

**Oregon State Bar**  
**Meeting of the Board of Governors**  
June 24, 2011  
**Open Session Minutes**

The meeting was called to order by President Stephen Piucci at 11:02 a.m. on June 24, 2011, and adjourned at 2:03 p.m. Members present from the Board of Governors were Jenifer Billman, Barbara Dilaconi, Ann Fisher, Michelle Garcia, Michael Haglund, Gina Johnnie, Matt Kehoe, Christopher Kent, Ethan Knight, Tom Kranovich, Steve Larson, Audrey Matsumonji, Kenneth Mitchell-Phillips, Mitzi Naucler, and Maureen O'Connor. Staff present were Sylvia Stevens, Helen Hierschbiel, Jeff Sapiro, Susan Grabe, George Wolff, Kay Pulju, Mariann Hyland, and Camille Greene. Also present were: ONLD Chair-Elect Jason Hirshon; ABA HOD Delegate Christine Meadows; PLF liaison, Fred Ruby and PLF CEO, Ira Zarov; former BOG President, Gerry Gaydos; Diversity Section Chair, Diane Schwartz Sykes; and Lauren Paulson.

**Friday, June 24, 2011, 11:00 a.m.**

**1. Department Presentation**

- A. Ms. Grabe presented an overview of the Public Affairs program and staff. The department's mission is to apply the knowledge and experience of the legal profession to the public good by advocating for the legal profession, the judicial system and the public. The department has impact on the legislature, sections and committees, workgroups, and the public.

**2. 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.

Ms. Stevens introduced Mariann Hyland, the new Director of Diversity and Inclusion and showed an example of how ads will look on BarBooks®.

- D. Report of the BOG Liaison to MBA

Mr. Kent reported on the May 3 meeting of the MBA. They have no issues for the bar.

**3. Professional Liability Fund**

**A. General Update**

Mr. Zarov reported that the PLF board is considering whether to eliminate the Special Underwriting Assessment. Any recommendation to do so will be presented to the BOG. The PLF is also looking at a way to allow members to pay their assessment with credit cards that doesn't result in passing on the bank fees to other members. The PLF Board will have two lawyer vacancies for BOG appointment; nominees will be presented by the end of October. Mr. Zarov also gave a brief update on the PLF Defense Panel Training, case count, and staffing issues.

**B. Financial Report**

As written.

**C. 2012 Assessment**

The PLF does not anticipate an increase in the assessment for 2012 but the final recommendation will be submitted to the BOG in due course.

**4. Special Appearances**

**A. Update on Convocation on Equality**

Mr. Gaydos introduced Diane Schwartz Sykes who gave an update on the history and status of the November 4, 2011 Convocation on Equality (COE.) Mr. Gaydos expressed his gratitude to the bar employees, Diversity Section members and others who are working on the 2011 COE.

Ms. Schwartz Sykes presented the Diversity Section's resolution for BOG support of the 2011 Convocation on Equality.**[Exhibit A]**

**Motion:** Mr. Piucci moved, Ms. O'Connor seconded, and the board voted unanimously to adopt the resolution supporting the COE.

**B. ABA Delegate Report**

Ms. Meadows informed the board of the issues for the ABA Annual Meeting in August in Toronto. Additional details will be provided as they are available.

**C. Member Request to Support Lawyers in China**

Ms. Stevens presented a request from a member, who wishes to remain anonymous, to protect colleagues in China.**[Exhibit B]**

**Motion:** Mr. Kent moved, Mr. Haglund seconded, and the board voted to express its solidarity with lawyers in China in response to recent arrests and detention of Chinese rights lawyers. Ms. Matsumonji abstained.

## 5. Rules and Ethics Opinions

### A. Legal Ethics Committee

Ms. Stevens presented the Legal Ethics Committee's recommendation to revise Formal Ethics Opinion No. 2005-151 that deals with "fixed fees," including those collected in advance and frequently referred to as "earned on receipt." The opinion was based on RPC 1.5 and 1.15-1 as they existed in January 2005 as well as existing case law governing "earned on receipt" fees. **[Exhibit C]**

**Motion:** Ms. Fisher moved, Ms. Matsumonji seconded and the board voted unanimously to issue a revised Formal Opinion No. 2005-151 to conform it to recent changes in the Rules of Professional Conduct.

