

Oregon State Bar
Meeting of the Board of Governors

April 27, 2012

Open Session Minutes

The meeting was called to order by President Mitzi Naucler at 1:05 p.m. on April 27, 2012. The meeting adjourned at 5:02 p.m. Members present from the Board of Governors were Jenifer Billman, Pat Ehlers, Hunter Emerick, Ann Fisher, Michelle Garcia, Mike Haglund, Matthew Kehoe, Theresa Kohlhoff, Tom Kranovich, Steve Larson, 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, Judith Baker, Christine Kennedy, Maggie Wagner, Toni Kelich, Anna Zanolli, Kateri Walsh, and Camille Greene. Others present were Tom Cave, PLF CFO, Bill Carter, PLF Board Member, Valerie Saiki, PLF Board, Norm Williams, OLF President, Jason Hirshon, ONLD Chair and Lauren Paulson.

1. Call to Order/Finalization of the Agenda

2. Department Presentations

- A. Mr. Wegener presented an overview of Facilities and Operations and the indirect cost allocations which include: accounting services, facilities, tenant services, mailing and distribution, Information Design & Technology, and Human Resources.
- B. Ms. Kennedy presented an overview of the Human Resources department. She explained HR's contribution to controlling indirect costs through management of workers' compensation, employment practices, and liability insurance claims. HR is also committed to increasing the diversity of bar staff, which is especially challenging given the bar's low employee turnover rate.

3. Reports

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 informed the BOG that she has engaged Jason Furlong to speak on trends in the profession immediately prior to the 2012 HOD Meeting. She also mentioned that staff is working on an update on the OSB Website Redesign. Ms. Stevens inquired if the BOG was interested in an email distribution list or whether they are satisfied with sending regular e-mails for their intra-board communication.

D. Board Members' Reports

Board member Maureen O'Connor will be a speaker at the ABA LRIS Leadership Forum in Chicago in June. Hunter Emerick attended the OLIO Spring Social. He also reported that the Judicial Administration Committee is supporting the judicial department's efforts to increase court funding. Ms. Garcia announced that the Affirmative Action Committee would like reports from the BOG at their meetings.

E. Director of Diversity & Inclusion

Ms. Hyland reported on the recent projects and programs of the Diversity & Inclusion Department, including diversity branding and logo creation, collaboration with US Department of Agriculture to settle discrimination claims, the launch of their fundraising campaign, development a participant database, and the launch of a facebook® site and a twitter® account.

F. MBA Liaison Reports

Mr. Larson reported on the April 4, 2012 MBA meeting and dinner. He noted the MBA is active and interested in staying involved in the coalition to help court funding. Ms. Kohlhoff reported on the May 2, 2012 MBA meeting, their member insurance costs and interest in the OSB LRS changes.

G. Oregon New Lawyers Division Report

Mr. Hirshon reported on a variety of ONLD projects and events described in his written report. ONLD will participate in the MBA's May golf event for law students and has formed a group to expand the ONLD's social networking and provide technology guidance. ONLD is looking for a non-law public service project in Lincoln City. They are setting up a young lawyer mentoring listserve and a "thumbdrive" effort to bridge the gap between lawyers who need work and people who need their services. Mr. Hirshon was elected to represent Oregon and Washington as the ABA Young Lawyers District representative.

4. Professional Liability Fund

Mr. Carter gave a general update and presented the 2011 PLF Annual Report. The claims department surveyed lawyers who have had claims and the results were favorable to the PLF. Mr. Cave presented the financial report. Investment returns have been good, but defense costs are increasing. The PLF will be meeting with actuaries to assess the value of their current claims relative to their budget.

5. Emerging Issues Discussion

Ms. Naucier updated the board on the WSBA Fee Referendum which will roll back license fees from \$450 to \$325. The reduction was approved by 52% of the members voting (43%). The proponents argued, in part, that the WSBA should focus on its mandatory functions. Mr. Wegener presented a brief summary of how the OSBs membership fee is spent.

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

A. Access to Justice Committee

Ms. Baker presented the Legal Aid Accountability Report which summarizes the review of the legal service programs that receive funding from the OSB Legal Services Program and the areas that require follow-up. Legal services programs are going through a planning process to ensure continuity of services after the funding cuts.

B. Member Services Committee

Mr. Kehoe gave an update on the Credit Card Affinity Program and product discounts for members, and solicited ideas for a proposed member satisfaction survey/poll. Regions 1, 3, 4 and 5 have board openings and need candidates for the October election. The committee is discussing whether to change the Standard Section Bylaws regarding executive committee term limits and will submit a recommendation to the board at the June meeting.

C. Budget and Finance Committee

Mr. Haglund presented the March 31, 2012 Financial Report. Mr. Emerick reported that the 2012 Economic Survey will be presented to the board at the June meeting.

D. Policy and Governance Committee

Ms. Fisher presented six committee recommendations:

1. An initial charge for the New Lawyer Mentoring Program and a revision to the Unlawful Practice of Law committee charge **[Exhibit A]**;
2. An amendment to MCLE Rule 3.7(c) to clarify that Active Pro Bono members reinstating to regular active status will have the same reporting periods as members reinstating from inactive status **[Exhibit B]**;
3. Adoption and submission to the Supreme Court of amendments to the Bar Rules of Procedure establishing reinstatement requirements for members suspended for failure to file IOLTA compliance reports, complete the New Lawyer Mentoring Program requirements, or complete ethics school **[Exhibit C]**;
4. A revision to OSB Bylaw 15.401 expanding the permissible recipients of section charitable donations **[Exhibit D]**; and
5. Several housekeeping amendments to the OSB Bylaws **[Exhibit E]**.

Motion: The board voted unanimously to approve the recommendations of the Policy and Governance Committee.

Ms. Fisher reported that the P&G Committee recommends pursuing legislation to establish a bar-operated centralized legal notice system. Mr. Larson reported that the Public Affairs Committee agrees that the concept should be presented to Legislative Counsel's office to hold the prospective bill's "place" in the 2013 session. Mr. Emerick expressed the need for a business plan to insure the board is aware of the costs of developing and maintaining the online system and that there is adequate funding for this model, and of the potential political challenges that we will face. Mr. Williams stated that the Oregon Law Foundation has

researched this model for over a year and concluded that an understanding of the scope of these legislative changes is needed before you can develop a website for this purpose.

Motion: Mr. Haglund moved, Mr. Kranovich seconded, and the board voted unanimously to include the central legal notice system proposal with the rest of the bar's legislative package, with the understanding that additional information will be developed about the structure of the system. Ms. Naucner abstained. **[Exhibit F]**

E. Public Affairs Committee

Mr. Larson presented a legislative update. In May the legislature will conduct hearings on filing fee changes. The Chief Justice is going to the Emergency Board to seek funding for the courts.

Motion: Mr. Larson moved, Mr. Kehoe seconded, and the board voted unanimously to accept Mr. Larson's amended committee motion to submit the 2013 OSB law improvement package with the understanding that after drafting by Legislative Counsel's Office, the bills will be reviewed again by the Public Affairs Committee and the board. **[Exhibit G]**

F. New Lawyer Mentoring Program

Ms. Walsh informed the board of the NLMP mentor selection process and the screening of mentors. The NLMP subcommittee recommends, if a mentor candidate is questioned by the board, a board member from the candidate's region will contact members in that region for feedback on the candidate and report back to the board. After discussion, it was agreed not to seek a change in the NLMP Rules at this time, but to discuss the issue with the Chief Justice.

The board reviewed the list of mentor candidates submitted by the NLMP Committee.

Motion: Mr. Kranovich moved, Mr. Wade seconded, and the board voted unanimously to recommend them to the Oregon Supreme Court. **[Exhibit H]**

7. Other Action Items

A. Courthouse Passes for OSB Members

Mr. Spier reported that one of his constituents had inquired about the possibility of a "bar card" or other mechanism for OSB members to bypass courthouse security. After reviewing the history of this issue, the board agreed this is not an issue it wishes to undertake at this time.

B. CSF Claim No. 2012-01 HOWLETT (Uriarte) Appeal

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

8. Consent Agenda

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

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.

OREGON STATE BAR

Policy and Governance Committee Agenda

Meeting Date: March 30, 2012
Memo Date: March 15, 2012
From: Danielle Edwards, Ext. 426
Re: NLMP and UPL Committee Assignments

Action Recommended

The Policy and Governance Committee should recommend to the Board that it approve the proposed New Lawyer Mentoring Committee assignment and changes to the Unlawful Practice of Law Committee assignment.

Background

The New Lawyer Mentoring Committee was created by the Board of Governors during their March 18, 2011 meeting with the purpose of reviewing mentor candidates and overseeing implementation of the curriculum and program. Since a committee assignment was not originally created, the language on the following page is offered to serve as their formal committee assignment.

In November 2011 the Board of Governors approved changes to OSB Bylaw Article 20 based on a recommendation from the Policy and Governance Committee and the Unlawful Practice of Law Task Force. The following proposed changes to the UPL Committee assignment reflect the bylaw changes adopted by the BOG last November and relate to the committee's role in drafting informal advisory opinions.

Note, additions and deletions to the original UPL committee assignment are indicated on the following pages by underlining (new) or strikethrough (deleted).

