted her work at Rutgers University School of Law and Columbia University School of Law. She described her work for individual rights, especially women’s rights and her steadfast belief that the law must give equal rights to all.

She noted that in 1980, President Jimmy Carter appointed her to the U.S. Court of Appeals for the District of Columbia Circuit and thirteen years later, when nominated by President Bill Clinton, she became only the second woman to sit on the U.S. Supreme Court.
While no other member of the bench or bar has made a more significant impact on the interpretation of the Equal Protection Clause, she told us that Justice Ginsburg had also drafted groundbreaking decisions in the areas of employment and race discrimination, affirmative action, habeas corpus and abortion.

She recited some of her many prestigious awards, including the ABA's Margaret Brent Women Lawyers of Achievement Award and the ABA's Thurgood Marshall Award. She highlighted her profound impact on the law and described her as one of the most elegant role models for women lawyers around the country. She recounted a quote from her confirmation hearings to capture Justice Ginsburg's essence: "I would like to be thought of as a person who cares about people and does the best she can with the talent she has to make a contribution to a better world."

President Lamm concluded by remarking that the presentation of the ABA Medal to Justice Ruth Bader Ginsburg represents our deep admiration for her personal courage, incomparable intellect and vast contributions to our profession, our society and the pursuit of justice. The House welcomed Justice Ginsburg with a standing ovation.

Remarks of Justice Ruth Bader Ginsburg

In her remarks before the House, Associate Justice Ginsburg said, “As you have just heard, I have lived long enough to see great changes in our profession. The news of my receiving the award was surprising, spirit-lifting and appreciated beyond reckoning.”

She told delegates of her first involvement with the ABA in the 1960s with the Section of International Law. She told of being offered a tenure post at Columbia Law School and was on the Board of the ABA Journal through 1978. She went to China after the ABA was invited and was part of a group that arrived just after the end of the Cultural Revolution. She recounted her ABA involvement and acknowledged she had received more than she had given.

Without the ABA support, she said she did not believe she would hold the position she does today. She noted her appointment to the federal bench by President Carter in 1980 and to the Supreme Court in 1993 and the work of the ABA Committee on the Federal Judiciary on both occasions. She hoped that the U.S. Senate would, with ABA encouragement, return to the collegial bipartisan spirit that she and Justice Breyer experienced.

Justice Ginsburg spoke to the evolving role of woman, specifically in the profession. She noted the creation of the Commission on Women and its good work over the years and the swearing in of new Justice Kagan. Justice Ginsburg referenced Susan B. Anthony as hoping for a world where women will be the peer of man ... “equal though not identical with him.” Justice Ginsburg encouraged the ABA to continue its efforts of full realization of Anthony’s vision.

She applauded President Lamm for her work as ABA president. “May the association thrive, aided by everyone here in the pursuit of justice,” making it equal and accessible to all, concluded Ginsburg.
The House gave her a standing ovation and Chair Hubbard thanked her and indicated that she had honored us by her service and her presence.

**Statement by the Treasurer**

Treasurer Alice Richmond of Massachusetts was introduced and reminded us of her promise of more transparency in our financial system and more reliability in our financial reports. She reported that we are on the path to fulfillment of that promise but it is still a work in progress. She referred the House to her written report and illustrated her presentation with a number of charts depicting the Association's financial position.

She informed the House that the general revenue budget represents approximately 54% of total anticipated ABA revenue or $107 million while the consolidated budget with all of the ABA's financial operations is nearly double that amount at about $200 million.

For FY 2009-2010, the ABA's projected consolidated revenues (money received from all sources) is likely to be about $198.9 million, a projected reduction of $7.1 million from audited FY 2009 revenues of $206 million. This projected 3.5% consolidated revenue decline is only $200,000 less than $199.1 million consolidated revenue amount included in the FY 2009-2010 consolidated budget.

She highlighted that consolidated projected revenue for FY 2009-2010 includes a $7.6 million transfer from net assets in the general revenue portion. She informed the House that this represents funds which were transferred from "the dues warehouse" in order to balance the FY2009-2010 budget and to provide a cushion if operating revenues did not equal operating expenses. Without this $7.6 million "dues warehouse" transfer, the Association might be projecting as much as a $2.7 million net operating loss. Instead, she told us that she expects that consolidated revenue will exceed consolidated expenses by about $5 million.

She reported that dues continue to be the Association's largest revenue source and currently exceed the FY 2009-2010 budget projection by approximately $500,000. Based on dues payments received through July 31, 2010, dues revenue is anticipated to be $79.1 million which is about a $6.9 million decline from two years ago. She also reported that non-dues revenue appears to be down on a consolidated basis from $122.1 million in FY 2008-2009 to $119.8.

Ms. Richmond also reported a concerted and successful effort to control Association operating expenses. Through the first 10 months of FY 2009-2010, expenses are down about $7.4 million or 3.7%. Compensation and benefits, which represent approximately 45.4% of total operating expenses, increased slightly when compared to 2009. She pointed out that ABA employees have not had any salary increases in two years except through normal promotions and noted that the budget for FY 2010-2011 does not provide for increased salaries.

She reviewed the investment portfolio and pointed out that long-term investments have recovered to some extent, increasing from $156.3 million to $163.2 million as of the end of June, 2010. She reported the hiring of a new Association investment advisor. She
described the retirement programs presently available to ABA employees and reported that the Board was still reviewing the program and had requested further information to be discussed at its Fall, 2010 Board meeting in Miami.

Treasurer Richmond told the House she has reviewed the Association's cash flow management this year. She reported that two events, a reduction in dues revenue and a large cash payment to the ABA retirement plan, had combined to create a decline in available cash. Between August 31, 2009 and December 31, 2009, the Association's available cash and cash equivalents dropped from $28.8 million to $20.0 million. She anticipated that cash on hand was expected to rise to around $28 million by August 31, 2010.

She closed by describing the Association's year end financial projections. While dues revenue has decline for the past two years, we are doing better than our 2009-2010 budget projections and better than many had predicted based on general economic conditions. The even better news was that the ABA's projected consolidated balance sheet as of FY 2009-2010 year end showed only a $1.7 million decrease in the ABA's net assets from the previous year. She expressed her appreciation to many people including the financial services staff for their hard work.

Chair Hubbard thanked her for her report.

Presentation by the President of the American Bar Endowment

Chair Hubbard recognized Roderick Mathews, President of the American Bar Endowment. Mr. Mathews described the American Bar Endowment, its activities and its unique role in the ABA. Mr. Mathews presented two checks totalling $7,155,311. One check was presented to Richard Pena, president of the American Bar Foundation in the amount of approximately $3.5 million. Another check in the same amount was presented to Alice Richmond, Treasurer of the ABA and Alan Kopit, chair of the Fund for Justice and Education.

Chair Hubbard commended the ABE for its fine work.

Statement by the Executive Director

Chair Hubbard welcomed ABA Executive Director Jack L. Rives of Illinois. Mr. Rives told delegates it was a great honor and responsibility to serve in his position. He noted he began his new duties on Law Day this year. He has had a tremendous welcome and has received a lot of information on the current situation and challenges. He noted this is an exciting time to be in leadership and told us we are at a critical point in time. The legal profession and the Association are at inflection points, where the future will look different than the recent past. He told the House he is optimistic about the future, and that we can do the right things to shape it.

Mr. Rives listed three particular areas of focus for the staff: to increase membership, increase non-dues revenues, and lower operating expenses. He wants attorneys to want to join the ABA, for altruistic reasons and also because membership
provides real value. He told us we need to do a better job of showing value, including those things we do to help lawyers become more effective.

He emphasized that our volunteer leaders set values, goals and vision. His commitment is for staff to do all they can to execute our vision and direction. He explained that the staff is passionate about the Association and its mission.

He concluded by reminding us that we are the world’s largest professional service organization. He expressed his total confidence that, working together, we have great days ahead.

Chair Hubbard thanked Mr. Rives for his remarks and his strong leadership.

Passing of the President’s Gavel

Chair Hubbard recognized President Carolyn Lamm of the District of Columbia for the passing of the gavel. Ms. Lamm told us it was her great honor and privilege to introduce Stephen Zack of Florida and pass the gavel to him. She told us of his background, including his law degree from the University of Florida. He is the administrative partner at the Miami office of Boies, Schiller & Flexner and practices complex commercial litigation. She recalled his most well known client was Al Gore and his perfect cross-examination on the hanging chad. He has represented the Florida governor and Florida senator Bob Graham. He was the youngest and the first Hispanic president of The Florida Bar. He has been president of the National Conference of Bar Presidents and member of the ABA Board of Governors. He was a founding member of the Cuban-American Bar Association. He has been Chair of the House of Delegates. He is the first Hispanic-American to be ABA President.

She also told us of his personal qualities. His smile and charisma precede him. He “lights it up” with energy and vigor. He has great judgment and is a clear thinker with a pragmatic approach. He is a great friend and is incredibly persuasive. She valued his wise counsel.

She noted that Steve truly has only the best interests of the profession, the Association and the public at heart. She told us she was delighted to turn over the gavel to the new president.

Remarks of Stephen N. Zack

Mr. Zack told the delegates it was a great privilege to address the House. He commended Chair Hubbard for a fabulous job. He thanked President Carolyn Lamm for an incredible year. Because of her leadership, he said the Association is poised for greatness. He told us she had guided us with a strong hand and an open heart. He told the House he was looking forward to Bill Robinson’s leadership. He thanked his wife and introduced and thanked his family. He recognized his law partners. He noted the many friends he met when he came to the United States who have made him the person he is today.
He told us of the time when he was 14 years old and leaving Cuba and he was detained in a cell, not knowing what would happen to him. The last thing on Earth that he could ever have imagined then was a day like this, and he thanked the House for this privilege.

He recalled the time when Richard Nixon resigned as president of the United States and noted that the most powerful person in the world left office, not by force of an army, but by a greater force, the Constitution of the United States. It reaffirmed that in the United States when we have the most serious problems, we turn to our lawyers and not to our generals. He said it was one of the finest moments for this Association when President Chesterfield Smith said, “We must always speak truth to power, and no man is above the law.” President Zack told us that continues to be the responsibility of our association today. He mentioned four specific responsibilities -- the preservation of the justice system, civic education, human rights and protecting and preparing for disaster.

Preservation of the Justice System

He described the fight to establish the rule of law around the world; yet, expressed concern we are in danger of losing that at home. He noted the financial crisis in America and its devastating impact on our court system. He told us we have a justice gap in this country and we also have a funding problem in our justice system. He noted we’re not just talking about judges’ salaries, but also public defenders, state attorneys, prosecutors, and closing the doors of our courthouses to all Americans. President Zack stated this is a question of access for all Americans because access begins with access to our courts. He told us over half of our courts are under a freeze for judicial compensation and one-third of them are actually considering user fees. He told the delegates he will set up a task force that will look at the preservation of our justice system and it will be chaired by David Boies and Ted Olson, and 20 of the most distinguished lawyers in our country to bring recommendations for solutions. He told us that is our responsibility and we will fulfill it.

Civic Education

He said it is equally important to respond to Justice Souter’s challenge to become involved in teaching civics to all Americans. He noted the very troublesome fact that 75 percent of all Americans don’t know that the Bill of Rights protects religious freedom and that school children don’t know the three branches of government. For that reason, he is establishing the American Bar Academy. It will be chaired by two long-standing members of this House, Marna Tucker and Paulette Brown, who will work with Justice Souter and Justice O’Connor to address the challenge of civic education. He told us it is our responsibility and our obligation to teach civics to all Americans and we will honor that responsibility.

Human Rights

President Zack voiced his concern that the nation becomes more divided when it comes to human rights and cited immigration as one of the issues that divides us. He stated we must and can be united. He reminded us that President Kennedy told us 50 years ago that we are a nation of immigrants and our freedoms are based on the principle that the law protects the minority from tyranny of the majority. He noted the ABA’s work,
under President’s Lamm’s leadership, to create the most comprehensive report on immigration reform in the last 50 years. He noted that it is our responsibility, and we will honor that responsibility.

He also called our attention to diversity as one of the four principal missions of our Association. Because of that, he will establish a new advisory committee on Hispanic Legal Rights and Responsibilities to be chaired by Cesar Alvarez with Emilio Estefan as one of the honorary chairs. He noted that Hispanics are underrepresented in our Association, in our profession, in our law schools and in our courts. He called on us to fully integrate Hispanics into our profession and our society because that is our responsibility, and that is our obligation and we will do it.

**Protecting and Preparing for Disaster**

He told us we have a fiduciary obligation to prepare for disasters. He reminded us that we passed the Katrina Rule that has now been adopted in 18 states. It assists us, as a profession, to be prepared for a natural disaster. He also told us there is the possibility of a man-made disaster. For example, if the President of the United States suspended *habeas corpus*, what would the response of our Association be? He told us now is the time to consider what our response should be.

He concluded by saying that history has taught us that we can have liberty and justice or neither, for there is nothing in between. He reminded us that in America we know that no man is above the law and we have the responsibility to ensure that no one is beneath its protection. He stated that when people ask today who will speak for justice, we will answer, “We will.”

Chair Hubbard thanked President Zack and indicated he looked forward to his leadership.

**Election of Officers and Members of the Board of Governors**

On behalf of the Nominating Committee, Thomas R. Curtin of New Jersey, Chair of the Steering Committee of the Nominating Committee, reported on the nominations for officers of the Association and members of the Board of Governors. The House of Delegates elected the following persons for the terms noted:

**Officers of the Association**

**President-Elect (2010-2011)**
Wm. T. (Bill) Robinson III of Kentucky

**Chair of the House of Delegates (2010-2012 Term)**
Linda A. Klein of Georgia
Secretary (2011-2014 Term; to serve as Secretary-Elect in 2010-2011)
Honorable Cara Lee Neville of Minnesota

Treasurer (2011-2014 Term; to serve as Treasurer-Elect in 2010-2011)
Lucian T. Pera of Tennessee

Members of the Board of Governors (2010-2013)

District Members
District 7: Cheryl I. Niro of Illinois
District 8: Edith G. Osman of Florida
District 10: James S. Hill of North Dakota
District 11: James F. Carr of Colorado
District 13: Carlos A. Rodriguez-Vidal of Puerto Rico
District 18: James Dimos of Indiana

Section Members-At-Large
Section of Legal Education and Admissions to the Bar
Peter A. Winograd of New Mexico

Section of Public Contract Law
Mary Ellen Coster Williams of Maryland

Woman Member-At-Large
Michelle A. Behnke of Wisconsin

Law Student Member-At-Large (2010-2011)
Tommy Preston, Jr., of South Carolina

It was noted that the Association’s Constitution provides that the President-Elect automatically becomes the President at the conclusion of the Annual Meeting and Stephen N. Zack of Florida will assume that office.

Remarks by President-Elect Nominee

Chair Hubbard introduced and congratulated President-Elect Nominee Wm. T. (Bill) Robinson III of Kentucky.

Mr. Robinson recognized and expressed appreciation to William Hubbard for the great job he has done as Chair of the House. He told us of his profound sense of gratitude as he enthusiastically accepted the responsibilities of serving as our next President-Elect.

First and foremost, he recognized his family beginning with his best friend, his wife, Joan. He talked about his grandson who told him he wanted to be a lawyer. He paid tribute to his parents and to the parents of his wife. He thanked his law firm, Frost Brown Todd, for their support and the fact that his firm and Steve Zack’s firm are 100% members of the Association.
He thanked the delegates for giving him the opportunity to work closely with them and other leaders of the ABA to help successfully guide this association through these troubled financial times. He told us he was determined to deliver continued effective leadership to this great association with commitment, calm and continuity.

President-Elect Robinson told us our fundamental obligation is to serve as stewards of this Association and of our profession. This requires discipline and focus. He informed us that the test has to be: what is in the best interest of the American Bar Association, what is in the best interest of the rule of law and what is in the best interest of our profession.

He said he sees the current challenging situation as an opportunity and a chance to move forward in a way that will make the ABA stronger and more relevant than ever. His concept is to leverage the existing organization to harvest the best ideas from everyone and support coordinated efforts to make sure that what we achieve has the support of everyone.

He acknowledged the fact that the profession has been hit hard by the economic crisis and noted the profound, adverse consequences for every bar association represented in the House. He called for continued long-term, fiscal stability. Without that, he stated we cannot accomplish anything of lasting value or impact.

He told us we face a very challenging dilemma. We know we cannot stand still, but asked how do we adapt to this ever-changing, financial environment without losing or compromising our identity and without losing the essence of what the American Bar Association does and should stand for. He did not pretend to have all the answers, but he did share basic concepts with the House:

First, he noted we should be very skeptical of any notion that there is a “silver bullet solution” for our financial problems and challenges. We need to recognize that change is complex and will require flexibility and compromise.

Second, he counseled us to be thoughtful and committed to long-term, consistent, well-reasoned approaches year after year.

Third, he called for an integrated approach, combining the creative intelligence and energy of our volunteer leadership with the experience and expertise of our dedicated staff, led by Jack Rives. He asked for the best ideas from all corners of the organized bar including our sections, state and local bars and the specialty and ethnic bars.

He noted that such an integrated approach, building on past work and leadership, is one of the best things we can do to enhance ABA membership. He urged us to convince lawyers in our home towns that the ABA is important to their practices and to the rule of law. There are certain things that really matter – like providing effective support for our courts and for fair and equal access to justice, while assuring fair and impartial diversity in our Association and in our profession. He told us that these require the leadership and support at the national level that only can be provided by the American Bar Association.
He also called on us to make the best use of our existing resources. He noted that lawyers will continue to sacrifice personal and family time to provide volunteer services and leadership. We will continue to set the standard for volunteer service, not only in our profession, but in this country.

He closed by asking for our help and continued support. Working together, he told us we can and will make a positive difference. He challenged us to achieve meaningful, lasting, needed change so that, in the years to come, we can say – we did our best work in difficult times, and we did it together.

Chair Hubbard thanked President-Elect Robinson and expressed his appreciation for his vision for the future of the Association.

Remarks by Professor David B. Wilkins

Chair Hubbard introduced Professor David B. Wilkins, the Lester Kissel Professor of Law and Director, Program on the Legal Profession at Harvard Law School, to address the House regarding the impact of globalization and technology on the legal profession.

He told the House it was a privilege and honor to be present at the request of President Lamm. He began by asking what he called the big question – are the changes we are seeing in the profession a paradigm shift or is it just a temporary thing? He said it’s too early to tell, but unlikely to be either. Instead he sees large scale trends that began after the last market crash and will affect all lawyers. These large scale trends are the globalization of economic activity, rise of informational technology, and the disintegration of 19th century categories of knowledge and organizational forms.

He discussed five shifts within the legal profession: (1) from solos to professional organizations; (2) from homogeneity to diversity; (3) from oligopoly to competitive market; (4) from artisanal craft norms to profit driven business; and (5) from local control to global ambition. He described and detailed each of these for the House.

He noted we live in a world where globalization dominates while local concerns are important. He termed it glocalization. He identified several trends for the future: governments are investing heavily in innovation including legal innovation; legal education reform is underway around the world using the American model, but creating global law schools; new organizational forms are being created for legal services; and global, technology and free trade issues will affect all US attorneys.

He told us the implications for legal practice are profound. There will be increasing cross border practices for anything from M&A to family law. There will be increased competition. Technology will reduce the need for traditional legal services, but open up other opportunities. Successful lawyers must understand and manage these global trends.

He discussed the significance of these trends in the profession both in the corporate law sector and individual lawyer sector, as well as the impact on our society. He told us he believed we are moving toward a new partnership that will require new leadership skills and new collaboration to produce them. We will need academics. The organized bar will need
to coordinate action and be the voice in the United States and around the world. But the profession will need to support the organized bar.

We face a fundamental challenge. We have to respond to changes, but we must do more than that. We must define a new professionalism that is responsive to changing markets, but true to the profession’s highest ideals. To accomplish this goal, we must work together.

Chair Hubbard thanked Professor Wilkins for his remarks.

**Scope Nominating Committee**

Paula Frederick of Georgia, member of the Committee on Scope and Correlation of work, nominated Estelle H. Rogers of the District of Columbia, to the Committee on Scope for a 5-year term beginning at the conclusion of the 2010 Annual Meeting. J. Anthony Patterson of Texas was nominated to fill a vacancy for a 3-year term and M. Joe Crosthwait, Jr. of Oklahoma was nominated to fill a vacancy for a 2-year term. Chair Hubbard moved that nominations be closed. The motion was approved. Chair Hubbard later moved the election of the three nominees. The motion was approved.

**Delegate-at-Large Election Results**

Hon. Bernice B. Donald, Secretary of the Association, announced the election of the following members to three-year terms as Delegates-at-Large: John J. Bouma of Arizona, Jose C. Feliciano of Ohio, Katherine H. O’Neil of Oregon, Scott F. Partridge of Texas, Carole L. Worthington of Tennessee and Kenneth E. Young of North Carolina.

In addition, Larry McDevitt of North Carolina and Jay E. Ray of Texas were elected to one-year terms to fill two Delegate-at-Large vacancies.

**Resolution and Impact Review Presentation**

Chair Hubbard noted that the resolutions passed in the House begin the ABA’s effort to educate constituents and adopt policy, the impact of which goes far beyond these walls. He recognized L. Jonathan Ross of New Hampshire to present the report of the Committee.

Mr. Ross referred the House to the written report provided to delegates. He introduced two presenters to review the impact of two resolutions adopted in 2008.

Pamela J. Roberts of South Carolina reviewed the 2008 resolution which adopted a Model Rule for Registration of In-House Counsel. She noted that in the last two years, 43 states have adopted Rule 5.5 and 31 states have adopted some part of the registration rules. She described the importance of and reasons for the adoption of the model rule. She also noted another 2008 resolution which urged lawmakers to consider the value of ecosystems and its timely impact in light of current events such as the Gulf oil spill. Chair Hubbard thanked the committee for its good work.
Martin Lybecker of the District of Columbia reviewed the events that led to the financial crisis and the response of the Association. In the wake of the collapse of Lehman, the Business Law Section formed a committee to study the issues. They developed principles that were approved by the House. Armed with those principles, the Association was prepared to act. He described one idea that was put forward by others concerning the creation of a consumer finance protection bureau. He told us that lawyers were to be governed by the bureau, but through the Association’s efforts, they were eventually excluded. The success story here was that the Association spotted an issue, had a policy, and was prepared to lobby effectively.

**Presentation on Membership**

Patricia Lee Refo of Arizona, Chair of the Standing Committee on Membership, addressed the House on membership issues and presented a video and showcased a new “tagline” for the Association.

**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] Hon. Bernice B. Donald moved and Edward Haskins Jacobs, of the Virgin Islands, 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.” Brian Melendez of Minnesota, Chair of the Standing Committee on Constitution and Bylaws, reported that the standing committee had reviewed Report 11-1 and voted to recommend that it was out of order in that it is inconsistent with the purposes of the Constitution, and that it not be approved. P. Gene Vance, II of Kentucky moved to postpone indefinitely consideration of Report 11-1. Robert Weinberg of the District of Columbia spoke in opposition to the motion to postpone indefinitely. The House approved the motion to **postpone indefinitely**.

[11-2] C. Elisia Frazier of Georgia moved Report 11-2 amending §6.2 and various other sections of the Constitution and House Rules of Procedure, to provide that each territory, as defined, shall have a seat in the House of Delegates. Brian Melendez, Chair of the Standing Committee on Constitution and Bylaws, reported that the proposed constitutional amendment was approved as to form, but noted the Committee took no position on the merits. Gov. Togiola T.A. Tulafono of American Samoa, Chief Justice Robert J. Torres, Jr. of Guam, Tom Bolt of the Virgin Islands, and Dennis W. Archer of Michigan spoke in favor of the constitutional amendment. Anthony R. Palermo of New York, Michael P. Gunn of Missouri, and Philip S. Anderson of Arkansas spoke in opposition to the constitutional amendment. The constitutional amendment was **not approved by a vote of 301 to 155 (2/3 vote required)**. Joaquin Camacho Arriola, Jr. of Guam requested a motion to reconsider. Chair Hubbard indicated only a person who voted against Report 11-2 could motion to reconsider.
At the close of the first day, Marvin S. Lieber of Pennsylvania was recognized. Having voted in opposition to Report 11-2, he moved to reconsider Report 11-2. Anthony R. Palermo of New York spoke in opposition to the motion and raised a point of order which the Chair overruled. President Carolyn B. Lamm of the District of Columbia spoke in favor of the motion to reconsider. The motion to reconsider was approved. Thomas R. Curtin of New Jersey made a point of order which the Chair overruled. Neal R. Sonnett of Florida moved to lay the motion on the table until the following morning. The motion to table until the next morning was approved by a vote of 209 to 185. Donald D. Slesnick II of Florida made a point of order as to the time for the next day’s session. Chair Hubbard indicated that delegates would be notified by listserv.

On the next morning, Michelle A. Behnke of Wisconsin moved to take Report 11-2 off the table. The motion to remove from the table was approved. R. William Ide III of Georgia and H. Thomas Wells, Jr. of Alabama spoke in favor of the constitutional amendment. Daniel W. Van Horn of Tennessee and Hervey Levin of Texas spoke in opposition to the constitutional amendment. Sharon Stern Gerstman of New York moved the previous question. The motion to call the previous question was approved. The constitutional amendment was not approved by a vote of 248 to 149 (2/3 vote required).

[11-3] Loren Kieve of California moved Report 11-3 amending §31.7 of the Bylaws to increase the size of the Standing Committee on Federal Judicial Improvements from nine to eleven members. Brian Melendez, Chair of the Standing Committee on Constitution and Bylaws, indicated the proposed amendment was approved as to form, but noted the Committee took no position on the merits. The bylaws amendment was approved.

[11-4] Hon. Bernice Donald moved Report 11-4 amending various sections of the Association’s Constitution, Bylaws and House Rules of Procedure as housekeeping amendments. Brian Melendez of Minnesota presented the Report and spoke in favor of the motion. Saul A. Wolfe of New Jersey moved to amend the proposed constitutional amendment. Brian Melendez of Minnesota spoke in opposition to the amendment. The amendment failed. The proposed housekeeping amendment was approved (2/3 vote required).

[11-5] Pauline A. Schneider of the District of Columbia moved Report 11-5 amending Sections 45.9 (a) and (b) of the House Rules of Procedure regarding the role of the House of Delegates in the law school accreditation process in order to comply with Department of Education regulations. The House Rules of Procedure amendment was approved (2/3 vote required).

ARCHIVING

[400] The House approved by consent Recommendation 400 recommending that certain Association policies that pertain to public issues and are 10 years old or older be archived.
ASSOCIATION DUES STRUCTURE

[118] On behalf of the Standing Committee on Membership, Patricia Lee Refo of Arizona, withdrew Recommendation 118 recommending a new dues structure for lawyer members of the Association effective for dues commencing with the 2011-2012 fiscal year and each year thereafter.

