

**Oregon State Bar  
Special Open Meeting of the Board of Governors  
March 30, 2012  
Minutes**

The meeting was called to order by President Mitzi Naucler at 3:00 p.m. on March 30, 2012. The meeting adjourned at 3:30 p.m. Members present from the Board of Governors were Jenifer Billman, Barbara Dilaconi, Patrick Ehlers, Hunter Emerick, Ann Fisher, Michael Haglund, Matthew Kehoe, Theresa Kohlhoff, Tom Kranovich, Richard Spier and David Wade. Staff present were Sylvia Stevens, Helen Hierschbiel, Rod Wegener, Judith Baker and Camille Greene. Board members not present: Michelle Garcia, Ethan Knight, Steve Larson, Audrey Matsumonji, Maureen O'Connor and Travis Prestwich.

**1. Swearing-In of New Board Members**

BOG President Mitzi Naucler swore in new board member Patrick J. Ehlers, Jr.

**2. Appointment of New PLF Board of Directors Member**

Appointments Committee Chair, Barbara Dilaconi, presented the committee's recommendations for interim appointments.

**Motion:** The board voted unanimously to approve the committee motion for the appointments as listed in **[Exhibit A]**.

**3. Abandoned Funds**

On behalf of the Budget & Finance Committee and the Access to Justice Committee, Mr. Haglund recommended that the BOG approve the committees' recommendations regarding the distribution of abandoned client funds.

**Motion:** The board voted unanimously to waive the one meeting notice.

**Motion:** The board voted unanimously to approve the joint committee motion that the OSB enter into an agreement with the legal aid providers in which the legal aid providers agree to reimburse the OSB if the allotted reserve gets diminished or depleted, and that the abandoned client funds appropriated to the OSB Legal Services Program be disbursed pursuant to the recommendation outlined. **[Exhibit B]**

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** March 30, 2012  
**Memo Date:** March 30, 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.

#### **Affirmative Action Committee**

**Recommendation:** Linda Meng, Secretary, term expires 12/31/2012

#### **Unlawful Practice of Law Committee**

**Recommendation:** Simon Whang, Chair, term expires 12/31/2012

**Recommendation:** Britney Colton, Chair-Elect, term expires 12/31/2012

**Recommendation:** Laura Rufolo, Secretary, term expires 12/31/2012

**Recommendation:** David Doughman, term expires 12/31/2015

**Recommendation:** Andrew McStay, term expires 12/31/2014

**Recommendation:** Katharine von Ter Stegge, term expires 12/31/2014

#### **Oregon Law Foundation Board**

**Recommendation:** Katharine West, term expires 12/31/2012

#### **Professional Liability Fund Board of Directors**

**Recommendation:** Julia Manela, term expires 12/31/2016

## **OREGON STATE BAR**

### **Access to Justice Committee and Budget and Finance Committee**

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**Meeting Date:** March 30, 2012  
**Memo Date:** March 19, 2012  
**From:** Legal Services Committee  
**Re:** Abandoned Client Funds Appropriated to the OSB Legal Services Program

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#### **Action Recommended**

Recommend to the BOG that they approve the following recommendations regarding the abandoned client funds:

- 1) that the OSB enter into an agreement with the legal aid providers in which the legal aid providers agree to reimburse the OSB if the allotted reserve gets diminished or depleted. (See the Repayment, Recoupment and Set-Off Agreement included in the packet).
- 2) that the abandoned client funds appropriated to the OSB Legal Services Program be disbursed pursuant to the recommendation outlined below.

#### **Background**

When money held in a lawyers' trust account is declared abandoned, it is sent to the Oregon State Bar (OSB), pursuant to ORS 98.386. Revenue received by OSB pursuant to ORS 98.386 may be used for the funding of legal services provided through the Legal Services Program established under ORS 9.572, the payment of claims allowed under ORS 98.392(2) and the payment of expenses incurred by the OSB in the administration of the Legal Services Program. Although this revenue may be used for funding of legal services, a person who has a claim of ownership to abandoned funds held by the OSB may file a claim seeking the return of the money. The money must be returned if the claim is found to be valid by the OSB, even if the claim is filed years later.

Since the statute was changed in 2009, OSB has received a current total of \$225,000 (includes interest earned). During this same period, OSB received five claims for the return of abandoned property totaling \$2,539. The claims ranged in amounts from \$10 to \$1,212. Almost all of the abandoned money sent to OSB was in relatively smaller amounts, ranging from \$100 to \$5,000 for each client. Two were larger. One was \$30,070 and one was \$26,259.

It is a goal of the LSP to disburse the abandoned property to the legal service providers as intended by the 2009 legislature. It is also a goal to protect against forcing OSB to use revenue from OSB general fund or reserves, to pay a claim under ORS 98.392(2). These goals can be achieved by keeping a reserve from abandoned property revenue and requiring legal aid providers to pay back or permit recoupment/set-off in the event that the

reserve is not adequate to cover the likely claims for the return of abandoned property.

