

**Oregon State Bar**  
**Meeting of the Board of Governors**

February 10, 2012

**Open Session Minutes**

The meeting was called to order by Vice-President Steve Larson at 12:00 p.m. on February 10, 2012. President Mitzi Naucler arrived at 2:00 p.m. and presided over the remainder of the meeting. The meeting adjourned at 5:00 p.m. Members present from the Board of Governors were Jenifer Billman, Barbara Dilaconi, Hunter Emerick, Ann Fisher, Michelle Garcia, Mike Haglund, Matthew Kehoe, Ethan Knight, Theresa Kohlhoff, Tom Kranovich, Audrey Matsumonji, Maureen O'Connor, Travis Prestwich, Richard Spier and David Wade. Staff present were Sylvia Stevens, Rod Wegener, Helen Hierschbiel, Jeff Sapiro, Kay Pulju, Susan Grabe, Mariann Hyland, George Wolf, Catherine Petrecca, Dani Edwards and Camille Greene. Others present were Ira Zarov, PLF CEO, Jason Hirshon, ONLD Chair and Dexter Johnson, Public Service Advisory Committee Chair.

**1. Department Presentation**

Ms. Pulju presented an overview of OSB Member and Public Services, which encompasses– the OSB *Bulletin*, Marketing, Media and Communications, Member Services, Customer Service/Reception, and Referral and Information Services. The department's projects include market research/surveys, social media development, online event calendar, website advertising, membership directory, listserve maintenance, elections, leadership training, and Legal Links in-house production.

**2. Report of Officers & Executive Staff**

**A. Report of the President**

As written.

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

As written.

**C. Report of the Executive Director**

ED Operations Report as written. Ms. Stevens presented the Western States Bar Conference schedule for March 21-24 in Las Vegas. She announced that May 25 BOG committee meetings have been moved to May 24 to avoid a conflict with Memorial Day Weekend. Ms. Stevens announced that Kenneth Mitchell-Phillips accepted employment outside of the region from which he was elected, thereby terminating his position on the board. A special election will be held to fill the vacant Region 5 position.

**A. Director of Diversity & Inclusion**

Ms. Hyland reported on the recent projects and programs of the s Diversity & Inclusion department, including a diversity branding launch, collaboration with US Department of Agriculture to settle discrimination claims, and updating OLIO database for fundraising purposes.

**B. MBA Liaison Reports**

Mr. Knight reported on the February 1, 2012 MBA meeting.

**3. Professional Liability Fund [Mr. Zarov]**

Mr. Zarov gave a general update and presented the financial report and goals for 2012. The PLF hired Holli Houston as a new claims attorney effective January 1, 2012. The excess program has decreased in number of law firms and attorneys that are covered due to competition from other excess programs. Payment by credit cards has increased and is helpful to covered members. The PLF is exploring insurance for cyber and electronic losses that are excluded from the existing coverage plan.

**4. Emerging Issues**

Ms. Naucler initiated a discussion on the relevance of the current House of Delegates (HOD) model. The board agreed to develop an *ad hoc* HOD committee comprised of one member from each HOD region. The Policy and Governance committee will facilitate this study. The charge would include but not be limited to looking at whether or not the HOD should exist, and whether it would be more effective to have the entire membership vote via email.

Ms. Naucler encouraged the board members to bring up topics for future discussion as emerging issues.

**5. Rules and Ethics Opinions**

**A. Legal Ethics Committee**

Ms. Stevens presented the proposed formal opinion addressing communicating through Facebook and similar social media. After discussion about whether a lawyer must disclose his or her identity in making a "friend" request to an unrepresented party, the board referred the opinion to the LEC for further consideration and possible revision of the answer to question 2. **[Exhibit A]**

**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 his written report. He also presented the 2012 ONLD calendar of events. ONLD closed its second round of recruitment for the popular Practical Skills through Public Service Program with more than 40 applicants.

**B. CSF Claim No. 2011-16 HARRISON (Szal)**

In his request for review, Mr. Szal emphasized his concern over the veracity of Harrison's itemization of additional time and his belief that she performed no services for him after November 2006.

**Motion:** Mr. Haglund moved, Mr. Kehoe seconded, and the board voted unanimously to affirm the CSF's denial of the claim.

**C. Public Service Advisory Committee LRS Recommendation**

Mr. Johnson presented the Public Service Advisory Committee's (PSAC) recommendations for a Lawyer Referral Service (LRS) funding model. This "cafeteria-style" model would allow panelists to choose one of three percentage fee structures that best fit their needs, equalize the economic impact on panelists, and perhaps encourage less "fall-off" upon implementation of the new fee structure. Mr. Emerick inquired about the impact of these fees on low-volume cases, and Mr. Wade questioned the need for the middle level of fees. Mr. Haglund questioned the increased IT costs to create and administer an untested multi-level fee model. Mr. Wegener explained that new software is being purchased from an experienced vendor, but that it would have to be tailored to handle a "cafeteria-style" model. Mr. Wegener said a blueprint of this project is needed before costs could be more accurately estimated, but he guessed it could be between \$25,000 and \$40,000. Based on staff's survey of other bars using percentage-fee models, Mr. Wegener suggested that any fee less than 15% would likely not entirely cover the cost of operations. . Other points made by various BOG members were: (1) investing perhaps \$25,000 to modify software is a good investment to produce revenue of \$275,000 per year; (2) the 3-tier model may be more acceptable to members who feel the bar is "pushing something down their throats;" (3) increasing the amount panelists pay demands providing them with a superior product; and (4) if the goal of changing the model is to maximize revenues, why allow panelist to choose the option that will return the least money to the bar?

**Motion:** Ms. Fisher presented the Policy & Governance committee motion to accept the report as presented by PSAC for the OSB Lawyer Referral Service (LRS). See Report, Revised LRS Policies, and Operating Procedures **[Exhibit B]**. The board rejected the motion (4-13-0). Yes: Billman, Kranovich, Fisher, and Wade; No: Naucler, Matsumonji, O'Connor, Knight, Prestwich, Emerick, Garcia, Haglund, Kohlhoff, Kehoe, Larson, Dilaconi, and Spier. No one abstained.

**Motion:** Mr. Haglund then presented the Budget and Finance committee motion to accept a single percentage fee (12%) model with no threshold. Mr. Prestwich offered a friendly amending changing the percentage to 10%, but died for lack of a second. The board voted to approve the original motion (14-3-0). Yes: Billman, Spier, Naucler, Matsumonji, O'Connor, Knight, Emerick, Garcia, Haglund, Kohlhoff, Wade, Kehoe, Larson, and Dilaconi; No: Kranovich, Prestwich, and Fisher. No one abstained.

**Motion:** Mr. Wade moved, seconded by Mr. Haglund, to accept the task force report and recommendations as amended by the previous vote. The board voted unanimously in favor.

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

**A. Access to Justice Committee**

**Motion:** The board voted unanimously to approve the Access to Justice Committee’s motion to increase the salary cap from \$50,000 to \$55,000 for public service lawyers applying for the Oregon State Bar Loan Repayment Assistance Program and change the Policies and Guidelines to reflect that the Advisory Committee will consider the forgivable nature of the student loans of the applicants. **[Exhibit C]**

**B.** Member Services Committee

**Motion:** The board voted unanimously to approve the Sustainable Future Section’s motion to approve the “Oregon State Bar Partners in Sustainability” program. **[Exhibit D]**

**C.** Policy and Governance Committee

**Motion:** The board voted unanimously to approve the committee motion to retire the Joint Statements of Principles by removing them from the OSB website, but retain them in archives for historical reference.

**Motion:** The board voted unanimously to approve the committee motion to sunset (abolish) the OSB standing committee on Access to Justice.

**Motion:** The board voted unanimously to approve the committee motion to present the proposed amendment of ORPC 1.8(e) to the HOD for consideration. **[Exhibit E]**

**D.** Public Affairs Committee

**Motion:** The board voted to approve the committee motion to pay for the economic survey to document the effects of court budget reductions on the Oregon economy. All voted yes except Fisher. No one abstained. **[Exhibit F]**

**E.** New Lawyer Mentoring Program

**Motion:** Mr. Larson presented the NLMP motion to approve the list of potential mentors. Mr. Kehoe moved, Ms. Dilaconi seconded, and the board approved a list of mentors, with the exception of one candidate, for submission to the Supreme Court. All voted yes except Fisher, Kranovich and Spier. No one abstained. **[Exhibit G]**

**8. Consent Agenda**

**Motion:** M moved, M seconded, and the board voted unanimously to approve the consent agenda including various appointments **[Exhibit H]** and the Client Security Fund Claims for repayment **[Exhibit I]**.

**9. Closed Sessions – see CLOSED Minutes**

**A.** Judicial Session (pursuant to ORS 192.690(1)) – Reinstatements

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

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

None.

## **PROPOSED-FORMAL OPINION 2012-XXX**

### **Accessing Information about Third Parties Through a Social Networking Website**

#### **Facts:**

Lawyer wishes to investigate a person in the course and scope of an ongoing legal matter by accessing the person's online activity through social media websites. Lawyer would like to view the publicly available information and would also like to obtain access to the person's non-public information stored online behind the person's privacy settings. To obtain the latter information, Lawyer must seek permission from the holder of the account.

#### **Questions:**

1. May Lawyer review a person's publicly available information on the internet?
2. May Lawyer, or an agent on behalf of Lawyer, access a person's non-public information?
3. May Lawyer use deception in obtaining access to non-public information?

#### **Conclusions:**

1. Yes.
2. See discussion.
3. See discussion.

#### **Discussion:**

##### **1. Lawyer may access publicly available information on the internet.<sup>1</sup>**

Oregon RPC 4.2 provides:

In representing a client or the lawyer's own interests, a lawyer shall not communicate or cause another to communicate on the subject of the representation with a person the lawyer knows to be represented by a lawyer on that subject unless:

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<sup>1</sup> Although Facebook and MySpace are current popular social media sites, this opinion is meant to apply to any similar social networking website on the internet.

- (a) the lawyer has the prior consent of a lawyer representing such other person;
- (b) the lawyer is authorized by law or by court order to do so; or
- (c) a written agreement requires a written notice or demand to be sent to such other person, in which case a copy of such notice or demand shall also be sent to such other person's lawyer.

OSB Ethics Op No 2005-164 discussed the propriety of a lawyer accessing the public portions of an adversary's website and concluded that doing so is not "communicating" with the site owner within the meaning of RPC 4.2. The Opinion compared accessing a website to reading a magazine article or purchasing a book written by an adversary. By the same analysis, accessing the publicly available information on a person's social media website is not a "communication" prohibited by RPC 4.2.<sup>2</sup>

**2. Lawyer may request access to non-public information if person is not represented by counsel on the subject and no actual misrepresentation of disinterest is made by Lawyer.**

To access non-public information on a social media website, a lawyer may need to make a specific request to the holder of the account.<sup>3</sup> Typically that is done by clicking a box on the public portion of a person's social media site which triggers an automated notification to the person asking if they want to accept the request. If Lawyer has actual knowledge that the person about whom Lawyer seeks information is represented by counsel, RPC 4.2 prohibits Lawyer from making the request except through the person's counsel or with the counsel's prior consent. *See* OSB Formal Ethics Op No. 2005-80 (discussing the extent to which certain employees of organizations are deemed represented for purposes of RPC 4.2).

If, however, Lawyer does not "know" the person is represented, a direct request for access to the entire site is permissible. OSB Formal Ethics Op No 2005-164. However, communication with unrepresented persons is governed by Oregon RPC 4.3 which provides, in pertinent part:

In dealing on behalf of a client or the lawyer's own interests with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding.

The purpose of the rule is to avoid the possibility that a nonlawyer will believe lawyers "carry special authority" and that a nonlawyer will be "inappropriately deferential" to someone else's attorney. 71.503, ABA/BNA Lawyers' Manual on Professional Conduct. See also ABA Model

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<sup>2</sup> This analysis is not limited to adversary parties, but applies to a lawyer who is accessing the publicly available information of any person including a juror, witness or alleged victim during trial.

<sup>3</sup> This is sometimes called "Friending", although it may go by different names on different services.

Rule 4.3, Cmt. [1] (“An unrepresented person, particularly one not experienced in dealing with legal matters, might assume that a lawyer is disinterested in loyalties or is a disinterested authority on the law even when the lawyer represents a client.”) The rule imposes no affirmative duty on a lawyer to identify oneself as such and state the nature of the lawyer’s role. Available authorities suggest that the rule applies only when the unrepresented person knows he or she is dealing with a lawyer.<sup>4</sup> - See OSB Formal Ethics Op No. 2005-80 (discussing the extent to which certain employees of organizations are deemed represented for purposes of RPC 4.2).