CIVIC EDUCATION

[110] On behalf of the Standing Committee on Public Education, Eduardo R. Rodriguez of Texas, moved Recommendation 110 encouraging all lawyers to consider it part of their fundamental responsibility to ensure that all students experience high quality civic learning, including the study of law, government and history. Michael Fox of New York spoke in favor of the recommendation. The recommendation was approved.

CIVIL RIGHTS

[111] On behalf of the Section of Individual Rights and Responsibilities, Robert J. Grey, Jr. of Virginia, moved Recommendation 111 urging state, territorial and tribal governments to eliminate all of their legal barriers to civil marriage between two persons of the same sex who are otherwise eligible to marry. President Carolyn B. Lamm of the District of Columbia, H. Thomas Wells of Alabama and President-Elect Stephen N. Zack of Florida spoke in favor of the recommendation. Leslie W. Jacobs of Ohio spoke in opposition to the recommendation and moved to table the recommendation. James R. Silkenat of New York, Mark I. Schickman of California, and Robert J. Grey, Jr. of Virginia raised points of order. Chair Hubbard ruled that the motion to table was out of order. The recommendation was approved.

[106A] On behalf of the Commission on Law and Aging, David M. English of Missouri, moved Recommendation 106A supporting the reauthorization, funding and authority of the Protection and Advocacy System and related programs of legally based advocacy services protecting the rights of persons with disabilities and opposing legislation that would place limits on class actions on behalf of persons with disabilities beyond what is required under the Federal Rules of Civil Procedure. The recommendation was approved.

CLIENT PROTECTION

COURTS

[102] On behalf of the National Conference of Specialized Court Judges, Michael F. Pietruszka of New York, moved Recommendation 102 adopting the black letter Principles and Standards of the Judicial Excellence in Child Abuse and Neglect Proceedings: Principles and Standards for Court Organization, Judicial Selection and Assignment, Judicial Administration and Judicial Education, dated August 2010, to improve, at the state and local levels, the quality of judicial practice, and court processes, related to civil child abuse and neglect cases. The recommendation was approved.

CRIMINAL JUSTICE

[100A] On behalf of the Criminal Justice Section, William N. Shepherd of Florida, moved Recommendation 100A urging the United States Department of Justice (“the Department”) to continue in its commitment to investigate allegations of professional misconduct on the part of the Department’s lawyers and to release as much information regarding completed investigations as possible, consistent with privacy interests and law enforcement confidentiality concerns. The recommendation was approved.

[100B] On behalf of the Criminal Justice Section, Stephen A. Saltzburg of the District of Columbia moved Recommendation 100B urging trial and appellate courts, in criminal cases, when reviewing the conduct of prosecutors to differentiate between “error” and “prosecutorial misconduct.” Mr. Saltzburg also moved to amend the recommendation. The amendment was approved. Neal R. Sonnett of Florida and Daniel W. Van Horn of Tennessee spoke in favor of the amended recommendation. Brian C. Miller of Texas spoke in opposition to the amended recommendation. The recommendation was approved as amended.

[100C] On behalf of the Criminal Justice Section, Stephen A. Saltzburg of the District of Columbia moved revised Recommendation 100C urging federal, state, territorial, tribal and local governments to provide funding to state and federal public defender offices and legal aid programs specifically for the provision of advice to indigent non-U.S. citizen defendants. The recommendation was approved as revised.

[100D] On behalf of the Criminal Justice Section, William N. Shepherd of Florida, moved revised Recommendation 100D urging federal, state, local, tribal and territorial governments to provide sufficient funding and resources necessary to facilitate basic and applied scientific research to improve and/or further develop forensic science disciplines. The recommendation was approved as revised.

[100E] On behalf of the Criminal Justice Section, Stephen A. Saltzburg of the District of Columbia, moved revised Recommendation 100E urging the federal government to provide funding and resources sufficient to facilitate the examination of existing standards, accreditation and certification for government and private laboratories, examiners/analysts in government and private laboratories, and identified forensic science service providers who offer examination conclusions and/or interpretations of forensic laboratory results. The recommendation was approved as revised.
[100F] On behalf of the Criminal Justice Section, William N. Shepherd of Florida, moved Recommendation 100F urging the federal government to provide the funds, resources and other support necessary to effectively integrate the forensic science community into the nation’s system of homeland security. The recommendation was **approved**.

[100G] On behalf of the Criminal Justice Section, Stephen A. Saltzburg of the District of Columbia, moved revised Recommendation 100G urging federal, state, and territorial governments to provide funding and enact legislation necessary to support requiring that all offices charged with conducting medico-legal death investigations meet mandatory accreditation, certification or professional practice standards within a reasonable time frame. The recommendation was **approved as revised**.

[100H] On behalf of the Criminal Justice Section, William N. Shepherd of Florida, moved Recommendation 100H urging Congress to enact legislation and authorize and appropriate funds necessary to achieve nationwide interoperability of the Automated Fingerprint Identification System. The recommendation was **approved**.

[100I] On behalf of the Criminal Justice Section, Neal R. Sonnett of Florida, moved revised Recommendation 100I urging federal, state, local and territorial governments, legislative bodies and courts to provide the funds and other resources necessary to assure that in criminal cases an accused: 1) is able to obtain testing or re-testing of evidence, and 2) is provided expert testimonial or other assistance when necessary to assure a fair trial or sentencing proceeding. The recommendation was **approved as revised**.

**ELECTION LAW**

[114] On behalf of the Standing Committee on Election Law, John C. Kenney, Jr. of the District of Columbia, moved revised Recommendation 114 supporting state and federal initiatives to modernize and improve voter registration practices, databases and networks and urging an independent technical and security assessment of statewide voter registration databases as well as supporting efforts to achieve ongoing improvements to such databases. The recommendation was **approved as revised**.

**ETHICS AND PROFESSIONAL RESPONSIBILITY**

[113] On behalf of the Standing Committee on Ethics and Professional Responsibility, Paula J. Frederick of Georgia, moved Recommendation 113 amending the Application Section of the 2007 ABA Model Code of Judicial Conduct to ensure consistency in judicial ethics standards nationwide. The recommendation was **approved**.
GATEKEEPER REGULATION AND THE PROFESSION

[116] On behalf of the Task Force on Gatekeeper Regulation & the Profession, Neal R. Sonnett of Florida, moved revised Recommendation 116 supporting the United States Government’s efforts to combat money laundering and terrorist financing and observing that voluntary, risk-based and updated guidance would assist legal professionals to avoid money laundering and terrorist financing risks when providing services to clients, and adopting the Voluntary Good Practices Guidance for Lawyers to Detect and Combat Money Laundering and Terrorist Financing. Kevin L. Shepherd of Maryland and Gary Sutton of the District of Columbia spoke in favor of the recommendation. The recommendation was approved as revised.

GENERAL PRACTICE

[10A] On behalf of the Alabama State Bar, Clark Cooper of Alabama moved Recommendation 10A, acknowledging the 50th Anniversary of the publication of Harper Lee’s novel, “To Kill a Mockingbird”, and honoring the positive role that the book has played in the lives of lawyers, their families and the American public over the last 50 years. The recommendation was approved.

GUN VIOLENCE

[115] On behalf of the Standing Committee on Gun Violence, Hon. Robert B. Collings of Massachusetts, moved Recommendation 115 urging federal, state and territorial governments to enact laws requiring that all newly-manufactured semi-automatic pistols be fitted with microstamping technology which would enable law enforcement to identify the serial number of the pistol and hence the first known purchaser of a weapon used in a crime. The recommendation was approved.

HEALTH LAW

[101] On behalf of the Young Lawyers Division, Jay E. Ray of Texas, moved Recommendation 101 urging Congress to amend the Medicare, Medicaid and SCHIP Extension Act of 2007 (the “Act”) to create a safe harbor provision precluding the assessment of civil penalties against responsible reporting entities as defined under the Act, that rely upon information verified by claimants regarding entitlement to or receipt of Medicare benefits. The recommendation was approved.

IMMIGRATION

[300] On behalf of the Section of Business Law, Barbara Mendel Mayden of Tennessee, moved Recommendation 300 supporting full implementation of legislation by Congress to provide for the creation of Startup Visa (by way of the creation of the EB-6 Visa Program, the reformation of the EB-5 Visa Program or similar creation, reformation and/or restructuring of the current U.S. immigration regime) to provide for a mechanism whereby immigrant-founders of businesses can obtain legal status in the U.S. The recommendation was approved.
INTELLECTUAL PROPERTY LAW

[301] On behalf of the Section of Intellectual Property Law, Susan B. Montgomery of Massachusetts, moved Recommendation 301 supporting the principle that under the Copyright Clause of the Constitution of the United States (Article I, section 8, clause 8), Congress has the power to implement U.S. obligations under international copyright treaties by restoring copyrights in certain works of foreign origin that have gone into the public domain, and thereby to improve protection available abroad to holders of U.S. copyrights. The recommendation was approved.

INTERNATIONAL LAW

[107A] On behalf of the Section of International Law, Michael H. Byowitz of New York, moved Recommendation 107A urging the United States to ratify the Comprehensive Nuclear Test Ban Treaty which is an international agreement designed to create a permanent, global, legally-binding and all-encompassing prohibition on any nuclear explosions. The recommendation was approved.

[302] Hon. Bernice B. Donald of Tennessee moved Recommendation 302 urging the federal government to intensify its efforts to provide adequate food, water, shelter and physical security to displaced women and children in Haiti. Jayne E. Fleming of California presented the recommendation and spoke in support of the motion. The recommendation was approved.

JUDGES

[107B] On behalf of the Section of International Law, A. Joshua Markus of Florida, moved revised Recommendation 107B encouraging education and training for judges in the United States and abroad, regarding financial market products and practices, and that judges be provided with accurate, timely, balanced and reliable educational resources. The recommendation was approved as revised.

LAW AND AGING

[106B] On behalf of the Commission on Law and Aging, David M. English of Missouri, moved Recommendation 106B urging Congress and the Administration to reauthorize and implement the Older Americans Act of 1965 as amended, giving increased priority to the delivery of legal services and elder justice. The recommendation was approved.

LEGAL SERVICES

[104] On behalf of the Section of Litigation, Hon. Bernice B. Donald of Tennessee moved revised Recommendation 104 adopting the ABA Model Access Act, dated August 2010, which is a model statute for implementing jurisdictions to establish and administer a civil right to counsel, consistent with ABA policy adopted in August 2006. Robert L. Rothman of Georgia presented the recommendation and spoke in support of the motion. Joanne A. Epps of Pennsylvania moved to amend the recommendation. The amendment was approved.
Marshall J. Wolf of Ohio moved to further amend the recommendation. Lawrence J. Fox of Pennsylvania, Timothy B. Walker of Colorado and Jonathan W. Wolfe of New Jersey spoke in favor of the motion to amend. Mark I. Schickman of California, Kay H. Hodge of Massachusetts, Estelle H. Rogers of the District of Columbia and Robert E. Juceam of New York spoke in opposition to the motion to amend. Robert A. Weeks of California moved the previous question. The motion to call the previous question was approved. The motion to further amend the recommendation failed.

Kathleen J. Hopkins of Washington moved to further amend the recommendation. R. William Ide III of Georgia and Kathryn G. Madigan of New York spoke in favor of the motion to amend. Marshall J. Wolf of Ohio and Timothy B. Walker of Colorado spoke in opposition to the motion to amend. The motion to amend failed.

Michael S. Greco of Massachusetts and H. Thomas Wells, Jr. of Alabama spoke in favor of the recommendation. Richard T. Cassidy of Vermont spoke in opposition of the recommendation. The recommendation was approved as revised and amended.

[105] On behalf of the Standing Committee on Legal Aid & Indigent Defendants, Hon. Bernice B. Donald moved revised Recommendation 105 adopting the black letter and commentary ABA Basic Principles of a Right to Counsel in Civil Legal Proceedings, dated August 2010, which represent an effort to state, in a clear and accessible fashion, the fundamental requirements for effectively providing representation in certain high-priority civil proceedings to persons unable to afford an attorney. Earl Johnson, Jr. of California presented the recommendation and spoke in support of the motion. Joanne A. Epps of Pennsylvania moved to amend the recommendation. The motion to amend was approved. The recommendation was approved as revised and amended.

PARALEGALS

[108] The House approved by consent Recommendation 108 as submitted by the Standing Committee on Paralegals, granting approval and reapproval to several paralegal education programs, withdrawing the approval of two programs at the requests of the institutions and extending the term of approval to several paralegal education programs.

PREEMPTION OF STATE TORT LAWS

[117] On behalf of the Task Force on Federal Agency Preemption of State Tort Laws, H. Thomas Wells of Alabama, moved revised Recommendation 117 urging Congress to address foreseeable preemption issues clearly and explicitly when it enacts a statute that has the potential to displace, supplement or otherwise affect state tort law. Edward F. Sherman of Louisiana presented the recommendation and spoke in support of the motion. Stephen A. Saltzburg of the District of Columbia, Geoffrey C. Hazard, Jr. of California and Randolph J. May of Maryland spoke in favor of the recommendation. Nathaniel Cade, Jr. of Wisconsin spoke in opposition to the recommendation. The recommendation was approved as revised.
SPECIALIZATION

[112] The House approved by consent Recommendation 112 as submitted by the Standing Committee on Specialization granting reaccreditation of the Social Security Disability Advocacy program of the National Board of Social Security Disability Advocacy, division of the National Board of Legal Specialty Certification of Wrentham, Massachusetts, until the adjournment of the House of Delegates meeting in August 2015.

STATE AND LOCAL GOVERNMENT LAW

[119] On behalf of the Section of State and Local Government Law, Benjamin E. Griffith of Mississippi, withdrew Recommendation 119 endorsing the Recommendations for an Effective National Mitigation Effort, a white paper on national mitigation prepared by the National Emergency Management Association.

YOUTH AT RISK

[109A] On behalf of the Commission on Youth at Risk, Laura V. Farber of California, moved Recommendation 109A urging state, local, territorial and tribal governments to provide legal counsel to children and/or youth at all stages of juvenile status offense proceedings as a matter of right and at public expense. The recommendation was approved.

[109B] On behalf of the Commission on Youth at Risk, Laura V. Farber of California, moved Recommendation 109B urging state, local, territorial and tribal governments to effectively implement the older youth provisions of the Fostering Connections to Success and Increasing Adoptions Act, in particular to extend foster care, independent and transitional living services, adoption assistance, and guardianship assistance to all youth and young adults through at least age 21. The recommendation was approved.

Passing of Chair’s Gavel

At the conclusion of the meeting of the House on Tuesday, August 10, Chair Hubbard thanked the House for its attentiveness and courtesies. The Chair recognized the chairs of the House committees and the delegates acknowledged them. The Chair introduced the staff assigned to the House, had them come to the well of the House and the House acknowledged them with a standing ovation. The Chair expressed his thanks to the Hon. Bernice Donald, Secretary of the Association. He paid special tribute to his wife.

He told the delegates it had been his great honor and privilege to serve as Chair of the House. He further told the delegates he had held in trust the position which the House had allowed him to have, in order to guide us in the positions we have taken. Chair Hubbard was acknowledged by the House with a standing ovation.

Chair Hubbard introduced incoming Chair Linda A. Klein of Georgia. He told delegates no one was more qualified to be chair of the House. He noted she had served as Chair of the Rules and Calendar Committee of the House and Georgia State Bar...
President. She serves on numerous charitable boards in Atlanta and is managing partner at her firm. He expressed his excitement and great honor in introducing her to the House.

Linda Klein thanked William Hubbard for steady, grateful and inspired leadership, always delivered with a smile. She thanked him for all he has done for the Association and the profession.

**Closing Business**

Allan Tanenbaum of Georgia was recognized to make a musical presentation to delegates regarding the 2011 Atlanta Midyear Meeting.

Pamela Bresnahan of Maryland moved a resolution in appreciation of the San Francisco lawyers and judges, for their work in hosting the meeting. The motion was approved.

Chair Klein recognized Judy Perry Martinez of Louisiana who then moved that the House adjourn *sine die*. The motion was approved.
Report of the

Out of State Lawyers in Arbitration Task Force

August 13, 2010
**Introduction**

The Out of State Lawyers in Arbitration (OOSLA) Task Force was created on January 6, 2010 by OSB President Kathleen Evans in response to a 2009 House of Delegates Resolution which directed the Board to Governors (BOG) to:

“...study and implement a program whereby out-of-state attorneys appearing in Oregon in an arbitration...register with the Oregon State Bar prior to any hearing..., provide a certificate of good standing from the [jurisdiction] in which the attorney is admitted to practice and certificate of insurance [and] that the registration program collect a reasonable fee from out-of-state attorneys applying to appear in arbitration in Oregon.”

The Task Force was chaired by Richard G. Spier (Portland). The other members of the Task Force were Robert S. Banks, Jr. (Portland); Jeffrey M. Batchelor (Portland); Hon. Frank L. Bearden (Portland); James M. Brown (Portland); Hon. Mary J. Deits (Portland); M. Christie Helmer (Portland); David A. Hilgemann (Salem); Michelle Vlach-Ing (Salem); Leslie S. Johnson (Portland); James L. Knoll (Portland); Michael Moffitt (Eugene); Katherine H. O’Neil (Portland); James R. Uerlings (Klamath Falls); O. Meredith Wilson, Jr. (Portland); and Barbara Woodford (Portland). Christopher Kent (Portland) was the Board of Governors liaison. OSB General Counsel Sylvia E. Stevens served as reporter. The OOSLA Task Force met on February 17, March 13, May 26, and June 24, 2010.

After thoroughly and carefully analyzing the myriad issues raised by the HOD resolution, a majority of the Task Force (9 members) recommends against establishing a registration program for OOSLs participating in arbitrations in Oregon. A minority of the Task Force (6 members) recommends that new language be added to Oregon Rule of Professional Conduct 5.5 requiring (1) certification by OOSLs participating in pending or potential arbitrations to be held in Oregon that they are in good standing in their home jurisdictions and (2) evidence that they possess malpractice insurance equivalent to that required of Oregon attorneys or that they have informed their client that they do not possess such insurance.
Task Force Analysis and Findings

The Task Force began its work by reviewing the HOD resolution which, according to the proponent, was aimed at addressing the following concerns:

- clarifying whether representation of a client in arbitration constitutes the practice of law in Oregon;
- ensuring that OOSLs are subject to discipline in Oregon;
- filling any gaps in existing regulation, including what is meant by “temporary practice” in RPC 5.5; and
- gathering information about the frequency of OOSL participation in Oregon arbitrations.

There was agreement among Task Force members, as an initial proposition, that a lawyer representing a client in an arbitration proceeding is engaged in the practice of law, no different than representing a client in court-based litigation.\(^1\) The Task Force then turned to a review of Oregon RPCs 5.5 and 8.5. The Task Force acknowledged that RPC 5.5(c)\(^2\) clearly contemplates the provision of legal services by OOSLs in connection with “pending or potential arbitration” proceedings without any kind of registration. The Task Force read RPC 8.5\(^3\) to unequivocally subject OOSLs who provide or offer to provide legal services in Oregon to

\(^1\) The Task Force recognized that certain arbitration forums allow representation by nonlawyers, and that such practice is outside the Task Force’s purview.

\(^2\) Rule 5.5 (Unauthorized Practice of Law; Multijurisdictional Practice) provides in pertinent part:

\[*\]

(b) A lawyer who is not admitted to practice in this jurisdiction shall not:

\(1\) except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or

\(2\) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.

\(^3\) Rule 8.5 (Disciplinary Authority; Choice of Law) provides in pertinent part:
the disciplinary authority of the Oregon State Bar, although there was some question about the efficacy of such authority. Finally, the Task Force reviewed ORS 36.670, which expressly allows OOSLs to appear in arbitration proceedings in Oregon. There was some discussion about whether the statute prohibited the imposition of any regulations or requirements, but it was ultimately concluded that modest requirements wouldn’t impinge with the statutory mandate.

To ensure it considered as wide a range of views as possible, the Task Force directed the following inquiry to arbitration organizations:

1. Have your administrators, arbitrators or participants identified any problems or concerns with the performance or conduct of out-of-state lawyers as advocates in Oregon arbitration proceedings?

2. Have there been any concerns or allegations of misconduct or incompetence?

3. Has your organization identified any significant difference in the outcome of proceedings when out-of-state lawyers are involved?

4. If out-of-state lawyers were required to register with the Oregon State Bar in order to appear in an Oregon arbitration, would that have any impact on the manner in which your organization handles the proceedings?

Responses were received from the American Arbitration Association, US Arbitration & Mediation, and the Arbitration Service of Oregon. None had experienced any problems with OOSLs and they were unanimous in opining that a registration requirement would create unnecessary barriers to client’s ability to be represented by the lawyer of their choosing. The American Arbitration Association reported that there are only a handful of states that require OOSLs to register in order to appear in an arbitration and that lawyers and parties tend to avoid those jurisdictions, especially when insurance is a requirement.

A similar inquiry was sent to members of the ADR, Litigation, Business, Insurance and Consumer Law Sections of the OSB:

(a) Disciplinary Authority. A lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction, regardless of where the lawyer’s conduct occurs. A lawyer not admitted in this jurisdiction is also subject to the disciplinary authority of this jurisdiction if the lawyer provides or offers to provide any legal services in this jurisdiction. A lawyer may be subject to the disciplinary authority of both this jurisdiction and another jurisdiction for the same conduct.

***

Report of the OOSLA Task Force
1. Have you identified any problems or concerns with the performance or conduct of out-of-state lawyers as advocates in Oregon arbitration proceedings?

2. Have you identified any significant difference in the outcome of proceedings when out-of-state lawyers are involved?

3. Do you think it would be a good idea for the bar to require out-of-state lawyers appearing in Oregon arbitrations to register with the bar?

Nineteen lawyers responded. Of those, 10 were strongly opposed to any requirement for registration or certification of OOSLs; 4 were in favor and 5 were ambiguous. The principal arguments in opposition were that registration would create barriers to clients’ free choice of counsel and risk the imposition of reciprocal limits imposed against Oregon lawyers. Some respondents also questioned the authority or propriety of the OSB regulating private dispute resolution proceedings. Those in favor cited the similarity of arbitrations to court proceedings and analogized a registration or certification obligation to the existing requirement for pro hac vice admission to appear in an Oregon court proceeding.

Synthesizing the many views expressed as well as their own experience and opinions, the Task Force identified the following factors as important to a final decision:

- There is no evidence, anecdotal or otherwise, to suggest that OOSL practice in Oregon arbitrations is currently a problem;
- Arbitrations are often complex and significant, comparable to court cases, and there is a similar need for protection of affected clients;
- Clients are typically unaware of the jurisdictional limits of a lawyer’s practice and the corresponding differences in what recourse is available in the event of a fee dispute, malpractice claim or complaint of disciplinary misconduct;
- The guiding principle for practicing law in Oregon, including through pro hac vice or reciprocity admission, is “thou shalt be insured;”
- Registration would be a minor inconvenience and not anti-competitive;
- No registration program will assure that clients have full recourse against incompetent lawyers even if they have malpractice coverage;
Compliance with any registration rule must be the obligation of lawyers, with no duty to monitor or enforce imposed on or expected of arbitrators; and

Registration should not erect unnecessary or overly burdensome barriers to an out-of-state client's choice of counsel.

Conclusions and Recommendation

After considering all the information received from within and outside the group, a majority of the Task Force concluded that the bar should not impose a certification or registration program on OOSLs in Oregon arbitrations. They found no evidence or other basis to indicate that a problem existed that would be corrected by a certification or registration; moreover, they had some concern that erecting such a barrier might have unfortunate consequences for Oregon lawyers who handle arbitrations in other jurisdictions.

A minority of Task Force members disagreed, concluding that protection of clients justifies the imposition of a modest certification requirement focusing on malpractice coverage. They are concerned that widespread and ever-increasing Internet advertising by OOSLs coupled with the growing use of arbitration to resolve disputes in a wider variety of practice areas will mean more OOSL practice in Oregon. A certification or registration program will assist the bar in monitoring the magnitude of temporary practice and ensuring appropriate action to protect clients.

While the majority of the Task Force recommends against any kind of certification for OOSLs in Oregon arbitrations, they recognize that the HOD resolution appears to require the BOG to “implement” such a program. Accordingly, the Task Force offers a proposed amendment to RPC 5.5 for the BOG’s consideration if it determines implementation of a certification program is required. The proposal is a compromise between the desire of the minority to require malpractice insurance of all OOSLs in Oregon arbitrations. Task Force members recognize that lawyers in other jurisdiction are not required to have such insurance, and that mandating coverage would inappropriately intrude on an out-of-state client’s ability to be represented by a lawyer of their choosing. Accordingly, the Task Force agreed that the rule should require either proof of malpractice coverage equivalent to that required of Oregon lawyers or that the client has been notified that the lawyer does not have the coverage required of Oregon lawyers. It was also agreed that in-house counsel (including government lawyers) should be exempt from the certification requirement. A question was raised whether to exempt collective bargaining arbitrations, but after discussion, the group concluded that no special treatment in that area is needed.
Rule 5.5 Unauthorized Practice of Law; Multijurisdictional Practice

(a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

(b) A lawyer who is not admitted to practice in this jurisdiction shall not:

(1) except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or

(2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.

(c) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction that:

(1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;

(2) are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized;

(3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternate dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer’s practice in a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires pro hac vice admission;

(4) are not within paragraphs (c)(2) or (c)(3) and arise out of or are reasonably related to the lawyer’s practice in a jurisdiction in which the lawyer is admitted to practice; or

(5) are provided to the lawyer’s employer or its organizational affiliates and are not services for which the forum requires pro hac vice admission.

(d) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide
legal services in this jurisdiction that are services that the lawyer is authorized to provide by federal law or other law of this jurisdiction.

(e) A lawyer who provides legal services in connection with a pending or potential arbitration proceeding to be held in his jurisdiction under paragraph (c)(3) of this rule must, upon engagement by the client, certify to the Oregon State Bar that:

(1) the lawyer is in good standing in every jurisdiction in which the lawyer is admitted to practice; and

(2) unless the lawyer is in-house counsel or an employee of a government client in the matter, that the lawyer

   (i) carries professional liability insurance substantially equivalent to that required of Oregon lawyers, or

   (ii) has notified the lawyer’s client in writing that the lawyer does not have such insurance and that Oregon law requires Oregon lawyers to have such insurance.

The certificate must be accompanied by the administrative fee for the appearance established by the Oregon State Bar and proof of service on the arbitrator and other parties to the proceeding.