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

### A. Oregon New Lawyers Division Report

Mr. Hirshon reported on a variety of ONLD projects and events described in the written report and presented the updated 2011 ONLD calendar of events. Recently the ONLD board discussed the ONLD goals and mission, at the board's request. The division will be participating with the *Daily Journal of Commerce* to give monthly ONLD updates. ONLD members are advocating in their local school districts for iCivics, as requested by Chief Justice DeMuniz. The ONLD graded the high-school essays and chose winners. Their new program, Practical Skills through Public Service, is aimed at pairing up unemployed or under-employed new lawyers with public service opportunities.

Mr. Hirshon presented the ONLD's request to seek federal funding for the Law College Program. They are asking for \$4,000 and the first item on their agenda will be on Social Security Law.

**Motion:** Mr. Kent moved, Ms. Matsumonji seconded, and the board voted unanimously to approve the ONLD's request to seek federal funding for the Law College Program.

## 7. BOG Committees, Special Committees, Task Forces and Study Groups

### A. Access to Justice Committee

Ms. Johnnie presented the Public Service Advisory Committee Recommendation to implement a percentage fee model for LRS. **[Exhibit D]** Ms. Fisher questioned whether there is a clear understanding of what the proposed change will mean to access to justice. Ms. Johnnie explained that the current program screens calls makes referrals as appropriate to Legal Aid or Modest Means; all we are looking at is changing the fee structure. Mr. Haglund identified five reasons why changing the

funding is a good idea: (1) Call wait-time due to staff overload can be reduced, enhancing the service ; (2) It may enable us to make the RIS programs self-sufficient; (3). Oregon is often a trailblazer, but in this case we are looking at a model that 23 states and 16 local bars already use and have not abandoned once adopted; (4) We have our own very-qualified bar committee that recommends this model based on extensive research; and (5) Concerns about liability for negligent referral not supported by evidence from other programs and any ethical issues are easily addressed through our Legal Ethics Committee. Mr. Haglund urged as a matter of good policy that the BOG approve shifting the LRS to a model that includes percentage fees and leave it to staff and the PSC to work out the details. Mr. Kent agreed that the new model will increase the funding for the department, but is it a public service or a money-maker? He expressed concern about liability for negligent referral , and also that the program may violate ORS 9.505 and result in a possible legal challenges in the future. Mr. Kent and Mr. Kehoe agreed that this should be debated with the membership at the HOD meeting. Mr. Kranovich predicted that we will hear from the HOD if we pass this funding model. Ms. Naucler expressed the view that lawyer referral is a public service as it is currently structured, so the new funding model will not change the access to justice. Ms. O'Connor stated that as a non-attorney, she would rely on the bar for a referral and does feel what we currently have is a public service. Ms. Billman stated that she the PSC proposal for the following reasons: (1). It addresses the needs of the current financial situation; (2) It will maintain the Modest Means program mission; and 3. It will expand to the middle-income population with time.

**Motion:** Mr. Haglund moved that the BOG approve and authorize the OSB LRS to shift to a percentage-fee model, and have staff and the PSAC make recommendations through the P&G Committee to develop its appropriate features. Ms. Johnnie seconded and the motion passed 9-6. (Aye: Ms. Billman, Ms. Garcia, Mr. Haglund, Ms. Johnnie, Mr. Knight, Ms. Matsumonji, Mr. Mitchell-Phillips, Ms. Naucler, and Ms. O'Connor. Nay: Mr. Kranovich, Mr. Larson, Ms. Dilaconi, Mr. Kent, Ms. Fisher and Mr. Kehoe.)

**B.** Appellate Screening Committee

Mr. Larson explained that the governor's office has asked the committee to work with county bars to help make their appointment screening processes uniform throughout the state.