If a person who receives a “friend” request is unaware that the requestor is a lawyer, there can be no misunderstanding of the lawyer’s role and no duty on the part of the lawyer to correct anything. The person using the social media site has control over who views the non-public portions by either accepting or declining “friend” requests; the person’s failure to inquire about the identity or purpose of unknown requestors is not the equivalent of misunderstanding a lawyer’s role.<sup>5</sup>

### **3. Lawyer may not advise or supervise the use of deception in obtaining access to non-public information unless ORCP 8.4(b) applies.**

Oregon RPC 8.4 prohibits a lawyer from engaging in “conduct involving dishonesty, fraud, deceit or misrepresentation that reflects adversely on the lawyer’s fitness to practice law.”<sup>6</sup> See also RPC 4.1(a) (prohibiting a lawyer from knowingly making a false statement of material fact to a third person in the course of representing a client). Accordingly, Lawyer may not engage in subterfuge designed to shield Lawyer’s identity from the person when making the request, and may not ask an agent to do so.<sup>7</sup>

As an exception to RPC 8.4(a)(3), RPC 8.4(b) allows a lawyer to advise clients and others about or supervise, “lawful covert activity in the investigation of violations of civil or criminal law or constitutional rights, provided the lawyer’s conduct is otherwise in compliance with these Rules of Professional Conduct.” For purposes of the rule “covert activity” means:

[A]n effort to obtain information on unlawful activity through the use of misrepresentations or other subterfuge. ‘Covert activity’ may be commenced by a lawyer or involve a lawyer as

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<sup>4</sup> See 71:505, ABA/BNA Lawyers’ Manual on Professional Conduct and cases cited therein.

<sup>5</sup> See also, *Murphy v. Perger* [2007] O.J. No. 5511, (S.C.J.) (Ontario, Canada) (requiring personal injury plaintiff to produce contents of Facebook pages, noting that “[t]he plaintiff could not have a serious expectation of privacy given that 366 people have been granted access to the private site.”)

<sup>6</sup> See *In re Carpenter*, 337 Or 226, 95 P3d 203 (2004) (lawyer received public reprimand after assuming false identity on social media website and engaging in improper conduct).

<sup>7</sup> Also See, The Committee on Professional and Judicial ethics of ABCNY, Formal Opinion 2010-2, opining that a lawyer may ethically “friend” an unrepresented party or witness without revealing the lawyer’s true motives for the request, provided that the lawyer does not misrepresent her identity.

*Note, however*, that contacting the victim of a crime through social networking sites, criminal defense lawyers should ensure that they meet the legal requirements for contacting a victim in a criminal case.

an advisor or supervisor only when the lawyer in good faith believes there is a reasonable possibility that unlawful activity has taken place, is taking place or will take place in the foreseeable future.

In the limited instances allowed by the RPC 8.4(b) (more fully explicated in OSB Formal Ethics Op No 2005-173), Lawyer may advise or supervise another's deception to access a person's non-public information on a social media website.

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** February 10, 2012  
**Memo Date:** January 31, 2012  
**From:** Public Service Advisory Committee  
**Re:** Lawyer Referral Service -- Percentage Fee Funding

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### Action Recommended

Approve the percentage fee funding model for the OSB Lawyer Referral Service (LRS), as specified in this report and in revised LRS Policies and Operating Procedures

### Background

Currently the LRS Program operates at an annual deficit of about \$250,000. At its June 2011 meeting the BOG approved adoption of a percentage fee funding model for LRS and charged the Public Service Advisory Committee (PSAC) with developing specific program recommendations. In developing its recommendations the PSAC and bar staff have researched various percentage models and sought feedback from LRS panelists through a survey and several focus groups. A detailed timeline of progress since the BOG's initial charge to the PSAC in 2009 is attached.

#### Survey of LRS Panelists

In September, bar staff sent an electronic survey to 822 LRS panelists. Forty-one percent responded. The survey solicited panelist feedback on: percentage fee models; LRS consultation fee policies and amounts; how to address office location in both panelist registration and client referral processing; whether to add additional "subject matter panels" with minimum education/experience requirements; and whether to expand the Modest Means Program into new areas of law at the same time LRS changes are implemented.

The first question on the survey was a "forced choice" that asked why the respondent participated in LRS -- to provide a public service (19%) or to market their practice (80%). In questions about percentage fees, the majority (61%) indicated they would wait for more details before deciding whether to renew and a minority (23%) indicated they would probably not renew. The two greatest concerns about the new model were: "New reporting and payment procedures may increase my non-billable/administrative time" (82%) and "It will make participation too expensive/more expensive than it is worth" (77%). The survey showed that a majority did not want to expand the Modest Means

Program (55%) or change the number of subject matter panels (69%). A strong majority (59%) also preferred to keep referrals limited by geography. In response to questions about the initial consultation through LRS, approximately half judged the \$35 consultation fee “about right,” with most others thinking it should be higher. Clear majorities favored a 30-minute time limit on consultations as well as the ability to offer consultations over the phone (70% and 74%, respectively).

### Focus Groups

To expand on the survey results and clarify options, staff coordinated two sets of focus groups of 20 and 30 panelists. The first set of groups discussed the LRS program generally. The strongest theme that emerged from these discussions was “let the panelists choose” wherever possible. That sentiment was particularly strong regarding initial consultations, e.g., panelists should be free to charge or waive fees, consult over the phone, etc. Both groups also reached a clear consensus that office location is important but no longer a first consideration, and that LRS locations or regions should be based on population and should be roughly equivalent for rural and urban practitioners as much as practical.

The second set of focus groups considered percentage fee specifics. The discussions focused on the relative pros and cons of three sample percentage fee models: A) 20% over a threshold of \$600, B) 15% over a threshold of \$300, and C) 10% with no threshold. No consensus was reached, with most participants preferring whichever approach offered simplicity and resulted in the lowest fees for their particular practice area(s). The main arguments in favor of the basic differences in approach were:

#### Higher Percentage/Higher Threshold Approach

- Easier bookkeeping/less paperwork and fewer small payments
- Psychologically less of a problem to pay on larger amount (have made money)
- Those who take only small cases will pay little or nothing, which should be encouraged

#### Lower Percentage/Lower Threshold

- More fair because all pay, not just those who get one good case
- Easiest to remember and apply -- consistent
- Believe total fees would be less

Participants in the second set of focus groups also discussed registration fees. Generally they favored retaining some type of enrollment fee but thought they should be lowered with the implementation of percentage fees.

The PSAC reviewed the survey results, participated in the focus groups and discussed recommendations as a committee over six meetings between October 2011 and January, 2012. The PSAC also reviewed percentage fee model policies, procedures and rules from around the country. The committee presents its recommendations in two parts, following the order of the focus group discussions. The recommendations discussed below are incorporated into the revised policies and procedures, along with details on calculation and remittance of percentage fees.

### **Recommendations on Program Operations.**

The committee recommends the following program changes:

- The fee for an LRS and Modest Means Program (MMP) initial consultation should remain \$35, but there should be a 30-minute time limit; regular or MMP hourly rates may apply if the consultation exceeds 30 minutes. A panelist may waive the initial consultation fee.
- Remove the requirement that the initial consultation must be held in person. Each panelist may decide whether to offer initial consultations over the phone or by any other method acceptable to both attorney and potential client.
- LRS locations should be regional and based on roughly equivalent population size. Panelists should be able to register for adjacent regions or for referrals statewide. Client preferences will dictate the importance of location in the matching criteria.
- LRS should not add additional subject matter panels at this time.
- Expansion of the Modest Means Program should occur after the LRS percentage fee model is in place. The expansion should occur at a measured pace with the advice and counsel of substantive law sections' executive committees.
- The percentage fee model should be fine-tuned over time and with advice from substantive law sections' executive committees on the impact of the percentage fee model on particular practice areas. This process should begin with the Workers Compensation Section, which has expressed

particular concern about the impact of percentage fees on workers comp practitioners.

### **Recommendation on Panelist Fees.**

Based on panelist feedback, recognition of the lack of detailed economic data and promotion of goals of simplicity and panelist choice, PSAC recommends a “cafeteria plan” model that will allow each panelist to select one of three percentage/threshold combinations. The percentage/threshold combinations recommended are:

- A. 18% with a per-matter threshold of \$400
- B. 15% with a per-matter threshold of \$200
- C. 12% with no threshold

The committee understands that implementation of a “choose-your-own-plan” may require additional time and expense for software customization now and in the future. Central to the viability of this proposal is the ability of the software to easily and reliably compute amounts due from panelists based on only three factors: their choice of plan, the date representation on the matter began and the net amount collected from clients. (Staff were unable to provide firm estimates on software capability in the timeframe given for committee consideration.) After discussion, however, a strong majority of committee members concluded that the benefit of offering panelists a choice outweighs the likely increase in administrative costs. In addition, implementing a range of options to start will allow the bar to gather actual data for projecting the revenue potential of the different rates, the absence of which makes settling on a single rate difficult at this point. The committee also concluded that having the range in differences between the three plans be narrow would enhance the likelihood of continued participation by existing panelists.

Consistent with the BOG’s June 2011 approval of a percentage fees model, the committee further recommends retaining panelist registration fees, but reducing and simplifying the registration fees while LRS funding transitions to the percentage fee model. In addition, the fees for registering in multiple locations should be reduced, and a new fee created for a new option to receive referrals statewide. The recommended panelist registration fees are:

- Basic registration, including home location and up to four areas of law:
  - \$50 for those admitted in Oregon for less than 3 years
  - \$100 for those admitted in Oregon for 3 years or more
- \$50 for each additional geographic region

- \$300 for a statewide listing
- \$30 for each additional area of law (beyond the four included in a basic registration)

# Lawyer Referral Service Policies

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- I. Goal: The goal of the Lawyer Referral Service (LRS) is to serve lawyers and the public by referring people who seek and can afford to pay for legal assistance (Potential Clients) to lawyers who are willing to accept such referrals, and also to provide information and other resources as appropriate. All lawyers participating in the LRS (Panelists) agree to abide by these Lawyer Referral Service Policies (Policies) and Lawyer Referral Service Operating Procedures (Procedures).
- II. Eligibility: Lawyers satisfying the following requirements shall be eligible to apply for participation in the LRS. The lawyer must:
  - A. Maintain a private practice;
  - B. Be an Active Member of the Oregon State Bar in good standing;
  - C. Maintain malpractice coverage with the Professional Liability Fund (PLF); and
  - D. Have no formal disciplinary, protective or custodianship proceedings pending.Additional standards apply for special subject matter panels; the special subject matter panels and qualifications are stated in the Procedures.
- III. Complaints:
  - A. Ethics Complaints: Complaints about possible ethical violations by Panelists shall be referred to the Oregon State Bar Client Assistance Office.
  - B. Customer Service Complaints: LRS Staff monitor complaints concerning the level of customer service provided by Panelists. The character, number, and/or frequency of such complaints may result in removal from the LRS, with or without prior notice.
- IV. Removal:
  - A. Panelists against whom disciplinary, protective or custodianship proceedings have been approved for filing shall be automatically removed from the LRS until those charges have been resolved. A matter shall not be deemed to be resolved until all matters relating to the disciplinary proceedings, including appeals, have been concluded and the matter is no longer pending in any form.
  - B. A Panelist whose status changes from "active member of the Oregon State Bar who is in good standing" shall be automatically removed from the LRS.
  - C. A Panelist who leaves private practice, fails to maintain coverage with the PLF, or files an exemption with the PLF shall be automatically removed from the LRS.
  - D. A Panelist may be removed from the LRS or any LRS panel if the Panelist violates these Policies and/or the Procedures.
  - E. In all instances in which the Panelist is removed, automatically or otherwise, prior notice need not be given to the Panelist.
- V. Funding & Refunds:
  - A. Funding: All Panelists shall pay the annual LRS registration fees (Registration Fees) and percentage remittances on all attorneys' fees earned and collected (Remittances) from each potential client referred by the LRS and accepted as a client (Client).
    1. Registration Fees: The Board of Governors (BOG) shall set the Registration Fees. All Panelists shall pay Registration Fees annually for each program year and, except as provided in Paragraph (B) "Refunds" (below), Registration Fees are non-refundable and not prorated.

## Lawyer Referral Service Policies

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2. Remittances: As provided below and explained further in the Procedures, if a Panelist and Client enter into an agreement whereby the Panelist will provide legal services to the Client for which the Client will pay a fee, then Remittances will be due the LRS upon payment of the fees by the Client. The combined fees and expenses charged a Client may not exceed the total charges that the Client would have incurred had no referral service been involved. The BOG sets the percentage rate(s) to be applied to all Panelists' attorneys' fees earned and collected from Clients in excess of any applicable threshold. Remittances owed to the LRS are calculated by multiplying the percentage rate(s) by the earned and collected attorney fees. If a Panelist fails to pay the appropriate Remittance(s) to the LRS in accordance with these Policies and the Procedures, the Panelist will be ineligible for referrals until all Remittance(s) have been paid in full. A Panelist's obligation to pay Remittances owed to the LRS continue regardless of whether the Panelist is in breach of this agreement, fails to comply with these Policies or the Procedures, is removed from the LRS, is no longer eligible to participate in the LRS, or leaves the LRS.
  3. Communications Regarding Remittances: Upon settlement of a matter, the Panelist shall be obligated to include the LRS with those who have a right to know about a settlement to the extent necessary to allow the LRS to have knowledge of the terms of the settlement (including all fees paid in the case, whether paid directly by another party, or by settlement proceeds) so that the LRS may determine the portion of the fees to which it is entitled.
- B. Refunds: Upon written request, a Panelist who has been automatically removed from the LRS shall be entitled to a prorated refund of registration fees. The amount of the refund shall be based on the number of full months remaining in the Program Year for which the fees were paid, as measured from the date the written request is received. An automatically removed Panelist who again meets all of the eligibility and registration requirements prior to the expiration of the Program Year during which the automatic removal occurred may reapply and be reactivated for the remainder of that Program Year upon written request and payment of any amount refunded.
- VI. Review and Governance:
- A. Public Service Advisory Committee (PSAC):
    1. The PSAC advises the Board of Governors on the operation of the LRS. The PSAC works with LRS Staff in the development and revision of these Policies and the Procedures. Amendments to these Policies must be approved by the BOG. Amendments to the Procedures may be approved by a simple majority of the PSAC, with the exception that proposed revisions to the amount of the Registration Fees and the percentage rate(s) and threshold used to calculate Remittances shall be submitted to the BOG for approval.
    2. Upon written request, the PSAC shall review an LRS Staff decision to remove a Panelist at its next regularly scheduled meeting. Such written request shall be submitted to the PSAC within 30 calendar days of the date notice of the LRS Staff decision is given to the removed Panelist.