NEW LAWYER MENTORING COMMITTEE CHARGE

General:

The New Lawyer Mentoring Committee works with Oregon State Bar Staff to develop, implement, oversee and refine the New Lawyer Mentoring Program. The Committee and its members shall:

Specific:

1. Act as ambassadors for the Program to the legal community and public, including acting as a resource for speaking engagements and CLE programs related to the Program;
2. Assist with the recruitment and retention of mentors;
3. Develop Program policy and oversee the regulatory components of the program, including enforcement of Program requirements and approval of new mentors;
4. Solicit feedback from Program participants and strategies for evaluating the performance of the Program;
5. Review and revise Program curriculum and structure as needed; and
6. Solicit nominations for the OSB Award of Merit, the President's Public Service Award, Membership Service Award, Affirmative Action Awards, the Joint Bench Bar Professionalism Award, and any other state, local, and national awards for lawyers who make a contribution to serving the legal needs of Oregonians.

UNLAWFUL PRACTICE OF LAW COMMITTEE CHARGE

General:

1. Provide input, analysis and evaluation of the program to the program manager and/or BOG.
2. Make recommendations to the program manager regarding how the program can be improved.
3. Serve as volunteers for program elements.
4. Understand that when changes are made in program outcomes, input will be considered from the committee, as well as from other groups or means such as surveys, focus groups, ideas from other bars, etc.
5. Recognize that the program committee is not a governing body for the program and that the committee does not direct the activities of the program manager.

Specific Program Outcomes:

1. Conduct thorough investigations of UPL complaints and present comprehensive investigative reports for full committee consideration within 60 days of an assignment, or within an extended period as provided by committee rule.
2. Assist in drafting informal advisory opinions on what constitutes the unlawful practice of law.
3. Continue to recommend to the BOG that injunctive suits be initiated or that cease and desist agreements be entered into when the facts of a particular investigation support such action.
4. Issue letters of notice or admonition to the subjects of committee investigations, as warranted by the facts and committee rules.
5. Maintain policies and procedures to ensure compliance with statutory requirements, to meet standards of due process and fairness, and to ensure an appropriate measure of public protection from unlicensed practitioners.
6. Solicit nominations for the OSB Award of Merit, the President's Public Service Award, Membership Service Award, Affirmative Action Awards, the Joint Bench Bar Professionalism Award and any other local and national awards for lawyers who make a contribution to serving the legal needs of Oregonians.

OREGON STATE BAR

Policy and Governance Committee Agenda

Meeting Date: March 30, 2012
Memo Date: March 6, 2012
From: MCLE Committee
Re: Proposed Amendment to MCLE Rule 3.7(c)

Action Recommended

Review and approve the proposed amendment to MCLE Rule 3.7(c) to clarify reporting periods for Active Pro Bono members who are reinstated as active members.

Background

Please see MCLE Rule 3.6 regarding Active Pro Bono members.

3.6 Active Pro Bono. Members who are in Active Pro Bono status pursuant to OSB Bylaw 6.101 are exempt from compliance with these Rules.

In order to clarify whether an Active Pro Bono member who becomes reinstated as an active member will be assigned a new reporting period or retain a current reporting period, I propose amending Rule 3.7(c) as follows:

3.7 Reporting Period.

(c) Reinstatements.

(1) A member who transfers to inactive or Active Pro Bono status, is suspended, or has resigned and who is reinstated before the end of the reporting period in effect at the time of the status change shall retain the member's original reporting period and these Rules shall be applied as though the transfer, suspension, or resignation had not occurred.

(2) Except as provided in Rule 3.7(c)(1), the first reporting period for a member who is reinstated as an active member following a transfer to inactive or Active Pro Bono status or a suspension, disbarment or resignation shall start on the date of reinstatement and shall end on December 31 of the next calendar year. All subsequent reporting periods shall be three years.

(3) Notwithstanding Rules 3.7(c)(1) and (2), reinstated members who did not submit a completed compliance report for the reporting period immediately prior to their transfer to inactive or Active Pro Bono status, suspension or resignation will be assigned a new reporting period upon reinstatement. This reporting period shall begin on the date of reinstatement and shall end on December 31 of the next calendar year. All subsequent reporting periods shall be three years.

OREGON STATE BAR

BOG Policy and Governance Committee Agenda

Meeting Date: March 30, 2012
Memo Date: March 8, 2012
From: Jeffrey D. Sapiro, Disciplinary Counsel, Ext. 319
Re: Proposed Amendments to Reinstatement Rules

Action Recommended

Review amendments to Title 8 of the Bar Rules of Procedure (“BRs”) and, if acceptable, submit them to the Board of Governors for adoption and subsequent filing with the Oregon Supreme Court. The amendments would establish a reinstatement procedure for lawyers who have been suspended for not filing the annual IOLTA certificate, for failing to complete Ethics School and for failing to comply with the New Lawyer Mentoring Program.

Background

Title 8 of the BRs contains the rules of procedure that govern reinstatements. Presently, the rules recognize that lawyers may be applying for reinstatement for the following reasons: they are on inactive status, or previously resigned, or have been suspended for disciplinary reasons, or were suspended for nonpayment of bar dues or the PLF assessment.

Recent developments have created a need to amend the reinstatement rules to recognize other situations in which lawyers may be suspended and subsequently seek reinstatement:

1. NLMP. The New Lawyer Mentoring Program (“NLMP”) Rule, adopted by the Oregon Supreme Court in December 2010, provides that a lawyer who fails to complete the program may be suspended by the court.
2. IOLTA Certificate. At the bar’s request, ORS 9.675 was passed in 2011. That statute requires active members to file an annual IOLTA certificate with the bar, disclosing the location and account number of lawyer trust accounts. A failure to do so results in an administrative suspension, much like a failure to pay bar dues or the PLF assessment.
3. Ethics School. In 2011, BR 6.4 became effective. That rule requires disciplined lawyers to attend a one-day ethics program presented by the bar. A failure to do so may result in suspension.

Discussion

Attached, in a red-line format, are proposed amendments to the reinstatement rules. They incorporate into the existing rule structure of Title 8 the new types of suspension

mentioned above and establish the procedure for those suspended lawyers to seek reinstatement.

The amendments recognize that, like MCLE suspensions, NLMP and Ethics School suspensions are imposed by the Supreme Court and, therefore, it is the court that must make the ultimate decision to reinstate.¹ However, suspensions for failing to file an annual IOLTA certificate occur by operation of a statutory procedure like bar dues and PLF suspensions. Therefore, these three types of reinstatements (IOLTA, bar dues and PLF assessment) are dealt with similarly.

ORS 9.542 provides that the Board of Governors may adopt rules of procedure, subject to the approval of the Supreme Court. Staff is recommending that the Policy & Governance Committee submit the attached amendments to the Board of Governors for adoption and subsequent filing with the Supreme Court.

JDS

¹ Note that the NLMP rule adopted by the Supreme Court in December 2010, already has a reinstatement provision in it and, therefore, the inclusion of an NLMP provision in Title 8 of the rules of procedure is a bit redundant. However, lawyers who are interested in reinstatement for any reason are likely to look to Title 8 for guidance and staff sees no harm in having an NLMP provision there, as well. The two provisions are consistent with one another.

Title 8 — Reinstatement

Rule 8.1 Reinstatement — Formal Application Required.

(a) Applicants. Any person who has been a member of the Bar, but who has

- (i) resigned under Form A of these rules more than five years prior to the date of application for reinstatement and who has not been a member of the Bar during such period; or
- (ii) resigned under Form B of these rules prior to January 1, 1996; or
- (iii) been disbarred as a result of a disciplinary proceeding commenced by formal complaint before January 1, 1996; or
- (iv) been suspended for misconduct for a period of more than six months; or
- (v) been suspended for misconduct for a period of six months or less but has remained in a suspended status for a period of more than six months prior to the date of application for reinstatement; or
- (vi) been enrolled voluntarily as an inactive member for more than five years; or
- (vii) been involuntarily enrolled as an inactive member; or
- (viii) been suspended for any reason and has remained in that status more than five years,

and who desires to be reinstated as an active member or to resume the practice of law in this state shall be reinstated as an active member of the Bar only upon formal application and compliance with the Rules of Procedure in effect at the time of such application. Applicants for reinstatement under this rule must file a completed application with the Bar on a form prepared by the Bar for such purpose. The applicant shall attest that the applicant did not engage in the practice of law except where authorized to do so during the period of the applicant's inactive status, suspension, disbarment or resignation. A reinstatement to inactive status shall not be allowed under this rule. The application for reinstatement of a person who has been suspended for a period exceeding six months shall not be made earlier than three months before the earliest possible expiration of the period specified in the court's opinion or order of suspension.

(b) Required Showing. Each applicant under this rule must show that the applicant has good moral character and general fitness to practice law and that the resumption of the practice of law in this state by the applicant will not be detrimental to the administration of justice or the public interest. No applicant shall resume the practice of law in this state or active membership status unless all the requirements of this rule are met.

(c) Learning and Ability. In addition to the showing required in BR 8.1(b), each applicant under this rule who has remained in a suspended or resigned status for more than three years or has been enrolled voluntarily or involuntarily as an inactive member for more than five years must show that the applicant has the requisite learning and ability to practice law in this state. The Board may recommend and the Supreme Court may require as a condition precedent to

reinstatement that the applicant take and pass the bar examination administered by the Board of Bar Examiners, or successfully complete a prescribed course of continuing legal education. Factors to be considered in determining an applicant's learning and ability include, but are not limited to: the length of time since the applicant was an active member of the Bar; whether and when the applicant has practiced law in Oregon; whether the applicant practiced law in any jurisdiction during the period of the applicant's suspension, resignation or inactive status in this state; and whether the applicant has participated in continuing legal education activities during the period of suspension or inactive status in this state.