The Task Force recognizes that certification, if required, will impose administrative burdens on the Oregon State Bar and on OOSLs and their clients. The costs to the bar can be alleviated by the fee, and any burden on the lawyers and clients is outweighed by the protection it will afford to clients of OOSLs, commensurate with those available to clients of Oregon lawyers.

Respectfully submitted,

OUT-OF-STATE LAWYERS IN ARBITRATION TASK FORCE
OREGON STATE BAR
Board of Governors Agenda

Meeting Date: November 13, 2010
Memo Date: October 28, 2010
From: Gina Johnnie, Access to Justice Committee Chair
Re: Lawyer Referral Service – Pilot Project

Action Recommended

Approve on a pilot basis RIS participation in an American Bar Association (ABA) and Department of Labor (DOL) program for referring clients with issues concerning the Family and Medical Leave Act (FMLA) and Fair Labor Standards Act (FLSA).

Background

The ABA and DOL have developed a new referral program that all ABA-approved LRS programs are encouraged to join. Potential clients will be referred by the DOL to a toll-free number administered by the ABA. Callers will then be referred to the closest participating LRS program. Once the panels are in place DOL offices will no longer make any referrals outside the ABA-sponsored program.

Participation requires each LRS to establish panelist qualification guidelines based on education and experience standards set by the DOL. The DOL approved-standards for this panel are:

Panelists must have handled at least (3) labor & employment-related cases through discovery within the past (5) years; at least one (1) trial (bench or jury – civil or criminal) or at least two (2) arbitrations within the past seven (7) years; and have attended at least five (5) hours of labor & employment-related CLEs in his or her current or most recent compliance period.

RIS policy requires BOG approval of any new “subject matter panels” that have education and/or experience requirements. RIS currently has three subject matter panels approved by the BOG for certain criminal defense, adoption and immigration matters.

OSB LRS staff e-mailed information on the proposed pilot (along with pre-registration forms) to the 134 members currently registered with our regular LRS Labor & Employment panel. To date 13 members have submitted registration forms, along with many positive comments and no complaints.
Oregon State Bar
Board of Governors Agenda

Meeting Date: November 13, 2010
Memo Date: October 29, 2010
From: Judith Baker, Ext. 323
Re: Revision in the OSB Legal Services Program Standards and Guidelines

Action Recommended

Approve revision to language in the OSB Legal Services Program Standards and guidelines.

Background

The Legal Services Program Standards and Guidelines (the "Standards and Guidelines") call for a peer review evaluation of each legal aid provider receiving funds from the LSP. Each of the providers have been peer-reviewed at least twice since the Standards and Guidelines were adopted. The Oregon Law Center was evaluated in 2000 shortly after the adoption of the Standards and Guidelines, and again in 2005 following the statewide reconfiguration process. Legal Services of Oregon was evaluated in 2002 and again in 2007. Columbia County Legal Aid has been evaluated twice, the Center for Non-Profit Legal Services in Jackson County has been evaluated twice, and Lane County Law and Advocacy Center has been peer-reviewed three times.

The peer review is focused on assuring compliance with the OSB LSP Standards and Guidelines; assuring accountability to clients, the public and funders; and to assist with providers' self-assessment and improvement. The peer review methodology that has been designed and implemented, consists of an extensive set of checklists, interview protocols, policies and procedures designed to accomplish the above goals without interfering with the daily operation of providers.

The peer review process reflects the state of the art of legal services program evaluation as it existed when the Standards and Guidelines were adopted in 1998. The thought was that since each program has been thoroughly peer-reviewed twice the design of the evaluation approach should be revisited.

The LSP Manager and legal aid providers met with The Resource for Great Programs several times over the course of the past few months to design new evaluation tools and methods. The Standards and Guidelines language has been revised to incorporate the new evaluation approach. The revisions are found in the Standards and Guidelines at Sections II and V. These sections are included for the BOG's review and approval.
II. Governing Structure

A. Statutory Authority

On September 24, 1997, the Oregon State Bar Legal Services Program (OSB LSP) was established by the Board of Bar Governors as directed by ORS 9.572 to 9.578 (Appendix A1). The OSB LSP is charged with: the administration of filing fee funds appropriated to the OSB by ORS 21.480 (Appendix A2) for funding legal services programs; the establishment of standards and guidelines for the funded legal services programs (Providers); and the development of evaluation methods to provide oversight of the Providers.

B. Governing Committee

1. **Purpose:** The Governing Committee (OSB LSP Committee) is charged with oversight of the OSB LSP and the funds appropriated to the Bar by the Oregon Legislature under ORS 9.572. The OSB LSP Committee will receive direction from the Board of Governors.

2. **Duties to the OSB Board of Governors:** The OSB LSP Committee will be responsible for reviewing and reporting to or making recommendations to the OSB Board of Governors on the following:

   - The Standards and Guidelines for the OSB LSP and their periodic review
   - Applications for funding to the OSB LSP
   - Disbursement of funds and annual OSB LSP budget
   - Assessment Peer review of Providers Programs
   - Annual reporting by the Providers
   - Legislative issues involving the legal aid filing fee funds
   - Complaints and grievances about Providers
   - Additional work of the OSB LSP

3. **Membership**

   a. **Appointment:** Appointment of members to the OSB LSP Committee shall be made by the Oregon State Bar Board of Governors.
b. **Membership:** The OSB LSP Committee will consist of 9 members: 7 members, in good standing, of the Oregon State Bar; and 2 public members. The membership should be representative of the statewide aspect of the OSB LSP and should reflect the diversity of the service areas. No more than 3 attorney members should be from the Portland metropolitan area. The following criteria should be considered in selecting members:

1. Commitment to the basic principles of access to justice
2. Ability to advance the mission of the OSB LSP
3. Knowledge and understanding of providing quality legal services to low-income people.
4. History of support for legal services providers
5. Representation of a geographic area with special attention given to practice area specialties.

4. **Term of Appointment:** Appointments will be made for 3 year terms with the exception of the initial attorney appointments. To stagger vacancies on the OSB LSP Committee and to provide continuity, the initial appointments will be: 3 attorneys appointed for 3 years; 2 attorneys appointed for 2 years, and 2 attorneys appointed for 1 year.

5. **Liaisons to Committee:** The Oregon Law Foundation and the Campaign for Equal Justice are invited and encouraged to each have a liaison to the OSB LSP.

6. **Meetings:** The OSB LSP Committee will meet quarterly. The Chair can call Special Meetings as needed. Meeting notices and agendas will be sent out according to public meeting law. Members can participate by telephone.

7. **Quorum:** Five members constitute a quorum for voting purposes.

8. **Subcommittees:** The OSB LSP Committee Chair has the authority to appoint additional subcommittees to make recommendations on specific issues as needed.
a. **Standing Subcommittees:** There will be two standing subcommittees, the Grievance Subcommittee of the OSB LSP and the Peer Review Committee of the OSB LSP. The subcommittees may include non-committee members who provide additional expertise and perspective. Subcommittee members will be appointed by the OSB LSP Committee Chair.

   (1) **Peer Review Subcommittee:** The Peer Review Subcommittee will serve as a steering committee for the peer reviews of Providers. The members will be responsible for developing review teams and providing leadership for the review teams. See V.D. of this section which defines the peer review process.

   The Peer Review Subcommittee will be comprised of at least three members of the Committee. In addition, the Subcommittee will include one person who is eligible to be a client, but who is not a current client, or a former client of a Provider; one former staff member of a legal services program; and one law office management specialist.

   (2) **Grievance Subcommittee:** The Grievance Subcommittee will meet as needed to review grievances and recommendations from the OSB LSP Director. The members will make a report to the full committee on grievances and their resolutions. When necessary, the Grievance Subcommittee may request the OSB LSP Committee Chair to call a special meeting of the full committee to address a complaint.

   The Grievance Subcommittee will be comprised of at least 3 members of the Committee. In addition, the Subcommittee will include one person who is eligible to be a client, but who is not a current client, or a former client of a Provider and one former staff member of a legal services program.

b. **Additional Subcommittees:** The OSB LSP Committee Chair has the authority to appoint additional subcommittees to make recommendations on specific issues as needed.
C. Program Staff

1. **Director of Legal Services Program**: The OSB will hire a Director of Legal Services Program (OSB LSP Director) who will be supervised by the Executive Director of the Oregon State Bar. The OSB LSP Director will staff the OSB LSP Committee and be responsible for supporting its work and for the effective administration of all aspects of the LSP.

   a. The LSP Director will be responsible for monitoring, reviewing, reporting and making recommendations to the OSB LSP Committee on the following:

   - These Standards and Guidelines and their periodic review
   - Applications for funding
   - Disbursement of funds and Annual OSB LSP budget
   - Assessment of Peer Review of Provider Programs
   - Annual Reporting by the Providers
   - Legislative Issues regarding the filing fee funds
   - Complaints and grievances about Providers
   - Additional work of the OSB LSP

   b. The LSP Director will be responsible for providing technical assistance to Providers to ensure compliance with these Standards and Guidelines.
V. Oversight by OSB Legal Services Program

The filing fees collected for legal services by the OSB LSP will continue to be used to support programs providing basic civil legal assistance to low-income Oregonians. The increase in court fees was calculated to replace decreased funding by other sources to legal services in Oregon and to enhance the broad based, full range of advocacy approaches and services to clients.

A. Funding of Providers

1. **Presumptive funding:** To maintain the current statewide level of service the OSB LSP will continue to fund those legal services providers receiving filing fees at the enactment of 1997 Oregon Laws Chapter 801 Section 73 and the 2003 legislative increase in filing fee funds. These providers will receive the funds from the OSB LSP after administrative fees, up to $5.1 million dollars (2003 filing fee level adjusted for inflation increased by the 1.6 million dollar gap to meet the legal needs of the poor assessed in 2003) with an annual cost-of-living increase. The increase in the presumptive funding level meets the 1997 and 2003 legislative intent to provide additional funding for legal services to the poor at the same time continuing the approach adopted by the Interim Civil Legal Services Task Force who developed the Standards and Guidelines in 1998.

   a. **Initial Funding:** Providers will be required to complete the Initial Compliance Determination Application. Providers must complete the application and demonstrate compliance with these Standards and Guidelines within two months after this document becomes effective to qualify for funding under the OSB LSP beginning September, 1998.

   Funding will continue under presumptive funding until:
   1. Provider is found not in compliance at which point Section V.F. will be implemented; 2. Provider discontinues provision of services at which point Section V. F. 5. will be implemented; or 3. OSB LSP no longer receives funding under ORS 9.572 et seq.

   b. **Distribution of Funds:** Presumptive funding will be based on the same distribution formula that was in effect at the enactment of 1997 Oregon Laws Chapter 801 Section 73. The Providers will be encouraged to utilize provisions c. and d. of this Section to modify

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Standards and Guidelines
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grants and subcontract to meet unmet needs, to provide services to the under-served populations and to encourage a full range of services throughout Oregon.

c. **Modification of Grants:** A Provider receiving presumptive funding may request that the OSB LSP transfer funds allocated to it to another Provider receiving presumptive funding in order to maintain the existing statewide level of service or to improve the statewide availability of services. The OSB LSP will consider the request and submit its recommendation to the BOG.

d. **Subcontracting of Funds:** Providers may subcontract with others to provide specific services or to enhance services under the following conditions:

(1) The subcontract is for no more than one year;

(2) All subcontracts must be approved by the OSB when the aggregate total of the subcontracts for the year or when any one subcontract equals or exceeds $50,000 or is greater than 25% of the Provider's annualized grant;

(3) The subcontract is for services within the parameters of these Standards and Guidelines;

(4) The subcontract includes language insuring compliance with Sections III. C. 1, 3, 4 and III. F. of these Standards and Guidelines if the subcontract is with an organization, other than a current Provider, providing legal services to low-income people, or with a law firm or attorney;

(5) The Provider must include provisions to obtain the needed information on the services performed by subcontract for inclusion in its annual report; and

(6) For all subcontracts, the Provider must give the OSB LSP 30 days notice of intent to subcontract along with a copy of the proposed subcontract.

2. **Additional Funds:** If there are funds over those allocated for presumptive
funding, the OSB LSP may award those funds to current Providers or applicants who demonstrate the ability to provide services that address the unmet needs and emerging needs of low-income Oregonians and the needs of the uncounted and under-served, low-income populations. The OSB LSP will determine the process for application for those funds.

B. Performance Evaluation of Providers

The OSB LSP has the responsibility to ensure that filing fees funds are effectively being used to provide high quality legal services to low-income Oregonians. The Annual Reporting Requirements and the Accountability Process Peer Review process are designed to provide the OSB LSP with the information necessary for the oversight required by Statute and not to be unduly burdensome on Providers.

All peer review and oversight activities shall be conducted in accordance with the American Bar Association’s Standards for Monitoring and Oversight of Civil Legal Services Programs.

C. Annual Reporting Requirements

1. Annual Audit: All Providers shall annually undergo a financial audit by an independent auditor, which meets generally acceptable accounting practices. A copy of the final audit report shall be submitted to the OSB LSP.

2. Annual Report: Each Provider shall annually file with the OSB LSP a report detailing its activities in the previous year. The report will be due by the first day of October and needs to contain the following information in the requested format:

   a. The numbers and types of cases and matters in which legal services were delivered;

   b. A listing of the Provider’s staff and Governing Body;

   c. A copy of its budget;

   d. A narrative description of the Provider’s operations, including a description of its needs assessment, priority setting, and grievance

Oregon State Bar Legal Services Program

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Adopted by the Board of Governors May 29, 1998

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processes, which is sufficient to demonstrate that the Provider is in compliance with these Standards and Guidelines.

A Provider may comply with this requirement by submitting copies of reports or applications to the Legal Services Corporation, the Oregon Law Foundation or other funding agencies that provide the requested information.

D. **ACCOUNTABILITY PROCESS** Peer Review.

1. **Process:** The process will focus on the effectiveness of the providers in meeting the needs of individual clients and the larger client community, and in the development and use of resources. The goals of the review are to assure compliance with OSB LSP Standards and Guidelines; assure accountability to clients, the public and funders; and to assist with provider’s self-assessment and improvement.

   The process has three components:

   1. A periodic self-assessment report submitted by providers, including a narrative portion and a statistical/financial portion;

   2. A periodic accountability report provided by the OSB LSP to the OSB Board of Governors and other stakeholders summarizing the information from the providers’ self-assessment reports and other information including ongoing contacts with providers by OSB LSP staff and annual program financial audits; and

   3. Ongoing evaluation activities by the OSB LSP including peer reviews, desk reviews, ongoing contacts and other evaluation activities consistent with the OSB LSP Standards and Guidelines.

The OSB LSP will conduct a peer review of each Provider every three years or more frequently if determined necessary by the OSB LSP. The peer review visits will be conducted by attorneys, persons eligible, but not currently clients, and experts in law office management, who have an interest in, and knowledge of, the delivery of quality legal services to the poor. They will use these Standards and Guidelines and the additional standards contained in Appendices C, D, and F in reviewing office policies, procedures and performance. Besides consulting with office staff, they will consult with the local bar, judges, other legal services providers, social service providers and members of the client community to gain a better understanding of the working of the office and its reputation and effectiveness in providing high-quality legal services to clients.
quality legal services to clients. The review shall be a cooperative effort between the OSB LSP and the Provider, with the goal of improving operations.

2. **Report:** A written, Draft Report will be presented to the Provider within 60 days of completion of the peer review. The Draft Report will outline the strengths of the Provider, point out areas where improvements can be made, and suggest ways of enhancing services. Any comments from the Provider will be incorporated in a final report.

**E. Complaint Procedure**

1. **Complaints about Legal Services Providers:**
   
a. Each Provider under the OSB LSP is required to have a written internal grievance procedure to address complaints about the manner or quality of legal assistance provided in individual cases or about the denial of legal assistance in individual cases. Any such complaint received by the OSB LSP will be directed to the Providers' internal process except when there appears to be a pattern to the complaints or when the complaint falls into one of the categories listed below. Providers will furnish the OSB LSP with the resolutions to the referred complaints.

b. Ethics complaints and malpractice claims will be referred to the appropriate department of the Bar.

c. Complaints that Providers are acting outside the scope of the statute, ORS 9.574, not in compliance with these Standards and Guidelines, or misusing funds will be addressed by the OSB LSP’s Committee or Grievance Committee through the Director of the OSB LSP.

d. Complaints regarding the overall quality of legal assistance or the performance of the Provider will be addressed by the OSB LSP Committee or Grievance Committee through the Director of the OSB LSP.

e. The OSB LSP Committee, the Executive Director of the Bar, and the General Counsel of the Bar will be notified of the complaints against
Providers. A listing of all complaints, which will include synopses and resolutions, will be kept by the OSB LSP Program Director.

f. Each complaint will be investigated (except ethics and malpractice complaints which will be referred to the appropriate body) and responded to timely. If a Provider is found not to be in compliance with these Standards and Guidelines, the procedure under Non-Compliance by Provider (F of this section) will be implemented.

2. Complaints from Applicants to the OSB LSP

Applicants who are not granted funds by the OSB LSP may make a written presentation to the Board of Governors during the OSB LSP Committee’s funding recommendation.

F. Non-Compliance by Provider

1. Informal Negotiation: When it is found that a Provider is not in substantial compliance with these Standards and Guidelines, the OSB LSP Director (the Director) will negotiate and work with the Provider to assist it in coming into compliance. This period of negotiation will last no more than 60 days and no less than 15 days.

The Director will notify the OSB LSP Committee and the OSB Executive Director that the Provider is out of compliance prior to formal notice being given.

2. Formal 30 Day Notice: If the Provider continues to be out of substantial compliance, the Provider and the Provider’s Board Chair will be given a formal 30 day written notice that details how it is out of compliance and the steps necessary to achieve compliance. The Director will continue to assist the Provider in resolving the problem.

3. Mediation: If after 30 days from the receipt of the formal notice, the Provider still has not demonstrated compliance, the Director will immediately send a second notice to the Provider and the Provider’s Board Chair. The second notice will list three names of mediators and give the Provider 15 days from receipt of the second notice to agree to one of the mediators or suggest another mediator. If the Provider and the Director
cannot agree on a mediator within the 15 day period, the Director will petition the presiding judge for a judicial district to appoint a mediator.

In the mediation, the OSB LSP will be represented by the Director or by the Chair of the OSB LSP Committee. The Provider will be represented by its Executive Director or Board Chair. Within one week of the mediation, a written decision will be forwarded to the OSB LSP Committee, the OSB Executive Director, the OSB Board of Governors and the Provider’s Board Chair.

4. Hearing: If the mediation fails to produce a resolution in the matter, the Director shall give the Provider and Provider’s Board Chair a written notice of hearing. The hearing will be held no sooner than 30 days after Provider’s receipt of notice of hearing.

The Provider will have the opportunity to present evidence that it has come into compliance or is making satisfactory progress towards compliance. The OSB LSP Committee will make up the hearing panel. Prior to suspension of funding, a written report will be presented to the OSB Board of Governors and OSB Executive Director within 5 days after the hearing is held which outlines the facts and decision.

5. Suspension of Funding: If the report indicates that the Provider is still not in compliance and is not making satisfactory progress towards compliance based on the decision of the hearing, the Director shall suspend funding until the Provider is able to demonstrate compliance. Notice of suspension shall be served on the Provider in person or by certified mail and will be effective immediately upon service.

The OSB LSP Committee, in consultation with the OSB Executive Director and the OSB General Counsel, will determine if during the suspension all or part of the suspended funds should be used to contract with another Provider for legal services. If the Provider continues to provide legal services as defined under the funding agreement during the suspension, any unused funds accrued during the suspension will be paid to the Provider.

6. Termination of Services: If the Provider terminates its provision of legal services as defined under these Standards and Guidelines, funding will cease and all unexpended funds shall revert back to the OSB LSP. The OSB LSP Committee will meet to determine the reallocation of those funds to other Providers or to new applicants.
OREGON STATE BAR
Board of Governors Agenda

Meeting Date: November 13, 2010
Memo Date: October 29, 2010
From: Judith Baker, Ext. 323
Re: Requested Change of Funding Allocation

Action Recommended

Approve a request for the reallocation of funds that are administered and distributed by the OSB Legal Services Program and delegate authority to the Legal Services Program Manager to decide the final amount based on the recommendation from LASO and OLC.

Background

The Legal Service Program Manager received a request to change the allocation of funds that are administered and distributed by the OSP Legal Services Program (LSP). The letter outlining the reason for the request is from Legal Aid Services of Oregon and is attached. This request is coming before the BOG because the LSP Standards and Guidelines directs the LSP Committee to make recommendations to the BOG on the disbursement of funds to the providers of legal aid. The LSP Committee will meet on November 4 to review this request. It is anticipated that the LSP Committee's recommendation will be that the BOG approve the request.

Specifically LASO is asking that funds currently received by LASO be reallocated to the Oregon Law Center (OLC) based on the intent to convert the existing LASO Hillsboro Regional Office to an OLC office. In order to complete this change some of LASO’s non-LSC statewide funding will have to be re-allocated to OLC.

LASO’s is also requesting that the LSP Committee and the BOG approve the reallocation request in concept but delegate to the LSP Manager the authority to decide the final amount. This is because LASO and OLC have not yet completed the expense calculation for the transfer and will do so by mid-December but that is too late to get the BOG requisite approval.
October 26, 2010

Judith Baker
Director, Legal Services Program
Oregon State Bar Association
P.O. Box 231935
Tigard, OR 97281-1935

RE: Request for change of funding allocation

Dear Judith:

This is a request to change the allocation of funds that are administered and distributed by the OSB Legal Services Program. Specifically, we are requesting that funds currently received by Legal Aid Services of Oregon (LASO) be reallocated to the Oregon Law Center (OLC), in an exact amount to be determined as explained below.

Reason for request: As you know, LASO, OLC, and other legal services providers participated in a statewide strategic planning process in 2007, resulting in recommendations to improve the delivery of services to low-income Oregonians consistent with the OSB Legal Services Program Standards and Guidelines and other provider goals. One of the recommendations relates to the LASO Hillsboro Regional Office:

“To enable more effective provision of the full range of services in response to emerging client needs, convert the existing LASO Hillsboro Regional Office to an OLC office unless management’s analysis of implementation issues reveals insurmountable obstacles related to resources or client services.”

LASO and OLC have analyzed transition issues and determined that there are no insurmountable obstacles\(^1\). We initially postponed any action because of the possibility of certain federal regulatory changes that would have affected the decision to implement. However, once it became clear that those changes were not likely, our discussion re-opened and we confirmed that the underlying reasons for the recommendation remain valid. Both providers have agreed that the recommendation should be

\(^1\) There are certain contingencies that need to be resolved before the change can be finalized, and all of them appear to be resolvable. For example, we will need to ask other grant funders currently providing funding to the LASO Hillsboro Office to approve a subgrant or transfer of funding to OLC. In the unlikely event that a contingency cannot be resolved or waived, we will inform you.
implemented effective January 1, 2011, at the start of each organization’s fiscal year. The boards of both organizations have approved this action.

**What will change?**  All of the existing management and staff of the Hillsboro Regional Office will become OLC employees. The office location will remain the same. It will continue to serve the same 5-county region (Tillamook, Clatsop, Columbia, Yamhill, and Washington). The office is expected to function in the same way that it did within LASO, except that the office will be able to provide a greater range of services to clients without the LSC restrictions.

There is a separately funded and managed LASO Farmworker Program office sharing space with the Hillsboro Regional Office. Because the primary source of revenue for that Farmworker office is specialized LSC migrant farmworker funding, it will remain as an adjacent but legally and physically separate office of LASO. The two offices will continue to collaborate closely on client services during and after the transition.

**Funding change.**  In order to complete this change, some of LASO’s non-LSC statewide funding will have to be re-allocated to OLC. The goal of both organizations is to shift sufficient revenue from LASO to OLC to enable OLC to operate the Hillsboro Office, but neither LASO nor OLC should have to draw on resources from other offices to implement the change. However, we have not yet completed the expense calculations for the office including, for example, calculating salary placements and benefit levels for all employees under OLC policies. Once we have expense figures, we will need to decide the amounts from each permissible funding source (including filing fees) that should be shifted.

We expect to have final expense figures by mid-December at the latest, but that won’t give the LSP and OSB Board of Governors sufficient time to approve a request before the end of the year. Therefore, this request to you does not include a final amount. Instead, we would like to request that the Legal Services Program Committee and the OSB approve the reallocation in concept and delegate authority to you to decide the final amount for 2011 based on recommendations you receive from LASO and OLC before the end of this year.

I have provided an advance copy of this letter to David Thornburgh, OLC Executive Director, and he has no objections. Please contact him directly if you have any questions related to OLC in this proposed change. Please contact me if you have any questions related to LASO. Thank you for your assistance with this request.

Sincerely,

Thomas J. Matsuda
Executive Director

c:  David Thornburgh, OLC
OREGON STATE BAR
Board of Governors Agenda

Meeting Date: November 13, 2010
Memo Date: November 4, 2010
From: Steve Larson, Chair, Appellate Screening Committee
Re: Proposal to Accept Committee’s Recommendations

Action Recommended

Consider Appellate Screening Committee’s candidate recommendations to the Governor’s office.

Background

Judge Jack Landau will step down from Court of Appeals bench upon his swearing in as a Justice of the Oregon Supreme Court in January.

The following candidates have submitted application materials for the vacancy created by the Honorable Jack Landau and have interviewed with the Appellate Screening Committee. Judge Landau announced his resignation from the Court of Appeals effective January 3, 2011 creating a vacancy to be filled by the Governor.

Allan J. Arlow
John L. Barlow
Christopher C.S. Blattner
Roderick A. Boutin
Nena Cook
Benjamin C. Debney
Joel S. DeVore
Michael T. Dugan
Susan D. Isaacs

David E.A. Leith
Christopher A. McCormack
Lynn R. Nakamoto
Kathleen J. Rastetter
Scott A. Shorr
Alycia N. Sykora
Timothy R. Volpert
Steven T. Wax
Michael C. Zusman

The Appellate Screening Committee of the Board of Governors reviewed the applications and interviewed each candidate. Joe O’Leary, General Counsel for the Governor’s Office also participated in the interviews. Upon completion of its review of the candidates, the committee recommends this list of candidates for consideration by the Board of Governors. The board will then make recommendations to the Governor.
2011 BUDGET

Report to the
Board of Governors
November 12, 2010

CONTENTS

1. Purpose of this Report
2. General Overview for 2011
3. Summary of 2011 Revenue and Expense Categories
4. Program, Policy, and Operational Considerations for 2011
5. Fanno Creek Place
6. Operating and Capital Reserve and Other Contingency Funds
7. Five-Year Forecast
8. 2012 and Beyond – Filled with Unknowns
9. Recommendations of the Board of Governors

Exhibit A – 2011 Budget Summary by Program
Exhibit B – Five-Year Forecast

1 PURPOSE OF THIS REPORT

This report of the 2011 Oregon State Bar budget to the Board of Governors was developed from the line item budgets prepared by the bar program and department managers, and is a summarized version of each department and program. Those detail budgets are not included with this report, but are available by request, and will be available at the meeting.