## Lawyer Referral Service Policies

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3. Upon written request, the PSAC may review an LRS Staff decision regarding a Panelist's registration, renewal, and/or special subject matter panel registration (collectively, "Registration Issues"). Such written request shall be submitted to the PSAC within 30 calendar days of the date notice of the LRS Staff decision is given to the lawyer. The PSAC's review and decision regarding Registration Issues shall be final.
- B. Board of Governors (BOG):
1. Upon written request by any PSAC member or LRS Staff, PSAC decisions regarding proposed revisions to the Procedures may be reviewed by the BOG. Upon written request of a Panelist, a decision of the PSAC regarding Panelist eligibility or removal may be reviewed by the BOG, which shall determine whether the PSAC's decision was reasonable. The written request shall be submitted to the BOG within 30 calendar days of the date notice of the PSAC decision is given to the affected Panelist.
  2. The BOG shall set the amount of the Registration Fees and the percentage rate(s) and threshold used to calculate Remittances.
  3. These Policies may be amended, in whole or in part, by the BOG.

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# Lawyer Referral Service Operating Procedures

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## 1) How It Works:

- a) Screening: LRS Staff process referrals using information gathered from the potential client during the screening process -- legal need, geographic area, language spoken, and other requested services (credit cards accepted, evening appointments, etc.) – to find a lawyer participating in the LRS (Panelist) who is the best match for each potential client.
- b) Rotation: Referrals are made in rotation to ensure an equitable distribution of referrals among similarly situated Panelists.
- c) Processing: Generally, potential clients receive one referral at a time and will not be provided more than three (3) referrals within a 12-month period for the same legal issue. Under certain circumstances, LRS Staff may provide more than three (3) referrals and may also provide several referrals at the same time. Such circumstances may include but are not limited to emergency hearings, referral requests from those who live out-of-state, lawyers interviewing Panelists to represent their clients in other matters, etc. Potential clients are told by LRS:
  - i) To tell the Panelist that they have been referred by the Oregon State Bar’s Lawyer Referral Service;
  - ii) That they are entitled to an initial consultation of up to 30 minutes for \$35;
  - iii) That the Panelist’s regular hourly rate will apply after the first 30 minutes; and,
  - iv) That all fees beyond the initial consultation will be as agreed between the client and the Panelist.
- d) Follow-up: After processing a referral, LRS Staff email a referral confirmation to the Panelist and, if possible, to the potential client as well. A comprehensive status report is sent to Panelists on a monthly basis. LRS Staff will also send follow-up surveys to potential clients and clients referred by the LRS.
- e) Initial Consultations:
  - i) Amount: Panelists agree to charge potential clients who live in Oregon and are referred by the LRS no more than \$35 for an initial consultation; except that no consultation fee shall be charged where:
    - (1) Such charge would conflict with a statute or rule regarding attorneys’ fees in a particular type of case (e.g., workers’ compensation cases), or
    - (2) The Panelist customarily offers or advertises a free consultation to the public for a particular type of case.
  - ii) Duration: Potential clients are entitled to 30 minutes for a maximum of \$35. If the potential client and Panelist agree to continue consulting beyond the first 30 minutes, the Panelist must make clear what additional fees will apply.
  - iii) Telephone, Computer and/or Video Consultations: It is up to the Panelist whether the Panelist will provide initial consultations by any communication method other than a face-to-face meeting with the potential client. Panelists may indicate their preferences on their LRS applications.

# Lawyer Referral Service Operating Procedures

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- iv) Location of Face-to-Face Consultations: All lawyer-client meetings must take place in an office, conference room, courthouse, law library, or other mutually agreeable location that will ensure safety, privacy, and professionalism.
- 2) Customer Service: Panelists agree to participate only on those panels and subpanels reasonably within the Panelist's competence and where the LRS has qualified the Panelist to participate on one or more special Subject Matter Panels, as applicable. In addition, Panelists must demonstrate professional reliability and integrity by complying with all LRS Policies and Procedures, including the following customer services standards:
- a) Panelists will refrain from charging or billing for any fee beyond the initial consultation fee unless and until the Panelist and potential client have agreed to the attorneys' fees and costs for additional time or services beyond the initial 30-minute consultation;
  - b) Panelists will use written fee agreements for any services performed on behalf of clients that are not completed at the initial consultation;
  - c) Panelists will communicate regularly with LRS staff, including updating online profiles and providing notice if a Panelist is unable to accept referrals for a period of time due to vacation, leave of absence, heavy caseload or any other reason;
  - d) Panelists will keep clients reasonably informed about the status of the clients' legal matters and respond promptly to reasonable requests for information. Panelists will return calls and e-mails promptly, and will provide clients with copies of important papers and letters. Panelists will refer back to the LRS any potential client with whom the Panelist is not able to conduct an initial consultation in the timeframe requested by the potential client or for any other reason; however, in order to provide a high level of customer service, the Panelist may offer the potential client a referral to another lawyer provided:
    - i) The subsequent lawyer is a Panelist;
    - ii) The potential client is informed of the potential client's option to call the LRS back for another referral rather than accepting the offered substitution;
    - iii) The potential client agrees to the substitution; and,
    - iv) Both the referring Panelist and subsequent lawyer keep the LRS apprised of the arrangement and disposition of all referrals, and ensure that all reports to the LRS clarify and document all resulting lawyer-client agreements and relationships, if any.
  - e) Panelists will submit any fee disputes with LRS-referred clients to the Oregon State Bar Fee Arbitration Program, regardless of who submits the petition for arbitration and regardless of when the dispute arises.
- 3) How To Join the LRS:
- a) Before submitting your application and payment, please read through the Lawyer Referral Service Policies (Policies) and these Procedures completely and contact LRS Staff with any questions you may have;
  - b) Complete and submit the LRS Application Form (Application) (login at [www.osbar.org](http://www.osbar.org) and click on the link for the Application);

# Lawyer Referral Service Operating Procedures

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- c) Complete and submit Subject Matter Qualification Forms for certain designated panels (if required);
  - d) Ensure that your Professional Liability Fund (PLF) coverage is current and that all outstanding PLF invoices are paid; and,
  - e) Pay all Registration Fees.
- 4) Program Year: The LRS operates on a 12-month program year (Program Year). The Program Year begins July 1 and ends June 30. Although the LRS will accept applications at any time, Registration Fees are not prorated for late registrants. Payment of the Registration Fee shall entitle the Panelist to participation only for the remainder of the applicable Program Year. The LRS may refund Registration Fees only if requested prior to the beginning of the applicable Program Year.
- 5) Regions: LRS registration uses geographic regions based upon population density, counties, court locations, as well as potential client and Panelist convenience. A chart of the regions and the county(ies) in each region may be found on the Application. Payment of the Base Registration Fee (see below) includes registration for one (1) region, which shall be the region in which a Panelist's Office is located (Home Region). For an additional fee, Panelists may elect to register for additional regions outside of the Panelist's Home Region for some or all of the general areas of law (Panels) selected.
- 6) Subject Matter Panel Qualifications: Registration for special Subject Matter Panels requires a separate form and affirmation showing that the Panelist meets basic competency standards. The Subject Matter Panels currently include: 1) felony defense, 2) interstate/independent adoption, 3) deportation, and Department of Labor-referred FMLA/FLSA matters. Additional information and forms are available by logging in at [www.osbar.org](http://www.osbar.org).
- 7) Registration Fees (effective 07/01/12):
- a) Base Registration Fee:
  - b) Enhanced Services Fees:
    - i) Additional Regions:
    - ii) Additional Panels:
- 8) Remittances:
- a) Percentage Rate: X
  - b) Threshold: Y
  - c) The Math: Panelists will pay the LRS a remittance on each and every LRS-referred matter in which the earned and collected attorneys' fees meet or exceed the threshold or "deductible." The remittance is a percentage only of the Panelist's professional fees and does not apply to any costs advanced and recovered.
  - d) Remittance Payments to the LRS: Panelists will report and submit remittances to the LRS in the next status report period after the fees have been paid (either in response to a bill or if the Panelist has billed against funds held in trust). If a Panelist fails to pay the appropriate remittances to the LRS within the next reporting period, LRS Staff shall notify the Panelist requesting immediate payment of the appropriate Remittances to the LRS. LRS Staff may

# Lawyer Referral Service Operating Procedures

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remove the Panelist from rotation and cease referrals to the Panelist until all remittances are paid in full.

Final Case Status Reports and Payment: Panelists must submit a final report at the conclusion of the matter reflecting the dates and amounts of all fees paid by or on behalf of the client, accompanied by a copy of the final client billing or settlement statement. The final payment of all remittances due on the matter must be received by the LRS within 30 days of the Panelist's receipt of the client's final payment.

If the Panelist fails to pay the appropriate Remittance to the LRS within 30 days LRS Staff shall remove the Panelist from all referral panels and cease all referrals to the Panelist until all Remittances owed are paid. If the Panelist fails to respond within 10 business days of a delinquency notice sent by LRS Staff, the matter will be presented to the Public Service Advisory Committee (PSAC). The PSAC may authorize LRS staff to undertake collection efforts or may refer the matter to OSB General Counsel's Office.

A Panelist who has been delinquent in payment three times is subject to permanent expulsion from the LRS. The PSAC's decision on the expulsion is final.

- e) Special Circumstances:
  - i) If an LRS-referred client puts other potential clients in touch with the Panelist for the same matter (a multiple-victim auto accident or multiple wage claims against the same employer, for instance), the remittance due to the LRS applies to all fees earned on the matter.
  - ii) If an LRS-referred matter closes and some time later the client contacts the Panelist on an unrelated matter, no remittance is due to the LRS on the new unrelated matter.
  - iii) If a Panelist elects to share or co-counsel a client matter with another lawyer for any reason, the Panelist is solely responsible to the LRS for Remittances on all fees generated during the course of representation of the client in that matter (including any fees paid to the other lawyer brought in on the matter).
- 9) Renewals: To remain an active Panelist in the LRS and continue to receive referrals, Panelists must:
  - a) Be current with all Remittances owed to the LRS and pay all Registration Fees owed for the upcoming Program Year by the deadline stated in the renewal notice; and,
  - b) Continue to be eligible to participate in the LRS and otherwise be in compliance with the Policies and these Procedures.
- 10) Reporting:
  - a) LRS will provide Panelists a monthly report listing all the Panelist's pending or open referral matters. Panelists will complete the report indicating the status of each matter; failure to complete all such reports within 30 days will be grounds for removal from rotation. Reports are considered delinquent until completed and all Remittances are paid.

# Lawyer Referral Service Operating Procedures

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- b) If, in its sole discretion, the LRS deems it necessary, the LRS may audit the client file and the Panelist's records to determine if the correct remittances have been paid.
- 11) Follow-up: LRS sends follow-up surveys to Panelists asking if clients consulted with the Panelist, amounts of fees paid, and if they were satisfied with the LRS process. Any pertinent information will be forwarded to Panelists, and, if deemed necessary by LRS Staff, to the PSAC. The LRS also routinely monitors referrals by checking court dockets, legal notices, etc.
- 12) Remittance Disputes/Audits: Remittance disputes between the LRS and Panelists that cannot be resolved through intervention by the Executive Director or the PSAC are subject to collection actions. Participation in the LRS constitutes the Panelist's and the client's authorization for the LRS Staff or a duly authorized agent to examine and audit the Panelist's financial records and the legal files with regard to clients. The audit may include but is not limited to charts of accounts, general account records, court filing records, calendars, appointment records, time sheets, docket sheets, engagement letters, fee agreements and contracts with clients – in any and all forms and formats, media, files, devices, computers and accounts, whether electronic or otherwise.
- 13) Participation in other Referral & Information Services Programs: In addition to administering the LRS, the OSB Referral & Information Services Department also administers the following other programs that provide referrals in the same or similar areas of law: Military Assistance Panel, Problem Solvers Program and Modest Means Program. More information can be found at [www.osbar.org/forms](http://www.osbar.org/forms).

P:\Referral and Information Services\Percentage Fees Implementation\Operating Procedures\_revised\_draft\_2.doc

**October 2009:** At its annual retreat and strategic planning session the BOG assigned the following charge to its Access to Justice Committee: “RIS funding models: Receive reports on various funding models, national trends, stakeholder interests in Oregon, financial impact, meet with consultants from the ABA.”

**January 2010:** Lish Whitson, an ABA Program of Assistance (PAR) consultant with extensive LRIS experience (also an OSB member and out-of-state HOD delegate), met with the PSA Committee to discuss percentage fee models, ethics and implementation concerns, and whether there would be any necessary changes to OSB bylaws, bar policies and/or the Oregon Rules of Professional Conduct.

**February 2010:** Access to Justice Committee meeting addressed authority for percentage fees (pursuant to PSA Committee recommendation and conclusion that percentage fees model appears to be a viable option and that future action should be pursued).

