

**Oregon State Bar  
Special Meeting of the Board of Governors  
May 20, 2011  
Minutes**

The meeting was called to order by President Steve Piucci at 11:05 a.m. on May 20, 2011, and adjourned at 12:39 p.m. Members present from the Board of Governors were Jenifer Billman, Barbara Dilaconi, Hunter Emerick, Ann Fisher, Michelle Garcia, Michael Haglund, Gina Johnnie, Matthew Kehoe, Christopher Kent, Tom Kranovich, Steve Larson, and Maureen O'Connor. Staff present were Rod Wegener, Helen Hierschbiel, Kay Pulju, Amber Hollister, George Wolff and Camille Greene. Also present were Lish Whitson, former chair of the ABA's Standing Committee on Lawyer Referral & Information Services and an out-of-state member of the bar's House of Delegates, and three members of the OSB Public Service Advisory Committee: Doug Tookey, Chair, Will Jones, Member, and Dan Griffith, Public Member.

**1. Call to Order**

**2. Lawyer Referral Service Funding (Johnnie)**

A. Guest Speaker, Lish Whitson

Ms. Johnnie gave the background of the LRS funding issue and the need for additional funding now that Bar Books is a free service to members. The board will vote on this issue in June. If new funding is approved, it could bring LRS out of the red, helping the OSB's overall budget situation. OSB currently has approximately 1300 LRS panel members and receives up to 80,000 calls per year, with 55,000 of those referred to the panelists.

Mr. Whitson reported, based on past experience, that a percentage-fee funding model would bring steady revenue income to the bar while providing access to justice to the public. It is important to distinguish between Pro bono, Modest Means, and LRIS when branding each program. The OSB can avoid negligent referral liability (not an issue elsewhere) with proper terms of agreement for and vetting of panelists.

Mr. Whitson's answers to LRS Questions **[Exhibit A]** and others raised by **BOG members**:

- King County's panel has 300 attorneys and raises \$250,000-\$260,000 per year.
- Registration fees would need to increase to unsupportable amounts to equal the revenue from percentage-fee funding.
- OSB's panels are very large, perhaps the largest in the country. LRS should strive for quality panels, rather than quantity. Attrition at the outset of percentage fees is therefore a benefit, and experience shows that most who

leave will want to come back when they see how good the program has become.

- States that implement a percentage-fee model do not return to their previous funding model. Without percentage fees, pro bono and modest means panels may become unsustainable, and the quality of LRS referrals continues to degrade over time.
- When calls are properly referred to Pro bono, Modest Means, or LRIS, the program benefits everyone and access to justice is served.
- Ms. Hirschbiel clarified that it would require a change to Oregon's RPCs.
- Give your panelists a heads up on the new terms: under oath, hold harmless, and percentage fees and hope that some will opt out resulting in a quality panel. Our current number of 1300 panelists is too many to service efficiently. Send out a questionnaire at the end of the first year. It is good publicity and a public service.

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

None.

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1. What is the revenue potential with percentage fees?
2. Wouldn't it be easier and just as effective to raise the panel registration fees?
3. What happens if so many lawyers dislike the new model that they quit the program?
4. How many other statewide and/or mandatory bar LRS's use a percentage fee model? What have some of their experiences been?
5. What if Oregon is just different from other jurisdictions?
6. What's to lose by keeping the status quo?
7. Some Oregon lawyers say they never get fee-generating cases from our LRS. What if that's the case and switching to percentage fees fails to bring in new revenue?
8. Isn't it particularly unfair to "tax" LRS lawyers since they only get low fee generating cases and the program benefits everyone?
9. Won't the ethics rules require clarification?
10. Wouldn't percentage fees greatly increase the amount of administrative work each lawyer has to do?
11. How are confidential settlement amounts handled?
12. What's to stop a lawyer from increasing his/her hourly rate to compensate for the "new" amount owed under a percentage fees revenue model?
13. Won't the public disapprove of the LRS receiving part of the funds collected from the client? Won't percentage fees make the bar look bad?
14. Is there an increased likelihood the bar could face a negligent referral claim?
15. Why shouldn't the OSB just outsource the program or use an online-only software product?

**Oregon State Bar  
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Executive Session Minutes**

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

A. Tax Matters

- a. Decide whether to pursue an administrative appeal of the Washington Department of Revenue decision regarding the Oregon State Bar's tax obligations.

OSB received notice from Washington State that we are liable for B&O tax on OSB CLEs held in Washington State in the past. We responded, as a governmental entity, we should be exempt. Washington disagreed. We can proceed to move forward with voluntary disclosure agreement, to limit liability to the past four tax years, or proceed with the administrative appeal. Ms. Hirschbiel recommends we proceed with the administrative appeal, based on precedence set by Washington State Bar. It is hard to distinguish us from the Washington State Bar, who won their administrative appeal. OSB may look for alternative counsel, rather than Stoel Rives, who represented us as a state agency in the past. They recommend we sit down with Washington state to discuss. We have until June 13 to appeal. We have operated in good faith, exempt from Federal and other taxes, and thought we were exempt from Washington state tax, too. If we proceed with this appeal, will it have a ripple effect with our other tax exemptions? Washington State Bar may want to file an *amicus brief* so they are not affected if we have to pay taxes which are estimated at \$3000-\$4000 per year.

**Motion:** Mr. Haglund moved and Ms. Fisher seconded to accept the recommendation to pursue an administrative appeal of the Washington Department of revenue decision regarding the Oregon State Bar's tax obligations. The board unanimously approved the motion.