

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

August 24, 2012

**Open Session Minutes**

The meeting was called to order by President Mitzi Naucler at 12:32 p.m. on August 24, 2012. The meeting adjourned at 3:20 p.m. Members present from the Board of Governors were Jenifer Billman, Barbara Dilaconi, Hunter Emerick, Ann Fisher, Michael Haglund, Matthew Kehoe, Ethan Knight, Theresa Kohlhoff, Tom Kranovich, Steve Larson, Audrey Matsumonji, Pat Ehlers, 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, Linda Kruschke and Camille Greene. Others present were Ira Zarov, PLF COO, Tom Cave PLF CFO, Laura Rackner, PLF BOD, and Jason Hirshon, ONLD Chair.

**1. Call to Order/Finalization of the Agenda**

**2. Department Presentations**

- A. Ms. Kruschke presented an overview of the Legal Publications Department whose purpose is to improve the knowledge and skills of Oregon lawyers by producing high-quality resources in a timely manner with new material posted as received. The department relies on volunteer authors who are members of the bar. All staff editors are members of the bar. The primary product is the BarBooks™ online library. Monthly BarBooks™ seminars train members how to use BarBooks™ and count for one CLE credit. The average "pageviews" per day is steadily rising.

**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 asked the board members to pass along to her any suggestions they have for changing the current BOG committee structure that would make the committees and the BOG function more effectively.

Ms. Stevens reminded the board that a few members had suggested that lawyers be required to complete a certain number of their MCLE credits in live programs; she asked whether the BOG wanted to ask the MCLE Committee to study the issue and the consensus was yes. Ms. Stevens will draft a memo for the MCLE Committee on behalf of the board.

- D. Board Members' Reports

Board member Ms. O'Connor will be presenting to the national meeting of the Lawyer Referral Services on branding and marketability. Mr. Emerick recently attended OLIO and was impressed with the program and encouraged board members to support Opportunities for Law in Oregon (OLIO.) Mr. Haglund and Mr. Knight hosted the first meeting of the OSB Legal Job Opportunities Task Force at the bar center. Three future meetings are scheduled. Ms. Dilaconi is going to be playing Marie Callas in February.

**E. Director of Diversity & Inclusion**

Ms. Hyland reported on the 15th Annual OLIO in Hood River, OR. The event was well attended and for the first time undergraduates participated. Some funding issues arose and they are researching the use of member dues to fund OLIO.

**F. MBA Liaison Reports**

Mr. Larson reported on the August 1, 2012 MBA meeting. He noted the MBA has a new chairman, Gregory Moab, and the MBA is searching for a new executive director. Mr. Larson recommended the board be involved in the MBA's court funding committee.

**G. Oregon New Lawyers Division Report**

Mr. Hirshon reported on a variety of ONLD projects and events described in his written report. ONLD hosted a casino night with OLIO participants and has a new four-month series of CLEs on diversity beginning in September. ONLD will host an information booth at the Lane County Fair, utilizing more than 30 volunteers. ONLD passed out survival kits during the July bar exam and attended the ABA Young Lawyers Division annual meeting in Chicago earlier in August. The executive committee would like to schedule a social with the board in the near future.

**4. Professional Liability Fund**

Mr. Zarov gave a general update and presented the May 31, 2012 Financial Statements. He reported that the excess program has done well since 2008; and cyber coverage will be added to the program in 2013. The PLF will present its budget to the board for approval in November. Claims are up approximately 10% over previous year's averages but are skewed by one member with multiple claims. He introduced the 2013 PLF BOD President-Elect, Laura Rackner.

Mr. Cave explained the claim liabilities' negative effect on the PLF's financials. The average cost of defending claims continues to rise and is greater than the average amount of indemnity.

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

**A. New Lawyer Mentoring Program**

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

**Motion:** Mr. Larson moved, Ms. Dilaconi seconded, and the board voted unanimously to recommend the list of candidates to the Oregon Supreme Court. Mr. Emerick abstained. **[Exhibit A]**

**B.** Executive Director Evaluation Committee

In Ms. Garcia's absence, Ms. Naucler presented the committee's recommended changes to the Executive Director's annual salary. **[Exhibit B]**

**Motion:** The board voted unanimously to approve the recommendation of the Executive Director Evaluation Committee to increase the Executive Director's salary by 2% effective immediately.

**C.** Budget and Finance Committee

Mr. Haglund presented the committee recommendation to increase the Client Security Fund assessment from \$15 to \$45. The board agreed to table the discussion until the September board meeting.

Mr. Haglund presented the committee recommendation to delegate the authority to Mr. Wegener to negotiate the tenant improvements at the bar center and take the cost from the landlord contingency fund.

**Motion:** The board voted unanimously to approve the recommendations of the Budget and Finance Committee regarding tenant improvements funding and direction.

Mr. Haglund presented the committee's recommended revisions to the OSB investment Policy to diversify the bar's investments. **[Exhibit C]**

**Motion:** The board voted unanimously to approve the investment policy recommendations of the Budget and Finance Committee.

**D.** Member Services Committee

Mr. Kehoe presented the committee's recommended awards recipients. **[Exhibit D]**

**Motion:** The board voted unanimously to approve the awards recommendations of the Member Services Committee.

**E.** Policy and Governance Committee

Ms. Fisher presented three committee recommendations:

1. Section bylaw changes including meeting flexibility and sunseting a section. **[Exhibit E];**

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

2. Survey the HOD delegates for their views on the continuing viability of the HOD governance model and, if retained, how it can be a more meaningful experience for the delegates. **[Exhibit F];**

**Motion:** The board voted unanimously to survey the HOD, based on the recommendations of the Policy and Governance Committee.

3. Review the BOG's role in judicial selection. Policy and Governance will continue to study the issues of judicial evaluations and continuing legal education requirements for judges, but for now recommends going back to the prior BOG policy of ranking candidates for appellate appointments and informing the Governor which are "highly qualified" or "qualified." Ms. Billman also said the information should be available to the public prior to appointment. Mr. Wade stated that this would help prevent the Governor from appointing without considering the bar's input. The board discussed the bar's role in the judicial selection and the public's perception of that role. If the bar cannot give an honest assessment of the candidates, which may or may not involve ranking, then they should not participate in the evaluation process at all. **[Exhibit G];**

**Motion:** The board voted to approve the recommendations of the Policy and Governance Committee regarding review of candidates for appellate appointment. Mr. Larson and Ms. Naucler were opposed.

**F. Public Affairs Committee**

Mr. Larson presented a legislative update. Five of the bar's bills have been finalized by Legislative Counsel's Office. One additional bills have been added to the bar's legislative package relating to allocating interest on title escrow accounts to the OLF. The Bar Act bill will also be amended to add minor changes that will align the delinquency dates for annual fees and IOLTA certification and allow for electronic notice of delinquency. **[Exhibits H & I]**

**Motion:** The board voted unanimously to approve the recommendations of the Public Affairs.

**6. Other Action Items**

- A. Sending the Centralized Legal Notice System Plan to 2012 House of Delegates.

**Motion:** Mr. Wade moved to send a resolution to the HOD in support of pursuing the idea of a centralized legal notice system to generate revenue for low-income legal services. After discussion of the relative merits of taking the issue to the HOD at this time, Mr. Wade withdrew his motion.

- B. Client Security Fund Claims Recommended for Payment

**Motion:** Mr. Haglund moved, Mr. Wade seconded, and the board voted to approve the payments of \$242,127.45 recommended by the Client Security Fund. The BOG deferred action on the DICKERSON (Morning Star) claim pending the review of additional information. Ms. Fisher was opposed. **[Exhibit J].**

- C. Request to Survey OSB Members About Violence in the Profession.

Ms. Stevens presented correspondence from Stephen D. Kelson request a survey of the OSB membership. The board denied Mr. Kelson's request to the extent it constitutes a request that he be provided a list of members at no cost.

**7. Consent Agenda**

**Motion:** Mr. Larson moved, Ms. Fisher seconded, and the board voted unanimously to approve the consent agenda including various appointments **[Exhibit K]**.

**8. 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

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

None.