**April 2010:** Staff conducted focus group with LRS and MMP panelists to discuss percentage fee models and existing LRS policies and procedures.

**May 2010:** Access to Justice and Budget & Finance Committees discuss development of percentage fee funding for LRS.

**June 2010:** Joint meeting of the Access to Justice and Budget and Finance Committees with stated goal to: “Determine desired revenue goal for Referral & Information Services program for guidance in developing a proposed new funding model.”

**September 2010:** Access to Justice Committee meeting with three representatives of the national LRIS community –(the LRIS Director from the Columbus Bar Association, Staff Counsel for the ABA’s Standing Committee on Lawyer Referral & Information Services, and the prior ABA PAR consultant) – to discuss all aspects of adopting and implementing a percentage fees revenue model.

**November 2010:** Planning Session at BOG retreat with specific discussion of the RIS Funding Model as one of the Emerging Issues for 2011.

**(January – December 2010):** PSA Committee met 5 times to continue research and evaluation of the information gathered to date.

**January 2011:** Access to Justice Committee meeting with Lawyer Referral & Information Services as the predominant agenda item.

**March 2011:** Access to Justice Committee meeting and teleconference with Alameda County Bar Association LRS Program Administrator and LRS of Central Texas (Austin) Executive Director;

**April 2011:** Special Work Session with full BOG to address the RIS business model, which concluding that a percentage fee system is in the best interests of the LRS and the bar the PSA Committee submitted its recommendation that the BOG move forward with implementation of a percentage fees model for the 2012 program year, i.e., July 1, 2012.

**May 2011:** Special agenda and full board meeting with the ABA PAR consultant Lish Whitson (his third visit).

**June 2011:** The Budget & Finance Committee evaluated LRS funding and the BOG took up the PSA Committee recommendation and passed a motion that the BOG approve and authorize the OSB LRS to shift to a percentage-fee model.

**September/October 2011:** Conducted a survey of 822 LRS panelists (with a 41% response rate) to gather feedback on percentage fee implementation.

**December 2011:** Conducted focus groups with approximately 20 LRS and MMP panelists to address service improvements and program operations. The PSA Committee met to review focus group results.

**January 2012:** Conducted focus groups with approximately 30 LRS and MMP panelists to addressing percentage fee implementation. The PSA Committee met three times (1/7, 1/21 and 1/28) to evaluate all of the foregoing, review and revise LRS Policies and Procedures, and finalize its percentage fee model recommendation.

I have been a Lawyer Referral Service panelist for:

Answer Options	Response Percent	Response Count
1 year or less	6.0%	20
Between 1 and 5 years	<b>35.3%</b>	<b>118</b>
Between 5 and 10 years	17.4%	58
Between 10 and 20 years	23.4%	78
20 or more years	18.0%	60
	<i>answered question</i>	<b>334</b>
	<i>skipped question</i>	<b>4</b>

**OSB Public Service Advisory Committee**  
**Meeting Minutes**  
**January 7, 2012**

**Members Present:** Dexter Johnson (Chair), William Jones (Secretary), Erin Fitzgerald, Jennifer Li, Brenda Terreault, Barbara Smythe, Diane Weisheit, Daniel Griffith, Ann Fisher (BOG Member), Tom Kranovich (BOG Member). By phone: Bruce Harrell, Rebekah Dohrman

Staff: Kay Pulju, George Wolff

**Discussion:**

The PSA committee approved the minutes of the December, 10, 2011, meeting.

George and Kay explained the current roll of the PSA to new committee members including defining the current task of the PSA as it relates to implementation of a new percentage fee model. Ann further defined the BOG's expectations of the PSA as it relates to a new revenue model within the LRS and encouraged the PSA to look at all possible options including a "hybrid" model.

Kay discussed a summary of the focus groups conducted on January 5, 2012, at which time three focus groups were conducted by bar staff and attended by several PSA and BOG members. The purpose of these focus groups were to further define the details of a percentage fee model. The general concerns of bar members were widely varied both within individual groups and from group to group. General concerns were:

- Ethical concerns of sharing fees
- High threshold amounts with higher percentage fees v. low threshold amounts with lower percentage fees
- Administrative expense of participation
- Defining of geographic regions
- Usage of generated revenue

At the request of the committee George explained participant attrition in transition to a percentage fee model in other jurisdictions.

The committee discussed the proposed draft of the LRS policies and procedures along with relevant concerns of a hybrid model including an increase or decrease in "sign-up-fees," along with the implementation of a percentage fee model. Various concerns were raised in light of participant attrition, possible revenue loss or gain and administrative burden for the LRS and participants, as compared against several defined models.

Tom recommended a three-tiered approach to the percentage fee model whereby participants in the LRS would be allowed to select from three defined percentage fee structures ranging from low threshold amounts with lower fee percentages to a mid level, then a higher threshold amount

with a higher fee percentage. Concerns were raised concerning software functionality, administrative burden and participant attrition.

Dexter further defined a three-choice model which would allow LRS participants to have three choices (A, B, C,) which would allow participants to select one of the three percentage fee models at the beginning of the LRS program year. A participant's selection would run for an entire LRS program year and would not be allowed to change until the next LRS program cycle. Bruce moved to present the three-tiered model to the BOG. Following clarification by the committee which removed any defined numbers or percentages from the three-tiered model, the motion of Bruce was seconded by Erin, and passed by vote (10-1).

Dexter proposed a meeting date of January 21, 2012, to further define the PSA recommendation to the BOG.

**Next meeting:** PSA Committee meeting, January 21, 2012.

## **OSB Public Service Advisory Committee**

### **Meeting Minutes**

**January 21, 2012**

**Members Present:** Dexter Johnson (Chair), William Jones (Secretary), Erin Fitzgerald, Jennifer Li, Barbara Smythe, Diane Weisheit, Daniel Griffith, Ann Fisher (BOG Member), Tom Kranovich (BOG Member). By phone: Bruce Harrell, Jill Brittle

Staff: Kay Pulju (present), Sylvia Stevens (present), George Wolff (by phone)

### **Discussion:**

The PSA committee approved the minutes of the January 7, 2012 meeting.

Dexter brought forth the agenda for the meeting consisting of one hour dealing with collateral issues and the second hour focusing directly upon the percentage fee model.

Kay pointed out the recent edits to the LRS policies which consisted of mostly grammatical and clerical changes. Jennifer sought clarification of the policies dealing with percentage fees attaching to either the "same matter" or to the same "referral." The general consensus of the committee was that percentage fees should attach to a "referred matter." Sylvia sought to have the LRS policies reflect a clarification in the language of "legal fees" versus "costs."

The committee then discussed a modification of the regions that would be used to register and panelists. Kay explained the current location based model which focuses on the city a panelist resides within. According to the results of focus groups the regional model should reflect first an area of law then location in selecting a referred panelist. Dexter presented a proposed motion

consisting of regions of roughly equal population densities, including a second additional fee to register a panelist for an additional region and a third fee payable by a panelist for statewide registration. Jennifer moved the proposed motion, Bruce seconded, the motion passed unanimously. Dexter later clarified that initial registration includes a panelist's home region.

Kay then explained the current annual registration fees consisting of \$50 for first year attorney's, \$75 for second year and \$100 for three or more years of membership. Concerns were brought forward concerning the timing of projected revenue with an expected drop in registration fee revenue and a later increase in overall revenue from the percentage fee model. Dexter brought forth a proposed motion consisting of modifying the registration fee to \$50 for a panelist's first two years followed by a registration fee of \$100 for three or more years of membership and including a panelist's home region within the registration fee. Bruce moved the proposed motion, Diane seconded and the motion passed unanimously.

The committee then discussed the subject matter panels included within the current LRS system. Dexter proposed a motion that there be no change in the subject matter panels under the percentage fee model. Bruce moved the proposed motion, Jennifer seconded, the motion carried unanimously.

The committee then turned to the topic of \$35 initial consultations, which have no time limitation currently. George discussed the findings from the focus groups where the panelists were in approval of a \$35 initial consultation so long as the consultation was limited to 30 minutes. Kay brought forth the trend of many other jurisdictions to eliminate or reduce the initial consultation fee. Bruce moved to retain the current fee of \$35, which could be waived by individual panelists, with a maximum time limit of 30 minutes. Diane seconded the motion. The motion carried with two in opposition. Bruce brought forward concerns regarding the necessity of a written fee agreement when a referred client exceeds thirty minutes. The committee agreed to hold this issue for later review.

The committee then discussed concerns in moving towards the percentage fee model. Dexter clarified that on January 7, 2012, the committee carried a motion to recommend a three tiered model to the BOG. Dexter then brought forth specific concerns regarding the possibility that a panelist could change "tiers" while still retaining a "referred matter" resulting in confusion upon what tier applies to each matter. Additionally, Dexter brought forth concerns from a technical perspective, which Kay and George clarified in dealing with more complex software to employ a tiered system and the additional costs associated with such a system. George explained that a tiered system would be unique to Oregon as no other LRS uses such a model. George also explained that nationwide percentage fee models break even at a 15% remittance while LRS systems operating at a 10% remittance tend to struggle to break even, if they break even at all.

Dexter proposed a meeting date of January 28, 2012, to further define the percentage fee recommendation to the BOG.

**Next meetings:** PSA Committee meeting, January 28, 2012.

**OSB Public Service Advisory Committee**  
**Meeting Minutes**  
**January 28, 2012**

**Members Present:** Dexter Johnson (Chair), William Jones (Secretary), Jill Brittle, Erin Fitzgerald, Jennifer Li, Barbara Smythe, Daniel Griffith, Ann Fisher (BOG Member), Tom Kranovich (BOG Member). By phone: Bruce Harrell, Diane Weisheit

Staff: Kay Pulju, George Wolff, Sylvia Stevens

**Discussion:**

Dexter summarized the prior decisions of the committee as outlined in the January 21, 2012, committee minutes followed by a summary of the “three-tiered” model. Dexter also outlined the agenda for the meeting as attempting to reach the goals of the LRS program by defining the specific undecided items to be added to the committee recommendation to the BOG.

Kay brought forth the technical aspects and costs of a three-tiered model versus a single fee model within the LRS. Additional expenses are expected to be in the neighborhood of \$44,000 in addition to an additional four months to prepare the software. The total project cost is expected to be near \$120,000, including the additional costs in developing the three-tiered model. Of the additional expense, \$27,000 is expected to be a capital outlay while the remainder is consumed by staff labor.

Dexter then outlined the goals of the percentage fee model including, 1. Elimination of the LRS budget shortfall, 2. Retaining and improving LRS service levels, 3. Receiving additional funds from those who benefit from the LRS program, 4. Promoting access to legal services. Concerns were raised regarding various percentage fees and thresholds resulting in excessive administrative burden (if no threshold is used) and concerns of panelists’ who may never remit payment as fees may continually be beneath the threshold in a higher threshold model.

On the topic of administrative burden, Bruce proposed aggregate yearly billing as an option to avoid non-remittance for panelists’ who may not have individual cases exceeding a minimum threshold. George brought forth concerns of administrative expense and pointed out that an aggregate model is not used in other jurisdictions.

The committee then discussed the complexities of the three-tiered model. A specific concern was raised concerning a panelist who changes between tiers at the end of a program cycle while retaining a referred matter from the prior program year. George and Sylvia voiced specific concerns regarding the Legacy system which must be integrated in order to retain a single source for member data. George also expressed concerns in having custom software developed for the three-tiered model and the lack of technical support or updates available for custom software that would be available in software currently used in other jurisdictions.

Dexter then proposed a vote to rescind the three-tiered proposal to the BOG which was moved by Erin and Seconded by Jennifer. The motion did not carry with two in opposition.

The board then discussed the threshold amounts and percentages to be proposed within a three-tiered model to the BOG. The initial percentages proposed were 20%, 15% and 10% respectively. Dexter proposed moving to an 18%, 15% and 12%. Erin proposed a change in threshold amounts under each of the three percentage fee models. After discussion throughout the committee, Dexter moved to adopt the following structure in a three tiered percentage fee model to be presented to the BOG, Jill seconded the motion which passed with two in opposition.

- 18% remittance with a \$400 threshold
- 15% remittance with a \$200 threshold
- 12% remittance with no threshold

In addition, the issue of initial consultation policies between the LRS and Modest Means program was addressed by the committee. The committee agreed that the Modest Means policies concerning initial consultations should be revised to match the proposed changes to the LRS system.

Finally, the committee discussed an issue raised by the workers compensation section's executive committee: Whether there ought to be a different percentage rate or different policy for workers compensation matters since workers comp attorneys feel that their fees are already so low. The committee decided this should be addressed after implementation of a percentage fees model in consultation with substantive law executive committees, and in conjunction with evaluation of possible expansion of the Modest Means Program.

**Next meeting:** PSA Committee meeting, May 12, 2012 at 10:00 a.m.

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# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** February 10, 2012  
**Memo Date:** January 26, 2012  
**From:** Access to Justice Committee  
**Re:** Changes to the LRAP Policies and Guidelines

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### Action Recommended

The Access to Justice Committee recommends that the BOG approve an increase of the salary cap from \$50,000 to \$55,000 for public service lawyers applying for the Oregon State Bar Loan Repayment Assistance Program and that the Policies and Guidelines be changed to reflect that the Advisory Committee will consider the forgivable nature of the student loans of the applicants.