Mr. Larson reported that the Appellate Screening Committee recommended all candidates for the current appellate court vacancy.

**Motion:** The board voted unanimously to approve the committee motion to approve the recommendations for the appellate court vacancy.

**C.** Budget and Finance Committee

Mr. Kent reported on the financial position of the bar. He gave a summary of various capital improvement matters at the bar center including building out the 3d floor space for RIS and Admissions, improving the unfinished 1<sup>st</sup> floor space to enhance is rental potential, budgeting for tenant improvements, installing an "Oregon State Bar" sign on the building, and replacing the reception area floor. The committee recommends authorizing the expenditure of approximately \$240,000 to make these improvements. The options to fund these improvements were discussed, and the committee would like to authorize the CFO to explore funding before they make the decision to use current reserve funds.

**Motion:** The board voted unanimously to approve the committee motion to take action on the tenant improvements for the vacant space on the first and third floor and other capital improvements at the bar center, to authorize the bar's CFO to continue exploring a loan for funding the tenant and other capital improvements, and to engage Macadam Forbes as brokers for leasing the vacant space at the bar center.

**D. Member Services Committee**

In Ms. Johnnie's absence Ms. O'Connor presented the Member Services Committee's recommendation to sunset the Law Practice Management Section.

**Motion:** The board voted unanimously to approve the committee motion to sunset the Law Practice Management (LPM) Section as requested, transferring its assets (list serve and fund balance) to the PLF's practice management program.

Ms. Pulju presented a timeline for Annual OSB Awards and shared some members' reactions to changes in the membership directory distribution format.

**E. Policy and Governance Committee**

**Motion:** Ms. Naucler presented the committee motion to repeal of RPC 1.15-2(m) in light of the legislature's approval of SB 380 which makes failure to certify IOLTA compliance an administrative matter. This will be a BOG resolution on the HOD Agenda. The board voted unanimously to approve the committee motion.

**Motion:** Ms. Naucler presented the committee's motion to consolidate the 16 LPRC committees into 7 according to BOG regions. No rule changes are required, as structure of the LPRCs is within the discretion of the BOG. The board voted unanimously to approve the committee motion.

**Motion:** Ms. Naucler presented the amendment to the Exemption to Member email Requirement to change it to no email required if over 65 and retired or if other ADA accommodations are needed. The board voted unanimously to approve the committee motion.

**F. Public Affairs Committee**

During her department presentation, Ms. Grabe updated the board on the status of the legislative session. The Public Safety Budget (which encompasses the Judicial Budget) is the main issue at this time and things are moving quickly as the session winds to an end.

In Mr. Johnson's absence, Ms. Matsumonji presented the committee's request for the board to consider nominating Dave Barrows for the Professionalism Commission's Edwin J. Peterson Professionalism Award. The Commission has indicated that Mr. Barrows' inactive status will not be a problem.

**Motion:** The board voted unanimously to approve the committee motion to nominate Dave Barrows for the Professionalism Commission's Edwin J. Peterson Professionalism Award.

## **8. Consent Agenda**

**Motion:** Ms. Fisher moved, Ms. Naucler seconded, and the board voted unanimously to approve the consent agenda including various appointments [**Exhibit E**] and the revocation of the last revision to the executive director's contract [**Exhibit F**].

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

Nothing submitted.

OREGON STATE BAR BOARD OF GOVERNORS  
RESOLUTION IN SUPPORT OF  
THE 2011 CONVOCATION ON EQUALITY

WHEREAS diversity within the legal profession, which is reflective of the diversity of cultures, experiences, abilities, race, and sexual orientation of Oregonians, is crucial to pursuing access to justice for all;

WHEREAS the Oregon State Bar is committed to serving and valuing its diverse communities, to advancing equality in the judicial and criminal justice systems, and to removing barriers within those systems;

WHEREAS the Oregon State Bar embraces its diverse constituencies and is committed to the elimination of bias in the Judicial and criminal justice systems;