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

<b>Bar#</b>	<b>Sal.</b>	<b>F.Name</b>	<b>M.Name</b>	<b>L.Name</b>	<b>City.State.Zip</b>
981738	Ms.	Carolyn		Alexander	Salem, OR 97301
041409	Ms.	Amy		Angel	Portland, OR 97204
710101	Mr.	Dennis		Ashenfelter	Albany, OR 97321
861494	Mr.	Lawrence		Beck	Portland, OR 97205
841132	Mr.	Mark		Becker	Hillsboro, OR 97124
791575	Mr.	Charles	D.	Beshears III	Portland, OR 97201
851571	Mr.	Whitney		Boise	Portland, OR 97205
760679	Mr.	Douglas		Bomarito	Tigard, OR 97223
861606	Ms.	Michelle		Burrows	Portland, OR 97209
851745	Mr.	Timothy		Colahan	Burns, OR 97720
042669	Ms.	Renee		Cummings	Portland, OR 97212
952428	Ms.	Alice		Cuprill-Comas	Portland, OR 97209
922560	Mr.	Michael		Czaiko	Oregon City, OR 97045
812037	Mr.	C.	Thomas	Davis	Beaverton, OR 97005
891621	Mr.	Robert		Demary	Portland, OR 97204
972496	Mr.	Robert	A.	Diehl	Wilsonville, OR 97070
872132	Mr.	Jeffrey		Eberhard	Portland, OR 97204
820476	Mr.	Paul		Elsner	Portland, OR 97201
841361	Mr.	Hunter		Emerick	Salem, OR 97308
840473	Mr.	Mark		Geiger	Salem, OR 97301
035386	Ms.	Katrina		Glogowski	Seattle, WA 98121
983893	Ms.	Stephanie		Hortsch	Salem, OR 97301
861717	Ms.	Eva		Kripalani	Portland, OR 97212
993098	Mr.	Lance		Lefever	Springfield, OR 97477
842733	Mr.	Roger		Lenneberg	Clackamas, OR 97015
872860	Mr.	Michael	C.	Lewton	Portland, OR 97204
060270	Ms.	Christine	N.	Moore	Portland, OR 97204
681121	Mr.	Roger		Mundorff	Milwaukie, OR 97222
732218	Mr.	Roscoe	C.	Nelson	Portland, OR 97258
021268	Mr.	James		Oberholtzer	Portland, OR 97204
770604	Mr.	Gene		Platt	Newberg, OR 97132
661038	Mr.	Robert	C.	Robertson	Medford, OR 97501
080325	Mr.	Joseph	Justin	Rollin	Portland, OR 97205
753221	Mr.	Michael	E.	Rose	Portland, OR 97204
973875	Mr.	Craig		Russillo	Portland, OR 97204
661091	Mr.	Norman		Sepenuk	Portland, OR 97204
891187	Mr.	John		Shadden	Hillsboro, OR 97123
045530	Ms.	Michelle	Barton	Smigel	Portland, OR 97204
993833	Ms.	Cathern		Tufts	Siletz, OR 97380
860993	Mr.	Douglas	V.	Van Dyk	Oregon City, OR 97045
944898	Hon.	Debra	Kay Zuhlke	Vogt	Eugene, OR 97401
801350	Mr.	Robert	C.	Weaver	Portland, OR 97204
944605	Judge	Katherine		Weber	Oregon City, OR 97045
901359	Mr.	David		Wiles	Portland, OR 97204

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# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** August 24, 2012  
**From:** Michelle Garcia, Chair, ED Evaluation Committee  
**Re:** Executive Director Compensation

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### **Action Recommended**

Approve the recommendation of the Executive Director Evaluation Committee to increase the annual salary of the Executive Director by 2%.

### **Background**

Sylvia began her tenure as ED in August 2010. Her contract (which expires December 31, 2013) calls for annual salary increases “in an amount determined between the Executive Director and the Board, but by not less than the percentage increase granted to other OSB staff.”

Sylvia’s first annual performance review as ED took place in November 2011 and was very favorable. No adjustment in salary was addressed at that time. In January 2012, Sylvia’s annual salary was increased by 2%, the same amount that all OSB staff salaries were increased.

In April, the ED Evaluation Committee met and voted to recommend an increase in Sylvia’s salary in recognition of her excellent performance. After consultation with Mitzi Naucler, Sylvia suggested an additional 2% for the remainder of 2012. Her 2013 salary can be addressed after the BOG establishes the budget for 2013.

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# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** August 24, 2012  
**Memo Date:** August 10, 2012  
**From:** Rod Wegener, CFO  
**Re:** Revision to Investment Policy in Bylaw 7.402

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### Action Recommended

Approve the recommendation of the Budget & Finance Committee to revise the list of approved investments in bylaw 7.402.

### Background

The Board of Governors earlier approved the Budget & Finance Committee's recommendation to revise the bar's investment policy. However, it was later determined that two of the asset classes recommended were actually the same class, only with different titles. To formalize the revision, below is the revised policy approved by the Committee at its July 27 meeting.

#### OSB Bylaw Subsection 7.402 Approved Investments

Investments will be limited to the following obligations and subject to the portfolio limitations as to issuer:

- (a) The State of Oregon Local Government Investment Pool (LGIP) no percentage limit for this issuer.
- (b) U.S. Treasury obligations - no percentage limitation for this issuer.
- (c) Federal Agency Obligations - each issuer is limited to \$250,000, but not to exceed 25 percent of total invested assets.
- (d) U.S. Corporate Bond or Note - each issuer limited to \$100,000.
- (e) Commercial Paper - each issuer limited to \$100,000.
- (f) Mutual funds that commingle one or more of the approved types of investments.
- (g) Mutual funds of U.S. and foreign equities.
- (h) Mutual funds in these asset classes: high-yield bonds, emerging market bonds, international small capitalization equities, and diversified commodities.**
- ~~(i) Federal deposit insurance corporation insured accounts.~~
- ~~(j) Individual public-traded stocks, excluding margin transactions, short sales, and derivatives.~~
- ~~(k) Small capitalization international equities.~~
- ~~(l) Emerging markets fixed income.~~

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# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** August 24, 2012  
**Memo Date:** August 21, 2012  
**From:** Matt Kehoe, BOG Member Services Committee  
**Re:** 2012 OSB President's Awards, Carson Award and Award of Merit

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### Action Recommended

Approve the following slate of award nominees.

*President's Membership Service Award:*

Ben & David Eder

Andrew Schpak

*President's Public Service Award:*

Michelle Grable

Hon. Michael McShane

*President's Affirmative Action Award:*

Emilie Edling & Akira Heshiki

*President's Public Leadership Award:*

Suzanne Rowe

*President's Sustainability Award:*

Diane Henkels

*Wallace P. Carson, Jr., Award for Judicial Excellence:*

Hon. Marco Hernandez

*Award of Merit:*

David S. Barrows

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# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** August 24, 2012  
**Memo Date:** August 6, 2012  
**From:** Ann Fisher, Policy & Governance Committee Chair  
**Re:** Amendments to OSB Standard Section Bylaws

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### **Action Recommended**

The Policy & Governance Committee recommends that the Board adopt the attached amendments to the OSB Standard Section Bylaws.

### **Background**

As required by the Standard Section Bylaws, in late March the Member Services Department sent section executive committee members proposed standards section bylaw changes with a request for feedback. The following proposed bylaw changes have incorporated feedback received from section executive committee members, OSB General Counsel's Office, and the Member Services Committee of the BOG. The amendments provide for more meeting flexibility and clarify the procedure for sunseting a section. Additional housekeeping changes are also proposed.

## Standard Section Bylaws

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#### Article I Definition And Purpose

**Section 1.** Sections provide Bar members who share interests in particular substantive areas of law an opportunity to develop and improve skills and provide a forum for communication and action in matters of common interest.

**Section 2.** Sections may adopt a statement of purpose.

**Section 3.** The Section shall not participate in or take a position with respect to the election or appointment of a candidate for any public office.

#### Article II Membership

**Section 1.** Any active or inactive member of the Oregon State Bar may be a regular member upon payment of the membership dues. Any active member of another state bar may be an out-of-state member. Sections are encouraged to offer complimentary membership to 50-year members and to judges and their lawyer staff. Nonlawyers may be associate members as provided in Section 2 of this Article. Only regular members may vote and hold office except as otherwise specifically approved by the Section membership and the Board of Governors.

Section 2.

(A). Associate membership shall be available to: (1) employees of an Oregon lawyer or employees of the legal department of a corporation or government entity who are supervised by an Oregon lawyer, (2) law students, and (3) members of related professions.

(B). Out-of-state members as defined in Section 1 and associate members as defined in Section 2(A) are automatically entitled to membership upon payment of section dues unless the Section votes at its annual meeting to “opt out” and not include either out-of-state members or associate members.

(C). Out-of-state members and associate members shall certify their qualifying status upon initial application for membership and annually upon renewing their membership.

(D). Out-of-state or associate membership shall terminate immediately upon the termination of the member’s qualifying status. There shall be no refund of dues in that event.

**Section 3.** Membership dues shall be set by the membership of the Section at the annual meeting of the Section or by mail or electronic ballot, subject to subsequent approval of the Board of Governors. Membership dues shall not be prorated for any portion of a year. Dues may be waived for new admittees, law students or any other category designated by the Section. Membership dues for members of the Oregon State Bar shall be collected annually by the Bar with Bar membership fees.

### Article III Meetings of Section

**Section 1.** Meetings of the Section (including meetings of the Executive Committee and its committees) are subject to the Public Meetings Law (ORS 192.610 et seq. and 192.630(4)). ORS 192.630(4) requires that meetings of a public body be held within the geographic boundaries of the state. The Section shall notify the Bar at least twenty (20) days in advance of any meeting, or in the case of special meetings as soon as possible.

**Section 2.** The Section shall hold at least one membership meeting annually for the purpose of conducting Section business, which meeting shall be known as the Section Annual Business Meeting. The Section Annual Business Meeting may be held ~~electronically in conjunction with the Annual House of Delegates Meeting of the Oregon State Bar.~~ Sections shall elect officers and executive committee members by November 15, ~~either at the Section Annual Meeting or by a mail or electronic ballot election.~~

**Section 3.** Special meetings of the Section may be scheduled from time to time by the Section Executive Committee.

**Section 4.** A quorum is required to conduct Section Business ~~at all meetings of the Section~~ ~~the Section Annual Business Meeting.~~ ~~At Section meetings other than Section Executive Committee meetings,~~ ~~those members present voting participating in the vote~~ ~~voting~~ shall constitute a quorum. ~~Action and -action at a meeting of the Section~~ shall be by majority of those voting.

**Section 5.** A report to the Section membership shall be ~~included in-~~ presented at the meeting ~~notice~~ and shall include information about the Section’s activities and use of dues for the previous calendar year, the activities and use of dues contemplated for the next year, the status of the Section’s finances, its budget, long range plan and fiscal reserve policy.

**Section 6.** The Section shall sponsor or co-sponsor not ~~less-fewer~~ than one continuing legal education program every two years. The CLE program may, but need not, be held in conjunction with the Section’s Annual Business Meeting. Sections are encouraged to offer complimentary CLE admission to 50-year members and to judges and their lawyer staff.