(d) Fees. In addition to the payments required in BR 8.6, an applicant under this rule shall pay at the time the application for reinstatement is filed, an application fee of \$500.

Rule 8.2 Reinstatement — Informal Application Required.

(a) Applicants. Any person who has been a member of the Bar, but who has

(i) resigned under Form A of these rules for five years or less prior to the date of application for reinstatement, and who has not been a member of the Bar during such period; or

(ii) been enrolled voluntarily as an inactive member for five years or less prior to the date of application for reinstatement; or

(iii) been suspended for failure to pay the Professional Liability Fund assessment, Client Security Fund assessment, or membership fees or penalties and has remained in that status more than six months but not in excess of five years prior to the date of application for reinstatement,

(iv) been suspended for failure to file with the Bar a certificate disclosing lawyer trust accounts and has remained in that status more than six months but not in excess of five years prior to the date of application for reinstatement,

may be reinstated by the Executive Director by filing an informal application for reinstatement with the Bar and compliance with the Rules of Procedure in effect at the time of such application. The informal application for reinstatement shall be on a form prepared by the Bar for such purpose. The applicant shall attest that the applicant did not engage in the practice of law except where authorized to do so during the period of the applicant's inactive status, suspension or resignation. Reinstatements to inactive status shall not be allowed under this rule except for those applicants who were inactive and are seeking reinstatement to inactive status after a financial suspension. No applicant shall resume the practice of law in this state or active or inactive membership status unless all the requirements of this rule are met.

(b) Required Showing. Each applicant under this rule must show that the applicant has good moral character and general fitness to practice law and that the resumption of the practice of law in this state by the applicant will not be detrimental to the administration of justice or the public interest. No applicant shall resume the practice of law in this state or active membership status unless all the requirements of this rule are met.

(c) Fees. In addition to the payments required in BR 8.6, an applicant under this rule shall pay at the time the application for reinstatement is filed, an application fee of \$250.

(d) Exceptions. Any applicant otherwise qualified to file for reinstatement under this rule but who

(i) during the period of the member's resignation, has been convicted in any jurisdiction of an offense which is a misdemeanor involving moral turpitude or a felony under the laws of this state, or is punishable by death or imprisonment under the laws of the United States; or

(ii) during the period of the member's suspension, resignation or inactive status, has been suspended for professional misconduct for more than six months or has been disbarred by any court other than the Supreme Court; or

(iii) has engaged in conduct which raises issues of possible violation of the Bar Act, Code of Professional Responsibility or Rules of Professional Conduct;

shall be required to seek reinstatement under BR 8.1. Any applicant required to apply for reinstatement under BR 8.1 because of this rule shall pay all fees, assessments and penalties due and delinquent at the time of the applicant's resignation, suspension or transfer to inactive status, and an application fee of \$500 to the Bar at the time the application for reinstatement is filed, together with any payments due under BR 8.6.

(e) Referral of Application to Board. If the Executive Director is unable to determine from a review of an informal application and any information gathered in the investigation of the application that the applicant for reinstatement has made the showing required by BR 8.2(b), the Executive Director shall refer the application to the Board for consideration, with notice to the applicant.

(f) Board Consideration of Application. If, after a referral from the Executive Director, the Board determines from its review of the informal application and any information gathered in the investigation of the application that the applicant for reinstatement has made the showing required by BR 8.2(b), the Board shall reinstate the applicant. If the Board determines that the applicant has not made the showing required by BR 8.2(b), the Board shall deny the application for reinstatement. The Board also may determine that an application filed under BR 8.2 be granted conditionally. The Board shall file an adverse recommendation or a recommendation of conditional reinstatement with the Supreme Court under BR 8.7.

(g) Suspension of Application. If the Executive Director or the Board, as the case may be, determines that additional information is required from an applicant regarding conduct during the period of suspension, resignation or inactive status, the Executive Director or the Board, as the case may be, may direct Disciplinary Counsel to secure additional information concerning the applicant's conduct and defer consideration of the application for reinstatement.

Rule 8.3 Reinstatement — Compliance Affidavit.

(a) Applicants. Subject to the provisions of BR 8.1(a)(v), any person who has been a member of the Bar but who has been suspended for misconduct for a period of six months or less shall be reinstated upon the filing of a Compliance Affidavit with Disciplinary Counsel as set forth in BR 12.9, unless the court or Disciplinary Board in any suspension order or decision shall have directed otherwise.

(b) Fees. In addition to the payments required in BR 8.6, an applicant under this rule shall pay an application fee of \$250.

Rule 8.4 Reinstatement — Financial or Trust Account Certification Matters.

(a) Applicants. Any person who has been a member of the Bar but suspended solely for failure to pay the Professional Liability Fund assessment, Client Security Fund assessment or annual membership fees or penalties, or suspended solely for failure to file a certificate disclosing lawyer trust accounts, may be reinstated by the Executive Director to the membership status from which the person was suspended within six months from the date of the applicant's suspension, upon ~~payment of the following sums to the Bar~~:

(i) payment to the Bar of all applicable assessments, fees and penalties owed by the member to the Bar, and

(ii) in the case of a suspension for failure to pay membership fees or penalties or the Client Security Fund assessment, payment of a reinstatement fee of \$100; or

(iii) in the case of a suspension for failure to pay the Professional Liability Fund assessment, payment of a reinstatement fee of \$100; or

(iv) in the case of suspensions for failure to pay both membership fees or penalties or the Client Security Fund assessment, and the Professional Liability Fund assessment, payment of a reinstatement fee of \$200; or

(v) in the case of suspension for failure to file a lawyer trust account certificate, filing such a certificate with the Bar and payment of a reinstatement fee of \$100.

An applicant under this rule must, in conjunction with the payment of all required sums, submit a written statement to the Executive Director indicating compliance with this rule before reinstatement is authorized. The written statement shall be on a form prepared by the Bar for such purpose. The applicant shall attest that the applicant did not engage in the practice of law except where authorized to do so during the period of the applicant's suspension.

(b) Exceptions. Any applicant otherwise qualified to file for reinstatement under this rule but who, during the period of the member's suspension, has been suspended for misconduct for more than six months or been disbarred by any court other than the Supreme Court, shall be required to seek reinstatement under BR 8.1. Any applicant required to apply for reinstatement under BR 8.1 because of BR 8.4(b) shall pay all fees, assessments and penalties due and delinquent at the time of the applicant's suspension and an application fee of \$500 to the Bar at the time the application for reinstatement is filed, together with any payments due under BR 8.6.

Rule 8.5 Reinstatement — Noncompliance With Minimum Continuing Legal Education, New Lawyer Mentoring Program or Ethics School Requirements.

(a) Applicants. Subject to the provisions of BR 8.1(a)(viii), any person who has been a member of the Bar but suspended solely for failure to comply with the requirements of the Minimum Continuing Legal Education Rules, the New Lawyer Mentoring Program or the Ethics School established by BR 6.4 may seek reinstatement at any time subsequent to the date of the applicant's suspension by meeting the following conditions:

(i) Completing the requirements that led to the suspension;

(ii) Filing a written statement with the Executive Director, on a form prepared by the Bar for that purpose, which indicates compliance with this rule and the applicable MCLE, -NLMP or Ethics School Rule 8-2. The applicant shall attest that the applicant did not engage in the practice of law except where authorized to do so during the period of the applicant's suspension; and

(iii) Submitting in conjunction with the required written statement, a reinstatement fee of \$100.

(b) Referral to Supreme Court. Upon compliance with the requirements of this rule, the Executive Director shall submit a recommendation to the Supreme Court with a copy to the applicant. No reinstatement is effective until approved by the Court.

(c) Exception. Reinstatement under this rule shall have no effect upon any member's status under any other proceeding under these Rules of Procedure.

Rule 8.6 Other Obligations Upon Application.

(a) Financial Obligations. Each applicant under BR 8.1 through 8.5 shall pay to the Bar, at the time the application for reinstatement is filed, all past due assessments, fees and penalties owed to the Bar for prior years, and the membership fee and Client Security Fund assessment for the year in which the application for reinstatement is filed, less any active or inactive membership fees or Client Security Fund assessment paid by the applicant previously for the year of application. Each applicant under BR 8.1(a)(i), BR 8.1(a)(viii), BR 8.2(a)(i), ~~or~~ BR 8.2(a)(iii) or BR 8.2(a)(iv) shall also pay to the Bar, at the time of application, an amount equal to the inactive membership fee for each year the applicant remained suspended or resigned and for which no membership fee has been paid. Each applicant shall also pay, upon reinstatement, any applicable assessment to the Professional Liability Fund.

(b) Judgment for Costs; Client Security Fund Claim. Each applicant shall also pay to the Bar, at the time of application:

(i) any unpaid judgment for costs and disbursements assessed in a disciplinary or contested reinstatement proceeding; and

(ii) an amount equal to any claim paid by the Client Security Fund due to the applicant's conduct, plus accrued interest thereon.

(c) Refunds. In the event an application for reinstatement is denied, the Bar shall refund to the applicant the membership fees and assessments paid for the year the application was filed, less the membership fees and assessments that applied during any temporary reinstatement under BR 8.7.