### Background

The Loan Repayment Assistance Program (LRAP) is now in its sixth year of providing forgivable loans to lawyers pursuing careers in public service law. Through this program, lawyers working in public service may receive loans for up to \$5,000 per year for three years to aid them in repaying their educational debt. Each loan is forgiven at the end of the year, provided that the lawyer remains in public service. The LRAP Advisory Committee seeks to refine the Policies and Guidelines to make clear that the forgivable nature of outstanding loans is a factor in determining who obtains the loans. Since 2008, most law student debt is owed directly to the federal government. The unpaid portions of those federally direct loans are able to be completely forgiven for any lawyer who works in public service and makes appropriate loan payments for ten years. The LRAP Advisory Committee wants to make clear that the availability of that forgiveness is a factor used by the Advisory Committee in determining who will receive OSB LRAP funds as the program moves forward. Consequently, Section 4(B)(i) of the Policies and Guidelines would be changed as follows:

Educational debt and/or monthly payment to income ratio;

Will be changed to:

Educational debt, monthly payment to income ratio; and/or forgivability of debt;

In addition, the Advisory Committee wishes to increase the current salary cap of \$50,000 to \$55,000. The salary cap has not been raised since 2009, when it increased from the original \$45,000 cap to \$50,000. Increasing the salary cap will allow attorneys to apply for the LRAP funds who have served for up to twelve years in public service. Those attorneys are not eligible for federal loan forgiveness and have disproportionately higher loan payments to make compared with newly admitted attorneys.

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# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** February 10, 2012  
**Memo Date:** January 27, 2012  
**From:** BOG member Services Committee  
**Re:** Request from the OSB Sustainable Future Section

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### Action Recommended

Approve the Sustainable Future Section's request to use the designation "OSB Partner in Sustainability" in its new program promoting sustainable office practices.

### Background

The OSB Sustainable Future Section is launching a new "Partners in Sustainability" program. The purpose of the program is to encourage and recognize Oregon law firms that meaningfully implement a prescribed set of sustainable office practices. The program objectives are consistent with the sustainability goals articulated in Section 26 of the Bylaws of the Oregon State Bar. Each law firm that certifies compliance with the criteria will become a Partner in Sustainability. The Section will recognize the commitment of Partners in Sustainability on the Section's website, in advertising in Bar publications and in other media, including the bar's website.

Criteria for the program, which are attached, encompass paper management, reduction of energy and water usage, waste reduction, sustainable purchasing, and office education. In some categories, application of the criteria differs based upon whether the law office is small (1-5 attorneys), medium (6-24 attorneys), or large (25 or more attorneys). To be eligible to become a Partner in Sustainability, the firm must adopt a sustainability policy containing specified elements, select a sustainability coordinator, and implement an education program focused on sustainability matters. In connection with the program, the Section will publish a Model Law Office Sustainability Policy, which is attached, containing the required program elements and other recognized sustainable office practices. The Model Policy may be used by law firms without modification or adapted to the firm's circumstances or needs.

The Sustainable Future Section would like to refer to each law firm satisfying the criteria as an "Oregon State Bar Partner in Sustainability." Accordingly, the Section requests the approval of the Oregon State Bar regarding this label. No further BOG involvement will be required as the Section will coordinate all program activities.

[enter comm. name]

[enter meeting date]

**SUSTAINABLE FUTURE SECTION  
OF THE OREGON STATE BAR**

**Partners in Sustainability Program**

© OSB SUSTAINABLE FUTURE SECTION 2011  
DRAFT OF DECEMBER 20, 2011

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**Notes:**

1. This Program includes criteria for an Oregon law office to meet in order to qualify as an Oregon State Bar Partner in Sustainability.
  2. To become a Founding Partner for 2012, to be announced on Earth Day 2012, an application must be submitted by March 15 to the Sustainable Future Section at the address noted on the application form.
- 

**Background on Program**

The Sustainable Future Section (the Section) of the Oregon State Bar (OSB) seeks to encourage law offices to adopt sustainable practices. This Partners in Sustainability Program (the Program) is in line with the goals of (1) Article 26 of the OSB Bylaws on sustainability and (2) ORS 184.423 enacted to encourage sustainable practices in public agencies.

The Program will recognize law offices of all sizes that meet the criteria set forth below. For this program, three categories of office size have been selected, based on the number of attorneys in a contiguous office in the state of Oregon. Organizations with law offices in multiple locations may qualify each location based on the number of lawyers with their primary office at that location:

Small office	1 to 5 attorneys
Medium office	6 to 24 attorneys
Large office	25 or more attorneys

An office satisfying the criteria set forth below will be recognized as an Oregon State Bar [need permission] Partner in Sustainability, and will be publicized by the Sustainable Future Section, and listed on its website. If an organization qualifies more than one office, the organization name shall be listed only once, with office locations noted.

An application may be submitted to the Section at any time. A law office will be recognized as a Partner in Sustainability on the Section's web site and in *The Long View* as soon as practicable after acceptance of the application. However, the failure to apply by particular dates will preclude recognition of the law firm in any scheduled media advertisements or press releases. In general, a firm that has its application accepted before September 30 of any year will be listed as a Partner in Sustainability for that year

with other Partner firms in any Section communication about current Partners or advertisement in selected media. Furthermore, those firms submitting applications before March 15, 2012 will be recognized as Founding Partners in Sustainability in any Section Earth Day 2012 communication or advertisement.

After the application is accepted by the Section, a law office may state that it is an Oregon State Bar Partner in Sustainability or OSB Partner in Sustainability, but shall not state that it is “certified” because no third-party certification is involved in this program. [need permission]

### **Criteria for OSB Partners Program**

Note: Bold items are required for all law offices.

#### **A. General**

- **A sustainability policy has been adopted by the office including required elements noted in the [Model Law Office Sustainability Policy](#) of the Sustainable Future Section.**
- **A sustainability coordinator (can be volunteer and/or part-time) has been appointed by the office with responsibilities defined by the office.**
- **An education program for office personnel is in place. See elements in IV below.**

## **B. Office Operations**

### **I. Paper Management**

- **Copy/printer paper and other writing paper products have at least 50% post-consumer recycled content.**
- **Office policy on data and document storage is intended to minimize the use of paper.**
- **Office policy on court and agency filing procedures favors using the least paper that courts allow.**
- **Paper towels and toilet paper, if supplied by the law office, have at least 50% post-consumer recycled content and shall be non-chlorine bleached and un-dyed.**
- **Copy and print jobs should be double-sided unless otherwise specified. The default on copiers and printers is set at duplex.**

*Large offices must satisfy all 3 of the following:*

*Medium offices must satisfy 2 of the following:*

- *Documents are processed electronically when appropriate, including the use of the scan option on copier, rather than printing hard copies.*
- *Payroll information is provided to employees online, eliminating paper paystubs, envelopes, and mail delivery.*
- *Office employs hardware and software to scan for electronic document distribution and storage.*

## II. Energy and Water Reduction

- **Office policy calls for individual computers and printers to be turned off at the end of each day, with exceptions allowed for standard maintenance.**
- **Procedures are in place for shared copy machines and printers to be turned off, or put in standby mode, at the end of each day.**
- **(1) Lights are controlled by timers or motion sensors, or (2) office policy calls for lights to be turned off at the end of the day and when leaving the office for more than thirty minutes;**
- **(1) Monitors are set to go to sleep after 30 minutes or less, or (2) personnel have been instructed to turn off monitors when leaving the office for 30 minutes or more;**

*Large and Medium offices must satisfy the following:*

- If the law office is in rented space, discussions have been held with a representative of the building owner to discuss how to reduce energy and water use in the building generally and the feasibility of the following steps:
  - More switches installed to reduce lights per switch, ambient light levels in office spaces adjusted to no more than 1.4 watts per square foot, law office space sub-metered or energy-star appliances installed.
  - Low-flow faucets and, if applicable, shower heads and dual flush toilets installed.
- If the law office is in owned space, the office has considered the items listed in the preceding bullet point and implemented those that are feasible.
- If the law office occupies space certified as LEED Gold or Platinum, the two criteria above shall not apply and this requirement shall be satisfied.

### III. Waste and Toxics Reduction

- **Desk-side recycling boxes with or without attached pitch cans, but no trash cans, are at each workstation.**
- **Durable plates, cups, glasses, utensils, and coasters are provided in kitchen and conference rooms (if any).**
- **Collection containers are set up for bottles, cans, newspapers, magazines, and cardboard, and a procedure has been established for their recycling.**
- **A procedure has been established to provide for non-curbside recycling of non-reusable items, such as batteries, plastic bags, clamshells, electronics, CFL's, etc.**

*Large offices must satisfy 3 of the following:*

*Medium and small offices must satisfy 2 of the following:*

- *Office has held discussions with the building owner's representative regarding the hazards of chemicals in the workplace including paints, glues, and other products used in tenant improvements, and requested that cleaning supplies are certified by Green Seal or meet US EPA's Design for the Environment standard, and that the janitorial staff be trained in the benefits of non-toxic cleaners. If the building contracts with a janitorial service, law office has requested that building owner requires service to use non-toxic cleaners and methods by negotiating them into the contract. If the law office controls the cleaning practices, it implements the same requirements on itself.*
- *Old office equipment, furniture, and supplies are sold or donated for reuse when feasible.*
- *Food scraps are composted.*
- *Office purchases remanufactured ink cartridges and/or makes arrangements for its used cartridges to be reused.*

#### **IV. Office Education**

- **All employees have been, or will be within three months of submitting an Application to become a Partner, educated about the office sustainability policy and portions of the Partners' certification criteria that relate to their work, and such education is part of new employee orientation.**
- **The office has an ongoing education program calling for at least two noontime or work-time education programs each year focused on matters pertinent to sustainability.**
- **Attorneys/staff are trained on paperless options, waste reduction, toxics reduction, and resource conservation;**

#### **V. Sustainable Purchasing**

- **Office has a written purchasing policy regarding the purchase and delivery of supplies, equipment and services (including cleaning supplies, electronics and food) with a goal of minimizing packaging, disposables, and toxics and maximizing recycled and recyclable content.**
- **If lunches are ordered by the office regularly, the policy encourages the utilization of lunch caterers that minimize disposables and purchase locally grown, organic food.**
- **If plates, cups, glasses or utensils are provided for use in the office, they are permanent ware and not single-use disposable items.**
- **Individual plastic bottles of water are not provided by the office.**
- **If coffee is purchased by the office, consideration has been given to organic, fair-trade and/or shade-grown varieties.**

#### **C. Transportation Energy Reduction**

- **Office encourages reduction in use of fossil fuels for business travel through teleconferencing and other electronic conferencing technologies.**
- **If public transportation is available to firm personnel, the office provides a subsidy of at least 50% for bus or light rail passes for employees who commute regularly by public transportation.**

*Large offices must satisfy 3 of the following:*

*Medium offices must satisfy 2 of the following:*

- *Office does not provide free pay individually for parking for any personnel.*
- *Incentives are provided for bike commuters in the form of subsidies and/or items like showers and/or secure bike storage.*
- *Office provides a carpool pairing resource.*
- *Office has purchased one or more car-sharing memberships.*
- *Office reimburses cab fares for employees who commute by alternative methods who must work beyond a certain time in the evening.*
- *Office personnel have use of a Level 2 charging station (for car batteries) provided by the law office or building manager.*

**PARTNERS IN SUSTAINABILITY PROGRAM  
OREGON STATE BAR  
January \_\_, 2012**

**Law Office Application to Qualify as Partner in Sustainability**

**1. Contact information:**

**Name of law office:**

**Address(es) in Oregon:**

**Contact person:**

**Phone number:    E-mail:**

**2. Law office size:**

**Lawyers with a primary personal office by address listed above: \_\_\_\_\_**

**3. Law office certification:**

The undersigned Oregon lawyer, being a principal, partner, or manager of the law office, certifies that the office at each address listed above meets the current Criteria for OSB Partners Program\* and intends to continue meeting the criteria in the future.

\_\_\_\_\_

Name and title (for law office)

\*The current criteria for the OSB Partners Program can be found on the website for the Sustainable Future Section of the Oregon State Bar.

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**Acceptance:**

The OSB Sustainable Future Section accepts the application. The law office is qualified as a Partner in Sustainability for calendar year(s) \_\_\_\_\_.

\_\_\_\_\_

Name and Title (for Sustainable Future Section)

SUSTAINABLE FUTURE SECTION  
OF THE OREGON STATE BAR

## Model Law Office Sustainability Policy

© OSB SUSTAINABLE FUTURE SECTION 2011  
DRAFT OF DECEMBER 16, 2011

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**Notes:**

1. This policy may be adopted and used by an office as written without credit to the Sustainable Future Section. Although the model policy has been drafted for widespread use by law offices generally, it will also satisfy the office-policy requirements of the SFS Partners in Sustainability Program.
  2. An asterisk (\*) and italics in paragraphs below identify the only minimum requirements to satisfy the office policy criteria in the SFS Partners in Sustainability Program and have no other significance. See footnote below about Partners Program.
- 

Our firm seeks to establish sustainable office practices consistent with its overall commitment to provide excellent legal services to clients. The best-known definition of sustainability is contained in a 1987 report *Our Common Future* commissioned by the UN World Commission of Environment and Development:

*Sustainable development is meeting the needs of the present without compromising the ability of future generations to meet their own needs.*

We recognize that all human activity, including the operation of a law office, has an impact on the environment and the natural world. Within the firm we make daily choices in performing work that can either reduce or increase that impact. As a firm we seek to reduce the impact.