### **Ongoing Disbursement Recommendation**

It is recommended that the LSP hold \$100,000 in reserve to cover potential claims for the return of abandoned property and to distribute the revenue that arrives each year above this amount. This disbursement will happen in March and the amount can change from year to year depending on the abandoned funds received each year. It is recommended that the funds be disbursed using a standard formula based on poverty population sending 11% to Lane County Legal Aid and Advocacy Center, 6% to the Center for Nonprofit Legal Services, 1% to Columbia County Legal Aid and 82% to LASO and OLC, which cover the rest of the state. If there is a recommendation from the legal aid providers that this disbursement formula be revised in the future it will be approved at the discretion of the LSP Committee.

### **2012 Disbursement Recommendation**

It is also recommended that in 2012 the amount over the \$100,000 reserve or \$125,000 be disbursed as follows:

- 1) Disburse \$32,000 off the top to LASO to help cover one-time expenses related to layoffs and an office closure in 2012.
  
- 2) Disburse the remainder using percent of poverty population sending 11% to Lane County Legal Aid and Advocacy Center, 6% to the Center for Nonprofit Legal Services, 1% to Columbia County Legal Aid and 82% to Legal Aid Services of Oregon and Oregon Law Center which cover the rest of the state. The percentage to be disbursed between LASO and OLC will be determined at a later date. The Director of Legal Services Program will be given the discretion to approve and disburse funds pursuant to the recommendation forwarded by the LASO and OLC boards.

## REPAYMENT, RECOUPMENT AND SET-OFF AGREEMENT

**Parties.** This agreement is entered between the Oregon State Bar (OSB) and the five nonprofit corporations identified below (legal aid provider/s).

**Recitals.** Each legal aid provider currently receives money from the OSB Legal Services Program including money from state court filing fees and pro hac vice fees. The legal aid providers seek to receive additional money from the OSB Legal Services Program from lawyer trust account funds that have been reported abandoned and turned over to the OSB pursuant to ORS 98.386 (“abandoned trust account funds”).

Although abandoned trust account funds may be used for funding of legal services, the money must be returned to a person who files a valid claim for such funds at any time in the future pursuant to ORS 98.392. The OSB does not want to use OSB general revenue or reserves to pay such claims. The OSB will hold an amount of the unclaimed funds in reserve in order to cover claims (“reserve”).

**In exchange for the mutual promises set forth herein, the parties therefore agree as follows:**

**Distribution.** On or after March 1 of each year, OSB shall make an annual distribution to each of the legal aid providers from any amounts above the reserve, in accordance with a distribution formula established by the OSB Legal Services Program. The reserve is currently set at \$100,000 but may be changed at any time in the sole discretion of the OSB.

**Request to Return Money if Reserve is Not Adequate.** In the event that OSB has exhausted its reserve, or is likely to soon exhaust its reserve, OSB may request that each of the legal aid providers return monies that the legal aid providers received from abandoned trust account funds. Such request must be in writing and must specify the amount requested, which shall be calculated as a pro rata amount of the total amount requested based on the percentage of the total distribution that each legal aid provider received from the abandoned trust account funds in the preceding calendar year.

**Promise to Pay OSB.** Each legal aid provider shall pay to the OSB the requested amount within ten days of receipt of OSB’s written request for payment.

**Agreement to Permit Set-Off or Recoupment.** If the legal aid provider fails to pay OSB the requested amount within ten days, OSB may recoup the requested amount from any other monies that are earmarked for distribution to the legal aid providers through the OSB Legal Services Program.

**Standards and Guidelines.** Each legal aid provider shall use all revenue distributed from the abandoned trust account funds in a manner that complies with the OSB Standards and Guidelines.

**Effective Date.** The agreement will be effective as of March 1, 2012.

**Term/Termination.** This Agreement will be effective for an initial term of one year from its Effective Date and will automatically renew for successive additional one-year terms unless a party gives 30 days advance written notice to the other parties that this Agreement will expire at the end of the then-current term.

**Entire Agreement.** This agreement is the final expression of, and contains the entire agreement between the parties with respect to the subject matter of the agreement and supersedes all prior understandings with respect to it.

**Authority.** Each person signing below has been duly authorized by the governing body of each respective organization to approve this agreement.

Dated this \_\_\_\_ day of April, 2012.

OREGON STATE BAR

LEGAL AID SERVICES OF OREGON

By \_\_\_\_\_

By \_\_\_\_\_

OREGON LAW CENTER

LANE COUNTY LEGAL AID & LAW CENTER

By \_\_\_\_\_

By \_\_\_\_\_

COLUMBIA COUNTY LEGAL SERVICES

CENTER FOR NONPROFIT LEGAL SERVICE

By \_\_\_\_\_

By \_\_\_\_\_