(d) Adjustments. In the event an application for reinstatement is filed in one year and not acted upon until the following year, the applicant shall pay to the Bar, prior to reinstatement, any increase in membership fees or assessments since the date of application. If a decrease in membership fees and assessments has occurred, the Bar shall refund the decrease to the applicant.

Rule 8.7 Board Investigation And Recommendation.

(a) Investigation and Recommendation. On the filing of an application for reinstatement under BR 8.1 and BR 8.2, Disciplinary Counsel shall make such investigation as it deems proper and report to the Executive Director or the Board, as the case may be. For applications filed under BR 8.1, the Board shall recommend to the court that the application be granted, conditionally or unconditionally, or denied, and shall mail a copy of its recommendation to the applicant. For applications denied by the Board or recommended for conditional reinstatement under BR 8.2(f), the Board shall file its recommendation with the court and mail a copy of the recommendation to the applicant.

(b) Temporary Reinstatements. Except as provided herein, the Board may temporarily reinstate an applicant pending receipt of all investigatory materials if a determination is made that the applicant is of good moral character and generally fit to practice law. A temporary reinstatement shall not exceed a period of four months unless authorized by the court. In no event shall the Board temporarily reinstate an applicant who seeks reinstatement following a suspension or disbarment for professional misconduct, or an involuntary transfer to inactive status.

Rule 8.8 Petition To Review Adverse Recommendation.

Not later than 28 days after the Bar files an adverse recommendation regarding the applicant with the court, an applicant who desires to contest the Board's recommendation shall file with Disciplinary Counsel and the State Court Administrator a petition stating in substance that the applicant desires to have the case reviewed by the court. If the court considers it appropriate, it may refer the petition to the Disciplinary Board to inquire into the applicant's moral character and general fitness to practice law. Written notice shall be given by the State Court Administrator to the Disciplinary Board Clerk, Disciplinary Counsel and the applicant of such referral. The applicant's resignation, disbarment, suspension or inactive membership status shall remain in effect until final disposition of the petition by the court.

Rule 8.9 Procedure On Referral By Court.

On receipt of notice of a referral to the Disciplinary Board under BR 8.8, Disciplinary Counsel may appoint Bar Counsel to represent the Bar. Disciplinary Counsel or Bar Counsel shall prepare and file with the Disciplinary Board Clerk, with proof of service on the applicant, a statement of objections. The statement of objections shall be substantially in the form set forth in BR 12.5.

Rule 8.10 Answer To Statement Of Objections.

The applicant shall answer the statement of objections within 14 days after service of the statement and notice to answer upon the applicant. The answer shall be responsive to the objections filed. General denials are not allowed. The answer shall be substantially in the form set forth in BR 12.3. The original shall be filed with the Disciplinary Board Clerk with proof of service on Disciplinary Counsel and Bar Counsel. After the answer is filed or upon the expiration of the time allowed in the event the applicant fails to answer, the matter shall proceed to hearing.

Rule 8.11 Hearing Procedure.

Titles 4, 5 and 10 shall apply as far as practicable to reinstatement proceedings referred by the court to the Disciplinary Board for hearing.

Rule 8.12 Burden Of Proof.

An applicant for reinstatement to the practice of law in Oregon shall have the burden of establishing by clear and convincing evidence that the applicant has the requisite good moral character and general fitness to practice law and that the applicant's resumption of the practice of law in this state will not be detrimental to the administration of justice or the public interest.

Rule 8.13 Burden Of Producing Evidence.

While an applicant for reinstatement has the ultimate burden of proof to establish good moral character and general fitness to practice law, the Bar shall initially have the burden of producing evidence in support of its position that the applicant should not be readmitted to the practice of law.

Rule 8.14 Reinstatement and Transfer--Active Pro Bono.

(a) Reinstatement from Inactive Status. An applicant who has been enrolled voluntarily as an inactive member and who has not engaged in any of the conduct described in BR 8.2(d) may be reinstated by the Executive Director to Active Pro Bono status. The Executive Director may deny the application for reinstatement for the reasons set forth in BR 8.2(d), in which event the applicant may be reinstated only upon successful compliance with all of the provisions of BR 8.2. The application for reinstatement to Active Pro Bono status shall be on a form prepared by the Bar for such purpose. No fee is required.

(b) Transfer to Regular Active Status. An applicant who has been on Active Pro Bono status for a period of five years or less and who desires to be eligible to practice law without restriction may be transferred to regular active status by the Executive Director in the manner provided in and subject to the requirements of BR 8.2. An applicant who has been on Active Pro Bono status for a period of more than five years may be transferred to regular active status only upon formal application pursuant to BR 8.1.

OREGON STATE BAR

Policy and Governance Committee Agenda

Meeting Date: April 27, 2012
From: Sylvia E. Stevens, Executive Director
Re: Section Charitable Donations

Action Recommended

Consider revising the OSB Bylaw 15.401 as it relates to charitable donations by sections.

Background

OSB Sections are authorized to make charitable donations only with the prior approval of the Executive Director. The ED, in turn, may approve donations only where the contribution “is related to the purposes for which the section exists.”¹ Pursuant to OSB Bylaw 15.1, “Sections are intended to provide bar members who share particular interests an opportunity to develop and improve skills and to provide a forum for communication and action in matters of common interest.”

For sections that are not entirely self-supporting, charitable donations must also be to organizations or causes where the donee can show that the donation is consistent with the “limitations” in Bylaw 12.1,² the “guidelines” for the bar’s legislative and policy activities. The guidelines are an expression of permitted uses for mandatory license fees under the doctrine of *Keller v. State Bar of California*, 499 US 1,111 S Ct 2228 (1990), which requires that the fees only be used for activities that are germane to the purposes for which the bar exists. According to ORS 9.080, those purposes are “advancing the science of jurisprudence” and “improving the administration of justice.”

¹ OSB Bylaws Subsection 15.401 Donations:

Sections may make donations to charitable causes only with prior approval of the Executive Director. The Executive Director will allow such donations only on a showing by the prospective donee that the donation of section funds to the charitable entity is related to the purposes for which the section exists. For sections that are not entirely self-supporting, as described in Article IX, Section 5(B) of the Standard Section Bylaws, the prospective donee must also show that the donation fits within the limitations set forth in Section 12.1 of the Bar’s Bylaws.

² OSB Bylaws Section 12.1:

Bar legislative or policy activities must be reasonably related to any of the following subjects: Regulating and disciplining lawyers; improving the functioning of the courts including issues of judicial independence, fairness, efficacy and efficiency; making legal services available to society; regulating lawyer trust accounts; the education, ethics, competence, integrity and regulation of the legal profession; providing law improvement assistance to elected and appointed government officials; issues involving the structure and organization of federal, state and local courts in or affecting Oregon; issues involving the rules of practice, procedure and evidence in federal, state or local courts in or affecting Oregon; or issues involving the duties and functions of judges and lawyers in federal, state and local courts in or affecting Oregon.

Section donations to the Campaign for Equal Justice and the Classroom Law Project have long been permitted (and, in fact, encouraged). Other approved recipients have been added to the list (see attached) as requests were made by sections. While most of the recipients have some connection to the science of law and the administration of justice, it is difficult to always see a connection to the purposes for which a section exists. The lack of clear standards on that last point suggest (and recent practice bears this out) that nearly every section request is granted without much analysis. The process would have more integrity if the bylaw relating to section donations offered better guidance.

No section is entirely self-supporting, so all are required to abide by the *Keller*-based limitations in Bylaw 12.1. Further limiting donations to those that are connected to the section's mission may not be necessary. A look at the list of approved recipients suggests that the requirement has been interpreted loosely over the years. Assuming, for instance, that the donation to the Lewis & Clark Small Business Clinic came from the Business Law Section, it is not clear how that donation advances the section's purpose of "improving skills" or "action in matters of common interest" to section members. On the other hand, the donation provides greater avenues to legal services for small business owners, which serves a bar-wide commitment to access to justice. It is more properly the province of a section to decide what causes to support, so long as they don't violate Bylaw 12.1.

I suggest amending Bylaw 15.4011 as follows:

Sections may make donations to charitable causes or organizations only with prior approval of the Executive Director. The Executive Director will allow such donations ~~only~~ on a showing by the section prospective donee ~~that the donation of section funds to the charitable entity is related to the purposes for which the section exists. For sections that are not entirely self-supporting, as described in Article IX, Section 5(B) of the Standard Section Bylaws, the prospective donee must also show~~ that the donation ~~fits within the limitations~~ is germane to the Bar's purposes as set forth in Section 12.1 of the se Bar's Bylaws. The Executive Director will maintain a list of approved recipients.

List of Approved
Charitable Contributions

Any section making a donation to a charitable group can only do so with the approval of the Executive Director. The Director will only allow donations on the showing by the prospective donee that the donation of section funds to the charitable entity is related to the purpose for which the section exists. The following groups have been approved:

Allen Hein Scholarship Fund at NW School of Law of Lewis & Clark College

Campaign for Equal Justice

Carlton Snow scholarship fund

Chemawa Student Association

Classroom Law Project

Federal Circuit Bar Associations Charitable and Educational Fund - FCBA

Harry Chandler scholarship fund

Legal Aid Services of Oregon

Lewis & Clark Small Business Clinic

Multnomah County Probate Advisory Committee

National Bar Assoc. – Oregon Chapter

National Council on Juvenile and Family Court Judges

NAYA – Native American Youth Association

OMLA (Oregon Minority Lawyers Association)

OLIO (Opportunity for Lawyers in Oregon)

Oregon Lawyer Assistance Foundation (OLAF)

Oregon Lawyers Against Hunger

Peacemakers

St. Andrews Legal Clinic

Section scholarships to 3 law school for students earning the highest grade on the final exam i.e., Securities Section award to securities students.