*\*This policy has been adopted by the [management team] [law office] to implement that intent.*

**\*Sustainability Coordinator.** *One person shall be designated as the Sustainability Coordinator for the firm. The time allocated for work as the Coordinator shall be determined by the [Firm Administrator] [Managing Partner]. The Coordinator shall be responsible for educating firm personnel on sustainability, making recommendations to firm management to implement the policy, and maintaining awareness of this policy among firm personnel generally.*

**\*Education.** *The Coordinator shall establish an education program to include the following elements. First, all existing personnel shall be introduced to this policy and its goals in a short training. All incoming personnel shall receive an introduction to the policy and goals in new personnel orientation. Second, the Coordinator shall plan at least two educational sessions each year, open to all office personnel, on matters related to sustainability.*

**Sustainability Team.** A Sustainability Team, organized by the Coordinator, shall meet periodically to evaluate current practices, determine priorities in carrying out this policy, and consider ways to educate and motivate lawyers and staff to adopt more sustainable practices. Anyone with ideas for improving the firm's performance is encouraged to contact a member of the Sustainability Team.

**\*Purchasing.** *Sustainability shall be considered in the purchase of supplies, equipment, and services. Examples of sustainability criteria are recyclability, biodegradability, recycled content, waste minimization, hazardous-chemical free, energy conservation, resource conservation, locally manufactured, and organic.*

**\*Waste Reduction and Recycling.** *Subject to security and other requirements, policies shall be established that minimize the use of paper in printing, copying, internal and external communications, and data storage. Systems will be established to minimize disposables and packaging, reuse equipment and supplies where feasible, and maximize recycling of all items that can be recycled in this region.*

**\*Energy.** *Policies shall be established to encourage energy conservation and efficiency in heating/cooling, lighting, and equipment. For matters not within the control of the office, negotiations with the building manager may be appropriate to seek best practices.*

**Travel.** The Sustainability Team shall consider means for reducing business travel, including teleconferencing options, and strategies for reducing the impact of travel, including fuel efficiency, flexible car options, and carbon offsets.

**Commuting.** The firm management shall establish commuter incentives to encourage use of mass transit, carpooling, biking, running, and walking.

**Carbon Credits/Green Power.** The firm shall consider the purchase of carbon credits to offset all or a portion of the greenhouse gas emissions associated with our internal operations and the purchase of green power to encourage alternatives to fossil fuels.

**Tenant Improvements.** When tenant improvements are made, where possible the firm shall specify materials that are the least hazardous and most natural and give preference to those that are high in recycled content, recyclable or biodegradable, certified sustainable, and durable.

**Implementation and Measuring Success.** In implementing this policy, where practicable baselines shall be established for practices that can be measured--such as paper used, recycled content of supplies, disposables purchased, percentage of office waste that is recycled, and electricity used--and progress shall be reported to the firm at least annually.

**\*Reports.** *The Sustainability Coordinator will make periodic reports, not less than once a year, to the firm management regarding the progress the firm is making toward sustainability.*

MEMORANDUM

**TO:** Oregon State Bar Board of Governors

**FROM:** Steve D. Larson

**DATE:** April 10, 2012

**RE:** Changing Professional Rule Regarding Costs Advanced

Any lawyer that has handled a contingency fee case is familiar with Oregon Rule of Professional Conduct 1.8(e). For the benefit of the rest of us, following is what Oregon Rule of Professional Conduct 1.8(e) provides:

While representing a client in connection with contemplated or pending litigation, a lawyer shall not advance or guarantee financial assistance to the lawyer's client, except that a lawyer may advance or guarantee the expenses of litigation, provided the client remains ultimately liable for such expenses to the extent of the client's ability to pay.<sup>1</sup>

This Rule of Professional Conduct is based on outdated concepts of champerty and maintenance, and is interfering with access to justice for people that want to hire Oregon lawyers, but may not have the resources to be ultimately liable for filing fees, deposition expenses, expert witness fees, and other costs that have risen dramatically in recent years. It is also inhibiting the opportunity for Oregon lawyers to represent clients in deserving cases. This rule is also inconsistent with common practice, because lawyers do not necessarily pursue their clients to recover costs if a case is unsuccessful.

Oregon lawyers that take cases on a contingency fee are making decisions about the value and viability of a case. If a lawyer is willing to represent a client on a contingency fee basis and take the risk of paying the costs of the litigation with no right to recover costs from the client if the case is unsuccessful (and be willing to tell the client that up front in writing), why should the Oregon State Bar want to preclude that lawyer from representing the client. Often, a client will be unwilling to bring a valid claim for a relatively modest amount of money if there is a chance he or she might have to pay for out of pocket expenses if the case is unsuccessful.

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<sup>1</sup> The Oregon State Bar Approved Explanation of Contingent Fee Agreement that lawyers are required to send to potential contingent fee clients goes further. It states: If we advance money for filing fees, witness fees, experts reports, court reporter's services or other expenses on your behalf, you must repay us whether the case is won or lost.

In the majority of other states, lawyers may advance court costs and expenses of litigation, and the repayment of those costs can be contingent on the outcome of the matter. That is because those states have adopted the ABA Model Rule 1.8(e). I am unaware of any statistical or anecdotal evidence that the adoption of this rule in these other states led to any problems. Sylvia Stevens sent out an inquiry on the listserv that goes to all the general counsel for state bar organizations and every jurisdiction that responded to her inquiry said they have no problem with the model rule.

When Oregon adopted the Oregon Rules of Professional Conduct, we retained the language of former DR 5-103(B). Only a small minority of states (Michigan, New York, New Mexico, Oregon, Virginia, and Washington) still use this outmoded approach.

I would like to propose that the Oregon State Bar adopt ABA Model Rule 1.8(e). That rule and the comments to it follow:

**ABA Model Rule 1.8:**

(e) A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that:

- (1) a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter; and
- (2) a lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client.

Comment [10]:

[10] Lawyers may not subsidize lawsuits or administrative proceedings brought on behalf of their clients, including making or guaranteeing loans to their clients for living expenses, because to do so would encourage clients to pursue lawsuits that might not otherwise be brought and because such assistance gives lawyers too great a financial stake in the litigation. These dangers do not warrant a prohibition on a lawyer lending a client court costs and litigation expenses, including the expenses of medical examination and the costs of obtaining and presenting evidence, because these advances are virtually indistinguishable from contingent fees and help ensure access to the courts. Similarly, an exception allowing lawyers representing indigent clients to pay court costs and litigation expenses regardless of whether these funds will be repaid is warranted.

Excerpt from ABA/BNA Lawyers' Manual on Professional Conduct:

**Court Costs and Litigation Expenses**

Although Model Rule 1.8(e) generally prohibits the advancement or guarantee of financial assistance by a lawyer to a client in connection with litigation, the rule provides an exception for the expenses of the litigation itself, including court costs.

Allowing lawyers to advance court costs and litigation expenses is comparable to allowing lawyers to charge contingent fees, and rests on the same justification of ensuring access to justice for those who could not otherwise afford to pursue their claims. Model Rule 1.8 cmt. [10]; Restatement (Third) of the Law Governing Lawyers §36 cmt. c (2000).

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# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** February 9, 2012  
**From:** Steve Larson, Public Affairs Committee Chair  
**Re:** Stable Court Funding Economic Survey

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### **Action Recommended**

Consider PAC recommendation regarding economic survey to document the effects of court budget reductions on the Oregon economy.

### **Background**

As part of the coalition on stable court funding discussions, and at the request of the Chief Justice, coalition participants concluded that it would be more persuasive to document the effects of court budget reductions on the Oregon economy rather than present anecdotal evidence to the legislature. Other states, including Florida, California and Georgia, have undertaken similar studies with beneficial results.

Please see attached description of the scope of work product from EcoNorthwest.

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January 20, 2011

**TO:** Susan Grabe, Amber Hollister  
**FROM:** Bryce Ward, Ed MacMullan  
**SUBJECT:** REVISED DRAFT SCOPE OF WORK AND BUDGET

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In this memo we describe our revised draft scope of work and budget based on your comments on our previous draft.

### **Task 1: Background**

Since the beginning of the Great Recession, much has been written on declining budgets for state courts and the associated socioeconomic consequences. In this task, Task 1, we will review a sampling of this literature. Our review will focus on the types and amounts of budget cuts, how budget cuts affect court services, and the resulting socioeconomic consequences of reduced court services. We will also briefly describe state courts in Oregon. This description will include the functions of state courts, how they operate and the relationship between the functions of state courts and the socioeconomic wellbeing of the state's residents, businesses and local governments.

Budget: \$3,100.

### **Task 2: Effects of Budget Cuts on State Courts in Oregon**

In Task 2, we will describe how budget cuts have and will affect the operations of state courts in Oregon. To the extent the available data will allow, we will describe past budget cuts and their effects on state courts in Oregon. We will also describe the direct economic consequences measured in the numbers of court-related jobs and employment income of an illustrative budget cut of \$X million. Using economic multipliers, we will then describe the indirect effects of this illustrative budget cut on the larger Oregon economy.

Budget: \$4,300.

### **Task 3: Effects of Budget Cuts on Socioeconomic Wellbeing**

In Task 3, we will describe how an illustrative budget cut of \$X million, could affect the socioeconomic wellbeing of Oregon residents, businesses, and local governments. To the extent the available data will allow, we will describe the consequences quantitatively, e.g., amounts of business investments at risk, financial resources tied up in delayed judgments, etc.

Budget: \$3,000.

### **Task 4: Summary Memo**

In Task 4, we will summarize our analysis, results and conclusions in a memo.

Budget: \$1,200.

Total Budget for Tasks 1 – 4: \$11,600.

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# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** February 10, 2012  
**Memo Date:** February 10, 2012  
**From:** Kateri Walsh, NLMP Administrator  
**Re:** New Lawyer Mentor Program: Mentor Nominees

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### **Action Recommended**

Review the attached list of volunteer mentors for the New Lawyer Mentoring Program, and approve appointment recommendations for submission to the Oregon Supreme Court.

### **Background**

All mentors participating in the New Lawyer Mentoring Program require recommendation by the Board of Governors and appointment by the Oregon Supreme Court. The criteria include:

- Seven years of experience as a practicing attorney.
- No pending disciplinary prosecutions.
- A reputation for competence, ethics and professionalism.

Please review and approve all appropriate volunteers. Contact Kateri Walsh directly with any questions or concerns about the process, or about any volunteer mentors.

**MENTORS FOR BOG APPROVAL, FEBRUARY 2012 --- New Lawyer Mentoring Program**

Bar#	Sal.	F.Name	M.Name	L.Name	City.State.Zip
800099	Hon.	Ann		Aiken	Eugene, OR 97401
981752	Ms.	Traci		Anderson	Portland, OR 97204
911947	Ms.	Dawn		Andrews	Portland, OR 97204
690061	Mr.	Gavin		Armstrong	Eugene, OR 97401
901990	Mr.	Dave		Bahr	Eugene, OR 97402
760504	Mr.	William	D.	Bailey	Tigard, OR 97223
915144	Mr.	James		Baker	Portland, OR 97214
022457	Ms.	Wendy		Baker	Eugene, OR 97401
951927	Mr.	Andy		Balyeat	Bend, OR 97701
030785	Mr.	Glen		Banfield	Portland, OR 97204
690093	Mr.	Albert	J.	Bannon	Portland, OR 97201
011960	Ms.	Mary-Beth		Baptista	Portland, OR 97204
760568	Ms.	Cynthia		Barrett	Portland, OR 97201
881556	Mr.	Jesse	Wm.	Barton	Salem, OR 97304
821887	Mr.	Fritz		Batson	Eugene, OR 97440
012027	Mr.	David		Bean	Portland, OR 97205
951830	Mr.	Carson		Bowler	Portland, OR 97204
012113	Mr.	Douglas		Bragg	Portland, OR 97224
850065	Mr.	Richard		Braun	Portland, OR 97204
912416	Ms.	Anne	Corcoran	Briggs	Boise, ID 83706
050206	Ms.	Adrian		Brown	Portland, OR 97204
822070	Mr.	Jon		Buerstatte	Eugene, OR 97440
881674	Mr.	B	Kevin	Burgess	Eugene, OR 97401
640088	Mr.	Carl		Burnham, Jr.	Ontario, OR 97914
011770	Mr.	John	F.	Butler	Eugene, OR 97401
710362	Mr.	Win		Calkins	Eugene, OR 97401
930114	Ms.	Alison	Kean	Campbell	Portland, OR 97232
032816	Mr.	David	C.	Campbell	Portland, OR 97204
771363	Ms.	Cynthia		Carlson	Eugene, OR 97401
970394	Mr.	John		Casalino	Portland, OR 97204
911915	Mr.	James	C.	Chaney	Eugene, OR 97401
904926	Mr.	Jeffrey	M.	Cheyne	Portland, OR 97204
830043	Mr.	Jay	R.	Chock	Portland, OR 97204
831709	Ms.	Christine		Chute	Dallas, OR 97338
760970	Mr.	Art		Clark	Eugene, OR 97440
833871	Hon.	Mark D.		Clarke	Medford, OR 97501
920411	Mr.	Tom		Cleary	Portland, OR 97204
824655	Hon.	Thomas		Coffin	Eugene, OR 97401
965776	Mr.	Michael		Cohen	Portland, OR 97204
972378	Mr.	Andrew		Coit	Eugene, OR 97401
811930	Mr.	Mark		Comstock	Salem, OR 97308
781675	Mr.	Richard		Condon	Salem, OR 97301
932373	Mr.	Joseph		Connelly	Eugene, OR 97401
560237	Mr.	Thomas	E.	Cooney	Lake Oswego, OR 97035
871964	Mr.	Brad		Copeland	Eugene, OR 97440