WHEREAS the Oregon legal community has made much progress but has much more work to do to reach these important goals;

WHEREAS achieving equality in the judicial and criminal justice systems will require ongoing concerted and focused efforts by Oregon attorneys, legal professionals and community leaders;

WHEREAS the 2011 Convocation of Equality seeks to embody and advance these values and efforts, as it celebrates the 10<sup>th</sup> Anniversary of the first Convocation of Equality in 2001;

WHEREAS the programs, panels and presentations at the 2011 Convocation will advance diversity awareness in a number of communities, including attorneys wishing to increase their cultural competency and understanding of diverse communities; employers seeking to increase diversity in the workplace; diverse attorneys hoping to build leadership skills and to advance their professional and volunteer-service careers; and diversity supporters looking to support diversity efforts;

WHEREAS The 2011 Convocation on Equality is a keystone event that will bring positive attention and focus to the Oregon State Bar's efforts toward inclusion of all;

THEREFORE BE IT RESOLVED THAT:

We support the 2011 Convocation on Equality and encourage bar members and community leaders throughout the state of Oregon to attend and to participate;

We, as the leadership of the Oregon State Bar, agree to review the reports generated at the Convocation and to consider whether to adopt or implement any specific recommendations.

We recognize and support the work of the OSB Diversity Section and other organizations and agencies to implement the Convocation's objectives and goals, consistent with the Bar's commitment to advancing diversity in the Oregon legal community and access to justice for all Oregonians.

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** June 24, 2011  
**From:** Sylvia E. Stevens, Executive Director  
**Re:** Support for Lawyers in China

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### Action Recommended

Consider a member's request that the OSB support lawyers in China.

### Background

An OSB member<sup>1</sup> has asked the OSB to express its solidarity with lawyers in China in response to recent arrests and detention of Chinese rights lawyers. In support of the request, the member has submitted the following statement from the Committee To Support Chinese Lawyers:

#### Lawyers Urge Solidarity With Chinese Colleagues

*"I'll bet that there will be others in the future who, like me, will become increasingly mute...*

*Maybe everyone should learn from me and be a tortoise hiding its head, for it's because I've done this*

*that not a single hair on my body has been harmed. Of course, perhaps there's been a huge earthquake inside my heart."*

*—lawyer Li Tiantian's blog entry, posted after her return home after two months of secret detention*

On the 22<sup>nd</sup> anniversary of the violent crackdown on protesters in Tiananmen Square, Chinese authorities are engaged in the most severe crackdown on lawyers and human rights defenders since 1989. Just as the protestors who gathered in Tiananmen Square in 1989 called for democratic reform, today, many of China's human rights lawyers have developed a deep-rooted conviction that the rule of law is not merely a superficial gloss—that it in fact represents a framework for justice that applies equally to all, and with the power to hold even the State that created it accountable.

China has repeatedly avowed its commitment to the rule of law but in recent months has taken violent steps to silence its human rights lawyers. Lawyers are essential to the establishment and maintenance of the rule of law; they play an integral part in the mechanisms that lead to the even-handed and predictable

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<sup>1</sup> The member has asked that her name not appear in materials connected with this discussion "since my family continues to do work in China and does not wish to place any Chinese colleagues and contacts at risk."

enforcement of laws. As United Nations General Assembly has unanimously recognized, there is nothing disloyal or subversive about a lawyer defending alleged criminals, unpopular clients, or whistleblowers working to bring official corruption to light.

Li Tiantian is among the wave of lawyers, human rights defenders, and activists who have been arbitrarily detained by the government since February, in apparent response to fears of a Chinese “Jasmine” revolution. Lawyers who have been disappeared, detained, tortured and beaten, include:

Tang Jitian, disappeared in February; after three weeks he was released to house arrest

Teng Biao, disappeared in February for 70 days

Jiang Tianyong, disappeared in February for two months

Liu Shihui, missing since February

Tang Jingling, charged with “inciting subversion of state power” in March

Li Fangping, disappeared for five days in April

Ni Yulan, criminally detained since April and held on unspecified charges

Jin Guanghong, disappeared tortured for ten days in April

Li Xiongbing, disappeared for three days in May

As fellow lawyers, we repudiate these attacks on our Chinese counterparts. At this time, when so many of our Chinese colleagues are being silenced, it is imperative that we speak out on their behalf in order to ensure that this disturbing abuse does not successfully quash their efforts to establish the rule of law in China.