Updated 3/12

Article 2 Board of Governors

Section 2.1 Duties and Responsibilities

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Subsection 2.101 Election

(a) The election of lawyer-members of the Board will be conducted according to Article 9 of the Bar's Bylaws.

(b) ~~Nominations-Candidate statements~~ for the office of Governor from a region must be in writing. The Executive Director will prepare the forms for ~~these nominations~~the candidate statements and supply the forms to the applicants. Applicants must complete and file the form with the Executive Director by the date set by the Board. The Executive Director must conduct elections in accordance with the Bar Bylaws and the Bar Act.

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Section 2.3 Public Members

In addition to the ~~12~~ resident active members of the Bar required by ORS 9.025, four public positions exist on the Board of the Bar.

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Article 5 Oregon State Bar Delegates to the American Bar Association House of Delegates

Section 5.1 Selection

~~Nominations-Candidate statements~~ for the House of Delegates of the American Bar Association ("ABA") must be in writing. The Executive Director will prepare forms for ~~these nominations~~the candidate statements and supply the forms to applicants. The applicants must file the forms with the Executive Director not more than 90 nor less than 30 days before the election held in conjunction with the Oregon State Bar House of Delegates election. Election of ABA delegates must be conducted according to Article 9 of the Bar's Bylaws. The ABA delegates will be elected from the state at large and the term of office is two years. ABA delegates must be in-state active members of the Bar. The Board must fill a vacancy in the office of ABA delegate due to a delegate's resignation, death or any other reason in the same manner as provided in ORS 9.040(2) for board members.

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Article 9 Election Procedures

Section 9.1 Date of Elections

The election for members of the Board of Governors will be held annually on the third Monday in October. Bar members who wish to appear on the ballot must present a candidate statement to the executive director of the Bar at least 160 days before the election.

In the case of an uncontested election for the Board of Governors, a candidate will be declared elected thirty-one days after the final day on which ~~nominating petitions~~candidate statements for the Board are required to be filed, provided that a challenge has not been filed pursuant to ORS 9.042. If a challenge has been filed, the candidate will be declared elected at the end of that process unless the challenge is successful.

The election for members of the OSB House of Delegates will be held annually on the third Monday in April. Bar members who wish to appear on the ballot must present candidate statement to the executive director of the Bar at least 30 days before the election.

The election for representatives to the ABA House of Delegates will be held annually on the third Monday in April in conjunction with the election to the OSB House of Delegates. Bar members who wish to appear on the ballot must present a candidate statement to the executive director of the Bar at least 30 days before the election.

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Article 18 Discipline

Section 18.1 State Professional Responsibility Board

Subsection 18.100 Duties

The State Professional Responsibility Board ("SPRB") is authorized to exercise its powers and authority pursuant to statute, the rules of procedure and the Bar's bylaws. The SPRB will meet regularly pursuant to the call of the chairperson to consider complaints and other matters within its jurisdiction. The SPRB will receive the counsel and advice of the Office of Disciplinary Counsel of the Bar. Disciplinary Counsel will regularly report to the Board of Governors regarding actions taken by the SPRB. The SPRB may proceed with business if a quorum of ~~five-six~~ members is present at any meeting and act by a vote of a majority of those present.

Subsection 18.101 Composition

The SPRB will consist of ~~seven-eight~~ resident active members of the Bar and two at large public members appointed by the Board of Governors. The Board of Governors annually will appoint one member of the SPRB to act as its chairperson. All lawyer members of the SPRB are appointed for terms of not more than four years from the following regions: two members from region five and one member from each of the other Board of Governors regions. The two public members are appointed for terms of not more than four years. No member may serve more than four years. The Board of Governors may replace members of the SPRB as the need arises.

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Article 24 Attorney Assistance

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Section 24.4 State Lawyers Assistance Committee Review and Intake

Subsection 24.400 Complaints and Referrals

(a) Any person may submit directly to SLAC, either orally or in writing, the name of any lawyer whose performance or conduct appears to be impairing the lawyer's professional competence or ability to practice law. A referral of a lawyer to SLAC should include a description of the circumstances and copies of any relevant documents. SLAC members who are contacted regarding a complaint or referral will obtain preliminary information and refer the matter to the chairperson. The chairperson will confirm receipt of a referral in a letter to the person making the referral. The letter must contain a disclosure substantially as follows:

"We appreciate your interest in bringing this matter to our attention. Our Committee will respond by contacting the lawyer to discuss the problem. It is important for you to understand, however, that the purpose of this Committee is to provide confidential assistance to lawyers who are impaired in the practice of law for reasons such as drug or alcohol problems, emotional problems or lack of competence. For that reason, we focus our work on determining the specific assistance that the lawyer needs and making sure that the lawyer follows a treatment or assistance program. This Committee does not deal with lawyer discipline issues. All information we receive from you will be kept confidential and will not be reported to the bar disciplinary authorities. If you believe that this lawyer has acted improperly and you wish to make a complaint to the bar, you should write to Client Assistance Office, Oregon State Bar, P.O. Box 231935, Tigard, OR 97281."

(b) If a referral is received from a member of the Bar, the letter required in paragraph (A) must also contain the following statement:

"If you are a member of the Bar, please review Oregon RPC ~~8-1(e)~~8.3(a) to determine whether you may have an independent obligation to contact the Bar."

.....

Article 25 Law Student Associates

Any student currently enrolled in an Oregon law school may become a Law Student Associate of the Bar. Law Student Associates are not members of the Bar and, except as provided in this article, do not have any of the rights and responsibilities of members. Law Student Associates must pay an annual fee established by the Executive Director in an amount sufficient to cover the cost of providing information and services to Law Student Associates. ~~Law Student Associates will receive a subscription to the Bulletin, will be informed of the Bar sections that permit Law Student Associates and will be informed of CLE seminars that the CLE Seminars Manager determines are relevant to law students. Other s~~Services and information ~~may be~~ provided ~~to Law Student Associates will be as~~ determined by the Executive Director.

OREGON STATE BAR
Policy and Governance Committee

Meeting Date: March 19, 2012
Memo Date: March 30, 2012
From: Oregon Law Foundation Board
Re: Centralized Legal Notice System

Action Recommended

This memo is informational only.

Background

OBJECTIVE: Create a website owned by the Oregon State Bar, at which all legal notices required under state law would be made available free of charge and in a searchable format to the public, the net revenue of which website would be allocated to the Oregon Law Foundation (OLF) for distribution according to its charitable formulae.

WHY MOVE TO A SYSTEM OF ONLINE LEGAL NOTICES: The current system in which legal notices are published in newspapers is both costly and ineffective. Persons and businesses who must publish legal notices in newspapers incur significant costs, often running into the thousands of dollars for each individual legal notice. Some local governments, which must publish a variety of legal notices regarding governmental meetings and actions (see, e.g., ORS § 305.583(9)), spend considerable sums publishing these required legal notices. In the case of legal notices published by private businesses, such as banks or construction firms, the costs of publishing these notices are passed along to customers; in the case of legal notices published by county and local governments, those costs are passed on to taxpayers in the form of higher taxes.

Equally disturbing, legal notices published in newspapers are often never viewed by the persons who might be interested or affected by the actions that are the subject of the notices. Indeed, many of these legal notices are published in newspapers with small circulations in which it is highly unlikely that interested parties will ever see or learn of the notice.

Moreover, the Legislature did not create the newspapers' monopoly because it wished to subsidize the newspaper industry but because, for most of Oregon's history, newspapers were the best way to alert the public of important issues and developments.

That assumption, which is the entire rationale for requiring publication of legal notices in newspapers – no longer holds true in the 21st Century. More and more individuals seek information through online sources. Correspondingly, newspaper circulation has dwindled substantially in the past decade. As a result of these two, mutually reinforcing phenomena, newspaper publication is increasingly unlikely to alert members of the public of the activities or developments that are the subject matter of the required legal notices. In short, relying on newspapers to provide a forum for the dissemination of important legal notices no longer makes sense.

By centralizing legal notices on a single, online website, costs to advertisers would be reduced (saving affected businesses and taxpayers millions of dollars per year in advertising costs). In addition, a centralized online system would make it easier for individuals and businesses to find or be made aware of notices that affect or interest them. In short, an online notice system would be both more efficient and more effective.

WHY DOES THE SYSTEM NEED TO BE CENTRALIZED? In order to ensure that the public would be able to easily find legal notices in which they are interested, all legal notices would have to be published in one, central location. If there were multiple websites (or newspapers as there are now), members of the public would not know which website to access. Indeed, for those notices whose publication is required by due process, the failure to centralize the online publication of such notices would arguably raise concerns under the Due Process Clause of the Fourteenth Amendment.

WHY OSB SHOULD BE THE ENTITY TO SET UP AND RUN AN ONLINE LEGAL NOTICE WEBSITE: For three reasons. First, the bar is the most natural entity to own and operate a centralized legal notices website. Legal notices are, by definition, uniquely associated with the legal profession. They are typically created by lawyers and have critical due process impact on the public. Who better to understand and enforce the public's due process rights than lawyers. Moreover, part of the problem with the current, newspaper-based system is that so many legal notices are never seen or read by the parties to which they are ostensibly addressed. An OSB-owned website would be the most natural place for lawyers both to post and to search legal notices. As such, it would be much more likely that

notices posted on such a website would reach their intended audience, thereby assisting in the administration of justice in Oregon.