The Budget & Finance Committee reviewed the first draft of this report at its September 24 meeting and will review this revised report prior to the BOG meeting. After the September meeting, all budget preparers were asked to review their respective budgets for more current or revised information. This report includes the changes from that review.

The 2011 budget is presented to the board for its review and subsequent approval.
2

General Overview for 2011

Operations

Even though it will be the sixth year of a dues cycle with no membership fee increase, 2011 should be a successful financial year.

The projected Net Revenue with this report is $316,085

This net revenue is unusually high until all the unusual circumstances are understood:

- The grant from the PLF for BarBooks
- The reallocation of reserve funds for BarBooks
- A significant reduction in print and mailing costs with the move to more electronic distribution of information instead of paper
- Eliminating the Leadership College
- Changes in staffing

This net revenue number can be found in the far right column of the TOTAL OPERATIONS line on Exhibit A and line 45 of Exhibit B.

The chart on the next page shows the little difference in the overall general operations budget in the last five years. The revenue and expense numbers do not include the revenue or the direct program costs of Legal Publications because of the change to the delivery of the product in 2011. Over the past 5-year period, revenue changes only $495,000 and expenses $467,000 from the highest year to the lowest year.

- Revenue increases 5.1% – or only 1% a year – from 2007.
- Expenses increase only 4.6 % over five years and only 1.2% over four years

The latter number is clearly a trade off in program activities and reflective how technology is keeping many expenses of the bar in check.
The Net Expense for Fanno Creek Place is $782,640 and the negative cash flow is $301,498 (see the bottom of page 2, Exhibit B). The net expense is higher than projected a few months ago because of the likely change in tenants on the first floor at the bar center. However, the negative cash flow is lower assuming the transition in tenants occurs and the bar is cashed out of the existing lease.

3 SUMMARY OF 2011 REVENUE AND EXPENSE CATEGORIES

Member Fee Revenue

Member Fee revenue is projected to increase by 2.4% in 2011. That is slightly above the average growth in the past few years and is attributable to new membership through enhanced reciprocity.

No member fee increase is included in 2011 – the sixth consecutive year the active member fee has remained at $447.00 at $447.00 (excluding the Affirmative Action and Client Security Fund assessments). Since 1935 there have been only two periods of seven years each – 1943 to 1949 and 1963 to 1969 – where the active membership fee did not change over a longer period of time than the projected six-year stretch.
Unless the bar maintains an above-normal net revenue for 2010 and 2011, a $50.00 active member fee (and possibly an inactive member fee) increase is necessary in 2012 if the bar is to continue its present level of programs and services.

- **Program Fee Revenue**
  Excluding Legal Publications, all other Program Fee revenue reports modest growth – 1.7% over 2010.

- **Other Income**
  The investment income of $112,800 will remain historically low primarily due to low interest rates, which on the short-term dollars is expected to remain below 1% in 2011. The earnings on the reserve portfolios also are conservative based on the projected earnings from the investment managers.

- **Salaries, Taxes & Benefits**
  The 2011 salary pool is 3%, the same as the 2010 pool. However, the overall increase in all program and department salaries is only $28,000 due in part to the elimination of one manager position with the combination of the Communications and Member Services Departments and other internal position and personnel adjustments.

  The Taxes & Benefits rate as a percent of the salaries budget increases from 29.2% to 34.9%. The 2011 rate is higher than included in the last budget report and is due to the employer’s PERS current contribution rate almost doubling on July 1, 2011.

- **Direct Program Expenses**
  All Direct Program and General & Administrative expenses decline $388,567 from the 2010 budget. This is an amazingly high number and almost half of that - $168,607 – comes from the cut back in print Legal Publications. Almost every department had its Direct Program and General & Administrative costs decline from 2010.

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**4 PROGRAM, POLICY, AND OPERATIONAL CONSIDERATIONS FOR 2011**

The items in this section are changes or continuation in the 2011 budget for which the committee should approve or not approve.

- **Carryover Activities from Prior Budgets**
  These items have been in the budget in recent years, some for several years.

  1. **Grant to Campaign for Equal Justice - $45,000**
The first commitment of $50,000 was made in 2001. For 2007 through 2010 the grant was $45,000.

2. **Grant to Classroom Law Project - $20,000**
   The first commitment of $20,000 was made in 1999, and has been that amount every year except 2006 when the grant was reduced to $10,000.

3. **Council on Court Procedures - $4,000**
   The bar has committed $4,000 per year since 1994.

4. **Fastcase Online Legal Research Library - $105,683**
   The bar’s contract with Fastcase starts its third subscription year in September, 2011. The annual subscription increases 5% a year, but still is less than the amount the bar paid for Casemaker.

5. **PERS Contingency**
   The PERS Contingency has been funded with various sums depending on the expected change in the employer’s rate. An increase will begin mid 2011, so the contingency has been funded the past few years and by July 1, 2011 will be $455,000 when the contingency will be used to offset the higher cost for PERS.
   The “Funds Available/Reserve Requirement” reflects setting aside $192,000 in 2010 and half that amount in 2011.

6. **New Programs/Activities**
   **BarBooks Available to All Active Members – New Funding Sources**
   The grant of $300,000 from PLF and $400,000 reallocation of reserve funds are included in the Legal Publications revenue.
   Also included is $179,137 of sales of print books. Correspondingly, the costs related to print and distribute the books declines $171,000. The sales numbers are about half what was included in the last report to the Budget & Finance Committee. The lower amounts are due to a reassessment of how many print books would sell in 2011, and a lower number was reconsidered as more realistic with the change to the online version.
   This revenue number still is at best an “educated guess” and the online impact is unknown. The Committee has stated it will be monitor the activity throughout 2011 for the impact on future budgets.
   The $400,000 in reserve dollars technically is not “revenue,” rather a sale of assets. Although this amount is included as revenue for budgeting purposes, the financial statements will adjust for this amount to conform to accounting principles and audit report standards.
7. **Mandatory Mentoring Program – Expense of $18,000**

Eighteen thousand dollars of new costs are included in the 2011 budget for the Mandatory Mentoring Program. However, the costs to support that program are much greater as it is anticipated a .5 FTE will be allocated to the administration of this program. That FTE is an allocation of duties from existing personnel in the to-be-combined Communications and Member Services Department.

An atypical cost of this program is the potential lost CLE revenue to the bar for those mentors who receive MCLE credits for their role as mentors. A projected lost CLE revenue for 500 mentors who would typically attend a bar sponsored CLE is $44,000 annually.

A previous Budget & Finance Committee decision (June 17, 2010 meeting) was to charge the mentees a fee for service from this program.

The task force’s recommendation is to charge a $100.00 fee to each mentee which would be payable at the completion of the two-year mentorship. This would raise approximately $50,000 in the second year of the program (2012), so no new revenue is included in the 2011 budget.

**ACTION REQUIRED:** Establish the registration fee for the mentee and decide when the fee is payable.

8. **Diversity Convocation – Placeholder amount of $10,000**

The Convocation Committee has presented a budget with $49,700 in revenue and $45,494 in expenses creating a net revenue of $4,206. The revenue is based on a $75 registration fee for 155 attendees and receiving $23,675 in law firm and other sponsors (the bar has received $5,000 so far). The one-day event with two meals and a reception is scheduled for November 4, 2011 at the Oregon Convention Center. The bar’s CLE Seminars, Design Center, and other staff already have provided budgetary, administrative, and other assistance to the committee.

Based on the budget so far, no out-of-pocket funding is required of the bar unless the bar intends to be a sponsor, although the bar may need to provide deposits to some vendors.

**ACTION REQUIRED:** Determine an amount to support the Diversity Convocation.

9. **Senior Lawyer Task Force – Placeholder amount of $10,000**

The charges and policies of this task force are not complete, and the amount of $10,000 is simply an indication of financial support to the task force’s recommendations.

10. **Remote Communications Task Force – Placeholder amount of $10,000**

The charges and policies of this task force are not complete, and the amount of $10,000 is simply an indication of financial support to the task force’s recommendations.
11. **NEW MATTER: Increase the Cost for OSB Delegates to the ABA Conventions – Amount TBD**

The budget includes a reimbursement of $1,500 to each of the four delegates to the ABA’s mid-year and annual conventions. The reimbursement amount has been $1,500 for many years, and a delegate has inquired about an increase, as if the delegate attends both conventions, the delegate is reimbursed only $750 per event – an amount which may cover only half the delegate expense.

**ACTION REQUIRED:** The reimbursed cost for the four ABA delegates remains at $6,000 (capped at $1,500 per delegate per year) or is increased to an amount to be determined by the board.

**Changes in Programs/Activities from 2010 Budget**

12. **Ethics School – Net Expense of $27,000**

The implementation of this service has not been formalized yet. The 2010 budget included part-time personnel and administrative costs in Disciplinary Counsel. The program still will be administered by the bar, but will be performed by existing personnel and the other costs have been integrated into the Disciplinary Counsel 2011 budget.

13. **Terminate the Leadership College – decrease expenses $41,40 and reallocate personnel**

The college is terminated after four years. This decision was made in a prior meeting.

14. **Change in Membership Directory – Decreases expenses by $47,090**

Eliminating the printed white pages of members’ names and addresses is projected to save $47,090 in printing and postage costs. However, the impact on advertising in the new Resource Directory and the web is unknown. Advertising revenue in the 2011 budget was dropped by $13,300, as there had been a slight decline in 2010. Also an unknown are the sales of the Resource Directory and if there will be a market for members wanting to purchase the printed white pages from the bar. Sales for these directories are projected to decline $12,850 over the 2010 budget.

15. **Email the Membership Fee Statement – decrease expenses $16,800**

The reduction of postage, printing, and mailhouse services costs is substantial. The budget includes 1 to 2 printed post card reminders for members who may not be aware of the new practice, as well as the normal email reminders.

16. **Reduce Indirect Costs- $99,000**

All non-personnel indirect costs decrease $99,000 - and almost all of the decrease is due to technology-related practices.
The 2011 budget for Fanno Creek Place is a $782,640 Net Expense. Budget highlights are:

- The bar receives a full year’s rental income from the PLF and Opus Northwest (assuming Opus continues with the terms under the Master Lease).
- Assuming the bar is able to reach agreement with a replacement tenant for the 20/20 space and the bar is cashed out by 20/20, the bar will be whole with its rental income projections for the next three years, and will have a lease extending two more years after the 20/20 lease was to expire.
- The Opus Northwest lease and the facilities management agreement with NorthMarq expires January 2013.
- Operating costs are projected to be 4% more than 2010. However, these operating costs have not been coordinated with NorthMarq yet, and typically these expenses have been below budget.
- The annual debt service (principal and interest) for the fourth year of the mortgage is $891,535 ($744,850 interest and $189,458 principal).
- Depreciation is a large non-cash expense of $520,600.
- The net cash flow is a negative $301,498 (if the bar receives the 20/20 buyout), which is in line with the forecasts leading to the development of the building.
- In spring 2010, bar staff began a more proactive marketing of the conference center and meeting rooms to unrelated parties, and the projected revenue in 2011 is a modest $15,000.

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 reduced the amount needed in this fund initially. The estimated reserve in 2011, and the next few years, is $500,000, which is $250,000 each for major building and furniture replacement costs or improvements and technology related capital purchases and upgrades.
**Other Reserves, Fund Balances, and Contingencies**

All other reserves, fund balances, and contingencies – fund balances for Affirmative Action, CSF, Legal Services, LRAP, and sections and the legal fees, landlord, and PERS contingencies – remain fully funded. A chart of the reserve balances versus the funds available will be shared at the committee meeting.

A notable change in these funds or reserves is an increase in the Claims Paid budget in the **Client Security Fund** from its customary $150,000 to $225,000 for 2011. The increase is based on the larger amount of claims paid in 2010 and the outlook for forthcoming claims. The assessment was increased by $10.00 to $15.00 for 2010.

**Five Year Forecast**

Exhibit B is the summarized 2011 budget and the five-year forecast for operations, Fanno Creek Place, and reserves. Looking at the bottom line in each category . . .

a. The **Operation Budget** has a net revenue throughout the five year-period – assuming there is a member fee increase in 2012. (page 1)

b. **Fanno Creek Place** operates as expected with some six month vacancies in 2014 and 2015 (page 2)

c. The **Reserves** return to above the established levels in 2011 and remain so during the next five-year cycle (page 3).

The **Funds Available** schedule (page 3, Exhibit B) is prepared to convert from accrual accounting to a cash basis so actual cash and investments available can be compared with the reserve requirements.

A key to returning to a positive reserve balance is for the investment portfolio to show steady growth. The schedule projects the growth to average a modest 3.5% to 4% a year.

**2012 and Beyond – Filled with Unknowns**

The five-year forecast is developed on what we know now based on current operations. However, the next few years are filled with numerous financial uncertainties, some of which the bar can control, some it cannot. Here are some of the questions and financial issues the bar will struggle with in the next few years.

→ **Will the members approve a $50.00 (or another amount) active member fee increase in 2012 or 2013?**

→ **Can the budget offset the diminishing revenue from print book sales?**
Will the members have a positive reaction to the bar’s electronic distribution of information with the membership directory, BarBooks, and the fee statement – all of which are a cost savings to the bar’s operating budget?

The forecast projects revenue from percentage fee for referrals from the bar’s Lawyer Referral program. Will the board approve this new source of revenue? If so, will it generate revenue to help balance the budget and reduce the member fee funding for lawyer referral services?

Should the bar raise the inactive member fee by $40 or another amount in 2012? The forecast includes revenue of $156,000 for this increase in 2012.

The employer rate for PERS for the two-year beginning mid 2011 is known, but what happens to the rate in mid 2013?

Revenue in CLE Seminars has slowly declined with the impact of more competition and education through online resources. Will that continue, or can the bar generate more revenue through its seminars programming?

Have enough resources been allocated for the mandatory mentoring program?

There were several reductions in operating costs due to technology for 2011. Can those reductions continue or be found in other sources?

Will the uncertainty about the existing tenant be resolved and can the bar engage new tenants for the vacant space once the master lease with Opus expires in January 2013?

Will interest rates remain low creating continuing low returns on the bar’s short-term invested funds?

The bar has some of its reserves in the stock market. Growth in the market means growth for the bar’s reserves and possible allocation to operations, but the market is volatile and offers only uncertainty.

Will there be an impact with $400,000 in fewer reserve dollars beginning in 2011?

Recommendations of the Board of Governors

1. Action on the items specifically noted in the report.
2. Approve or amend the 2011 budget report.
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<td>$150,360</td>
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**TOTAL PROGRAMS**

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<th>Direct Program</th>
<th>Gen &amp; Admin</th>
<th>Total Expense</th>
<th>Indirect Costs</th>
<th>Net Revenue</th>
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<td>$4,382,997</td>
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<td>$8,612,341</td>
<td>$2,080,771</td>
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**ALLOCATIONS:**

| Finance & Operations         | $6,651,200 | $1,232,633 | $1,135,730 | $86,269      | $2,454,632 | ($1,980,982) | $6,177,550 |
| Less: Dept Charges/Offsets   | ($473,650) | ($473,650) |            |              |              | ($40,000)   | $433,650   |
| Oregon State Bar Center      | $0         | $0         | $36,060    | $3,940       | $40,000     | ($40,000)   | $0         |
| Contingency                  | $25,000    |            |            |              | $25,000     | ($25,000)   |            |

**TOTAL OPERATIONS**

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<th>Direct Program</th>
<th>Gen &amp; Admin</th>
<th>Total Expense</th>
<th>Indirect Costs</th>
<th>Net Revenue</th>
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<td>Fanno Creek Place</td>
<td>$837,281</td>
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<td>$1,651,350</td>
<td>$20,800</td>
<td>$1,778,350</td>
<td>($158,429)</td>
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**TOTAL GENERAL FUND**

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<th>Gen &amp; Admin</th>
<th>Total Expense</th>
<th>Indirect Costs</th>
<th>Net Revenue</th>
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<tr>
<td>$11,871,478</td>
<td>$7,429,607</td>
<td>$4,553,262</td>
<td>$453,804</td>
<td>$12,436,672</td>
<td>($98,640)</td>
<td>($466,555)</td>
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**DESIGNATED FUNDS:**

| Affirmative Action Program   | $496,211 | $214,800 | $194,140    | $19,069      | $428,009      | $60,544      | $7,658     |
| Client Security Fund         | $228,600 | $32,200  | $226,900    | $1,572       | $260,672      | $12,946      | ($45,018)  |
| Legal Services               | $6,032,500 | $81,400 | $5,944,500  | $5,483       | $6,031,383    | $25,150      | ($24,033)  |

**TOTAL ALL FUNDS**

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<th>Revenues</th>
<th>Sal &amp; Benefits</th>
<th>Direct Program</th>
<th>Gen &amp; Admin</th>
<th>Total Expense</th>
<th>Indirect Costs</th>
<th>Net Revenue</th>
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<td>$18,628,789</td>
<td>$7,758,007</td>
<td>$10,918,802</td>
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<td>$19,156,736</td>
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## 2011 Budget

### Oregon State Bar

#### Five-Year Forecast

## Operations

### November 10

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<th>$50</th>
<th>$0</th>
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<td>BUDGET</td>
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<td>% of Total Revenue</td>
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<td>CLE Seminars</td>
<td>1,372,895</td>
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## Expenditures

### November 10

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<tr>
<th>Salaries &amp; Benefits</th>
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## Exhibit B

Page 1 of 3
# 2011 Budget

## Five-Year Forecast

### Fanno Creek Place

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<td>First Floor Tenant</td>
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<td>(50,000)</td>
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<td><strong>Net Cash Flow - Fanno Creek Place</strong></td>
<td>(380,360)</td>
<td><strong>2012</strong></td>
<td>(419,043)</td>
<td>(453,657)</td>
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<td><strong>Net Revenue/(Expense) - Operations</strong></td>
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<td>405,583</td>
<td>317,149</td>
<td></td>
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<td><strong>Net Cash Flow - Fanno Creek Place</strong></td>
<td>(380,360)</td>
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<td>224,446</td>
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<td><strong>Allocation of PERS Reserve</strong></td>
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<tr>
<td><strong>Change in Investment Portfolio MV</strong></td>
<td>33,800</td>
<td><strong>2013</strong></td>
<td>282,200</td>
<td>287,800</td>
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<td><strong>Allocation of PERS Reserve</strong></td>
<td>96,000</td>
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<td>290,700</td>
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<td><strong>Allocation of PERS Reserve</strong></td>
<td>96,000</td>
<td><strong>2016</strong></td>
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**Reconciliation Cash to Accrual**

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<th>2011</th>
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<td>317,149</td>
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<tr>
<td><strong>Net Revenue/(Expense) - FC Place</strong></td>
<td>(700,393)</td>
<td><strong>2014</strong></td>
<td>(738,520)</td>
<td>(760,750)</td>
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<td><strong>2016</strong></td>
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<td>($428,472)</td>
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**November 2010**

**Exhibit B**
OREGON STATE BAR
Board of Governors Agenda

Meeting Date: November 12, 2010
Memo Date: October 28, 2010
From: Frank Garcia, Jr., Diversity Administrator
Re: 2011 Convocation On Equality

Action Recommended

Approve the proposal for financial and in-kind support put forth by the 2011 Convocation On Equality Steering Committee. (See Attached).

Background

The 2011 Convocation On Equality will take place on Nov. 4, 2011 to commemorate and celebrate the 10 year anniversary of the Convocation On Equality held in 2001. The original program is largely regarded as a milestone event in the history of diversity and access to justice within the Oregon State Bar, as the program led to the creation of the Oregon State Bar Diversity Section and solidified support for the Oregon State Bar’s Affirmative Action Program. The program’s general aims for next year are to celebrate and recognize progress made in advancing diversity and inclusion at the bar and to provide substantive educational and enrichment opportunities to its attendees. The program is scheduled to run a full day and will include a general plenary, keynote, breakout sessions, Access to Justice CLE’s, recognition ceremony, resource fair and reception/mixer.

This program was conceived by the OSB Diversity Section Executive Committee in 2009 and the planning has been led by three of their members; Emily Edling, Akira Heshiki and Diane Schwartz-Sykes. They have assembled a Steering Committee to guide the planning process and those members are; Gerry Gaydos, Hon. Janice Wilson, Hon. Angel Lopez, Hon. David Schuman, Hon. Adrienne Nelson, Hon. Richard Baldwin, David Bartz and Linda Meng.

The planning continues to make steady strides and the committee has had multiple conversations with the various departments of the Oregon State Bar that will assist with the in-kind contribution. Many details still need to be clarified, but that is normal for programs of this size and this far out on the calendar. All bar departments and staff identified within the proposal have indicated the willingness and ability to assist in developing a successful program. Additionally, Karen Lee and the CLE Department have agreed to provide the on-site registration for the program.
Decision from: Oregon State Bar Board of Governors

Contact for more information or to accept proposal: OSB Diversity Section Convocation on Equality Subcommittee members Akira Heshiki, Emilie Edling, and Diane Sykes at ConvocationOnEquality@gmail.com.

Date: May 12, 2010

Background to the project: The Convocation on Equality (COE) is a ten-year reunion event for the Convocation on Equality that was held in 2001, which triggered the interest of many individuals and law firms to advance diversity within the Oregon State Bar, led to the creation of the OSB Diversity Section, and strengthened the support for one of the Oregon State Bar’s affirmative action strategies, including Opportunities for Law in Oregon (OLIO). The 2001 Convocation on Equality was an event sponsored by the Oregon State Bar, the Multnomah Bar Association, and Oregon Women Lawyers.

General aims: The 2011 COE is scheduled to be held on November 4, 2011. The Convocation will celebrate diverse attorneys, as well as the Oregon legal profession’s diversity-achievements, while also providing concrete and substantive educational and enrichment opportunities to its attendees. The educational programming will have three tracks geared toward (1) diverse attorneys, (2) allied attorneys looking to assist in diversity work and/or gain more cultural competency, and (3) legal employers or firm leaders addressing diversity goals in their workplace. We intend to offer quality CLEs which will empower the individual and will qualify for Access to Justice Credits; workshops on diversity topics; a keynote address; a ceremony to recognize members of the legal community who have been involved in diversity efforts; a networking/mentoring event for diverse students and attorneys; and tabling by legal and community organizations that support diversity work. Additionally, the Convocation will publish a comprehensive manual on best diversity practices, which will guide some or all of the training that takes place during the legal employer/firm leader track.

Expected Outcomes: We’ve identified several goals for the 2011 COE, and are forming committees to work on aspects of the COE that address those goals, which include: (1) Celebrating diversity achievements and the diverse attorney, and recognize attorneys who have done great works in the diverse community; (2) Providing an opportunity for diverse associates to connect with a number of attorneys that are willing and interested in mentoring; (3) Providing attendees an all-encompassing “no excuses” book regarding (diversity-related) best practices; (4) Increasing awareness of the OSB’s diversity programming (Diversity
Section, AAP, OLIO) and of diversity-related organizations and opportunities generally; (5) Providing instruction and diversity training that is insightful and responsive to the needs of legal employers, and the diverse and allied community; (6) Empowering and inspiring individuals to participate in diversity work.

Specific Request for Assistance: The Oregon State Bar has a successful infrastructure and experienced staff that places the BOG in a unique and important position to assist with the COE. As we currently are operating without a set budget and on volunteer support, we would greatly appreciate BOG assistance in getting those planning the COE and working on fundraising on their feet by providing all of the following:

1) Assistance of the Bar’s financial staff and other staff members in finalizing a budget

2) Administrative assistance in creating an account for Convocation funds, keeping track of funds, and budgeting expenses

3) Creative assistance in designing a logo for the Convocation

4) Creative and administrative assistance in building and maintaining a simple website for the Convocation

5) Creative and production assistance in creating a video for showing at the Convocation

6) Staffing the Convocation’s “Local Arrangements Committee,” the committee that helps with the day-of-activities of the Convocation concerning securing the location for the event, organizing the space, and coordinating registration and check-in

7) Providing advertising for the Convocation, through the bar’s websites, emails, publicity in the Bar Bulletin and mailings

8) Providing publications/print services for the Convocation. We anticipate that at least two publications will be generated prior to the event. A directory of organizations as well as a handbook to be distributed on CD will be created

9) Finally, and most importantly, in addition to the in-kind support outlined above, a financial contribution for underwriting the general programming would greatly assist in assuring that the programming for the event is meaningful, responsive, effective and empowering for those who attend. We are hoping that the Bar will budget at least $10,000 toward this event.

In addition, BOG members are invited to participate in the COE planning by joining COE committees. Please let your members know of our work and invite them to contact us to be involved.

Benefits of involvement with this project: The creation and hosting of the 2011 COE will be a combined effort of the Bar, the OSB Diversity Section, specialty bars, law firms, and diverse and allied attorneys in order to (1) gain input from our entire diverse legal community during the planning for the COE programming, (2) provide meaningful programming for all Oregon attorneys, and (3) strengthen the
understanding that there is a large, powerful, and diverse community supporting diversity-related works in the legal profession in Oregon. By assisting in this endeavour the BOG, the Bar and Bar staff will maintain high visibility as a diversity ally while fulfilling the Oregon State Bar's own mission of serving and valuing its diverse community, advancing equality in the justice system, and removing barriers to that system.