The Committee to Support Chinese Lawyers (<http://www.csclawyers.org>) is a group of independent lawyers from outside China whose goal is to support lawyers in China in their quest to strengthen the rule of law there. The Committee, which is housed at the Leitner Center for International Law and Justice at Fordham Law School in New York City, seeks to strengthen the role of lawyers and to promote their independence.

Encourage your local Bar Association to support Chinese lawyers.

For more information and address information for open letters, please send a request to [jchia@law.fordham.edu](mailto:jchia@law.fordham.edu).

**FORMAL OPINION NO. 2005-151**  
[REVISED 2011]

**Fee Agreements:**  
**Fixed Fees**  
**Facts:**

Lawyer wishes to use fixed fee agreements for certain types of services that Lawyer will perform for clients. Lawyer intends to obtain most or all of the fixed fee in advance of performing any services for the client.

**Questions:**

1. May Lawyer enter into fixed fee agreements with clients?
2. May Lawyer deposit prepaid fixed fees in Lawyer's general account?
3. May Lawyer keep all of the prepaid fixed fee even if the representation ends before all of the work is performed by Lawyer?
4. May Lawyer charge more than the fee fixed by the agreement when the matter unexpectedly involves more work than usual for the particular matter?

**Conclusions:**

1. Yes, qualified.
2. No, qualified
3. No, qualified.
4. No, qualified.

**Discussion:**

For purposes of this opinion, the term *fixed fee agreement* includes any fee agreement in which the lawyer's charge for specified services is a fixed dollar amount, regardless of when the lawyer is paid or how much work the lawyer must do and regardless of the name applied by the lawyer to the agreement—e.g., "flat fee," "nonrefundable retainer," "prepaid legal fee," etc.

1. *Propriety of Fixed Fee Agreements.*

Oregon RPC 1.5(a) and (b) provide:

(a) A lawyer shall not enter into an agreement for, charge or collect an illegal or clearly excessive fee or a clearly excessive amount for expenses.

(b) A fee is clearly excessive when, after a review of the facts, a lawyer of ordinary prudence would be left with a definite and firm conviction that the fee is in excess of a reasonable fee. Factors to be considered as guides in determining the reasonableness of a fee include the following:

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

(3) the fee customarily charged in the locality for similar legal services;

(4) the amount involved and the results obtained;

(5) the time limitations imposed by the client or by the circumstances;

(6) the nature and length of the professional relationship with the client;

(7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and

(8) whether the fee is fixed or contingent.

The Oregon RPCs do not prohibit fixed fee agreements. In addition, case law establishes that fixed fee agreements are permitted as long as they are not excessive or unreasonable. *In re Hedges*, 313 Or 618, 623–624, 836 P2d 119 (1992) (“[W]here a [nonrefundable fixed fee] arrangement is used ‘the designation of the fee as nonrefundable must be made by a clear and specific written agreement between client and lawyer.’”); *In re Biggs*, 318 Or 281, 293, 864 P2d 1310 (1994). The mere fact that a fixed fee may result in a fee in excess of a reasonable hourly rate does not in itself make the fee unethical. *In re Gastineau*, 317 Or 545, 552, 857 P2d 136 (1993). On the other hand, “The disjunctive use of the word ‘collect’ means that the excessiveness of the fee may be determined after the services have been rendered, as well as at the time

the employment began.” *In re Gastineau, supra*, 317 Or at 550–551; OSB Formal Ethics Op Nos 2005-15, 2005-69, 2005-97; *In re Sassor*, 299 Or 720, 705 P2d 736 (1985).