Bar#	Sal.	F.Name	M.Name	L.Name	City.State.Zip
610180	Mr.	William B.		Crow	Portland, OR 97204
924654	Mr.	Thomas		Cupani	Salem, OR 97301
850373	Mr.	Paul		Dakopolos	Salem, OR 97308
025873	Mr.	Brian		Davidson	Portland, OR 97204
851817	Ms.	Gwen		Dayton	Portland, OR 97223
962586	Ms.	Heather		Decker	Milwaukie, OR 97267
944787	Ms.	Tammy		Dentinger	Salem, OR 97308
822370	Mr.	Joel		DeVore	Eugene, OR 97440
922814	Mr.	Peter	C.	Diamond	Portland, OR 97230
962636	Mr.	Christopher		Drotzmann	Portland, OR 97204
922932	Ms.	Gilion		Dumas	Portland, OR 97209
932588	Mr.	Brendan		Dummigan	Portland, OR 97205
754030	Mr.	Daniel		Dziuba	Portland, OR 97204
893605	Hon.	Cynthia		Easterday	McMinnville, OR 97128
041186	Mr.	Patrick		Ehlers	Portland, OR 97204
854133	Mr.	Kenneth		Elmore	Eugene, OR 97401
912606	Mr.	Ronald		Elzinga	Portland, OR 97205
730843	Mr.	Stephen		English	Portland, OR 97209
670340	Mr.	William		Flinn	Bend, OR 97701
923078	Ms.	Meagan		Flynn	Portland, OR 97201
091858	Ms.	Margaret "Gosia"		Fonberg	Portland, OR 97204
914779	Ms.	Kitri		Ford	Bend, OR 97702
033166	Mr.	David	S.	Foster	Portland, OR 97204
872243	Ms.	Cynthia		Fraser	Portland, OR 97204
812298	Ms.	Jaye		Fraser	Salem, OR 97312
590331	Mr.	Robert	H.	Fraser	Eugene, OR 97440
832041	Mr.	Douglas		Fredricks	McMinnville, OR 97128
892448	Mr.	Marc		Friedman	Eugene, OR 97440
002592	Mr.	Mark		Friel	Portland, OR 97204
741061	Mr.	Donald		Gallagher	Eugene, OR 97440
002600	Mr.	Paul		Galm	Beaverton, OR 97005
792352	Mr.	Frank		Gibson	Eugene, OR 97440
851222	Mr.	Kirk		Gibson	Portland, OR 97205
670397	Mr.	James		Gidley	Portland, OR 97209
000096	Mr.	David		Giles	Portland, OR 97239
660458	Hon.	W.	Michael	Gillette	Portland, OR 97204
990535	Mr.	John	Phillip	Gilroy	Lake Oswego, OR 97035
812400	Mr.	Jimmy		Go	Portland, OR 97207
890504	Ms.	Debbie		Goldberg Menashe	Portland, OR 97204
830423	Mr.	Timothy		Grabe	Portland, OR 97212
771901	Mr.	Paul		Graham	Salem, OR 97301
990542	Ms.	Erin		Greenawald	Salem, OR 97301
882175	Ms.	Melinda		Grier	Eugene, OR 97401
754317	Mr.	Jim		Griggs	Salem, OR 97308
940845	Mr.	John		Gutbezahl	Lake Oswego, OR 97035
731179	Hon.	Ancer		Haggerty	Portland, OR 97204
822743	Mr.	Michael		Halligan	Portland, OR 97205

Bar#	Sal.	F.Name	M.Name	L.Name	City.State.Zip
792542	Mr.	Bruce		Hamlin	Portland, OR 97204
992787	Mr.	Todd		Hanchett	Portland, OR 97204
943320	Mr.	Thomas		Hanrahan	Portland, OR 97201
975454	Mr.	Douglas	C.	Hanson	Salem, OR 97309
721129	Mr.	Edwin		Harnden	Portland, OR 97204
842432	Mr.	Tilman		Hasche	Portland, OR 97214
010050	Mr.	Michael		Heilbronner	Portland, OR 97232
862067	Hon.	Marco		Hernandez	Portland, OR 97204
820602	Mr.	Robert	G.	Higgins	McMinnville, OR 97128
710860	Hon.	Michael		Hogan	Eugene, OR 97401
003370	Mr.	Susan		Howard	Portland, OR 97204
640429	Hon.	John		Jelderks	Portland, OR 97204
690860	Mr.	David		Jensen	Eugene, OR 97401
023377	Mr.	Scott		Jerger	Portland, OR 97205
772355	Mr.	David		Jewett	Springfield, OR 97477
882340	Mr.	Derek		Johnson	Eugene, OR 97401
933230	Ms.	Lara		Johnson	Eugene, OR 97401
992913	Mr.	Todd		Johnston	Eugene, OR 97440
954092	Ms.	Janis	Searles	Jones	Portland, OR 97202
802825	Mr.	Ivan		Karmel	Portland, OR 97205
014666	Mr.	Benjamin		Kearney	Eugene, OR 97440
923512	Mr.	Eric		Kekel	Portland, OR 97204
970735	Mr.	Sean	David	Kelly	Cottage Grove, OR 97424
60801	Ms.	Karen		Kemper	Corvallis, OR 97339
060801	Ms.	Karen		Kemper	Corvallis, OR 97339
690925	Mr.	Andrew	P.	Kerr	Portland, OR 97205
630432	Hon.	Garr		King	Portland, OR 97204
933301	Mr.	Brent		Kinkade	Bend, OR 97701
081879	Mr.	James	R.	Kirchoff	Medford, OR 97501
953244	Mr.	Ken		Kissir	Gresham, OR 97030
812123	Ms.	Chris		Kitchel	Portland, OR 97204
933319	Ms.	Ronnee		Kliwer	Portland, OR 97232
811400	Mr.	Bill		Kloos	Eugene, OR 97401
015088	Mr.	Scott		Kocher	Portland, OR 97204
992991	Mr.	John		Kodachi	Portland, OR 97258
560237	Mr.	Thomas	E.	Cooney	Lake Oswego, OR 97035
903174	Mr.	David		Kracke	Portland, OR 97239
802911	Mr.	Steve		Krasik	Salem, OR 97301
023350	Ms.	Angela		Kuhn	Medford, OR 97501
760353	Mr.	Louis		Kurtz	Eugene, OR 97401
951389	Mr.	John		Lamborn	Burns, OR 97720
821554	Hon.	Hon. Jack		Landau	Salem, OR 97301
013248	Mr.	Ernest		Lannet	Salem, OR 97301
943645	Mr.	Daniel	P.	Larsen	Portland, OR 97209
980739	Mr.	Andrew		Lauersdorf	Portland, OR 97204
943660	Ms.	Linda		Law	Portland, OR 97204
820784	Mr.	Henry "Chip"		Lazenby	Portland, OR 97214
700835	Mr.	Joseph		Leahy	Springfield, OR 97477

Bar#	Sal.	F.Name	M.Name	L.Name	City.State.Zip
080031	Mr.	Andrew		Lewinter	Eugene, OR 97401
904625	Mr.	Andy		Lewis	Eugene, OR 97440
772631	Mr.	Jerome		Lidz	Eugene, OR 97401
871101	Mr.	Russell		Lipetzky	Salem, OR 97301
993113	Mr.	E.	Bradley	Litchfield	Eugene, OR 97440
015095	Mr.	Paul		Logan	Portland, OR 97201
980753	Mr.	Matt		Longtin	Eugene, OR 97401
691078	Mr.	Donald		Loomis	Eugene, OR 97401
802975	Mr.	Robert		Lowry	Eugene, OR 97440
970030	Mr.	Scott		Lucas	Eugene, OR 97401
933490	Mr.	Gregory		Lusby	Eugene, OR 97440
025422	Mr.	Matthew		Lysne	Salem, OR 97301
031182	Mr.	Bradley		Maier	Portland, OR 97204
000791	Ms.	Julia		Markley	Portland, OR 97209
540594	Hon.	Malcolm		Marsh	Portland, OR 97204
001522	Mr.	Douglas		Marteeny	Albany, OR 97321
903332	Ms.	Christine		Mascal	Portland, OR 97204
820849	Mr.	Jeffrey		Matthews	Portland, OR 97258
850650	Mr.	Scott		McCleery	Eugene, OR 97440
841520	Mr.	Nathan		McClintock	Coos Bay, OR 97420
073050	Mr.	Eric		McCormick	Portland, OR 97205
044753	Ms.	Margaret		McWilliams	Sisters, OR 97759
823323	Mr.	Gary		Meabe	Portland, OR 97204
034008	Mr.	Shawn	N.	Menashe	Portland, OR 97204
071510	Ms.	Jennifer		Middleton	Eugene, OR 97401
943899	Mr.	Gregory		Moawad	Portland, OR 97239
732099	Mr.	Gerald	E.	Montgomery	Portland, OR 97223
871119	Hon.	Michael		Mosman	Portland, OR 97204
903450	Mr.	Anthony		Motschenbacher	Portland, OR 97204
933760	Ms.	Katherine		Moyer	Eugene, OR 97401
880872	Hon.	Lynn		Nakamoto	Salem, OR 97301
034086	Ms.	Jennifer	A.	Nelson	Portland, OR 97204
012328	Ms.	Sarah		Nelson	Portland, OR 97204
973495	Ms.	Christine		Nesbit	Eugene, OR 97402
014627	Ms.	Devon	Zastrow	Newman	Portland, OR 97204
973510	Ms.	Kelly		Noor	Salem, OR 97308
926043	Mr.	Brad		Nye	Bend, OR 97701
953710	Ms.	Karen		O'Connor	Portland, OR 97204
963832	Mr.	Melvin		Oden-Orr	Portland, OR 97205
870704	Mr.	Arden		Olson	Eugene, OR 97401
742393	Mr.	Wm Kelly		Olson	Portland, OR 97204
024985	Ms.	Ellen		Osoinach	Portland, OR 97204
822539	Ms.	Mary	Ellen	Page Farr	Portland, OR 97239
832990	Ms.	Martha		Pagel	Salem, OR 97301
764073	Mr.	R	Scott	Palmer	Eugene, OR 97440
762788	Mr.	Frank		Papagni	Eugene, OR 97401
013778	Mr.	Matthew		Perkins	Portland, OR 97208

Bar#	Sal.	F.Name	M.Name	L.Name	City.State.Zip
823750	Ms.	Nancy		Popkin	Portland, OR 97204
783444	Mr.	William		Potter	Eugene, OR 97440
853087	Mr.	Mike		Pugh	Eugene, OR 97401
853094	Mr.	Michael		Purcell	Portland, OR 97204
965056	Mr.	Chris		Ramras	Portland, OR 97204
043944	Mr.	Jesse		Ratcliffe	Salem, OR 97301
793510	Mr.	John R.		Ratto	Portland, OR 97204
821088	Mr.	Ralph		Rayburn	Beaverton, OR 97005
550803	Hon	James A.		Redden	Portland, OR 97204
953918	Mr.	Donald	N.	Rees	Portland, OR 97204
964752	Mr.	Brent		Renison	Portland, OR 97209
973789	Mr.	James	B.	Rich	Salem, OR 97306
973796	Mr.	Ian		Richardson	Eugene, OR 97440
770665	Mr.	Stephen		Riedlinger	Portland, OR 97201
893461	Mr.	Charles		Ringo	Bend, OR 97701
950230	Mr.	Matthew		Rizzo	Portland, OR 97205
034330	Ms.	Nicole		Robbins	Clackamas, OR 97015
742734	Mr.	Gary		Roberts	Portland, OR 97204
013975	Mr.	Glenn		Robles	Portland, OR 97205
953964	Ms.	Charese		Rohny	Portland, OR 97201
984545	Ms.	Judith		Rosenberg	Portland, OR 97213
773275	Mr.	Daniel		Rosenhouse	Portland, OR 97201
773290	Ms.	Linda		Rudnick	Beaverton, OR 97008
971007	Ms.	Karen	Stenard	Sabitt	Eugene, OR 97401
853238	Mr.	Douglas		Schaller	Eugene, OR 97401
014089	Mr.	Scott		Schiefelbein	Portland, OR 97204
843417	Mr.	Jens		Schmidt	Eugene, OR 97401
763232	Mr.	Kirk		Schmidtman	Woodburn, OR 97071
910930	Ms.	Karen		Schoenfeld	Portland, OR 97214
044080	Mr.	Andrew		Schpak	Portland, OR 97204
003799	Mr.	John		Schroedel	Portland, OR 97205
980990	Ms.	Diane		Schwartz Sykes	Portland, OR 97201
883318	Ms.	Concetta		Schwesinger	Salem, OR 97309
035480	Mr.	Keith		Semple	Eugene, OR 97401
814690	Mr.	Dennis		Shen	Portland, OR 97204
801073	Ms.	Lynn		Shepard	Eugene, OR 97401
801066	Mr.	Pete		Shepherd	Salem, OR 97301
031680	Ms.	Teresa		Shill	Portland, OR 97205
961873	Mr.	Scott		Shorr	Portland, OR 97204
793946	Mr.	Scott		Sideras	Oregon City, OR 97045
860908	Hon.	Michael		Simon	Portland, OR 97204
681519	Mr.	Daniel		Skerritt	Portland, OR 97204
813795	Mr.	Steve		Smucker	Portland, OR 97205
732834	Ms.	Judy	Danelle	Snyder	Portland, OR 97205
873496	Mr.	Marco		Spence	Eugene, OR 97401
994491	Mr.	Darian		Stanford	Portland, OR 97204
914407	Ms.	Teresa	A.	Statler	Portland, OR 97204