### Article IV Officers

**Section 1.** The officers of the Section shall be the Chair, Chair-Elect, Immediate Past Chair, Secretary, Treasurer and such other officers as may be determined to be necessary by the membership. Officers of the Section shall be active members of the Oregon State Bar. Sections may establish eligibility-requirements or other procedures to ensure rotation of the Chair among specific groups or specialty areas of the membership, such as plaintiff or defense counsel.

**Section 2.** The Chair, or the Chair-Elect in the absence of the Chair, shall preside at all meetings of the Section and of the Section Executive Committee. The Chair shall appoint the officers and members of all committees of the Section pursuant to Article VII; plan and monitor the programs of the Section; keep the Section Executive Committee informed and carry out its decisions; and perform such other duties as may be designated by the Section Executive Committee. The Chair shall serve as an ex officio voting member of the Oregon State Bar House of Delegates. In the event the section chair serves in another ex officio House of Delegates capacity, the chair-elect shall serve in the chair's stead at the House of Delegates' annual meeting as provided in the House of Delegates Rules of Procedure.

**Section 3.** The Chair-Elect will become the Chair on January 1 regardless of the date of the Section Annual Business Meeting or, regardless of the date of the mailed or electronic ballot election. The Chair-Elect shall aid the Chair in the performance of the Chair's responsibilities, and shall perform such other duties as may be designated by the Section Executive Committee. In the event of the death, disability, or resignation of the Chair, the Chair-Elect shall perform the duties of the Chair for the remainder of the Chair's term or disability.

**Section 4.** The Secretary shall retain and maintain all books, papers, documents and other property pertaining to the work of the Section, and shall keep a true record of proceedings of all meetings and votes of the Section and of the Section Executive Committee. The Secretary shall perform other duties as assigned by the Section Executive Committee.

**Section 5.** The Treasurer shall keep an accurate record of all receipts and expenditures by the Section as hereinafter provided; report on the Section's present and projected financial condition at each meeting of the Section Executive Committee; prepare an annual projected budget for approval by the Section Executive Committee; and submit a report of the Section's financial affairs and financial condition to the members at the Section Annual Business Meeting.

## Article V Section Executive Committee

**Section 1.** The Section Executive Committee shall be composed of the Chair, the Chair-Elect, the Immediate Past Chair, the Secretary, the Treasurer, and not fewer than two (2) nor more than twelve (12) Members-at-Large. The terms of the Members-at-Large shall be staggered as evenly as possible. Suspended members may not serve on the Section Executive Committee.

**Section 2.** The Section Executive Committee shall supervise and control the affairs of the Section subject to these Bylaws and the Bar's bylaws.

**Section 3.** A quorum is required to conduct Executive Committee business. A quorum shall consist of a majority of the Executive Committee. Action of the Section Executive Committee shall be by majority vote of those voting.

**Section 4.** The Chair may, and upon the request of three members of the Executive Committee shall, call meetings of the Executive Committee.

**Section 5.** Between meetings of the Section, the Section Executive Committee shall have full power to do and perform all acts and functions that the Section itself may perform. Voting on matters of Section business may be done electronically and results of an electronic vote must be recorded in the official minutes of the Section.

**Section 6.** The Section Executive Committee may direct that a matter be submitted to the members of the Section by a mail or electronic vote or by a vote at the Section Annual Business Meeting; in any such event, binding action of the Section shall be by majority of those voting.

**Section 7.** No salary or compensation for services shall be paid to any member of the Section Executive Committee or member of any committee with the exception of the Editor and other staff of the Section newsletter (if applicable). Reimbursement may be allowed for travel and other out-of-pocket expenses for members of the Section Executive Committee and members of all Section standing and special committees.

**Section 8.** The membership of the Section shall have the right to rescind or modify any action or decision by the Section Executive Committee, except for filling a vacancy in the position of Officer or Executive Committee member, and also may instruct the Section Executive Committee as to future action. The Executive Committee shall be bound by any such action of the membership. The right of the membership to direct, modify, or rescind

an act of the Section Executive Committee shall not include the power to invalidate contracts or payments previously made under direction of the Executive Committee. Any vote to direct, modify, or rescind an action of the Section Executive Committee must be taken at a meeting at which two-thirds of members voting approve the Motion.

## Article VI Terms of Office and Elections

**Section 1.** No member may serve on the Section Executive Committee for more than nine consecutive years.

**Section 2.** Each term of office shall begin on January 1 regardless of whether the election is held at the Section Annual Business Meeting or a mailed or electronic ballot election.

**Section 3.** A position on the executive committee, including an officer position, may be, at the option of the Executive Committee, deemed vacant if that member:

A. Fails to attend two consecutive meetings, in the absence of an excuse approved by the chair prior to the meeting; or

B. Fails to attend four consecutive meetings, even if excused.

**Section 4.** Except as provided by Article IV, Section 3, and except for the office of Chair-Elect, the Section Executive Committee shall fill by appointment until January 1 of the next year any position that becomes vacant.

**Section 5.** Any officer or Member-at-Large appointed to fill an unexpired term shall serve the unexpired period. Such members shall then be eligible at the next Section Annual Business Meeting or mail or electronic ballot election for election for a first full term, unless the member's election to the new term will result in a violation of Section 1 of this article.

**Section 6.** At the Section Annual Business Meeting or a mail or electronic ballot election, the Section membership shall elect:

A. A Chair-Elect, Secretary and Treasurer, each to serve a term of one year; and

B. Members-at-Large to serve terms of two years or less on the Section Executive Committee.

**Section 7.** The Chair-Elect will succeed to the office of Chair on January 1 and serve a term of one year. If the office of Chair-Elect is vacant at the Section Annual Business Meeting or a mail or electronic ballot election, then a Chair shall be elected by the members. No officer shall serve two successive terms in the same office, except the Treasurer. A Member-at-Large may serve no more than four consecutive years as a Member-at-Large.

**Section 8.** At least sixty (60) days prior to the Section Annual Business Meeting or a mail or electronic ballot election, the Section Executive Committee shall appoint a nominating committee of not less than three members of the Section, no more than two-thirds of whom may be on the Executive Committee. The nominating committee shall make and report to the Chair at least thirty (30) days prior to the Section Annual Business Meeting or the date of a mail or electronic ballot election one nomination for each position to be filled by election. The nominating committee shall use reasonable efforts to ensure that the members nominated reflect the diversity of the Section membership, the Oregon State Bar and community at large, taking into account all relevant factors including without limitation practice area, office location, age, gender, ~~and~~ race, ethnicity, disability and sexual orientation

**Section 9.** To the extent possible, no more than one person from the same law firm, company or department of a public agency may serve on the Executive Committee at the same time.

**Section 10.** If elections are held at the Section Annual Business Meeting, the report of the nominating committee shall be distributed to the Section membership along with the notice of the time and place of the Section Annual Business Meeting at least fourteen (14) business days in advance of the meeting. Additional nominations for any position may be made from the floor at the Section Annual Business Meeting. Elections for

contested positions may be by written ballot. Each contested position shall be set forth and voted upon separately. In a contested election, the candidate receiving the highest number of votes shall be elected.

**Section 11.** Upon approval of the Section Executive Committee, elections may be by mail or electronic ballot of the Section membership provided that: (1) write-in votes are allowed, (2) ballots are returned to an appropriate Section officer for tabulation, and (3) the results are certified to the Bar Center no later than November 15.

## Article VII Committees

**Section 1.** The Section Executive Committee may establish as many standing committees as deemed necessary and may set the names, functions, and duration of such committees. The Chair, with the approval of the Section Executive Committee, shall appoint the Chair and members of all standing committees.

**Section 2.** In addition to the standing committees provided above, the Executive Committee may appoint as many special committees for particular purposes as deemed appropriate and may set the names, functions, and duration of such committees. The Chair, with the approval of the Section Executive Committee, shall appoint the Chair and members of all special committees.

## Article VIII Legislative Activities

**Section 1.** Legislative activity of the Section, whether initiating legislation or taking positions in support or opposition of pending legislation shall be in compliance with Article 12 of the OSB Bylaws and these bylaws. The Section shall not represent to the legislature or any committee thereof a position or proposal or any bill or act as the position of the Section without the majority approval of the Section Executive Committee and the approval of the Board of Governors, except as provided otherwise below.

**Section 2.** The Section shall submit proposals for new legislation, together with the full text of the proposals to the Public Affairs Director by ~~May-April 1 of each odd-numbered year~~, or such ~~other~~ date as the Public Affairs Director shall designate. The proposal shall indicate whether the Section requests that it be presented to the legislature under the sponsorship of the Oregon State Bar or of the Section. The Board of Governors will inform the Section whether the legislation should go forward under the sponsorship of the Section or under the sponsorship of the Bar, and whether it will be presented to the House of Delegates or the membership for approval. If the Board of Governors declines to submit the Section's proposal for Bar-sponsored legislation to the House of Delegates or the membership, any member of the Section may submit the matter to the House of Delegates or the membership in accordance with ORS 9.148(3) and (4) and Article 3 of the OSB Bylaws.

**Section 3.** During regular legislative sessions the Section Executive Committee may, by majority vote, tentatively approve a position in favor of or in opposition to any pending bill within its general subject area. The proposal shall be submitted to the Bar's Public Affairs Director or the Chair of the Board of Governors Public Affairs Committee. After receipt of the proposal, the chair of the committee shall have 72 hours to approve the position or to refer it to the entire Public Affairs Committee. If the chair or committee approves the proposal, the action then becomes an official position of the Section and representatives of the Section may testify or make other appropriate statements.

**Section 4.** When special need is demonstrated, the Public Affairs Committee may expedite the introduction of new Section bills or amendments. The Public Affairs Director shall be kept informed about the status of Section legislative activity.

## Article IX Receipts and Expenditures

**Section 1.** Membership dues shall be collected by the Oregon State Bar and any other receipts of this Section shall be remitted promptly to the Oregon State Bar.