2. *May Prepaid Fixed Fees Be Deposited into the Lawyer’s General Account?*

Oregon RPC 1.5(c) provides, in part:

A lawyer shall not enter into an arrangement for, charge or collect:

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(3) a fee denominated as “earned on receipt,” “non-refundable” or in similar terms unless it is pursuant to a written agreement signed by the client which explains that:

(i) the funds will not be deposited into the lawyer trust account, and

(ii) the client may discharge the lawyer at any time and in that event may be entitled to a refund of all or part of the fee if the services for which the fee was paid are not completed.

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Oregon RPC 1.15-1(a) provides, in pertinent part:

(a) A lawyer shall hold property of clients or third persons that is in a lawyer’s possession separate from the lawyer’s own property. Funds, including advances for costs and expenses and escrow and other funds held for another, shall be kept in a separate “Lawyer Trust Account” maintained in the state where the lawyer’s office is situated, or elsewhere with the consent of the client or third person. Each lawyer trust account shall be an interest bearing account in a financial institution selected by the lawyer or law firm in the exercise of reasonable care. . . .

Oregon RPC 1.15-1(c) provides:

A lawyer shall deposit into a lawyer trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred.

Ordinarily, fees are earned as work is performed. See OSB Formal Ethics Op No 2005-149. Without a clear written agreement between a lawyer and a client that fees paid in advance are earned on receipt, such funds must be considered client property and are, therefore, afforded the protections imposed by Oregon RPC 1.15-1. *In re Biggs, supra* (discussing former DR 9-101). If there is a written agreement with the client that complies with the requirements of Oregon RPC 1.5(c)(3), the fixed fee is earned on receipt, the funds belong to the lawyer and may not be put in the lawyer’s client trust account. If no such agreement exists, the funds must be placed into the trust

account and can only be withdrawn as earned. See, e.g., *In re Hedges*, supra; OSB Formal Ethics Op No 2005-149.

3. *Early Termination by Client and the "Nonrefundable Fee."*

A lawyer who does not complete all contemplated work will generally be unable to retain the full fixed fee. This is consistent with *In re Thomas*, 294 Or 505, 526, 659 P2d 960 (1983), in which the court stated: "It would appear that any fee that is collected for services that is not earned is clearly excessive regardless of the amount." Moreover, [Oregon RPC 1.5 \(c\)\(3\)\(ii\) requires the lawyer to inform the client in the written fee agreement that the client may be entitled to a refund of all or part of the fee if the services for which the fee was paid are not completed.](#)

Accordingly, even a fee designated as "nonrefundable" is subject to refund if the specified services are not performed. Thus, designation of a prepaid fixed fee as "nonrefundable" may be misleading, if not false, in violation of Oregon RPC 8.4(a)(3) (prohibiting conduct involving "dishonesty, fraud, deceit or misrepresentation that reflects adversely on the lawyer's fitness to practice law"). Whether, or to what extent, a bad-faith termination by a client near the end of a matter requires a refund of fees paid in advance is a question beyond the scope of this opinion.

4. *Charges in Excess of Fixed Fee Agreement.*

A lawyer may not charge more than the agreed-on fee, and any fee charged in excess of the agreed-on fee is excessive as a matter of law. It follows that unless either (a) the fee agreement itself allow for changes over time<sup>1</sup> or (b) the fee agreement is permissibly modified pursuant to OSB Formal Ethics Op No 2005-97, the agreed-on fixed amount is all that the lawyer may collect.

Approved by Board of Governors, ~~August 2005~~ June 2011.

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<sup>1</sup> For example, a fixed fee agreement might provide a fixed fee for each stage of a project rather than a fixed fee for the whole. Similarly, agreements that allow periodic adjustments to hourly fees or costs are also permissible unless illegal or otherwise unreasonable.

COMMENT: For additional information on this general topic and other related subjects, see THE ETHICAL OREGON LAWYER §§3.2, 3.14, 3.19 (Oregon CLE 2003); [FEE AGREEMENT COMPENDIUM CH. 11 \(UPDATED 4/2011\)](#); RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS §§34, 38 (2003); and ABA Model Rule 1.5.