Second, as discussed in more detail below, a centralized, online legal notice website would generate a significant amount of net revenue. It is precisely because of the amount of revenue that is at stake that newspapers or other for-profit enterprises have an incentive to maximize profits which come at the cost of tax payers and consumers. Hence, the online legal notices website should be owned by a not for profit entity, such as the bar. Indeed, it is hard to imagine another not for profit entity that would be better suited to own and operate an online, legal notices website other than the bar. In addition an important element of a legal notice system is that notices be published in a forum independent of the government such as a neutral third party to ensure that the notice delivery requirements are followed. The bar is a public corporation funded by membership and program fees. It is not a state agency and does not receive any financial support from the state's general fund. To that end it is an objective third party with no economic stake in the system making it the ideal neutral party.

Third, by operating the legal notices website, the bar would be positioned, via the Oregon Law Foundation, to provide funds for legal services for the benefit of needy Oregonians. Affiliated with the bar, OLF helps fulfill the bar's mission of increasing access to justice in Oregon. As in the 1980s, when the bar realized that the interest on lawyer trust accounts provided a potential revenue source for legal aid programs and assigned the OLF to serve as the organization to collect and distribute IOLTA income, the requirement to publish legal notices likewise creates a large potential source of revenue that could be used to fund legal aid services. Although the state's IOLTA program provides significant assistance to legal aid services in Oregon, the drop in interest rates witnessed in the past four years has forced the Oregon Law Foundation to slash the amount of money that it awards to grantees by over 66% during that time. The income generated from a bar-owned legal notices website would allow OLF both to diversify its income sources (thereby making it less sensitive to interest rate changes) and, more importantly, to increase the amount of money that it is able to distribute each year to eligible programs.

HOW SUCH AN ONLINE SYSTEM WOULD WORK: Persons or entities who are required by law to give the public notice of proposed actions (such as public meetings, foreclosures, probating of wills, etc.) would send the proposed notice to the online website (either electronically or via mail), which would then post the notice on the website in an easily searchable format for the required time period for that type of notice. The website would be free to the public, who could search the posted notices free of charge. The persons or businesses who post the notices, however, would be charged a reasonable fee for publishing the notice, just as newspapers do currently.

Such a centralized online system would likely generate significant income for the bar. An informal study conducted last fall by an Oregon attorney, John Gear, estimated that Oregon newspapers receive approximately \$30 million per year to publish legal notices required under state law. Assuming that the \$30 million figure is in the general ballpark, an online website could easily charge less than the newspaper do now (because, unlike a newspaper, the website would not have to purchase newsprint or hire many employees to operate the endeavor). Preliminary investigations as to what it would cost to create and maintain the website suggest that it would cost approximately \$100,000 to set up the website and perhaps that same amount per year to maintain it. If the website were to charge one-third of what newspapers currently charge, it would stand to generate potentially as much as \$10 million in gross revenue per year, which would produce a net income of approximately \$9.9 million per year.

In addition to this publication revenue, additional revenue could also be generated by setting up the website to allow for individuals who wish to be notified when a notice naming a particular person, property, or business to purchase an “alert me” service. For a fixed fee covering a limited period of time, the website would email the subscriber to alert them whenever a legal notice with a particular person, property, or business is named in the notice. Because such a service is not currently offered by Oregon newspapers, the likely revenue stream from such subscriptions is difficult to estimate.

WHAT NEEDS TO BE DONE:

PHASE ONE (Legislative Changes): Currently, a number of sections in the Oregon Revised Statutes require regulated entities to publish notices in a newspaper of general circulation. As a consequence, newspapers possess a legislatively-conferred monopoly on the publication of these notices. In order to set up a bar-owned and operated online legal notice system, it would be necessary to persuade the Legislature during the 2013 Regular Session to amend these statutory provisions.

Legislation to establish an online legal notices system would need to comprise two elements. First, a new subchapter would need to be added to Chapter 193 of the ORS, which governs publication of legal notices, to expressly provide for online publication through the OSB. This subchapter would authorize OSB to create a centralized, online website for the publication of legal notices, permit OSB to charge persons who submit such notices for publication a reasonable charge for such publication, and outline the basic guidelines for the publication of such notices (how long must OSB keep them online, etc.). In addition, the statute would provide that the net revenue from such website be provided to OLF to, in turn, fund access to justice.

Second, all of the pertinent statutes throughout ORS that require newspaper publication of a legal notice would have to be amended to provide that all such legal notices be “published” in the OSB Legal Notices Website. For example, consider the statutory requirement for banks and other lenders that wish to foreclose on real property to provide notice of the foreclosure sale to the public. As currently written, ORS § 86.750(2)(A) requires trustees under a deed of trust to publish notice of the foreclosure sale: “a copy of the notice of sale must be published in a newspaper of general circulation in each of the counties in which the property is situated once a week for four successive weeks. The last publication must be made more than 20 days prior to the date the trustee conducts the sale.” In recent years, this particular statutorily-conferred monopoly has become especially lucrative for newspapers, so much so that real estate trust companies have recently begun purchasing small-

town newspapers to reduce their publication costs – see the Oregonian article from Jan. 15, 2012

([http://www.oregonlive.com/business/index.ssf/2012/01/northwest trustee squeezes mor.html](http://www.oregonlive.com/business/index.ssf/2012/01/northwest_trustee_squeezes_mor.html)). Under this proposal, ORS § 86.750(2)(A) would be amended to read something like the following: “... a copy of the notice of sale must be transmitted to the Oregon State Bar, which shall include such notice on its legal notice website as provided in ORS § 193.____ for a period of no less than 28 days, the last day of which period must be at least 20 days prior to the date the trustee conducts the sale.”

PHASE TWO (Business Startup): Create the OSB Legal Notices website in time for it to be up and running as of the effective date of the statutory changes.

A. Place an RFP with website developers to create a website that would permit individuals to search all legal notices by name, subject, or location. The website could also sell subscription services to individuals and lawyers, in which, for a fixed fee, the website would automatically alert the individual or lawyer by email if a legal notice were posted that met a specified search parameter.

B. Once the website is up and running, OSB would designate a person to manage the website to ensure its continual operation and to answer questions by outside parties.

C. Advertise the website. It will be important to undertake an advertising campaign to assure that both the entities using the website to place notices and the public searching for notices have knowledge of the website’s existence.

LIKELY OBJECTIONS AND THE RESPONSES THERETO:

(1) This is stealing business from newspapers and will therefore be the end of many newspapers. Newspapers are likely to object to this proposal on the ground that it will eliminate a substantial category of their advertising revenue, thereby imperiling many marginal newspapers. While that is undoubtedly true, it is also beside the point.

Newspapers have been able to generate that income solely by virtue of the legislatively-conferred monopoly that the Oregon Legislature has given them. There is nothing sacrosanct about that monopoly. In fact, newspapers have abused that monopoly by charging high prices for the publication of those notices. Those high costs, in turn, are passed along to consumers and taxpayers, both of whom must ultimately foot the bill for the cost of these notices.

(2) Due process requires that legal notices be published in newspapers. The U.S. Supreme Court has never held that legal notices must be published in newspapers; rather, due process requires only that any notice, other than personal notice, be undertaken in a manner “reasonably calculated” to reach affected persons or entities. True, publication in newspapers has long been held to provide a way of complying with due process when personal notice is impossible or unavailable. At a time when newspapers were the only widely circulated medium of communication, newspapers were perhaps the best mechanism for reaching individuals who could not be identified personally or for giving notice to the public generally. These days, however, with declining newspaper circulation, it is possible that newspaper publication no longer satisfies this due process requirement. More importantly, though, online publication on a centralized website available free of charge to the public would certainly provide a superior means of providing notice both to individuals potentially affected by the action that is the subject matter of the notice and to the public generally. Unlike newspaper publication, the online system would be free to consumers and more readily accessible to the public at large.

Newspapers will argue that a web based legal notice system is not readily accessible to those members of the public not online so the due process requirement is not met. However the same holds true for those members of the public who do not subscribe to a newspaper. Both those without online access and those without a newspaper subscription can go to their local library to gain either online or newspaper access for free.

SUMMARY: The current statutory system provides newspapers with a legislatively-conferred and -created monopoly for the publication of legal notices. This monopoly is both costly and incomplete. It is costly because, in many towns and cities where there is only one

newspaper, that newspaper is able to charge above-market advertising rates for individuals, businesses, or local governments that must publish legal notices. It is incomplete because individuals or businesses that wish to learn of some action that is the subject of the legal notice may not subscribe to the relevant newspaper or read the pertinent section of the newspaper on the day that the legal notice is published.

By moving to a centralized, online system for the publication of legal notices, costs to businesses and taxpayers could be reduced, and due process concerns could be more easily met. Moreover, as the principal, not for profit organization dedicated to serving and bolstering the system of justice in Oregon, OSB is best positioned to assume this role, and the income generated by the website could then be used by OLF to help fund legal services for low-income Oregonians.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: April 27, 2012
From: Steve Larson, Public Affairs Committee Chair
Re: Law Improvement Proposals

Consider Public Affairs Committee request to approve 2013 OSB package of Law Improvement proposals for **approve** submission of the law improvement package to Legislative Counsel (LC) for drafting in accordance with the comments in the attached memo.