**Section 2.** The Oregon State Bar shall regularly assess the Section an amount to cover both direct and indirect costs of the Section's activities performed by the Oregon State Bar staff.

**Section 3.** Expenditure of the balance of Section funds, after such assessment, shall be as determined by the Executive Committee. Section funds shall be disbursed by the Oregon State Bar as authorized in writing by the Section's Treasurer using forms and following procedures established by the Bar. If the Treasurer is unavailable for authorization, the Section Chair may authorize disbursement of Section funds followed by written notice to the Treasurer of the action taken. Reimbursement of expenses incurred by the Treasurer or by the Treasurer's firm must be authorized in writing by the Section chair. Expenditures of Section funds shall not exceed the available Section fund balance, nor shall expenditures be in violation of laws or policies generally applicable to the Oregon State Bar.

**Section 4.** Contracts for Section newsletter editors or other providers of personal services must be reviewed and signed by the Oregon State Bar Executive Director or the Director's designee.

Section 5.

(A) The Section serves as an education, communication and networking forum in the areas of law or other law related activity for which the Board of Governors approved its establishment. If the Section receives support from the Bar on other than a fee for service basis, it shall comply with the expenditure restrictions applicable to the Bar as set forth in *Keller v. State Bar of California*, 496 US 1 (1990) and related board policies.

(B) If the Section wishes to spend Section funds free from the restrictions imposed by *Keller* and related board policies it may do so if it pays the full cost of administration and other support provided by the Bar, so that the Section is entirely self-supported by voluntary dues of its members. The Section must obtain approval of its members to such election by mail or electronic vote or at a regular or special meeting. Upon exercising its right under this policy, the Section shall be provided administrative and other services by the bar on a fee for service basis only. The election shall be effective until rescinded by a vote of the Section membership.

## Article X

### Notice of Meetings, Minutes and Reports

**Section 1.** The Chair or Secretary shall distribute ~~notice~~ notice of scheduled Section Executive Committee meetings together with an agenda and minutes of the previous meeting to all Section Executive Committee members and to the Bar at least ten (10) business days prior to such meetings, or if ten days' notice is not practicable, then such lesser notice as is practicable. ~~Typed Minutes~~ minutes of all meetings of the Section and of the Section Executive Committee shall be distributed to all members of the Section Executive Committee and to the Bar no later than thirty (30) days after the meeting and are subject to amendment and approval at the next meeting of the Section or the Section Executive Meeting.

**Section 2.** Whenever the Section desires to request action by the Board of Governors, the requested action shall be reflected in the minutes and shall in addition be set forth in a letter accompanying the minutes and delivered to the Board of Governors in care of the Executive Director. If the vote on the requested action is not unanimous, the votes for and against shall be set forth in the minutes and the dissenting members shall be afforded the opportunity to explain their positions.

**Section 3.** Not later than December 1, the Chair shall file with the Executive Director of the Oregon State Bar a concise report summarizing the activities of the current year and anticipated activities for the ensuing year ~~;~~ ~~together with the full text of any proposed legislation.~~

**Section 4.** A proposed annual budget and proposed annual dues for approval by the Board of Governors shall be provided to the Executive Director no later than October 15 of each year if it contains a proposal for a change in membership dues, or no later than December 1 of each year if no change in membership dues is proposed. Alternatively, this budget information may be included with the Section's annual report submitted December 1, pursuant to Section 3 of this Article.

**Section 5.** The proposed budget shall have attached to it a short description of the Section's long range plans for programs and activities which require accumulation of funds and the Executive Committee's reserve plan, including the target reserve calculated to protect the Section from foreseeable financial loss.

**Section 6.** At the request of the Board of Governors, the Section Chair shall present a report in person to the Board of Governors concerning the activities of the Section for the current and succeeding years.

## Article XI Amendments to Bylaws

**Section 1.** These Bylaws may be amended by the Board of Governors. Notice of intent to promulgate and pass Bylaw Amendments shall be given to the Section Executive Committee Chair in sufficient time to allow for review and comment. Bylaw amendments passed by the Board of Governors become effective upon passage.

**Section 2.** These Bylaws may be amended by the Section by a majority of those voting in a mail or electronic ballot or at any membership meeting of the Section to become effective upon subsequent approval of the Board of Governors. Notice of intent to amend bylaws and the text of proposed amendments shall be distributed to all Section members at least fourteen (14) business days prior to the meeting or mail or electronic balloting.

## Article XII Sunsetting the Section

**Section 1.** A Section Executive Committee may recommend that the Board of Governors sunset the section if it has accomplished its goals or is otherwise deemed no longer necessary. A sunset recommendation submitted to the Board of Governors must include a proposal for distribution of any section assets.

**Section ~~2~~1.** The Section has a duty to its members, and at a minimum each year, must:

- A. Hold regular Executive Committee meetings.
- B. Appoint a Nominating Committee.
- C. Hold a Section Annual Business Meeting.
- D. Elect officers and executive committee members at large by November 15 of each year.
- E. Submit an annual budget.
- ~~F. File an annual Section CLE Participation Report.~~
- ~~FG.~~ File ~~its an~~ annual report.

If the Section fails to meet the above minimum requirements, it is subject to restructuring or sunsetting by the Board of Governors.

## Article XIII Rules of Order

**Section 1.** Except as otherwise provided herein, meetings of this Section shall be conducted in accordance with the most recent edition of Robert's Rules of Order.

Section 2. All references in these Bylaws to "mail" or "mailing" or "mail ballot" shall also include electronic email to a member or addressee who has an email address on file with the Oregon State Bar ~~and who has agreed to be contacted by electronic mail.~~

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** August 24, 2012  
**From:** Ann Fisher, Chair, Policy & Governance Committee  
**Re:** HOD Structure Review

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### Action Recommended

Approve the committee's recommendation that HOD delegates be surveyed at the November 2012 meeting for their view on the continuing relevance of the HOD and any structural changes that will make it more fairly representative and relevant.

### Proposal

In January 2012, the Policy & Governance Committee discussed an OSB member's suggestion that governance issues be put to an electronic vote of the membership now that we have that ability, rather than be delegated to a small number of HOD members. Recognizing that the suggestion was in essence to abolish the HOD, the discussion turned to looking at the whether the HOD continues to be an effective governance model for the OSB.<sup>1</sup> In February, the BOG agreed that the issue should be studied further.

In discussion over the ensuing months, the P&G Committee identified several concerns and issues:

1. The HOD is "metro area-centric" because ¾ of the section chairs (ex officio delegates) are from the metro area of the Willamette Valley; the metro slant is further exacerbated by the fact that many local bar leaders are unaware that they are also ex officio delegates.
2. Several delegates frequently question the value or significance of their roles; others have complained about wasting time with delegate resolutions that have no obvious connection to OSB governance.
3. Delegates have struggled to identify and bring forth issues appropriate for the HOD.
4. The availability of electronic voting makes it again possible for governance issues to be presented to the membership as a whole, rather than to a relatively small group of delegates.

The P&G Committee also identified several potential solutions:

1. Eliminate the HOD and devolve all HOD authority to the BOG and/or the Supreme Court.
2. Eliminate the HOD and revert to an online "town hall" system of member governance.

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<sup>1</sup> See the brief history of the HOD, *infra*.

3. Eliminate section chairs as ex officio delegates.
4. Enhance outreach and information to local bar leaders so they understand their ex officio delegate role.
5. Establish an all-regions “caucus” several months in advance of the HOD during which delegates can brainstorm and develop resolutions for HOD consideration.

After examining the various possibilities, the P&G Committee concluded that the best approach was to get input from the HOD delegates before proposing any actions. Accordingly, it recommends that some time be scheduled during the HOD meeting to get the delegates’ reactions to the above possibilities and any others that the delegates may have.

### **Background**

#### *History of the House of Delegates*

The first HOD meeting was 1996, but the idea of a House of Delegates was an ongoing discussion at various times beginning in 1938. One thought permeated all of those discussions: there should be a more representative system of governance than placing the decisions in the hands of those who had the time, money and inclination to attend the Annual Meeting. Early efforts to establish a delegate governance model were unsuccessful. Committees were established to study the issue in 1938, 1944, 1956 and 1963. In 1972 the issue was referred to the Committee on Function and Organization of the Bar<sup>2</sup> which studied it for five years before drafting a legislative proposal that was presented at the Annual Meeting in 1977; it was rejected in favor of a study on how to improve the existing “town hall” system. No changes resulted from that study.

Surveys in 1979 and 1983 indicated that the majority of responding members favored the town hall system coupled with mail referenda on some questions. By the latter part of the 1980’s, Oregon was one of only a handful of states that retained a town hall membership governance structure. In 1989, the Function and Organization Committee proposed a vote-by-mail procedure by which any proposal (other than one from the BOG) would be submitted to a non-binding vote at the Annual Meeting and then to the entire membership for a binding vote. Nothing came of that proposal, but in 1990 the BOG asked the Committee to develop a model for a House of Delegates.

The proposal developed by the BOG was submitted to a membership vote in August 1992. Of the 9,346 active members, 36% returned ballots; the proposal was favored by a 2/3 majority. The proposal was submitted to the 1993 Legislature as SB 256. It provided for one elected delegate for every 100 bar members with a minimum of five delegates per region. It also provided that section and committee chairs and BOG members would be ex officio delegates.

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<sup>2</sup> A predecessor of the Policy and Governance Committee.

The bill passed the Senate with some amendments, but ran into strong opposition in the House from Rep. Del Parks, who was not persuaded that the HOD makeup would fairly reflect the interests of lawyers throughout the state. He proposed reducing the number of elected delegates (from 1:100 lawyers in the region to 1:200) and having 2 representatives from each local bar, which would have given much greater power to the rural counties. The bill died in the House.