**Who is involved:** This OSB Diversity Section Executive Committee ("DSEC") initiative was conceived in 2009 and began with a September '09 planning meeting of diverse and allied attorneys and OSB Affirmative Action Program leaders. That meeting identified numerous needs and goals for the COE, which have guided the planning process. The DSEC then selected a Steering Committee to guide and assist with the planning process. The Steering Committee consists of Past OSB President, Gerry Gaydos, Hon. Janice Wilson, Hon. Angel Lopez, Hon. David Schuman, Hon. Adrienne Nelson, David Bartz, Linda Meng, and Hon. Richard Baldwin. These individuals work with the DSEC's COE Subcommittee leaders, Akira Heshiki, Emilie Edling, and Diane Schwarz Sykes. A lengthy list of other COE planning participants and supporters, as well as updates on planning progress, will soon be available on the blog for the Convocation on Equality at http://www.convocationonequality.blogspot.com/, and the list is still growing.
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<td>Hot Water</td>
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<td>$300</td>
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<tr>
<td><strong>20% Service Charge</strong></td>
<td></td>
<td></td>
<td>$292</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td></td>
<td>$1,754</td>
</tr>
<tr>
<td><strong>Discovery Media A/V Costs</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Full-Day Video Taping</td>
<td></td>
<td>$595</td>
<td></td>
</tr>
<tr>
<td>Breakout Video Taping</td>
<td>6</td>
<td>$95</td>
<td>$570</td>
</tr>
<tr>
<td>DVD Mastering</td>
<td>8</td>
<td>$50</td>
<td>$400</td>
</tr>
<tr>
<td>DVD Copies</td>
<td>1</td>
<td>$80</td>
<td>$80</td>
</tr>
<tr>
<td><strong>Total Discovery A/V</strong></td>
<td></td>
<td></td>
<td>$1,645</td>
</tr>
<tr>
<td><strong>Total Audio visual</strong></td>
<td></td>
<td></td>
<td>$2,785</td>
</tr>
<tr>
<td><strong>OCC A/V Rental Costs</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lectern/mic combo</td>
<td>3</td>
<td>$40</td>
<td>$120</td>
</tr>
<tr>
<td>Tabletop microphones and stands</td>
<td>3</td>
<td>$35</td>
<td>$105</td>
</tr>
<tr>
<td>Wireless lapel microphones</td>
<td>1</td>
<td>$150</td>
<td>$150</td>
</tr>
<tr>
<td>6 Channel Mixer</td>
<td>3</td>
<td>$50</td>
<td>$150</td>
</tr>
<tr>
<td><strong>LCD Support Package</strong></td>
<td>3</td>
<td>$205</td>
<td>$615</td>
</tr>
<tr>
<td>-------------------------</td>
<td>---</td>
<td>------</td>
<td>------</td>
</tr>
<tr>
<td><strong>Total OCC A/V</strong></td>
<td></td>
<td></td>
<td><strong>$1,140</strong></td>
</tr>
<tr>
<td><strong>Plated Dinner</strong></td>
<td>290</td>
<td>$31</td>
<td><strong>$8,990</strong></td>
</tr>
<tr>
<td><strong>20% Service Charge</strong></td>
<td></td>
<td></td>
<td><strong>$1,798</strong></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td></td>
<td><strong>$10,788</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Light Reception - OCC</strong></th>
<th>Qty</th>
<th>Cost per unit</th>
<th>Total Price</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Serves 200 people - 1200 pieces</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Imported &amp; Domestic Cheese Platter</td>
<td>50</td>
<td>$320</td>
<td><strong>$320</strong></td>
</tr>
<tr>
<td>Seasonal Crudite</td>
<td>50</td>
<td>$225</td>
<td><strong>$225</strong></td>
</tr>
<tr>
<td>Antipasto Platter</td>
<td>50</td>
<td>$325</td>
<td><strong>$325</strong></td>
</tr>
<tr>
<td>Chilled Prawns w/ Citrus Vodka Cocktail Sauce</td>
<td>15 Dz</td>
<td>$48</td>
<td><strong>$720</strong></td>
</tr>
<tr>
<td>Roasted Tomato &amp; Basil Bruschetta</td>
<td>9 Dz</td>
<td>$28</td>
<td><strong>$252</strong></td>
</tr>
<tr>
<td>Phyllo Cup with Chicken Curry</td>
<td>9 Dz</td>
<td>$28</td>
<td><strong>$252</strong></td>
</tr>
<tr>
<td>Gravlax with Red Onion &amp; Sour Cream</td>
<td>9 Dz</td>
<td>$32</td>
<td><strong>$288</strong></td>
</tr>
<tr>
<td>Vegetable Mousse on Comcake</td>
<td>9 Dz</td>
<td>$36</td>
<td><strong>$324</strong></td>
</tr>
<tr>
<td>Vegetarian Spring Rolls w/ Sweet Chili Sauce</td>
<td>9 Dz</td>
<td>$24</td>
<td><strong>$216</strong></td>
</tr>
<tr>
<td>Beef Tenderloin Crostini</td>
<td>9 Dz</td>
<td>$39</td>
<td><strong>$351</strong></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td></td>
<td><strong>$3,525</strong></td>
</tr>
<tr>
<td><strong>20% gratuity</strong></td>
<td></td>
<td></td>
<td><strong>$705</strong></td>
</tr>
<tr>
<td><strong>cost of 1 drink</strong></td>
<td></td>
<td></td>
<td><strong>$4,230</strong></td>
</tr>
</tbody>
</table>

| Cash Bar Set-Up & Bartender Fees | **$100** | **Hosted Bar** | $8 | **$2,320** |
| **20% gratuity** | **$20** | **20% gratuity** | **$464** |
| **Total Bar Cost** | **$120** | | **$2,784** |

| **Total Reception** | | | **$4,350** |

<table>
<thead>
<tr>
<th><strong>Discovery Media Convocation Video Production Costs</strong></th>
<th>Qty</th>
<th>Rate</th>
<th>Subtotal</th>
</tr>
</thead>
<tbody>
<tr>
<td>Videotaping at one designated location</td>
<td>3</td>
<td>$95</td>
<td><strong>285</strong></td>
</tr>
<tr>
<td>Editing for production</td>
<td>3</td>
<td>$95</td>
<td><strong>285</strong></td>
</tr>
<tr>
<td>DVD master</td>
<td>1</td>
<td>$50</td>
<td><strong>50</strong></td>
</tr>
<tr>
<td><strong>Total Convocation Video</strong></td>
<td></td>
<td></td>
<td><strong>$620.00</strong></td>
</tr>
</tbody>
</table>

* will use high conservative estimate of $3K
<table>
<thead>
<tr>
<th>OCC Room Rentals 2 ballrooms, 3 concurrent breakout sessions</th>
<th>$1,250</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Consultant fees</strong> - we may use consultants to facilitate some of the sessions, we have 3 sessions running concurrently for an anticipated 5 hours of CLE/programming sessions. This figure is very conservative and estimates the use of a paid consultant at $250/hr providing 15 hours of training/facilitation during the day of the event and 1 hour of preparation for every hour of facilitation. 30 hours x $250</td>
<td>$7,500</td>
</tr>
<tr>
<td><strong>Key note speakers</strong> - This sum assumes the cost of up to two speakers. It is the intent of the key note to endeavor to try and find someone relevant who will not be so expensive.</td>
<td></td>
</tr>
<tr>
<td>speaking fee $ 2500</td>
<td>$5,000</td>
</tr>
<tr>
<td>airline (or milage) $1500 RT</td>
<td>$3,000</td>
</tr>
<tr>
<td>hotel $300 x 1 evening + incl fees tax/fees</td>
<td>$600</td>
</tr>
<tr>
<td>Gift basket $200</td>
<td>$400</td>
</tr>
<tr>
<td><strong>Awards</strong> - one goal of the Convocation is to recognize individual diverse attorneys who through their small but persistent efforts may have contributed to the successes of the bar.</td>
<td></td>
</tr>
<tr>
<td>150 (recipients) x $20 (certificate/plaque)</td>
<td>$3,000</td>
</tr>
</tbody>
</table>
## COE Sample Program Outline

<table>
<thead>
<tr>
<th>WELCOME</th>
<th>Speaker/Video/Set the Tone</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>COMMUNITY BUILDING EXERCISE</strong></td>
<td></td>
</tr>
<tr>
<td><strong>BREAKOUT: PROGRAM TRACK</strong></td>
<td>(Programs allow cross-over between the tracks, except for mentoring event which is limited to diverse attorneys)</td>
</tr>
<tr>
<td><strong>TRACK 1: LEGAL EMPLOYERS</strong></td>
<td><strong>TRACK 2: ALLIED ATTORNEYS AND LAW STUDENTS</strong></td>
</tr>
</tbody>
</table>
| Programming Could Include:  
  - Workshops on Manual  
  - Instruction  
  - Mutual Mentoring  
  - Reverse Mentoring  
  - Diversity Training | “Diversity 201 Program” Could Include:  
  - Panel of diverse attorneys  
  - Round Table  
  - Introductions/101 Discussions with Diverse Attorneys  
  - Diversity Training | Build Community within the Diverse Community:  
  - Exercise and/or  
  - Networking and/or  
  - Panel of diverse attorneys  
  - Video?  
  
  Activity to Recognize Achievement/Contributions:  
  - Achievement Walk  
  - Who’s Who in Diversity Program w/Directory |
| **NETWORKING LUNCH** | |
| **BREAKOUT: CONTINUATION OF PROGRAM TRACK** | |
| Programming Could Include:  
  - Workshops  
  - Instruction  
  - Mutual Mentoring  
  - Reverse Mentoring  
  - Educate about and Recruit involvement  
  - Diversity Advocacy Training | Diversity Advocacy Training  
  - Interrupting Bias Training  
  - Educating others on the business case for diversity  
  - Educate about and Recruit involvement in specific programs | Diverse Attorney/Student Caucus  
  - Advise diverse community of existing diversity resources (DSEC, the Bar, OLIO, etc)  
  - Breakout groups identify community needs and plan an initiative  
  - Initiatives are presented to diverse community and members sign up to lead or support various initiatives proposed  
  
  Speed Networking Activity  
  Senior diverse attorneys sit at small tables and diverse associates/law students rotate and connect for several minutes, then rotate again; organizers facilitate further contact between mutually interested persons |
| **RECEPTION** | Networking/Possible Awards Ceremony/Celebrate COE 2011 Achievements |

*Tabling from various organizations will be held from the time of Registration to the start of the Dinner Event.*
Action Recommended

Consider another draft of a Bar Rule of Procedure (BR) implementing an ethics school for disciplined attorneys.

Background

In August 2010, the Board of Governors approved a new rule of procedure (BR 6.4) for submission to the Supreme Court that would authorize an ethics school for attorneys disciplined in Oregon. The court considered the proposed rule at a public meeting on September 9, 2010. All justices except Chief Justice De Muniz were present and they posed a number of questions to me. At the end of the discussion, I was left with the impression that the justices were in favor of the ethics school, but wanted a few revisions to the proposed BR. Staff has revised the rule consistent with the justices’ comments and the revised rule (attached) now is back before the board for consideration.

Discussion

As originally written, proposed BR 6.4(a) establishes the ethics school requirement for reprimanded and suspended attorneys. Subsections (b) and (c) establish deadlines by which the attorneys must complete ethics school to avoid further suspension by the court. The changes to the rule suggested by the justices include:

- revisions to subsections (b) and (c) that permit the court to suspend an attorney who does not complete ethics school timely, but don’t require the court to do so. (An attorney “may be suspended,” rather than an attorney “shall be suspended.”)
- a new subsection (BR 6.4(d) in the attached redraft) that allows for an extension of time for an attorney to complete ethics school beyond the regular deadline, if the attorney can show good cause.

The justices talked about other aspects of the ethics school rule, but I did not get the impression that the bar was being asked to make further changes to the rule in response. Among these topics were: whether the rule should give the bar discretion to decide when to impose an ethics school requirement on an attorney, as opposed to requiring it for all
disciplined lawyers; a concern over the attendance fee for ethics school (provided for in subsection (a)) and that it be kept to a minimum; recognition that the requirement in (a) that attorneys must attend ethics school “in person” will add further expense for those attorneys residing outside the Portland metro area; and whether the course content will be customized to correlate with the ethics problems of those attorneys in attendance. The court seemed to be satisfied with the information I provided in response to their questions.

Assuming the attached revisions are acceptable to the board, draft #2 of BR 6.4 will be sent back to the Supreme Court for final approval and we will recommend an effective date a few months down the road to give staff time to develop the curriculum and work out necessary logistics.

JDS
Attachment: BR 6.4
BR 6.4. Ethics School.

(a) An attorney sanctioned under BR 6.1(a)(ii), (a)(iii) or (a)(iv) shall successfully complete a one-day course of study developed and offered by the Bar on the subjects of legal ethics, professional responsibility and law office management. Successful completion requires that the attorney attend in person the course offered by the Bar and pay the attendance fee established by the Bar.

(b) An attorney reprimanded under BR 6.1(a)(ii) who does not successfully complete the course of study when the course is next offered by the Bar following the effective date of the reprimand shall may be suspended from the practice of law upon the order of the Supreme Court until the attorney successfully completes the course.

(c) An attorney suspended under BR 6.1(a)(iii) or (a)(iv) shall not be reinstated until the attorney successfully completes the course of study, unless the course is not offered before the attorney’s term of suspension expires, in which case the attorney may be reinstated if otherwise eligible under applicable provisions of Title 8 of these Rules until the course is next offered by the Bar. If the attorney does not successfully complete the course when it is next offered, the attorney shall may be suspended from the practice of law upon the order of the Supreme Court until the attorney successfully completes the course.

(d) Notwithstanding the provisions of BR 6.4(b) and (c), an extension of time in which to complete the ethics school requirement may be granted by the Bar or the Supreme Court, as the case may be, for good cause shown.
OREGON STATE BAR
Policy & Governance Committee Agenda

Meeting Date: November 12, 2010
Memo Date: September 29, 2010
From: Cindy Hunt, Chair, MCLE Committee
Re: Proposal to amend Rule 5.2(c)(2)

Action Recommended

Review and approve the amendment to MCLE Rule 5.2(c)(2).

Background

At its meeting on September 17, the MCLE Committee reviewed the request of OSB member Steve Larson regarding granting CLE credit for editing legal publications.

When the MCLE Rules were adopted in 1987, the rule regarding legal research read as follows:

5.2 (d) Legal Research.

(1) Legal research activities may be accredited provided the activity satisfies the following criteria:

(i) It has produced published findings in the form of articles, CLE course materials, chapters, or books, personally authored in whole or in substantial part, by the applicant; and

(ii) It contributes substantially to the legal education of the applicant and other attorneys; and

(iii) It is not done in the regular course of the active member’s primary employment.

In 1992, it was brought to the attention of the MCLE Board that many members spend a considerable amount of time editing CLE publications. In 1993, the Supreme Court amended the rule to include credit for editors of CLE publications.

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In 2000, the MCLE Committee conducted an overall review of the rules and regulations. After this review, the Legal Research rule was amended in 2001 to disallow credit for time spent editing and allow credit for time spent writing, in addition to the time spent on legal research. It was also expanded to allow credit for members who personally
authored or edited in whole or in substantial part a final product of the Legal Ethics Committee.

The current Legal Research and Writing rule is set forth below:

**Rule 5.2 (c) Legal Research and Writing.**

(1) Legal research and writing activities not included in a teaching activity may be accredited provided the activity satisfies the following criteria:

   (i) It has been published in the form of articles, CLE course materials, chapters, or books, or issued as a final product of the Legal Ethics Committee, personally authored or edited in whole or in substantial part, by the applicant; and

   (ii) It contributes substantially to the legal education of the applicant and other attorneys; and

   (iii) It is not done in the regular course of the active member’s primary employment.

(2) The number of credit hours shall be determined by the MCLE Administrator, based on the contribution of the written materials to the professional competency of the applicant and other attorneys. One hour of credit will be granted for each sixty minutes of research and writing, but no credit shall be granted for time spent on editing.

Mr. Larson participated in the September 17 MCLE Committee meeting via teleconference and provided information regarding the role of editors. He believes editing is just as challenging as authoring. Editors often perform significant research and can draft changes or send chapters back to authors for reworking. They provide an objective look at each chapter to see that everything is covered, the chapter is balanced, an important case is not missing, etc. Members of the editorial board do not perform stylistic editing, as that is performed by OSB Legal Publications staff.

After a short discussion, the MCLE Committee voted unanimously to recommend amending MCLE Rule 5.2(c)(2) as follows:

**Rule 5.2 (c) Legal Research and Writing.**

* * *

(2) The number of credit hours shall be determined by the MCLE Administrator, based on the contribution of the written materials to the professional competency of the applicant and other attorneys. One hour of credit will be granted for each sixty minutes of research and writing, but no credit shall be granted for time spent on stylistic editing.

Attachments:
- The Editorial Review Board Member's Guide to Editing
- E-mail correspondence from Steve Larson
- Page 3 of Sylvia Stevens' 11/22/2000 letter to Supreme Court explaining proposed rule amendments
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- Nov/Dec 1992 memo to BOG and draft rule revision
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The Editorial Review Board Member’s Guide to Editing

When the time comes to edit a chapter for Legal Publications, the editorial review board member has a very specific role. What follows is a brief description of that role and our expectations.

You were chosen to be a member of the editorial review board because of your expertise in the subject of the book. You should use your expertise to perform the tasks that Legal Publications staff cannot perform. Take a broad view of the chapter. The typical reader of a Legal Publications book is a lawyer who is not an expert in the subject of the book. Consider the following issues:

- Did the author adequately cover the chapter’s topic?
- Did the author cover subjects that are beyond the scope of the chapter?
- Does the chapter need any reorganization?
- Does the chapter discuss the important cases, statutes, and other sources of law?
- Did the author include practice tips, caveats, examples, notes, queries, and comments that are helpful to the reader?
- Does the chapter have appropriate cross-references to other sections of the chapter, other chapters in the book, and other Legal Publications books?
- Are there forms or appendices that the author should have added?

When editing, keep in mind that we have lawyers on staff who check all citations for legal and technical accuracy, update citations, edit for legal substance and readability, and conduct limited research and writing. We also employ professional editors who perform extensive proofreading and copyediting to ensure that each chapter follows our style guidelines. To that end, we do not want our editorial review board members to duplicate the tasks of our staff. You do not need to correct spelling, grammar, punctuation, or formatting, check citations, or make style changes. If you catch those errors, feel free to correct them, but your time is better spent on “the big picture.”

Your primary objective is to ensure that the chapter is ready for the next step: editing by the Legal Publications Department. Most chapters will be ready after you have considered the above issues and added (or deleted) material or reorganized as necessary. But a few chapters might require a second draft or some additional work by the authors. These are chapters for which the additional work requires legal expertise in the topic covered by the chapter. You must decide whether a chapter needs to go back to the author for additional work or is ready for editing by Legal Publications. If a chapter must go back to the author, please let the Legal Publications Department know and give the author a reasonable due date.

By focusing on these issues, you will help to produce the best book possible. If you have any questions about the editing process, feel free to contact Linda Kruschke at (503) 431-6415 or lkruschke@osbar.org.
Denise Cline

From: Steve Larson [SLarson@stollberne.com]
Sent: Wednesday, July 14, 2010 9:16 AM
To: Sylvia Stevens
Cc: Denise Cline; Linda Kruschke
Subject: RE: CLE credits

Sylvia,

One other thought. At a time when some have raised concerns that transitioning to an online format may impact the quality of CLE publications, I think offering credits for editing will keep more experienced lawyers involved in the process.

Steve

From: Sylvia Stevens [mailto:ssstevens@osbar.org]
Sent: Wednesday, July 14, 2010 7:55 AM
To: Steve Larson
Cc: Denise Cline; Linda Kruschke
Subject: RE: CLE credits

Steve, the “no credit for editing” policy goes back to the origin of MCLE, I believe. The thinking, I suspect, is that editing is an exercise in refining the substantive work product and typically doesn’t involve research and original writing. Also, the purpose of MCLE is to educate the author and the audience, not merely to apply one’s existing knowledge, which is what editors do.

That said, I have no problem with asking the MCLE Committee to look at this issue. Let me know if you would like me to pass on the inquiry to the MCLE Committee.

From: Steve Larson [mailto:SLarson@stollberne.com]
Sent: Tuesday, July 13, 2010 5:32 PM
To: Sylvia Stevens
Subject: CLE credits

Sylvia.

I attended a meeting of editors for the OSB CLE publication entitled Civil Pleading and Practice. I should disclose that I am one of the editors. The editors wanted to know why authors got cle credit for all the time researching and writing their articles, while editors got no credit. Linda Kruschke and I had no answer. Do you know why there is this distinction, and does it make any sense. Oftentimes, we editors have to apply our knowledge and do some quick research to identify big picture items they are missing. It seems to me that if we spend 40 hours reviewing chapters authored by others, we should get credit.

Steve

Steve D. Larson
Denise Cline

From: Steve Larson [S Larson@stollberne.com]
Sent: Wednesday, July 14, 2010 9:13 AM
To: Sylvia Stevens
Cc: Denise Cline; Linda Kruschke
Subject: RE: CLE credits

Sylvia,

Thanks for your quick response. I would like you to pass on the inquiry to the MCLE Committee.

Thanks,

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Steve

Steve D. Larson
s ll ar son@stollarbe ne.com
Rule 5:

5.1(a): The new language emphasizes the goal of mandatory continuing legal education to increase the member’s competence as a lawyer.\(^3\)

5.1(b): The new language recognizes “professional responsibility” as a broader concept than pure “legal ethics.” Under the current rules, credit for professional responsibility activities is not clearly allowed.

5.1(d): The purpose of this new language is to allow credit for new types of learning that do not occur in traditional group settings, such as internet-based programs. The Committee also recommends deleting 5.2(6), which required a “comfortable physical setting,” as being vague, unenforceable and possibly incompatible with the individual participation in internet-based and similar activities.

5.2(b): Minor grammatical and style changes.

5.2(c): Allows credit for service grading bar exams; currently only writer/graders could have credit.

5.2(d)(1): Allows credit for legal writing. Prior policy (based on MCLE Board interpretation of the rule) allowed credit only for “nose in the book” activity, which didn’t recognize the learning value in synthesizing the research into a published product.

5.2(d)(1)(i): The Legal Ethics Committee had requested that members be granted more than the current two credits per year of service on the ground that LEC members put in considerable time and study in the development of opinions and informal responses to inquiries. The MCLE Committee declined to recommend additional credits for service on the LEC, but suggested that LEC members apply for research and writing credit for the work they issue. This necessitates a minor change in the rule’s language requiring published work, since many LEC responses are not issued as published formal opinions, but as informal “direct advice letters” to the inquirer.

5.2(d)(2): Clarifies that research and writing credit is not granted for editing.

5.2(e): Minor non-substantive grammatical and style changes.

5.2(g): New language to make it clear that credit for “other CLE activities” will be granted only on application. A sizeable number of members seem to believe that their credits under Rule 5 are automatic.

5.5: Expands the definition of “legal ethics” to include professionalism and judicial ethics.

5.6: Personal Management Assistance is a new category of activity on the recommendation of the Professional Liability Fund.\(^4\) The PLF’s suggestion was to include

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\(^{3}\) This change is proposed partly in response to requests the Committee has considered from the PLF and others to accredit programs that seem unrelated to professional competence.

\(^{4}\) As indicated previously, programs that fall within the topic of personal management have traditionally been approved for credit; however, there has never been a specific category of personal management.
the Rules, but in the regulations. Mr. Hatfield will draft language to generalize the MCLE Rule and suggest a new late filing fee structure.

c) Legal Research Credits. The committee agreed that credit should be given for writing (but not for editing) and that the rule should be more clear. There was also consensus that the legal research credits should be limited in each reporting period rather than by project. Mr. Hatfield will draft language to implement those concepts.

d) Sponsor Fees. Ms. Coers-Mitchell pointed out that the sponsor fee has remained at $35 for many years and is probably too low. There was general approval of a two-tier fee so that longer programs (full day or more) pay a larger fee than shorter programs. There was some discussion of whether individuals should pay a modest application fee. Ms. Coers-Mitchell will draft language to change the sponsor fees. As with the late filing fees, it was agreed that the MCLE Rules should provide for the sponsor fee in general, but the details should be in the regulations for ease of changing in the future. Staff will prepare a report showing the number of programs accredited by sponsors and individuals in 1999 and the number of hours of each program.

e) 42-Day Rule for Accrediting Programs. After discussion, it seemed clear that the problem exists more with individual members than with sponsors. It was suggested that individual applications not be accepted more than 30 days after the program or less than 30 days before the end of the reporting period; it was also suggested that late individual applications be subject to a greater fee.

f) Filing Deadline. The committee approved a change in the filing deadline to January 31 to coincide with the due date for annual membership fees. Ms. Stevens will draft amendments to the Rules and regulations to implement this change.

g) Credit Hour Increments. After discussion, the committee approved staff's suggestion to accredit programs in ¼ hour increments. A number of other jurisdictions do this; also, since we allow partial credits, it will allow members to get more accurate credit for attending only parts of a program.

5. Active Retired/Active Emeritus Members. Ms. Stevens and Ms. Cline reported on the confusion that seems to exist among many of these members as to their obligation to comply with MCLE. There was general agreement that Active Emeritus and Active Retired members be exempted from MCLE compliance. It was suggested however, that members with past disciplinary problems should not be exempted if they continue to practice law. Staff was asked to get information on the disciplinary history of members currently on Active Retired or Active Emeritus status.

6. Program Measures. Mr. Mobley explained the value of program measures and the importance of the MCLE committee being involved in the development of them. Ms. Stevens indicated that a Program Measure does exist for MCLE, although it is certainly subject to amendment if the committee recommends. Mr. Mobley suggested the following information to use in measuring the success of the program: # of members reporting each period, # of members exempt from reporting, # not in compliance (after notice and time to cure), and # of hours of credit claimed.

Minutes-MCLE Committee Meeting- April 29, 2000 (Page 2)
b) Legal Research. All agreed that credit should be received for research and writing but not for editing. It was also agreed that there should be a cap on the hours earned for research and writing credits in a member's reporting period. After some discussion, it was decided to recommend that no more than 20 credits shall be allowed for legal research activity during a single reporting period. This is a decrease from the 23 credits that Mr. Hatfield suggested in his draft revision of Rule 6.2. The committee felt that the maximum credits should be decreased to 20 because although there is much value in research and writing, there is also value in interacting with peers at live programs.

There was some discussion about whether a change should be made to Rule 5.2(d)(1)(iii) regarding legal research that is done in the regular course of the active member's primary employment. Many law professors are expected to publish articles periodically. There was discussion as to whether this is part of their primary employment.

c) Sponsor fees. Ms. Coers-Mitchell submitted her proposed changes to MCLE Rules 4.2 and 4.3 via e-mail. No action was taken on these items and both will be discussed at the next meeting. Items discussed include 1) There was some concern about having individual members pay an accreditation fee. If 30 members apply for program accreditation for the same program, what purpose is served by reviewing the same program agenda/material 30 times? 2) Should longer programs have a graded sponsor fee, such as $10 per credit hour for any program over four hours in length? 3) There was some discussion as to whether the sponsor fees are collected to generate revenue or recover costs. The committee requested that staff provide a list of programs accredited recently, sorted by sponsor. This information will be available at the next meeting.

d) 42 day rule for credit applications. Regarding the suggested revisions to Rule 4.3(d) stating "and in no case shall a written application for accreditation be filed less than 30 days before the end of the MCLE reporting period," there was a discussion as to whose reporting period it refers to since sponsors do not have a reporting period. This item is open for further discussion at the next meeting.

e) Credit for Personal Practice and Management Programs. Mr. Gordon submitted his proposed language for credits earned for personal and practice improvement. All agreed that the maximum number of hours a member can earn in a single reporting for these types of programs should be less than six, which is the
reciprocal basis, without the need for formal application. However, the MCLE Board reserves the right to assign a different number of credit hours if necessary.