Bar#	Sal.	F.Name	M.Name	L.Name	City.State.Zip
671167	Mr.	Kenneth		Stephens	Portland, OR 97204
770712	Hon.	Janice M.		Stewart	Portland, OR 97204
873883	Ms.	Tina		Stupasky	Eugene, OR 97401
783942	Hon	Patricia A.		Sullivan	Vale, OR 97918
954347	Mr.	Nathan		Sykes	Portland, OR 97232
753619	Mr.	Thomas		Tankersley	McMinnville, OR 97128
893519	Ms.	Cathy	Steele	Tappel	Portland, OR 97258
965790	Mr.	Charles		Tebbutt	Eugene, OR 97402
841229	Mr.	Terence		Thatcher	Portland, OR 97204
102144	Mr.	Troy	E.	Thompson	Portland, OR 97202
934998	Mr.	Henry		Tilghman	Portland, OR 97213
961218	Mr.	Jamie		Troy	Portland, OR 97213
994151	Mr.	Richard		Vangelisti	Portland, OR 97204
784823	Mr.	Gregory		Veralrud	Eugene, OR 97401
931217	Mr.	David		Wade	Eugene, OR 97440
833667	Mr.	Theodore		Walker	Eugene, OR 97401
014483	Ms.	Victory		Walker	Grants Pass, OR 97526
002926	Ms	Sarah	EK	Wallace	Salem, OR 97308
863120	Mr.	James	K.	Walsh	Eugene, OR 97405
711838	Mr.	John		Watkinson	Eugene, OR 97440
974297	Mr.	Don		Webb	Eugene, OR 97403
974312	Ms.	Linda		Weimar	Beaverton, OR 97006
974320	Ms.	Julie		Weis	Portland, OR 97201
763794	Mr.	Bruce	M.	White	Portland, OR 97204
774267	Mr.	Douglas		Wilkinson	Springfield, OR 97477
034940	Mr.	Timothy L.		Williams	Bend, OR 97701
911470	Mr.	Jeffrey		Wing	Eugene, OR 97401
014555	Ms.	Caroline		Wong	Portland, OR 97204
843908	Mr.	Jeffrey		Wong	Portland, OR 97210
861075	Ms	Valerie		Wright	Bend, OR 97701
050238	Ms.	Jane		Yates	Eugene, OR 97440
794597	Mr.	David		Zarosinski	Portland, OR 97204
743543	Mr.	Ira		Zarov	Tigard, OR 97281
753980	Mr.	Gary		Zimmer	Portland, OR 97258

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# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** February 10, 2012  
**Memo Date:** February 10, 2012  
**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.

#### **MCLE Committee**

**Recommendation:** Kristie L. Gibson, term expires 12/31/2014

**Recommendation:** Sean E. O'Day, term expires 12/31/2013

#### **Pro Bono Committee**

**Recommendation:** Sara A. Bateman, term expires 12/31/2014

#### **Judicial Administration Committee**

**Recommendation:** Carla Piluso, public member, term expires 12/31/2014

#### **Uniform Civil Jury Instructions Committee**

**Recommendation:** Roy Fernandes, term expires 12/31/2012

#### **Disciplinary Board**

**Region 2 Recommendation:** Debra Velure, term expires 12/31/2014

#### **Local Professional Responsibility Committee**

**Recommendation:** Paul Bovarnick, term expires 12/31/2012

#### **Commission on Judicial Fitness and Disability**

**Recommendation:** Gene Hallman, term expires 2/10/2016

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** February 10, 2012  
**From:** Sylvia E. Stevens, Executive Director  
**Re:** CSF Claims Recommended for Payment

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### Action Recommended

Approve the following claims recommended for payment by the Client Security Fund:

No. 2010-36 GINSLER (Kitchens)	\$1,363.00
No. 2010-40 DALRYMPLE (Stockberger)	\$1,945.00
<b>TOTAL</b>	<b>\$3,308.00</b>

### Background

#### No. 2010-36 GINSLER (Kitchens) \$1,363

This is the third claim the CSF has received from former clients of Portland attorney William Ginsler. Kitchens hired Ginsler in June 2008 to handle a Chapter 13 bankruptcy. Kitchens alleges that Ginsler misappropriated approximately \$8,200, but after reviewing the client's extensive file, the CSF concluded that all but the \$1,363 discussed below was accounted for.

Ginsler instructed Kitchens to turn over his tax refund check of \$1,363 to the trustee, but Kitchens mistakenly cashed it. Kitchens withdrew the appropriate amount from his credit union account and gave it to Ginsler in a cashiers' check. Ginsler said he would remit the funds to the Chapter 13 trustee. The trustee has no record of receiving the money.

As the bankruptcy case neared a close in early 2010, Ginsler petitioned the court for additional attorney fees. Kitchens objected to any additional fees for Ginsler, and pointed out the missing \$1,363 to the court. The bankruptcy judge ordered Ginsler to appear and account for the missing funds. (Ginsler withdrew from representing Kitchens, who retained substitute counsel to conclude the Chapter 13.) Ginsler also hired counsel. At the hearing, Ginsler's counsel reported that Ginsler would not appear, citing health reasons, but acknowledged that Ginsler had received the \$1,363 and hadn't remitted it to the trustee.

Ginsler resigned Form B in October 2010 with eleven complaints pending including this one. The CSF Committee recommends that Kitchens be awarded \$1,363 to reimburse him for Ginsler's misappropriation. No judgment is required because the claim is for less than \$5,000 and Ginsler's resignation arose in part from his representation of Kitchens.

**No. 2010-40 DALRYMPLE (Stockberger) \$1,945**

Stockberger hired Klamath Falls attorney Richard Dalrymple in mid-2007 for assistance with refuting DHS allegations arising out of Stockberger's visitation with his grandson. He deposited a retainer of \$2,500. Between June and September 2007, Dalrymple had applied \$555 of the deposit to his fees. The October 2, 2007 statement showed a remaining trust balance of \$1,945. Stockberger doesn't believe that Dalrymple provided any further services. However, for reasons that are not clear, Stockberger also acknowledges that he did not request a refund of his retainer balance until he learned that Dalrymple had committed suicide on February 2, 2009.

Stockberger received a letter from attorney Gary Hedlund, who was assisting Dalrymple's widow with winding up Dalrymple's affairs. Hedlund gave Stockberger his file, but advised Stockberger to contact Mrs. Dalrymple regarding funds in the lawyer trust account. Despite several contacts, Stockberger got no satisfaction from Mrs. Dalrymple and he appears to have dropped the matter until he learned about the Client Security Fund in late 2010 and filed this claim.

Mrs. Dalrymple was not very cooperative with the CSF investigation into this an one other claim (including ignoring a subpoena). Nevertheless, she reported that there was some money in Dalrymple's trust account at the time of his death and claims she distributed the available trust account funds to clients who asked until the funds were gone.

Hedlund initially told the CSF investigator that no probate had been filed, but further investigation revealed that a probate was filed in Klamath County in mid-February 2009, with Mrs. Dalrymple as personal representative. Among the claims was one for \$12,000 for "unearned legal fees." (The estate was essentially insolvent; Mrs. Dalrymple had to sell the family home to satisfy outstanding personal obligations.) Despite Stockberger's correspondence with Hedlund and Mrs. Dalrymple, he was not given notice of the probate and learned of it only after filing his CSF claim. The estate was closed in September 2010 with a "small estate affidavit."

The CSF Committee was troubled by Stockberger's unexplained delay in taking any action to recover the balance of his trust deposit in late 2008. At the same time, it agreed that Stockberger had no reason to believe that his remaining trust balance wasn't being held by Dalrymple until he chose to retrieve it and cannot be faulted for failing to file a claim in a probate of which he had no knowledge. The committee also recognized that there were insufficient funds in Dalrymple's trust account to satisfy all the client claims.

The CSF Committee ultimately concluded there was sufficient evidence of dishonesty (Dalrymple's apparent failure to maintain the unearned portion of Stockberger's fees in trust or to account for earning the remainder) to make Stockberger's claim eligible for reimbursement from the CSF. The committee also recommends waiving the requirement for a judgment, since the estate was insolvent and is closed.

**Oregon State Bar  
Board of Governors Meeting  
February 10, 2012  
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. Derek L. Caplinger – 942646

**Motion:** Ms. Dilaconi presented information concerning the BR 8.1 reinstatement application of Mr. Caplinger. Ms. Dilaconi moved, and Ms. O'Connor seconded, to recommend to the Supreme Court that Mr. Caplinger's reinstatement application be approved. The motion passed unanimously.

2. L. Ross Brown – 700219

**Motion:** Ms. Fisher presented information concerning the BR 8.2(b) reinstatement application of Mr. Brown. Ms. Fisher moved, and Ms. Dilaconi seconded, to deny the application and make an adverse recommendation on the application to the Supreme Court pursuant to BR 8.2(f) and BR 8.7(a). The motion passed unanimously.

3. Tara M. Hendison – 980635

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

4. James J. Kolstoe – 852586

**Motion:** Mr. Kehoe presented information concerning the BR 8.1 reinstatement application of Mr. Kolstoe. Mr. Kehoe moved, and Ms. Matsumonji seconded, to recommend to the Supreme Court that Mr. Kolstoe's reinstatement application be approved, conditioned on Mr. Kolstoe completing a two-year probationary period with terms as recommended by staff. The motion passed (13-4-0). Ms. Billman, Mr. Spier, Mr. Kranovich, Ms. Naucler, Ms. Matsumonji, Mr. Knight, Mr. Prestwich, Ms. Garcia, Mr. Haglund, Ms. Fisher, Mr. Wade, Mr. Kehoe, and Mr.

Larson voted in favor. Ms. O'Connor, Mr. Emerick, Ms. Kohlhoff, and Ms. Dilaconi were opposed. No one abstained.

5. Parrish E. Pynn– 983277

**Motion:** Mr. Wade presented information concerning the BR 8.1 reinstatement application of Mr. Pynn. Mr. Wade moved, and Mr. Kehoe seconded, to recommend to the Supreme Court that Mr. Pynn's reinstatement application be approved. The motion passed unanimously.

6. James M. Pippin– 711354

**Motion:** Mr. Larson presented information concerning the BR 8.1 reinstatement application of Mr. Pippin. Mr. Larson moved, and Mr. Wade seconded, to temporarily reinstate Mr. Pippin per BR 8.7(b). The motion passed. Mr. Emerick abstained.

7. David A. Urman – 853768

**Motion:** Mr. Knight presented information concerning the BR 8.1 reinstatement application of Mr. Urman. Mr. Knight moved, and Mr. Kehoe seconded, to recommend to the Supreme Court that Mr. Urman's reinstatement application be approved, conditioned on Mr. Urman completing 25 MCLE credits before his reinstatement becomes effective. The motion passed unanimously.

8. Lisette M. Spencer– 963398

**Motion:** Mr. Haglund presented information concerning the BR 8.1 reinstatement application of Ms. Spencer to satisfy the one meeting notice requirement set forth in Bar Bylaw 6.103. Ms. Spencer's application will be placed on a future agenda for consideration and action.

9. Eric A. Trice – 991154

**Motion:** Mr. Kehoe presented information concerning the BR 8.1 reinstatement application of Mr. Trice. Mr. Kehoe moved, and Ms. Dilaconi seconded, to recommend to the Supreme Court that Mr. Trice's reinstatement application be approved, conditioned on Mr. Trice completing 45 MCLE credits before his reinstatement becomes effective. The motion passed unanimously.

10. Hadley Howell Van Vactor – 060138

**Motion:** Mr. Emerick presented information concerning the BR 8.1 reinstatement application of Ms. Van Vactor to satisfy the one meeting notice requirement set

forth in Bar Bylaw 6.103. Ms. Van Vactor's application will be placed on a future agenda for consideration and action.

B. Disciplinary Counsel's Report

Mr. Sapiro reported on developments regarding the bar's custodianship over the law practice of Bryan W. Gruetter.

**Oregon State Bar  
Board of Governors Meeting  
February 10, 2012  
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. Unlawful Practice of Law

1. The UPL Committee recommended the Board rescind its decision to seek injunctive relief against Ms. Shields.

**Motion:** Ms. Dilaconi moved and Mr. Kehoe seconded to accept the recommendation that the Board rescind its decision to seek injunctive relief against Ms. Shields. The board unanimously approved the motion.

2. The UPL Committee recommends the Board seek injunctive relief against Mr. Klosterman to prevent his continued unlawful practice of law.

**Motion:** Mr. Wade moved and Mr. Kehoe seconded to accept the recommendation that the Board seek injunctive relief against Mr. Klosterman. The board unanimously approved the motion.

B. Pending or Threatened Non-Disciplinary Litigation

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

C. Other Matters

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