A revised bill was introduced in 1995, the most fundamental difference in which was the addition of local bar presidents as ex officio members. The bill did not meet the same resistance as its predecessor and it became effective January 1, 1996. The first delegate elections were held in April 1996. For the next few months, delegates met with BOG representatives and OSB staff to draft rules of procedure and discuss other potential structural and procedural issues (such as seating in “regional delegations,” having an executive committee, and the like). The first meeting of the HOD was held in Medford on September 28, 1996.

### *Attendance and Participation*

HOD attendance has been adequate over the years, with only one year that there was no quorum. Between 1996 and 2011, the attendance of various components of the HOD was as follows:<sup>3</sup>

<i>Category</i>	<i>High</i>	<i>Low</i>
Elected delegates	90%	63%
Public members	83%	17%
Local bar presidents	57%	11%
Committee chairs <sup>4</sup>	90%	30%
Section chairs	79%	13%
BOG	100%	45%

During that same period, overall attendance ranged from a high of 80% (1996) to a low of 52% (2004).<sup>5</sup> HOD members were surveyed in 1998, after the second HOD meeting. The reasons given for not attending included “didn’t realize I was a member,” “on vacation or out of town,” “scheduling conflict,” “other commitments,” and “too expensive.” It is unknown whether different responses would be given now that the HOD is a more mature governance structure.

Anecdotal information suggests that some delegates don’t find the agenda compelling. Similarly, there have been some concerns raised in the last couple of years that too much of the HOD meeting is taken up with delegate resolutions on matters not relevant to bar governance.

Various ideas have surfaced from time to time to “enhance” the HOD including having an executive committee, appointing “chief delegates” from each region, and improving

<sup>3</sup> See attached spreadsheet for details.

<sup>4</sup> Eliminated after 2001.

<sup>5</sup> Attendance was 50% in September 2008, insufficient for a quorum, as discussed above.

member understanding of the HOD's role. The most significant change occurred about five years ago when a second round of pre-HOD regional meetings was instituted. The first regional meetings usually takes place in July, well in advance of the resolution filing deadline, and provides an opportunity for delegates to discuss ideas for resolutions and get information about how to submit them. The second round of meeting takes place approximately a month before the HOD meeting, after the preliminary agenda approved by the BOG has been published.

### *Over- and Under-Representation*

Over the years there has been concern that the HOD was heavily weighted in favor of the metro area or the Willamette Valley because a majority of ex officio delegates (section chairs, local bar presidents and BOG members) reside in the Portland metropolitan area<sup>6</sup> or in the Willamette Valley.<sup>7</sup> Having local bar presidents as ex officio delegates was intended to ameliorate that situation. The HOD will always have the majority of its members in the metro area and Willamette Valley because that is where the majority of lawyers practice. Currently, 82% of section chairs are from those areas. By contrast, only 40% of local bar presidents are from the metro area or the valley:

Total delegates	227 (6 are currently vacant)
Section Chairs	41 (31 from the metro area, 3 from the valley)
Local Bar Presidents	20 (3 from the metro area and 5 from the valley)

### *Other Bar Governance Models*

As noted above, one of the arguments in favor of creating the HOD in the early 1990's was that that Oregon was one of only a few bars that retained a "town hall" style of membership governance. No mention was made about what other bar were doing in lieu of a town hall, but it appears there was an unspoken understanding that they were being replaced by houses of delegates (representative assemblies). Whether that was true in the early 1990's or not, it is certainly not the case now. A 2009 ABA survey showed that only 5 of the 35 unified bars has a representative assembly (HOD), and none of them are in the western states.

Rather, the predominant model of bar governance is a board of governors. Among the western states,<sup>8</sup> board size ranges from 5 (Idaho) to 23 (California). About half have public members on the board and several have designated seats for minority lawyers, young lawyers, and law school representatives. Most meet 6-10 times per year. All but three have an executive committee that handles interim operational matters. Most jurisdictions also have some kind of initiative process by which a specified percentage of members can petition for a bar-wide vote on an issue.

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<sup>6</sup> Multnomah, Washington and Clackamas Counties.

<sup>7</sup> Marion, Polk, Benton, Linn and Lane Counties.

<sup>8</sup> Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah and Washington.

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** August 24, 2012  
**From:** Ann Fisher, Chair, Policy and Governance Committee  
**Re:** Judicial Selection, Evaluation and Education

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### Action Recommended

Consider the recommendations of the Policy and Governance Committee that the BOG:

- (1) change the way it makes recommendations to the governor on appellate appointments;
- (2) develop a process for evaluation of municipal, state and federal judges; and
- (3) mandate continuing legal education on judicial ethics and demeanor for sitting judges.

### Background

Over the last several months, the Policy and Governance Committee has discussed several issues involving the judiciary. They fall into two categories: (1) the BOG's contribution to appellate judicial appointments and (2) evaluation and education of sitting judges.

#### *Appellate Selection*

On the issue of appellate judicial appointments, the committee believes that the Bar's contribution was more valuable when it included a public ranking of the candidates. Currently, OSB Bylaw 2.703 provides generally that "Upon completion of the due diligence review, the Board's Committee on the Judiciary<sup>1</sup> will recommend a list of candidates suitable for consideration by the Governor to the Board,...."

For many years, the bylaws provided that the BOG would recommend those candidates it believed were "highly qualified" and, on request of the Governor, would also provide names of "qualified" candidates.<sup>2</sup> That type of recommendation was dropped sometime in 2005 in favor of merely indicating which candidates are "suitable to consideration." The change was made to accommodate the then-Governor, who didn't want any ranking in the recommendations. As a practical matter, since the change all candidates have been recommended to the Governors as suitable for consideration. At the same time, the BOG's preferences are shared with the governor's counsel or the governor orally so there is no public record of what could be considered a ranking of the candidates.

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<sup>1</sup> Since renamed to the Appellate Selection Committee.

<sup>2</sup> The BOG policies in effect at the time also included the following statement: "A 'highly qualified' or 'qualified' recommendation is intended to be objective. Failure to recommend a candidate in any particular selection process is not a finding that the person is unqualified."

Several BOG members who have served on the Appellate Selection Committee have expressed chagrin that they devote a considerable amount of time to interview and evaluate the candidates (often on a short time schedule), yet are prohibited from giving the governor a frank assessment of the candidate's qualifications.

#### *Judicial Evaluations*

On the issue of judicial evaluations, the committee members expressed concern at what appears to be an increasing lack of professionalism among judges, manifesting in rude treatment of lawyers and litigants. The committee believes the BOG should develop a system for evaluating sitting judges in municipal, state and federal courts.<sup>3</sup> Judicial evaluations can improve judicial performance in addition to helping citizen be more informed voters in judicial elections.

Evaluations of Multnomah County judges were done for several years during the 1970s and 1980s and the results were published in *The Oregonian*. The idea of judicial evaluations for state court judges was recommended some years ago by the BOG's *former* Committee on the Judiciary, but in the face of strong opposition from the then-Chief Justice, no action was taken. The P&G Committee believes it is time to revisit the idea.<sup>4</sup>

#### *Judicial Education*

The committee's concerns about judicial behavior suggest the need for better training and education. To that end, the P&G Committee recommends amending the MCLE rules to require that judges obtain 6 hours in each reporting period on the subjects of "judicial ethics and demeanor." This would be in addition to the 6 hour requirement for all members in "ethics and professional responsibility" (which includes one hour of child abuse reporting).

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<sup>3</sup> Information, guidance and templates are available from a variety of sources including the National Center for State Courts.

<sup>4</sup> Unbeknownst to the P&G Committee at the time of its discussions, the Appellate Judicial Selection Work Group of the Oregon Law Commission is considering the merits of judicial evaluations, among other issues. BOG Member Mike Haglund serves on the work group.

# OREGON STATE BAR

## Public Affairs Committee Agenda

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**Meeting Date:** August 24, 2012  
**From:** Sylvia E. Stevens, Executive Director  
**Re:** Alignment of Delinquency Dates and Elimination of Certified Mail for Notices

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### Action Recommended

Consider adding to the bar's 2013 Legislative package proposed amendments to ORS 9.200 and ORS 9.675 that would align the delinquency dates for payment of fees and IOLTA compliance, and allow the bar to send notices of delinquency/noncompliance by e-mail rather than by certified mail.

### Background

#### Delinquency Dates

OSB members who fail to pay their annual fees or PLF premiums or to file their annual IOLTA certification<sup>1</sup> by the due dates are subject to administrative suspension. For reasons that are lost to history, members are not considered delinquent on payment of the annual fee until 90 days after the due date, yet they are delinquent on payment of the PLF premium 30 days after the due date. There is no "grace period" for the IOLTA certification requirement so members who fail to file on January 1 are immediately in noncompliance. In all cases, suspension occurs 60 days after the notice of delinquency or noncompliance is mailed to the member:

**9.200 Effect of failure to pay membership fees; reinstatement.** (1) Any member in default in payment of membership fees established under ORS 9.191 (1) for a period of 90 days, or any person in default in payment of membership fees established under ORS 9.191 (2)<sup>2</sup> for a period of 30 days after admission or as otherwise provided by the board, or any member in default in payment of assessed contributions to a professional liability fund under ORS 9.080 (2) for a period of 30 days, shall, after 60 days' written notice of the delinquency, be suspended from membership in the bar. The notice of delinquency shall be sent by the executive director[, *by registered or certified mail,*] to the member in default at the [*last-known post-office address of the*] member's e-mail on file with the bar on the date of the notice, except that notice shall be sent by mail to any member who is exempt from having an e-mail address on file with the bar. Failure to pay the fees or contributions within 60 days after the date of the deposit of the notice in the post office shall automatically suspend the delinquent member....