**Reg. 4.400.** The existing credit calculation assumes a 50 minute credit hour. The calculation is no longer valid under the proposal for a 60 minute credit hour. In addition, subsection (b) contains some clarification regarding credit exclusions.

**Reg. 4.504.** This new regulation emphasizes that sponsors must be accurate in the advertising of credits available for a particular program.

**RULE FIVE**

**Rule 5.1(4).** The change in this rule merely reflects the shift of the definition of "group CLE activity" from Rule 1.7 to the accreditation standard for this type of activity.

**Rule 5.2.** As mentioned above, "individual CLE activities" are being deleted from the rules.

**Rule 5.3 (new Rule 5.2).** At various points, the change to a 60 minute credit hour is reflected.

**Rule 5.3(d) (new Rule 5.2(d)).** Currently, credit is not available for legal research unless it results in a published article personally authored by the member. It has been brought to the attention of the MCLE Board that many members spend substantial periods of time editing, rather than authoring, CLE books. The rule is amended to allow credit not just to the authors but also to the editors.

An additional change makes reference to a limitation on legal research credits established in new Rule 6.2.

**Rule 5.7 (new Rule 5.6).** A subsection has been added to prohibit credit for stale video or audio tapes or for repeat viewing or listening to the same program during one reporting period.

**Reg 5.200 (old).** This regulation is deleted consistent with the repeal of "individual CLE activities."

**Reg 5.200 (new).** The Professionalism Committee has requested on several occasions that professionalism credit either be mandatory or at least be available in addition to or in lieu of legal ethics credit. The MCLE Board has not been in favor of a mandatory professionalism requirement. Nor did the board wish to dilute the legal ethics requirement to any extent. This regulation is a compromise of sorts in that it recognizes that legal ethics activities that include instruction in professionalism and discussion of the Oregon State Bar Statement of Professionalism may qualify for ethics credit.

**RULE SIX**

**Rule 6.1(d).** Implementation language has been deleted.
(c) **Service as a Bar Examiner.** Service as a bar examiner for Oregon may be accredited, provided that the service includes personally writing and grading a question for the Oregon bar exam during the reporting period. Such service may be accredited for six (6) credit hours per question.

(d) **Legal Research.**

1. Legal research activities may be accredited provided the activity satisfies the following criteria:

   - It has produced published findings in the form of articles, CLE course materials, chapters, or books, personally authored or edited in whole or in substantial part, by the applicant; and

   - It contributes substantially to the legal education of the applicant and other attorneys; and

   - It is not done in the regular course of the active member’s primary employment.

2. The number of credit hours shall be determined by the MCLE Board, and shall be based on the limitation set forth in Rule 6.2, the hours of preparation and the contribution of the written materials to the professional competency of the applicant and other attorneys.

(e) **Legal Ethics Service.** Two credit hours per year for each twelve months [year] of service toward meeting the legal ethics requirement shall be given for service on the Oregon State Bar Legal Ethics Committee, Client Security Fund Committee, Commission on Judicial Fitness & Disability, Local Professional Responsibility Committees, State Professional Responsibility Board, and Dis-
OREGON STATE BAR
Policy and Governance Committee Agenda

Meeting Date: November 12, 2010
From: Sylvia E. Stevens, Executive Director
Re: New Lawyer Training Program Implementing Rules

Action Recommended

Consider the recommendation of the Mentoring Task Force that implementing rules for the New lawyer Training program be submitted to the Supreme Court for adoption.

Background

The New Lawyer Task Force has developed two rules for the BOG’s approval and submission to the Supreme Court. The New Lawyer Training Program (NLTP) rule is an overarching implementation rule to establish the mandatory program. The MCLE Rule amendment complements the NLTP rule and connects the two programs for administrative purposes.

The NLTP rule is intentionally quite general, leaving the details of the program (requirements, curriculum, MCLE credits and administration) to the Bar. One of its principal features is that the BOG create a standing committee to advise the BOG in the future as to the operation of the program, including any modifications to the curriculum. The standing committee would also be responsible for mentor recruitment and matching.

The NLTP curriculum is still a work in progress, as is mentor recruitment. However, the Task Force believes that the implementing rule should be presented to the Court now so that there is a formal, established basis for going forward. Submitting the rule now will also allow the BOG and the Task Force time to make any changes the Court may request.
MCLE Rule 3.7 (b) New Admittees. The first reporting period for a new admittee shall start on the date of admission as an active member and shall end on December 31 of the next calendar year. All subsequent reporting periods shall be three years.

(1) New admittees who have been granted a temporary deferral under Rule 5 of the New Lawyer Mentoring Program (NLMP) may have their first reporting period extended by twelve months. If additional one-year deferrals and extensions are granted under Rule 5 of the NLMP, new admittees may also receive additional extensions of their first reporting period.

(Note: if the rule change suggested above, the BOG will also be asked to adopt the following new MCLE Regulation:

Regulation 3.300 Application of Credits

(e) Successful completion of the NLMP shall satisfy a new admittee’s obligations under MCLE Rule 3.3(b).)
Supreme Court Rule on New Lawyer Mentoring Program

1. **Applicability.** All lawyers admitted to practice in Oregon after January 1, 2011 must complete the requirements of the Oregon State Bar’s New Lawyer Mentoring Program (NLMP) except as otherwise provided in this rule. Completion of the NLMP will satisfy the participating new lawyer’s obligations under Minimum Continuing Education (MCLE) Rule 3.3(b).

2. **Administration of the NLMP.**

   2.1. The OSB Board of Governors shall develop the NLMP curriculum and requirements in consultation with the Supreme Court and shall be responsible for its administration. The OSB Board of Governors shall appoint a standing committee to advise the BOG regarding the curriculum and administration of the NLMP.

   2.2. The OSB Board of Governors may establish a fee to be paid by new admittees participating the NLMP.

3. **New Lawyer’s Responsibilities.**

   3.1. The NLMP shall be operated in two sessions each year, one beginning on May 15 and the other on October 15. Unless deferred or exempt under this rule, new lawyers must enroll, in the manner prescribed by the OSB, in the first NLMP session after their admission to the bar.

   3.2. The new lawyer shall be responsible for ensuring that all requirements of the NLMP are completed within the requisite period including, without limitation, filing a Completion Certificate executed by the assigned mentor attesting to successful completion of the NLMP.

4. **Appointment of Mentors; MCLE Credit.**

   4.1. The Supreme Court will appoint mentors recommended by the OSB Board of Governors. To qualify for appointment, the mentor must be an active member of the OSB in good standing, with at least seven years of experience in the practice of law, and have a reputation for competence and ethical and professional conduct. All appointed mentors must complete the NLMP mentor training before participating in the program.

   4.2. Mentors **shall be entitled to 12 general** may claim MCLE credits, as established by the OSB Board of Governors, for each session during which they mentor one or more new
lawyers. A mentor who participates for less than a full session shall be entitled to claim credit on a pro-rated basis.

5. **Deferrals.**

5.1. The following new admittees are eligible for a temporary deferral from the NLMP requirements:

5.1.1. New admittees whose principal office is outside the State of Oregon and for whom the OSB determines that participation in the NLMP would be a substantial hardship;

5.1.2. New admittees serving as judicial clerks; and

5.1.3. New admittees who are otherwise not engaged in the practice of law.

5.2. A deferral will extend the new lawyer’s MCLE compliance period by one calendar year. Additional one-year deferrals and extensions may be granted upon request.

5.3. A new admittee who is granted a deferral under section 5.1.1 of this Rule and who, within two years of beginning to practice law in any jurisdiction, establishes a principal office within the State of Oregon, must enroll in the next NLMP session. A new lawyer whose participation in the NLMP was deferred under this rule must enroll in the next NLMP session following the conclusion of the judicial clerkship or the lawyer’s entering into the practice of law.

6. **Exemptions.** The following new lawyers are exempt from the NLMP:

6.1. New admittees on active status who do not practice law in Oregon; and

6.2. New admittees who have practiced law in another jurisdiction for two years or more are exempt from the requirements of the NLMP.

7. **Certificate of Completion; Noncompliance.**

7.1. Each new lawyer is expected to complete the NLMP within 12 months of the date of enrollment, but in no event later that December 31 of the first full year of admission to the bar. The Certificate of Completion must be filed with the bar on or before that date. Successful completion of the NLMP shall satisfy the new lawyer’s obligations under Minimum Continuing Education Rule 3.3(b).

7.2. A new lawyer who fails to file a Certificate of Completion by December 31 of the first full year of admission shall be given notice and opportunity to cure as provided in
Minimum Continuing Education (MCLE) Rule 7.5. The MCLE Administrator may grant additional time for completion of the NLMP as provided in MCLE Rule 9. Failure to cure the noncompliance will subject the new lawyer to suspension from membership in the bar in accordance with Minimum Continuing Education (MCLE) Rule 7.6.

8. Reinstatement.

8.1. A new lawyer suspended for failing to timely complete the NLMP may be reinstated by as provided in Bar Rule of Procedure 8.5.

9—Conflicts of Interest and Confidentiality in Outside Mentoring.

9.1. Terminology

9.1.1. “Outside mentoring” is that which occurs between a new lawyer and a mentor who is not a member of new lawyer’s firm.

9.1.2. “Limited guidance” by a mentor is ad hoc and as needed, but does not include long-term on-going assistance by the mentor in a specific client matter.

9.1.3. “Hypothetical discussion” is a consultation by a new lawyer with an outside mentor about a new lawyer client matter that does not, and will not foreseeably, disclose information identifiable to a real client.

9.1.4. A “confidentiality agreement” is an agreement by a mentor to not use or reveal confidential client information disclosed in outside mentoring by a new lawyer. Unless otherwise provided in the agreement, a mentor who enters a confidentiality agreement is subject to the restrictions upon the use of confidential information imposed by RPC 1.18.

9.2. Neither the existence of the mentoring relationship nor the provision of limited guidance by an outside mentor on an issue relating to a specific client of the new lawyer shall create a lawyer-client relationship between the new lawyer’s client and the mentor.

9.3. A new lawyer shall not disclose to an outside mentor confidential information relating to the representation of a client unless:

9.3.1. The disclosure is permitted by RPC 1.6;

9.3.2. The information is disclosed in a hypothetical discussion; or,

9.3.3. The mentor enters a confidentiality agreement prior to receiving the confidential
9.4. Before providing limited guidance, an outside mentor is not required to check for conflicts of interest under RPC 1.7 or RPC 1.9, unless:

9.4.1. The mentor knows that the limited guidance will be adverse to a current or former client of the mentor; or

9.4.2. The mentor enters into a confidentiality agreement, pursuant to NLMP Rule 9.3.3.
Action Recommended

Change Bylaw Article 16 as shown on the attached Exhibit A.

Background

The current Bylaw Article 16 provides, among other things, that:

Section 16.1 Self-supporting Philosophy

Because the entire CLE function is operated out of the Bar’s general fund, the aspirational goal for CLE Seminars and Legal Publications is to be generally self-supporting, with seminar registration fees and publication prices fixed accordingly. . . .

Because of the Board of Governors’ decision to make BarBooks™ a member benefit, it is no longer appropriate to view the Legal Publications Department as self-supporting, even from an aspirational standpoint.

In reviewing this Bylaw for revision to make it consistent with the Board of Governors’ current goals for the Legal Publications Department and the organization, the Legal Publications Manager consulted with Executive Director Sylvia Stevens. We thought that several other provisions of this Article 16 should be deleted or modified because they are micro-operational in nature rather than overarching principles of governance. The attached Exhibit A shows the proposed deletions and modifications.

It was also thought that an important issue relating to legal publications was not included, and that is the relative copyrights between authors and the bar. The proposed language that has been inserted is based on the Volunteer Copyright Agreement that is currently used by the Legal Publications Department for all authors.

Amendments to the Bylaws requires one meeting notice unless two-thirds of the entire Board (11 members) waive the notice requirement.
Proposed Amendments
Oregon State Bar Bylaws

Article 16 Continuing Legal Education

Section 16.1 Self-supporting Philosophy

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

Because the entire CLE function is operated out of the Bar’s general fund, the aspirational goal for CLE Seminars and Legal Publications is to be generally self-supporting, with seminar registration fees and publication prices fixed accordingly. Except as otherwise provided herein, participating members of the Bar will not receive compensation for services on behalf of CLE Seminars or Legal Publications, beyond a modest memento or other recognition and payment of expenses within board guidelines.

Section 16.2 OSB Continuing Legal Education Seminars Program

Subsection 16.200 Reduced and Complimentary Registrations

Complimentary admission to CLE seminars is available to the following OSB lawyer members: lawyer-legislators, 50-year members, judges, and judicial clerks. Complimentary admission does not include the cost of lunch or other fee-based activities held in conjunction with a CLE seminar. For purposes this policy, “judges” means full or part-time paid judges and referees of the Circuit Courts, the Court of Appeals, the Tax Court, the Supreme Court, and of tribal and federal courts within Oregon.

Complimentary registration at any event for judicial clerks will be limited to one clerk for each trial court judge and two clerks for each appellate court judge. The CLE Seminars Department may provide a reduced registration fee, tuition assistance and complimentary copies of programs may be available to certain attendees, in the sole discretion of the CLE Seminars Director or the co-sponsor of a program, for new admittees as defined in the Minimum Continuing Legal Education rules, non-lawyer employees of lawyers or law firms, other non-legal professionals and law students. Tuition assistance may be made available on the basis of financial need. The CLE Seminars Department may provide video tapes of CLE seminars, at cost, to the state court administrator or other appropriate distribution source, limited to one copy of the tapes for each seminar. The state court administrator may choose the seminars that he or she wishes to acquire. The policy also applies to federal court libraries in Oregon.

Subsection 16.201 Expenses of Speakers and Planners

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

Section 16.3 Continuing OSB Legal Education Publications Program

Subsection 16.300 Purpose/Benefit of Membership

The BarBooks™ online library comprises all Legal Publications books products as well as other materials as the Bar deemed appropriate to include from time to time. BarBooks™ is a benefit of active membership in the Oregon State Bar and is available for purchase by inactive members, and non-members, and libraries. The mission of the Bar’s CLE Publications program is to publish and maintain high-quality, practical books on Oregon law in a timely manner. The CLE Publications library will be composed of: Permanent, core publications, on substantive areas of continuing general interest to members that are supplemented regularly and at least once each three years; intermediate-term publications that have a limited life, with supplementation at appropriate intervals and cancellation at the end of their useful life and publications dealing with narrow or specialized topics that are published on an opportunity basis and will not generally be supplemented.

Subsection 16.301 Discounts on Print Books

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

Subsection 16.302 Complimentary Copies/Volunteer Copyright Agreement

Each volunteer author of a legal publication will sign a Volunteer Copyright Agreement under which provides that the author retains the copyright in his or her chapter, and grants to the Oregon State Bar a nonexclusive right to include the chapter within the Publication as a collective work; to use, distribute, or sell the collective work in any manner the OSB deems appropriate; to revise the collective work, including his or her chapter, for use, distribution or sale as a subsequent edition of the collective work, a revision of the collective work, or as an entirely new publication; with the Oregon State Bar and its licensees having similar rights to use, distribute, or sell the collective work in any manner they deem appropriate. The CLE Publications Department will provide a gift certificate redeemable for the purchase of any CLE publication or BarBooks™ online library to each editor and author of each publication in appreciation for their volunteer efforts on that publication.
Action Recommended

Consider whether to recommend to the Board of Governors that the Oregon State Bar convene a task force to review, and if appropriate revise, the performance measure standards for attorneys in juvenile and criminal cases.

Background

The Office of Public Defense Services has noted that the Principles and Standards for Counsel in Criminal, Delinquency and Dependency cases have not been revised since 2006, and suggests that it is now time to do so. Attached are some suggested areas of revision provided by OPDS. The Oregon State Bar was involved in the last round of revisions, and is in the best position to bring together attorneys who are knowledgeable on this issue, and to provide staff support for the task force.

The Public Affairs Department received a formal request that the OSB convene this task force from OPDS in late September.
The meeting was called to order by President Kathleen Evans at 9:15 a.m. on August 13, 2010, and adjourned at 2:00 p.m. Members present from the Board of Governors were Barbara DiIaconi, Kathleen Evans, Michelle Garcia, Michael Haglund, Gina Johnnie, Derek Johnson, Christopher Kent, Ethan Knight, Steve Larson, Karen Lord, Audrey Matsumonji, Kenneth Mitchell-Phillips, Mitzi Naucler, Maureen O’Connor, and Stephen Piucci. Staff present included Sylvia Stevens, Rod Wegener, Jeff Sapiro, Susan Grabe, Kay Pulju, Anna Zanolli, and Teresa Wenzel. Also, present were Jason Hirshon from the ONLD and from the Out of State Lawyers in Arbitration Task Force, Richard Spier, Michelle Vlach-Ing, and Robert Banks.

1. **Inspiration**

   Mr. Piucci reported on the iCivics program that he learned about at the ABA Annual Meeting in August. Justice Sandra Day O’Connor presented the program, which is designed to teach elementary school students the fundamentals of civics through online games and activities. The Chief Justice has asked the Bar to promote the program to Oregon educators. The BOG will be discussing the idea further.

2. **Departmental Presentation**

   A. **Public Affairs**

      Ms. Grabe presented information about activities of the Public Affairs Department its interactions with the membership, the judiciary and the legislature.

3. **Report of Officers**

   A. **Report of the President**

      As written.

   B. **Report of the President-elect**

      As written.

   C. **Report of the Executive Director**

      As written.

   D. **Oregon New Lawyers Division**

      Jason Hirshon, ONLD Treasurer, highlighted the written ONLD report. He indicated the members are excited about the new mentoring program and he invited board members to attend the division’s meetings to see firsthand what they are doing.
4. **Professional Liability Fund**

   The PLF Board of Directors was meeting in Hood River and no representative from the PLF attended the BOG meeting.

   **A. SUA Appeal**

   The committee that reviewed Mr. Lawson’s SUA appeal consisted of Mr. Kent, Ms. Johnnie, and Mr. Larson. Mr. Kent presented a summary of the issues surrounding Mr. Lawson’s appeal and the committee’s recommendation. The board discussed the matter concluding that based on the facts presented; Mr. Lawson was not at fault.

   **Motion:** Mr. Johnson moved, seconded by Ms. Matsumonji seconded, that no SUA be assessed against Mr. Lawson. All board members voted in favor of the motion with the exception of Ms. Naucler, who opposed the motion and Ms. DiIaconi, who abstained.

   **B. General Update**

   As written.

   **C. Preliminary June 30, 2010 Financial Statements**

   As written.

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

   **A. Client Security Fund**

   1. **No. 09-24 HORTON (Ryan) Appeal**

      Mr. Larson presented Mr. Ryan’s request for an additional award to cover the legal fees he incurred in obtaining a judgment against Horton’s estate.

      **Motion:** Mr. Larson moved, Mr. Piucci seconded, and the board unanimously voted to deny Mr. Ryan’s appeal.

   2. **No. 09-41 RICHARDSON (Ervin) Appeal**

      Mr. Larson presented Mr. Ervin’s appeal from the committee’s denial of his claim on the grounds that it was a fee dispute and that; in any event, Mr. Ervin had not exhausted his recourse against the lawyer.

      **Motion:** Mr. Larson moved, Ms. DiIaconi seconded, and the board passed the motion to deny Mr. Ervin’s appeal. Mr. Knight abstained.

   3. **CSF Claim No. 08-18 SHINN (Rhodes) Appeal**

      The board reviewed Mr. Rhodes’ renewed appeal. The board discussed the issue of the medical provider liens and whether Mr. Rhodes was the real victim of Shinn’s conduct.
Motion:  Mr. Larson moved, Mr. Kent seconded, and the board voted to grant Mr. Rhodes an additional $10,000. Ms. Lord, Ms. Johnnie, and Mr. Piucci opposed the motion.

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

A. Access to Justice Committee
   1. Update
      Ms. Johnnie informed the board that the Access to Justice Committee is meeting with ABA representatives to discuss percentage fee lawyer referral systems and the experience of other states. Board members were encouraged to attend the meeting, which will be September 9, 2010, from 9:00 a.m. – 11:00 a.m. at the Oregon State Bar Center.

B. Budget and Finance Committee
   1. 2011 Executive Summary Budget
      Mr. Kent informed the board that the preliminary budget projections for 2011 show a positive balance even without revenue from BarBooks™. Expenses for 2010 will likely be less than anticipated, but a dues increase will likely be necessary in 2012. PERS will continue to be a substantial line item, the financial impact was anticipated and there are sufficient reserves available. There are still many details that could affect the budget, including mandatory mentoring, creation of a senior lawyers division, lawyer referral changes, Urban Rural Task Force, and others. The committee will have another look at the budget during its September meeting and it will come back to the board for finally approval in November.

   2. Five Year Forecast
      As written.

C. Policy and Governance Committee
   1. Proposed Amendments to RPC
      Ms. Naucler presented the proposed amendment to RPCs 1.5 and 1.15 regarding earned on receipt fees.

      Motion:  The board voted unanimously to approve the committee motion to accept the proposed amendment to RPCs 1.5 and 1.15.

      Ms. Naucler presented the proposed change to RPCs 1.2 and 3.4 regarding a lawyer’s duty not to violate court order or counsel clients to do so.

      Motion:  The board voted unanimously to approve the committee motion to accept the proposed amendment to RPCs 1.2 and 3.4.

      Ms. Naucler presented the proposed change to RPC 3.3(c) regarding a lawyer’s duty when a client commits perjury.
Motion: The board voted unanimously to approve the committee motion to accept the proposed amendment to RPC 3.3(c).

2. Proposed Amendments to MCLE Rule 5.5(b)

Ms. Naucler presented the MCLE Committee’s proposed amendment to MCLE Rule 5.5(b), which adds the phrase “or military service” to the rule. Because most of what the proponent’s concerns are covered under the existing rule, the committee recommended no change at this time. The proponent was invited to bring his concerns about anti-military bias back to P&G after he has discussed them with the various stakeholders of the Access to Justice compromise.

3. Ethics School

Ms. Naucler presented the proposed amendments to BR 6.4 concerning ethics school.

Motion: The board voted unanimously to approve the committee motion to accept the proposed amendment to BR 6.4.

D. Public Affairs Committee

1. Political Update
   a. Court Fees Task Force Legislative Recommendation
      
      Mr. Piucci reiterated the charge of the task force and indicated the task force is waiting for input from the court and the committee expects to bring the finalized report to the board at its November meeting.

2. Priorities for 2011 Legislative Session

Motion: The board unanimously approved the committee motion to approve the priorities for 2011, which include adequate funding for the court system, balanced access to justice in civil and criminal cases, and support for the bar bill package.

E. Public Member Selection

The committee interviewed seven candidates for the position and recommended Jenifer Billman.

Motion: The board unanimously approved the committee motion to appoint Jenifer Billman as Public Member to the Board of Governors commencing January 1, 2011.
7. BOG Committees, Special Committees, Task Forces and Study Groups

A. BarBooks™ Steering Committee

1. Legal Publications Print Book Revenue Projections

The committee reviewed the results of the member survey and concluded there is still a market for print books. The steering committee recommends that the bar continue to provide print books during 2011 by pre-order only. The board agreed unanimously.

The committee also reported on the status of advertising and plans for educating members about BarBooks™

Advertisers will be offered “packages” that will include advertising in the online membership directory and on appropriate page in BarBooks™, as well as space in print materials.

An educational video and BarBooks™ demo is being prepared for the bar’s website; staff will make presentations to local bars and bar groups to assist in the education; and there will be a presentation at the SSFP resources fair to be held at the bar center on November 19.

B. Out of State Lawyers in Arbitration Task Force

1. Out of State Lawyers in Arbitration Task Force Report

Richard Spier presented the majority position that after carefully analyzing the myriad of issues raised by the HOD resolution in 2009, a registration program for out of state lawyers participating in arbitrations in Oregon is unnecessary and not recommended.

Robert Banks presented the minority position that supported a certification requirement being added to Oregon Rule of Professional Conduct 5.5. Lawyers would be required to show that they are in good standing in their home jurisdictions and that they possess malpractice insurance equivalent to that required of Oregon State Bar attorneys or that they have informed their client that they do not possess such insurance. Michelle Vlach-Ing added that as long as the out of state attorneys register with the bar and they were an attorney in good standing, it was not necessary to be over-burdensome by requiring them to have malpractice insurance as long as they inform their clients of their lack of insurance.

Mr. Spier indicated that the majority of the task force would support the rule change as a fair compromise if that is the will of the Board of Governors. All speakers thanked Ms. Stevens for her assistances with the task force.

The board thanked the committee for its work.
Motion: Mr. Kent moved, Mr. Piucci seconded, and the board unanimously passed the motion to table consideration of the action for the next board meeting.

C. Member Services Committee [Ms. Fisher]
   1. Recommendation to Create Senior Lawyers Division

   This was tabled by consensus until the board’s next meeting.

   2. Recommendations for 2010 OSB Annual Awards

   Ms. Johnnie presented the nominees for awards. The board briefly discussed the relative merits of having multiple recipients the Judicial Excellence award.

Motion: Mr. Johnson moved, Ms. Naucler seconded, and the board voted unanimously to give one Judicial Excellence Award in 2010.

Motion: Ms. DiIaconi moved, Mr. Johnson seconded, and the board voted unanimously to give The Honorable Daniel Harris the Judicial Excellence Award.

Motion: The board passed the committee motion to approve the 2010 OSB Annual Awards slate (Exhibit 1).

8. Consent Agenda

Motion: Ms. DiIaconi moved, Mr. Piucci seconded, and the board voted unanimously to add “or inactive” to the criteria for the President’s Sustainability Award, Bar Bylaw Section 4.9.

Motion: Mr. Piucci moved, Mr. Mitchell-Phillips seconded, and the board unanimously voted to approve the Consent Agenda as amended.

9. Good of the Order (Non-action comments, information and notice of need for possible future board action)

   Nothing for the good of the order.
Oregon State Bar  
Meeting of the Board of Governors  
September 24, 2010  
Open Session Minutes

The meeting was called to order by President Kathleen Evans at 1:00 p.m. on September 24, 2010, and adjourned at 1:45 p.m. Members present from the Board of Governors were Barbara DiIaconi, Kathleen Evans, Ann Fisher, Michael Haglund, Derek Johnson, Christopher Kent, Ethan Knight, Steve Larson, Mitzi Naucler, and Stephen Piucci. Staff present included Helen Hierschbiel, Rod Wegener, Jeff Sapiro, Susan Grabe, and Teresa Wenzel. Also, present were Lauren Paulson and Charlie White.