Background

Attached is a list of legislative proposals from bar groups reviewed by the Public Affairs Committee to ensure they meet the OSB guidelines with respect to legislation, OSB Bylaw 12. Once approved by the board, these bills, in the normal course of business, would be submitted to Legislative Counsel's office for bill drafting purposes, introduction through Judiciary Committee, and then pre-session filed for the 2013 legislative session. In this instance, Public Affairs will continue to monitor them and address any concerns raised in the comments to the proposals.

Direct link to the proposals: <http://osblip2013.homestead.com/index.html>

By way of background, it might help to have an overview of the process by which bar group legislative proposals are developed and the options the board has with respect to handling them.

To begin, bar sections and committees are encouraged to have a legislative subcommittee that is involved in the legislative process, either monitoring or advocating on issues that affect their area of practice. Public Affairs staff works with bar groups (mainly sections that encompass substantive practice areas) to help them develop legislative proposals for submission to the board, and ultimately, inclusion in the bar's package of Law Improvement Legislation for the 2013 legislative session. Law improvement legislation is legislation that clarifies statutory ambiguities, removes unnecessary procedural requirements, modifies unforeseen glitches in previous legislation, or otherwise improves the practice of law. Policy changes are also included in the bar package of legislation when deemed appropriate.

Most bar groups create legislative subcommittees to solicit issues or concerns, and to develop a set of recommendations for executive committees to consider. Before any proposal is forward to the board of governors for consideration, it must be approved by a majority of the executive committee (we encourage executive committees to be representative of the diverse views on the section). Bar groups are encouraged to be mindful of differing viewpoints in the practice area.

Thirteen bar groups submitted 22 proposals for consideration by the April 2 deadline which were posted on the OSB website.

On April 23, 2012, the Public Affairs Committee held a meeting at which representatives from the various bar groups were invited to present their proposals and comments from the bar at large were solicited. Aside from comments on two bills affecting administrative law, there were no member comments received on the proposals. We will continue to disseminate the concepts and actively solicit feedback.

Public Affairs Committee reviews legislation to ensure that

- it meets the OSB guidelines with respect to legislation, OSB Bylaw 12, (Keller)
- respects divergent opinions of subgroups within the legal profession and
- avoids committing bar resources to issues that are divisive or create factions within the profession

Generally, the PAC has encouraged section and committee participation in the law improvement program by giving deference to the expertise and the work of the groups that have made proposals.

The next step in the process is for the Board of Governors to approve the package for submission to Legislative Counsel for drafting. This step does not mean that any particular bill will be introduced as a bar sponsored bill; it simply allows the proposal to be placed in a form that could be introduced. Proposing groups work with LC to ensure that the bill actually reflects the intent of the drafters.

The PAC and the BOG may decide to move forward or decline to sponsor a proposal at any of these points in the future:

- when the LC draft is received during summer, or
- when the draft is forwarded to the Judiciary Committee for introduction (September), up to the point when the Judiciary Committee actually votes to sponsor bills in December.

Oregon State Bar
2013 Law Improvement Package

Board of Governors:

1. Board of Governors

- Dischargability of OSB Costs – This bill would provide that an award of costs to the Oregon State Bar in a disciplinary proceedings is not dischargeable in a bankruptcy proceeding.
**** NOTE – Confirm Oregon Supreme Court’s position on this issue before proceeding.**
- Custodianship of Law Practice – This bill would permit an individual who is appointed as a custodian of a nonperforming law practice to receive first priority in payment for reasonable compensation and expenses in a case where assets are insufficient to meet all obligations.
- UTPA Amendment – Amends the Unlawful Trade Practices Act to explicitly make the unlawful practice of law an unlawful trade practice. Amends ORS 646.608.

2. Lawyers for Veterans

- Notice of SCRA in Administrative Hearings - Amend ORS 183.413 to require notice of administrative hearings to include a statement that the Servicemembers Civil Relief Act applies to such proceedings and affords active duty servicemembers the right to defer such hearings.
****NOTE – Governor’s office may address this problem administratively, making the introduction of a bill unnecessary.**
- Increase Judicial Discretion in Sentencing Certain Veterans - Allow judges increased discretion to sentence certain veterans to probation and treatment rather than to incarceration. To be eligible for such sentencing, the veteran must suffer from Post Traumatic Stress Disorder or from Traumatic Brain Injury.
****NOTE – Ongoing discussion with District Attorneys and other interested parties is necessary. Final language of proposal may change based on these discussions.**

3. OLF

- Interest from Escrow Accounts – Requires that escrow trust accounts held by title companies be set up according to a system similar to lawyer’s IOLTA accounts, with interest going partially to funding legal services.
**** NOTE – Send back to OLF for further consideration.**

- Centralized Legal Notice System - Requires that the Oregon State Bar create and maintain a centralized online system that lawyers, government entities, and other persons may use to post statutorily required legal notices. Posting to this system eliminate the need for the person to run a notice in the newspaper. Any net revenue from this system would go to fund legal services.
****NOTE – Request BOG set up task force to study issues and develop recommendations for BOG to consider.**

OSB Sections:

4. Administrative Law

- Fastcase Pilot Project - Requires state agencies to maintain final orders (as defined in ORS Chapter 183) in a digital format. This requirement is being proposed in order to facilitate the inclusion of agency final orders in online electronic databases such as Fastcase.
****NOTE – Work with DAS and Governor’s office regarding feasibility.**

5. Animal Law

- Warrantless Entry for Animal Welfare - Amends existing law to clarify that peace officers may enter a premises, search and seize an animal without a warrant if they reasonably believe that it is necessary to prevent serious harm or to render aid to the animal. Peace officers are currently permitted to do this to safeguard “property”, which includes animals. However some jurisdictions are reluctant to exercise this authority without clearer statutory guidance. Amends ORS 133.033.
**** NOTE – Work with section to create training opportunities with law enforcement on this issue.**

6. Business Law

- Remote-Only Shareholder Meetings - Clarify existing law to make clear that it is permissible to hold shareholder meetings over a webcast or other electronic communications medium without the need for the meeting to be based in a physical location. Current law clearly allows shareholders to participate at a meeting via this type of technology, but references in statute to the “place” of the meeting make it unclear if a meeting can be conducted exclusively through such remote communication systems. Amends ORS Chapter 60.
****NOTE – Concerns have been raised regarding shareholders who are unable to participate electronically. Further discussion with section to determine if this concern can be accommodated or whether non-bar affiliated entity should sponsor.**
- Equity Awards to Employees - The bill provides express authority for boards of directors to delegate to corporate officers the authority to grant equity awards to corporate employees. Current law is clear that boards may do this directly, but it is unclear as to whether they may delegate the authority to officers. Amends ORS 60.157.

7. Consumer Law

- Disclosure of Termination Fees – This bill amends the Unlawful Trade Practice Act and would require that at the time a contract is executed the contracting entity must conspicuously disclose the early cancellation fee and the total amount of the payments required to fulfill the entire contract. Amends ORS Chapter 646.
****NOTE – Work with section to determine if there is a non-bar entity better suited to sponsor this proposal.**

8. Debtor-Creditor

- Amended Notices of Sale - This bill would clearly define the duties of a trustee in a trust deed foreclosure when an initial sale has been lawfully stayed and the stay is then lifted. Amends ORS 86.755.
****NOTE – Work with section to determine if there is a non-bar entity better suited to sponsor this proposal.**
- Qualifications to Serve as Trustee - This bill would allow another attorney in the trustee attorney's firm to act on behalf of the trustee when the trustee is unavailable to act as trustee. Under current law, matters that must be undertaken by the trustee must wait until the trustee is again available, or a new trustee is appointed. Amends ORS 86.790.
****NOTE – Work with section to determine if there is a non-bar entity better suited to sponsor this proposal.**

9. Elder Law

- Protective Proceedings - Makes clarifications to the rules regarding attorney's fees and costs in protective proceedings cases. Amends ORS 125.095.

10. Estate Planning and Administration

- Uniform Trust Code Revisions - Makes numerous technical changes to the Oregon Uniform Trust Code. Amends ORS Chapter 130.
- Digital Assets - Establishes definitions and rules for the administration, maintenance and disposition of digital assets upon a decedent's death. Amends ORS Chapters 114, 125 and 130.
****NOTE – Workgroup will continue to work with internet service providers to address concerns.**

11. Family Law

- Housekeeping (ORS Ch 107 and 109) - This bill makes several changes to ORS Chapters 107 and 109 in order to clarify several ambiguities and errors. The issues covered include taxability of spousal support and applicability of statutory restraining orders, the proper location to file filiation proceedings, and the elimination of the term “suit” in certain contexts.
**** NOTE – Some provisions of this bill are more appropriate to be included in Legislative Counsel’s general statutory cleanup bill. This bill should be amended to remove those sections, e.g, the proper location to file filiation proceedings, and the elimination of the term “suit” in certain contexts.**
- Life Insurance - This bill provides for the award of attorneys fees in certain cases involving court ordered life insurance policies.
- Survivor Benefit – This bill provides for protections of survivor benefits for former spouses of members in a public retirement plan in cases where the spouses divorce prior to the death of the insured party.
**** NOTE – Work with section to determine if there is a non-bar entity better suited to sponsor this proposal.**

12. Juvenile Law

- Correction to Erroneous Statutory Reference – ORS 419B.100(1) (Jurisdiction in juvenile dependency proceedings) refers to “subsection 6” in the body of the text. However, this subsection was eliminated by a bill in 2011. In 2011, the legislature removed the former subsection(3), dealing with parental treatment by prayer, leaving only 5 subsections. This bill would correct this erroneous reference.
**** NOTE – This problem can be addressed through inclusion in Legislative Counsel’s general statutory cleanup bill. Introduction of this bill is likely unnecessary.**

OSB Committees:

13. Uniform Criminal Jury Instructions

- Technical Correction to Uniform Criminal Jury Instructions - Corrects a longstanding conflict between the current Uniform Criminal Jury Instructions and the Oregon Supreme Court’s decision in *Ireland v. Mitchell*, 226 Or 286, 290, 359 P2d 894 (1961). The statute requires that a judge inform jurors that they must distrust a witness that is false in one part of their testimony, whereas the court has ruled that jurors may distrust such a witness, but are not obligated to do so. Common practice is to abide by the Supreme Court’s ruling. Amends ORS 10.095.