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<sup>1</sup> Lawyers are required to certify whether they have a lawyer trust account in Oregon and, if so, at what financial institution, or alternatively, that they are exempt from the requirement to maintain such an account.

<sup>2</sup> That provision applies to prorated fees for members admitted to practice after the due date for annual fees.

**9.675 Mandatory certification and disclosures for lawyer trust accounts.**

\* \* \*

(2) If a member does not file the certificate and disclosures required by this section by or within 30 days after the due date prescribed under subsection (1) of this section, the executive director shall send written notice of the default to the member[. *The notice shall be sent by registered or certified mail to the last-known post-office address of*] at the member's e-mail address on file with the bar on the date of the notice, except that the notice shall be mailed to any member who is exempt from having an e-mail address on file with the bar. If a member does not file the certificate and disclosures required by this section within 60 days after the date the notice is mailed, the person's membership in the bar is automatically suspended....

Because of the different "grace periods," members who don't pay their annual fees by the January 31 due date are delinquent at the end of April and subject to suspension on July 1. Members who don't pay their PLF assessment are delinquent on or about March 1 and subject to suspension on or about May 1.<sup>3</sup> Members who don't file their IOLTA compliance certificate are delinquent on February 1 and subject to suspension on or about April 1.<sup>4</sup>

In addition to the statutorily required notices, more reminders and notices are sent to members who haven't paid their dues or filed their IOLTA compliance certificates. The PLF does the same with assessment delinquencies (including telephoning the members). Nevertheless, the inconsistent suspension dates (together with three notices from different departments) cause considerable confusion on the part of our members. Aligning them (and eventually devising a method to send a single notice) would go a long way toward assisting members with these requirements. The easiest way would be to reduce the annual fee "grace period" to 30 days and build in a 30 day "grace period" for IOLTA certification.

**Notices**

When a members is delinquent with payments or IOLTA compliance filing, written notice is sent informing the member of the delinquency and the time for cure before suspension will occur. In both cases, the notices are required to be sent by registered or certified mail to the member's last known post office address. In 2012, the cost of mailing delinquent annual fee notices was \$2600. The cost of mailing notices of IOLTA noncompliance was in excess of \$2400. (We do not have information relating to the cost of mailing notices of PLF assessment delinquencies, but suspect they are the same or higher, as the PLF allows the assessment to be paid in quarterly installments.)

Beginning January 1, 2011, all active members have been required to maintain an e-mail address for official bar communications.<sup>5</sup> We sent annual fee notices by e-mail in 2011 and

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<sup>3</sup> The date varies by one or two days, depending on how quickly the notices are prepared.

<sup>4</sup> See note 2; in actual practice since the IOLTA certification requirement is only a few years old, we have sent a "courtesy reminder" in early February, giving members another 30 days before we send the 60-day suspension notice.

<sup>5</sup> Bar Rule of Procedure 1.11(b) provides, in pertinent part: "All attorneys must also designate an e-mail address for receipt of bar notices and correspondence except attorneys who are over the age of 65 and fully retired from the practice of law and attorneys for whom reasonable accommodation is required by applicable law."

2012 with very favorable results both in the timing of payments and the cost savings over printing and mailing. Additional cost savings can be had by eliminating the requirement for sending the delinquency notices by e-mail.

If the foregoing ideas were implemented, ORS 9.200 and 9.675 would be amended as follows:

**9.200 Effect of failure to pay membership fees; reinstatement.** (1) Any member in default in payment of membership fees established under ORS 9.191 (1) for a period of [90] 30 days, or any person in default in payment of membership fees established under ORS 9.191 (2)<sup>6</sup> for a period of 30 days after admission or as otherwise provided by the board, or any member in default in payment of assessed contributions to a professional liability fund under ORS 9.080 (2) for a period of 30 days, shall, after 60 days' written notice of the delinquency, be suspended from membership in the bar. The notice of delinquency shall be sent by the executive director, by registered or certified mail, to the member in default at the last-known post-office address of the member. Failure to pay the fees or contributions within 60 days after the date of the deposit of the notice in the post office shall automatically suspend the delinquent member....

\* \* \*

**9.675 Mandatory certification and disclosures for lawyer trust accounts.**

\* \* \*

(2) If a member does not file the certificate and disclosures required by this section by the due date prescribed under subsection (1) of this section, the executive director shall send written notice of the default to the member. The notice shall be sent by registered or certified mail to the last-known post-office address of the member. If a member does not file the certificate and disclosures required by this section within 60 days after the date the notice is mailed, the person's membership in the bar is automatically suspended....

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<sup>6</sup> That provision applies to prorate fees for members admitted to practice after the due date for annual fees.

**OREGON STATE BAR**  
**Legislative Proposal**  
**Part I – Legislative Summary**

**RE: INTEREST FROM ESCROW ACCOUNTS**

**Submitted by: Oregon Law Foundation**

**Legislative Contact(s): Judith Baker**  
**Phone: (503) 431-6323**  
**E-mail: [jbaker@osbar.org](mailto:jbaker@osbar.org)**

**1. Does this amend current law or program?**

- a. Yes  **Amends ORS 696.578**  
b. No

**2. PROBLEM PRESENTED** (including level of severity):

Escrow trust accounts set up by title companies are very similar in form and function to lawyer trust accounts. However, moneys in the accounts are not treated similarly in terms of requirements for the accounts to be interest bearing with funds dedicated toward an appropriate purpose. Specifically these accounts need not be interest bearing, and if they are the interest may be kept by the escrow agent.

**3. SOLUTION:**

Require that escrow trust accounts be established as interest bearing accounts with interest dedicated to an approved charitable purpose such as the Oregon Law Foundation.

Title companies currently have escrow trust accounts set up to hold funds of parties to a real estate transaction until the transaction is completed. Similar to IOLTA accounts, escrow accounts must be set up as trust accounts kept separate and distinct from funds belonging to the title company. Currently under Oregon statute these escrow trust accounts can be set up as either noninterest bearing accounts or interest bearing with interest, upon agreement of all parties, going to either the escrow agent or a nonprofit selected by the escrow agent that has an affordable housing mission.

There are large sums of money being held in escrow trust accounts that have the potential to earn a substantial amount of interest to fund legal aid during a time when legal aid funding is decreasing and statewide services are eroding. It is difficult to predict with certainty the level of interest revenue that could be generated. This is because we currently don't know how much money is held in escrow accounts in Oregon and what the interest rate would be. In an attempt to estimate a ball park figure it may help to use Ohio as an example. Ohio's escrow accounts, which are only for residential property, generate two-thirds the interest revenue produced by Ohio's IOLTA accounts. When interest rates are more robust OLF annually receives \$3.6 million in IOLTA account interest. Two-thirds of \$3.6 million is almost \$2.4 million.

**4. PUBLIC POLICY IMPLICATION** of this proposed legislative change:

It will increase the interest revenue going to the OLF which in turn will increase the grant allocations to legal aid providers and other legal service organizations that provide access to justice to low income Oregonians.

5. Could the problem be addressed through a **NON-LEGISLATIVE SOLUTION**, such as administrative rule or education?

No.

6. **COULD ANOTHER SECTION OR GROUP MORE APPROPRIATELY INTRODUCE THE BILL?** If so, have you suggested it to the section or group?

No.

7. **IDENTIFY THE GROUP OR CONSTITUENCIES THAT WOULD BE MOST IMPACTED** or interested in this change. Who would support it and who would oppose it?

**Groups that Support**

This would be supported by legal service organizations that receive funding from the OLF for access to justice purposes. Support may also come from the courts who value increased funding for organizations that promote access to the court system.

**Groups with Concerns**

The three groups that it might concern are the banks, title companies and the Oregon Association of Realtors Home Foundation (Foundation).

- The banks may be concerned because it is believed that escrow accounts are mostly set up as noninterest bearing and therefore the banks benefit from not paying interest on accounts with potentially large balances.
- The title companies also benefit from having funds in noninterest bearing accounts because the banks allow an earnings credit on other accounts title companies hold at the bank. That said all but one title company in Oregon is a national company. In all likelihood the national title companies are already familiar with escrow accounts being IOLTA accounts in other state.
- In 2003 legislation was passed allowing escrow agents and real estate agents to voluntarily open client trust accounts with interest going to a nonprofit that provides first time home buying assistance and for development of affordable housing. In 2004 the **Oregon Association of Realtors Home Foundation** was set up with the mission to provide financial resources to create, expand and encourage home ownership opportunities for Oregonians. The Foundations website encourages both escrow agents and real estate agents to voluntarily set up their client trust accounts with interest going to the Foundation. The Foundation also encourages direct contributions and in the last couple of years has held fundraising events.

Based on the Foundation's tax returns the Foundation is not generating a large amount of revenue from escrow and real estate account interest. The following is the revenue reported from the Foundations tax returns for 2004 through 2010 (includes both interest and contribution revenue but not revenue generated by fundraising events)

- 2004 - \$21,480
- 2005 - \$14,970
- 2006 - \$14,960
- 2007 - \$46,235
- 2008 - \$41,058
- 2009 - \$82, 838
- 2010 - \$32,792

8. **Has this been introduced in a prior session?**

No.

**OREGON STATE BAR**  
**Legislative Proposal**  
**Part II – Legislative Language**

Please provide your legislative language below:

We don't have legislative language at this time.