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# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** June 24, 2011  
**Memo Date:** June 10, 2011  
**From:** Public Service Advisory Committee  
**Re:** Lawyer Referral Service -- Percentage Fee Funding

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### Action Recommended

Approve development of a percentage-fee funding model for the OSB Lawyer Referral Service (LRS) with the goal of raising program revenue sufficient to cover Referral & Information Services (RIS) program expenses. Direct bar staff, with assistance of the Public Service Advisory (PSA) Committee, to draft new policies and procedures for LRS that address operational and administrative issues identified by the BOG and PSA Committee. Direct the Executive Director and, as needed, the Policy & Governance Committee to proceed with any necessary changes to OSB bylaws, bar policies and the Oregon Rules of Professional Conduct.

### Background

The OSB created the LRS in 1971 to match people seeking legal help with appropriate lawyers based on areas of practice, location and special services provided. Approximately 1,300 bar members currently participate as LRS panel attorneys. The basic LRS operating system supports other specialized referral panels within RIS: the Modest Means Program, Military Assistance Panel, Problem Solvers and Lawyer to Lawyer services.<sup>1</sup>

RIS is supported through a combination of LRS panel registration fees and general bar funds. Over the past 20+ years different committees and boards have reviewed the LRS/RIS funding model, generally with the stated goal of making the program and/or department financially self-supporting. In 2009 the BOG asked the PSA Committee and bar staff to develop a new funding model for LRS, and assigned a monitoring role to the BOG's Access to Justice Committee. Since that time PSA Committee members and staff have reviewed various funding options, making regular reports to the BOG Access to Justice Committee. Other BOG committees and the full board have also discussed the topic. The PSA Committee has concluded that a percentage fee system is in the best

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<sup>1</sup> With the exception of the Modest Means Program, these are all "pro bono" services in which lawyers provide services at no cost to the client. Lawyers participating in the Modest Means Program agree to charge a reduced fee; eligible clients earn no more than 225% of the Legal Aid/Federal Poverty Guideline income limits.

interests of the LRS and the bar, and recommends that the BOG move forward with implementation for the 2012 program year.

A percentage fee system offers the potential to make LRS self-supporting while also funding needed program improvements. It is our understanding that the vast majority of state and local bars have adopted a percentage fee model and that none have reverted back to a registration fee-only model. The other possible option is to increase panel registration fees, but the PSA Committee does not recommend this option as it is unlikely to raise substantial revenue and is instead likely to result in decreased revenue from reduced participation. In addition, a percentage-fee system is the most equitable option in that only those who *choose* to participate in LRS and *financially benefit* as a result will pay anything beyond the basic registration fees.

Implementation will be a complex process involving extensive member communications and regular reports to the BOG through its Policy & Governance Committee. Specific issues to address include:

- Determining the appropriate percentage amount(s) and whether to include thresholds and/or caps;
- Minimizing administrative burdens on panelists;
- Consideration of education/experience requirements for certain panels;
- Timeline for implementation;
- Compiling and consolidating percentage fee model best practices from around the country and drafting new policies, procedures, and rules to effectuate all of the foregoing.

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# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** June 24, 2011  
**Memo Date:** June 24, 2011  
**From:** Barbara Dilaconi, Appointments Committee Chair  
**Re:** Volunteer Appointments to Various Boards, Committees, and Councils

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### Action Recommended

Approve the following Appointments Committee recommendations.