1. Open Session  
   A. Approve HOD Agenda  
      1. Amendment of HOD Rules 5.5 – Board of Governor Resolution No. 2  
         Ms. DiIaconi will be the presenter for the board.  
      2. Resolutions Regarding Veterans Day Remembrance – Board of Governors Resolution No. 3  
         Mr. Kent will be the presenter for the board.  
      3. Amendment of ORPC 1.5 and 1.15-1 – Board of Governors Resolution No. 4  
         Mr. Johnson will be the presenter for the board.  
      4. Amendment of ORPC 1.2 and 3.4 – Board of Governors Resolution No. 5  
         Mr. Knight will be the presenter for the board.  
      5. Amendment of ORPC 3.3 – Board of Governors Resolution No. 6  
         Ms. Naucler will be the presenter for the board.  
      6. Resolution for Repeal of ORS 419B.010 and 9.114 – House of Delegates Resolution No. 2  
         Ms. Hierschbiel presented information about the history of the rules and indicated that the national trend is to expand the mandatory child abuse reporting obligations, not to limit them. Ms. Grabe informed the board of the legislative history and implications of the resolution indicating that it would be an uphill battle and politically unwise to advance the proposed legislative changes.
Motion: Mr. Larson moved, Mr. Kent seconded, and the board voted unanimously to oppose the resolution.

Mr. Piucci will present the opposition for the board.

7. Resolution to Amend ORPC 7.1 – 7.3 – House of Delegates Resolution No. 3

Motion: Mr. Larson moved, Ms. DiIaconi seconded, and the board voted unanimously to oppose the resolution.

Ms. DiIaconi will present the opposition for the board.

8. Resolution to Amend Bar Rule 8.2 – House of Delegates Resolution No. 4

Motion: Ms. DiIaconi moved, Mr. Kent seconded, and the board voted unanimously to oppose the resolution.

Mr. Haglund will present the opposition for the board.

9. Resolution to Amend ORS 133.060 – House of Delegates Resolution No. 5

After discussion, the board concluded it would be more appropriate to have the resolution vetted through the appropriate channels before being presented to the HOD.

Motion: Ms. Fisher moved, Mr. Kent seconded, and the board voted unanimously to oppose the resolution.

Mr. Knight will present the opposition for the board.


This resolution is supported in concept by the Sole and Small Firm Practitioners Section. The board expressed concerns that this resolution interferes with marketing aspects of the CLE programs and indicated, once the cost-free BarBooks™ program is rolled out to the entire bar and other pricing adjustments are concluded, this resolution may become a moot point.

Motion: Mr. Kent moved, Mr. Larson seconded, and the board unanimously voted to oppose the resolution.

Mr. Kent will present the opposition for the board.

11. Resolution to Encourage the Effective and Efficient Administration of Justice – late House of Delegates Resolution (Exhibit 1)
The board opposed the resolution on the grounds that it arrived after the HOD resolution deadline and further discussed the merits determining that the resolution was inappropriate due to Keller guidelines.

**Motion:** Mr. Kent moved, Ms. DiIaconi seconded, Ms. Fisher added a friendly amendment, and the board unanimously voted to omit the resolution from the preliminary HOD Agenda and should the late resolution make it onto the HOD Agenda from the floor of the HOD, to oppose it under Keller.

Ms. Fisher will present the opposition for the board should the resolution make it to the HOD Agenda from the floor of the HOD.

**Motion:** Mr. Piucci moved, Mr. Haglund seconded, and the board unanimously voted to adopt the preliminary HOD Agenda for distribution to the membership.

**B. Executive Director Evaluation Committee**

**Motion:** The board unanimously voted to approve the committee motion to accept the contract with Sylvia Stevens for the position of Executive Director.

**C. Nominating Committee**

The Nominating Committee recommended Mitzi Naucler to the board as its 2011 President-elect. Final approval for the position will come before the board at its November 2010 meeting.

**D. Appointments Committee**

**Motion:** The board unanimously voted to approve the Appointments Committee’s recommendation to appoint Jennifer Gates to the Council on Court Procedures.

**E. Budget and Finance Committee**

The committee informed the board that the bar’s tenant, 20/20 Eye Clinic, has terminated its lease and that the bar is in negotiations with another eye clinic to take over the lease and possibly continue the lease new until 2021.
Resolution to Encourage the
Effective and Efficient Administration of Justice

WHEREAS, the State of Oregon is currently, and for the foreseeable future will be, faced with significant budget deficits, and,

WHEREAS, life without the possibility of parole is both an adequate deterrent, serves retributive purposes, and satisfies concerns related to public safety, and,

WHEREAS, the family members of victims of capital crimes are not well served by ongoing litigation as is evidenced and supported by groups such as Murder Victim’s Families for Reconciliation, and,

WHEREAS, a sentence of death and the related state and federal post-conviction litigation, has been shown in numerous studies, to cost far more than a sentence of life without the possibility of parole, and,

WHEREAS, the elimination of state and federal post-conviction litigation concerning death sentenced inmates would result in significant cost savings for the State of Oregon, and,

WHEREAS, those cost savings could be applied to public safety concerns, education, and other vital State interests such as improving access to justice for those in need who could not otherwise afford adequate legal services, as well as re-entry services, and needed state-wide drug treatment programs, and,

WHEREAS, there have been only two executions in Oregon since 1976, and,

WHEREAS, both of those executions were the result of death row inmates who abandoned their appeals and were executed without full review of their convictions and sentences, and,

WHEREAS, the last Oregon execution took place fourteen years ago in 1996, and,

WHEREAS, the death penalty has been shown in numerous studies to be disproportionately applied to the poor, to minorities, and to those who do not have access to quality legal assistance, and,

WHEREAS, the death penalty has been shown in numerous studies to be disproportionately applied in cases where the victim(s) were white, and,

WHEREAS, there is a disproportionate use of the death penalty among different counties within the State of Oregon, and,

WHEREAS, a 2009 survey of police chiefs conducted by the Death Penalty Information Center resulted in the conclusion that the police chiefs rated the death penalty as the least effective means of reducing violent crime and the least effective use of taxpayer dollars used to reduce crime, and,
WHEREAS, the Oregon State Bar Association is an organization committed to equality, fairness and access to justice, as well as the protection of human rights of all citizens regardless of race, gender, economic standing, and sexual orientation,

NOW THEREFORE BE IT RESOLVED, that the House of Delegates urges the Board of Governors, in the strongest possible terms, consistent with ongoing efforts to improve access to justice, and consistent with the pursuit of the effective and efficient administration of justice, to encourage, by any means available, including legislative action and other action, to make a top priority in the pursuits of the Board of Governors, the commutation of all Oregon death sentences presently imposed on Oregon’s thirty-four death sentenced inmates, to life without the possibility of parole.

Submitted by: ____________________________
Printed Name: Patrick J. Ehlers
Bar Number: 04118

Background:

In more than thirty years, Oregon has carried out only two executions. During that time violent crime has consistently declined and is presently at record lows. There are only thirty-four people currently on Oregon’s death row and yet the litigation regarding those thirty-four cases is costing the State millions of dollars in litigation costs. Simultaneously, Oregon is experiencing one of the worst budget deficits in State history. Commutation of Oregon’s entire death row to life without parole sentences will significantly reduce, if not eliminate completely, state and federal post-conviction litigation costs, while at the same time maintaining public safety. The Governor retains exclusive commutation power and has sole discretion to exercise that power.

There have been, to date, a total of one-hundred-thirty-eight death row inmates exonerated from death rows across the United States who were determined to be innocent although they had been previously convicted and sentenced to death after trial. In 2009, there were nine death row exonerations in the United States of individuals who were freed after having served a combined total of one-hundred and twenty-one years in prison. Access to justice is a persistent problem in capital litigation at all levels. This is consistently evidenced by the number of ineffective assistance of counsel claims that prevail on appeal in both state and federal courts both across the country and in Oregon.

Bangladesh, China (People's Republic), Cuba, Egypt, Iran, Iraq, Jordan, North Korea, Laos, Lebanon, Libya, Pakistan, Palestinian Authority, Saudi Arabia, Somalia, Sudan, Syria, and Yemen. And, in 2009 the following countries ignored both evolving standards of decency and human rights by leading the world in executions of their citizens: China (1000+), Iran (388), Iraq (120), Saudi Arabia (69), United States (52), Yemen (30), and Sudan (9), Viet Nam (9), Syria (8), and Japan (7).

There is precedent for elimination of death row through the commutation of all death sentences to life without the possibility of parole. On January 13, 2003, the death sentences of one-hundred and fifty-six death row inmates in Illinois were commuted to life without the possibility of parole.

There are thirty-four death row inmates in Oregon whose cases are costing, and will continue to cost the State of Oregon, millions of dollars in both state and federal post-conviction litigation costs. That litigation would be substantially reduced, if not completely eliminated, by commutation of all Oregon death sentences to life without the possibility of parole.

The facts stated in this resolution were obtained from the publications of the Death Penalty Information Center, Amnesty International, Murder Victim’s Families for Reconciliation, The Oregonian, and the Oregon Department of Corrections.

Financial Impact (if any):  None
The meeting was called to order by President Kathleen Evans at 8:00 a.m. on October 29, 2010, and adjourned at 9:00 a.m. Members present from the Board of Governors were Barbara DiIaconi, Kathleen Evans, Ann Fisher, Michael Haglund, Gina Johnnie, Derek Johnson, Christopher Kent, Ethan Knight, Steve Larson, Karen Lord, Audrey Matsumonji, Kenneth Mitchell-Phillips, Mitzi Naucler, and Stephen Piucci. Staff present were Sylvia Stevens, Rod Wegener, Susan Grabe, Helen Hierschbiel, Judith Baker and Camille Greene. Also, present were PLF Board and staff members Fred Ruby, Ira Zarov, Tom Cave, Tim Martinez, and Ron Bryant (via phone), and Gerry Gaydos, past OSB president.

1. Ratification of BOG Action of September 24, 2010 Meeting
   A. Ratify Approval of HOD Agenda
   Motion: Steve Piucci moved, Barbara DiIaconi seconded, and the board voted unanimously to ratify its prior approval of the HOD Agenda.
   B. Ratify Approval of Executive Director Contract
   Motion: Ann Fisher moved, Steve Piucci seconded, and the board voted unanimously to ratify its prior approval of the Executive Director Contract.
   C. Ratify Appointment to Council on Court Procedures
   Motion: No action taken, will be moved to the November meeting agenda.

2. Approval of PFL 2011 Assessment
   A. 2011 Excess Rates and 2011 Primary Program Assessment and 2011 Budget
   Motion: Barbara DiIaconi moved, Chris Kent seconded, and the board voted unanimously to approve the PLF 2011 Excess Rates, 2011 Primary Program assessment and the 2011 Budget.

3. Public Affairs Committee
   A. Update
   Motion: Ms. Grabe and Mr. Kent updated the board on the recent discussions in Salem regarding the changes to the civil filing fees and criminal fines structure, including the funding of Legal Services. Gerry Gaydos, OSB Court Fees Task Force Chair,
indicated that the task force supports the funding of the Legal Services program, since
the OSB has oversight over the program.

4. **Good of the Order (Non-action comments, information and notice of need for possible
future board action)**
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. Rick Blake – 001396

Action: The board reviewed information concerning the BR 8.1 reinstatement application of Mr. Blake to satisfy the one meeting notice requirement of Bylaw 6.103. The application will come before the board at a later meeting.

2. Timothy M. B. Farrell – 923007

Action: Ms. Lord moved, Ms. Matsumonji seconded, and the board unanimously passed the motion to recommend to the Oregon Supreme Court that Mr. Farrell be reinstated as an active member of the Oregon State Bar.

3. Ruth E. Heller – 923315

Action: Ms. Naucler moved, Ms. DiIaconi seconded, and the board unanimously passed the motion to temporarily reinstate Ms. Heller immediately as an active member of the Oregon State Bar pursuant to BR 8.7 and recommend to the Oregon Supreme Court that Ms. Heller be reinstated as an active member of the Oregon State Bar after the mailing of the Bulletin, to allow for comments resulting from the notice.

4. Kelly H. Hughes – 011690

Action: Ms. Johnnie moved, Mr. Mitchell-Phillips seconded, and the board unanimously passed the motion to temporarily reinstate Mr. Hughes as an active member of the Oregon State Bar pursuant to BR 8.7, effective when the Supreme Court acts on his MCLE reinstatement application.
5. Sohaye Lee – 984387

Action: Mr. Kent moved, Mr. Larson seconded, and the board unanimously passed the motion to recommend to the Oregon Supreme Court that Ms. Lee be reinstated as an active member of the Oregon State Bar upon payment of fees.

6. Arthur C. Piculell – 721981

Action: Ms. Matsumonji moved, Mr. Knight seconded, and the board unanimously passed the motion to recommend to the Oregon Supreme Court that Mr. Piculell be reinstated as an active member of the Oregon State Bar upon completion of 45 MCLE credits.

7. Matthew A.C. U’ren – 940361

Action: Mr. Piucci moved, Ms. Lord seconded, and the board unanimously passed the motion to temporarily reinstate Mr. U’ren as an active member of the Oregon State Bar pursuant to BR 8.7.

B. Disciplinary Counsel’s Report

As written.
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.

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7. Matthew A.C. U’ren – 940361

**Action:** Mr. Piucci moved, Ms. Lord seconded, and the board unanimously passed the motion to temporarily reinstate Mr. U’ren as an active member of the Oregon State Bar pursuant to BR 8.7.

B. Disciplinary Counsel’s Report

As written.
Discussion of items on this agenda is in executive session pursuant to ORS 192.660(2)(f) and (h) to consider exempt records and to consult with counsel. This portion of the meeting is open only to board members, staff, other persons the board may wish to include, and to the media except as provided in ORS 192.660(5) and subject to instruction as to what can be disclosed. Final actions are taken in open session and reflected in the minutes, which are a public record. The minutes will not contain any information that is not required to be included or which would defeat the purpose of the executive session.

A. Unlawful Practice of Law

1. Sharon Shields, UPL No. 09-55

Action: Discussion was held in executive session and in open session Ms. DiIaconi moved, Mr. Knight seconded, and the board voted unanimously to seek injunctive relief against Ms. Shields to prevent her continued unlawful practice of law.

B. General Counsel’s Report

The BOG received status reports on the non-action items.

C. Executive Director Evaluation Committee

Action: Mr. Kent moved, Mr. Piucci seconded, and the board unanimously voted to ratify the acceptance of the resignation of Teresa Schmid and to pay her severance that had been negotiated.

Action: On motion of the Executive Director Evaluation Committee, the BOG voted unanimously to appoint Sylvia E. Stevens as the new Executive Director of the Oregon State Bar.
OREGON STATE BAR
Board of Governors Agenda

Meeting Date: November 12, 2010
Memo Date: October 28, 2010
From: Ann Fisher, Member Services Committee Chair
Re: 2011 BOG and HOD Election Dates

Action Recommended

Approve the following proposed election dates as required by ORS 9.040 and 9.152.

Background

ORS 9.040, 9.042 and 9.152 as well as OSB Bylaw 9.1 and 5.1 outline the following dates for bar elections.

OSB and ABA HOD Election

Nominating petitions due  Friday, March 18, 2011
Ballots sent  Thursday, March 31, 2011
Election (ballots due)  Monday, April 18, 2011 (3rd Monday in April)
Delegates assume office  Tuesday, April 19, 2011

BOG Election

Nominating petitions due  Tuesday, May 10, 2011 (160 days before election)
Challenges due  Thursday, June 9, 2011 (30 days from 5/10)
BOG decision on challenges  Thursday, June 23, 2011 (14 days from 6/9)
Petition for SC review  Friday, July 8, 2011 (15 days from 6/23)
Final SC decision  Friday, September 23, 2011 (10 days before ballots are sent)
Ballots sent  October 3, 2011 (1st Monday in October)
Election  October 17, 2011 (3rd Monday in October)
Board Members Assume Office  January 1, 2012
OREGON STATE BAR
Board of Governors Agenda

Meeting Date: November 13, 2010
Memo Date: November 2, 2010
From: Barbara DiIaconi, Appointments Committee Chair
Re: Appointments for the Consent Agenda (exhibit 1 of 2)

Action Recommended

Approve the following recommendations from the Appointments Committee.

Access to Justice Committee
Members with terms expiring 12/31/2013:
Fischer, Llewellyn
Gruber, Diane
Richardson, Liane
Watkins, Ulanda

Affirmative Action Committee
Chair: Meng, Linda
Secretary: Thacker, Christina
Members with terms expiring 12/31/2013:
Austin, Amanda
Bartz, Dave
Gates Rudd, Michelle
Morgan, Janice
Reeves, Liani
Rastetter, Tom

Bar Press Broadcasters Council
Secretary: Underhill, Rod
Members with terms expiring 12/31/2013:
Albrecht, Cheryl
Jacobs, Chad
Olsen, Dan
Sosa-Tirado, Magali

Client Security Fund Committee
Chair: Taggart, Max
Secretary: Wright, Terry
Members with terms expiring 12/31/2013:
Angus, Jane
Bennett, Steven
Cousineau, Jessica L
Eggert, Christopher
Kekel, Eric

Federal Practice and Procedure Committee
Chair: Milesnick, Elizabeth
Secretary: Jerger, Scott
Members with terms expiring 12/31/2013:
Bladock, James
Haddad, Joseph
Keith, Calvin
Lora, Sara
Nakamoto, Lynn
Sortun, Anna

Judicial Administration Committee
Chair: O’Neil, Yumi
Secretary: Nancy Cozine
Members with terms expiring 12/31/2013:
Johnson, Dexter A.
McGrath, Michael Thomas
Nordyke, Vanessa A.
Sugawa-Fujinawa, Kim

Legal Ethics Committee
Chair: Elkanich, David J.
Secretary: Harris, Jet
Members with terms expiring 12/31/2013:
Cushing, Kathleen A
Hansen, Kurt F
Riordan, Shannon L
Todd, James
Legal Heritage Committee
Chair: Fu, Ning
Secretary: Luke Stanton
Members with terms expiring 12/31/2013:
Aoyagi, Robin
Anderson, Mary Anne
Chin, William
Johnson, Trevor
Landsverk, Wayne D
Pfeiffer, Jamie
Pirtle, Brandy
Wright, Beth
Martinez, Paul (public member)
Mullen, Jay (public member)

Legal Services Committee
Chair: Seidman, Scott
Secretary: Edwards, Amy
Members with terms expiring 12/31/2013:
Temple, Ava
Pennock Barbour, Holly (advisory member)

Loan Repayment Assistance Program
Advisory Committee
Members with terms expiring 12/31/2013:
Anderly, Andrea
Eyerman, Linda
Freitas, Norma

MCLE Committee
Chair: Cribbins, Melissa
Secretary: Mitchel-Markley, Caitlin
Members with terms expiring 12/31/2013:
Bush, Stephen
Nickerson, Heyke
Kilian, John (public member)

Pro Bono Committee
Chair:
Secretary:
Members with terms expiring 12/31/2013:
Kenney, Brett
Thompson, Andrea
Van Camp, Elijah
Williamson, Meredith
Winter Whelan, Sarah

Procedure and Practice Committee
Chair: Bovarnick, Paul
Secretary:
Members with terms expiring 12/31/2013:
Cowley, Craig M.
Doyle, Dirk
Kohlhoff, Theresa
Olson, Steven D.
Posner, Jason L.
Pistacchio, Jason M.

Public Service & Information Committee
Chair: Tookey, Douglas L
Secretary: Johnson, Dexter
Members with terms expiring 12/31/2011:
Tooke, Douglas
Members with terms expiring 12/31/2013:
Li, Jennifer
Taylor, Avalyn
Terreault, Brenda

Quality of Life Committee
Chair: Schpak, Andrew
Secretary: Milton Myles, Kevin
Members with terms expiring 12/31/2013:
Dukelow, Kyle B.
Ehlers, Patrick J.
Tara, Kali
Wright Decker, Heather
Tempey, Damon (public member)

State Lawyers Assistance Committee
Chair: Welch, Bryan
Secretary: Lusk, Robert
Members with terms expiring 12/31/2014:
Welch, Bryan

Uniform Civil Jury Instructions Committee
Chair: Furrer Newton, Cynthia
Secretary: Jonsson, Scott
Members with terms expiring 12/31/2011:
Newton, Cynthia
Members with terms expiring 12/31/2013:
Angeli, Courtney
Casper, Michael
Courtnage, Emily
Dozier, Keith
Houston, Holli
Kalmanson, Matthew
Smith, Julie
Vacura, Julie

Uniform Criminal Jury Instructions Committee
Chair: Furrer Howard, Chris

Secretary: Ludington, Monte
Members with terms expiring 12/31/2013:
Davis, Kara
Glenn, Kelly
Kafel, Elizabeth
Quale, Courtney
Washington, Michael

Unlawful Practice of Law Committee
Chair: Borg, C. Lane
Chair-Elect: Garcia, Oscar
Secretary: Whang, Simon
Members with terms expiring 12/31/2014:
Watson, Lillian

Disciplinary Board
State Chair and Chair-Elect terms expire 12/31/2011.
State Chair: Paul Fr
State Chair-Elect: William Crow

Unless otherwise noted regional chair positions have terms expiring 12/31/2011 and all members have terms expiring 12/31/2013.

Region 1
Chair: Carl W. Hopp Jr.
Members: Dave Coughlin, John G. McBeec (public member), and William J. Olsen (public member).

Region 2
Chair: Jack Gardner
Members: Carrie Bebout (public member).

Region 3
Chair: R. Megan Annand
Members: John E. (Jack) Davis, Joan Marie Michelsen, and Duane M. Schutz.

Region 4
Chair: William Blair

Region 5
Chair: William Crow
Members: Ronald Atwood, Nancy Cooper, Charles Paternoster, Benjamin Haile, and Leah A. Johnson, Charles H. Martin (public member), Carlos Calderon(public member), and Nicole M. Ferran (public member).

Region 6
Chair: Mary Kim Wood
Members: James E Edmonds, Llewelly M. Fischer, Sydney Brewster, Paul Levy, Bob McCann, Yvonne A. Tamayo, Richard M. Miller (public member), Fadd E. Beyrauty (public member), Vaugh Stanley Edsal (public member), and Dorothy Fallon (public member).

**Region 7**
Chair: Anthony Buccino
Members: Deanna Franco, Walt Barnes, Willard Chi, Andrew M. Cole, Emily Hogan, Dave Paul, Joan LeBarron (public member), and Diane Wustruck (public member).

**Bar Counsel**
Region 1
W. Eugene Hallman

Region 2

Region 3
Michael Jewett

Region 4
Arnold S. Polk

Region 5

Region 6
William E. Brickey, Michael F. Conroyd, and Susan Hohbach.

**Local Professional Responsibility Committee**
All terms expire 12/31/2011

BAKER/GRANT
Robert W. Whitnah – CHAIR
Matthew B. Shirtcliff
Ryan S. Joslin

BAKER/GRANT
Matthew L. Jarvis - CHAIR
CLACKAMAS/LINN/MARION
Carol A. Parks – CHAIR
Jennifer S. Hisey
Ethan Resnick Hasenstein
David L. Carlson
John H. Beckfield
Michael James Buroker
Linda L. Marshall
Philip A. Johnson
Susan R. Gerber

CLATSOP/COLUMBIA/TILLAMOOK
Sarah E. Hanson – CHAIR
Deborah A. Dyson

COOS/CURRY
Sharon K. Mitchell – CHAIR
Melissa T. Cribbins
Brett V. Kenney
Alexandria C. Streich
Rick Inokuchi
Daniel M. Hinrichs
Megan L. Jacquot

CROOK/DESCHUTES/JEFFERSON/WHEELER
Lisa N. Bertalan – CHAIR
Steven D. Bryant
Mark Louis Katzman
Beth M. Bagley
Lori A. G. Hellis

DOUGLAS
Bruce R. Coalwell – CHAIR
Samuel Hornreich
Dirk E. Doyle

GILLIAM/HOOD RIVER/SHERMAN/WASCO
William H. Sumerfield – CHAIR
Jeffrey J. Baker
Deborah M. Phillips
Linda K. Gouge

HARNEY/MALHEUR
Brian T. Zanotelli – CHAIR
JACKSON/JOSEPHINE
Gerald M. Shean– CHAIR
Allen G. Drescher
William Francis
Justin Rosas

KLAMATH/LAKE
Andrew C. Brandsness– CHAIR
Marcus M. Henderson
Ronald D. Howen

LANE
Liane I. Richardson– CHAIR
Jane M. Yates
Martha L. Rice
Andrea M. Nagles

MORROW/UMATILLA
Douglas R. Olsen– CHAIR
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Jerilyn A. Krier
Alexander D. Libmann
Brenda Terreault
Karen R. Thompson

UNION/WALLOWA
Mona K. Williams– CHAIR
Paige Louise Sully
Janie M. Burcart
WASHINGTON/YAMHILL
Catherine A. Wright—CHAIR
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Elizabeth Kafel
Stephanie M. Lommen
Fred W. Anderson
John Berman
William D. Bailey
Caitlin J. Mitchel-Markley
Thomas J. Flaherty
Kali S. Tara

State Professional Responsibility Committee
Chair: Jana Toran, term expires 12/31/2011
Region 2: Danna C. Fogarty, term expires 12/31/2014
Region 6: Chelsea D. Armstrong, term expires 12/31/2014
Region 7: Michael J. Gentry, term expires 12/31/2014
Public Member: TBD, term expires 12/31/2014
OREGON STATE BAR
Board of Governors Agenda

Meeting Date: November 13, 2010
From: Sylvia E. Stevens, General Counsel
Re: CSF Claims Recommended for Payment

Action Recommended

Consider the following claims recommended for payment:

No. 2009-11 MOTTRAM (Enterprise) $10,000.00
No. 2010-03 HAYES (Reaves) $1,025.00
No. 2010-04 HAYES (Way) $2,050.00
No. 200-06 HAYES (Lowells) $4,000.00
No. 2010-18 HAYES (Hendricks) $1,968.44
No. 2010-24 WILSON (Van Dermark) $1,729.50

TOTAL $18,279.94

Discussion

No. 2009-11 MOTTRAM (Enterprise) $10,000.00

Enterprise Rent-a-Car of Oregon retained Clackamas attorney John Mottram in 2007 to pursue a claim against a lessee for damage to one of its vehicles. The parties agreed to a flat fee of $300 plus 1/3 of any recovery obtained by Mottram.

In May 2008, Enterprise contacted Mottram about the status of the case; he replied that no settlement had been reached. In October 2008, Mottram informed Enterprise that he had reached a settlement with the lessee but had not yet received the settlement funds. Mottram resigned Form A in December 2008 without notice to his clients.