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** August 24, 2012  
**From:** Sylvia E. Stevens, Executive Director  
**Re:** CSF Claims Recommended for Payment

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### Action Recommended

Consider the recommendation of the Client Security Fund that the following applications for reimbursement be granted:

No. 2011-18 DICKERSON (Morning Star)	\$50,000.00
No. 2011-22 SCHANNAUER (Olive)	\$800.00
No. 2011-29 GRUETTER (Foster)	\$50,000.00
No. 2012-03 GRUETTER (Key)	\$50,000.00
No. 2012-04 GRUETTER (Liebzeit)	\$50,000.00
No. 2012-07 GRUETTER (Runkel)	\$46,833.14
No. 2012-17 GRUETTER (Thornhill)	\$30,705.27
No. 2012-28 GRUETTER (Love)	\$2,206.44
No. 2012-34 GRUETTER (Carey)	\$3,345.00
No. 2012-38 GRUETTER (Shatka)	\$2,237.60
No. 2012-40 GRUETTER (Haron)	\$6,000.00

**TOTAL** **\$292,127.45<sup>1</sup>**

### Background

#### **No. 2011-22 SCHANNAUER (Olive) - \$800.00**

Wendy Olive hired Bend attorney Peter Schannauer in October 2009 to complete the adoption of her domestic partner's child. She deposited a flat fee of \$800 for Schannauer's services and \$200 for estimated filing fees. There was no written fee agreement and nothing to indicate that the fees were earned on receipt.

Olive heard almost nothing from Schannauer thereafter (except for one call in March 2010 instigated by Olive) and in October 2010 she demanded a refund of her \$800. In November, Schannauer responded that he had filed a petition on her behalf, but that it had been rejected and needed additional work. That was the last Olive heard from him. Olive then hired Eugene attorney Brewer to complete the adoption. Brewer learned from the court that

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<sup>1</sup> \$234,127.45 attributable to Bryan Gruetter.

nothing had been filed on Olive's behalf. Schannauer expressed remorse to Brewer about his representation of Olive and promised a refund of the advanced funds but he never delivered it.

The CSF Committee reviewed the claim in October 2011 and recommended an award of the entire \$800 that Olive had paid Schannauer. The BOG considered the claim at its November 2011 meeting, but a question was raised about whether there was sufficient evidence of dishonesty, particularly since no complaint had been made to Disciplinary Counsel's Office. Following that meeting, the CSF referred the matter to DCO.

Schannauer didn't respond to DCO's inquiries and the matter was referred to the Region 1 LPRC in January 2012. Schannauer initially told the LPRC investigator that he had filed Olive's petition; later amended his statement to say he had drafted the petition and submitted it for review to an adoption specialist at DHS. He was advised to gather additional information and amend the petition. Schannauer believed he reported this development to Olive (which she denies) and also thought he had drafted an amended petition but had not filed it because he felt insecure about filing it. He was unable to produce an amended petition for the LPRC investigator.

Schannauer acknowledged that he failed to issue a refund to Olive, saying he was "too busy." The money tendered for fees and costs was all deposited into Schannauer's business account. He told the LPRC investigator he was unaware of special language necessary to make his \$600 fee "earned on receipt." He first said he had deposited the \$200 cost advance into trust, but later acknowledged that it too had been deposited into his business account. Schannauer admitted using all of the funds paid by Olive for his own use and that he was will to make "any necessary financial reimbursement" but "only over time."

The Committee concluded that any work Schannauer did was of no value and that all of the money deposited by Olive was misappropriated to Schannauer's own use. Schannauer continues to practice in Bend. The SPRB has authorized prosecution on this and two other complaints against Schannauer. The CSF Committee is confident Schannauer will be disciplined in connection with his representation of Olive and recommends that she be reimbursed all of the money deposited with Schannauer. Because the loss is for less than \$5000 and Schannauer will be disciplined in connection with it, no judgment is required.

#### **No. 2011-18 DICKERSON (Morning Star) - \$50,000**

In February 2007, the Morning Star Missionary Baptist Church building was destroyed by fire. After collecting nearly \$1 million in insurance proceeds, the church pastor reached out to one of its congregants, Ernie Bighaus, for guidance about rebuilding the church. Bighaus recommended that the Church also hire attorney Daniel Dickerson to advise on contracts relating to the rebuilding. Bighaus represented Dickerson as "well-known" in the field of construction law, when in fact, Mr. Dickerson had no such expertise. However, Dickerson had previously represented Bighaus on several matters.

On June 24, 2008, Bighaus introduced Dickerson to the pastor. Dickerson presented a flat fee agreement under which the church would pay \$20,000 for his services. At the same time, Bighaus presented the pastor with a contract whereby the church would engage 2RE General Contractors, Inc., a Texas company owned by Bighaus, to manage the construction project (“the contract”). The contract called for an up-front payment of \$438,000, discounted to \$330,000 if paid immediately. Dickerson told the church officials that he had read the contract, that it would protect the church and was in its best interest, and urged them to sign in order to receive the discount.<sup>2</sup>

Between June 26 and July 24, Dickerson received his \$20,000 attorney fees as well as \$320,000 toward the construction management contract. (The final \$10,000 was due on completion.) Eight months went by with no meaningful progress on the church rebuilding and little contact from Bighaus. In April 2009, after a local contractor offered to donate construction management services to the congregation, church officials requested that Bighaus refund \$300,000 of the monies paid. He declined.

In October 2009, Bighaus demanded payment of the “hold back” that was due on completion of the project. Church officials contacted Dickerson for advice and help, but he urged them to pay Bighaus and they did.

In December 2009, recognizing that his loyalties were with Bighaus,<sup>3</sup> the church fired Dickerson and hired Miller Nash to represent it. In response to Miller Nash’s request for the file, an accounting and a refund of any unearned portion of the \$20,000 fee, Dickerson stated he would be out of the country beginning in February 2010. The church later learned that Dickerson and Bighaus moved to Kenya where they are involved in building a charitable children’s home called “Naomi’s Village.” The projected building cost, according to the Naomi’s Village website, is \$300,000. Bighaus is listed as the “lead builder” and Dickerson as the “ass’t. builder, botanist.”)

The church sued Dickerson in June 2010 alleging negligence, breach of fiduciary duty, and breach of contract and seeking to recover all of the money delivered to Dickerson for his own or 2RE’s benefit. (The church did not allege theft or other intentional conduct because it would negate PLF coverage.) The PLF appointed counsel to represent Dickerson; the case was complicated by Dickerson’s absence from the jurisdiction and by his filing bankruptcy in early 2011. The church eventually settled with the church for \$100,000; because of the “wasting” provisions of the PLF policy, the church feared it could end up with nothing even if it prevailed at trial.

The CSF Committee concluded that this claim is eligible for reimbursement. The church was Dickerson’s client and Dickerson’s dishonesty (in collusion with Bighaus) led to the church’s loss of more than \$350,000. The Committee recommends an award of \$50,000. The church has

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<sup>2</sup> In fact, the contract, an AIA form, was not completed fully and contained ambiguous and contradictory terms.

<sup>3</sup> Unbeknownst to the church, 2RE was not a licensed contractor in Oregon and was not a valid business until early 2010 when Dickerson incorporated it and served as its registered agent.

no further recourse against Dickerson. He was disbarred in August 2010 for, among other things, failing to account for flat fees and perform agreed work in matter unrelated to his representation of the church. The church's civil claim was reduced to a judgment that was fully satisfied by the PLF payment.

### **Bryan Gruetter Claims**

#### *Common Facts*

Bryan Gruetter was admitted to practice in 1986; after working for two Bend law firms, he had his own successful plaintiff's personal injury practice for more than 8 years. He was well known and widely respected in the Bend legal community. Gruetter had an unblemished disciplinary history until he was admonished in August 2011 for failing to promptly disburse payment to a third party lienholder. He excused his delay as the result of failing to enter the payment date in his "tickle system," being caught up in a complex trial, and health issues that took him away from the office. He assured DCO that he was hiring a new assistant to help bring order to his practice.

Unbeknownst to Disciplinary Counsel's Office, colleagues in Bend had noticed for several months that Gruetter was behaving strangely. He was often seen playing video poker in bars, he missed appointments and increasingly failed to show for court hearings or sought last-minute continuances alleging on health problems or calendar conflicts.

In late November 2011, a complaint was filed alleging that Gruetter had failed over the course of a year to pay a client's hospital lien. Within a few days, additional complaints began to come in, all alleging inability to communicate with Gruetter or to receive payments from his office. By January 20, 2012, the bar had received 16 complaints. Several days later, first by court order then by stipulation with Gruetter, the bar became the custodian of Gruetter's practice. At the time, there was slightly more than \$2500 in Gruetter's trust account. (The custodianship is closed and the balance of Gruetter's trust account was disbursed to the CSF by court order.)

Within days of the first disciplinary complaint, Gruetter's clients began to present applications for reimbursement from the Client Security Fund. As of July 17, 2012, the Fund had received 33 claims alleging losses ranging from \$500 to \$142,000. Reduced to claim limits, awards to all of the claimants will exceed \$750,000.

In late February, Gruetter submitted a Form B resignation (citing 25 pending matters) which was accepted by the Supreme Court and became effective April 19, 2012. Gruetter and his wife are currently under investigation by the US Attorney's office, which plans to prosecute them for wire fraud.

At its June 2012 meeting, the BOG approved awards totaling \$173,815.39 to seven of Gruetter's clients. The CSF Committee recommends that the requirement for judgments be waived in all cases. In some of the smaller cases that were part of his Form B resignation, no judgment is required in any event. For the others, the Committee believes that pursuing a judgment against Gruetter is pointless. He has no assets of which anyone is aware, and he is

likely to be convicted and imprisoned before too long. Additionally, it would be an undue burden on his clients to have incur the additional expense of legal proceedings.

**No. 2011-29 GRUETTER (Foster) - \$50,000**

Elisha Foster retained Gruetter to bring a claim for injuries suffered in a December 2008 auto accident. Her claim was settled in May 2010 for \$452,000. Gruetter deposited the settlement proceeds into his trust account. Gruetter deducted his fees (\$150,000) and costs (\$1962), paid medical expenses of \$37,617.98 and distributed \$202,000 to the client. He promised to pay remaining outstanding medical bills from the balance of \$60,420.02 and, if he could arrange additional reductions, to return any remainder to the client.