#### Uniform Criminal Jury Instructions Committee

**Recommendation:** Andrew M. Lavin, term expires 12/31/2012

#### Disciplinary Board

**Region 1 Recommendation:** Jennifer Kimble, term expires 12/31/2013

**Region 5 Recommendation:** Nancy Cooper, term expires 12/31/2013

**Region 7 Recommendation:** Deanna Franco, term expires 12/31/2013

**Region 7 Recommendation:** Kelly Harpster, term expires 12/31/2013

#### Commission on Judicial Fitness and Disability

**Recommendation:** Robert Thuemmel, term expires 7/13/2015

#### Council on Court Procedures

**Recommendation:** Jay Beattie, term expires 8/2013

**Recommendation:** Brian Campf, term expires 8/2013

**Recommendation:** Kristen S. David, term expires 8/2013

**Recommendation:** Robert Keating, term expires 8/2013

**Recommendation:** Mark R. Weaver, term expires 8/2013

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# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** June 24, 2011  
**From:** Sylvia E. Stevens, Executive Director  
**Re:** Executive Director Contract Revision

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### **Action Recommended**

Revoke the decision at the February 17, 2011 Board meeting revising the ED contract to include an extra PERS contribution.

### **Background**

Earlier this year, at my request, the BOG approved a revision to my contract that would have designated a small percentage of my salary as an employer contribution to my PERS Individual Account. PERS has informed me that it does not believe I qualify under the statutory provision that allows these employer contributions for "groups" of employees. I am not interested in pursuing an appeal of PERS' decision and request that the BOG revoke its prior action so that my contract remains in its original August 2010 form.

**Oregon State Bar  
Board of Governors Meeting  
June 24, 2011  
Judicial Proceedings Minutes**

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. Brian Dobie – 902490

**Motion:** Mr. Larson presented information concerning the BR 8.1 reinstatement application of Mr. Dobie. Mr. Larson moved, and Mr. Kent seconded, to recommend to the Supreme Court that Mr. Dobie’s reinstatement application be denied. The motion passed unanimously.

2. Maureen Flanagan – 990488

**Motion:** Mr. Haglund presented information concerning the BR 8.1 reinstatement application of Ms. Flanagan. Mr. Haglund moved, and Ms. O’Connor seconded, to recommend Ms. Flanagan’s reinstatement to the Supreme Court. The motion passed unanimously.

3. Fred M. Granum – 832145

**Motion:** Mr. Kranovich presented information concerning the BR 8.1 reinstatement application of Mr. Granum. Mr. Kranovich moved, and Ms. Matsumonji seconded, to recommend Mr. Granum’s reinstatement to the Supreme Court. The motion passed unanimously.

4. J. Pat Horton - 670523

**Motion:** Ms. Johnnie presented an inquiry from the Supreme Court regarding the BR 8.1 reinstatement application of Mr. Horton. Ms. Johnnie moved, and Ms. Matsumonji seconded, to affirm the board’s prior recommendation that Mr. Horton be reinstated. The motion passed unanimously. Staff will so inform the court.

5. James Kolstoe –852586

Mr. Kehoe presented information concerning the BR 8.1 reinstatement application of Mr. Kolstoe to satisfy the one meeting notice requirement of Bylaw 6.103. The application will come before the board at a later meeting.

6. Amy L. Muenchrath – 973463

Ms. Dilaconi presented information concerning the BR 8.1 reinstatement application of Ms. Muenchrath to satisfy the one meeting notice requirement of Bylaw 6.103. The application will come before the board at a later meeting.

7. Michael M. Pacheco - 910851

**Motion:** Mr. Kranovich presented information concerning the BR 8.1 reinstatement application of Mr. Pacheco. Mr. Kranovich moved, and Ms. Matsumonji seconded, to recommend to the Supreme Court that Mr. Pacheco's reinstatement application be denied. The motion passed unanimously.

8. John W. Walker –733145

Ms. Naucler presented information concerning the BR 8.1 reinstatement application of Mr. Walker to satisfy the one meeting notice requirement of Bylaw 6.103. The application will come before the board at a later meeting.

B. Disciplinary Counsel's Report

As written.

**Oregon State Bar  
Board of Governors Meeting  
June 24, 2011  
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. Pending UPL Litigation
  - 1. The BOG received status reports on the non-action items.
  
- B. Pending or Threatened Non-Disciplinary Litigation
  - 1. The BOG received status reports on the non-action items.
  
- C. Other Matters
  - 1. The BOG received status reports on the non-action items.