Upon further inquiry February 2009, Enterprise learned that Mottram had resigned from the bar in December 2008 and had actually settled the case and received $15,000 from the lessee in December 2007. This claim was filed shortly thereafter.

The CSF Committee considered the claim initially in January 2010 and concluded it was eligible for reimbursement in the amount of $10,000 (allowing $5,000 for Mottram’s 1/3 fee), except that the claimant had not obtained a civil judgment. Mottram filed a Chapter 7 bankruptcy petition in May 2010 and Enterprise’s counsel obtained a stipulated judgment of nondischargeability on August 10, 2010. The committee reviewed the claim again at its August 28 meeting and concluded it is fully eligible for payment.
No. 2010-03 HAYES (Reaves) $1,025.00

Brandon Reaves hired Eugene attorney Keith Hayes in May 2009 for assistance relating to a juvenile matter in which Reaves had been involved several years prior. Hayes’ fee agreement called for hourly fees of $225 and a minimum “non-refundable” fee of $1250 paid in advance. Hayes prepared a simple 2-page petition and filed it in Marion County in December 2009. The matter was set for hearing in April 2010. Reaves heard nothing more from Hayes.

At the time he took Reaves’ case, Hayes was the subject of several pending disciplinary matters. Most related to his conduct in bankruptcy cases going back to 2006 and included charges of neglect, failure to communicate, charging excessive fees, false statements to the court and failure to comply with court orders. Hayes had been suspended from practice in the bankruptcy court twice, the most recent in August 2009. An order suspending Hayes from practice during the pendency of his disciplinary cases was entered in January 2010; he was disbarred by a trial panel effective July 27, 2010.

Upon reading a February 2010 newspaper article about Hayes’ interim suspension, Reaves called him again and Hayes promised to refund the fees Reaves had advanced. However, he never did. The Committee concluded that the claim is eligible for reimbursement and no judgment is required because, while not one of the cases for which Hayes was disbarred, the conduct is identical and the amount is less than $5,000.¹ The committee also believes that Hayes is judgment-proof and it would be unreasonable to demand that the claimant pursue a judgment against him. The Committee recommends an award of $1,025, which allows $225 to Hayes for the minimal work he performed.

No. 2010-04 HAYES (Way) $2,050.00

Ms. Way hired Hayes in December 2009 to represent her in her divorce, paying him $2500 as a “minimum non-refundable fee earned upon receipt” and hourly fees of $225 after the minimum fee had been earned. The engagement agreement also provided that the client would be billed only at the end of the matter.

Hayes filed the client’s petition for dissolution, but missed several scheduled arbitration hearings, conducted no discovery, and never met with his client. He did attend a 4-hour arbitration hearing, but the matter was not concluded. As indicated above, Hayes was

¹ CSF Rule 2.6 provides:

As a result of the dishonest conduct, either:

2.6.1 The lawyer was found guilty of a crime;
2.6.2 A civil judgment was entered against the lawyer, or the lawyer’s estate, and that judgment remains unsatisfied; or
2.6.3 In the case of a claimed loss of $5,000 or less, the lawyer was disbarred, suspended, or reprimanded in disciplinary proceedings, or the lawyer resigned from the Bar.
suspended in late January 2010 pending the resolution of several disciplinary charges. He did not complete Way’s legal matter and did not refund any portion of the fees she paid in advance.

The committee concluded the claim is eligible for an award and that no judgment should be required. Way’s complaint was not part of Hayes’ disbarment, but the conduct was identical and the amount is less than $5000. The committee also believes that Hayes is judgment-proof and it would be unreasonable to demand that the claimant pursue a judgment against him. The committee recommends an award of $2050, based on Hayes having put two hours of work into the matter and earning $450.

No. 2010-06 HAYES (Lowells) $4,000.00

The client hired Hayes in May 2006 to file a Chapter 13 bankruptcy. There was no written fee agreement. Despite the client’s three years of payments under her plan, the case was dismissed in December 2009 because, on Hayes’ advice, she had failed to turn over her tax refunds for 2007 and 2008 to the trustee.

The client was covered by ARAG insurance through her union. In December 2007, ARAG paid Hayes $750 for his representation in the bankruptcy case. Under the terms of the ARAG policy, Hayes was required to accept that amount as his full fee in the case. Hayes did not disclose the $750 payment to the court or the trustee. Rather, he allowed the trustee to pay him $4000 over the three years of the plan from the client’s Chapter 13 payments. In February 2010, the bankruptcy court ordered Hayes to disgorge fees in 16 cases, including $4000 to Ms. Lowells. The payment was due in 30 days from the court’s order; no payment has been forthcoming from Hayes.

The committee concluded that this claim is eligible for an award and that no judgment should be required. As with the two prior claims, Lowells’ bar complaint was not part of Hayes’ disbarment; however the conduct is identical and the claim is for less than $5,000. The committee also believes that Hayes is judgment-proof and it would be unreasonable to demand that the claimant pursue a judgment against him.

No. 2010-18 HAYES (Hendricks) $1,968.44

The client hired Hayes in early 2008 to file a Chapter 13 bankruptcy. The client/debtor began making payments under her proposed plan, but her plan wasn’t confirmed. Although she was granted leave to file an amended plan, after a few efforts to negotiate with creditors,
Hayes essentially abandoned the case and the Chapter 13 was dismissed. While the case was pending, Hayes received his fee of $4,000 through the plan payments.

After the case was dismissed, the client inquired of the trustee about a refund of the preliminary payments she had made. The trustee informed her that the refund of $1,968.44 was delivered to and cashed by Hayes shortly after the case was dismissed. Hendricks was unable to recover the funds from Hayes.

The committee concluded that this payment was eligible for an award, as Hayes had no right to retain the $1,968.44 in plan payments. The committee declined to recommend an award for the fees paid by the client, concluding that the reasonableness of those fees in relation to his services was a fee dispute. As with the other claims, the committee recommends that no judgment be required. Hendricks’ complaint was not part of Hayes’ disbarment, but the conduct is identical and the amount of her claim is less than $5,000. The committee also believes that Hayes is judgment-proof and it would be unreasonable to demand that the claimant pursue a judgment against him.

No. 2010-24 WILSON (Van Dermark) $1,729.50

The client hired Eugene attorney Linda Wilson in the fall of 2005 to modify the terms of a divorce decree, paying a $2,500 fee in advance, plus $154 for filing fees. Nothing was filed in the case, but in October 2005 Wilson issued a billing statement showing the deposit of $2,654 to trust and a charge of $924.50 for 3.7 hours worked. That was the last the client heard from Wilson.

At the time she was retained in this case, Wilson was involved in a formal disciplinary proceeding that was scheduled for trial in December 2006. Wilson ignored several requests from the client for a refund of the unearned fees. (Wilson was suspended in April 2007 and submitted a Form B in July 2008; she died in May 2010).

The committee concluded that the claim is eligible for an award in the amount of $1,729.50 (the unearned balance of the funds deposited in advance) and that no judgment should be required. Wilson is deceased and her husband reports that her estate is insolvent.
October 4, 2010

Rod Wegener
Oregon State Bar
16037 SW Upper Boones Ferry Rd
Tigard, OR 97281

Dear Rod:

The Oregon Area Jewish Committee 2010 Judge Learned Hand Award Luncheon on September 21 was a wonderful occasion. If you were able to attend, you know that the event was outstanding in every way.

Chief Justice Paul De Muniz was a gracious and deserving honoree for the Lifetime Achievement Award. His history as an attorney, a judge, and a stellar community member is truly inspirational. Emerging Leadership honoree Elisa Dozono also showed us how worthy she is of special recognition.

Your support of the Oregon Area Jewish Committee and in honor of Chief Justice De Muniz and Elisa Dozono is greatly appreciated. Your gift of $375, of which $200 is the actual price of the luncheon and $175 is tax deductible, helped us raise necessary funds to continue our important work. For your records the Oregon Area Jewish Committee's 501(c)3 tax identification number is 26-1871211.

The entire board of the Oregon Area Jewish Committee joins us in thanking you for being part of this very special occasion.

Sincerely,

Elizabeth Schwartz
President

Emily Georges Gottfried
Executive Director

506 members attended

Oregon Area Jewish Committee is an independent Affiliate of the American Jewish Committee®
## MINUTES
**BOG Access to Justice Committee**

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<td>Chair:</td>
<td>Gina Johnnie</td>
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<td>Maureen O’Connor</td>
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<td>Derek Johnson, Mitzi Naucler</td>
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<td>Gina Johnnie, Maureen O’Connor, Karen Lord, Audrey Matsumonji, Ken Mitchell-Phillips</td>
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<td>Lauren Paulson, Michelle Teed, Charlie White</td>
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<td>Staff Members:</td>
<td>Judith Baker, Cathy Petrecca, Kay Pulju</td>
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### ACTION ITEMS

1. **Topic:** Minutes of the July meeting were not approved due to lack of a quorum.

### INFORMATION ITEMS

2. **Topic:** Distribution of Unclaimed IOLTA Funds. The current recommendation is to hold off on disbursing funds until the Legal Services Program has a better sense of the process and amount of money involved. The LSP Committee expects to have a disbursement recommendation for this committee’s approval in January 2011. A formal policy will need to be approved through the Budget & Finance Committee.

3. **Topic:** Columbia County Legal Aid. The program asked for a time extension to continue working with Legal Aid Services of Oregon on how to coordinate services. The LSP Committee granted a six-month extension.

4. **Topic:** Pro Bono Week. The Oregon New Lawyers Division and the bar’s Pro Bono Committee have planned activities in Portland, Salem and Eugene. The main event, a Pro Bono Provider Fair followed by a social and presentation of the Pro Bono Challenge awards will take place on Thursday, October 28 at the Oregon Historical Society. Oregon lawyer Brent Renison will receive the NLADA’s Beacon of Justice Award at a ceremony in Washington, D.C., on October 6.

5. **Topic:** Special LRS Panel for Employment Issues. The ABA has asked all certified LRS programs to participate in a joint venture with the Department of Labor, and bar staff would like to participate on a pilot basis. The new panel would require lawyers to meet minimum education/experience requirements to receive referrals; state affiliates of the Department of Labor would refer prospective clients only to the special panel.

6. **Topic:** Other Business. Lauren Paulson (guest) spoke about pro bono events that used to be held in Washington County. He would like to see the bar more involved in Law Day activities.
Minutes
Budget & Finance Committee
August 12, 2010
Oregon State Bar Center
Tigard, Oregon

Present - Committee Members: Chris Kent, chair; Steve Larson, vice-chair; Michelle Garcia; Mike Haglund; Karen Lord; Mitzi Naucler. Other BOG Members: Kathy Evans. Staff: Susan Grabe; Linda Kruschke; Sylvia Stevens; Rod Wegener.

1. Minutes – July 16, 2010 Committee Meeting
The minutes of the July 16, 2010 meeting were approved.

Mr. Wegener’s indicated the written July 31 financial statements and report will be available after the financial information from NorthMarq, the facilities manager, is available. The preliminary July report indicated July’s net revenue is almost $10,000 and the net revenue after seven months is probably an unprecedented high. The high net revenue again is attributable to the receipt of much Program Fee revenue before the related program expenses have occurred. Admissions revenue already has exceeded 2009 revenue and Legal Publications and Lawyer Referral revenue also are well ahead of last year at this point. Conversely, all direct expenses are only 49% of budget.

Mr. Wegener stated that expenses will start to catch up with revenue as the bar soon pays such large expenses related to the bar exam and grading and the grant to the Campaign for Equal Justice. Although net revenue usually declines from this point in the year forward, it is likely the bar could end 2010 ahead of the budgeted net revenue.

The committee asked that the two investment managers provide a fifteen minute summary of the bar’s investment portfolio at the next committee meeting.

3. Legal Publications Print Book Revenue Projections
The committee discussed the results of the member survey on the interest of purchasing printed versions of legal publications after BarBooks becomes available to all members in 2011. The survey indicated a high enough interest in the print books that the bar will continue to sell them in its existing format during 2011. However, the committee agreed to monitor the sales and evaluate during 2011 whether this practice should continue. The committee was shown a sample of a book the member could print from a pdf provided on the bar’s web site, as an alternative to purchasing the current format.

The second part of the discussion was the review of the projected revenue from print book sales. The July 30 memo from bar staff indicated potential revenue of $348,000 in 2011. This projection assumes new title books in the current format are created and sold with pre-orders only during 2011 and sales from existing inventory. The committee agreed to include
this projected revenue in the budget forecast for 2011, but concluded this projection will be monitored as the year unfolds.

4. **2011 Executive Summary Budget report**

With the inclusion of the projected revenue from print book sales, the Executive Summary of the 2011 budget includes a net revenue of $383,400. The summary includes these changes to the current year budget: the elimination of the leadership college, eliminating the white pages in the membership directory, sending the annual membership fee statement via email, and the combination of the Communications and Member Services Departments. The ethics school is to be implemented in late 2010 or 2011, but the funding for it will come from existing resources.

During the meeting, the committee recommended the inclusion of “placeholder” amounts of $10,000 for the following in the 2011 budget: mandatory mentoring, the remote communications task force, the senior lawyer task force, and the diversity convocation. In each case, all the programs have not been developed, so the final budget amount is still to be determined. No major changes were anticipated for the New Lawyers Division.

Mr. Wegener reported that department staff have begun work on developing the line item budgets for 2011 and the first draft will come to the committee at its September 24 meeting. However, these line item budgets are created about a month earlier than usual, so there probably will be adjustments to the budget presented at that meeting before the final budget is completed for the November meetings.

5. **Other Business**

Mr. Wegener reported that the tenant 20/20 is exploring sub-lease options for its space at the bar center.

6. **Next committee meeting**

The next meeting will be Friday, September 24 at the bar center in Tigard.
Minutes
Budget & Finance Committee
September 24, 2010
Oregon State Bar Center
Tigard, Oregon

Present - Committee Members: Chris Kent, chair; Steve Larson, vice-chair; Mike Haglund; Mitzi Naucler. Other BOG Members: Kathy Evans. Staff: Helen Hierschbiel; Rod Wegener.

1. Minutes – August 12, 2010 Committee Meeting
The minutes of the August 12, 2010 meeting were approved.

The August 31 financial statements indicated another healthy net revenue of $984,000 reported Mr. Wegener. The budgeted net revenue for 2010 is $140,000. From September to December 2009, the bar’s net revenue dropped $390,000 and Mr. Wegener reiterated that during the last four months of the year, expenses always exceed revenue, but a net revenue well above the budget is expected for 2010.

Contributing to the net revenue are all-time highs in revenue for Admissions and Lawyer Referral already. The higher revenue in Admissions is attributed in part to enhanced reciprocity and another 185 new members via that process are projected for 2011. Legal Publications also could exceed its budgeted revenue if print book sales on books still to come to market this year reach its expectations; although the activity probably will have a net expense. The only negative in the report was that CLE Seminars revenue was only 56% of budget.

3. Presentation by Investment Managers
Representatives from Washington Trust Bank and Becker Capital provided the committee with an oral and printed report on the investment portfolio managed by each firm. Previously Washington Trust Bank provided the bar with a letter for the bar to consider additional investment vehicles for the bar’s policy. Mr. Wegener will distribute the letter to the committee for its review.

4. 2011 Budget Report
The report to the committee was the first report with the line item budgets developed by the program managers. Mr. Wegener walked the committee through the report highlights, chief of which was a projected net revenue of $565,000. Mr. Wegener further stated there are a number of budget areas that are incomplete and a more complete budget report will be presented at the November committee and board meetings.
By consensus, the committee approved the report knowing that an updated report will be on the next meeting’s agenda.

5. **Change in Tenant and Lease at the Bar Center**

Mr. Kent and Mr. Wegener updated the committee on the potential change in tenants on the first floor at the bar center. Due to the confidential nature requested by the prospective tenant and the ongoing negotiations, limited details were provided at the meeting.

6. **Next committee meeting**

The next meeting will be during the November 11-13 board retreat and meeting at Timberline Lodge.
## MINUTES

**BOG Member Services Committee**

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<th>Meeting Date:</th>
<th>August 12, 2010</th>
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<td>Oregon State Bar</td>
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<td>Ann Fisher</td>
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<td>Barbara DiIaconi, Derek Johnson, Ethan Knight</td>
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<td>Staff:</td>
<td>Kay Pulju, Margaret Robinson, Dani Edwards</td>
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### ACTION ITEMS

1. **Approval of Minutes:** minutes from the July Member Services Committee meeting were approved as submitted.

2. **OSB Annual Awards:** After review of the award nominees, the committee selected members to recommend for each award. The formal recommendations will be discussed during the BOG meeting on August 13.

3. **OSB Program Review:** After discussion of the BOG Budget and Finance Committee’s decision to not fund the Leadership College the Member Services Committee unanimously approved a recommendation for the BOG to support the B&F Committee’s decision to not fund the Leadership College. Members of the committee discussed ideas on how to approach a review of the bar programs and services. The committee will review their notebooks and make note of which areas they are interested in looking at further. After receiving feedback from the committee, staff will prepare a schedule of items to be reviewed by the committee.

### INFORMATION ITEMS

4. **Rural/Urban Task Force:** The task force recently distributed a survey and based on the responses they created committees to look at various topics including technology, barriers to bar involvement, and governance issues and representation.

5. **Diversity/AAP Update:** The Diversity Administrator provided a recap of the OLIO retreat held in Hood River earlier in the month. Attendance was good and student and lawyer participation was astounding.
MINUTES
BOG Policy and Governance Committee

Meeting Date: August 12, 2010  
Location: OSB Center, Tigard, Oregon  
Chair: Mitzi Naucler  
Vice-Chair: Chris Kent  
Members: Barbara Dilaconi, Michelle Garcia, Michael Haglund, Ethan Knight, Maureen O'Connor

### ACTION ITEMS

1. **The minutes of the June 12, 2010 meeting were approved.**

2. **Amendment to MCLE Rule on Access to Justice.** Jess Barton appeared to explain his proposal for amending MCLE Rule 5.5(b) to add “military service” as a category eligible for Access to Justice credits. After discussion, it appeared to the committee that many of the programs that Mr. Barton was concerned about were already eligible for AtoJ credit under the category of “disability.” The committee suggested to Mr. Barton that he seek input from the AAC and Diversity Section regarding his concern that “anti-military” bias should be included in the rule. No other action was taken.

3. **Ethics School.** The committee reviewed the proposed rule establishing an ethics school and voted unanimously to recommend that the BOG forward it on to the Supreme Court for adoption.

4. **New Lawyer Training Program.** Ms. Stevens updated the committee on the New Lawyer Mentoring Program and indicated the Task Force would have a proposal for enabling rules for the committee and BOG’s consideration in November.
MINUTES
BOG Public Affairs Committee

Meeting Date: August 12, 2010
Location: Oregon State Bar
Chair: Steve Piucci
Vice-Chair: Derek Johnson
Members Absent: Ann Fisher
Staff Members: Susan Grabe, Judith Baker

ACTION ITEMS

1. Minutes. The minutes were approved by consensus.

2. OSB Priorities for 2011. The committee recommends that the board of governors adopt the following priorities for the 2011 legislative session: 1) Adequate funding for the justice system, 2) Access to Justice, including funding for both civil and criminal legal services, and 3) the OSB Law Improvement package of bills

INFORMATION ITEMS

3. Court Fees: The committee received an update on the Joint Interim Committee on Justice System Revenues and the bar’s task force on court fees. The bar task force is waiting to review the legislative concept from OJD so that the task force can provide additional feedback to the legislature. The task force is also drafting a report that addresses some of the long term issues facing the courts in Oregon.

4. Initiatives: The committee reviewed the initiatives that will be on the ballot in November, paying particular attention to those with a significant fiscal impact. The move to annual sessions of the legislature

5. Legal Services Developments: The committee received an update on the status of Columbia County Bar regarding legal services delivery. In addition, the bar has been working with its congressional delegation to ensure IOLTA funds are included as fully insured funds by the FDIC, which have been inadvertently written out of recent legislation.
MINUTES
BOG Public Affairs Committee

Meeting Date: September 24, 2010
Location: Oregon State Bar
Chair: Steve Piucci
Vice-Chair: Derek Johnson
Members Present: Steve Piucci, Derek Johnson, Ann Fisher, and Steve Larson (walk through), and.
Members Absent: Gina Johnnie, Audrey Matsumonji, Kenneth Mitchell-Phillips
Staff Members: Susan Grabe, Judith Baker

ACTION ITEMS

- Minutes. The minutes were approved by consensus.

- Red Flags Rule. The bar has been working with its congressional delegation to ensure IOLTA funds are included as fully insured funds by the FDIC, which have been inadvertently written out of recent legislation. The bar has sent a letter to Sen Merkley who sits on the Senate Banking Committee regarding legislation under consideration that would jeopardize the lawyer exemption under Red Flags. The committee approved the letter which supported the bar’s long held position on this matter.

INFORMATION ITEMS

- Election Cycle Update. The committee reviewed the legislative seats at play this election cycle. There is the potential for a marked increase in the numbers of lawyer legislators in the 2011 election. Public Affairs, with committee and board approval, has stepped up outreach efforts.

- Justice System Revenue Committee and Court Fees: The committee received an update on the Joint Interim Committee on Justice System Revenues and the bar’s task force on court fees. The bar task force is waiting to review the legislative concept from OJD so that the task force can provide additional feedback to the legislature. The task force is also drafting a report that addresses some of the long term issues facing the courts in Oregon.
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<td><strong>TOTALS</strong></td>
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Funds available for claims and indirect costs allocation as of September 2010

<table>
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<th></th>
<th>UNPAID BALANCE</th>
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<td><strong>TOTALS</strong></td>
<td><strong>$313,348.83</strong></td>
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Total in CSF Account $586,108.00
Fund Excess $272,759.17
## 2010 JUDGMENTS COLLECTED

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<tr>
<th>Date</th>
<th>Attorney</th>
<th>Payment Received</th>
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<td>1/5/2010</td>
<td>Phil Kelley</td>
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<td>2/10/2010</td>
<td>Phil Kelley</td>
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<tr>
<td>3/4/2010</td>
<td>Phil Kelley</td>
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<td>4/5/2010</td>
<td>Phil Kelley</td>
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<td>5/3/2010</td>
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<td>6/4/2010</td>
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<td>8/25/2010</td>
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<td>9/8/2010</td>
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<td>9/30/2010</td>
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**TOTAL**          | **$3,781.93**   |
## OREGON STATE BAR
### Client Security - 113
#### For the Nine Months Ending September 30, 2010

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<tr>
<th>Description</th>
<th>September 2010</th>
<th>YTD 2010</th>
<th>Budget 2010</th>
<th>% of Budget</th>
<th>September Prior Year</th>
<th>YTD Prior Year</th>
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<td>460</td>
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<td>Membership Fees</td>
<td>285</td>
<td>211,186</td>
<td>216,100</td>
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<td>62</td>
<td>68,626</td>
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<td>Miscellaneous Income</td>
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<td><strong>TOTAL REVENUE</strong></td>
<td>812</td>
<td>219,547</td>
<td>227,400</td>
<td>96.5%</td>
<td>(2,254)</td>
<td>76,823</td>
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<td><strong>EXPENSES</strong></td>
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<td><strong>SALARIES &amp; BENEFITS</strong></td>
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<td>Employee Salaries - Regular</td>
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<td>24,204</td>
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<td>2,210</td>
<td>21,448</td>
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<td>Employee Taxes &amp; Benefits - Reg</td>
<td>723</td>
<td>6,686</td>
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<td>6,802</td>
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<tr>
<td><strong>TOTAL SALARIES &amp; BENEFITS</strong></td>
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<td>30,889</td>
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<td>76.5%</td>
<td>2,867</td>
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<td>Claims</td>
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<td>Collection Fees</td>
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<td>Travel &amp; Expense</td>
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<td><strong>TOTAL DIRECT PROGRAM EXPENSE</strong></td>
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<td>162,331</td>
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<td>24,512</td>
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<td><strong>GENERAL &amp; ADMINISTRATIVE</strong></td>
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<td><strong>TOTAL G &amp; A</strong></td>
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<td><strong>NET REVENUE (EXPENSE)</strong></td>
<td>(7,414)</td>
<td>25,299</td>
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<td>(29,755)</td>
<td>(54,585)</td>
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<td>15,471</td>
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<td>(30,841)</td>
<td>(64,359)</td>
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### Fund Balance
- **Beginning of Year:** 570,637
- **Ending:** 586,108

### Staff - FTE count
- 0.35
- 0.35
- 0.35
Summary of 2010 House of Delegates Actions
October 29, 2010

Passed

Amend HOD Rule 5.5 regarding distribution of agenda (BOG Resolution No. 2). Yes: 122; No: 2; Abstain: 0

Veterans Day Remembrance extending gratitude to those serving in the military service and offering condolences to the families of those who have died in service to their country (BOG Resolution No. 3). Yes: 122; No: 0; Abstain: 2

Amend Oregon Rules of Professional Conduct 1.5(c)(3) and 1.15-1(c) regarding “earned on receipt” fees (BOG Resolution No. 4). Yes: 118; No: 10; Abstain: 0

Amend Oregon Rule of Professional Conduct 3.3 regarding a lawyer’s obligation when a client or witness offers false evidence (BOG Resolution No. 6, as amended). Yes: 113; No.: 3; Abstain: 5.

Support Adequate Funding for Legal Services to Low-Income Oregonians (HOD Resolution No. 1). Yes: 106; No: 13; Abstain: 6.

Direct the BOG to study sponsoring a bill to amend ORS 133.060 to provide electronic notice for fist appearances on criminal citations (HOD Resolution No. 5, as amended). Yes: 105; No: 21; Abstain: 0.

Failed

Amend Oregon Rules of Professional Conduct 1.2 and 3.4 to prohibit a lawyer from violating or advising a client to violate a ruling of the court (BOG Resolution No. 5). Yes: 51; No: 71; Abstain: 6.

Exempt lawyers from the duty to report child abuse under ORS 419B.010 and repeal the educational requirement of ORS 9.114 (HOD Resolution No. 2). Yes: 13; No: 112; Abstain: 2.

Amend Oregon Rules of Professional Conduct 7.1 – 7.3 to conform to the analogous rules governing Washington lawyers (HOD Resolution No. 3). Yes: 16; No: 104; Abstain: 2.

Amend Bar Rules of Procedure 8.1 and 8.2 to allow reinstatement of all inactive members by the Executive Director (HOD Resolution No. 4). Yes: 22; No: 95; Abstain: 7.

Prohibit OSB from offering quantity-discount pricing to one purchaser that is different from the price offered to other purchasers (HOD Resolution No. 6). Yes: 52; No: 67; Abstain: 6.