Despite his assurances to Foster, Gruetter did not pay the remaining medical claims and she learned of this only when the creditors began to look to her for payment. In one case, the creditor obtained a judgment and began foreclosure and sale of Foster's home to satisfy the obligation. The sale has been deferred pending the outcome of Foster's CSF claim.

The Committee recommends that Foster be awarded \$50,000 of her loss.

**No. 2012-03 GRUETTER (Key) - \$50,000**

Veryl Key hired Gruetter to pursue her injury claim resulting from a 2005 fall. The case settled in December 2010 for \$100,000. After deducting his attorney fees and costs, \$66,434.41 remained for the client. Gruetter disbursed \$10,000 to her in January 2011 and promised the balance after he resolved her medical liens.

Over the next year Gruetter failed to pay or compromise the outstanding medical claims, failed to provide Key with an accounting and failed to disburse any additional funds to Key.

The Committee recommends that Key be awarded \$50,000 of her loss.

**No. 2012-04 GRUETTER (Liebzeit) - \$50,000**

LeAnn Liebzeit hired Gruetter on July 2, 2010 to pursue a claim for injuries sustained in an auto accident. The claim was settled in October 2011 for \$150,000. After deduction of Gruetter's fee and costs (totaling \$50632.95) there remained \$99,367.05. Gruetter made partial disbursement of \$40,000 to Liebzeit but retained the balance (\$59,367.05) to apply to outstanding liens and expenses.

Among Liebzeit's outstanding obligations was a PIP "lien" for \$37,850. Liebzeit's new attorney confirms that Gruetter never sought or obtained a waiver of the lien, or a waiver or reduction of any of her other medical expenses. The PIP carried indicates it might reduce its claim if Liebzeit is still treating and can provide proof of additional expense. She is unable to do

that, however, because her doctors won't provide additional service until her outstanding balances are resolved.

The Committee recommends that Liebrecht be awarded \$50,000 of her loss. There was considerable discussion of whether the award should be reduced by the amount of the PIP lien since that is money she wouldn't have received if Gruetter had paid it. The Committee ultimately concluded, however, that it is not a "windfall" to the client because if the PIP carrier had waived or reduced the lien Liebrecht would have received some or all of it. Also, she will likely now have to use it to settle the lien.

**No. 2012-07 GRUETTER (Runkel) - \$46,833.14**

Gruetter settled Lana Runkel's personal injury claim in August 2011 for \$145,000. He deducted his fees and costs, paid medical expenses and made a partial distribution to the client:

Settlement proceeds	145,000.00
Gruetter's 1/3 fee	(48,333.33)
Costs Advanced by Gruetter	(1,127.16)
Medical Expenses Paid	(46,706.37)
Received by Client	<u>(2,000.00)</u>
Balance due Client	\$46,833.14

Despite many requests by Runkel between September 2011 and January 2012, Gruetter failed to account for or deliver the balance of her funds. Runkel's new attorney, Ed Merrill, has filed suit against Gruetter for \$46,833.14. He anticipates a default judgment will be entered but will be uncollectible.

The Committee recommends that Runkel be awarded \$46,833.14 in exchange for an assignment of any judgment she obtains against Gruetter.

**No. 2012-17 GRUETTER (Thornhill) - \$30,705.27**

Cheryl Thornhill was represented by Joe Walsh of Gruetter's office in connection with a claim for injuries suffered in an auto accident in early 2009. Thornhill settled with the at-fault driver for \$25,000 in December 2009. In February 2011, she settled with her own insurer and received \$22,328.56 in UIM benefits (for a total recovery of \$47,328.56).

Walsh provided a "final accounting" in December 2011 indicating that after deduction of the firm's fees and costs and \$1,770.44 owed to Aetna, there would be \$28,934.83 for Thornhill. Walsh instructed Thornhill to deal directly with Gruetter or his wife to get a check for that amount.<sup>4</sup> Thornhill's calls to Gruetter's office went unanswered. She went to the office in early January 2012 and was told by Gruetter's wife that she (Thornhill) would have to deal with

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<sup>4</sup> Walsh was an independent contract and had no access to or information about Gruetter's trust account.

Walsh. Only upon contacting Walsh again did Thornhill learn that no checks were being issued from Gruetter's account.

There is no record that Gruetter's office ever paid the \$1,770.44 owed to Aetna, so the Committee recommends an award of \$30,705.27 (\$28,934.83 + \$1,770.44).

**No. 2012-28 GRUETTER (Love) - \$2,206.44**

Jenny Love is Gruetter's niece. She hired him to assist her with a personal injury claim. The case was settled in October 2010 for \$35,615.24. After deducting his costs, Gruetter distributed all the proceeds to Love except \$3345 that he was holding back to reimburse costs owed to Hurley Re<sup>5</sup> (estimated at \$500) and a Regence lien of \$2,843.82.

In December 2010, Gruetter reimbursed Hurley Re's costs of \$189.44. In September 2011, Regence agreed to reduce its lien to \$1,895.88 (a reduction of \$947.94). In October and November 2011, Love contacted Gruetter's office several times requesting confirmation that all of her obligations had been satisfied and that she would receive the remaining funds. In December 2011, Gruetter disbursed \$947.94 to Love.

Gruetter never paid the Regence lien of \$1,895.88, nor did he refund the \$310.56 difference between what was held back for Hurley Re and what was actually paid. The Committee recommends Love be awarded \$2,206.44 for her loss.

**No. 2012-34 GRUETTER (Carey) - \$3,345**

Gruetter was engaged in 2007 to handle a personal injury case for Carol Carey, which he eventually settled in 2009 for \$100,000. Over a period of months, Gruetter made partial disbursement to the client and paid her hospital bill, but never provided a full accounting. The CSF investigator was able to construct the following accounting:

Settlement proceeds	100,000.00
Gruetter's 1/3 fee	33,333.00
Advanced Costs	410.00
Disbursed to client	44,000.00
Legacy payment	18,912.00
Hold back for Compro	<u>1,613.00</u>
Balance due to client	1,732.00

Gruetter did not pay Compro and never disbursed the remaining \$1,732 to the client. The Committee recommends that Carey be awarded \$3,345 for her loss.

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<sup>5</sup> Gruetter was with the Hurley Re firm at the time he undertook Love's representation.

**No. 2012-38 GRUETTER (Shatka) - \$2,327.60**

Gruetter was retained to pursue Michael Shatka's claims for injuries arising from a 2006 auto accident. The case was eventually tried to a jury and resulted in a \$60,000 verdict in late 2010. Gruetter paid the client's medical bills and disbursed approximately \$22,000 to the client. In June 2011, the client learned that Gruetter had not paid the fees of the client's surgeon for his trial testimony.

The Committee recommends that Shatka be reimbursed \$2,327.60, the amount that should have been paid to the witness.

**No. 2012-40 GRUETTER (Haron) - \$6,000**

Gruetter was engaged to pursue claims for injuries sustained by Louis Haron during surgery at St. Vincent Hospital. The claim was settled for \$250,000 in 2010. Gruetter deducted his fees and costs, paid the client's medical bills, and disbursed the net proceeds to the client except for \$10,000 that was held back as "a precaution" against additional medical bills.

Louis Haron died in May 2011 of unrelated causes. Before his death he demanded that Gruetter release the remaining \$10,000, which resulted in a disbursement of \$4,000 shortly before Louis' death. Mrs. Haron continued to make demand of Gruetter for the balance (the last one on January 4, 2012), but got no response.

The Committee recommends an award of \$6,000 to Alice Haron. There is no pending probate and Mrs. Haron was her husband's sole beneficiary.

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# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** August 24, 2012  
**Memo Date:** August 24, 2012  
**From:** Barbara Dilaconi, Appointments Committee Chair  
**Re:** Volunteer Appointments

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### **Action Recommended**

Approve the following Appointments Committee recommendations.

#### **Affirmative Action Committee**

**Recommendation:** Diane Schwartz Sykes, term expires 12/31/2014

#### **House of Delegates**

**Region 3 Recommendation:** Joel Benton, term expires 4/20/2015

**Region 4 Recommendation:** Mark J. Lang, term expires 4/20/2015

**Region 4 Recommendation:** Ellen Strom, public member, term expires 4/20/2015

**Region 5 Recommendation:** Paresh Patel, public member, term expires 4/20/2015

**Region 6 Recommendation:** Debra Cohen Maryanov, term expires 4/20/2015

**Region 7 Recommendation:** Claudia Pieters, public member, term expires 4/20/2015

**Out of State Region Recommendation:** Michael E. Vinding, term expires 4/20/2015

**Oregon State Bar  
Board of Governors Meeting  
August 24, 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. Jennifer M. Gleason – 935198

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

2. Paul S. Majkut – 872900

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

3. Kimberly M. Pfefer – 053471

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

4. Michelle Lynn Shaffer – 981018

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

5. Emily Rae Swensen – 971759

**Motion:** Ms. Fisher presented information concerning the BR 8.1 reinstatement application of Ms. Swensen to satisfy the one meeting notice requirement set

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

6. Joel D. Shapiro – 003814

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

B. Disciplinary Counsel's Report

As written.

**Oregon State Bar  
Board of Governors Meeting  
August 24, 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

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

C. Other Matters

1. The BOG received status reports on the non-action items.
2. Ms. Hirschbiel presented the request of Jossi Davidson for the board to file an application to appear *amicus curiae* in the case of *Martin v. Coleman*.

**Motion:** Mr. Spier moved, Mr. Prestwich seconded, and the board voted unanimously to deny the request to file the application.