MENTORS FOR BOG APPROVAL, APRIL 2012 --- New Lawyer Mentoring Program

Bar#	Sal.	F.Name	M.Name	L.Name	City.State.Zip
770998	Mr.	Howard	G.	Arnett	Bend, OR 97701
781270	Mr.	Ronald		Atwood	Portland, OR 97204
974240	Ms.	Kristy	Kay	Barrett	Portland, OR 97213
821973	Mr.	Ronald	L.	Bohy	Beaverton, OR 97008
863439	Mr.	Jon		Correll	Eugene, OR 97401
042762	Ms.	Sarah		Drescher	Portland, OR 97232
710506	Mr.	Charles		Duncan	Eugene, OR 97401
852697	Ms.	Jean		Fischer	Keizer, OR 97303
870450	Mr.	Brad		Garber	Lake Oswego, OR 97035
721040	Mr.	Roger		Gould	Coos Bay, OR 97420
832904	Mr.	James	T.	Guinn	Oregon City, OR 97045
772370	Mr.	Roland	W.	Johnson	Enterprise, OR 97828
963262	Mr.	Joel		Kent	Bend, OR 97701
862264	Mr.	David		Kuhns	Salem, OR 97302
842740	Mr.	David	P.	Levine	Lake Oswego, OR 97035
870625	Mr.	Eric	R.	Miller	Portland, OR 97223
803136	Mr.	Scott		Monfils	Portland, OR 97204
873117	Ms.	Mary	Kathryn	Olney	Salem, OR 97312
935585	Ms.	Jodie		Polich	Milwaukie, OR 97269
823781	Mr.	Robert		Radler	Beaverton, OR 97008
791045	Ms.	Dianne		Sawyer	Portland, OR 97223
944368	Mr.	Matthew		Shirtcliff	Baker City, OR 97814
003996	Ms.	Kristin		Sterling	Portland, OR 97204
921356	Ms.	Deborah		Stoll-Underwood	Eugene, OR 97401
044445	Ms.	Rebecca		Watkins	Portland, OR 97204
833452	Mr.	Brian		Whitehead	Salem, OR 97302
743432	Mr.	Steven		Wilgers	Coos Bay, OR 97420
853926	Mr.	David	O.	Wilson	Eugene, OR 97401
861068	Ms.	Robin		Wright	Portland, OR 97204

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: April 27, 2012
Memo Date: April 27, 2012
From: Barbara Dilaconi, Appointments Committee Chair
Re: Volunteer Appointments to Various Boards, Committees, and Councils

Action Recommended

Approve the following Appointments Committee recommendations.

Affirmative Action Committee

Recommendation: Charles "Chas" Lopez, Public Member, term expires 12/31/2014

Minimum Continuing Legal Education Committee

Recommendation: Cecelia Batlan, Secretary, term expires 12/31/2012

House of Delegates

Region 1 Recommendation: Justin Morton, term expires 4/20/2015

Region 2 Recommendation: Ross M Shepard, term expires 4/20/2015

Region 2 Recommendation: Douglas R Wilkinson, term expires 4/20/2015

Region 3 Recommendation: Peter Joseph Carini, term expires 4/20/2015

Region 3 Recommendation: Josh Soper, term expires 4/20/2015

Region 4 Recommendation: Simeon D (Sim) Rapoport, term expires 4/20/2015

Region 4 Recommendation: Scott Bellows, term expires 4/20/2015

Region 5 Recommendation: Shannon R Armstrong, term expires 4/20/2013

Region 5 Recommendation: Christopher A Larsen, term expires 4/20/2014

Region 5 Recommendation: Lori L Brocker, term expires 4/20/2014

Region 5 Recommendation: Jason E Hirshon, term expires 4/20/2015

Region 5 Recommendation: Justin D Leonard, term expires 4/20/2015

Region 5 Recommendation: Duane K Petrowsky, term expires 4/20/2015

Region 5 Recommendation: Christopher R Piekarski, term expires 4/20/2015

Region 5 Recommendation: Douglas A Schoen, term expires 4/20/2015

Region 5 Recommendation: Christine Meadows, term expires 4/20/2015

Metropolitan Public Defender Services Board of Trustees

Recommendation: Stephen A. Houze, term expires 6/3/2015

Ninth circuit Judicial Conference Lawyer Representatives

Recommendations: Bryan Beel, Craig A. Crispin, Orrin Leigh Grover III, Rachel Marshall, Tonia Moro, Josh Newton, Karen Oakes, Robert Rainwater, Elizabeth A. Semler, and Kim Sugawa-Fujinaga.

Oregon Law Commission

Recommendation: Julie McFarlane, term expires 6/30/2016

Recommendation: Mark Comstock, term expires 6/30/2016

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: April 27, 2012
From: Sylvia E. Stevens, Executive Director
Re: CSF Claims Recommended for Payment

Action Recommended

Consider the CSF Committee's recommendation to make the following award:

CSF Claim No. 2010-19 DICKERSON (Rawson) - \$3100

Background

On February 1, 2008, Claimant entered into an agreement to pay Daniel Dickerson a flat fee of \$5000 to pursue litigation arising from misrepresentation in a real estate matter. The agreement provided that the funds were "deemed to be earned, in full, upon receipt." She paid Dickerson \$600 upon signing the agreement and the balance in three installments.

Claimant says she heard nothing from Dickerson after the initial meeting and she professes no knowledge about what happened in her case. Nevertheless, she paid Dickerson \$1000 on February 11, 2008; \$300 on May 22, 2008; and \$3100 on February 17, 2009.

The court file indicates that Dickerson filed a complaint on Claimant's behalf on February 21, 2008. On May 30, 2008, the court issued a general judgment of dismissal for want of prosecution. Sometime thereafter Dickerson effected service on the defendants, who filed a notice of intent to appear in July 2008. The file contains nothing else. The statute of limitations has run and Claimant's claim cannot be revived.

Dickerson was disbarred in August 2010 for multiple violations of the RPCs, but this representation was not part of his disciplinary case. The matters leading to Dickerson's disbarment were similar, however: Dickerson took on a client's matter, accepted a fee in advance, then did little or no work and stopped communicating with the clients. The trial panel opinion notes that Dickerson's violations occurred during a relatively short period of time (mid-2006 to mid-2008) when he was experiencing personal problems. Nevertheless, the panel was found no excuse for Dickerson's failure to inform his clients that he was unable to perform adequately. In at least one matter, the panel found his failure to refund the unearned portion of a flat fee paid in advance was an intentional misappropriation.

The CSF Committee acknowledged that Dickerson did some work on Claimant's matter (preparation, filing and service of the complaint) for which he was entitled to be compensated. However, the Committee concluded that Dickerson was dishonest in accepting \$3100 more than 9 months after Claimant's matter had been dismissed (a fact which he failed to convey) and long after he essentially abandoned her matter.

**Oregon State Bar
Board of Governors Meeting
April 27, 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. Michael R. Blaskowsky – 841766

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

2. Susan M. Coby – 901556

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

3. Ann Highet – 902999

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

4. 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 recommend to the Supreme Court that Mr. Pippin's reinstatement application be approved. The motion passed. Mr. Emerick abstained.

5. Randall W. Rosa – 825006

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

6. Lisette M. Spencer – 963398

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

7. Robert E. Sullivan – 983539

Motion: Ms. Garcia presented information concerning the BR 8.1 reinstatement application of Mr. Sullivan. Mr. Wade moved, and Mr. Emerick seconded, to temporarily reinstate Mr. Sullivan per BR 8.7(b). The motion passed unanimously.

8. Hadley Howell Van Vactor – 060138

Motion: Mr. Emerick presented information concerning the BR 8.1 reinstatement application of Ms. Van Vactor. Mr. Emerick moved, and Mr. Spier seconded, to recommend to the Supreme Court that Ms. Van Vactor's reinstatement application be approved. The motion passed unanimously.

B. Disciplinary Counsel's Report

Mr. Sapiro reported on developments regarding the bar's custodianship over the law practice of Bryan W. Gruetter, who is no longer a member of the Oregon State Bar.

**Oregon State Bar
Board of Governors Meeting
April 27, 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 BOG received status reports on the non-action items.

B. Pending or Threatened Non-Disciplinary Litigation

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

C. Other Matters

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